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# ABSTRACT

*The aggrieved party has a legal right to sue when a contract has been breached. The party might seek damages through an injunction, which is a remedy available under the Indian Contract Act, 1872 for such a violation. Injunctions are also expanded in Part III, Chapter VII, and VIII of the Specific Relief Act, 1963, from S. 36[1] to S. 42[2].*

*The major subject we will address in this paper is the many forms of injunctions and when they are granted and when they are denied. Permanent, mandatory, and temporary injunctions are the primary categories. The primary goal of an injunction given against an individual is to maintain the status quo as it was at the start of the proceedings and to guarantee that it does not alter before the legal procedures against that individual are completed. A type of legal protection is given to a party to safeguard them from future damage.*

*Further, the research will examine Damages instead of or in addition to injunction and injunction to perform a negative covenant with case laws to keep a check of relevance on practical life.*

*This paper's main motive is to explain to the readers about the significance of the remedy granted under the Indian Contract Act, 1963 for injunctions and also the loopholes of the previous Act, though the amendment Act has covered a lot of gaps for bringing a change in ease of business and enforceability of contracts still there is a lot to come the way.*

*Last but not least the paper will talk about the critical analysis of the topic and probable solutionswith an appropriate conclusion so that the readers get a complete idea of the topic for future referenceand opinion of the author.*

KEY WORDS – Injunctions, Remedy, Aggrieved, Damages, Negative Covenant.

[1] S. 36, Specific Relief Act, 1963.
[2] S. 42, Specific Relief Act, 1963.

# INTRODUCTION

The most basic ideology in which the whole contract law revolves is 'CONTRACT' which means an agreement enforceable by law. All the readers have a basic idea while reading this paper that how a contract is formed, through the offer, acceptance, promise, consideration, competence, agreement, and lastly enforceability by law which finally makes a contract to be established.

When a contract is formed there can be a breach of contract as well. When there is abreach of contract there is a party liable for it and similarly an aggrieved party who suffers loss and damage. For the suffering party, there are certain provisions under the Indian Contract Law that are known as remedies. Remedies are of various types –

1. Recession of the contract.
2. Suit for damages.
3. Suit upon quantum meruit.
4. Suit for specific performance.
5. Suit for an injunction.

This paper examines about how an injunction is granted and on what grounds it is refused, given under the Specific Relief Act, 1963. Injunctions are defined by Black's Law Dictionary as *a court order commanding or preventing an action. To get an injunction, the complainant must show that there is no plain, adequate, and complete remedy at law and that an irreparable injury will result unless the relief is granted*[3]. Further, a more detailed description of the topic will be covering the research paper. Lastly, the paper will leave the readers with a probable analysis of the topic and solutions for the loopholes in the Act, for future reference and relevance they can draw in practical life.

[3] Black's Law Dictionary, Edn. 10, 2014, Bryan A. Garner.

# LITERATURE REVIEW

## ➢ JOURNAL ARTICLES-

**"M.H. Matthews, 1988, Injunctions, Interim Relief and Proceedings Against Crown Servants"[4]**

- The journal examines the lack of injunctive redress available to citizens who have been wronged by English Crown law has long been seen as a void.
- The journal further suggested that public law remedies introduced in 1972, such as injunctions for judicial review prerogative orders, could have closed the gap, it seems to have been unaffected.
- The journal adds that it was previously considered that injunctions were not possible against Crown servants, even if they were able to argue their case.
- The journal states that on the other hand, In English law, the position is currently governed by Crown Proceeding.

**"Injunctions. Nature and Scope of Remedy. Perpetual Injunction after Long Possession"[5] -**

- The journal studies the concept of injunction in various parts of the law, like, it studies injunctionas jurisdiction of courts, federal and state courts through the writ of Habeas Corpus.
- The journal also examines the nature and scope of remedy available in the concept of Injunction and perpetual injunction after long possession.
- The journal cites foreign judgments and mentions the equitable decree as a cause of action in another state. The journal further talks about the Municipal Corporations and franchises and the permits granted to a private person to operate a spur track.

[4] M.H. Matthews, 1988, *Injunctions, Interim Relief and Proceedings Against Crown Servants*, published by Oxford University Press, Vol. 8, No. 1, pp. 154-168, ISSN - 1460-2083, available at https://www.jstor.org/stable/764418.
[5] 1908, *Injunctions. Nature and Scope of Remedy. Perpetual Injunction after Long Possession*, published by the Harvard Law Review Association, Vol. no. 21, pp. 220-221, ISSN - 0017-811X, available at https://www.jstor.org/stable/1324891.

