
THE BUYER IS GONE, THE GOODS ARE GONE, AND THE PRICE UNPAID: LEGAL REMEDIES FOR THE UNPAID SELLER UNDER INDIAN LAW

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I. Introduction

In business transactions regulated by sale of goods contracts, the seller often conveys possession or ownership of the products prior to receiving complete payment. This disparity where delivery occurs prior to payment establishes a significant legal risk. If the customer defaults on payment, the seller not only incurs a financial loss but may also cede complete ownership over the items. In this case, the law acknowledges the unpaid seller and confers particular rights to safeguard their business interests even after the products have departed from their control.

According to the Sale of Goods Act, 1930, an unpaid seller can be defined as an individual to whom the full payment has not been rendered or provided. Moreover, the definition includes a seller who has accepted a payment instrument, such as a cheque or bill of exchange, that has been dishonoured. Additionally, a seller who has received only a portion of the payment, with the remaining balance unpaid, is same as an unpaid seller under the act. The Act further provides protection to individuals occupying the role of the seller, such as an agent representing the seller.

For instance, X consents to sell a laptop to Y for ₹50,000. Y compensates him via a post-dated cheque. When X hands over the laptop, he is merely a seller. However, if the cheque is subsequently dishonoured by the bank, X will be classified as an unpaid seller in accordance with Section 45¹

The Sale Of Goods Act provides remedies for the seller against the goods and against the buyer personally. The statutory provisions aim to protect business equity by allowing sellers to secure

¹ Section 45 of the Sale of Goods Act, 1930

payment even after delivering goods. However, practical challenges remain. The growing use of third-party logistics, documentation of title transfers like bills of lading, and complex supply chains have weakened possession-based remedies under the Act. Additionally, under the Bankruptcy Code, 2016, an unpaid seller is treated as an unsecured creditor during insolvency, significantly limiting recovery prospects.

This paper examines three primary questions:

- What rights have been given to the underpaid seller under Indian law?
- Are these remedies practically effective in today's world?
- What insights might the UK's experience with the Sale of Goods Act 1979 and the Corporate Insolvency and Governance Act, 2020 (CIGA 2020) provide for Indian law?

Part II reviews the existing literature on unpaid seller rights. Part III outlines the research methodology. Part IV examines the statutory framework and key judicial interpretations. Part V critically evaluates the practical enforceability of these remedies, with comparative insights from UK law. Part VI concludes with key findings and suggestions for reform.

II. Literature Review

Many eminent writers and academics have explored unpaid seller's rights. Our research has included a compilation of textbooks, commentaries, and journal articles to comprehend the legal framework and the practical challenges.

- Avtar Singh (revised by Deepa Paturkar), *Law Of Sale of Goods*²: This textbook offers a clear and systematic elucidation of the rights of an unpaid seller. The book categorizes rights into two main types: rights pertaining to goods and personal rights against the buyer. It also explains the legal basis for each right with examples, which helped us in understanding how these rights work in real situations.
- Pollock & Mulla, *The Sale of Goods Act*³: This Commentary focuses heavily on judicial interpretations and traces the statutory development of unpaid seller remedies under

² Deepa Paturkar, Avtar Singh's Law of Sale of Goods (LexisNexis 2020).

³ Dinshaw Fardunji Mulla (rev. Abhinandan Malik), The Sale of Goods Act (11th edn, LexisNexis 2021).

Sections 45 to 56. It clarified the more procedural elements, such as how and when in real-world situations the right to lien or stoppage in transit may be rightfully used.

- Stephenson Harwood LLP, *Help, My Buyer Is Insolvent! The Unpaid Seller's Rights Against the Goods* (2021)⁴: this article was particularly useful to understand how the UK's Corporate Insolvency and Governance Act, 2020 (CIGA) affects unpaid sellers. It showed us that in the UK, insolvency proceedings can block sellers from enforcing lien or stoppage. The comparative insight from the UK model is particularly valuable for highlighting gaps in Indian law concerning seller protections during insolvency.
- Ishita Mittal, "Rights of an Unpaid Seller under the Sale of Goods Act"⁵: This article highlights the unpaid seller's various rights and surveys judicial pronouncements interpreting these rights.

