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“Aim and historical development of Civil Procedural Law”

Authored By-Sakshi Tripathi

BA.LLB. (Hons.)

Semester 5

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Abstract

“The more you study the civil procedure code, the more you realise what an admirable piece of legislation it is.”

- Chief Justice M.C. Chagla

We should not forget that procedural law is to mean to be a servant not a tyrant law. It should not be an obstruction in giving justice but to aid the justice. The procedural norms in law are very important. Both the branches of law ie. Substantive and procedural are complementary to each other and are interdependent. We all know that procedural law has always been in existence from the very beginning of the judicial system because it is impossible to perform any law without a procedure. But the point is before 1859 we had not any codified procedural law in India. In 1859 we had our first codified procedural law. In this paper I am going to talk about the object and purpose for enacting the civil procedure code and also how the civil procedural code has been evolved throughout the years and what are the important amendments has been done till now.

Introduction

“Procedural law provides machinery for enforcement of rights created by substantive law. Procedural law is thus an adjunct or accessory to substantive law.”

The Code of Civil Procedure of 1908 (CPC) is a colossal piece of legislation by any criterion. However, out of all its distinguishing characteristics, its structural framework—which is highly distinctive and not present in the majority of legislation today—stands out. It governs all procedures and practices which are followed in Indian civil courts. It talks about all actions to be followed in all civil courts from filing a civil suit and till the decree is carried out.

Before 1859 we don't find any codified, well unified legislation which governs the procedures to be followed in Indian civil courts. Crown Courts were located in Presidency towns back when they were under British administration, and Provincial Courts were located in Mofussil. In those times there were different systems in different courts which were governed by different rules and regulations. In 1908 we come up with a well unified code

after repealing all the previous code. In this there is the distinctive structural framework: Two heads summarize the entire CPC. The first heading is titled "Sections," and it describes the statutory rules governing how lawsuits can be brought and how they should be adjudicated. The "First Schedule" is found in the second head and lists several "Rules" that govern every part of a civil trial, from how to file a lawsuit to how to handle the ultimate appeal against a ruling.

So, the question arises that what were those major flaws in the CPC, 1859? Why did the code get repealed many times? How this code has evolved till now with such a unique framework? What was the purpose of making this code so structured and unique? To get the answer of these critical questions we need to get back to the colonial era to get an idea of the historical development of this code.

KEYWORDS

Procedural law, substantive law, development, historical background, amendments, case study etc.

What Is The Code Of Civil Procedure ?

According to Black's Law Dictionary a civil procedure is "A body of law concerned with the methods, procedures and practices used in civil litigation."

- A code is a set of regulations that direct how a matter proceeds in court, according to Section 2 (1) of the Code of Civil Procedure, 1908.
- The Code of Civil Procedure, 1908, which is a procedural law by definition, is acknowledged as a Code because it regulates civil procedures in Indian territory.
- While the orders and rules specify the process and mechanism for managing civil cases in India, the sections of the Code of Civil Procedure address general principles of jurisdiction.

The Aim Of Civil Procedural Law

The aim of the Civil Procedure Code lies in the preamble of this code itself which says-

“An act to consolidate and amend the laws relating to the procedure of the courts of civil judicature.”

Here consolidate means that this code collects all the laws which deal with the particular subject and assemble it in a very proper way so that I can form a useful code.¹ The Code of Civil Procedure is a codified set of rules for civil court procedures. The Code consolidates and changes the statutes relating to the process of the Courts of Civil Judicature, as stated in *Prem Lala Nahata v. Chandi Prasad Sikaria*². It undoubtedly also covers certain substantive rights. However, the consolidation of the law governing civil procedure is its main goal. It is not a punitive statute for punishments and penalties, nor is it something made to mislead people; rather, it is created to promote justice and further its goals. Therefore, it is important to avoid overly technical section constructions that don't allow for any reasonable flexibility of interpretation, as long as both parties are treated fairly.³

Therefore, the code's provisions should be generously interpreted, and technical challenges shouldn't be allowed to undermine the administration of substantive justice.⁴ The court should refrain from taking a "hypertechnical view."⁵ The Code's provisions have developed over many years of experience stemming from English common law.⁶

In the case of *Saiyad Mohd. Bakar El-Edroos v Abdulhabib Hasan Arab*⁷ the H'ble Supreme Court stated that “A procedural law is always in aid of justice, not in contradiction or to defeat the very object which is sought to be achieved. A procedural law is always subservient to the substantive law. Nothing can be given by a procedural law what is not sought to be given by a substantive law and nothing can be taken away by the procedural law what is given by the substantive law.”⁸

¹ *Administrator General of Bengal v. Prem Lal Mullick*, (1894-95) 22 IA 107; ILR (1895) 22 Cal 788 (PC); *Mahant Shantha Nand v. Mahant Basudevanand*, AIR 1930 All 225 at p. 230 (FB).

² (2007) 2 SCC 551.

³ *Sangram Singh v. Election Tribunal*, AIR 1955 SC 425 at p. 429; (1955) 2 SCR i at p. 5; *Chinnammal v. P. Arumugham*, (1990) 1 SCC 513.

