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A Study on Damages as Remedies of Breach of Contract under Indian Contract Law and English Contract Law

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ABSTRACT

When parties enter into a contract or a contract is signed, there are certain chances that the contract will be breached. In this case, in order to protect the preferences or goals of the contracting parties or parties entering into the contract along with providing them with justice, the parties that have been victims of the unlawful act of violation shall be granted such remedies. Damages are one of the remedies which is provided for the breach or violation of contract. It essentially refers to any kind of monetary loss or compensation granted at one time in the form of a sum of money. The purpose or intent of establishment of the systematic or structural law of harm given for violation of contract is to know whether the workers or the public are satisfied in order to maintain the integrity of the community and uplift/promote its growth. This paper intends to showcase meaning, nature and objective of damages as a remedy of breach of contract along with providing an insight on the same under the Indian as well as English law. It also provides a comparison between the two laws with regard to damages under violation/breach of contract.

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

I. INTRODUCTION

A contract is an enforceable arrangement. If a party who has signed/entered into a contract violates a compulsion or duty that the contract enforces, a new responsibility may occur, i.e. a compulsion or responsibility to reimburse damages to the other party with respect to any harm or loss undergone by the violation. Damages refer to the monetary reward, received by performance of an operation, for a mistake that is a breach or violation of contract, the redress being awarded at one time in the form of a lump sum; expressed in English currency unconditionally and usually, though not always. This given definition encompasses an ordinary and stringently correct sense for the word known as 'damages' and keeps out the demands of

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cash other than the ones for breach of contract remuneration. There are also four types of cases in which an action achieves pecuniary fulfillment and they are still beyond the definition so present. They are, measures for cash receivable under the terms and conditions of a contract, measures of restoration, contracts which were quasi-contracts formerly, equity and contractual steps or measures, measures where the legislative or equal right for recovery is unrelated to any contract and violation of the enforceable agreement. The compensation for breach of contract is laid down in both Indian and English law. There are some similarities and distinctions in these two laws on the same subject and this gives an insight into the main theme of the topic.

(A) Problem Statement

The main problem area of this research paper is related to damages given as, or being the means of legal reparation/remedies for the violation of a contract, i.e. breach. It gives an insight into the very concept and meaning of damages given for a breach or violation of contract under the law related to contracts in India and damages given for a breach or violation of contract under the law related to contracts in England. Along with this, paper aims to highlight the main similarities and differences of the two concepts. The objectives, nature and types of damages are also given here.

(B) Literature Review

1. Blackstone, *Book II. Ch. 26: Of Title to Things Personal by Occupancy*, p. 438.- This book gave the definition of damages and introduced the concept of damages.
2. Clarke DN. *Halsbury's Laws of England (Fourth Edition, 2006 Reissue). Vol. 12, p. 412 LexisNexis, 2006*- This gave the objective of damages, and emphasized on the fact that why should the damages be given.
3. Kapadia Shaili Arvind, *Law Relating To Damages For Breach Of Contract An Analytical And Comparative Study Of Judicial Trend In India And England*- This paper gave the comparison between the law governing the damages as a remedy for breach of contract in India and England.
4. Dalal, Arvinder Singh, *Damages for the breach of contracts- A study of judicial trends in India England and the United States of America*- This paper gave a view on the types of damages for breach of contract.
5. Saini, Saroj, *Damages for breach of contracts Emerging judicial trends*- This paper gave a general view on the law of damages under English law.

6. Sir Dinshah Fardunji Mulla, *The Indian Contract Act*- This book gave an explanation to the Section 73 and 74 of the Indian Contract Act along with giving the types of breach of contract with examples.
7. Avtar Singh, *Contract and Specific Relief*- This book gave an idea on the law governing the damages of breach of contract in India along with emphasizing on the detail analysis of section 73 and 74 of the Indian Contract Act of 1872.
8. Nishith Desai Associates, *Law of damages in India*- This paper gave an insight to the steps and process of awarding damages from the Indian perspective, i.e. under the Indian law.

(C) Research Questions

Here, I have highlighted some of the research questions that this research paper aims to answer.

1. What is meant by damages and what is its nature?
2. What are the objectives of damages as remedies for breach of contract?
3. What are the types of damages?
4. What is mentioned about damages as remedies for breach of contract under the Indian law?
5. What is mentioned about damages as remedies for breach of contract under the English law?
6. What can be the similarities and differences between damages of breach of contract under Indian law and damages of breach of contract under English law i.e. outcome of comparison between the two laws?

