

## THE SPECIFIC RELIEF ACT, 1963

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## Introduction

- **History of Specific Relief Act, 1963-**

In India, the common law doctrine of equity had traditionally been followed even after it became independent in 1947. However it was in 1963 that the “Specific Relief Act” was passed by the Parliament of India following the recommendation of the Law Commission of India in its ninth report on the act, the specific relief bill 1962 was introduced in Lok Sabha in June 1962 and repealing the earlier “Specific Relief Act” of 1877.

- Developed in England by Equity Courts
- In England, before the invent of Specific Relief, the only remedy was that of ‘damages’ under which the party in breach need not to perform the promise
- Sometimes, the damages would prove to be insufficient
- So, in order to obviate such hardships, the Equity Court developed certain reliefs called ‘Specific Relief’
- Originally drafted upon the lines of the draft New York Civil Code, 1862
- passed in 1877
- Amended by Acts of 1882, 1891, 1899, 1929, 1940, 1951, and was repealed in 1963
- Embodies the doctrines evolved by the English Equity Courts
- Principles of Equity, Justice & Good Conscience
- Required to be pleaded specifically to be enforced
- 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.

- **Meaning of specific performance**

Laws fall into three categories.—

- Those which define Rights.
- Those which define Remedies.
- Those which define Procedure.

The Law of Specific Relief belongs to the second category. It is a law which deals with ‘Remedies’.

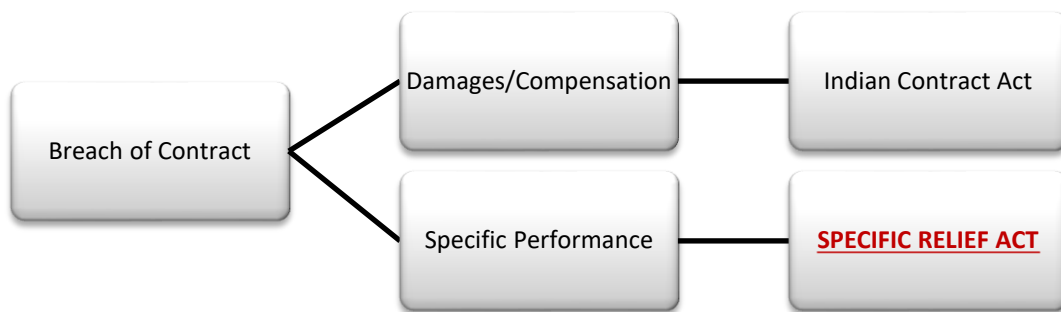
The expression Specific Relief means a relief in specie. It is a remedy which aims at exact fulfillment of an obligation. The suit under Specific Relief Act may be brought to compel the performance of the contract by the person in default. Such relief may be either positive or negative. It is positive when a claim to the performance of it and negative when it is desired to prevent the doing of thing enjoined or undertaken as not to be done.

The Specific Relief Act explains and enunciates the various reliefs which can be granted under its provisions, provides the law with respect to them. It provides for the exact fulfilment of the obligation or the specific performance of contract. It is directed to the obtaining of the very thing which a person is deprived of and ought to be entitled to ask for. It is a remedy by which party to a contract is compelled to do or omits the very acts which he has undertaken to do or omit. The remedies which has been administered by Civil Courts of Justice against any wrong or injury fall broadly into two classes,

