IV. LEGISLATION

IV(i) Introduction

Prior to passing of Hire Purchase Act 1938 in UK, hire purchase transactions were governed by various statutes like Contracts Act, Factors Act, Money Lenders Act and Sale of Goods Act amongst others with overmuch reliance on judge-made case law. The vagaries of legal decisions and the impunity with which mal-practices flourished vitiated this field encouraging financiers to exploit their victims for inequitable gains, and the law, perhaps unwittingly, abetted instead of calling a halt.

Under the then prevalent device known as 'linked on' agreements, a hirer who had managed to make most of the payments in time, was goaded into entering in a fresh agreement to cover the goods comprised in the original agreement with certain other goods linked in. Thus it was a matter of time for the hirer to commit a default when the owner would pounce upon the goods linked in under the new agreement as well as the original goods for which instalments might have been over-paid.

These and various other abusive practices woke up public conscience and it was for Miss Allen Winkinson to pilot the adoption of the Hire-Purchase Act of 1938. This statute brought to an end the era of uncertainty of court decisions and interpretative discord amongst various unconnected legislations. It has been held on several occasions that where a hire-purchase agreement is entered into without fulfilling the requirements of the Hire-Purchase Act, the agreement is void for illegality.

The hire-purchase got a stimulus in England not because of its merits or otherwise but because the hire-purchase agreement was preferred to the agreement to sell on credit terms to protect the owner or seller from the operation of Sec. 9 of the Factors Act 1889 and Sec. 25(2) of the Sale of Goods Act 1893. Under Sec. 9 of Factors Act, the seller's title to the goods sold on credit was taken away from him. Thus the goods
acquired on credit could be disposed of fraudulently and recovery of the instalments was not possible. Sec. 25(2) of the Sale of Goods Act 1893 laid down:

"(2) Where a person having bought goods with the consent of the seller, in good faith and without notice of any lien or other right of the original seller, shall have the effect as if the person making the delivery were a mercantile agent in possession of the goods with the consent of the owner."

In the important case of Lee v. Butler (1893), the furniture acquired on instalment credit under a hire-purchase agreement was sold by the hirer to a third party, who purchased it in good faith not knowing or not bothering to enquire under what conditions the furniture was acquired by the first purchaser. It would appear ridiculous that the court decided that the second purchaser had good title to the goods he had purchased and the original owner could recover his dues from the first purchaser under the hire-purchase agreement but he had no remedy against the second purchaser.

Two years later a different form of agreement came before the House of Lords in Helby v Matthews (1895). In Lee v. Butler there was no provision in the agreement that the hirer could return the goods any time before the stipulated period; it only provided that the hirer would be the owner after paying so many instalments. In Helby v Matthews, there was such a provision that the hirer could terminate the agreement by surrendering the goods (a piano), which meant that till such termination, which may come any time, the hirer was a mere bailee and had no title of ownership. This further meant that the second purchaser had purchased goods from the hirer with defective title or no title at all.

Case law emanating out of interpretative legislations is not mandatory as the legislations themselves. Too much of case law confounds confusion.

"To resolve a particular dispute so as to produce a just result, the court lays down a principle which in later cases is applied and extended to cover situations where the facts are entirely different. In the course of time, a detailed
and increasingly rigid set of rules is developed and the raison d'etre of the original decision is consigned to oblivion beneath a mass of case law."

(Source 1)

The mile-stones in hire-purchase case law in UK, which rendered the preceding case law more or less redundant, are:

(i) upto Helby v Matthews in 1895;
(ii) upto first Hire-Purchase Act of 1938;
(iii) Report of the Crowther Committee on Consumer Credit in 1971;
(iv) Consumer Credit Act of 1974, and
(v) attractions of the Uniform Commercial Code on the pattern of USA.

Indian Case Law

As a historical inevitability, Indian case law heavily rests on English case law and Indian Hire Purchase Act 1972 (not enforced) draws inspiration and guidance from similar enactments in the UK. This fact led the Bombay High Court to admit:

"... the very expression 'hire-purchase agreement' is not one that originated in this country. It is clearly a form of agreement which has originated in England and has been created by those engaged in the trade of particular articles. Substantially in this country there is little or no authority on hire-purchase agreement."

(Source 2)

This position in 1925 has by now vastly changed. By now there is a good deal of case law in India mostly after Independence, dealing with all important aspects of hire purchase transactions. The basic principles have been laid down by the Supreme Court and the High Courts in a number of judgments analysing the true nature, scope and essential ingredients as well as distinguishing features which differentiate them from other financial transactions like loans, pledges and hypothecation.

cation of movables. The case law covers other branches of law such as sale of goods, motor vehicles, insurance, taxation, arbitration, limitation, claim petitions, injunction, priority of debts and criminal law relating to theft, dacoity, confiscation, etc. A perusal of this wide coverage gives a grasp of hire-purchase vis-a-vis several other branches of law.
IV(ii) Motor Vehicles Act

History

Prior to 1914, there were as many as six separate enactments, namely, Bengal Act No. III of 1903, Bombay Act No. II of 1904, Burmah Act No. II of 1906, Madras Act No. I of 1907, Punjab Act No. II of 1907 and U.P. Act No. II of 1911. To achieve uniformity, the Indian Motor Vehicles Act (Act No.VIII of 1914) was passed.

The Statement of Objects and Reasons of the Motor Vehicles Act, 1939 (Act No.4 of 1939) reads as under:

It has been recognised now for some years past that the Indian Motor Vehicles Act 1914, which was found to suit conditions at an early stage of development of motor transport, is no longer adequate to deal with conditions brought about by the rapid growth of motor transport in the past two decades. In the interests alike of the safety and convenience of the public and of the development of a co-ordinated system of transport, much closer control is required than the present Act permits, and it is necessary to take powers to regulate transport.


The 1939 Act is divided into the following chapters:

I. Preliminary
II Licensing of drivers of motor vehicles
IIA Licensing of conductors of stage carriages
III Registration of motor vehicles
IV Control of transport vehicles
V Construction, equipment and maintenance of motor vehicles
VI Control of traffic
VII Motor vehicles temporarily leaving or visiting India
VIII Insurance of Motor vehicles against third-party risks
IX Offences, penalties and procedure
X Miscellaneous.
Motor Vehicles Act and Hire-purchase

Motor Vehicles Act and Rules have a direct bearing on hire-purchase of commercial vehicles. Rules are formulated by States under powers conferred by the Central Act, which differ from State to State. The Central Act is of prime concern and the provisions which directly or indirectly affect hire-purchase of commercial vehicles are dealt with hereunder.

Hire-purchase Endorsement

The original Act of 1939 was silent about hire-purchase simply because there was no hire-purchase of much consequence at that time. Section 31A introduced in the Amendment Act of 1969 requires the registration authorities to make an endorsement in the Registration Certificate regarding the hire-purchase agreement and to cancel it when the agreement is terminated.

Owner

Under Sec.2(19), "Owner means, where the person in possession of a motor vehicle is a minor, the guardian of such minor, and in relation to a motor vehicle which is the subject of a hire-purchase agreement, the person in possession of the vehicle under that agreement." Thus the hirer under a hire-purchase agreement is the owner being the person in possession of the vehicle which is registered in his name. There are, however, two owners of the vehicle, namely, the hirer as the de facto owner and the financier as the de jure owner in whom proprietary rights vest.

The distinction between the two ownerships is retained in Form E, which is form of application for grant of Registration Certificate and in Form G, which is registration Certificate to the effect that the vehicle is 'subject to hire-purchase agreement with ....'. The endorsement in Form G is called a hire-purchase endorsement and till this endorsement is cancelled, the RC-holder does not become the absolute owner of the vehicle. This cancellation is done on production of Hire-purchase Termination Form, which is issued by the financier when all dues have been paid. Once the hire-purchase endorsement is cancelled, the hirer's limited right of bailment crystalises into absolute ownership by his exercise of the
option to purchase the new vehicle; in the case of an old vehicle, the charge created on the security of the vehicle is extinguished and the hirer's absolute title over the vehicle revived.

Registration Certificate

Registration Certificate (RC) is not a document of title and the RC-holder is not the absolute owner automatically, but holds a limited power of permissive custody. RC is an important piece of evidence to ostensibly show the owner of the vehicle who is to pay taxes and perform the duties and obligations under the Motor Vehicles Act.

New Registration Certificate

The original Act provided for issue of a duplicate RC to the financier after cancellation of the original RC in certain specific circumstances viz. repossession on default and refusal by the RC-holder to surrender the same. By insertion of clause (5) in Sec.31A, specific provision is made for issue of a fresh RC to the financier for the unexpired period of the original RC.

In A. Jagadesan v The State of Karnataka and another (1)

A. Jagadesan was the Manager of Sundaram Finance Ltd. Mangalore, which had a hire-purchase agreement with one George in respect of a Premier Padmini motor car. After his demise, his wife continued for some time to observe terms of the agreement. A complaint was filed before the police by the brother of the deceased that the car was stolen when it was parked. Meantime, Sundaram Finance Ltd. had intimated the Regional Transport Officer that the company had secured possession of the car as there was default in payment of instalments and requested for a duplicate RC cancelling the old one. The police seized the car which was produced before the Magistrate. The Magistrate directed handing over possession of the car to the wife of the deceased and Sundaram Finance Ltd. applied for revision challenging the Magistrate's order.

(1) : High Court of Judicature of Karnataka at Bangalore in A. Jagadesan v The State of Karnataka and other 1978(2) ILR (Karnataka) 1384.
The High Court of Judicature of Karnataka at Bangalore held: "One of the clauses entitles Sundaram Finance Ltd. to seize the vehicle from the possession of the hirer. Clause 12 is to the effect that the owner agrees to permit the hirer to have the registration in his own name provided that the hirer shall transfer the registration in the name of the owner whenever required to do so by them. The Magistrate ought to have directed the vehicle to be returned to the possession of Sundaram Finance Ltd. In the result, the order passed by the Judicial Magistrate is set aside."

Registration in another State

Sec. 29(1)(a) lays down that when a motor vehicle registered in one State is kept in another State for more than a year, the RC-holder shall apply to the new registering authority in the other State for assignment of a new registration number after presenting the original RC before him. Sub-section (2A) to Sec. 29 introduced by Amendment Act 1978 provides that the Registering Authority in case of a vehicle subject to a hire-purchase agreement or hypothecation should, after assigning the vehicle a new registration mark, inform the financier/hypothecatee concerned about this fact of assignment.

Taxation

This is a State subject levying Motor Vehicles Tax and tax on passengers and goods, though in some States these two have been merged into a single tax. The liability for the tax is of the operator as it is he who derives earnings from the vehicle and has control over its movement and operation. That is why in a hire-purchase agreement the hirer agrees -

"to pay all fees and taxes including Road Tax, Goods Tax, Passenger Tax or any other tax and insurance, in respect of the motor vehicle hired out. The hirer and the guarantor indemnify the owner against any claim in respect of such taxes, fees, fines and other dues of any kind levied by any Registering Authority, Taxation Officer, Excise Department or any other authority whatsoever."

On repossession of the vehicle, the financier intimates the concerned authorities that the vehicle is not being plied
on public roads. With the lodgment of this 'Stoppage Report' taxation for the non-operation period is saved.

There have been a number of cases in which the liability to pay tax has been disowned by both the contending parties. It is, however, a settled law by now that when a vehicle transfers hands either by sale or by repossession, the liability up to the date of such transfer or seizure is that of the transferor or the operator. However, a distinction is made between the incidence of tax and incidence of penalty for non-payment or late payment of tax. Incidence of tax attaches to the vehicle, but incidence of penalty attaches to the defaulter. Accordingly, even the transferee is held liable to pay arrears of tax for the period before the vehicle was transferred on the ground that it was his look out to ascertain tax payments before he got the vehicle transferred in his name. The penalty, however, rests squarely on the shoulder of the transferor being the defaulter and personally liable as such.

