



ONLINE CONSUMER PROTECTION - PRESENT REALITIES, PRESSING PROBLEMS AND FUTURE PROSPECTS

Seied Beniamin Hosseini¹

¹PG Student in MBA, B.N. Bahadur Institute of Management Sciences (BIMS),
University of Mysore, Mysore, Karnataka, India.

Dr. D. Anand²

²Professor, B.N. Bahadur Institute of Management Sciences (BIMS),
University of Mysore, Mysore, Karnataka, India.

ABSTRACT

Recently, in 2015 the Consumer Affairs Minister, Mr. Ram Vilas Paswan, introduced the Consumer Protection Bill 2015, which is likely to replace the old Consumer Protection Law of 1986. The 1986 Act was introduced to protect the consumers from unfair trade practices and to redress their grievances & disputes by establishing various consumer councils. However there were certain lacunae in the said Act. The Act did not provide for any remedy to the web consumers. A consumer can bring an action against the seller only in the place where the transaction took place. The new bill on the other hand, aims to fill the gaps by widening the scope and ambit of the old law and bringing about radical changes in order to ensure speedy and inexpensive justice to aggrieved consumers. The activists of Consumer Protection Bill believe that the new bill is likely to make process of consumer grievance redressal more complex and burdensome.

KEYWORDS: Consumer Protection Act ,India, Online Consumer ,Buyer, Seller ,Contract , CPA

INTRODUCTION

The Consumer protection law rests on the foundations of contract law, law of sale of goods and law of torts. Taking the rights of the consumer as given in these laws, these laws are well settled for more than 150 years. Law of torts is vigorously developing and finding newer applications but the core principles of the field are well settled for decades. A consumer law has to conceptually express this foundation. This is for these reasons. One, reaffirm the existing rights. Two, locate additional rights which are being created for the consumer with reference to the foundational laws. Three, make it clear at each stage that the consumer law has to be read with reference to the foundational law.

In enacting the Consumer Protection Act, 1986, this aspect of consumer law was ignored. The Act was drafted in itself, without using the standard lexicon of

contract law and the law of sale of goods. As a result, the CPA lacks conceptual clarity and is unhappily drafted. The bill started out as an amendment to the Consumer Protection Act, 1986 (CPA). At some stage, it was realised that the amendments were numerous. Following this, the amendment bill was turned into an original bill, to replace the CPA. This seemingly harmless act has had unintended consequences. The bill ends up heavily borrowing from the CPA in content, structure and style and ends up making all the problems its own. There may still be justification for the shortcomings in the CPA. It was the first consumer law in India, enacted 30 years back. In these 30 years, we understand all these fields and their relations much better. Casting the bill on the CPA, is to jettison the advances of knowledge in these 30 years.

The Indian Contract Act, 1872 was based on the British common law. The Sale of Goods Act, 1930 was drawn from the British sale of goods Act, 1893, which was a codification of the common law. Law of torts continues to be a common law creation. As the principles are the same, the courts continue to draw from each other in understanding and elaborating them. In this, the British courts have had a pre-eminent position, particularly, in the commonwealth part of the world. The Indian courts, like their counter-parts elsewhere, routinely turn to the UK law for elaboration of the principle and its justification. Consistent with this, we will be turning to the law in the UK and court judgements for elaboration of the principles and experiences. A further reason for this is India was an economy characterised as a 'licence permit' economy. As there were limited disputes, our courts did not get to elaborate the commercial laws.

The salient features of the new bill include establishment of an independent executive agency, the Central Consumer Protection Authority (CCPA), which will serve as a regulatory body to take care of the rights of the consumers. The authority will have a right to recall the products and cancel the advertisements in case of misleading advisements. It will also be empowered to commence class action lawsuits against companies that are evading the statutes of the law and it will now, also, cover Indian e-commerce portals. The new bill confers power on the authority to initiate action against the manufacturers on its own unlike the old Act where the consumer is required to file a case before the court to initiate proceedings.

