



# CRITICAL ANALYSIS OF THE THEORY OF FUNDAMENTAL BREACH

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A contract is a legally binding arrangement. A contract, in its broadest sense, is a set of corresponding commitments made by two or more people, either in writing or orally, that binds them in a contractual legal relationship.

A contract is a legal agreement between two parties that have agreed to deal with each other.

In general, a breach is the failure to perform an act that is required for the fulfilment of a promise, agreement, or contract. A breach, according to the Oxford dictionary, is a failure to do something that is required by law. Something refers to an action or inaction that violates a contract. A breach of contract occurs when one or both of the parties fails to fulfil their contractual duties. The opposite party suffers a loss as a result of the non-performance. Breach of contract, according to Black's law dictionary, is when a party fails to fulfil the terms of a deal.

According to the Indian Contract Act, 1872, a contract is legally binding, and a breach of contract is a violation of the legally required legal responsibility. If one of the parties fails to fulfil the contract's responsibilities in such a violation, the other must cancel the contract. A contract violation might occur in its entirety or in part. The party who breaches the contract is solely responsible for the portion of the contract that they did not complete. A remedy is a legal mechanism for placing the aggrieved party in the position they were in before to the breach of contract or in the position they would be after the contract's fulfilment.

## Introduction

On the advice of the 9th Law Commission Report<sup>1</sup>, the Specific Relief Act was initially adopted as the 'Specific Relief Act, 1877,' which was then changed as the 'Specific Relief Act, 1963,' by the Parliament of India.

Because contract law is a substantive law, it cannot provide all possible reliefs and remedies. Keeping this in mind, the Specific Relief Act, 1963 (hereinafter referred to as "the Act"), based on the principles of equity, justice, and good conscience, broadens the scope of seeking relief in the Civil Courts and provides for a slew of reliefs and remedies when a legal right is violated. While the act does not provide any rights in and of itself, it does require them to be pleaded in front of the court.

### A REVIEW OF THE LITERATURE

There is a plethora of information on the subject at hand. This material was primarily derived from the Indian Contract Act, 1872, and Avtar Singh's book "Contracts and Specific Relief Act.". Many secondary sources, on the other hand, have been considered in the course of the investigation.

Gaurang Jajodia's article "Remedies under Breach of Contract" provides an in-depth knowledge of the numerous remedies available under the Contracts Act while also noting the various means of implementing the remedies.

By comparing remedies for breach of contract in Asia's various countries, Paula Giliker's book "Studies in the Laws of Asia: Remedies for Breach of Contract" gives readers a comprehensive understanding of the subject at hand.

Damages as a remedy for breach of contract are discussed in depth in "Importance and relevance of Damages as a Remedy by Sankalp Jain." The article goes into further detail on the role damages play in Indian and English legal systems. The UN Convention on Contracts for the International Sale of Goods is also mentioned in the Article.

B.V.R. Sarma's "Adjudication of claim for Damages under Sections 73,74 and 75 of the Indian Contracts, 1872" was another paper that helped clear up the uncertainty in the subject matter. Sections 73, 74, and 75 provide a thorough explanation of the sorts of damages that can be claimed and the corresponding monetary amounts. The article also includes numerous examples to help the reader better grasp the concepts being discussed.

The laws are frequently divided into categories based on:

Rights, Remedies, and the Procedure for Using Them The law of specific relief, which spells forth various reliefs and remedies to be offered, is based on the second category. According to section 4<sup>2</sup> of the legislation, it exclusively deals with the imposition of civil rights; it does not cover criminal rights. The remedies established by Civil Courts of Justice are classified as follows: one where the plaintiff receives his entitlement and is compensated for the loss if the status quo is not restored; and one where the plaintiff receives his entitlement and is compensated for the loss if the status quo is not restored.

*The above mentioned is done by seeking various remedies that are recognized by the Court under the provisions laid down by the Act:*

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<sup>1</sup> Law Commission of India, *Specific Relief Act: Some Suggestions*, Report No.9, 19(JULY,1958).

<sup>2</sup> Law Commission of India, *Specific Relief Act 1963*: 13(December,1963)

<sup>2</sup> THE GENERAL CLAUSES, Section-4, ACT No-10, 1897: [11th March, 1897.]

