



**BIHAR**

**Judicial Services Exam**

**CIVIL JUDGE**

**Bihar Public Service Commission**

**Volume - 3**



# BIHAR JUDICIAL SERVICES

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# **The Code of Civil Procedure**

## The Code of Civil Procedure, 1908

- \* Act No. 5 of 1908
- \* Assent: 21<sup>st</sup> March, 1908
- \* Enforce: 1<sup>st</sup> January, 1908

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## **Orders**

### **Part-I (01-20A)**

- O1 = Name of Parties
- O2 = Frame of Suit
- O3 = Recognized Agents and Pleadings
- O4 = Institution of suits
- O5 = Issue and service of Summons
- O6 = Pleadings
- O7 = Plaint
- O8 = Written Statement
- O9 = Appearance of Parties and Consequences of Non appearances
- O10 = Examination of Parties
- O11 = Discovery and Inspection
- O12 = Admission
- O13 = Production, Impounding and Return of Documents

O14 = Settlement of Issues and Determination of suit or issues of law or issues agreed upon

O15 = Disposal of the suit of the 1<sup>st</sup> hearing

O16 = Summon of Witness

O16A = Attendance of witnesses confirmed or detained in prisons

O17 = Adjournment

O18 = Hearing

O19 = Affidavit

O20 = Judgment and Decree

O20A = Cost

### **Part-II [Execution (O21)]**

### **Part-III [Incidental Proceedings (O22-51)]**

O22 = Death, marriage and Insolvency

O23 = Withdrawal and Adjustment

O24 = Payment in Court

O25 = Security of Cost

O26 = Commission

### **Suits (O27-35)**

O27 = Govt.

O27A = Constitution

O28 = Army

O29 = Corporation

O30 = Firm/Hindu Undivided Family

O31 = Trustee, Executor and Administrator

O32 = Minor/Unsound Mind

O32A = Family

O33 = Indigent

O34 = Mortgage

O35 = Inter-pleader

O36 = Special Case

O37 = Summary Procedure

### **Supplemental Proceedings (O38-40)**

- O38 = Arrest and Attachment before Judgment
- O39 = Temporary Injunction and Interlocutory orders
- O40 = Appointment of Receiver

### **Appeal (O41-45)**

- O41 = Appeals from original decrees
- O42 = Appeals from Appellate decrees
- O43 = Appeals from orders
- O44 = Appeals by Indigent persons
- O45 = Appeals to the Supreme Court

### **Reference, Review**

- O46 = Reference
- O47 = Review
- O48 = Miscellaneous
- O49 = Chartered High Court
- O50 = Provincial Small cause court
- O51 = Presidency Small Cause Courts

<b>Part-A</b>		
<b>Sec</b>	<b>Mix</b>	<b>Order</b>
1-6		
	7 + O50	
	8 + O51	
9-14		
15-25		1, 2, 3
	26 + O4	
	27 - 29 + O5	
		6 - 10
	30 + O11	
		12 - 15
	31 - 32 + O16	
		16 A, 17, 18, 19
	33 - 20	
34		

	<b>35 + 20A</b>	
<b>35 A, B</b>		
	<b>Part-B</b>	
	<b>36 - 74 + O21</b>	
	<b>Part-C</b>	
		<b>22 - 25</b>
	<b>75 - 78 + O26</b>	
	<b>79 - 82 + O27</b>	
		<b>27A, 28 - 34</b>
<b>83 - 87A</b>		
<b>87 B</b>		
	<b>88 + O35</b>	
<b>89</b>		
	<b>90 + 36</b>	
<b>91 - 95</b>		
		<b>37</b>
	<b>94 - 95 + O38 - 40</b>	
	<b>96 - 99A + O41</b>	
	<b>100 - 103 + O42</b>	
	<b>104 - 106 + O43</b>	
<b>107 - 108</b>		
		<b>44</b>
	<b>107 - 112 + O45</b>	
	<b>113 + O46</b>	
	<b>114 + O47</b>	
<b>115</b>		
<b>116 - 120</b>		
<b>121 - 131</b>		
<b>132 - 158</b>		
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Q. What is the object of CPC?

