

Introduction to Civil Procedure Code 1908

Distinction between procedural law and substantive law
Substantive law is the statutory, or written law, that defines rights and duties, such as crimes and punishments (in the criminal law), civil rights and responsibilities in civil law. It is codified in legislated statutes or can be enacted through the initiative process.

Independence existence based set of laws

Cannot be applied in non-legal contexts

Procedural law is the “machinery” for enforcing those rights and duties. Procedural law comprises the rules by which a court hears and determines what happens in civil or criminal proceedings, as well as the method and means by which substantive law is made and administered.

There’s no independence existence

Can be applied in non-legal contexts

History of the code, extent and its application, definition

To give uniformity to Civil Procedure Legislative Council of India, enacted Code of Civil Procedure, 1859, which received the assent of Governor-General on 23 March 1859. The Code however, not applicable to Supreme Court in the Presidency Towns and to the Presidency Small Cause Courts. But it did not meet the challenges and was replaced by Code of Civil Procedure Code, 1877. But still it did not fulfill the requirements of time and large amendments were introduced. In 1882, it was recast the whole Code and it was the Code of Civil Procedure, 1882.

With passing of time it is felt that the Code needs some flexibility to breathe the air of speed and effectiveness. So, meet these problems Code of Civil Procedure, 1908 was enacted. Though it has been amended number of time it stood the test of time. – Wikipedia.org

2. Definitions.

In this Act, unless there is anything repugnant in the subject or context,-

- (1) “**Code**” includes rules;
- (2) “**decree**” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [* **] section 144, but shall not include-
 - (a) any adjudication from which an appeal lies as an appeal from an order, or
 - (b) any order of dismissal for default.

Explanation—A decree is preliminary when further proceedings have to be taken before the suit can be completely disposed of. It is final when such adjudication completely disposes of the suit, it may be partly preliminary and partly final;

- (3) “**decree-holder**” means any person in whose favour a decree has been passed or an order capable of execution has been made;

- (4) “**district**” means the local limits of the jurisdiction of a principal Civil Court of original jurisdiction (hereinafter called a “District Court”), and includes the

local limits of the ordinary original civil jurisdiction of a High Court;

- 3[(5) “**foreign Court**” means a Court situate outside India and not established or continued by the authority of the Central Government;]
- (6) “**foreign judgment**” means the judgment of a foreign Court;
- (7) “**Government Pleader**” includes any officer appointed by the State Government to perform all or any of the functions expressly imposed by this Code on the Government Pleader and also any pleader acting under the directions of the Government Pleader;

- 4[(7A) “**High Court**” in relation to the Andaman and Nicobar Islands, means the High Court in Calcutta;

- (7B) “**India**”, except in sections 1, 29, 43, 44, [544A], 78, 79, 82, 83 and 87A, means the territory of India excluding the State of Jammu and Kashmir;
- (8) “**Judge**” means the presiding officer of a Civil Court;
- (9) “**judgment**” means the statement given by the judge on the grounds of a decree or order;
- (10) “**judgment-debtor**” means any person against whom a decree has been passed or an order capable of execution has been made;

- (11) “**legal representative**” means a person who in law represents the estate of a deceased person, and includes any person who intermeddles with the estate of the deceased and where a party sues or is sued in a representative character the person on whom the estate devolves on the death of the party so suing or sued;
- (12) “**MESNE profits**” of property means those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits, but shall not include profits due to improvements made but the person in wrongful possession;
- (13) “**movable property**” includes growing crops;
- (14) “**order**” means the formal expression of any decision of a Civil Court which is not a decree;
- (15) “**pleader**” means any person entitled to appear and plead for another in Court, and includes an advocate, a vakil and an attorney of a High Court;

- (16) “**prescribed**” means prescribed by rules ;
- (17) “**public officer**” means a person falling under any of the following descriptions, namely:-
 - (a) every Judge;
 - (b) every member of 2[an All-India Service];
 - (c) every commissioned or gazetted officer in the military, 6[naval or air forces] of 7[the Union] 8[* **] 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;
 - (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;

- (18) “**rules**” means rules and forms contained in the First Schedule or made under section 122 or section 125;
- (19) “**share in a corporation**” shall be deemed to include stock, debenture stock, debentures or bonds; and
- (20) “**signed**”, save in the case of a judgment or decree, includes stamped.

