PREFACE

The purpose of this work not only present original ideas on privity of Contract but also an attempt has been made to present "Third party Rule" and "Privity of Consideration" in British and Indian Context.

The credit for emergence of the doctrine of privity is although, attributed to the common law courts yet it is applied in India as well.

The doctrine, being one of the basic principles of the law of contract, is of great utility. It ensures that a stranger to a contract neither sue nor be sued by the parties to the contract. However, in course of time, it was realised that the doctrine is too rigid to cope with social demands, for a contract affects not only the parties to it but society at large as well.

Consequently, certain limitations were envolved and recognised to the doctrine by legislature and judiciary.

The doctrine of privity of contract was first time applied in Jorden v. Jorden (1594).

The privity of contract was established in Tweddle v. Atkinson (1861) and had ultimately succeeded in getting the final seal of approval by the House of Lords Dunlop Pnumatic Tyre Co. Ltd. v. Selfridge and Co. Ltd. (1915) A.C. 847.

In 1991 the law Commission produced a consultation paper which suggested that radical changes are required in the Law. Although the purposal to change the law obtained spread support, the technical questions of exactly how to bring the change about proved much more difficult than had been anticipated and in-fact untill 1999 that the contract (Right of third parties) Act, 1999 become law.
For the purpose, the Thesis has been spread over Nine Chapters.

**Chapter-I**, which presents **Introduction** has been divided into two parts. **In the first part Concept and Evolution of privity of contract in British and Indian context** has been discussed. In English law the doctrine was established in Twiddle v. Atkinson, (1861) 1 B & S 393 and Dunlop Pneumatic Tyre Co. Ltd. vs. Selfridge and Co. Ltd. 1915 A.C. 847 is still applied in England with certain limitations.

The Indian Contract Act, 1872 does not embody any specific provision defining the doctrine, the definition given by the English court in **Price v. Easton (1833) 4 BAd. 433** has been accepted.

The possibility of third party's action was examined in **Rakhma Bai v. Govind Moreshwar 1904 6 BOM LR 421**, but firmly established in **Khawaja Muhammad Khan v. Nawab Hussaini Begum – 1910, 37 I.A. 152**.

**In the Second part** of this Chapter, **Concept and Evolution of privity of consideration, in British and Indian Context**.

In general idea of consideration was formed about the **middle of the 15th century**. The present dimentions of the English concept of consideration was laid down by the Court of Exchequer in Curie v. Misa 1875, But in India precise formulation of consideration was injected through the legislature, **Sec. 2 (d) of Indian Contract Act, 1872**.

The Madras High Court in Chinnaya v. Rammaya 1882 allowed plaintiff to recover annuity, consideration given by "any other person" is equally effective.

In **Samuel v. Ananthanatha 1883, 6 Mad. 351**.

The court allowed the action in favour of strangers. The Indian contract widens the definition of consideration.
Chapter-II, 'Privity of Contract and of Consideration', certain theories of contract and their jurisprudential aspects and the extent to which they support the doctrine of privity of contract have been discussed.

The landmark judgement of the apex court of India in two cases.


A Consideration is essential for a valid contract. The general rule in contract Act 1872, is "an agreement without consideration is void."
The consideration has got multi dimensional significance under the contractual obligations in India welfare state.

Reform in privity is not possible without reforming consideration.

Chapter – III, 'Remedies of the privity of contract' are discussed. The remedy that may be available to the promisee if the promisor fails to perform the promise are only relevant under the promisee is able and willing to enforce the contract for the benefit of the third party.


The exception to the rule that damage could not be recovered for third party's loss was later extended.

The third party for whose benefit a contract has been made, may not sue on the contract but the party making the contract may sue for specific performance for the benefit of the third party even where damages are nominal, will be obtainable.

In India, in Seenivasan v. Peter Jebaraj and Anr. AIR 2008 SC 2052, held by Supreme Court that Sale made by third parties during suit is valid.

Chapter – IV, 'The Rationale and an appraisal of the third party rule' are discussed. Those, who favour the common law rule also point out that it is not absolute. The Courts and the legislature have created exceptions to avoid perceived injustice. The considerable criticism of the principle that third party cannot acquire rights under a contract has been noted.

