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LAW COMMISSION
OF INDIA

EIGHTH REPORT
(SALE OF GOODS ACT, 1930)

GOVERNMENT OF INDIA ● MINISTRY OF LAW

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CHAIRMAN,
LAW COMMISSION,
NEW DELHI,
March 1, 1958.

Shri A. K. Sen,
Minister of Law,
New Delhi.

My dear Minister,

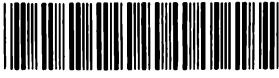
I have great pleasure in forwarding herewith the Eighth Report of the Commission on the Sale of Goods Act.

2. At the first meeting of the Law Commission held on the 17th September, 1955, the Commission decided to take up the revision of the Sale of Goods Act and entrusted the task to a sub-committee consisting of Shri G. S. Pathak and Shri G. N. Joshi. The consideration of the subject was initiated by Shri Joshi who in consultation with Shri Pathak prepared a Draft Report which was circulated to all Members of the Commission and their views invited thereon. The views together with the Draft Report were discussed at a meeting of the Statute Revision Section of the Commission held on the 7th December, 1957. Important suggestions made by Members at this meeting were accepted and it was left to the Chairman to finally settle the Report in the light of the discussion.

3. The Commission wishes to acknowledge the services rendered by its joint Secretary, Shri D. Basu, in the preparation of this Report.

Yours sincerely,
M. C. SETALVAD.

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CONTENTS

PARAGRAPHS		PAGES
1—2	History of the Legislation	I
3	Scope of the proposed revision	I
4—29	Examination of the provisions of the Act indicating the changes required	2—10

APPENDIX

Proposals as shown in the form of amendments	II
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REPORT ON THE SALE OF GOODS ACT, 1930

1. Until the first of July, 1930, the law of sale of goods in India was governed by Chapter VII (sections 76 to 123) of the Indian Contract Act, 1872. The Indian Contract Act itself being based on the English Common Law, the law relating to the sale of goods in India followed the principles of the English Common Law, including the Law Merchant. The English law of sale of goods was codified in 1893 by the enactment of the Sale of Goods Act which embodied the basic Common Law principles after adapting them to meet the needs of a growing society. History of
the Legisla-
tion.

2. In India, by 1920 it was found that the law relating to the sale of goods contained in Chapter VII of the Indian Contract Act was not adequate to meet the needs of the community and that some of the provisions of this branch of the law required alteration in the light of new developments in mercantile transactions. The accretions to the law made by judicial decisions in England which were embodied in the Sale of Goods Act of 1893 were not to be found in the analogous provisions contained in the Indian Contract Act. It was also considered necessary to embody the law relating to sale of goods in a separate enactment. Hence, in 1926-27 an exhaustive examination of the case-law bearing on the portions of the Contract Act dealing with the sale of goods was made by the Legislative Department. As a result of this examination, a draft Bill was prepared in 1928. In 1929 a Special Committee consisting of eminent lawyers examined the draft Bill and the draft Bill, as revised by this Committee and, subsequently, by a Select Committee of the Legislature, was enacted as the Indian Sale of Goods Act, 1930 (III of 1930), section 65 of which repealed Chapter VII of the Indian Contract Act, 1872. The Act, as passed, was mainly based on the provisions of the English Act of 1893, modified in the light of subsequent judicial decisions in England and India.

3. Having carefully examined the provisions of the Act in the light of judicial decisions in India since 1930, the development of the law relating to the sale of goods in other countries, the suggestions made by various commercial bodies and individuals as well as the requirements of the modern welfare State, we have reached the conclusion that the provisions of the Act do not require any radical change. Scope of the
proposed
revision.

Examination of the provisions of the Act, indicating the changes required.

4. We now proceed to an examination of the sections of the Act *seriatim* in order to indicate the changes which we consider necessary. The more important suggestions received from various bodies and persons are referred to in their appropriate places, and our reasons for accepting or rejecting them have been stated.

Sec. 1.

5. In conformity with our recommendation regarding other Acts, we recommended the deletion of the word 'Indian' from the title of the Act [sub-section (1) of section 1.].

Sec. 2.