II. DEFINITION, NATURE AND CLASSIFICATION OF DAMAGES

(A) Definition and Nature

The term "damages" applies to the amount of money provided under the statute as monetary compensation or compensation relating to money after a wrong done or an injustice done, which is the result of a violation of a contract or an act that comes under tort.

According to Blackstone, damages are "a kind of property acquired and lost by law suit and judgment. Unquestionably, the injured party has a vague and indeterminate right to any harm or other damage as soon as he receives the injury; and the judgment of the jurors and the judgment of the court thereupon, in this case, do not properly vest in him a new title. They do not give, but the right is established."²

² 2 WILLIAM BLACKSTONE, COMMENTARIES ON THE LAWS OF ENGLAND, Ch 26: Of Title to Things Personal by

Damages refer to financial compensation, obtained through performance of a measure, for an error, i.e. breach or violation of contract, the recompense being awarded at one time in the form of a lump sum; represented in English currency unconditionally and usually, though not always.

Damages refer to money paid to the other by one side; it is a legal recourse. The courts of law were initially only authorized to offer monetary compensation for historical and political purposes in the growth of the English legal system. If something other than money was desired by a petitioner, recourse to a separate equity scheme was required. The true distinction is long gone, but the difference is still recognized; a judge can be said to be "sitting in law" or "sitting in equity," or demands for both money and any action may be involved in a case.

'Damages' are remuneration or reimbursement given as money for the forfeiture caused to the person who has gone through the diminution. Certain measures for damages can be brought by the party suffering or facing diminution because of a contract infringement. Any damage action poses two concerns. The first one being the "remoteness of damages" issue while, the second one being "Measure of damages." Our area of interest is to grant some compensation or damage because of non-performance of contractual liabilities or violation of contract. Hence, the application of damages, under both the law in India as well as the law in England, would have to be rested upon, from time to time, on the theory enunciated by the Court. The idea that perhaps the penalties or damages are not punitive and are compensatory, along with inaccessibility for infringement and the calculation of damages, would have to be excluded.³

(B) Objective of Damages

The objective of determining damages on the breach or violation of contract is to situate the parties at a stance where they would have actually been in, if the breach had not at all occurred. Another objective is to compensate the claimant for what he missed, which involves asking him what might have been in his pay package when he brought it home.⁴

It can be said that, another objective can be to put the plaintiff in a position as nice as money can do, as if the vow had been fulfilled. The defendant was guilty of a deliberate mistake in deception by causing the claimant to behave to his detriment. The aim of damages is, to pay back the plaintiff for all the injuries he/she has gone through, as money will do that, so far, again. The damages are restricted to what may rationally be supposed to have been with regard

Occupancy; 438 (Robert Malcolm Kerr ed. 1876).

³ Shaili Arvind Kapadia, Law Relating To Damages For Breach Of Contract An Analytical And Comparative Study Of Judicial Trend In India And England, INFLIBNET CENTRE (Jan 07, 2021, 10:40 P.M.), <http://hdl.handle.net/10603/309065>

⁴ 12 D.N. CLARKE, HALSBURY'S LAWS OF ENGLAND ; 412 (LexisNexis, Fourth Edition, 2006 Reissue, 2006).

to the parties. For the damage due to fraudulent act, the defendant is bound to give compensation or make reparation.

III. TYPES OF DAMAGES

In the event of financial loss, while it is difficult to categorize into categories, the forfeit of general business or gain is very different. Although losses that are not in written form see a reasonably bigger magnitude as compared to any job of similar nature envisaged as those imaginable, losses based on a specific agreement that results in huge. 'Damage' means the kind of recompense questionable in case of physical injury. It is not appropriate for a complainant to go ahead and demonstrate the precise characteristic or amount of a forfeit that has occurred. While it has already been claimed that in cases of loss of profit, the same rules,⁵ in the case of Victoria Laundry, this particular thing is hard to come to terms with the Court of Appeal's ruling in which the 'usual' forfeit of profit was retrieved, but not in case of extremely profitable contracts of the Ministry of Supply.⁶ Given below, are the types/kinds of damages given in case of a contractual breach⁷:-

(A) General Damages

General or Ordinary damages are damages resulting from a contractual breach in the ordinary line of events. Damage resulting from the normal effects of a contractual breach shall be deemed to constitute a general damage. They are those damages that are presumed by statute to have been infringed by the contract. In general, they are given to reward the party who has been affected, not punishing its intentions. These damages are generally given judgement on by taking the real forfeit sustained by the injured party into account. The amount of recompense to be paid by the court would be exactly the amount that would end up the blameless party in the same condition he would have served if the given contract had been executed, not violated.

