
THE DOUBLE-EDGED SWORD OF INJUNCTIONS: STRATEGIC DELAYS AND SPEECH SUPPRESSION IN INDIAN JURISPRUDENCE

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ABSTRACT

Based on socio-legal and socio-anthropological techniques used, on average in 2021, gag orders favoured privileged persons 72.7% of the time, with 40 million cases pending in the courts creating significant backlogs for the judiciary, and most of the applicants seeking the orders that prioritise their interests tend to come from historically silenced communities. The misuse of injunctions in India, notably through Strategic Lawsuits Against Public Participation (SLAPP), have furnished a chilling effect of injunctions on free speech and expression under Article 19(1)(a) of the Constitution. Landmark cases, including *Bloomberg v. Zee Entertainment* (2024) and *Tata Sons v. Greenpeace*, demonstrates how *ex parte* injunctions and directions to maintain the status quo are weaponised to silence dissent, investigative journalism, and public-interest advocates. The comparative examples of the UK, US, and Japan reveal the systemic flaws in the Indian legal regime in restraining speech and expression and examples of alternative frameworks to trial the allegations of SLAPP behaviour, including the availability of anti-SLAPP laws and objective/factor analyses for injunctive relief.

RESEARCH QUESTION(S)

1. What is the interplay between SLAPP (Strategic Litigation Against Public Participation) suits and pre-trial injunction as a tool to suppress free speech?

- **Basis:** High-profile cases like IIPM's defamation suits¹ and the Maharaj Libel Case² depict how SLAPP suits leverage costly litigation to silence critics,³ which have ultimately prompted the courts to observe the need to deploy procedural safeguards under **Order 6 Rule 16**⁴ and **Order 7 Rule 11**⁵ of the **Civil Procedure Code (CPC)** to prevent such abuse⁶.

2. What measures are deployed by courts to balance free speech with reputational harm while governing the grant of pre-trial injunctions?

- **Basis:** To avoid stifling public debate, the SC emphasized that pre-trial injunctions require proof of "malice" or "palpable falsity." The **Bonnard Rule**⁷ (adopted in Tata Sons v. Greenpeace) mandates a high bar for interim injunctions in defamation cases⁸.

¹ IIPM v. Google & Ors., Civil Suit No. 3 of 2013, Addl. District Judge, Gwalior (M.P.)- illustrates the strategic use of pre-trial injunctions to stifle criticism through SLAPP tactics. In 2013, IIPM secured an ad interim injunction from a Gwalior court under Order 39 CPC, blocking over 70 websites from hosting content critical of its academic credentials.

² Nanabhai Rustomji Ranina v. Karsandas Mulji, (1862) 1 Bom H.C.R. 91.— and its 2024 Netflix adaptation — highlight evolving judicial attitudes toward injunctions and free speech. In the original case, the Bombay High Court dismissed defamation charges against journalist Karandas Mulji for exposing corruption within a religious sect, affirming that public interest reporting outweighs reputational claims. This contrasted sharply with the 2024 injunction against Netflix's Maharaj, temporarily halted over allegations of offending religious sentiments.

³ Apoorva Mishra, Understanding SLAPP Suits Through the Lens of Netflix Movie "Maharaj", LiveLaw (July 3, 2024), <https://www.livelaw.in/articles/understanding-slapp-suits-lens-netflix-movie-maharaj-267052>.

⁴ Code of Civil Procedure, 1908, § 6, r. 16 (India).

⁵ Code of Civil Procedure, 1908, § 7, r. 11 (India).

⁶ Don't SLAPP Free Speech: A Primer on SLAPP Suits in India, Centre for Internet and Society (2023), <https://cis-india.org/internet-governance/dont-slapp-free-speech>.

⁷ Tata Sons Ltd. v. Greenpeace Int'l, (2011) Delhi HC, I.A. No. 10399/2010 in CS(OS) 1407/2010.

Citing *Bonnard v. Perryman*, [1891] 2 Ch 269 (CA) (UK). - prohibits pre-trial injunctions in defamation cases unless the defendant's statements are "untruthful or malicious."

⁸ Pre-trial injunction against news publication may have severe ramifications for freedom of speech: SC, Deccan Herald (Apr. 10, 2024), <https://www.deccanherald.com/india/pre-trial-injunction-against-news-publication-may-have-severe-ramifications-for-freedom-of-speech-sc-2952697>.

RESEARCH OBJECTIVE(S)

The study after carefully examining the interplay between Strategic Litigation Against Public Participation (SLAPP) suits and pre-trial injunctions, as well as an examination of procedural abuses under **Order 39 CPC**⁹ and the conflict between injunctions and freedom of speech under **Article 19(1)(a)**¹⁰ in defamation cases and SLAPP suits, proposes a requirement for more systematic reform of guidelines, providing greater scrutiny before ex parte or interim relief is granted, involving continued judicial education in terms of independence and impartiality (or lack thereof) to ensure that the injunctive regime in India is fair and proportional, as well as monitors international best practices for supporting the right to freedom of speech.

