

LAW COMMISSION OF INDIA

ONE HUNDRED SIXTY EIGHTH REPORT

ON

THE HIRE-PURCHASE ACT, 1972

MARCH, 1999



D.O.No.6(3)(39)/96-LC(LS)

18.3.1999

Dear Dr.M.Thambi Durai,

I am forwarding herewith the 168th report on "The Hire-Purchase Act, 1972".

2. The subject was taken up by the Commission in pursuance of the reference of the Government of India dated 30th September, 1996. Earlier, the Commission had made an indepth study of the subject and forwarded its 20th report on "The Law of Hire-Purchase" in May, 1961. Parliament enacted the Hire-Purchase Act, 1972 following the recommendations of the Commission. A number of companies carrying on hire-purchase business pointed out certain deficiencies in the Act and therefore the said Act could not be enforced. The Government of India introduced the Hire-Purchase (Amendment) Bill, 1989 in pursuance of the observations made by the Parliamentary Standing Committee. Therefore, the Government of India referred the whole issue of hire-purchase law to the Law Commission for an indepth examination.

3. The need for a separate Hire-Purchase law to regulate hire-purchase transactions, is undeniable. Such a law is essential with a view to affording protection to the buyer of the goods on hire-purchase, against certain abuses in the practice of hire-purchase trading. Some safeguards may also be required for the owner of the goods.

4. The Commission circulated a questionnaire on "Law of Hire-Purchase" to the concerned interest groups to solicit their views on the subject. After considering their views, the Commission has recommended various amendments in the Hire-Purchase (Amendment) Bill, 1989 and the Hire-Purchase Act, 1972. For the sake of convenience, the Commission has also annexed The Hire-Purchase (Amendment) Bill, 1999 (Annexure-A to the report) which incorporates the Hire-Purchase (Amendment) Bill, 1989 and our modifications therein as well as in the Principal Act. Again, for the sake of convenience and ready reference, we have set out in Annexure-B to the report, the

Hire-Purchase Act, 1972 as amended by the Hire-Purchase (Amendment) Bill, 1999. In other words, if all the amendments suggested by the Law Commission are accepted by the Parliament, the Hire-Purchase Act, 1972 would read as set out in Annexure-B to the report.

With regards,

Yours sincerely,



(B.P. Jeevan Reddy)

Dr.M.Thambi Durai
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Law, Justice & Co.Affairs
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CHAPTER I

INTRODUCTORY

1.1 The subject:- The Law Commission had, in its eighth report on the Sale of Goods Act¹ observed as follows:-

"There is no provision in the Act regulating a transaction of hire-purchase, which is also a method of selling goods. It is a transaction of hire at the inception with an option to purchase.

"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 (1 and 2 Geo. 6, c.53), 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. This Act has been supplemented by the Hire-Purchase Act, 1954 (2 and 3 Eliz. 2, c.51).

"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. The Commission will make its recommendations in this connection in a separate report."

1.2 The Genesis of the report:- During the past few decades there has been a mushroom growth of hire-purchase transactions in India. The growth of hire-purchase transactions and the complexities surrounding such transactions perhaps prompted the Law Commission to undertake a study of the subject. The Commission made an in-depth study of the subject and submitted its 20th Report on "The Law of Hire-Purchase" in May, 1961. The Commission also appended a Bill to its report on the Hire-Purchase. The Indian Parliament enacted the Hire Purchase Act, 1972 following the recommendations of the Law Commission.

1.2.1 The Government of India by G.S.R. 228 (E) dated 13.4.1973 notified that the Act will come into force with effect from 1.6.1973. A number of companies which were carrying on hire-purchase business or financing of hire-purchase transactions made representations to the Government pointing out certain deficiencies in the Act and requested for postponement of decision of the enforcement of the Hire Purchase Act. This resulted in the issuance of notification GSR No.288(E) dated 31.5.1973 rescinding the earlier notification and appointing 1.9.1973 as the date on which the Act would come into

force. Meanwhile Shri R.T.Parthasarathy, M.P. who was the Chairman of the Joint Committee which examined and reported upon the Hire Purchase Bill wrote a letter dated 10.8.1973 to the Minister in the Ministry of Law and Justice pointing out certain anomalies in the Act. As a result GSR No.402(E) dated 30.8.1973 was issued rescinding the operation of the Act from 1.9.1973 as notified earlier. The matter rested there.

1.2.2 The Report dated April 24, 1987 of the Committee on Petitions, Rajya Sabha relating to the question of bringing into force the Hire Purchase Act, 1972 noted the sad state of affairs resulting from the non-enforcement of the Act and recommended that immediate steps be taken to notify and implement the Hire Purchase Act, 1972 without any further delay.

1.2.3 In due course, the Ministry of Law & Justice prepared a comprehensive Amendment Bill for the amendment of the Hire Purchase Act which was introduced in the Rajya Sabha on the 5th May, 1989. A copy of the Bill is annexed hereto as ANNEXURE-C for ready reference. In pursuance of the rules relating to the Department related Parliamentary Standing Committee, the Chairman of Rajya Sabha referred the Bill to the Committee on Home Affairs for examination and report. The Committee considered the Bill and heard the representative of Ministry of Law, Justice & Company Affairs, and made the following

Recommendations/observations² :-

"(i) The Hire Purchase Act since its passage in 1972 has remained in -operative till now. In between great many socio-economic changes, particularly during the last couple of years, have taken place. As the legislation intends to govern the rights and duties of both the business and consumer communities, it becomes imperative to have these changes reflected in the legislation, otherwise the entire exercise in this regard may prove to be futile.

(ii) The Bill which seeks to amend comprehensively nearly half of the provisions of the Hire Purchase Act, 1972, in some cases substituting the entire provisions of the Act, has been brought forward pending enforcement of the Principal Act. It, therefore, necessitates the desirability of enacting a fresh legislation of the subject instead of doing complicated patch-work here and there in the Act.

(iii) Some of the provisions of the Bill are too technical and intricate to be comprehended by a common man, who is concerned with the subject matter of the Bill. Those provisions, therefore, needs to be simplified.

In view of the above, the Committee is of the considered view that the present Bill may not suffice in achieving the desired objectives. The Committee, therefore, recommends that Government may consider referring the whole issue of hire-purchase to the Law Commission for an in-depth examination, keeping in view the above observations and thereafter bring in a fresh comprehensive legislation on the subject before Parliament, as expeditiously as possible."

1.2.4 Reference made by the Government:- The Committee recommended that Government may consider referring the whole issue of hire-purchase to the Law Commission for an in-depth examination, keeping in view the observations of the Committee and thereafter bring in a fresh comprehensive legislation on the subject before Parliament, as expeditiously as possible. Accordingly, the subject of hire-purchase was referred by the Government to the Law Commission for an in-depth examination.

1.2.5 Questionnaire circulated by the Commission:- The Commission circulated a questionnaire on Law of Hire-Purchase (ANNEXURE-D) to Bar Associations, State Governments, Advocates, eminent Jurists and others concerned to solicit their views on the subject.

Before embarking upon analysis of views received, it is pertinent to tread through the historical concept of the term 'hire-purchase' and growth of the subject in our courts.

1.3.1 Growth of Hire-Purchase transactions:

Industrialisation in Europe started long back and it has passed through centuries as to today. England occupied a leading position in the race of industrialisation in Europe. Colonisation of Asia, Africa and certain parts of America by the European powers started with the objectives of securing supply of raw materials to their industries and later on markets for their products. The colonial markets, however, were originally not attractive in view of their poverty, backwardness and ignorance. The colonial masters, therefore, had to find alternate markets for their products. One of the novel methods of achieving this object was perhaps hire purchase and credit sale.

1.3.2 In England, the practice of selling goods on credit, the price being payable by instalments, is of very early origin; but the appearance of hire-purchase as a commercial institution dates substantially to the second half of the nineteenth century. In the industrial sphere, at about the same time, the North Central and British Wagon Companies began to finance the purchase by collieries of the railway wagons needed for the carriage of coal and security for the advances made was provided by

hire-purchase transactions. The subsequent advent of the motor-car immensely extended the ambit of hire-purchase, and hire purchase terms are now available over a large range of consumer durables.

1.3.3 It cannot be denied that whenever a society which is primarily an agricultural society transforms into an industrialised society, commercial or business law is required to be enacted to protect certain rights and interests of parties. The law of hire-purchase differs considerably from the law of sale owing to differences in commercial practice. Thus the existence of codifying Act for sale of goods will not serve the purpose with regard to hire purchase transactions.

Despite rapid developments of industries in India and despite a general acclaim that India ranks in the top industrialized countries of the world, it still remains basically an agricultural society and a large chunk of its population still lives in villages which are far away from the aura of influence of industrialization. However in metropolitan cities, there is vast increase in commercial transactions through the system of 'hire-purchase'. Such transactions include purchasing of motor vehicles, domestic appliances, and even purchasing of houses/flats. Even the public undertakings are building houses and selling these on hire-purchase basis.

1.4 Concept of Hire-Purchase:- The words "hire-purchase" are frequently used in general discussion to denote all forms of instalment trading. Two classes of instalment contract are in common use; the hire-purchase agreement and the credit sale agreement (sometimes called a deferred payment sale contract). A hire-purchase agreement connotes that the vendor of the goods will let them and the customer will hire them for a fixed period and will pay an agreed rental by a series of instalments throughout the hiring period; and that when the customer has paid all the instalments he shall become the owner of the goods. It is also customary that the customer shall have the right to return the goods in good order at any time during the hiring period and to discontinue the hiring, provided that he pays an agreed proportion of the total hiring cost and any overdue instalments. Such transaction is thus a contract of hire with an option to purchase; and until that option is exercised, the vendor remains the owner of the goods. A credit sale agreement, on the other hand, is a contract of sale which provides that the owner will sell and the purchaser will buy the goods and will pay an agreed price by a series of instalments. Ownership of the goods passes immediately the agreement is signed and the purchaser becomes an ordinary debtor for the several instalments of the purchase price³.

1.4.1 'Hire-purchase agreement', means⁴ an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the term of the agreement and includes an agreement under which -

- (i) possession of the goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments, and
- (ii) the property in the goods is to pass to such person on the payment of the last of such instalments, and
- (iii) such person has a right to terminate the agreement at any time before the property so passes. (Hire-Purchase Act, 1972, section 2(c).

1.4.2 Hire-purchase system is a transaction or system whereby a person agrees to take on hire - an article with a stipulation that if he pays certain number of instalments by way of hire, he shall become the owner of that article, on payment of a further sum by way of option of purchase, at his choice⁵.

1.4.3 According to Halsbury's Laws of England⁶:

"Hire purchase agreement" means an agreement, other than a conditional sale agreement, under which (1) goods are bailed in return for periodical payments by the person to whom they are bailed; and (2) the property in the goods will pass to that person if the terms of the agreement are complied with and either (a) the bailee exercises an option to purchase the goods; (b) any party to the agreement does a specified act; or (c) any other specified event occurs. For the avoidance of doubt it is expressly stated that the person by whom goods are bailed to an individual under a hire purchase agreement is taken to provide that individual with fixed-sum credit to finance the transaction of an amount equal to the total price of the goods less the aggregate of any deposit and the total charge for credit.

"Conditional sale agreement" means an agreement for the sale of goods or land under which the purchase price or part of it is payable by instalments, and the property in the goods or land is to remain in the seller notwithstanding that the buyer is to be in possession of the goods or land until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled".

1.4.4 The same author further explains⁷ the nature of hire-purchase contracts as follows:

"The contract of hire purchase is one of the variations of the contract of bailment, but it is a modern development and the rules with regard to bailments, which were laid down before any contract of hire purchase was contemplated, cannot be applied without modification because such a contract has in it not only the element of bailment but also the element of sale. At common law "hire purchase" properly applies only to contracts of hire conferring an option to purchase, but it is often used to describe contracts which are in reality agreements to purchase chattels by instalments, subject to a condition that the property in them is not to pass until all instalments, have been paid. The distinction between these two types of contracts is, however, a most important one, because under a contract to purchase by instalments there is a binding obligation on the buyer and he can therefore pass a good title to a purchaser or pledgee dealing with him in good faith and without notice of the rights of the true owner, whereas in the case of a contract which merely confers an option to purchase there is no binding obligation on the hirer to buy, and a purchaser or pledgee can obtain no better

title than the hirer had, except in the case of a sale in market overt, the contract not being an agreement to buy within the Factors Act, 1889 or the Sales of Goods Act, 1893."

1.4.5 The similarity between contracts of sale and hire-purchase is accentuated by the artificial nature of most hire-purchase agreements. This is evident by consideration of three points. Firstly, the real object of a contract of hire-purchase is almost invariably the ultimate sale of goods. Secondly, the amount which the hirer is bound to pay under the contract is usually far in excess of that which he would have had to pay if he were really hiring the goods. And thirdly, the legal purchase price for which the hirer has the option to buy the goods is frequently nominal only and, in fact is sometimes not exacted in practice. There is further a practical complication about hire-purchase contracts which makes them distinct from contracts of sale. A transaction under which a person 'buys' goods on hire-purchase is often and, in the motor trade is usually, a complex transaction involving three and not two parties. Many retailers do not wish to act as financiers themselves supplying credit to consumers. So a hire-purchase transaction often involves, first, a sale, under which the retailer sells the goods to a finance company, and then secondly, a hire-purchase contract, under which the finance company lets the goods on hire-purchase terms to the 'buyer'. It

follows that the 'buyer' has no contractual relations with the seller and this sometimes has important legal consequences⁸.

1.5 Certain important cases relating to hire-purchase decided by courts in India:- Industrialisation and commercial activities in India were introduced by the British rulers which were designed and devised for safeguarding the economic interests of our colonial masters. The advent of hire-purchase transaction in England was subsequently introduced into various colonies of Great Britain depending on the economic and commercial development in the colonies. India was no exception. Disputes involving hire-purchase transactions in India perhaps reached the court in the first quarter of the twentieth century. Perhaps the first important reported case is that of A.Cecil Cole v. Nanalal Moraji Dave and another in which Justice Martin observed⁹:

"Now the very expression "hire-purchase agreement" is not one that originated in this country. It is clearly a form of an 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...."

1.5.1 In Auto Supply Company Ltd. v. V. Raghunatha Chetty¹⁰, a company had agreed to offer a bus on a hire-purchase agreement, on condition that Rs.1140/were to be paid by the hirer on delivery, and 11 monthly instalments were to be paid thereafter, each of Rs.226, and the owners were to be entitled to terminate the contract on default occurring if hirer for any month was in arrears. A suit was brought by the owners for possession of the bus on the happening of the said condition. Lord Couts-Trotter, C.J. held that though there was no such explicit condition, yet it was the necessary implication that when the agreement terminated either by the choice or default of the hirer, all sums paid by him are to be retained by the owners, the amount Rs.1140/- being construed either as the first instalment of the hire money or as the premium taken by the owner for granting lease and in either case money received was not to be refunded. The money was not to be regarded as advance of rent. Justice Ananthakrishnan Ayyar held¹¹-

"In a contract of sale for a price payable by instalments, the purchaser has no option of terminating the contract and returning the chattel, whereas in a contract of hire-purchase the hirer has such an option. In the case of hire purchase contract, the hirer has got option to purchase, which he may exercise or not according to his sweet will and pleasure; but in the case of a contract of

sale the purchaser has become the owner of the chattel, but the price is by agreement payable by instalments."

1.5.2 In the case of S.S.Tiwari v. Remington Rand Incorporated, Grille, J.C. held¹² -

"Where in the agreement to purchase a typewriter, there is a clause by which the hirer is entitled to put an end to the contract by return of the machine at any time, forfeiting former payments, it is a contract for hire-purchase and not a contract for sale. In such a case there is nothing illegal or inequitable in the company enforcing its rights on the contract to recover the arrears of the instalments while recovering the machine at the same time. Once the machine is in the possession of the company whether it is handed over by the hirer or recovered otherwise, it is the company's property to be disposed of by them as they wished, and such disposal can have no bearing whatever on the arrears which are arrears for hire and not instalments of the purchase money in respect of a purchase which the hirer was bound to fulfil."

1.5.3 In the case of Babu Balmakund v. Mahesh Narayan Singh & Ors., the court held¹³ that-

"Where under a hire-purchase agreement, the purchaser is given the option to terminate the contract of hire at any time by returning the goods and paying the hire due upto the date of such return, the transaction cannot be regarded as an out and out sale."

1.5.4 In Y. Dakshinamurthi Mudaliar v. General and Credit Corporation (India) Ltd., the Madras High Court, inter alia, observed¹⁴ as follows:-

"To sum up, the law of hire and hire-purchase stems from the law of contract of which it forms an important segment. It is comparatively modern in origin and is designed to serve the needs of credit buying while at the same time protecting the vendor from being caught in the meshes of the law relating to sales stricto sensu. In effect hire-purchase is bailment with an option to purchase though it is sometimes used in a wider sense to include agreements where there is an irrevocable agreement to buy in instalment terms with the proviso that the title shall not pass until the instalments are paid. A hire-purchase agreement thus creates a bailment, but is a bailment plus an option to purchase. The transaction is compounded of the

element of both the law of hire and sale and it would be clearly wrong to assimilate it to a hypothecation of moveable property."

1.5.5 In Damodar Valley Corporation v. State of Bihar, the Supreme Court observed⁵ the distinction between a mere contract of hiring, a sale or a hire purchase as follows:-

"8... the sole question for determination in this appeal is whether, in respect of the machinery and equipments admittedly supplied by the Corporation to the Contractors, it was a mere contract of hiring as contended on behalf of the appellant Corporation, or a sale or a hire purchase, as contended on behalf of the respondent State. The law on the subject is not in doubt, but the difficulty arises in applying that law to the facts and circumstances of a particular case on a proper construction of the document evidencing the transaction between the parties. It is well settled that a mere contract of hiring, without more, is a species of the contract of bailment, which does not create a title in the bailee, but the law of hire purchase has undergone considerable development during the last half a century or more and has introduced a number of variations, thus leading to categories, and it becomes a question of

some nicety as to which category a particular contract between the parties comes under. Ordinarily, a contract of hire purchase confers no title on the hirer, but a mere option to purchase on fulfilment of certain conditions. But a contract of hire purchase may also provide for the agreement to purchase the thing hired by deferred payments subject to the condition that title to the thing shall not pass until all the instalments have been paid. There may be other variations of a contract of hire purchase depending upon the terms agreed between the parties. When rights in third parties have been created by acts of parties or by operation of law, the question, which does not arise here may arise as to what exactly were the rights and obligations of the parties to the original contract. It is equally well settled that for the purpose of determining as to which category a particular contract comes under, the Court will look at the substance of the agreement and not at the mere words describing the category. One of the tests to determine the question whether a particular agreement is a contract of mere hiring or whether it is a contract of purchase on a system of deferred payments of the purchase price is whether there is any binding obligation on the hirer to purchase the goods. Another useful test to determine such a controversy is whether there is

a right reserved to the hirer to return the goods at any time during the subsistence of the contract. If there is such a right reserved, then clearly there is no contract of sale, vide *Helby v. Matthews*, 1895 AC 471. Applying these two tests to the transaction in the present case, it becomes clear that it was a case of sale of goods with a condition of re-purchase on certain conditions depending upon the satisfaction of the Corporation as to whether the "residual life" of the machinery or the equipment was not less than one-third of the standard life in accordance with the terms agreed between the parties." (emphasis laid)

1.5.6 M/s K.L.Johar & Co. v. The Deputy Commercial Tax Officer¹⁰, is the case relating to hire-purchase which came up for decision before the Supreme Court of India. The appellant was a finance company doing business of advancing money to persons who purchased motor vehicles but were themselves not in a position to find ready money to pay the price. The appellant since the commencement of their business had entered into several hire-purchase agreements with persons desirous of purchasing motor vehicles. On April 28, 1956, the appellant submitted a return to the Assistant Commercial Tax Officer Coimbatore, showing a turnover for the purposes of sales tax for Rs.2,37,993/- for the year 1955-56. The Asstt. Commercial Tax Officer made a provisional assessment on

the basis of the return submitted by the appellant and fixed instalments for payment thereof. The appellant paid the instalments but preferred a revision to the Commercial Tax Officer mainly on the ground that hire-purchase agreements were not transactions of sale liable to be taxed under the Madras General Sales Tax Act, 1939. The matter came in appeal to the Supreme Court and it was observed in paragraphs 11 and 17 as follows:-

"This brings us to a consideration of the validity of Explanation 1, which we have already set out. It is necessary in this connection to understand the nature of a typical hire-purchase agreement as distinct from a sale in which the price is to be paid later by instalments. In the case of a sale in which the price is to be paid by instalments, the property passes as soon as the sale is made, even though the price has not been fully paid and may later be paid in instalments. This follows from the definition of sale in S.4 of the Indian Sale of Goods Act (as distinguished from an agreement to sell) which requires that the seller transfers the property in the goods to the buyer for a price. The essence of a sale is that the property is transferred from the seller to the buyer for a price, whether paid at once or paid later in instalments. On the other hand, a hire-purchase agreement, as its very name implies,

has two aspects. There is first an aspect of bailment of the goods subjected to the hire-purchase agreement, and there is next an element of sale which fructifies when the option to purchase, which is usually a term of hire-purchase agreements, is exercised by the intending purchaser. Thus the intending purchaser is known as the hirer so long as the option to purchase is not exercised, and the essence of a hire-purchase agreement properly so called is that the property in the goods does not pass at the time of the agreement but remains in the intending seller, and only passes later when the option is exercised by the intending purchaser. The distinguishing feature of a typical hire-purchase agreement therefore is that the property does not pass when the agreement is made but only passes when the option is finally exercised after complying with all the terms of the agreement."

"The next question that arises is whether a hire-purchase agreement ever ripens into a sale and if so when. We have already pointed out that 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. When all the terms of the agreement are satisfied and the option is exercised a sale takes place of the goods which till then had been hired. When this sale takes place it will be liable to sales tax under the Act for the taxable event under the Act is the taking place of the sale, the Act providing for a multi-point sales tax at the relevant time. Where, however option is not exercised or cannot be exercised because of the inability of the intending purchaser to fulfil the terms of the agreement, there is no sale at all. As the taxable event is the sale of goods, the tax can only be levied when the option is exercised after fulfilling all the terms of the hire-purchase agreement. We cannot agree with the view of the High Court that because in most of such cases the option is exercised, tax is leviable immediately on the making of the hire-purchase agreement and that in a few cases where there is failure to carry out the terms of the agreement or to exercise the option, there can be adjustment by elimination of such portion of the turnover. As we have pointed out the taxable event under the Act is the sale of goods and until that taxable event takes place there can be no liability to pay tax. Therefore, even though eventually most cases of hire-purchase may result in sales by the exercise of the option and the fulfilment of the

terms of the agreement, tax is not exigible at the time when the hire-purchase agreement is made, for at that time the taxable event has not taken place; it can only be exigible when the option has been exercised and all the terms of agreement fulfilled and the sale actually takes place. When sale takes place in a particular case will depend upon the terms of the hire-purchase agreement but till the sale takes place there can be no liability to sales tax under the Act. The High Court therefore was in error in holding that transactions of hire-purchase of the kind with which we are dealing 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 of the type with which we are dealing sale only takes place when the option is exercised after all the terms of the agreements are fulfilled and it is at that time that the tax is exigible."

1.5.7 The next important case decided by the Supreme Court on the point of hire-purchase is Sundaram Finance Ltd. v. State of Kerala¹⁷, the appellants in this case were a company incorporated under the Companies Act and carried on business of financing purchases of motor vehicles on security of those vehicles. The short question in this case was whether the hire-purchase agreements entered into by the appellant with its

customers were transactions of sale of goods or were only documents securing the return of the loans advanced by it to its customers. The Supreme Court in its judgment in paras 23 and 24 held:

"A hire purchase agreement is normally one under which an owner hires goods to another party called the hirer and further agrees that the hirer shall have an option to purchase the chattel when he has paid a certain sum, or when the hire-rental payments have reached the hire-purchase price stipulated in the agreement. But there are variations when a financier is interposed between the owner of the goods and the customer. The agreement, ignoring variations of detail, broadly takes one or the other of two forms:(1) when the owner is unwilling to look to the purchaser of goods to recover the balance of the price, and the financier who pays the balance undertakes the recovery. In this form, goods are purchased by the financier from the dealer and the financier obtains a hire-purchase agreement from the customer under which the latter becomes the owner of the goods on payment of all the instalments of the stipulated hire and exercising his option to purchase the goods on payment of a nominal price. The decision of the Court in AIR 1965 SC 1082 dealt with a transaction of this character. (2) In the other

form of transactions, goods are purchased by the customer, who in consideration of executing a hire-purchase agreement and allied documents remains in possession of the goods, subject to liability to pay the amount paid by the financier on his behalf to the owner or dealer and the financier obtains a hire purchase agreement which gives him a license to seize the goods in the event of failure by the customer to abide by the conditions of the hire-purchase agreement."

"The true effect of a transaction may be determined from the terms of the agreement considered in the light of the surrounding circumstances. In each case, the Court has, unless prohibited by statute, power to go behind the documents and to determine the nature of the transaction, whatever may be the form of the documents. An owner of goods who purports absolutely to convey or acknowledges to have conveyed goods and subsequently purports to hire them under a hire-purchase agreement is not estopped from proving that the real bargain was a loan on the security of the goods. If there is a bona fide and completed sale of goods, evidenced by documents, anterior to and independent of a subsequent and distinct hiring to the vendor, the transactions may not be regarded as a loan transaction, even though the reason for which it

was entered into was to raise money. If the real transaction is a loan of money secured by a right of seizure of the goods, the property ostensibly passes under the documents embodying the transaction, but subject to the terms of the hiring agreement, which become part of the buyer's title, and confer a licence to seize. When a person desiring to purchase goods and not having sufficient money on hand borrows the amount needed from a third person and pays it over to the vendor, the transaction between the customer and the lender will unquestionably be a loan transaction. The real character of the transaction would not be altered if the lender himself is the owner of the goods and the owner accepts the promise of the purchaser to pay the price or the balance remaining due against delivery of goods. But a hire-purchase agreement is a more complex transaction. The owner under the hire-purchase agreement enters into a transaction of hiring out goods on the terms and conditions set out in the agreement, and the option to purchase exercisable by the customer on payment of all the instalments of hire arises when the instalments are paid and not before. In such a hire purchase agreement there is no agreement to buy goods; the hirer being under no legal obligation to buy, has an option either to return the goods or to become its owner by payment in full

of the stipulated hire and the price for exercising the option. This class of hire-purchase agreement must be distinguished from transaction in which the customer is the owner of the good and with a view to finance his purchase he enters into an arrangement which is in the form of a hire purchase agreement with the financier, but in substance evidences a loan transaction, subject to hiring agreement under which the lender is given the license to seize the goods."

1.5.8 In The Instalment Supply Ltd. vs. S.T.O. Ahmedabad¹⁰, the petitioner, a limited company carried on the business of financing the purchase of motor vehicles. The person desiring to purchase a motor vehicle entered into a hire-purchase agreement with the petitioner company on certain terms and conditions. The question before the Supreme Court was when does a sale liable to sales tax take place under a hire-purchase agreement. the Supreme Court observed in para 7:-

"A contract of sale should be distinguished from a contract of hire-purchase. A contract of hire-purchase is properly speaking a contract of hire by which the hirer is granted an option to buy but is not, as under a contract of sale, under a legal obligation to do so. The contract of hire-purchase is one of the variations of the

contract of bailment, but it is a modern development of commercial life, and the rules with regard to bailments, which were laid down before any contract of hire-purchase was contemplated, cannot be applied simpliciter, because such contract has in it not only the element of bailment but also the element of sale. At common law the term "hire-purchase" properly applied only to contracts of hire conferring an option to purchase but it is often used to describe contracts which are in reality agreement to purchase chattels by instalments, subject to a condition that the property in them is not to pass until all instalments have been paid. The distinction between these two types of hire purchase contracts is, however, a most important one, because under the latter type of contract there is a binding obligation on the hirer to buy and the hirer can therefore pass a good title to a purchaser or pledgee dealing with him in good faith and without notice of the rights of the true owner, whereas in the case of a contract which merely confers an option to purchase there is no binding obligation on the hirer to buy, and a purchaser or pledgee can obtain no better title than the hirer had. (Halsbury's Laws of England, 3rd Edn., Vol. 19,

para 823, pages 510-511). These propositions of law have been quoted with approval by this Court in the two decisions earlier referred to."

1.5.9 Thus the concept of hire-purchase has been put beyond the pale of doubt by the courts in our country. However, it cannot be gainsaid that a separate Act should be enacted to regulate hire-purchase transactions. We proceed on to consider the views obtained on the questionnaire circulated by us.

