



RJS

Rajasthan Judicial Services

Rajasthan High Court (RHC)

Volume - 4

The Constitution of India & The Code of Civil Procedure, 1908



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CHAPTER

Constitution of India

Important Amendments for Preliminary Exams

1. 1st Amendment (1951)

- ✓ Added **9th Schedule** (immunity to land reform laws).
- ✓ Curtailed **Right to Property (Art. 19(1)(f))**.
- ✓ Introduced **reasonable restrictions** on Art. 19.
- ✓ Inserted Art. 31A & 31B.

2. 7th Amendment (1956)

- ✓ Reorganized States on **linguistic basis** (States Reorganisation Act).
- ✓ Abolished distinction between Part A, B, C, D states.
- ✓ This Amendment created the concept of a **“common Governor”**, i.e., one individual can act as the constitutional head of two or more states simultaneously.
- ✓ This Amendment empowered the Parliament to establish a **common High Court** for two or more states.

3. 21st Amendment, 1967

- ✓ Added **Sindhi**.
- ✓ Total: **15 languages**

4. 24th Amendment (1971)

- ✓ Made clear: **Parliament has power to amend any part of Constitution**, including Fundamental Rights.
- ✓ Article 368 made explicit.
- ✓ Response to *Golaknath v. State of Punjab* (1967).

5. 25th Amendment (1971)

- ✓ Inserted **Art. 31C**: Directive Principles (Art. 39(b), (c)) override Fundamental Rights (Art. 14, 19).

6. 26th Amendment (1971)

- ✓ Abolished **privy purses & privileges** of erstwhile rulers.

7. 31st Amendment (1973)

- ✓ Increased strength of **Lok Sabha** from 525 to 545.

Kesavananda & Emergency Era

7. 42nd Amendment (1976) (*Mini-Constitution*)

- ✓ Added words **“Socialist, Secular, Integrity”** in Preamble.
- ✓ Made **DPSPs** superior to Fundamental Rights (subject to judicial review later).
- ✓ Curtailed judicial review.
- ✓ Gave Parliament primacy in amending Constitution.
- ✓ Extended tenure of Lok Sabha & State Assemblies from 5 to 6 years.

8. 44th Amendment (1978)

- ✓ Reversed Emergency excesses.
- ✓ Restored tenure of Lok Sabha & Assemblies back to **5 years**.
- ✓ Restored power of **judicial review**.
- ✓ Made **Right to Property** (Art. 300A) a **legal right**, no longer a fundamental right.
- ✓ Provided that **Fundamental Rights under Art. 20 & 21** cannot be suspended even during Emergency.

9. 52nd Amendment (1985)

- ✓ Inserted **10th Schedule (Anti-Defection Law)**.

10. 61st Amendment (1989)

- ✓ Reduced **voting age** from **21 to 18 years**.

11. 69th Amendment (1991)

- ✓ Made Delhi **National Capital Territory (NCT)** with Legislative Assembly (Art. 239AA).

12. 71st Amendment, 1992

- ✓ Added **Konkani, Manipuri, Nepali**.
- ✓ Total: **18 languages**.

13. 73rd Amendment (1992)

- ✓ Constitutional status to **Panchayati Raj Institutions**.
- ✓ Added **11th Schedule**.

14. 74th Amendment (1992)

- ✓ Constitutional status to **Urban Local Bodies (Municipalities)**.
- ✓ Added **12th Schedule**.

15. 86th Amendment (2002)

- ✓ Made **Right to Education (Art. 21A)** a Fundamental Right (6–14 years).
- ✓ Changed DPSP: Art. 45 → Early childhood care (0–6 years).

16. 91st Amendment (2003)

- ✓ Limited size of **Council of Ministers** (15% of Legislative strength).
- ✓ Strengthened Anti-Defection Law.

17. 92nd Amendment, 2003 (came into effect in 2004)

- ✓ Added **Bodo, Dogri, Maithili, Santhali**.
- ✓ Total: **22 languages** (current)

18. 97th Amendment (2011)

- ✓ Gave **constitutional status to cooperatives** (Art. 19(1)(c), Part IXB).
- ✓ Later partly struck down by SC in *Union of India v. Rajendra Shah* (2021) for want of state ratification.

19. 101st Amendment (2016)

- ✓ Introduced **Goods and Services Tax (GST)**.
- ✓ Created GST Council (Art. 279A).