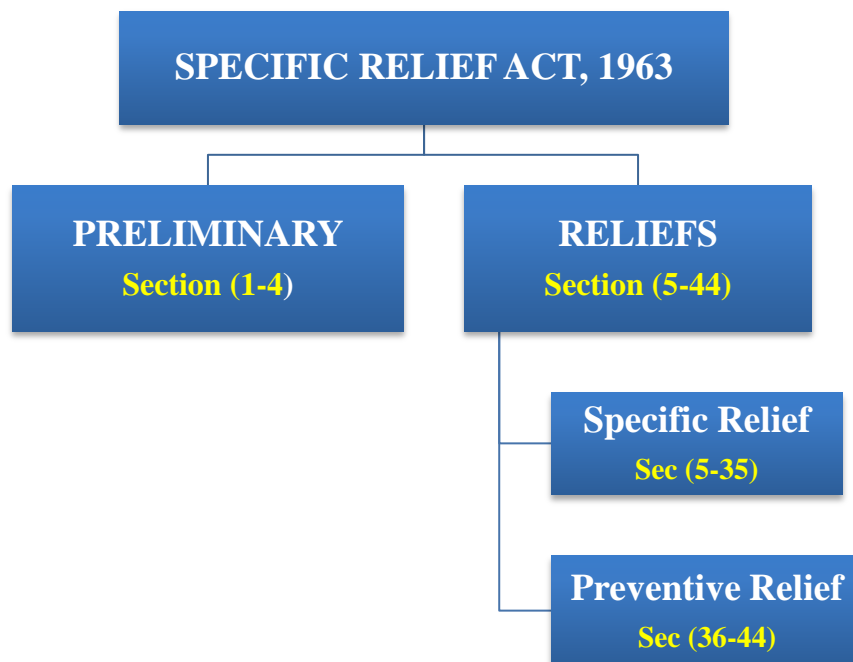
(i) those by which the suitor obtains the very thing to which he is entitled, and

(ii) those by which he obtains not that very thing, but compensation for the loss of it.

- The former is the specific relief. Thus specific relief is a remedy which aims at the exact fulfilment of an obligation. It is remedial when the court directs the specific performance of contract and protective when the court makes a declaration or grants an injunction.



- Remedies available under Specific Relief Act-



The Specific Relief Act, 1963 extends to the whole of India, except the State of Jammu and Kashmir. The Specific Relief Act deals only with certain kinds of equitable reliefs and these are now:

- Recovery of Possession of Property
- Specific Performance of Contract
- Rectification of Instrument
- Rescission of Contracts
- Cancellation of instruments
- Declaratory Decrees
- Injunctions

## Reliefs regarding possession of movable and immovable property

- **Immovable Property-**

**Section 5 of the Specific Relief Act deals with the recovery of specific immovable property.**

**Recovery of specific immovable property.**—*A person entitled to the possession of specific immovable property may recover it in the manner provided by the Code of Civil Procedure, 1908 (5 of 1908).*

The section in simple words provides that any person who is lawful owner of immovable property can get the possession of such property by due course of law. It means that when a person is entitled to the possession of specific immovable property he can recover the same by filing the suit as per provisions of CPC. He may file suit for ejectment on the strength of his title and can get a decree for ejectment on the basis of title within 12 years of the date of possession. Section 5 of the Act declares that in a suit for recovery of immovable property by person 'entitled to' provisions Order XXI, Rule 35 and 36 of CPC would apply.

There are three types of actions which can be brought in law for the recovery of specific immovable property:

- a) A suit based on title by ownership;
- b) A suit based on possessory title;
- c) A suit based merely on the previous possession of the plaintiff where he has been dispossessed without his consent otherwise than in due course of law.

The last remedy is provided in Section 6 of the Act. The suits of the first two types can be filed under the provisions of CPC.

The word 'entitled to possession' means having a legal right to title to possession on the basis of ownership of which the claimant has been dispossessed. Plaintiff must show that he had possession before the alleged trespasser got possession. In *Ismail Ariff v. Mohammed Ghouse*,

the Privy Council held, “the possession of the plaintiff was sufficient evidence a title of owner against the defendant by section 6 of the Specific Relief Act, 1962, if the plaintiff has been dispossessed otherwise than in due course of law.” there may be title by contract, and prescription or even by possession and the last will prevail where no preferable title is shown.

**Section 6 Suit by person dispossessed of immovable property.—**

1. *If any person is dispossessed without his consent of immovable property otherwise than in due course of law, he or any person claiming through him may, by suit, recover possession thereof, notwithstanding any other title that may be set up in such suit.*
2. *No suit under this section shall be brought—*
  - a. *after the expiry of six months from the date of dispossession; or*
  - b. *against the Government.*
3. *No appeal shall lie from any order or decree passed in any suit instituted under this section, nor shall any review of any such order or decree be allowed.*
4. *Nothing in this section shall bar any person from suing to establish his title to such property and to recover possession thereof.*

The main object of Section 6 is to discourage forcible dispossession on the principle that disputed rights are to be decided by due process of law and no one should be allowed to take law into his own hands, however good his title may be. Section 6 provides summary remedy through the medium of Civil Courts for the restoration of possession to a party dispossessed by another within 6 months of its dispossession leaving them to fight out the question of their respective title in a competent Court if they are so advised.