FOOTNOTES AND REFERENCES

CHAPTER I

1. Eighth Report, p.4 para 12
2. See Parliament of India, Rajya Sabha Committee on Home Affairs, Twenty-First Report, The Hire Purchase (Amendment) Bill, 1989, (Rajya Sabha Secretariat, New Delhi July, 1995) p.2
3. H.Simpson Cook; J.Anderson Hermon and H.Pearse, Hire-Purchase Accounts and Finance (London, 1959 edn.), page 17.
4. A.R.Biswas in Mitra's Legal and Commercial Dictionary, IInd Edition, page 367
5. Venkataramaiya's Law Lexicon Vol.1, 1971 Edition, page 551
6. Halsbury's Laws of England (Fourth Edition, London, 1979) Vol.22, para 37, p.34:
7. Id., para 209, p.173
8. P.S.Atiyah, The Sale of Goods (Delhi, 1995), p.12.
9. AIR 1925 Bom 18
10. AIR 1929 Mad.884
11. Id., p.886
12. AIR 1934 Nagpur 151
13. AIR 1934 Oudh 133
14. ATR 1960 Mad 328
15. AIR 1961 SC 440

16. AIR 1965 SC 1082
17. AIR 1966 SC 1178
18. AIR 1974 SC 1105

CHAPTER II

PART I

ANALYSIS OF VIEWS ON QUESTIONNAIRE

2.1 Views of respondents considered:- Pursuant to the questionnaire issued by the Law Commission on 18th May 1988, several responses were received. The High Court of Madhya Pradesh, Government of Assam, Government of Haryana, Board for Industrial and Financial Reconstruction, Madras High Court Bar Association, the Lok Ayukta of Karnataka, a number of District Judges of the Karnataka Cadre and certain other interested individuals and organisations replied to the questionnaire. Almost all of them have supported the amendments proposed by the 1989 Amendment Bill and the modifications suggested by the Law Commission. One individual¹ who claims to be the author of the book "Lease Financing and Hire Purchase", a book running into 2000 pages, has expressed the view that the very idea of a Hire-Purchase Act should be dropped and a Consumer Credit Act on the lines of the British and Australian enactments be enacted. A similar objection has been put forward by another gentleman², whose letter has been forwarded to us by the Federation of All India Hire Purchase Financers. This objection/suggestion is not acceptable for more than one reason, but before we record them, it would be appropriate to deal with the English law

and the UK Acts on the subject including the UK Consumer Credit Act, 1974, since the aforesaid objection/suggestion is based mainly on the Acts of UK.

2.2 Views regarding dropping of Hire-Purchase Act and introduction of Consumer Credit Act on the pattern of the British and Australian enactments, examined:- The hire purchase transactions in the United Kingdom were not regulated by law until 1938. In that year, the Hire Purchase Act, 1938 was enacted which defined the hire purchase agreement as an agreement for the bailment of goods under which the bailee might buy the goods or under which the property in the goods might pass to the bailee. This Act, however, did not take in the conditional sale agreements. This was done by the Hire Purchase Act, 1964 which defined the conditional sale agreements as agreements for the sale of goods under which the purchase price or part of it was payable by instalments and the property in the goods was to remain in the seller until such conditions as to the payments or instalments or otherwise, as might be specified in the agreement, were fulfilled.

2.2.1 The 1938 Act was amended and enlarged by the Hire Purchase Act, 1954 and again by the Hire Purchase Act, 1964. The 1964 Act had a specific part, i.e. part III

which protected the bonafide purchasers of motor vehicles covered by an hire purchase agreement/conditional sale agreement.

2.2.2 In the year 1965, the British Parliament enacted the Hire Purchase Act, 1965, repealing the Acts of 1938, 1954 and 1964 (except part III of the 1964 Act). This Act purported to be a consolidating Act on the subject of agreements in the United Kingdom. Section 1 defined the expressions "hire purchase agreement", "credit sale agreement" and "conditional sale agreement" in the following words:

"Hire purchase agreement" means an agreement for the bailment of goods under which the bailee may buy the goods, or under which the property in the goods will or may pass to the bailee;

"Credit sale agreement" means an agreement for the sale of goods under which the purchase price is payable by five or more instalments, not being a conditional sale agreement;

"Conditional sale agreement" means an agreement for the sale of goods under which the purchase price or part of it is payable by instalments, and the property in the goods is to remain in the seller (notwithstanding that the buyer is to be in

possession of the goods) until such conditions as to the payment of instalments or otherwise as may be specified in the agreement are fulfilled.

2.2.3 The 1965 Act applied to hire purchase agreements/conditional sale agreements whereunder the hire purchase price or total purchase price, as the case may be, did not exceed 2000 pounds. Of course, the said limit could be raised by the Government in the manner prescribed by section 3. Section 4 excluded from its ambit agreements entered into by or on behalf of a corporate body as the hirer or buyer of the goods. Section 5 provided that an agreement of hire purchase/credit sale agreement/conditional sale agreement shall not be enforceable unless the agreement was signed by the hirer/buyer and the requirements of sections 6, 7, 8 and 9 were complied with. Section 6 required that before entering into an agreement, the buyer must have been informed of the cash price of the goods which meant the price at which the concerned goods might be purchased for cash. Section 7 provided the form and contents of the agreements. Section 8 provided for supply of copy of agreement to the hirer. Section 9 provided for supply of copies of agreement to hirer or buyer within a particular period where the agreement was signed at a place other than the 'appropriate trade premises'. Section 10 clothed the court with the power to dispense with the requirements of sections 6, 7, 8 and 9 where it was satisfied that

failure to comply with any of the said requirements had not prejudiced the hirer/buyer. Section 11 conferred upon the hirer/buyer a right to cancel and section 12 provided the mode in which the notice of cancellation was to be served. Section 13 provided for the situation following the cancellation of agreement including redelivery and interim care of the concerned goods. Sections 14 and 15 dealt with certain other aspects of cancellation of the agreement by the hirer.

2.2.4 Sections 16 to 20 dealt with representations, conditions and warranties. Section 16 provided that any representation by a person other than the owner/seller with respect to the goods, whether orally or in writing, shall be deemed to be a representation made by him as the agent of the owner/seller. Section 17 set out the implied conditions and warranties. It provided that every agreement shall be deemed to imply a stipulation on the part of the owner/seller that he had the right to sell the goods, that the hirer/buyer shall have and enjoy a quiet possession of the goods and further that the goods were free from any charge or encumbrance in favour of any third party. This was of course subject to the rider that where any such defect was made known to the hirer/purchaser specifically in writing, section 18 permitted the parties to exclude the warranties mentioned under section 17 by express stipulation. Section 19 set out the further implied conditions where the goods were sold in bulk with

reference to a sample or where they were sold by description. Section 20 contained certain special provisions with respect to the conditional sale agreements.

2.2.5 Sections 21 to 24 dealt with duties of the owner/seller to supply information and to furnish other relevant documents to the hirer/buyer. Section 21 provided, inter alia, that the agreement shall specifically provide the amount paid by the hirer/buyer, the amount remaining unpaid under the agreement, the date on which each instalment became due and the amount of such instalment etc. Failure to comply with the above requirements made the agreement unenforceable so long as the failure continued. Sections 22 and 23 dealt with the contract of guarantee accompanying an agreement and the documents to be supplied to the guarantor. Section 24 cast an obligation upon the hirer/buyer to give information about the whereabouts of the hired goods, if so requested by the owner/seller and also allow the same to be inspected. Section 25 provided that in case of default in payment of instalments in accordance with the agreement, the right of termination shall not be exercised by the owner/seller unless he served a notice in that behalf upon the hirer/buyer. Section 26 contained certain supplementary provisions concerning notices of default contemplated by section 25. Section 27 conferred upon the hirer/buyer the right to terminate the agreement any time

before the final payment was made under the agreement and the consequences flowing therefrom. Section 28 dealt with the liabilities of the hirer/buyer in cases where he terminated the agreement.

2.2.6 Section 29 declared that certain stipulations specified therein shall not form part of an agreement and, if provided, shall be void.

2.2.7 Section 30 dealt with death of a hirer/buyer where an agreement provided for its termination on the happening of such event or any other specified event. In the absence of such a stipulation, the right of the hirer/buyer was made heritable. Sections 31 and 32 made certain supplemental provisions which need not be referred to herein.

2.2.8 Part III defined "protected goods" and restrictions on the right of an owner to recover possession thereof in certain situations. Section 41 provided that where the owner initiated an action for recovery of goods under section 35, he shall not take any steps to enforce payment of any sums due under the agreement or under the contract of guarantee relating to the said agreement. Section 42 conferred upon the court power to make appropriate orders in cases of non-compliance with orders for specific delivery of goods. Section 45 applied the provisions of

sections 35 to 44 to conditional sale agreements as well. Sections 46 to 50 contained certain supplementary provisions which need not be dealt with herein.

2.2.9 Section 51 dealt with appropriation of payments by the hirer/buyer having two or more agreements with the same owner/seller. Section 52 stated that refusal to surrender goods shall not be treated as conversion where the right to recover possession of the goods by the owner/seller was subject to any restriction and that restriction was subsisting. Sections 57 to 62 contained certain supplementary provisions. It may be reiterated that while repealing the 1964 Act under the 1965 Act, Part III of the 1964 Act was not repealed.

2.2.10 In 1974, the British Parliament enacted the Consumer Credit Act, 1974. This Act was made to give effect to a number of recommendations made by the Crowther Committee on Consumer Credit (1971). The Act establishes a comprehensive code of regulation for the supply to individuals (including sole traders and partners) of credit not exceeding 5000 pounds throughout the U.K. It provides for licencing of those who carry on the business of granting consumer credit and ancillary credit businesses. It covers transactions which were not previously regulated by any enactment. It applies to bankers, financial houses, building societies, local authorities, life insurance offices, moneylenders, pawn

brokers, cheque and voucher traders, issuers of credit cards, mail order companies, retailers, service industries, mortgage companies and other businesses providing financial accommodation. It also affects mortgage, finance and insurance brokers, solicitors, estate agents, debt collectors, factors, companies engaged in block discounting, debt counsellors, debt adjustors, credit insurers and credit reference bureaux. This Act not merely applies to hire purchase transactions, but also to lease transactions. Certain provisions of the Act namely those which dealt with extortionate credit bargains, however, apply to all credit agreements where the debtor is an individual regardless of the amount of the credit advances. It repeals Hire Purchase Act, 1964 (except Part III) and the Hire Purchase Act, 1965. As a matter of fact, Schedule IV to this Act substitutes entire Part III of the Hire Purchase Act, 1964, which deals with title to motor vehicles on hire purchase or conditional sale. It seeks to protect the rights of a bonafide purchaser of motor vehicle from a person who has obtained it under a hire purchase or conditional sale agreement but who disposes it of before the property in the vehicle vests in him. It also contains certain other supplemental provisions.

2.2.11 "The draftsman of the Act has found it impossible to set up a system of wide ranging control without devising new concepts and consequently has introduced in

Part II of the Act an entirely new and sometimes complex terminology. However, despite its length (containing 193 sections) the Act is merely a blueprint for the system of regulation and licencing which it establishes. It will be supplemented by a mass of regulations, orders and other subordinate legislation. This subordinate legislation will inevitably be far more voluminous and complex than the Act itself³."

2.2.12 The Consumer Credit Act, 1974 contains as many as 193 sections divided into 12 parts in addition to five Schedules, which too are quite elaborate. Part I (sections 1 to 7) sets out the duties of the Director General of Fair Trading. His main duty is to administer the licencing system set up by the Act and to exercise the adjudicating functions conferred upon him by the Act with respect to issue, renewal, variation, suspension and revocation of licences. He is vested with the power of general superintendence over the working and enforcement of the Act and regulations made thereunder. The Secretary of the State is empowered by section 2 to confer additional powers upon the director. The adjudicating functions of the director are subject to the supervision of council or tribunals created under the Tribunals and Inquiries Act, 1971. Sections 4 to 7 obligate the director to arrange for dissemination of such information and advice as it may appear to him expedient to give to the public and to submit annual reports. They also

provide the form in which applications are to be made to him. Section 7 provides a penalty for furnishing false information in any application made under the Act.

2.2.13 Before referring to the other provisions of the Act, it would be appropriate to mention that section 189 defines various expressions occurring in the Act. It Inter alia, defines the expressions 'conditional sale agreement', 'consumer credit agreement', 'consumer hire agreement', 'credit sale agreement', 'debtor-creditor-supplier agreement', 'hire purchase agreement', 'debtor', 'hirer', 'owner', 'creditor', 'protected goods', 'regulated agreements', 'restricted-use credit agreement', 'surety', 'supplier' and 'total price'.

2.2.14 Part II deals with credit agreements, hire agreements and linked transactions. section 8 defines the expressions personal credit agreement and consumer credit agreement. A personal credit agreement is a mere credit arrangement without limit on the amount, while a consumer credit agreement is a personal credit agreement stipulating a credit not exceeding 5000 pounds. A consumer credit agreement is called 'regulated agreement' within the meaning of the Act provided it does not fall under any of the exemptions provided by section 16. Section 9 defines the expression "credit" while section 10 says that a credit agreement can be a 'running account credit facility' or a 'fixed sum credit facility'.

Section 11 defines the expressions 'restricted-use credit agreement' and 'un-restricted use credit agreement'. A restricted-use credit agreement is a regulated consumer credit agreement to finance a transaction between the debtor and the creditor whether forming part of that agreement or not, or to finance a transaction between a debtor and a person other than the creditor. An un-restricted-use credit agreement is a regulated consumer credit agreement not falling within the ambit of restricted-use credit agreement. Section 12 specifies what a 'debtor-creditor-supplier agreement' means, while section 13 defines 'debtor-creditor agreement'. Section 14 specifies what 'credit-token agreements' mean whereas section 15 defines 'consumer hire agreements'. A consumer hire agreement, according to section 15 "is an agreement made by a person with an individual ("the hirer") for the bailment or (in Scotland) the hiring of goods to the hirer being an agreement which - (a) is not a hire purchase agreement, (b) is capable of subsisting for more than three months and (c) does not require the hirer to make payment exceeding 5000 pounds" - in other words lease agreements not amounting to hire purchase agreements. A consumer hire agreement is also a regulated agreement if it is not exempted under section 16. It may be stated at this stage itself that the expression "hire purchase agreement" (as defined in section 189) means "an agreement other than a conditional sale agreement under which - (a) goods are bailed or (in Scotland) hired in return for

periodical payments by the person to whom they are bailed or hired and (b) the property in the goods will pass to that person if the terms of the agreement are complied with and one or more of the following occurs -

- (i) the exercise of an option to purchase by that person.
- (ii) the doing of any other specified act by any party to the agreement.
- (iii) the happening of any other specified event."

2.2.15 Section 16 provides for exemptions. According to this section, the Act does not regulate a consumer credit agreement where a creditor is a local authority or a building society or a body specified by the Secretary of State being an insurance company, a friendly society, an organisation of employers or of workers, a charity, a land improvement company or a body corporate named or specifically referred to in any public or general Act. The section further specifies the types of agreements which are exempted thereunder. Section 17 defines 'small agreements' as agreements for credit not exceeding 30 pounds and section 18 defines 'multiple agreements'. Section 19 defines linked transactions, while section 20 contemplates the Secretary of State making regulations for determining the true cost to the debtor of the credit provided or to be provided under a consumer credit agreement.

2.2.16 Part III deals with licencing of credit and hire businesses. Section 21 indicates that a licensee is required to carry on the consumer credit business or consumer hire business. (As already stated, a consumer credit business is concerned with only provision of credit while consumer hire agreement is a leasing agreement as defined in section 15). Section 22 says that licences under section 21 could be standard licences or, as the case may be, group licences. Sections 23 to 28 deal with matters to be provided in the licence, qualifications of a licensee, the conduct of business of the licensee and the manner in which the applications for licence are to be dealt with. Sections 29 to 42 deal with length, variation, suspension and revocation of licences. They also provide for situations in which a licensee dies or becomes bankrupt. Appeals are provided against the orders of a director, counselling, suspending or otherwise curtailing the licence.

2.2.17 Part IV containing sections 43 to 54 deal with advertisements or advertising business as it may be called. The Part applies to such advertisements as are published indicating that the advertiser is willing to provide credit or to enter into an agreement for the bailment or hiring of goods. Section 44 deals with the form and content of advertisements. It provides that the Secretary of State shall make regulations as to the form and content of such advertisements. Sections 45, 46 and

47 prohibit advertisements which are false or misleading or otherwise infringe the Act or regulations made thereunder. Section 48 prohibits the canvassing or soliciting of the regulated agreements at any place other than the trade premises. Section 49 contains a similar prohibition with respect to debtor-creditor agreements. Section 50 punishes circulation of such material to minors. Section 53 obliges a person carrying on consumer credit business/consumer hire business to display the prescribed information in the prescribed manner.

2.2.18 Part V containing sections 55 to 74 deals with entering into of credit or hire agreements and their cancellation. Section 55 obliges the creditor to furnish all relevant information to the debtor/hirer while section 56 brings into net even the antecedent negotiations. Section 57 provides for the withdrawal of a party from the prospective agreement i.e., before the agreement is concluded. Section 59 declares that an agreement to enter into a prospective regulated agreement is void against the debtor/hirer. Section 60 provides for the form and content of 'regulated agreements' which expression is defined in section 189 in the following terms: "'regulated agreement' means a consumer credit agreement or consumer hire agreement, other than an exempt agreement, and 'regulated' and 'unregulated' shall be construed accordingly". This section contemplates the Secretary of State making regulations in this behalf with

a view to ensuring that the debtor/hirer is made aware of all the relevant information concerning the agreement. Section 61 provides for signing of the agreement by both the hirer/debtor as well as the creditor/owner. It says that the document should contain all the terms of the agreement other than the implied terms. A document which is not executed in accordance with section 61 is declared as "not properly executed". Section 63 places an obligation upon the owner/creditor to supply a copy of the agreement to the debtor/hirer. Section 64 provides that in the case of cancellable agreement, a notice in the prescribed form setting out the conditions in which the cancellation can be effected must be enclosed to the agreement. Section 65 declares that an improperly executed agreement is unenforceable against the debtor/hirer. Section 67 deals with and specifies what cancellable agreement is. Section 69 deals with notice of cancellation and section 70 provides for the consequences and situations pursuant to cancellation of a regulated agreement. Sections 71, 72 and 73 also deal with the same subject-matter. Section 74 excludes certain agreements (non-commercial agreements, overdawal agreements etc. from the ambit of Part V).

2.2.19 Part VI containing sections 75 to 86 provides for matters arising out of currency of credit or hire agreements. Section 75 declares that if a debtor under a debtor-creditor-supplier agreement (section 12(b) or

12(c)) has, in relation to a transaction financed under an agreement, any claim against the supplier in respect of a misrepresentation or breach of contract, the said claim shall extend equally against the creditor who is made jointly and severally liable along with the supplier to the debtor. Section 76 says that no action for any breach or any other type of action shall be taken against the debtor/hirer by the creditor/owner unless a prior notice of seven days is given in that behalf. Section 77 sets out the duties of a creditor under a regulated agreement for a fixed-sum credit while section 78 deals with the duty of the creditor to give information under a running account credit agreement. Section 79 places an obligation upon the owner under a regulated consumer hire agreement to furnish all information asked for by the debtor with respect to the agreement and the matters concerning it. Failure to furnish such information disentitles the owner from enforcing the agreement. Section 81 deals with payments made by the debtor/hirer who is having two or more regulated agreements with the same owner/creditor. It entitles the debtor/hirer to direct the appropriation of the sums paid by him and also provides for the situation where no such direction is made. Section 82 provides for variation of the agreements by the creditor/owner by giving notice to the debtor/hirer of the consequences of such variation. Sections 83, 84 and 85

contain certain further safeguards for the debtor in case of credit agreements. Section 86 provides for the situations where the debtor/hirer dies.

2.2.20 Part VII containing sections 87 to 104 deals with default and termination of agreements. Section 87 declares that before the owner takes any action for any default or breach by the debtor/hirer under a regulated agreement, he shall give a prior notice. Section 88 prescribes the contents of such a notice and section 89 says that before the prescribed period, if the debtor takes action to repair the default or the breach, the owner/creditor shall not be entitled to take the proposed action.

2.2.21 Section 90 speaks of "protected hire purchase agreements" and "protected conditional sale agreements". It imposes restrictions upon the owner's right to recover the goods under such an agreement (regulated agreement) in certain situations. Section 91 declares that if goods are recovered by the creditor in contravention of the provisions of section 90, the agreement shall come to an end and the debtor shall be released from all liabilities thereunder. Sub-section (1) thereof says that "except under an order of the court, the creditor or owner shall not be entitled to enter any premises to take possession of goods subject to a regulated hire purchase agreement, regulated conditional sale agreement or regulated consumer

hire agreement". Section 93 prohibits the owner from increasing the interest in the case of default by the hirer. Section 94 confers a power upon the debtor to complete the payments ahead of time and section 95 provides for the rebate he is entitled to in such a situation. Section 97 casts an obligation upon the creditor to furnish all information as may be called for by the debtor concerning the agreement. Section 99 confers upon the debtor a right to terminate the hire purchase or conditional sale agreement by giving the prescribed notice (except in a case where the title to the land has passed to the debtor under the conditional sale agreement), and section 100 provides for the liabilities of the hirer in case of such termination. Sub-section (1) of section 100 reads thus : "Where a regulated hire purchase or regulated conditional sale agreement is terminated under section 99 the debtor shall be liable, unless the agreement provides for a smaller payment, or does not provide for any payment, to pay to the creditor the amount (if any) by which one-half of the total price exceeds the aggregate of the sums paid and the sums due in respect of the total price immediately before the termination". The other sub-section provides for matters ancillary to termination of the agreement. Section 101 similarly confers upon the hirer the power to terminate the hire agreement.

2.2.22 Part VIII containing sections 105 to 126 deals with form and content of securities, pledges, negotiable instruments and land mortgages. Section 105 declares that any security provided in relation to a regulated agreement shall be in writing and shall be in a form and contain contents as may be specified in the regulations. Section 107 casts an obligation upon the creditor under a regulated agreement for a fixed sum credit, in relation to which security is provided, to furnish all information as may be called for by the debtor concerning such agreement and security. A similar obligation is placed upon the creditor for furnishing information to the surety under a 'running account credit agreement' by section 108. To the same effect is section 109 which casts a similar obligation upon the owner to furnish information to a surety under consumer hire agreement. Duty is also placed upon the creditor/owner to furnish all relevant information to the debtor/hirer in respect of the security executed in relation to his agreement. Section 111 says that where a default notice is issued by the owner, a copy of it shall also be served upon the surety, where the surety is liable to be proceeded against by virtue of the security executed by him.

2.2.23 Sections 114 to 122 deal with pledges which include a pawning agreement. Section 123 prohibits the creditor/owner from taking a negotiable instrument other than a bank note or a cheque in discharge of any sum

payable by the debtor/hirer under a regulated agreement or by a surety in relation to such agreement. It also prohibits the creditor/owner from taking a negotiable instrument as security for the discharge of any sum payable as mentioned therein. Section 124 provides for the consequences of breach of the prohibition contained in section 123. Section 125 deals with 'holders in due course'.

2.2.24 Part IX deals with judicial control over the agreements governed by the Act. The said part confers extensive powers upon the courts to modify and extend the terms of the agreement in appropriate situations. If an agreement is found to be an extortionate credit bargain, it is open to the court to modify the same and reopen it and redetermine the liabilities of the debtor thereunder.

2.2.25 Part X containing sections 145 to 160 deals with ancillary credit business, its licensing, the contents of agreements executed in that behalf and other matters connected therewith. Part XI provides for enforcement authorities, their powers and other matters. Section 173 prohibits incorporation of any stipulation in the regulated agreements contrary to the provisions of the Act or the regulations made thereunder. Part XII contains certain supplemental provisions. It includes section 189 which contains several expressions occurring in the Act.

2.2.26 It would thus be evident that the Consumer Credit Act, 1974 deals mainly with credit transactions (moneylending and loan transactions) and hire agreements (leasing agreements). It is true that it also deals with hire purchase and conditional sale agreements but the main emphasis is upon credit and hire agreements. As against this, the Hire Purchase Act, 1965 dealt exclusively with hire purchase agreements (in its broadest sense). The Indian Act (Hire Purchase Act, 1972) was drafted keeping in view the provisions of the said 1965 Act of U.K. Further, 1989 Bill has also been drafted keeping in view the objections raised by the Financiers' organisations. In this view of the matter, it would not be right to suggest (as has been suggested by some respondents⁴ that the 1972 Act has become outdated now and that the Indian Parliament should enact a Consumer Credit Act on the lines of the U.K. Act. These gentlemen evidently do not take into account the fact that "money-lending" is exclusively a State subject under our Constitution (Schedule VII List II Entry 30) and hence Parliament cannot make a law on that subject. So far as leasing transactions are concerned, a separate enactment can be thought of on that subject but we do not see why for that reason, the Hire Purchase Act, which was enacted as far back as 1972 should not be enforced now at least, with all appropriate modifications suggested in 1989 Amendment Bill and this

Report. Indeed, there is a pressing demand from the consumers' organisations for enforcing the Act to protect their rights.

2.2.27 We may now pass on to the major and extensive objections, suggestions and amendments suggested by the Federation of Hire-Purchase Financiers.

2.3 The Federation of All India Hire Purchase Financiers having its registered office at Secunderabad (hereinafter referred to as the "Federation") has submitted two sets of objections/suggestions. With its letter dated 13th July 1998, the Federation has enclosed the representations made by it with respect to the Hire Purchase Act and the Amendment Bill to the then Prime Minister, Law Minister, Finance Minister, Minister for Surface Transport, Law Secretary and the present Prime Minister, the Home Minister and some others. In particular, Annexure IX to its letter sets out in extenso, in a tabular form, various amendments, changes and modifications suggested by the Federation and the reasons in support of each such suggestion, modification and objection. In a subsequent communication dated 28th August 1998, the Federation brought to our notice that the aforesaid Annexure IX enclosed to their letter/representation dated 13th July 1998 was an

uncorrected one and was sent to the Law Commission by mistake. It stated that it was enclosing the revised and correct copy of the said Annexure.

2.3.1 It would be clear from a perusal of the two Annexures (hereinafter referred to as the first set of objections and the revised set of objections), that the objections and suggestions urged by the Federation pertain not only to the 1989 Amendment Bill but also to the original Act as passed by Parliament in 1972 and the suggestions, changes and additions proposed by the Law Commission in their questionnaire.

2.4 The questionnaire issued by the Law Commission was confined to the 1989 Amendment Bill and the modifications and changes suggested by the Law Commission. It was made clear therein that no objections/suggestions were being invited with respect to the original enactment for the reason that the draft of the original enactment was prepared by the Law Commission under the chairmanship of late Shri Justice T.L. Venkatarama Aiyer after extensive consultations. Even so, after receipt of the said objections of the Federation, the Commission has decided that with a view to removing any grievance that all its objections were not considered, the Law Commission will consider all objections including those relating to the original enactment. Accordingly, it has examined and dealt with each and every suggestion/objection made by the

Federation both in the first set of objections and the revised set of objections. This has been done in the interest of fairness and also because the original consultation took place about 26 years ago.

2.5 We have, accordingly, considered all the objections received with respect to original enactment, 1989 Amendment Bill and the suggestions of the Law Commission contained in the questionnaire, as would be evident from a perusal of Part II.

2.6 As the Law Commission had made it clear in the questionnaire, it is accepting and adopting all the amendments suggested in the 1989 Amendment Bill subject, of course, to the changes and modifications suggested by it which were set out in full in the questionnaire. The discussion in Part II may be viewed keeping this background in mind.

PART II

CONCLUSIONS AND RECOMMENDATIONS

2.7 Section 2(c) definition of the "hire-purchase agreement":- The Federation has urged that this definition be substituted altogether. The reason given for this change is contained in their letter dated 24th August, 1998 accompanying the revised set of objections. It has been submitted that the hire-purchase transaction is one where "the goods (purchased at the request of the hirer) are delivered on hire with an option to purchase (and not an advance made on the security of goods, as is presumed so far, which is clearly indicated in the text of the present Act)". The said submission, in the opinion of the Law Commission, is based upon an incomplete reading of the definition. The definition as suggested herewith, which is fully recast by the Law Commission, also takes in the type of transactions referred to by the Federation. The objection urged is thus devoid of substance. In its objections submitted earlier along with their letter dated 13th July, 1998, it had suggested addition of the words "together with such incidental charges and expenses as may be payable" in the definition. The Federation wanted the said words to be added at the end of clause (ii) in the definition. In the opinion of the Law Commission, this

suggestion is unnecessary and irrelevant in the light of the definition now suggested by it. The definition of "hire-purchase agreement" shall now read as follows:-

"(c) "hire-purchase agreement" means

(i) an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and

(ii) an agreement for the sale of goods under which the purchase price or part of it is payable in instalments, and the property in the goods is to remain in the owner (notwithstanding that the hirer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise, as may be specified in the agreement, are fulfilled."

