

ETIQUETTES OF LEGAL COMMUNICATIONS¹

“COMMUNICATION IS THE KEY”, is a statement that we have often heard. Communicating properly during all conversations or correspondences whether formal or informal or otherwise will ensure that the message is properly received.

This article deals with nuances of legal communications. In court disputes, correspondences amongst the parties play a big role and sometimes higher than the legal pleadings filed during the proceedings. In view of this while issuing legal notice certain basic hygiene is required. Delivery of notice to the other party is very important in civil proceedings and sometimes it is seen that in case the party against whom relief is sought was not notified properly, the entire proceedings is set aside after decades of litigation.

NOTICE CLAUSE IN AGREEMENTS

Legal disputes arise out of breach of agreements and agreements define a notice clause. The notice clause should be well drafted in agreements and contain proper references to:

- address of both the parties;
- various modes of sending the notice like hand-delivery, by registered post A.D., by courier, by email or by WhatsApp;

A notice delivered through WhatsApp is valid and accepted in the court of law subject to proof of delivery of the said messages. This was more specifically set out by the Bombay High Court in the Judgement of ***SBI Cards & Payments Services Pvt. Ltd. Vs. Rohidas Jadhav & Ors²***, wherein the notice sent via WhatsApp to the respondent was duly served, delivered and opened, which in the Court’s opinion is considered to be sufficient for the purpose of service of notice under Order XXI Rule 22 of the Code of Civil Procedure, 1908. Therefore, the Hon’ble Justice G.S. Patel in an order dated June 11, 2018 held that, “*He was served by an authorized officer of the Claimant, Ms. Fatema Kalyanwala by sending a PDF and message to his mobile number as a WhatsApp message. For the purposes of service of Notice under Order XXI Rule 22, I*

¹ The article reflects the general work of the authors and the views expressed are personal. No reader should act on any statement contained herein without seeking detailed professional advice.

² Ordinary Original Civil Jurisdiction, Notice No. 1148 Of 2015

will accept this. I do so because the icon indicators clearly show that not only was the message and its attachment delivered to the Respondent's number but that both were opened."

- A provision that each party should inform any change to the addresses so that the notices can be properly sent or received.
- Period of notice.

MARKING WITHOUT PREJUDICE ON COMMUNICATIONS

Many a times we see that certain documents (agreement drafts/ notices/ letters) are marked "without Prejudice". This phrase is often not understood. To put it simply, the implication of marking a communication as **without prejudice** is that the recipient of such communication cannot use such communication against the sender. The contents written in such communication are independent and the same shall not be used against the writer of the communication. The privilege of "**without prejudice**" applied to the written and oral communication as well.

This privilege is recognized in Section 23 of Indian Evidence Act, 1872 wherein certain admissions are marked as irrelevant if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given. A communication marked as without prejudice comes under this category. This provides a protection to the Parties so that parties can freely discuss and explore a settlement in an unbiased manner.

Now the question arises is that when a Party should **not** use the said phrase. It is pertinent to note that writing "without prejudice" in every communication blindly will not help as that communication then cannot be used in evidence. Hence this phrase should be cautiously used wherever necessary.

"Without prejudice" should not be used where there is no settlement as it limits a party from producing such communication in the Court as evidence. The Black's Law Dictionary defines 'without prejudice' as, "Where an offer or admission is made 'without prejudice', or a motion is denied or a bill in equity dismissed 'without prejudice', it is meant as a declaration that no rights or privileges of the party concerned are to be considered as thereby waived or lost,

except in so far as may be expressly conceded or decided.”

MODE OF SENDING THE NOTICES

Proper delivery of a notice or communication. Any communication needs to be properly delivered and sent to the recipient, and a receipt obtained for such communication.

MODE	PRECAUTIONS
Registered Post Acknowledgement Due (RPAD)/ Speed Post A.D.	Keeping the acknowledgements/ tracking report proper and shall be preserved in a file.
Courier	The acknowledgement should be obtained and in case the courier portal issues a receipt, the same should be preserved appropriately.
Hand Delivery	Acknowledgement should be obtained.
Email	The email should be marked appropriately with delivery receipt and read receipt (if the software allows) and the same should be preserved.
WhatsApp	WhatsApp notice should be sent specifically to such person and the read notification should be enabled. A screenshot of such read and received notification should be preserved.

REFUSAL IS ALSO GOOD SERVICE

As delivery/ service of communication holds the essential place, it is also to be noted that any refusal to accept service is also considered as a good service. This was more particularly set out by the Bombay High Court in the Judgement of **The Commissioner of Sales Tax, Maharashtra State v/s Sunil Haribhau Pote**³, wherein the Court opined that, *“the presumption that when the addressee whose address is set out on the envelope had an occasion to notice and peruse the packet, meant for him, but he refuses to accept it, then, that is deemed to be served. The addressee in this case is correctly described. There is no dispute about his identity. Even his address is correct. It is at that address the packet is carried and by the concerned postal authority. The duly authorized person carrying the packet reached the*

³ SALES TAX REFERENCE NO.53 OF 2009 IN REFERENCE APPLICATION NO.35 OF 2004

address. On noticing the addressee, he serves it, but the addressee after having perused the packet refused to accept it. It is in these circumstances, the postal remark that the concerned person has refused to accept; hence, returned to the sender denotes good and valid service.”

CONCLUSION

Considering the etiquettes mentioned above, it is pertinent to note the following aspects to have an effective communication:

- i. legal communications should be properly and carefully drafted and sent.
- ii. specific caution should be taken while communicating through electronic modes such as using features of high importance, confidential data, data sensitivity etc.
- iii. For the purposes of tracking the delivery of communication sent through R.P.A.D. or Speed Post A.D., the facility of India Post website i.e. www.indiapost.gov.in can be availed.

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