The new bill is proposed on the lines of institutions in USA and European countries which provide that a consumer protection law should derive its basis from the contract law and the law of sale of goods without which the law of consumer protection tends to be confusing and conflicting. Describing standard form contracts to be 'of comparative modern origin', Lord Diplock, in the 1974 judgment in *Schroeder Music Publishing Co Ltd. v. Macaulay*,¹ complained that the corporations being stronger effectively confronted the customer with a condition to accept the goods with all the terms, or reject them altogether. Lord Denning, another reformer, corrected that the customer was not even given the freedom of 'take it or leave it.' Instead, he was simply given a form and told: 'sign here'. And if things went wrong, the corporation would shift the burden on the consumers for having accepted the goods with full knowledge of the terms imposed.²

¹ [1974] 1 WLR 1308.

² *Levison v. Patent Steam Carpet Cleaning Co. Ltd.*, (1977) 3 All ER 498.

Therefore, in order to protect the interests of the disadvantaged party, the British courts recognised the principle of contract law by virtue of which the weaker party could avoid the contract if a party to the contract committed a fundamental breach. UK incorporated this principle in case of consumer contracts also by enacting the Unfair Terms in Consumer Contracts Regulations, 1999 wherein an unfair term in a contract concluded with a consumer by a seller or supplier shall not be binding on the consumer.

However, the earlier consumer protection law of India did not recognise this aspect in case of consumer contracts. The 2015 bill has incorporated the above principle by introducing a 'product liability' clause which mandates that if product/services causes personal injury, death or property damage, the authority will take action against defaulting manufacturers or service providers.³ Thus by introducing this clause the new bill protects the interests of the online consumers as well who enter into a contract with sellers of online stores to purchase the products without having any means to sample and test the products and services that they are purchasing.

The Bill also fixes product liability upon the manufacturer for any defect in the product if such a product inflicts any damage, personal injury or results in a death of the consumer. In certain cases, the seller could also be held liable for the same. The Bill limits the ability to claim damages on account of mental agony only to cases where personal injury is actually caused. Furthermore, the Act envisages consumer complaints to be resolved expeditiously within three to five months.

The concerned forum is also authorised to cancel unfair terms and conditions in a contract to protect the exploitation of the consumers by traders/service providers. The bill therefore recognises that there is no place for unfair contract terms in consumer contracts.⁴ This necessarily means that a contract is binding but not the unfair terms in it. If, however, the cancellation of such unfair terms goes to the root of the contract, the contract would be held void.

It is often contended that Indian consumers face a variety of threats when shopping online due to the shortcomings in the Consumer Protection Act, 1986. The use of internet for purchasing products, the online mode of payment, and such other digital activities raise a number of issues with regard to consumer protection. The new bill proposes to cover all such shortcomings by acknowledging

³ Section 72(1) of the Consumer Protection Bill, 2015.

⁴ Section 2(42), the Consumer Protection Bill, 2015.

the new consumer trends emerging through the e-commerce platform. Various aspects of e-commerce which are often considered as unethical such as misleading advertisements to consumers, online multi-level marketing, direct selling practices and many other potentially unethical business practices which might mislead or exploit consumers are specifically targeted by the new legislation. Direct interventions and class actions by the regulatory authority for consumers with grievances will therefore now increase the cost of doing business for some companies. E-commerce businesses must particularly take note of the “product liability” section of the bill. If the amendments are passed, action will be taken against manufacturers that sell products and services which cause death, damage or injury to the consumers. The bill provides for a mediation option that can be used by both parties as an alternative dispute resolution mechanism to ensure speedy and inexpensive justice.

For the said purpose, the National, State or district forum will be entitled to mediate a dispute between the parties. The State Government is empowered to establish District Consumer Mediation Cell attached to the District Commission in each district of the State and a Consumer Mediation Cell attached to the State Commission.⁵ The new law provides for punishment up to life imprisonment in certain cases of food poisoning. Thus the 2015 bill incorporates stringent punishment against the incidents of fraud and cheating.

