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ON

Session – III

- Framing of issues .
- Necessity of framing of preliminary issues.

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Framing of Issues in Civil suit and Necessity of

Framing of Preliminary Issues

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Introduction

The framing of issues in a civil suit is a foundational procedural step under the Code of Civil Procedure, 1908 (CPC), serving as the linchpin that bridges pleadings and trial. This process crystallizes the disputes between parties, delineating the precise questions of fact or law requiring adjudication. By narrowing the scope of litigation, it ensures judicial efficiency, prevents unnecessary evidence, and upholds the principles of natural justice. Equally critical is the concept of framing preliminary issues-those legal questions that, if resolved, could dispose of a suit at the threshold, sparing the court and parties from protracted trials. This introduction explores the doctrinal underpinnings, procedural mechanics, and jurisprudential evolution of issue framing in India, with a focus on Supreme Court rulings that have shaped its contemporary application.

Concept and Legislative Framework

Under Order XIV of the CPC, the court is mandated to frame issues after examining the pleadings, documents, and oral submissions during the "first hearing." Issues arise from material propositions affirmed by one party and denied by the other, ensuring the trial remains focused on genuine disputes. The Supreme Court in ***Fiza Developers & Inter-Trade (P) Ltd. v. Amci (I) (P) Ltd. (2009) 17 SCC 796*** emphasized that the object of framing issues is to "focus upon the questions on which evidence has to be led and to indicate the party on whom the burden of proof lies." This procedural step is not merely administrative but a judicial function that demands meticulous attention to the pleadings and the legal questions they engender.

The legislative intent behind Order XIV is rooted in colonial-era reforms, drawing from English common law principles. Over time, amendments to the CPC, particularly in 1976 and 2002, refined the process, limiting the trial of preliminary issues to those involving **jurisdiction** or **statutory bars** (e.g., limitation, res judicata). This shift aimed to curb the misuse of preliminary objections to delay trials, as noted in *Hardwari Lal v. Pohkar Mal* (2000) 1 SCC 46, where the Court contrasted the pre- and post-amendment scope of Order XIV Rule 2.

Purpose and Necessity of Framing Issues

- 1 **Judicial Economy:** By confining the trial to contested matters, issue framing prevents superfluous evidence and arguments. For instance, in *Major S.S. Khanna v. Brig. F.J. Dillon* AIR 1964 SC 497, the Court held that framing issues ensures "the parties know the exact points of dispute and are not taken by surprise."
- 2 **Fairness and Due Process:** Properly framed issues guarantee both parties a fair opportunity to present their case. The omission of a critical issue, however, does not always vitiate the trial if evidence on the point was led and arguments addressed, as clarified in *Nagubai Ammal v. B. Shama Rao* AIR 1956 SC 593.
- 3 **Clarifying Burden of Proof:** Issues demarcate which party bears the onus of proving a fact, a principle underscored in *Bhagwati Prasad v. Chandramaul* AIR 1966 SC 735, where the Court ruled that a decision cannot rest on an unpleaded issue.

Preliminary Issues: Scope and Judicial Discretion

Order XIV Rule 2(2) permits courts to try preliminary issues **only** if they pertain to:

- The court's jurisdiction, or
- A statutory bar to the suit (e.g., limitation under Section 3 of the Limitation Act, res judicata under Section 11 CPC).

Hon'ble Supreme Court's ruling in *R.Nagraj (Dead) through Lrs. vs. Rajmani and Ors* on 11th April, 2025 illustrates the principle that *Suit Can Be Dismissed*

As Time-Barred Even If No Specific Issue Regarding Limitation Was Framed .
The Court held that procedural lapses in framing issues do not preclude dismissal of a time-barred suit if the parties had a fair chance to argue the point, stating:

“Procedural laws are the handmaid of justice... The absence of a framed issue on limitation cannot curtail the court’s duty to render substantive justice.”

However, courts must exercise caution. In **Prithvi Raj Jhingta v. Gopal Singh (2003) 1 ShimLC 1 (FB)**, Hon’ble Himachal Pradesh High Court cautioned that mixed questions of law and fact cannot be tried preliminarily. For example, a plea of adverse possession requiring factual determination cannot be decided without evidence.

Consequences of Improper Framing

Failure to frame issues does not invariably invalidate a trial. In ***Sunyabasi Pikra v. Paramanand Ranasingh* AIR 1986 SC 789**, the Court upheld a judgment where an issue was omitted but evidence on the point was thoroughly examined. Conversely, appellate courts may remand cases if crucial issues are overlooked, as in **Ram Sarup Gupta v. Bishun Narain Inter College(1987) 2 SCC 555**, where the failure to frame an issue on title necessitated retrial.

The Legal Framework-Order XIV CPC

Order XIV of the Code of Civil Procedure, 1908 (CPC), forms the backbone of the Indian civil trial process by codifying the principles and procedures for the framing of issues. The meticulous identification and framing of issues ensure that the real disputes between parties are clarified at the outset, guiding the trial process and preventing unnecessary delays, confusion, or miscarriage of justice. It provides an in-depth doctrinal and practical analysis of Order XIV, its key provisions, judicial interpretations, and the necessity of framing preliminary issues, with reference to relevant Supreme Court rulings.

Structure and Purpose of Order XIV CPC

Order XIV is titled “Settlement of Issues and Determination of Suit on Issues of Law or on Issues Agreed Upon.” Its primary objective is to ensure that the trial is focused on the precise points of dispute, thereby facilitating a fair and expeditious resolution.

