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Hadley v. Baxendale: Critical Analysis

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ABSTRACT

In the construction of a contract, there is a wide range in contractual provisions that deal with delays and their consequences. Several such contractual provisions are examined in this paper, and their legal interpretation is examined. The older forms' wording reflects the way the courts have interpreted them, as well as their history. Newer forms use different language, but their goals are the same-to allocate contract risk in a clear and efficient manner.

According to contract law, a party can only be held liable for losses that occur in the normal course of things or that can be reasonably presumed to have been in the contemplation of both parties at the time the contract was made, as set out in the English case of Hadley v. Baxendale. In this paper, we use a formal model to examine the impact of this limitation on contract damages. One is the Hadley limit on liability, and the other is an unrestricted liability rule. Section 73 of the Indian Contract Act, 1872, dealing with unliquidated damages is the main essence from the landmark case of Hadley v. Baxendale case law, here the two rules were established through the judgement which are reinterpreted in the section 73 of the Indian Contract Act, 1872, which specifically talks about general and special damages and on what grounds they are granted. The case also talks about remoteness of damages which states that for the purposes of compensating losses caused by contract breaches, 'remoteness of damages' is defined as the legal standard for determining which damages are compensable, it provides that the party suffering from the breach may only seek consequential damages if both parties were aware of the likelihood of arising of such losses.

Keywords: Risk, Damages, Unliquidated, Special, Remoteness.

I. INTRODUCTION

In cases of contract breach, damages are the preferred remedy. It is common in contract's law to award the non-violating party damages so that he can be restored to his pre-contract position. However, in these situations, it's important to consider the breaching party's level of responsibility. The question arising in ascertaining this is, is the breaching party responsible for compensating the non-breaching party for all of their losses, both direct and indirect? Is compensation due for losses incurred far away?

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The English case of *Hadley v. Baxendale*² from 1854 is the most significant case law addressing these issues. 'Judge Sir Edward Hall Alderson' presided over a bench in the Court of Exchequer that decided the case. The ruling limits the liable party's liability so that the awarded damages aren't too high. Limiting the party entering into contract liability is justified by the fact that there is no limit to culpability will discourage the average person from entering into commercial agreements. Contracting will become a risky business if the parties cannot predict the monetary value of his promise if his liability is uncapped.

It express the same principle in their contract laws. With the help of *Hadley v. Baxendale* and the Indian Contract Act of 1872, this article seeks to clarify the rule that was established in that landmark case. Additionally, the research paper discusses cases in which the rule was used and recent criticisms of the rule.

II. MEANING NATURE AND SCOPE OF CONTRACTS

A contract is a legally binding agreement. When making a promise, it can be either a promise to do something or not to do something. A contract can only be made by two or more people agreeing to it, with one of them making an offer and the other accepting it. A contract is a legally enforceable agreements or also could be said to be set of promises that gives rise to obligations.

It is said that a proposal is accepted when the person to whom it is made gives his or her assent with the proposal by indicating their willingness to do or refrain from doing something. If the promisee accepts the proposal, the proposal becomes a promise. The person who makes and accepts the proposal is known as "promisor," and those who accept and fulfil the promise are known as "promisees." When any person does something at the request of the promisor, or promises to do something at the request of the promisees, or does something at the request of the promisees or promises to do something, it is called consideration for that given promise.

In the context of a contract, promise forms the consideration for parties to the contract is called an agreement. An agreement that cannot be enforced by law is void and an agreement that can be enforced by law at the option of one or more of the parties, but not at the option of another.

(A) Essentials of contract

Under Section 10³, a contract includes the following: It cannot be formed unless one or both parties make an offer. There are times when this principle is not applicable. Acknowledgement of the offer to begin with, the Offer must be acknowledged and accepted by the intended

² HADLEY V BAXENDALE (1854) 9 EX 341

³ Indian Contract Act, 1872.

recipient. Therefore, only B can accept an offer from A. When the parties entering into contract has no intention to form a legal relationship, there leads to be no contract. In the case of commercial agreements, parties intention to create legal relation is already presumed. Section 4⁴, states that an offer is only complete when the other party is aware of it. An offer must be communicated in order for an agreement to be formed. So, an agreement is a proposal that has been accepted.

(B) Literature review

Articles

1. 'Damages For Breach of Contract for Sale of Goods'⁵

- This article talks about the damages arising due to breach for sale of goods using Hadley v. Baxendale as an example.
- While analysing the claims for such damages it talks about two distinct questions that the remoteness of damage for which compensation is claimed must be distinguished from monetary measure of that compensation.
- This paper elucidates how the actionable damage should be restored to its whole depending upon delay in delivery or no delivery at all and breach of warranty.

