

* Chapter 6 :- Civil Procedure Code *

* Scope of Law :-

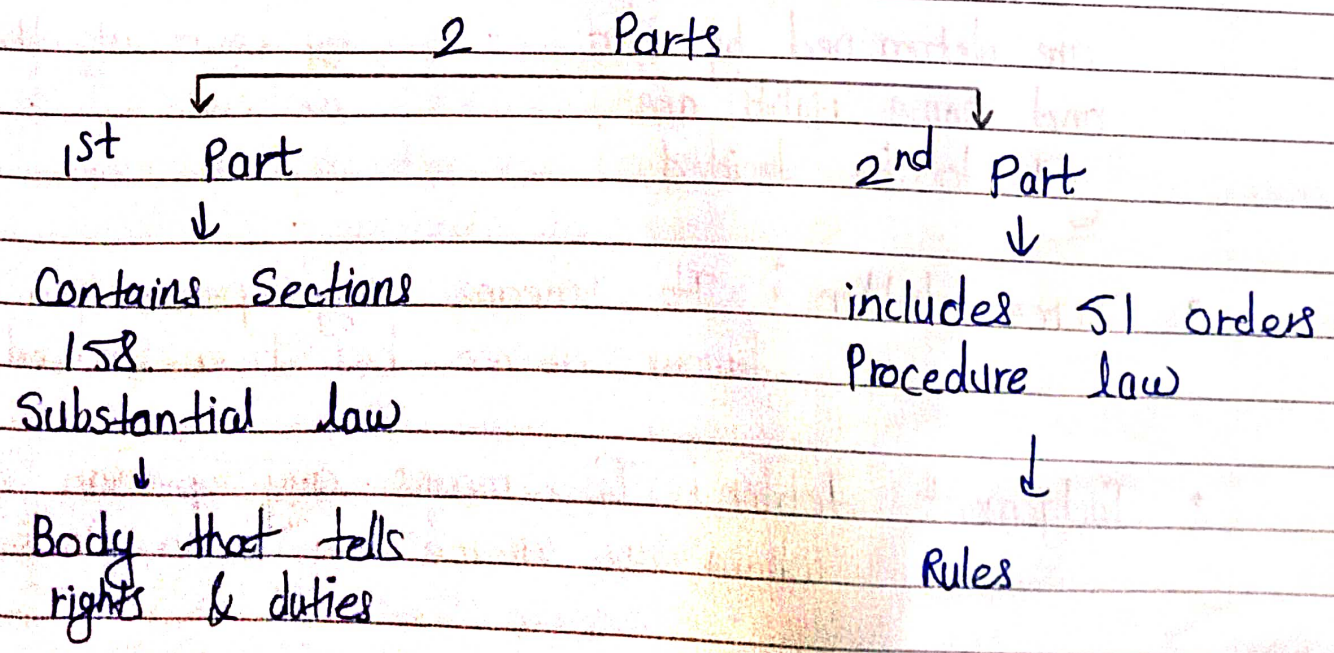
This Civil procedure code consolidates & amends laws related to procedure of court Civil court jurisdiction

The code does not affects any special or local laws

The code is general law therefore if there is any conflict between code and special law, the special law will prevail.

If on a particular matter special law is silent then this code applies.

* Scheme of code :-



* Cause of Action

- It is defined in Order 2, Rule 2 of CPC.
- It means reason for action.
- Why case is filed is a cause of action.
- It means every fact which is necessary for plaintiff to prove in order to support his right of judgement of court.
- It is based on right & infringement for which relief is claimed.

* Decree

- It defined in Section 2(2) of CPC.
- It is formal expression of adjudication which court determines conclusively, the right of parties in respect to matter or all matters.
- There are two types of decree

1) Preliminary decree

2) Final decree

- It means some rights are determined by court and some rights are yet to be decided.

- It is determined by court at the end of case.

- Decree - holder : It means any person in whose favour decree has been passed.

- Judgement debtor : It means any person against whom the decree has been passed.

- Decree is always appealable unless it is prohibited or forbidden by law specifically.

* Order

- It is defined in section 2(14) of CPC.
- Every decision of court is a order, which is not a decree.
- It is a formal expression of decision of court which is not a decree.
- It is not generally appealable unless it is specifically provided by law.

