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# India's E-Commerce Rise: Performance of E-Contracts under Sale of Goods Act, 1930

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## ABSTRACT

*Electronic commerce has grown ingrained in our daily life in recent years, and numerous business transactions worth billions are conducted via this booming, new industry. This technological advancement has resulted in faster methods of conducting business transactions, which is distinct from paper transactions because the steps required to conclude and form an e-contract are distinct and may be deemed more technical than those required to conclude and form traditional contracts. In order to show the implications of the performance of E-Contracts under the said Act, it is necessary to understand the meaning of E-Contract. E-contract is one of the divisions of E-Commerce. It has a similar connotation to traditional business, in which goods and services are exchanged for a specified sum of money. The main difference is that the contract is executed using a digital communication channel, such as the internet. It enables sellers to connect directly with the final consumer, bypassing the middlemen and expediting the whole transaction process. As a result of which, this research paper attempts to highlight some of the sections of Chapter IV of the Sale Of Goods Act, 1930, which deals with the performance of a contract with special reference to E-Commerce in India and would also attempt to highlight the issues that are faced in the performance of E-Contract under the said act.*

**Keywords:** E-Commerce, E-Contracts, Performance, Contract Law, Sale of Goods.

## I. CONCEPT OF VALIDITY WITH RESPECT TO A CONTRACT

The only necessary condition for validating an electronic contract in compliance with the prerequisites set forth in Section 10 of the Indian Contract Act, 1872<sup>3</sup>. Also, various legislations validates E-Contract as a valid contract in India, such as the Information Technology Act, 2000<sup>4</sup>, Electronic Commerce Act, 1998, Sale of Goods Act, 1930. The Indian Evidence Act, 1872<sup>5</sup> also gives validity to E-Contracts as it recognises electronic documents as evidence.

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<sup>3</sup> Section 10, Indian Contract Act, 1872 – What agreements are contracts.

<sup>4</sup> Section 10, Information Technology Act, 2000 - Power to make rules by Central Government in respect of [electronic signature]

<sup>5</sup> Section 65B. Indian Evidence Act, 1872 – Admissibility of electronic records.

Prior to the revolution of E-Commerce, the legislation Sale of Goods Act, 1930 was solely intended for traditional business transactions as e-contracts were not a type of contract people used to enter into, but, due to the rapid growth of virtual business transactions of goods & services in recent years, the stated act is being implemented to ensure legal integrity. To establish the relationship between the execution of E-Contracts and the sale of products legislation, the parts pertaining to contract performance must be examined.

## **II. CRITICAL ANALYSIS OF THE PROVISIONS OF THE SALE OF GOODS ACT, 1930**

Chapter IV deals with the 'Performance of the Contract' under the Sale of Goods Act, 1930, which ranges from Section 31 to Section 44. Before performing the contract, there are certain duties of the seller and buyer on the E-Commerce portal that are needed to be performed to constitute a valid E-Contract. Section 31<sup>6</sup> states,

*"It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale."*

This section underlines the reciprocity of duty commitments. The duty of the seller is to deliver the products, regardless of whether he/she is the owner or not, and regardless of whether he/she has possession at the time of the contract of sale. The buyer's responsibilities are to accept the products and pay for them. The words "in accordance with the terms of the contract of sale" are intended to show that the parties are at liberty to modify the terms. Unless otherwise specified in a contract, these obligations are concurrent, as mentioned in the following section. For instance, in terms of online shopping, various payment methods are provided to the buyer/customer to choose at his/her convenience. However, once that payment method has been chosen by the customer, it is necessary for the customer to abide by the same.

