



Madhya Pradesh

Judicial Services Exam

The High Court of Madhya Pradesh

Volume - 5

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



INDEX

The Code of Civil Procedure, 1908 (CPC)		
	PRELIMINARY	
1.	Section - 1. Short title, commencement and extent. Section - 2. Definitions. Section - 3. Subordination of Courts. Section - 4. Savings. Section - 5. Application of the Code to Revenue Courts. Section - 6. Pecuniary jurisdiction. Section - 7. Provincial Small Cause Courts. Section - 8. Presidency Small Cause Courts	2 3 17 18 19 20 21 22
	PART I SUITS IN GENERAL JURISDICTION OF THE COURTS AND Res judicata	
2.	Section - 9. Courts to try all civil suits unless barred. Section - 10. Stay of suit. Section - 11. Res judicata. Section - 12. Bar to further suit. Section - 13. When foreign judgment not conclusive. Section - 14. Presumption as to foreign judgments.	23 26 30 34 37 40
	PLACE OF SUING	
3.	Section - 15. Court in which suits to be instituted. Section - 16. Suits to be instituted where subject-matter situate. Section - 17. Suits for immovable property situate within jurisdiction of different Courts. Section - 18. Place of Institution of suit where local limits of jurisdiction of Courts are uncertain. Section - 19. Suits for compensation for wrongs to person or movables. Section - 20. Other suits to be instituted where defendants reside or cause of action arises. Section - 21. Objections to jurisdiction. Section - 21A. Bar on suit to set aside decree on objection as to place of suing. Section - 22. Power to transfer suits which may be instituted in more than one Court. Section - 23. To what Court application lies. Section - 24. General power of transfer and withdrawal. Section - 25. Power of Supreme Court to transfer suits, etc.	42 44 48 49 50 51 54 57 58 60 62 66

	INSTITUTION OF SUITS	
4.	Section - 26. Institution of suits.	69
	SUMMONS AND DISCOVERY	
5.	Section - 27. Summons to defendants.	70
	Section - 28. Service of summons where defendant resides in another State.	73
	Section - 29. Service of foreign summonses.	75
	Section - 30. Power to order discovery and the like.	78
	Section - 31. Summons to witness.	79
	Section - 32. Penalty for default.	80
	JUDGMENT AND DECREE	
6.	Section - 33. Judgment and decree	83
	INTEREST	
7.	Section - 34. Interest	85
	COSTS	
8.	Section - 35. Costs	87
	Section - 35A. Compensatory costs in respect of false or vexatious claims or defences	92
	Section - 35B. Costs for causing delay	94
	PART II EXECUTION GENERAL	
9.	Section - 36. Application to orders.	95
	Section - 37. Definition of Court which passed a decree.	96
	COURTS BY WHICH DECREES MAY BE EXECUTED	
10.	Section - 38. Court by which decree may be executed.	99
	Section - 39. Transfer of decree.	100
	Section - 40. Transfer of decree to Court in another State.	101
	Section - 41. Result of execution proceedings to be certified.	102
	Section - 42. Powers of Court in executing transferred decree.	103
	Section - 43. Execution of decrees passed by Civil Courts in places to which this Code does not extend.	104
	Section - 44. Execution of decrees passed by Revenue Courts in places to which this Code does not extend.	105
	Section - 44A. Execution of decrees passed by Courts in reciprocating territory.	105
	Section - 45. Execution of decrees outside India.	107
	Section - 46. Precepts.	107

	QUESTIONS TO BE DETERMINED BY COURT EXECUTING DECREE	
11.	Section - 47. Questions to be determined by the Court executing decree.	107
	TRANSFEREES AND LEGAL REPRESENTATIVES	
12.	Section - 49. Transferee.	109
	Section - 50. Legal representative.	109
	PROCEDURE IN EXECUTION	
13.	Section - 51. Powers of Court to enforce execution.	110
	Section - 52. Enforcement of decree against legal representative.	111
	Section - 53. Liability of ancestral property.	112
	Section - 54. Partition of estate or separation of share.	112
	ARREST AND DETENTION	
14.	Section - 55. Arrest and detention.	113
	Section - 56. Prohibition of arrest or detention of women in execution of decree for money.	114
	Section - 57. Subsistence-allowance.	114
	Section - 58. Detention and release.	114
	Section - 59. Release on ground of illness.	114
	ATTACHMENT	
15.	Section - 60. Property liable to attachment and sale in execution of decree.	115
	Section - 61. Partial exemption of agricultural produce.	116
	Section - 62. Seizure of property in dwelling house.	117
	Section - 63. Property attached in execution of decrees of several Courts.	117
	Section - 64. Private alienation of property after attachment to be void.	117
	SALE	
16.	Section - 65. Purchaser's title.	118
	Section - 66. [Repealed.].	118
	Section - 67. Power for State Government to make rules as to sales of land in execution of decrees for payment of money.	118
	DISTRIBUTION OF ASSETS	
17.	Section - 73. Proceeds of execution-sale to be rateably distributed among decree-holders.	118
	RESISTANCE TO EXECUTION	
18.	Section - 74. Resistance to execution.	120
	PART III	
	INCIDENTAL PROCEEDINGS	
	COMMISSIONS	
19.	Section - 75. Power of Court to issue commissions.	121
	Section - 76. Commission to another Court.	122
	Section - 77. Letter of request.	123
	Section - 78. Commissions issued by foreign Courts.	123