The object of this section appears to have been to give special remedy to the party illegally dispossessed by depriving the dispossessor of the privilege proving a better title to the land in dispute. Section 6 should be read as part of the Limitation Act and its object to put an additional restraint upon illegal dispossession with a view to prevent the applicant of that dispossession, from getting rid of the operation of the Act by his unlawful conduct. If the suit is brought within the period prescribed by that Section, even the right of the land is precluded from showing his title.

**Difference between section 5 and 6-**

	SECTION 5	SECTION 6
1.	The Claim is based on title	The claim is based on possession and no proof of title is required and even rightful owner may be precluded from showing his title to the land
2.	The period of limitation is 12 years	The period of limitation is only 6 months from the date of dispossession

- **Movable Property-**

**Section 7 - Recovery of specific movable property** —*A person entitled to the possession of specific movable property may recover it in the manner provided by the Code of Civil Procedure, 1908.*

*Explanation 1.—A trustee may sue under this section for the possession of movable property to the beneficial interest in which the person for whom he is trustee is entitled.*

*Explanation 2.—A special or temporary right to the present possession of movable property is sufficient to support a suit under this section.*

Property of every description except immovable property is movable property. Example: Government Securities, share certificates are movable property but not money. For application of the section it must be specific i.e. ascertained and ascertainable capable of being seized and delivered. The remedy of recovery of specific movable property means the property itself and not its equivalent.

Section 7 provides for the recovery of movable property in specie i.e. the things itself. The things to be recovered must be specific in the sense they are ascertained and capable of identification. The nature of things must continue without alteration.

Section 7 and 8 embody the English Rules as to detinue. An action in detinue would lie only for some specific article of movable property capable of being recovered in species and of being seized and delivered up to the party entitled. A person can seek recovery of his personal belongings under this section. The cases in which movable property can be recovered in specie



are given under Section 8. However if the goods have ceased to be recoverable the remedy lies in compensation .

Who can sue under Sec 7-

To succeed under this section it is sufficient if the plaintiff seeking possession has a right to present or immediate possession or by way of special or temporary right to present possession i.e. of a bailee, Pawnee, finder of lost goods. A trustee can sue under this section possession of movable property to protect the beneficial interest of the beneficiary and it is not necessary to make the beneficiaries, parties to the suit.

## **Specific performance of contract**

(Sections 10, 14, 15, 16)

