

Section 9 of Civil Procedure Code with reference to Jurisdiction
under Various Special Enactments

by

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INTRODUCTION

Jurisdiction derived from the Latin word "jurisdictio", Juris meaning "law" and dictio meaning "to speak" is the practical authority granted to a formally constituted legal body to deal with and make pronouncements on legal matters and, by implication, to administer justice within a defined area of responsibility. The term is also used to denote the geographical area or subject-matter to which such authority applies.

Jurisdiction draws its substance from public international law, conflict of laws, constitutional law and the powers of the executive and legislative branches of government to allocate resources to best serve the needs of its native society.

The word jurisdiction signifies the scope of power and authority Jurisdiction is the extent of the power which is conferred upon the court by its constitution to try a proceeding .It is a power of a court to hear and determine a cause, to adjudicate or exercise judicial power.

In the year 1928, the Calcutta High Court attempted to explain the meaning of the term jurisdiction in the case of **Hriday Nath Roy v. Akhil Chandra Roy**, the court stated: "*jurisdiction is the power of the court to hear and determine a cause, to adjudicate and exercise judicial powers in relation to it.*" It went further and demarcated three different categories of jurisdictions:

1. Subject matter jurisdiction:

Subject matter implies the main or the fundamental matter of a particular nature which is under question subject matter jurisdiction essentially states whether the court has the authority to try the subject matter in question. It primarily specifies whether the courts are allowed to try matters of a certain nature. If not, then the courts cannot try that particular case.

2. Pecuniary jurisdiction:

Pecuniary implies related to capital. It means of a certain monetary value. A court can have certain financial limitations which the courts should adhere to and

beyond which the courts cannot try the matter. The primary aim of setting a pecuniary Jurisdiction is to preclude the higher courts from getting burdened and at the same time extend help to the parties.

3. Territorial jurisdiction:

Also known as local jurisdiction, territorial jurisdiction lays down the geographical limits of a court's authority. It ensures that such limits of courts are clarified clearly and specifically. No court is authorized to try matters which exist beyond their respective territorial limit.

Apart from the above three classifications, jurisdictions are also divided on the basis of "original", and "appellate Jurisdiction or "exclusive" and "concurrent jurisdiction" Additionally, the jurisdiction of the court is not decided on the arguments of the defense but on the basis of the allegations made in the complaint. An order passed by court lacking jurisdiction is nullified and is unenforceable.

The maxim "Ubi Jud Ibi Remedium" (where ever there is a right there is a remedy), it is a fundamental principle of law. Any person having a right has a corresponding remedy to institute suits in a court unless the jurisdiction of the court is barred. Whenever the object of the proceedings is the enforcement of civil rights, a civil court has jurisdiction to entertain the suit independently.

Section 9 of C.P.C deals with jurisdiction of civil courts to try cases which are civil in nature and which arises out of civil dispute subjected to bar of cognizance to try those cases.

Disputes may either be of a civil nature or not of a civil nature. This section only empowers a court to entertain actions of a civil nature. Any proceeding which involves the assertion or enforcement of a civil right is a civil proceeding. A civil proceeding is a process for recovery of individual right or redress of individual rights. Civil courts have jurisdiction over all suits of a civil nature, unless their cognizance is either expressly or impliedly barred. A suit of a civil nature is a proceeding, the object of which is enforcement of rights and obligations of citizens.

In Section 9 of the C.P.C, it states that ***"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."*** Here, the term "expressly barred" refers to situations where a specific law or statute explicitly states that a particular type of suit cannot be heard by the courts.

Expressly or impliedly barred:

1. Suits expressly barred - A suit barred by an enactment for the time being in force is said to be expressly barred. A competent legislature can bar jurisdiction of civil courts with respect to a particular class of suits of a civil nature, provided that, in doing so, it keeps itself within the field of legislation conferred on it and does not contravene any provision of the Constitution. Hence, a suit is said to expressly barred when it is prohibited by the statute for the time being in force.

2. Suits impliedly barred - A suit barred by general principles of law is said to be impliedly barred. Where the statute provides a specific remedy, it deprives the person of a remedy of any other form. Similarly, even civil suits are barred from the cognizance of a civil court on the ground of public policy. A suit is said to be impliedly barred when it is said to be excluded by general principles of law. When a specific remedy is given by statute, it, therefore, denies a person who requires a remedy of any different form than is given by statute.

SUMMARY:

Section 9 of the C.P.C. provides that the civil courts have the jurisdiction to try all suits of a civil nature unless their jurisdiction is expressly or impliedly barred by a specific statute. This section ensures that individuals have the right to approach civil courts for the enforcement of their civil rights. However, if a law explicitly or implicitly restricts the civil court's jurisdiction in certain matters (e.g. tribunals or special forums), then the civil court cannot entertain such cases.

Key Points:

- i. Grants civil courts broad jurisdiction over civil matters.
- ii. Excludes cases where jurisdiction is barred by law.
- iii. Ensures protection and enforcement of civil rights.

Section 9 of the Civil Procedure Code, 1908, says that civil courts have the authority to hear all suits of a civil nature unless a specific law says otherwise. In simple terms, if someone's civil rights like property, contracts, or personal rights are affected, they can approach a civil court, unless there's a law that clearly says a civil court can't deal with that kind of issue.

The Civil Procedure Code, 1908 (C.P.C) lays down the procedural framework for civil litigation in India. Section 9 of the C.P.C is a foundational provision that grants jurisdiction to civil courts to adjudicate civil disputes. It embodies the principle *Ubi Jus Ibi Remedium* – Where there is a right, there is a remedy.

2. Suits of Civil Nature:

The term "civil nature" is not defined in the C.P.C, but generally, it includes suits pertaining to private rights such as property rights, contracts, torts, service matters, etc. Explanation I & II (added in the 1976 Amendment) broaden the scope:

- Explanation I: A suit where the right to property or to an office is contested is a suit of civil nature even if it involves religious rites.
- Explanation II: It is immaterial whether any fees are attached to the office or not.

