

Temporary Injunctions Under Order XXXIX of The Code of Civil Procedure, 1908: Judicial Discretion and Procedural Misuse in Civil Litigation

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Abstract—Temporary injunctions constitute one of the most significant interim remedies within Indian civil procedure. Order XXXIX of the Code of Civil Procedure, 1908 empowers courts to grant preventive relief to preserve disputed property or rights pending final adjudication. Over time, judicial interpretation has structured the grant of such relief around three established principles: prima facie case, balance of convenience, and irreparable injury.

Despite doctrinal clarity, the discretionary nature of temporary injunctions has produced concerns regarding inconsistency and procedural misuse. Ex parte orders, suppression of material facts, forum shopping, and strategic litigation have complicated the equitable character of interim relief. This paper examines the statutory framework of Order XXXIX, the judicial evolution of governing principles, and patterns of misuse in civil litigation. It further analyses comparative developments under the United Kingdom Civil Procedure Rules. The paper argues that while judicial discretion remains essential, procedural safeguards and accountability mechanisms are necessary to prevent abuse and ensure that interim relief promotes justice rather than delay.

I. INTRODUCTION

Civil litigation is inherently time-consuming. From the filing of a plaint to the delivery of a final decree, considerable time may pass. During this period, the subject matter of dispute may be altered, alienated, damaged, or rendered commercially ineffective. If courts were powerless to intervene until final adjudication, the ultimate decree might become meaningless.

To address this concern, interim remedies have been incorporated into procedural law. Among these remedies, temporary injunctions under Order XXXIX

of the Code of Civil Procedure, 1908 hold central importance. They function as preventive measures designed to maintain the status quo and protect disputed rights until the court decides the matter on merits.

Temporary injunctions do not determine rights conclusively. They are provisional in nature. Their objective is to prevent irreparable harm and preserve the effectiveness of judicial adjudication. However, because the power to grant injunction is discretionary and equitable, its application has generated both judicial refinement and practical challenges.

The core issue surrounding temporary injunctions is the balance between protection and misuse. While interim relief safeguards rights, it may also be employed strategically to delay proceedings or exert pressure. This paper explores that dual character through doctrinal and critical analysis.

II. CONCEPTUAL FOUNDATIONS OF TEMPORARY INJUNCTIONS

Temporary injunctions are rooted in principles of equity. Historically, equitable jurisdiction developed to prevent injustice where common law remedies were inadequate. Indian procedural law reflects this equitable heritage.

The theoretical basis of temporary injunctions rests on three interrelated ideas:

1. Preservation of disputed subject matter
2. Prevention of irreparable injury
3. Maintenance of status quo pending adjudication

The Supreme Court has repeatedly emphasised that injunction is not a matter of right. In *Dalpat Kumar v Prahlad Singh*, the Court clarified that interim relief requires judicial satisfaction regarding established

conditions. The power must be exercised cautiously and on sound legal principles.

Thus, temporary injunctions operate as safeguards that protect both litigants and the integrity of the judicial process.

III. STATUTORY FRAMEWORK UNDER ORDER XXXIX

The statutory basis for temporary injunctions is found primarily in Order XXXIX of the Code of Civil Procedure, 1908. These provisions must be read along with Section 94 and the inherent powers preserved under Section 151 of the Code.

A. Order XXXIX Rule 1: Danger to Property

Rule 1 empowers the court to grant a temporary injunction where it is proved by affidavit or otherwise that:

- Property in dispute is in danger of being wasted, damaged, or alienated by any party to the suit;
- The defendant threatens to dispossess the plaintiff; or
- The property may be wrongfully sold in execution of a decree.

The focus of this provision is preservation. The court does not decide ownership or final rights at this stage. Instead, it prevents alteration of circumstances that may frustrate the eventual decree.

B. Order XXXIX Rule 2: Restraining Breach of Contract or Injury

Rule 2 enables the court to restrain the defendant from committing a breach of contract or causing injury of any kind to the plaintiff in relation to property in dispute.