In the light of this definition, the definition of the expression "owner" also requires to be modified slightly, though no such modification is required with definition of the expression "hirer". The definition of the expression "owner" shall read as follows:-

"(f) "owner" means the person who lets or has let, or the person who delivers or has delivered possession of goods, to a hirer under a hire-purchase agreement and includes a person to whom the owner's property in the goods or any of the rights or liabilities under the agreement has passed by assignment or by operation of law."

2.8 Section 2(d):definition of "hire-purchase price":The only addition the Federation had asked for in its original set of objections is of the words "authorised by the owner" after the words "to the owner or to any other person" and before the words "or is to be or has been discharged". The Law Commission sees no objection to the addition of the said words which are merely clarificatory in nature. The Federation has also suggested that the words "hire-purchase charges" should be substituted with the words "hire charges". The reason given in support of this change is an extension of its objection to the definition of the expression "hire-purchase agreement" which has been found to be unacceptable.

2.8.1 It may be mentioned that the Law Commission had proposed the substitution of the said definition with a view to simplifying it but on a further consideration, the Commission has decided to retain the definition as it is contained in the original Act with the amendment indicated

in the Hire-Purchase (Amendment) Bill, 1989. Accordingly, the definition of the expression "hire-purchase price" in clause (d) of section 2 shall read as follows:-

"(d) "hire-purchase price" means the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of or the acquisition of property in, the goods to which the agreement relates; and includes any sum so payable by the hirer under the hire-purchase agreement by way of a deposit or other initial payment, or credited or to be credited to him under such agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the owner or to any other person authorised by the owner or is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means; but does not include any sum payable as a penalty or as compensation or damage for a breach of the agreement, and also does not include any sum -

(i) payable as expenses for delivering the goods to the hirer and the installation thereof, in accordance with the terms of the agreement, or

(ii) payable as any fee, in respect of the goods and the agreement, for the purposes of registration or otherwise under any law for the time being in force, or

(iii) payable as insurance premium, or

(iv) payable as penalty, compensation or damages for a breach of the agreement."

2.9 The 1989 (Amendment) Bill has added clause (c) in sub-section (1) of section 3 which sets out the requirements of a hire-purchase agreement. The AIHPA wants this clause to be deleted. At the same time, it wants the addition of the following words: "containing the main rights and obligations of the parties thereto" at the end of clause (a) of sub-section (1). The Law Commission sees no reason to agree to the said suggestion. The Federation has also suggested addition of certain words in sub-section (1) which suggestion is fully given effect to by the Law Commission by introducing sub-section (4) in this section. Yet another objection, which is repeated ad nauseum is that the expression "surety" be substituted by the expression "guarantor" for which there does not appear to be any good or substantial reason. Section 3 as contained in the original Act and as proposed

to be amended in 1989 (Amendment) Bill is wholly appropriate and needs no change. Accordingly, section 3 should read as follows:

"3. Hire-purchase agreement to be in writing and signed by parties thereto

(1) Every hire-purchase agreement shall be-

(a) in writing;

(b) signed by all parties thereto;

and

(c) accompanied by a declaration in the prescribed form containing the main rights and obligations of the hirer and signed by all the parties to the agreement.

(2) A hire-purchase agreement shall be void against the hirer if any of the requirements specified in sub-section (1) has not been complied with;

(3) Where there is a contract of guarantee, the hire-purchase agreement shall be signed by the surety also, and if the

hire-purchase agreement is not so signed, it shall be voidable at the option of the owner."

2.10 The Law Commission had suggested addition of sub-section (1A) in Section 4. The Federation has not objected to it but has submitted that this provision should be incorporated in Section 3. This suggestion is accepted. Accordingly, it is recommended that a new sub-section, namely, sub-section (4) be added in section 3 to the following effect:

"(4) The Hire-purchase Agreement and the declaration shall be executed in two sets, duly signed by the parties. One such set shall be handed over to the hirer and where there is a surety, yet another set to the surety, immediately after the execution of the Agreement."

2.11 Section 4:- In the later set of objections submitted by the Federation, no specific objections or suggestions were put forward with respect to section 4. The changes suggested are merely phraseological in nature, which have already been rejected. Accordingly, there need be no changes in section 4 except those proposed in the 1989 Amendment Bill.

2.12 Section 7:- The first objection of the Federation urged in the earlier set of objections is to the title of section 7. The present title of section 7 is "Limitation on hire-purchase charges". The Federation wants it to be substituted as "Statutory Hire-purchase charges". We see no particular reason for this change.

2.12.1 No objections were raised to any of the definitions contained in sub-section (1) of section 7 as proposed to be amended by the 1989 (Amendment) Bill. No objections were also raised to the substitution of the said definitions as proposed by the Law Commission in paragraph 6 of the 'Questionnaire' except certain phraseological changes (see the revised set of objections by the Federation). Accordingly, sub-section (1) of section 7 shall read as follows -

"(1) In this section :

- (a) "Cash price of goods" means the price at which a prospective buyer may, at the date of the hire purchase agreement, purchase the goods for cash;
- (b) "deposit" means any sum payable by the hirer under the hire-purchase agreement by way of deposit or other initial payment credited or to be credited to him under the agreement on account of any such

deposit or payment, whether that sum is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means;

(c) "hire purchase charges" means the difference between the balance hire purchase price and the balance cash price of the goods;

(d) "balance cash price of goods" means the cash price of goods less any deposit;

(e) "balance hire purchase price" means the hire purchase price less any deposit;

(f) "statutory hire purchase charges" means the amount as determined by the formula contained in sub-section (2)";

2.12.2 Sub-section (2) of section 7 is proposed to be substituted in full by the 1989 (Amendment) Bill. The Law Commission agrees with the said substitution as pointed out in the "questionnaire". The Law Commission has also proposed to add an illustration to the said sub-section with a view to clarifying the the meaning of the formula contained in the sub-section. The only suggestion made by the Federation in the first set of objections is that the words "at the rate of 18% per centum per annum or if a

lower rate is specified in sub-section (3), at such lower rate" in the said sub-section should be deleted and in their place the words "at mutually agreed rate per centum per annum" should be substituted. In the revised set of objections, not only two rates of interest (18% for new goods and 24% for old goods) but several other phraseological changes are suggested. Indeed, the Federation has asked for deletion of sub-section (2) altogether on the ground that it affects the fundamental right of citizens to carry on business. It is not possible to agree with the suggestion since it would strike at one of the main objects behind the Act and the Amendment Bill. The limit on the rates of interest is in the nature of reasonable restriction within the meaning of article 19(6) of the Constitution of India. Having regard to the present interest rates prevailing in the market and keeping in view the fact that the owner has to maintain an establishment and staff for the purpose of his business, the Law Commission is of the opinion that the rate of eighteen per cent proposed is just and proper. The said rate shall be uniform for both the new and old goods. Accordingly, sub-section (2) of section 7 alongwith the illustration shall read as follows:

"(2) The statutory hire-purchase charges shall be an amount calculated (at the rate of eighteen per centum per annum, or if a lower rate is specified under sub-section (3) at such lower rate) in accordance with the following formula:-

$$SC = \frac{NC \times R \times T}{100}$$

where SC - represents the statutory hire-purchase charges;

NC - represents the net cash price;

R - represents the rate; and

T - represents the time expressed in years and fractions of years, that elapses between the date of the agreement and the date on which the last hire-purchase instalment is payable under the agreement.

:
"Illustration to sub-sections (1) & (2): A, a hirer purchases a car from B, the owner, on hire purchase basis. The cash price of the car is Rs.65,000/- . A pays a deposit of Rs.15,000/- on the date of hire purchase agreement which means

that Rs.50,000/- is the balance cash price of the car. The rate of interest permitted by this section is 18% per annum. The period of agreement between the parties is five years and the balance hire-purchase price is payable in 60 equal monthly instalments. Accordingly, applying the above formula, the statutory hire purchase charges in this case would be Rs.45,000/- arrived at in the following manner-

$$\frac{50,000 \times 18 \times 5}{100} = \text{Rs.45,000/-}$$

100

The hire purchase charges cannot exceed the statutory hire purchase charges. Thus in this illustration, the hire purchase price is Rs.1,10,000/i.e., Rs.65,000/- plus Rs.45,000/-. The balance hire purchase price is Rs.95,000/- i.e., Rs.1,10,000/- minus Rs.15,000/(deposit). This sum of Rs.95,000/- is payable in 60 monthly instalments.

Further this amount of Rs.45,000/- being the statutory hire purchase charges should be worked out by the parties on the date of entering into the hire purchase agreement and should be mentioned in the agreement as such."

2.13 Proposed section 7A:- It was suggested by the Law Commission in its 'Questionnaire' that after section 7, a new section 7A should be added and sub-sections 4, 5 and 6 of section 7 be omitted. No objection has been raised to this suggestion. Accordingly, it is recommended that sub-sections 4, 5 and 6 of section 7 be deleted and after section 7, the following Section 7A shall be inserted -

"Section 7 A - Hire Purchase Charges not to exceed Statutory Hire Purchase Charges: Any stipulation in the hire-purchase agreement whereunder the hirer is obliged to pay hire purchase charges in excess of the statutory hire purchase charges as specified in sub-sections (1) and (2) of section 7 shall be null and void and shall not be enforceable. Any owner collecting hire purchase charges in excess of the statutory hire purchase charges shall refund the amount so collected with interest at the rate of 18% to the hirer immediately after it is collected or whenever it is demanded by the hirer. If the owner fails to discharge this obligation, it shall be open to the hirer to approach the court for recovering the said excess amount."

2.14 Section 9:- No objections have been made with respect to the amendments proposed by the 1989 (Amendment) Bill to section 9 of the Act in both the sets of objections, except some minor phraseological changes. No objection is also taken to the addition of an illustration

after sub-section (2) of section 9 with a view to clearly explaining the formula contained in sub-section (2) of section 9. Accordingly, section 9 shall read as follows:

'9. Right of hirer to purchase at any time with rebate. -

(1) The hirer may, at any time during the continuance of the hire-purchase agreement and after giving the owner not less than fourteen days' notice in writing of his intention so to do, complete the purchase of the goods by paying or tendering to the owner the hire-purchase price or the balance thereof together with such incidental charges and expenses as may be payable under the terms of the agreement, as reduced by the rebate calculated in the manner provided in sub-section (2).

(2) The rebate for the purposes of sub-section (1) shall be an amount calculated at the rate of 18% (or at such lesser rate of interest as may have been provided in the Agreement) on the amount outstanding on the date on which the hirer seeks to complete the purchase of goods.

Illustration: For the purpose of this illustration, the figures as mentioned in the illustration to sub-section (2) of section 7 are adopted. The hirer seeks to exercise the option to purchase the goods as contemplated by this section at the end of three years i.e., after 36 months. Twenty-four months are still remaining. In such a case, the hirer will be entitled to a rebate of Rs.6,840/- worked out in the following manner:

In this illustration (as contained in section 7), the monthly instalment is Rs.1583.33p. i.e., Rs.95,000/- divided by 60. The hirer has paid 36 instalments, which means he has paid Rs.56,999.88p., i.e. Rs.57,000/- and the balance payable is Rs.38,000/-. But, since he has opted to purchase at the end of 36 months, he is entitled to a rebate of Rs.6,840/-, which means that he has to pay Rs.31,160/- for purchasing the goods.

(3) The provisions of this section shall have effect notwithstanding anything to the contrary contained in the hire-purchase agreement, but where the terms of the agreement entitle the hirer to a rebate higher than that allowed by this section, the hirer shall be entitled to the rebate provided by the agreement."

(The formula indicated in the amending Bill is substituted by the aforesaid simple formula for easy understanding and in the interest of simplicity).

2.15 Section 10:- The next objection taken by the Federation is to section 10. It wants addition of the words "as also repair and recondition charges incurred on the goods". (No such objection was urged in the first set of objections). We have examined the suggestion and find that it has no relationship with sub-section (3) which merely speaks of the hirer's liability accrued prior to termination of hire-purchase agreement. The words proposed to be added are also ambiguous. Accordingly, the said suggestion is not acceptable.

2.16 Section 11:- Several objections have been made with respect to section 11. Section 11 which has remained untouched by the 1989 (Amendment) Bill provides for a right in the hirer to appropriate payments in respect of two or more agreements. The section entitles the hirer to specify the agreements to which the payment made by him should be appropriated and also provides for the situation where he does not indicate such preference. The Federation wants that section 11 should be deleted altogether. By deleting this section, the said Federation wants to have an unregulated discretion in the owner/financier to appropriate the payments made by the

hirer in such manner as the owner thinks fit. It is pointed out by the Federation that if the right to indicate appropriation is given to the hirer, it may lead to serious prejudice to the owner in certain situations. It submitted, "It is likely that at a particular point of time a hirer, who is having three or four Hire Purchase Agreements with a Hire-Purchase Financier may have a large number of arrears in one or two accounts, while the other accounts may be with only a smaller number of arrears. In such an event, if either the Hirer is given the authority to appropriate the amount paid as he wishes or if the Financier has to appropriate it only against the accounts in the order in which they were entered into, it is likely that the accounts with lesser arrears may get closed faster, whereas those with larger arrears will remain as it is." (drawn from the first set of objections). The Law Commission does not see much merit in this objection. Section 11 recognises and gives effect to a well-known principle of law of contract (vide sections 59 and 60 of the Indian Contract Act, 1872) and there is no good reason to make a departure therefrom. The situation contemplated by the Federation is more imaginary than real. Hence, we do not recommend any change in section 11.

2.17 Section 12:- Section 12 of the Act has remained untouched by the 1989 Amendment Bill except for addition of the words "together with such incidental charges and expenses as may be payable under the terms of the

agreement" after the words "under the Hire Purchase Agreement" in sub-section (4). The Federation, however, has raised several objections to section 12, which are to the following effect:-

(a) The words "or if his consent is unreasonably withheld, without his consent" at the end of sub-section (1) should be deleted.

(b) Sub-section (2) should be deleted altogether. Similarly, sub-section (3) and the explanation thereto should also be deleted.

2.17.1 The Federation's objections are based upon the following reasoning: "A hire-purchase agreement is basically like a contract of bailment where the asset of hire-purchase financier is entrusted to a hirer in good faith with very limited rights of using the vehicle for his own purpose with strict condition that he should not part with it to any one till property in the vehicle passes to him. Before selecting the hirer, the financier makes elaborate enquiry about his credentials and repayment capacity and only thereafter the vehicle is bought and hired to him. It may so happen that an unacceptable person who has been refused finance by a financier may stealthily take possession of a vehicle by offering a more than reasonable price to an existing hirer. Once the vehicle is in his custody, he can deal

with it as he likes and even dismantle it and thus cheat the financier. If the financier refuses to assign the contract, the hirer has been permitted to refer the matter to a court of law which in effect will only mean that the matter will be dragging for a number of years and in the meantime no payment will be forthcoming....." (drawn from the first set of suggestions which is substantially similar to the objections/suggestions in the revised set).

2.17.2 There appears to be some substance in this objection. Keeping in view the objections and apprehensions expressed by the Federation and with a view to protecting the interests of both the hirers and the owners (financiers), sub-section (2) has been recast herewith, while no change is recommended in any other sub-sections of this section. Sub-section (2) is recast as follows:

"(2). (a) Every request for according consent for such assignment shall be in writing and the owner shall reply to the same in writing within one week of the receipt of such request.

(b) If the owner withholds his consent to the assignment by the hirer of his right, title and interest under the Hire Purchase Agreement on the ground that his demand for an amount or consideration of which there is no mention in the

Hire Purchase Agreement, is not satisfied or agreed to, the consent shall be deemed to be unreasonably withheld."

2.17.3 The above substitution of sub-section (2) takes care of the apprehensions of the owners/financiers. The scheme of the section is that where the owner unreasonably withholds his consent to assignment of hirer's right, title and interest under the Hire Purchase Agreement, it shall be permissible for the hirer to go ahead and assign his right, title and interest without the consent of the owner. For this purpose, the section defines what is an unreasonable withholding of consent by the owner. If the withholding of consent is not unreasonable within the meaning of the section, the hirer cannot assign his right, title and interest without obtaining the consent of the owner. Now sub-section (2), as recast by the Law Commission clarifies that only where consent is refused on the ground that the owner's demand for a higher amount which does not form part of the agreement is not satisfied, the withholding of consent shall be deemed to be unreasonable within the meaning of sub-section (1), entitling the hirer to assign his right, title and interest under the Agreement without obtaining the consent of the owner.

2.18 Section 13:- No objections have been raised with respect to section 13 which has also remained untouched by the 1989 Amendment Bill.

2.19 Section 14:- Section 14 has remained untouched by the 1989 Amendment Bill. It sets out the obligations of the hirer in the matter of the care to be taken of hired goods. The Federation, however, has raised certain objections to it. They are - (i) clause (b) of sub-section (1) should be deleted and (ii) at the end of sub-section (2), the words "or on loss of goods itself" should be added. In the revised set of objections, a fresh suggestion is made to the effect that in clause (a) of sub-section (1), the words "subject to reasonable wear and tear" shall be added.

2.19.1 We have carefully considered the suggestions of the Federation including the reasons stated in support thereof (mentioned in both the sets of objections) but are unable to accede to the same. Section 14, as it stands, strikes a careful balance between the rights and obligations of the hirer as well as the owner. Deletion of clause (b) of sub-section (1) will create a very anomalous situation and would be extremely unjust to the hirer besides being unreasonable in the context of such agreements. The proposed addition of words at the end of sub-section (2) would be inconsistent with the provisions

of sub-section (1). The new objection raised with respect to clause (a) of sub-section (1) is equally unfounded. Section 14 will, accordingly, remain unchanged.

2.20 Section 15:- No objections are raised with respect to section 15 which has also remained untouched by the Amendment Bill.

2.21 Section 16:- Section 16 speaks of the obligation of the hirer to give information as to whereabouts of the goods. The Federation has suggested that the words "where the goods are at the time when the information is given or if it is sent by post, at the time of posting" appearing at the end of sub-section (1) should be substituted by the words "the time, date and place to enable the owner to inspect the goods within a period of 14 days from the date of the receipt of information from the hirer". In the revised set of objections, yet another obligation is sought to be cast upon the hirer viz., to produce the goods for inspection by the owner. In our opinion the first mentioned suggestion is reasonable and is accordingly accepted but not the second-mentioned one (put forward in the revised set of objections).

2.21.1 The next suggestion of the Federation with respect to section 16 relates to sub-section (2) thereof. The Federation suggests that the words "he shall be punishable with fine which may extend to Rs.200/-" appearing at the

end of sub-section (2) should be substituted by the words "the owner may take action in accordance with the provisions of clause (b) of sub-section (2) of section 18." The Law Commission is, however, not in favour of this suggestion. The rights of the owner are amply protected by sub-section (2) of section 18 and it is unnecessary to add yet another right of termination by way of sub-section (2) of section 16. Accordingly, section 16 will read as follows:-

"16. Obligation of hirer to give information as to whereabouts of goods -

(1) Where by virtue of a hire-purchase agreement, a hirer is under a duty to keep in his possession or control the goods to which the agreement relates, the hirer shall, on receipt of a request in writing from the owner, inform the owner the time, date and place at which the goods can be inspected within a period of fourteen days from the date of the receipt of the request by the hirer.

(2) .- If the hirer fails without reasonable cause to give the said information within fourteen days of the receipt of the notice, he shall be punishable with fine which may extend to two hundred rupees."

2.22 Section 17:- Section 17 provides for the rights of the hirer in case of seizure of goods by the owner. This Section has been proposed to be amended in several particulars by the 1989 (Amendment) Bill. In particular sub-section (5) is proposed to be inserted in the said section. These proposed amendments are acceptable and are accordingly adopted by the Law Commission.

2.22.1 Though no objections were raised in the first response, objections have been raised with respect sub-sections (1), (2) or (3) of this section in the revised set of objections. It has been submitted that the words "falls short" in sub-section (1) should be substituted with the word "exceed". No reasons are given in support of this change and hence the Law Commission is unable to consider this suggestion. The other suggestion - addition of certain words in clause (1) of this sub-section - is really superfluous since those words are already added by the Amendment Bill in the main limb of the sub-section. The substitution of certain words suggested in sub-section (2) is also unacceptable for the reason that the words proposed to be substituted do not fit into the structure or scheme of the sub-section. With respect to suggestion for adding certain words in sub-section (3), no reasons have been given in support thereof. Accordingly, the suggestions given with respect to sub-sections (2) and (3) cannot be accepted.

2.22.2 In sub-section (4) of section 17, the Federation has suggested that after the words "that could be reasonably obtained by him", the following words "in case where the goods are required by any law for the time being in force to be registered in the owners name, on the date of such registration and in other cases" should be substituted. We have not really been able to comprehend the reasons for addition of the words suggested. The only reason given by the Federation in its first response was to the following effect: "But for the goods which is subject to registration to be made by the Government, the date of registration in the name of the owner has been considered as the date for such valuation, vide amendment sub-section (2) under the forthcoming Bill. Hence, in compliance with the said section, the sub-section (4) also equally requires to be amended accordingly, for such goods." The purpose behind the provision in sub-section (2) and the provision contained in sub-section (4) is, however, not identified by the Federation. The substitution suggested in sub-section (4) is therefore not acceptable.

2.22.3 So far as sub-section (5) which is sought to be inserted by the Amendment Bill in section 17 is concerned, the Federation had suggested in its first set of objections that after the words "the owner at his discretion" in the last limb of sub-section, the words "on his reinstating the hiring" should be inserted. It has

been further suggested that the following words "as if the agreement had not been terminated and the owner had not taken possession of the goods" occurring at the end of sub-section should be deleted. The reasons given in support of these suggestions are wholly unacceptable. Sub-section (5) provides for a relief to a hirer in case of seizure of goods by the owner under clause (c) of section 19. In such a situation, the suggestions put-forth by the Federation cannot be accepted. In the revised set of objections, while the aforesaid suggestion is not reiterated, a new suggestion is put forward viz., substitution of clause (iii) of sub-section (5). In effect, by means of this substitution, the Federation seeks to bring in the concept of 'reinstatement of hiring' under the hire-purchase agreement. A distinction is sought to be made between the 'agreement' and the 'hiring', which has no basis in principle. We are unable to accede to these suggestions.

2.22.4 The Government of Haryana has suggested that the words "the owner, at his discretion may" should be substituted with the words "the owner shall". The Law Commission agrees with the reasoning behind this change. Once the hirer has rectified the default (on account of which the goods were seized) there should be no further discretion left in the owner either to return the goods or not. He should return the goods-unless ofcourse, he has disposed of the said goods befor the hirer makes the

payment or remedies the breach as contemplated by this section. Accordingly, the last para in sub section (5) of S.17 may be recast as follows :

"the owner shall return the goods to the hirer, except in a case where the goods are disposed of by way of sale or by way of hire purchase as the case may be before the hirer makes the payment or remedies the breach as contemplated by this sub-section, and on such return the goods shall be recovered and held by the hirer pursuant to the terms of the hire-purchase agreement as if the agreement had not been terminated and the owner had not taken possession of the goods".

2.23 Section 18:- Section 18, which is the first section in Chapter V dealing with the rights and obligations of the owner, entitles the owner to terminate the hire-purchase agreement for default in payment of hire or any unauthorised act or breach of express condition. Sub-section (1) provides that in case of more than one default in the payment of hire as provided in the agreement, the owner shall be entitled to terminate the agreement subject to section 21 and after giving the hirer a notice in writing of not less than one week in case the hire is payable at weekly or lesser intervals and two weeks' notice in any other case. In its first set of objections, the Federation stated that in case of even a

single default, the owner shall be entitled to terminate the agreement. The Federation is also opposed to the provision of giving the hirer a notice in writing of not less than one week or two weeks, as the case may be, as provided in sub-section (1). The only reason given is that since the hirer knows the dates on which he has to make the payment, even a single default should entitle the owner to terminate the agreement subject of course to section 21. In the revised set of objections, the plea of a single default is dropped but the objection to the requirement of notice is reiterated. Acceptance of this suggestion made by the Federation would result in making the provision in sub-section (1) very harsh. The law must take note of the actual prevailing conditions. Sub-section (1) of section 18 as proposed to be amended by the 1989 (Amendment) Bill is, therefore, eminently reasonable and should remain unchanged.

2.23.1 The amendments suggested in sub-section (2) of section 18 are merely formal. The Federation wants the expression "agreement", wherever it occurs to be substituted by the expression "hiring". No good reasons are assigned for this phraseological change. The only amendment proposed by the 1989 (Amendment) Bill in this behalf is the substitution of the words "together with such incidental charges and expenses" in the place of the words "together with such interest thereon" occurring in the proviso to sub-section (1). This amendment is

perfectly reasonable and should be accepted. Accordingly, section 18 should remain unchanged except for the amendments suggested by the 1989 (Amendment) Bill.

2.24 Section 19:- Section 19 which provides for the rights of the owner on termination of the hire-purchase agreement, is proposed to be amended by the 1989 (Amendment) Bill in the following manner:-

- (i) In clause (a) of section 19 for the words "arrears of hire due" the words "together with such incidental charges and expenses as may be payable under the terms of the agreement" should be substituted; and
- (ii) In clause (c) for the words "to enter the premises of the hirer and seize the goods", the words "to seize the goods" should be substituted.

Though certain phraseological changes are suggested by the Federation in this behalf, no cogent reasons are assigned by it in support thereof. Accordingly, section 19 should remain unchanged except for the amendments proposed by the 1989 (Amendment) Bill which are accepted by the Law Commission.

2.25 Section 20:- Section 20 places a restriction on the owner's right to recover possession of goods otherwise than through Court. The 1989 (Amendment) Bill proposes to change the figures mentioned in the "Explanation" appended to sub-section (1); for the words "fifteen thousand rupees" and "five thousand rupees", wherever they occur, the words "twenty thousand rupees" and "ten thousand rupees" respectively are sought to be substituted. The only and the main objection of the Federation to this section (as put forward in the first set of objections) is that wherever it mentions 'hire-purchase price', it should be substituted by the words "net hire-purchase price". According to the Federation, since the deposit is already paid at the inception, that should not be taken into account for the purpose of determining the "statutory proportion". In the revised set of objections, however, several objections have been raised to this section. Firstly, it has been submitted that section 20 is bad altogether inasmuch as it violates the Fundamental Rights of the owner. Alternatively, it is suggested that there ought to be a change in the amounts mentioned in the several clauses of the 'Explanation'. The reasons given in support of these new suggestions are that by entering into a hire-purchase transaction, the owner is running a great risk and that this section has the effect of driving the owner to court where proceedings may drag on for years together, and that this would be putting him to greater risk. It is submitted that this section is wholly biased

in favour of the hirers and is prejudicial to the interest of the owners. The Law Commission does not find it possible to agree with any of these suggestions. Firstly, it may be noted that deposit too forms part of the hire-purchase price. Secondly, the proportion at which the "statutory proportion" is fixed is fair and just. The right of the owner to recover possession is interfered with only where the 'statutory proportion' is either paid or tendered by or on behalf of the hirer - and not in all cases. Such a provision is necessary to prevent unjust and oppressive seizures by the owners. The suggestions put forward are, therefore, unacceptable. Accordingly, Section 20 should remain unchanged except for the changes indicated in the 1989 (Amendment) Bill.

2.26 Section 21:- Section 21 provides relief against termination for non-payment of hire. No serious objections have been raised by the Federation against this provision except some phraseological changes. It may be noted that the Amendment Bill of 1989 has substituted the words "together with such incidental charges and expenses" for the existing words "together with such interest thereon". This amendment is acceptable to the Law Commission. There is no substance in the changes suggested by the Federation. Accordingly, section 21 should remain unaltered except for the amendment suggested by the 1989 (Amendment) Bill.

2.27 Section 22:- Section 22 provides for relief against termination of hire-purchase agreement for unauthorised act or breach of express condition. This section has remained untouched by the Amendment Bill. The Federation has also not raised any particular objection to this provision except a certain phraseological change, the kind of which has already been rejected by us. Accordingly, section 22 will remain unchanged.

2.28 Section 23:- Section 23 sets out the obligation of the owner to supply copies and information. The 1989 (Amendment) Bill not only proposes to amend sub-section (1) in certain particulars but also seeks to insert sub-section (1A) after sub-section (1). A consequential amendment is also suggested in sub-section (3). As proposed to be amended by the 1989 Bill, sub-sections (1) and (1A) of Section 23 read as follows:-

"Section 23: Obligation of owner to supply copies and information:

- (1) It shall be the duty of the owner to supply, free of cost, a true copy of the hire-purchase agreement and a true copy of the declaration referred to in clause (c) of sub-section (1) of Section 3, signed by the owner -

(a) to the hirer without undue delay after execution of the agreement; and

(b) where there is a contract of guarantee to the surety on payment made at any time before the final payment has been made under the agreement.

