

# Hear-say in Contracts under the Indian Contract Act, 1872

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**ABSTRACT:** *This paper specifically analyses the issues related to bid and acceptance of communication and is therefore limited to the issues surrounding the topic, notably in the sense of bid revocation and acceptance. The researcher can only deal with the topic, i.e. the communication of offers and acceptances in transactions, owing to space and time constraints. The investigator also does not deal with electronic mode of bid and approval circumstances in detail since there is hardly any case study or law approved in India. Therefore, the first part will be to examine how and whether the constituents are interacting. The second part will address and explain relevant parts of the Indian Contract Act, 1872, and the final part will discuss the jurisdiction of a contract and the need for correspondence.*

**KEYWORDS:** *Agreement, Acceptance, Communication, Contract, Indian Contract Act, 1872, Offer, Proposal.*

## INTRODUCTION

Communication is the technique through which someone may convey some idea or feeling to another person. In contracts, a party may initiate a bid by correspondence, which can either be approved or merely refused by the other, or can also position its request. The correspondence, adoption and termination of proposals is dealt with in Sections 3 and 4 of the Indian Contract Act, 1872, and when the communication is complete [1]. Communication may be of different kinds. An offer can be expressed verbally or in writing, addressed by telephone or also by post. The approval may be rendered in exchange by the same mode or also via fax. A significant feature is contact in a deal. As technology evolves and improves, it can improve even the technique used to communicate and will be simpler and smoother. Communication plays an important part, since an acceptance must be conveyed back to the bid communicated, so then a deal is claimed to be made. When an offer is revoked, it must then be conveyed and, thus, approval of the 2nd offer leads to a deal.

Communication is characterized as "the expression or exchange of information through speech, writing, gestures or behaviour, the process of bringing an idea to another perception; the expression or exchange of information." To bring forward the offer and approval, contact is important. For it to be effective, approval must be conveyed [2]. In the case of *Felthouse v. Bindley*, where the law is valid, this can be seen. Yet acceptances also often do not have to be communicated if the correspondence has been deferred. In the case of *Powell v. Lee*, the committee ruled that there was no formal contact from the committee to the claimant, so there was no deal. The "postal rule" can also interact.

When the supplier learns and knows about the deal, an oral approval is transmitted. For eg, A says that if she wears a green shirt, I'll pay C \$100. Even if she does the act of wearing green, since it was not passed on to her, she is not entitled to the money. Now, in this situation, the bid must be specifically conveyed to C. The communication of approval can also be expressed equally. There is also a recommended approval form that may be sought from the supplier [3]. But there may be an exception to this, i.e. approval may be rendered by a particular process before and until the purpose of the specified method is done, such as timely acceptance. In one of the instances, it was said that the acceptance method is legitimate and that this method was only to ensure that the distribution that had occurred was completed. It is possible to separate conversation into two forms, i.e. oral communication and written communication. Oral contact may take place only if the offer and approval is rendered solely on an oral or verbal basis. For instance: A tells B that by paying him Rs. 2, he will sell B a pen costing Rs. 2, and B agrees the bid. 2. And after the offeror and the offeree express the decision to offer or agree in a written form will a written contact take

place. For instance: A mails a letter to B saying that he will sell the pen for Rs. 3, and by writing back his approval, B accepts the bid [4]. Only when the bid and approval, which are in written form, i.e. either via letter or fax, does a written correspondence happen. A sends a letter to B, for instance, saying that he'll sell the house to him for a determined amount of money. By mailing him back, B accepts the bid and claims that he is prepared to pay the agreed price to buy the property.

## DISCUSSION

Oral correspondence will now be further broken down into two (1) private and (2) mobile calls. When the offeror and the offeree are seated next to each other and thus expressing their proposals and acceptations, an intimate level contact may be achieved. A sitting at a coffee shop, for example, makes a suggestion to B suggesting that the coffee shop owned by A should be sold to B, and then B agrees the same [5]. The proposals and acceptances are made concurrently in certain forms of correspondence as both the offeror and the offeree are seated next to each other. In a telephone form of oral conversation, the communication is completed through the telephone, as the name implies. C, for instance, calls D and informs him that in the same telephone conversation or approving it any other day, he will sell the book for Rs. 200 and D.