**"Richard P. Rozek, Economic Analysis of the risks associated with Seeking a Preliminary Injunction"[6] –**

- The paper examines that in a patent dispute concerning pharmaceutical technology, one issue that may come up for both the plaintiff and the defendant is the potential hazards connected with marketing an allegedly infringing product before the dispute being decided. This is something that can be a problem for both parties.
- Secondly, Plaintiffs can seek preliminary injunctions. Before granting an injunction, the facts must be analyzed. This paper discusses the economic components of such an approach, including establishing whether the plaintiff would suffer irreparable loss without an injunction, measuring the balance of harms to both the plaintiff and the defendant, and determining whether an injunction serves the public interest.

**"Jay Coniston, Seeking a Preliminary Injunction"[7] –**

- The author mentions that preliminary injunctions are frequently requested in franchise lawsuits. Numerous situations repeat.
- The author further defines that preliminary injunction can be sought by franchisors to prevent the termination of a franchise, by franchisees to prevent the continued use of trademarks and other property by a terminated franchisee, and by businesses to prevent the violation of a covenant not to compete or the misappropriation of trade secrets.
- The journal gives an overview of preliminary injunction practice provided in this article.

**"Douglas Rendleman, How to Enforce an Injunction"[8] –**

- The journal states that neither an injunction nor a judgment marks the conclusion of an equity case. The money judgment or injunction must still be paid or obeyed by the defendant.

[6] Richard P. Rozek, 2016, *Economic Analysis of the risks associated with Seeking a Preliminary Injunction*, published by the Cambridge University Press, Vol. no. 7, pp. 206-212, ISSN – 0768-2352, available at https://www.jstor.org/stable/24770010.
[7] Jay Conison, 1993, *Seeking a Preliminary Injunction*, published by American Bar Association, Vol. no. 12, pp. 125-128, ISSN - 0747-0088, available at https://www.jstor.org/stable/29541569.
[8] Douglas Rendleman, 1983, *How to Enforce an Injunction*, published by American Bar Association, Vol. no. 10, pp. 23-24, 52-53, ISSN - 0747-0088, available at https://www.jstor.org/stable/29758835.

- The journal also examines the problem that even when the injunction is lifted, the defendant's rebellious nature may resurface. The most fundamental methods of enforcing money judgements are well-known to most lawyers. What about injunctions, though?
- The journal also states contempt of court was among the most flexible means of enforcing an injunction. It allows for a wide range of remedies that can be used by imaginative attorneys and judges.
- The purpose of this journal was that diligent lawyers need to be aware of the dangers that come with its authority. This article explains how to use contempt to enforce injunctions, and the best place to start is with the injunction itself.

➢ **BOOKS –**

**"Avtar Singh, 2017, Law of Contract and Special Relief Act[9]" –**

- The author has provided with a detailed view on what basically injunction is what are the types of injunctions, when an injunction is granted and refused, about the limitations provided for an remedy to be granted and also what type of injunction will be granted on what applicable situation. Also, the author has elaborated about the significance of injunctions and recent amendment Act of Specific Relief Act, 2018.
- The author has also described about injunctions under the Specific Relief Act, 1963, and the Indian Contract Act, 1872. He has also elucidated about temporary and permanent injunctions (S. 36, 37)[10], permanent injunctions (S. 38)[11], mandatory injunctions (S. 39)[12], a perpetual injunction (S.38),[13] and on what ground each of them is granted and refused.
- The author states that when there is a breach of contract then one has the right to grant a remedy and specifically talks about the importance of injunctions. He talks about Damages instead of in addition to an injunction (S. 40)[14], perpetual injunctions when refused (S. 41)[15], the injunction to

[9] Avtar Singh, 2017, *Indian Contract & Specific Relief* Act, published by - Lucknow: Eastern Book Company, 12th Edition, ISBN-10: 9351454533 ISBN-13: 978935145453.
[10] S. 36, 37, Specific Relief Act, 1963.
[11] S. 38, Specific Relief Act, 1963.
[12] S. 39, Specific Relief Act, 1963.
[13] *ibid.*
[14] S. 40, Specific Relief Act, 1963.

perform a negative covenant (S. 42)[16]. Lastly, he also mentions landmark case laws forinjunctions.

**"K.R Bulchandani, 2010, Buisness Law[17]" -**

- The books examine suit for injunction as a means of enforcing a contract or a promise or forbidding the party from committing a breach. It states that an injunction is a court order of the court directed a person to do or refrain from doing some act, which is the subject matter of thecontract and which a party undertakes to do or not to do.
- Secondly, the book analyses when a can court suit restrain a party by an order of injunction from committing the breach. The power of the court is discretionary and may be granted for a temporary or an indefinite period.
- The author also discusses case laws on types of injunctions and specifically on the Specific Relief Act.

**"Sir Jack Beatson, Andrew Burrows, John Cartwright, 2010, Anson's Law of Contract[18]"–**

- The authors of the book in Part 5 (Remedies for Breach of Contract) mention restitutionary awards and limitations on Acts. Under this part, the author describes the types of remedies and states specifically about injunctions and their types.
- The author also mentions in what conditions a compensation can be granted and determines the basis of assessment of damages based on reference to contract terms, and defines thebasic rule of when an injunction is granted and refused on purpose.

