

Specific Performance of Contract

Specific Performance of Contract: Introduction and Current Construct under Indian Law

Introduction to Specific Performance of Contract

Specific performance is an equitable remedy granted by courts in cases of breach of contract. Instead of awarding monetary damages, the court directs the party in breach to perform their obligation under the contract, as agreed.

This remedy is particularly important when:

- The subject matter is unique (e.g., sale of land, rare goods).
- Damages are not an adequate remedy.
- The contract is capable of being performed.

Example:

If A agrees to sell a unique painting to B and then refuses, B may ask the court to compel A to fulfill the contract rather than simply compensate with money—because the painting is unique.

The remedy of specific performance is rooted in equity, aiming to ensure justice and fairness, especially when monetary compensation falls short.

Indian Legal Framework: Specific Relief Act, 1963

In India, specific performance is governed primarily by the **Specific Relief Act, 1963**, which underwent significant amendments in **2018** to align with modern commercial needs.

1. Evolution and Purpose of the Specific Relief Act

The Specific Relief Act, 1963, replaced earlier colonial-era laws to better suit Indian contract enforcement. It lays out:

- Remedies related to contracts,
- Conditions under which specific performance can be granted,
- Circumstances where it may be refused.

Before the 2018 Amendment, specific performance was discretionary. Courts would assess if monetary damages were inadequate before granting this remedy.

2. Key Provisions of the Specific Relief Act (Post-2018 Amendment)

Section 10 – Specific Performance as a General Rule

Old Position (before 2018):

Specific performance was granted only when damages were inadequate and subject to the court's discretion.

Current Position (after 2018 Amendment):

Specific performance is no longer discretionary—it is the default remedy unless certain exceptions apply.

The amendment reflects a pro-enforcement approach, improving investor and business confidence.

Intent: To make contract enforcement more predictable and reduce delays in commercial litigation.

Section 11 – Contracts in Trusts

Trust-related contracts can also be specifically enforced under certain conditions.

Section 12 – Part Performance

Courts may enforce part of a contract in some cases (e.g., when full performance isn't possible but the part performance has substantial value and can be compensated for).

Section 14 – Contracts Not Specifically Enforceable

Certain contracts cannot be specifically enforced, including:

- Where performance involves personal skill or mental effort (e.g., singing at a concert),
- Contracts that are determinable by nature (can be terminated at will),
- Contracts that are too vague or uncertain to enforce,
- Contracts that involve continuous duty over a long time that courts can't supervise.

2018 change: Removed several previous restrictions, expanding the scope of contracts eligible for specific performance.

Section 14-A – Expert Involvement

Newly added in 2018: Courts can now appoint experts to assist in determining complex issues related to specific performance, especially in technical or commercial matters.

Section 20 – Substituted Performance

Introduced in the 2018 Amendment:

- If one party fails to perform their obligation, the aggrieved party can get the work done by a third party or themselves, and recover the costs from the breaching party.
- This does not bar a suit for damages, but bars a claim for specific performance once substituted performance is undertaken.

Purpose: To allow quicker redressal and avoid dependence on lengthy court enforcement.

Section 21 – Compensation Alongside Specific Performance

A party may claim compensation along with specific performance if they suffer a loss due to delay or partial performance.

3. Judicial Approach and Interpretation

Over time, Indian courts have refined the doctrine through various judgments. Some highlights:

K. Narendra v. Riviera Apartments (1999):

Specific performance is not automatic—it must be fair and equitable.

Indian Oil Corporation v. Amritsar Gas Service (1991):

Where the contract was determinable in nature, specific performance was refused.

Church of North India v. Lavajibhai Ratanjibhai (2005):

Courts emphasized that when damages are an adequate remedy, specific performance should not be granted.

Post-2018, courts now grant specific performance more routinely unless the case falls into exceptions under Section 14.

4. Commercial Impact and Relevance in Today's India

The 2018 reforms to the Specific Relief Act were introduced in the wake of:

- Make in India, Ease of Doing Business, and Startup India initiatives.
- Need for stronger enforcement of contracts in infrastructure and real estate sectors.
- Pressure to reduce backlog of cases by discouraging discretionary and prolonged litigation.

These changes align with international practices, helping boost investor confidence, particularly in real estate, public-private partnerships (PPPs), and long-term infrastructure projects.

The concept of specific performance has evolved from a discretionary equitable remedy to a statutory right, thanks to reforms under the Specific Relief Act, 1963 (as amended in 2018). In today's context, this shift emphasizes certainty in contract enforcement, aligns with modern

commercial needs, and strengthens India's legal regime to support economic growth and global trade.

