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# **THUMBS UP: AN EVOLVING LEGAL PARADIGM OR A FORESTALLING LEGAL PARADOX IN THE DIGITAL ERA**

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## **ABSTRACT**

India has gone through laudable transformation in digital sector during 21<sup>st</sup> century. The influence of this transformation can be manifold. The aftermath of this transformation has resulted in changing modern science, medicine, law and diverse disciplines. The discipline of law started recognising digital e- contracts, Artificial Intelligence tools for legal drafting, digital research facilities etc. In the realm of contract law, the method by which acceptance is communicated holds paramount importance. Traditional forms of acceptance, such as written or verbal confirmation, have long been the norm. However, with the advent of digital communication and the ever-evolving landscape of social interaction, the recognition of non-verbal cues, such as a thumbs up gesture, as a valid form of acceptance poses both advantages and challenges within the legal framework. The legal recognition of thumbs up as a valid acceptance under contract law by the King's Bench for Saskatchewan is yet another perfect epitome to understand the development of law in digital era. Keeping in mind the trans-judicial communicative history of India, the question that I would like to put up through this article is whether the recognition of thumbs up as valid acceptance be considered as an evolving legal paradigm that would lead the law or as a forestalling legal paradox which would vex the courts.

## **I. INTRODUCTION**

The convergence of politics, law, and technology is going to force a lot of good thinking, as Bill Gates once stated accurately. This intersection will lead to the development of an advanced legal system with appropriate, functional, and effective processes worldwide. Modern digital era with advanced applications such as WhatsApp, Instagram, Facebook and Snapchat as well as AI driven tools namely Chat GPT, Gamma.ai, Quill Bot, Jasper and Grammarly go have in many ways facilitated the amalgamation of law and technology. The transition from paper contracts to e-contracts, manual drafting to electronic drafting, normal filing to e- filing are perfect epitomes of

this change. But the pertinent question is whether this transition really leads to melioration in legal milieu or is it opening pandora box with umpteen legal issues?

India is a country with immense number of both civil and Criminal laws. Among these laws, it is based on the Indian Contract Act 1872 a legally enforceable promise is made between two parties. The Indian Contract Act 1872 governs the creation and discharge of contracts along with providing adequate remedies to the injured party for the non-performance of contract. It's this law which has been dealing with the formation of agreement, enforceability of the same for over a long time. But recently in a judgment by a Canadian Court *South West Terminal Ltd v Achter Land and Cattle Ltd*<sup>1</sup> the Hon'ble court accepted thumbs up emoji as a valid electronic signature to contract. In India though electronic contracts are recognised through section 10 of Information technology act 2000 thumbs up was not considered as a valid acceptance hitherto. In this research paper I would delve into the various aspects of contract formation under Indian Contract Act 1872, a critical analysis on the Canadian court's judgment in *South West terminal*<sup>2</sup> and its impact on the Indian Contractual Jurisprudence.

## **II. CONTRACT: A VALID LEGAL INSTRUMENT**

A contract is generally defined as a binding agreement between two or more persons or parties especially, one legally enforceable or a business arrangement for the supply of goods or services at a fixed price<sup>3</sup>. Whereas a Contract, by virtue of Indian Contract Act 1872 is defined as an agreement enforceable by law.<sup>4</sup> Therefore a contract according to this definition includes an Agreement which can be enforced through a court of law. It is section 10 of Indian Contract 1872 which defines what all agreements are contracts. For the purpose of this research section 10 of Indian Contract Act 1872 is of relevance. It is quoted below:

***“10. What agreements are contracts. —All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.***

***Nothing herein contained shall affect any law in force in [India] and not hereby expressly repealed by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents.”***

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<sup>1</sup> [2023] SKKB 116.

<sup>2</sup> Ibid.

<sup>3</sup> 'Contract' < [www.merriam-webster.com/dictionary/contract.com](http://www.merriam-webster.com/dictionary/contract.com)> accessed 09<sup>th</sup> January 2023

<sup>4</sup> Indian Contract Act 1872, s 2(h).

