



E-ISSN: 2789-8830  
P-ISSN: 2789-8822  
IJLLR 2023; 3(2): 16-18  
Received: 17-04-2023  
Accepted: 23-05-2023

**Akshita Sharma**  
Post-Student 2<sup>nd</sup> Year, LLB,  
Department of Law, Symbiosis  
Law School, Pune,  
Maharashtra, India

## Critical analysis of section 9 code of civil procedure

**Akshita Sharma**

### Abstract

The following article highlights and comprehends the scope and significance of the ambit of civil suits and jurisdiction in India by taking Section 9 of the Code of Civil Procedure as the focal point of analysis. The article mentions the critical viewpoint of the section with the help of various legislations and precedents. The article further concludes with various imperative suggestions that can be incorporated into the section to make it more comprehensive followed by a detailed conclusion.

**Keywords:** The code of civil procedure, civil suit, section 9, judiciary

### Introduction

“I have always held that the civil courts are the bulwark of a democratic Constitution and that people should have the fullest faith in them”, quote cited by the father of our nation Mahatma Gandhi reflects the importance of civil litigation in resolving problems and upholding spirit of justice and democracy in India. Initiating with defining the imperative legislation of India which is the Code of Civil Procedure, 1908 which in simplest terms is a procedural law governing the legal cases related to civil nature in India. To comprehend the code it is significant to grasp that the respective legislation is divided into two parts, the first part containing 158 sections and 51 orders and rules in the first schedule which is in the second part of the code. This paper tries to comprehend the scope and significance of ambit of civil suits and jurisdiction in India by taking Section 9 of Code of Civil Procedure as the focal point of analysis and further research.

### Definition and legal jurisprudence of Section 9

Initiating with defining the Section 9 of the Code of Civil Procedure which goes like “Courts to try all civil suits unless barred: 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”. In simplest terms, the section elaborates the “civil courts in India have jurisdiction to try all civil suits or civil matters unless their cognizance is either expressly or impliedly barred”. However in the judgment of “A.R. Antulay v R.S. Nayak it was stated that it is well settled that a civil court has an inherent power to decide its own jurisdiction”. Imperative to note that definition of civil suit is not explicitly mentioned in the legislation, thus ones which are not criminal in nature and involves the private rights of the individuals involved in terms as civil suit. The Code of Civil Procedure sets out the methods and rules for conducting a lawsuit and specifies the types of cases that can be heard by civil court as mentioned in the case of “Union of India v Delhi High Court Bar Association which stated that it is not an absolute right given to anyone to decide that a case needs to be determined and entertained by the Civil Court only. Whenever a statute is silent whether the dispute is of the civil nature or not then it cannot take away the jurisdiction of the civil courts to try such matters merely on this issue”.

To further understand, Section 9 has positive and negative connotations attached to it having both positive and negative intent to it, where the one is concerned regarding the jurisdiction of the court and then latter is inference to the terms explicit and implied used in the code. Wherein, the research paper of ‘Suits of Civil Nature: A study published in the legal database of Manupatra throws a light on explicitly meaning mention of barring to try under this civil jurisdiction and impliedly refers to when the statute is providing “a legal remedy to the aggrieved party in the form of an appeal, this is an implied bar on the section 9 of the CPC that such a case cannot be tried by the civil court”. Taking into the international perspective in mind, the United States civil law is primarily governed by state law and in general, for a court to be able to hear a case in the United States, it is usually necessary for the court to

**Correspondence Author:**  
**Akshita Sharma**  
Post-Student 2<sup>nd</sup> Year, LLB,  
Department of Law, Symbiosis  
Law School, Pune,  
Maharashtra, India

have both subject matter jurisdiction and personal jurisdiction which in comparison to India is not the case. In England, the civil cases are tried and heard in the County court and in case of extreme complexity the cases are heard in the High Court again in comparison to the Indian jurisprudence which as mentioned in the Section 9 is heard by the civil courts.

### Critical analysis of Section 9 CPC

While critically analyzing the respective section, certain pointers strike my comprehension such as the extreme broad nature of the section which does not explicitly mention the types of cases that fall within the jurisdiction of civil courts. This can lead to a grave obstacle where the jurisdiction of multiple cases overlap, leading to uncertainty and vagueness. As a result, the anxious litigant may face challenges in determining the appropriate court to file their respective suit in. Another lacunae that could be identified while analysing the section here was the jurisdiction of civil courts under Section 9 is not absolute and can be affected by other provisions of the Code of Civil Procedure and other laws.