However, the success of the law depends heavily on the speed and consistency of court implementation, and India still needs complementary reforms in judicial capacity, digitization, and procedural efficiency to fully realize the benefits.

Effectiveness of Specific Performance Laws in India

Introduction

The remedy of **specific performance** is vital in ensuring that contracting parties are held to their obligations, especially when monetary compensation is not sufficient. In India, the **Specific Relief Act, 1963**, particularly after its **2018 amendment**, has significantly transformed the landscape of contract enforcement.

While the legislative intent is clear and progressive, the **effectiveness of these laws depends on practical enforcement**, judicial interpretation, institutional capacity, and public awareness.

1. Strengthened Legal Framework – A Step Forward

Post-2018 Provisions Have Made Laws More Assertive

The 2018 amendment has made **specific performance a default remedy**, moving away from earlier discretionary principles. This is a marked improvement, as it:

- Reduces uncertainty in commercial contracts.
- Encourages foreign and domestic investors.
- Provides clear enforcement mechanisms like **substituted performance**.

Effectiveness:

High in terms of **legal clarity and legislative intent**. The Act now reflects international best practices and responds to commercial realities.

2. Judicial Attitudes Are Adapting, But Slowly

Mixed Implementation Across Courts

Indian courts have begun applying the amended provisions more confidently. However, some challenges remain:

- **Older case law** still influences some decisions.
- Judicial officers are **not uniformly trained** on new amendments.
- **Inconsistency in interpretation** across different High Courts delays the uniform application of the law.

Effectiveness:

Moderate. While the judiciary is gradually adapting, more consistent and rapid application is required, especially in lower courts.

3. Delay in Enforcement – A Persistent Challenge

Procedural Delays Undermine the Spirit of the Law

Even if a party is entitled to specific performance under the law, they may have to wait **years for resolution** due to:

- **Overburdened courts**
- Delayed **evidence collection and trial processes**
- Lack of **judicial infrastructure**, particularly in commercial courts

This delay often **defeats the purpose** of specific performance, which is meant to be a timely remedy.

Effectiveness:

Low to Moderate. Legal provisions are sound, but the **speed of enforcement** remains a significant barrier.

4. Substituted Performance – An Innovative but Underutilized Tool

Implementation Gaps Exist

Substituted performance (Section 20), a concept introduced in 2018, allows the aggrieved party to get the contract performed through a third party and recover costs.

However:

- Many parties are **unaware of this remedy**.
- It is often **not raised in litigation**.
- Some judges are **reluctant to apply it** due to unfamiliarity.

Effectiveness:

Moderate. The potential is strong, but **awareness and practical use are still limited**.

5. Complexity in Technical Contracts

Need for Expert Involvement

In large-scale infrastructure and commercial projects, specific performance can involve **technical complexity**. While Section 14-A allows the court to appoint experts, in practice:

- Courts **seldom use this provision**.
- Judges may lack confidence in assessing technical or engineering-related disputes.

Effectiveness:

Moderate. The provision is progressive, but its application requires **institutional readiness and expert support** systems.

6. Lack of Awareness Among Stakeholders**Especially Among SMEs and Individuals**

While large corporations are better equipped to enforce contractual rights, **smaller businesses and individuals** often:

- Lack knowledge about specific performance remedies.
- Avoid litigation due to **perceived cost and delay**.
- Settle out of court or suffer losses without recourse.

Effectiveness:

Low to Moderate. The law is more effective for **commercially sophisticated parties**, less so for common citizens or small businesses.

7. Positive Impact on Commercial Confidence**Boosting Investor and Business Trust**

By strengthening specific performance as a remedy, the law has had a **positive impact on India's Ease of Doing Business environment**, particularly in the enforcement of contracts:

- It encourages more **written and enforceable agreements**.
- Lenders and investors find comfort in **predictable enforcement outcomes**.
- Encourages **long-term project planning** with reduced litigation risks.

Effectiveness:

High. The law has improved India's image in international commercial circles and contributed to business reforms.

8. Real Estate and Infrastructure Sector Impact**High Utility, Slow Execution**

In sectors like **real estate and public-private infrastructure**, specific performance is crucial—since no two pieces of land or projects are identical.

However:

- **Real estate disputes remain heavily delayed.**
- Specific performance decrees are often not executed timely, especially when possession or land transfer is involved.

Effectiveness:

Moderate. While these sectors benefit most from the law, **ground-level execution remains challenging**.

