
ANALYSIS OF VARIOUS INTERPRETATIONS OF “COMMUNICATION” IN CONTRACT LAW

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ABSTRACT

The word communication is derived from the Latin word *communicatio*, which means "to share". Communication can be called the basic essence of a contract as without it, a legally valid contract cannot exist. While it seems like a basic term, communication covers a wide aspect of various types of communications which exist and lead to forming of a contract between parties. The purpose of this research paper is to explore various communications and their modes in order to understand how a contract comes into place through communications. The findings of the paper looked at and categorically established various modes of communications and led to the suggestions that there is a need to segregate and clearly establish instantaneous and non-instantaneous modes of communications. In order to provide a digital touch whilst dealing with a generalized topics, evolvement of legal communication in the digital age was also looked at.

Keywords: communication, contract, legal, methods

INTRODUCTION

Communication can be defined as anything that is exchanged by spoken, written, or implied signals and symbols. The act of conveying information from one place to another, from one person or group to another, is known as communication. Every communication has at least one sender, a message, and a receiver. We use communication in our day-to-day life as a primary means to get our point across. Effective Communication is a fundamental need to all administrative functions¹. However, when we talk about communication specifically in a legal aspect, communication can be done through 3 methods- written and spoken mediums (express communication) and conduct (implied promise).

It's no surprise that communication is the most important and crucial aspect of a successful contract as without it, a legal contract cannot exist. An offer is made by one party to another before a contract is drawn up. In exchange for consideration, an offer is a pledge to perform or refrain from performing an act at the request of the other person. It should also include a declaration expressing the desire to enter into a contract. An offer is not valid until it is communicated; an offer can be transmitted by word or gesture, with word referring to either oral or written communication. Because an offer and acceptance cannot exist in silence, they must be adequately communicated; otherwise, the agreement will be null and void. It is important to understand the different kinds of communications which exist in order to understand the legal aspects under contract law, which can be used to deal with situations in case of breach of contract, dispute and revocation. India has changed significantly since the inception of The Indian Contract Act, 1872 which raises a question of whether all provisions under the act are still relevant.

FINDINGS

Communication in a Contract

A "Contract" is defined as an agreement that can be enforced by law or an arrangement that intended to create a legal relationship². When we look at it in extremely simple terms, it can be

¹ Shruti Shrivastava, Vineeta Prasad, Importance of Effective Communication Strategies to Improve Workplace Communication, November 2019, International Journal of Recent Technology and Engineering (IJRTE), ISSN-2277-3878, available at - <https://legalserviceindia.com/legal/article-5094-communication-in-law-of-contracts-importance-and-legal-consequences.html>

² The Indian Contract Act, 1872, Section 2(h)

explained as an agreement that legally binds two or more parties or a promise that is enforceable by law. Communication, which is an essential in life of a man as a social animal, also has an extremely vital role in the Indian Contract Act. Under Indian Contract Act, 1872, a proposal or offer i.e., when one person signifies to another person his willingness to do or not do something (abstain) with a view to obtain the assent of such person to such an act or abstinence³ and further acceptance i.e., when the person to whom the proposal is made signifies his assent thereto⁴ are essential in order for a contract to exist. Proposal and acceptance both require the aid of communication in order to mutually exist and take the contract farther. As neither proposal nor acceptance can be made without the use of communication, it makes the factor an extremely important part of a contract. While offer and acceptance is usually the norm, in more complicated situations, a contract typically follows an extended set of communications that can include offers, counter-offers, and other exchanges of information⁵.

It can be clearly noticed that even after the contract has been formulated communication is still a requirement in cases of matters like dispute and revocation. In order for a contract to be valid, consensus ad idem⁶, or the fact that all parties of the contract should be in agreement on the basis of the contract is another essential that cannot be accomplished without communication. There are also contracts in our day-to-day life that would not be possible without communication such as paying a cab driver, buying vegetables from a supermarket etc.

Mode of Communication

It is essential to maintain that the communication done by one party has clearly reached the other party and has been understood. As such, it is important to ascertain modes through which communication in a contract can occur so as to ensure it is coherent and holds a valid legal standing. Keeping the requirements in mind communication can occur through-

Express Contract

Oral Communication, leading to an oral contract is a contract which is agreed upon solely through oral correspondence without any written evidence. Though oral contracts are legally

³ The Indian Contract Act, 1872, Section 2(a)

⁴ The Indian Contract Act, 1872, Section 2(b)

⁵ Benjamin E. Hermalin, Avery W. Katz et al, Handbook of Law and Economics, 2007, Elsevier B.V, available at- [https://doi.org/10.1016/S1574-0730\(07\)01001-8](https://doi.org/10.1016/S1574-0730(07)01001-8)

⁶ Legal Maxims Explained, IFMA Knowledge Library, 2014, International Faculty Management Association, available at- <https://community.ifma.org/fmpedia/w/fmpedia/consensus-ad-idem>

binding, complex oral contracts are more likely to fall apart when held up to the scrutiny of a court, usually because the parties can't reach an accord over the finer points of the agreement⁷, due to which this communication is mostly used for simple agreements. Ex. telephonic conversation.

