



## THE EFFECTS OF COMMUNICATION AND NON- COMMUNICATION ON CONTRACTS

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### ABSTRACT:

Communication, in the contracts is present from the very initial stage. From the point where the proposal or the offer is made by the offeror till the acceptance of the contract.

For a contract to form, there requires an offer which is enforceable by law from a party and acceptance from the other party, which makes the proposal into a promise. Ultimately, it would be called as an agreement.

The way the communication effects the offer, acceptance and revocation has been mentioned quite elaborately in this paper.

The types of offers have been mentioned and to whom they are communicated. For instance, specific offers are those which are communicated to only a specific party. While, the general offers are those in which the communication is done with the public at large (e.g., advertisements and posters). The communication of offer is complete when the other party learns about the offer which the offeree is putting forth. The ways of communicating the offers have also been mentioned in this paper. The ways and conditions for communicating the offer and

where the communication isn't necessary and also the modes of communication.

the importance of communication in the process of revocation has also been discussed. The thumb rule is that the revocation must be communicated before the acceptance of the proposal vis-à-vis, in case of change in decision. The modes of communication in the contracts are also discussed in this paper. There are two types of communication: Instantaneous and non-instantaneous. Instantaneous means the telephonic communication and the conversation in the social media platforms. Non instantaneous are the postal communication, telegram and emails.

**Keywords:** Communication, Contracts, Offer, Acceptance, Revocation, Postal Rule, Instantaneous Communication, Non-instantaneous Communication.

### INTRODUCTION:

A contract is a defined as '*An agreement enforceable by law*<sup>1</sup>' as per Section 2(h) of the Indian Contract Act, 1872. For the formation of the contract there should be an agreement and it should be enforceable by law. According to Section 2(e) agreement means '*Every promise and a set of promises forming the consideration for each other*<sup>2</sup>'. A promise can also be said as an accepted proposal and according to Section 2(b), '*A proposal when accepted becomes a promise*<sup>3</sup>'. The definitions' process comes down this way, a contract is an agreement and an agreement is a promise and a promise is an accepted proposal. Ultimately, in an agreement, there would be a proposal from a

<sup>1</sup> Indian Contract Act 1872, s 2(h).

<sup>2</sup> Indian Contract Act 1872, s 2(e).

<sup>3</sup> Indian Contract Act 1872, s 2(b).



side and acceptance must be present from the other side.

Effective communication about the offer and its acceptance, as well as a clear understanding of it, are critical for forming a valid contract and avoiding misunderstandings and misconceptions. Many contracts fail owing to a lack of communication, and persons are forced to face legal penalties. To avoid being affected by this, the contract's conditions must be well communicated.

According to Section 3 of The Indian Contract Act 1872, *The communication of proposals the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it*<sup>4</sup>.

In the whole procedure of formation of the contract, the **Communication** plays a key role. An offer is made by a party through communication to the offeree and acceptance of the offer must be apprised through the communication (i.e., verbal or through postal, etc.)

The Section 4 states: *The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made*<sup>5</sup>. If the acceptance of the proposal/offer isn't communicated then there wouldn't be a validity of the contract. Since, the offeror would not know if the offer has been by the offeree is accepted or not.

## OFFER AND COMMUNICATION:

As per the Section 2(a) of the Indian Contract Act 1872 an is defined as follows: *'When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal*<sup>6</sup>.

The term signifies in this definition means that without the communication, there cannot be an offer.

For instance, If M wants to sell her necklace to L for rupees 2 lacs, this would be an offer. However, M has to communicate it to L about that only then, it could be considered to be an offer.

## Types of Offers:

There are 3 types of offers. They are general offer, specific offer and invitation to offer. There can be no offer without communication.

1. **Invitation to offer-** It refers to the act of inviting people to make an offer in order to form a contract; the most simple and well-known example of invitation to offer is advertisement. When a party files a tender application to the institution, the tender advertisement becomes an invitation to offer.

It was held in *Gibson v Manchester City Council*<sup>7</sup>, that a policy for selling council houses to renters was not an offer, but rather an invitation to offer, and so no contract could be formed as a result of it.

<sup>4</sup> Indian Contract Act 1872, s 3.

<sup>5</sup> Indian Contract Act 1872, s 4.

<sup>6</sup> The Indian Contract Act 1872, s 2(a).

<sup>7</sup> *Gibson v Manchester City Council*, 1 All ER 972.



In *Harvey v Facey*<sup>8</sup>, it was determined that the telegram transaction between plaintiff and defendant was merely an informational exchange. The distinction between the offer and invitation to offer has been observed.

In *Said v Butt*<sup>9</sup>, the court ruled that a shop is a venue for bargains, not mandatory sales. The invitation to offer is primarily communicated through informational posters or advertising.

