

# CPC (concurrent list)

Civil Procedural Code, 1908.  
[Whenever any civil right of any person is violated then remedy will be given by Civil Court & procedure adopted by Civil Court in relation to that] → is CPC?

Purpose of Application laws are (I Cont. Act)  
classified  
→ substantive - prescribe rights & duties of parties  
→ procedural  
↳ how prescribe the procedure by which rights & duties prescribed by substantive enforced

Mo. proper system  
[Firstly in 1859 then 1877 & finally 1908 - applied from 1st Jan 1899-1909]

Under Dirn of Sir Charles Hook [2nd Law Commission]

Q. Is CPC a complete code?

Sec - Inherent powers

151 CPC Each & every civil court is given Inherent power while in Criminal matter only HC has given it in Sec 482 CPC.

HC also has inherent power

[If a thing is not mentioned explicitly mentioned in Sec (151) in CPC & not prohibited & SI Orders

Civil court may pass any order in interest of justice!

Not a complete code: - Sec [4] of CPC,  
if there is specific law regarding civil  
then provisions of CPC will not affect those provisions.  
"local"  
territorial

Because complete code → is that code which provide similar system for application of civil law.  
e.g. Diff. (in) Labour, Service, Consumer, Revenue.  
Tribunals prot

Q. Can H.C amend provisions of CPC? Order 39

H.C can amend only orders and schedules but not sections.  
plaintiff can apply for temporary [Injunction].

### History of CPC.

It begins with 1859 - First code of civil procedure enacted

↓ Before that there was no uniformity in law of civil procedure applicable to whole country

1st effort: Sir Charles Wood (2nd law commission) → No S.C provisions, no small courts

↓ commission prepared few drafts (Bengal, Madras, Bombay & N.W provinces) (amalgamated) - CPC 1859

lacking in many respect - comprehensive bill was prepared by Mr. Harvington to replace it. (Judicature Acts of England) & borrowed provisions of New York civil code

Bill enacted CPC - 1877

↓ further amendments → CPC 1882.

3rd codification

rigid provisions needs of country. Revision work was taken by select committee

Sir Eusebio Richards - assent on  
 21st March 1908 & it came into force  
 on 1st Jan 1909

An act to consolidate and amend the laws relating to procedure of courts of civil Judicature.

Sec - 158  
 order - 57

Sec	1 - 8	Preliminary	
Part I	9 - 35	Suits in General	20A
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IX	116 - 120	Sp. pr. H.C. → not being	
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Trustly [Cause of Action] - [Cause of action]<sup>every</sup>  
 Plaintiff v. Defendant.

Subject matter - pecuniary territorial  
 (Arrest & stay)

- CEJO TY }  
 { 5 10 15 20 25 }  
 order 38 - Arrest    order 39 - temporary  
 order - 40 Receiver    Injunction  
 49 - chartered H.C.  
 50 - Small case courts    51 - Presidency

Rights given by our common law system  
matrimonial rights, rights arising out  
of tort, violation of legal right.

When question is as to creation, violation or  
enforcement of imp legal right, is said to  
be of civil nature.

### Sec 9 - Suits in General

Subject to provisions hereinafter contained,  
court shall have jurisdiction to try  
all suits of civil nature.

- 2) Except cognizance of which is expressly  
or impliedly barred. (Special law)  
↓  
illegal / against public policy. [Sec - 4]

Explanation:- A suit in which right to  
property or to an office is contested is suit  
of civil nature, notwithstanding it depends  
entirely on ques of religious right &  
ceremonies.

Ex-2 [Whether fees is attached or not  
immaterial] [Ashby v. White] Case

Civil right includes private right  
& obligation.

# Where basic question of legal right can't be determined without disposing caste cases then it can't be also be civil right.

Adjudication = Judicial determination of court on point of controversy.

Judgement Sec 2(9) = Statement given by judge on grounds of decree/order.

\* Kinds of Civil suit:-

- 1) Relating to right to property
- 2) " to right to worship
- 3) \* " to taking out religious processions
- 4) Specific performance
- 5) dissolution of marriage
- 6) Suit for rent
- 7) Suit for hereditary offices

\* Not civil suit:-

- 1) Purely Caste Questions
- 2) Religious rites & Ceremonies
- 3) Recovery of voluntary payment
- 4) Expulsion from caste
- 5) Pol. elections

Sec 151 = Inherent power of Civil Courts

\* Civil court has power to examine permission of act which bar its jurisdiction.

