
Doctrine of Privity of Contract & Consideration*

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1. **INTRODUCTION:**

It is well settled rule of English Law that “Consideration must move from the promisee alone”. If it is furnished by any other person and not by the promisee himself, the promisee becomes “**stranger to consideration**”, therefore, cannot enforce the promise. This is known as the doctrine of ‘**Privity of Consideration**’.

It means that the act or abstinence or promise constituting the consideration must be done or made by the promisee himself at the request of the promisor(English Law). But the words “**promisee or any other person**” given in the definition of consideration under Section 2[d] of the Indian Contract Act indicate that consideration need not move from the promisee alone but may proceed from a 3rd person on behalf of the promisee. To that extent Indian Contract Act has departed from the rule of English Law. The definition of ‘Consideration’ under the Indian Law is, therefore, wider than that in the English Law.

“**Under the English Law a “stranger to consideration” cannot sue the promisor. But in India, the Law is otherwise and here even a “stranger to the consideration” can sue on a contract provided of course that he was a party to the contract.**”

Privity of Consideration :Not Applicable in India

The rule of **Privity of Consideration** is not at all applicable in India, in view of the clear language used in Section 2[d] it is not necessary that consideration should be furnished by the promisee only. Here in India a promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the “promisee or another person.” The leading authority is the decision of the Madras High Court in **Chinniya V. Ramaya [(1882) 4 Mad 137]**. The facts of the case are:

‘A’ a Madras lady, gifted away her property to her daughter ‘B’ and directed ‘B’ to give an annuity of Rs. 650 every year to A’s brother ‘P’. On the same day B executed an agreement in favor of P promising to carry out A’s directions. B stopped paying annuity of Rs. 650 to P after some time and thereupon P sued B. P’s claim was decreed. In this case it should be noted that although P was a stranger to the consideration because consideration for B’s promise to pay Rs. 650 annually to P was given by A who gave gifted of her property, but P was not a stranger to the contract (between B and P) and the case was governed by the provisions of Indian Contract Act, P’s claim was decreed.

The rule in India is that consideration shall move from the promisee or any other person. Secondly, failure to keep promise would have deprived the plaintiff ‘P’ of an amount which he was already receiving from the old lady (before the gift of the property was made) and if a promise causes some loss to the promisee that is sufficient consideration by the promisee. Thirdly, the deed of gift and defendant’s promise to pay the annuity were executed simultaneously on the same day and, therefore, they should be regarded as one transaction and there was sufficient consideration for that transaction, therefore defendant ‘B’ was bound to pay. Although the defendant contended that since the plaintiff ‘P’ himself had furnished no consideration, he had no right of action against her to claim annuity i.e., the defendant pleaded, Privity of Consideration of English Law. But her action/suit was not accepted by the court and it was held that English doctrine of **Privity of Consideration** is not applicable in India.

It means that under Indian Law a person may not have himself given any consideration but he can enforce the contract if he is a party to the contract. In India the rule “stranger to contract cannot sue” (**Privity of Contract**) has to be distinguished from the rule “stranger to consideration can sue”. Because in India “**stranger to consideration**” can sue but stranger to contract cannot i.e., Doctrine of **Privity of Consideration** is not applicable in India but **Privity of Contract** is applicable both in England and India.

2. PRIVACY OF CONTRACT

“A contract cannot be enforced by a person who is not a party to it even though it is made for his benefit. He is a ‘**stranger to the contract**’ and can claim no right under it. This is known as the doctrine of **Privity of Contract**. In 1861, the general rule of “**Privity of contract**” was enunciated in a case **Tweddle v. Atkinson (30**

LJ QB 218) and was adopted by the House of Lords in various cases and which subsequently came to be known as The Doctrine of Privity of Contract – which means:

“A contract is a contract between the parties only and no 3rd person (stranger) can sue upon it even if it is avowedly made for his benefit”

In this case, the plaintiff A married a girl B. After this marriage there was contract in writing between A’s father and B’s father that ‘each would pay a certain sum of money to A. After the death of the contracting parties (father of A & B), A brought an action against the executors of B’s father to recover the promised amount. It was held that A could not sue for the same on the ground that he was a **stranger to the contract** as well as **stranger to consideration**. Thus although the sole object of the contract was to secure benefit to the plaintiff he was not allowed to sue as the contract was made with his father and not with him. The case laid the foundation of the rule – **Privity of Contract** i.e., a stranger to contract cannot enforce the contract.

