



**CRITICAL STUDY OF DOCTRINE OF PRIVACY OF CONTRACT AND NEED  
FOR REFORMS**

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**ABSTRACT**

The principle of privity of contract is a fundamental doctrine in the field of contract law that regulates the rights and responsibilities of the parties involved in a contractual agreement. It establishes that only those who are parties to a contract can enforce its terms or be bound by its provisions. The doctrine of privity of contract dictates that a contract cannot be enforced by a third party who is not privy to it, regardless of any potential benefits or impact on said party.

The legal principle of privity of contract, originating from the common law, is designed to safeguard the independence and confidentiality of contractual associations, thereby upholding the liberty of contract. The implementation of this measure serves to impede external interference and curtail the capacity of external entities to enforce contractual entitlements or impose legal obligations on the parties involved in the contract. The inflexibility of the aforementioned doctrine has been subjected to scrutiny over the course of time due to its propensity to generate inequitable consequences. This article provide an overview of the doctrine along with its exceptions and usage.

**Keywords:** Contract, Agreement, Privity, Enforcement.

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**DEFINITION OF PRIVACY OF CONTRACT**

The Privity of Contract has been defined as the relationship or connection between two or more parties who have entered into a contractual agreement. The act of drafting a contract entails the imposition of distinct duties and liabilities upon the individuals who are signatories to said

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agreement. The Doctrine of Privity of Contract posits that solely the parties involved in a contract are legally entitled to initiate a lawsuit or be sued in relation to any contractual dispute.

The Doctrine provides a rationale for the aforementioned entitlement. The assertion posits that the entitlement to such right is vested in the contracting parties by virtue of their pre-existing relationship, and not extended to any third party, as stipulated in the doctrine of Privity of Contract.

The principle of privity of contract, which stipulates that an individual who is not a party to a contract is precluded from bringing a lawsuit, has become deeply entrenched in the English common law. However, the principle has received criticism from various sources over time. The doctrine in question was subject to criticism and recommended for abolition by the law revision committee in 1937, which was led by Lord Wright.

As per the committee's sixth interim report, it was stated that. "The contract in question explicitly aims to bestow a benefit upon a third party. As a result, the third party possesses the right to enforce the provision in their own name. However, the promisor retains the ability to raise any defence that would have been valid against them in the event of a dispute with the third party."<sup>1</sup>

The principle of privacy has not been able to completely replace another principle that has much deeper origins. The concept being referred to is that of a commitment made by an individual that is both deliberate and intended to be legally enforceable. According to legal convention, a promise made under seal or for good consideration is binding and enforceable by the court. The court is empowered to ensure that the promisor fulfils their obligation. The right to enforce a contract is not limited to the party who has provided the consideration, but may also be exercised by a non-party to the contract. The aforementioned agreement was established for the purpose of benefiting the individual in question, who possesses a satisfactory level of interest that warrants their ability to enforce it. It should be noted, however, that any potential defences that may be available on the writs must be taken into consideration.

## **PRIVITY OF CONTRACT CASES**

The Doctrine of Privity of Contract was primarily established subsequent to the Tweddle vs Atkinson case<sup>2</sup>, wherein certain key principles were delineated. John Tweddle and William Guy

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<sup>1</sup> Stephen A. Smith, Contracts for the Benefit of Third Parties: In Defence of the Third-Party Rule (1997) 17(4) Oxford Jour. Of Leg. St. 643-663.

<sup>2</sup> Tweddle vs Atkinson [1861] EWHC QB J57.

entered into an agreement whereby they would jointly provide a monetary contribution to Tweddle's son, who was betrothed to William's daughter. Unfortunately, William passed away prior to fulfilling any financial obligations. Subsequently, the offspring of Tweddle initiated legal proceedings against the executor of Mr Guy's estate in order to claim the agreed-upon amount. According to legal proceedings, the enforcement of a promise or agreement made by one party to another cannot be imposed by a third-party beneficiary.

The definition of Privity of Contract was conclusively established subsequent to the legal case of Dunlop Pneumatic Tyre Co. Ltd versus Selfridge & Co. Ltd. Dunlop<sup>3</sup> engaged in the production of tyres and aimed to uphold a consistent market pricing strategy. The company in question entered into a contractual agreement with its dealers, Dew & Co., stipulating that the latter would refrain from selling any of its products below the predetermined retail price.

