
INTERNATIONAL JOURNAL OF ADVANCED LEGAL RESEARCH

**INDEMNITY CLAUSES IN SPACE COMMERCE CONTRACTS:
MANAGING LIABILITY IN THE ERA OF PRIVATE SPACE
EXPLORATION**- Vijayasree N B¹**ABSTRACT**

The Outer Space, once the exclusive preserve of the state, has become an arena of rigorous private activity due to activities like satellite launches, space tourism, telecommunications etc and has the potential to build a trillion-dollar industry within the next ten years. The change from state-driven industry to privately owned enterprise, popularly referred to as the 'privatisation of space' has been occurring at a faster pace than the legal framework developed during an age where only states travel beyond Earth. As private entities increasingly bear the operational and financial risks which was once taken care of by the states, issues related to ownership, exploitation and risk allocation have become more relevant, hence the need to come up with legal frameworks which address these risks. In this context, indemnity clauses have been seen as the best contractual method of dealing with high risks involved in launch failures, damages to satellites and the third-party claims. Yet, the rules regarding the indemnity, under Section 124 & 125 of the Indian Contract Act, 1872, have been drafted keeping in mind the traditional forms of commercial dealings and neither do they take into account the specific liabilities arising in space activity. Thus, there is an essential research question being raised in this paper, whether the current framework for indemnity in India is enough to regulate contractual liability in private space business, or does it require specific reforms.

Using doctrinal and comparative research methods, the paper will compare legal provisions, judicial interpretations and practice regarding indemnity in India with those in US, Japan and

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Luxembourg which are some of the countries having more developed regulatory frameworks in this area.

Key words: Space commerce, privatisation of space, Indemnity Clause, Indian Contract Act 1872.

Introduction

This research paper aims to study the effectiveness of indemnity clauses as a tool for allocating risks in private space commerce agreements in India, starting with the doctrinal background of the use of indemnity clauses in The Indian Contract Act 1872, then analysing their applicability to specific risks in space and comparing India's systems to that of US, Japan and Luxembourg.

Research objectives

- To examine the legal framework governing contracts of indemnity under the Indian Contract Act, 1872 and its significance as a risk allocation mechanism
- To analyse the nature of contractual risks in private space commerce and the role of indemnity.
- To compare the contractual approaches to indemnity and liability management in India to that of The U.S, Japan and Luxembourg in commercial space activities
- To assess the adequacy and gaps of The Indian Contract Act 1872 in addressing contractual liability in private space commerce.

Chapter I: Understanding Space Commerce and the Need for Contractual Risk Allocations

Space activity was historically a state monopoly, where systems were procured from industry and contractors by government.² India's programme followed this pattern based on the vision of Vikram Sarabhai of utilizing space technology for socio-economic development and not

²Clelia Iacomino & Silvia Ciccarelli, Potential Contributions of Commercial Actors to Space Exploration,1 Advances in Astronautics Sci& Tech. 141, 142 (2018) 141 - 151

for mere prestige, where ISRO designed, develop and launched all the national assets since 1969.³

This monopoly gave way to the “New Space” ecosystem, which is a market-led approach, with the entry of new firms, revolutionary industrial methods and significant investment in launches, mining, and tourism.⁴The United Nations pioneered this change through its Commercial Space Launch Act in 1984 and its Cargo and Operations and Transportation Service (COTS) program, where the government transferred cargo and crew transportation into private companies on a cost-fixed contract basis.⁵ In India, the limited capacity of a budget of 2 billion dollars and about 16,000 people spread thin in military, human space flight and commercial areas, encouraged reforms.⁶ It has been formally instituted by the Indian Space Policy 2023, through which India established IN-SPACe as a single window regulatory agency and directed ISRO to transfer mature technologies to the industry.⁷The number of registered start-ups increased from 1 in 2014 to 189 in 2023 and the aim is to expand the space economy from eight billion to forty-four to fifty billion dollars by the decade’s end.⁸This is an example of the state enabled commercialization model, where state exercises control and the private sector takes charge of operations and finance.⁹

Space commerce, thus refers to the commercial activities that earn revenue from space, space technologies or space data. According to the Indian Space Policy 2023, Non- Government Organisations are allowed to conduct “end-to-end activities” such as launch vehicle development, satellite communication and remote sensing, ground support facilities, dissemination of data and even retrieval of space resources,¹⁰ whereas the international NewSpace environment expands these to include satellite construction and space tourism.¹¹ ^10. This is not done by one party alone. The typical sequence goes as follows satellite owner-> manufacturer->launch provider -> insurer -> Regulator (IN-SPACe)-> affected third parties, the policy itself distributes responsibilities between IN-SPACe, ISRO, Newspace

