

‘Status Quo To Be Maintained...’: **In Need of a Legal Definition?**

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Abstract

Reading the orders of the superior courts of Pakistan one often comes across the phrase 'status quo to be maintained till next date of hearing'. Mostly, during the first date of hearing, lawyers are seen to be praying for an interim order for maintaining status quo. This paper will elaborate how the scope of the phrase 'status quo' used in the Pakistani legal system has become vague and how this has allowed for its function to be abused in courts. Judgments from the High Courts of Pakistan in particular will be used to show how the concept of 'status quo' needs sound judicial codification which can help resolve the erratic use of this Latin phrase.

Introduction

The literal meaning of the phrase *status quo* is ‘the existing state of affairs’,¹ the present situation or condition.² Orders to maintain the *status quo* are usually used (but not limited to) in cases involving possession of a land or running state of affairs of a corporation. Although the phrase emerged as a political term in international law to point out at the state of things existing before the war,³ it has however found a place in the legal arena as an injunctive, restrictive and preventive remedy. The word *status quo* itself is not a remedy. It is the order which states ‘*status quo* to be maintained’ that gives the command and is the cause of the issue this paper will discuss.

Many questions can be asked around this topic. For example, whether *status quo* is only limited to possession or it extends beyond that. Another area to explore is the reason behind the courts’ opting for the use of the Latin jargon, instead of referring directly to possession or property rights. A further point that needs to be clarified is whether the order may encompass situations involving movables or, for example, a company’s functioning. Moreover, if the phrase *status quo* is given a wider scope, it remains to be seen if this can have negative repercussion in the administration of justice, as it may generate uncertainty as to which parties will be bound by it. Finally, another issue that needs to be addressed is whether there is any danger that the *status quo* order may be misused and lead to unfair practices.

¹‘status quo’ (*Merriam Webster*) <<https://www.merriam-webster.com/dictionary/status%20quo>> accessed 8 August 2018.

²‘the status quo’ (*Cambridge Dictionary*) <<https://dictionary.cambridge.org/dictionary/english/status-quo>> accessed 8 August 2018.

³Michelle Benson, *Status Quo Preferences and Disputes Short of War*, 33 *International Interactions* 271-288 (2007).

As will be shown later, the current practice surrounding this phrase shows that lawyers and parties can use it to circumvent and dodge legal requirements and even engage in malpractice. As an order which is used very frequently, this is a cause for concern which calls for judicial qualification of the scope of this phrase.

Using Latin phrases may show depth of reading and acumen, but this is not without risks: it may conceal lack of clarity regarding the exact scope of the expression used, under the guise of vocabulary. It is humbly submitted that this is exactly what happens with the phrase *status quo*, which confirms the need for its proper elaboration. This paper would like to be a contribution to its proper understanding and definition, for the purpose of its use in court.

A. Definition

The definition of this term can be taken from a judgment of the Sindh High Court where *status quo* was held to mean ‘same status with regard to title or possession of immovable property as existed on date of filing of suit was to be maintained’.⁴ Issuing an injunction, the court held that an order of injunction was a preventive remedy and the purpose of this order was to preserve the *status quo* of the matter of the suit, which was pending for determination. This shows that the *status quo* order may be issued by a judge to prevent any of the parties involved in a dispute from taking any action until the matter can be resolved. It seeks to prevent

⁴*Mst. Roshan Bano v Pakistan Defence Officers Housing Authority* 2016 PLD 445.

harm and to preserve the existing conditions, so that a party's position does not suffer prejudice until a solution is reached.⁵

Since this definition does seem to provide a clear understanding of what this phrase means when incorporated into an order by the court, one is left to wonder where the uncertainty referred to earlier, regarding its boundaries and applicability, lies. This is explored in the next part of this paper, where it will be shown that although the phrase works with a discerning definition its use by the courts does not clarify what is included within the scope of this term. The scope of the order seems to vary on a case to case basis and this muddles the legal operation of this phrase and consequently, its legal definition. It is important that clarity is achieved as this is a frequently used order which often works with valuable immovable property, whose legal sphere may be affected by acts coming from multiple sources. This can lead to great financial loss to parties involved and create unnecessary problems for those who choose to bring their matters to court. This can in turn act as a deterrent for the need to access courts in matters where they stand to be the most competent in dealing with the issue at hand.

