

## THE RIGHTS AND DUTIES OF AN INDEMNITY HOLDER

---

Sanya Agarwal\*

### INTRODUCTION

People used to feel much more secure about their commitments in the past. Word of mouth was reliable enough to inspire confidence. However, as people's levels of confidence began to decline, they desired to have everything in writing. Additionally, many felt compelled to reduce risk exposure in return for something. As this idea gained popularity in society, it was thought that it should also have a place in the law. As a result, legislation was created to address the idea of indemnity in English law. When the British began running India and taking control of our nation, they also enacted a number of laws. The 1872 Indian Contract Act was one such statute. As these laws were created by British legislators, they were mostly based on English laws but were modified to meet the needs of India's culture. The statute passed in 1872 included a discussion of the idea of indemnification.

Now that the Indian Contract Act of 1872 had undergone certain adjustments, the English and Indian laws had undergone some notable changes as well. In comparison to Indian law, the English legal system has a slightly broader definition of indemnity. According to English law, a contract of indemnity is a guarantee made by one party to another to make up for a loss incurred as a result of a particular incident, known as the "trigger event." This definition of indemnity has nothing to do with the person(s) responsible for the occurrence of the event that gave rise to liability. However, the concept of indemnity under Indian law only covers losses resulting from the indemnifier's or another person's actions; it excludes losses resulting from natural disasters. In contrast, the concept under English law covers situations in which paying for losses resulting from any of the three aforementioned circumstances is acceptable.

### STATEMENT OF PROBLEM

A contract of indemnity is a special contract wherein a party promises to the indemnified party to do good the losses arising as a consequence of the acts of the promisor or any third party. In this regard, the law has provided some rights and duties to the indemnified or the indemnity

---

\*SECOND YEAR, IIM ROHTAK.

holder. Thus, the purpose of this project is to look at the duties and rights that are provided to an indemnity holder under the Indian Contract act, 1872 in the contract of indemnity.

## OBJECTIVES

- To understand the concept of Indemnity as per the provisions of the Indian Contract Act, 1872.
- To study the essentials of a contract of Indemnity.
- To discuss the Rights of an indemnity holder under the Indian Contract Act, 1872.
- To discuss the Duties of an indemnity holder under the Indian Contract Act, 1872.
- To identify the case judgments given by various courts related to the rights and duties of an indemnity holder.

## RESEARCH METHODOLOGY

The methodology adopted in the study is entirely doctrinal. Under the current study, a thorough assessment of existing doctrinal approaches is required in order to develop a scientific theory. The research issue was investigated using both a doctrinal and empirical method. The research was conducted using journals, books, newspapers, cases, reports, and other online sources. The research was based on case laws from the Supreme Court and the High Court.

## OVERVIEW OF CONTRACT OF INDEMNITY

Journal of Legal Research and Juridical Sciences

### WHAT IS INDEMNITY?

*According to Section 124 of the Contract Act, 1872 a contract of indemnity is: “A contract of indemnity is a contract whereby one party promises to save the other party from the losses caused to him by the conduct of the promisor or any other person.*

**For instance: A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of rupees. This is a contract of indemnity.”<sup>1</sup>**

Thus, the two parties in a contract of indemnity are indemnifier and indemnified and the basic essence of the indemnity contract is to make good the losses that occurred by his own conduct or due to the conduct of the third party. The concept of indemnity started with the case of

---

<sup>1</sup> Section 124, Indian Contract Act, 1872

*Adamson vs. Jarvis*<sup>2</sup>. Jarvis directed Adamson to sell the cattle at an auction which was duly executed, and when the real owner turned up acclaiming the ownership, Adamson had to pay the damages incurred. The Court held that Jarvis would have to indemnify Adamson for the losses incurred because he was executing the tasks as entrusted by Jarvis and it would be reasonable to presume that all the ramifications that would arise in the future course of execution would be taken care of by Jarvis.”