³Tal Inbar & Lauren Dagan Amos, India’s Private Space Race: From Sarabhai’s Vision to Commercialisation of Space, BESA Ctr. Persps. Paper No. 2, 403 (Aug 19, 2026) <https://besacenter.org/indias-private-space-racefrom-sarabhais-vision-to-the-commercialization-of-space/> (last visited September 12th 2026)

⁴Iacomino & Ciccarelli, *supra* note 1, at 142-143

⁵Id. at 143.

⁶Inbar & Degan Amos, *supra* note 2

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⁸Inbar & Degan Amos, *supra* note 2

⁹Id

¹⁰Indian Space Policy 2023, *supra* note 6, § 4(1)–(13)

¹¹Iacomino & Ciccarelli, *supra* note 1, at 142

India Ltd and the departments of space.¹² Such Multiplicity can lead to several entities getting involved in an incident, each trying to protect its liability position through contracts.

This is made worse by liabilities that are unique to this industry, like massive capital value, inherent technological uncertainty and the harm that can affect those who have not entered into any contract with the operator, in addition to the increasing problem of orbital debris and cross-boundary operations.¹³ The literature on India's international responsibilities international responsibilities point out that the liabilities associated with damage caused by space objects, licensing issues and the compliance with treaties pose major problems.¹⁴ India does not have any specific legislation related to outer space activities but operates under policies like SATCOM and Remote Sensing Data with a draft Space Activities Bill proposing licensing, liability provisions and a regulator which is still pending.¹⁵

Where the regulations have not been adequate, the gap has been filled by private contracting. The use of Indemnity clauses, insurance, limitation of liability clauses, cross-waiver and dispute resolutions clause has become the chief means of risk allocation, something that the policy recognises in asking IN-SPACe to formulate guidelines for liability.¹⁶ The actual risk allocation between parties such as the satellite owner and the launcher, is left to private contract law. And in the field where a mistake could spell disaster, risk allocation through contract becomes a requirement, something that makes indemnity clauses especially relevant.

Chapter II Legal Framework Indemnity Under the Indian Contract Act, 1872.

Indemnity is the contractual mechanism whereby one party, in advance accepts liability for a loss that would otherwise be incurred by the other party. Section 124 states "*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"*".¹⁷ Section 125 grants the indemnity holder the right to claim damages, costs and amounts paid under a bona fide compromise and thereby ensure a sensible settlement. The

¹²Indian Space Policy 2023, *supra* note 6, §§5 - 8

¹³Jayanti Vajiram, Utkarsh Maurya & Negha Sentil, India's Progress in Space Exploration and International Legal Challenges in Meeting Goals Within International Space Boundaries: A Review, at 3 (2024)

¹⁴*Id* at 2 -3; Bhavesh, Space Law and Emerging Issues in India, 2 Int'l J. Legal Rsch & Analysis, at 5 -7 (Aug. 2024)

¹⁵Bhavesh, *Supra* note 13, at 6 - 8

¹⁶Indian Space Policy 2023, *supra* note 6, §5(18)

¹⁷Indian Contract Act, 1872, § 124 (India)

norm in third-party space damage claims, is recoverable without requiring all disputes go to trial.¹⁸

The judicial interpretations of this statute has broadened it in ways that have great relevance for the business of space. In the case of Gajanan Moreshwar Parelkar v. Moreshwar Madhan Mantri, The Bombay High Court determined that, upon the absolute liability arising, the indemnity holder can either make the indemnifier liable for it directly or secure payment without making any payment himself/herself.¹⁹ The case of Osman Jamal & Sons. Ltd. V. Gopal Purushottam took this principal further, finding that there is no requirement for the insolvent indemnity holder to make such a payment, because otherwise the indemnity will be useless.²⁰ These two principles are critical in our context, because the launch liability often amounts to several hundred millions, an amount neither of parties, especially an Indian space start up with constrained capital resources, will ever be able to pay before earning anything back. The fact that indemnity works on a forward-looking basis instead of being strictly retroactive is exactly what makes it feasible for an industry like this one. This precisely why indemnity clauses plays a crucial role in space commerce contracts. By providing for indemnity, one of the parties like the owner of the satellite, the service provider or an insurance company is able to establish ahead of time who assumes the risk associated with launch failure, loss of satellite or harm from debris in the case of failure if rockets.²¹ Indemnities can be formulated in such a way that will provide for the kinds of events covered by the clause as well as establish when the claim arises.²² In most cases the indemnified parties own negligence is excluded from the clause, however, no-fault indemnities not doing so will come under public policy scrutiny especially considering the power imbalance between startups and powerful launch companies especially considering the power imbalance between startups and powerful launch companies or foreign contractors.²³

