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SYNOPSIS

Nature and scope of Code of Civil Procedure 1908

The Code of Civil Procedure 1908 (CPC) is the body of law (**adjective law**) concerned with the methods, procedures and practices used in civil litigation for the pursuance of a legal remedy. The Code consists of two parts. 158 Sections form the first part and the rules and orders contained in Schedule I form the second part. The sections are to create jurisdiction while the rules and orders indicate the mode in which the jurisdiction should be exercised.

Codification of natural justice

The Code is a codification of the principles of natural justice. Natural justice means 'justice to be done naturally' which is adopted naturally by the habits of every individual. It does not mean godly-justice or justice of nature. It simply means an in-built habit of a person to do justice. For example, if a child of 1½ year breaks the saucer, the mother of the child may slap him being furious, but at the time of slapping, she would repeatedly ask him why he has broken the saucer, though she knows that the child has not started speaking. As these principles are inbuilt-habit of everyone to ask others for furnishing the explanation of anything done by them, the same are known as 'principles of natural justice'. In Garden of Eden God did not punish Adam and Eve without giving them opportunity to show cause as to why they had eaten the prohibited fruit. The first reported case of principles of natural justice in Dr. Bentely's case, i.e., R V.

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University of Cambridge, (1723) 1 STR 757, wherein reference of the incident of Garden of Eden was made. [Chauhan p 1]

History of enactment

The first Code of Civil Procedure was enacted in 1859 by the Committee headed by Mr. John Romily. It was amended in 1877 and, subsequently, in 1882, however, those amendments did not serve the purpose, therefore, the present Code of Civil Procedure was enacted in 1908. It was drafted by the Committee headed by Sir Earle Richards. The Committee before submitting the draft to the West Minister Parliament travelled India, read its history and ancient texts and then knew the traditions and culture of this country, and draft legislation was prepared keeping all such things in view.

Civil litigation

Civil litigations may consist of suits in which the right to property or to an office is contested. A suit is any proceeding by a party or parties against another in a court of law. Instances of civil litigations or suits are [Takwani 2015 p 54]:

a) suits relating to rights to property;

b) suits relating to rights of worship;

c) suits relating to taking out of religious processions;

d) suits relating to rights to shares in offerings;

e) suits for damages for civil wrongs;

f) suits for a special performance of contracts or for damages for breach of contracts;

g) suits for specific reliefs;

h) for restitution of conjugal rights;

i) suits for dissolution of marriage;

j) suits for rents;

k) suits for right of franchise;

l) suits for right to the office;

m) suits against wrongful dismissal from service and for salaries etc.

The following are, however, not regarded suits of civil nature and therefore may not be contested before the civil courts under CPC [Takwani 2015 p 54]:

a) suits involving principally caste questions;

b) suits involving the purely religious rites or ceremonies;

c) suits for upholding mere dignity or honour;

d) suits for recovery of voluntary payments or offerings;

e) suits against expulsion from caste etc.

Stages in the civil litigations

Civil courts, Courts of small causes, High Courts and the Supreme Court follow and apply CPC while adjudicating the dispute of civil nature. A typical civil litigation in the trajectory of CPC undergoes the following stages:

a) Institution of suit

b) Summon to defendant

c) Inspection of document

d) Written statement

e) Amendment of pleading

f) Documentary evidence

g) Oral evidence

h) Trial

i) Disposal

j) Appeal etc.

k) Execution