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# Scope of Civil Rights covered and governed through Civil Procedure Code 1908: An Analysis in the light of decided Cases in India

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## ABSTRACT

*Code of Civil Procedure 1908 or CPC, 1908 is even though a procedural code, it deals with certain substantive rights. This research presents a detailed study into such civil rights covered and governed by CPC through decided case laws. S.9 of CPC is particularly relevant in this context. Here, Part I deals with case laws deciding the scope of 'suits civil in nature' and thereby recognizing certain civil rights of citizens under CPC. Part II outlines the conditions under which civil courts are empowered to deal with subject matter coming under the jurisdiction of specialized administrative tribunals followed by Conclusion and bibliography.*

## I. INTRODUCTION

Copyright Code of Civil Procedure, 1908 is a procedural law. Procedural Law deals with procedure for enforcement of rights and liabilities. The Code of Civil Procedure (CPC) is a procedural law whose object of is to collect and consolidate laws relating to procedure of civil courts. Civil Courts deal with civil disputes. But along with procedures, CPC also covers substantive rights. These rights are essentially civil rights, i.e. they pertain to private rights or remedies of a citizen. Civil rights involve or arise from an issue of civil nature. This research strives to present a detailed study on the scope of civil rights covered and governed through CPC 1908, on the basis of decided case laws in India.

### (A) Review of Literature

1. In this article<sup>2</sup> the author analyzes the convergence of civil and religious rights (particularly Hinduism) through case law analysis. She argues that in India, civil courts have a distinctive contribution in shaping the religion and while doing so they end up

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<sup>2</sup> Gilles Tarabout, *Ruling on Rituals: Courts of Law and Religious Practices in Contemporary Hinduism*, 17, SAMAJ, (2018), <https://doi.org/10.4000/samaj.4451>

intervening in religious practices, although with secular motive. This paper has been used in the present research as a starting point to understand civil rights involved in religious matters and for obtaining case laws pertaining to the same.

2. In this article<sup>3</sup> the author analyzes the jurisdiction of civil courts dealt under S. 9 of CPC, 1908 by enumerating the suits concerning various civil rights maintainable under the section. However, the author has not given the case citations whose content he has referred to. It has been used substantially in the present paper.
3. In this article<sup>4</sup> the author has discussed about the jurisdiction of civil courts under CPC in detail, citing sections and case laws wherever required. It has been used only as a reference in the present research.
4. In this book<sup>5</sup> the author who is an advocate under the chapter “suits under s.9” has dealt civil rights under CPC in Q&A format of the previous year questions for various State Judicial services. It has been used to obtain case laws on certain particular rights.

#### **(B) Research Questions**

1. What are civil rights?
2. Which provision under CPC deals substantially with civil rights?
3. What does ‘suit civil in nature’ essentially mean?
4. Under what conditions a civil court has jurisdiction to deal with subject matter of tribunals?

#### **(C) Research Objectives**

1. To find out the meaning of the term civil rights
2. To analyze the scope of the expression ‘civil in nature’
3. To investigate the circumstances under which civil courts can deal with subject matter of specific tribunals

#### **(D) Research Methodology**

The present research has been carried out through doctrinal method using secondary sources of information available in books and on articles over internet. Through case law analysis the subject of civil rights under CPC has been presented in detailed manner and research is limited

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<sup>3</sup> Santanu Dey, *Legal Provisions of Section 9 of Code of Civil Procedure, 1908 (C.P.C.)*, (Oct 19th, 2021, 05:15 pm) <https://www.shareyouressays.com/knowledge/legal-provisions-of-section-9-of-code-of-civil-procedure-1908-c-p-c-india/114419>

<sup>4</sup> Shraddha ojha, *Jurisdiction of Civil Court Under Civil Procedure Code*, LEGAL SERVICE INDIA, <http://www.legalservicesindia.com/article/508/Jurisdiction-Of-Civil-Court-Under-Civil-Procedure-Code.html>

<sup>5</sup> ADV. KISHOR PRASAD, *PROBLEMS & SOLUTIONS ON CIVIL LAW*, p.12-14 (Universal Law publication, 2010)

to S.9 of CPC, 1908.

