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## Order, Judgment And Decree Under Civil Procedure Code, 1908

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### Abstract

A nuanced understanding of the distinctions between an order, a judgment, and a decree is essential to comprehending the procedural framework that governs civil adjudication in India. These three concepts, though closely related, represent different stages and functions within the judicial process established under the Code of Civil Procedure, 1908 (CPC). The CPC serves as the cornerstone of civil justice, outlining the step-by-step mechanism for instituting suits, regulating the conduct of proceedings, and determining the legal consequences of judicial findings. It ensures that every decision rendered by a civil court follows a structured process that upholds the principles of natural justice, fairness, and transparency.

A judgment embodies the court's reasoning and conclusions on the matters in dispute, reflecting the judicial mind at work. A decree is the formal expression of that adjudication, conclusively determining the rights and liabilities of the parties involved. An order, on the other hand, addresses procedural or interlocutory matters that arise during litigation and does not necessarily dispose of the suit. Although they operate within the same legal framework, each plays a distinct role in ensuring the orderly administration of justice and the enforceability of judicial outcomes.

This research aims to analyze the conceptual foundations, statutory provisions, and judicial interpretations that define the nature and scope of orders, judgments, and decrees under the CPC. It also explores their interrelationship, procedural significance, and the implications they carry for litigants and the justice delivery system. By drawing upon landmark judgments, the study seeks to clarify ambiguities, promote procedural consistency, and contribute to a deeper understanding of civil procedure in India.

### Keywords

1. Civil Code,
2. Order,
3. Judgment,
4. Decree

## Introduction

The administration of civil justice in India is governed by the **Code of Civil Procedure, 1908 (CPC)**, which provides a detailed legislative framework for the conduct of civil proceedings. The CPC defines and regulates the procedural steps through which civil rights and obligations are adjudicated by courts. Within this codified structure, three key judicial instruments - order, judgment, and decree - acquire distinct legal identities, each having specific statutory backing and procedural effect.

Under **Section 2(9)** of the CPC, a judgment refers to the statement given by the judge on the grounds of a decree or order. It forms the judicial reasoning that articulates the court's findings and conclusions on the issues raised in a suit. A decree, as defined in **Section 2(2)**, is the formal expression of an adjudication that conclusively determines the rights of the parties regarding all or any of the matters in controversy. Conversely, an order, as per **Section 2(14)** of the CPC, denotes the formal expression of any decision of a civil court which is not a decree. Orders may arise at various stages of a proceeding and are crucial for regulating the procedure and progress of a case. While some orders are interlocutory, others are appealable under **Section 104** and **Order XLIII Rule 1** of the CPC.

Understanding these provisions is vital, as the differentiation among orders, judgments, and decrees directly affects procedural rights, appeal mechanisms, and the execution of civil remedies.

## DEFINITIONS

### Order – Section 2(14) of the CPC

As per **Section 2(14)**, an order means the formal expression of any decision of a civil court which is not a decree. Orders are passed at various stages of a suit to regulate procedure or determine interim issues. Some orders are purely procedural, while others have substantial legal consequences.

### Judgment – Section 2(9) of the CPC

Under **Section 2(9)**, a judgment means the statement given by the judge on the grounds of a decree or order. It contains the reasoning, findings, and conclusions of the court on each issue of law and fact.

The judgment is thus the intellectual and analytical foundation of the court's decision - explaining why and how a conclusion was reached. **Order XX Rules 4 and 5** of the CPC require that every judgment state the issues, findings, and reasons in a clear and concise form.

### Decree – Section 2(2) of the CPC

According to **Section 2(2)**, a decree means the formal expression of an adjudication that conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit.

However, it specifically excludes (a) any adjudication from which an appeal lies as an order, and (b) any order of dismissal for default.

A decree thus transforms the reasoning of the court into a legally binding determination. A **preliminary decree** declares the rights of parties but requires further proceedings before final relief is granted (e.g., partition suits or accounts suits). A **final decree** concludes the matter entirely.

## JUDICIAL INTERPRETATIONS:

**In Shah Babulal Khimji v. Jayaben (1981)**, the Supreme Court clarified that while every decree is an order, not every order is a decree.

**Principle:** The Supreme Court clarified the distinction between a decree and an order. Every decree is an order, but not every order is a decree.

A decree must conclusively determine the rights of the parties with regard to all or any of the matters in controversy in the suit. In contrast, orders are generally procedural or interlocutory in nature and may not finally settle the rights of the parties.

**Significance:**

This case provided an authoritative interpretation of Section 2(2) of the CPC, defining what constitutes a decree.

**In Shankar v. Chandrakant (1995)**, the Supreme Court emphasized that a decree must conclusively resolve the rights of the parties.

**Principle:**

The Court reiterated that for an adjudication to amount to a decree, it must conclusively determine the rights of the parties.

- If the decision leaves any issue unresolved or is merely procedural, it cannot be treated as a decree.
- The finality and conclusiveness of the adjudication are essential features of a decree.

**Significance:**

This ruling reinforced the test of finality — only when the rights of the parties are conclusively decided does an adjudication become a decree.

**In Balraj Taneja v. Sunil Madan (1999)**, the Supreme Court held that a judgment must reflect the application of judicial mind and cannot be a mere formality. The reasoning must be apparent so that higher courts can examine the basis of the decision on appeal or revision.

**Principle:**

The Supreme Court held that a judgment must reflect application of judicial mind.

