



Presentation on Civil Legal Remedies

***By:
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Crash Foundation Course***

Flow of presentation

- ▶ Definition of right and remedy
- ▶ Remedies overview and writs
- ▶ Tortious remedies
- ▶ Specific statutory remedies
- ▶ Equitable remedies
- ▶ Remedies under ICA, 1872 and SRA, 1963
- ▶ Compensatory jurisprudence and curative relief
- ▶ New trends

What is a Legal Right?

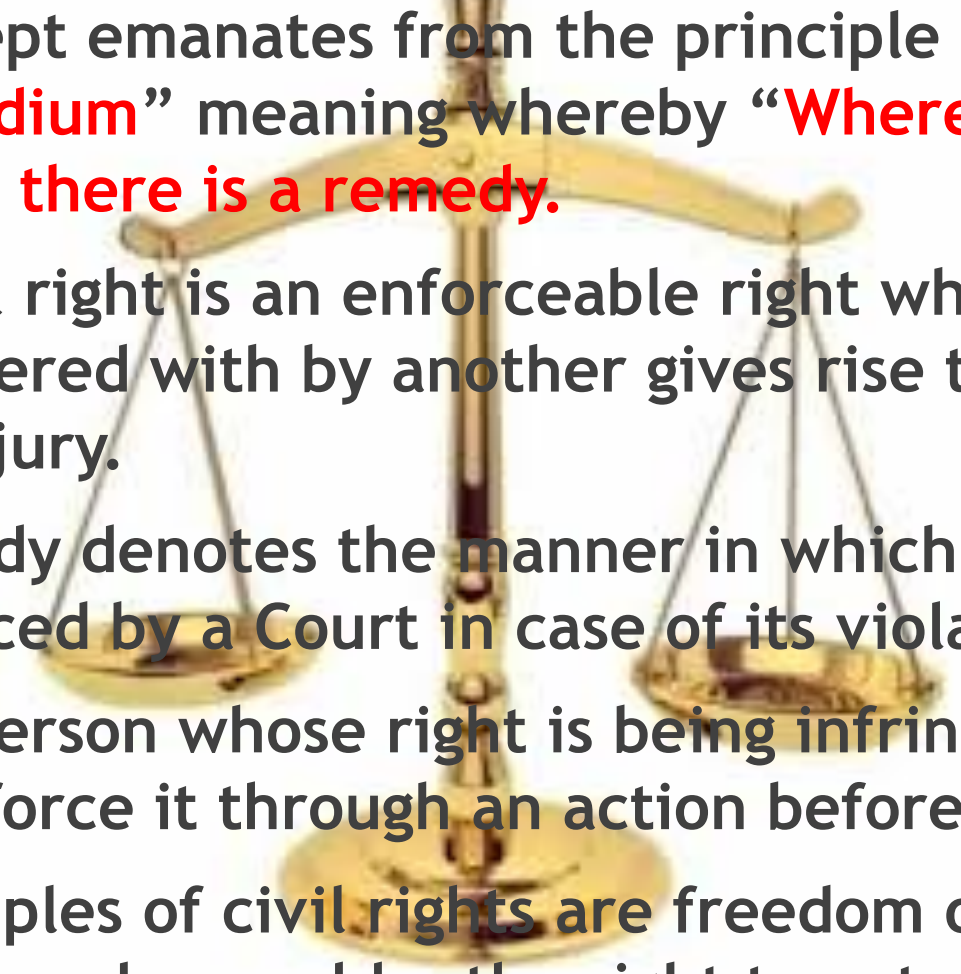


- Is a claim recognized and delimited by law for the purpose of securing it.