2. Unliquidated Damages - Concept, Genesis and Calculation⁶

- This article explains how damages may be defined as the remedy in the form of monetary compensation given to the party who has suffered as a result of the breach demand damages from the party who caused the breach and resulting in a loss or injury to the party. While analyzing damages it also talks about how depending on statutory and contractual criteria, India may provide specific performance or damages for such a default. Specific Relief Act of 1963 covers specific performance damages; Contract Act of 1872 governs non-performance damages (the Act). "Damages" refers to the non-defaulting party receiving compensation for an actionable wrong.
- Section 73 of the Act provides that the aggrieved party is entitled to compensation for any loss or damage. This loss or harm must have occurred naturally or been foreseeable when the contract was signed. Damages do not include distant and indirect losses, and

⁴ ibid n2

⁵ Leow Chye Sian, Damages For Breach of Contract for Sale of Goods, 13 SAclJ 135 (2002)

⁶ Bhumesh Verma* and Aditi Duggal, PL (CL) 89Unliquidated Damages - Concept, Genesis and Calculation, (February, 2019)

mitigation must be considered.

3. **Sale of Goods (United Nations Convention) Act 1995**⁷

- The 'United Nations Convention on Contracts for the International Sale of Goods' became a part of Singaporean law on March 1, 1996, with the enactment of the 'Sale of Goods (United Nations Convention) Act 1995,' which is the primary focus of this article's discussion. This was the date that the 'Sale of Goods (United Nations Convention) Act 1995' came into force.
- It mentions the application of the convention, general provisions of the convention, obligation of the seller and the remedies available to party.
- 'The Sale of Goods Act's' sections 50 and 51, are based on Hadley v Baxendale test, but semantically distinct. Loss "naturally occurring in the course of events" is defined under the Act. Article 74 limits damages recoverable by using the foreseeability test. If tort claims stemming from breach of a sale contract are not covered by Article 74, the question remains unanswered in nations that accept this distinction.

4. **"Changing Course at the Top"**⁸

- This article discusses how much a damage on a new fixture could be fell within the first rule in Hadley v. Baxendale because it was a loss that the charterer should have been aware to be not unusually likely to result from a breach of contract consisting of a delay in redelivery. The delay in redelivery was the cause of the charterer's loss.
- Article also discusses how a loss on the purchase of a new item fell inside the first rule in Hadley v. Baxendale because it was a loss that the charterer ought to have realised to be not unusually likely to result from a breach of contract consisting of a delay in redelivery.

5. **Internet Intermediate Liability for Illicit Online Gambling in India**⁹

- The limits through which damages are assessed in contract law have been redrawn in Transfield v. Mercator. The ruling demonstrates a significant shift from the Hadley v. Baxendale rule, which had previously been employed for determining contractual damages. The ruling has contributed to a lot of ambiguity in English common law by

⁷ **Chan Leng Sun, Sale of Goods (United Nations Convention) Act 1995 8 SAcLJ 104 (1996)**
Lecture: Singapore Academy of Law Distinguished Speaker Lecture 2016 "Changing Course at the Top" ,29 SAcLJ 23 (2017)

⁹ **Anjali Anchayil ,Internet Intermediate Liability for Illicit Online Gambling in India, 3.1 GNLU L. Rev. 147 (2010)**

focusing more on the agreement-centered approach. Examining how English contract law has evolved since this case, this study looks at the judgement in *Transfield v. Mercator*.

- The author also discusses how the Indian perspective on contractual damages would be affected by this ruling. As a final attempt, this study seeks an agreement between the procedures given by *Hadley v. Baxendale* and *Transfield v. Mercator* for determining contractual damage claims.

Book review

1. *Avtar Singh, (2017), Law of Contract and Specific Relief*¹⁰

- The author has provided with a detailed view on how special and general damages are compensated for the damage caused by the party breaching the contract.
- Various tests are mentioned by the author in order to determine the extent of the other party's injury.
- The author explains who bears the burden of proving a loss in order to be eligible for compensation and to specify the amount of damages.

2. *K.R. Bulchandani, Business Law*¹¹

- The author talks about how the Section 73 (2) deals with remoteness of damages. It cites example from the case *Hadley v. Baxendale*, where it has been observed that the court will only those losses that are fairly and reasonably to be considered either arising naturally.
- The author also talks about special and general damages and the way both are to be dealt.

3. *P.C. Markanda, The Law of Contract*¹²

- The author talks about breach of contract, types of breach, damages and its measure. It describes how neither Sections 55 nor 73 of the Contract Act describe in detail how or in what manner damages or compensation should be calculated.

4. *Pallock & Mulla, The Indian Contract & Specific Relief Act*¹³

- The author cites *Hadley v. Baxendale* and various other cases to make a broad

¹⁰ Avtar Singh, Contract & Specific Relief, Book code- ISBN- 978-93-8882-289-3

¹¹ K.R. Bulchandani, Business Law, Book Code- ISBN 978-93-5024-281-0

¹² Volume 1, P.C. Markanda, Naresh Markanda, Rajesh Markanda, P.C. Markanda, The Law Of Contract , 2017

¹³ Volume 1, R Yashod Vardhan, Chitra Narayan, Pollock & Mulla, The Indian Contract & Specific Relief Act

understanding about the Indian Contract Act, 1872.