* Judgement

- It is defined in Section 2(9)
- It is a statement given by court on ground of decree & order.
- Order deciding primary issue is a judgement

* Jurisdiction of Civil Court

1) Jurisdiction over subject matter.

Jurisdiction try to certain matters in some court which is limited by statute or law. Where the subject matter is the case will go to the same court.

2) Jurisdiction over persons

Any person of our country is are subject to jurisdiction of civil courts of country except foreign state.

3) Pecuniary jurisdiction depending upon pecuniary values of suit :- Pecuniary jurisdiction & lays down that save so far as otherwise expressly provided courts shall only have jurisdiction over suits the amt / value of which does not exceed pecuniary limits of any of its ordinary jurisdiction.

4) Place of suing Territorial jurisdiction :- Territorial limits of jurisdiction for each court is limited & decided by statute.

* Requirements of Res judicata.

1) Matter directly & substantially in issue in former suit shall also be directly & substantially in issue in later suit.

2) former suit has been heard & finally decided.

3) Parties are same under both the suits

• Res judicata does not apply to consent or compromise decree, But if court comes to conclusion the parties intended that consent decree should have binding effect conclusively then res judicata applies

* Jurisdiction may further classified into following categories.

i] Original Jurisdiction :- A court tries and decides suits filed before it.

ii] Appellate Authority :- Court hears appeals against decisions or decree passed by sub-ordinate court.

iii] Criminal & appellate Jurisdiction :- The Supreme Court, the High Court & District Courts have both original and appellate jurisdiction in various matters.

* STAY OF SUIT [DOCTRINE OF RES SUB JUDICE]

Section 8 :- It means same matter, case same but pending in another court.

- No court shall proceed with trial of any suit in which the matter in issue is also directly or substantially in issue in previously instituted suit between same parties under same title & matter, where such suit is pending in same / any other court.

- The main object of this doctrine is to avoid conflict between courts.

- The previous suit ^{shall} pending in competent jurisdiction.

- The following are essentials -

1) There must be two suits instituted in different courts.

2) The matter in issue in previous suit shall be similar to matter in issue in latter suit / subsequent suit.

3) The suit must be between the same parties.

4) The earlier instituted suit shall be pending in courts of competent jurisdiction.

* Case law :- Kings Pharmaceuticals Vs. Swan Pharmaceuticals.

Facts : Suit was filed by plaintiff company stating that there is infringement by defendant company is using trade name of medicine & selling it in same wrapper with same design with same colour. A subsequent suit was institute in different court by defendant company against plaintiff with the same subject matter.

Decision : The court held that subsequent suit should be stayed as simultaneous trial of suits in different court might result in conflicting decisions as issue involved was in two suits was totally identical.

* DOCTRINE OF RES JUDICATA / BAR ON SUITS

- Section 11, deals with res judicata.
- According to provisions of this section, No court shall try any suit in which matter in issue in former suit ~~either~~ between same parties under same title with same matter in Court competent to try such subsequent suit in which such issue has been subsequently raised finally decided by court.
- It says that once there is res is judicata, then it shall not be adjudicated again.
- It is based on a maxim which is 'no one shall be twice vexed for the same cause'.
- following are conditions of Res judicata -

1) The matter in former suit shall be in matter in subsequent suit.

2) The prior suit must be between same parties

3) The parties should have intigated under the same title.

4) The court which determines the earlier suit must have competent jurisdiction.

5) The former suit has been decided.

- It is based on following public policy.
 - 1) There should be end to litigation.

2) The parties to suit must be harrassed for the same matters.

3) The time of court should not be wasted over the matters.

4) It is rule of convenience not a rule of justice.

Res subjudice	Res judicata
1) It restricts trail of suit.	1) It restricts trail of decided suit.
2) It restricts court to accept similar matter during pendency of suit.	2) It restricts court to accept similar matter which has been already decided by court.

* SUITS BY / AGAINST MINOR.

1) A minor is person below the age of 18 years, and a person whose minor has been appointed by Court is below age guardian of 21 years.

2) If a minor institutes a suit then it shall be instituted in his name by person who in such suit shall be called next friend of minor.

3) If suit is instituted without friend then defendant may apply for dismissal of suit.