III. Methodology

We have used doctrinal methodology based on the statutory provisions of the Sale of Goods Act, 1930, particularly Sections 45 to 56 concerning the rights of an unpaid seller. Commentary from standard texts has been used to interpret the legal framework. Relevant judicial decisions have been analysed to understand the application of these rights. A limited comparison with the UK Sale of Goods Act, 1979 and the Corporate Insolvency and Governance Act, 2020 has also been undertaken to highlight differences in insolvency treatment in India and the United Kingdom.

The paper is purely analytical in nature.

IV. Legal Framework and Case Law Analysis

A. Right Against Goods

Sections 45 to 56 of the Sale of Goods Act, 1930 expressly recognise an unpaid seller's rights.

The Act provides for two categories of remedies: rights concerning the goods and rights enforceable against the buyer personally. This section examines the right against goods

⁴ Emma Skakle and Jonathan Spearing, 'Help, my buyer is insolvent! The unpaid seller's rights against the goods' (Stephenson Harwood LLP, June 2021) <https://www.shlegal.com/news/what-the-commodities-industries-need-to-know-about-the-corporate-insolvency-and-governance-act> accessed 27 April 2025.

⁵ Ishita Mittal, 'Rights of an Unpaid Seller under the Sale of Goods Act' (2023) 3 Jus Corpus LJ 25.

supported by significant judicial interpretations.

Sections 47-49 offer the unpaid seller a lien, allowing them to maintain possession of the goods until the amount is paid. This right arises when the transaction is made without credit terms, the agreed-upon credit period expires, or the buyer becomes insolvent.

When products are sold without a credit arrangement, Section 32⁶ applies, regarding delivery and payment as simultaneous responsibilities, unless the parties agree differently. This concurrent condition principle was reaffirmed in *Vishnu Sugar Mills Ltd v. Food Corporation of India*⁷, where the Patna High Court ruled that even in cases of statutory sales, the buyer must pay the full price at the time of delivery and cannot impose delayed payment terms that disadvantage the seller.

If the buyer fails to pay, the seller has the right to exercise their lien and retain possession of the items. In credit sales, the right of lien is deferred during the agreed-upon credit period, but it resumes when the credit term expires without payment. Furthermore, if the buyer becomes insolvent, the seller may use the right of lien even before the credit period expires, because insolvency effectively undermines the basis of the credit arrangement.

Example: X sells goods to Y for ₹50,000 on a 30-day credit. Y is declared insolvent after 15 days. Despite the ongoing credit period, X may immediately exercise his lien and retain the goods.

It is significant that lien is a possession right. Even if ownership of the items has already moved to the buyer, the seller's right to maintain possession persists until full payment is made⁸. The lien, however, secures only the price of the goods and does not cover additional costs, such as storage charges incurred by the seller while exercising this right.

Part-Delivery

Section 48⁹ specifies that if an unpaid seller makes a partial delivery of the goods, they retain the right of lien on the remaining goods¹⁰. However, if the part-delivery occurs in circumstances

⁶ Section 32 of the Sale of Goods Act, 1930

⁷ *Vishnu Sugar Mills Ltd v Food Corporation of India* AIR 1987 Pat 22 (Pat HC)

⁸ *Imperial Bank v London and St Katherine Docks Company* (1877) 5 Ch D 195

⁹ Section 48 of the Sale of Goods Act, 1930

¹⁰ *Grice V Richardson* (1877) LR 3 AC 319

that indicate the seller intended to relinquish his lien, he cannot claim it over the remainder. In layman's words, when part-delivery is meant to serve as full delivery, the seller's lien is waived.

The burden of proving that the seller waived his lien rests on the party making that claim.¹¹

Where goods are to be delivered in installments, a buyer's default in paying for one instalment does not, by itself, entitle the seller to halt further deliveries. The seller may only refuse to deliver the remaining goods if either (a) the buyer goes insolvent or (b) the buyer's breach amounts to a repudiation of the entire contract.

Termination of Lien

Although the right of lien is a powerful remedy, it is not without limits. Section 49¹² outlines four circumstances under which lien comes to an end.

When the buyer or their designated agent legally takes possession of the items, the seller's lien expires, even if payment has not yet been received. Since the buyer has obtained complete ownership in these situations, the seller is required to seek recovery through a debt action. Second, when the items are turned over to a carrier or bailee for delivery, the seller's lien is eliminated¹³. With the potential for a stoppage in transit, the lien could be reinstated in the event that the buyer becomes insolvent. Thirdly, the seller may choose to explicitly or implicitly waive the lien by an action or agreement. Lastly, the buyer's legitimate and unconditional tender of the whole price, even if the seller declines to accept it, terminates the seller's lien.¹⁴

Thus, the right of lien depends entirely on the seller maintaining uninterrupted possession under proper conditions, and is lost by lawful delivery, waiver, or tender of price.