This provision is frequently invoked in commercial litigation, intellectual property disputes, partnership conflicts, and contractual matters. It broadens the scope of interim relief beyond tangible property to include legal and commercial rights.

C. Order XXXIX Rule 3: Notice and Ex Parte Injunction

Rule 3 lays down the procedural safeguard that notice should ordinarily be given to the opposite party before granting an injunction. However, where delay would defeat the purpose of the injunction, the court may grant ex parte relief.

When granting ex parte injunction, the court must:

- Record reasons for dispensing with notice;
- Require the applicant to deliver copies of the application and documents to the opposite party;
- Fix a date for hearing the application finally.

This rule attempts to balance urgency with fairness. Nevertheless, its practical application remains controversial.

D. Inherent Powers under Section 151 CPC

In *Manohar Lal Chopra v Rai Bahadur Rao Raja Seth Hiralal*, the Supreme Court recognised that courts retain inherent powers to grant injunctions even where specific provisions may not strictly apply. The Court held that procedural law should not be interpreted so narrowly as to prevent courts from doing justice.

While this interpretation strengthens judicial flexibility, it simultaneously enlarges discretionary space, making disciplined exercise of power essential.

IV. JUDICIAL EVOLUTION OF THE THREE-FOLD TEST

Over time, the Supreme Court has crystallised the principles governing temporary injunctions into a structured three-fold test. These principles ensure that discretion is exercised within recognised legal boundaries.

A. Prima Facie Case

The first requirement is the existence of a prima facie case. This does not mean that the plaintiff must establish his claim conclusively at the interim stage. Instead, there must be a serious question to be tried.

In *Dalpat Kumar v Prahlad Singh*, the Supreme Court clarified that a mere triable issue is insufficient unless it is supported by material showing a bona fide claim. The Court emphasised that the applicant must demonstrate a substantial contention deserving investigation.

Similarly, in *Zenit Mataplast Pvt Ltd v State of Maharashtra*, the Court cautioned that courts should not conduct a detailed examination of evidence or attempt to reach final conclusions at the interim stage. The inquiry must remain limited and provisional.

Thus, prima facie assessment ensures that interim protection is granted only where the claim is not frivolous.

B. Balance of Convenience

The second condition requires the court to evaluate comparative hardship. The court must determine which party would suffer greater harm if the injunction is granted or refused.

In *Gujarat Bottling Co Ltd v Coca Cola Co*, the Supreme Court observed that injunction should not cause more injustice than it seeks to prevent. The objective is to preserve fairness between parties during the pendency of litigation.

Further, in *Best Sellers Retail India Pvt Ltd v Aditya Birla Nuvo Ltd*, the Court held that where damages provide an adequate remedy, the balance may tilt against granting injunction.

Balance of convenience, therefore, requires a pragmatic and contextual evaluation.

C. Irreparable Injury

The third requirement is proof of irreparable injury. The injury must be such that monetary compensation would not adequately redress it.

In *Wander Ltd v Antox India Pvt Ltd*, the Supreme Court reinforced that appellate courts should not interfere with discretionary orders unless they are arbitrary or perverse. This principle strengthens the finality of interim determinations at the trial level.

Irreparable injury ensures that injunction remains an exceptional remedy reserved for situations where damages are insufficient.

V. EX PARTE INJUNCTIONS: SAFEGUARDS JUSTIFICATIONS AND JUDICIAL CAUTION

Among all forms of interim relief, ex parte injunctions are the most sensitive. They are granted without hearing the opposite party and therefore temporarily restrict a person's legal rights without prior notice. While such power is sometimes necessary to prevent immediate harm, it must be exercised with extreme caution.

Order XXXIX Rule 3 of the Code of Civil Procedure, 1908 makes notice the general rule and ex parte relief the exception. The exception applies only where delay would defeat the purpose of the injunction. However, the phrase "defeat the purpose" is not statutorily defined, leaving its interpretation to judicial discretion.