Another noteworthy feature of the 2015 bill is the provision of cooling off. The new bill gives the right of cooling off in consumer contracts. Ordinarily the rule is that once a contract is made, it is final and binding on all the parties. But the cooling-off clause gives right to a consumer to return the goods purchased by him within the specified time period and get the payment back if the goods are not in conformity. Many countries recognise this rule. In UK, the Consumer Credit Act, 1974 allows a 14 days cooling-off period in consumer credit.⁶ Canada also recognises the law on cooling off which varies from state to state depending on the type the contracts.⁷

India on the other hand did not specifically provide for any provision for cooling-off period except in insurance contracts. The rule was once a contract is entered into between the parties it is final and its sanctity must be preserved. However, the government of India

to introduce exceptions to this general rule particularly in e-commerce transactions where the consumer is very often at disadvantaged situation since he does not get a chance to see the goods or ascertain services. Also consumers in India are often misled by the unfair and false advertising. The consumer buys product by placing his reliance on the advertisements. It is only after he makes purchase, the consumer realises that he has been misled by the false advertisement. Even in case of electronic contracts, it is only after the consumers receives the delivery of the products, he realises that the said products are not in conformity with the goods which were displayed in the online stores and were ordered by him. Many a times, the consumer however was able to set aside the contract but the retailer will refuse to entertain his complaint by shifting the blame on the manufacturer who issues the advertisements. Therefore in this background, there was a need in India for introducing the concept of cooling-off in every consumer sales contract.

The 1986 Act did not have any clear provision for cooling-off. It only talked about ‘reasonable length of time’ but did not define what constitutes *reasonable*. This gave wide discretion to retailers to set their own ‘reasonable length of time’, which could be as little as nine days in extreme cases. Therefore, in order to obtain a balance between the rights of the consumer and the inconvenience caused to the trader, the Consumer Protection Bill, 2015 provides for a cooling-off period of 30 days. This period enables the consumer to cancel the contract within the prescribed limit in case of any hardship caused to him due to any misrepresentation on the part of the seller. Similarly the interests of the seller is also taken into account as the trader is not required to provide service till the cooling off period is over. Similarly, it also protects the interests of those persons who buy digital content such as e-books, or online films and music by giving them the option of replacement in case the downloads does not work, but not a refund. Thus, it can be said that the 2015 bill provides for a comprehensive framework to look after the interests of the consumers.

CONSUMER IN CONTRACT LAW

The bill defines a consumer to be a person who enters in a contract to buy goods or avail services. Once a consumer has been defined as a contracting party, the rights of a consumer come to rest on the well settled

made efforts

⁵ Section 63(1), the Consumer Protection Bill, 2015.

⁶ The Consumer Credit Act, 1974.

⁷ Akhileshwar Pathak, *E-Retailing and the Consumer Protection Bill, 2015: Drawing from the European Union Consumer Directives*, Indian Institute of Management Ahmedabad-380 015, India.

contract law and the law of sale goods. For this reason a person becomes a bearer of rights by entering into a contract, or by virtue of family law or a law made by the legislature.

A consumer, as a contracting party, can approach a civil court for seeking a remedy for a breach. **The courts;** A consumer would rather forgo his legal rights than approach a civil court. However, are procedure bound, expensive and time consuming. Further, most consumer contracts are of small value. Thus, a consumer is effectively left remediless. This is where the CPA stepped in and created a three tiered consumer forum for a consumer to seek remedy from. The forums followed simple procedures and were bound to give remedy within months.

The consumer law should at least give these rights, if not create further rights. For every breach, the party who has suffered breach can claim damages to cover the loss caused by the breach. In addition, a contracting party can terminate the contract for breach of a substantial aspect of the contract. A substantial part of a contract is a 'condition' of the contract. On the breach of a peripheral aspect of the contract, the other party can claim damages but not terminate the contract. A subsidiary aspect of a contract is a 'warranty' to the contract. In the case of a breach of a warranty, the parties must get on with the contract⁸ In each case, the courts decided whether the term breached was a core of the contract (condition) or a subsidiary part (warranty)⁹ With these developments, the contracting parties learnt not to leave this to chance and provided in the contract on the rights of the contracting parties to terminate the contract. Thus, a contracting party can terminate a contract as provided in the contract. If the contract has no terms on termination, the party can terminate the contract for a significant breach.

RIGHTS OF THE BUYER IN A SALE CONTRACT

With the development of the economy, specialised forms of contract developed and with them, law dealing with special contracts. The first to develop was the law of sale of goods. A sale was a contract where the seller transferred the ownership in goods to the buyer for a price. The law of sale of goods developed on the foundation of contract law. In Britain, the common law principles were codified as the Sale of Goods Act in 1893.

