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## EVALUATING THE EFFICACY OF UNPAID SELLER'S RIGHTS: A COMPREHENSIVE ANALYSIS OF EXISTING LEGAL FRAMEWORKS

### ABSTRACT

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*What happens when a seller sells his goods and the buyer does not pay? He becomes an unpaid seller who then has to take the legal recourse to get price for his goods. The rights of Unpaid sellers are mentioned in the Sale of Goods Act. The act covers various situations like stoppage in transit, lien, suit for damage, etc. Even though the provisions are in place in real life most of the time they are not enough. One of the major problems faced is when they decide to file a suit because the legal system in India can be slow and bureaucratic. This makes it challenging and time-consuming for unpaid sellers to take legal action against purchasers. The unpaid seller may suffer financial hardship and business loss as a result of this. Thus, even though the provisions are in place they may become remediless.*

### INTRODUCTION

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There are various types of contract but basic features of contract such as promise, consideration etc remain the same. One such contract is the contract for the Sale of goods which is governed by the Sale of goods act, 1930. This type of contract is between the buyer and the seller, both of whom are defined under section 2 of the act. According to sec 2(1) of SGA buyer is a person who

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buys or agrees to buy goods<sup>1</sup>. Whereas the seller is defined under sec 2 (13) of the act which states that “seller” means a person who sells or agrees to sell goods<sup>2</sup>. Since this contract is also governed

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<sup>1</sup> The Sale of Goods Act, 1930 (3 of 1930) sec 2(1)

<sup>2</sup> The Sale of Goods Act, 1930 (3 of 1930) sec 2(13)

by the basic features of the contract which means that the buyer has to give consideration to the seller in exchange of goods and such consideration is monetary in nature and is defined as price under sec 2(10).

However, in certain cases it may happen that the buyer refuses or is unable to pay the price because of one or another reason. In such a condition the seller may be called an unpaid seller. In this situation the buyer gets undue advantage and the unpaid seller faces significant financial loss. In addition to that he faces legal challenges in ensuring payment for goods sold, particularly in contexts where legal protections and enforcement mechanisms are weak or non-existent.

But the adequacy and effectiveness of the provisions meant to safeguard unpaid seller may vary depending on various factors. Given the importance of unpaid seller rights for the financial security and sustainability of small businesses, it is important to examine the effectiveness of the legal framework and enforcement mechanisms in place. This research paper seeks to understand the who is an unpaid seller and what are the rights afforded to him under the act. It further seeks to explore the gaps and ambiguities that may be found in the act that may hinder its effectiveness. Lastly, through a detailed examination of the relevant laws, regulations, and practices, this paper aims to identify the strengths and weaknesses of the legal framework and to make recommendations for improving the protections afforded to unpaid sellers.

## **RESEARCH METHODOLOGY**

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**HYPOTHESIS** - Unpaid sellers face significant financial risks and legal challenges in ensuring payment for goods sold, particularly in contexts where legal protections and enforcement mechanisms are weak or non-existent. The effectiveness of unpaid seller rights is contingent upon the legal framework and enforcement mechanisms in place, and strengthening these protections can improve the financial security of these people.

This paper has following objectives-

- To understand and analyse the meaning of Unpaid seller.
- To understand the rights and remedies available to the unpaid seller
- To identify any gaps or limitations in the current rules by analysing the legal framework for unpaid seller rights under the Sale of Goods Act 1930 in India.

The research questions are-

- Who is an Unpaid seller ?
- What are the legal provisions for the protection of unpaid seller rights under the Sale of Goods Act 1930 in India?
- What are the primary challenges that unpaid sellers in India encounter when attempting to assert their legal claims under the Sale of Goods Act 1930, and how might these challenges be overcome?
- What are the gaps and limitations of the provisions given in the Sale of Goods Act?

## LITERATURE REVIEW

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- **Sale of goods act,1930<sup>1</sup>**

The Act has been read and analysed to know the provisions related to the unpaid seller and the rights available to him. It helped in forming the basic understanding of the concepts such as the unpaid seller, Seller's lien etc.

- **Indian contract act ,1872<sup>2</sup>**

The Indian Contract Act, 1872 is a significant legislation that governs the formation, performance, and enforcement of contracts in India. It helped in providing complementary and additional knowledge on the topic. Various sections such as sec 73 and 74 were read in order to develop a better understanding of the rights of unpaid sellers.

