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Breach of Contract and Damages under Indian Contract Act, 1872

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This article examines the concept of damages as a remedy for breach of contract under the Indian Contract Act, of 1872. Contracts, integral to modern commerce, often face breaches, necessitating remedies for aggrieved parties. Damages, typically monetary compensation, aim to restore the injured party to their pre-breach position. The article elucidates the meaning, nature, and objectives of damages, categorizing breaches and corresponding damages. Key breaches include anticipatory, actual, minor, material, and mutual breaches, each affecting the type and amount of damages awarded. Damages encompass ordinary, special, vindictive, nominal, and punitive forms, each addressing different extents and impacts of the breach. The Indian Contract Act, particularly Sections 72 to 74, outlines the legal framework for claiming damages, emphasizing compensation for direct and foreseeable losses while excluding remote and indirect damages. This analysis underscores the importance of damages in upholding contractual integrity, providing justice, and ensuring the smooth functioning of commercial activities. Through this exploration, the article highlights how damages serve as a critical legal recourse, reinforcing the rights of parties and promoting accountability in contractual relationships.

Keywords: *breach of contract, damages, compensation, remedies, legal recourse.*

INTRODUCTION

Whenever two or more parties enter into a contract, there is always a potential chance of the contract being breached due to various reasons. In such a scenario, the parties who have suffered

losses or have become victims due to this breach can exercise their right to extract justice and defend themselves.¹

The parties which have suffered due to the breach of contract can avail remedies against the losses. One such remedies available to the victim are Damages. Fundamentally, damages primarily refer to any type of monetary loss or compensation granted at once in the form of a lump sum of money. The purpose or intent of the establishment of a systematic and structural law of harm for such breaches of contracts and violations is to determine whether the workers or the public are satisfied to ensure and uphold the integrity of the community and promote its growth. This article intends to exhibit the meaning, nature, and purpose of damages as a remedy to the breach of contract along with providing an insight into the subject matter under the Indian Contracts Act.

Ubi Jus Ibi Remedium is a Latin legal maxim meaning 'where there is a right, there is a remedy'² which implies that if a person's right is violated, the injured party will be entitled to equitable remedies and compensation under the law. A contract is an enforceable agreement that legally binds all the parties involved in the contract. This means that if any of the parties violates or breaches their duty or obligation, a new responsibility or compulsion is imposed upon them to reimburse or compensate for the damages incurred to the injured party due to the negligence of the party which failed to perform its obligations/ violation of the contract.³

Damages mean compensation in terms of money for the loss suffered by the injured party, with the redress being awarded at one time in the form of a lump sum usually expressed in the English Currency.⁴ Contracts are an essential element in our economy and are essentially used

¹ Ativa Goswami, 'A Study on Damages as Remedies of Breach of Contract under Indian Contract Law and English Contract Law' (2021) 4(4) International Journal of Law Management and Humanities <<https://doi.org/10.1000/IJLMH.111314>> accessed 14 June 2024

² 'Legal Maxims Used By Courts in India' (IIPRD, 14 May 2020) <<https://www.iiprd.com/legal-maxims-used-by-courts-in-india/>> accessed 14 June 2024

³ Goswami (n 1)

⁴ *Ibid*

in every transaction in today's date. Contracts are very important to business and commercial activities as they govern all the trade and transactions taking place.⁵

Thus, it is very likely that breaches of contracts are unavoidable. Hence it is crucial to assess the resources and the remedies available in such a situation where one party fails to perform their contractual obligations to the other party.⁶ As discussed earlier, one of the most used remedies in such cases is Damages. But it is also important to consider various aspects while calculating the amount of damages.

Definition and Nature: The term 'Damages' refers to the amount of money supplied under the statute as compensation or monetary compensation in the event of wrongdoing or breach as a result of a contract violation or tort conduct. According to Blackstone, damages are a type of property acquired and lost by lawsuit and judgment. Undoubtedly, the injured party will have a right to any harm or other damage as soon as the injury is done. The judgment of the court, in this case, does not properly vest in him a new title. It is not given but the right is established. Damages are a legal recourse; it is money paid to the other by one side. The theory of damages is that they are a form of compensation for the injury suffered, and the amount of money awarded to compensate for the injury should be as close as possible to the amount that would have put the injured party in the same position if the wrong had not been committed.