5. **Law of Contract by R.K. Bangia**¹⁴

- The author talks about compensation in case of damage arising due to breach of contract covered under various sections mentioned under the Indian Contract Act, 1872.

(C) Statement of problem

Legal principles dictate that when an unlawful conduct causes harm, it is required to assign liability in accordance with general principles of the law, which is the case. There are several examples of circumstances when quantifying the losses of a given conduct is extremely difficult. Hadley v. Baxendale, a major case in Contract Law, and the technique for calculating the loss or total of the amount to be provided as compensation for the injury.

(D) Rationale of study

The party that has suffered as a result of that breach has a right to compensation from the party who has broken the contract, which naturally arises from the usual course of events or that the parties knew would result from a violation of the contract when they made it. This is to remedy any harm that has been done to the party as a result of the breach of contract. This kind of compensation is not to be granted for any loss or damage incurred as a result of the breach, regardless of how remote or indirect the cause of such losses or damages may have been." According to the law, any person who is harmed as a result of the failure to discharge an obligation that is comparable to those created by contract is entitled to receive a comparable amount of compensation from the party in that cause breach, just as if such a person had contracted to discharge it and had broken his contract. This is because the law states that "any person injured by the failure to discharge an obligation resembling those created by contract is entitled to receive a similar amount of According to the explanation provided in Section 73, "When calculating the amount of loss or damage that resulted from a breach of contract, it is necessary to take into consideration the options that were available to alleviate the problems brought on by the non-performance of the contract. In this study, we investigate the case of Hadley v. Baxendale, discuss its connection to Indian contract law, and analyse the continued applicability of its guiding principle.

(E) Research objectives

The purpose of this research is:

¹⁴ R.K Bangia, Law of Contract 1, Allahabad Law Agency

1. To study and critically analyse the case study of Hadley v. Baxendale.
2. To understand the relevance of Hadley v. Baxendale case in Indian Contract Act, 1872.
3. To analyse the remoteness of damage and compensation granted under section 73.
4. To examine the application of Hadley v. Baxendale in Indian Cases.
5. To study and examine if the case law to be critically analysed still plays the same significance in Indian Contract law.

(F) Research questions

1. What is the significance of Hadley vs. Baxendale in the present scenario?
2. What relevance does the Hadley vs. Baxendale plays in Indian contract law today?
3. What is the difference between remoteness of damages in contact law and law of torts?
4. Has the rule of Hadley v. Baxendale changed with time?
5. Are the principles mentioned in Hadley v. Baxendale applicable?
6. How to apply the rule of remoteness in present situation?
7. Are there any amendment brought to change the rules set up in Hadley v. Baxendale?

(G) Research methodology

The methodology that would be applied for this research is Doctrinal, Analytical and Comparative research. In this research the primary sources of data are the Indian Contract Act, Judicial precedents. The secondary sources of data do comprise of published books, journals, scholarly articles, news releases, research reports are used.

III. UNDERSTANDING THE CONCEPT AND IMPLICATION OF BREACH OF CONTRACT

A contract is a promise made in exchange for something of value, such as money or property, that can be enforced by either specific performance or damages. If there is a violation of the terms of the contract, the party that was harmed may submit a claim for compensation.

(A) Breach of contract

When a judge hears a case involving a contract, it is usually because one or both parties believe the contract has been broken. A breach of contract occurs when a party to a contract fails to fulfil any of their obligations under the contract in the absence of a valid reason. Failure to meet industry standards or any express or implied warranty, including the implied warranty of merchantability, falls under this category.

Depending on the particulars of the situation, a breach of contract may or may not include

serious consequences. The responsibilities of the parties and the remedies available to them will vary depending on the nature of the violation. It is considered a major breach of the contract when one of the parties obtains anything that is materially different from what was described in the contract because the party that breached the contract did not perform some portion of the contract. A breach of this kind happens when the customer anticipates receiving a box full of soccer balls but instead receives a box full of tennis balls instead of what was advertised. As soon as a breach becomes significant, the party that is not in violation is released from their obligation to perform and given the right to any and all remedies for breach of contract.

One of the factors that courts take into consideration when deciding whether or not something is important is the amount of advantage acquired by the party that did not break the agreement. Is it feasible to offer the party that did not break the agreement appropriate compensation for the damages?

The degree of performance displayed by the side who breached the agreement.

The suffering that was inflicted on the party who breached the agreement.

The behaviour of the party in violation, which may have been careless or intentional.

The possibility that the party who has broken the contract will still fulfil its other commitments after the breach has been discovered.

