DAMAGES FOR BREACH OF CONTRACTS: EMERGING JUDICIAL TRENDS

SUMMARY

Contracts are an integral part of everyday’s life, all over the world. Thus every complex imposes obligations on the parties. If the contract is unilateral, it imposes obligations only on one of the parties, whereas in case of bilateral contracts, obligations imposed on both the parties is some basic feature which can be explained as follows:-

1. It is applied on the basis of a breach of effective contract;
2. Its contents are associated with the implementation of obligations under the contracts or liability on the property;
3. The application is applied by authorised agencies for organisations (courts, arbitrators) or by the aggrieved party on the basis of legal regulations.

Thus, the law of contracts basically has three agreed upon functions of these are as follows:-

I. Specifications of arrangements which are legally binding.
II. Definition of rights and duties created by enforceable agreements.
III. Indication of consequences for unexcused breaches.

These three functions of the law of contract can be assigned to its provisions regarding formation, interpretation and remedies for breach of contract respectively. Remedies, thus constitutes one of the vital elements of conference. The focus of my research on the third point mentioned above.

Relevance of the topic:

In this global era, the related to damages and compensation has acquired its own distinctive and persuasive place of importance in business and economic environment. The concept of “social and economic justice” under the Constitution of India and the concept of “human rights” have significantly enlarged the scope of the field of this subject and there are clear indications that it will develop with the passage of time. The last relating to damages for breach of contracts goes deeper and deeper into the social, economical and legal regime with its slow and steady growth. As, in today’s vibrant business environment, most of the commercial transactions are successfully and effectively undertaken for the contracts. Thus, a comprehensive study of the
development of “breach of contracts” and “damages” is required for the better understanding of the different stories, those have been evolved time to time to clarify and bring forward the stories of breach of contracts.

**Aim of the study:**

Unlike other branches of law, the rights and remedies are inextricably entwined in the law of contracts also. Thus, my studies basically concerned with those recourses which, an innocent party may practically take if the other party makes breach of contract. Moreover, it is universally accepted fact that it is very generally among the lawyers to take about “enforcing the contracts”. If one goes through the prevailing practice of today, then it can be easily concluded that “an action for damages” to compensate for the breach of contract, is found to be the most commonly used remedy. Thus, it is important as well as significant to analyse the different aspects of this concept.

During the whole research there are certain questions which had to be answered are as follows:

I. What are the grounds on the basis of which the party can claim “damages”?  
II. From home, such damages are to be claimed?  
III. What type of damages, one can claim, under particular circumstances?  
IV. What would be the amount of damages to be claimed?  
V. How can these damages be calculated?  
VI. What amount of damages can be termed as reasonable and fair to be granted by the court?  
VII. Whether the damages are simply compensation for a penalty?  
VIII. Whether the aggrieved party claiming damages for breach of contract can be allowed to make profit out of it?  
IX. What is the concept of remoteness of damages?  
X. What can be the reasonable quantum of damages?  
XI. What is the doctrine of quantum-meruit?  
XII. Is there any remedy available, in case a party is unjustly enriched?

All the above questions of grave concern not only for academicians, research scholars and lawyers, but our judicial system is also very concerned of all these questions; because the judges have to decide these questions, whenever there be a case feel it is case before them to decide.
Therefore, basically this is the need of modern era to do a comprehensive study of the concept “Damages for Breach of Contracts and emerging judicial trends”, and same is the aim of my study.

**Object and Scope of the Study:**

This study is mainly based on the decisions taken for the development of law of damages for breach of contracts. A collective study is done of the decisions which are taken in this regard by the English Courts, the Privy Council, the Court of Appeals, the Chancery Division, Exchequer court, the Hon’ble Supreme Court of India, Hon’ble High Court of Punjab and Haryana and Hon’ble High Courts of all other States in India. This study focuses on certain areas like: “How effectively our Legislature and Judiciary is working in the area of awarding damages for the breach of contracts?” Moreover “How the eminent judges of our country are helping in the development of the concept of damages through their judicial decisions?

