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Damages for Breach in Contract with special reference to Judicial Trends

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ABSTRACT

When parties enter into a contract there is a huge probability that one of the parties is going to breach the contract. In this scenario mitigating the damage done to the other parties becomes quite a difficult task. The court here needs to decide upon various types of breaches for simplification of remedies and sort the matter. The author tries to differentiate between the types of breaches and also verifies them through various cases. The case laws show how the actual progress has occurred in providing relief to the damaged party over the period of time. Various doctrines have been devised through these case laws which the author tries to decode here. Although we have adopted the India Contract Act, from the English back in 1872, it has progressed magnificently and new additions have been made from time to time and it has transformed into something quite different from what it actually was. The law has definitely not been static in any sense and we Indians have given a new perspective to it sometimes even going back on what was originally stated. Through this paper, the author tries to explain the meaning, nature, and purpose of different types of breaches in contract law as well as sheds some light on the remedies available for the injured party, with the help of cases laws. It also compares and contrasts different types of breaches of contract and tries to go into their fundamentals and the reasoning behind the remedies.

Keywords: *Breach, doctrines, case laws, remedies interpretation, evolved, reasoning*

I. INTRODUCTION

The Romans were the first to classify contract law and address contractual duty on part of the parties when both have entered into a contract. Here the duty was enforced by the law at that time, not following which would result in punishments. These Roman notions helped a lot when the Indian Contract Act was being devised by the English.

Following the Roman notion of contract law, the English too devised their Contractual laws from the Middle Ages and refined the concept through the fifteenth and the sixteenth century by incorporating various new concepts such as enforcing legal rights in a contract and the introduction of debt action and covenant action.

Following all these previous tries to formulate a contract law, The English devised the Indian

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Contract Act, of 1872.

Section (2h)[2] of the Indian Contract Act 1872 defines a contract as a mutual legal agreement between two or more parties that is enforceable by law. It can be in form of a written contract or an oral contract.

Therefore breach of contract is a legal cause of action which may be civil. Here the exchange that was bargained for in the beginning is not honoured by one or more parties by non-performance, hindrance or any other reason. A breach takes place when one of the parties fails to complete its obligations either partially or wholly or shows the intent to fail the said obligation. Thus breach of contracts results in the discharge of the contract which at times may not be fair for all the parties which initially entered. The nature of the breach may differ and would thus differentiate the liabilities of parties. In some cases, there may be no other option but to discharge the contract (i.e. frustration), here the remedies will differ greatly from any normal breach.

Assessing the breach of contract, by the court generally depends on factors such as:

- Presence and validity of the contract
- Requirements for the contract
- Modifications if made any
- Was the breach legally allowed
- What are the damages;

The onus of proof here lies on the plaintiff itself and he/she needs to inform the defendant about the lawsuit before approaching the court. The seriousness of a breach is to be decided by the judge itself after he/she looks into the contract. Once the parties have approached the court, it then determines which type of breach was done by the party and provides relief accordingly. If the remedy is to be provided it depends upon various factors. One such important factor is the rule devised in Hadley v. Baxendale[3] which states that consequential damages can only be claimed by the injured party when all the contracting parties were aware of any loss which may arise out of breach of the contract.

II. TYPE OF BREACHES OF CONTRACT

Contract breaches may be of several types. The damages that are to be awarded are based on

[2] The Indian Contract Act, 1872, No. 9, Act of Imperial Legislative Council, 1872.
[3] Hadley v. Baxendale, (1854) 9 Ex. 341.

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these:

(A) ANTICIPATORY BREACH OF CONTRACT

Indian contract act, 1872, in Section 39 defines an anticipatory breach as "When a party to a contract has refused to perform or disabled himself from performing, his promise in its entirety, the promisee may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance"[4]

Thus the doctrine of anticipatory breach means when it is clear that one party to the contract will not perform the said obligations at the point of time before the performance of the contract is due the aggrieved party can approach the court. Often time it is also referred to as anticipatory repudiation.

The intent of the defendant here should be absolute refusal to fulfil the terms and conditions of the contract for the suit to be qualified as an anticipatory breach of contract. Here as well, the onus of proof lies on the plaintiff as he needs to show the clear intent of the defendant to not abide by the contract.