From the above-mentioned section, it can be understood that a contract is an agreement made between parties who are competent to it. Section 11 states that a Major, a person of Sound mind and a person not disqualified by law is competent to contract. Such agreement shall not be one which the act itself has declared void and also requires a lawful consideration, lawful object with a free consent of the parties. Apart from the mandates of section 10 the court in various cases has reiterated certain other requisites for a valid contract. They are as follows:

- A. There must be Intention to create legal obligation.
- B. Domestic agreements are not Contracts
- C. Social Invitation are not contracts

The essential thing which has to be noted here is that in all three aforementioned situations there are is less intention for the parties to get into legal an obligation. A contract being a valid legal instrument having a nature that all parties entering into it shall have to perform the respective obligations as stated in the Contract. A case in which any of the party act in contravention to the agreed promise he commits a breach of the promise and such a party is liable to pay compensation to the other party.

So, from the above it can be concluded that every contract consists of an agreement which is a promise or set of promises forming considerations for each other and every promise takes birth when the person to whom a proposal is made signifies his assent thereto. Concludingly it can be said that an Acceptance opens a door for a contract.

### **III. ACCEPTANCE AS A DOOR TO THE CONTRACT**

Generally, an acceptance according to human psychology is a person's assent to the reality of a situation, recognizing a process or condition (often a negative or uncomfortable situation) that is a fait accompli without attempting to change it or protest it. The concept is close in meaning to acquiescence.<sup>5</sup> An alternative interpretation of acceptance includes a favourable greeting, a sense of belonging, a favour, and endorsement—that is, approving something. For example, a person may like and accept someone just because they approve of them. But looking upon a legal definition it is contract act which tried to provide the same through section 2(b). It is quoted below: *“Section 2(b). – “When the person to whom the proposal is made signifies his assent thereto, the proposal becomes an accepted proposal. A proposal when accepted, becomes a promise”.*

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<sup>5</sup> ‘Acceptance’

<<https://en.wikipedia.org/wiki/Acceptance#:~:text=Acceptance%20in%20human%20psychology%20is,change%20it%20or%20protest%20it.>> accessed 23<sup>rd</sup> November 2023

Illustration: A proposes B to sell his car for an amount of Rs 6,00,000. B agrees to purchase the car for the agreed amount.

The Contract Act through its provision of section 7 specifies that various requisites for a valid acceptance. They are as follows:

- A. It must be absolute
- B. It must be unqualified
- C. It must be made in some usual and reasonable manner unless the proposal prescribes the manner of acceptance.
- D. It must be accepted while the offer is subsisting.

Section 8 of the Indian Contract Act also provides an insight on acceptance. The section states 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.<sup>6</sup> It is poignant to note that an acceptance without communication is nothing but a line drawn in flowing water. Therefore, a study on acceptance would go in vain if it doesn't provide insight on communication of acceptance. Section 4 and 5 of the Indian Contract Act 1872 states what completes the communication of acceptance and when can an acceptance be revoked. The Law of Contracts states that an acceptance may be revoked at any time before the **communication of the acceptance** is complete as against the acceptor, but not afterwards. So, in order to have a clear picture on revocation we must understand when will a communication be complete. The section 4 is reproduced as such for better understanding:

**4. 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 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.”*

*The communication of a revocation is complete, —*

*as against the person who makes it, when 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 his knowledge.*

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<sup>6</sup> The Indian Contract Act 1872, s 8.

Therefore, from the aforementioned it is understood as to how important acceptance is to a contract. Now the germane question is in the digital era like of now can an acceptance be made in the form of thumbs up? If the answer to same is yes then a series of questions will follow. Whether such an acceptance will only bound e-contracts? Whether other informal emojis can also be used as acceptance? Whether an acceptance by the form of a thumbs up is as equal as the normal modes of acceptance? Whether an acceptance made by the form of a thumbs up conveys the requisite intention to enter into a legal obligation? And if the answer is no also there are apposite legal questions needing answer. When the whole world is making a sea change towards digitalisation why can't such form of acceptance be considered legally valid? Law being a tool of social transformation where in it is always said as Law leads the society and vice versa it is equally important for the law to admit accept and adapt to the fast pacing technology. Wouldn't this be a greater step towards the same.

Even though the legislature of India as well as other jurisdictions haven't pondered this as a question so far the courts has from time to time provided decisions with inklings on how law should look upon this change. *South West Terminal Ltd v Achter Land and Cattle Ltd*<sup>7</sup> was one such decision. In this case the King's Bench of Saskatchewan in Canada has held that sending a thumbs up emoji in response to a contract will amount to acceptance and bind the parties under a legal contract. A top to bottom understanding of the judgment is needed here in order to understand why the court regarded thumb up can be the modern signature.