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

## Damages

*One of the most common legal remedies for a breach of contract is damages. The term "damages" refers to monetary recompense for the loss experienced by the offended party. A party that has been injured by a breach of contract may file a breach of contract case using either specified performance as a remedy or damages such as general or liquidated damages, nominal damage (no loss situation), compensatory, punitive, and specific damages. The court has complete discretion over the amount of compensation and the type of damages to be awarded. Damages are usually commensurate to the loss suffered or by restoring the injured party to their pre-injury state. It's vital to remember that the burden of proof is on the injured party.*

*Hadley v. Baxendale (1854) 9 EX 341<sup>34</sup> As millers, the plaintiffs had a large company. The mill was forced to close owing to a crankshaft failure. This broken crankshaft was to be delivered to Greenwich in order to receive a replacement part. The carriers were the defendants, and they pledged to deliver it to Greenwich. They were told to do it right now because the mill had come to a halt. The delivery was delayed due to unforeseen circumstances, and the plaintiff's mill was unable to continue operating. A lawsuit was filed by the plaintiff against the defendants. The rule was that if two parties have a contract with one other and one of them breaches it, the damages awarded to the aggrieved party must be fair and reasonable, regardless of whether the violation was intentional or not. The Indian Contract Act of 1872<sup>5</sup> includes provisions about compensation for loss or damage caused by a violation of contract. These requirements can be found in Section 73<sup>6</sup>. S. 74<sup>7</sup> deals with a scenario in which the parties have previously determined the penalty for breach of contract, whereas this provision discusses the rights of the party that is harmed as a result of the other party breaking a contract. According to Section 75<sup>8</sup>, a party that has the legal right to repudiate a contract also has the legal right to collect compensation for doing so.*

The requirements for circumstances in which the specific performance of a contract is legally enforceable are outlined in Section 10 of the Act.<sup>9</sup>

According to the terms of just this section of the act, the courts have the authority to grant specific performance of a portion of the contract as stated in Section 12 of the Act. Take, for example: In the case of B. Santoshamma v. D. Sarala[1], which was decided on September 18, 2020, it was determined that the court may, under Section 12 of the Specific Relief Act directs that the party who has defaulted to perform specifically as per the part of

<sup>3</sup> Hadley v. Baxendale, 156 Eng. Rep. at 146.

Richard Danzig, Hadley v. Baxendale: A Study in the Industrialization of the Law, 4 J. LEGAL STUD. 249, 251 & n.5 (1975).

<sup>5</sup> Imperial Legislative Council, Act No-9 of 1872: 25(April 1872)

<sup>6</sup> The Indian Contract Act, Section 73 of 1872

<sup>7</sup> The Indian Contract Act, PENALTIES IN REGARD TO BREACH OF CONTRACT: SECTION 74

<sup>8</sup> The Indian Contract Act, section 75 of 1872

<sup>9</sup> Law Commission of India, Specific Relief Act: 19(JULY, 1958).

the said contract, as he can perform, provided the other party accepts to pay or has paid the consideration for the whole of the contract, which would be less proportional to the total value of the contract if admits of compensation

*The provisions that were just described can be applied to online contracts or e-contracts since the scope of these e-contracts is so broad that it requires specific laws to control them. It is important to make an amendment that adds requirements that are tailored expressly for electronic contracts.*

### Recovery Of Possession Of Property

**Immovable Property:** Property that can't be moved: The Code of Civil Procedure of 1908 says how a person who is supposed to own a certain piece of real estate can get it back (5 of 1908)

In simple terms, the section says that anyone who is legally the owner of real property can get the possession of that property by following the law. It means that if a person has the right to own a certain piece of real property, he can get it back by filing a lawsuit according to the CPC.

People are not allowed to take something by force in India. Even the owner of a property, like a landlord, can't force or scare their way back in. He must follow the law, and taking something by force is against the law. The law is clear about who owns what, and courts usually look down on evictions that don't follow the law. Section 6 of the act makes it clear that the rule is recognised by the law.

The main goal of Section 6 is to stop people from taking someone's property by force. This is based on the idea that disputed rights should be decided by the law, and no one should be able to make their own rules, no matter how good their title. Section 6 gives a quick way for a party who has been kicked out of their home by someone else to get it back through the Civil Courts. This can happen within 6 months of the party being kicked out, giving them time to fight about their rights in a proper court if they are told to do so.