2. **General Offer-** An offer made to the public at large is known as general offer. In the case *Carlill v. Carbolic Smoke ball co.*<sup>10</sup>, The defendant advertised a medication known as carbolic smoke ball. According to the commercial, the indicated treatment is a preventive medicine for the condition known as influenza. It also promised that anyone who acquired influenza after using the drug would be given a 100-dollar incentive. The aforementioned sum was also placed with Alliance Bank in order to give the prize. Despite taking the medication as prescribed, the plaintiff contracted influenza. She claimed her compensation from the corporation, which denied it, claiming there wasn't communication of company's acceptance of the offer received.

**The contentions made by the company:**

- a. There was no intent, and advertising does not create a legal connection.
- b. The offer hasn't been made to a specific person.
- c. The communication of acceptance wasn't done through the direct communication.

The Court ruled in favour of the plaintiff since depositing money indicated their desire, making an offer to the world at large is known as a broad offer, and a general offer does not require communication of acceptance.

In *Lalman Shukla v. Gauri Datt*<sup>11</sup>, The defendant's nephew ran away from his home. The plaintiff (the defendant's servant) was dispatched to look for the missing youngster. Following the plaintiff's departure in search of the youngster, the defendant advertised a reward for anyone who could locate the boy. The plaintiff, who did not know about the award, was successful in finding the boy. When he discovered the defendant's declared reward, he filed a lawsuit against defendant to recover the prize money, as he had retrieved the youngster for free. The court ruled that since the plaintiff was unaware of the prize offer, his act of locating the missing youngster did not imply that he accepted the offer because he only learned about it after locating the boy. As a result, he was not eligible to receive the reward. According to contract law, an offer can only be accepted after the offeree becomes aware of it. It means that the offer must be offered by the offeror in order for the other party, the offeree, to accept it. This case law demonstrates the importance of communication of the offer.

3. **Specific Offer-** When the offer has been made to a specific person or a particular institution or a group then it is known as

<sup>8</sup> *Harvey v. Facey*, (1893) AC 552.

<sup>9</sup> *Said v. Butt*, [1920] 3 KB 497.

<sup>10</sup> *Carlill v. Carbolic Smoke ball co.*, 2 QB 484 (QBD).

<sup>11</sup> *Lalman Shukla v. Gauri Datt*, [1913] 40 ALJ 489.



a specific offer. In this aspect, the communication of the proposal and the acceptance is necessary.

In the case of *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas and Co. and Ors.*<sup>12</sup>, The plaintiffs offered to purchase cotton seed cake from defendants, and the resulting contract was negotiated as an oral contract through the telephone on July 22, 1959. The court stated that the parties are in indirect presence of each other on telephones, assuming the parties to be the callers.

The court relied on the English case law of *Entores Ltd. v. Mills Far East Corporation*<sup>13</sup>, which held that in situations of instantaneous communication, the contract is only complete when the seller receives a "yes," and the contract is created based on where it is formed, to avoid jurisdictional issues in the event of a breach.

The court reasoned that, considering the critical nature of a telephone discussion, the parties are in a sense present with each other and talks are closed by instantaneous communication. They believe that in circumstances where a contract is to be finished by instantaneous modes of communication, the contract can only be completed when the offer's acceptance reaches the offeree, and that exceptions for non-immediate modes of communication will not be applied. This case law demonstrates the importance of rapid offer communication.

### Communication of Offer/ Proposal:

The primary part of the proposal's definition emphasises on the requirement of the willingness to make a proposal which must be 'signified'. In the traditional terms of the law of contracts, the proposal/ offer must be communicated to the other party (i.e., offeree).<sup>14</sup>

The importance of the communication of offer has been enlightened in the previously mentioned case of *Lalman Shukla v. Gauri Datt*<sup>15</sup> where the court stated, "There was never an enforceable agreement as the acceptor never had the knowledge of such an offer and without which he could never give his assent." The Section 4 says, *the communication of a proposal is complete when it comes to the knowledge of the person to whom it is made.*

According to Section 9: *Promises, express and implied. – In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.*<sup>16</sup>

1. **Express communication of the offer-** this occurs when the offer is made directly.

Cross offer- it occurs when two parties simultaneously offer the same thing to each other without being aware of the other party's proposal.

Counter offer occurs when a party to which the proposal is made respond with another

<sup>12</sup> *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas and Co. and Ors.*, AIR 1966 SC 543.

<sup>13</sup> *Entores Ltd. v. Mills Far East Corporation*, (1955) 2 Q.B.D 327.

<sup>14</sup> *Lalman Shukla v. Gauri Datt*, [1913] 40 ALJ 489.

<sup>15</sup> Rajesh Kapoor, *Avtar Singh's Contract & Specific Relief* (Abhinandan Malik, 13<sup>th</sup> edn, EBC 2021) 8.