B. Parties Bound by an Order to Maintain *Status Quo*

The effect of a *status quo* is capable of being far reaching. For example, in a judgment of Sindh High Court, titled as *UBL v*

⁵'Status Quo' (*US Legal*) <<https://definitions.uslegal.com/s/status-quo/>> accessed 8 August 2018.

Hyderabad Electronic Industries Ltd,⁶ it was held by the Court that any agreement and/or settlement agreement executed between judgment debtors, decree holder and third party, during attachment and operation of a *status quo* order was void and of no legal effect. This is evidence of the impact the application of the *status quo* can have. The effects of a *status quo* order, unlike what happens in many other areas of the law, are not confined to the parties between whom the *status quo* order is passed. This judgment shows the broad application of a court injunction directing *status quo* to be maintained, which can adversely affect a third party, which might be perhaps in good faith.

However, the Peshawar High Court, in *Aamir Masood Khan V Ellahi Bakhsh*⁷, apparently took a different and more restrictive stance. A situation arose where the *status quo* order was alleged to be violated by the decree holder and it was prayed that contempt proceedings be initiated. The action which was alleged to be the contempt and violation of the *status quo* order was that the decree holder applied for disconnection of natural gas and electricity connections and for demolition of a disputed house for construction thereon. It was held that the role of the decree holder was only to the extent of filing of application for demolition and disconnection, and he could not be held responsible for the actions taken by the Cantonment Board, Electricity and Gas Companies in respectively, demolishing the disputed house and disconnecting the connections. Thus, no contempt of court was committed by the decree holder by filing application which led to the disconnection of electricity and gas of the disputed house. The Court further held that the order of a competent court, interim or final, would be binding only once it was properly communicated to the concerned person. The *status quo* order passed by the Court was not communicated to the

⁶*UBL v Hyderabad Electronic Industries Ltd* 2017 CLD 1340.

⁷*Aamir Masood Khan V Ellahi Bakhsh* 2016 YLR 2269.

concerned authorities and therefore it did not meet the test for requiring the government official to refrain from proceeding in a particular matter. The Court further noted that a case of contempt could have been made out against Executive Officer Cantonment Board if a subsequent suit against demolition of disputed house had not been filed. This judgment makes it clear that the communication of the *status quo* order to the relevant parties is of vital importance. This is a first step in determining the scope of the *status quo* order. The parties against whom the *status quo* has not been ordered or to whom this order is not communicated are not liable to contempt of court if they act in a manner which is inconsistent with it. This means that the malpractice, of not disclosing the true address of the respondents and getting *status quo* order against them cannot get protection of the law through this definition. Furthermore, this judgment is important with regards to the aftermath of any alleged violations of the *status quo* order, as the chances of petitioners trying to pressurise the respondents through filing contempt proceedings is also minimised.

C. Limitations of the Scope of an Order to Maintain *Status Quo*

Usually the prayer of *status quo* is made through a miscellaneous application under Order 39 Rule 1 and 2 of the Code of Civil Procedure 1908⁸ read along with section 151 CPC. In *Dawood Baloch v Muhammad Saleem*,⁹ the Sindh High Court came across a matter involving a stay petition by a tenant regarding

⁸Hereinafter 'CPC'.

⁹*Dawood Baloch v Muhammad Saleem* 2017 YLR 1916.

eviction proceedings on the basis of a *status quo* order passed in the suit filed by him. The Honourable Court was of the stern view that Section 151 CPC was not applicable in the proceedings under Cantonments Rent Restriction Act, 1963. The reasoning was primarily based upon the observation that the proceedings before the Rent Controller were independent proceedings which were controlled by special law while proceedings before a civil Court were altogether different from the proceedings before the rent controller. Thus, this is a clear case where the Court had provided, although unintentionally, a device which can be considered to be a shield against the mischiefs of this *status quo* doctrine. The court had focused upon the provisions of the CPC as general law. Applying one of the basic rules of law which allows special law to prevail over general law, the court held that the *status quo* order passed in the civil suit was not helpful to seek stay of proceedings before the rent controller who was a creature of special law. This shows a further limitation of the operation of a stay order, however, it is not conclusive in ascertaining the exact scope of *status quo*.