A. The Rationale for Framing Issues

Framing issues is not a mere formality; it is a judicial function of critical importance. As the Supreme Court has observed, issues are the “backbone of a suit” because they define the boundaries of the dispute and inform the parties about the questions that will determine the outcome. Without properly framed issues, trials risk becoming unfocused, leading to injustice or unnecessary delay.

Key Provisions of Order XIV

A. Rule 1: Framing of Issues

- **Definition and Arising of Issues:**

Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other. Material propositions are those necessary for the plaintiff to establish a right to sue or for the defendant to constitute a defense. Each such proposition forms a distinct issue.

- **Types of Issues:**

- *Issues of Fact*
- *Issues of Law*
- *Mixed Issues of Law and Fact*

The court must classify issues accordingly at the first hearing, after reviewing pleadings, documents, and hearing parties.

- **Procedure:**

The court frames and records issues after reading the plaint, written statement, examining parties or their representatives, and considering documents and answers to interrogatories.

- **Materials for Framing Issues (Rule 3):**

Issues may be framed from:

- Allegations made on oath by parties or their pleaders
- Allegations in pleadings or answers to interrogatories
- Contents of documents produced by either party

B. Rule 2: Pronouncement on All Issues and Preliminary Issues

- **General Rule:**

The court must pronounce judgment on all issues, both of law and fact.

- **Exception-Preliminary Issues:**

The court may decide an issue of law as a preliminary issue *only* if it relates to:

- (a) the jurisdiction of the court, or
- (b) a statutory bar to the suit (e.g., limitation, res judicata).

This is a significant limitation introduced by the 1976 amendment, which replaced the mandatory language (“shall try those issues first”) with discretionary language (“may try those issues first”), thus restricting the use of preliminary issues to prevent unnecessary fragmentation and delay in trials.

- **Judicial Discretion:**

The court has discretion to decide whether to try a preliminary issue first or along with other issues. This discretion must be exercised judiciously, ensuring that only pure questions of law that can dispose of the suit are tried as preliminary issues.

C. Rule 5: Amendment and Addition of Issues

- **Court’s Power:**

The court may amend, add, or strike out issues at any stage before passing a decree if it is necessary for determining the matters in controversy. This power can be exercised suo motu or on the application of parties and is vital to ensure that the trial remains focused on the real disputes as they emerge during proceedings.

Judicial Interpretation and Analysis

A. Honourable Supreme Court on the Nature and Importance of Issues

The Apex Court has repeatedly emphasized that the framing of issues is a judicial duty and not a mere administrative task. In ***Bhagwati Prasad v.***

Chandramaul, AIR 1966 SC 735, the Court held that a decision cannot rest on an unpleaded issue, underscoring the necessity of clear and precise issues for a fair trial.

In **Hardwari Lal v. Pohkar Mal**, the Hon'ble Supreme Court analyzed the impact of the 1976 amendment to Rule 2, observing:

"A comparative reading of the said provision as it existed earlier to the amendment and the one after amendment would clearly indicate that the consideration of an issue and its disposal as preliminary issue has now been made permissible only in limited cases."

This doctrinal shift ensures that preliminary issues are not misused to delay justice.

B. Honourable High Courts on Mixed Questions of Law and Fact

Hon'ble Sikkim High Court in **Phigu Tshering Bhutia v. Shri Karma Samten Bhutia (2024)** clarified that Order XIV Rule 2 does not confer jurisdiction to decide mixed questions of law and fact as preliminary issues unless the facts are clear from the plaint itself. The Court, relying on Hon'ble Supreme Court's decision in **Nusli Neville Wadia v. Ivory Properties & Ors.**, held that:

"Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts. In case of dispute as to facts, it is necessary to be determined to give a finding on a question of law. Such question cannot be decided as a preliminary issue."

This reinforces the principle that only pure questions of law, where no factual inquiry is needed, can be determined as preliminary issues.

C. Pronouncement on All Issues

The Honourable Supreme Court has also clarified that, except in the limited circumstances provided under Rule 2(2), the court must pronounce judgment on all issues. This ensures that the trial is comprehensive and that no aspect of the dispute is left unresolved, thereby reducing the risk of piecemeal litigation and multiplicity of proceedings.

Practical Application and Procedure

A. When and How Issues Are Framed

Issues are framed at the first hearing of the suit, after the court has had the opportunity to review the pleadings, examine the parties, and consider any relevant documents or interrogatories. The process is designed to clarify the exact points of variance between the parties and to focus the trial on those points.

B. Amendment of Issues

Order XIV Rule 5 empowers the court to amend issues at any stage before the decree is passed. This flexibility is crucial, as it allows the court to respond to developments during the trial, such as the emergence of new facts or legal arguments. The Honourable Supreme Court has held that this power should be used to ensure that the real questions in controversy are determined and justice is done.

C. Agreed Issues

Order XIV Rule 6 allows parties to agree in writing to state any question of fact or law as an issue, and the court may pronounce judgment accordingly if the agreement is bona fide.

The Necessity of Framing Preliminary Issues

The necessity of framing preliminary issues arises from the need to prevent unnecessary trials when a pure question of law can dispose of the suit at the outset. However, as clarified by the Honourable Supreme Court and High Courts, this power is to be exercised sparingly and only in clear cases where no factual inquiry is required.

