



## **Judicial Approaches to Damages in Breach of Contract Cases in Nepal**

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### **Abstract**

Breach of contract is the condition in which at least one party do not fulfill their respective obligation even after entering into the contract. The aggrieved party can claim the lawful remedies to address the injury suffered. Damage is one of the remedies and can be defined as monetary compensation paid to the innocent party for the breach of contract. This article focuses on investigating the legal and judicial responses to damages in breach of contract cases in Nepal. This doctrinal study has adopted exploratory descriptive and analytical method. This study has used primary data obtained from diverse sources like statutory laws, legal documents, academic journals, reports and precedents established by the Supreme Court of Nepal. The National Civil Code, 2074 had adopted the internationally accepted principle and provisions of damage in Nepal. This paper aims to investigate the principle of specific damage of contract and to discuss the judicial responses to the doctrine of damage of contract in Nepal.

**Keywords:** breach of contract, damages, judicial response, National Civil Code, 2074, legal remedies

### **Introduction**

Breach of contract is the condition in which at least one parties do not fulfill their respective obligation even after entering into the contract. Anson (2010) defines breach of contract as, "The failure, without legal excuse, to perform any promise that forms part of a contract." Section 535 of the National Civil Code 2074 has defined a breach of contract act as if any party to a contract fails to fulfill the obligation under the contract or gives a notice to the other party that he or she will not perform the act to be performed by him or her under the contract or his or her action and conduct demonstrate that he or she is incapable of performing the act under the contract, the party shall be deemed to have breached the contract. If one party fails to complete its promises, there is infringement of contractual obligations. Anticipatory and actual



breaches are the two ways in which breached of contract occur. A party declares his intention of not performing the contract before the performance is due is called anticipatory breach whereas if a party declares his intention of not performing the contract on due date of performance or during the course of performance then it is called actual breach. The party committing breach of contract is called the “guilt party” and the other party is called the “injured” or “aggrieved party”.

In such a case, the aggrieved party can claim the lawful remedies to address the injury suffered. There are different remedies available for the breach of contract that depends upon the provisions of contract. The possible remedies are legal remedy that consists of damage, and equitable remedies that includes specific performance, injunction, rescission, restitution, and Quantum Merit. Monetary compensation paid to the innocent party for the breach of contract is called damage. Beside all these remedies, damage plays pivotal role in providing compensation against the losses suffered from the breach of contract. The legal provision for breach of contract in Nepal is mentioned in the National Civil Code, 2074. It is further shaped by judicial precedents.

Damages can be classified on the basis of specific purposes into general, special, nominal, punitive, and liquidated damages. The canon of damages is grounded on the principle of restitution, by restoring the non breaching party to their original position by covering any losses they have occurred. When there is the computation of damages, courts must decide the quantum of damages based on factors such as the degree of the loss, foresee ability, causation, and alleviation of damages by the aggrieved party. Nepal has mixed legal system combined by common law, civil law and Hindu legal traditions. Damage consists of essentials of common law. In Nepal, the judicial precedents established by the Supreme Court plays an essential role for shaping the doctrine of damages.

This paper seeks to investigate and argue analytically the responses of the Supreme Court of Nepal to the principle of damages in breach of contract. It also examines the clarification of key principles such as extent of the loss; foresee ability, causation, and mitigation of damages. Moreover, the article focused the milestone judgment of Supreme Court which is accountable for enlargement of principle of damages in Nepal. Overall, the work aims to glow into the progression of the judicial approach to principle of damages in breach of contract cases in Nepal.

### **Statement of the Problem**

Breach of contractual obligations in Nepal is controlled by National Civil Code, 2074. It provides damage as compensation to the aggrieved party. There is presence of robust legal framework but difficulty in calculation of damages still persists regarding principles like foresee ability, causation, and mitigation. The judgments of the Supreme Court of Nepal play a pivot role in shaping the principles of damages. This article focuses to investigate the legal and judicial responses to damages in breach of contract cases in Nepal.

### **Research Questions**

The questions that are raised in this research work are:



- i. What are the legal principles and provisions on damages in case of breach of contract in Nepal?
- ii. What are the judicial responses to the doctrine of damages in breach of contract cases in Nepal?

