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Review document

THE CODE OF CIVIL PROCEDURE, 1908
PART-1 (SEC.1-80)

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THE CODE OF CIVIL PROCEDURE, 1908¹

Short Title: The Code of Civil Procedure, 1908

Long Title: An Act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature.

Ministry: Ministry of Law and Justice

Enforcement Date: 01-01-1909

Objective-

The Law relating to the practices and procedure to be followed in the Civil Courts is regulated by the Code of Civil Procedure, 1908. The word CODE means ‘a systematic collection of statutes, body of laws so arranged as to avoid inconsistency and overlapping’.

The main object of this civil procedure code is to consolidate and amend the laws relating to the procedure and practices followed in the Civil Courts in India. It has been enshrined in the preamble of the code that it is enacted to consolidate and amend the laws relating to the procedure to be followed in the civil courts having civil jurisdiction in India. The Civil Procedure Code regulates every action in civil courts and the parties before it till the execution of the degree and order.

The code has a brief history. Before 1859, there was no uniform civil procedure applicable for the entire country. Sir Charles Wood was the then President of the Board for the affairs of India instructed the Second Law Commission to prepare a simple code for applicability to whole India. Although it was not applicable in Presidency Supreme Courts and Presidency Small Cause Courts. This code had several issues and was amended and reacted in 1877. Another amendment was made in 1892. There existed a conflict of judicial opinion and interpretation of certain procedures of the code.

In 1908, with the assent of the Governor-General, The Code of Civil Procedure of 1908 was implemented. The Civil Procedure Code has been amended several times to meet the needs and requirements which are dynamic and changing from time to time.

¹<http://legislative.gov.in/sites/default/files/A1908-05.pdf>

Important provisions-

The Body of the Code has 12 parts containing 158 sections. **Section 1** of the Act talks about the extents of the applicability of the Act. The Civil Procedure Code was passed in 1908 and came into force from 1st January 1909. The Code is applicable to the whole country except- the state of Nagaland and the tribal areas. Earlier the act was also not applicable to the State of Jammu and Kashmir, but by the Jammu and Kashmir Reorganization Act, 2019 the Code is now applicable to state of Jammu and Kashmir as well. The word tribal areas is also defined within the Section itself. **Section 2** provides a list of certain important definitions in order to understand the act. The important ones include decree, judgement, court, foreign judgement, movable property and many more.

Section 3-8 talks about the constitution of different courts and their jurisdiction. **Section 9** was enacted to list the jurisdiction of a civil court to try all suits of civil nature unless they are barred expressly or impliedly. Whereas **Section 10** provides for stay of suit. **Section 11** deals with the well-known doctrine of res judicata, which means that No Court shall try an issue with the same parties, litigating under the same title in a matter which has been partially or substantially been decided by that court. **Sections 13 and 14** relate to foreign judgments under which it is to be presumed that the judgement was given by a competent court and that it shall be conclusive as to any matter thereby adjudicated between the parties, except under certain circumstances. **Sections 15 to 21-A** regulate the place of suing. They lay down rules as to jurisdiction of courts, jurisdiction of suits related to movable as well as immovable property and objections as to jurisdiction. **Sections 22 to 25** make provisions for transfer and withdrawal of suits, appeals and other proceedings from one court to another. It enlists the general power of transfer and withdrawal and the power of Supreme Court to transfer suits.

Section 26 is an important Section of the Code as it gives the first step to start proceedings in a Civil Court. It mentions that a civil suit can be instituted only after presentation of a plaint, which contains facts proved by an affidavit. **Section 27- Section 32** deals with summons and delivery. After the plaint has been filed, it is Important to serve summons to the defendant and witnesses. There is a penalty if the defendant flouts the orders and disobeys the summons. The next important set of Sections is **Sections 33- Section 35B**. Here, the court is empowered to pronounce judgement after the case has been heard and also on such judgement a decree shall follow.

Section 36 to 46 deals with the courts by which decrees may be executed, transfer of decree, result of execution proceeding, power of courts and execution of decrees outside India. There is also a certain procedure for the execution of decree, the details are provided in **Section 51 to Section 54**. Order execution of the decree may be by delivery of any property, by attachment and sale or by the sale without attachment, by arrest and detention in prison, by appointing a receiver or by any such other manner as may be required.

