Page 1395 - 1407 **DOI:** *https://doij.org/10.10000/IJLMH.116869*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 7 | Issue 1

2024

Introduction to the Concept of Law on Damages

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ABSTRACT

A breach of contract is a possibility whenever two parties engage in the act of entering into or signing a contract. The parties who have been the victims of an unlawful act of breach shall be allowed the aforementioned remedies in order to provide them with justice and to protect the interests or goals of the contractual parties or parties entering into the contract. This is done to preserve the interests of the contractual parties in the contract. In the event that a contract is broken or violated, one of the conceivable remedies is the payment of damages. The purpose of establishing a systematised or structural law of injury granted for violation of contract is to preserve the community's integrity and stimulate its growth. This study will demonstrate the notion of damages, their nature, and their function according to Indian law. Hadley v. Baxendale is the case that established the standard rule for determining the amount of consequential damages that should be awarded for breach of contract. This article's objective is to provide an analysis of the words "Damages" and "Penalty" as they appear in Sections 73 and 74 of the Indian Contract Act of 1872.

Keywords: *damages, remedies, compensation, breach, violation, contract.*

I. INTRODUCTION

A legally binding agreement is referred to as a contract. If a party that has signed or entered into a contract violates a compulsion or duty that the contract imposes, then a new responsibility, in the form of a compulsion or responsibility to reimburse damages to the other party for any harm or loss suffered as a result of the violation, may come into play. This new responsibility would be to pay damages for any harm or loss that was sustained as a result of the violation. Damages are the monetary compensation, earned by performance of an operation, for a mistake that is a breach or violation of contract. The term "damages" refers to the amount of money provided by statute. As a result of either the non-performance of contractual obligations or the violation of the contract, it is in our best interest to award some sort of compensation or harm.

(A) Objective of damages

The goal of damages is to compensate the plaintiff for all of the injuries he or she has suffered.

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The damages are limited to what can be rationally assumed to have occurred between the parties. For the damage due to fraudulent act, the defendant is bound to give compensation or make reparation.

II. TYPES OF DAMAGES

Losses based on a specific agreement are enormous, despite the fact that losses that are not in writing are of a size comparable to those resulting from any project of a like character that may be envisioned. The term 'damage' refers to questionable compensation for physical injury. It is inappropriate for a complainant to demonstrate the exact nature or value of a forfeited asset. Listed below are the sorts of damages awarded in the event of a violation of contract.[3]

1. General Damages:

Loss resulting from the typical consequences of a violation of contract shall be considered general damage. These are the damages believed by law to have been caused by the breach of contract. In general, they are granted to reward the affected party, not to penalise it for its actions. The amount of restitution to be paid by the court would be the exact amount that would place the innocent person in the identical position he would have been in if the contract had been honoured.

Example 1: If a contract states that A will give Rs.5,000 to B on a certain day and A fails to deliver on that date, B will be unable to pay his debts and will be utterly devastated. A is not obligated to do anything positive for B other than pay the agreed-upon principal amount plus accrued interest through the agreed-upon date of payment.

2. Special Damages:

Extraordinary/ Special damages are monetary compensation paid out to victims of injuries or financial losses that were brought on by unusual or extraordinary events. They are not held accountable for the natural and probable repercussions that resulted from the violation of the contract. When a party breaches a contract, they may be liable for special damages, which are losses that are considered indirect.

Example1 :- A negotiated with B to supply steel rails, which B had agreed to supply to a railway company for a very high profit. A was informed of B's agreement with the railroad firm at the time the contract was signed. A has violated the terms of the agreement. B has the right to claim not only the difference between the market price and the contract price at the date of delivery,

[3] Types of damages for breach of contract with examples, ACCOUNTLEARNING, (https://accountlearning.com/types-of-damages-for-breach-of-contract-with-examples/) [ISSN 2581-5369]

but also the profit it would have made and the damages it would have to pay to the railway company.

3. Nominal Damages

In the event that simply a technical violation of civil rights occurred, the injured party is given nominal damages. There is no significant loss in this case. Such damage is quite minimal in scope. They are only given to recognise the party's right to pay for the contract violation.

4. Punitive Damages

Punitive or exemplary damages are those that are given to punish or include an instance of someone doing improperly, who has acted intentionally, maliciously, or deceptively. Unlike compensatory damages, which are meant to compensate for genuine loss, punitive damages are meant to punish the wrongdoer for their despicable behaviour and to deter others from acting in a similar way. Punitive damages for contract violations are rarely granted.. If we look at the case Chief Secretary, State of Gujarat, ***Gandhinagar v. M/s Kothari's Associates***[4], in this instance, it was determined that the function of damages is not punitive but compensatory, and this principle applies to both torts and contracts.