	PART IV SUITS IN PARTICULAR CASES SUITS BY OR AGAINST THE GOVERNMENT OR PUBLIC OFFICERS IN THEIR OFFICIAL CAPACITY	
20.	Section - 79. Suits by or against Government. Section - 80. Notice. Section - 81. Exemption from arrest and personal appearance. Section - 82. Execution of decree.	123 124 125 125
	SUITS BY ALIENS AND BY OR AGAINST FOREIGN RULERS, AMBASSADORS AND ENVOYS	
21.	Section - 83. When aliens may sue. Section - 84. When foreign States may sue. Section - 85. Persons specially appointed by Government to prosecute or defend on behalf of foreign Rulers. Section - 86. Suits against foreign Rulers, Ambassadors and Envoys. Section - 87. Style of foreign Rulers as parties to suits. Section - 87A. Definitions of “foreign State” and “Ruler”	125 126 126 126 127 127
	SUITS AGAINST RULERS OF FORMER INDIAN STATES	
22.	Section - 87B. Application of sections 85 and 86 to Rulers of former Indian States.	127
	INTERPLEADER	
23.	Section - 88. Where interpleader-suit may be instituted.	127
	PART V SPECIAL PROCEEDINGS ARBITRATION	
24.	Section - 89. Settlement of disputes outside the Court.	129
	SPECIAL CASE	
25.	Section - 90. Power to state case for opinion of Court.	130
	PUBLIC NUISANCES AND OTHER WRONGFUL ACTS AFFECTING THE PUBLIC	
26.	Section - 91. Public nuisances and other wrongful acts affecting the public. Section - 92. Public charities.	131 131
	PART VI SUPPLEMENTAL PROCEEDINGS	
27.	Section - 94. Supplemental proceedings. Section - 95. Compensation for obtaining arrest, attachment or injunction on insufficient ground.	133 134

	PART VII APPEALS APPEALS FROM ORIGINAL DECREES	
28.	Section - 96. Appeal from original decree. Section - 97. Appeal from final decree where no appeal from preliminary decree. Section - 98. Decision where appeal heard by two or more Judges. Section - 99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction. Section - 99A. No order under section 47 to be reversed or modified unless decision of the case is prejudicially affected.	135 136 136 136 137
	APPEALS FROM APPELLATE DECREES	
29.	Section - 100. Second appeal. Section - 100A. No further appeal in certain cases. Section - 101. Second appeal on no other grounds. Section - 102. No second appeal in certain cases. Section - 103. Power of High Court to determine issues of fact.	137 137 138 138 138
	APPEALS FROM ORDERS	
30.	Section - 104. Orders from which appeal lies. Section - 105. Other orders. Section - 106. What Courts to hear appeals.	138 140 140
	GENERAL PROVISIONS RELATING TO APPEALS	
31.	Section - 107. Powers of Appellate Court. Section - 108. Procedure in appeals from appellate decrees and orders.	141 108
	APPEALS TO THE SUPREME COURT	
32.	Section - 109. When appeals lie to the Supreme Court. Section - 112. Savings.	142 143
	PART VIII REFERENCE, REVIEW AND REVISION	
33.	Section - 113. Reference to High Court. Section - 114. Review. Section - 115. Revision.	143 144 145
	PART IX MISCELLANEOUS	
34.	Section - 132. Exemption of certain women from personal appearance. Section - 133. Exemption of other persons. Section - 134. Arrest other than in execution of decree. Section - 135. Exemption from arrest under civil process. Section - 135A. Exemption of members of legislative bodies from arrest and detention under civil process.	146 147 148 148 149