<sup>16</sup> The Indian Contract Act 1872, s 19.



offer that changes the conditions of the previous offer.

*Wrench v. Hyde*<sup>17</sup>, was a property sale case in which the defendant offered to sell his property i.e., farm for a certain (1200 pounds) price, which the plaintiff declined, and then the defendant reduced the price (1000 pounds) and made another offer, which the plaintiff also declined, and then the plaintiff sent counter offer (950 pounds), which the defendant refused. The plaintiff eventually agreed to purchase the farm for the defendant's second offer (1000 pounds), which the defendant declined. The plaintiff subsequently filed a specific performance complaint in court. The Court ruled in favour of the defendant, holding that when a counter offer is made, the initial offer is superseded and destroyed.

**2. Communication of offer through service rendering-** It is an inferred offer through service rendering. However, it has been deemed inadmissible since an offer can't be granted in ignorance; it must be notified to the party to whom it is made.

In *Taylor v. Laird*<sup>18</sup>, The claimant worked as the ship's captain possessed by the defendants. During his cruise return to Britain, he voluntarily relinquished his post as captain and performed like an ordinary member of the crew at a foreign port. This shift in position was not communicated to the defendant. When he returned, he attempted to recover pay from defendant for his duties as a crew member on the trip.

The issue was whether defendant had approved the claimant's job offer while being uninformed of it, and whether the defendant was contractually obligated to pay the claimant's wages for his labour aboard the ship on the return journey<sup>19</sup>.

The court ruled that the claimant wasn't really eligible to wages for the return trip because he had not entered into a contract with the defendant for the execution of his employment as an ordinary crew member. There was no foundation for a contract because the defendant had not received any contact or proposal of work in this role from the claimant. The court concluded that it would be unreasonable to bind a party to an offer that he was not made aware of and hence had no option to accept or reject; as a result, accepting an offer 'in ignorance' is not permissible in English contract law.

Pollock said:

“One cleans another's shoes; what can the other do but put them on? Is that evidence of a contract to pay for the cleaning?”

In some cases, the services rendered are necessity and the need of the hour, one may resituate for the said service voluntarily, but there is no contractual obligation.”

<sup>17</sup> *Wrench v. Hyde*, 49 ER 132.

<sup>18</sup> *Taylor v. Laird*, (1856) 25 LJ Ex 329.

<sup>19</sup> All Answers ltd, 'Taylor v Laird' (*Lawteacher.net*, May 2022) <

<https://www.lawteacher.net/cases/taylor-v-laird.php?vref=1> > accessed 22 May 2022.



### ACCEPTANCE AND COMMUNICATION:

**Acceptance is communicated by an overt act or through behaviour (Words spoken or written, or actions taken):** In *Brogden v. Metropolitan Railway & Company*<sup>20</sup>, “The plaintiff supplied coal to the defendant railway firm. They have been bargaining informally without a written contract for several years. Both sides believe that signing a formal written contract is preferable. The plaintiff made a few small changes and filled in certain gaps before returning it to the defendant. The defendant just provided the documentation but never accepted the contract, which was never communicated to the plaintiff. Then there was a disagreement, and the written agreement was called into doubt. Despite the lack of communication of acceptance, it was determined that a written contract was enforceable.”

**Communication must be made to the offeror:** In the case of *Felt house v. Bindley*<sup>21</sup>, “the plaintiff Felt house told his nephew that he would buy his nephew's horses. He told his nephew that if he did not hear from him, he would take ownership of the horse. The nephew is currently auctioning off his other possessions. Mr. Bindley instructed the auctioneer not to sell the horse. Mr. Bindley inadvertently auctioned off the horse. Bindley was summoned to court by Felt house. The contract between the plaintiff and his nephew was not consummated, according to the court, because the nephew did not accept the offer. The court decided

that before an offer can be considered a contract, it must be clearly specified. This is a historical case that emphasizes the necessity of communication when it comes to contract. There can be no contract without appropriate communication.”

**Communication must be initiated by the acceptor:** In *Powell v. Lee*<sup>22</sup> “it had a plaintiff who applied for the position of headmaster and was accepted by the school board. Prior to the formal appointment, a director informed Powell of the decision, which was later retracted by the board of directors. The school breached the contract, and the court concluded that because the offeror failed to indicate acceptance, there is no functional contract. To be deemed effective, the acceptance must be communicated to the provider by the recipient of the offer or a lawfully authorized person on its behalf. It is not a contract if the contact is done through unauthorized personnel.”

As per Section 4 of ICA, *the communication of an acceptance is complete- as against the proposer, when it is put in a course of transmission to him, so as to be out of the power of the acceptor; as against the acceptor, when it comes to the knowledge of the proposer*<sup>23</sup>:

In *Household Fire & Accident Insurance Co. v. Grant*<sup>24</sup>, “Mr Grant, the defendant, applied for shares in the complainant's company, Household Fire Insurance. The complainants assigned Mr Grant shares and concluded the contract by mailing him a letter with notice of the allotment. This letter, however, never

<sup>20</sup> *Brogden v. Metropolitan Railway & Company*, (1877) 2 AppCas 666.