Written Communication- This is the method used for most contracts as it holds the most legal backing. In a written contract, all the terms and conditions of a contract are written down and signed by all parties to a contract, thus given their consent to the agreement. In case of dispute, the contract can be referred to which is why written communication is the most preferred and recommended way of doing legal deals. Ex. Letter

Implied Contract

Implied Communication- An implied contract is a legally-binding obligation that derives from actions, conduct or circumstances of one or more parties in agreement⁸.

While implied contract has no written or verbal confirmation, it enjoys the same legal bindings as express contracts that are voluntarily entered into by parties through oral or written means. This type of contract arises due to conduct or actions of parties and is thus assumed to exist. As with oral contracts, their existence is difficult to prove due to lack of physical proof. Ex. entering a restaurant and ordering food enters one into an implied contract to pay.

Types of Communication under Contract

While speaking strictly in terms of a contract, communication plays an important role in the following 3 aspects-

- **Communication of Offer**

An offer or proposal is the first element which leads to initiation of communication between parties of a contract. As described previously an offer occurs when one person signifies to another person his willingness to do or not do something (abstain) with a

⁷ Clay Halton, Oral Contract, 2021, Investopedia, available at- <https://www.investopedia.com/terms/o/oral-contract.asp>

⁸ Will Kenton, Implied Contract, 2020, Investopedia, available at- https://www.investopedia.com/terms/i/implied_contract.asp

view to obtain the assent of such person to such an act or abstinence⁹. In order for an offer to become valid it is essential that it should be communicated, certain, distinguished from invitation to offer and must be free to consent.

According to Indian Contract Act, the person making the proposal is called the “promisor”, and the person accepting the proposal is called the “promisee”¹⁰; Communication of offer can be made through both oral and written methods and is said to be completed when it comes to knowledge of the promisee.

- **Communication of Acceptance**

Acceptance in terms of contracts means when the person to whom the proposal is made signifies his assent thereto, the offer is said to be accepted¹¹. A proposal when accepted becomes a promise. It is important to note that mere silence cannot be treated as acceptance. The contract can only come into existence after proper communication of acceptance as stated in the case of Lalman Shukla vs. Gauri Dutt¹². Communication of acceptance can be done through the following modes-

- **Communication of Acceptance by an Act-** Here the acceptance is communicated using express mediums i.e., through oral or written conduct. Acceptance through e-mails, telephonic conversations, letters etc. will come under this form.
- **Communication of Acceptance by Conduct-** Here the acceptance is communicated using implied mediums i.e., through actions and conduct rather than specifically stated acceptance through oral or written mediums. In implied contracts acceptance is always through conduct.

Further, another important aspect in the timing as it differs for both the parties involved, it can be understood as –

- **As against the Offeror** - When the proposer puts the acceptance of offer in transmission, the acceptance of the proposer is complete as they do not have an option

⁹ Supra no. 3

¹⁰ The Indian Contract Act, 1872, Section 2

¹¹ Supra no. 4

¹² (1913) 11 ALJ 489

to revoke the agreement.

- **As against the Acceptor** - Communication of acceptance for the acceptor is complete when he receives knowledge of the acceptance given by the other party.

- **Communication of Revocation**

Revocation refers to cancellation or annulment of a contract. A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards¹³. This means that the timing of revocation is of outmost importance as it needs to be communicated in a specific window. 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;¹⁴
- as against the person to whom it is made, when it comes to his knowledge¹⁵

Communication in Contracts in the Digital Age

Long gone are the days when communication of offer, acceptance and revocation were made only through letters or face-to-face conversations. In the digital day and age where almost everything is done through a smartphone in hand, it becomes essential to learn about the rules and regulations ascertaining the contracts made through digital media. The Information Technology Act, 2000¹⁶ details aspects concerning interactive communication but fails to provide any information on using social media platform to create contracts. Completion of proposal, acceptance and revocation is dealt under section 4 of the Indian Contract Act, it states that:

The communication of a proposal is complete when it comes to the knowledge of the person to whom it is made. The communication of an acceptance is complete, — as against the proposer,

¹³ The Indian Contract Act, 1872, Section 5

¹⁴ Communication When Complete, India Code, available at- https://www.indiacode.nic.in/show-data?actid=AC_CEN_3_20_00035_187209_1523268996428§ionId=38607§ionno=4&orderno=4#:~:text=The%20communication%20of%20a%20revocation,it%20comes%20to%20his%20knowledge.

