

FRAMING OF ISSUES

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AS AN AID TO A BETTER GRASP OF THE CASE, BETTER DIRECTION IN LEADING EVIDENCE, AND BETTER ARGUMENTS.

PART ONE

GENERAL

SHORT SYNOPSIS

- Introduction: The creation of Focus.
- What exactly is meant by the term 'issues'
- Do issues arise primarily from the law or from the pleadings:
- Issues come into play in every area: civil, criminal, revenue, taxation & others
- Definition of issues in the Code of Civil Procedure
- The word material in Order 14. And what is meaning of 'Cause of Action'?
- Can the issues go beyond the pleadings?
- The importance of framing issues correctly and accurately:
- Only issues relevant to that genre/type of cases need be framed.
- Object of framing issues
- What happens if proper issues are not framed?
- Is the usual procedure of framing issues adopted while framing issues correct?
- What is the duty of the Court while framing issues?.
- Can the Court recast the issues at any stage?

Introduction: The creation of Focus.

- **The purpose of this short article is to create focus on a very important and neglected area of the law: viz. the framing of issues**

Before I start I would like to find out as to how many believe that issues spring out of pleadings, and how many believe that issues spring from the law applicable to that particular genre or type of cases. As expected, it appears generally, that most of us mechanically feel that issues are rise and ought of pleadings which are averred by one party and denied the other, without having an adequate grasp of the relevant law applicable to cases of that particular kind.

I have chosen this topic for a start, as I feel that the framing of issues is probably the most important part of the trial; and only on laying down the foundation of the case with correct and accurate issues, is it possible to frame the right questions, go along the right lines and come to the correct decision in the shortest possible time that is humanly possible.

The framing of issues is a very vexed problem and I must say that incorrect and inaccurate framing of issues is possibly the primary cause of unnecessary delay in disposing of matters before the Court, apart from causing unnecessary expense to the clients in terms of time, effort and energy.

Conversely, if issues are framed in the manner required by law, after going through all the proceedings in the matter including the plaint, written statement and the documents as envisaged by law, it will cut down a lot of unnecessary court time. I feel it is very unfortunate, with the deepest respect to the learned counsel, and to the Judiciary, that issues are being framed most mechanically after taking draft issues from both the sides and giving a only a cursory hearing in the matter.

On giving adequate attention to framing issues correctly, we be able to focus our attention on the correct line of thought that is required to decide a matter, and hopefully it will ultimately it lead to far quicker and more efficient justice. As stated before, there are several areas in the conduct of a trial framing of issues probably occupies the highest and most special place, as it is the very foundation of the case and if it is properly handled it will lead to quicker and a better quality of justice.

In this little write up, I shall take you through what the Apex Court and what several High Courts have said with regard to the importance and method of framing of issues sharply and correctly. Thereafter, I shall suggest a method or methodology of framing the correct issues and issue set, that can be used in every single matter that comes before the Court. I do not claim that it will be a perfect method, but I have put in a lot of effort in it and I hope it will be worth the while. However, I shall always be grateful for suggestions.

Issues come into play in every area civil, criminal, revenue, taxation & others

- Issues are the **crux** of the matter
- Without understanding the crux of the matter there is no **direction** in the **preparation** of the matter or in the **conduct** of the matter
- Importance of asking the **right questions**

In **C V Joshi Vs Elphinstone Spinning Mills** reported in **2001(supp 2) BomCR 57** the Hon'ble Bombay High Court laid down that even in execution proceedings issues come into play by way of prudence, though it is not technically necessary to frame them.

ISSUES FROM THE CODE OF CIVIL PROCEDURE.

ISSUES UNDER CPC

The primary difficulty in understanding issues as stated hereinbefore, is that the term 'issues' in our mind is controlled of by the first part of Order 14 of the Code of Civil Procedure, which deals with issues, which we take as a complete and exhaustive exposition of the law on the subject. The word **material** is defined thereafter and separately in sub clause (2) of the Order, but even though it is of utmost importance, it is often sidelined while framing issues.

Kindly note the word "**material**" which occurs in the said **Order 14 (1) and (2)** of Code of Civil Procedure

- The word **material** in Order 14 can only relate to the **cause of action in that particular type of cases**

- **Definition of issues in the Code of Civil Procedure**

- **Order 14** of the Code of Civil Procedure. I would not like to reproduce the provisions of Order 14 of the Code of Civil Procedure but please note:

- **Order 14** of the Code of Civil Procedure **stresses** the fact of **assertion** by one party and **denial** by the other
- **The word ‘material’ is of prime importance in Order 14 but somehow it is relegated to the background and this is probably the main reason why there is much confusion in relation to framing of issues.** The word material in the above Section can only have reference to the Cause of Action in the matter. Without this interpretation it loses all its meaning. But what is cause of action.

