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**DOCTRINE OF PRIVACY OF CONTRACT UNDER INDIAN AND
ENGLISH LAWS**

ABSTRACT

De Jure Nexus

In contract law, the privity rule is an English law concept that precludes any third party or Stranger from being bound by a contract's duties or terms and conditions.¹ A third party, often known as a stranger, is somebody who is not one of the contract's original parties. As previously mentioned, the privity rule of contract law permits only the original parties to be entitled to the contract's terms and conditions.

Let's look at an example:

In return for a monthly fee and access to the company's other services, Jack accepts a job offer from a business. In this circumstance, if there is a breach of contract, no one else has any rights to the contract's terms and conditions since the contract is between Jack and the company.²

¹ Mahawar, S. and Das, S., 2021. *The privity rule of Contract Law: a ground for reform - iPleaders*. [online] iPleaders. Available at: <<https://blog.ipleaders.in/privity-rule-contract-law-ground-reform/?amp=1>> [Accessed 12 February 2022].

² Mahawar, S. and Das, S., 2021. *The privity rule of Contract Law: a ground for reform - iPleaders*. [online] iPleaders. Available at: <<https://blog.ipleaders.in/privity-rule-contract-law-ground-reform/?amp=1>> [Accessed 12 February 2022].

The only objective of this provision is to safeguard third parties from becoming embroiled in any kind of contract-related dispute.

KEYWORDS: PRIVACY RULE, CONTRACT LAW, CONTRACT TERMS,

CONTRACT CONDITIONS

Consideration in privity rule of Contract Law:

The sole difference between English and Indian law, as the preceding comparison illustrates, is that a person may sue even if he is not a party to the dispute. As a result, understanding the idea of consideration in Indian contract law is critical. Because both parties must profit from each other under a contract, consideration may be described as an exchange of value between the parties.

Example:

Ram assures Dham that he would give him a pair of shoes in exchange for Rs. 2000, however the money is given to Ram by Rahul instead of Dham. This demonstrates that the existence of consideration, even if delivered by a third party to the contract, is significant.

Case law

The Hon'ble Madras High Court declared in Venkata Chinnaya Rau v. Venkataramaya Garu and others (1882) that the consideration does not always flow from the promisee, but might also move from any other person who is not participating in the transaction.

Dunlop Pneumatic Tyre Co Ltd v Selfridge & Co Ltd (1915), Tweddle v Atkinson (1861), and Dutton v Poole are some more instances that demonstrate the notion of contemplation (1678)³

Comparison between English Law and Indian Law

English Law

³ Mahawar, S. and Das, S., 2021. *The privity rule of Contract Law : a ground for reform - iPleaders*. [online] iPleaders. Available at: <<https://blog.iplayers.in/privity-rule-contract-law-ground-reform/?amp=1>> [Accessed 12 February 2022].

Both the privity rule and the idea of consideration were founded in English law in the 19th century. In the case *Tweddle v. Atkinson*, the privity rule of contract law was first adopted (1861). In this situation, Tweddle's father-in-law made a deal with Atkinson to donate \$200 and \$100 to Tweddle and his wife, respectively. Tweddle's father-in-law donated, but Atkinson died before he could contribute the funds, prompting Tweddle to bring a lawsuit against Atkinson's estate. The court, however, dismissed his claim owing to Tweddle's father-in-law's lack of regard for Atkinson. Tweddle was also not included in the deal. Tweddle's claim was rejected by the court because he was a third party to both the contract and the consideration, even though it was for his advantage. In the case of *Dunlop Pneumatic Tyre Co Ltd v. Selfridge & Co* (1915), the court changed the notion of privity by dismissing the plaintiff's claim since he was not a party to the contract.⁴

Indian Law

The rule became known after a decision by the Privy Council in the case of *Jamna das v. Ram Autar* (1911), in which the Privy Council held that because there is no contract between the plaintiff and the other party, the plaintiff is a stranger to the contract and thus cannot sue for damages arising from it. However, the aforementioned example is not necessarily the same as the famous case *Donoghue v. Stevenson* (1932), in which Ms Donoghue's friend delivered a faulty ginger beer that included a partly decomposed snail, prompting Ms Donoghue to file a lawsuit claiming damages. The contract in this instance was between her friend and the store owner, but it was determined that the manufacturer should have some feeling of commitment and a duty of care for his consumers, and she was granted damages as a result.⁵

