

INTERPRETATIVE ANALYSIS OF THE CONCEPT OF PROPOSAL AS UNDER SECTION 2(A) OF THE INDIAN CONTRACT ACT, 1872

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Abstract

This article provides an interpretative analysis of the concept of "proposal" under Section 2(a) of the Indian Contract Act, 1872. It explores the statutory definition of a contract as an enforceable agreement and examines the essentials of a valid proposal, including communication, intent to create legal relations, and clarity of terms. The article highlights additional essentials derived from case law, such as the need for unconditional and absolute assent, prescribed communication methods, and timely acceptance.

The analysis identifies shortcomings in the statutory definition, such as the lack of explicit requirements for unconditional assent, communication methods, and time constraints. A revised definition is proposed to enhance legal clarity and precision. By examining case laws and theoretical foundations, the article aims to refine the statutory definition and facilitate clearer judicial interpretations, ultimately providing a more robust framework for contractual agreements.

Keywords:

Indian Contract Act, proposal, offer, contract, legal enforceability, Section 2(a), essentials of a valid offer, case law analysis, statutory interpretation, judicial clarity.

What is a Contract?

"Contract" as stated in Section 2(h) of the Indian Contract Act, 1872, is an "agreement" having legal enforceability. An agreement is treated as a settled pact between two or more persons, which includes similar commitments or which both persons need to satisfy undertakings. When all agreements have legal binding it turns into a Contract.

First let us have a look at the definition of Proposal as per Section 2(a) of the Indian Contract Act, 1872¹²⁵⁴

Proposal/Offer

¹²⁵⁴ What is Offer? Essentials of Valid Offer and Types of Offer, Latest Laws (last visited Aug. 4, 2024), <https://www.latestlaws.com/articles/what-is-offer-essentials-of-valid-offer-and-types-of-offer>.

What is Offer? What are Essential Elements of Offer?, SRD Law Notes (June 6, 2017), <https://www.srdlawnotes.com/2017/06/what-is-offer-what-are-essential.html>.

Essentials of a Valid Offer, India Filings (last visited Aug. 4, 2024), <https://www.indiafilings.com/learn/essentials-of-a-valid-offer>.

"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"

By this definition we can find out that an offer is said to be made when an "offerer" agrees to do or prevents himself/herself from doing something, with the consent of the "offeree" then the offer is said to be made complete.

Now lets have a look at the essentials of Valid proposal/offer:-

(1) The "offer" must be made known

A legitimate "offer" must communicate or express the "offerer's" intent to engage into a contract or to refrain from doing so. A simple desire or readiness to accomplish something is insufficient and will not qualify as an "offer".

According to the ruling in "Lalman Shukla vs. Gauri Dutt (1913)", the "offeree's" mere knowledge of an offer does not constitute "acceptance".

(2) The "offer" must be made to establish a legal connection

A "proposal" must be made with the goal to establish a legal connection in order to be considered valid; otherwise, it will merely be an "invitation to offer". A professional connection may not be established via a professional invitation. An offer must result in a contract that establishes legal responsibilities and legal repercussions for breach of the contract.

An invitation to dinner issued by Arun to Barun is not a legitimate "offer", for instance.

(3) The conditions of the "offer" must be unambiguous and precise

Understanding the "parties" intents is crucial because without it, the courts will be unable to determine what the parties wish to accomplish. Therefore, the conditions of the "offer" must be precise and unambiguous rather than ambiguous and flexible.

Rahul, for instance, offers to sell Sameer oranges for Rs. 800. This offer is invalid since neither the exact types of fruits nor their amounts are specified.

4] The "Offer" Might Be Conditional

An "offer" may be subject to conditions, but "acceptance" cannot be. Any terms or restrictions the "offeror" thinks essential may be added to the offer. Therefore, Ajay can propose to sell Salman some things in exchange for a 60% down payment. Salman can now choose to accept these terms or submit a counterproposal.