Ans. An Act to consolidate and amend the laws relating to the procedure of the courts of civil Judicature.

There were many amendments, so there is a history of CPC also.

Act no. 8, 1859

Act no. 10, 1877

Act no. 14, 1882

Presently Act no. 5, 1908

In present CPC also has various amendments including Mali math Committee.

i. Act no. 104, 1976

ii. Act no. 46, 1999

iii. Act no. 22, 2002

iv. Act no. 4, 2016 (Commercial courts for Rs. 1 Cr. Or more)

v. Act no. 28, 2018 (Amendment in commercial courts)

- Now CPC apply in J and K also Schedule 5 and 8 of J and K reorganization Act, 2019.
- It has prospective effect and not retrospective effect.

Q. Where CPC doesn't apply?

Ans. Sec 1 Not apply on J and K (Now apply refer J and K reorganization Act, 2019)

\* Not apply to the tribal areas and Nagaland

\* Tribal area = such area which before 31 Jan, 1992 was tribal area of Assam, as referred in Para 20 of the sixth Schedule of the constitution.

Wherever following matter there CPC shall apply along with local laws:

a. Amindivi Island

b. East Godavari

c. West Godavari and Vishakhapatnam agencies.

d. In state of AP (Andhra Pradesh)

e. Lakshadweep

- Consent of Governor General 21 Mar 1908
- Came into force 1 Jan 1908.

**Sec 4:** wherever special law, local law or special proceedings CPC shall not apply.

- \* Wherever any landholder or landlord recovers rent from the produce of land then CPC shall not apply for his remedies.

**Sec 5:** wherever matter certain to revenue courts then CPC shall apply only when special procedures (Act) are silent.

- \* SC can issue notification that the provisions of CPC apply with or without modification.
- \* Revenue court does follow; court having jurisdiction under any local law to entertain suit or other proceedings relating to the rent revenue or profits of land used for agriculture purposes but does not include a civil court having original jurisdiction under this code. (CPC does not apply)
- \* If provisions of revenue courts are silent then CPC apply.

Revenue court-Raj Land Revenue Act, Raj, Tenancy Act.

**Sec3:** District court is subordinate to HC and every civil court of Inferior grade i.e., small because court subordinate to DC & HC. 4 other courts are also subordinate to DC or HC.



Tribunals are created to reduce the burden of courts, they perform the quasi-judicial function and can exercise only certain powers under CPC & CrPC. They are headed by judicial officer which doesn't make it a Court.

Q. What do you understand by jurisdiction?

Ans.

- a. Subject Wise: (Family Courts, Raj Appellate Tribunal)
- b. Territorial Jurisdiction (15-25)
- c. Pecuniary Jurisdiction (Sec 6)
  - i. Civil Judge- 0 - 2 Lakh
  - ii. Senior Civil Judge - 2 - 5 Lakh
  - iii. District Judge - 5 Lakhs or more
- d. Original or Appellate Jurisdiction

## Sec 2: Definitions

- i. Code
- ii. Decree
- iii. Decree holder
- iv. District
- v. Foreign Court
- vi. Foreign Judgment
- vii. Govt. Pleader
- viii. A. High Court
- ix. B. India
- x. Judge
- xi. Judgment
- xii. Judgment Debtor
- xiii. Legal Representative
- xiv. Mesne profit
- xv. Moveable Property
- xvi. Order
- xvii. Pleader
- xviii. Prescribed
- xix. Public Officer
- xx. Rules
- xxi. Share in-incorporation
- xxii. Signed
- xxiii. Public officer: means an person falling under any of the following descriptions namely.
  - a. Every Judge
  - b. Every member of all India Service.
  - c. Army
  - d. Officer of Court
  - e. Confine person (Police)
  - f. Information of offence and Protect health safety (CID/Doctor)
  - g. Revenue
  - h. Any person who is in pay or remuneration by govt. or perform public duty.

<b>Legal Representative</b>		
<b>De Jure</b> Such person who is law represents the estate of a deceased person.	<b>De Facto</b> Such person who intermeddles (interfere) with the property of the deceased.	<b>National LR</b> Such person where suit is of representative character then to whom estate evolves. Eg: Labor Union Vice President.

