NOTES

The Specific Relief (Amendment) Act, 2018: A Paradigm Shift in Contract Enforcement

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The Specific Relief Act, 1963 underwent significant transformation through the 2018 Amendment. This amendment fundamentally altered the philosophy governing specific performance.

Before 2018, specific performance was an exceptional remedy. Courts granted it only when damages proved inadequate. The amendment reversed this approach entirely, making specific performance the rule rather than the exception.

The Core Philosophical Shift

Section 10 previously used the word **"may,"** granting courts wide discretion to refuse specific performance. *The amended Section 10 removes this discretionary language. Courts must now enforce contracts specifically, subject to limited statutory exceptions.*

This change reflects India's growing emphasis on contractual certainty and ease of doing business. Moreover, it aligns Indian contract enforcement with international commercial practices, where specific performance receives greater judicial deference.

Consequently, damages have become a secondary remedy rather than the primary judicial preference. This reversal significantly impacts how courts approach breach of contract cases, particularly in commercial and infrastructure disputes.

Refinement of Section 14 Restrictions

The 2018 Amendment substituted **Section 14** to realign it with a pro-enforcement philosophy. Most notably, *it deleted the historical bar against enforcing contracts where monetary damages were adequate.*

However, it retained strict exceptions for contracts involving personal skills, those that are determinable in nature, and those involving a continuous duty that a court cannot supervise.

While the court supervision bar remains law under **Section 14(b)** regarding ***the performance of the continuous duty***, modern judicial interpretation has narrowed its application.

Courts are increasingly willing to enforce complex contracts (like construction or infrastructure) if the terms are precisely defined, moving away from past reluctance by focusing on clear schedules rather than assuming an ongoing duty is automatically unsupervisable.

Introduction of Substituted Performance

Section 20 introduces an *entirely new remedy*: substituted performance. If a party fails to perform t*he contract, the aggrieved party may get it performed through a third party, recovering costs from the defaulting party.*

This provision requires *prior written notice of not less than thirty days before invoking substituted performance.* Importantly, once *substituted performance is elected, the aggrieved party cannot simultaneously claim specific performance for the same breach.*

Substituted performance offers commercial flexibility. It allows parties to mitigate losses quickly without waiting for lengthy litigation. However, it demands careful procedural compliance, particularly regarding the mandatory notice requirement.

Special Provisions for Infrastructure Projects

Sections 20A, 20B, and 20C represent landmark additions *targeting infrastructure development.* **Section 20A** *restricts courts from granting injunctions in contracts related to infrastructure projects specified in the Schedule,* where such injunctions would impede completion.

This provision balances private contractual rights against larger public interest in infrastructure development. Delayed projects affect economic growth, employment, and public welfare, justifying limitations on injunctive relief in specific circumstances.

Section 20B establishes *special courts* for infrastructure project disputes.

Section 20C mandates expeditious disposal of suits under the Act generally. Courts must resolve proceedings within twelve months from the date of service of summons. This provision tackles the broader problem of prolonged specific relief litigation.

Expert Opinion Under Section 14A

The amendment inserts **Section 14A**, *empowering courts to seek expert opinion on technical matters.* In any suit where the court considers it necessary to get specialised assistance on a specific issue, it may appoint one or more experts, direct them to report to the court, and secure their attendance for providing evidence.

This provision recognises that judges often lack technical expertise to assess complex engineering or construction disputes, thereby improving the quality and accuracy of judicial decisions in specialised commercial matters.

Amendments to Rescission Provisions

Section 21, which deals with awarding compensation in specific performance suits, *was amended by the 2018 Act to delete the phrase 'or in substitution of'.*

This crucial change effectively strips the court of its power to grant monetary compensation as a replacement or alternative to specific performance under this section.

Instead, *compensation can now only be claimed 'in addition to' specific performance.* This recalibration ensures absolute consistency with the broader statutory shift that establishes performance-oriented execution as the mandatory default right, rather than treating monetary compensation as a discretionary alternative.

Limiting Discretion Under Injunctions

The amendment also *revised provisions concerning injunctions,* particularly **Section 41,** *dealing with circumstances where injunctions cannot be granted.The amendment revised provisions concerning injunctions by inserting a crucial new clause,* ***Section 41(ha)****, into the Act.*

The addition of clause (ha) explicitly prohibits courts from granting an injunction in suits involving infrastructure projects if such relief would impede or delay the progress or completion of the project. These changes further reinforce the pro-enforcement philosophy underlying the entire amendment.