¹⁸Indian Contract Act, 1872, § 125 (India); Thomson Reuters, Indemnification Clauses in Commercial Contracts (Oct. 20, 2024) <https://legal.thomsonreuters.com/en/insights/articles/indemnification-clauses-in-commercial-contracts> (last visited 13th September 2026)

¹⁹Gajanan Moreshwar Parelkar v. Moreshwar Madan Mantri, AIR 1942 Bom 302; Wayne Courtney, Indemnities and the Indian Contract Act 1872, 27 Nat'l L. Sch. India Rev. 143, 160-70 (2015)

²⁰Osman Jamal & Sons. Ltd. V. Gopal Purushottam, AIR 1929 Cal 208; Courtney *supra* note 18, at 169-70

²¹ Thomas Reuters, *Supra* note 17

²²*Id*

²³ Id; Roshan Gwhankar, Risk & Rescue: An Analysis of Contract of Indemnity Under Indian Law, LinkedIn (2024) https://www.linkedin.com/pulse/risk-rescue-analysis-contract-indemnity-under-indian-law-gawhankar-fjpgf?utm_source=share&utm_medium=member_android&utm_campaign=share_via (last visited 13th September 2026)

Indemnity differs from other mechanisms, yet was formulated to work hand in hand with them, insurance transfers risk to a third-party insurer, limitation on liability sets a cap on liability, guarantee binds a third-party to fulfil its obligations.²⁴ These mechanisms are always used in combination in space contracts because none of them alone can handle such risks on its own, hence indemnity clauses is not merely a legal formality but a commercial device.²⁵

Chapter III Indemnity Clauses in Space Commerce Contracts

Space commerce is done through a number of repetitive contractual arrangements, each distinguished by its own risk profile. These include launch service contracts, satellite manufacturing contracts, space tourism contracts and satellite services contracts. The most risk-intensive one being the launch service contract, since in the case of a problem the entire spacecraft worth millions of dollars, gets ruined and so receives the closest attention here. A well drafted indemnity clause is characterised by having a structure, which includes: a trigger, like failure to launch or harm done to third parties, The protected party, the covered loss, exceptions, including the indemnitee's own negligence, a liability limit insurance and notice and settlement procedures.²⁶ This format aligns especially with the Section 125's²⁷ clauses regarding damages, costs and settlement represent "covered loss" and "procedure" while the cases of Gajanan Moreshwar and Osman Jamal define when the trigger becomes enforceable.²⁸ Such risk allocation clauses which are developed together through termination for convenience, warranty and indemnity clauses, represent common drafting in contracts relevant to space assets.

The third-party liability issue presents a further Indian specific dimension, according to the liability convention, the Government of India as the "launching state" faces potentially unlimited liabilities irrespective of whether the launch was done by ISRO or any private entity.²⁹ The IN-SPACenotified guidelines for the Indian Space Policy 2023 takes care of it by including third-party liability insurance (of rupees 500 crore cap) as an essential prerequisite to authorisation, the government, the operator and the customer being covered under it with

²⁴Thomas Reuters, *Supra* note 17

²⁵*Id.*

²⁶Thomas Reuters, *Supra* note 17

²⁷ICA *supra* note 17

²⁸Gajanan Moreshwar *Supra* note 18; Osman Jamal *Supra* note 19

²⁹ Convention on International Liability for Damages Caused by Space Objects art. II, Mar. 29, 1972, 961 U.N.T.S. 187.

foreign agreements explicitly covering third party liability on their part.³⁰ It is a conscious policy initiative to make private companies independent operators with such contractual liabilities.³¹