**Mesne Profit:** Such benefit which was received by person having wrongful possession.

- \* Such property actually received, or person could have received by ordinary diligence.
  - Different from sec 144; there possession is rightful. (Lower court gave different judgement.)
- \* It doesn't include improvements (MP = Profit + Interest - Improvements.)

**Decree:** Formal expression of adjudication

- \* Which conclusively determine the rights of parties.
- \* With regard to all or any matter of controversy in a suit.
- \* It is preliminary or final.
- \* It includes following things 'Deemed Decree'.
  - a. Rejection of Pleint (O7, R11)
  - b. Question under sec 144
  - c. It excludes following things:
    - A. Appeal from orders (O43, sec 104-106)
    - B. Order of dismissal for default.

**Formal Expression:** Court shall specifically state whether relief is granted or not.

Adjudication: Court has used its discretion, where there is discretion there are following things: -

- a. Heard both the parties.
- b. Judgement is on merit.

\* Decision: May be on merit or may not be on merit.

Adjudication - Decree

Decision - Order

- \* Conclusively Determines: That judgement is final. (If aggrieved, go to higher authorities)
- \* Suit: Decree on suit and not on application, but there are exceptions:
  - i. By indigent person
  - ii. Where application of arbitration is rejected.
  - iii. Order 36 Rule 3 (Special matter)
- \* Hansraj Gupta Vs official liquidator Dehradun
  - General rule is that civil proceedings are instituted by presentation of plaint.
- \* Venkata Reddyvs Pethi Reddy
  - Wherever in decree there is adjudication then there pleading of parties shall be seen and proceedings of court.

### Decree is of two types

Preliminary Decree	Final Decree
<ol style="list-style-type: none"> <li>a. Wherever shares of parties are determined</li> <li>b. Further proceedings are required.</li> <li>c. Preliminary decree can be more than one.</li> <li>d. Preliminary not dependent on final decree.</li> </ol>	<ol style="list-style-type: none"> <li>a. Wherever rights of parties are determined completely.</li> <li>b. Finally decided.</li> <li>c. Final decree is only one.</li> <li>d. Dependent on preliminary decree i.e., if preliminary is to set aside then final decree also set aside.</li> </ol>

**Sec97: Appeal from final decree where no appeal from preliminary decree:**

- \* If preliminary decree is not appealed, then later on an appeal of final decree there shall be no objection.

**Shankar Vs Chandrakant**

- \* In preliminary decree right and duties of parties are determined but further proceedings are required.

Q. Can there be partly preliminary and partly final decree?

Ans. Yes, suit for possession or mesne profit.

**Deemed Decree:** Such orders which are just like decree but principle of res judicata not apply E.g.: O7 R13

- \* CIT Vs Bombay Trust Corporation
- \* It is not decree but treated as decree.

**Order:** Means the formal expression of any decision of a civil court which is not a decree.

<b>Decree 2 (2)</b>	<b>Order 2 (14)</b>
<ul style="list-style-type: none"> <li>* Formal expression of adjudication.</li> <li>* Conclusively determines the rights of parties.</li> <li>* Right of first appeal.</li> <li>* There can be second appeal.</li> <li>* There is one final decree.</li> <li>* Decree is of two types.</li> </ul>	<ul style="list-style-type: none"> <li>* Formal expression of decision</li> <li>* May or may not conclusively determine.</li> <li>* No appeal except appeal lie as appeal of order (D43, Sec 104 105)</li> <li>* No second appeal</li> <li>* Application itself</li> <li>* Any number of orders.</li> <li>* No types.</li> </ul>

<b>Decree</b>	
<b>What is included</b>	<b>What is excluded</b>
<ul style="list-style-type: none"> <li>* Order of at a battement of suit</li> <li>* Appeal which is time barred and dismissed.</li> <li>* Where there is no cause of action.</li> <li>* Sec 92 of (CPC [Public Nuisance])</li> <li>* E.g.: Right to sue ends</li> </ul>	<ul style="list-style-type: none"> <li>* Dismiss in default</li> <li>* Appointment of Commission</li> <li>* Temporary Injunction.</li> <li>* Return of plaint.</li> <li>* O23 R1, Withdrawal and adjustment.</li> </ul>