4) If there is case against a minor, then the court shall appoint a guardian for it.

5) If in a case a minor turns or becomes major then he shall decide whether to continue suit or abandon the suit. If he ~~rather~~ wants to continue suit then ⁱⁿ his name suit will file and next friend's name will discharge. If he abandon then case will dismiss by court & court can ask to repayment of cost incurred by defendant.

* PLACE OF SUING.

- If suit is regarding wrong to immovable property, suit may be instituted in court in whose jurisdiction such immovable property is situated.
- If two or more than two courts have jurisdiction then suit may be instituted in any of such court.
- If Jurisdiction is uncertain then suit may be instituted in any of such court after recording the statement to that effect.
- If suit is for compensation for wrong done ^{or immovable property}, then suit may be instituted in such court in whose jurisdiction wrong was done or in whose jurisdiction defendant resided.

- If there are more than one defendant, then suit may be instituted in court in whose jurisdiction wrong was done or whose jurisdiction any of such defendant resides. After taking approval from court or from other defendants who do not reside.
- If defendant is Body corporate or company, then suit may be instituted in court in whose jurisdiction principle office of company is situated, or in whose jurisdiction cause of action arose, provided company has subordinate office at such place.
- Parties can agree and decide to vest jurisdiction in any court provided such court have competent jurisdiction.
- According to sec. 16 subject to pecuniary or any other limitations prescribed by any law following suits should be instituted in Court within the local limits of whose jurisdiction the property is situated. -

1) for recovery of immovable property with/without rent or profit.

2) for partition of immovable property.

3) for foreclosure or redemption of immovable property in case of mortgage.

4) for determination of rights or interest in immovable property.

↳ for compensation for wrong to immovable property.

↳ for recovery of moveable property, actually distraint or attachment.

* Injunction

TEMPORARY INJUNCTION - Court may grant temporary injunction to prevent any waste, damage, sale or removal or dispossession of property, or dispossession of plaintiff or disposition of property, or injury to plaintiff or his property.

Court will issue temporary injunction only if court satisfy that there could be substantial or irreparable harm or injury if such temporary injunction is not granted.

* IMPORTANT STAGES IN PROCEEDING OF SUIT

1) **Presentation of plaint**: According to ^{order} rule 4 of CPC every suit shall be instituted by presentation of Plaint.

2) **Service of Summons**: (Order 5) When suit has been instituted then summons is to be issued to defendant by Court.

3) **filing of written statement**: (Order 8) Defendant shall within 30 days of summons shall present a written statement to his defence. The maximum period to present written statement is 120 days.

- 4) Appearance of parties : (Order 9) Parties should be appear on date fixed by summon.
- 5) Examination of Parties : (Order 10) Court examines the both parties to the court.
- 6) Framing of issues : (Order 14) The court frames the issues according to order 14.
- 7) Hearings : The Court hears the both parties according to order 18.
- 8) Judgement : The court pronounces decree according to Order 20.

* DELIVERY OF SUMMON BY COURT

- When a suit is instituted, the court issues order to ~~den~~ defendant to appear and to file written statement or his defence within period of 30 days from date of service of summon.
- If defendant has appeared at presentation of plaint & admits his the plaintiff's claim, then there is no need to issue summon.
- Every summon must be signed by Judge / authorised officer of Court & should contain seal of court & to be go along with a copy of plaint.

* DEFENCE

- The defendant should file written statement of his defence within 30 days from service of summon.
- If he fails to file written statement within specified time, he is allowed to file written statement on other day as specified by court for reasons to be recorded in writing.
- The period for filing written statement should not exceed 90 days.

* APPEARANCE OF PARTIES & CONSEQUENCES OF OFFENCE.

- When a suit is filed by plaintiff, a summon is to be issued by court to defendant and defendant shall file a written statement of his defence within 30 days to court.
- After the service of summon if defendant does not appear & only plaintiff appears then court may proceed such defendant 'ex - parte'. It means a suit will continue & the court will decide suit on basis of facts & evidence & documents of plaintiff, in absence of defendant.
- If plaintiff does not appear, defendant appears then court will dismiss the suit.

