NOTES AND COMMENTS

SITUATIONS IN WHICH COMMUNICATION OF ACCEPTANCE IS NOT REQUIRED FOR FORMATION OF CONTRACT: AN ANALYSIS

Abstract

This paper analyzes exceptions to the communication of acceptance rule in Indian contract law, focusing on scenarios where contracts form without explicit communication. It examines deeming provisions, performance of conditions, proposer's dispensation, acceptance by conduct, retention of goods, and failure to notify rejection. The study investigates how these exceptions align with the Indian Contract Act, supported by Indian and foreign case laws. It also addresses challenges posed by digital and AI-driven contracts, advocating for consumer protection and updated electronic contracting rules. The paper concludes that while these exceptions offer flexibility, they necessitate clear guidelines to ensure genuine consent and prevent exploitation, recommending stronger consumer safeguards, transparent electronic contracting rules, and attribution rules for AI-driven acceptances to

I Introduction

EVERY CONTRACT springs from the acceptance of a proposal. Communication of acceptance is an important element in the formation of a contract, and as a general rule acceptance has to be communicated so as to effectuate a contract. However, there are situations where the law makes an exception and allows a contract to be formed without communication of acceptance. These instances stand apart from the norm and raise a larger question, how far does the Act itself permit such departures? The aim here is to set out these exceptions in a clear form, trace their statutory and judicial basis, and assess whether they sit comfortably within the overall framework of the Contract Act.

If acceptance is treated as complete without any clear signal, one side may go ahead on the assumption that a binding contract exists, while the other honestly believes nothing has yet been finalised. Such mismatches of understanding are a common source of disputes, and the costs of resolving them in court can easily outweigh the supposed efficiency of dispensing with formal communication. Towards this end, the paper seeks to find the ways to avoid the danger of miscommunication between the parties when they are set to form a contract.

There are various ways and methods whereby a proposee could signify his assent to the proposal. This paper focuses only on those cases where the communication of acceptance is just not required for concluding a contract. Even though such situations are very few, however, working out those circumstances in practice has always been

messy and contested. The Contract Act, 1872 does not specifically classify the situations and cases where communication of acceptance can be dispensed with and the same is sought to be found out in a comprehensive manner in this paper.

II Deeming of communication even when it is not a fact

'Deeming' is a legal device that is used when it is necessary to establish a legal fiction either positively by considering something to be what it is not, or negatively by considering something not to be what it is. 'Deem' is used to provide that the legislation is to be applied as if some fact were different from what it is in reality. It is used to establish a condition or fact that is not true in a literal sense but is treated as true for legal purposes.[1] The difference between presumption and deeming is that in the case of the former, the presumption can be rebutted by contrary evidence, but in case of deeming, the presumption cannot be rebutted, even by evidence, and a contrary proof is not worth entertaining. Therefore, unlike the word 'presume', which is subject to contrary proof, 'deem' is imperative and binding. It leaves no room for alternative interpretation.

There are two distinct situations in which the legal device of 'deem' is used in the Contract Act where acceptance is deemed to have been made even when it is not a fact. These situations exist within sections 3 and 4 of the Act. Section 3 of the Contract Act is as follows:[2]

> Communication, acceptance and revocation of proposals.— The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are *deemed* to be made by any act or *omission* of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the *effect* of communicating it.

Section 3, as stated above, focuses on how communication of proposal, acceptance and revocation takes place or is *deemed* to have taken place. Such communication could be made in two ways: one by 'act' and two by 'omission' of the parties. Such an act or omission should signify the intent of the party concerned or in the alternative it should have the effect of communicating it.

Focusing on the aspect of 'communication by omission', *i.e.,* passive communication or communication without doing anything. That means acceptance may be *deemed* to be communicated by *omission* if it generates a particular *effect* on the other party. In

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1 For example: A document may be deemed to have been delivered if sent by registered mail. Even if the document is not actually received, sending it by registered mail satisfies the requirement.

2 S. 3, Indian Contract Act, 1872. Emphasis added.

this provision law has created a legal fiction to deem communication even when it is not a fact in a situation where the absence of communication has generated a certain effect on the other party. It implies that there are possibilities in which even without communication of acceptance, a contract can be formulated and the need for communication of acceptance can be dispensed with in certain situations. Practically, an acceptance sent by post takes effect before it is actually communicated. In *Byrne* v. *Van Tienhoven*, Lindley J. treated the question as beyond dispute:[3]

> It may be taken as now settled that, where an offer is made and accepted by letters sent through the post, the contract is completed the moment the letter accepting the offer is posted, even though it never reaches its destination.[4]

The second deeming provision, which has the impact of concluding a contract without actual communication of acceptance is contained in section 4 of the Contract Act which is as follows:[5]

> Communication when complete.—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, 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 above provision manifests a rule of expediency whereby communication of acceptance is deemed to have been made as soon as the proposee posts his letter of acceptance through a mutual agent, like a post office. Imagine a situation where the proposee posts his letter of acceptance, but the letter is lost in transit and never reaches the proposer. The law still deems that the communication of acceptance is done even when it actually never happened. This is the rule of expediency whereby law seeks to apportion potential loss which happens during the course of a transaction without the fault of any party.

A situation where the acceptance, though received, is not read or where the listener on the telephone does not catch the words of acceptance but nevertheless does not ask for them to be repeated[6] in the situation where a contract has been deemed to

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3 *Byrne* v. *Van Tienhoven* (1880) 5 CPD 344 at 348.

4 Cheshire, Fitroot and Fungston's Law of Contract, 17th ed. 72 (2017).

5 S. 4, Indian Contract Act, 1872. Emphasis supplied.

6 *Entores Ltd.* v. *Miles Far East Corpn.*, (1955) 2 QB 327: (1955) 2 All ER 493.

have been formed even without the communication of acceptance has been a fact. In *Entores Ltd.* v. *Miles Far East Corporation* it was held:[7]

> The offeror may be estopped from denying that the acceptance was communicated if it was 'his own fault that he did not get it'; e.g 'if the listener on the telephone does not catch the words of acceptance but nevertheless does not... ask for them to be repeated'.

In *Household Fire Insurance Co. Ltd.* v. *Grant*,[8] the defendant applied for shares in the plaintiff company. A letter of allotment was posted but it never reached the defendant. The company went into liquidation, and it was held that the defendant was a shareholder and liable for calls on the shares. Here the application for allotment of shares is the proposal and the letter of allotment of shares is the acceptance. So, even without communication of acceptance the court held that the contract was formed.