Example-1- A has been given a contract to sell and supply B with 50 rice bags at Rs1,450 each bag, the price payable during the time of delivery. Price of the rice each bag increased to Rs.1,500 and A declined to sell the rice. At the cost of Rs.50 each bag, B can demand damages. They comprise of the direct damage that the resentful party has suffered. They are determined by measuring the normal forfeit incurred by contractual violation. As per law, for any remote

⁵ Parsons (H.) Livestock) Ltd. v. Uttley Ingham & Co. Ltd., 791 QB (1978), 3 WLR 990 (1977), 2 Lloyd's Rep 522 (1977), Wroth v. Tyler Ch.30 (1974), Transworld Oil Ltd. V. North Bay S.S. Cpn. 2 Lloyd's Rep. 173 (1987), Brown v. K.M.R. Services Ltd. 4 All E.R. 385(1994)(India), Homsy v. Murphy 73 P. & C.R. 26(1997).

⁶ 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).

⁷ 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/>

or indirect injury, compensation shall not be granted.

Example-2- If a contract is entered upon, stating A to give Rs.5, 000 to B on a given day, and on that day, he won't give the money, so B is incapable of paying his debts, and he's absolutely destroyed. A is not responsible for doing anything positive to B except for the amount of principal with interest up to the day of payment he had agreed to pay because to contractual obligation.

(B) Special Damages

Such damages which are payable for the injury or the loss incurred by certain special or unusual circumstances are known as special damages. The natural and possible effects of the breach of the contract are not attributed to them. Special damage is viewed as indirect loss suffered by the involved party due to breach of contract. Special damages can be recovered only if the other party is aware of the special circumstances responsible for the special losses at the time of signing the contract. No special responsibility would be generated through subsequent experience of special circumstances.

Example 1- A negotiated with B to supply Rs.5, 000 for a specific form of machinery to be supplied on a fixed day. On the day specified, A did not deliver the machinery. So B had to buy the same one for Rs.6,500 from another dealer. In addition, B was also prohibited from executing a contract with C, which he had already agreed on the basis of the contract with A, and was obligated to compensate C for the non-execution of the contract. Here, the amount of compensation paid by B to C is the special harm arising from the particular circumstances, i.e. B's contract at the time of the contract with C. It is only if A has been told of the contract between B and C that these damages will be recovered. In the above case, the special damages are the compensation paid by B to C as they rise on the account of the unusual or special conditions, i.e. the contract of B with C at the time of the contract. If A was informed of the contract between B and C, then only damages can be recovered. However, the difference between the contract price and the price charged by B to another dealer of Rs.1,500 is ordinary loss and can be recovered from A.

Example 2- A negotiated with B to supply steel rails, who in turn had contracted to supply the same for a very high profit to a railway firm. B's deal with the railway company was made clear to A at the time the contract was concluded. A has committed a breach of contract. B is not only entitled to demand the difference between the market price and the contract price at the date of delivery, but is also entitled to the profit it would have made and the damage it would have to pay to the railway company.

(C) Exemplary or Vindictive Damages

Such damage shall be granted to the party which has committed a violation of the contract for the purpose of punishing the erring party as the defaulting party and of compensating the aggrieved party. These damages are usually awarded in the event of an action for loss or breach of contract. For example, violation of a marriage contract, dishonor of the bank's cheque for no proper reason etc. Such damages are awarded because of the difficulties of calculating the amount of emotional anguish or the degree of the injuries to the aggrieved party's feelings. The main purpose of granting such compensation is to prevent an individual from committing a violation of that contract.

Example 1-A libel against a distinguished naval officer was perpetrated by an author and his publisher. The officer sued for compensation. He was awarded compensatory damages of £15,000 and punitive damages of £25,000 to both defendants.

Example 2- The bank disobeyed the order of the customer to avoid paying a specific cheque and, as a result, another cheque for £ 25,000 was dishonored due to insufficient funds. The court paid £ 250 to the plaintiff as damages.