The Supreme Court addressed this issue in *Morgan Stanley Mutual Fund v Kartick Das*. The Court laid down important guidelines for granting ex parte injunctions, including:

1. The existence of a strong prima facie case;
2. Proof of irreparable injury;
3. Balance of convenience in favour of the applicant;
4. Genuine urgency;
5. Recording of reasons for dispensing with notice.

The Court emphasised that ex parte injunctions should not be granted mechanically. Judicial satisfaction must be reflected in the order itself.

The principle of full disclosure was reinforced in *Prestige Lights Ltd v State Bank of India*, where the Supreme Court held that suppression of material facts disentitles a party from equitable relief. Since injunction is an equitable remedy, the applicant must approach the court with clean hands.

Similarly, in *Kishore Kumar Khaitan v Praveen Kumar Singh*, the Court reiterated that equity demands transparency and good faith. Any attempt to mislead the court undermines the legitimacy of interim protection.

Despite these safeguards, ex parte injunctions often operate as powerful strategic tools. In commercial and property disputes, even a short-lived interim restraint can significantly impact negotiations, transactions, and business operations. This practical reality makes careful judicial scrutiny indispensable.

VI. PATTERNS OF PROCEDURAL MISUSE IN CIVIL LITIGATION

While temporary injunctions serve an essential protective function, their misuse has become a recurring concern within civil litigation. The discretionary structure of Order XXXIX allows flexibility, but it also creates opportunities for strategic behaviour.

A. Property Litigation and Development Stagnation

In urban property disputes, injunctions are frequently sought to prevent construction, sale, or transfer of land. Even when the underlying claim is weak, interim stay orders may halt development projects for years. Delays in trial proceedings effectively convert temporary injunctions into long-term restraints.

This phenomenon creates economic inefficiency and burdens judicial resources. Developers, investors, and

third parties may suffer significant losses, even if the suit ultimately fails.

B. Commercial and Contractual Disputes

In commercial matters, injunctions are often sought to restrain enforcement of contracts, invocation of bank guarantees, or termination of agreements. While legitimate protection may sometimes be necessary, interim orders can also function as negotiation leverage.

The Supreme Court has repeatedly cautioned against excessive interference in commercial transactions, particularly where damages are quantifiable. Nevertheless, strategic invocation of interim relief remains common.

C. Forum Shopping

Another manifestation of misuse is forum shopping. Litigants sometimes approach courts perceived to be more liberal in granting interim relief. This practice undermines uniformity and encourages inconsistency across jurisdictions.

Although jurisdictional rules limit such behaviour, practical realities sometimes allow parties to exploit procedural gaps.

D. Prolonged Interim Orders

Perhaps the most significant concern is the continuation of temporary injunctions for extended periods without final adjudication. What begins as short-term protection often becomes de facto final relief.

This problem is aggravated by docket congestion and adjournments. Interim orders may remain in force for years, thereby distorting the balance of justice.

E. Psychological and Economic Pressure

Interim injunctions may also create indirect pressure. Even if ultimately vacated, the temporary restriction may disrupt business operations, affect reputation, or create uncertainty. The practical impact of interim relief is therefore far greater than its provisional character suggests.

The patterns discussed above do not suggest that temporary injunctions are inherently flawed. Rather, they highlight the need for disciplined judicial application and procedural safeguards.

Judicial Discretion Under Order XXXIX: Scope, Standards and Limits

One of the most fascinating aspects of temporary injunctions under the Code of Civil Procedure, 1908 is the width of judicial discretion. Order XXXIX does not provide an exhaustive definition of when an injunction must be granted. Instead, it lays down broad conditions, leaving substantial room for judicial interpretation. This flexibility has allowed courts to respond to varied factual situations, but it has also resulted in inconsistency and, at times, procedural abuse.

