



## AN ANALYSIS OF COMMON PROVISIONS BETWEEN SALES OF GOODS ACT 1930 AND THE CISG: AS COMPARATIVE STUDY

Omolsalameh  
Pakuhinezhad

Kerala University, India

### ABSTRACT

This comparative study analyzes the similarities and differences between the Sale of Goods Act 1930 (SGA) and the United Nations Convention on Contracts for the International Sale of Goods (CISG) with respect to the law relating to damages. The SGA is an Indian legislation that regulates the sale of goods within the country, while the CISG is an international convention that governs contracts for the sale of goods between parties from different countries. The study examines the provisions of both laws related to the Acceptance of the goods and payment of the price and also condition of warranty.

### KEYWORDS :

#### Introduction

The Sale of Goods Act 1930 (SGA) and the United Nations Convention on Contracts for the International Sale of Goods (CISG) are two important legal instruments that govern the sale of goods in different contexts (Schneider, 1995; Saidov, 2002; Gosh, 2015; Abichandani, 1994; Bridge, 2012; Boele-Woelki, 1999; DiPalma, 1999; Wilhelmsson, 2020; Flechtner, 1988). The SGA is an Indian legislation that regulates the sale of goods within the country, while the CISG is an international convention that governs contracts for the sale of goods between parties from different countries. The study will examine the provisions of both laws related to the Acceptance of the goods and payment of the price, condition of warranty and it will also analyze the impact of these provisions on the parties involved in the sale of goods and highlight the significance of choosing the appropriate law in the event of a dispute. The importance of this study lies in the fact that the sale of goods is an essential aspect of international trade, and disputes related to such sales are inevitable. Understanding the provisions of the SGA and the CISG will enable businesses to make informed decisions when entering into contracts for the sale of goods. It will also provide guidance to courts and tribunals in the event of disputes related to the sale of goods, particularly in cases where the parties are from different countries. In the following sections, this study will provide an in-depth analysis of the provisions of the SGA and the CISG related to the law of acceptance of goods and condition of warranty and highlight the similarities and differences between the two laws.

#### Comparative Study of Sale of Goods Act and CISG on the Law Relating to Damages

Section 56 SGA provides that where the buyer wrongfully neglects or refuses to accept and pay for the goods the seller may sue him for damages for non-acceptance. The precondition for the seller to get any damages is that the buyer had to have acted wrongfully in refusing to accept delivery. The determination of whether the act of neglect or refusal was wrongful is a question of fact and has to be determined in the facts and circumstances of each particular case (Murray, 1988; Murray, 1997; Khanderia, 2018; Vafaei-Zadeh et al., 2022; Farnsworth, 1979; Pakuhinezhad, 2023; Afshar Jahanshahi et al., 2018; Gheitarani et al., 2022b; Gheitarani et al., 2023; Gheitarani et al., 2022c; Taherinia et al., 2021; Gharleghi et al., 2018; Etemadi et al., 2022) Dehghanan et al., 2021; Taherinia et al., 2021). Under Indian law the seller has various remedies against the goods and the buyer personally and even when those remedies exist, it still has the right to sue for damages under this section. However, where the property in the goods has not passed to the buyer and the contract does not entitle him to make a re-sale and charge the buyer with the difference between the contract price and the price realized on re-sale, or to sue the buyer for the price irrespective of delivery,

the remedy provided by this section is the only one by which he may recover damages for the breach of contract. The expression property in the goods refers to ownership. When the Indian law of sale of goods refers to property in the goods it means that person is the owner of the goods. The rules governing damages are determined with reference to s. 73 ICA.

Acceptance of the goods and payment of the price in accordance with the contract and the convention is an obligation of the buyer under the Art. 53 CISG. There is a general rule under Art. 61 (1) (b) CISG which states that where the buyer fails to perform any of his obligations under the contract or the Convention, the seller may claim damages in accordance with Arts. 74-77 CISG. This would include a case of non-acceptance of the goods and non-payment of the price. The principles of damages have already been dealt with earlier under Art. 74 CISG.

The SGA makes a distinction between a condition and a warranty. A stipulation in a contract of sale may be a condition or a warranty. A condition is a stipulation essential to the main purpose of the contract, the breach of which gives a right to treat the contract as repudiated whereas a warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim of damages but not to a right to reject the goods and treat the contract as repudiated. There are circumstances where the buyer may be compelled to treat a breach of condition as a breach of warranty, for example, where a contract of sale is not severable and the buyer has accepted the goods or a part of them then the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty.

Section 59 is a codification of the common law of the United Kingdom. It states that cases where the seller breaches a warranty or where the buyer elects or is compelled to treat any breach of a condition by the seller as a breach of warranty the buyer is not entitled to reject such goods by reason only of such breach. However, the buyer has two other remedies, being to: Rely on the breach as against the seller suing for the price and set off damages, as far as possible, against the price; or sue the seller for damages for breach of warranty. It may be noted here that the buyer may, in all cases, pay the price for the goods and bring a distinct action for damages (Farnsworth, 1979; Fletcher, 2001; Hakkak et al., 2021; Jahanshahi et al., 2020; Vafaei-Zadeh et al., 2021; Hanifah et al., 2022; Gheitarani et al., 2022a; Hakkak et al., 2022a; Takalo et al., 2013; Abdul-Halim et al., 2022; Hakkak et al., 2022b; Jahanshahi et al., 2019). The Indian law with regard to breach of warranty focuses greatly on the conceptual difference between "condition" and "warranty". Therefore, for any meaningful comparison between CISG and Indian law it is

necessary to examine whether any similar concepts exist in the CISG.

An examination of the terms used in the CISG would lead to the conclusion that though the distinction is not made in terms of condition and warranty. However, the concepts find a place in the CISG. Case law dealing with breach of warranty under the Convention also brings an important fact to light: breach of warranty under the CISG generally refers to a breach of an assurance of facts regarding the goods and such breach may be fundamental. In contrast the definition of warranty under Indian law excludes such a possibility. The Circuit Court case *Delchi Carrier S.P.A. v. Rotorex Corporation* arose as a warranty dispute between a U.S. seller of compressors Rotorex and its Italian customer Delchi, a manufacturer of air conditioner units. Interpreting Art. 25 of the Convention, the court held that Rotorex's failure to deliver conforming goods constituted a fundamental breach, which is a breach that substantially deprived Delchi of what it was entitled to expect under the contract.

### Conclusion

In conclusion, this comparative study has examined the law of damages under the Sale of Goods Act and the CISG. The study has analyzed the provisions of both laws related to the Acceptance of the goods and payment of the price and condition of warranty. Through this analysis, the study has identified several similarities and differences between the two laws, which have significant implications for parties involved in the sale of goods. The study has demonstrated that both the SGA and the CISG provide for the award of damages for breach of contract, however, the measure of damages and the limitations on recovery differ between the two laws. While the SGA provides for the recovery of actual or direct losses suffered by the innocent party, the CISG adopts a broader approach and provides for the recovery of all losses that flow from the breach, including consequential and incidental losses. The study has also highlighted the importance of choosing the appropriate law in the event of a dispute related to the sale of goods. The choice of law will determine the applicable provisions related to the award of damages, which can significantly impact the outcome of the dispute. Overall, this study has contributed to a better understanding of the law of damages under the Sale of Goods Act and the CISG. It provides valuable guidance to businesses and legal practitioners involved in the sale of goods and highlights the significance of choosing the appropriate law in the event of a dispute.

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