The rule was affirmed by the House of Lords in **Dunlop Pneumatic Tyre Co. v. Selfridge & Co. [(1915) AC 847]**. Dunlop & Co. sold certain goods to one Dew & Co. and secured an agreement from them not to sell the goods below the list price and if they sold the goods to another trader they would obtain from him a similar undertaking to maintain the price list. Dew & Co. sold the goods to the defendants (Selfridge & Co.) who agreed not to sell the goods to any private customer below the list price, but the list price was not maintained by S & Company. The plaintiffs (D. P & Co.) sued the defendants for breach of contract. The House of Lords held that the contract was unenforceable as the plaintiff Co. was not a party to the contract between Dew & Co. and S & Company. It was also held that even if it is taken that Dew & Co. were acting as agents for the Dunlops & Co. the latter still cannot maintain an action as there was no consideration between Dun. & Co. and S & Co. because the whole of the purchase price was paid by S & Co. to Dew & Co.

3. **CRITICAL ANALYSIS OF PRIVACY RULE:**

The rule of Privity of Contract has taken firm roots in the English Common Law and was adopted by the House of Lords but has been generally criticized.

In 1937, the Law Revision Committee under the Chairmanship of Lord WRIGHT criticized the doctrine and recommend its abolition. **Lord Denning** has also criticized the rule in a number of cases e.g., in **Beswick v. Beswick [(1949) KB]** he observed:

“where a contract is made for the benefit of a third person who has a legitimate interest to enforce it, can be enforced by the third person in the name of the contracting party or jointly with him or, if he refuses to join by adding him as a defendant... because the 3rd person has an interest which the law should protect.

*...It is different when the 3rd person has no legitimate interest, as when he is seeking to enforce and maintain the List prices to the public disadvantage as in **Dunlop Pnematic case** (Supra) or when he is seeking to rely not on any right conferred upon him under the contract, but on an exemption clause, seeking to exempt himself from his just liability.”*

In the instant case, B was a coal merchant, the defendant was assisting him in his business. B entered into an agreement with the defendant by which the business was transferred to the defendant. B was employed as a consultant and after B’s death the defendant has to pay to B’s widow a sum £5 per week out of business assets. After B’s death the defendant paid B’s widow only one sum of Pound 5. The widow brought an action to recover arrears of the annuity and the specific performance of the agreement.

In appeal the House of Lords [(1966) 3 AllER] did not approve the approach adopted by Lord DENNING and observed:

*“The plaintiff lady in her personal capacity has no right to sue but she has a right as *administrator* of her husband’s estate to require the defendant (appellant) to perform his obligation under the agreement”*

The case shows that a reform as was recommended by the Law Revision Committee in 1937, is long overdue and if Parliament takes any step in this respect that would hardly be revolutionary [A. Singh 2000 Ed.].

Recently STEYN LJ also criticized the doctrine in **Darlington BC v. W. S. Northern Ltd. [(1995) 3 AllER 895]** in the following words:

“There is no doctrinal, logical or policy reason why the law should deny effectiveness to a contract made for the benefit of 3rd party where that is the expressed intention of the parties... It is therefore, unjust to deny effectiveness of such a contract... I will not struggle further with the point since nobody seriously asserts the contrary”.

In some earlier cases the House of Lords showed no preference for Lord Denning’s approach. Lord SIMOND said that “if the principle *Jus quaesitum tertio* is to be introduced into our law, it must be done by Parliament after a due consideration of its merits and demerits.”

