

# TOPIC- INTERIM ORDERS AND THEIR TYPES UNDER CODE OF CIVIL PROCEDURE,1908 IN INDIA

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## ABSTRACT OF THE TOPIC

“It must not be forgotten that procedure is just a handmaiden of justice and the cause of justice can never be allowed to be thwarted by any procedural technicalities.”

Procedural law indeed delivers the process of getting justice in court but it must not be used in a way to deny justice. Indian courts have applied and proved this rule several times. Though substantive laws are very important to lay down the rights and liabilities of parties, the value of procedural law cannot be underestimated.

The Code of Civil Procedure is consolidated as to the procedure to be followed by civil courts while delivering judgment or adjudicating on any matter in issue before it. Code came into force with effect on 1 January 1909. The Code is designed to facilitate justice and further its ends and should not be confused with penal enactment for punishments.

The courts in a country are constituted to maintain peace and order and to provide justice to ensure the “Status quo” by possessing all such powers as be necessary to do the right and to undo the wrong to the parties in the interval between the commencement of the proceedings and final adjudication.

Although there are various grounds as to why interim orders are passed the above-listed reason is one of the main reasons for granting interim relief. In this research paper, I have discussed in detail the difference between substantive and procedural law, the introduction and meaning of Interim Orders, the passing of Interim Orders to provide relief to an intervening matter, the classification and types of Interim Orders, all the provisions relating to Interim Orders provided in the Code and case studies of

And in the conclusion of the topic, I have explained the importance of passing interim orders between the commencement of proceedings and the final adjudication of the suit and further discussed and analyzed the recent view of Indian Courts on the topic.

## INTRODUCTION OF CODE OF CIVIL PROCEDURE,1908

The law can be divided into two groups that are either Substantive and Procedural law. The essential distinction between the both is that Substantive law is to define, create or confer substantive legal rights or legal status or to impose and define the nature and extent of legal duties. The function of procedural law is to provide the machinery or how legal rights, duties, or status may be enforced or recognized by a court of law.

Procedural law is thus an adjunct or an accessory to substantive law. It is procedural law that puts life into substantive law by providing a remedy and implements the well-known maxim *ubi jus ibi remedium* meaning where there is a right there is a remedy.

In the year 1908, the present Code of Civil Procedure was enacted. It was amended by two important Amendment Acts in 1951 and 1956. Overall, this Code worked satisfactorily, though there were some shortcomings in it.

Some of the important changes introduced in this Code are as follows: -

1. Doctrine of Res Judicata was made more effective and gained precedence throughout Indian Judiciary.
2. Restitutions are imposed on the right to appeal under section 96 and revision under section 115.
3. New order 32-A has been inserted to provide special procedures in litigation concerning the affairs of a family.
4. Provisions were made to ensure that written statements and documents are filled without delay.

Extent and Applicability – the code extends to the whole of India except the state of Jammu and Kashmir and the states of Nagaland and Tribal Areas. Later, by the amendment of 1976, the applications of provisions of the Code have been extended to the Scheduled Areas also. The Code does not exempt foreigners from its operation.

Object- the object of the Code is to consolidate and amend all laws relating to the procedure of courts of Civil Jurisdiction. It is a consolidated code collecting all the laws relating to the procedure to be adopted by civil courts.

In the leading case of *Hukum Chand v. Kamalanand*, it was held that the provisions of the Code should be construed liberally, and mere technical objections should not be allowed to defeat substantial justice.

The rules of procedure are intended to safeguard the administration of justice and must be interpreted in such a manner as to render the enforcement of substantive rights effectively. A hypertechnical view should not be adopted by the courts in interpreting procedural laws.

The Code can be divided into two parts

1. The body of the code contains 158 Sections.
2. The schedule (1) containing 51 Orders and Rules

Sections deal with provisions of a substantive nature, laying down the general principles of jurisdiction, which may be exercised. Sections of the Code cannot be amended except by Legislatures whereas, Orders and Rules can be amended by High Courts.

