

Contract of indemnity

An indemnity contract is a legal arrangement between two parties in which one party agrees to pay another party for a loss or harm that meets certain requirements and conditions unless other circumstances are specified. It is a form of contingent contract which is characterized by all the essential elements of a valid contract.

In an indemnity contract, there are only two parties, as stated in:

- The indemnifier:

The promisor, who agrees to make up the damage caused to the other group, is called the Indemnifier.

- The Indemnified:

the person who is assured of compensation for the damage incurred (if any) is referred to as the indemnity holder or the indemnified.

The mode of the compensation contract can be express or implied, i.e. if a person expressly agrees to save the other from damages, the mode of the contract will be stated, while if the contract is signified by the terms of the case, the mode of the contract will be implied.

Examples of the indemnity contract are given below:

1. Suppose John had sold Paul a house at Peter's direction. Afterwards it is revealed that Alex is the house's registered owner. Alex got back John's sum for selling his house. John will now recoup Peter's fee. This is an implicit form of an indemnity contract.
2. Beta Insurance Company entered into a deal with Alpha Ltd. to reimburse the company's stock of products up to Rs. 50,00,000 for a premium of Rs.1,00,000

for damages incurred by accidental fire. That is an explicit type of an indemnity contract.

Rights of indemnity holderSection 125 of the Indian contracts act states:

Rights of indemnity-holder when sued.

The promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor:

1. All damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies.
2. all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;
3. all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

Rights of the Indemnifier

- After the indemnity holder is paid for the damage incurred, the compensator shall have all the rights to all the methods and services which can save the compensator from the damage.

The essence of the indemnity contract is the loss to the party, i.e. Indemnification can only be done if the loss to the other party is incurred, or if it is certain that the loss will incur.

The Indian Contract Act of 1872 does not provide for the time to commence the liability of the indemnifier under the contract.

But in this respect different high courts in India held the following rules:

The Indemnifier shall not be liable until the loss has been suffered by the indemnified person.

If the indemnified person has not discharged his liability, he may compel the indemnifier to make good his loss. In the leading case of **Gajanan Moreshwar vs. Moreshwar Madan** (1942), the judge made the observation that If the indemnified has incurred a liability and the liability is absolute, he is entitled to call upon the indemnifier to save him from the liability and pay it off.

Indemnity and insurance Stand in India

section-124 acknowledges only such a contract as an indemnity contract where there is a guarantee to save another person from harm that may be incurred by the actions of the promiser himself or by some other person's conduct. It does not cover a commitment to compensate for the loss due to human activity not occurring. Therefore, the scope of section-124 does not extend to an insurance plan. Therefore, if an insurer agrees to pay compensation in the case of damage by fire under an insurance policy, such a policy does not fall under the purview of section-124. Such contracts are contracts that are valid as contingent contracts as described in section 31.

In **United India Insurance Co. vs. M/s. Aman Singh Munshilal**. The cover note stipulated delivery to the consigner. Moreover, on its way to the destination the goods were to be stored in a godown and thereafter to be carried to the destination. While the goods were in the godown, the goods were destroyed by fire. It was held that the goods were destroyed during transit, and the insurer was liable as per the insurance contract.

Stand in Europe

Under English law the term "indemnity" has a far wider sense than the Indian Contract Act gives it. It requires a guarantee to save the pledge from failure, be it caused by human intervention or some other incident such as an accident and fire. By English law an insurance contract (other than life insurance) is an indemnity contract.

Nevertheless, the Life Insurance plan is not an indemnity plan, since specific factors apply in such a contract. For example, a life insurance policy may include payment of a certain sum of money either upon a person's death or upon the expiry of a defined period of time (even if the insured person is still alive).

For such a case, there does not arise the issue of the amount of damage incurred by the insured, or compensation for the same. However, even though a certain sum is due in the event of death, because a person's life can not be measured unlike property, the entirety of the guaranteed amount is due. Even for that reason it is not an indemnity deal.

Recommendations of the law commission of India

The Indian Law Commission prepared and published its Thirteenth Report in 1958, under the chairmanship of Shri MC Setalvad, proposing changes to the various provisions of this act.

The most important of this commission's recommendations are:[4]

- Modification of the privity doctrine to require a third party to sue in such conditions in respect of a contract made for his benefit.
- Change of consideration doctrine to make contracts enforceable without consideration, an obligation to hold a bid open for an indefinite period of time.
- The recognition of principle of promissory estoppels
- wagering contracts and contingent deals to be made unlawful
- To require fair restriction of the right to carry on trade
- Include the rules relating to substantive modifications to papers.
- The concept of coercion in the Indian contract act isn't exhaustive.

It can't refer to modern-day circumstances where violence can be caused in many ways. The Indian Contract Act defines coercion as: the committing or threatening to commit, any act forbidden by the Indian Penal Code or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an

agreement.

The report suggested the phrase **forbidden by the Indian Penal Code** should be replaced with a wider expression of the offences forbidden by law in India be included in the Section. The report suggested the following phrase instead: Coercion is the committing or threatening to commit any act, when the committing, or threatening to commit such act is punishable by any law for the time being in force, or the unlawful detaining, or threatening to detain, any property, to the prejudice of any person whatever, with the intention to causing any person to enter into a contract.