



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.



Kinds of Wrongs

- **Civil Wrongs** – generally affecting private rights and interests
- **Criminal Wrongs** – public wrings affecting the whole society, also called crimes / offences



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.

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.**



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**.



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



Civil Litigation in India

- Most common form of civil litigation- Suit E.g. **Original Suits** (OS), **Original Petitions** (OP)
- **Suit**-not defined by Code
- **Suit**-always relate to civil litigation and derived from the word *suing* (take legal action)

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**)



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



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



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)



S.80 Notice

- where a suit is to be instituted against the Government or any public official for any act purported to be done in his official capacity, the person filing the suit must give a notice of at least 2 months before filing the suit.
- the suit must be instituted only for acts purported to be done by him in his official capacity.

The act must be such as is done or



The S.80 notice must be served on

- a) Where a suit is instituted against the Central Government but not the Railway department, a Secretary to the Government.
- b) Where a suit is instituted against the Central Government and it relates to the Railway, the General Manager of Railways.
- c) Where a suit is instituted against the Government of Jammu and Kashmir, the Chief Secretary to the Government.
- d) Where a suit is instituted against any other State Government, a Secretary to such Government or the Collector
- e) Where a suit is instituted against any public official, such public official



Suits by or against Governments- Constitution of India

- Article 300 of the Constitution: deals with legal proceedings by or against the Union of India or State
- Provides that in a suit by or against the Government, the authority to be named as plaintiff or defendant, as the case may be; in the case of the Central Government, the Union of India and in the case of State Government, the State, which is suing or is being sued.



Conclusion

Thank You