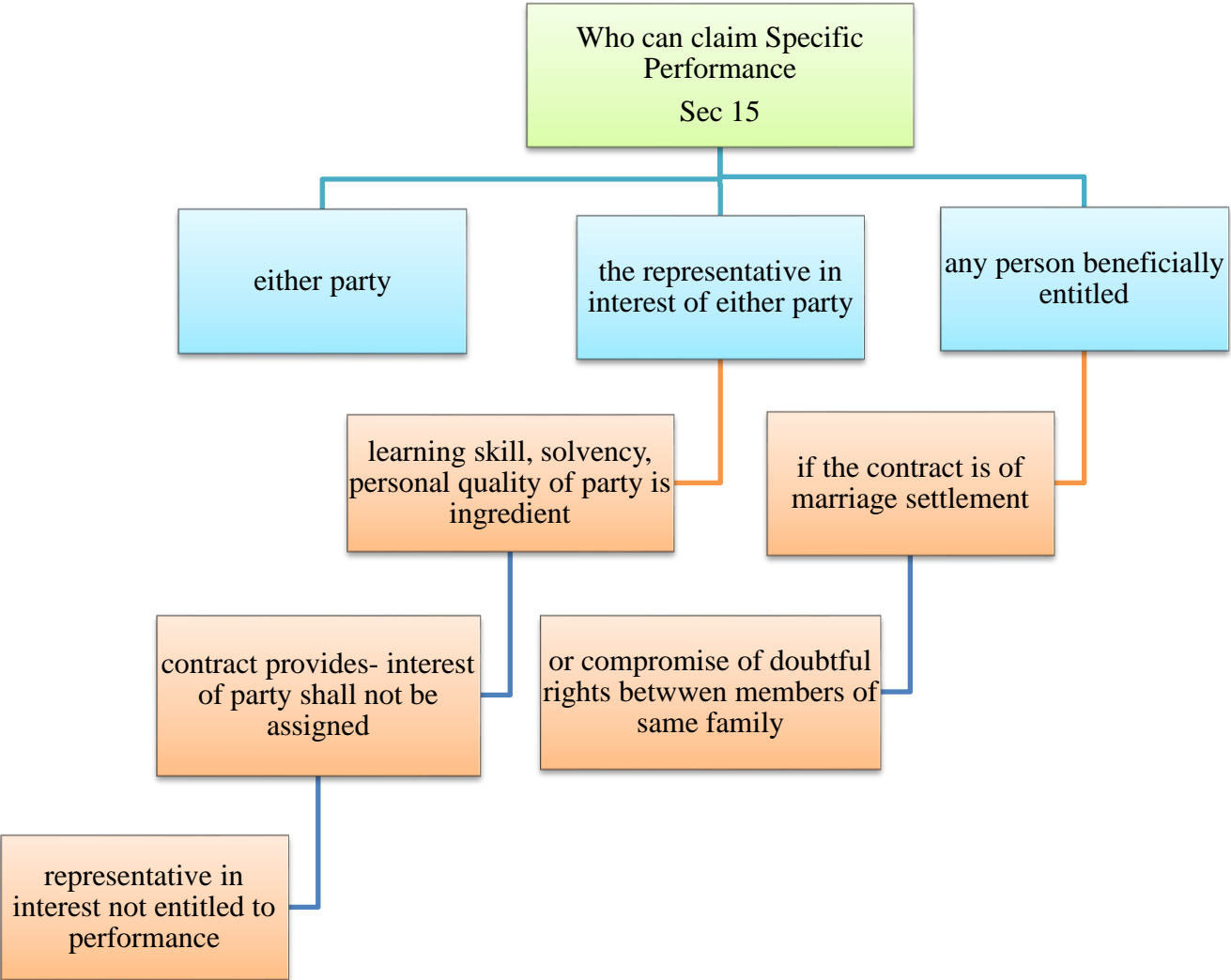
Q1- When can the Specific Performance be awarded? Sec 10

Q2- When can the remedy of specific performance not be awarded? Sec 14

Q3- Who can claim Specific Performance? Sec 15

Q4- Who cannot claim Specific Performance?- Sec 16

Q5- Against whom can the Specific Performance be claimed? Sec 19



When can the remedy of specific performance not be awarded

1963 Act	2018 Amendment Act
The remedy of performance available at court's discretion.	Now it is mandatory for the court to grant specific performance
It is to be granted only when- a- the actual damage caused due to the non-performance of the action could not be ascertained b- monetary compensation would not be adequate relief for the non-performance of contract.	It can be rejected only when it is so barred by the provisions of the Act under Sec. 14 and Sect. 16.

As per amended Sec 14 following are the grounds on which specific performance is not granted-

To state that the following categories of contracts **cannot be specifically enforced**:

- (i) where an aggrieved party has obtained **substituted performance** of the contract
- (ii) where the contract involves performance of a **continuous duty** which cannot be supervised by the court;

**Joseph v. National Magazine Co Ltd. [1958]**

A writer refused to have his name published as the author which had been re-edited and altered by a magazine expressing other opinions in a different style. He was not entitled to specific performance of his contract as that would require supervision by the court of editing the article though he would be entitled to damages for loss of opportunity of enhancing his reputation.

Example: Where A contracts to render personal service to B or contracts to employ B on personal service or being an author contracts with B, a publisher to complete a literary work, B cannot enforce specific performance to these contracts.