20. 102nd Amendment (2018)

- ✓ Granted constitutional status to **National Commission for Backward Classes (NCBC)**.

21. 103rd Amendment (2019)

- ✓ Introduced **10% reservation for Economically Weaker Sections (EWS)**.
- ✓ Added **Art. 15(6), 16(6)**.

22. 104th Amendment (2020)

- ✓ Extended reservation of **SC/ST in Lok Sabha & State Assemblies** till 2030.
- ✓ Abolished reserved seats for **Anglo-Indians** in Lok Sabha & Assemblies.

23. 105th Amendment (2021)

- ✓ Restored power of **States to identify OBCs** for their own list.

24. 106th Amendment (2023)

- ✓ It reserves one-third of seats for women in Lok Sabha, State Legislative Assemblies, and Legislative Assembly of Delhi.



List of Cases on Constitutional Doctrines

- 1. Doctrine of Quasi-Federalism** – Indian Constitution is federal with strong unitary bias – *State of West Bengal v. Union of India (1963) SC*.
- 2. Doctrine of Separation of Powers** – No rigid separation, but functional separation between legislature, executive & judiciary – *Indira Nehru Gandhi v. Raj Narain (1975) SC*.
- 3. Doctrine of Rule of Law** – No one is above law; equality before law – *ADM Jabalpur v. Shivkant Shukla (1976) SC* (criticized, later corrected in *Maneka Gandhi (1978)* & *K.S. Puttaswamy (2017)*) SC.
- 4. Doctrine of Judicial Review** – Judiciary has power to strike down unconstitutional laws – *Marbury v. Madison (1803, US) SC of US*; in India – *Kesavananda Bharati v. Union of India (1973) SC*.
- 5. Doctrine of Reasonable Classification** – Equality permits reasonable classification, not class legislation – *State of West Bengal v. Anwar Ali Sarkar (1952) SC*.
- 6. Doctrine of Arbitrariness** – Any law/action arbitrary violates Art. 14 – *E.P. Royappa v. State of Tamil Nadu (1974) SC*; strengthened in *Maneka Gandhi V. Union of India (1978) SC*.
- 7. Doctrine of Manifest Arbitrariness** – A law can be struck down if arbitrary – *Shayara Bano v. Union of India (2017) SC* (Triple Talaq case).
- 8. Doctrine of Pleasure Qualified by Safeguards** – Though Art. 310 gives “pleasure doctrine”, Art. 311 gives safeguards – *Shamsher Singh v. State of Punjab (1974) SC*.
- 9. Doctrine of “Collective Responsibility”** – Cabinet collectively responsible to Lok Sabha – *Shamsher Singh v. State of Punjab (1974) SC*, *Ram Jawaya Kapur v. State of Punjab (1955) SC*.
- 11. Doctrine of Unreasonable Restriction** – Restrictions on FR must be reasonable – *Chintaman Rao v. State of M.P. (1951) SC*.
- 12. Doctrine of Public Interest** – Courts allow restrictions if in larger public interest – *Bennett Coleman v. Union of India (1972) SC*.
- 13. Doctrine of Balancing Fundamental Rights** – When two FRs conflict, balance must be struck – *Bijoe Emmanuel v. State of Kerala (1986) SC*.
- 14. Doctrine of Living Constitution** – Constitution interpreted as evolving with time – *Navtej Singh Johar v. Union of India (2018) SC*.
- 15. Doctrine of Constitutional Morality** – Constitutional values must guide interpretation – *Government of NCT of Delhi v. Union of India (2018)*, *Navtej Johar (2018) SC*.
- 16. Doctrine of Transformative Constitutionalism** – Constitution seen as a tool of social transformation – *Navtej Johar (2018)*, *Joseph Shine (2018) SC*.
- 17. Doctrine of Subsidiarity** – Matters should be handled at lowest effective level – applied in local governance context (*Bommai V. State of Karnataka case 1994 indirectly*).
- 19. Doctrine of “Fruit of the Poisonous Tree”** – Illegally obtained evidence inadmissible – adopted in India cautiously (*Pooran Mal v. Director of Inspection (1974)*) SC.
- 20. Doctrine of Double Jeopardy** – No person tried/punished twice for same offence – *Maqbool Hussain v. State of Bombay (1953) SC*.

