



## The Code of Civil Procedure (Uttar Pradesh Amendment) Act, 1978

Act 31 of 1978

**Keyword(s):**

**Central Act Amendment, The Code of Civil Procedure, 1908**

**Amendments appended: 11 of 1981, 14 of 2003**

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विधान पुस्तकालय

(राजकीय प्रकाशन)

उत्तर प्रदेश, लखनऊ

## सिविल प्रक्रिया संहिता (उत्तर प्रदेश संशोधन) अधिनियम, 1978

(उत्तर प्रदेश अधिनियम संख्या 31, 1978)

उत्तर प्रदेश विधान सभा ने दिनांक 28 अगस्त, 1978 ई० तथा उत्तर प्रदेश विधान परिषद् ने दिनांक 9 सितम्बर, 1978 ई० की बैठक में स्वीकृत किया।

'भारत का संविधान' के अनुच्छेद 201 के अन्तर्गत राष्ट्रपति ने दिनांक 29 सितम्बर, 1978 ई० की अनुमति प्रदान की तथा उत्तर प्रदेशीय असाधारण गजट के विधायी परिशिष्ट के भाग 3-खंड (क) में दिनांक 6 अक्टूबर, 1978 ई० को प्रकाशित हुआ।

सिविल प्रक्रिया संहिता, 1908 का उत्तर प्रदेश में अपनी प्रवृत्ति के सम्बन्ध में अग्रतर संशोधन करने के लिए

### अधिनियम

भारत गणराज्य के उन्तीसवें वर्ष में निम्नलिखित अधिनियम बनाया जाता है :—

1--(1) यह अधिनियम सिविल प्रक्रिया संहिता (उत्तर प्रदेश संशोधन) अधिनियम, 1978 कहा जायगा।

(2) इसका विस्तार सम्पूर्ण उत्तर प्रदेश में होगा।

(3) यह 1 अगस्त, 1978 से प्रवृत्त समझा जायगा।

2--सिविल प्रक्रिया संहिता, 1908 की, जिसे आगे उक्त संहिता कहा गया है, धारा 39 उपधारा (3) के स्थान पर निम्नलिखित उपधारा रख दी जायगी, अर्थात्—

“(3) इस धारा के प्रयोजनों के लिए किसी न्यायालय को सक्षम अधिकारिता वाला न्यायालय समझा जायगा, यदि ऐसे वाद की, जिसमें डिक्री पारित की गयी हो, रकम या विषय वस्तु का मूल्य, डिक्री का अन्तरण करने के लिये आवेदन करते समय उसकी मामूली अधिकारिता की धन संबंधी सीमा (यदि कोई हो) से अधिक न हो, भले ही उसे वाद पर विचारण अन्यथा अधिकारिता न हो।”

उद्देश्य और कारणों के विवरण के लिए कृपया दिनांक 24 अगस्त, 1978 ई० का सरकारी साधारण गजट के विधायी परिशिष्ट का भाग 3-खंड (क) देखिये।

संक्षिप्त नाम विस्तार  
और प्रारम्भ

अधिनियम संख्या  
5, 1908 की  
धारा 39 का  
संशोधन

PRICE 15 PAI

धारा 115 का  
प्रतिस्थापन

3—उक्त संहिता की धारा 115 के स्थान पर निम्नलिखित धारा रख दी जायगी, अर्थात्—

“115—उच्च न्यायालय बीस हजार रुपये और उससे अधिक मूल्य के मूलवादों या अन्य कार्यवाहियों से, जिनके अन्तर्गत 1 अगस्त, 1978 के पूर्व संस्थित ऐसे पुनरीक्षण वाद या अन्य कार्यवाहियां भी हैं, उद्भूत होने वाले मामलों में, और जिला न्यायालय किसी अन्य मामले में, जिसके अन्तर्गत ऐसी तारीख के पूर्व संस्थित किसी मूल वाद या अन्य कार्यवाहियों से उद्भूत होने वाला मामला भी है, किसी भी ऐसे मामले के अभिलेख को मंगवा सकेगा, जिसका विनिश्चय, यथास्थिति, ऐसे उच्च न्यायालय या जिला न्यायालय के अधीनस्थ किसी न्यायालय द्वारा किया गया है और जिसकी कोई भी अपील उसमें नहीं होती, और यदि यह प्रतीत हो कि ऐसे अधीनस्थ न्यायालय में—

