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Contracting under Electronic Media

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This Journal article deals with a study of the concept and law of Offer and Acceptance in the modern scenario. The Communication process of an offer and the conditions stating about its acceptance in the 21st-century life and lifestyle has been drastically changed, this project report is all about those changes and makes mentions of different electronic mediums to enter into an authentic contract. The analysis is connected and revolves around the technological forms of contract with the security of both parties. It includes the scrutinizing and transfer of information through emails, websites, messaging, postage, telephone, and other online or electronic platforms. The communication or purpose of a contract happening electronically is governed by the Indian Contract Act, 1872¹ as well as other laws such as Information Technology Act, 2000.²

Keywords: *communication, electronic medium, technological forms.*

INTRODUCTION

Contracts are a very significant part of the daily life of a person, we knowingly or unknowingly enter into many contracts on daily basis. The contract can be an oral or written agreement between two or more parties. These parties might include individual people, companies, non-profits, or government agencies. “The whole process of entering into a

¹ Indian Contract Act 1872

² Information Technology Act 2000

contract starts with an offer by one party, an acceptance by another party, and an exchange of consideration.”³ Thus, Offer and Acceptance form the essence of a contract, the communication of an offer and acceptance timing forms a very important component in a contract.

However, the meanings and definitions remaining the same, there has been an expansion in the modes of Offer and Acceptance. The recent era is being considered as the time of science, as the technological developments and improvements in scientific research are beyond imagination. This modernization has brought the concept of contract, i.e., communication of Offer and Acceptance of Offer to the online platform. The offers are now conveyed through the electronic modes and generally, the Acceptance is also received through the same or other electronic platforms.

Thus, along with the existing Definitions and ideas about the Offer and Acceptance, a study of their electronic perspective also becomes necessary. The early myths and fears about the fears of loss of privacy, cyber frauds, online hackings, etc. are now been reduced through the establishment of well-defined laws or amending the already existing laws to include the guidelines regarding the online or electronic communication of the offer and the performance of the contract. “This legal framework ranges from facilitation of e-commerce, protection of privacy, the regulation of computer crime, computer misuse, and regulating illegal content on the net. This short paper focuses only on a few contractual issues which arise in the IT Act relating to electronic commerce.”⁴

COMMUNICATION AND REVOCATION OF OFFER AND ACCEPTANCE.

Offer (i.e. Proposal)

The term 'Offer or Proposal' is defined under Section 2(a) of the Indian Contract Act, 1872⁵ as-

³ Mariya Paliwali, 'Offer and Acceptance under Indian Contract Act 1872' (*iPleaders*, 24 December 2019)

<https://blog.ipleaders.in/offer-acceptance/#Introduction> assessed 8 January 2021

⁴ Devadutt Kamat, 'Information Technology Act, 2000 - A Contractual Perspective' (2004) 1 SCC (Jour) 11

⁵ Indian Contract Act 1872, s 2(a)

"When one person signifies to another his willingness to do or to abstain from doing anything, to obtain the assent of that person either to such act or abstinence, he is said to make a proposal."

The making of an offer, with one or more parties, is the first and foremost step towards entering into a contract. The basic terminology, i.e., the basic parties in a contract or during the communication of the Offer are: Offeror or promisor, the one who makes an offer; and the Offeree or promisee, he is the one to whom the offer has been made. There are certain conditions of a valid contract, whereas the most important ones are that; a proposal must be made or expressed as the willingness of the Offeror to do or abstain from doing a certain task, and secondly, it should be conveyed to the offeree to obtain consent upon doing or abstaining that certain task. A simple example of an offer is- when, a man Mr. X asks another man Mr. Y "Will you buy my land?" this is an offer made to Mr. Y by Mr. X.

Communication of offer- Section 4 of the Indian Contract Act, 1872⁶ defines the necessary conditions or key points as to know the complete communication of the offer is been made or not. The communication of the proposal or offer is said to be completed when the offer made by the Offeror comes to a complete knowledge of the Offeree. Revocation of the offer- Under Section 5⁷, it has been stated that an offer can be revoked at any time before the completion of the communication of the acceptance, against the offeror. Thus, the Offer cannot be revoked once the acceptance is made at the end of the offeree.

ACCEPTANCE

The term 'Acceptance' is stated under Section 2(b) of the Indian Contract Act, 1872⁸ as-

"When the person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted."

