

# The Specific Relief (Amendment) Act, 2018

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## ABSTRACT:

The Specific Relief (Amendment), Act of 2018 has been passed by the Parliament with a sole purpose of tackling the inefficiencies and inabilities that had developed in the Specific Relief Act of 1963; Owing to the recent trends of transformation in the Indian economy and the business –finance sector, the Amendment Act has truly brought about a considerable change in the substratum and ethos of the principal Act. The research paper emphasizes on the various amended provisions of the principal act and how they are going to act as an antidote to the long ailment of contractual enforcement. It also intensively discusses and analyses the changes that the Amendment has brought in by providing Specific Performance as a rule rather than an exception and by doing away with the discretionary power of the courts in matters such as Contract enforcement. The additional measure to obtain relief in the form of Substituted Performance and the subsequent employment of experts is even commended by the researcher. Even the proposed plan of setting up certain special courts for infrastructure related disputes and crunching the court proceedings over a period of 24 months has been evaluated by the researcher. Along with this, the researcher interprets the Amendment Act and analyses its implications and expected impacts. The applicability of the Amendment Act has been brought to the forefront by presenting a comparison of the same with the Specific Relief Act of 1963. The research highlights the overall relevancy of the Amendment Act and argues that it is truly a “way forward” for the transforming conditions of the present era.

**Keywords:** Specific Relief, Court’s Discretion, Substituted Performance, Infrastructure Projects.

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## I. INTRODUCTION

The Specific Relief (Amendment) Act, 2018 introduces a paradigm shift in the prevalent law regarding contractual enforcement in India, shifting the focus from the previous default remedy of award of damages for breach of contract to enforcing specific performance of contracts.<sup>1</sup>

Acknowledging the need for greater certainty in contractual enforcement and time bound adjudication of rights of contesting parties, the Specific Relief (Amendment) Act, 2018 (**Amendment Act**), amending the Specific Relief Act, 1963 (**Principal Act**), which essentially prescribes remedies for parties either by awarding specific performance of a contract, or granting an injunction, or declaration in favour of the aggrieved party; was recently passed by both Houses of Parliament. It received Presidential assent on 1 August 2018.<sup>2</sup>

“Specific relief” is a remedy decreed by courts, and requires precise fulfillment of contractual or legal obligations by a defaulting party when monetary damages are inappropriate or inadequate.<sup>3</sup>

The Amendment was introduced based on the recommendations of the Expert Committee appointed by the Government Of India under the leadership of Mr. Anand Desai, with the primary objective of, amongst other

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<sup>1</sup> Ran Chakrabarti et al., *The Specific Relief (Amendment) Act, 2018: Overview & Implications*, MONDAQ, (December 1, 2018, 10:00 AM) <http://www.mondaq.com/india/x/736966/Contract+Law/The+Specific+Relief+Amendment+Act+2018+Overview+Implications>.

<sup>2</sup> *Analysis, Amendments to Specific Relief Act, 1963*, TRILEGAL (December 1, 2018, 10:00 AM), [https://www.trilegal.com/pdf/create.php?publication\\_id=14&publication\\_title=amendments-to-the-specific-relief-act-1963](https://www.trilegal.com/pdf/create.php?publication_id=14&publication_title=amendments-to-the-specific-relief-act-1963)

<sup>3</sup> Specific Performance, LII (December 1, 2018, 10:00 AM), [https://www.law.cornell.edu/wex/specific\\_](https://www.law.cornell.edu/wex/specific_)

things, to regulate enforceability of contracts concerning infrastructure development in India in order to promote public interest and 'Ease of Doing Business', to address issues of delay in enforceability of contracts, and to provide an effective remedy to parties who have suffered loss due to breach or no fulfillment of a contract. It is noteworthy that the Amendment is also in line with the UNIDROIT Principles of International Commercial Contracts, which aspire to achieve harmonization in international law governing commercial contracts and are a reflection of concepts found in majority of legal systems worldwide.<sup>4</sup>

The Act has now amended 54-year-old law by removing the associated flaws and defects and provides specific performance by courts as a general rule, as part of the government's ease of doing business policy.

## II. AIM

The research project aims at shedding light on the recently passed Specific Relief (Amendment) Act, 2018. The main aim of the project is to discuss the various provisions of the Amendment Act, analyse its plausible implications on commercial arrangements along with a brief discussion of the reason that were responsible for such changes. Along with this the researcher even brings into our concern the various flaws of the Amendment Act, which are eating away its worth. The Researcher further goes on to present a concise remark relating to the Amendment Act.

### OBJECTIVES

- To discuss the Expert Committee Report.
- To explain the various provisions of the Amendment Act.
- To analyze the inherent flaws associated with the Act.
- To present a brief remark on the Amendment Act.

## III. RESEARCH METHODOLOGY

The researcher follows The Doctrinal method of research which requires gathering relevant data from the specified documents and compiling databases in order to analyze the material and arrive at a more complete understanding and analysis of the Specific Relief (Amendment) Act, 2018.

This research paper has both quantitative and qualitative data collection tools. Data collection is done through referring to various websites-books, classroom observations and questioning with teacher

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<sup>4</sup>Bhavana Sunder, Ashish Kabra & Vyapak Desai, *Contract enforcement finally sees relief*, NISHITA DESAI ASSOCIATES (December 1, 2018, 12:16 PM) <http://www.nishithdesai.com/information/news-storage/news-details/article/contract-enforcement-finally-sees-relief-amendments-to-the-specific-relief-act.html>

## IV. SCOPE

There were not much restriction regarding the making of this research paper because of the nature of this research paper. The reasons and the provisions were fairly easily accessible and thus it was easy to reach an analysis, but the topic being a vast field of applicability and contractual relevance in a developing economy concerning India, cannot be confined, thus, the research work has sought with some of the unavoidable limitations.