<sup>21</sup> *Felthouse v. Bindley*, 142 ER 1037.

<sup>22</sup> *Powell v. Lee*, 99 LT 284.

<sup>23</sup> Nipun Chandrakar, ‘Role of Communication in law of contract’ (*iPleaders*, 4 May 2021) <

<https://blog.iplayers.in/role-communication-law-contract/> > accessed on 23 May 2022.

<sup>24</sup> *Household Fire & Accident Insurance Co. v. Grant*, LR 4 Ex D 216.



made it to Mr Grant since it was misplaced in the mail. As a result, Mr Grant never paid for the shares. When the Household Fire Insurance Company declared bankruptcy, the liquidator demanded payment of the shares from the defendant. Mr Grant refused to pay because he did not consider himself a shareholder and did not believe there was a binding contract in his mind.

The court ruled that the liquidator was entitled to receive money since Mr Grant and the Household Fire Insurance business had a valid contract. This ruling was challenged. The appeal addressed whether the share offer had been accepted and if there existed a legally enforceable contract. The appeal was dismissed, and it was determined that the parties had a legitimate contract for the shares. The postal rule, which provides that acceptance is effective when mailed, was upheld, as long as the parties see the post as an acceptable mode of communication. This law holds true even though Mr Grant never received the letter. According to Lord Justice Thesiger, posting acceptance results in a meeting of minds, which results in a binding contract. Lord Justice Bramwell argued that the postal rule can stymie transactions and that acceptance should be effective only when the letter arrives<sup>25</sup>.

In *Adams v Lindsell*<sup>26</sup>, “the defendant promised to sell wool to the plaintiff through mail; however, due to the letter's incorrect address, it would not reach to the plaintiff's address until September 5. This also caused a delay in the letter of acceptance, which came on September 9 at the defendant's location, while the defendant already had sold wool to

a third party on September 8th. The court was asked to rule on when the acceptance was made, and when the contract began.

The Court ruled in favour of the plaintiff, holding that the acceptance was completed as against the offeror at the moment the letter was mailed, and so a contract existed here between the plaintiff and the defendant, and selling wool to a third party was indeed a breach of that contract. When it comes to the awareness of the proposer, the court additionally decided that the communication of acceptance had accomplished as against the acceptor. This is regarded as a watershed moment in postal law.

When it comes to accepted communication via electronic devices, India follows the rule set in *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Company and Others*<sup>27</sup>. In this case, the court found that an electronic contract is formed when the offeror receives notification of acceptance<sup>28</sup>.

**The communication of a revocation is complete- as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it<sup>28</sup>;**

- A withdraws his proposal through telegram

<sup>25</sup> Kashmitha Belwalkar, ‘Communication in Contracts’ (*Aishwarya Sandeep*, 4 August 2021) <<https://aishwaryasandeep.com/2021/08/04/communication-in-contract-law/>> accessed on 23 May 2022.

<sup>26</sup> *Adams v Lindsell*, 106 ER 250.

<sup>27</sup> *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Company and Others* (n 12).

<sup>28</sup> Rajesh Kapoor (n 15) 61.



- When the telegram is sent, the revocation is complete in comparison to A
- It is complete in relation to B after B receives it
- B cancels his acceptance through telegram
  - B's revocation is complete in relation to B when the telegraph is sent, and in relation to A when it reaches him.<sup>29</sup>

#### Communication when it isn't necessary-

However, in some instances, communication of approval is not required. The offeror may provide a certain form of acceptance, and the acceptor must simply follow that mode. Then there may be an offer that implies that acting on its terms is adequate acceptance. An offer of this type is an announcement to pay a prize for finding a missing item. Sometimes, the offeror may have regarded a certain act by the acceptor as comparable to acceptance.<sup>30</sup>

In the case of *Carlill v. Carbolic Smoke Balls*, L.J. Bowen has observed the following regarding this aspect: But there is this clear gloss to be made upon that doctrine, that as notification of acceptance is required for the benefit of the person who makes the offer, the person who makes the offer may dispense with notice to himself if he thinks it desirable to do so, and I suppose there can be no doubt that where a person in an offer made by him

to another person, expressly or impliedly intimates a particular mode of acceptance as sufficient to make the bargain binding, it is only necessary for the other person to whom such offer is made to follow the indicated method of acceptance; and if the person making the offer, expressly or impliedly intimates in his offer that it will be sufficient to act on the proposal without communicating acceptance of it to himself, performance of the condition is a sufficient acceptance without notification.<sup>31</sup>

In another similar case *Taylor v. Allon*<sup>32</sup>, a motorcyclist was penalized for riding his bike on a public street without third-party insurance. His insurance had terminated, but his employer had provided him with a temporary cover letter. He had not accepted this, therefore there was no contract at the relevant date, however the temporary risk note remained in effect.