Any action for damages raises two problems, these problems are –

- The remoteness of Damage;
- Measure of damages.⁷

⁵ Madhur Khatri, 'An Investigation into the Concept of Damages as a Form of Remedy for Breach of Contract in Indian Contract Law and English Contract Law' (2022) 5(3) International Journal of Law Management & Humanities <<https://doi.org/10.10000/IJLMH.113156>> accessed 14 June 2024

⁶ *Ibid*

⁷ Manoj Kumar Sadual, 'Damages For Breach Of Contract Under Indian Contract Act-1872' (2018) 6(5) IMPACT: International Journal of Research in Humanities, Arts and Literature <<https://www.impactjournals.us/index.php/download/archives/09-10-2021-1633777073-6-IMPACT%20:%20IJRHAL-61.%20IJRHAL%20-%20DAMAGES%20FOR%20BREACH%20OF%20CONTRACT%20UNDER%20INDIAN%20CONTRACT%20ACT-1872.pdf>> accessed 14 June 2024

The term 'loss or damage' under Section 73 of the Indian Contracts Act, 1872 is defined as 'compensation for loss or damage caused by breach of contract'. When a contract is broken, the party who suffers as a result of the breach is entitled to compensation from the party who caused the breach for any loss or damage he suffered as a result of the breach, which naturally arose in the normal course of things from the breach, or which the parties knew would be likely to result from the breach when they made the contract. Such compensation is not to be granted for any loss of profit or revenue incurred as a result of the breach.

When a contract is breached, the injured party is entitled to receive compensation for any loss or damage caused to him, which naturally arose in the usual course of things from such breach, or which the parties were aware of while entering into the contract to be likely to result from the breach of it.⁸ Such compensation is not given for any remote and indirect loss or damage sustained because of the breach. In case an obligation created by contract has been incurred and has not been discharged, the party injured by the failure to discharge it is entitled to receive the same compensation from the defaulter. In estimating the loss arising from a breach of contract, the means of remedy due to non-performance must be taken into account.

Objective of Damages: The objective of damages is essentially to put the parties that are claiming damages for the breach of a contract in the position they would have been if the breach of contract had not occurred at all. Another objective is to compensate the claimant for what he missed. It is basically to put the injured party in a place where it would have been with the help of monetary compensation. The defendant guilty of the breach must repay and compensate the aggrieved party who faced loss due to the breach of contract. The defendant is bound to give reparations for the fraud and damages are the remedy for the injured party.⁹

TYPES OF BREACH OF CONTRACT

Even the breach of a contract is of several types. Hence, the amount of damages to be awarded is based on several factors. These factors are:

⁸ Goswami (n 1)

⁹ Khatri (n 5)

Anticipatory Breach of Contract: Under Section 39 of the Indian Contracts Act 1872, an anticipatory breach of contract means that when it is evident that one of the parties of the contract will not perform their obligations as per the contract at a point of time before the performance of the contract, the aggrieved party has the right to approach the court. In these cases, the plaintiff needs to prove that the intentions of the defendant are clear to not abide by the contract.¹⁰ In the case of *West Bengal Financial Corporation v Gluco Series Pvt. Ltd.*¹¹, the dispute centred around a loan agreement where the defendant, West Bengal Financial Corporation (WBFC), had granted an initial loan of Rs. 4,38,000 to the plaintiff, Gluco Series Pvt. Ltd., with a provision for an additional loan of Rs. 1,62,000 contingent on the plaintiff repaying Rs. 60,000 annually. The plaintiff failed to meet this repayment obligation but demanded an additional loan. The court held that the agreement was severable into two distinct contracts: one for the initial loan, which was fulfilled, and one for the additional loan, which the plaintiff breached by failing to make the required payments. Consequently, under Section 39 of the Indian Contract Act, the plaintiff's failure constituted an anticipatory breach of contract, justifying WBFC's decision to repudiate the agreement for the additional loan. The court affirmed that WBFC was within its rights to deny extending the second loan due to the plaintiff's non-compliance with the repayment terms.