Judicial discretion in granting temporary injunctions is not arbitrary. It is guided by established principles developed through case law. The Supreme Court in *Dalpat Kumar v. Prahlad Singh* clarified that the power to grant temporary injunction is discretionary and equitable. The court must be satisfied that there is a prima facie case, that the balance of convenience lies in favour of the applicant, and that refusal would cause irreparable injury. These three conditions form the foundation of judicial discretion.

1. Prima Facie Case

The concept of a prima facie case does not mean that the plaintiff must prove the case conclusively at the interim stage. Rather, the court must see whether there is a serious question to be tried. In *Wander Ltd. v. Antox India (P) Ltd.*, the Supreme Court observed that appellate courts should not interfere with the exercise of discretion by trial courts unless it is arbitrary, capricious, or perverse. This reinforces that the trial court's evaluation of prima facie case carries significant weight.

However, courts must be careful not to conduct a mini-trial while assessing prima facie case. In practice, detailed arguments are often advanced at the interim stage, leading to long hearings and detailed orders. This sometimes blurs the line between interim assessment and final adjudication. Judicial discipline requires that courts restrict themselves to examining whether the claim is not frivolous and whether there is a serious dispute requiring trial.

2. Balance of Convenience

The second requirement, balance of convenience, involves comparing the likely harm to both parties. The court must consider which party would suffer

greater hardship if the injunction is granted or refused. This is a practical and contextual exercise.

For example, in property disputes, if construction is ongoing and the plaintiff seeks to stop it, the court must evaluate whether allowing construction would permanently alter the subject matter. At the same time, stopping construction may cause financial loss to the defendant. The balance of convenience depends on facts, not assumptions.

In *Gujarat Bottling Co. Ltd. v. Coca Cola Co.*, the Supreme Court emphasized that injunction is a discretionary relief and should be granted only when the plaintiff's conduct is fair and free from blame. Thus, balance of convenience is not purely economic; it includes equitable considerations.

3. Irreparable Injury

Irreparable injury does not mean that the injury must be beyond all possibility of repair. It means that the injury cannot be adequately compensated in monetary terms. In commercial disputes, courts often hesitate to grant injunctions when damages can sufficiently compensate for the loss.

However, in cases involving property rights, reputation, intellectual property, or environmental damage, courts are more willing to grant injunctions because such harm may not be easily quantifiable.

The cumulative satisfaction of all three principles is mandatory. If even one condition fails, an injunction should not ordinarily be granted.

4. Ex Parte Injunctions: A Critical Area

Order XXXIX Rule 3 allows courts to grant ex parte injunctions where delay would defeat the object of the injunction. While this provision is necessary in urgent cases, it is also the most controversial.

In *Morgan Stanley Mutual Fund v. Kartick Das*, the Supreme Court laid down guidelines for granting ex parte injunctions. It held that such injunctions should be granted only in exceptional circumstances. The court must record reasons, require prompt service of notice, and fix an early date for hearing.

Despite these safeguards, ex parte injunctions are sometimes granted routinely. In commercial matters, a party may obtain an ex parte stay and use it strategically to pressure the opponent into settlement.

This leads to allegations of procedural misuse.

Courts have attempted to correct this trend by insisting on strict compliance with Rule 3, including filing

affidavits showing urgency and serving copies of the plaint and documents immediately after the order.

5. Duration and Modification of Injunctions

Temporary injunctions are meant to operate until disposal of the suit or until further orders. However, in practice, suits often take years to conclude. This means that a "temporary" injunction can effectively become permanent in impact.

To address this concern, courts retain power to modify or vacate injunctions if circumstances change. Order XXXIX Rule 4 allows the defendant to apply for discharge or variation of the injunction. This provision acts as a safeguard against injustice.

Nevertheless, delays in hearing applications under Rule 4 often weaken this safeguard. When courts do not dispose of vacating applications promptly, the interim order continues to operate for long periods, sometimes causing serious prejudice.

