

of the Nation ? Every citizen has got the fundamental rights under the Constitution and one of the fundamental rights is right to education. This right is available to all either minority or majority, then why to make a distinction to divide the citizenry leading to confusion and chaos ? Where is education today in the field of various positive discriminations ? We are bogged down by acrimonious controversies dividing the nation, and baffling litigations. Isn't it that we wait for what is next by the Court/and we have to follow that. Allahabad High Court has

maintained "*status quo*" on the majority status of Aligarh Muslim University issue. However the Division Bench of the Apex Court has referred the matter to a five judge Constitution Bench. Aren't we like the hollow men of *T.S. Eliot*, a great poet, "Shape without form, shade without colour, paralysed force, gesture without animation. Therefore, the time has come where we have to rethink for a united and integrated BHARAT in terms of Constitutional Preamble. The double standards one for majority and other for minority must go.

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## E-CONTRACTS AND JURISDICTION

By

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### *Introductions :*

Contract means an enforceable agreement entered into by and between the parties agreeing to perform their respective part of contract within the four corners of the terms and conditions stipulated therein. It is well settled law that mutual assent is essential to the formation of a contract. The assent must be manifested. Therefore absence of acceptance, there cannot be a contract. Offer and acceptance together constitute the contract. Law of contracts is the most important branch of business law. It plays an important role in regulating daily trade, commerce and industry. The Contracts Act creates an obligation between the parties in personam and not against in rem.

Information Technology has brought tremendous change in living standard of

people. Communication and information has become part of our life and spread over every nook and corner of the world. Likewise, e-commerce had no boundaries because just click of a mouse, one can enter into contract with anyone and anywhere across the globe. Virtually there is no boundaries for e-contracts.

Before adverting to the provisions of Information Technology Act 2000, with regard to e-contracts, let us see what Indian Contract Act says; Section 2(h) of the Contract Act defined contract as : *An agreement enforceable by law is a contract.*

### *Essential Ingredients of a Contract :*

It is needless to say that two competent persons are required to make an enforceable agreement. The following are the essential ingredients of a valid contract :

1. Parties to the contract should be competent to enter into contract.
2. There should be free consent for entering into contract.
3. There must be offer by the proposer and acceptance by the proposee.
4. There must be a valid consideration.
5. There must be lawful object for contract.

It is a settled proposition that every offer must be communicated to the acceptor for the purpose of acceptance. There cannot be any acceptance of the offer; consequently no contract.

To ensure valid contract it is necessary that the acceptor must communicate his acceptance to the offeror. If the acceptor after accepting the offer, withholds the acceptance to himself without communicating it to the offeror, there cannot be any contract. Therefore offeror must communicate his offer to the acceptor for his acceptance and the acceptor also, in turn, must communicate his acceptance to the offeror. Absence of any of the above condition shall result in *non est* of a contract.

### **Postal Rule :**

In good old days the contracts were used to enter into between the parties by communicating their offer and acceptance through the postal letters, in case the parties belongs to different places (before Telex and Teleprinters introduced). Now let us see when offer and acceptance is completed through postal letters, for which it is necessary to refer Section 4 of Contract Act. Section 4 says : *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 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 communication of a revocation is complete,-*

*as against the person who makes it is put into a course of transmission to the person to whom it is made, so as to be out of the power of the person who makes it;*

*as against the person to whom it is made, when it comes to the knowledge.*

For instance : (a) A sends his proposal, by letter, to sell his land to B for a valid consideration.

The communication of the proposal is complete when B receives the letter.

(b) B accepts A's proposal by a letter sent by post.

The communication of the acceptance is complete against A when the letter is posted by B; as against B when the letter is received by A

That means communication of acceptance must come to the knowledge of the offeror.

Section 5 of the Contract Act deals with revocation of proposals and acceptances.

*Section 5 : Revocation of proposals and acceptance,-*

*A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards.*

*An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.*

For example : A offer to sell his house to B, by a letter sent by post.

B accepts the proposal by a letter sent by post.

Here A may revoke his proposal at any time before or at the moment when B posts his letter of acceptance, but not afterwards.

B may revoke his acceptance at any time before or at the moment when the letter communicating it reaches A, but not afterwards.

A cumulative study of the above two proviso Sections 4 and 5 of the Contract Act clearly indicates that an offeror is entitled to revoke his acceptance any time before the communication of acceptance is put into the course of transmission by the acceptor but not later. Similarly an acceptor is also entitled to revoke his acceptance before the communication of an acceptance already sent by him comes to the knowledge of the offeror. Section 6 of the Contract Act lays down other modes of revocation of contract.

#### ***Rule of Instantaneous Contract :***

After Telex and Teleprinters came, the postal rule has been replaced by rule of instantaneous contract enunciated by eminent Jurist Lord *Denning* in the case; *Entores v. Miles Far East Corporation*, 1955 (2) QB 327; in the above said case the question of acceptance through Telex service came for consideration. It is held as follows : “The contract is only complete when the acceptance is received by the offeror and the contract is made at the place where the acceptance is received.