In *Hairoon Bibi* v. *The United India Life Insurance Co. Ltd.*,[9] the plaintiff's husband was the holder of a life insurance policy issued by the defendant company. A quarterly premium for the renewal was payable on the October 8, 1939. Such a premium was not paid on the due date, and under the terms of the policy, there was one month's period of grace from that date for payment. The amount was not paid even within this month and the husband of the plaintiff, wrote to the company, on November 19, 1939, asking for an extension of one more month of the days of grace and stating that he would pay the premium with the penalty due by the December 8, 1939. This letter elicited the reply from the company on November 21, 1939, in which they asked him to send the premium and interest so that they could send him a receipt and they state:[10]

> Since the policy will continue to be under lapse till receipt of the premium amount, we would urge you to remit this amount as early as possible even before 8th December, 1939, so that the insurance protection may continue to be bestowed on the policy.

The premium was remitted by money order from plaintiff's village on November 28, 1939, well within the December 8, 1939, and the amount reached the company's branch office on the November 30, 1939. But the insured died suddenly on November 29, 1939.[11] When a claim was made for payment of the insurance amount, the plaintiff was met with the plea that as the insured was dead before the premium was actually received by the company the policy which had lapsed was not in force and

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7 *Id.* at 333.

8 (1879) 4ED 216, (1874-80) Al RE Rep 919 (CA).

9 AIR 1947 Mad 122.

10 *Id.*, para. 1.

11 *Id.*, para. 2.

that nothing was therefore due and payable to her.[12] In this context the court remarked:[13]

> Of course, the very idea underlying the revival of a lapsed policy is that the assured should be alive on the date of the revival. If he was dead when the policy was in a state of lapse, there could be nothing like any revival at all.

The first question before the court was whether the insurance policy stood renewed before the death of the assured? The second question was whether the fact that the sender could, under the post office rules, call back the money order detracts in any way from the rule that acceptance in the manner indicated by the proposer or constitutes in law a good and valid acceptance?

The court noted that the money order was probably the mode of payment that was intended by the defendant company. The court held that under section 4 of the Contract Act[14] the communication of acceptance on the part of the assured was complete as against the insurance company as soon as the money was sent by money order, *i.e.,* on November 29, 1939, forming a binding contract. The assured died on November 29, 1939 and the money reached the office of the insurance company on November 20, 1939. Here the court noted that formation of contract took place a day before the death of the assured, therefore the plaintiff was entitled to receive the benefit of the insurance. The fact that the money order reached the office of the insurance company a day after the death of the assured can have no bearing on the outcome of the case as the contract had already been formed. This view is buttressed by section 50 of the Contract Act which says by way of illustration:[15] "A desires B, who owes him Rs. 100, to send him a note for Rs. 100 by post. The debt is discharged as soon as B puts into the post a letter containing the note duly addressed to A." Further, with regards to the second question that the remitter had the power to stop the payment being made to the payee can also have no bearing on the outcome of the contract as section 4 is amply clear on this aspect, when it has undoubtedly segregated the completion of communication of acceptance as against the proposer and acceptor.[16]

In a situation when the communication of acceptance does not reach the proposer each of the parties may act in reliance on his view of the situation: the proposer may

12 *Ibid.*

13 *Id.*, para. 3.

14 S. 4, Indian Contract Act, 1872: Communication when complete.— … 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 the acceptor; as against the acceptor, when it comes to the knowledge of the proposer.

15 See, S. 50, Illustration (d), Indian Contract Act, 1872. See also, *Henthorn* v. *Fraser* (1892) 2 Ch. 27.

16 The same is also warranted by the Indian Post Office Act, 1898.

enter into other contracts, assuming that his proposal had not been accepted, while the proposee may refrain from doing so, believing that he had effectively accepted the proposal. In such a situation, the actions of both the parties are perfectly reasonable, but the law must decide one way, and the law favours the proposee on these grounds that it is the proposee who 'trusts to the post'.[17]

III Performance of conditions of a general proposal

A general proposal is a proposal[18] made to the world at large, rather than to a specified person. Such a proposal invites any member of the public to fulfil certain conditions and if the conditions are met, the proposal stands accepted. There is no particular need to communicate the acceptance in such cases. Section 8 of the Contract Act recognises the same principle. It says:[19]

> *Performance of the conditions of a proposal*, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal.

In *Carlill* v. *Carbolic Smoke Ball Co.*[20], a reward was announced, by way of a general proposal, to anyone who contracted influenza even after taking the medicine of the company under prescribed conditions. The plaintiff claimed the said reward without ever communicating her acceptance while the defendant raised the contention that since communication of acceptance was not made from the plaintiff's end, a contract cannot be said to have been formed. The court held that since the proposal was not made to a specific person, but was a general proposal which was made to the public at large, a communication of acceptance was not required. The performance of the terms of the contract was sufficient for the contract to be formed.

According to Cheshire, the argument that the plaintiff should have notified her intention to put the defendants' panacea to the test was dismissed as absurd. Bowen LJ, after stating the normal requirement of communication, continued:[21]

> But there is this clear gloss to be made upon that doctrine, that as notification of acceptance is required for the benefit of the person

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17 See, *Household, etc., Insurance* v. *Grant* (1879) 4 Ex. D. at 233.

18 S. 2(a), Indian Contract Act, 1972 defines proposal as: "When one person signifies to another his willingness to do or to 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." It may, accordingly, seem that a valid proposal should be made to a specific person however, according to Sir William Anson, "An offer need not be made to an ascertained person, but no contract can arise until it has been accepted by an ascertained person." See, J. Beatson, A. Burrows, and J. Cartwright (Eds.), *Anson's Law of Contract*, 29th edn. 37 (Oxford 2010).

19 S. 8. Indian Contract Act, 1872. Emphasis added.

20 *Carlill* v. *Carbolic Smoke Ball Co.*(1893) 1 QB 256.

21 *Id.* at 269-70.

> who makes the offer, the person who makes the offer may dispense with notice to himself if he thinks it desirable to do so... and if the person making the offer expressly or impliedly intimates in his offer that it will be sufficient to act on the proposal without communicating acceptance of it to himself, performance of the condition is a sufficient acceptance without notification.... In the advertisement cases it seems to me to follow as an inference to be drawn from the transaction itself that a person is not to notify his acceptance of the offer before he performs the condition.... From the point of view of common sense, no other idea could be entertained. If I advertise to the world that my dog is lost and that anybody who brings the dog to a particular place will be paid some money, are all the police or other people whose business it is to find lost dogs to sit down and write me a note saying that they have accepted my proposal?