6. Discretion and Appellate Interference

Appellate courts are generally slow to interfere with discretionary orders unless there is clear error. In *Wander Ltd. v. Antox India (P) Ltd.*, it was held that appellate interference is justified only when the discretion has been exercised arbitrarily or contrary to settled principles.

This limited scope of interference ensures stability but also means that trial courts bear heavy responsibility. Poorly reasoned interim orders can significantly affect parties' rights.

7. Comparative Perspective: United Kingdom Civil Procedure Rules

A brief comparison with the United Kingdom offers useful insight. Under the Civil Procedure Rules (CPR), interim injunctions are governed by Part 25. The English courts apply principles derived from *American Cyanamid Co. v. Ethicon Ltd.*

In *American Cyanamid*, the House of Lords held that the court need not decide difficult questions of law or fact at the interim stage. The key question is whether there is a serious issue to be tried and whether damages would be an adequate remedy. This approach minimizes detailed examination at the interim stage and focuses on practical justice.

Compared to Indian practice, UK courts often require applicants to provide cross-undertakings in damages. This means that if the injunction is later found

unjustified, the applicant must compensate the defendant. Such undertakings act as a strong deterrent against misuse.

Indian law does not uniformly insist on such undertakings, though courts sometimes impose conditions. Introducing a structured requirement similar to the UK system could reduce frivolous injunction applications.

8. Challenges in Practice

Despite clear principles, the actual application of judicial discretion varies widely across courts. Some judges adopt a cautious approach, granting injunctions sparingly. Others are more liberal, especially in property disputes.

This variation creates unpredictability. Litigants may engage in forum shopping, filing suits in jurisdictions perceived as more likely to grant interim relief. Such practices undermine consistency and fairness.

Furthermore, detailed interim orders sometimes prejudice the final trial. Observations made at the injunction stage, though technically not binding, can influence subsequent proceedings.

9. Need for Structured Reasoning

To prevent misuse, courts must provide reasoned orders clearly addressing the three tests. A mechanical reproduction of the words “prima facie case, balance of convenience, irreparable injury” without analysis should be avoided.

Structured reasoning promotes transparency and enables effective appellate review. It also reassures parties that discretion has been exercised judiciously.

Procedural Misuse of Temporary Injunctions in Civil Litigation

Temporary injunctions are designed as protective mechanisms. However, in actual litigation practice, they are sometimes used as strategic tools rather than genuine safeguards. The flexibility of Order XXXIX, combined with delays in disposal of civil suits, has created opportunities for procedural misuse. This part critically examines how interim injunctions are misapplied and the consequences of such misuse on the civil justice system.

1. Injunction as a Delay Strategy

One of the most common forms of misuse is filing a suit primarily to obtain an interim injunction. In many

property disputes, especially in urban areas, plaintiffs approach courts seeking to restrain construction, alienation, or possession transfer. Once the injunction is granted, the defendant’s activities are halted. Even if the suit ultimately fails, the interim order may remain operative for several years due to delays in trial.

The Supreme Court has repeatedly cautioned against such tactics. In *Dalpat Kumar v. Prahlad Singh*, the Court emphasized that injunction cannot be granted merely because it is convenient to do so; the plaintiff must strictly satisfy the required tests. Despite this warning, lower courts sometimes grant interim relief without close scrutiny, especially when documentary title is disputed.

Where the judicial process itself is slow, interim relief becomes a substitute for final relief. This distorts the purpose of Order XXXIX and encourages speculative litigation.

2. Ex Parte Injunctions and Tactical Advantage

Ex parte injunctions present a particularly sensitive area. Order XXXIX Rule 3 permits such orders when delay would defeat the object of the injunction. However, this exception is sometimes treated as routine practice.

In *Morgan Stanley Mutual Fund v. Kartick Das*, the Supreme Court laid down strict guidelines for granting ex parte injunctions. It stated that such relief should be granted only in exceptional circumstances, and courts must record reasons demonstrating urgency.