Ingredients of an Anticipatory breach include:

- The party defaulting the contract must deny to the other party unconditionally and positively. Rejection put forward by the defaulting party must be absolute and directed towards the aggrieved party. If the rejection is not clear or is qualified it does not pass the test though the aggrieved party here may suspend its performance and askfor an assurance from the party in question.

- The defaulting party is unable to do the obligations due to any other action. Actions are considered as important as words in Contracts and any voluntary action that may renderthe party unable to complete the given obligations is considered an anticipatory breachof contract by the other.

- If a contract is transferred to any third party it makes it an anticipatory breach for example contract between A and B of transfer of property but A transfers the propertyto C, which makes A liable for anticipatory breach of contract.

If an anticipatory breach of contract has occurred, the grieved party has two options. The first is to cancel the contract and proceed to the court of law immediately. Here the aggrieved party may choose not to wait for the date of performance by the other party. The other option that

[4] Indian Contract Act, *supra* Note 1.

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the party has is, may wait till the time for the performance to end and file for damages caused by the party directly. But for this both the parties need to ensure that the contract is kept alive.

The remedies for an anticipatory breach include monetary damages awarded, restitution, rescission, and reformation which may be awarded by the court as deemed fit.

Food Corporation Of India vs Joginderpal Mohinderpal[5]

Here it was opined by the Supreme court of India that any unilateral change made by one party without conforming to the other party and cancelling the contract if the other didn't perform the obligations amounted to a breach of contract on part of party A.

Therefore, it was decided that any contract is considered broken if a party refuses to perform itspromise regardless of when the performance is meant to take place. Therefore repudiation of acontract means unambiguous refusal by one of the parties.

Universal Cargo Carriers Corporation v Citati [6]

A vessel was to be loaded with scrap iron at Basrah but the charterer was unable to perform his obligations, as there was no fixed time limit, the vessel owner decided to terminate the contract and approached a third party. Here it was opined that 'anticipatory breach' means that a party is in breach from the time an actual breach becomes inevitable. The breach in question should be the same as what would have happened if the aggrieved party would have waited.

Similarly in the case of **Jawahar Lal Wadhwa and Anr. V. Haripada Chakraborty[7]** it was observed by the court that when one of the parties commits an anticipated violation, the opposing parties may treat the violations as an end to the contract and similarly may claim for damages but cannot ask for the court to provide specific performance.

The doctrine of anticipatory breach does not move the performance of a party forward or backwards rather it completely renders the contract void. Indian courts often follow the doctrine of anticipatory breach of contract taking various references and precedents from English law as well.

(B) ACTUAL BREACH OF CONTRACT

An actual breach of contract is when the breaching party has breached the contract i.e.has failed to perform its obligations by the due date or executed the obligations very poorly. Ifan actual breach occurs the aggrieved party has various ways of resolving the situation. Here alawsuit is

[5] Food Corporation Of India v. Joginderpal Mohinderpal, (1989) 2 SCC 347.
[6] Universal Cargo Carriers Corporation v. Citati., (1957) 2 WLR 713.
[7] Jawahar Lal Wadhwa v. Haripada Chakraborty, (1988) Supp SCC 552.

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not the sole solution as the parties in conflict may also appoint a mediator to reviewthe contract dispute or may even use binding arbitration for the easement. An actual breach ofcontract may further be divided into two types:

- Actual breach of contract during performance

An actual breach of contract due to non-performance is when one party in the contract refuses to or fails to perform its obligations outlined in the contract during its performance. It may also occur when a party fails to abide by the terms and conditions of the said contract. Here the alleged party is said to breach the essentials of the contract. A breach of any non-essential element may not cause the failure of the contract but gives the aggrieved party, the right to be compensated accordingly.

- Actual breach of contract due to late performance

Here one of the parties fails to meet the duties and obligations mentioned in the contract within the specified time limit. If so happens the other party is not required to complete their part of the contract and may hold the defaulting party liable for breach of contract. Another important essence of this type of breach is that time is the crux of the contract. If time is mentioned as a key element in the contract then it is indeed a breach of the contract and the defaulting party is liable for damages, whereas if time is an insignificant part of the contract then the defaulting party may carry on with its contractual obligations but may have to pay for late performance to the aggrieved party.