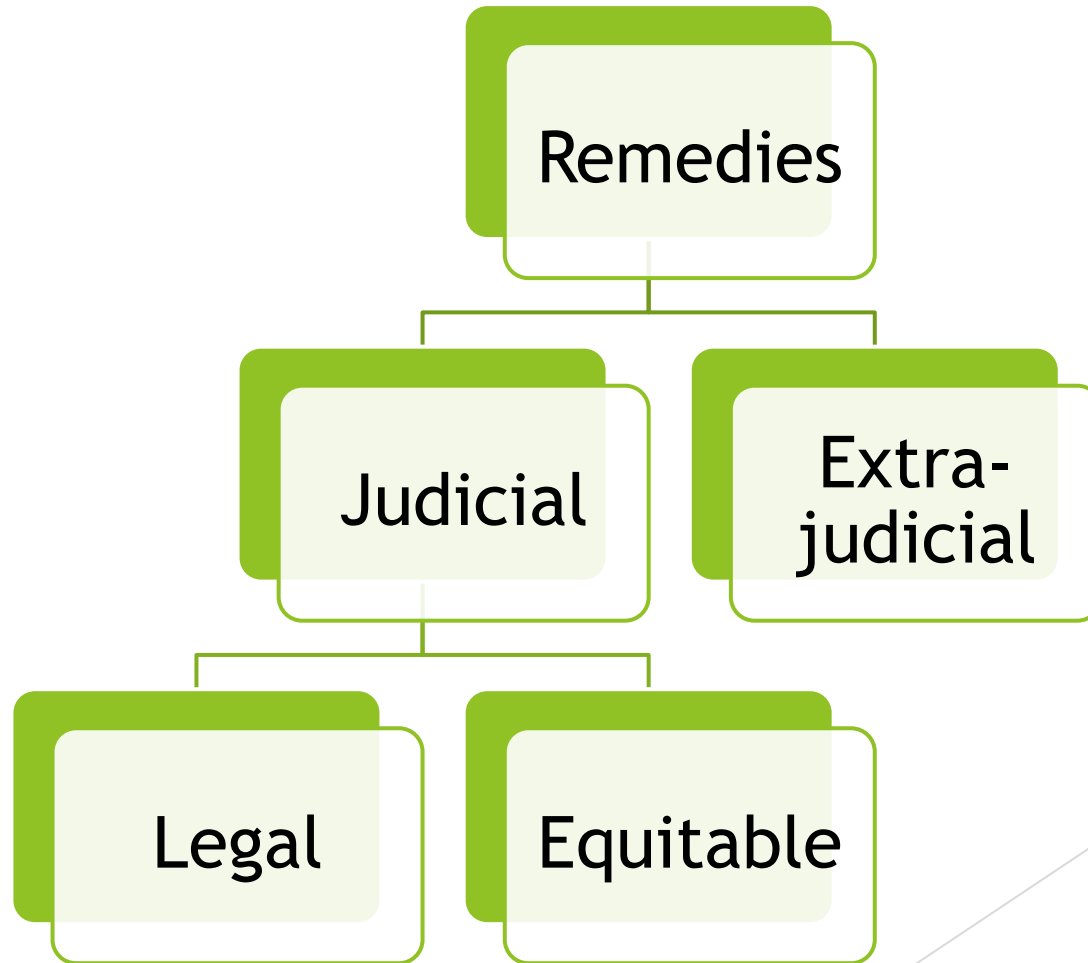
Or

- the interest in a claim which is recognized by and protected by sanctions of law imposed by a state.

Legal Right and Remedy

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- ▶ Concept emanates from the principle “**Ubi Jus Ibi Remedium**” meaning whereby “**Where there is Right, there is a remedy.**”
 - ▶ A civil right is an enforceable right which if interfered with by another gives rise to an action for injury.
 - ▶ Remedy denotes the manner in which a right is enforced by a Court in case of its violation.
 - ▶ The person whose right is being infringed has right to enforce it through an action before the court.
 - ▶ Examples of civil rights are freedom of speech, press, and assembly; the right to vote;; and the right to equality etc.