Right of Stoppage in Transit

The right of stoppage in transit allows an unpaid seller to reclaim custody of goods while they are with a carrier or bailee, if the buyer becomes insolvent. This remedy is available after the seller has abandoned possession, but before the items are delivered to the buyer or their agent.

¹¹ BLACKBURN ON SALES, 341 (3rd Edn).

¹² Section 49 The Sale of Goods Act, 1930

¹³ Jain Mills and Electrical Stores v State of Orissa AIR 1991 Ori 177

¹⁴ Levy & Co Ltd v Goldberg (1922) 1 KB 688

Transit is regarded to continue while the items are kept by an independent carrier and terminate when the buyer or their representative takes legitimate possession of the goods.¹⁵

To exercise the right of stoppage, three conditions must be met: (i) the seller remains underpaid, (ii) the goods are in transit, and (iii) the buyer has become insolvent.

The right to the goods ends when the buyer receives them or when the carrier confirms that they are holding the goods on behalf of the buyer.¹⁶ However, if stoppage is validly exercised, the seller regains possession and the lien is reinstated.

Right of Resale

Section 54¹⁷ lays forth the circumstances under which an unpaid seller may re-sell the items following lien or stoppage in transit. The buyer keeps the right to get delivery by completing complete payment, the mere exercise of lien or stoppage does not terminate the contract. Reselling the items allows the seller to break the agreement and obtain the good's worth. The right to resell arises under three circumstances:

- Perishable goods: If the goods are perishable, the seller may resell them immediately without notifying the customer.
- Non-perishable goods with notice: In the event of non-perishable items, the seller must provide the buyer adequate notice of their intention to resale. If the customer does not pay within a reasonable time after receiving notification, the seller may resell the goods. The seller has the right to keep any profit from the resale and to recover any losses from the original buyer.
- Express right in the contract: If the original contract expressly states that the seller has the right to resell, the seller may do so without notifying the buyer.

If the seller resells the items without providing the requisite notification, they waive their right to seek damages for any subsequent loss and must return any profit from the resale to the original buyer. The new buyer's title is unaffected by the absence of notice. Section 54(3) states

¹⁵ Schotsmans v. Lancashire & Yorkshire Railway Co 1867 LR 2 Ch App 332: 36 LJ Ch 361.

¹⁶ Great Indian Peninsula Railway Co. v. Hanmandas (1889) 14 Bom 57

¹⁷ Section 54 of the Sale of Goods Act, 1930

that the following purchase receives a legal title regardless of whether the first buyer was notified. This provision serves as an exemption to the general norm under Section 27, which bans a seller from passing a title that is better than their own.¹⁸

When the seller exercises the right to resell, the original buyer who paid a deposit is entitled to a refund, however the seller may deduct any damages incurred. For compensation for such damages, the seller must show the difference between the original contract price and the resale price. The right to resell is crucial because without it, the unpaid seller would simply keep possession of the goods with no ultimate remedy. Resale enables the seller to obtain the value of the goods, end the original contract, and protect their commercial interests.

B. Right Against the Buyer

Suit for Price (Section 55)

Section 55 allows the unpaid seller to file a lawsuit against the buyer for the price of the goods. According to Section 55(1), if ownership has been transferred to the buyer and the buyer wrongfully refuses or neglects to pay, the seller may sue for the agreed price. This right exists since both risk and title have passed to the buyer, and the seller has fulfilled their commitment to deliver.¹⁹

Section 55(2) addresses a distinct circumstance in which the seller may sue for the price even if ownership has not yet passed, as long as the contract states that payment is due on a predetermined date regardless of delivery.

For example, if A agrees to sell 100 units of machinery to B, with payment due by 25th December and delivery scheduled for 30th December, A can claim the price if B fails to pay by the due date, despite the goods not yet being delivered.

Thus, Section 55 protects the unpaid seller by allowing recovery of the price whether ownership has passed or payment is contractually due.

¹⁸ Gallagher v. Shilcock [1949] 2 K.B. 765

¹⁹ Kushalbai vs Mohmadhussain, 1980 (2) SCC 1

Suit for Damages for Non-Acceptance (Section 56)

If a buyer refuses to accept and pay for the goods, the unpaid seller has the right to seek damages.²⁰ This right is applicable even if ownership has not passed or the seller retains possession. The seller's loss is the result of a breach of contract, and damages are paid to restore the seller's financial position if the contract had been correctly executed.

