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CONTRACT OF INDEMNITY: Old English Law, New English law, and Indian law: A Comparison

(AUTHOR)

AARZOO SAHDEV

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1. I, Aarzoo Sahdev certify that the paper details my own original research. All sources are properly acknowledged in the paper. To the best of my knowledge, all of the work mentioned in the paper e is original, and no parts have been taken or reproduced without the proper authorization from other sources.
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Place: Rohtak, India

Date: 15 October 2022

RATIONALE

The rationale of this report is mainly centered around the comparison of the indemnity laws in the Indian and English contexts.

According to the Indian Contract Act of 1872, an indemnity contract is one in which one party promises to protect the other from any losses incurred as a result of the promisor's own or another party's actions.¹ According to Section 124 of The Act, indemnity is defined as a risk transfer mechanism between two parties: the party from which the risk is transferred and the party making the risk commitment. The indemnified/promisee or indemnity-holder is the former; the promisor or indemnifier is the latter.

A particular maxim found in Old English law provides a summary of what it actually implies in that system, " You Must Be Damnified Before You Can Claim to Be Indemnified ".² From the foregoing, it follows that the English legal system prioritized the loss rather than the cost of covering the loss. The analogy that best shows the English law's element of indemnity is

¹ The Indian Contract Act, 1872, Section 124, No.9, Acts of The Parliament, 1872 (India)

² Academia, Contract of Indemnity & Guarantee, https://www.academia.edu/9012692/Contract_of_Indemnity_and_Guarantee

that you cannot expect the doctor to mend a broken bone unless and until you have really broken one. A promise that the indemnity holder may never be called upon to pay is known as an indemnification in English law. A promise of this nature may be made explicitly or inferred from the facts of the case.³

The report seeks to discuss the view of the 13th Law Commission Report, 1958 as well as its suggestions on expanding the scope of indemnity under Indian law.

STATEMENT OF PROBLEM

Considering that only losses caused by human agency are covered by indemnification under Indian law, the scope of indemnity is narrower under English law. The Law Commission of India advised that indemnity (under the Indian Contract Act, 1872; hereafter referred to as ICA) should also cover situations where losses may or may not occur as a result of a person's action (similar to English law) in its 13th report in 1958. By broadening the section's applicability and making it more ubiquitous in diverse circumstances, this was suggested to extend the scope for compensation and include more opportunities for indemnification of losses. **However, the recommendation has not yet been implemented.**

The research seeks to discuss whether or not this suggestion should be implemented, in India. To explore whether or not the scope should be expanded the portion on Indemnity, covered by the 13th Law Commission Report, 1958 has been vividly discussed and conclusions have been drawn from the same.

OBJECTIVES OF THE REPORT

Aforementioned are the objectives of the report, these objectives have been discussed in the same order as they have been listed:

- To discuss, evaluate and comprehend the differences and similarities between English law and Indian law, as pertains to the Contract of Indemnity as well as the difference between the Old and the New English law relating to the same
- To analyze landmark judgments, which set precedents and contributed to the development of English and Indian law, vis a vis the Contract of Indemnity
- To enumerate the rights and duties of the indemnifier and the indemnity holder, under the Indian context, and include a case study on “Employer’s Indemnity”, under the Indian context

³ Wayne Courtney, Indemnities And The Indian Contract Act of 1872 , 27 National Law School of India Review, 66–68. (2015)

- To assess whether or not the scope for the Contract of Indemnity should be expanded in India, making it similar to the English law

DISCUSSING OBJECTIVE 1: *To discuss, evaluate and comprehend the differences and similarities between English law and Indian law, as pertains to the Contract of Indemnity as well as the difference between the Old and the New English law relating to the same.*

And

DISCUSSING OBJECTIVE 2: *To analyze landmark judgments, which set precedents and contributed to the development of English and Indian law, vis a vis the Contract of Indemnity.*

INDEMNITY UNDER THE INDIAN CONTEXT

According to Section 124 of the Indian Contract Act of 1872, a contract of indemnity is one in which one party promises to protect the other against loss brought on by the guarantor's own or another party's actions.

