CHAPTER IV

EXCEPTION II TO THE DOCTRINE OF PRIVITY OF CONTRACT:
THE BURDEN ASPECT OF CONTRACT

The 'burden of contract' is the second aspect of the doctrine of privity of contract.\(^1\) The expression of 'burden of contract' signifies the obligation or liability created by a contract. The contract creates right in one party and corresponding duty in other party. The duty or liability so created may also be called as burden of that party upon whom it is imposed with his consent. The question which may normally arise is that when a stranger can be allowed to reap the benefits of a contract, why can the contractual obligations be not imposed upon him.

It is to be noted that as a general rule the parties to a contract cannot impose contractual burden upon a third party without his consent. The reason is very simple. Since the third party has not given his consent to the contract, therefore, it would be unjust to impose contractual burden upon him. However, there are certain cases, where contractual liabilities can be imposed upon a stranger. This chapter deals with those situations where a stranger to a contract can be held liable.

\(^1\) Ernest H. Scammel (1955) 8 Current Legal Problems, 131.
(A). Position Under English Law

The English law, ordinarily, prevents the contracting parties from enforcing contractual obligations against a stranger to the contract. But, there are certain exceptional circumstances when a stranger to a contract can be sued. They relate to (i) a contract relating to land and (ii) a contract relating to chattels.

(i). Contract relating to land

Certain kinds of restrictions concerning use of land can be imposed on a stranger to a contract. 'A lease with restricted covenant' is the most common example where parties to a contract can impose contractual obligations on a stranger. In [Spencer's case](1583) 5 C. Rep. 16(a) it was held that if A leased out land to B there was a privity of contract between them. But, if any covenant was attached to the lease it could be enforced not only between A and B, but also against assignees of the lease.

[Tulk v. Moxhay](1848) 2 Ph. 774 is another important case on this point in which a covenant relating to a freehold land was enforced by the court against a stranger to the contract. In this case the plaintiff, the owner of several houses, sold the garden which was in centre of square to one Elms. A

3. (1848) 2 Ph. 774 (also cited in Anson's Law of Contract 26th Ed.(1948) at 382.
condition was attached to sale that the garden would be preserved and no construction could be made on it. After various conveyances, the garden was sold to the defendant, Moxhay, who had notice of the covenant restricting construction on the garden. The defendant proposed to construct building on it. The plaintiff sought injunction. The injunction was granted against the defendant by the court of equity and not by the common law court as it had no remedy against a stranger to a contract in such a case.

It was, thus, possible for owner of a freehold land to attach covenant restricting its use which could bind all the subsequent owners provided they purchased lands with notice of covenant.

However, the rule in Tulk v. Moxhay was later on modified by the court in London county Council v. Allen wherein it was laid down that the person seeking to enforce covenant must show that (a) it was imposed for benefit of neighbouring land owned by him, and (b) the benefit of covenant had passed to him. Such covenants must also be registered under the Land Charges Act, 1972.

It is, thus, clear that subsequent purchaser of the land burdened with covenant purchases the land subject to such covenant, i.e. equitable interest. It is also to be

4. Supra note 3.
5. (1914) 3 K.B. 642.
noted that some other interest in land such as 'easements' and 'options to purchase' are also governed by the same principle.

(ii). Contracts relating to chattels

The position of a stranger's liability, who acquires chattels with notice of existing restriction can be examined as follows:

(a). Restriction upon resale price

Normally, at common law, a seller of goods cannot impose liability upon subsequent purchasers to purchase goods at a fixed price or not to purchase the goods below certain price. For example, in Taddy & Co. v. Sterious & Co\textsuperscript{7}, the plaintiffs manufacturers of tobacco, sold the tobacco packets to Messrs Nutter, a whole-sale dealer. A condition was printed on each packet that the tobacco would not be resold below a certain price. The whole-sale dealer resold them to defendants who resold it below the fixed price. The plaintiffs' action for injunction against defendants failed. It was held that the condition of this kind could not run with the goods. Such condition could not be enforced against subsequent purchasers.