METHODOLOGY

This study adopted a mixed-methods approach, utilizing **doctrinal, comparative, empirical** and **policy analysis** to investigate the misuse of injunctions in India. This combination of quantitative and qualitative knowledge affords a full critique of India's injunction regime, affording appropriate and justifiable legal analysis with workable policy solutions.

INTRODUCTION

Governed by **Order 39 of the CPC** and reinforced under the **Specific Relief Act**, an injunction- a judicial order issued by a court that compels an individual to act upon or omit from acting upon specific actions- is an equitable remedy when monetary compensation is insufficient to preserve the *status quo* or prevent irreparable harm until a matter is finally adjudicated. The concept of injunction is not new to this age. Historical equity practices between **1790** and **1882** in the US demonstrate how courts frequently used injunctions to protect rights.¹¹

⁹ Code of Civil Procedure, 1908, Order 39 (India).

¹⁰ INDIA CONST. art. 19, cl. 1(a).

¹¹ Adam Mossoff, Injunctions for Patent Infringement: Historical Equity Practice Between 1790–1882, SSRN (2010), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1567210 - *A study of 899 federal cases showing permanent injunctions granted in over 91% of valid patent infringement matters.*

Injunctions have many forms- temporary restraining orders, preliminary injunctions, and permanent injunctions- each tailored to administer equitable justice depending on each case's special facts and circumstances. However, just like any other theoretical tool curated to prevent injustice eventually led to paradoxical results owing to their misuse. The same has been the case of injunctions. Over time, injunctions have been strategically misused in a two-fold manner—first, to stall proceedings and delay justice, and second, to suppress free speech by preventing public participation. Thereby presenting a complex challenge for Indian courts.

Strategic Lawsuits Against Public Participation (SLAPP)- often initiated by influential corporations, political actors, or wealthy individuals to intimidate, silence, or exhaust the resources of journalists, civil society actors, and public-interest advocates- is one of the most concerning manifestations of this misuse, which are often accompanied by a pre-trial or ex parte injunction.

"The grant of an ex parte interim injunction by way of an unreasoned order definitely falls within the above formulation, necessitating interference by the High Court."

— *Supreme Court in Bloomberg v. Zee Entertainment (2024)*

While gag orders¹² or interim restraints granted by courts without exercising due diligence in cases like- *IIPM case (Supra)* and *Maharaj Libel Case (Supra)*- illustrate how injunctions have been misused, the SCs 2024 ruling¹³ acknowledged this concern, warning against the automatic issuance of ex parte interim injunctions without due diligence in defamation claims, as it poses a serious threat on free speech under **Article 19(1)(a)** of the Constitution.

Additionally, marginalized communities- Dalit activists and religious minorities- often face the brunt of such misuse by well-resourced adversaries, which consequently leads to grave fundamental rights violations.

¹² When Silence Isn't Golden: How Gag Orders Can Evade First Amendment Protections, Yale Media Freedom & Information Access Clinic, Yale Law School (2022), <https://law.yale.edu/mfia/case-disclosed/when-silence-isnt-golden-how-gag-orders-can-evade-first-amendment-protections>.

¹³ See supra note 2- *Illustrates early free speech protection and its judicial revival in light of the 2024 Supreme Court ruling curbing religious-sentiment-based injunctions*.

Supreme Court of India (2024) (on file with author) (ruling emphasized constitutional safeguards against pre-trial gag orders in media-related litigation).

See also: *Netflix Inc. v. Unknown Respondents*, Gujarat HC Injunction Order (2024), temporarily stayed by the Supreme Court. Coverage at Scroll.in, <https://scroll.in>.

As a result, injunctions meant to serve as equitable remedies are now used as legal weapons, subsequently affecting individual liberties and exacerbating India's chronic problem of judicial backlog.