5] No negative conditions are permitted in the "offer"

The "offer" cannot be automatically accepted if any of its conditions are not met. As a result, it is impossible to guarantee that approval will be assumed if it is not notified by a specific date.

Example: Anil proposes to sell Sunny his horse for the sum of 50000 Rs. The "offer" will be regarded as accepted if it is not rejected before Monday. This "offer" is not legitimate.

6] The "Offer" May Be Generalized or Particular

The "offer" may be made to one or more particular "parties", as we saw before. Or the offer could be made to the whole public.

7] "Offer" may be Explicit or Implied

The "offeror" may present an offer verbally or even via his actions. An explicit "contract" is one that is created by words, whether they are written or spoken (oral conduct). Additionally, an implied contract exists when an offer is made by the conduct and activities of the "offeror".

Now lets have a look at the essentials of proposal we do not find in the definition as per Section 2(a) but do find in the case laws:-¹²⁵⁵

1. "Offer" must be "unconditional" and "absolute"

Conditional Offer will not be a legally applicable offer as it would amount to a counter offer which would nullify the original offer. Example. Anil offers to sell his cricket bat to Amir for Rs 2000, provided he runs 5 rounds of the football field in Juhu. This does not led to the offer being made and it would be considered to be a counteroffer.

2. Offer should be made in some "usual and reasonable manner"

The offer must be made in a prescribed manner, that means in an usual or reasonable manner as it would be in the normal course of business. If the offer is not made in a prescribed or usual manner, the offeree might refuse to accept the offer and the offer is deemed to be null and void, even though no communication is made by the offeree to the offeror.

¹²⁵⁵ Essentials of a Valid Offer, India Filings (last visited Aug. 4, 2024), <https://www.indiafilings.com/learn/essentials-of-a-valid-offer>
Essentials of a Valid Acceptance, Legal Katta (last visited Aug. 4, 2024), <https://legalkatta.in/acceptance-meaning-essentials-of-valid->

Example: Karan makes an offer to Aditya to sell his mobile phone to him for Rs 20000 through a pigeon mail. The offer message reaches Aditya after quite a long time. Here Aditya might refuse to accept the offer, thus making the offer null and void since Karan didn't make the offer in a prescribed mode.

3. "Offer" must be communicated within a reasonable period of time

"Offer" must be communicated within a "reasonable period of time", since there is a constraint of time regarding the validity and legal sanctity of the "offer", with respect to the terms and conditions of the time within which the obligations of the offer made has to be fulfilled by the "offeree". For example if the Offer made by Irfan to Anushka takes seven days to reach and the terms of the offer are to be fulfilled within 5 days from the date of the "offer" being made, the offer can be declared as void since the ambit of the offer was not within the reasonable period of time.

4. "Offer" made by an "agent" on behalf of the "Offerer" is also valid and can be legally enforceable once "acceptance" to the offer is made.

For example, Madhuri appoints Urmila to be her agent and places a written offer to Kajol to sell her a diamond ring for Rs 2000000. Now if Kajol accepts the offer in the mode prescribed by Madhuri through Urmila, Madhuri cannot refuse to sell the ring since the offer is valid now.

5. Counter Offer

When the "offeree" to whom the proposition is presented makes any changes to the first "offer", it occurs. The modification might involve adding new provisions to the proposal or adding additional requirements. Any modification to the first "proposal" renders the entire "proposal" worthless, making it a new offer. The decision to accept or reject the "counteroffer" now rests with the original "offeror". In "General George Innih v. Ferado Agro Consortiums Ltd" case 1990, the "defendant" extended a purchase offer to the "plaintiff" in exchange for

his "acceptance" of the "offer" within three days. The "plaintiff" accepted the offer but requested a two-week extension. The plaintiff filed a complaint alleging contract violation after the "appellant" sells their property to a third party. The Appellate Court ruled that including a new provision in the offer renders the initial offer invalid and transforms it into a "counter-offer", which the original offerer is free to take or reject.