## V. OBJECTIVES OF THE AMENDMENT ACT

- The Amendment Act has been introduced with the principal motive of introducing greater certainty in the enforcement of contracts and thus improving the Indian track-record;
- The Amendment aims to widen the scope of specific performance as a remedy to contracting parties irrespective of whether damages are an adequate relief.<sup>5</sup>
- The law relating to specific relief must be made more business friendly and enhance the “Ease of Doing Business”, released by The World Bank.<sup>6</sup>
- The Amendment Act seeks to provide aggrieved parties with speedy relief by bringing in a time bound manner of redressal.<sup>7</sup>

The Amendment Act has brought about a considerable change in the substratum and ethos of the Act.

## VI. REASONS OF THE AMENDMENT ACT

- **Report Findings: World Bank Doing Business 2018 and Economic Survey 2018**

World Bank in its Ease of Doing Business 2018 report places India's rank as 100 (out of 190 countries) which is a commendable improvement from the earlier rank of 130 in 2017.<sup>8</sup> This has been contributed by factors such as payments of taxes and strengthening access to credit. An area that came out clearly where our country is lagging behind is in Enforcement of Contracts and associated Legal systems and procedures; this domain is closely watched by international investors for them to obtain comfort in our dispute resolution process resulting

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<sup>5</sup> Suchita Vyas, *Specific Relief (Amendment) Act, 2018: A Paradigm Shift?*, MONDAQ (December 1, 2018, 05:05 PM) <http://www.mondaq.com/india/x/749686/Contract+Law/Specific+Relief+Amendment+Act+2018+A+Paradigm+Shift>.

<sup>6</sup> Seema Jhingan, *Specific Relief (Amendment) Act, 2018*, IR GLOBAL (December 12, 2018, 7:45 PM), <https://www.irglobal.com/article/specific-relief-amendment-act-2018>

<sup>7</sup> Vivek Sriram, Niharika Mepani & Gargi Bohra, *Specific Relief (Amendment) Act, 2018*, KHAITAN & CO (December 1, 2018, 7:45 PM), <https://www.khaitanco.com/PublicationsDocs/Khaitan%20&%20Co-Ergo-Newsflash-14Aug2018.pdf>

<sup>8</sup> *Ease of doing business: India ranks 100 among 190 countries, moves up 30 places*, ET NOW (December 1, 2018, 7:45 PM), <https://www.timesnownews.com/business-economy/economy/video/ease-of-doing-business-india-ranks-100-among-190-countries-moves-up-30-places/116379>

in speedy justice. The dispute resolution system in Indian courts is a long, efficacious, and an expensive method, that most of the big multi nationals, firms and associates tried to avoid.<sup>9</sup>

Subsequently our Economic Survey 2018 report highlighted in its chapter “Ease of Doing Business Next Frontier: Timely Justice” that India has only marginally improved its position on Enforcing Contracts (from 172 in 2017 to 164 in 2018 as per World Bank Doing Business indicators) which is still behind Pakistan, Congo and Sudan.<sup>10</sup> Thus, the weightage given to monetary compensation method over the performance of specific contracts demotivates the international investors in having commercial transactions in the country.

- **The Backlog – Pending Cases in India**

An estimate of pending cases in India by National Judicial Data Grid as of 2nd April 2018 is 26.5 million.<sup>11</sup> The average time required to enforce a contract through court being 1445 days (approx.4 years) is a very demotivating proof for the financial investors and commercial allies to have business relations in India against a 164 days in Singapore (the best performer as per DB 2018 report)<sup>12</sup> – becomes understandable for an investor’s country risk perception in a situation of a project contract ending up in a dispute. Thus, reforms were a need of the hour as the country wants to thrive and prosper in this age of ‘Money Market’, to have better international relations in terms of business and commerce along with a sense of achievement and commendation by fairing over the International Rankings.

- **Commercial Cases – Delays leading to costs and time overruns**

The Economic Survey 2018 notes the count and value of stayed infrastructure projects belonging to 6 ministries with a total no. of 52 whose value is around Rs.52, 081 Crores! Apart from general work overload in Courts, the Survey also mentions “Recourse to Injunctions and Stays” also as one of the main reasons for project delays on account of judicial procedures. For instance, in High Court of Delhi, Injunctions in the Intellectual Property Rights (IPR) cases led to about 60% of cases being stayed with average pendency of 4.3 years 7.9 years for final disposal.<sup>13</sup>

<sup>9</sup>NilimaBhadbhade, *The Specific Relief (Amendment) Act 2018: a Hurried Legislation*, B&B (December 1, 2018, 11:34 PM), <https://barandbench.com/specific-relief-amendment-act-hurried-legislation/>

<sup>10</sup> *Economic Survey 2017-18*, REPORTER AT LARGE (December 1, 2018), <https://reporteratlarge.org/wp-content/uploads/2018/02/Economic-Survey-2017-18-Vol-1.pdf>

<sup>11</sup> Abraham C. Mathews, *Travesty of Justice*, BUSINESS TODAY (December 1, 2018), <https://www.businesstoday.in/magazine/features/travesty-of-justice/story/272909.html>

<sup>12</sup> *Ease of doing business in India*, WORLD BANK GROUP (December 1, 2018), <http://www.doingbusiness.org/en/data/exploreconomies/india>

<sup>13</sup>Venkateswaran T., *The Specific Relief (Amendment) Act, 2018 – Overview & Implications*, JUUDGE, (December 1, 2018, 11:23 AM) <https://juudgeblog.wordpress.com/2018/11/10/the-specific-relief-amendment-act-2018-overview-implications/>

The above scenario is a clear indicator of the impact the judicial delays have on uncertainty in commercial contracts, especially capital-intensive and long-duration projects.<sup>14</sup> This unfortunately leads to project time and cost overruns resulting in unviable costs and uncertain project environment.

