



Tamil Nadu

Judicial Services Exam

Tamil Nadu Public Service Commission (TNPSC)

Volume - 5

The Code of Civil Procedure 1908 & The Specific Relief Act 1963



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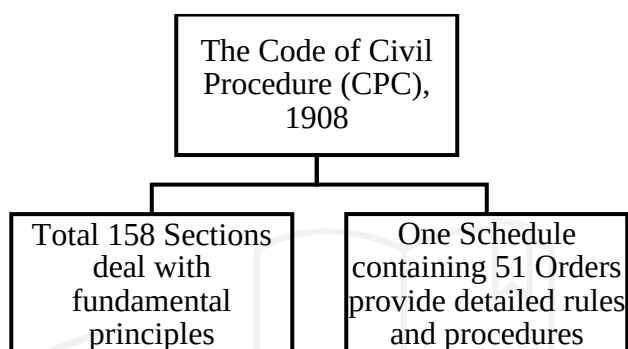
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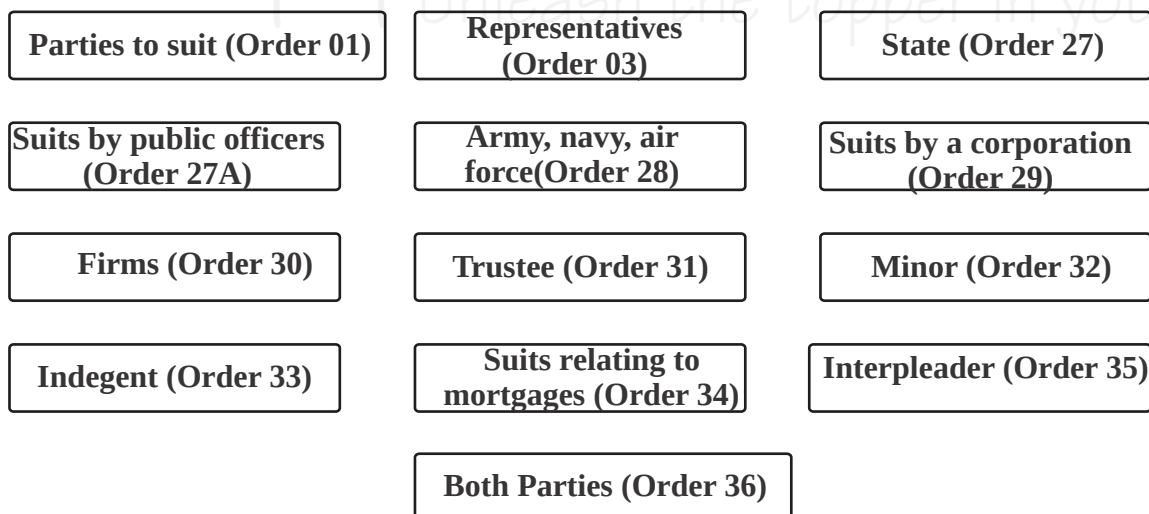
CHAPTER

