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## The Specific Relief (Amendment) Act, 2018 - An Analysis

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*The enumeration of rights and duties must be supported with legal tools that assist the individual in enforcing his or her rights. Every person who has been harmed in the social process is entitled to remedy. Only then can it be said that human society is structured in such a way that the principle of "ubi jus ibi remedium" ("where there is a right, there is a remedy") is put into practice. Following the same principle, the Specific Relief Act<sup>1</sup> was enacted in 1963 to provide justice to aggrieved parties/parties to a contract. The strict design of the Act, on the other hand, discouraged the aggrieved party from approaching the court. The Specific Relief Act of 1963 has in some aspects has failed the test of time. As a result of this failure, several modifications to the legislation were required. The Specific Relief (Amendment) Act of 2018<sup>2</sup> proposes a fresh solution to the problem. The paper, after putting forth the fundamentals, seeks to discuss the sections amended by the act while also shedding light on the ambiguity surrounding the applicability of the amendment. The paper concludes with a critical appraisal of the amendment which might help in its further improvement.*

**Keywords:** *specific relief, contract, performance.*

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<sup>1</sup> Specific Relief Act 1963

<sup>2</sup> Specific Relief (Amendment) Act 2018

## INTRODUCTION

Contract law in India is considered to be one of the oldest laws of the country. Being centuries old, the act has become redundant and the execution of the act has been becoming more and more challenging owing to a lack of contract enforcement mechanisms. The lack is one of the causes of delayed justice and high litigation costs.<sup>3</sup> The effectiveness of the country's contract enforcement system is critical for the economic success of the nation. However, the Special Relief Act of 1963 did not totally address this issue. The Specific Relief (Amendment) Act 2018<sup>4</sup> was introduced to mend the lacunae in the special relief act of 1963.<sup>5</sup> The Specific Relief Amendment Bill was passed by both houses of Parliament (Lok Sabha and Rajya Sabha) on July 23, 2018, and received presidential assent on August 1, 2018, making it a law<sup>6</sup>. The provisions of the Specific Relief (Amendment) Act<sup>7</sup> will take effect on October 1, 2018,<sup>8</sup> according to a notification issued by the Ministry of Law and Justice.<sup>9</sup> In essence, the amendment legislation emphasises the problem of delays in the enforcement of contracts and tries to give more remedies to the aggrieved party of the contract. Most importantly, the amendment makes specified performance a norm rather than a discretion.<sup>10</sup> This is further supported by Supreme Court judgments in *B. Santoshamma v. D. Sarala*<sup>11</sup> and *Sughar Singh v. Hari Singh*<sup>12</sup> wherein it was held that “specific performance of a contract,<sup>13</sup> is no longer discretionary after the amendment”. The amendment furthers the motive of The Indian

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<sup>3</sup> *Ibid*

<sup>4</sup> Specific Relief (Amendment) Act 2018

<sup>5</sup> *Ibid*

<sup>6</sup> Sourav Ghosh and Sanlap Roy, ‘The Viewpoint: Paramountcy of Performance: Specific Relief (Amendment) Act, 2018’ (*Bar and Bench*, 27 November 2018) <<https://www.barandbench.com/view-point/specific-relief-amendment-act-2018>> accessed 18 November 2021

<sup>7</sup> *Ibid*

<sup>8</sup> Aaratrika Bhaumik, ‘Whether Specific Performance Of An Agreement Is Mandatory Under Amended Provisions Of Specific Relief Act, 1963? Calcutta High Court Explains’ (*livelaw*, 17 November 2021) <<https://www.livelaw.in/news-updates/whether-specific-performance-agreement-mandatory-amended-provisions-of-specific-relief-act-1963-calcutta-high-court-explains-185752>> accessed 18 November 2018

<sup>9</sup> *Ibid*

<sup>10</sup> *Ibid*

<sup>11</sup> *B. Santoshamma v D. Sarala*, 2020 SCC OnLine SC 756

<sup>12</sup> *Sughar Singh v Hari Singh*, 2021 SCC OnLine SC 975

<sup>13</sup> *Ibid*

Contract Act<sup>14</sup> that is to put a promisee in a position as if the contract is performed, and not to punish the party who has breached the contract.<sup>15</sup>

