Jurisdiction of Civil Courts under Code of Civil Procedure

# Introduction

Jurisdiction has not been explained in the Code of Civil Procedure. In simple words, it can be described as the power of the court to settle the matter. The Indian Judiciary has invoked the ancient legal maxim ‘Ubi jus Ibi Remedium’, which means that where there is a right there is a remedy. The judicial forum must have jurisdiction to deal with the matter. Hence, the Jurisdiction commonly rests where the crime is committed.

# Meaning of jurisdiction

Jurisdiction is defined as the limit of judicial authority or extent to which a court of law can exercise its authority over suits, cases, appeals etc. A 1921 Calcutta High Court judgement in the case of [Hriday Nath Roy Vs Ram Chandra](https://indiankanoon.org/doc/266315/" \t "_blank) sought to explain the meaning of the term ‘Jurisdiction’ in detail. An investigation of the cases in the texts shows several attempts to explain the word Jurisdiction which has been declared to be the power to hear and determine the issues of law and the fact or the authority by which their judicial powers take knowledge of facts and decide causes or the authority to hear and decide the legal dispute or the power to hear and determine the subject matter in the dispute among the parties to a suit and to adjudicate or exercise any judicial power over them or the ability to hear, determine and declare judgement on issues before the court or the power or authority which is given to a court by government to understand and learn causes between parties and to give a judgement into the effect or the power to enquire into the facts to apply the law to pronounce the Judgement and put it into execution.

# Lack of jurisdiction and irregular exercise of jurisdiction

Whenever the suit is made before the court the initial issue is to decide whether the court has jurisdiction to deal with the matter. If the court has all the three territorial, pecuniary or subject matter jurisdiction then simply the court has the power to deal with any of the cases. If the court does not have any of the jurisdiction then it will be recognised as lack of jurisdiction and irregular exercise of jurisdiction. When the court does not have jurisdiction to decide the case then such decision will be regarded as void or voidable depending upon the circumstances.

# The basis to determine jurisdiction

Jurisdiction is determined mainly on the grounds of:

1. Fiscal value;
2. Geographical boundaries of a court;
3. The subject matter of court.

So, the Court, before accepting notice, needs to take into consideration the following characteristics:

* The Fiscal value of the trial.
* The specialties of the suits.
* The regional limits of the court.

It is not only suitable that panel should have any right to deal with the issue or that the court has a pecuniary jurisdiction of the court has a local jurisdiction, but the court must be able to grant the compensation in such matter. In the case of[Official Trustee Vs Sachin Nath](https://indiankanoon.org/doc/266438/), the court held that in order to deal with the topic the court must not be the only jurisdiction to decide a specific matter but also the court has the ability to give the order for which it is examined.

# Courts and Tribunals

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| **Basis for comparison** | **Tribunal** | **Court** |
| Meaning | Tribunal can be defined as minor courts that resolve conflicts arising in special cases. | Courts refer to the part of a legal system which is organised to give their judgement on civil and criminal cases. |
| Decision | Official payment | Acquittal, judgement, Decree, conviction. |
| Deals with | Particular cases | Different types of cases |
| Headed by | Chairperson and other judicial members. | Judges or panel of judges or magistrate |

# Jurisdiction of foreign courts

A foreign court is described as a court outside Bangladesh, and a foreign judgement means a judgement of a foreign court. In other words, a foreign judgement means an adjudication by a foreign court upon a matter before it. The following conditions would give power to the foreign courts to adjudicate a matter presented before it:

1. When the person is a subject of a foreign country in which the judgement has been obtained.
2. If he was a resident of a foreign country when the action was commenced and the summons was served on him.
3. When the person is in the character of plaintiff chooses the foreign court as the forum for taking action in which forum he issued later.
4. When the party on summons voluntarily appeared.
5. When through an agreement, a person has agreed to present himself to the forum in which the judgement is obtained.

# Kinds of jurisdiction

## Territorial or local jurisdiction

Under this territorial or local jurisdiction, the geographical limits of a court’s authority are clearly delineated and specified. It cannot exercise authority beyond that geographical/ territorial limit. For example, if a certain crime is committed in Madhya Pradesh, only the courts of law within the borders of Madhya Pradesh can hear and decide the case. Furthermore,[Section 16](http://www.aaptaxlaw.com/code-of-civil-procedure/section-15-16-code-of-civil-procedure-court-in-which-suits-to-be-instituted-suits-to-be-instituted-where-subject-matter-situate-section-15-16-of-cpc-1908-code-of-civil-procedure.html)of the Code of Civil Procedure explains the territorial jurisdiction on the grounds of the location of the immovable property. In the case of [Harshad Chiman Lal Modi Vs D.L.F Universal Ltd](https://indiankanoon.org/doc/1916513/" \t "_blank), the court interpreted Section 16 that the suit pertaining to immovable property should be brought to the court. The court does not have the power to decide the rights of property which are not situated. However, the court can still pass a relief if the opposite party agrees to try the suit in such a case.

