

---

## *Tracing The History Of The Sale Of Goods Act, 1930*

---

*Suryansh Singh, National Law Institute University, Bhopal.\**

### *Abstract*

Chapter 7 of the Indian Contract Act 1872 was used to oversee the sale of products in India until July 1, 1930. The Indian Contract Act is based on the English common law, and the Indian law dealing to the sale of goods followed the common law principles, including the law merchant, as codified in 1893. India by 1920 discovered that the Indian contract act 1872's chapter 7 provisions dealing to goods sales were not appropriate, and that some sections of this branch needed to be reworked to keep pace with the changing nature of mercantile transactions. The sale of goods act of 1893, which incorporated judicial judgements in England, contained no accretions to English law on sales of goods. In 1926-27, the legislative department conducted a thorough review of the Indian contract act's case law dealing to the sale of goods and concluded that a new enactment was needed to deal with these transactions. By 1928, a bill draught had been created. Chapter 7 of the 1872 Indian Contract Legislation was repealed by the Indian Sale of Goods act in 1930 after it had been evaluated by a select committee of distinguished attorneys and jurists in 1929. Lawmakers in India and England were inspired by the British Sale of Goods Act, which was reworked by the courts in the two countries. In this paper I have presented a comprehensive history with reference to the History of the Sale of goods act. And carried out research on individual properties of the act in an attempt to decode the colonial influence and demystify the evolution of the act.

---

\* Second year, Law student pursuing BA. LLB. (Hons.) from National Law Institute University, Bhopal.

## I. Review Of Literature

- ***The Sale Of Goods Act by Pollock and Mulla, 11<sup>th</sup> Edition:*** This commentary provides in depth understanding of each and every section of the sale of goods act with the relevant case laws for the same.
- ***The Indian Sale Of Goods Act, 1930:*** this is the authoritative text of the act drafted by the legislature.
- ***8<sup>th</sup> Law Commission Report:*** The 8<sup>th</sup> Law Commission Report talks about the Sale of Goods act and undertakes an exhaustive examination of the same.

## II. Statement Of Problem : How has the Sale of Goods act evolved with time?

## III. Objectives Of The Study

- To trace the evolution of the Sale Of Goods Act.
- To understand the history of the Sale Of Goods Act.
- To understand the nature and scope of the act.
- To understand the principles of construction of the act.

## IV. Research Questions

- What is the origin of the legislation regarding sale of goods in India?
- Why were the provisions of the Indian contract act repealed due to the new legislation?
- What are the principles of construction of this legislation?

## **V. Hypothesis**

This project will strive to achieve and comprehend a relative gap in literature with regards to tracing the history of the sale of goods act.

## **VI. Method Of Study**

The belief analysis approach was used as the method of study. A brief investigation means that a legal proposition is investigated using the approach of reviewing existing legislative propositions and cases and applying reasoning force.

## **VII. History Of The Act**

Until the first day of July 1930, the sale of commodities in India was governed by Chapter 7 of the Indian Contract Act 1872, which was enacted in 1872. With its origins in English common law, the Indian Contract Act and the Indian law relating to the sale of goods both followed the principles of common law, including the law of merchant. In 1893, the English law of sale of goods was codified, placing emphasis on common law principles and tailoring it to the needs of a growing society. By 1920, it had been discovered in India that the provisions relating to the sale of goods contained in Chapter 7 of the Indian Contract Act 1872 were insufficient to meet the needs of the community, and that some provisions of this branch were in urgent need of revision in light of new developments in mercantile transactions. Despite the fact that the sale of goods act 1893 had many of the accretions to the law of sale of goods resulting from judicial decisions in England, the Indian contract statute did not contain any of these accretions. It was also determined that a separate enactment be enacted to deal with transactions involving the sale of commodities, and as a result, the legislative department conducted an extensive analysis of the case law pertaining to the sale of goods in the Indian contract statute between 1926 and 1927.

By 1928, a draught law had been produced. When the draught bill was considered by a select committee of distinguished lawyers and jurists in 1929, the legislature took it under consideration and passed The Indian Sale of Goods Act, 1930, which repealed Chapter 7 of the Indian Contract Act, 1872. Most of the provisions of this legislation were derived from the British Sale of Goods Act, with certain modifications made in light of future legal rulings in England and India.