6. Suggestions have been received in regard to some of the definitions contained in section 2.

With reference to the definition of "documents of title to goods" in sub-section (4), it has been pointed out that there is a conflict of decisions with regard to the effect of endorsement on a railway receipt. One view is that the endorsement of a railway receipt, which is a mercantile document of title, invests the endorsee with a right to maintain a suit on the basis thereof. This view has been taken by the Punjab¹ and Allahabad² High Courts and a Division Bench of the Bombay High Court.³

On the other hand, there is a decision of a Single Judge of the Bombay High Court⁴ wherein he has expressed the opinion that though a railway receipt is a document of title to goods, mere endorsement of the receipt by itself is not enough to constitute the endorsee either a *bona fide* pledgee for value or a *bona fide* transferee for value of the goods represented by the railway receipt.

This can hardly be said to be a conflict of judicial opinion which would justify a clarification of the law, for the view taken by the Single Judge is contrary to an earlier decision of a Division Bench of that High Court, and the decisions of some other High Courts as well.

7. It has been suggested that the definition of "goods" in clause (7) of section 2 should include electricity, gas and water.

Pollock and Mulla in their Commentary on the Indian Sale of Goods Act⁵, have expressed the view that it is

¹ *Jalan & Sons v. G.G.-in-Council*, A.I.R., 1949 East Punjab 190.

² *Sheo Prasad v. Dominion of India*, A.I.R. 1954 All. 747.

³ *Dolatram Dwardadas v. B.B. & C.I. Railway Co.*, A.I.R. 1914 Bombay 178.

⁴ *Shamji Bhanji & Co. v. North Western Railway*, A.I.R. 1947 Bom. 169.

⁵ 2nd Edition, p. 13.

doubtful whether the Act is applicable to such things as gas, water and electricity. The Calcutta High Court shares this doubt at least as regards electricity.

In England also, the position is uncertain. In (1909) 2 K.B. 604,² the case was argued on the assumption that electrical energy was to be considered "goods" for the purposes of the law relating to sale of goods, but it was expressly stated that the point was not being decided and might have to be considered later. As regards water, it was held in 11 Q.B.D. 21³ that water supplied by a water company to a consumer and standing in his pipes, may be the subject of a larceny at common law. According to the decision in (1829) 4 C. & P. 87⁴, an agreement for the supply of water by a water company comes within the exemption of 'contract for sale of goods' under the Stamp Act. Gas has been held to be goods by the Privy Council.⁵

However, in the United States of America, it has been held that a contract to supply power is a contract of sale.⁶ Thus, electricity has been held to be personal property, capable of sale.⁶

In India, according to section 39 of the Indian Electricity Act, electrical energy can be the subject-matter of theft. Article 287 of the Constitution which prohibits a State Legislature from imposing a tax on 'the consumption or sale of electricity' shows that there can be a sale of electricity.

8. In view of the fact that contracts with regard to the supply of electrical energy and water are common, we think that the matter should be placed beyond doubt and an amendment should be made in section 2(7) so as to include power in the shape of electrical energy, water and gas within the definition of "goods".

9. The Stock Exchange, Bombay, has suggested that "stocks and shares" which are included in the definition of "goods" should be regarded as actionable claims instead of "goods" as at present. We are unable to accept this suggestion, as section 82 of the Companies Act, 1956 has

¹ *Rash Behari v. Emperor*, A.I.R. 1936 Cal. 753 at p. 766.

² *County of Durham Electrical Power Distribution Co. v. Commissioners of Inland Revenue*, (1909) 2 K.B. 604.

³ *Ferens v. O' Brien*, (1883) 11 Q.B.D. 21.

⁴ *West Middlesex Water Works Co. v. Suerkrop*, (1829) 4 C. & P. 87.

⁵ *Erie County Natural Gas & Fuel Co. Ltd., v. Carroll & anr.*, (1911) A.C. 105.

Volume XLVI, American Jurisprudence, p. 216.

treated "shares or other interest of a member in a company" as movable property and the existing definition of "goods" is in accord with that section. We have carefully examined the reasons given by the Stock Exchange but we do not think that they justify the proposed change.

10. It has been suggested that in the definition of "property" in clause (11) of section 2, the words "special property" should be substituted by the words "special interest", on the ground that there is only one kind of property, *viz.*, general property, and that special property is merely a misnomer for special interest in goods. But the use of the expression 'special property' is so well-established that we think it undesirable to alter the definition.

Sec. 3.

11. No change is necessary in section 3.

Sec. 4.

12. There is no provision in the Act regulating a transaction of hire-purchase, which is also a method of selling goods. It is a transaction of hire at the inception with an option to purchase.

