
DOCTRINE OF RESTITUTION UNDER SECTION 144 CPC: SCOPE AND JUDICIAL TRENDS – HOW COURTS RESTORE THE PARTIES TO THEIR ORIGINAL POSITION WHEN A DECREE IS REVERSED

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ABSTRACT

The doctrine of restitution under Section 144 of the Code of Civil Procedure, 1908 (CPC) is a crucial mechanism for ensuring fairness in civil litigation. Its central aim is to restore parties to the position they originally occupied before an erroneous decree or order was passed. Restitution prevents unjust enrichment by ensuring that no party is allowed to retain benefits obtained under a judgment that is later reversed, varied, or set aside. The principle is guided by the maxim "*Actus curiae neminem gravabit*" no one should suffer because of an act of the court.

This research paper examines the scope and judicial trends relating to restitution under Section 144 CPC. It explores how the doctrine operates when decrees are overturned, the conditions for seeking restitution, and the distinction between restitution and execution. Through analysis of leading cases such as *Binayak Swain v. Ramesh Chandra Panigrahi* and *South Eastern Coalfields Ltd. v. State of M.P.*, the paper highlights how Indian courts have interpreted restitution as not merely a statutory right but a necessary remedy flowing from equity and justice. The study also discusses how courts extend restitution beyond Section 144 by invoking inherent powers under Section 151 CPC, especially in cases involving interim orders or stays.

Further, the paper critically assesses challenges like delays, multiplicity of proceedings, enforcement difficulties, and misuse by litigants. A comparative insight into the approach of common law jurisdictions such as the UK and US shows that India's statutory framework is narrower, though the judiciary has broadened its application through purposive interpretation. Finally, the paper suggests reforms such as time-bound disposal of applications, automatic restitution upon reversal of decrees, clearer treatment of third-party rights, and deterrent costs to prevent misuse.

Overall, the research reaffirms that restitution is not just a procedural formality but an essential safeguard for the credibility of the judicial process. By strengthening Section 144 CPC and its practical implementation, courts can ensure that justice is truly achieved and not undermined by temporary or erroneous decrees.

Keywords: Restitution, Section 144 CPC, unjust enrichment, act of the court, civil procedure, equity, judicial trends, inherent powers, comparative law, fairness in litigation.

1. Introduction

One of the most essential principles of civil justice is that no individual should be placed at a disadvantage because of the actions of a court. The function of the judiciary is to uphold justice, not to cause unfair hardship. However, in the process of litigation, it often happens that one party secures an advantage or benefit under a decree or order of the court. Later, when that decree is challenged and overturned by a superior court, the situation changes entirely. In such cases, if the party who had enjoyed the benefit under the earlier decree is allowed to retain it, the result would clearly be unjust and contrary to the very idea of justice. To prevent such unfair outcomes, the law recognizes the doctrine of restitution.

Restitution, in its simplest sense, means restoring someone to their original position the position they would have been in had the wrongful act or erroneous order not occurred. In the context of civil proceedings, this doctrine becomes relevant when a decree or order of a court has allowed one party to receive some benefit, such as possession of property, recovery of money, or some other advantage. Later, when a higher court reverses, varies, or sets aside that decree, it becomes necessary to undo the consequences of that earlier order. The party who had complied with the original decree often under compulsion of law should not continue to suffer once that decree is no longer valid¹. Therefore, the law ensures that the disadvantaged party is compensated, and both parties are placed back in the positions they originally occupied.

To achieve this, the Code of Civil Procedure, 1908 (CPC) contains a specific provision: Section 144. This section provides the statutory basis for restitution and obliges courts to correct the effect of decrees that are later reversed. It not only authorizes the return of benefits wrongly taken but also enables the court to grant interest, costs, or other reliefs necessary to ensure

¹ Aishwarya Agrawal, Doctrine of Restitution under CPC, LAWBOOMI (Aug. 21, 2023), <https://lawbhoomi.com/doctrine-of-restitution-under-cpc/>

complete fairness. Thus, restitution is not just about repayment; it is about preventing unjust enrichment and reinforcing the trust of citizens in the judicial process.

