



LAW COMMISSION OF INDIA

ONE HUNDRED AND FIFTH REPORT

ON

QUALITY CONTROL AND INSPECTION OF CONSUMER GOODS

October, 1984

GOVERNMENT OF INDIA
Ministry of Law, Justice and Company Affairs

ERRATA



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JUSTICE K. K. MATHEW

D. O. NO. F. 2(U)/84-L.C.

NEW DELHI,

DATED, THE 27TH OCTOBER, 1984.

My dear Minister,

I am forwarding herewith the One Hundred and Fifth Report of the Law Commission on "Quality Control and Inspection of Consumer Goods". The subject was taken up by the Law Commission on its own.

The Commission is indebted to Dr. M. B. Rao, Member, and Shri A. K. Srinivasamurthy, Member-Secretary, for their valuable assistance in the preparation of the Report.

With regards,

Yours sincerely,

(Sd.)

K. K. MATHEW

Shri Jagannath Kaushal,
Minister of Law, Justice
and Company Affairs,
NEW DELHI.

Encl : 105th Report

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CHAPTER I

INTRODUCTION

1.1. Consumer protection, of late, is increasingly receiving attention both, in the Press and Government in our country. It appears that the Government of India have set up Consumer Protection Council of India under the Chairmanship of the Minister in the Ministry of Civil Supplies.¹ Addressing the first meeting of the Consumer Protection Council in New Delhi, the Minister appears to have referred to the increasing sophistication of manufacturing processes and with the tremendous expansion of markets, the control of the consumer in the modern economic structure left him a prey to innumerable disadvantages. It would appear that the Delhi Administration have decided to set up a technical laboratory where foodstuffs and other consumable goods purchased by the consumers could be tested about their quality.

1.2. A letter,² inter-alia, stating that representations had been received pointing out that difficulties are experienced by persons who had purchased defective electrical goods and thereafter found themselves helpless; has been received in the Commission. The Correspondent suggested that the Law Commission may consider the advisability of recommending the amendments to the law on the lines of the U.K. Supply of Goods (Implied Terms) Act, 1973 and the Unfair Contract Terms Act, 1977. But there is no reference to the Law Commission from the Government on the subject. However, as the question of consumer protection is engaging the attention of the Government as well as the public and in view of its importance, the Law Commission has taken up the subject for consideration.

1.3. We may at this juncture state that the question of amending the Indian Contract Act to provide relief against unfair terms in standard forms of contracts, on the model of U.K. Unfair Contract Terms Act, 1977, has been the subject matter of a separate report^{3A}. In this report, it is proposed to go into the question as to how best to safeguard consumer interests in respect of purchase of costly electrical gadgets etc. without the consumer being driven to initiate costly and, possibly, long drawn out litigation.

CHAPTER II

EXISTING LAW ON THE SUBJECT

2.1. The conditions and warranties governing the sale of goods are contained in sections 11 to 17 of the Sale of Goods Act, 1930. Section 11 provide that unless a different intention appears from the terms of the contract, stipulation as to time is not deemed to be the essence of a contract. Section 12 defines the terms 'condition' and 'warranty'; section 13 when a condition may be treated as a warranty; section 14 of the implied condition to title, quiet possession etc.; section 15 as to sale by description; section 16 as to implied conditions as to quality of fitness and section 17 as to sale by sample.

¹Financial Express (27.11.1983)

²Law Commission File No. F.2(1)84-LC, S.No. 2

^{3A}A103rd Report of the Law Commission.

2.2. The normal principle of law is summed up in the maxim 'caveat emptor' and is based on the presumption that the buyer is relying on his own skill and judgment when he effects a purchase. There are, however, recognised exceptions to the above rule. First, "where a manufacturer or dealer contracts to supply an article which he manufactures or produces, or in what he deals, to be applied to particular purpose, so that the buyer necessarily trusts to the judgment or skill of the manufacturer or dealer there is in that case an implied term or warranty that it shall be reasonably fit for the purpose to which it is to be applied. In such a case the buyer trusts to the manufacturer or dealer, and relies upon his judgment and not upon his own".³

2.3. The second exception is that where goods are bought by description from a seller who deals in goods of that description, there is an implied term that the goods shall be of merchantable quality. Both the common law rule as well as the exceptions are incorporated in section 16 of the Sale of Goods Act, 1930, which is based upon section 14 of the English Act.

