

Communication of Proposal under the Indian Contract Act, 1872

Indian Contract law occupies the most important place in commercial law. Without the law on contracts, it would have been difficult to exercise trade or any other commercial activity. It is not only the business community that is affected by contract law, but it affects everyone. The purpose of contract law is to ensure that the rights and obligations arising from a contract are respected and that legal remedies are made available to those affected. According to [Section 1](#) of the [Indian Contract Act, 1872](#), this law can be called the Indian Contract Act, 1872.

For constituting a Contract, the proposal of desire is the very first step.

What is a Contract?

Initially, we have to understand the meaning of some terms in order to understand the meaning of Contract under the Indian Contract Act, 1872.

Proposal: According to [Section 2\(a\)](#) of the Indian Contract Act, 1872, when any person signifies his willingness to another person to do anything or abstain from doing anything with a view to obtain the assent of either of such act or abstention, then we will say that person is making a proposal.

Promises: According to [Section 2\(b\)](#), when the person to whom the proposal is addressed signifies their assent, the proposal is deemed to have been accepted. A proposal, when accepted, becomes a promise.

Promisor and Promisee: According to [Section 2\(c\)](#), the person making the proposal is called the “promisor”, and the person who accepts the proposal is called the “promisee”.

Consideration: According to [Section 2\(d\)](#), when, at the option of the promisor, the promisee or any other person has done or refrained from doing, or does or refrains from doing, or promises to do or refrain from doing, something, such act or abstinence or promise is called a consideration for the promise.

Agreement: According to [Section 2\(e\)](#), each promise and each series of promises, which constitute the consideration of each other, constitute an agreement.

Reciprocal Promises: According to [Section 2\(f\)](#), each promise and each series of promises, which constitute the counterpart of each other, constitute a reciprocal promise.

Void agreement: According to [Section 2\(g\)](#), an agreement not enforceable by law would be void.

Contract: According to [Section 2\(h\)](#), a legally enforceable agreement is a contract.

Voidable Contract: According to [Section 2\(i\)](#), an agreement that is enforceable by law at the option of one or more of the parties, but not at the option of the other or others, is a voidable contract.

Communication of Proposal, Acceptance, and Revocation

In accordance with [Section 3](#) of the Indian Contract Law, communication of proposals, acceptance of proposals, and revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revokes, by means of which it intends to communicate this proposal, acceptance or revocation, or which has the effect of communicating it.

Communication of Proposal

Communication of a proposal is the very first step towards making any contract. A proposal can be made by various types which are described below:

Kinds of Proposal

Express Proposal

A proposal which is made either by word (may be written or spoken) or by conduct, is said to be an express proposal.

Illustration: X says to Y, he will sell his house to him for Rs 3 crore. It is an express proposal.

Implied Proposal

A proposal that is made, apart from the word, is said to be an implied proposal.

Illustration: If A sits on a bus. Then it is considered that he has accepted the proposal of the bus's services which was given in an implied way.

A railway coolie carries the luggage of a passenger without being asked to do so. Here any normal person can understand that he is doing this for wages. It is an implied proposal.

Specific Proposal

When a proposal is made for a person or a particular class of person, then it is considered as a Specific Proposal.

General Proposal

When a proposal is made for each and every person, i.e. the world at large, then any person can accept that general proposal by performing the terms of the proposal.

In the case of *Carlill v. Carbolic Smokeball Co. Ltd.*, a company manufactured smoke balls and claimed that the person will be rewarded if he/she suffered from influenza after using their products. A lady suffered influenza after using that product. Here, the company is liable for giving a reward because that lady fulfills the condition of their proposal.

In the case of *Lal v. Charan Lal*, a father published a pamphlet in which it was written that whoever found his lost son will be rewarded. Plaintiff found his son and claimed the reward. Here, he is entitled to get the reward because he has accepted a general proposal from his father.

Essential Conditions for a valid proposal

A valid proposal must fulfill the following conditions:

The proposal must be made for the creation of a legal relationship

Merely, a statement of hope, desire, or intention does not constitute a binding proposal. It is a very essential condition to constitute a legal relationship for the creation of a contract.

Illustration: 'A' invites 'B' at dinner. This does not create any legal relation, so there is no agreement.

If 'A' proposes 'B' to sell his car for Rs 2 lakh. 'B' has accepted 'A' proposal. Here, intent to create a legal relationship is shown.

The proposal must be communicated

An offer is valid only when it is communicated to the offeree. Without communication of the proposal, it cannot be accepted.

In the case of *Lalman Sukla v. Gauri Dutt*, 'A' is a servant of 'B'. 'A' has lost his nephew and he sent his servant 'B' in search of the boy. 'A' published an advertisement that anyone who finds his nephew will be rewarded. 'B' found his nephew and later on, he came to know about the advertisement and he claimed the reward. But his claim failed because in order to constitute a contract, there must be an acceptance of the proposal and without knowledge of the proposal, acceptance cannot be done.

Signifies willingness of proposal to obtain assent to it

In order to constitute a valid proposal, a proposal is of such type in which the promisee has a reasonable opportunity for either acceptance and ignorance of the proposal. The unilateral decision does not amount to a valid proposal.