Conclusion: A Law with Great Potential, but Dependent on Enforcement

The **Specific Relief Act, 1963**, especially after the 2018 amendment, provides a **modern, pro-enforcement legal structure** for specific performance. It reflects India's ambition to become a more reliable legal environment for contracts.

However, its **practical effectiveness remains mixed** due to:

- Delays in the judicial system,
- Inconsistent interpretation,
- Low awareness, and
- Underutilization of progressive provisions.

Way Forward:

- **Judicial training and sensitization** on amended provisions.
- **Digitization and fast-tracking** of commercial disputes.
- **Public awareness campaigns**, especially targeting MSMEs and startups.
- **Better use of experts** in technical disputes.

With continued reform in **legal infrastructure and court efficiency**, the effectiveness of specific performance laws in India can rise significantly, making it a robust tool for ensuring justice and contract enforcement.

Disadvantages and Shortcomings of Specific Performance Laws in India

While the Specific Relief Act, 1963—especially after its 2018 amendments—has considerably strengthened the framework for enforcing contracts through specific performance, there remain **several limitations, ambiguities, and implementation gaps** that reduce the law's overall effectiveness.

1. Delays in Judicial Process

Shortcoming: Procedural and systemic delays defeat the purpose of specific performance.

- Specific performance is meant to be a timely remedy, particularly in contracts where the subject matter is unique.
- However, **civil courts in India are overburdened**, and even special commercial courts are prone to adjournments, slow evidence collection, and delays in judgment delivery.

- By the time a decree is passed, **circumstances may have changed**, rendering the relief meaningless.

Impact: Parties often choose to settle or seek damages instead of enduring years of litigation.

2. Limited Use of Substituted Performance (Section 20)

Shortcoming: Progressive in concept, but poorly implemented.

- Introduced in the 2018 amendment, **substituted performance** allows the aggrieved party to perform the contract through a third party and recover the costs.
- In practice, this remedy is **rarely invoked**, either due to **lack of awareness** or **judicial hesitation**.
- The legal and evidentiary burden to prove substituted performance and claim costs is **unclear and underdeveloped**.

Impact: Parties still rely on specific performance rather than practical alternatives, even when self-help would be faster.

3. Lack of Differentiation for Personal or Non-Commercial Contracts

Shortcoming: The Act does not clearly distinguish between commercial and personal agreements.

- Specific performance laws apply equally to **business contracts** and **private arrangements** (e.g., contracts between individuals).
- There is no **specialized treatment or fast-track process** for high-value infrastructure or commercial projects, despite the differing stakes and urgency.

Impact: Both simple and complex cases face similar procedural hurdles, reducing the utility of the law in strategic sectors.

4. Non-Enforceability of Certain Contracts Remains Vague (Section 14)

Shortcoming: Terms like "determinable contracts" and "contracts involving continuous duty" are not precisely defined.

- Courts have discretionary power to decide what constitutes a **determinable contract**, leading to **inconsistent interpretations**.
- For example, agency contracts or MoUs can be challenged as non-enforceable under this section, even if they are partially performed or involve significant reliance.

Impact: This creates legal uncertainty, especially in employment, consultancy, and service contracts.

5. No Provision for Punitive Measures Against Frivolous Defenses

Shortcoming: The law allows for prolonged litigation even when the defense has no merit.

- There is **no strong mechanism** to deter parties from raising **delaying tactics or false defenses** in specific performance suits.
- This clogs the court system and discourages aggrieved parties from pursuing rightful enforcement.

Impact: Undermines the seriousness of the remedy and emboldens contractual breaches.

6. Limited Access for Small Businesses and Individuals

Shortcoming: Cost and complexity make specific performance inaccessible for many.

- Legal costs, delay, and procedural complexity often discourage **MSMEs, startups, and individual contractors** from seeking specific performance.
- Many do not even pursue litigation due to lack of **legal awareness or financial resources**.

Impact: The remedy is practically more accessible to **corporates and large entities**, defeating the equitable foundation of the law.

7. Inefficient Execution of Decrees

Shortcoming: Even after obtaining a decree, enforcement is a major hurdle.

- Obtaining specific performance from the court is only the first step.
- **Execution of the decree**—getting possession of land, compelling action from the breaching party—often takes **additional time and litigation**.
- In cases involving land or property, resistance from the defendant or third-party claims often **stall execution for years**.

Impact: Reduces confidence in judicial enforcement and frustrates contract holders.

8. Limited Use of Expert Assistance (Section 14-A)

Shortcoming: Courts seldom utilize expert guidance in technical or complex cases.