2(2) - decree means formal expression of adjudication which so far as

regards the court expressing it determine the rights of parties w.r.t to all or any of matters in controversy in suit & may be either preliminary or final.

It shall be deemed to include rejection of plaint & determination of any question within Sec 144

- 1) any adjudication from which appeal lies
- 2) any order of dismissal for default

Preliminary decree issued in:- Possession though not exhaustive

Order 20  
Rule 12

- ii) profits
- iii) dissolution of partnership
- iv) foreclosure, redemption, sale - mortgage
- v) pre-emption
- vi) partition
- vii) separate possession

Bhagwan Singh vs Kall Kolla Shih - not exhaustive.

Q. Can suit have more than one preliminary decree?

Ans. SC In Phoolchand v. Gopal Lal

In case of partition one suit can have more than one preliminary decree but not confirmed in other case.

Shankar vs Chandrakar - More than one final decree can be passed

deemed decree - rejection of plaint, orders under Sec 144

A decree is preliminary when further proceedings have to be taken before suit can be disposed of final adjudication completely dispose of suit.

Thus in a suit for recovery of money, if amt. found due to decree holder is declared & manner in which amt paid laid down → decree is final decree.

(ii) Partly preliminary & partly final

A decree may be partly preliminary & partly final. eg in a suit for possession of immovable property with mesne profit (direct enquiry).

[former part of decree - final while latter is preliminary]

★ Judgement & decree distinction

1) It is not necessary for a judge to give statement in decree though, it is necessary in judgement.

○ It is not necessary, formal expression of order in judgement.

Rule 6-A of Order 20 → Amendment 1976  
last paragraph of judgement should precisely  
state relief granted

[Judgement → stage prior to passing of decree  
or order]

\* <sup>sec</sup> 2(14) ~~Judgment~~ Order - Formal expression of  
decision of court which is not a decree

Similarities :- Adjudication of court of law  
may either be a) decree b) order & can't be both

- \* both relate to matter in controversy
- \* both are decisions given by court
- \* ~~controversy in~~ adjudication of court of law  
formal expression

[Order & decree difference]

1) A decree can only be passed in a suit  
which commenced by presentation of a  
plaint. . . Decree originates from suit  
by presentation of plaint or may arise from  
proceeding commenced by petition or an application

2) A decree is an adjudication  
conclusively determining right of  
parties w.r.t all or matter in  
controversy. an order on other  
hand finally determine

3) It may be final / preliminary but  
order is not.



Caueat → It is an official request that court should not take particular action without issuing notice to party lodging caueat & hearing other side.

Civil → All proceedings asserts civil rights conferred by civil law.

\* Court → place where justice is administered person should be entrusted with judicial functions.

defendant - person against whom relief is claimed by plaintiff.

\* Execution = process of enforcing or giving effect to judgement, decree or order of court.

Issue → 'a point in question' or legal issues 3 types -

1) Issue of fact

2) Issue of law

3) mixed issue of fact & law.

arise when

material proposition of one party fact or law proposed by one & alleged by another party.

Jurisdiction → authority to decide Justice prescribe w.r.t subject matter, pecuniary, territorial

consent can ~~take~~ neither confer nor  
take away jurisdiction of court

→ Plaint → statement of claim, document,  
memorial by presentation of which  
suit is instituted. It is pleading of plaintiff

\* Suit → civil proceeding by presentation  
of plaint.

Summon → document issued by court of  
justice calling upon person to whom  
it is directed to attend before judge or  
any officer of court for certain purpose.  
It can also be issued to witness

Written statement - reply of a defendant  
to plaint filed by plaintiff. Pleading  
of defendant.

## Chapter - 1.

\* Ubi jus ibi remedium wherever there is  
right, there is remedy.

Accordingly litigant having civil right has  
remedy to file civil suit & court will  
take cognizance.

Jurisdiction → 'jus' & 'dicto' - means  
one who speaks by law.

power or authority of a court of law  
to hear & to determine, discuss or matter.

Extent of the authority which court has to decide matters that are litigated before it or cognizance of matters presented. If administrative justice, not subject matter, primary value & local limits

★ Case: Pratibha Thakur v. Sakimdaa Natl

Not every case jurisdiction to decide particular matter → to decide matter, it must have → they must as well as pass the other stage for

Q1: can jurisdiction be created by consent?