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- 24. Doctrine of Escheat** – If a person dies intestate without heirs, property goes to the State – *Art. 296 of Constitution.*
- 25. Doctrine of Bona Vacantia** – Ownerless property goes to State – *Art. 296.*
- 26. Doctrine of Public Trust** – State is trustee of natural resources for public – *M.C. Mehta v. Kamal Nath (1997) SC.*
- 27. Basic Structure Doctrine** – Parliament can amend Constitution but cannot alter its basic features (democracy, federalism, judicial review).
Case: *Kesavananda Bharati v. State of Kerala (1973).*
- 28. Pith and Substance Doctrine** – Legislative competence judged by true subject of law, not incidental encroachment.
Case: *State of Bombay v. F.N. Balsara (1951).*
- 29. Colourable Legislation** – What cannot be done directly, cannot be done indirectly by legislature.
Case: *K.C. Gajapati Narayan Deo v. State of Orissa (1953) SC.*
- 30. Severability Doctrine** – Invalid part of a statute can be severed; rest continues if workable.
Case: *R.M.D. Chamarbaugwala v. Union of India (1957) SC.*
- 31. Eclipse Doctrine** – Pre-constitutional laws inconsistent with FRs are dormant, not void; revive if inconsistency removed.
Case: *Bhikaji Narain Dhakras v. State of M.P. (1955) SC.*
- 32. Waiver Doctrine** – Fundamental Rights cannot be waived as they serve public policy.
Case: *Bheshar Nath v. CIT (1959 SC).*
- 33. Harmonious Construction** – Conflicting provisions should be interpreted to give effect to both.
Case: *M.S.M. Sharma v. Sri Krishna Sinha (1959) SC.*
- 34. Prospective Overruling** – New judicial ruling applies only prospectively, not retrospectively.
Case: *I.C. Golaknath v. State of Punjab (1967) SC.*
- 35. Separation of Powers** – Legislature, executive, judiciary have separate domains; part of basic structure.
Case: *Indira Gandhi v. Raj Narain (1975) SC.*
- 36. Laches Doctrine** – Delay in filing petition can defeat claim (“equity aids the vigilant”).
Case: *State of M.P. v. Bhailal Bhai (1964 SC).*
- 37. Stare Decisis** – Courts must follow precedents; ensures certainty under Art. 141.
Case: *Bengal Immunity Co. v. State of Bihar (1955) SC.*
- 38. Rule of Law** – No one is above law; equality before law is guaranteed.
Case: *ADM Jabalpur v. Shivkant Shukla (1976)* (later corrected in *Maneka Gandhi*).
- 39. Proportionality Doctrine** – Restrictions on rights must be necessary, suitable, least restrictive.
Case: *K.S. Puttaswamy v. Union of India (2017) SC.*
- 40. Territorial Nexus Doctrine** – State law may operate extraterritorially if sufficient nexus exists.
Case: *State of Bombay v. R.M.D.C. (1957) SC.*
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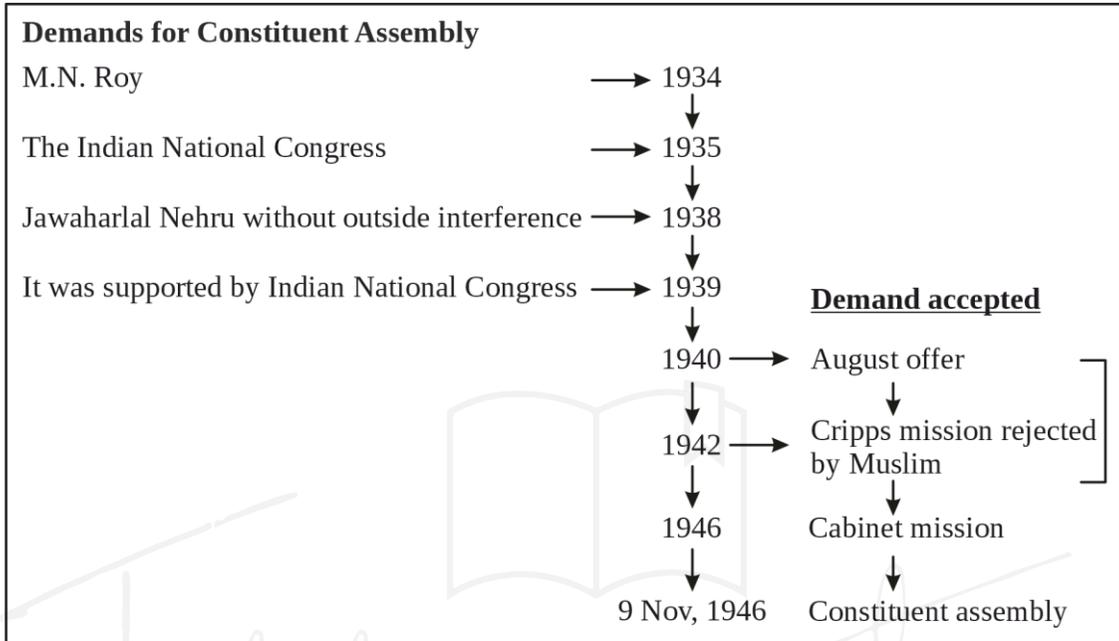
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- 41. Repugnancy Doctrine** – In Concurrent List, Union law prevails over inconsistent State law.
Case: *M. Karunanidhi v. Union of India (1979) SC*.
- 42. Occupied Field Doctrine** – When Union law occupies field, State cannot legislate further.
Case: *Tika Ramji v. State of U.P. (1956) SC*.
- 43. Pleasure Doctrine** – Govt. servants hold office during President's/Governor's pleasure, subject to Art. 311.
Case: *Shamsher Singh v. State of Punjab (1974) SC*.
- 44. Doctrine of Legitimate Expectation** – Citizens can expect consistency in state policy; breach reviewable.
Case: *Navjyoti Coop. Group Housing Society v. Union of India (1992) SC*.