The subsequent Sections then talk about the arrest and detention, attachment and sale and also distribution of property for the purpose of execution of the judgement decree in detail. Certain sections further talk about all the incident matter related to such arrest, detention, sale, attachment and distribution of property. **Section 75 to Section 78** deal pertain to incidental proceedings. **Section 75** empowers the courts to issue commission for any of the matters such as-

- To examine any person
- To make local investigation
- To examine or adjust accounts
- To make a partition
- To hold scientific, technical, or expert investigation
- To conduct sale of property subject to speedy and natural decay and is in custody of court
- To perform any ministerial act

If a person is not residing in India, the court can issue a letter of request to examine that witness under section 77. Similarly, a commission can be issued by foreign court under some circumstances as given under Section 78.

Under **Section 79-80** Suits can be instituted by or against the government or public officers in their official capacity. Section 79 mentions the where the Government of India is to be made party as plaintiff or defendant it shall be referred as the Union of India (before 1950 it was Dominion of India), in case of State, it shall be referred to as State.

Important Amendments –

Some important changes brought in the **year 1976** are-

- The doctrine of res judicata is being made more effective.
- Power of transfer of proceedings from one High Court to another is given to the Supreme Court.
- Freedom from attachment of a portion of salary to all salaried employees to be granted.
- Scope of summary trials substantially widened.
- The practice to pass preliminary and final decree in certain suits is to be abolished.
- Restrictions imposed on right on revision and appeal.
- Provision made to ensure written statements and documents are filed without delay.
- New Order 32A inserted to provide a special procedure in litigation concerning the affairs of a family.
- Provision of giving notice under Section 80 before the institution of a suit against the government or a public officer was made less stringent.

Changes brought by Amendments of **YEAR 1999 and 2002-**

The amendments made in 1976 were not found to be satisfactory, certain additional changes were required to dispose of civil cases expeditiously. So Justice Malimath Committee was

appointed by the Government. In pursuance of the recommendations made by the committee, the Code was amended in 1999 and 2002 to incorporate the suggestions.

The main object of the amendments is to ensure fair and natural justice and providing a speedy remedy by eliminating untoward delay in disposal of the cases.

According to the amendment,

- Summons should be delivered to the defendant within 30 days from the date of filing of the suit.
- The written statement should be filed within 30 days. The court may extend this period up to 90 days.
- The penalty for non-appearance and default has been increased to Rs.5000/-
- In case of decree for payment, if the judgment debtor does not pay, he can be detained in civil prison. If the default is for payment up to Rs.2000, he will not be detained in civil prison.
- In case of attachment while executing a decree, the monthly salary up to Rs.1000/- and two third of the remaining salary exceeding Rs.1000/- will not be attached.
- The amendments paved the way to the new and efficient methods for settlement of disputes, like Arbitration, Conciliation and Mediation. Lok Adalat is a very good example for this.
- There is a provision for the defendant to get compensation for the expenses incurred, loss or injury including the loss of reputation caused to him because of his arrest or attachment of his property.
- After the amendments, if the value of subject matter of the suit is below Rs.1000, such disputes cannot be appealed.
- If the case is adjudicated by a single judge of a high court whether in the original or appellate jurisdiction, no appeal will be entertained against the order of the single judge of the high court.
- There is no second appeal if the subject matter of the suit is for the recovery of money not exceeding Rs.25,000/-
- The Court may adjourn the framing of issues for a period not exceeding seven days while examining the witnesses or examining the documents presented before the court.
- Any party to the suit will not be given more than 3 adjournments during the hearing of any suit.
- The Court will pronounce the judgment once the trial is over. The Court shall endeavor to pronounce judgment within 30 days from the conclusion of hearing. But, in the case of exceptional or extraordinary circumstances, the court may fix a day beyond 30 days but before 60 days from the conclusion of the hearing.

Conclusion-

The court was enacted with the aim to consolidate and amend laws relating to the procedure of courts of civil judicature. It has been designed in such a way so as to facilitate justice and further its ends and is not a penal enactment for penalties and punishments. A procedural law is always in aid of justice, it is subservient to the substantive law. Nothing can be given by a procedural

law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law.² The code has been helping the court to deliver impartial and unbiased justice. It gives clear and simple picture of procedures to be followed. Although, it may have some limitations yet it is one of the most efficient procedural laws of the country.



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²SaiyadMohd. Bakar v Abdulhabib Hasan (1998)4 SCC 370

ABOUT THE AUTHOR



I'm Shivika Goyal from University Institute of Legal Studies Panjab University Chandigarh. I'm a keen observer, a quick learner and an ardent reader. I am glad to have worked under legaleagle law forum. The Bare Act Review Internship program helped me in doing a lot of research, I studied the bare acts carefully, observed its drafting, learnt the merits and launces in each bare act. The experience was quite an enriching and the journey learning experience with this will be cherished forever.