- If defendant / plaintiff gives sufficient reason for his non-appearance on previous date of hearing, the Court may set aside ex-parte order / order of dismissal of suit.
- If defendant is not served with summon, then the Court shall order second summon to be issued.
- If summon is served to defendant without sufficient time to appear, then Court will postpone hearing to further date.
- If summon ^{was} is not served to defendant due to plaintiff's default, then Court shall order plaintiff to pay cost of adjournment.
- The period of limitation for file application to set aside ex-parte decree is 30 days from date of passing decree.
- The defendant has 4 remedies in case of ex-parte
 - 1) He may file appeal against ex-parte decree
 - 2) He can file application to review judgement
 - 3) He can apply for set aside ex-parte decree.
 - 4) In case of fraud a suit can be filed but no suit should be file for non-service of summon.

* INTERLOCUTORY ORDER

Power to order interim sale

If any movable propert property being subject-matter of suit which subject to speedy & natural decay or which any other just & sufficient cause it may be desirable to be sold at once. The court may order suit to sale any movable property on application of any party to suit.

* DETENTION, PRESERVATION, INSPECTION OF SUBJECT MATTER OF SUIT.

- The Court may on application of any parties to suit may make order for detention, preservation / inspection of any property which is subject-matter of suit.

- The Court may authorise any person to enter upon / into any land / building in possession of any other party to suit.

- The Court may authorise any sample to be taken, or any observation to be made / experient to be try for obtaining full information.

* APPLICATION FOR SUCH ORDER TO BE AFTER NOTICE.

1) Application by plaintiff → After institution of the suit.

2) Application by defendant → After appearance.

* DEPOSIT OF MONEY

* APPEALS. (can be asked for 8 marks in exam)

• Right of appeal is not a natural / inherent attached to litigation

• It is a legal right given by statute or by rules having force of statute.

• There are 4 kinds of Appeal under Civil procedure Code. -

1) Appeal from Original decree :

• It may be preferred to Court Superior to Court passing the decree.

• Appeal may be lie from original decree passed ex-parte.

• If decree is passed with consent of part parties then no appeal lies.

• Appeal from original decree lies on question of law.

2) Second Appeals

• It is lies to High Court.

• According to sec. 100 of CPC, appeal lies to High Court from every decree passed by subordinate court.

• If High Court satisfies that case involves substantial question of law.

3) Appeal against order.

• Generally appeal for order is not allowed.

- But appeal against orders can be allowed on ground of defect / irregularity of law.
- Appeal from order can be lie on following orders.

- 1) An order refusing leave to institute a suit.
- 2) Order for compensation for obtaining attachment or injunction on insufficient ground.
- 3) An order imposing fine or directing the detention or arrest of any person except in execution of decree.
- 4) Appealable order as set out in Order 43, rule 1.

4) Appeal to Supreme Court

- An Appeal can be filed to supreme court on those decrees which have been passed by High Court in original jurisdiction.
- Appeal to supreme court lies on following cases -

1) When any decree / order of Civil Court is certified by court that the case can be fit for appeal to Supreme Court, or when special leave is granted by S.C.

2) Any decree / order, judgement passed on appeal by High Court / by any other court, or final appellate jurisdiction.

3) Any order / decree, judgement passed by High court in exercise of original civil jurisdiction.

• It is general rule that no party to appeal shall be entitled to produce additional evidence whether order / documentary. But it is allowed in following cases:-

1) If lower court refuses to admit evidence which ought to have been admitted.

2) If appellate court requires any document to be produced or any witness to be examined to pronounce judgement.

3) For any substantial cause, but in all such cases appellate court shall record reasons for ~~at~~ admission of additional suit.

• Essential factors to be stated in appellate judgement

→ Point for determination

→ the decisions therein

→ reasons for such decisions

→ where the decree appealed from is reversed / varied, the relief to which appellants are entitled

* Judgement

• The court shall pronounce judgement within 30 days from date on which hearing of case was concluded.

• However, if it is not practicable, then shall fix future day which should not be more than 60 days.

IMP * SET OFF :- Order 8, Rule 6.

Set off is reciprocal acquittal or debt. Plaintiff's claim is reduced to the extent of amount claimed by defendant. There is always an ascertained sum of money in set off.