Making of the Indian Constitution

1. Background

- ✓ **British Rule:** Exposed India to modern constitutional institutions (Govt. of India Acts, 1909–1935).
- ✓ **Demand for Constitution:** Indian National Congress (INC) demanded self-governance & Constituent Assembly since 1934 (M.N. Roy's idea).



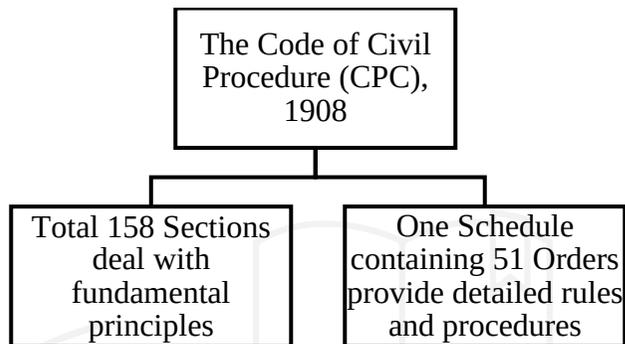
- ✓ **August Offer (8 August 1940):** The British promised that after World War II, Indians would get a chance to frame their own Constitution. But Congress rejected it (they wanted full independence), but the Muslim League accepted it.
 - ✓ **Cripps Mission (1942):** Proposed Indian dominion with right to frame its own constitution but it was rejected.
 - ✓ **Cabinet Mission Plan (1946):** The British Government sent a Cabinet Mission (Pethick-Lawrence, Cripps, A.V. Alexander) to India in 1946 to discuss independence and transfer of power.
 - ✓ It rejected the demand for a separate Pakistan but proposed a **Union of India** with provinces and princely states.
 - ✓ The Union would control only **foreign affairs, defence, and communications**; provinces retained autonomy.
 - ✓ Provinces were grouped into three sections (A: Hindu-majority, B & C: Muslim-majority).
 - ✓ It proposed a **Constituent Assembly** to frame the Constitution and an **Interim Government** until full transfer of power.
- ## 2. Formation of Constituent Assembly
- ✓ **Total Members:** 389 (292 from provinces, 93 from princely states, 4 from Chief Commissioner's provinces).
 - ✓ **Method:** Indirect election by Provincial Assemblies on basis of population (1 seat per 10 lakh).
 - ✓ **After partition (1947):** 299 members remained (229 provinces, 70 princely states).