The Code of Civil Procedure, 1908

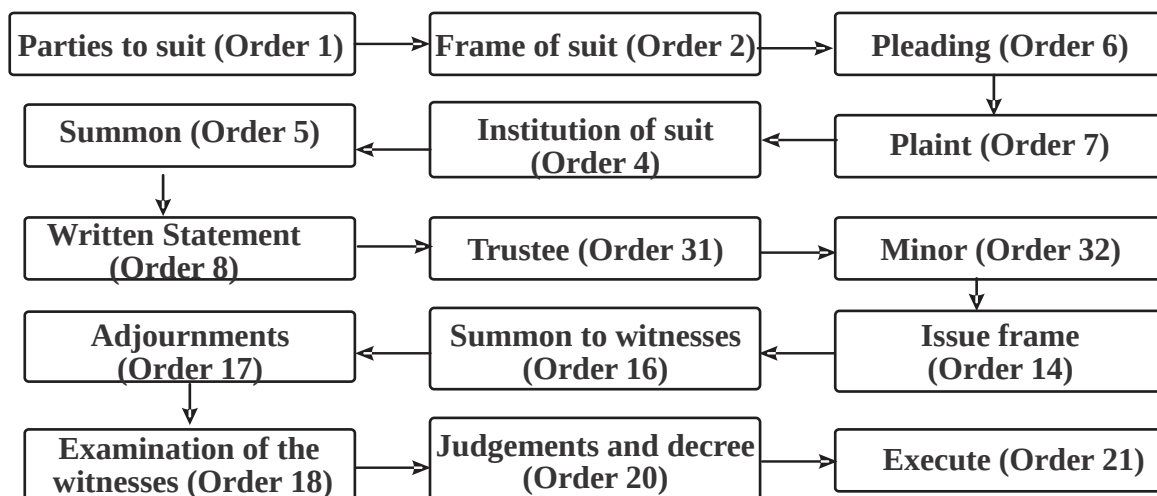
The Code of Civil Procedure (CPC), 1908, is structured with 158 sections and a schedule containing 51 Orders. These sections are the core of the code, dealing with fundamental principles and procedures. The schedule, with its 51 Orders, provides detailed rules and procedures for various aspects of civil litigation.



Type of parties



Civil Procedure



Section 1 — Short Title, Commencement, and Extent

1. Short Title

- ✓ The statute is formally called “**The Code of Civil Procedure, 1908**” (CPC, 1908).
- ✓ This title is used for all references in statutes, pleadings, and judgments.
- ✓ Purpose: To provide a uniform procedural framework for civil courts in India.

2. Commencement

- ✓ The CPC came into force on **1 January 1909**.
- ✓ Once in force, it applies until repealed or amended — there is no sunset clause.

Amendment of 2002 came into force – 1 July, 2002

3. Territorial Extent

- ✓ General Rule: CPC extends to the **whole of India**, but with certain exceptions and special provisions.

(a) Exceptions

1. **State of Nagaland** and “**tribal areas**” are excluded from automatic application.
2. However, the **State Government** concerned may, by **notification in the Official Gazette**, extend the CPC or any part of it to these areas.
3. Such extension can be made **with modifications** — these may be:
 - **Supplemental** (adding extra provisions),
 - **Incidental** (adjustments necessary for local conditions),
 - **Consequential** (changes resulting from the main extension).

Explanation to Clause (3)

- ✓ “Tribal areas” means those territories which, **immediately before 21 January 1972**, were part of the **tribal areas of Assam** under **paragraph 20 of the Sixth Schedule** to the Constitution.

4. Special Application to Certain Areas

- ✓ In the following territories, CPC applies **subject to existing special rules or regulations**:
 1. **Amindivi Islands**
 2. **East Godavari Agency**
 3. **West Godavari Agency**
 4. **Visakhapatnam Agency** (all in Andhra Pradesh)
 5. **Union Territory of Lakshadweep**
- ✓ This means CPC does **not override** any special local procedural law already in force in these regions.

Nature: Procedural law (lex fori) — governs how civil courts conduct trials, not substantive rights.

Section 2. Definitions. —In this Act, unless there is anything repugnant in the subject or context

Section 2 (1) “Code” → When used in the CPC, it does not mean only the bare sections enacted by Parliament.

It also includes:

- The main body of the CPC (Sections 1 to 158), and
- The rules contained in the First Schedule (as originally enacted) and
- Any rules framed by High Courts under the Code’s rule-making powers (Part X – Sections 121 to 131).

Section 2(2) — “Decree”

A **decree** means:

- **Formal expression** of an **adjudication**
 - ✓ Must be recorded formally (usually in writing and signed by the Judge).
 - ✓ “Adjudication” means judicial determination of a disputed matter.
- Passed by a court in a suit.
- Conclusively determines the rights of the parties in relation to all or any matters in controversy in the suit.

Inclusions

A decree also includes:

1. Rejection of a plaint (Order VII Rule 11 CPC).

- ✓ Though no trial is conducted, rejection operates as a decree and is appealable under Section 96.