**Movable Property:** Property that can be moved: Recovery of specific movable property: The Code of Civil Procedure of 1908 says how a person who has a right to specific movable property can get it back. All property except property that can't be moved is movable property.

*State of Gujarat v. Biharilal*<sup>10</sup>[2], it was decided that property that can be identified by the person who lives there is equipped with some kind of contract, and property that has the characteristics of movable property is covered by section 7 of the Specific Relief Act, 1963.

[3] *Joseph v. National Magazine Co*<sup>11</sup>. A writer didn't want his name on an article that had been changed and rewritten by a magazine to say different things in a different way. He didn't have a right to specific performance of his contract because that would have meant having the court edit the article. However, he could sue for damages because he lost the chance to improve his reputation.

So, if the parties meet the requirements listed above, they can be given this fair and wonderful solution. Care should be taken with the ingredients and the nooks and crannies where a case can fit.

### Specific Performance Of Contract

One of the most important parts of civil rights is that promises made in a contract are kept. Specific performance means that a promise made in a contract is kept as both parties agreed. Specific performance is a type of justice relief that the court can give.

<sup>10</sup> *State of Gujarat v. Kishanbhai, Appeal (Cr.) NO. 1485 OF 2008 SC January 7, 2014*

<sup>11</sup> *Joseph v. National Magazine Co Ltd* [1959] Ch 14

Contracts have to be upheld, but the only way the law of contracts can do that is by giving the wronged party money.

The person who is wronged files a suit for specific performance in a court with the right to hear it. This is done because the other party hasn't done what they were supposed to do. An obligation is any legal duty that can be enforced by the law. If you don't do what you're supposed to, you have to follow the terms of the contract.

If someone breaks a contract, the equity courts can make sure that the contract is carried out exactly as it was written. But this isn't a right, so you can't ask for it. It's up to the court to decide if it's a good idea.

If it's not possible to figure out how much compensation should be given. When it's impossible to figure out how much to pay, a specific performance remedy is given. In this case, the court tells the defendant to do what he said he would do when the contract was made. Specific performance is given as a remedy when there is no other way to get what was promised in the contract.

Specific performance is a type of remedy that is given when the value of goods is hard to figure out and the goods are unique. For instance, buildings, land, or goods that have a lot of value to the plaintiff. The court is the only one who can give a specific performance remedy.

Correcting an error in an instrument, or "instrument" in this case, is called "rectification." Rectification of instruments under the Specific Relief Act is a fair or impartial way for the Court to fix things when the facts don't match up with what the parties had in mind.

Section 26 says that a contract or other legal document can be changed if it doesn't say what the parties really meant because of fraud or a mistake on both sides. Rectification is the process of making a document match the actual or previous agreement.

#### **The essentials of application of rule of rectification are:**

There must have been a real agreement that was different from what was said. The contract in question didn't really say what the parties meant because one of them lied or they both made a mistake. If one side makes a mistake, it won't be possible to fix the instrument. The court must figure out what the parties wanted the instrument to mean and what the legal consequences are. The court can decide for itself whether or not to give the relief of rectification.

#### **Sartaj v. Ayub Khan (2019)**

In this case, it was decided that the appellant filed a civil suit with the claim that the plaintiff bought property (land) from the defendant by registered sale deed for valuable consideration, but now they are taking unfair advantage of the mistake and misunderstanding in the sale deed. In the ruling, it was decided that the appeal should be allowed, that the lower appellate court's ruling should be overturned, and that the trial court's ruling and decree should be restored.

#### **Noordin Esmailiji v. Mohamed Umar Subrati (2019)**

At the start of the case, the Nevitia Floor Mills and Sardar Haji Badloo Subrati made a deal. Six parts have been made out of the land. And the fight over the land started. At last, it was decided that a suit for rectification of deed based on mutual mistake is valid if third parties' rights have not been affected. The time starts from the date that the mistake was discovered. I think it's important to fix a mistake in a legal document, because section 26 lets people go to court if the parties made a mistake in a contract. As there are some rules that say the rectification can't happen if the court doesn't think it's right, the law may not be changed.

## Rescission Of Contracts

In general, the word "Rescission" means to cancel, destroy, cancel out, or undo a transaction. Rescission of Contract is a relief that the Act gives to a person who was forced to sign a contract through fraud or breaking the law.

