

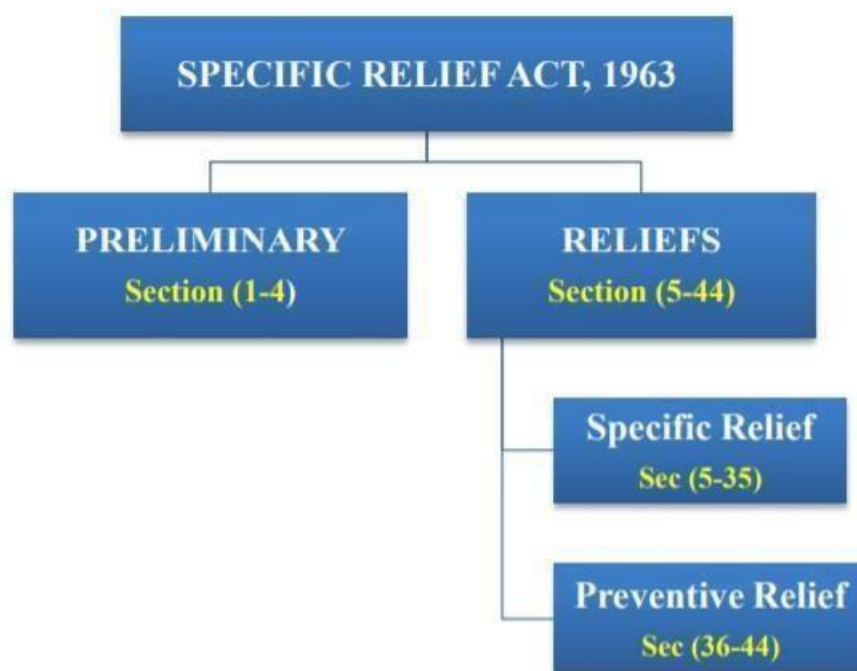
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INTRODUCTION

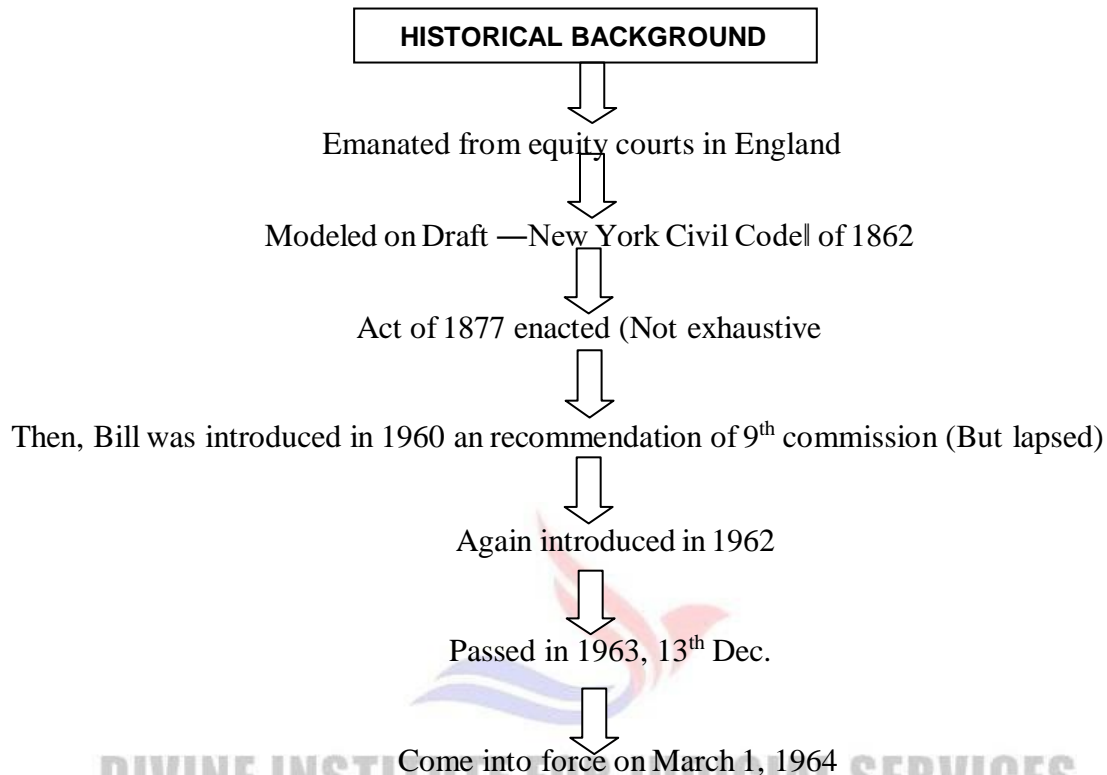


HISTORICAL BACKGROUND

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

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 The present Specific Relief Act, 1963 is an amended form of the former Specific Relief Act 1877 which was repealed by Section 44 of the present Act.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