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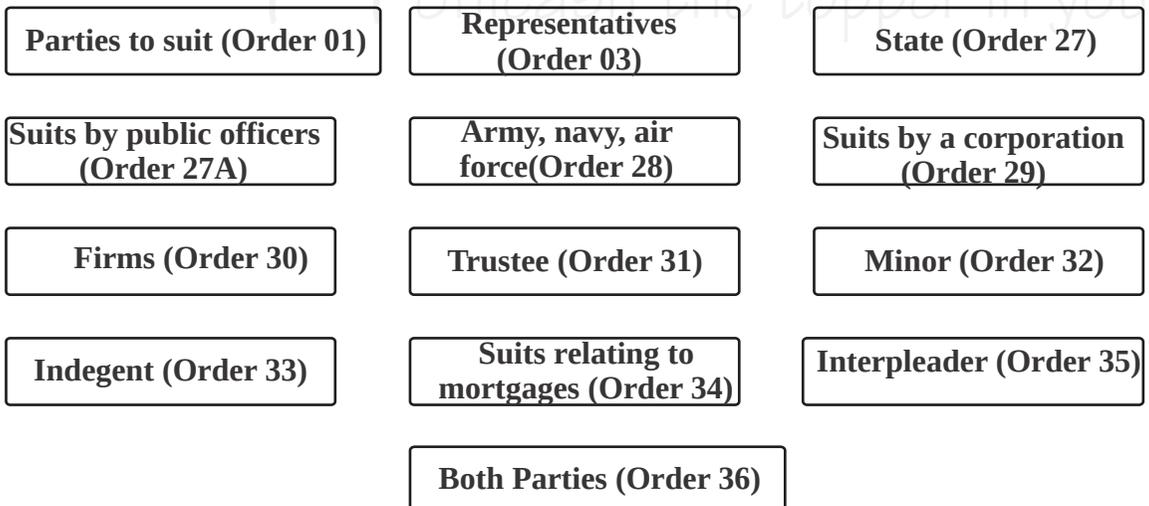
CHAPTER

The Code of Civil Procedure, 1908

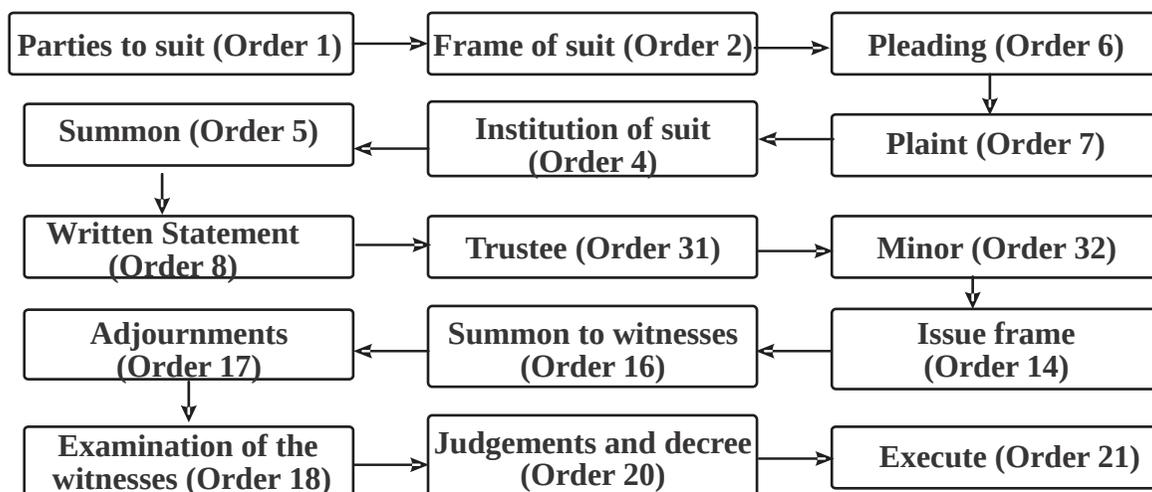
The Code of Civil Procedure (CPC), 1908, is structured with 158 sections and a schedule containing 51 Orders. These sections are the core of the code, dealing with fundamental principles and procedures. The schedule, with its 51 Orders, provides detailed rules and procedures for various aspects of civil litigation.



Type of parties



Civil Procedure



Section 1 — Short Title, Commencement, and Extent

1. Short Title

- ✓ The statute is formally called “**The Code of Civil Procedure, 1908**” (CPC, 1908).
- ✓ This title is used for all references in statutes, pleadings, and judgments.
- ✓ Purpose: To provide a uniform procedural framework for civil courts in India.

2. Commencement

- ✓ The CPC came into force on **1 January 1909**.
- ✓ Once in force, it applies until repealed or amended — there is no sunset clause.