### WHO IS AN INDEMNIFIER?

A person who guarantees to pay for the loss caused to the indemnity holder as a result of the occurrence of a certain event is known as an indemnifier, whether done by the indemnifier themselves or by a third party. The maturity of liability arises as soon as the loss to the indemnity holder results from the actions of the indemnifier or another party.<sup>3</sup>

### WHO IS AN INDEMNITY HOLDER?

An indemnity holder is a party who has been guaranteed by the indemnifier of the expenses and losses that may arise with respect to a certain item in the future. The damage must have resulted from an occurrence of an incident for which the indemnifier, or any other third party, is responsible.<sup>4</sup>

### ESSENTIALS OF A CONTRACT OF INDEMNITY

There are certain conditions for a valid contract of indemnity -

- The consideration for the contract should be lawful.
- The object of the contract should be lawful.
- Loss to the indemnity holder
- It is also dependent on a particular event.
- The indemnity may be *expressed* or *implied* according to the situation.
- All the other essentials of a valid contract.

These conditions must be fulfilled in order to form a valid contract of indemnity<sup>5</sup>.

---

<sup>2</sup> 4 Bing 66

<sup>3</sup> Avtar Singh, Law of Contract & Specific Relief (10th edn, Eastern Book Company 2010).

<sup>4</sup> Ibid

<sup>5</sup> Avtar Singh, Law of Contract & Specific Relief (10th edn, Eastern Book Company 2010).

## RIGHTS OF AN INDEMNITY HOLDER

The indemnity holder is granted certain rights under Section 125 of the Indian Contract Act of 1872, which must be upheld by the indemnifier. These rights include:

1. **Right to recover damages (Section 125(1))**
2. **Right to recover the costs incurred (Section 125(2))**
3. **Right to recover sums paid during compromise (Section 125(3))**

In an indemnity contract, the Promisee who is operating within the scope of his authority is entitled to compensation from the Promisor —

1. *“All damages which he may be compelled to pay in a suit in respect of any matter to which the promise to indemnify applies;”*

It has been established ever since 1873 that the principle of Damages Paid in Suit of Providing Indemnity to a Person Who Had Acted on the Faith of Another Person.

For example, if two parties, A and B, sign a contract of indemnity in which A indemnifies B for any losses that B might suffer in the event that a ship being used to transport commodities sinks due to human error. If the ship sinks due to a human mistake, in this case, A will be responsible for compensating B for his damages, and B will have the right to sue A for those damages.<sup>6</sup>

In the case of *Parker vs. Lewis*<sup>7</sup>,

According to a judgment, it would be prudent for the party being compensated who changed his position and was exposed as a result of that action to receive compensation and protection from a third party. If the insured loses a lawsuit and pays the money to the creditor to resolve the conflict, the insurer is now unconditionally obligated to defend the insured.

In case of *Alla Venkataramanna vs. Palacherela Manqamma*<sup>8</sup>,

The Court has ruled that because the case has an indemnified conclusively roped with, it has a binding impact on the indemnifier even if he is not a party to the contract.

---

<sup>6</sup> Rights of an indemnity holder - iPleaders

<sup>7</sup> (1873) 8 Ch App 1035

<sup>8</sup> AIR 1944 Mad 457

In the case of *Anwar Khan vs. Gulam Kasam*<sup>9</sup>, It was decided that the amount of damages would depend on how much the person had been indemnified.

2. ***“All costs which he may be compelled to pay in any such suit if, in bringing or defending it, did not contravene the orders of the promisor, and acted. It would have been wise for him to act in the absence of any indemnity deal, or if the Promisor had allowed him to bring or defend the suit.”***

The indemnity holder is given a legal right to recover from the indemnifier all incidental costs and damages of the claim that he may be required to pay in a lawsuit when defending a lawsuit where the issue of indemnity is at issue.

For example, suppose two parties, A and B, entered into a contract whereby A indemnified B for any damages brought on by a specific shipment of products. Now, if a lawsuit is filed over an incident, such as an accident, that resulted in the loss of the shipment, the outcome may be crucial to the case. If so, the costs associated with the lawsuit will also be recoverable from the indemnifier under the authority granted to the indemnity holder to do so by Section 125 of the Indian Contract Act, 1872. However, he must follow the indemnifier's instructions and behave as he would have in the absence of the indemnity while bringing up or defending such a lawsuit.<sup>10</sup> The Courts further widened the range of the expenses to be expended and asserted that only reasonable expenses would be reimbursed.

In the case of *Gopal Singh vs. Bhawani Prasad*<sup>11</sup>, The Court ruled that only expenses that would be expected to be incurred by a prudent man and are reasonable in nature can be recovered.