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



It comprises of initially Sections 1-44 (Sections 43 & 44 Repealed vide Repealing Act 1974 w.e.f. 20.12.1974) and divided into three parts and eight chapters.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

NATURE OF SPECIFIC RELIEF ACT

Laws fall into three categories.—

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

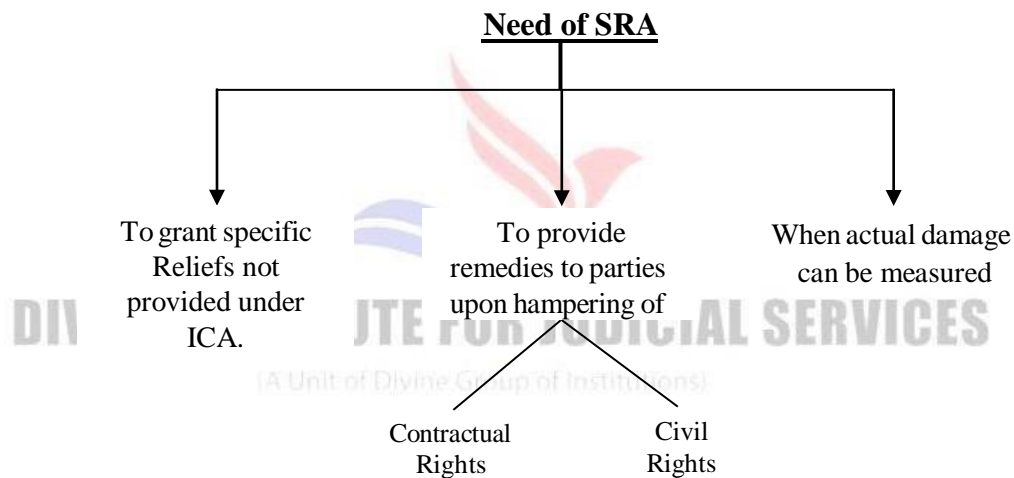
The Law of Specific Relief belongs to the second category. It is a law which deals with Remedies'. The following kinds of remedies may be granted by a court under the provisions of the Specific Relief Act:

- Recovery of possession of property(Sec.5,6,7,8)
- Specific performance of contracts(Sec. 10)
- Rectification of instruments(Sec. 26)

- Rescission of contracts(Sec. 27 to 30)
- Cancellation of Instruments(Sec 31 to 33)
- Declaratory decrees(Sec. 34 to 35)
- Injunction(Sec. 36 to 42)

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

NEED OF SPECIFIC RELIEF ACT



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

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

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

WHAT IS SPECIFIC PERFORMANCE OF THE CONTRACT

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

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

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

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

Remedies under civil laws in india:

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

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

WHO CAN GRANT SPECIFIC PERFORMANCE OF CONTRACT?

The court’s power to grant specific performance is discretionary and based on justice equity and good conscience.

AMENDMENTS UNDER SPECIFIC RELIEF ACT

Amended by Acts of 1882, 1891, 1899, 1929, 1940, 1951, and was repealed in 1963 after that in 2018 major amendments made in this act.

SPECIFIC RELIEF AMENDMENT ACT 2018

The Party affected can move to the court for directing the other Party to fulfil the obligations or requirements under the contract. The Act provides for a Specific performance of a contract in absence of monetary relief, which makes it an Alternative remedy. In earlier act the courts had a discretionary power whether to grant such relief of specific performance or not. This used to increase the uncertainty of contracts and contractual reliefs.

