

**PAPER SUBMITTED FOR SECOND  
WORKSHOP Dt.21.06.2025**

**Session – III**  
**FRAMING OF ISSUES**  
**AND**  
**NECESSITY OF FRAMING OF**  
**PRELIMINARY ISSUES**

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## **FRAMING OF ISSUES**

### ➤ **Introduction:-**

The framing of the issues is the most crucial phase of a civil trial. The right and accurate issues must be framed in order to get the best decision in the quickest amount of time. Inaccurate and incorrect issues may kill the valuable time of the court.

- In *Siddhi Chunilal vs. Suresh Gopkishan*, (1) it was observed that if correct and accurate issues were not framed, it leads to gross injustice, delay and waste of the court's valuable time in deciding the matter.

- If defendant makes no defense, framing and recording issue by the Court does not arise, in such a case, a Court need not frame and record issue in as much as the defendant makes no defense at the first hearing of the suit.

- For example, a plaintiff says the defendant borrowed Rs 10 lakh from him. The defendant denies it. It is an affirmation by one party and denial by the other. Then there arises a distinct dispute and that dispute is termed an "issue". The court can then frame issues based on the facts of the case and proceed with it.

### ➤ **What are the issues or definition of issues:-**

Issues mean a single material point of fact or law in litigation that is affirmed by one party and denied by the other party to the suit and that subject of the final determination of the proceedings.

➤ **When issues arises?**

Issues arise when a material proposition of fact or law is affirmed by one party and denied by the other party to the suit.

➤ **What are the material propositions:-**

According to Rule 1(2) material propositions are those propositions of fact or law which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defense.

➤ **What is the object of framing issues:**

The main object of framing issues is to ascertain the real dispute between the parties by narrowing down the area of conflict and determine where the parties differ.

In *Fiza Developers & Inter-Trade (P) Ltd. v. Amci (I) (P) Ltd., (2009) 17 SCC 796* : “The object of 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.”

➤ **Kinds of issues:**

As per the Order 14 Rule 1(4) of the C.P.C. issues are of two kinds.

**A.** Issues of fact ,

**B.** Issues of Law. Issues, however, may be mixed issues of fact and law.

**Rule 2(1) OF Order 14** provides that where issues both of law and fact arise in the same suit, notwithstanding that a case may be disposed of on a preliminary issue, the court should pronounce judgment on all issues. But if the court is of the 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:

- i. The jurisdiction of the court; or
- ii. A bar to the suit created by any law for the time being in force,

For that purpose, the court may, if it thinks fit, postpone the settlement of the other issues until the issues of law have been decided.

➤ **What are the various relevant provisions in framing of issues**

- 1) Order-XIV, Rules-1 to 6 of C.P.C.
- 2) Order-XVIII, Rule-2 of C.P.C.
- 3) Order-XX, Rule-5 of C.P.C.
- 4) Order-XV, Rule-1 of C.P.C.

➤ **Order XIV Rule 1: Framing of Issues**

● **Sub-rule (1):**

Issues arise when material propositions of fact or law are affirmed by one party and denied by the other.

● **Sub-rule (2):**

Material propositions are those essential for establishing the plaintiff's right to sue or the defendant's defense.

● **Sub-rule (3):**

Each material proposition affirmed by one party and denied by the other must form a distinct issue.

● **Sub-rule (4):**

Issues are classified into issues of fact and issues of law.

- **Sub-rule (5):**

At the initial hearing, the court must ascertain the material propositions on which the parties disagree and frame the issues accordingly.

- **Sub-rule (6):**

If the defendant fails to present a defense at the initial hearing, the necessity to frame issues may be obviated.

- **Order XIV Rule 2: Pronouncement on All Issues**

- **Sub-rule (1):**

The court must render judgment on all issues, even if the case can be disposed of on a preliminary issue.

- **Sub-rule (2):**

If an issue of law pertains to jurisdiction or constitutes a statutory bar, it may be tried first.

