

## A STUDY ON INDIGENT PERSON UNDER CIVIL PROCEDURE CODE

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### Abstract:

The paper deals with the provisions and legal status of an Indigent person (i.e) A person who is not ready to take care of himself it also states that no individual should be left unheard it one of the main principle Rule of Natural Justice. The Indian constitution has additionally furnished with the provisions of free legal aid to every citizens. Order 33, Code of Civil Procedures manages Suits by indigent person . The principle point of this research is to bring out in detail about the rights, duty and liability of an Indigent person , the contents of applications and certain circumstances where the application gets rejected in detail is explained by the researcher in separate chapters which helps the learner to understand in detail.

[\(Cardozo 2012\)](#)

**Keywords:** Indigent person, pauper, code of civil procedure code, free legal aid, natural justice, content of application.

### Introduction:

Before understanding what is the procedure and provisions with respect to a suit by a pauper, let us understand what does a pauper means? Essentially the importance of the word

pauper is the individual without a support or a destitute person who relies upon help from public welfare funds or charity. We as a whole are familiar with the way that a suit requires payment of fees for exercises running from institutions of the suits itself to the service of summons to other costs which the court may acquire time to time and establishment for the decree to be executed in a case which is decided in party's favour and if not a whole new range of payments for appeal.

Under the Code of Civil procedure, if there should be an occurrence of a common suit, the arrangement for the same has been furnished under Order XXXIII with the title of suit by indigent person.<sup>1</sup> Basically what it provided is the special provision for the people who are excessively poor, making it impossible to file a suit for themselves. It is very evident that the jurisprudential approach behind this arrangement is to enable a man no matter from what economical background, to bring his matter of alleged violation of cause of action to the court. Being in consonance with natural justice, it not only protects bonafide cases of a indigent individual yet in addition also safeguards interest of the revenue and protects the defendant from harassment. ([Shavell 1981](#)) Inquiry into the means of an indigent person under order 33 of the code of civil procedure for purpose that no person. The aim is to Study about the status of the indigent person.

- To learn about the procedure to be followed by an indigent person in filing an application.
- To analyse the difference between suits by plaintiff and suits by indigent person.
- To study the provision related to indigent person.
- To study about the rights, duty and liability of an indigent person.

### **Hypothesis:**

The indigent person is liable to pay the court fees prescribed by law other than that of damages or compensation occurred in a suit to the court.

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<sup>1</sup> Mulla, the code of civil procedure, volume 4, Pp 268- 270.

**Materials and methods:**

In this paper, the researcher has opted for doctrinal research methodology and the sources are collected through secondary data by means of referring books, journals, articles and e-sources.

**Review of literature:****Mulla, the code of civil procedure, volume 4, Pp 268- 270.**

From this book I have come to know when a suit is instituted not possessed of sufficient means to pay the fees prescribed is the requirement to sue as a pauper.

**Dharmananda panda, AIR 1993 ori 23.**

The term “not possessed of sufficient means “ is explained in detail which brings a clear outline about its features.

**Singhvi.L.M, Law and poverty, (N.M.Tripathi publications, Bombay, 1973) 284.**

Although a waiver of court fee is allowed there is no provisions for assigning counsel to the pauper and therefore, it is unlikely prosecute his suit.

**Chapterization:****Chapter1:****Inquiry into the means of an indigent person:**

Each Inquiry into whether or not individual is an indigent person might be made, in the First instance by the chief ministerial officer of the court, unless the court generally directs and the court may receive the report of such officer as it own finding or may itself make an inquiry into the question.<sup>2</sup>[\(India 1977\)](#)

**Contents of the application:**

Every Application for authorization to sue as an indigent person should contain the particulars required in regards to plaint in suits; a schedule of any movable or immovable

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<sup>2</sup> Dharmananda panda, AIR 1993 ori 23.