**"Ratan Lal Dhiraj Lal, Laws of Torts[19]" -**

- The author defines injunctions in the law of torts as a remedy When a court issues an injunction, itrequires another party to do or refrain from performing a certain action.
  In most situations, people seek monetary compensation (damages) for the loss they've suffered, but plaintiffs may also seek an injunction to stop more harm from occurring.

[16] S. 42, Specific Relief Act, 1963.
[17]K.R. Bulchandi, 2017, *Business Law,* published by – Himalaya Publishing House,22nd Edition, ISBN 978-93-5024-2810
[18] Beatson J., Burrows A., Cartwright J., 2010. *Anson's Law of Contract*. Oxford University Press, 29th Edition, ISBN HB 978–0–19–959333–0 ISBN PB 978–0–19–928247–0.
[19]Ratan Lal & Dhiraj Lal, 2013. Law of Torts, published by Lexis Nexis India Publication, 26th Edition, ISBN 9789386515667.

- In Chapter IX, the author begins with the introduction of damages, causation, remoteness, a measure of damages, interim damages, compensation under section 357, Code of Criminal Procedure, provisional awards, damages in actions of Contracts and of Tort. Further, the author subdivides the aforementioned topics. Foreseeability, intended consequences, intervening acts or events, a summary of principles in considering remoteness, and mitigation of damages all are covered under the head of the remoteness.
- Similarly, a measure of damages constitutes the general principles, four kinds of damages (contemptuous, nominal, ordinal, and exemplary damages), general and special damages, prospective and continuing damages, measures the damages for mental suffering and nervous shock, the inaction of personal injury, for non-pecuniary and pecuniary losses. Measures of damages in the Law of Torts deal with the compensation to be granted when there is an injury toproperty, wherein he also refers to an injunction as a remedy.

**"Pollock and Sir Dinshaw Fardunji Mulla, The Indian Contract Act, 1872[20]" –**

- The author in Chapter VI of the book talks about the breach of contract. In Chapter IV ofthe book, it has been established that in the cases of the non-performance by one party the other party is not liable to perform his side of performance and is entitled to reimbursement for the loss suffered by him.
- In chapter VI the author illustrates how compensation for the violation of the contract is estimated and about types of remedies applicable for the aggrieved party, wherein theauthor examines about injunction in a detailed manner.
- Under injunction the author elucidates its types and particularly when it is granted and refused and its significance in landmark judgments. He also refers to the Specific Relief Amendment Act, 2018.

[20] Pollock & Mulla, 2018, *The Indian Contract Act*. Lexis Nexis India Publication, 15th Edition, ISBN 13: 9788131252291

## STATEMENT OF PROBLEM

When analyzing the subject of the research paper, one is likely to come across a variety of important considerations. When an injunction is granted as opposed to when it is denied is one of the most fundamental issues that might emerge. Second, under what conditions is it possible to file a motion for an injunction? Most significantly, when can one prevent the breach of an obligation, compelperformance of certain acts, and be in accordance with limitations provided under the Act? Last but not least in what circumstances would each of the several kinds of injunctions be applicable. The aforementioned literature analysis allowed us to gain an understanding of the challenges that arise while discussing this subject as well as the potential answers that may be found to these challenges.

## RATIONALE OF STUDY

Injunctions are one of the most important remedies available under the Indian Contract Act, which is also detailed in the Specific Relief Act. The primary goal of a temporary injunction given to an individual is to maintain the status quo as it was at the start of the proceedings and to guarantee that it does not alter before the legal procedures against that individual are completed. A type of legal protection is given to a party to safeguard them from future damage. With the purpose ofenhancing India's track record in contract enforcement and minimizing the time it takes to settle ongoing disputes; injunctions try to protect contractual expectations and minimize uncertainty.

The concept of an injunction as a remedy is not new; it has a historical background derived from foreign law, and the essence of this remedy is clearly and elaboratively mentioned in various research papers. However, the main issue is on what grounds an injunction is granted and refused, and what limitations are not to be exceeded.

## RESEARCH OBJECTIVE

THE PURPOSE OF THIS RESEARCH IS –

- To understand the main essence of injunctions under the Specific Relief Act, 1963.
- To analyze the difference between various types of injunctions.
- To know in what circumstances an injunction is granted and refused.
- To understand on what conditions is it possible to file a motion for an injunction.
- To know on what probable events can one prevent the breach of an obligation, compel performance of certain acts.
- To determine the limitations on which injunctions will be granted.
- To analyze what circumstances would each of the several kinds of injunctions be applicable.
- To ascertain changes and significance of the Specific Relief Act and its amendment in 2018.
- To critically analyze the aforementioned objectives and specifically the types of injunctions.
- To make efforts to suggest positive steps to curb the gaps and challenges present under the SpecificRelief Act, 1963 specifically for injunctions and their types.