## II. SUITS ARISING OUT OF CIVIL RIGHTS MAINTAINABLE IN A CIVIL COURT

A Civil court can deal with a suit only when the Cause of Action involves civil rights. Maintainability of a Suit depends on the jurisdiction of the Court which in turn means the power of the Court to try a matter and adjudicate upon it. S. 9 of CPC under Part I deals specifically with 'Jurisdiction of Courts'. As per this section, *"The Courts shall (subject to the provisions herein contained) have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred."* Therefore, as per this section, there are two conditions to decide the jurisdiction of a Civil Court namely,

- a) Suit must be of Civil nature
- b) Cognizance of suit Not expressly or impliedly barred

### Suit must be of civil nature

A suit is of civil nature if it relates to determination of Civil rights and enforcement thereof. Civil rights, as stated above, relates to the private rights or remedies of a citizen as distinguished from political or religious rights. Explanation I attached to S.9 expounds the scope of Civil rights by stating that *"A suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies."* Thus, if the principal question involved in a suit is purely religious or pertaining to caste, then civil courts cannot adjudicate on the same. However, if the principal matter relates to Civil rights such as right to property or right to office and religious or casteist question are only incidental, then civil court's jurisdiction is not barred in such suits.

The inclusion of the phrase "of civil nature" expands the scope of this section. This proposition has been confirmed by the Supreme Court in **P.M.A. Metropolitan v. Moran Mar Marthoma**,<sup>6</sup> where it observed that, *"Each word and expression casts an obligation on the Court to exercise jurisdiction for enforcement of right...No Court can refuse to entertain suit if it is of the description mentioned in this section. That is amplified by use of the expression, 'all suits of civil nature'...nature has been defined as 'the fundamental qualities of a person or thing...it is wider in content. 'Civil nature' is wider in content than 'civil proceedings'. The section would, therefore, be available in every case where the dispute was of the characteristics of affecting one's rights which are not only civil but of civil nature."*

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<sup>6</sup> AIR 1995 SC 2001

In this regard there are a plethora of judgments which involves Civil rights as adjudicated by Courts irrespective of whether they include religious or other rights. These are as follows:

### **(A) Civil rights involved in religious matters**

#### **Right to religious office(s)**

In **Sinha Ramanuj v. Ranga Ramanuj**<sup>7</sup> the issue was whether the plaintiff, who was the *araidanaikar* at the sub-shrine of *Emberumanar* would be an office holder in the main temple of *Athinalalwar* temple at Tirunelveli district and whether by virtue of being an office holder, would have precedence to receive the *Theertham* attached to the office. After various contradicting decisions by different forums, the matter came as SLP before the SC. One of the major issues was the maintainability of the suit under S.9 of CPC in regards to matters of temple. Here SC observed that the Explanation I attached to S. 9 “*implies two things namely (i) a suit for an office is a suit of civil nature, (ii) It does not cease to be one even if the decision depends entirely upon a decision of a question as to the religious rites or ceremonies.*”

It held that “*A declaration of religious honors or privileges would not lie in a civil suit but, a suit to establish one’s right to an office in a temple and to honors and privileges attached to the office as perquisites would be maintainable provided that holder of the alleged office shall be under a legal obligation to discharge the duties of the said office and the non-observance of which may be visited with penalties.*” The Religious rites or ceremonies or honors shown or precedence given to religious dignitaries are placed on the same footing and any suit principally concerned with the above can’t be civil rights.

It deserves mention here that prior to the Amendment of 1976, there was a judicial confusion persisting as to whether claim to an office, religious or otherwise, would be classified as a civil right, in case there was no fee or emolument attached to it. However, the Amendment Act No. 104 of 1976 added another Explanation to S. 9 as **Explanation II** which finally laid to rest the turmoil surrounding fees attached to office or not. As per this Explanation, “*for the purposes of this section, it is immaterial whether or not any fees are attached to the office referred to in Explanation I or whether or not such office is attached to a particular place*” implying thereby that irrespective of whether fee is attached to a particular office or not or whether it is at a particular place or not, it would be considered as a suit of civil nature.

#### **Right of worship**

In **Ugamsingh & Mishrimal v. Kesrimal**<sup>8</sup>, the issue was whether the dispute between

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<sup>7</sup> AIR 1961 SC 1720

<sup>8</sup> (1970) 3 SCC 831

Digambara and Shwetambara Jain sects regarding right to worship is a suit of civil nature or not. It was held by the SC that Right to worship is a civil right and hence, the suit is maintainable under S.9 of CPC. Similarly in **Dist. Council of UBMC & Ors v. Salvador Nicholas Mathias & Ors**<sup>9</sup> dealing with Christian religion, it was held by the SC that *“the dispute as to right of worship is one of civil nature within the meaning of S. 9 of the Code and a suit is maintainable for the vindication or determination of such right.”*

### **(C) Right to take out religious processions**

In **Shaik Piru Bork & Ors. v. Kalandi Pati & Ors**<sup>10</sup>, the Orissa High Court ruled that the suit relating to right to take out religious processions is of civil nature and therefore a civil right. It does not cease to be a suit of civil nature merely because procession is of religious character.