⁶ Indian Contract Act 1872, s 4

⁷ Indian Contract Act 1872, s 5

⁸ Indian Contract Act 1872, s 2(b)

The creation of a contract requires acceptance of the offer, without any kind of acceptance on behalf of the promisee, the offeror is not bound in any manner. In case of no reply from the offeree, the offeror is free to withdraw his offer at any point, before the communication of acceptance of the offer. Acceptance establishes a legal relationship between the parties and binds them together for the fulfillment of the purpose of the contract.

Communication of Acceptance- The two factors that influence the communication of Acceptance are; the mode of Acceptance and the timing of Acceptance. The mode or medium is the method adopted to convey the Acceptance of the Offer, whether through electronic platforms or direct personal communication and can be also expressed through actions. Moreover, the communication of the acceptance is complete when he puts such acceptance in the course of transmission, and communication in the case of the acceptor is complete when the proposer acquires knowledge of such acceptance.

Revocation of Acceptance- Section 5⁹ states the same as stated above, the Revocation of Acceptance can be done, or the Acceptance can be revoked only until the communication is not completed against the Acceptor. Later, no revocation can take place.

CONTRACTING THROUGH ELECTRONIC MEDIUM: E-CONTRACTING

The changing trend and era have brought the process of Contracting to the electronic platforms, in the emerging world of technological developments and software updating, the Offer and Acceptance have taken a completely new look. Other than the personal face-to-face communication of and offer and acceptance, there are other ways, such as through telephone, emailing, and messaging, etc. A vast paradigm of legal rules has been created to facilitate the reaping of utmost results and prosperity by the use of IT.¹⁰ The legal agendas of E-contract facilitate in every sphere, such as e-commerce, protection from cyber-crime, regulate the misuse of technological facilities, etc. Contractual perspective of Information Technology Act, 2000 regulates the process of contracting, through online platforms.

⁹ Indian Contract Act 1872, s 5

¹⁰ Kamat (n 4)

VALIDITY OF ONLINE CONTRACTING

The Indian Contract Act, 1872 gives the rules and conditions for the basic common contract laws, under the act basic laws, "A legally valid contract is made up of free consent of the parties, lawful consideration, a lawful object and non-void. The Fulfilment of the contract does not provide a particular way of communication between the Offeror and the Offeree, it might be direct Face-to-face communication, through verbal words, writing, or through actions. Thus, there is no such compulsion to writing for the Validity of the contract, except for certain specific situations prescribed by the law. The process of online Contracting is specified under Information Technology Act, 2000; the act does not define some specifically different criteria or conditions for a contract to be valid under technological circumstances. Section 10A of ITA 2000 provides the legal validity of electronic contracts in India. While the Indian Contract Act 1872 does not exclude electronic contracts, ITA 2000 specifically provides for them.¹¹

It defines E-contracting as:

"Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or through an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose."

TIME FORMATION OF A CONTRACT

Time plays a significant role in the formation of a contract; to determine the applicability of law, to prioritize the competing claims, to ascertain the place applicability of the contract, etc. therefore, it becomes necessary to include the aspect of "when" the contract is formed. Section

¹¹ Editorial, 'Electronic Contracts in India's Information Technology Act 2000' (Concord, 9 April 2016) <<https://www.concordnow.com/blog/electronic-contracts-indias-technology-act-2000/>> assessed 13 January 2021

4 of the Contract Act¹², combined with Section 13 of the IT Act¹³, lays down the law for electronic contract formation as under:

- The communication of the offer completes when the information enters the information system designated by the offeree, or, in case no system is authorized and the information enters the system of the Offeree, also the offeree reverts.
- The communication of Acceptance is complete when the acceptance has been dispatched or sent through the electronic system of the Offeree or Acceptor. As, for Offeree, the communication of Acceptance is completed when the acceptance reaches/enters the system as defined by the Offeror, in case of no specified device or setup, the Acceptance is completed if it reaches the Offeror's system.
- The communication of Revocation is considered to be completed when the party making revocation dispatches the record and it enters the information system of the other party. As against the person to whom revocation is made, it is completed when it comes to his knowledge.¹⁴

MODES OF ELECTRONIC CONTRACTING

The process of online contracting can be done through various modes, like, E-mailing, massaging, telephone, etc. A few of the modes of online contracting can be discussed here below:

Telephone and telex: The communication made through Telephone or Telex, or fax as well as emails is categorized as instantaneous modes of communication because the communication about Offer or Acceptance of the contract reaches from one party to another in just some fractions of seconds or milliseconds. Communication through these modes generally takes place when the parties have a more or less geographical distance among them. In such a circumstance, the communication is completed when the Offeror talks to the offeree regarding the contract, i.e., makes an offer. Similarly, when the Offeree confirms or speaks his

¹² Indian Contract Act 1872, s 4

¹³ Information Technology Ac 2000, s 13

¹⁴ Kamat (n 4)

acceptance, the contract is said to be established. Therefore, the telephone is called an instantaneous mode of communication, as the conversation takes place in the presence of both/all the parties, where they can hear each other and at the same time speak up their decision of Acceptance or Rejection of the Offer. Also, the time gap that establishes during communication through Postage or letter does not create a problem here, there is no time gap. Thirdly, there is no interference of any third party or outsider in the communication process, the Decisions remains entirely in the hands of the Offeror and the Offeree, and no third-party influence is practiced.

E-mailing: Initially, E-mailing has been considered as an informal mode of communication, however, it is largely used for communicating and negotiating a contract. “Through the 2008 Amendment, Section 10A of the IT Act has been amended to provide the legislative authority to electronic contract, it added that: Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or employing an electronic record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.” Contracting through E-mail is said to be controlled/depending upon the time of sending the time, specifically defined period after the sending of email, and/or the time is shown on the delivery receipt generated by the sender. Though communication through E-mail is a widely used model, it has some shortcomings and trappings; it is a fragmented process and involves many steps. The E-mailed message is packed into various groups and is sent through stages. E-mailing is also called an immediate mode of communication, but, unlike telephonic communication, E-mail does not specify the receipt of the information by the offeree. Also, a technical glitch can interrupt the path to reaches the Offeree, and the communication remains mid-way. Thus, the classification of E-mails to the instantaneous mode of communication is not rational.

Messaging: The concept of contracting through Messaging is similar to sending or receiving E-mails. Information sent through any messaging platform other than E-mail is considered as contracting through messaging. However, it is taken to be more informal than any other mode.

Sending a message helps to get instant replies and indicates the receipt of the message to the receiver. The communication of the offer and acceptance is here said to be completed simply when the message reaches the receiver device or information system. Still, to confirm whether the message has been in the knowledge of the receiver, the receiver's response becomes necessary. "The addressee of an electronic message has to have somehow consented to receive such communications and, more specifically, to receive them in that format and to that address. Explicit consent is not necessary and contract interpretation, as well as practices and usages, may help in determining the existence of such consent."¹⁵

Websites: "It involves digital products, such as software, music, or videos, where a consumer goes onto the retailer's website and downloads the product in return for payment."¹⁶ A website is a piece of digital machinery, which reverts to the needs of the users in a manner that is by default added in its operations. During online contracting or purchasing through the website, once the buyer added or placed an order, the producer has to work to fulfill the condition of the contract by making the necessary product available to the buyer at his doorsteps. Even, the websites mode is seen as a self-service shop operated by the buyers themselves, it is not one, as the fulfillment of the contract is done at the producer's end, and also, the websites send the confirmation e-mails, product progress reports, delivery tracking, etc. which is not possible/present in Self-servicing.

CASE LAWS

Dr. Mandeep Sethi vs Union Bank of India¹⁷

Introduction: This case dealt with the Validity of E-auctions conducted by the Debt Recovery Tribunals. The Government of India and the Ministry of Finance instructed the Debt Recovery Tribunals to conduct Electronic Auctions. And a Writ petition was filed against these instructions, challenging the matter of sales and attachments.

¹⁵ Wolfgang Hahnkamper, 'Acceptance of an Offer in Light of Electronic Communications' (2005) 25 Journal of Law and Commerce

¹⁶ Donal Nolan, 'Offer and Acceptance in the Electronic Age', in Andrew Burrows and Edwin Peel (eds), *Contract Formation and Parties* (Oxford University Press 2010) 61-87

¹⁷ *Dr Mandeep Sethi v Union Bank of India* AIR 2013 P&H 82, 2013 (170) PLR 137

Facts: The topic of the Argument was that the bidders bidding through E-auction are not in person but through the electronic medium which does not fall under the head of public auction, as defined under the Rule 56 of Rules. The E-auction is relevant only in the circumstances where the bidders are corporate and educated citizens of the country, however, in case the property to be auctioned is located in a rural area, the village dwellers with no Electronic Computer facility will fail to get involvement. Thus, such a process of electronic Auction was challenged to be not legal and valid. Also, under the Section 4¹⁸ and 10(A)¹⁹ of the Information Technology Act, 2000, the electronic format is a substitute for anything that will not require to be done in Writing or Printed compulsorily. The main aim of the Auction is to secure the best price for the item being auctioned, however, this can be done only when there is maximum participation in the process so that everybody has equal opportunities to make an offer.