(क) ऐसी अधिकारिता का प्रयोग किया है जो उसमें विधि द्वारा निहित नहीं है;

या

(ख) ऐसी अधिकारिता का प्रयोग करने में असफल रहा है जो ऐसे निहित है;

या

(ग) अपनी अधिकारिता का प्रयोग करने में अवैध रूप से या तात्त्विक अनियमितता से कार्य किया है;

तो, यथास्थिति, उच्च न्यायालय या जिला न्यायालय उस मामले में ऐसा आदेश कर सकेगा जैसा वह ठीक समझे :

परन्तु जिला न्यायालय द्वारा विनिश्चित किसी मूल्य के मूलवादों या अन्य कार्यवाहियों से उद्भूत होने वाले मामलों के संबंध में केवल उच्च न्यायालय इस धारा के अधीन आदेश करने के लिए सक्षम होगा :

परन्तु यह और कि उच्च न्यायालय या जिला न्यायालय किसी वाद या अन्य कार्यवाही के दौरान दिये गये किसी आदेश में, जिसके अन्तर्गत किसी विवादक को विनिश्चित करने का आदेश भी है, इस धारा के अधीन न तो फेरफार करेगा और न उसे उलटेगा, सिवाय उस आदेश के—

(i) जिसमें यदि फेरफार किया जाय या जिसे उलट दिया जाय तो वाद या अन्य कार्यवाही का अंतिम रूप से निपटारा हो जायगा; या

(ii) यदि रहने दिया जाय तो न्याय न हो पायेगा या उस पक्षकार को जिसके विरुद्ध आदेश दिया गया था, अपूर्य क्षति होगी ।

स्पष्टीकरण:—इस धारा में, पद ‘कोई मामला जिसका विनिश्चय किया गया’ है, के अन्तर्गत वाद या अन्य कार्यवाही के दौरान किसी विवादक को विनिश्चित करने का आदेश भी है।”

4—उक्त संहिता की प्रथम अनुसूची में, आदेश 6 में, नियम 15 में, उपनियम (1) में, शब्द “संहिता की धारा 139 के अधीन सशक्त किसी अधिकारी द्वारा दिलाये गये शपथ पर” के स्थान पर शब्द “उसके पाद भाग में” रख दिये जायेंगे ।

5—जहां ऐसे प्रकार की कार्यवाही, जिसमें जिला न्यायालय इस अधिनियम द्वारा यथा प्रति-स्थापित उक्त संहिता की धारा 115 के अधीन अभिलेख मांग सकता है और आदेश पारित कर सकता है, 1 अगस्त, 1978 के ठीक पूर्व—

(क) जिला न्यायालय में विचाराधीन थी, वहां ऐसा न्यायालय उसके निस्तारण की कार्यवाही करेगा मानो इस अधिनियम के उपबन्ध सभी सारभूत समयों पर प्रवृत्त थे;

(ख) उच्च न्यायालय में विचाराधीन थी, वहां ऐसा न्यायालय उसके निस्तारण की कार्यवाही करेगा मानो यह अधिनियम प्रवृत्त न हुआ हो ।

6—(1) सिविल प्रक्रिया संहिता (उत्तर प्रदेश संशोधन) अध्यादेश, 1978 एतद्द्वारा निरसित किया जाता है ।

(2) ऐसे निरसन के होते हुए भी, उपधारा (1) में निर्दिष्ट अध्यादेश द्वारा यथासंशोधित उक्त संहिता के अधीन कृत कोई कार्य या कार्यवाही इस अधिनियम द्वारा यथा संशोधित उक्त संहिता के अधीन कृत कार्य या कार्यवाही समझी जायगी मानो इस अधिनियम के उपबन्ध सभी सारभूत समय पर प्रवृत्त थे ।