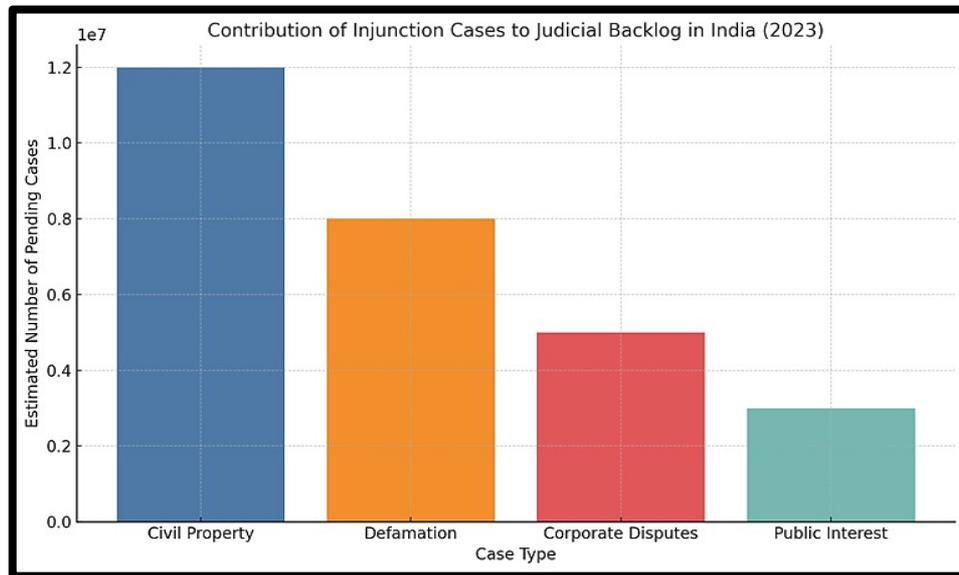


FIGURE 1: *As of 2023, Indian courts faced over 40 million pending cases, with injunction-related disputes contributing significant Judicial Backlog.*¹⁴

¹⁴ Siddharth Narrain, Shaping Judicial Safeguards Against SLAPP Suits: Emerging Protections in Indian Law, Oxford Human Rights Hub (Feb. 27, 2024), <https://ohrh.law.ox.ac.uk/shaping-judicial-safeguards-against-slapp-suits-emerging-protections-in-indian-law/>.

JUDICIAL PRONOUNCEMENT(S)

<u>Case</u>	<u>Court</u>	<u>Facts</u>	<u>Legal Relevance</u>
<p><u>1. Indian Institute of Planning and Management (IIPM) v. Google India Pvt. Ltd.</u></p> <p>CS(OS) 1989/2008</p>	Delhi HC	IIPM filed a suit for <u>permanent injunction</u> against Google India for hosting allegedly <u>defamatory content</u> about it on various blogs and websites via its platform, claiming damage to its reputation. <u>IIPM did not include the original authors</u> of the content as parties. The plaintiff had also obtained <u>ex parte injunctions</u> in similar previous matters.	The case highlights the <u>strategic use of injunctions</u> to suppress criticism by targeting intermediaries (like Google) instead of the actual authors. The <u>court refused to grant an injunction</u> , citing <u>non-joinder of necessary parties</u> and the <u>abuse of process</u> . It underscores how interim injunctions can be misused for silencing dissent or controlling public discourse under the guise of defamation.
<p><u>2. Tata Sons Ltd. v. Greenpeace International & Ors.</u></p> <p>MANU/DE/02 20/2011</p>	Delhi HC	Tata Sons filed a suit seeking a <u>permanent injunction</u> and ₹10 crore in damages against Greenpeace for allegedly <u>defamatory content</u> and misuse of the TATA trademark in an online game that parodied Tata's Dhamra Port Project, citing ecological concerns. They sought an <u>interim injunction</u> under Order XXXIX Rule 2 CPC. The Plaintiff argued that the parody was defamatory, malicious, and violated trademark law. Greenpeace contended it was a <i>bona fide</i> exercise of free speech, parody, and criticism in public interest.	The Court <u>refused the interim injunction</u> , emphasizing the high threshold in <u>free speech cases</u> . Citing <u>Bonnard v. Perryman and Greene v. Associated Newspapers</u> , the Court held that interim injunctions should rarely be granted in defamation cases unless <u>falsity and malice</u> are clearly established. It recognized the <u>danger of SLAPP suits</u> —strategic litigation used to silence criticism—and the need for judicial caution to prevent abuse of injunctions as a tool of censorship, especially in matters of public interest and ecological concern.
<p><u>3. Dalpat Kumar v. Prahlad Singh</u></p> <p>AIR 1993 SC 276</p> <p>1991 INSC 341</p>	SC	The case involved a protracted <u>dispute over a residential property in Jaipur</u> . The first appellant had secured an <u>ex parte decree for specific performance</u> in 1979 and obtained a sale deed through the court in 1983. Multiple suits and objections followed, including a fresh suit in 1988 by the respondent alleging fraud by the appellant, who was also his counsel. The <u>respondent sought a temporary injunction against dispossession</u> . The trial court denied the injunction, but the High Court reversed it. The matter reached the Supreme Court on appeal.	The court emphasized the <u>three-fold test</u> for granting temporary injunctions: <u>prima facie case, balance of convenience, and irreparable harm</u> . The case highlights the importance of <u>judicial discretion in applying these principles</u> to prevent misuse of <u>injunctions</u> and ensure that they serve their intended purpose without causing undue harm to parties.