[A.R. Antulay v. R.S. Nayak]

\* Court by its directions could not confer jurisdiction on another court which did not possess it.

The power to enlarge or restrict jurisdiction is legislative in character. It is power to confer a right of appeal or take away right of appeal. Parliament can alone do it by law.

Such a basic & fundamental defect cannot be cured by consent of parties & judgments however certain & terminably consent can't be curable & made & void ✓

It can be challenged at any stage  
An order does pass by court  
without jurisdiction → is [void non-judice]

\* An agreement to court absolutely the jurisdiction  
of court would be unlawful & void being  
against public policy.  
(only state made non-judicial act)

But if two or more courts have jurisdiction  
then it is open to parties to select a  
particular forum & exclude the other forums  
Such an agreement would be legal valid &  
enforceable.

# Lack of jurisdiction & irregular exercise  
of jurisdiction.

\* Once court has power, then it has power  
to decide it wrong as well as right.  
It decides wrong if the wrong party has only  
course prescribed by law for selecting  
matter right & if that course is not  
taken judgement can't be disturbed.

1. If there is lack of jurisdiction the  
decree passed by  
court is null &  
it can be set off  
by & ~~not~~ in any  
collateral proceedings  
but no order  
then fine

2. Irregular then  
not gets  
root of matter,  
error can be  
remedied in appeal or  
revision, or  
evening  
but no order  
then fine

\* Res Judicata & Res Sub Judice  
where Res J. applies to a matter adjudicated upon (res judicata), res sub judice applies to matter pending trial (sub judice)

- ii) res judicata bars trial of suit or issue which has been decided in former suit  
res sub judice bars trial of suit which is pending in decision previously instituted suit.

\* [Res Judicata & Lis pendens]  
lis pendens is only one aspect of Res Judicata [Sec 52 of TP]

where a conflict arises b/w two the Res J. will prevail. Once judgement is duly pronounced by competent court in regard to sub. matter of suit, in which doctrine of lis pendens applies, said decision operates as res judicata & would bind not only parties but also transferees pendente lite.

e.g. A files a suit against B for declaration that he is owner of suit property. During the pendency of suit B transfers property to C. Doctrine of lis pendens apply to such transfer & if decree passed in favour of A, C can't claim title.

But if in another suit by C  
B regarding same property decree

pass in favour of B. The suit filed by  
A is decided, such decree will  
operate as res judicata against A  
notwithstanding doctrine of Lis  
pendens & transfer in favour of C during  
pendency of suit filed by A against B.

[Res Judicata & withdrawal of suit]  
Order 23, Rule 1] deal with  
withdrawal of suits

It enacts where plaintiff withdraws suit  
without leave of court then he  
will be precluded from instituting  
a fresh suit.

1st → matter, heard (decided) & then by

2nd → plaintiff himself withdraws.

★ [Doctrine of constructive Res judicata  
is nothing but rule of Estoppel]

Res Judicata

1. It results from  
a decision of court.

2. Based on public policy  
that there should be an  
end to litigation.

Estoppel

It flows  
from act  
of parties

prescribed  
upon  
doctrine  
of equity

that no bars

Order 39 - temporary injunction is order against person to do something, not to do

something ~~for~~ or maintain status quo for specific period.

2. Injunction has to be filed, then application of Order 39 along with affidavit, all such documents claiming relief

While disposing application of TI, court has to see

- 1) Reason
- 2) Prima facie case
- 3) irreparable loss
- 4) Balance of convenience

Interim order → is a temporary order passed during trial to restrain a party from doing certain act, that may cause

or do act further harm or damage to other party  
e.g. TI on land disputed b/w two brothers

Interlocutory = doesn't affect right & obligation procedural order.

e.g. Appointment of receiver/commissioner

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Appeal → Right to appeal = Substantial right (given under provision of law)

3 things to consider -

- i) Whether appeal is allowed
- ii) When to institute appeal
- iii) How to institute appeal

→ Whether decision or order is maintainable

# challenge of order/decre. - subordinate court in higher court

\* Appeal may lie against preliminary decree but once judgement is pronounced (final decree is given) then no appeal can lie against such preliminary decree

96(4) ⇒ No appeal shall lie except on ques of law from decree by small cause court where amt. does not exceed 10,000 Rs.