3. Bar of Jurisdiction:

Jurisdiction can be expressly barred by specific statutes (e.g., Consumer Protection Act, Industrial Disputes Act). It can also be impliedly barred when special tribunals or authorities are designated to handle particular matters.

For example, if there is a specific statute or law that prohibits a court from hearing a particular type of suit, such as a suit involving a matter that falls under the exclusive jurisdiction of a specialized tribunal, then the court's jurisdiction may be expressly barred. On the other hand, if there is a legal principle or doctrine that suggests that a court should not entertain a certain type of suit, even if there is no explicit provision, then the court's jurisdiction may be impliedly barred.

Section 9 of the C.P.C is an important provision that establishes the general rule of jurisdiction for civil courts in India and serves as a basis for determining whether a court has the authority to hear a particular civil suit or not.

LEGISLATIVE ANALYSIS

If the civil suit desires to have jurisdiction, two requirements must be met:

- The conflict must be of a civil nature, and
- The courts ability to hear such matters is not barred.
 1. Although the term "civil" is not defined anywhere in the Civil Procedure Code, it generally refers to the remedies that relate to an individual's rights as opposed to criminal or political rights.
 2. The term "civil nature" refers to a citizen's personal freedoms and responsibilities. A lawsuit that has caste or religion as its main issue is not protected. Whether or not there are expenses involved or the case is associated with a specific party, a lawsuit involving a religious office is maintainable.

3. The word "shall" makes it necessary for the courts to consider a case if it fits the section's definition. The expression "nature" refers to its intrinsic characteristics, such as its sort, kind, and character. Examples of civil lawsuits include those involving property, the right of worship, the disruption of religious processions, and damages for civil wrongs.

SECTION 9 - SCOPE AND APPLICATION:

Suits of civil nature are instituted and tried by the civil courts. The court means that apart from having the trappings of some judicial tribunal should also have the capacity and the power to give the definitive judgment which is finality and has authority, which is the essential of the judicial pronouncements. Section 9 of the C.P.C gives the power to the Civil Courts to try the suits which are of civil nature and are not either expressly or impliedly barred by any other law. Hence, a civil court can try a case if -

- The suit in the question is of a civil nature:

The cognizance of the suit is not expressly or impliedly barred by any other statute. The definition of the civil suit is not enunciated anywhere in the Code. It can be said that a suit which is not criminal in nature is a civil suit. A suit that determines the civil rights of the person can be termed as the civil suit. A proceeding which addresses the redressal of the private rights is a civil action. It was held in the case of **Dhruv Green Field vs. Hukam Singh**, AIR 2002 SC 2841 Hon'ble Supreme court held that whenever a special statute provides for the exclusion of the civil courts to entertain a suit then it should be construed strictly but in a case where a civil court has the power grant relief to one of the part of the suit then it has the jurisdiction to entertain such a suit.

In **Union of India v. Delhi High Court Bar Assn**, AIR 2002 SC 1479 Hon'ble Supreme court held 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.

CLASSES OF SUITS:

Suits may be divided into two classes –

- 1) Those of a civil nature and
- 2) Those not of a civil nature.

It is only the former suits that a Civil court has jurisdiction to entertain. A

Civil court has no jurisdiction to try suits which are not of a civil nature.

Suits of Civil Nature

A suit is of a civil nature if the principal question therein relates to a civil or legal right. Explanation to the section specifies that if the principal or only question in the suit is a caste question or a question relating to religious rites or ceremonies, the suit is not of a civil nature for it deals not with the rights of the citizen but with matters that are purely social. However, when

- 1) A caste question or a question relating to religious rites or ceremonies is not the principal question in the suit, but is merely a subsidiary question and
- 2) The principal question is of a civil nature eg a question as to any right to property or to an office or to any other civil right and
- 3) The principal question, which is of a civil nature, cannot be determined without deciding the caste question or the question relating to religious rites or ceremonies, the court has the power to decide the caste question or the question relating to religious rites or ceremonies, to enable it to decide the principal question. "**Sarda Kunwar v Gajanand** AIR 1942 All 320; **Thiruvankata Ramanuja v Venkatacharlu** AIR 1947 PC 53 : 73 IA 156 : 1947 ILR Mad 436 : 229 IC 380 ; **Lalji v Walji** (1895) ILR 19 Bom 507; **Pragji v Govind** (1887) ILR 11 Bom 534; **Ramakrishna v Gangadhar** AIR 1968 Ori 26". It is upon this principle that Explanation I to the section is based.

The bar may be provided explicitly or impliedly to file civil suit. A bar is said to be an explicit bar when it is clearly provided in the statute that the civil courts will be barred from trying this kind of suit. An implied bar is 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 C.P.C that such a case cannot be tried by the civil court.

An inherent lack of jurisdiction is a case when the court has no jurisdiction to try the case so the decree passed in such a case will be a nullity. Whether the court has jurisdiction or not can be decided once the issues are framed and the arguments are advanced. It was held by the court in the case of **Mathura Prasad Bajoo Jaiswal v. Dosibai N.B. Jeejebhoy**, AIR 1971, SC 2355 where a decision is given by the court when the court had no jurisdiction then it would not be considered as the res judicata in the subsequent proceeding in the same matter in issue between the same parties.

In a case where more than one court has jurisdiction to try a case then an agreement can be made between the parties to submit the dispute to one of the courts and such an agreement will not be considered as against the public policy.

In other words it can be said that the theory of jurisdiction as enunciated under Section 9 of the C.P.C was discussed by the Hon'ble Supreme Court in the case of **PMA Metropolitan v. M.M. Marthane**, AIR 1995 SC 2001 as follow:

The phrases used in the Section 9 of the C.P.C have both the positive and negative intent. Section 9 is divided into two parts wherein one part talks about the jurisdiction to try the civil cases and the other part talks about the suit that are impliedly and expressly barred to be tried by the civil courts.