<u>Case</u>	<u>Court</u>	<u>Facts</u>	<u>Legal Relevance</u>
<p><u>4. Colgate Palmolive v. Hindustan Lever</u></p> <p>(1999) 2 SCC 248</p> <p>1999 INSC 340</p>	SC	Colgate advertised its toothpaste using a symbol or claim described as "Suraksha Chakra", implying protection against tooth decay, germs, and bad breath. HLL filed a <u>complaint</u> before the MRTPC, alleging that this constituted a misleading/unfair trade practice under the MRTP Act. The MRTPC issued a <u>partial injunction</u> , <u>restraining Colgate</u> from displaying "Suraksha Chakra" in advertisements but <u>did not impose a total ban on the product or advertisements</u> . Both parties appealed: <u>Colgate (CA No. 2620/1998)</u> challenged the restraint order. HLL (CA No. 3288/1998) challenged the refusal to impose a total ban.	The Court <u>strongly disapproved of the blanket grant of ex parte injunctions</u> in commercial disputes involving advertisements. While relying on <u>Gujarat Bottling Co. Ltd. v. Coca Cola Co.</u> and <u>American Cyanamid v. Ethicon</u> it held that the injunction was granted without properly examining the balance of convenience or giving the opposite party a fair chance to respond. This case underscores the <u>need for balancing competing interests while granting interim relief</u> , ensuring that <u>injunctions do not unfairly stifle market competition or innovation</u> .
<p><u>5. Bloomberg Television Production Services India Pvt. Ltd. and Ors. v. Zee Entertainment Enterprises Ltd.</u></p> <p>MANU/SC/02 51/2024 (22 March 2024)</p>	SC	On 01 March 2024, an ADJ at Saket Courts, New Delhi, <u>passed an ex-parte ad-interim order</u> directing Bloomberg and its journalists to <u>take down a 21 Feb 2024 article</u> and <u>restraining further publication</u> . The order, based on limited reasoning and precedents, was upheld by the Delhi High Court on 14 March 2024. The <u>Supreme Court found both orders lacked proper judicial analysis and set them aside</u> .	The Supreme Court reaffirmed that <u>ex-parte injunctions, especially in defamation suits involving journalistic speech, must be granted with exceptional caution</u> . It criticized the <u>mechanical application of the three-fold test</u> (prima facie case, balance of convenience, irreparable harm) and emphasized the need for reasoned orders. The Court <u>underscored the Bonnard standard</u> and <u>warned against unreasoned censorship and SLAPP suits</u> used to chill free speech, calling for stricter scrutiny before pre-trial gag orders.

Pre-trial injunctions and SLAPP (Strategic Litigation Against Public Participation) lawsuits intersect to expose a concerning procedural misuse of **Order 39 CPC**, in which plaintiffs employ interim relief procedures to suppress journalistic expression and dissent under pretences of defamation. Prominent cases like IIPM v. Google¹⁵ and the Maharaj Libel Case¹⁶ show how these lawsuits subject critics to drawn-out legal proceedings and expenses, leading courts to employ procedural protections **under Order 6 Rule 16 and Order 7 Rule 11 CPC**

¹⁵ Indian Inst. of Planning & Mgmt. v. Google India Pvt. Ltd., Civil Suit No. 46-A/2013 (Dist. Ct., Gwalior, Feb. 2013)

¹⁶ Nanabhai Rustomji Ranina v. Karsandas Mulji, (1862) 1 Bom. H.C.R. 91 (India).

to stop abuse. The *Bonnard v. Perryman rule*¹⁷, which is echoed in *Tata Sons v. Greenpeace*¹⁸, is one of the strong doctrines' courts have adopted in recognition of this chilling effect. It establishes a high bar for granting pre-trial injunctions in defamation cases, requiring unambiguous proof of "malice" or "palpable falsity."

By overturning irrational gag orders and warning against the automatic application of the prima facie test, the Supreme Court reaffirmed this standard in *Bloomberg v. Zee Entertainment*¹⁹, highlighting the need for any speech restriction to be well-reasoned, specifically tailored, and supported by compelling harm. Indian courts are balancing the fundamental right to free speech under **Article 19(1)(a)** and the right to reputation under **Article 21**²⁰ through this developing body of jurisprudence. This prevents interim injunctions from being used as a cover for private or strategic censorship.

COMPARATIVE ANALYSIS

Injunctions, a tool for administering equitable justice, are not unique to India. International judicial systems deploy injunctions uniquely to injunctions, reflecting local legal traditions and societal values.