#### WHAT ARE INTERIM ORDERS?

The literal meaning of the word interim means for the time being, not final, intervening, provisional or temporary. The word “interim” when used as a noun means intervening and when used as an adjective means temporary or provisional. Thus, interim or interlocutory orders are those orders passed by a court during the pendency of a suit or proceeding which do not determine finally the substantive rights and liabilities of the parties in respect of the subject matter of the suit or proceeding.

Interlocutory means not that which decides the cause, but that which settles some intervening matter relating to the cause; a decree or judgment given provisionally during the course of a legal action.

After the suit is instituted by the plaintiff and before it is finally disposed of, the court may make interlocutory orders as may appear to the court to be just and convenient. They are made to assist the parties to the suit in the prosecution of their case or to protect the subject matter of the suit. Courts are constituted to do justice and must be deemed to possess all such powers as may be necessary to do the right and undo the wrong in the course of the administration of justice.

during the pendency of proceedings. Hence, interim proceedings play For instance, there is a dispute between A and B relating to a property. B makes an application to the court asking the court to restrict A from selling the property to a third party or doing any construction on the said property until the final orders are given out. To protect B’s rights and ensure protection and justice for B, the court passes an order for B’s relief until the final judgment is given. The order passed is called an interim order.

Interim orders are necessary to deal with and protect the rights of the parties in the interval between the commencement of proceedings and the final adjudication. They enable the court to grant such relief or to pass such order as may be necessary, just, or equitable. They also prevent any abuse of process a crucial role in the conduct of litigation between parties.

## Classification Of Interim Orders:

An interim order may be classified into two categories depending on the nature of the direction issued by the court. According to Section 2 (14) of the Civil Procedure Code, 1908 the word “order” refers to the formal expression of any decision (not a decree) of a civil court.

1. **Directive Order**– The courts issue a directive order to instruct either party to act in a specific way until the trial ends or till the time a further order is issued. If not continuing the action would harm the other party, the courts can issue a directive interim order.
2. **Restraining Order**– The courts issue a restraining order to prevent any of the parties from acting in a specific way while the civil lawsuit is pending. The courts issue these orders to prevent any party from being harmed because the other party may have continued acting upon the issue involved in the suit.

### When can an Interim Order be passed in India?

- a. Where there is a prima facie case in favor of the party seeking the order,
- b. Or, irreparable damage may be caused to the party if the order is not passed and such damage may not be ascertained in terms of money and payable as damages,
- c. Or, where the balance of convenience lies with the party requesting the order.

Everyone must obey the final or interim order passed by the competent court. The party, against whom the order is passed, can take appropriate measures to withdraw or revoke the interim order if it believes that the order does not comply with the law. However, he cannot refuse to follow the order.

Wilful disobedience to the court’s instructions will constitute contempt of the court. If a person does not obey the court’s order, then the court can also refuse to hear the person’s opinion.

## TYPES OF INTERIM ORDERS

Interim orders under Civil Procedure Code, 1908 may be summarized as under-

1. Commissions: Order 26
2. Temporary injunctions Order 39 Rules 1-5
3. Interlocutory Orders: Order 39 Rule 6-10
4. Receiver: Order 40

### COMMISSIONS: ORDER 26

Sections 75 to 78 deal with the powers of the court to issue commissions and detailed provisions have been made in Order 26 of the code. The power of the court to issue commissions is discretionary and can be exercised by the court for doing complete justice between the parties.

It can be exercised by the court either on an application by a party or its motion. It is to be noted that the Commissioner appointed by the court does not perform any judicial functions.

The purpose for issuing commissions- section 75 enacts that the court may issue commissions for any of the following purposes-

- i. To examine witnesses (Sections 76-78; Order 26 Rules 1-83),
- ii. To make local investigations (Rules 9 and 10)
- iii. To adjust accounts (Rules 11 and 10)
- iv. To hold a sale of property Rule 10A
- v. To perform ministerial acts Rule 10B

The court may issue a commission for the examination or interrogation or otherwise of any person in the following circumstances: -



1. If the person to be examined as a witness resides within the local limits of the court's jurisdiction and is exempted under the Code from attending the court, or is sick or has infirmity due to which he is unable to attend court, in the interest of justice or for expeditious disposal of the case,
2. If he resides beyond the local limits of the jurisdiction of the court,
3. If he is about to leave the jurisdiction of the court,
4. If he is a government servant and cannot attend court without detriment to public service.