	Section - 136. Procedure where person to be arrested or property to be attached is outside district.	149
	Section - 137. Language of subordinate Courts.	149
	Section - 138. Power of High Court to require evidence to be recorded in English.	150
	Section - 139. Oath on affidavit by whom to be administered.	150
	Section - 140. Assessors in causes of salvage, etc.	150
	Section - 141. Miscellaneous proceedings.	150
	Section - 142. Orders and notices to be in writing.	151
	Section - 143. Postage.	151
	Section - 144. Application for restitution.	151
	Section - 145. Enforcement of liability of surety.	152
	Section - 146. Proceedings by or against representatives.	153
	Section - 147. Consent or agreement by persons under disability.	153
	Section - 148. Enlargement of time.	153
	Section - 148A. Right to lodge a caveat.	154
	Section - 149. Power to make up deficiency of court-fees.	155
	Section - 150. Transfer of business.	150
	Section - 151. Saving of inherent powers of Court.	155
	Section - 152. Amendment of judgments, decrees or orders.	156
	Section - 153. General power to amend.	156
	Section - 153A. Power to amend decree or order where appeal is summarily dismissed.	156
	Section - 153B. Place of trial to be deemed to be open Court.	156
	Section - 157. Continuance of orders under repealed enactments.	156
	Section - 158. Reference to Code of Civil Procedure and other repealed enactments.	157
	ORDERS	
35.	Order I – Parties to Suits	157
36.	Order II – Frame of Suit	158
37.	Order III – Recognized Agents and Pleadings	160
38.	Order IV – Institution of Suits	161
39.	Order V – Issue & Service of Summons	161
40.	Order VI – Pleadings Generally	163
41.	Order VII – Complaint	166
42.	Order VIII – Written Statement, Set-off & Counter-claim	172
43.	Order IX – Appearance of Parties and Consequence of Non-Appearance	174
44.	Order X – Examination of Parties by the Court	176
45.	Order XI – Discovery and Inspection	177

46.	Order XI (Commercial Courts) – Disclosure, Discovery & Inspection	180
47.	Order XII – ADMISSIONS	182
48.	Order XIII – Production, Impounding and Return of Documents	185
49.	Order XIV – Settlement of Issues	187
50.	Order XV – Disposal of the Suit at the First Hearing	188
51.	Order XVI – Summoning and Attendance of Witnesses	189
52.	Order XVI-A – Attendance of Prisoner-Witnesses	191
53.	Order XVII – Adjournment	192
54.	Order XVIII – Hearing of the Suit and Examination of Witnesses	193
55.	Order XIX – Affidavits	195
56.	Order XX – Judgment and Decree	196
57.	Order XXA – Costs	199
58.	Order XXI – Execution of Decrees and Orders Payment under Decree	200
59.	Order XXII – Death, Marriage and Insolvency or Parties	207
60.	Order XXIII – Withdrawal and Adjustment of Suits	209
61.	Order XXIV – Payment into Court	210
62.	Order XXV – Security for Costs	211
63.	Order XXVI – Commissions	212
64.	Order XXVII – Suits by or against Government or Public Officers	215
65.	Order XXVII – A CPC	216
66.	Order XXVIII – Suits by or against Military, Naval Men or Airmen	217
67.	Order XXIX – Suits by or against Corporations	218
68.	Order XXX – Suits by or against Firms and Persons carrying on Business in Names other than their Own	220
69.	Order XXXI – Suits by or against Trustees, Executors, and Administrators	222
70.	Order XXXII – Suits by or against Minors and Persons of Unsound Mind	223
71.	Order XXXII – A Suits relating to matters concerning the Family	225
72.	Order XXXIII – Suits by Indigent Persons	226
73.	Order XXXIV – Suits Relating to Mortgages of Immovable Property	228
74.	Order XXXV – Interpleader Suits	231
75.	Order XXXVI – Special Case	232
76.	Order XXXVII – Summary Procedure	234
77.	Order XXXVIII – Arrest and Attachment Before Judgment	235
78.	ORDER XXXIX – Temporary Injunctions and Interlocutory Orders	237

79.	Order XL – Appointment of Receivers	239
80.	Order XLI – Appeals from Original Decrees	239
81.	Order XLII – Appeals from Appellate Decrees (Second Appeals)	241
82.	Order XLIII – Appeals from Orders	242
83.	Order XLIV – Appeals by Indigent Persons	243
84.	Order XLV – Appeals to the Supreme Court	244
85.	Order XLVI – REFERENCE	246
86.	Order XLVII – Review	247
87.	Order XLVIII – Miscellaneous	249
88.	Order XLIX – Chartered High Courts	249
89.	Order L – Provincial Small Cause Courts	250
90.	Order LI – Presidency Small Cause Courts	251