Q. What is judgment?

Ans. Sec2 (ix): Statement of any judge on the grounds of decree or order (Refer O20 R4)

<b>Judgment General</b>	<b>Judgment of Small Cause Court.</b>
<ul style="list-style-type: none"> <li>a. Concise statement of the case.</li> <li>b. Points for determination.</li> <li>c. The Decision.</li> <li>d. Reason of decision</li> </ul>	It contains only <ul style="list-style-type: none"> <li>a. Points of determination.</li> <li>b. Decision</li> </ul>

<b>Decree holder</b>	<b>Decree Debtor</b>
Such person in whose favor decree is passed. Order capable of execution is passed.	Such person against whom decree is passed. Order capable of execution is passed.
Person also includes mortgagee	Person also includes Guarantor

**A**  
(Judgement Debtor)

**Vs**

**B (Winning)**  
(Judgement Holder)

**Rules:** Means rules and forms contained in the first schedule and made under section 122 or 125.

**Share in corporation:** Includes stock debenture-stock, debentures, or bonds.

**Signed:** Save in the case of a judgement or decree, includes stamp.

**Pleader:** Means any person entitled to appear and plead for another in court, and includes an advocate, a Vakil or an attorney of high court.

**Prescribed:** Means prescribed by rules.

**Code:** includes rules

**District:** Means the local limits of the jurisdiction of a principal civil court or original jurisdiction (DC) and includes the local limits of the ordinary original civil jurisdiction of a HC.

**Foreign Court:** Means

A court situated outside India and not established or continued by the authority of the central govt.

**Foreign Judgment:** Means the judgement of a foreign court.

**Government Pleader:** Includes any officer appointed by the state govt. to perform all or any of the function expressly imposed by this code & also any pleader acting under the direction of the govt. pleader.

**High Court:** In relation to Andaman and Nicobar Islands means the High Court in Calcutta?

**India:** Means the territory of India excluding J and K.

**Judge:** Means the presiding of officer of a civil court.



**Moveable property:** Includes growing crops.

Q. What do you understand by civil nature suits?

Ans. Sec9: Courts to try all civil suits unless barred except

- a. Expressly barred (Refer Sec 4 and 5)
- b. Impliedly barred (Refer Arbitration clause which is by consent of parties).

**Explanation 1:** Wherever matter is of right of property or office then it shall be of civil nature then although such right is based on religious rites and ceremonies.

**Explanation 2:** It is immaterial that such post is attached with fees or particular place.

\* Wherever matter is of civil nature or not then we have to see rights and liabilities.

If matter is of civil nature and rights are infringed then compensation shall be given.

\* A.RAnatulay Vs R.S. Nayak

By consent of parties nobody can be given jurisdiction.

\* Most Rev. PMA Metropolitan Vs Moran Mar Marthoma

In sec 9, the civil nature given is both positive as well as negative.

\* Firm seth Radha Krishan Vs Adminstrator Municipality Committee Ludhiana

In sec 9, all types of matters shall be considered civil matters except impliedly or expressly barred.

\* Dhulabhai Vs State of M.P.

Civil courts are exclusively barred by special tribunals and special provisions in enactment and special lights.

\* Premier Automobile Vs Kamlekar Shantaram

\* RSRTC Vs Krishnakant

\* Chandrakant Vs Muncipal Corporation of Ahemdabad

In all the three cases matter pertain to Industrial Dispute Act and Jurisdiction of civil Court.

Court held ID Act is a special provision and civil courts have no jurisdiction.

### **Following things considered in civil matter**

1. Where main question relates to civil nature (rights) although it depends on religious question.
2. Injuria sine Damnum (Injury without damage)
3. Right to property.
4. On breach of contract.
5. Compensation
6. Right to Worship
7. Right to divorce
8. Right to procession
9. Right to specific performance
10. Right to divisible of property inheritance.

### **No civil nature suit**

1. Purely religious matter.
2. Purely custom
3. Caste related question
4. Personal matter
5. Political matter
6. Internal question (indoor management)
7. Wherever matter is of priest, pujari