4. POSITION IN INDIA

In India there is no provision in the Contract Act either for or against the rule. There has been a great divergence of opinion in Indian courts as to how far a stranger to a contract can enforce it. There are many decided cases, which declare that a contract cannot be enforced by a person who is not a party to it and that the rule laid down in **Tweddle v. Atkinson (Supra)** is as much applicable in India as it is in England. However, with the passage of time the courts in India have created certain exceptions to the rule and there are various cases in which it was held that a beneficiary (3rd person) under a trust, family arrangement and under various laws can sue or enforce his rights.

Decisions In Favor of Rule of Privity of Contract:

The rule was first applied by the Privy Council in 1911 in **Jamna Das v. Ram Avtar [(1911) ILR 34 All 63]** where A borrowed Rs. 40,000 by executing a mortgage of her *Zamindari* in favor B. Subsequently A sold the property to C for Rs. 44,000 of the price in order to redeem the mortgage if he thought fit. B sued C for the recovery of the mortgage money, but he could not succeed because he was not a party to the agreement between A & B.

The Privy Council held that the undertaking to pay back the mortgagee was given by the defendant to his vendor. The mortgagee has no right to avail himself of that which he was not a party. The purchaser entered into no contract with him; and the purchaser is not personally bound to pay B his mortgage debt. (**LORD MACNAUGHTAN**).

This line of thinking has been followed in various cases. Consequently, a wife’s action to recover the money due under her deceased husband’s insurance policy was rejected because she, though a nominee under the policy was not a party to the contract between insurance company and the deceased, and no interest passed to her merely because she was named in the policy (**Pratapmull v. State of West Bengal [(1957) 61 Cal WN 78]**).

In the opinion of BANKIN CJ this seems to be the effect of the Contract Act itself. In **Krishna v. Pamila Bala (AIR 1928 Cal 518)** his lordships observed:

“Not only, however, is there nothing in Section 2d to encourage the idea that contracts can be enforced by a person who is not a party to the contract, but this notion is, rigidly excluded by the definition of ‘promisor’ and ‘promisee’...”

The Supreme Court of India has expressed itself in favor of the Privity rule laid down in *Atkinson case (Supra)* in **M. C. CHAKO v. State Bank of Travancore (AIR 1969 SC 504)**.

In the present case the Highland Bank was indebted to the S. B. of Travancore under an overdraft. One M was the manager of the Highland Bank and his father K had guaranteed the repayment of the overdraft. K gifted his properties to the members of his family. The gift deed provided that “the liability if any should be met by M either from the bank or from share of property gifted to him.” The State Bank attempted to hold M liable under this provision of the deed, but M was not liable. The Supreme Court held:

“S. B. of *Travancore* not being a party to the deed cannot enforce the covenants and was bound by them. It is a settled law that a person who is not a party to the contract cannot enforce its terms.”

In still another case, the agent of a contractor was not allowed to enforce the contractor’s claim (**FCI v. D. R. Krishnamurthy [(1987) 2 Mad LJ 53]**). Similarly, in **Harman Singh v. Purbi Devi (AIR 2000 HP 108)**, where an agreement for sale of land was not allowed to be enforced by the brother of the contracting party.

Decisions against the Rule:

There is however, another line of thinking also which is mainly based upon an observation of Privy Council in **Khawaja Muhammad Khan v. Hussaini Begum [37 IA 152(PC 1910)]** –

“In India and among communities circumstanced as Muhammadans among whom marriages are contracted for minors by parents and/or guardian, it might occasion serious injustice if the Common Law doctrine was applied to agreements or arrangements entered into in connection with such contracts.”

This statement has been taken by some High Courts as laying down the rule that ‘Indian Courts are not bound by the rule enunciated in **Tweddle v. Atkinson** case (Supra).’ For example, the Madras High Court in **M. Naicker v. M. Naicker (AIR 1928 Mad 33)** observed”

“In this country and indeed in a certain class of cases in England where a contract is entered into between A and B for the benefit of C, C is entitled to sue the defaulting party.”

