

**Amendment to section 91, 92 and 104 of the
Code of Civil Procedure, 1908.**

Report No. 132

Amendment in Sections 91, 92 and 104 of the Code of Civil Procedure 1908

Sections 91 and 92 of the Code of Civil Procedure 1908, deal with special proceedings for institution of civil suits in the cases of public nuisance and breach of trust in public charities. Under the said sections such suits can be instituted only by the Advocate General or two or more persons after obtaining consent in writing in that regard from the Advocate General. The sections read as under: -

Section 91. Public Nuisances:

- (1) In the case of a public nuisance the Advocate General, or two or more persons having obtained the consent in writing of the Advocate-General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.
- (2) Noting in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

Section 92. Public Charities:

- (1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Provincial Government within the local limits of whose jurisdiction the whole or any part of the subject matter or the trust is situate, to obtain a decree –
 - (a) Removing any Trustee;
 - (b) Appointing a new Trustee;
 - (c)
 - (d)

The said provisions were considered by the Council of Islamic Ideology and it was observed by the Council that the purpose of the provisions can be achieved only when every aggrieved person is allowed to institute a suit in such like cases without the consent of the Advocate General. While proposing amendment in section 91 the Council recommended that it will be enough if the Advocate General is only informed in writing by the aggrieved person about the institution of

suit of public nuisance without waiting for his consent so that the aggrieved person may not continue to suffer such nuisance till the availability of the consent of the Advocate General. The provisions of section 92, wherein the institution of suit in the cases of breach of trust in public charities has been made subject to the consent of the Advocate General, were also considered by the Council which were held to be resulting in unnecessary delay in the dispensation of justice. So it was recommended that instead of obtaining the consent of the Advocate General for the institution of such suits a three months notice to him may be issued for the institution of such suits.

The same provisions as contained in the Indian Civil Procedure Code were also considered by the Indian Law Commission and amendment was proposed in section 91 (1) for authorizing any two or more persons to institute a suit in respect of public nuisance after obtaining the leave of the Court instead of permission of the Advocate General. Proposing amendment in section 92(1) CPC the Indian Law Commission observed that the provision requiring leave of the Advocate General should be replaced by a provision requiring leave of the Court as obtaining the leave of the Advocate General takes time, and the considerations which he takes into account can be taken into account by the Court as well.

The procedure provided in sections 91 and 92 whereby the aggrieved persons have been made bound to seek prior permission of the Advocate General for the institution of such suits seems to be cumbersome and an unnecessary hurdle in the dispensation of expeditious justice.

Furthermore, the Religious Endowment Act, 1863 referred to in sub-section (2) of section 92 has already been repealed vide the Federal Laws (Revision and Declaration) Ordinance, 1981 (Ordinance XXVII of 1981), so this provision may also be amended accordingly.

A consequential amendment will also be required in section 104 CPC to make the refusal order of the court under sections 91 and 92, after the proposed amendment, also appealable for which a new clause (fff) may be inserted in section 104 CPC.

Recommendations of the Sub-Committee.

After review of proposal the Sub-committee of the LJCP recommended addition of words “having interest” in the proposed amendment in section 91 of CPC. Likewise the Sub-committee also proposed that in the proposed clause (fff) of section 104 of CPC right of appeal might be provided against the order of granting leave by the court to institute a suit under section 91 and 92 of CPC.

A comparative table with respect to the existing provisions, proposed amendments by the Secretariat of the Commission and recommendations made by the Sub-committee is as follows.

Comparative Table follows:-

| Existing Provisions | Proposed Amendments | Recommendations of the Sub-Committee |
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| <p>Section 91. Public Nuisances:</p> <p>(1) In the case of a public nuisance the Advocate General, or two or more persons having obtained the consent in writing of the Advocate-General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.</p> | <p>Section 91. Public Nuisances:</p> <p>(1) In the case of a public nuisance the Advocate General, or two or more persons with the leave of the Court, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.</p> | <p>Section 91. Public Nuisances:</p> <p>(1) In the case of a public nuisance, the Advocate General, or two or more persons having interest with the leave of the Court, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.</p> |

