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BLOGS

Offer and Acceptance under Indian Contract Act, 1872

Ruchika Mohapatra · 14 Jun 2025

Introduction

Let’s say, R goes to a restaurant and orders a pizza from the menu. The restaurant accepts and starts preparing his pizza. Once R receives the pizza, he is bound to pay.

In this example, the prices on the menu are an invitation to offer. When R places the order, it is an offer. The restaurant accepts the offer by preparing and serving the pizza.

The Indian Contract Act, 1872, provides a comprehensive framework governing the formation and enforceability of contracts. The fundamental principle of contract formation is based on the concept of offer and acceptance. These two elements are essential to create a legally binding agreement.

Offer under Indian Contract Act

Definition of Offer

Section 2(a) of the Indian Contract Act, 1872, defines an offer (or proposal) as “when one person signifies to another his willingness to do or 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.”

The person making the proposal is called the proposer or offeror, and the person to whom the proposal is made is known as the offeree.

Essentials of a Valid Offer

1. Expression of Willingness: The offeror must express a clear intention to be bound by the offer once it is accepted.

2. Communicated to the Offeree: An offer must be communicated to the offeree before it can be accepted.
3. Must Create Legal Relations: The proposal should not be a mere social or moral obligation but should intend to create a legal obligation.
4. Definiteness and Certainty: The terms of the offer must be clear and definite to avoid ambiguity.
5. Not a Mere Invitation to Offer: Advertisements, price lists, and catalogues generally do not constitute offers but invitations to offer.

For example, A offers to sell his house to B for Rs. 50 lakh. If B accepts the offer, a contract is formed. However, if A merely advertises that he intends to sell his house, it is an invitation to offer and not a binding proposal.

Types of Offers

1. General Offer: An offer made to the public at large. Example: In Carlill v. Carbolic Smoke Ball Co., a company offered a reward to anyone who used their smoke ball as prescribed and still caught influenza. The court held that the offer was a general one and enforceable when accepted by performance.
2. Specific Offer: An offer made to a specific person or group.
3. Cross Offer: When two parties make identical offers to each other in ignorance of the other's offer. No contract is formed until acceptance.
4. Counter-Offer: When the offeree modifies the terms of the original offer, it amounts to a counter-offer, which nullifies the original offer.
5. Standing Offer: A continuing offer, often used in business agreements where multiple transactions may occur over time.

Acceptance of an Offer

Definition of Acceptance under Indian Contract Act

Section 2(b) of the Indian Contract Act states, "When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted." Upon acceptance, the proposal becomes a contract.

Essentials of a Valid Acceptance

1. Must be Absolute and Unqualified: The acceptance must correspond exactly with the offer without modifications.
2. Must be Communicated to the Offeror: Acceptance must be conveyed to the offeror in a manner prescribed or usual in business practice.
3. Mode of Acceptance: If a particular mode is prescribed, acceptance must be given in that manner.
4. Within a Reasonable Time: Acceptance must be made within a reasonable time before the offer lapses or is revoked.
5. Acceptance Must be Made by the Offeree: Only the person to whom the offer is made can accept it.
6. Silence is Not Acceptance: Mere silence does not amount to acceptance unless the parties have agreed otherwise.

For example, A offers to sell his bike to B for Rs. 50,000. B agrees to buy it for Rs. 45,000. This is not acceptance but a counter-offer. If A agrees to Rs. 45,000, then a valid contract is formed.

Case Laws on Offer and Acceptance

Carlill v. Carbolic Smoke Ball Co.

The company advertised that they would pay 100 pounds to anyone who used their smoke ball as directed and still contracted influenza. Mrs. Carlill used it and fell ill. The company refused to pay, arguing there was no binding contract.

The court ruled that the advertisement constituted a valid general offer, which was accepted when Mrs. Carlill performed the conditions. Hence, the company was bound to pay her.

Lalman Shukla v. Gauri Dutt

The defendant’s servant, Lalman Shukla, was sent to search for the defendant’s missing nephew. Later, the defendant announced a reward for finding the child. Lalman Shukla found the child but was unaware of the reward.

The Allahabad High Court held that since Lalman Shukla was unaware of the offer, he could not claim the reward. Acceptance requires knowledge of the offer.

Harvey v. Facey

Harvey telegraphed Facey, asking, "Will you sell us Bumper Hall Pen? Telegraph lowest price." Facey replied, "Lowest price £900." Harvey replied, "We accept," but Facey refused to sell.

The Privy Council ruled that Facey's response was only an invitation to treat, not an offer. Thus, no contract was formed.

Communication and Revocation of Offer and Acceptance

Communication of Offer and Acceptance

Section 4 of the Indian Contract Act states:

- An offer is complete when it comes to the knowledge of the offeree.
- Acceptance is complete as against the proposer when it is put in a course of transmission beyond the acceptor's control.

Revocation of Offer and Acceptance

Section 5 of the Act provides:

- An offer may be revoked at any time before acceptance is communicated.
- Acceptance may be revoked before the acceptance reaches the proposer.

For example, A makes an offer to B by post. B accepts and sends his acceptance by letter. Before A receives the letter, he revokes the offer. The revocation is ineffective since B has already accepted it.

Conclusion

The principles of offer and acceptance form the foundation of contract law. A valid contract arises only when a lawful offer is made and unequivocally accepted, subject to compliance with legal requirements. Case laws such as *Carlill v. Carbolic Smoke Ball Co.* and *Lalman Shukla v. Gauri Dutt* clarify the nuances of these concepts. Understanding these principles is crucial for businesses, individuals, and legal professionals to ensure the enforceability of contracts under Indian law.