Actual Breach of Contract: An actual breach of contract occurs when a party has breached the contract i.e. failed to perform their obligations to the other party as per the terms of the contract.¹² When an actual breach has occurred, the injured party has the right to claim remedies like compensation and damages. The actual breach of contract also has two types:

- Actual breach of contract due to non-performance;
- Actual breach of contract due to late performance.

A Minor Breach of Contract: A minor breach of contract is a breach that is so small and usually insignificant to the parties involved, and all parties can complete the remainder of the contract

¹⁰ Sneha Mahawar, 'Types of Breach of Contract That You Should Know About' (*iPleaders*, 13 March 2022)

<<https://blog.iplayers.in/types-breach-contract-should-know-about/>> accessed 09 June 2024

¹¹ *West Bengal Financial Corporation v Gluco Series Pvt. Ltd.* (1973) ILR 1 CAL 434

¹² *Ibid*

despite the minor breach. This does not affect the overall purpose and terms of the contract. Usually, the amount of damages awarded for a minor breach is limited and such breaches are usually settled outside the court.¹³

A Material Breach of Contract: A material breach is a breach of contract that is so significant it challenges the fundamentals of the contract itself. In the case of *National Power Plc v United Gas Co Ltd.*¹⁴ the English court ruled on the interpretation of 'material breach' in contract law, focusing on National Power's alleged failure to provide requested information to United Gas. National Power contended that 'material' should equate to 'repudiatory,' necessitating a breach severe enough to justify contract termination. However, the court disagreed, defining a material breach as one that significantly impacts the innocent party's ability to derive the contract's expected benefits.

Mutual Breach of Contract: There may be instances where all the parties involved in the contract want to breach the contract. This may happen due to any factor, in this case, the parties can choose to void the current contract and enter into a new contract altogether. This type of breach has no remedy in the court of law.¹⁵

TYPES OF DAMAGES

Financial loss is difficult to define whereas general loss/gain is distinct. Losses based on specific agreements are much larger in scale than the losses not written. In the event of physical injury 'DAMAGES' is defined as the remuneration that can be considered questionable. While claiming damages complainant should not demonstrate the specific amount of forfeit that has occurred. In case of loss of profit, the same principle has been asserted.

The types/kinds of damages are -

1. Ordinary Damages: When one party breaks the contract and other the party suffers damages due to its action that occurs normally during the event is defined as ORDINARY DAMAGES.

¹³ *Ibid*

¹⁴ *National Power Plc v United Gas Co Ltd.* (1998) All ER (D) 231

¹⁵ Sneha Mahawar, 'All about Discharge of a Contract' (*iPleaders*, 31 May 2022) <<https://blog.iPLEADERS.in/all-about-discharge-of-a-contract/>> accessed 09 June 2024

The location for the initiation of a lawsuit for breach of contract is decided by the place where the contract is broken. Ordinary damages are also known as GENERAL DAMAGES. In the event of a breach of contract, it is one of the forms of damages that are awarded.¹⁶ Damages occurring naturally due to the usual course of the event are known as general damages. The aggrieved party might seek monetary compensation as a result of a violation of the contract.

2. Special Damages: Extraordinary damages are awarded in the case when one party receives notice of unique circumstances impacting the contract. When the contract is broken due to unusual circumstances special damages are awarded. This form of loss occurs as a result of unique circumstances not as a result of the defendant's infringement of terms and conditions. Party is held accountable for both special as well as ordinary damages in case of breach of contract in this case.¹⁷

In ordinary damages, the aggrieved party has to show the court that he has suffered some losses whereas in the case of special damages, the plaintiff has to show that he suffered some special damages.

In *Madras Railway Company v Govind Rao*,¹⁸ the plaintiff had delivered a sewing machine to the Madras Railway Company. These sewing machines were to be delivered to a specific place where the plaintiff was expected to carry his business at special profits. But, due to the fault of the company, the delivery of these sewing machines got delayed and the festival season was over which resulted in a loss to the plaintiff. In this case, the court held that the claim for special profit was too remote to be compensated because the special purpose of the company was not known.