Section 73 of the Indian Contract Act of 18725 states: "*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.*6"

Damages under Law of contract in India:

Under *section 73 of Indian Contract Act* [7]when a contract has been breached, the party who has suffered as a result is entitled to compensation from the party who has breached the contract for any loss or damage that resulted from the breach in the ordinary course of events or which the parties knew would likely result from the breach when they entered into the contract. However, penalty on the other hand is slightly different. Under the law of contracts, a penalty does not necessarily entail punishing the wrongdoer. It is utilised entirely differently. It is in no way

[4] Gandhinagar v. M/s Kothari's Associates 3 Guj.L.R.2177, at 2200 (2003) (India).
[5] Section 73 of Indian Contract Act 1872
[6] The Indian Contract Act, 1872 (Act No. 9 of 1872) , S. 73
[7] Section 73 of the Indian contract act of 1872 act no 9 of 1872

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comparable to punitive damages. *Section 74 of the Indian Contract Act, 1872*[8]. The indicated amount is a reasonable amount of compensation for the breach, and the amount cannot exceed what is stipulated in the contract.

III. JUDICIAL PRECEDENTS

(A) Recent Judicial Precedents (2015- present)

a. Kailash Nath v. Delhi Development Authority (2015)[9]

i. Facts

An auction was held for "Plot 2-A," a piece of real estate in New Delhi, by the Delhi Development Authority (henceforth referred to as DDA). The highest bid was submitted by the appellant, Kailash Nath Associates, for Rs. 3.12 Crores. The appellant was required to provide DDA with a deposit equal to twenty-five percent of their bid price. Any form of cash or bank draught is acceptable for this deposit. After being awarded the offer, the appellant was given until May 17th to pay the remaining 75%. On February 18, 1982, DDA confirmed that it had received the specified amounts, at which point the offer was considered to be accepted. Payment on this DDA was extended to October 1982 on the advice of High-Power Committees, with an interest rate of 18% p.a., which might reach 36% p.a. In spite of this, the appellant requested a payment extension in May 1982 as a result of the general economic crisis. The DDA also failed to respond to the appellant attempts to contact it between 1984 and 1987, leading to the property re-auction at a price of Rs. 11,78 Crores. The Appellant filed a Petition for Specific Performance and Deposit Refund with the Delhi High Court. The High Court then issued a reversal of the deposit and a denial of the request for specific performance. The earnest money plea was denied by the Division Bench of the High Court after an appeal from the Single Bench ruling. The Supreme Court ruled that there was no contract breach by the appellant, and so no penalty could be imposed under Section 74 of the Indian Contracts Act, 1872.

ii. Issues

To what extent does time play a role in the fulfilment of the conditions of the contract between the parties in question, and does this role continue even after the terms have been fulfilled? Or when an extension is requested in order to improve performance?

iii. Judgement

There was no indication of a breach of contract, so the buyer was not entitled to a refund of

[8] Section 74 of the Indian contract act of 1872, act no 9 of 1872
[9] Kailash Nath v. Delhi Development Authority (2015), 4 SCC 136

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their earnest money. It was argued that if time constituted an essential aspect of the contract, then it could only be waived if both parties came to a consensus ad idem on the terms of the waiver, as stated in the case of Anandram Mangturam v. Bholaram Tanumal[10]. In the case of Keshavbhai Lallubhai Patel and Others v. Lalbhai Trikumlal Mills Ltd.[11], it was ruled that neither the buyer nor the seller could request an extension of the deadline for making payment on the purchase without the agreement of both parties. If one party to a contract suffers no damages as a result of the violation, the law does not provide for a windfall. Since that Article 14 stated goal is "elimination of administrative arbitrariness and the provision of equal, equitable, and fair treatment" to all Article 14 demand that it be applied to the respondent is obligatory under Paragraph 8 as well. that the respondent is subject to the provision of Article 14 of The Indian Constitution.

iv. Critical Analysis

Case of M/S Kailash Nath Associates v. Delhi Development Authority & Anr. heard by the Supreme Court of India; concerns Contract Law. The judgement was clearly written, and it has now become the standard by which future damages for breach of contract will be measured. The case core ramifications, however, continue to be a bone of contention among business communities. the remaining shares. The defendant also agreed not to engage in competitive

b. Universal Petro Chemicals Ltd. Vs. BP PLC and Ors (2022)[12]

i. Facts

Universal Petro Chemicals Ltd. (hereafter referred to as the "Appellant") signed a partnership agreement with a German business, Respondent No. 3, under which the Appellant agreed to manufacture and market lubricants based on Aral's formulation in India. Following the Collaboration Agreement, essential permits were received from the Reserve Bank of India (RBI) under the Foreign Exchange Management Act of 1973 on November 25, 994, which were then integrated into the Collaboration Agreement via a supplementary agreement in 1995.

