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OFFER AND INVITATION TO TREAT: WHERE THE LINE SITS AND WHY IT MATTERS IN INDIAN CONTRACT LAW

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INTRODUCTION

When two people enter into a contract in India, the first question that needs to be answered is very simple: was there ever a real offer in the first place? Not every statement that sounds like an offer is one. Some statements genuinely bind the person who makes them; these are offers. Others are merely opening moves, a way of saying "come talk to me" without any real obligation attached. The law calls these invitations to treat.

The Indian Contract Act, 1872 does not use the phrase "invitation to treat" anywhere. But the concept is very much alive in Indian law, built into how courts have interpreted the word "proposal" under the Act and shaped by principles borrowed from English common law. Getting the two confused has real consequences; businesses can find themselves locked into deals they never intended to make, or people can discover that what they thought was a binding agreement turns out to be nothing at all.

This article examines what separates a proposal from an invitation to treat, how Indian courts have addressed the question, and why it still matters in everyday commercial situations in India today.

THE INDIAN CONTRACT ACT, 1872: THE STARTING POINT

Unlike English law, which has developed the law of contract almost entirely through case law, India has a codified statute. Section 2(a) of the Indian Contract Act, 1872 defines a 'proposal' as:

"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."[1]

A few things stand out from this definition. First, the proposal must be communicated, you cannot accept something you do not know about. Second, the person making the proposal must be willing to be bound if assent is given. Third, the entire point of the proposal is to get the other person's agreement to specific terms.

Section 2(b) then defines acceptance: "when the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted."[2] Once accepted, a proposal becomes a promise, and once there is consideration on both sides, you have a binding contract.
The invitation to treat lies entirely outside this chain. It is the step before a proposal, the act of inviting someone to make a proposal in the first place. The person who issues an invitation to treat is not signifying willingness to be bound. They are signifying willingness to receive proposals.

WHAT IS A PROPOSAL (OFFER) UNDER INDIAN LAW?

A proposal under the Indian Contract Act must meet certain conditions to be valid and capable of acceptance. It must be communicated to the person it is addressed to, its terms must be certain and complete, and it must show a genuine intention to be bound if assent is given.

Indian courts have consistently held, following the objective approach, that the test for whether a proposal has been made is not what the proposer privately intended, but what a reasonable person in the position of the offeree would have understood from the words and conduct used.[3]

The Supreme Court of India in *Bhagwandas Goverdhandas Kedia v Girdharilal Parshottamdas & Co* (1966)[4] dealt extensively with the mechanics of offer and acceptance under the Act, particularly in the context of contracts made over telephone and telex. The court affirmed that a

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[1] Indian Contract Act, 1872, § 2(a).
[2] Indian Contract Act, 1872, § 2(b).
[3] Balfour v. Balfour [1919] 2 KB 571
[4] Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co. AIR 1966 SC 543.

contract is formed at the place where acceptance is communicated to the offeror confirming that clear proposal and acceptance are the twin pillars of any binding agreement.

WHAT IS AN INVITATION TO TREAT IN THE INDIAN CONTEXT?

An invitation to treat, though not named as such in the 1872 Act, is best understood as a statement or conduct that invites another person to make a proposal, without itself amounting to one. The person issuing it retains the right to accept or reject whatever proposal comes back.

The most important practical consequence is this: if a statement is merely an invitation to treat, a person who responds to it and purports to 'accept' it has not created a contract. They have simply made a proposal of their own, which the original party can accept or decline. This principle plays out constantly in Indian commercial life. A trader who puts goods on display in a shop in Chandni Chowk or at Crawford Market is not making an offer to sell those goods. They are inviting customers to come forward and submit purchase proposals. The seller retains the right to refuse.

INDIAN CASES AND THE DISTINCTION

DISPLAYS OF GOODS AND SHOP TRANSACTIONS

While India does not have a case directly mirroring *Pharmaceutical Society of Great Britain v Boots Cash Chemists* [1953][5] on self-service pharmacies, the underlying principle has been absorbed into Indian commercial practice and has been acknowledged by the courts. Displaying goods with a price in a shop, a mela, or a market stall is treated under Indian law as an invitation to treat, the contract comes into being not when the customer picks up the goods, but when the seller accepts the customer's offer to purchase at the till or point of payment. This matters practically in India in areas such as essential commodities trading, where a shopkeeper's refusal to sell at the displayed price has been challenged. Courts examining such disputes have had to engage with whether the display itself amounted to an offer.

TENDERS AND GOVERNMENT CONTRACTS

The invitation to treat concept is perhaps most litigated in India in the context of public tenders. When a government body or public sector undertaking issues a Notice Inviting Tender (NIT), it is

[5] Pharmaceutical Society of Great Britain v. Boots Cash Chemists (Southern) Ltd., [1953] 1 Q.B. 401.

not making an offer to the contractors who will bid. It is issuing an invitation to treat asking interested parties to submit proposals.
The Supreme Court in Har Shankar v Deputy Excise and Taxation Commissioner[6] made clear that an invitation to bid does not bind the authority inviting tenders to accept any particular bid. The final discretion to accept or reject lies with the authority, and no concluded contract arises merely because a tender is submitted.

This has been reaffirmed in numerous later decisions dealing with public procurement. In Tata Cellular v Union of India[7], the Supreme Court laid down that while an invitation to tender is not an offer, the authority issuing it must still act fairly and cannot arbitrarily reject conforming bids, though this obligation arises from administrative law principles rather than contract law.