Lord Parker, on the other hand, stated that if he would have taken out his motorcycle based on the temporary risk note, there would have been enough acceptance by conduct without communication. Even yet, though he could have protected his skin by displaying the unaccepted temporary cover, he could always disclaim his duty to the firm to pay the premium.

#### When Parties in direct communication:

This rule, that the acceptance is completed as against the proposer only when letter is posted, is most likely intended to apply solely when the parties are apart and communicate

<sup>29</sup> R. Yashod Vardhan, Chitra Narayana and Vinod Kumar, *Pollock and Mulla: The Indian Contract Act 1872* (16<sup>th</sup> edn, Lexis Nexis 2022) 102.

<sup>30</sup> Rajesh Kapoor (n 15) 30.

<sup>31</sup> *Carlill v. Carbolic* (n 10).

<sup>32</sup> *Taylor v. Alton*, (1966) 1 QB 304; (1965) 2 WLR 598.



by post. In England, its use has been limited to circumstances in which the post is employed, and the illustration b) attached to Section 4 similarly assumes communication by post. "Where, however, the parties are in each other's presence or, although being separated in distance," they are in direct communication, such as by phone, no contract will arise until the offeror receives notification of acceptance. This is evident from the remarks given in the case of *Entores Ltd v Miles Far East Corporation*.<sup>33</sup>

Denning LJ made the following observation: "First, take a circumstance in which two people make a contract by word of mouth in the presence of one another." Assume I yell an offer to a man across a river or a courtyard, but I don't hear his response because it is blocked out by an aircraft flying overhead. There is currently no contract. If he wants to form a contract, he must wait until the airplane has departed before shouting his acceptance so that I can hear what he says. Consider the following scenario: two persons enter into a contract over the phone. Assume, for example, that I make an offer to a man over the phone and the line goes "dead" in the middle of his response, such that I do not hear his words of acceptance. There is no contract at that point. The facts of the case were that an offer was made from London to a party in Holland by telex, and it was promptly accepted via telex, with the only question being whether the contract was made in England or Holland. The Court of Appeal ruled that telex is a mode of immediate communication and that "the rule concerning instantaneous communications between parties is different from the rule about post."

<sup>33</sup> *Entores Ltd v Miles Far East Corporation*, [1955] EWCA Civ 3.

The contract is only complete when the offeree accepts it.<sup>33</sup>

Where the proposal and acceptance are made via letter, the contract is made at the location where the acceptance letter is placed.

The Supreme Court remarked that "authorities in India" indicate a pretty uniform trend that in case of post-contract negotiations, the contract is complete when acceptance of the offer is put into a process of transmission to the offeror." Thus, where a premium due on a life insurance policy was sent by money order, it was determined that the policy had been revived from the date of the money order rather than the date of its receipt by the firm.

The insured died in the meantime, and his wife received the proceeds. Whatever validity this rule may have from the perspective of the assured or offeree, it definitely makes the offeror's situation terrible. The prevailing feeling is that even in the case of postal communications, the principle of consensus or "meeting of minds" should be followed, and no contract should be entered into until acceptance is received.

In *Holwell Securities Ltd v Hughes*<sup>34</sup>, it was decided that if an option to acquire land was exercisable by notice, the mere posting of the notice, which was never delivered, was not a genuine exercise of the option.

The Supreme Court has approved the "Entores case":

The Supreme Court upheld the Entores principle in the aforementioned *Bhagwandas*

<sup>34</sup> *Holwell Securities Ltd v Hughes*, 1 WLR 155.



*Goverdhandas Kedia v Girdharilal Parshottamdas & Others*, case.

In this case, the plaintiffs made an offer to the defendants in Khamgaon to acquire specific items from Ahmedabad, and the defendants accepted the offer. The question was whether the discussion resulted in a contract at Khamgaon not in Ahmedabad. A majority of the judges (Hidayatullah J [later CJ]) (dissenting) opted to accept the English norm established in the Entores case and saw no need to apply the post office rule to telephone communications. Shah J (later CJ) believed "Section 4 does not suggest that the contract is made in one location qua the proposer and another one qua the acceptor. "

The contract is completed when the offeror receives notification of acceptance. However, he added, the draftsman of the Indian Contract Act could not have anticipated the use of the telephone because it had not yet been invented, and hence the section's terms should be limited to communications by post.

Hidayatullah J (later CJ) stated, "Despite the fact that "the statute was framed at a time when telephones, wireless, Telstar, and Early Bird were not envisioned," Section 4's language is flexible enough to cover telephonic communications.