In 2002, Respondent No. 3's holding firm, Veba Oil, was bought by the first respondent, BP Plc., a UK business that also held Respondent No. 2, Castrol India Limited. As the RBI permission was expiring, the Appellant applied to the Ministry of Commerce and Industry, Government of India, for approval regarding the royalty and extension of the Agreement's term. On November 13, 2002, the government granted the Appellant's request by extending the RBI's

[10] Anandram Mangturam v. Bholaram Tanumal, AIR 1946 Bom 1
[11] Construction & Design Services v. DDA (2015) 14 SCC 263
[12] SCC Online, http://www.scconline.com/DocumentLink/K5teRWQ0 ,(last visited June 10,2022)

approval. The RBI permission extension letter further stated that the royalty was payable from January 1, 2003 to December 31, 2009, and the Collaboration Agreement was valid from January 1, 2003 to December 31, 2009.

Respondent No. 3 then sent a termination notice, claiming that the Agreement would end in 2004 with no further extensions. The Appellant filed a Civil Suit in response to the notice, and the High Court issued an interim order banning the Respondents from carrying out the termination notice and interfering with the Appellant's use of 'Aral' ("Interim Order").

ii. Issues

- Is the suit maintainable?
- To what reliefs, if any is the plaintiff is entitled to?
- Whether the Agreement dated lst November 2004 is terminable by six months' notice and whether the letter of termination as alleged in paragraph 44 of the plaint is legal and valid or is the contract valid till 31st December, 2009

c. Dyna Technologies Pvt. Ltd. V. Crompton Greaves limited (2019)[13]

i. Facts

DCM Shriram Aqua Food Limited and M/s Crompton Greaves Limited signed an agreement to establish an aquaculture plant by DCM. The Respondent requested bidders for construction work, and M/s Dyna Technologies Pvt. Ltd. filed a proposal, estimate, and quotation. The Respondent sent the Appellant a letter of intent dated July 25, 1994. Following the Appellant's enquiries and explanations, the Respondent modified the contract and issued a work order on November 15, 1994. However, on January 5, 1995, the Respondent told the Appellant to stop working. The appellant filed a claim for compensation for premature contract termination and sought arbitration.

Respondent filed an appeal against the ruling before the Madras High Court Division Bench, citing Section 37 of the Act. The Division Bench partially permitted the appeal and set aside the Award regarding the claim for losses owing to unproductive use of machinery. The judgement was challenged before the Supreme Court.

ii. Issues

- Whether the Award relating to the claim for losses due to unproductive machineries was

[13] SCC Online, http://www.scconline.com/DocumentLink/aIfbN9Vf ,(last visited June 10,2022)

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reasoned?

- Whether the Award can be sustained?
- In view of the Award failing to meet the test of legal reasoning, the Award was held to be unintelligible and therefore, unsustainable. Accordingly, the Respondent was directed to pay a sum of INR 30,00,000/- to the Appellant in full and final settlement of the claim in question within a period of eight weeks after which interest at the rate of 12% p.a. will be applicable.

iii. Judgement

The Supreme Court identified three qualities of a reasonable award: appropriate, understandable, and adequate. Incorrect reasoning in a tribunal's award may indicate a weakness in the decision-making process. If an award is contested due to impropriety or perversity in thinking, it can only be challenged using the grounds specified in Section 34 of the Act. If an award is challenged because it is incoherent, it is the same as not offering any explanations. The court must assess the adequacy of grounds for an award under Section 34, taking into account the nature of the issues under examination

iv. Critical Analysis

The Supreme Court's decision stated that arbitral awards should not be tampered with lightly. However, if the court determines that the award's perversity is at the bottom of the issue, it may justify interfering. This ruling may expand the scope of court intervention in arbitral awards, as it allows for involvement both when there is no explanation and when the reasoning is weak. The Court ordered the Respondent to pay specified amounts to the Appellant in order to resolve the 25-year-old case, despite the fact that the Award was deemed unsustainable for lack of logic. The Court did not supplement the legal reasoning in the Award due to the subject's intricacy, but issued the directive anyway. This case may raise questions about the limit of a court's intervention and how it can apply its authority if an award is deemed unreasonable.

