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**CROSS-BORDER COMMERCE: ANALYSING SALES OF GOODS CONTRACTS  
IN INTERNATIONAL TRADE**

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# CROSS-BORDER COMMERCE: ANALYSING SALES OF GOODS CONTRACTS IN INTERNATIONAL TRADE

Maithili Katkamwar\*

## *Abstract*

*As the seller is introduced to the international market, the risks of international geopolitics arise. This article seeks to understand and analyse the dynamics of global trade and how the amendments in the existing Sales of Goods Act can improve trade, allowing the seller to sell goods internationally and in their own country. For this, the researcher has reviewed the Sales of Goods Act to understand the basics of the law. The research also delves into analysing different dispute resolution mechanisms that will play a significant role. The jurisdiction clause in these deals is analysed through case laws and rules. The comparative study done by the author on the CISGE, which is the United Nations Convention on Contracts for International Sales of Goods, and the Sales of Goods Act, provides a good lens to understand the improvements necessary to resolve these problems. The author uses books, journals, and legislation for this article.*

**Keywords:** Cross-border Commerce; Sale; Contract; International Trade, Globalisation, etc.

## Introduction

The Sale of Goods Act, 1930 (SOGA) is a legislation that deals with the sales of movable property. Instituted in the year 1930, it defines goods as “goods” means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.”<sup>1</sup> The act provides the necessities for the contract of sales, the conditions and warranties, performance, rights of unpaid sellers, remedies and buyers' rights and duties.

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<sup>1</sup> The Sale of Goods Act, 1930

## *Cross-Border Commerce*

The globalised trade market has led the seller to sell and compete with the world markets, but this has also exposed him to the shifts in the world market due to wars and other political challenges. This has made the seller shift to a flexible approach for the trade. The SOGA Act only gives the seller the right to trade in the Indian market. If a person wants to sell goods in foreign countries, compliance with the United Nations Convention on Contracts for International Sales of Goods guidelines is essential. This leads to confusion and the trader's reluctance to have a flexible approach towards the sales of goods.

Globalisation has increased international trade, leading to ambiguity in the legal enforcement of contracts. Cross-border trade has a lot of challenges, like ambiguity in governing laws, as the laws vary from country to country, creating problems in choosing the laws that are appropriate for the parties. The absence of governing statutes can lead to the court applying the laws of the defendant's domicile, making it disadvantageous for the other party. Though the SOGA Act is primarily domestic law, it may be used to clarify the terms for sales and goods.

The jurisdiction of the parties is of significant concern. This research analyses the jurisdiction issue by providing various case laws and analysing statutes like the Sales of Goods Act and the Civil Procedure Code, 1908.

The performance of the contract is of immense importance. It is connected to the cross-border contracts as the SOGA Act contains the specific obligations regarding the quality, quantity and delivery of goods. The parties must confirm if their contracts comply with SOGA and the laws and jurisdiction where they operate.

Further, there are many dispute resolution mechanisms. The researcher will analyse dispute resolution mechanisms, their workings, advantages, and disadvantages. Though the Sales of Goods Act is domestic, its principles are essential to understand and interpret the contractual relationships between parties of different nationalities.

The world is going through difficult times both politically and economically. While globalisation has aided international trade, it has also affected businesses due to global issues like wars and tariffs. This has led to a mixed approach in business wherein the seller wants to sell products to domestic and international markets. In this paper, the researcher will try to understand how the sales of goods can help with this.

*This paper aims to analyse the issue of jurisdiction in cross-border trade, understand the performance of contracts under the Sales of Goods Act and its connection with international disputes, and evaluate the dispute resolution options.*

### **Literature Review**

This paper tries to supplement the core understanding by referring to books, journals, newspapers, etc. Chirag Seth & Niharika Singh,<sup>2</sup> has helped in the formative understanding of how the cross-border contracts work. It talks about the types of commercial contracts, the importance and position of the international conventions like CISG and how different dispute resolution procedures work in controlling the fallout. The paper is very useful in analysing the judicial interpretation of the validity of these contracts and how interstate relations affect these contracts. Pramil Kant,<sup>3</sup> gives us a comprehensive understanding of the legal system. This highlights both international and domestic dimensions of the contracts. The article also covers a discussion on private international law principles like the Proper law of contract, *lex loci contractus*, etc. The article also covers the role of arbitration in easing the conflict between the companies.

The article "*Arbitration Clauses in Cross-Border Transactions: Indian Perspective*"<sup>4</sup> provides a comprehensive analysis of the role that arbitration plays in cross-border contracts. The authors warn practitioners to avoid the pathological arbitration clauses, which are vague and can cost a lot of time and effort if any conflict arises. The article examines the judicial trends regarding these contracts. It also refers to cases to show the changes and the necessary shifts.