Introduction of 2018 Amendment Act

By Minister of Law & Justice, Mr. Ravi Shankar Prasad on 22nd Dec 2017



Passed by Lok Sabha on 15th March, 2018

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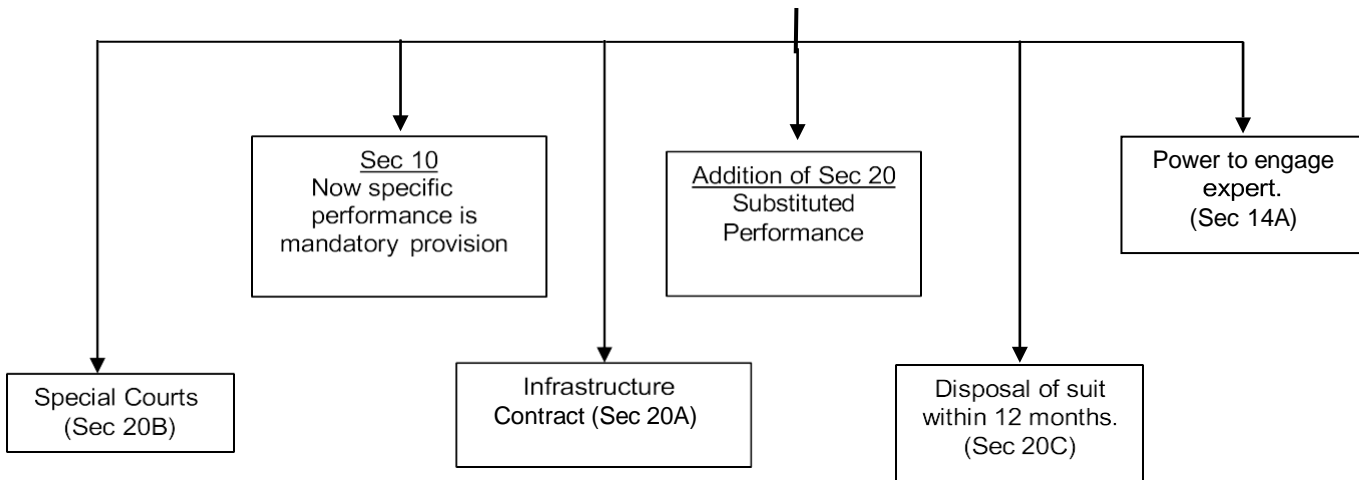
Bill received assent of president on 1 Aug, 2018



Come into force from 1st Oct, 2018

As part of the 'Ease of Doing Business' initiative of the Government of India and increased difficulties in the performance and execution of contract based on infrastructure developments, public-private partnerships and other public projects, involving huge investments, the strong need for the change in the existing legislation arose. Hence The Specific Relief (Amendment) Bill, 2017 ("the Bill") was introduced by the Minister of Law and Justice, Mr Ravi Shankar Prasad on 22nd December 2017 and was passed by the Lok Sabha on 15th March 2018. The Bill received ascent of President of India on 1st August, 2018. It will come into force with effect from 1st October, 2018.

KEY FEATURES OF 2018 AMENDMENT ACT



1. Specific Performance no longer discretionary

The relief of specific performance evolved as a discretionary remedy granted by English courts of equity in cases where either the common law courts could not provide a remedy, or the remedy was inadequate. In India, the Principal Act was enacted embodying this same outlook towards specific performance. Prior to the amendment, the Principal Act gave courts a discretionary power to grant specific performance of a contract under two circumstances i.e., where

- (a) Monetary compensation for breach of contract was inadequate; or
- (b) The extent of damage caused by the breach could not be ascertained.

Consequently, grant of specific relief for breach of contract was more of an exception, with courts granting damages as a general rule.

A major change introduced by the Amendment Act, is that it now makes it mandatory for courts to enforce specific performance of contracts, except for certain types of contracts where performance is not specifically enforceable.

2. Reduction in category of contracts not specifically enforceable

The newly substituted Section 14 has reduced the categories of contracts that are not specifically enforceable. Notably,

- (i) contracts where non-performance could be monetarily compensated;
- (ii) contracts running into minute details or dependent on the volition of the parties; and
- (iii) contracts which from their nature are such that the court cannot enforce specific performance of material terms, have been deleted

The amended Section 14 now recognises only 4 categories of contracts that cannot be specifically enforced, i.e.,

- (i) Contract where a party has obtained 'substituted performance' under Section 20;
- (ii) Contract involving performance of a continuous duty which cannot be supervised by courts;
- (iii) Contract so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of material terms; and
- (iv) Contract of a determinable nature

3. Additional remedy of Substituted Performance

By introducing the remedy of 'substituted performance', the Amendment Act has given statutory recognition to the concept of 'Right to Cover' in contracts (usually an agreed contractual term between parties), which allows an aggrieved party in case of non-performance of a contract, to obtain performance from a third party and at the same time recover the consequent costs or loss for such substituted performance from the breaching party.

Though a remedy akin to substituted performance is provided under the Indian Contract Act, 1872 where, a non-defaulting party can buy the goods or services elsewhere at an additional cost and such cost be considered for calculating damages to be awarded, the award of damages is circumscribed by tests of foreseeability and mitigation of losses. Also, generally any indirect loss/cost incurred by a non-defaulting party does not fall within the ambit of damages recoverable under Indian contractual law. By providing the remedy of 'substituted performance', the Amendment Act seeks to restore a non-defaulting party to the position it would have otherwise occupied, but for the breach of contract.