## RESEARCH QUESTIONS

- what are the various types of injunctions and their significance in different circumstances?
- analysis of different types of injunctions.
- what are the grounds on which injunctions and their types are granted and refused?
- what changes occurred in the specific relief amendment act of 2018?

## RESEARCH METHODOLOGY

The methodologies that would be used in the process of doing this study would include Doctrinal, analytical, and comparative studies in the research paper. The Indian Constitution, the Indian Contract Act of 1872, the Indian Evidence Act, the Specific Relief Act of 1963, Rules, Government Orders, Judicial Precedents, and Reports of Various Committees, Statistics, and Act Amendments were the primary sources of information that were utilized in this investigation. Secondary data sources consist of items such as books and journals that have been published, academic publications, press releases, print media, online journals, and research reports, among other things.

# STUDY OF VARIOUS TYPES OF INJUNCTIONS UNDER SPECIFIC RELIEF ACT 1963: A CRITICAL STUDY

A court can issue an injunction as a legal remedy. Simply put, an injunction means that one of the people involved in a case must do something or stop doing something. Once the Court makes a decision, both sides have to follow it. If the party doesn't follow the injunction, they could face harsh financial penalties or even jail time.

No one has come up with a clear definition of an injunction. For example, Joyce, Nelson, Burney, and Lord Halsbury all have different ideas about what it means.

Injunctions are made against people. It is not connected to a property. For example, A, who is suing B, gets an injunction against B that says he can't build a wall. A sells the property to C. The sale of the property does include the injunction.

There are three characteristics of an injunction -

- It is a judicial process,
- The relief obtained thereby is a restraint or prevention, and
- The act prevented or restrained is wrongful.

Injunctions in India have been incorporated into rules of jurisdiction by being enacted as sections of the Specific Relief Act, 1963. An injunction will not be issued under the following situations –

- Where damages are the appropriate remedy,
- Where an injunction is not the appropriate relief,
- Where the plaintiff is not entitled to an injunction on account of his conduct,
- Where the contract cannot be specifically enforced,
- Where the injunction would operate inequitably.

Governing Law -

The law of injunctions is clearly stated in several Relief Acts, and it is carried out according to the rules in Order XXXIX, Rules 1 and 2 of the Civil Procedure Code. More specifically, the laws regarding this provision can be found in S. 151 and S. 94 of the Specific Relief Act, 1963, which is a law that gives specific relief to people who need it. In Civil Law, legal remedies are used to enforce either primary or secondary rights. When a contract is broken, if the court orders specific performance in favor of the innocent party, this is like enforcing a basic right. When the court orders someone to pay

for damage, this is called the enforcement of secondary rights. The purpose of the Specific Relief Act of 1963 is to protect and uphold the basic rights of parties.

Requirements for an Application for Injunction: The petitioner must apply for an injunction if: The petitioner has a strong prima facie case that has a chance of succeeding. The balanceof convenience or inconvenience is in favor of the petitioner. If a temporary or permanent injunctionis not granted, the petitioner would be forced to suffer an irreparable loss.

The following types of Injunctions are granted by the Court under the provisions of the Specific Relief Act, 1963 -

1. Temporary Injunctions (S. 36 & 37)[21]
2. Perpetual Injunctions (S. 38)[22]
3. Mandatory Injunctions (S. 39)[23]
4. Damages instead of or in addition to Injunction (S. 40)[24]
5. Injunction to perform a negative covenant (S. 42)[25]

Temporary Restraining Order - A temporary restraining order is just what its name suggests, as the same is valid until the period of restraining order draws to a closure. The Court grants it to preserve the status quo of the subject of the controversy until the hearing of an application for a temporary injunction. Through it, it also seeks to prevent any instance of unnecessary and irreparable injury.

Cases in which temporary injunctions may be granted –

- That any proper in dispute in a suit is in danger of being wasted, damaged, or alienated by anyparty to the suit, or wrongfully sold in execution of a decree, or
- That the defendant threatens, or intends, to remove or dispose of his property todefraud his creditors,
- That the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiffabout any property in dispute in the suit.

The court may order grant a temporary injunction to restrain such action or make such other order to stay and prevent 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. In the case law of

[21] S. 36, 37, Specific Relief Act, 1963.
[22] S. 38, Specific Relief Act, 1963
[23] S. 39, Specific Relief Act, 1963.
[24] S. 40, Specific Relief Act, 1963.
[25] S. 42, Specific Relief Act, 1963.

***Volition Investment (P) Ltd. v. Madhuri Jitendra Mashroo***[26], the buyer was entitled to an injunction to prevent the seller from transferring the property to any other person.

A similar case of ***Arvind Construction Co (P) Ltd v. Kalinga Mining Corpn***.[27], is a *prima facie* caseof injunction where the High Court did not err in refusing the injunction.