For instance, X could consent to act as a guarantor for his student son Y, meaning that X would be obligated to make payments on Y's behalf if Y was unable to pay his rent and monthly costs to Z (a PG), making up for the damages Z.

In agreements between occupants and property owners, indemnity clauses are frequently used. Residents agree to hold the property owners harmless from any costs or damages incurred as a result of injuries sustained on the property while the property owners assume responsibility for anything that may be dangerous or unsettling.

A minor indemnity clause will not prevent the occupant from suing if the incident was caused by the property's minor disrepair, for example, if the owner is indemnified from damages if the occupant gets hurt on the property accidentally. However, if the owner is regularly informed that a particular area of the property is dangerous and likely to cause some damage and injuries to the occupant.

The definition of an indemnification contract includes both express and implied guarantees. The Indian Contract Act of 1872 deals with implied indemnification situations under Sections 69, 145, and 222.

Essentials of a Contract of Indemnity:

-To guarantee that an aggrieved party has a specific remedy to address bugs or faults in products or services delivered under the Contract, it is an absolute promise to compensate for

defined loss or injury.

-It is a promise to make good on or take precautions against loss, harm, or damage.

-In general, it covers all contracts for security, guarantee, etc. It is an independent contract rather than a supplementary one.

-It is a method for determining risk-based accountability.

-Wherever feasible, indemnity clauses should specify the circumstances under which compensation will occur. They must be concise and straightforward.

Discussed further are the landmark cases of indemnity covered under Indian law, namely Gajanan Moreshwar Parelkar Vs Moreshwar Madan Mantri (1942), which was tried in the Bombay High Court and the judge presiding was Justice Chagla and Osman Jamal & Sons Vs Gopal Purshottam (1942). The facts, issues, observations and judgments of the court have been discussed.

Landmark Indian Cases on Indemnity

Gajanan Moreshwar Parelkar vs Moreshwar Madan Mantri⁴

Facts

Facts: For 999 years, Plaintiff has rented land from BMC. The plaintiff granted the defendant's request to hold the property so he could construct a structure there. Over time, the plaintiff also mortgaged the property for pending payments from the defendant to the material supplier totaling Rs. 10,000. In exchange for the plaintiff being released from all obligations related to the land, the lease of the plot was also transferred into the defendant's name. However, the defendant did not absolve the plaintiff of the debts for which the plaintiff had brought a lawsuit. The plaintiff requested that the defendant hold him harmless from all obligations arising from the mortgage and deed of additional charge.

Issues:

Is an actual loss necessary to obtain compensation from the indemnifier?

If the plaintiff had not yet suffered a loss, was this claim for indemnity premature?

Observations:

Justice Chagla held as follows:

“It is true that under the English common law no action could be maintained until actual loss had been incurred. It was very soon realized that an indemnity might be worth very little indeed if the indemnified could not enforce his indemnity till he had actually paid the loss. If

⁴ (1942) 44 BOMLR 703

a suit was filed against him, he had actually to wait till a judgment was pronounced, and it was only after he had satisfied the judgment that he could sue on his indemnity. It is clear that this might under certain circumstances throw an intolerable burden upon the indemnity holder. He might not be in a position to satisfy the judgment and yet he could not avail himself of his indemnity till he had done so. Therefore, the Court of equity stepped in and mitigated the rigor of the common law. **The Court of equity held that if his liability had become absolute then he was entitled either to get the indemnifier to pay off the claim or to pay into Court sufficient money which would constitute a fund for paying off the claim whenever it was made.”**

Decision:

The case was decided in favor of the plaintiff.

Osman Jamal and Sons Limited v. Gopal Purshttam ILR (1929) ⁵

Facts:

A business was working in the position as the defendant firm's commission agent when it made purchases of specific products on behalf of the defendants, which they neglected to do. The supplier gained the right to recover from the business a specific amount of money as compensation for the breach. The claim wasn't paid because the company went into liquidation.

Issues:

- Whether the defendant liable to indemnify the plaintiff even though the latter had not actually paid the vendor?

Decision:

It was decided that even though the business hadn't actually paid the vendor, the Official Liquidator may still get their money back. However, the court ordered that the money be held aside so that it can be utilized to pay the vendor in full for whose contract the business had acquired liability.