### **Objectives of the Study**

The general objective of this research is to significantly study the legal principles, provisions and judicial responses to the doctrine of damage in breach of contract cases in Nepal. Based on this intention, there are the following specific objectives:

- i. To explore the legal principles and provisions on damages in cases of breach of contract in Nepal.
- ii. To discuss the judicial responses to the doctrine of damages in breach of contract cases in Nepal.

### **Review of Literature**

Different factors like legal principles, case laws and the interpretation of remedies for the breach of contract played vital role for the judicial response to the principle of damage. The doctrine of damage is especially associated to the monetary compensation given to the victim party due to the breach of contract by the other party. The Supreme Court of Nepal plays an important role by giving landmark decision regarding the doctrine of damage. The Supreme Court of Nepal gives more priority to equitable remedies than legal remedy particularly specific performance when the monetary compensation i.e. damage is not sufficient. The following literatures have been reviewed during the course of study:

S.N. Kalika (2020), in his study “Judicial Response to the Doctrine of Specific Performance in Nepal”, states that if the monetary compensation is not sufficient to provide adequate relief for the victim party due to the breach of contract by another party, there is essential remedy for the victim party. This type of specific performance is equitable remedy that is suitable for the contractual dispute when the contract is made upon unique goods or services that cannot be measured easily. The Supreme Court of Nepal also has given decisions on specific performance in such contexts stressing on the need to fulfilling their respective obligations instead of managing monetary compensations.

S.K Giri (2024) has published an article entitled “Breach of Contract and its Remedies: Theory and Practice with Special References to Nepalese Law” that deals with the comprehensive examination of various types of breach of contract and remedies particularly available under the existing Nepali law. Minor, material, anticipatory, and actual breaches are the types of breach of contract, each with distinct legal implications. The study emphasizes that while compensatory damages are the most common remedies, the judiciary's willingness to grant specific performance indicates a broader interpretation of justice in contractual relationships. The process of giving specific performance in judicial decision is increasing as it is based on the principle of fairness, justice and equity. The role of the judiciary is not limited to interpretation of the prevailing law. Instead, it shapes the legal landscape by establishing the precedent. The decisions of the Supreme Court are strictly done as per the legal principle of



contract law. Such decisions play an important role in addressing the unique condition of each case. When the traditional remedies are not adequate to provide fairness and justice the judicial decision is important to combat with unique case to provide remedy to the aggrieved party.

In conclusion, the judicial response for the breach of contract is focused in damage but if the monetary compensation is not sufficient then committed toward equitable remedies. The legal provisions of Nepal protect the contractual rights and judiciary serves as the guardian of justice regarding breach of contract.

### **Research Methodology**

Being a qualitative study these research work is analytical, descriptive and doctrinal nature. This study has used primary data obtained from diverse sources like statutory laws. Legal documents, academic journals, reports and precedents established by the Supreme Court of Nepal. As a qualitative study, this is focused deep into the facts of the case laws, issues raised by the plaintiff and the basis of the decision. Similarly, the secondary data of qualitative nature are derived from books and articles. The reference style used in this work is APA method.

This study is limited to the principles, legal provisions and judicial responses relating to damages of contract within Nepal. It deals with the investigation of the concerned legal principles and analyses of the judicial responses to the damages of contract

### **Results and Discussion**

#### **Legal Principles on Damages in Cases of Breach of Contract**

The main legal framework governing damages for breach of contract case in Nepal are provisioned in National Civil Code, 2074. This principle provides fairness and compensation to the aggrieved party thus protecting the sanctity of contract.

The Civil Code incorporates the following principles of damages:

1. **Compensatory Damages:** The central aim of compensatory damages is to restore the aggrieved party in Latin **restitutio in integrum** which means restoration to the original position they would have been if their respective contractual obligations were fulfilled.
2. **Liquidated Damage:** It is a kind of compensatory damages Liquidated damages are a type of compensatory damages which is given to the aggrieved party when general or special damages are very difficult to prove. For the enforcement of liquidated damages it is the subject matter of scrutiny of judiciary and is not of punitive categories.
3. **Foresee ability of damages:** This is the fundamental principle established in contract law established by reputed case law Hadley v. Baxendale. During the time of contract formation the damage must be foreseeable if there will be breach of contractual obligation which is mentioned also in national Civil Code, 2074.
4. **Mitigation of losses:** This is an important in damage that the aggrieved party due to breach of contractual obligations has performed or was willing to fulfill own obligations. So before the claims for damage the responsibility of aggrieved party to fulfill losses is essential.