What is meaning of ‘Cause of Action’?

The Apex Court has laid down in the below mentioned case as to what is cause of action.

Rajesh Coach Builders .Versus Nagindas Machchram & Sons.

It is well settled that a cause of action means every fact, which, if traversed, it would be necessary for the Plaintiff to prove in order to support his right to a judgment of then of the Court. In other words, it is a bundle of facts which taken with the law applicable to them, gives a Plaintiff a right to relief against the Defendant. It must include some act done by the defendant since in the absence of such an act no cause of action can possibly accrue. It is not limited to the actual infringement of the right sued on but includes all the material facts on which it is founded. It does not comprise evidence necessary to prove such facts, but every fact necessary for the Plaintiff to prove to enable him to obtain a decree. Everything which if not proved would give the defendant a right to immediate judgment must be part of the cause of action. But it has no nexus whatsoever to the defence which may be set up by the defendant nor does it depend on the character of the relief prayed for by the Plaintiff. This is settled by the Apex Court in A.B.C. Laminart Pvt. Ltd. (supra)

What exactly is meant by the term ‘issues’

Do issues arise primarily from the law or from the pleadings:

It is important to understand while conducting a matter, as to **exactly what is meant by the term ‘issues’**. If you go only by the provisions laid down by the Civil Procedure Code we are apt to make errors because like what is stated hereinafter, it is not a complete exposition of the law on the point. A more apt description and nomenclature would probably be: **‘the questions to be considered by the Court’** rather than what are the issues in the matter. The related question which we shall consider hereinafter is issues arise from the law or from pleadings.

Let me give an example. In a case under the Civil Law, even if both the sides have not looked into the question of limitation though the matter is barred under the law of limitation on the face of the record, ordinarily an issue will not be raised by the Court if it goes purely by the principles of the Code of Civil Procedure; because in Order 14 of the Code of Civil Procedure, **only those material propositions of law which have been challenged by that other side can be matters of issues**. However, the Court is duty-bound to decide the matter as time barred. In fact, it is the duty of the Court to dismiss the matter

under Section 3 of the Limitation Act if it is time barred, even if neither side has opened this question.

Similarly, in case of a Special Court like the Debt Recovery Tribunal, a party might, due to oversight or otherwise, not agitate the question of inherent jurisdiction even if the matter did not fall within the four corners of the law entitling the Debt Recovery Tribunal to try the matter.. I feel the first question any special Court should ask before entertaining or deciding a matter, is whether that transaction as seen from the face of the plaint falls within the four corners of the governing section of the particular act, i.e. Section 17 of the DRT Act, which decides whether or not the Tribunal has jurisdiction to try the matter. In the aforesaid circumstances, if the Tribunal at any time finds that it has no jurisdiction to try the matter, the Tribunal is duty-bound to stop at that point and send the matter back to the Civil Court or otherwise proceed as per law. Here again the question is if the matter is looked into as an issue as envisaged under the Civil Procedure Code, no issue can be framed because the parties have not opened this question or denied the same.

Can the issues go beyond the pleadings?

In **Satya Narayan Vs Radha Mohan** reported in A 1979 Raj 126 the Hon'ble Rajasthan High Court while holding that issues can be framed even beyond the pleadings held as follows:

This question has been clarified by the above Court in clear terms as given below:

1. *The learned Munsiff is not agreeable to delete it. It is true that so far as Order XIV, Rule 1 of the Civil P. C. is concerned, issues arise when a **material proposition of fact or law is affirmed by one party and denied by the other.** the said rule, however, **does not lay down the negative** that an issue cannot arise otherwise from the formal pleadings of the parties. Any lawyer familiar with the practice of Matrimonial Courts in this country will bear out that issues like issue as to whether there is collusion between the parties or not, **arising out of Section 23, Hindu Marriage Act, are framed by the matrimonial court no matter whether or not the parties have pleaded the necessary facts in their pleadings.** This is because the court is forbidden to grant relief under Sections 10 and 13 of the said: Act unless it is satisfied that the petition under Section 10 or 13 is not presented or prosecuted in collusion with the Respondent. It is generally considered safe and helpful to frame an issue on the point so that the Petitioner may not be taken by surprise, by the courts subsequent to grant of relief to him despite proof of the ground or grounds on which such relief was claimed, merely because the Court discovered from other chance material on the record that the petition was presented or prosecuted in collusion with the Respondent.*

