

The first uniform code of civil procedure was enacted in 1859, but not applicable to Supreme Court or Presidency small Cause Courts.

In 1877 a new Code was enacted
In 1882 again

The present CPC was enacted in 1908 and amended in 1951, 1956, 1976, 1999, 2002.

ENFORCED = 1 JAN 1909
Amendment $\left\{ \begin{array}{l} 1999 \\ 2000 \end{array} \right\} - \underline{1 July} \text{ V. Jmk}$

158 Sec -

51 - Orders

8 - Appendices

Preamble - Consolidate and amend laws

Sec-1 - 8' - Preliminary

Short title

Commencement

extent

Civil procedure
Code

1 Jan 1909 enforcement
21st March Commencement

all over
India on
[31 Oct 2019] except

Nagaland &
tribal
areas

State Govt
will notify in 6 schedule
of Const.

Cause of Action - (2019) DJS

Cause of Action arises when real dispute arises eg.
when party asserts and other party denies any
right.

CPC provides plaintiff must contain the facts
constituting the COA and where it arose.

Rastriya Ispat Nigam Ltd v/s Prathyusha Resources
and Infra Private Ltd & ors (2016)

Salient features of the 1999 and 2002 Amendments

With a view to expediting the process of litigation and clearing the huge backlog of cases pending in courts all over India, a Committee was appointed under Justice Malimath (the Justice Malimath Committee) to suggest changes in the Civil Procedure Code. Accordingly, the Committee submitted its Report, and Parliament passed the Code of Civil Procedure (Amendment) Act, 1999. Before these amendments could be brought into force, the Bar Council of India and several Bar Associations requested the Government to reconsider certain provisions of these amendments as they were likely to cause hardship to litigants. Accordingly, the Government looked into the matter once again, and in consultation with the concerned bodies and persons, proposed further amendments in the Civil Procedure Code, *including some amendments to the 1999 Amendments*, and this took shape in the form of the Civil Procedure (Amendment) Act, 2002. Both these Amending Acts were then brought into force with effect from 1st July, 2002. These amendments have been reflected at the relevant places in the text.

The most important amendments made in 1999 and 2002 are as follows:

1. S. 26 : S. 26 was amended to provide that the facts of every plaint *must be proved by an Affidavit*.
2. S. 27 : S. 27 was amended to provide that summons should be sent to the defendants within a period of 30 days from the institution of the suit. (*Earlier, there was no fixed time for this purpose.*)
3. S. 39 : S. 39 of the Code was also amended, and it now provides that a court which passed a decree would *not* be authorised to execute such a decree against any person or property outside the local limits of its jurisdiction.

4. S. 64 : In S. 64 (dealing with private alienation of attached property), it is now provided that the section would *not* apply to any private transfer or delivery of the property under a contract entered into and registered *before the attachment*.
- ✓ 5. S. 89 : A *new section* was inserted (S. 89) to provide for the settlements of disputes outside the court (alternate dispute resolution). S. 89 is based on the recommendation of the *Law Commission of India* and the *Justice Malimath Committee*.
6. S. 100A : It was recommended by the *Justice Malimath Committee* that a second appeal against the judgment of a Single Judge exercising a first appellate jurisdiction should be abolished. Likewise, it was suggested that appeals should *not* lie to a Division Bench against the decision of a Single Judge of a High Court under Articles 226 and 227 of the Constitution. Both these suggestions were incorporated into the 1999 *Amendment*. However, following wide-scale protests, the second proposal was dropped by the 2002 Amendment, and the first was retained. (This is discussed under S. 100-A, later in the book.)
7. S. 102 : S. 102 *now* provides that no second appeal would lie from any decree, when the subject-matter of the original suit is for recovery of money *not* exceeding ₹ 25,000.
8. S. 115 : The *Malimath Committee* observed that, often, the records of the lower court were sent to the High Court in revision proceedings, even when the High Court had *not* yet asked for them. The Committee was also of the view that revision provision proceedings should *not* operate as a stay of proceedings before the trial court. S. 115 was *amended to achieve these objects*.
9. S. 148 : S. 148 allows the court to enlarge the time when any period is fixed or time is granted by the court for any act. This section was *amended* to provide a maximum further time of 30 days in all — with a view to minimize the procedural delay at the instance of either party to the suit.
10. O. IV : The Rules of O. IV have been amended to provide that a suit is to be instituted by presenting a plaint in duplicate. It is now also provided that a plaint shall *not* be deemed to be duly instituted unless it complies with certain prescribed formalities.
11. O. V : O. V of the Code, which provides for issue and service of summons, now lays down fixed time-frames for this purpose. A copy of the plaint, along with all the documents, is to be delivered to the defendant, along with the summons. Provisions

Letters
Patent
appeal

Enlargement
of time

are also made for delivery of the summons by *speed post, courier service, fax and e-mail*.