### **Right to office of head priest**

In **P.M.A Metropolitan case**<sup>11</sup>, the matter was regarding declaration of *Malankara Syrian Orthodox Church* as Episcopal or Congregational. Episcopacy refers to a system where the Bishop is the successor of the apostle of Christ whereas Congregationalism is its opposite. Congregationalists believe that every Christian has the right to perform all functions whereas in Episcopal churches only the ordained priests can celebrate sacraments. While interpreting the term ‘civil nature’ to include rights relating to worship, status, office or property, it was held that *“though civil court has no jurisdiction to adjudicate dispute relating to ecclesiastical or religious faith and rites but it has jurisdiction to decide validity of exercise of right in respect of such faith which involves civil consequences.”*

### **Various Rights in Hindu religious temples**

In **Thenappa Chettiar & Ors v. Karuppan Chettiar & Ors**<sup>12</sup>, the plaintiff prayed for the settlement of scheme in respect of a private trust known as *Sina Ravanna Mana Pana Sona Guru Puja Mutt* at Tiruchnapalli district, a joint foundation between the fathers of Plaintiffs and defendants. It was held that *“if there is a breach of trust or mismanagement on the part of the trustee, a suit can be brought in civil Court by any person interested for the removal of the trustee and for the proper administration of the endowment.”*

In **V.R. Reddy v. K.S. Reddy**<sup>13</sup>, a civil suit by Hindu worshipper of a temple for declaration

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<sup>9</sup> (1988) 2 SCC 31

<sup>10</sup> AIR 1964 Ori 18

<sup>11</sup> Supra note 2

<sup>12</sup> (1968) 2 SCR 897

<sup>13</sup> AIR 1967 SC 436

that a certain compromise decree is not binding on deity was held maintainable. It was observed that *“a declaration of this character, namely, that the compromise decree is not binding upon the deity is in itself a substantial relief and has immediate coercive effect... A declaration of this kind falls outside the purview of Specific Relief Act and would be governed by the general provisions of CPC like S. 9.”* and thus, held maintainable under S.9.

### **Right to enter temple**

In **Nar Hari Shastri v. Shri Badrinath Temple Comm.**<sup>14</sup>, it was held that *“declaratory suit seeking the declaration to enter the Badrinath Temple by Pandas accompanying their Yajmans and taking gifts is maintainable in a civil court.”*

### **Suits regarding right to Yajmanvritis**

*Yajmanvriti* is the amount received by a *purohit* from the *Yajman* for officiating pujas or ceremonies. *Yajmanvriti* is considered as heritable property, although it is not same as easement right. However, it creates a permanent relation and therefore any suit claiming right to *yajamanvriti* is considered as civil suit.<sup>15</sup>

### **(B) Civil suits regarding Government/Private Job**

#### **Rights to arrears of salary**

In **Om Prakash Gupta v. State of U.P.**<sup>16</sup> it was held that a govt. servant who has been dismissed from service illegally is entitled to bring a suit for recovery of arrears of his salary. Similarly in **State of Bihar v. Abdul Majid**<sup>17</sup> holding that a civil suit claiming arrears is maintainable it was observed that *“the rule of English Law that civil servant cannot maintain a suit against the State for recovery of arrears of salary does not prevail in India”* as it is against the provisions of CPC.

#### **Right against wrongful dismissal**

It was held in **Ram Kumar v. State of Haryana**<sup>18</sup> that civil courts can entertain suit against the dismissal of a roadways bus conductor.

### **(C) Civil Suits regarding Marriage and Family matters**

#### **Right of succession to property**

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<sup>14</sup> 1952 SCR 849

<sup>15</sup> Supra note 3

<sup>16</sup> (1955) 2 SCR 391

<sup>17</sup> AIR 1954 SC 245

<sup>18</sup> 1987 Supp. SCC 582

In **R.Kasthuri & Ors. v. M. Kasthuri Ors.**<sup>19</sup> regarding maintainability if civil suit in dispute principally related to succession to property, turning on question of legitimacy of legal heirs, it was held that *“said dispute could only be resolved vide a civil court and the HC erred in relegating parties to the Family Court.”*

### **Suit regarding partition of property**

In **Chhote Khan v. Mal Khan**<sup>20</sup>, it was held that Partition suit amongst co-sharers can be maintained in a civil court.