Damages are calculated using the criteria outlined in Sections 73 and 74 of the Indian Contract Act of 1872. Typically, damages are computed as the difference between the contract price and the market price on the day of breach, regardless of subsequent market developments. Even if the market value rises following the breach, the seller is still entitled to recover the difference based on the price at the time of breach. This method stops the buyer who defaults from escaping responsibility because of later changes in the market.

The duty to mitigate loss also applies, requiring the seller to take reasonable steps to limit the damages. This remedy complements the right to sue for the price, ensuring that the seller's commercial interests are protected and compensating for the buyer's failure to perform.²¹ This remedy complements the seller's right to sue for the price and ensures that commercial expectations are protected, allowing the seller to recover the loss that naturally results from the buyer's non-performance.

V. Critical Evaluation and Comparative Insights

Although the Sale of Goods Act, 1930 establishes a solid framework for the protection of unpaid sellers, its effective application faces difficulties in contemporary commercial practices. The exercise of lien is tied to the seller's possession of goods, which is often lost when items are entrusted to third-party logistics providers or warehouses. Likewise, the enforcement of stoppage in transit has become more complex due to digital delivery systems and the use of electronic bills of lading, making it harder to ascertain when transit officially concludes and creating ambiguity in asserting this right.

Personal remedies such as suits for price and damages also offer limited relief once insolvency proceedings are initiated. Under the Insolvency and Bankruptcy Code, 2016, unpaid sellers are

²⁰ Cloudwalker Streaming technologies Ltd v Flipkart India Ltd, 2019 SCC Online NCLT 671

²¹ P.S.N.S. Ambalavana Chettiar v. Express Newspapers Ltd. AIR 1968 SC 741

treated as unsecured creditors without any priority, substantially diminishing their chances of recovery.

Comparatively, English law demonstrates a more integrated approach. The UK's Sale of Goods Act, 1979 recognises similar rights, but under the Corporate Insolvency and Governance Act, 2020 (CIGA), a moratorium is imposed during insolvency, balancing creditor protections with faster resolution.²² Indian law, by contrast, lacks structured protections for sellers once insolvency proceedings begin.

Given these challenges, reform is necessary. Granting unpaid sellers a limited priority under the IBC and updating Sections 50 to 52 to address digital logistics practices would strengthen the seller's position. Although the rights provided under Indian law remain conceptually robust, adapting them to contemporary commercial realities is essential to preserve their effectiveness and uphold the interests of sellers.

VI. Conclusion

The rights of an unpaid seller under the Sale of Goods Act, 1930, provide critical remedies in commercial transactions through lien, stoppage in transit, resale, and personal actions for price and damages. However, as examined, the practical enforcement of these rights is increasingly constrained by modern logistics practices and the treatment of unpaid sellers as unsecured creditors under the Insolvency and Bankruptcy Code, 2016.

This paper's analysis of statutory provisions and case law confirms that while Indian law offers theoretical protection to unpaid sellers, its effectiveness is significantly reduced once insolvency proceedings commence. Comparative insights from the United Kingdom demonstrate a more integrated approach, particularly with the safeguards introduced under the Corporate Insolvency and Governance Act, 2020.

To enhance the protection of unpaid sellers, reforms are necessary. Limited priority under insolvency law and legislative updates reflecting modern supply chain realities would strengthen the practical enforceability of these rights.

²² Emma Skakle and Jonathan Spearing, 'Help, my buyer is insolvent! The unpaid seller's rights against the goods' (Stephenson Harwood LLP, June 2021) <https://www.shlegal.com/news/what-the-commodities-industries-need-to-know-about-the-corporate-insolvency-and-governance-act> accessed 27 April 2025.

Future study could explore how Indian law might better protect unpaid sellers during insolvency and in digital trade contexts. Greater attention could be given to the impact of modern supply chain practices, such as electronic bills of lading and digital deliveries, on possession-based remedies. Comparative insights from other common law jurisdictions could also inform potential reforms.

Table of Cases

- *Cloudwalker Streaming Technologies Ltd v Flipkart India Ltd* 2019 SCC Online NCLT 671
- *Cooper, ex p* (1879) LR 11 Ch D 68 (CA)
- *Gallagher v Shilcock* [1949] 2 KB 765
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