

# Indic Legal Law Journal

Volume No. 1

Issue No. 1

April - May 2022

Pages: 1 - 8

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## **PRIVITY OF CONTRACT AND PRIVITY OF CONSIDERATION**

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### **1. INTRODUCTION**

The word 'Privity' has been originated from the Latin word '*privus*', which means a legal relationship that exists between two persons having the same interest in the property binding by law.

The doctrine of Privity of Contract has its root from the English Common Law which means that the contract is binding only on the parties and no third party can enforce the contract or be sued under it. In this article, the author has discussed in detail about the doctrine of 'Privity of Contract' and 'Privity of Consideration'. It's essential elements and exceptions. Also, a comparative study between the English Law and Indian Law has been made.

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## 2. PRIVITY OF CONTRACT

The concept of consideration in Indian Contract Act, 1872, specifies that ‘Consideration’ for an agreement to proceed from a third-party. However, a third party to a consideration is unlike a stranger to a contract. The law doesn't allow a stranger to file a suit on the contract. This right is out there only to an individual who may be a party to the contract and is named Doctrine of Privity of Contract.

Privity of Contract may be a concept that states contracts shouldn't give rights and obligation to parties aside from the persons who are parties to the contract. In other words, those whose are parties to the contract can only sue and may be sued. A person aside from the parties to the contract are “Stranger to the Contract”.

The Rule of “Privity of Contract”, which suggests that a stranger to a contract cannot sue, has taken firm roots within the English Common law. The choice of the House of Lords in *Beswick v. Beswick*<sup>1</sup> rested on this approach. Privity of contract is the rule that specifies only the parties directly involved during a contract can enforce the terms of the contract. the agreement explicitly shields the parties from more bizarre’ s impedance.

The standard is a custom-based law rule that basically expresses that someone who isn't involved with the agreement can't have the advantage of it nor would they be able to be held at risk under the agreement. In spite of the fact that the outsider could pick up something helpful under the agreement, they actually can't sue on the off chance that they don't get the guaranteed benefits.

The idea of Privity of agreement appear when outsiders to the agreement visited the court to authorize the agreements, notwithstanding they weren't the genuine parties to the agreement. This was generally because of issues related with subordinate agreement terms that tended to acknowledgment and thought. The rule of Privity of agreement includes its underlying foundations inside the UK, where it had been first gotten decided 1861 in *Tweddle v. Atkinson*<sup>2</sup>.

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<sup>1</sup> (1966) 3 W.L.R. 396.

<sup>2</sup> (1861) 1 B&S 393.

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In *Tweddle v. Atkinson*<sup>2</sup>, the Court of Queen's Bench has laid the subsequent principles:

The plaintiff's marriage was proposed with the daughter of one guy and the intended marriage promised to pay some consideration to plaintiff's son and therefore the plaintiff's father entered into an agreement by which it had been agreed that every month he and the defendant would pay the (plaintiff's son) boy a sum of cash. Guy did not do so and therefore the plaintiff's son sued his executors.

Though the only object of the contract was to secure a benefit to the plaintiff, he wasn't allowed to sue because the contract was made together with his father and not with him.

The case laid the inspiration of what subsequently came to be referred to as the doctrine of 'privity of contract' which suggests that a contract may be a contract between the parties only and no person can sue upon it albeit it's avowedly made for his benefit. This was attested by the House of Lords in *Dunlop pneumatic tyre Co v. Selfridge & Co*<sup>3</sup>.

The offended parties (Dunlop and Co) offered certain merchandise to one Dew and Co and tied down a contract from them to not sell the items underneath the inquiring as to whether they offered the items to an alternate broker, they may get from him an indistinguishable endeavour to deal with the value list. Dew and Co offered the tires to the respondents (Selfridge and Co) who consented to not offer the tires to any private client at yet the rundown costs. The offended parties recorded an objection for penetrate of this agreement.

It was held that the offended parties were thought to be spies, no consideration moved from them to the litigants, and in this way, no agreement is made enforceable by the offended parties.

Expressed, as it were, the 2 crucial suggestions of English law are:

(1) Consideration must move from the promisee and in this manner the promisee as it were. The teaching obviously says if the thought is moved by any outsider other than the promisee then promisee gets more odd to the agreement and subsequently, gets more bizarre to the consideration.

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<sup>3</sup> (1915) U.K.H.L. 1.