INDEMNITY UNDER THE ENGLISH CONTEXT

English law serves as the foundation for the majority of the Indian law of indemnification that has been examined in the preceding chapters. The English Law of Indemnity and Indian Law differ from one another in a few key ways. The Indian Law of Indemnity is a subset of

⁵ AIR 1929 Cal 208, 118 Ind Cas 882

the English Law, which is a universal set.

According to English law, an indemnity agreement is "a promise to hold someone safe from loss resulting from a transaction carried into at the promisor's instance." Protection from the effects of any action or circumstance, not just human agency.

Old English Law

The maxim "you must be damnified before you claim to be indemnified" was developed; it calls for actual loss.

New English law:

It has been noted that "indemnity is not necessarily conferred by return after payment" in the case of *Richardson Re, Ex parte The Governors of St. Thomas's Hospital*. The requirement of indemnity is that the party receiving it never be required to make a payment.

Discussed further are the landmark cases of indemnity covered under Indian law, namely *Richardson Re The Governors of St. Thomas Hospital, ex parte* (1911) and *Regional Manager Oriental Fire And General Insurance Company Madras Vs. Savoy Solvent Oil Extractions Ltd* (1997) The facts, issues, observations, and judgments of the court have been discussed.

Richardson Re The Governors of St. Thomas Hospital, ex parte⁶

Observations and Decisions:

According to Buckley L.J., if the above amount were distributed among the creditors generally, the creditor whose claim the debtor was indemnified against would only receive a dividend and would be entitled to an additional dividend if additional assets were received. Against this claim, the debtor would have no further rights of indemnity, and as a result, his indemnification against such a creditor would not be complete as it had been intended to be.

Let's say A has a claim against B, but B has a right to indemnity from C.B. in relation to that claim, and C.B. files for bankruptcy. Is B's bankruptcy trustee in a position where he can compel the payment of the claim's amount to him and then utilize the money so obtained for distribution among the creditors generally, as opposed to the case where he merely pays a dividend on the claim that A has against the bankrupt? It's not necessary for payment to be made in full to grant indemnity. In order for there to be an indemnity, the person receiving it must never be required to make payments.

Regional Manager Oriental Fire and General Insurance Company Madras Vs. Savoy

⁶ 2 KB 705, 715 (CA)

Solvent Oil Extractions Ltd⁷

It was determined that a life insurance contract is not an indemnity contract since, in such a transaction, other factors come into play. For instance, a life insurance contract may dictate that a certain amount of money will be paid upon a person's death or upon the passing of a predetermined amount of time (even if the assured is still alive). In such a scenario, the issue of the amount of loss incurred by the assured or compensation for it does not come up. Additionally, even if a certain amount is payable in the event of death, the entire amount insured becomes due because, unlike property, a person's life cannot be valued.

DISTINCTIONS BETWEEN INDIAN AND ENGLISH LAW OF INDEMNITY

Contract of Indemnity under English law	Contract of Indemnity under Indian law
1. A contract of indemnification is defined by English law as "a promise to keep a person harmless from the consequences of an act."	1. According to Section 124, a contract of indemnity is defined 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."
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.

DISTINCTIONS BETWEEN OLD AND NEW ENGLISH LAW OF INDEMNITY

Indemnity under Old English law	Indemnity under New English law
1. Maxim followed, "you must be damnified before you claim to be indemnified"	1. Maxim followed, "indemnity is not necessarily given by repayment after payment."
2. Required actual loss before payment was made.	2. The requirement of indemnity is that the party receiving indemnity never is required to make a payment.

⁷ 1996 (2) ALT 1005

DISCUSSING OBJECTIVE 3: *To enumerate the rights and duties of the indemnifier and the indemnity holder, under both laws, and include a case study on “Employer’s Indemnity”, under English and Indian Scenario*

RIGHTS OF AN INDEMNIFIER

The Indian Contract Act, 1872 is silent on this aspect.