This person has the right to get out of the contract by asking the court to say that he is not bound by it. So, ending the contract is called "Rescission of Contract." The right to get out of a contract is based on the idea that the contract never really happened because of its flaws. It is well known that a person who sues for rescission of contract cannot also sue for specific enforcement as an alternative form of relief. However, a person who sues for specific enforcement can also sue for rescission of the contract as an alternative form of relief.

### **Sardar Mohan Singh v. Mangailal,**

Following the particular performance decree was issued, it was noted by the Hon'ble Supreme Court that the Court does not lose its jurisdiction, nor does it cease to exist. After the sale deed has been executed in accordance with the decree of particular performance, the trial court retains its authority and jurisdiction to handle the matter. Furthermore, the decree for specific performance stipulated that the court could provide an extension of time for the conditions set forth in the decree to be met.

Coercion, deception, fraud, or undue influence can lead to a party's agreement to a contract being voided. According to the principle of equity, Indian Courts have interpreted rescission in such a way that both parties, i.e. the one who wants to rescind the contract and the one who would be impacted by such rescission, receive the same level of compensation.

During contract negotiations, a party may reserve the right to withdraw or terminate the agreement if specified events or a breach of the contract occur in his favour. As long as both parties have fulfilled their contractual obligations, the court has the option of cancelling the contract. It's important to note that a court doesn't have to get involved when one party has the option to back out of a contract. In those cases, the court just states the parties' rights instead of giving them a right.

## Cancellation Of Instruments

In plain terms, cancellation of instruments means the nullification of a written document which provides proof of a transaction between the parties that are part of the transaction.

Cancellation of documents is dealt with by Sections 31, 32 and 33 of the Specific Relief Act, 1963. If there is an instrument, which is void or voidable due to some reason and a party to such an instrument has enough reasons to believe that the said instrument has the potential to act against him and may even cause serious injury to him, then such a person can file a suit with regards to the cancellation of such an Instrument. This is a discretionary remedy.

### **Cancellation of Instruments can be done in two ways, as follows:**

The court cancels the entire document.

Partially cancelled instrument. These cancellations are outlined in Section 32 of the Specific Relief Act.

## Prem Singh v. Birbal (2008)[6]

The Supreme Court has discussed Section 31 of the 1963 Specific Relief Act. The court ruled that void or voidable documents can be cancelled.

The court ruled that void documents do not necessitate an action for cancellation under Section 31 of the Specific Relief Act, 1963. When a similar complaint is expressed about a voidable document/instrument, a suit under Section 31 of the Specific Relief Act, 1963 must be brought to cancel the instrument.

The courts in India invalidate instruments under the Specific Relief Act of 1963 to serve justice to parties that fear or are being injured by the other party due to the instrument/contract. In such cases, the court cancels the contract or document. Thus, the Specific Relief Act, 1963's provisions regarding the cancellation of instruments are admirable and align with the courts' mission to serve justice.

## Declaratory Decrees

A declaratory suit is brought by a person who has been refused any legal or property rights, and if an action is brought by the person who has been rejected, it is called a declaratory suit. A Declaratory decree is a binding pronouncement of equity rights without any further action.. A declaratory decree is a cone that establishes the right and removes any ambiguity about the status of the parties involved.

Specific Relief Act of 1963 Sections 34 and 35 include language addressing declaratory decrees. Defining decree is an order that declares a person's legal rights. In a declaratory decree, the court announces some existing rights in favour of the plaintiff, and it exists only if the plaintiff is denied of his right to which he is entitled. That's when the plaintiff is able to get precise redress from the defendant who deprived him of his right.

No further relief can be sought in a suit brought under S.34 of the act by anyone who claims that he or she is entitled to any legal character, or any right to any property. The court may in its discretion declare that a person is entitled to such a character or right, and the plaintiff need not ask for any further relief in such a suit in order to obtain this declaration.

It is mentioned in the case of **Naganna v. Sivanappa**[7] and by the arguments made in this case, it encourages the plaintiff to come forward to enjoy the rights that they are entitled to and if any Defendant denied the Plaintiff from providing any rights for which they are entitled to use the declaratory decree provisions.

It was ruled that the court had complete power to deny the remedy if it thought the claim was too far-fetched or that a declaration would be ineffectual. According to the definition of 'Right to Property' in this article, it was found that the plaintiff must have an existing right to any property, not only a mere interest in it, in order to receive preferential treatment.