This study would reveal that there is a range of remedies which are made available to the victim of breach of contract. Our judiciary is there for the enforcement of these private arrangements. Even the officers of the courts, and sometime the police can be called for the enforcement of those contracts and all this happen on the behalf of a private person. Thus, this study would reveal that the hypothesis is focused on the fact “Up to what extent judiciary through its various decisions, is working remarkably, for the development of the law of damages for breach of contract.” This study is explanatory of the hypothesis as the study would reveal “How the legislations are also helping the judiciary to decide new challenges brought before them to decide”?

Although, there are various remedies available for the breach of contracts under Indian legal system, but there is always a scope of evolution of a new remedy depending upon the peculiarity of the cases which comes before the court time to time.

**HYPOTHESIS:**

The primary objective behind the present research is to bring analytical and comparative approach which is based on the decided cases. This research is mainly focused on how law of damages for breach of contract developed in England as well as in India. Moreover, how and to what extent we have borrowed the principles of law of contract of England in Indian Law of contract. In the developing countries like India, the Courts have been discharging the extraordinary and responsible functions such as:
Evaluation and computing the claim of damages as well as assuring unconstrained development of commercial transactions in India;

When and to what extent it is necessary to exercise judicial interference in commercial transaction?

The researcher, in this research has made an effort to check: “How far the Hon’ble Supreme Court of India, Hon’ble High Court of Punjab and Haryana and Hon’ble High Courts of all other States in India, along with the English Courts, the Privy Council, the Court of Appeals, the Chancery Division, Exchequer court, has remained successful in performing their above mentioned functions? And while performing their functions, to what extent they have got success in giving a piercing and comprehensible voice to the law of damages to the breach of contracts”. Moreover, the researcher has focused on certain questions, such as:

- Whether all these Hon’ble institutions have achieved success in their efforts?
- How far these efforts have been successful?
- Whether ultimate success has been achieved through these efforts or not?
- Are there any loopholes in the present litigation system?
- Whether law enforcement in the country is weak?
- What efforts can be taken to make the entire procedure of claiming damages for breach of contract smooth, uncomplicated, constant and sound so that the ultimate justice can be provided to the aggrieved party?

The above mentioned questions pose to her own self, has made the research scholar to find out the answers, and these undergoes the entire research exercise.

**RESEARCH DESIGN:**

The study undertaken is, of course, on wide range i.e. analytical and comparative study of decisions of English Courts as well as Indian Courts on the subject of law of damages for breach of contracts.

The method adopted by the researcher is both analytical as well as critical. It is primarily doctrinal, reportive study. The method used for carrying out this research work is based on a systematic counter review of all the relevant literature available related to the subject i.e. damages for breach of contract.

In carrying out the above task of analytical study and research, all available literature on the topic under focus is based on case law material, legislation and articles evolved. The writings of the jurists have been perused. The greater emphasis, undoubtedly during this analytical study, is on case-law developed by the English
Courts, the Privy Council, the Court of Appeals, the Chancery Division, the Hon’ble Supreme Court of India, Hon’ble High Court of Punjab and Haryana and other Hon’ble High Courts of all other States in India. Thus, it has been a doctrinaire research approach combined with limited pragmatic study descriptive, evaluative, critical, explanatory study, which includes the following:

- Recognise the problem.
- Identify and define the problem.
- Formulate a problem hypothesis, deduce consequences and define basic terms and variables.

**SOURCES:**
The entire research work is based on these sources, which, can broadly be divided into two categories:

1. Primary Sources;
2. Secondary Sources.

**Primary Sources:**
The researcher has mainly relied upon the articles and reports written by the eminent Jurists and legal experts, decided case laws of England and Indian Courts as well as all the possible information available on the Web-sites for analytical and comparative study of emerging judicial trend in India and England on the subject of damages for breach of contract. A detailed list of the same is given in the Bibliography.

**Secondary Sources:**
Books written by eminent authors of both the countries i.e. England and India, Law Journals published by the authorized publication houses of England and India, are relied upon as a secondary source of research. A detailed list of the secondary source is also given in the Bibliography.

**BRIEF SUMMARY OF THE STUDY:**
The introductory chapter deals with the historical aspect of the concept of “Damages for breach of contract”. In this chapter an overview of the concept is given. This chapter mainly deals with the different stages of development of “concept of contract” as well as of the “concept of damages”. From ancient time to modern time, how “concept of damages” has come into existence, is also being discussed in detail. Different legal systems are also discussed for the better understanding of the concept. A comparative analysis of English and Indian legal system is also done in this
chapter. The aim, object and scope of the study is also discussed. The plan and the methodologies employed in the present study are also dealt with in this chapter.