Similarly, in Mc Gruther v. Pitcher\textsuperscript{8}, the plaintiffs were manufacturers of 'revolving heel pads'. The pads were packed in boxes separately. Inside each box a printed slip was pasted which stated that the pads were not to be resold

\textsuperscript{7} (1904) 1 Ch. 354.
\textsuperscript{8} (1904) 2 Ch. 306.
below a fixed price and that subsequent purchasers were bound to obey this condition. A whole-sale agent sold the pads to defendant who resold them below the fixed price. The plaintiffs sued the defendant for injunction which was not granted. The court held that the defendant was a stranger to the contract and, therefore, he was not liable to observe such condition.

A combined effect of sub sections (1) and (2) of section 26 of Resale Prices Act, 1976 reveals that where goods are sold by a supplier with a condition that they shall not be resold below a minimum fixed price, the supplier may enforce the condition against any person who is not a party to the original sale and subsequently, purchases goods provided:

(i) the condition is not unlawful under Resale Prices Act, 1976, and
(ii) the third party (i.e. subsequent purchaser) has purchased the goods with notice of such condition.

(b). Patents

The right of a patentee to make use and exercise his invention is his sold right. A person, therefore, can sell the patented articles only when he has obtained licence for it from the patentee. He is also bound to abide by the condition, if any, attached to the licence by the patentee. Thus, a patentee has right to enforce the condition against
a third person also. It was observed in *Dunlop Rubber Co.Ltd. v. Long Life Battery Depot*, that if the plaintiffs in Mc.Gruther's case had been the patentees, instead of licensees of the patent, they might at that time, have succeeded in enforcing the condition.

However, the right of a patentee to attach a condition for resale price of the goods has been curtailed by statutes. Section 10 of the English Resale Prices Act, 1976 provides that patent licences and licensing agreements are subject to the *Treaty of Rome* which is applicable in English Law. According to this Treaty a 'common market' for European Economic Community has been established with the object to promoting competition of trade among Member States. *Article 85(1)* of the Treaty provides that all the agreements which directly or indirectly fix purchase or selling prices shall be void. Therefore, if a patentee wants to attach a condition for maintenance of resale price of patent, he must obtain a declaration from Commission of European Communities that his agreement does not fall within Article 85(1) of the Treaty.

*Section 44 of the English Patents Act, 1977* is also against any other restriction. It states that if patentee attaches a condition to the agreement that the patented article is only to be used for manufacture with supplies purchased from patentee, the condition shall be void. The

10. Supra note 8.
patentee can do so only when he is willing to supply or license the patented article on reasonable terms and without any such condition.

It is, thus, evident that a patentee has no absolute right to use, exercise and sell his invention with any condition as he desires. He has to comply with certain statutory requirements provided by Article 85(1) of the Treaty of Rome and section 44 of the English Patents Act, 1977.

(c). Ships under Charter-party

A contract may be made to charter ship. There may also be occasions when the same ship is sold or mortgaged before termination of charter-party. The question arises as to whether the purchaser or mortgagee (a stranger to charter-party) is liable to honour charter-party. In De Mathos v. Gibson the mortgagee of a ship, who had acquired the mortgage of ship with knowledge of existing charter-party, was restrained by an interlocutory injunction to sell the ship. Although, a final injunction was refused (on the ground that mortgagee had not interfered with performance of the charter until it was evident that the ship owner was wholly unable to perform it), an attempt was made by the Court of Chancery to hold a stranger to contract liable.

Lord Strathcona Steamship Co., Ltd. v. Dominion Coal Co., Ltd. case is generally regarded as an authority on the

point. In this case the respondents had chartered a ship from its owner for a long time. But, in the meantime, the owner sold the ship to appellants. The appellants had knowledge of charter-party and gave an impression that they would honour the charter-party. They were sued. The appellants pleaded that there was no privity of contract between them and the respondent and, therefore, they were not bound to respect the charter-party.

The Privy Council granted injunction against the appellants refraining them from violating the covenant. The Court referring to Tulk v. Moxhay and De Mathos v. Gibson held that whether the subject matter was land or chattel, the principle was the same. The remedy is a remedy in equity by way of injunction against acts inconsistent with the covenant, with notice of which the land was acquired. It is, thus, clear that a third party to the charter-party was held liable in this case.

