

CIVIL PROCEDURE CODE

INTRODUCTION

- The law can be broadly classified as –
- Substantive Law, and
- Procedural Law.

- The **Substantive Law**, whether it is based on statute law or common law, defines what facts are constituting a fact or liability.
- To say, in other words, the Substantive law defines various principles regarding the rights and liabilities. (Example: The Indian Penal Code, 1860 which describes various offenses punishable under Criminal acts).

- On the contrary, **the Procedural law or adjective law**, on the other hand, prescribes the procedure and machinery for the enforcement of those rights and liabilities. To say, in other words, the procedural law is concerned with enforcement of those rights and liabilities determined in accordance with the rules of the substantive law.
- (Example: The Code of Civil Procedure 1908, The Code of Criminal Procedure, 1973 etc).
- The Law regulating the procedure to be followed in civil court is governed by the Civil Procedure Code and this Civil Procedure Code is one of the most important branches of the procedural law.
- As we all know, **“Ignorance of law is not a defense”** and every Indian should know the laws of this nation.

Historical Background

- Till 1859, in India, there was no uniform codified law for the procedures to be followed in Civil Courts. In those old days, under the British rule, there were Crown Courts in Presidency towns and Provincial Courts in Mofussils.
- These Courts in Mofussil areas and Presidency towns were governed by different systems of Civil procedure through various rules, regulations and special acts and those were changed on time to time basis on the basis of circumstances and needs.
- For the first time in 1859, a uniform civil procedure Code was introduced by passing the Civil Procedure Code (Act VII of 1859). But this code could not serve the purpose as this code was not made applicable to the Supreme Courts (Crown Courts under the Royal Charter) and the Sadar Diwani Adalats (Principal Courts under the Judicial Plan by the Governor General).

- In 1861, the Indian High Courts Act was passed and the Supreme Courts and Sadar Diwani Adalats were abolished. Then the High Courts were established by replacing the Supreme Courts at Madras, Bombay and Calcutta. Then the Civil Procedure Code 1859 made applicable to these newly established High Courts.
- The Code of 1859 was amended regularly from time to time and was replaced by passing the Civil Procedure Code, 1877. This code of 1877 was amended in 1878 and 1879 and the third civil procedure Code was enacted in 1882, which replaced the previous code. The Code of Civil Procedure 1882 was also amended several times and ultimately the present code of Civil Procedure, 1908 was passed overshadowing the defects of the Code of 1882.

Meaning and Object

- 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. As such, it was enshrined in the preamble of the code that it was 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 **Aim of the Procedural law** is to implement the principles of Substantive law.[5] This Code ensures fair justice by enforcing the rights and liabilities.

Scope

- The Code is exhaustive on the matters directly dealt by it but it is comprehensive in other issues. The framers of the code could not foresee the possible circumstances which may arise in the future litigations and could not provide the procedure for such situations. Hence the framers of the code (legislature) provided inherent powers to the court to meet such circumstances (where the code could not provide a procedure) according to the principles of **natural justice, equity and good conscience**.
- As this Code is a general procedural law, it does not contradict with the local or special law in force. **In the event of any conflict between the civil procedure code and the special law**, the special law will prevail over the civil procedure code. **In case the local or general law is silent on any matter**, then the provisions of the civil procedure code will prevail.

Scheme

- The Code has two parts and they are –
- The Body of the Code
- The Schedule
- **The Body of the Code** has 12 parts containing 158 sections.[8] The **Schedule** is the second part containing orders and rules.
- **The Body of the Code** lays down general principles relating to **Power of the court**, and in the case of the second part, that is, **the Schedule** provides for **the procedures, methods and manners** in which the jurisdiction of the court may be exercised.

- In fact, there were five **schedules** when this code was enacted. Later the Schedules II, III, IV and V were repealed by the subsequent amendments of the code. The
- The **first schedule** which is the only schedule to the code now has 51 orders. Each order contains rules that vary in numbers from order to order. There are eight appendices giving model formats (Forms), such as –
 - Pleadings (Plaint and Written Statement formats)
 - Process formats
 - Discovery, Inspection and Admission
 - Decrees
 - Execution
 - Supplemental Proceedings
 - Appeal, Reference and Reviews
 - Miscellaneous

- The various High Courts are empowered to alter or add any rules in the **schedules** under **Section 122 to 127, 129, 130 and 131** and such new rules should not be inconsistent with the provisions of the body of the code.[9]
- **The Provisions of the Body of the code** can be amended only by the legislature and the Courts can not alter or amend the body of the code.