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Privity of Contract and Consideration

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According to the common law principle of Privity, a contract cannot include a stranger. It is one of contract law's highly contested theories. When a party to a contract fails to fulfill their obligations, it is highly usual for a stranger or third party to be forced to meet those obligations. A stranger may also be held accountable for an obligation or duty owed to one of the contracting parties. Only the contractual or interested party is liable for obligations and duties under the principles of Privity, founded on the interest theory, which limits their application. However, a specific exception to the rule has emerged as the doctrine has developed. The Researcher in this paper will discuss the historical background of the Privity of contract, the exceptions to the doctrine of Privity, and a comparative study of this doctrine of England with India.

Keywords: *contract, third-party, privity, obligation, contracting parties, comparative study.*

INTRODUCTION

When a promise is backed with consideration, it constitutes an agreement under English law. If there is no consideration supporting an agreement, it will not be upheld in court. As a result, consideration plays a significant role in creating contracts. However, consideration is generally a particular aspect of the law, not just English law. Promises made without receiving anything in return are not always enforceable and binding unless made in a specific format. "Consideration" refers to something with some legal significance away from the plaintiff.

Without payment, the exchange only constitutes a gift. Its foundation is the concept of reciprocity.[1]

Consideration under Indian Contract Act, 1872 is defined as– "When, at the desire of the promisor, the promise or any other person has done or abstained from doing or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called consideration of a promise."[2]

The doctrine of Privity of a contract is a common law principle that holds that only those who have entered into a contract may sue one another to enforce their rights and obligations and that no third party may impose obligations on anyone who is not a party to the contract, even if the contract has been entered into for that person's benefit. The "interest hypothesis," on which the rule of Privity is primarily based, holds that the only party with a legal right to enforce the contract is the one with interest in it.[3]

The essentials of Privity of the contract include –

1. The most crucial need is that there has been a contract between two or more parties. A contract has been entered into between two parties.
2. Competent parties and a valid consideration are required: - The application of this theory is contingent upon the parties' competence and the presence of consideration.
3. One of the parties has breached the terms of the agreement: This is a crucial prerequisite for the law of Privity of the contract to be applied.
4. Now that a contract has been broken, only the parties to the deal have the legal right to sue one another for breach of contract.

BACKGROUND

In the historical case of ***Tweddle v Atkinson***,[4]In 1861, the doctrine of Privity of the contract was underlined. It was asserted that it had been in use since the beginning of the 17th century. Early in the 17th century, courts adopted interest theory and recognised the idea that people

[1] Arushi Chopra, 'Consideration and Privity to contract' (*Ipleaders*, 30 January 2022) <https://blog.ipleaders.in/contract/> accessed 20 August 2022
[2] India Contract Act 1872, s 2(d)
[3] Avtar Singh, *Contract & Specific Relief* (7th edition, Eastern Book Company 2019) 31
[4] *Tweddle v Atkinson* [1861] 121 ER 762

with interests should have the freedom to act. It was initially mentioned in the ***Levett v Hawes***[5] case from 1599, which came before Tweddle v Atkinson. The case was founded on the fact that the son was supposed to get marriage money. When the father's commitment to give his son money falls through, he takes legal action. The court holds that the son must have brought the lawsuit, supporting the doctrine's fundamental tenet that only interested parties may bring or bring a lawsuit.

Another case is ***Hadves v Levit***[6] In 1632, the court dismissed the father of the groom's lawsuit, alleging that the bride's father had broken a promise by refusing to pay money because the son should have brought the case since he was the party interested. In another instance of ***Dutton v Poole,***[7] a father's lawsuit against his son was dismissed on the grounds that his sister should bring the case instead of him because she is the party that has an interest.

PRIVITY OF CONSIDERATION

It makes little difference whether the promise moves from the promisee or any other person because a promise is enforceable provided there is some consideration for it. The doctrine of constructive consideration is another name for this. However, there is a Privity of contemplation in English law, i.e. Only the promisee and the promisor may receive consideration; an outsider or third party Offer your consideration by citing the case of India, the situation there can be ***Venkata Ramayya Garu v Venkata Chinnaya Rau***[8]. In that case, an older woman named A gave her daughter (the defendant) her estate with the instruction that the daughter should provide her brothers with an annuity of Rs. 653 per month (the plaintiffs). The defendants and the plaintiff agreed on the same day that she would pay the allowance as instructed by A. The defendant did not pay the agreed-upon amount. In a lawsuit brought by the plaintiffs against her, she argued that because they had provided no consideration, they had the standing to sue.[9]

[5] *Levett v Hawes* Cro. Eliz. 654
[6] *Hadves v Levit* (1632) Het. 176
[7] *Dutton v Poole* [1678] 83 ER 523
[8] *Venkata Ramayya Garu v Venkata Chinnaya Rau* ILR (1882) 4 Mad 137
[9] Avtar Singh (n 3)

The rule that states that a person cannot sue if they are a stranger to the contract must be contrasted with the law mentioned above that states that someone who is a stranger to the consideration may sue in India. It has been observed above that a person may not have himself given any consideration. Still, he can enforce the contract if they are a party to the deal because, according to Indian law, consideration may be provided by the promise or the third party. That has no bearing on the law of contractual Privity. According to Indian law, a person may not be required to provide any consideration, but if he is a party to the contract, he may still enforce it. In India, the principle of Privity of contract (stranger to a contract cannot sue) must be separated from the principle of a stranger to consideration (stranger to suing). The doctrine of Privity of consideration is not applicable in India, while the doctrine of Privity of contract is applicable in both India and England. This is because a "stranger to consideration" can sue in India, but a contract cannot.[10]