### THE AMENDMENT: NEED OF THE HOUR

The Amendment Act was enacted to shift the approach from "damages as the rule and particular performance as the exception" to "specific performance as the rule and damages as the alternate remedy".<sup>16</sup>It attempts to improve India's worldwide position<sup>17</sup> in terms of contract enforceability and ease of doing business indexes.<sup>18</sup>It was imperative to amend the Specific Remedy Act of 1963 in order to provide aggrieved parties a better possibility of getting specific relief. The inadequacy test was originally a requirement for obtaining specific relief under Section 10 of the Specific Relief Act. The test was repealed by the Specific Relief (Amending) Act of 2018, which completely replaced Sections 10 and 14, as well as Section 20. As a result, the inadequacy test is no longer applicable. Substituting section 10 and 20 serves one more purpose, it has eliminated, to a large extent, the discretion of courts in granting specific relief. The unamended Section 20 of the Act stated that the court might provide a particular remedy at its discretion. Likewise, Section 20 is replaced by the Amendment Act. That being the case, the particular relief becomes a normal statutory remedy rather than a discretionary remedy.<sup>19</sup>

If a party breaches his contract, the other party may not be able to establish and recover all of the losses he experienced as a result of the breach under existing legislation from 1963. He also cannot ask for specific performance with confidence because there is no assurance he will get it. He will now be allowed to seek specific performance if he desires so, according to the change. This also satisfies contractual parties' inherent desire for their contracts to be honored. This method is supposed to improve contracting culture and boost contracting party

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<sup>14</sup> Indian Contract Act 1860

<sup>15</sup> *Ibid*

<sup>16</sup> Apoorv Sarvaria, 'India: Recent Amendments made in the Specific Relief Act- A Brief Overview' (*mondaq*, 13 November 2018) <<https://www.mondaq.com/india/contracts-and-commercial-law/754498/recent-amendments-made-in-the-specific-relief-act-a-brief-overview>> accessed 17 November 2021

<sup>17</sup> *Ibid*

<sup>18</sup> *Ibid*

<sup>19</sup> *Ibid*

performance. To that degree, a shift in strategy is desirable. The revised system allows the aggrieved party to select between a substituted performance or compensation in lieu of a specified remedy.

In addition to the above-mentioned purposes, amending the act server following objectives:

- It improves the enforceability of contracts.
- It reduces the time taken in redressing the breach.
- It limits the discretion of the court which in turn reduced uncertainty.
- It promotes foreign investment in India and changes the regulations to make them more business-friendly.
- It meets the contractual expectations.<sup>20</sup>

## FUNDAMENTAL ELEMENTS OF THE AMENDMENT

The amendment has made various changes in the fundamental structure of the Specific Relief Act, 1963. Some of the changes are discussed below:

### **Specific performance will be a general rule rather than a limited right:**

Specific performance was not available as a remedy for every contract under the inadequacy test. Furthermore, the plaintiff may not be able to establish all of the losses he has incurred as a result of the breach, and such claims will not be granted. The amendment abolished this restriction, making specific performance a general remedy open to a promisee who chooses to claim it, to preserve the moral responsibility of a promise and prevent persons from violating it.

Formerly, as per section 10, “specific performance of a contract was a discretionary remedy that could be given only if following conditions were met:

- the actual damage caused due to the non-performance of the action could not be ascertained; or

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<sup>20</sup> *Ibid*

- when monetary compensation would not be adequate relief for the non-performance of the contract.”<sup>21</sup>

However, the Amendment Act now restricts a court's ability to order specific performance of a contract unless the contract in question falls into one of the categories of contracts listed in the amended Section 14 of the Act, or the aggrieved party seeking relief falls into one of the categories of persons listed in the amended Section 16 of the Act<sup>22</sup>. Furthermore, the revised Act allows an aggrieved party to seek compensation “in addition to” or “instead of” seeking specific performance in the event of a contract violation (whereas prior to the amendment, such a compensation claim could be made “either in addition to or instead of” seeking specific performance.)<sup>23</sup>

However, it is pertinent to note that *the award of specific performance is subject to certain exceptions and also to the terms and conditions of the agreement between the parties.*<sup>24</sup> It's also worth noting that the previous legislation prohibited the specific performance of contracts including an arbitration clause; however, this provision has been repealed with this change.

