EFFORTS TAKEN TO MAKE CIVIL PROCEDURE CODE, 1908
MORE EFFECTIVE AND JUSTICE ORIENTED

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INTRODUCTION

A civilized society is governed by two types of laws—substantive and procedural. Though substantive laws that govern the rights and obligations of individuals are more important than procedural laws, their efficacy depends on the substance of procedural laws. Therefore, it is important for the procedural law to be fair and expeditious so that the substantive laws achieve their object. The law governing the procedure of settling civil disputes in India is the Civil Procedure Code, 1908 (hereinafter CPC). It was enacted in 1859 by the British. Later, the 1859 code was amended in 1877 and furthermore in 1882. After a lot of deliberation and judicial conflict, a revised Code of Civil Procedure Bill was examined by a Special Committee led by Sir Earle Richards and it received the assent of Governor General of India on 21 March, 1908 giving us the CPC.

The object of CPC is to ensure procedural regularity in civil litigation. It has to adhere to the principles of natural justice and ensure that the parties get a fair and expeditious trial. The latter have been held to be a part of right to life under Article 21 of the Constitution of India. International instruments like the Universal Declaration of Human Rights, 1948² and the International Covenant on Civil and Political Rights, 1966³ (ICCPR), of which India is a part, also recognize fair and speedy trial as essential principles of justice. The provisions in CPC seek to maintain these principles and

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3 Article 14, International Covenant on Civil and Political Rights, UN General Assembly Resolution 2200A (XXI), December 16 1966.
keep the procedure effective and justice oriented. A meticulous examination of the CPC through the passage of time has resulted in many amendments being made to it to increase its efficacy.

This present article seeks to examine the changes made in CPC by three major amendments- 1976, 1999 and 2002 and their impact on procedure. The initial sections discuss the concepts of natural justice, fair and expeditious trial and how the CPC ensures that these are followed. The subsequent sections elucidate provisions relating to res judicata, access to justice, settlement of family disputes and special provisions regarding women. A humanist approach adopted by CPC has also been examined. The concluding section critically analyses the changes brought about by the abovementioned amendments.

PRINCIPLES OF NATURAL JUSTICE

The main objective of the CPC is to ensure that the contesting parties get an equal opportunity to argue their case. The expression ‘principles of natural justice’ is used to highlight the ‘criteria of procedural fairness’ that should be followed. They ensure that decisions are arrived at after careful scrutiny of the evidence and without any bias after hearing both the parties. The concept of natural justice involves two ideas (a) Nemo judex in re sua, which means that the authority before which the dispute is raised should be unbiased (b) audi alteram partem meaning the affected person has a right to be heard. These principles have not been laid down exhaustively anywhere. Whether there has been a violation of these principles depends on the facts and circumstances of each case and it for the court to decide.

FAIR TRIAL

The Supreme Court held in Sangram Singh vs. Election Tribunal, Kolkata that any decision which is likely to affect the life and property of a person should not be taken behind his back without giving him a chance to be heard. For the procedure to be called fair, all the decisions that are taken must be accompanied by reasons. The defendant has to be given a fair hearing. What constitutes ‘fair’ varies from case to case. The defendant may be only asked to submit a written statement or given a full hearing. Before starting the adjudication process, the defendant must be given a proper notice.

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4 Dhakeswari Cotton Mills Ltd v CIT, West Bengal AIR 1955 SC 65; M/s Mehta, Parikh & Co. v CIT, Bombay AIR 1956 SC 554.
6 AIR 1955 SC 425.
proceeding initiated without notifying the defendant will be violative of natural justice. But the underlying idea of a ‘fair’ procedure is that the defendant must know what action is initiated against him and why. He should have a copy of all the documents that may be used against him. He should be given an opportunity to cross-examine the witnesses.

