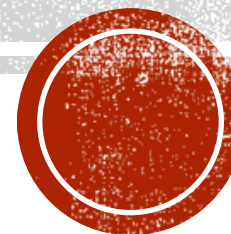


INJUNCTION



DEFINITION

An injunction is defined in **Halsbury's Laws** as:

“A judicial process whereby a party is ordered to refrain from doing or to do a particular act or thing.”
Oxford dictionary meaning of word Injunction is “a Judicial warning or a Judicial order restraining a person from an action or compelling a person to carry out a certain act.”

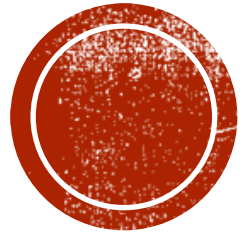
- Injunction law in our country originates from English Equity Jurisprudence, which, in turn, borrowed from Roman Law.
- A fundamental principle is that a right should have a corresponding remedy.
- Injunctions are judicial remedies that can be restrictive (prohibiting acts) or mandatory (commanding correction).
- Injunctions may be temporary, interim, interlocutory, or permanent.



EQUITABLE PRINCIPLES

- The Specific Relief Act establishes equity principles for injunctions, requiring fair and honest conduct free from fraud.
- Some important equitable principles which are necessary to consider while granting or refusing injunction are as follows.
 - Whenever there is right there is remedy.
 - One who seeks equity must come with clean hands.
 - One who seeks equity must do equity.
 - Where equities are equal the law will prevail.
 - Equity follows the law.
 - Equity aids the vigilant, not those who slumber on their rights.
 - Equity acts a personam.





TEMPORARY INJUNCTION



SCOPE

- The court, under Section 94 of the Code of Civil Procedure, can grant a temporary injunction if the defendant threatens dispossession or harm to the plaintiff's property in dispute.
- If defendants attempt to dispose of part of the property, the plaintiff has the right to claim an injunction.
- A temporary injunction is a provisional measure preserving the subject matter's current state to prevent the dissolution of the plaintiff's rights.
- Immediate relief is the primary reason for seeking a temporary injunction.
- Section 94 (c) and (e) of the Code of Civil Procedure allows the court to grant a temporary injunction or another interlocutory order to prevent justice from being defeated.
- Section 95 of the Civil Procedure Code enables the court to award reasonable compensation if a temporary injunction is granted without sufficient grounds or if the plaintiff's suit fails without reasonable or probable cause.
- The compensation may be up to the court's pecuniary jurisdiction trying the suit.



PRINCIPLE

- While granting temporary injunction the tests be applied are
 1. Whether the plaintiff has a **prima facie case**,
 2. Whether the **balance of convenience** is in favour of plaintiff and
 3. Whether the plaintiff would suffer **irreparable injury** if his prayer for temporary injunction is disallowed.
- Before granting the injunction, the court must be satisfied about the following aspects:
 1. One who seeks equity must come with **clean hands**.
 2. One who seeks equity must do **equity**.
 3. Whenever there is right there is **remedy**
- The nature of the injunction grant is equitable, allowing the court to impose reasonable terms and conditions.



OBJECT OF INTERLOCUTORY INJUNCTION

- Rule 3 of Order XXXIX in the Civil Procedure Code allows the court, in exceptional circumstances and based on sound judicial discretion, to grant an ex parte interim injunction to protect the plaintiff from anticipated harm.
- According to Rule 3A of Order XXXIX, if an injunction is granted without notifying the opposite party, the court should aim to conclusively address the application within 30 days from the injunction date. If unable to do so, the court must record the reasons for this inability.



BASIC INGREDIENTS

- Prima Facie Case
- Balance of Convenience
- Irreparable Harm
- Other Reasons

Relevant Case Law

- *Gujarat Bottling Co. Ltd. v. Coca Cola Co., (1995) 5 SCC 545*



INHERENT POWER OF THE COURT

- There was a conflict on whether a court could issue a temporary injunction under Section 151 of the Civil Procedure Code when not covered by Order XXXIX Rule 1 and 2.
- For implementing an injunction order, police protection can be ordered under Section 151.
- However, police assistance is only enforceable based on a final order under Order XXXIX Rule 1, 2 and ordering it without giving the defendant a chance to present objections is deemed improper.