In the modern context, where litigation is often prolonged and involves multiple levels of appeal, the importance of restitution has grown significantly. Parties may spend years pursuing appeals, during which time interim orders or final decrees may temporarily favour one side². This may lead to transfers of money, property, or possession that deeply affect the other party. If the ultimate decision of a higher court declares the earlier order to be invalid, it would be meaningless if the aggrieved party is not restored to their rightful position. Hence, without restitution, justice remains incomplete, even if a case is eventually decided in favour of the rightful party.

2. The Core Idea: “No One Should Suffer for an Act of the Court”

The central philosophy behind Section 144 CPC lies in equity, justice, and fairness. Courts have repeatedly highlighted the legal maxim “*Actus curiae neminem gravabit*”, which means that no person should be harmed because of an act of the court³. This principle makes it clear that the judiciary, whose role is to protect rights and deliver justice, should never become the reason for causing prejudice to any litigant.

When a party follows a court decree, their compliance is not an act of free choice but an obligation compelled by law. If such a decree is later found to be invalid and set aside, it would be highly unfair to allow the other party to continue enjoying the benefits obtained under it. Keeping such gains would amount to unjust enrichment, something the law strongly discourages.

The doctrine of restitution under Section 144 thus functions as a corrective mechanism. It ensures that the parties are restored to the same position they were in before the erroneous decree was passed. By doing so, the principle safeguards innocent litigants from unnecessary harm and prevents misuse of the judicial process.

In a broader sense, this doctrine also helps maintain the credibility of the judicial system. If wrong decrees were allowed to permanently alter rights, public confidence in the fairness of courts would decline. Restitution further prevents litigation from being used as a means of

² FactualCode, A Complete Note on 'Appeals Under CPC', FactualCode (Jan. 16, 2025), <https://factualcode.com/a-complete-note-on-appeals-under-cpc/>

³ Saleha Haneef, Discuss the Doctrine of Restitution Under CPC, LEGAL VIDHIYA (Feb. 1, 2025), <https://legalvidhiya.com/discuss-the-doctrine-of-restitution-under-cpc/>

securing temporary and unfair advantages. Ultimately, this principle reaffirms the role of courts as guardians of justice, not instruments of injustice.

3. Important Judicial Pronouncements

The doctrine of restitution under Section 144 CPC has been shaped, refined, and strengthened by Indian courts over several decades. Judicial interpretation has ensured that this provision is not treated as a mere technical remedy, but rather as an instrument of substantive justice. The Supreme Court and various High Courts have, through landmark judgments, made it clear that restitution is not optional but an obligation that flows from the principles of equity and fairness. These cases demonstrate how courts have extended the scope of restitution to cover not only the return of what was wrongfully gained but also compensation for losses suffered due to an erroneous decree⁴.

One of the earliest and most authoritative pronouncements on the subject came in *Binayak Swain v. Ramesh Chandra Panigrahi* (AIR 1966 SC 948)⁵. In this case, the Supreme Court clarified that restitution under Section 144 is not a matter of judicial discretion. Once the conditions of the section are satisfied namely, that a decree has been reversed or varied and one party has enjoyed benefits as a result of that decree the court must restore the aggrieved party to their original position. The judgment highlighted that good faith or innocence of the party who had benefitted is immaterial; what matters is that the advantage was gained under a decree which no longer exists in law. This case established the principle that restitution is mandatory and automatic once the requirements are fulfilled, setting the tone for future jurisprudence.