1. **Issuance of Summons to the Defendant:** In CPC, Rule 1 in Order V is the principal rule that governs the issuance of summons to the defendant after a plaint has been presented before a court. The defendant is given an opportunity to prepare his defense with regard to the claims made in the plaint. Summoning the defendant is a mandatory requirement for proceeding with the trial, except in cases where the defendant is present when the plaint is presented and he accepts the claims of the plaintiff. Rules 2, 6 and 7 of Order V were amended by section 15 of the Civil Procedure Code (Amendment) Act, 1999 (hereinafter the 1999 amendment) providing for a copy of the plaint and all the other documents relied on by the plaintiff to be given to the defendant along with the summons. This provision was made to make the defendant aware of all the materials that can be used against him and he can prepare his defense accordingly.

2. **Cross-Examination of Witnesses:** An important aspect of ensuring a fair trial is to allow the defendant to cross-examine witnesses. The purposes of cross-examination are ‘to impeach the accuracy, credibility and general value of evidence.’ The defendant should know about the evidence presented against him and it should be available for his ‘information, comments and criticism.’ Thus formal cross-examination is a part of procedural justice. While the court can ask for the personal attendance of any witness provided he is not exempted under any provision of the CPC, provisions have been made to allow either party to cross-examine the witnesses. Sub-rule (1) of Rule 2, Order XIX states that if the court believes that a party bona fide desires the presence of a witness in the court for cross-examination and the witness can be produced before the court, it can call for the witness to be present in court for the purpose of cross-examination by the other party.

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10 ibid.
3. **Appeals**: Where a substantial question of law is involved, Section 96 of CPC allows for an appeal from an original decree to protect the rights of the judgment-debtor. The 1976 amendment prevented appeal from any suit cognizable by Court of Small Causes, except those involving substantial questions of law, when the amount did not exceed three thousand rupees. The 1999 amendment increased this limit to ten thousand rupees. A major change introduced by this amendment in Section 100A. It prohibited appeal against a decree or order passed by a single judge bench of a high court in any proceedings under article 226 or 227. The section was introduced by 1976 amendment and modified by the amendments in 1999 and 2002. Section 102 does not permit appeals in matters where the monetary amount to be recovered does not exceed twenty five thousand rupees. It was amended in 1976 where the amount was increased to three thousand rupees from the original amount of one thousand rupees and further in 1999 where the amount was further increased to twenty five thousand rupees.

4. **Revision**: Another important provision is Section 115. It gives the power to the High Court to call for cases decided by any subordinate court and if the High Court feels that the subordinate court did not have jurisdiction or it exceeded its jurisdiction or it exercised its jurisdiction in an illegal manner or with material irregularity. The Malimath Committee suggested that records of proceedings of the lower courts should be sent to the High Court for revision only if the High Court so desired. Its recommendations were incorporated by the 1999 amendment. It also changed sub-section 3 to add that a revision should not stay the proceedings before the trial court unless expressly stayed by the High Court.

**EXPEDITIOUS TRIAL**

The right to get a speedy trial has been recognized by the Supreme Court to be a constitutional right under Article 21. Its basis lies in the case of *Hussainara Khatoon v State of Bihar* where Justice Bhagvati held that a procedure that did not ensure a reasonably expeditious trial could not be said to be fair. The efforts have long been aimed at clearing the backlog of cases that still continue to exist. This was identified by the Law Commission of India as long back as 1958. The 54th Law

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12 AIR 1979 SC 1369.

Commission Report\textsuperscript{14} meticulously examined CPC to streamline the procedure and ensure expeditious trials. The 77\textsuperscript{th} report also suggested changes to reduce the delay and arrears at the trial stage.\textsuperscript{15} But recently the Supreme Court had to appoint an amicus curiae in a case to formulate guidelines for speedy trials.\textsuperscript{16} Inordinately long trials result in miscarriage of justice and involve a lot of expenses. Thus provisions have been made in CPC to ensure that disputes are settled quickly and no unnecessary delay is caused.