Property belonging to the applicant thereof might be attached and should be signed and verified in the way endorsed for the signing and verification of pleadings.<sup>3</sup>

**Procedures:**

Rule 2 to 8 endorses the procedure to be taken when the suit is proposed to be initiated as a indigent person. Rule 2 provides for signing and verification of the plaint. This rule is significantly complained with the application for authorization which is joined by a separate plaint where the plaint contains all the necessary particulars and as been properly verified.<sup>4</sup>The non verification of the properties does not entitle a dismissal of the application where the content of the application have not been checked but rather a separate affidavit in which the announcements contained in the application are expressed to be valid, has been documented, the same can be dealt with as a part of the application.

**Examination Of The Suit:**

The rule provides for the examination of suits instituted by the indigent person under two kinds namely<sup>5</sup>([Cardozo 2012](#))

1. The examination of the applicant which may, be instituted as per the rule laid down under code of procedure.
  - a. The merits of the claim
  - b. Pauperism, and
2. The examination of the person other than the applicant which ought to be confined within the preview pauperism as per the rules 6 and 7 of the civil procedure code . Person Other than

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<sup>3</sup> C.K.Takwani, civil procedure with limitation act, 1963.

<sup>4</sup> R.V. Dev v chief secretary government of kerala, (2007) 5 SCC 698.

<sup>5</sup> Indigent person under code of civil procedure 1908, justice G.S. singhvi, supreme court of india, July 24, 2011.

applicant can't be inspected on the benefits of the claim. At the point when a applicant is a minor it is sufficient to examined the next friend.

#### **Stages of inquiry of an indigent person:**

On application for an permission to file a suit as an pauper , the first stage examination of the petition under order 33 rule 4 at which stage the court can suo motu can dismiss the petition on any ground indicated in order 33 rule 5.<sup>6</sup> On the off chance that the petition Isn't so dismissed the second stage is noticed to the opposite party and an fiction of the date under order 33 rule 7 for prove with respect to the application. Right now the applicant can give him a chance to prove that the petition of isn't subjected to any of the prohibition specified in order 33 rule 5 and it is similarly opened to prove that the request of is so object . In deciding the inquiries Of allow of leave to sue as a indigent individual the question whether the suit as framed is viable and capable must be chosen first it can't be left for consideration during the process of trail. It goes deep root into the issues.[\(Cheesman 2014\)](#)

#### **Dismissal Theapplication:**

- When it has not been file in the way prescribed by the code.
- At the point when the applicant isn't an indigent person.
- Where the applicant has within 2 months before filing the application disposed off his property falsely or he has done as such to have the capacity to sue as a indigent person .  
<sup>7</sup>Be that as it may, where even the property was not disposed off, the applicant would have been an indigent person , the application won't be rejected.
- Where the applicant goes into a concurrence with someone else with respect of the property and in this way such individual gets an interest over the subject matter.

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<sup>6</sup> B.Manikyam v B.Rama murthy AIR 1975 Ori 20.

<sup>7</sup> The procedure laid down for filing suits in India, shailaja.B

- Where some other individual has gone into a concurrence with him to finance the litigation.
- Where the charges made in the application demonstrates no reason for action.
- Where the claims made in the application demonstrate that it would be banished by any law for the time being in force.<sup>8</sup>

From there on, the court should fix a day where the applicant might be permitted to put forth proof that he is an indigent person. (Rule 6) No less than 10 days must be given to the government pleader and the contrary party in such cases with the goal that they may endeavor to disprove the applicant claim of being an indigent person. At the hearing, the court should look at the parties as well as the witnesses (rule 7) The witnesses might be required to be inspected as regardless of whether the applicant is a indigent person and whether or not the applicant has arranged off any property deceitfully or to be pronounced a pauper individual within 2 months before the application.[\(Brown and Marriott 2011\)](#)<sup>9</sup> The parties might be inspected as respects all issues determined under Rule 5 (justification for dismissal). The parties may likewise advance any arguments as respects the application or the proof showed. From that point, the court should decide whether to permit or prohibit the applicant to sue as a indigent person.<sup>10</sup> Where the application is permitted, the application might be dealt with as the plaint in the suit and ordinary procedures as in a suit should begin. In any case, the applicant won't be required to pay the court charges or some other expenses as respects of services of any procedure, appointment of a pleader, and so forth. (Rule 8) In any case, under Rule 9, such consent conceded might be pulled back on an application of the respondent or the government pleader. An unmistakable notice in writing of such withdrawal must be given to the applicant.

