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EXPANDING SCOPE OF MERCHANTABILITY QUALITY

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I. ABSTRACT:

In the times of information asymmetry and the growing disparity between the knowledge of a said product obtained by a consumer for its maximum utilisation from the supplier or the manufacturer/producer becomes crucial. There are several laws arounds the globe protecting the interest of innocent customers, such as, we have the newly amended Consumer Protection Act of 2019 in India. The goods to match their descriptive quality (merchantable quality) or fitness becomes paramount. But can the seller be held liable if the goods were already examined before purchasing? Can the sale be repudiated if only a part of goods are defected? Does durability and reasonable value come under the ambit of merchantable quality? This article answers all these questions by analysing and comparing the status of provisions provided under the Indian and English Laws on Sale of Goods, which keep a check on the seller's duty and responsibility to supply goods of the satisfactory quality. The article also encompasses the stages of development of the English law over a period of time and how the Indian Sale of Goods Act of 1930 is falling short of it. Some reforms/suggestions proposed by the Law Commission, mentioned in the article, have yet to be acted upon by the legislature in making the law on merchantable quality more inclusive and contemporary.

II. KEYWORDS:

Caveat Emptor, Merchantable Quality, Reasonable Value, Fitness of goods, Description, Marketability, Durability

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III. INTRODUCTION:

In the ever-changing world with advanced technology and multi-functional products, often there arises a problem of information asymmetry. It is a state, wherein, the manufacturer of the producer of the goods is more aware of the goods than the buyer. It becomes essential to protect the consumer that the products bought by him must adhere to some conditions pertaining to the quality of the goods, failing which, the consumer must have a way to reject the said goods. In this article, the various provisions which secure the rights of the buyer, thereby, preserving the essence of consumer rights, are being discussed. The Sale of Goods Act of 1930 (hereinafter referred to as SOGA) provides for different provisions related to the merchantable quality of goods. It is based upon the English Sale of Goods Act, 1893.

IV. WHAT IS “MERCHANTABLE QUALITY” UNDER THE SALES OF GOODS ACT OF 1930?

In a general sense, goods are considered to be merchantable when they are “marketable” or “sellable”. Merchantable goods should not necessarily be superior or unexpectedly outstanding, rather, they should only be able to match the reasonable standards of being marketable, wherein, they are fit for sale in the usual course of business or trade, at the usual selling price.² Clause 12 of Section 2 of SOGA, defines quality of goods include their state and condition.³ The test of a reasonable or a prudent man is applied that the goods are in such quality and in such state or condition that a reasonable man acting prudently after full examination of the goods will accept them.

An implied condition is a stipulation in a contract which if breached can give the person (against whom the contract has been breached) to reject the goods. Under the SOGA, there exists an implied condition as to the merchantability of goods. Clause 2

² Merchantable, available at:

<https://www.law.cornell.edu/wex/merchantable#:~:text=%E2%80%9CMerchantable%E2%80%9D%20is%20equivalent%20to%20%E2%80%9C,trade%2C%20at%20usual%20selling%20price.> (last visited on August 1, 2022).

³ Section 2(12) of SOGA.

of Section 16 of the Act lays down the provisions of merchantable quality, which is an exception to the ruler of Caveat Emptor (let the buyer be aware).

The clause provides that:

- a. When the goods are bought on description,
- b. From a seller who deals in goods of such description (not necessary that the seller is the manufacturer or the producer of such goods),

If the above two condition are fulfilled, then there exists an implied condition in the contract of sale that the goods shall be of "merchantable quality".

Buying goods on description: Goods are said to be bought on description when the buyer does not have an opportunity to physically examine the goods, there is an objective test as to the goods that they shall correspond to their description in the contract [Section 15 of SOGA]. But when a buyer is given an opportunity to see/examine the goods, he later on cannot claim that the goods do not accord with the description. However, reliance is always placed upon what is written in the contract rather than what is seen by the buyer.

For the application of Clause 2 of Section 16, it is not essential for the seller to be the manufacturer or producer of the said goods, what is essential is that the goods were bought on description and if the same is not fulfilled then the buyer has a right to repudiate the contract and reject the goods, as per Clause 2 of Section 12 of SOGA. However, he can also treat the breach of condition as a breach of warranty and instead of repudiating the contract, can claim compensation from the seller for the loss suffered by him.⁴

Goods are said to be merchandisable when they are finished products and the person purchasing the goods does not have to take another step to make them fit for use. The same was propounded in the leading case of *Grant v. Australian Knitting Mills Ltd.*⁵ In the instant case, X purchased woollen innerwear from Y, who dealt in that type of products. The fabric had contained certain chemicals because of which, when worn by

⁴ Section 13(1) of SOGA.