Sundaram Finance Ltd. filed a writ petition before the High Court of Judicature of Mysore at Bangalore (1) for quashing the orders of the Commissioner for Transport, Bangalore, holding that the company was liable to pay taxes for four quarters for four goods vehicles in respect of which there was a hire purchase agreement. As the hirer had committed default in the payment of instalments, the vehicles were seized by the company and they had intimated the RTO of the same with a view to claiming exemption from the payment of tax. The Company's appeal to the Transport Commissioner had been dismissed.

The High Court held that "... insistence on the production of the documents is permissible only when the documents are in possession or control of the person claiming exemption and he does not produce them. But if in a case like this, where the company provided the hirer with financial accommodation under hire-purchase agreement, and the hirer who defaulted in the payment

of the instalments, had the custody of the documents and would not make them available to the company, it would not be right to refuse the exemption on the unavailable ground that the company should have produced the documents which were with the hirer."

**Clearance Certificate**

A peculiar stand was taken by the Registering Authority when a clearance certificate in respect of a particular vehicle was applied for. The RA insisted on clearance certificates in respect of all vehicles registered in the name of the hirer though the finance company was concerned only with that vehicle which had been financed by it and with no other vehicle. This stand of the RA did not find favour with court. (1)

In another case, after surrendering RCs and permits pertaining to two vehicles seized by Sundaram Finance Ltd., they applied to the DTO for issue of tax clearance certificate. He returned the applications on the ground that the tax clearance certificate could be obtained only by the hirer and not by them. Sundaram Finance Ltd. therefore filed writ petitions before the High Court of Judicature at Madras. (2) It was held: "On the facts of these cases, the District Transport Officer is not justified in returning the applications of the petitioner for the issue of the tax clearance certificates on the ground that the permit-holder alone should apply for the tax clearance certificates. The petitioner is entitled to ask for the issue of a tax clearance certificate on its own right."

**Liability without fault**

Motor Vehicles (Amendment) Act 1982 has added new Sec. 92A in Chapter VIIA under which, irrespective of fault on the part of the owner or driver, an absolute liability to pay

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(1) Sundaram Finance Ltd. v Regional Transport Officer, Tirunelveli, following the earlier decision in W P No.3184 of 1976 - K. Sundarambal v The Regional Transport Officer, Salem & another.

(2) Sundaram Finance Ltd. v District Transport Officer, Tiruchirapalli and others (88 Law Weekly 837)
Rs. 15,000 in case of death and Rs. 7,500 in case of permanent disability from any accident is provided for. This is without prejudice to the right vested under Sec. 110A to claim higher compensation as well as under the Workmen's Compensation Act 1923. The liability under Sec. 92A is that of the owner. This has come to be known as 'No Fault Liability' meaning thereby that fault or no fault, the claim is created instantly there is death or permanent disability consequent on an accident by a vehicle.

The Motor Accident Claims Tribunal, Rajasthan took no time in deciding a case referred to it in which a scooter rider was killed by a truck, by asking the owner of the vehicle to pay Rs. 15,000 as interim compensation. The insurance company appeared before the Tribunal denying its liability to pay the 'no fault' compensation on the ground that the insurance policy covered the liability of the owner in case of fault of his driver. This plea was accepted by the Tribunal, which has given rise to views and counter-views in respect of the liability of the insurance company.

The transporters' (RC-holders') view is: Sec. 94 of the Act puts a statutory obligation on the owners of motor vehicles to get their vehicles insured for the use of the vehicles in public place. Neither in the said section nor in the policies which contain the terms and conditions of the contract, nowhere negligence or fault theory is propounded or any word relating thereto is mentioned. So the insurance covers are issued for the use of the motor vehicle in public places without attaching any element of negligence or fault thereto. Any attempt to distinguish between - 'fault liability' and 'no fault liability' would be contrary to the substance and spirit of the insurance policy. To ask the owners of motor vehicles to pay compensation after they have got them insured would virtually tantamount to motor vehicles without insurance.

The intention of introducing Sec. 92 is apparent. Previously the usual experience was that a case of claim arising out of a motor accident lingered on and it was not easy to establish the 'fault'. Sec. 92A cuts short that exercise.
Hit-and-run motor accident

Sec. 92A has validity only when the vehicle involved in an accident is known. Sec. 109A has been introduced to cover 'hit-and-run' cases. 'Hit-and-run motor accident' has been defined in sub-section (b) thereof as an accident arising out of the use of a motor vehicle, the identity whereof cannot be ascertained in spite of reasonable efforts for the purpose. An elaborate scheme has been propounded in Sec. 109A under which there shall be paid as compensation out of the Solatium Fund (a) in respect of the death of any person resulting from a hit-and-run motor accident, a fixed sum of five thousand rupees, and (b) in respect of grievous hurt to any person, a fixed sum of one thousand rupees. This being a need-based social welfare measure, funds would be made available to the states by the Solatium Fund Authority in accordance with the requirement. Under the simple procedure, the Tehsildar or Sub-Divisional Officer, who is the Claims Inquiry Officer, recommends the grant of compensation on the basis of police report and medical certificate. The District Magistrate, who is the Claims Settlement Commissioner, gives the award and payment is made by him through the Tehsildar or the Sub-Divisional Officer. The claimant is not required to go from place to place for receipt of the compensation.

Permit System

Permit system started with the passing of the Motor Vehicles Act, 1939. In those pre-independence days when road transport was not much, permits were issued only to cover 25 miles, later revised to 150 miles. Much later state level permits system was introduced, followed by inter-state and then zonal permit and finally the national permit. The operator can apply for any permit of his choice.

In Explanation to Sec. 63(11)
(a) "national permit" means a permit granted by the appropriate authority to the owner of a motor vehicle authorising him to operate as a public carrier throughout the
Chapter IV(ii)

territory of India or in such contiguous States, not being less than five in number (including the State in which the permit is issued), as may be specified in such permit in accordance with the choice indicated by such owner to whom such permit is granted;

The underlying object of permit system is to regulate heavy vehicular traffic. The following section makes this clear.

43. Power of State Government to control road transport. -

(1) A State Government, having regard to -

(a) the advantages offered to the public, trade and industry by the development of motor transport;
(b) that desirability of co-ordinating road and rail transport;
(c) the desirability of preventing the deterioration of the road system, and
(d) the desirability of preventing uneconomic competition among motor vehicles,

may issue directions ....

Complaints regarding misuse of the discretionary powers vested in the RTA in the issue of permits come up before law courts. Their view is clear from the following judgement.

"It is neither possible, nor it is desirable, to restrict the discretion of the Regional Transport Authority to grant or refuse a stage carriage permit on consideration of public interests. The High Court would not substitute its own discretion though it would be ready to interfere with an obviously perverse exercise of such discretion. (1)

The High Court was unsparing when a clear case of misuse of discretion came before it.

"Where the results of power to grant permit show that permits are, without sufficient grounds for a discrimination or preference based on an appraisement of merits or requirements of public interest, being invariably granted to one particular party, the powers are not fairly or impartially exercised. Quasi-judicial powers have to be exercised fairly, reasonably and impartially. Capricious or dishonest preferences on purely personal grounds are necessarily excluded here. (2)

(2) Ajantha Transports v T.V.K. Transporters (1975) 1 SCC 55.
The following Schedules form part of the Act:

First  Prescribing forms

A  Form of application for licence to drive a motor vehicle
AA  Form of application for the addition of a new class of vehicle to a driving licence
B  Form of application for the renewal of driving licence
C  Form of medical certificate
D  Driving licence
E  Form of application for the registration of a motor vehicle
F  Omitted
G  Form of certificate of registration
H  Certificate of fitness (applicable in the case of transport vehicles only)

Second  Diseases and disabilities absolutely disqualifying a person for obtaining a licence to drive a motor vehicle

Third  Test of competence to drive

Fourth  Authorities entitled to grant licences etc.

Fifth  Offences on conviction of which an endorsement shall be made on the licence of the person affected

Sixth  Registration marks

Seventh  Omitted

Eighth  Limits of speed for motor vehicles

Ninth  Traffic signs

Tenth  Driving regulations

Eleventh  Signals

Besides Motor Vehicles Act 1939, there are other enactments, Acts and Rules, connected with road transport.

Fatal Accidents Act 1855

An Act to provide compensation to families for loss occasioned by the death of a person caused by actionable wrong.

The Motor Vehicles International Circulation Rules, 1933

Based on the International Convention relative to motor traffic concluded at Paris on the 24th April 1926 - motor vehicles leaving India under an International Driving Permit, motor vehicles arriving in India under an International Certificate and persons arriving in India with an International Driving Permit.
The Inter-State Transport Commission Rules, 1960

The powers and functions of the Commission include classification of routes and areas as inter-State routes and inter-State areas for the purpose of developing road motor transport, etc. etc.

The Motor Vehicles (Diplomatic and Consular Officers Vehicles) Registration Rules, 1960

Motor Transport Workers Act, 1961

An Act to provide for the welfare of motor transport workers and to regulate the conditions of their work.


IV(iii) Survey of Certain Cases

In the High Court of Judicature at Madras
Manasuba & Co. P Ltd - Petitioner
The Official Liquidator, Madras High Court
v. The Commissioner of Police and 23 others. (1)

This case arose out of an application filed by the Official Liquidator of the Madras High Court for determination of the rights inter se of the 24 respondents who claimed preferential rights over the saleproceeds of the various motor vehicles which belonged to Manasuba & Co. P. Ltd. in liquidation. The vehicles were sold by the Official Liquidator with the consent of the respondents under orders of the Court.

The important issues dealt with in the judgment areas under:

(1) An objection was raised that the advance was made by the hire purchase companies - for the chassis of the vehicle and therefore they could not project the claim over the entire vehicle on which the body had been built by the hirer. The objection was ruled out.

(2) Not only a hypothecatee but also the financier under the refinancing hire-purchase agreement being a person who has lent moneys by way of a loan on a security is also a secured creditor.

(3) The right to seize the vehicle is peculiar to a hire-purchase contract. It establishes that the financing company is not an ordinary creditor, but a creditor with a privilege to seize the vehicle in case of default.

(4) In the case of a financing hire purchase agreement, the financier being the owner, is entitled to be treated as a preferential creditor.

(5) Having paid the amounts due and payable by the hirer, the guarantor is entitled to be subrogated to all the rights to which the creditor is entitled to.

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(1) ILR 1969-2 Mad. 569.
In the High Court of Judicature at Orissa, Cuttack
Sundaram Finance Ltd. v. Shankar Chit Fund

On May 29, 1962 a hire purchase agreement in respect of a truck was entered into between Sundaram Finance Ltd., the owner, and J. Kamaraju Prusti, the hirer. Before conclusion of the hire purchase agreement, when a sum of Rs. 9,307.44 was still payable to the owner, Shankar Chit Fund filed two money suits against the hirer for a total amount of Rs. 3,301.10. On December 15, 1963 the truck was attached in the said money suits. Sundaram Finance Ltd. opposed the attachment on the ground that the truck was subject-matter of the subsisting hire purchase agreement and therefore it could not be attached. The trial court released the truck from attachment subject to the condition that the claimant, Sundaram Finance Ltd., either deposits in cash or furnishes property security of the suit amount. Sundaram Finance Ltd. challenged the validity of the impugned order.

The observation in the judgment is: "It appears from the impugned order that the learned trial court, apart from merely mentioning the hire purchase agreement, has not dealt with the effect and implications of the document. It is an apparent material irregularity. The learned Munsif should have considered, inter alia, whether the defendant (hirer) had paid his dues under the agreement or whether he had exercised his option to purchase the truck or whether the truck could be attached. The impugned order is clearly illegal."

In the High Court of Judicature at Bombay
Tata Engineering & Locomotive Co. Ltd. v.
Bharat Mining Corporation Ltd. & others.


TELCO entered into three hire purchase agreements with Bharat Mining Corporation Ltd., the first defendant in the above case with the guarantor as the second defendant. The Manager appointed under the Coal Mines (Nationalisation) Act 1973 was the third defendant. Coal India Limited was the fourth defendant. TELCO filed a suit for recovery of arrears of monthly instalments.