- (iii) where the contract is dependent **on personal qualifications** of an individual;

Example: The principle applies equally where the employer seeks to enforce the contract. Even if a person has contracted with another to perform a service and there is consideration for such service in the shape of liquidation of debt or even remuneration he cannot be forced by compulsion of law to continue to perform such service as that would be forced labour within inhibition of Article 23 of the Constitution of India.

(iv) the contract is **determinable** by its nature.

Example: Where A and B contract to become partners in a certain business the contract not specifying the duration of the proposed partnership, the contract cannot be specifically performed for if it were so performed either A or B might at once dissolve the partnership.

*Substituted performance-* the concept has been introduced for the first time by the 2018 Amendment Act. Section 20 of the SRA now permits a party suffering from a breach of contract, to have the contract performed by a third-party or through its agent and recover the costs and expenses incurred in substituting such performance, from the defaulting party (unless agreed otherwise under the contract).

As per sec 16 specific performance of a contract cannot be enforced in favour of a person or be claimed by a person—

(a) who has obtained substituted performance of contract under section 20;

(b) who has become incapable of performing,

(c) who has violated any essential term of, the contract that on his part remains to be performed

(d) who has acted in fraud of the contract, or willfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or

(e) who has failed to prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms of the performance of which have been prevented or waived by the defendant.

Hence, Specific performance of contract is to be granted on all grounds except when covered by the aforementioned grounds.

## Part performance of contract-

The general rule is that the court shall not direct specific performance of part of the contract except in following case-

Part not performed forms a <u>small portion</u> of the whole contract		
<p><b>Either party</b> may obtain specific performance</p>	<p>If the defaulting party admits of compensation in money</p>	<p>court may allow performance so far as possible and award compensation for the remaining portion.</p>
Part not performed forms a <u>large portion</u> of the whole contract		
<p>The <b>defaulting party</b> is not entitled to obtain a decree for specific performance whether or not he admits of compensation in money.</p>		
<p>The <b>other party may</b> institute a suit for specific performance</p>		
<p>Where the defaulting party admits to compensation in money</p>	<p>The court may direct the party in default to perform specifically so much of his part of the contract as he can Perform</p>	<p>And require the other party –</p> <ul style="list-style-type: none"> <li>• to pay the agreed consideration for the whole of the contract reduced by the consideration for the part which must be left unperformed</li> <li>• relinquishes all claims to the performance of the remaining part of the contract</li> <li>• relinquish all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default</li> </ul>
<p>Where the defaulting party does not admit to compensation in money</p>	<p>The court may direct the party in default to perform specifically so much of his part of the contract as he can Perform</p>	<p>And require the other party to-</p> <ul style="list-style-type: none"> <li>• pay the consideration for the whole of the contract without any abatement</li> <li>• relinquishes all claims to the performance of the remaining part of the contract</li> <li>• relinquish all right to compensation, either for the deficiency or for the loss or damage sustained by him through the default</li> </ul>
Part which cannot be performed is <u>separate and independent</u> from the other part (contract is divisible) - The court can direct performance of the part which can be performed.		

## Defenses

Sec 9 of the Specific Relief Act, 1963 provides for the defences against specific performance of contracts. It states that, where any relief is claimed under this Chapter in respect of a contract, the person against whom the relief is claimed may plead by way of defence any ground which is available to him under any law relating to contracts. For enforcement of specific performance of a contract, there must be a valid contract. Consequently, the remedy of specific performance cannot be granted if the contract is void or illegal, e.g. A minor's agreement is void as a minor is not competent to contract. Therefore, it can-not be specifically enforced.

The defendant may take the defence that the remedy claimed should not be granted on the following grounds:

- Invalidity of contract
- sufficiency of compensation
- discretion of the Court

## Rectification

Sec. 26 provides that a contract or any other instrument may be rectified when it does not express the real intention of the parties because of any fraud or mutual mistake of the parties. Rectification consists in bringing the document in conformity with the actual or prior agreement. The essentials of application of rule of rectification are-

- a) There must have been a genuine agreement different from the expressed agreement.
- b) It was through fraud or mutual mistake between the parties that the contract in question did not express truly the intention of the parties.
- c) A unilateral mistake will not afford relief for rectification of instrument.
- d) The court has to determine the intention of the parties with regard to meaning and legal consequences of the instrument.

