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# **A SUGGESTIVE AND COMPARATIVE ANALYSIS: LAWS OF INDEMNITY OF THE UNITED KINGDOM AND THE REPUBLIC OF INDIA**

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## **ABSTRACT**

The focal point of this paper is to delve into the comparative legal framework of the United Kingdom and India around indemnity laws. The paper explores the legal mechanisms in both the states and is nucleated around the differences between them that is a result of their common legal history. The paper has been divided into a descriptive, analytical and prescriptive part. The structure of the paper has been sequentially arranged as follows- introduction, legal jurisprudence of indemnity laws along with case laws of the United Kingdom, Indian indemnity laws and case laws, three fractions of comparative analysis and conclusion.

## INTRODUCTION-

From business transactions to personal laws, the law of contracts has successfully existed in negotiating terms and conditions throughout the globe. The historical timeline that the United Kingdom lived in India informed several social aspects of India including the legal framework. It was therefore implied that several aspects of Indian laws cascade with English laws but a more nuanced study of the laws highlights some cardinal differences and gaps between the laws of the two states. While this paper starts with a more descriptive undertone, it rightly concludes by making some key points to understand the differences between the indemnity laws of the UK and India. Indemnity is a fundamental principle in contract law that aims to restore the aggrieved party to the position they would have been in had the breach not accorded.

A Contract of Indemnity can be described as doing a good deed for someone who has suffered a loss or assisting the aggrieved person in such a way that their prior state has been restored.

Indemnity can be viewed as a sub-category of damages and compensation, but an indemnity contract can be viewed as a particular kind of contract; in particular, the indemnity contract falls under the special contracts category because of the unique nature of its subject matter. Indian indemnity laws are not as exhaustive and do not efficiently cater to the legal needs of the Indian public and are therefore subjected to numerous academic criticisms and suggestions.

Section 124 of the Indian Contract Act, 1872 defines a contract of indemnification. The terms stipulated in section 10 of the Indian Contract Act, 1872 must be met, just like in other contracts. So, to crown it up, a contract of indemnity, to put it simply, is an agreement between two parties whereby one agrees to pay the other for any losses that may be suffered by the promisor or by any other third party. While Section 125 deals with the rights of indemnity holders and more. Let us now briefly look at the legal provisions of both of the states-

## PROVISIONS & ENFORCEABILITY OF INDEMNITY LAWS IN THE UNITED KINGDOM

The dictum *"you must be damnified before you can claim to be indemnified"*<sup>1</sup> is used by English law to define an indemnity contract in the United Kingdom. This implies the promisee cannot seek compensation unless and until he has not suffered any harm. Under English law,

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<sup>1</sup> Sakshi Aggarwal, 'Contract of Indemnity in India & UK' [2018] Law Time Journal

one of the primary requirements for indemnity is the damage. In England, the indemnity rule states that the indemnity holder cannot get compensation from the indemnifier until after they have suffered a loss, followed the indemnifier's instructions, incurred costs throughout the lawsuit, or made a compromise payment.

An indemnity holder cannot invoke a contract of indemnity in the absence of loss. As soon as the indemnity holder covered the damages, the indemnity became enforceable. They can ask the indemnifier for release from indemnity after covering losses. This is evident in the *Adamson v. Jarvis*<sup>2</sup>, decision, which gave rise to the concept of indemnity. In this instance, the complainant sold the cattle to a different individual on the defendant's orders. Subsequently, it was found that the complainant was required to pay damages for the sale of the cattle and that the claimant was not the true owner. The plaintiff sought payment from the defendant. The court determined that because the plaintiff had followed the defendant's instructions, the defendant was responsible for compensating the plaintiff for any damages. Furthermore, *Dugdale v. Lovering*<sup>3</sup> case resulted in more legal changes. This case highlights that a person is entitled to indemnity under English law, even in cases where there is an implied assurance or when it is clear from the promisee's actions that they would have done differently if they had known they would get indemnity.