- **Jurisdictional Issues:**

If the court lacks jurisdiction, the suit must be dismissed at the threshold.

- **Statutory Bar:**

If a suit is barred by law (e.g., limitation, res judicata), it should not proceed to trial.

This approach promotes judicial economy and prevents the wastage of time and resources on suits that are bound to fail on legal grounds.

The Process and Principles of Framing Issues

The process of framing issues is a pivotal stage in civil litigation, serving as the procedural bridge between pleadings and trial. It is at this juncture that the court crystallizes the real disputes between parties, ensuring the trial is focused, efficient, and fair. The necessity of framing preliminary issues—those that can dispose of a suit at the threshold—further underscores the importance of this process. It explores the doctrinal and practical contours of the process and principles of framing issues, drawing on legislative provisions, Honourable Supreme Court rulings, and scholarly commentary.

The Doctrinal Basis and Legislative Mandate

Order XIV of the Code of Civil Procedure, 1908 (CPC), is the statutory foundation for the framing of issues. Rule 1(3) of Order XIV states:

“Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.”

Material propositions are those facts or legal contentions that must be specifically alleged by the plaintiff to establish a right to sue, or by the defendant to constitute a defense. Unless a material proposition is both affirmed by one party and denied by the other, a distinct issue does not arise. The Honourable Supreme Court in ***Sri Nanjudchari v. The Chairman*** held:

“It is mandatory on the part of the trial court to frame all necessary issues arising from pleadings i.e., material proposition of fact and law affirmed by one party and denied by another.”

This doctrinal clarity ensures that only genuine disputes are put to trial, preventing unnecessary litigation on uncontested matters.

The Procedural Steps in Framing Issues

A. Review of Pleadings and Documents

The process begins with a careful examination of the plaint, written statement, and any subsequent pleadings. The court must also consider documents produced by the parties and answers to interrogatories, as these may clarify or amplify the points of dispute.

B. Hearing the Parties

At the first hearing, the court may examine the parties or their representatives to clarify the points of variance. This interactive process helps the court to ascertain the real controversy and avoid the omission of any material issue.

C. Identification and Recording of Issues

Once the material propositions at variance are identified, the court frames and records each issue distinctly. Issues are classified as:

- **Issues of Fact** (e.g., whether a contract was executed)
- **Issues of Law** (e.g., whether the suit is barred by limitation)
- **Mixed Issues of Law and Fact** (e.g., whether a transaction is void for fraud)

The Honourable Supreme Court has emphasized that the framing of issues is a judicial function, not a mere formality, and must be performed with care and precision.

Principles Governing the Framing of Issues

A. Issues Must Arise from Material Propositions

Only those points that are both asserted by one party and denied by the other should be framed as issues. If there is no specific denial, the question of framing an issue does not arise.

B. Issues Should Be Clear, Concise, and Not Compound

Each issue should address a single, clear point of dispute. Compound or vague issues can lead to confusion and inefficiency at trial.

C. No Issues Where No Defense Is Raised

If the defendant does not contest the claim, the court need not frame or record issues, as there is no dispute to be resolved.

D. Amendment of Issues

Order XIV Rule 5 empowers the court to amend, add, or strike out issues at any stage before passing a decree if it is necessary for determining the real questions in controversy. This flexibility ensures that the trial remains focused on the evolving disputes.

Judicial Analysis and Hon'ble Supreme Court Rulings

A. The Honourable Supreme Court on the Centrality of Issues

In ***Bhagwati Prasad v. Chandramaul***, the Honourable Supreme Court held that a decision cannot rest on an unpleaded issue, underscoring the importance of clear and precise issues for a fair trial. The Court stated:

“A party approaching a civil court claims specific reliefs and lays down its position in its pleadings. The court’s framing of issues on the compete factual averments contextualizes the real controversy between the parties.”

B. Framing of Defective or Incomplete Issues

In ***Nagubai Ammal v. B.Shama Rao***, Hon'ble Supreme Court clarified that the framing of a wrong, improper, or defective issue does not vitiate the trial, as long as the parties entered the trial knowing the other side's case in full and led evidence in respect of the question which the court decided upon. However, the court cannot decide upon a question of law not pleaded or for which no specific issue was framed, as this would deprive parties of the opportunity to address the matter.

C. Framing Issues Based on Pleadings

Hon'ble Supreme Court has consistently held that issues must be framed based on the pleadings and not on extraneous matters. In ***Shri Ram Sahu (Dead) Through Lrs v. Vinod Kumar Rawat***, the Court criticized the High Court for considering issues framed in another case, reiterating that each suit must stand on its own pleadings and issues.

D. The Role of Evidence and Amendment

If sufficient evidence is adduced on a point not explicitly framed as an issue, the court may decide that point, provided both parties had the opportunity to address it. This principle prevents technicalities from defeating substantive justice.

The Necessity and Process of Framing Preliminary Issues

A. Preliminary Issues: Scope and Discretion

Order XIV Rule 2(2) CPC restricts preliminary issues to pure questions of law relating to the court's jurisdiction or a statutory bar to the suit. The Honourable Supreme Court in ***Hardwari Lal v. Pohkar Mal*** observed:

“The consideration of an issue and its disposal as a preliminary issue has now been made permissible only in limited cases. The only exception to this is contained in sub-rule (2). This sub-rule relaxes the mandate to a limited extent by conferring a discretion on the court.”

