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# **THE DOCTRINE OF PRIVACY OF CONTRACT**

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## **Introduction**

**The doctrine of privity rule in Contract Law** is an English Law principle that prevents any third party or a stranger from being bound by any obligations or terms and conditions of a contract. Here, a third party or a stranger means any party other than the original parties of the contract.

What is the actual purpose behind this principle? Are there any exceptions to it? Does this principle need reform? These are exactly the questions that are going to be answered in this article focusing mainly on the required reforms in the doctrine of privity rule of contract law.

## **The privity rule of Contract Law: meaning and purpose**

### **Meaning:**

As already stated, the doctrine of privity rule of contract law allows only the original parties to be entitled to the terms and conditions of the contract.

Let's take an example to understand it:

Abhishek accepts an offer from a company in consideration of receiving fees every month with some other facilities provided by the company. If in this case, the breach of contract occurs then no other person is entitled to the terms and conditions of the contract because the contract is between Abhishek and the company.

### **Purpose:**

The only purpose behind this rule is to protect the third parties from getting involved in any sort of lawsuit initiated from the contract.

### **Essentials of privity of contract<sup>1</sup>**

**A contract has been entered into between two parties:-** The most important essential is that there has been a contract between 2 or more parties.

**Parties must be competent and there should be a valid consideration:-** Competency of parties and the existence of consideration are pre-requisites for application of this doctrine.

**There has been a breach of contract by one party:-** Breach of contract by one party is the essential requirement for the application of the doctrine of privity of contract.

**Only parties to contract can sue each other:-** Now after the breach, only parties to a contract are entitled to sue against each other for non-performance of contract.

### **Comparison between English Law and Indian Law**

#### **English Law**

In English law, both the doctrine of privity rule and the doctrine of consideration were established in the 19th century. The provision of the privity rule of contract law was first introduced in the case *Tweddle v. Atkinson* (1861)<sup>2</sup>. In this case, Tweddle's father-in-law came into a contract with Atkinson to contribute an amount of \$200 and \$100 each to Tweddle and his wife. Tweddle's

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<sup>1</sup> <https://blog.iplayers.in/doctrine-of-privity-of-contract/>

<sup>2</sup> <https://www.lawteacher.net/cases/tweddle-v-atkinson.php>

father-in-law contributed his part but Atkinson died before contributing the money as a result of which Tweddle filed a suit against Atkinson's estate. However, the court rejected his claim due to the absence of consideration from Tweddle's father-in-law to Atkinson. Also, Tweddle himself was not a part of the contract. As Tweddle was a third party to both the contract and the consideration, his claim was not accepted by the court even if it was for his benefit.

Further, the doctrine of privity was modified in the case *Dunlop Pneumatic Tire Co Ltd v. Selfridge & Co (1915)* where the court rejected the claim of the plaintiff because he was not part of the contract.

### **Indian Law**

The rule came into notice after a judgment of the privy council in the case of *Jamna das v. Ram Autar (1911)*<sup>3</sup> where the privy council held that there is no contract between the plaintiff and the other party which makes the plaintiff a stranger to the contract and hence, the plaintiff cannot claim for any damages arising out of the contract. But it doesn't mean that the above case will always be the same as in the famous case *Donoghue v. Stevenson (1932)*<sup>4</sup> *Mss. Donoghue's* friend brought a defective ginger beer that contained a partially decomposed snail due to which *Ms. Donoghue* filed a suit seeking damages. In this case, the contract was between her friend and the owner of the shop but it was observed that the manufacturer should have some sense of commitment and a duty of care towards his customers, consequently she was awarded the damages.

### **Comparison**

If we compare both the laws then we can say that there are many similarities between the English law and the Indian law that only the original parties of a contract can file the suit. However, the scope of privity rules is much wider in Indian law than in English law. It's because the definition

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<sup>3</sup>

<https://indiankanoon.org/doc/1923175/#:~:text=This%20is%20a%20perfectly%20plain,no%20party%20to%20the%20sale.>

<sup>4</sup> <https://www.lawteacher.net/cases/donoghue-v-stevenson.php>

and importance of consideration in Indian law are much wider than in English law (Babu ram Budhu mal and Ors. v. Dhan Singh Bishan Singh 1956). In India, a stranger or a third party can sue if the contract involves consideration but the same cannot happen in England.