6. Cross Offer

A "cross offer" is formed when two offers with comparable conditions are made to each other by both parties and "cross" at the post. In "Tinn v. Hoffman & Co" Case 1873, both parties simultaneously made two "offers" with the same conditions, but they crossed at the post. One of the parties argued that it was a legal contract. The Court determined that there was no legitimate contract between the parties as there was no "consensus ad idem" between the involved parties.

Now let us have a look at the shortcomings of the definition of proposal given under Section 2(a) of the Indian Contract Act.¹²⁵⁶

"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"

1. In the above definition, the first shortcoming we find that the concept of providing "absolute" and "unqualified" assent by the "offerer" to the "offeree" to do or abstain from doing something is missing, the concept of which we can draw from the definition and essentials of "acceptance", that applies also to the definition of "offer". This clause of absolute and unqualified assent is required to be mentioned in the definition of offer/proposal in order to

¹²⁵⁶ Essentials of Acceptance, Writing Law (last visited Aug. 4, 2024), <https://www.writinglaw.com/acceptance-essentials-of-acceptance-communication-of-acceptance-to-wrong-person-indian-contract-act-notes>. Essentials of a Valid Contract, iPleaders (last visited Aug. 4, 2024), <https://blog.iplayers.in/essentials-of-a-valid-contract>.

avoid any further confusion regarding the interpretation of the definition by Honourable Judges of the Courts while giving their verdict/judges on Several Cases. We have seen in earlier cases where it took courts some time to find out whether the assent given was “absolute” and “unqualified” or was it obtained or given under the situations of “fraud”, “misrepresentation”, “undue influence”, “coercion”, “mistake” etc. In the absence of “absolute” and “unqualified” assent by the “offerer” and also “offeree”, the proposal/offer is meant to be void/voidable.

2. The second shortcoming we find from the above definition is the clause of making or accepting the “offer” in a “prescribed”, “usual” or “reasonable” mode is missing. In this case also we draw the inference from the definition of “Acceptance” under Indian Contract Act 1872 where it is stated that the “acceptance” must be given in an usual prescribed and reasonable manner, otherwise it might be voidable. Adding this particular clause to the definition would enhance the comprehensiveness of the definition and would help again in easy interpretation of the definition of Valid “Offer” or “Proposal”. Previously we have seen this problem in cases where judges found it difficult to establish whether the offer made by the offerer was in a prescribed, reasonable or usual manner.
3. The third shortcoming we find from the above definition is the absence of the clause stating that the offer or proposal made would stand void if not accepted within a specified period of time which is contemporaneous to the terms and conditions regarding the timing of events to be executed mentioned in the offer. Similarly if the offer requires an unreasonable amount of time to reach the offeree it can be termed as void. So therefore adding this clause to the

definition of proposal would reduce the chances of inaccurate and difficult judgements since it can make the definition more compact.

4. The last shortcoming, though a minor one should be noted which states that both in case of the definition of Offer and Acceptance must be noted that, it suggests that the offerer may and offeree too may. This word “may” might create confusion in future judgements since it doesn’t compulsorily bind the offerer or offeree to accept the conditions of the offer and execution of the same. Thus it might create problem in drafting of contracts and agreements. Moreover the concept of consideration is not highlighted anywhere in the definition of offer, although it is covered under the essentials of offer/proposal. Consideration is an absolute essential of offer/proposal, without which the definition of offer is incomplete.

Thus we can conclude by giving a new modified and more comprehensive definition of Proposal as under Section 2(a) of Indian Contract Act 1872 after analysing all the essentials of offer, acceptance and contract, and after going through past judgements and case laws.

New Definition of Proposal/Offer

“When one person/offeree signifies to another person/offeree his/her unconditional and absolute willingness to do or to abstain from doing anything, with a view to obtaining the unconditional and absolute assent of that other to such act or abstinence in a prescribed usual and reasonable manner, within a specified period of time he/she is said to make a proposal”

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