Some real incidents illustrate why debris collision risk is difficult to indemnify. In the case of collision between Iridium 33 and Cosmos 2251 satellite in 2009, there was no indemnification claim raised by Iridium because it had already been warned about the potential danger and yet chose to “ride out” the situation. Thus, its negligence in this case could have been easily proved and thus recovery from the contract would be virtually impossible despite knowing about the debris.³² In addition to this, the case of Cosmos 954’s fragmentation over Canada back in 1978 was settled only by diplomatic negotiations and not by any previously made contract, with the Soviet Union paying only a portion of Canada’s damage costs.³³ These two examples show that an indemnity clause allows risk allocation between the contracting parties but cannot indemnify any unrelated third-party, which is why space powers increasingly pair such clauses with mandatory insurance and at the international level, proposals for industry risk pools and compensation funds.³⁴

Indemnity and insurance continue to operate as separate but complementary mechanisms. As seen from the perspective of financing, the UNIDROIT Cape Town Convention and its space protocol of 2012 are examples of how indemnity and security agreements between the financing company and the operator survives the failure of the venture, by providing for an international register of creditor rights in space assets so that indemnity and insurance remains enforceable even when the underlying space venture fails.³⁵ From the underwriting perspective, since no insurance company can handle a claim for total loss arising out of space

³⁰ Abishek Malhotra, Navigating Liability(s) Through the Risks in the Space Sector (May. 16. 2024) <https://www.sia-india.com/corner/navigating-liabilitys-through-the-risks-in-the-space-sector/> (last visited 14th September 2026)

³¹ Maulik Sharma & Seema Modi, An Analysis of the Current Legal Framework for Commercialisation of the Private Space Sector in India, 8 Int’l J.L. Mgmt & Human 2344-56, 2352-53 (2025)

³² Ranjana Kaul, Legal Dimensions of Commercialisation of Space, Vivekananda Int’l Found. Brief, 27 -28 (May 2023)

³³ *Id* at 29

³⁴ Ahmad Momeni Rad & Farzaneh Sadat Sajedi, Insurance of Space Activities in the Era of Satellite Constellations, 5, Legal Stud. Digital Age, 6-7, 9-11 (2026)

³⁵ Sandeep Bhat B, Contractual Aspects in Private Commercial Space Ventures, In Contracts, Agreements and Public Policy in India, 49-50 (Siram Bhated., NLSIU Book Series-1, 2025)

mission, insurance pools and reinsurance agreements come into play, to spread the catastrophic risk.³⁶

Real instruments confirms the above. The Space Act Agreements entered into between NASA and Blue Origin and NASA and Voyager Space/Nanoracks on commercial space stations involve milestone-based agreements that have cross-waivers of liability.³⁷ In addition, the General Clauses and Conditions from the European Space Agency Involve the use of arbitration clauses for the settlement of contractual disputes. This same practice is reflected in the space development agreements of SpaceX, Boeing, Airbus and Arianespace.³⁸ Private joint development agreements include the 2023 agreement between ARQUIMEA and Aerospacelab's 2023 agreement for joint development and mass production of low orbit satellite platform embed comparable risk and revenue sharing terms of the same kind.³⁹ World view's Terms and conditions on public space tourism limit the liability of the operator to amounts paid only and excludes specific performance and consequential damages, while also mandating that promotional flights passengers hold the operators harmless.⁴⁰ None of these are included in the indemnities under section 124 definition of the indemnity but they all have the same effect which shows how space contracts normally combine limitations of liability, waiver, indemnity and insurance clause because no mechanism alone can absorb all the losses.

Chapter IV – Comparative Analysis of Contractual Risk Allocation – India, The United States, Japan and Luxembourg

The Indian Scenario

The Section 124-125 of the Indian Contract Act, 1872 gives India a general law of indemnity, but such an agreement was designed without regard to the problem of space liability and can cover only private allocation of the loss between the parties.⁴¹ The Indian Space Policy 2023

³⁶*Id* at 52-53

³⁷NASA, NASA Adjusts Agreements to Benefit Commercial Station Development, (Jan.5, 2024)<https://www.nasa.gov/humans-in-space/commercial-space/leo-economy/nasa-adjusts-agreements-to-benefit-commercial-station-development/> (last visited 18th September 2026); NASA Space Act Agreement No. SAA-UA-23-38919

³⁸ I1 Seok Oh, Contractual Considerations for Space Asset Joint-Development, 2 J. Space Security 20, 26 (2025)

³⁹*Id.* at 23

⁴⁰ World View, Space Tourism Terms and Conditions §8, 8a<https://www.worldview.space/space-tourism-terms-and-conditions> (last visited 18th September 2026)