The distinction matters enormously in government contracting. A contractor who submits a tender in response to an NIT has made a proposal, not an acceptance. The contract only comes into being when the government authority communicates its acceptance of that tender.

ADVERTISEMENTS AND PRICE CIRCULARS

Indian courts have also had to deal with the status of advertisements and price lists. The general principle, consistent with English common law, is that an advertisement is an invitation to treat and not a proposal under Section 2(a)[8].

In Harvey v Facey 1893[9] an English law case which directly applies to Indian contract law given its historical basis the court held that a mere statement of the lowest price at which a person would sell was not an offer capable of acceptance. It was at most a response to an inquiry, leaving the terms of any actual proposal to be worked out subsequently. This principle applies squarely to price lists and catalogues circulated by Indian businesses. A pharmaceutical company that sends a price list to chemists across India, or a textile manufacturer that distributes a catalogue with rates,

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[6] Har Shankar v. Deputy Excise and Taxation Commissioner, (1975) 1 SCC 737
[7] Tata Cellular v. Union of India, (1994) 6 SCC 651.
[8] Indian Contract Act, 1872, § 2(a).
[9] Harvey v. Facey, [1893] A.C. 552.

is not making proposals. The chemist or buyer who responds with a purchase order is making the proposal; the seller then accepts or declines.

THE EXCEPTION: ADVERTISEMENTS THAT DO AMOUNT TO PROPOSALS

Just as *Carlill v Carbolic Smoke Ball Co* (1893)[10] carved out an exception in English law for advertisements that are specific enough to amount to offers, Indian courts recognise the same possibility. Where an advertisement is sufficiently certain in its terms, names a definite benefit, and shows a clear intent to be bound by anyone who performs the stated condition, it can amount to a proposal under Section 2(a)[11].

A common Indian example is a reward notice 'whosoever returns the lost dog to X address will be paid Rs 5,000.' This is a proposal to the world at large. Any person who performs the condition of returning the dog, has accepted the proposal by conduct, and the contract is complete.

Section 8 of the Indian Contract Act[12] is important here: it provides that "performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise which may be offered with a proposal, is an acceptance of the proposal." This is the Indian statutory foundation for what English law calls unilateral contracts.

E-COMMERCE AND THE DIGITAL INDIA CONTEXT

The distinction between offer and invitation to treat has taken on fresh importance in India with the explosive growth of e-commerce platforms. When Flipkart, Amazon India, Meesho, or any other platform lists a product with a price, the question of whether that listing constitutes a proposal or an invitation to treat has real commercial stakes particularly when incorrect prices are listed.
The Information Technology Act, 2000[13] and the Indian Contract Act together govern electronic contracts in India. The IT Act, through Section 10A[14], affirms that contracts concluded

[10] Carlill v. Carbolic Smoke Ball Co., [1893] 1 Q.B. 256.
[11] Indian Contract Act, 1872, § 2(a).
[12] Indian Contract Act, 1872, § 8.
[13] Information Technology Act, 2000, § 10A.
[14] Sale of Goods Act, 1930, § 64.

electronically are valid, but it does not alter the fundamental rules about when a contract is formed offer, acceptance, and consideration still determine the moment of formation.

In general, most e-commerce listings in India are treated as invitations to treat. The customer placing an order makes the proposal; the seller or platform confirms the order, completing the contract. This is typically what the terms and conditions of major Indian e-commerce platforms state explicitly that an order confirmation email constitutes acceptance and is the moment the contract is formed.

AUCTIONS IN INDIA

Auctions under Indian law follow the same logic as in English law. Section 64 of the Sale of Goods Act, 1930[15] provides that in a sale by auction, the sale is complete when the auctioneer announces its completion by the fall of the hammer or in any other customary manner, and until such announcement is made, any bidder may retract their bid.

This is the statutory version of the principle in *Payne v Cave* (1789)[16] : the auctioneer's putting up of a lot is an invitation to treat, each bid is a proposal, and the hammer fall is the acceptance. The statute also provides that where a sale is notified as subject to a reserved price and the auctioneer accepts a bid below it, no contract is formed.

CONCLUSION

The distinction between a proposal and an invitation to treat sits quietly at the base of Indian contract law. The Indian Contract Act, 1872 does not name it, but the concept runs through the Act's definition of proposal, its rules on acceptance, and the conditions for a valid contract under Section 10[17].

What the cases from the Supreme Court's treatment of tenders and public contracts, to the Privy Council decisions that shaped Indian contract law, to the statutory provisions on auctions and

[15] Sale of Goods Act, 1930, § 64.
[16] Payne v. Cave, (1789) 3 Term Rep. 148.
[17] Indian Contract Act, 1872, § 10.

electronic contracts show is a consistent principle: not every statement is a commitment, and the law will not hold a person to words that a reasonable understanding of the context shows were merely an invitation to begin negotiating. The objective test[18] what a reasonable person in the position of the recipient would understand from the words and conduct used remains the core of the analysis, whether the dispute involves a government tender in Delhi, a goods listing on a Mumbai e-commerce platform, or a reward notice pasted on a wall in Kolkata.

For law students and practitioners alike, the starting point in any contract dispute is the same: was there ever a real proposal on the table? That single question, properly answered, determines everything that follows.

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[18] Bhagwandas Goverdhandas Kedia v. Girdharilal Parshottamdas & Co., AIR 1966 SC 543.