	Specific Relief Act	
	Part – I Preliminary	
1.	Section 1: Short Title, Extent, and Commencement	252
2.	Section 2: Definitions	252
3.	Section 3: This Act does not	252
4.	Section 4: Specific Relief Enforces Only Individual Civil Rights	252
	Part – II	
	Chapter - 1 Recovery of Possession of Property	
5.	Section 5: Recovery of Specific Immovable Property (Based on Title)	253
6.	Section 6: Recovery Based on Possession (Not Title)	254
7.	Section 7: Recovery of Specific Movable Property	255
8.	Section 8: Liability to Deliver Movable Property	256
	Chapter - 2 Specific Performance of Contracts	
9.	Section 9: Defences to Specific Performance	258
10.	Section 10: Cases in Which Specific Performance is Enforceable	259
11.	Section 11: Specific Performance of Contracts Related to Trusts	259
12.	Section 12: Specific Performance of Part of Contract	260
13.	Section 13: Rights of Purchaser or Lessee Against Person with No or Imperfect Title	261
14.	Section 14: Contracts That Cannot Be Specifically Enforced	262
15.	Section 15: Who May Obtain Specific Performance	263
16.	Section 16: Personal Bars to Relief	265

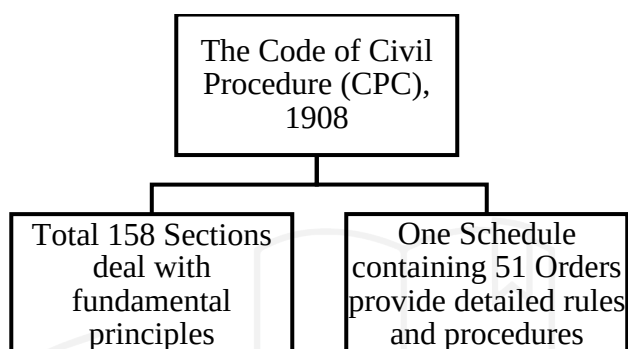
17.	Section 17: Contract to Sell/Lease Immovable Property by Person Without Title	266
18.	Section 18: Non-Performance Due to Fraud, Mistake, Misrepresentation, etc.	266
19.	Section 19: Against Whom Specific Performance Can Be Enforced	266
20.	Section 20: Substituted Performance of Contract	266
21.	Section 21 – Power To Award Compensation in Certain Cases	267
22.	Section 22 – Power to Grant Relief for Possession, Partition, etc.	267
23.	Section 23 – Liquidation of Damages Not a Bar to Specific Performance	268
24.	Section 24 – Bar of Suit for Compensation for Breach After Refusal of Specific Performance	268
25.	Section 25 – Application of Chapter to Certain Awards and Testamentary Directions	268
26.	Section 26: When Instrument May Be Rectified	268
27.	Section 27: When Rescission May Be Granted or Refused	271
28.	Section 28: Rescission After Decree of Specific Performance	272
29.	Section 29: Alternative Prayer for Rescission in Specific Performance Suit	273
30.	Section 30: Court May Require Restoration/Compensation	273
31.	Section 31: When Cancellation May Be Ordered	274
32.	Section 32: Partial Cancellation	275
33.	Section 33: Power to Require Restoration/Compensation	276
34.	Section 34: Discretion of Court	277
35.	Section 38: Declaratory Relief vs Injunction	279
36.	Section 35: Effect of Declaration	279
37.	Section 36: Preventive Relief	280
38.	Section 39: Mandatory Injunction	282
39.	Section 40: Damages Instead of or Along with Injunction	283
40.	Section 41: Injunction When Refused	283
41.	Section 42: Injunction to Perform Negative Agreement	283