The Court further clarified that the obligation to decide a question of law as a preliminary issue is now discretionary, not mandatory, and must be exercised judiciously.

B. Mixed Questions of Law and Fact

The Honourable Supreme Court and various High Courts have held that mixed questions of law and fact cannot be tried as preliminary issues unless the facts are clear from the plaint itself. For example, limitation may be tried as a preliminary issue only if it is apparent from the pleadings and requires no factual inquiry.

C. Practical Approach

The process of framing preliminary issues involves:

- Scrutinizing the pleadings to identify any pure question of law that, if decided, would dispose of the suit.
- Ensuring that the issue does not require the determination of disputed facts.
- Exercising judicial discretion to decide whether to try the issue first or along with other issues.

Types of Issues-Fact, Law, and Mixed

The process of framing issues in a civil suit is not merely a procedural formality but a substantive step that determines the entire course of the trial. Order XIV Rule 1(4) of the Code of Civil Procedure, 1908 (CPC), recognizes that issues are of two primary kinds: issues of fact and issues of law. In practice, a third category-mixed issues of law and fact-has emerged through judicial interpretation. The careful classification of these issues is essential, particularly when considering the necessity and scope of framing preliminary issues. It explores the doctrinal distinctions, practical implications, and judicial treatment of these three types of issues, with reference to Honourable Supreme Court and High Court rulings.

Doctrinal Foundations and Legislative Text

Order XIV Rule 1(4) CPC provides:

“Issues are of two kinds: (a) issues of fact, (b) issues of law.”

A “material proposition” is one that must be specifically alleged by the plaintiff to show a right to sue or by the defendant to constitute a defense. Each such proposition, if affirmed by one party and denied by the other, forms a distinct issue. The classification of issues is not merely academic; it determines the scope of evidence, the burden of proof, and the court’s power to dispose of the suit at a preliminary stage.

Issues of Fact

Definition:

Issues of fact are disputes concerning the existence or non-existence of a factual circumstance. These are questions that must be resolved by examining evidence-oral, documentary, or otherwise.

Examples:

- Whether a contract was executed between the parties.
- Whether a particular event occurred on a given date.

- Whether the defendant was in possession of the suit property.

Judicial Approach:

The Hon'ble Supreme Court in ***Sri Nanjudchari v. The Chairman*** held that it is mandatory for the trial court to frame all necessary issues arising from pleadings, including material propositions of fact affirmed by one party and denied by another. The court's role is to ensure that all factual disputes are clearly identified, so that both parties have the opportunity to present evidence and arguments.

Practical Implications:

- Issues of fact require the leading of evidence.
- The burden of proof is allocated based on who asserts the fact.
- The court cannot decide these issues without a full trial.

Issues of Law

Definition:

Issues of law are disputes concerning the interpretation or application of legal principles, statutes, or case law. These issues do not depend on the resolution of disputed facts but on the legal consequences of admitted or established facts.

Examples:

- Whether the suit is barred by limitation.
- Whether the court has jurisdiction to entertain the suit.
- Whether the plaint discloses a cause of action.

Judicial Approach:

Order XIV Rule 2(2) CPC allows the court to try an issue of law as a preliminary issue only if it relates to the jurisdiction of the court or a statutory bar to the suit. Honourable Supreme Court in ***Hardwari Lal v. Pohkar Mal*** clarified that the disposal of a suit on a preliminary issue is permissible only in these limited circumstances.

Practical Implications:

- Issues of law can sometimes be decided without taking evidence.

- If a pure question of law can dispose of the suit, the court may pronounce judgment on that issue alone.
- However, if the legal issue depends on disputed facts, it cannot be decided as a preliminary issue.

Mixed Issues of Law and Fact

Definition:

Mixed issues of law and fact are those that require the court to determine both the factual circumstances and the applicable legal principles. The legal outcome depends on the resolution of underlying factual disputes.

Examples:

- Whether a transaction is void for fraud (requires establishing facts of fraud and applying legal principles).
- Whether the suit is barred by limitation, when the starting point of limitation is itself disputed.
- Whether res judicata applies, when the identity of parties or subject matter is in question.

Judicial Approach:

Honourable Supreme Court and various High Courts have consistently held that mixed questions of law and fact cannot be tried as preliminary issues unless the relevant facts are clear and undisputed from the pleadings. Hon'ble Sikkim High Court in ***Phigu Tshering Bhutia v. Shri Karma Samten Bhutia*** emphasized that Order XIV Rule 2 CPC confers no jurisdiction on the court to decide a mixed question of law and fact as a preliminary issue unless the facts are clear from the plaint itself.

In ***Nusli Neville Wadia v. Ivory Properties & Ors.***, Hon'ble Supreme Court stated:

“Once facts are disputed about limitation, the determination of the question of limitation also cannot be made under Order 14 Rule 2(2) as a preliminary issue or any other such issue of law which requires examination of the disputed facts.

In case of dispute as to facts, it is necessary to be determined to give a finding on a question of law. Such question cannot be decided as a preliminary issue.”

Practical Implications:

- Mixed issues require both evidence and legal argument.
- They cannot be decided at a preliminary stage unless the facts are admitted or clear from the pleadings.
- Courts must be cautious not to treat such issues as purely legal, as doing so may result in injustice.

