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A COMPARATIVE ANALYSIS OF PRIVITY OF CONTRACT AND CONSIDERATION UNDER ENGLISH AND INDIAN LAW

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ABSTRACT

The notion of privity is the result of contract and privity working together. It makes reference to a part of the agreement that is exclusive or confidential. A contract cannot provide rights or impose responsibilities on a non-party, according to the common law concept of privity of contract. In essence, privity of contract is a contract that permits both parties to sue another person but forbids third parties from doing the same. Furthermore, for a promise to be enforceable, the idea of consideration requires that something be offered or guaranteed in return for the promise. Only the contractual or interested party may be held accountable for obligations and duties, according to the theories of privity rooted in the interest theory. But as the theory has developed, there is now an exception where a stranger may also be held accountable for obligations or responsibilities owed to one of the parties to the contract. The meaning and historical development of the doctrine of the Privity, the application of contracts theory to the Doctrine of Privity, the exclusion to the Doctrine of Privity, significant court rulings, and a comparative analysis to determine the circumstances in India and England will all be covered by the researcher in this review paper.

KEYWORDS; *Contract, Exclusion, Privity, Obligation, Consideration, Indian Law, English Law*

1. INTRODUCTION

The party's desire to engage into a contract is a required condition for it to be enforceable. This implies that only one party may file a lawsuit or be sued for non-performance or violation of contract. In English law, this concept—known as Privity of Contract—is regarded as a common law foundation. It specifically allows the lone party to the contract to bring a lawsuit or be sued, and it firmly prohibits asserting one's rights and responsibilities against third parties. It also prohibits bringing legal action against a third party whose interests the contract is intended to serve. The interest theory, which holds that only the parties to the contract have the right to defend their rights and obligations against one another, can be said to constitute the foundation of privity of contract from a legal perspective.

For Example: Let's say A promises to provide products to B in exchange for Rs. 1000. if any of them fall short of their commitments. Then, neither party may sue nor be sued by anybody else for non-performance or violation of contract; they both have the right to do so.

Any valid agreement must be entered into with the intention of entering into a contract, and only the parties may initiate legal action against one another or accept legal action on the other party's behalf in the case of a violation or non-performance. This concept is acknowledged as an established principle in English law and is known as the Privity of Contract. It specifically prohibits one party from exercising their rights and responsibilities against other parties and only allows one party to file a lawsuit or be sued. It also prohibits bringing a lawsuit against a third party whose interests the contract was enacted for. Jurisprudential study states that the privity of contract is based on the interest premise.

The promisee alone must provide consideration, according to English law. If the promise is given to a person other than the promisee, the promisee loses their ability to enforce the promise and becomes unfamiliar with it. This concept is known as privity of contemplation.

2. ESSENTIAL ELEMENTS TO THE PRIVITY OF CONTRACT AND CONSIDERATION

The privity of contract is composed of four essential components;

- There must be a Contract;
- Contract must be lawful;
- Party to contract must be competent;
- Lawful Consideration;
- Contract was breached by one of the parties must be their;
- Parties to the contract is entitled to sue each other.

3. BRIEF HISTORY OF DOCTRINE

The seminal case of Tweddle v. Atkinson in 1861 brought attention to the Doctrine of Privity of Contract. It was asserted, nonetheless, that it had been in service since the beginning of the seventeenth century. Courts used interest theory in the early 17th century and acknowledged the idea that those with interests should have the authority to act.

Prior to the Tweddle v. Atkinson case, it was initially documented in the Levett v. Hawes case in 1599. The foundation of the argument was the requirement that the son get the marriage money. The lawsuit is brought by the father when the promise to give the son money is broken. According to the court, the complaint must have been started by the son, supporting the fundamental tenet of the theory that only those with a legitimate interest may be sued.

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In Hadves v. Levit (1632), for example, the court rejected the groom's father's complaint that the bride father had not fulfilled a promise (i.e., refused to pay money), ruling instead the son must have initiated the claim as he was the one having an interest. A father's lawsuit against his child was rejected in a different Dutton v. Poole ruling because his sister had to initiate the action since she was the person having an interest.

Take the Price v. Easton case from 1833, which was closely connected to and established the theory of consideration. The famous Tweddle v. Atkinson ruling, which established the theory of consideration generally, was linked to and established this. An individual who is not a party to a contract cannot be obligated by its terms, nor can an outsider get rights under it.

4. PRIVITY OF CONSIDERATION

The third-party right to contract rule and the Indian rule that forbids outsiders from bringing lawsuits must be distinguished. The Indian Contract Act states that the third party may offer consideration; nevertheless, this does not change the concept of privity of contract. The idea is that if a person is a party to an agreement, he can nevertheless enforce its terms even if he hasn't received any payment for himself.