## Pecuniary jurisdiction

Pecuniary means ‘related to capital.’ It approaches the question of whether the court is competent to try the case of the financial value. The code allows analysing the case unless the suit’s value exceeds the financial limit of the court. [Section 15](https://indiankanoon.org/doc/299466/)of the Code of Civil Procedure commands the organisation of the suit in the court of the low grade. It refers to pecuniary jurisdiction of Civil court. It is a course of the method and it does not affect the jurisdiction of the court. The main objective of establishing pecuniary jurisdiction is to prevent the court of a higher level from getting burdened and to provide assistance to the parties. However, the court shall interfere if it finds the judgment to be wrong. For example, ’A ’wants to accuse ‘B’ due to a violation of the contract to obtain Rs 5000 in Bombay. The Bombay High Court has original jurisdiction and small causes court with the jurisdiction up to Rs 50000. So, a suit to obtain Rs 5000 should ideally be dealt with small causes court. In the case of[Karan Singh Vs Chaman Paswan](https://indiankanoon.org/doc/1625415/)the plaintiff filed a suit in the subordinate court involving an amount of  Rs 2950, but the court rejected the case. Later his next appeal was allowed by the High Court, but it ordered him to pay the deficit amount. The appellant contested that the decision of the district court will be a nullity, but the High Court dismissed the claim. Later the Supreme Court confirmed the decision of the High Court declaring that the decision of district court won’t be void.

## Jurisdiction as to the subject matter

The subject matter can be defined as the authority vested in a court to understand and try cases concerning a special type of subject matter. In other words, it means that some courts are banned from hearing cases of a certain nature. No question of choices can be decided by the court which do not have subject matter jurisdiction. [Section 21](https://indiankanoon.org/search/?formInput=section%2021%20code%20of%20civil%20procedure%20) of the Code of Civil Procedure is related to the stage challenging the jurisdiction. For Example, “Ranveer”, a resident of Sonipat bought a food item of ‘AA’ brand that was plagued with pests. He should prosecute ‘ZZ’ company in Sonipat District forum rather than District Civil Court of Sonipat.

## Original and appellate jurisdiction

Appellate jurisdiction refers to the court’s authority to review or rehearsal the cases that have been already decided in the lower courts. In the Indian circumstances, both the High Court and Supreme Court have the appellate jurisdiction to take the subjects that are bought in the form of appeals.

Original Jurisdiction refers to the court’s authority to take notice of cases that could be decided in these courts in the first instance itself. Unlike appellate jurisdiction wherein courts review the previously decided matter, here the cases are heard afresh.

## Exclusive and concurrent jurisdiction

In Civil Procedure, exclusive jurisdiction means where a single court has the authority to decide a case to the rejection of all the courts. This jurisdiction is decided on the basis of the subject matter dealt with by a specific court. For example, the U.S District courts have particular jurisdiction on insolvency topics.

Concurrent jurisdiction exists where two or more courts from different systems simultaneously have jurisdiction over a particular case. In this situation, parties will try to have their civil or criminal case heard in the court that they perceive will be most favourable to them.

## General and special jurisdiction

General jurisdiction means that general courts do not limit themselves to hearing only one type of cases. This type of jurisdiction means that a court has the power to hear all types of cases. So the court that has general jurisdiction can hear criminal, civil, family court case and much more.

Specific jurisdiction is the ability of the court to hear a lawsuit in a state other than the defendant’s home state if that defendant has minimum contacts within the state where the suit will be tried.

## Legal and equitable jurisdiction

Equitable jurisdiction belongs to the authorities of the courts to take specific actions and pass some orders in order to deliver an equitable and reasonable outcome. These judgments are usually outside the purview of law, in the sense that support provided by the courts may not be necessarily confirmed by the statue. In the case of[K.K.Velusamy Vs N.Palanisamy](https://indiankanoon.org/doc/1126109/), the Supreme Court of India held that Section 151 does not give any special jurisdiction to civil courts, but only presents for the application of discretionary power to achieve the ends of justice. This suggests that the court cannot give any such order which may be denied under any law in such an order that may be prohibited under any law in order to achieve the ends of justice. This would lead to the conclusion that such equitable jurisdiction is secondary to the authority of the courts to implement the law.

# Expounding and expanding jurisdiction

Expounding jurisdiction means to describe, clarify and explain jurisdiction. Expanding jurisdiction means to develop, expand or prolong jurisdiction. It is the duty of the court to clarify its jurisdiction and it is not proper for the court to extend its jurisdiction.