Nevertheless, the part of the agreement that states that the indemnity holder cannot exercise a contract of indemnity in the absence of loss complicated matters for all parties, especially for the indemnity holder who was unable to cover the losses with his own money. Recognising the seriousness of the issue, the court of equity provided a certain type of remedy to the indemnity holder. Hon. Justice Buckley LJ made the following statement in the *Richardson Re V. Governing Body President of St. Thomas Hospital* case: "Indemnity is not necessarily given by repayment after payment." According to indemnity law, the person who is being compensated in the first instance must never be asked to pay. In a significant ruling in the *Re Law Guarantee and Accidental* case, the court held that the scope of the indemnity agreement should extend beyond compensating the party for any monetary losses. The goal of an indemnity contract is to put the indemnity holder back in the same situation as before the loss happened. Therefore, if the indemnity holder is required to cover the loss and then compensate the indemnifier for

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<sup>2</sup> Adam v. Jarvis [1827] 4 Bing 66

<sup>3</sup> Dugdale v. Lovering [1875] 32 LT 155

the amount, the indemnity will become meaningless.

Since the loss may result from an individual's actions or from an incident or accident, such as a fire, the scope of an indemnity contract in the United Kingdom is far greater than it is in India. Only the first scenario, however, turns out to be accurate in India. Indemnity contracts do not apply to life insurance in the United Kingdom. This is so because there is no way to quantify the worth of a person's life, and in situations where there is no written agreement providing indemnity, there is no need for compensation.

## **PROVISIONS & ENFORCEABILITY INDEMNITY LAWS IN INDIA**

As mentioned previously, the scope of indemnity law in India is more limited as compared to English Law. According to the definition of indemnity provided in section 124 of the Indian Contract Act of 1872, the extent of indemnity is restricted since the indemnity holder is only paid when a loss results from human action<sup>4</sup>. Other incidents or accidents related to the same are not included in it. This leads us to conclude that, for the purposes of section 124, indemnity includes all damages that are caused by (a) the promisor acting on his own behalf or (b) by third parties or anyone other than the promiser. It is therefore clear that losses resulting from accidents or from some natural disasters are not included in this definition.

### **• Origin and growth of contract of indemnity under Indian law**

In India, the contract of indemnity originated in the case *Osman Jamal & Sons Ltd v/s Gopal Purshotam*<sup>5</sup>. The factual matrix of the case is as follows- the plaintiff is a company which is working as a commission agent for a defendant firm. The defendant firm was engaged in buying and selling of Hessian and Gummies, where the defendant firm promised with the plaintiff firm that in case of any loss the defendant firm will be indemnified. The plaintiff firm bought Hessian from Maliram Ramdas, but the defendant company is not able to make payment and take delivery of Hessians. So Maliram sold the same to other people at a lower price. Maliram sued the plaintiff for the loss, but the plaintiff company was winding up and asked the defendant to indemnified for the same. But the defendant refused to pay the damages and claimed that

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<sup>4</sup> Prerita Bhardwaj, 'Critical Analysis of Statutory Framework of Indemnity Contracts' [2023] Manupatra

<sup>5</sup> *Osman Jamal And Sons Ltd. vs Gopal Purshottam* [1928] AIR1929CAL208

because of the plaintiff he was not able to do the payment. In this case, the court held that the defendant is liable to indemnify the plaintiff because he promised for the same.

Further down the legal trajectory, the landmark case of *Gajanan Moreshwar Parlekar v. Moreshwar Madan Mantri*<sup>6</sup> is one of the most important cases concerning indemnity rules in India. In this instance, Gajanan Moreshwar Parlekar, the plaintiff, received a land lease from BMC for 999 years. The plaintiff was subsequently requested to transfer the benefit of that lease to the defendant, Mr. Moreshwar Madan Mantri. After the plaintiff gave his consent and the defendant received the benefit of the lease, the defendant started building on the property. He owed the material supplier Rupees 5,000 twice over while the construction process was in motion. Therefore, he requested that the Plaintiff mortgage a portion of the land to the material supplier, guaranteeing that the Defendant would reimburse him for any losses. After the Defendant neglected to reimburse the material supplier, the Plaintiff filed a lawsuit against the Defendant.

As per the court's ruling in this case, Section 124<sup>7</sup> only addresses a specific type of indemnity wherein the indemnifier or another party bears responsibility for the loss resulting from their actions. It does not address cases that fall outside of this category or situations where the liability arises because of the indemnity holder's actions at the indemnifiers request. S. 124 discusses the following behaviour, although in this case, the obligations were past, that is, prior to the contract's actual date of entering into force. Thus, in this case, S. 124 was not relevant. It was further held by the court that if the indemnity holder has incurred a liability and the liability is absolute, he can address the indemnifier to save him from the liability and pay it off. The court ruled in favour of the plaintiff, holding that equitable principles, as used in English courts, would be used and that Sections 124 and 125 of the Indian Contract Act, 1872, are not exhaustive.

