

Essentials and rights in the contract of indemnity

For the contract of indemnity to take place, the essentials must be that there must be two parties and an arrangement between them in which the promisor agrees to protect the promisee against any loss. This is the most important aspect of the indemnity contract. The loss may have occurred as a result of the promisor's or some other third party's behaviour. The Act's rules limit the loss to a degree that it is limited to the human agency only, and an act of God is not protected by the indemnity contract. Contracts of indemnity include things like marine insurance, fire insurance, and so on.

There can be express and implied indemnity contracts. An implied indemnity contract is out of the purview of the definition of indemnity given under Section 124.

Rights incurred by an indemnity holder

Section 125 of the Act describes the right of an indemnity holder:

- Any fee he was forced to pay in a matter or a suit to which the indemnifier's guarantee extends will be recoverable by the indemnity holder. For example, A and B will agree that if C sues B in a specific matter, A will indemnify B. For example, A and B will agree that if C sues B in a specific matter, A will indemnify B.
- C has now filed a lawsuit against B, and B has been forced to make a settlement. According to the contract, A would be responsible for all payments made by B to C in connection with that matter.
- Any costs that the indemnity holder may have to pay to a third party are also recoverable. However, the indemnity holder should have behaved prudently and in accordance with the indemnifier's instructions.
- Any amounts charged under any suit or compromise, as long as it was not against the indemnifier's orders, are also recoverable by the indemnity holder.

Rights of an indemnifier

Despite the fact that the Act mentions the indemnity privileges, the Indian Contract Act of 1872 excluded indemnifier rights.

In *Jaswant Singh v. the State*, it was concluded that the reimburse advantages are like those of a guarantee under Section 141, where the person who indemnifies gains the advantage of all protections held by the loan boss against the vital borrower, regardless of whether the foremost account holder was worried about them.

On the off chance that an individual chooses to reimburse, he will be named as having prevailed to the entirety of the structures and means which the individual who was initially reimbursed may have ensured himself against any misfortune or harms; or haggled for pay for his misfortune or harms.

When the indemnifier pays for the misfortunes or harms, he at that point moves into the shoes of the reimburse, giving him the entirety of the advantages that the first indemnifier needed to shield himself from misfortune or mischief.

Commencement of liability under the contract of indemnity

There is no stable position on the issue of the commencement of liability under the contract of indemnity. In England, indemnity liability arises only when the indemnity holder suffers a loss. On the contrary, the Indian Contract Act is silent on this matter. This is further discussed below.

The position of the law with respect to the liability of indemnifiers has always been in question on the point of whether indemnity holders should be indemnified before or after the loss. Whether the indemnifier can be asked to indemnify the indemnity holder before he has suffered any loss of goods or money.

An indemnity holder is entitled to be indemnified only after he has suffered a loss under English common law; until then, there can be no action from the side of the indemnifier. However, this created problems and difficulties for those indemnity holders who were not capable of managing the loss on their own. In such cases, the Court of Equity granted relief to the indemnity holders. It was also provided that the indemnity holder could compel the indemnifier to protect him against the loss for which he had promised the indemnity.

However, the position in India is not stable. There were differences in the opinions of the high courts like the Allahabad High Court, the Calcutta High Court, and the Bombay High Court over the issue of whether indemnity could be claimed before suffering any loss. Where some courts held that there could be no indemnity until there was an actual loss, others favoured indemnity holders in such situations. The Bombay High Court, in the case of *Ganajanan Moreshwar v. Moreshwar Madam*, cited the observations of the Court of Equity in England and held that if the liability is absolute, the indemnity holder can ask the indemnifier to protect him and pay off the liability. This was also mentioned in the 13th Law Commission Report.

Commencement of liability of indemnifier

The Indian Contract Act, 1872, does not specify when the indemnifier's liability under the contract of indemnity begins. However, multiple high courts in India have ruled in this regard:

- He must follow the orders of the promissor;
- He must act as a prudent man would, in case there was no existence of a contract of indemnity;
- Indemnifier cannot be held liable until any losses are suffered by indemnified;
- Indemnified can compel the indemnifier to compensate his loss although he has not discharged his liability.

Illustration

A worked for GHI School and was a professional school bus driver. The school administration instructed all drivers not to drive the bus faster than 40 km/h. A did not follow the instructions and, as a result, met with an accident. Here, the school administration will no longer be obligated to indemnify him if he violates their orders.

Duties and liabilities of indemnifier

It is now well established by various case laws that the liability of the indemnifier arises only when the indemnity holder has suffered some kind of loss and not before. However, whenever his liability arises, he has to perform the following duties:

Indemnify all damages

The indemnifier has a duty to pay for damages suffered by the indemnity holder due to the loss for which he promised in the contract. The question of whether the indemnity holder suffered direct or indirect loss is immaterial in this case. It was held in the case of [Nallappa Reddi v. Vridhachala Reddi and Anr. \(1914\)](#) that the duty to indemnify arises as and when the decree has been passed against him, and he must fulfil his duty and the promise made to the indemnity holder.

Indemnify the costs

An indemnity holder can compel the indemnifier to pay for the costs if he did not breach the terms and conditions of the indemnifier and the contract. In this situation, if the indemnity holder proves that there was no fault on his end, the indemnifier has a duty to pay for the costs that he incurred while reducing the claims. The indemnifier must also compensate the indemnity holder for all the amounts paid by the indemnity holder during any proceedings in a case.

Illustration

X gave his house to Y for auction and promised to pay for any loss or damage suffered during the auction, and Y was unaware of the fact that X is not the real owner of the property. As soon as Y realised who the real owner was, he paid him the amount because of which he suffered damages and sued X. X had to pay all the damages and costs incurred by Y.

Indemnify amount payable in case of compromise

The indemnifier has a duty to pay that amount to the indemnity holder, which he paid as compensation in a suit, but the condition is that the promisee did not act against the orders of the promisor. The Madras High Court, in the case of [Venkatarangayya Appa Rao v. Varaprasada Rao Naidu \(1920\)](#), gave certain conditions that must be fulfilled if an indemnity holder has to be paid in case of a compromise. Only when these conditions are fulfilled is the indemnifier liable to pay. The conditions are:

- Compromise must be done in a bonafide manner.
- No collusion in a settlement.
- It must not be an immoral bargain.