

Contractual law analysis on verbal and non-verbal agreements

Contractual law has long formed the backbone of economic, social, and private transactions in every legal system. The essence of a contract lies in the meeting of minds, the consensus ad idem, between two or more parties who intend to create legal obligations and rights. Over time, the written contract has emerged as the most recognised and reliable mode of evidencing such agreements. However, not all agreements are written, and in fact many day-to-day dealings occur without a signed document. Verbal agreements and non-verbal or implied contracts remain vital in commercial and personal life, raising questions about their enforceability, evidentiary value, and recognition within legal frameworks. A critical analysis of these forms of agreements requires exploring their doctrinal foundations, practical implications, and the judicial stance taken by courts in India and comparative jurisdictions.

The law of contract, both under the Indian Contract Act of 1872 and other common law frameworks, recognises that contracts need not always be reduced to writing to be valid. A contract requires certain essential elements: offer and acceptance, lawful consideration, competence of parties, free consent, and lawful object. Nowhere does the statute require that a contract be written, except in certain cases where special statutes mandate writing such as contracts relating to immovable property, contracts under the Companies Act, or contracts governed by the Statute of Frauds in Anglo-American jurisdictions. Thus, by default, oral or verbal agreements are legally valid, provided they can be proved and all essential ingredients of contract formation are present. Non-verbal agreements, often falling under the category of implied contracts, are also legally enforceable when the conduct of the parties indicates mutual consent and intention to be bound. The difficulty, however, lies not in their validity but in proving their existence and terms in a court of law.

Verbal agreements have existed since ancient times when commerce and transactions relied heavily on trust, community reputation, and verbal promises. In India, traditional systems of trade and barter functioned largely through oral commitments, witnessed by community elders or recorded in symbolic forms. With the advent of codified law, the Indian Contract Act, 1872 recognised oral contracts as enforceable, with Section 10 affirming that all agreements made with free consent of competent parties, for lawful consideration and with lawful object, are contracts. This implies no requirement of writing unless law specifically requires so. However, while legally valid, verbal agreements raise practical evidentiary challenges. Courts have often struggled with issues of proving what was actually agreed, since verbal contracts rely on memory, witness testimony, and circumstantial evidence rather than documentary proof.

Judicial precedents in India have established a nuanced approach to verbal contracts. In *Trimex International FZE Ltd. v. Vedanta Aluminium Ltd.* (2010), the Supreme Court held that even an oral contract or a contract concluded through correspondence without formal

documentation could be binding if it reflected consensus ad idem. Similarly, in *Aloka Bose v. Parmatma Devi* (2009), the Court affirmed that oral agreements to sell immovable property, though not advisable, could be valid if proved, unless barred by statutory requirements like the Transfer of Property Act and Registration Act which mandate writing and registration. These cases highlight that courts are willing to uphold oral contracts, but proof becomes the deciding factor.

Comparatively, common law jurisdictions such as the United States and the United Kingdom also uphold oral contracts, though with caveats. The Statute of Frauds in the UK (1677) and its American counterparts require certain contracts to be in writing—such as contracts involving land, contracts that cannot be performed within one year, contracts for sale of goods above a certain value, and suretyship contracts. Outside of these exceptions, oral contracts remain valid. Landmark US cases like *Lucy v. Zehmer* (1954) demonstrate that even informal discussions, if showing clear intent to contract, can bind parties. Thus, across jurisdictions, oral agreements are valid in principle but risky in practice due to evidentiary uncertainty.

Turning to non-verbal agreements, these fall under implied contracts where the law infers the existence of a contract from conduct, circumstances, or established course of dealing rather than express words. Implied contracts are of two kinds: implied-in-fact contracts, where mutual assent is inferred from conduct; and implied-in-law contracts or quasi-contracts, where obligations are imposed by law to prevent unjust enrichment. Non-verbal agreements are especially relevant in commercial and service contexts where parties rarely articulate formal terms but act in ways that clearly demonstrate contractual intent. For instance, boarding a bus, purchasing goods at a self-service store, or using a parking lot are all everyday examples of implied contracts. The law imposes obligations on both sides despite the absence of written or spoken words.