The Indian Contract Act states that the promisee or anybody else may provide consideration. It implies that it doesn't matter who makes the commitment as long as it is cared for. If the party making the promise is not contested, it might come from anybody else, even the promisee. English law, however, takes a different position. There, the attention must shift away from the promisee himself. This contract shall not be enforceable in England, but in India, things are different since Section 2(h) clearly states that the promisee or anybody else may offer consideration at the promisor's request.

The *Chinnaya v. Ramayya* case provides more details on this concept. as this instance, an old widow named A bequeathed her money to her daughter (the defendant) with the proviso that the daughter provides Rs. 653 as an annuity to A's brothers (the plaintiffs). That day, the plaintiffs and defendants agreed that she would follow A's instructions and pay the annuity. The defendant failed to pay the prescribed sum. In a case the plaintiffs filed against her, she said that they lacked consideration and, as a result, no cause of action.

The plaintiff and defendant's agreement must be upheld, and the Madras High Court decided that the defendant's mother gave enough consideration in this arrangement. This case makes it clear that even when A and B enter into a contract, A does not directly provide B with any consideration; rather, B obtains consideration via C, a third party. Even though A doesn't understand consideration, he can nevertheless hold B responsible for the conditions of the contract. Just Indian law is affected by this; under English law, things are different and the consideration can only flow from the promisee to the consideration. Under no circumstances may a foreigner attend the consideration.

5. COMPARISON OF ENGLISH AND INDIAN LAW

With the exception of the fact that a stranger to the consideration may file a lawsuit in India but not in England, the general rule governing the notion of privity is the same in both Indian and English law.

- **Indian Law**

Although the term of consideration under the Indian Contract Act is more expansive than under English law, the common law approach is typically applied in India, and the Privy Council's ruling in the Jamna case provided the basis for this application. *Avtar Singh v. Das*[1]. Furthermore, it was reaffirmed in the seminal ruling of Advertising *Bureau v. C.T. Devaraj*[2] that the advertiser's lawsuit against the financer was destined to be dismissed due to the lack of a privity of contract among the two parties. But occasionally, as in *Chinnaya v. Rammayya*,[3] "consideration can shift from the agreement or any other person." whereby it was decided that even if the old lady was a party to the suit, her sister had the right to keep it going since the old lady's care for her sister had shifted to the daughter.

- **English Law**

In *Tweddle v. Atkinson*[4], it was decided that the plaintiff could not enforce the claim since he was a stranger to the transaction and the consideration. The house of lords also upheld the rule of privity in the *Dunlop Pneumatic Tyre Co. Ltd. v. Selfridge & Co. Ltd*[5]. case, declaring that the English legal system was unaware of the principle of "Jus quaesitum tertio" arising from the contract and that rights could be granted through the property but not to a third party as a right to enforce the contract in personam. Even though they were not parties to the contract, third-party beneficiaries have been permitted to seek damages for breaches in recent years due to the erosion of the rule of privity. The most recent law, the Contract (Rights of Third Parties) Act, 1999, supports the aforementioned claim.

6. JUDICIARY ON PRIVITY OF CONTRACT

In recent years, the judiciary and other law reform organizations have been instrumental in ending the Third-Party dictatorship. The list of reform requests made by the judiciary in earlier instances is as follows.

- In the Beswick v. Beswick case, the Law Revision committee recommended that a third party is able to enforce a contract in their personal name as long as the terms of the arrangement are advantageous to them. He highlighted the reasons why the House of Lords would think that addressing the matter was vital if there was still a significant period of parliamentary delay, even if he hinted that legislation was the wisest course of action.
- According to Lord Diplock, the Swain v. Law Society case's not being recognized of third-party rights is an outdated flaw that has long been seen as a critique of English law.

[1] *(1911) 30 I.A.7.*
[2] *A.I.R. 1995 S.C. 2251.*
[3] *(1882) I.L.R. 4 Mad. 137.*
[4] *(1861) 1 B & S 393.*
[5] *(1915) A.C.847*

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- Lord Goff, the Pioneer Container, expressed doubts regarding the tenet's continued existence in relation to White v. Jones. He said that in this case, the law is insufficient as it is known to be hampered by the concepts of considerations & privity of contract. Buller J. clarified the circumstances in the Marchington v. Vernon case by stating that a third person may file a lawsuit in response to a commitment given by one irrespective of the regulations controlling business dealings, from one party to an additional for the third's advantage.