2. *The Rajasthan Premises (Control of Rent and Eviction) Act, 1950, as amended to date, **'provides another instance of a statute containing a provision which would justify an issue even, if the pleadings do not contain a specific averment and denial of such averment in a formal manner.** Section 14 (2) of this Act lays down that no decree for eviction on the ground that the premises are required reasonably and bona fide by the landlord, shall be passed if the court is satisfied that having regard to all the circumstances of the case including the question whether other reasonable accommodation is available to the landlord or the tenant greater hardship would be caused by passing the decree than by refusing to pass it. Now it is obvious that, whether the parties plead or not a duty is cast on the court to determine the possible consequences of a presumptive decree for eviction in terms of comparative hardship to the parties. The issue stated above was framed by the trial Court, in view of the provisions of subsection (2) of Section 14. No legitimate objection can, therefore, be taken to the framing of the issue.*

Issues can therefore be said to arise primarily from the law and not from the facts alone.

The importance of framing issues correctly and accurately:

- ***Issues are the very foundation of the case and if they are not framed with accuracy and skill it leads to defects in the entire trial leading to an incorrect judgment***

[1] **Interesting case.** This case given hereinbelow is a perfect example what difficulties can be created when issues are not framed correctly; when the essential issues are left out of the case; when the class of cases and issues springing therefrom are not properly understood, and the injustice that springs from the entire exercise.

This interesting case which came before the Bombay High Court, in which the Hon'ble Court came down heavily upon the trial Court as the trial Court had passed a decree not against the defendant/s but against the Plaintiff himself, even though there was no cross suit or a counter claim filed against him. This case has been reported in **2009(6) BCR 857** in Siddhi Chunilal Vs. Suresh Gopkishan. It appears in this case, correct and accurate issues were not framed, leading to gross injustice, delay and waste of the Court's time in deciding the matter. It appears that the Hon'ble Trial Court had passed a decree against the Plaintiff even in the absence of the cross suit or a counterclaim and decided various questions which were not material and relevant to the matter. I would not like to go through the entire case, but beg to place before you in some detail some excerpts from the judgement can be repeated with advantage as they fully illustrate what I have to say: --

EXCERPTS FROM THE JUDGMENT.

*"The trial Court had **not only dismissed the suit**, in but even in the absence of cross objections, **directed the Plaintiff to hand over possession of the suit property to the defendants** within three months from the date of the said judgment*

Briefly stated the facts giving rise to the second appeals are that, Respondent No. 1 herein was the original Plaintiff. The filed a suit for injunction in respect of six acres of portion of land The Defendant had purchased the said property for a Rs. 2000 by registered sale deed dated 8.5.1974 from Respondent No. 2 . Since the purchase of the land he has been in possession of the said property Appellants and Respondent No. 2 were disturbing his possession, and therefore, he filed suit for perpetual injunction.

Respondent No. 2 contended further in the written statement the father of the Plaintiff had joined hands with the revenue officers on the basis of a false and bogus sale deed had got false mutation entries made in revenue record without notice to the Defendants.

The defendant denied that he was Karta of the family. He further contended that the eastern 15 acres of the land belongs to and is in possession of his family and he himself Appellant No. 1 and his other sons were owners thereof. The property is cultivated by his sons and wife. He had not sold any portion from

survey No. 15 on northern side to Respondent No. 1 and Plaintiff was never in possession of the suit property.

It is thus clear as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser.

The sale by a karta of the family would be at the most voidable. In any case, Respondent No. 2 was entitled his undivided share in the ancestral property. In a suit for perpetual injunction we are concerned with whether was in settled possession of the property in question as on the date of the suit and whether there was threat to his possession at the hands of the Defendants.

There was absolutely no prayer by way of counter claim either by Appellants or by Respondent No. 2 in the respective Written Statement and in spite of that the trial Court misled itself into framing issues as to whether as Respondent No. 2 was Karta of the family whether he sold the property to Respondent No. 1 Plaintiff for the benefit of the estate. .
The learned Trial Court answered that the Respondent No. 2 was the karta of the family but held that he had not sold the property as karta and the sale was not for the benefit of the estate. There is no issue framed regarding legal necessity. But, the said issue was discussed at length. In fact, the issues framed were not necessary for the decision of the suit for perpetual injunction in absence of any counter claim. Only questions those should have been considered were whether the Plaintiff was in the settled possession of the suit property and whether there was any obstruction to his possession by Respondent No. 2 and appellants the original Defendants. Though the trial Court answered that the Plaintiff was in possession of the property as owner,, it ultimately directed the Plaintiff to hand over possession of the suit property to Defendants within three months from the date of the order."