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<sup>1</sup> The Sale of Goods Act,1930, No.3, Acts of Parliament, 1930 (India)

<sup>2</sup> The Indian Contract Act, 1872,No.9, Acts of Parliament ,1872 (India)

- **Pollock and Mulla, *The Indian contract act 1872***<sup>3</sup>

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This book provides a comprehensive understanding of various concepts of the Indian contract Act. It explains about Quantum of damage in case of breach by another party and about lien in detail.

- **Pollock and Mulla, *Sale of goods act 1930***<sup>4</sup>

This book provides in-depth knowledge on the Unpaid seller and his rights. It covers the basic elements which are provided in the law itself and elaborates upon it. It helped in building up understanding by explaining various cases and other relevant information.

- **P. Ramanatha Aiyar , *Law of Sale of Goods***<sup>5</sup>

This book provides exhaustive commentary on The Sale of Goods Act. Chapter five of this book deals with the concept of an unpaid seller and his rights. It provides elaborate explanations on each section.

- **R. Chakraborty, *Law of Sale of Goods and Partnership***<sup>6</sup>

This book provides exhaustive commentary on The Sale of Goods Act along with other acts which includes Indian Partnership act and Multimodal Transportation Of Goods Act. This book helped in various provisions on the unpaid seller's rights.

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<sup>3</sup> Sir Frederick Pollock & Sir Dinshaw Fardujjin Mulla, *The Indian Contract Act, 1872* (LexisNexis, 15 ed. 2020)

<sup>4</sup> Sir Frederick Pollock & Sir Dinshaw Fardujjin Mulla, *The Sale of Goods Act* (LexisNexis, 10th Ed. 2017)

<sup>5</sup> P. Ramanatha Aiyar , *Law of Sale of Goods* (Universal Law Publishing Co. Pvt.Ltd., 10th ed. 2016)

<sup>6</sup> R. Chakraborty, *Law of Sale of Goods and Partnership* (Orient Publishing Company, 1st Ed. 2006)

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## WHO IS AN UNPAID SELLER?

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Sale of goods Act 1930 was based on the English Law. Chapter V of SGA deals with unpaid sellers. Broadly speaking, sections 45 to 55 are primarily where the provisions pertaining to the rights of unpaid sellers are found. As per section 45(1) of SGA, “The seller of goods is deemed to be an “unpaid seller” when the whole of the price has not been paid or tendered, or when a bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise”.<sup>7</sup> It is clear from the definition given in this section that, if only part payment is done by the buyer then also the seller will be called an unpaid seller as per the act. For Example - If A sold a mobile phone to B and the price agreed between them was Rs. 45,000. But the buyer B pays only 30,000 and refuses to pay the remaining amount. In this case the seller will be called the unpaid seller as per the S.45(1) of the act because the whole of the price has not been paid and therefore he will be entitled to the remedies available under the act.

The other part of the definition provides for when a bill of exchange has been given to the seller as conditional payment but the condition has not been fulfilled. For Example- Mr. A, a wholesale supplier of goods, sold goods worth INR 1,00,000 to Mr. B on credit with a payment term of 30 days. Mr. B presented Mr. A with a postdated check, which Mr. A accepted. Insufficient funds in Mr. B's account prevented the check from being honoured when Mr. A submitted it to the bank after 30 days. Due to the fact that Mr. A has not received money for the products he sold to Mr. B, he is an unpaid seller in this case. Due to Mr. B's failure to fulfil his commitment to pay for the

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<sup>7</sup> The Sale of Goods Act, 1930, § 45(1), No.3, Acts of Parliament, 1930 (India)

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items, the dishonoured cheque leaves Mr. A without compensation. This is quite a common problem in today's society where payment is done through cheques and other such ways and that's why it was included in the section as well.

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Subsection 2 further clarifies about who is a seller for the purpose of this chapter. It states that m “seller” includes any person who is in the position of a seller.<sup>8</sup> Thus it may include a consignor or agent who has paid the amount himself or is otherwise directly accountable for it, or an agent of the seller to whom the bill of lading has been endorsed.

Broadly speaking ,the rights available to the Unpaid seller can be classified as-

- The rights against the buyer
- The rights against the Goods

### **The Rights Against The Buyer**

#### *SUIT FOR PRICE*

It is talked about in Sec 55 of SGA. There are 2 subsections under Sec 55 of SGA which deal with different conditions.