Bishambhar Nath Agarwal vs Kishan Chand And Others[6]

Through this case law, it was held that when any specified action is to be done within a stipulated period it should be performed in that manner only and the other parties don't have the right of performing it in their way or their own time, which if they do would constituteto a breach of contract.

Haryana Telecom Ltd. V. Union Of India [7]

It was held in the case of Haryana Telecom Ltd. v. Union of India that one of the provisions of the contract stated that exchanges made after the delivery period had expired did not disenfranchise the party's right to liquidated damages and that an examination of all the clauses revealed that time was the essence of the contract.

[6] Bishambhar Nath Agarwal v. Kishan Chand, (1989) SCC OnLine All 426.
[7] Haryana Telecom Ltd. v. Union Of India, (2006) SCC OnLine Del 575.

Cutter v Powell [8]

Mr Cutter was a sailor and was hired for a journey and given a promissory note by the employer which stated that after ten days of arriving in Liverpool the employer will pay Mr Cutter a certain amount providing that he acts as a second shipmate on the ship. Mr Cutter performed his duties till the six-week mark and then died unexpectedly before reaching Liverpool. Mr Cutter's wife brought an action against the employer to pay the due wage for the partial performance done by Mr Cutter. The woman failed the action as payment was doneonly if Mr Cutter completed his tenure as the second mate on the ship. To reduce such harsh decisions exceptions have been made under **Divisible/Severable contracts** that when possible, the court will always divide performance into different parts and compensation can be claimed accordingly.

This exception was further developed in the **Ritchie vs Atkinson[9]** case where the concept of substantial performance was developed. It said that if the court feels that substantial performance is done by a party, it may award the party an agreed price and deduct the money of the part not performed. If however, the performance is not substantial the claimant is not entitled to anything. Here the main difficulty arises in knowing how much is substantial performance and due to its nature, it has been left to the discretion of the court.

Apart from the time of the breach, an anticipatory breach and an actual breach differ in various areas.In an anticipatory breach of contract, the entire contract gets discontinued or terminated whereas in an actual breach of contract the breach may be of condition, warranty, or an innominate term. In an anticipatory breach of contract, the damaged party can quash the contract and file a lawsuit well before the performance of the time, whereas in an actual brief the plaintiff can only file a lawsuit after the breach has occurred

(C) MINOR BREACH OF CONTRACT

A minor breach of contract is a breach that is so insignificant that it hardly affects the remainder of the contract and all the parties can complete the remainder of the contract. The overall purpose of the contract is not affected by such a breach.Here the aggrieved party still has some grounds for a lawsuit against the opposing party but needs to show that it has suffered sufficient damages. Often the damages awarded are very limited to a minor breach of contract. Non-performance by the aggrieved party is not allowed in a minor breach of contract. Therefore it is preferred that a minor breach of contractshould be settled outside the court as the damage

[8] Cutter v Powell, (1795) 6 TR 320.
[9] Atkinson v. Ritchie, (1808) 103 E.R. 877.

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sustained by a party isn't too much and can be easily liquidated by a mediator.

Rice v Great Yarmouth Borough Council[10]

Here the contractor had made two contracts with the council one for leisure management and one for maintenance of sports facilities, parks, gardens, etc. It was already mentioned in the contract that if a party commits any breach of the contract then the whole contract would be terminated.The issue raised was whether the whole contract could be terminated even because of a minorbreach of contract. After intense debate and discussion, it was held such clauses in a contract should not be taken 'literally'. Depriving the contactor of four years of contract just because of a minor breach was not right and thus cannot be considered repudiatory. Accordingly, the plea to terminate the contract was dismissed by the court.

(D) MATERIAL BREACH OF CONTRACT

A material breach could be defined as a breach so great that it challenges the fundamentals of a contract itself. The breach must be the very root of the contract between the said parties. Here the aggrieved party usually ends the contract and approaches the court for damages. The court when determining whether the breach is material or not often looks at past judgments and legal guide known as Restatement (Second) of contract. Some of the key factors that are important in determining whether a contract is a material breach are:

- Was the other party deprived of the fundamentals of the contract?