Relevant Case Law

- *Manohar Lal Chopra v. Rai Bahadur Rao Raja Seth Hiralal, 1961 SCC OnLine SC 17*

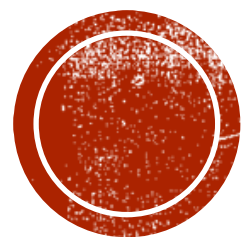


CASES WHEN TEMPORARY INJUNCTION MAY BE GRANTED

According to Order 39 Rule 1 of the Code of Civil Procedure.-

- When any property in dispute is in danger,
- When any property in dispute is being wasted,
- When any property in dispute is damaged,
- When any property in dispute is alienated by any party,
- When any property in dispute is wrongfully sold in execution of a
- When defendant threatens,
- When defendant intends to remove,
- When defendant dispose of his property with a view to defrauding his creditor,
- When defendant threatened to dispossess the plaintiff,
- When defendant otherwise cause injury to the plaintiff in relation to any property in dispute in a suit,
- Where defendant is about to commit a breach of contract or other injury of any kind,
- Where a court is of the opinion that in the interest of just so requires.





PERMANENT INJUNCTION



INJUNCTION UNDER SPECIAL STATUTE

- Section 37(2) of the Specific Relief Act stipulates that a perpetual injunction can only be granted through a decree made at the hearing and upon the merits of the suit.
- It restrains the defendant from asserting a right or committing an act contrary to the plaintiff's rights.
- Section 38 of the Specific Relief Act allows the granting of perpetual injunction in cases where it prevents the breach of an obligation existing in favour of the plaintiff, especially in contractual matters guided by Chapter II of the Specific Relief Act on specific performance of contracts.



REFUSAL TO GRANT INJUNCTION

Section 41 of the Act deals with when injunction cannot be granted,

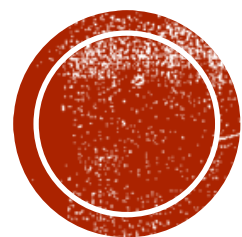
- to restrain any person from prosecuting a judicial proceeding unless such a restraint is necessary to prevent a multiplicity of the proceedings,
- to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that from which the injunction is sought,
- to restrain any person from applying to any legislative body,
- to restrain any person from instituting or prosecuting any proceedings in criminal matter,
- to prevent the breach of a contract the performance of which would not be specifically enforced,
- To prevent on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance,
- to prevent a continuing breach in which the plaintiff has acquiesced,
- when equally efficacious relief can certainly be obtained by any other mutual mode of proceedings except in case of breach of trust,
- when the conduct of the plaintiff or his agent has been such as to disentitle him to the assistance of the Court,
- when the plaintiff has not personal interest in the matter



WHEN PERPETUAL INJUNCTION MAY BE GRANTED

- Chapter 8 of the Specific Relief Act permits the grant of perpetual injunction to prevent breaches of contractual obligations related to property rights.
- Perpetual injunction is awarded when compensation in money is inadequate, and Section 38 guides the court in this matter.
- The plaintiff must establish a legal right, and the relief extends to tort-related violations.
- The court assesses the existence of the right before granting relief.
- Injunctions can be granted even before actual damage occurs, and jurisdiction exists to protect property from threatened acts.
- The court considers factors such as blamelessness, irreparable damage, and the availability of equally efficacious remedies.
- The Clean hands principle is crucial, requiring fair dealings by the plaintiff.
- Delays in seeking relief must be reasonable, and immaterial time doesn't affect remedial rights.





MANDATORY INJUNCTION



- A mandatory injunction compels the defendant to rectify a wrongful state or fulfil legal obligations.
- In India, governed by Section 39 of the Specific Relief Act, it's always in direct form.
- It's granted to prevent a breach and enforce necessary acts, aiming to restore the original condition.
- Special injury or substantial damage must be proven in such suits.
- Before filing, there must be a legal obligation on the defendant to perform certain acts.
- Interlocutory mandatory injunctions aim to maintain or restore the last non-contested status until the final hearing, preventing irreparable harm or compelling the undoing of illegal acts.
- Court issues temporary mandatory injunctions in cases of extreme hardship and compelling circumstances, usually when restoring the status quo is essential.



