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## RULE OF PRIVACY OF CONTRACTS: STUDY IN INDIAN AND ENGLISH CONTEXT

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### ABSTRACT

A stranger cannot be a party to a contract, according to the common law doctrine of the principle of privity. It is one of the contested doctrines in contract law. Even though the doctrine was well-settled by judicial pronouncement, academics and the judiciary continue to disagree. It is very common for a third party or a stranger to be held accountable for the failure of contracting parties to fulfil their duties and obligations. Only the contracting or interested party is liable for obligations and duties, according to the Privity doctrines based on the interest theory. Nonetheless, as a result of the evolution of the doctrine, an exception has emerged whereby the stranger can also be held liable for obligations or duties owed to one of the contracting parties. In this review paper, the researcher will examine the meaning and historical development of the doctrine of Privity; the applicability of Contract theory to the Doctrine of Privity; the exception to the doctrine of Privity; landmark judicial pronouncements; and conduct a comparative analysis of the situation in India and England.

**KEYWORDS:** *Contract, Exception, English law, Obligation, Privity, and Stranger.*

### INTRODUCTION

It is a requirement of a valid contract that the parties have the intention to enter into the contract. As a result, only the contracting parties are permitted to sue or be sued for breach of contract or non-performance of the contract. This principle, known as Privity of Contract in English law, is regarded as a common law principle. It expressly allows the contract's sole party to sue or be sued, and expressly prohibits strangers from enforcing their rights and liabilities. It also makes it illegal to sue a third party who benefits from the contract. Privity of Contract is based on the interest theory, which states that only parties to a contract are entitled to protect their rights and liabilities against each other. It's easier to understand with an example:

suppose A promises to deliver goods to B in exchange for Rs. 500. If any of them fails to meet

their obligations, promises. Then they both have the legal right to sue others for non-performance or breach of contract. No one else is allowed to sue or be sued under the contract.

#### *Brief History of Doctrine of Privity of Contract*

The doctrine of contract privity was highlighted in the landmark case of *Tweddle v. Atkinson*<sup>2859</sup> in 1861.<sup>2</sup> It was claimed, however, that it had been in use since the early 17th century. Courts in the early seventeenth century used interest theory and recognized the principle that those with interests have the right to act.

It was first recorded in the case of *Levett vs. Hawes*<sup>2</sup> in 1599, before *Tweddle v. Atkinson*.<sup>3</sup> The case was based on the fact that the son was to receive the marriage money. The action is brought because the promise to pay money to the son's father was broken. The court

<sup>2859</sup> (1861) 121 ER 762<sup>2</sup> Cro. Eliz. 654

believes that the suit must have been brought by the son, thus supporting the doctrine's basic premise that only interested parties can be sued or sued.

Another case is *Hadves vs. Levit*<sup>2860</sup> of 1632, in which the court dismissed a suit brought by the groom's father for non-performance of a promise made by the bride's father (i.e. denial of payment of money) on the grounds that the suit had to be brought by the son because he was the interested party. In *Dutton v. Poole*<sup>5</sup>, a suit brought by a father against his son was dismissed on the grounds that the suit must be brought by his sister because he is the interested party.

#### **RESEARCH OBJECTIVE**

This paper will majorly be focusing on the three points provided below:

- To study the doctrine of privity of contract in Indian and English contexts.
- Understanding the exceptions of privity of contract.
- To analyze the say of law reform commission report on privity of contract and third party rights.

#### **RESEARCH QUESTION**

The research questions which will be answered in the latter part are:

- a. how is the doctrine of privity of contract applied differently in Indian and English law?
- b. why do we need an amendment in section 37 of the Indian contract act?

#### **RESEARCH ANALYSIS**

##### **PRIVITY OF CONTRACT: ENGLISH LAW**

According to the legal principle known as privity of contract, the parties to a deal are the only people who have the legal right to abide by its terms. This remains accurate in the vast majority of situations. Compensation for contract breaches that the beneficiaries were not aware of or involved in has been allowed

although the rule of privity has been eroded in recent years, and third parties can now sue for breach of contract, only the parties to a contract can sue for breach of contract. One recent law that falls under the category of "new rules" is the Contract (Rights of Third Parties) Act 1999, which was passed in England not too long ago.

The precedent for the rule of privity of contract was laid down in the case of *Tweddle v. Atkinson*, which is where it was first recognised and established.