(1A) It shall be the duty of the owner, at any time before the final payment has been made under the hire purchase agreement, to supply to the hirer additional copies of the hire purchase agreement and the declaration referred to in clause (c) of sub-section (1) of Section 3 within fourteen days after the owner receives the request in writing from the hirer in this behalf and the hirer tenders to the owner the prescribed fees for expenses."

2.28.1 The objections of the Federation relating to sub-section (1) of Section 23 are merely phraseological in nature. In short, the Federation wants the expression 'surety' to be substituted by the expression 'guarantor' which has already been rejected in earlier part of this report. However, in view of the Law Commission's

recommendation to insert sub-section (4) in section 3, sub-section (1) of section 23 becomes superfluous and may be deleted. So far as sub-section (1A) proposed to be added by the Amendment Bill is concerned, two objections were raised by the Federation: (i) to omit the words "and the declaration referred to in clause (c) of sub-section (1) of section 23" and (ii) substitution of the words "and the hirer tenders to the owner the prescribed fee for expenses" with the words "along with the prescribed fee towards expenses". We are unable to see any substance in these objections. Once a declaration has been executed as required by section 3 and also because it accompanies the hire-purchase agreement, its inclusion in sub-section (1A) is totally justified. Similarly, the substitution of the words asked for by the Federation has no particular significance. Accordingly, it is recommended that sub-section (1A) as proposed to be introduced by the 1989 (Amendment) Bill be incorporated in section 23 but in view of the deletion of sub-section (1), the proposed sub-section (1A) has to be numbered as sub-section (1) in section 23.

2.28.2 With respect to sub-sections (2), (3) and (4), the objections of the Federation are merely phraseological in nature and need not be dealt with individually.

The Federation, inter alia, wants that the words "sum of one rupee" in sub-section (2) should be substituted by the words "sum of rupees two hundred". We do not see any basis for this exaggerated amount. However, the sum of rupee one in sub-section being too low, the words "sum of one rupee" occurring in sub-section (2) should be substituted by the words "sum of ten rupees". With this minor change in sub-section (2), the aforesaid sub-sections, as proposed to be amended by the Amendment Bill, will remain unaltered. However, the amendment proposed by clause (c) of Section 14 of the Amendment Bill will not be required because the proposed sub-section (1A) is sought to be numbered as sub-section (1).

2.29 Section 24:- Section 24 has not only remained untouched by the Amendment Act, no objections have been raised thereto by the Federation or by any one else. Accordingly, section 24 remains unchanged.

2.30 Section 25:- Section 25 provides for a situation where the hirer becomes insolvent. The Amendment Bill proposes to insert a proviso to sub-section (2) of section 25 as under :

"provided that before any such permission is granted, the Insolvency Court, or the court, as the case may be, in which the winding up proceedings are pending, shall grant the owner an opportunity of being heard in the matter."

2.30.1 While the Federation has not taken any objection to sub-section (1) of section 25, it has asked for substantial changes both in sub-section (2) as well as in the proviso proposed to be added thereto by the Amendment Bill. Sub-section (2), as it stands, reads : "The official Receiver or the liquidator, as the case may be, may with the permission of the Insolvency Court or the Court in which the winding up proceedings are pending, assign the rights of the hirer under the agreement to any other person, and the assignee shall have all the rights and be subject to all the obligations of the hirer under the agreement". The Federation wants sub-section (2) to be substituted altogether. The substituted provision suggested by the Federation makes no reference to the Court. At the same time, it creates an obligation upon the official Receiver or liquidator to inform the owner within 7 days of his taking charge about the insolvency of the hirer and also to intimate the owner whether he intends to continue to make the periodic payments under the agreement or return the goods subject to rebate provided by section 9. While the substitution suggested by the Federation cannot be accepted in its entirety, it

must be conceded that there is some force in its submissions. Accordingly, it is recommended that after sub-section (1), a new sub-section, namely, sub-section (1A), may be inserted, which shall read as follows :

"(1A) The official Receiver or liquidator, as the case may be, shall, subject to the orders of the Insolvency Court or the Court, if any, inform the owner, as soon as he takes possession of the hired goods, of the fact of his taking possession of the hired goods and shall also intimate the owner whether he proposes to continue to make the payments in accordance with the hire-purchase agreement. On receiving such intimation, it shall be open to the owner to approach the Insolvency Court or the Court, as the case may be, for appropriate directions."

2.30.1 With the incorporation of the aforesaid sub-section (1A), the objections of the Federation with respect to section 25 would be substantially met. Accordingly, sub-section (2) along with its proviso proposed to be amended by the Amendment Bill, and the 'Explanation' shall remain unchanged.

2.31 Sections 26 and 27:- Sections 26 and 27 have remained untouched by the Amendment Bill. No objections have been raised with respect to these sections. Accordingly, sections 26 and 27 will remain unchanged.

2.32 Section 28:- Section 28 contemplates a situation where the enforcement of the right of the owner to recover possession of goods from a hirer is subject to a restriction and during the subsistence of such restriction, the hirer refuses to give up possession of the goods to the owner. The section says that such a refusal on the part of the hirer shall not be treated as conversion of the goods. This section remains untouched by the Amendment Bill. The Federation has, however, asked for a total substitution of the section including its title. According to the substitution suggested by the Federation, an obligation is placed upon the hirer not to refuse to give possession of the goods and not to seek any restriction on the owner's right to obtain possession. It is obvious that the substitution suggested by the Federation is altogether a different proposition from the provision contained in section 28. Section 28 indeed states the obvious. If the right of the owner to recover possession is subject to a restriction, it is obvious that the refusal of the hirer to give up possession of the goods, during the subsistence of such restriction, cannot be treated as conversion. Accordingly, we see no justification to make any change in section 28.

2.33 Section 29:- Section 29 deals with service of notice. The slight amendment suggested by the Federation is phraseological in nature and does not constitute any real change. Section 29 shall accordingly remain unchanged.

2.34 Section 30:- Section 30 confers upon the Central Government the power to exempt hire-purchase agreements relating to certain categories of goods from the operation of sections 6, 9, 10, 12 and 17. The submission of the Federation is that this section should be deleted altogether. We are not agreeable to the said suggestion. The power of exemption is provided to meet various contingencies and other exigencies which may arise in future and which may call for special treatment. Section 30 has not only specified the sections from which exemption can be granted but it has also specified the situations in which such power can be exercised. It is, accordingly, a well-defined provision containing sufficient guidance. This is also a well-established feature of legislation to which no valid objection can be taken. Section 30 should, therefore, remain unchanged.

2.35 Section 31:- Section 31 merely states that the Act shall not apply in relation to any hire-purchase agreement made before the commencement of the Act. No objections are urged with respect to this section. Similarly, no

objections are urged with respect to Sections 32 and 33 proposed to be inserted by the 1989 (Amendment) Bill. Section 32 confers the rule-making power upon the Government and Section 33 contains, what is called, the 'removal of difficulties clause'. For obvious reasons, the Federation has not raised any objections to these sections. No comments are called for from the Law Commission on these provisions.

Before concluding, the Law Commission is of the opinion that new sections be inserted in the Act, 1 dealing with the insurance of the goods which are the subject-matter of a hire-purchase agreement and the other regarding the application of law relating to illegal contracts. The new sections, numbered 28A and 28B shall read as follows:-

"28A. Insurance.- (1) The owner may require any goods comprised in a hire purchase agreement to be insured, and at all times during the period of the agreement kept insured, in the names of the owner and the hirer against any risk that the owner thinks fit at the expense of the hirer.

(2) Where in respect of the insurance of goods comprised in a hire purchase agreement, the insurer allows a no-claim rebate or a rebate of a similar nature, the hirer under the agreement is entitled

to the benefit of the rebate, and any person who knowingly pays or allows any such rebate to the owner under the agreement shall not be relieved of his obligation towards the hirer.

(3) Nothing in this section shall limit or restrict the right of the owner to provide insurance without charge to the hirer."

The Commission thinks it equally advisable, in the interest of both the hirer and the owner that the Act should specifically provide for the enforceability of the agreements which contravene any of the provisions of the Act. Accordingly, the following provision be inserted as Section 28B:

"28B. Application of law relating to illegal contracts.- If an agreement has been entered into in contravention of any of the provisions of this Act or an act which contravenes any of the provisions of this Act, is committed in the course of the performance of an agreement, it shall not make the agreement illegal and the agreement shall be and shall continue to be binding and enforceable except with respect to the provisions inconsistent with the Act."

We recommend accordingly. For the sake of convenience, the Amendment Bill to be introduced in the Parliament is appended herewith (Annexure-A). The appended Bill incorporates the provisions of the Hire-Purchase (Amendment) Bill, 1989, as well as those suggested by the Law Commission, to the Hire-Purchase Act, 1972 and the Hire-Purchase (Amendment) Bill, 1989. For the sake of convenience and ready reference again, we have set out in Annexure-B the Hire-Purchase Act, 1972 incorporating the amendments proposed in the Hire-Purchase (Amendment) Bill, 1999 (Annexure-A). In other words, if all the amendments suggested by the Law Commission are accepted by Parliament, the Hire-Purchase Act, 1972 would read as set out in Annexure-B.



(MR. JUSTICE B. P. JEEVAN REDDY) (RETD.)

CHAIRMAN



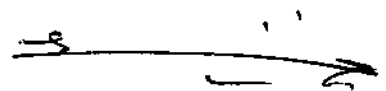
(MS. JUSTICE LEILA SETH) (RETD)

MEMBER



(DR. N.M. GHATATE)

MEMBER



(DR. SUBHASH C. JAIN)

MEMBER-SECRETARY

DATED: 17 MARCH, 1999

FOOTNOTES AND REFERENCES

CHAPTER II

1. Shri Vinod Kumar Kothari
2. Shri Sunil Kamoria
3. See "General Note" to the Act in the Current Law Statutes Annotated, 1965, Sweet and Maxwell, London, p.39.
4. Suggestions by Mr Vinod Kumar Kothari and Mr Sunil Kanoria whose views have been echoed by the Federation of All India Hire Purchase Financiers.

ANNEXURE-A

Bill No. _____ of 1999

THE HIRE-PURCHASE (AMENDMENT) BILL, 1999

A

BILL

to amend the Hire-Purchase Act, 1972.

Be it enacted by Parliament in the Fiftieth Year of the Republic of India as follows :-

1. Short title and commencement.- (1) This Act may be called the Hire-Purchase (Amendment) Act, 1999.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Amendment of Section 2.- In Section 2 of the Hire-purchase Act, 1972 (hereinafter referred to as the principal Act),-

(a) for clause (c), the following clause shall be substituted, namely :-

'(c) "hire-purchase agreement" means

(i) an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and

(ii) an agreement for the sale of goods under which the purchase price or part of it is payable in instalments, and the property in the goods is to remain in the owner (notwithstanding that the hirer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise, as may be specified in the agreement, are fulfilled.'

(b) for clause (d), the following clause shall be substituted, namely :-

'(d) "hire-purchase price" means the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of or the acquisition of property in, the goods to

which the agreement relates; and includes any sum so payable by the hirer under the hire-purchase agreement by way of a deposit or other initial payment, or credited or to be credited to him under such agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the owner or to any other person authorised by the owner or is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means; but does not include any sum payable as a penalty or as compensation or damage for a breach of the agreement, and also does not include any sum -

(i) payable as expenses for delivering the goods to the hirer and the installation thereof, in accordance with the terms of the agreement, or

(ii) payable as any fee, in respect of the goods and the agreement, for the purposes of registration or otherwise under any law for the time being in force, or

(iii) payable as insurance premium, or

(iv) payable as penalty, compensation or damages for a breach of the agreement.'

(c) for clause (f), the following clause shall be substituted, namely :-

'(f) "owner" means the person who lets or has let, or the person who delivers or has delivered possession of goods, to a hirer under a hire-purchase agreement and includes a person to whom the owner's property in the goods or any of the rights or liabilities under the agreement has passed by assignment or by operation of law.'

(d) After clause (f), the following clause shall be inserted namely :-

'(ff) "prescribed" means prescribed by rules made under this Act;'

2. Amendment of Section 3.- For section 3, the following section shall be substituted, namely :-

'3. Hire-purchase agreement to be in writing and signed by parties thereto.-

(1) Every hire-purchase agreement shall be-

(a) in writing;

(b) signed by all parties thereto;

and

(c) accompanied by a declaration in the prescribed form containing the main rights and obligations of the hirer and signed by all the parties to the agreement.

(2) A hire-purchase agreement shall be void against the hirer if any of the requirements specified in sub-section (1) has not been complied with.

(3) Where there is a contract of guarantee, the hire-purchase agreement shall be signed by the surety also, and if the hire-purchase agreement is not so signed, it shall be voidable at the option of the owner.

(4) The Hire-purchase Agreement and the declaration shall be executed in two sets, duly signed by the parties. One such set shall be handed over to the hirer and where

there is a surety, yet another set to the surety, immediately after the execution of the Agreement.'

3. Amendment of section 4.- In section 4 of the principal Act in sub-section (1),-

(a) in clause (d), the word "and", occurring at the end, shall be omitted;

(b) in clause (e), the word ";and" shall be added at the end;

(c) after clause (e), the following clause shall be inserted namely :-

"(f) such additional particulars as may be prescribed.";

(d) for sub-section (2), the following sub-section shall be substituted, namely :-

“(2) Where any part of the hire-purchase price is, or is to be, paid or given otherwise than in cash or by cheque, the hire-purchase agreement shall contain a description of that part of the hire-purchase price, and shall also state

the date on which such part is to be paid or given and the value thereof as, agreed to by the parties or where different portions of such part are to be paid or given on different dates, the date on which each such portion is to be paid or given and the value thereof as agreed to by the parties."

4. Amendment of section 7.- In section 7 of the principal Act,-

(a) for sub-section (1), the following sub-section shall be substituted, namely :-

'(1) In this section :

(a) "Cash price of goods" means the price at which a prospective buyer may, at the date of the hire purchase agreement, purchase the goods for cash;

(b) "deposit" means any sum payable by the hirer under the hire-purchase agreement by way of deposit or other initial payment credited or to be credited to him under the agreement on account of any such deposit or payment, whether that sum

is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means;

(c) "hire purchase charges" means the difference between the balance hire purchase price and the balance cash price of the goods;

(d) "balance cash price of goods" means the cash price of goods less any deposit;

(e) "balance hire purchase price" means the hire purchase price less any deposit;

(f) "statutory hire purchase charges" means the amount as determined by the formula contained in sub-section (2)';

(b) for sub-section (2), the following sub-section shall be substituted, namely :-

"(2) The statutory hire-purchase charges shall be an amount calculated (at the rate of eighteen per centum per annum, or if a lower rate is specified under sub-section (3) at such lower rate) in accordance with the following formula:-

$$SC = \frac{NC \times R \times T}{100}$$

where SC - represents the statutory hire-purchase charges;

NC - represents the net cash price;

R - represents the rate; and

T - represents the time expressed in years and fractions of years, that elapses between the date of the agreement and the date on which the last hire-purchase instalment is payable under the agreement.

"Illustration to sub-sections (1) & (2): A, a hirer purchases a car from B, the owner, on hire purchase basis. The cash price of the car is Rs.65,000/- . A pays a deposit of Rs.15,000/- on the date of hire purchase agreement which means that Rs.50,000/- is the balance cash price of the car. The rate of interest permitted by this section is 18% per annum. The period of agreement between the parties is five years and the balance hire-purchase price is payable in 60 equal monthly instalments. Accordingly, applying the above

formula, the statutory hire purchase charges in this case would be Rs.45,000/- arrived at in the following manner-

$$\frac{50,000 \times 18 \times 5}{100} = \text{Rs.45,000/-}$$

100

The hire purchase charges cannot exceed the statutory hire purchase charges. Thus in this illustration, the hire purchase price is Rs.1,10,000/i.e., Rs.65,000/plus Rs.45,000/-. The balance hire purchase price is Rs.95,000/i.e., Rs.1,10,000/- minus Rs.15,000/(deposit). This sum of Rs.95,000/- is payable in 60 monthly instalments.

Further this amount of Rs.45,000/- being the statutory hire purchase charges should be worked out by the parties on the date of entering into the hire purchase agreement and should be mentioned in the agreement as such."

(c) in sub-section (3),-

(i) the words ", being a rate which shall not be less than ten per centum per annum," shall be omitted;

(ii) for the words "statutory charges", the words "statutory hire-purchase charges" shall be substituted;

(d) sub-sections (4), (5) and (6) shall be omitted.

5. Insertion of new section 7A.- After section (7) of the principal Act, the following section shall be inserted, namely :-

"Section 7 A - Hire Purchase Charges not to exceed Statutory Hire Purchase Charges: Any stipulation in the hire-purchase agreement whereunder the hirer is obliged to pay hire purchase charges in excess of the statutory hire purchase charges as specified in sub-sections (1) and (2) of section 7 shall be null and void and shall not be enforceable. Any owner collecting hire purchase charges in excess of the statutory hire purchase charges shall refund the amount so collected with interest at the rate of 18% to the hirer immediately after it is collected or whenever it is demanded by the hirer. If the owner fails to discharge this obligation, it shall be open to the hirer to approach the court for recovering the said excess amount."

6. Amendment of section 9.- For sub-sections (1) and (2), the following sub-sections shall be substituted, namely:-

'9. Right of hirer to purchase at any time with rebate.-

(1) The hirer may, at any time during the continuance of the hire-purchase agreement and after giving the owner not less than fourteen days' notice in writing of his intention so to do, complete the purchase of the goods by paying or tendering to the owner the hire-purchase price or the balance thereof together with such incidental charges and expenses as may be payable under the terms of the agreement, as reduced by the rebate calculated in the manner provided in sub-section (2).

(2) The rebate for the purposes of sub-section (1) shall be an amount calculated at the rate of 18% (or at such lesser rate of interest as may have been provided in the Agreement) on the amount outstanding on the date on which the hirer seeks to complete the purchase of goods.

Illustration: For the purpose of this illustration, the figures as mentioned in the illustration to sub-section (2) of section 7 are adopted. The hirer seeks to exercise the option to purchase the goods as contemplated by this section at the end of three years i.e., after 36 months.

Twenty-four months are still remaining. In such a case, the hirer will be entitled to a rebate of Rs.6,840/- worked out in the following manner:

In this illustration (as contained in section 7), the monthly instalment is Rs.1583.33p. i.e., Rs.95,000/- divided by 60. The hirer has paid 36 instalments, which means he has paid Rs.56,999.88p., i.e. Rs.57,000/- and the balance payable is Rs.38,000/-. But, since he has opted to purchase at the end of 36 months, he is entitled to a rebate of Rs.6,840/-, which means that he has to pay Rs.31,160/- for purchasing the goods.'

7. Amendment of section 10.- In section 10 of the principal Act,-

(a) in sub-section (1), the words "sub-section (9)" in the end shall be substituted by the words "section 9";

(b) in sub-section (1) the words "together with such incidental charges and expenses as may be payable under the terms of the agreement" shall be added at the end.

8. Amendment of section 12.- In section 12 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely :-

"(2). (a) Every request for according consent for such assignment shall be in writing and the owner shall reply to the same in writing within one week of the receipt of such request.

(b) If the owner withholds his consent to the assignment by the hirer of his right, title and interest under the Hire Purchase Agreement on the ground that his demand for an amount or consideration of which there is no mention in the Hire Purchase Agreement, is not satisfied or agreed to, the consent shall be deemed to be unreasonably withheld."

9. Amendment of section 16.- For sub-section (1), the following sub-section shall be substituted, namely:-

'(1) Where by virtue of a hire-purchase agreement, a hirer is under a duty to keep in his possession or control the goods to which the agreement relates, the hirer shall, on receipt of a request in writing from the owner, inform the owner the time, date and place at which the goods

can be inspected within a period of fourteen days from the date of the receipt of the request by the hirer.'

10. Amendment of section 17.- In section 17 of the principal Act,-

(a) in sub-section (1),-

(i) in the opening portion, after the words "by which the hire-purchase price", the words "together with such incidental charges and expenses as may be payable under the terms of the agreement" shall be inserted;

(ii) in clause (ii), the words "on the date of seizure" shall be omitted;

(b) in sub-section (2), in the opening portion, for the words "the value of any goods on the date of seizure", the words "the value of any goods in a case where the goods are required by any law for the time being in force to be registered in the owner's name, on the date of such registration and in any other case on the date of seizure" shall be substituted;

(c) after sub-section (4), the following sub-section shall be inserted, namely:-

"(5) Where the owner seizes the goods under clause (c) of section 19, the goods let under a hire-purchase agreement and if, within fourteen days of the date of such seizure, the hirer-

(i) pays or tenders to the owner the hire in arrears up to the date of payment or tender, together with such incidental charges and expenses as may be payable under the terms of the agreement;

(ii) remedies any breach of agreement or (where he is unable to remedy the breach by reason of the fact that the owner has seized the goods) pays or tenders to the owner the costs and expenses reasonably and actually incurred by the owner in doing any act, matter or thing necessary to remedy the breach;

(iii) pays or tenders to the owner the reasonable costs and expenses of the owner of and incidental to his seizure of the goods and of his returning them to or to the order of the hirer, the owner shall return the goods to the hirer, except in a case where the goods are disposed of by way of sale or by way of hire purchase as the

case may be before the hirer makes the payment or remedies the breach as contemplated by this sub-section, and on such return the goods shall be recovered and held by the hirer pursuant to the terms of the hire-purchase agreement as if the agreement had not been terminated and the owner had not taken possession of the goods'.

11. Amendment of Section 18.- In section 18 of the principal Act, in sub-section (1), in the proviso, for the words "together with such interest thereon", the words "together with such incidental charges and expenses" shall be substituted.

12. Amendment of Section 19.- In section 19 of the principal Act, -

(i) in clause (a), after the words "arrears of hire due" wherever they occur, the words "together with such incidental charges and expenses as may be payable under the terms of the agreement" shall be inserted;

(ii) in clause (c), for the words "to enter the premises of the hirer and seize the goods", the words "to seize the goods" shall be substituted.

13. Amendment of Section 20.- In section 20 of the principal Act, in sub-section (1), for the words "fifteen thousand rupees" and "five thousand rupees", wherever they occur, the words "twenty-five thousand rupees" and "ten thousand rupees" shall, respectively be substituted.

14. Amendment of Section 21.- In section 21 of the principal Act, for the words "together with such interest thereon", the words "together with such incidental charges and expenses" shall be substituted.

15. Amendment of Section 23.- In section 23 of the principal Act, -

(a) For sub-section (1) of the principal Act, the following sub-section shall be substituted, namely:-

"(1) It shall also be the duty of the owner, at any time before the final payment has been made under the hire-purchase agreement, to supply to the hirer additional copies of the hire-purchase agreement and the declaration referred to in clause (c) of sub-section (1) of section 3 within fourteen days after the owner receives the request in writing from the hirer in this behalf and the hirer tenders to the owner the prescribed fees for expenses";

(b) In sub-section (2) of the principal Act, for the words "sum of one rupee", the words "sum of ten rupees" shall be substituted;

16. Amendment of Section 25.-

(a) After sub-section (1), the following sub-section shall be inserted, namely:-

"(1A) The official Receiver or liquidator, as the case may be, shall, subject to the orders of the Insolvency Court or the Court, if any, inform the owner, as soon as he takes possession of the hired goods, of the fact of his taking possession of the hired goods and shall also intimate the owner whether he proposes to continue to make the payments in accordance with the hire-purchase agreement. On receiving such intimation, it shall be open to the owner to approach the Insolvency Court or the Court, as the case may be, for appropriate directions."

(b) In sub-section (2), the following proviso shall be inserted at the end, namely:-

"Provided that before any such permission is granted, the Insolvency Court or, as the case may be, the court in which the winding up proceedings are pending shall grant the owner an opportunity of being heard in the matter."

17. Insertion of new sections 28A and 28B.- After section 28 of the principal Act, the following sections shall be inserted, namely:-

"28A. Insurance.- (1) The owner may require any goods comprised in a hire purchase agreement to be insured, and at all times during the period of the agreement kept insured, in the names of the owner and the hirer against any risk that the hirer thinks fit at the expense of the hirer.

(2) Where in respect of the insurance of goods comprised in a hire purchase agreement, the insurer allows a no-claim rebate or a rebate of a similar nature, the hirer under the agreement is entitled to the benefit of the rebate, and any person who knowingly pays or allows any such rebate to the owner under the agreement shall not be relieved of his obligation towards the hirer.

(3) Nothing in this section shall limit or restrict the right of the owner to provide insurance without charge to the hirer.

28B. Application of law relating to illegal contracts.- If an agreement has been entered into in contravention of any of the provisions of this Act or an act which contravenes any of the provisions of this Act, is committed in the course of the performance of an agreement, it shall not make the agreement illegal and the agreement shall be and

shall continue to be binding and enforceable except with respect to the provisions inconsistent with the Act."

18. Insertion of new section 32 and 33.- After section 31 of the principal Act, the following sections shall be inserted, namely:-

"32. Power to make rules .- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the form and manner in which all or any particulars shall be specified in every hire-purchase agreement under clause (c) of sub-section (1) of section 3;

(b) the additional particulars which shall be specified in every hire-purchase agreement under clause (f) of sub-section (1) of section 4;

(c) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such

modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

33. Power to remove difficulties.- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of five years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament".

ANNEXURE-B

THE HIRE-PURCHASE ACT, 1972
(Incorporating the amendments of the Hire-Purchase (Amendment)
Bill, 1999)

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THE HIRE-PURCHASE ACT, 1972

(Incorporating the amendments of the Hire-Purchase (Amendment)
Bill, 1999)

An Act to define and regulate the rights and duties of parties to hire-purchase agreements and for matters connected therewith or incidental thereto

Be it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:

CHAPTER 1

Preliminary

1. Short title, extent and commencement.- This Act may be called the Hire-Purchase Act, 1972.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date as the Central Government may, by notification in the official Gazette, appoint.

2. Definitions - In this Act, unless the context otherwise requires -

(a) "contract of guarantee" in relation to any hire-purchase agreement, means a contract whereby a person (in this Act referred to as the surety) guaranteed the performance of all or any of the hirer's obligations under the hire-purchase agreement;

(b) "hire" means the sum payable periodically by the hirer under a hire-purchase agreement;

(c) "hire-purchase agreement" means

(i) an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and

(ii) an agreement for the sale of goods under which the purchase price or part of it is payable in instalments, and the property in the goods is to remain in the owner (notwithstanding that the hirer is to be in possession of the goods) until such conditions as to the payment of instalments or otherwise, as may be specified in the agreement, are fulfilled.

(d) "hire-purchase price" means the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of or the acquisition of

property in, the goods to which the agreement relates; and includes any sum so payable by the hirer under the hire-purchase agreement by way of a deposit or other initial payment, or credited or to be credited to him under such agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the owner or to any other person authorised by the owner or is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means; but does not include any sum payable as a penalty or as compensation or damage for a breach of the agreement, and also does not include any sum -

(i) payable as expenses for delivering the goods to the hirer and the installation thereof, in accordance with the terms of the agreement, or

(ii) payable as any fee, in respect of the goods and the agreement, for the purposes of registration or otherwise under any law for the time being in force, or

(iii) payable as insurance premium, or

(iv) payable as penalty, compensation or damages for a breach of the agreement.'

(e) "hirer" means the person who obtains or has obtained possession of goods from an owner under a hire-purchase agreement, and includes a person to whom the hirer's rights or liabilities under the agreement have passed by assignment or by operation of law;

(f) "owner" means the person who lets or has let, or the person who delivers or has delivered possession of goods, to a hirer under a hire-purchase agreement and includes a person to whom the owner's property in the goods or any of the rights or liabilities under the agreement has passed by assignment or by operation of law;

(ff) "prescribed" means prescribed by rules made under this Act;

(g) each of the words and expressions used and not defined in this Act but defined in the Indian Contract Act, 1872 (9 of 1872), or the Sale of Goods Act, 1930 (3 of 1930), shall have the meaning assigned to it in that Act.

CHAPTER II

Form and Contents of Hire-Purchase Agreements

3. Hire-purchase agreement to be in writing and signed by parties thereto.-

(1) Every hire-purchase agreement shall be-

(a) in writing;

(b) signed by all parties thereto; and

(c) accompanied by a declaration in the prescribed form containing the main rights and obligations of the hirer and signed by all the parties to the agreement.

(2) A hire-purchase agreement shall be void against the hirer if any of the requirements specified in sub-section (1) has not been complied with.

(3) Where there is a contract of guarantee, the hire-purchase agreement shall be signed by the surety also, and if the hire-purchase agreement is not so signed, it shall be voidable at the option of the owner.

(4) The Hire-purchase Agreement and the declaration shall be executed in two sets, duly signed by the parties. One such set shall be handed over to the hirer and where there is a surety, yet another set to the surety, immediately after the execution of the Agreement.