प्रथम अनुसूची के  
आदेश 6 का  
संशोधन

संक्रमणकालीन  
उपबन्ध

निरसन और  
अपवाद

उत्तर प्रदेश  
अध्यादेश  
संख्या 15,  
सन 1978

Dated Lucknow, May 28, 1981

IN pursuance of the provisions of clause (3) of Article 348 of the Constitution of India the Governor is pleased to order the publication of the following English translation of the Civil Prakriya Sanhita (Uttar Pradesh Sanshodhan) Adhiniyam, 1981 (Uttar Pradesh Adhiniyam Sankhya 11 of 1981) as passed by the Uttar Pradesh Legislature and assented by the President on May 12, 1981 :

THE CODE OF CIVIL PROCEDURE (UTTAR PRADESH AMENDMENT)  
ACT, 1981

(U .P. ACT NO. 11 OF 1981)

[As passed by the Uttar Pradesh Legislature]

AN

ACT

*further to amend the Code of Civil Procedure, 1908 in its application  
Uttar Pradesh*

IT IS HEREBY enacted in the Thirty-second Year of the Republic of India as follows :—

Short title and  
extent.

1. (1) This Act may be called the Code of Civil Procedure (Uttar Pradesh Amendment) Act, 1981.

(2) It shall extend to the whole of Uttar Pradesh.

Amendment of  
section 139 of  
Act no. 5 of 1908,

2. In section 139 of the Code of Civil Procedure, 1908, for clauses (b) and (c), the following clauses shall be substituted and be deemed always to have been substituted, namely :—

“(b) any person appointed in this behalf by a High Court or District Court ; or

(c) any person appointed in this behalf by such other Court as the State Government may, by general or special order, empower in this behalf ;”

By order,  
G. B. SINGH  
Sachiv.

IN pursuence of the provisions of clause (3) of article 348 of the Constitution of India, the Governor is pleased to order the publication of the following English translation of the Civil Prakriya Sanhita (Uttar Pradesh Sanshodhan) Adhiniyam, 2003 (Uttar Pradesh Adhiniyam Sankhya 14 of 2003) as passed by the Uttar Pradesh Legislature and assented to by the President on December 19, 2003:—

THE CODE OF CIVIL PROCEDURE (UTTAR PRADESH AMENDMENT)  
ACT, 2003

(U.P. ACT No. 14 of 2003)

(As passed by the Uttar Pradesh Legislature)

AN

ACT

*further to amend the Code of Civil Procedure, 1908 in its application to Uttar Pradesh.*

IT IS HEREBY enacted in the Fifty-fourth Year of the Republic of India as follows:—

Short title, extent  
and commencement

1.(1) This Act may be called the Code of Civil Procedure, (Uttar Pradesh Amendment) Act, 2003.

(2) It extends to the whole of Uttar Pradesh.

(3) It shall be deemed to have come into force on March 22, 2003.

Substitution of  
section 115 of Act  
no. 5 of 1908

2. For section 115 of the Code of Civil Procedure, 1908, hereinafter referred to as the principal Act, the following section shall be *substituted* and be deemed to have been *substituted* with effect from July 1, 2002, namely :—

“115.(1) A superior court may revise an order passed in a case decided in an Revision original suit or other proceeding by a subordinate court where no appeal lies against the order and where the subordinate court has—

(a) exercised a jurisdiction not vested in it by law; or

(b) failed to exercise a jurisdiction so vested; or

(c) acted in exercise of its jurisdiction illegally or with material irregularity.

(2) A revision application under sub-section (1), when filed in the High Court, shall contain a certificate on the first page of such application, below the title of the case, to the effect that no revision in the case lies to the district court but lies only to the High Court either because of valuation or because the order sought to be revised was passed by the district court.

(3) The superior court shall not, under this section, vary or reverse any order made except where,—

(i) the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceeding; or

(ii) the order, if allowed to stand, would occasion a failure of justice or cause irreparable injury to the party against whom it is made.

(4) A revision shall not operate as a stay of suit or other proceeding before the court except where such suit or other proceeding is stayed by the superior court.