- **Order XIV Rule 3: Materials for Framing Issues**

The court may frame issues by considering the following:

1. **Allegations on oath:** Statements made by parties or their legal representatives.
2. **Pleadings and Interrogatories:** Assertions contained within pleadings or responses to interrogatories.
3. **Documents Produced:** Contents of documents submitted as evidence.

➤ **Order XIV Rule 4: Examination Before Framing Issues**

The court may adjourn the framing of issues and compel the attendance of individuals or production of documents necessary for accurate issue framing.

➤ **Order XIV Rule 5: Amendment and Striking Out of Issues**

● **Sub-rule (1):**

The court may amend or frame additional issues at any time before issuing a decree.

● **Sub-rule (2):**

The court may strike out improperly framed issues.

➤ **Order XIV Rule 6: Agreed Issues**

Litigants may submit agreed-upon factual or legal questions as issues through a written agreement.

➤ **Order XIV Rule 7: Judgment on Agreed Issues**

If satisfied with the good faith of the agreement, the court may try the issue and render judgment accordingly.

**Order XV, Rule 1 of the Code of Civil Procedure, 1908 (CPC)** addresses the disposal of a suit at the first hearing. It states that if the court, at the first hearing, finds that the parties are not at issue on any question of law or fact, it may pronounce judgment immediately. This allows for quicker

resolution of cases where there is no real dispute, streamlining the judicial process.

**According to Order-XVIII, Rule-2 (1) of C.P.C.** On the day fixed for the hearing of the suit, the party having the right to begin shall state his case and produce his evidence in support of the issues which he is bound to prove.

**According to Order-XX, Rule-5 of C.P.C.** the Court shall state its finding on each issue in suit. It mandates that the Court clearly states that its decision on each issue with reasons supporting it.

➤ **Importance of issues**

To decide a case properly the framing of the issue should be appropriate. Framing of issue helps the parties to lead necessary evidence in support of the claims and the reliefs. It will give the other party to confront or construct the case to bring home his defence. Issues are the lamp post which enlightens the parties, the trial court and the appellate court as to what the controversy is, what the evidence must be, and where the truth in the dispute lies.

➤ **When issues are framed?:-**

According to rule 1, issues are framed and recorded by the court at the first hearing after reading the plaint, written statement, examining and hearing of parties and their pleaders.

In ***P. Kashinath Yadav Vs. Mangilal Choudary, 2022 (1) ALT 45***, the Court observed that in the interest of efficiency and expeditious disposal of cases, members of the Bar should file draft issues prior to the formal framing of issues by the court. This practice would aid the

trial courts in understanding the contours of the dispute early on, streamline proceedings, and ultimately save judicial time.

➤ **Whether court can postponement framing of issues?**

If the court determines that the questions cannot be properly formulated without the examination of a party who is not present or without the review of a document which has not been presented in the suit, the framing of the issues may be postponed for a maximum of seven days.

- In ***Desi Kedari vs. Huzurabad Co-Operative Marketing Society Ltd. and Others (1994) 2 ALT 539 (D.B.)***, the court held that issues need not be framed when there is no dispute regarding the material averments in the plaint. The ruling emphasizes that in cases where the facts alleged in the plaint are accepted, the court can proceed to dispose of the matter without the formal framing of issues, thereby streamlining the adjudication process.

- In ***Desi Kedari vs. Huzurabad Co-Operative Marketing Society Ltd. and Others, (1994) 2 ALT 539 (D.B.)***, the court ruled that when there is no denial of the allegations in the plaint, the court can act under Order 10 Rule 1 based on the admission of facts. Consequently, the court may pronounce judgment immediately under Order 15 Rule 1 without framing any issues. This decision highlights the efficiency of the judicial process when parties do not contest the material facts of the case.