## Chapter 2:

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<sup>8</sup> Suits by indigent person, Law times of journals, Aug 28, 2017.

<sup>9</sup> Ramadas sahu v Ramchandra AIR 1957 part 562.

<sup>10</sup> The procedure laid down for filing suits in forma pauperis in India, shailaja.B

**Withdrawal Of The Suits:**

- It is proven that the applicant conduct was vexatious or improper.
- It is shown that the applicant has the required means and isn't an indigent person.
- It is hinted that the applicant went into a concurrence with a third party as respects the subject matter of the suit and consequently the third party has obtained an all right the property.<sup>11</sup>

Where the plaintiff prevails in the suit, the court fees that would have been paid by him had he not been adjudged a indigent person might be paid by such person as the decree may order to the State Government. Where the plaintiff [\(Brown and Marriott 2011; Krishna Iyer 1975\)](#)

(a) fails in the suit or

(b) the authorization conceded to him to sue as a indigent person is pulled back or

(c) where the suit is withdrawn or expelled in light of the fact that the summons on the defendant isn't served properly because of the disappointment of the plaintiff to pay court expenses or postal charges or on the grounds that the plaintiff does not show up at the time of hearing,<sup>12</sup> the court should arrange the plaintiff or his co-plaintiff to pay the court expenses which he would have to pay had he not been as an indigent person. (Rule 11) Where the plaintiff or his co-plaintiff suing as indigent person is dead, the State Government may recover the court fees from the home of the expired. (Rule 11-A) In both the previously mentioned cases (Rules 11 and 11-A), the sum might be recoverable by the Collector when a copy of the order is sent to him. (Rule 14) Where the application of a man to sue as a indigent person has been refused, he should not be permitted to sue in such limit at a later stage. (Rule 15) .Be that as it may, he may

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<sup>11</sup> Santanu dey, Appeals by indigent person

<sup>12</sup> Law commission of india, 54th report , no.104 of 1976, sec 81 ( W.e.f 1-2-1977).

establish a standard suit provided he pays the expenses brought about by the defendant and the State Government in opposing his application.<sup>13</sup>

Such payments must be set aside a few minutes of institution of the suit or at some other time as may have been determined. The court should be at the discretion to broaden such time period from time to time.

Further, the suit will be regarded to have been instituted on the day the application to sue as a indigent person was instituted.

A respondent setting up a counter claim or set-off may even do as such in the limit of a indigent person. In such case all the relevant provisions which are applicable to the plaintiff suing as a indigent person will end up relevant to him. (Rule 17)<sup>14</sup>

Rule 18 engages the Central or State governments to make provisions for giving free legal aid administrations to impoverished people. The High Court may execute the same with the leave of the State government. These provisions may express the nature and degree of individuals, the issues to which they might relate, the organizations which should accommodate lawful guide, and so on.

### **Chapter 3:**

#### **Appeal procedure instituted by the indigent person:**

Any person who are entitled to prefer an appeal, who is unable to pay the expense required for the memorandum of an appeal, may show an application accompanied by a memorandum of an appeal and might be permitted to advance as a indigent person, subject to the provisions relating with suits by indigent person. [Order XLIV, Rule 1(1)].<sup>15</sup>

Where an application is dismissed under Rule 1, the Court may, while rejecting the application, enable the applicant to pay the essential court fee within such time as might be

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<sup>13</sup> Mula, the code of civil procedure 13th edition by P.M.Bakshi, Butterworth, New Delhi, 2001 at p.1489.

<sup>14</sup> Kapil v shivmangal Aswathy AIR 2001 MP 108.