Exemplary damages are the types of damages where the amount of money the offender has to pay, is intended to be very large, as to prevent them or others from committing the same crime in the future. These damages are purported to punish the defendant, and not only to compensate

¹⁶ Goswami (n 1)

¹⁷ Sadual (n 7)

¹⁸ *Madras Railway Company v Govind Rao* (1898) ILR 21MAD172

the plaintiff. A landmark case in this type of damage is *Rookes v Barnard* (1964)¹⁹ where three cases were laid down where punitive damages were awarded:

- Unreasonable, restrictive, or unconstitutional behaviour on the part of any government employee.
- Wrongdoing by the defendant that he has determined for oneself, which may surpass the amount of compensation due to the plaintiff.
- Any case where a statute provides for exemplary damages.

3. Vindictive Damages: Vindictive damages are meant to recompense an aggrieved party for mental stress or injury sensations in situations where the injury was caused or exacerbated by the defendant's wrongdoing. Vindictive damages are also known as Aggravated damages. When the defendant does not intend to compensate the plaintiff then in that case exemplary damage is designed to penalise the defendant.²⁰

4. Nominal Damages: Nominal damages are awarded in the case when there is just technical a violation of civil rights. There is no significant loss in this case. They are issued only to acknowledge the party's right to seek compensation. The amount of harm is negligible in this case. It is uncommon to grant minimal damages in a contract dispute. This is so because, if a legal wrong has been committed, these lawsuits frequently involve financial losses.²¹ Other sorts of damages, such as compensatory damages, liquidated damages, punitive damages, and restitution, are given out more frequently.

Nominal damages, however, might occasionally be essential to a contract case. These may consist of:

- Situations where property values cannot be determined;

¹⁹ *Rookes v Barnard* [1964] 1 All ER 367

²⁰ Goswami (n 1)

²¹ Khatri (n 5)

- Mixed lawsuits are defined as a claim of both contract as well as torts;
- Cases where the defendant has been found to have lied to or misled the plaintiff.

Imagine that plaintiff A brings a claim against defendant B for breach of contract after the latter failed to furnish the insurance that was promised. Plaintiff A made other plans to ensure they had insurance. Even if plaintiff A won, the court would likely only grant minor damages because defendant B's acts caused plaintiff A no loss.

5. Punitive Damages: Punitive damages refer to the compensation that the defendant pays to the plaintiff above the amount of compensatory damages. These damages are awarded so that the defendant or other individuals are deterred from doing the same action which amounts to a lawsuit. These damages are awarded rarely in breach of contract. These are most commonly used in torts proceedings rather than in contracts.²² In the case of *Chief Secretary, State of Gujarat, Gandhinagar v/ M/S Kothari Associates*²³, it was held that damages are compensatory, not retaliatory and this applies to both contracts as well as torts.

DAMAGES UNDER INDIAN LAW

After understanding the meaning, definition, and kind of damages it becomes imperative to know the concepts damages are related to. The definition of damages is not provided in the INDIAN CONTRACT ACT, 1872 but its concept is provided in Section 72 and Section 73 of the act. The conditions required to claim damages/compensation from the other party or the requisite that would lead to a breach of contract have all been provided with. The formation of a contract is most important for fulfilling our agenda. A contract is completed when an offer is made and is subsequently accepted with all the conditions being fulfilled by the offeree without any alterations in the offer, another most important phenomenon for a contract being made is it must be enforceable by law and there must be a lawful consideration. All these factors together complete the formation of a contract which is dealt with in Section 3 to Section 8 of INDIAN CONTRACT ACT, 1872. Parties enter into a contract according to their will without any coercion,

²² Goswami (n 1)

²³ *State of Gujarat v M/S Kothari Associates* (2003) 3 GLR 2177

only damages for breach can be awarded. Section 73 and Section 74 deal with breach of contract and liabilities of the parties.²⁴

Section 73 deals with the harm caused by infringement or direct damages resulting from a breach of contract in the form of unliquidated damages. The amount of compensation is calculated by the court based on harm caused to the individual who suffered a violation of the contract.²⁵ When a contract is broken the party suffering loss is entitled to receive compensation from the other party violating the contract for any harm or loss that occurred, naturally during the contract or which parties realized when entering into the contract will occur as a result of infringement states Section 73. Any remote or indirect damage that occurred is not covered under this liability.

