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**CRITICAL ANALYSIS OF DOCTRINE OF CONSIDERATION AND
PRIVITY RULE****Abstract**

The doctrine of consideration is very important in the Indian Contract Act section 25 and is also important for social and economic purposes. According to Indian Contract Act, of 1872, consideration is something done at the desire of the promisor also our Indian law said if in agreement there is no consideration then it's void in the eyes of law. The promise must be supported by consideration when both parties are mutually agreed. We discuss so much further like as a critical analysis and what are the essentials of the doctrine of consideration and a little bit of introduction to the Privity of consideration. And also, what is the landmark judgment in consideration also we talked about the privity of consideration cases which is not used in India.

Introduction

As we know already about the doctrine of consideration, so we just talked about it a little more in this research paper or what critics said so it's a very important thing first discussed about the history of the topic. This also discusses the history or evolution of the doctrine of consideration so this law generated in thirteenth-century English law. At that time English law doesn't even know what is Breach of contract but India already generated a breach of contract then English law has two contractual natures: covenant (a promise to somebody, or a legal agreement especially one to pay a regular amount of money to somebody/something) and the second one is debt (the action of the covenant was available only to enforce a promise that was made in writing and under seal). As we already said that consideration is important in day-to-day life and day-to-day business. And in the fifteenth and sixteenth-century covenant and debt were replaced by

“assumpsit” which means the Latin word “he has undertaken”, in common law, an action to recover damages for breach of contract. Consideration has been variously defined.

If we talked about the privity of contract and consideration so first, we know the definition it is clear that privity of consideration is not applicable in India in section 2(d), it is not necessary to promise should be furnished. A promise is enforceable if someone also includes in the consideration whether it moves from promisee and any other person. In the Privity of a contract if someone else is in a contract like we can say a third party then it's not a contract.

Salient Features of the Doctrine of Consideration and Privity of Consideration and Contract

- The classical doctrine of consideration maintained that the performance of a pre-existing contractual duty owed by the promisee to the promisor was no consideration for a new promise to confer an additional benefit on the promisee.

The doctrine of consideration is defined by “Sir Frederick Pollack as an act, or promise, of the price in which the other party is bought, and the entire agreement is then enforceable”. The doctrine of consideration is important in all contract that is enforceable and legal in the eyes of law or the Indian contract act, of 1872.

For example – There is a boy Shyam who is going back home from the factory and suddenly he sees that his friend's house is on fire. He controls Piyush's house fire, but Shyam didn't claim it because Piyush never told him to help him he helps with his consent.

- Section 2(d), Indian Contract Act, 1872 defines consideration as under- “When at the desire of the promisor, the promisee or any other person has done or abstained from doing or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise”.

There are three types of consideration-

- Past Consideration – Past consideration means that the consideration was already given earlier, and we made the promise in the future.

For example – If we use Amazon or some other apps that provide a delivery, so this delivery app party pays, and the things are coming late.

- Present Consideration – Present consideration means it happens simultaneously.

For example – John makes an offer that if someone finds a dog, he'll give u the 500bucks. Charul finds his dog so now John gave him the 500 bucks that he promised.

- The executor or Future consideration – Future consideration means consideration will pay in the future.

For example – Divya promises to provide makeup to Charul and charul promise to pay in the future.

The privity of consideration does not apply in India acc to section 2 (d) but in English law applies to this third party that can also give the consideration or pays the money whatever is in a contract.

In India there is a rule that we cannot sue a “stranger of contract” (Privity of Contract) but the Indian rule “stranger to consideration” we can sue. Because in India stranger of consideration we can sue but stranger of a contract we cannot sue.

In India third party can enter into a contract but there is no right in consideration only the promisor can sue and sue the other party and also in English law but in English courts consideration is also applicable.

LANDMARK JUDGEMENTS OF DOCTRINE OF CONSIDERATION

1 Durga Prasad v Baldeo case

In this case, the plaintiff Durga Prasad said the Baldeo to build a proper market in Etawah in this market there are two types of the market is Hume Ganj and the second one is Ram Ganj the plaintiff also said if you do this to me I'll reward you but the defendant who is Baldeo don't react then after a days ago collector said to the defendant to build a market so Baldeo agrees to this. But after that defendant asked for a commission from the plaintiff. So, this is a fact of the case.