7. EXCEPTIONS TO PRIVITY OF CONTRACT

There are certain exceptions to the basic rule that one party to a contract cannot sue another. These are the following:

- **Insurance;** According to the idea, only the contract's parties may assert rights and bear a disproportionate amount of liability. The exception to this rule, though, is an insurance contract that allows a life insurance policyholder's heirs to receive the covered sum in the event of the policyholder's death even if they were not parties to the contract. This exception is best described by the Tattersall v. Drysdale[6] decision.
- **Land covenants**; The rules regulating the passing on of immovable property may cause changes to the norm of privity. According to the concept established in the landmark decision of Tulk v. Moxhay, a buyer of land who is aware that the landowner is subject to specific responsibilities stipulated by agreement regarding the land shall be obligated by such requirements regardless of he is not a party to the agreement.[7]
- **Acknowledgement/admission**; In some situations, the two parties do not have a privity of contract; yet, if one of them acknowledges or admits, via their actions, that the other party has the right to sue them, they may be held accountable under the law of estoppel. This recognition might be made explicitly or implicitly. Even though there was no privity of contract between the the plaintiff and the two defendants, it was decided in the case of Narayani Devi v. Tagore Commercial Corporation Ltd[8]. that the defendants had established such a privity with the plaintiff through their actions, acknowledgement, and admission that the plaintiff is entitled to her action.
- **Agency**; In some extraordinary circumstances, if the agent signs a contract with a third party on behalf of his principle, the law will consider such contract to have been formed by the principle directly. As a result, he or she may file a lawsuit on it and be sued on it.
- **Trust of contractual rights**; This exemption has been acknowledged by Indian law by the seminal ruling in Khwaja Muhammad Khan v. Husaini Begum. It specifies that an individual who has an interest in a certain Although being not a participant to the contract, property may enforce it. For instance, in a contract among A and B, a third person, C, may acquire a beneficial interest with regard to certain property. As a result, C can use the powers granted to him to enforce his claim. In Narayani Devi v. Tagore Commercial Corporation Ltd., the Calcutta High Court acknowledged the claim in favor of a beneficiary in the form of a trust. In a same vein, "trust" has been employed in England to keep the promiser accountable, as seen in the Gregory & Parker v. Williams (1817) case.
- **Maintenance Under Family Arrangements**; The beneficiary may make a claim on his own behalf when a family arrangement contract seeks to safeguard the interests of a third party. When it comes to dividing familial assets jointly among the male members, this type of behaviour has often been allowed; the intention of this clause is to protect the female family units. The male family members' partition-deed in Sunda raga Aiyengar v. Lakshmi Ammal[9] stated that the defendants would cover a share of the plaintiff's marital expenses. It was determined that the agreement established a condition similar to a trust in the plaintiff's benefit, even though she did not participate in the transaction.

8. CONCLUSION

The solitary party to the contract gets no right at all to file a lawsuit or get sued, and it is specifically illegal for them to use their rights and responsibilities against a third party, I learned after reading the complete study paper. It is also prohibited to sue a third party for whose benefit the contract is implemented.

We have also observed that Indian and English law have different perspectives on consideration and contract privity. Personally, I believe that a party to a contract may pursue it under Indian law even if he hasn't gotten anything in return. The Indian principle of "stranger to contract can't sue" (Privity of Contract) must be distinguished from the principle of "stranger to consideration could sue." Due to the principle of privity of While the privilege of contract is valid in both England and India, consideration is not in India; a "stranger to consideration" may file a lawsuit, but a "stranger to contract" cannot.

The common law concept of privity is widely recognized in India, despite the fact that the Indian Contract Act defines consideration more liberally than English law and permits consideration to come from non-contracting parties. Only the parties to a contract are typically entitled to the rights and obligations that result from it, according to the theory of privity. But according to privity of contemplation, the only individual permitted to the person who gave consideration is the one who has the authority to enforce the contract and pursue legal action against it; in this context, consideration is linked to privity of contract.

We have also observed that the concept, which the court had been using from the early 17th century, was acknowledged in the Tweddle v. Atkinson case.

The next section compared consideration & privity of contract under Indian and English law. We have also discussed the privity theory's exceptions and the contract's consideration. The aforementioned explanation makes it evident that there are

[6] *(1935) 2 K.B. 174.*
[7] *(1848) 41 ER 1143.*
[8] *AIR 1973 Cal 401*
[9] *(1915) 38 Mad 788.*

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three main exceptions to the law of privity & consideration to a contract. They are as follows: Integrity, Acknowledgment, and Trust of Contractual Rights come after Admission.

We have also seen other case laws, like Beswick v. Beswick, Swain v. Law Society, and White v. Jones. I use a range of examples to understand the problems caused by the privity of contract. Lastly, we have also looked into the provisions of section 37A and its proper placement within the Indian Contract Act.

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