Why this case is interesting is because **it is a good illustration** to what happens if the averments in the plaint are not correctly understood, the case is not put into its proper class, and the correct issues are not framed which are required to try that particular class of cases. I have taken the liberty of reproducing a fair chunk from the above judgment because it is import and illustrative of the points I am trying to make.

Obviously, the entire trial was directed along the wrong lines leading to what is a patently wrong decision in the case. The issues that were not relevant were decided leading to a lot of waste of time, effort and energy, apart from the injustice that this caused to the parties; and further that a matter which could be decided in a very short time, dragged on for a number of years leading to the corresponding clogging up of the judicial system.

In **2004 Supreme Court SCW 4205** it was held that where the Plaintiff is in settled possession of the property; he is entitled to protect his possession even though he failed to prove his ownership or title. Even a true owner cannot dispossess such a trespasser except otherwise than in due course of law and grant of injunction is proper.

The correct issues ought to have been **in conformity with** the above Supreme Court judgment.

Only issues relevant to that genre/type of cases need be framed.

This case is also illustrative on the question that each type of cases or rather, each genre of cases has a specific and fixed set of issues that have to be decided, and the Court ought not to be misled into going beyond that **basic set of issues**. For instance, as stated in the above mentioned case, in cases of perpetual injunction, the only question is whether there was **settled possession** by the Plaintiff, and further if the defendant was committing breach of the same. If the Hon'ble trial Court had appreciated this and framed the issues or set of issues in relation to the aforesaid type/class of cases, then the entire set of issues relating to the Plaintiff or the defendant's property being HUF property and whether the Defendant was addicted to vices, and that he sold the property not for necessity, could have been conveniently sidelined and ignored, leading to a quick disposal of what actually was a very simple routine case.

It may also be noted that the above case not only have erroneous issues have been framed, but the essential issues have not been framed at all leading to gross distortion of the entire trial and to delay and injustice to the parties. .

Object of framing issues

In AIR 2001 Supreme Court 490 the Hon'ble Apex Court has laid down:

*“the stage of framing issues is an important one in as much as on that day the scope of the trial is determined by laying the path on which a trial should proceed excluding diversions and departures therefrom. That the dispute between the parties is determined, aitia forfeited Naroda and the concave mirror held by the Court the reflecting the pleadings of the parties pinpointed the issues the disputes on which the two sides differ. The correct decision of civil lis largely depends on the correct framing of issues correctly determining the real point in controversy which need to be decided. The scheme of Order 14 of the Code of Civil Procedure relating to settlement of issues shows that an issue arises when a material proposition of fact or law is affirmed by one party and denied by the other. Each **material** proposition and from the one party and denied by the other to form the subject of a distinct issue. An obligation is cast on the Court to read the plaint/petition and the written statement/counter if any, and indigenously with assistants of the landed counsel for the parties committed propositions of fact or law on which the parties are at variance. Issues should be framed and recorded on with this in the case will depend”*

Is the usual procedure of framing issues adopted while framing issues correct?

What is the duty of the Court while framing issues.

The usual procedure that is being usually adopted by the Courts has been criticized by the Hon'ble Bombay High Court in the following words:

In Board of Trustees of the Port of Mormugao Vs. V.M. Salgaokar & Brothers it has been laid down:

Duty of Court--Draft issues submitted by one party **should not be mechanically adopted by the Court** as it is primarily the **duty of the judge** to frame the issues in the cases. Therefore, the judge is bound to apply his mind to pleadings of the parties before framing the issues. (Para3).

“It is needless to say that it is primarily the duty of the Judge to frame the

issues in the case. Therefore the Judge is bound to apply his mind to the pleadings of the parties before framing the issues. It cannot be forgotten that framing of the issues has a very important bearing on the trial and decision of the case. As observed by the Supreme Court in (J.K. Iron & Steel Co. Ltd. Kanpur v. The Iron & Steel Mazdoor Union, Kanpur)1. **A.I.R 1956 S.C. 231 the only point of requiring pleadings and issues is to ascertain the real dispute between the parties, to narrow the area of conflict and to see just where the two sides differ.**" This is precisely what was expected of the learned Judge. From the record it is clear that after the parties had submitted their draft issues they were not heard. This position is not disputed even by the learned Counsel for the Plaintiffs. Therefore, the issues were finalized even without hearing the parties. From the perusal of the issues it is also clear that the learned Judge has not taken into consideration the pleadings of the parties. Shri Presswala the learned Counsel appearing for the petitioners, has taken me through certain issues which clearly indicate that they did not arise out of the pleadings of the parties, namely the differences or real dispute between the parties. I= satisfied that the issues have been framed by the learned Judge before me that even when the Order 23rd March, 1988 was passed the learned Judge had not perused the pleading nor has given proper opportunity to the defendants to point out as to how the various issues are not necessary or that the burden has been wrongly cast upon the Defendants".