After a detail discussion on the historical aspect of damages in chapter I, Legal and Conceptual frame work of remedies for breach of contract is discussed in Chapter –II. In this chapter some basic issues related to the breach of contracts and concept of damages are discussed. An idea of meaning, nature and effect of breach of contract is given. All the remedies which are available to an aggrieved party are discussed in this chapter. The definitions and meaning of the word “Damages”, along with the difference between damages and other related concepts is also dealt within this chapter. Basically, this chapter revolves around the different types of damages. How an aggrieved party can claim different types of damages, in different circumstances, is also discussed in detail.

Chapter-III, basically deals with fairness and reasonableness in the measurement of damages. In this chapter the major problems of civil wrong i.e. the determination of liability and its extent so as to ascertain whether the plaintiff is entitled to the award of damages or compensation and if he is so entitled, then how much compensation should be paid to him, is being discussed. This chapter gives an idea about foundation of liability for breach of contract. Any person who has suffered loss, detriment, or injury, whether to his person, property, or rights, through the unlawful act or omission or negligence of another is entitled to a pecuniary compensation. Any person who is a sufferer may recover such compensation in the Courts. Moreover, an analysis of those problems, which arises in the matter of determination of damages on the breach of contract is being done in this chapter, like which law is to govern the questions that whether there is a breach or not, or if the breach is there, then, for what consequences the liability should be there (i.e. the question of remoteness), and what is the extent of such liability (i.e. the measure of damages). In case of a contractual relationship, the rules of compensation are generally found to be incorporated in the Indian contract act, 1872. Thus, Sec.73 is being discussed in detail under this chapter. This chapter deals with the judicial pronouncements in pre-independence India and post-independence India and a comparative study between the decisions of courts of England and decisions of Indian Courts is being done. This chapter throws light on the researcher’s ideas on the comparative study of term damages and the rule to grant
damages and the chapter is preface to chapter on remoteness of contract as propounded by the English Court in Hadley v. Baxendale.¹

As the discussion of Sec.73 without discussing Sec.74 is considered to be in complete, so in chapter-IV, concept of fairness and reasonableness is being discussed in detail with a special reference to liquidated damages and penalty. Whether the agreed sum is recoverable from the party at fault depends upon whether it constitutes liquidated damages, when it is recoverable, or a penalty, when it is not. The law as to liquidated damages and penalties has a long involved history, and a brief account of the development over the centuries is necessary for a full understanding of the modern law. It has been stated in the previous chapter that the damages are considered to be too remote, if despite the wrongful act of the defendant, the plaintiff by failing to use reasonable care to avoid, allows himself to suffer the damage by his own negligence or indifference to the consequence. In an action on contract, the damages, which an injured person is entitled to recover, must be the direct result of the wrongful act and no claim can be made to damages, which are only remotely connected with it.

Chapter-V, is an attempt to throw some light on certain important doctrines of Law of Contract which are connected with the concept of damages under law of contract in one way or the other in India as well as in other country like England with all material differences. These doctrines are as follows:-

- Doctrine of quantum meruit,
- Doctrine of unjust enrichment and
- Quasi-contracts.

How these doctrines work in India and up to what extent they are relevant in present scenario, is observed under this chapter.

Under Chapter-VI, contractual liability is being discussed in reference to conflict of laws. In recent years, the basic features of the conflict of laws, its methodology, and its governing ideologies have been seriously questioned. No scholarly or judicial consensus is found on the choice of law rules. Thus, in this chapter, the meaning of private international law is discussed as the law applied by domestic courts whenever a foreign element is relevant to the resolution of a legal controversy.² Some ideas are

¹ (1854) 9 Ex. 341.
given with regard to conflictual liabilities like how these problems can be solved in the era of modernization.

Chapter-VII, deals with the finding and researcher’s assessment and recommendations as well as concluding remarks and the suggestions.

Analytical, Critical and comparative study of decisions, their drawbacks and the legislative drawbacks are discussed in the above chapters. All the aforesaid chapters give an exhaustive as well as critical analysis of judicial trends on the subject and some suggestions for future study are also given by the researcher.