The use of word shall in the section denote that the law envisaged in the provision must be follows scrupulously. After reading the concept underlying Section 9 of CPC, we can say that the civil court tries only suits of civil nature. And the cases which are not of civil nature or the suits which are expressly or impliedly barred are tried either in tribunals or councils or special courts specified under any enactment.

The questions purely relating to caste or religious ceremonies are decided by the community or religious heads like priests, spiritual heads, etc. On the other side, questions that are political in nature are decided by public administrative authorities.

When there is no dispute as to the nature of the suits instituted in the civil court being civil in nature but while researching the researcher found out that there are lot of sham complaints that are presented before the court which in turn burden the court as well as cause prejudice to another party. According to Order VII Rule 11 there is a remedy which empowers the court to dismiss a suit at the threshold even without recording the evidences, conducting trial if the court is satisfied that if it falls under any of the grounds contained in this provision.

The courts are free to reject the vexatious complaints in order to save the time of the courts as the judicial time is precious. The power which has been given to the court under Order 7 Rule 11 is mandatory in nature and can be exercised at any time and at any stage of the suit. The Hon'ble Supreme Court in the recent case of **Dahiben v. Arvinbhai Kalyanji Bhanusali**, AIR 2020 SC 3310 has dismissed an appeal against the order of the lower court and upheld the order of the lower court which rejected the complaint at the threshold because it was found that institution of the complaint by the plaintiff was nothing but a clear abuse of process of law and was also bereft of any merit.

The litigants have the choice to seek the rejection of the plaint at the threshold when the suit fails in disclosing a cause of action which is valid in eyes of law, or is barred by any law or the reliefs which are sought and prayed are un-remediable and defective and not in the line of Order VII Rule 11. Litigants need to be careful that the courts while exercising the power under Order VII Rule 11 cannot go into the merit of the case and the court makes its decision and determination only by scrutinizing the averments that are made out in the plaint which is presumed to be true. The courts also need to be very cautious while exercising their powers under the said Order as the plaint that prima facie provides for a cause of action is not to be rejected at the threshold.

Jurisdiction Of Civil Court Under Civil Procedure Code

Section 9 of C.P.C deals with the jurisdiction of civil courts in India. It says that 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.

- Explanation I- a suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of questions as to religious rites or ceremonies.
- Explanation II- for the purpose of this section, it is immaterial whether or not any fees are attached to the office referred to in explanation I or whether or not such office is attached to a particular place.

Conditions

A civil court has jurisdiction to try a suit if two conditions are fulfilled:

1. The suit must be of a civil nature;
2. The cognizance of such a suit should not have been expressly or impliedly barred.

(a) Suit of civil nature:-

i. meaning:- in order that a civil court may have jurisdiction to try a suit, the first condition which must be satisfied is that the suit must be of a civil nature? The word 'civil' has not been defined in the code. But according to the dictionary meaning, it pertains to private rights and remedies of a citizen as distinguished from criminal, political, etc. the word 'nature' has been defined as 'the fundamental qualities of a person or thing; identity or essential character; sort, kind, character". It is thus wider in content. The expression 'civil nature' is

wider than the expression 'civil proceedings'. Thus, a suit is of a civil nature if the principal question therein relates to the determination of a civil right and enforcement thereof. It is not the status of the parties to the suit, but the subject matter of it which determines whether or not the suit is of a civil nature.

ii. Nature and scope- the expression "suit of a civil nature" will cover private rights and obligations of a citizen. Political and religious questions are not covered by that expression. A suit in which the principal question relates to caste or religion is not a suit of a civil nature. But if the principal question in a suit is of a civil nature (the right to property or to an office) and the adjudication incidentally involves the determination relating to a caste question or to religious rights and ceremonies, it does not cease to be a suit of a civil nature and the jurisdiction of a civil court is not barred. The court has jurisdiction to adjudicate upon those questions also in order to decide the principal question which is of a civil nature. Explanation II has been added by the amendment act of 1976. before this explanation, there was a divergence of judicial opinion as to whether a suit relating to a religious office to which no fees or emoluments were attached can be said to be a suit of a civil nature. But the legal position has now been clarified by explanation II which specifically provides that a suit relating to a religious office is maintainable whether or not it carries any fees or whether or not it is attached to a particular place.

iii. Doctrine explained- explaining the concept of jurisdiction of civil courts under Section 9, in **PMA Metropolitan v. M.M. Marthoma**, the Hon'ble Supreme Court stated: *"the expansive nature of the section is demonstrated by use of phraseology both positive and negative. The earlier part opens the door widely and latter debars entry to only those which are expressly or impliedly barred. The two explanations, one existing from inception and later added in 1976, bring out clearly the legislative intention of extending operation of the section to religious matters where right to property or office is involved irrespective of whether any fee is attached to the office or not. The language used is simple but explicit and clear. It is structured on the basic of a civilized jurisprudence that absence of machinery for enforcement of right renders it nugatory. The heading which is normally a key to the section brings out unequivocally that all civil suits are cognizable unless bared. What is meant by it is explained further by widening the ambit of the section by use of the word 'shall' and the expression 'all suits of a civil*

nature unless expressly or impliedly barred'. Each word and expression casts an obligation on the court to exercise jurisdiction for enforcement of rights. The word shall make it mandatory. No court can refuse to entertain a suit if it is of the description mentioned in the section. That is amplified by the use of the expression. 'all suits of civil nature'. The word civil according to the dictionary means, relating to the citizen as an individual; civil rights' In Black's legal dictionary it is defined as, 'relating to provide rights and remedies sought by civil actions as contrasted with criminal proceedings'. In law it is understood as an antonym of criminal. Historically the two broad classifications were civil and criminal. Revenue, tax and company etc. were added to it later. But they too pertain to the larger family of civil. There is thus no doubt about the width of the word civil. Its width has been stretched further by using the word nature along with it. That is even those suits are cognizable which are not only civil but are even of civil nature. The word 'nature' has defined as 'the fundamental qualities of a person or thing; identity or essential character, sort;kind;character'. It is thus wider in content. The word 'civil nature' is wider than the word 'civil proceeding'. The section would, therefore, be available in every case where the dispute was of the characteristics of affecting one's rights which are not only civil but of civil nature."

iv. Test: a suit in which the right to property or to an office is contested is a suit of a civil nature, notwithstanding that such right may depend entirely on the decision of a question as to religious rites or ceremonies.

v. Suits of civil nature: illustrations- the following are suits of a civil nature.