In practice, however, litigants often seek ex parte injunctions to surprise the opposite party and create immediate pressure. In commercial disputes, a temporary stay on contractual performance may push the defendant toward settlement, even when the plaintiff’s claim is weak. The reputational impact of injunctions in intellectual property cases also gives plaintiffs strategic leverage.

If courts do not promptly hear applications for vacating such injunctions, the defendant remains restrained for extended periods. This undermines the principle of natural justice.

3. Forum Shopping

Another form of procedural misuse is forum shopping. Litigants sometimes choose jurisdictions where courts are perceived to be more inclined toward granting

interim relief. This practice exploits territorial jurisdiction rules and increases litigation complexity. Forum shopping not only burdens certain courts but also creates inconsistency in interim relief standards. Uniform application of Order XXXIX principles is essential to prevent such manipulation.

4. Suppression of Material Facts

Injunction is an equitable remedy. A party seeking equity must approach the court with clean hands. Suppression of material facts is a serious issue in interim applications.

In *Gujarat Bottling Co. Ltd. v. Coca Cola Co.*, the Supreme Court observed that the conduct of the party seeking injunction is highly relevant. If the applicant conceals material facts or acts dishonestly, the court may refuse relief.

Despite this principle, instances of selective disclosure are not uncommon. Parties may omit prior agreements, pending proceedings, or material correspondence to strengthen their claim of urgency. Detecting such suppression requires careful judicial scrutiny at the initial stage.

5. Long Duration of Interim Orders

Perhaps the most systemic problem is the longevity of interim orders. Civil suits in India often take several years to conclude. As a result, a temporary injunction may effectively operate for a decade.

This raises concerns about fairness. If the plaintiff ultimately loses, the defendant may have suffered irreversible losses during the pendency of the injunction. Monetary compensation may not fully repair such harm.

Order XXXIX Rule 4 allows modification or discharge of injunctions. However, applications under this provision are themselves subject to delays. In many cases, the interim order continues simply because the court has not found time to reconsider it. The Supreme Court in *Wander Ltd. v. Antox India (P) Ltd.* stressed that appellate courts should not interfere lightly with discretionary orders. While this preserves judicial autonomy, it also limits corrective mechanisms when interim orders cause prolonged hardship.

6. Commercial Litigation and Strategic Injunctions

In intellectual property and commercial contract disputes, interim injunctions play a central role.

Plaintiffs often seek immediate restraint to prevent alleged infringement or breach.

The problem arises when an injunction becomes a negotiation tactic. In fast-moving industries, even a short restraint can significantly impact market position. A competitor may file a suit not merely to protect rights but to delay a rival's product launch.

Comparatively, under the Civil Procedure Rules of the United Kingdom, courts frequently require a cross-undertaking in damages when granting interim injunctions. This principle, developed in *American Cyanamid Co. v. Ethicon Ltd.*, ensures that if the injunction is later found unjustified, the applicant compensates the defendant.

In India, although courts may impose conditions, cross-undertakings are not uniformly insisted upon. Introducing a more structured requirement could discourage speculative injunction applications.

7. Impact on Judicial Efficiency

Procedural misuse of temporary injunctions contributes to docket congestion. Interim hearings consume substantial judicial time. Lengthy arguments at the interlocutory stage often resemble final hearings.

When interim applications dominate proceedings, the main suit progresses slowly. This creates a cycle: delay strengthens the strategic value of interim orders, which in turn encourages more injunction-based litigation.

Thus, misuse of Order XXXIX is not merely an individual injustice; it affects the entire civil justice system.

8. Judicial Responses and Emerging Trends

Courts have attempted to address misuse through several measures:

- Insisting on detailed affidavits showing urgency.
- Directing early disposal of suits involving interim orders.
- Imposing costs for frivolous applications.
- Encouraging mediation in commercial disputes.

Recent judicial trends show greater emphasis on reasoned orders and stricter scrutiny of *ex parte* injunctions. However, uniform implementation across jurisdictions remains a challenge.

