



The Future of Equitable Remedies: Should Equity Be Codified in India?

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ARTICLE DETAILS	ABSTRACT
Research Paper	
Keywords : <i>equity, equitable remedies, codification, injunctions, specific performance, restitution, promissory estoppel, legitimate expectation, Article 142, India, Law Commission.</i>	<i>Indian private and public law already breathes equity: injunctions, specific performance, restitution, promissory estoppel, unconscionability, legitimate expectation, and “complete justice” under Article 142 all draw from equitable traditions. Yet the Indian legal system has no single “Equity Code.” Instead, equitable norms are scattered across statutes—e.g., the Specific Relief Act 1963 (as amended in 2018), the Indian Trusts Act 1882, the Transfer of Property Act 1882, the Contract Act 1872, procedural and constitutional provisions—and are richly developed in case law. This paper asks whether India should codify equity—fully or partially—and if so, how. After tracing the historical development of equity in India and surveying contemporary doctrine and practice, the paper undertakes a comparative analysis (UK, US, Australia, Canada, and civil-law jurisdictions) to extract models and warnings. It then poses criteria for evaluating codification: certainty and accessibility, institutional capacity, flexibility and adaptability, federal balance, and impacts on commercial growth. The paper ultimately recommends principles-based partial codification—a “Restatement-cum-Framework Statute” that (i) consolidates foundational equitable maxims and general tests for core remedies, (ii) standardizes remedial discretion and defenses, and (iii) leaves room for purposive judicial development. It proposes a staged law reform process using a Law Commission Draft Equity (Principles and Remedies) Bill,</i>



accompanied by model rules for courts, dynamic commentary, and periodic review. The conclusion is that wholesale codification risks freezing a living tradition, but carefully designed partial codification can improve coherence, predictability, and access to justice while preserving equity's essential flexibility.

1. Introduction

Equity began as a corrective to the rigors and gaps of the common law. Over centuries, equitable remedies evolved to guard against injustice—through injunctions, specific performance, rescission, rectification, restitution, subrogation, and defenses such as laches, acquiescence, and “clean hands.” India inherited this tradition through colonial legal development, blended it with codified private law (Contract Act, Transfer of Property Act, Trusts Act) and constitutional commitments (Articles 14, 19, 21, 32, 226, 136, 142). Today, equitable reasoning is everywhere in Indian practice: interim and perpetual injunctions; decrees of specific performance; restitution under Section 144 CPC; promissory estoppel against the State; legitimate expectation in administrative law; proportionality and balancing in fundamental rights adjudication; and the Supreme Court’s power to “do complete justice.”

Yet the landscape is fragmented. Equitable principles often appear as judge-made standards or are embedded in multiple statutes with varied language. Lawyers and judges navigate a dense web of precedents; litigants encounter unpredictability and costs; commerce demands clearer risk allocation. The 2018 amendments to the Specific Relief Act—tilting toward specific performance and calibrating injunctive relief in infrastructure projects—signaled a policy choice: certainty for investment and infrastructure, without discarding equitable discretion. The broader question remains: Should India codify equity? If so, what form should codification take, and what are the tradeoffs?

This paper argues that the best path is not a rigid, exhaustive code, but a principles-based, partial codification that (a) articulates foundational equitable norms and remedial architectures, (b) harmonizes standards and defenses across civil and public law, and (c) preserves space for judicial innovation aligned with constitutional values. To motivate this thesis, we first reconstruct the historical and doctrinal terrain.

2. Historical Background: Equity’s Migration into Indian Law

2.1 From English Chancery to Indian Courts

In English law, the Judicature Acts of 1873–75 fused law and equity procedurally, while preserving their substantive distinctiveness. British India imported both statutes and equitable ideas. Early High Courts

exercised equitable jurisdiction, often applying English principles “as justice, equity, and good conscience” where indigenous or statutory law was silent.