The doctrine was taken further in *South Eastern Coalfields Ltd. v. State of Madhya Pradesh* ((2003) 8 SCC 648)⁶. In this case, the Court addressed the question of whether restitution should be limited only to returning the benefit obtained under the reversed decree, or whether it should also include compensation for the period during which the benefit was wrongfully enjoyed. The Supreme Court firmly held that restitution is not complete unless the party who suffered is fully compensated for the loss. Therefore, restitution includes not only the principal amount but also interest, damages, and costs. The Court explained that litigation should never

⁴ M.P. Ram Mohan & Mridul Godha, The Law of Restitution for Unjust Enrichment in India, *Lloyd's Maritime and Commercial Law Quarterly*, Nov. 27, 2022, <https://www.iima.ac.in/publication/law-restitution-unjust-enrichment-india>

⁵ *Binayak Swain v. Ramesh Chandra Panigrahi*, Civil Appeal No. 804 of 1963, Supreme Court of India, Decided on December 10, 1965, available at <https://www.lawfinderlive.com/archivesc/110206.htm>

⁶ *South Eastern Coalfields Ltd. v. State of Madhya Pradesh & Ors.*, Writ Petition (Service) No. 2111 of 1988, decided on June 24, 2002, available at <https://www.legitquest.com/case/south-eastern-coalfields-ltd-v-state-of-mp-and-others/160151>

be allowed to operate as a tool for unjust enrichment. If a party benefits from an interim order or decree that is subsequently overturned, they cannot retain the advantage or profit gained during that period. This case is significant because it broadened the scope of restitution and linked it directly with the principle of preventing unjust enrichment. It emphasized that restitution is not just about returning money or property but about neutralizing every possible advantage wrongfully obtained through the judicial process.

The principle was further reinforced in *Indian Council for Enviro-Legal Action v. Union of India* ((2011) 8 SCC 161)⁷. Here, the Supreme Court went beyond the literal language of Section 144 CPC and recognized restitution as a universal principle of justice. The Court observed that restitution cannot be restricted to situations covered under Section 144 alone. Even in circumstances where Section 144 technically does not apply, courts are empowered to grant restitution by invoking their inherent powers under Section 151 CPC. This judgment shows that the doctrine of restitution has a broader application in Indian law and can be invoked whenever necessary to ensure fairness and justice. The decision makes it clear that restitution is not confined to statutory text but flows from the court's duty to undo injustice and prevent one party from being unjustly enriched at the expense of another.

Another noteworthy case is *Kavita Trehan v. Balsara Hygiene Products Ltd.* (1994)⁸. In this decision, the Supreme Court extended the doctrine of restitution to cover interim orders. Often, during the pendency of litigation, courts grant interim reliefs such as injunctions or stay orders. These orders may allow one party to gain certain advantages or prevent the other party from exercising their rights. If later the case is decided against the party who enjoyed the benefit, the doctrine of restitution can be applied to ensure that such gains are not retained. This judgment made it clear that restitution is not confined only to final decrees but can also operate against advantages gained through temporary or interim judicial orders.

Together, these judicial pronouncements have elevated restitution from being a narrow procedural remedy to a fundamental principle of justice. The consistent message across these cases is that restitution is essential to maintain the integrity of the judicial process. Courts cannot allow themselves to be used as instruments of unfair advantage. If a decree or order is subsequently declared invalid, it is the court's responsibility to undo its effect and restore the

⁷ *Indian Council for Enviro-Legal Action v. Union of India*, A.I.R. 2011 S.C. 634, available at <https://indiankanoon.org/doc/1356184/?type=print>

⁸ *Kavita Trehan & Ors. v. Balsara Hygiene Products Ltd.*, 1991 Latest Caselaw 423 Del. *Kavita Trehan And Ors. vs Balsara Hygiene Products Limited*

parties to their rightful position. Restitution thus serves as a safeguard against misuse of litigation, delays, and tactical manoeuvres designed to exploit temporary judicial outcomes.