In the English Sale of Goods Act of 1893, there was no provision for such a transaction. Hence provision was made by a separate Act, namely, the Hire-Purchase Act of 1938 (1 & 2 Geo. 6, c. 53), with a view to affording protection to the buyer of the goods on hire-purchase, or on similar terms, against certain abuses which had become apparent in the practice of hire-purchase trading. This Act has been supplemented by the Hire-Purchase Act, 1954 (2 & 3 Eliz. 2, c. 51).

In our opinion, it is desirable that a separate Act on the lines of the English Hire-Purchase Acts and other similar laws should be enacted in India to regulate hire-purchase transactions. The Commission will make its recommendations in this connection in a separate report.

Sec. 5.

13. It has been suggested that a provision should be made for the passing of the property in an undivided share of a large mass of fungible goods and that fungible goods should be defined as meaning "goods of which any unit or its nature are by mercantile usage treated as equivalent to any other unit."

This suggestion is inspired by a similar provision in section 76(1) of the American Uniform Sales Act,—approved by the National Conference of Commissioners on Uniform State Laws, 1906. There is no such provision in the English Sale of Goods Act.

Having regard to the provisions of our Act which deal with transactions in such goods, such as section 22, the difficulty of framing an adequate definition of such goods and having regard more particularly to the fact that no difficulties have been felt by the absence of such a definition, we are of the opinion that it is not necessary to accept the suggestion.

14. A suggestion has been made by the Bihar Lawyers' Association that it should be provided that contracts for the sale of goods can lawfully be made by writing on a duly stamped paper. It is not quite clear whether this requirement of a stamped paper is intended to apply only to an "agreement to 'sell'" or to a 'sale' also. In any case we cannot accept this suggestion. It would impose an obligation to reduce to writing every transaction of sale and we do not think that any reasons exist for imposing so drastic an obligation. The existing practice would not seem to have occasioned any difficulties; on the contrary, it seems to have proved useful and facilitated the transaction of business. Having regard to the volume and the frequency of transactions of sale of goods, we do not consider it advisable to impose so rigorous a condition.

15. No alternation is considered necessary in sections 6 Secs. 6 to 12. to 12.

16. Section 13(1) deals with voluntary waiver of a con- Sec. 13. dition by the buyer; whereas section 13(2) deals with compulsory waiver. A difficulty arises where the contract is for the sale of specific goods, the property in which has passed to the buyer. According to section 13(2), in such a case the buyer is compelled to treat the condition as a warranty. According to *Pollock and Mulla*¹, the language of section 13(2) is somewhat obscure:

"The language, however, is not very happy and logically comes very near to being a contradiction in terms; for if the property passes despite the non-fulfilment of the stipulations, the stipulations are not conditions at all, whereas if the stipulations are conditions, the property does not pass if they are not fulfilled, unless the buyer waives their performance by accepting the goods or otherwise."

According to the learned authors¹, section 13(2) is perhaps intended to express and may possibly be considered as

¹ Indian Sale of Goods Act, 2nd Ed., pp. 62-63.

giving effect to the rule of common law as stated by Blackburn, J.:

“Generally speaking, when the contract is as to any goods, such a clause is a condition going to the essence of the contract; but when the contract is as to specific goods, the clause is only collateral to the contract, and is the subject of a cross action or matter in reduction of damages—*Heyworth v. Hutchinson*, (1867) L.R. 2 Q.B. 447, 451.”

In *Lal Chand v. Baij Nath*¹, Amir Ali, J., commenting on this sub-section, stated:

“I concede, therefore, that it is highly desirable that the sub-section should be couched in less equivocal language. For my own part, having regard to the large volume of modern business done upon sale by sample, I would be glad to see the sub-section omitted. That, however, is a matter for the legislature.”

Two courses have been suggested to meet this difficulty.

(a) To take away the sale of specific goods by sample from the operation of section 13(2) to avoid the conflict with section 17 which provides for implied conditions in the case of contracts for sale by sample. Property in specific goods in a deliverable state passes to the buyer when the contract is made (section 20). In modern times, there is a large volume of sale of specific goods by sample. Section 17(2)(a) gives rise to an implied condition that the bulk should correspond with the sample in quality. However, in a case where the property has passed to the buyer already when the contract is made (Section 20) and the property is delivered subsequently but it does not correspond with the sample, the implied condition raised by section 17(2)(a) stands frustrated as the buyer will be compelled to treat the implied condition as a warranty. In *G. Mackenzie and Co. Ltd v. Nagendra Nath*³, it was held that section 13 is not limited to a breach of an express condition but extends also to a breach of an implied condition. The result is that the buyer will have no right to reject the goods and will have to fall back

¹ I.L.R. (1936) 63 Cal. p. 736, at p. 745.

