III. The Indian Code of Civil Procedure, 1908.

The law relating to the procedure in suits and civil proceedings in India is contained in the Code of Civil Procedure, 1908. The word civil is used to distinguish the same from military, criminal, revenue etc. The word procedure is used to distinguish the same from substantive law. Substantive law consists of rules relating to rights and obligations of the state and individuals while the law of procedure provides the manner in which these rights and obligations are enforced. Sometimes however one gets into the other's area.

Salmond observes: "The law of procedure may be defined as that branch of the law which governs the process of litigation. Substantive law is concerned with the ends which the administration of justice seeks, procedural law deals with the means and instruments by which those ends are to be attained."

The procedural laws have to be invoked when substantive law is to be enforced. Prior to its enforcement, the law may remain only a formulation of rules of conduct. Many a times, substantive rights have sprung out of procedure. It was therefore argued before the amendment of Art. 368 of the Constitution of India, that as it provided for procedure of amendment, the power of amendment could be inferred. There is a body of common law which has developed out of procedural

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laws as against substantive laws. Legal thinking itself has been greatly though perhaps invisibly influenced by the procedure of the time being.

Pollock and Maitland point out that medieval English procedure was strongly inclined towards the strict adherence to the rules of procedure. But the need to temper it with attributes of the changes found necessary with time was felt. Under the older procedure the court was bound, as were the parties, by the formalities of the procedure and had little or no discretion in using the rules of procedure. But gradually it was realised that the judges must be deemed to have certain inherent or equitable powers to do justice and to prevent it from being defeated or delayed.

The Civil Procedure Code in India embodies a mixture of strictness of procedure and of discretionary powers vested in the courts. The aim is to do justice. It would be useful to keep in mind the guiding rule of interpretation of the Code given by the Supreme Court of India in Sangram Singh v. Election Tribunal. Bose J. said:

Now a code of procedure must be regarded as such. It is "procedure" something designated to facilitate justice and further its ends, not a penal enactment for punishment and penalties, not a thing
design to trip people up. Too technical a construction of sections that leaves no room for reasonable elasticity of interpretation should therefore be guarded against (provided always that justice is done to both the sides) lest the very means designed for furtherance of justice be used to frustrate it.

The Code has been amended from time to time by various acts of the Central and State legislatures. The Code is mainly divided into two parts, namely sections and orders. While the main principles are contained in the sections, the detailed procedure with regard to the matters dealt with by the sections are specified in the orders. As has been laid down, however, it is incorrect that main sections are more imperative than rules. Rules framed as orders have force of law. Under Section 122, the High Courts have powers to amend, by rules, the procedure laid down in the orders. In exercise of these powers, various amendments have been made in the orders by different High Courts. As per Section 128, these rules must be consistent with provisions in the body of the Code. Further, they are subject to the previous approval of the authorities mentioned in Section 126.

The typical proceedings for the enforcement of civil rights and obligations is a suit and the typical tribunal in which a suit is launched is
a civil court. Therefore, the basic statute covering almost the entire law of procedure in India, namely, the Code of Civil Procedure, 1908, is concerned almost wholly with institution of a suit in a civil court, the progress of its trial ending with orders or a decree and its further stages such as appeals, reference, reviews and revision and the execution of decrees and orders.

The stages through which a contested civil suit will go are normally

1. Institution of Suits (Order IV)
2. Issue and Service of Summons (Order V)
3. Filing of written statement by the defendant (Order VII)
4. Discovery and Inspection (Order XI)
5. Production of Documents (Order XII)
6. Settlement of Issues (Order XIV)
7. Examination of Witnesses (Order XVI to XIX)—Trial.
8. Judgment and Decree (Order XX)
9. Execution of Decrees and Orders (Order XXI)

It may also be noted that the Code has given very wide scope and inherent powers to the civil courts in order to do justice. Section 9 of the Code says: 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. Thus, a suit to enforce all
civil rights or obligations would be triable by
Civil courts. Some examples of such suits are:
suits relating to rights in property, suits relating
to religious rights, religious property, suits
for damages for civil wrongs, suits for breaches
of contract, suits for specific relief, rights
arising out of marriages, suits between landlord
and tenants, suits between co-sharers, suits for
injunctions etc.\textsuperscript{9}. Such suits can be against other
individuals, organisations or even government\textsuperscript{10}.
Section 151 says: Nothing in this Code shall be
deemed to limit or otherwise affect the inherent
power of the Court to make such orders as may be
necessary for the ends of justice or to prevent
abuse of the process of the Court.