4. Contents of hire-purchase agreements.- (1) Every hire-purchase agreement shall state -

(a) the hire-purchase price of the goods to which the agreement relates

(b) the cash price of the goods, that is to say, the price at which the goods may be purchased by the hirer for cash;

(c) the date on which the agreement shall be deemed to have commenced;

(d) the number of instalments by which the hire-purchase price is to be paid, the amount of each of those instalments and the date, or the mode of determining the date, upon which it is payable, and the person to whom and the place where it is payable;

(e) the goods to which the agreement relates, in a manner sufficient to identify them; and

(f) such additional particulars as may be prescribed.

(2) Where any part of the hire-purchase price is, or is to be, paid or given otherwise than in cash or by cheque, the hire-purchase agreement shall contain a description of

that part of the hire-purchase price, and shall also state the date on which such part is to be paid or given and the value thereof as, agreed to by the parties or where different portions of such part are to be paid or given on different dates, the date on which each such portion is to be paid or given and the value thereof as agreed to by the parties.

(3) Where any of requirements specified in sub-section (1) or sub-section (2) has not been complied with, the hirer may institute a suit for getting the hire-purchase agreement rescinded; and the Court may, if it is, satisfied that the failure to comply with any such requirement has prejudiced the hirer, rescind the agreement on such terms as it thinks just, or pass such other order as it thinks fit in the circumstances of the case.

5. Two or more agreements when treated as a single hire-purchase agreement.- Where by virtue of two or more agreements in writing, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and the bailee has an option to purchase the goods and the requirements of section 3 and section 4 are satisfied in relation to such agreements, the agreements shall be treated for the purpose of this Act as a single hire-purchase agreement made at the time when the last of the agreements was made.

**Warranties and Conditions, Limitation on Hire-purchase Charges
and Passing of Property**

6. Warranties and conditions to be implied to hire-purchase agreements.- (1) Notwithstanding anything contained in any contract, in every hire-purchase agreement there shall be an implied warranty -

(a) that the hirer shall have and enjoy quiet possession of the goods; and

(b) that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass.

(2) Notwithstanding anything contained in any contract, in every hire-purchase agreement there shall be -

(a) an implied condition on the part of the owner that he has a right to sell the goods at the time when the property is to pass;

(b) an implied condition on that the goods shall be of merchantable quality, but no such condition shall be implied by virtue of this clause -

(i) as regards defects of which the owner could not reasonably have been aware at the time when the agreement was made, or

(ii) as regards defects specified in the agreement (whether referred to in the agreement as defects or by any other description to the like effect), or

(iii) where the hirer examined the goods, or a sample thereof, as regards defects which the examination ought to have revealed, or

(iv) if the goods are second-hand goods and the agreement contains a statement to that effect.

(3) Where the hirer, whether expressly or by implication, -

(a) has made known to the owner the particular purpose for which the goods are required, or

(b) in the course of any antecedent negotiation, has made that purpose known to any other person by whom those negotiations were conducted,

there shall be an implied condition that the goods shall be reasonably fit for such purpose.

(4) Where the goods are let under a hire-purchase agreement by reference to a sample there shall be -

(a) an implied condition on the part of the owner that the bulk will correspond with the sample in quality, and

(b) an implied condition on the part of the owner that the hirer will have a reasonable opportunity of comparing the bulk with the sample.

(5) Where the goods are let under a hire-purchase agreement by description there shall be an implied condition that the goods will correspond with the description; and if the goods are let under the agreement by reference to a sample as well as by description, it shall not be sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.

(6) An owner shall not be entitled to rely on any provision in a hire-purchase agreement excluding or modifying the condition set out in sub-section (3) unless he proves that before the agreement was made the provision was brought to the notice of the hirer and its effect made clear to him.

(7) Nothing in this section shall prejudice the operation of any other enactment or rule of law whereby any condition or warranty is to be implied in any hire-purchase agreement.

7. Limitation on hire-purchase charges.-

(1) In this section :

(a) "Cash price of goods" means the price at which a prospective buyer may, at the date of the hire purchase agreement, purchase the goods for cash;

(b) "deposit" means any sum payable by the hirer under the hire-purchase agreement by way of deposit or other initial payment credited or to be credited to him under the agreement on account of any such deposit or payment, whether that sum is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means;

(c) "hire purchase charges" means the difference between the balance hire purchase price and the balance cash price of the goods;

(d) "balance cash price of goods" means the cash price of goods less any deposit;

(e) "balance hire purchase price" means the hire purchase price less any deposit;

(f) "statutory hire purchase charges" means the amount as determined by the formula contained in sub-section (2).

(2) The statutory hire-purchase charges shall be an amount calculated (at the rate of eighteen per centum per annum, or if a lower rate is specified under sub-section (3) at such lower rate) in accordance with the following formula:-

$$SC = \frac{NC \times R \times T}{100}$$

where SC - represents the statutory hire-purchase charges;

NC - represents the net cash price;

R - represents the rate; and

T - represents the time expressed in years and fractions of years, that elapses between the date of the agreement and the date on which the last hire-purchase instalment is payable under the agreement.

Illustration to sub-sections (1) & (2): A, a hirer purchases a car from B, the owner, on hire purchase basis. The cash price of the car is Rs.65,000/- . A pays a deposit of Rs.15,000/- on the date of hire purchase agreement which means that Rs.50,000/- is the balance cash price of the car. The rate of interest permitted by this section is 18% per annum. The period of agreement between the parties is five years and the balance hire-purchase price is payable in 60 equal monthly instalments. Accordingly, applying the above formula, the statutory hire purchase charges in this case would be Rs.45,000/- arrived at in the following manner-

$$\frac{50,000 \times 18 \times 5}{100} = \text{Rs.45,000/-}$$

100

The hire-purchase charges cannot exceed the statutory hire purchase charges. Thus in this illustration, the hire purchase price is Rs.1,10,000/- i.e., Rs.65,000/- plus Rs.45,000/-. The balance hire purchase price is Rs.95,000/- i.e., Rs.1,10,000/- minus Rs.15,000/- (deposit). This sum of Rs.95,000/- is payable in 60 monthly instalments.

Further this amount of Rs.45,000/- being the statutory hire purchase charges should be worked out by the parties on the date of entering into the hire purchase agreement and should be mentioned in the agreement as such.

(3) The Central Government may, by notification in the official Gazette, and after consultation with the Reserve Bank of India, specify the rate per centum per annum, at which statutory hire-purchase charges may be calculated under sub-section (2) and different rates may be so specified in respect of hire-purchase agreements relating to different classes or sub-classes of goods.

7A. Hire Purchase Charges not to exceed statutory hire purchase charges.- Any stipulation in the hire-purchase agreement whereunder the hirer is obliged to pay hire purchase charges in excess of the statutory hire purchase charges as specified in sub-sections (1) and (2) of section 7 shall be null and void and shall not be enforceable. Any owner collecting hire purchase charges in excess of the statutory hire purchase charges shall refund the amount so collected with interest; at the rate of 18% to the hirer immediately after it is collected or whenever it is demanded by the hirer. If the owner fails to discharge this obligation, it shall be open to the hirer to approach the court for recovering the said excess amount.

8. Passing of property.- Subject to the provisions of this Act, the property in the goods to which a hire-purchase agreement relates shall pass to the hirer only on the completion of the purchase in the manner provided in the agreement.

CHAPTER IV

Rights and Obligations of the Hirer

9. Right of hirer to purchase at any time with rebate.-

(1) The hirer may, at any time during the continuance of the hire-purchase agreement and after giving the owner not less than fourteen days' notice in writing of his intention so to do, complete the purchase of the goods by paying or tendering to the owner the hire-purchase price or the balance thereof together with such incidental charges and expenses as may be payable under the terms of the agreement, as reduced by the rebate calculated in the manner provided in sub-section (2).

(2) The rebate for the purposes of sub-section (1) shall be an amount calculated at the rate of 18% (or at such lesser rate of interest as may have been provided in the Agreement) on the amount outstanding on the date on which the hirer seeks to complete the purchase of goods.

Illustration: For the purpose of this illustration, the figures as mentioned in the illustration to sub-section (2) of section 7 are adopted. The hirer seeks to exercise the option to purchase the goods as contemplated by this section at the end of three years i.e., after 36 months. Twenty-four months are still remaining. In such a case, the hirer will be entitled to a rebate of Rs.6,840/- worked out in the following manner:

In this illustration (as contained in section 7), the monthly instalment is Rs.1583.33p. i.e., Rs.95,000/- divided by 60. The hirer has paid 36 instalments, which means he has paid Rs.56,999.88p., i.e. Rs.57,000/- and the balance payable is Rs.38,000/-. But, since he has opted to purchase at the end of 36 months, he is entitled to a rebate of Rs.6,840/-, which means that he has to pay Rs.31,160/- for purchasing the goods.

(3) The provisions of this section shall have effect notwithstanding anything to the contrary contained in the hire-purchase agreement, but where the terms of the agreement entitle the hirer to a rebate higher than that allowed by this section, the hirer shall be entitled to the rebate provided by the agreement.

10. Right of hirer to terminate agreement at any time.-(1) The hirer may, at any time before the final payment under the hire-purchase agreement falls due, and after giving the owner not less than fourteen days' notice in writing of his intention so to do and re-delivering or tendering the goods to the owner, terminate the hire-purchase agreement by payment or tender to the owner of the amounts which have accrued due towards the hire-purchase price and have not been paid by him, including the sum, if any, which he is liable to pay under section 9 together with such incidental charges and expenses as may be payable under the terms of the agreement.

(2) Where the hirer terminates the agreement under sub-section (1), and the agreement provides for the payment of a sum named on account of such termination, the liability of the hirer to pay that sum shall be subject to the following conditions, namely:

(a) where the sum total of the amounts paid and the amounts due in respect of the hire-purchase price immediately before the termination exceeds one half of the hire-purchase price, the hirer shall not be liable to pay the sum so named;

(b) where the sum total of the amounts paid and the amounts due in respect of the hire-purchase price, immediately before the termination does not exceed one-half of the hire-purchase price, the hirer shall

be liable to pay the difference between the said sum total and the said one-half, or the sum named in the agreement, whichever is less.

(3) Nothing in sub-section (2) shall relieve the hirer from any liability for any hire which might have accrued due before the termination,

(4) Any provision in any agreement, whereby the right conferred on a hirer by this section to terminate the hire purchase agreement is excluded or restricted, or whereby any liability in addition to the liability imposed by this Act is imposed on a hirer by reason of the termination of the hire-purchase agreement by him under this section, shall be void.

(5) Nothing in this section shall prejudice any right of a hirer to terminate a hire-purchase agreement otherwise than by virtue of this section.

11. Right of hirer to appropriate payments in respect of two or more agreements.- A hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the agreements which is not sufficient to discharge the total amount then due under all the agreements to appropriate the sum so paid by him in or towards the satisfaction of the sum

due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and if, he fails to make any such appropriation as aforesaid the sum so paid shall, by virtue of this section, stand appropriated towards the satisfaction of the sums due under the respective hire-purchase agreements in the order in which the agreements were entered into.

12. Assignment and transmission of hirer's right or interest under hire-purchase agreement.- (1) The hirer may assign his right, title and interest under the hire-purchase agreement with the consent of the owner, or if his consent is unreasonably withheld, without his consent.

(2) (a) Every request for according consent for such assignment shall be in writing and the owner shall reply to the same in writing within one week of the receipt of such request.

(b) If the owner withholds his consent to the assignment by the hirer of his right, title and interest under the Hire Purchase Agreement on the ground that his demand for an amount or consideration of which there is no mention in the Hire Purchase Agreement, is not satisfied or agreed to, the consent shall be deemed to be unreasonably withheld.

(3) Where on a request being made by a hirer in this behalf the owner fails or refuses to give his consent to an assignment under sub-section (1) the hirer may apply to the Court for an order declaring that the consent of the owner to the assignment has been unreasonably withheld, and where such an order is made the consent shall be deemed to be unreasonably withheld.

Explanation.- In this sub-section, "Court" means a court which would have jurisdiction to entertain a suit for the relief claimed in the application.

(4) As a condition of granting such consent, the owner may stipulate that all defaults under the hire-purchase agreement shall be made good and may require the hirer and the assignee to execute and deliver to the owner an assignment agreement, in a form approved by the owner, whereby, without affecting the continuing personal liability of the hirer in such respects, the assignee agrees with the owner to be personally liable to pay the instalments of hire remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term thereof and whereby the assignee indemnifies, the hirer in respect of such liabilities.

(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.

Explanation. - In this sub-section, the expression "legal representative" has the same meaning as in clause (11) of section 2 of the Code of Civil Procedure, 1908 (5 of 1908).

(6) The provisions of this section shall apply notwithstanding anything to the contrary contained in the hire-purchase agreement.

13. Obligations of hirer to comply with agreement.-Subject to the provisions of this Act, a hirer shall be bound -

(a) to pay the hire in accordance with the agreements,
and

(b) otherwise to comply with the terms of the agreement.

14. Obligation of hirer in respect of care to be taken of goods.- (1) A hirer in the absence of a contract to the contrary, -

(a) shall be bound to take as much care of the goods to which the hire-purchase agreement relates as a man of ordinary prudence would under similar circumstances, take of his own goods of the same bulk, quality and value;

(b) shall not be responsible for the loss, destruction or deterioration of the goods if he has taken the amount of care thereof described in clause (a).

(2) The hirer shall be liable to make compensation to the owner for any damage caused by failure to take care of the goods in accordance with the provisions of sub-section (1).

15. Obligation of hirer in respect of use of goods.- If the hirer makes any use of the goods to which the hire-purchase agreement relates which is not according to the conditions of the agreement, the hirer shall be liable to make compensation to the owner for any damage arising to the goods from or during such use.

16. Obligation of hirer to give information as to whereabouts of goods.-

(1) Where by virtue of a hire-purchase agreement, a hirer is under a duty to keep in his possession or control the goods to which the agreement relates, the hirer shall, on receipt of a request in writing from the owner, inform the

owner the time, date and place at which the goods can be inspected within a period of fourteen days from the date of the receipt of the request by the hirer.

(2) If the hirer fails without reasonable cause to give the said information within fourteen days of the receipt of the notice, he shall be punishable with fine which may extend to two hundred rupees.

17. Rights of hirer in case of seizure of goods by owner.- (1) Where the owner seizes under clause (c) of section 19 the goods let under a hire-purchase agreement, the hirer may recover from the owner the amount, if any, by which the hire-purchase price together with such incidental charges and expenses as may be payable under the terms of the agreement falls short of the agreement of the following amounts, namely:

- (i) the amounts paid in respect of the hire-purchase price up to the date of seizure;
- (ii) the value of the goods.

(2) For the purposes of this section, the value of any goods in a case where the goods are required by any law for the time being in force to be registered in the owner's name, on the date of such registration and in any other case on the date of seizure is the best price that can be reasonably obtained for the goods by the owner on that date less the aggregate of the following amounts, namely:

(i) the reasonable expenses incurred by the owner for seizing the goods;

(ii) any amount reasonably expended by the owner on the storage, repairs or maintenance of the goods;

(iii) whether or not the goods have subsequently been sold or otherwise disposed of by the owner the reasonable expenses of selling or otherwise disposing of the goods; and

(iv) the amount spent by the owner for payment of arrears of taxes and other dues which are payable in relation to the goods under any law for the time being in force and which the hirer was liable to pay.

(3) If the owner fails to pay the amount due from him under the provisions of this section or any portion of such amount to the hirer within a period of thirty days from the date of notice for payment of the said amount is served on him by the hirer, the owner shall be liable to pay interest on such amount at the rate of twelve per cent per annum from the date of expiry of the said period of thirty days.

(4) Where the owner has sold the goods seized by him the onus of proving that the price obtained by him for the goods was the best price that could be reasonably obtained by him on the date of seizure shall be upon him.

(5) Where the owner seizes the goods under clause (c) of section 19, the goods let under a hire-purchase agreement and if, within fourteen days of the date of such seizure, the hirer-

(i) pays or tenders to the owner the hire in arrears up to the date of payment or tender, together with such incidental charges and expenses as may be payable under the terms of the agreement;

(ii) remedies any breach of agreement or (where he is unable to remedy the breach by reason of the fact that the owner has seized the goods) pays or tenders to the owner the costs and expenses reasonably and actually incurred by the owner in doing any act, matter or thing necessary to remedy the breach;

(iii) pays or tenders to the owner the reasonable costs and expenses of the owner of and incidental to his seizure of the goods and of his returning them to or to the order of the hirer, the owner shall return the goods to the hirer, except in a case where the goods are disposed of by way of sale or

by way of hire purchase as the case may be before the hirer makes the payment or remedies the breach as contemplated by this sub-section, and on such return the goods shall be recovered and held by the hirer pursuant to the terms of the hire-purchase agreement as if the agreement had not been terminated and the owner had not taken possession of the goods.

CHAPTER V

Rights and obligations of the owner

18. Rights of owner to terminate hire-purchase agreement for default in payment of hire or unauthorised act or breach of express conditions.- (1) Where a hirer makes more than one default in the payment of hire as provided in the hire-purchase agreement then, subject to the provisions of section 21 and after giving the hirer notice in writing of not less than -

i) one week, in a case where the hire is payable at weekly or lesser intervals; and

ji) two weeks, in any other case,

the owner shall be entitled to terminate the agreement by giving the hirer notice of termination in writing:

Provided that if the hirer pays or tenders to the owner the hire in arrears together with such incidental charges and expenses as may be payable under the terms of the agreement before the expiry of the said period of one week or, as the case may be, two weeks, the owner shall not be entitled to terminate the agreement.

(2) Where a hirer-

(a) does any act with regard to the goods to which the agreement relates which is inconsistent with any of the terms of the agreement; or

(b) breaks an express condition which provides that, on the breach thereof, the owner may terminate the agreement,

the owner shall, subject to the provisions of section 22, be entitled to terminate the agreement by giving the hirer notice of termination in writing.

19. Rights of owner on termination.- Where a hire-purchase agreement is terminated under this Act, then the owner shall be entitled,-

(a) to retain the hire which has already been paid and to recover the arrears of hire due together with such incidental charges and expenses as may be payable under the terms of

the agreement:

Provided that when such goods are seized by the owner, the retention of hire and recovery of the arrears of hire due together with such incidental charges and expenses as may be payable under the terms of the agreement shall be subject to the provisions of section 17;

- (b) subject to the conditions specified in clauses (a) and (b) of sub-section (2) of section 10, to forfeit the initial deposit, if so provided in the agreement;
- (c) subject to the provisions of section 17 and section 20 and subject to any contract to the contrary, to seize the goods;
- (d) subject to the provisions of section 21 and section 22, to recover possession of the goods by application under section 20 or by suit;
- (e) without prejudice to the provision of sub-section (2) of section 14 and section 15, to damages for non-delivery of the goods, from the date on which termination is effective, to the date on which the goods are delivered to or seized by the owner.

20. Restriction on owner's right to recover possession of goods otherwise than through Court.- (1) Where goods have been let under a hire-purchase agreement and the statutory

proportion of the hire-purchase price has been paid, whether in pursuance of the judgment of a court or otherwise, or rendered by or on behalf of the hirer or any surety, the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than in accordance with sub-section (3) or by suit.

Explanation.- In this section, "statutory proportion" means,-

- i) one-half, where the hire purchase price is less than twenty-five thousand rupees; and
- ii) three-fourths, where the hire-purchase price is not less than twenty-five thousand rupees:

Provided that in the case of motor vehicles as defined in the Motor Vehicles Act, 1939 (4 of 1939), "statutory proportion" shall mean,-

- i) one-half, where the hire purchase price is less than ten thousand rupees;
- ii) three-fourths, where the hire purchase price is not less than ten thousand rupees but less than twenty-five thousand rupees;
- iii) three-fourths or such higher proportion not exceeding nine-tenths as the Central Government may, by notification in the Official Gazette, where the hire-purchase price is not less than twenty-five thousand rupees.

(2) If the owner recovers possession of goods in contravention of the provisions of sub-section(1), the hire-purchase agreement, if not previously terminated, shall terminate, and -

(a)the hirer shall be released from all liability under the agreement and shall be entitled to recover from the owner all sums paid by the hirer under the agreement or under any security given by him in respect of; and

(b)the surety shall be entitled to recover from the owner all sums paid by him under the contract of guarantee or under any security given by him in respect thereof.

(3) Where, by virtue of the provisions of sub-section (1), the owner is precluded from enforcing a right to recover possession of the goods, he may make an application for recovery of possession of the goods to any court having jurisdiction to entertain a suit for the same relief.

(4) The provisions of this section shall not apply in any case in which the hirer has terminated the agreement by virtue of any right vested in him.

21. Relief against termination for non-payment of hire
Where the owner, after he has terminated the hire-purchase agreement in accordance with the provisions of sub-section (1) of section 18, institutes a suit or makes an application against the hirer for the recovery of the goods, and at the hearing of the suit or application, the hirer pays or tenders to the owner the hire in arrears, together with such incidental charges and expenses as may be payable under the terms of the agreement and the cost of the suit or application incurred by the owner and complies with such other conditions, if any, as the Court may think fit to impose, the Court may, in lieu of making a decree or order for specific delivery, pass an order relieving the hirer against the termination; and thereupon the hirer shall continue in possession of the goods as if the agreement had not been terminated.

22. Relief against termination for unauthorized act or breach of express condition.- Where a hire-purchase agreement has been terminated in accordance with the provisions of clause (a) or clause (b) of sub-section (2) of section 18, no suit or application by the owner against the hirer for the recovery of the goods shall lie unless and until the owner has served on the hirer a notice in writing,-

- (a) specifying the particular breach or act complained of; and
- (b) if the breach or act is capable of remedy, requiring the hirer to remedy it,

and the hirer fails, within a period of thirty days from the date of the service of the notice, to remedy the breach or act if it is capable of remedy.

23. Obligation of owner to supply copies and information.-

(1) It shall also be the duty of the owner, at any time before the final payment has been made under the hire-purchase agreement, to supply to the hirer additional copies of the hire-purchase agreement and the declaration referred to in clause (c) of sub-section (1) of section 3 within fourteen days after the owner receives the request in writing from the hirer in this behalf and the hirer tenders to the owner the prescribed fees for expenses.

(2) It shall also be the duty of the owner, at any time before the final payment has been made under the hire-purchase agreement, to supply to the hirer, within fourteen days after the owner receives a request in writing from the hirer in this behalf and the hirer tenders to the owner the sum of ten rupees for expenses, a statement signed by the owner or his agent showing-

- (a) the amount paid by or on behalf of the hirer;
- (b) the amount which has become due under the agreement but remains unpaid, and the date upon which each unpaid instalment became due, and the amount of each such instalment; and
- (c) the amount which has become due under the

agreement and the date or the mode of determining the date upon which each future instalment is to become payable, and the amount of each such instalment.

(3) Where there is a failure without reasonable cause to carry out the duties imposed by sub-section (1), or sub-section (2), then while the default continues,-

(a) the owner shall not be entitled to enforce the agreement against the hirer or to enforce any contract of guarantee relating to the agreement, or to enforce any right to recover the goods from the hirer; and

(b) no security given by the hirer in respect of money payable under the agreement or given by a surety in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable against the hirer or the surety by any holder thereof,

and, if the default continues for a period of two months, the owner shall be punishable with fine which may extend to two hundred rupees.

(4) Nothing in sub-section (3) shall be construed as affecting the right of a third-party to enforce against the owner or hirer or against both the owner and the hirer any charge or encumbrance to which the goods covered by the hire-purchase agreement are subject.

CHAPTER VI

Miscellaneous

24. Discharge of price otherwise than by payment of money. Where an owner has agreed that any part of the hire-purchase price may be discharged otherwise than by the payment of money, any such discharge shall for the purposes of section 10, section 11, section 17, section 20 and section 23, be deemed to be a payment of that part of the hire-purchase price.

25. Insolvency of hirer, etc.- (1) Where, during the continuance of the hire-purchase agreement, the hirer is adjudged insolvent under any law with respect to insolvency for the time being in force, the official Receiver or where the hirer is a company, then in the event of the company being wound up, the liquidator, shall have, in respect of the goods which are in the possession of the hirer under the agreement, the same rights and obligations as the hirer had in relation thereto.

(1A) The official Receiver or liquidator, as the case may be, shall, subject to the orders of the Insolvency Court or the Court, if any, inform the owner, as soon as he takes possession of the hired goods, of the fact of his taking possession of the hired goods and shall also intimate the owner whether he proposes to continue to make the payments in

accordance with the hire-purchase agreement. On receiving such intimation, it shall be open to the owner to approach the Insolvency Court or the Court, as the case may be, for appropriate directions.

(2) The official Receiver or the liquidator, as the case may be, may, with the permission of the Insolvency Court or the Court in which the winding up proceedings are pending, assign the rights of the hirer under the agreement, to any other person, and the assignee shall have all the rights and be subject to all the obligations of the hirer under the agreement.

Provided that before any such permission is granted, the Insolvency Court or, as the case may be, the court in which the winding up proceedings are pending shall grant the owner an opportunity of being heard in the matter.

Explanation - In this section, "official Receiver" means an official Receiver appointed under the Provincial Insolvency Act, 1920 (5 of 1920), and includes any person holding a similar office under any other law with respect to insolvency for the time being in force.

26. Successive hire-purchase agreements between same parties.- Where goods have been let under a hire-purchase agreement, and at any time thereafter the owner makes a subsequent hire-purchase agreement with the hirer, whether

relating exclusively to other goods or to other goods together with the goods to which the first agreement relates, any such subsequent hire-purchase agreement shall not have effect in so far as it affects prejudicially any right which the hirer would have had by virtue of section 20 under the first agreement, if such subsequent hire-purchase agreement had not been made.

27. Evidence of adverse detention in suit or application to recover possession of goods.- (1) Where, in a suit or application by an owner of goods which have been let under a hire-purchase agreement, to enforce a right to recover possession of the goods from the hirer, the owner proves that, before, the commencement of the suit or application and after the right to recover possession of the goods accrued, the owner made a request in writing to the hirer to surrender the goods, the hirer's possession of the goods shall, for the purpose of the owner's claim to recover possession thereof, be deemed to be adverse to the owner.

(2) Nothing in this section shall affect a claim for damages for conversion.

28. Hirer's refusal to surrender goods not to be conversion in certain cases.- If during the subsistence of any restriction to which the enforcement by an owner of a right to recover possession of goods from a hirer is subject by virtue

of this Act, the hirer refuses to give up possession of the goods to owner, the hirer shall not, by reason only of such refusal, be liable to the owner for conversion of the goods.

28A. Insurance.- (1) The owner may require any goods comprised in a hire purchase agreement to be insured, and at all times during the period of the agreement kept insured, in the names of the owner and the hirer against any risk that the hirer thinks fit at the expense of the hirer.

(2) Where in respect of the insurance of goods comprised in a hire purchase agreement, the insurer allows a no-claim rebate or a rebate of a similar nature, the hirer under the agreement is entitled to the benefit of the rebate, and any person who knowingly pays or allows any such rebate to the owner under the agreement shall not be relieved of his obligation towards the hirer.

(3) Nothing in this section shall limit or restrict the right of the owner to provide insurance without charge to the hirer.

28B. Application of law relating to illegal contracts.- If an agreement has been entered into in contravention of any of the provisions of this Act or an act which contravenes any of the provisions of this Act, is committed in the course of the performance of an agreement, it shall not make the agreement

illegal and the agreement shall be and shall continue to be binding and enforceable except with respect to the provisions inconsistent with the Act.

29. Service of notice.- Any notice required or authorized to be served on or given to an owner or a hirer under this Act, may be so served or given.-

(a) by delivering it to him personally; or

(b) by sending it by post to him at his last known place of residence or business.

30. Power to exempt from provisions of sections 6,9,10,12 and 17 in certain cases.- Where the Central Government is satisfied that having regard to -

(a) the short supply of any goods or class of goods,
or

(b) the use or intended use of any goods or class of goods and the persons by whom such goods or class of goods are used or intended to be used, or

(c) the restrictions imposed upon the trade or commerce in any goods, or

(d) any other circumstances in relation to any goods or class of goods,

it is necessary or expedient in the public interest so to do, the Central Government may, by notification in the official Gazette, direct that clause (b) of sub-section (2) of section 6, section 9, section 10, section 12 and section 17 or any of them shall not apply or shall apply with such modifications as may be specified in the notification, to hire-purchase agreements relating to such goods or class of goods.

31. Act not to apply to existing agreement.-This Act shall not apply in relation to any hire-purchase agreement made before the commencement of this Act.

32. Power to make rules.- (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the form and manner in which all or any particulars shall be specified in every hire-purchase agreement under clause (c) of sub-section (1) of section 3;

(b) the additional particulars which shall be specified in every hire-purchase agreement under clause (f) of sub-section (1) of section 4;

(c) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

33. Power to remove difficulties.- (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Provided that no such order shall be made after the expiry of a period of five years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.

TO BE INTRODUCED IN THE RAJYA SABHA

Bill No. XI of 1989

THE HIRE-PURCHASE (AMENDMENT) BILL, 1989

BILL

to amend the Hire-purchase Act, 1972.