(D) Nominal Damages

The aggrieved party is granted nominal damages if there is only a technical breach of civil rights. No considerable loss is incurred here. The amount of such damage is very small. They are granted merely to acknowledge the right of the party to seek compensation for the violation of the agreement.

Example for this damage - A signed a contract with B, a dealer, to buy a scooter. He struggled, however, to buy the scooter. Nevertheless, the run on for the scooters much overtook its stock, and B was able to sell the scooter without incurring any forfeit of gain. B is made liable to pay only nominal damages.

(E) Punitive/ Exemplary Damages

The damages that are paid to penalize or include an instance of a person doing wrong, who has behaved deliberately, perniciously or in a counterfeit manner are known as punitive or exemplary damages. Punitive damages are meant to penalize the person doing wrong for his/her appalling conduct and to discourage others from behaving in the same way, unlike compensatory damages that are intended to cover actual harm. For breach of contract, punitive damages are rarely awarded. In tort cases, they occur more often to prosecute malicious or careless wrongdoing that results in personal injury. If we observe the case of Chief Secretary,

State of Gujarat, Gandhinagar v. M/s Kothari's Associates⁸, in this case, it was held that the role of damages is not retaliating but compensating, so this principle extends to both torts as well as contracts.

IV. DAMAGES OF BREACH OF CONTRACT UNDER 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. According to section 3 to section 8 of the Indian Contract Act, a contract is said to be made when, sequentially, an offer and acceptance is complete. If the contract is entered upon out of freewill of the parties, then only the damages for breach would be provided. Also the parties should have a freedom of contract. Sections 73 and 74 deal with liability for the loss or harm generated by the contractual breach or violation.

Section 73 of the Indian Contract Act of 1872 deals with direct damages arising from the violation of a contract and the harm resulting from an infringement in the form of unliquidated damages. This type of damages are given or awarded by the courts on the basis of an estimate of the harm to the person to whom the violation has occurred.

According to section 73 of Indian Contract Act of 1872, "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 realized, when entering into the contract, would be likely to occur as a result of the infringement thereof. Such liability shall not be provided for any remote and indirect loss or damage incurred as a result of the infringement."⁹This is the first part of the section.

The second part of the section deals with the recompense for non-performance of duty, matching those generated by the contract. It can be understood as, "Where a liability similar to that caused by the contract has been incurred and has not been satisfied, any person injured by failure to perform the contract shall be entitled, by default to obtain the same compensation

⁸ Gandhinagar v. M/s Kothari's Associates 3 Guj.L.R.2177, at 2200 (2003) (India).

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

from the party as if the party had agreed to cancel the contract and had breached the contract.”¹⁰

Here, if a contract is signed at first, and a violation of the contract occurs, the loss or damage that arises is of such a nature as to result from such infringement in the ordinary course of the matter; or the parties realized that such loss or damage might occur at the end of the contracting duration afterwards. Then, liability is paid by the party for any damage or harm caused by the party.

Section 74 of the 1872 Indian Contract Act deals with losses that are liquidated, i.e., damages stipulated. Therefore, a breach of the contract must arise in the case of a demand for damages, thus avoiding cases where there is a legitimate termination of the contract without any violation of the terms of the contract.

According to section 74 of the Indian contract Act of 1872, which has a concern with the recompense for a breach or violation of contract where punishment is stipulated for, “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 from the party who has breached the contract, whether or not the actual damage or loss is found to have been caused thereby, not exceeding the amount specified or, as the case may be, the penalty provided for.”¹¹

There is an explanation to this, i.e., “A pre-requisite of interest that is increased after the date of default can be a condition for penalty.”¹²

There is an exception to this as well. It is, “If any individual goes on to enter into any bond, recognition or other medium with the same characteristics or, 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, makes any bond for the performance of any public duty or of any act of interest to the public, he shall be liable, in breach of the condition of any such instrument, to pay the full amount mentioned.”¹³

Explanation-“A person who is entering into a contract with the government does not mandatorily handle any public obligation or pledge to perform an action that is of concern of public.”¹⁴

¹⁰ Id.

¹¹ The Indian Contract Act , 1872 (Act No. 9 of 1872) , S. 74

¹² Id.

¹³ Id.

¹⁴ Id.