Ex. A filed suit against B for recovery of loan of ₹ 1,00,000/- B asked to deduct ₹ 20,000/- on account of goods supplied by B to A. This is set off.

IMP

* EQUITABLE SET OFF

- Defendant is allowed to claim set off arising out of same transaction is equitable set off.

- Claim by defendant is always of unascertained sum of money.

- By equitable set off defendant is prevented to take separate action.

- Ex - Ravi purchased sofa amounting ₹ 2,00,000/- from Mr. Raja which turned out to be defective, Raja filed a suit for recovery of ₹ 2,00,000/- & Ravi asked Court to reduce amount as sofa was defective. Now whatever sum Court will deduct is equitable set off.

IMP

* COUNTER CLAIM

- Defendant claims some or more than of what plaintiff claims it is known as counter claim.

- It is allowed by law & it is not necessary that counter claim should arise out of some transaction.

- Ex - Mr. Ashish files suit against Mr. Sharma of defamation, Mr. Sharma alleged same against Mr. Ashish

* REFERENCE (Sec. 113)

A Court before judgement in which suit has been instituted may state a case & refer same for opinion of High Court & High Court may make order as it thinks fit.

* REVE REVIEW (Sec. 114)

- The right of review has been conferred by Sec. 114.
- It provides that any person considering himself aggrieved by decree / order can apply for review of judgement to the court which passed decree / order any time on ground ~~mentioned~~ mentioned below -
 - 1) If applicant discover any new & important matter or evidence after decree was passed / order made.
 - 2) If there is any mistake / error apparent on face of the record.
 - 3) For any other sufficient reason.

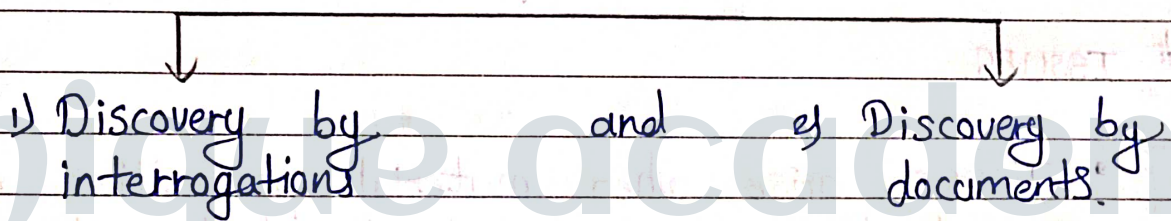
* REVISION (Sec. 115)

- Section 115 deals with revision
- High Court can call for any case which has been decided by any subordinate court & in which no appeal lies thereto & if such subordinate court appears -
 - 1) to have exercised jurisdiction vested in by law, or,
 - 2) failed to exercise jurisdiction so vested, or,
 - 3) Acted in exercise its jurisdiction illegally / with material irregularity, the High Court can make such orders as it thinks fit.

* DISCOVERY & INTEROGATORIES and PRODUCTION OF DOCUMENTS.

- Discovery :- It means finding out material facts & documents from adversary in order to
 - to know nature of case, or
 - to support his own case, or
 - to narrow points at issue, or
 - to avoid providing admitted facts.

• There are two types of discovery



Any party to suit can delivery interogatories in writting for examination of opposite party to Court.

Party can refuse to produce ~~suit~~ document for inspection in following cases -

where the documents discloses the party's evidence

where it enjoys a legal professional privilege

When it is injurious to public interest.

denial of possession of document.

* ADMISSION BY PARTIES.

- ADMISSION means one party accepts the case / claim of another party either wholly / partly to be true.
- Admission can be either in
 - pleadings, or
 - by answers to interrogatories, or
 - by agreement of parties, or
 - by notice.

* ISSUES.

- Issues arise when material proposition of fact is affirmed by one party & denied by other party.
- Issues can be either of fact or law.
- Issues are to be framed on material proposition of fact / law & to be gathered from following points -
 - 1) Allegations made in plaint & written statement.
 - 2) Allegations made by parties or persons on their behalf or their pleaders on oath.
 - 3) Allegations in answer to interrogatories.
 - 4) Contents of document produced by parties.

5) Statements made by parties or by their representatives.

6) from examination of any witness or any document to be produced.