76 to 123 of the Indian Contract Act, 1872, are repealed and replaced by this Act; they were adequate for their time, but by 1930, it was evident that they needed to be amended in order to keep pace with the development of modern trade. Based on and substantially reproducing the English Sale of Goods Act of 1893, which was itself a successful codification of English common law, the Act is tailored to the specific conditions of India, which necessitate provisions that differ from those currently in force in England in some respects. In theory, and in the majority of details, the laws governing the selling of goods in the two countries are currently identical. It may be useful to refer to English authorities on the interpretation of the various provisions, even though they are not officially binding in India.”<sup>1</sup>

It was the Sale of Goods Act 1979 that brought the law relating to the sale of goods in the United Kingdom together. It came into force on 1 January 1980, replacing the Sale of Goods Act 1893 and parts of certain other enactments, and incorporating changes that had already been made to those Acts through amendments at the time of their passage. When compared to the Act of 1893, the purpose of this act is to bring together all relevant legislation into one comprehensive body of law, therefore abolishing previous statutes and consolidating the existing statutory law in one place. See Section 3 of the Act of 1979, which lists the repealed provisions.) Like its predecessor, the Sale of Products Act of 1893, the Sale of Goods Act of 1979 applies to contracts for the sale of all sorts of goods and, in general, to every type of contract, with one or two exceptions (eg: section 57 dealing with sales by auction).

---

<sup>1</sup> Consolidated Coffee Ltd v Coffee Bangalore.

## VIII. Nature And Scope Of The Act

Its provisions are set against the backdrop of general contract law and personal property law, and it establishes a set of principles of law that are unique to the sale of goods, among other things. The provisions of the Contract Act, which have not been repealed by this Act, continue to apply to contracts for the sale of products (section 3), and any rule of law that is not in conflict with this Act is preserved (section 4). [Section 66(e)] of the Code of Civil Procedure.

Section 62 of the Act upholds, in principle, the traditional independence of contracting parties to negotiate the terms of their own agreements with one another. In addition to this basic clause, specific provisions of the agreement affirm the parties' ability to change or negate the effect of the agreement. However, in some cases, this freedom is severely curtailed or even prohibited altogether. As a result, Section 18 states that no property can be transferred in things that have not been determined. Section 6(3) states that a supposed present sale of future goods acts only as an agreement to sell if the products are actually delivered in the future. In accordance with Sections 27 to 30, no agreement between the parties can abrogate or restrict the rights of third parties to obtain good title under the Act. The rights of parties who fall under the purview of sections 27 to 30 are clearly defined, and the parties are prohibited from including any provisions in a contract that may give rise to a dispute between the parties<sup>2</sup>. Section 27 of the Uniform Commercial Code defines the circumstances under which a buyer obtains good title from a seller who is not the owner of the goods. If, as a result of his actions, he is prevented from challenging the seller's authority to sell, the marginal note reads "Sale by person, not the owner." Section 28 of the Uniform Commercial Code states that a "selling by one of joint owners" protects the buyer provided the buyer purchases in good faith and without being informed that the seller does not have the authorization to sell. Section 29 is a clause that demonstrates the comprehensive scope of the law. A person who obtains possession of goods pursuant to a voidable contract under section 19 or 19A of the Indian Contract Act 1872 may be able to acquire good title to the goods if the buyer acts in good faith during the course of the transaction.

---

<sup>2</sup> Section 7 & 8, nature of which raise doubt whether they may be negated by agreement. However, Section 62 is comprehensive enough in its terms and would save a CIF contract (Chalmers, p 31). See also some provisions of section 64 regarding auction sale which are probably mandatory.

Specifically, Section 30(1) protects the interests of a person who purchases goods from a seller who had promised to sell and who is in possession of the goods without having been informed of the prior sale and acting in good faith to purchase the goods. Section 30(2) protects a person's possession of goods purchased in good faith and without knowledge of any encumbrance or interest in respect of those items.