RIGHTS OF AN INDEMNITY HOLDER: SECTION 125

Rights of the Indemnity Holder in a Lawsuit— Acting within the scope of his authority, the promisee in an indemnity agreement is entitled to recover from the promisor:

- (1) all damages that he may be required to pay in a lawsuit involving any matter to which the promise to indemnify applies; In other words, the established obligation to pay the last arises for the indemnifier at the primary site when a third party brings a claim against the indemnified.
- (2) all costs that he may be required to pay in a lawsuit involving any such matter if, in bringing or defending it, he did not disobey the promisor's instructions and acted as it would have been prudent for him, In one instance, A urged B to sell some products to C by lying to B about who owned them and posing as the owner. Real owner D. filed a lawsuit against B following the sale. After B was ordered to pay the cost, B filed a lawsuit against A to rely on this clause, and the judgement was upheld in his favour.
- (3) Any payments he may have made in accordance with any compromise of a similar lawsuit, provided that the compromise complied with the promisor's instructions and was one that the promisee would have made if there had been no contract of indemnity or if the promisor had given him permission to do so. Any agreement for less than the whole amount is arbitrary, unfair, and in violation of Article 14 of the Constitution.

LITERATURE REVIEW/CASE STUDY ON EMPLOYER'S INDEMNITY

The following is a literature review of the: "Employer's Indemnity Action"⁸, by John C. Folkenroth :

INTRODUCTION

The established principle of a master-servant relationship is that masters are liable for the wrongdoings that their subordinates commit while working for them (in the course of employment) However, given that (the master) is not at fault himself, is it valid hat even the master may seek reimbursement or indemnification from the servant's tortious actions and the damages paid to third parties? It is argued that this indemnity option is rarely utilized by employers because they worry about negative impacts on worker productivity in addition to objections from labour unions. As a result, given that this area of contract law is comparatively underdeveloped, a study of the rule in relation to the literature review has been conducted below.

NARRATION

In the American case of *Ocean Steam Navigation Co. v. Compania Transatlantica Espanola*⁹, where it was argued that any individual who endures a loss as a result of another individual's actions has a right to be reimbursed, whether or not there was an express contract between them, the employer's indemnity first garnered public acknowledgment here, in this instant case. Later cases affirmed this ruling and argued that the unjust enrichment concept¹⁰ served as the foundation for it.

However, the early British cases in this area had their foundation on a contractual basis. In *Lister v. Ice and Cold Storage Co.*¹¹, the House of Lords ruled that a truck driver is responsible for compensating his company for the costs associated with compensating an injured pedestrian. The House made the case that an employment contract logically entails that the employee has a duty to use reasonable skill and care. Therefore, the master would have a cause of action against his servant for the breaking of an implied condition of contract in situations when employees are careless.

⁸ John C. Folkenroth, *The Employer's Indemnity Action*, 34 Louisiana Law Review (1973) accessed from [http://digitalcommons.law.lsu.edu/lalrev/vol34/iss1/10]

⁹ 134 N.Y. 461, 31 N.E. 987 (1892). (1892).

¹⁰ *United States v. Gilman*, 206 F.2d 846 (9th Cir. 1953).

¹¹ 1957] A.C. 555 (1956)

LATER APPLICATIONS

The author then asserts that the "deep pocket theory" can adequately explain the justification for demanding damages for master's negligence. Due to the servant's lack of resources and the fact that the employer gained from the servant's actions that caused the damage, the master is required to make payment.

CRITICISM

When examining the reasons for the employer's court-filed indemnification action, the author heavily relies on the Lister case¹². This case, however, has been criticized for citing irrelevant precedents. In its ruling, the Harmer v. Cornelius¹³ case—often cited—held that an inept scene-painter could be fired before the end of his term. The Lister case, which involved a single unintentional act by an otherwise qualified truck driver who had been working for his company for the better part of 20 years¹⁴, does not fit the parallel. The Harmer case, which discussed ability rather than perfection, was therefore not relevant in this instance.

INDIAN SCENARIO

The Indian Contract Act of 1872's Section 124 addresses the topic of legal indemnity. It outlines three key characteristics of any indemnity contract: 1) A promise from the indemnifier to the indemnity-holder; 2) A promise to protect the indemnity-holder from loss, and 3) A promise that the extent of the loss is limited to that brought on by human conduct. The last factor leads to the conclusion that the Act's definition of indemnity is a very narrow one, even in cases of Employee's indemnity.