The Government, in the spirit of 'Ease of Doing Business' in India and based on the recent years World Bank Doing Business Report findings, has, as a result, introduced various amendments to the Specific Relief Act 1963 to address the above concerns – mainly regarding availability of Remedy to critical Infrastructure Projects and discretionary powers of Courts.<sup>15</sup>

#### • **Expert Committee Report.**

The Amending Act follows a Report submitted to the Government by an Expert Committee of six members consisting of legal practitioners and academics constituted in January 2016 for suggesting amendments to the Specific Relief Act so that 'specific performance is granted as a general rule', and to 'ensure that discretionary relief is done away with' for ensuring 'ease of doing business in India'.<sup>16</sup>

The Recommendations of the Committee are as follows:

- To change 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;
- To provide guidelines for reducing the discretion granted to Courts and tribunals while granting performance and injunctive reliefs;
- To introduce provisions for rights of third parties (other than for Government contracts);
- Important projects that are of public nature should be insulated from any interruption on account of judicial process<sup>17</sup>.

The Amendment has become a patchwork of some opposing and erratic provisions. The Amendment has been rushed without consultation with the main stakeholders who administer this Act: Advocates and Judges.

The Ministry did not publish the Report of the Expert Committee. It has, however, been made available under the RTI Act.<sup>18</sup>

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<sup>14</sup> *Specific Relief Amendment Bill, 2018: Importance of Discretionary Power of the Court with Relation to Specific Performance*, NLIU (December 2, 2018), <http://cbcl.nliu.ac.in/contract-law/specific-relief-amendment-bill-2018-importance-of-discretionary-power-of-the-court-with-relation-to-specific-performance/>

<sup>15</sup> K.S. Venkatachalam, *Ease of doing business in India*, *THE DIPLOMAT* (December 2, 2018) <https://thediplomat.com/2017/11/the-ease-of-doing-business-in-india/>

<sup>16</sup> Nilima B., *The Specific Relief (Amendment) Act 2018: a Hurried Legislation*, *OBITERDICTADOTIN*, (December 2, 2018), <https://obiterdictadotin.files.wordpress.com/2018/10/the-specific-relief-amendment-act-a-hurried-legislation.pdf>

<sup>17</sup> *Specific Relief (Amendment) Act, 2018*, CYRIL AMARCHAND MANGALDAS, (December 2, 2018) <http://www.cyrilshroff.com/wp-content/uploads/2018/07/Brief-on-Specific-Relief-Amendment-Act-2018.pdf>

Thus, some of the provisions of The Specific Relief Act 1963 that were acceptable and applicable in the previous times need to be modified, transformed and evolved so as to make them confer with the needs of the present time. The Amendment Act signifies the importance of evolution that is necessary in the laws to make them suitable for the present times. The law must be flexible in nature with a scope of improvement over time.

## VII. PROVISIONS OF THE AMENDMENT ACT

- **Changing the Discretionary power of the Courts.**

An important feature in the list of amendments is that the grant of specific performance of contracts has been made compulsory, by taking away the discretionary power of courts.<sup>19</sup> The current Act Section 10 mentions that specific performance of contract ‘may’ be enforced by the court in its discretion when, (i) the actual damage caused due to the non-performance of the action could not be ascertained; or (ii) when monetary compensation would not be adequate relief for the non-performance of contract. Availability of such discretionary powers have allowed the courts often award damages as a general rule and grant specific performance as an exception apart from injunctions.<sup>20</sup>

The amendment has now changed this scenario and turned the law upside down by stating that specific performance of a contract shall be awarded as a rule rather than an exception and be enforced by the court. The compensation can no longer be sought in substitution of specific performance. However, compensation can be sought in addition to specific performance.<sup>21</sup>

**Comment:** The Amendment Bill has changed the nature of specific relief from an equitable, discretionary remedy to a statutory remedy. The discretionary nature of remedy created uncertainty and the grant of the relief was not uniform. With the amendment, specific performance now be granted by courts unless the claim for relief is barred under limited grounds prescribed in the statute.<sup>22</sup> This change is aimed at providing greater protection of contractual expectations by ensuring that a non-defaulting party can obtain the performance he

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<sup>18</sup> supra note 9.

<sup>19</sup>S. 3 of the Specific Relief (Amendment) Act, 2018.

*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.*”

<sup>20</sup> S. 4 of the Specific Relief (Amendment) Act, 2018.

In section 11 of the principal Act, in sub-section (1), for the words “contract may, in the discretion of the court”, the words “contract shall” shall be substituted. (December 03, 2018)

<sup>21</sup>Charulata, *THE SPECIFIC RELIEF (AMENDMENT) ACT, 2018*, ARCHANABALA.

