



DIVINE INSTITUTE FOR JUDICIAL SERVICE

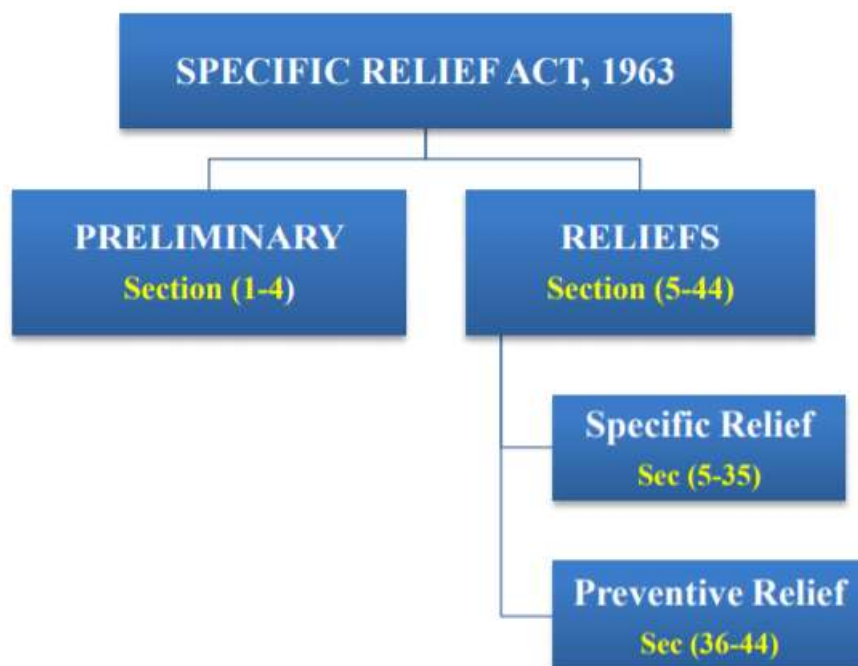


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INTRODUCTION



HISTORICAL BACKGROUND

The specific relief emanated from the equity courts in England. It was modeled on the draft New York civil code of 1862 and embodied in it. The act of 1877 was enacted which was not exhaustive. The law commission appointed by the President of India after advent of new constitution addressed itself to this task at its very first meeting. The recommendations of the commission were embodied in its ninth report which was forward to the government of India on 19th July 1958. On the recommendation of the law commission a bill was introduced in the parliament on 23rd December 1960 which lapsed on its dissolution. Again in 1962 the specific relief bill, 1962 was introduced in the parliament. The specific relief bill having been passed by both the houses of parliament received the assent of the president on 13th December, 1963. It came on the statute book as The Specific Relief Act, 1963. The Specific Relief Act, 1963 is an Act of the Parliament of India which provides remedies for persons whose civil or contractual rights have been violated.

The Specific Relief Act 1963 was enacted by the Parliament and it came into force on March 1, 1964. The present Specific Relief Act, 1963 is an amended form of the former Specific Relief Act 1877 which was repealed by Section 44 of the present Act. The Act has been modified,

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amended or changed or new provisions have been added. The Act was enacted in order to provide reliefs in cases relating to contracts, torts and other cases.

It comprises of initially Sections 1-44 (Sections 43 & 44 Repealed vide Repealing Act 1974 w.e.f. 20.12.1974) and divided into three parts and eight chapters. The present Act of 1963 replaces the old Act of 1877.

NATURE OF SPECIFIC RELIEF ACT

Laws fall into three categories.—

1. Those which define Rights.
2. Those which define Remedies.
3. Those which define Procedure.

The Law of Specific Relief belongs to the second category. It is a law which deals with Remedies'. The following kinds of remedies may be granted by a court under the provisions of the Specific Relief Act:

- Recovery of possession of property
- Specific performance of contracts
- Rectification of instruments
- Rescission of contracts
- Cancellation of Instruments
- Declaratory decrees
- Injunction

This shows how this act covers the remedial aspects of the law and comes into picture only when a legal right is violated, thus a branch of the procedural law. In the event of situation not covered under the 1963 Act, the Indian Courts can exercise their inherent powers in term of Sec. 151 of C.P.C.

NEED OF SPECIFIC RELIEF ACT

This legislation has been necessary because Indian Contract Act, 1872 provides only the relief of compensation in the case of breach of contract. It was found that there might be situations wherein grant of compensation would not afford adequate relief and only specific performance of the contract would render justice and provide adequate relief. Thus the approach of this act is that when a person has withdrawn himself from the performance of a particular promise or a contract with respect to another person, the other person so aggrieved is entitled to a relief under

Specific Relief Act, 1963 to enforce that specific contract. This Act is considered to be in one of the branches of the Indian Contracts Act, 1872.

The Specific Relief Act 1963 sets out the remedies available to parties whose contractual or civil rights have been hampered. The Act comes into play when an actual damage for non-performance of a contractual obligation cannot be measured or the monetary compensation would not suffice.

WHAT IS SPECIFIC PERFORMANCE OF THE CONTRACT

The specific performance is an equitable remedy in the law of contract, whereby a court issues an order requiring a party to perform a specific act i.e. it means performing the contract as per the terms and conditions agreed between the parties rather than payment of damages or compensation for the non performance of the contract.

For example, A agrees to sell a piece of land to B. B pays the agreed price, but A refuses to execute the transfer deed. B has the right to have the contract carried into effect by asking the court to compel A to perform the contract.

AS PER Austin – he has pointed out that morally speaking there is an obligation on each party to contract to fulfill the terms of the contract he has undertaken to perform, i.e., he ought to keep his word. If therefore he fails to fulfill his promise to the other party, that party should have-

1. The right to compel the specific performance thereof
2. A right to an injunction
3. Right of obtaining satisfaction in lieu of specific performance with compensation
4. Right of obtaining specific performance in part with satisfaction or compensation for the residue

Remedies under civil laws in india:

- (i) Those by which the suitor obtains the very thing which he is entitled and
- (ii) Those by which the suitor does not obtain the very thing but compensation for the loss of it.

The first is 'specific relief' and the second is 'compensatory relief'. Specific relief is the remedy which aims at the exact fulfillment of an obligation or the specific performance of the contract. It is in this sense distinguishable from the general remedy which gives pecuniary compensation only. Where the aggrieved party can be adequately compensated in money, he will get only a decree for damages and not the equitable remedy of specific performance. But where pecuniary compensation is no adequate relief for the non- performance of the contract, the specific