*Tweddle's* father and his father-in-law, *Atkinson*, signed a contract to aid *Tweddle's* father assist *Tweddle* and his wife financially. This contract was signed by both men. The employment held by *Tweddle's* father was maintained. however *Atkinson* did not fulfil his end of the bargain because he passed away before making any payments. *Tweddle* initiated legal action against the individuals responsible for administering *Atkinson's* estate. His claim was thrown out of court because he was not a party to the contract in question. despite the fact that it would be to his advantage in the long run. The judge found that it was impossible to argue that there was a violation of the law because there was no basis for such an assertion. There is an unspoken agreement between *Tweddle* and *Atkinson*, and it is especially clear given the lack of care coming from both of them. Moving on to *Atkinson* from *Tweddle* In this particular case, the plaintiff lacked experience in both the realm of business contracts and legal matters, making him an inexperienced litigant. As a result of his lack of familiarity with the idea of consideration, he was unable to successfully pursue his claim.

The notion of privity of contract was validated once again by the House of Lords in the case of *Dunlop Tyre Co. v. Selfridge*. The defendants, the plaintiffs, sold tyres to wholesale wholesalers affiliated with *Dew & Co.* on terms that were acceptable to *Dew & Co.* Retailers would commit to not selling items at prices lower than the list price set by the plaintiff. The defendants purchased some of the tyres from *Dew*, and

<sup>2860</sup> (1632) Het. 176

then they resold those tyres at a price that was lower than the manufacturer's suggested retail price. The plaintiff filed a motion for a preliminary injunction as well as a claim for damages. Even though there was a plan in place, the action did not work because there was not enough The contract that was made between the defendants and Dew did not include the plaintiffs as a party.

### **PRIVITY OF CONTRACT: INDIAN LAW**

India applies contract privity like other countries. In spite of the fact that the Indian Contract Act employs a more open-ended definition of consideration than does English law, the common law principle of privity of contract has been extensively utilised in Indian legal practise., and only a party to the contract can enforce it. This is despite the fact that the Indian Contract Act was modelled after English law. 4 The decision that was made by the Privy Council in the case of Jamna Das v. Ram Avtar constitutes the basis of the legal authority needed to put the rule into effect in India. 5 Within the context of that scenario, A had provided X with a mortgage on some property. In order to recover the money that was owed from the mortgage, X initiated legal action against B. The Privy Council ruled that X could not sue B for the money because there was no contract. We decided. Circus owner submitted ad order to Advertising Bureau v. C. T. Devaraj. Unfortunately, the plaintiff-advertiser was unable to come to an agreement with the circus's backer. The advertisement was left out of the contract that was made between the financier and the owner of the circus. The action that the advertiser brought against the financier was thrown out of court because there was no privity of contract between the advertiser and the financier.

The parties to a contract, which is almost always a contract for the sale of goods or services, are the only ones who are privy to the information that is protected by the confidentiality provisions of a contract. The concept of horizontal privity describes the

situation that arises when the benefits of a contract are to be shared with a third party. Vertical privity refers to a situation in which one of the parties to a contract has a separate contract with a third individual or business. This situation involves a contract between two parties. If a third party is given an advantage as a result of a contract, it does not have the legal right to sue the parties to the contract for anything other than the benefit it was given. The product is sold to a store by a distributor after being purchased from the manufacturer by the distributor. After that, a consumer ultimately buys the item from the vendor. As an illustration of how there is no privity of contract between the consumer and the manufacturer, consider the following case.

In *Donoghue v. Stevenson*<sup>7</sup>, Ms. D.'s friend bought her a defective bottle of ginger beer. This case shows parties can pursue additional remedies. Due to her friend's transaction with the store owner, there was no privity of contract. However, the manufacturer owed their customers a duty of care, and she was awarded damages in tort. It's a close, mutual, or consecutive relationship to the same property right or promise power. Privity can also mean guaranteeing a promise.

### **EXCEPTIONS TO THE RULE OF PRIVACY OF CONTRACT**

1) Beneficiary Under a Contract or Trust of Contractual Rights In the case of *Dunlop Pneumatic Tyre Co. v. Selfridge & Co.*, Lord Haldane acknowledged the existence of an exception to the rule of privity of contract. Case Concerning *Selfridge & Co. vs. Dunlop Pneumatic Tyre* In spite of the fact that the court stated in this particular case that only a contract party is allowed to sue on it and that no such right is conferred on a third party, the court did acknowledge that such a right can be transferred by property, such as under a trust. A lawsuit can only be brought by the parties to a contract; a third party has no legal standing to do so. In this instance, the terms of the contract are not being enforced by the third party.