d. Shwetadri Speciality Papers Pvt. Ltd. V. National Research Development Corp and Ors.[i][14]

i. Facts

The Petitioner was interested in getting thermographic paper manufacturing technology and signed a licence deal with NRDC. A review of the agreement dated October 29, 1990 reveals that it is a standard form agreement between the Petitioner and the Respondent under which the

[14] MANU/DE/2377/2019

Respondent would provide the process for the manufacture of thermographic paper, which would include laboratory scale process data and recommendations for plant layout and manufacturing processes. The procedure is plainly named 'thermographic paper'.The petitioner wanted to establish a manufacturing facility and sought the NRDC in 1989.The NRDC informed the Petitioner that it had the technology to make 'thermographic or fax paper'. This is obvious from a letter dated October 31, 1989.. However, the Petitioner later discovered that the process was not operating, and that the thermographic paper provided to him was only for use in ECG machines, seismographs, electronic desk calculators, digital panel printers, and other devices, not fax machines. Several letters were exchanged between them. However, the flaws with the process could not be overcome. As a result, the petitioner invoked the licence agreement's arbitration clause.

ii. Issues

1. Does the Claimant Company's C.M.D. have any locus standi in the claim?
2. Whether Section 446 of the Companies Act 1956 vitiates the Arbitrator's jurisdiction.
3. Whether the claim Application is barred by limitation (the burden of proof is on the Respondent).
4. Whether the Licence Agreement of 29.10.1990 covers FAX paper as well, taking into account, among other things, the Exports NRDC letter dated 31.10.1989 and the Claimant Company's licence application dated 7.9.90? If not, whether the Respondent's actions in attempting to assist the Claimant Company after 1994 makes them (the Respondent) obliged under the Licence Agreement to give technical know-how for the production of FAX paper. (Onus on the Claimant).
5. To what relief is the Claimant entitled?

iii. Judgement

Under Section 73 of the Indian Contract Act, 1872, only direct and proximate damages can be awarded even if breach is found and not indirect damages which are remote. 'The defendant is liable only for "natural and proximate consequences of a breach or those consequences which were in the parties' contemplation at the time of contract". Proximate and natural consequences are those that flow directly or closely from the breach in the usual and normal course of events--those which a 'reasonable man' or a person of ordinary prudence would when the bargain is made foresee, as expectable results of later breach.. Thus understood, it has got only the same meaning as the companion phrase 'natural and proximate'.

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IV. Interpretation of sec. 73 and 74 with respect to the case Hadley vs Baxendale[15]

Hadley v. Baxendale, a famous contract law case, led to the rule that you can only get compensation for consequential damages if the party who broke the contract had a good reason to know that consequential damages were likely to happen. [16]As it has been explained in the past, the principle's standard of predictability has been very strict and hard to bend. This way of putting it goes against both the general rule of expectation damages in contract law and the general rule of proximate cause outside of contract law. The principle of Hadley v. Baxendale is not supported by the least-cost theory, the theory of efficient breach, or information-forcing incentives. The new system would change the standard for foreseeability based on the nature of the interest and the wrong, and the standard would be used at the time of the breach.

Most of the time, a promisor won't know the value of contract performance unless the promisee tells him. In the famous English case of Hadley v. Baxendale from the 1800s, this was the case. In that case, Hadley, the owner of a mill, hired Baxendale, a carrier, to get a broken engine shaft to another city by a certain date. Performance was worth a lot more to Hadley than usual because the broken shaft was going to be used as a model for a new one. Without the new shaft, his mill would not work. But Hadley didn't tell Baxendale this, so he had no reason to take extra steps to make sure the package got there on time. In the end, Baxendale wasn't able to move the shaft by the due date, which delayed the mill's operations. In this case, the general ruling was that liability should be limited to losses that "arise in the normal course of events" or that "could have been expected by both parties at the time they made the contract as a likely result of its breach." So, the court said that Baxendale wasn't responsible for Hadley's lost profits. They were caused by Hadley's unusual situation and were not something that Baxendale could have been expected to think of. For Baxendale to be responsible for Hadley's lost profits, the court said that Hadley had to tell Baxendale about his unique situation when the contract was made.

V. Critical analysis

The Indian Contract Act, 1872 (ICA) is a colonial law, and the way business is done has changed or evolved a lot since then. The act is old, so it has some holes that need to be looked at again and fixed so that business can run smoothly. Sec. 73 and 74 of the ICA are an example of this kind of loophole. Section 73 talks about unliquidated damages, which come into play when a

[15] Hadley V. Baxendale (1854) 156 ER 145

[16] See RESTATEMENT (SECOND) OF CONTRACTS § 351(1) (1979) ("Damages are not recoverable for loss that the party in breach did not have reason to foresee as a probable result of the breach when the contract was made.") see also Koufos v. C. Czarnikow Ltd.

contract doesn't have a liquidated damages clause. Sec.74 speaks about liquidated damages.