5. **Non economic losses:** Non-economic losses like emotional distress are typically not awarded damage unless clearly provided by law or under exceptional conditions accepted by the courts.
6. **Punitive Damages:** Punitive or 'exemplary' damages have no place in the law of contract. Contractual damages cannot be punitive in nature no matter howsoever outrageous the defendant's conduct may be.
7. **Nominal Damages:** If the breach of contract causes no loss to the aggrieved party, no damages need to be awarded to him. However, in order to record the fact of breach by guilty party, the courts may award nominal damage.

Above given principle have been incorporated in to National Civil Code, which provides compensations to the aggrieved part in case of breach of contract.

### **Legal Provisions on Damages in Cases of Breach of Contract in Nepal**

In Nepal, the legal framework prevails to provide damage for the breach of contract is mainly codified in National Civil Code, 2074. After the critical analysis of these provisions reveal recognized principles of contract law which aims to fulfill the contractual obligations by compensating the aggrieved party. The key provisions on damage on breach of contract in National Civil Code, 2074 of Nepal are given as below:

#### **Section 537: Compensation for Breach of Contract**

1. **Compensation for actual loss:** When a contract is breached then the aggrieved party can claim damage from another party and the basis of damage will be for the actual loss suffered or any damage before making the contract both the parties knew it when breach of contract occurred (*Sub-section 1*).
2. **Agreed compensation amount:** If there is breach of contract then aggrieved party can claim only the reasonable amount i.e. agreed compensation amount from another party involved in that contract (*Sub-section 2*).
3. **No specified compensation amount:** The aggrieved party can only claim reasonable amount for the direct and actual loss due to the breach of contract if no specified compensation amount is mentioned earlier in contract formation(*Sub-section 3*):
4. **Extension of contract period:** If there is provision of compensation in the contract when the task is not completed in time then the party who pay the compensation can ask for the extension of time period based on compensation amount paid.(*Sub-section 4*):
5. **Other legal actions:** Due to the compensation amount paid to the aggrieved party, it does not stop the aggrieved party from taking other legal actions for the breach of contract (*Sub-section 5*):

This provision ensures fair compensation for breaches while addressing direct and actual damages, pre-determined compensatory clauses, and the rights of parties to pursue additional legal remedies. It also considers practical scenarios like timeline extensions when compensation is paid.



### **Judicial Oversight and Enforcement**

Nepalese courts have the discretion to interpret and enforce the provisions on damages. The Court ensure that the principle of equity and justly are aligned with compensations. However the Court must be more cautious involving complex commercial transactions or vaguely prepared contract. The provisions mentioned in Nepalese law face procedural inefficiencies and limited legal awareness challenges which hinders the proper implementation of these provisions.

Some of the landmark decisions made by Supreme Court in responses of damage are given as below:

#### **a. Prithivi Prasad Roka v. Jaljala Multiple Campus**

For the building of toilet ad safety tank a contract was signed by the both party on 23<sup>rd</sup> Ashadh 2066. The contract was signed at total cost of Rs 54,00,000 and the structure was to be finished by 15<sup>th</sup> Falgun 2066. The defendant stopped the construction work on 15<sup>th</sup> Kartik 2066, leading to material damage. According to Contract Act, 2056 under clause 87 the petitioners file a case for the contract enforcement and compensation. The case was dismissed by the high court stating that the contract period has been expired and there was a new contract for the formation of campus. The Supreme Court upheld the High Court's decision, ruling that Clause 87 applies only during the validity of a contract. No relief can be granted after its expiration. The Supreme Court decision was consistent with the high court decision stating that Clause 87 of Contract Act 2056 applies during only the validity of a contract. No relief can be given after the expiry of time.

#### **b. Summit Pvt. Ltd. v. Sarada Prasai:**

The plaintiff Summit Pvt. Ltd. leased land from Sarada Prasai in 1998, with an decision to buy within 10 years. A suit was filed when Sarada Prasai refused to sell the leased given land to plaintiff. The District court gave decision on the side of plaintiff but the high court reversed it stating that the contract could not be enforced. The Supreme court establish the precedent that contract under old law are ruled by the new laws for remedies and limitations.