The Necessity of Proper Classification

The classification of issues as fact, law, or mixed is not merely theoretical. It has significant procedural consequences, especially regarding the court's power to dispose of suits at the threshold. Order XIV Rule 2 CPC restricts the trial of preliminary issues to pure questions of law relating to jurisdiction or statutory bar, precisely to avoid the risk of injustice that may arise from deciding mixed issues without a full trial.

Honourable Supreme Court Guidance:

Honourable Supreme Court in ***Ramesh B. Desai v. Bipin Vadilal Mehta*** held that where the adjudication of an issue of law depends on the determination of disputed facts, such an issue cannot be tried as a preliminary issue. Similarly, in ***Sunabasi Pikra v. Paramanand Ranasingh***, the Court held that if both parties have led evidence on a disputed matter, the absence of a specifically framed issue is immaterial, but this does not justify treating mixed issues as preliminary issues.

Analysis and Judicial Trends

A. Issues of Fact:

These are the most common and require a full trial. Courts must ensure that all factual disputes are clearly framed as issues, allowing parties to present evidence and arguments.

B. Issues of Law:

Courts may dispose of suits on pure questions of law at the threshold, but only if the legal issue does not depend on disputed facts. This promotes judicial economy and prevents unnecessary trials.

C. Mixed Issues:

The judicial consensus is that mixed issues cannot be decided as preliminary issues unless the facts are undisputed or admitted. This approach safeguards the rights of parties to a fair trial and prevents the premature disposal of suits on incomplete records.

D. Honourable High Court and Supreme Court Rulings:

Recent judgments reinforce the principle that the court's jurisdiction to decide preliminary issues is limited to pure questions of law. Hon'ble Sikkim High Court in ***Phigu Tshering Bhutia*** and Hon'ble Supreme Court in ***Nusli Neville Wadia*** have provided clear guidance on this point.

The Necessity and Rationale for Framing Issues

Framing of issues is a fundamental procedural step in civil litigation, serving as the cornerstone for a fair, efficient, and focused trial. It delineates the precise points of dispute between parties, guiding the presentation of evidence and arguments, and ultimately shaping the court's decision. It explores the necessity and rationale for framing issues, supported by authoritative Supreme Court rulings and doctrinal analysis, to highlight its indispensable role in the civil justice system.

Conceptual Understanding: What Are Issues?

An "issue" in a civil suit is essentially a point of contention between the parties—a material proposition of fact or law affirmed by one party and denied by the other. The court frames these issues to identify the exact questions that require adjudication. As stated in *Legal Service India*, framing of issues is “probably the

most important part of the trial of a civil suit” because “it is the point on which a case itself is decided in favour of one side or the other”.

Hon'ble Supreme Court in *Sri Nanjudchari v. The Chairman* held that it is mandatory for the trial court to frame all necessary issues arising from the pleadings, i.e., material propositions of fact and law affirmed by one party and denied by another. This ensures that the trial is confined to genuine disputes, avoiding irrelevant or extraneous matters.

Necessity of Framing Issues

A. Ensures Clarity and Focus in Trial

Framing issues provides clarity by crystallizing the real points of dispute. It prevents the trial from becoming a vague or sprawling inquiry. The court, parties, and advocates understand exactly what facts or legal questions are contested, enabling focused evidence presentation and argumentation. Bar & Bench explains that framing issues “determine what evidence will be produced by either party” and contextualizes the real controversy between parties.

B. Avoids Surprise and Ensures Fairness

By framing the issues upfront, the court ensures that no party is taken by surprise during the trial. This aligns with the principles of natural justice and procedural fairness. The parties know what points they must prove or defend, and the court ensures that each issue receives adequate consideration.

Rationale Behind Framing Issues: Doctrinal and Practical Perspectives

A. Material Propositions and the Formation of Issues

Issues arise only when a material proposition is affirmed by one party and denied by the other. Material propositions are those necessary to establish a right to sue or a defense. Hon'ble Supreme Court in *Sri Nanjudchari* emphasized that unless each material proposition is affirmed by the plaintiff and denied by the defendant, a distinct issue will not form.

This principle prevents the trial from being cluttered with irrelevant or uncontroverted matters, focusing judicial attention on genuine disputes.

B. Judicial Duty and Discretion

Framing issues is a judicial function, not a mere procedural formality. The court must frame all necessary issues suo motu, even if the parties do not specifically request it. Hon'ble Madhya Pradesh High Court has held that the duty to frame issues is mandatory and the court must exercise its power to amend or add issues at any stage to determine the matters in controversy.

C. Flexibility to Amend Issues

Order XIV Rule 5 CPC empowers the court to amend or add issues at any stage before passing the decree. This flexibility ensures that the issues reflect the real controversy as it evolves during trial, preventing injustice due to procedural lapses.

Consequences of Failure to Frame Issues

A. Trial Without Framing Issues

While framing issues is mandatory, Hon'ble Supreme Court held that failure to frame an issue does not necessarily vitiate the trial if evidence on the point was led and parties had the opportunity to address it. In ***Mohd Kareemuddin Khan v. Syed Aza***, the Court held that even if an issue was not framed, the court could decide on that question if both parties adduced evidence on it.

Similarly, in ***Sunyabasi Pikra v. Paramanand Ranasingh***, the Court observed that non-framing of a particular issue is immaterial if both parties have led evidence on the matter.