Permanent Injunction - A permanent injunction, which is issued at the time of final judgment, is meant for granting a final relief to the applicant. These injunctions remain constant if the conditions that produced them are permanent.

S. 38[28] of the Specific Relief Act states the circumstances in which a permanent injunction can be granted. It provides –

*Perpetual injunction when granted. —*

*(1) Subject to the other provisions contained in or referred to by this Chapter, a perpetual injunction may be granted to the plaintiff to prevent the breach of an obligation existing in his favor, whether expressly or by implication.*

*(2) When any such obligation arises from the contract, the court shall be guided by the rules and provisions contained in Chapter II.*

*(3) When the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the court may grant a perpetual injunction in the following cases, namely: —*

*(a) where the defendant is a trustee of the property for the plaintiff;*

*(b) where there exists no standard for ascertaining the actual damage caused, or likely to be caused, by the invasion;*

*(c) where the invasion is such that compensation in money would not afford adequate relief;*

*(d) where the injunction is necessary to prevent a multiplicity of judicial proceedings*[29].

The condition prerequisite to the applicability of the section is –

1. There must be legal right express or implied in favor of the applicant;[30]
2. Such a right must be violated or there should be threatened invasion;[31]
3. Such a right should be an existing one;
4. The case should be fit for the exercise of the court's direction;[32]

[26] Volition Investment (P) Ltd. v. Madhuri Jitendra Mashroo, AIR 2003 Bom 360.
[27] Arvind Construction Co (P) Ltd v. Kalinga Mining Corpn., (2007) 6 SCC 798.
[28] S. 38, Specific Relief Act, 1963.
[29] Section 38, Specific Relief Act, 1963.
[30] Basanti Paikaray v. Pranath Paikaray, (2007) 4 SCC 795.
[31] Parkasho Devi v. Tarsem Lal, AIR 2003 P&H 245.
[32] Gur v. Bhag, 96 PR 1911: 11 IC 213.

5. It should not fall within the sphere of the restraining provisions contained in, or referred to, in S. 41[33] of the Specific Relief Act[34].

Mandatory Injunction - Considered as the most rigorous of all injunctions, a mandatory injunction directs the defendant to perform an act. For example, if a Court orders the removal of a building or structure due to misplaced construction, then it fits the description of a mandatory injunction.

S. 39 of the Specific Relief Act, 1963, reads: *"When to prevent the 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 to compel performance of the requisite acts".*

A mandatory injunction for eviction of a gratuitous licensee or a person in permissive possession upon revocation of permission by the owner is possible. In the case of ***Madho Singh v. Abdul Qaiyum Khan[35]***, the grant by the trial court was held to be proper. Such a person in possession is entitled to an order for retaining his possession or claim for repossession, which happened in the case of ***Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria[36].***

Mandatory injunctions will not be granted in the following cases –

1. Where compensation in terms of money will be adequate relief to the plaintiff.
2. Where the balance of convenience is in favor of the defendant.
3. Where the plaintiff is guilty of allowing the obstructions to be completed before coming to the court.
4. Where it is desired to create a new state of things[37].

*S. (40)[38] Damages instead of, or in addition to the injunction –*

*(1) The plaintiff in a suit for perpetual injunction under S. 38[39], or mandatory injunction under section 39[40], may claim damages either in addition to or in substitution for, such injunction and the court may, if it thinks fit, award such damages.*

*(2) No relief for damages shall be granted under this section unless the plaintiff has claimed such relief in his plaint: Provided that where no such damages have been claimed in the plaint, the court shall,*

[33] S. 41, Specific Relief Act, 1963.
[34] Attar Singh Balmar Singh v. Vishan Das, ILR, 1937 18 Lah 345.
[35] Madho Singh v. Abdul Qaiyum Khan, AIR 1950 ALL 505.
[36] Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria, (2012) 5 SC 370.
[37] Sheo Nath v. Ali, 80 ALL 70.
[38] S. 40, Specific Relief Act, 1963.
[39] S. 38, Specific Relief Act, 1963.
[40] S. 39, Specific Relief Act, 1963.

*at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including such claim.*

*(3) The dismissal of a suit to prevent the breach of an obligation existing in favor of the plaintiff shall bar his right to sue for damages for such breach.*

When a suit, in which damages were not claimed, is dismissed, a subsequent separate suit for damages would not lie. The court can award damages instead of an injunction where the injury is threatened thoughnot yet caused. A similar happened in the landmark case of ***Leeds Industrial Coop Society Ltd v. Slack***[41]**,** which laid down those damages that could be allowed to a person whose treatment is sure to suffer the loss of his right to light when a planned building structure comes up.