⁴¹Indian Contract Act, 1872, §§ 124 125 (India)

allows non-Government entities to conduct all commercial space activities and orders IN-SPACe, the single window regulator to establish rules on liability.⁴² IN-SPACe Norms, Guidelines and Procedures 2024, (NGP 2024) provide the industry-specific level, acknowledging unlimited exposure to third parties of the launching state, require the third party liability insurance limited by IN-SPACe in Launching Service Agreements, The Government to be an insured party and the transfer of such third-party liability to the launch operator till separation under these agreements.⁴³ There is a problematic interaction between these two levels, While section 124 to 125 provide the contract-based structure, the liability recovery provisions of NGP 2024 itself is unlimited, so that no private indemnity agreement can be prepared at present without knowing its upper limit.⁴⁴ Thus India can be said to have a basis for indemnity based on a contract structure, along with sector regulation, but the framework remains a work in progress.

The United States: Contractual and Governmental Risk Sharing

The Commercial Space Launch Act allows the FAA to license launches with a condition that the licensee is financially responsible for the launch, taking into account the “Maximum Probable Loss” and the amount of liability is limited by insurance reasonably available on the international market.⁴⁵ Beyond that limit, the federal government indemnifies the licensee for third-party claims beyond the insurance limit within another statutory cap, subject to Anti-Deficiency Act restrictions and periodic congressional renewal.⁴⁶ In addition, private ordering plays a role as well, NASA’s Space Act Agreements with the commercial space companies, such as Blue origin and Voyager Space/Nanoracks, rely on mutual waiver of liability, whereby each of the parties waives the right to file claims against the other for damages sustained to its people and property irrespective of the fault and allocating risks contractually between operator and customer independently of the statutory scheme.⁴⁷ The U.S therefore has a multi-layer approach to commercial space risk sharing, comprising operator’s

⁴²Dep’t of Space, Gov’t of India, Indian Space Policy 2023 § 4-5, 5(18), at 6-9, (2023)

⁴³Indian Nat’l Space Promotion & Authorization Ctr., Norms, guidelines and Procedure for Implementation of Indian Space Policy- 2023 at 58-60 (May 3, 2024) [hereinafter NGP 2024]; Bhavya Singh & Kostuv Keshav, Privatising Space, Socialising Liability? Re thinking India’s Liability Framework for Commercial Space Activities, 8 Indian J.L. & Legal Research. 6433-34 (2026) 6428 -6447

⁴⁴ NGP 2024 *supra* note 42 at 87; Singh & Keshav *Supra* note 42 at 6435-36

⁴⁵51 U.S.C. §50914(a) (2018 & Supp. 2026); Edwin Charles Kisel, Indemnification for Commercial Space Services Vendors, 53 Pub. Cont. L.J. (2024)

⁴⁶51 U.S.C. §50915(a) (2018 & Supp. 2026); 14 C.F.R. § 440.19 (2026)

⁴⁷NASA Adjusts *supra* note 36

insurance, limited governmental indemnity and negotiated mutual waivers, whereas in India the issue of contract, insurance and even governmental indemnity is far from having been sorted out of the same extent.

Japan- Statutory Liability and Private Operator Risk

Japan's present law of space activities, licenses private launch operators and provides for their third-party liability and insurance requirements by legislation, the most comprehensive treatment of the policy behind the statutory scheme is found in Sakamoto's pre-enactment study of the Japanese National Space Development Agency or "NASDA". NASDA Law's 1998 revision introduced precisely such a statutory scheme whereby, inter alia, the launching operator (originally NASDA) could not launch a rocket unless it had insurance sufficient in the judgement of the ministerial authorisation to enter into a "special agreement" where it assumed all liability towards its commercial consignor.⁴⁸ Since this is already done by way of statutory and insurance requirements, the private indemnity clause in Japan thus serves a narrower purpose than in India, it distributes an insured layer among the launch providers, satellite owner and consignor rather than open ended residual risks.⁴⁹ Japan therefore shows how sector-specific statutory liability may be able to supplement and not replace the role played by the contracts.