Borrowing from this, in

⁸ *Wallis, Son and Wells v. Pratt and Haynes, (1911-1913) All ER Rep 989* explains the concepts of condition and warranty.

⁹ *Hong Kong Fir Shipping Company v. Kawasaki Kisen Kaisha Limited, (1962) 2 QB 26.*

India, the Sale of Goods Act, 1930 was enacted. The common law recognised certain rights of the buyer in relation to the seller. In every sale contract, the buyer was taken to have the right (implied) to terminate the contract if any of the followings in relation to the quality of goods were not met. One, the supplied goods did not meet the description. Two, the supplied goods were not of merchantable quality. Goods are not of merchantable quality if these are not fit for their basic ordinary use. Three, the goods were not suitable for the agreed purpose. As a breach of a requirement gave the right to terminate the contract, it was a 'condition' of the contract. The conditions were 'implied' as these were to be inserted in a contract even if the parties were silent on it. Thus, the law calls these 'implied conditions'. Having created the right for the buyer, the law gave the freedom to the contracting parties to oust these in express terms. Section 62 of the Sale of Goods Act, 1930 provides "Exclusion of implied terms and conditions, where any right, duty or liability would arise under a contract of sale by implication of law, it may be negated or varied by express agreement ... " hence there are two aspects of requirement for ousting the implied conditions in express terms. First, there must be a written contract. Second, the courts have ruled that as the implied conditions are given by law as a right to the buyer, these can be vacated only if it is absolutely clear and categorical that the parties want to oust it. Further more, contract law developed with the traders. It proliferated as consumer contracts only in the post-war years and The courts made a distinction between consumer contracts and commercial contracts. In today's parlance, commercial contracts are called business-to-business contracts. In a business-to-business contract, the parties have latitude to settle on what they want for a price. Every term has a price and these get negotiated. If the buyer wants greater protection, he will be charged for it with a higher price.

Alternately, if the buyer settles for something less, he will negotiate a lower price. Businessmen will have different needs and come up with varied practices to suit their needs. The courts respect the freedom of contract and do not interfere with the terms.¹⁰

Consumer contracts are different in footing. These are of mass produced goods moving to the end users, for household use. The contracts are, invariably, on standard terms set by the seller and the buyer does not have the freedom to negotiate the terms. For this reason,

¹⁰ *KG Bominflot Bunkergesellschaft für Mineralöle mbH & Co v. Petroplus Marketing AG (The Mercini Lady) [2010] EWCA Civ 1145; Air Transworld Ltd v Bombardier Inc. [2012] 1 C.L.C. 145; and Dalmare SpA v Union Maritime Ltd, [2013] 1 C.L.C. 59.*

the courts have treated it as a separate category and extended protection wherever they can. For instance, the courts would never import past dealing or trade practices in a consumer contract if it is to the detriment of a consumer.¹¹ The courts attempted to develop protection against unfair terms for consumers deploying the principles of contract law.¹² Following this, the British Parliament enacted the Unfair Contract Terms Act, 1977, giving protection to consumers against unfair terms. It is evident that the law developed a valuable right for the buyer in the implied conditions. To deprive a consumer of the protection is an unfair term. The Unfair Contract Terms Act, 1977 specifically provides on it. Section 6(2) provides that in a consumer contract, the implied conditions on conformity of the goods with description, merchantability or fitness for a particular purpose cannot be 'excluded or restricted by reference to any contract term.' This has been assimilated in the UK's, the Consumer Rights Act, 2015. The Australian law, Competition and Consumer Act, 2010 also does not give the freedom in a consumer contract to oust the implied conditions.

The CPA did not have provisions on unfair contract terms. Enacted in 1986, the developments on unfair contract terms were still not in the horizon. The bill recognises that there is no place for unfair contract terms in consumer contracts. It makes provisions to declare any unfair contract term void.¹³ The definition, as it should be expected, is broad to include ousting of the implied conditions to be an unfair contract term. In fact, the definition should be re-worked to provide an exhaustive list of kinds of unfair contract terms. We can safely take it to be the intention of the bill to keep the implied conditions on quality as an inviolate right of the consumer. The text of the bill, thus, should make the following declaration:

Ousting of implied conditions and warranties void¹⁴; The implied conditions and warranties created for the buyer in the Sale of Goods Act, 1930 cannot be limited or excluded by contract terms. A contract term ousting the implied conditions and warranties is void.