DISCRETION OF COURT

- The discretionary jurisdiction for mandatory injunctions aligns with Specific Relief Act sections 37 to 41, particularly section 39, which compels the performance of acts to prevent a breach of obligation.
- Sections 40 and 41 of the Specific Relief Act allow for damages in addition to or in lieu of injunction and provide circumstances when the injunction may be refused.
- The law of injunctions, grounded in equity, guides the court to act based on justice, equality, and conscience when specific rules don't apply.
- An injunction aims to restore the status quo, not create a new order, emphasising the need for a clearly established right.
- To obtain a mandatory injunction, the right must be clearly proven, and there must be a present intent to use that right interfered with by the alleged obstruction.



MAREVA INJUNCTION

- It is also known as Freezing Orders.
- The intent is to prevent the defendant from rendering a decree against him worthless by removing his assets from the Court's jurisdiction.
- It is also seen as an attachment before judgment under Order 38, Rule 5 of CPC.

Relevant Case Law

- ***Mohit Bhargava vs. Bharat Bhusan Bhargava [(2007) 4 SCC 795]***



QUIA TIMET INJUNCTION

- Quia Timet' means “since he fears”.
- If an applicant seeks an injunction before the act of the defendant has occurred which is alleged to involve an interference with his rights, then he is said to seek a Quia Timet injunction.
- It is generally issued to prevent breaches of covenants or breaches of patents etc.
- Basically, it is issued to restrain a wrongful act which is threatened or imminent but which has yet not been commenced.



ANTON PILLER ORDER

- Covered under Order 26 C.P.C



JOHN DOE ORDERS

- Used in Intellectual Property Right cases and cases of Cyber Law violation.
- Issued against unknown defendants.
- The defendant is added after it is seen that they are indulging in illegality.



DYNAMIC INJUNCTIONS

- Used in cases involving Cyber Laws Violation
- Roving injunction which is dynamic like the website showing pirated content.
- It is an innovative remedy.
- Used when URL blocking is not sufficient.
- Delhi High Court had granted a dynamic injunction – extending to identical websites



GEOBLOCKING AND GLOBAL INJUNCTION

- These are Innovative Remedies
- GeoBlocking is when a content on a website or the entire website is blocked in one portion of the world or in one or more than one countries.
- Global Injunction is when a content on a website or the entire website is banned throughout the world, i.e., all the countries.
- Case Law - *Swami Ramdev v. Facebook, 2019 SCC OnLine Del 10701*



ENFORCEMENT OF A DECREE FOR INJUNCTION

- Order 21, Rule 32(1) indicates that, in enforcing a decree for injunction, the judgment-debtor may face civil prison, property attachment, or both.
- However, Rule 32(5) gives the court flexibility to direct the judgment-debtor to perform the act or have it done by someone else at their cost.
- If the injunction is set aside or satisfied later, the rule becomes obsolete.
- Decrees for injunction and partition must be executed within 12 years as per Article 136 of the Limitation Act.
- The proviso to Article 136 specifies that the enforcement of perpetual injunction decrees has no time limitation.
- Orders under Section 151 of the Code of Civil Procedure are not appealable, as only specific orders listed in Section 104 and Order 43 Rule 1 are subject to appeal.



DISOBEDIENCE, REMEDY EFFECT

- Order 39 Rule 2-A of the Civil Procedure Code outlines remedies and effects for disobedience of temporary injunctions.
- If the disobedience persists beyond one year from the date of attachment, the court can sell the attached property and compensate the affected party from the sale proceeds.
- The attachment continues only as long as the breach or disobedience persists, with a maximum limit of one year.
- If the disobedience stops earlier, the attachment also ceases.
- Remedies for enforcing or addressing disobedience of either perpetual or mandatory injunctions are found in Order 21 Rule 32 of the Civil Procedure Code.