⁵ (1936) 70 MLJ 513.

X, he caught dermatitis. X sued Y. It was held by the Privy Council that because of such a defect the goods have been rendered unmerchantable and X was entitled to claim damages, as herein, the disease caused to X was not because of him being sensitive but rather because of the defect in the quality.

Right of buyer extinguished upon examination of the goods [Proviso to clause 2 of Section 16]: If the buyer has gotten an opportunity to examine the goods bought by him, then the liability of the seller is absolved. In such a case, the buyer is protected only for a latent defect, which could not have been detected on a reasonable examination by him.⁶ For instance, in the *Grant* case, the proviso was not applied as the chemicals in the fabric was a latent defect and could be detected only after using (wearing the material).

It is to be noted that if a certain person is allergic to any substance, then it does not affect the merchantable quality of the goods. For instance, if a person caught dermatitis after wearing a Harris tweed coat because of his sensitive skin, the seller was not held liable as the goods need to be fit for a reasonable person.⁷

V. MERCHANTABLE QUALITY MEANS 'SATISFACTORY QUALITY' UNDER THE ENGLISH LAW:

The provisions dealing with the merchantable quality are dealt under the English Sale of Goods Act of 1979. Clause 2 of Section 14 of the Act provides that, wherein the seller supplied goods in the course of his business and no amendments have been made in the former position of the goods then there is an implied condition that the goods should be of 'satisfactory quality'. Similar to the SOGA, 'quality under the English Act is defined as the "state or condition of the goods"⁸.

⁶ Mulla, *The Sale of Goods Act of 1930 and The Indian Partnership Act* 49 (Lexis Nexis, 12th edition).

⁷ *Morelli v. Fitch & Gibbons*, (1928) 2 KB 636.

⁸ Section 61 of the English Sale of Goods Act.

The liability of the seller is absolved when the buyer examines the goods before the sale is made, or when the sale is by sample, and any defect could have been apparent on a reasonable examination.⁹

In the leading case of *Stevenson and Another v. Rogers*¹⁰, it has been held that a regularity in the dealing of the goods is not required and a 'one-off' sale in the course of business is sufficient for the applicability of the implied condition of merchantable quality. Some illustrating cases where the goods were not held to be fit for use pertaining to their unsatisfactory quality:

1. *Priest v. Last*¹¹, wherein a person bought a hot water bottle on description and the same burst out while being used by his wife, the plaintiff was entitled to claim damages for the loss suffered.
2. *Godley v. Perry*¹², wherein, a boy saw a toy displayed in a shop and purchased it. While he was playing with it, the catapult broke off and caused injury in the eye of the kid, which then had to be removed. The shopkeeper contended that it was not a sale by description. However, the court ruled that buying goods on display are covered under 'sale by description' and pertaining to the unsatisfactory quality of the toy, the plaintiff was entitled to claim compensation for the same.
3. *Chaproniere v. Mason*¹³, wherein, a person bought a bun from a confectioner's shop which had a stone, when being bitten, it broke the teeth of the plaintiff and the same was rendered unmerchantable.

VI. SCOPE OF MERCHANTABLE QUALITY:

Merchantable quality of the goods can have various dimensions. Issues can be raised onto whether a particular product needs to be merchantable for a period of time or

⁹ *Ibid* at Section 14(2C).

¹⁰ [1999] QB 1028.

¹¹ [1903] 2 KB 148.

¹² [1960] 1 WL 9.

¹³ [1905] 21 TLR 633.

what should be the stand on such goods on the market value and whether on re-sale, the seller would be bound by the provisions of merchantable quality.

Some of these dimensions are being discussed, hereinafter,

- 1. Durability:** It was believed that the outdated idea of "merchantable quality" placed too much emphasis on purpose-fitness and left out the idea of appropriate durability. The implied definition of "satisfactory quality" in the law is believed to have addressed the question of reasonable durability. In the case of *Mash and Murrell v. Joseph I Emmanuel*¹⁴, the potatoes when sold and loaded were sound but when the ship arrived, they were found to be rotten. The honourable Diplock J. held that sellers were liable as the goods must remain merchantable on arrival and throughout their normal course of the journey. However, what can be the durable time length is a question of fact depending upon the price paid for the goods and the circumstances of the case.