1. Suits relating to rights to property;
2. Suits relating to rights of worship;
3. Suits relating to taking out of religious procession;
4. Suits relating to right to share in offerings;
5. Suits for damages for civil wrongs;
6. Suits for specific performance of contracts or for damages for breach of contracts;
7. Suits for specific relief's;
8. Suits for restitution of conjugal rights;
9. Suits for dissolution of marriages;
10. Suits for rent;
11. Suits for or on account;
12. Suits for rights of franchise;
13. Suits for rights to hereditary offices;

14. Suits for rights to Yajmanvritis;
15. Suits against wrongful dismissal from service and for salaries, etc.
16. Suits not of civil nature- illustrations- the following are not suits of a civil nature;
17. Suits involving principally caste questions;
18. Suits involving purely religious rites or ceremonies;
19. Suits for upholding mere dignity or honor;
20. Suits for recovery of voluntary payments or offerings;
21. Suits against expulsions from caste, etc.

(b) Cognizance not barred as stated above, a litigant having a grievance of a civil nature has a right to institute a civil suit unless its cognizance is barred, either expressly or impliedly.

- i. Suits expressly barred- a suit is said to be 'expressly barred ' when it is barred by any enactment for the time being in force. It is open to a competent legislature to bar jurisdiction of civil courts with respect to a particular class of suits of a civil nature, provided that, in doing so, it keeps itself within the field of legislation conferred on it and does not contravene any provision of the constitution. But every presumption should be made in favor of the jurisdiction of a civil court and the provision of exclusion of jurisdiction of a court must be strictly construed. If there is any doubt about the ousting of jurisdiction of a civil court, the court will lean to an interpretation which would maintain the jurisdiction. Thus, matters falling within the exclusive jurisdiction of revenue courts or under the code of criminal procedure or matters dealt with by special tribunals under the relevant statutes e.g. by industrial tribunal, income tax tribunal, revenue tribunal, electronic tribunal, rent tribunal, cooperative tribunal, motor accident claims tribunal, etc. or by domestic tribunals, Bar Council, Medical Council, university, club etc. are expressly barred from the cognizance of a civil court. But if the remedy provided by a statute is not adequate and all questions cannot be decided by a special tribunal, the jurisdiction of a civil court is not barred. Similarly, when a court of limited jurisdiction prima facie and incidentally states something, the jurisdiction of a civil court to finally decide the time is not ousted.
- ii. Suits impliedly barred- a suit is said to be impliedly barred when it is barred by general principles of law. Where a specific remedy is given by a statute, it thereby deprives the person who insists upon a remedy of any other form than that given by the statute. Where an act creates an obligation and enforces its

performance in a specified manner, that performance cannot be enforced in any other manner. Similarly, certain suits, though of a civil nature, are barred from the cognizance of a civil court on the ground of public policy. "the principle underlying is that a court ought not to countenance matters which are injurious to and against the public weal." Thus, no suit shall lie for recovery of costs incurred in criminal prosecution or for enforcement of a right upon a contract hit by section 23 of the Indian Contract Act, 1872; or against any judge for acts done in the course of his duties. Likewise, political questions belong to the domain of public administrative law and are outside the jurisdiction of civil courts. A civil court has no jurisdiction to adjudicate upon disputes of a political nature. Who may decide? It is well settled that a civil court has inherited power to decide its own jurisdiction. Presumption as to jurisdiction In dealing with the question whether a civil court's jurisdiction to entertain a suit is barred or not, it is necessary to bear in mind that every presumption should be made in favor of the jurisdiction of a civil court. The exclusion of jurisdiction of a civil court to entertain civil causes should not be readily inferred unless the relevant statute contains an express provision to that effect, or leads to a necessary and inevitable implication of the nature.

Exclusion of jurisdiction:

A litigation having a grievance of a civil nature has, independent of any statute, a right to institute a suit in a civil court unless its cognizance is either expressly or impliedly barred. The exclusion of the jurisdiction of a civil court is not to be readily inferred and such exclusion must be clear. Again, even when the jurisdiction of a civil court is barred, either expressly or by necessary implication, it cannot be said that the jurisdiction is altogether excluded.

A court has jurisdiction to examine whether the provisions of the act and the rules made there under have or have not been complied with, or the order is contrary to law, malafide, ultra vires, perverse, arbitrary, 'purported', violative of the principles of natural justice, or is based on 'no evidence' and so on. In all these cases, the order cannot be said to be under the act but is de hors the act and the jurisdiction of a civil court is not ousted.

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Presumption as to jurisdiction

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Burden of proof

It is well- settled that it is for the party who seeks to oust the jurisdiction of a civil court to establish it. It is equally well settled that a statute ousting the jurisdiction of a civil court must be strictly construed. Where such a contention is raised, it has to be determined in the light of the words used in the statute, the scheme of the relevant provisions and the object and purpose of the enactment. In the case of a doubt as to jurisdiction, the court should lean towards the assumption of jurisdiction. A civil court has inherent power to decide the question of its own jurisdiction; although as a result of such inquiry it may turn out that it has no jurisdiction to entertain the suit.