2.2 Codified Private Law with Equitable DNA

Nineteenth-century Indian codifiers—Macaulay (Penal Code), Pollock and others (Contract Act)—crafted wide-ranging codes that embed equitable notions:

- **The Contract Act, 1872:** sections on rescission for voidable contracts, undue influence (s.16), fraud and misrepresentation (ss.17–19), liquidated damages/penalties (s.74).
- **The Transfer of Property Act, 1882:** equitable priorities, doctrine of part performance (s.53A), fraud on creditors (s.53), rules on notice and bona fide purchaser.
- **The Indian Trusts Act 1882:** fiduciary obligations and remedies, tracing, and constructive trusts in substance.
- **The Code of Civil Procedure, 1908:** declaratory relief (s.34 Specific Relief Act), injunctions (Specific Relief Act, with CPC machinery), restitution (s.144 CPC), execution discretion, and interim measures.

2.3 Constitutionalization of Equity

Post-1950, the Constitution elevated equitable reasoning:

- Articles 32 & 226 enabled flexible public-law remedies (writs, directions, orders).
- Article 142 empowered the Supreme Court to “do complete justice,” a markedly equitable charter.
- Fundamental rights jurisprudence (Articles 14, 19, 21) internalized proportionality, legitimate expectation, non-arbitrariness, and substantive due process—concepts adjacent to equity.

3. The Contemporary Indian Framework of Equitable Remedies

3.1 Specific Relief

The Specific Relief Act, 1963 (amended in 2018) modernized and expanded specific performance and injunctive relief. Key features include:

- **Specific performance** as a primary remedy in many contracts, limiting judicial discretion to refuse where damages are adequate—reflecting a commercial policy tilt.
- Tailored rules for **infrastructure projects**, constraining injunctions that could stall public projects.

- Declaratory relief (s.34) and injunctions (ss.36–42), with established interim standards: prima facie case, balance of convenience, and irreparable injury (drawn from Supreme Court precedent such as *Dalpat Kumar v. Prahlad Singh*).

3.2 Injunctions and Interim Relief

Indian courts routinely grant temporary injunctions (Order XXXIX Rules 1–2 CPC), status quo orders, and anti-suit or anti-arbitration injunctions (sparingly), guided by equitable principles of necessity, proportionality, and clean hands. Public interest and third-party rights temper equitable discretion.

3.3 Restitution and Unjust Enrichment

Although India lacks a dedicated “Law of Restitution” statute, restitution is effected through s.144 CPC, contract/quasi-contract provisions, and judge-made unjust enrichment principles. Courts have recognized quantum meruit, money had and received, failure of basis, and mistake as grounds for restitution, often aligning with common-law restitution scholarship.

3.4 Estoppels, Promissory Estoppel, and Legitimate Expectation

Promissory estoppel against the State (e.g., *Motilal Padampat Sugar Mills*) and legitimate expectation in administrative law permit equitable relief where formal legal rights are absent but fairness demands intervention—subject to public interest. These doctrines harmonize Articles 14 and 19 values with policy-based constraints.

3.5 Unconscionability, Clean Hands, and Laches

Courts have set aside contracts or clauses for unconscionability in exceptional cases (e.g., *Central Inland Water Transport v. Brojo Nath*), enforce the clean hands maxim, and apply laches/acquiescence to bar stale equitable claims. In public law, delay is weighed against systemic rights.

3.6 Article 142 and “Complete Justice”

Article 142 is a uniquely Indian, textually entrenched equitable power enabling the Supreme Court to craft bespoke remedies beyond strict statutory confines, provided they do not contravene substantive law. This power has been used to mold interim regimes, grant compensation, and tailor relief in complex constitutional cases.

4. The Case for and Against Codifying Equity

4.1 Arguments for Codification

1. **Coherence and Predictability:** A single framework can harmonize scattered principles, reduce forum shopping, and provide consistent standards across High Courts.
2. **Accessibility and Access to Justice:** Litigants and junior lawyers struggle with diffuse precedent. Codification, accompanied by official commentary, would lower informational barriers.
3. **Commercial Certainty:** Infrastructure and cross-border commerce benefit from clearer remedial baselines (e.g., when specific performance is likely, when injunctions are barred, how to quantify gain-based remedies).
4. **Training and Judicial Capacity:** A statutory map can guide trial courts in calibrating discretion with structured factors and presumptions, reducing idiosyncrasy without eliminating judgment.
5. **Public Law Synergies:** Principles like proportionality, legitimate expectation, and estoppel could be coherently stated with limits, reducing doctrinal confusion and aligning with constitutional values.
6. **Comparative Convergence:** Many jurisdictions have restatement-like texts (e.g., US Restatements), or consolidated principles (e.g., the UK's equitable doctrines as refined post-fusion). India can synthesize a modern statement responsive to its social-constitutional context.