Held: The Court concluded that there is no as such definition of the act Public Auction, it just means a public sales with bidders offering the highest price for a property. All the People of the Public have a fair right to attend the Auction and be a vital element of the competition by openly bidding for a subject matter. Also, no provision in the statutes confers the jurisdiction of the Central Government to direct the Debt Recovery Tribunals. And the property being auctioned here was located in a municipal area, whereas for the rural areas the court has allowed a certain level of discretion to conduct an appropriate auction.

Chwee Kin Keong vs Digilandmall Pte. Ltd.²⁰

Facts: “In this case, the defendant Digilandmall.com Pte ltd., an online IT company sold its related software and hardware from Singapore. While making the contract, an employee mistakenly mentioned the incorrect price on the HP website, it was listed at the price of \$66 whereas, the actual price was \$3,854.” The complainant ordered 100 printers at the same price, and when the company noticed this mistake later when they received around 4000 orders. They sent e-mails to communicate that the order will not be fulfilled.

¹⁸ Information Technology Act 2000, s 4

¹⁹ Information Technology Act 2000, s 10(a)

²⁰ *Chwee Kin Keong v Digilandmall Pte Ltd* [2005] 1 SLR(R) 502

Issue: The plaintiff complained that the company was not aware of the mistake made by them, and now they were required to fulfill the contract. Thus, the issue was as to the price was a mistake and the contract needs to be fulfilled or not.

Held: It was held that the contract remains void, as the pricing was a mistake. The price was the core of the contract and the complainant also must have noticed that the product has been under-priced to a very low level. *“There was no consensus ad idem or meeting of the minds between the parties, which meant that there could be no binding contract between them.”*

Bhagwandas Goverdhandas Kedia vs M/S. Girdharilal Parshottamdas²¹

This was a case under which Kedia Ginning Factory of Khamgaon entered into a contract to supply cottonseed cakes to M/s, Girdharilal of Ahmedabad, the failure of supply called for action against the former in the court of Ahmedabad, whereas, the appellant contended that the purchase was made in Khamgaon, so the Jurisdiction lies there. The Contract Act does not particularly deal with the place of contracting, however, the Court held that in case of contracting through telephone, post, or telegram, the jurisdiction will lie in the territory of the Offeree, the state, or place where the acceptance was made.

CONCLUSION

The above paper deals with the significance of the electronic modes of Contracting, with the changing era. The modes of electronic media are completely a new way of communicating the Offer and Acceptance of an offer. However, being a recent phenomenon, it consists of certain boons as well as banes. The technological system is not free from blemishes and demands at least basic knowledge of operating the systems to enjoy the best possible facilities. On the other hand, human nature is so complicated and complex that every process involving human beings faces some or other kind of deprivations or disabilities. The technology is still in the process of improvement and changes; therefore, the problems can be dealt with slowly and carefully.

²¹ *Bhagwandas Goverdhandas Kedia v M/S Girdharilal Parshottamdas* 1966 AIR 543, 1966 SCR (1) 656

Moreover, the usage of electronic media for contracting might create some new difficulties and unseen situations in front of the user, and it will require a certain amount of time to adapt to this mode of communicating the Offer and Acceptance.²²

“It may be concluded that where various steps of a contract have been affected through electronic means, the parties are at consensus-id-idem and such an agreement fulfills all the essentials of a valid contract under the Indian Contract Act, 1872 mentioned above, then, such contract is valid and legally enforceable.”²³

²² Kamat (n 4)

²³ Maneck Mulla, 'Validity of Electronic Contracts in India' (*Mondaq*, 4 May 2018)

<<https://www.mondaq.com/india/contracts-and-commercial-law/699022/validity-of-electronic-contracts-in-india>> assessed 13 January 2021