S. (42)[42]. The injunction to perform the negative agreement. —*Notwithstanding anything contained in clause*

*(e) of section 41*[43]*, where a contract comprises an affirmative agreement to do a certain act, coupled with a negative agreement, express or implied, not to do a certain act, the circumstance that the court is unable to compel specific performance of the affirmative agreement shall not preclude it from granting an injunction to perform the negative agreement: Provided that the plaintiff has not failed to perform the contract so far as it is binding on him*[44]. A court can issue an injunction to stop someone from doing anything that is expressly forbidden in the contract. A limitation of fact is whether the plaintiff has fulfilled his or her obligations under the agreement. Naturally, the plaintiff is not entitled to such an injunction if he fails to execute it. There can be no particular enforcement of a breach of contract, hence an injunction cannot be given to prevent it from happening.

[41] Leeds Industrial Coop Society Ltd v. Slack, 1942 AC 851 (HL).
[42] S. 42, Specific Relief Act, 1963.
[43] S. 41, Specific Relief Act, 1963.

[44] *ibid.*

# AMENDMENT OF SPECIFIC RELIEF ACT, 1963

For people who have been wrongly harmed by someone else's actions, the Specific Relief Act is an important piece of law that provides for compensation or restitution. It is founded on the premise that if one party withdraws from fulfilling an agreement or contract with another party that is harmed, the other party has recourse under the Specific Relief Act of 1963. An offshoot of this legislation is the Indian Contracts Act, 1872.

The Specific Relief Act, 1963, was passed by India's parliament to give redress for those whose civil or contractual rights had been infringed. This new Act of 1963 replaces a previous one of 1877.

The *Specific Relief (Amendment) Act, 2018*[45] became operational on August 1, 2018, and it amended the provisions of the Specific Relief Act, which was passed in 1963. The goal of the Amendment Act is to improve India's standing in international rankings measuring the enforceability of contracts and the ease with which businesses may operate.

The goal of the Amendment Act, in its broadest sense, is to address the problem of delays in the enforcement of contracts. In addition to this, it intends to fill in the gaps left by the preceding Act and provide further remedies for parties who have had their contractual rights violated.

SOME KEY HIGHLIGHTS OF THE SPECIFIC RELIEF AMENDMENT ACT, 2018 –

- Specific performance will no longer be a limited right, but a general rule -
  An aggrieved party has a right under the Amendment Act to seek particular execution of a contract as a general rule, which reduces the court's discretion in such instances. The S. (3)[46] and S. (4)[47] of the amendment Act amends S. 10[48] and S. 11[49] of the Act, S. (10)[50] of the amendment Act amends S. 20(1)[51] of the Act, S. 11[52] of the amendment Act amends S. 21[53] of the Act.

[45] The Specific Relief (Amendment) Act, 2018.
[46] S. 3, Specific Relief Act, 2018.
[47] S. 4, Specific Relief Act, 2018.
[48] S. 10, Specific Relief Act, 1963.
[49] S. 11, Specific Relief Act, 1963.
[50] S. 10, Specific Relief Act, 2018.
[51] S. 20(1), Specific Relief Act, 1963.
[52] S. 11, Specific Relief Act, 2018.
[53] S. 21, Specific Relief Act, 1963.

- No injunction granted against infrastructure projects –

  The Amendment Act prohibits courts from awarding injunctions in infrastructure contract issues if they delay project development or completion. These projects fall under (subject to revision by the Central Government) –

  1. Transport;
  2. Energy;
  3. Water and Sanitation;
  4. Communication (telecommunication);
  5. Social and Commercial infrastructure, such as affordable housing.

     The purpose is to reduce judicial participation in infrastructure projects and assure that court processes do not hinder or postpone their completion, especially those with a larger public interest. Refer to S. 14[54] of the amendment Act, which inserts the schedule of the Act.

- Special courts and case deadlines –

  Special civil courts will address infrastructure contract lawsuits under the Act.

  The Amendment Act specifies a 12-month timeframe for all Act proceedings, beginning with the defendant's summons. With proper reason, the court might extend the deadline by 6 months. Refer to S. 10[55] of the amendment Act, which amends S. 20(b)[56] of the Act and inserts proviso to Section 20(c)[57] in the Act.

- Engagement of Experts -

  The Amendment Act adds a clause for employing technical experts in cases where the court needs an expert opinion on a specific subject. Courts shall decide the conditions of payment for such experts, and the parties will pay in proportion and at the appropriate time. Refer to S. 5[58] of the amendment Act, which inserts S. 14(a)[59] of the Act.

- Limited Liability Partnership recognized -

  The Amendment Act added limited liability partnerships to the list of parties that might demand particular performance. Refer to S. 6[60] of the amendment Act, which inserts S. 15(fa)[61] of the Act.

[54] S. 14, Specific Relief Act, 2018.
[55] *supra.*
[56] S. 20(b), Specific Relief Act, 1963.
[57] S. 20(c), Specific Relief Act, 1963.
[58] S. 5, Specific Relief Act, 2018.
[59] S. 14(a), Specific Relief Act, 1963.