Be it enacted by Parliament in the Fortieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Hire-purchase (Amendment) Act, 1989.

Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 2 of the Hire-purchase Act, 1972 (hereinafter referred to as the principal Act),—

Amendment of section 2.

(a) in clause (d), for the words "but does not include any sum payable as a penalty or as compensation or damages for a breach of the agreement", the following shall be substituted, namely:—

"but does not include any sum—

(i) payable as expenses for delivering the goods to the hirer and the installation thereof, in accordance with the terms of the agreement,

(ii) payable as any fee, in respect of the goods and the agreement, for the purposes of registration or otherwise under any law for the time being in force,

(iii) payable as insurance premium, and

(iv) payable as a penalty or as compensation or damages for a breach of the agreement";

(b) after clause (f), the following clause shall be inserted, namely:—

"(ff) "proscribed" means proscribed by rules made under this Act";

Amend-
ment of
section 3.

3. In section 3 of the principal Act, in sub-section (1),—

(i) in clause (a), the word "and", occurring at the end, shall be omitted;

(ii) in clause (b), the word "and" shall be added at the end;

(iii) after clause (b), the following clause shall be inserted, namely:—

"(c) accompanied by a declaration in the prescribed form containing the main rights and obligations of the hirer and signed by all the parties to the agreement."

Amend-
ment of
section 4.

4. In section 4 of the principal Act, in sub-section (1),—

(a) in clause (d), the word "and", occurring at the end, shall be omitted;

(b) in clause (c), the word "; and" shall be added at the end;

(c) after clause (c), the following clause shall be inserted, namely:—

"(d) such additional particulars as may be prescribed."

(d) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) Where any part of the hire-purchase price is, or is to be, paid or given otherwise than in cash or by cheque, the hire-purchase agreement shall contain a description of that part of the hire-purchase price, and shall also state the date on which such part is to be paid or given and the value thereof as agreed to by the parties or where different portions of such part are to be paid or given on different dates, the date on which each such portion is to be paid or given and the value thereof as agreed to by the parties."

Amend-
ment of
section 7.

5. In section 7 of the principal Act,—

(a) in sub-section (1),—

(i) clause (a) shall be omitted;

(ii) clause (b) shall be re-lettered as clause (a);

(iii) clause (c) shall be re-lettered as clause (b), and clause (b) as so re-lettered, for the words, brackets and let-

"as defined in clause (b)", the words, brackets and letter "as defined in clause (a)" shall be substituted;

(iv) clause (d) shall be re-lettered as clause (c), and in clause (c) as so re-lettered, for the words "net hire-purchase charges", the words "hire-purchase charges" shall be substituted;

(v) clause (e) shall be re-lettered as clause (d), and in clause (d) as so re-lettered,—

(A) in the opening portion, for the word "less,—" the words, brackets and letter "less any deposit as defined, in clause (a);" shall be substituted;

(B) sub-clauses (i) to (iii) shall be omitted;

(vi) for clause (f), the following clause shall be substituted, namely:—

'(e) "statutory hire-purchase charges", in relation to a hire-purchase agreement, means the amount calculated in accordance with the provisions of sub-section (2).';

(b) for sub-section (2), the following sub-section shall be substituted, namely:—

"(2) The statutory hire-purchase charges shall be an amount calculated at the rate of eighteen *per centum* per annum, or if a lower rate is specified under sub-section (3), at such lower rate, in accordance with the following formula:—

$$SC = \frac{NC \times R \times T}{100}$$

where SC—represents the statutory hire-purchase charges;

NC—represents the net cash price;

R—represents the rate; and

T—represents the time expressed in years and fractions of years, that elapses between the date of the agreement and the date on which the last hire-purchase instalment is payable under the agreement.;

(c) in sub-section (3),—

(i) the words "being a rate which shall not be less than ten *per centum* per annum," shall be omitted;

(ii) for the words "statutory charges", the words "statutory hire-purchase charges" shall be substituted;

(d) in sub-section (4),—

(i) for the words "net hire-purchase charges", wherever they occur, the words "hire-purchase charges" shall be substituted;

(ii) for the words "statutory charges", wherever they occur, the words "statutory hire-purchase charges" shall be substituted.

Amend-
ment of
section 9.

6. In section 9 of the principal Act,—

(a) in sub-section (1), after the words "or the balance thereof", the words "together with such incidental charges and expenses as may be payable under the terms of the agreement" shall be inserted;

(b) for sub-section (2) and the *Explanation*, the following sub-section shall be substituted, namely:—

"(2) The rebate for the purposes of sub-section (1) shall be calculated in accordance with the following formula:—

$$R = \frac{C \times M \times (M+1)}{N \times (N+1)}$$

where R—represents rebate;

C—represents hire-purchase charges as defined in clause (c) of sub-section (1) of section 7 or statutory hire-purchase charges as defined in clause (e) of sub-section (1) of section 7, whichever is less;

M—represents the number of complete months still remaining in the period of the agreement;

N—represents total number of complete months in the period of the agreement."

Amend-
ment of
section
10.

7. In section 10 of the principal Act, in sub-section (1), the words "together with such incidental charges and expenses as may be payable under the terms of the agreement" shall be added at the end.

Amend-
ment of
section
12.

8. In section 12 of the principal Act, in sub-section (4), after the words "under the hire-purchase agreement", the words "together with such incidental charges and expenses as may be payable under the terms of the agreement" shall be inserted.

Amend-
ment of
section
17.

9. In section 17 of the principal Act,—

(a) in sub-section (1),—

(i) in the opening portion, after the words "by which the hire-purchase price", the words "together with such incidental charges and expenses as may be payable under the terms of the agreement" shall be inserted;

(ii) in clause (ii), the words "on the date of seizure" shall be omitted;

(b) in sub-section (2), in the opening portion, for the words "the value of any goods on the date of seizure", the words "the value of any goods in a case where the goods are required by law for the time being in force to be registered in the owner's name, on the date of such registration and in any other case the date of seizure" shall be substituted;

(c) after sub-section (4), the following sub-section shall be inserted, namely:—

"(5) Where the owner seizes the goods under clause (c) of section 19, the goods let under a hire-purchase agreement and if, within fourteen days of the date of such seizure, the hirer—

(i) pays or tenders to the owner the hire in arrears up to the date of payment or tender, together with such incidental charges and expenses as may be payable under the terms of the agreement;

(ii) remedies any breach of agreement or (where he is unable to remedy the breach by reason of the fact that the owner has seized the goods) pays or tenders to the owner the costs and expenses reasonably and actually incurred by the owner in doing any act, matter or thing necessary to remedy the breach;

(iii) pays or tenders to the owner the reasonable costs and expenses of the owner of and incidental to his seizure of the goods and of his returning them to or to the order of the hirer.

the owner, at his discretion, may return the goods to the hirer and the goods shall be received and held by the hirer pursuant to the terms of the hire-purchase agreement as if the agreement had not been terminated and the owner had not taken possession of the goods."

10. In section 18 of the principal Act, in sub-section (1), in the proviso, for the words "together with such interest thereon", the words "together with such incidental charges and expenses" shall be substituted.

Amendment of section 18.

11. In section 19 of the principal Act,—

(i) in clause (a), after the words "arrears of hire due" wherever they occur, the words "together with such incidental charges and expenses as may be payable under the terms of the agreement" shall be inserted;

(ii) in clause (c), for the words "to enter the premises of the hirer and seize the goods", the words "to seize the goods" shall be substituted.

Amendment of section 19.

12. In section 20 of the principal Act, in sub-section (1), for the words "fifteen thousand rupees" and "five thousand rupees", wherever they occur, the words "twenty-five thousand rupees" and "ten thousand rupees" shall, respectively, be substituted.

Amendment of section 20.

13. In section 21 of the principal Act, for the words "together with such interest thereon", the words "together with such incidental charges and expenses" shall be substituted.

Amendment of section 21.

14. In section 23 of the principal Act,—

(a) in sub-section (1),—

(i) in the opening portion, after the words "a true copy of the hire-purchase agreement", the words, brackets, letter and figures "and a true copy of the declaration referred to in clause (c) of sub-section (1) of section 3" shall be inserted;

Amendment of section 23.

(ii) in clause (a), for the word "immediately", the words "without undue delay" shall be substituted;

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) It shall also be the duty of the owner, at any time before the final payment has been made under the hire-purchase agreement, to supply to the hirer additional copies of the hire-purchase agreement and the declaration referred to in clause (c) of sub-section (1) of section 3 within fourteen days after the owner receives the request in writing from the hirer in this behalf and the hirer tenders to the owner the prescribed fees for expenses.";

(c) in sub-section (3), after the words, brackets and figure "sub-section (1)", the words, brackets, figure and letter " (1A) " shall be inserted.

Amend-
ment of
section
25.

15. In section 25 of the principal Act, in sub-section (2), the following proviso shall be inserted at the end, namely:—

"Provided that before any such permission is granted, the Insolvency Court or, as the case may be, the court in which the winding up proceedings are pending shall grant the owner an opportunity of being heard in the matter."

Inser-
tion of
new
sections
32 and
33.

Power
to make
rules.

16. After section 31 of the principal Act, the following sections shall be inserted, namely:—

"32. (1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) the form and manner in which all or any particulars shall be specified in every hire-purchase agreement under clause (c) of sub-section (1) of section 3;

(b) the additional particulars which shall be specified in every hire-purchase agreement under clause (f) of sub-section (1) of section 4;

(c) any other matter which is required to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect,

as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

33. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order, published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as may appear to be necessary for removing the difficulty:

Power to
remove
difficul-
ties.

Provided that no such order shall be made after the expiry of a period of five years from the commencement of this Act.

(2) Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament."

STATEMENT OF OBJECTS AND REASONS

The Hire-purchase Act, 1972 was enacted, in pursuance of the recommendations of the Law Commission contained in its Twentieth Report, mainly to regulate the rights and duties of parties to hire-purchase agreements. As the developmental activities undertaken by organisations in the small-scale industrial sector are mainly through the device of letting out machinery, implements, etc., on hire-purchase basis and as the provisions of the Hire-purchase Act involved devising of new forms and hire-purchase agreements, etc., it was decided to allow sufficient time for the various organisations, the trade and the public to realise the implications and impact of the legislation and to make the necessary adjustments in their affairs by the time the Act was brought into force. However, before the Act could be brought into force, several representations were received from the public against bringing the Act into force on account of certain difficulties pointed out from several quarters in the implementations thereof. This matter was also examined, *inter alia*, by the Banking Law Committee appointed by the Reserve Bank of India. The Committee on Petitions of the Rajya Sabha had occasion to consider the question of bringing into force the Hire-purchase Act and recommended that immediate steps be taken to notify and implement the Hire-purchase Act without any further delay. In view of this, it is felt that the Act should be brought into force as early as possible after meeting the main difficulties noticed.

2. The subject dealt with by the Act is of a highly technical nature with far-reaching consequences. The difficulties are mainly in respect of matters relating to the limiting of hire-purchase charges, the right of hirer to purchase at any time with rebate, the modifications necessary to bring the Hire-purchase Act in harmony with the present economical and other conditions and the absence of any provision for making rules for bringing out more clearly the implications of some of the provisions of the Act and particularly those which involve mathematical calculations. These difficulties appeared to be felt more in respect of hire-purchase agreements providing for obtaining credit for such assets as are intended for generating income of a business. For the purpose of removing these difficulties, the proposed legislation makes suitable amendments in the parent Act on the analogy of similar legislations in various other countries.

3. Certain other amendments of administrative or procedural nature which would be helpful and beneficial particularly to the hirers, are also proposed. In view of the highly technical nature of the subject matter of the parent Act, a provision is also being included, on usual pattern, empowering the Central Government to remove difficulties by making suitable orders.

4. This Bill seeks to achieve the above objectives.

New Delhi;
The 6th April, 1989.

B. SHANKARANAND

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 16 of the Bill seeks to insert a new section 32 in the Hire-purchase Act, 1972 (26 of 1972) empowering the Central Government to make rules to carry out the provisions of the said Act. The rules may provide for the form and manner in which all or any of the particulars shall be specified in every hire-purchase agreement, the additional particulars which shall be specified in every such hire-purchase agreement and other matters which may be required for bringing out more clearly the intentions of some of the provisions of the parent Act and particularly those which involve mathematical calculations.

In view of the nature of legislation relating to hire-purchase agreements, clause 16 of the Bill also inserts a new section 33 in the Hire-purchase Act empowering the Central Government to remove by order any difficulty which may arise in giving effect to the provisions of that Act. This is by way of abundant caution and for covering difficulties which may arise. It has, however, been provided that no such order shall be made after the expiry of a period of 5 years from the commencement of the Hire-purchase Act. It has also been provided that a copy of every such order made shall be laid before each House of Parliament.

The matters in relation to which rules or orders may be made are matters of administrative detail and procedure and it is difficult to provide for the same in the Bill itself. The delegation of legislative power is therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE HIRE-PURCHASE ACT, 1972

(26 OF 1972)

* * * * *

Defin-
itions.

2. In this Act, unless the context otherwise requires,—

* * * * *

(d) "hire-purchase price" means the total sum payable by hirer under a hire-purchase agreement in order to complete purchase of, or the acquisition of property in, the goods to which the agreement relates; and includes any sum so payable by hirer under the hire-purchase agreement by way of a deposit or other initial payment, or credited or to be credited to him under such agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the owner or to any other person or is to be or has been discharged by payment of hire or by transfer or delivery of goods or by any other means; but does not include any sum payable as a penalty or as compensation for damages for a breach of the agreement;

* * * * *

CHAPTER II

FORMS AND CONTENTS OF HIRE-PURCHASE AGREEMENTS

Hire-
purchase
agree-
ments to
be in
writing
and
signed
by parties
thereto.

3. (1) Every hire-purchase agreement shall be—

- (a) in writing, and
- (b) signed by all the parties thereto.

* * * * *

Contents
of hire-
purchase
agree-
ments.

4. (1) Every hire-purchase agreement shall state—

* * * * *

(d) the number of instalments by which the hire-purchase price is to be paid, the amount of each of those instalments, and the date or the mode of determining the date, upon which it is payable, and the person to whom and the place where it is payable; and

(e) the goods to which the agreement relates, in a manner sufficient to identify them.

(2) Where any part of the hire-purchase price is, or is to be, paid otherwise than in cash or by cheque, the hire-purchase agreement shall contain a description of that part of the hire-purchase price.

* * * * *

7. (1) In this section,—

Limita-
tion on
hire-pur-
chase
charges.

(a) "cash price instalment", in relation to a hire-purchase instalment, means an amount which bears to the net cash price the same proportion as the amount of the hire-purchase instalment bears to the total amount of hire-purchase price;

(b) "deposit" means any sum payable by the hirer under the hire-purchase agreement by way of deposit or other initial payment or credited or to be credited to him under the agreement on account of any such deposit or payment, whether that sum is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means;

(c) "net cash price", in relation to goods comprised in a hire-purchase agreement, means the cash price of such goods as required to be specified in the hire-purchase agreement under clause (b) of sub-section (1) of section 4, less any deposit as defined in clause (b);

(d) "net hire-purchase charges", in relation to a hire-purchase agreement for any goods, means the difference between the net hire-purchase price and the net cash price of such goods;

(e) "net hire-purchase price", in relation to goods comprised in a hire-purchase agreement, means the total amount of hire-purchase price of such goods as required to be specified in the hire-purchase agreement under clause (a) of sub-section (1) of section 4 less,—

(i) any amount which is payable to cover the expenses of delivering the goods or any of them to or to the order of the hirer and which is specified in the agreement as included in the hire-purchase price;

(ii) any amount which is payable to cover registration or other fees under any law in respect of the goods or the agreement or both and which is specified in the agreement as included in the hire-purchase price; and

(iii) any amount which is payable for insurance (other than third party insurance) in respect of the goods and which is specified in the agreement as included in the hire-purchase price;

(f) "statutory charges", in relation to a hire-purchase agreement, means the aggregate of the amounts calculated in accordance with the provisions of sub-section (2) as statutory charges in respect of each of the cash price instalments corresponding to each of the hire-purchase instalments under the agreement.

(2) The statutory charges, in respect of a cash price instalment, shall be an amount calculated at the rate of thirty per centum per annum.

or, if a lower rate is specified under sub-section (3), at such lower rate, in accordance with the following formula:--

$$SC = \frac{CI \times R \times T}{100}$$

where,--SC, - represents the statutory charges;

CI,--represents the amount of cash price instalment expressed in rupees or fractions of rupees;

R,--represents the rate; and

T,--represents the time, expressed in years and fractions of years, that elapses between the date of the agreement and the date on which the hire purchase instalment corresponding to the cash price instalment is payable under the agreement.

(3) The Central Government may, by notification in the Official Gazette, and after consultation with the Reserve Bank of India, specify the rate *per centum per annum*, being a rate which shall not be less than ten *per centum per annum*, at which statutory charges may be calculated under sub-section (2) and different rates may be so specified in respect of hire-purchase agreements relating to different classes or classes of goods.

(4) Where the net hire purchase charges in relation to a hire-purchase agreement exceed the statutory charges in relation to such agreement calculated in accordance with the provisions of sub-section (2), the hirer may, by notice in writing to the owner, either elect to treat the agreement as void or to have his liability reduced by the amount which the net hire-purchase charges exceed the statutory charges aforesaid.

* * * * *

CHAPTER IV

RIGHTS AND OBLIGATIONS OF THE HIRER

Right of
hirer to
purchase
at any
time
with
rebate.

9. (1) The hirer may, at any time during the continuance of the hire purchase agreement and after giving the owner not less than four days' notice in writing of his intention so to do, complete the purchase of the goods by paying or tendering to the owner the hire-purchase price or the balance thereof as reduced by the rebate calculated in the manner provided in sub-section (2).

(2) The rebate for the purposes of sub-section (1) shall be equal to two-thirds of an amount which bears to the hire-purchase charges the same proportion as the balance of the hire-purchase price not yet paid bears to the hire-purchase price.

Explanation.--In this sub-section, "hire-purchase charges" means the difference between the hire-purchase price and the cash price as specified in the hire-purchase agreement.

10. (1) The hirer may, at any time before the final payment under the hire-purchase agreement falls due, and after giving the owner not less than fourteen days' notice in writing of his intention so to do and re-delivering or tendering the goods to the owner, terminate the hire-purchase agreement by payment or tender to the owner of the amounts which have accrued due towards the hire-purchase price and have not been paid by him, including the sum, if any, which he is liable to pay under sub-section (2)

Right of hirer to terminate agreement at any time.

* * * * *
12. (1)

(4) As a condition of granting such consent, the owner may stipulate that all defaults under the hire-purchase agreement shall be made good and may require the hirer and the assignee to execute and deliver to the owner an assignment agreement, in a form approved by the owner, whereby, without affecting the continuing personal liability of the hirer in such respects, the assignee agrees with the owner to be personally liable to pay the instalments of hire remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term thereof and whereby the assignee indemnifies the hirer in respect of such liabilities.

Assignment and transmission of hirer's right or interest under hire-purchase agreement.

* * * * *
17. (1) Where the owner seizes under clause (c) of section 19 the goods let under a hire-purchase agreement, the hirer may recover from the owner the amount, if any, by which the hire-purchase price falls short of the aggregate of the following amounts, namely:—

Rights of hirer in case of seizure of goods by owner.

(i) the amounts paid in respect of the hire-purchase price up to the date of seizure;

(ii) the value of the goods on the date of seizure.

(2) For the purposes of this section, the value of any goods on the date of seizure is the best price that can be reasonably obtained for the goods by the owner on that date less the aggregate of the following amounts, namely:—

(i) the reasonable expenses incurred by the owner for seizing the goods;

(ii) any amount reasonably expended by the owner on the storage, repairs or maintenance of the goods;

(iii) (whether or not the goods have subsequently been sold or otherwise disposed of by the owner) the reasonable expenses of selling or otherwise disposing of the goods; and

(iv) the amount spent by the owner for payment of arrears of taxes and other dues which are payable in relation to the goods under any law for the time being in force and which the hirer was liable to pay.

* * * * *

CHAPTER V

RIGHTS AND OBLIGATIONS OF THE OWNER

Rights of owner to terminate hire-purchase agreement for default in payment of hire or unauthorised act or breach of express conditions.

18. (1) Where a hirer makes more than one default in the payment of hire as provided in the hire-purchase agreement then, subject to the provisions of section 21 and after giving the hirer notice in writing, of not less than—

(i) one week, in a case where the hire is payable at weekly or lesser intervals; and

(ii) two weeks, in any other case,

the owner shall be entitled to terminate the agreement by giving the hirer notice of termination in writing:

Provided that if the hirer pays or tenders to the owner the hire in arrears together with such interest thereon as may be payable under the terms of the agreement before the expiry of the said period of one week or, as the case may be, two weeks, the owner shall not be entitled to terminate the agreement.

* * * * *

Rights of owner on termination.

19. Where a hire-purchase agreement is terminated under this Act then the owner shall be entitled—

(a) to retain the hire which has already been paid and to recover the arrears of hire due:

Provided that when such goods are seized by the owner, the retention of hire and recovery of the arrears of hire due shall be subject to the provisions of section 17;

* * * * *

(c) subject to the provisions of section 17 and section 20 and subject to any contract to the contrary, to enter the premises of the hirer and seize the goods;

* * * * *

Restriction on owner's right to recover possession of goods otherwise than through court.

20. (1) Where goods have been let under a hire-purchase agreement and the statutory proportion of the hire-purchase price has been paid, whether in pursuance of the judgment of a court or otherwise, or tendered by or on behalf of the hirer or any surety, the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than in accordance with sub-section (3) or by suit.

Explanation.—In this section, "statutory proportion" means,—

(i) one-half, where the hire-purchase price is less than fifteen thousand rupees; and

(ii) three-fourths, where the hire-purchase price is not less than fifteen thousand rupees:

Provided that in the case of motor vehicles as defined in the Motor Vehicles Act, 1939, "statutory proportion" shall mean,—

(i) one-half, where the hire-purchase price is less than five thousand rupees;

(ii) three-fourths, where the hire-purchase price is not less than five thousand rupees but less than fifteen thousand rupees;

(iii) three-fourths or such higher proportion not exceeding nine-tenths as the Central Government may, by notification in the Official Gazette, specify, where the hire-purchase price is not less than fifteen thousand rupees.

* * * * *

21. Where the owner, after he has terminated the hire-purchase agreement in accordance with the provisions of sub-section (1) of section 18, institutes a suit or makes an application against the hirer for the recovery of the goods, and at the hearing of the suit or application, the hirer pays or tenders to the owner the hire in arrears, together with such interest thereon as may be payable under the terms of the agreement and the costs of the suit or application incurred by the owner and complies with such other conditions, if any, as the court may think fit to impose, the court may, in lieu of making a decree or order for specific delivery, pass an order relieving the hirer against the termination; and thereupon the hirer shall continue in possession of the goods as if the agreement had not been terminated.

Relief against termination for non-payment of hire.

* * * * *

23. (1) It shall be the duty of the owner to supply, free of cost, a true copy of the hire-purchase agreement, signed by the owner,—

(a) to the hirer, immediately after execution of the agreement; and

* * * * *

(3) Where there is a failure without reasonable cause to carry out the duties imposed by sub-section (1), or sub-section (2), then, while the default continues,—

(a) the owner shall not be entitled to enforce the agreement against the hirer or to enforce any contract of guarantee relating to the agreement, or to enforce any right to recover the goods from the hirer; and

(b) no security given by the hirer in respect of money payable under the agreement or given by a surety in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable against the hirer or the surety by any holder thereof,

and, if the default continues for a period of two months, the owner shall be punishable with fine which may extend to two hundred rupees.

* * * * *

Obligation of owner to supply copies and information.

25 (1) *

Insol-
vency of
hirer,
etc.

(2) The Official Receiver or the liquidator, as the case may be, with the permission of the Insolvency Court or the court in which the winding up proceedings are pending, assign the rights of the hirer under the agreement, to any other person, and the assignee shall have all the rights and be subject to all the obligations of the hirer under the agreement.

Explanation.—In this section, "Official Receiver" means an Official Receiver appointed under the Provincial Insolvency Act, 1920, and includes any person holding a similar office under any other law with respect to insolvency for the time being in force.

* * * * *

RAJYA SABHA

A

BILL,

to amend the Hire-purchase Act, 1972.

(Shri B. Shankaranand, Minister of Law and Justice)



R. L. MEENA
Member - Secretary &
Secretary to the Govt. of India
Tel. 3383382

निधि आयोग
LAW COMMISSION
भारत सरकार
GOVERNMENT OF INDIA
शास्त्री भवन
SHASTRI BHAWAN
नई दिल्ली
NEW DELHI-110 001
May 18, 1998

To

Chief of the Organisation,
National Housing Bank,
Hindustan Times, 6th & 9th Floor,
18, K.G. Marg, New Delhi.

Subject:- Questionnaire on Law of Hire-Purchase.

Sir/Madam,

During the past few decades, there has been a mushroom growth of hire-purchase transactions in India which prompted the Law Commission to undertake a study on the subject. The Commission made an indepth study on the subject and submitted its 20th Report on "The Law of Hire-Purchase" in May, 1961. The Indian Parliament enacted the Hire-Purchase Act, 1972 following the recommendations of the Law Commission. Because of pointing out certain anomalies in the Act by the Chairman of the Joint Committee of Parliament, and by a number of companies involved in business of financing, the Act was not brought into force as pointed out in the appended papers. The report dated April 24, 1987 of the Committee on Petitions, Rajya Sabha recommended for implementing the Act expeditiously. In due course, the Ministry of Law & Justice prepared a comprehensive Amendment Bill for the amendment of the Hire-Purchase Act, 1972 which was introduced in the Rajya Sabha on 5th May, 1989. The Parliamentary Standing Committee has vide its 21st report dated August 7, 1995 recommended that Government may consider referring the issue of hire-purchase to the Law Commission for an indepth examination, keeping in view the observations of the Committee. Accordingly, the subject of hire-purchase was referred by the Government of India to the Law Commission for an indepth examination.

2. The Law Commission has drawn up a questionnaire on the aforesaid subject and is interested to have the views of all interested persons/bodies on the subject. A copy of the questionnaire alongwith a copy of the Hire-Purchase Act, 1972 and the Hire-Purchase (Amendment) Bill, 1989, is enclosed for your ready reference.

3. The Commission would, request you to convey your views on the Questionnaire so as to reach the Commission at the earliest and in any case not later than 15th June, 1998. The Commission would also be grateful, if copies of this questionnaire are made and distributed to the concerned with a request to directly transmit their views to the Law Commission.

Yours faithfully,

(R.L.Meena)

Encl: As stated

QUESTIONNAIRE ON LAW OF HIRE- PURCHASE

Since law operates in a society, social ethics and values do play an important role in the framing, operation and implementation of laws. Customary laws, codes and legislation quite often consolidate the prevailing norms of a given society. Cases are not, however, uncommon in which legislation provides for or embodies new rules of law which create rights and obligations different from the norms prevailing in the society. Commercial transactions form one set of such legislation in which new rights and obligations may be created for the parties. It needs no mention that whenever a society which is primarily an agricultural society transforms into an industrialised society commercial or business law is needed.[1]

Viewed in this context, despite rapid developments of industries in India and despite a general acclaim that India ranks in the top ten industrialized countries of the world, it still remains basically an agricultural society and a large chunk of its population still lives in villages which are far away from the aura or influence of industrialization. Industrialization and commercial activities in India were

[1] A.G.Guest, The Law of Hire Purchase (London, 1966) p.1

strengthened by the British-rulers which were designed and devised for safeguarding the economic interests of our colonial masters.

Industrialization in Europe started long back and it has passed through centuries as of today. England occupied a leading position in the race of industrialization in Europe. Colonisation of Asia, Africa and certain parts of America by the European Powers started with the objectives of securing supply of raw materials to their industries and later on markets for their products. The colonial markets, however, were originally not attractive in view of their poverty, backwardness and ignorance. The colonial masters, therefore, had to find alternate markets for their products. One of the novel methods of achieving this object was perhaps hire purchase and credit sale.

In England, the practice of selling goods on credit, the price being payable by installments, is of very early origin; but the appearance of hire-purchase as a commercial institution dates substantially to the second half of the nineteenth century when the Singer Manufacturing Company began to offer to housewives and others the opportunity of acquiring sewing machines on "hire and purchase" terms. The precedent thus set was quickly followed by the vendors of furniture, pianos and other household consumer goods. In the industrial sphere, at about the same time, the North Central and British Wagon Companies began to finance the purchase by

collieries of the railway wagons needed for the carriage of coal and security for the advances made was provided by hire-purchase transactions. The subsequent advent of the motor-car immensely extended the ambit of hire-purchase, and hire purchase terms are now available over a large range of consumer durables.

