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**UNDERSTANDING THE LEGAL FRAMEWORK & REMEDIES OF  
INDIAN CONTRACT ACT, 1872 WITH RESPECT TO BREACH OF  
CONTRACT**- Rishabh Sharma<sup>1</sup>**Introduction**

Considering the pervasive nature of obligations in our daily lives, it is rational to anticipate that breaches of these responsibilities will occur, be they contractual, tortious, or restitutionary in nature.

After the plaintiff has proven that the defendant has failed to fulfil a duty, they will typically pursue financial compensation to make up for the resulting loss. The legal principle that a remedy exists wherever a right exists is well-established and universally acknowledged. Hence, it is indisputable that in the event that one party suffers financial detriment due to the breach of contract by the other party, the aggrieved party shall seek restitution for the breach, and the party at fault shall be obligated to reimburse the incurred losses. According to the conservative interpretation of contracts, compensation for the injured party in the event of a transgression is the principal purpose of damages. By awarding expectation damages, the aggrieved party is returned to the position they would have occupied had the contract been fulfilled.

The methods, objectives, and compensation, which are expectation damages, are so fundamental to the field of contract law that they are self-evident.

Further analysis reveals that the definitions of expectation, compensation, and injury are subjective; consequently, it is not immediately apparent that expectation damages invariably serve as compensation. The purpose of this chapter is to analyse the definitions of these

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pivotal terms, devise precise theoretical and practical approaches for quantifying damages in instances of contract breaches, and assess the relationship between these damage calculation methods and the principles of equity and fairness.

A contractual arrangement is deemed discharged or terminated upon the fulfilment of the legal obligation specified in the agreement. Contract termination may occur for the following reasons:

- Completion of obligations by both parties;
- Mutual agreement to terminate the contract;
- Unforeseen circumstances preventing one party from fulfilling their obligations;
- Legal intervention leading to termination;
- Expiration of the mutually agreed-upon time period.

### Meaning of “Breach of Contract”

Broadly speaking, breach is the failure to carry out an obligation or make a commitment. As stated in Merriam Webster's Dictionary of Law, "breach" is defined as "the failure to perform the action that is stipulated by a contract, agreement, or obligation<sup>2</sup>." As defined by the Oxford Law Student Dictionary, "breach" pertains to the deliberate violation or non-compliance with a legal decree, agreement, or code of ethics<sup>3</sup>.

A written or verbal contract is broken when any of its provisions are not fulfilled without a good reason that can be supported by the law. This can include things like not finishing a task, not paying in full or on time, not delivering all of the items that were agreed upon, using inferior or significantly different goods in place of the required goods, not providing the required bond, being consistently late without a valid reason, or acting in any way that suggests you are unwilling to complete the work. A breach of contract is one of the most common grounds for filing a lawsuit to obtain recompense or to enforce the terms of the agreement.

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<sup>2</sup> Merriam, Webster's Dictionary of Law, ed. 1st (2005)

<sup>3</sup> J.E. Penner, Oxford law student dictionary

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According to the Black Law Dictionary, breach of contract is the act of failing to carry out the terms specified in a contractual agreement<sup>4</sup>.

Therefore, when one party violates a contract or agreement by neglecting to fulfil its obligations or impeding the other party's ability to fulfil its responsibilities, it is referred to as a breach of contract in legal parlance. It is possible to break a contract totally or in part. Contracts usually end when all parties have performed their end of the bargain. Nonetheless, there are situations in which parties are unable to discharge their responsibilities for a variety of reasons. In certain situations, the party is deemed to have violated the terms of the contract. A breach of contract is the most common reason for contract disputes to be litigated in court.

The court has to make sure that each of the following conditions is satisfied in order to establish a case of breach of contract: The agreement must meet all requirements to be enforceable in a court of law in order for it to be considered legally binding. The contract will not be accepted as authentic if any of the required components are absent, and no judicial action will be possible as a result.

It's a sign that the user wrote. It is the plaintiff's responsibility to prove that the defendant broke the terms of the agreement. The plaintiff performed all of the tasks required for the contract to be carried out. It is necessary for the plaintiff to give the defendant a fair warning of the violation. Notification verbally is not as effective as notification in writing. Consequently A breach of contract occurs when one of the parties to the agreement willfully fails to fulfil their obligations, either entirely or in part, or willfully makes it impossible for them to be fulfilled<sup>5</sup>. Renunciation, or the inability to perform, can happen even before the time for performance has arrived.

### **Nature of Contract**

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<sup>4</sup>Black Law Dictionary, ed. 8th,ed.

<sup>5</sup> This definition of breach appears in *Associated Cinema of America, Inc v. World Amusement Co., (1937) 201 Minn 94*(Minnesota SC).

