

# CHAPTER 2

## CIVIL REMEDIES : THE GENERAL REMEDIES

### 2.1. Substance and procedure

A distinction that is traditionally made is between substance and procedure. Substantive law is concerned with rights, duties, liabilities and process. Adjectival law relates to the enforcement of rights, duties and liabilities and the mode of exercise of powers. The distinction cuts across that between civil and criminal law. In India, the law of civil procedure is mainly contained in the Code of Civil Procedure, 1908. The law of criminal procedure is to be found in the Cr. P.C. 1973.

### 2.2. Civil and criminal law

The distinction<sup>1</sup> between a civil wrong and a crime lies in the legal consequences that may follow it. If an act is followed by criminal proceedings, the act is a crime.<sup>2</sup> If it is followed by civil proceedings, then it is a civil wrong. In criminal proceedings, the primary sanction sought to be enforced (in the generality of cases) is the sanction of the criminal law, that is to say, punishment. In civil proceedings, the relief sought (in the generality of cases) is payment of money, delivery of property, specific performance of contracts, declaration or injunction. In certain special cases, the two may be combined. For example, in criminal prosecutions, the court may, while convicting the accused, also order him to make restitution to the victim of the offence for the loss suffered

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1. Glanville Williams, *Learning the Law* 2-3 (1982).

2. Cf. *Seaman v. Burley*, (1896) 2 Q.B. at 340.

by the victim in consequence of the offence<sup>1</sup>. But these are exceptional provisions, not detracting from the basic distinction between a civil wrong and a crime.

### 2.3. Section 9, Code of Civil Procedure, 1908

The procedural provision relevant to suits in general is section 9 of the Code of Civil procedure, 1908, which reads as under :-

**“9 Courts to try all civil suits unless barred. :-** The Court shall (subject to the provisions herein contained) have jurisdiction to try suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred”.

There are two Explanations annexed to the section which are not material for the present purpose. The broad principle on which the section is based is that if a civil right is established, then a suit to enforce the right can be entertained by the civil courts, unless the law for the time being in force expressly or impliedly bars cognizance by the civil court.

Therefore the fundamental requirement is that a right must be proved to have been established.

### 2.4. Rights and remedies

It is an established principle of the Indian legal system that where there is a right, there is a remedy. If a citizen has a right, he must (unless the law provides to the contrary) be allowed to pursue the remedy. A right is a claim recognised and enforced by the courts in the administration of justice. A right may arise from the Constitution, statute, uncodified law or custom. A citizen can sue in a civil court under section 9 of the Code of Civil procedure, 1908 if he can prove that there is a right vested in him. By virtue of sections 101 to 103 of the Indian Evidence Act, 1872, it is, of course, for the person bringing the suit to prove the existence of facts on which the right asserted by him depends.

### 2.5. Section 91, Code of Civil Procedure, 1908

While a suit under section 9, Code of Civil Procedure, 1908, requires *locus standi*, section 91 of the Code envisages a more

1. Section 357, Code of Criminal Procedure, 1973.

elastic procedure, whereunder two or more persons may, with the leave of the Court, institute a suit for appropriate relief where a public wrong is complained of. The remedy is eminently suitable where a public nuisance is complained of. Of course, the distinction between public nuisance and private nuisance has to be borne in mind.<sup>1</sup> "Public nuisance" includes an act which causes, or must necessarily cause, obstruction, injury or annoyance to persons who are enjoying a public right.<sup>2</sup>

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1. A. I. R. 1960 All. 633.

2. A. I. R. 1972 Raj. 103.