From a different angle, it can also be stated that communication of acceptance is required only for the benefit of the person who makes the proposal and accordingly the proposer may be presumed to have dispensed with the notification to himself if he makes such a general proposal.

IV Performance of conditions of a specific proposal

The principle enumerated in section 8 of the Contract Act[22] is applicable not just to general proposals but also to those proposals that are made to a specified person. The essence lies in the performance of conditions of the proposal and such performance itself is capable of forming of a contract without any requirement of communication of its acceptance.

In *Alexander Brogden* v. *The Directors of the Metropolitan Railway Company,*[23] the defendant, Brogden, had continued to supply the Metropolitan Railway Company with coal for many years without any formal contract. Eventually, Brogden suggested that the parties draw up a formal contract. Metropolitan drew up a draft, leaving certain parts blank for Brogden to fill in. Brogden filled in the blanks and also added an arbitration clause. He then signed the bottom of the document and sent it back to Metropolitan. Metropolitan did not respond. The parties proceeded in accordance with the terms of the said draft and occasionally made reference to the 'contract' when dealing with minor disputes. However, when a significant dispute arose, Brogden denied that any contract had been formed between them. Metropolitan sued Brogden for breach of contract. The House of Lords held in favour of Metropolitan while deciding whether there was a binding contract between the parties. The conduct of the parties established that there was a contract between them, and Brogden was in

22 S. 8, Indian Contract Act, 1872. See, *supra* note 18.

23 (1877) 2 App Cas 666.

breach of it. Metropolitan's initial draft could be seen as an invitation to proposal and when Brogden altered that draft, he was making a proposal. Metropolitan then accepted this proposal by fulfilling the conditions of the proposal and acting in accordance with its terms, while there was no communication as to acceptance.

The actions of the company, by retaining the draft agreement in its possession, could be interpreted as indicative of tacit acceptance. However, this mental acceptance was not explicitly communicated, nonetheless, the subsequent behaviour of both parties, engaging in coal supply and payment transactions based on the proposed terms, served as practical evidence of their mutual intention. As noted by Lord Cairns LC, the conclusive acceptance occurred when the company initiated a consistent pattern of conduct unmistakably tied to the contract, and when this conduct was acknowledged and reciprocated by party B through the continued supply of coal. Lord Blackburn stated the principle in the following manner:[24]

> But I have always believed the law to be that when an offer is made to another party, and in that offer, there is a request express or implied that he must signify his acceptance by doing some particular thing, then as soon as he does that thing, he is bound. If a man sent an offer abroad saying: I wish to know whether you will supply me with goods at such and such a price, and, if you agree to that, you must ship the first cargo as soon as you get this letter, there can be no doubt as soon as the cargo was shipped the contract would be complete, and if the cargo went to the bottom of the sea, it would go to the bottom of the sea at the risk of the orderer.

This case clearly established that acting on the terms of a proposal or performance of conditions of a proposal can be enough to constitute an acceptance without any need to communicate the acceptance specifically. In *Brogden,*[25] despite no formal contract being signed, the parties' ongoing conduct in line with the terms of a draft agreement suggested acceptance and formed a binding contract. This notion is similar to *Carbolic Smoke Ball*[26], where performing the requested action in response to a general proposal without any explicit acceptance led to a binding contract.[27]

In *Calgary Hardwood and Veneer Ltd. And Foreign and Domestic Wood Ltd.* v. *Canadian National Railway Co.*,[28] the court ruled on a case involving a proposal for the sale of a

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24 *Id.* at 691.

25 *Supra* note 23.

26 See, *Carlill* v. *Carbolic Smoke Ball Co.*(1893) 1 QB 256.

27 See, Nicholas Rafferty, "Recent Developments in the Law of Contract", 24 *McGill LJ* 239 (1978).

28 (1977) 5 A.R. 582 (TD).

portion of land and the lease of another part, contingent upon the proposee obtaining planning permission within nine months. Despite no explicit communication of acceptance during this period, the court upheld the formation of a valid contract. It reasoned that the proposer had specified a particular mode of acceptance, and by fulfilling the condition, the proposee effectively accepted the proposal without the need for prior notification to the proposer regarding their intention to accept.

In *Allahabad Bank* v. *Mecon Doranda, Ranchi*,[29] a bank received margin money from a customer for an issue of a bank guarantee. The bank suggested that in lieu of charges for other services, the customer should deposit an amount. The customer stated an inability, but offered to keep its trade surplus with the bank. The bank did not respond, but issued the bank guarantee. It was held that the bank was not entitled to claim charges, because the customer's proposal to keep a trade surplus was accepted by the bank by issuing the bank guarantee? Actions such as forwarding a bank guarantee for obtaining mobilization advance, arbitration proceedings, and references to arbitration and awards have also been deemed acceptance by conduct.[30]

V Where the proposer himself dispenses with the requirement of communicating acceptance

It is always open to the proposer to prescribe the mode of acceptance which the proposee needs to follow to accept the proposal. Section 7 of the Contract Act states:[31]

> Acceptance must be absolute — In order to convert a proposal into a promise, the acceptance must— (1) be absolute and unqualified; (2) be expressed in some usual and reasonable manner, *unless the proposal prescribes the manner in which it is to be accepted.* If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer 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.

A perusal of the above provision makes it clear that the proposer can prescribe and insist on the mode of acceptance. But what happens when the proposer prescribes inaction or silence on the part of the proposee to constitute acceptance? Can such inaction or silence amount to acceptance?

In *Felthouse* v. *Bindley*[32] the uncle wanted to buy a horse from his nephew. After having previous negotiations about buying a particular horse, the uncle sent a letter saying,

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29 *Allahabad Bank* v. *Mecon Doranda, Ranchi*, AIR 2005 Jhar. 54.

30 *Mukand Ltd.* v. *Hindustan Petroleum Corpn.*, (2005) 3 CLT 45 (Bom).

31 S. 7, Indian Contract Act, 1872. Emphasis added.

32 *Felthouse* v. *Bindley*, (1862) EWHC CP J35.