In the case of *Hulas Kunwar v. Allahabad Bank Ltd.*, the respondent by circular, sent to its constituents, to increase the interest rate. It was held that it did not amount to the proposal because constituents did not have opportunities to say 'yes' or 'no' in the matter of increasing rate of interest.

The proposal must be constituted with a view to obtaining the assents

The proposal must be made with an intention to obtain the assent of the other party. Merely disclosing the intention of making a proposal does not amount to a proposal.

The proposal must contain a Promise

The proposal must contain a promise in which it is shown by the promiser that if the proposal is accepted, then something shall be done or not be done, shall or shall not happen. When a person signifies to do or not to do something but does not communicate this to his contracting party. Then it will not be considered as a proposal.

The proposal must be certain and definite

The proposal must not be vague and not be of such a type which is impossible to enforce. A proposal must state the essential term of performance on both sides.

Essential terms include:

- 1. Subject matter identity;**
- 2. Consideration;**
- 3. Performance timing;**
- 4. Actual work requiring performance.**

In the case of *Taylor v. Portington*, X has purchased a Horse from Y and promised to buy another if the first one will be proved lucky. In this case, it was held that X's promise is not enforceable as it is vague.

A has two-cars and he made an proposal to sell his car for Rs 1 Lakh to B. B cannot enforce this agreement as it is not clear which car he wanted to sell.

Must not contain a mere expression of intention

If a proposal contains a mere expression of intention to do anything only, then it cannot be enforceable.

Illustration: A says to B that he wants to sell his car for Rs 1 lakh. B cannot enforce this statement as a proposal from the side of A as it is just an expression of intention.

The proposal must be different from preliminary negotiations

The advertisement card, catalogues and circular cards that contain price notation do not amount to the proposal because it is just an invitation to the proposal. A simple statement from which no promise can be inferred cannot be treated as a proposal.

Must not contain negative terms

The proposal must not contain such a clause that if the promisee will give no reaction, then it will be considered that proposal is accepted.

Illustration: If A says to B that he will sell his truck for Rs 30 lakh and if he did not get a reply before next Sunday, then the proposal will be considered as accepted. A cannot enforce B to buy his truck in this way.

Must not contain the false statement

If any of the statements in which proposals are the basis of the acceptance and form the basis of the contract between parties, and are found to be a false statement, then it will consider that contract becomes void and not enforceable.

May be subject to a condition

A proposal can be created on a subject to condition. When a person accepts an offer that is subject to a condition, then it is presumed that he has accepted that offer with the condition and he cannot deny it later on.

Illustration: A says to B to send a reply of acceptance of the offer via. telegram. But B has chosen another medium to send a reply of acceptance. Here, acceptance of B can be rejected.

Must contain all the term of Contract

A proposer has to state each and every word in his proposal which he wants to include in the contract, then he cannot leave anything on promisee that he should understand by himself.

When does the Communication of Proposal gets complete?

According to [Section 4](#) of the Indian Contract Act, 1872, the Communication of the proposal is complete when it comes to the knowledge of that person for whom that proposal was made.

Illustration: A sent a proposal letter to B on Monday via. post. The proposal letter reached B's place on Wednesday. In this case, communication of a proposal is completed on Wednesday, not on Monday.

Telephonic Conversation

The above-described case is only applicable in the communication of the proposal via. Postal services or any other services which take some time for the proposer to convey his/her message. But, a proposal can also be made via. Telephonic conversation.

When the proposer conveys his message on the telephone to other people. Then, communication of the proposal is completed at the same time as the message came in the knowledge of the promisee. In the case of network issues and disconnection of calls during conversations, then it is not considered as a valid proposal as it will not be sure and certain.

Conclusion

The proposal is the very first stage in order to make a contract. The person who made the proposal is called the proposer and the person for which proposal is made is called the promisee. Offeree has reasonable opportunities to say 'Yes' or 'No' to the offerer for his/her proposal. Communication of the proposal is completed when it comes to the knowledge of the promisee.

Section 3 of Indian Contract Act defines that **communication** may be conducted through an act or omission, by which party's intention is communicated, or which has the effect of communicating for proposals, acceptance of proposals, and revocation of proposal and acceptance. *“communication of proposals, acceptance of proposals, and revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revokes, by means of which it intends to communicate this proposal, acceptance or revocation, or which has the effect of communicating it.”*

Two methods of communication:

- **Any act:** It includes any conduct, words, written (e.g. email, letters, telegrams, advertisement, etc.) or oral (e.g. telephone message).
- **Omission:** It includes such conduct or forbearance (voluntarily refraining from doing something) on one's part that another party takes it as willingness or consent. It includes silence as well.

Felthouse v. Bindley^[1]

In this case, Felthouse made a proposal to buy nephew's horse and added that “if I hear no more from him I'll consider the horse mine”. After that, his nephew was busy in an auction and didn't communicate to him but nephew told Bindley

(auctioneer) to not present the horse for auction sale as he intended to keep it for his uncle. Bindley sold the horse by mistake. Felthouse sue Bindley for recovery of horse. Court held that the nephew's acceptance was not communicated to Felthouse. *So there is no contract regarding this.*

When we do call that communication is completed?

