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**REVIEW DOCUMENT**

**CIVIL PROCEDURE CODE 1908**

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# CIVIL PROCEDURE CODE 1908

Report

## PART III INCIDENTAL PROCEEDINGS:

### Significance:

There are primarily two branches of law called the Substantive law and Procedural Law. While substantive law is based on the statute law or common law passed by the legislature which basically governs the behaviour of people and also defines the laws and rules defining the crimes as well as their respective punishments. On the contrary, the Procedural law consists of legal machinery or procedure for the enforcement of rights and liabilities determined following the provisions of substantive law. The Code of Civil Procedure 1908 is one of the most important branches of procedural law which governs the procedure to be followed in a civil court.

### Objectives:

The main objective of the Civil Procedure Code is to unify and amend all the laws related to the various procedures and methods which are involved in the working of Civil Courts which exercises civil jurisdiction over the entire country of India. It acts as a primary regulator of every civil activity which forms an indispensable part of civil courts and the parties before it till the final implementation of the decree and order. The main objective of procedural law is the implementation of the principles and ideals of Substantive Law. This law plays a major role in ensuring justice and equality among convicts by the enforcement of rights and liabilities.

### Provisions:

- **Section 75: Power of Court to issue commissions:**

This section describes the circumstances under which a Court may issue a commission. Court may issue a commission to examine or investigate any person, or to conduct any local investigation, to examine or adjusts accounts of the alleged offender, to hold a scientific, technical or expert investigation and also to administer the sale of the disputed property which can be decayed or spoiled over time and which is pending in the custody of the Court.

- **Section 76: Commission to another Court**

This section describes the procedure adopted by the Court in the examination of the witnesses.

1. The Court may issue a commission for examination of the witness to any Court situated in the same state or in any other state where the cause of action has arisen and where the person or the witness to be examined is originally situated.
2. The examining Court must examine the witness or cause him to be examined, After the execution of the examination, the evidence collected from it must be taken to the Court from which the order of examination was issued.

- **Section 77: Letter of request**

In lieu of issuing a commission, the Court may issue a letter of request to examine

a witness residing at any place not within India.

- **Section 78: Commissions issued by foreign Courts**

Subject to such conditions and limitations as may be prescribed the provisions as to the execution and return of commissions for the examination of witnesses shall apply to commissions issued by or at the instance of—

- (a) Courts situate in any part of India to which the provisions of this Code do not extend; or
- (b) Courts established or continued by the authority of the Central Government outside India; or
- (c) Courts of any State or country outside India.]

### **Amendments to the Code:**

The Civil Procedure Code has been amended on several occasions to cater to the requirements of the dynamic and changing world. The Code has been amended for more than 30 times between the period of 1909 to 1976. However, the year 1999 and 2002 were successful in its contribution to major amendments to the Code. The major changes brought by these amendments to ensure fair and speedy justice to all are as follows:

- The amendment changed the timings within which summons are meant to be delivered to the defendant. It was required to be served to the defendant within 30 days from the date of filing the suit. It also mandated the filing of written statements within 30 days from the date of filing the suit.
- It leveraged the quantum of penalty for non-appearance and default to Rs. 5000/-.
- In case of decree for payment, if the judgment debtor does not pay, he can be detained in civil prison. If the default is for payment up to Rs.2000, he will not be detained in civil prison.
- It changed the amount of attachment involved in executing the decree by excluding the monthly salary up to Rs.1000/- and two-third of the remaining salary exceeding Rs.1000.
- The amendment brought a major development in the area of dispute resolution by the introduction of new and efficient methods such as Arbitration, Conciliation and Mediation. Lok Adalat is a very good example of this.
- The amendment introduced a much-required provision to compensate the defendant for the expenses incurred by him, including the loss or injury, including the loss or injury caused by the tarnishing of one's reputation.
- The amendment changed the pecuniary jurisdiction of the Civil Court to the amount of Rs 1000 and above.
- No appeal would lie in any Court against the order of a single judge of the High Court, whether in the original or appellate jurisdiction.
- The Parliament has amended the Code vide Civil Procedure (Amendment) Act, 2002. The amendment in Code was done in 1999 also, but the said amendments were not made effective. Both the amendment acts, which became effective from 1st July 2002, taken together intend to bring in virtually certain radical changes. After a long wait and struggle, the Central Government has managed to effect some very significant and path-breaking changes in the Code aiming to simplify the procedure and reduce the delays.

## **Conclusion:**

To enable the courts to deliver impartial and unbiased justice, the Code of Civil Procedure, 1908 provides simple and clear procedures to be followed by the Civil Courts. In case of no provisions relating to some issue or matter, the Court will not be able to decide efficiently.

Hence the Code of Civil Procedure, 1908 incorporated the provisions for inherent powers. When there is no legislation, the Court, in the interest of justice may exercise the discretionary power by acting beyond the powers conferred on them under the Code of Civil Procedure. It is known as the inherent powers of the Court .

## ABOUT THE AUTHOR



I am Shruti Madhogaria, a second year law student from Himachal Pradesh National Law University, Shimla. This internship has been a wholly different experience from the rest as in this we had to review Bare Acts rather than writing a research paper. It extended my horizon of knowledge with respect to various acts and their amendment. The knowledge gained through this internship would never go waste. I tried to complete the tasks allotted to me with full dedication and hardwork and this was an invaluable experience for me which I would cherish all my life.