9. Need for Reform

To reduce procedural misuse, several reforms may be considered:

1. **Mandatory Time Limits:** Interim injunctions could be subject to periodic review, ensuring that they do not continue indefinitely without reassessment.
2. **Cross-Undertaking in Damages:** Adopting a structured practice similar to the UK could deter speculative applications.
3. **Strict Compliance with Rule 3:** Courts must insist on immediate service and short returnable dates for ex parte orders.
4. **Expedited Trials:** Suits involving interim relief should be prioritized for early disposal.
5. **Enhanced Costs:** Frivolous or malicious injunction applications should attract realistic costs.

Such reforms would preserve the protective purpose of temporary injunctions while discouraging abuse.

Conclusion, Synthesis and Reform-Oriented Reflections

Temporary injunctions under Order XXXIX of the Code of Civil Procedure, 1908 occupy a central position in Indian civil litigation. They represent the judiciary's power to intervene at an early stage to prevent injustice before it becomes irreversible. At the same time, they illustrate the tension between flexibility and certainty, discretion and discipline, protection and potential misuse.

After examining the statutory framework, judicial principles, comparative perspectives, and patterns of procedural misuse, certain clear themes emerge. This concluding part attempts to synthesise those themes and offer a balanced, reform-oriented evaluation.

1. The Protective Purpose of Order XXXIX

The primary objective of temporary injunctions is preservation. Civil disputes often involve property, contractual rights, intellectual property, environmental interests, or personal rights that may be irreparably harmed if no interim protection is granted. If courts were compelled to wait until final adjudication, many decrees would become meaningless.

Indian courts have consistently reaffirmed this preventive function. In *Dalpat Kumar v. Prahlad Singh*, the Supreme Court clarified that interim injunctions are meant to preserve the subject matter of the suit so that justice is not frustrated by subsequent

events. Similarly, in *Gujarat Bottling Co. Ltd. v. Coca Cola Co.*, the Court stressed that injunction is an equitable relief guided by fairness and good conduct. Thus, Order XXXIX is not merely procedural; it reflects substantive justice. It ensures that courts remain effective guardians of rights during the pendency of litigation.

2. Judicial Discretion: Strength and Vulnerability

A recurring theme throughout this paper has been the wide discretion conferred upon courts. The three-fold test—prima facie case, balance of convenience, and irreparable injury—provides guidance but not rigid boundaries.

In *Wander Ltd. v. Antox India (P) Ltd.*, the Supreme Court held that appellate courts should not lightly interfere with discretionary orders unless they are arbitrary or perverse. This reinforces the autonomy of trial courts but also places heavy responsibility upon them.

The strength of discretion lies in flexibility. Each case presents unique facts, and rigid rules could lead to injustice. However, discretion without structured reasoning can create inconsistency. Different courts may reach different conclusions on similar facts, leading to unpredictability in litigation.

Therefore, the solution is not to reduce discretion, but to discipline it through reasoned orders, uniform standards, and judicial training.

3. Ex Parte Injunctions: The Most Sensitive Zone

Among all aspects of Order XXXIX, ex parte injunctions are the most controversial. They are necessary in urgent situations, yet they risk violating the principle of *audi alteram partem*.

The Supreme Court in *Morgan Stanley Mutual Fund v. Kartick Das* laid down clear guidelines to restrict routine ex parte orders. It required courts to record reasons, examine urgency, and ensure prompt service of notice.

Despite these safeguards, practice shows that ex parte injunctions sometimes become tactical tools. The immediate restraint they impose may create commercial or strategic pressure disproportionate to the strength of the plaintiff's claim.

This area demands strict judicial vigilance. Courts must ensure that urgency is real and not manufactured. Early hearing dates and mandatory compliance with

procedural requirements are essential to protect fairness.

4. The Problem of “Temporary” Becoming “Permanent”

One of the most serious structural concerns is delay in disposal of civil suits. When suits take years to conclude, interim injunctions often operate for extended periods. What is meant to be temporary effectively becomes long-term restraint.