"If I hear no more about him, I consider the horse mine at £30.15s." The nephew did not reply as he was busy at the auctions. He instead instructed his manager not to sell that horse. But by mistake, that horse was sold. The uncle then sued the manager for the tort of conversion. However, this action in tort necessitated the uncle to show the horse was his property and that depended on the conclusion of a contract between him and his nephew. The manager argued against the contention of the uncle as the acceptance was never communicated. The court ruled that the uncle did not have ownership of the horse as there was no acceptance of the contract. The court stated that acceptance must have been communicated and cannot be imposed due to the silence of one of the parties and the proposer cannot by his own act put the proposee in an awkward position where he must speak or by his silence create a contractual obligation. This will militate against the 'free will' of the proposee to enter into a contract.

On slightly altering the facts of the case. Suppose the manager did not sell and reserved the horse but the uncle changed his mind after his proposal and did not come forward to collect the horse. Upon being sued by the nephew he argues that there was no communication of acceptance. In this situation, as the uncle himself had dispensed with the requirement of communication of acceptance, the same would be binding on him and even without communication the contract would have been concluded.

Cheshire states:[33]

> It should follow from this that if the nephew on the facts of *Felthouse* v. *Bindley* had sued the uncle, the latter would have been unable to rely on the non-communication of acceptance. It may further be argued that the true principle is that the offeror cannot by ultimatum impose on the offeree an obligation to state his no-acceptance, but that the contract may, nevertheless, be concluded if the offeree unequivocally manifests his acceptance. It may appear paradoxical that one party can assert that there is a contract and not the other but this can be explained in terms of estoppel.

Cheshire has further stated:[34]

> While an offeror may not present an offeree with the alternatives of repudiation or liability, he may, for his own purposes, waive the need to communicate acceptance. He may himself run the risk of incurring an obligation, though he may not impose it upon another. Such waiver may be expressed or may be inferred from the circumstances. It will

33 Cheshire, Fitroot and Fungston's Law of Contract, 17th edn., 67 (2017).

34 *Id.* at 66.

> normally be assumed in what are sometimes called *unilateral* contracts. In this type of case the offer takes the form of a promise to pay money in return for an act; and the performance of that act will usually be deemed an adequate indication of assent.

Accordingly, doing nothing or remaining silent may be a condition of the proposal itself, but doing nothing or maintaining silence without being backed by the terms of the proposal and doing nothing as per the terms of the proposal are two different things. In the latter instance we may reasonably construe such non-action on the part of the proposee as performance of the conditions of the proposal, as he has done what exactly was asked of him.[35] Such non-action can also be seen as communication in itself. In such cases, however, both the proposer and proposee must be *ad idem* in the matter of such a requirement of non-action. If a proposer has specifically prescribed or impliedly authorised any particular manner of communicating acceptance, he cannot thereafter dispute the adequacy of that manner. If a miscarriage befalls him then he can be said to have taken that risk upon himself while the action or inaction of the proposee was in accordance with the proposal. When the proposee makes acceptance in the manner thus authorized by the proposer, the proposer has but himself to blame if the situation turns out to be disadvantageous to him.

VI Acceptance by conduct of the proposee

Section 8 of the Contract Act[36] recognises the fact that a proposal may contain certain conditions and the performance of such conditions by the proposee can amount to acceptance of the proposal. Therefore, acceptance can take place just by the conduct of the proposee without any need for him to communicate the same. Further, in the cases in which the proposer invites acceptance by the doing of an act it is sometimes impossible for the proposee to manifest his acceptance otherwise than by a certain conduct. But conduct will only amount to acceptance if it is clear that the proposee did the act with the intention, actual or apparent, of accepting the proposal.[37] Further, section 9 of the Contract Act is as follows:[38]

> Promises, express and implied.— In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

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35 See, *Alexander Hamilton Institute* v. *Jones*, (1924) Ill App. 444; See also, 9(1), Halsbury's Law of England, "Contract", 4th ed., para. 655 (30 June 1998).

36 S. 8, Indian Contract Act, 1872. See, *supra* note 18.

37 See, *Bhagwati Prasad Pawan Kumar* v. *Union of India* (2006) 5 SCC 311; *Taylor* v. *Allon* (1966) 1 Q.B. 304.

38 S. 9, Indian Contract Act, 1872.

Section 9 is embracive of acceptance when made otherwise than in words and in such a situation the promise is said to be implied. This provides for very wide factual situations, such as an act, omission or conduct, which could be construed as acceptance. That means when an acceptance is made through the conduct of the parties, a contract can certainly be implied. Conduct can either be positive or negative; it is positive when the proposee is asked to do something and the proposee does that; it is negative when the proposee abstains in accordance with the proposal.

In *Nalini* v. *Somasundaram*,[39]the parties were married under the Special Marriage Act. After a few years of matrimony, the relations between them got strained, and the wife contemplated to file an application for divorce. Wife's lawyer contacted the husband to settle the terms of divorce, including alimony, etc. The husband wrote a letter to the wife's lawyer, detailing the terms which he was willing to allow to his wife as part of the divorce settlement which included, among other things, the provision of the house in Santhome High Road for the residence of the wife so long as she remained unmarried subsequent to divorce. The said letter written by the husband to the counsel for the wife was put in evidence in the divorce proceeding. Subsequently a divorce decree was granted, which, however, did not mention the provision of the house in Santhome High Road for the residence of the wife. The lower court opined that the letter written by the husband to the wife before divorce constituted a proposal which was not accepted by the wife, or the acceptance was not communicated to the husband. In either of the situations no contract resulted between them. The high court agreed with the lower court in as much as the lower court decided that the said letter written by the husband to the wife constituted a proposal. However, on the point of the lack of communication of acceptance of this proposal, the high court did not agree with the view of the lower court and reversed it. The high court opined that the said proposal by the husband was accepted by the conduct of the wife in filing a divorce petition even though it was never communicated.[40]

In *The Church Schools Company (Ltd)* v. *Soames*,[41] the testator proposed to leave a sum of GBP 3000 to the plaintiff, a charitable educational group, for the establishment, maintenance and advancement of a school. The same was later incorporated in a will by the testator, which was subsequently revoked. The succeeding will contained no such bequest. The charitable educational group accordingly established such a school. Subsequently, there was a denial on the part of the testator's estate to pay. Upon being sued, it was argued on behalf of the testator's estate that the acceptance of the said proposal was never communicated. The testator's estate was held liable for the

39 *Nalini* v. *Somasundaram*, AIR 1964 Mad 52, (1916) 43 IA 138 at 146, 39 Mad 509 at 522, AIR 1916 PC 9 at 12.

40 The contract got concluded by such filing for divorce petition. The subsequent non mention of the provision for residence of the wife at the house in Santhome High Road is inconsequential.