- Sec 55(1) states that, “Where under a contract of sale the property in the goods has passed to the buyer and the buyer wrongfully neglects or refuses to pay for the goods according to the terms of the contract, the seller may sue him for the price of the goods”<sup>11</sup>.

There are two cases in this subsection:

1. Where the goods have been sold and delivered
2. Where the goods have been sold but the delivery has not yet taken place.

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<sup>8</sup> The Sale of Goods Act,1930, § 45(2)No.3, Acts of Parliament, 1930 (India) <sup>11</sup>  
The Sale of Goods Act,1930, § 55(1), No.3, Acts of Parliament, 1930 (India)

It must be noted that the passing of property in goods is different from the delivery of the goods. So with the exception of the situation provided in Sec 55(2) of SGA the seller can sue the buyer only when the property has passed yet the buyer has not paid the price. Since in both of the cases given above goods have been sold meaning the property has passed which is irrespective of the delivery which means that the Unpaid seller can sue for the

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price. However in case of situation 2. the seller should keep in mind that the delivery should not be the condition precedent to the payment then only he can sue otherwise not.

#### Case- Wayne Methyr Steam Coal Co v Morewood <sup>9</sup>

In this case the plaintiff coal company sold a quantity of coal to the defendant, who agreed to pay upon delivery. The defendant promised to pay for the plaintiff coal company's sale of coal upon delivery. The defendant claimed that the coal was of poor quality and refused to pay when it was delivered. The plaintiff filed a lawsuit over the cost of the coal.

The defendant claimed that the plaintiff had breached the contract and that the coal was not of the desired quality. The court decided that the plaintiff was entitled to compensation despite the defendant accepting the coal without objecting.

- As per Sec 55(2) of SGA, “Where under a contract of sale the price is payable on a day certain irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price although the property in the goods has not passed and the goods have not been appropriated to the contract.”<sup>10</sup>

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<sup>9</sup> Wayne Methyr Steam Coal Co v Morewood [1867] LR 2 Exch 151

<sup>10</sup> The Sale of Goods Act, 1930, § 55(2), No.3, Acts of Parliament, 1930 (India)

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Wrongful refusal by the buyer can be determined by the facts of a particular case. For example- if the buyer refuses to pay before the delivery of the goods where such delivery was condition precedent to the payment of price then it will not be considered as the wrongful refusal.

### *SUIT FOR DAMAGES*

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Provisions regarding this subject are provided under section 56 of SGA. As per the section, Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller may sue him for damages for non-acceptance.<sup>11</sup> Since this section does not mention anything about the quantum of damages it is determined by referring to ICA. Sections 73 and 74 of the Indian Contract Act are applicable for determining the amount of damages.

In all instances where a contract is breached, the injured party is entitled to get compensation from the party in default for the loss inflicted to him which naturally follows in normal run of things from such breach. It is the general objective of legislation when awarding damages for a breach of contract that the non-defaulting party be placed in the same condition, as he would have been, if the contract had been fulfilled.

Case- Shyam telecom Ltd. v. Prime Telecom Solutions Pvt. Ltd <sup>12</sup>

This lawsuit for the settlement of unpaid debts between two telecom corporations was resolved by the Calcutta High Court. The defendant, Prime Telecom Solutions Pvt. Ltd., had received goods and services on credit from the plaintiff, Shyam Telecom Ltd. After numerous requests and reminders, the defendant did not pay the unpaid debts. The plaintiff filed a lawsuit in an effort to reclaim the unpaid sum, interest, and additional fees. The defendant claimed that because the plaintiff's provided goods and services had defects, it was not required to pay the whole price. The defendant also claimed that it had set off some of the payments against the plaintiff's liability towards it. The defendant also claimed that it had set off some of the payments against the

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<sup>11</sup> The Sale of Goods Act, 1930, § 56, No.3, Acts of Parliament, 1930 (India)

<sup>12</sup> Shyam telecom Ltd. v. Prime Telecom Solutions Pvt. Ltd. (AIR 2011 Cal 169)



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plaintiff's liability towards it. The Calcutta High Court rejected the defendant's arguments and held that the plaintiff was entitled to recover the full amount along with interest and other charges.