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(2) An agreement can't be implemented by a person who isn't a party thereto but it's made for his advantage. He's an alien to the agreement and may guarantee no rights thereunder.

The teaching of Privity of agreement is relevant to England just as in India.

At the point when a celebration to an agreement needs to uphold those terms, they will normally do as such as long as they need authoritative Privity with the contrary party (for example the contracting party). This regulation of statute applies to both composed and oral agreements.

### 3. EXCEPTIONS

In a common parlance, under the regulation of privity of agreement just the parties to an agreement has been entitled to sue in case of breach or non-performance of a contract, but now with the procedural innovations the courts have allowed certain exceptions during which an individual though not a party to the contract isn't prevented from enforcing a contract which has been made for his benefit. Hence, some exceptions are there through which a party is additionally capable of enforcing the contract.

#### 1. Agency

Agency may be a relationship between two persons i.e., one is that the actual or principal party (called principle) and therefore the other is that the contracting party (called agent who acts on behalf of the principle). Here the contracting party acts within the scope of his authority and within the name of the principle party. The principal party here, though the third party is capable to enforce the contract concluded between his agent and therefore the other party.

#### 2. Trust of Contractual Rights or beneficiary under a contract

If a Contract is concluded between the trustee of a trust and another party, then the beneficiary of the trust can sue by enforcing his right under the trust, albeit he's a stranger to the contract.

This has been clearly illustrated within the case of *Rana Uma Nath Baksh Singh v. Jang Bahadur*<sup>4</sup>, where there was an individual named Rana who was given possession of the whole estate created by his father and was required to pay specific amount of cash and a village to be

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<sup>4</sup> (1939) 41 B.O.M.L.R. 659.

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paid to Jang Bahadur (his father's illegitimate child). It had been held that a trust was created for the advantage of Jang bahadur and hence he's entitled to implement the contract.

In the case of Khwaja Muhammed Khan v. Hussaini Begum<sup>5</sup>, there was an arrangement between the respondent and offended party's dad and in this way the dad of the offended party said that in the event that she weds his child, she will get Rs. 500 month to month as kharcha-I-pandan and a couple of steady property was charged for this cost. Respondent didn't pay her the money subsequently she brought a suit against him. It had been held that in spite of the fact that she wasn't a party to the agreement yet there being a chosen charge on the property in support of herself, she will sue as a recipient.

In the case of Dunlop pneumatic tire Co. Ltd. v. Selfridge & Co. Ltd<sup>3</sup>., it had been held by Lord Haldane that though stranger to contract cannot sue but where there's "a right conferred by way of property, as for instance, under a trust", third party may sue. the idea of an action in such cases isn't the enforcing of contract but the enforcement of right that has been created within the sort of trust. This enforcement of right and obligation will depend on the facts and circumstances of the case.

## 4. ESSENTIALS

The following are the essentials of Privity of Contract:

1. The Contract must be entered into between two parties- the pre requisite condition for this doctrine is there has been a contract between two or more parties.
2. Parties must be competent and there should be a legitimate Consideration- the Parties to a Contract must be Competent and there must be an existence of a lawful consideration.
3. There must be a breach of contract by one party- For the appliance of the Doctrine of Privity of Contract, it's the essential requirement.

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<sup>5</sup> (1910) 12 B.O.M.L.R. 638.

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4. Parties to a Contract can sue only-The parties to an agreement are just qualified to sue for the violation of an agreement and no any outsider or an outsider can sue for the non-execution of agreement.

## PRIVITY OF CONSIDERATION

Presence of Consideration is an important element for a legitimate contract, an agreement inconsiderately is void.

Section 2(d) of the ICA<sup>6</sup> contains the definition of Consideration.

"When at the desire of the promisor, the promisee or the other individual has done or avoided doing, or does or swears off doing, or vows to attempt to or go without accomplishing something, such act or restraint is named a thought for the promisee."

Consideration means something reciprocally for the promise. It's going to be either some benefit conferred on one party or some detriment suffered by the opposite. within the words of Lush J. in *Currie v. Misa*<sup>7</sup> " Regarding Law, an important thought may comprise of in some right, intrigue, benefit or advantage accumulating to atleast to a single party, or some restraint, disservice, misfortune or risk given, denied or embraced by the inverse."