## **III. DELIVERY OF GOODS UNDER E-CONTRACT**

With respect to the performance of the contract, delivery of the goods forms a major component. Therefore, each and every section that specifies delivery of goods under the Sale of Goods Act has been analysed with respect to E-Contracts,

### **(A) Section 32, Sale of Goods Act, 1930 – Payment and Delivery are concurrent conditions**

*- "Unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods."*

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<sup>6</sup> Section 32, Sale of Goods Act, 1930 - Payment and delivery are concurrent condition

## 1. Ready and Willing

This section basically states that the delivery of the goods and payment of the cost are concurrent conditions; they must be met alongside, which means that the seller must be prepared and willing to deliver the goods in return for payment, and the buyer should be ready to pay the price for the purpose of possession of the goods. The seller in order to be ready and willing, need not be in actual possession of the good; it is sufficient if he has control and can cause the delivery of such goods. Section 32 has no bearing on the question of whether the parties entered into a contract at all, but if a contract is established, payment and delivery are contemporaneous conditions. It pertains to a condition that is to be implied unless there is a provision to the contrary in a contract<sup>7</sup>. The section assumes the existence of a contract in respect of which such a term may or may not be read.

## 2. Unless otherwise agreed

Application of this section towards e-contracts can be explained through an illustration, A likes a product on B's website and chooses to purchase the same. Here, A can either opt to pay the price through online banking/card payment or can even opt for cash on delivery option, which is quite popular with people. In either case, B is bound to deliver the product to A's doorstep even if he hasn't collected the payment. While Section 32 talks about the "intentions" of both the parties to perform concurrent conditions, it does not explain whether it has to be pre-paid or paid on delivery. As a result of which, the term "Unless otherwise agreed" is mentioned in the section, which gives independence to both the parties to amend policies, the procedures to pay etc. and conduct negotiations on the same.

**(B) Section 33, Sale of Goods Act, 1930 – Delivery** - *“Delivery of goods sold may be made by doing anything which the parties agree shall be treated as delivery or which has the effect of putting the goods in possession of the buyer or of any person authorised to hold them on his behalf.”*

**1. Agreement of Delivery by the Parties** - The first part of this section deals with the mode of delivery. Delivery can be accomplished in any manner agreed upon by the parties as being acceptable as delivery. The question is one of the agreements between the parties, and where a dispute arises, the Court is called upon to ascertain what the agreement between the parties was.

In relation to E-commerce, for instance, Mr A purchases books from the merchant site of B

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<sup>7</sup> Claude-Lila Parulekar v. Sakal papers (P) Ltd., AIR 2005 SC 4074

and the price for the product has been fully paid through net banking. Due to the non-availability of A in the city at that time, he asks the merchant site to keep his product with them only. This delivery will fall under “*made by doing anything which the parties agree shall be treated as delivery*”.

- i. **Constructive Delivery** - Constructive delivery works the same way in E-commerce as it does in the real world of business. By constructive delivery, it means that there may be a change in possession of goods without any change in their actual and visible delivery. In such instances, the seller's possession of the goods may alter following the sale, and he may no longer hold the goods as the owner but rather as a bailee for the buyer. This was established in the case of *Elmore v. Stone*<sup>8</sup>, where the horse was sold, and the seller kept it at the request of buyer. This can only be applied in cases of E-commerce where the price for the delivery has already been paid and is not valid on products that are for “cash on delivery” because till the time seller does not receive the amount, the buyer cannot claim his right on those products. Also, in constructive delivery, both the parties shall agree to such arrangement, and in cases where either party does not approve of it, such possession may be termed as illegal.

**(C) Section 34, Sale of Goods Act, 1930 - Effect of part delivery** – “*A delivery of part of goods, in the progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole; but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder*”.

- The section is based on a common law’s rule which states that “*delivery of part may be a delivery of the whole if it is so intended and agreed but not otherwise and burden of proof seems to be on party affirming such intention*<sup>9</sup>”. It is a constructive delivery only when the delivery of a component occurs concurrently with the delivery of the whole. Accepting goods from the seller constitutes acknowledgment of constructive possession of the entire transaction. The other part of this section deals with the intention of severing the part of goods from whole, it won’t be termed as complete delivery<sup>10</sup>. This section can be understood in light of the operations of any E-commerce. For instance, A places an order of five books from merchant site B. Due to stock delay

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<sup>8</sup> *Elmore v. Stone*, 127 ER 912

<sup>9</sup> Per Lord Blackburn in *Kemp v. Falk* 7 App Cas 573, 586, (1882)

<sup>10</sup> *Dixon v. Yates*, 5 B & AD. 313.339, (1883)

and various reasons, A receives three books during first week of placing the order and other two during the next week. A's acceptance of first three books signifies his acceptance through his action that other part delivery is approved. In case he doesn't want part deliveries, he has the option of cancelling the order at any point of time. Also, if B has the intention of severing the deliveries from the whole, he would be held negligent and may supply only one book at a time out of five which may attract legal action against him.