However, the present position of law in this regard is found in the case of Port Line Ltd. v. Ben Line Steamers Ltd. In this case a ship was chartered by the plaintiffs. During existence of charter-party, the owners sold the ship to the defendants. According to the contract of sale the defendants had to return the ship to the owner so that they

13. Supra note 3.
14. Supra note 11.
could fulfil original charter-party. But, the ship was requisitioned by the Crown. The plaintiffs sued the defendants for compensation for loss which they suffered due to not using the ship during period of requisition. It was held that injunction was the only remedy for the charterer. He could neither obtain specific performance of the contract nor could he get damages. The Court further held that the subsequent purchaser of ship (i.e. stranger to charter-party) could be restrained only when he had actual knowledge at the time of purchase of charterer's right. The constructive notice was held to be insufficient. Thus, Strathcona's case was held to be applicable subject to condition of actual notice by subsequent purchaser of charterer's rights.

(d). Liability of Stranger for use of other chattels

Where a contract imposes restrictions on use of goods other than ship (e.g. machine), upon subsequent purchasers, such purchasers cannot be generally held liable to comply with the restrictions. However, the subsequent purchaser of a chattel can be restrained if he commits or threatens to commit tort of interference with such contract. Similarly, restricting covenant can be imposed by owner of a chattel to use it or not to use it in a particular manner.

17. Supra note 12.
(e). **Hire-purchase and hire**

There appears to be no authority on the point as to whether a third party who purchases chattel from its owner during existence of hire-purchase agreement is liable to the hirer who had agreed to purchase the chattel just after payment of all the instalments. According to Anson, the better view is that the purchaser is bound at least if he has notice of the agreement of hire-purchase. The same principle can possibly be applied to a simple bailment for hire.

(B). **The Position Under Indian Law**

One of the fundamental principles of contract is that the parties to a contract cannot transfer contractual burdens upon a stranger without his consent. But, there are certain statutory exceptions to this general principle which are discussed below:

(1). **The Law of Agency**

An agency is a well-known exception to the doctrine of privity of contract. An agent, by entering into a contract with a third person, makes the principal liable to such third person. Obviously enough, the principal is a

22. Ibid, at 389.
stranger to the contract made between agent and third person even though he is held liable.  

The Agency as an exception to the privity rule has been discussed in detail in chapter V of this thesis.

(2). Under the Trusts Act

The beneficiary under a trust enjoys certain privileges and rights. But, at the same time he has certain liabilities too under the Trust Act which are stated below:

The first part of Section 33 of the Indian Trusts Act, provides that a person other than a trustee who has gained an advantage from a breach of a trust must indemnify the trustee to the extent of the amount actually received by such person under the breach of trust; and where he is beneficiary the trustee has a charge on his interest for such amount. This section, thus, lays down two principles of law: Firstly, it makes it clear that any one who receives advantage from breach of a trust is liable to compensate the trustee. This is the general principle. Secondly, it emphasises beneficiary's liability in case of such breach. It provides that if the beneficiary receives any benefit from such breach he is liable to compensate the trustee. The trustee in such case will have a charge on beneficiary's interest.

It is evident that the beneficiary does not give

24. The Indian Trusts Act, 1882.
his consent to the formation of trust. The consents are exchanged between the settlor and the trustee only. The beneficiary is, thus, a stranger to the trust even then he is held liable to the trustee. However, the second part of Section 33 of the Indian Trusts Act provides that where the trustee is guilty of fraud and the breach of trust is a consequence of such fraud, the beneficiary is not liable to compensate the trustee.

Similarly, Section 68 of the Act provides that where one of several beneficiaries - (a) joins in committing breach of trust, or (b) knowingly obtains any advantage therefrom, without the consent of the other beneficiaries, or (c) becomes aware of breach of trust committed or intended to be committed and either actually conceals it, or does not within a reasonable time, take proper steps to protect the interests of other beneficiaries, or (d) has deceived the trustee and thereby induced him to commit a breach of trust, the other beneficiaries are entitled to have all his beneficial interests impounded as against him and all who claim under him (otherwise than as transferees for consideration without notice of breach) until the loss caused by the breach has been compensated.

This section defines the liability of a beneficiary. But, it applies only when there are co-beneficiaries. It provides for liability of a beneficiary
against other co-beneficiaries. It does not deal with a beneficiary's liabilities towards trustee. It provides for an alternative remedy to aggrieved beneficiaries against guilty beneficiary. It is to be noted that such remedy may primarily be sought against the trustee who has caused breach of trust.