It is discretionary for the court to grant the relief of rectification.

## Rescission

Sections 27-30 of SRA provide the remedy of rescission. Rescission, i.e. revocation or abrogation of contract is the mode by which a contract may be discharged, and as such relief of rescission is the opposite of relief of specific performance. According to Section 27, a contract may be rescinded on following grounds-

1- Where the *contract is voidable* or terminable by the plaintiff.

Contract is voidable when it falls under the ambit of Sec 19, 19 A, 39, 53 and 55 of the Indian Contract Act.

2- Where the *contract is unlawful* for causes not apparent on its face and the defendant is more to blame than the plaintiff.

### **Limitation to the right of rescission-**

The right of rescission is subject to the following limitations. In such situations the law may not permit the exercise of the right of rescission-

(a) the contract has been expressly or impliedly ratified by the plaintiff

(b) the parties cannot be substantially restored to the position in which they stood when the contract was made where due to the change of circumstances which has taken place since the making of the contract (however not due to any act of the defendant himself),

(c) third parties have acquired rights in good faith without notice and for value

(d) only a part of the contract is sought to be rescinded and such part is not severable from the rest of the contract.

Where a suit for specific performance of contract is decreed and purchaser does not pay the purchase money which the court has ordered him to pay, the vendor may apply in same suit to have contract rescinded and court may rescind the contract and may direct:-

- Restoration of possession;
- Refund of earnest money and other profits;
- Restore any benefits received;



- To give compensation.

Principle of unjust enrichment- On adjudging the rescission of a contract, the court may require the party to whom such relief is granted to restore, so far as may be, any benefit which he may have received from the other party and to make any compensation to him which justice may require.

### **Cancellation**

Sec 31 to 33 of SRA deals with cancellation. Following conditions need to be satisfied to have an instrument cancelled-

- 1- The provisions are applicable to any instrument (includes contract, will etc.)
- 2- Any person can have the instrument cancelled if the instrument is void or voidable against him and who has reasonable apprehension that such instrument if left outstanding may cause him serious injury.
- 3- Ordering cancellation is discretion of the.
- 4- If the instrument has been registered the court shall also send a copy of its decree to registration office.
- 5- The instrument can be cancelled partially.
- 6- The court may direct plaintiff to restore benefits taken or grant compensation to defendant.

## **Declaration**

If any person entitled to any legal character, or to any rights as to any property is denied by another and if any suit is filed by the person so denied it is called a declaratory suit. A Declaratory decree is a binding declaration of right in equity without consequential relief. In simple terms, a declaratory decree is one which settles the right and removes the confusion of the status of the party.

Provision regarding declaratory decree has been provided in sections 34 and 35 of the Specific Relief Act, 1963.

Section 34-

*“Any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any further relief:*

*Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.*

*Explanation: A trustee of property is a "person interested to deny "a title adverse to the title of someone who is not in existence, and for whom, if in existence, he would be a trustee”*

### **Essentials of a declaratory suit**

- The person filing the suit must be entitled to legal right or any right as to any property
- The person against whom the suit is to be filed must actually be denying the right or is interested in denying the right of the plaintiff
- Passing a declaratory decree is on the discretion of the court.

### **Effect of declaration**

The provision for the effect of declaration has been provided under section 35 of Specific Relief Act. Section 35 reads as:

“A declaration made under this Chapter is binding only on the parties to the suit, persons claiming through them respectively, and, where any of the parties are trustees, on the persons for whom, if in existence at the date of declaration, such parties would be trustees.”

That means a declaratory decree is binding only on the parties to the suit and upon the representatives of the parties to the suit. So, declaratory decree is “in personam” and not “in rem”.

So a declaratory decree is one which resolves the legal uncertainty of the rights and status of the parties. However, passing of a declaratory decree is a matter of discretion of court and it cannot be claimed a right.

Section 34 of the Specific Relief Act also provides that any person entitled to any legal character may institute a suit for declaration and the court may in its discretion make a declaration that he is so entitled and the plaintiff in such a suit need not ask any further relief.