It is deemed a minor infringement of their agreement as long as the party to the contract still obtains the goods or service that was agreed upon, while the other party does not. There is a possibility that there may be exception to this rule, such as in circumstances in which the contract stipulates a certain delivery date (meaning that the deadlines are hard) or in which the contract indicates that "time is of the essence" (i.e., deadlines are firm). There is a right to compensation for the party that did not violate the contract so long as that party is required to fulfil under the terms of the contract and can recover damages as a result of the other party's violation. Even in the event that a seller is late in delivering the products due to a small violation of the contract, the buyer is still responsible for making payment for the items; nevertheless, the buyer may be entitled to collect damages.

(B) Damages

Damages are monetary recompense for the harm done to the injured party. The injured party must demonstrate that they were harmed. Two issues arise as a result of the damage action:

Remoteness of damage

Measure of damage

The defendant cannot be held liable for all of the consequences of a breach because they are too far away. Since the damage is said to be too far away and therefore unrecoverable, there is a limit to liability.

(C) Damages Calculated

Once the type of damages to be recovered (general or special) has been determined, the financial value of those damages must be determined. A set of fundamental rules governs its operation.

A claim for damages resulting from a violation of contract, regardless of whether the claim is for general or liquidated damages, remains just a claim until it is evaluated by the court, and it does not become a debt until the court grants the amount that was claimed as damages.

A party whose rights have been violated should be compensated, not punished, according to well-established principle. Damages are compensatory, not punitive, according to well-established principle. In order to achieve this, the primary goal of damages law has been met.

IV. FACTS OF THE CASE

In *Hadley v. Baxendale*, an English case, a mill's broken component was the subject of a contract for carriage. City Steam Mills in Gloucester were owned and operated by Hadley with the help of his partners. Steam power was used to clean and process food grains into flour and bran at the mill, which was located nearby. The steam engine's crankshaft broke during one of the mill's operating days, and production was halted.

W. Joyce & Co., an engineering firm based in Greenwich, was contacted by the owners of the mill to manufacture a new crankshaft. As a reference for the new crankshaft, the manufacturers requested the broken crankshaft be sent to them.

Baxendale, the owner of the common carrier Pickford & Co., was approached by Hadley via his agent. Both parties agreed on a shipping price and a delivery date for the crankshaft, which was broken. Hadley made it clear that the delivery must be completed on time.

Shipping to Greenwich, however, was rerouted through London, where a broken crankshaft was stored until the rest of the shipment arrived. The manufacturer received the shipment a few days after the due date. While this was going on, the mill in Gloucester was shut down. Hadley lost a lot of money because of the mill's inability to produce.

He is suing Baxendale for damages to compensate for his losses due to the mill's inactivity and possible loss of customers and goodwill. Hadley is enraged by his loss."

(A) Rule of Hadley v. Baxendale:

The mill's inability to operate arose as a matter of law, was Baxendale liable to pay compensation? Consequently, Hadley cannot claim damages from Baxendale for the loss of profits resulting from Baxendale's breach, the Bench ruled. While contracting, Hadley did not mention that the mill would be out of service until the new crankshaft was installed. Because of this, it is not reasonable to expect one party to compensate for what he could not reasonably foresee at the time of signing the agreement.

Mill owners could also send their machinery to be repaired in other situations, the judges said. This critical component could be replaced or the mill could function even if this component is missing entirely. Hadley could have simply told Baxendale what kind of loss he stands to suffer if the delivery is not made on time, given how critical the component was to the mill's operation. No one can expect a rational man to arrive at that conclusion on his own.

"Where two parties have made a contract which one of them has broken, the damages which the other party ought to receive in respect of such breach of contract should be such as may fairly and reasonably be considered either arising naturally, that is, according to the usual course of things, from such breach of contract itself, or such as may reasonably be supposed to have been in the contract itself," Sir Edward Hall Alderson stated as a general rule on damages in breach of contracts.

As was mentioned before, the rule established by Hadley v. Baxendale distinguishes between "general losses" and "consequential or specific damages." When a contract is breached, general damages are those that follow as a natural consequence. There are many examples of this, such as if Jai agrees to buy some grain from Raj, but Raj doesn't fulfil his end of the bargain. For example, if Jai had to pay a higher price for the same amount of food grains from another seller on the specified date, then his general damages would be equal to the difference in price. In this case, the general damages will be the difference between the contract price and the market price of the goods.

If a party fails to fulfil their contractual obligations, the other party has the right to sue for general damages as a result of the failure. Damages as a result of other events are more difficult to calculate.

The interests of each party to a contract may not always be shared or known to the other side. While the consequences of a breach of contract aren't necessarily caused by it, they can still have an impact on the parties involved. The purpose of consequential damages is to make up for such inconsequential harms.

Hadley v. Baxendale states that the non-breaching party can only claim consequential damages if both parties to the contract were aware of the possibility of such losses. Consequences rule is based on the knowledge of parties at time of contract and reasonable man's standard. This is important to keep in mind.