### **Granting no injunction against contracts related to infrastructure projects:**

The Amendment Act prohibits courts from issuing injunctions in cases involving contracts for infrastructure projects if such an injunction will obstruct or delay the project's development or completion.<sup>25</sup>The Amendment includes a comprehensive list of the infrastructure projects that are covered by this law.“These infrastructure projects are categorized under the below-mentioned brackets:

- transport;
- energy;

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<sup>21</sup> Indus Law, ‘India- The Specific Relief (Amendment) Act, 2018: Overview & Implications’ (*Conventus Law*, 17 October 2018) <<https://www.conventuslaw.com/report/india-the-specific-relief-amendment-act-2018/>> accessed 16 November 2021

<sup>22</sup> Specific Relief (Amendment) Act 2018, s 10

<sup>23</sup> *Apoorv Sarvaria* (n 9)

<sup>24</sup> Specific Relief (n 1)

<sup>25</sup> Specific Relief (Amendment) Act 2018, s 20A

- water and sanitation;
- communication, such as telecommunication; and
- social and commercial infrastructure, such as affordable housing.”<sup>26</sup>

### **Special Courts for contracts on infrastructure projects:**

Under the amendment, certain civil courts will be classified as special courts and will hear suits brought under the Act involving contracts for infrastructure projects.<sup>27</sup>

### **Fixed duration for case disposal:**

The Amendment Act also establishes a “12-month” deadline for the resolution of all proceedings brought under the Act, beginning with the date the defendant receives the summons. The courts “may extend the term for a maximum of 6 months” after documenting grounds in writing for such extension.<sup>28</sup>

### **Expert advice mechanism:**

The Amendment Act adds a new clause to the Act that allows for the hiring of technical experts in litigation. Courts will establish payment terms for such experts, with the parties to the litigation paying in the proportions and at the times stipulated by the court.<sup>29</sup>

### **Acknowledgment to Limited Liability Partnership:**

“By introducing sub-section (fa) in Section 15 of the Act, the Amendment Act added *limited liability partnerships*<sup>30</sup> to the list of parties who may seek specific performance.”<sup>31</sup>

Illustration: Say, LLP “X” and LLP “Y” merge to form LLP “Z”. Then LLP “Z” can demand specific performance of a contract that LLP “X”/ LLP “Y” was a party to. Likewise, a third

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<sup>26</sup>Apoorv Sarvaria (n 9)

<sup>27</sup> Specific Relief (Amendment) Act 2018, s 20B

<sup>28</sup> Specific Relief (Amendment) Act 2018, s 20C

<sup>29</sup> Specific Relief (Amendment) Act 2018, s 14A

<sup>30</sup> Specific Relief (Amendment) Act 2018, s 15

<sup>31</sup> Apoorv Sarvaria (n 9)

party can seek specific performance against LLP “Z” for a contract that LLP “X” / LLP “Y” was privy to.

### **Substituted Performance:**

It is a remedy in which the aggrieved party, after providing the contract breaker an opportunity to execute his part, can have the contract performed through other channels and recover the costs and expenditures from the contract breaker.<sup>32</sup> This is now a statutory right as a result of the amendment. The Amendment Act adds a substituted performance provision to Section 20 of the Act. In the event of a contract violation, the aggrieved party has the right to have the contract executed by a third party or via his own agency, as well as to recover the actual expenses and expenditures. This does not, however, bar the aggrieved party from pursuing reimbursement from the defaulting party. Such substituted performance may be obtained only upon service of notice of a minimum of 30 days to the defaulting party. However, if there is a contract to the contrary between the Parties, the concept of substituted performance will have no applicability.<sup>33</sup>

### **CONTRACTS NOT SPECIALLY ENFORCEABLE**

Under The Amendment Act, specific performance can not be granted for the types of contracts listed below<sup>34</sup>:

- a contract in which the party has obtained substituted performance under section 20;
- a contract in which the performance of a continuous obligation is required that the court cannot supervise;
- a contract that is so reliant on the parties' qualifications that the court is unable to compel precise fulfillment of its material provisions; and
- a contract that is determinable by its nature.<sup>35</sup>

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<sup>32</sup> Specific Relief (Amendment) Act 2018, s 20

<sup>33</sup> Prakriti Agarwal, 'Specific Relief (Amendment) Act, 2018: An Overview' (*FoxMandal*, 10 July 2019) <<https://www.foxmandal.in/an-overview-of-the-specific-relief-amendment-act-2018/>> accessed 18 November 2021

<sup>34</sup> *Ibid*

### **Rights of the third party:**

The Specific Relief Act was also amended to allow a third person on whom the contractual parties have conferred a benefit, to specifically enforce contracts, subject to the contracting parties' rights. This is in the nature of an exception to the doctrine of "privity of contract."

