

CODE OF CIVIL PROCEDURE

By: Dr. Justice B.S. Chauhan

Judge

Supreme Court of India

As it is evident from its name, it mainly lays down the procedure to be adopted in civil courts, and its principles may be applicable in other courts, like writ courts, and Tribunals to the extent the enactments establishing the Tribunals provide for it. It provides for a fair procedure for redressal of disputes. The other party may know what is the dispute about, what defence it can take, and how both the parties may proceed to prove their respective cases. Some of its provisions are substantive in nature and not procedural at all, like Sections 96, 100, 114 and 115 providing for a right of appeal, review and revision. The other provisions are generally procedural in nature. The purpose of the Civil Procedure Code, 1908 (hereinafter referred to as 'Code') is to provide a litigant a fair trial in accordance with the accepted principles of natural justice. The Code is mainly divided into two parts, namely, Sections and Orders. While the main principles are contained in the Sections, the detailed procedures with regard to the matters dealt with by the Sections have been specified in the Orders. Section 122 of the Code empowers the High Court to amend the Rules, i.e., the procedure laid down in the Orders and every High Court had amended the procedure from time to time making the amendments in the said Orders.

The Code is a codification of the principles of natural justice. Natural justice means 'justice to be done naturally' which is adopted naturally by the habits of every individual. It does not mean godly-justice or justice of nature. It simply means an inbuilt-habit of a person to do justice. For example, if a child of 1,1/2 years breaks the saucer, the mother of the child may slap him being furious, but at the time of slapping, she would repeatedly ask him why he has broken the saucer, though she knows that the child has not started speaking. As these principles are inbuilt-habit of everyone to ask others for furnishing the explanation of anything done by them, the same are known as 'principles of natural justice'. In Garden of Eden God did not punish Adam and Eve without giving them opportunity to show cause as to why they had eaten the prohibited fruit. The first reported case of principles of natural justice in Dr. Bentley's case, i.e., **R. V. University of Cambridge**, (1723) 1 STR 757, wherein reference of the incident of Garden of Eden was made.

The two words are repeated everyday in the courts- 'justice' and 'law'. Justice is an illusion as the meaning and definition of 'justice' varies from person to person and party to party. Parties feel that they have got justice only and only if the case succeeds before the court, though it may not have a justifiable claim. (Vide: **Delhi Administration V. Gurudeep Singh Uban**, AIR 2000 SC 3737).

For paucity of time it would not be possible for us to deal with every provision in the Code. Thus, we will discuss the scope and application of the provisions which we have to deal with every day in the Court.

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David Baud



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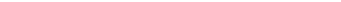
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