#### **IV. CRITICAL ANALYSIS OF SOUTH WEST TERMINAL LTD. V. ACHTER LAND & CATTLE LTD.<sup>8</sup>**

The global COVID-19 pandemic, caused by the novel coronavirus SARS-CoV-2, has had profound and far-reaching impacts on various aspects of human life. One of the most notable consequences has been the accelerated growth and widespread adoption of technology across various sectors. The pandemic acted as a catalyst, pushing societies and businesses to embrace technological solutions to navigate the challenges posed by lockdowns, social distancing, and remote working. With lockdowns and social distancing measures in place, traditional retail faced unprecedented challenges. E-commerce platforms witnessed a surge in demand as consumers turned to online shopping for convenience and safety. Contactless payment methods, including mobile wallets and digital currencies, gained popularity, further reducing the reliance on physical

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<sup>7</sup> *South West Terminal* (n 1).

<sup>8</sup> *Ibid.*

currency.

The judgment in this case shall be analysed as a post covid case in my opinion. Though the judgment doesn't directly acknowledge the same, the reason for the decision can be implied as an effect of the post covid technological association of individuals. The judgment is critically analysed below by distinguishing the facts, issues and judgment of the case which are relevant to this study.

**A. Facts relevant to the study:**

The facts of the case which are relevant to the study is reproduced as such from the judgment:

1. South West Terminal Ltd. ("SWT") is a grain and crop inputs company incorporated under The Business Corporations Act, with their registered office in Gull Lake, Saskatchewan.
2. Achter Land & Cattle Ltd. ("Achter") is a corporation with their registered office in Swift Current Saskatchewan. Achter is a farming corporation owned and operated by Chris Achter. Chris Achter is a proper representative of Achter. Chris Achter's father is Bob Achter.
3. Kent Mickleborough is a Farm Marketing Representative with SWT, primarily acting as a grain buyer for SWT.
4. SWT has purchased grain from Achter through various deferred grain contracts since approximately 2012.
5. On March 26, 2021 at 1:01PM, Mr. Mickleborough texted the following text message to producers including Bob Achter and Chris Achter:
6. All Divisions - - Kent Mickleborough – Flax Prices: Flax 1Can (max 6% dockage) \$22.50/bu Apr. \$17.00 Oct/Nov/Dec del
7. Following Mr. Mickleborough sending this text message, he received a call from Bob Achter. After speaking with Bob Achter, Mr. Mickleborough called Chris Achter. Following the phone call with Chris Achter, Mr. Mickleborough had a contract drafted for Achter to sell SWT 86 metric tonnes of flax to SWT at a price of \$17.00 per bushel (which amounts to \$669.26 per tonne) with a delivery period listed as "Nov". Mr. Mickleborough applied his ink signature to the contract, then took a photo of the contract using his cell phone. Mr. Mickleborough then texted the photo of the contract to Chris Achter at number 306-264-7664, along with the text message: "Please confirm flax contract". Chris Achter texted back from 306-264-7664 a "thumbs-up" emoji.
8. Achter did not deliver 87 metric tonnes of flax to SWT in November 2021.

9. The spot price that flax was trading at on November 30, 2021 was \$41.00 per bushel (which amounts to \$1,614.09 per tonne).

This is a summary judgment application brought by the plaintiff, South West Terminal Ltd. [SWT], Infront of The Queen's Bench Rules for judgment against the defendant, Achter Land & Cattle Ltd. [Achter]. SWT claims the parties entered into a deferred delivery purchase contract [flax contract] on March 26, 2021 in which SWT agreed to buy and Achter agreed to deliver 87 metric tonnes of flax for a contracted price of \$669.26 per tonne, with delivery between November 1, 2021 and November 30, 2021. Achter did not deliver any flax. The plaintiff sues for breach of contract and damages of \$82,200.21 plus interest and costs. The defendant denies entering into the contract and in the alternative or in addition relies on the statutory defence found in s. 6(1) of The Sale of Goods Act, RSS 1978, c S-1 [SGA] contending any contract is unenforceable because there was no note or memorandum of the contract made or signed by the parties. What sets this case apart is the use of a thumb's up emoji and what that meant in the context of the specific facts of this law suit.

