

**WORK SHOP-III AT
SRIKAKULAM DISTRICT
ON 15.12.2019**

**PAPER PRESENTATION
ON**

**PRINCIPLES OF MANDATORY
INJUNCTION**

BY

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MANDATORY INJUNCTION

INTRODUCTION

An unjust Law itself is a specious of violence

...Mahatma Gandhi

The whole subject depends upon the following expression.

“The expression” - “Justice, equity and good conscience” incorporated to Indian Society and Circumstances.(AIR 1975 M.P 89).

An injunction is a remedy granted by the court that prohibits the commission of a wrong threatened or the continuance of a wrongful course of action already begun. If a party fails to comply with an injunction granted by a Court, then the party could face criminal or civil penalties or contempt of court. The relief of injunction is an equitable relief. When the legal remedies are inadequate, incomplete, their equity would come into application to prevent the wrong and justice. An injunction is the command of the Court which restrains one of the party to the lis from doing or permitting others to do an act which is unjust to other.

TYPES OF INJUNCTIONS:

1. Temporary and Permanent injunctions (Sections 36 & 37)
2. Perpetual injunctions (Section 38)
3. Mandatory injunctions (section 39)
4. Damages in lieu of or in addition to injunction(section 40)
5. Injunction to perform a negative covenant (section 42)

AN APPLICATION FOR INJUNCTION MUST BE FURNISHED IF:

- a) The petitioner has a strong prima-facie case, which has the potential to succeed.
- b) The balance of the convenience or that of inconvenience is in favour of the petitioner.
- c) Non-granting of a temporary or permanent injunction would force the petitioner to suffer an irreparable damage.

MANDATORY INJUNCTION:

Mandatory injunction is an **injunction** which orders a party or requires them to do an affirmative act or mandates a specified course of conduct. It is an extraordinary remedial process which is granted not as a matter of right, but in the exercise of sound judicial discretion. Mandatory injunction can be granted on account of laches. **(S.N.Sadasiva Chettiar vs. T.K.Subrahmaniam 1977(1) M.L.J page 67.**

Difference between Mandatory and Prohibitory Injunction:

A Prohibitory Injunction is simply an order of court requiring a person to restrain from doing any particular act, whereas in mandatory injunction court not only requires a person to restrain from doing an act, but also compels performance of certain act necessary for putting an end to a wrongful state of things created by him, or otherwise in fulfillment of his legal obligation.

Interlocutory mandatory injunctions are granted generally to preserve or restore status-quo of the last non-contested status which preceded the pending controversy until the final hearing, when full relief could be granted or to compel the undoing of those acts which have been illegally done or the restoration of that which was wrongfully taken from the complaining party. Before issuing temporary mandatory injunction the Court must be satisfied that the effect of injunction would be to preserve status-quo and to prevent irreparable injury.

A **temporary mandatory injunction** can be issued only in case of extreme hardship and compelling circumstances and mostly in those cases when status-quo existing on the date of institution of suit is to be restored. The jurisdiction to issue mandatory injunction is discretionary jurisdiction which can be exercised only in a

case which falls strictly within four corners of provisions enumerated under sections 37 to 41 of Specific Relief Act.

Mandatory injunctions are contemplated under section 39 of the Specific Relief Act, where it is necessary to prevent the breach of obligation and the erring party may be compelled to perform certain acts. Section 40 provides for granting damages in lieu of or in addition to injunction. While section 41 provides circumstances when the injunction should be refused. Section 42 provides for grant of injunction to perform a negative agreement. The Law of injunctions is vast and expansive and it is based on the principles of equity. The Court should act according to the justice, equality and conscience, when there is no specific rules applicable to the circumstances of the case. Section 39 says to prevent a breach of obligation, it is necessary to compel the performance of certain acts which the court is capable of enforcing. The Court may in its discretion grant an injunction to prevent the breach complained of and also to compel performance of the requisite acts.

EQUITY PRINCIPLES:

- (i) Equity will not suffer a wrong without a remedy;
- (ii) Equity follows the Law;
- (iii) Where there is equal equity the first shall prevail;
- (iv) Where the equities are equal, the first shall prevail;
- (v) He who seeks equity, must do equity and come with clean hands;
- (vi) Delay defeats the equities;
- (vii) Equity looks to the intent rather than form;
- (viii) Equity looks on that has done which has to be done;
- (ix) Equity imputes an intention to fulfill;
- (x) Equity acts in personam.

APPLICABILITY OF INJUNCTION:

The general rule is that grant of an injunction is a matter of discretion of the court and it cannot be claimed as of right. However, the discretion has to be exercised in a judicious manner and in accordance with the provisions relating to the grant of injunction contained in the Specific Relief Act. It is well settled that no interim injunction would be issued if final relief cannot be granted. When plaintiff has no personal interest in the matter, injunction cannot be granted.

PRINCIPLES GOVERNING MANDATORY INJUNCTION:

Mandatory injunction is an order requiring the defendant to do some positive act for the purpose of putting an end to a wrongful state of things created by him, or otherwise in fulfillment of his legal obligation.

Essential:

Two conditions must be fulfilled for a mandatory injunction can be granted.

1. There must be an obligation on the part of defendant to perform certain acts the breach of which obligation must be alleged by the plaintiff.
2. Relief must be enforceable by the court.