⁴ *Hukum Chand Boid v. Kamalanand Singh*, ILR (1906) 33 Cal 927.

⁵ *Ganesh Trading Co. v. Moji Ram*, (1978) 2 SCC 91 at p. 96; *Babu Lal v. Hazari Lal*, (1982)

⁶ *Subrata Roy Sahara v. Union of India*, (2014) 8 SCC 470; *Maria Margarida Sequeira Fernandes v. Erasmo Jack de Sequeira*, (2012) 5 SCC 370; (2012) 3 SCC (Civ) 126.

⁷ (1998) 4 SCC 343 at p. 349.

⁸ See also, the following observations of Lord Denning in *Jones v. National Coal Board*, (1957) 2 QB 55: (1957) 2 WLR 760 (CA) : "It's all very well to paint justice blind, but she does better without a bandage round her eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth."

Historical Background

Following the Revolt of 1857, the British Crown declared India to be a British colony in 1858 by Queen Victoria's Proclamation. This provided the codification of laws a considerable boost, and civil procedure was the first to get enacted. The Indian Penal Code, which is sometimes cited as the pinnacle of legal achievement, was drafted in 1837 but didn't become a statute until 1860.

There was no unified, codified legislation governing the civil court's procedure in India before to 1859. The provincial courts in Mofussils and the crown courts in presidential towns were controlled by various systems of civil procedure in those days. These systems included specific rules, regulations, and special acts that were occasionally applicable to them. These Courts in the Mofussil areas and the Presidency towns were governed by numerous civil procedure rules, regulations, and special acts, which were periodically altered to meet the needs and conditions. A uniform and codified civil procedure code was created for the first time in 1859 by passing the Civil Procedure Code. (1859 Act VII). However, because the Supreme Courts (Crown Courts under the Royal Charter) and the Sadar Diwani Adalats were not supposed to be covered by this legislation, it was unable to serve its intended purpose (Principal Courts under the Judicial Plan by the Governor General). However, this law was unable to fulfil its primary objective because the Supreme Courts (Crown Courts under the Royal Charter) and the Sadar Diwani Adalats were not intended to be subject to it. The very first act which was of 1859 was divided into 12 chapters and has 388 sections. This code had a lot many lacunas so after passing 18 years; a new code of 1877 was enacted after repealing the previous one. In this decade a lot many important legislation were enacted for example Indian Contract Act and Indian Evidence Act. The code of 1877 was very vast which contained 652 sections as it was inspired by a lot of development that took place in that time period.

The 1877 CPC was a very thorough and well-intentioned law, but it existed for a very short time. The duration was roughly five years. The British made a third attempt at establishing a comprehensive statute to address the wide range of issues that a civil trial invariably brought up. Thus, the 1877 CPC was abolished and a new CPC was formed in 1882. The 1882 CPC was another lengthy piece of law with nearly 650 sections.

If we compare CPC with other laws present in India, unfortunately it was repealed three times in a very short period of 23 years because of its shortcomings, which was not the case with other laws. After this a special committee submitted a report along with a draft of new CPC on 31st Aug, 1907, which published in the Gazette of India on 7th Sept, 1907. This new CPC became law in March 1908 and it came into the force on 1st Jan, 1909.

Amendments Of 1951 And 1956

The existing Code of Civil Procedure was adopted in 1908. Two significant Amendment Acts from 1951 and 1956 brought a lot of changes in it. Although it had several flaws, this code generally functioned properly. After carefully analysing the numerous recommendations made by the Law Commission in its numerous reports, the government decided to introduce the bill to alter the Code of Civil Procedure, 1908, bearing in mind, among other things, the following factors:⁹

- A litigant should get a fair trial in accordance with the accepted principles of natural justice.
- Every effort should be made to expedite the disposal of civil suits and proceedings, so that justice may not be delayed.
- The procedure should not be complicated, and should, to the utmost extent possible, ensure a fair deal to the poorer sections of the community who do not have the means to engage a pleader to defend their cases.

There are some crucial changes made in the CPC, 1908 by the amendment act of 1976 are as follows¹⁰:

- The doctrine of res judicata is being made more effective.
- Power to transfer proceedings from one High Court to another is given to the Supreme Court.
- Freedom from attachment of a portion of salary to all salaried employees is granted.
- Provision of giving notice under Section 80 before the institution of a suit against the Government or a public officer is made less stringent.

⁹ Takwani, C. K. *Civil Procedure Code*. 1987, <https://doi.org/10.1604/9780897717724>. (Statements of objects and reasons and amendment act of 104 of 1976; see also *Subrata Roy Sahara v. UOI*, (2014)4SCC (Civ)424

¹⁰ Takwani, C. K. *Civil Procedure Code*. 1987, <https://doi.org/10.1604/9780897717724>.

- Restrictions are imposed on the right of appeal and revision.
- Provisions are being made to ensure that written statements and documents were filed without delay.
- New Order 32-A has been inserted to provide a special procedure in litigation concerning the affairs of a family.
- The practice to pass preliminary and final decree in certain suits is abolished.
- Scope of Summary Trials is substantially widened.
- Important changes have been made to provide relief to poorer sections of the community.

