



Privity of Contract in India: Judicial Exceptions and the Expanding Scope of Contractual Rights

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ABSTRACT

The doctrine of privity of contract has traditionally operated as a strict gatekeeper of contractual rights, confining enforceability exclusively to parties who are formally bound by agreement. Rooted in classical common law principles, the doctrine emphasises consent, consideration, and certainty. However, in its rigid application, the rule often produces outcomes that are disconnected from social realities and commercial intentions. Indian courts, confronted with such tensions, have progressively recognised judicial exceptions that allow third parties to enforce contractual rights in limited and principled circumstances.

This paper undertakes a comprehensive study of the doctrine of privity of contract in India, examining its conceptual foundations, judicial evolution, and the expanding scope of contractual rights through recognised exceptions. It argues that Indian jurisprudence reflects a conscious movement from formalistic contract theory towards a more equitable and purpose-oriented approach. By analysing trust-based obligations, agency, assignment, family arrangements, and early judicial departures from strict privity, the paper highlights how courts have attempted to harmonise contractual certainty with substantive justice. The study adopts a humanised analytical approach, focusing not merely on doctrinal rules but also on their real-world implications for individuals, families, and commercial actors.



1. Introduction

Contract law is often described as the law of promises. At its core lies the expectation that promises voluntarily undertaken will be honoured and enforced by legal sanction. Yet, the law of contract does not enforce every promise; it enforces only those promises that satisfy certain formal requirements. One of the most significant of these requirements is the doctrine of privity of contract, which limits enforceability strictly to the parties who have entered into the agreement.

The doctrine, while seemingly technical, has profound implications. In everyday life, contracts are rarely confined to the interests of only two individuals. A contract between an employer and an insurance company may be intended to protect an employee's family. A construction contract may be entered into for the benefit of a purchaser not formally named in the agreement. Family settlements, maintenance agreements, and commercial supply chains frequently involve third persons who depend directly on contractual performance but are not signatories to the contract.

In India, where social relationships are deeply interwoven with contractual arrangements, a strict application of privity can produce harsh and unjust outcomes. Courts have therefore been compelled to confront a fundamental question: should the law privilege formal contractual boundaries over substantive justice, or should it recognise the legitimate expectations of third parties where intention and fairness so demand?

This paper examines how Indian courts have navigated this dilemma. It traces the historical foundations of privity, analyses its reception under Indian contract law, and explores the judicial exceptions that have gradually expanded the scope of contractual rights. The study proceeds on the premise that the evolution of privity in India is not merely a legal phenomenon but a reflection of changing judicial attitudes towards fairness, social welfare, and economic realities.

2. Conceptual Foundations of the Doctrine of Privity

2.1 Meaning and Scope of Privity of Contract

The doctrine of privity of contract posits that a contract cannot confer rights or impose obligations upon any person except the parties to the contract. In other words, a stranger to a contract cannot sue upon it, even if the contract was entered into for his benefit.

This rule is closely linked to two fundamental principles of contract law:

Consent – Only those who consent to be bound should be subject to legal obligations.



Consideration – Only those who furnish consideration should be entitled to enforce a contractual promise.

Together, these principles form the classical justification for privity. The doctrine thus ensures clarity regarding who may sue and who may be sued, thereby reinforcing legal certainty and predictability.

2.2 Historical Development in Common Law

The doctrine of privity emerged as a settled principle of English common law during the nineteenth century, a period marked by formalism and strict adherence to contractual autonomy. The classical statement of the rule emphasised that consideration must move from the promisee, and therefore a third party who provides no consideration cannot enforce the contract.

English courts consistently applied this principle, even where the outcome appeared unjust. The rigidity of the rule attracted criticism, particularly as industrialisation and complex commercial arrangements increased the involvement of third parties in contractual networks.