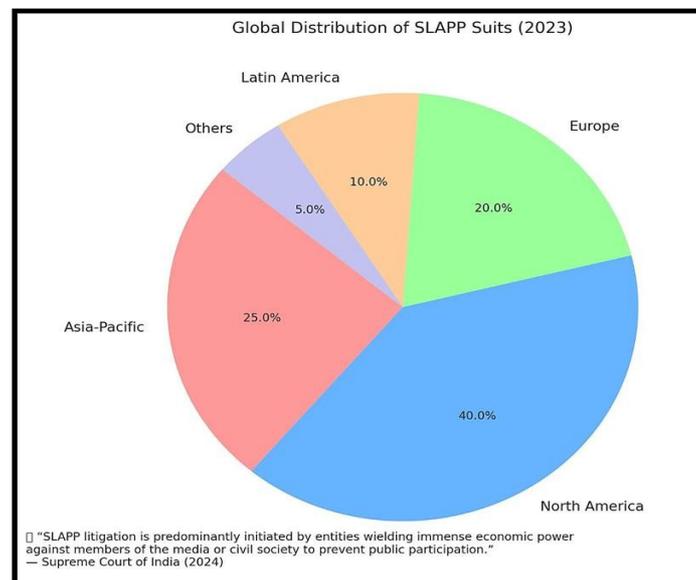


FIGURE 2: Global Distribution of SLAPP Suits (2023)

¹⁷ *Bonnard v. Perryman*, [1891] 2 Ch. 269 (C.A.) (U.K.).

¹⁸ *Tata Sons Ltd. v. Greenpeace Int'l & Ors.*, CS(OS) No. 1407/2010, ¶ 10 (Delhi H.C. 2011)

¹⁹ *Bloomberg L.P. v. Zee Entertainment Enterprises Ltd.*, O.M.P. (I) (Comm.) No. 250/2024 (Delhi H.C. Mar. 2024)

²⁰ *Subramanian Swamy v. Union of India*, (2016) 7 SCC 221, ¶¶ 58–60 (India) (upholding criminal defamation and recognizing right to reputation as a facet of Article 21).

See also *Om Prakash Chautala v. Kanwar Bhan*, (2014) 5 SCC 417, ¶ 12.

A. Injunction Standards

1. India: While the Indian judiciary is bestowed with the power to grant interim relief to preserve rights under the **Specific Relief Act**²¹ and the **Code of Civil Procedure (CPC)**, the absence of robust anti-SLAPP laws leading to the misuse of injunctions are commonly witnessed in studying the frequency in which corporations file defamation suits to suppress media and activists. For example, *Bennett Coleman & Co. (Times Group)* sued *Newslaundry* for ₹1 billion (US\$13.7 million) over satirical criticism, demanding injunctions to block future coverage.²²

A study shows that over **72.7%** of gag orders in India benefit privileged defendants, often big corporations²³. Financial imbalance favoring companies is created by the expense of defending against SLAPPs, which exceeds ₹10 lakh in each case. Corporate procedural manipulation strategies are further made possible by cases like *Honasa Consumer v. RSM General Trading*²⁴, in which the Delhi High Court adopted a lenient take on anti-enforcement injunctions. That being said, the SC, in cases like *Bloomberg Television v Zee Entertainment (Supra)*, emphasized media freedom while criticizing such orders²⁵.

2. United Kingdom: While employing a discretionary approach to injunctions, the UK often uses interim injunctions in libel and privacy cases. Additionally, the concept of "super-injunctions" has been controversial because big corporations misuse them to restrict media reporting without public knowledge²⁶. Similar to India's anti-suit injunctions, the UK courts have adopted a liberal approach to anti-enforcement injunctions, thereby weighing free expression against privacy rights. *Albeit*, procedural delays and high litigation costs favour corporations.

²¹ Specific Relief Act, 1963, §§ 37–42, No. 47, Acts of Parliament, 1963 (India).

²² Times of India Parent Co. Sues Media Watchdog Newslaundry for \$13.7 Million, Comm. to Protect Journalists (Jan. 22, 2021), <https://cpj.org/2021/01/times-of-india-parent-company-sues-media-watchdog-newslaundry-for-13-7-million/>.

²³ Sruthi S., An Empirical Study on the Accessibility and Validity of Criminal Gag Orders in India, 3 Int'l J. Legal Sci. & Innovation 119 (2021), <https://ijlsi.com/paper/an-empirical-study-on-the-accessibility-and-validity-of-criminal-gag-orders-in-india/>.

²⁴ Honasa Consumer Ltd. v. RSM Gen. Trading, 2023 SCC OnLine Del 6553 (India). - *Concerning interim injunctions and brand reputation in online advertising*.

²⁵ Krishnadas Rajagopal, SC Stresses Media Freedom, Criticises HC Gag Orders, Econ. Times (Apr. 9, 2024), <https://economictimes.indiatimes.com/news/india/sc-stresses-media-freedom-criticises-hc-gag-orders/articleshow/119129943.cms>.