As per the Indian law and the Indian Contract Act, of 1872 in an agreement if we registered so first both the parties must have consented to agree. JUDGEMENT-The plaintiff's claim was rejected, and the case was dismissed by the court. This was done so that there is no prominent and recognized consideration in the case of section 2(d) of the Indian Contract Act. “It was also decided by the judges that if the Act is that important of consideration is an essential element of contract there lies no chance for an appeal, and the same was dismissed by the court”. The court dismissed the agreement because there is a lack of consideration of the desire of the promisor.

1. CHINMAYA V RAMAYYA CASE

In this case, there was an old lady who gave the immovable property to his daughter but also she said that she have to pay an annuity amount to her sister (the old lady's sister) the daughter failed to pay so her aunt filed a case against the old lady daughter. The daughter took a plea that the consideration didn't move from the old lady to her so it was not a valid contract.

JUDGEMENT – “The court said that the aunt also has a legal right she is no other person and they also prove that consideration is not required to move from the aunt. so the court gave the judgement that aunt has a legal right to maintain a suit for recovery”.

It's also included in the privity of consideration. Because she had no right to claim annuity the defendant pleaded, the privity of consideration of English law. AND her action is not accepted in the court of the privity of consideration in English law but is not applicable in India.

1. TWEDDLE V ATKINSON CASE

In this case, plaintiff A married girl B. After this marriage, A's and B's father contract to each other to pay a sum amount but a couple of days ago both A's and B father's died and A took an action against B's father to recover the promised amount. A could not sue because it's a stranger of contract and it's also a stranger of consideration. He was not allowed to sue for a father's money.

JUDGEMENT-The case gave the judgement that Privity of Contract is a stranger to contract and cannot sue the contractor.

EXCEPTIONS OF DOCTRINE OF CONSIDERATION

1. **Love and Affection = section 25 (1)** says that an agreement without consideration is not void.

2. It is expressed in writing.
3. Under the law, it should be registered in the registration document.
4. Natural love and affection between two parties.

FOR EXAMPLE – Charul promises his son Pankaj to give an Rs.1000, charul puts his promise to his son in writing and registered it so it will be a valid contract even if it's without consideration.

1. **Promise to Compensate for Something Done Voluntarily = Section 25 (2)** says that an agreement without consideration is not void.

“In this, someone promises if some do the voluntarily done something so we have to compensate and which is legally compellable to do it.”

FOR EXAMPLE –

1. Shriya finds a Divya purse so Divya promises to give 300Rs.
2. A said to B you saved me in the road accident so I'll give you 1000Rs.

3.PROMISE TO PAY A TIME-BARRED DEBT = Section25(3) says that an agreement without consideration is not void.

“In this promise made in writing and signed by some other person who is a party and also the agent is necessary, parties can pay wholly or in part a debt which the creditor payment but in a limitation period”.

FOR EXAMPLE –

1. Pankaj owes Atul Rs.2000 but the debt is barred by the limitation act. Pankaj paid 500Rs. To Atul in his account of the debt. It's a valid contract.

EXCEPTIONS TO THE PRIVITY RULE-

1. **Family settlement** – In this provision family has a responsibility if there is an expense in marriage and expenses to a woman we cannot resist. It's a legal right of the family members.

FOR EXAMPLE – A daughter with her husband and also her father entered into a contract. In this contract, it will be mentioned that she will maintain her mother but she refused to do that. In a suit that mother has a legal right required to maintain her mother, though she is a stranger in a contract. (Veeramma v. Appayya AIR 1957)

1.Agency: When the defendant constitutes himself, as the agent of the third party: If Hina receives some money from Parul to be paid over to charul. He gave the receipt to charul, and then charul can recover this amount to Hina who shall be regarded as an agent of charul.

IN CASE OF AGENCY: In this agent enter a contract with the parties and the principal can sue for it.

CRITICAL ANALYSIS OF THE DOCTRINE OF CONSIDERATION AND PRIVITY OF RULE:

The first issue of consideration is the lack of definition critics saw many definitions of the juris they don't give a that much good definition almost all Juris said different things. Many of the Juris said consideration won't allow in the contract but many of the juris and critics also said no consideration is important because we saw in the Indian Contract Act 1872 law also said without consideration contract is a void agreement but there is also many exceptions that are the problem

the law gave exceptions also so it's very confusing to understand what they want to say. And also the judges gave many confused judgements in many cases and it's unfair to the public policy and moralities of the society. In the present scenario, the judicial decision of the judges is not fit for society.