CONCLUSION

The researcher takes issue with the author's methodology for reaching the same conclusion, even though he does agree with the author's end conclusion that only actions of extreme negligence should be covered by an indemnity right.

The deep pocket idea chokes off any booming sector, regardless of how infrequently it is applied. The suggestion to stop using insurer subrogation is also unrealistic. Without rights of subrogation, few insurance companies would actually sell coverage to the employee. It is a universally recognized premise.

¹² Supra n.9.

¹³ (1858) 141 ER 94

¹⁴ Roscoe Steffen, The Employer's "Indemnity" Action, The University of Chicago Law Review, Vol. 25, No. 3.

DISCUSSING OBJECTIVE 4: *To assess whether or not the scope for the Contract of Indemnity should be expanded in India, making it similar to the English law- based on the 13th Law Commission Report*

VIEWS AND SUGGESTIONS OF THE 13th LAW COMMISSION **REPORT, 1958 ON THE LAWS GOVERNING INDEMNITY**

This report's primary goal was to trace the history of the Indian Contract Act and all of its modifications. Another goal was to revise both the Act and the Contract of Indemnity.

The Law Commission believes that Section 124 of the Indian Contract Act, which defines indemnity under Indian law, is insufficient because it does not define all of the various aspects of indemnity. The same was said of Section 125 of the Act, where the rights of the promisee are again not addressed by Indian law. The courts frequently must rely on Indian common law, which is identical to English law in this regard.¹⁵

According to the Commission, indemnification is defined in English law as a promise to protect the promisee against loss resulting from occurrences or accidents that may or may not be dependent on other people's behavior, or from responsibility stemming from whatever the promisee does at the promisor's request. A contract may be expressed or implied in order to create an indemnity right. This essentially broadens the definition of implied contracts for indemnity when someone acts on another's demand and causes harm to a third party; the one who makes the demand is responsible for compensating the person who complies.

The Commission believes that the definition in Section 124 of The Indian Contract Act needs to be modified and changed in order to incorporate the other type of indemnity, which covers damages from accidents, natural disasters, and other causes as well as implicit indemnity as a concept.

The commission goes on to claim that Section 125 of The Act is insufficient since it does not identify all of the promisee's rights, which are many. A few courts and the judiciary have backed the idea that the promisee can exercise his right to indemnity and be released of all liabilities by the promisor even if he has suffered any actual loss, while others have disagreed. The Law Commission, however, concurs with the indicated viewpoint. The Commission noted the following in an effort to further explain the idea since the courts that backed the viewpoint followed the English Law of Indemnity.

Even in the absence of such an unique agreement, the person entitled to the indemnity may

¹⁵ Secretary of State v. The Bank of India, AIR 1938 P.C 191 (192)

assert his right to do so as soon as his duty to the third party has emerged. As a result, he may receive relief prior to actually suffering damage because equity's rules now govern all Courts. Therefore, even when the promisor has no obligation to the third party, as is the case in contracts of simple indemnity, the promisee himself, he may in the right circumstances obtain an order compelling the promisor to set aside a fund from which the liability may be satisfied or to pay the amount due directly to the third party.¹⁶

Later on, the commission cites the *Sheffield Corporation v. Barclay*¹⁷ case, in which Lord Davey makes the following remarks. When someone who is vested with a statutory or common law duty of a ministerial nature is required to exercise that duty upon the request, direction, or demand of another, (it doesn't seem to matter which word you use), and without any intentional wrongdoing on his part acts in a way that appears to be legal but is, in fact, unlawful and a breach of the duty, and thereby exposes him to liability to third parties, there is implied by law a contract by the person making¹⁸.

The Law Commission's Recommendations for Additions

The Commission believes that the definition in Section 124 of The Indian Contract Act needs to be modified and changed in order to incorporate the other type of indemnity, which covers damages from accidents, natural disasters, and other causes as well as implicit indemnity as a concept.

The suggested amendment to Section 124 is as follows:

A contract of indemnity is one in which one party expressly or imply promises to protect the other against loss brought on by the conduct of the promisor, the conduct of another party, or the conduct of an event unrelated to the action of the promisor.