(1) : AIR 1968 Orissa 126 = ILR 1968 Cuttack 164)
and interest due and claimed that the defendants were liable to forthwith return the vehicles or pay their value and also to pay damages for wrongful detention. After discussing the evidence, the High Court gave the following decision:

"In the absence of any circumstances militating the same, these agreements are in essence hire-purchase agreements. I, therefore, reject the contention that the agreements are in reality loan or financing transactions against the security of the suit vehicles. I hold that the suit trucks had not vested in the Central Government (Coal India Ltd.) on the appointed day and that the same belonged to the plaintiffs (TELCO) and continued to be their property. Coal India Ltd. had wrongfully detained the suit vehicles. I feel that damages at the rate of Rs. 25 per day would be a fair and adequate amount."

In the Supreme Court of India
Damodar Valley Corporation v. K.K.Kar (1)

Some hire purchase agreements provide for arbitration without resort to court in the first instance. In this case the validity of the very reference to arbitration was questioned on the ground that the claim had been fully settled and nothing remained for arbitration. The appeal before the Supreme Court was preferred by the Damodar Valley Corporation against the decision of the Calcutta High Court on a civil revision petition.

K.K. Kar entered into a contract with Damodar Valley Corporation to supply certain quantities of coal at certain price, but as he failed to do so, the Corporation repudiated the contract. K.K. Kar served a notice of his intention to refer the matter to the arbitration under the arbitration clause and followed it up by nominating an arbitrator. As the appellant did not agree to nominate the arbitrator, K.K. Kar intimated the appellant that the arbitrator appointed by him will proceed with the enquiry as the sole arbitrator, whereupon the appellant filed a petition under S. 9(6) and 33 of the Arbitration Act challenging the validity of the appointment of the sole arbitrator.

(1) AIR 1974 SC 158.
The Supreme Court held: "The contention that has been canvassed before us is that as there has been a full and final settlement under the contract, the rights and obligations under the contract do not subsist and consequently the arbitration clause also perishes along with the settlement. A repudiation by one party alone does not terminate the contract. This is not a case where the plea is that the contract is void, illegal or fraudulent etc., in which case the entire contract along with the arbitration clause is non est, or voidable. Where the binding nature of the contract is not disputed, but a difference has arisen as to whether there has been a breach or whether one or both the parties have been discharged from further performance, such differences are "upon" or "in relation to" or "in connection with" the contract. That a contract has come to an end by frustration does not put an end to the contract because there must be rights and obligations which had arisen earlier when it had not come to an end, as it is only the further performance of the contract that has come to an end. In the circumstances, notwithstanding the plea that there was full and final settlement between the parties, that dispute can be referred to the arbitration."

In the High Court of Judicature at Madras
The State of Tamil Nadu v. (1) Sundaram Finance Ltd.

Six buses were acquired by Swami Motor Transport P Ltd. under hire purchase agreements with Sundaram Finance Ltd. Due to non-payment of motor vehicle tax, the buses were distrained by the Tahsildar of Thanjavur under the Revenue Recovery Act. The Collector of Thanjavur contended that the Government has a first charge over the distrained property since there were arrears of tax.

The trial court held: The rulings with regard to the priority of crown can be applicable only to the debts of equal degree. No charge has been created under the provisions of the

Motor Vehicles Taxation Act for the payment of crown debt. On the other hand, in the hire purchase agreements, it has been specifically provided that the owner of the vehicles is the financier till the last instalment is paid by the hirer.

The State of Tamil Nadu preferred these appeals. The High Court upheld the above view and observed: "The priority of the crown debts cannot rank as against a hire purchase holder so as to deprive him of his security or to affect or injure his right as such owner."
IV(iii) Survey of Certain Cases
(a) Criminal Cases

In terms of the hire-purchase agreement, the financier is entitled to seize or take possession of the vehicle for non-payment of dues. In order to evade such seizure and to implicate the financier, the defaulting hirer takes recourse to a court of law or the police authorities alleging that the vehicle has been stolen and robbery or decoity committed by the financier and his men. On the basis of survey of a large number of such cases, which try to colour the seizure as a criminal offence, some important cases are selected, one of which is dealt with in detail and the rest are summarised.

In the High Court of Judicature at Allahabad (1) Pooran Mal v. Sadho Ram

October 21, 1964.

Brijbhasi General Motor & Finance Co. Delhi, represented in this case by its associate Pooranmal, let out a truck UPL 3456 to Sadho Ram and Ishwar Das under a hire purchase agreement on 9-2-1961. A sum of Rs.1,500 was paid at the time of the execution of the agreement and the balance was agreed to be paid in eighteen monthly instalments so as to make a total of Rs.25,692.50. Sadho Ram defaulted in the payment of instalments. The finance company terminated the agreement and the hirer was asked to surrender the truck and on his failure to do so, the truck was seized on 12-1-1964.

On 17-1-1964, Sadho Ram filed a complaint in the court of Judicial Officer, Varanasi u/ss 392, 323, 504 and 506 of the Indian Penal Code. It was alleged that in the evening of 17-1-1964 five persons forcibly took possession of the truck and in the process assaulted the complainant with fists and kicks. In the complaint there was no mention of any hire purchase agreement or any amount due and payable.

The judgment is summarised as under:

The main question is whether any offence u/s 392 IPC, i.e., robbery, is made out. In all robberies, s. 390 IPC says, there is either theft or extortion. The case is that the petitioner seized the truck and wanted to take it away and when the complainant obstructed, he was beaten. The gravamen of the charge is that theft was committed in a manner so as to make it robbery.

Theft is committed when a person intends to take dishonestly movable property out of the possession of another without his consent. "Dishonesty" is defined by S. 24 IPC which says that whoever does anything with the intention of causing wrongful gain to one person or wrongful loss to another person, is said to do that thing dishonestly. S. 23 explains what is wrongful gain and what is wrongful loss. Wrongful gain is gain by unlawful means of property to which the person gaining is not legally entitled. Wrongful loss is the loss by unlawful means of property to which the person losing it is legally entitled.

Before the offence of theft is made out, it has to be established that (1) the accused-petitioners were not legally entitled to the truck and that the complainant was wrongfully deprived of the truck; (2) the means employed to take possession were unlawful, and (3) the taking was without the complainant's consent. The existence of hire purchase agreement between the complainant and the finance company being admitted, the rights of the parties would be governed by it. The agreement does not postulate the hirer being the owner of the vehicle at any time prior to the payment in full of the amount due under the agreement.

The eighth condition of the agreement provides, inter alia, that if the monthly hire is in arrears, the owner may, with or without notice to the hirer, terminate the contract of hiring and forthwith take possession of the vehicle. The first ingredient of the offence of theft is therefore lacking.

The agreement says that for the purposes of repossession of the vehicle, leave and licence is given to the owner to take possession of the same from the hirer. The question still remains
whether in aid of such taking, force can be used or employed. The law recognises the principles of self-defence against injury to human body as well as against property. The real justification for these principles of self-defence or self-redress is necessity of immediate action to save injury to person or property. If a person is compellable by law only to seek redress by suit in a court of law for a violation of his right to immediate possession of movable property, the remedy would be often worse than the mischief and the law would aggravate the injury instead of redressing it. If a person is in possession of some goods and a stranger comes and takes it against his will, it is well settled that the person has in law a right to use sufficient force to retake the goods. There seems to be no substantial difference between such a case and the present one.

Salmond in his Treatise on Torts says: "Any person entitled to the possession of goods may retake the goods either peacefully or by the use of reasonable force from any person who has wrongfully taken or detained it from him. Such a retaking, even though forcible, is neither a civil injury nor a criminal offence." In Burns 'Justice of Peace' under the title 'Forcible entry', it seems certain that even at this day he who is wrongfully dispossessed of his goods may justify the retaking of them by force from the wrong-door if he refuses to redeliver them. For, the violence which happens through the resistance of the wrongful possessor, being originally owing to his own faults, gives him no just cause of complaint, inasmuch as he might have prevented it by doing as he ought."

It cannot, therefore, be alleged that the means employed to take possession of the vehicle were unlawful because force was used.

The third constituent element of the offence of theft is that the taking is without consent. The relevant consent in view of Explanation 5 to Sec. 378 IPC may be express or implied. The agreement grants leave and licence to the owner to take possession of the vehicle. This amounts to the hirer giving his consent to the removal of the truck. The third element of the offence of theft has equally not been established.
The petitioners were successful in taking away the truck and overcoming the complainant's obstruction. The petitioners have been prosecuted for committing robbery. The Supreme Court in Apparao v. Lakshmi Narayana (AIR 1962 SC 586) held that a bona fide claim of right can be a good defence to a prosecution for theft. The petitioners seized the truck under a claim of right and if no offence of theft is made out the charge of robbery fails.

Oudh Chief Court
H.G. Ranson v. Triloki Nath (1)

The above case is on a very different footing. Ranson obtained a truck on hire-purchase but defaulted in payment. The dispute as to the arrears was referred to arbitration. The award granted Rs.2,606-11-6 to the finance company. The award was filed in court. Ranson filed objections. At this stage the finance company people forcibly seized the truck. The Oudh Chief Court held that the legal possession of the truck was with the hirer and the finance company was not entitled to recover possession. The acquittal of the company's men under s. 379 IPC was set aside. The finance company, instead of terminating the contract, had enforced it and obtained an award of money in satisfaction of all its claims under the agreement. Agreement having thus been satisfied, nothing was left to be terminated. The company did not become entitled to the truck.

In the High Court of Judicature at Bombay
Kesarsingh Sardarsingh Gir In re & another
(unreported decision)
September 20, 1963.

The complainant, Triloksinh Arjunsingh took a truck on hire purchase agreement from one Amichand Dhaniram of Indore. By the month of May 1961, the complainant fell into heavy arrears and the guarantor called upon the hirer to pay the balance of the instalments or he should hand over the truck to him. The hirer said that in the event of his not being able to pay the arrears within a period of six weeks, he would give back the truck to the owner. The arrears were not paid as promised. The owner thereupon

(1) AIR 1942 Oudh 318.
seized the truck and brought it to Indore along with the goods loaded in the truck which were sent to the consignee, Khimji of Bhiwandi, by another truck.

The trying Magistrate believing the evidence led by the prosecution held the offence proved and sentenced each of the accused. The appellate judge disbelieved the story of voluntary surrender by the complainant (hirer) and maintained the conviction. It was against that judgment that the accused came up before the High Court in revision.

The High Court held: It is not disputed that the complainant has failed to pay a large number of instalments. It is thus clear that the owner would be entitled to terminate the contract. It is implicit that the complainant was agreeable to hand over the truck after the lapse of one and a half months. There can, therefore, be no doubt in law that the hire purchase agreement was terminated. The removal of the truck cannot be considered to be theft since the necessary ingredient, viz. dishonest intention is not present. The goods belonging to Kimji were sent to him. Khimji himself has not lodged any complaint for theft. In the result, the application succeeds. The conviction and sentence of both the accused are set aside and they are acquitted.

In the Supreme Court of India
Trilok Singh and others v. Satya Deo Tripathi


The dispute between the parties related to the purchase of a truck under a hire purchase agreement entered into with a financier firm. According to the complainant, the amount advanced by the said firm was by way of loan, while according to the appellants it was on the basis of a hire purchase agreement. It was further averred that all the accused acting in a high-handed manner during his absence came to his house and in spite of protest by his wife forcibly under threat of arms removed the truck and thus they were said to have committed the various offences including the offence of dacoity. The Magistrate passed an order

(1) AIR 1979 SC 850.
directing the issue of summons against the accused. Before the
summonses were actually issued, on the same day, the appellants
moved the Allahabad High Court to quash the criminal proceeding
in question. The High Court refused to quash the said proceeding
and dismissed the application. Hence this appeal to the Supreme
Court.

The Supreme Court held: On the well-settled principles
of law, it was a very suitable case where the criminal proceeding
ought to have been quashed by the High Court in exercise of its
inherent power. The dispute raised by the complainant-hirer was
purely of a civil nature even assuming the facts stated by him
to be substantially correct. Even assuming that the owners went
and seized the truck from the house of the hirer, they could and
did claim to have done so in exercise of their bona fide right
to seizing the truck on the hirer's failure to pay the third
monthly instalment in time. It was, therefore, a bona fide civil
dispute which led to the seizure of the truck. The criminal
prosecution deserves to be quashed.

