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# DOCTRINE OF PRIVACY OF CONTRACTS

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## ABSTRACT

This research paper talks about the definition of doctrine of privacy of contracts. The paper will first explain the term privacy and will also differentiate between privacy in consideration and privacy in contracts. It will also take a case law to understand the difference between privacy and consideration. It will also explain about four types of exceptions which are under privacy of contracts with relevant case laws. The research paper will also conclude with the importance of doctrine of privacy of contracts in Indian Contract Act, 1872.

## INTRODUCTION

The term privacy means no interference of third party between the parties. So, the term doctrine of privacy means no interference of third party to the parties of a contract. In short, a stranger to a contract cannot sue the actual parties to a contract. Privacy of consideration is not used in Indian courts but privacy of contracts exists. But there are 4 exceptions to doctrine of privacy of contracts and we will go further through it in detail. The four exceptions are beneficiaries under trust or change or any other arrangement, marriage settlement or partition or other family arrangement, acknowledgment of estoppel, covenants running with land. These exceptions can be further analyzed through relevant case laws.

Looking through the case of <sup>1</sup>Chinaiya Vs Ramaiya, 1882 which was ruled by the Madras High court. The case was about Ramaiya's mom coming into a contract with Ramaiya that after her death, she will pass her property to Ramaiya but in one condition that is to pay her aunt Chinaiya 653 rupees as annuity. After her mom's death, the property was passed to Ramaiya and she also paid 653 rupees to her aunt like she promised to her mom but soon she stopped giving her aunt money. So, her aunt went to the court and requested the court so that Ramaiya would continue paying her but Ramaiya's arguments were that she didn't come into a contract with her aunt and

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<sup>1</sup> Chinaiya Vs Ramaiya {ILR (1876-82) 4 Mad 137}

thus, it was not even a contract since there was consideration from one party only. However, the court ruled that the doctrine of privity of consideration doesn't exist in Indian courts and therefore, Ramaiya has to pay the money to her aunt which she made a promise to her deceased mom.

Therefore, there is no doctrine of privity of consideration which exists in English courts and the contract can be made for a third party and if the third party doesn't get the benefit, then he can sue the party in court of law. But doctrine of privity of contract is different from doctrine of privity of consideration and it can be understood through another case.

In the case of <sup>2</sup> *Dunlop Vs Selfridge*, Dunlop entered into a contract with Dew stating that the goods shouldn't be sold below the list price and if they will sell the goods to another trader then they've to maintain the list price. Dew now entered into a contract with Selfridge, selling the tires below the list price. The plaintiff Dunlop sued the defendant Selfridge for breach of contract. However, the court held that only Dew had got the right to sue Selfridge and Dunlop is just a third party to the contract and according to doctrine of privity of contracts, a third party can't sue the actual parties to the contract.

Through these two cases, the doctrine of privity of contract and doctrine of privity of consideration can be understood properly.

## EXCEPTIONS TO DOCTRINE OF PRIVACY OF CONTRACTS

- The first exception is

### 1) Beneficiaries under trust or charge or any other settlement: -

This contract is made between an owner and a trustee for the betterment of a third person who is known as beneficiary. The owner is the holder of the property whereas, the trustee is the person hired by the owner to look after his property.

Illustration: - I've 1000 chocolates with me and my nephew wants to eat all of it but I know if he will eat all of them in irregular manner then he can fall ill and every time, I would not be there to give him properly. So, trustee is appointed for my niece (beneficiary) who can provide him chocolates accordingly.

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<sup>2</sup> *Dunlop Vs Selfridge* {UKHL 1}

There are some conditions like if the owner dies, the trustee will still work for the beneficiary and if the beneficiary is a minor then he can sue the trustee through his legal guardian.

- The second exception is

2) Marriage settlement, partition or family arrangement: -

Here, the beneficiary has got the rights to sue the party if the party has promised the actual party to take the responsibility which can be about marriage, partition or any other family arrangement.

In the case of <sup>3</sup>Rose Fernandez Vs Joseph Gonsalves, A girl's father entered into an agreement for her marriage with the defendant. The defendant didn't follow according to the contract so the girl sued the defendant. It was in the court that there was a breach of promise of marriage and the defendant couldn't take the plea that she wasn't a party to the agreement. In another case of <sup>4</sup>Dropati Vs Jaspat Rai, the defendant's wife Dropati left him for his cruelty. He even executed an agreement with her father, promising to treat her properly and if he failed to do so, then he has to pay her monthly maintenance and to provide her with a dwelling. Subsequently, she was again ill-treated by her husband and was also driven out. She was entitled to enforce the promise made by the defendant to her father.

- The third exception is

3) Acknowledgement of estoppel: -

To understand this, the term doctrine of estoppel means a person can't get away from his own words.

Whereby the terms of contract, a party is required to make a payment to a third person and he acknowledges it to the third person, a binding obligation is thereby incurred towards him. Acknowledgement may be expressed or implied. This exception covers cases where promisor by his conduct, acknowledgement or otherwise constitute himself as an agent to third party.

- The fourth exception is

4) Covenants running over land: -

Covenants mean agreements and running with land refers to rights and covenants in a real

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<sup>3</sup> Rose Fernandez Vs Joseph Gonsalves {ILR (1924) 48 Bom 673}

<sup>4</sup> Dropati Vs Jaspat Rai {(1905) PR 171}

estate that remains with the land, regardless of the ownership. These rights are tiled to the property that is land and not with the owner. Therefore, they move from deed to deed as the land is transferred from one owner to another.

Looking through the case of <sup>5</sup>Tulk vs Mackey, the defendant Mackey brought a subsequent land which belongs to a purchaser but originally, he knew it was Tulk's land and there were covenants running with the land as Tulk restricted the land for public purpose. But the purchaser sold the land to Mackey. Later, Tulk sued Mackey in the court of law and the judge stated that the one who purchases land know Mackey knew that there were covenants running in the land. So, the defendant couldn't stand in a different ground than the owner from whom he purchased the property.

## CONCLUSION

The doctrine of privity of contracts is much essential for its existence in a contract. It gives no rights to third party to sue the parties who are enforcing the contract. Thus, it removes confusion. Without, this doctrine, the Indian contract Act would've been difficult to enforce. Therefore, the paper concludes with the doctrine of privity and exceptions to doctrine of privity and like English courts, Indian courts should also enforce doctrine of privity of consideration for the smooth enforcement and performance of the contract.

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<sup>5</sup> Tulk vs Mackey {(1848) 41 ER 1143}