Aspects of the quality of goods include their suitability for all the purposes for which goods of the kind in question are typically supplied, as well as their look and finish, lack of minor flaws, safety, and durability, according to section 14(2B) of the (UK) Sale of Goods Act. It can be observed that these aspects of quality are not intended to be absolute requirements that have to be achieved at any cost. According to the paragraph itself, the elements on the list are simply considerations for product quality "in appropriate cases" Even in situations where a specific component does relate to a specific sale transaction, it does not impose an unbending requirement that must be met. In fact, the concepts of "appearance and finish" and "durability" are not expressed in terms of rigid guidelines.¹⁵ In the Indian law, the situation is vague and unclear pertaining to the durability of the goods.

¹⁴[1961] 1 All ER 485.

¹⁵ The Sale of Goods (Amendment) Act 1996: Satisfactory Quality, An Undivided Share in A Bulk and Other Amendments, available at: <https://www.scoonline.com/Members/SearchResult.aspx> (last visited on August 08, 2022).

In a recent case of *Chaliar latex India Pvt. Ltd. v. The rehabilitation Plantation Ltd.*¹⁶, in order to sell "675 barrels of normal rubber latex processed during the month of December 1990 at Ayiranalloor Estate," the defendant requested bids. The bid from the plaintiff was accepted. After that, the parties signed the Ext.B5 agreement. Plaintiff purchased 644 barrels for the price. Only 605 barrels of the full sum were lifted by them. The complaint claims that the latex is of poor quality and does not adhere to the generally expected norms. The suit was therefore brought in order to recover Rs. 2,26,182/-. The accusation was refuted by the defendant. The claim is that the latex provided had higher levels of volatile fatty acids (VFA) than usual. The defendants also demonstrated that the VFA concentration will start to rise two to three months after the latex is purchased. As soon as it is collected, the latex will then be treated with 1.2 percent ammonia to retain its quality; this type of ammonia-treated latex is known as "regular latex." The latex would be useable for up to six months, but its quality would decline throughout that time.

The plaintiff also admitted that there was a delay on their part in executing the contract due to the lack of funds and a reasonable opportunity was given to them to examine goods before submitting the tender. Plaintiff acknowledged taking samples. It is also acknowledged that the plaintiff has always been free to conduct tests on the items' quality, including their ammonia and VFA levels. The honourable Kerala High Court while rejecting the plea of the plaintiff held that the plaintiff cannot claim that the items were unfit for his purposes because, it is admitted, he had the chance to inspect the quality of the goods prior submitting his tender but just glanced at them or failed to determine if they were of the required quality. There was an unjustifiable delay on the part of the plaintiff to lift the goods and based on the evidence of reasonable time-passage, he cannot claim that the goods are not of merchantable quality.

¹⁶ 2017 SCC OnLine Ker 8638.

- 2. Marketability:** There exists an implied condition that the goods purchased should be capable of extracting "reasonable full value" and not just any value. In the leading case of *Jones v. Just*¹⁷, there was a contract for the sale of a specific type of cloth, manila hemp. During the course of transmission by the sea, the cloth was wetted by the sea water and as a result it could only pass as a normal hemp in the market and not as manila hemp. Nevertheless, the buyer took the delivery and had to sell it at a substantially low price. The honourable court held that the seller would be liable because the cloth bought was not of the description given in the contract. The contract was for the supply of the manila hemp, and it turned out to be ordinary. Hence, the contention of the seller that the buyer had waived off his right by accepting the delivery failed and he was held liable.

In a very recent case, *Hyundai Motor India Limited v. Shailendra Bhatnagar*¹⁸, the respondent purchased the model Creta 1.6 VTVT SX+, which came with two front-line airbags from the appellants, the manufacturers. The complaint was filed by the respondents after the car met with an accident on the Delhi-Panipat Highway Road in 2017, which majorly damaged the Right-Hand front pillar, front roof and side panels, and Left Hand wheel suspensions of the vehicle. The respondent suffered severe dental injuries and injuries in chest area due to the non-deployment of the airbags at the time of the collision of the vehicle. The State Consumer Redressal Commission and the National Commission upheld the claim of the complainant. On appeal to the honourable supreme court, the appellant argued that the investigation report prepared by them clearly shows that minimum threshold force required for the airbags to deploy was not reached. On the other hand, the complainant contended that he purchased the vehicle due to its marketability on safety measures. It was held by the honourable court that the vehicle was purchased owing to its description of safety features and there was a failure to meet the demands of the standard of

¹⁷ 1868 LR 3 QB 197.