### **Suits for restitution of conjugal rights or for dissolution of marriage**

Whenever there are family courts established, as per S. 7 of Family Courts Act, they are empowered to deal with suits regarding restitution of conjugal rights or for dissolution of marriage. However, when there's no Family Court in existence, Civil Courts are empowered under S. 9 of CPC to entertain such suits.

### **(D) Civil suits regarding Company, arbitration and other matters**

#### **Suit challenging validity of contract containing arbitration clause**

In **Orient Transport Co. v. Jaya Bharat Credit and Investment Co. Ltd.**<sup>21</sup> holding that suit challenging validity of a contract containing arbitration clause is not barred under S. 32 of the Arbitration Act, 1940, it was observed by the 2 Judge Bench that *“S. 32 of the Arbitration Act does not contemplate the case of a suit challenging the validity of a contract merely because it contains an arbitration clause. Sections 32 and 33 have very limited application...Every person has a right to bring a suit of civil nature and Court has jurisdiction under S. 9 CPC to try such suit. Such a right can only be taken away by express terms or necessary implications. S. 32 of the [Arbitration] Act does not have that effect.”*

#### **Suit regarding matters involving any Company**

In **Dwarka Prasad Agarwal v. Ramesh Chander Agarwal**<sup>22</sup>, the jurisdiction of civil court vis-à-vis Company Court was contested. In this case the owner of a printing press leased out the press to the company of which he himself was a member. Another member of the company allegedly illegally dispossessed the lessor of the printing press henceforth the lessor brought the eviction suit in a civil court. The suit was held to be maintainable under S.9 CPC as civil court was concerned with *“the rival claims of the parties as to whether one party has been*

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<sup>19</sup> (2018) 5 SCC 353

<sup>20</sup> AIR 1954 SC 575

<sup>21</sup> (1987) 4 SCC 421

<sup>22</sup> (2003) 6 SCC 220



*illegally dispossessed by another or not.*”

### **(E) Civil suits regarding specific relief**

#### **Suits for Specific relief**

A suit by a Hindu wife seeking permanent injunction against her husband in order to restrain him from entering into second marriage is considered to be a suit of civil nature as it is not barred by S. 5 of HMA, 1955. Also, the same has been given under S. 38 of Specific Relief Act, 1963 and therefore cognizable by civil courts.<sup>23</sup>

#### **Suit relating to Right to property**

In **E.Achuthanan Nair v. P. Narayanan Nair**<sup>24</sup>, it was held that a dispute regarding identification of boundary between two adjacent land owners is certainly a dispute of civil nature and is not barred, either expressly or impliedly. Similarly, in **K.S.B Ali v. State of A.P**<sup>25</sup>, question regarding determination of *lis* between parties as to the title of immovable property was held to be a judicial function and hence within jurisdiction of civil courts and not of Executive.

- Along with above Suits for specific performance of contract or damages for breach of contract or damages for civil wrongs are also considered as suits of civil nature.<sup>26</sup>

The above are a list of suits considered as suits of civil nature, the cognizance of which is based on presence of certain civil rights. The list is certainly not exhaustive and many other varied civil rights may be added to them by virtue of evolving nature of CPC.

However, there are certain suits which can by no means be considered as suits of civil nature as they do not arise from civil rights. These are

1. Suits dealing purely with religious rites or ceremonies<sup>27</sup>
2. Suits involving principally caste question or expulsion from caste<sup>28</sup>
3. Suits for upholding mere dignity or honor<sup>29</sup>
4. Suits involving recovery of voluntary payments<sup>30</sup>

These suits involve either social rights or social obligations and not legal rights and therefore

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<sup>23</sup> Supra note 3

<sup>24</sup> AIR 1987 SC 2137

<sup>25</sup> (2018) 11 SCC 277

<sup>26</sup> Kamal Puri v. B.M. Engineering works AIR 1982

<sup>27</sup> Supra note 8

<sup>28</sup> State of T.N v. Ramalinga Madam, (1985) 4 SCC 10

<sup>29</sup> Supra note 8

<sup>30</sup> Ibid.

are not cognizable by civil courts.

### III. SUITS COGNIZABLE BY CIVIL COURTS EVEN WHEN THERE IS EXPRESS OR IMPLIED BAR

Language of Section 9 of CPC consists of two parts; First part of S.9 is open ended whereas second part of S.9 is closed off. The Second part to S. 9 reads as “...*excepting suits of which their cognizance is either expressly or impliedly barred*” implying that Civil courts are not supposed to take cognizance of suits expressly or impliedly barred.