As previously mentioned, the creation of a brand-new section called Section 72 A

72 A. When an implied contract of indemnity may be used. Without a specific agreement to the contrary, the person performing an act at the request of another is entitled to be compensated by that person if the conduct proves to be harmful to a third party's rights despite the act not being plainly tortious to the person performing its knowledge.

Following is recommended in light of the Law Commission's assessment of the rights set forth in Section 125 of The Act:

125A Rights of Indemnity Holder:

¹⁶ Law Commission of India 13th report, at 49

¹⁷ *Sheffield Corporation v. Barclay*, (1905) A.C 399

¹⁸ Winfield, *Law Of Quasi-Contracts*, 116-117 (London: Sweet & Maxwell, 1952)

When liability has arisen against him in favor of a third party, the promisee under a contract of indemnity may, acting within the bounds of his authority, obtain against the promisor, in the proper case, a decree compelling the promisor to set aside a fund out of which the promisee may meet such liability or directing the promisor to discharge such liability himself. Regardless of whether any actual loss has been suffered and even in the absence of the kind of suit mentioned in section 125, the promisee may bring a claim under this section.

CONCLUSION AND ANALYSIS

Although there are several gaps in the legislation outlined in the Indian Contract Act of 1872 about the indemnity's qualities, indemnity under an indemnity is fully developed. The Act defines indemnification in a limited sense as a contract wherein the indemnifier commits to defending the indemnified party against any harm caused to it by the indemnifier's own or another person's conduct.

Surprisingly, this definition does not include indemnification for damages that may arise from situations that are not always related to the actions of the indemnifier or any other person, such as loss brought on by a fire or an unforeseen accident.

Similar to this, the party being indemnified may be held liable for actions taken at the request or direction of the indemnifier. The majority of principal-agent relationships can use this. Even though there is a gap in the law, the courts have stepped in to fill it and determined that the Indian Contract Act does not include all aspects of the law governing indemnity. There are instances where courts have expanded the indemnity to include these circumstances.

This issue was acknowledged by the Law Commission, which in its 13th report suggested broadening the concept of indemnity

. Thus, a modification to the Indian Contract Act is desired to provide more certainty and clarity regarding this issue. Due to this, the courts historically held that the party being indemnified could only file a claim for indemnification after being sued and suffering damages. However, in later rulings, courts have decided that if this viewpoint is accepted, it would place an unacceptable burden on the party being indemnified because they would not be able to use the indemnity until they had paid the damages.

If an indemnified party can convince the court that there is a valid claim against him or her and that the contract of indemnification covers the claim, then the indemnified party may bring legal action against the indemnifier even before suffering any actual damage. Thus, a standard indemnity clause offers protection from any and all losses, claims, and liabilities that

may arise in connection with the specified transaction, regardless of how they may arise.

Considering the economics of the transaction, it is crucial from the standpoint of an indemnifying party to include carve-outs for these kinds of losses and preferably have a cap on the maximum responsibility that the party is ready to accept.

Any illogical, arbitrary, or unconscionable clause in a contract is subject to judicial examination, and courts have the authority to limit the extent of such a clause. This is something that should be kept in mind while drafting indemnification clauses in contracts.

A contract to indemnify means more than just a contract to refund for money spent; it also, in a derived sense, refers to the indemnifier's obligation to defend the party being indemnified from a third-party claim.

Sec. 124 of the Indian Contract Act, 1872, which defines what indemnity means under Indian law, only focuses on one type of indemnity and does not specify what the judiciary should focus on in cases where the other types of indemnities, such as those arising from the conduct of phenomena, such as thunder causing a fire or earthquakes, etc., are present. It also does not mention the implied form of indemnity, which the High Court later clarified in its decision in the case of *Secretary of State vs. The Bank of India*¹⁹.

Because of the aforementioned, contracts for insurance are not covered by contracts for indemnities. However, the legislative and definition of English law both cover a wide range of express and implied indemnities. However, life insurance policies are not regarded as indemnities under English law. One cannot claim the indemnity until they have not experienced any of the losses specified in the contract, which defeats the entire purpose of indemnity under Indian law's definition and allocation of rights to the promisee. The promisee, who is unable to cover the losses in his or her own capacity, is in a helpless situation that presents a significant problem for the courts.