In the leading decision of **Secretary of State v. Mask & Co.**, the Privy Council rightly observed: *"it is settled law that the exclusion of the jurisdiction of the civil court is not to be readily inferred, but that such exclusion must either be explicitly expressed or clearly implied. It is also well established that even if jurisdiction is so excluded the civil courts have jurisdiction to examine into cases where the provisions of the act have not been complied with, or the statutory tribunal has not acted in conformity with the fundamental principles of judicial procedure."*

It is respectfully submitted that the following observations of Subba Rao, J. (as he then was) in the leading case of **Radha Kishan v. Ludhiyana Municipality** lay down the correct legal position regarding jurisdiction of civil courts and require to be produced: "under section 9 of the civil procedure code the court shall have jurisdiction to try all suits of civil nature excepting suits of which cognizance is either expressly or impliedly barred. A statute, therefore, expressly or by necessary implication can bar the jurisdiction of civil courts in respect of a particular matter. The mere conferment of special jurisdiction on a tribunal in respect of the said matter does not in itself exclude the jurisdiction of civil courts.

The statute may specifically provide for ousting the jurisdiction of civil courts; even if there was no such specific exclusion, if it creates liability not existing before and gives a special and particular remedy for the aggrieved party,

the remedy provided by it must be followed. The same principle would apply if the statute had provided for the particular forum in which the remedy could be had.

Even in such cases, the civil court's jurisdiction is not completely ousted. A suit in a civil court will always lie to question the order of a tribunal created by statute, even if its order is, expressly or by necessary implication, made final, if the said tribunal abuses its power or does not act under the act but in violation of its provisions."

Exclusion of jurisdiction of civil court: Principles from the above discussion it is clear that the jurisdiction of civil courts is all- embracing except to the extent it is excluded by law or by clear intendment arising from such law.

In the classic decision of **Dhulabhai v. State of M.P.**, after considering a number of cases, Hidayatullah, C.J. summarized the following principles relating to the exclusion of jurisdiction of civil courts:

- a) Where a statute gives finality to orders of special tribunals, the civil courts jurisdiction must be held to be excluded if there is adequate remedy to do what the civil courts would normally do in a suit. Such a provision, however, does not exclude those cases where the provisions of a particular act have not been complied with or the statutory tribunal has not acted in conformity with fundamental principles of judicial procedure.
- b) Where there is an express bar of jurisdiction of a court, an examination of the scheme of a particular act to find the adequacy or sufficiency of the remedies provided may be relevant but this is not decisive for sustaining the jurisdiction of a civil court. Where there is no express exclusion, the examination of the remedies and the scheme of a particular act to find out the intendment becomes necessary and the result of the inquiry may be decisive. In the latter case, it is necessary to see if a statute creates a special right or a liability and provides for the determination of the right or liability and further lays down that all questions about the said right and liability shall be determined by tribunals so constituted, and whether remedies normally associated with actions in civil courts are prescribed by the said statute or not.
- c) Challenge to the provisions of a particular act as ultra vires cannot be brought before tribunals constituted under that act. Even the high court cannot go into that question on a revision or reference from decisions of tribunals.

- d) When a provision is already declared unconstitutional or the constitutionality of any provisions is to be challenged, a suit is open. A writ of certiorari may include a direction for refund if the claim is clearly within the time prescribed by the limitation act but it is not a compulsory remedy to replace a suit.
- e) Where the particular act contains no machinery for refund of tax collected in excess of constitutional limits or is illegally collected, a suit lies.
- f) Questions of the correctness of an assessment, apart from its constitutionality, are for the decision of the authorized and a civil suit does not lie if the orders of the authorities are declared to be final or there is an express prohibition in a particular act. In either case, the scheme of a particular act must be examined because it is a relevant enquiry.
- g) An exclusion of jurisdiction of a civil court is not readily to be inferred unless the conditions above set down apply. The above principles enunciated are relevant in deciding the correctness or otherwise of assessment orders made under taxing statutes. In **Premier Automobiles v. K.S. Wadke**, the Hon'ble supreme court laid down the following principles as applicable to the jurisdiction of a civil court in relation to industrial disputes:
 - h) If a dispute is not an industrial dispute, nor does it relate to enforcement of any other right under the act, the remedy lies only in a civil court.
 - i) If a dispute is an industrial dispute arising out of a right or liability under the general or common law and not under the act, the jurisdiction of a civil court is alternative, leaving it to the election of a suitor or person concerned to choose his remedy for the relief which is competent to be granted in a particular remedy.
 - j) If an industrial dispute relates to the enforcement of a right or an obligation created under the act, then the only remedy available to suitor is to get adjudication under the act.
 - k) If the right which is sought to be enforced is a right created under the act such as chapter V- A, then the remedy for its enforcement is either section 33-C or the raising of an industrial dispute, as the case may be. Again, in **Rajasthan State Road Transport Corpn. Vs. Krishna Kant**, after considering various leading decisions on the point, the Hon'ble Supreme Court summarized the principles applicable to industrial disputes thus:
 - 1. Where a dispute arises from the general law of contract, i.e., where relief's are claimed on the basis of the general law of contract, a suit filed in a civil court cannot be said to be not maintainable, even though such a

dispute may also constitute an "industrial dispute" within the meaning of section 2(k) or section 2-A of the industrial Dispute Act, 1947.

2. Where, however, a dispute involves recognition, observance or enforcement of any of the rights or obligations created by the industrial Dispute Act, the only remedy is to approach the forums created by the said act.
3. Similarly, where a dispute involves the recognition, observance or enforcement of rights and obligations created by enactments, like the industrial employment (standing order) act, 1946- which can be called "sister enactments" to the industrial dispute act- and which do not provide a forum for resolution of such disputes, the only remedy shall be to approach the forums created by the industrial dispute act provided they constitute industrial disputes within the meaning of section 2(k) and section 2-A of the industrial dispute act or where such enactments say that such dispute shall be adjudicated by any of the forums created by the industrial disputes act. Otherwise, recourse to a civil court is open.
4. It is not correct to say that remedies provided by the industrial disputes act are not equally effective for the reason that access to a forum depends upon a reference being made by the appropriate government. The power to make a reference conferred upon the government is to be exercised to effectuate the object of the enactment and hence is not unguided. The rule is to make a reference unless, of course, the dispute raised is a totally frivolous one *ex facie*. The power conferred is the power to refer and not the power to decide, though it may be that the government is entitled to examine whether the dispute is *ex facie* frivolous, not meriting adjudication.
5. Consistent with the policy of law aforesaid, we commend to parliament and state legislature to make a provision enabling a workman to approach the labor court- i.e., without the requirement of a reference by the government- in case of industrial dispute covered by section 2-A of the industrial disputes act. This would go a long way in removing the misgiving with respect to the effectiveness of the remedies provided by the industrial disputes act.
6. The certified standing orders framed in accordance with the industrial dispute act and its sister enactment is to provide an alternative dispute-resolution mechanism to workmen, a mechanism which is speedy,