The above proposition was applied by the Supreme Court of India in the case of *Bhagwandas Kedia v. Girdharilal*, AIR 1966 (1) SCR 656; it is held “*in case of offers and acceptance communicated by telephone, the contract is complete only at the end of the offeror where he has received the acceptance to his offer.*”

#### ***E-Contracts :***

The recent trend of making contract through Internet is called e-contract. In the present e-society, it is possible that every day thousands of messages can be transmitted

across the world between the persons of the same country or persons of different countries. The Internet connects countless networks throughout world. By exchange of communication of offer and acceptance through electronic record, one can enter into contract instantaneously. The legality and enforceability of the e-contract is not affected.

In view of unforeseen development in the information and communication technology the Government of India has enacted “The Information Technology Act 2000”.

The expression of proposer and acceptor used in the contracts Act has been substituted by the words “Originator” and “Addressee” in the I.T. Act 2000. Sections 11 to 13 of I.T. Act deals with communication and transmission of electronic record between originator and addressee through network service provider.

Section 11 of I.T. Act says; Attribution of electronic record.—An electronic record shall be attributed to the originator :

- (a) if it was sent by the originator himself;
- (b) by a person who had the authority to act on behalf of the originator in respect of that electronic record; or
- (c) by an information system programmed by or on behalf of the originator to operate automatically.

The aforementioned section clearly indicates that communication by the originator to the addressee through Internet e-mail has to be sent by the originator himself or authorized person on his behalf. Therefore it can be presumed that proposal is being sent by the originator or his authorized person.

Section 12 of the I.T. Act referring to the acknowledgement and receipt says :—(1) *Where the originator has not agreed with the addressee that the acknowledgement of receipt of electronic record*

*be given in a particular form or by a particular method, an acknowledgement may be given by-*

- (a) any communication by the addressee, automated or otherwise; or
- (b) any conduct of the addressee, sufficient to indicate to the originator that the electronic record has been received.

Sub-section (2) says : *where the originator has stipulated that the electronic record shall be binding only on receipt of an acknowledgement of such electronic record by him, then unless acknowledgement has been so received, the electronic record shall be deemed to have been never sent by the originator.*

Sub-section (3) says : *Where the originator has not stipulated that the electronic record shall be binding only on receipt of such acknowledgement, and the acknowledgement has not been received by the originator within the time specified or agreed or, if no time has been specified or agreed to within a reasonable time, then, the originator may give notice to the addressee stating that no acknowledgement has been received by him and specifying a reasonable time by which the acknowledgement must be received by him and if no acknowledgement is received within the aforesaid time limit he may after giving notice to the addressee, treat the electronic record as though it has never been sent.*

The aforementioned sub-section (1) of Section 12 clear the ambiguity, when there is no mention of a particular form or method by which acknowledgement is to be sent by the addressee, the addressee may acknowledge the receipt of electronic record by any communication automated or by any conduct of which is sufficient to indicate to the originator as to the receipt of such communication/electronic record.

According to sub-section (2) of Section 12 clearly envisages that where the originator has set a condition to the addressee that the electronic record shall be binding only on receipt of acknowledgement of electronic record from the addressee, then unless acknowledgement has been received by the

originator from the addressee, the electronic record shall be deemed to have never been sent by the originator. The addressee by complying the originator's specified condition makes the said electronic record binding on the originator.

Sub-section (3) of Section 12 indicates where the originator has not specified any precondition or time as to the binding affect of the electronic record, then it is the obligation on the part of the addressee to send receipt of acknowledgement within the time specified or agreed or in case no time is specified, within reasonable time, in such case originator may give a notice to the addressee about the non-receipt of the acknowledgement by him and specify further reasonable time for the receipt of the same. The originator is entitled to deem as if no electronic record was sent by him even after he has failed to receive the acknowledgement from the addressee within aforesaid reasonable time. In such case no proposal is said to have been made by means of electronic record and the question of acceptance does not arise.

Section 13 of I.T. Act say : *Time and place of dispatch and receipt of electronic record.-(1) Save as otherwise agreed to between the originator and the addressee, the dispatch of an electronic record occurs when it enters of computer resource outside the control of the originator.*

*Sub-section (2) says : Save as otherwise agreed between the originator and the addressee, the time of receipt of an electronic record shall be determined as follows, namely :-*

- (a) *if the addressee has designated a computer resource for the purpose of receiving electronic records—*
  - (i) *receipt occurs at the time when the electronic record enters the designated computer resource; or*
  - (ii) *if the electronic record is sent to a computer resource of the addressee that is*

*not the designated computer resource, receipt occurs at the time when the electronic record is retrieved by the addressee;*

*(b) if the addressee has not designated a computer resource along with specified timings, if any, receipt occurs when the electronic record enters the computer resource of the addressee.*