In India, the Indian Contract Act explicitly recognises quasi-contracts under Sections 68 to 72, covering cases like supply of necessities to persons incapable of contracting, payment by an interested person, obligations of persons enjoying benefit of non-gratuitous acts, and liability for money paid or things delivered under mistake or coercion. Courts have repeatedly upheld implied obligations where equity demands so, as in *State of West Bengal v. B.K. Mondal and Sons* (1962), where the Supreme Court held that the government was liable to pay for benefits derived from construction work carried out by a contractor, even in absence of formal contract, as it would otherwise amount to unjust enrichment.

Non-verbal agreements have also been recognised internationally in cases like *Carlill v. Carbolic Smoke Ball Co.* (1893), where conduct by the plaintiff in using the product as instructed was held sufficient to establish contractual acceptance of the company's public offer. Similarly, in *Brogden v. Metropolitan Railway Co.* (1877), the House of Lords held that even without a formally executed contract, conduct such as ordering coal and supplying it constituted acceptance, thereby creating a binding agreement. These cases illustrate the law's

pragmatic approach in recognising that contracts can be formed through conduct, not just written or verbal declarations.

One of the persistent challenges in both verbal and non-verbal contracts is evidentiary reliability. Courts must ascertain what the parties agreed upon, whether there was intention to create legal relations, and what the specific terms were. In verbal agreements, reliance on witness testimony can lead to uncertainty, bias, and unreliability. In non-verbal agreements, courts must interpret conduct, which may be ambiguous or open to multiple interpretations. For example, if one party provides services without explicit request, is it a contract or a gratuitous act? The Indian Contract Act attempts to address this through the principle that non-gratuitous acts confer obligations, but disputes often arise on whether the act was gratuitous or contractual.

Another issue lies in proving consideration in verbal and non-verbal agreements. While consideration is a fundamental requirement under Section 10 of the Indian Contract Act, its presence is easier to prove in written contracts. In oral or implied contracts, courts must infer consideration from surrounding circumstances. Legal experts argue that this creates scope for exploitation, with parties often denying the existence of consideration after benefiting from the agreement.

Modern commercial realities further complicate the picture. With the rise of digital transactions, verbal contracts made over phone calls, video conferences, or even voice messages on apps like WhatsApp and Zoom are increasingly common. Courts have begun recognising these communications as valid, provided intention and consensus are clear. Similarly, non-verbal agreements now extend into digital domains, such as clicking “I agree” on websites or engaging in e-commerce platforms, where assent is expressed by conduct rather than explicit signatures. Indian courts, like their Western counterparts, have begun upholding such electronic contracts under the Information Technology Act, 2000, which validates electronic records and digital signatures.

Despite recognition, legal experts caution against over-reliance on verbal and non-verbal agreements, given the scope for dispute. Academic scholarship in India suggests that while flexibility of contract law is essential to accommodate the realities of daily life, greater emphasis should be placed on encouraging written agreements for substantial transactions. The Supreme Court itself has repeatedly observed that written agreements prevent unnecessary litigation and provide clarity of rights and obligations. Nevertheless, the law must strike a balance between flexibility and certainty, ensuring that oral and implied agreements remain enforceable but subject to strict scrutiny in terms of evidence.

One potential reform suggested by legal scholars is greater use of presumptions in favour of non-gratuitous acts, shifting the burden on the benefiting party to disprove contractual intention. This would align with the equitable principles underlying quasi-contracts. Similarly, technological solutions like recording verbal contracts or documenting digital communications

could serve as evidence, reducing reliance on subjective testimony. Courts have already begun accepting electronic records, call recordings, and digital messages as admissible evidence under the Indian Evidence Act, thereby strengthening the enforceability of modern verbal contracts.

Critics, however, argue that too liberal an approach risks undermining contractual certainty. If every act of benefit or casual conversation could be construed as a binding contract, parties may be unwilling to engage in everyday interactions without fear of legal liability. Therefore, judicial caution remains essential in distinguishing between social or domestic arrangements, which are generally presumed not to create legal relations, and commercial agreements, where intention to create legal obligations is presumed.

The contrast between verbal and non-verbal agreements also raises interesting doctrinal questions. Verbal agreements are express but undocumented, relying on spoken words; non-verbal agreements are tacit, relying on conduct. Yet, both embody the principle that contracts are about intention and consent, not formality. This reflects the broader philosophy of contract law, rooted in freedom of contract and mutual consent. However, while verbal contracts demonstrate explicit but informal assent, non-verbal agreements rely heavily on judicial interpretation of conduct, making them more flexible but also more prone to dispute.