This has its origins in English law, which upholds the same rights for the promisee and adheres to the dictum that damnation comes before compensation. Later on, though, it was overturned by equity courts in England and even in Indian law, although not by a change in the legislation itself, but rather through a case law known as *Gajanan Moreshwar Parelkar vs. Moreshwar Madan Mantri*.

In its thirteenth report, the Law Commission of India acknowledged both of the aforementioned issues and went into further detail before recommending changes to the Indian Contract Act, 1872. The Law Commission even advises adding a brand-new Section

¹⁹ (1938) 40 BOMLR 868

72(A) that classifies indemnity as a form of quasi-contract. Finally, it advises changing Section 125 to reflect the required language stating that the promisor is nonetheless liable even if the promisee does not incur a loss. Even though English law and Indian law differ from one another, they are comparable in several ways. However, not enough to refer to them as the two halves of the same coin. Both states' laws about the genuine nature of indemnity have gaps in them. However, these loopholes are being rectified in accordance with needs along with jurisprudence and court proceedings.

The development of legal concepts and the improvement of existing ones are facilitated by reports like the Law Commission Report. The English Law and its provisions should be upheld by the Indian Courts, but not to the extent that they become wholly dominated by it.

In the recent past, the IT sector has seen a significant increase in the execution of indemnification contracts. There are several circumstances or scenarios in which the continuation of an indemnity can have a significant impact for some people while having little or no impact on others. The law of contracts has a novel idea known as the "Indemnity Lottery," which holds that outcomes in civil indemnity proceedings are always unpredictable. In conclusion, an indemnity is a very helpful condition characterized that may be used to give the party being indemnified a form of guaranteed payment in the event that the other party makes a claim against it that actually belongs to the indemnifier.

RESEARCH METHODOLOGY

RESEARCH DESIGN

For this research, I have adopted both empirical and theoretical research designs. Empirical research is based on information accumulated by unique trials or perceptions, while theoretical research design analyzes and makes associations between observational examinations to characterize or propel a hypothetical position.²⁰ For the theoretical research aspect, peer-reviewed journals, articles, and papers on relevant topics such as “Contract of indemnity V Contract of guarantee”, “Rights of an indemnifier”, “Scope of indemnity under English and Indian law” have been referenced and cited. For the empirical research, I have conducted and analyzed a CASE STUDY gathering information about how Employee's indemnity plays out in English and Indian context. The research gathered from the case study

²⁰ Collier, N.C., 1910. The Validity of Contract of Indemnity for Liability to Third Persons Arising Out of Negligence. *Cent. LJ*, 71, p.39.

has been rigorously analyzed and put into the context of the main research.

NATURE/SOURCE OF DATA/INFORMATION

The data gathered for this research is from a theoretical point of view. It has been gathered from peer-reviewed journals and articles, legislations, and statutes. For the empirical research, a case study, which is Employer's indemnity has been carried out. A literature review of an accredited published paper (by John C Folkenroth) on the same is done.

LIMITATIONS

Liability issues can never be resolved with a straightforward indemnity clause. The law tends to be against people who try to avoid responsibility for their conduct or who seek an exemption from responsibility. A careless party shouldn't be allowed to totally shift all claims and damages filed against him to another, non-negligent party, and this is the main justification for this. For e.g. An amusement park ticket states that a person visiting the park cannot hold management accountable for any accidents of his or hers owing to ride malfunctions or other occurrences. However, because it is not founded on a contract, such a defence rarely prevails in court.

Even though the 13th Law Commission Report, 1958 suggested widening the scope of indemnity in India to include acts other than those in human agency, the implementation of such will increase the liability of the indemnity holders to a greater extent and there were will be surmountable questions as to the equity and justice in such. Moreover, Sec 124²¹ defines a contract if indemnity as a contract "... A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a contract of indemnity" , if the scope of the contracts of indemnity under Indian law are extended, there will be a thorough rewriting and revision of Sec 124-125²², which specify the definition of indemnity and the rights held by an indemnity holder.

²¹ Indian Contract Act, 1872

²² Indian Contract Act, 1872

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