2.3 Philosophical Justifications

The philosophical appeal of privity lies in its respect for individual autonomy. Contract law is built on the notion of voluntary obligation. Extending rights to third parties risks undermining the freedom of contracting parties to define the scope of their obligations.

However, this philosophy also reveals the doctrine's limitations. Autonomy, when elevated to an absolute value, may ignore power imbalances and social contexts in which contracts operate. In many cases, third-party beneficiaries have legitimate expectations created by the contracting parties themselves. Denying them enforceability may preserve formal autonomy but defeat substantive justice.

3. Privity of Contract under Indian Law

3.1 Statutory Position under the Indian Contract Act, 1872

The Indian Contract Act, 1872 does not expressly articulate the doctrine of privity of contract. Instead, the doctrine has been inferred from provisions relating to consideration and agreement. Section 2(d) defines consideration as something done or promised at the desire of the promisor, and Indian courts have traditionally interpreted this provision in line with common law principles of privity.

Unlike English law, Indian law allows consideration to move from a third party. This statutory feature has often been cited as a basis for relaxing the doctrine of privity. However, despite this flexibility, Indian courts have generally maintained that only parties to a contract can sue upon it, unless recognised exceptions apply.



3.2 Judicial Reception of Privity in India

Indian courts initially adopted the doctrine of privity with considerable strictness. Early decisions reflect a strong influence of English common law and a reluctance to depart from established principles. The judiciary emphasised the need for certainty and warned against opening the floodgates to third-party claims.

Over time, however, courts became increasingly sensitive to the realities of Indian society. Judges recognised that a mechanical application of privity could undermine justice, particularly in family arrangements and social welfare contexts. As a result, Indian jurisprudence gradually developed exceptions that softened the doctrine without dismantling it entirely.

3.3 The Indian Approach: Formal Rule with Equitable Flexibility

The Indian position may be described as a formal adherence to the doctrine of privity, tempered by equitable flexibility. Courts have not rejected the doctrine outright. Instead, they have preserved it as a general rule while carving out exceptions where:

The intention to benefit a third party is clear;

Equity demands intervention to prevent injustice; or

Statutory policy overrides contractual formalism.

This balanced approach reflects an attempt to harmonise contractual certainty with social justice.

4. Judicial Exceptions to the Doctrine of Privity (Part I)

4.1 Trusts and Beneficial Interests

One of the most firmly established exceptions to the doctrine of privity is based on the law of trusts. Where a contract is entered into with the intention of creating a trust in favour of a third party, the beneficiary is entitled to enforce the trust, even though he is not a party to the contract.

In such cases, the promisee is treated as a trustee holding the benefit of the contract for the third party. The enforceability does not arise from the contract itself but from the equitable obligation imposed by trust law.

Indian courts have consistently recognised this exception. The key requirement is the intention to create a trust. Mere incidental benefit is insufficient. The intention must be evident from the terms of the contract or surrounding circumstances.



Trust-based exceptions often arise in family contexts, such as settlements made for the benefit of children or dependents. Denying enforcement in such cases would not only frustrate the intention of the contracting parties but also expose vulnerable beneficiaries to economic insecurity.

4.2 Agency and Representation

Agency constitutes another significant exception to privity. When a contract is entered into by an agent acting within the scope of authority on behalf of a principal, the principal is entitled to enforce the contract, even though he is not personally a signatory.

This exception is not truly a departure from privity but rather a legal recognition that the agent's acts are, in law, the acts of the principal. The doctrine ensures that commercial transactions conducted through intermediaries remain enforceable.

In modern commerce, agency is indispensable. From employment contracts to insurance arrangements, intermediaries act on behalf of principals. Without this exception, the doctrine of privity would paralyse routine economic activity.

4.3 Assignment of Contractual Rights

Assignment provides a mechanism through which contractual rights may be transferred from one party to another. Once a valid assignment takes place, the assignee acquires the right to enforce the contract in his own name.