Moving on to the risk of abuse of this concept by lawyers and the parties, it is important to refer to the case *TMK Sugar Mill (Pvt.) Ltd v Venus Chemicals (Pvt.) Ltd*,¹⁰ where the Sindh High Court had to address the abuse of the *status quo* order by the parties and its attorneys. No court can personally visit the disputed property due to which it relies upon the statements and affidavits of the parties. The affidavit attached along with the petition or the plaint contains the undertaking that whatever is stated in the plaint is true and best of the knowledge of the petitioner or the plaintiff. At times, this undertaking is also signed by the power of attorney holders as well. This creates a very vulnerable situation where the chances of abuse of the process of law becomes likely. The aforementioned

¹⁰ *TMK Sugar Mill (Pvt.) Ltd v Venus Chemicals (Pvt.) Ltd* 2017 MLD 366.

case involved a suit for specific performance of contract. Plaintiffs filed two suits for specific performance of asset purchase agreements claiming that the defendants, having sold out the suit property to them, had avoided to perform their part of contract and tried to interfere with their possession, whereupon, the Single Judge of the Honourable Sindh High Court, on injunction application, directed the parties to maintain *status quo*. However, on the later date of hearing, the respondents/defendants, denied the existence of said agreements and contended that the plaintiffs, under the garb of *status quo* order, had forcibly taken over the possession. The Judge presiding over the matter ordered a judicial inquiry report. On the basis of that judicial inquiry report, the truth was revealed and the judge handed over the possession of the property back to the defendants. This shows that in reference to the practical aspects, the court should always keep in mind the possibility and chances of malpractice and abuse of the process of law. Had circumstances not forced the applicants in this case to state otherwise, the property which was rightfully the defendants' would have been unjustly awarded to the petitioners.

In 2017, the Islamabad High Court gave an important judgment in a case titled *Nomad Art Gallery Center v CDA*.¹¹ In this case the trial Court issued notice and meanwhile granted an order to maintain *status quo* on the first date of hearing. Through this judgment the Court had a chance to clarify the extended scope of Court's power in cases involving contempt of the injunctive or *status quo* order:

(1) The court while granting injunctive relief had the jurisdiction to restore the possession of property in case the same was taken away in violation of the injunctive order (*status quo*);

¹¹2017 CLC 941.

(2) Trial Court could order *status quo* under its inherent jurisdiction under s. 151, C.P.C.

(3) Injunctive order passed by the Court was not operative unless other side against whom the order had been passed was served with the same or had knowledge of the *status quo* order.

(4) Trial Court had only jurisdiction to restore the possession if injunctive order had been violated and violation could only be attributed to the other side if it was aware of the same.

(5) High Court had *suo motu* revisional power to correct any illegality/jurisdictional error.

This judgment is important in three aspects. The first is that it shows that at times, *status quo* is an important remedy which the courts have to provide at the interim stage so that the aggrieved party does not suffer an irreparable loss. Second, the higher courts need to be vigilant about their honour and consider in detail any allegations regarding violation of *status quo* orders. If the *status quo* order is violated, there should be contempt proceedings.¹²

The Lahore High Court,¹³ came across a situation where the Lahore Development Authority (LDA) issued notification for acquisition of land of petitioners during pendency of *status quo* order. That notification (issued under s. 4 of Land Acquisition Act, 1894) was in defiance of a *status quo* order. However, the court observed that the Authority, after issuance of *status quo* order could have either moved for vacation of the same before the same court or could have approached the higher forum for recalling/setting aside

¹²The Supreme Court of Pakistan, while striking down the Contempt of Court Act 2012, clarified that Article 204(1) of the Constitution of Pakistan confers the power to punish a person who commits contempt only to the Supreme Court or to the High Courts. *Baz Muhammad Kakar v. Federation of Pakistan* PLD 2012 SC 923.