**B. Issues relevant to the study:**

The facts of the case which are relevant to the study is reproduced as such from the judgment:

- a) Was a valid contract formed between SWT and Achter to deliver 87 tonnes of flax in November 2021 for a price of \$669.21 per tonne?
- b) Was there a consensus ad idem?
- c) Were the requirements of s. 6 of the SGA met?

**C. Analysis:**

With regard to the first issue, the parties disagree as to whether there was identity of minds which is the core of every contractual obligation. Every contract takes its birth from an offer which is accepted by the offeree in the same sense and same manner. In this instant case Chris (Principal for Achter) who is the acting mind of the defendant Achter had a long-standing business relationship with SWT going back to at least 2015 when Kent Mickleborough [hereinafter Kent] started with SWT as a grain buyer. From the exhibits produced before the court it is as clear as day that Mr Kent and Mr Chris has several times concluded contract through telephones, mails or text messages. As stated earlier it is important to note here the role played by the pandemic which has in fact fastened this way of concluding contracts though prior to covid also they did the same. From exhibits produced before the court several times for the sale of different items Mr Kent has

prepared contracts after discussing with Chris and had sent the photo of the same with signature in it asking to confirm the contract. To this in many instances Mr Chris responded with “OK, Looks Good, Yup” etc. So it can be concluding held that every time Mr Kent sends “Please confirm terms of contract” and Chris did so by succinctly texting “looks good”, “ok” or “yup”, the parties clearly understood these curt words were meant to be confirmation of the contract and not a mere acknowledgement of the receipt of the contract by Chris. In all these instances Chris delivered the grain as contracted and got paid. There was no evidence he was merely confirming the receipt of a contract and was left just wondering about a contract.

Now coming on the facts of the case in hand Chris states that with regarding the flax contract which is the matter in issue he him selves admit that he has sent a thumbs up back to message from Kent on March 26 2021. But he states that through the thumbs-up emoji he simply confirmed that he received the Flax contract. It was not a confirmation that he agreed with the terms of the Flax Contract. The full terms and conditions of the Flax Contract were not sent to him, and he understood that the complete contract would follow by fax or email for him to review and sign.

The court opined that It can't find this later flax contract to be very different from the former contracts referred to above and this time instead of words like “ok”, “yup” or “looks good” being texted by Chris – a commonly used thumbs up emoji. Then arises the next question as to whether Chris was aware of what a thumbs up meant? It appears that Chris does not accept SWT's contention that a thumbs up emoji means something to the effect “I agree” or “I accept” or some sort of positive affirmation. Instead, he takes the position that he is generally unaware of what a thumbs up emoji means and in particular what he meant to convey to Kent on March 26, 2021.

This led the court towards finding the meaning of the thumbs up emoji. His Lordships J.Keene has taken the simpler approach of referring the dictionary meaning of the same and stated that a thumbs up according to the dictionary and to the best of his understanding “it is used to express assent, approval or encouragement in digital communications, especially in western cultures. Chris has already agreed that by sending thumbs up he was trying to communicate the he received the flax contract which means he is aware that thumbs up means an informal “OK” or something affirmative.

Thus, the court rejects Chris's account because Kent's memory is supported by the pre-conversation circumstances (many prior contract negotiations that resulted in contracts); in fact,

Kent texted the contract offer shortly after the gentlemen concluded their phone call. The court decided that, based on the preponderance of the evidence, Chris authorized or approved the deal, just as he had in the past—he just used a thumbs up emoji this time. The thumbs up, in his lordship's view, signified approval of the Flax contract, not just that he had received the contract and would give it some thought. According to his lordships, a sane spectator who was aware of the entire context would only arrive at this decision. Therefore, it can be concluded that here in this case there is consensus ad item – a meeting of the minds – just like they had done on numerous other occasions.