As mentioned above, section 68 of the Indian Trusts Act prescribes four grounds on which the guilty beneficiary is liable to the other beneficiaries, who have suffered loss due to breach of trust by the trustee. The right to compensation available under this section to innocent beneficiaries is so important that they can even impound beneficial interest of the defaulting beneficiary to compensate the whole loss.

It is, thus, evident that liabilities can be imposed upon a beneficiary, although he is a stranger to the trust and has not given his consent to the creation of a trust.

**Under the Indian Partnership Act, 1932**

The question may naturally arise as to who is a stranger to a partnership. There are two categories of strangers as regards to a partnership. The first category includes those persons who have not given their consent to the partnership. The second category may be inferred from Section 18 of the Partnership Act. This section provides
that 'subject to provisions of this Act, a partner is the agent of the firm for purpose of business of the firm.' Consequently, the firm on which behalf a partner makes contract with another person can be treated as a principal. The principal (i.e. the firm) is a stranger as regards to contract made between acting partner and third person. Similarly, other partners may be regarded as stranger to the contract which is entered into between the acting partner and third person. It is, therefore, necessary to examine the liability of the firm and other partners including a minor.

(a). Firm's liability for partner's act

A firm is not, in fact, a legal entity as distinct from its partners. A firm is nothing but a collective name of partners. Consequently, liability of a firm means liability of all the partners. Therefore, no suit can be brought against a firm. But, in practice for mercantile purposes a firm can sue and can be sued. A firm can be sued by disclosing names of all the partners in plaint. Similarly, for assessment of income for income tax purposes, a firm whether registered or not, is treated as a separate entity as distinct from its members. It is, therefore, useful to examine how for a firm (as a principal) is liable to a third person with whom a partner contracts in the name of the firm.

25. Section 4, The Indian Partnership Act, 1932.
26. The position under the English Law is the same.
27. Code of Civil Procedure 1908, Order XXX.
(1). Liability for acts done by a partner under his implied authority

The general rule is that the firm is liable for acts done by a partner on firm's behalf within the scope of his implied authority. 28 Clause (1) of Section 19 of the Partnership Act provides that 'subject to provisions of Section 22, the act of a partner which is done to carry on in the usual way, the business of the kind carried on by the firm binds the firm.' An implied authority depends upon the nature of the business of firm. For acts which are to be covered within implied authority, following essentials are needed:

(1) the act must be done in relation to partnership business;
(2) The act must be done for carrying on the business of the firm in the usual way; and
(3) the act must be done by the partner on behalf of the firm 29 i.e. in firm's name and not in the name of a partner.

In Devji v. Magan Lal & Others, 30 the Supreme Court has held that where a partner takes a lease of premises (sub-lease of colliery) in his name, he cannot be regarded as having acted on behalf of the firm.

28. 'Implied Authority' is also called as 'general', 'ordinary' 'apparent' or 'ostensible' authority.
29. Section 22, The Indian Partnership Act, 1932.
(ii). Liability for tort

Section 26 of the Partnership Act deals with the liability of the firm for torts committed by a partner. The firm is bound for wrongful act of a partner provided that (1) it has been done in the ordinary course of the business of the firm i.e., it is committed within implied authority of the partner, or (2) with the authority (express) of his co-partners. The firm is liable for both negligent and intentional tort. Thus, where a partner, for instance, had received stolen goods and credited the proceeds of their sale to the account of the firm all partners were held liable to the plaintiff.31

(iii). Liability for specific tort

Section 27 of the Partnership Act provides that a firm is liable for mis-application of money or property received from a third party. For this purpose, it makes no difference that money or property has been received by the partner or the firm. What is required is that the partner must be guilty of committing wrong of misuse of money or property. If such wrong is committed by a partner it is the firm which is liable to compensate the person wronged.

Thus, the combined effect of the principles embodied under Sections 19, 26 and 27 of the Partnership Act is that the firm is liable for acts and wrongs of its

partners done within the scope of express or implied authority of the partners. A contract with a third person is made by a partner acting on behalf of the firm. As the contract is made by the partner in the firm's name, he acts only as an agent of the firm. Consequently, the firm is held liable to third person under the contract.

(b). Partner's liability for firm's act

The partners are made jointly and severally liable for the act of the firm by Section 25 of the Act. This section provides that every partner is liable jointly with all other partners and also severally for acts of the firm done while he is a partner. When a partner does an act on behalf of the firm, the act is considered the act of the firm and not only of the acting partner. It means even those partners are held liable under this section who have not made the contract directly. All such partners who have not given their consent to the contract are liable although in one sense they are stranger to the contract.