1. **Summons to Defendant:** According to Section 27, CPC, the summons to the defendant must be sent within thirty days of institution of suit. The 1999 amendment fixed the time limit so that there is no delay in hearing the dispute. Order VIII, Rule 1 prescribes the limitation period for the defendant to file a written statement. It was amended by the Civil Procedure Code (Amendment) Act, 1976 (hereinafter 1976 amendment) and further in 2002.\textsuperscript{17} The 1976 amendment made the provisions of the rule mandatory while the 2002 amendment prescribed a limit of thirty days to file the written statement. The second proviso to sub-rule (1) of rule 1, Order V, which is the same as the proviso to Rule 1 of Order VIII, gives the court the discretion to increase the time limit, after recording the reasons in writing, if the defendant fails to file a statement within thirty days but the date should not exceed 90 days from the date of issuing summons. Section 148 of CPC empowers the court to extend the time for an action if the original fixed period has expired. But a limit of thirty days was added to the extended time was added by the 1999 amendment. The court has been given the discretion to increase the time despite the limit prescribed by CPC. Though it appears self-contradictory, it is the inherent power of the court under section 151 to take certain steps to deliver justice.

2. **Adjournments:** The 1999 amendment also substituted sub-rule (1) of Rule 1 in Order XVII where the number of adjournments that a court can grant have been restricted to three. Sub-rule (2) was also amended allowing the court to award adjournment costs as well as higher costs if it thinks fit. So exemplary costs may be awarded if a party hinders the trial by seeking repeated adjournments. Rule 4 of Order XIV was amended for limiting the court’s discretion by fixing the time beyond which it could not grant adjournment for examining the witnesses before issues

\textsuperscript{14} Law Commission of India, *On the Role of Civil Procedure* (54\textsuperscript{th} Report, February 1973).
\textsuperscript{15} Law Commission of India, *Delay and Arrears in Trial Courts* (77\textsuperscript{th} Report, November 1978).
\textsuperscript{16}Ramrampal Devi v Nirmala Devi(2011) 8 SCC 249.
\textsuperscript{17}By the Civil Procedure Code (Amendment) Act 2002.
were framed. The importance of speedy trial can be gauged from the fact that seeking adjournments for postponing the examination of witnesses will amount to misconduct on the advocate’s part. Rule 5 was omitted to allow quick framing of issues.

3. Costs: Section 35 of CPC provides for awarding costs of litigation. It is the court’s discretion to award costs depending on equity, moral and legal merits and other factors like the conduct of the parties during litigation. Extended proceedings lead to the award of heavy costs. No appeal lies against an order for costs if the court has exercised its discretion sensibly and there is no question of principle involved. To prevent people from filing frivolous claims, Section 35A provides for awarding compensatory costs. The 1976 amendment excluded the application of this section to revisions. It also inserted Section 35B which empowers the court to impose costs on parties responsible for delaying the trial at any stage. Payment of the costs is a condition precedent for further prosecution of the suit.

4. Summary Trials: Another provision that aims at providing speedy disposal of cases is summary trials under Order XXXVII. In certain cases, if the court feels that the defendant does not have a genuine claim and is delaying the matter, it can pass an order without letting him defend himself. He can do so only with the court’s permission and after filing an affidavit stating that the plaintiff must prove the case against him. Summary trials were introduced for speedy disposal of cases involving the recovery of money where the defendant did not have a strong case.

RES JUDICATA

The rule of res judicata is based on two principles: (i) no person should be troubled twice for one and the same cause; (ii) it is in the interest of the State that there should be end of lawsuit. This doctrine aims at preventing the abuse of law by any party. If a party raises different pleas at each

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18NG Dastane v Shrikant S. Shivde AIR 2001 SC 2028.
20A Yousuf v SowrammaAIR 1971 Ker 261.
21RasangDebnath v Calcutta University AIR 1998 Gau 112.
22MahendraBaluraoMahadik v Subhash Krishna Kumaar AIR 2005 SC 1794.
23Hill v Peel 1870 LR 5 CP 172; Indian Bank v M/s Muco Electronics AIR 2005 AP 328.
24Based on the maxims nemo debit lisvecari pro unaeteadem causa and interest reipublicaeut sit finis litiumrespectively.
stage of the proceedings, it will result in a multiplicity of suits. To ensure fairness in the procedure, a party should be allowed to raise all the pleas in the proceedings when the action is initiated. For res judicata to operate, the subject matter of the suit should be ‘directly and substantially’ same in both the suits. The parties to the suit should be the same and the subject matter should have been finally decided in the previous suit by a court that was competent to try the suit.