# Appeal should be within limitation (Sec 3 - Law of limitation 1, 1963)  
↓ यदि कोई appeal, after limitation period applicn/suit expires, it shall be rejected by court. (delay of condone)

Sec 5 → If an appeal is within period after expiry of limitation (not available for suit) court may admit it (it should be applied judiciously).

In some cases:- e.g. Incapability of party (ill or death of party)

Name of Appellate Court  
(Place of " " )  
[NO. & year of Appeal - - -]

Descriptor & Name of Appellant (Self or representative)  
v/s  
" " of Respondent (transferee)



## [ Power of appellate court ]

- ★ 1. Adjourn the proceedings
- 2. Maintain the decree
- 3. Amend the judgement
- 4. Dismiss the appeal.
- 5. Ex parte (decide)
- 6. Compromise & withdrawal permission.

7. Appellate court also has power for order to dep. Surety.

8. Suspend proceeding of execution

9. Provide compensation & restitution (Sec)

★ Appellate court also have power to frame issues, if it think fit

↳ in such cases, issues are remand to subordinate court

→ If appellate court thinks fit, evidence is not taken properly then can take add. evidences

★ Also have power to review the judgement.  
(Sec)

★ Second appeal - only if permissible.

1) Only by H.C.

2) Within period of limitation (exception - Sec 5)

3) Subj matter value exceed 25000.

4) Should not be by single judge bench.

5) Only on question of law

6) Against decree of civil court.

7) against ex parte

\* Generally Adv. Gen institute suit for public nuisance but 2 or more person can also institute with permission of court.

(Order - 91)  $\Rightarrow$  if court refused then appeal in order

\* Order 45  $\Rightarrow$  Appeal to S.C [with/without certificate]  
& Sec 109

[Sec 104 & Order 41] read together

1. ques of law  
[public imp]

2. HC thinks need to be decided by SC

When trial court deals with a case & issue arise regarding constitutionality of pt on law, then it refer to H.C = Reference  
(S. 113, Order 46)

Ref (H.C), Appeal (Higher court), Review (same court)

pt. doubt on constitutionality of pt.

many grounds

New substantial evidence / Amended law

$\Rightarrow$  60 days

$\Rightarrow$   $\frac{30 = \text{subordinate}}{90 = \text{H.C}}$

30 days

[Rule of necessity party] will apply in case of non ponde & miss jonde

2) Rule of reasonable party will apply in case of [Trust  $\Rightarrow$  administrator] appointed sen in his place of (trustee) then also can be decided

[Sec 79, 80 - Suit by or against Govt]

[Notice] = 2 months before suit

Content - 1) Facts of case  
2) when cause of action arose

### 3) [Reliefs]

If notice not given  $\rightarrow$  ? Court shall except u/s 80 the suit if ~~except~~ allow to give notice thereafter.

1) Court may reject such suit.

\* On such suits (res judicata) will not be rejected) applicable. However suit should be decided on merits.

(2) A suit to obtain urgent or unremedied relief against the Govt, Court

may admit suit without notice but reasonable opportunity of heard should be given.

& if Court delayed there is no urgent relief, Court return the plaint for presentation after complying with Sec 13

Law under Art 13(3) = of Const. Rules by-law, sub-rule, order, notification, regulations, bye-laws)

\* Order [XXVII A]  $\rightarrow$

Suits involving a substantial question of law as to interpretation of [Const.]

- (1) Notice to Attorney Gen or Advocate Gen.
- ↓ (Union Govt)
  - ↓ (State Govt)

Q. Why notice shall be given:-

So that Govt may able to defend and copy of plaint should be affur with it.

If after giving notice, state/ Union deems fit that added as party, then they can be added. (~~Ar~~ Sec 2)

In case of statutory instrument

(notice → govt pleader, if question concerns the Govt or-

b) to the authority which issued the statutory instrument, if qests concerns authority other than Govt.]

Order XXVIII → Suit by or against military, Naval or Air men

→ who cannot obtain leave may authorize any person to sue or defend for them

a) shall be in writing & signed by the officer.

b) countersigned by commanding officer shall be presented by court

\* Then person authorized may be appointed

## Letter of authorization -

1) Name, address, description of person authorised

2) [Facts of case]

3) Officers of military [description]

Q. If any decree/order passed favour/against that military man whether it will be binding on member of forces?

Ans. Yes judgement, decree will be binding on member of forces but it can be challenged on grounds that person authorised ~~autho~~ called did not acted in due diligence.