### *SUIT FOR INTEREST*

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Section 61 of the Sale of Goods Act allows a seller to charge interest to a buyer on the price of goods if there is a formal agreement between them about interest from the day payment is due. However, if there is no such agreement, the seller may begin charging interest from the moment they notify the buyer. In cases where there is no agreement, the court may award interest to the seller on the price from the due date at a rate determined by the court.

### *REPUDIATION OF THE CONTRACT BEFORE THE DUE DATE*

This is covered under section 60 of SGA. It is called anticipatory breach. When one of the contracting parties notifies the other party that he does not plan to carry out his obligations under the agreement before the due date for performance. It also includes the situations where the performance of the contract is to take place at a future date but one of the parties shows through its conduct that it intends to repudiate the contract. This section gives the non repudiating party the option to either wait till the due date or to treat the contract as rescinded in anticipation.

If the buyer terminates the agreement before the set deadline for performance, the seller may regard the agreement as violated and file a claim for damages for non-acceptance in accordance with Section 56 of the Act. In other words, the seller may seek compensation for the harm the anticipatory violation of the contract caused.

Case- Associated Cement Co. Ltd. v. Contromix Ltd<sup>13</sup>

The seller filed a suit for damages for non-acceptance under section 56(2) of the Sale of Goods Act after the buyer wrongly rejected the goods and repudiated the agreement. As per the court, the

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<sup>13</sup> Associated Cement Co. Ltd. v. Contromix Ltd., (1989) 2 SCC 75

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seller was entitled to damages for non-acceptance, including lost profits, interest, and costs incurred as a result of the buyer's violation of the contract.

## **Rights Against Goods**

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Broadly speaking the rights against goods are given in section 46 of SGA and they are later described elaborately individually in the other section.

As per section 46 of SGA the unpaid seller has following rights as per implication of the law-

1. *Lien over the goods*- It is available only when the seller has the possession of the goods sold. Section 47 to 49 deal with unpaid seller's lien. The definition of lien given in Black's Law dictionary states that, "it is a legal right or interest that a creditor has in another's property lasting or duty, i.e., security is satisfied". It is implicit here that this right can be exercised when the property in goods has transferred to the buyer but he has not yet paid the price. The only stipulation is that it can only be exercised when the seller has the possession of the goods. As soon as the goods are out of possession of the seller, this right becomes unavailable to the seller and he has to seek another remedy. Even when the seller is in possession as agent or bailee he can exercise this right. This lien comes under the category of particular lien and not under general lien which means. This right to retention is available in the following situations-
  - where the goods have been sold without any stipulation as to credit.<sup>14</sup>
  - where the goods have been sold on credit, but the term of credit has expired<sup>15</sup>. In this case the right of lien does not arise till the expiry of the time of credit period.
  - where the buyer becomes insolvent.<sup>16</sup>

Right of lien in case of part delivery to the buyer is dealt in sec 48 of SG. AS per this section the seller may retain the part of the goods that are in his possession unless there is a waiver.

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<sup>14</sup> The Sale of Goods Act, 1930, § 47(1)(a), No.3, Acts of Parliament, 1930 (India)

<sup>15</sup> The Sale of Goods Act, 1930, § 47(1)(b), No.3, Acts of Parliament, 1930 (India)

<sup>16</sup> The Sale of Goods Act, 1930, § 47(1)(c), No.3, Acts of Parliament, 1930 (India) <sup>20</sup>

Grice V Richardson (1877) 2 App cas 319

There was a contract for the sale of tea. As per the contract the seller first delivered a consignment of 3 parcels of tea to the buyer. But they were not compensated for the portion that remained with them. They were permitted to retain it until the price was paid.

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2. *Right of stopping the goods in transit* - It can be exercised when the goods are not in possession of either the buyer or the seller but are in the way of being delivered to the buyer. In order to protect themselves from potential losses, sellers have the right to halt the transit of their goods when goods have been given to a carrier or bailee for the purpose of being delivered to the buyer who turns out to be insolvent. Sec 50-52 deals with the right of stoppage in transit

According to section 50, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price.<sup>17</sup> Thus, the prerequisites for this right are-

- Unpaid seller
- Buyer becomes insolvent
- Property has passed to the buyer
- The goods are in course of transit

In the case of *Schotsman v. Lancashire & Yorkshire Railway Co.*<sup>22</sup> It was held that The course of transit depends upon the capacity of the middleman to hold the goods. Middleman should be an intervening person between the seller who has parted with the goods and the buyer who has not yet received the goods.<sup>18</sup>

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<sup>17</sup> The Sale of Goods Act, 1930, § 50, No.3, Acts of Parliament, 1930 (India)

<sup>22</sup> *Schotsman v. Lancashire & Yorkshire Railway Co.* 1867 LR Ch. 332.