In the event of a breach of contract, the rule regarding consequential damages effectively limits the parties' liability. Even if the delivery of food grains by A to B on a specific date is the subject of general damages, we can still use this example. B's food processing plant needs the food grains as an input, so if A fails to deliver them on time, the plant will have to shut down. Only if B had informed A that the production would have to be halted in the event of a delay in the delivery of food grains will A be liable for the loss of profit.

Most common law jurisdictions have adopted the rule of Hadley v. Baxendale, which is widely accepted and incorporated into contract law.

In the case of *Horne V. Midland Railway Co* it was held that special damages cannot be claimed if special circumstances are unknown. He was ordered to supply the French army with some shoes. He was attempting to overcharge them. There was nothing unusual about how the shoes were delivered to the defendant railway company, just a delivery date of Feb. 3rd. The consignment arrived late, and the recipient refused to accept it. It was required that the plaintiff sell the goods at a discount of 50%. The difference between the contract price and the actual sale price of the goods was the basis for the plaintiff's claim. The loss was extraordinary, and as a result, no compensation can be offered.

Rules from Hadley v Baxendale are incorporated into Section 73:

Damages incurred as a result of the breach are not to be compensated, according to the section of the law. It also states that the same principles apply if a quasi-contractual obligation has been breached.

Any loss or damage resulting from the breach of contract is eligible for compensation, as long as the parties knew at the time of the contract that the breach was likely to cause such losses or damage.

The plaintiff had to show that damages had been incurred and what the appropriate method of converting the loss into money would be. A "hypothetical reasonable man" can predict how much liability will be in an ordinary situation. A certain amount of loss must be demonstrated through evidence.

(B) Rule of Hadley v. Baxendale in Indian Contract Act, 1872

A section of the Indian Contract Act that incorporates Hadley v. Baxendale's rule is Section 73. A breach of contract gives the victim party the right to receive compensation from the party who broke the contract for any loss or damage he or she suffered as a direct result of the violation, as well as for any future losses or damages he or she knew were likely to occur when they were agreed upon.

Any loss or damage resulting from the breach, whether direct or indirect, will not be covered by this type of compensation. An injured party may be entitled to the same compensation from the party in default as if the party in default had contracted with that person to fulfil their obligation and had breached that contract if the obligation resembles those created by a contract and is not fulfilled.

Explanation- When calculating losses or damages caused by contract breaches, the means to alleviate the inconvenience caused by the non-performance of the contract must be taken into account. "." Section 73 of the Indian Contract Act, 1872, has been used by the Indian Judiciary in a number of high-profile decisions.

Historically, this decision has been seen as establishing two ground rules:

In the context of general damages, the term refers to the damages that occur as a result of the breach itself. If a contract is breached, the defendant is responsible for any and all consequences that may arise as a result.

The term "Special Damages" refers to damages that arise because of the plaintiff's unique circumstances. There is no way to get it back unless the possibility of getting it back was discussed in the beginning.

'UNION OF INDIA v. HARI MOHAN GHOSH' - The problem at hand concerns the loss of a consignment of phoney silk that had been given to the Indian Railways to be transported and which had been entrusted to them for that purpose. Hari Mohan, the owner of the commodities, initiated legal action against the railways in order to recoup both the value of the products and the profit that was foregone. According to section 73 of the Indian Contract Act, the Guwahati High Court did not award damages for lost profit because the Railways was not aware of the nature or extent of the loss. This decision was made in accordance with the fact that the Railways was not aware of either the nature or extent of the loss (the case law for Rules of *Hardly v. Baxendale*).

a. Application of the rule by Indian courts:

When calculating the amount of loss or damage that resulted from a breach of contract, it is important to take into account any solutions that could have been implemented to alleviate the problems that were brought on by the non-performance of the contract. Thus for example, the passenger is entitled to compensation for the inconvenience of walking and any reasonable expenses he incurs, like a motel stay, if a railroad company fails to perform its contractual obligations of transporting him to a specific station. He may also use another mode of transportation and bill the railroads for the cost if it is reasonable to do so in the circumstances. He should not charter a special train in order to avoid having to wait and then bill the railway company for the costs.

Madras Railway Co. v. Govinda Rau was one of the first cases in India to apply the rule of *Hadley v. Baxendale*. As a tailor working with Govinda Rau to set up shop in Karamadai for a local festival, the petitioner hired the Railway Company to transport his sewing machine and clothing. Despite this, Govinda Rau was forced to return to India without being able to run his business because of a delivery delay.

When Rau's business was shut down during the festival, he sought compensation for his travel expenses and the profits he lost from his business.

Because Rau had not informed the Railway Company of the date by which the goods were to be delivered or of the purpose for which the goods are being transported, the High Court of Madras rejected Rau's claim for damages for lost profit.