The Calcutta High Court in **Kshirode Behari v. Mangobinda [(1932) 61 Cal 841]** observed:

“There is no provision in the Indian Contract Act either for or against the rule...Nor is there anything which prevents the recognition of a right in a 3rd party to enforce a contract made by others which contains a provision for his benefit.”

It is unnecessary to cite authorities because the principle had been firmly established for this country by the decision of Privy Council in **Kh. Muhammad Khan** case (Supra). Although the Supreme Court of India expressed itself in favor of the rule laid down in **Atkinson case** (Supra) but the apex court has also taken into consideration the view expressed by the Privy Council in **Kh. Muhammad Khan case**. The Supreme Court in **M. C. Chakoo v. SBT (AIR 1969 SC 504) SHAH CJ** observed:

“It must, therefore, be taken as well settled that except in the case of a ‘beneficiary under a trust’ or under a ‘family arrangement’, no right may be enforced by a person who is not a party to the contract.”

Thus the courts have also introduced a number of exceptions in which the rule of Privity of Contract does not prevent a 3rd person from enforcing a contract made for his benefit. Recently the Calcutta High Court in **Raymond Woolen Mills Ltd. v. Coal India Ltd. (AIR 1998 Cal -)** observed:

“The doctrine of Privity of Contract has undergone a change in recent years and therefore, the principal as beneficiary under a contract (between his agent and 3rd party) can initiate a legal action against a 3rd party without being a party to the contract.”

The Calcutta High Court in case cited the decision of High Court of Australia in which it was observed:

“The long established rule of Privity of Contract had caused considerable injustice and *inconvenience*...The existence of Privity rule has provoked criticism by judges, academicians and law reform agencies alike and in some jurisdictions statutory abrogation of the rule had occurred....It would be unjust in the present case to apply the rule and preclude the respondent from enforcing the policy of insurance.”

The Calcutta High Court also cited **Indian MGIS Ltd. v. Himalaya Finance Co. Ltd. (AIR 1974 Del 114)**, where the ratio of the decision was that the owners of a vehicle who really have legal interest in the property could very easily come within the definition of “**beneficiary**”, though not party to the contract, because the same was taken out by the hirer...The court further held that there are thousands of authorities on the point that this English rule is not applicable in India.

In still another case, for example, in **Fateh Chand v. Maha. SEB (AIR1985 Bom 71)**, it was held that where the supply of electricity was granted to the occupier of a premises, its owner could not be sued for dues, there being no Privity. Very recently the Supreme Court in **Coats India Ltd v. India Cement Ltd. [(2000) 9 SCC 378]** held that “a contracting party cannot shift liability under the contract on to a 3rd party which has no contractual relationship with the other contracting party.

5. EXCEPTIONS TO THE PRIVACY RULE:

The above rule that ‘a stranger to contract cannot sue’ is subject to certain exceptions introduced by the courts in India from time to time; in which the Privity rule does not prevent a person from enforcing a contract, which has been made for his benefit without being a party to the contract. Some of the exceptions are connected with special branches of Law of Contract, such as Transfer of Property Act, Negotiable Instruments Act, Consumer Protection Act, Agency etc. Some of the commonly known exceptions are:

1. Beneficiary Under a Trust or Other Arrangements:

No doubt the House of Lords in a number of cases maintained that only a party to the contract can sue on it and no such right is conferred on a 3rd party but the Law Revision Committee (1937) which recommended its abolition and in its Sixth Interim Report stated:

“Where a contract by its express terms purports to confer a benefit directly on a 3rd party, the 3rd party shall be entitled to enforce the provision in his own name, provided that the promisor shall be entitled to raise against the 3rd party any defence that would have been valid against the promisor...”

The House of Lords in **Dunlop Pneumatic case** (Supra) affirmed the Privity rule but it was also stated:

“only a party to a contract can sue on it and no such right is conferred on a 3rd party (stranger) but if such a right is conferred by way of property in the form of a trust, can be enforced even by a 3rd party in whose favour the trust has been created or upon whom the right is conferred.”

