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Interpretative Analysis of the Concept of Proposal as per the Indian Contract Act 1872 and Contractual Jurisprudence

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ABSTRACT

There are certain essential conditions which need to be fulfilled for a contract to be legally valid and subsequently successfully performed. The first such condition or step in formulation of a contract is a Proposal, also known as Offer. Since it holds such an important initiating impact in world of legal contracts, it is imperative to be examined holistically. This paper aims examine the definition of proposal, followed by essential elements needed to form a valid proposal, classification of proposals and associated case-laws. Due to the immense influence of British laws in the Indian legal system, this paper will analyse the related provisions given in the Indian Contract Act, 1872 and English jurisprudence revolving around contract laws. This paper shall also attempt to find statutory anomalies and thereby provide recommendations to fulfil such lacunae.

Keywords: Proposal, Offer, Indian Contract Act, Section 2(a).

I. INTRODUCTION

Interpretation of laws can be done via various methods as suggested by experts. This assignment aims to interpret the concept of ‘proposal’ through Austin’s method of discovering the rule, understanding the intention behind the legislation and understanding the extent of cases that are covered under this statute.

“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” - Section 2(a) of Indian Contract Act, 1872

The very purpose of the drafters of the Indian Contract Act of 1872 (hereafter, the Act) to include the Interpretation Clause is to clearly define legal terms, their meanings and consequently the rationale behind their existence at the very outset to the readers and users of this Act. The first and foremost definition in the Interpretation Clause of the Act is that of an Offer which is also known as a Proposal. The party which makes the offer is known as the

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'Offeror' and the party to whom the offer is made is the 'Offeree'. It marks the advent of an intention between competent parties to form a legal relationship. This relationship is born out of a contract and all the laws regarding the same are governed in India by the Act originating from the English Common Law.

An offer is generally recognised as an essential element of a formation of a contract worldwide. Even though the concept of Contract existed even during the times of the Social Contract Theorists, the concept of an offer properly theoretically developed in the 19th century.

Example of Offer: A is willing to sell a mobile phone to B for ₹5000 if B is willing to buy. Here, a legal transaction is proposed by A to B with proper quid pro quo.

According to Treitel “ offer is an expression of willingness to contract on certain terms made with the intention that it shall become binding as soon as it is accepted by the person to whom it is addressed, the “offeree”. From this definition it can be inferred that ‘offer’ as a concept cannot be read independently but has to be interpreted along with ‘acceptance’ to arrive at a holistic understanding and the main essence of offer followed by acceptance is to establish a consensus ad idem between the parties.

II. ESSENTIAL ELEMENTS OF PROPOSAL FOUND IN THE DEFINITION

For a successful contract to get executed there are certain essential elements of an offer as per the definition which needs to be ensured. These elements can be determined by the literal interpretation of the provision. These elements are as follows:

The foremost element of a proposal is the presence of two parties. Parties may be persons of all kinds like legal persons, artificial persons, etc. The doctrine of privity of contract can be imported from all the interpretation clauses.

The word ‘signifies’ in the definition of proposal indicates a communication. For an offer to be valid communication is a must. According to Section 4 of the Act communication of the proposal is complete only when it comes to knowledge of the offeree. A classic case on this issue is that of *Lalman Shukla v Gauri Dutt*.

An offer cannot project silence as acceptance. In other words, no offer can state that if acceptance is not given by the offeree within a specified time then the offer is assumed to be accepted. In the case of *Felthouse v Bindley*, an uncle made an offer to his nephew to buy his horse and the offer had a clause that if the acceptance had not been communicated within the specified time then the offer is assumed to be accepted. The nephew instead of replying ordered the auctioneer to preserve the horse for the uncle. The auctioneer by mistake sold the horse and

got sued by the uncle. The Court held that there was no valid contract of sale.

The word “willingness” in the definition is the intention of the first party to initiate a contractual relationship with the other. No provision in the Act expresses it but it can be inferred from the interpretation of section 2(a).

The phrase “obtaining the assent” in the definition is the seeking of the acceptance of the party by the offeree. It is important because intention of both the parties is the basic crux of a contract. Also, as per Section 14 of the Act, the assent given should be ‘free’ in nature, devoid of undue influences, coercion etc. Therefore, there should be no burden of acceptance on the part of the offeree. An offer is completed when it comes to the knowledge of the offeree as per section 4 of the Act.

An Act or Omission is present in the offer without which the rationale behind a proposal is meaningless.

III. ESSENTIAL ELEMENTS OF PROPOSAL ESTABLISHED BY CASE LAWS

1. Communication of an offer can be implied or expressed:

It is mentioned in section 9 of the Act and not in the definition of offer. *Upton Rural District Council v Powell* and *Ramji Dayawala and Sons (P) Ltd v Invest Import* are examples of cases of implied offer.

2. An offer is different from an invitation to offer:

The distinction between the two have been explained by the Privy Council in *Harvey v Facey*. In *Pharmaceutical Society of Great Britain Boots Cash Chemists (Southern) Ltd* case the Court held that displaying goods in a shop with price-tags does not amount to an offer, instead it is an invitation to offer; *invitatio ad offerendum*. In order to gauge whether it is an offer to invitation to offer, intention of the offerer must be taken into account.