Types of Remedies



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graph LR; Legal[Legal] --- Constitutional[Constitutional]; Legal --- Statutory[Statutory];
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Legal

Constitutional

Statutory

Constitutional Remedies

Prerogative Writs

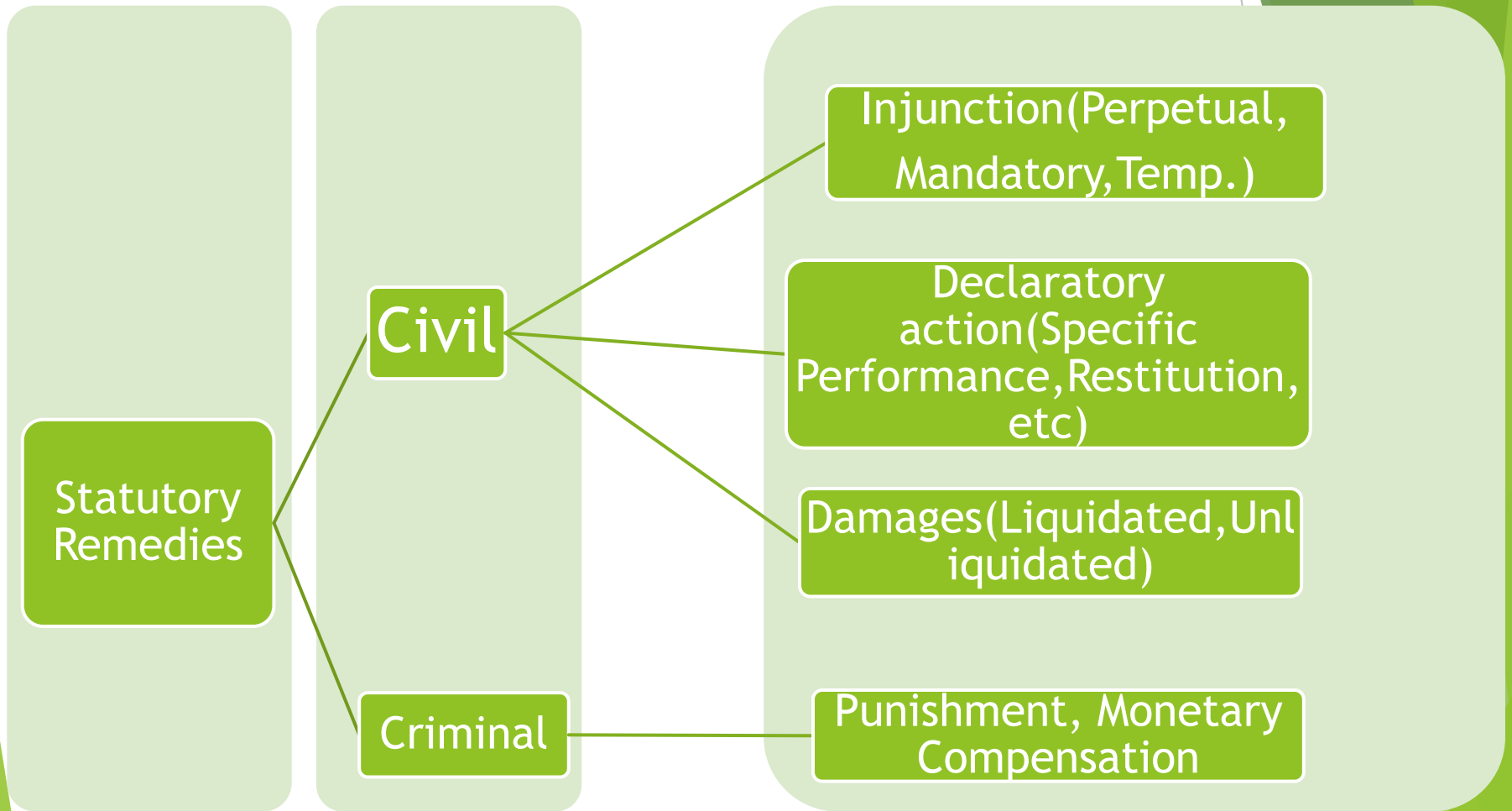
(Under Art. 32 and 226)