¹⁵ *Ibid*

¹⁶ ITA-2000

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. 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 knowledge¹⁷.

The postal rule of communication, which acts as an exception to the section 4 of the Indian Contract Act says that acceptance is made and the contract becomes binding when the acceptor has put the mail in the transmission¹⁸. However, it was established in the landmark case of Entores Ltd v. Miles Far East Corp¹⁹ that this exception does not hold in cases of instantaneous contract such as in case of telephone or the internet. The logic behind this lies in the fact that the principle cannot be applied in this case as if a phone line “went dead” just before the offeree said “yes”, it would be absurd to assume that the contract was formed and the parties would not have to call each other back²⁰. This leaves a gap with absolutely no rule available to deal with contracts made on the internet, a major issue as majority of communication in 2022 in India happen through the internet.

SUGGESTIONS

The contract act in itself provides all the conditions required in order to stipulate a contract. “Communication” which is an essential element without which a contract cannot exist, has various types and modes mentioned under the act itself. The Indian Contract Act, established in 1872 has since then been used in order to deal with all factors relating to law of contracts in the country. When talking specifically in terms of communication, some additional information is required with respect to Section 4 as it fails to deal with an essential aspect of the contract in the modern world- through instant means. The Court observed that the draftsman of the Contract Act did not contemplate the use of instantaneous means of communications²¹. Alongside, while there is also dispute on whether some aspects should come under

¹⁷ The Indian Contract Act, Section 4

¹⁸ Akshata Srinath, Hear-say in Contracts, Legal Service India, available at- <http://www.legalservicesindia.com/article/289/Hear--Say-InContracts.html#:~:text=As%20exception%20to%20the%20section,are%20basically%20non%2Dinstantaneous%20communication.>

¹⁹ EWCA Civ 3,,2 QB 327

²⁰ Ayush Pandia, Is Section 4 of the Contract Act ,1872, in Pace with the 21st Century, SSC online, available at- <https://www.sconline.com/blog/post/2018/03/13/is-section-4-of-contract-act-1872-in-pace-with-21st-century/>

²¹ *Ibid*

instantaneous or non-instantaneous mode. For example, while emails are not included under the postal rule of communication, an exception to the section 4 of The Contract Act, they ought to come under non-instantaneous communication as alongside it being a fragmented process that has a lot of stages, the message is also sent through different routes after being split into various packages, further the sender has no option of knowing whether the communication is successful instantly as it only tells you that the mail has been delivered and does not signal whether the other party has any knowledge of it, unlike other platforms such as WhatsApp.

There is a need for the act to define instantaneous and non-instantaneous modes of communication clearly in order to reduce any confusion. Furthermore, the part which is not covered under the provisions currently present i.e., instantaneous communication shall be dealt with.

CONCLUSION

Communication in contracts plays an extremely vital role as without it the process of making an offer and its further acceptance cannot be fulfilled. In other words, it is not possible for a legally binding contract to exist without communication. It is self-evident that the offeree and offeror must be notified of the offer and acceptance and must be on the same terms in order for the contract to be valid, this is also done through communication. It can be clearly noticed that even after the contract has been formulated communication is still a requirement. It is important to understand the different kinds of communications which exist in order to understand the legal aspects under contract law, which can be used to deal with situations in case of breach of contract, dispute and revocation. Alongside oral, written and implied methods through which communication can be conveyed, there are 3 major types of communication, namely communication of offer, acceptance and revocation which constitute all the essential communication required in the making or annulment of the contract. While there are factors to be kept in mind while making both offer, acceptance and revocation, it is important to note that mere silence cannot be treated as acceptance, thus making communication necessary from all the parties involved.

The Information Technology Act of 2000 covers features of interactive communication, but it is silent on the use of social media platforms to make contracts. There are also no provisions given in order to deal with communications made through instantaneous methods which makes life difficult as in the 21st century most communication is done through mails, WhatsApp, fax

etc. The paper concluded that in order avoid any misunderstanding, the act should clearly specify instantaneous and non-instantaneous means of communication. Furthermore, the part that is not covered by the current provisions, namely, instantaneous communication, shall be addressed.

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