(December 03, 2018, 03:23 PM)

<https://archanabala.com/2018/08/23/the-specific-relief-amendment-act-2018/>

<sup>22</sup> Desai, supra note 4.

bargained for. This amendment may also discourage errant parties who may deem it more viable to breach a contract than perform it, as the cost of damages may still be less than the cost of the performance.<sup>23</sup>

- **Limited liability partnerships:** The resulting limited liability partnership formed by the amalgamation of two limited liability partnerships, has been included as a party in favour of or against whom specific performance may be granted as a relief. This change merely seeks to update the SRA as similar provisions existed for amalgamating companies.<sup>24</sup>

- **Contracts which cannot be specifically enforced:**

Section 14 of the SRA has now been amended to state that the following categories of contracts cannot be specifically enforced:

- where an aggrieved party has obtained substituted performance of the contract (as discussed below);
- where the contract involves performance of a continuous duty which cannot be supervised by the court;
- where the contract is dependent on personal qualifications of an individual, such that enforcement of the material terms is not possible; and
- The contract is determinable by its nature.<sup>25</sup>

**Comment:** The Amendment Bill has deleted the settled ground that specific performance is granted only when monetary compensation is not adequate, making specific performance a general remedy available to any person who wishes to claim it unless she is barred under specific grounds laid out in the statute. Therefore, the primacy given to damages as a relief over specific performance under Indian law has been removed. As the courts no longer have the discretion to decide upon granting specific relief, there is far more certainty that the parties will be successful in obtaining specific relief.<sup>26</sup>

The Amendment Act has also amended Section 16 of the SRA to suggest that a party seeking specific performance, only has to "prove" that such party has performed or has been ready and willing to perform the

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<sup>23</sup> [https://www.trilegal.com/pdf/create.php?publication\\_id=14&publication\\_title=amendments-to-the-specific-relief-act-1963](https://www.trilegal.com/pdf/create.php?publication_id=14&publication_title=amendments-to-the-specific-relief-act-1963) (December 03, 2018)

<sup>24</sup>S. 8 of the Specific Relief (Amendment) Act, 2018.

*In section 19 of the principal Act, after clause (c), the following clause shall be inserted, namely:— "(ca) when a limited liability partnership has entered into a contract and subsequently becomes amalgamated with another limited liability partnership, the new limited liability partnership which arises out of the amalgamation."* (December 04, 2018)

<sup>25</sup> S. 5 of the Specific Relief (Amendment) Act, 2018.

*For section 14 of the principal Act, the following sections shall be substituted, namely:— "14. The following contracts cannot be specifically enforced, namely:— (a) where a party to the contract has obtained substituted performance of contract in accordance with the provisions of section 20; (b) a contract, the performance of which involves the performance of a continuous duty which the court cannot supervise; (c) a contract which is so dependent on the personal qualifications of the parties that the court cannot enforce specific performance of its material terms; and (d) a contract which is in its nature determinable.* (December 03, 2018)

<sup>26</sup> Desai, supra note 4.

essential terms of the contract and an averment to such effect in the pleadings is no longer mandatory when seeking specific performance.<sup>27</sup>

- **SUBSTITUTED PERFORMANCE: A New Remedy**

The Amendment has been included to provide the affected party an option to utilize or appoint a third party contractor or appoint its own agency to execute the remaining part of the contract, called as Substituted Performance, by sending a 30-day written notice before obtaining and proceeding accordingly. The affected party can now also recover the costs in connection with execution of such a substituted performance from the other party who is in breach of the contract. However, it has also been mentioned that once the substituted performance provision requirement has been invoked, the affected party would then not be able to claim specific performance i.e., making the defaulting party to perform the contractual obligations as per earlier agreed terms.<sup>28</sup>

**Comment:** The introduction of substituted performance will enable parties to satisfy performance of the contract work even if there is a breach as the party not in breach can ensure the performance of the contractual objective through a third party or through its own agency.<sup>29</sup> The party not in breach would not suffer inordinate delays of litigation in ensuring the performance of the intended contractual obligations. The introduction of a specific provision allowing recovery of costs pursuant to substituted performance would reduce the risks and uncertainty around the ability to claim complete costs of substituted performance.<sup>30</sup>

Further, the notice period of 30 days may also deter the occurrence of a breach of contract.<sup>31</sup> Parties may choose to perform or renegotiate the contract within this period. This would encourage continuation of contractual relationships and achieve the planned objectives of the contract.

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<sup>27</sup>S. 7 of the Specific Relief (Amendment) Act, 2018.

*In section 16 of the principal Act,— (i) for clause (a), the following clause shall be substituted, namely:— “(a) who has obtained substituted performance of contract under section 20; or”; (ii) in clause (c),— (I) for the words “who fails to aver and prove”, the words “who fails to prove” shall be substituted; (II) in the Explanation, in clause (ii), for the words “must aver”, the words “must prove” shall be substituted.* (visited on 03.12.2018)

<sup>28</sup>S. 10 of the Specific Relief (Amendment) Act, 2018.