The case law on Section 144 shows that restitution is not a matter of charity or discretion, but a binding duty on courts. From *Binayak Swain* to *South Eastern Coalfields* and *Indian Council for Enviro-Legal Action*, the judiciary has repeatedly underlined that restitution must be broad, effective, and fair. By including interest, damages, and extending the principle to interim orders and inherent powers, courts have ensured that the doctrine evolves in a manner consistent with the demands of justice. These judgments reflect the judiciary's determination to prevent unjust enrichment and reaffirm the idea that the law's role is to correct, not perpetuate, injustice.

4. Challenges and Criticism

Although the doctrine of restitution under Section 144 CPC is based on fairness and justice, its application in practice is far from perfect. Several hurdles have been observed in the Indian judicial system that weaken the effectiveness of this principle. One of the most serious problems is the long delay in litigation. Restitution is meant to undo an injustice quickly and restore parties to their original positions. However, in reality, applications under Section 144 often take years to be decided. This makes the whole process almost meaningless because by the time restitution is ordered, the party who suffered has already endured prolonged financial or personal loss. Justice that comes after many years cannot be considered true justice.

Another difficulty is the tendency of parties to file fresh suits for recovery instead of approaching the same court through Section 144. The Code clearly provides that the party entitled to benefit must apply for restitution in the court of first instance, but due to lack of awareness or tactical choices, litigants sometimes initiate fresh proceedings⁹. This leads to unnecessary multiplicity of litigation, increases workload on courts, and prolongs the hardship of the aggrieved party.

There is also a great deal of ambiguity in the scope of restitution. While Section 144 covers cases where decrees are reversed or modified, confusion often arises when third parties become involved. For example, if a property has changed hands during the execution of a decree that was later set aside, the question arises whether restitution should be granted against the

⁹ Tulip Kanth, *Fresh Suit Not To Be Filed When Subsequent Events Form Continuous Cause Of Action & Don't Change Nature As Well As Character Of Civil Suit: SC*, VERDICTUM (Jan. 11, 2025), https://www.verdictum.in/court-updates/high-courts/the-state-of-west-bengal-ors-v-pam-developments-private-limited-anr-2025-insc-69-civil-suit-subsequent-events-1564516?utm_source=chatgpt.com

innocent third-party purchaser. Such situations expose the limits of Section 144 and make its application uncertain.

Enforcement of restitution orders is another major challenge. Even when courts grant restitution, the actual recovery of money or possession of property can be extremely difficult. Sometimes, the party in possession resists, or the money has already been spent. The victorious litigant may be forced to initiate further execution proceedings, which again consumes time and resources. In effect, restitution often remains a paper remedy rather than a practical relief.

Lastly, the possibility of misuse cannot be ignored. Parties often secure interim orders or stays at the early stages of litigation and then enjoy the benefits for years, knowing well that even if the case ultimately goes against them, they will have already gained an advantage. For instance, someone may remain in possession of property under an interim order for decades before restitution is finally ordered. By then, they would have reaped significant benefits that cannot be fully compensated. This tendency to use litigation as a tool for temporary gain undermines the true purpose of restitution. All these issues collectively dilute the strength of Section 144 and highlight the gap between theory and practice in Indian civil procedure.

5. Comparative Insight

Looking at how restitution is dealt with in other legal systems provides valuable perspective. In many common law countries, such as the United Kingdom and the United States, restitution is treated not merely as a statutory rule but as a general equitable principle. The focus is on preventing unjust enrichment and ensuring that no party gains unfairly at the expense of another.

In the United Kingdom, restitution is a well-developed remedy applied across different areas of law including contract, tort, and claims of unjust enrichment. Courts there do not limit themselves to narrow statutory provisions but apply restitution whenever justice demands it. This makes the principle flexible and responsive to varied circumstances.

In the United States, the law has gone a step further by codifying restitution principles in the Restatement (Third) of Restitution and Unjust Enrichment. This provides a comprehensive framework under which courts can order restitution whenever benefits have been conferred as

a result of mistake, fraud, or judicial error. The system thus recognizes restitution as a core remedy rather than a supplementary one¹⁰.