# Jurisdiction of civil court

## Section 9 of CPC

[Section 9](https://unlocking-the-future.com/legal-provisions-of-section-9-of-code-of-civil-procedure-1908-c-p-c-india/) of the Code of Civil procedure deals with the jurisdiction of civil courts in India. It declares that the court shall have jurisdiction to try all lawsuits of civil nature accepting suits of which their cognizance is either expressly or impliedly barred.

## Conditions

A Civil court has jurisdiction to decide a suit if two requirements 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.

## i) The suit of civil nature

### Meaning

‘Civil Suit’ has not been explained in any Act. Any suit that is not criminal in nature can be termed as a suit of a civil nature. Any suit that pertains to determination and implementation of civil rights may be defined as a civil suit. In the case of [Kehar Singh Nihal Singh Vs Custodian General](https://indiankanoon.org/doc/166692/" \t "_blank), the court elaborated the concept of Civil proceeding. It was defined as a grant of private rights to individuals or corporations of society. The objective of the action is the reward or recovery of private rights. In other words, the civil action may be described as the proceeding between two parties for implementation or redressal of private rights.

### Nature and scope

The expression ‘suit of civil nature’ will cover the private rights and obligations of the citizens. The political and religious question is not covered by a suit of a civil nature. A suit in which principal question is related to caste or religion is not of a suit of a civil nature. But if the main question in a suit of civil nature involves the decision relating to caste question or to religious rites and ceremonies it does not terminate to be a suit of a civil nature. The court has jurisdiction to decide those questions also, in order to decide the important question which is of civil nature.

### Explanation of doctrine

Each phrase and description assigns a duty on the court to apply jurisdiction for the accomplishment of rights. No court can decline to examine if it is of the information mentioned in [Section 9](http://www.legalservicesindia.com/article/508/Jurisdiction-Of-Civil-Court-Under-Civil-Procedure-Code.html) of the Code of Civil Procedure. The word civil according to the dictionary suggests, associating to a citizen as an individual. The word nature has been called the primary qualities of a person or thing. The word civil nature is prevalent than the word civil proceeding. The doctrine described the theory of the jurisdiction of civil courts under section 9 of the Code of Civil Procedure in [PMA Metropolitan Vs M.M. Marthoma](https://indiankanoon.org/doc/634316/)the Supreme Court observed that:

* The phrases used in section 9 has a positive and negative intent.
* The original part has a broader sense as it includes all the problems of civil nature; on the other hand, the latter part has a wider sense as it refuses the topic which is impliedly or expressly barred.
* The two reasons mentioned in Section 9 reveals the legislative purposes.
* It designated duty on the court to perform the jurisdiction for the implementation of private rights
* No court has the benefit to refuse the matter which introduces under this section
* It is necessary to take the knowledge of matter because the word “shall” is used, which means that it is a compulsory section.

In the case of  [Shankar Narayanan Potti vs K. Sreedevi](https://indiankanoon.org/doc/1909386/" \t "_blank), the Supreme Court held that the ‘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.” This means that Legislature can defeat the jurisdiction of the civil court by adding a provision or clause in any Act itself. In the case of [Shri Panch Nagar Park vs Purushottam Das](https://indiankanoon.org/doc/956654/" \t "_blank) it was held that if there are no specific terms in any statute the court needs to look into design, plan and suitable provisions of the Act in order to find implied dismissal of the jurisdiction of a civil court.

### Test

A suit in which the right to property or to an office is struck is a suit of a civil nature, notwithstanding that such right may depend only on the choice of a question as to religious rituals or ceremonies.

## ii) Cognizance not barred

A claimant having a complaint of a civil nature has the power to begin a civil suit unless its cognizance is barred, either expressly or impliedly.

### Suits expressly barred

A suit is said to expressly barred when it is prohibited by the statute for the time being in force. It is subject to the competent legislature to bar the jurisdiction of civil courts with regard to a specific class of suits of civil nature, provided that, in doing so it retains itself within the scope of legislation given to it and does not contradict any terms of the constitution.

### Suits impliedly barred

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. When an act formed an obligation and made its performance in a specified manner that performance cannot be implemented in any other manner.

## Presumption as to jurisdiction

In dealing with the subject whether a civil court’s jurisdiction to analyse a suit is barred or not, it is necessary to bear in mind that every opinion should be made in support of the jurisdiction of a civil court. The rejection of the jurisdiction of a civil court to entertain civil causes should not be easily inferred unless the appropriate law contains express terms to that effect or points to a significant and inevitable implication of nature.

## Burden of proof

It is well proved that it is for the party who tries to dismiss the jurisdiction of the civil court to establish it. It is uniformly well established that the statue dismissing the jurisdiction of a civil court must be strictly explained. In the case of doubt as to jurisdiction, the court should lean towards the theory of jurisdiction. A civil court has original authority to determine the issue of its own jurisdiction although as a consequence of such query it may become that it has no jurisdiction to consider the suit.