2. Determination of any question under Section 144 CPC (Restitution).

- ✓ Example: When a decree is varied/reversed in appeal, and the court orders return of benefit received under it.

Exclusions

A decree does not include:

(a) Any adjudication from which an appeal lies as an appeal from an order (e.g., certain orders under Order XLIII).

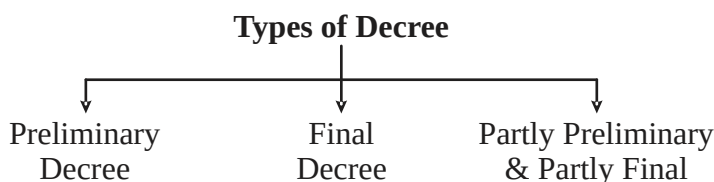
(b) Any order of dismissal for default (non-appearance of plaintiff) under Order IX Rule 8/Rule 3.

- ✓ This is not an adjudication on merits.

Essential Elements

A decree must:

1. Result from an adjudication.
2. Be given in a suit (not in execution or miscellaneous proceedings unless expressly included).
3. Decide rights of parties regarding the matters in controversy.
4. Conclusively determine those rights.
5. Be formally expressed.
6. Be passed by a civil court.



1. Preliminary Decree

- ✓ Decides rights of parties but further proceedings are required before final disposal.
- ✓ Example: In a partition suit, shares of parties are decided but actual division is pending.

2. Final Decree

- ✓ Completely disposes of the suit; nothing remains for further decision.
- ✓ Example: In a partition suit, after deciding the shares of parties, the court allotted the specific shares to each party.

3. Partly Preliminary & Partly Final

- ✓ When one part of the adjudication finally decides some issues, while another part requires further action.
- ✓ Example: In a mortgage suit, liability determined (final), but amount to be calculated by commissioner (preliminary).

Case Laws

- **Mool Chand v. Dy. Director, Consolidation (1995) SC** — Adjudication must be by a court and must conclusively determine rights.
- **Madho Das v. Mukand Ram (AIR 1955 SC 481) SC** — Even if not titled “decree”, if it satisfies all conditions, it is a decree.
- **Shah Babulal Khimji v. Jayaben D. Kania (1981) SC** — Distinction between decree, judgment, and order explained.

Section 2(3) — Decree-holder

- A person **in whose favour**:
 1. A **decree** has been passed, **or**
 2. An **order capable of execution** has been made.

Includes:

Legal representatives, transferees, or assignees of decree (Order XXI Rules 16 & 18 CPC).

Excludes:

A person who benefits indirectly from a decree without being named in it.

Example: If A obtains a money decree against B, A is the decree-holder.

Section 2(4) — District

Local limits of jurisdiction of a principal Civil Court of original jurisdiction (commonly called “District Court”).

Includes:

Local limits of ordinary original civil jurisdiction of a High Court (e.g., Bombay, Calcutta, Madras High Courts).

Importance:

- Determines territorial jurisdiction in civil matters.
- “District” is a jurisdictional unit, not merely an administrative division.

Section 2(5) — Foreign Court

A court situated outside India, and

Not established or continued by the authority of the Central Government of India.

Effect: Judgments of foreign courts are treated as **foreign judgments** under Section 2(6) and Sections 13–14 CPC.

Example:

➤ A court in Pakistan is a foreign court.

Section 2(6) — Foreign Judgment

Judgment of a foreign court.

Legal Relevance: Enforceable in India only if it satisfies conditions under Section 13 CPC (e.g., competence, finality, not obtained by fraud, not opposed to Indian law or natural justice).

Section 2(7) — Government Pleader

Any officer appointed by State Government to perform the statutory functions of Government Pleader under CPC.

Includes: Any pleader acting under the directions of the Government Pleader.

Role:

- Represents the Government in civil proceedings.
- His functions include filing written statements, appearing in court, advising departments etc.

Section 2(7A) — High Court

For Andaman and Nicobar Islands, the “High Court” means the High Court at Calcutta.

Reason: A special territorial arrangement due to geography and administration.