[60] S. 6, Specific Relief Act, 2018.
[61] S. 15(fa), Specific Relief Act, 1963.

- Substituted performance –

  The Amendment Act also adds substituted performance to Section 20[62]. In the case of a contract violation, the aggrieved party may have a third party or his agency fulfill the contract andcollect actual costs and expenditures. The aggrieved party might still sue the defaulting party for damages. Once a replacement performance is requested, the offended party cannot seek a particular performance. Refer to S. 10[63] of the Amendment Act, which inserts S. 20(4)[64] in the Act.

- Unenforceable contracts -

  The Amendment Act prohibits specified performance for the following contracts: A contract where a party has obtained substituted performance under S. 20[65] of the Act; a contract whose performance involves a continuous duty the court cannot supervise; a contract so dependent on the personal qualifications of the parties that the court cannot enforce its material terms; and a determinable contract.

[62] S. 20, Specific Relief Act, 1963.
[63] *supra.*
[64] S. 20(4), Specific Relief Act, 1963.
[65] *supra.*

## JUDICIAL PRECEDENTS

The Hon'ble Apex court while dealing with the issue of whether an interim Mandatory Injunction can be granted in a suit, held as under in ***Hammad Ahmed v. Abdul Majeed & Ors.***[66] That court will grant interim relief only if satisfied that withholding of it would prick the conciseness of the court.

Injunction and Specific Performance: In a landmark judgment of ***Sucha Singh Sodhi v. Baldev Raj Walia***[67] and ***Rathnavathi & Anr v. Kavita Ganashamdas***[68], the Supreme Court of India said that suits for permanent injunction and specific performance are based on different causes of action and that rule 2 of the Civil Procedure Code does not apply to them. "In the first case, the plaintiff must show that there is a prima facie case, a balance of convenience, and an irreparable loss likely to be suffered by the plaintiff on facts related to the suit property, as stated in S. 38[69] of the Specific Relief Act of 1963 and Order 39[70] Rules 1 and 2 of the Code of Civil Procedure". This is a well-established legal principle that can be employed in injunction with and in addition to the primary remedy available in a suit or other process. A court has the authority to award interim remedies while the dispute is underway. The term "injunction" refers to court orders issued throughout a case.

Since the Pandemic, many contracts have been violated because of this force majeure provision. ' Force majeure, on the other hand, does not mean that parties can be excused from their duties simply by invoking this situation.

In the case of ***Halliburton Offshore Services Limited v. Vedanta Limited***[71], the facts of the case were that Halliburton was in charge of drilling for Vedanta in three oil and gas blocks on land in the Indian stateof Rajasthan. Under the terms of its contract, Halliburton was supposed to finish drilling these wells by January 16, March 16, and June 16, 2019. So, Halliburton was technically late when the request foran injunction was filed. As a result of the country's total lockdown and resulting constraints on industrial activity and people's freedom of movement, Halliburton was unable to finish its portion of the contract as originally planned. In anticipation of Vedanta's expected termination of the contract

[66] Hammad Ahmed v. Abdul Majeed, (2020) 16 SCC 507.
[67] Sucha Singh Sodhi v. Baldev Raj Walia, (2018) 6 SCC 733.
[68] Rathnavathi & Anr v. Kavita Ganashamdas, 2015 5 SCC 223.
[69] S. 38, Specific Relief Act, 1963.
[70] Order 39, Code of Civil Procedure, 1908.
[71] Halliburton Offshore Services Limited v. Vedanta Limited, 2020 SCC Online, Del 542.

and the accompanying invocation of bank guarantees, it had filed a request for temporary protection in this case.

In the judgment it was held in the court dismissed Halliburton's claim that it was unable to fulfill its responsibilities because of the shutdown and the losses it would cause. Due to the "short length" of the shutdown, it was determined that Standard Retail could not be saved from its contractualresponsibilities by the lockdown. Therefore, Halliburton was liable to pay for injunctions.

In a recent case of ***Standard Retail Pvt. Ltd. v. G.S. Global Corp***[72]. Petitioners supplied steel to respondent No. 1's South Korean office. Petitioners in Seoul and Mumbai. Petitioners imported steel from G. S. Global Corp. Petitioners want Wells Fargo to stop negotiating letters of credit. The petitioners contend that contracts with respondents were due to the COVID-19 epidemic and lockdown conditions. The contracts included a force majeure clause that allowed Respondent to cancel the contract or part of it by written notice in the case of an act of God, including epidemics, natural catastrophes, war or armed conflict, etc. for a reasonable time.

The court ruled that the petitioners are not entitled to an ad-interim remedy from the Respondent Bank since the letters of credit represent a separate transaction with the Bank. The force majeure provision in contracts only applies to the respondent. The advice and announcements relied on by respondents saying there is no limitation on steel transportation at all ports and related activities show steel distribution was considered an essential service. Lockdown can't save petitioners from paying the respondent and thejudgment of ***Energy Watchdog v. CERC***[73] and ***Satyabrata Ghosh v. Mugneeram Bangura & Co.***[74] as relied on petitioner do not apply in this case.