### **Limiting discretion of courts in contracts relating to trust:**

As opposed to the earlier provision where Courts were given the discretion to direct specific performance of contracts that were agreed to be done in the performance wholly or partly of trust, being trusts established under the Indian Trusts Act, 1882,<sup>36</sup> now the words "may", in the discretion of the Court,<sup>37</sup> has been substituted with the word "shall" indicating the mandatory nature of the clause<sup>38</sup>. Therefore, now, the Courts are obligated to direct specific performance of a contract that is to be done in the performance of a trust, either wholly or partially, subject to the terms and conditions of the remainder of the provisions of the act as well as the underlying contract.<sup>39</sup>

### **Sections amended:**

Specific Relief (Amendment) Act, 2018 amends several sections of the Specific Relief Act, 1963 to make it more compatible with the contemporary world. Sections amended are discussed below:

### **Section 6:**

The Amendment Act has widened the scope of section 6. The Parliament has specified that a claim for recovery of possession may be filed either by the person who was dispossessed without his consent or any person "through whom he has been in possession" or any person

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<sup>35</sup> Specific Relief (Amendment) Act 2018, s 14

<sup>36</sup> Indian Trusts Act 1882

<sup>37</sup> *Ibid*

<sup>38</sup> Specific Relief (Amendment) Act 2018, s 11

<sup>39</sup> *Ibid*



claiming through that person.<sup>40</sup>Prior to the amendment, this sort of litigation could only be filed by the individual who had been wrongfully dispossessed or anybody claiming through him. Even a person who had been in possession of the immovable property via the aggrieved person may now initiate a claim under Section 6 of the Act.

### **Section 10:**

Section 10 of the Act has been substituted and instead the newly inserted Section 10 states, “the specific performance of a contract shall be enforced by the court subject to the provisions contained in sub-section (2) of Section 11, Section 14 and Section 16 of the Act”.<sup>41</sup>In circumstances where the genuine damage for non-performance could not be ascertained or when compensation for non-performance would not be an adequate remedy, it has made specified contract performance the norm rather than an option.

The words "may, in the discretion of the court" ensured that specific performance of any contract would not be imposed automatically upon fulfillment of the criteria and that the courts would have discretion in giving or denying specific performance relief. However, the Parliament has taken away all discretion in court by amending the Specific Relief (Amendment) Act, 2018 by stating, “the specific performance of a contract ‘shall be enforced by the court subject to the provisions of sub-section (2) of Section 11, Section 14, and Section 16 of the Specific Relief Act, 1963’”.<sup>42</sup>

The amendment in section 10 makes specific performance a general rule and removes uncertainty in the performance of contracts hereby encouraging the public to enter into developmental contracts.

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<sup>40</sup> Apoorv Sarvaria, ‘India: Recent Amendments made in the Specific Relief Act- A Brief Overview’ (*mondaq*, 13 November 2018) <<https://www.mondaq.com/india/contracts-and-commercial-law/754498/recent-amendments-made-in-the-specific-relief-act-a-brief-overview>> accessed 18 November 2021

<sup>41</sup> *Ibid*

<sup>42</sup> *Ibid*

**Section 11:**

The amendment has made certain changes in section 11 which deals with the specific performance of contracts concerning trusts. It has substituted the words “contract may, in the discretion of the court” with “contract shall”, stripping off discretionary power of courts and making it mandatory for them to grant specific relief in appropriate cases.

**Section 14:**

Section 14 deals with the contracts not especially enforceable. The old section is replaced by a new one in which some clauses are kept unaltered. “Only following contracts are not especially enforceable:

- substituted performance in accordance with Section 20 of the Act has been obtained,
- where the performance is of a continuous duty which the courts cannot supervise,
- where the contract is dependent on personal qualifications of parties that the court cannot enforce it of its material terms, and
- where the contract is determinable”.<sup>43</sup>

**Section 14A inserted:**

The modification adds a new Section 14A, which deals with courts' ability to hire experts to help them with any specific problem in the case. The clause is intended to allow civil courts to appoint an expert whose opinion or report will become part of the case's record and may be scrutinized. Any individual may also be ordered by the court to disclose relevant information or to produce or provide access to any relevant document, commodities, or property for inspection by the expert.