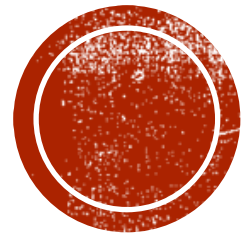
INJUNCTION IN CASE OF BANK GUARANTEE

- An injunction against a bank paying amounts covered by an unconditional bank guarantee is not allowed unless fraud is present.
- Staying a bank guarantee is possible only on grounds of fraud and in cases of irreversible injury.
- According to the Specific Relief Act's Section 41(j), an injunction can't be granted if the applicant lacks personal interest in the matter.

Relevant Case Law

- *Premji Ratansey Shah v. Union of India*, (1994) 5 SCC 547





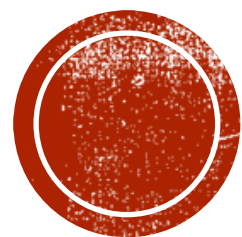
INJUNCTION UNDER CR.P.C



SECTION 133 — PUBLIC NUISANCE READ WITH SECTION 142

- Under Section 133, if a Magistrate believes immediate measures are needed to prevent imminent danger or serious injury to the public, they can issue an injunction to the person against whom the order was made.
- In case of non-compliance, the Magistrate can use necessary means to prevent danger or injury.
- While there's no specific provision for notice, justice and fairness suggest providing an opportunity for the affected person to be heard before issuing an injunction.
- Section 142(3) ensures that no lawsuit can be filed for actions done in good faith by a Magistrate under these provisions.





IMPORTANT JUDGEMENTS



GUJARAT BOTTLING CO. LTD. V. COCA COLA CO.

The apex court has established four governing principles for granting temporary injunctions:

- Prima Facie Case: The applicant must establish a prima facie case in his favour, showing basic facts that indicate a reasonable chance of success in the main case.
- Applicant's Conduct: The court examines the conduct of the applicant, which is relevant even when setting aside an order under Order 39 Rule 4.
- Balance of Convenience: The court assesses the balance of comparative loss or inconvenience to both parties if the injunction is or isn't granted.
- Irreparable Injury: The court considers whether the applicant would suffer an irreparable injury that cannot be adequately compensated with monetary damages if the injunction is not granted.



MANOHAR LAL CHOPRA V. RAI BAHADUR RAO RAJA SETH HIRALAL

- This case concluded that the Court has powers under Section 151 of the Civil Procedure Code to issue an injunction in cases not falling within Order 39 Rule 1 & 2.
- The discretion should be exercised judiciously and police protection can be ordered for the enforcement of an injunction, but not on the basis of an ad-interim ex-parte order.



ZENIT MATAPLAST (P) LTD. V. STATE OF MAHARASHTRA

- The Supreme Court explained the scope of interim injunctions, stating that they should be granted after considering the pros and cons of the case on settled principles, taking into account prima facie case, balance of convenience, and irreparable injury.



DORAB CAWASJI WARDEN V. COOMI SORAB WARDEN, (1990) 2 SCC 117

The Supreme Court gave guidelines for grant of mandatory injunction which are as follows:

- The plaintiff has a strong case for trail. That is it shall be of a higher standard than a prima-facie case that is normally required for a prohibitory injunction.
- It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
- The balance of convenience is in favour of the one seeking such relief.



KISHORE KUMAR KHAITAN V. PRAVEEN KUMAR SINGH

The Supreme Court held that:

- Interim mandatory injunctions are not easily granted and require clear circumstances and prima facie evidence justifying a restoration of the status quo.
- In the present case, the plaintiff has not been able to establish the foundation for the possession claimed, and the tenancy remains to be proven in the suit.
- The disturbance of the status quo by the defendants has not been established, and there is no clear foundation for granting an interim mandatory injunction in favor of the plaintiff.
- The order passed by the Additional District Judge, confirmed by the High Court, calls for interference in this appeal.