*Explanation -I.* In this section,—

(i) the expression 'superior court' means—

(a) the district court, where the valuation of a case decided by a court subordinate to it does not exceed five lakh rupees;

(b) the High Court, where the order sought to be revised was passed in a case decided by the district court or where the value of the original suit or other proceedings in a case decided by a court subordinate to the district court exceed five lakh rupees;

(ii) the expression 'order' includes an order deciding an issue in any original suit or other proceedings.

*Explanation -II.* The provisions of this section shall also be applicable to orders passed, before or after the commencement of this section, in original suits or other proceedings instituted before such commencement.”

3.(1) Notwithstanding anything contained in this Act, no judgement or order passed by the High Court in a revision filed on or after July 1, 2002 shall be liable to be questioned or reviewed on the ground that the revision ought to have been filed in the district court.

Transitory  
Provisions

(2) Any revision filed in the district court in a case where the value of the original suit or proceeding does not exceed five lakh rupees and is decided by it on the assumption that the district court would have jurisdiction notwithstanding the amendment of section 115 of the principal Act, by the Code of Civil Procedure (Amendment) Act, 1999 shall be deemed to have been correctly filed in that court and its decision thereon shall not be liable to be questioned on this ground, and such revision, if any pending on the date of commencement of this Act, shall be decided by that court.

(3) If on or after July 1, 2002 an application for revision under section 115 of the principal Act has been filed before the High Court in a case decided by a court subordinate to the district court, where the value of the original suit or proceeding does not exceed five lakh rupees and such application is pending on the date of commencement of this Act, then such application, unless arguments thereon have already been concluded and only judgement remains to be pronounced by the High Court, shall stand transferred to the district court concerned, and the same shall be disposed of in accordance with the said section 115 as substituted by this Act.

13

Repeal and savings.

4-(1) The code of Civil Procedure (Uttar Pradesh Amendment) (Second) Ordinance, 2003 is hereby repealed.

U.P.  
Ordinance  
no. 26 of  
2003.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the principal Act as amended by the Ordinance referred to in sub-section (1) or by the Code of Civil Procedure (Uttar Pradesh Amendment) Ordinance, 2003 shall be deemed to have been done or taken under the corresponding provisions of the principal Act as amended by this Act as if this Act were in force at all material times.

U.P.  
ordinance  
no. 5 of  
2003

STATEMENT OF OBJECTS AND REASONS

The Code of Civil Procedure (Uttar Pradesh Amendment) Act, 1978 (U.P. Act no. 31 of 1978) was enacted to amend *inter-alia* section 115 of the Code of Civil Procedure, 1908 in its application to Uttar Pradesh to provide for empowering the District Judges to revise the orders of courts subordinate to them, arising out of the original suits of the valuation up to Rupees Twenty thousand. The section 115 of the said Code was further amended in its application to Uttar Pradesh by the Uttar Pradesh Civil Laws (Amendment) Act, 1991 (U.P. Act no. 17 of 1991) to raise the said valuation up to Rupees One lac. Since the said amendments have been repealed by section 32 of the Code of Civil Procedure (Amendment) Act, 1999 (Act no. 46 of 1999), the District Judges in the state now have no power to revise the order of the courts subordinate to them arising out of original suits with effect from the date of commencement of the said Act of 1999 *i.e.* 01-07-2002. Same view has been expressed by the Hon'ble High Court of Judicature Allahabad in the matter of United Service Club and others Vs. Anita Barlo and others (Civil Revision Number 92 of 2002) decided on 16-9-2002. Consequently a litigant has to approach the Hon'ble High Court for filing a revision against the order of the subordinate courts arising out of suits of any valuation, whereas, he can file an appeal before the District Judge against the order of the subordinate courts passed in original suits of valuation up to Rupees Five lacs under the provisions of Bengal, Agra and Assam Civil Courts Act, 1887. With a view to removing the difficulties, it has been decided to amend section 115 of the said Code in its application to Uttar Pradesh to provide for empowering the District Judges to revise the orders of the courts subordinate to them arising out of original suits of the valuation up to Rupees Five lacs.

The Code of Civil Procedure (Uttar Pradesh Amendment) Bill, 2003 is introduced accordingly.

By Order,  
R.B. RAO  
Pramukh Sachiv.