12. O. VI : O. VI was amended to provide that the person verifying the pleading must file an *affidavit* in support of his plaint.
13. O. VII : O. VII was amended to provide that if a plaintiff sues upon a document, he must enter such a document in a list and produce it in the court when the plaint is presented by him. In case a document or a copy thereof is *not* filed with the plaint, it *cannot* be received in evidence on behalf of the plaintiff at the hearing of the suit without the leave of the court.
14. O. VIII : O. VIII *now* requires the defendant to present his written statement within thirty days from the date of service of the summons on him. The defendant is also required to produce documents relied upon by him. If he does *not* do so, the documents *cannot* be received in evidence on behalf of the defendant at the hearing of the suit, *unless* leave of the court has been obtained.
15. O. IX : O. IX was amended to provide that if the plaintiff fails to deliver the summons within the prescribed period, the suit is to be *dismissed* by the court. If the summons remain unserved, the plaintiff can apply for fresh summons *within seven days, instead of within one month* (which was the period prescribed in the Code before the Amendment).
16. O. XII : R. 2 of O. XII was amended to reduce the time (*from 15 days to 7 days*) within which notice to admit a document may be given by any party to the suit.
17. O. XIV : R. 4 of O. XIV was amended to restrict the discretion of the court, by fixing a time limit beyond which no adjournment for the examination of witnesses or production of any document can be granted by the court before framing of issues.
18. O. XVI : O. XVI was amended to fix a time limit within an application can be made for summoning of witnesses.
19. O. XVII : R. 1 of O. XVII was amended to provide that not more than three adjournments can be granted to any party during the hearing of a suit. The reasons for such adjournment are also to be recorded in writing, and the costs occasioned by the adjournment are to be awarded to the other party.

[This amendment was introduced for the purpose of expediting cases - as adjournments after adjournments were being given endlessly, often for the asking, resulting in a snail-like pace of litigation. However, the Supreme Court has watered down the

impact of this provision, by holding it to be *directory rather than mandatory*, and this amendment has thus failed to achieve its purpose.]

20. O. XVIII : O. XVIII, which provides for the manner in which evidence is to be recorded, was amended to confer the power of recording evidence on a Commissioner to be appointed by the court.
21. O. XX : After the hearing of a case is over, definite time frames have now been prescribed for pronouncing the judgment.
22. O. XXVI : O. XXVI now provides that a Commission can be issued, *not only* in cases where the witness resides outside the local limits of the court's jurisdiction, *but also* in any case where the interests of justice so demands.
23. O. XLI : In order to avoid delays, O. XLI was amended to provide that an appeal can be filed on the basis of a *copy of the judgment*, as obtaining a copy of the *decree* takes considerable time in most courts.
24. Several *monetary provisions* contained in the Code, including those relating to payment of fine, have been suitably revised, keeping in mind the high rates of inflation today, compared to the time when the original provisions were made, as for instance, S. 32, S. 58, S. 60, S. 96, etc.

U.V. Singh
The above amendments were challenged before the Supreme Court in *Salem Advocate Bar Association, T.N. v. Union of India* (AIR 2003 SC 189). The Supreme Court, however, *held* that these amendments were *not ultra vires* the Constitution of India, and were therefore, valid.

The Commercial Courts Act

3/2/20
In 2015, it was deemed fit to constitute *commercial courts* for adjudicating commercial disputes exceeding a specified value, and for this purpose, Parliament enacted the Commercial Courts Act, 2015, making appropriate amendments to the CPC for dealing with such disputes. Substantial amendments were made in this regard in 2018, and the relevant provisions of this Act, as amended, have been discussed at the relevant places.

B. DEFINITIONS (S. 2)

Decree

Decree is the operating part of the judgement and it has to be in harmony with the judgement.

Sec-33 of civil procedure code, 1908 says decree is followed by the judgement.