The next section that has to be discussed is Section 125<sup>8</sup>, which gives the indemnity holder certain rights that the indemnifier is required to uphold. These rights include:

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<sup>6</sup> *Gajanan Moreshwar Parlekar vs Moreshwar Madan Mantri* [1942] AIR 1942 BOMBAY 302

<sup>7</sup> Indian Contract Act 1872, s 124

<sup>8</sup> Indian Contract Act 1872, s 125

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

However, the aspect of indemnifier rights in the statute is vague. Indemnity clauses transfer the whole risk of future damages to the promisor, therefore protecting the indemnity holder's interests, assuming the indemnity holder acts in line with the indemnifier or as a sensible man would have done in the absence of the indemnity contract. The section is ambiguous on the Indemnifier's Rights, which are necessary to get certainty about the contract's conditions. The promisor is not weakened, however, by the absence of this kind of guarantee.

The Court said in *Jaswant Singh v. Section of State*<sup>9</sup> that the indemnifier's rights align to those of a surety. The surety's rights are expressly mentioned in section 141 of the Indian contracts act. These are established on principles of natural justice and are very broad in its essence. But, practically, an indemnifier has no rights as per the act. But through precedents, the indemnifier is entitled with securities similar to creditor as against the principal debtor<sup>10</sup>.

## COMPARATIVE ANALYSIS: DISTINCTIONS BETWEEN INDIAN AND ENGLISH LAW OF INDEMNITY

This table briefly informs us about the key differences in indemnity laws of both the states-

CONTRACT OF INDEMNITY UNDER ENGLISH LAW	CONTRACT OF INDEMNITY UNDER INDIAN LAW
1. English law defines indemnity as "a promise to keep a person harmless from the consequences of an act."	1. According to Section 124, Indian law describes it as "an agreement by which one party promises to protect the other from loss caused to him by the action of the promisor himself, or by the conduct of any other person."

<sup>9</sup> *Jaswant Singh vs The State* [1965] 1966CRILJ451

<sup>10</sup> Aarzoo Sahdev, 'Contract of Indemnity: Old English Law, New English Law and Indian Law: A Comparison' [2022] <https://www.ijlra.com/>

2. The liability under this encompasses losses brought on by natural disasters such as fires, accidents, and other tragedies as well as those brought on by the human agency.	2. The liability of the promisor arises from loss caused to the promisee by the conduct of the promisor himself or by the conduct of another person. [Punjab National Bank v Vikram Cotton Mills]
3. Wider scope as compared to the Indian law of indemnity.	3. Scope is narrow as compared to English law
4. Majorly based on legal judgements	4. Majorly based on statutory laws
5. Rights of indemnifier	5. No rights of indemnifier
6. Includes express and implied contracts	6. Includes only express contracts

Let us look more deeply into the different aspects of legal differences:

### 1. Statutory Framework:

The law of the Republic of India is codified and so are the laws regarding indemnity in the Indian Contracts Act of 1872. So, the definition of indemnity laws of India is embedded in section 124 of the Indian Contracts Act. From here, we get the basic rule on indemnity and its legal implications in the Indian context. This helps us to address and understand situations where one party makes a promise to protect the interests of the other party in case any harm is caused by the conduct of the promisor or any third-party interference. Although, the definition is very basic, to begin with the power vested in the judiciary broadens the interpretation of the law. Through precedents and jurisprudence, the wider sense of understanding indemnity has also covered the extra mile of explaining the nature of indemnity, and the different types of damages and losses that come under the legal umbrella of indemnity though not enough.

However, contrary to these Indian laws, the United Kingdom has a more developed and detailed definition and understanding of indemnity since it is developed majorly through judgements and doesn't restrict its implementation to the statutory definition of indemnity. The laws in the United Kingdom majorly derive their legal validation from common law principles alongside having statutory laws informing the indemnity laws aiding the process of understating but in

India, there exists a specific legal definition that lays the groundwork for reasonings, understandings and application of indemnity in contracts. This statement highlights the fundamental gaps between the legal systems of India and the United Kingdom when it comes to this.