The text of the Act should not be completely ignored by the courts. When the words of acceptance are said into the phone, they are transmitted to the offeror in such a way that they are beyond the acceptor's control. The acceptor is unable to recall them. Because the

communication is instantaneous, the contract is formed right away.

Fax communication is comparable to telex communication. Fax communication is also instant communication. It works with a phone connection. The standard rule applies. Fax communication, like telephone communication, is complete when the offeror receives the acceptance. The mere absence of a signed formal contract has no bearing on the unconditional acceptance of a proposal or the implementation of the contract that results from it. Sections 4 and 7 were satisfied by the unequivocal acceptance of a contract by e-mail of an offer made via e-mail outlining the terms and conditions."<sup>35</sup>

#### **Acceptance Communication Mode:**

To turn a proposal into a promise, the acceptance must—

- (1) be unqualified and absolute;
- (2) be expressed in a common and acceptable manner, unless the proposal specifies how it is to be approved. If the proposal specifies how, it should be accepted and the acceptance is not made in that manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal be accepted in the prescribed manner and not otherwise; if he fails to do so, he accepts the acceptance.<sup>36</sup>

Acceptance communication is initiated using words, whether oral or written. It can be done by phone calls, e-mails, telegrams, and so on.

<sup>35</sup> *Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas and Co. and Ors.*, AIR 1966 SC 543.

<sup>36</sup> *Kashmitha* (n 15).



Acceptance Communication through Conduct: The offeree conveys his acceptance by his actions. Boarding a bus is an example of acceptance communication through behaviour.

In the case of *Byomkesh Banerjee v. Nani Gopal Banik*<sup>37</sup>, the company claimed that the letter of allotment of shares had been posted, but the petitioner denied receiving it. The court directed that a notice of allotment, which is viewed as acceptance of an offer to purchase shares, be notified to the allottee when it is delivered under sections 4 and 5. The contract is considered complete from the moment it is signed. It makes no difference whether or not he receives the letter.

In *Hairoon Bibi v. united India Life Insurance Co*<sup>38</sup>, AIR 1947 Mad 122 case, where a premium due on a life insurance policy was sent by money order, it was held that the policy had revived from the date of the money order and not from the date of its receipt by the company. The assured having died in the meantime, his widow recovered the proceeds.

### REVOCATION AND COMMUNICATION:

In general terms, the term Revocation means taking back.

According to *Black's Law Dictionary*, revocation means "The recall of some power, authority, or thing granted, or a destroying or making void of some deed that had existence until the act of revocation made it void. It may be either general, of all acts and things

done before; or special, to revoke a particular thing".

As per Indian Contract Act 1872, section 4:

*The communication of a revocation is complete, — as against the person who makes it, when it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it; as against the person to whom it is made, when it comes to his knowledge*<sup>39</sup>.

For example:

L offers K to sell his property for Rs. 3 lacs and sends him the offer through the medium of post. But, upon changing his mind he wanted to revoke the offer. He sends his revocation of proposal through telegram so that the message of revocation reaches first.

Similarly, K accepts the proposal/ offer of L and sends the acceptance of the offer via post. Later, K wanted to revoke his acceptance. He sends the revocation of acceptance through the telegram.

The Rule is that: The revocation must and should reach before the letters of offer and acceptance reaches.

A common question which arises is the consequence of the situation where the letter of acceptance or the letter of offer and the revocation of acceptance / offer reach at the same time to the receiver.

Through the application of the objective approach to the situation. The letter of revocation would be taken into consideration

<sup>37</sup> *Byomkesh Banerjee v. Nani Gopal Banik*, AIR 1987 Cal 92.

<sup>38</sup> *Hairoon Bibi v. united India Life Insurance Co*, AIR 1947 Mad 122.

<sup>39</sup> The Indian Contract Act 1872, s 5.



and the letter of acceptance or the offer will be considered invalid.

Following are a few case laws that contain such circumstances:

In *Payne v. Cave*<sup>40</sup>, the plaintiff held an auction to sell his goods, and the defendant made the highest bid, but he withdrew his bid before the auctioneer dropped the hammer. The court ruled that there was no contract because the revocation of the offer occurred before it could be accepted, and the revocation was properly communicated.

In *Byrne & Co v Leon Van Tien Hoven & Co.*,<sup>41</sup> the defendant submitted an offer to the plaintiff for the sale of goods on October 1st, which arrived on October 11th and was accepted by the plaintiff through letter and telegram. On the 8th of October, the defendant sent another letter of revocation, which was received later. The court had to decide whether or not the revocation was valid. The court ruled in favour of the plaintiff, ruling that the letter of revocation was ineffectual because it arrived after the proposal was accepted and the contract was declared to be made.