Indian law recognises the assignment of contractual rights, subject to certain limitations. Personal obligations and contracts involving personal skill or confidence are generally non-assignable. However, monetary claims and other proprietary rights are commonly transferable.

Assignment is central to financial markets, debt recovery, and commercial credit systems. By allowing enforcement by assignees, the law facilitates liquidity and economic efficiency while respecting the original contractual framework.

5. Emerging Tension between Formalism and Justice

The recognition of exceptions to privity reveals an underlying tension in Indian contract law. On one hand, courts are committed to preserving certainty and respecting party autonomy. On the other hand, they are increasingly conscious of the need to prevent injustice caused by rigid formalism.



This tension is particularly evident in cases involving family welfare, maintenance obligations, and socially embedded contracts. The judiciary's willingness to depart from strict privity in such cases reflects an implicit acknowledgment that contract law cannot operate in isolation from social realities.

6. Family Arrangements, Marriage Settlements, and Maintenance Obligations

6.1 Social Context and Judicial Sensitivity

Indian contract law operates within a unique social milieu where contractual arrangements are frequently embedded in familial and relational structures. Agreements relating to marriage expenses, maintenance, inheritance, and family settlements often involve third parties—wives, children, or dependents—who are not formal signatories to the contract but are the very persons for whose benefit such agreements are made.

Strict application of the doctrine of privity in such cases would negate the social purpose of these arrangements. Indian courts, therefore, have adopted a pragmatic and compassionate approach by recognising family arrangements as a judicial exception to privity.

6.2 Judicial Recognition of Family Arrangements

Courts have consistently held that where a contract is entered into for the benefit of a third party in a family context, such third party may enforce the contract. This approach is particularly visible in cases involving marriage settlements and maintenance agreements.

The rationale behind this exception is twofold. First, family arrangements are not commercial bargains but instruments of social welfare and harmony. Second, the parties entering into such contracts clearly intend to benefit a third person, and denying enforcement would defeat that intention.

6.3 Maintenance Agreements and Gender Justice

Maintenance-related agreements illustrate the human impact of privity exceptions. Often, a husband or a relative undertakes to pay maintenance to a woman under an agreement executed with another family member. If the woman were denied enforcement due to lack of privity, the law would indirectly sanction economic vulnerability.

Indian courts have rightly recognised that maintenance agreements create enforceable rights in favour of the beneficiary woman. This judicial stance aligns contract law with constitutional values of dignity, equality, and social justice.



7. Collateral Contracts and Parallel Obligations

7.1 Concept of Collateral Contracts

A collateral contract is a separate and distinct agreement that exists alongside the main contract. It is typically formed when one party makes a promise to induce another to enter into the principal contract. Even if the promisor is not a party to the principal contract, the collateral promise may still be enforceable. This doctrine operates as an indirect exception to privity by recognising that contractual liability may arise independently of the main agreement.

7.2 Indian Judicial Approach

Indian courts have accepted collateral contracts where clear evidence exists of:

A collateral promise;

Intention to create legal relations; and

Reliance on the promise by the promisee.

By enforcing collateral contracts, courts ensure that parties cannot escape liability merely because the promise was not incorporated into the primary contract.

7.3 Socio-Legal Perspective

Collateral contracts often protect individuals who rely on representations made by dominant commercial actors. For instance, a small supplier induced by assurances from a large corporation may suffer significant loss if such assurances are ignored. The doctrine ensures that power asymmetries do not translate into legal injustice.

8. Estoppel, Acknowledgement, and Conduct-Based Exceptions

8.1 Estoppel as an Equitable Tool

Estoppel prevents a party from denying a representation if another person has relied upon it to their detriment. Though traditionally defensive in nature, Indian courts have occasionally employed estoppel to allow third-party enforcement in exceptional circumstances.

This marks a significant departure from classical contract theory and reflects the judiciary's willingness to prioritise equity over rigid formalism.