Again the Gwalior Bench of the MP High Court has laid down:

In Bhagwan and Ors. vs. Sachi Chandra Jain and Ors. (07.08.1991 - M...) the Hon'ble Madhya Pradesh High Court has laid down

I am also very clear in my mind that the **duty in regard to framing of the issue** is of the Court which it has to discharge because it has to try the suit and it has to give notice to parties to lead evidence with reference to the issues framed. Reference to Court's "satisfaction" in Prasad's case also implies that duty. I, therefore, find no force in the contention of Shri Lokendra Gupta that because the **Plaintiff did not apply for framing of issue** in regard to adequacy of consideration, Court's default in that regard is condonable. Rule 5 of Order 14, C.P.C. empowers the Court to amend issues or frame additional issues at any stage of proceedings and it **does not contemplate that the power must be exercised when application is made on the other hand it saddles on the Court a duty to exercise power suo motu "for determining the matters in controversy between the parties"** if that was necessary to do so. When the question of exercise of jurisdiction is in issue that is to be considered in appeal as to whether there was abdication of jurisdiction or it was exercised illegally or with material irregularity.

- Since the framing of issues if **the primary duty of the judge**, taking the draft issues of both sides, and framing issues without following the correct procedure; and to the law applicable to that **type of cases** and the pleadings of both sides, and the material before it would be incorrect. However it was held that there was no harm in taking help from Advocates of both the sides

Can the Court recast the issues at any stage?

After the amendment of 2002 in the Code of Civil Procedure, Order 14 Rule 5 which was deleted by earlier amendment, and brought back, the Courts

again have wide powers to amend or strike out any issues framed at any stage before passing the decree. Further, the Court has been given powers to amend or frame additional issues as may be necessary for determining the matters in controversy between the parties.

As stated earlier, in **Bhagwan and Ors. vs. Sachi Chandra Jain and Ors the MP High Court** has laid down that Issues can be framed at any stage, and it is **in fact the duty of the Court** to frame issues at any stage if it comes to the conclusion that the correct issues have not been framed in the matter.

What happens if proper issues are not framed: *The danger of not clearly comprehending the case and not framing the correct issues was brought out in Venkataswamy vs. Narayana A. and Ors. (25.01.2002 - KARHC) where the Karnataka High Court was pleased to lay down as follows:*

“On going through the impugned judgment and pleadings of the parties, , 1 find that the Trial Court is not clearly comprehended the disputed factual issues and legal questions that emerge out of them. The case of the Plaintiff indicates that the defendants 1 and 2 were permitted to stay in the house gratuitously and it was in the nature of a licence. When he found that their stay became inconvenient he asked them to go out, which they refused and continued their stay. Thereby according to the Plaintiff the stay of defendants 1 and 2 becomes one of a trespasser.

From the facts and contentions put forth by both the parties, it is clear that none of the parties are in exclusive occupation of any of the portion of the house property. It appears that defendants 1 and 2 although are cooking separately in different rooms each one of them have unimpeded access for enjoyment of all the portions of the house. There-fore from the facts and material it indicates that Plaintiff is not deprived of the possession of the property. In other words, the Plaintiff and defendants are in joint possession and enjoyment of the property. In a given situation, it would be preposterous to make a demand on the Plaintiff to seek the relief of possession, as he is already in joint possession and riot deprived of the effective possession.

In a suit filed for bare injunction when the pleadings of the parties warrant framing of an issue regarding title any adjudication of the suit only from the stand point of possession without addressing to the question of title would be only a superfluous approach and would not be a meaningful and effective adjudication, further giving rise to multiplicity of proceedings. Therefore, keeping in view the legislative purport and intent of the provisions of Section 26 it was just and necessary for the Trial Court to have framed an issue with regard to the title on the basis of the averments made by the defendant in the written statement. In that view of the matter, I find that the Trial Court ought to have framed an issue with regard to the title to the property and should have called upon the Plaintiff to pay Court fee on one-half of the market value.