### **Jurisdiction In Cross-Border Trade**

Due to increasing globalisation, cross-border trade has become very prominent. Jurisdiction is an essential component of the party's ability to resolve disputes. Generally, the contracts contain a jurisdictional clause that states the jurisdiction. This location can be a neutral destination or one of the countries doing business. However, the general notion propounded by the court is that the parties cannot hold another place where neither party exists as jurisdiction. However, this was changed in the case of *Modi Entertainment Network v. W.S.G. Cricket Pvt. Ltd.*, where the court said that private entities have the freedom to decide on their redressal forum. The court has also warned that this foreign jurisdiction clause can be quashed when extraordinary circumstances arise. The clauses are not definitive and often intervene

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<sup>2</sup> Chirag Seth & Niharika Singh, *The Role Of Commercial Contracts In Cross-Border Trade: Legal Obstacles And Solutions*, 5 (7) Indian Journal of Legal Review, 2025, 565.

<sup>3</sup> Pramil Kant, *Laws regulating cross-border contracts in India*, available at *Laws regulating cross-border contracts in India*, iPleaders (last visited 10 October 2024)

<sup>4</sup> Lakshmikumaran and Sridharan, *Arbitration Clauses in Cross-Border Transactions: Indian Perspective*, (Sept. 22, 2023) available at – [Arbitration clauses in cross-border transactions – Indian perspective | Lakshmikumaran & Sridharan Attorneys](#) (last visited Jan. 17, 2025).

where factors such as the interests of justice are considered.<sup>5</sup> Recognition of the situations in which the jurisdiction of foreign courts is mentioned in section 13 of the Civil Procedure Code and section 44-A establishes a legal fiction that allows a decree from a superior court in these territories to be considered similarly to a decree by the district court, in the United Kingdom, the UAE, Singapore and others. This principle is applicable. For countries not in this category, the entities must apply a new suit in the Indian courts on the foreign decree or the cause of action. The courts have propounded that the foreign court's judgment will only have an evidentiary effect; the Bombay High Court emphasised this in the case of *Marine Geotechnics LLC v. Coastal Marine Construction and Engineering Limited*.<sup>6</sup> There are two types of jurisdiction clauses: exclusive jurisdiction clauses, which mandate the parties to keep a singular court generally in one party's country, and non-exclusive jurisdiction clauses, which allow the pursuance of multiple jurisdictions by the parties. There are a lot of challenges to the jurisdiction clauses, like the enforcement of the foreign judgements as discussed prior, and the courts can institute the doctrine of *forum non conveniens*, which allows the Indian courts to quash the decree passed by the foreign courts<sup>7</sup>.

### **Performance Of Contracts**

Performance of contracts under the Sales of Goods Act is mentioned in sections 31 to 44. These deal with the rights of the seller, the rights of buyers, the delivery and its mode and the rights of the unpaid seller.

The definition of seller is given in Section 2(13) of the act and is as follows: "seller" means a person who sells or agrees to sell goods.<sup>8</sup> According to section 31, some rights are given to the seller; they are to keep the goods until the payment is completed and uphold their possession. Delivery is only to be made when the buyer forwards the application. Further, the seller can halt the delivery of goods until the payment is completed. He has the authority to resell the goods under some conditions. Further, he can sue the person who bought the goods if he fails to make payments on a particular day, and the same is mentioned in the contract.

The section also mentions the duties of a seller to the buyer. This includes making requirements for transferring the property and goods when in the custody of a courier service. This should ensure the property has been delivered correctly per the

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<sup>5</sup> Pramil Kant, *Laws regulating cross-border contracts in India*, I pleadings, available at [Laws regulating cross-border contracts in India - iPleaders](#) (last visited 10 October 2024)

<sup>6</sup> *Marine Geotechnics LLC v. Coastal Marine Construction & Engineering Ltd.*, (2014) 2 BomCR 769

<sup>7</sup> Sneha Kalia, *Foreign Jurisdiction Clauses in Commercial Contracts: An Indian Perspective*, India Corp Law, (Dec 28, 2020)

<sup>8</sup> The Sale Of Goods Act, No. 3 of 1930, § 2 (Ind.)

contract's terms. The goods should further adhere to the requisite conditions and warranties.

The act defines a buyer through section 2 (1), which is *"buyer" means a person who buys or agrees to buy goods;*".Section 31 gives the rights and duties of the buyers. The buyers' rights are to receive the delivery of goods as per the contract.<sup>9</sup> The buyer has the right to reject a contract if he is not satisfied with the quality and quantity of the goods and have the right to examine them; they have the right to know how the goods are being delivered. Further, he can sue the seller for the loss that occurred or was caused by the seller's wrongful neglect. With the rights come specific duties. These include the acceptance of delivery of goods when the seller has fulfilled all the criteria; he must state the time by which the goods should be delivered. Further, he is liable to bear the risk of damage when delivery is from a distinct place. When the goods arrived, he had the duty to pay the price of the transfer of possession, and if he didn't accept the goods, he had to pay the charges.