¹³*Mian Rafat Mehmood v Director General, LDA, Lahore* 2016 CLC 408.

thereof. Failure of the Authority in doing so and resorting to issue notification was a violation of an injunctive order issued by a court of law and hence was illegal, unlawful and void *ab initio*. This shows the severe impacts a *status quo* order can have on public bodies. Setting aside the usual leniency public bodies enjoy on the ground of public policy, the court explained that the far-reaching adverse effect of violation of *status quo* order may go as far as depriving an individual of their right as owner of the land without the due process of law. Linking the importance to abide such orders with its constitutional basis the Court provided it with additional legal strength. In the same case, the court held that the Constitution provided protection against compulsory acquisition of land without following due process of law which therefore amounted to misuse of power.

In *Sindh Board of Revenue Employees Co-Operative Housing Society v P.O. Sindh through Secretary to Government of Sindh Revenue Department*,¹⁴ the Sindh High Court came before a factual controversy between the parties which concerned demarcation of land. The matter required recording of evidence and thus could not be resolved through that constitutional petition. However, along with the direction to the parties to approach the revenue authorities to resolve the controversy the Court ordered that both the parties should maintain *status quo* over the subject site which would automatically lapse after a specified period. This is not unusual as there are numerous other judgments which evidence the same. However, in the same judgment the Court further clarified that the authority thus approached would be independent to determine question of *status quo*. This thus means that the authority was given an ad-hoc quasi-judicial role through this judgment. This

¹⁴*Sindh Board of Revenue Employees Co-Operative Housing Society v P.O. Sindh through Secretary to Government of Sindh Revenue Department* 2016 YLR 1699.

blurs the concept of *status quo* because an authority different from the issuing court was granted the power to determine the scope of *status quo* and stands in direct contradiction of the definition of an order of *status quo* provided by the Sindh high court, stated above.¹⁵

Additionally, in an important judgment of the Sindh High Court,¹⁶ it was categorically stated that the provision of Order 39, Rule 1 & 2 of the CPC 1908 was not meant for introduction of a new situation but the same was meant to preserve the interests and rights and to maintain status quo during pendency of the case. With regards to the injunction orders, the court was blunt and specific that there can be no injunction where 'irreparable loss/injury' was not established as it was the most important ingredients out of the three required, which are:

- a) A *prima facie* case in favour of the petitioner;
- b) Irreparable loss will be caused to the petitioner if injunction is not ordered;
- c) Balance of convenience/probabilities shall lie in favour of the petitioner.

Moreover, the Court stated that, '...interim injunction could be sought by the defendant when the plaintiff had intended to seek *status quo* during pendency of suit'. The Court explained that the prayer for interim injunction was required to be checked against the main relief which had been sought through pleadings. If the relief was not sought as the main one by the plaintiff, it could not be extended as interim injunction. Thus, the court admitted that it was bound to proceed within prescribed limits of law and grant of

¹⁵*Supra* note 3.

¹⁶*Gul Hassan Shah v Province of Sindh Through Secretary, Land Utilization Board of Revenue* 2016 YLR 35.

injunction is not arbitrary choice of the judge, but a systematic and formulistic approach is demanded from the presiding judge.

1. Limitations imposed by an order of *status quo*

In addition to the discussion regarding the types of actions forbidden or permitted for the purposes of determining the scope of the phrase ‘*status quo* to be maintained’, it is also of key importance to discuss which parties are bound by it and the law of limitation applying to it. *Status quo* order is better placed in suits or litigation involving immovable assets or property. It is clear from the above authorities and academic discussion that whenever a *status quo* order is made, then the person in possession and title shall retain such possession and title until the suit is disposed of, unless it automatically lapses after a period of time.¹⁷ Even if the possessor and title holder are two different people, the physical and legal situation remains the same i.e. both hold their respective titles. As far as the issue of which parties are bound by the order is concerned, the law is clear in the light of the above authorities that such order prevent the third party interests in the property, these rights often include rights in the lease, sale/alienation, mortgage, gift, will or any other similar disposal act, transferring the interest in the property under the Transfer of Property Act, 1882 (hereinafter ‘TPA’). Thus, such orders not only bind the parties to the litigation on the suit property, but also, to some extent, third parties. Third parties may be any party which may affect or get affected by the *status quo* order. In light of the principles identified so far, if a party to the litigation sells the suit property, the bona fide purchaser or purchaser with the notice of this may still be bound by it, as such a transaction is void.¹⁸