The rule of res judicata is embodied in Section 11 of CPC. The 1976 amendment added explanations VII and VIII to the section. Before these explanations were added, the provisions of this section did not apply to execution proceedings. But explanation VII provides for the application of not only res judicata but also constructive res judicata to execution proceedings. Prior to the insertion of explanation VIII, a judgment of a competent court did not operate as res judicata in subsequent suits if it had limited jurisdiction. But the 1976 amendment changed this and allows for the judgment of a court of limited jurisdiction, that is competent to hear the suit, to operate as res judicata despite the fact that the court of limited jurisdiction was not competent to hear the subsequent suit or the suit in which such issues were subsequently raised.25

The purpose of the amendment was to enlarge the scope of Section 11. Otherwise, there would have been continuous litigation thereby adding to the number of cases in the already burdened judiciary and the object of the doctrine would have been defeated.

ACCESS TO JUSTICE

Litigation entails high costs that are very difficult for the poor to meet. The Constitution of India casts a duty upon the state to ensure that no one is denied access to justice due to their weak economic background. It is the duty of the state to provide free legal aid to people who otherwise cannot afford a lawyer.26 The court has to inform the accused about his rights and which forum to approach. To give legal aid a nationwide framework, the Legal Services Authorities Act was enacted in 1987.

To ensure that poor people have the means to justice, Order XXXIIIA of CPC deals with ‘suits by indigent persons’ and Order XXXXIV with ‘appeals by indigent persons’. Such persons are

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25 Code of Civil Procedure 1908, s 11, expln VIII.
26 Constitution of India 1949, art 39A.
exempted from paying the court fee at the first instance. A person cannot be denied access to justice just because he cannot pay the court fee.\textsuperscript{27} The concept has been illustrated in *Union Bank of India v Khader International Construction*.\textsuperscript{28} These provisions were inserted by the 1976 amendment and are aimed at securing social justice. They cannot be called unfair since they amount to a deferred payment of the court fee. The state will take steps to recover the court fee and this court fee shall be ‘a first charge on the subject matter of the suit.’\textsuperscript{29}

**SPECIAL PROVISIONS REGARDING FAMILY DISPUTES**

Order XXXIIA of CPC states the provisions regarding family disputes and calls for a different approach to settle family matters. Since such disputes concern human relationships and are very sensitive, family courts have been established to hear them. Any order or decree passed by a family court, except under Chapter IX of the Criminal Procedure Code, 1973, will have the same effect as if passed by a civil court and shall be executed according to the provisions of CPC.\textsuperscript{30} The 1999 amendment inserted Section 89\textsuperscript{31} which provides for alternate mechanisms for resolving disputes outside the court. The court can, after framing the issues, refer the dispute for settlement by way of arbitration or mediation, conciliation, judicial settlement or through Lok Adalats. If these methods fail to bring about an amicable settlement between the parties, then that they should approach the Court.

Although the tenets of fair trial require that the proceedings to be open and public, family disputes are an exception and may be held in-camera if the family court and either party so desires.\textsuperscript{32} Proviso to Section 153B of CPC was inserted by the 1999 amendment which provides that a judge may order any person or public in general to not be present during the proceedings. The object of these provisions is to ensure that sensitive family matters are not argued in public as it can have an adverse effect on the partied in the society. The importance of in-camera proceedings in such cases has been

\textsuperscript{27}AA HajaMuniuddin v Indian Railways (1992) 4 SCC 736.
\textsuperscript{28}(2001) 5 SCC 22.
\textsuperscript{29}ibid. Position reiterated in *RV Dev v Chief Secretary, Govt. of Kerela*(2007) 5 SCC 698.
\textsuperscript{30}The Family Courts Act 1984, s 18(1).
\textsuperscript{31}Civil Procedure Code (Amendment) Act 1999, s 7.
\textsuperscript{32}The Family Courts Act 1984, s 11.
discussed in *Janaki Ballav v. Bennet Coleman and Co. Ltd.*[^33] Thus CPC realizes the delicate nature of family issues and deals with them differently.