The following rules under which the revocation happens in India is through The Indian Contract Act 1879, section 5:

*Revocation of proposals and acceptances. — A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. An acceptance may be revoked at any time before the communication of the*

*acceptance is complete as against the acceptor, but not afterwards.*<sup>42</sup>

### MODES OF COMMUNICATION:

There are 2 modes of communication through which the parties can communicate:

#### 1. Instantaneous mode of communication:

Contracts made over the phone are, without a doubt, made at a distance, but communication is rapid and oral. The rule that acceptance is not complete until it is accepted, heard, and understood by the offeror would thus regulate contracts negotiated over the phone just as much as those negotiated in the physical presence of the parties.<sup>43</sup>

When the acceptor communicates through telephone or telex, he will usually know if his communication did not reach the proposer and can try again. The rule is sound and practical since the noise of a flying aircraft may drown out the oral acceptance, or the phone may go dead or feeble and fuzzy, and so not be heard. If the words of acceptance are inaudible and the offeror does not hear or understand them, the acceptance is incomplete, and no contract is created until the acceptor repeats his acceptance so that the offeror can hear it.<sup>44</sup>

“The Information Technology Act, 2000 provides that unless otherwise agreed, the despatch of an electronic record occurs when it enters a computer resource<sup>45</sup> outside the control of the originator.<sup>46</sup> If the addressee has identified a computer resource for receipt of an electronic record (for example, if an

<sup>40</sup> *Payne v. Cave*. 3 TR 148.

<sup>41</sup> *Byrne & Co v Leon Van Tien Hoven & Co.*, 5 CPD 344

<sup>42</sup> The Indian Contract Act 1872, s 5.

<sup>43</sup> Yashod Vardhan, Chitra (n 29) 105.

<sup>44</sup> Ibid.

<sup>45</sup> The Information Technology Act 2000, s 2 (1) (k).

<sup>46</sup> The Information Technology Act 2000, s 13(1).



offer expressly specifies the address to which acceptance must be sent), and the electronic record is sent to such resource, it is considered received whenever the electronic record enters the designated computer resource. The proposal is accomplished against the proposer once it is in the process of transmission to the person who it's made, so that it is no longer within the control of the person making it. If it is transmitted to a computer resource that is not the intended computer resource instead of the designated computer resource, the record is deemed received when it is retrieved by the addressee. If the addressee has not specified a computer resource or timings, the record is received whenever it enters the addressee's computer resource. The sender of the electronic record has the right to specify that the record supplied is only binding upon receipt of acknowledgement.”

When communicating via an "instantaneous" means, such as telephone or telex, the sender knows immediately whether his communication has arrived and has the opportunity to make a suitable communication. The postal rule is an exception to the general rule when communication is transmitted by post or telegram. An acceptance submitted via fax, on the other hand, may not be received at all or may not be readable, and hence should not be effective immediately. An e-mail acceptance may never reach the addressee. The sender's email is "posted" with the addressee's server in the addressee's "mail-box." If the server function is available, the addressee will receive it when he accesses it and downloads the message to his machine.

It is therefore proposed that the principles of postal communication be made applicable to fax or e-mail communication, or messages delivered by comparable electronic methods, unless the sender has an instant chance to check the proper communication of the message. However, several courts have ruled that the contract is concluded when acceptance is received, whether by telex, fax, or email.

“While e-mail or Facebook contact is protected by Section 4, there is no clear rule as to whether postal or instant communication rules are deemed to be the same as "contracts" made through Facebook/e-mail/Instagram DMs, etc. If someone sends a message instantly through Facebook or e-mail and reacts to the opposite party, it is known as instant communication; but if the opposite party does not respond instantly, it tends to be non-instant communication in nature, but this is a presumption of rationale and is not confirmed. Therefore, a combination of all modes of modern contact are social media tools. Under Section 13 of the Information Technology Act, 2000, *the transfer of an electronic document occurs as it achieves access to a computing resource that is beyond the jurisdiction of the originator.* There will be a confirmation of the bid in the case of e-mail when the letter reaches the electronic mailbox of the offeree, so the contract is established when the message enters the mailbox of the person to whom it is sent.<sup>47</sup>”

<sup>47</sup> I. Ayres and A. Schwartz, “The no-reading problem in consumer contract law,” (2014) 66 (3) Stanford Law Review <

<https://www.jstor.org/stable/24246723?seq=1> > accessed on 24 May 2022.



## 2. Non instantaneous mode of communication: '*Postal Rule*'

“Adams v Lindsell established the postal rule that the contract is complete when the acceptance of the offer is placed in a course of transmission by post to the offeror. To the degree that the clause in the section's second paragraph states that acceptance is completed whenever the letter is delivered, it reflects English law. However, it differs from English law in that the acceptance is only binding on the proposer when the letter is posted, and only on the acceptor when the letter has reached the proposer (refer section 5).