In *Union of India v. Hari Mohan Ghosh*, the rule is applied in a different way. In this case, the Indian Railways had misplaced a shipment of synthetic silk in transit. When the owner of the goods, Hari Mohan, lost money because of a delay in delivery, he took legal action against the railways. However, because the Railways had no idea what was being transported or why, the Guwahati High Court refused to award damages for lost profits.

b. Relevance in Indian Law

Section 23¹⁵ states that the Despite the absence of an express statutory ban in India, a consideration or object of an agreement is considered illegal if it is of such a nature that, if allowed, it would defeat any law or if the court regards it as immoral or opposed to public policy. This is the case even if the nature of the consideration or object is such that it would defeat any law if it were permitted. If either the object or the consideration of the contract violates the law,

¹⁵ Indian Contract Act, 1872

the deal will be ruled null.

When parties to a contract are found to be in a position of unequal bargaining power, courts may refuse to enforce liability exclusion or limitation clauses that are deemed unconscionable. An unfair or unreasonable contract, or an unfair or unreasonable clause in a contract, entered into between parties who are not equal in bargaining power was introduced by the Supreme Court in 1986. In addition to the examples cited above, examples of such a disparity in bargaining power were provided, including when the parties to a contract have vastly differing economic resources, when the weaker party is unable to obtain goods or services or a means of livelihood on terms acceptable to the stronger party, and when a man has no meaningful choice but to sign a contract or accept the terms of a prescribed agreement. Contracts containing terms that shock the court's conscience are void, rather than public policy, according to the Supreme Court. However, despite the fact that the court was dealing with a provision for termination of employment that had been found to be unfair, the aforementioned findings were made in the context of more general commercial matters, including contracts that contained exclusion or limitation of liability clauses. To be fair, the court ruled that this principle was not applicable in cases where the parties' bargaining power was almost identical or where the contract was a commercial transaction in which both parties were businessmen.

In the case of *DHL Worldwide Express Courier Division of Airfreight Ltd v. Bharathi Knitting Company*, the Supreme Court dealt with a clause in the terms and conditions printed on a consignment note for shipment of a package that limited the liability of a courier company in the event of any loss or damage to a shipment. The clause in question was related to a provision in the terms and conditions that governed the shipment of a package. This judgement was made by the National Consumer Disputes Redressal Commission, and it was upheld by the Supreme Court. As a result, the Supreme Court limited the consignor's compensation for failure of service to only the amount that was indicated in the restriction of responsibility provision. In spite of the National Commission's finding that the consignor had signed the consignment note, a court ruled that parties who sign documents with contractual terms are typically bound by such contracts. The court also rejected the contention that there was no agreement *ad idem* between the parties on limitation of liability and ruled that parties who sign documents with contractual terms are usually bound by such contracts.

Delhi High Court's Single Judge in 2010 dealt with the question of whether contractual clauses can disentitle an individual from claiming damages, which they are otherwise entitled to claim under law, i.e. if parties can contract out of Section 73 of the Contract Act. Specifically, the court examined a clause in a government construction contract that prevented the contractor

from claiming compensation for delays and extended completion times caused by events beyond their control. This case was about that clause. The Supreme Court issued two contradictory decisions on the same clause, presenting the court with a difficult decision. Initially, the Supreme Court ruled that the clause in question would prevent the contractor from claiming damages or an extension of time to complete the project if he was delayed. However, the Supreme Court ruled in the other case that the clause did not bar an arbitrator from awarding damages that would otherwise be due to the employer as a result of the latter's breach of contract, but only prevented the department (relevant authority of the employer) from doing so.

According to the Delhi High Court's ruling, Section 23 of the Contract Act voids clauses that bar and disentitle a contractor from claiming damages that it is entitled to claim under Sections 55 and 73 of the Contract Act.

Individuals can waive their rights under a law enacted for their own benefit, but such rights cannot be waived under a law enacted for the benefit of the public interest or public policy.

Sections 55 and 73 of the Contract Act, which deal with contract breaches, are the heart, foundation, and basis of the Act. As a matter of public policy, contracts with clauses that do not provide any redress to a party aggrieved should take precedence over those with clauses that do.

A grave public interest is jeopardised if a clause is allowed that seeks to undermine the contract's very foundations.

Section 23 of the Contract Act declares clauses that violate public policy and the public interest to be null and void.

A provision that excludes or limits responsibility must also be investigated for the presence of any potential exceptions that it may contain. In the matter of *Simplex Infrastructure v. Siemens Limited*, which was heard before the Bombay High Court, this provision was analysed. It was asserted in the petition that the petitioner's obligation was constrained by the contract, and as a result, the petitioner requested a variety of temporary reliefs, including an injunction against the encashment of a bank guarantee, awaiting the conclusion of the arbitral proceedings. Due to the limitation of liability clause in the contract, the petitioner's liability was limited for any and all losses, claims, and damages that resulted from the agreement. However, the limitation of liability clause did not apply to the petitioner's liability for certain losses, such as lost production, lost use, lost profit, lost information and/or data, and any other indirect or consequential damage. The condition indicated that it would not apply to any damages, losses, or claims other than those that were the direct result of intentional or willful misconduct. The

respondent invoked the bank guarantee, among other things, to recover additional expenses incurred as a result of numerous defaults by the petitioner. The court found that such recoveries would not be covered by the limitation of liability clause, which had a limited scope of application, and made this determination. As a result of this ruling, the court dismissed the petitioner's contention that a contract limited its obligation due to the wilful misconduct exemption. The petitioner had argued that the contract limited its liability.

