

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 5 | Issue 3

2022

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An Investigation into the Concept of Damages as a Form of Remedy for Breach of Contract in Indian Contract Law and English Contract Law

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ABSTRACT

When two parties engage into a contract or a contract is signed, there is a potential that it will be broken. In this scenario, the parties who have been victims of the unlawful act of breach will be awarded such remedies in order to defend the preferences or goals of the contractual parties or parties entering into the contract, as well as to provide them with justice. Damages are one of the remedies available in the event of a contract breach or violation. It primarily refers to any type of monetary loss or compensation given in the form of a lump sum of money at one time. The objective or intent of establishing a systematic or structural law of harm for contract violations is to determine if workers or the general public are satisfied in order to maintain the community's integrity and encourage its growth. This paper aims to explain the meaning, nature, and purpose of damages as a breach of contract remedy, as well as provide an overview of the subject under Indian and English law. It also compares and contrasts the two laws in terms of damages for contract violations and breaches.

Keywords- Damages, Remedies, Breach, Compensation, Violation, Contract.

I. INTRODUCTION

"Ubi Jus Ibi Remedium" is a Latin legal maxim which means "where there is a right, there is a remedy," implying that if a person's right is violated, the victim will be entitled to an equitable solution under the law. A contract is a legally binding agreement. A new responsibility may arise if a party that has signed/entered into a contract violates a compulsion or obligation that the contract imposes, namely, a compulsion or responsibility to compensate damages to the other party for any harm or loss caused by the violation. Damages relate to the monetary compensation gained by performing an operation for a mistake that is a breach or violation of contract, with the redress being paid all at once in the form of a lump amount; represented in

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English currency unconditionally and typically, but not always, in English money. Contracts have become more important since our economy and other related industries have seen a fast increase in business and commercial activities. Contracts govern practically all types of transactions and other relationships between parties, thus it's unavoidable that the number of disputes emerging from them has increased. It is critical to assess the resources and remedies available in circumstances when the parties fail to honour the commitments set forth in the contract governing their relationship. Damages in lieu of violation of contract is one of the legal remedies available. Damages must be calculated based on a variety of circumstances, thus the purpose of this article is to methodically identify all of the important aspects to consider when calculating damages and to critically scrutinise them using statutory provisions, case law, and illustrations.

(A) Definition & Nature

The term "damages" refers to the amount of money supplied under the statute as monetary compensation or compensation relating to money in the event of a wrongdoing or injustice as a result of a contract violation or a tort conduct.

Damages, according to Blackstone, are "a type of property acquired and lost as a result of a legal action and decision. Unquestionably, as soon as the injured party receives the injury, he has a vague and indefinite right to any harm or other loss; therefore the jury's decision and the court's decision thereon, in this case, do not properly vest in him a new title." They do not give, but they do establish the right.² The theory of damages is that they are a form of compensation and satisfaction for the injury suffered, meaning that the amount of money awarded to compensate for the damages suffered should be as close as possible to the amount that would have put the injured party in the same position if the wrong for which he is seeking damages had not occurred.

In *Sohm v. Dixie Eye*, Justice Greenwood of the Court of Appeals of Utah adopted these words:

"damages" normally refers to money claimed by, or ordered to be paid to, a person as recompense for loss or injury. "The term injury is sometimes used in the sense of damage, as including the harm or loss for which compensation is sought, and has been defined as damage resulting from an unlawful act; but there is, properly speaking, a material distinction between

² WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, Ch 26: Of Title to Things Personal by A Project Of Liberty Fund (1753)

the two terms in that injury means something done against the party's right, causing damage, whereas damage is the harm, detriment, or loss sustained as a result of the injury."

Under Section 73 of the Indian Contract Act, 1872, the term "loss or damage" 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."

(B) Objective of Damages

The goal of calculating damages for a contract breach or violation is to put the parties in the position they would have been in if the breach had not occurred at all. Another goal is to make up for what the claimant missed, which entails asking him what might have been in his pay package when he brought it home³. Another goal, it could be stated, is to place the plaintiff in a position as nice as money can buy, as if the vow had been honoured. By persuading the claimant to behave in a way that was detrimental to him, the defendant made a purposeful deception mistake. The purpose of damages is to compensate the plaintiff for all of the injuries he or she has suffered, as money will not be able to do so again. Damages are limited to what could reasonably be assumed to have occurred between the parties. The defendant is obligated to compensate or make reparation for the harm caused by the fraudulent act.