The contract stipulated that Dew & Co. was obligated to secure an accord from its retailers, whereby any sales made below the predetermined retail price would result in a specified fee per tyre being remitted to Dunlop. As a result, when Selfridge & Co. engaged in selling their products at a price lower than the retail value, Dunlop initiated legal proceedings against them and asserted a claim for damages.

According to the doctrine of Privity, Dunlop, being a third party to the contract between Dew & Co. and Selfridge & Co., was precluded from seeking damages from the latter, as per the court's ruling. The Doctrine of Consideration was also instituted, stipulating that in order for a contract or promise to be enforceable, the promisee must furnish the promisor with something of value in exchange for the successful fulfilment of the agreement.

## **INDIAN CONTRACT ACT**

“The Indian Contract Act of 1872 was founded upon the principles of the Doctrine of Privity of Contract. The legal interpretation of Privity of Contract and Privity of Consideration varies under Indian jurisdiction. The statement posits that the scope of consideration can extend to a third party, thereby implying that both the promisee and a third party can potentially furnish consideration. As per the Indian Contract Law, it is possible for a third party who is not a party to the consideration to initiate legal action against one of the parties involved.”<sup>4</sup>

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<sup>3</sup> Dunlop Pneumatic Tyre Co. Ltd versus Selfridge & Co. Ltd. Dunlop [1915] AC 847.

<sup>4</sup> The Indian Contract Act, 1872.

## **TWO TYPES OF PRIVITY OF CONTRACT**

In addition to comprehending the definition of Privity of Contract, it is imperative to possess a comprehensive comprehension of the two distinct classifications of Privity of Contracts, namely Horizontal and Vertical Privity of Contract.

Horizontal Privity of Contract involves a scenario where a beneficiary is a third party who is not a participant in the contract. Conversely, within a vertical contractual arrangement, all parties involved in the agreement are poised to receive direct advantages from it.

## **EXCEPTIONS**

Notwithstanding, there exist certain exemptions to the principle of Privity of Contract. Outlined below are several scenarios in which a third party may have grounds to initiate legal action against one of the parties involved in a contract.

In cases where a trust is established in favour of a third party or beneficiary as a result of an agreement between multiple parties, the beneficiary may have the ability to pursue legal action against the contracting parties. This exception to the principle of Privity of Contract allows for such action to be taken. As an illustration, an individual has established a trust with his younger sibling in support of his juvenile offspring.

As per the stipulations of this trust, in the event of the individual's demise, the responsibility of managing their assets shall be entrusted to their younger sibling. Upon reaching the age of majority, the aforementioned trust shall transfer ownership of the property to the designated daughter. In the event that the brother declines to comply, it is possible for the daughter, who holds beneficiary status, to initiate legal action against the brother utilising the exception to the Privity of Contract principle.

When an agent enters into a contractual agreement with a third party on behalf of the principal, it creates an obligation for the principal to fulfil the terms of the contract with the third party. As per the Privity of Contract provision of the Indian Contract Act, an agent is an individual who has been duly appointed to carry out actions and serves as a representative of another party in interactions with third parties. The individual who enlists the services of an agent or is represented by one is commonly referred to as the principal.

Family settlement refers to the process of resolving disputes and reaching an agreement among family members regarding the distribution of assets and other matters related to inheritance.

In cases where the contract is a familial agreement, such as a marriage settlement, it is possible for a third party or beneficiary to initiate legal action against the signatories of the contract in order to enforce the agreement. This falls under the exceptions to the

Individuals who receive benefits through a trust, charge, or other similar arrangement. An individual who has been granted a charge or other interest in a particular property may exercise it, even if they are not deemed to be a contracting party, as per the law. The principle in question is exemplified by the ruling of the Privy Council in the case of *Nawab Kwaja Bombad Khan v Nawab Hussaini Begum*<sup>5</sup>.

In cases where a contractual party is obligated to make a payment to a third party and acknowledges this obligation to said third party, a legally binding obligation is incurred towards the third party. Acknowledgment can be either explicit or implicit. This provision pertains to situations where the individual making the promise procures the acknowledgment of conduct or assumes the role of an agent for the third party.