#### **c. Hari Prasad Joshi v. Hikmat Bahadur Malla**

The defendant leased land to plaintiff with an annual increment in rent. However the plaintiff reduced the rent unilaterally breaching the contract. The High court verdicts that the reduction in rent breached the contract and the Supreme court gave precedent that unilateral changes to contract terms and conditions are invalid thus there must be mutual understandings in order to change the terms of contract.

#### **d. Min Bahadur Shrestha v. Madhyamanchal Irrigation Development Division Office:**

The plaintiff had done contract for the construction of Tadi Irrigation project and claimed payment and as well as extension of time period but dispute occurred between two parties. The District court gave decision in the favor of contractor but the Appellate court revised the decision by stating that the extension could not be given due to the expiration of contract. With regards above case, Supreme Court gave verdict that damages were sufficient, and the contract



couldn't be enforced. The case established that in breach of contract, compensation may be sufficient, and enforcement isn't always necessary.

**e. Ganga Bahadur Gurung v. Bhagwati Thapa:**

A contract was executed between Bhagwati Thapa and Ganga Bahadur Gurung. Bhagwati Thapa borrowed Rs. 3,600,000 from Ganga Bahadur Gurung, in agreement to pay back within 3.5 years and transferring land as security. After settlement, the land wasn't returned, leading to a court case. The District Court quenched the case for being away from the law of limitations, but the Appellate Court gave verdict opposite to District court. The Supreme Court ruled Bhagwati was entitled to the land's return, as the law of limitations started only when the land wasn't returned. The case established that the law of limitations starts when the obligated party reject to achieve the contract.

**f. The Oriental Insurance Co. Ltd. v. Ram Krishna Rawal:**

Ram Krishna Rawal insured pledge goods but when the goods caught fire the insurer company did not reimburse full compensation to Ram Krishna Rawal. The District and Appellate Court ordered the insurer company to pay the full amount with interest to Ram Krishna Rawal. Later on the case was quenched by the Supreme Court stating that as the contract mentioned arbitration for disputes, the dispute must be solved through arbitration not through litigation.

**Conclusion**

Any aggrieved party can get remedy as damage when monetary compensation is adequate. The principles of damages are incorporated into National Civil Code, 2074 of Nepal and are also practiced in the Nepalese court. There are different precedents established by Supreme Court regarding damage. Thus, the discretion exercised by Nepalese Court is fairly and justly aiming to restore the aggrieved party into their original position as much as possible.

**References**

- Anson, W. R. (2010). *Principles of the English law of contract* (28th ed.). Oxford University Press.
- Ganga Bahadur Gurung v. Bhagwati Thapa, NKP 2066, 8103.
- Giri, S. K. (2024). Breach of Contract and its Remedies; Theory and Practice with Special References to Nepalese Law. *Journal of Management*, 7(1), 98-114.
- Government of Nepal (2018). National Civil Code, 2074. Ministry of Law, Justice and Parliamentary Affairs. Retrieved from <https://www.moljpa.gov.np/en/wp-content/uploads/2018/12/Civil-code.pdf>
- Hadley v. Baxendale, (1854) 9 Exch. 341. Retrieved from <https://law.justia.com/cases/foreign/united-kingdom/9-ex-ch-341-1854.html>
- Hari Prasad Joshi v. Hikmat Bahadur Malla, NKP 2067, 8396.
- Kalika, S. N. (2020). Judicial Response to the Doctrine of Specific Performance in Nepal. *Management Dynamics*, 23(2), 85-96.
- Min Bahadur Shrestha v. Madhyamanchal Irrigation Development Division Office, Sindhuli, NKP 2066, 8154.
- Prithvirasad Roka v. Vinod Mohan Acharya, Campus Chief of Jaljala Multiple Campus, Liwang, Rolpa, NKP 2072, 1163.
- Rakesh Kumar on behalf of The Oriental Insurance Company Ltd. V. Ramkrishna Rawal, NKP 2066, 8078.
- Roger Henke authorized by Sumit Hotel Pvt. Ltd., Kupandole v. Sharada Prasain, et. al., NKP 2070, 288.