*For section 20 of the principal Act, the following sections shall be substituted, namely: —“ (1) Without prejudice to the generality of the provisions contained in the Indian Contract Act, 1872, and, except as otherwise agreed upon by the parties, where the contract is broken due to non-performance of promise by any party, the party who suffers by such breach shall have the option of substituted performance through a third party or by his own agency, and, recover the expenses and other costs actually incurred, spent or suffered by him, from the party committing such breach (3) Where the party suffering breach of contract has got the contract performed through a third party or by his own agency after giving notice under sub-section (1), he shall not be entitled to claim relief of specific performance against the party in breach. (4) Nothing in this section shall prevent the party who has suffered breach of contract from claiming compensation from the party in breach.* (December 03, 2018)

<sup>29</sup> <http://cbcl.nliu.ac.in/contract-law/specific-relief-amendment-bill-2018-importance-of-discretionary-power-of-the-court-with-relation-to-specific-performance/> (December 03, 2018)

<sup>30</sup> <https://www.lexology.com/library/detail.aspx?g=f964e521-4024-44f8-8a06-e4ff81f2286a>(December 03, 2018)

<sup>31</sup>S. 10(2) of the Specific Relief (Amendment) Act, 2018. (December 03, 2018)

*No substituted performance of contract under sub-section (1) shall be undertaken unless the party who suffers such breach has given a notice in writing, of not less than thirty days, to the party in breach calling upon him to perform the contract within such time as*

- **EXPERT OPINION.**

A new section has been introduced to the Act (Section 14A), which empowers Courts to get expert opinion from one or more than one experts, where the Court considers it necessary, to assist it on any specific issue involved in the suit. Such opinion or report given by the expert will be a part of the record of the suit. The Court may also direct the fee, cost or expenses to be paid to the expert and the proportion in which the parties shall pay such amount.<sup>32</sup>

**Comment:** The Amendment Bill now grants courts the opportunity to receive expert assistance when faced with a technical or scientific issue. Although parties can provide expert evidence to support their cases, a court-appointed expert would may be more independent and impartial.<sup>33</sup>

- **Fixed Timelines.**

A suit filed under the Specific Relief Act would have to be disposed of by the court within 12 (twelve) months from the date of service of summons to the defendant. This period can be extended by 6 (six) months after the recording of written reasons by the court. The fixed timelines have been prescribed to reduce delays and ensure expeditious disposal of suits by courts.<sup>34</sup>

**Comment:** Timelines are prescribed to reduce delays and ensure ready disposal of suits by courts. A harmonious interpretation would have to be given to these timelines to avoid a potential conflict with the timelines prescribed under the Commercial Courts Act, 2015. Further, substantial infrastructure would be required to be created to ensure timely disposal of cases to meet the aggressive timeline of 12 months.<sup>35</sup>

- **Recovery of possession**

The Original Act permits the following persons to file a suit for recovery of possession of immovable property: (I) a person put out of possession (dispossessed person); and (ii) any person claiming through such dispossessed

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*specified in the notice, and on his refusal or failure to do so, he may get the same performed by a third party or by his own agency: Provided that the party who suffers such breach shall not be entitled to recover the expenses and costs under sub-section (1) unless he has got the contract performed through a third party or by his own agency.*

<sup>32</sup>S. 5(1) (4) of the Specific Relief (Amendment) Act, 2018. (December 03, 2018)

*(1) Without prejudice to the generality of the provisions contained in the Code of Civil Procedure, 1908, in any suit under this Act, where the court considers it necessary to get expert opinion to assist it on any specific issue involved in the suit, it may engage one or more experts and direct to report to it on such issue and may secure attendance of the expert for providing evidence, including production of documents on the issue.(4) The expert shall be entitled to such fee, cost or expense as the court may fix, which shall be payable by the parties in such proportion, and at such time, as the court may direct."*

<sup>33</sup> Desai, supra note 4.

<sup>34</sup>S. 10 of the Specific Relief (Amendment) Act, 2018.

*Amendment to the Section 20 of The Specific Relief Act, 1963; Notwithstanding anything contained in the Code of Civil Procedure, 1908, a suit filed under the provisions of this Act shall be disposed of by the court within a period of twelve months from the date of service of summons to the defendant: Provided that the said period may be extended for a further period not exceeding six months in aggregate after recording reasons in writing for such extension by the court."* (December 03, 2018)

<sup>35</sup> <http://www.nishithdesai.com/information/news-storage/news-details/article/contract-enforcement-finally-sees-relief-amendments-to-the-specific-relief-act.html> (December 03, 2018)

person.<sup>36</sup> The amended Act additionally permits a person through whom the dispossessed got possession of the immovable property, to file a suit for recovery.<sup>37</sup>

- **Infrastructure Contracts.**

Given the significance of infrastructure projects in India, the amendments grant special treatment to the 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.<sup>38</sup>

Section 20A proposed to be introduced by the amendment restrains Courts from granting injunction in a suit involving contract relating to an infrastructure project, where granting injunction would cause impediment or delay in the progress or completion of such infrastructure project.<sup>39</sup> These projects can be categorized under the following infrastructure sectors and their sub-sectors: (i) transport; (ii) energy; (iii) water and sanitation (iv) communication (such as telecommunication); and (v) social and commercial infrastructure such as affordable housing and the Central government may amend the list through notification.<sup>40</sup>

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.<sup>41</sup>

- **Special Courts:** Another change brought under the amendment is that certain civil courts may be designated as Special Courts by the state government, in consultation with the Chief Justice of a High Court. These courts will deal with cases pertaining to infrastructure projects.<sup>42</sup>

- **RECENT DEVELOPMENTS**

<sup>36</sup> <https://www.prsindia.org/billtrack/specific-relief-amendment-bill-2017> (December 03, 2018)

<sup>37</sup> S. 2 of the Specific Relief (Amendment) Act, 2018

*In section 6 of the Specific Relief Act, 1963 (hereinafter referred to as the principal Act), in sub-section (1), after the words "he or any person", the words "through whom he has been in possession or any person" shall be inserted.* (visited on 03.12.2018)

<sup>38</sup> S. 10 of the Specific Relief (Amendment) Act, 2018.