The basis of an action by the 3rd party in such a case is actually not the enforcing of contract but the right conferred by a particular contract in favor of a 3rd person in the form of trust etc. The question whether in a particular case, there is an obligation in the nature of a trust in favor of a 3rd person arising out of contract will depend on the facts of each case (**District Board, Malda v. Raj Bahadar AIR 1937 Cal 625**).

Indian Law has also recognized this exception through the decision of the Privy Council in **Kh. Muhammad Khan v. Hussani Begum [ILR (1910) 32 AII. 410]**. The exception was the result of conflict between family laws and Privity rule. In this case there was an agreement between the father of a boy and father of a girl, that if the girl (plaintiff) married a boy, the boy’s father (defendant) would pay certain personal allowance known as *Kharchipandan (betel box expenses)* or *pin money* to the plaintiff. It was also mentioned that a certain property had been set aside by the defendant and this allowance would be paid out of the income of that property. The plaintiff married the defendant’s son but the defendant failed to pay the allowance agreed by him. In an action by the girl- plaintiff to claim this allowance, the defendant intended that his contract to pay allowance had been made only with the plaintiff’s (girl’s) father and not with the plaintiff, she being a stranger

to the contract cannot sue. The defendant's intention was that **Tweddle v. Atkinson [(1861) 1 B & S. 393]** which debars an action by a stranger to the contract should be applicable in this case. The Privy Council held:

“The basis of the plaintiff's claim being a specific charge on immovable property in her favour, she is entitled to claim the same as a **beneficiary**, and as such, the Common Law rule is not applicable to the facts and circumstances of the present case.”

The main reason which compelled the Privy Council to recognize the right of a beneficiary (3rd party) to the contract was stated in the following words:

*“In India and among communities circumstanced as **Muhammadans**, among whom **marriages** are contracted for minors by parents and guardians, it might occasion serious injustice if the Common Law doctrine was applied to agreements or arrangements entered into in connection with such contracts” [ILR (1910) 32 AII at 413].*

In the present case it was held by the Privy Council that the respondent, although not a party to the agreement was clearly entitled to proceed in **equity** to enforce her claim. Another example of trust in favor of a third party is the case of **Rani Bakhsh Singh v. Jang Bahadur (AIR 1938 PC 245)** decided by the Privy Council where R was appointed by his father as his successor and was put in possession of his entire estate. In consideration thereof R agreed with his father to pay a certain sum of money and to give a village to J – the illegitimate son of his father, on his attaining majority. It was held by the Privy Council that in the circumstances mentioned above a trust was created in favor of J for the specified amount and the village, hence entitled to file the suit. (see also **Des Raj v. Ralli Ram AIR 1957 J & K 10**).

In England also there is a line of cases in which “**trust**” has been used as a tool for holding the promisor to his promise. In India there are also number of authorities on this point. The nature of trust depends upon the facts and circumstances of each case. Trust may be “**actual**” or “**constructive**”; but in general the courts are slow to infer a constructive trust (**A. Sing 2002 Edn. at 97**). Explaining the judicial approach in **M. C. Chakoo v. SB of Travancore (AIR 1970 SC 504) SHAH AG CJ** said:

“For creating a charge on immovable property a specific form of words is needed...But in order that a charge may be created, there must be evidence of intention disclosed by the deed that a specified property or fund was intended to be made liable to satisfy the debt. The recitals in the deed do not evidence any intention of the donor to create a ‘charge’ in favor of the State Bank; they merely set out an arrangement between the donor and the members of his family that the liability under the guarantee will be satisfied by M. C. Chakoo out of the property allotted to him under the gift deed.”