The power of the civil court to issue declaratory decrees in exercise of power under Section 34 Specific Relief Act is not exhaustive and the civil court has power to grant further declaratory decrees independently of the requirements provided under Section 34 of the Specific Relief Act.

Discretion of court as to declaration of status or right: According to section 42 of the S.R Act any person entitled to any legal character, or to any rights as to any property may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, the plaintiff need not in such suit ask for any further relief.

**Bar to such declaration-** Provided that no court shall make any such declaration where the plaintiff, being able to seek further relief than a mere declaration of title, omits to do so.

Illustration: A is in possession of certain property. B alleging that he is the owner of the property requires A to deliver it to him. A may obtain a declaration of his right to whole the property.

## Injunction

There can be cases where the nature of the contract does not allow damages to likely serve any purpose nor admit to specific performance. In such cases, the court may have to restrain the party who threatens the breach, to the possible extent. When he is prevented from resorting to other openings, it may exert some pressure upon his mind and he may be persuaded to go ahead with the performance of his contract. This type of remedy is known as preventive relief. This is granted by issuing an order known as injunction.

Injunction is a form of specific relief which the court grant when the pecuniary compensation would be inadequate or altogether futile. Injunction is an order or decree by which a party to an action is required to do or refrain from doing a particular act or thing.

An injunction has 3 characteristics-

- a) It is a judicial process
- b) The object attained thereby is restraint or prevention and in some cases of doing certain acts
- c) The thing restrained or prevented is a wrongful act.

Specific Relief Act, 1963 makes provision for Perpetual injunction (Sec 38) and Mandatory injunctions (Sec. 39), while temporary injunction is granted under the Civil Procedure Code, 1908.

### ❖ **Temporary injunction-**

Temporary injunctions are those which remain in force until specified time or till date of next hearing of the case, or until further orders of the court. Such injunctions can be granted at any stage of the suit and are governed by Order 39 of the Code of Civil Procedure, 1908 and not by Specific Relief Act, 1963.

### **Gujarat Bottling Co. Ltd. vs. Coca Cola Company [1995(5) SCC 545]**

The object of the interlocutory injunction is to protect the plaintiff against injury by violation of his right for which he could not be adequately compensated in damages recoverable in the action if the uncertainty were resolved in his favour at the trial.

### ❖ **Permanent injunction-**

Section 37(2) of the Specific Relief Act, 1963 lays down that a permanent injunction can only be granted by a decree at the hearing and upon the merits of the case. Thus, for obtaining a permanent injunction, a regular suit is to be filed in which the right claimed is examined upon merits and finally, the injunction is granted by means of judgement. A permanent injunction therefore finally decides the rights of a person whereas a temporary injunction does not do so. A permanent injunction completely forbids the defendant to assert a right which would be contrary to the rights of the plaintiff.

Section 38 of the Specific Relief Act, 1963 specifies certain circumstances under which permanent injunction may be granted by the court:

- **Where the defendant is a trustee of the property for the plaintiff.**

Where there exists no measure to ascertain the loss or actual damage caused. For example, 'A' pollutes the air with smoke so as to interfere with the physical comfort of Band C, who carries on business in the neighbourhood. 'B' and 'C' may sue for an injunction to restrain 'A' from polluting the air.

- **Where the invasion is such that compensation in terms of money is not an adequate relief.**

For example, 'A' a professor deliver lectures to his students, being his own literature composition he does not communicate them to the whole world. These lectures are the property of the professor and he is entitled to restrain the students from publishing without his contents.

- **Where it is necessary to prevent a multiplicity of judicial proceedings.**

### **Requirements of Applicability**

The conditions pre-requisite for the application of this section are-

- There must be an expressed or implied legal right in favour of the plaintiff;
- Such a right must be violated or there should be a threatened invasion;
- Such right must be an existing one;

- It should fall within the sphere of restraining provisions (referred to in section 41 of the specific relief act).

### Illustrations-

- 'A' lets certain land to 'B' and 'B' contracts not to dig sand and gravel. 'A' may sue for an injunction to refrain 'B' from digging in violation of the contract.
- Where the directors of the company are about to pay a dividend out of capital. Any of the shareholders may sue for an injunction to restrain them.