Amendments Of 1999 And 2002

As we have seen that there was a lot of amendments in year 1976 in CPC but these changes were not felt sufficient. So with a view to fasten the disposal of civil cases and make it more effective, government appointed Justice Malimath committee. For implementation of the recommendations of the committee, the code was amended again in the year of 1999 and 2002 by the amendments acts of 1999¹¹ and 2002¹² respectively.¹³

- (i) In several matters, such as issuing of summons, filing of written statement, amendment of pleadings, production of documents, examination of witnesses, pronouncement of judgments, preparation of decree, etc., a time-limit is prescribed
- (ii) A new provision for settlement of disputes outside the court has been introduced
- (iii) Number of adjournments have been restricted
- (iv) A provision for recording of evidence by the Court Commissioner has been made
- (v) Endless arguments are sought to be shortened by (a) empowering the court to fix a time-limit for oral arguments; and (b) by permitting written arguments to be placed on record by the parties
- (vi) A provision is made for filing of appeal in the court which passed the decree
- (vii) Instituting of appeal against the judgment is allowed where the decree is not drawn up

¹¹ Act 46 of 1999

¹² Act 22 of 2002

¹³ Takwani, C. K. *Civil Procedure Code*. 1987, <https://doi.org/10.1604/9780897717724>.

- (viii) Scope of First Appeal, Second Appeal, Letters Patent Appeal and Revision has been curtailed.

In the case of Salem Advocate Bar Assn. v. UOI,¹⁴ the Hon'ble Supreme Court held that all the amendments made in the civil procedure code, 1908 in 1999 and 2002 are constitutional and intra vires. This case will be dealt in detail further in this paper.

Scope And Scheme Of The Code

The Code covers every topic in detail that it is intended to cover. Furthermore, it does not cover all of the topics that are not addressed there. The legislature is unable to anticipate every case that might occur in a future case and, as a result, cannot provide a procedure for them.¹⁵ The court has an inherent power to resolve those issues in a way that upholds justice, equity, and good conscience.¹⁶ The code clearly states that “Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court”.¹⁷

The Code is composed of two segments: One is the body of the Code, which contains 158 sections, and the second part contains the (First) Schedule, which contains Orders, Rules, and Forms. The (First) Schedule relates to the procedure and the method, manner, and mode in which the jurisdiction may be exercised, while the sections deal with provisions of a substantive nature, laying down the general principles of jurisdiction. Sections that constitute the Code's main body are fundamental and can only be amended by the legislature. On the other hand, High Courts have the authority to change the (First) Schedule of the Code, which contains Orders and Rules.¹⁸

The amendments made by High Courts to the rules contained in the (First) Schedule also become part of the Code for all purposes “as if it were enacted in the Code,” it is abundantly clear when considering the overall structure of the Code. The sections and the rules must therefore be read together and cohesively construed, but the sections will hold precedence if

¹⁴ (2005)6 SCC 344

¹⁵ Manohar Lal Chopra v. Seth Hiralal, AIR 1962 SC 527; 1962 Supp (1) SCR 450; Padam Sen v. State of U.P., AIR 1961 SC 218; (1961) 1 SCR 884.

¹⁶ Hukum Chand Boid v. Kamalanand Singh, ILR (1906) 33 Cal 927.

¹⁷ Section 151 of civil procedure code, 1908 bare act.

¹⁸ Ss. 121, 122, 125-131; see also, Vareed Jacob v. Sosamma Geevarghese, (2004) 65CC 571

the rules are in conflict with them.¹⁹

Conclusion

After going through the historical development of this code, now we got to know that what was the need for repealing the code for so much times and coming with this unique framework. The code of 1908 provides sections, orders and rules which are meant to be followed by the civil courts in India for fair and speedy trial of the courts without taking away anyone's right. It is very much possible that at that time makers of the code could not provide procedure for unforeseeable future circumstances which may arise; it has given high courts a special power which is called inherent powers of the court to act according to the principles of justice, equity and good conscience. Substantive law are very important for keeping harmony but we cannot underestimate the importance and value of the procedural laws. The objective of this law is to facilitate justice and further it ends. Procedures for enforcing rights and obligations are set forth by procedural laws. The effectiveness of procedural legislation greatly influences the effectiveness of substantive laws. Unless the process is easy, quick, and affordable, substantive laws—no matter how good—are doomed to fall short of their intended purpose and end aim. So this is how the Civil Procedural law has been structured in a quite unique way with a scheme which is still not found in most laws. By the time whenever the need for amendments have been felt, the lawmakers amended the code keeping in mind the speedy trial and rights of the both parties. Although it could have certain drawbacks, it is nonetheless effective, straightforward, and understandable and enables the courts to administer fair justice.

¹⁹ Director of Inspection of Income Tax (Investigation) v. Pooran Mal & Sons, (1975) 45CC \$68; State of U.P. v. Babu Ram Upadhyaya, AIR 1961 SC 751 at p. 761; (1961) 2 SCR 679

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