Section 2(7B) — India

For most sections of CPC, “India” means the territory of India excluding the State of Jammu & Kashmir (as per old provision — now changed after abrogation of Article 370, but still relevant in historical context).

Exception: In Sections 1, 29, 43, 44, 44A, 78, 79, 82, 83, 87A, “India” includes J&K.

Section 2(8) — Judge

The presiding officer of a civil court.

Note: A “Judge” is distinct from “Court” —

Court = Judge + all officers + establishment + legal authority.

Judge = only the presiding officer.

Section 2(9) CPC — “Judgment”

Judgment means the statement given by the Judge of the grounds of a decree or order.

Essential Elements:

1. Statement by the Judge

- ✓ Must be delivered by the presiding officer of a civil court.
- ✓ It is the Judge's personal reasoning, not that of ministerial staff.

2. Contains Grounds

- ✓ It must set out the reasons that lead the Judge to pass the decree or order.
- ✓ This reasoning helps the appellate court to decide the appeal.
- ✓ Grounds in the judgement shows that the court has applied its mind.

3. Relates to a Decree or Order

- ✓ A judgment is not an independent adjudication; it is tied to either a decree or an order. First judgment comes

Note: Order XX deals with judgment.

Judgment vs. Decree vs. Order

- **Judgment = Reasons + decision** (why and how the court decided).
- **Decree = Formal expression** of the adjudication (the operative conclusion in the suit).
- **Order** = Formal expression of any decision not amounting to a decree.

Section 2(10) CPC — “Judgment-debtor”:

Judgment-debtor means any person **against whom** a decree has been passed **or** an order capable of execution has been made.

Essential Elements:

1. Opposite of Decree-holder

- ✓ While a decree-holder is the person in whose favour a decree is passed, the judgment-debtor is the person against whom it is passed.

2. Covers Both Decree and Executable Order

- ✓ Includes cases where:
 - A money decree is passed against the person.
 - An order for possession or specific performance capable of execution is passed.

3. Scope

- ✓ May include:
 - Original defendant.
 - Legal representative of the defendant (if liable under decree).
 - Transferee of property subject to decree (Order XXI Rules 10 & 50 CPC).

4. No Distinction in Nature of Decree

- ✓ Applies whether decree is for money, property, injunction, restitution, etc.

Note: “Judgment-debtor” is **not limited** to the defendant named in the plaint; it includes any person against whom the decree/order is enforceable in execution proceedings

Example

- **Money Decree:** A owes B ₹1,00,000. B sues and gets a decree. A becomes the judgment-debtor.
- **Possession Decree:** X is ordered to vacate land; X is judgment-debtor for purposes of execution.

Important Case:

- **Jaswant Singh v. Custodian of Evacuee Property, AIR 1985 SC 1096** — Judgment-debtor is the person bound by the decree; includes legal representatives bound under Section 50 CPC.
- **State of Punjab v. Qaisar Jehan Begum, AIR 1963 SC 1604** — Even if not a party to the original suit, a person can be a judgment-debtor if the decree is executable against them.

Section 2(11) CPC — “Legal Representative”:

Legal representative means:

1. A person who in law represents the estate of a deceased person, and
2. 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 that party.

Essential Elements:

1. Represents the estate in law

- ✓ A person who, under personal law or succession law, is entitled to inherit or manage the estate of a deceased.
- ✓ Examples:
 - Heirs under Hindu Succession Act.
 - Executor or administrator under the Indian Succession Act.
 - Legal heir under Muslim personal law.

2. Includes “Intermeddler”

- ✓ A person **not legally entitled** but **deals with or takes possession** of any part of the estate after the death of the owner.
- ✓ Law treats such person as a legal representative for liability purposes — **to prevent evasion of legal responsibility**.
- ✓ Example: A neighbour sells the deceased’s cattle — he can be impleaded as LR to recover value.

3. Representative Character Cases

- ✓ Where the deceased was **suing or being sued in a representative capacity** (e.g., trustee, karta of HUF, head of association), the LR is the **person on whom the estate or office devolves**.
- ✓ Example: In a suit by a trustee, on his death, the new trustee becomes LR.