The legal system of the United Kingdom has two basic components that envelope common law as stated through judgements and case laws and statutory provisions through legislations in parliament. Earlier court rulings and decisions slowly and steadily formed a common legal perception of indemnity laws for the public to rely on. In the court, the judges examine and determine the intent and the precise meaning of indemnity through cases and procedures for indemnity disputes are generally settled through this. This accommodates a more nuanced, detailed and flexible understanding of indemnity since the variance and change that is seen through the cases are hence accommodated over time and there is no strict definition. Even though there are some laws informing indemnity like the Unfair Contract Terms Act of 1977 they often don't define indemnity. If anything, limitations and restrictions are imposed on the broad scope of understanding indemnity laws. For instance, limiting the scope of consumer protection contracts can see the application of indemnity laws to escape liability arising out of negligent acts.

### **The fundamental gaps of interpretation and role of legal cultures**

India is a common-law country. Jurisprudence is developed through precedents but the lack of enough legal understanding of indemnity makes it difficult for legal scholars, advocates and judges to rely on earlier court rulings. While English law has been shaped through case laws and statutory provisions providing legal backing to the same, India finds it more complicated to depend on it entirely. The approach of the United Kingdom towards the law and its understanding through rulings provide more flexibility, but it also brings with itself uncertainty about the implementation of the law in indemnity disputes. Modifications made through judgements are always subjected to prospective judgments, so there's no reliable framework to definitely rely on. At the same time, due to a lack of enough judgments and understanding, the Indian courts depend on the statutory provisions but restrict the scope of changing parameters. This is a more systematic approach to understanding indemnity indubitably and the fundamental skeleton of the law is clearer but the definition limits the scope of change and with



time, makes it obsolete. These basic differences are the culmination of their existing legal cultures and vision towards the future of legal norms<sup>11</sup>.

## **2. Regulatory Environment:**

There are gaps in the regulatory process over the framing and implementation of the indemnity laws, for instance, the Unfair Contract Terms Act in the United Kingdom has particular laws that oversee indemnity clauses alongside having strong precedents decide the course of any indemnity issue in the United Kingdom. But two nations with a common structure of legal system deciding on indemnity laws, its interpretation and implementation so differently thereby highlighting the contrasting nature of how regulatory oversight mould the usage and effectiveness of the same laws in both nations.

- **Specific Regulations Impacting Indemnity-**

In the United Kingdom, the implementation of indemnity laws is heavily relied on statutes and statutory interpretation by judicial authorities highlighting common law influence. One of the main legislations guiding the practice of settling indemnity dispute is the Unfair Contract Terms Act 1977 (UCTA). Here's how it impacts the provisions on indemnity-

UCTA includes contracts drafted during the course of business transaction out of a lot of other things, curbs the ability of the business entity to limit or exclude liability arising out of death or personal injury caused by negligent activities through an indemnity clause or any other terms of the contract. The act gives an introduction to the "reasonableness test" for the terms of the contract to restrict the liability arising for the breach of contract or negligent activity. Any provision that seeks to limit the indemnifier's liability might be subjected to the reasonableness test, more importantly in cases where the law could necessarily create an imbalance of the parties' rights, demands and obligations to the detriment of the more economically vulnerable or weaker party. For a broader sense of understanding, consumer protection laws in the United Kingdom also affects the enforceability of indemnity laws, especially in standard contracts or contracts with consumers, where there needs to be a greater level of scrutiny and fairness. There is a deeper understanding of principles of natural justice, of fairness and reasonableness

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<sup>11</sup> Madhav Saxena, 'Comparative Study between Contract of Indemnity and Guarantee vis-a-vis Provisions of U.K. and India' [2023] <https://doi.org/10.10000/IJLMH.114983>

that ensures that the laws do not become oppressive or unjust to the party who bears the indemnity burden, specifically when it comes to consumer contracts or contracts between parties of varying sizes.

Contrastingly, India does not have a codified equivalent to the UCTA when it comes down to regulating indemnity laws, instead, it revolves fundamentally around the principles laid down in the Indian Contract Act that addresses indemnity disputes. Since it lays down the statutory foundation for understanding indemnity and comprehending its effect, unlike the UCTA, it does not explicitly explore the fundamentals of fairness or reasonableness. But analogous to the United Kingdom, India does have a consumer protection act that seeks to protect unfair contractual terms. However, these protections are operated through a different legal framework with a different legal regulatory mechanism.

- **The key difference lies in the regulatory approach to overseeing indemnity clauses:**

Specific regulations like the Unfair Contract Terms Act directly influence how indemnity clauses can be structured and enforced, focusing on fairness and protecting the party that could be unduly burdened by such clauses. Meanwhile, in India, there is no direct equivalent to the UCTA focusing specifically on contract terms, the enforcement and interpretation of indemnity clauses are guided by the Indian Contract Act and judicial decisions that focus on the intent of the parties and the fairness of the contract as a whole.