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<sup>43</sup> Apoorv Sarvaria (n 9)

**Section 15:**

Section 15 of the act “specifies the persons who may claim specific performance of a contract. It now embraces a limited liability partnership (LLP) that was created by merging two existing LLPs, one of which may have engaged into a contract prior to the merger”.

**Section 16:**

As a result of the Parliament's approach to enforcing specific performance without the award of penalties or compensation as an option for breach or non-performance, section 16 of the Act has been modified. In addition, the obligation in Section 16 clause (c) to aver that the party is ready and willing to execute the contract's fundamental conditions has been removed. The party seeking specific performance now just needs to establish it, rather than aver it in the pleadings.

**Clause ‘ca’ was inserted in section 19:**

The next change is to Section 19 of the Act, where clause (ca) has been added to “allow specific performance of a contract to be enforced against a limited liability partnership that arises from an amalgamation of a limited liability partnership that had previously entered into a contract with another limited liability partnership”.<sup>44</sup>

**Section 20:**

The unamended Section 20, which provides for discretion to edict specific performance, has been switched with a new section that introduces the concept of substituted performance. This new provision allows an aggrieved party to seek substituted performance through a third party or its own agency, and to collect the expenses and other costs expended, spent, or suffered by that party from the party at fault. Section 20 sub-section (2), on the other hand, requires the party who has been harmed to give written notice of not less than 30 days to the party who has breached the contract. The addendum to this sub-section further clarifies that the party that has experienced a breach of contract is only entitled to collect such expenses and

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<sup>44</sup> Specific Relief Act 1963

fees if the contract was fulfilled by a third party or by its own agency. Subsection (3) clarifies that after the substituted performance has been chosen, the party who has suffered is not entitled to specific performance against the party who has caused such suffering. Subsection (4), on the other hand, safeguards compensation claims from the person who has broken the law.

## INTRODUCTION OF SECTIONS 20A, 20B AND 20C

Sections 20A, 20B, and 20C were added to the Act by the Amendment Act of 2018.

- Special provisions have been created in Section 20A for contracts pertaining to infrastructure projects, as detailed in the Schedule added into the Act by the Amendment Act of 2018. It prohibits a civil court to issue an injunction in connection to infrastructure projects if doing so will obstruct or delay the progress or completion of those projects.
- Section 20B establishes Special Courts to hear suits brought under the Act involving contracts for infrastructure projects.
- Section 20C mandates that cases brought under the Act be resolved “within 12 months” of the date of delivery of summons on the defendant, with the possibility of an extension for a total of six months.<sup>45</sup>

**Section 21:** The amendment has slightly altered section 21 which deals with the power to award compensation. In 21(1) the phrase "either in addition to or in substitution of" has been replaced with the words "in addition to." This amendment expresses the Parliament's desire to encourage the specific performance of the contract rather than claiming remuneration in lieu of specified performance.

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<sup>45</sup> *Ibid*

**Section 25:** “The introduction of the Arbitration and Conciliation Act, 1996<sup>46</sup>, and the removal of the previous Arbitration Act, 1940,” resulted in a change to Section 25.

**Section 41:** Section 41 of the Act has been amended to provide a list of scenarios in which an injunction cannot be obtained. Clause (ha) has been added, which states, “an injunction cannot be issued if it will obstruct or delay the progress or completion of any infrastructure project, or interfere with the continuous supply of necessary facilities relating to such project or services”<sup>47</sup>.

### THE AMENDMENT: PROSPECTIVE OR RETROSPECTIVE

One controversy engulfing The Amendment<sup>48</sup> is its equivocal stand on the issue whether it is prospective or retrospective. The ambiguity is further aggravated by the fact that different courts have given different judgements on the issue. In the case of *Church of North India v Ashoke Biswas*<sup>49</sup>, the Calcutta High Court held that any suit that was not ‘decreed’ until the commencement of the Amendment i.e. 01.10.2018 would fall within the purview of the Amendments.<sup>50</sup> The Court reasoned that because the question of contract enforcement arises only on the day of the decree's passing, not on the date of the suit's initiation, the Act must have retrospective effect and apply to all outstanding actions.