For the reasons aforesaid, it was imperative on the part of the Trial Court to have framed an issue with regard to the title as observed above and to have given a fair opportunity to both the parties to adduce evidence with regard to the nature of the property as to whether it is exclusive property of the Plaintiff or otherwise depending upon the answer to the question the Plaintiff would be entitled to the final relief.”

SUGGESTED METHOD OF FRAMING ISSUES

General:

The primary questions to be determined, as stated earlier, relating to limitation, jurisdiction and the like, which may not be necessarily pleaded by any of the parties, nevertheless cast a duty on the Court to frame an issue and decide the same before proceeding with the matter.

Each genre/type of cases has a certain set of issues that can arise, and that depends on the law and not on the facts. Therefore the first question would be to see **what law is applicable in the matter** to get the decision that the plaintiff wants. **All possible questions that may arise** or may have to be determined from **that particular area of law** ought to be before the Court while drafting the issues. It is on the basis of these questions and only on the basis these questions, can the Court proceed to draft issues. The aforesaid **'questions to be determined'** form the backdrop within which the plaintiff and defendant can plead their case. In other words if the pleadings of the parties are outside **this set of issues**, then they are not relevant to the decision of the case and ought not to be allowed to become a matter of an issue. The first set of issues as stated earlier this come from the law, and I have for convenience, given them the nomenclature of **broad basic issues** which ought to cover all the possible issues in that type of cases.

The next question the Court must have before it, is if the plaintiff has drafted his pleadings in such a way so as to cover all the relevant points for determination in order to get the judgement that he prays for. If these pleadings have not been made, then they are defective and incomplete, and the Court may proceed either to dismiss the case under **Order 7 Rule 11** or otherwise proceed as per law. Similarly, if looking to the written statement the Court finds that all the points for determination have not been brought out in defence, the Court has to proceed to pass the judgement or otherwise proceed as per law. It is only after this stage can the Court proceed to cast issues in the manner as we know it.

In case the Plaintiff has pleaded the facts which fall within one of these **questions for determination**, then the Court can look into whether the defendant has accurately, and as expected in law, and as expected in the law of pleadings, denied what is stated by the Plaintiff, so as to form the basis of an issue. If there is no proper pleading or denial as envisaged by law, and by the law of pleadings, no issue can be framed on the point. If the Plaintiff has pleaded his case as per law and the defendant has denied it as envisaged by law, an issue can be framed on that particular point.

In cases where the **'point for determination'** is partly admitted by the other side, such a party would only be required to prove only that part of the **'point for determination'** which is not admitted by the other side and not the point in its entirety. In other words, if the facts that support a point for determination consist of two parts A and B, and the other side admits either of them, **the issue should be narrowed down from the broad basic issue to only that part that the other side is denying**. More often than not, this is not done and the party is obliged to prove the entire issue even though part of it is plainly admitted by the other side. This leads to great expense and unnecessary delays

The next step is the correct **casting of the burden on the right party**. This has become more or less academic because the Court, when both sides have

led evidence in the matter, has to go by probabilities rather than by the technical mode of burden of proof. However, when the weight of evidence is evenly matched it assumes significance. In criminal cases where the prosecution has to prove the matter beyond all reasonable doubt, it has its own importance. The Evidence Act has laid down several rules to decide the question of burden of proof. I have found it very convenient to use the following integrated rule for putting the burden on a party:

"The burden of proving something is on the party who asserts the same, unless the other side would fail is no evidence is given, or unless the best evidence lies in the hands of the opposite party"

It be may noted here that it is only the person having the best evidence can produce it, and all the various laws and sections on burden of proof will be subject to the rule that the person who has the best evidence has to prove the same, because probably no one else will be in a position to prove the same however hard he tries.

After putting the burden of proof on the correct party, one is to see the interplay of the issues and make the adjustment accordingly. Some types of cases have an intricate play of issues probably partly due to bad drafting on part of the draftsmen who have drafted the law. If a party proves some law or fact, then the other side might in defence have to prove some legal position or fact which again obliges the first party to prove some other legal question or fact and so it goes on. This can sometimes be complicated, but if this is not done at the start of the case either party may not put in material he might have otherwise have put in evidence

After this stage is over, the Court can then see whether on the basis of the issues framed the party can obtain an order related to the prayers he has made in the plaint or complaint or if the other side can successfully defend the action.

That I think should give a picture of the stage of framing issues in a clear sense, as without a correct understanding of the points for determination and framing of issues, the very foundation of the case becomes defective leading to gross distortion in the legal process and injustice and delays in the matter.