In the High Court of Judicature at Allahabad
Jai Narain Gupta & another
v. the State of U.P. and another
May 23, 1978

This is an application u/s 482 Cr.P.C. for quashing the
order passed by Chief Judicial Magistrate, Dehradun. The appli-
cants are financiers who financed money under a hire purchase
agreement according to which the hirer was to pay the money in
instalments. The hirer committed default and the applicant
therefore seized the truck. The hirer made a report of theft
against the applicants and some others. The police submitted
a final report as they found no case made out against the appli-
cants. The applicants then gave an application for the restora-
tion of the truck in their favour. The hirer filed objections
and the learned Magistrate rejected the application.

The High Court in appeal held: The ownership in the truck
would continue to vest in the applicants till such time as the
hirer has paid the entire loan money. The applicants therefore
were well within their right to seize the truck. Merely because the hirer had filed a complaint against the applicants u/s 379 IPC, it was not proper on the part of the Magistrate to have refused to deliver possession of the truck to the applicants. The order passed by the Magistrate in this case is patently illegal and as such it cannot be allowed to stand. The Magistrate is directed to hand over possession of the truck in question to the applicant.

In the High Court of Judicature at Allahabad
Sri Jai Narain and another
v. Sri Amar Nath Kukreja
February 9, 1979

The facts in this case are more or less similar to the above cited case. The High Court held: It appears that the complaint has been filed by Amar Nath Kukreja in order to harass the applicants. It is also not clear from the complaint and also the statement of Amar Nath Kukreja as to what offence has been made out against the applicants. In these circumstances, the complaint filed by Amar Nath Kukreja amounts to an abuse of the process of the court and deserves to be quashed.

In the High Court of Judicature at Allahabad
S.S. Sehgal & others
September 8, 1978.

This is yet another case of similar nature. Punjab & Sind Bank, Kanpur (S.S. Sehgal, Manager) entered into an agreement with Umesh Chandra Tripathi for advance of a loan of Rs.64,400 for purchase of a truck. The truck was hypothecated to the bank till the loan was paid up. Ten monthly instalments were regularly paid but thereafter default was committed by the hirer. The truck was taken into possession and was put to auction which was purchased by one Mehar Singh. The question arose whether the aforementioned acts make out the ingredients of offences u/s 420 IPC and u/s 467 IPC.

It was held: There is hardly any question of dishonest intention or cheating or committing of forgery. Similarly, so far as the offence u/s 467 is concerned, where allegations of getting
signed blank papers could not amount to offence u/s 467 IPC. Ingredients of the offence would be made out if a document is forged which purports to be a valuable security etc. The proceedings in a case like one before me already amount to abuse of the process of the court.
IV(iii) Survey of Certain Cases

(b) Sales Tax Liability

The concept of applicability of sales tax in the case of a hire-purchase transaction hinges on passing of the property in the goods to the hirer, at which stage the sale transaction will be complete. Had there been a legislation in India on the lines of the South Australian Consumer Transactions Act, 1972, the position would have been different.

"24(1). The property in any goods subject to a contract that constitutes, or to contracts that together constitute, a hire-purchase agreement, shall pass to the consumer upon delivery of the goods to him."

The Central Sales Tax Act governs inter-state sale transactions and each State has its own Sales Tax Act. In the absence of uniformity in the quantum of sales tax in different States, there is not only flight of capital but a flight of business to the neighbouring low sales tax State. The situation is exploited by industries located in high sales tax States opening sales depots in the low sales tax State where sales are shown to have been effected. The prevalent rates of sales tax are shown in the following table.

<table>
<thead>
<tr>
<th>State</th>
<th>Rate of Sales-tax</th>
<th>Surcharge</th>
<th>Point of tax</th>
<th>Effective Rate</th>
<th>Revised ST Rate</th>
<th>w.e.f.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Assam</td>
<td>12</td>
<td>First</td>
<td>12</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Andhra Pradesh</td>
<td>5</td>
<td>10% on ST</td>
<td>First</td>
<td>6.4</td>
<td>5</td>
<td>11-9-85</td>
</tr>
<tr>
<td>Bihar</td>
<td>9</td>
<td>1% on TO</td>
<td>Last</td>
<td>10.09</td>
<td>5</td>
<td>11-9-85</td>
</tr>
<tr>
<td>Chandigarh</td>
<td>10</td>
<td>2% on ST</td>
<td>First</td>
<td>10.2</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Gujarat</td>
<td>11</td>
<td>20% on ST</td>
<td>First</td>
<td>13.2</td>
<td>2.97</td>
<td>25-7-85</td>
</tr>
<tr>
<td>Goa/Daman</td>
<td>3</td>
<td>First</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Haryana</td>
<td>10</td>
<td>2% on ST</td>
<td>First</td>
<td>10.2</td>
<td>5</td>
<td></td>
</tr>
<tr>
<td>Himachal Pradesh</td>
<td>10</td>
<td>10% on ST</td>
<td>First</td>
<td>11</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Jammu &amp; Kashmir</td>
<td>10</td>
<td>5% on ST</td>
<td>Last</td>
<td>10.5</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
In accordance with the Central Sales Tax Act, only a government department (and not government owned autonomous corporation) is entitled to issue Form 'D'. The present rate of sales tax applicable against Form 'D' is 4%.

Form 'C' can be issued only by registered dealers under the Sales Tax Act who purchase the goods either for

i. resale,

ii. use in manufacture or processing the goods for sale,

iii. use in generation/distribution of power, or

iv. packing of goods for sale or resale.

The present rate of sales-tax applicable for sales against Form 'C' is 4%.

Silvassa is a part of centrally administered Dadra-Nagar-Haveli enclave levying on sales tax. Recession and consumer resistance had made things difficult for the engineering industry and there was rush to Silvassa to sell commercial vehicles,
scooters, motor cycles, mopeds, diesel engines, tractors and what else you may have. Particularly manufacturers of commercial vehicles caught in the low demand and high price trap, found that they could under-invoice by about Rs.16,000. This price drop converted the then uneconomic business into a profitable bargain both for the seller as well as for the buyer. The vehicles purchased in Silvassa were transported to other sales tax levying States and registered in those states. The State governments were stricken with dismay at the loss estimated at Rs.18 crores they were incurring because of Silvassa.

Under departmental instructions, the State sales tax authorities stopped issuing Form No. 31 under which no sales tax was leviable by the State of entry of the vehicles from Silvassa. The dream-like Silvassa interlude was over on 31st December 1983.

Centrally administered Goa and Daman took over from Silvassa, with sales tax as low as 3%. Quickly the manufacturers of engineering items including commercial vehicles, opened sales depots and the dealers opened purchase offices. The business was brisk on the pattern of Silvassa. A saving of 7% or more in sales tax was ample to cover transportation costs and yet leave a handsome saving. The neighbouring states looked in dismay at the loss of revenue because convoys of commercial vehicles carrying 'sales tax paid' papers crossed over without paying sales tax of those states. A peculiar side effect of the disparity in rates of sales tax was that hire purchase companies of Calcutta and other places purchased vehicles from Daman or Goa, transported them to the destinations and let them on hire under hire-purchase agreements charging sales tax at the full rate applicable in that state. This meant that the difference in the rates of sales tax was appropriated by the hire-purchase companies without any accountability under the defective sales tax law. This would not have been possible if there had been a provision in the sales tax act that no amount collected as sales tax could be retained by the collector irrespective of the assessed sales tax under the sales tax act.
It soon became patently clear that the inundation of vehicles from Daman and Goa inflicting loss of sales tax could be stopped only by suitably reducing the rate of sales tax by the affected states. While it was not necessary to bring down the rate of sales tax on vehicles at par with Daman and Goa, it would be effective if the rate was brought down so that the sales tax paid at Goa or Daman and the transportation expenses could more or less nullify the tax advantage. All the south Indian states had already lowered the sales tax on vehicles around 6%. Gujarat was the first state in north India to bring down sales tax to 6.6% followed by Madhya Pradesh. Other wavering states, thinking but not acting, will have to come to a decision the earlier the better for them.

Sales tax has its own legal history putting the state sales tax acts to severe tests and not at all faring well at the hands of law courts. Here are some important judgments regarding levy of sales tax on hire-purchase transactions.

In the Supreme Court of India
K.L. Johar & Co.
v. Deputy Commercial Tax Officer, Coimbatore (1)

The issues decided in this very important case were:
(1) whether sales tax can be levied at the point when an agreement of hire purchase is made, (ii) whether payment of instalments would constitute the price, and (iii) whether transactions of a financier entering into a finance agreement in the nature of hire-purchase were liable to sales tax.

This case arose before the Supreme Court as an appeal against the judgment of a Division Bench of the Madras High Court in Commercial Credit Corporation Ltd. v. D.C.T.O., Madras preferred by K.L. Johar & Co., a financing company. The sales tax authorities had made a provisional assessment on the appellant levying sales tax on the transactions. The appellant filed a writ petition in the High Court questioning the provisional assessment contending that levy of sales tax in respect of the transactions was illegal and unconstitutional.

(1) AIR 1965 SC 1082.
The High Court held that as there were two sales involved in the transaction and the Act levied a multi-point tax on sales, tax could be levied again when the appellant sold the vehicle to the intending purchaser. It rejected the contention of the appellant that such hire purchase agreements were nothing more than hiring agreements.

The Supreme Court held that in cases of this kind there are two sales, one by the dealer to the financier and the other by the financier to the person who wanted to purchase the vehicle. Moreover, the essence of 'sale' under the Sale of Goods Act is that the property should pass from the seller to the buyer.

Sec. 4 of Sale of Goods Act 1930 reads as follows:

"4. (1) A contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price. There may be a contract of sale between one party- owner and another.

(2) A contract of sale may be absolute or conditional.

(3) Where under a contract of sale the property in the goods is transferred from the seller to the buyer, the contract is called a sale, but where the transfer of the property in the goods is to take place at a future time or subject to some condition thereafter to be fulfilled, the contract is called an agreement to sell.

(4) An agreement to sell becomes a sale when the time lapses or the conditions are fulfilled subject to which the property in the goods is to be transferred."

Hire-purchase agreements are not conditional sales. Therefore, any legislation by the State Legislature making any agreement of transaction in which the property does not pass from the seller to the buyer a 'sale' would be beyond its legislative competence. As the Explanation I to S. 2 of the Madras General Sales Tax Act 1939, which lays down that hire purchase agreement shall be deemed to be a sale in spite of the fact that the property does not pass at the point of such agreement from the seller to the buyer, is beyond the legislative competence of the State legislature. It must, therefore, be said to be invalid and struck down.

A hire-purchase agreement has two elements: (1) element of bailment, and (2) element of sale, in the sense that it
contemplates an eventual sale. The element of sale fructifies when the option is exercised by the intending purchaser after fulfilling the terms of the agreement. As the taxable event is the sale of goods, the tax can only be levied when the option is exercised. The High Court was in error in holding that transactions of hire purchase having regard to their main intent and purpose, might be treated as sales at the time the agreement is entered into. In all hire purchase agreements sale takes place only when the option is exercised after all the terms of the agreement are fulfilled and it is at that time sales tax is exigible.

What is the quantum of sale price? The appellant's contention was that the sale price is only one rupee which the hirer had to pay when he exercised his option to purchase. The respondent contended that the sale price would be the entire amount paid by the hirer to the financier and the tax is exigible on this entire amount. Neither of these two contentions was correct. Out of the payments made, a part is towards the hire and a part towards the payment of the price and it would be for the sales tax authorities to determine in an appropriate way the price of the vehicle on the date the hirer exercises his option and becomes the owner of the vehicle. There was no legislative guidance in such matters.