This part of the act talks about liquidated damages, but it doesn't say what they are, and the courts have often made confusing decisions in different cases. This study is an attempt to clear up the confusion between important court decisions about liquidated damages. Liquidated damages are hard to get because the person who was wronged has to prove how much damage he or she caused. There are very few contracts where the damages in the event of a breach cannot be determined. In these kinds of circumstances, it can be challenging to assert liquidated damages that equal the actual damages. The "genuine prior estimate of damages" clause, which the party who breaches the contract attempts to exploit, is given weight by the courts in determining whether liquidated damages are appropriate or not. Additionally, there is no distinction between a penalty and liquidated damages under Indian contract law because the awarded compensation cannot exceed the contract's maximum value.

- Traditional laws' applicability to E-contracts: The Indian Contract Act of 1872 has rules about what happens if a contract is broken and who pays for it. These rules apply to both traditional contracts and e-contracts. The idea of "online contracts," is very broad and needs specific laws to govern it. E-contracts need their own rules, so the law needs to be changed.
- Judicial interpretation: The term "damages" has been construed in a variety of ways by various legal systems throughout history. The result is that people's minds are clouded with confusion as a result of it. The viewpoint expressed in the case of Hadley v. Baxendale was later accepted as valid in a number of other decisions. In a later decision, Victoria Laundry (Windsor) Ltd. v. Newman Industries Ltd[17]., Asquith, J. reformulated this position, and it was subsequently approved in the instances that followed.
- Recommendations by Law Commission: In its report, which came out in 2006, the Lssaw Commission criticised the way contracts have been looked at in the past. It said what the position is on substantive and procedural unfairness and gave a list of the things that can be done to help parties who have been treated unfairly in either area. The suggestions have not yet been taken up.
- Remedies: The difference between legal and equitable remedies needs to be clarified. The vast majority of people simply cannot wrap their heads around this idea. Financial compensation for harms and losses is the goal of legal remedies. However, the goal of

[17] Victoria Laundry Vs. Newman Industries, [1949] 2 KB 528

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equitable remedies is to provide the injured person with some form of relief that is not monetary in nature but is nonetheless fair and reasonable. Specific fulfilment of the contract is an example of an equitable remedy.

It is obvious that the test of predictability is less a conclusive test than it is a cover for a growing body of tests. The foreseeability test exhibits some circularity, as is true of many "reasonable man" tests. "What types of damages should the promisor be held liable for by the court? those that a reasonable man would have expected him to anticipate. But what should a reasonable man have anticipated? those instances of injury that the court believes he should be responsible for." The easy trick of defining the traits of the doing the foreseeing can therefore be used to manipulate the test of foreseeability.

VI. CONCLUSION AND SUGGESTIONS

This study article was quite useful in providing crucial information about damages as contract breach remedies. Damages are monetary compensations or reimbursements made to the victim for the harm they have sustained. Damages can be pursued by the party who has suffered a loss or harm as a result of the breach or violation of contract. As we learn, the purpose of paying damages is to compensate the claimant for the losses incurred. When it comes to Indian law, section 73 and section 74 of the Indian Contract Act of 1872 as well as an exemption to section 74 discuss damages awarded as remedies for breach of contract or neglect. If the item in question is of exceptional value to the wronged party, this could be the case. Thus, damages may be awarded in addition to or in place of particular performance by the court.[18] Also, a clause for liquidated damages would not stop a court from ordering someone to do something.[19] I would like to emphasise that damages play a significant role in contract law, particularly when it comes to damages for breach of contract. Therefore, having understanding on this area is essential.

A few suggestions would include:

1. Owing to the rapid development of technology, the participants in business transactions need to be more it requires them to also be cautious, and to carefully consider even the smallest details or specifications in order to protect their interests.
2. In addition, it also feel that in the event of a punishment, damages must be determined. The aforementioned clauses, Sections 73 and 74, should be read with great care by Indian courts and judges so that the ordinary man may benefit from

[18] Specific Relief Act 1963, s. 21
[19] Specific Relief Act 1963, s 23; P. D'Souza v. Shondrilo Naidu AIR 2004 SC 4472

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these ideas.

3. The terms of a contract are now very detailed and complicated. Parties should negotiate and agree on the different remedies that the hurt party can use to reduce and make up for the losses it may suffer because of a breach of contract. This should be done very intrinsically to protect, secure, and safeguard their own interests in case the contract terms are broken.[20]

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