In the case of *Pepin vs. Chunder Seekur Mookerjee*<sup>12</sup>, The Court determined that costs incurred during claim reduction are covered by the rights granted to the indemnification holder and can therefore be collected.

3. ***“All the sums which he may have paid under the terms of any compromise of any such suit if the compromise were not contrary to the orders of the promisor and was***

---

<sup>9</sup> AIR 1944 Mad 457

<sup>10</sup> Rights of an indemnity holder - iPleaders

<sup>11</sup> (1888) ILR 10 All 531

<sup>12</sup> (1880) ILR 5 Cal 811

*one which it would have been prudent for the promise to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.”*

These rights come into play when there is a compromise. If the suit is not against the promisor's orders and is the one that would have been prudent for the promise to make in the absence of any indemnity contract, an indemnity holder also has the right to recover all the amounts from the indemnifier that he may have paid under the terms of compromising the case. The promisor could not invoke the doctrine of res judicata in the instance of damages because doing so would absolve them of their obligation to make the payment in question.

For example, If A and B have a contract together and A indemnifies B with regard to the accomplishment of a duty given to B by a third party. The sum paid by B under the compromise is also recoverable from A under the right to recover sums paid under a compromise subject to, in the event that the assignment is not completed and the person who assigned the task to B brings a lawsuit against the same. However, he must follow A's instructions and behave as he would have in the absence of the indemnity while bringing up or defending such a lawsuit.<sup>13</sup>

#### **DUTIES OF AN INDEMNITY HOLDER**

Duties and rights always go hand in hand. Some implicit obligations of the indemnification holder include adhering to the terms and conditions of the contract. It should be highlighted that these obligations of the indemnified are actually the indemnifier's "rights." In the following circumstances, the indemnifier will not be liable for loss, unless expressly provided for in the contract<sup>14</sup>:

**“1. Duty to act prudently**– The indemnity-holder must act reasonably. If the indemnity-holder acts negligently, the indemnifier shall not be liable to indemnify.

**2. Duty not to act to cause harm or loss**– The indemnity-holder must not intend to deceive or cause harm to the indemnifier, and thus, must act in good faith.

**3. Duty to comply with the orders of Promisor**– If the indemnity-holder acts in contravention of the orders of the Promisor, the indemnifier will not be responsible for such losses which arise due to non-compliance of instructions.”

---

<sup>13</sup> Rights of an indemnity holder - iPleaders

<sup>14</sup> Chitty On Contract (13th edn, Sweet & Maxwell, 2008) vol 2.

## CONCLUSION

In conclusion, an indemnification agreement is a useful tool for safeguarding a party against damages. The party who is indemnified has an advantage in that they do not have to demonstrate that an event was caused by the promisor's default or that it occurred close to one. Simply demonstrating that the event occurred is sufficient to establish damages. The parties may also assert damages for contract violations that lead to those damages. All of this has made sure that the indemnified party is protected from any harm-causing event's effects.

As is clear, the provision of the rights leaves room for a wider interpretation in the interests of fairness and justice. The Law Commission argued that "the rights of the indemnity holder should be more completely defined and the remedies of an indemnity holder should be mentioned even in circumstances where he has not been sued" in its recommendation (in 13th Report, 1958). Therefore, expanding and changing the indemnity holder's rights can help to protect their interests and reduce the costs and risks associated with lawsuits and other third-party actions."



## BIBLIOGRAPHY

---

### Statute:

- The Indian Contract Act (9 of 1872).

### Books:

- Avtar Singh, Law of Contract & Specific Relief (10th edn, Eastern Book Company 2010).
- Chitty On Contract (13th edn, Sweet & Maxwell, 2008) vol 2.
- DR. RK BANGIA, INDIAN CONTRACT ACT, (7<sup>TH</sup> Ed, ALA, 2017)

### Articles:

- Rights of Indemnity Holder – Section 125 of the Indian Contract Act by Tazeen Ahmad
- Contract of Indemnity: Rights and Liabilities of Indemnity Holder by Mohit Mandloi

### Websites:

- <https://blog.ipleaders.in/rights-of-an-indemnity-holder/>
- <https://www.lawcolumn.in/rights-and-liabilities-of-indemnity-holder/#:~:text=Section%20124%20of%20the%20Contract,promisor%20or%20any%20other%20person>