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The judgement (2(1)) and decree (2(2)) has been defined in Sec 2 of CPC and provisions related to it are given in Order 20 of this Act.

Definition & Meaning - 2(2)

The code defines the term decree in following words:-

Decree means the formal Expression¹ of an adjudication² which, as regards the Court expressing it³, conclusively⁴ determines the rights of the parties with regard to all or any of the matter in controversy in the suit and may be either preliminary or final.

- 1- There must be an adjudication
- 2- Adjudication must be given in a suit
- 3- It determine the rights of parties conclusively.
- 4- Formal Expression of such adjudication.

1- Adjudication | Essentials |

Deep Chand vs Land Acquisition Officer

If the matter is not judicially ~~decr~~ determined then, it is not a decree.

2- Suit -

Any civil procedure which has been instituted by presentation of a plaint.

Decree can only be in a civil suit. If there is no civil suit there is no decree.

3- Rights in Controversy

The rights determined under this circumstance are substantial rights not procedural rights.

4- conclusive determination

Narayan Chandra vs Bratirodh Sahni.

The determination should be final and conclusive regarding the court which passes it.

→ Decisions considered as decree

- 1- Order of abatement of suit
- 2- Dismissal of appeal as time-barred.
- 3- Rejection of plaint (Deemed decree) O.R. ✓
- 4- Order granting cost and instalments
- 5- Sec 144 (Restitution) ✓



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~~Order~~ Decisions not considered as a decree

- 1- Dismissal of appeal for default
- 2- Appointment of Receiver
- 3- Order for remand
- 4- Order of granting interim relief
- 5- ~~By~~ Returning of Plaintiff (Q.R.)



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Types of Decree

1- Preliminary Decree

• — Preliminary decree
•] — final decree

A decree is stated as preliminary decree when the rights of parties regarding all or any of the matter in dispute are determined but does not dispose of the suit completely.

Mool Chand vs Director, Consolidation,
a preliminary decree is only a ~~stage~~ stage to work out the rights of parties until the matter is finally decided by the court.

Shankar vs Chandrakant

The preliminary decree is a decree in which the rights and liabilities of parties are declared but actual result is left.

eg- of Preliminary decree

- ① Suit for possession & rent ⑤ O₂₀ - R₁₂ - Possession & Mesne profit
- ② Administration suits O₂₀ R₁₃ ⑥ O₃₄ R₁ - Foreclosure suit
- ③ Suit of pre-emption O₂₀ R₁₄ ⑦ O₃₄ R₄ - Suit for sale
- ④ Suit filed for dissolution of partnership O₂₀ R₁₅

Can there be more than one preliminary decree?

Some high courts are of the view that there can be more than one preliminary decree while some of the high court are against this.



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Phool Chand & s/o Gopal Lal

IPC prohibits passing more than one preliminary decree but court can pass if circumstances requires.

2- Final Decree

The final decree is a decree which disposes of a suit completely and settles all the matter in dispute between the parties.

Can there be more than one final decree?

Gulabam Bai v/s Ahamedasa Rowther (1919)

The code nowhere contemplates more than one pre or final decree.

Shanker v/s Chandrakant - (1995) (Imp)

More than one pre- & final decree can be passed.

③ partly preliminary and partly final Possession & Mesne Profit.

This happens some part of the decree is preliminary while the rest is a final decree.

④ Deemed decree Rejection of plaint (O 7 R 11)

An adjudication which does not fall formally under the definition of decree stated u/s 2(2) but due to legal fiction, they are deemed to be decrees are considered as deemed decree.

⑤ Illegal / Void / Null Decree

A decree is said to be nullity if it is passed by a court having no inherent jurisdiction.

Sardar Prilam Singh vs Addl District Judge, Mathura (1995)

⑥ Contingent Decree

Whenever suit is pending in trial court & some point of law has been sent in reference to H.C. then the rule is that the trial court shall pass the final decree only upon receipt of direction of H.C. However O 46 R 2 says the trial court may continue the proceeding & pass decree without waiting but if judgment is in contradiction with H.C. then trial court have to reverse its decision.

CODE OF CIVIL PROCEDURE, 1908

(1)

Section (1-35-B)

1. In which of the following cases the Supreme Court has upheld the constitutionality of the Code of Civil Procedure (Amendment) Acts of 1999 and 2002?