So also Clause (1) of Section 45 of the Partnership Act provides that notwithstanding the dissolution of a firm the partners continue to be liable as such to third parties for any act done by any of them which would have been an act of the firm if done before dissolution, until public notice is given of the dissolution. Thus, if no public notice regarding the dissolution.

32. The Indian Partnership Act, 1932.
dissolution of the firm is given, all the partners will be bound for acts of a partner done after dissolution of the firm. But, the act must be of the kind which the firm was usually doing before dissolution.

It is clear that the act of a partner is deemed an act of the firm. The partners who have actually not contracted with third person are held liable for acts of any partner. Thus, section 45 imposes contractual burden on those who have not, indeed, entered into the contract with the third person. The privity rule is accordingly defeated by the provisions of this section.

In such a case the partner who has retired from partnership as a result of dissolution would, nevertheless, be liable for transaction of the firm.

In *C. Assiamma v. State Bank Of Mysore and others* the plaintiff Bank filed a suit for recovery of money from the firm after firm's dissolution by an agreement. The notice of dissolution was not given to the Registrar of Firms. It was given only in a local newspaper. The firm continued its business even after dissolution.

It was held that mere publication of notice in local newspaper was not sufficient to absolve retired partner from his liability to third person. There was no public notice as contemplated in Sections 45(1) and 72 of 33. A.I.R. (1990) Ker. 157.
the Partnership Act. The Court further held that in the circumstances retirement of defendant (appellant) even if it be true, could not affect rights of the plaintiff Bank who was a third party in view of Section 32 (3) of the Partnership Act. However, the proviso to the section 45(1) of the Partnership Act provides that the estate of a deceased or an insolvent partner or of a retired partner not known to the person dealing with the firm to be a partner, is not liable for acts done after the date on which he ceases to be a partner.

It is, thus, clear that in order to absolve the retired partner from further liability the requirement of proper notice is necessary. In absence of such notice he cannot escape the liability. It is obvious that as regards the contract between firm and a third person, the retired partner is a stranger even though he is held liable. It is, therefore, clear that burden of a contract can be imposed upon a retired partner, who is, in fact, a stranger to the firm's contract.

(c). Minor's liability

Sub-section 1 of Section 30 of the Indian Partnership Act provides that although a minor may not be a partner in a firm but he may be admitted to the benefits of partnership.

Sub-section 3 of Section 30 of the Act, lays down

34. Supra note 33 para 23 at 167.
two general principles. The first is that a minor is, personally, not liable for firm's act. It is because a partnership with a minor is void. In *Sri Rama Mohan Motor Services v. V.C.I.T.*, the Supreme Court held that where partnership deed disclosed that one of five partners was a minor, the partnership was void.

The second principle is that the share of a minor in the firm is liable for firm's act. That is, a minor is liable to third person to the extent of his share in the firm but he is not liable personally. It follows from this that the second principle is an exception to the privity rule.

(4). *Under Negotiable Instruments Act*

There are certain provisions under the Negotiable Instruments Act which provide that contractual liabilities can be imposed on a stranger to a contract. These instances are discussed below:

(i). Liability of drawee of a cheque:

In the general sense, a cheque and a bill of exchange are regarded as means of transfer of obligation from drawer to drawee to pay a certain sum of money to the payee.

38. The Negotiable Instruments Act, 1881.
39. Ibid. Sections 31, 32, 36 and 53.
Section 31 of the Negotiable Instruments Act, 1881 deals with the liability of drawee to the payee when cheque is presented to him. It provides that 'the drawee of a cheque, having sufficient funds of the drawer in his hands, properly applicable to the payment of such cheque must pay the cheque when duly required to do so. This section makes it compulsory that the drawee must have sufficient funds of the drawer, otherwise he will not be bound.

Regarding the two requirements: acceptance of cheque and availability of sufficient funds, the Supreme Court has emphasised the second one. In the case of Jagjivan Mauji v. Messrs Ranchhod Das Meghji, the Supreme Court held that the liability of drawee arises even without acceptance of cheque, provided that he has sufficient funds in his hands. However, the Court further observed that under Section 32 of the Negotiable Instruments Act the liability of the drawee (of bill of exchange) arises only when he accepts the bill.