The main difference between English and Indian law is that the former only allows for compensation for losses resulting from human activity, while the latter allows for damages resulting from both natural disasters and human activity. The disparity mostly revolves around the scope of what is considered compensable by indemnity or insurance contracts, specifically with reference to the cause of the loss—that is, whether it results from man-made or natural disasters

### **3. Legal flexibility in statutory provisions:**

The primary distinction between Indian and English law is that, under Indian law, compensation for losses is restricted solely to the extent of human conduct, but under English law, damages are remedied against both human conduct and natural events. This difference primarily revolves around the scope of what is considered compensable under contracts of

indemnity or insurance, particularly regarding the cause of the loss—whether it arises from human actions or natural events.

- **Indian Law Perspective**

The concept of indemnity (as stated in Section 124) within Indian law, especially as construed under the Indian Contract Act, 1872, primarily stresses protection against loss brought on by human actions or conduct. The actions of the promisor or any other individual are included in this regard. The wording of the Act places a strong emphasis on indemnity, which is sometimes read to imply that compensation is mostly determined by human activities, direct or indirect.

- **English (UK) Law Perspective**

English law, on the other hand, does not limit the idea of indemnity or recompense for losses to just the actions of individuals. Indemnity can cover a broader range of risks under English law, including losses resulting from natural disasters. In part, English law has a wider application than Indian law because it does not place as much emphasis on a strict legislative definition of indemnity. The fundamentals and parameters of indemnity clauses are instead understood through the particulars of each contract and the principles of common law. This implies that, if both the parties agree, contracts in the United Kingdom may be drafted to include indemnity for losses born out of a variety of different events, including acts of god, as is the case currently.

- **Implications of the Difference:**

- 1) **Risk Management:** The difference also highlights a wider understanding of risks that are safeguarded and managed in both the jurisdictions. It is cardinal for companies and entities to effectively negotiate terms in their indemnity contract to accommodate indemnity laws to cover the necessary risks as parties can contractually agree to indemnity against a wider range of risk in the United Kingdom.
- 2) **Contractual Flexibility:** A stricter understanding of indemnity laws through statutory provisions pertaining to indemnity lessens the room for flexibility in the Indian laws since it restricts the freedom to determine the extent of losses and indemnity. Whereas natural events can be included in contractual agreements of indemnity in the United Kingdom which broadens the aspects of indemnity laws. While there still exists some space for

interpretation of these clauses through judicial organs in India, there needs to be greater developments.

- 3) Legal Interpretation and Enforcement: Often concentrating on human activities, parties to indemnity contracts in India must define compensable conduct more effectively, due to India's stricter statutory interpretation. Contrastingly, because English law revolves around common law principles and contractual terms, it is important to clearly define the extent of indemnity clauses, even if the parties did not intend for provisions for act of god or natural disasters.

In conclusion, English laws allows indemnity law to cover for both human conduct and natural disasters. Meanwhile, the approach taken by Indian law, which derives its legal validation from the Indian Contract Act that tends to concentrate narrowly on human activities, This contrast in regulation and implementation highlights how important it is to understand the regulatory framework and legal background elucidating indemnification agreements, as these determinants have an effect on how parties draft contracts and effectively manage potential hazards across jurisdictions.

#### **4. Rights of indemnifier in UK and India**

An indemnifier possesses certain rights in the United Kingdom. An individual or institution that indemnifies for particular damages or liabilities does the same to safeguard the other party being indemnified from certain risks. The indemnifier in the United Kingdom can claim numerous rights in exchange for giving this indemnification. Some of them are as follows-

- The right to subrogation enables the indemnifier to take the role of the party being indemnified and pursue any rights or claims that the party being indemnified might have against third parties liable for the loss or damages. This gives the indemnifier the ability to sue other liable parties for the money received under the indemnity contract.
- In order to fairly distribute the cost of indemnification when multiple parties are jointly liable for a loss, the indemnifier may ask other liable parties for contributions. This protection makes the guarantee that the indemnifier isn't unjustly left holding the full load of liability.
- The indemnifier may enforce the provisions of the indemnity contract, including the

indemnified party's duties to notify claims, assist in their defence, and lessen damages. By doing this, the indemnifier is guaranteed the ability to make the party being indemnified answerable for carrying out its end of the bargain.