### **Consideration in privity rule of Contract Law:**

As the above comparison suggests, the only difference between English law and Indian law is that a person can sue even if he is a stranger to the consideration. Therefore, it is important to understand the concept of consideration in Indian contract law. In simple terms, consideration can be defined as an exchange of value between the parties because in a contract both the parties must benefit from each other.

Before moving into the legal definition of consideration we need to first know the meaning of contract and agreement under the Indian contract law:

**Contract: Section 2(h)** of the **Indian Contract Act, 1872**<sup>5</sup>(ICA, hereafter) explains a contract as a valid agreement between two parties that is enforceable by law.

**Agreement: Section 2(e)** of the ICA, 1872 states that every promise and set of promises made by the parties that form a consideration between the parties is known as an agreement.

**Consideration: Section 2(d)** of the ICA, 1872 states that an act of consideration can be formed as per the desire of the promisor, promisee, or any other person.

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<sup>5</sup> <https://www.indiacode.nic.in/bitstream/123456789/2187/2/A187209.pdf>

It is important to note that the term “any other person” mentioned in Section 2(d) is third-party of consideration. This denotes that if there is a presence of consideration in the contract then it does not matter who provided the consideration.

**Example:**

Rajesh promises Dinesh to give a pair of shoes in consideration of Rs. 2000 but the consideration is provided to Rajesh by Rahul instead of Dinesh. This shows that the presence of consideration matters even if it's provided by a third party to the contract.

**Case law**

In Venkata Chinnaya Rau v. Venkataramaya Garu and others (1882) case the Hon'ble Madras High Court stated that the consideration does not always move from the promisee, it can also move from any other person who is not involved in the contract.

Additionally, some other cases that explain the concept of consideration are such as Dunlop Pneumatic Tire Co Ltd v Selfridge & Co Ltd (1915), Tweddle v Atkinson (1861), Dutton v Poole (1678).

**Exceptions to the privity rule of Contract Law**

**Building in the trust:**

In this exception of the privity rule of Contract Law, the third party is entitled to sue the other party if there is a presence of trust. It is also important to note that there must be a certain benefit to the third party. According to this exception, in case of any breach of trust, the third party can sue the other party even if he is not a part of the contract. (Lloyds v. Harper 1880, M.C. Chacko v. State bank of Travancore 1970)

For instance, person “A” gives the possession of his company’s share to person “B” with a condition that person “B” would give 50% of his shares to Person “C”. But after the death of person “A”, person “B” refused to give any of his share to person “C”. As a result of this, person “C” sued person “B”. In this case, person “C” has trusted “B” for receiving the shares but person “B” did not fulfill the conditions. Here, person “C” can sue the other party even if he is not part of the contract.

### **Contract with the third party through an agent:**

According to the Indian Contract Act, an agent is a person who acts and represents on behalf of a principal and deals with the other parties who are not a part of the contract. If the agent establishes a contract with a third party, then it's the responsibility of the agent to fulfill all the terms and conditions of the contract. For instance, if A is an agent of B, then A will build a contract with C and deal with him on behalf of B.

### **Acknowledgment, estoppel, or admission:**

According to this exception, a third party can sue the other party if they acknowledge an act, then they are obliged to do that act. In case of failure, they would be liable as per the law of estoppel. (Waltons stores Ltd v Maher 1988)

For instance, Jack asks Mary to give Rs. 5000 to Patrick on his behalf. If in this case, Mary acknowledges it then she is bound to pay the amount to Patrick. If she doesn't pay the amount then Patrick can sue her regardless of the fact that he is the third party.

### **Family Arrangements or marriage expenses:**

The family arrangements or marriage settlements are mentioned in the Specific Relief Act, 1963. If a contract is made according to the family arrangements or marriage settlements to provide benefit to the third party or stranger to the contract then the third party can sue for the benefits of the contract. (Sundara Raja v Lakshmiammal 1914)

For instance, Ankita belongs to a joint family, and her family made some arrangements to pay the expenses for her marriage. However, the family parted ways due to which the provision for marriage expenses of Ankita was not fulfilled. Later, Ankita sued for her benefits even if she is not part of the contract.

### **Conclusion**

From the above discussion, we have seen that although only parties to contract can sue each other and no stranger is allowed to enter between the parties to sue. But with the development of time, the law has also developed and now even a stranger is permitted to sue to safeguard his interest under exceptional circumstances.