*Express bar* is imposed by inserting a *Privative clause* in an enactment whereby the jurisdiction of civil courts is ousted from taking cognizance of civil rights and instead, vested on specially created administrative tribunals. The reasons for doing the same are many like complexities of modern day welfare state, inability of poor people to afford lengthy and expensive litigation process, requirement of subject matter expertise or to deal with situations of emergency. Therefore, matters falling under the exclusive jurisdiction of tribunals like industrial tribunal, rent tribunal, revenue tribunal or tax tribunals etc. are expressly barred from cognizance of civil courts.

As to suits *impliedly barred*, it refers to those matters the cognizance of which is barred by general principles of law. *‘The principle underlying is that a Court ought not to countenance matters which are injurious to and against public weal.’*<sup>31</sup> For instance, no suit lies to recover costs in a criminal proceeding or enforcement of contract hit by S. 23 of Indian Contract Act, 1872 or political or administrative matters or suits against public policy.

However, such bar is not absolute. In **Secy. Of State v. Mask & Co.**<sup>32</sup>, it was observed that *“even if jurisdiction is so excluded [expressly or impliedly], the civil courts, have jurisdiction to examine cases where the provisions of the Act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure.”*

The same principle was reiterated in **Firm Seth Radha Kishan v. Administrator, Mun.Comm. Ludhiana**<sup>33</sup> where it was held that *“a suit in civil Court will always lie to question the order of a tribunal created by a statute, even if its order is, expressly or by necessary implications, made final, if the said tribunal abuses its power or does not act under the Act but in violation of its provisions.”*

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<sup>31</sup> As per Kapur, J. in Union of India v. Ram Chand, Air 1955 Punj 166

<sup>32</sup> AIR 1940 PC 105

<sup>33</sup> (1964) 2 SCR 273

For example in **Hira Lal v. Gajjan**<sup>34</sup> it was held that “*where title to land arises incidentally, exclusive jurisdiction of revenue courts will not bar a suit for permanent injunction in a civil court.*”

W.r.t *Taxing statutes*, J Hidayatullah in **Dhulabai v. State of M.P**<sup>35</sup> summarized the principles regarding exclusion of jurisdiction of civil courts vis-à-vis taxing tribunals and stated that

- a) If statute gives finality to order of tribunal, then civil court’s jurisdiction is ousted, provided that the tribunal acted in conformity with the provisions of statute and fundamental principles of judicial process.
- b) The point of constitutionality of the Act cannot be raised in the tribunal and the only remedies available are either a civil suit or a writ petition.
- c) When assessment is based on an unconstitutional provision, a civil court has jurisdiction to look into the matter.
- d) When a particular Act contains no machinery for refund of tax collected in excess of constitutional set limits, then civil suit lies.<sup>36</sup>
- e) The correctness of assessment has to be decided by the statutory authorities only and civil court would have no jurisdiction.

Similarly w.r.t. *industrial dispute*, the jurisdiction of civil court is governed by the following principles as laid down in **Premiere Automobiles v. Kamlekar Shantaram**<sup>37</sup> and **Rajasthan S.R.T.C v. Krishna Kant**<sup>38</sup> respectively:

- a) If dispute is neither an industrial dispute, nor does it relate to any rights under the concerned Act, then remedy lies in civil court.
- b) If dispute relates to general or common law, then it is up to the party to choose the forum for seeking appropriate remedy, whether civil court or industrial tribunal.
- c) If dispute arises from general law of contract, a civil suit would be maintainable despite the dispute being an industrial dispute under the Act.
- d) If an industrial dispute relates to any right or obligation specifically created under the concerned Act, then only remedy available is adjudication by tribunal.

#### IV. CONCLUSION

Under CPC, a civil suit can only be instituted only when it involves civil rights. As such, CPC

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<sup>34</sup> (1990) 3 SCC 285

<sup>35</sup> AIR 1969 SC 78

<sup>36</sup> Bharat Kala Bhandar v. Municipal Committee (1965) 3 SCR 499

<sup>37</sup> AIR 1975 SC 2238

<sup>38</sup> (1995) 5 SCC 75

is deemed to be a procedural law per se. However, along with procedural aspect, CPC covers and governs substantive civil rights, the scope of which has been determined through a plethora of cases, as discussed above. It follows from above that, in accordance with the Common Law maxim of *Ubi jus ibi remedium* i.e. where there is a right, there is a remedy, in here whenever there is a civil right and the same is infringed, there is remedy available in the form of suit of civil nature instituted and maintainable in a civil court under S.9 of CPC.

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