<sup>18</sup> Ashpreet Kaur, 'Rights of an Unpaid Seller', Ipleaders, (Apr 2, 2023) <<https://blog.ipleaders.in/rights-of-an-unpaid-seller/>> .

*3. Right of resale*

After the other two rights have been exercised by the seller this particular right becomes an important right of the seller. This is also available in the case of non acceptance of the goods by the buyer. If after the exercise of right of retaining goods the buyer still refuses to pay and a reasonable time has passed where the seller remains an unpaid seller then he may exercise this right. However it is the duty of the seller to give a reasonable notice of resale to the buyer before such resale actually takes place.

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Resale of goods can take place in following circumstances-

- When the goods are perishable.
- When the seller notifies the buyer about his intention to resale the goods.
- When the right of resale has been expressly reserved by the seller.

## CHALLENGES FACED BY UNPAID SELLER

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Even when the laws are in place to protect the rights of unpaid sellers they still find it difficult to enforce their rights due to a variety of reasons. One of the major problems faced is when they decide to file a suit because the legal system in India can be slow and bureaucratic. This makes it challenging and time-consuming for unpaid sellers to take legal action against purchasers. The unpaid seller may suffer financial hardship and business loss as a result of this.

Furthermore, the cost of litigation might be excessively high, especially for small and medium-sized businesses (SMEs) who lack the funds to undertake lengthy court battles.

Unpaid sellers' ability to assert their rights may also be hampered by practical obstacles in establishing their claims. For instance, it could be difficult for sellers to demonstrate that the items were in transit when they sought to use their right to stop the goods.

The presence of informal and unregulated markets in India is another aspect that may affect the effectiveness of unpaid seller rights. India has a large informal economy, which makes it challenging for small enterprises to assert their legal rights. It's possible that these companies lack access to formal contracts, legal advice, or other tools that may help them safeguard their interests.

Aside from these difficulties they face problems like lack of awareness, corruption or any other such barriers which makes it difficult for them to exercise their rights.

## CONCLUSION

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The Sale of Goods Act 1930 provides a comprehensive framework for the rights of unpaid sellers, including the right of lien, right of stoppage in transit, and right of resale. These rights allow sellers to retain possession of goods until payment is received, to stop goods in transit if the buyer defaults, and to resell the goods in the event of a buyer's default. However, in the Indian context, the effectiveness of unpaid seller rights is largely dependent on the legal framework and enforcement mechanisms in place.

For instance, one of the drawbacks of section 47 is that it only applies to the unpaid seller who is in possession of the goods. This means that the seller might not be able to use their right of lien if they have already delivered the items to the buyer. However it can be remedied by exercising other rights provided by the law. Further section 50 which deals with right of transit is only available when the buyer becomes insolvent. Another example is that of section 55 of the Sale of Goods Act, 1930 which grants a seller the legal right to seek compensation for the cost of the products supplied, but this right may be undermined by a slow, incompetent, or corrupt court system.

To overcome some of these gaps and the challenges faced by the unpaid seller there is a need to improve the enforcement mechanisms available to unpaid sellers. The enforcement tools available to unpaid sellers need to be improved. This can be accomplished through simplifying the legal system, and the legal process, and enhancing the judiciary's capacity. Moreover, alternative dispute resolution processes like arbitration and mediation can be promoted as a speedier and more economical way to settle conflicts.

Overall it can be said that the hypothesis is only partially correct because the laws laid down under the Sale of goods act provide protection to the unpaid seller to a large extent. These right cover a variety of situations in which the unpaid seller might find himself in. Whatever challenges the unpaid sellers face may be overcome by further strengthening the laws ,enhancing enforcement methods, and encouraging improved record-keeping and documentation procedures. By taking these measures, unpaid sellers can improve their financial security and contribute to the growth and development of the Indian economy.

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