“The section's provision on notification of acceptance, as illustrated by the images, is primarily intended to address the issues posed by the establishment of agreements between parties at a distance. As a result, there comes a point during the acceptance process when the intended receiver is bound but the sender is not. Before it is assured that the suggestion will be considered, it becomes a promise. This is a deliberate and significant change from the common law requirement requiring the promise and consideration to be concurrent.

The language of the second paragraph suggests that the proposer must be deemed to have received the acceptance at the time it was sent in order for it to be "out of the acceptor's power," even if the acceptance is not actually received by the proposer, and thus it becomes a promise on which the acceptor can sue.

Where the employee who had offered to voluntarily retire revoked the offer and a letter of acceptance dated one day prior to the

revocation was received after the communication of the revocation, it was held that the revocation of offer was valid in the absence of evidence regarding the actual date of posting of the letter of acceptance.

By this technique (i.e., at the time of dispatch), the acceptance may not become a promise if the acceptor's consideration was not a promise but performance—for example, the sale of goods despatched at the proposer's request without prior agreement. The Act makes no mention of the intending purchaser being assumed to have received goods that never arrived; at most, he is deemed to have been informed of their shipping.”<sup>48</sup>

Unless the proposal was expressly made conditional on the actual receipt of an acceptance within a prescribed time, or in due course, or unless the acceptor sends a revocation as provided for by the latter part of the section and explained by illustration, a binding contract appears to be formed by a letter of acceptance despatched in the usual way, even if it does not arrive at all, unless the proposal was expressly made conditional on the actual receipt of an acceptance within a prescribed time, or (c).<sup>49</sup>

### Telegrams:

The rule for telegrams is the same as it is for letters by post: acceptance is complete when the telegram is turned over for dispatch to the telegraph office.<sup>50</sup> This question is no longer relevant because the service for sending telegrams has been stopped.

<sup>48</sup> Yashod Vardhan, Chitra (n 29) 105.

<sup>49</sup> Yashod Vardhan, Chitra (n 29) 105.

<sup>50</sup> Ibid 106.

**Mails:**

Although e-mail communication has some of the trappings of instant communication, it is a fragmented process with numerous steps. The e-mail message is divided into packets and distributed over several routes. Furthermore, unlike with instantaneous modes of communication, the sender has no idea if the e-mail transmission was successful, because even while he receives a delivery receipt, it simply indicates delivery to mailbox and does not show that the other party is aware of the receipt. Thus, e-mail messages come under the purview of non-instantaneous communication. The above-mentioned default rules will apply to e-mail contracts.<sup>51</sup>

**CONCLUSION:**

Communication plays a key role from the formation of the contract to the end of the contract. There is a lot of significance to the word 'communication' in here due to the consent of the parties. For a contract to form, there requires an offer and the offer must be accepted, then there would be negotiations regarding the clauses present in the contract. There also chances of having a counter offer. Both the parties are benefitted due to the contract, which makes it essential to clarify and communicate all the terms, conditions and clauses present in the contract. In case either of the parties would want to revoke their acceptance or the offer itself, the revocation shall be communicated to the other party.

However, in some instances, communication of approval is not required. The offeror may provide a certain form of acceptance, and the

acceptor must simply follow that mode. Then there may be an offer that implies that acting on its terms is adequate acceptance.

In the present era there is an enormous usage of the instantaneous mode of communication. Since there are improvements in the technology, the offer or the acceptance can be communicated quickly. Even though people are far off from each other, they can communicate within some time which actually makes the process of contracting easier and is time saving. With the evolution of social media platforms like Facebook, Instagram and WhatsApp, etc., where people can communicate about their offer or the acceptance and the maintenance of the records regarding the acceptance and the proposal would be recorded. Mails have become the official mode of internet business communication, but they come under the purview of the non-instantaneous mode of communication. Even though, it delivers the messages quickly, the sender of the mail wouldn't know the status of the mail whether it has been checked or unchecked.

The postal mode of communication has been reduced since a lot of problems were faced due to it. Mainly due to the time duration that takes to deliver the proposal or the acceptance or the letter of revocation. In recent days, the postal mode is only used and also rarely used for the official purposes. People are choosing instantaneous communication methods as they are time saving. For the benefit of both the parties, communication always solves the issues and nuances present between them so that the contract could run smoothly throughout its

<sup>51</sup> Ashank, 'Emails and Contracts' (*Legal Services India. Com*) <  
[http://www.legalservicesindia.com/article/2326/Email](http://www.legalservicesindia.com/article/2326/Emails-and-contracts---communication-and-validity.html)

[ls-and-contracts---communication-and-validity.html](http://www.legalservicesindia.com/article/2326/Emails-and-contracts---communication-and-validity.html)  
> accessed on 24 May 2022.



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duration or both the parties could save their precious time and investment if there's been a denial of the proposal or revocation.

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