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A CRITICAL REVIEW OF SPECIFIC RELIEF ACT, 1963

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INTRODUCTION

The maxim ubi jus ibi remedium, meaning 'where there is a right, there is a remedy,' is fundamental in Indian law. It ensures that individuals whose rights have been violated have access to remedies. The **Specific Relief Act of 1963** provides remedies for civil rights violations, particularly in cases of breach of contract. The Act offers targeted solutions for specific legal issues. According to Section 4, the Act enforces only individual civil rights and does not extend to criminal or penal matters.

The Parliament of India enacted the Specific Relief Act, 1963 (Act No. 47 of 1963) on 13th December, 1963 which came into force on 1st March, 1964. It is divided into three parts, *viz*, Preliminary, Specific Relief and Preventive Relief. Part I consists of Sections 1 to 4, and Part II consists of Sections 5 to 35, covering Chapters 1 to 6, and Part III consists of Sections 36 to 42, which cover Chapters 7 and 8. It applies to the entire India including Jammu and Kashmir. It does not affect any operation of the Indian Registration Act, 1908 (Act 16 of 1908), on documents. Also, it does not deprive any person from his right to relief, other than specific performance, under any contract².

SPECIFIC RELIEF

Every substantive law is made with the legislative intent to provide remedy for the wrong done to the party. On the similar lines, this act seeks to provide the network of reliefs in the following ways: -

1. RECOVERING POSSESSION OF PROPERTY:

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² Section 3 of Specific Relief Act, 1963 (47 of 1963)

Chapter 1 of Part II of this Act details the legal procedures for recovering both immovable and movable property, as outlined in Sections 5-8. Under **Section 6**, an individual who has been dispossessed of their immovable property without their consent can file a suit to regain it. This suit, however, must be initiated within six months from the date of dispossession and cannot be filed against the government. Furthermore, any decree or order issued in such a suit is final and cannot be appealed or reviewed. The chapter also covers the recovery of movable property. **Section 7** specifically deals with the recovery of particular movable items, while **Section 8** provides for the immediate delivery of possession of movable property to the entitled person in specific circumstances.

2. SPECIFIC PERFORMANCE OF CONTRACTS:

Chapter 2 of this Act, which includes Sections 9 to 25, focuses on the specific performance of contracts. This is a crucial aspect of contract law as it addresses the need to fulfil agreed-upon expectations. If one party fails to perform their part of the contract, the other party, who has suffered as a result, may be awarded compensation. Additionally, when a person is sued for a claimed relief, they are entitled to use any available defence to counter the claim³.

The Specific Performance of a contract shall be enforced by the Court subject to the provisions of Section 11(2), 14 and 16 of the said Act. There are certain kinds of contracts which cannot be enforceable. These are as follows:

CONTRACTS WHICH ARE NOT ENFORCEABLE: -

- ❖ Section 11(2): - when a trustee enters a contract by acting beyond his powers or in breach of trust.
- ❖ Section 14(a) and Section 16(a): - when either party has obtained substituted performance of contract in accordance with Section 20. Where a contract is breached due to non-performance of duty of either party, the party who suffers 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.
- ❖ Section 14(b): - a contract which involves the performance of continuous duty which the court cannot supervise.

³ Section 9 of the SRA, 1963

- ❖ Section 14(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.
- ❖ Section 14(d): - a contract which is in its nature determinable.
- ❖ Section 16(b): - a person who has become incapable of performing, or violates any essential term, or acts in fraud of the contract, or wilfully acts at variance.
- ❖ Section 16(c): - a person who fails to prove that he has performed or has always been ready and willing to perform the essential terms of the contract.
- ❖ Section 17: - Contract to sell or let property by one who has no title.

3. RECTIFICATION, RESCISSION AND CANCELLATION OF CONTRACTS:

Sometimes when agreements are put into writing, the true intentions of the parties can be misunderstood, leading to disagreements. To fix this and prevent problems, Chapter III of the Act allows the correction of these written documents. Additionally, either party can cancel certain contracts. When this happens, a party can choose to **rescind** the contract as outlined in Chapter IV. And, for documents that are mistakenly created as void or become void due to a technical error, Chapter V offers a solution.

4. PREVENTIVE RELIEF:

Part III of the Act, comprising Chapters VII and VIII, addresses preventive relief. This relief is granted at the court's discretion through either temporary or perpetual injunctions. A perpetual injunction aims to prevent the breach of an existing obligation, whether express or implied. Additionally, a mandatory injunction offers relief by compelling the performance of specific acts enforceable by the court, thereby preventing an obligation's breach.

5. DECLARATORY RELIEF:

There is another relief which is available to a person who is entitled to any legal character or to any right as to any property and he is denied enjoyment of that right or character by any person. Chapter VI of the Act deals with such relief.

CONCLUSION

The Specific Relief Act of 1963 stands as a cornerstone of Indian civil law, providing essential remedies for individuals whose rights have been infringed. From enabling the recovery of property to ensuring the specific performance of contractual obligations, and offering avenues for rectification, rescission, and even preventive and declaratory relief, the

Act is comprehensive in its scope. While addressing the fundamental maxim *ubi jus ibi remedium*, it also acknowledges the practical limitations of judicial intervention, as seen in the contracts it deems unenforceable. Ultimately, the Act reinforces the principle of justice by providing targeted legal solutions, thereby upholding the integrity of civil rights and contractual agreements in India.