inexpensive, informal and unencumbered by the plethora of procedural laws and appeals upon appeals and revisions applicable to civil courts. Indeed, the powers of courts and tribunals under the industrial disputes act are far more extensive in the sense that they can grant such relief as they think appropriate in the circumstances for putting an end to an industrial dispute.

Very recently, in **Chandrakant Tukaram v. Municipality Corporation of Ahmedabad**, the Hon'ble Supreme Court reiterated the principles laid down in earlier decisions and stated: "*it cannot be disputed that the procedure followed by civil courts are too lengthy and, consequently, are not an efficacious forum for resolving the industrial disputes speedily. The power of the industrial courts also is wide and such forums are empowered to grant adequate relief as they just and appropriate. It is in the interest of the workmen that their disputes, including the dispute of illegal termination, are adjudicated upon by an industrial forum.*"

Members of a religious body possess the right to conduct a religious procession with its appropriate observances along a highway and a suit will lie against those who prevent the procession and its observances. The worshipers in a mosque or a temple that abuts on a high road could not compel the processionists to intermit their worship while passing the mosque or temple on the ground that continuous worship was conducted there. But, no single sect can claim the exclusive use of the highway for their worship. **Chandu Sajan patel v Nyahal Chand** 52 BLR 214: 1950 ILR Bom 192; **Sangabasavaswami v Mahanta swami** 1946 ILR Bom 437: 48 BLR 100 : AIR 1946 Bom 353.

Jurisdiction of Civil Courts in Land Acquisition:

In State of **Bihar Vs Dharendra Kumar and others** - 1995 (3) ALT(D.N.) 8.2 (D.B.), it was held that under Sections 4(1), 6, and 9 of the Land Acquisition Act, 1894, and Section 9 and Order 39 Rule 1 of the Civil Procedure Code, 1908, civil courts lack jurisdiction to question the validity or legality of notifications issued under the Land Acquisition Act, as this authority is exclusively vested in the High Court.

Jurisdiction of Civil Courts under the Madras Minor Inams Act:

In **R.Manicka Naicker Vs E. Elumalai Naicker** - 1995 (3) ALT(D.N.) 52.1 (D.B.), it was held that under Section 9 of the Civil Procedure Code, 1908, and the Madras Minor Inams (Abolition and Conversion into Ryotwari) Act, 1963, civil courts

retain jurisdiction to determine the title to minor inam lands that were abolished under the Act, as well as to assess whether a lessor has the right to evict a lessee from those lands, as the Act does not oust the jurisdiction of civil courts in such matters.

Suit for Declaration of Scheduled Tribe Status:

In State of **Tamil Nadu and others Vs A. Gurusamy** - 1997 (2) ALT(D.N.) 14.2 (D.B.), it was held that under Section 9 of the Civil Procedure Code, 1908, a suit for a declaration that the respondent belongs to the Scheduled Tribe "Kattunaicken" in Tamil Nadu is maintainable, affirming the jurisdiction of civil courts to adjudicate on matters concerning the status of individuals in relation to scheduled tribes.

Jurisdiction of Civil Courts and Land Tribunal Orders:

In **Balawwa and another Vs Hasanbi and others** - 2001 (1) ALT(D.N.)(SC) 18.2 (D.B.), The Hon'ble Supreme Court addressed the jurisdiction of civil courts in the context of the Karnataka Land Reforms Act, 1961, specifically Sections 48 and 48-A. The case involved a dispute over the title of two out of four landed properties, where the defendants claimed exclusive rights based on an order from the Land Tribunal. The trial court granted a decree for partition, which was partially upheld by the lower appellate court but reversed regarding the landed properties, citing the Tribunal's order as conferring exclusive title. The Hon'ble Supreme Court reversed the lower appellate court's decision, asserting that the jurisdiction of civil courts is not ousted by the Tribunal's orders unless the relief sought could be granted by the Tribunal under the special statute. The Court concluded that the Tribunal's jurisdiction was limited to declaring occupancy rights and did not extend to ousting civil court jurisdiction regarding partition claims, thereby affirming the plaintiff's right to a share in the property.

Suit for Recovery of Amounts and Limitation

In **Wipro Products Ltd. and another Vs Akbar S Noorani** - 2013 (6) ALT 421 (D.B.), the court addressed a suit filed by the plaintiff, a trader in edible oils, for recovery of various amounts totaling Rs.14,10,000/- arising from business transactions with the defendants, manufacturers of edible oils. The plaintiff's claims included Rs.1,10,000/- as a stockist deposit, Rs.3 lakhs for goodwill, Rs.3 lakhs for breach of contract, and Rs.7 lakhs for malicious prosecution. The trial court partially decreed the suit, allowing only the claim for the deposit, while dismissing

the other claims as barred by limitation. The appeals from both parties were dismissed, with the court noting that the plaintiff failed to demonstrate that the criminal complaint against him was false or motivated by malice, and that the claims for goodwill and damages were filed too late, originating from events in 1980 but not pursued until 1987. The court upheld the trial court's judgment, affirming the refund of the deposit while rejecting the defendants' counterclaim due to lack of timely action.