2.4. The first exception would apply in a case where the description of the goods required is given by the buyer and they point to the fact that they are required for a particular purpose. In such a case, it would be a fair inference that the goods are being ordered for that particular purpose. It was held that where a person who had no special knowledge or skill with regard to hot-water bottles, went to a chemist who sold such articles and asked for a 'hot-water-bottle', the court might justly infer that the goods were bought and sold for the purpose of being used as a hot-water-bottle.⁴ Similarly, a retail dealer in woollen goods who sells underpants must know that they are required for the particular purpose of being worn next to the skin.⁵

2.5. But the proviso to sub-section (1) of section 16 of the Act provides, *inter-alia*, that if the contract for sale is for a specified article under its patent or other trade name, there is in that case an implied condition as to its fitness for any particular purpose. It was, however, held that although a person may order an article under a patent or trade name, yet if at the same time the buyer makes it clear to the seller that he is relying on the seller's skill and judgment to ensure that the article shall be fit for a particular purpose, the proviso has no application.⁶

2.6. This leads us to the second exception to the common law rule of 'caveat emptor', namely, that the goods should be of merchantable quality where goods are bought from a seller who deals in the goods of that description, whether he is the manufacturer or producer or not. It applies specially for latent defects which could not be noticed on inspection of the goods. Where the plaintiff had his hair dyed by the defendant at his hair dressing establishment with a product recommended by the defendant as a good hair dye and he contracted dermatitis as a direct result of the use of the hair dye, the defendant was held liable in damages.⁷

2.7. Further, section 15, *inter-alia*, provides that there is an implied condition that the goods correspond with the description. The Indian law is largely based on the U.K. Sale of Goods Act.

³Jones Vs. Just, (1868)L.R. 3 QB 197

⁴Preist Vs. Last, (1903) 2 KB 148.

⁵Grant Vs. Australian Knitting Mills Ltd., AIR 1936 PC 34.

⁶Baldry Vs. Marshal, (1925) 1 KB 260.

⁷Watson Vs. Buckley, Osborne, Garrett & Co. Ltd., (1940) 1 All E.R. 174.

CHAPTER III

FURTHER DEVELOPMENTS IN U. K. LAW

3.1. In the U.K., law on Sale of Goods has been amended largely on the recommendations of the Law Commission of England. The Law Commission of England had made three reports on exemption clauses in contracts. The first report,⁸ a joint report of the English and Scottish Law Commission, contains a number of recommendations in relation to the sale of goods, amendments to section 12 to 15 and 55 of the Sale of Goods Act, 1893, dealing with implied terms in the contract of sale and to the regulation of the clause excluding or limiting the effect of those terms. On the basis of the first report, the Supply of Goods (Implied Terms) Act, 1973 was enacted. The main object of the 1973 Act was severely to limit the sellers' right to exclude these implied terms. The Act also implied those conditions, suitably adjusted, to contracts of hire purchase, and these provisions have now been re-enacted, with minor amendments, by the Consumer Credit Act, 1974. The 1973 Act also improves obligations on the supplier of goods on redemption of trading stamps that are to the same general effect as the implied conditions under a contract of sale or hire purchase. The legislation was consolidated by the Sale of Goods Act, 1979.⁹

3.2. The second report¹⁰ is concerned with provisions excluding or restricting any legal duty or obligation owed by one person to another and which does not fall within the ambit of Supply of Goods (Implied Terms) Act, 1973. While the first report is a joint report of the Law Commission of England and the Scottish Law Commission, in the second two Law Commissions have reached a wide measure of agreement on the main issues but have divergent conclusions on two matters of fundamental importance, largely based on the local laws.¹¹ We are, however, not concerned with them in this report.

3.3. The second report, among other things, considered the purported exclusion of liability for 'negligence' and of liability for breaches of contracts other than contracts for the supply of goods. The Unfair Trade Practices Act, 1977, is largely based on the second report of the Commission. The second report deals with the contracts for supply of goods otherwise than by sale or hire-purchase of goods: like contract of hire of goods, contract for work and materials; regarding the condition of title, compliance with the description, merchantability and fitness and to ensure that the consumer obtains benefits in respect of these conditions despite any attempt to contract out of them.

3.4. The third report¹² made by the Law Commission of England deals with the subjects which are not dealt with by the first two reports. It deals with the terms to be implied in other contracts of supply, like contracts analogous to sale: such as contracts of barter and of work and materials.

3.5. As pointed out¹³ earlier, the subject of unfair terms in standard form of contract is receiving our separate attention. Therein we deal with attempts to impose undue terms in contracts. That leave us with the first and third reports of the English Law Commission.

⁸U.K. Law Commission No. 24. Scot. Law Commission No. 12.

⁹The Law of Consumer Protection and Fair Trading by Brian W Harvey, 2nd Edition, p.84-85.

¹⁰U.K. Law Commission No. 69 Scot. Law Commission No. 39.

