

**CLASS- B.A.LL.B VIIIth SEMESTER
SUBJECT- ADMINISTRATIVE LAW
PAPER CODE- 801**

INJUNCTION

An injunction is an order issued by a court, at the suit of a party complainant, directed to a party defendant in the action, or to a party made a defendant for that purpose, forbidding a person to do some act, or to permit his servants or agents to do some act, which he is threatening or attempting to commit, or restraining him in the continuance thereof, such act being unjust and inequitable, injurious to the plaintiff, and not such as can be adequately redressed by an action fit law.

Definitions:

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.”

Types of Injunctions

Generally speaking, there are two types of injunctions under the act, as mentioned below:

1. **Temporary Injunction**
2. **Perpetual/Permanent Injunction**

1. **Temporary Injunction**

Temporary injunctions, as the name suggests, are the injunctions that are given for a specific period of time or until the court gives further order regarding the matter in concern. They can be obtained during any stage of the trial and are regulated by the Code of Civil Procedure (CPC), 1908:

- **Section 94:** The section provides for supplemental proceedings, to enable the court to prevent the ends of justice from being defeated. Section 94(c) states that a court may grant temporary injunction and in case of disobedience commit the person guilty

thereof to the civil prison and order that his property be attached and sold. Section 94(e) of the Code enables the court to make interlocutory orders as may appear to it to be just and convenient.

- **Section 95:** If it is found by the court that there were no sufficient grounds to grant the injunction, or the plaintiff is defeated in the suit, the court may award reasonable compensation to the defendant on his application claiming such compensation.
- **Order XXXIX:**

Rule 1: It enlists the situations when a court may grant temporary injunction. These are:

1. Any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
 2. the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors,
 3. the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.
- **Rule 2:** It provides that an interim injunction may be granted for restraining the defendant from committing a breach of contract or other injury of any kind to the plaintiff.
 - **Rule 3:** It states that a court shall direct a notice of application to the opposite party, before granting the injunction to the plaintiff. However, if it seems to the court that the purpose of the injunction would be defeated by the delay, it may not provide the notice.
 - **Rule 4:** It provides for vacation of already granted temporary injunction.
 - **Rule 5:** It states that an injunction directed to a corporation is binding not only on the corporation itself, but also on all members and officers of the corporation whose personal action the injunction seeks to restrain.

In the **M. Gurudas and Ors¹**. case the Hon'ble Supreme Court of India has opined, "*while considering an application for injunction, the Court would pass an order thereupon having regard to prima facie, balance of convenience and irreparable injury.*"

1. Prima Facie Case:

Prima Facie literally means, on the face of it. In **Martin Burn Ltd. vs. R.N. Banerjee²** while discussing the meaning of the 'prima facie' case, the court said:

"A prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence."

Prima facie case is a must to be eligible to obtain a temporary injunction. However, it is not sufficient and temporary injunction cannot be granted if the damage that will be caused if the injunction is not given is not irreparable.

2. Irreparable Injury:

'Irreparable injury' means such injury which cannot be adequately remedied by damages. The remedy by damages would be inadequate if the compensation ultimately payable to the plaintiff in case of success in the suit would not place him in the position in which he was before injunction was refused.

3. Balance of Convenience:

In the case of **Anwar Elah v. Vinod Misra And Anr³**, the court has clearly explained the meaning of 'balance of convenience'. According to the court:

¹ AIR 2006 SC 3275

² 1958 SCR 514

³ 60 (1995) DLT 752

“Balance of convenience means that comparative mischief or inconvenience which is likely to issue from withholding the injunction will be greater than that which is likely to arise from granting it. In applying this principle, the Court has to weigh the amount of substantial mischief that is likely to be done to the applicant if the injunction is refused and compare it with that which is likely to be caused to the other side if the injunction is granted.”

2. Permanent Injunction

A permanent injunction can be granted by the court by passing a decree made at the hearing and upon the merits of the suit. Once such decree is passed, the defendant is permanently prohibited from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

When can a permanent injunction be granted?

A permanent injunction may be granted:

- a.** To the plaintiff in a suit to prevent a breach of an obligation existing in his favour, whether implicit or explicit. However, in a case where such an obligation arises out of a contract.
- b.** In a case where the plaintiff invades or threatens to invade the the plaintiff’s right to, or enjoyment of, property, the court may grant a permanent injunction where:

1. The defendant is trustee of the property for the plaintiff;
2. there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;
3. the invasion is such that compensation in money would not afford adequate relief;
4. the injunction is necessary to prevent a multiplicity of judicial proceedings.

Mandatory Injunction

If the court finds it necessary and within its capability, to compel the performance of an act, to prevent the breach of an obligation, it may do so granting a mandatory injunction to the plaintiff, compelling the defendant to perform the requisite acts.

Damages In Lieu of, or in Addition to Injunction If the plaintiff claims for any additional damages along with the injunction sought for, either perpetual or mandatory, or in substitution of the said injunction, the court may award him such damages, if it thinks fit^l. If no damages have been claimed, the court may allow the plaintiff to make the required amendments to the plaint and claim damages.

However, it is highly recommended to claim damages in the plaint before submitting it, as permission for further amendments rests solely at the discretion of the court.

Differences Between Temporary and Perpetual Injunction:

	Temporary Injunction	Perpetual Injunction
1.	For a specified time and may be granted at any point during the suit.	By the decree of the court, by the examination merits of the case.
2.	Order 39 (Rules 1 to 5) of CPC governs temporary injunctions	Sections 38 to 42 of SRA governs perpetual Injunctions.
3.	Is non-conclusive and short run.	·Is Final, Conclusive and Long Run.
4.	May only focus on the Plaintiff's side.	Focuses on the Plaintiff as well as the Defendant.
5.	May be revoked by the court	Is non-revocable by the court, though appealable.

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