Comparison

If we examine the two laws, we can see that the English and Indian laws have a lot in common, such as the fact that only the original parties to a contract may initiate a lawsuit. However, in Indian law, the scope of privity principles is significantly broader than in English law. It's because under Indian law, the scope and significance of contemplation are

⁴ Mahawar, S. and Das, S., 2021. *The privity rule of Contract Law : a ground for reform - iPleaders*. [online] iPleaders. Available at: <<https://blog.ipleaders.in/privity-rule-contract-law-ground-reform/?amp=1>> [Accessed 12 February 2022].

⁵ Mahawar, S. and Das, S., 2021. *The privity rule of Contract Law : a ground for reform - iPleaders*. [Online] iPleaders. Available at: <<https://blog.ipleaders.in/privity-rule-contract-law-ground-reform/?amp=1>> [Accessed 12 February 2022].

significantly broader than in English law (Babu ram Budhu mal and Ors. v. Dhan Singh Bishan Singh 1956). In India, if a contract contains consideration, a stranger or a third party may sue, but this is not possible in England.⁶

Exceptions to the privity rule of Contract Law

• Establishing trust:

If there is a presence of trust, the third party is authorized to sue the other party under the privity rule of Contract Law. It's also worth mentioning that the third party must profit in some way. This exemption allows a third person to sue the other party even though he is not a party to the contract in the event of a breach of trust. (M.C. Chacko v. State Bank of Travancore 1970, Lloyds v. Harper 1880)

individual "For example, Person "A" might transfer ownership of his company's shares to Person "B" on the condition that Person "B" transfer 50% of his shares to Person "C." " After person "A" died, person "B" refused to give any of his share to person "C." As a result, the individual ""C" has launched a lawsuit against "B." " In this circumstance, person "C" trusted "B" to receive the shares, but "B" failed to complete the requirements. Person "C" has the right to sue the other party even if he is not a party to the contract.

• Enter into a contract with a third party via an agent:

An agent, according to the Indian Contract Act, is a person who acts and represents a principal in dealings with third parties who are not parties to the contract. If the agent enters into a contract with a third party, it is the agent's obligation to ensure that the contract's terms and conditions are met. If A is B's agent, for example, A will draft a contract with C and interact with him on behalf of B.

• Acknowledgement, estoppel, or admission:

Under this exemption, a third party may sue the other party if they admit an act and are then obligated to do that conduct. They would be responsible under the doctrine of estoppel if they failed. (Maher v Waltons Stores Ltd, 1988)

⁶ Mahawar, S. and Das, S., 2021. *The privity rule of Contract Law: a ground for reform - iPleaders*. [Online] iPleaders. Available at: <<https://blog.ipleaders.in/privity-rule-contract-law-ground-reform/?amp=1>> [Accessed 12 February 2022].

For example, Jack requests Mary to donate Patrick Rs. 5000 on his behalf. If Mary accepts it in this scenario, she is obligated to pay Patrick the sum. Patrick may sue her if she does not pay the money, despite the fact that he is a third party.

• **Family arrangements or wedding costs:**

Family arrangements or marital settlements are included in the Specific Relief Act of 1963. If a contract is made to benefit a third party or stranger to the contract based on family arrangements or marital settlements, the third party or stranger to the contract may sue for the contract's benefits. *Lakshmiammal vs. Sundara Raja* (*Sundara Raja v Lakshmiammal*, 1914) For example, Ankita hails from a mixed family, and her family set aside funds to pay her wedding costs. The family, however, disintegrated, and the money put aside for Ankita's wedding expenses was not reached. Despite the fact that she was not a party to the contract, Ankita subsequently sued for her benefits.⁷

The need for reform in privity rule of Contract Law

In privity rule, there has been a long history of change.