- It should not be a mere formality or mechanical act.
- The reasoning behind the decision must be clearly recorded so that appellate or revisional courts can understand and assess the basis of the judgment.

**Significance:**

This case elaborated on Section 2(9) of the CPC (definition of judgment) and stressed the importance of reasoned judgments as a hallmark of judicial fairness and transparency.

## CONCEPTUAL LOOPHOLES AND AMBIGUITIES IN THE INTERPRETATION OF ORDER, JUDGMENT, AND DECREE UNDER THE CPC

While the Code of Civil Procedure, 1908 (CPC) seeks to establish a systematic framework for civil adjudication, the statutory definitions of order, judgment, and decree under Section 2 reveal certain conceptual ambiguities that often lead to interpretative confusion and procedural complications. These ambiguities have been highlighted repeatedly in judicial discourse and academic analysis, as they impact the classification of judicial acts and the determination of appellate rights.

### 1. Ambiguity in Determining When an Order Amounts to a Decree

In practice, it often becomes difficult to distinguish whether a particular adjudication of the court constitutes an order or a decree. Certain orders—for instance, the rejection of a plaint under Order VII Rule 11, or the determination of preliminary issues under Order XIV Rule 2—have the effect of conclusively determining rights of the parties, similar to a decree. This creates a gray area where procedural classification affects substantive rights, particularly in matters of appealability and execution. The lack of a clear legislative guideline on how to identify when an order assumes the character of a decree has led to conflicting interpretations in case law, compelling courts to rely on judicial discretion rather than statutory clarity.

### 2. Vagueness in the Definition of “Order” under Section 2(14)

Section 2(14) defines an order as “the formal expression of any decision of a civil court which is not a decree.” This definition is circular and negative in nature — it defines an order not by what it is, but by what it is not. The legislature provides no explicit parameters for identifying what constitutes a “decision” or how much formality is required for an expression to qualify as an order. This lack of precision generates uncertainty, especially when courts issue oral directions, interim observations, or procedural decisions that are recorded but not formally expressed. The absence of a more comprehensive statutory definition thus leaves much to judicial interpretation, leading to inconsistency.

### 3. Logical Inconsistency in the Definition of “Judgment” under Section 2(9)

A judgment is defined as “the statement given by the judge on the grounds of a decree or order.” However, the practical sequence of civil adjudication creates a conceptual tension: the judgment precedes the decree, since the decree is drawn from the judgment’s conclusions. Therefore, defining the judgment as being “on the grounds of a decree appears logically inconsistent. A more coherent drafting would have described a judgment as “the statement given by the judge containing the reasons for which a decree or order is passed.” The current language implies a reverse chronology, which does not align with judicial practice or procedural reality.

### 4. Ambiguity in the Expression “Rights of the Parties in All or Any of the Matters” in Section 2(2)

Section 2(2) defines a decree as conclusively determining “the rights of the parties with regard to all or any of the matters in controversy in the suit.” This phrasing raises interpretative challenges. If a judgment is expected to decide all issues framed under Order XIV, then the decree — which is drawn from the judgment — should naturally reflect a determination of all those matters. However, by permitting the phrase “all or any,” the legislature allows for partial adjudication to qualify as a decree. This blurs the conceptual line between preliminary decrees (which resolve some matters) and interlocutory orders, potentially resulting in overlapping classifications and procedural confusion in appeals.

### 5. Absence of a Clear Correlation Between Orders, Judgments, and Decrees

The CPC does not provide a direct statutory explanation of how order, judgment, and decree interrelate procedurally. While judicial interpretation has attempted to clarify that the judgment provides reasoning, the decree provides finality, and the order regulates proceedings, this understanding is derived more from practice

than from the text of the Code. The absence of a cross-referential framework within the CPC often leads to conflicting interpretations regarding when a decision transitions from one category to another.

#### 6. Ambiguity in Appeal Provisions

The confusion over classification extends into the appellate structure. Under Section 96 and Section 100, appeals lie from decrees, while Section 104 and Order XLIII Rule 1 provide for appeals from certain orders. However, when the status of a judicial act is disputed—whether it is a decree or an order—the right to appeal may be compromised. This procedural uncertainty has led to numerous cases being dismissed on technical grounds rather than on their merits, which undermines the principle of access to justice.

#### 7. Lack of Uniform Judicial Interpretation

Different High Courts and benches of the Supreme Court have, at times, interpreted similar procedural actions differently. For instance, while some courts treat the rejection of a plaint as a decree (Order VII Rule 11), others consider similar procedural dismissals as orders, depending on context. This inconsistency has weakened the uniform application of the CPC and created uncertainty for litigants and practitioners alike.

### CONCLUSION

The statutory framework of the CPC, though intended to ensure procedural precision, leaves several interpretative gaps concerning the definitions and interrelations of order, judgment, and decree. These ambiguities affect both procedural efficiency and substantive justice. The legislature could consider revising Sections 2(2), 2(9), and 2(14) to include clearer cross-references, better sequencing, and precise distinctions. Such reforms would bring greater logical coherence to the CPC, reducing judicial confusion and strengthening the predictability and transparency of civil adjudication in India.

### References

1. Code of Civil Procedure, 1908
2. Shah Babulal Khimji v. Jayaben D. Kania & Anr (1981) 4 SCC 8
3. Shankar v. Chandrakant (1995) 1 SCC 351
4. Balraj Taneja & Anr. v. Sunil Madan & Anr. (1999) 8 SCC 396