**(D) Section 35, Sale of Goods Act, 1930 - Buyer to apply for delivery** – *“Apart from any express contract, the seller of goods is not bound to deliver them until the buyer applies for delivery.”*

- This provision said that if the buyer does not apply for delivery, he has no cause of action against the seller; additionally, he must identify that cause of action in his plaint<sup>11</sup>. The demand by a third party isn't valid and in cases where seller provides for notice of arrival of goods like an invoice, the buyer will be under obligation to apply for the delivery. This can be understood in reference to the E-commerce as well.
- Big companies like Myntra has delivery partners who deliver the products to the customer, these partners are independent and only act as courier agency. For instance- Mr. A orders a pair of shoes from Myntra and the delivery partner collect the same from their warehouse. Due to some technical fault, delivery could not be made for several days. Here A has to apply for delivery from the delivery partner and cannot hold Myntra responsible for the delay. However, to maintain the brand image, big E-commerce giants provides on the spot help in cases of late delivery and related issues but when it comes to fixing the legal responsibility, Go Javas has bigger responsibility in that case. Also, when buyer applies for the delivery, it will be dependent on nature and circumstances of the particular contract as to the time within which seller is required to comply with buyer's demand.
  - i. Under C.I.F (Cost, Insurance and Freight, an international shipping agreement), it is considered as the duty of the seller to inform buyer about arrival of his goods at the port destination after which there arises the obligation of the buyer to apply for the delivery. Same is applied in case of Ecommerce business which has its establishment in some other country while the buyer is sitting in his

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<sup>11</sup> *Sivaya v. Ranganayakulu*, 37 Bom LR 538 (1935)

home country, ordering the products.

- ii. Seller's liability is limited till the arrival of the goods to Post Office only and not beyond it. Another notable point about buyer's duty is that his duty to apply for delivery does not arise when seller has refused to perform his part of the contract without any justification even before the final date of delivery has arrived. This may be the pure case of "anticipatory breach of contract" by the seller and the said Section 35 has no application when buyer treats the contract as rescinded by the virtue of Section 60 of this Act<sup>12</sup>. This clause can be applied to the cases of E-commerce as well.

**(E) Section 36, Sale of Goods Act, 1930<sup>13</sup>** defines the rules as to the delivery of the goods ranging from place of the delivery, time for delivery, mode to expenses of such delivery. The following sub-sections explained must be understood in light of E-commerce transactions,

1. **Rules of delivery** - Rules of delivery may be varied according to the agreement between buyer and seller on a website of the seller.
2. **Interpretation of contract** - It establishes the question of whether the buyer must apply for possession or the seller must deliver the items to the buyer; this question is determined by the facts and circumstances of each contract. Usually in cases of E-commerce, it is the seller who sends the goods to the buyer after receiving the order.
3. **Place of delivery** under the ambit of E-commerce transactions form under the element of an express contract. The goods are delivered to the buyer from the place where they were lying like warehouse of the company. The given Section is silent on the mode of delivery of the products and any reasonable mode can be adopted by the company.
4. **Time of Delivery** - Sub-section (2) deals with the time for delivery and states that it is the duty of the seller to deliver the goods within a reasonable time and where time is fixed, seller has to follow the time limit. It could depend on number of reasons like- nature of goods, transport facilities and related issues. In case the time period lapses; it will be breach of contract. Also, there are few other E-commerce companies like Alibaba and Ebay who asks for bigger time

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<sup>12</sup> Devilal v. Govindlal, AIR 1961 Raj. 283

<sup>13</sup> Section 36, Sale of Goods Act, 1930 – Rules as to delivery.

window which may extend till one month due to the location of their businesses and it is up to the buyer to agree on it or not. In case buyer feel that time factor is not being followed, he is free to rescind the contract (cancel the order in case of E-commerce) but not before providing the previous notice to the seller for the same.