Evidentiary value of the report- The Commissioner's report will provide preliminary evidence about the facts and data collected by the Commissioner. It will constitute important evidence and cannot be rejected unless there are sufficient grounds to do so.

It would, however, be open to the court to consider what weight to attach to the data collected by the Commissioner and reflected in the report and to what extent to act upon them.

Powers of Commissioner- Rules 16-18

- i. Summon and procure the attendance of parties, and witnesses and examine them
- ii. Call for and examine documents
- iii. Enter into any land or building mentioned in the order
- iv. Proceed ex- parte if parties don't appear before him despite the order of the court.
- v. Rule 18 B empowers the court to fix the date for the return of commission.

A judicial function can not be delegated to a commission. Thus, no commission can be issued to value the property in dispute as it is the function of the courts. But commissions can be approached or appointed to gather data to help such determination by courts. Similarly, commissions can not be appointed to scrutinize votes at the elections. Again, it is not the business of courts to collect evidence on behalf of the party nor to protect the rival party from evil consequences. A civil court, hence cannot appoint a commission for judicial works.

## TEMPORARY INJUNCTIONS

Injunctions are issued during the pendency of proceedings in court. An injunction is a judicial process whereby a party is required to do or refrain from doing any particular act. It is a remedy in the form of an order of the court addressed to a particular person that either prohibits him from doing or continuing to do a particular act that is a prohibitory injunction. Or orders a person to carry out certain acts that are mandatory injunctions.

The main purpose of granting interim relief is the preservation of property in dispute till legal rights and conflicting claims of the parties before the courts are resolved or adjudicated.

The underlying object of granting a temporary injunction is to maintain and preserve the status quo at the time of the institution of the proceedings and to prevent any change in it until the final determination of the suit. It is the nature of protective relief granted in the favour of the party to prevent future possible injury.

Injunctions can be classified into various types- A permanent injunction will forever restrict a party from performing a specified act, and a ruling can only be granted on the merits of the case after the hearing of both parties is over. It is governed by Sections 38 to 42 of the Specific Relief Act, of 1963

On the other hand, a temporary injunction restricts the parties temporarily from not performing specified actions and can only be approved before the litigation or until a further court order is dealt with. It is regulated by the Code of Civil Procedure, 1908.

Injunctions will be **preventive** if they prevent, prohibit, or restrict someone from doing something; or **mandatory** when they force or order someone to do something.

An **ad interim injunction** order is granted without finally deciding on an application for an injunction and operates till the disposal of the application. Usually, an interim injunction is granted while finally deciding the main application and the injunction operates till the disposal of the suit.

It is not the plaintiff alone who can apply for an interim injunction, a defendant can also seek an injunction against the plaintiff by applying to the court. An injunction can only be issued against a party to suit and not against a stranger or a third unknown party.

Temporary injunctions may be granted by courts in the following cases listed under Order 39 Rule 1: -

- a. Where any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to suit or wrongfully sold,
- b. Where the defendant threatens or intends to remove or dispose of his property with the view of defrauding creditors,
- c. Where the defendant threatens or intends to cause injury to the plaintiff about any property in dispute in the suit.
- d. Where a defendant is about to commit a breach of contract or another injury of any kind,
  - e. Where a court is of opinion that the interest of justice so requires.

The power to grant injunctions should be exercised by the courts reasonably, judiciously, and on sound legal principles. Injunctions should not be loosely granted as it affects the other side. The nature of relief of injunctions should be equitable relief, and the court has undoubtedly the power to impose such terms and conditions as it thinks fit. Such conditions, however, must be reasonable so as not to make it impossible for the party to comply with the same. Generally before granting the relief the court must be satisfied with the following factors:-

- i. Whether the plaintiff has a prima facie case or not?
- ii. Whether the plaintiff would suffer irreparable injury if his prayer for temporary injunction is not granted?
- iii. Whether the balance of (in)convenience is in favor of the plaintiff?