4.2 Arguments against Codification

1. **Risk of Ossification:** Equity thrives on flexibility. A rigid code may freeze doctrine and stifle innovative, context-sensitive justice.
2. **Over-generalization:** Equity's strength lies in case-sensitive discretion. Attempting to enumerate all standards can produce over-broad or under-inclusive rules.
3. **Legislative Overload and Delay:** Codification is resource-intensive. The effort could distract from procedural reform, judicial capacity building, and digitization that may yield higher returns.
4. **Dynamic Constitutional Adjudication:** Public-law equity evolves rapidly. Hard-coding it could lag behind constitutional jurisprudence, especially in rights-technology interfaces.
5. **Forum Diversity as a Feature:** Different High Courts experimenting within broad bounds may improve doctrine via judicial dialogue.



6. **Interplay with Sectoral Statutes:** Special regimes (competition law, securities, insolvency, infrastructure, arbitration, environmental law) already craft bespoke standards. A general equity code may conflict or create unintended pre-emption.

5. Comparative Perspectives

5.1 United Kingdom: Fusion and Judicial Development

The UK fused law and equity procedurally via the Judicature Acts, but content has remained judge-made. Courts refined injunction standards, equitable compensation, knowing receipt/dishonest assistance, and modern estoppels. Lesson: Fusion does not require codification; a coherent common law can modernize equity. But doctrinal clarity often emerges slowly and depends on appellate bandwidth.

5.2 United States: Restatements and Uniform Acts

American law features Restatements (Contracts, Restitution and Unjust Enrichment, Torts) and Uniform Acts (e.g., UCC). While nonbinding, these texts guide courts and promote convergence. Lesson: A restatement model can capture principles without freezing them, supporting both courts and practitioners.

5.3 Australia and Canada: Structured Discretion

Both jurisdictions retain robust equitable doctrines with structured tests (e.g., for unconscionability, fiduciary duties, constructive trusts). Courts often articulate factor-based analyses that discipline discretion. Lesson: Structure need not equal code; appellate clarification can deliver predictability.

5.4 Civil-Law Jurisdictions: Codified Remedial Architecture

Civil codes (France, Germany) place remedial law largely in statutes, emphasizing damages, performance, and restitution. Equitable ideas surface as good faith, abuse of rights, and unjust enrichment doctrines. Lesson: Codification can succeed, but it reflects a foundational legal culture built on codes; transplanting wholesale may misfit a common-law-constitutional ecosystem like India's.

6. What Exactly Would “Codifying Equity” Mean for India?

“Codification” sits on a spectrum:

1. **Full Code of Equity:** A comprehensive statute displacing case law for all equitable doctrines and remedies.

Risk: Over-rigidity; high conflict with sectoral statutes; constitutional friction.

2. Principles-Based Framework Statute: A concise act stating maxims, remedial aims, baseline tests for core remedies (injunctions, specific performance, rescission, restitution, rectification), and defenses (laches, clean hands, hardship). It would expressly preserve judicial development and sectoral overrides.

3. Thematic Mini-Codes: Separate statutes or consolidated chapters on Restitution, Estoppel, Fiduciaries, and Injunctions; possibly accompanied by amendments to the Specific Relief Act and CPC.

4. Non-Statutory Restatement: An authoritative Law Commission “Restatement of Indian Equity” periodically updated; persuasive but not binding.

5. Procedural Codification: Amend CPC and High Court Rules to standardize interim relief tests, evidentiary thresholds, and costs remedies, while leaving substantive equity to case law.

India already has pieces of (2) and (5): the Specific Relief Act and CPC rules, plus constitutional equity. The policy question is whether to add a unifying, principles-based framework—and if so, how to design it to promote clarity without calcification.