Jurisdiction of Civil Courts in Temple Management Dispute:

In **Sahebgouda (dead) by LRs and others Vs Ogeppa and others** - 2003 (5) ALT(D.N.)(SC) 1.2 (D.B.), the Hon'ble Supreme Court addressed a suit concerning the appellants' claim to be ancestral pujaris of a temple, seeking a declaration of their rights and an injunction against the respondents. The trial court partially decreed the suit, affirming the puja rights of both parties, but the High Court later ruled that the jurisdiction of civil courts was barred under Section 80 of the Bombay Public Trust Act, 1950. The Hon'ble Supreme Court overturned this decision, stating that the bar in Section 80 specifically applies to questions that must be decided by an officer or authority under the Act, which did not encompass the issues at hand. The Court found the High Court's interpretation erroneous, set aside its judgment, and remanded the matter for fresh consideration.

Benami Transactions (Prohibition) Act 1988

Section 4 of Benami Transactions (Prohibition) Act 1988, bars the suit to enforce any right in respect of benami property. The section is prospective and does not affect suit or other proceedings pending on the date of its enforcement (19.5.1988) vide **Rajagopal Reddy v. Padmini Chandrasekharan** AIR 1996 SC 238.

However, the Act does not prohibit such suit, defence or plea if property is purchased by a person in favour of his wife or unmarried daughter vide **Nand Kishore Mehra v. Sushila Mehra** AIR 1995 SC 2145 and **Rebti Devi v. Ram Dutt** AIR 1998 SC 310.

In **C. Gangacharan v. C. Narayanan**, AIR 2000 SC 589, supra, it has also been held that suit for possession on the plea that plaintiff sent money to defendant from abroad to purchase property in plaintiff's name but defendant purchased in his own name is not barred by the Act as the suit is against trustee.

Similarly in **P.V.G. Raj Reddy v. P.N. Reddy**, AIR 2015 SC 2485 it has been held that suit for declaration, cancellation of sale deed and for possession on

the plea that plaintiffs sent money to defendants from abroad for purchasing property in plaintiff's name but defendants purchased one property in the name of their close relation and the other jointly in the names of plaintiff's son and son of defendants 1 and 2 is not barred by the Act.

Public Money Recovery:

Recovery of Debts Due to Banks and Financial Institutions Act (RDDB Act) 1993, by virtue of its Section 18 prohibits the Civil Court to exercise any jurisdiction in relation to the matters specified in Section 17.

It has been held in **Bhanu Construction Company v. Andhra Bank**, AIR 2001 SC 477 that under Section 18 of the Act the jurisdiction of the Civil Court stands barred from the appointed date which is the date on which Tribunal was constituted and not the date on which the Act was passed.

SERVICE MATTERS

The jurisdiction of all Courts (including Civil Court) except of Hon'ble Supreme Court or Labour Court/ Industrial Tribunal is barred by Section 28 of Administrative Tribunals Act 1985 in respect of Government employees' service matters as defined under section 3(q) and not excepted by section 2 of the Act. However the Hon'ble Supreme Court in **L. Chandra Kumar v Union of India**, AIR 1997 SC 1125 (7 judges) has held that even though at the initial stage even jurisdiction of High Court under articles 226 or 227 of the Constitution (writ petition) is barred but against judgment or order passed by the Tribunal, High Court can entertain writ petition, which must be heard by Division Bench.

Corporations:

- I. State Road Transport Corporation: In **Mafatlal Narandas Barot v J. D. Rathod, Divisional Controller, State Transport Mehsana**, AIR 1966 SC 1364 (CB) it was held that a terminated employee of SRTC could approach the High Court through writ petition against his termination order, and he could be granted relief of reinstatement if termination was against mandatory provision of Road Transport Corporation Act, 1950 or the Rules or Regulations framed thereunder.
- II. (Rajasthan) State Electricity Board : In **Rajasthan State Electricity Board v. Mohan Lal** AIR 1967 SC 1857 (CB) it was held that writ petition by an employee of the Electricity Board for promotion is maintainable as Electricity Board is a corporation, hence, statutory body and included in the definition of State under Article 12 of the Constitution.

Companies:

- I. Bharat Petroleum Corporation: In **Som Prakash Rekhi v. Union of India**, AIR 1981 SC 212 it was held that the corporation was a Government company, hence, State within the meaning of Article 12, writ petition filed before the Hon'ble Supreme court for enforcement of pension scheme and payment of pension was held to be maintainable.
- II. In **Central Inland Water Transport Corporation v. B.N. Gangoli** AIR 1986 SC 1571 it was held that though the corporation was a Government company under section 617 of Companies Act but was State within the meaning of Article 12, hence, writ petition by its terminated employee for reinstatement was maintainable. The company, apart from being a Government company was also wholly owned by the Central Government and two State.

Societies controlled or dominated by Government:

Initially even the societies constituted, managed, controlled and financed by the Government were also considered to be non-statutory bodies. Council for Scientific and Industrial Research (CSIR) being such a society was held to be non-statutory body in **Sabhajit Tiwari v. Union of India**, AIR 1975 SC 1329 (Constitution Bench). In that case an employee of CSIR had filed a writ petition under article 32 of the Constitution before the Hon'ble Supreme Court seeking pay parity with new entrants under articles 14 and 16. The Hon'ble Supreme Court held that the CSIR being only a registered society was not an authority under Article 12 hence it was not subject to fundamental rights. This authority has been overruled by P.K. Biswas 2002 (5) SCC 111 supra and it has been held that CSIR is authority under article 12 and amenable to writ jurisdiction. In this case an employee had challenged his termination (on what ground is not clear) through writ petition before High Court which had been held to be not maintainable by the High Court in view of Sabhajit Tiwari (1975) supra. Even before it was overruled, Sabhajit Tiwari (1975) had constantly pricked the conscience of the Hon'ble Supreme Court. It was explained, distinguished, criticized and watered down in Ramana (1979), Ajay Hasia (1981), Som Prakash Rekhi (1981) and P.K. Ramachandra Iyer (1984), infra as discussed in paras 24 to 32 of P.K. Biswas, (2002)supra.