These Sections are sufficient to establish accountability when the question of e-contracts arises. Without these provisions, it would be impossible to give legal sanctity to the world of virtual business.

#### **IV. ISSUE OF SECTION 41, SALE OF GOODS ACT, 1930 – MISREPRESENTATION UNDER E-COMMERCE**

**Section 41, Sale of Goods Act, 1930 – Buyer’s right to examining the goods** – “(1) *Where goods are delivered to the buyer which he has not previously examined, he is not deemed to have accepted them unless and until he has had a reasonable opportunity of examining them for the purpose of ascertaining whether they are in conformity with the contract.*”

“(2) *Unless otherwise agreed, when the seller tenders delivery of goods to the buyer, he is bound, on request, to afford the buyer a reasonable opportunity of examining the goods for the purpose of ascertaining whether they are in conformity with the contract.*”

In the case of E-Commerce, this right that is given to the buyer to examine the goods before purchasing under the said act is absent. In a brick and mortar showroom the buyer has the option of examining the product he/she buys and assuring himself/ herself of the quality of the product by touch and hence chances of being misled by the seller are few. The principle of ‘Caveat Emptor’ is strictly applicable in brick and mortar world. However, in the situation of an online transaction, where the customer is disadvantaged and unable to evaluate the quality of the commodity being purchased, it is nearly impossible to implement the concept of ‘Caveat Emptor’ properly. Therefore, the newly emerged doctrine in the era of Human Rights of consumers ‘Caveat Venditor’ must strictly adhere to in online transactions. Although, there are remedies available to the buyers of E-Commerce in which they can apply for refund or return of the goods and consumer courts can also be approached to seek compensation. However, there is a need of reform that would address this issue.

#### **V. CONCLUSION**

In this ever expanding world of E-commerce, we need various legal tools to implement legality of this business. We have to make sure that rights of both buyers and sellers are not infringed

due to lack of clarity or unavailability of legal norms at place. Sale of Goods Act, 1930 addresses some of the issues of e-contracts and chapter IV of it can easily be linked to the business of E-commerce to provide legal sanctity. There are various legislations that protects the operations of E-Commerce directly or indirectly ranging from Information Technology Act, 2000 to Sale of Goods Act, 1930.

However, as the number of internet users grows, e-contracts are being arranged to expand further. The expanding popularity of internet banking and credit or debit cards, as well as the increasing number of educated and computer-literate individuals during the covid times as well will bolster this increase. The need of the hour is a legislation that covers all aspects of electronic contracts, from payment mechanisms to maintaining basic standards in service delivery. For example, as mentioned above, Section 41 of Sale of Goods Act, 1930 cannot be applied to E-Contracts which deals with the right to examine the goods before purchasing them, however, such process is not possible in the case of e-contracts.

The Electronic Commerce (EC Directive) Regulation, 2002<sup>14</sup> under European Union addresses several issues faced in the performance of e-contracts, even such issues that consists of minor technicalities. In India, we may have a separate legislation called The Electronic Commerce Act, 1998, but with just 15 sections, it does not address the complexities of E-Contracts. A law in this area will help identify offenders who have utilized the internet to earn quick money. This will also serve as a safeguard for legitimate e-contract websites, assisting in their further growth. Additionally, a consumer court authority should be established to investigate disputes stemming from e-contract transactions. This authority must consist professionals in fields such as payment security. This will encourage prompt resolution of disputes and further promote the use of e-contracts.

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<sup>14</sup> Electronic Commerce (EC Directive) Regulation 2002, UK Statutory Instruments, available at, <https://www.legislation.gov.uk/uksi/2002/2013/contents/made>, accessed on 30<sup>th</sup> December, 2021.