41 *The Church Schools Company (Ltd)* v. *Soames*, (1897) 13 TLR 439.

promised sum given the testator had, *inter vivos*, commenced paying rent on the school site and had instigated a 'legacy' that was subsequently abandoned.[42] It is a case of acceptance by positive conduct on the part of the plaintiff in establishing the school in accordance with the proposal, and it was held that there was no need for any communication of the same.

The proposal of C to send to W a music track for incorporation into W's album and an invoice was accepted when W produced the album incurring expenses.[43] In this case although the original proposal was 'subject to contract', the conduct of making album constituted acceptance.

In *Roberts* v. *Hayward*,[44] a tenant was in possession of the premises under a lease of three years on a rent of 45 pounds to be paid annually. The owner of the premises gave a notice to the tenant to vacate beyond the term of the lease of three years or to pay an enhanced rent of 50 pounds annually. The owner further stated that if the tenant did not so vacate the premises, he shall be presumed to have agreed to pay the enhanced rent. The tenant did not vacate the premises but refused to pay the enhanced rent saying that he never accepted the alleged offer. It was held that the tenant was bound to pay the enhanced rent. The court commented:

> The tenancy under the agreement expired at Midsummer, 1826. Immediately after that time, the plaintiff was a trespasser; but the landlord was not obliged to treat him as such, but might make proposals to him, to renew the relation of landlord and tenant between them. This he did, and the plaintiff did not say, I will go out directly. His silence on the subject is tantamount to his saying, I will continue in on the terms of your proposal.

Here, silence on the part of the tenant manifests his conduct by which he can be said to have accepted the proposal even though there was no communication of such acceptance.

In *Alliance Bank* v. *Broom*,[45] the defendant owed an unsecured debt to the plaintiff bank. As the debt was unsecured the plaintiff bank demanded some security from the defendant which the defendant agreed to by providing some goods. However, such goods were never produced. When the plaintiff bank sought to enforce the contract, the defendant denied— reasoning that the bank had not provided any consideration for the same. It was held that the defendant's proposal to give additional

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42 See, Mark Giancaspro, *Consideration in Contract Law: Historic and Contemporary Principles and Perspectives* 37 (Edward Elgar 2024).

43 *Confetti Records* v. *Warner Music UK Ltd.,*(2003) EWHC 1274 (Ch). See also, *LIC of India* v. *R. Vasireddy*, AIR 1984 SC 1014.

44 *Roberts* v. *Hayward* (1828) 3 C and at 432.

45 *Alliance Bank* v. *Broom*, (1864) 2 Drew and Sm 289, 34 LJ (Ch) 259.

security was accepted by the bank's forbearance to sue for that debt. By not suing the bank had shown forbearance and this was a valid acceptance, so the promise to provide security was binding. Consequently it can be stated, that by the plaintiff's conduct of forbearance the proposal was accepted by the plaintiff bank.

In the case of *Cole-McIntyre-Norfleet Co.* v. *Holloway*,[46] on March 26, 1917, the defendant's salesman visited the plaintiff's store and successfully solicited an order from the plaintiff for fifty barrels of meal, a perishable commodity. The defendant provided that the plaintiff had until July 31, 1917 to request delivery of the meal, and would be charged for storage of any barrels not requested by this time. The defendant's salesman visited the plaintiff's store once a week for every week following the plaintiff's order but never mentioned the order during these visits. On May 26, 1917, the plaintiff requested delivery of the barrels from the defendant. However, the defendant informed the plaintiff that it had never accepted his order and thus no contract existed. Between March 26, when the order was placed, and May 26, when the plaintiff requested delivery, the prices for meals significantly increased. The plaintiff brought a suit to recover the excess in price in the Tennessee state court. The court opined that the defendant's unreasonable delay in informing the plaintiff that it did not accept the order actually amounted to acceptance itself, and thus a valid contract was formed. It was held that the defendant's silence for two months was unreasonable and that it operated as an acceptance of the order.[47] Here, the silence of the defendant for two long months in the circumstances can be reasonably termed as conduct which is not positive in fact, but is negative, and it is taken by the court to an acceptance of the proposal, especially when the defendant had substantial time to notify the plaintiff.

In *Haridas Ranchordas* v. *Mercantile Bank of India*,[48] Mercantile Bank charged compound interest on certain overdrafts by its customers. The customers did not object to such a charge in accordance with the usual course of business. It was held that the charge of compound interest by the bank was in the sense of a proposal which was accepted by the conduct of the customer who chose not to object to such a charge on multiple occasions. The argument that such an acceptance was not communicated did not find favour with the court.

The principles outlined emphasize that acceptance of a proposal under Sections 8 and 9 of the Indian Contract Act, 1872, can be effectuated through conduct, omission, or silence, provided such conduct unequivocally manifests an intention to accept the proposal. Judicial precedents further affirm that acceptance need not always be communicated explicitly, as acts consistent with the terms of the proposal or

46 (1919, Tenn.) 214 S. W. 817.

47 *Ibid.*

48 *Haridas Ranchordas* v. *Mercantile Bank of India* (1920) 47 IA 17: AIR 1920 at 61.

unreasonable delay in rejecting the same may constitute implied acceptance. Thus, a valid contract may arise even in the absence of express communication, contingent upon the proposee's actions aligning with the proposer's conditions.[49]

VII Acceptance of consideration by the proposee

Section 8 of the Contract Act reads: "Performance of the conditions of a proposal, or *the acceptance of any consideration for a reciprocal promise which may be offered with a proposal*, is an acceptance of the proposal."[50] In the light of the second half of section 8 of the Act, it could be said that there is no need for communication of acceptance as acceptance of consideration in itself would amount to a binding contract between the parties.

In *LIC of India* v. *Consumer Education and Research Centre,*[51] the Life Insurance Corporation of India had accepted the premium when the proposer had applied for insurance along with the premium by way of a cheque. The court held that encashing the said cheque constituted acceptance of consideration, which in turn formed a binding contract of insurance between LIC and the proposer applicant without there being any need for communication of such acceptance. In *Manufacturers' etc., Bureau* v. *Hosiery Co.*,[52] a proposee did not communicate his acceptance but accepted the benefits of the proposal. It was held that his silence and acceptance of the benefits constituted acceptance of the proposal.[53]

VIII Retention of goods sent on a sale or return basis

Sometimes a proposer sends goods to the prospective purchaser on a sale or return basis, *i.e.*, the receiver of the goods is at liberty to accept the goods and then pay the consideration or reject the goods. What happens when he starts using the goods sent but does not communicate his acceptance? The offer may expressly or impliedly waive the requirement of communication of acceptance. For example, an offer to supply goods made by sending them to the offeree may be accepted by simply using them and an offer to buy goods made by ordering them may sometimes be accepted by simply dispatching them. The UK Sales of Goods Act has a specific provision regarding this issue. It says: "The buyer is also deemed to have accepted the goods

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49 Japanese courts, for instance, have been willing in certain cases to treat continued performance without objection as acceptance, reflecting how local business practice works. See, Petra Butler and Bianca Maria Mueller, "Acceptance of an Offer under the CISG" 7 *VUWLRP* (7/2017).