There are no criminal provisions in the Act, and there are no unique rules of evidence or procedure established by the Act. Different statutes and regulations provide for some sort of criminal punishment for violating the duties owed to consumers as a measure of consumer protection. The parties' tortious liability, if any, to each other and to third parties is unaffected by the Act, with the exception of questions of ownership of and right to possession of items that are the subject of a contract of sale, which are dealt with by the Act.

## IX. Principles Of Construction

Lord Herschell noted in *Bank of England v Vagliano Brothers* that the English Act of 1893 on which this Act is based was a codifying Act, and that the rules for construing a codifying Act were as follows:<sup>3</sup>

*“The proper course is in the first instance to examine the language of the statute and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment would bear an interpretation in conformity with this view I am of course far from asserting that resort may never be had to the previous state of law for the purpose of aiding in construction of the provisions of the code.*

---

<sup>3</sup> Bank of England v Vagliano Brothers

*If, for example a provision be of doubtful import then this resort would be perfectly legitimate. Or, again if in a code of the law of negotiable instruments, words be found which have previously acquired a technical meaning, or been used in a sense other than their ordinary one, in relation to such instruments, the same interpretation might well be but upon them in the code. I give 9.) these as examples merely; they, of course, do not exhaust the category. What, however, I am, venturing to insist upon is that the first step taken should be to interpret the language of the he statute, and that an appeal to earlier decisions can only be justified on some special ground.”*

In the same case, Lord Halsbury LC made the following observation:

*“I am wholly unable to adopt the view that where a statute is expressly said to codify the law, you are at liberty to go outside the code so created, because before the existence of that code another law prevailed.”*

The Supreme Court of India, in the case of Kehar Singh, laid down the law with regard to the interpretation of statutes, holding that:<sup>4</sup>

*“...In the past, the Judges and lawyers spoke of a golden rule by which statutes were to be interpreted according to grammatical and ordinary sense of the word. They took the grammatical or literal meaning unmindful of the consequences. Even if such a meaning unmindful of the consequences. Even if such a meaning gave rise to unjust results which the legislature never intended, the grammatical meaning alone was kept to prevail. They said that it would be for the legislature to amend the Act and not for the court to intervene by its innovation. During the last several years, the golden rule has been given a go-by. We now look for the intention of the legislature or the purpose of the statute. First, we examine the words of the statute. If the words are precise and cover the situation in hand, we do not go further. We expound those words in the natural and ordinary sense of the words.*

---

<sup>4</sup> Kehar Singh v State, AUR 1983 SC 1889 : 1988 SCR Supl (2) 24.

*But, if the words are ambiguous, uncertain or any doubt arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We then examine every word, every section and every provision. We examine an Act as a whole. We examine the necessity which gave rise to the Act. We look at the whole situation and, not just one-to-one relation. We will not consider any provision out of the framework of the statute. We will not view the provision as abstract principles separated from the motive force behind. We will consider the provisions in the circumstances to which they owe the But because it was passed with the intent of "defining and amending" the law relating to the sale of goods, the provisions of Section 3 show that it does not do so in its entirety, as would be expected."*

*"As a result of Section 65 of the Act, chapter VII of the Contract Act, which had previously governed the law of sales of goods, is no longer in effect. It has been stated that it is dangerous to refer to provisions that have been repealed in order to determine what the legislature intended to enact in their place and stead; and if the words of the new statute are capable of being interpreted without the assistance of foreign legislation, it is not appropriate to examine statutes that are no longer in effect in order to impose on those words a meaning that, taken by themselves, they do not bear. And a decision by a court in accordance with an earlier statute is not binding on a court in accordance with a later statute. eir origin. We will consider the provisions to ensure coherence and consistence within the law"*

Section 3 of the Act indicates that it does not attempt to cover all aspects of the law relating to the selling of commodities. Section 65 of the Act repeals Chapter VII of the Contract Act, which formerly covered the law of goods sales. It's been said that it's risky to use provisions that are no longer in effect to determine what the legislature intended to enact in their place and stead; and if the new statute's words can be understood without the aid of previous legislation, it's not appropriate to look back at previous legislation to impose a meaning on those words that they do

not bear on their own.<sup>5</sup> Furthermore, a court's ruling under an earlier act does not bind it when construing a later statute.<sup>6</sup>