¹⁷*Sindh Board of Revenue Employees Co-Operative Housing Society v P.O. Sindh through Secretary to Government of Sindh* 2016 YLR 1699.

¹⁸*Nomad Art Gallery Center v CDA* 2017 CLC 941.

In addition to it, if the land Registrar or the revenue department who have tampered with the records had been notified of the *status quo* order issued by the High Court, they will be liable to contempt of court.¹⁹

After this conceptual analysis of the concept of *status quo*, it is now pertinent to discuss it specifically in the light of Order 39 of CPC. The court is duty bound to do justice and equity, it has to be extra cautious in such matters. The order of *status quo* or any other order under Order 39 must be assessed in the light of determination of ‘an arguable *prima facie* case in favour of the plaintiff’, ‘a balance of convenience in his favour’ and ‘suffering irreparable loss’, in case of denial of the injunction. The last condition of irreparable loss in case of denial of the injunction is similar to the equitable doctrine of ‘unconscionability’ in other Common law jurisdictions. The court must consider all three elements to be present if the order under this order has to be passed.²⁰

This has its own flaws. The principle that a *prima facie* case may be arguable in favour of the petitioner, seems to create uncertainty as yet there is no rule *per se* which can guide the clients and their lawyers to be sure if they can get a remedy under Order 39. This means that existing case law will help to see what precedent the courts may follow in factual circumstances. The assessment by the court of the factual reality is therefore important to make the test more practical.

¹⁹*UBL v Hyderabad Electronic Industries Ltd* 2017 CLD 1340.

²⁰*Gul Hassan Shah v Province of Sindh Through Secretary, Land Utilization Board of Revenue* 2016 YLR 35. It is submitted that the reason the courts in Pakistan follow strictly the three-step test is to avoid frivolous litigations and abuse of Order 39.

D. Temporary Injunctions and *Status Quo*

In addition to the above, an important question is to determine how orders to maintain *status quo* fit within the family of remedies called ‘temporary injunctions’. If in a dispute over property, ‘it is proved by affidavit or otherwise:

a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or

b) that the defendant threatens or intends to remove or dispose of his property with a view to defraud his creditors,

the Court may by order grant a temporary injunction to restrain such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal or disposition of the property as the Court thinks fit, until the disposal of the suit or until further orders’.²¹

From the wording of the Rule three basic notions can be derived. The first is that sub-paragraph a) looks at the property as being in danger of being wasted, damaged or alienated by any party of the suit, whereas sub-paragraph b) looks specifically at the defendant as a potential source of threat to the preservation of the suit property. These are two distinct ways of looking at the perils the property may incur, one more objective the other more subjective. This is reflected in the following part of the Rule, where it is clearly stated that Third, the order is either restraining in nature, or staying and preventing a temporary injunction may be issued to ‘restrain’ dispositive act, whereas any such order can be issued for the purpose of ‘staying and preventing’ removal, waste, damage, alienation or disposal of the suit property. The first part, which uses the word ‘acts’, may only refer to actions of a natural person, while the

²¹CPC Order XXXIX, Rule 1

second part appears inapplicable to natural persons and restricted to goods only. There can clearly be no confusion between the two concepts. Even referring to the laws of English language and interpretation of the words, one could reach the same conclusion. The similarity between the two words is that they are both verbs. The difference is that while prevent means primarily to stop or to keep something from happening,²² restrain applies indifferently to someone or something.²³

