

C.K. TAKWANI

**CIVIL
PROCEDURE**

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CIVIL PROCEDURE

C. K. Takwani

B.A. (Hons.), LL.M.

Advocate, Gujarat High Court

Lecturer in Law

Sir L.A. Shah Law College,

I.M. Nanavati Law College, Ahmedabad

Author of : LECTURES ON ADMINISTRATIVE LAW



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CIVIL PROCEDURE

“The more you study the Civil Procedure Code, the more you realize what an admirable piece of legislation it is.”

—Chief Justice M.C. Chagla

“A code of procedure must be regarded as such. It is ‘procedure’, something designed to facilitate justice and further its ends : not a penal enactment for punishment and penalties ; not a thing designed to trip people up.”

—Justice Vivian Bose,
(1955) 2 SCR 1, 8

*“Lead, Kindly Light,
Amid the Encircling Gloom,
Lead Thou Me On !”**

DEDICATED
TO
THE SACRED MEMORY
OF
MY FATHER

*Cardinal Newman : THE PILLAR OF THE CLOUD

P R E F A C E

I have pleasure in placing the present work on Civil Procedure Code before the students of law and junior advocates. This is a subject which is of daily use to the Bench and the Bar and no one concerned with the administration of civil justice can afford to be without a thorough understanding of its general principles. This book is written primarily for the students of law and junior practitioners and with that view in mind, I have not adopted the traditional method of discussing the subject sectionwise as it is not appropriate in this subject where a number of topics are dealt with partly in the Sections and partly in the Orders ; e. g. First Appeals (Ss. 96 to 99A and O. XLI) ; Second Appeals (Ss. 100 to 103 and O. XLII) ; etc. This is not a commentary on Civil Procedure Code as it is found in several well-known works on the subject. Instead, I have discussed all the important provisions under appropriate heads by dividing them in various parts and by again dividing those parts in various chapters. There is a well-known proverb in English which says that "*one should not miss the wood for the trees*" (i. e. one should not become so involved in details that one cannot see the matter as a whole). Keeping this in mind, I have endeavoured to expound the subject in such a manner that the reader does not get lost in details but that he comes to see what it is all about. I have tried to explain broadly and generally as to what happens to a suit from the date of its institution till final decision, in appeals or in revision and in execution. Endeavours have also been made to explain certain topics by giving suitable illustrations and citing cases. I have also incorporated important decisions of the Supreme Court and the leading cases of the High Courts and tried to deduce principles emerging from those decisions which, I hope, would be useful to the Bench and the Bar.

The Code of Civil Procedure, 1908 has been extensively amended by the Amendment Act of 1976. The main object of the amendment is to reduce law's delay. In the humble opinion of the author, however, the amendments are not sufficient and I have made certain suggestions to reduce delay in civil litigation in the

last chapter. Model forms of Complaint, Written Statement, First Appeal, Second Appeal and Revision Application have also been given in Appendices.

I am greatly indebted to Hon'ble Mr. Justice P. D. Desai of the Gujarat High Court for giving me valuable suggestions. I am equally grateful to Sharvashri M. D. Pandya, P. V. Hathi and other advocates who have helped me in the present work. I am also thankful to my wife for ably assisting me. I will be failing in my duty if I do not make a mention of my personal friends and colleagues Sharvashri M.C. Patel and Mustak Kadri, without whose help it would not have been possible for me to complete the present work.

I am thankful to Shri Surendra Malik, Advocate, Supreme Court (Editor, *Supreme Court Cases*) for taking keen interest in the present work. I am also thankful to the Publishers for bringing out this publication expeditiously.

I am sure that the present work will fill the lacuna in the field and enable the students of law and the junior advocates to acquire sound knowledge of this branch of law.

March 24, 1983

—C. K. Takwani

Ahmedabad.

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