The words 'hire-purchase' are frequently used in general discussion to denote all forms of instalment trading. There are, in fact, two classes of instalment contract in common use, the hire-purchase agreement and the credit sale agreement. A hire-purchase agreement usually provides that the vendor of the goods will let them and the customer will hire them for a fixed period and will pay an agreed rental by a series of installments throughout the hiring period; and that when the consumer has paid all the installments he shall become the owner of the goods. It is also customary that that the customer shall have the right to return the goods in good order at any time during the hiring period and to discontinue the hiring, provided that he pays an agreed proportion of the total hiring cost and any overdue installments. The transaction is thus a contract of hire with an option to purchase and until that option is exercised, the vendor remains the owner of the goods. A credit sale agreement, on the other hand is a contract of sale which provides that the owner will sell and the purchaser will buy the goods and will pay an agreed price by a series of installments. Ownership of the goods passes

immediately the agreement is signed and the purchaser becomes an ordinary debtor for the several installments of the purchase price.

Industrialisation and commercial activities in India were introduced by the British rulers which were designed and devised for safeguarding the economic interests of our colonial masters. The advent of hire-purchase transaction in England was subsequently introduced into various colonies of Great Britain depending on the economic and commercial development in the colonies. India was no exception. Disputes involving hire-purchase transactions in India perhaps reached the court in the first quarter of the twentieth century. Perhaps the first important reported case is that of A.Cecil Cole v. Nanalal Moraji Dave and another (AIR 1925 Bom 18) in which Justice Martin observed:

"Now the very expression "hire-purchase agreement" is not one that originated in this country. It is clearly a form of an 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...."

Similarly, in the case of V.Dakshinamurthi Mudaliar v. General and Credit Corporation (India) Ltd. (AIR 1960 Mad 328) the Madras High Court, inter alia, observed as follows:-

"To sum up, the law of hire and hire-purchase stems

from the law of contract of which it forms an important segment. It is comparatively modern in origin and is designed to serve the needs of credit buying while at the same time protecting the vendor from being caught in the meshes of the law relating to sales stricto sensu. In effect hire-purchase is bailment with an option to purchase though it is sometimes where there is an irrevocable agreement to buy in instalment terms with the proviso that the title shall not pass until the installments are paid. A hire-purchase agreement thus creates a bailment but is a bailment plus an option to purchase. The transaction is compounded of the element of both the law of hire and sale and it would be clearly wrong to assimilate it to a hypothecation of moveable property."

During the past few decades there has been a mushroom growth of hire-purchase transactions in India. The growth of hire-purchase transactions and the complexities surrounding such transactions perhaps prompted the Law Commission to undertake a study of the subject. The Commission made an in-depth study of the subject and submitted its 20th Report on "The Law of Hire-Purchase" in May, 1961. The Commission also appended a Bill to its report on the Hire-Purchase. The Indian Parliament enacted the Hire Purchase Act, 1972 following the recommendations of the Law Commission.

The Government of India by G.S.R. 228 (E) dated 13.4.1973 notified that the Act will come into force with effect from 1.6.1973. A number of companies which were carrying on hire-purchase business or financing of hire-purchase transactions made representations to the Government pointing out certain deficiencies in the Act and requested for postponement of decision of the enforcement of the Hire Purchase Act. This resulted into the issuance of notification GSR No.288(E) dated 31.5.1973 rescinding the earlier notification and appointing 1.9.1973 as the date on which the Act would come into force. Meanwhile Shri R.T.Parthasarathy, M.P. who was the Chairman of the Joint Committee which examined and reported upon the Hire Purchase Bill wrote a letter dated 10.8.1973 to the Minister in the Ministry of Law and Justice pointing out certain anomalies in the Act. As a result GSR No.402(E) dated 30.8.1973 was issued rescinding the operation of the Act from 1.9.1973 as notified earlier.

The Report dated April 24, 1987 of the Committee on Petitions, Rajya Sabha relating to the question of bringing into force the Hire Purchase Act, 1972 noted the sad state of affairs and recommended that immediate steps be taken to notify and implement the Hire Purchase Act, 1972 without any further delay.

In due course, the Ministry of Law & Justice prepared a comprehensive Amendment Bill for the amendment of the Hire Purchase Act which was introduced in the Rajya Sabha on the 5th May, 1989. A copy of the Bill is annexed hereto for ready reference. In pursuance of the rules relating to the Department related Parliamentary Standing Committee, the Chairman of Rajya Sabha referred the Bill to the Committee on Home Affairs for examination and report. The Committee considered the Bill and heard the representative of Ministry of Law, Justice & Company Affairs. The Committee vide its 21st Report dated August 7, 1995 recommended that Government may consider referring the whole issue of hire-purchase to the Law Commission for an in-depth examination, keeping in view the observations of the Committee and thereafter bring in a fresh comprehensive legislation on the subject before Parliament, as expeditiously as possible. Accordingly, the subject of hire-purchase was referred by the Government to the Law Commission for an in-depth examination.

The Law Commission has thoroughly examined the Act and the Amendment Bill. The Commission is of the opinion that the Hire Purchase Act enacted in 1972 was based upon the 20th Law Report submitted by the Law Commission, which was prepared under the chairmanship of Justice Shri T.L.Venkatrama Iyer- one of the greatest judges produced by this country. The report was prepared after extensive consultations. The basic framework of the Act is sound and needs no change. Indeed, no one asked for such a total change. It is fairly simple and capable of being understood.

by the persons likely to be governed by it. (The changes and additions now proposed by the Law Commission make it more simpler, as would be evident from what follows.) Only the trading community had raised two objections. The Amendment Bill meets and satisfies the two objections raised by the trading community to the Act. The formula in sub-section (2) of section 7 has been completely substituted. Certain unnecessary definitions in section 7 have been omitted and certain others amended. However, with a view to simplify and clarify the material provisions of the Hire Purchase Act, the following changes/amendments are suggested in the Act (as proposed to be amended by the 1989 Amendment Bill).

I In section 2, the definitions of "contract of guarantee", "hire" and "hire purchase agreement" need no amendment. However, the definition of "hire purchase price" in clause (d) requires to be simplified. The present definition, as proposed to be amended by 1989 Amendment Bill, reads as follows:

"(d) "hire purchase price" means the total sum payable by the hirer under a hire purchase agreement in order to complete the purchase of, or the acquisition of property in, the goods to which the agreement relates; and includes any sum so payable by the hirer under the hire purchase agreement by way of a deposit or other initial payment, or credited or to be credited to him under such agreement on account of any such deposit or payment, whether that sum is to

be or has been paid to be owner to to any other person or is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means; but does not include any sum-

(i) payable as expenses for delivering the goods to the hirer and the installation thereof, in accordance with the terms of the agreement,

(ii) payable as any fee, in respect of the goods and the agreement, for the purposes of registration or otherwise under any law for the time being in force,

(iii) payable as insurance premium, and

(iv) payable as a penalty or as compensation or damages for a breach of the agreement".

The above definition can be simplified and clarified as follows:

["(d) 'Hire purchase price' means the total sum payable by the hirer under a hire purchase agreement in order to complete the purchase of or the acquisition of the property in the goods to which the agreement relates and includes any sum payable by the hirer under the hire purchase agreement by way of a deposit or other initial payment (whether paid by the hirer or any other person on his behalf and whether paid in cash or in any other manner) and also includes the hire purchase charges but does not include any sum-

(i) payable as expenses for delivering the goods to the hirer and the installation thereof, in accordance with the terms of the agreement,

(ii) payable as any fee, in respect of the goods and the agreement for the purposes of registration or otherwise under any law for the time being in force,

(iii) payable as insurance premium, and

(iv) payable as a penalty or as compensation or damages for a breach of the agreement".

(The portion underlined is added with a view to remove any doubts whether the "hire purchase price" includes "hire purchase charges" or not)]

The other definitions contained in clauses (e), (f), (ff) (proposed to be added in 1989 Amendment Bill) and (g) can remain as they are.

II In section 4(1), the present clause (b) be substituted with the following:

"(b) The cash price of the goods as defined in clause (e) of section 7(1)."

In section 4(1) the proposed clause (f) (proposed to be added by the 1989 Amendment Bill) may be renumbered as (g) and a new clause (f) may be introduced in the following terms:

"(f) The name of the owner of the goods and his address, the name of the hirer of the goods and his address, the name and addresses of the sureties, if any, and the place where the hire purchase agreement is executed."

After sub-section (1) in section 4, the following sub-section may be inserted in the following terms:

"(1A) The hire purchase agreement shall be executed in two sets, signed by both the parties, and one such set shall be handed over to the hirer immediately after the execution of the agreement."

III Section 7 is the most material section in the Act. It is proposed to be extensively amended by the 1989 Amendment Bill. Section 7(1) contains six definitions in clauses (a) to (f). The Amendment Bill rightly proposes to omit and delete the definitions of "cash price instalment" in clause (a) and "net hire purchase charges" in clause (b). The Amendment Bill proposes to redesignate clause (b) - which defines the expression "deposit" - as clause (a) and proposes to enact clause (b) in the following terms:

"(b) Hire purchase charges in relation to a hire purchase agreement for any goods means the difference between the net hire purchase price and the net cash price of such goods."

The Amendment Bill further seeks to substitute the last words "as defined in clause (b)" in clause (c) - which defines the expression "net cash price" - with the words "as defined in clause (a)". This is merely a consequential and a formal change.

Similarly, in clause (d) which defines the expression "net hire purchase price", the entire portion beginning with the word "less" is proposed to be deleted altogether and in its place only the following words "less any deposit as defined in clause (a)" are proposed to be substituted. Clause (f) is redesignated as clause (e) and has been substituted altogether as follows:

"(e) "Statutory hire purchase charges" in relation to a hire purchase agreement means the amount calculated in accordance with the provisions of sub-section (2)."

It is suggested that the definitions in section 7(1) may be recast as follows:

- (1) "(a) "Cash price of goods" means the price at which a prospective buyer may, at the date of the hire purchase agreement, purchase the goods for cash."
- (2) The definition of "deposit" in clause (a) can remain as it is, but shall be renumbered as clause (b).
- (3) The definition of "hire purchase charges" in the proposed clause (b) may be recast as follows:

"(c) "Hire purchase charges" means the difference between the balance hire purchase price and the balance cash price of the goods."
- (4) Clause (c) which defines the expression "net cash price" may be omitted and the following definition may be inserted as clause (d):

"(d) 'Balance cash price of goods' means the cash price of goods less any deposit."
- (5) Instead of the proposed clause (d) which defines the expression "net hire purchase price", the following definition may be substituted:

"(e) 'Balance hire purchase price' means the hire purchase price less any deposit."

(6) After clause (d), a new clause (f) may be inserted as follows:

"(f) "Hire purchase charges" means the difference between the (balance) hire purchase price and the balance cash price of the goods."

(7) The proposed clause (e), which defines "statutory hire purchase charges" should be redesignated as clause (g) and should read as follows:

"(g) "Statutory hire purchase charges" means the amount as determined by the formula contained in sub-section (2)."

(8) Sub-section (2) can remain as it is but the following illustration may be added at the end of clause (2):

"Illustration to sub-sections (1) & (2): A (hirer) purchases a car from B (owner) on hire purchase basis. The cash price of the car is Rs.65,000/-. A pays a deposit of Rs.15,000/on the date of hire purchase agreement which means that Rs.50,000/- is the balance cash price of the goods (car). The rate of interest permitted by this section is 18% per annum and the period of agreement is five years payable in 60 equal monthly instalments. Accordingly, the statutory hire purchase charges in

this case would be Rs.45,000/arrived at in the following manner-

$$\underline{50,000 \times 18 \times 5} = \text{Rs.45,000/-}$$

100

The hire purchase charges can not exceed the statutory hire purchase charges. Thus in this illustration, the hire purchase price is Rs.65,000/- plus Rs.45,000/- = Rs.1,10,000/-. The balance hire purchase charges are Rs.1,10,000/- minus Rs.15,000/- (deposit) = Rs.95,000/-. This sum of Rs.95,000/- is payable in 60 monthly instalments.

Further this amount of Rs.45,000/-, being the statutory hire purchase charges should be worked out by the parties on the date of entering into the hire purchase agreement and should be mentioned in the agreement as such."

IV After section 7, a new section 7A may be added in the following words:

("Section 7A - - Hire Purchase Charges not to exceed Statutory Hire Purchase Charges: Any stipulation in the agreement of hire purchase with the hirer to pay hire purchase charges in excess of the statutory hire purchase charges as specified in sub-section (1) & (2) of section 7 shall be null and void and shall not be enforceable. Any owner collecting hire purchase

charges over and above the statutory hire purchase charges shall refund the excess amount collected with interest @ 18% to the hirer immediately after it is collected or whenever it is demanded by the hirer. If the owner fails to discharge this obligation, it shall be open to the hirer to approach the court for recovering the said excess amount.")

In view of this new section, sub-sections (4), (5) and (6) of section 7 may be omitted.

(V) Section 9 of the Act which is the first section in chapter IV, which sets out the rights and obligations of the hirer is sought to be amended extensively by the 1989 Amendment Bill. The Amendment Bill adds certain words in sub-section (1) and substitutes sub-section (2) altogether. It does not touch sub-section (3). As proposed to be amended by the 1989 Amendment Bill, sub-sections (1) and (2) of section 9 read as follows:

"9. Right of hirer to purchase at any time with rebate - (1) The hirer may, at any time during the continuance of the hire purchase agreement and after giving the owner not less than fourteen days notice in writing of his intention so to do, complete the purchase of the goods by paying or tendering to the owner the hire purchase price or the balance thereof together with such incidental charges and expenses as

may be payable under the terms of the agreement as reduced by the rebate calculated in the manner provided in sub-section (2).

(2) The rebate for the purposes of sub-section (1) shall be calculated in accordance with the following formula -

$$R = \frac{C \times M \times (M + 1)}{N \times (N + 1)}$$

$N \times (N + 1)$

where R - represents rebate;

C - represents hire purchase charges as defined in clause (c) of sub-section (1) of section 7 or statutory hire purchase charges as defined in clause (e) of sub-section (1) of section 7, whichever is less;

M - represents the number of complete months still remaining in the period of the agreement;

N - represents total number of complete months in the period of the agreement."

In the light of the changes suggested herein, it would be appropriate to substitute (C) and the matter thereunder occurring in sub-section (2), with the following:

"C - represents the statutory hire purchase charges as defined in clause (g) of

sub-section (1) of section 7 or the lesser amount, if any, provided in the hire purchase agreement."

It would be most appropriate if an illustration is also added after sub-section (2) to explain the working of the formula contained in the said sub-section. For this purpose, we take the very same illustration as has been appended to sub-sections (1) and (2) of section 7. It may be mentioned that the object of sub-section (2) of section 9 is to ascertain the amount of rebate in a given case. For the purpose of illustrating the said formula we take the case where the period of repayment is five years but the hirer wants to complete the purchase of goods by tendering to the owner the balance of the hire purchase price after the completion of three years. The question is, what would be the amount of rebate in such a case. The amount of statutory hire purchase charges (or the hire purchase charges, as they may be called since the hire purchase charges can never exceed the statutory hire purchase charges) is Rs.45,000/- in the aforesaid illustration. If so, the formula has to be worked in the following manner:

$$\frac{45,000 \times 24 \text{ months} \times 25}{60 \times 61}$$

$$60 \times 61$$

The working of the above formula leads to an amount of Rs.7377.05, which is the amount of rebate to which the hirer is entitled to.

VI No changes are called for in the other sections of the Act as proposed to be amended by the 1989 Amendment Bill except in section 23. In view of sub-section (1A) proposed to be added in section 4 (in this report) clause (a) in sub-section (1) of section 23 becomes unnecessary and has to be deleted, in which case sub-section (1) of section 23 shall read as follows:

"(1) It shall be duty of the owner to supply, free of cost, a true copy of the hire purchase agreement, signed by the owner, to the surety, where there is a contract of guarantee, on demand made at any time before the final payment has been made under the agreement."

Inasmuch as the 1972 Act was made on the basis of the 20th Report of the Law Commission and whereas the Law Commission has had exhaustive consultations with all concerned and interested persons, bodies and organisations before submitting the said report, the Law Commission does not think that any more consultation process is necessary so far as the Act is concerned, also because the objections put forward by the trading community to the Act have been met and satisfied through the Amendment Bill. The Consumers Organisations have however been pressing for early

implementation of the Act. This questionnaire is thus confined to the Amendment Bill of 1989 and to the changes proposed by the Law Commission.

The Law Commission seeks your cooperation, valuable views, opinions, suggestions, ideas and comments on the changes proposed by the Amendment Bill of 1989 and the changes proposed by the Law Commission. For proper examination of the subject, your views on the following questions would be of immense use for finalising our report on the subject:-

QUESTIONNAIRE

1(a). The Hire-Purchase (Amendment) Bill, 1989 proposes to delete the following words in the definition of "hire purchase price" in clause (d) of Sec.2 of the Hire Purchase Act, 1972:-

"but does not include any sum payable as a penalty or a compensation or damages for a breach of the agreement",

and, in their place, substitute the following matter:-

"but does not include any sum -

(i) payable as expenses for delivering the goods to the hirer and the installation thereof, in accordance with the terms of the agreement.

(ii) payable as any fee, in respect of the goods and the agreement, for the purposes of registration or otherwise under any law for the time being in force,

(iii) payable as insurance premium, and

(iv) payable as a penalty or as compensation or damages for a breach of the agreement"

Have you any suggestions, objections or comments to offer on the proposed amendment?

1(b). The Law Commission proposes, in the interest of clarity and simplicity, to define the expression "Hire Purchase Price" in the following words:

" (d) 'Hire Purchase Price' means the total sum payable by the hirer under a hire purchase agreement in order to complete the purchase of or the acquisition of the property in the goods to which the

agreement relates and includes any sum payable by the hirer under the hire purchase agreement by way of a deposit or other initial payment (whether paid by the hirer or any other person on his behalf and whether paid in cash or in any other manner) and also includes the hire purchase charges but does not include any sum -

(i) payable as expenses for delivering the goods to the hirer and the installation thereof, in accordance with the terms of the agreement,

(ii) payable as any fee, in respect of the goods and the agreement for the purposes of registration or otherwise under any law for the time being in force,

(iii) payable as insurance premium, and

(iv) payable as the penalty or as compensation or damages for a breach of the agreement".

(The portion underlined is added with a view to remove any doubt whether the "hire purchase price" includes "hire purchase charges" or not)

Have you any suggestions, objections or comments to offer on the proposed change?

2(a). The Law Commission proposes that the existing Clause (b) of sub-section (1) of Section 4 in the Act be substituted by the following clause :-

"(b) Cash price of the goods as defined in clause (e) of Section 7(1)".

What are your suggestions, comments and objections to the above proposal?

3(a). The Amendment Bill proposes to introduce clause (f) in Sub-section (1) of Section 4 to the following effect:-

"(f) Such additional particulars as may be prescribed".

The Law Commission proposes to recommend that the proposed Clause (f) be re-lettered as "Clause (g)" and the following Clause (f) be inserted therein.

"(f) The name of the owner of the goods and his address, the name of the hirer of the goods and his address, the name and addresses of the sureties, if any, and the place where the hire purchase agreement is executed."

Have you any objections or suggestions to the above proposal?

3(b). The Law Commission proposes to recommend that after sub-section (1) of Section 4, the following sub-section (1A) be inserted:-

"(1A) The hire purchase agreement shall be executed in two sets, signed by both the parties, and one such set shall be handed over to the hirer immediately after the execution of the agreement".

Have you any suggestions or objections to this proposal?

4. The Amendment Bill proposes to substitute sub-Section (2) of the Act, as proposed in sec. 4(ii) of the Amendment Bill. Have you any objections or suggestions to offer in this behalf?

5. The 1989 amendment Bill proposes extensive changes in Section 7. So far as sub-section (1) is concerned, the following are the changes proposed by the Amendment Bill:-

(i) clause (a) to be omitted;

(ii) clause (b) to be re-lettered as clause (a), and after such Clause (a) the following Clause (b) is to be inserted:-

"(b) "hire-purchase charges", in relation to a hire-purchase agreement for any goods, means the difference between the net hire-purchase price and net cash price of such goods"

(iii) consequential changes in Clause (c);

(iv) omission of Clause (d);

(v) re-lettering Clause (e) in the Act as 'clause (d)' and substitution of the entire matter beginning with the word "less", and in its place substitution of the words "less any deposit as defined in Clause (a)";-

(vi) in the place of the existing clause (f) in the Act, substitution of the following clause (e): "Statutory hire purchase charges" in relation to a hire purchase agreement means the amount calculated in accordance with the provisions of sub-section (2)".

Have you any suggestions, objections or comments to offer with respect to the above changes?

6. The Law Commission proposes to recommend that the definitions in sub-section (1) of Section 7 be substituted altogether with the following definitions:-

(a) "Cash price of goods" means the price at which a prospective buyer may, at the date of the hire purchase agreement, purchase the goods for cash";

(b) "deposit" means any sum payable by the hirer under the hire-purchase agreement by way of deposit or other initial payment or credited or to be credited to him under the agreement on account of any such deposit or payment, whether that sum is to be or has been

discharged by payment of money or by transfer or delivery of goods or by any other means";

.... [No Change]

- (c) "hire purchase charges" means the difference between the balance hire purchase price and the balance cash price of the goods";
- (d) "balance cash price of goods" means the cash price of goods less any deposit";
- (e) "balance hire purchase price" means the hire purchase price less any deposit";
- (f) "hire-purchase charges" means the difference between the balance hire purchase price and the balance cash price of the goods";
- (g) "statutory hire purchase charges" means the amount as determined by the formula contained in sub-section (2)";

The above changes are proposed to be recommended to bring in simplicity and clarity in the definitions. Have you any suggestions, objections or comments to offer on the aforesaid proposed changes?

7(a). The amendment Bill proposes to substitute sub-section (2) altogether as mentioned in the Bill. The Law Commission is of the opinion that it is a very welcome amendment/substitution. Have you any suggestions and objections to the said substitution?

7(b) With a view to explain the formula contained in sub-section (2) of Section 7, and to make it easily understood by all concerned, the Law Commission proposes to recommend to add the following illustration at the end of sub-section (2):-

" Illustration to sub-sections (1) & (2): A hirer purchases a car from B owner on hire purchase basis. The cash price of the car is Rs.65,000/-. A pays a deposit of Rs.15,000/- on the date of hire purchase agreement which means that Rs.50,000/- is the balance cash price of the goods (car). The rate of interest permitted by this section is 18% per annum and the period of agreement agreed between the parties is five years, payable in 60 equal monthly instalments. Accordingly, the statutory hire purchase charges in this case would be Rs.45,000/arrived at in the following manner-

$$50,000 \times 18 \times 5 = \text{Rs. } 45,000/-$$

100

The hire purchase charges can not exceed the statutory hire purchase charges. Thus in this illustration, the hire purchase price is Rs.65,000/- plus Rs.45,000/- = Rs.1,10,000/-. The balance hire purchase charges are Rs.1,10,000/- minus Rs.15,000/- (deposit) = Rs.95,000/-. This sum of Rs.95,000/- is payable in 60 monthly instalments.

Further this amount of Rs.45,000/-, being the statutory hire purchase charges should be worked out by the parties on the date of entering into the hire purchase agreement and should be mentioned in the agreement as such."

It may be mentioned that in the above illustration, various expressions which are defined in sub-section (1) of Section 7 (as recommended by Law Commission) have been duly underlined.

Have you any suggestions/objections or comments to offer to the proposed insertion of illustration to sub-sections (1) and (2).

7(c) Alternatively, is it advisable to omit sub-section (2) of section 7 altogether (together with the proposed illustration) and provide simply, -since the provisions of the Bill seek to apply a flat rate formula,- that the owner shall not charge, stipulate or collect hire-purchase charges in excess of the amount calculated at the rate of 18% per annum (or if a lower rate is specified under sub-section (3), at such lower rate) on the balance cash price, payable during the period, expressed in years and fractions of years, as the case may be, that elapses between the date of agreement and the date on which the last hire purchase instalment is payable under the agreement. Provided that such amount calculated shall be payable in equated periodic instalments. Then there will be consequential modification in clause (g) by deleting words "by the formula contained in sub-section (2)" and substituting by "by subsection (2)".

8. In sub-section (3) of Section 7, the Amendment Bill proposed to delete the following words: "being a rate which shall not be less than 10% per annum".

Have you any suggestions or objections to offer in this behalf.

9. The Law Commission proposes to recommend that sub-section (1) of after Section 7, a new sub-section '1A' be inserted in the following terms:-

"Any stipulation in the agreement of hire purchase with the hirer to pay hire purchase charges in excess of the statutory hire purchase charges as specified in sub-sections (1) and (2) of section 7 shall be null and void and shall not be enforceable. Any owner collecting hire purchase charges over and above the statutory hire purchase charges shall refund the excess amount collected, with interest @ 18%, to the hirer, immediately after it is collected or whenever it is demanded by the hirer. If, the owner fails to discharge this obligation, it shall be open to the hirer to approach the court for recovering the said excess amount with interest"

The Law Commission further proposes to recommend that in view of the said insertion of sub-section 1A to the existing sub-sections (4), (5) and (6) of Section 7 in the Act may be deleted.

Have you any suggestions, objections or comments to offer to the proposed recommendations?

10(a). The amendment Bill proposes to delete the existing sub-section (2) and the Explanation appended thereto in Section 9 of the Act and in its place substitute a new sub-section (2) as contained in Section 6 of the Amendment Bill. Law Commission agrees with the said amendment/substitution.

Have you any suggestions, objections and comments to offer on the proposed amendment?

10(b) With a view to make the formula contained in new sub-section (2) of Section 9 easily understandable, the Law Commission proposes to recommend the addition of the following illustration in sub-section (2) in the following terms:-

"Illustration:- For the purpose of this illustration, the very same facts as are mentioned in the illustration proposed to be added to sub-sections (1) and (2) of section 7 are being adopted. The object of sub-section (2) of section 9 is to ascertain the amount of rebate in a given case. In the aforesaid illustration, the hirer wants to complete the purchase of goods by tendering to the owner the balance of the hire purchase price after

the completion of and at the end of a period of three years. The rebate he is entitled to in such a situation is the following:-

$$45,000 \times 24 \text{ months} \times 25$$

$$60 \times 61$$

The working of the above formula leads to an amount of Rs.7377.05, which is the amount of rebate to which the hirer is entitled to.

Have you any suggestions or objections to the proposed recommendation?

11. The amendments proposed by the Amendment Bill in Sections 10 and 12 are merely formal. Similarly, the amendments proposed in sub-section (1) and sub-section (2) of Section 17 are also formal. The Amendment Bill, however, proposes to insert sub-section (5) in Section 17 as set out in section 9(c) of the Bill.

Have you any suggestions, objections or comments to offer to the above amendment?

12. While, the amendments proposed by the Amendment Bill in sections 18, 19, 20 and 21 are formal, the amendments proposed in section 23 are material. Even here the amendments proposed in sub-section (1) again are formal but the addition of sub-section (1A) in section 23 may call for your comments. The proposed amendments are set out in section 14 of the Amendment Bill.

Have you any objections, suggestions or comments to offer?

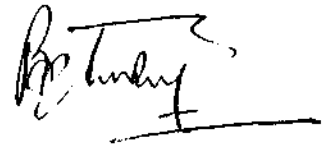
13. The Law Commission proposes to recommend that in view of the new sub-section (1A) recommended by it to be added in Section 4, the existing clause (a) in sub-section (1) of section 23 of the Act may be deleted, in which case sub-section (1) of section 23 shall read as follows:-

"(1) It shall be the duty of the owner to supply, free of cost, a true copy of the hire purchase agreement, signed by the owner, to the surety, where there is a contract of guarantee, on demand made at any time before the final payment has been made under the agreement".

Have you any suggestions or objections to offer to the proposed recommendations?

14. The Amendment Bill proposes to add Section 32 in the Act to confer upon the Central Government the power to make the Rules. Similarly, it proposes to add section 33 to confer upon the Central Government the power to remove difficulties. The proposed sections 32 and 33 are set out in section 16 of the Amendment Bill.

Have you any suggestions, objections and comments to offer on the above additions?

A handwritten signature in black ink, appearing to read 'P. T. Srinivasan', with a horizontal line underneath.

THE HIRE-PURCHASE ACT, 1970

ARRANGEMENT OF SECTIONS

CHAPTER I

PRELIMINARY

SECTIONS

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2. Definitions.

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4. Contents of hire-purchase agreements.
5. Two or more agreements when treated as a single hire-purchase agreement.

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WARRANTIES AND CONDITIONS, LIMITATION ON HIRE-PURCHASE CHARGES AND PASSING OF PROPERTY

6. Warranties and conditions to be implied in hire-purchase agreements.
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8. Passing of property.