Courts now exercise injunctive powers more cautiously, especially concerning infrastructure and public utility contracts. This reflects legislative intent to prevent injunctions from stalling projects

of national economic importance.

Rationale Behind the Amendment

Recommendations from an expert committee headed by ***Anand Desai***, constituted by the ***Ministry of Law and Justice, directly informed the 2018 amendment.*** The committee identified rampant misuse of discretionary refusal by courts, which routinely awarded damages as a default instead of performance, causing immense commercial uncertainty and discouraging strict contractual compliance.

Furthermore, India's targeted focus on improving its ranking on the ***World Bank's Ease of Doing Business Index*** heavily motivated the reform. Contract enforcement metrics directly influenced this legislative overhaul, structurally connecting private law reform to broader macroeconomic policy objectives.

The Specific Relief (Amendment) Act, 2018 marks a decisive shift toward performance-oriented contract enforcement in India. It prioritises certainty, efficiency, and public interest, particularly within infrastructure development, reshaping remedies available under the Specific Relief Act, 1963

THE SPECIFIC RELIEF (AMENDMENT) ACT, 2018

A paradigm shift in Indian contract enforcement

THE CORE SHIFT

BEFORE 2018:

Specific performance was exceptional; courts often preferred damages when compensation appeared adequate.

AFTER 2018:

Section 10 makes specific performance the rule, subject to limited statutory exceptions. The reform prioritises contractual certainty, efficiency, and actual performance.

1. SECTION 10 – FROM "MAY" TO "MUST"

The earlier Section 10 gave courts broad discretion to refuse specific performance. The amended provision removes that discretionary language and makes specific enforcement the default.

PRACTICAL EFFECT:

Damages become a secondary remedy, especially in commercial and infrastructure disputes. The defendant must rely on a recognised statutory exception.

2. SECTION 14 – REFINED RESTRICTIONS

The amendment removed the historical bar based solely on the adequacy of monetary compensation. It retained restrictions for:

- Contracts involving personal skill or volition.
- Determinable contracts.
- Continuous duties that a court cannot supervise.

Modern interpretation narrows the supervision restriction. Precisely defined construction and infrastructure contracts may be enforced when clear schedules and terms make supervision workable.

3. SECTION 20 – SUBSTITUTED PERFORMANCE

When a party defaults, the aggrieved party may have the contract performed through a third party and recover the actual costs from the defaulting party.

PROCESS:

→ Give prior written notice of at least 30 days.
→ If the default continues, arrange substitute performance and recover the costs.

30 DAYS

Once substituted performance is elected and carried out, specific performance cannot also be claimed for the same breach. Commercial parties gain flexibility, but procedural compliance is essential.

4. INFRASTRUCTURE-FOCUSED PROVISIONS

1. **Section 20A** limits injunctions in scheduled infrastructure contracts when an injunction would impede completion.
2. **Section 20B** establishes special courts for infrastructure project disputes.
3. **Section 20C** requires suits under the Act to be disposed of expeditiously, generally within 12 months from service of summons.

Together, these provisions balance private contractual rights with economic growth, employment, and public welfare.

5. SECTION 14A – EXPERT ASSISTANCE

Courts may appoint one or more experts on technical issues, require written reports, and secure their attendance to give evidence. This supports better decisions in complex engineering, construction, and specialised commercial disputes.

6. COMPENSATION UNDER SECTION 21

The 2018 amendment deleted the phrase "or in substitution of". Under the supplied material, compensation may now be claimed in addition to specific performance, reinforcing the performance-oriented structure of the reform.

7. SECTION 14(ha) – CAUTIOUS INJUNCTIONS

Courts cannot grant an injunction in an infrastructure-project suit when it would impede or delay the project's progress or completion. The aim is to prevent litigation from stalling projects of national economic importance.

WHY THE REFORM? The reform responded to concerns about inconsistent refusals of specific performance, commercial uncertainty, weak contractual compliance, and the need to improve India's contract-enforcement climate and ease of doing business.

BOTTOM LINE: The 2018 Amendment shifts Indian contract law from damages-first discretion toward performance-oriented enforcement—with safeguards for public infrastructure and defined statutory exceptions.

Educational overview | Specific Relief (Amendment) Act, 2018

(Mind Map for CLAT PG Aspirants)