The second part of this section deals with compensation for non-performance of duty in contracts. If the party had agreed to cancel the contract or had breached the contract, the person getting injured by this act is entitled to obtain the same compensation as agreed in the terms of the contract. If the contract is signed and has been breached the loss or damages resulting out of this is of character which would follow from such infringement which had happened in the normal course of action; or as if they are aware that such violation would happen after the conclusion of the contract. After that, the party breaching the contract is responsible and liable to pay the compensation. In the case of *Union of India v Raman Iron Foundry*²⁶, the court reaffirmed the principle that claims for unliquidated damages do not constitute an immediate debt until they are adjudicated and assessed by a court or adjudicatory authority. This interpretation aligns with the intent of Section 73 to ensure that compensation is awarded based on the actual losses suffered by the aggrieved party, rather than speculative or punitive damages. Furthermore, the case exemplifies the judiciary's approach to maintaining consistency in the assessment of damages, regardless of whether they are stipulated as liquidated damages in the contract or claimed as unliquidated damages through the judicial process. This uniformity

²⁴ Sadual (n 7)

²⁵ Goswami (n 1)

²⁶ *Union of India v Raman Iron Foundry* (1974) 2 SCR 231

underscores the equitable principles enshrined in the Indian Contract Act, safeguarding the rights of parties and promoting fair resolution of contractual disputes.

Unlike Section 73, Section 74 of the act deals with liquidated damages or damages that are already decided in the terms of the contract. As a result, a contract must be breached in the event of a demand for damages not as a result of the termination of the contract without any violation of terms and conditions of the contract.²⁷ 'When a contract is violated, the aggrieved party is entitled to receive fair compensation from the other party no matter whether the amount of compensation is written in the contract or any other conditions regarding the breach or violation are provided the contract,' says Section 74 of the act which deals with recompense to the aggrieved party for violation of contract where compensation is liquidated.²⁸ A prerequisite for this is that interest may increase on the amount if it is not provided to the aggrieved party within the stipulated time as per the explanation of this section. In the case of *Oil & Natural Gas Corporation Ltd. v Saw Pipes Ltd.*²⁹, the Supreme Court of India addressed the issue of liquidated damages specified in a contract. The court held that if a contract specifies liquidated damages, they should be awarded unless they are deemed to be punitive or excessive. The court emphasized that the compensation awarded should be reasonable and reflect the actual loss incurred due to the breach.

However, there exists an exception to this section which states that 'If any person enters into a contract or bond with the state or central government for the general interest of the public at large, a person breaching the contract is liable to pay the entire amount specified in the contract' it says. '*A Person entering a contract with the government is not required to perform any public duty or promise that is of public concern.*'

The enforceable agreement i.e., contract is first achieved, and after that person breaching the contract is liable to pay compensation to the aggrieved party. Compensation may be specified

²⁷ Indian Contract Act 1872, s 74

²⁸ *Ibid*

²⁹ *Oil & Natural Gas Corporation Ltd. v Saw Pipes Ltd.* (2003) AIR SCW 3041

in the contract or the compensation may be decided by the court considering the basis of harm caused to the individual.

CONCLUSION

Damages are one of the fundamental remedies, providing monetary compensation that the aggrieved victim party can claim in case of a breach of contract. In case an obligation created by contract has been incurred and has not been discharged, the party injured by the failure to discharge it is entitled to receive the same compensation from the defaulter. Damages are one of the most common ways of compensation for a breach of contract. Damages are aimed to restore the injured party to their original position which was maintained before the breach of the contract. The term 'loss or damage' is defined under Section 73 of the Indian Contracts Act, 1872. Particularly, in Sections 73 and 74, damages are classified to address various types of breaches, including anticipatory, actual, minor, material, and mutual breaches. As discussed above, there are several types of breaches of contracts that have different effects on the damages awarded. The forms of damages can also be classified into various forms such as ordinary, special, vindictive, nominal, and punitive, catering to the specific circumstances and impacts of each breach. Through this analysis, it is evident that damages not only provide a legal recourse for the injured parties but also reinforce the rights and obligations within contractual relationships.