²⁶ Jorge L. Contreras, International Attitudes Toward Injunctions and Standard-Essential Patents, Univ. of Cal. Berkeley Sch. of L. (Sept. 2016), <https://www.law.berkeley.edu/wp-content/uploads/2016/09/International-Attitudes-Towards-Injunctions-and-SEPs.pdf>.

3. United States: The US's well-established system for handling injunctions centred on preventing irreparable harm. Anti-SLAPP laws in 26 states protect individuals and media by deterring abuse by reducing corporate leverage while allowing early dismissal of frivolous suits and fee-shifting²⁷. Furthermore, cases like *Near v. Minnesota*²⁸ (1931) depict a strong tradition against prior restraint, which limits government interference with free speech in the US²⁹.

4. Japan: Japan's comparatively rigid approach towards injunctions, inferred by the tendency to grant permanent injunctions automatically in patent infringement cases, makes it corporate-friendly. Furthermore, in Japan, strong emphasis is placed on respecting court decisions and less flexibility in granting injunctions compared to other jurisdictions, thereby making the legal environment in Japan "staid," which discourages frivolous suits; however, the strict defamation laws and lack of anti-SLAPP laws favour the big corporates and leave individuals susceptible to corporate pressure.³⁰

B. Tabular Comparison: India/ UK/ US/ Japan

<u>Jurisdiction</u>	<u>Corporate Dominance in SLAPPs</u>	<u>Judicial Safeguards</u>	<u>Procedural Manipulation Risks</u>
India	High - e.g., <i>Times Group v Newslandry</i>	Weak - no anti-SLAPP laws	High - costs exceed ₹10 lakh
US	Moderate - deterred by anti-SLAPP laws	Strong - early dismissal, fee-shifting	Low - anti-SLAPP penalties
UK	High - super-injunctions	Moderate - public interest test	Moderate - costs favour corporations
Japan	Moderate - rigid injunctions	Weak - no anti-SLAPP laws	Low - less adversarial system

²⁷ E. M. S. SLAPP Suits: An Encroachment on Human Rights of a Global Proportion and What Can Be Done About It, 17 Nw. J. Int'l Human Rights 108 (2023), <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1256&context=njihr>.

²⁸ *Near v. Minnesota*, 283 U.S. 697 (1931). - Landmark U.S. Supreme Court case affirming First Amendment protections against prior restraints and gag orders.

²⁹ Intellectual Property Owners Association (IPO) White Paper, Artificial Intelligence and Intellectual Property (2023), <https://ipo.org/wp-content/uploads/2023/04/ASI-whitepaper-final.pdf>.

³⁰ Cohausz & Florack, Global Injunction Tracker (2023), https://www.cohausz-florack.de/fileadmin/Artikel/IAM97_Global_injunction_tracker.pdf.

<i>Jurisdiction</i>	<i>Injunction Framework</i>	<i>Free Speech Safeguards</i>	<i>Anti-SLAPP Provisions</i>
India	Specific Relief Act & CPC (Order 39) for temporary injunctions. Lack of robust anti-SLAPP laws.	Limited safeguards; misuse of injunctions common.	Absence of statutory anti-SLAPP framework.
UK	Interim injunctions in libel and privacy cases; use of "super-injunctions".	Public interest defence and urgency filters.	No specific anti-SLAPP laws, but judicial discretion often protects free speech.
US	Prior restraint doctrine (<i>Near v. Minnesota</i>); anti-SLAPP laws in many states.	Strong protections for free speech; early dismissal of frivolous suits.	Robust anti-SLAPP laws to deter abusive litigation.
Japan	Emphasis on privacy and reputation protection with some consideration for public interest.	Public interest and urgency considered in defamation cases.	Limited anti-SLAPP provisions; judicial discretion plays a significant role.

CRITICAL ANALYSIS

Injunctions, governed under **Order 39 CPC** and **Sections 36–42 of the Specific Relief Act, 1963**, hold a pivotal position in the Indian civil jurisprudence, offering vital protection against irreparable harm and ensuring equitable justice by applying the **three-fold test** as seen in cases like ***Dalpat Kumar v. Prahlad Singh***³¹. However, their procedural abuse—particularly in the form of SLAPP suits, ex parte orders, and unreasoned interim reliefs—poses significant challenges to implementing injunctions.

³¹ Dalpat Kumar & Anr. v. Prahlad Singh & Ors., AIR 1993 SC 276.