| Section 92. Public | Section 92. Public | Section 92. Public |
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| <p>Charities:(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the trust and having obtained the consent in writing of the Advocate General, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Provincial Government within the local limits of whose jurisdiction the whole or any part of the subject matter or the trust is situate, to obtain a decree –</p> <p>(a) Removing any trustee; (b) Appointing a new trustee; (c)..... (d).....</p> <p>(2) Save as provided by the Religious Endowments Act, 1863 no suit claiming any of the relief specified in sub-section (1) shall be substituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.</p> <p>Section 104. Orders from which appeal lies.- (1) An appeal shall lie from the</p> | <p>Charities:(1) In the case of any alleged breach of any express or constructive trust created for public purposes of a charitable or religious nature, or where the direction of the Court is deemed necessary for the administration of any such trust, the Advocate General, or two or more persons having an interest in the Trust and having obtained the leave of the Court, may institute a suit, whether contentious or not, in the principal Civil Court of original jurisdiction or in any other Court empowered in that behalf by the Provincial Government within the local limits of whose jurisdiction the whole or any part of the subject matter or the trust is situate, to obtain a decree –</p> <p>(a) Removing any trustee; (b) Appointing a new trustee; (c)..... (d).....</p> <p>(2) No suit claiming any of the relief specified in sub-section (1) shall be substituted in respect of any such trust as is therein referred to except in conformity with the provisions of that sub-section.</p> <p>Section 104. Orders from which appeal lies.- (1) An appeal shall lie from the</p> | <p>Charities:</p> <p style="text-align: center;">approved</p> <p style="text-align: center;">approved</p> <p>Section 104. Orders from which appeal lies.- (1) An appeal shall lie from the</p> |

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| <p>following orders, and save as otherwise expressly provided in the body of this code or by any law for the time being in force, from no other orders:-</p> <p>(f) an order under section 35A;</p> <p>(ff) an order under section 47;</p> | <p>following orders, and save as otherwise expressly provided in the body of this code or by any law for the time being in force, from no other orders :-</p> <p>(f) an order under section 35A</p> <p>(ff) an order under section 47;</p> <p>(fff) an order under section 91 or section 92 refusing leave to institute a suit of the nature referred to in section 91 or 92, as the case may be.</p> | <p>following orders, and save as otherwise expressly provided in the body of this code or by any law for the time being in force, from no other orders :-</p> <p>(f) an order under section 35A;</p> <p>(ff) an order under section 47;</p> <p>(fff) an order under section 91 or section 92 granting or refusing leave to institute a suit.</p> |
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Commission's deliberations.

The Commission was briefed that section 91 and 92 of CPC provide for institution of suits in respect of public nuisance and breach of trust in public charities by the Advocate General or two or more persons with the consent of the Advocate General. The procedure for seeking consent of the Advocate General for institution of such suits causes unnecessary delay in dispensation of justice, therefore, amendments are proposed in sections 91 and 92 of CPC to the effect that two or more persons may institute a suit with the leave of the court in addition to being instituted by the Advocate General. In addition, amendment is also proposed for addition of clause (fff) in sub-section (1) of section 104 CPC (pertaining to orders from which appeal lies) whereby an order under section 91 and 92 refusing leave to institute a suit, would be appealable.

The proposed amendments were discussed in detail by the Commission. Majority of the Members took the view that since a suit under section 91 CPC is brought in respect of public nuisance, therefore, the qualification of having interest of the persons instituting the suit is not necessary. Thus, in the light of majority view, the Commission approved amendments in section 91 of CPC proposed by the Secretariat of the Commission. The Commission also approved the proposed amendment in section 92 of CPC.

With regard to the proposed amendment in section 104 of CPC by adding clause (fff), the proposal of the Secretariat of the commission providing right of appeal against the order of refusal only was approved with the view that appeal against granting permission to file suit, proposed by the Sub-Committee of the Commission, would cause delay which was not the object of the proposed amendment in section 104 of CPC.

Draft Bill for amendment in section 91, 92 and 104 of the Code of Civil Procedure, 1908 is annexed herewith.

A**Bill**

further to amend the Code of Civil Procedure, 1908 (Act No. V of 1908).

Whereas it is expedient further to amend the Code of Civil Procedure, 1908 (Act V of 1908) for the purpose hereinafter appearing;

It is hereby enacted as follows;

1. Short title and commencement.- (1) This Act may be called the Code of Civil Procedure (Amendment) Act, 2014.

(2) It shall come into force at once.

2. Amendment to section 91 Act V of 1908.- (1) In the Code of Civil Procedure, 1908, hereinafter the said Code, in section 91, in sub-section (1) for the words "having obtained the consent in writing of the Advocate General" the words "with the leave of the Court" shall be substituted.

3. Amendment to section 92 Act V of 1908.- (1) In the said Code, in section 92,-

(a) in sub-section (1) for the words "and having obtained the consent in writing of the Advocate General" the words "and having obtained the leave of the Court shall be substituted; and

(b) in sub-section (2) the words "Save as provided by the Religious Endowment Act, 1863" shall be omitted.

4. Amendment to section 104 Act V of 1908.- In the said Code in section 104, after clause (ff), the following new clause (fff) shall be added, namely:

"(fff) an order under section 91 or section 92 refusing leave to institute a suit."