- (a) Salem Advocate Bar Association, Tamil Nadu v. Union of India
- (b) Delhi High Court Bar Association v. Union of India
- (c) Allahabad High Court Bar Association v. Union of India
- (d) Punjab and Haryana High Court Bar Association v. Union of India

[Jharkhand (J) 2008]

Ans. (a)

2. The Code of Civil Procedure (Amendment) Act, 2002 came into force on

- (a) 1st April, 2002
- (b) 1st June, 2002
- (c) 6th June, 2002
- (d) 1st July, 2002

[Uttarakhand (J) 2002, 2006]

Ans. (d)

3. From which date Civil Procedure Code, 1908 became operative?

- (a) 1st January, 1908
- (b) 1st April, 1908
- (c) 31st December, 1908
- (d) 1st January, 1909

[Bihar (J) 2009]

Ans. (d)

4. The provisions of Civil Procedure Code

- (a) Specifically apply to Writ Petitions
- (b) Do not specifically apply to Writ Petitions
- (c) Always apply to Writ Petitions
- (d) Never apply to Writ Petitions

[Uttarakhand (J) 2011]

Ans. (b)

5. A decree can be

- (a) Preliminary
- (b) Final
- (c) First preliminary then final
- (d) Either preliminary or final

[M.P. (J) 2006]

Ans. (d)

6. A decree may be

- (a) Preliminary
- (b) Final
- (c) Partly preliminary and partly final
- (d) All of the above

[A.P.P. R.P.F. 2010]

Ans. (d)

7. A judgment shall contain

- (a) a concise statement of the case
- (b) issues
- (c) decision and reasons for it
- (d) all of the above

[A.P.P. R.P.F. 2010]

Ans. (d)

8. Decree shall be deemed to include the rejection of a plaint and the determination of any question within Section 144 of C.P.C.

- (a) Wrong
- (b) Right
- (c) It includes rejection of plaint but does not includes the determination of any question within Section 144 of C.P.C.
- (d) It includes determination of any question within Section 144 but shall not include the rejection of a plaint

[Chhattisgarh (J) 2004]

Ans. (b)

9. Which of the following is/are not a decree?

- (a) An order returning the plaint to be presented to the proper Court
- (b) An order of dismissal for default
- (c) Rejection of plaint
- (d) Both (a) and (b)

[A.P.P. R.P.F. 2010]

Ans. (d)

10. The provisions relating to mesne profits are provided in which section of Civil Procedure Code, 1908?

- (a) Section 2 (10)
- (b) Section 2 (12)
- (c) Section 2 (14)
- (d) Section 2 (16)

[M.P. A.P.P. 2008]

Ans. (b)

11. Which of the following can be said to be 'judgment' as defined in Section 2 (9) of the Code of Civil Procedure?

- (a) An order
- (b) A decree

- (c) Statement of grounds of an order or decree
- (d) All of the above

[M.P. A.P.P. 2008]

Ans. (c)

12. In which of the following provisions 'mesne profit' has been defined in the C.P.C.?

- (a) Section 2 (4)
- (b) Section 2 (8)
- (c) Section 2 (12)
- (d) Section 2 (14)

[Uttarakhand (J) 2002, 2011]

Ans. (c)

13. Which of the following is not an essential element of a decree?

- (a) Conclusive determination of the rights of the parties
- (b) A formal expression of an adjudication
- (c) An adjudication from which an appeal lies as an appeal from an order
- (d) The adjudication must have been given in a suit

[A.P.P. R.P.F. 2010]

Ans. (c)

14. In a case facts in issue relating to possession, ownership, jurisdiction, valuation of case and court fee are made. Which fact in issue/issues is decided earlier?

- (a) Fact in issue relating to ownership
- (b) Fact in issue relating to possession
- (c) Fact in issue relating to jurisdiction
- (d) Fact in issue relating to court fees and valuation of case

[M.P. A.P.P. 2008]

Ans. (c)