**SPECIAL PROVISIONS REGARDING WOMEN**

Certain provisions in CPC were made effective to deal with matters concerning women. Section 56 prohibits the arrest or detention of a woman in civil prison in execution of a money decree.[^34] It also applies to arrests made before judgment. That means a woman cannot be arrested or detained in a civil prison under Order XXXVIII, Rule 1 if she is a defendant in a suit for the recovery of money.[^35] These special provisions do not violate the right to equality. Article 15 of the Constitution prevents discriminatory treatment but not protective treatment favourable to women.[^36] Article 15(3) enables such provisions to be made for women notwithstanding article 15(1).[^37] In addition to this, Section 132 exempts those women who are prohibited by customs and manners of the country to appear in public from personal attendance in court.

**HUMANIST APPROACH**

The CPC is not merely based on the black letter of law and procedure. It takes into account humanist perspective while charting out the procedure. For example, Section 60 that deals with the property that is liable to attachment in the execution of a decree exempts certain kinds of property from attachment. The 1976 amendment made two significant changes to the section. It amended clause (c) of sub-section (1) to include houses and buildings of labourers, agriculturalists and servants to be exempted from attachment. Next, it inserted clauses (ka), (kb) and (kc) thereby exempting deposits under the Public Provident Funds Act, 1968, life insurance policies and those tenancies of residential buildings to which rent controls laws apply respectively from attachment. The distinction between the salaries of government or local or railway employees and private employees has been removed. Cattle and other tools used by an agriculturalist to earn his livelihood cannot be attached. These provisions are based on reasonable and equitable grounds. The

[^33]: AIR 1989 Ori 225.
[^34]: See *Jiwandas v Janaki* AIR 1922 Nag 98; M/s Chelsea Mills v M/s Chorus Girl Inc AIR 1991 Del 129.
[^35]: *M/s Chelsea Mills v M/s Chorus Girl Inc* AIR 1991 Del 129.
[^37]: *Preeti Srivastava (Dr) v State of Madhya Pradesh* (1999) 7 SCC 120.
fundamental right to life includes right to livelihood. Therefore, attachment of such property will defeat the purpose of providing social and economic security to the citizens.

If the court feels that the evidence of a witness who is in prison is material to the proceedings, it can call for the attendance of the prisoner under Order XVIA. Rules 1-7 of the order elucidate the provisions using which the court can ask for the attendance of witnesses in prisons. Thus a prisoner is not precluded from the process of justice if he has an important role to play in the proceedings.

CONCLUSION

Ever since the enactment of CPC, a lot of effort and scrutiny have gone into increasing its efficacy. The amendments have always aimed at rationalizing the civil litigation system and make it justice oriented. However, there have been concerns about the amended provisions. It is argued that the amendments have not completely removed the irregularities and have added to the ambiguity.38 For example, the 1999 amendment to Section 100A raised apprehensions since it disallowed appeal from the decision of a single-judge bench of the High Court in a proceeding under article 226 or 227. It was viewed as a measure barring the aggrieved party to further approach the court for settling the dispute. The later amendment however rectified this and provides the option of appealing to the Division Bench against an order of the single-judge bench. The lawyers challenged the thirty days limit set by the 1999 amendment upon the defendant to file a reply to the summons. The 2002 amendment increased the time to ninety days with reasons to be recorded in writing. Another change that raised doubts among legal luminaries was the 199 amendment to Section 89. It was argued that the section did not clarify that if the parties were to opt for any of the alternate procedures for settlement of disputes, then which among the four- arbitration, mediation, conciliation or Lok Adalat- will be adopted in a certain case and why.39

Though there have been apprehensions about the efficacy of the provisions of CPC, it cannot be completely denied that the steps taken have yielded results to some extent. Procedural lethargy has reduced, though not significantly. The provisions have been helpful in providing expeditious relief in certain cases. Special forum for family disputes has reduced the number of cases reaching the ordinary civil courts, thereby reducing the burgeoning backlog of cases to some degree. Free legal

aid is being given people who cannot afford the services of a lawyer. While positive measures have been taken, the concerns of the legal scholars and professionals need to be addressed in order to increase the effectiveness of the CPC and make it more justice oriented and simplified.
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