Suits: Jurisdiction of the civil courts

Jurisdiction means the extent of the power of the court to entertain suits, appeals and applications. The meaning of the word “jurisdiction” has been expounded with some detail in a Full Bench case in Hriday Nath Roy v. Ram Chandra, (A.I.R. 1921 Cal. 34). The following passage from the judgment of the said case is relevant in this connection:

“In the order of reference to a Full Bench in the case of Sukhlal v. Tara Chand, [(1905) 33 Cal. 68], it was stated that jurisdiction may be defined to be the power of Court to hear and determine a cause, to adjudicate and exercise any judicial power in relation to it; in other words, by jurisdiction is meant the authority which a Court has to decide matters that are litigated before it or to take cognizance of matters presented in a formal way for its decision.

Kinds of jurisdiction

|Jurisdiction over the subject-matter

|Territorial jurisdiction

|Pecuniary jurisdiction

|Original or Appellate

Jurisdiction

Bar on suits

Express : When statute makes so. Revenue Courts, Criminal Courts, Rent Tribunal , Income tax Tribunal Accident Claims etc. can handle only relevant cases. BUT if remedy provided therein not adequate, Civil Courts jurisdiction can not be ousted. If statute gives finality to a Tribunal Order , Civil Court jurisdiction is ousted if there is adequate remedy in the Statute to do what the CC would normally do.

Implied : General principles. If remedy demanded is not provided by Statute. Also public policy bar – suit by witness to recover money, suit for damages against a judicial officer in course of his duty etc. If statute is complete in itself, and has a court designated for it, jurisdiction of civil courts barred by necessary implication. Suits of civil nature (Sec.9)

Not the status of parties but subject matter determines whether it is a Civil Suit.

|Covers private rights and obligations. Political, Social, religious not covered.

|If suit is Civil (property/office right) and incidental issue relates to caste, religion etc., it remains a civil matter. For eg. Property, right to worship share in offerings, Religious Procession, Specific Performance/ Relief, Conjugal Rights/ Dissolution, right to hereditary offices, excommunication, dispute about religious office is civil, election validity, wrongful dismissal , salaries etc Not Civil: mainly caste, purely on religious rites, upholding dignity-claim to be declared temple’s guru, recovery of voluntary payments/offerings, etc. Doctrine of Res sub judice and Res judicata (Sec. 10, 11 and 12) The Doctrine of Res-judicata is based on the following three maxims:

- 1.Nemo Debet Lis Vexari Pro Una Et Eaden Causa – No man should be vexed twice over for the same cause;
- 2.Interest Republicate Ut Sit Finis Litium – It is in the interest of the State that there should be an end to a litigation; and
- 3.Res Judicata Pro Veritate Occipitur – A judicial decision must be accepted as correct. The doctrine of Res Judicata has been explained in the simplest possible manner by Das Gupta J. in the following words: “The principle of Res Judicata is based on the need of giving finality to judicial decisions. What it says is that once a res is judicata, it shall not be adjudged again.”

Primarily it applies as between past litigation and future litigation. When a matter whether on a question of fact or a question of law has been decided between two parties in one suit or proceeding and the decision is final, (either because no appeal was taken to a higher Court or because the appeal was dismissed, or no appeal lies), either party will not be allowed in a future suit or proceeding between the same parties to canvass the matter again.

Section 11 reads thus:

No Court shall try any suit or issue in which the matter directly and substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court.

Explanation I:The expression “former suit” shall denote a suit which has been decided prior to the suit in question whether or not it was instituted prior thereto.

Explanation II:For the purposes of this section, the competence of Court shall be determined irrespective of any provisions as to a right of appeal from the decision of such Court.

Explanation III:The matter above referred to must in the former suit have been alleged by one party and either denied or admitted expressly or impliedly, by the other.

Explanation IV:Any matter which might and any ought to have been made ground of defence or attack in such former

suit shall be deemed to have been a matter directly and substantially in issue in such suit.

Explanation V:Any relief claimed in the plaint, which is not expressly granted by the decree, shall, for the purposes of this section, be deemed to have been refused.

Explanation VI:Where persons litigate bonafide in respect of a public right or of a private right claimed in common for themselves and others, all persons interested in such right shall, for the purposes of this section, be deemed to claim under the persons so litigating.

Explanation VII:The provisions of this section shall apply to a proceeding for the execution of a decree and references in this section to any suit, issue or former suit shall be construed as references, respectively, to a proceeding for the execution of the decree, question arising in such proceeding and a former proceeding for the execution of that decree.

Explanation VIII:An issue heard and finally decided by a Court of limited jurisdiction, competent to decide such issue, shall operate as Res Judicata in a subsequent suit, notwithstanding that such Court of limited jurisdiction was not competent to try such subsequent suit in which such issue has been subsequently raised.