II. TYPES OF DAMAGES

While it is difficult to define financial loss into categories, the loss of general business or gain is very distinct. Although losses that are not in writing have a larger magnitude than losses that are based on a specific agreement, losses based on a specific agreement have a much larger scale. 'Damage' refers to the type of remuneration that can be considered questionable in the event of a physical injury.⁴ A complainant should not go ahead and demonstrate the specific attribute or amount of a forfeit that has occurred. While it has been asserted that the same principles apply in cases of loss of profit, in the case of Victoria Laundry, it is difficult to reconcile the Court of Appeal's verdict in which the 'normal' forfeit of profit was retrieved, but not in circumstances of exceptionally profitable Ministry of Supply contracts⁵. The types/kinds

³ Clarke DN. Halsbury's Laws of England (Fourth Edition, 2006 Reissue). Vol. 12, p. 412 LexisNexis, 2006

⁵ Islamic Republic of Iran S.S. Lines v. Ierax S.S. Co. of Panama 1 Lloyd's Rep. 81(1991), Brown v. K.M. R. Services Ltd. 4 All E.R. 598 (1995).

of damages awarded in the event of a contractual breach are listed below.⁶

(A) Ordinary Damages

Ordinary damages are the losses incurred by the aggrieved party when one party breaks the contract and the aggrieved party suffers damages that occur normally during the course of the event. A lawsuit for breach of contract damages can be initiated in the location where the contract was broken. General Damages is another name for ordinary damages. It is one of the forms of damages that can be awarded in the event of a contract breach. Damages that occur naturally as a result of the usual course of events are known as general damages. The party who suffers losses as a result of the violation of contract might seek monetary compensation. Even if the aggrieved person is aware of the damages when the contract is breached, the aggrieved party can seek compensation if any loss is incurred to him as a result of the breach of contract.

(B) Special Damages

When one party to a contract receives notice of unique circumstances impacting the contract, extraordinary damages are awarded.

Special damages are those awarded when a contract is broken due to unusual circumstances. This form of loss occurs not as a result of the defendant's infringement of the terms and conditions, but rather as a result of the unique circumstances that occurred. If a party breaches the contract in this case, he is held accountable for both special and ordinary/general damages.

(C) Vindictive Damages:

The 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. Aggravated damages are another term for vindictive damages. Instead of penalising the defendant, exemplary damages are designed to penalise the defendant when the defendant does not intend to compensate the plaintiff for the loss he or she has caused.

(D) Nominal Damages:

If there is just a technical violation of civil rights, the injured party is awarded nominal damages. There is no significant loss in this case. The quantity of such harm is negligible. They are issued solely to acknowledge a party's right to seek compensation for a breach of contract.

(E) Punitive Damages:

⁶ Types of damages for breach of contract with examples, ACCOUNTLEARNING,(Jan 08, 2021, 11:15 A.M.), <https://accountlearning.com/types-of-damages-for-breach-of-contract-with-examples/>

Punitive or exemplary damages are damages given to punish or include an instance of a person doing wrong, who has behaved purposefully, perniciously, or in a deceptive manner. Punitive damages, unlike compensatory damages, are designed to punish the wrongdoer for his or her heinous behaviour and deter others from acting in the same way. Punitive damages are rarely awarded for contract breaches. They are more commonly used in tort proceedings to pursue deliberate or reckless wrongdoing that causes personal injury. In the case of Chief Secretary, State of Gujarat, Gandhinagar v. M/s Kothari's Associates ⁷, it was determined that damages are not retaliatory but compensatory, and that this principle applies to both torts and contracts.

