

## Position of a contract of indemnity in England and India

### England

The word “indemnity” is used in a wider sense under English law. It includes a contract or promise to save a person from losses caused by humans, agencies, or any other event like accidents that are not under the control of any person. It also identifies contracts of insurance other than life insurance as contracts of indemnity. The reason for not recognising life insurance as indemnity is simple. It is because the conditions are different in both of them. For example, a life insurance contract may provide payment on the death of a person or after the expiration of a specified period. But this does not fall under the ambit of indemnity.

On the other hand, in the Indian context, the contract of indemnity does not specifically recognise a contract of insurance under indemnity. The Privy Council, however, in the case of [Secretary of State v. Bank of India Ltd. \(1938\)](#), recognised it as an implied contract under indemnity. The [13th Law Commission Report](#) in India suggested amending Section 124 of the Indian Contract Act, 1872, to include loss caused by events that do not depend on the conduct of any person.

### India

As stated above, indemnity in India has been defined under Section 124 of the Indian Contract Act, 1872. According to the Section, it is a contract in which a party makes a promise to save others from any kind of loss due to the actions of the promisor himself or any third person. This definition is only limited to the losses caused by the actions of humans or agencies and does not include losses that are caused due to events that cannot be controlled or foreseen by any person, as stated in the case of [Gajanan Moreshwar v. Morehswar Madan \(1942\)](#).

It can be said that the contract of indemnity in India does not include a contract of insurance within its ambit. So, if a person under an insurance contract promises the other to pay compensation or damages for losses due to accidents or fires, these are not covered under indemnity but are contingent contracts given under [Section 31](#) of the Act. In the case of [United India Insurance Company v. M/s. Aman Singh Munshilal \(1994\)](#), goods were stored in godowns, from where they had to be carried to their destination after some time. While in storage, the goods were destroyed by fire. The Court, in this case, held that the goods were destroyed during transit, and the insurer must pay as the contract of insurance.

## Legislative and judicial enactments of contract of indemnity under Indian law

In India, a contract of indemnity started for the situation *Osman Jamal and Sons Ltd v/s Gopal Purshotam* in which the offended party is a partnership that goes about as a commission specialist for the respondent. The litigant firm was occupied with purchasing and selling Hessian and Gummies, and the offending party firm had consented to repay the respondent firm in case of a misfortune.

The offended party organization bought Hessian from Maliram Ramjets, yet the litigant organization can't pay and get the Hessian. Thus, Maliram Ramjets offered a similar item to others at a lower cost. Maliram Ramjets sued the offended party for the misfortune, however, the offended party was currently slowing down and requested that the litigant remunerate them.

However, the defendant declined to pay the damages, claiming that he was unable to do so because of the complainant.

HELD- The defendant is liable to indemnify the complainant, according to the court, because he agreed to do so.

The section contemplates indemnity can be expressed or implied. An example of implied indemnity is the decision of the Privy Council in **Secy of State for India in Council v. Bank of India Ltd.** in which, a forged note endorsement was given to a bank which was received in good faith and for the value. It was later received by the Public Office for renewal in their name. The compensation was recovered by the true owner of the note from the State and was allowed to recover from the bank on a promise of indemnity on implied.

One of the case laws and Judgments was the Gajanan Moreshwar vs. Moreshwar Madan Mantri.

In this case, Gajanan Mores was having land in Bombay however at rent for an extensive stretch. Gajanan Moreshwar was moved to Moreshwar Madan Mantri, however, for a restricted period. M Madan began the development once again the plot and requested some material from K D Mohandas, when K D Mohandas requested the installment of the material, M Madan would not compensate the sum and mentioned G Moreshwar to set up a home loan deed for K D Mohandas. The loan cost was chosen and G Moreshwar put a charge over his ownership. As indicated by the deed, a date was chosen for the arrival of the chief sum. In any case, M Madan concludes that he will pay the chief sum alongside the interest to deliver from a home loan deed, and chooses a specific date for something very similar.

In this case, the court held that if an indemnity holder has raised a liability that is absolute in nature, the indemnity holder may order the indemnifier to fulfil the responsibility or pay the sum. It is not necessary for a commitment to compensate for a loss.

The court made the right decision, in my opinion, because the indemnifier is able to reimburse the indemnity holder if any liability occurs, so the indemnifier can pay the debt directly.

And if the indemnity holder does anything that causes the liability to occur, he must pay the liability because indemnifiers promise to return the indemnity holder to his original condition.

In India, all issues are viewed where misfortunes are brought about because of the promisor himself or some other outsider while in England every one of the issues is viewed were a misfortune causes by any individual just as from any mishap.