Luxembourg- Commercial Space and Emerging Risks

Luxembourg regulates private space commercial space activity, including space-resource exploitation through The Law of 15 December 2020 on Space Activities (authorisation, government supervision, a national registry of Space Objects) and the Law of 20 July 2017 on the Exploration and use of Space Resources, which grants operators ownership of extracted materials subject to mission-specific written approval.⁵⁰ Under the latter law, liability of the operator for the damages to the mission is strict under Article 16 and must be secured by insurance or personal means "appropriate to the risk" under Article 10.⁵¹ The statutory clarity

⁴⁸Saeko Sakatamo, Legal Framework for Japan to facilitate Private space Activities 9-10 (2006) 84

⁴⁹*Id* at 10.

⁵⁰ Loi du 15 December 2020 sur les activités spatiales [Law of Dec. 15 2020 on space activities (Lux); Loi du 20 juillet 2017 sur l'exploration et l'utilisation des ressources de l'espace [Law of July 20, 2017 on the Exploration and Use of Space resources] art. 1-2(1) (Lux); Lux. Space Agency, Legal Framework <https://space-agency.public.lu/en/support/industry-portal/legal-framework.html>

⁵¹Loi du Juillet 2017, *supra* not 49 art. 10, 16

concerning ownership, authorisation and the security arrangements is exactly the factor which makes Luxembourg an ideal location for new space endeavors, contractual indemnification simply fills any gaps created by the statute, allocating among the parties to the contract, costs and risks that the statute fails to cover.⁵²

Comparative Assessment

The approach of India to the risk allocation in contracts is fairly underdeveloped. The United States, Japan, Luxembourg have managed to include indemnity, insurance third-party liability and government into one statutory framework. However, India is confined to use the general law of the Indian Contract Act 1872 and uses nothing else but the Indian Space Policy, 2023 and the IN-SPACe's NGP 2024 initiative guideline form.⁵³ The American approach provides for a linkage between the insurance of the operators and a maximum probable loss, which is then backed up by the capped government indemnification as well as cross-waivers, whereas Japan concentrates all statutory liabilities on the licenced operator and thus the indemnity is left to cover only the already-insured layer. In Luxembourg, both liability and financial security are established by statute, which becomes incentives for the investments.⁵⁴ The gap is not that the Indian Contract law lacks tool of indemnity but section 124-125 already let any two parties allocate risks to third party and link it to insurance by private agreements but the issue is that India unlike the other mentioned jurisdictions has no sector specific default fixing this. The NGP 2024 requires insurance but not any limitation on the liability that would eventually be determined in an indemnity clause.⁵⁵ Thus, the lessons India should learn from other jurisdictions are in supplementing and not replacing existing contract law, like a statutory default in third-party liability allocation, a more tightly integrated connection between mandatory insurance and indemnity, a maximum cap on operator liability, standardised contracts for space agreements and shared risks between operators and government.⁵⁶ India need not adopt a system from anywhere but there is a method in each jurisdiction that may work on its own way.

⁵² *Id* art. 13-15

⁵³ ICA § 124 125; Indian Space Policy 2023 *supra* note 41; NGP 2024 *supra* note 42 at 58-60

⁵⁴ U.S.C *supra* note 44; Kisel, indemnification *supra* note 44; Sakatamo legal framework *supra* note 47

⁵⁵ NGP 2024 *supra* note 42 at 87; Singh & Keshav *supra* note 42 at 6435-38

⁵⁶ Singh and Keshav *supra* note 42 at 6437-38

Chapter V- Adequacy of the Indian Contract Act,1872 in Governing Space Commerce Contracts

The law of indemnity provided by the sections 124 and 125 of the Indian Contract Act of 1872, provides for a general principle of law of indemnity where the promisor is responsible for indemnifying the other against any losses and where the indemnity holder has the right to enforce such indemnification, costs and bona fide settlements that has worked well in normal commercial risks, but space commerce challenges the scope of this general law of indemnity.⁵⁷ The losses may be high-value and unpredictable and may exceed the balance sheet of any single party. Third-party damages may occur independently of any contract such as orbiting debris or failed launch over another state's territory and the contracts themselves cross borders applying the rules on liability of launching State under Outer Space Treaty and Liability Convention and Liability is frequently layered across many like satellite owner, manufacturers, launch provider insurer and the government.⁵⁸ No information is being provided by section 124-125 on how indemnity interacts with mandatory insurance or debris risks specifically, IN-SPACe's application of guidelines to third-party insurance and Launch Service Agreements covers part of the ground that needs to be filled by future national space legislation, even if a comprehensive national space legislation remains under discussion.