Amendment of 2002 came into force – 1 July, 2002

3. Territorial Extent

- ✓ General Rule: CPC extends to the **whole of India**, but with certain exceptions and special provisions.

(a) Exceptions

1. **State of Nagaland** and “**tribal areas**” are excluded from automatic application.
2. However, the **State Government** concerned may, by **notification in the Official Gazette**, extend the CPC or any part of it to these areas.
3. Such extension can be made **with modifications** — these may be:
 - **Supplemental** (adding extra provisions),
 - **Incidental** (adjustments necessary for local conditions),
 - **Consequential** (changes resulting from the main extension).

Explanation to Clause (3)

- ✓ “Tribal areas” means those territories which, **immediately before 21 January 1972**, were part of the **tribal areas of Assam** under **paragraph 20 of the Sixth Schedule** to the Constitution.

4. Special Application to Certain Areas

- ✓ In the following territories, CPC applies **subject to existing special rules or regulations**:
 1. **Amindivi Islands**
 2. **East Godavari Agency**
 3. **West Godavari Agency**
 4. **Visakhapatnam Agency** (all in Andhra Pradesh)
 5. **Union Territory of Lakshadweep**
- ✓ This means CPC does **not override** any special local procedural law already in force in these regions.

Nature: Procedural law (lex fori) — governs how civil courts conduct trials, not substantive rights.

Section 2. Definitions. —In this Act, unless there is anything repugnant in the subject or context

Section 2 (1) “Code” → When used in the CPC, it does not mean only the bare sections enacted by Parliament.

It also includes:

- The main body of the CPC (Sections 1 to 158), and
- The rules contained in the First Schedule (as originally enacted) and
- Any rules framed by High Courts under the Code’s rule-making powers (Part X – Sections 121 to 131).

Section 2(2) — “Decree”

A **decree** means:

- **Formal expression** of an **adjudication**
 - ✓ Must be recorded formally (usually in writing and signed by the Judge).
 - ✓ “Adjudication” means judicial determination of a disputed matter.
- Passed by a court in a suit.
- Conclusively determines the rights of the parties in relation to all or any matters in controversy in the suit.

Inclusions

A decree also includes:

1. Rejection of a plaint (Order VII Rule 11 CPC).

- ✓ Though no trial is conducted, rejection operates as a decree and is appealable under Section 96.

2. Determination of any question under Section 144 CPC (Restitution).

- ✓ Example: When a decree is varied/reversed in appeal, and the court orders return of benefit received under it.

Exclusions

A decree does not include:

(a) Any adjudication from which an appeal lies as an appeal from an order (e.g., certain orders under Order XLIII).

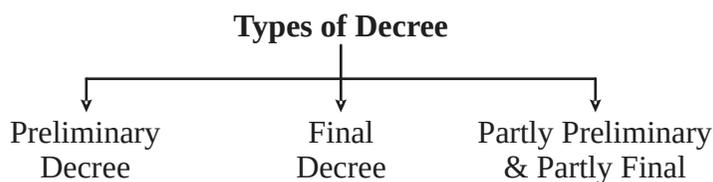
(b) Any order of dismissal for default (non-appearance of plaintiff) under Order IX Rule 8/Rule 3.

- ✓ This is not an adjudication on merits.

Essential Elements

A decree must:

1. Result from an adjudication.
2. Be given in a suit (not in execution or miscellaneous proceedings unless expressly included).
3. Decide rights of parties regarding the matters in controversy.
4. Conclusively determine those rights.
5. Be formally expressed.
6. Be passed by a civil court.



1. Preliminary Decree

- ✓ Decides rights of parties but further proceedings are required before final disposal.
- ✓ Example: In a partition suit, shares of parties are decided but actual division is pending.

2. Final Decree

- ✓ Completely disposes of the suit; nothing remains for further decision.
- ✓ Example: In a partition suit, after deciding the shares of parties, the court allotted the specific shares to each party.

3. Partly Preliminary & Partly Final

- ✓ When one part of the adjudication finally decides some issues, while another part requires further action.
- ✓ Example: In a mortgage suit, liability determined (final), but amount to be calculated by commissioner (preliminary).