Additionally the court relied on the Electronic Information and Documents Act, 2000 an Act respecting Electronic Information and Documents Chapter E-7.22 of the Statutes of Saskatchewan, 2000 which through it's section 18 provides that “an action in electronic form” can be used to allow to express acceptance. The section is reproduced below:

***Section 18 (1)** Unless the parties agree otherwise, an offer or the acceptance of an offer, or any other matter that is material to the formation or operation of a contract, may be expressed:*

*(a) by means of information or a document in an electronic form; or*

*(b) by an action in an electronic form, including touching or clicking on an appropriately designated icon or place on a computer screen or otherwise communicating electronically in a manner that is intended to express the offer, acceptance or other matter.*

*(2) A contract shall not be denied legal effect or enforceability solely by reason that information or a document in an electronic form was used in its formation*

The court in order to substantiate the reasoning, placed reliance on the decision of *Quilichini v Wilson's Greenhouse*<sup>9</sup> while interpreting this provision it was held that the laws is unambiguous. Touching or clicking on a suitably labelled icon or location on a computer screen can indicate agreement to the terms of the contract. Nothing in the above is diminishing the possibility of carrying out the contract in a different way, such as printing a hard copy and having a participant sign a hard copy form. Even while there are other ways to carry out the contract, this does not mean that using only one of those ways does not constitute agreement

The defendant contends that, in contrast to everything mentioned above, a genuine signature is necessary since it attests to the signer's identity and transmits a message, in this case acceptance.

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<sup>9</sup> [2017] SKQB 10.

The court, however, does not believe such argument to be convincing. The court also acknowledged that, in the traditional presentation, a signature does serve to verify identification and an agreement. That does not, however, exclude the usage of a contemporary emoji like a thumbs up.

For the aforementioned reasons, the court determines that, given the particulars of this case, the parties entered into a legally enforceable contract.

While analysing the second issue the court was looking into section 6 of the Sale of Goods Act, RSS 1978 where in it was stated that a contract will be enforceable by action only if a memorandum in writing of the contract is made and signed by the party to be charged or his agent in that behalf. Here the court placed its reliance on various decisions the common law has developed in these modern times to hold that emails are sufficient to constitute in writing and signed requirements. The court reiterated the findings in *Quilichini*<sup>10</sup> and in that case, it was determined that by selecting the "I agree icon," the client was consenting to the terms of the contract, which "may be expressed by touching and clicking on an appropriately designed icon or place on a computer screen." As a result, the court determined that there is case authority for the use of email and electronic signatures that are not made with wet ink to identify the signer and demonstrate their approval of the content of the document.

Hence the court readily acknowledged that a thumbs up emoji is a non-traditional means to "sign" a document but nevertheless under these circumstances this was a valid way to convey the two purposes of a "signature" – to identify the signatory (Chris using his unique cell phone number) and to convey Achter's acceptance of the flax contract. The Court therefore find that under these circumstances that the provisions of s. 6 of the SGA have been met and the flax contract is therefore enforceable.

## **V. PERSUASIVE ROLE OF FOREIGN JUDGMENTS AND TRANS JUDICIAL COMMUNICATION**

Although there is no legal principle that aims to prevent a constitutional court from referencing foreign judgments, the law itself requires that this process be done cautiously and that consideration be given to the structural similarities before applying a foreign court's decision to a

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<sup>10</sup> Ibid.

domestic issue. It has been noted that many nations' constitutional systems, particularly those that follow the common law tradition, frequently appropriate ideas and precedents from one another. India is not an exception to this phenomenon. The rulings of foreign courts have been cited by Indian courts on numerous occasions. The phrase which is used to express this trend is called "trans judicial communication". It means courts are talking to one another all over the world.<sup>11</sup>

The best epitomes of trans judicial communication in India can be found in following judgments:

A. *Aruna Ramchandra Shaunbag v. Union of India*<sup>12</sup>:-

In this landmark judgment which allowed passive euthanasia in India the court relied on the foreign judgment *Airedale NHS Trust v. Bland*.<sup>13</sup> In this case court held that in case of incompetent patients the doctors can withdraw life support system in the best interest of the patient and which cannot be regarded as crime. The court relied on this judgment as there was no point in law with regard to euthanasia at that point of time.

B. *Maneka Gandhi v. Union of India*<sup>14</sup>:-

This decision has heavily relied on multiple foreign decisions. The court in this case while interpreting article 21 laid down the position that any governmental action violating 21 shall be based due process of law having the essential features fairness, justness and reasonableness. The adoption of due process clause in this case is based on US decisions.