The Madras High Court also refused to enforce a clause limiting the dry cleaner's liability to 50% of the market price or value of the articles in case of loss, which was printed on the reverse of the bill handed over to the customer. The court ruled that imposing such a condition would be a flagrant violation of negligence law, as it would go against public policy, the public interest, and fundamental principles of contract law.

(C) Difference in Remoteness of damage in tort and contract

'Remoteness of Damage' is a fascinating topic in tort law. Law dictates that if a wrongful act causes harm, the perpetrator must be held accountable. It's not always easy to figure out who is responsible for what, as many cases have shown us.

Once a tort (wrongful act) has been committed, the ramifications are numerous. The repercussions could be even more dire. These "consequences of consequences" can spiral out of control, raising questions about the defendant's legal responsibility. "How far can the defendant's liability be stretched for the 'consequences of consequences' of the defendant's tort?" is the question this particular topic addresses.

The legal test for determining which types of losses caused by a breach of contract may be compensated by an award of damages is known as the "remoteness of damages." An alternative term for this is damage quantification, which refers to a method of quantifying compensation for an event or loss that is considered to be not too far off in the future. In *Hadley v Baxendale*, the Court of Exchequer ruled on the remoteness of damage in a contract.

V. JUDICIAL PRECEDENTS IN 21ST CENTURY

1. In the case *Fiberfill Engineers v. Indian Oil Corporation Limited*¹⁶ (2019), with regard to price adjustments made by respondent that were admittedly liquidated damages, the following was needed to be examined, bearing in mind the jurisdictional contours of this Court under Section 34 of the 1996 Act: In the first place, whether or not time was essential to a contract and if it was, did it continue to be? Secondly, was the respondent

¹⁶ SCC Online, <http://www.sconline.com/DocumentLink/5246d22b>, (last visited June 10, 2022)

in violation of the contract that existed between them? When a contract is breached, does the respondent suffer any harm or loss that would be expected to occur in the normal course of things, or that the parties were aware of when they entered into the contract? Could damages be proven in this case? If damages could not be proven, what was FFE's reasonable compensation under the liquidated damages clause, which is Clause 4.4.0.0 of the GCC? The court on the basis of well-known contract law principles, such as Section 73 of the Contract Act, stated that reasonable compensation will be established. From Sections 73 and 74, it is clear that the party claiming breach of contract and claiming compensation is entitled to succeed only if he can prove that "legal injury" has been suffered by him.

2. In the case **Universal Petro Chemicals Ltd V. B.P. PLC and Others**¹⁷ (2022), in accordance with Section 73 of the Indian Contract Act of 1872, the Appellant is entitled to compensation for the breach of contract. Plaintiffs who fail to expressly seek damages under Section 21(5) of the Specific Relief Act are not entitled to such relief, According to the plaintiffs' attorneys The Respondents argue that Section 73 of the Indian Contract Act states that damages can only be awarded for actual losses, not for the loss of profits. Thus, the Appellant did not seek damages relief, as the learned Single Judge noted in his ruling. In the Appellant's appeal, no damages were sought by the appellants. That no damages or compensation could be granted was actually a specific argument made on behalf of the Appellant before the Division Bench." They claimed that calculating the damages or compensation due was impossible due to an inability to predict the future loss of revenue and/or value of goodwill.
3. In the case, **Dyna Technologies Pvt. Ltd. V. Crompton Greaves limited**¹⁸ (2019), the court held that Section 73 of the Indian Contract Act, 1872 confers a public interest right, and any contractual clause that takes away this right violates Section 23 of the Indian Contract Act, according to the learned counsel. As a result, only the individual can benefit from laws enacted to protect his or her rights, while laws enacted to serve the public good can only be used by the general public.
4. In the case of **Union of India V. Recon, Mumbai**¹⁹ (2020), According to Indian Contract Act, 1872, an innocent party can claim damages from a party found in breach of contract under section 73 of the Indian Contract Act, 1872. The claimant is entitled to damages

¹⁷ SCC Online, <http://www.scconline.com/DocumentLink/K5teRWQ0> ,(last visited June 10,2022)

¹⁸ SCC Online, <http://www.scconline.com/DocumentLink/XsJTqmJI> ,(last visited June 10,2022)

¹⁹ SCC Online, <http://www.scconline.com/DocumentLink/o1rW63Sj> ,(last visited June 10,2022)

under section 73 of the Indian Contract Act, 1872 for overhead costs incurred as a result of the work being extended past its originally agreed-upon duration of 57.5 months.