The newly substituted Section 20 of the Principal Act provides an aggrieved party the option of 'substituted performance' through a third party or by its own agency. Further, while availing the remedy of 'substituted performance' disentitles an aggrieved party from claiming specific performance, it does not disentitle the aggrieved party from claiming damages for the breach of contract.

However, Section 20 lays down that the costs recovered from the defaulting party must be those actually incurred, spent or suffered by the non-defaulting party. Therefore, where the costs claimed from the defaulting party for 'substituted performance' exceed the contract price leading to a dispute, the non-defaulting party would need to prove in court

- (a) performance of the contract by a third party or own agency; and
- (b) the quantum of actual costs incurred by such 'substituted performance'

1. Power to engage experts

The Amendment Act now specifically empowers courts to engage technical experts to assist on technical issues that may arise in a suit for specific performance. This amendment will enhance the ability of courts to try suits where technical issues of construction, public utility services, developments/ re-development etc., arise for consideration.

2. Infrastructure Contracts

Given the significance of infrastructure projects in India, the amendments grant special treatment to infrastructure projects. 'Infrastructure project' has been defined to include scheduled categories of projects such as transport, energy, water and sanitation, communication, social and commercial infrastructure.

The Amendment Act introduces Section 20A which debars Courts from granting an injunction in a suit relating to an infrastructure project contract, where such injunction could cause delay in the completion of such project. The amendments also provide for the designation of Special Courts to try matters relating to infrastructure project related contracts.

The special recognition accorded to infrastructure projects stems from the sentiment that public infrastructure work should continue without interruption or delay and therefore seeks to abolish the indiscriminate practice of granting injunctions on public utility projects.

3. Time bound adjudication

The Amendment Act provides an ambitious timeline of 12 months from the date of service of summons on the defendant for the disposal of a suit for specific performance. This period can be further extended by 6 months by the court.

The Amendment Act signals a welcome departure from granting specific performance as an exceptional equitable remedy to statutorily mandating that contracts must now be specifically enforced. The amendments are designed to protect contractual rights while lending greater certainty in enforcement of contracts by reducing the element of court discretion.

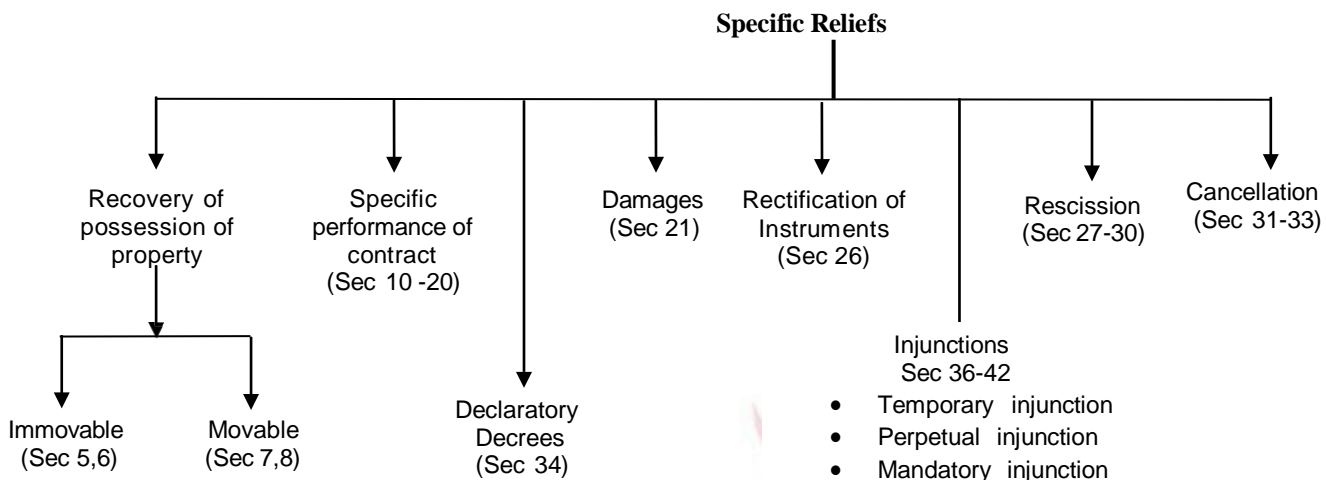
Historically, public utility projects in India have been plagued with delays on account of court mandated injunctions, interminable court processes and restrictions on use of third party agencies for completing projects. The special treatment given to public utility projects under the Amendment Act will therefore not only help promote growth benefiting the public but also protect investor sentiment.