It may be noted here that where a special
remedy is provided by the legislature the general
remedy of civil suit is barred. However, the
enactments which promulgate such special remedies,
normally provide for the extent to which the
provisions of the Code will be applicable to the
proceedings under such enactments. Further, by
amendment in 1976 it is made clear by adding an Explanation to section 141 that the provisions of the Code will not be applicable to writ proceedings of the High-Court.

One of the criticisms of the Indian legal system is that access to the masses is lacking. The above discussion and the interpretations like the one of J. Bose at our apex Court as above may well help solve this problem of access with the use of the provision of representative suits contained in Order 1 Rule 8 of the Code, where one person can take up the cause of the masses and resources can be collectivised. This however will demand creativity and innovativeness from the bar as well as the bench which will be clear as we continue.
Foot Notes of the Indian Code of Civil Procedure, 1908

(1) Preamble to the Code in Civil Procedure, 1908": An Act to consolidate and amend the laws relating to the procedure of the Courts of Civil Judicature".

(2) V.S. Deshpande "Civil Procedure", is The Indian Legal System, The Indian Law Institute publication, 1978 p.177.


(4) Ibid Foot-Note 2.


(8) AIR 1937 Pat. 307 at P.10

(10) At two main places provisions are found relating to the suits against governments in India. One is the Constitution of India and the other, the Code of Civil Procedure.

Art.300(1) of the Constitution of India: The Government of India may sue or be sued by the name of the Union of India and the Government of State may sue or be sued by the name of the State and may subject to any provision which may be made by Act of Parliament or of the Legislature of such State enacted by virtue of powers conferred by this Constitution, sue or be sued in relation to their respective affairs in the like cases as the Dominion of India and the corresponding Provinces or the Corresponding Indian States might have been sued if this Constitution had not been enacted.

Sec.80 C.P.C. - (1) Save as otherwise provided in sub-section (2), no suit shall be instituted against the Government (including the Government of the State of Jammu & Kashmir) or against a
public officer in respect of any act purporting
to be done by such public officer in his official
capacity, until the expiration of two months next
after notice in writing has been delivered to,
or left at the office of-

(a) in the case of a suit against the Central
Government, (except where it relates to a railway),
a Secretary to that Government;

(b) in the case of a suit against Central
Government where it relates to a railway, the
General Manager of that railway

(bb) in the case of a suit against the Government of State
of Jammu & Kashmir, the Chief Secretary to that
Government or any other officer authorized by that
Government in this behalf;

(c) in the case of suit against any other
State Government a Secretary to the Government
or the Collector of the district.

And in the case of a public officer, delivered
to him or left at his office, stating the cause
of action, the name, description and place of
residence of the plaintiff and the relief which
he claims; and the plaint shall contain a statement
that such notice has been so delivered or left.

(2) A suit to obtain an urgent or immediate relief
against the Government (including the Government
of the State of Jammu & Kashmir) or any public officer in respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as required by sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit:

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation to it after complying with the requirements of sub-section (1).

(3) No suit instituted against the Government or against a public officer in respect of any act purporting to be done by such public officer in official capacity shall be dismissed merely by reason of any error or defect in the notice referred to in sub-section (1), if in such notice -

(a) the name, description and the residence of the plaintiff had been so given as to enable the appropriate authority or the public officer to identify the person serving the notice and
such notice had been delivered or left at the office of the appropriate authority specified in sub-section (1); and (b) the cause of action and the relief claimed by the Plaintiff had been substantially indicated.