III. DAMAGES UNDER INDIAN & ENGLISH LAW

(A) Indian Law

After knowing the meaning, definition and kinds of damages, it is important to know, the concepts that damages are related to. Although the definition of damages is not provided in the act, the concept of damages is provided in Section 73 and Section 74 of the Indian Contract Act, 1872. This needs to be thought upon. The conditions that would lead to a breach or violation of contract and the conditions that would give a person, the permission to claim for damages can either be liquidated or unliquidated. The formation of contract plays a very essential role in fulfilling our agenda. A contract is considered to be made when an offer and acceptance are completed sequentially, according to sections 3 to 8 of the Indian Contract Act. If the parties entered into the contract of their own free choice, only damages for breach would be paid. The parties should also be able to contract freely. Sections 73 and 74 deal with liability for losses or harm caused by a breach or violation of a contract.

The Indian Contract Act of 1872, Section 73, deals with direct damages resulting from a contract violation as well as the harm caused by an infringement in the form of unliquidated damages. The courts give or award this form of damages based on an estimate of the harm caused to the individual to whom the violation happened. "When a contract has been breached, the party suffering such an infringement shall be entitled to claim compensation from the party violating the contract for any loss or harm caused to it by that infringement which, naturally, occurred in the ordinary course of the case as a result of that infringement, or which the parties realised, when entering into the contract, would be likely to occur as a result of that infringement," ⁸states section 73 of the Indian Contract Act of 1872. Any remote or indirect

⁷ Gandhinagar v. M/s Kothari's Associates 3 Guj.L.R.2177, at 2200 (2003) (India).

⁸ The Indian Contract Act , 1872 (Act No. 9 of 1872) , S. 73

loss or damage incurred as a result of the infringement will not be covered by this liability." The first portion of the section is here.

The second portion of the section deals with remuneration for non-performance of duty in accordance with the contract's provisions. "Where a liability similar to that caused by the contract has been incurred and not satisfied, any person injured by the party's failure to perform the contract shall be entitled, by default, to obtain the same compensation. from the party as if the party had agreed to cancel the contract and had breached the contract." If a contract is signed first, and a contract violation happens, the loss or damage that results is of a character that would follow from such infringement in the ordinary course of business; or the parties were aware that such loss or damage would occur at the conclusion of the contracting period later. After that, the party is responsible for any damage or harm produced by the party.

The 1872 Indian Contract Act, Section 74, deals with liquidated losses, or damages stipulated. As a result, a breach of contract must occur in the event of a demand for damages, avoiding situations where the contract can be legitimately terminated without any violation of the conditions."If a contract has been breached, whether the sum is specified in the contract as the amount to be paid in the event of such breach, or whether the contract includes some other clause by way of punishment, the party complaining about the breach shall be entitled to claim fair compensation," says section 74 of the Indian Contract Act of 1872, which deals with recompense for a breach or violation of contract where punishment is stipulated. "A prerequisite of interest that is increased after the date of default can be a requirement for penalty,"⁹ according to the explanation.

There is, however, an exception to this rule. "If any individual goes on to enter into any bond, recognition, or other medium with the same characteristics, or makes any bond in compliance with the provisions of any law or as per the orders of the government at the centre or of any government of the State, for the performance of any public duty or of any act of public interest to the public, he shall be liable, in breach of the condition of any such instrument, to pay the full amount mentioned," it says. "A person who enters into a contract with the government is not required to handle any public duty or promise to execute an action that is of public concern." The enforceable agreement, i.e. contract, is first achieved, and then the contract specifies a specific sum as compensation or penalty for contract breach. Following that, if the contract is broken, the party who broke it pays compensation to the other party.

(B) English Law

⁹ The Indian Contract Act , 1872 (Act No. 9 of 1872) , S. 74

The damages determined by the parties can be liquidated damages or fines, according to English law. The liquidated damages are the actual preliminary estimate of the forfeit incurred by the contract breach if the damages established by the parties are the actual preliminary estimate of the forfeit suffered by the contract breach. On the other hand, if the penalty agreed to be paid in the event of a violation is excessively high and disproportionate to the potential loss, i.e. the sum is set in the terrarium, the penalty is regarded as a penalty by way of protection to the promised party, ensuring that the contract is enforced.¹⁰