*Sub-section (3) says : Save as otherwise agreed to between the originator and the addressee, an electronic record is deemed to be dispatched at the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.*

*Sub-section (4) says : The provision of sub-section (2) shall apply notwithstanding that the place where the computer resource is located may be different from the place where the electronic record is deemed to have been received under sub-section (3).*

*Sub-section (5) says : For the purpose of this section,-*

- (a) if the originator or the addressee has more than one place of business, the principal place of business, shall be the place of business;*
- (b) if the originator or the addressee does not have a place of business, his usual place of residence shall be deemed to be the place of business;*
- (c) "usual place of residence", in relation to a body corporate, means the place where it is registered.*

According to sub-section (1) of Section 13 envisages that dispatch of an electronic record occurs when it enters a computer resource outside the control of the originator. Once the electronic record leaves the out box of the originator, it is outside the control of the originator to retrieve.

Sub-section (2) of Section 13 says about the time of receipt of an electronic record by the addressee. As per clause (a) of sub-section (2) denotes where the addressee is

having designated computer resource for the purpose of receiving electronic record, then receipt of such electronic record occurs at the time when the electronic record enters the designated computer resource.

In case when the originator sends electronic record to a non designated computer resource, then receipt occurs at the time when the electronic record is retrieved by the addressee. E-mails and websites *etc.*, are the examples of designated computer resource.

Present globalization era has made it possible to a person to enter into a contract from anywhere with any person across the globe. In such circumstances sub-section (3) clarifies as to when and where the dispatch and receipts occurs. As per aforesaid sub-section (3), an electronic record is deemed to be dispatched from the place where the originator has his place of business, and is deemed to be received at the place where the addressee has his place of business.

As per sub-section (4) location of computer resource is irrelevant fact (where the companies are having many branches across the country and world). In such event time and place of dispatch and receipt of electronic records between the originator and the addressee occurs as mentioned in sub-section (3).

Sub-section (5) has further clarified with regard to location of place of business address of the originator and the addressee. Clause (a) of sub-section (5) says where the originator or the addressee has branches of their business, then the principal place of business is considered to be place of business for the purpose of dispatch and receipt of electronic record. Clause (b) of sub-section (5) says where the originator and the addressee has no place of business, then their usual place of residence is deemed to be the place of business for the purpose of dispatch and receipt of electronic record. Further usual place of residence in relation to a body corporate means where it is registered.



It is a fact that electronic record and communication process through computer Internet were given legal sanctity and they are admissible as evidence in the Court of law.

### *Jurisdiction of Courts :—*

As I elaborately discussed about postal rule in preceding paras that under the postal rule, a contract between the offeror and acceptor is completed once the acceptor puts his acceptance in the course of transmission. Then the proposer cannot revoke his proposal since the acceptance is complete as against the proposer. But an acceptor after putting the letter of acceptance into the course of transmission can revoke the acceptance before such acceptance comes to the knowledge of the proposer. The proposer can revoke his proposal before the acceptor putting his acceptance into the course of transmission but not afterwards. Therefore the contract is deemed to be completed by post or

telegram at the place where the acceptance of the proposal is posted or telegraphed, consequently cause of action arises and where the acceptance is posted or telegraphed, the Courts of that place shall have jurisdiction.

In case of instantaneous contracts entered into telex, telephone and computer Internet, a contract is completed where the acceptance is received. In all the cases the cause of action arises at the place where the acceptance is received, consequently the Courts of that place shall have jurisdiction. From the above proposition it is clear that when the parties enter into contract through computer Internet, being instantaneous mode of communication, the contract is deemed to be completed where the acceptance of proposal is received and the Courts of that place shall have jurisdiction to try such cases. Further it was also clarified by Supreme Court in *Bhagvandas Goverdhandas Kedia v. Giridharilal Parshottamdas & Co.*, AIR 1966 SC 543.

## CHIEF JUSTICE RAJAMANNAR – SOME ANECDOTES

*By*

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There are Judges and Judges. Many of them are only judges – nothing more, nothing less. But late Dr. *P.V. Rajamannar* was a Judge with a difference and distinction. He was both a litterateur and a jurist. It would be more appropriate to call him a literary man who strayed into the field of law rather than a legal luminary with literary proclivities.

He edited for some time 'Kala', a magazine devoted to the fine arts, as its name indicates. He contributed several articles to reputed journals. He is the author of many plays in Telugu. He had a keen sense of humour.

Once his one act play 'Tappevaridi' (whose fault) was put on boards. He was also present. After the play was over, he was asked to say a few words. He said "Tappu Nadi" (The fault is mine) obviously referring to the poor performance of the actors.

He presided over a meeting. When asked to give his address, he rose from his seat and said "9, Victoria Crescent, Egmore, Madras" and sat down. He literally gave his address.

In 1948 he attended the All India Chief Justices's Conference at Delhi. Prime Minister