3. Terms of offer should be concrete and not ambiguous:

In the case of *Taylor v Portington* the Court held that the wordings of the rent agreement between the tenant and the landlord was vague and hence the contract was void.

4. Without the intention and ability to create a legal relation, an offer is void:

Lord Atkin in the case of *Balfour v Balfour* held that when a husband and wife make an agreement it is not to enter into a legal relationship. Agreements which are purely domestic in nature made by spouses are not breach of contract cases to be entertained by the Court. In *Weeks v Tybold* it was held that joking statements do not amount to a proposal. In *Hulas Kunwar v*

Allahabad Bank Ltd it was held that unilateral declarations are not proposals. Even social engagements like offer to share cost of petrol needed for a journey are not proposals as held in *Coward v Motor Insurers' Bureau*.

IV. TYPE OF OFFERS

On the basis of the judicial interpretations of the definition of Offer, it can be classified into several types. From these different categories, different elements of proposal can be gauged too.

1. General Offer:

It is a proposal which is made to the general public at large. The genesis of this type of offer is the case of *Carlill v Carbolic Smoke Ball and Co*. The Court had held that anybody from the public who can fulfil the terms and conditions of the proposal will be eligible for the reward of the proposal.

2. Specific Offer:

This offer is made to a specific person only and can be accepted by the said person only. In the case of *Boulton v Jones* it was held that no one other than the party to whom the offer was made can accept the offer and carry out the performance of the contract.

3. Counter Offer:

When the offeree gives a qualified acceptance suggesting modifications to the original offer then it becomes a counter offer, i.e., the original offer ceases to exist and reverse the parties from offeree to offerer and vice versa. Bombay High Court gave a landmark judgement regarding this issue in *Hyde v Wrench*.

4. Cross Offer:

When two parties simultaneously communicate two offers to each other without the knowledge of the respective other's proposal, it is said to be a cross offer. For example, in *Tinn v Hoffman* both Tinn and Hoffman had written letters to each other on the same day for purchasing of iron without the knowledge of each other's offers.

5. Standing Offer:

An offer, for example, tender involved in supply chain of goods, which remains open for acceptance for a long duration is called a standing offer. In *Perclval Ltd v London County Council Asylums and Mental Deficiency Committee*, the Court held that the tender was a standing offer which was needed to be converted into a series of contracts.

6. Express and Implied Offer:

Offer can be of these two types from the modes of communication. The concept of these two types can be derived from section 9 of the Act.

V. ANOMALIES IN SECTION 2(A) OF THE INDIAN CONTRACT ACT 1872

According to the thirteenth Law Commission of India Report 1958 "When Sir James Stephen moved the Indian Contract Bill, he admitted that it was not and could not pretend to be, a complete code upon the branch of law to which it related. He, however, expressed a hope that in later years it would be easy to enact supplementary chapters relating to the several branches of law of contract which the Bill did not touch". This is an official recognition of the anomalies in the Act. Certain anomalies are present in the definition of offer too. For example, the word 'signifies' is ambiguous and can be left to interpretation. Communication of offer should be through reasonable means. Another flaw is that the word 'assent' should have come with its own criteria of being absolute in nature. If assent given is partial, then usually modifications are demanded by the offeree. During this negotiation the acceptance becomes a counter-offer and the offeree becomes an offeror. Moreover, a contract is valid only if it is drafted for a legal activity. The legality of the act is absent in the definition of the offer, however, the aspect of enforceability by law is mentioned in section 2(g) and (j).

VI. SUGGESTIONS

As per the rule of reasonable construction, this assignment proposes a modified definition of proposal:

When one person unambiguously signifies through a reasonable mode, to another person or the world at large, implicitly or explicitly, his willingness to do or to abstain from doing anything legally permitted, with a view to obtaining the absolute and unqualified assent of that other or others to such act or abstinence, he is said to make a proposal.

This definition covers general offer as well as offer made to a particular person. It brings clarity to the definition and thus covers essential elements of offers which are established by several case-laws, such as, implied and expressed offer, absolute assent, ability to form a legal consideration, etc. Legal capacity of the parties to contract can also be included in this definition but then the definition will become unnecessarily wordy and complicated.

VII. CONCLUSION

The application of Indian Contract Act of 1872 is not only restricted within the territory of India but is also adopted by Bangladesh, Pakistan Malaysia and Myanmar, due to colonial influences.

This proves the importance and relevance of the law, which has stood the test of time across South Asia and South-East Asia. Even though the Act does not claim itself to be exhaustive, it has played a substantive role in developing contractual law. Certain amendments to the Act, such as the one suggested above, will make the Act reach higher levels of legal excellence.

Moreover, with such advances in science and technology, e-contracts, smart-contracts have come into the picture and redefined the terms of contractual laws all over the world. The concept of offer and acceptance is one of the very few remaining notions of classical contractual law. Even though there has been a great shift in the practical paradigm, still offer, and acceptance has a significant effect on the ethos of contract law.

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