MORGAN STANLEY MUTUAL FUND V. KARTICK DAS

The Supreme Court held that ex-parte injunctions are granted only under exceptional circumstances, guided by certain factors. Factors influencing the Court's decision include:

- Whether irreparable or serious harm will occur to the plaintiff.
- Whether refusing the injunction would cause greater injustice than granting it.
- Consideration of the time when the plaintiff first had notice of the complained act to prevent improper orders.
- Evaluation of whether the plaintiff acquiesced for some time, which might prevent granting an ex-parte injunction.
- Expectation that the party applying for ex-parte injunction will act responsibly.
- Possible limitation of the ex-parte injunction's duration.
- Consideration of general principles like prima facie case, balance of convenience, and irreparable loss by the court



PREMJI RATANSEY SHAH V. UNION OF INDIA

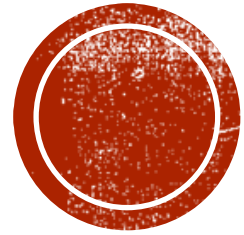
- The central question revolves around the issuance of an injunction against the true owner, emphasising that this relief is discretionary and equitable.
- Injunctions may protect the possession of a lawful owner, and it's not obligatory to grant such relief merely upon request.
- Section 41(j) of the Specific Relief Act establishes injunction as a personal right, requiring the plaintiff to demonstrate a personal interest.
- The absence of a proven interest renders injunction protection unattainable. It is well-established legal principle that injunction is not granted against the true owner.
- The Supreme Court's rejection of relief is deemed appropriate since the petitioners lack any rightful interest in the property and their possession, if any, is considered unlawful.
- It dismissed the pretext of a land identity dispute as insufficient grounds to claim injunction against the true owner, ultimately supporting the decisions of the lower courts without finding any justifiable reason for interference.



MOHIT BHARGAVA VS. BHARAT BHUSAN BHARGAVA

- The Supreme Court clarified that a court passing a decree is entitled to execute it, either itself or by sending it to another court for execution, as per Sections 38 and 42 of the Code.
- The amendment in 2002 resolved the conflict regarding the execution of a decree against a person or property outside the local limits of the executing court's jurisdiction.
- It emphasised that the executing court must refrain from proceeding if the execution involves such persons or property.
- The discussion covered jurisdiction in ordering attachment and execution against immovable property outside the court's jurisdiction.
- In the case discussed, the property sought for sale is not a partnership asset, and Order 21 Rule 50 is deemed inapplicable.
- The High Court's intervention in transferring the decree to the court with jurisdiction over the property is deemed justified.
- The challenge to earlier orders was dismissed, emphasising that the executing court's orders were within its jurisdiction, and the High Court correctly refused interference.
- However, the direction for the sale of the property by public auction is deemed void after the decree's transfer to the court at Indore, and the decree-holder is advised to file an application in the new executing court for the property's sale.





IMPORTANT JUDGEMENTS IN CASES OF IPR AND CYBER LAWS

JUGGERNAUT BOOKS PVT. LTD V. INK MANGO INC. & ORS.

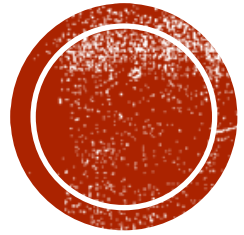
- The Plaintiff– Juggernaut Books Pvt. Ltd. (Delhi based), was a publisher of books and e-books by various well-known authors through a web-based software which is accessible from computers and smartphones on its platform - ‘www.juggernaut.in’
- Defendant– a New York based company was using an identical domain name www.thejuggernaut.com
- The Court found that it had the jurisdiction to entertain this matter as the Defendants had purposefully availed of the Court's jurisdiction.
- The Court granted an interim injunction against the Defendants and also directed blocking of the Defendants’ website.



SWAMI RAMDEV & ANR. V. FACEBOOK & ORS.

- Defamatory Content on Google platform.
- Global injunction sought for removal of all links;
- Google agreed for GEO-BLOCKING
- Reliance placed on *Google Vs. Equustek*– Canadian and US decisions
- Delhi High Court directed– if the defamatory material was uploaded from India, Indian courts can grant global injunctions.
- For uploads from outside India, the court ordered platforms to ensure that they use appropriate geo-blocking measures, so that users from India (Indian IP addresses) were unable to access the content.





THANK YOU