The doctrine of consideration is the most controversial issue in English law because in English law there is very less play in a contract of consideration.

To create a legal contract consideration is important but if we made a contract deed consideration is not necessary. If consideration is absent in the deed so it's not binding. This is known as "nundum pactum". The critics like us also argue such as Lord Goff that consideration is unnecessary and that is the reason to be legal in a contract.

Currie v Misa (1875) is defined as a valuable consideration in rights, liabilities, duties, interest, loss, and benefit to the other party not only one party's responsibilities also will be the same if both parties are in a contract. So it's a simple definition critics also want to say in this example that if someone is in a contract like both the parties so it's half-half we have to share.

Professor Atiyah also criticises some points which the critic also satisfy to their points. He said the law applied in the court that consideration is used in this contract but if the court found that there is an undesirable to enforce a promise so the courts do a bargain or they can also say this consideration doesn't matter so we don't apply in this like in the exceptional cases or deed.

It's particular problem in cases if courts want they can solve this agreement which often involves economic hardship and changing circumstances.

Now we criticize a privity rule, so this rule of privity of contract has taken firm roots in an English firm if we saw our Indian law privity of contract is valid if some 3rd person also involves in a contract but he or she doesn't sue for consideration in India but in English law privity of consideration is allow. The privity of contract is adopted by the House of Lords and is also being criticized.

In 1937 Lord Wright also criticized the doctrine and also said to abolish this law. Lord Denning also criticized the number of cases and one case is: Beswick v Beswick (1949) he observed that : In this case, B was a coal merchant and the defendant was assisting him in his business. B agreed with the defendant and B was a consultant a few days ago B died so the defendant have to pay B's wife \$5 but the defendant only paid pound 5 so the wife sued the defendant in the specific performance of the agreement.

Many critics said the plaintiff lady has no right to sue because she is a stranger to a contract. But "If in a contract there is the benefit to the third party then they have a legal right to sue".

So In the critic's opinion if we saw the case so the wife has a legal right to sue and its money is her husband's money so she can sue for his husband's money because in law wife has a legal right to the husband's money.

CONCLUSION:

In this whole journey of the doctrine of consideration and privity Rule I just want to summarise what we talked about the topics what are we conclude is Consideration is an essential element of a valid contract without consideration contract is void but we also talked about some exceptions in which how there are some few points in which if consideration is only one-sided then also the contract is valid. However several judges also gave the judgements in consideration keeping in

mind of persons that what type of consideration is better many judgements are also not that much good according to critics and also we talked about the many cases which are related to the consideration.

Under Indian Law, a person's privity of consideration is not applicable but we can enforce the privity of contract. In India has rule "stranger to contract cannot sue" ("**privity of contract**") has to be distinguished from the rule "stranger of consideration can sue" ("**privity of consideration**"). In this privity of contract as we already talked about the 3rd person benefit is also necessary and the law also saw if 3rd person has any benefit in the contract then the 3rd party can sue for their right.

In the recent judgement in the Delhi High Court in India in Klans Mittelbachert v. East India Hotels Ltd. [AIR 1997 Del. 230], there was a contract between German Airlines and the respondents [EI Hotels Ltd]. In this case, the plaintiff the co-pilot stayed in a 5-star hotel and he is seriously injured it's a negligent case.

So the fact of the case is He was injured while driving in a swimming pool where he was hit by an iron rod left negligently by hotel staff. The plaintiff suffered paralysis and died after agony of 13 years. Plaintiff did the action directly to the hotel management although he is not in a contract because the flight company gave all the expenses to stay so there is no direct contract. Plaintiff is a stranger in the contract or we can say he is a third party in this. His action is covered in the Law of Torts. The defendant is also liable for the Consumer Protection Act, 1986 for hazardous services. So all the compensation included almost 50 lakh defendant should compensate the plaintiff.

Explaining the concept of an exception to

Privity of Contract rule the Delhi High Court held:

"Doctrine of Privity of Contract has many exceptions, in one of this case in which if the plaintiff has any benefit include which is important then the contract can sue".