B. Remand for Framing of Issues

In some cases, appellate courts have remanded matters to trial courts for framing issues when crucial points were omitted. For example, in ***Syed Mahmood v. Dr. Manik Chandra***, the court remitted the matter for framing issues and giving parties reasonable opportunity to lead evidence.

C. Impact on Appealability

Dismissal of a suit without framing issues and before trial is generally not appealable, but rejection of the plaint is appealable. This distinction underscores the procedural importance of framing issues before trial.

Framing of Preliminary Issues-Scope and Limits

The concept of preliminary issues in civil litigation is rooted in the principle of judicial economy and the need to avoid unnecessary trials when a suit can be disposed of at the threshold on a pure question of law. However, the scope and limits of framing such issues have been the subject of legislative reform and significant judicial scrutiny. Here we examine the statutory framework under Order XIV Rule 2 of the Code of Civil Procedure, 1908 (CPC), and analyze the key Supreme Court rulings that clarify when and how preliminary issues may be framed and decided.

Statutory Framework: Order XIV Rule 2 CPC

Order XIV Rule 2 CPC governs the trial of issues and the circumstances under which preliminary issues may be framed and decided:

- **Sub-rule (1):** The court must pronounce judgment on all issues, both of law and fact.
- **Sub-rule (2):** Exceptionally, the court may try an issue of law as a preliminary issue *only* if it relates to:
 - (a) the jurisdiction of the court, or
 - (b) a bar to the suit created by any law for the time being in force (such as limitation, res judicata, or statutory bar).

This provision marks a departure from the pre-1976 position, where all issues of law could be tried as preliminary issues, often leading to piecemeal litigation and delay.

Judicial Interpretation: Supreme Court on Scope and Limits

A. Only Pure Questions of Law

Hon'ble Supreme Court in ***Hardwari Lal v. Pohkar Mal*** clarified that, after the 1976 amendment, the trial of preliminary issues is permissible only in limited

cases-specifically, those relating to jurisdiction or a statutory bar. The Court observed:

“The consideration of an issue and its disposal as a preliminary issue has now been made permissible only in limited cases. ... The only exception to this is contained in sub-rule (2). This sub-rule relaxes the mandate to a limited extent by conferring a discretion on the court.”

B. Discretion, Not Mandate

Order XIV Rule 2(2) is discretionary, not mandatory. Even when a pure question of law relating to jurisdiction or a statutory bar arises, the court is not obliged to try it as a preliminary issue. The court may, in its discretion, decide to try all issues together if it is more expedient for the just, expeditious, and economical disposal of the suit.

C. No Preliminary Issue on Mixed Questions

Hon'ble Supreme Court and various High Courts have repeatedly held that a preliminary issue can be framed and decided only when it is a pure question of law, not when it is a mixed question of law and fact. In ***Nusli Neville Wadia v. Ivory Properties & Ors.***, the Court held that if the determination of a legal issue (such as limitation or res judicata) depends on disputed facts, it cannot be decided as a preliminary issue. Similarly, Hon'ble Sikkim High Court and the Supreme Court in *Sankuntala* have held that the court has no jurisdiction to try a suit on mixed issues of law and fact as a preliminary issue.

D. Examples: Limitation and Res Judicata

- **Limitation:** The Supreme Court in 2022 held that limitation can be decided as a preliminary issue under Order XIV Rule 2(2)(b) only if the question can be decided on admitted facts. If the facts are disputed, the issue cannot be tried preliminarily.
- **Res Judicata:** The Court has clarified that res judicata may be determined as a preliminary issue only when it does not involve a disputed question of fact or a mixed question of law and fact.

E. Maintainability and Other Bars

Issues such as maintainability of the suit, when based on pure questions of law and not requiring evidence, may also be tried as preliminary issues.

Rationale Behind the Restriction

The legislative intent behind restricting the scope of preliminary issues was to prevent delays caused by piecemeal trials and repeated remands. Hon'ble Supreme Court in ***Ramesh B. Desai v. Bipin Vadilal Mehta*** explained that the object of the amendment was to ensure that, except in clear cases, all issues should be tried together to avoid unnecessary fragmentation of proceedings and to promote the expeditious disposal of suits.

Conclusion

The framing of issues stands as a foundational pillar of civil litigation in India, ensuring that trials are focused, efficient, and just. Governed by the Code of Civil Procedure, 1908, this process is more than a procedural formality-it is the mechanism by which the real points of dispute are crystallized, enabling the court to adjudicate only those matters that are genuinely contested between the parties. By identifying and separating questions of fact, law, and mixed questions, the court not only streamlines the trial but also upholds the principles of natural justice and procedural fairness.

The Role and Impact of Framing Issues

Framing issues narrows the scope of litigation to what truly matters, preventing the trial from devolving into a broad, unfocused inquiry. It compels both parties to clarify their positions and guides the court in determining the relevance and admissibility of evidence. This clarity is essential for judicial economy, as it avoids unnecessary delays and ensures that only pertinent matters are addressed during the trial.

A correctly framed set of issues is the bedrock for a fair decision. As highlighted by the Hon'ble Supreme Court and academic commentators, the absence or

improper framing of issues can result in confusion, injustice, or even remand for retrial. However, the courts have also recognized that if parties have had the opportunity to present evidence and arguments on a point—even if a specific issue was not framed—substantive justice should not be sacrificed for procedural technicalities.