This implies that even if a civil suit is filed, the court may not have the authority to hear it if it is explicitly prohibited by law or if another law removes the jurisdiction of the civil court. However, Section 9 does not provide any lucid guidelines as to when such jurisdiction can be removed thus lack of clarity regarding territorial jurisdiction which can cause scepticism and inconsistency in the judgments given by courts. "The above limitations deciphered leads to more time taken and a delay in the justice delivery system, consequently waste of resource and increased apprehension amongst the parties at dispute". The 54th Law Commission Report also highlighted the comprehensive recodification of the code for speedy and effective administration of justice. It initiated the angle of the procedural law to be seen in the promotion of avoidance of delays in litigation and minimizing costs etc.

Another distinct subject pointed out was the lack of definition of the term civil suit in the code, being a comprehensive code the most imperative definition should have been clearly stated. Though in the case of *Kehar Sinha Nehal Singh v. Custodian General* "a legal proceeding between two parties for the redressal, determination or implementation of private rights", nevertheless amendment should be initiated to make it more coherent. Another word dictated in the section 9 of the act is the word "shall" that states compulsion meaning the court cannot reject the suit as seen in the case of *Shankar Narayan v. K. Sreedevi* which stated that "Civil Court has primary jurisdiction in all types of civil matters as per Section 9 of CPC unless the action is expressly or impliedly barred".

Another lacuna which could be gathered from the analysis is the case might have conflicting laws, this means that even if a suit is of a civil nature, the court may not have jurisdiction to hear it if it is expressly barred by law or if another law specifically ousts the jurisdiction of the civil court. Reading the section in the broader picture it gets more evident that the section has limited scope in the sense of only dealing with civil suits and ousting other nature of disputes such as criminal and constitutional.

### Conclusion and Suggestions

Certain suggestions that can be incorporated to make Section 9 more comprehensive and in general the Code of Civil Procedure ameliorated are as follows:

- a) **Review and Revision:** It is the clear responsibility of the parliament to initiate an amendment procedure to make the section MOR inclusive and lucid and certain things to be amended could be defining civil courts, types of civil cases under the jurisdiction providing proper guidelines to make it less ambiguous.
- b) **Simplification of the legal language:** One way to achieve this is by creating legal documents in plain language, offering legal assistance to litigants who are not familiar with legal jargon, and motivating lawyers to use less complex language in court.
- c) **Digitalization:** Modernizing the legal system can be done by digitizing court proceedings and developing online platforms for submitting cases and retrieving case records. This will aid in reducing the backlog of cases and increasing the availability of justice.
- d) **Alternative Dispute Resolution:** The act can be amended to promote ADR mechanisms like arbitration, mediation and conciliation this will aid in reducing the burden on the judiciary.

In conclusion, although Section 9 of the Code of Civil Procedure is a vital provision that defines the fundamental principle of civil court jurisdiction, it has some flaws that require attention. These loopholes can create ambiguity, inconsistency, and delay in resolving disputes, underscoring the necessity for regular reviews and modifications to ensure the provision stays meaningful and efficient. Code of Civil Procedure being an evolving jurisprudence with multiple judicial pronouncements embodying the principles of natural justice and Latin maxims such as *Audi Alteram Partem* further affirms the objective of such legislations that can be more effective with further amendments. The basic rational behind formation of certain procedural codes such as Code of Civil Procedure and Code of Criminal Procedure is to instrument the principles mentioned in the Constitution keeping in mind the principles of natural justice such as fair trial, reasonable time and notice etc which needs to be kept in mind at all times.

### References

1. Astha Tripathi, Srishti Nigam. Suits of Civil Nature: A Study, Manupatra; c2021 Jul 8. <https://articles.manupatra.com/article-details/Suits-of-Civil-Nature-A-Study>.
2. Nupur Thapliyal. Objective of Interrogatories is to narrow controversy, can't be used by plaintiff for substituting burden of proof: Delhi High Court, LIVE LAW; c2022 Oct 3. <https://www.livelaw.in/news-updates/cpc-interrogatories-plaintiff-burden-of-proof-delhi-high-court-210849>.
3. Ashutosh Sahu. Inherent Powers of Courts under the Code of Civil Procedure, 1(3) JCLJ, 332-342.
4. Code of Civil Procedure, (§) (India); c1908, 5(5).
5. Aryan Birewar. Code of Civil Procedure, 1908 – A Critical Analysis, IJLMH. 2021;4(6):1337-1343. <https://doij.org/10.1000/IJLMH.112330>.
6. Courts and tribunals judiciary. <https://www.judiciary.uk/about-the-judiciary/our-justice-system/jurisdictions/civil->