In the Supreme Court of India
Sundaram Finance Ltd.
v. State of Kerala and another (1)

The above case arose as an appeal to the Supreme Court against the decision of the Kerala High Court. The decision was on the question of the liability of the appellant to sales tax. The Sales Tax Officer had held that the hire purchase transactions between the financiers and hirers were 'sales' within the meaning of the Travancore-Cochin General Sales Tax Act and the financiers were 'dealers' liable to be assessed under the Act. The appellants filed writ petitions in the High Court, but they were dismissed.

(1) AIR 1966 SC 1178.
The Supreme Court held: The financiers are carrying on the business of financiers; they are not dealing in motor vehicles. The motor vehicle purchased by the customer is registered in the name of the customer and remains at all material times so registered in his name. There is hypothecation of the vehicle in favour of the financier as a security for repayment of the loan. The so-called 'sale letter' is a formal document which is not made effective by registering the vehicle in the name of the financiers. Their right to seize the vehicle is merely a licence to ensure compliance with the terms of the hire purchase agreement. The customer remains qua the world at large the owner and remains in possession. The right of the financiers may be extinguished by payment of the amount due to them under the terms of the hire purchase agreement even before the dates fixed for payment. Therefore, the intention of the financiers in obtaining the hire-purchase and allied agreement was to secure the return of loan advanced and no sale of the vehicle was intended. They are therefore not liable for sales tax.

This being a case of re-finance of an old vehicle, the agreement does not contemplate exercise of an option on payment of a nominal sum of money as is to be found in other hire purchase agreements in the case of new vehicles. The customer is already the owner of the goods. The intention of the financiers in obtaining the hire-purchase and allied agreements was to secure the return of loans advanced to their customers, and no real sale of the vehicle was intended by the customer to the financiers. The transactions were merely financing transactions.

According to the Supreme Court judgment in the case of K.L. Johar & Co. in 1965, sales tax is leviable at the time of termination of hire purchase contract, which is the date of sale. Vehicle is a moving asset plying from place to place and from state to state. A material point of law arose when the hire-purchase agreement was executed in one state and the vehicle happened to be in another state at the time of termination of the contract.
when sales tax became payable. Which of the two States was entitled to levy the sales tax? This point was decided by the Supreme Court in its judgment cited below.

In the Supreme Court of India  
The Instalment Supply Ltd. v.  
Sales Tax Officer, Ahmedabad-19 and others.  
May 1, 1974.

In this case the actual sale fructified only when the hirer exercised his option to purchase under the hire-purchase agreement and at that time the goods were inside the State of Gujarat. There should be no objection to the Gujarat State taxing, what, according to the Central Sales Tax Act is a sale inside the State of Gujarat. There can also be no objection to State making a sale of goods which are inside the State at that time the sale takes place liable to sales tax under its own legislation. In this case the contract of hire purchase was entered into in Delhi, the instalments were paid in Delhi and the option itself was exercised in Delhi made no difference. All that it means is that the agreement of sale was concluded in Delhi whereas the sale itself was completed by the property in the goods passing in Gujarat State and the sale, therefore, took place in Gujarat State. Nor can there be any objection to Gujarat levying a tax in respect of the same goods even though those goods may have been subjected to tax earlier by the Delhi State. There is no rule that any goods can be subjected to tax only once. Even in respect of the same goods sales tax can be levied as often as there are sales. In the present case, there was really no sale when the hire-purchase agreement was entered into. The sale itself took place only when the hirer exercised his option to purchase and that was when the goods were inside the State of Gujarat and, therefore, the State of Gujarat was entitled to levy a tax on that transaction of sale.

Forty-sixth Amendment

The genesis of the 46th Amendment to the Constitution of India lay in the findings and recommendations of the Fifth Finance Commission, the Uttar Pradesh Taxation Enquiry Committee and the 61st Report of the Law Commission of India, according to which it was necessary to seal loopholes in the existing sales tax and
other legislation which made it possible to evade tax on manipulated non-sale transactions.

The Constitution (Forty-sixth Amendment) Bill 1981 was introduced in the Lok Sabha on 3-4-1981, passed on 14-7-1982, then passed by Rajya Sabha on 10-8-1982 and finally the President signed it on 3rd February 1983 after which the Bill became The Constitution (Forty-sixth Amendment) Act 1982. The objects of the Act are:

(i) To provide for the levy of tax on transactions which are considered to be non-sale transactions, such levy being for the exclusive benefit of the States;

(ii) To provide for Central law to tax consignments of goods when they take place in the course of inter-State trade or commerce, revenue from such tax being for the exclusive benefit of the States;

(iii) To provide for retrospective levy of tax on receipts in the hands of hoteliers and restaurateurs and validation of the proceedings taken by the States in this regard.

The 61st Report of the Law Commission of India states that the States could not tax hire-purchase transaction not resulting in sale. The States could tax hire-purchase transactions resulting in sale, but only to the extent to which the tax is levied on the sale price, the sale price in this case being a notional figure. "Since the present constitutional position represents a dichotomy in the sense that tax on the hire part is within the competence of the Union only, and that on the sale part is within the competence of the States only, it becomes necessary to amend the Constitution so that the amendment will authorise levy of the entire tax by one legislative authority."

To implement the recommendations of the Law Commission and to meet the demands of the States, the Amendment Act has inserted clause (29A) in Article 366 which reads as under:

366. In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say:

(29A) Tax on sale or purchase of goods includes:

(c) a tax on the delivery of goods on hire-purchase or any system of payment by instalments;
Chapter IV(iii)(b)

After the required number of States pass similar legislations in line with the constitutional amendment, they will seek to tax hire-purchase transactions on this deemed sale basis, viz. that a sale takes place even at the time of the inception of the hire-purchase agreement by importing the concept of a deemed delivery.

Most of the States have a single point taxation and in the case of a new vehicle, it has already borne tax at the point of sale by the automobile dealer before the hire-purchase transaction is entered into, which in fact is a second or a subsequent sale not subject to tax for the second time. Even if hire-purchase transaction could he considered a 'delivery' within the meaning of clause (29A), there will be no liability for tax either in the hands of the financier or the hirer. Old vehicles already belong to the hirers, which is only a case of refinance or a loan transaction in which the financier is a secured creditor, no sales tax liability arises.

Consignment Tax

The Forty-sixth Amendment Act 1982 was enacted as a result of reports from State Governments about large scale avoidance of central sales tax on inter-state sales of goods through the medium of consignment of goods from one State to another and leakage of sales tax in works contracts, hire-purchase transactions and lease of goods. By the Act a new entry 92B has been inserted in List-I of Union List of the Seventh Schedule enabling the Parliament to levy taxes on the consignments of goods. The industrially advanced States are eager for levy of consignment tax but opposed by less industrialised States as such a tax would place an enormous burden on the economy and the benefits from this tax would accrue to the industrially advanced States at the cost of consumers in less advanced States.
A new tax termed as Turnover Tax was first imposed by the State of Karnataka by introducing a new Section 6B in the Karnataka Sales Tax Act 1957. This new levy became payable by every dealer whose total turnover in a year exceeded Rs. one lakh at the rate of one-half per centum. The feature of turnover Tax was that it could not be passed on to the buyer as a sales tax can be. On the pattern of Karnataka Turnover Tax, other States are coming up with similar levy. Uttar Pradesh levied Turnover Tax in 1983 but subsequently this levy was allowed to be passed on to the buyer.
IV(iii) Survey of Certain Cases

(c) Interference of various Agencies

There are extraneous circumstances as well as laws entirely unconnected with the hire-purchase business which affect hire purchase transactions leaving no choice but to face them. Such incidents are not the common feature of this business, but when unavoidable, they become bothersome and costly in terms of wasted time and money.

Confiscation

Confiscatory legislations provide penalties for the contravention of their provisions which include the seizure, confiscation and forfeiture of vehicles when they are used in the perpetration of offences. Confiscatory legislations like the Opium Act (sec.11), the Punjab Excise Act (sec.78(1)), Bombay Prohibition Act (sec.99), the Madras Forest Act (sec.43), the Andhra Pradesh Forest Act (sec.43) etc. have identical provisions as the Customs Act.

The Customs Act, sec. 115(2) : Any conveyance or animal used as a means of transport in the carriage of any goods or in the carriage of any smuggled goods, shall be liable to confiscation.

It may happen some times that a report reaches the financier that a certain vehicle under hire purchase agreement is not seen nor heard of for quite some time. This galvanises the financier into action till the vehicle is traced out. If the vehicle is traced in government custody, confiscated for certain offence, the financier has to go through all the legal chores of establishing that he is the owner of the vehicle and though the vehicle might have been used in committing the offence, it cannot be confiscated, as he was not a party to the offence. The hire-purchase agreement has a specific stipulation under which:

"The Hirer further agrees not to use the motor vehicle for any illegal purposes."
In State of Madhya Pradesh v. Azad Finance Company (1) the Supreme Court held that the Opium Act being a penal statute should be "construed in such a way that a person who has not committed or abetted an offence should not be visited with a penalty." Vehicles belonging to the financier but under a hire purchase agreement cannot be confiscated unless the financier was involved in the perpetration of the offence or had abetted it. The prosecution had argued that the amended Opium Act was that the conveyance used in commission of an offence shall be confiscated and it was therefore obligatory on a court to confiscate the vehicle irrespective of its ownership. This argument was rejected by the High Court as well as by the Supreme Court.

In State of Andhra Pradesh v. Yedla Parayya (2) the Magistrate had ordered confiscation of the vehicle involved in the commission of an offence under Andhra Pradesh Forest Act. The Session Judge set aside the order of confiscation which was confirmed by the High Court as well as by the Supreme Court.

Constitutional issues are involved in confiscatory legislation. Confiscation of property attracts Article 19(1)(g) of the Constitution of India which guarantees to the citizens of India the right to carry on any occupation, trade or business subject to reasonable restrictions that may be imposed "in the interests of general public". Sec. 8 of the Drugs and Magic Remedies (Objectable Advertisements) Act 1954 empowers seizure and detention of documents, articles or things which contravened the Act. In Hamdar Dawakhana and another v. Union of India and Others (3) this was held to be an unreasonable restriction upon the fundamental right. For a hire purchase company dealing with automobiles, the stock-in-trade is the vehicle. When it is confiscated, it impairs the right guaranteed by Article 19(1)(g) and constitutes an unreasonable restriction in the absence of "interests of general public".

(1) AIR 1967 SC 276.
(2) AIR 1970 SC 718.
(3) AIR 1960 SC 554.
A law which deprives a person of his property as a penalty for an offence neither committed nor abetted by him nor with his knowledge cannot be considered to be "fair, just and reasonable". The legislations like the Opium Act, Customs Act, Forest Act, etc. in so far as they deprive the owners of their proprietary rights under hire purchase agreement infringe the owners' right to property.

In the High Court of Judicature at Madras (1)
G.G. Kesavalu Naidu

On a plea of 'guilty', the accused, who was found transporting arrack on a bicycle was convicted and the vehicle was confiscated. The owner of the cycle who was running a cycle shop applied to the High Court against the said order. After examining various cases it was concluded: "The net result of this analysis is that though the vehicle used for transporting prohibited liquor can be confiscated, it is not imperative for the Court to do so, but merely discretionary; secondly, though strictly speaking the remedy of the owner of the vehicle is to proceed against his hirer who was putting it to illegal purpose; equity, justice and good conscience requires that this provision should be used in a humane and just manner. The proper course for the Magistrate who intends to confiscate the vehicle, is first of all to ascertain to whom the vehicle belongs and then if the Magistrate believes that the vehicle belongs to the accused, he can straightway order its confiscation. If on the other hand there are reasons to believe that the owner is a different person, notice might be issued to that alleged owner to come and show that he had exercised due care in preventing the commission of an offence. In the result, the orders of the lower Court confiscating the bicycle are set aside."

In the High Court of Judicature of Maharashtra
Great Finance Co. P. Ltd. v. The State
January 20, 1965.