Liquidated damages are a true preliminary estimate of the forfeiture and should be regarded to be the amount established by the contractual parties as the compensation or damages to be paid, regardless of the real injury.¹¹ In this situation, the promisee receives the agreed-upon amount, no more or less, and no proof of actual harm is required. In the case of a penalty, on the other hand, the sum established is the overall limit of damages; if the promisee has not genuinely suffered too much harm, he will not receive the full amount. "You shall not go over the penalty; you shall provide the party some reward within it to which he may prove himself entitled," is the rule in such a circumstance.¹²

According to the plaintiffs in *Dunlop Pneumatic Tyre Co. vs. New Garge and Motor Co.*,¹³ the Dunlop company furnished the defendants with tyres under the Price Maintenance Agreement, and the defendants were not to sell such tyres below the manufacturers' advertised price. In addition, the agreement stipulated that they must pay £ 5 in liquidated damages to the plaintiffs for tyres, tubes, and other items sold in breach of the agreement. The House of Lords decided that the amount of damages payable was a true pre-estimate of the loss, and that the damages levied were liquidated accordingly. The parties are not allowed to prove the genuine forfeiture if the participants' determination is regarded to be a true preliminary assumption of forfeiture in the event of liquidated damages.

The appellants agreed to supply the respondents with such machinery within 18 weeks in *Coeillulose Acetate Silk Co. Ltd. v. Widnes Foundry, (1925) Ltd.*¹⁴, and to pay compensation at a rate of £ 20 per week if the machinery was not delivered within the specified time. On that premise, a 30-week delay was incurred, resulting in a £600 loss. The respondents claimed a

¹⁰ Jonathan Riley, Contracting under Indian or English law: Part-2 key contract differences, MONDAQ CONNECTING KNOWLEDGE AND PEOPLE,(Jan 08, 2021, 12:20 P.M.), <https://www.mondaq.com/india/contracts-and-commercial-law/65440/contracting-under-indian-or-english-lawpart-2-key-contract-differences>

¹¹ Wallis v. Smith, 21 Ch D 243 at 267(1882)

¹² Kemble v. Forren, 1 Camp. 78 (1807)

¹³ *Dunlop Pneumatic Tyre Co. v. New Garge and Motor Co.* AC 79(1915).

¹⁴ *Coeillulose Acetate Silk Co. Ltd. v. Widnes Foundry*, AC 20 (1933).

loss of £5,850, which they stated was their actual loss. The House of Lords determined that the agreed-upon sum was not a punishment, but rather a pre-estimate of the likely loss, and therefore the damages were restricted to that sum.

If the 'accepted damages' are substantially disproportionate to the likely loss, the damages are punished by a penalty, and the real damages, not the sum thus defined, are payable in such a circumstance. Thus, in *Kemble v. Forren*¹⁵, the defendant chose to serve as the principal comic for four seasons at a pay of £ 3-65-8d. In order to calculate the output of each power. It was also provided that if any party violated the agreement, penalties of up to £ 1000 would be imposed. Such fines were imposed for various infractions, such as a one-night absence or non-payment of £ 3-65-8d. The compensation due in this case was determined to constitute a penalty.

IV. COMPARISON BETWEEN DAMAGES OF BREACH OF CONTRACT UNDER INDIAN & ENGLISH LAW

Damages as breach-of-contract remedies have certain similarities and distinctions. Below is a comparison of damages for breach or violation of contract under Indian and English law:

A limitation of liability clause is normally appropriate and enforceable under Indian law, unless the limits on responsibility resulting from a fraudulent conduct, death, personal injury, or carelessness are not adaptable. Furthermore, in order to be enforceable, the limitation of liability clause must be reasonable and not constitute a punishment. As a result, the position is identical to that of English law.

The right of a participant to pursue culpability for breach of contract will be limited to the actual damages suffered as a result of the breach. To recover for a contractual breach, the aggrieved party must show that such damage naturally occurred in the ordinary course of the infringement, or that it was harm that the participants believed would be most likely to cause when the agreement was formed, according to Section 73 of the Indian Contract Act (ICA).

Section 73 further stipulates that any unanticipated forfeit or damage experienced as a result of a contractual breach is not recompensed. In English law, there are no legal limitations on a party's right to recover for indirect loss, and there are the same two types of damages that can be recovered (in the case of *Hadley-v-Baxendale*, the two limbs).¹⁶ The implementation of distance laws is clearly based on English law.