- Although the law permits the appointment of **experts**, this provision is rarely used.
- Judges may be reluctant due to budgetary issues, procedural unfamiliarity, or traditional legal culture.

Impact: In disputes involving construction, engineering, or financial contracts, lack of expert input can lead to **misinterpretation or inadequate relief**.

9. Vague Guidelines for Assessing "Adequate Relief"

Shortcoming: Subjective tests are still applied in some courts.

- Though specific performance is now the rule rather than the exception, **courts still assess if damages are "adequate" relief** in certain circumstances.
- There is **no clear test or criteria** provided by the Act or case law for determining adequacy.

Impact: Adds ambiguity and risks inconsistency in judicial decisions.

10. Exclusion of Non-Written Contracts

Shortcoming: Oral agreements are generally excluded from specific performance claims.

- The Act typically requires **written contracts** for enforcement through specific performance.
- In practice, many commercial or personal dealings—especially in informal sectors—are not documented.

Impact: A large portion of real-world contracts, especially in semi-formal or informal markets, fall outside the scope of the remedy.

While India's **Specific Relief Act** has evolved into a robust legal instrument for enforcing contracts, it still suffers from several **disadvantages and shortcomings** that restrict its full potential. These issues are rooted not just in the statute but also in **institutional weaknesses, procedural inefficiencies, and gaps in awareness**.

To address these gaps, reforms should focus on:

- **Judicial training and awareness** of amended provisions,
- **Stronger enforcement mechanisms** and quicker execution of decrees,
- **Support for small businesses and individuals** to access remedies,
- **Clearer definitions and guidelines** within the statute itself,
- **Better use of technology and expert consultation** in complex cases.

Until these systemic and legislative improvements are made, the effectiveness of specific performance laws in India will remain **significantly limited by their practical application**.

1. Strengthening Contract Enforcement

Positive Views:

- **Arush Khanna**, a partner at Trinaya Legal, views the amendment as a significant step towards effective contract enforcement. He notes that by making specific performance the

rule rather than the exception, the amendment aims to restore confidence in commercial contracts and expedite dispute resolution [cite]turn0search5[.]

- **PSA More**, a boutique law firm, describes the amendment as a "paradigm shift" that aligns Indian law with international standards, such as the UNIDROIT Principles, and emphasizes the importance of strict enforcement of contracts to promote business certainty [cite]turn0search6[.]

2. Concerns Over Fairness and Implementation

Critical Perspectives:

- **Nilima Bhadbhade**, a member of the Expert Committee that recommended the amendment, has criticized the Act for not adequately considering the fairness of enforcement, especially in personal contracts. She argues that the amendment was rushed and lacks sufficient consultation with stakeholders, potentially leading to unintended consequences [cite]turn0search1[.]
- **Legal Service India** highlights concerns that the amendment may place defendants in a vulnerable position by shifting the burden of proof, and notes the lack of provisions for supervising substituted performance, which could lead to misuse [cite]turn0search9[.]

3. Retrospective Application and Judicial Interpretation

Judicial Insights:

- The **Supreme Court of India** has clarified that the 2018 amendments apply retrospectively. In *Katta Sujatha Reddy v. Siddamsetty Infra Projects Pvt. Ltd.*, the Court reversed its earlier decision, emphasizing that the amendments are procedural and should be applied to pending cases, thereby aligning with the legislative intent to streamline contract enforcement [cite]turn0search3[.]
- **Kaustav Saha**, in the NUJS Law Review, critiques the Court's reasoning in this case, arguing that treating specific performance as a remedy rather than a right leads to inconsistent judicial approaches and may undermine the legislative intent to make specific performance more accessible [cite]turn0search0[.]

4. Impact on Infrastructure Projects

Sector-Specific Observations:

- **S Jalan & Company**, a law firm, notes that the amendment is particularly beneficial for infrastructure projects, as it limits court interference and aims to reduce delays, thereby providing a more predictable legal environment for investors and stakeholders [cite]turn0search10[.]

5. Ambiguities and Practical Challenges

Implementation Issues:

- **Santosh B. Malligawad**, writing for iPleaders, discusses the procedural challenges arising from the amendment, such as the unclear application to contracts executed before the amendment and the potential for misuse in substituted performance scenarios [\[cite?turn0search7?\]](#).

While the **Specific Relief (Amendment) Act, 2018**, is generally seen as a progressive step towards enhancing contract enforcement in India, legal experts have raised concerns about its fairness, implementation challenges, and potential unintended consequences. The retrospective application of the amendments and the shift in the burden of proof are areas that continue to attract debate and require careful judicial consideration to balance the interests of all parties involved.