Nature of Liability

- **Extent:** Liable only to the extent of the estate of the deceased in their possession; not personally liable unless they have misappropriated assets.
- Governed by Sections 50 & 52 CPC (execution against legal representatives).

Important Case Laws

1. **Custodian of Branches of BANCO National Ultramarino v. Nalini Bai Naique, AIR 1989 SC 1589** — Definition is inclusive; not confined to heirs and legal representatives under personal law.
2. **Andhra Bank Ltd. v. R. Srinivasan, AIR 1962 SC 232** — An intermeddler with the estate is liable as Legal representative.
3. **Jogendra Nath v. Administrator General of Bengal, AIR 1984 SC 1054** — Executor named in will is **Legal representative** even before grant of probate.

Section 2(12) — “Mesne Profits”:

- Mesne profits of property mean:
- Profits which the person in wrongful possession of such property:
 - ✓ Actually received, or
 - ✓ Might with ordinary diligence have received, and

Includes: Interest on such profits.

Excludes: Profits due to improvements made by the person in wrongful possession.

Essential Elements:

1. Wrongful Possession

- ✓ Mesne profits arise only when possession is unlawful.
- ✓ Law presumes such person must be accountable for benefits derived from property during wrongful possession.

2. Measure of Profits

- ✓ Can be based on:
 - Actual income (e.g., rent collected, crops sold).
 - Potential income if the person had used the property with ordinary diligence (e.g., a shop could have been let out at market rent).

3. Interest

- ✓ Statutorily included — compensatory in nature.
- ✓ Court awards interest from date of wrongful possession till delivery of possession.

4. Exclusion for Improvements

- ✓ If the wrongful possessor enhanced profits through their own **improvements**, that extra amount is excluded from mesne profits.
- ✓ Rationale: Owner is entitled only to the property's inherent earning capacity, not benefits from the trespasser's investments.

Example

For example, if someone illegally occupies your shop and earns ₹5000 rent per month, and you could have earned ₹6000, the mesne profit for a year would be ₹72,000 (₹6000x 12), plus interest. It excludes improvements made by the wrongful possessor. Essentially, it recovers the benefit derived from unlawful occupation.

Relevant Provisions

- **Order XX Rule 12 CPC** — Court can pass decree for possession + past mesne profits + future mesne profits until delivery.
- **Order XX Rule 18 CPC** — In partition suits, court can direct mesne profits for wrongful possession of share.

Important Case Laws

1. **Fateh Chand v. Balkishan Das, AIR 1963 SC 1405** — Mesne profits are compensation for wrongful possession, not penal in nature.
2. **Lucy Kochuvareed v. P. Mariappa Gounder, AIR 1979 SC 1214** — Mesne profits = Actual or potential earnings + interest; exclude improvements.
3. **K.T. Plantations Pvt. Ltd. v. State of Karnataka, (2011) 9 SCC 1** — Concept tied to restitution and unjust enrichment principles.

Section 2(13) CPC — “Movable Property”:

Movable property includes growing crops.

Essential Elements:

1. Inclusive Definition

- ✓ The CPC does not exhaustively define movable property; it only states that *growing crops* are to be treated as movable property for its purposes.
- ✓ This is an inclusive definition — other movable items are covered as per general law.

2. General Meaning OF Movable Property in other Act.

- ✓ As per the section 3(36): General Clauses Act, 1897
- ✓ “Movable property” means property of every description, except immovable property.

3. Why Growing Crops are Movable

- ✓ Though physically attached to the land, growing crops are considered **movable** because:
 - They are meant to be severed and used independently (harvest).
 - For purposes like attachment in execution (Order XXI CPC), they can be treated as movable.

4. Examples of Movable Property

- ✓ Tangible: furniture, car, jewellery.
- ✓ Intangible: debts, shares.
- ✓ Growing crops: wheat, rice, sugarcane in the field.