[72] Standard Retail Pvt. Ltd. v. G.S. Global Corp., 2020 SCC Online Bom 704.
[73] Energy Watchdog v. CERC (2017) 14 SCC 80.
[74] Satyabrata Ghosh v. Mugneeram Bangura & Co. (1954) SCR 310.

## CRITICAL ANALYSIS

This article's overall purpose was to dispel the widely held misconception that the courts have a lot of discretion when it comes to injunctions. When there is scope for discretion, then there is potential for dishonesty, which can lead to arbitrary judgments. This is a well-known truth. As a result, a multi-tiered control system is a must. A variety of methods can be used to resolve the issues that have arisen throughout the implementation of injunctive relief to meet the legal standards thathave been established. This remedy is administered by the courts, so it's no surprise that judges bear the bulk of the obligation.

One of the reasons so many cases are indeed pending in court is because the judge acts as an investigator when it refers to the enforcement of injunctions. Because of this, courts should consider injunction cases by putting the claim's significance into perspective. For this suggestion, S. 42[75] of the SRA, 1963 is made useless when even minor claims are served first and injunctions are enforced rather than refused. This is why this proposal has been put forward.

The true development of an injunction case may be followed to maintain tabs on it. Whether or not an injunction will benefit the claimant depends on whether or not it does more harm than goodto the party seeking it. If additional injunction lawsuits are filed, they should be considered at the initialhearing. As soon as the court is made aware of any alterations in the claimant's complaint, such changesmay be implemented. Cases that fail to meet the requirements of the law or lack a legitimate basis foraction should be dismissed. Therefore, we can conclude that it’s good that the government is trying to fill up the gaps through the new amendment but it’s still complicated in some ways.

[75] S. 42, *Specific Relief Act*, 1963.

## SUGGESTIONS

According to the SRA, before issuing an injunction, the court must ensure that the opposing party has received notice of the application, or that notice could not have been delivered if the opposing party had refused to accept it if it could. If a private party seeks a temporary injunction against the government or statutory public authority, the court must serve reasonable notice to the government's legal counsel and give him or any legal counsel authorized by him an opportunity to be heard before issuing an ex-party injunction.

Over and beyond the debate, it's obvious that the government and the general population are treated quite differently. Because notifying the wider public isn't required. However, in the case of the government, notification is required. When a party is denied or even annihilated, the law is notequal for everyone in this situation. As a result, that clause should be changed to benefit the general public.

Judges must issue at least six decrees every month. When it comes to decrees, an injunction order is not considered one. As a result, they are unconcerned with the verdict. This order should be incorporated concerning subjugated to the 6 decrees for the end of justice. Injunction petitions follow the same procedure as the original lawsuit. Because of this, a significant amount of time has passed and the original case has been deprived.

A lot of information is required here to improve the legal process. For the sake of administeringjustice among particles, every court should be considered to have all the capabilities necessary for doing complete justice for the parties before it.

Lastly, incorporating government schemes like Digital India and Make in India with a suit for an injunctionwill be a great suggestion to apply digitalization in court cases to quickly rectify the problem whichwill not delay decision-making and infrastructure development, this will not create a barrier or stopthe work of major public concern. If there will be quicker relief granted to the suffering party more contracts will be formed inside as well as outside the country creating more foreign direct investment and word class technology.

Applying injunctions to Make in India means increasing the ease of doing business in the country and reducing the time frame for the enforceability of contracts.

# CONCLUSION

To summarize, an injunction is an order issued by a court that compels a person to carry out a certain action or prevents that person from doing so. It is only in cases of extreme exigency that the courts will use their authority to grant injunctions. In most circumstances, a court will not impose an injunction unless there is a risk that the subject in question would suffer impairment to their rights that cannot be repaired. The court needs to be convinced that some action has already been taken or isbeing threatened that will cause the party requesting the injunction to suffer damage that cannot be repaired before granting the injunction. In legal parlance, wrongdoing is said to be irreparable whenno amount of money can effectively recompense for it. It is not sufficient to show irreparable harm just based on a loss of earnings. It is sufficient to consider the possibility of property being destroyed. There is no automatic entitlement to injunctive remedy; nonetheless, the court retains the authority to refuse such relief at its discretion.

The court has complete discretion over whether or not to grant the injunction requested. Relief cannot be claimed legally as a matter of entitlement even if the applicant's case is strong enough. Therefore, the ability to issue injunctions should be treated with the utmost care and attention at all times. That kind of authority carries with it the risk of harming someone who isn't in any way at fault. Having so much power comes with a great deal of accountability. As a result, unlike everything else in this universe, an injunction is not unqualified.

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