PRIVITY OF CONTRACT

English Law –

It was determined in ***Tweddle v Atkinson***[11] that only parties to a contract can sue one another by the House of Lords and subsequently came to know as the Doctrine of Privity rule – "*A contract is a contract between the parties only and no 3rd person (stranger) can sue upon it even if it is avowedly made for his benefit*".In this case, A is the plaintiff, and B is the bride. After this marriage, A's and B's father signed a written agreement stating that each would pay A a specific sum of money and that A would have the right to sue for such sums. After the deaths of the two fathers, A filed a lawsuit against the executors of B's father to recoup the promised sum. It was decided that A could not file a similar lawsuit. In this instance, the plaintiff was unfamiliar with the contract and the consideration; therefore, he could not enforce his claim. The House of Lords reiterated the Privity of contract principle in ***Dunlop Pneumatic Tyre Co. Ltd. v Selfridge & Co. Ltd***.[12] In this case, the plaintiff sold products to Dew & Co. and obtained a commitment not to sell goods for less than the list price. The defendants were given the items

[10] Dr K Hari Prasad, 'Doctrine of Privity of contract: A comparative study of India and England' (2019) 6 (3) JETIR
[11] *Tweddle v Atkinson* [1861] 123 ER 762
[12] *Dunlop Pneumatic Tyre Co. Ltd v Selfridge & Co. Ltd.* [1915] AC 847

by Dew & Co. in exchange for their promise not to sell them below the list price. Additionally, they agreed that if they sold goods to another trader, they would have the same commitment to maintaining the price list from him. The plaintiffs filed a lawsuit against them for contract breach after they failed to comply. It was decided that the plaintiffs could not enforce the contract because, even if they were assumed to be concealed principals, no consideration had been transferred from them to the defendants.

Indian Law –

Both India and England are subject to the rule that "privity of contract" is required and that a third party to the contract cannot file a lawsuit. Even if the definition of consideration is broader under the Indian Contract Act than in English law, only a portion of the contract may be enforced in Indian law due to the common principle of the Privity of contract.[13] A had mortgaged some real estate to X in the case of ***Jamna Das v Ram Avtar***.[14] Then A sold this home to B, who had made a deal with A for B to pay off the X mortgage. To recoup, X filed a claim against B. It was decided that because X and B did not enter into a contract, X could not execute the contract against the mortgage. Therefore the buyer was not liable for the mortgage debt directly. In the case of ***Iswaram Pillai v Sonivaveru***,[15] A mortgaged his land to B in exchange for B's pledge to pay off A's obligation to C. B was declared a stranger to the contract when C sued B. The Highland Bank was obligated to the State Bank of Travancore by an overdraft in the case of ***M.C. Chacko v State Bank of Travancore***.[16] The overdraft was guaranteed by M, the manager of the Highland Bank, and his father K. K gave the family member his properties as a gift. The gift deed said that M should pay any liabilities resulting from the guarantee from the bank or the portion of the property given to him. Under this deed clause, The State Bank attempted to hold M accountable. However, the Supreme Court ruled that because the State Bank was not a party to the deed, it could not enforce its covenants.

[13] Avtar Singh (n 3)
[14] *Jamna Das v Ram Avtar* (1912) ILR 34 AII 63
[15] *Iswaram Pillai v Sonivaveru* ILR (1913) 38 Mad 733
[16] *M.C Chacko v State Bank of Travancore* AIR 1970 SC 504

THE EXCEPTIONS TO THE PRIVITY RULE

The beneficiary under a contract - If any party fails to fulfill his obligations under a contract between two parties with the benefit of a third person who is not a party, the third party may assert his rights against the other parties. For instance, a beneficial right to specific property may be created through a contract between Alfred and John in favour of Rose, and in that case, Rose can assert his claim based on this right. The ***Muhammad Khan v Husaini Begum***[17] case brought to light the idea of a beneficiary under a contract.

Family Settlement - If a partition or family arrangement makes allowances for the maintenance or wedding costs of female members, even though they are not participants in the agreement, they may nevertheless bring a lawsuit under the terms of the arrangement.

Acknowledgement or Estoppel - When a party is compelled to pay a third party under the terms of a contract and accepts that payment to the third party, a legal obligation is created towards that third party. It's possible to convey or imply acknowledgement. This exclusion applies to situations where the promisor appoints himself as the third party's agent through his actions, acknowledgement, or other means. ***Devaraja Urs v Ram Krishnaiah***[18] is a case in which in an officially recorded sale deed, A sold his house to B. He left him with a portion of the proceeds, intending for him to pay C, his creditor, this sum. After that, B made partial payments to C, notifying him that they were from the sale price still owed to him and that the remaining amount would be transferred immediately. On the other hand, B did not pay the balance and sued him for it.

Provision for maintenance or marriage - To protect the interests of family members who are unlikely to receive a specified portion and to give the testator's will the most significant possible impact, these types of provisions are recognised as an exception to the law of Privity of contract. For instance, suppose A distributes his property to his three sons equally, with the provision that each of them will leave Rs. 10,000 to C, A's daughter, following his death. Now, if any of them disobeys this, C may file charges.

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[17] *Muhammad Khan v Husaini Begum* (1907) ILR 29 All 222
[18] *Devaraja Urs v Ram Krishnaiah* AIR 1952 Mys 109

CONCLUSION

According to the legal principle known as Privity of contract, only the parties to a contract have the right to file a lawsuit for breach of that contract; a third person is not entitled to such a right. The principle above, however, is not widely accepted in India and is the topic of numerous scholarly and professional disagreements. There have been Indian examples that have been covered in this article where the rule of Privity of the contract was not applied in a particular situation but in other cases of a similar character and setting. This is because there is a fragile line of difference between the Privity of consideration and contract. But as time passed, the law evolved as well, and now, in extraordinary cases, even a stranger is allowed to file a lawsuit to protect his interests.