8.2 Acknowledgement and Admission

In some cases, courts have recognised that acknowledgment or admission by a contracting party may create enforceable rights in favour of a third party. Where a promisor openly accepts responsibility towards a third party and conducts himself accordingly, courts have been reluctant to allow denial of liability on the ground of privity.

8.3 Judicial Debate and Criticism

While such conduct-based exceptions advance fairness, they also attract criticism for introducing uncertainty. Critics argue that expanding privity through estoppel risks undermining contractual predictability and may expose parties to unforeseen liabilities.

Indian courts, therefore, apply these exceptions cautiously, emphasising clear intention, consistent conduct, and demonstrable reliance.

9. Statutory Exceptions to Privity of Contract

9.1 Legislative Intervention

Statutory law frequently modifies or overrides the doctrine of privity. Legislatures recognise that contractual formalism may be inadequate to protect public interests and vulnerable groups.

9.2 Consumer Protection Regime

Under consumer protection laws, beneficiaries who are not direct parties to a contract may still seek remedies. For example, a person using goods purchased by another may qualify as a consumer and enforce rights against manufacturers or service providers.

9.3 Insurance and Compensation Frameworks

Insurance law provides another statutory exception. Beneficiaries under insurance policies, though not parties to the contract, are often entitled to claim benefits. Similarly, compensation regimes under motor accident laws allow victims to claim directly against insurers.

9.4 Significance

Statutory exceptions demonstrate that the erosion of strict privity is not merely judicial activism but a conscious policy choice aimed at balancing contractual autonomy with social welfare.



10. Critical Case Law Analysis

Indian case law reflects a gradual but discernible shift from strict privity towards a purposive approach. Courts have repeatedly emphasised that the doctrine should not be applied mechanically where it results in injustice.

However, higher judiciary has also cautioned against indiscriminate expansion of third-party rights. The prevailing judicial philosophy appears to favour incremental development—recognising exceptions grounded in intention, equity, and statutory policy rather than sweeping reforms.

This cautious evolution preserves doctrinal stability while allowing necessary flexibility.

11. Policy Evaluation: Certainty versus Justice

11.1 The Need for Certainty

Contract law thrives on predictability. Businesses rely on clear boundaries of liability to assess risk and allocate resources. Excessive dilution of privity could undermine commercial confidence.

11.2 The Imperative of Justice

Conversely, a purely formal approach may legitimise unfair outcomes. Where parties deliberately structure contracts to benefit third persons, denying enforcement contradicts moral and social expectations.

11.3 Judicial Reconciliation of Competing Principles

Indian jurisprudence reflects an attempt to strike a balance between these competing considerations. The doctrine of privity remains the rule, but exceptions operate as safety valves to prevent injustice.

12. Suggestions for Reform

12.1 Statutory Recognition of Third-Party Beneficiaries

India may consider introducing a statutory provision explicitly recognising the rights of intended third-party beneficiaries. Such recognition should be subject to safeguards to prevent abuse.

12.2 Codification of Judicial Exceptions

Codifying well-established exceptions—such as trusts, family arrangements, and assignments—would enhance legal certainty and reduce litigation.



12.3 Clear Judicial Guidelines

Courts should articulate clear standards for applying estoppel and conduct-based exceptions. This would preserve fairness without compromising predictability.

13. Conclusion

The doctrine of privity of contract, though foundational, is no longer absolute in Indian law. Judicial exceptions and statutory interventions have progressively expanded the scope of contractual rights to accommodate social realities and equitable considerations.

Indian courts have demonstrated commendable sensitivity in balancing contractual autonomy with substantive justice. Rather than dismantling the doctrine, they have refined it—retaining privity as the general rule while allowing carefully circumscribed exceptions.

As contractual relationships become increasingly complex and socially embedded, the continued evolution of privity will remain essential. A principled, human-centred approach—anchored in intention, reliance, and fairness—offers the most sustainable path forward for Indian contract law.

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