¹¹ *Photo Production Ltd v Securicor Transport Ltd*, 1980 AC 827.

¹² *Mccutcheon (A. P.) v. David Macbrayne Limited*, 1964 1 WLR 430; *Hollier v. Rambler Motors (1972) QB 2*; and *British Crane Hire Corporation v. Ipswich Plant Hire Limited*, (1975) QB 303.

¹³ Some of the cases where the British courts attempted to develop protection against unfair terms were *Levison v. Patent Steam Carpet Cleaning Co. Ltd.*, (1977) 3 All ER 498; *J. Spurling, Ltd. v. Bradshaw*, (1956) 2 All ER 121; and *Photo Production Ltd. v. Securicor Transport Ltd.*, (1978) 3 All ER 146. The British Parliament stepped-in by enacting the Unfair Contract Terms Act, 1977.

¹⁴ See Section 2(42), the Consumer Protection Bill, 2015.

IMPLIED CONDITIONS IN CONSUMER PROTECTION BILL 2015

A rational basis for a consumer law is that a consumer has certain rights. A consumer can approach a court or a forum for the enforcement of the right. The CPA does not follow this basic organising principle and the bill in copying it, repeats it. It defines 'defect' and gives the power to the forum to remedy 'defect in goods'. Defect is defined as:

(11) "defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods and the expression "defective" shall be construed accordingly;

The provision is not stated as a right of the buyer. Even if one takes it as a right, it is a self-contained right within the bill. While Section 3 of the bill mentions that it applies in addition to and not in derogation' to the other existing laws, it opens up doubt on the scope of 'defect'. The law of sale of goods is well settled for 100 years. The three implied conditions have come to cover any grievance the buyer may have in relation to the quality of goods. This has been in the original scope of the three implied conditions as well as meaning given to the terms by the court judgements. It was said close to hundred years back, the three implied conditions are so comprehensive that the rule no more was 'caveat emptor' but 'caveat vendor'.¹⁵ There is no gain in jettisoning the well settled terms and introduce a new term 'defect'. If the three implied conditions put together have become inadequate in any respect, the answer is not in jettisoning the terms. It is in building on them and strengthening them. For example, the Sale of Goods Act, 1979 of the UK has replaced merchantable quality with 'satisfactory quality'. The Consumer Rights Act, 2015 has added further to the implied conditions.

¹⁵ *Grant v Australian Knitting Mills, Ltd.*, [1936] AC 85.

For instance one of the significant features of the new bill is to bring the online consumers under the gamut of the Act as there is no dedicated Act for e-commerce. The decision came after the Maggi Controversy which resulted in growing concern over the safety of consumers. Further, due to expansion of e-commerce and online shopping in India, consumers these days have also become exposed to new forms of unfair trade and unethical business practices. There has been an increased use of internet these days for purchasing purposes. Transactions taking place over the internet are bereft of interaction between the buyer and the seller, as a result of which the former is unable to inspect the quality of the goods offered to him. Fraudulence in online payments is also common. Therefore the need was felt for protecting the consumers against these technological challenges and to allow for a 'territory free' legal action against any goods or service provider. Thus, instead of defining 'defect' in goods, the rights of the rights of the buyer should be listed as the right to terminate the contract on breach of an implied condition.

Beyond the three implied conditions, the contract may set further standards of quality of goods and give the rights to the buyer to terminate for contract for its breach. For example, a premium product comes with the term: 'The goods would be of excellent and outstanding quality and worth the money'. The contract term may provide the right to the consumer to terminate the contract if the quality is not met. This is an express term in the contract giving a right to the buyer to terminate the contract. At times, the contract may not state the right to terminate in express terms but one can infer it from the terms. For example, 'Satisfaction guaranteed- money return' implies that the buyer can terminate the contract if he is not satisfied with the goods. Thus, the buyer can have the right to terminate the contract due to express or implied terms in the contract.