2) Behaviour, Acknowledgment, or Admission: Although there may not be any direct contact between the two parties, one of them may be held liable under the doctrine of estoppel if they recognise the rights of the other party to suit him through their behaviour, acknowledgement, or admission. This can make the other party liable. While there was no contract between the plaintiff and the defendant, the defendant agreed to pay the plaintiff's husband a certain sum during his lifetime and then to his widow after his death as part of an arrangement with his husband, *Narayani Devi v. Tagore Commercial Corporation Ltd.* This agreement was made through the plaintiff's husband. The question of whether or not the plaintiff had the legal right to sue the defendant had been raised. It was proven that the defendant had complied with the agreement by making some payments to the plaintiff following the death of the plaintiff's husband, and that the defendant had then asked for more time to make the remaining payments. Because of the defendant's actions and acknowledgements, the plaintiff had created a relationship of trust and privity with them.

3) If the contract guarantees a benefit to a third party under a family arrangement, that third party may file a claim in his own right as a beneficiary if he is not provided the benefit.. When a joint family property is divided amongst the male members of the family, there have been several cases where it has been allowed for a provision to be made for the support of the female members of the family. In the case of *Sundaraga Aiyanger v. Lakshmiammal*, the partition deed that was created between the male members of the family stipulated that the defendants would contribute to the wedding expenses of the plaintiff. She initiated legal action in an effort to persuade the defendants to fulfil the terms of their agreement. Even though the plaintiff was not a party to the contract, it was decided that the arrangement established a situation of trust in her favour, so it was decided that she was entitled to the

money even though she was not a party to the contract.

### **REPORT OF THE LAW REFORM COMMISSION ON PRIVACY OF CONTRACT AND THIRD PARTY RIGHTS**

The Contract Law (Privity of Contract and Third Party Rights Bill, 2008) was a draught bill that was produced by the Law Reform Commission in response to their recommendation that a third party should be allowed to defend its contract rights in three different situations. The Law Revision Commission acknowledges that a third party should only be given permission to enforce a contract in one of the following three scenarios:

- It is reasonable to presume that the parties intended for a third party to enforce a term or bring an action if the term specifically confers a benefit on the third party. This is the case when the term states that the benefit will be conferred on the third party.
- When the contract says a third party can enforce it even if it doesn't benefit them. The LRC recommends including a provision in the Bill's enacting legislation to give third parties an enforcement right as intended by the contracting parties. If this term is in the contract, both parties intend for a third party to enforce it.
- When a phrase allows a third party to rely on liability exclusions or limits if the contractual parties intended it. Incorporating and interpreting exception clauses follows the same procedures.

The LRC suggests:

- The parties to the contract should, if at all possible, identify the third party by name; if this is not possible, the contract should identify the third party as a member of a class or as responding to a description.
- A clause in a contract ought to be enforceable by a third party even if no payment is required.
- Once each contractual party knows the third party has agreed to the contract, neither should be able to cancel or vary it in a way that

harms the third party's rights. After this point, the contracting parties must seek the third party's agreement to cancel or amend the contract. If clearance isn't given, the third party may sue based on the original contract terms.

- Contracting parties should be authorised to include a change or termination clause.

### **AMENDMENT IS REQUIRED**

The strict application of the doctrine of privity of contract generates undeniable suffering and rigidity, which in turn causes some unfairness to those who are impacted. Consequently, the Law In its 13th report, the Indian Commission of Inquiry sought to avoid injustice caused by the strict interpretation of the Constitution. doctrine suggested that the Contract Act be amended to include a new section 37A: Advantage to third parties:

- Where a contract clearly confers direct authority on a third party, unless the contract expressly states otherwise, Unless otherwise provided, the third party may enforce it in his own name, subject to any limitations. defences that would have been effective between the contracting parties
- Where a contract expressly bestowing a benefit directly on a third party has been entered under The contracting parties cannot be bound by a third-party policy issued, openly or implicitly, by the third party. Replace it with a new contract, or cancel or modify it so that the rights of the third party are affected.

### **CONCLUSION**

No one can be held liable under a contract unless they are a party to it. No one but the contract's parties can enforce it, which might be problematic if it prevents the person most interested from doing so. Numerous exceptions make the concept bearable, but they raise the question of whether to alter it further or delete it.

According to privity of contract, a contract can only confer rights on its parties. Sometimes it's unclear who the "parties" are and who should be held accountable or reimbursed in the case of

inevitable breaches. Privity is based on common law, which is made up of collective court decisions. Today, the law recognises that, in the increasingly complex world of trade, some adjustments are needed to accommodate exceptions to the general rule and ensure recompense for wrongdoers. Warranty claims have affected this approach shift. The judiciary devised a number of strategies to avoid the unpopular theory. Complex and artificial, they used trust and agency law, as well as collateral contracts. However, these instances are limited.

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