That said, as with any significant legislative overhauling, the impact of the Amendment Act is largely predicated on its successful implementation, keeping in mind the renewed objectives of the Principal Act.

CHAPTER – I

(PART-1)

PRELIMINARY



APPLICABILITY OF SPECIFIC RELIEF ACT SECTION 1

The Act, called the Specific Relief Act, 1963, extends to the whole of India [The words except the State of Jammu and Kashmir omitted by Act 34 of 2019, S. 95 and the Fifth Schedule w.e.f. 31-10-2019].

Earlier this act was not applicable upon Jammu and Kashmir. The reason regarding this exclusion is that the transfer of property act 1882 was not applicable upon the state of Jammu and Kashmir.

When before 1963, the repealed Act, the Act of 1877 was in place, the Indian courts used to grant the relief on the grounds of equity, justice and good conscience. It is because the relief of specific relief was not created by courts rather it was in existence independently.

The commencement of this act was left at the hands of the Central Government to notify such date by notification in the Official Gazette. Hence, the Act came into force as on March 1, 1964.

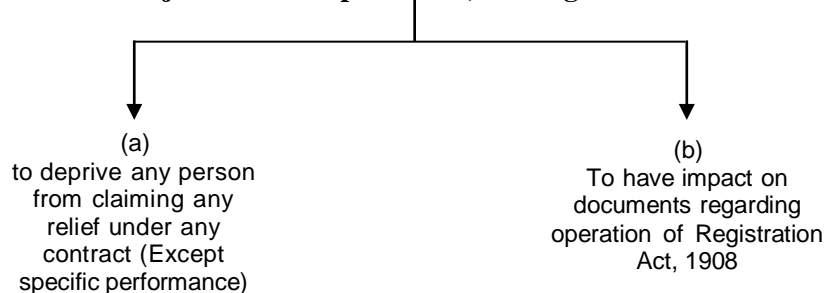
IMPORTANT DEFINITIONS- SECTION-2

Section 2 of the Specific Relief Act, 1963 deals with some important definitions which are as follows:

1. **Section 2(a) deals with obligations** which are duties imposed on a person by the law or the legal body. Thus it includes every duty enforceable by law.
It is not a mere moral, religious or social duty rather a duty corresponding with a legal right. This is a very wide definition and would include any enforceable duty under any statute for the time being in force.
2. **Section 2(b) deals with the settlement**
It means an instrument other than a will or codicil as defined by the Indian Succession Act, 1925, where by the destination or devolution of successive interests in movable or immovable property is disposed of or is agreed to be disposed of. In simple words it means delivery of movable or immovable property to their successive interests when it is agreed to be disposed of. The courts consider the number of factors to determine whether a document is a will or a settlement, like, name used to describe the document, registration, reservation of life- estate, reservation of the power of revocation, use of present or future tense.
3. **Section 2(c) deals with the word “trust”** It has the same meaning as in Section 3 of the Indian Trusts Act, 1882.
4. **Section 2(d) deals with the word “trustee”** which means the person holding trust in the property.
5. **Section 2(e)**- All other definitions which have not been explained herein are the same as referred to the definitions of the Indian Contracts Act, 1872. (Doctrine of pari materia)

Sec 3 - SAVING CLAUSE

It means subject to certain provisions, nothing in this Act shall be deemed :-



SPECIFIC RELIEF IN CIVIL CASES ONLY UNDER SECTION 4

Section 4 makes it clear that the grant of the relief is only for the enforcement of individual civil rights and not for penal laws. Hence, the presence of penal nature in the matter would have to be established. Section 4 of this act explains that this Act grants special relief for the enforcement of individual rights and not for imposing penal laws. The enforcement under this Act only bases itself on the individual civil right and the substantive nature must be established for that fact.

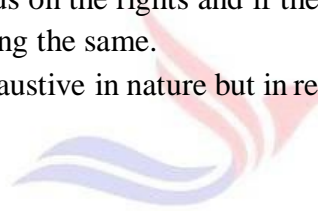
Purpose of section 4

The enforcement of a penal law should not be the sole object of the specific relief, the real object being the protection of civil rights of a suitor or prevention of a civil wrong to him. Where, however, the enforcement of a penal law is merely ancillary or incidental to the grant of specific relief the court will not necessarily refuse it.

Specific relief cannot be denied simply because there is criminal counterpart to the wrong.

Thus its main purpose is to focus on the rights and if there is any penal nature of the case, it may have to be established for proving the same.

The specific relief act is not exhaustive in nature but in reference to its on reliefs, it is exhaustive.



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