- Habeas Corpus
- Certiorari
- Mandamus
- Prohibition
- Quo Warranto

Other Constitutional Articles

- Article 137 (Curative Relief)
- Article 142
- Article 227

Statutory Remedies



Tortious Judicial Remedies

1) **Injunctions**: Order of the Court restraining, the commission, repetition, or continuance of a wrongful act by the defendant.

2) Damages

3) Decree for possession:

Specific restitution of Property:- available to only those who are in possession of property and hence is limited to torts of infringement.

(Polluter Pays Principle)

(M.C. Mehta And Anr vs Union Of India & Ors on 20 December, 1986)

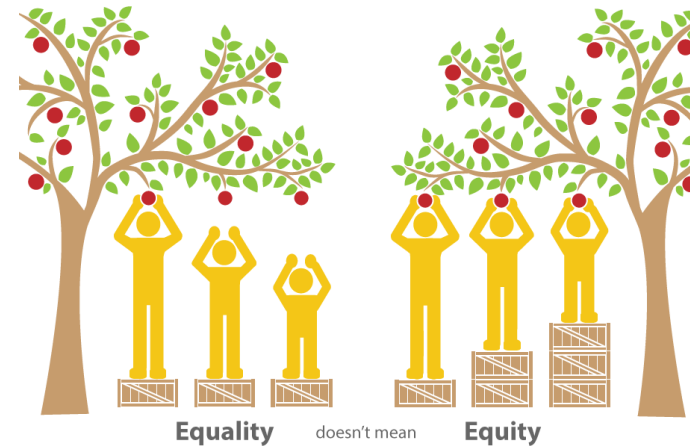
Extra-Judicial Remedies

- Self-help
- Re-entry on Land
- Expulsion of trespasser
- Reception of goods
- Abatement of Nuisance

Specific Statutory Civil Remedies

- ▶ Specific statutory remedies are provided under specific statutes imposing a specific obligation on a person or conferring power on an administrative body.
- ▶ A relief which could not be obtained through a writ could be obtained as a Statutory remedy.
- ▶ Sec-18 of Land Acquisition Act, 1894 - Right of the aggrieved party to require the matter to be referred to the Court by District Collector .
- ▶ S-6 of the Essential Commodities Act, 1955 - Appeal against the orders of confiscation to a designated judicial authority.

Equitable Remedies



- ▶ The practice of granting equitable remedies came about to compensate for the inadequacies of the common law courts which could not grant remedy if the affected party wanted the performance of the contract or wanted to prevent the commission of a wrong threatened.
- ▶ ‘**ubi jus ibi remedium**’ , the principle that wherever there is a wrong there will be a remedy is the basis of granting equitable remedies.

Equitable Remedies

- Developed by courts of equity
 - During the time of Henry VII
 - flexible responses to changing social conditions
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- ▶ Examples:
 - Rescission
 - Specific performance
 - Contract reformation

Remedies under Indian Contract Act, 1872



1) Suit for Specific Performance

- a) Where there exists no standard for ascertaining the actual damage caused to the aggrieved party by the non-performance.
- b) Where monetary compensation will not be adequate relief.
- c) Where the act to be done is in the performance of trust.
- d) In general the court will only grant specific performance where it would be just and equitable to do so.

