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BREACH OF CONTRACT**

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**ANALYSING THE
COMPENSATION FOR LOSS
OR DAMAGE CAUSED BY
BREACH OF CONTRACT**

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INTRODUCTION

The India Contract Act, 1872 is the act which gives the laws regarding contracts in India. It is the main act regulating the contract law. An agreement enforceable by law is called as a contract. When one party in a binding contract fails to deliver according to the conditions of the contract the contract is said to be breached. The aggrieved party who has suffered due to the breach of contract is compensated by way of damages. Section 73 of The Indian Contract, deals with the compensation of loss or damage caused by breach of contract. This section of the Indian Contract Act says that if a contract has been broken,

the aggrieved party is entitled to be compensated by the party who has broken the contract. The damages might be the ones which arose in the natural course of the breach or both parties are aware of the damages which may arise due to the breach of contract while entering into the contract. However, in case of remote or indirect loss, no compensation is due.

For e.g.: In the case of *Murlidhar Chiranjilal v Harishchandra Dwarkadas*¹ the appellant who had entered into a contract for sale of canvas at Re. 1 per yard with the respondent wherein the delivery was to be made through a railway receipt for Calcutta for Kanpur. The labour charges and the transportation charges were to be paid by the respondent. The receipt was to be delivered on 5th August 1947 but the appellant could not do so because the booking was closed. Section 73 of The Indian Contract Act was applicable in this case to determine the quantum of damages.

¹ *Murlidhar Chiranjilal v Harishchandra Dwarkadas and anr*, AIR 1962 SC 366

LITERATURE REVIEW

The researcher has referred to various books, articles and journals to make this research effective:

1) *Damages and Penalty as Held under section 73 and 74 of The Indian Contract Act*² an internet source article by Sumangali Yechuri gives in detail the meaning of damages and penalty in Sections 73 and 74 of the Indian Contract Act. This article also gives the difference between damages and penalties. Damages and penalties are often confused to mean the same and therefore this article has the aim to give the clear meaning and judicial interpretations of the two words.

2) *Introduction to Section 73 and 74 of Indian Contract Act*³ an internet source article gives an introduction to the sections 73 and 74 of Indian Contract Act. It describes in brief about how the law evolved and explains the difference between the provisions in India and England. The use of case laws makes the

article more effective and interesting to read.

3) *The Indian Contract Act (9 of 1872) with exhaustive case law*⁴ a book by Universal S concise commentary gives details about the Indian Contract Act, 1872. The book has been updated and revised. It has all the recent updates regarding the field of law and case laws. This book due to its contents is very helpful for research and people who are legal professionals. This book gives in depth information of the Indian Contract Act.

4) *Introduction to Section 73 and 74 of the Indian Contract Act*⁵, an internet source article gives in depth information about the provisions contained in Section 73 and 74 of the Indian Contract Act, 1872. The use of case laws makes the article interesting and effective.

RESEARCH METHODOLOGY

The research methodology that will be adopted in this synopsis shall be the Doctrinal method of research. It involves

² Sumangali Naga Yechuri, *Damages and Penalty as Held under section 73 and 74 of The Indian Contract Act*, Electronic Journal (Nov 27,2020, 6:00 PM) SSRN:

<https://ssrn.com/abstract=1724542> or
<http://dx.doi.org/10.2139/ssrn.1724542>

³ *Introduction to Section 73 and 74 of Indian Contract Act*, Legal Services India (Nov 27, 2020,

8:00 PM)

<http://www.legalservicesindia.com/law/article/1014/4/Introduction-To-Section-73-and-74-of-Indian-Contract-Act>

⁴ *The Indian Contract Act (9 of 1872) with exhaustive case law*, (3rd ed. Universal Concise Commentary, 2018)

⁵ *Supra* Note, 3

analysis of case law, arranging, ordering and systematizing legal propositions and study of legal institutions.⁶

There are certain features and advantages considering which this research method has been adopted. Following are the features and advantages:

- 1) Within a limited time period, researchers are provided with the tools to reach decisions on a variety of problems.
- 2) This method is research method is flexible in nature and thus makes it easier to stretch it to any extent to make it workable.
- 3) This type of research is considered to provide appropriate guidance and hence it is of informational value.

TYPES OF DAMAGES UNDER SECTION 73 OF INDIAN CONTRACT ACT

There are five Kinds of damages:

1) General Damages:

During the normal course of events the damages which arouse naturally

are called as general damages. They arouse from the breach of contract itself. The losses in this case are not capable of precise quantification in monetary terms.⁷ General damages are inclusive of:

- Difference between contract and market price
- Difference between value of good as delivered and as warranted moreover the interest on the money that has been wrongfully withheld.⁸

2) Special Damages:

Damages that do not arise out of normal course of events. Unless they are brought to the notice of the plaintiff, they are not easily recoverable. Theses damages arise due to unusual circumstances which affect the plaintiff. Such type of damages should be anticipated while entering into the contract. But subsequent knowledge would not create any special liability. Some cases in which special damages are given are as follows:

- The losses which flow out due to the breach of contract

⁶ Dr. T. Padma and K P C Rao, *Legal Research Methodology*, 31(1st ed. Asia Law House, Hyderabad 2011)

⁷Janhavi Arakeri, *Types of Damages under Section 73 of the Indian Contract Act, 1872*, ipleaders.in (26th January, 2021, 7:00 PM) <https://blog.ipleaders.in/types-damages-section-73-indian-contract-act-1872/>

⁸ Ruchi Tirkey, *Remedies for Breach of Contract*, 6 IJSER.42, 2015

- When a private person or State violate other person's right.⁹

3) Nominal Damages:

The Plaintiff is entitled to nominal damages if the defendant is found guilty of breaching of the contract, even if there is no proof of actual damages. Nominal damages are awarded only if there is infringement of a legal right and there is no real damage. Only because of the infringement it gives right to the verdict.