¹⁸ CIVIL APPEAL NO. 3001 OF 2022.

quality of the airbag system and so the appellant were held responsible and liable. It was also noted by the apex court that in such cases, the punitive damages should be given to create a deterrence effect and the tribunals are even justified to award compensation exceeding the claimed amount.¹⁹

VII. WHAT HAPPENS WHEN ONLY A PART OF THE GOODS ADHERE TO SATISFACTORY QUALITY?

We have so far looked into as to what is the rule regarding the goods which are altogether unsatisfactory or merchantable, but there may also arise a situation, wherein, only a part of the goods are unmerchantable. In such a citation, emphasis is given as to what does the provision says. Under SOGA, the goods bought by description from a seller dealing in such goods in the course of business, must be of marketable quality. This is an implied condition precedent to the contract, which gives a rise to the buyer's rejection of goods in case of non-fulfilment of the condition. In the case of *Jackson v. Rotax Motor and Cycle Co. Ltd.*²⁰, the court held that the defendant had the right to reject the whole consignment when some of the goods were found to be defected. Since, the requirement of merchantability applies to all the goods and if part of the goods is unmerchantable, the buyer might reject the whole.²¹

However, when the buyer chooses to accept the goods, he can only treat the breach of condition as a breach of warranty and claim damages for the loss suffered. The buyer has a right to check the goods under Section 41 of SOGA, and he is not assumed to have accepted the goods until he has had a chance to exercise that right. In other words, he is allowed to decline them. When a contract is made for specified commodities, the right of rejection is forfeited once ownership of those things has passed to the buyer.²² In the case of *Aga Mirza Nasarali Khoyee and Company v. Gordon Woodroffe and Company*²³, there were two contracts of sale by description of Dry salted

¹⁹ *Nagappa v. Gurudayal Singh & Others*, [(2003) 2 SCC 274].

²⁰ [1910] 2 KB 937.

²¹ John N. Adams and Hector MacQueen, *Atiyah's Sale of Goods* 190 (Pearson Education Canada, 12th edition).

²² *Sorabji Hormusha Joshi And Co. vs V.M. Ismail And Anr*, AIR 1960 Mad 520.

²³ 1936 SCC OnLine Mad 138.

Malabar Sea salt cure skins, containing a stipulation of being fair average quality as passed by the seller. The appellant did not supply the whole quantity of the goods under both contracts. On top of that, some of the goods were found to be defective and tainted, which was only discovered when the goods were put to use. The seller filed a suit to recover the payments for supply and delivery of the goods in turn, the purchasing firm filed a counterclaim for damages of the defective products and for not sending the goods in full balance, which had the effect of wiping out the suit claim of the seller. The goods were found to be unmarketable. The honourable High Court, upholding the trial court's decision, held that: Although he is not allowed to reject the products, the buyer has the right to sue the seller for damages in situations where he chooses or is forced, as in this case, to treat any breach of a condition as a breach of warranty. By filing a counterclaim, the defendants are attempting to vindicate this entitlement. They have the right to do so, and thus our decision must likewise favour the defendants on this basis.

VIII. REFORMS SUGGESTED BY THE INDIA LAW COMMISSION UNDER INDIAN LAWS DEALING WITH MERCHANTABLE QUALITY OF THE GOODS:

The Hundred and Fifth Report of the Law Commission (October 1984) on "Quality Control and Inspection of Consumer Goods," published by the Ministry of Law, Justice and Company Affairs, provides for the following amendments:

1. To undertake a preventive approach rather than a reformatory approach based on the line of amendments made in the UK Sale of Goods (Implied Terms) Act, 1973 and 1979.
2. With the growing technology and production of cosmopolitan and sophisticated gadgets, it can be difficult at times for a purchaser of such goods to establish the defect or that any part of such goods has been altered. Thereby, he would be unable to establish that the commodity is unmerchantable and will not be able to seek remedy for the same.

3. Instead of bringing exclusive amendments in the provisions of the law safeguarding the rights of the consumers, such a method should be opted, wherein, the consumer gets to test the standard or quality of the goods at the times of the purchase or merely on the payment of a small fee so to test the quality of the product.

IX. CONCLUSION

The Sale of Goods Act, 1930 provides for laws relating to the merchantable quality of the goods which is largely based upon the English Sale of Goods Act. The Act is essentially made to regulate the sale of goods and to protect the seller, however, Section 16 is an embodiment of caveat venditor, which protects the rights of the buyer as a consumer of the goods pertaining to their quality and fitness. When a buyer buys a product, an implied condition exists regarding the merchantable quality of the goods to be fit for a reasonable man. When the goods are unmerchantable due to some defect or merely because they are not yet finished products, the buyer is entitled to reject the goods, provided he did not get an opportunity to examine the goods or when he examined the goods, but the defect was of such a nature as could not have been detected on mere examination until put to use. The provision plays a crucial role in today's world, where the problem of information asymmetry carries on.

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