² *Vide* Pollock & Mulla, Indian Sale of Goods Act, 2nd Ed., p.62.

³ I.L.R. (1946) 1 Cal. 225.

upon his remedies under section 59 for breach of warranty only. *Pollock and Mulla*¹ point out that there may be cases of sale of specific goods by description also if the buyer relies on their description.

In view of these considerations it has been suggested that in order to give relief to such buyers, the following sub-section may be inserted as sub-section (4) to section 13:

“Sub-section (4):—Nothing in sub-section (2) shall affect the case of sale of specific goods by sample or description.”

(b) In the alternative, it is suggested that section 13(2) should be deleted.

In our opinion, the better course would be to omit from section 13(2) the words “or where the contract is for specific goods the property in which has passed to the buyer”.

17. No alteration is necessary in sections 14-15.

Secs. 14-15.

18. It was pointed out by the Deputy Director of the Indian Standards Institution that though under sections 5 and 6 of the Indian Standards Institution (Certification Marks) Act of 1952, persons are prohibited from making improper use of standard marks and of certain names, there is no provision in the law to enable the buyer to repudiate a contract if the goods sold on the basis that they are in accordance with the standards laid down by Government do not conform to the Government standards. It was, therefore, suggested that a provision should be inserted in section 16 of the Sale of Goods Act that when Government lays down any compulsory standard for any products, the products sold should conform to that standard.

Sec. 16.

We had the advantage of a discussion with the Deputy Director on this subject.

It appears that the Act itself contains no provision prescribing any particular standard of quality for any of the standard marks envisaged by the Act. The Act only penalises the use of standard marks otherwise than in accordance with its provisions.

There are, of course, some other Acts which lay down or provide for the making of rules to prescribe standards

¹ Indian Sale of Goods Act, 2nd Ed., p. 62.

of quality, such as the Agricultural Produce (Grading and Marking) Act, 1937, and the Drugs Act, 1940. The Drugs Act prohibits the sale of goods which are not of the standard quality. It is, however, not possible from such penal provisions to imply the existence of a condition or warranty regarding the quality of the goods, the breach of which may entitle the buyer to civil consequences under the Sale of Goods Act.

What is necessary to achieve the object in view is a provision which will imply in such cases a condition or warranty regarding the quality of the goods, to the effect that the goods sold are of the quality which the standard or other mark carries with it. In the absence of an express or implied condition or warranty regarding the quality of the goods, the purchaser would not be able to claim a right to repudiate the contract or claim damages for breach of the warranty. He may be liable for the penalties provided under the Acts. The enactment of a statutory condition of warranty may affect a large class of merchants and middlemen. It is a matter of policy to be decided by the Union and the State Governments whether they should undertake such legislation. In the circumstances we do not propose to make any recommendation on the question raised by the Deputy Director.

Secs. 17-24.

19. No alteration is necessary in sections 17 to 24.

Sec. 25.

20. In sub-sections (2) and (3) of section 25, we propose to include the case of railway receipts. Goods are frequently consigned by rail with the railway receipts made out in the name of the consigner or his agent or bank with the clear intention of reserving a right of disposal to the consignor and there is no reason why in these cases the consignor by rail should not have the same rights as the consignor by ship.

Sec. 26.

21. No change is necessary in section 26.

Sec. 27.

22. It has been suggested by the Government of Bihar that the words "good faith" in section 27 should be given the same meaning as in section 52 of the Indian Penal Code. The words "good faith" are not defined in the Act and the definition in the General Clauses Act is applicable. We have carefully examined this suggestion but are unable to accept it. We do not feel that a definition which is appropriate to the purposes of the Criminal Law should be imported into the Civil Law, the considerations applicable to the two systems being very different.

23. No change is necessary in sections 28 to 53.

Secs. 28-53.

24. It has been suggested that the following be inserted as sub-section (5) in section 54:

“The seller is bound to exercise reasonable care and judgment in making a resale and subject to this requirement he may make a resale either by public or private sale.”

This suggestion appears to be based on section 60(5) of the Uniform Sales Act of the United States referred to earlier. The principle contained in this suggested sub-section has already been applied by Indian decisions and is in our view implicit in section 54.