A truck was involved in an offence under the Bombay Prohibition Act. Ganja was being carried in the truck. The persons concerned were convicted. At the end of the trial, Great Finance

(1) In re 1955 MWN 473.
Co. P. Ltd. applied to the learned trial Magistrate that the petitioner had given the truck to Sardar Ajit Singh under a hire purchase agreement; though some instalments were paid, Ajit Singh committed default and the petitioner was entitled to the possession of the truck. This application was rejected on two grounds, viz. the petitioner did not establish its title to the truck, and the petitioner did not exercise due care in preventing the commission of the offence. The learned trial Magistrate ordered confiscation of the truck. On appeal, the Sessions Judge also held that the petitioner did not establish that it had exercised due care in preventing the commission of the offence and dismissed the appeal.

The High Court held that under a hire-purchase agreement and for all practical purposes the control is that of the hirer. The only due care that can be expected of a person giving a truck on hire purchase agreement is the insertion of a clause, which the petitioner has done, which reads: 'To see that the vehicle conforms to all laws, rules and regulations for the time being in force...'. In view of this, the High Court held that the courts below were wrong in holding that the petitioner had not taken due care for the prevention of the commission of the offence as required by the Act.

Injunctions

Lord Salsbury has defined 'injunction' as a judicial process where the party is ordered to refrain from doing (restrictive injunction) or to do a particular act or thing (mandatory injunction). Injunctions can be temporary/interlocutory or perpetual/permanent. In hire purchase transactions, civil courts have granted injunctions, both temporary and permanent whenever the aggrieved party has adequate grounds. It is this provision which is availed of generally by hirers against financiers. The hirer files a civil suit against the financier alleging that he is the owner of the vehicle and praying for grant of a permanent injunction restraining the financier from repossessing the vehicle and also seeking a temporary injunction pending disposal of the suit.
Chapter IV(iii)(c)

In AIR 1956 Bombay 476, the Bombay High Court held that in a case if the plaintiff is required to pay money under a contract and such payment is proved, the remedy for the aggrieved plaintiff is either to refuse to pay and suffer the consequences or to recover the money by way of a suit, but he is not entitled to any injunction.

Suits for perpetual injunctions are filed under the Specific Relief Act 1963. Hirers, after committing default, invoke the provisions of this Act for declaratory relief on the footing that the suit transactions are mere loan-transactions and therefore the vehicle belongs to the hirer absolutely and the financier has no right to repossess the same even after default. Another form of suit is to ask for possession of the vehicle repossessed by the financier on default, and in the meanwhile seek to restrain the financier by injunction from dealing with the vehicle in any manner by way of sale, etc.

**Jurisdiction**

Hire purchase agreement contains a jurisdiction clause reading somewhat on the following lines:

"This agreement has been accepted and executed by the owners at (place) and it has been agreed between the parties hereto that this agreement shall be observed and performed at (place) and the Hirer and the Guarantor specifically agree that (place) courts only shall have the exclusive jurisdiction to try any arbitration or legal proceedings, or any suit, claim or dispute."

Jurisdiction is the right to exercise legal authority in the administration of justice, which can be territorial, pecuniary or special. Only High Courts and Supreme Court have both civil and criminal jurisdiction. Sections 16 to 20 of the Civil Procedure Code specify territorial jurisdiction. Suits have to be instituted where the subject matter of the dispute is situated. In the case of breach of contract, the suit can be laid either at a place where the contract ought to have been performed or the performance is completed. Pecuniary jurisdiction refers to the monetary limits for courts within which they can function. Small Cause Courts, City Civil Courts and High Courts have pecuniary jurisdiction in slabs one above the other.
Courts have inherent powers to decide the question of jurisdiction and are not confined merely to agreements between parties but they can take into account special circumstances like the convenience of parties, balance of convenience or any oppressive factor involved which may lead to injustice or failure of justice.

Law of Limitation

Law of limitation restricts the time on expiry of which civil suits or other proceedings become time barred. This branch of law is based on twin factors: firstly, there should be a well defined limit to litigation, and, secondly, laws aid the vigilant and not those who slumber. As there is yet to come into force a law governing hire purchase transactions, the Limitation Act of 1908, now replaced by the Limitation Act of 1963 is applicable besides general Contract Law. The period of limitation for suits and other actions relating to hire purchase transactions depend on the nature of the action initiated. The suit may be for recovery of dues or for breach of contract or in connection with repossession of the vehicle. In most of the cases the period of limitation is three years. It is advisable for a hire purchase financier to be vigilant and aware of the limitation of time prescribed by law and to act in time if he is compelled and decides to take recourse to a court of law.

Writ Jurisdiction

Rights and liberty of individuals are of paramount importance in every democratic country and writ jurisdiction, which is called the bulwark of jurisprudence, is inherited by India from the British. Writ is a document containing royal instructions or instructions issued under royal authority and originally it was conceived as a prerogative of the Crown. Subsequently courts were vested with writ jurisdiction. In India, Article 32 vests powers in the Supreme Court to issue writs for enforcement of Fundamental Rights set out in Chapter III of the Constitution. Powers are similarly vested in High Courts under Articles 226 and 227.

In legal terminology, a writ is a direction or order issued by the Supreme Court and the High Court to inferior courts,
tribunals or authorities exercising judicial or quasi-judicial functions. Its main purpose is to secure speedy and effective justice without routine proceedings like appeal, revision, etc. Hire purchase transactions are concerned mainly with the following writs:

(i) Writ of Declaration is sought whenever a declaration is necessary in respect of the legality or constitutionality of any statutory provision, etc.

(ii) Writ of Certiorari is issued from a superior court to take a case out of the jurisdiction of a lower court together with all relevant records. In the well-known case of K.L. Johar & Co., the Supreme Court issued a writ of certiorari, reversed the earlier decision of the High Court and struck down the levy of sales tax in hire-purchase transactions.

(iii) Writ of Mandamus is from a high to an inferior court. In K.T. Kathiri v. Regional Transport Officer, Kozikoda (1) it was held that when a claim for exemption of tax is made for the period when the vehicle is not used and prior intimation given, it is the bounden duty of the authorities to investigate and determine the claim; failure to do so amounted to derelection of duties. The authorities were therefore directed to re-examine the entire question afresh and grant appropriate relief.

(iv) Writ of Prohibition. In J. Bahadur Singh Jain v. Tahsildar, South West Madras (2) a writ of prohibition was granted under Article 226 on the ground that the demand for arrears of taxes due from the financier under threat of coercive revenue recovery proceedings was not maintainable.

(1) 1965 KLT 1206
(2) 1978(2) MLJ 282.
IV(iii) Survey of Certain Cases

(d) Contractual Obligations

The law has not defined and cannot of itself define, what are the normal and reasonable terms of a hire purchase agreement. In order to constitute a valid contract, the parties must so express themselves that their meaning can be determined with a reasonable degree of certainty. Hire purchase agreement provides -for the rights and obligations of the contracting parties covering every legal aspect guided by the different enactments and case law having a bearing on each clause.

Contract

According to Pollock's 'Principles of Contracts' as well as the American Law Institutes Restatement of Contracts - "A contract is a promise or set of promises which the law will enforce". According to Corbin's 'Contracts' and Anson's 'Law of Contracts' - "That portion of the field of law that is classified and described as the law of contracts attempts the realisation of reasonable expectations that have been induced by the making of promise." For a contract to be valid: (1) the parties must "mean business", they must intend to enter into legal relations; (2) there must be a promise, that is, an offer duly accepted; (3) either the promise must be contained in a deed under seal or it must be supported by consideration; (4) the apparent agreement between the parties must not be vitiated by mistake, misrepresentation, duress or undue influence; (5) the parties must be capable of contracting; and (6) the object of the contract must not be illegal. The law of contracts differs from most -others; in a contract the parties themselves make their own rules as to what shall and what shall not bind them. In other branches of the law the parties concerned have no such power. (1)

The general rule is that a law which governs a contract is the law of the country where the contract is made, or the

law of the country where it is to be performed. There are cases in which the laws of two provinces (States) in India being different, they were regarded as two different countries. (1)

Under a contract, one party's contractual obligations are another party's rights and vice versa. Drafting of an agreement of contract is an endeavour to define unambiguously and explicitly the rights and obligations of both the contracting parties towards each other and enforceable legally.

Obligations

Obligations have been defined as every duty enforceable by law. A hire-purchase agreement, like any other contract, may be terminated (i) by the owner exercising his right as may be defined in the agreement mostly for default by the hirer; (ii) by the hirer in exercise of his right to return the vehicle at any time, (iii) by breach on the part of the hirer amounting to repudiation, e.g. wrongful sale of the vehicle, etc. and (iv) by performance, i.e. the hirer making all payments. When the hirer makes all payments and exercises the option to purchase, the hire purchase agreement becomes converted into a contract of sale. Some salient obligations under a typical hire-purchase agreement are examined below.

Initial Payment

The value of goods let on hire-purchase falls during the course of hiring. The value of a second-hand vehicle may be reduced by 25 to 50 per cent even after only a few days use as in the case of cars.

"There is no question here of any misleading of the hirer; he signed the agreement with his eyes open and in many ways it was an exceedingly favourable agreement to him. But it must be a necessary implication that he was not entitled to get back anything which he had paid under the terms of the agreement. There is no doubt that the initial payment was made a heavy one with the express purpose of acting as a deterrent to hirers throwing back road-depreciated cars on the hands of the owners within a few months of the commencement of the hiring." (2)

(1) Shanker Vishnu v. Maneklal; AIR 1940 Bom.362.
(2) Auto Supply Co. v. Raghunath Chetty, AIR 1929 Mad.884.
Maintenance

It is a stipulation that the hirer agrees to keep the vehicle in thorough working condition and order and to make no alteration without the previous written consent of the owner. Even in the absence of such explicit provision, the hirer is under an implied obligation to take reasonable care of the vehicle during the currency of the agreement.

Theft or loss

When in lawful possession of the hirer, if the vehicle is stolen, the hirer is answerable for the loss. Where the vehicle is damaged after delivery to the hirer, he is responsible for repairs.

Co-hirers

Hire purchase agreements, as a rule, do not use first person singular as "I hereby agree that ..." but they are worded in the third person "the Hirer hereby agrees ... ", in which case the singular includes the plural. Even if such agreement is signed by two or more joint hirers, their liability is joint as well as several, though not specifically mentioned.

Repossession or seizure

The hire purchase agreement exhaustively provides for various grounds and mode of repossession or seizure of the vehicle. In actual practice, repossession is a tough and at times a hazardous job as only in rare cases the hirer would surrender the vehicle meekly without resistance.

Judgment Debtor

If a creditor obtains a decree against the hirer and enforces it by execution, only those goods belonging to the hirer can be attached and not those under a hire purchase agreement of which the hirer is not the owner.

Insolvency

If the hirer is adjudged bankrupt, his property will vest in the trustee in bankruptcy for the benefit of the creditors.
Goods let on hire under hire purchase agreement do not vest in the trustee. As a precaution and protection, the owner serves notice withdrawing the consent to the hirer's bailment and possession.

**Security**

Legal security serves the purpose of requiring both the lender and the borrower to make a serious evaluation of the risks involved. In this way the taking of security injects a sense of discipline and responsibility into the activities of both of them. It is insurance against the possibility of changed circumstances falsifying the predictions of the feasibility study.

**Warranty**

Whether specifically provided or not, it is an implied term that the vehicle is reasonably fit and suitable for the purpose for which it is expressly hired. If damage is caused or loss incurred to the hirer on account of defect in the vehicle, the owner is liable to the hirer to make good the damage or loss. Mere preliminary inspection by the hirer will not relieve the owner of this implied term.

**Option**

Option to purchase is the essential part of the hire purchase agreement. "I think, it may well be right to say that if at any stage the option to purchase goes, the whole value of the agreement to the hirer has gone with it. If he wanted to make an agreement merely to hire a car, he would make it, but he enters into a hire purchase agreement because he wants to have the right to purchase the car; that is the whole basis of the agreement."

(Source 1)

**Breach of Contract**

Where a breach by the hirer amounts to a repudiation, the owner is entitled to recover damages based on his loss or profit. Where the breach by the hirer does not amount to a repudiation, the owner may terminate the agreement but he cannot claim damages.