Note: Growing crops are movable only when intended to be severed; otherwise, they may be treated as immovable (e.g., orchard trees).

Case Law:

- **Thakur Chandra v. Mohd. Baksh, AIR 1925 All 228** — Growing crops are considered movable property as they are intended to be severed.
- **Shantabai v. State of Bombay, AIR 1958 SC 532** — Distinction between immovable (standing timber, trees with long life) and movable (growing crops intended for harvesting).

Section 2(14) — “Order”:

Order means the formal expression of any decision of a Civil Court which is not a decree.

Essential Elements:

1. Formal Expression

- ✓ Must be in writing and signed by the Judge.
- ✓ Verbal directions or administrative notes are not “orders” under CPC.

2. Decision of a Civil Court

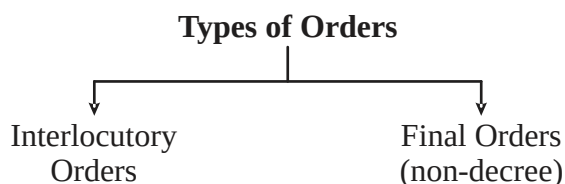
- ✓ An order is passed by a civil court exercising its jurisdiction in a civil matter.
- ✓ It can arise in a suit or any other civil proceeding (including execution, miscellaneous applications).

3. Not a Decree

- ✓ **Decree:** Formal expression of adjudication conclusively determining rights of parties in a suit (Section 2(2) CPC).
- ✓ **Order:** Decision that does not satisfy decree requirements.

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- ✓ Example:
- Rejecting a plaint = decree (explicitly included in Section 2(2)).
 - Returning a plaint = order (Order VII Rule 10).

Note: Every decree is an order, but every order is not a decree



1. **Interlocutory Orders** — Made during the pendency of a suit, not finally deciding it (e.g., granting temporary injunction).
2. **Final Orders (non-decree)** — Finally dispose of a proceeding but are not decrees because they do not arise from a “suit” (e.g., order in execution proceedings).

Appealability

- Only certain orders are appealable under Section 104 CPC and Order XLIII Rule 1.
- Non-appealable orders may be challenged via revision under Section 115 CPC or writ jurisdiction.

Order vs. Decree — Differences

Feature	Decree	Order
Definition	Section 2(2) CPC	Section 2(14) CPC
Nature	Conclusively determines rights in a suit	May or may not conclusively determine rights
Arises from	Suit	Suit or other proceedings
Appeal	First appeal lies under Section 96	Appeal lies only if specifically provided
Number	One decree per suit (with possible preliminary & final stages)	Multiple orders possible

Important Case Laws

- **Shah Babulal Khimji v. Jayaben D. Kania (1981) 4 SCC 8** — Clear distinction between decree, judgment, and order; certain orders may have finality for appeal purposes.
- **Bikram Das v. Financial Commissioner (AIR 1976 SC 105)** — Order must be a judicial determination in a civil cause, not an administrative act.

Section 2(15) CPC — “Pleader” in detail:

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.

Essential Elements:

1. Meaning

- ✓ A pleader is someone legally authorised to:
 1. **Appear** in court — represent a party.
 2. **Plead** — address the court on facts and law.

2. Includes

- ✓ **Advocate** — Enrolled under the Advocates Act, 1961.
- ✓ **Vakil** — Older term historically used for legal practitioners (still used in some states in subordinate courts).
- ✓ **Attorney of a High Court** — In certain High Courts (like Bombay, Calcutta, Madras before 1961), attorneys had right to act and plead.

3. Legal Framework

- ✓ **Advocates Act, 1961** now governs rights of appearance and practice.
- ✓ Section 30 of Advocates Act — Every advocate whose name is on a State roll is entitled to practice in all courts in India.

4. Distinction

- ✓ **Pleader** (in CPC sense) is a **generic term** for any authorised legal representative.
- ✓ Can include:
 - Public Prosecutors when appearing for the State in civil matters.
 - Government Pleaders under Section 2(7) CPC.
 - Special counsel appointed by Government or private parties.