7. Design Principles for an Indian Equity Framework

Any reform should satisfy five criteria:

1. Clarity with Flexibility

Text should frame purposes and factors, not rigid rules. For instance, a statutory test for interim injunctions could enumerate the classic triad plus public interest, third-party impacts, and adequacy of damages, with illustrations.

2. Constitutional Compatibility

The statute must defer to fundamental rights, Article 142, Articles 32/226, and specialized regimes (e.g., insolvency, competition, environmental). Include a savings clause: “Nothing in this Act limits constitutional remedies or sector-specific statutes.”

3. Remedial Coherence

Provide a taxonomy of remedies—rights-protective (specific performance, injunction), corrective (rescission, rectification), and gain-based (account of profits, disgorgement)—and selection principles (least-restrictive effective remedy; proportionality; avoidance of double recovery).

4. Structured Defenses

Clarify laches, acquiescence, estoppel, hardship, impossibility, clean hands, with indicative factors and burden of proof.

5. **Commercial Sensitivity and Public Interest**

Address injunctions in infrastructure/public contracts, irreversible third-party reliance, and public interest carve-outs; calibrate cross-undertakings in damages and security for costs.

6. **Institutionalization and Updating**

Provide for periodic review (e.g., every five years), model rules for High Courts, and an official commentary updated by a Standing Committee with judicial, academic, and bar representation.

8. **Concrete Reform Proposals**

8.1 A “Restatement-cum-Framework Statute”

Enact a concise Equity (Principles and Remedies) Act with the following structure:

- **Preamble & Purposes**

- To promote just, proportionate, and efficient remedies; to harmonize equitable principles; to preserve constitutional remedies; to facilitate commerce and public interest.

- **Part I – General Principles**

- Enumerate **equitable maxims** (e.g., equity acts in personam; equity follows the law; he who seeks equity must do equity; delay defeats equity; equality is equity).
- **Interpretive clause:** Courts must construe the Act to advance its purposes and may develop doctrine consistent with them.

- **Part II – Remedial Architecture**

- **Injunctions:** Baseline triad + public interest; factors for prohibitory vs. mandatory injunctions; limits in infrastructure; cross-undertaking in damages; anti-suit injunctions (stringent thresholds; comity).
- **Specific Performance:** Presumptive availability in defined categories; defenses (hardship, personal service, supervision impracticability); interaction with liquidated damages and penalties.
- **Rescission & Rectification:** Grounds (fraud, mistake, misrepresentation, undue influence); bars (affirmation, third-party rights).



- **Restitution & Unjust Enrichment:** Cause of action structure—enrichment, at claimant's expense, unjust factor (mistake, failure of basis, wrong), defenses (change of position, bona fide purchase).
- **Account of Profits / Disgorgement:** Availability for fiduciary breach, knowing receipt/assistance, exceptional wrongs where compensatory damages are inadequate and deterrence is required.
- **Declaratory Relief:** Standards and utility in public and private law.
- **Part III – Defenses and Bars**
 - Laches, acquiescence, hardship, clean hands, illegality, impossibility, estoppel (including promissory estoppel against the State—subject to paramount public interest), legitimate expectation factors.
- **Part IV – Procedural Harmonization**
 - Model tests for interim relief; reasons requirement; proportionality; costs and undertakings; treatment of ex parte orders; timelines for hearings and vacation benches.
- **Part V – Savings and Co-ordination**
 - Savings clause for constitutional remedies and specialized statutes.
 - Non-derogation clause preserving judicial innovation.
 - Review mechanism and official commentary.

8.2 Amendments and Cross-References

- **Specific Relief Act:** Align definitions/tests; avoid duplication; preserve the 2018 commercial policy choices; add cross-references for consistency.
- **CPC:** Codify principles for interim relief, undertakings, and expedited schedules in commercial and public-interest cases.
- **High Court Rules:** Uniform practice directions for affidavits, disclosure at interim stages, and scheduling.

8.3 Institutional Process

- Law Commission Reference to prepare a Draft Bill plus Restatement Commentary drawing from Indian and comparative jurisprudence.



- Consultative White Papers with bar associations, commercial bodies, public-interest groups, and state governments.
- Pilot Implementation via Model Rules in select High Courts, followed by nationwide adoption and periodic evaluation.