➤ **What materials are required for framing of issues?:-**

Issues may be framed by the Court from all or any of the following materials—

1. Allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;
2. Allegations made in the pleadings or in answers to interrogatories delivered in the suit;
3. The contents of the documents produced by either party.

➤ **Can the court Amend the issues framed:-**

Order 14 Rule 5, C.P.C. gives the court the authority to change the issues it has set forth or to set forth new issues at any point in the course of proceedings. It does not, however, believe that this authority must be used when an application is made; rather, it places a duty on the Court to use this authority suo moto “for determining the matters in controversy between the parties” if it were necessary to do so.

➤ **Can the Court frame Additional Issues?**

In *Kotha Sailaja vs. Thandu Yadagiri and others, (2012) 4 ALT 278 (S.B.)*, the court addressed the dismissal of a petition for framing additional issues in a partition suit. The plaintiff's son filed the suit against his siblings, claiming that the seventh defendant had purchased the property from the legatees under a will executed by their mother. The lower court dismissed the petition on grounds related to limitation and court fees. The court held that it is the duty of the court to ensure that all questions are comprehensively decided, regardless of objections raised by the other party. The dismissal was deemed erroneous because the additional issues were relevant for the adjudication of the partition suit. The court set aside the lower court's order, directing the framing of additional issues and allowing both parties to present further evidence.

➤ **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 (Refer Section 25 of the CPC and the Order XLI Rule 24)

➤ **Steps in Framing Issues**

**1. Initial Hearing:** The court examines the plaint and written statements. It may conduct an examination under **Rule 2 of Order X** and hear the parties to identify material points of dispute.

**2. Formation of Issues:** The court formulates and records the critical issues for adjudication.

**3. Examination of Witnesses or Documents:** The court may defer framing issues to examine witnesses or inspect documents when necessary.

**4. Amendment and Striking Out of Issues:** The court may amend existing issues or frame additional ones, striking out improperly framed issues when required.

**5. Agreed Issues:** Parties may identify agreed-upon factual or legal questions. Upon verifying the sincerity of such agreements, the court may record and adjudicate those issues.

**ORDER - XI(V Order 14 Rule 7** provides that Where the Court is satisfied, after making such inquiry as it deems proper, (a) that the agreement was duly executed by the parties, (b) that they have a substantial interest in the decision of such question as aforesaid, and (c) that the same is fit to be tried and decided, it shall proceed to record and try the issue and state its finding or decision thereon in the same manner as if the issue had been framed by the Court; and shall, upon the finding or decision on such issue, pronounce judgment according to the terms of the agreement; and upon the judgment so pronounced a decree shall follow.

➤ **NECESSITY OF FRAMING PRELIMINARY ISSUES**

In the intricate landscape of civil litigation, the efficient and expeditious resolution of disputes is paramount. The Civil Procedure Code, 1908 (CPC), a procedural bible for Indian civil courts, incorporates various mechanisms to achieve this objective. One such crucial mechanism is the concept of “preliminary issues.” These are issues that, if decided in a particular way, can dispose of the entire suit or a significant part of it, thereby saving the court’s valuable time as well as parties’.

➤ **What are Preliminary Issues?**

Preliminary issues are essentially foundational questions that need to be addressed at the outset of a civil suit. They typically do not delve into the merits of the case itself, but rather concern procedural, jurisdictional, or legal bars to the maintainability of the suit. If the court finds in favour of the party raising a preliminary issue, the suit may be dismissed, or certain claims may be struck off, without the need for a full-fledged trial on all issues.

➤ **Legl Basis: Order XIV Rule 2 CPC**

The primary provision governing preliminary issues is Order XIV Rule 2 of the Civil Procedure Code, 1908. This rule states:

- (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, save as otherwise provided, pronounce judgment on all issues.
- (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 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.”