C. *M.H. Hoskot v. State of Maharashtra*<sup>15</sup>:-

In this landmark decision the court interpreted substantive due process so as to imply that free legal services are included in Article 21. The Supreme court in this expressly relied on foreign decisions to hold indigent persons are entitled to free legal aid.

D. *Rangarajan v. Jagjivan Ram and Union of India*<sup>16</sup>:-

In this decision the court relied on the 'clear and present danger' test for placing restraints on speech which was formulated in the *Schenck v. United States*.<sup>17</sup> The court in aforementioned Indian case held that the censorship of a film which criticised caste-based reservation is

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<sup>11</sup> Anne-Marie Slaughter, 'A Typology of Trans judicial Communication' 1995 29 U. RICH. L. REV. 99  
<<https://core.ac.uk/download/pdf/232781656.pdf>> accessed 08<sup>th</sup> December 2023.

<sup>12</sup>[2011] MANU/SC/0176.

<sup>13</sup>[1993] All E.R. 82 (H.L.).

<sup>14</sup>[1978] AIR SC 597.

<sup>15</sup>[1978] AIR SC 802.

<sup>16</sup>[1989] 2 SCC 57.

<sup>17</sup>[1919] 247 U.S. 4.

inconsistent with the principle of freedom of speech and expression.

Apart from these decisions there are many other decisions which have adopted the principles from foreign decisions such as *Kharak Singh v. State of Uttar Pradesh*<sup>18</sup>, *Bennet Coleman v. Union of India*<sup>19</sup> and *Bachan Singh v. State of Punjab*.<sup>20</sup> Thus we can say that in this era of globalization of legal standards, there is no reason to suppress the judicial dialogue between different legal systems which build on similar values and principles. But, undoubtedly, none of these decisions are binding upon the Indian Supreme Court but they are authorities of high persuasive value to which Courts may legitimately turn for assistance.<sup>21</sup>

## **VI. THE EVOLVING LEGAL PARADIGM OR FORESTALLING**

### **LEGAL PARADOX**

A transformative legal change can become the hallmark of human progress, shaping the way we live, work, and communicate. From the invention of the laws to the age of artificial intelligence lawyer to argue in courts, each stride in law has brought about transformative changes in society. However, with every breakthrough comes a duality of effects, a balance between merit and demerit. When acceptance is allowed legally to be made through an emoji of thumbs up, we must delve into the intricate interplay between the positive and negative aspects of this change, exploring how each innovation not only propels us forward but also presents challenges and consequences that demand careful consideration. As we navigate the ever-evolving landscape of law, it is crucial to recognize that while these advancements in laws empower us in unprecedented ways, they also require a thoughtful and ethical approach to mitigate potential drawbacks. Let's us examine some of drawbacks:

A. Multiplicity of emoji will vex the Court: -

The Canadian Court through the decision of *South West Terminal Ltd. V. Achter Land & Cattle Ltd*<sup>22</sup> has allowed thumbs up to be a valid acceptance to a contract. The germane question here is an electronic doesn't only have thumbs up as an emoji. There are multitudinous emojis with numerous meanings for different persons. Recognition of an emoji to signify identity and acceptance would open up the flood gates to allow all sorts of cases coming forward asking for

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<sup>18</sup>[1963] AIR SC 1295.

<sup>19</sup>[1973] AIR SC 106.

<sup>20</sup>[1980] AIR SC 898.

<sup>21</sup> Burhan Majid, 'Persuasive Role of Foreign Judgements: An Indian Context' 2015 Jay Kay Law Reporter <[https://www.jklaws.in/admin\\_panel/files/9201711035450.pdf](https://www.jklaws.in/admin_panel/files/9201711035450.pdf)> accessed 23<sup>rd</sup> December 2023.

<sup>22</sup>*South West Terminal* (n 1).

interpretations as to what various different emojis. Courts will be inundated with all kinds of cases if a court finds that the thumbs up emoji can take the place of a signature. It will result as an unnecessary vexing of the court.

**B. Difficult to identify the meaning of Emoji:-**

An emoji is a form of an informal method of communicating between two persons. There are numerous emoji existing in the digital field. Each will carry different meaning to different persons. So for many emojis a real meaning is hard to find resulting in dumb of cases.