Here, the enforceable agreement, i.e. contract is first realized, then the contract has a certain amount stipulated as compensation or penalty for breach of contract. Then, after the contract is breached, compensation is given by the party causing the violation.

V. DAMAGES OF BREACH OF CONTRACT UNDER ENGLISH LAW

According to English law, the damages determined by the parties can be either liquidated damages or fines. If the damages set by the parties are the actual preliminary estimate of the forfeit incurred by the breach of the contract is referred to as the liquidated damages. On the other hand, if the fee agreed to be paid in the case of a violation is unreasonable and extremely disproportionate to the possible loss, i.e. the sum is set in the terrarium, the penalty is regarded as the penalty by way of protection to the promised party such that the contract is enforced.¹⁵

Liquidated damages shall be considered as a true preliminary estimate of the forfeit and should be assumed as the amount determined by the contractual parties as the recompense or damages to be given, whatsoever the real harm may be.¹⁶ In such a case, the promisee receives the sum so set, neither more nor less, without being needed to prove real harm. In the other hand, in the case of penalty, the amount set is the overall limit of damages, if he has not actually suffered too much harm, the promisee will not get the entire amount. The rule in such a case is: "You shall not go above the penalty; you shall give the party some reward within it that he may prove himself entitled to."¹⁷

According to *Dunlop Pneumatic Tyre Co. v/s. New Garge and Motor Co.*,¹⁸ the plaintiffs, under the Price Maintenance Agreement, the Dunlop company provided the defendants with tyres according to which the defendants were not to sell such tyres, further below the list price of the manufacturers. In addition, the agreement specified that they must pay £ 5 to the plaintiffs for tires, tubing, etc. sold in violation of this agreement by means of liquidated damages. The House of Lords adjudged that the amount of damages payable reflected a true pre-estimate of the loss, and that the damages charged were liquidated as such. If the determination by the participants is deemed to be a true preliminary assumption of the forfeiture in the case of liquidated damages, the parties are not permitted to prove the real forfeiture.

In *Coeillulose Acetate Silk Co. Ltd. v. Widnes Foundry, (1925) Ltd.*,¹⁹ the appellants consented

¹⁵ 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-law-part-2-key-contract-differences>

¹⁶ Wallis v. Smith, 21 Ch D 243 at 267(1882).

¹⁷ Kemble v. Forren, 1 Camp. 78 (1807)

¹⁸ *Dunlop Pneumatic Tyre Co. v. New Garge and Motor Co.* AC 79(1915).

¹⁹ *Coeillulose Acetate Silk Co. Ltd. v. Widnes Foundry*, AC 20 (1933).

to supply the respondents with such machinery within 18 weeks and further agreed to pay compensation at a rate of £ 20 for each week's delay, unless the machinery was supplied within the specified duration. A delay of 30 weeks was incurred and the loss amounted to £ 600 on that basis. The respondents claimed £5,850, which was the real loss they experienced. The House of Lords found that the amount agreed to in the agreement was not a penalty, but a pre-estimate of the probable loss, and that the damages were only limited to that amount.

If the 'agreed damages' do not bear any proportion of the probable loss but are grossly disproportionate, the damages are punished by means of penalty, and the real damages and not the amount so fixed would be payable in such a situation. Thus, in *Kemble v. Forren*,²⁰ The defendant decided to work as the main comic at a salary of £ 3-65-8d for four seasons. For the output of each power. It was also stipulated that penalties amounting to £ 1000 had to be paid for the violation of the agreement by either party. Such penalties were for some kind of violation, whether it was a one-night absence, or a non-payment of £ 3-65-8d. In this case, the compensation payable was held to be a penalty.

VI. COMPARISON BETWEEN DAMAGES OF BREACH OF CONTRACT UNDER INDIAN AND ENGLISH LAW

Damages as remedies of breach of contract have certain similarities as well as differences. The comparison between damages of breach or violation of contract under Indian and English law is provided below.

According to Indian law, a restriction of liability clause is usually applicable and enforceable, unless limits on liability resulting from fraudulent act, death, personal injury, carelessness are not adaptable. Furthermore, to be enforceable, the restriction of the liability clause must have to be fair and should not constitute to a punishment. Hence, the situation is same as the English law.

The right of a participant to seek liability for violation of contract shall be restricted to the real injuries resulting from the breach sustained by that party. Section 73 of the Indian Contract Act (ICA) states that the aggrieved party must demonstrate, to recover for a contractual breach, 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.