Specific conditions for delivering the goods are defined in section 33 of the Act 33. *"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 the buyer's possession or of any person authorised to hold them on his behalf."*<sup>10</sup> Some key delivery factors include the presence of two parties, wherein one party should possess the goods and the other party should transfer the possession to the other.<sup>11</sup> Furthermore, the delivery of the goods can take place in different ways. Actual delivery occurs when the possession is transferred to the buyer or someone authorised by the buyer. Whereas the constructive delivery is where the physical or symbolic delivery has not occurred, this happens in a three-fold pattern where the seller keeps the goods for the buyer, becoming a bailee. The buyer continues to hold possession of the goods as a bailee for the seller. Lastly, this can also be done when the carrier acknowledges the holding of goods for buyers.<sup>12</sup>

The section 45 of the act defines unpaid seller as- *"Unpaid seller" defined. —(1) The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act — (a) when the whole of the price has not been paid or tendered; (b) 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 because of the dishonour of the instrument or otherwise.*

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<sup>9</sup> Sangeet Kumar Khamari, Performance of the Contract of Sale under the Sale of Goods Act, Ipleaders

(Feb.13, 2020) [Performance of the Contract of Sale under the Sales of Goods Act \(ipleaders.in\)](https://www.ipleaders.in/performance-of-the-contract-of-sale-under-the-sale-of-goods-act/)

<sup>10</sup> The Sale of Goods Act,1930, S.33

<sup>11</sup> *Supra* note 3.

<sup>12</sup> *Ibid.*



(2) *In this Chapter, the term “seller” includes any person who is in the position of a seller, as, for instance, an agent of the seller to whom the bill of lading has been endorsed, or a consignor or agent who has himself paid, or is directly responsible for, the price.”*<sup>13</sup>. The rights of an unpaid seller can be against the goods and can be against the buyer.<sup>14</sup> The right in opposition of goods is that the seller has the right to possession over the goods; he has the right to stop the carrier from delivery and can sell the goods. Further, the seller has some rights against the buyer, including the right to sue the buyer when the price of the goods is not paid.

## **Dispute Resolution**

Dispute resolution gets trickier in an international forum where the parties are different countries. The standard dispute resolution methods are litigation, arbitration and mediation. They have advantages and disadvantages and can be used in various situations.

### **Litigation**

Under the Sales of Goods Act, the disputes should be resolved in court according to section 55 of the Sales of Goods Act, which states

#### **55. Suit for price. —**

*(1) 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.*

*(2) 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. However, the property in the goods has not passed, and the goods have not been appropriated to the contract.”*<sup>15</sup>.

The further categories of the suit are mentioned in sections 55- 61 of the Act.

When applying for the suits, the parties must consider the suit's jurisdiction as mentioned in the above sections. The advantages of this are clarity in the legal

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<sup>13</sup> The Sale of Goods Act, No. 1930, S.45

<sup>14</sup> Supra note 3.

<sup>15</sup> The Sale of Goods Act, 1930, S.55

framework, and the courts can appeal and enforce the order, depending on their international relations and treaties. The disadvantage of the system is the breach of the parties' confidentiality, leading to a loss of reputation. The lengthy procedures and costs often make the parties uninterested in the process.

### **Arbitration**

The contractual breach by the parties mentioned under the SOGA Act can be resolved through arbitration, provided the parties agree to it. Arbitration is an effective tool for resolving disputes due to its efficiency, confidentiality, and ability to choose a neutral forum. The Indian Arbitration and Conciliation Act, 1996, governs the procedure, and it is in sync with the international standards and supports the enforcement of the agreements and the awards. The courts can enforce the arbitral awards and intervene when the natural justice and public policy principles are hindered. India is a signatory to many treaties; thus, others can implement the agreements. International rules govern these, such as UNCITRAL Arbitration or institutional rules like the International Chamber of Commerce or the American Arbitration Association<sup>16</sup>. The advantages are the confidentiality of the parties and the enforceability under international treaties like the New York Convention. This approach's disadvantages include the high cost and the lack of appealing options.

### **Mediation**

Mediation involves a neutral third-party facilitating deliberation to reach an amicable solution. The significant disadvantage of the same is the non-binding nature of the Mechanism, but it can lead to alignment with Soga's principles.

### **Comparative Study**

The international authority governing international trade is the United Nations Convention on Contracts for the Global Sales of Goods. The sales of goods govern the sales contracts in India. The comparative analysis of the two entities is done with three things in mind: jurisdiction, performance, and dispute resolution.