25. It has also been suggested that the phrase “perishable goods” should be defined. In our opinion, it is difficult to define this phrase with precision. The phrase is well understood in the commercial world and judicial decisions and text books have made its meaning clear.

26. No alteration is considered necessary in sections 55 to 64.

Secs. 55-64.

27. Section 64A was inserted by Act XLI of 1940 to replace s. 10 of the Indian Tariff Act, 1934. That provision had been enacted on the lines of s. 10 of the Finance Act, 1901 (1 Edw. 7, c7), which referred only to customs and excise duty. Since then, the incidence of a purchase tax has also been covered in England by section 24 of the Finance Act, 1948 (11 & 12 Geo. 6, c. 49). On principle, there is no reason why there should not be a similar provision to deal with the case of the imposition or change in the rate of a sale or purchase tax subsequent to the making of a contract for the sale of goods.

Sec. 64A.

We have, accordingly, proposed the insertion of a new section (s. 64B of the App.) relating to sales tax, on the lines of section 64A. We also think it desirable to make the provisions of s. 64A and s. 64B subject to an agreement to the contrary. That is the position in England. This can be brought about by the addition of the words “unless otherwise agreed” at the commencement of s. 64A.

28. It was suggested that the Indian Bills of Lading Act, 1856 (Act IX of 1856) should be consolidated with the Sale of Goods Act. In particular, it was suggested that section 2 of the Bills of Lading Act should be enacted as sub-section (8) to section 51 of this Act which deals

with duration of transit, and that sections 1 and 3 of the Bills of Lading Act should be inserted in this Act as sections 64B and 64C in order to give effect to the right of stoppage in transit or claims for freight.

In our opinion, the ambit of the Bills of Lading Act is wider than that of the Sale of Goods Act and embodying the provisions of the Bills of Lading Act in the Sale of Goods Act, would result in disturbing the frame, the structure and the unity of the Sale of Goods Act. In our view, the proper place for the Bills of Lading Act would be a comprehensive enactment dealing with the Law of Carriers, in all its aspects. The framing of a comprehensive law dealing with Carriers is under our consideration.

29. In order to give a concrete shape to our proposals, we have, in the Appendix, put them in the shape of draft amendments to the relevant sections of the Act. The Appendix is not, however, to be treated as a draft Bill.

M. C. SETALVAD.

(Chairman)

M. C. CHAGLA.

K. N. WANCHOO.

P. SATYANARAYANA RAO.

N. C. SEN GUPTA.

V. K. T. CHARI.

D. NARASA RAJU.

S. M. SIKRI.

G. S. PATHAK.

G. N. JOSHI.

N. A. PALKHIVALA.

(Members)

K. SRINIVASAN,
DURGA DAS BASU,

Joint Secretaries.

NEW DELHI;
The 1st March, 1958.

APPENDIX

Proposals as shown in the form of amendments.

[*This is not a draft Bill*]

In sub-section (1) of section 1 of the Indian Sale of Goods Act, 1930, (hereinafter referred to as the "principal Act"), omit the word "Indian".

1. Amend-
ment of sec-
tion 1.
(3 of 1930)

In clause (7) of section 2 of the principal Act, after the words "stock and shares": insert the words "*electricity, water and gas*".

2. Amend-
ment of sec-
tion 2.

In sub-section (2) of section 13 of the principal Act, omit the words "or where the contract is for specific goods the property in which has passed to the buyer,".

3. Amend-
ment of sec-
tion 13.

In section 25 of the principal Act—

(a) in sub-section (2), for the words "where goods are shipped and by the bill of lading" substitute the words "*where goods are shipped or sent by railway and by the bill of lading or railway receipt*";

4. Amend-
ment of sec-
tion 25.

(b) in sub-section (3), for the words "bill of lading" wherever they occur, substitute the words "*bill of lading or railway receipt*".

In section 64-A of the principal Act, add the words "unless otherwise agreed" at the commencement of the section.

5. Amend-
ment of sec-
tion 64-A.

After section 64A of the principal Act, insert the following section:

6. Insertion
of new sec-
tion 64-B.

"Section 64B—Application of section 64A to sale or purchase tax.

The provisions of section 64A shall apply in relation to the imposition, increase, decrease or remission of any tax on the sale or purchase of goods chargeable from the seller as they apply in relation to the imposition, increase, decrease or remission of any duty of customs or excise on goods".



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