- Under some indemnity agreements, the indemnifier may be entitled to take the lead in defending against lawsuits or claims resulting from the risks that are covered. With the use of this privilege, the indemnifier is guaranteed the chance to safeguard its interests and reduce any potential losses.
- If the party being indemnified violates any of its responsibilities or takes any actions that put the indemnifier at greater risk, the indemnifier may, in certain circumstances, be entitled to cancel the indemnification agreement. This defence keeps the indemnifier from suffering undue hardship as a result of the acts or inactions of the indemnified party.

Contrastingly, the indemnifier has no rights under the Indian Contract Act of 1872. However, the court determined that the indemnifier should be entitled to all indemnity securities in the same way as the creditor is against its major debtor in the case of *Jaswant Singh v. State* regardless of whether the indemnifier is aware of this.

### **5. Difference of express and implied contracts**

The fact that section 124 of the Indian Contract Act only deals with stated contracts of indemnity or expressed promises of indemnity raises further concerns. The Law Commission of India suggested these revisions in its 13 Report, 1958 on the Indian Contract Act; yet, in practice, implied indemnities are also recognized under Indian law. Depending on the case's facts or the behavior of the parties, it is feasible to infer implied indemnity.

Several decisions have held that indemnity may also arise as a result of the operation of law. In the case of *Secretary of State v. Bank of India*<sup>12</sup>, implied indemnity was very effectively addressed. when a government promissory note was wrongfully approved by a broker. In a spirit of good faith, the bank asked the Public Debt Office to renew a promissory note, and they were allowed. Meanwhile, a conversion case was brought against the Secretary of State by the

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<sup>12</sup> Secretary of State vs. Bank of India limited [1938] 40BOMLR868m

actual owner. The Secretary of State thus brought legal action against the bank on the grounds of implied indemnity.

It was decided that if someone is doing something at someone else's request and they cause harm to a third party and they are not aware that their actions are tortious, they should be compensated by the person making the request. The court cases *K.P.RM Kuppan Chettiar Vs. SP*<sup>13</sup>. R.M. RM. Ramaswami Chettiar and Anr. and Debabrata Ghose vs. Jnanendra N. Ghose and Ors <sup>14</sup>both affirmed equitable principles of implied indemnity.

In contrary, the United Kingdom includes both express and implied contracts and is therefore broader in its application.

### **A POSITIVE AND PRESCRIPTIVE APPROACH: RECOMMENDATION OF 13<sup>th</sup> LAW COMMISSION REPORT IN INDIA:**

The law Commission proposes to amend Section 124 to include the clarification of the express and implied meaning of indemnity. It is imperative to include language that ensures indemnity for damages committed by third parties.

The Law Commission also recommends introducing a brand-new Section 72(A) that would categorize indemnities as quasi-contracts. The last amendment that is suggested is to amend Section 125 to add the language that is required to show that the promisor's liability exists in situations other than when the opposing party suffers a loss. Though the laws of the two countries are very different, there are many areas where they are comparable. Both have legal frameworks with holes that need to be filled on the real purpose of indemnity.

Unlike the UK, India does not have a particular clause regarding the enforceability of an indemnity contract. Regarding the same, different viewpoints have been expressed. Nonetheless, decisions made by equity courts have recently been implemented. The first Indian case to offer indemnity prior to payment was *Osman Jamal And Sons Ltd. v. Gopal Purshottam*. The court did, however, rule that the defendant had to pay the plaintiff back. Likewise, the Gujarat High Court upheld the ruling in *Gajanan Moreshwar v. Moreshwar Madan* in *The New*

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<sup>13</sup> K.P. Rm. Kuppan Chettiar Alias vs Sp. R.M. Rm. Ramaswami Chettiar And Anr. [1946] AIR 1946 MAD 472, AIR 1946 MADRAS 472

<sup>14</sup> Debabrata Ghose vs Jnanendra N. Ghose And Ors. [1959] AIR1960CAL381, AIR 1960 CALCUTTA 381 <sup>15</sup> The New India Assurance Company Ltd. Vs The State Trading Corporation Of India [2006]AIR 2007 (NOC) 517 (GUJ.)

*India Assurance Company Ltd. v. The State Trading Corporation of India Ltd. and Anr*<sup>15</sup>, holding that the indemnifier or defendant is liable to pay in case of breach of promise irrespective of the precise loss suffered. The purpose of indemnity is to shield the indemnifier from culpability, not to reimburse the sum.