### **Origin**

CISG was developed to address the need for uniformity in international sales law. It was started by the United Nations Commission on International Trade Law

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<sup>16</sup> Michael F. Hoellering, *Alternative Dispute Resolution and International Trade*, XIV Review of Law & Social Change (1986) N.Y.U.

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(UNCITRAL) in 1966, and then the convention was adopted in 1980 in Vienna. Eighty countries have ratified this and aim to bring together international sales law.

The Sales of Goods Act of England inspired the SOGA Act. The Indian SOGA was drafted between 1926 and 1927 and was enacted on July 1, 1930.

### **Jurisdiction**

The CISG doesn't mention the jurisdiction but allows the parties to set their own authority. Article 31 provides for the same. The article has been interpreted in various conventions, like the Brussels and Lugano Conventions, to facilitate jurisdiction based on where the contract is exercised.

The CISG is applicable under Article 1 when the contracting parties are from different countries. The amenability of the CISG application provides autonomy to the parties.

The SOGA is a domestic law, and the general principle is that the suit is instituted in the defendant's place, though it has some exceptions. However, it is still unfavourable to one party and can lead to inconvenience due to an offshore litigation case.

The absence of such a law clause can lead to ambiguity and chaos among businesses.

### **Performance of Contract**

The CISG has a broad scope of rights of performance. Articles 46 and 62 of the Act require the buyer to insist on special delivery of the contract when the seller has failed to deliver the goods.<sup>17</sup> CISG further allows the parties to choose the remedies according to the nature of the breach, for example. The buyer may request the repair or maintenance when the goods are non-conforming. This flexibility is also reflected in Article 50, which permits the price reduction in non-conformity with the contract. These clauses protect the contract and the parties' interests even when specific challenges arise. The regulation also allows for the adaptation of obligations due to unforeseen situations. It also exempts liability when the non-performance was due to unforeseeable circumstances.<sup>18</sup>

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<sup>17</sup>Jianming Shen, S.J.D, the remedy of requiring performance under the cisg and the relevance of domestic rules, *Arizona Journal of International and Comparative Law* ,13, 2, pg – 253- 306.

<sup>18</sup> CISG-AC Opinion No. 10, Agreed Sums Payable upon Breach of an Obligation in CISG Contracts

On the other hand, SOGA has stricter provisions that mandate the buyer and seller to perform their part within a specific time; if they fail, they may seek a remedy for the loss. The SOGA has a narrow scope of remedies and holds monetary remedies in the highest place. This leads to more breaking of contracts without any fruitful performance for the parties. The rigid enforcement policy puts pressure on commercial relations even in the case of tiny breaches. This creates disputes that hinder the performance of the contract.

### **Dispute Resolution Mechanism**

The CIGS encourage the inclusion of dispute resolution clauses in the contracts. Article 19 gives the importance of a dispute resolution clause to contract acceptance. The parties can tailor their clauses according to their needs and interests. There is an encouragement of ADR in the CISG, which gives the autonomy to choose the methods according to their preference. The arbitration is a more encouraged mechanism due to its neutrality in dispute resolution and non-reliance on the national court, saving time and expenses. Further, there are no strict obligations for its implications.

The SOGA encourages litigation more, leading to lengthy litigations and increasing costs. Further, the problem of jurisdiction is evident in the filing of the suit. The SOGA provides for alternative dispute resolution systems. Still, they are not mentioned explicitly in the act, which leads to an explicit mention of a dispute = resolution clause, which leads to uncertainty, ambiguity, and inconsistencies.

### **Conclusion**

The sales of goods in cross-border trade provide details about the complexities of international commerce. The increase in global trade has led to a rise in foreign exchange, and the requirement for legal laws and frameworks is essential. The SOGA deals with domestic principles that aid the interpretation of international sales contracts.

Jurisdiction is of immense importance to dispute resolution, and the flexibility provided by the jurisdiction clauses lets the parties choose their courts. The landmark case of *Modi Entertainment Network v. W.S.G Cricket Pvt. Ltd.*<sup>19</sup> underscores the importance of jurisdictional clarity in cross-border transactions.

The performance of contracts contains the rights and duties of the seller, buyer, and unpaid seller, as well as the modes of delivery and their process. The rigidity in

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<sup>19</sup> AIR 2003 SC 1177

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disputes can be solved through the CISG, which provides a flexible framework. Alternative Dispute resolutions are limited to dispute clauses in the contracts. The CISG provides greater flexibility by encouraging alternative dispute resolution mechanisms like arbitration.

There are other challenges, like the ambiguity of payment and currency issues, such as exchange rates and payment modes. The fluctuations in market situations can lead to problems with the contracts' finances. Further, devising legislation on foreign contracts is imperative while observing India's growing foreign trade and startup boom. This legislation should contain dispute resolution mechanisms like arbitration, mediation, etc., to maintain confidentiality and ease of business in the country.