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If the hirer disposes of by sale or transfer the goods of which he is not the legal owner, he commits the offence of conversion. After termination of the agreement either by the owner or by the hirer, it is a contractual obligation of the hirer to immediately deliver back the goods to the owner. Non-delivery of goods by the hirer of which he has no right to retain possession, is 'detene' or detention and actionable by the owner under trover (wrongful detention). Trespasser is the third party to whom the hirer disposed of the goods covered by a hire purchase agreement.

Guarantee and Guarantor

The legal position of the Guarantor is governed by the Indian Contract Act 1872 as under:

S. 126 - A Contract of Guarantee is a contract to perform the promise or discharge the liability of a third person in case of his default. The person who gives the guarantee is called the 'surety'; the person in respect of whose default the guarantee is given is called the 'principal debtor', and the person whom the guarantee is given is called the 'creditor'.

S. 128 - The liability of the guarantor is coextensive with that of the principal debtor (hirer) and it continues so long as the hire purchase agreement continues to be in force.

S. 133 - The guarantor is absolved from all liability when without his consent the terms of the contract are modified during its currency.

S. 139 - If the creditor does any act which is inconsistent with the rights of the guarantor or omits to do any act which the creditor's duty requires him to do and the eventual remedy of the guarantor against the hirer is thereby impaired, the guarantor is discharged.

It will thus be seen that the guarantor virtually indemnifies the financier. The liability of the guarantor presupposes the existence of a separate liability of the principal debtor and his liability is thus secondary which comes into existence only on default by the principal debtor. A guarantee is in itself a contract to indemnify upon a contingency. The obligation of the surety or guarantor is necessarily a collateral obligation, postulating the principal liability of the principal debtor.
With every payment made by the hirer, the liability of the guarantor is reduced pro tanto (to that extent). If the guarantor pays the dues of the defaulting hirer, he is entitled to subrogation, that is, the guarantor has taken the place of the hirer, and he can in his own turn proceed against the defaulting hirer to recover the payment made by him to the owner. He, however, cannot exercise the option to purchase the vehicle.

**Arbitration**

In essence arbitration is settlement of a dispute by outside agency enjoying the trust of the contracting parties. When there is no arbitration clause in a hire purchase agreement, the recourse for a disputant is a court of law. Having entered into an agreement with the arbitration clause, no party can resile from it under such untenable plea as he was not aware of it at the time of entering into the agreement. Such a plea would be opposed to the well-known doctrine of approbate and reprobate. If a party withholds cooperation and participation in the arbitration proceedings, the sole arbitrator can proceed ex-parte and his award would be perfectly valid.

**Death of the Hirer**

Hire purchase agreements provide for termination of hiring by the owner on the death of the hirer. This was adversely commented in England by the Molony Committee on Consumer Protection (1962, Cmnd 1781). Under prevalent law, termination of agreement as a result of death of the hirer is no longer possible in England. Hire purchase agreements in India continue to provide that the agreement is terminable by the owner on the death of the hirer. The Hire-purchase Act 1972 provides -

"12(5). The right, title and interest of a hirer under a hire purchase agreement shall be capable of passing by operation of law to the legal representative of the hirer but nothing in this sub-section shall relieve the legal representative from compliance with the provisions of the hire-purchase agreement."

Though the hire purchase agreement is in the individual name of the hirer, the vehicle acquired under the agreement is the estate or property of the family and the dependents and heirs of the hirer have as much interest in it as the hirer himself. Just
as land, house or any other property cannot be expropriated on death, the vehicle under hire purchase agreement should form part of inheritance. But so long as specific legislation is not brought into force, the present state of affairs will continue.
IV(iv) Findings and recommendations of government committees and commissions.

A committee report, however well thought out and intrinsically valuable, is tossed from one department to another where each department takes months without any concrete comment. After a futile journey for a few years, the report becomes stale and outdated when a new committee is appointed to cover the same ground afresh. The archives of the central and state governments are the repositories of piled up reports of committees, commissions, enquiries and investigations covering all imaginable subjects. To avoid the onus of decision, it is the practice to consign the matter to a committee and forget it. The committee - takes its own time knowing well the fate of its report and when at last the report comes out, it takes a leisurely round of the various departments till it ends up in the burial ground called archives.

The Tariff Commission recommended in 1952 a flat rate of excise duty for all components of motor vehicles. Again the Tariff Commission recommended in 1955-56 that manufacturers should be free to vary prices subject to periodic investigations. The Ad Hoc Committee under the chairmanship of L.K. Jha recommended in 1959 fixing a uniform rate of import duty on all automobile components; also waiver of excise duty on tyres and tubes and batteries used as original equipment and uniform rate of excise duty on all other components. No action was taken on any of these reports.

Law Commission

Shri T.L. Venkatarama Aiyer, Chairman Law Commission and former Supreme Court Judge, prepared the Twentieth Report of the Law Commission published in 1961 in which, after surveying hire-purchase law, observed as under in connection with sale of goods:

"In the English Sale of Goods Act of 1893, there was no provision for such a transaction. Hence provision was made by a separate Act, namely, the Hire Purchase Act of 1938 with a view to affording protection to the buyer of the goods on hire-purchase, or on similar terms, against certain abuses
which had become apparent in the practice of hire-purchase trading. In our opinion, it is desirable that a separate Act on the lines of the English Hire-purchase Acts and other similar laws should be enacted in India to regulate hire-purchase transactions."

Saraiya Committee

Government of India appointed the Saraiya Committee in 1968 to study the growth of road transport financing. The Committee while recognising the role of hire-purchase financiers, recommended that cheaper credit should be made available to hire purchase financiers to enable them to finance the road transport operators on easy terms.

National Credit Council - Study Group

The National Credit Council appointed another Study Group in 1969 to go into the credit facilities for the road transport operators. This Study Group stressed the need of adequate number of intermediaries, that is, hire-purchase financiers conceding that they enjoy certain advantages over commercial banks and other financial institutions, such as, special experience of road transport financing, local knowledge of individual operators, and they have an effective system of inspection, supervision, control and are in close and constant touch with the operators.

Banking Commission - Study Group

Another Study Group was appointed by the Banking Commission in 1971 to report on non-banking financial intermediaries. The report of this Study Group confirmed that hire-purchase form of credit is very much suitable to borrowers who have no money and no security to offer to the lending institutions. As the title to the property is retained by the lender/owner under a hire purchase agreement, that property serves as security till termination of the agreement. The Study Group found that particularly for road transport industry, there was full scope as well as need for organised banking system and hire purchase financing companies to jointly undertake hire-purchase business.
Banking Laws Committee

Government of India appointed Banking Laws Committee under the Chairmanship of Dr. P.V. Rajamannar, which submitted its report on Personal Property Security Law in 1977. The findings, recommendations and conclusions of this report are very important. Extracts relevant to this study are quoted below: (1)

1. Our credit security law has become antiquated since it does not recognise the functional role of the security, but lays undue emphasis on the form and ignores the substance. It has to be made rational and modern to facilitate intelligent financial planning.

2. When banks and other financing institutions switch over from a security-oriented to a purpose-oriented approach under the scheme of credit planning, security has a necessary but only a functional role. Since the present legal structure is not the work of any conscious analytical endeavour to give security a role consistent with its purpose and function in a developing economy, it is not surprising that the present legal structure comes in the way of banks performing effectively their role as catalysts of economic development.

3. Fictitious property concepts (for example, the fiction of 'owner' and 'hirer' under our hire-purchase law) have affected the development of our road transport industry. When it is recognised that there should not be any unnecessary restrictions on road transport industry, we may have to reform our instalment credit law to remove the handicaps faced by the road transport industry by reason of archaic and artificial notion.

4. In order to quicken the pace of implementation of the new economic programme of the Government aimed to maximise employment and yield optimum socio-economic benefits, the necessity is obvious for a statutory scheme which will take care of all the existing defects in our personal property security law. Such a scheme should facilitate the shift aimed by Government from capital-intensive to employment-oriented technologies. This should also help to reduce the cost of credit.

5. While credit for purchase money is given both by banks and hire-purchase financing institutions, the economic function they perform is the same. The law relating to instalment credit, or in other words, credit for purchase money, has not developed in our country in any rational way, but this is due to certain historical developments.

6. Both on logic and with a view to ensure that credit for productive purpose is not hampered by unnecessary legal constraints, it becomes necessary to deal comprehensively with the law governing instalment credit for meeting the needs of industry, trade and commerce, whether such credit is given by banks or by hire-purchase institutions.

7. In view of the fact that there is a great need for expediting reform in the field of credit-security law to facilitate the expeditious implementation of our economic programmes, this is the proper time to have a complete review of the scheme of our hire-purchase legislation. The non-enforcement of the legislation (Hire-Purchase Act 1972) so far is a positive factor which enables Government now to look at the whole spectrum of our credit-security law in its broad perspective and come forward with reformatory legislative measures.
IV(v) Hire Purchase Legislation

For hire-purchase legislation, a draft bill was submitted by the Law Commission as early as in 1961. That bill was passed after 11 years as Hire Purchase Act 1972 and placed on the Statute Book as Act 26 of 1972. Even now, after more than 13 years, the Act still continues to remain confined to the Statute Book unrepealed and unenforced.

"The Hire Purchase Act 1972 was enacted in pursuance of the Report of the Law Commission. But, pending further comprehensive examination, it has not been enforced. The Law Commission's Report and this Act were further considered by two expert bodies. The whole matter has been further reviewed by the Banking Laws Committee in great detail in its Report on Personal Property Security Law. The Banking Laws Committee has emphasised that a distinction has to be drawn between credit for business and credit to a consumer involved in the two types of hire-purchase transactions. The Committee has taken the view that credit by way of instalments for acquisition of motor vehicles is in the nature of a business credit and that, therefore, there is need for defining the rights and liabilities of the parties on a basis different from that applicable in the case of hire-purchase transactions involving simple consumer credit on a small scale. In fact, the Committee has recommended that hire-purchase business in motor vehicles should be excluded from the purview of the 1972 Act. The Reports of the various Committees are under consideration and it is the intention of the Government to come forward with suitable legislation in the light of the examination." ¹

The position of hire-purchase law lucidly summed up above in 1980, still continues unchanged.

Shri Ashoke Sen, Union Minister for Law and Justice, in his inaugural address at the 9th Annual Convention of the Federation of Indian Hire Purchase Associations held at Calcutta in March 1985, said that he would take up steps to formulate and finalise hire-purchase legislation as early as possible. In the second day's session of the Convention, this business came up for discussion. The consensus of opinion was for adoption of a separate hire-purchase law in order to mitigate the uncertainties and vagaries of totally unconnected laws governing hire-purchase transactions. There was, however, another school of thought which was of the opinion that the existing legal structure was flexible and adequate to meet the requirements of hire-purchase transactions. This view possibly stemmed from the fear that the proposed hire-purchase legislation would be rigid and under the plea of the protection of the weaker section, it may favour the hirer at the cost of the financier thus curtailing the latitude of freedom now enjoyed by the financiers.

Personal Property Security Bill

The Banking Laws Committee appointed by the Government of India under the chairmanship of Dr. P.V. Rajamannar, retired Chief Justice of Madras High Court, submitted its report in 1977 on Personal Property Security Law. After covering all the aspects of personal property as security for productive purposes, the Committee formulated a full-fledged scheme titled "The Personal Property Security Bill, 19.." for adoption as an Act. The relevant portions of the Bill covering the subject of this study, namely, hire-purchase of commercial vehicles, are given hereafter.

THE PERSONAL PROPERTY SECURITY BILL 19..