It is possible to take into account some abolished legislation's provisions, together with authorised bodies' interpretations of them. It is reasonable to believe that the legislature has adopted an official interpretation that has been utilised regularly and without change. When lawmakers discuss the same subject over the course of a legislative session, they are generally thought to be using the same language in the same context. A change in terminology may indicate a movement in intent, but this is not always the case. It's reasonable to assume that an expansion was intended by the legislature when, on the other hand, abolished provisions were interpreted narrowly and then expanded by succeeding legislation. When the repealing Act's wording appears to be narrower than the repealed Act's, it may be inferred that the change was done on purpose. This is only one of several factors that must be taken into consideration: ultimately, the words of the existing Act are all that must be taken into consideration as well.

## **X. Traditional Action Patterns From The English Past**

A codification of English common law, known as the English Act, has been described as a very successful codification. Old-style proceedings in England resulted in a great deal of precedent for today's laws, such as trespass and prevention of repossession, in cases in which the plaintiff had been displaced from his rightful place of residence. This precedent helped to shape English law on sales of goods for centuries to come (detinue). A codification of English common law, known as the English Act, has been described as a very successful codification. Old-style proceedings in England resulted in a great deal of precedent for today's laws, such as trespass and prevention of repossession, in cases in which the plaintiff had been displaced from his rightful place of residence. This precedent helped to shape English law on sales of goods for centuries to come (detinue).

---

<sup>5</sup> *Braford v Clarke*, (1883) 8 AC 354, p 380

<sup>6</sup> *Exp Blaiberg, Re Toomer*, (1883) 23 Ch D 254, p Ppa Jessel MR, "I think the Proper course is to read the act and ascertain its meaning not to trouble ourselves with the decisions of the former act.

The following are some of the most significant occurrences from India's traditional styles of action that should be mentioned in order to explain this concept: Similar to the Indian system, the plaintiff is not obliged to specify which of the ancient modes of action he intends to pursue; rather, he must simply produce sufficient proof to establish that he has a legitimate claim.

Trespassing requires that the plaintiff be in possession of the property at the time of the alleged trespass, and the right to sue for trover or detinue requires that the plaintiff have an instant right to possession at the time of the alleged trespassing. It is possible for many rights to exist at the same moment and for them to be held by separate individuals.

An owner who has lost possession of his or her property cannot sue in trespass, but a person who has the right to retake possession at his or her discretion, such as a bailor at his or her discretion or on the basis of a condition that can be determined at his or her discretion, may do so in some circumstances.

In many circumstances, a bailee of the owner's goods can bring any of the aforementioned forms of actions against a wrongdoer if the facts support it. This is due to the fact that he has legal custody of the items and is entitled to possession of the commodities against everyone save the bailor, and in many situations against him as well.

An owner who was out of possession and not entitled to immediate possession could only bring a special action on the case under the old forms; the "action on the case" was a form of action developed in the 14th century by the courts of common law in an attempt to provide a remedy for breaches of contract that were not covered by the old forms of action.<sup>7</sup>

---

<sup>7</sup> Cheshire & Fifoot, *Law of Contract*, p 8 et seq.

## XI. Conflict Of Laws

In most cases, the law of the nation where a person's personal property is located rules dispositions of personal property in accordance with the rule *loci regit actum* (the location governs the act). Any transfer of personal property valid under that law is binding worldwide, whether it is made by sale or otherwise.<sup>8</sup> a gift,<sup>9</sup> or a pledge.<sup>10</sup> In general, issues concerning the validity or interpretation of a contract are governed by the law of the country in which the contract is made; however, when a contract is made in one country but is to be performed in another, the law of the country in which the contract is to be performed is generally the law to be applied.<sup>11</sup> Although these requirements are founded on the parties' alleged intention, they are vulnerable to being rebutted by the facts of any individual situation in which a different aim is either expressed or may be inferred.<sup>12</sup> However, simply admitting that products sold FOB in an Indian port under a contract established in India are bound for another country would not overcome this presumption, and the transaction will be governed by Indian law.<sup>13</sup> Questions of evidence, on the other hand, are determined by the law of the land.<sup>14</sup>

