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Code of Civil Procedure, 1908

Two main Branches of Law:-

(A). Substantive Law

Deals with Rights ^{of} obligations:-

Defines Rights

(B) Adjective Law

Deals with practice and procedure in courts to enforce such Rights and obligations.

Determine remedies

Its governs the process of action.

CPC and other similar Acts i.e. Transfer of property, Contract Act, sales of Goods Act etc.

Lays down procedure for enforcement of Rights and obligations.

Substantive Law has no retrospective effect unless expressly laid down

History

Its pre-amble shows that it is a consolidating and amending relating to procedure of courts. Prior to 1859, there was no uniform Law of procedure.

Procedure in Mufassil courts was regulated by special acts and regulations which were repealed by Act X of 1861.

In 1859, first CPC was passed. In 1862 High courts were established. Code of 1859 was followed by them. This code was ill-drawn, ill-arranged and incomplete. It was substituted by another.

52 sections. This code was substituted by the present Code in 1908. It came into force on 1-1-1909.

Its Frame Work

It is divided in two parts:-

- 1). First portion contain 158 sections;
- 2). Second portion Orders and Rules. It is known as Rules of procedure i.e. First Schedule. In this Schedule there are

Appendices

- | | | |
|------------------------------|---------------------------------|-----------------|
| (i) Pleadings | (ii) Process | (iii) Discovery |
| (iv) Inspection | (v) Admission | (vi) Decree |
| (vii) Execution | (viii) supplemental provisions. | |
| (ix) Appeal | (x) Reference | (xi) Review |
| (xii) Miscellaneous matters. | | |

High courts possess Rule-making power. It may adopt CPC, which is applicable to all courts. Any amendment or rule made by the High court is to be followed by subordinate courts.

Second schedule of the code contains law relating to arbitration but this portion was repealed and substituted by Arbitration Act, 1940.

Whether CPC Exhaustive

S. 151 says, "Nothing in this code shall be deemed to limit as otherwise affect the inherent powers of the court to make such Orders as may be necessary for the ends of Justice or to prevent the abuse of the process of the court."

Its object is to prevent the chance of failure of Justice in the absence of a specific provision for procedure. So CPC is assumed as not exhaustive, when necessity arises, the courts provide relief U/S 151. The law cannot make express provisions against all inconveniences. The Judge can solve it U/S 151.

These power in a procedural matter. The court cannot pass any orders which will violate the basic provided Law.

General Law and Special Law

1. CPC is a General Law applicable to all courts dealing in Civil matters.
2. Special Law is codified for some specific matters.

If Special Law is enacted, It will be followed for that specified purpose and the General Law will not apply. But when there is no Special Law or procedure then General law will apply.

Division of CPC

It has two portions i.e.

- 1) First portion contains 158 sections. These contain Substantive provisions.
- 2) Second portion is called Schedule. There is ² ~~30~~ ⁵⁰ orders in it. Each order contains a number of Rules. There are operative provisions.

Illustration

5.33 CPC lays down that after hearing the case the court shall pronounce Judgment and it will follow a Decree. Order (xx) provides its details.

Sections 38 to 48 deal with execution of a decree but the manner of its execution has been provided in order (xxi).

Narration of Orders

(i)	1	(ii)	2	(iii)	3	(iv)	4	(v)	5
(vi)	6	(vii)	7	(viii)	8	(ix)	9	(x)	10
(xi)	11	(xii)	12	(xiii)	13	(xiv)	14	(xv)	15
(xvi)	16	(xvii)	17	(xviii)	18	(xix)	19	(xx)	20
(xxi)	21	(xxii)	22	(xxiii)	23	(xxiv)	24	(xxv)	25
(xxvi)	26	(xxvii)	27	(xxviii)	28	(xxix)	29	(xxx)	30