DURABILITY OF GOODS AND TERMINATION OF A CONTRACT

Business law developed over the centuries in a context where trade and commerce was rudimentary. The requirement of merchantability developed in a context where the parties were dealing with farm produce and basic goods.¹⁶ Whether the goods were merchantable or not was a matter to be judged then and there with reference to the goods delivered. With manufactured and durable goods, if these were not working or stopped

working soon after being delivered, there was no difficulty in claiming that the seller had not delivered goods of merchantable quality. For example, if a mobile phone stopped working within days of purchase, it was clear that the seller had supplied a defective mobile phone. The buyer was in his rights to terminate the contract and return the goods. Difficulty arises when the goods break down after a longer period of delivery. It is retrospectively clear that the seller has delivered goods which are not of merchantable quality. Thus seen, the buyer should be free to terminate the contract. In case of termination, however, the buyer should get back his money and return the goods in as good a condition as he got it. However, this is not possible as the buyer has used the goods. This being the case, the buyer should compensate the seller for the use he has made of the goods. This can be done by finding a value for the depreciation of the goods. Despite this, the seller will get left with used goods for which he may not find value.

Another principle of the law of sale of goods stepped-in to resolve the question. The law gives only a 'reasonable time' for a buyer to reject the goods. The basis for this was the buyer must be given time to examine the delivered goods. At the same time, the seller cannot be left in suspension forever whether the goods are being accepted or not. There must be commercial certainty. The balancing was done by stating that the buyer only has a reasonable time for rejecting the goods.

Bernstein v Pamsons Motors (Golders Green) Ltd,¹⁷ was a test case where all the motor car sellers wanted an answer to the question of merchantability of cars and the right of the buyer to reject. The buyer discovered serious defect in a new car after three weeks, when the car had done 225 Kms. The court noted that the reasonable time period was to 'inspect and try out' the goods 'generally rather than with an eye to any specific defect.' The court was of the view:

"to project the period further would be artificial and contrary to the general legal proposition that there should, whenever possible, be finality in commercial transactions. ... In my judgment, the nature of the particular defect, discovered ex post facto, and the speed with which it might have been discovered, are irrelevant to the concept of reasonable time in section 35 as drafted. ... The complexity of the intended function of the goods is clearly of prime consideration here. What is a reasonable time in relation to a bicycle would hardly suffice for a nuclear submarine. "

¹⁶ *Gardiner v Grey*, 171 ER 46 is a 1815 judgement cogently stating the principle of merchantability.

¹⁷ *Bernstein v Pamsons Motors (Golders Green) Ltd*, [1987] R.T.R. 384.

Applying the principle, the court was of the view that three weeks was a reasonable time for the buyer to have examined the car and taken a decision. The buyer, thus, lost the right to reject the goods and terminate the contract. The implied condition had become a warranty and he had the right to get the goods repaired or replaced. The Indian law is identical. Section 42 of the Sale of Goods Act, 1930 gives a reasonable time for the buyer to reject the goods. Failing this, the implied condition would get turned into an implied warranty.

In the UK, however, the Sale and Supply of Goods Act, 1994 changed the thrust of 'reasonable time'. In *Clegg v. Olle Andersson*¹⁸ the Court of Appeal explained it that the buyer having a reasonable time to inspect the goods was only one of the questions to be answered in deciding whether the goods were accepted. Further, the time taken in requesting for repairs or agreeing to repairs or carrying them out was not to be counted. In an earlier case, *Rogers v Parish (Scarborough) Ltd.*¹⁹, a buyer rejected a car after six months when the car had done more than 8800 Kms. The lawyer for the seller did not consider the argument of a 'reasonable time' to be a significant one to the case. The court, allowed the buyer to terminate the contract. The Consumer Rights Act, 2015 has resolved the doubt over the 'reasonable time' by fixing it at 30 days.

As a summary buyer has a right to terminate the contract on the grounds that the supplied goods do not meet the implied conditions. However, the right of rejection has to be exercised within a 'reasonable time'. Once the reasonable time lapses, the implied condition becomes a warranty.

The buyer cannot terminate the contract but has the right of getting the goods repaired or replaced. We may learn from the UK experience and settle for 30 days to be the time window for the consumer to reject the goods.