The above three rules are described as “three pillars” on which the foundation of every order of injunction rests. It is also known as the “triple test” for granting interim injunctions. All of these elements are of extreme importance and should discuss in detail before granting an interim injunction.

The power to issue injunctions is to be exercised judicially and in the public interest, no interim injunction can cause administrative inconvenience or result in public mischief.

Order 39 enumerates circumstances in which a court may grant an interim injunction. It, however, nowhere provides that no temporary injunction can be granted by the court unless the case falls within the said provision. Hence, where the case is not covered by Order 39 interim injunction can be granted by the court in the exercise of inherent powers under section 151 of the Code.

Rule 3 of Order 39 states that the court shall before granting an injunction, give notice to the opposite party, except where it appears that the object of granting the injunction would be defeated by delay. But the proviso added by the Amendment Act of 1976 lays down that when an ex-parte injunction is proposed to be given, the court has to record reasons for coming to such conclusions that the object of granting injunctions would be defeated by delay.

In such a case, the court shall endeavor to finally dispose of the application within 30 days from the date on which the ex parte injunction was granted.

Where the court is satisfied with the case of the applicant and inclined to grant interim relief, it must consider the interest of the other side. The party at whose instance the interim order is passed should be made accountable for the consequences of such orders.

An order granting or refusing to grant an injunction is subject to appeal. An order granting or refusing an injunction is a case decided within the meaning of section 115 of the Code and hence a revision lies against such an order.

## INTERLOCUTORY ORDERS

Interlocutory orders are somewhat similar to temporary injunctions. Interlocutory order only settles intervening matters related to the cause. The court has the power to order the sale of any movable property which is the subject matter of the suit, which is subject to speedy or natural decay, or for any just and sufficient cause desirable to be sold at once.

Rules 6 to 10 of Order 39 provide for making certain interlocutory orders. However, before making such orders the Court shall give notice to the opposite party except in cases where it appears to the Court that such object of making such orders will be defeated by delay. Following are the circumstances where interlocutory orders can be passed by the Courts: -

1. The court has the power to order the sale of perishable property in certain circumstances,
2. Detention, preservation, and inspection of any property,
3. It can authorize any person to enter upon or into any land or building,
4. It can authorize any person to take any sample or observation for full information or evidence.

## RECEIVER

The term “receiver” is not defined in the Code of Civil Procedure. However, simply a receiver means a person who receives money from another and renders an account.

According to Kerr, a receiver is a person who is “ an impartial person appointed by the court to collect and receive, pending the proceedings, the rents, issues, and profits of land, or personal estate, which does not seem reasonable to court that either party should collect or receive”

The primary object of the receiver is to protect, preserve and manage the property during the pendency of the litigation. A receiver is an officer and is an extended arm of the court, a part of court machinery by which the rights of parties are protected. the purpose of the receiver is to preserve the suit property and safeguard the interests of the parties to the suit.

Appointment of the receiver is at the discretion of the court as the mode of appointment of the receiver is recognized as the harshest remedy available for the protection, preservation, and enforcement of rights of the parties and it should be allowed in extreme cases and in the circumstances where the interests of justice require such power to be exercised.

Where it appears to the court to be just and convenient, it may appoint a receiver. The principle that is adopted by Indian courts is the same as the Chancery Courts in England for the appointment of receivers. Courts in India have very wide jurisdiction to appoint as well as to remove a receiver in the exercise of their discretion.

Principles:

The following principles must be borne in mind before appointing a receiver

- The appointment of a receiver is the discretionary power of the court
- It is a protective relief. The object is the preservation of the property in dispute pending a judicial determination of the rights of the parties to it.
- A receiver should not be appointed unless the plaintiff *prima facie* proves that he has a very excellent chance of succeeding in the suit.
- It should only be provided for the prevention of a manifest wrong or injury since it deprives the opposite party of possession of the property before final judgment is pronounced.

A receiver is a person who is independent, impartial, and disinterested in the subject matter of the suit. Generally, a party to the suit should not be appointed as a receiver by the court. But there is no rigid rule that a party to suit cannot be appointed as a receiver.