The legal framework allows for amendment of issues if new facts or legal questions arise during the trial. This flexibility is vital for ensuring that the real controversy is always before the court and that justice is not thwarted by procedural rigidity. Courts must, however, exercise this power judiciously and provide reasons aligned with the interests of justice.

The process of framing issues is a judicial function requiring careful analysis, critical thinking, and effective advocacy. It is typically undertaken after the first hearing, once the pleadings and documents have been reviewed and the parties' positions clarified. The introduction of case management conferences in commercial courts further strengthens this process by setting timelines and focusing the trial on core disputes.

Failure to frame proper issues can lead to significant procedural complications, including appellate remand and retrial. However, as the Hon'ble Supreme Court has clarified, courts are not barred from deciding on questions if parties have had a fair chance to address them and sufficient evidence is available. This balance between procedural rigor and substantive justice is a hallmark of the Indian civil justice system.

Final Reflections

The framing of issues is not just a procedural step but the very architecture upon which the edifice of a civil trial is built. It ensures that justice is not only done but is seen to be done, by confining the court's attention to the real controversies and by giving both parties a fair opportunity to present their case. As civil litigation grows more complex, the importance of precise, thoughtful, and flexible issue framing is necessary. For judges, lawyers, and litigants alike, mastery of this process is essential for the fair and effective administration of justice.

References and Other Content

1. <https://www.barandbench.com/columns/advocates-diary-essentials-of-a-civil-suit-framing-of-issues>

Failure of a civil court to frame an issue

If the court does not frame a specific issue on a contested point of fact or law, that does not affect the overall validity of the trial, or vitiate the trial. In [*Nagubai Ammal v B. Shama Rao*](#), Hon'ble Supreme Court held that the framing of a wrong, improper or defective issue does not vitiate the trial, as long as the parties entered the trial knowing the other side's case in full, and led evidence in respect of the question which the court decided upon.

Power of the court to decide on questions outside the issues framed

A court should not decide upon a question of law which was not pleaded by either party, and in respect of which no specific issue was framed after the completion of pleadings as well. A party approaching a civil court claims specific reliefs and lays down its position in its pleadings. The court's framing of issues on the competing factual averments contextualises the real controversy between the parties. Therefore, if an issue is not framed by the court, since no pleading or relief was claimed towards such an issue by either party, the court cannot determine such a question and pass a decree based on the same, since the parties have had no chance to address such an issue in the first place.

Hon'ble Supreme Court in [*Bhagwati Prasad v. Chandramaul*](#) and [*Ram Sarup Gupta \(through his LRs\) v. Bishun Narain Inter College*](#) has emphasised that in the absence of pleadings, if it appears that the suit was decreed on a specific issue which was not framed or in the knowledge of the counterparty – thereby preventing the party from leading any evidence on such an issue - the decree passed by the court would be unsustainable. This was reiterated in [*Bacchaj Nahar v. Nilima Mandal and another*](#), where the Hon'ble Supreme Court held that in a suit which concerned issues of the title over property, the determination

of an unrelated issue of easementary right over the property (which was neither pleaded by either party, nor an issue framed) would render the decree unsustainable in law.

2. <https://sites.google.com/site/sarinadvocate/FRAMING-OF-ISSUES>

On the importance of framing correct issues, *In AIR 2001 SC 490 (Makhan Lal Bangal v. Manas Bhunia and others)* Hon'ble Supreme Court has held thus :

"An obligation is cast on the Court to read the plaint/petition and the Written Statement/counter, if any, and then determine with the assistance of the learned counsel for the parties, the material proposition of fact or law on which the parties are at variance. The issues shall be framed and recorded on which the decision of the case shall depend. The parties and their counsel are bound to assist the Court in the process of framing of issues. Duty of the counsel does not belittle the primary obligation cast on the Court. It is for the Presiding Judge to exert himself so as to frame sufficiently expressive issues. An omission to frame proper issues may be a ground for remanding the case for retrial subject to prejudice having been shown to have resulted by the omission. The object of an issue is to tie down the evidence and arguments and decision to a particular question so that there may be no doubt on what the dispute is. The Judgment, then proceeding issues-wise would be able to tell precisely how the dispute was decided".

A point alleged by the plaintiffs and admitted by the defendants cannot be said to be in issue and a decision can be given on the basis of the admission without an issue (See Order 12 Rule 6 of the Code of Civil Procedure of 1908)

When a specific plea was raised, relevant issue ought to have been framed.

A mere vague recital that the suit is not maintainable in law cannot give rise for framing of an issue as to the maintainability of the suit. Likewise mere assertion in the written statement that the defendants are in possession of the suit land-since long or for many years without any knowledge thereof to the plaintiffs and without claiming the right of adverse possession does not warrant framing of

issue on adverse possession. The averments contained in the plaint which are not traversed in the written statement and as to which no issue has been asked for are to be deemed to be admitted. If the party intends to make a particular averment to be the subject matter of an issue in a suit, then it must be specifically denied. Mere non-admission could not warrant the Court to frame an issue in that regard.

It is well established that the Court is not bound to frame issues suo moto on questions of fact where the parties do not ask for the same. The omission to raise an issue on a point implies abandonment of such point by the party.