Res-Sub Judice and Res-Judicata:

Section 10 of C.P.C. deals with stay of suit. The other name of this section is Res-Sub Judice. It provides:

No Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim litigating under the same title where such suit is pending in the same or any other Court in Pakistan having Jurisdiction to grant the relief claimed, or in any Court beyond the limits of Pakistan established or constituted by the Federal Government and having like Jurisdiction or before the Supreme Court.

The essence of this section is that it does not bar the institution of a suit, but only bars the trial, if certain conditions are not fulfilled. The subsequent suit, therefore, cannot be dismissed by the Court, but is required to be stayed. A person, who seeks to get a suit stayed under the doctrine of Res-Sub Judice, shall satisfy the following conditions:

1. There must be two suits – one previously instituted and the other subsequently instituted.
2. The matter in issue in the subsequent suit must be directly and substantially in issue in the previous suit.
3. Both suits must be between the same parties or their representatives.
4. The previously instituted suit must be pending in the same Court in which the subsequent suit is brought or in any consequent Court to try the said suit.
5. The Court in which previous suit is pending, must be a competent Court to grant relief.
6. Parties to previous suit and subsequent suit must be litigating under the same title in both suits. Section 10 is mandatory and no discretion is left with the Court, but to stay the suit based on the doctrine of Res-Subjudice.

Section 10 is an exemption to a suit pending in a foreign Court. A Civil Court can stay a suit by virtue of inherent powers vested in it under Section 151, C.P.C., even without application of Sec. 10 of C.P.C.

Foreign Judgment (Sec. 13, 14)

13. When foreign judgment not conclusive.

A foreign judgment shall be conclusive as to any matter thereby directly adjudicated upon between the same parties or between parties under whom they or any of them claim litigating under the same title except-

(a) where it has not been pronounced by a Court of competent jurisdiction;

(b) where it has not been given on the merits of the case;

(c) where it appears on the face of the proceedings to be founded on an incorrect view of international law or a refusal to recognise the law of

1[India] in cases in which such law is applicable;

(d) where the proceedings in which the judgment was obtained are opposed to natural justice;

(e) where it has been obtained by fraud;

(f) where it sustains a claim founded on a breach of any law in force in 1[India].

14. Presumption as to foreign judgments.

The Court shall presume upon the production of any document purporting to be a certified copy of a foreign judgment that such judgment was pronounced by a Court of competent jurisdiction, unless the contrary appears on the record; but such presumption may be displaced by proving want of jurisdiction.

Place of Suits (Ss. 15 to 20)

Sec. 15. Court in which suits to be instituted.

Sec. 16. Suits to be instituted where subject-matter situate.

Sec. 17. Suits for immovable property situate within jurisdiction of different Courts.

Sec. 18. Place of institution of suit where local limits of jurisdiction of Courts are uncertain.

Sec. 19. Suits for compensation for wrongs to person or movables.

Sec. 20. Other suits to be instituted where defendants reside or cause of action arises.

Transfer of Cases (Ss. 22 to 25)

Sec. 22. Power to transfer suits which may be instituted in more than one Court.

Both husband and wife initiating separate proceeding at different places. Both the proceedings triable by the same court.

Husband's case to be transferred to the place where wife's case is pending; Ms. Shakuntala Modi v. Om Prakash Bharoka, AIR 1991 SC 1104.

Sec. 23. To what Court application lies.

1. Where the several Courts having jurisdiction are subordinate to the same Appellate Court, an application under section 22 shall be made to the Appellate Court.

2. Where such Courts are subordinate to different Appellate Courts but to the same High Court, the application shall be made to the said High Court.

3. Where such Courts are subordinate to different High Courts, the application shall be made to the High Court within the local limits of whose jurisdiction the Court in which the suit is brought is situate.

Sec. 24. General power of transfer and withdrawal.

Sec. 25. Power of Supreme Court to transfer suits, etc.

On the application of a party, and after notice to the parties, and after hearing such of them as desire to be heard, the Supreme Court may, at any stage, if satisfied that an order under this section is expedient for the ends of justice, direct that any suit, appeal or other proceeding be transferred from a High Court or other Civil Court in one State to a High Court or other Civil Court in any other State.

No case can be transferred to another court unless first Court is biased or some reasonable grounds exist; Gujarat Electricity Board v. Atmaram Sungomal Poshani, (1989) SCJ 180.