Nominal Damages are awarded in the following circumstances:

- i. When there is a technical breach committed by the defendant and the plaintiff does not intend to execute the contract.
- ii. When the complainant fails to prove the loss, he has suffered as the result of contract breach.
- iii. When there is an actual damage suffered not due to the defendant's fault, but because of his own conduct or an outside act.
- iv. The plaintiff can if he so desires, prove that his legal rights have been infringed without worrying about the occurrence of actual loss, in case there exists no basis for quantifying

the amount. The contention that nominal damage is a trivial amount of money is flawed. This is because, even though the sum is insignificant and cannot be quantified, the damages can be expressed in other terms.

4) Substantial Damages:

The damage which causes actual economic loss or for which a large amount is awarded. A substantial damage is when there one party has completely failed to perform the contract.

5) Liquidated Damages:

Once the damages are fixed by the parties, they are called liquidated damages. The sum which agreed by the parties to be paid if one of them breaches the contract. In other words, it can be called as the pre estimated loss. Section 74 of the Indian Contract is applicable in such cases. There are specific cases in which liquidated damages can be claimed:

- Where the purchaser was entitled to claim damages at the agreed rate if the seller does not deliver the goods within seven days or before the fixed dates.

⁹ *Supra* Note, 6

THE LEGAL TEST
REMOTENESS OF DAMAGES:
IN BRIEF

Section 73 of the Indian Contract Act incorporates to rules of the landmark case of *Hadley vs Baxendale*¹⁰. The compensation for loss or damage is recoverable if:

- 1) It arises naturally from the course of things from the breach.
- 2) Which parties knew at the time of contract as likely to result from breach.¹¹

Remoteness of damages is a legal test which can be used to determine the type of loss caused by the breach of contract. If the damages were foreseeable then they cannot consider to be too remote. In the above-mentioned case of *Hadley vs Baxendale*,¹² the Court acknowledged that the defendant's failure to perform the task was the only reason for the loss that the plaintiff suffered.

CASE LAWS RELATING TO
THE TOPIC.

1) In the case of *Murlidhar Chiranjilal v Harishchandra Dwarka*¹³ as the appellant who had entered into a contract for sale of canvas at Re. 1 per yard with the respondent wherein the delivery was to be made through a railway receipt for Calcutta for Kanpur. The labour charges and the transportation charges were to be paid by the respondent. The receipt was to be delivered on 5th August 1947 but the appellant could not do so because the booking was closed. Section 73 of The Indian Contract Act was applicable in this case to determine the quantum of damages.

2) In the case of *Czarnikow Ltd v Koufos*¹⁴ there was a contract for the carriage of cargo of sugar which was delayed by 9 days. Unfortunately, due to the arrival of another cargo sugar the market price of the sugar dropped. The plaintiff sought to recover the damages (the difference between the original and the increased market price.) due to the breach of contract. But it was argued that the market price was likely to increase and the loss was also too remote. It was held by the court that since the defendant should have known about the fluctuation of the market prices, he would

¹⁰ *Hadley vs Baxendale*. [1854] EWHC J70

¹¹ *Supra* Note, 8

¹² *Supra* Note, 9

¹³ *Murlidhar Chiranjilal v Harishchandra Dwarkadas and anr*, AIR 1962 SC 366

¹⁴ *Czarnikow Ltd v Koufos*, [1969] 1 AC 350

have to pay the loss for the breach of contract.

3) In the case of *Simpson v London and North Western Ely Company*.¹⁵ The court held that if the party breaking the contract knows the special circumstances then he is liable and the communication of the same is not necessary.

**DIFFERENCE IN ENGLISH
LAW AND INDIAN LAW
REGARDING LIQUIDATED
DAMAGES.**

English Law states that the whole amount must be either rejected or accepted by the court.

Indian Law states that the court instead of rejecting may reduce or accept the whole amount.

CONCLUSION

A contract can be defined as an agreement enforceable by law. The researcher has come to the conclusion that there are some points missing in the Indian Contract Act as

compared with other countries. Following are the points:

- Section 73 states only about the damages caused by the breach of contract arising during the natural course of things. There is no mention about the indirect loss or damage sustained due to the breach.
- Indian Contract does not have any provisions for the compensation of losses of the contracts which have been termed void.

There is a difference regarding the liquidated damages in the Indian Contract Law and the English Law. Overall, the Indian Contract Act is a relevant and a thorough legislation. All the types of damages given above are important to compensate the party who has suffered due to breach of contract.

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