Compared to these approaches, India's reliance on Section 144 seems somewhat restrictive. The doctrine is tied mainly to decrees that are reversed, varied, or set aside, which limits its direct applicability. However, the Indian judiciary has widened its scope by invoking inherent powers under Section 151 CPC to apply restitution even outside Section 144. This shows that while India's starting point is narrower, the courts have moved closer to the broader equitable principles followed in the UK and US. Still, the lack of a comprehensive framework means that much depends on judicial discretion, which can lead to inconsistency.

6. Suggestions for Better Implementation

To make the doctrine of restitution more effective in India, several reforms and improvements can be considered. Firstly, restitution applications must be decided within a fixed and reasonable time frame. If courts are mandated to dispose of such applications within six months, the very purpose of restitution restoring parties without delay would be better served. Without such timelines, the relief loses meaning.

Secondly, restitution should not always depend on a separate application. Once a decree is reversed, the court should automatically order restitution, including interest and costs, without waiting for the aggrieved party to initiate a process. This would prevent unnecessary procedural delays and ensure that justice flows naturally from the appellate decision.

Thirdly, there is an urgent need to clarify how restitution applies to third-party rights. Innocent purchasers or transferees should not be unfairly penalized, yet the original litigant must also not be left remediless. A clear statutory framework balancing these interests would reduce litigation and uncertainty.

Fourthly, courts must adopt stronger measures to deter misuse of interim orders. Litigants who wrongfully enjoy benefits for years under stays or injunctions should be made to pay exemplary costs, damages, and interest. This would discourage parties from using litigation as a tactical weapon and reinforce the seriousness of the restitution principle.

Finally, judicial consistency is critical. Higher courts must lay down uniform guidelines on restitution to prevent conflicting interpretations across jurisdictions. If the law is applied

¹⁰ *Singapore Journal of Legal Studies* (2024) 1626-1998-sjls-dec-299.pdf

consistently, parties will have greater faith in the system, and the doctrine will achieve its true purpose of fairness.

7. Conclusion

The doctrine of restitution under Section 144 CPC plays a vital role in ensuring that justice is not just delivered in words but felt in practice. At its heart lies a very simple yet powerful idea: no person should suffer because of the act of a court, and no party should be allowed to keep benefits obtained from a decree that has later been declared wrong. Without restitution, the whole system of appeals and revisions would lose its meaning, because even if a higher court corrects an error, the party who suffered would still remain at a loss.

Through the language of Section 144, the law attempts to restore parties to the same position they would have been in if the erroneous decree had never existed. Over time, the judiciary has expanded this principle, stressing that restitution is not a matter of charity or discretion but a necessary step flowing from fairness. Cases like *Binayak Swain* and *South Eastern Coalfields* have made it clear that restitution includes not just return of property or money but also interest, damages, and costs, so that the wronged party is truly compensated. Courts have also shown flexibility by invoking inherent powers under Section 151 CPC when Section 144 does not directly apply, which demonstrates that restitution is a principle broader than the statute itself.

At the same time, challenges in implementation cannot be ignored. Delays, fresh suits, difficulties in enforcement, and even misuse of interim orders reduce the effectiveness of this doctrine. Comparative analysis also shows that while countries like the UK and US treat restitution as a wide equitable remedy, India's statutory approach is narrower and sometimes rigid. Still, the Indian judiciary has taken steps to close this gap by interpreting Section 144 in a purposive manner.

Looking forward, it is important for courts to adopt stricter timelines, make restitution more automatic, and deter misuse by imposing exemplary costs. Clearer rules on how third-party rights are treated would also strengthen the doctrine. Ultimately, restitution is not just about technical legal relief it is about upholding the credibility of the judicial process.

As a law student, I see Section 144 CPC as a reminder that justice is incomplete until the wrong caused by a mistaken decree is undone. By strengthening the doctrine of restitution, our courts reaffirm their role not only as decision-makers but as guardians of fairness, ensuring that the law serves people rather than harms them.