50 S. 8, Indian Contract Act. Emphasis supplied.

51 (1995) 5 SCC 482.

52 152 Wis. 73, 138 N. W. 624, 42 L. R. A. (N. S.) 847, Ann. Cas. 1914C, 449 (1912).

53 See, "Contracts. Silence as Acceptance of Offer." 8 (7) *Virginia Law Review* 537–38 (1922).

when after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them."[54]

Section 3 of the Contract Act covers this situation; it says, "The communication of proposals, the acceptance of proposals, and the revocation of proposals and acceptances, respectively, are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation, or which has the effect of communicating it."[55] Accordingly, when a proposer sends goods to the proposee and the proposee starts using the goods but does not communicate his acceptance, he is still deemed to have accepted the proposal.

Does section 3 of the Contract Act cast a duty on the proposee to return or reject the goods sent to him on a sale or return basis if he does not want those goods? What if those goods are sent to him unsolicited? Is he still under a duty to return or reject the goods? There is no general duty cast on the proposee to reject or return the goods sent to him.[56] Otherwise, this will give rise to a strange situation where a person could be flooded with goods by different vendors, expecting a reply from him, failing which there would be a contract. This could put an unreasonable burden on the proposee far beyond his capacity as a reasonable man. However, under section 3, a contractual liability could arise upon an act or omission of the proposee by which he either intends to communicate his acceptance or which has the effect of communicating it. Therefore, even acceptance by omission or passive acceptance is tagged to either intention or effect. It is certain that one cannot be forced into contractual relations with another by sending unsolicited goods.

In *Evans Piano Co.* v. *Tully,*[57] the defendant was put in possession of a piano on a thirty day trial under a promise either to sign a contract to pay in monthly instalments if he decided to keep the piano, or to return the piano if not satisfied. He kept the piano for several months. A suit was brought for the full purchase price. It was held that the defendant's act of keeping the piano way beyond the period of thirty days constituted an acceptance of the proposal of the vendor. And even without any communication of acceptance a contract was formed.

In *Ostrnan* v. *Lee*,[58] the plaintiff got an old automobile delivered to the defendant for sale if the defendant found it useful for his business. The defendant kept the

54 S. 35(4), UK Sales of Goods Act, 1979.

55 S. 3, Indian Contract Act,1872.

56 Such a duty can be cast only in specific situations.

57 *Evans Piano Co.* v. *Tully* (19I7, Miss.) 76 So. 833. See also, *Choice* v. *Mosely* (1828, S. C.) 1 Bailey, 136; *Hunt* v. *Wyman* (1868) 1oo Mass. 198, and *Isaacs* v. *MacDonald* (1913) 214 Mass. 487, 102 N. E.

58 *Ostrnan* v. *Lee* (1917, Conn.) IOI Atl. 23.

automobile for nearly two years without intimating the plaintiff whether he wanted to keep it or not. During this time, he also tried to sell it to third parties. Thereafter he notified the plaintiff that he did not wish to purchase the said automobile. It was held that the defendant had already accepted the proposal of the plaintiff without there being any need for communicating the same. Further, the act of the defendant in communicating his rejection was inconsequential as his retention of the automobile beyond a reasonable time had already amounted to acceptance.

In *Austin* v. *Burge*,[59] the defendant's father-in-law subscribed for a newspaper published by the plaintiff to be sent to the defendant for two years, and the father-in-law paid for it for that time. It was then continued to be sent to the defendant, through the mail, for several years more. On two occasions the defendant paid a bill presented for the subscription price, but each time directed it to be stopped. He testified that, notwithstanding the order to stop it, it was continued to be sent to him, and he continued to receive and read it, until finally when he had relocated to another state. Upon being sent the newspaper the defendant continued to take it from the post office to his home, thereby making a conscious and deliberate effort. The court held it to be an acceptance, and, an obligation had arisen to pay for it, despite there being no communication of acceptance from his side. Therefore, acceptance may be inferred from silence where goods are sent to another without request and are used and dealt with by him as his own.[60]

Where a proposee takes the benefit of offered services with a reasonable opportunity to reject them and reason to know that they were offered with the expectation of compensation, he is bound to pay the proposer for the same. For example, if a window cleaner cleans the windows of a house without the knowledge of the owner. The owner won't be liable to pay for the service until he becomes aware of the act before its completion and yet does not stop the person then and there from continuing. This element encapsulates a scenario where there is knowledge on the part of the receiving party, his not interfering and/or objecting to the performance of services can be seen as an implied acceptance where silence makes the contract binding on the receiving party. There is no question of this being an unreasonable element, because where there is duty to speak, his silence is speech in itself.

A comparison needs to be made between situation that arise under section 3 and under Section 70 of the Contract Act which is as follows:[61]

> Obligation of person enjoying benefit of non-gratuitous act.— Where a person lawfully does anything for another person, or delivers anything to him, not intending to do so gratuitously, and such other person enjoys

59 156 Mo. App. 286.

60 *Ibid.* See also, *Fogg* v. *Portsmouth Atheneum*, 44 N. H. 115; *Goodland* v. *Leclair*, 78 Wis. 176.

61 S. 70, Indian Contract Act, 1872.

> the benefit thereof, the latter is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered.

On a reading of section 70 and comparing it with section 3 it may seem that these two provisions have a common turf and certain situations might be covered under both the provisions. However, the situations that could come under section 3 should be covered there as section 70 is meant for only those situations which could not be covered under section 3 as section 70 is typically reserved for those circumstances which arise outside the ambit of contract. This is made clear by the title of Chapter V of the Contract Act which is:[62] "Of Certain Relations Resembling Those Created by Contract",[63] meaning thereby that the provisions of this chapter are reserved for those relations and situations not specifically covered by contractual relations. Section 3 and section 70, therefore, are mutually exclusive.