**C. New Features as a Threat: -**

WhatsApp has launched two new features for editing messages as well as vanishing text after a certain period. The policy of the edit feature says that this feature provides the user a moment when the user is mistaken and simply changes their mind, and then the user can edit the sent messages. Suppose if X enters into a contract with Y where acceptance is given through an emoji of thumbs up. With the advanced feature in order to avoid the contractual obligation X edits the message and keep there a thumbs down. The whole objective of the judgment would go in vain in such circumstance. Similarly, if the vanishing feature is turned on by any party, then the message itself will vanish from the chat. In such a case what will be the basis for assurance of the contract. The judgment carries no directions as to what shall be done in future if features change.

**D. Different Platform different Interfaces: -**

The Court in this case globally accepted thumbs up as a valid acceptance to an offer. The court didn't specify any medium through which it shall be conveyed. The problem here is for Instagram the interface is set in a manner that if a message is deleted the whole of it will go from the chat unlike WhatsApp. In WhatsApp it shows to the user that something is deleted. Similarly in Snap Chat, Telegram and other platforms the differences in interfaces will act as hindrance as to the conclusion of Contract. A legal insight with regarding the deletion of a message and its impact on the concluded terms of any contract is not visible in the judgment.

**E. Uncertainty as to who accepted the Contract: -**

A signature is something which in many cases is unique to the person signing it. The chance of fabricating the same is shallow. But a thumbs up when recognised as an acceptance under contract law would pose a serious threat. The notable issue here is uncertainty as to who send it. Suppose if X sends Y an offer through WhatsApp and Y's wife or a friend who is having an access to the

phone of X sends back to Y a thumbs up then the contract is completed. Making it worse suppose if the acceptance is sent by a person who is not in good terms with X, deletes the same for X then in chat head of X there is no indication as to the acceptance would be shown. This sort to put the acceptor in a position where he is not even aware of the contract.

F. Threat of Hacking: -

Every electronic device is subject to hacking. Though there are multiple software's to protect the device from hacking none provides safety lock stock barrel. So therefore, the very chance of hacking a device cannot be wiped out. If someone's device gets hacked and the person who is in control of it might use the device in a way he wants. Suppose if he sends a thumbs up to a contract send through the device then the hacked will cost a lot of penny if didn't keep the word.

G. A thumbs up doesn't convey requisite intention and confidence on the Promise: -

A promise should necessarily consist of a mental element which is the confidence conveyed from Promisor to promisee. Though the offeree has sent an acceptance in the form of a thumbs up, an appropriate question is whether it is conveying the requisite intention as of required for a contract. Suppose if you made an offer to a car company to deliver a car on your favourite persons birthday. To this text they reverted you with a thumbs up. How confident you will be on that promise if you're so specific about that date? or let us examine it from the other side the car company is willing to deliver the car and they have sent a thumbs up to it. You are the one who agreed to make the payment on the day of delivery suppose if no other conversation has taken place between you and the car company how much confidence will they have since you haven't responded anything to their thumbs up. Making the hypothetical situation worse what if the buyer has turned off his "Read Receipts"? So therefore a acceptance through thumbs up lacks confidence and intention

H. Laymen's Ignorance as a Challenge:

Though the Canadian court through its judgment held that a thumbs up can be a valid acceptance it might not reach to the consciousness of the laymen. He may not be aware of this fact and may respond according to his common believes resulting in he or she falling into the pit of legal obligation. This results in making a person liable for what he didn't really intend.

So from the above discussed we can conclude that recognition given by the court for the emoji thumbs up to be as equal as an acceptance would seriously give rise to many legal issues. However, one cannot turn a blind eye to this judgment off hand in 21<sup>st</sup> Century as we are in digital era

evolving and transforming each day. Let's us examine the judgment of the court as an evolving legal paradigm.