This Bill is intended to provide comprehensive statutory scheme which would govern all kinds of security agreements dealing with all forms of personal property. The scheme employees neutral terminology and provides incentives to
banks and other financing institutions extending purpose and production-oriented credit. It also covers instalment credit provided by both banks and hire-purchase financing institutions. (1)

This Act does not apply to a transaction governed by the Hire-Purchase Act 1972. (2)

A security interest attaches when (a) value is given, and (b) the debtor gets rights in the property. (3) A security interest is perfected by registration thereof and from the date of registration. (4) Where a secured party enters into a security agreement with a debtor regarding the property being a motor vehicle, the certificate of registration which stands in the name of such debtor, and the security interest is registered, no other person claiming any interest in the vehicle shall be entitled to assert his claims in preference to the claims of such secured party. (5)

At any time before the secured party has disposed of the property, the debtor may either (a) redeem the property by tendering fulfilment of all obligations secured by the property; or (b) reinstate the security agreement by paying the sums actually in arrears, or by curing any other default by reason whereof the secured party has become entitled to dispose of the property. (6)

Upon default under a security agreement, the secured party has the right to take possession of the property and for this purpose to enter the premises of the debtor. In taking possession, the secured party may proceed without judicial process if this can be done without breach of peace or he may apply to the court for taking possession. (7)

Where under a security agreement a secured party is entitled to appoint a receiver of the property, and in any event upon default, the secured party may appoint a receiver. (8)

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(1) Preamble (2) Section 4. (3) Section 8
(4) Section 25 (5) Section 37 (6) Section 49
(7) Section 58 (8) Section 63
Upon default under a security agreement, the secured party may dispose of any of the property in its then condition or after any reasonable repairing, processing or preparation for disposition. (1)

Where the property is disposed of in accordance with this section, the disposition discharges the security interest of the secured party and terminates the debtor's interest in the property. (2)

Where there is a conflict between a provision of this Act and any other law for the time being in force, the provision of this Act shall prevail unless this Act provides otherwise. (3)

For the purpose of carrying out the provisions of this Act, the Central Government may frame such rules as it may consider necessary from time to time. (4)

(1) Section 64(1)  
(2) Section 64(9)  
(3) Section 77  
(4) Section 80
IV(vi) Critical Study

Absence of legislation

Overlapping laws stepping on each other's toes makes the job of the judges very difficult. What comes out in the shape of a judgment is a compromise between conflicting provisions of entirely different sets of laws. On the sales tax front, the government itself was the victim of such a maze of laws because of 'sale' being defined variously in different laws. The story of amending Acts and constitutional amendments tell their own story of efforts at sealing gaps in such laws in the light of experience gained during enforcement.

The present chaotic state of our credit-security law, particularly our personal property security law, is primarily due to the application of archaic principles and concepts of Common Law developed a century ago in western countries, without considering the present day validity of those concepts with reference to socio-economic objectives.

"The development of the hire-purchase form was peculiar to the circumstances that prevailed in the UK. They have no direct application to our country. Since the present legal structure is not the work of any conscious analytical endeavour to give security a role consistent with its purpose and function in a developing economy, it is not surprising that the present legal structure comes in the way of banks performing effectively their role as catalysers of economic development. The institutionalisation of hire-purchase credit and encouragement for the formation and growth of strong and viable units could be effectively ensured only when the framework of our credit-security law allows ample scope both for banks and the hire-purchase financing institutions to play their proper role in dispensing purpose-oriented instalment credit for purchase money."

- Source 1.

Source 1 - Banking Laws Committee Report on Personal Property Security Law 1977 (pp 73, 75, 111)
"The fact of the matter is that the finance houses were forced by archaic and totally unsuitable legislation into adopting the legal fiction of hire-purchase. The business of instalment finance has grown and prospered over recent years in spite of the handicaps imposed by an archaic legal structure."

- Source 1.

The new legal framework suggested by the Crowther Committee rests on the recognition that the extension of credit in a sale or hire-purchase transaction is in reality a purchase-money loan and that the reservation of title under a hire-purchase or conditional sale agreement or finance lease is in reality a chattel mortgage securing a loan. The broad classification of distinguishing credit as consumer credit and commercial credit is also the prevailing pattern of legislation in the United States and Canada. In the USA, instalment credit for purchase money is now generally governed by Article 9 of the Uniform Commercial Code. The special features relating to consumer credit are now taken care of by the Uniform Consumer Credit Code.

In Australia, a committee chaired by Prof. Arthur Rogerson concluded in 1969 that "the continued use of hire-purchase as a means of granting instalment credit should not be possible." The Model Bills of Australia widely draw from Article 9 of the Uniform Commercial Code of USA.

"The trend now, as seen from the legislation and considered views in the UK, USA, Australia and other countries is to unify the scheme of legislation relating to credit for the acquisition of goods, whether the relative transaction is couched as hire-purchase or credit sale or conditional sale."

- Source 2

Hire Purchase Agreement

"The law relating to hire-purchase is in a rudimentary state in this country. There is no specific statute governing the rights and liabilities of parties to a transaction of

Source 1 - R.G. Kirkpatrick and Basil Greene in "The policies of instalment credit law - An appraisal from the point of view of finance houses" quoted by Banking Laws Committee Report 1977 (p.73)
hire-purchase. The law leaves the parties to their own agreement in respect of various incidents of the hire-purchase agreement. If the parties specifically provide in their agreement for certain situations and prescribe a particular procedure which they are to adopt and specify the means which they may use to resolve those situations, they are bound by those provisions in the agreement."

- Source 1

This observation was made in 1964 when the Hire Purchase Act was not in sight and even after passing of that Act in 1972, because of its non-enforcement, the situation continues unchanged. Thus the hire-purchase agreement still holds full sway. A specific statute for hire-purchase would hold the scales at equilibrium between the contracting parties rather than governed by one-sided agreements. It would also reduce unnecessary and costly litigation under various laws and the contracts would run more smoothly.

Sales Tax

Sales tax has always been a controversial legislation. Artificiency of this pernicious levy pushing up prices hardly serves any public interest. It is the consensus of opinion that reasonable rates of taxes not subject to yearly budgets would eliminate uncertainty and speculation in the pre-budget period and would revive industry and trade and a boyant market would fetch in for the exchequer steady and ever growing flow of tax revenue through an ever expanding tax base.

The disparity in the rates of sales tax in different states of the Union of India has all conceivable demerits. For instance, sales tax on vehicles differed from 'nil' at Silvassa in 1983, 3% at Daman in 1984, around 6% in most of the South Indian states and 10% and above in Uttar Pradesh and most other states in North India. The disparity in two neighbouring states was exploited by making purchase in the low tax state and transporting the vehicle for registration and use in the high tax state.

state. The high tax state thus lost revenue from sales tax on vehicles. Awakened to this reality, the high tax states of Gujarat, Madhya Pradesh and Bihar brought down the sales tax on vehicles around 6% and the remaining states will have to follow suit. The evasion of sales tax through loopholes in legislation sought to be curbed by the 46th Amendment to the Constitution does not aim at bringing uniformity in rates of sales tax.

The consignment tax and the turnover tax conceived as progressive replacement of sales tax merely ended in additional complicated taxation to push up prices and incentives to rampant evasion.

**Government Committees**

The purpose of appointing committees, commissions, enquiry bodies and study groups is to examine the subject by experts under specific terms of reference in all its aspects and to formulate well thought out recommendations. But it becomes a mockery when the intention is merely to side-track the issue so that after a short time public attention is diverted elsewhere. There are far too many instances in which reports of committees and commissions just faded away without any positive action by government. The instance germane to this study is the report of the Banking Laws Committee which submitted its report in 1977 without evoking any action by government till date. Most of the ailments of hire-purchase would be cured with the enactment of a specific and codified hire-purchase legislation on the basis of the Report of the Banking Laws Committee.

Earlier, the 20th Report of the Law Commission was submitted in 1961 along with draft hire-purchase bill. It was passed by the Lok Sabha after 11 years in 1972 in the form of Hire-Purchase Act 1972. If not repealed, the Act was not enforced and even now the hire-purchase continues bereft of a legislation. Viewed in contrast with such ill-conceived and useless legislation like the Urban Land Ceiling Act, the inactivity of government in the case of hire-purchase legislation is inexplicable, to say the least.
The Personal Property Security Bill

Being a Report of the Banking Laws Committee, it primarily concerns itself with bank transactions. Exclusively bank clauses in the Personal Property Security Bill as well as routine legal portions have, therefore, been omitted in this study.

The salient features of this proposed legislation are:
(i) it covers most of the voluminous case law, (ii) it covers not only hire-purchase but all security arrangements whether sale, lease, lien, gift, pledge, mortgage, hypothecation, floating charge or trust receipt; (iii) it employs 'neutral terminology' shaking off the accretions of worn-out terms like 'hirer' (debtor), 'owner' (secured party), purchase money (finance, loan), etc. and (iv) it covers wider field of transactions, such as, inventories, crops, fixtures, comingled goods, etc. which are relevant in bank dealings.

Section 12 extends protection to the debtor (hirer) on return of the vehicle or on its repossession, as the liability of the debtor is restricted to his indebtedness. In other words, the secured party (owner) cannot retain all the proceeds on disposal of the vehicle but only the amount of outstanding instalments.

Section 25 lays down that a security interest is perfected by registration thereof and from the date of registration. In the case of vehicles, such registration is done under S.31A of the Motor Vehicles Act 1939. Since a vehicle with the same chassis and engine numbers cannot be registered twice, such perfection carries top priority because section 33 lays down that a perfected security interest has priority over an unperfected security interest. As a further safeguard, section 34 lays down that priority shall be determined by the order of time of perfection.

Section 23(2) provides that an assignee of a security interest succeeds to the position of the assignor at the time of the assignment. A bank granting cash credit facility against hire-purchase documents becomes the assignee creating a co-security interest in the vehicle.
In some cases, particularly by banks, the advance is to be released in periodical instalments or on the performance of some stipulation. Proviso to section 25 is a remedy for the hirer (debtor) to apply to the registering authority for the revocation of the registration on the ground that the secured party has not given value in terms of the security agreement or has inordinately delayed the giving of such value.

Section 37 bestows absolute security interest (de jure ownership) to the secured party, and no other person shall be entitled to assert his claims in preference to the claims of the secured party.

Section 58 of this Bill as well as section 19(c) of the Hire Purchase Act 1972 specifically give the right of seizure to the secured party.

Section 63 provides for appointment of a receiver who, for all intents and purposes, is the arbitrator with the added power to take possession of the property and to realise and recover all the income of the property. It also lays down the mode of disposal of the amounts received by the receiver.

Section 77 asserts that where there is conflict between a provision of this Act and any other law, the provision of this law shall prevail.

Section 69 recognises the validity of the hire-purchase agreement and its provisions but, obviously, any provision in the agreement contrary to the law would be imoperative.

As made clear in the Project Report (BLC) (xii), under this Act, hirers of vehicles may not get the protection extended to them under the Hire Purchase Act 1972, but claims to reduce the scope for fraudulent actions to defeat the claims of the secured party.

Motor Vehicles Act 1939

In the Personal Property Security Bill, the consequential amendments proposed to the Motor Vehicles Act include: (i) re-definition of 'owner'; (ii) S. 31A remoulded incorporating therein
certain obligations on the Registering Authorities to safeguard the interest of the secured party (owner); (iii) the certificate of registration given a greater recognition; and (iv) statutory recognition given to the register maintained by motor vehicles authorities. The proposed amendments to the Motor Vehicles Act aim at bringing the whole hire-purchase transactions under a unified statute eliminating any likely conflict between various other statutes. This cohesive unity of legal demarkation would reduce the grievances and problems of both the hirer and the financier.

Neutral Terminology

Article 9 of the Uniform Commercial Code of USA provides a constructive approach to the problem of terminology in secured transactions. The person advancing funds on security is known as the 'secured party', whether in form he is a conditional seller, an owner supplying on hire-purchase, a mortgagee or a pledgee. The person for whose benefit the funds are provided or a part of the price is left outstanding is termed as 'debtor' whether he is a conditional buyer, a hirer, a mortgagor or pledger.

"Without such neutral terms the law would simply be perpetuating the artificial distinction between one type of security interest and another. New terminology is also important as a means of avoiding the use of existing terms carrying with them meanings and interpretations resulting from previously decided cases. For a modern personal property security law it is essential to be able to cut free from words that have acquired over the years a distinctive significance which might well run counter to the underlying principles and policies -of the proposed new legislation." Source 1