Now and then, it is insignificant that the consideration moves from the promisee or the other individual, as some consideration is just needed to make a promise enforceable. This is frequently at times called as 'Doctrine of Constructive Consideration'. Under English law, notwithstanding, there's a privity of consideration, for example consideration must move from the promisee and promisor only, an outsider or individual can't furnish consideration.

It is clear in Section 2(d) of the Indian Contract Act, that it's redundant that consideration ought to be by the promisee. A promise is enforceable if there's some consideration for it and it's very unimportant whether it moves from the promisee or the other individual. When at the desire of the promisor, the promisee or the other individual has done or swore off doing, or does or swears off doing, or vows to attempt to or avoid accomplishing something, such act or restraint is named as consideration for the promisee."

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<sup>6</sup> Indian Contract Act, 1872.

<sup>7</sup> (1910) 12 B.O.M.L.R. 638.

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In *Chinnaya v. Ramaya*<sup>8</sup> 1882, the Madras Court concluded that the court could have easily allowed the plaintiff to recover annuity, as consideration given by "any other person" is equally effective.

The rule in England that the stranger to a contract cannot sue has to be differentiated from the rule that in India where an individual who is stranger to consideration can sue. The rule is that an individual might not have himself given any consideration but he can enforce the contract if he's a celebration to the contract, because consistent with Indian Contract Act, consideration could also be given either by the promisee or any third party. That, however, doesn't affect the rule of privity of contract. within the case of *Chinnaya v. Ramayya*<sup>8</sup>, a spouse allowed her bequest to her little girl (Defendant) with a course that the girl should pay a fixed Rs.653 of money yearly to A's sibling (offended party). On a comparable day, the respondents made a promise with the offended party that she would pay the money as coordinated by A. The respondent didn't pay the specified whole. In an action against her by the offended party she battled that since the offended party themselves had not repaid consideration, that they had no privilege of filing a suit. The Madras high court held that during this agreement the consideration had been outfitted by the respondent's mom and it had been sufficient consideration to uphold the promise between the offended party and consequently the litigant. Inside the said case, it is regularly observed that A enters during an agreement with B however A himself has not given any consideration to B, yet the consideration hosts been given by third party for example C to B. Albeit A might be an alien to consideration, he can at present implement the agreement against B. One must recall this is regularly just evident under Indian Law and thus the circumstance is diverse under English Law where the thought can just move from the promisee and no outsider can keep up any action regardless.

## 5. ENGLISH LAW

Under English law, there's a 'privity of consideration', for example consideration must move from the promisee as it were. Under the Indian law, consideration might be expected promisee or the other individual, accordingly there's no privity of consideration.

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<sup>8</sup> (1882) I.L.R. 4 Mad 137.

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In *Tweddle v. Atkinson*<sup>2</sup>, 1861: In this case, A married a girl, B. Then, the father of A and B made promise to provide money to B and he shall be able to sue if the same was not given to him. After the death of fathers, A sued the executor for the sum of money. The court stated that he cannot sue because he is a stranger to consideration.

Similarly. In *Dunlop Pneumatic Tire Co. Ltd. v. Selfridge & Co. Ltd*<sup>3</sup>, 1915: The appellant (Dunlop Co.), manufacturer of tyres, sold some tyres to Dew & Co. on an agreement that they will not sell them below the decided rate. Dew & Co. sold some tyres to Selfridge & Co. (respondent) on a condition that for every sell that happens below list price, the respondent shall pay Dew & Co. some amount. The respondent sold some tyres below list price and defendant sued them for damages.

House of Lords held that since there was no consideration between appellant and respondent and neither was Dew & Co. acting as an agent of appellant, there is no contract to enforce.

## 6. CONCLUSION

Privity of Contract is a lawful guideline which expresses that solitary parties to an agreement can sue for violation of an agreement, while any outsider to an agreement doesn't reserve this option to sue for the break of agreement.

Nonetheless, this principle isn't settled in India and is dependent upon a ton of conversations. There have been cases in which the rule of privity is applied while in the same nature and circumstances there are cases where the rule of privity is not applied. The concept of privity of contract in is similar in both English and Indian context except for that in India a person who is a stranger to a consideration can sue whereas in England he cannot.

Also, Consideration to a contract is an essential element, without which, generally, there cannot be a valid contract enforceable in the court of law. Unlike the rule of Privity of Contract, the rule of Privity of Consideration is well established with the help of statutory principles and developed Case laws. This article briefly discusses both the concepts with proper established judicial precedents and legislative enactments.