RIGHT OF THE BUYER TO TERMINATE THE CONTRACT - BILL REMEDY

The contract may have express or implied terms giving the right to the consumer to terminate the contracts on being supplied with goods not in conformity with the contract. In addition, irrespective of the contract terms, if the implied conditions given by the Sale of Goods Act, 1930 are not met, the buyer can terminate the contract. The first implied condition is that the supplied goods must be in conformity with description. This can be breached in

a variety of ways. The second implied condition is of merchantability. The goods are not fit for their basic use. The third implied condition is fitness for a purpose. The contract may have described the purpose which the product serves. The three implied conditions have a very wide scope. On being supplied with the goods, if the goods do not meet any of the implied conditions, the consumer has a right to terminate the contract. In this case, the trader should return any money taken from the buyer and the buyer should return the goods to the trader. The buyer will further claim damages arising from the breach.

A buyer who has the right to terminate the contract may not terminate the contract. In this case, the seller will repair the goods or give a replacement. Even after repair or replacement, the goods may turn out to be in breach of an express or implied condition or continue to need repair or replacement. This could be because of the earlier defect persisting or a new one coming up. The consumer had only elected to waive his right of termination for the breach. The right to terminate is a part of the contract and continues. As the goods continue to be in breach of an express or implied condition, the consumer has the right to terminate the contract.

There is a situation where the supplied goods have a problem but the buyer does not have a right to terminate the contract. For example, if a mobile phone has a scratch, it meets the implied conditions but there is still a problem with the goods. The seller is in breach of the contract but it is not serious enough for the buyer to terminate the contract. In such cases, the seller will repair the goods or give a replacement. The problem may still persist. The courts in such situations, where goods even after repair are not made in conformity with the contract, take the contract as lost and give the right to the buyer to terminate the contract. The question is how many chances should be given to the seller to repair or replace the goods? In today's time, giving multiple chances to the trader will only create harassment for the consumer. The trader supplying defective goods and not being able to attend to it in one repair or replacement is indicative of the intrinsic defect in the goods and the incapacity of the trader to correct it. The consumer loses trust and confidence in the seller. The consumer should be given the right to terminate the contract after one attempt at repairing or replacing the goods. Thus, after one repair or replacement, the consumer should have the right to terminate the contract. An associated question is how many days should be given to the buyer for rejecting the goods? I tentatively, the buyer could be given fourteen days to reject the goods.

¹⁸ *Clegg v. Olle Andersson*, [2003] EWCA Civ 320.

¹⁹ *Rogers v Parish (Scarborough) Ltd.*, [1987] Q.B. 9 33

DELAY IN DELIVERY OF GOODS

A ground for termination on which the bill is silent- refusal to deliver the goods and delay in delivery. The following situations on delay in delivery or denied delivery. The seller, for whatever reasons, refuses to deliver the contracted goods. For instance, where the seller does not deliver the goods on the scheduled date. In commercial contracts, delay is taken to be a core part of the contract giving the right to the buyer to terminate the contract. In other contracts, it has to be judged from the contract terms whether the time was of 'essence' for the buyer to terminate the contract. Often, in consumer contracts, it may not be of essence. Whether a washing machine is delivered on Monday or gets delivered on Wednesday is not so important for the buyer to terminate the contract. There may, however, be consumer contracts where the trader delivering the goods on schedule is a core part of the contract. In this case, the consumer has the right to terminate the contract.

The second situation is an online store pre-books orders but later refuses to supply at the contracted price. In this case, there is nothing further for the parties to do. The trader is in breach of his contractual duty. The consumer can communicate to the trader his intention of terminating the contract. Or from the conduct of the parties, it can be inferred that the contract is terminated.

The third situation is where the trader does not deliver the goods on time but promises to deliver soon. The consumer agrees to this. Thereafter, the trader fails to deliver the goods. In this situation, the consumer should have the right to terminate the contract after giving a reasonable time to the trader to deliver the goods. The fourth situation is where the buyer does not have the right to terminate the contract for a delay. The seller, however, does not supply the goods within a reasonable period. The buyer would get the right to terminate the contract. These rights follow from the Sale of Goods Act, 1930 and should be included in the bill. The provision could read:

A consumer has the right to terminate the contract for a delay in delivery in the following situations:

- (1) The contract provides for a delivery schedule. The delivery of goods on schedule is of essence to the contract and the seller fails to deliver the goods on schedule.
- (2) The contract provides for a delivery schedule but the consumer agrees to an extension of the schedule. The seller fails to deliver within the extension period.