A. Necessity for Legal Evolution in a Dynamic Society: -

Justice demands that the law, like a living organism, evolves and adapts with the changing tides of society, ensuring that it remains a beacon of fairness and equity in every era. Therefore, in an era where people use smart phones than papers it is important for the law to adapt with this changing technology. From that perspective, the judgment in South west terminal case<sup>23</sup> is a positive note. The judgment by giving thumbs up emoji a legal status the very basics of contractual formation is a making a Paradigm shift from traditional signature-based contracts.

b) Efficient to Communicate

The ability of the thumbs-up emoji to effectively convey a positive response is one of its main advantages. Brevity is often rewarded in the fast-paced world of online communication. Without lengthy justifications, the thumbs-up emoji offers a concise and understandable way to convey agreement, approval, or acknowledgment. The thumbs-up emoji proves to be a succinct and efficient mode of communication in scenarios where seconds count, like in group chats or instant messaging.

c) Advantage of Universality:

The thumbs-up emoji is universal and does not discriminate based on language or cultural background, unlike words or phrases that could be interpreted differently. It is simple enough and universal enough to be understood and recognized by people from a wide range of backgrounds. Suppose if the contract is between parties residing in two distinct countries such forms of easy communications are the need of the time. The thumbs-up emoji promotes inclusivity and cross-cultural understanding as a unifying symbol of acceptance in a globalized world where people from diverse cultural backgrounds interact online.

d) Emojis as the “new words” : -

Words are key elements of English language. Once we come across a new word and we are not able to understand the meaning of it what one will do is to refer the dictionary. Emojis are the new words of modern times. So, developing a dictionary with providing meanings of the emojis would can seriously help the courts to interpret the meaning of the emoji which will reduce the probability of uncertainty. If a dictionary of the kind is developed the court can rely on the dictionary meaning

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<sup>23</sup>*South West Terminal* (n 1).

of the emojis and more emojis can be given a legal recognition.

## **VII. CONCLUSION**

Emojis are a vital component of our language in the age of digital communication because they are a concise and aesthetically pleasing way to express feelings and responses. Of all the emojis that are available, the thumbs up emoji has become a universal representation of acceptance and approval. This study examines the development of the thumbs-up emoji and makes the case for its acceptance as a legitimate symbol of communication in the modern era with a reference to the Canadian court's judgment in *South West Terminal Ltd. V. Achter Land & Cattle Ltd.*<sup>24</sup>

In this study I was trying to examine whether the recognition given to thumbs up as a valid acceptance is an evolving legal paradigm or a forestalling legal paradox. The original purpose of emojis was to enhance text-based communication with emotional nuance. From straightforward smiley faces, they have developed into a vast array of symbols that convey a variety of feelings and behaviours. The thumbs-up emoji is a powerful tool for communication in the digital age because it is a universally understood gesture that has transcended language barriers.

The emergence of social media, instant messaging, and online collaboration has brought about a significant change in the way we communicate. Emojis are a quick and effective way to convey feelings and reactions in this digital age when words may be scarce. Because of its positive meaning, the thumbs up emoji has emerged as a standard for acknowledging and accepting messages in a variety of settings.

The thumbs-up emoji is undoubtedly popular, but accepting it as a legitimate symbol of acceptance has drawbacks of its own. This study examines the possible negative effects of depending on this seemingly harmless gesture in various situations.

The ambiguity and lack of nuance that come with using the thumbs-up emoji as a legitimate form of approval is one of the main drawbacks. Emojis lack the nuance necessary to accurately convey complex emotions or in-depth feedback, in contrast to spoken or written communication. Using the thumbs-up emoji alone could result in miscommunication. Cultural differences can greatly affect how emojis, such as the thumbs-up symbol, are interpreted. In one culture, a gesture that is considered positive might be interpreted differently in another. Formal agreements and commitments often call for clear and concise communication in specific professional and legal

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<sup>24</sup> Ibid.

contexts. Using the thumbs-up emoji in these circumstances could result in miscommunications or arguments because of the symbol's simplicity, which might not be appropriate given the seriousness of the situation. Contractual agreements and legal documents require clarity, which emojis might not always offer. Relying solely on a thumbs-up emoji can be seen as dismissive or impersonal in circumstances where meaningful conversation is essential, which can impede the growth of real connections and understanding.

The thumbs-up emoji has definitely become a widely used symbol of approval in the digital sphere, but there are drawbacks to accepting it as a legitimate form of acceptance. The utilization of this emoji in various contexts can lead to ambiguity, cultural differences, professional ramifications, emotional disconnection, and a lack of accountability. Therefore, it is crucial to explore more explicit and alternative forms of communication. Recognizing the limitations of emojis and working toward more comprehensive and nuanced ways to express acceptance and approval are crucial as we navigate the digital landscape.