¹⁵ *Kemble v. Forren* 6 Bing 141(1829), *Ford Motor Co. v. Armstrong*, 31 TLR 267(1915).

¹⁶ *Hadley-v-Baxendale* EWHC J70(1854)

Everyone is accustomed to referring to the second limb of Hadley-v-Baxendale¹⁷ as 'implicit loss,' which under English law does not emerge clearly from the violation but must have been included in the fair consideration of the participants when the enforceable agreement was reached, as 'implicit loss,' but under Indian law, it's best not to use that term to avoid categorising the deficit as an irreparable forfeit under Section 73, unless the deficit is irreparably damaged.¹⁸

It's also worth remembering that, according to the British Sugar case, "consequential loss" under English law does not imply forfeit incurred obviously as a result of an infringement, as might appear to be the natural sense, but forfeit "over and above that which occurs as a direct result of the infringement," or a kind of indirect damage, and consequential damage is treated similarly in Indian law.

"If a contract has been breached, whether the sum is specified as the amount to be paid in the contract in the event of such breach, or whether the contract includes some other clause by way of punishment, the party complaining about the breach shall be entitled to claim fair compensation from the party who has breached the contract, whether or not the actual damage or loss is found to have been caused thereby," according to Section 74 of the Indian Contract Act of 1872.

According to English law, if the parties agree that the amount is a true preliminary estimate of the damage or harm to be incurred, that amount is typically given, and it is clear from the act that the claimant is not required to provide proof of his actual loss. However, the petitioner must show that the plaintiff suffered civil harm, and that it is reasonable for the defendant to claim that the fair payment to which the plaintiff is entitled is less than the amount claimed, which is to be determined by the courts because it is difficult to demonstrate the true forfeit suffered by the plaintiff. This means that while a provision for liquidated damages may be considered legal, the plaintiff may not be entitled to the full amount sought, but may instead be entitled to a degree of appropriate recompense as determined by the courts that does not exceed the liquidated damages sought.

It should be noted that, unlike English law, Indian law does not distinguish between a legitimate liquidated damages service and an invalid penalty clause. Indeed, Section 74 applies to both "the amount defined in the enforceable agreement as the money to be given in the event of such

¹⁷ Id. At 15.

¹⁸ Remedies for breach of contract, JUDICIAL EDUCATION CENTRE UNIVERSITY OF NEW MEXICO, (Jan 07, 2021), <http://jec.unm.edu/education/online-training/contract-law-tutorial/remedies-for-breach-of-contract>

violation" and "any other clause by way of punishment," noting that both must be handled in the same way, with the exercise being to assess the right to fair recompense in every case. We must avoid the use of the word 'punishment clause' in our drafting, under English law, for fear of invalidity.

The leading cases on the principles of liquidated damages are *Maula Bux v. Union of India* (1969)¹⁹ and *Oil & Natural Gas Corporation v. Saw Pipes* (2003)²⁰, and it appears from those cases that the provisions on liquidated damages must be specifically drawn out, that the measurement of liquidated damages must be simple to understand, and that the defendant should be read to show that the figure was a true preliminary assumption of the forfeit or harm probable.

This was a comparison of damages as breach of contract remedies under both laws.

V. CONCLUSION

This research paper was quite useful in providing crucial information about damages as breach of contract remedies. Damages are monetary incentives or reimbursements provided for the impairment suffered by the afflicted person. Damages can be sought by the party who has suffered a loss or harm as a result of the breach or violation of contract. As we know, the purpose of giving damages is to compensate the person who has filed a claim, i.e. the claimant, for what he or she has missed. When a contract is violated or broken, various forms of damages can be awarded. When it comes to Indian law, damages paid as remedies for dereliction or breach of contract are addressed under sections 73 and 74 of the Indian Contract Act of 1872, coupled with an exception to section 74. The damages determined by the parties under English law might be either liquidated damages or fines. Finally, I'd like to point out that under Indian and English law, damages as breach of contract remedies have certain similarities and distinctions.

¹⁹ *Maula Bux v. Union of India* SCR (1) 928 (1970).

²⁰ *Oil & Natural Gas Corporation v. Saw Pipes* 5 SCC 705 (2003).