A more sharp query concerns whether indemnity can legally transfer liability that international law has imposed upon the State. A series of contractual indemnity obligations, from the government to the operators, from the operators to the launch service providers and from the launch service provider to the insurance company will transfer liability through this process but will not relieve India of its own treaty obligation to the foreign state because the private contract cannot bind on a third party.⁵⁹ Indemnity thus only operates as an internal recovery method.

This raises a further, more conventional contract law issue of the extent of the freedom of parties to allocate the burden. Section 23 of ICA voids agreements whose objects are unlawful or opposed to public policy and the courts in India have nullified the agreements

⁵⁷ICA § 125-125; Courtney, indemnities and ICA *supra* note 18 at 160-70

⁵⁸Outer Space Treaty art, VI, Jan. 27 1967, 18 U.S.T. 2389, 961 U.N.T.S. 187; Convention on International Liability for Damage Caused by Space Objects art II-III ;Bhat B Contractual Aspects In space ventures *supra* note 34 at 52-53

⁵⁹Convention on International Liability for Damage Caused by Space Objects art I(c); Singh & Keshav *supra* note 42 at 6432-33

where there were oppressive terms which were made due to unequal bargaining power.⁶⁰ Indemnity clauses which provides protection to a dominant launching agency in case of their own negligence against financially constrained startup in India would attract such an objection. Moreover indemnification of gross negligence and wilful misconduct would raise concerns regarding its legality under public policy and in case indemnity agreement tries to cover an injury caused to an unrelated third party, that third party receives no protection since indemnity is enforceable only between the parties.⁶¹ This why India's general law of indemnity is sufficient for risk sharing but it is this lacuna that has to be bridged.

Conclusion

The main objective of this paper was to determine if the indemnity doctrines provided by Section 124-125 of the Indian Contract Act of 1872 were sufficient for dealing with contractual liabilities in the field of space business, starting from the ideas in its general contract sense, followed by its application in space contracts and comparing the Indian situation with that of U.S, Japan and Luxembourg

This research paper indicates that indemnification under sections 124 and 125 is a proactive risk allocation approach and not simply an approach for compensation. Gajnan Moreshwar and Osman Jamal state that indemnification gives the right to a claimant to seek discharge or guarantee in case the obligation to indemnity arises before paying first out of pocket, which is a feature indispensable in an industry where losses can run into millions of dollars. Thus, indemnification is critical in the field of space agreements due to the possibility to allocate risks in advance who bears the risk of launch failure, satellite loss or third-party damage rather than slow litigation after the fact.

The major danger faced by this industry is the value and unpredictability of the losses involved, third-party liability that is independent of contractual liability like orbital debris, international dealings and layers of contractual parties involves reveals the weaknesses of indemnity clauses. Indemnity works well in allocating risk between the contractual parties but does not provide compensation to any third party or foreign government independent of the contract. Which is why it is paired with insurance, limitation of liability clauses and cross

⁶⁰ ICA § 23; Mayank Tinker, "Public Policy and Contract Law in India" an Examination of the Evolving Nature and Legal Implications, 8 Int'l J. Sci. Dev. & Rsch.1, 3(2023)

⁶¹ Tinker supra note 59 at 1, 3; Rohan Gawhankersupranote22

waivers. The comparative study reveals that it is not the lack of indemnity as a means of legal regulation in India that creates the gap but the lack of a particular sector specific default that establishes the upper limit on indemnity. In the US, operator insurance, government indemnity and the cross-waivers have all been integrated into one single statute. In Japan the liability is statutory and vested exclusively with the licensed operator, limiting indemnity to insurance. In Luxembourg liability and financial security are fixed by statute which provides a clarity needed for attracting investment. While in India the guidelines for IN-SPACe require operator insurance but no limit on the operator's liability making the ceiling uncertain. The ICA thus doctrinally sufficient for allocating risks between parties but not for the specific needs of space commerce activities.

On this basis, the recommendations drawn from this paper are:

- IN-SPACe must limit the operators liability together with the insurance provision, in accordance with the “maximum probable loss” principle from the United States, Inorder to write indemnity clause based on a fixed limit.
- Third party liability must be assigned in Launch Services Agreement through legislation in India instead of depending on guidelines- based expectation.
- IN-SPACe needs to establish standard form of indemnification and insurance clauses in the context of space commerce agreements eliminating the imbalance of power when it comes to negotiation between startups and large launch operators that was noted as public policy
- Any future space legislations must clearly state that indemnity must not absolve India of its international responsibility as a launching state and that indemnification is an internal mechanism only.

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