This rule, though amended over time, highlights the court’s discretion to decide certain issues as preliminary. Prior to the 1976 amendment, the rule mandated the court to decide preliminary issues first if they involved questions of law. However, the amendment introduced a shift, emphasizing that normally all issues should be decided together, unless the preliminary issue falls within the specific categories mentioned in sub-rule (2).

➤ **Types of Preliminary Issues:**

Order XIV Rule 2(2) specifically identifies two key categories of preliminary issues:

1. Issues relating to the jurisdiction of the court: This is a fundamental aspect of any legal proceeding. If a court lacks the inherent power or authority to entertain a suit, any judgment rendered by it would be a nullity. Examples include:
  - Pecuniary jurisdiction: Whether the value of the subject matter of the suit falls within the financial limits of the court's jurisdiction.
  - Territorial jurisdiction: Whether the cause of action arose or the defendant resides within the geographical limits of the court.

In ***Rajkamal Electronics Private Limited and others Vs. M/s. Sony India Pvt. Ltd., 2023 (1) ALT 430***, the Court held that the *outer limit for filing a counterclaim is up to the stage of framing of issues*. Filing a counterclaim beyond this stage is impermissible, reinforcing the principle that procedural timelines must be respected to ensure orderly conduct of trials.

- Subject matter jurisdiction: Whether the court has the authority to hear cases of a particular nature (e.g., a civil court cannot hear a criminal case).
2. Issues relating to a bar to the suit created by any law for the time being in force: This category encompasses various legal impediments that prevent a suit from proceeding. Examples include:
    - Limitation: Whether the suit has been filed within the prescribed period of limitation as per the Limitation Act, 1963.

In ***Khaja Quthubullah vs. Government of Andhra Pradesh and Others (1994) 3 ALT 220 (S.B.)***, the court ruled that a lower court's disposal of a suit solely on the preliminary issue of limitation, without addressing other issues, was improper. The court highlighted that the question of limitation is a

mixed question of law and fact, which necessitates evidence from all parties before it can be determined.

- Res Judicata: Whether the matter issue has already been directly and substantially decided by a competent court in a previous suit between the same parties.
- Constructive Res Judicata: Where a matter which might and ought to have been made a ground of defence or attack in the former suit, but was not, is deemed to have been a matter directly and substantially in issue in such former suit.
- Plea of Estoppel: Where a party is prevented from asserting a fact or claim due to a previous representation or conduct.
- Lack of Locus Standi: Whether the plaintiff has a legal right or interest to bring the suit.
- Misjoinder or Non-joinder of parties: Though often curable, in some cases, fundamental misjoinder or non-joinder can be a preliminary issue.
- Bar under specific statutes: For instance, certain suits may be barred by specific acts like the Specific Relief Act, 1963 (e.g., specific performance of contracts of a personal nature).

➤ **Discretion of the Court**

It is crucial to understand that the decision to try an issue as a preliminary issue rests solely with the discretion of the court. The word “may” in Order XIV Rule 2(2) signifies this discretion. The court will typically exercise this power when it is convinced that a decision on such an issue would indeed save time and resources by disposing of the suit or a significant part of it. The court must be satisfied that the preliminary issue is purely a question of law, or

predominantly a question of law, and does not require extensive evidence to be led.

- In ***Abothula Rajaratnam Naidu v. Nizam Sugar Factory Ltd., Bobbili and others, 2002 (1) ALT 397 (S.B.)***, – Under Order 14 Rule 2(2) CPC, the Court is not mandatorily bound to try any issue as a preliminary issue; it retains discretion to do so. Specifically, only issues related to jurisdiction or a legal bar to the suit may be considered as preliminary issues. The Court held that interference with a lower court’s decision not to try such an issue preliminarily is unwarranted unless there is a clear likelihood of injustice.
- In ***Nuthalapati Munaswamy Naidu Vs. N.A. Chengama Naidu and others, 2018 (4) ALT 500 (S.B.)***, per B. Siva Sankara Rao, J. — The Court emphasized that if a preliminary issue is to be tried separately, the trial must be strictly confined to that issue alone. Otherwise, in accordance with the mandate under Order 14 Rule 2(1) read with the non- obstante clause and Order 20 Rule 5 of the Civil Procedure Code, the trial court is required to conduct a full trial on all issues framed and render findings on each one of them.