Further subdivisions can be rendered into postal correspondence, fax or fax and electronic mail in written communications. In a postal correspondence, the bid is provided through letters such as A written letter to B to sell the house and B to approve it by the same process. In the same way, the bid and approval may be made by fax or telefax. Electronic mail or e-mail is a modern and quickest type of contact method where, in seconds, the mail enters the provider or the offeree whether they have a net facility and has an e-mail address where the mails are sent [6]. Instantaneous communication and non-instant communication: instantaneous and non-instantaneous communication can again be separated into forms of communication. In order to propose an offer or approve an offer, this designation is performed according to their pace. It is safe to assume that telephone contact, fax, electronic mail, telex and oral communication are instantaneous means of communication, whereas postal communication is said to be non-instantaneous since it takes time to communicate and acknowledge the offer.

"The communication of the proposal, or the acceptance, etc., is effected by an act that (1) is intended to communicate it; (2) has the effect of communicating it." "An act or omission of the party proposing or accepting or withdrawing, as the case may be, would be communicated if the communication had the effect of being objectively considered from the position or point of view of the addressee"[7]. "A bid is generally effective when, and not until, it is communicated to the bidder." It is very relevant that the offeror must convey an offer to the offeree. Otherwise, while information of the bid has been implicitly gained, the offeree cannot approve it. The bid must not only be conveyed, but must also be communicated by the offeror or by the order of the offeror. It was held that the deal was a general one in the case of the *Carlill v. Carbolic Smoke Ball Corporation*, i.e. anyone buying and using the smoke ball must consider the offer made. The deposit of the money in the ball also indicated the intention of being tied to the deal. It was also said in the case of *Harvey v. Facey* that there was no deal in the first place, i.e. the defendants never wanted to sell the bumper hall pen, it was not said "yes, we will sell you bumper hall pens" in either of the telegrams. It was also held that the second telegram of the claimant did not amount to recognition [8]. In the case of *Fisher v. Bell*, it was concluded that the showing of merchandise with the price tag added to it is simply an invitation to give consumers an offer to purchase rather than a bid. It will also not contribute to a deal by just making an invitation and acceptance; there should be an intention to establish a legal partnership. It was said in *Payne v. Cave* that the auctioneer asks for bids in an auction, which is an opportunity to bid and the request is to make the bid. The buyer is then entitled to withdraw his or her offer until the auctioneer signals approval by knocking the hammer down.

In the case of *Karan Singh v. The Collector, Chhatarpur and Ors*, the simple approval by the Collector of the petitioner's offer on the file was not adequate to turn the petitioner's offer into a contract. It is well known that the general rule is that it is the offeree's approval of the bid and the offeror's intimation of that acceptance that results in a deal. One of the exceptions to this general rule is that when acceptance by post or telegram is allowed by arrangement, course of conduct or use of exchange, the bargain is struck and the deal is complete when acceptance by mailing a letter or sending a telegram is put into the course of

transmission by the offeree [9]. The defendant tried to sell the farm house for £ 1000 in another case, but the complainant declined to take it for £ 1000 but for £ 950. He declined to sell anything. The complainant was able to purchase it for £ 1000, but the defendant declined. This did not amount to agreement and so no deal was made so the first position on the offer was a counter offer and therefore no approval.

Acceptance can be expressed either by language or by the offeree's actions. In return, the recipient needs to do something to illustrate the purpose of recognition. The court said in the case of *Felthouse v Bindley* that the intention should have been conveyed to the uncle of the claimant or that one or the other should have been done to bind himself in a contract. The case also makes it clear that a person who makes an offer to the other person does not force any kind of deal on the other person simply saying that agreement is implied by silence [10]. If the contract has come into force by post, the contract can take effect only where acceptances have taken place. In the case of *American Pipe Co. v. Uttar Pradesh State*, for instance, it was claimed that only because the letter of approval was issued in Calcutta, it did not mean that the Calcutta court had authority to try the case. When a contract is made by post, the approval is only complete when the letter is sent, i.e. inserted in the letter box and then the location of the contract is made. As in the case of postal mail, the telegraph law is that recognition is complete only if the telegram is sent to the telegraph office for dispatch and, thus, the place of acceptance is the authority.

### CONCLUSION & IMPLICATIONS

In conclusion, it is clear that the offeror and the offeror must be aware of the grant and approval, respectively. The bid is usually presented to anyone in a unilateral deal and approval is made when the process is fulfilled in the prescribed way in the offer. Both bid and approval should be communicated in bilateral contracts, i.e. confirmed with the applicant and the offeree, and should thus become aware of whether an offer or acceptance has been made.

For non-instantaneous messages, i.e. postal letters and telegrams, the postal approval rule only applies. Acceptance is therefore rendered here after the recipient has sent the letter or in the direction of transmission. For immediate correspondence, the postal law does not apply. The approval is thus complete only until it hits the bidder (against the acceptor). An act committed by an acceptor may also mean approval of the offer made, and silence does not equate to acceptance.

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