- (3) The contract does not provide a delivery schedule. The seller fails to deliver the goods within a reasonable period after formation of the contract.
- (4) The contract provides for a delivery schedule. The delivery of goods on schedule is not of essence to the contract and the seller fails to deliver the goods within a reasonable period of the schedule.

CONCLUSION

The Consumer Protection Bill, 2015 is facing criticism on many aspects. Some argue for a separate Act that should regulate e-commerce transactions as present in UK and Europe. since e-commerce transactions differ in certain respects from an ordinary contract, therefore there is need for separate law in order to effectively deal with the issues of e-commerce. The activists of consumer protection bill believe that the new bill is likely to make process of consumer grievance redressal more complex and burdensome. Moreover, the equivalent powers which are granted to the proposed authority will overlap with that of the judiciary which is not only undesirable but may also lead to greater complexities. The draft bill also provides for mediation as a mechanism to resolve the disputes. Introduction of such a provision is likely to frustrate the ends of the justice on account of further delaying the process of settlement. Also, provisions pertaining to appointment of mediators could act as a breeding ground for corruption leaving the weaker party helpless.

Consumer law builds on the foundation of contract law and the law of sale of goods. It recognises the rights of the consumer under these laws and creates further rights. A rational and logical way of organising the law is to state the rights of the consumers.

The complexity and regulations are further increased due to setting up of a Consumer Authority and no clear provisions to simplify the conduct of cases in the courts. Further the bill should clearly lay down the products and services which qualify for commercial purpose as it still remains a grey area.

REFERENCE

1. [1974] 1 WLR 1308.
2. *Levison v. Patent Steam Carpet Cleaning Co. Ltd.*, (1977) 3 All ER 498.
3. Section 72(1) of the Consumer Protection Bill, 2015.
4. Section 2(42), the Consumer Protection Bill, 2015.
5. Section 63(1), the Consumer Protection Bill, 2015.
6. *The Consumer Credit Act, 1974.*

7. *Akhilshwar Pathak, E-Retailing and the Consumer Protection Bill, 2015: Drawing from the European Union Consumer Directives, Indian Institute of Management Ahmedabad-380 015, India.*
8. *Wallis, Son and Wells v. Pratt and Haynes, (1911-1913) All ER Rep 989 explains the concepts of condition and warranty.*
9. *Hong Kong Fir Shipping Company v. Kawasaki Kisen Kaisha Limited, (1962) 2 QB 26.*
10. *KG Bominflot Bunkergesellschaft für Mineralöle mbH & Co v. Petroplus Marketing AG (The Mercini Lady) [2010] EWCA Civ 1145; Air Transworld Ltd v Bombardier Inc. [2012] 1 C.L.C. 145; and Dalmare SpA v Union Maritime Ltd, [2013] 1 C.L.C. 59.*
11. *Photo Production Ltd v Securicor Transport Ltd, 1980 AC 827.*
12. *Mccutcheon (A. P.) v. David Macbrayne Limited, 1964 1 WLR 430; Hollier v. Rambler Motors (1972) QB 2; and British Crane Hire Corporation v. Ipswich Plant Hire Limited, (1975) QB 303.*
13. *Some of the cases where the British courts attempted to develop protection against unfair terms were Levison v. Patent Steam Carpet Cleaning Co. Ltd., (1977) 3 All ER 498; J. Spurling, Ltd. v. Bradshaw, (1956) 2 All ER 121; and Photo Production Ltd. v. Securicor Transport Ltd., (1978) 3 All ER 146. The British Parliament stepped-in by enacting the Unfair Contract Terms Act, 1977.*
14. *See Section 2(42), the Consumer Protection Bill, 2015.*
15. *Grant v Australian Knitting Mills, Ltd., [1936] AC 85.*
16. *Gardiner v Grey, 171 ER 46 is a 1815 judgement cogently stating the principle of merchantability.*
17. *Bernstein v Pamsons Motors (Golders Green) Ltd, [1987] R.T.R. 384.*
18. *Clegg v. Olle Andersson, [2003] EWCA Civ 320.*
19. *Rogers v Parish (Scarborough) Ltd., [1987] Q.B. 933*