Example

- If A hires a High Court advocate to defend a civil suit, that advocate is A’s pleader in CPC terminology.

Important Case Law

- **Harishankar Rastogi v. Girdhari Sharma, AIR 1978 SC 1019** — No one has a right to plead for another unless permitted by law; court has discretion to allow or refuse non-advocate representation.
- **T.C. Mathai v. District & Sessions Judge, AIR 1999 SC 1385** — Right to audience in court is controlled by statutory provisions and professional rules.

Section 2(16) CPC — “Prescribed”:

Prescribed means prescribed by rules.

Essential Elements:

1. Meaning in CPC Context

- ✓ When the CPC uses the term “prescribed” in any provision, it means that the details, procedure, form, time limit, or manner are **laid down in the rules** framed under the Code.
- ✓ Rules here refer to:
 - Rules in the **First Schedule** to the CPC (Orders I to LI), and
 - Rules made by the **High Courts** under **Sections 122 and 125 CPC**.

Section 2(17) CPC — “Public Officer”:

“Public officer” means a person falling under any of the following categories (a) to (h).

Essential Elements:

➤ Every Judge

- ✓ Includes all Judges — civil, criminal, revenue — whether in regular service or appointed for a specific case.
- ✓ Judicial status itself makes them a public officer.

➤ Every member of an All-India Service

- ✓ Refers to members of services under All India Services Act, 1951:
 - Indian Administrative Service (IAS)
 - Indian Police Service (IPS)
 - Indian Forest Service (IFS)
- ✓ Being centrally controlled but serving in States, they hold public officer status.

➤ Every commissioned or gazetted officer in the military, naval, or air forces of the Union while serving under the Government

- ✓ Includes all commissioned and gazetted officers (e.g., Lieutenant, Captain, Commander, Wing Commander) while in government service.

➤ Every officer of a Court of Justice whose duty is to:

- ✓ Investigate or report on matters of law or fact,
- ✓ Make, authenticate, or keep documents,
- ✓ Take charge of or dispose of property,
- ✓ Execute judicial process,
- ✓ Administer oaths,
- ✓ Interpret,
- ✓ Preserve order in court,

Includes: Any person specially authorised by a court to perform such duties.

Example: Sheristadar, Nazir, court clerks, interpreters.

-
- **Every person holding any office by virtue of which he is empowered to place or keep any person in confinement**

- ✓ Includes jail superintendents, prison warders, police custody officers.

- **Every officer of the Government whose duty is to:**

- ✓ Prevent offences,
 - ✓ Give information of offences,
 - ✓ Bring offenders to justice,
 - ✓ Protect public health, safety, or convenience.

Example: Police officers, municipal inspectors, health officers.

- **Every officer whose duty is to:**

- ✓ Take, receive, keep, or expend any government property,
 - ✓ Make surveys, assessments, contracts on behalf of Government,
 - ✓ Execute revenue processes,
 - ✓ Investigate/report on matters affecting Government's pecuniary interests,
 - ✓ Make/keep documents relating to such pecuniary interests,
 - ✓ Prevent infraction of laws protecting such interests.

Example: Revenue officers, PWD engineers, treasury officers.

- **Every officer in the service or pay of the Government, or remunerated by fees/commission for performing any public duty**

- ✓ Covers **all other government servants** and contractual officers performing a public function.

Purpose of Definition

- Identifies persons with **special procedural protections** or liabilities under CPC, e.g.:
 - ✓ **Section 80 CPC** — Mandatory notice before suing a public officer in respect of acts done in official capacity.
 - ✓ Certain privileges in execution and arrest provisions.

Case Law

- **State of U.P. v. Riaz Ahmad, AIR 1977 SC 1942** — Public officer is one who performs duties in connection with the affairs of the Union or State.
- **K. Satwant Singh v. State of Punjab, AIR 1960 SC 266** — Duties must be of a **public nature**; mere employment under government is not enough.
- **M.K. Sharma v. Bharat Electronics Ltd., (1987) 3 SCC 231** — Even employees of statutory corporations may be public officers if performing public duties.