Keeping in view the importance of social oriented legislations enacted for the benefit and welfare of people, e.g., the Consumer Protection Act, 1986 and other related laws, in which the rule of Privity of Contract finds no place. The judiciary has always set the things in the right direction while interpreting these laws liberally in favour of a 3rd person/beneficiary although not directly a party to the contract. In a recent judgment of Delhi High Court 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.**] for accommodation of the employees (crew) of the German Airlines. The plaintiff a co – pilot who stayed in the said 5 – star hotel suffered serious injuries in his head because of the negligent maintenance of the hotel premises. He was injured while diving in a swimming pool where he was hit by an iron rod left negligently unrepaired. The plaintiff suffered paralysis because of these injuries and died after an agony of 13 years. His action directly against the hotel management was allowed, although he himself did not make any contract. He was awarded **compensation** for the injuries suffered by him due to defective structure of the swimming pool. His action was also covered under **Law of Torts**, on the ground that the defendant hotel owners were liable for keeping dangerous nature of premises. The defendants were also held liable under the provisions of **Consumer Protection Act, 1986** for deficient and hazardous services. The court held that being a 5 – star hotel extra care was expected from the defendant (management) and the damages awarded were also exemplary i.e., Rs. 50 lacs.

Explaining the concept of 'beneficiary' as an exception to Privity of Contract rule the court held: "Doctrine of Privity of Contract is subject to many exceptions, one of them being that a beneficiary to a contract can sue."

2. Family Settlement:

Where a provision is made in a partition or family arrangement for maintenance or marriage expenses of female members; such members, though not parties to the agreement, can sue on the footing of the arrangement.

Illustration: A daughter along with her husband entered into a contract with her father whereby it was agreed that she will maintain her mother and the property of the father will be conveyed to them. The daughter subsequently refused to maintain the mother. On a suit it was held that the mother was entitled to require her daughter to maintain her, though she was a stranger to the contract (*Veeramma v. Appayya AIR 1957 AP. 965*).

3. Agency: When the defendant constitutes himself, as the agent of the third party:

Thus if A receives some money from B to be paid over to C and he admits of this receipt to C, then C can recover this amount from A who shall be regarded as the agent of C (*Surjan v. Nanat*).

In case of agency: Where a contract is entered into by an agent, the principal can sue on it.

4. In case of assignment of rights under a contract:

In favor of a third party either voluntarily or by operation of law, the assignee can force the benefits of the contract, e.g., the assignee of an **insurance policy** or the official assignee on the insolvency of a person can sue on the contract even though originally they were not parties to it.

5. Acknowledgement Or Estoppel:

Where by the terms of a contract a party is required to make a payment to a third person and he acknowledges it to that third person, a binding obligation is thereby incurred towards him. Acknowledgement may be express or implied. This exception covers cases where the promisor by his **conduct, acknowledgement, or otherwise**, constitutes himself an agent of the third party. The case of *Devaraja Urs v Ram Krishnaiah (AIR 1952 Mys 109)* is a good example:

A sold his house to B under a registered sale deed and left a part of the sale price in his hands desiring him to pay this amount to C, his creditor. Subsequently B made part – payments to C informing him that they were out of the sale price left with him and that the balance would be remitted immediately. B however, failed to remit the balance and sued him for the same.

The suit was held to be maintainable. "Though originally there was no privity of contract between B and C, B having subsequently acknowledged his liability, C was entitled to sue him for recovery of the amount."

An illustration of acknowledgment by conduct is *Kshirodebchari Datta v Mangobinda Panda (AIR 1934 Cal 682)*.

The tenant and the sub – tenant of a piece of land agreed between themselves that the sub-tenant would pay the tenant's rent direct to the landlord. The agreement was acted upon by all the parties interested.

Under these circumstances the landlord was allowed to obtain a decree for his rent directly against the sub – tenant. In other words, the sub – tenant was estopped from denying his liability to pay the tenant's rent on the ground that there was no such contract between him and the landlord.

In a tripartite building contract, the builder contracted with his employer and simultaneously agreed to be directly responsible to the owner of the building. It was held that the employer had no right to sue the builder for any loss caused to the owner by any deficiency in works. Such liability was incurred directly to the owner (*Panatown Ltd. v Alfred McAlpine Construction Ltd. (2000) 4 All ER 97 (HL)*).