Implied contracts of indemnity are not specifically mentioned in the Indian Contract Act of 1872. Law commission has acknowledged the implicit responsibility of indemnity, nevertheless. Regarding loss compensation for catastrophes or accidents as well as losses brought on by human activity, the Law Commission of India (1958) proposed two changes to the Indian Contract Act (1872). It has also requested that implied indemnity terms be included. While written contracts of indemnity are exclusively governed by Indian law, implied contracts are susceptible to court decisions.

## ANALYSIS AND CONCLUSION

In conclusion, the comparative analysis of indemnity laws in India and the UK reveals both similarities and differences in their legal frameworks and application. While both jurisdictions recognize indemnity as a fundamental principle in contract law, the specific provisions, interpretation, enforceability, and remedies may vary. Understanding these distinctions is essential for practitioners and scholars operating in the global legal landscape. Moreover, for first-year law students, grasping the fundamental concepts of indemnity laws in different jurisdictions provides a solid foundation for future legal studies and practice.

The Indian Contract Act of 1872 indicates that, despite its development, indemnity remains lacking in some areas. The Act is deficient in several areas pertaining to indemnity features. That being said, indemnity has a long history. As previously indicated, the way the sections pertaining to contracts of indemnity have been drafted has numerous flaws, is narrow and has deficiencies, when compared with English laws. It is necessary to define an indemnity contract more broadly, in line with English law. The definition of "indemnity" in English law is more expansive than it is in section 124. It consists of an assurance that the promise will be shielded from harm by events or situations unrelated to the promiser's actions or from liability resulting from anything done at the promiser's behest. In a similar vein, the definition needs to be expanded to include the other two causes—accidents and requests from third parties—aside from human agents in order to be more comprehensive. It should also make it very apparent

that an implied contract may exist. There has to be an addition to the section on quasi-contracts will explain situations in which the law contains an implicit indemnity contract.

Section 125 needs to be revised in order to make it explicit and comprehensible. Without a specific agreement, the person entitled to indemnification may pursue their claim under the equity concept of English law, which is currently followed by all courts, as soon as they become liable to the third party. They might therefore be compensated before they have truly experienced a loss. As a result, in the appropriate situations, he could obtain an order compelling the promisor to set aside money or pay the third party the amount required to fulfil the liability; alternatively, in situations where the promisor is not liable to the third party, like in contracts involving indemnity, he might obtain an order compelling the promisor to fulfil the promise. Furthermore, the person indemnified is not prohibited from seeking remedies if he is unable to have the duties to the third party properly performed against him. It is necessary to be more clear about the rights and remedies available to an indemnity holder in a scenario in which he is not sued. Furthermore, it is imperative that the rights of the indemnifier be clearly articulated.

Not only does Section 124 of the Indian contracts law definition of "indemnity" exclude the implied kind of indemnity, but it also does not specify what the judiciary should take into account when other types of indemnities arise, such as those caused by conditions like earthquakes or thunder causing a fire. The High Court clarified this point in its decision in the case of *Jaswant Singh*. Insurance plans do not fall under the definition of indemnity due to the aforementioned reasons.

However, a wide variety of indemnities, including implicit ones, are covered by both the legislative body's definition of "indemnity" and its own meaning under English law. But life insurance policies aren't considered indemnities in English law. Since one cannot seek indemnity until after they have not suffered any of the damages listed in the contract, the purpose of indemnity under Indian law is negated. In other words, indemnity is meaningless under the Indian Law of Indemnity. This creates a major issue for the legal system because the promisee is rendered helpless because they might not be able to use their own resources to pay for the damages.

This comes from the English legal system, which is comparable to other legal systems in terms of the promisee's rights and adheres to the need that damnification take place prior to indemnity.



Ultimately, though, it was strengthened by both modifications to the act and the English and Indian legal precedent of *Gajanan Moreshwar Parelkar vs. Moreshwar Madan Mantri*. The study acknowledged the two previously mentioned problems and offered further information on them before suggesting a modification to the statute.

Lastly, law is an ever-evolving process, fundamentally in common law countries. History bears testimony to how law grows through precedents in India. Law of contracts therefore has a long way to go to rightly cater to justice and develop equipage to effectively render contractual morality. Even then, the hope for a better statutory atmosphere will drive us to come up with laws and legislations.

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