

English contract problems in indian code and case law

[Law](#), [Contract Law](#)



Introduction

The Indian Contract Act traces its roots back to the English Contract Law. But the Indian Contract Act shows some deviation from the English Contract Law. This deviation is propounded in the treatment of the acceptor i. e. the offeree wherein the Indian law on offer and acceptance seems to favor the acceptor more than the English Contract Law.

The Mailbox rule, as the name suggests governs the communications taking place through post in English common law. According to this, a contract is formed as soon as the acceptor sends his letter containing the acceptance to the post office. This is a deviation from the usual rule involving other modes of communication like telephones, telex, etc. wherein the contract is formed only when the offeror is intimated of the acceptance of his offer by the offeree.

The Indian Contract Act, 1872 differs with regard to communications by post. Section 4 of the India Contract Act deals with the communication when complete and reads as follows:

“...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...”

This means that the offeror is bound when the offeree posts the letter of acceptance so as to be out of the reach of the offeree and the offeree is bound when the offeror receives the letter. This is discriminatory against the offeror as the offeror will be liable even if the letter of acceptance fails to reach him. But the offeror will not be liable if the mistake is committed by the offeree.

Dunlop v. Higgins, an English case demonstrates the reasons behind the conception of the mailbox rule which happens to be disadvantageous to the offeror. In this case, Higgins enquired about the price of iron and after subsequent communication, on the 28th of January Dunlop offered to sell iron to them at a specific price. Higgins received the letter on the 30th of January and sent their letter of acceptance on the same day but erroneously mentioned the date of posting as 31st January. Dunlop received the letter on the 1st of February and replied stating that they could not sell them the iron because the offer was not accepted in time. Higgins realized their mistake and wrote to Dunlop regarding the same. Upon the refusal of Dunlop to sell them the iron, Higgins sued them for breach of contract. The court decided in favor of Higgins and held that the contract was formed the moment Higgins posted the letter of acceptance. The court reiterated the reasoning used in Adams v. Lindsell which was that it is practically impossible to have a contract by post if the parties were not bound when the letter of acceptance is posted because if the offeror was not bound until he received the letter of acceptance, then it is only fair that the offeree is not bound until he has knowledge of the fact that his acceptance had reached the offeror. This

would lead to infinite number of communications resulting in the contract not being formed at all.

The other reason is that the post office is considered to be the agent for both the offeror and the offeree dealing with the dispatching of the offer and receiving of the acceptance. Giving it to the agent is as good as giving it to the principal and that's the reason why the contract is formed when it is posted. Another reason is that it is difficult to prove receipt of the acceptance as compared to proof of the posting. The mailbox rule prevents the offeror from falsely denying the receipt of the acceptance.

The reasons mentioned above validate the mailbox rule and even though it is against the offeror, it doesn't seem to favor the offeree. There is another reason which specifically favors the offeree. If the offeror mentions a certain date before which the offeree should send his acceptance, then because of the mailbox rule the offeree has more time to think about the offer and decide whether he wants to accept it. In the absence of this rule, the offeree would have to hurry and post his acceptance such that it reaches the offeror before the last date. The time of receipt is not considered in the mailbox rule; it is enough if the acceptance is posted before the last date. The mailbox rule shows that even though the Indian law blatantly favors the offeree, the common law also favors the offeree in a subtle way.

The offeree getting more time to think about the modalities may seem to be beneficial to him and detrimental to the offeror but there is another way of looking at the same. The rule may lead to immense loss for both the offeror

and the offeree. For example, if the offeror offers to sell perishable food items like coconuts, he would want the offeree to hurry and send his acceptance so that he can ship the coconuts to the offeree. But if the offeree delays and posts his acceptance on the last date, then there is a possibility that the coconuts would have already spoiled. The offeror would then be held liable. There is another possibility that the items may get spoiled within no time of delivery. The offeree might have wanted the coconuts for a ceremony. This would lead to hardship and loss for the offeree as well.

Section 5 of the Indian Contract Act deals with the revocation of proposals and acceptances and reads as follows:

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

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This favors the offeree. The offeree has the ability to revoke his acceptance as long as the revocation reaches the offeror before the acceptance. The offeror cannot revoke his offer once there is an acceptance. On the other hand, the common law does not favor the offeree since both the offeror and the offeree are contractually obligated once the letter of acceptance has been posted by the offeree. The offeree also cannot revoke his acceptance. This aims at preventing the offeree from having an edge over the offeror. The offeree if allowed to revoke his acceptance would keep the offeror waiting for his acceptance but he could also choose to revoke it through

other means like telephones, telex etc. which is unfair to the offeror. Though the common law seems to be unbiased, it has been held that the revocation of an offer before acceptance is valid only when it reaches the offeree while the acceptance is valid once posted. This clearly favors the offeree because there will be a contract even if the offeror decides to revoke his offer.

There is another instance apart from the mailbox rule where the offeree is favored. Section 6 of the Indian Contract Act deals with the modes of revocation of offer. The Indian law enunciates that in case the offeror wants to revoke his offer before the acceptance, he should either personally give a notice of revocation or should do so through his agent. This is as opposed to the common law which doesn't require the offeror to personally or through his agent inform the offeree about the revocation before the acceptance. The revocation is complete when the offeree gets knowledge of the revocation through any source. The Indian law seems to be favoring the offeree as it mandates that the notice of revocation should come from the person who makes the offer. The legitimacy of the source cannot be verified in the common law. Other people may not have the right information about the revocation of the offer. Both the offeror and the offeree will lose out and the contracts will not be formed due to reliance upon the words of a layman.

Under common law, a promise to keep an offer open is not binding on the offeror unless accompanied by consideration by the offeree. By paying the offeror the offeree creates an option contract due to which the offeror is bound and has to keep the offer open for that time frame. He is liable for any breach on his part. This is applied in *Routledge v. Grant*. But in Indian law, a

promise to keep an offer open is enforceable even without consideration. The Indian law is favorable to the offeree because in this case, the offeree need not make any additional payment in order to keep the offer open.

Contracts once formed cannot be cancelled without being sued for breach of contract. But common law under the Consumer Protection (Distance Selling) Regulations 2000 allows for the cancellation of a contract by the consumers within a particular time limit called the cancellation period without any liability arising from the same. This is called the cooling off period and usually lasts for around 7 days. The Indian law also has the cooling off period. The offeree in cases involving insurance policies is immensely benefitted because he has the choice to reconsider the contract. This is especially useful in situations involving a large amount of money. The offeror is at a disadvantage because he loses out on the contract. The doctrine of caveat emptor which has evolved from the common law translates to let the buyer beware. It is as opposed to the above rule which permits contracts to be cancelled within a particular time period. Caveat emptor is used more often in India and preferred to the cancellation of contracts. Common law though doesn't encourage the usage of caveat emptor. So, the offeree benefits more in the common law system than the Indian law.

Conclusion

I agree that Indian law on offer and acceptance favors the acceptor. I also feel that English common law favors the acceptor but to a minimal extent. The reasons behind India's inclination towards the offeree can probably be

because the offeror controls almost all aspects of the contract. The offeror mentions the last date of acceptance, the mode of communication and the offeree is bound by this. The offeree is at the mercy of the offeror and in order to prevent the offeree from reaching a pitiable position, some aspects of the formation of a contract are favorable to the offeree.