IX Failure to notify rejection of proposal

It is known, that the proposer cannot impose upon the proposee a burden to accept or reject the proposal. As a general rule the proposee should be at liberty to maintain his undisturbed silence. However, in certain situations, the failure on part of the proposee to reject the proposal and notify such rejection could amount to acceptance. This can be justified on the basis of Section 3 of the Contract Act which is permissive of deeming an acceptance by omission or silence on part of the proposee.[64]

Silence taken together with certain facts, may constitute acceptance. The conduct of the offeree may raise an estoppel.[65] If there is a course of dealings between the parties, the proposer may suppose that the silence amounts to acceptance, namely, previous offers to buy goods have been accepted as a matter of course by the dispatch of the goods.[66] If there is a prior understanding that contract forms, if not returned unsigned with a letter, shall amount to acceptance, then the non-return of the contract form is acceptance, but that is not so if there is no prior understanding.[67] Where the proposal is ambiguous and the proposee communicates with the proposer

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62 See, Title of Chapter V, Indian Contract Act, 1872.

63 The two illustrations attached to s. 70 buttress this understanding as both these illustrations speak of non-contractual situations. The two illustrations are: (a) A, a tradesman, leaves goods at B's house by mistake. B treats the goods as his own. He is bound to pay A for them. (b) A saves B's property from fire. A is not entitled to compensation from B, if the circumstances show that he intended to act gratuitously.

64 See, S. 3, Indian Contract Act. For a detailed discussion on section 3 refer to para 4, at 16.

65 *Roberts* v. *Hayward*, (1828) 3 C and P 432; *Spiro* v. *Lintern*, (1973) 3 All ER 319.

66 *Chitty on Contracts*, 28th edn., at 118 (2002); Halsbury's Laws of England, 9(1), 'Contract', para. 656 (4th edn. 1998),

67 *Goddarmal Hiralal* v. *Chandrabhan Agarwal and Co.*, AIR 1968 All 292.

indicating that he understood the proposal in a particular sense, the silence of the proposer may constitute acceptance.[68]

In *Lechler* v. *Montana Life Insurance Company,*[69] the plaintiff was the beneficiary of a life insurance policy issued by the defendant on the life of insured who was his uncle. The insured had paid the first premium by giving a promissory note. When the second premium became due, he did not pay it even within the grace period, and the policy lapsed. After a couple of months agents of the insurance company called at the farm of the insured for the purpose of renewing the policy. They obtained the signature of the insured to an application for reinstatement of the policy; it being agreed that he should give a promissory note for the renewal premium. The agents gave the insured an assurance at the time that upon receipt of his promissory note and application the company would reinstate the policy. Two or three days later, the insured went to the office of the agent and signed a promissory note for the full amount of the second premium, payable to the order of the Montana Life Insurance Company, and due about four months after which along with the application for renewal was immediately sent for reinstatement to the defendant company. The letter reached the company some two or three weeks later. About a month later the insurance company replied that they were unable to accept the promissory note sent and returned the same. The insurance company also suggested that the insured give a certain amount of premium as cash and the remainder in the form of a promissory note. This letter was received by the agent of the insurance company in due course of mail, but its contents were never communicated to the insured and the promissory note which the insured had given was not returned to him. About six weeks later the insured died, and the beneficiary brought an action, claiming that the policy was reinstated. The court held that the promissory note which the company mailed to its agent and which he retained, must be regarded as remaining in the company's possession, and the failure of the agent to notify the insured must be treated as the failure of the insurance company. The court stated:[70]

> Where the relations between parties have been such as to justify the offeror in expecting a reply, or where the offeree has come under some duty to communicate either a rejection or acceptance, his failure to communicate his rejection or to perform this duty may result in a legal assent to the terms of the offer… Within this principle we think there was a duty to return the note and communicate the rejection in the instant case at the peril of being held to the consequences of an assent to the reinstatement.

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68 *Halsbury's Laws of England*, 9(1), 'Contract', para 656 (4th edn. 1998).

69 (N. D., 1921), 186 N. W. 271.

70 *Ibid.*

The court was justified in holding that there was a duty to notify the policy holder of the rejection and that a failure to do so amounted to an acceptance of the application.[71] The agent's omission to inform the insured and return the promissory note can easily be understood by the insured and plaintiff as acceptance, and nothing contrary was communicated either. Hence the plaintiff's presumption that the contract is a binding one was validated by the court. Here the omission of the defendant to notify the rejection of the proposal clearly shows that there was no need of communication of acceptance and the contract was formed without it.

In *Robertson* v. *Tapley,*[72] the defendant sent a written draft agreement to the plaintiff to sign on the same and accept it, but instead of accepting it in its original form, the plaintiff altered, signed and returned the contract to the defendant, who remained silent and neither affirmed nor rejected the altered contract. However, the defendant permitted the plaintiff to perform his part of the contract without any notice or protest. It was held that the defendant had accepted the contract as amended without there being any requirement of communication as he failed to notify his rejection.

In *O'Neal* v. *Knippa*,[73] the defendant's cattle grazed on the land owned by the plaintiff. The plaintiff protested and told the defendant that he wished to use the land himself, however, he also proposed that the defendant could continue to keep the cattle upon the land by paying a certain sum of money per mensem. The defendant neither accepted nor rejected the proposal but replied, "That is too much." Beyond this no more communication took place between the parties on this subject. When sued to recover the money, the court held that such silence and permitting the cattle to remain upon the land constituted an acceptance of the plaintiff's proposal.[74] Here the defendant had expressed his unhappiness or disapproval to the amount asked by the plaintiff, however, thereafter he kept silent and did not also remove his cattle from the property of the plaintiff. In this situation, what if the plaintiff asks for unreasonable sum of money from the defendant and it is not practically possible for the defendant to remove his cattle immediately. In such a situation it could be prudent for the court to ask the parties to settle for a reasonable sum.

In the United States the approach has been more cautious: though courts have sometimes recognised silence as assent, but usually only where a history of previous dealings made that interpretation reasonable.[75] The European Union has dealt with

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71 See, "Contracts: Silence as Acceptance of an Offer." 20 (7) *Michigan Law Review*,790–791 (1922).

72 48 Mo. App. 239 (1892).

73 19 S. W. 1020 (1892). See also, *Bureau* v. *Hosiery Co.*, 152 Wis. 73, 138 N. W. 624, 42 L. R. A. (N. S.) 847, Ann. Cas. 1914C, 449 (1912).