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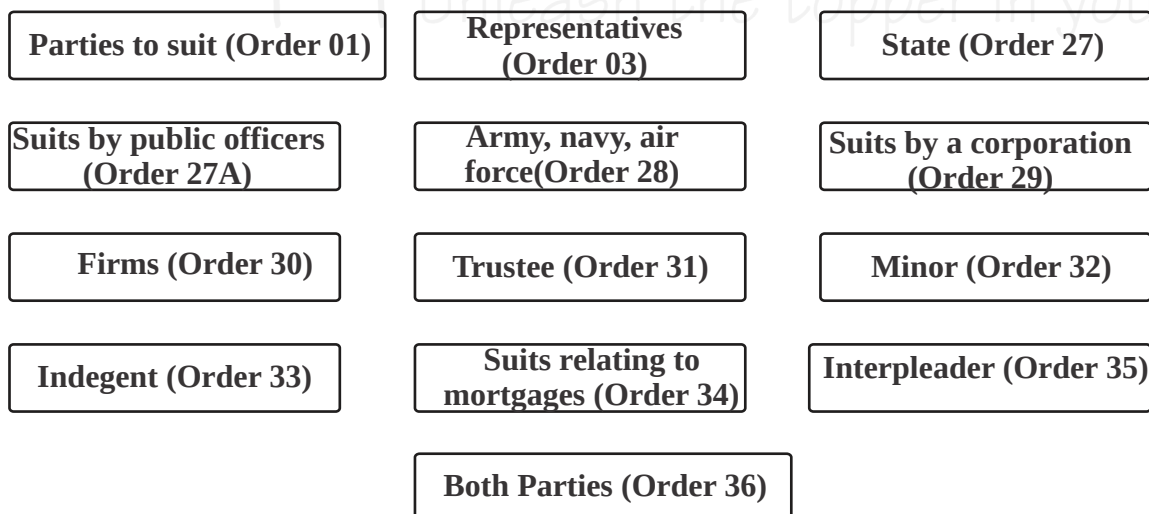
CHAPTER

The Code of Civil Procedure, 1908

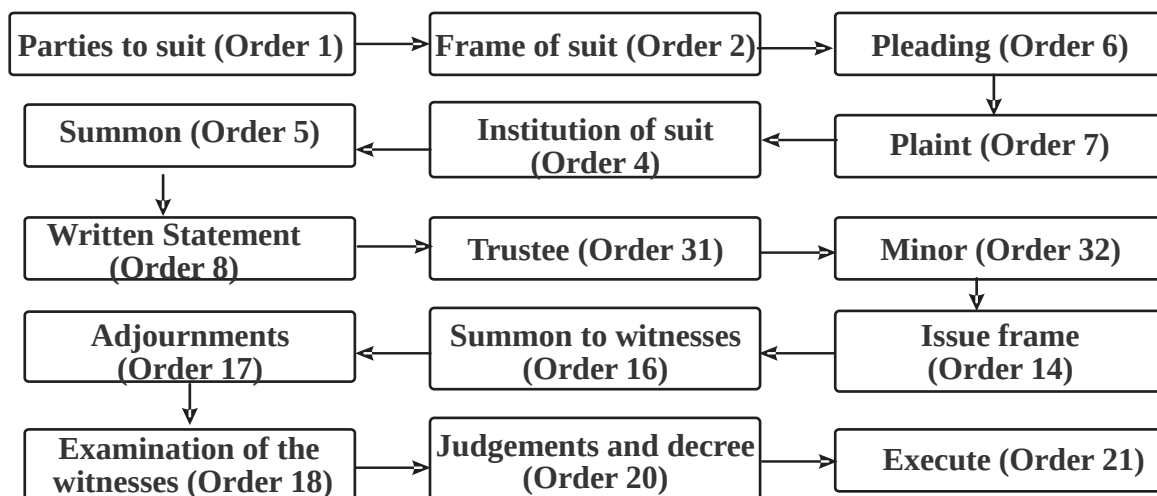
The Code of Civil Procedure (CPC), 1908, is structured with 158 sections and a schedule containing 51 Orders. These sections are the core of the code, dealing with fundamental principles and procedures. The schedule, with its 51 Orders, provides detailed rules and procedures for various aspects of civil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

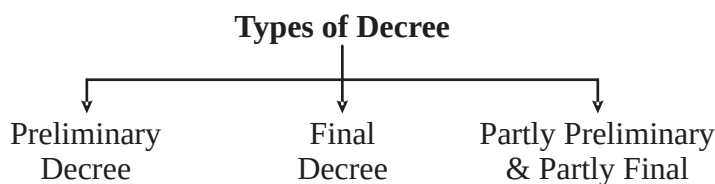
(b) Any order of dismissal for default (non-appearance of plaintiff) under Order IX Rule 8/Rule 3.

- ✓ 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

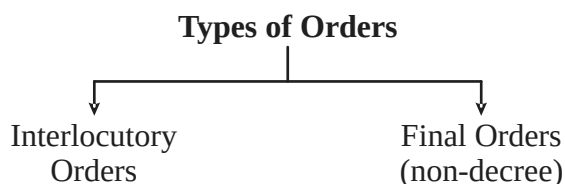
- ✓ An order is passed by a civil court exercising its jurisdiction in a civil matter.
- ✓ It can arise in a suit or any other civil proceeding (including execution, miscellaneous applications).

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.

- ✓ 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.

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- **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.