A. Procedural Loopholes and Lack of Judicial Vigilance

1. Abuse of Ex Parte Reliefs and Status Quo Orders

Ex-parte injunctions, primarily used for emergencies, are severely misused because they can be granted in the absence of a party based on incomplete or misleading submissions. Unless vacated in due course, these orders are a natural obstruction to litigation.³² **Justice N.V. Ramana**, former CJI, remarked that injunctions are supposed to provide prompt relief but are often used to "delay justice under the guise of equitable remedy."³³

2. Inconsistent Application of Legal Tests

Despite the SC orders in many cases, judicial subjectivity and poorly reasoned orders w.r.t. inconsistent and mechanic application of the **three-fold test** create unpredictability, undermining the legitimacy of the injunctive process. For example, in *the Colgate Palmolive case (Supra)*, the SC criticized MRTPC for issuing an ex parte blanket injunction without considering the balance of convenience or giving the other party a chance to respond.

B. Injunctions as Instruments of Suppression

1. SLAPP Suits and Their Chilling Effect

SLAPP is on the rise as a means of silencing dissent in India, especially w.r.t. matters of investigative journalism, public opposition, and whistle-blowing activities. The plaintiffs, usually powerful corporations or politically powerful individuals, file defamation or copyright claims, seeking injunctive relief to curb any opportunity for public debate. Cases like *IIPM v. Google India case (Supra)* and *Tata Sons Case (Supra)* are perfect examples of plaintiffs bypassing the authors' allegedly defamatory content and suing the intermediaries to get prompt orders to gag them. These SLAPP suits not only violate the spirit of a right to free speech under **Article 19(1)(a)** of the Constitution of India, but they weaponize the legal process to restrict democratic participation.

³² International Journal of Novel Research and Development (IJNRD), Global Distribution and Impact of SLAPP Suits on Free Speech, IJNRD Paper No. 2405524 (2024), <https://www.ijnrd.org/papers/IJNRD2405524.pdf>.

³³ Temporary Injunctions and Interlocutory Orders, BusinessWorld, (2023), <https://www.businessworld.in/article/temporary-injunctions-and-interlocutory-orders-538495>.

2. SC's Recognition of SLAPP Abuse

In the *Bloomberg Television Case (Supra)*, the SC condemned lower courts for issuing ex parte gag orders without applying the requisite legal tests or providing sound rationale. In particular, it held that wrt claims of defamation, including claims involving media, injunctions should not be issued in the absence of "palpable falsity or malice." The Court endorsed the "*Bonnard Rule*," holding that pre-trial injunctions should only be issued in rare cases w.r.t. defamation suits. This indicates a growing judicial responsibility to understand the potential misuse of injunctions in restricting legitimate criticism under the guise of protecting a person's reputational interest.

C. Structural and Doctrinal Weaknesses

1. Absence of Objective Guidelines

A fundamental defect of the injunction framework in India is the absence of prescribed statutory or judicial objective criteria for granting or denying injunctions. The absence of objective standards would create space for discretion, which could be exercised exceptionally poorly or entirely arbitrarily. The unstructured nature of discretion distinctly disadvantages individuals or organizations with fewer resources to pursue legal rights in prolonged injunctions.

2. Impact on Marginalized Communities

Frequently, litigation has involved large corporations, developers, and even state actors, who have used the injunction process to quash land rights protests, environmental campaigns, and media investigations. Since injunctions only favour the *status quo*, vulnerable groups are frozen out of the legal and political processes.

D. Broader Implications on Civil Justice

1. Delays and Judicial Backlog

Injunctions can cause severe delays in litigation, especially in real estate matters, wherein an interim injunction can prevent the possession or sale of property for years while a main suit is

pending. *Prem Kumar Ghai v. Dr. Veer Han Garg*³⁴ (2003) was an example of a case where the Court cautioned against the continued use of interim reliefs that were disadvantageous to defendants and that further delayed the final adjudication of the matter.

2. Equity vs. Efficiency

Although injunctions are based on equitable principles, ongoing reliance on injunctions, unexamined and applied without consideration of the rule of law, may introduce procedural inequity. A poorly reasoned or hastily granted injunction provides more injustice than it prevents and undermines the public's perception of the judiciary's objectivity and fairness.

CONCLUSION AND SUGGESTIONS

Initially intended to protect against irreversible damage, Injunctions are now commonly used to paralyze litigation or silence opposing voices of dissent in the context of Strategic Lawsuits Against Public Participation. As such, injunctions can be viewed as a double-edged sword in the Indian legal context. This practice is often apparent in defamation cases against journalists, activists, and civil society actors, where ex parte injunctions are being issued without fulfilling the threshold test of damage to reputation. Inspiration can be taken from the best international best practices to identify potential reform approaches that can be implemented in India to address the aforementioned concerns.

1. Strengthening Procedural Safeguards: Time-Bound Hearings and Penal Costs

Comparative Insight

In **Canada**, specifically under the **Protection of Public Participation Act 2015**³⁵, courts are required to hold expedited hearings to identify protected expression from action, with a Court able to dismiss early in the process if it concludes there is no merit to the case. 26 states (including **California** and **Texas**) have anti-SLAPP statutes allowing pre-trial dismissal and cost disincentives in the US³⁶.