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The manner in which a breach is classified under a contract is critical because it impacts the parties' options for recourse, including whether to terminate the agreement, suit for damages, or both. As a result, breaches are classified into two types<sup>6</sup>:

### 1. Anticipatory Breach

Anticipatory breach, as described by Barron's Law Dictionary, refers to a breach of contract that occurs before to the scheduled term of performance<sup>7</sup>. This phenomenon arises when one party proclaims or announces. Rejects his contractual duty prior to its maturity. An anticipatory breach occurs when one party explicitly expresses their intention to violate a contract. Noncompliance with a deadline may lead to a violation, even in the absence of verbal or written evidence. An anticipatory breach is a legal declaration that enables the opposing party to initiate legal proceedings prior to the actual occurrence of the breach of contractual obligations. Upon the occurrence of a breach of an agreement by one party, the aggrieved party possesses the legal entitlement to pursue compensation for any resulting harm or losses. Depending on the specific details and conditions, the party that is not in breach of the contract may have the ability to release themselves from their contractual obligations. In situations where there is an expected or significant violation of the contract, the party that is not at fault may have the right to exercise this privilege, as acknowledged in several legal cases. Breach can manifest in the subsequent manners:- A party reneging on their contractual obligations. A party's conduct may hinder their ability to satisfy their contractual obligations.

Section 39 of The Indian Contract Act, 1872 in India encompasses the concept of anticipatory breach. An anticipatory breach of contract happens when one party deliberately renounces the contract prior to the agreed-upon date for execution. The aggrieved party has the right to consider the contract as terminated and initiate legal action to claim compensation without delay. The party cannot deem the contract rejected until the performance deadline has passed. *Frost v. Knight*<sup>8</sup> is a pivotal legal case that revolves around the concept of "anticipatory breach". In this scenario, the recipient of the promise can consider the notice of intention as

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<sup>6</sup> Dr. Avtar Singh, "Law of Contract Act" (A Study of the Contract Act, 1872) and Specific Relief, ed. 13th, 2013. at.p.435.

<sup>7</sup><<http://www.answers.com/liabrary/Law+Dictionary-cid-1067332.>>

<sup>8</sup>(1872) L.R. 7 Exch. 111.

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ineffective and hold the other party accountable for not fulfilling their obligations. Nevertheless, this ensures that the contract remains valid and advantageous for all parties, contingent upon their respective responsibilities and legal requirements.

*Hoschster v. De La<sup>9</sup> Tour* is an important legal case that deals with the concept of anticipatory breach of contract. The court determined that in the event of contract repudiation prior to the performance date, immediate recovery of damages is permissible.

## 2. Actual Breach

An actual or current breach occurs when one party fails to fulfil their promise on the stipulated date, or performs the obligation incompletely or not in accordance with the contract terms. If a party fails to meet its promised duties, this is referred to as an actual breach. A warranty is a contractual condition that, if breached by one party, gives the other party the right to demand damages, which are monetary restitution for the incurred loss<sup>10</sup>. A condition is a critical element in a contract that, if breached by one party, allows the other party to cancel the contract and demand reimbursement for any losses incurred. Contract breaches are typically classed as anticipatory, genuine, minor, or material<sup>11</sup>. Having addressed the first two, it is now critical to understand the differences between all of them in order to gain a thorough knowledge of the concepts.

## 3. Difference between the two

Contract violations can be categorised into two broad groups. Both current and expected violations of the contract have negative consequences for the parties involved. They can lead to both financial and temporal inefficiency, as well as dissatisfaction for the parties involved in the contract. An actual breach happens when one party fails to fulfil their commitment by the specified deadline or does so inadequately. Anticipatory breach refers to the situation where one party informs the other party in advance, before the deadline for performance, that they will not be able to fulfil their duty. However, it should be noted that there may still be

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<sup>9</sup> (1853) 2 E&B 687.

<sup>10</sup> Bettini v Gye [1876] 1 QBD 183.

<sup>11</sup> Poussard v Spiers and Pond [1876] 1 QBD 410.

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solutions available in both situations. Regardless of the type of wrongdoing, the person that has not committed any fault has the right to seek compensation by legal means.

#### **4. Difference between Minor Breach and Material Breach**

Contract violations can be classified as small or significant. A minor breach, also known as a partial breach, refers to a scenario in which an agreement or contract is violated but only to a minimal level. A minor breach is a minor violation of the terms of a contract that does not jeopardise the entire transaction. A tiny breach occurs when one party fails to fulfil a specific obligation stipulated in the contract, but the failure does not render the entire contract void. A material breach is a major violation of a contract's terms that can render the entire transaction null and void. A material violation occurs when one party receives something that is significantly different from the contract specifications. Typically, a major breach relieves the non-breaching party of their obligation to continue performing and allows them to seek remedies.