Objective Questions

1. The Code of Civil Procedure came into force—
 - (A) On the first day of January, 1909
 - (B) On the first day of March, 1974
 - (C) On the first day of April, 1909
 - (D) None of these
2. Decree holder means a person—
 - (A) In whose favour a decree has been passed
 - (B) In whose favour an order capable of execution has been made
 - (C) (A) or (B)
 - (D) Any person
3. Foreign Court means a Court situate outside India and—
 - (A) Not established by the authority of the Central Government
 - (B) Not continued by the authority of the Central Government
 - (C) (A) or (B)
 - (D) None of these
4. According to the Code of Civil Procedure Judge means—
 - (A) The presiding officer of a Civil Court
 - (B) The presiding officer of a Criminal Court
 - (C) The presiding officer of a Revenue Court
 - (D) All of these
5. Which definition is not given u/s 2 of C.P.C.?
 - (A) Foreign Court
 - (B) Government Pleader
 - (C) India
 - (D) Indian Court
6. According to the Code of Civil Procedure, movable property includes—
 - (A) Growing Crops
 - (B) Timber
 - (C) Decree
 - (D) All
7. Public officer means a person falling under any of the following descriptions, namely—
 - (A) Every Judge
 - (B) Every officer who holds any office by virtue of which he is empowered to place or keep any person in confinement
 - (C) Every member of all India Services
 - (D) All of these
8. Rules means rules and forms—
 - (A) Contained in the first schedule
 - (B) Made under section 122
 - (C) Made Under Section 125
 - (D) (A) or (B) or (C)
9. Share in a corporation shall be deemed to include—
 - (A) A stock
 - (B) Debentures
 - (C) Bonds
 - (D) All of these
10. The decree shall be deemed to include—
 - (A) The rejection of a plaint
 - (B) The determination of any question within section 144
 - (C) Both
 - (D) None

11. The decree shall not include—
 (A) Any adjudication from which an appeal lies as an appeal from an order
 (B) Any order of dismissal for default
 (C) Both
 (D) None of these
12. Decree has—
 (A) Five kinds (B) Four kinds
 (C) One kind (D) Two kinds
13. Order means—
 (A) The formal expression of any decision of a civil court which is not a decree
 (B) The formal expression of any decision of a criminal court
 (C) The formal expression of any decision
 (D) None
14. According to which section this Code is applicable to Revenue Courts—
 (A) Section 3 (B) Section 4
 (C) Section 5 (D) Section 6
15. Section 6 provides—
 (A) Presidency Small Cause Courts
 (B) Provential Small Cause Courts
 (C) Precuniary Jurisdiction
 (D) None
16. Section 8, provides—
 (A) Presidency Small Cause Courts
 (B) Provential Small Cause Courts
 (C) Precuniary Jurisdiction
 (D) None
17. Section 7, provides—
 (A) Presidency Small Cause Courts
 (B) Provential Small Cause Courts
 (C) Precuniary Jurisdiction
 (D) None
18. Definition of public officer is given—
 (A) u/s 2 (17) (B) u/s 2 (16)
 (C) u/s 2 (15) (D) u/s 2 (14)
19. Definition of decree is given—
 (A) u/s 2 (17) (B) u/s 2 (16)
 (C) u/s 2 (4) (D) u/s 2 (2)
20. Judgement debtor means—
 (A) Any person against whom a decree has been passed
 (B) Any person against whom an order capable of execution has been made
 (C) Both
 (D) Any person against whom a revenue order is issued
21. The Code of Civil Procedure (Amendment) Act, 2002 came into force on—
 (A) 1st April, 2002 (B) 1st June, 2002
 (C) 6th June, 2002 (D) 1st July, 2002
22. In which of the following provisions mesne profit has been defined in the C.P.C ?
 (A) Section 2 (4) (B) Section 2 (8)
 (C) Section 2 (12) (D) Section 2 (14)
23. A decree can be—
 (A) Preliminary
 (B) Final
 (C) First Preliminary then final
 (D) Either Preliminary or final
24. Which definition is not given U/S 2 ?
 (A) Signed (B) Rules
 (C) Share (D) None

Answers with Hints

1. (A) According to Section 1 (2), C.P.C.
2. (C) According to Section 2 (3) of the Code of Civil Procedure.
3. (C) According to Section 2 (5) of the Code of Civil Procedure.
4. (A) According to Section 2 (8) of the Code of Civil Procedure.
5. (D) According to Section 2 of the Code of Civil Procedure.
6. (A) 7. (D) 8. (D) 9. (D) 10. (C)
11. (C) 12. (D) 13. (A) 14. (C) 15. (C)
16. (A) 17. (B) 18. (A) 19. (D) 20. (C)
21. (D) 22. (C) 23. (D) 24. (D)