³⁴Prem Kumar Ghai & Ors. v. Dr. Bir Bhan Garg, AIR 2005 P&H 193.

³⁵ Protection of Public Participation Act, S.O. 2015, c. 23 (Can. Ont.).

³⁶ See, e.g., Anti-SLAPP Statutes: 2023 Report Card, Institute for Free Speech (2023), <https://www.ifs.org/anti-slapp-report/>.

Recommendation

Order 39 CPC needs to be amended to allow for mandatory time-bound hearings for applications for interim relief. Additionally, robust penal costs should be the norm for litigants who misuse injunctions to stall proceedings.

2. Ensuring Transparency in Gag Order Petitions

Comparative Insight

The **UK** courts often use the "**open justice**" principle in conjunction with the **Human Rights Act (1998)**³⁷ w.r.t. injunctions that affect freedom of expression. The UK courts are instinctively against super-injunctions, where not only is the injunction secret but also the very existence of the injunction.

Recommendation

The disclosure of the complete factual matrix and anticipated public interest impacts in ex parte applications for gag orders should be strictly mandated, and Courts should publish the reasons for and the scope of such injunctions in the public domain unless there is an overriding concern over privacy or national interest.

3. Judicial Training and Standardised Thresholds

Comparative Insight

The **Judicial College in the UK**³⁸ and the **Federal Judicial Center in the US**³⁹ offer ongoing legal education in general but also devote resources to emerging topics, particularly media law, SLAPP suits, and balancing civil liberties with impartial relief.

³⁷ Human Rights Act 1998, c. 42 (UK), available at <https://www.legislation.gov.uk/ukpga/1998/42>.

³⁸ Judicial College, Judicial College Prospectus 2022–23 (2022), available at <https://www.judiciary.uk/wp-content/uploads/2022/06/Judicial-College-Prospectus-2022-23.pdf>.

³⁹ Federal Judicial Center, Education Programs, <https://www.fjc.gov/education/education-programs> (last visited Apr. 15, 2025).

Recommendation

Judicial training modules should be introduced into institutional structures for judges of the High Court and trial courts on the consistent application of the three-fold test, focusing on cases involving speech and public interest. Furthermore, model guidelines for reviewing injunction applications should be introduced, including freedom of speech.

4. Enactment of Anti-SLAPP Legislation

Comparative Insight

The Protection of Public Participation Act protects individuals from lawsuits that aim to silence public expression in **Canada**. On the same lines, **the EU Parliament** has recently proposed a Directive relating to SLAPPs to harmonize protection across member states.

Recommendation

India should implement a specific Anti-SLAPP law introducing (i) A preliminary filter test for determining suppressive cases, (ii) Early dismissal, (iii) An award of costs and attorney's fees if it is determined the claim is strategic/suppressive, (iv) Protection for journalists, researchers, whistleblowers, activists, and others engaged in a public discussion.

5. Promoting Judicial Accountability While Protecting Legitimate Rights

Comparative Insight

In the **US**, the **protections of the First Amendment**⁴⁰ require strict scrutiny before any prior restraint (injunction on speech) is granted. Similarly, in the **UK**, under the **Reynolds defense**⁴¹ (now replaced by **the Defamation Act, 2013**⁴²), courts can consider the public interest character of the speech before granting relief.

⁴⁰ New York Times Co. v. Sullivan, 376 U.S. 254, 270 (1964). - establishing the “actual malice” standard for defamation of public officials under the First Amendment.

⁴¹ Reynolds v. Times Newspapers Ltd., [2001] 2 A.C. 127 (H.L.) (U.K.). - Established the “Reynolds public interest defense” to defamation, allowing responsible journalism on matters of public concern.

⁴² Defamation Act 2013, c. 26, § 4 (UK), <https://www.legislation.gov.uk/ukpga/2013/26/section/4/enacted>. - Codified and replaced the common law Reynolds defense with a statutory defense for publication on matters of public interest.

Recommendation

Indian Courts must use a proportionality approach to balance reputational rights and freedom of expression. Additionally, Interim gag orders should not be granted unless verified affidavits and evidentiary proof show immediate, serious, and clearly irreparable harm.

Closing Note

In conclusion, unless India embarks on a path of systemic changes based on judicial discipline, legislative clarity, and procedural transparency; the injunctive remedy will remain chained as a tool of obstructive litigation instead of a safeguard of justice. Injunctions must not be so weakened that they leave real cases of irreparable harm without remedy. The courts must find the appropriate balance between preventing abuse and protecting rights. Thereby, drawing from successful international case law and tracing legislative authority found in the Constitution, India could instead transform its injunction jurisprudence into a doctrine that emphasizes protection for the powerless, deters the powerful, and preserves the ethos of justice based on fairness.

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