74 See, "Contracts. Silence as Acceptance of Offer", 8(7) *Virginia Law Review*, 537–38 (1922).

75 *Southern California Acoustics Co* v.*C. V. Holder Inc*, 71 Cal 2d 719 (1969).

this by barring traders from sending goods or services on the assumption that silence will amount to agreement.[76]European consumer law cuts off the possibility altogether by prohibiting businesses from treating inaction as agreement. The United Nations Convention on Contracts for the International Sale of Goods (CISG) allows contracts to be formed by conduct, but only where that conduct clearly shows acceptance.[77]

X Acceptance in cases of digital contracts

The shift to digital commerce has placed traditional rules on communication of acceptance under strain. Clickwrap agreements, where users click 'I agree' before proceeding, are now widely upheld by courts in the United States, the United Kingdom, and India, on the basis that the user's act constitutes a clear manifestation of assent.[78]Browsewrap agreements, by contrast, where terms are hidden in hyperlinks without any affirmative action, have been treated more cautiously; US Courts in particular have refused to enforce them absent evidence of reasonable notice.[79]

The law is also confronted with smart contracts on blockchain, where performance is communicated or even performed automatically by code once certain conditions are met. In such cases, there may be no conventional moment of communication at all; the code executes irrespective of whether either party is consciously aware.[80] Instruments like the UNCITRAL Model Law on E-Commerce (1996) and Article 11 of the CISG which do not require contracts to be concluded in writing lend some support for recognising such transactions, but neither fully answers how consent is to be attributed when human actors are not directly involved. Section 10A of the Indian Information Technology Act, 2000 similarly validates electronic contracts but the provision is only clarificatory in nature and for the purposes of communication of acceptance alludes to the principles of Contract Act, 1872.[81]

In the current times, AI driven contracting is being highly depended upon which adds further uncertainty. The question that originates here is that what happens if the AI

76 Art. 9(2), Directive 2005/29/EC of the European Parliament and of the Council of 11 May 2005 on unfair commercial practices affecting consumers, 149/22 (2005).

77 United Nations Convention on Contracts for the International Sale of Goods 1980, arts 18(1)–(3); CISG-AC Opinion No 13.

78 See, *Specht* v. *Netscape Communications Corp*., 306 F.3d 17 (2d Cir 2002).

79 See, *Nguyen* v. *Barnes & Noel Inc*, 763 F.3d 1171 (9th Cir 2014).

80 Petra Butler and Bianca Maria Mueller, "Acceptance of an Offer under the CISG",7 *VUWLRP*(7/2017).

81 S. 10A, Information Technology Act, 2000: Validity of contracts formed through electronic means.—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 by means of an electronic records, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.

assistant accepts an offer in milliseconds on behalf of its principal? In such a case, at what point is acceptance deemed communicated, when the algorithm acts, or when the human user becomes aware? Comparative law shows early movement: Singapore's Electronic Transactions Act expressly provides that contracts formed by automated message systems are valid, even if no natural person was involved in the operation.[82] Similar provisions are found in EU directives on electronic commerce.[83]

Taken together, these developments show that the traditional emphasis on outward communication is being reshaped. Courts across jurisdictions are converging on a functional approach: consent may be inferred from digital acts, provided the system offers reasonable notice, transparency, and a fair opportunity to decline. In the absence of such safeguards, the risk of exploitation outweighs the efficiency of automation.

XI Conclusion and recommendations

The sanctity of communication in the formation of contracts is a cornerstone of contract law, yet the Indian Contract Act, 1872, accommodates exceptions that allow for the validity of contracts even in the absence of explicit communication of acceptance. This paper has analysed the nuanced circumstances where the requirement of communication is either deemed fulfilled or effectively dispensed with, without undermining the binding nature of the contract.

Through a detailed examination of scenarios such as the deeming of communication as a legal fiction, the performance of conditions in both general and specific proposals, and instances where the proposer expressly or impliedly waives the necessity of communication, it is evident that the law prioritises the substance of the agreement over procedural formalities. Similarly, acceptance through the conduct of the proposee, the receipt and retention of consideration, and the failure to notify rejection in sale or return arrangements underscore the principle that actions often speak louder than words in the realm of contractual obligations.These exceptions, far from diluting the rigour of contractual principles, illustrate the adaptability of the law to practical realities, ensuring that genuine consensus *ad idem* is honoured even in unconventional circumstances. The findings of this research contribute to a deeper understanding of the interplay between communication and acceptance, bringing valuable insights into the evolving dynamics of contract law.

The analysis in this paper shows that these exceptions to the general rule are deliberate. They grow out of specific provisions in the statute and from case law that values the fact of agreement more than the exact form it takes.When it is clear that both sides meant to be bound, the lack of a formal acceptance shouldnot be interpreted to unravel the agreement.Even so, taking away the step of communicating acceptance

82 S. 15, Electronic Transactions Act, 2010 (Singapore).

83 Art 11, Directive 2000/31/EC (E-Commerce Directive); see also the related recitals.

carries its own risks. Sometimes, it can be difficult to determine whether a contract has truly been formed. The proposer may exploit this ambiguity, and their conduct could be understood in multiple ways, potentially leading to disagreements. This concern is especially significant in consumer agreements, where a power imbalance can give one party an unfair advantage.For that reason, courts should apply these exceptions only when the facts make it clear that there was a genuine meeting of minds. Lawmakers could also step in and make clear what amounts to 'acceptance by conduct' or a proper waiver of communication. That sort of clarity would keep the law practical without letting it drift into uncertainty. Flexibility keeps the law in touch with commercial practice, but without limits it risks eroding the predictability that contract law is meant to protect.

Given this, three suggestions seem especially important. First is to put in place stronger consumer protections, so that silence cannot be taken as acceptance unless the situation is tightly defined in advance. Rules of commercial expediency should not be permitted to override consumer welfare. Second is to update electronic contracting rules so that parties are told exactly when their acceptance will be treated as complete, for example, the moment they click 'I agree' or when a blockchain process executes it automatically. The third reform is to deal with AI contracting: if an algorithm accepts an offer, the law should make it clear that the act is attributed to the principal, but only where the system was deployed with authority and with safeguards against misuse.Steps like these would bring Indian law closer to what is happening internationally, while keeping the efficiency benefits of dispensing with communication of acceptance in exceptional circumstances. More importantly, they would protect the principle that has always underpinned contract law that obligations must rest on real and voluntary consent, even when the form of contracting is shaped by new technologies.

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