The next important analysis surrounds the word ‘staying’. The reason why this deserves separate analysis from ‘prevent and restrain’ is that this word is most commonly used in the legal sphere. What does stay mean? Is stay the same as *status quo*? The answer to this is that the two words have two different meanings. In a comprehensive way, the distinction between *status quo* and stay order is that the word *status quo* refers to the situation created by the order of the court, whereas the ‘stay order’ is directed towards an activity that needs to be discontinued. Therefore, even if *status quo* is imposed, this does not disentitle the directed person from the mesne profits or other profits from the property, whereas a ‘stay order’ may compel a person to stop an activity, if it is prejudicial to the suit property.²⁴

Another aspect worth mentioning is that section 52 of the TPA provides that if there is a pending litigation involving an alienable asset, it will be governed by the doctrine of *lis pendens*. In *Muhammad Younus v Ghazanfar Abbas*²⁵ the Lahore High Court

²²‘prevent’ (*Oxford Dictionary*) <<https://en.oxforddictionaries.com/definition/prevent>>.

²³‘restrain’ (*Oxford Dictionary*) <<https://en.oxforddictionaries.com/definition/restrain>>.

²⁴Avneesh Garg, *Meaning of Status Quo*, Indian Kanoon, <<http://lawrato.com>>.

²⁵ *Muhammad Younus v Ghazanfar Abbas* 2017 YLR 2229

said that documents prepared pending litigations ‘could neither be relied upon, nor considered’. In another case²⁶ the same Honourable Court stated that as the transferee had failed to prove his stance of *bona fide* purchaser, he had to ‘swim and sink with the original vendor’.

Notwithstanding the limitations imposed on the owner by a *status quo* order or under section 52 of the TPA, neither of them impedes peaceful enjoyment of the possession of property. The person who is enjoying the property would continue to do so and if he faces any interference with respect to this right he may sue the person who is causing this interference. An order to maintain *status quo* does not bar any of the rights of the property holder. It only impacts the right pertaining to transfer the property but putting it on hold until the conclusion of the suit. Therefore, if a court passes an order pertaining to maintenance of *status quo* with respect to a disputed property it means that the *status quo* is maintained only with respect to title and possession of the disputed property and nothing more should be extended in this respect.²⁷

Maintaining *status quo* is different from injunctions and stay orders where the court compels the person to do or restrain from doing any act, therefore the injunction and stay orders are right *in personam* and are directed towards a person only. Whereas the maintenance of *status quo* is towards the property and only restraint on a person is that he cannot alienate the property or create any third-party interests in the property.²⁸

This helps in constructing the definition of the word *status quo*. From the analysis conducted it is clear that the order of *status quo* is not ‘one word for all means and purposes’. It is applicable to

²⁶ *Asif Iqbal v Aman Ullah* 2017 YLR 2173.

²⁷ Garg, *supra* note 24.

²⁸ *Ibid.*.

the issue of possession and title. Other than that, it does not apply to mesne profits. In legal practice in Pakistan, judges and lawyers use the words 'stay order' and '*status quo*' interchangeably. The distinction made above between orders directed to the person and orders intended to keep the suit property free from danger, may help in correctly classifying the two remedies and bring clarity as to what is appropriate to ask from the court.

Conclusion

Courts in Pakistan have not yet come up with a comprehensive definition of *status quo* capable of encapsulating the exact meaning and boundaries of this order. Nevertheless, *status quo* orders are used every day with a frequency which few other legal orders come close to matching. The cases discussed above not only stand as examples of this but also provide evidence of the fact that the frequent use of an order to maintain *status quo* has failed to provide this device with proper boundaries or even clarification as to its exact area of operation. Concluding from all that is said above, the concept of *status quo* should be clarified and explained. With each passing day, a plethora of these orders are given by courts in Pakistan and with such uninhibited use of the phrase, it is losing its true essence. The law pertinent to this area is in a dire need of codification as such uncertainty and wrong use of the word will lead to further deterioration of relevant legal concepts. In addition to this, no legal concept which is of such frequent use, should be allowed to affect judicial decisions, while operating in such uncertainty.

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