<sup>15</sup> Muralidhar S, Law, poverty and legal aid( Lexisnexis, New Delhi, 2004)83.



fixed by the Court or extended by it from time to time; and upon such payment, the memorandum of appeal in regard of which such fee is payable should have an effective power and impact from if such fee had been paid in the first instance. (Order XLIV, Rule 2).<sup>16</sup>

Where an applicant, referred to in Rule 1, was permitted to sue or appeal as an indigent person in the Court from whose decree the appeal is preferred, no further inquiry in regard of the questions whether he is an indigent person might be important if the applicant has made an affidavit expressing that he has not ceased to be an indigent person since the date of the decree appealed from; yet in the event that the Government Pleader or the respondent debate reality of the statement made in such affidavit, an enquiry into the questions aforementioned should be held by the appellate court, or under the orders of the reappraising Court, by an officer of that court.<sup>17</sup>

Where the applicant is affirmed to have into an indigent person since the date of the decree announced from, the enquiry into the questions regardless of whether he is a pauper might be made by the appellate Court or, under the orders of the appellate Court, by an officer of that Court unless the appellate Court thinks of it as important in the conditions of the case that the orders ought to be held by the court from whose choice the decision is favored. (Order XLIV, Rule 3).

[\(Brown and Marriott 2011; Krishna Iyer 1975; Michie 1921\)](#)

By the amendment made in the year 1976 subjects rule (2) of Rule 1 of Order XLIV of the Code of Civil Procedure was deleted. The outcome is that when an application made under Rule 1 of Order XLIV, C.P.C. comes up for hearing, the only questions which has now to be considered is whether the applicant is an indigent person or not.<sup>18</sup>

Any inquiry relating with the benefits of the case does not emerge for consideration at that stage. In the event that the application is without a doubt, at that point the notice of claim would need to be registered as an appeal and discarded as per law.

### **Interlocutory Orders:**

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<sup>16</sup> R.V.Dev v chief secretary government of kerela and others AIR 2007 SC 2698

<sup>17</sup> [http://www.legalserviceindia.com/article/\\_/279-1.html](http://www.legalserviceindia.com/article/_/279-1.html)

<sup>18</sup> <http://www.legalblog.in/2011/07/indigent-person-under-code-of-civil.html>.

The general rule of law no appeal lies against an interlocutory order which isn't adequate to dispose the suit all in all, with the exception of where an appeal is explicitly given. The best test to find out whether a mistaken interlocutory orders has influenced a definitive choice on the benefits is to see whether the court would have gone to a same decision had the incorrect order not been passed.<sup>19</sup>

There are interlocutory orders which can be challenged in an appeal against the final decree. As said above, they are of such a nature as would or may have induced the court to modify its decision; for example, a order declining to concede a document which is in law admissible to examine at a witness or to issue a commission or some such act which is ascertained eventually to influence the decision of the court on the benefits.<sup>20</sup> ([Secretariat 2008](#))

At that point there are interlocutory requests against which no appeal has been provided and even they can be challenged in an appeal from the decree in the way put forward in S. 105 of the Code of Civil Procedure.

#### **Suggestions:**

- A proposal to be made in the present study to spread Awareness with regards to the Legal services Authorities among public.
- Because of absence of education and absence of Awareness among public about the constitutional provisions under 39-A, and Section 12(h) of LSA, the legal Aid and legal services implied for the a large number of the weaker segments are unable to utilize the

#### **Conclusion:**

To conclude that, the indigent person, regarding explanation I to Rule 1 of Order 33 of the Code of Civil Procedure, is one who is either not had of sufficient means to pay court fees when such charge is endorsed by law, or isn't entitled for property worth one thousand rupees

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<sup>19</sup> Abdul khaliq v Yasmin AIR 1986 ori 189

<sup>20</sup> Singhvi.L.M, Law and poverty, (N.M.Tripathi publications, Bombay, 1973) 284.

when such court fees isn't recommended. In both the cases, the property exempted from the attachment in execution of a decree and the subject matter of the suit should not be taken into account or capacity of such indigent person<sup>21</sup>. Besides, the components, for example, individual's work status and aggregate wage incorporating retirement benefits as annuity, responsibility for unrestricted resources, and individual's aggregate indebtedness and monetary help got from the relative or dear companions can be considered into account to determine whether the person has sufficient means to pay the court fees<sup>22</sup>. In this manner, the expression "sufficient means" in Order 33 Rule 1 of the Code of Civil Procedure considers the capacity or limit of a man in the common course to raise money by accessible lawful intends to pay court fees.

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1. Mulla, the code of civil procedure, volume 4, Pp 268- 270.
2. Dharmananda panda, AIR 1993 ori 23.
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