#### **3.4 Remedies for such Breach**

Personal responsibilities or rights are derived from dispositions, legal events, and the law<sup>12</sup>.

The sources of duties are:

- a) contracts,
- b) unilateral acts,
- c) acts causing harm,
- d) acts bestowing a benefit,
- e) and the law.

Contracts are the first area of accountability. When there is a contract, every liability that arises from the contract's violations falls under the category of contractual liability. If there is no way to enforce the rights resulting from a contract—a reciprocal arrangement of obligations and rights for the parties involved—it is meaningless. In this regard, the Latin maxim "ubi jus, ibi remedium" is significant since it highlights the need for a legal remedy in cases where a legal right exists. A right would mean nothing if it had no means of remedy. Remedies are specifically mentioned in a lot of business contracts. It is assumed that the

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<sup>12</sup> Article 124 of the UAE Civil Transactions Law No 5 of 1985 (the Civil Code).

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contract has specific language outlining every aspect of their business relationship. Their goal in doing this was to take the place of any legal rights and remedies that aren't stated clearly in the contract. Any particular remedies that a party want to pursue in the case of a contract violation should be included expressly in the agreement. A cumulative remedy clause ensures that the rights specified in the agreement are in addition to the rights provided by law for the specific issue at hand. Nonetheless, parties may pursue the remedies provided by the legal system governing contracts if they haven't expressly agreed upon a course of action in the event of a contract violation. A breach of contract occurs when one party does not carry out their end of the bargain or fulfils a significant provision of the agreement. The other party may release itself from any further responsibilities in the event that one of the parties breaches the agreement. Therefore, in order for one party to be held accountable, the other party must have suffered damages as a direct result of the defect or breach that the responsible party committed. There are ways to make up for these infractions.

### **Types of Remedy**

A remedy refers to a legal procedure that can be employed to restore an injured party to their original position prior to the failure to satisfy an obligation, or to a position that would have been achieved if the contract had been fully executed. In the English Common Law tradition, there were formerly two distinct types of courts. The courts of law were considered the primary venue for seeking redress for injustices, particularly breaches of contracts. On the other hand, the Courts of Equity were considered the ultimate option when the inadequate or unjust solutions in the Courts of Law persisted. The Common Law system has also been used to some extent in India.

Both remedies are utilised in India, however the division of courts into courts of law and courts of equity is not as pronounced as it is in England. Indian courts of law offer both remedies.

#### **1. Legal Remedy**

Compensatory damages and consequential losses are the two main types of legal remedies. These are monetary awards given to compensate the harmed party for any damages they may

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have suffered due to the breach and to put them back in the same situation they would have been in had the contract been followed.

## 2. Equitable Remedy

Equitable remedies prioritise fairness and justice over the specific financial losses caused by a breach. When the items are distinct or one-of-a-kind, a common fair solution is "specific performance," which grants the court the power to force the party that failed to fulfil their obligations to fulfil the exact conditions of the agreement. In such lawsuits, the courts have the authority to modify the terms of the agreement to ensure fairness for one or both sides. If the provisions of the agreement are particularly inequitable towards one party, the court may additionally opt to invalidate the entire agreement and restore the parties to their original positions before the agreement was made.

From an Indian standpoint, several measures for addressing breaches of contract have been established thus far. The Indian Contract Act, 1872, offers several remedies for breach of contract, including damages or compensation, specific performance, injunctions, rescission, and quantum meruit. Given that the primary objective of this research is to examine the consequences of breaching a contract, it is imperative to provide a comprehensive analysis of the notion of damages, as well as a brief summary of the many remedies available for breach of contract. Remedials are legal measures that allow a plaintiff to obtain compensation for losses if one party is found to have breached the terms of the agreement. Financial compensation is the most common kind of remedy provided to the injured party as a result of the breach of contract. As a result of the contract violation, the party that has suffered injury will be given the legal right to take action, which imposes a new obligation. These circumstances lead to a lawsuit seeking compensation for damages<sup>13</sup>. Damages are commonly regarded as a monetary sum that the plaintiff is legally entitled to collect from the defendant as recompense for the breach of contract, as established by the court. Compensation for breach of contract is to restore the plaintiff to a position that is equivalent to what he would have experienced if the contract had been fulfilled. The concept can be understood by stating that compensation, which refers to the payment of a certain sum of money to compensate for the losses suffered by the plaintiff, is the primary purpose of damages. The basic objective of

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<sup>13</sup>Borough's "Remedies under Law of Contract", Ch.2, at.p.16.

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a damages award is to restore the plaintiff to the position they would have been in if the contract violation had not occurred.