The principles governing the transfer of immovable property may also serve to modify the rule of privity. The legal doctrine of *Tulk v. Moxhay*<sup>6</sup> establishes that an individual who acquires land with knowledge that the landowner is subject to specific obligations arising from a covenant or agreement related to the land, shall be held accountable to those obligations, even if they were not a party to the original agreement.

## **A CRITICAL ANALYSIS OF THE DOCTRINE**

The concept of "privity of contract" pertains to the exclusive legal association that is established solely between the contracting parties. Despite being a topic of extensive deliberation and disapproval, this doctrine persists as a fundamental tenet of contract law.

The legal principle of privity of contract stipulates that solely the involved parties of a contract possess the right to enforce its provisions. The aforementioned implies that the contract cannot be enforced by a third party, irrespective of the possibility that said party may be impacted by its provisions. In the event that A and B engage in a contractual agreement, it is not permissible for C to initiate legal action against either A or B for the violation of said contract, irrespective of any consequential damages incurred by C.

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<sup>5</sup> *Nawab Kwaja Bombad Khan v Nawab Hussaini Begum* [1910] 12 BOMLR 638.

<sup>6</sup> *Tulk v. Moxhay* [1848] 41 er 1143.

The legal concept of privity of contract is founded upon the fundamental principle of contractual autonomy, which affords parties the liberty to engage in contractual agreements according to their own volition. The enforcement of contractual rights is ensured by the binding nature of the contract, which allows the parties involved to uphold the terms agreed upon. The utilisation of contracts in commercial transactions offers a sense of assurance and anticipatable, as involved parties can depend on the contractual provisions to regulate their association.

The doctrine of privity of contract can be traced back to the English common law. The legal precedent of *Tweddle v Atkinson* (1861)<sup>7</sup> established that a father's commitment to provide a monetary amount to his son-in-law could not be legally enforced, as the father was not a signatory to the agreement. This ruling established the legal doctrine that solely the involved parties of a contractual agreement possess the authority to enforce its provisions.

The concept of privity of contract has been a topic of significant scrutiny and disapproval throughout its existence. Detractors contend that it may result in inequitable consequences, particularly in scenarios where a contract has a negative impact on a non-contracting entity that lacks the ability to enforce its provisions. In the scenario where a builder and a developer enter into a contractual agreement for the construction of a house, and the resulting structure is found to be defective, it may not be feasible for the end purchaser of the property to pursue legal action against the builder for breach of contract, given that they are not a signatory to the original agreement.

In response to this critique, certain jurisdictions have implemented exemptions to the principle of privity of contract. An exception that exists in contract law is the "trust" theory, which permits a third party to enforce a contract in cases where the parties involved had the intention of establishing a trust for the benefit of the third party. In the scenario where two parties, A and B, enter into a contractual agreement to supply goods to a third party, C, and C remunerates A for the goods, C may have the ability to legally enforce the contract against B. This is contingent upon the establishment of evidence indicating that A and B had the intention of forming a trust for the purpose of benefiting C.

An additional exemption pertains to the "agency" principle, which permits a third party to implement a contract in cases where the parties involved in the contract had the intention of establishing an agency association for the advantage of the third party. In the scenario where A

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<sup>7</sup> *Tweddle v Atkinson* [1861] EWHC J57 (QB).

and B engage in a contractual agreement for the provision of services to C, with B serving as an intermediary for C, it is plausible for C to exercise the right to enforce the contract against A.

Notwithstanding these limited exemptions, the concept of privity of contract persists as a fundamental tenet of contract law in the majority of legal jurisdictions. The function it fulfils is crucial in guaranteeing the enforceability of agreements and furnishing assurance and foreseeability in business dealings.

## **CONCLUSION**

The doctrine of privity of contract is a pivotal principle in the field of contract law that governs the entitlements and responsibilities of the parties engaged in a contractual agreement. To sum up, it holds significant importance in the legal framework of contracts. The enforcement of contractual terms is restricted to the parties involved, thereby establishing a sense of assurance and foreseeability in business dealings. Despite facing criticism, the doctrine continues to hold significant value in the realm of contract law. Notwithstanding, certain jurisdictions have implemented exemptions to the doctrine in order to redress its perceived inequity in specific circumstances.