Mandatory injunction ought not to be granted as interim relief:

Mandatory injunction cannot be granted by way of interim relief as a grant of such injunction would be tantamount to a grant of final relief which would seriously prejudice the defendant. However, mandatory injunction can be granted in exceptional circumstances and it can be granted to restore the status quo on the date of filing of suit.

MANDATORY INJUNCTIONS can be granted generally to preserve or restore status quo of last non-contested status, guidelines for which are (a) plaintiff has a strong case for trial, (b) necessary to prevent irreparable or serious injury, which normally cannot be compensated in terms of money and (c) balance of convenience is in favour of party seeking such relief (**vide “Dorab Cawasji Warden (1990) 2 SCC 117”**). An injury caused to a person or persons would

constitute a sort of perennial trespass.(**Ardeshir Jivanje vs. Aimai Kuvarji, AIR 1929 Bombay page 94**). Where the defendant despite protests from the plaintiff persists in his unlawful acts and behaves in an unfair and highhanded manner(**Muralilal vs. Balakishan AIR 1926 NAG 416**). On entertaining a serious doubt where trial court refuses “**INTERIM MANDATORY INJUNCTION**”, Appellate Court not to interfere with such exercise of discretion, unless it is probably incorrect or untenable as long as view of trial court is a possible one, appellate court cannot interfere.

Easement of passage:

Some pathway is available and the defendants are poor persons residing in hut by encroaching on public road, held, relief claimed by the plaintiffs cannot be negatived in **Tudimella Laxminarayana vs. Tummala Narasaiah Naidu AIR 2005 (AP) 375**.

Defendants projection extends over the land belonging to the plaintiff, the plaintiff will be entitled to get a decree for mandatory injunction, held in **Mahabeer vs. Smt.Dayavathi AIR 1997 (All) 393**.

The power of the municipality or local body cannot be withheld by the Civil Court and decree of injunction cannot be granted against a statutory body. Any action of a statutory body is liable for judicial intervention. (**Hebbal Gangendhalli Layout Residents Association vs. Corporation of the City, Bengalore, 1992(3) Karnataka Law Journal page 40(D.B)**).

Injunction regarding a common wall-- In **Sardari Lal Gupta vs. Siri Krishan Aggarwal, A.I.R.1984 P&H, 439 at page 448**, it was observed that the plaintiff-respondent cannot, therefore, claim right of easement regarding air and light to his building through the common wall. In this situation it cannot be held that the respondent shall suffer any damage if the appellant supports his building on the party-wall and closes the ventilator.

Ad-interim Mandatory injunction:

“The ad interim mandatory injunction is to be granted not at the asking but on strong circumstance so that to protect the rights and interest of the parties so as not to frustrate their rights regarding mandatory injunction.” The Supreme Court has observed that grant of interim mandatory injunction is not prohibited, and it can be granted in 'appropriate' cases. The bench comprising **Justice Uday Umesh Lalit and Justice Hemant Gupta** observed that an ad interim mandatory injunction, is to be granted not at the asking but on strong circumstance so that to protect the rights and interest of the parties so as not to frustrate their rights regarding mandatory injunction. When Does Death of a Co-Appellant Result in the Abatement of Appeal as a whole” The court was dealing with a contention raised in an appeal (**Hammad Ahmed vs. Abdul Majeed**) that an application under Order XXXIX Rules 1 and 2 of the Code, the Court will not grant interim mandatory relief resulting in creation of entirely new state of affairs which hitherto never existed. In this case, an interim mandatory injunction to hand over of the passwords and management of Hamdard (wakf) to to appellant was sought.

“The grant of mandatory injunction is not prohibited even in **Samir Narian Bhojwani case**. It was held that unless clear and prima facie material justifies a finding that status quo has been altered by one of the parties the order in mandatory injunction can be given. The ad interim mandatory injunction, is to be granted not at the asking but on strong circumstances so that to protect the rights and interest of the parties so as not to frustrate their rights regarding mandatory injunction.” The bench also referred to **Deoraj vs. State of Maharashtra** which held that such interim relief only if it is satisfied that withholding of it would prick the conscience of the Court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. When mandatory injunction granted in **Mr.Barun**

Kumar Nahar vs. Parul Nahar & Anr. On 5 February, 2013. It would be seen from the aforesaid observation of the Apex Court in the said case that the relief of interlocutory mandatory injunction is granted generally to preserve or restore the status quo of the last contested status. The expression 'generally' in the above observation give a clear indication that the grant of interim mandatory injunction does not only confine to restore the status quo of the last contested status. The Apex Court in the said judgment further observed that being essentially an equitable relief the grant or refusal of an interlocutory mandatory injunction shall ultimately rest on the sound judicial discretion of the Court to be exercised in the light of the facts and circumstances of each case.

CONCLUSION:

The general rule is that grant of an injunction is a matter of discretion of the Court and it cannot be claimed as of right. However, the discretion has to be exercised in a judicious manner and in accordance with the provisions relating to the grant of injunction contained in the Specific Relief Act. It is well settled that no interim injunction would be issued if final relief cannot be granted. When plaintiff has no personal interest in the matter, injunction cannot be granted.

The Mandatory injunction can be granted in rare and exceptional cases. Those rare cases are where extreme hardship is likely to be caused to the plaintiff and where wrong has not been acquiesced by the plaintiff. The discretion, however, should be exercised reasonably, judiciously and on sound legal and equity principles, injunction should not be lightly granted as it adversely affects the other side. The grant of injunction is in the nature of equitable relief, and the court has undoubtedly power to impose such terms and conditions as it thinks fit.