This reality creates imbalance. If the plaintiff ultimately loses, the defendant may have suffered irreparable commercial or property loss during the pendency of the injunction. Monetary compensation may not fully restore the situation.

Although Order XXXIX Rule 4 permits modification or discharge of injunctions, procedural delays reduce its effectiveness. A more proactive approach is required, including:

- Fixing time-bound hearings for vacating applications.
- Periodic review of long-standing interim orders.
- Prioritising disposal of suits involving continuing injunctions.

Without such measures, the interim stage risks overshadowing the trial itself.

5. Comparative Insight: Lessons from the United Kingdom

A comparative glance at the United Kingdom provides valuable perspective. Under the Civil Procedure Rules, interim injunctions are governed by structured procedural safeguards. The principles in *American Cyanamid Co. v. Ethicon Ltd.* emphasise that courts should not conduct a mini-trial at the interim stage. Instead, they examine whether there is a serious issue to be tried and whether damages would be an adequate remedy.

A particularly significant safeguard in the UK system is the cross-undertaking in damages. An applicant who obtains an interim injunction must promise to compensate the defendant if the order is later found unjustified. This requirement acts as a powerful deterrent against speculative or tactical injunction applications.

Indian courts occasionally impose conditions, but there is no uniform insistence on cross-undertakings. Adopting a more consistent approach could strengthen accountability while preserving judicial flexibility.

6. Balancing Access to Justice and Preventing Abuse
Any reform must be careful not to restrict genuine litigants from obtaining necessary protection. Temporary injunctions are often the only shield available to vulnerable parties—such as small property holders, tenants, minority shareholders, or intellectual property owners—against powerful opponents.

Therefore, reform should focus on discouraging abuse rather than limiting access. Key principles include:

1. Strict scrutiny of urgency in ex parte cases.
 2. Clear, reasoned orders addressing each requirement.
 3. Realistic costs for frivolous applications.
 4. Encouragement of alternative dispute resolution mechanisms.
 5. Case management techniques to ensure early trial.
- The goal is equilibrium—ensuring that injunctions remain protective tools, not strategic weapons.

7. Broader Implications for Civil Justice

The discussion of temporary injunctions reflects a broader issue within civil procedure: how to maintain efficiency without sacrificing fairness. Interim relief is a powerful judicial instrument. Its misuse does not only affect individual litigants; it impacts judicial credibility and systemic efficiency.

When interim orders appear arbitrary or excessively prolonged, public confidence in civil courts may weaken. Conversely, when courts apply consistent standards with transparent reasoning, legitimacy is strengthened.

Thus, Order XXXIX serves as a lens through which the functioning of civil justice can be evaluated.

8. Final Evaluation

In my assessment, temporary injunctions under Order XXXIX are indispensable to the Indian legal system. They embody the preventive role of courts and protect rights from irreparable harm. However, their effectiveness depends entirely on disciplined judicial discretion and procedural vigilance.

The three-fold test—prima facie case, balance of convenience, and irreparable injury—remains sound. The problem lies not in doctrine but in implementation. Delays, inconsistent reasoning, and insufficient safeguards sometimes allow misuse.

Comparative practices, particularly cross-undertakings in damages and structured case

management, provide useful guidance for reform. At the same time, reforms must preserve the flexibility necessary to achieve equitable outcomes.

Ultimately, temporary injunction jurisprudence reflects the delicate balance between speed and fairness. Courts must act swiftly enough to prevent injustice, yet cautiously enough to avoid overreach. The legitimacy of interim relief depends on this balance.

Closing Reflection

Temporary injunctions are not final judgments, yet their impact can be profound. They can preserve rights, protect property, and prevent irreparable harm. But they can also delay justice and impose significant burdens when misused.

The future of Order XXXIX lies in strengthening procedural discipline, enhancing accountability, and ensuring timely adjudication. If these reforms are pursued, temporary injunctions will continue to serve their true purpose: safeguarding justice without compromising fairness.