9. Anticipated Benefits and Mitigation of Risks

9.1 Benefits

- **Predictability** for litigants and investors; clearer litigation risk pricing.
- **Efficiency**: Structured discretion reduces excessive appeals and interlocutory churn.
- **Access to Justice**: A single, navigable source lowers costs for smaller litigants.
- **Doctrinal Coherence**: Harmonized standards across public and private law promote principled adjudication.

9.2 Risk Mitigation

- **Anti-Ossification Design**: Express permission for courts to develop doctrine; illustrative factors rather than hard rules; periodic review.
- **Conflict Avoidance**: Explicit subordination to constitutional provisions and sectoral statutes; interpretive presumption against displacement.
- **Capacity Building**: Judicial training modules; benchbooks; digital toolkits; reason-giving templates to improve consistency.

10. Illustrative Applications

10.1 Interim Injunction in a Public Infrastructure Contract

Problem: A contractor seeks to restrain termination of a highway concession, citing irreparable reputational harm

Framework Outcome: The statute instructs courts to weigh public interest, third-party reliance, and adequacy of damages. Given the public-interest premium and alternative remedies (damages, expedited arbitration), the default leans against injunction; however, if the termination is *prima facie* arbitrary and would scuttle a critical financing close that benefits the public, a time-bound status quo with cross-undertaking and early final hearing may be granted.

10.2 Restitution for Mistaken Payment by a Fintech

Problem: A fintech erroneously credits a merchant; funds dissipate across wallets.

Framework Outcome: The unjust enrichment chapter provides a clear cause of action (enrichment, at claimant's expense, unjust factor: mistake), plus defenses (change of position). Courts can order tracing into substitute assets and adjust for innocent reliance.

10.3 Legitimate Expectation in Regulatory Transition

Problem: A regulator abruptly changes licensing, defeating an industry's reliance interest.

Framework Outcome: Statute codifies factors—clarity of representation, reliance, fairness, overriding public interest—authorizing prospective application, transition periods, or targeted compensation where appropriate.

11. Addressing Key Objections

Objection 1: Equity resists definition; codification will sterilize it.

Response: A principles-based instrument avoids exhaustive enumeration. It anchors purposes and factors, preserving judicial creativity while curbing arbitrariness.

Objection 2: Indian diversity demands decentralized experimentation.

Response: The framework sets baselines; High Courts retain room for context-specific elaboration. Periodic reviews can incorporate regional lessons into national guidance.

Objection 3: Sectoral statutes already manage equities.

Response: A savings clause prevents conflict. The framework fills horizontal gaps and harmonizes general standards (injunction tests, restitution architecture) across fields.

Objection 4: The 2018 Specific Relief amendments suffice.

Response: They mainly recalibrated specific performance and injunctions in commercial settings. Equity's reach is broader (restitution, estoppel, fiduciaries, public-law equities), warranting a more comprehensive, integrative treatment.

12. Implementation Roadmap

1. **Constitute an Expert Committee** (judges, senior counsel, academics, commercial law specialists, public-law experts).



2. **Empirical Study:** Map interim relief patterns, injunction duration, appellate reversal rates, and economic impacts in infrastructure disputes.
3. **Draft Restatement + Bill:** Publish in two volumes—(A) statutory text (lean, principles-driven) and (B) official commentary with illustrations and comparative notes.
4. **Consultation & Pilots:** Invite comments; pilot Model Rules in two High Courts; collect data on timelines, grants/refusals, costs, and settlement rates.
5. **Training & Toolkits:** Benchbooks, standard orders, and digital templates for interim orders and equitable accounting.
6. **Enactment & Review:** Sunset-style five-year review clause with mandatory reporting to Parliament.

13. Conclusion

India's legal order already contains a vibrant, constitutionally inflected law of equity. But its fragmentation burdens litigants and courts, impeding predictability and efficiency. Full codification risks freezing a living tradition and colliding with constitutional dynamism. The better path is a principles-based partial codification—a Restatement-cum-Framework Statute—paired with procedural harmonization and institutional supports. Properly designed, such an instrument would improve coherence and access while preserving the flexible, justice-seeking character that makes equity indispensable in a complex constitutional democracy.

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