Section 4 states that:

The communication of a proposal is complete when it comes to the knowledge of the person to whom it made.

There are two steps of valid communication of a proposal-

- (a) The communication of the proposal .
- (b) Acceptance or revocation by the person to whom it made.

- **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 acceptor;

As against the acceptor, when it comes to the knowledge of the proposer.

- **The communication of a revocation is complete:**

On the side of the proposer (who makes the proposal), when it is put into a course of transmission of the person to whom it is made, so as to be out of the power of the proposer.

On the side of person to whom it is made, when it comes to his knowledge.

Illustration:

(a) A proposes, by email , to sell a car to B at 98,000. The communication of proposal is complete when B receives the letter.

(b) B accepts A's proposal by revert the email. The communication of the acceptance is complete,-

As against A, when the email is sent;

As against B, when the email is received by A.

(c) A revoke his proposal by email. The revocation is complete as against A when it sent. It complete against B when B receives it .

B revokes his acceptance by email. B's revocation is complete as against B when the email is sent, and as against A when it reaches him.

Section 5 when we do we say that proposal and acceptance is revoked?

(1) A proposal or acceptance may be revoked at any time before the communication or at the moment when communication happens, but not afterwards.

(2) A proposal may revoked at any time before the communication of acceptance is completed as against the proposer, but not afterwards.

(3) An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Illustration:

X proposes B, by a letter sent by post, to sell his property to B.

B accepts the proposal by letter sent by post.

X may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time or at the moment when the letter communicating it reaches A, but not afterwards.

There are two contradictory judgements regarding the same:

- **In Re Landon and Northern Bank**[\[2\]](#) (1900) 1 Ch 220

Court held that an offer is revoked because offer to purchase share was revoked by letter posted on 26th October and it reached the acceptor on next day at 8:30a.m. After the 8:30 a.m., acceptor posted letter of acceptance .

- **In Sandhu Lal Motilal v. State of Madhya Pradesh**[\[3\]](#)

Whereas in this case, court held that contract was completed as soon the letter of acceptance was posted and the revocation was therefore ineffective.

Section 6: procedure of revocation

A proposal is said to be revoked when:

- By the communication of notice of revocation by the proposer to the other party; or
- By the expiry of the prescribed time for acceptance of proposal, or if there is no prescribed time, by the expiry of reasonable time, without communication of the acceptance; or
- By the failure of the acceptor to fulfill a condition precedent to acceptance;
- By death or insanity of the proposer , if the fact of his death or insanity comes to the knowledge of the acceptor before acceptance.

This section states modes in which a proposal can be revoked or shall stand revoked.

Section 7: when do we call acceptance must be absolute?

In sequence to change a proposal into a promise, the acceptance must:

- Be *absolute* and *unqualified*;

- Be expressed in some common and reasonable manner, until the proposal prescribes the manner in which it is to be accepted. If proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposal may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance.

L.I.C of India v. Rajavasireddy

The Supreme court of India observed that *“Contract of insurance will be concluded only when a party to whom an offer has been made accepts it unconditionally and communicates his acceptance to the person making the offer. Though in certain human relationships, silence to a proposal might convey acceptance but in the case of insurance proposal, silence does not denote consent and contract arises when the person to whom the offer is made says or does something to signify his acceptance. Mere delay in giving an answer cannot be construed as acceptance as prima facie, acceptance must be communicated to the offeror. Similarly, the mere receipt and retention of premium until after the death of the applicant or the mere preparation of the policy document is not acceptable.”*

Section 8 Acceptance by performing conditions, or receiving consideration

This section prescribes one of such methods in form of an implied contract.

It provides two mode of accepting the proposal:

- Acceptance by performance: The term “acceptance by performance” is very wide. It means acceptor must be acting as requested by the proposer as consideration for the promise.

Carlill v. Catholic Smoke Ball co.[4]

The Defendant, the Carbolic Smoke Ball Company of London (Defendant), placed an advertisement in several newspapers on November 13, 1891, stating that its

product, “The Carbolic Smoke Ball”, when used three times daily, for two weeks, would prevent colds and influenza. The makers of the smoke ball additionally offered a 100£ reward to anyone who caught influenza using their product, guaranteeing this reward by stating in their advertisement that they had deposited 1000£ in the bank as a show of their sincerity. The Plaintiff, Lilli Carlill (Plaintiff), bought a smoke ball and used it as directed. Several weeks after she began using the smoke ball, Plaintiff caught the flu. Court held that Defendant’s Appeal was dismissed, Plaintiff was entitled to recover 100£. The Court acknowledges that in the case of vague advertisements, language regarding payment of a reward is generally a puff, which carries no enforceability. In this case, however, Defendant noted the deposit of £1000 in their advertisement, as a show of their sincerity. Because Defendant did this, the Court found their offer to reward to be a promise, backed by their own sincerity.

- **Acceptance by receiving consideration:** It means when offeree makes a promise to offerer in from of consideration.

Section 9 Promise, express and implied: Insofar as the proposal or acceptance of any promise is made in words, the promise is said to be express. Insofar as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.