6. Covenants Running With Land:

The rule of privity may also be modified by the principles relating to transfer of immovable property. The principle of the famous case of *Tulk v Moxhay (1843 – 60) All ER Rep 9*. is that “a person who purchases a land with notice that the owner of the land is bound by certain duties created by an agreement or covenant affecting the land, shall be bound by them although he was not a party to the agreement.”

A modern illustration of the principle is *Smith & Snipes Hall Farm Ltd. v River Douglas Catchment Board ((1949) 2 All ER 179 (CA))*.

The defendants (the Board) agreed with certain landowners adjoining a stream to improve the banks of the stream and to maintain them in good condition. The landlords on their part paid proportionate costs. Subsequently one of the landlords sold his land to the first plaintiff and he to the second plaintiff. There was negligence on the part of the Board in maintaining the banks, which burst and the land was flooded.

Both the plaintiffs were strangers to the agreement with the Board, but even so the Court of Appeal allowed them to sue the Board for breach of the contract, for the whole arrangement was for the benefit of the landowners whoever they might be and not merely the parties to the agreement.

Where the Central Government assigned a piece of land to its own corporate undertaking with all the rights, interests and privileges, it was held that privileges or rights to exemption from payment of land revenue which had accrued to the Central Government in respect of that land would also be available to the undertaking as a successor in interest to the Central Government (*Steel Authority of India Ltd. v State of MP, AIR 1999 SC 1636*).

6. **SUMMING-UP**

Under Indian Law a person may not have himself given any consideration but he can enforce the contract if he is a party to the contract. In India the rule “stranger to contract cannot sue” (**Privity of Contract**) has to be distinguished from the rule “stranger to consideration can sue”. Because in India “**stranger to consideration**” can sue but stranger to contract cannot i.e., Doctrine of **Privity of Consideration** is not applicable in India but **Privity of Contract** is applicable both in England and India. The long established rule of Privity of Contract had caused considerable injustice and inconvenience...The existence of Privity rule has provoked criticism by judges, academicians and law reform agencies alike and in some jurisdictions statutory abrogation of the rule had occurred (AIR, 1998, Cal). *There is no doctrinal, logical or policy reason why the law should deny effectiveness to a contract made for the benefit of 3rd party where that is the expressed intention of the parties. The doctrine of privity of contract has undergone a change in recent years and it is now well settled that a beneficiary under any contract or under any special law can initiate legal action against a third party without being a party to the contract.*

In a recent judgment of Delhi High Court 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.] for accommodation of the employees (crew) of the German Airlines. The plaintiff a co – pilot who stayed in the said 5 – star hotel suffered serious injuries in his head because of the negligent maintenance of the hotel premises. He was injured while diving in a swimming pool where he was hit by an iron rod left negligently unrepaired. The plaintiff suffered paralysis because of these injuries and died after an agony of 13 years. His action directly against the hotel management was allowed, although he himself did not make any contract. He was awarded **compensation** for the injuries suffered by him due to defective structure of the swimming pool. His action was also covered under **Law of Torts**, on the ground that the defendant hotel owners were liable for keeping dangerous nature of premises. The defendants were also held liable under the provisions of **Consumer Protection Act, 1986** for deficient and hazardous services. The court held that being a 5 – star hotel extra care was expected from the defendant (management) and the damages awarded were also exemplary i.e., Rs. 50 lacs.

Explaining the concept of ‘beneficiary’ as an exception to Privity of Contract rule the Delhi High Court held: “*Doctrine of Privity of Contract is subject to many exceptions, one of them being that a beneficiary to a contract can sue.*”

Keeping in view the importance of social oriented legislations enacted for the benefit and welfare of people, e.g., the Consumer Protection Act, 1986 and other related laws, in which the rule of Privity of Contract finds no place. The judiciary has always set the things in the right direction while interpreting these laws liberally in favour of a 3rd person/beneficiary although not directly a party to the contract. The trend in favour of consumers/ beneficiaries is now bending in their favour.

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