Indian jurisprudence demonstrates a consistent willingness to enforce both forms when justice and equity demand so. Whether in recognising oral agreements to sell property, enforcing quasi-contractual obligations to prevent unjust enrichment, or upholding conduct-based contracts in commercial dealings, courts have signalled that substance, not form, is the guiding principle. At the same time, statutory frameworks requiring writing for certain contracts reflect the recognition that documentation is essential for high-value or long-term transactions, ensuring certainty and reducing litigation.

In conclusion, verbal and non-verbal agreements represent two enduring forms of contractual engagement that continue to shape the legal landscape in India and globally. Their validity is unquestioned, rooted in statutory law and judicial precedent. Yet, their enforceability often hinges on the ability to prove consent, terms, and consideration. While written contracts remain the gold standard for clarity and certainty, verbal and implied contracts embody the practical realities of everyday life, ensuring that law remains accessible and flexible. The challenge for courts and lawmakers lies in balancing this flexibility with the need for certainty, reducing evidentiary ambiguities, and protecting parties from exploitation. In a rapidly evolving commercial world marked by digital transactions, the importance of clear frameworks for verbal and non-verbal agreements is only set to grow. Strengthening evidentiary rules, adopting technological tools, and clarifying statutory provisions can ensure that these agreements continue to serve justice without undermining the reliability of contractual obligations. Thus, while the pen may still be mightier than the spoken word or silent conduct in contractual matters, the law remains attentive to all three as expressions of human intention to bind and be bound.

Verbal Agreements

Advantages

1. **Simplicity and Speed** – They can be made instantly without formalities, making them convenient for day-to-day dealings.
2. **Flexibility** – No rigid format is required; terms can be agreed through plain conversation.
3. **Cost-Effective** – No drafting fees, stamp duty, or registration costs are involved.
4. **Accessibility** – Especially beneficial in informal settings or where literacy levels are low, allowing wider participation in contractual relationships.
5. **Judicial Recognition** – Courts in India and common law countries have upheld oral contracts as valid, provided essentials are met.

Loopholes / Limitations

1. **Evidentiary Weakness** – Hard to prove in court; relies on memory, witnesses, or circumstantial evidence.
2. **Ambiguity of Terms** – Verbal agreements often lack specificity, leading to disputes about obligations.
3. **Risk of False Claims** – Parties may deny or distort what was said, leading to prolonged litigation.
4. **Not Suitable for Complex Transactions** – Large financial or long-term contracts require detailed terms that are impractical to manage verbally.
5. **Statutory Exclusions** – Certain contracts (sale of land, contracts beyond one year, etc.) must be in writing under statutes; verbal contracts cannot substitute here.

Non-Verbal (Implied) Agreements

Advantages

1. **Practicality in Daily Life** – Many everyday transactions (bus rides, shopping, restaurants) are based on implied contracts without the need for formal agreement.
2. **Flexibility** – Recognises that contracts can be formed by conduct, not just words, reflecting real-life business practices.
3. **Equitable Protection** – Prevents unjust enrichment by holding parties accountable even without explicit promises.

4. **Judicial Recognition** – Courts in India and abroad (e.g., *Carlill v. Carbolic Smoke Ball Co.*, *B.K. Mondal & Sons*) enforce implied obligations.
5. **Efficiency** – Saves time by not requiring explicit discussion or documentation for routine matters.

Loopholes / Limitations

1. **Ambiguity in Conduct** – Hard to determine whether actions implied consent or were merely casual/social.
2. **Scope of Obligation** – Terms of implied contracts are often uncertain, leading to interpretive disputes.
3. **Evidentiary Challenges** – Like verbal contracts, proving intention, consideration, and acceptance through conduct can be difficult.
4. **Risk of Over-extension** – Courts must be careful not to impose obligations where none were intended, especially in social or gratuitous settings.
5. **Limited Applicability** – Implied contracts work well for routine or small transactions but are ill-suited for complex, high-value agreements.

Comparative Insight

- **Verbal agreements** excel in express clarity (words exchanged) but fail in evidentiary strength.
- **Non-verbal agreements** excel in practicality (conduct speaks for itself) but fail in defining scope and obligations precisely.
- Both forms of contracts remain legally recognised but are more prone to **loopholes in proof and interpretation** than written contracts.