

The Code of Civil Procedure, 1908 –An Introduction

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Kinds of Law

□ **Substantive Law**

- creating rights and obligations on persons
E.g.: IPC, ICA and TPA

□ **Procedural Law/Adjective Law**

- laying the procedure for enforcing such rights and obligations E.g.: **CPC**, Cr.P.C and partly IEA.
 - include Rules framed under various enactments.
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Kinds of Wrongs

- ❑ **Civil Wrongs** – generally affecting private rights and interests
 - ❑ **Criminal Wrongs** – public wrongs affecting the whole society, also called crimes / offences
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Code of Civil Procedure, 1908

- ❑ Primary procedural law in administration of civil justice
 - ❑ Enacted in 1908 & Came into force w.e.f. 01-01-1909
 - ❑ Contains principles of natural justice
 - ❑ Based on **justice, equity, and good conscience**
 - ❑ Contains both procedural & substantive laws.
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Scheme of CPC

- ❑ Contains 158 sections – called Body
 - ❑ 51 orders in First schedule – called Rules
 - ❑ Sections deal with the substantive aspects of civil procedure
 - ❑ Orders deal with procedural aspects
 - ❑ Each order contains no. of Rules
 - ❑ Contains 08 Appendices.
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Amendments to CPC

- ❑ Three major amendments so far
 - ❑ 1976 amendment
 - ❑ 1999 amendment
 - ❑ 2002 amendment
 - ❑ **Object of amendments** -to keep procedural law in tune with **changing needs of society** and **even technological advances**.
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Hierarchy of Civil Courts in India

- ❑ Supreme Court
 - ❑ High Courts
 - ❑ District Courts
 - ❑ Courts of senior Civil Judge
 - ❑ Courts of Junior Civil Judge
 - ❑ Small Causes Courts
 - ❑ Court annexed mechanism – Lok Adalats
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Civil Litigation in India

- ❑ Most common form of civil litigation- Suit E.g. **Original Suits (OS)**, **Original Petitions (OP)**
 - ❑ **Difference** between OS and OP
 - ❑ **Suit**-not defined by Code
 - ❑ **Suit**-always relates to civil litigation and derived from the word suing (**take legal action**)
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Stages of Civil Litigation in india

- ❑ **Plaint**
 - ❑ **Summons**
 - ❑ **Written Statement** (Set-off, Counter Claim & New facts)
 - ❑ Appearance/Non-appearance of parties
 - ❑ Discovery. Inspection & Interrogatories
 - ❑ Amendment of Pleadings
 - ❑ **Framing of Issues**
 - ❑ **Hearing & Trial**
 - ❑ **Judgment & Decree**
 - ❑ **Execution Proceedings** (subject to **appeals, reference, review** and **revision**)
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Possibility of Settlement of dispute outside court

- ❑ **Section 89** inserted by 1999 amendment w.e.f.. 1-7-2002
 - ❑ If it appears to court that there exist elements of such settlement
 - ❑ Courts may formulate terms of settlement & inform parties
 - ❑ After receiving observations of parties, court may reformulate terms of possible settlement
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Possibility of Settlement of dispute outside court (contd.)

□ Refer terms of settlement to

- Arbitration
- Conciliation
- Judicial settlement including Lok Adalat
- Mediation (for effecting compromise)

*** If no such possibility exists, it may proceed with suit.**

Essential Conditions of Civil Suit

- ❑ **Parties**
- ❑ **Cause of action** /Subject matter/Civil dispute
- ❑ **Jurisdiction of Court** -Territorial, Subject matter & Pecuniary
- ❑ **Limitation**
- ❑ **Relief**
- ❑ **Other incidental conditions - No bar to suit, Court fees etc.**

Interim Orders

- ❑ May be passed during pendency of suit
- ❑ Include Commissions, Arrest before judgment, Attachment, Temporary Injunctions, Receiver & Security for costs.
- ❑ Object: to protect subject matter of suit and to meet the ends of justice
- ❑ Orders – passed at discretion of court and depending on facts and circumstances of each case.

Bars to Institution/Trial of Suits

- ❑ Stay of Suit (Res subjudice)
 - ❑ Res judicata
 - ❑ Court Fees (subject to filing of indigent/pauper suits)
 - ❑ Expiry of Limitation Period (subject to condonation of delay)
 - ❑ Lack of jurisdiction
 - ❑ Compulsory Arbitration Clause in agreement
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Important issues for Public Officers

- ❑ Definition of Public Officer- S.2 (17)
 - ❑ Affidavits
 - ❑ Pleadings (O.6,7 & 8)
 - ❑ Summons – Issue and Service
 - ❑ Suits by or against Govt./Public Servants in their official capacity (O.27, Sec.79-82)
 - ❑ S.80 Notice
 - ❑ Attachment of Property (Sec.60)
 - ❑ Arrest & Detention (S.55-59)
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Public Officer [Sec.2(17),CPC]

- ***means a person falling under any of the following descriptions, namely:-***
 - (a) every Judge;***
 - (b) every member of an All-India Service ;***
 - (c) every commissioned or gazetted officer in the military, naval or air forces of the Union while serving under the Government.***
 - (d) every officer of a Court of Justice whose duty it is, as such officer, to investigate or report on any matter of law or fact, or to make, authenticate or keep any document, or to take charge or dispose of any property, or to execute any judicial process, or to administer any oath, or to interpret, or to preserve order, in the court, and every person especially authorized by a Court of Justice to perform any of such duties:***
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Public Officer [Sec.2(17),CPC]

- (e) every person who holds any office by virtue of which he is empowered to place or keep any person in confinement;**
 - (f) every officer of the Government whose duty it is, as such officer, to prevent offences to give information of offences, to bring offenders to justice, or to protect the public health, safety or convenience;**
 - (g) every officer whose duty it is, as such officer, to take, receive, keep or expend any property on behalf of the Government, or to make any survey, assessment or contract on behalf of the Government, or to execute any revenue process, or to investigate, or to report on, any matter affecting the pecuniary interests of the Government, or to make, authenticate or keep any document relating to the pecuniary interests of the Government, or to prevent the infraction of any law for the protection of the pecuniary interests of the Government; and**
 - (h) every officer in the service or pay of the Government, or remunerated by fees or commission for the performance of any public duty;**
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Conclusion

Thank You