The British Courts recognized the need for improvements in the privity rule concept in 1937 and produced the Sixth Interim Report, which lays out the advantages to third parties in a contract. Cases such as *Beswick v Beswick* (1968), in which Lord Reid alluded to the 1937 study and stressed the need of dealing with the privity rule, heightened the importance of the demand for change. Judges in decisions such as *White v Jones* (1995) and *Woodar investment development ltd v Wimpey constructions (UK) Ltd* (1980) questioned contract law's rigidity when dealing with third-party rights.

The Law Commission of the United Kingdom decided in 1996 to revise the notion of privity without affecting the doctrine of contemplation. The law panel eventually came to the following conclusions:

- The notion of privity requires legislative change.
- The primary goal of the legislative change is for a third party to be able to enforce the contract's terms and conditions.

⁷ Mahawar, S. and Das, S., 2021. *The privity rule of Contract Law : a ground for reform - iPleaders*. [online] iPleaders. Available at: <<https://blog.ipleaders.in/privity-rule-contract-law-ground-reform/?amp=1>> [Accessed 12 February 2022].

- The other contracting parties must agree that the third party should benefit from the arrangement and that they intend to bind the third party to legal responsibilities.

Why is contract law's privity rule in need of reform?

The contract law privity rule presents a slew of concerns and reform proposals. To begin with, the law that denies a third party the ability to sue and that only the other party is able to recover their losses would be unfair to the third party. Due to a huge number of common law and legislative exceptions, the rule creates a lot of uncertainty and complications. As a result, change is critical.

The privity rule in contract law has resulted in a number of issues that may be handled by using certain contexts, such as:

Contract for construction

In the context of constructions, the case *D & F Estates Ltd v Church Commissioners for England* (1989) determined that the purchaser's claim could not be accepted and that the builder was not responsible in tort for the building's quality. Third parties in construction disputes, such as renters, buyers, and property financiers, seek protection as a result of such incidents.⁸

A property developer, for example, may engage into a contract with a contractor. The property developer obtains from the contractor an assurance for the benefit of the purchaser (third party) that the contractor will offer remedies to the purchaser in the event of any deficiencies. The privity rule prevents a third party from suing the contractor if the contractor fails to supply the remedies.

Contract of insurance

In this scenario, if the employer obtains insurance from the insurer for the benefit of his employee, the employee will not be able to sue the insurer for breach of contract since he is not a party to the contract.

Contract for payment of other parties

The phrase "A and B entered into a contract to pay money to C" is often used while discussing the privity rule. In the classic case of *Beswick v. Beswick* (1968), the nephew

⁸ Mahawar, S. and Das, S., 2021. *The privity rule of Contract Law : a ground for reform - iPleaders*. [online] iPleaders. Available at: <<https://blog.ipleaders.in/privity-rule-contract-law-ground-reform/?amp=1>> [Accessed 12 February 2022].

promised his uncle that he would pay a particular amount of money to his aunt every week, and as a result, the uncle sold the firm to his nephew. However, once his uncle died, the nephew stopped paying his aunt, prompting the aunt to bring a lawsuit against him and seek damages. However, since the aunt was not a party to the contract, the court declined to allow her to sue for damages. As a result, it demonstrates how the rule of privity may result in unfairness to third parties.

Changes for the advantage of third parties

The strict application of the privity rule has clearly harmed third parties. The proposed laws and improvements outlined in the Law Commission's 13th report are a true escape from injustice for third parties. As a result, the Law Commission of India suggested that a new Section 37A be written in the Contract Act that stipulates the advantages to third parties, comparable to the Contracts (Rights of Third Parties) Act, 1999. The advantages are as follows:

1. If a contract specifically specifies a third party, it must be enforceable in the third party's name and enable the third party to assert defences that would have been available to the original parties.
2. If a contract communicates advantages to a third party, the contracting parties are unable to cancel, create a new contract, or change the terms of the deal because it may impair the rights of the third party.

Conclusion

Without a doubt, the goal of introducing these restrictions is to shield third parties against litigation, yet the rule falls short of preserving the rights of third parties. Furthermore, the large number of exceptions produces a lot of uncertainty and complexity in the implication, and the doctrine of privity rule's provisions don't include any advantages for third parties, demonstrating the need of reforming the doctrine of privity rule.