* HEARING OF SUIT

- Generally, the plaintiff has right to begin the hearing of suit.

- But in following cases defendant has right to begin hearing of suit -

- If defendant admits facts alleged by plaintiff.
- When some other additional facts alleged by defendant.

- If plaintiff is not entitled to get any part or relief sought by him.

* AFFIDAVIT

- An Affidavit is a written statement of deponent on oath duly affirmed before any Court / Magistrate / any other oath commissioner appointed by Court or before Notary public.

- Affidavit can be used in following cases -

1) The Court may at any time order that any fact may be proved by affidavit on its own / application

of any party.

2) The Court may at any time order that affidavit of any witness can be read at hearing unless either party bona-fide desires to cross-examine him.

3) It is also used when evidence of witness given on affidavit & upon application by a party, but the Court at the instance of either party, order the deponent to attend court for cross-examination unless he is exempted from personal appearance.

* SUMMERY PROCEDURE (XXVII)

- Order 31 provides summery procedure in respect of certain suits.

- A procedure by way of summer suit applies to suit upon bills of exchange or promissory note or to suits in which plaintiff seeks only to recover debt, with or without interest, arising -

1) On a written contract, or

2) On an enactment, where sum of money sought to be recovered is fixed or nature of debt is other than penalty, or

3) On guarantee, when claim is against the principal is respect to debt / liquidated demand only.

- Rules for summary procedure applicable in following Courts -
 - 1) High Courts, City Civil Court & Small Court.
 - 2) Other Courts.

- The defendant is not entitled to defend the suit unless he enters an appearance within 10 days from service of summons.

- However, such leave shall not be granted where,
 - If Court satisfied that facts disclosed by defendant do not indicate substantial defence.

- The part of amt. claimed by plaintiff & admitted by defendant to be due from is deposited by him in the Court.

- The summary suit must be brought within 1 year from date on which debt becomes payable.

- The period of limitation in case of negotiable instrument is 3 years.

- Case law: In *BL Kashyap & Sons Ltd Vs JMS Steels and Power Corporation* it was held that leave to defend shall be granted only in exceptional cases and it will be denied if there is no fair or reasonable defence.

* Section 151

- object of inherent power of court is to do justice and to undo wrong done in process of court, fraud by party upon court.

* SAVING OF INHERENT POWERS OF COURT

- Sec. 151 says that 'Nothing in this section shall be deemed to limit or otherwise affect the inherent power of court to make such orders as may be necessary for end of justice & to prevent abuse of process of court'.

- It is one of the most used sections of the court in litigations

- Case law :- Scope of sec. 151 was explained by Supreme Court in case of K.K. Velusamy Vs. V.N. Palanisamy.

1) It only gives discretionary power to every court to do what is right & undo what is wrong & to do all things to secure end of justice.

2) Inherent power can be used to deal with such situation or aspect which end of justice demands

3) Court has no power to do what is prohibited by law

4) Inherent power can be used for any such matter which is not covered by any specific provision in the code

5) Inherent power of court should not be treated as carte blanche to grant any relief complete freedom

6) These powers should be exercised with prudence & care.

* MISJOINDER OF PARTIES

• When there are more than one person as a plaintiff or defendant and there is no common question of law or fact, then it is called misjoinder of parties.

• To avoid such misjoinder there should be :-

- 1) Common question of law or fact
- 2) Relief must arise out of same transaction.