*"For the purposes of the section, section 20B and clause (ha) of section 41, the expression "infrastructure project" means the category of projects and infrastructure Sub-Sectors specified in the Schedule. (2) The Central Government may, depending upon the requirement for development of infrastructure projects, and if it considers necessary or expedient to do so, by notification in the Official Gazette, amend the Schedule relating to any Category of projects or Infrastructure Sub-Sectors."* (visited on 04.12.2018)

<sup>39</sup> Manu Sebastien, *Parliament Passes Specific Relief Amendment Bill Making Specific Performance of Contract Compulsorily Enforceable*, *LIVELAW*, (December 04, 2018, 04:47 PM)

<https://www.livelaw.in/parliament-passes-specific-relief-amendment-bill-making-specific-performance-of-contract-compulsorily-enforceable/>

<sup>40</sup> Charulata, *supra* note 21.

<sup>41</sup> <http://www.mondaq.com/india/x/731812/Contract+Law/AMENDMENTS+TO+THE+SPECIFIC+RELIEF+ACT+1963> (December 04, 2018)

<sup>42</sup> S. 10 of the Specific Relief (Amendment) Act, 2018

*Amendment to section 20(B) of The Specific Relief Act, 1963; "The State Government, in consultation with the Chief Justice of the High Court, shall designate, by notification published in the Official Gazette, one or more Civil Courts as Special Courts, within the local limits of the area to exercise jurisdiction and to try a suit under this Act in respect of contracts relating to infrastructure projects."* (December 04, 2018)

**Extension to the Union Territory-** The Union Home Ministry on Dec 7, 2018, in a significant development, has empowered Lieutenant Governors (LGs) and administrators of Union territories to entitle civil courts as special courts to speed up the large pending cases relating to infrastructure projects.<sup>43</sup>

**Judgment of The Supreme Court (7 Jan 2019) :** In *Kamal Kumar vs Premlata Joshi*<sup>44</sup>, the bench comprising Justice Abhay Manohar Sapre and Justice Indu Malhotra listed out the requirements to be answered in a specific performance suit. Those are:

1. Whether there exists a valid and concluded contract between the parties for sale/purchase of the suit property? ;
  2. Whether the plaintiff has been ready and willing to perform his part of contract and whether he is still ready and willing to perform his part as mentioned in the contract? ;
  3. Whether the plaintiff has, in fact, performed his part of the contract and, if so, how and to what extent and in what manner he has performed and whether such performance was in conformity with the terms of the contract?;
  4. Whether it will be equitable to grant the relief of specific performance to the plaintiff against the defendant in relation to suit property or it will cause any kind of hardship to the defendant and, if so, how and in what manner and the extent if such relief is eventually granted to the plaintiff? 5. Whether the plaintiff is entitled to grant of any other alternative relief, namely, refund of earnest money etc, and if so on what grounds?<sup>45</sup>
- Along with this, the court added that the issue of readiness and willingness to enter into a contract is the most important issue for considering the grant of specific performance of the contract. In the facts of the case, the bench, while dismissing the appeal, said: "We find that the two Courts below have gone into these questions in the light of pleadings and evidence and recorded a categorical finding against the plaintiff holding that the plaintiff was neither ready and nor willing to perform his part of the contract and, therefore, he was not entitled to claim the relief of specific performance of the contract against the defendants in relation to the suit land."<sup>46</sup>

The Amendments to the Specific Relief Act are likely to reduce litigations and ensure the performance of the contractual work in a timely manner with the introduction of the concepts of substituted performance and the

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<sup>43</sup> <https://www.dailypioneer.com/2018/india/home-min-empowers-lgs--ut-admins-to-set-up-special-courts-to-expedite-infra-projects.html> (December 04, 2018)

<sup>44</sup> [https://www.sci.gov.in/supremecourt/2008/10523/10523\\_2008\\_Judgement\\_07-Jan-2019.pdf](https://www.sci.gov.in/supremecourt/2008/10523/10523_2008_Judgement_07-Jan-2019.pdf) (January 10, 2019, 08:57 PM)

<sup>45</sup> Ashok Kini, *SC Explains Five Material Questions To Be Answered In Specific Performance Suit*, *LIVELAW*, <https://www.livelaw.in/top-stories/sc-explains-material-questions-answered-specific-performance-suit-141942> (January 10, 2019, 10:34 PM)

<sup>46</sup> Murali Krishnan, *Grant of Relief of Specific Performance: What the Supreme Court held*, *BARANDBENCH*, <https://barandbench.com/grant-specific-performance-supreme-court-judgment/> (January 10, 2019, 11:56PM)

imposition of time limits for disposal of cases. Altering the nature of specific relief from an exceptional rule to a general rule will certainly ensure contractual enforcement.

The Amendment Act is an effective, efficient, purposeful and an intensive method of correcting the various defects associated with The Specific Relief (Amendment Act) 2018. It is a well-intended step to promote promptness and efficacy in the arena of contractual performance, as well as largely curb the uncertainty in projects involving public and private stake-holding. It pounds over the importance of having an advanced business and commerce sector along with a guideline based on law to act as a watchdog. These amendments are meant to keep pace with the rapid economic growth in the country. The amendments, which intend on increasing contract enforceability, will potentially increase India's ranking on the 'ease of doing business index' which is released by the World Bank as well.