Section 73 also states that any unintended forfeit or damage incurred because of a contractual breach shall not be recompensed for the forfeit or damage created by the contractual breach.

²⁰ *Kemble v. Forren* 6 Bing 141(1829), *Ford Motor Co. v. Armstrong*, 31 TLR 267(1915).

English law differs from this no one has any formal restriction on a party's right to recover for indirect loss, while one has the same two forms of damages which can be recuperated (in the case of *Hadley-v-Baxendale*, the two limbs²¹). English law is clearly based on the application of distance laws.

Everyone is habituated to define the second limb of *Hadley-v-Baxendale*²² as forfeit, under English law, that does not emerge clearly from the violation, but something that also must have been inside the fair consideration of the participants whenever the enforceable agreement was concluded, as 'implicit loss,' however under the law in India, it's indeed best not to make use of that word to prevent categorizing the deficit as an irreparable forfeit under Section 73, unless it's intended in a positive manner.²³

It is also worth remembering that, according to the *British Sugar* case²⁴, under English law, "consequential loss" does not imply forfeit incurred obviously as a result of an infringement, that may seem 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 Indian law considers consequential damage in a similar way.

According to Section 74 of the Indian Contract Act of 1872 " 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, not exceeding the amount specified or, as the case may be, the penalty provided for."

As under English law, if the parties have decided that the amount is a true preliminary assumption of the damage or harm that is to be suffered, then that amount is normally given, and it is evident from the act that the claimant does not have to give proof to show his actual loss. However, the petitioner must prove a civil harm and it is reasonable to the defendant to claim the fair payment to which the plaintiff is eligible may be lesser as compared to the amount claimed, which is to be found by the courts because it is hard to demonstrate the real forfeit sustained by the plaintiff.

This implies that there are cases where a provision of liquidated damages may be regarded as

²¹ *Hadley-v-Baxendale* EWHC J70(1854)

²² *Id.* At 20.

²³ 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>

²⁴ *British Sugar PLC v. James Robertson & Sons Ltd.*, R.P.C. 281(1996).

legitimate, but where the plaintiff may still not retrieve the amount mentioned, but may instead obtain a degree of fair recompense as recognized by the courts that does not exceed the liquidated damages claimed.

It is noticed that Indian law does not differentiate between a true liquidated damages services and an unconstitutional punishment clause in the same way as English law. Indeed, Section 74 applies to both 'the amount defined in the enforceable agreement as the money to be given in the event of such violation' and 'any other clause by means of punishment' and notes that both are to be handled in the same means, the exercise being, in ever case, to assess the right to fair recompense. For fear of invalidity, of course, we must prevent the use of the term 'penalty clause' in our drafting, under the English law.

Maula Bux v. Union of India (1969)²⁵ and *Oil & Natural Gas Corporation v. Saw Pipes* (2003)²⁶ are the top cases on the principles of liquidated damages and at least it seems evident from those cases that the provisions on liquidated damages must be specifically drawn out, that the measurement of the 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 to be sustained if it is not for the Court to assess a fair degree of compensation beneath the stated liquidated damages.

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

VII. CONCLUSION AND SUGGESTION

This research paper was very helpful in providing vital information about damages as remedies of breach of contract. Monetary incentives or reimbursement provided for the impairment incurred by the affected person is known as 'damages'. Measures for damages can be brought by the party who has incurred a damage or loss due to the breach or violation of contract. The need for providing damages, as we get to know, is to recompense the person who has claimed i.e. claimant for what he/she has missed. There are different types of damages that are awarded for violation/ breaking of a contract. Damages given as remedies for dereliction or breach of contract is mentioned under section 73 and section 74 of the Indian Contract Act of 1872 along with an exception to section 74, when it comes to the Indian law. Under the English law, the damages determined by the parties can be either liquidated damages or fines. Finally I would like to conclude that, damages as remedies of breach of contract have certain similarities as well as differences under the Indian and English law. The suggestion that I would like to give

²⁵ *Maula Bux v. Union of India* SCR (1) 928 (1970).

²⁶ *Oil & Natural Gas Corporation v. Saw Pipes* 5 SCC 705 (2003).

is that damages play a very important in contract law and especially when it comes to damages for breach of contract. Hence having a knowledge regarding this topic is important.