### **Damages: As the major Judicial recoverment**

Under common law, the most typical remedy for breach of contract is a damage award. This is a set amount of money established by the court to compensate the aggrieved party. To win large compensation, the innocent person must show that they have suffered actual financial injury. If there is no actual loss, they will only be entitled to nominal damages<sup>14</sup>, which recognise their valid legal claim. The most common legal remedy is an award of damages. Damages are granted to put the aggrieved party back in the same situation as if they had not suffered any losses. As a result, the awarded damages must be commensurate to the magnitude of the suffered losses. This is consistent with the principle stated in PART B of the *Robinson v. Harman case*<sup>15</sup>, which states: "The rule of Common Law is that when a party suffers a loss due to a breach of contract, they should be compensated with damages to the extent that it puts them in the same position as if the contract had been fulfilled." Essentially, compensation and satisfaction for an injury should be proportionate to the harm suffered, with the goal of restoring the injured party to their pre-wrongdoing position. The Supreme Court determined in a case that the company's claim to compensation for the denial of cash and reluctance to purchase merchandise is justified. When a mortgage is executed and registered, it represents a complete transfer of property. Mortgages are subject to both the Transfer of Property Act of 1881 and the Indian Contract Act of 1872. The contract for the provision of monies was still in effect. The party who borrowed money to buy property had the option of demanding strict performance of the contract or declaring themselves free of the obligation to furnish the items<sup>16</sup>. The state's commitment to acquire the commodities did not end just because it did not furnish the funds via a mortgage<sup>17</sup>. There was no compensation for the loading delay, which was caused by the plaintiff<sup>18</sup>.

### **Categories of Damages**

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<sup>14</sup>Nait Ram v. Shib Dutt, (1982) All 238.

<sup>15</sup> (1848) 1 Ex. 850, 855.

<sup>16</sup> Herman and Mahatta v. Asiatic Steam Navigation Co., AIR 1941 Sind, 146.

<sup>17</sup> State of Kerala v. Cochin Chemical Refineries Ltd., (1968) 3 SCR 556: AIR 1968 SC 1361.

<sup>18</sup>Timble Co. Ltd. V. Jorge A. Motors, AIR 1977 SC 734: (1977) 3 SCC 474.

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Restitution is the amount that a court awards to a person who has been harmed by the unfair behaviour of another party in a civil litigation. The process of awarding compensation is to place a monetary value on the harm that the defendant's acts have caused to the plaintiff. Restoring a victim of injustice to their pre-injury state is the aim of compensation. As a result, damages are frequently viewed as a way to make amends rather than as a tool of deterrence or punishment.

However, for a particular kind of wrongdoing, punitive damages may be awarded. Before someone can receive compensation, the injury they have suffered must be legitimately suffered by the subject and recognised by the legal system as a matter that warrants redress.

Before taking legal action, the person that has been wronged must determine what kind of damages they have suffered. They will be able to choose the right treatment thanks to this. The Law divided damages into five main categories:

### **1. Punitive Damages**

If a violation of contract involves severe misconduct or intentional deceit, the court may grant punitive damages in addition to any other damages or responsibilities. Punitive damages serve the purpose of penalising and deterring unlawful conduct or other types of misconduct by the party in breach or others.

### **2. Nominal Damages**

Where the innocent party has not actually suffered any loss as a result of the other party's breach, nominal damages are awarded; in contrast, substantial damages are awarded as monetary compensation for losses incurred as a direct result of the other party's breach.

### **3. Treble Damages**

Treble damage is a judicial notion in which the defendant may face three times as many damage charges. Usually, civil lawsuits call for triple damages, particularly where tort law is involved. When one person hurts another, that is a tort case.

### **4. Compensatory Damages**

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These damages are intended to compensate for any direct losses experienced by the non-breaching party as a result of the contract breach. Damages may be assessed to compensate the non-breaching party for any monetary losses or additional costs incurred in attempting to find an alternative solution. In rare cases, it may be possible to obtain consequential compensatory damages, often known as special damages. These damages compensate for indirect losses expected by both parties at the time of contract signing but unrelated to the other party's failure to deliver. For example, if a vendor failed to deliver things by the time specified in the agreement, it may have prevented the other party from completing orders, resulting in a loss of future business from clients. Future income losses and other expenses linked with these issues may be reimbursed by consequential damages.

### **5. Liquidated Damages**

These are symbolic damages that may be granted in cases when there has been a breach of contract but the party who did not break the contract has not suffered any financial losses as a result of the breach. It is possible that the party who violated the agreement will be required to pay a minimal amount that provides legal recognition of the infraction while having no significant influence on either party's financial situation.

### **6. Unliquidated Damages**

The court determines the amount of damages where the parties to a contract have not agreed in advance on the amount of damages for breaching the terms of the agreement. The court assessed the unliquidated damages as they were not able to be predicted in advance.

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