The fundamentals of a contract mean the consideration on which the contract was madein the first place and whether is it still available to the deprived party.

Can the other party be compensated for the loss suffered?

Can money solve the problem is a very big indicator as well? If a certain amount of cash can help keep the contract in place then the breach is less likely to be material in nature.

- What will be the damages suffered by the defaulting party

Does it mean to what extent has the breaching party gone to fulfil its end of the deal? This factor oftentimes depends on timing i.e. how far all the parties come in performing contractual duties.

- Was malice the main factor in the breach of the contract?

If the breach that happened seems to be wilful or resulted due to bad faith or unfair dealing of the breaching party the court is most likely to assume a material breach of the contract.

[10] Rice v. Great Yarmouth Borough Council, (2000) All ER (D) 902 9.

These conditions for consideration were further refined by the **Dalkia v Celtech**[11] case where the claimant came under the contract for 15 years to supply energy service to the defendant. The payment was to be done in monthly instalments known collectively as 'Charges'. The defendant failed to pay charges for 3 month time period for which the claimant sued him over material breach of contract. The defendant argues that the non-payment of those 3 days was less in proportion to the 100's charges to be paid therefore the breach was not material.The decision by the queen bench favoured the claimant and declared that the three-month non-payment was not trivial as it constituted a quarter of a year's earning and the claimant was already on brink of insolvency.

Through this case, the court opined, that to judge a breach as material three things need to be kept in mind, the nature and the specific obligations involved, how the breach happened, and its impact on the aggrieved party, and the condition in which the breach occurred.

(E) MUTUAL BREACH OF CONTRACT

There may arise times when all the parties in the contract want to breach the contract. This may arise when the underlying market changed substantially or the parties in the contract may find themselves in a different environment. If the following happens all the parties may choose to void the current contract and create a new contract altogether. Here a contract breach is desirable to everyone and this type of breach has no remedy in a court of law. The decision to render the contract void may be taken before the breach or after the breach.

III. BREACH OF CONTRACT DUE TO DOCTRINE OF FRUSTRATION

When parties enter into a contract there are various obligations imposed on them for complementation of obligations under the contract. But sometimes due to unforeseeable circumstances, it becomes impossible to complete the said obligations. In this case, the contract is said to be frustrating.

The Black's Law Dictionary defines the term 'Frustration' as "the prevention or hindering of the attainment of a goal, such as contractual performance"[12]. Here the said obligations may become impossible to fulfil or they may be transformed into something very different from the original obligations.

The Indian Contract Act does not mention the doctrine of frustration but does so indirectly under section 56[13] of the act where it states an agreement to do something impossible is void

[11] Dalkia Utilities Services Plc. v. Celtech International Ltd., (2006) EWCH 63 (Comm).
[12] BRYAN A. GARNER & HENRY CAMPBELL BLACK, BLACK LAW DICTIONARY (11th ed. 2019).
[13] Indian Contract Act, *supra* Note 2.

in itself. Further, it has explained that when the obligations in a contract have become unlawful or impossible the whole contract from the starting becomes completely void.

Davis Contractors v Fareham UDC[14]

Here the claimants agreed to build 78 houses for Fareham Council for a price of 85,000 Pounds in a tenure of 8 months. The project took 22 months and more money to be built. Later Davis Contractors were paid the due payment but they bought an action against Fareham demanding more payment on the fact that the contract became frustrated. The court here held that the contract can only become frustrated due to unforeseeable circumstances and in this scenario, the plaintiff still could perform the said obligations.

IV. CONCLUSION

This research paper is quite useful in providing data about the different types of breaches and the subsequent remedies which may be provided. The author performed research to do justice to the topic. Numerous case laws have been taken into account to prove the author's point. The various doctrines have been sufficiently explored by the author as well. The paper proves that contract law has come a long way since 1872. Although it is an English law contract law in India has evolved into something very different. The lawyers and the judges have time and time again provided a new perspective, a new meaning to the provisions. Many unnecessary provisions have been completely removed which were deemed to be unfit in today's time. By distinguishing the breaches into various types it has helped in making peace between the chaos that was earlier. We need to understand that law is an ever-evolving field and although we have come far there are still miles to cover.

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[14] Davis Contractors v. Fareham UDC (1956) AC 696.

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