In fact, **Rules 3, 4 and 5 of Order VIII of Code of Civil Procedure** provides for an integrated code dealing with the manner in which allegations of fact in the plaint should be traversed and the legal consequences flowing from its non-compliance. **The written statement must deal specifically with each allegation of fact in the plaint and when a defendant denies any such fact, he must not do so evasively but answer the point of substance. If the denial of a fact is not specific but evasive, then the said fact is to be taken to have been admitted. In such an event, the admission itself being proved, no other proof is necessary and the law in that regard is well settled since the decision of the Apex Court in the matter of Badat and Co. v. Eastern India Trading Co., .**

Preliminary Issues:

Sub-rule (2) of Order XIV Rule 2 C.P.C lays down that where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force.

The provisions of this Rule came up for consideration before this Court in **Major S.S. Khanna vs. Brig. F.J. Dillon AIR 1964 SC 497**, and it was held as under:-

"Under O.14 R.2 where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on the issues of law only, it shall try those issues first, and for that purpose may, if it thinks fit, postpone the settlement of the issues of fact until after the issues of law have been determined. The jurisdiction to try issues of law apart from the issues of fact may be exercised only where in the opinion of the Court the whole suit may be disposed of on the issues of law alone, **but the Code confers no jurisdiction upon the Court to try a suit on mixed issues of law and fact as preliminary issues.** Normally all the issues in a suit should be tried by the Court: not to do so, especially when the decision on issues even of law depends upon the decision of issues of fact, would result in a lop-sided trial of the suit."

Though there has been a slight amendment in the language of **Order XIV Rule 2 C.P.C by the Amending Act, 1976**, but the principle enunciated in the above quoted decision still holds good and there can be no departure from the principle that the Code confers no jurisdiction upon the Court to try a suit on mixed issue of law and fact as a preliminary issue and **where the decision on issue of law depends upon decision of fact, it cannot be tried as a preliminary issue.**

A plea of limitation cannot be decided as an abstract principle of law divorced from facts as in every case the starting point of limitation has to be ascertained which is entirely a question of fact. **A plea of limitation is a mixed question of law and fact.** The question whether the words "barred by law" occurring in Order VII Rule 11(d) C.P.C would also include the ground that it is barred by law of limitation has been recently considered by a two Judge Bench of this Court to which one of us was a member (**Ashok Bhan J.**) in **Civil Appeal No. 4539 of 2003 (Balasaria Construction Pvt. Ltd. vs. Hanuman Seva Trust and others)** decided on 8.11.2005 and it was held: -

"After hearing counsel for the parties, going through the plaint, application under Order 7 Rule 11(d) C.P.C and the judgments of the trial court and the High Court, we are of the opinion that the present suit could not be dismissed as barred by limitation without proper pleadings, framing of an issue of limitation and taking of evidence. **Question of limitation is a mixed question of law and fact.** Ex facie

in the present case on the reading of the plaint it cannot be held that the suit is barred by time."

Additional Issues:

Sometimes, either by oversight or for any other reason, the Court may omit to frame an issue on a relevant point even though the pleadings may justify framing of that issue. In that case, certainly the parties can ask for framing of an additional issue by taking recourse to Order 14 Rule 5 Code of Civil Procedure. The Court is required by Sub. Rule 5 of Rule 1 thereof to ascertain as to what material proposition of fact or of law, the parties are at variance and therefore frame the issues on which the right decision of the case appears to depend. Order 14, Rule 1 of C.P.C. provides that the issue arises when a material proposition of fact or of law is affirmed by the party and denied by the other. It further provides that the material proposition are those propositions of law or of fact which plaintiffs must allege in order to show a right to sue or a defendant must allege in order to constitute the defense, Thus the object of framing the issues is to shorten the arena of the dispute and to identify the points required to be determined. The courts are not expected to determine an issue which does not arise from the pleadings.

3. <https://lawwatch.in/framing-of-issues-in-a-civil-suit/>

When lower court omits framing any issue

When the lower court omitted to frame an issue before trying a matter in controversy, the appellate court can frame the issue and refer it for trial to the lower court. There is no need to remand the entire case. Then the lower court should try such issues and return the evidence and its decision to the appellate court (please see Section 25 of the CPC and the Order XLI Rule 24).

In appeal and second appeal

In an appeal, the primary issue is what wrong occurred in the Judgment/order. The question of fact or law can be challenged in an appeal.

However in the second appeal, the substantial question of law involved has to be framed as the issue.

Court adjudicates on issues

It is on the issues that the court applies its mind and decides which issue should be decided in whose favour.

The **judgment is the application of the court's mind on the issues** that the court initially frames. That means the issues run as a thread from the first day of hearing of a case to the last day of its judgment.

References

- 1 The Framing of Issues in India's Civil Procedure Code, Effective Laws (Jan. 8, 2025), <https://effectivelaws.com/framing-of-issues/>.
- 2 [Advocate's Diary] Essentials of a Civil Suit: Framing of Issues, Bar & Bench, <https://www.barandbench.com/columns/advocates-diary-essentials-of-a-civil-suit-framing-of-issues>.
- 3 Y. Srinivasa Rao, FRAMING OF ISSUES, Manupatra, <https://manupatra.com/roundup/378/Articles/FRAMING%20OF%20ISSUES.pdf>.
- 4 Importance of Framing of Issues in a Civil Suit, Lawwatch, <https://lawwatch.in/framing-of-issues-in-a-civil-suit/>.
- 5 Framing Of Issues, Legal Service India, <https://www.legalserviceindia.com/legal/article-10002-framing-of-issues.html>.