It is, thus, evident that the drawer transfers his liability to the drawee enabling the payee to receive payment from him (drawee). Originally, it is drawer, who is indebted to the payee and, therefore, he has primary duty to pay the payee. There is, in fact, a contract between the drawer and the payee, whereby the drawer has to pay certain money to the payee. But, when a cheque is drawn on the

41. Ibid. para 5 at 556.
drawee, the obligations of the drawer are assigned to the drawee. Consequently, the payee receives payment from drawee, i.e. a person who is a stranger to the contract between drawer and payee.

(ii). Liability of prior party to holder in due course

Section 36 of the Act provides that 'every prior party to a Negotiable Instrument is liable to a holder in due course until the instrument is duly satisfied.' The expression 'prior party' means the maker or drawer, acceptor and all the intervening indorsers. The general rule is that every prior party is liable to every subsequent party. 'A holder in due course is a person who possesses the instrument after furnishing consideration before the payable date and without having sufficient cause to believe that any defect existed in the title of the person from who he derived his title.' When the instrument is duly satisfied, liability of all prior parties is discharged.

The principle underlying this section is that not only the immediate prior party but all the prior parties are liable to holder in due course. This principle, thus, approves that a stranger (i.e. prior parties) to the contract can be sued.

(iii). Holder deriving title from holder in due course

The holder of a promissory note, bill of exchange

42 Section 9, The Negotiable Instruments Act, 1881.
or cheque means any person entitled in his own name to the 
possession thereof, and to receive or recover the amount due 
thereon from the parties thereof.

Section 53 of the Act provides that a holder of a 
negotiable instrument, who derives title from a holder in 
due course has the right thereon of that holder in due 
course. Thus, by this process the holder acquires right equal 
to the rights of a holder in due course. The result is that 
the holder may sue all prior parties in the same way as the 
holder in due course could have. In other words, logically, not only immediate, but all the prior parties are 
liable to holder until the instrument is duly satisfied.

Conclusion

Under English law the general rule is that 
contractual liabilities cannot be imposed upon a stranger to 
the contract. That is, normally parties to a contract cannot 
transfer contractual burdens to a stranger to the contract. However, there are certain cases, e.g., contract relating to 
land, contract relating to chattels (i.e. restriction upon 
resale price, patents, ships under charter-party, other 
chattels, hire-purchase) where contractual liabilities can 
be transferred to a stranger to the contract.

The general rule of law of contract in our country 
is that a promise must be performed by the promisor. But,

43. Section 8, The Negotiable Instruments Act, 1881.
44. Section 36, The Negotiable Instruments Act, 1881.
where promisor dies, his promise is required to be fulfilled by his legal representatives who are not party to the contract. 45

The law of agency is an exception to the burden aspect of doctrine of privity of contract. The principal becomes liable to discharge contractual obligations undertaken by the agent on his behalf, though the contract was made between the agent and the person dealing with the agent.

Under the Partnership Act the rule is that a firm is liable for all the acts of a partner done within his express or implied authority. 46 Even share of a minor, who is admitted to the benefits of partnership is liable to discharge firm's liability, e.g., debts and other obligations. The minor is not a party to the contract.

Under the Negotiable Instruments Act the drawee of a cheque pays the money mentioned on it to the payee. The drawee is a stranger to the contract constituted between the drawer and the payee, even though he is bound to pay to the payee. Similarly, every prior party is liable to the holder in due course as well as to the holder who

45. Section 37, The Indian Contract Act, 1872.
46. Sections 18, 19(1), 22, 26, 27 and 45, The Indian Partnership Act, 1932.
47. Sections 30(1) and 30(3), The Indian Partnership Act, 1932.
derives his title from a holder in due course. It is evident that the contract is made between the immediate prior party and holder in due course and the remaining prior parties are strangers to such contract, but they are liable until the instrument is duly satisfied. In the same manner, as regards to the contract between a holder and holder in due course all the prior parties are liable to the holder, although they are not parties to such contract.

It is, therefore, submitted that not only the parties to a contract, but stranger to the contract can also be sued. That is to say, there are certain cases where a stranger to a contract can be saddled with contractual obligations. However, it is open to the legislature to make rules in this regard. The courts are also privileged to widen the dimensions of such exceptions.