Labour Matters:

In respect of labour matters, suit is not maintainable if grievance is made regarding violation of rights which are created by Industrial Disputes Act 1947 (or U.P. Industrial Disputes Act 1947) or sister laws like Industrial Employment (standing orders) Act 1946 This aspect has been considered by the Hon'ble Supreme court in several authorities including **Premier Automobiles Ltd. v. K.S. Wadke of Bombay**, AIR 1975 SC 2238:1976(1) SCC 496.

Waqf Act 1995

1. Sections 6 and 7 of the Act provide for determination of certain disputes regarding waqf only by the Waqf Tribunal. Section 83 provides for the constitution of Tribunals and matters cognizable by them.

2. **Board of Waqf, West Bengal v. Anis Fatma Begum**, 2010 (14) SCC 588 (Waqf Tribunal has got exclusive jurisdiction to deal with the questions relating to demarcation of waqf property).

3. **A.J.P.P. Committee v. P.V. Ibrahim Haji**, AIR 2013 SC 3530 (Dispute with regard to management and peaceful enjoyment of Mosque and Madarsa and assets relating to waqf is to be decided by the Tribunal and not Civil Court)

Tax Matters

It has been held in **Commissioner, Income Tax v. Parmeshwari Devi Sultania**, AIR 1998 SC 1276 that Section 293 of Income Tax Act provides a specific bar against suits by providing that —no suit shall be brought in any civil court to set aside or modify any proceeding taken or order made under this Act.

Damages for Malicious Prosecution

Suit for damages for malicious prosecution on the ground that temporary injunction in the earlier suit instituted by the defendant was wrongly obtained is maintainable.

In this regard Section 95 C.P.C. which provides that in such situation, in that very suit, defendant may, on his application, be awarded compensation of a maximum amount of Rs.50,000/- (prior to 1999-2002 amendment it was only one thousand) is no bar to fresh suit for compensation by the defendant and in such suit the maximum limit of damages prescribed under Section 95 also does not apply **Bank of India v. L. Dass** AIR 2000 SC 1172.

Declaration regarding membership of Scheduled Caste or Tribe:

In **State of Tamil Nadu v. A. Gurusamy** AIR 1997 SC 1199 it has been held that civil court has got no jurisdiction to declare that a person (plaintiff) is member of a particular Schedule Tribe (or caste).

Election of M.P., M.L.A.:

Under Representation of People Act 1951, election of M.P. or M.L.A. can be challenged only before the High court and it is provided under Section 70 of the Act as follows:-

No civil court shall have jurisdiction to question the legality of any action taken or of any decision given by the Returning Officer or by any other person appointed under this Act in connection with an election.

Land Acquisition:

Civil Court has got no jurisdiction to decide the validity or legality of Sections 4 and 6 notifications of Land Acquisition Act, 1894 through which land is acquired, vide **Shri Girish Vyas v. State of Maharashtra** AIR 2012 SC 2043 (para 98) placing reliance upon **State of Bihar v. Dharendra Kumar** AIR 1995 SC 1955. Similar view has been taken in **Laxmi Chand v Gram Panchayat, Kararia**, AIR 1996 SC 523. Similar will be the position in respect of corresponding sections of new land acquisition Act i.e. Sections 11, 12 and 19 of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Family Courts:

The Family Courts Act 1984 confers jurisdiction upon a family court in respect of matrimonial disputes defined under Explanation to Section 7(1) Explanation to Section 7(1) and sub section (2) of Section 7

Motor Vehicles Act:

Claims for compensation in respect of accidents involving death of or bodily injury to persons arising out of the use of motor vehicles or damages to any property of a third party so arising may be instituted before Claims Tribunal constituted under Motor Vehicles Act 1988, by virtue of Sections 165 and 166 thereof.

Section 175 of the Act provides as under:

Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for

compensation which may be adjudicated upon by the Claims Tribunal for that area and no injunction in respect of any action taken or to be taken by or before the claims tribunal in respect of claim for compensation shall be granted by the Civil Court.

Partnership Act

Section 69 of Partnership Act 1932, bars certain suits by or against unregistered firms.

Payment of Wages Act

Under Section 15 of Payment of Wages Act 1936 claims arising out of the deduction from the wages or delay in payment of wages are to be made before the authority constituted for the said purpose under the said Section. Section 22 of the Act provides that no court shall entertain any suit for the recovery of wages or of any deduction from wages.

Religious Matters:

In **Ugam Singh v. Kesrimal** AIR 1971 SC 2540 it has been held that —it is clear therefore that a right to worship is a civil right, interference with which raises a dispute of a civil nature.

In **P.M.A. Metropolitan v. M.M. Marthoma** AIR 1995 SC 2001 it has been held that ex-communication by a Christian religious authority can be challenged through suit. In this authority, in the judgment by justice R.M. Sahai, the aspect of maintainability of suit in religious matters has been thoroughly examined in paras 27 to 35 and reference has also been made to Article 25 of the Constitution which guarantees freedom of conscience and the right freely to profess practice and propagate religion to every person.

Conclusion:

Section 9 of the Civil Procedure Code is like the entry gate to the civil courts. It opens the door for all civil disputes unless a special law locks that door—either clearly (expressly) or indirectly (impliedly). In today’s legal system, many special laws like SARFAESI, RERA, and the Consumer Act have created their own forums and remedies. But this does not mean civil courts are powerless in every case.

Civil courts can still help when:-

- There is fraud or misuse of power
- Your ownership or basic rights are affected

- The special law does not give a full solution

We must always ask:

1. What is the nature of the dispute?
2. Is there any special law covering it?
3. Does that law say civil courts are barred?
4. If barred, is there any exception—like fraud, title dispute, or lack of remedy?

We must be very careful before saying “you can’t come here.” The default rule is:

“If in doubt, the civil court will help, unless clearly excluded.”

Hence, Civil court is the general doctor. But if a specialist (special law) is available and working well, one has to use that first. But if that specialist is unfair, or missing, go back to the general doctor — the civil court.

“Jurisdiction is not just about power, it is about justice and justice should never be blocked without a valid reason.”