## VIII. IMPLICATIONS OF THE AMENDMENT ACT

Taking into account the large scale economic development since the passing of the Principal Act which brought in extensive commercial activities including Foreign Direct Investment, Public Private Partnerships, Limited Liability Partnerships etc., the Centre proposed amendment to the Principal Act, to enable the enforcement of contracts in a speedy and efficient manner by doing away with the broad discretion of courts to grant specific performance and to make specific performance as the rule rather than an exception:

- The Amendment Act expressly takes away the powers of a civil court to grant injunction in respect of all disputes arising out of a contract relating to an infrastructure project. While the object behind such amendment is stated to be the prevention of any impediment or delay in progress or completion of such projects which are generally in larger public interest, the possibility of the courts refusing to entertain an injunction application in bonafide cases cannot be ruled out and such an embargo, raises interesting public policy concerns<sup>47</sup>;
- Along with this, compelling specific performance in certain circumstances might be impractical, in particular, where the defaulting party to a contract is on the brink of financial distress or potential insolvency proceedings under the Insolvency & Bankruptcy Code.<sup>48</sup>
- Similarly, the alternative of monetary compensation would be meaningless in these circumstances, unless a third-party guarantor underwrites the obligations of the defaulting party.<sup>49</sup>
- While the intention to compress the court proceedings to a period of 18 months is a laudable aim,<sup>50</sup> it begs the question as to what would happen at the end of that time period.

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<sup>47</sup>Chakrabarti, supra note 1.

<sup>48</sup> <http://www.conventuslaw.com/report/india-the-specific-relief-amendment-act-2018/> (December 05, 2018)

<sup>49</sup> <https://corporate.cyrilamarchandblogs.com/2018/09/specific-relief-amendment-act-2018-prospective-retrospective/> (December 05, 2018)

- In addition to this, the establishment of the special courts for conflict resolution in the infrastructure projects, would not be much effective if the court are not equipped with the proper resources;
- The employment of The Experts by the court and taking in consideration the reports of such personnel's is a new and a noble idea that's going to help the courts in dispensing the matters related to such fields;
- Further, the Amendment Act may affect the jurisdiction of the courts under the Commercial Courts Act, 2015, with potential overlap between the jurisdiction of the special courts envisaged to adjudicate contracts relating to infrastructure projects and general commercial disputes relating to construction and infrastructure contracts. Clarity in relation to this will no doubt, be necessary.<sup>51</sup>

## IX. EXPECTED IMPACTS OF THE AMENDMENT ACT.

The impact of the Amendment will be seen through the evolution of the amended law through judicial pronouncements.

- Reduction in uncertainty of contract disputes with respect to judicial timelines by way of no injunctions on projects of public interest;
- The substitution clause would enable immediate remedy for the petitioner party against the contracted party who has breached terms even prior judicial process as the project work can continue to get executed.<sup>52</sup>
- Critical contracts can be secured of equity remedy wherein the performance of the contract required for the project as envisaged in the terms and conditions would become the norm avoiding any monetary compensatory replacement.<sup>53</sup>
- Special courts and expert opinions ecosystem would ensure speeding up the dispute resolution timelines, thereby ensuring for India and its investors faster justice, reduced uncertainty in contracts environment, stable and secure judicial process perception and better rankings in international standings;<sup>54</sup>

In summation, the Amendment is a delayed but welcome change as law makers have attempted to strengthen the existing law pertaining to specific performance of contracts and mitigate uncertainties in enforcement of such contracts.<sup>55</sup> They have followed a practical approach by giving substituted performance statutory recognition as recourse to this solution has been a common practice amongst parties to settle disputes arising

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<sup>50</sup>Mohana Roy, *Specific Relief (Amendment) Act 2018 Into Effect From 1st October 2018*, Kсандк, (December 05, 2018, 12:43 PM) <https://ksandk.com/corporate-commercial/2727/>

<sup>51</sup> <https://www.khaitanco.com/PublicationsDocs/Khaitan%20&%20Co-Ergo-Newsflash-14Aug2018.pdf> (December 05, 2018)

<sup>52</sup>Anubhav Pandey, *The Specific Relief (Amendment) Act, 2018 – Overview & Implications*, IPLEADERS (December 05, 2018, 05:43 PM), <https://blog.iplayers.in/specific-relief-amendment-act-2018/>

<sup>53</sup> Sebastien, supra note 39. (visited on 03.01.2019)

<sup>54</sup> Pandey, supra note 52.

<sup>55</sup> AayushMitraka, *The Specific Relief (Amendment) Bill, 2018: Shattering the Supremacy of Damages*, INDIACORPLAW (December 05, 2018, 11:35 PM), <https://indiacorplaw.in/2018/04/specific-relief-amendment-bill-2018-shattering-supremacy-damages.html>

out of real estate contracts. In the aftermath of the Amendment, parties while entering into new contracts may be encouraged to include specific clauses identifying a procedure for substituted performance in case of specified events of default or non-performance. Indeed, the Amendment has widened the scope of specific performance as a remedy to contracting parties irrespective of whether damages are an adequate relief.<sup>56</sup>

While these amendments are fascinating from commercial and public policy perspectives, their real-time impact can only be probed in the days to come

## **X. APPLICABILITY OF THE AMENDMENT ACT**

The Specific Relief (Amendment) Act 2018 has been passed by both Houses of Parliament after a brief discussion, but without debate. Like many other laws passed for enhancing business capabilities, this Amendment is likely to be yet another instance of *'legislate in haste, amend at leisure'*.