**Powers of receiver Rule 1(d)-** a receiver is an officer or representative of the court and he functions under its directions. The court may be conferred upon the receiver any of the following powers:

- i. To institute and defend suits
- ii. To realize manage, protect, preserve, and improve the property
- iii. To collect, apply and dispose of the rents and profits
- iv. To execute documents or
- v. Such of these powers as it thinks fit.

But he has no power except such as are conferred upon by the order by which he was appointed. It is open to a court to confer all of the above-mentioned powers. They are conditioned by the terms of his appointment. Even when full powers are conferred upon them, they should take the advice of the court in all important matters if he wants to protect themselves.

**Duties of receiver Rule 3-** a receiver has to furnish such securities, as the court thinks fit, duly to account for what he shall receive in respect of the property. He has to submit accounts for such periods and in such forms as the court directs. He has to pay the amount due from him as per the direction of the court. Being a representative of the court, he's bound to discharge his duty personally and cannot delegate or assign any of his rights or duties entrusted to him by the court.

**Liability of receiver-** under rule 4, If the receiver fails to give in to the account or is unable to pay the outstanding amount, or due to deliberate breach of contract or negligence caused damage to the goods then the court may instruct the seizure and sale of any of his property, and make up any money due to him.

## IMPORTANT CASE STUDIES

In the case of *M. Gurudas & Ors. Vs. Rasaranjan & Ors.* 2006; and *Shridevi & Anr. vs. Muralidhar & Anr.* 2007 the following observations were laid down –

- i. Grant of interim relief regarding the nature and extent thereof depends upon the facts and circumstances of each case as no strait-jacket formula can be laid down.
- ii. There may be a situation wherein the defendant/respondent may use the suit property in such a manner that the situation becomes irretrievable. In such a fact situation, interim relief should be granted to safeguard the rights of the parties involved in the suit.

In the case of *Anand Prasad Agarwalla v. State of Assam vs. Tarkeshwar Prasad & Ors.* 2001 it was observed that Interim order is passed based on prima facie findings, which are tentative. Such an order is passed as a temporary arrangement to preserve the status quo till the matter is decided finally, to ensure that the matter does not become either infructuous or a fait accompli before the final hearing.

The object of the interlocutory injunction is, to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favor at the trial.

The Supreme Court in *Manohar Lal Chopra Vs. Rai Bahadur Rao Raja Seth Hira Lal*, 1962 case held that the civil court has the power to grant interim injunction in the exercise of its inherent jurisdiction under section 151 even if the case does not fall within the ambit of provisions of Order 39 Code of Civil Procedure. As the main purpose of granting interim relief is to prevent misuse of powers and injustice to the parties. Hence even if a type of interim injunction falls out of the scope of Order 39 it can be granted to ensure and meet the ends of justice.

## CONCLUSION OF THE TOPIC

Until the judge issues the final Order or Decree, interim orders are passed as an instrument to settle an intervening matter to the suit. Interim Orders have always been beneficial and vital in ensuring that a party receives justice. Although it guarantees justice, if the rules handed down by the courts are not properly assessed, it could result in the abuse of justice.

It should be considered that if the court's workload were reduced, there might not be a need to issue an interim injunction and justice would be served promptly as the cases or matter in issue will be resolved in a reasonable time. But sadly, that is not the reality litigation in Indian Courts takes years to settle a dispute and come to a conclusion. So, what are parties supposed to do between the commencement period of proceedings and the final adjudication? If their rights continue to be infringed before final relief is granted, how can justice prevail?

To solve this serious problem, the provision of Interim Orders has been carefully and cautiously enacted in Civil Procedure Code. There are different types of Interim Orders as per the needs and requirements of each case. Although there are many developments and precedents made by the Indian Judiciary to tackle every possible type of intervening issue and grant relief according to that.

In my opinion, interim relief is a crucial step in the course of justice as it ensures that the right of any party is not infringed upon or taken away during the period of trial by any opposite party for its advantage before the final judgment of the court.

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### ABBREVIATION-

1. Code- Code of Civil Procedure, 1908

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