Section 38 expressly states that where an obligation arises from contract, the court shall be guided by the rules and principles given in connection with the specific performance of contracts. Thus, a perpetual injunction will be granted to prevent a breach of contract only in those cases where the contract is capable of specific performance (section 41(e)).

However, section 42 says that where a contract compromise of a positive agreement to do something and negative agreement not to do a certain act, whether expressly or impliedly, the fact that positive part is not capable of specific performance will not prevent the court from enforcing the negative part by means of an injunction.

The crux of this section is that where an agreement contains both affirmative and negative agreement, the court may enforce the negative agreement if a positive agreement is incapable of specific performance and may restrain a party from committing a breach of the negative part.

Temporary injunction	Perpetual injunction
For a specified time and may be granted at any point during the suit.	By the decree of the court, by the examination merits of the case.
Order 39 (Rules 1 to 5) of CPC governs temporary injunctions.	Sections 38 to 42 of SRA governs perpetual Injunctions.
Is non-conclusive and short run.	Is Final, Conclusive and Long Run.
May only focus on the Plaintiff's side.	Focuses on the Plaintiff as well as the Defendant.

May be revoked by the court	Is non-revocable by the court, though appealable
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### ❖ **Mandatory injunction-**

A mandatory injunction is defined by Salmond as “*an order requiring the defendant to do some positive act for the purpose of putting an end to a wrongful state of things created by him, or otherwise in the fulfilment of his legal obligations.*”

Section 39 of the Specific Relief Act, 1963 prescribes that, “*When to prevent breach of an obligation it is necessary to compel the performance of certain acts which the court is capable of enforcing, the court may in its discretion grant an injunction to prevent the breach complained of, and also compel the performance of requisite acts.*”

The object of a mandatory injunction is to restore him to the original condition and not create a new state of things. It is a most exceptional remedy and one which is never to be applied except with the greatest safeguard for the prevention of waste, as well as injustice.

In granting a mandatory injunction under the Specific Relief Act two elements have to be taken into consideration.

- First, the Court has to determine what acts are necessary in order to prevent a breach of the obligation.
- Secondly, the requisite acts must be such as the Court is capable of enforcing. In a suit for mandatory injunction it is necessary to prove special injury or substantial damage.

Before a suit for mandatory injunction can be filed, there must be an obligation on the part of the defendant to perform certain acts, whether it is not alleged that other party has committed a breach of an obligation on his part as the case is merely one of trespass, the plaintiff's remedy to file a suit for possession of the land and a suit for mandatory injunction cannot be filed without suing for possession of the land.

The obligation must be a legal obligation and not a mere moral duty.

## **Dorab Cawasji Warden vs. Coomi Sorab Warden [AIR 1990 S.C.867]**

The guidelines for interim mandatory injunctions are laid down -

1. The plaintiff has a strong case for trial. That is, it shall be of a higher standard than a prima facie case that is normally required for a prohibitory injunction.
2. It is necessary to prevent irreparable or serious injury which normally cannot be compensated in terms of money.
3. The balance of convenience is in favour of the one seeking such relief.

### **❖ Sec. 41 lays down cases where the injunction when cannot be granted -**

An injunction cannot be granted -

- (a) to restrain any person from prosecuting a judicial proceeding at the institution of the suit, in which injunction is sought, unless restraint is necessary to prevent multiplicity of proceeding.
- (b) to restrain any person from instituting or prosecuting any proceeding in a Court not subordinate to that, from which injunction is sought.
- (c) to restrain any person from applying to any legislative body,
- (d) to restrain any person from instituting or prosecuting any proceeding in a criminal matter,
- (e) to prevent the breach of a contract the performance of which could not be specifically enforced.
- (f) to prevent on the ground of nuisance, and act of which it is not reasonably clear that it will be a nuisance.
- (g) to prevent a continuing breach in which the plaintiff has acquiesced
- (h) when equally efficacious relief can be certainly be obtained by any other usual mode of proceeding except in case of breach of trust, when conduct of the plaintiff or his agents has been such as to disentitle him to the assistance of the Court.
- (i) when the plaintiff has no personal interest in the matter.