2) Suit for Injunction

- a) judicial order restraining a person from beginning or continuing an action threatening or invading the legal right of another, or compelling a person to carry out a certain act
- b) The right to relief by way of injunction is contained in part III of the **Specific Relief Act, 1963**
- c) Section 36 provides that preventive relief may be granted at the discretion of the court by injunction.
- d) Section 40 provides that damages may be awarded either in addition to or in substitution of injunctions

3) Suit for Cancellation

The breach of contract no doubt discharges the contract, but the aggrieved party may sometimes need to approach the court to grant him a formal rescission, i.e., cancellation, of the contract. This will enable the Plaintiff to be free from his own obligations under the contract

► 4) Compensation

- a) Section 73 of ICA, 1872: Compensation for loss or damage due to breach of Contract
- b) The aggrieved party may seek compensation from the party who breaches the contract.
- c) When the aggrieved party claims damages as a consequence of breach, the court takes into account the provisions of law in this regard and the circumstances attached to the contract.
- d) The amount of damages would depend upon the type of loss caused to the aggrieved party by the breach. The court would first identify the losses caused and then assess their monetary value.

5) Liquidated Damages

- a) Where the contract itself addresses the issue of consequences of a breach and stipulated a penalty, section 74 of the Indian Contract Act will come into play.
- b) When such a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, the party complaining of breach is entitled, to receive from the party who has broken the contract a reasonable compensation not exceeding the amount so named.
- c) Section 74 emphasizes that in case of breach of contract, the party complaining of the breach is entitled to receive **reasonable compensation**.
- d) There is no principle which requires that once the provision of liquidated damages has been made in the contract, in the event of breach of one of the parties, such clause has to be read covering all types of breaches although parties may not have intended and provided for compensation in express terms of all types of breaches. [*Steel Authority of India V Gupta Brothers Steel Tubes Ltd. (2009) 10 SCC 63.*]

Remedies under Specific Relief Act, 1963

- ▶ Recovery of Possession(Sec 5 to 8)
- ▶ Specific performance of Contract (Section 9 to 25)
- ▶ Compensation
- ▶ Rescission of Contract(Section 27 to 30)
- ▶ Declaratory Decrees(Section 34-35)
- ▶ Injunction(Section 36 to 42)

Compensatory Jurisprudence

- ▶ This Jurisprudence states that compensation should be provided when a wrong happened to a person irrespective of the absence of any express constitutional or legislative provision and of judicial precedents.
- ▶ Dilution of “Locus Standi” principle with the advent of PIL etc
- ▶ Courts invoke Article 32 and 226 where the legal injury is significant.
- ▶ Compensatory Justice Jurisprudence took birth in the case of Rudal Sah when the Hon'ble Supreme Court broke one more link in the shackles of restrictive interpretation and added another feather in the cap of Article 21 to crown the personal life and liberty of people
- ▶ Over a period of time, the Hon'ble Supreme Court has given a dynamic interpretation to the constitutional remedies provision under the Constitution so as to enhance the fundamental rights of an individual.
- ▶ LDA Vs MK Gupta: State is liable to pay compensation if citizen suffers loss or injury by arbitrary action of State.

Curative Relief

- ▶ The concept of **Curative petition** was evolved by the Supreme Court of India in the matter of Rupa Ashok Hurra vs. Ashok Hurra and Anr. (2002)
- ▶ It emanates from Article 137 : Power of SC to review any judgement pronounced or order
- ▶ The question was whether an aggrieved person is entitled to any relief against the final judgement/order of the Supreme Court, after dismissal of a review petition. The Supreme Court in the said case held that in order to prevent abuse of its process and to cure gross miscarriage of justic made by it.e, it may reconsider its judgements in exercise of its inherent powers.
- ▶ For this purpose the Court has devised what has been termed as a "curative" petition. In the Curative petition, the petitioner is required to aver specifically that the grounds mentioned therein had been taken in the review petition filed earlier and that it was dismissed by circulation.

NewTrends

- ▶ A new trend which is seen is seeking civil remedies to control criminal behaviour.
- ▶ Now a days remedies are sought in non conventional areas such as privacy protection in case of use of information technology etc.
- ▶ This feature may pose serious legal issues and constitutional challenges.

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Thank You