The Amending Act, it has been stated in both Houses of Parliament, has an objective to prevent errant contractors from breaking their contracts and hampering infrastructure projects. The ultimate aim of the Act is to enhance the standing of India in the 'ease of doing business' ranking. The discussion in the Houses centered on infrastructure contracts only. The entire discussion in both Houses has overlooked the fact that the same amendment, and the Specific Relief Act as amended, is not restricted to business contracts, but applies to the common man and his personal contracts. The Amendment grossly violates his expectations of fairness and justice in enforcement of contractual remedies.<sup>57</sup>

The amendment also suffers other defects. In the interest of, and pursuant to the objective of achieving certainty, provision should have been made relating to the contracts to which it will apply. The amendment should apply only to contracts that are made after the amendment becomes law, because parties, especially business parties, decide their terms and price with reference to remedies available when they make their contract.<sup>58</sup>

- **No compensation in substitution of specific performance**

The amendment to section 21 takes away the right of a party seeking specific performance from claiming compensation instead of specific performance. When the court refuses to grant specific performance of grounds given in the law, a plaintiff can pursue his claim for compensation. This is not possible under the amendment.

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<sup>56</sup> Vyas, supra note 5.

<sup>57</sup> <https://www.thehindu.com/opinion/op-ed/keeping-contracts-alive/article23384675>. (December 05, 2018)

<sup>58</sup> B. supra note 16.

The plaintiff loses his right because the Civil Procedure Code prevents him from bringing another suit. Such a plaintiff remains without a remedy;<sup>59</sup>

- **Redundant Provisions**

New sections 14(a) and 16 (a) provide that specific performance cannot be granted if a party has obtained substituted performance. This provision is not required because of the express provision in the amended section 20(3).<sup>60</sup>

- **Other issues**

Many smaller and finer aspects have been ignored in the amending Act. Providing remedy of substituted performance in section 20 can lead to confusion because section 20 of the existing Act of 1963 that provided for discretion in grant of specific performance will continue to apply to pending matters. The section dealing with substituted performance should have been numbered 20A.<sup>61</sup>

- **Wider consultation desirable**

- If the Bill were floated for consultation, suggestions would have come from the judiciary and the legal fraternity, especially trial lawyers who conduct specific performance suits, and are in a position to state the effect of the Bill's provisions. Such opinions and recommendations would have enhanced the usefulness of this legislation.<sup>62</sup>

The Amendment Act supports and helps the Indian economy to foster but as a coin has another side, so does this Act has. It is a very noble initiative by the Government of India to give a kick start to the business sector which has been lagging behind in the country. The provisions that have come along with this Amendment Act are highly appreciable and commendable one's but even has left some scope of improvement. The positive Criticism that the researcher presents is a guide as well as a direction that the GOI could follow in the upcoming years so as to refine the Act and wield its highest potential benefits

## COMPARISION: A SYNOPSIS

SPECIFIC RELIEF ACT,1963	SPECIFIC RELIEF(AMENDMENT)ACT,2018
Specific performance of the contract was dependent on the discretion of the court.	Grant of specific performance of contracts has been made compulsory

<sup>59</sup>Desai, supra note 4.

<sup>60</sup>Bhadbhade, supra note 9.

<sup>61</sup>Charulata, supra note 21.

<sup>62</sup>Bhadbhade, supra note 9.

No such provision was present to enforce the contract on the part of the defaulter.	Provision for the Substituted Performance of the contract by a third party.
No such provision was present at the disposal of the judges.	Court is empowered to get expert opinion from one or more than one experts in Infrastructure and related matters.
The suits had no particular time period in which they had to be disposed of further leading to years of impediment and delay in enforcing contractual liabilities.	A suit filed under the Specific Relief Act would have to be disposed off within twelve months from the date of service of summons to the defendant. This period can be extended by six months after the recording of written reasons by the court
There was no demarcation of any Court as a special one and the routine civil courts had the jurisdiction over such matters and dealt with them accordingly.	Certain civil courts are proposed to be designated as Special Courts by the state government that will deal specifically with the cases pertaining to the infrastructure related disputes.

## XI. CONCLUSION

The amendments to the Specific Relief Act have been introduced with the objective of reducing the number of litigation and to give seriousness to contracts i.e. performance of the contractual obligations by parties with the introduction of the concepts of Substituted Performance and the imposition of time limits for disposal of cases.<sup>63</sup>

Altering the nature of specific relief from an exceptional rule to a general rule is expected to ensure contractual enforcement. With this amendment, the judiciary will be forced to ensure that contracts are enforced and not just award damages for breach.<sup>64</sup>The Amendment Act even seeks to provide aggrieved parties with speedy relief by bringing in a time bound manner of redressal and the ability to choose their own remedy instead of leaving it to the discretion of the court

This is of course being done so that India moves up in the ease of doing business ratings, however the effect of it might be counter-productive and burden courts excessively. Consequential amendments to the Indian

<sup>63</sup>AkshitaAlok, *Making specific performance the rule; not the exception*, LAKSHMISRI (December 12, 2018,06:23 PM) <https://www.lakshmisri.com/News-and-Publications/Publications/Articles/Corporate/making-specific-performance-the-rule-not-the-exception>

<sup>64</sup> Desai, supra note 4.

Contract Act, 1872 should have been made to ensure harmonious interpretation of the breach and default provisions in both the amended Act and the Contract Act.<sup>65</sup>

The Amendment Act beyond all its drawbacks is still a very effective, efficient, purposeful, intensive and a type of Act that would help in improving the current unfortunate condition of the business and commerce industry.