In one case law the Bangalore District Court has declared The Act to be in reality prospective in force. According to the learned Judge, the Legislature has explicitly requested that the amending Act be prospective by utilising the following terms: “It shall come into force on such date as the Central Government may, by notification in the official gazette, appoint and different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the

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<sup>46</sup> Arbitration and Conciliation Act 1996

<sup>47</sup> Apoorv Sarvaria, ‘India: Recent Amendments made in the Specific Relief Act- A Brief Overview’ (*mondaq*, 13 November 2018) <<https://www.mondaq.com/india/contracts-and-commercial-law/754498/recent-amendments-made-in-the-specific-relief-act-a-brief-overview>> accessed 17 November 2021

<sup>48</sup> *Ibid*

<sup>49</sup> *Church of North India v Ashoke Biswas* (17.04.2019 - CALHC) : MANU/WB/0960/2019

<sup>50</sup> *Ibid*

coming into force of that provision”<sup>51</sup>. The judge interpreted the foregoing to indicate that the date of notice of the act's enforcement, i.e. October 1, 2018, is the date from which the act will also apply, giving it prospective effect.

Some scholars argue, “the method of an amendment adopted under the Specific Relief (Amendment) Act, 2018 is that of substitution. So, the date of applicability of the act should be March 1, 1964, when the original act came into force”. On the other end of the spectrum, some are of the opinion, “The Amendment should be prospective because parties, particularly commercial parties, pick their terms and price with reference to remedies available when they form their contract, the amendment should apply only to contracts signed after the amendment becomes law”. It will be fascinating to watch how other Courts approach this problem in the future, and whether the Supreme Court will intervene and establish the law.

### **CRITICAL APPRAISAL**

The Amendment makes the act more compatible with the present society. Nevertheless, there are some loopholes in the amendment which are still to be redressed. Although the Amendment Act aims to:

- remove obstacles to contract enforcement; and
- expedite the resolution of cases filed under the Act.

The new rules specifically eliminate a civil court's ability to issue an injunction in connection with any dispute arising out of a contract pertaining to an infrastructure project. While the stated purpose of such modifications is to remove any impediment or delay in the development or completion of such projects, which are often in the public interest, courts may refuse to accept injunction applications in bona fide instances. The change to Section 21 removes the power of a party requesting specific performance to demand compensation instead of specific performance. When a court declines to provide specific performance for legal reasons, a plaintiff might pursue a claim for reimbursement. This is not possible after the amendment. The plaintiff loses his claim since the Civil Procedure Code prohibits him from

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<sup>51</sup> *Ibid*

filing another complaint (*Res judicata*). Such a plaintiff has no recourse. However, forcing specific performance in some situations may be problematic, particularly if the defaulting party to a contract is in financial distress or facing bankruptcy procedures under the Insolvency and Bankruptcy Code<sup>52</sup>.

While the desire to shorten the judicial processes to 18 months is admirable, it begs the issue of what will happen at the conclusion of that time frame. Furthermore, the Amendment Act may have an impact on the court's jurisdiction under the Commercial Courts Act, 2015<sup>53</sup>, with the potential overlap between the jurisdiction of the special courts envisaged to adjudicate<sup>54</sup> contracts relating to infrastructure projects and general commercial disputes relating to construction and infrastructure contracts. Clarity in this regard will, without a doubt, be required.<sup>55</sup>

## CONCLUSION

The Specific Relief Act of 1963, which is over six decades old, did not meet the demands of modern society. It became imperative to amend the legislation. The Specific Relief (Amendment) Act of 2018 was introduced to mend the said loophole. The amendment act focused on changing the approach from “damages being the rule and specific performance being the exception, to specific performance being the rule, and damages being the alternate remedy”.<sup>56</sup> Although the amendment was mostly successful, there are still some flaws (as discussed under the heading ‘Critical Appraisal’) that need to be addressed at the earliest.<sup>57</sup> To prevent repeating these errors, legislators should seek expert counsel and public input, which was not done when The Amendment was drafted. The question of whether the act is retroactive or prospective is undecided. For the same, the courts have differing viewpoints. It would be fascinating to watch how the courts deal with the uncertainty and loopholes now.

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<sup>52</sup> Insolvency and Bankruptcy Code 2016

<sup>53</sup> Commercial Courts Act 2015

<sup>54</sup> *Ibid*

<sup>55</sup> Specific Relief (n 44)

<sup>56</sup> Prakriti Agarwal (n 33)

<sup>57</sup> *Ibid*