➤ **Importance and Benefits of Preliminary Issues**

The concept of preliminary issues offers several significant benefits to the judicial process:

- **Expeditious Disposal of Suits:** This is the primary advantage. By addressing fundamental legal or jurisdiction bars at the outset, genuinely flawed suits can be dismissed quickly, preventing unnecessary prolongation of litigation.
- **Reduced Litigation Costs:** For both parties, avoiding a full – blown trial translates into substantial savings on legal fees, court costs, and other associated expenses.
- **Conservation of Judicial Time:** Courts are burdened with a heavy caseload. Preliminary issues help in streamlining the judicial process by diverting resources away from suits that are legally untenable.
- **Clarity and certainty:** A decision on a preliminary issue provides early clarity on the maintainability of the suit, allowing parties to assess their positions more effectively.
- **Discourages Frivolous Litigation:** The possibility of early dismissal on a preliminary issue acts as a deterrent against filing suits without proper legal grounds or jurisdiction.

➤ **Challenges and Considerations**

While beneficial, the application of preliminary issues is not without its challenges:

- **Distinction between Law and Fact:** Sometimes, a preliminary issue might appear to be a pure question of law, but its determination could require some factual enquiry. The court must be careful not to embark on a mini-trial at the preliminary stage.
- **Avoidance of Piecemeal Trials:** The general principle under Order XIV Rule 2(1) is to pronounce judgment on all issues. Courts must be cautious not to encourage piecemeal trials by liberally allowing preliminary issues that require extensive evidence.

- Potential for Delay (if misused): if a party raises a frivolous preliminary issue merely to delay proceedings, it can defeat the very purpose of the provision. Courts must be vigilant in identifying such tactics.
  - Impact of Amendments: The 1976 amendment aimed to reduce the emphasis on deciding all preliminary issues first, promoting the idea of deciding all issues together unless specifically falling under the identified categories. This re-emphasizes the need for judicious application.
  - In **Meher Singh VS Deepak Sawhny and another** – The Bombay High Court held that the Questions regarding the jurisdiction of the court can be decided as preliminary issues, provided they do not require evidence.
  - In **Santan Costa and others VS Castane Xavier Costa and another** the Bombay High Court held that the issues that present a legal bar to the suit, such as res judicata, can also be considered as preliminary issues, but they must not involve mixed questions of fact and law.
  - In **Gulzar Singh Monga VS Kulbhushan Monga** – Punjab and Haryana High Court held that Issues that are purely legal and do not necessitate factual investigation can be decided as preliminary issues.
  - In **Satti Paradesi Samadhi & Philliar Temple VS M.Sankuntala** – The Hon'ble Apex Court that if an issue involves both factual and legal questions, it cannot be decided as a preliminary issue. Such issues require a full trial to assess the evidence.
- In **Ram Janam Yadav Vs. Additional District Judge, Azamgarh and others** – The Hon'ble Allahabad High Court held that Any issue

that necessitates the presentation of evidence cannot be treated as a preliminary issue.

➤ **Conclusion**

Preliminary issues under the Civil Procedure Code, 1908, are a vital tool for achieving efficient and just dispute resolution. By allowing courts to address fundamental legal and jurisdictional impediments at the threshold of a suit, they contribute significantly to reducing the burden on the judiciary, minimizing litigation costs, and providing early certainty to parties. However, the effective application of this mechanism requires careful judicial discretion, ensuring that the spirit of the law – to prevent unnecessary litigation – is upheld, without leading to fragmentation of trials or undue delays. A balanced approach ensures that preliminary issues serve their intended purpose as a catalyst for swift and equitable justice.