5. In the case of *Rainbow Ace Shipping S.A. Panama v. Lufeng Shipping Co. Ltd.*²⁰ (2020), The Division Bench concluded that Rule 941 of the Bombay High Court (Original Side) Rules is a special law that requires the plaintiff to give an undertaking before he seeks an order of arrest, citing Section 73 of the Indian Contract Act, 1872. The requirement to provide an undertaking is a provision of special law that takes precedence over general law, including the requirement that the party suffering the loss take all necessary steps to mitigate the same, because it is a special statutory provision. The Indian Contract Act 1872, as general law, does not apply to proceedings to enforce an undertaking under the Bombay High Court (Original Side) Rules 1941, and Rule 941 would be rendered otiose if the Rule of general law relating to mitigation applies.

VI. CRITICAL ANALYSIS

It is generally agreed that Hadley v. Baxendale is the key case for determining whether damage is a direct or indirect result of the breach of contract. If two parties have entered into a contract and one of them has broken that contract, then the damages that the other party ought to receive in respect of such a breach of contract should be such as may fairly and reasonably be considered either arising naturally, that is, according to the usual course of things, from such a breach of contract itself, or such as may reasonably be considered reasonable. Now, we believe that the rule that should be followed in a situation such as this one is as follows: When two parties have entered into a contract.

As a result, the rule in Hadley v. Baxendale has two parts. To recover damages for breach of contract, the other party has the right to recover such damages as may reasonably be considered arising naturally, or as may reasonably be presumed to have been in the contemplation of both parties at the time they entered into the contract; Both cases necessitate that the damage caused by the breach of contract is foreseeable.

In practice, it is difficult to determine which part of the rule governs a case because sometimes a claim "may be said to be within both parts of the rule" or in some cases the damages sustained "fall under one, or both, of the limbs of the rule."

Hadley v. Baxendale has been widely accepted, but contemporary writers have taken issue with it. It is argued that the rule has taken the form of a rigid principle that acts to curtail any claim

²⁰ SCC Online, <http://www.scconline.com/DocumentLink/aIfbN9Vf>, (last visited June 10, 2022)

for damages for events not mentioned in a contract.

When large corporations engage in high-value and high-impact complex commercial transactions, the parties are expected to understand all of the possible consequences of a breach of contract. Technology has advanced to the point where the consequences of a contractual violation can now be predicted at least as likely, if not definitively.

Even after signing a contract, businesses are expected to keep an eye out for any changes in circumstances that could lead to a completely different outcome from a breach of contract. All of this needs to be taken into consideration by the parties involved. Because of this, it is possible that the Hadley v. Baxendale rule, which allows damages only for losses contemplated at the time of contracting, is counterproductive to equity and justice. Despite the criticism, the rule of Hedley v. Baxendale remains widely accepted in English common law jurisdictions.

(A) Contemporary criticisms to the Rule of Hadley v. Baxendale: -

Madras Railway Co. v. Govinda Rau²¹ was one of the first cases in India to apply the rule of Hadley v. Baxendale. As a tailor working with Govinda Rau to set up shop in Karamadai for a local festival, the petitioner hired the Railway Company to transport his sewing machine and clothing. Despite this, Govinda Rau was forced to return to India without being able to run his business because of a delivery delay. When Rau's business was shut down during the festival, he sought compensation for his travel expenses and the profits he lost from his business. Because Rau had not informed the Railway Company of the date by which the goods were to be delivered or of the purpose for which the goods are being transported, the High Court of Madras rejected Rau's claim for damages for lost profit.

In Union of India v. Hari Mohan Ghosh, the rule is applied in a different way. In this case, the Indian Railways had misplaced a shipment of synthetic silk in transit. When the owner of the goods, Hari Mohan, lost money because of a delay in delivery, he took legal action against the railways. However, because the Railways had no idea what was being transported or why, the Guwahati High Court refused to award damages for lost profits.

(B) Suggestions

According to me, the ruling in Hadley v. Baxendale has helped in many cases in India from long time. There was indeed a need by Baxendale to confirm if Hadley's mill had a backup option or spare tool that could keep the mill in operation till the tool could return after repair.

The rule in this case brought the clause of special damages which implemented in Indian

²¹ Madras Railway Co. vs. Govinda Rau ILR 21 Mad 172

Contract Act, 1872. The rule in this case is of utter importance even in today's world.

VII. CONCLUSION

Contractual responsibilities are limited by the Hadley v. Baxendale rule. In the event of a breach of contract, the breaching party is obligated to pay damages only for the losses that would have been reasonably anticipated by the parties at the time of contracting, according to the rule. The rule encourages economic transactions to use contracts since it lowers the risk of a breach. Only the most immediate repercussions of a breach should be compensated for in a legal case. Even the most remote consequences of a violation of contract can be predicted and managed thanks to changes in business practices and technological breakthroughs. As a result, many legal scholars believe that the Hadley v. Baxendale rule should be updated. Many English common law jurisdictions and Indian law still adhere to the Hadley v. Baxendale rule, despite the critiques of the case.

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