Chapter-V, deals with 'Rights of the Third Parties Act, 1999'. The contract (Right of Third Parties) Act 1999 enables the parties to a contract to make it enforceable by a third party. Fraser River Pile & Dridge Ltd. v. Can-Drive Services Ltd. (2000).

Chapter-VI, deals with 'The imposition of contractual liabilities upon third parties'.

It would be unjust to impose contractual burden upon third parties. However there are certain cases, where contractual liabilities can be imposed upon a stranger.

Chapter – VII, covers 'Exemption clauses and third parties'.

Prior, to the contracts (Rights of third parties) Act 1999 such attempts to rely on exemption clauses encountered great difficulties.
The operation of doctrine of privity in such cases will be considered in *Scrutton Ltd. v. Midland Silicons Ltd. (1960). 2 All ER 737(CA)*.

**The Supreme Court of Canada** has recently gone even further than English courts in enabling third parties to take the benefit of exclusion clauses. *In London Drugs Ltd. v. Kuehne of Negal International Ltd. (1992) 97 DLR; 261.*

However, a common law exception such as the Canadian one would not be subject to the limitation in the 1999 Act, for exemption that the Third party be identified by name, class or description the courts may consider it in appropriate to enlarge the statutory provisions by judicial innovation.

**Chapter-VIII, deals with Exceptions :**

Exceptions have been analysed under English Law and Indian Law and Statutory and Non Statutory Exceptions.

**Chapter-IX, deals with Conclusion.**

In which the whole discussion has been summed up and the possible suggestions have been submitted.

It is to be noted that the present study is, especially based on provisions of the Indian Contract Act, 1872 British Statutes and Other Common Law Countries statutes have also been discussed.

**Indian Statutes, Indian Contract Act, 1872,** some other statutes mainly the Negotiable Instruments 1881, Indian Trust Act 1882, the Indian Partnership Act; 1932, the Life Insurance Corporation Act, 1956. The Motor Vehicle Act, 1988; Company Law; 1956; MRTP (Amendment) Act 1984; Indian Property Act; 1882. Specific Relief Act; 1963, Civil Procedure Code 1908 Indian Evidence Act, 1872. Industrial

It is also expedient to discuss English Statutes, Road Traffic Act, 1972, Bill of Exchange Act 1882; Married Women's Property Act; 1882, Law of Property Act 1925; Third Parties (Right Against Insurance) Act 1930 Fatal Accidents Act, 1846, 1908, 1959.


A number of countries recognise the rights of third parties to enforce the contract :- Scotland, France, Germany, Italy, Austria, Spain, Portugal, Netherlands, Belgium, Luxemborg, Greece are such countries.

The UNIDROIT principle provides that a contract is binding upon the third parties.

A further factor in support of reforming the third party rule in English Law is the fact that the legal systems of most of the members states of European Union recognised and enforce the rights of third party beneficiaries under contracts.

Analysis of Indian and English Law, I have also examined other common law countries as well.
In **France**, qualified by the **Act, 1121** of the code civil, permits a stipulation for the benefit of a third parties.

In **Germany**, contractual rights for third parties are created by **Act, 328** of the **Burgerliches Gesetz buclol**.

It is though expedient to incorporate quite relevant legal development that have been taken in the recent years.

It is in this respect that the cases of **Seevevasan v. Peter Jabaraj and Anr. 2008 SC 2052**.

**Bajaj Allianz General Insurance Co. Ltd. v. B.M. Niranjan and Anr. 2008 ACJ. 554.**

**Bhav Singh v. Savirani and Others, 2008 T.A.C. 134 (M.P.).**

**Branch Manager, National Insurance Co. Ltd. Mettur Dam v. Venkatanand Others, 2008, 277 (Mad.).**

**National Insdurance Co. Ltd. v. Jashuben Bala Bhai Koli (Vaghani) 2009 Guj.**

**ICICI Lombard General Insurance Co. Ltd. v. Vinod Bhai Hirabhai Vadher, 2009 (Guj).**

**National Insurance Co. Ltd. at Godhra v. Shabbir Mohammed Kunj and Others, 2009 (Guj.).**

**Gobind Ram V. Umed Singh & Others 2009 (P&H)** have been incorporated in my work.