The techniques for selecting the relevant law to sales of products reflect the reality that a sale is both a contractual and a proprietary transaction. In contractual disputes, the "applicable law" of the relevant contract is resorted to, whereas in proprietary disputes, the law of the country where the goods are located at the relevant moment (*lex situs*) is referred to. The proper law for a contract is established by general guidelines defined in the English conflict of laws system for determining which law is applicable. The contract's parties may, if they so desire, designate the law of a specific nation as the contract's suitable law.<sup>15</sup> But it has been claimed that the decision must be genuine

---

<sup>8</sup> *Cammell v Sewell*, (1860) 5 H&N 728, 120 RR 799; *Embricos v Anglo-Austrian Bank*, (1905) 1 KB 677. p-683 (CA); *Winkworth v Christie Mansion and Woods Ltd*, (1980) Ch 496, where works of art were stolen from the plaintiff in England, taken to Italy without his knowledge or consent, and there sold to the second defendant, an Italian, who sent them to first defendant in England to be auctioned. By Italian law the second defendant had a good title. it was held that Italian law governed.

<sup>9</sup> *Re Korvine's trust* (1921) 1 Ch 343, p 348.

<sup>10</sup> *City Bank v Barrow* (1880) 5 AC 664, p 667

<sup>11</sup> For a detailed discussion of the "proper law" of a contract in regard to its various aspects see Dicey & Morris, *The Conflict of Laws*, 12th Edn, 1993; Benjamin, *Sale of Goods*, 5th Edn, 1997, para 25,

<sup>12</sup> Pollock & Mulla, *The Sale of Goods Act*, 11th Edn, 1994, third reprint, pp 11-13 and authorities there cited

<sup>13</sup> *Sumner Permain & Co v Webb & Co*, (1922) 1 KB 55 (CA); *Benaïm & Co v Debono*, (1924) AC 14 (PC),

<sup>14</sup> Dicey & Morris, *Conflict of Laws*, 12 Edn, 1993, pp 174-181.

<sup>15</sup> *Rv International Trustee*, (1937) AC 500, p 529; *Perry v Eguisehie Life Assurance Society of the United*

and legitimate, and that there must be no compelling reason to avoid making it because of public policy considerations in order to do so.<sup>16</sup>

In the case that the parties have not chosen the relevant law, the court should identify the applicable legislation' in the first place based on the country or legal system with which the transaction has the closest and 'most' real link. Whether the "system of law" or the "country" must be considered depends on the circumstances, while the majority of versions of the criterion refer to the "system of law."<sup>17</sup>

Without proof to the contrary, international law is believed to be the same as municipal law in the absence of evidence to the contrary Foreign law must be proven as a matter of fact if it differs from domestic law and is relied upon.<sup>18</sup> In England, it is for the judge and not for It will be up to the jury to determine what the foreign law is. It was the Convention on the Law Applicable to Contractual Obligations (1980) that was the first step in the European Economic Community's endeavour to standardise conflict of law rules that apply to contracts, particularly contracts for the sale of products. Although the United Kingdom has signed this convention, it has not yet ratified it. Members of the Convention on the Settlement of International Contracts (CISG) want to develop uniform dispute rules in relation to international contracts throughout the world. It is stated in the agreement that an express choice of law will be binding; but, if all other relevant factors at the moment of choosing were linked to one country, the mandatory regulations of that nation should still apply.

---

States of America, (1929) 45 TLR 468, p 470; Vita Food Products Inc v Unus shipping Co (1939) AC 277; James Miller and Partners Ltd v Whitworth Street Estates (Manchester) (1970) AC 583; Amin' Rasheed Shipping Corp v Kuwait Insurance Ca, (1984) AC 50).

<sup>16</sup> See generally Dicey & Morris, Conflict of Laws, 24th Edn, he 801-808, 834, 1187-1284; ire, and North, Private International Law, 10th Edn, pp 145-155, 195, 201-202, 224; Benjamin See Goods, 5th Edn, 1993, para 25.