Case Laws

- **Mool Chand v. Dy. Director, Consolidation (1995) SC** — Adjudication must be by a court and must conclusively determine rights.
- **Madho Das v. Mukand Ram (AIR 1955 SC 481) SC** — Even if not titled “decree”, if it satisfies all conditions, it is a decree.
- **Shah Babulal Khimji v. Jayaben D. Kania (1981) SC** — Distinction between decree, judgment, and order explained.

Section 2(3) — Decree-holder

- A person **in whose favour**:
 1. A **decree** has been passed, **or**
 2. An **order capable of execution** has been made.

Includes:

Legal representatives, transferees, or assignees of decree (Order XXI Rules 16 & 18 CPC).

Excludes:

A person who benefits indirectly from a decree without being named in it.

Example: If A obtains a money decree against B, A is the decree-holder.

Section 2(4) — District

Local limits of jurisdiction of a principal Civil Court of original jurisdiction (commonly called “District Court”).

Includes:

Local limits of ordinary original civil jurisdiction of a High Court (e.g., Bombay, Calcutta, Madras High Courts).

Importance:

- Determines territorial jurisdiction in civil matters.
- “District” is a jurisdictional unit, not merely an administrative division.

Section 2(5) — Foreign Court

A court situated outside India, and

Not established or continued by the authority of the Central Government of India.

Effect: Judgments of foreign courts are treated as **foreign judgments** under Section 2(6) and Sections 13–14 CPC.

Example:

➤ A court in Pakistan is a foreign court.

Section 2(6) — Foreign Judgment

Judgment of a foreign court.

Legal Relevance: Enforceable in India only if it satisfies conditions under Section 13 CPC (e.g., competence, finality, not obtained by fraud, not opposed to Indian law or natural justice).

Section 2(7) — Government Pleader

Any officer appointed by State Government to perform the statutory functions of Government Pleader under CPC.

Includes: Any pleader acting under the directions of the Government Pleader.

Role:

- Represents the Government in civil proceedings.
- His functions include filing written statements, appearing in court, advising departments etc.

Section 2(7A) — High Court

For Andaman and Nicobar Islands, the “High Court” means the High Court at Calcutta.

Reason: A special territorial arrangement due to geography and administration.

Section 2(7B) — India

For most sections of CPC, “India” means the territory of India excluding the State of Jammu & Kashmir (as per old provision — now changed after abrogation of Article 370, but still relevant in historical context).

Exception: In Sections 1, 29, 43, 44, 44A, 78, 79, 82, 83, 87A, “India” includes J&K.

Section 2(8) — Judge

The presiding officer of a civil court.

Note: A “Judge” is distinct from “Court” —

Court = Judge + all officers + establishment + legal authority.

Judge = only the presiding officer.

Section 2(9) CPC — “Judgment”

Judgment means the statement given by the Judge of the grounds of a decree or order.

Essential Elements:

1. Statement by the Judge

- ✓ Must be delivered by the presiding officer of a civil court.
- ✓ It is the Judge's personal reasoning, not that of ministerial staff.

2. Contains Grounds

- ✓ It must set out the reasons that lead the Judge to pass the decree or order.
- ✓ This reasoning helps the appellate court to decide the appeal.
- ✓ Grounds in the judgement shows that the court has applied its mind.

3. Relates to a Decree or Order

- ✓ A judgment is not an independent adjudication; it is tied to either a decree or an order. First judgment comes

Note: Order XX deals with judgment.

Judgment vs. Decree vs. Order

- **Judgment = Reasons + decision** (why and how the court decided).
- **Decree = Formal expression** of the adjudication (the operative conclusion in the suit).
- **Order = Formal expression** of any decision not amounting to a decree.

Section 2(10) CPC — “Judgment-debtor”:

Judgment-debtor means any person **against whom** a decree has been passed **or** an order capable of execution has been made.

Essential Elements:

1. Opposite of Decree-holder

- ✓ While a decree-holder is the person in whose favour a decree is passed, the judgment-debtor is the person against whom it is passed.

2. Covers Both Decree and Executable Order

- ✓ Includes cases where:
 - A money decree is passed against the person.
 - An order for possession or specific performance capable of execution is passed.

3. Scope

- ✓ May include:
 - Original defendant.
 - Legal representative of the defendant (if liable under decree).
 - Transferee of property subject to decree (Order XXI Rules 10 & 50 CPC).

4. No Distinction in Nature of Decree

- ✓ Applies whether decree is for money, property, injunction, restitution, etc.