- **Some issues are the prime duty of the Court whether pleaded or not**

- When issues are a **prime duty of the Court**, the niceties of pleadings become irrelevant. Only the attention of the Court has to be drawn to the question.

- Note issues relating to **limitation, jurisdiction and inherent jurisdiction**, when they are evident on the **face of the record, where the Court is obliged to dismiss or reject the matter if the matter is clearly time barred or beyond jurisdiction of the Court.**

- Also note issues relating to **special areas** when the Court gets jurisdiction to try a matter in appeals and second appeals. In appeals the Court gets jurisdiction **only if there is a defect in the judgment** or order. In second Appeals the **mandatory issue is if the Appellant has raised a substantial question of law.**

- When the matter **does not disclose a cause of action** it is the duty of the Court to dismiss the same and ensure that it does not occupy the time of the Court.

- In matters relating to **Special Courts and Tribunals**, the Court gets jurisdiction to entertain the matter if the **plaint transaction prima facie falls within the four corners of the Section giving the Special Court its jurisdiction**. If it does not, then Court ought to return the plaint or take such other steps in the matter.

Preliminary Issues

The Court can try the matter as a preliminary issue on pure questions of limitation, jurisdiction or a bar under any law but not otherwise. **In 2006(5) BomCR 574** the Hon'ble **Supreme Court has laid down** " a Court can try an issue as a preliminary issue if it is a purely question of law e.g. want of jurisdiction or a bar created by any other statute; **but not in cases** which involve mixed questions of facts and law"

And conversely under **Order 15 Rule 3 of the Code of Civil Procedure** a Court is entitled to decide a preliminary issue if findings thereon could be sufficient for the decision and it can be pronounced accordingly. **In 2006(1) BomCR 873** the Bombay High Court has decided accordingly.

A careful perusal and use of the above can cut down the litigation time and cost enormously.

Order 7 Rule 11

It is well settled that if a matter does not disclose any cause of action it should be rejected under the provisions of **Order 7 Rule 11** of the Code of Civil Procedure. As stated by the Supreme Court such matters ought not to occupy the time of the Court but ought to be dismissed"

After the aforesaid preliminary questions have been sorted out then the main exercise can be proceeded with.

- **Detect the Broad basic issues that arise in that type/genre of cases before examining pleadings.**

- First note the **nature and type** of case
- Note and frame the '**issue set**' for cases **of that type**. It is more or less a **set of directions** or a **programme of action** in that particular type of cases.
- **In Appeals, the first and primary issue is as to "what is wrong with the Judgment/order"**, while in second appeals an issue relating to the **substantial question of law** has to be framed which is the primary issue in the matter.

- **Narrow basic Issues: Depending on the law of pleadings, and also referring to those pleadings of opposite side which admit pleadings of the Plaintiff in part.**

- Now look to and frame the issues on the **factual** and **legal** questions **pleaded and denied** and/or admitted **either fully or partially** and **pare down the issue to its barest essentials.**

- **When framing an issue advert to the strict requirements of the laws of pleadings** both on the part of the Plaintiff and on the part of the Defendant.
 - To form the basis of an issue there are **requirements of the pleadings** of the Plaintiff and **requirements of the denials** in the pleadings of the Defendant and issues can be framed only if the tests are satisfied.
 - E.g. In cases of fraud, in res judicata and the like, when the law of pleadings requires that there have to be specific pleadings, failing which no issues can be framed on that point.

With reference to the law of pleadings

Re: Vague Pleadings: Where the pleadings are vague and do not fall within the parameters and the law related to the laws of pleadings in the Code of Civil Procedure, then issues may not be framed. In **2008(6) BomCR. 788** the Bombay High Court has laid down:

“**Appellant** submits that Defendants plea was vague and on such a vague plea no issue of tenancy could be raised. Defendants did not give any particulars as to when the tenancy was created, by whom it was created and the area regarding which it was created and in absence of such particulars, no issue framed and referred to Mamlatdar, when a **vague plea** is made by Defendant contending that he is a tenant of land, **Court should hesitate to frame such an issue on such a vague plea**, unless Defendant is able to give particulars showing time when tenancy was created, person by whom it was created and terms on which it was created – if Defendant is unable to furnish, Court should not raise an issue on a vague plea- Rules of pleadings require that these particulars are minimum particulars which a man must furnish before he can request court to frame an issue as regards claim made for tenancy.”