# Exclusion of jurisdiction: Limitations

The common assumption is that the civil court has the jurisdiction to try the case. The prosecution has a case of a civil nature has, independent of any statute, a power to initiate a suit in a civil court unless its notice is expressly or impliedly barred yet it cannot be said that the jurisdiction is entirely eliminated. In the case of[Secretary of State Vs Mask & Co](https://indiankanoon.org/doc/1411268/), the Privy Council rightly mentioned that it is established law that the exclusion of jurisdiction of the civil court is not to be readily inferred but that such prohibition is either impliedly barred or explicitly expressed. It is also established that civil court has jurisdiction to examine into the cases which have not complied with fundamental principles of judicial procedure. In the case of[State of A.P. Vs Majeti Laxmi Kanth Rao](https://indiankanoon.org/doc/8458746/), the apex court has analysed to decide the elimination of jurisdiction of the Civil Courts. Firstly, the legislative intent to remove the suit is to be decided. It could be either directly or implicitly. The court needs to find and deduce the causes for the exclusion of the Civil courts and the explanation for it but the reason is not directed for judicial examination. After the court is convinced with the grounds, the court must find out whether the statute that prohibits the jurisdiction grants for an alternative remedy. In case there is no alternative remedy possible, the civil court’s jurisdiction cannot be eliminated. But it was ruled in [Balawwa v. Hasanabi](https://indiankanoon.org/doc/532938/" \t "_blank), Civil court’s jurisdiction is terminated with regard to a tribunal established by a statute only to the extent that the support granted by the tribunal in question. In this aspect, the Allahabad High court in various judgements has held that the suit is decreased from the jurisdiction of civil courts of the knowledge of the complete suit is forbidden. It means that for some suits wherein some parts are not decided by the civil court because of implied or express prohibition, it does not mean that the entire suit will be prohibited. As the additional points of law are exceeding the purview of the tribunal or even if it is within its scope of the particular tribunal regulated under the act, civil court’s jurisdiction is not restrained as it could still pass judgement as it still has the original jurisdiction to consider the suits. The situation remains obscure whether the appropriate tribunals under the act can give the order with regard to the part of the trial wherein the jurisdiction of the civil court is obstructed.

# Principles of exclusion of jurisdiction of civil court

## [Dhulabhai v. state of MP](https://indiankanoon.org/doc/1996908/)

Hidyatullah summarized the following principles relating to exclusion of jurisdiction of civil courts:

1. When a statute provides finality to the orders of particular tribunals, the civil court jurisdiction must be kept to be prohibited. Such a provision does not eliminate those cases where the terms of the act have not complied with fundamental laws of judicial method.
2. When there is an express bar of jurisdiction of the court, an examination of a scheme of a particular act to find the adequacy or sufficiency of remedies provided may be important but this is not crucial for maintaining the jurisdiction of a civil court
3. It examines the terms of a specific act as ultra vires cannot be brought before tribunals constituted under the act. Even the High Court cannot go for revision or reference from the decision of the tribunal.
4. When the terms are already stated illegal or declared the constitutionality of any terms is to be challenged, then a suit is open. A writ of certiorari may introduce a direction to refund but it is not a necessary remedy to compensate a suit.
5. When the particular Act includes no method for a return of tax collected in excess of constitutional goals, a suit lies.
6. Prohibition of the jurisdiction of a civil court is not ready to be inferred unless the conditions above set down apply.

## [Premier automobiles v. K.D Wadke](https://indiankanoon.org/doc/321104/)

The Supreme Court laid down the following principles as relevant to the jurisdiction of civil courts in association with industrial disputes:

1. If a conflict is not an industrial conflict, nor does it correlate to the enforcement of any other right under the industrial dispute Act, the remedy lies only in civil court.
2. If a conflict is an industrial conflict emerging out of a right or liability under the general or public law, the jurisdiction of the court is an alternative left to the person involved to decide his remedy for the support which is sufficient to be given in a particular remedy.
3. If an industrial dispute relates to the implementation of the right or a duty organised under the Act, then the only remedy available is to get adjudication under the Act.

# Conclusion

Civil court has jurisdiction to investigate whether tribunal and quasi-judicial bodies or legal executive acted within their jurisdiction. It can be presumed that section 9 essentially deals with the issue of the civil court’s jurisdiction to consider a matter. Civil court has jurisdiction to consider a suit of civil nature except when it’s notification is expressly barred or bared by significant suggestion. Civil court has jurisdiction to resolve the problem of its jurisdiction.

Note:

The distinction between the substantive and procedural law is not an always easy and clear-cut. The

same law may be procedural as well as substantive.

Example:

The Civil Procedure Code consists of two parts, the first containing sections which are more or less of

a substantive character laying down the general principles, and the second consisting of Orders

relating to the method in which the general principles are applied and they are procedural.