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RIGHTS AND OBLIGATIONS OF THE HIRER

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14. Obligation of hirer in respect of care to be taken of goods.
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SECTIONS

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19. Rights of owner on termination.
20. Restriction on owner's right to recover possession of goods otherwise than through court.
21. Relief against termination for non-payment of hire.
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CHAPTER VI

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24. Discharge of price otherwise than by payment of money.
25. Insolvency of hirer, etc.
26. Successive hire-purchase agreements between same parties.
27. Evidence of adverse detention in suit or application to recover possession of goods.
28. Hirer's refusal to surrender goods not to be conversion in certain cases.
29. Service of notice.
30. Power to exempt from provisions of sections 6, 9, 10, 12 and 17 in certain cases.
31. Act not to apply to existing agreements.

THE HIRE-PURCHASE ACT, 1972

No. 26 OF 1972

[8th June, 1972]

An Act to define and regulate the rights and duties of parties to hire-purchase agreements and for matters connected therewith or incidental thereto.

Be it enacted by Parliament in the Twenty-third Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short-
title,
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ment.

1. (1) This Act may be called the Hire-purchase Act, 1972.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Defini-
tions.

2. In this Act, unless the context otherwise requires,—

(a) "contract of guarantee", in relation to any hire-purchase agreement, means a contract whereby a person (in this Act referred to as the surety) guarantees the performance of all or any of the hirer's obligations under the hire-purchase agreement;

(b) "hire" means the sum payable periodically by the hirer under a hire-purchase agreement;

(c) "hire-purchase agreement" means an agreement under which goods are let on hire and under which the hirer has an option to purchase them in accordance with the terms of the agreement and includes an agreement under which—

(i) possession of goods is delivered by the owner thereof to a person on condition that such person pays the agreed amount in periodical instalments, and

(ii) the property in the goods is to pass to such person on the payment of the last of such instalments, and

(iii) such person has a right to terminate the agreement at any time before the property so passes;

(d) "hire-purchase price" means the total sum payable by the hirer under a hire-purchase agreement in order to complete the purchase of, or the acquisition of property in, the goods to which the agreement relates; and includes any sum so payable by the hirer under the hire-purchase agreement by way of a deposit or other initial payment, or credited or to be credited to him under such agreement on account of any such deposit or payment, whether that sum is to be or has been paid to the owner or to any other person or is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means; but does not include any sum payable as a penalty or as compensation or damages for a breach of the agreement;

(e) "hirer" means the person who obtains or has obtained possession of goods from an owner under a hire-purchase agreement, and includes a person to whom the hirer's rights or liabilities under the agreement have passed by assignment or by operation of law;

(f) "owner" means the person who lets or has let, delivers or has delivered possession of goods, to a hirer under a hire-purchase agreement and includes a person to whom the owner's property in the goods or any of the owner's rights or liabilities under the agreement has passed by assignment or by operation of law;

(g) each of the words and expressions used and not defined in this Act but defined in the Indian Contract Act, 1872 or the Sale of Goods Act, 1930 shall have the meaning assigned to it in that Act.

9 of 1872,
3 of 1930.

CHAPTER II

FORMS AND CONTENTS OF HIRE-PURCHASE AGREEMENTS

3. (1) Every hire-purchase agreement shall be—

(a) in writing, and

(b) signed by all the parties thereto.

(2) A hire-purchase agreement shall be void if in respect thereof any of the requirements specified in sub-section (1) has not been complied with.

(3) Where there is a contract of guarantee, the hire-purchase agreement shall be signed by the surety also, and if the hire-purchase agreement is not so signed, the hire-purchase agreement shall be voidable at the option of the owner.

Hire-purchase agreements to be in writing and signed by parties thereto.

Contents
of hire-
purchase
agree-
ments.

4. (1) Every hire-purchase agreement shall state--

(a) the hire-purchase price of the goods to which the agreement relates;

(b) the cash price of the goods, that is to say, the price at which the goods may be purchased by the hirer for cash;

(c) the date on which the agreement shall be deemed to have commenced;

(d) the number of instalments by which the hire-purchase price is to be paid, the amount of each of those instalments, and the date, or the mode of determining the date, upon which it is payable; and the person to whom and the place where it is payable; and

(e) the goods to which the agreement relates, in a manner sufficient to identify them.

(2) Where any part of the hire-purchase price is, or is to be, paid otherwise than in cash or by cheque, the hire-purchase agreement shall contain a description of that part of the hire-purchase price.

(3) Where any of the requirements specified in sub-section (1) or sub-section (2) has not been complied with, the hirer may institute a suit for getting the hire-purchase agreement rescinded; and the court may, if it is satisfied that the failure to comply with any such requirement has prejudiced the hirer, rescind the agreement on such terms as it thinks just, or pass such other order as it thinks fit in the circumstances of the case.

Two or
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purchase
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5. Where by virtue of two or more agreements in writing, none of which by itself constitutes a hire-purchase agreement, there is a bailment of goods and the bailee has an option to purchase the goods and the requirements of section 3 and section 4 are satisfied in relation to such agreements, the agreements shall be treated for the purposes of this Act as a single hire-purchase agreement made at the time when the last of the agreements was made.

CHAPTER III

WARRANTIES AND CONDITIONS, LIMITATION ON HIRE-PURCHASE CHARGES AND PASSING OF PROPERTY

Warrant-
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implied
in hire-
purchase
agree-
ments.

6. (1) Notwithstanding anything contained in any contract, in every hire-purchase agreement there shall be an implied warranty--

(a) that the hirer shall have and enjoy quiet possession of the goods; and

(b) that the goods shall be free from any charge or encumbrance in favour of any third party at the time when the property is to pass.

(2) Notwithstanding anything contained in any contract, in every hire-purchase agreement there shall be--

(a) an implied condition on the part of the owner that he has a right to sell the goods at the time when the property is to pass;

(b) an implied condition that the goods shall be of merchantable quality, but no such condition shall be implied by virtue of this clause—

(i) as regards defects of which the owner could not reasonably have been aware at the time when the agreement was made, or

(ii) as regards defects specified in the agreement (whether referred to in the agreement as defects or by any other description to the like effect), or

(iii) where the hirer has examined the goods, or a sample thereof, as regards defects which the examination ought to have revealed, or

(iv) if the goods are second-hand goods and the agreement contains a statement to that effect.

(3) Where the hirer, whether expressly or by implication,—

(a) has made known to the owner the particular purpose for which the goods are required, or

(b) in the course of any antecedent negotiations, has made that purpose known to any other person by whom those negotiations were conducted,

there shall be an implied condition that the goods shall be reasonably fit for such purpose.

(4) Where the goods are let under a hire-purchase agreement by reference to a sample there shall be—

(a) an implied condition on the part of the owner that the bulk will correspond with the sample in quality, and

(b) an implied condition on the part of the owner that the hirer will have a reasonable opportunity of comparing the bulk with the sample.

(5) Where the goods are let under a hire-purchase agreement by description there shall be an implied condition that the goods will correspond with the description; and if the goods are let under the agreement by reference to a sample as well as by description, it shall not be sufficient that the bulk of the goods correspond with the sample if the goods do not also correspond with the description.

(6) An owner shall not be entitled to rely on any provision in a hire-purchase agreement excluding or modifying the condition set out in subsection (3) unless he proves that before the agreement was made the provision was brought to the notice of the hirer and its effect made clear to him.

(7) Nothing in this section shall prejudice the operation of any other enactment or rule of law whereby any condition or warranty is to be implied in any hire-purchase agreement.

7. (f) In this section,—

(a) "cash price instalment", in relation to a hire-purchase instalment, means an amount which bears to the net cash price the same proportion as the amount of the hire-purchase instalment bears to the total amount of hire-purchase price;

Limitation on hire-purchase charges.

(b) "deposit" means any sum payable by the hirer under the hire-purchase agreement by way of deposit or other initial payment or credited or to be credited to him under the agreement on account of any such deposit or payment, whether that sum is to be or has been discharged by payment of money or by transfer or delivery of goods or by any other means;

(c) "net cash price", in relation to goods comprised in a hire-purchase agreement, means the cash price of such goods as required to be specified in the hire-purchase agreement under clause (b) of sub-section (1) of section 4, less any deposit as defined in clause (b);

(d) "net hire-purchase charges", in relation to a hire-purchase agreement for any goods, means the difference between the net hire-purchase price and the net cash price of such goods;

(e) "net hire-purchase price", in relation to goods comprised in a hire-purchase agreement, means the total amount of hire-purchase price of such goods as required to be specified in the hire-purchase agreement under clause (a) of sub-section (1) of section 4 less,—

(i) any amount which is payable to cover the expenses of delivering the goods or any of them to or to the order of the hirer and which is specified in the agreement as included in the hire-purchase price;

(ii) any amount which is payable to cover registration or other fees under any law in respect of the goods or the agreement or both and which is specified in the agreement as included in the hire-purchase price; and

(iii) any amount which is payable for insurance (other than third party insurance) in respect of the goods and which is specified in the agreement as included in the hire-purchase price;

(f) "statutory charges", in relation to a hire-purchase agreement, means the aggregate of the amounts calculated in accordance with the provisions of sub-section (2) as statutory charges in respect of each of the cash price instalments corresponding to each of the hire-purchase instalments under the agreement.

(2) The statutory charges, in respect of a cash price instalment, shall be an amount calculated at the rate of thirty per centum per annum or, if a lower rate is specified under sub-section (3), at such lower rate, in accordance with the following formula:—

$$SC = \frac{CI \times R \times T}{100}$$

where,—SC,—represents the statutory charges;

CI,—represents the amount of cash price instalment expressed in rupees or fractions of rupees;

R,—represents the rate; and

T,—represents the time, expressed in years and fractions of years, that elapses between the date of the agreement and the date on which the hire-purchase instalment corresponding to the cash price instalment is payable under the agreement.

(3) The Central Government may, by notification in the Official Gazette, and after consultation with the Reserve Bank of India, specify

the rate *per centum per annum*, being a rate which shall not be less than ten *per centum per annum*, at which statutory charges may be calculated under sub-section (2) and different rates may be so specified in respect of hire-purchase agreements relating to different classes or sub-classes of goods.

(4) Where the net hire-purchase charges in relation to a hire-purchase agreement exceed the statutory charges in relation to such agreement calculated in accordance with the provisions of sub-section (2), the hirer may, by notice in writing to the owner, either elect to treat the agreement as void or to have his liability reduced by the amount by which the net hire-purchase charges exceed the statutory charges aforesaid.

(5) Where a hirer elects, in accordance with the provisions of sub-section (4), to treat the hire-purchase agreement as void, the agreement shall be void, and the amount paid or provided whether by cash, cheque or other consideration, by or on behalf of the hirer in relation to the agreement shall be recoverable by the hirer as a debt due to him by the owner.

(6) Where the hirer elects to have his liability reduced by the amount referred to in sub-section (4), his liability shall be reduced by that amount and that amount may be set off by the hirer against the amount that would otherwise be due under the agreement and, to the extent to which it is not so set off, may be recovered by the hirer as a debt due to him by the owner.

3. Subject to the provisions of this Act, the property in the goods to which a hire-purchase agreement relates shall pass to the hirer only on the completion of the purchase in the manner provided in the agreement. Passing of property.

CHAPTER IV

RIGHTS AND OBLIGATIONS OF THE HIRER

9. (1) The hirer may, at any time during the continuance of the hire-purchase agreement and after giving the owner not less than fourteen days' notice in writing of his intention so to do, complete the purchase of the goods by paying or tendering to the owner the hire-purchase price or the balance thereof as reduced by the rebate calculated in the manner provided in sub-section (2). Right of hirer to purchase at any time with rebate.

(2) The rebate for the purposes of sub-section (1) shall be equal to two-thirds of an amount which bears to the hire-purchase charges the same proportion as the balance of the hire-purchase price not yet due bears to the hire-purchase price.

Explanation.—In this sub-section, "hire-purchase charges" means the difference between the hire-purchase price and the cash price as stated in the hire-purchase agreement.

(3) The provisions of this section shall have effect notwithstanding anything to the contrary contained in the hire-purchase agreement, but where the terms of the agreement entitle the hirer to a rebate higher than that allowed by this section, the hirer shall be entitled to the rebate provided by the agreement.

Right of
hirer to
terminate
agree-
ment
at any
time.

10. (1) The hirer may, at any time before the final payment under the hire-purchase agreement falls due, and after giving the owner not less than fourteen days' notice in writing of his intention so to do and re-delivering or tendering the goods to the owner, terminate the hire-purchase agreement by payment or tender to the owner of the amounts which have accrued due towards the hire-purchase price and have not been paid by him, including the sum, if any, which he is liable to pay under sub-section (2).

(2) Where the hirer terminates the agreement under sub-section (1), and the agreement provides for the payment of a sum named on account of such termination, the liability of the hirer to pay that sum shall be subject to the following conditions, namely:—

(a) where the sum total of the amounts paid and the amounts due in respect of the hire-purchase price immediately before the termination exceeds one-half of the hire-purchase price, the hirer shall not be liable to pay the sum so named;

(b) where the sum total of the amounts paid and the amounts due in respect of the hire-purchase price immediately before the termination does not exceed one-half of the hire-purchase price, the hirer shall be liable to pay the difference between the said sum total and the said one-half, or the sum named in the agreement, whichever is less.

(3) Nothing in sub-section (2) shall relieve the hirer from any liability for any hire which might have accrued due before the termination.

(4) Any provision in any agreement, whereby the right conferred on a hirer by this section to terminate the hire-purchase agreement is excluded or restricted, or whereby any liability in addition to the liability imposed by this Act is imposed on a hirer by reason of the termination of the hire-purchase agreement by him under this section, shall be void.

(5) Nothing in this section shall prejudice any right of a hirer to terminate a hire-purchase agreement otherwise than by virtue of this section.

Right of
hirer to
appropri-
ate
payments
in respect
of two
or more
agree-
ments.

11. A hirer who is liable to make payments in respect of two or more hire-purchase agreements to the same owner shall, notwithstanding any agreement to the contrary, be entitled, on making any payment in respect of the agreement which is not sufficient to discharge the total amount then due under all the agreements to appropriate the sum so paid by him in or towards the satisfaction of the sum due under any one of the agreements, or in or towards the satisfaction of the sums due under any two or more of the agreements in such proportions as he thinks fit, and, if he fails to make any such appropriation as aforesaid, the sum so paid shall, by virtue of this section, stand appropriated towards the satisfaction of the sums due under the respective hire-purchase agreements in the order in which the agreements were entered into.

12. (1) The hirer may assign his right, title and interest under the hire-purchase agreement with the consent of the owner, or, if his consent is unreasonably withheld, without his consent.

Assignment and transmission of hirer's right or interest under hire-purchase agreement.

(2) Except as otherwise provided in this section, no payment or other consideration shall be required by an owner for his consent to an assignment under sub-section (1), and where an owner requires any such payment or other consideration for his consent, that consent shall be deemed to be unreasonably withheld.

(3) Where on a request being made by a hirer in this behalf the owner fails or refuses to give his consent to an assignment under sub-section (1) the hirer may apply to the court for an order declaring that the consent of the owner to the assignment has been unreasonably withheld, and where such an order is made the consent shall be deemed to be unreasonably withheld.

Explanation.—In this sub-section, "court" means a court which would have jurisdiction to entertain a suit for the relief claimed in the application.

(4) As a condition of granting such consent, the owner may stipulate that all defaults under the hire-purchase agreement shall be made good and may require the hirer and the assignee to execute and deliver to the owner an assignment agreement, in a form approved by the owner, whereby, without affecting the continuing personal liability of the hirer in such respects, the assignee agrees with the owner to be personally liable to pay the instalments of hire remaining unpaid and to perform and observe all other stipulations and conditions of the hire-purchase agreement during the residue of the term thereof and whereby the assignee indemnifies the hirer in respect of such liabilities.

(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.

Explanation.—In this sub-section, the expression "legal representative" has the same meaning as in clause (11) of section 2 of the Code of Civil Procedure, 1908.

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(6) The provisions of this section shall, notwithstanding anything to the contrary contained in the hire-purchase agreement.

13. Subject to the provisions of this Act, a hirer shall be bound--

Obligations of hirer to comply with agreement.

- (a) to pay the hire in accordance with the agreement, and
(b) otherwise to comply with the terms of the agreement.

14. (1) A hirer in the absence of a contract to the contrary,

Obligation of hirer in respect of care to be taken of goods.

- (a) shall be bound to take as much care of the goods to which the hire-purchase agreement relates as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value;

(b) shall not be responsible for the loss, destruction or deterioration of the goods, if he has taken the amount of care thereof described in clause (a).

(2) The hirer shall be liable to make compensation to the owner for any damage caused by failure to take care of the goods in accordance with the provisions of sub-section (1).

Obligation of hirer in respect of use of goods.

15. If the hirer makes any use of the goods to which the hire-purchase agreement relates which is not according to the conditions of the agreement, the hirer shall be liable to make compensation to the owner for any damage arising to the goods from or during such use.

Obligation of hirer to give information as to whereabouts of goods.

16. (1) Where by virtue of a hire-purchase agreement a hirer is under a duty to keep in his possession or control the goods to which the agreement relates, the hirer shall, on receipt of a request in writing from the owner, inform the owner where the goods are at the time when the information is given or, if it is sent by post, at the time of posting.

(2) If the hirer fails without reasonable cause to give the said information within fourteen days of the receipt of the notice, he shall be punishable with fine which may extend to two hundred rupees.

Rights of hirer in case of seizure of goods by owner.

17. (1) Where the owner seizes under clause (c) of section 19 the goods let under a hire-purchase agreement, the hirer may recover from the owner the amount, if any, by which the hire-purchase price falls short of the aggregate of the following amounts, namely:—

(i) the amounts paid in respect of the hire-purchase price up to the date of seizure;

(ii) the value of the goods on the date of seizure.

(2) For the purposes of this section, the value of any goods on the date of seizure is the best price that can be reasonably obtained for the goods by the owner on that date less the aggregate of the following amounts, namely:—

(i) the reasonable expenses incurred by the owner for seizing the goods;

(ii) any amount reasonably expended by the owner on the storage, repairs or maintenance of the goods;

(iii) (whether or not the goods have subsequently been sold or otherwise disposed of by the owner) the reasonable expenses of selling or otherwise disposing of the goods; and

(iv) the amount spent by the owner for payment of arrears of taxes and other dues which are payable in relation to the goods under any law for the time being in force and which the hirer was liable to pay.

(3) If the owner fails to pay the amount due from him under the provisions of this section or any portion of such amount, to the hirer within a period of thirty days from the date notice for the payment of the said amount is served on him by the hirer the owner shall be liable to pay interest on such amount at the rate of twelve per cent per annum from the date of expiry of the said period of thirty days.

(4) Where the owner has sold the goods seized by him the onus of proving that the price obtained by him for the goods was the best price that could be reasonably obtained by him on the 4th date of seizure shall lie upon him.

CHAPTER V

RIGHTS AND OBLIGATIONS OF THE OWNER

18. (1) Where a hirer makes more than one default in the payment of hire as provided in the hire-purchase agreement then, subject to the provisions of section 21 and after giving the hirer notice in writing of not less than—

(i) one week, in a case where the hire is payable at weekly or lesser intervals; and

(ii) two weeks, in any other case,

the owner shall be entitled to terminate the agreement by giving the hirer notice of termination in writing:

Provided that if the hirer pays or tenders to the owner the hire in arrears together with such interest thereon as may be payable under the terms of the agreement before the expiry of the said period of one week or, as the case may be, two weeks, the owner shall not be entitled to terminate the agreement.

(2) Where a hirer—

(a) does any act with regard to the goods to which the agreement relates which is inconsistent with any of the terms of the agreement; or

(b) breaks an express condition which provides that, on the breach thereof, the owner may terminate the agreement,

the owner shall, subject to the provisions of section 22, be entitled to terminate the agreement by giving the hirer notice of termination in writing.

19. Where a hire-purchase agreement is terminated under this Act, then the owner shall be entitled,—

(a) to retain the hire which has already been paid and to recover the arrears of hire due:

Provided that when such goods are seized by the owner, the retention of hire and recovery of the arrears of hire due shall be subject to the provisions of section 17;

(b) subject to the conditions specified in clauses (a) and (b) of sub-section (2) of section 10, to forfeit the initial deposit, if so provided in the agreement;

(c) subject to the provisions of section 17 and section 20 and subject to any contract to the contrary, to enter the premises of the hirer and seize the goods;

(d) subject to the provisions of section 21 and section 22, to recover possession of the goods by application under section 20 or by suit;

(e) without prejudice to the provisions of sub-section (2) of section 14 and of section 15, to damages for non-delivery of the goods, from the date on which termination is effective, to the date on which the goods are delivered to or seized by the owner.

Rights of owner to terminate hire-purchase agreement for default in payment of hire or unauthorised act or breach of express conditions.

Rights of owner on termination.

Restriction on owner's right to recover possession of goods otherwise than through court.

20. (1) Where goods have been let under a hire-purchase agreement and the statutory proportion of the hire-purchase price has been paid, whether in pursuance of the judgment of a court or otherwise, or tendered by or on behalf of the hirer or any surety, the owner shall not enforce any right to recover possession of the goods from the hirer otherwise than in accordance with sub-section (3) or by suit."

Explanation.—In this section, "statutory proportion" means,—

- (i) one-half, where the hire-purchase price is less than fifteen thousand rupees; and
- (ii) three-fourths, where the hire-purchase price is not less than fifteen thousand rupees;

Provided that in the case of motor vehicles as defined in the Motor Vehicles Act, 1939, "statutory proportion" shall mean,—

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- (i) one-half, where the hire-purchase price is less than five thousand rupees;
- (ii) three-fourths, where the hire-purchase price is not less than five thousand rupees but less than fifteen thousand rupees;
- (iii) three fourths or such higher proportion not exceeding nine-tenths as the Central Government may, by notification in the Official Gazette, specify, where the hire-purchase price is not less than fifteen thousand rupees.

(2) If the owner recovers possession of goods in contravention of the provisions of sub-section (1), the hire-purchase agreement, if not previously terminated, shall terminate, and—

(a) the hirer shall be released from all liability under the agreement and shall be entitled to recover from the owner all sums paid by the hirer under the agreement or under any security given by him in respect thereof; and

(b) the surety shall be entitled to recover from the owner all sums paid by him under the contract of guarantee or under any security given by him in respect thereof.

(3) Where, by virtue of the provisions of sub-section (1), the owner is precluded from enforcing a right to recover possession of the goods, he may make an application for recovery of possession of the goods to any court having jurisdiction to entertain a suit for the same relief.

(4) The provisions of this section shall not apply in any case in which the hirer has terminated the agreement by virtue of any right vested in him.

Relief against termination for non-payment of hire.

21. Where the owner, after he has terminated the hire-purchase agreement in accordance with the provisions of sub-section (1) of section 18, institutes a suit or makes an application against the hirer for the recovery of the goods, and at the hearing of the suit or application, the hirer pays or tenders to the owner the hire in arrears, together with such interest thereon as may be payable under the terms of the agreement and the costs of the suit or application incurred by the owner and complies with such other conditions, if any, as the court may think fit to impose, the court may, in lieu of making a decree or order for specific delivery, pass an order relieving the hirer against the termination; and thereupon the hirer shall continue in possession of the goods as if the agreement had not been terminated.

22. Where a hire-purchase agreement has been terminated in accordance with the provisions of clause (a) or clause (b) of sub-section (2) of section 18, no suit or application by the owner against the hirer for the recovery of the goods shall lie unless and until the owner has served on the hirer a notice in writing,—

Relief against termination for unauthorised act or breach of express condition.

(a) specifying the particular breach or act complained of; and

(b) if the breach or act is capable of remedy, requiring the hirer to remedy it,

and the hirer fails, within a period of thirty days from the date of the service of the notice, to remedy the breach or act if it is capable of remedy.

Obligation of owner to supply copies and information.

23. (1) It shall be the duty of the owner to supply, free of cost, a true copy of the hire-purchase agreement, signed by the owner,—

(a) to the hirer, immediately after execution of the agreement; and

(b) where there is a contract of guarantee, to the surety, on demand made at any time before the final payment has been made under the agreement.

(2) It shall also be the duty of the owner, at any time before the final payment has been made under the hire-purchase agreement, to supply to the hirer, within fourteen days after the owner receives a request in writing from the hirer in this behalf and the hirer tenders to the owner the sum of one rupee for expenses, a statement signed by the owner or his agent showing—

(a) the amount paid by or on behalf of the hirer;

(b) the amount which has become due under the agreement but remains unpaid, and the date upon which each unpaid instalment became due, and the amount of each such instalment; and

(c) the amount which is to become payable under the agreement, and the date or the mode of determining the date upon which each future instalment is to become payable, and the amount of each such instalment.

(3) Where there is a failure without reasonable cause to carry out the duties imposed by sub-section (1), or sub-section (2), then, while the default continues,—

(a) the owner shall not be entitled to enforce the agreement against the hirer or to enforce any contract of guarantee relating to the agreement, or to enforce any right to recover the goods from the hirer; and

(b) no security given by the hirer in respect of money payable under the agreement or given by a surety in respect of money payable under such a contract of guarantee as aforesaid shall be enforceable against the hirer or the surety by any holder thereof, and, if the default continues for a period of two months, the owner shall be punishable with fine which may extend to two hundred rupees.

(4) Nothing in sub-section (3) shall be construed as affecting the right of a third-party to enforce against the owner or hirer or against both the owner and the hirer any charge or encumbrance to which the goods covered by the hire-purchase agreement are subject.

CHAPTER VI

MISCELLANEOUS

Dis-charge of price otherwise than by payment of money.

24. Where an owner has agreed that any part of the hire-purchase price may be discharged otherwise than by the payment of money, any such discharge shall, for the purposes of section 10, section 11, section 17, section 20 and section 23, be deemed to be a payment of that part of the hire-purchase price.

Insolvency of hirer, etc.

25. (1) Where, during the continuance of the hire-purchase agreement, the hirer is adjudged insolvent under any law with respect to insolvency for the time being in force, the Official Receiver or where the hirer is a company, then in the event of the company being wound up, the liquidator, shall have, in respect of the goods which are in the possession of the hirer under the agreement, the same rights and obligations as the hirer had in relation thereto.

(2) The Official Receiver or the liquidator, as the case may be, may, with the permission of the Insolvency Court or the court in which the winding up proceedings are pending, assign the rights of the hirer under the agreement, to any other person, and the assignee shall have all the rights and be subject to all the obligations of the hirer under the agreement.

Explanation.—In this section, "Official Receiver" means an Official Receiver appointed under the Provincial Insolvency Act, 1920, and includes 5 of 1926 any person holding a similar office under any other law with respect to insolvency for the time being in force.

Successive hire-purchase agreements between same parties.

26. Where goods have been let under a hire-purchase agreement, and at any time thereafter the owner makes a subsequent hire-purchase agreement with the hirer, whether relating exclusively to other goods or to other goods together with the goods to which the first agreement relates, any such subsequent hire-purchase agreement shall not have effect in so far as it affects prejudicially any right which the hirer would have had by virtue of section 20 under the first agreement, if such subsequent hire-purchase agreement had not been made.

Evidence of adverse detention in suit or application to recover possession of goods.

27. (1) Where, in a suit or application by an owner of goods which have been let under a hire-purchase agreement, to enforce a right to recover possession of the goods from the hirer, the owner proves that, before the commencement of the suit or application and after the right to recover possession of the goods accrued, the owner made a request in writing to the hirer to surrender the goods, the hirer's possession of the goods shall, for the purpose of the owner's claim to recover possession thereof, be deemed to be adverse to the owner.

(2) Nothing in this section shall affect a claim for damages for conversion.

28. If, during the subsistence of any restriction to which the enforcement by an owner of a right to recover possession of goods from a hirer is subject by virtue of this Act, the hirer refuses to give up possession of the goods to the owner, the hirer shall not, by reason only of such refusal, be liable to the owner for conversion of the goods.

Hirer's refusal to surrender goods not to be conversion in certain cases.

29. Any notice required or authorised to be served on or given to an owner or a hirer under this Act may be so served or given—

Service of notice.

(a) by delivering it to him personally; or

(b) by sending it by post to him at his last known place of residence or business.

30. Where the Central Government is satisfied that having regard to—

Power to exempt from provisions of sections 6, 9, 10, 12 and 17 in certain cases.

(a) the short supply of any goods or class of goods, or

(b) the use or intended use of any goods or class of goods and the persons by whom such goods or class of goods are used or intended to be used, or

(c) the restrictions imposed upon the trade or commerce in any goods or class of goods, or

(d) any other circumstances in relation to any goods or class of goods,

it is necessary or expedient in the public interest so to do, the Central Government may, by notification in the Official Gazette, direct that clause (b) of sub-section (2) of section 6, section 9, section 10, section 12 and section 17 or any of them shall not apply or shall apply with such modifications as may be specified in the notification, to hire-purchase agreements relating to such goods or class of goods.

31. This Act shall not apply in relation to any hire-purchase agreement made before the commencement of this Act.

Act not to apply to existing agreements.