

## Agreement In Sub-Silentio



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### A B S T R A C T

*This research paper is revolving round within the circumscribing area of the Indian Contract Act, 1872. It enumerates the essential ingredients of a contracts, the procedure involved in formation of promise creating the footing of a legally enforceable agreement, and constituents of a valid acceptance. Relying upon the secondary sources of data (i.e. the case laws) the present research work tests the hypothesis, "silence of the offeree amounts to consent towards the offer".*

### Introduction

The Indian Contract Act, 1872 provides the legal framework for formulation of trade, business and many other commercial transactions in terms of contracts. The independent and impartial Indian Judiciary has given shape to the Act by putting flesh into the bare bones of the Act. The Act provides the basic concepts about general and some specific contracts, maintaining the harmony with other allied laws like The Sale of Goods Act, 1932 and Partnership Act, 1932.

### Agreement and Acceptance

Acceptance plays a pivotal role in case of an agreement. In order to have the legal enforceability and be a contract, acceptance of the offeree must be there. According to Sec.2(h) of the Indian Contract Act, 1872 an agreement not having the legal enforceability can't be called as a contract. So, every contract first being an agreement contains some essentials, namely (i) an agreement between the parties, (ii) competency of the parties, (iii) lawful consideration, and lawful object (iv) free consent of the parties and (v) the agreement must not be expressly declared to be void.

The first ingredient i.e. the agreement between the parties has some steps or a certain procedure. First the proposal or offer to be made by one party. Then the offeree has to accept it. According to Sec.2(b) of the 1872 Act, a proposal when accepted becomes a "promise". Then in the final step "Every promise and every set of promises, forming the consideration for each other is an agreement". [Sec.2(e)].The term "acceptance" is not exactly defined under the 1872 Act. Section 2(b) enshrines that when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. In it's generic sense, it means giving assent or signifying willingness to someone or to something.

A valid acceptance can only convert an offer

into a promise, which can further be flourished into a contract. In order to be transformed into a contract finally, some conditions must be satisfied. According to the 1872 Act, these conditions are (i) acceptance must be communicated by the offeree to the offerer, (ii) it should be absolute and unqualified (iii) it should be made in some usual and reasonable manner, unless the proposal prescribes the manner of acceptance and lastly (iv) it should be made while the offer is still subsisting.

### Hypothesis

Basing upon the secondary sources of data i.e. some case laws, the present research work is intended to test the hypothesis, "silence of the offeree amounts to consent towards the offer.

### Agreement in sub-silentio

The term "sub-silentio" is a latin one and it means under or in silence or without notice being. To clarify the collective meaning of the phrase "agreement in sub-silentio", it is important to denote that acceptance may be conditional, expressed or implied. So, the general rule that an offer cannot be accepted by mere silence on the part of the offeree does not at all mean that an acceptance always has to be given in so many words. Acceptance also can be implied from the silence of the offeree. So, under certain circumstances offeree's silence, coupled with his conduct, which takes the form of a positive act may constitute an acceptance. The agreement made upon this kind of acceptance is designated as an agreement in sub-silentio.

### Legal Boundaries

Agreement in sub-silentio is a very recent concept to be evolved through the judicial trend. But it's implied presence can be seen in the 1872 Act. According to Sec.8 of the Act, if the offeree performs the conditions of an offer or accepts any consideration for a reciprocal promise which may be offered with the offer - it is an acceptance of the proposal. Here the

activities or conduct of the offeree is only narrated not the words to be communicated to signify acceptance. The said provision in turn implies that the offeree may not accept the proposal by saying words. So the agreement, thus formed would be called agreement in sub-silentio.

#### **Judicial Contribution**

As the term has a very recent origin, there are not much cases explaining the relevance. In *Bharat Petroleum Corporation Ltd. V Great Eastern Shipping Co. Ltd.* (AIR 2008 S.C. 357) it was held by the Apex Court that the conduct of the parties as evidenced and the appellant's silence on respondent's letters (whereunder the existing terms and conditions were asked to be continued) show that the stand of the respondent was accepted sub-silentio. So, the continuation of the old contract after the expiry of the time was held to be legal. In *carrier Airconditioning and others V M/s. Linc Digital System Pvt. Ltd.* (decided by the Delhi High Court on dt.09.04.2009) the validity of the renewal of the agreement was questioned.

Reference of the aforementioned case was given and the argument raised by the respondents that the renewal can only be allowed by written agreement and expressed acceptance was rejected. In *wire and wireless India Pvt. Ltd. V M/s. Information TV Pvt. Ltd.* (decided on 3rd June 2011) there was an agreement regarding the broadcasting of a channel. Reference was drawn from the paragraph 2-069 of the 28th edition of the book, "Chitty on Contract" by H.G. Beale. The

book provides acceptance by silence is never thought to give rise to any difficulty where the conduct of the party (offeree) takes the form of a positive act. The concerned agreement in sub-silentio was held to be approved in this case by the Telecom Disputes Settlement & Appellate Tribunal, New Delhi.

#### **Findings**

As the above discussed case laws show, silence of the offeree often coupled with his positive conduct shows his implied consent towards the offer. Hence the hypothesis taken for the study is proved.

#### **Conclusion and Suggestion**

Normally, in case of renewal, novation or any material alteration of contracts, the offeree remains silent and basing upon his positive conduct, the innocent offerer draws inferences of his (the offeree's) consent and performs accordingly. To save the innocent offerer and to estop the offeree from denying his implied consent, the doctrine of agreement sub-silentio is there. In order to avoid complications in contractual relations, some suggestions are, as follows.

- i) Some reasonable amendments should be done in the centuries old Indian Contract Act introducing the term "agreement in sub-silentio".
- ii) Offerees should not be remained silent, whenever they are not agreed with the offer of the offerer and should not give any positive indication which might create an illusion of their consent towards the offer.

## **REFERENCE**

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