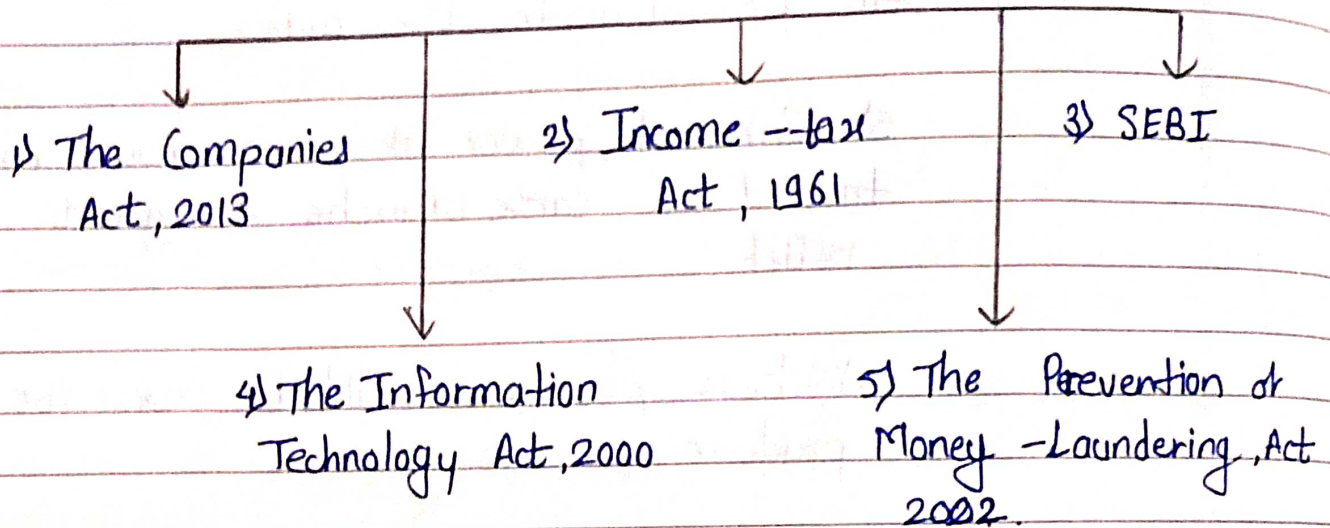
* POWERS OF CIVIL COURTS & THEIR EXERCISE BY TRIBUNALS

• Tribunals are quasi-judicial authorities established by law.

• Generally, they are established for speedy disposal of case and has expertise in some subject matter.

• These tribunals are empowered with some powers of Civil procedure.

- Few enactments empowering tribunals with power of Civil Court are :



* COMMERCIAL COURTS

- Commercial Courts Act, 2015
 - 1) Govt. of India introduced commercial courts and Commercial Appellate Division of High Court to reduce the burden of judiciary in commercial matters.
 - 2) It also helps to gain more trust of foreign investors over their investments in Indian Market.
 - 3) The main emphasis of Commercial dispute are special in nature because they affect economy of nation.
- State Government with consultation of respective high Court may constitute Commercial Courts at district level.
- State Government after consultation with high Court may -

- may specify pecuniary value which shall not be less than 3 lakh rupees.

- may extend, alter & reduce jurisdiction

- may appoint one / more persons to be Judge / Judges or such court who has experience in commercial dispute.

• According to sec. 6 of the Act, Commercial courts shall have jurisdiction to try all suits & applications related to commercial dispute.

* DETERMINATION OF SPECIFIED VALUE

• In case of recovery of money → Value should include interest upto date of filing of suit.

• In case of Movable Property → Market value of movable property.

• In case of Immovable property → Market value of immovable property.

• In case of other Intangible right → Market value of such right by plaintiff as on date of filing of suit.

MEDIATION

* PRE - INSTITUTION^u & SETTLEMENT

- The act requires that parties attempt to settle their issues through mediation.
- Time : Pre-litigation process shall be completed within period of 3 months from date of application made.
It can be also extend for 2 months with consent of parties.
- Award / settlement : The award / settlement of pre-litigation must be in written & signed by both the parties & mediator.

* APPEALS

- Any person aggrieved by judgement / order of commercial court can file appeal within 60 days from such judgement.
- If a person aggrieved by judgement of Commercial Court below district judge, then he may appeal to Commercial Appellate Court.
- If person aggrieved by judgement of Commercial Court at district level judge / Commercial division of High Court, can appeal to Commercial Appellate Division of High Court.

- All appeals should be disposed of within period of 6 months from date of filing.

* SUMMERY JUDGMENT

- Commercial disputes can be disposed off by the commercial court established under the Act without complete trial.

• Summery judgment is similar to Summery suits provided in CPC, but there is primary difference is that applications for summery judgement is related to commercial dispute & applications for summery suit is related to liquidated demand or fixed sum of debt.

• The application for summery judgement made by party after service of summon to defendant & before framing of issues.

• Summery judgement may be given upon consideration that the plaintiff / defendant has so claim / defence.

• And there is not any reason to why claim should not be disposed before recording of oral evidence.