In a declaratory decree, the rights of the Plaintiff are emphasised and the Plaintiff is given a great degree of ability to fight back against the defendant. The Declaratory decree notion can be analysed and understood in the simplest way by analysing how the court exercises its discretionary power and other features.

I believe that Declaratory decrees should be expanded to include more aspects of the law than they currently do, and that the most important thing that should be done in the long term is to limit courts' discretionary powers and establish a standard by which courts can use their discretion.

## Injunction

There have been numerous attempts to define the term "injunction." In Joyce's definition, it is an order remedial, with the overall goal of stopping the commission or continuation of a wrongdoing. In other words, an order or decree by which a party to an action is obligated to perform or refrain from performing a specific act or action.

It's possible to get an injunction ordered for or against an individual as well as for or against a government agency.

When a contract does not allow for specified performance or damages, it may not be possible to recover damages. To prevent a breach from occurring, a court may have to impose all necessary restraints on the party at fault. His thoughts will be put under strain and he may be convinced to carry out his contract's requirements if he is stopped from using other avenues.

Preventive relief is the term for this type of therapy. When this is granted, a court order called an injunction is issued. It is a sort of particular remedy granted by the court where monetary compensation would be insufficient or impossible.

The Specific Relief Act of 1963, which is controlled by the Code of Civil Procedure, 1908 in India, allows for the issuance of injunctions.

### **The court at its discretion can grant two types of injunctions:**

For a limited period of time, or until the court makes a ruling on an issue, a temporary injunction may be given. Anywhere in the courtroom, they are subject to the Civil Procedure Code, 1908. (CPC).

In the event of a final verdict, a permanent relief order is one that lasts for the remainder of the case. To protect the interests of the Plaintiff, the Defendant has been permanently forbidden from committing an act that could injure the Plaintiff. Special Relief Act, 1963, Section 38 outlines the circumstances under which Permanent Injunctions may be obtained.

### **Conclusion**

**Behind every action taken, there lies a reason and similarly the Specific Relief Amendment Act, 2018 was introduced due to the following reasons:**

The World Bank's Doing Business 2018 report ranked India 100th out of 190 countries. The research emphasised India's shortcomings in the areas of contract enforcement and the associated legal structures and procedures followed. As a result, India's Economic Survey 2018 emphasised the need for improved contract enforcement in our country and the need for a well defined legal framework. As of April 2018, the National Judicial Data Grid projected that there were 26.5 million pending cases in India.

Also in 2016, an expert committee was formed by the Ministry of Law and Justice, led by Mr. Anand Desai, to examine the Specific Relief Act, 1963 and make recommendations for an amendment to it, taking into consideration the fact that the act was framed in 1963 and many changes have occurred in our country since then. Moreover, the committee had to make sure that specific performance was granted as a rule, reimbursement or damages for non-performance remained an exception, and that discretionary relief was abolished. It was determined by the committee on proper inspection that the Specific Relief Act, 1963, should be revised in accordance with its mandate. Thus, the Amendment Act was enacted. '

The Specific Relief Amendment Act, 2018, like every coin, has both its advantages and disadvantages. In order to assess the short- and long-term implications of a piece of legislation, a thorough evaluation of the advantages and negatives typically necessitates at least 5-10 years of research. After 55 years, the Specific Relief Act was finally revised to close all the loopholes that had developed over time as cases were brought under its purview. Although the Amendment Act closes in on previously overlooked issues, it has included new provisions that will have to be tested to see if they help or hinder the process of resolving current issues with case dispositions and appeals.



**End-Notes:**

B. Santoshamma v. D. Sarala, Civil Appeal No. 3574 OF 2009.

State of Gujrat v. Biharilal, Civil Appeal no. 1826 of 1998.

Joseph v. National Magazine Co, 1959 Ch 14: (1958) 3 WLR 366.

Sartaj and Another v. Ayub Khan, (2019) 137 ALR 611.

Noorudin Esmailji Kurwa v. Mohomed Umar Subrati, (1940) 42 BOMLR 605.

Prem Singh & Ors v. Birbal & Ors, Civil Appeal No. 2412 of 2006.

Naganna v. Sivanappa , (1915) ILR 38 Mad 1162

Tarak Chandra Das vs. Anukul Chandra Mukherjee, A1.R. (1946) Cal. 118.