Similarly in AIR 1979 Bom 52, Bombay High Court has laid down:

“However, when inspite of particulars being asked for, a **vague plea** is made by the Defendant contending that he is a tenant of the land the Court **should hesitate to frame such an issue on such a vague plea** unless the Defendant is able to give particulars showing the time when the tenancy was created, the person by whom it was created and the terms on which it was created”

In 2000(4) BomCR 508, the Bombay High Court laid down the law relating to specific denials in the Written Statement thus:

“A mere vague issue 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 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 an issue on adverse possession. 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 settled that the **Court is not bound to frame issues suo moto on questions of fact** where the parties do not ask for the same. **If the denial 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 **AIR 1964 Supreme Court 538**”.

- **With reference to the application of the law relating to burden of proof and presumptions, to the draft issues**

- Even though the this area of burden of proof is now academic, as the court, when both parties have led evidence on an issue, has to go by the preponderance of probabilities rather than by the question of strict burden of proof, it still has its uses when the evidence is finely balanced.
- The integrated principles to put the burden on the correct party

The integrated principle: *the burden of proving an issue lies on the person who alleges a fact, unless the other would fail if no evidence is given, or the best evidence lies in the hands of the other side.*

- **Alternate lines of issues**

- In some cases issues have to be framed in the alternative, for example in cases of Specific Relief they may be one set and line of issues relating to the specific performance of the contract, and in the alternative there may be another line and set of issues relating to grant of compensation case the relief of specific performance is not granted.

- **Final and accurate issues [Final Check]**

Just by way of illustration in the reported in **2009(6) BCR 857** in Siddhi Chunilal Vs. Suresh Gopkishan. (supra) in which Borkar J passed his Judgment, the required issue stated with accuracy when viewed in this context ought to have been:

Does Plaintiff prove that he is in **settled** possession of the premises?

And not

Does Plaintiff prove that he is in **lawful** possession of the premises?

In the latter case it will cause confusion, as the question of title might then crop in leading to obfuscation of the matter.

IN CONCLUSION

In conclusion, I hope I have brought into focus the importance of framing the issues correctly, accurately, with skill and finesse. I hope I have made you aware of the importance of the said questions, and the law relating thereto, and give it the importance it deserves.

Issues have to be understood at every stage, right from the drafting of the pleadings right to the stage of final arguments. If properly applied, the law relating to issues can be used to cut down the litigation time enormously, and to get reasonably good reliefs for your clients in a much shorter time and with far lesser effort. **'Issues' probably form the most important part of the trial,**

and if adequate importance is given to the framing of issues, it may be one single factor leading to quick, affordable and a good quality of justice.

The principles that can be deduced from the above discussion on issues:

1. Issues may be based under Order 14 Rule 1 and 2 of the Code of Civil Procedure, but there is nothing to suggest that the above Order is exhaustive and that issues cannot be framed if there are no pleadings in the case.
2. There are a fixed set of issues for every type/genre of cases and they form the frame under which the Court should work to frame issues. Any pleading or material outside these broad basic issues is irrelevant to the matter and ought to be discarded.
3. On looking to the mandatory issues like limitation and jurisdiction if they are based only on pure law, and not on facts and not being mixed questions of law and facts, the Court may proceed to decide the same under the law after giving a hearing to both the parties.
4. If however, they are mixed questions of law and fact or questions of fact framing an issue on the same will depend on the law of pleadings
5. The Court must decide as to what is pleaded and what is not on advertent to the law of pleadings in the Code of Civil Procedure.
6. The Court must frame issues within the broad framework given above, on seeing the factual position that is pleaded by the parties.
7. The question of burden of proof is dependent on the relevant provisions of the Evidence Act, however, all rules must bend to the rule that the person with the best evidence must produce the same.
8. The burden of proof is fixed on a person and never shifts, however, the onus of proof shifts from time to time. Onus of proof cannot be a matter of issues.

As stated by the Supreme Court in **A 2001 Supreme Court 490** “ the **correct decision** of a Civil lis **largely depends on the correct framing of issues , and correctly determining the real points in controversy which need to be decided”**

P.S.

I earnestly hope that you find the above write up useful in your law practice. I am now working on '**Depth Analysis of Judgment**' which will give you a **deeper insight** into what constitutes a good judgment and what is a defective Judgment; which analysis I expect, will help you to draft well crafted Writs and Appeals.

Kindly communicate to me by eMail if you find the above write-up useful in your practice. I should be happy to send you on your request, an e-copy of my article on '**Depth Analysis of Judgment**' as soon as I am able.

S.A.AHMED