<sup>17</sup> James Miller and Partners Lid v Whitworth Swreet Estates (Manchester) Lid, (1970) AC 583, pp 603-606, 610-611; United States Surgical Corp v Hospital Products International Put Lid, (1983) 2 NS 157, pp 188-190; Compagnie d' Armement Mariime SA v Compagnie Tunisienne de Naigeion SA, (1971) AC 572, pp 583, 587, 603; Rossano v Manufacturers Life Insurance Co, (1962) 2 Al ER 214; Coast Lines Lid v Hudig and Veder Chartering NV, (1972) 1 All ER 451; Amin Rashid Shipping Corp v Kuwait Insurance Co, (1984) AC 50, pp 61, 69; Offshore International SA v Banco Central SA, (1976) All ER 749; BP Exploration Co (Libya) Lid v Hunt, (1979)} WLR 783 affirmed in (1982) All ER 925; Bonython v Commonwealth of Australia, (1951) AC 201, p 219; Tomkinson v First Pennsylvania Banking and Trust Co, (1961) AC 1007, pp 1081-1082.

<sup>18</sup> The Parchim, (1918) AC 157, pp 160-161, Lord Parker,

It is assumed that the contract is subject to the law of that country in which the parties' habitual residence, or the location of their central administration, or in the case of a trader's primary place of business or place of business where the contract is to be performed, is located. Without a choice, the contract will be governed by that country's law.

## **XII. Conclusion**

Chapter VII (Section 76-123) of the Indian Contract Act, 1872 governed sales of commodities until the 1st of July, 1930. All of India's laws on contracts, including the Sale of Goods Act, were developed based on English Common Law principles. Sale of Products legislation in England was codified in 1893, which comprised the most basic regulations linked to selling goods in order to adapt them to society's evolving needs.... Within a decade after the Indian Contract Act was enacted, it was clear there were insufficient laws regarding sales of products in India to keep up with developments made by English law. There was a tremendous deal of commotion since the British Courts' judgments were varied and the privy counsel was unable to keep up. A prominent panel of attorneys and jurists was convened in 1929 to devise a solution to this difficulty, and their draught Act of 1930 eventually led to the repeal of Indian Contract Act Sections 76 to 123. All of the legislation in the 1930 Sale of Goods Act was derived from the British Act of 1893.

As a result, it's apparent that the Indian Contract Act of 1930 informed the creation of the Act of 1930. Indian Contract Act is still referenced in both Section 2 (15) and Section 3 (of the Act of 1930). According to Section 2 (15), terms that are defined in the Indian Contract Act, 1872 (9 of 1872), and which are used but are not defined in this Act, are interpreted in accordance with those definitions. Further Section 3 of the 1930 Act notes that the Indian Contract Act, 1872 un-repealed sections which are not conflicting with the specific requirements of the 1930 Act should continue to apply to contracts for the sale of commodities.

### **XIII. Bibliography**

#### **A. Books**

- The Sale Of Goods Act By Pollock And Mulla, 11<sup>th</sup> Edition.
- The Indian Sale Of Goods Act, 1930.
- 8<sup>th</sup> Law Commission Report.
- Supreme Court On Specific Relief Act (1950 to 2019) (In 2 Volumes) by Surendra Malik, Sudeep Malik.
- Law Of Sale Of Goods - An Exhaustive Commentary On The Sale Of Goods Act, 1930 by Aiyar P. Ramanatha.
- Sale of Goods Act by Dr. R.K. Bangia.

#### **B. Websites**

- [www.jurn.com](http://www.jurn.com)
- <https://lawcommissionofindia.nic.in/1-50/Report8.pdf>
- [www.jstor.com](http://www.jstor.com)
- <https://www.ssrn.com/index.cfm/en/>
- <https://doaj.org/>
- <https://core.ac.uk/>
- <https://lawreviewcommons.com/>
- <https://ethos.bl.uk/Home.do>
- <https://www.researchgate.net/>
- <https://main.sci.gov.in/judgments>