¹¹U.K. Ibid paras 4 & 5

¹²U.K. Law Com. No. 95

¹³Chapter I. *supra*.

3.6. In the first report, the English Law Commission dealt with the amendments to section 12 to 15 and 55 of the U.K. Sale of Goods Act. We have corresponding provisions in section 12 to 17 in the Indian Sale of Goods Act, 1930. Section 12 of the U.K. Act deals with implied undertaking as to title etc. That section was recommended to be amended to provide that the exclusion or variation of the conditions of warranties should only be possible where it is clear that the seller is purporting to sell a limited title. In other words, the seller is not permitted to exclude the warranties of quiet possession, free from any charges or encumbrances in favour of the third parties. Section 13 dealing with sales by description is recommended to be amended to make it clear that the sale of goods in super-markets, where goods are exposed for self-selection by the buyer, is also to be treated as sale by description within the meaning of section 13 of the Act.

3.7. Section 14 dealing with implied conditions as to quality or fitness and section 15 dealing with sale by sample are sought to be amended to provide that the conditions implied therein continued to be applicable to goods which are supplied under a contract of sale even if such goods are themselves not the subject-matter of the sale: the condition of fitness for purpose should no longer be confined to sales where the goods are of a description which deals with the sellers business to supply, but should be extended to cover all sales in which the seller is acting in the course of the business. The provision about reliance on the sellers' skill and judgment involved in the contract of sale is replaced by a provision whereby the condition for fitness will be implied unless the circumstances are such as to show that the buyer did not rely or that it was unreasonable for him to rely on the seller's skill and judgment. Section 15 is sought to be amended to make it clear that the definition of merchantable quality applies not only to sale of goods in the course of business but also to sales by samples. Section 55 is sought to be amended to negative the right to exclude implied terms and conditions in a contract of sale. As stated earlier, these recommendations are given effect to by the Supply of Goods (Implied Terms) Act, 1973.

3.8. The Unfair Contract Terms Act, 1977, which is primarily concerned with making nugatory exemption clauses negating liability in negligence by one contracting party to another also contains provisions to restate the position with regard to attempts to exclude or modify the implied conditions contained in section 12 to 15 of the Sale of Goods Act, 1893 (now the 1979 Act) (and the parallel legislation for contracts of hire purchase).

3.9. It would appear that all these attempts to amend the law about the implied conditions e.g. merchantable quality etc. did not fully clarify the position and the public concern about sale of faulty goods is highlighted in the introduction of a Private Member's Bill in November, 1978, the Supply of Goods (Amendment) Bill. This Bill was later withdrawn and instead the Lord Chancellor referred the matter to the Law Commission who were asked to consider:¹⁴

- (a) whether the undertakings as to the quality and fitness of goods implied under the law relating to sale of goods, hire purchase and other contracts for the supply of goods require amendment;
- (b) the circumstances in which a person, to whom goods are supplied under a contract of sale, hire-purchase or other contract for the supply of goods, is entitled, where there has been a breach by the supplier of a term implied by statute to

¹⁴See Brian W Harvey, (note 9 supra) at p. 98.

- (i) reject the goods and treat the contract as repudiated;
 - (ii) claim against the supplier a diminution in or extinction of the price;
 - (iii) claim damages against the supplier;
- (c) the circumstances in which by reason of the Sale of Goods Act (1979) a buyer loses the right to reject the goods.

3.10. The Law Commission recommended in its 95th Report on "Implied Terms in Contracts for the supply of goods" that there should be legislation imposing clear terms as to title correspondence with description, merchantability and fitness for purpose in all contracts for the transfer of goods (other than those contracts primarily dealing with Sale of Goods and Hire Purchase Agreements). The draft Bill annexed to the Report makes it clear that the statutory term should apply not only to contracts of hire and barter but also to contracts for work and materials, the implied terms applying in respect of the materials.

3.11. No legislative action on the Law Commission's proposals appears to have yet been taken and the problem is still under consideration.¹⁵

CHAPTER IV

THE POSITION IN INDIA—THE NEED FOR AMENDMENT

4.1. We may to begin with refer to the decision in *Raghava Menon Vs. Kuttappan Nair*.¹⁶ There the plaintiff purchased a wrist-watch from the defendant. The watch did not give satisfactory service inspite of the fact that the seller had tried to set it right a number of times. The buyer sued the seller for the replacement of the watch or the refund of the price. It was held that the seller was bound to replace the watch or, in the alternative, to pay back its price. It was observed that:

"the plaintiff is a layman and he approaches a fairly reputed firm like the defendant dealing in watches and purchases a watch from them, not for any special purpose, but for the common purpose of knowing the correct time. In such a case, section 16(1) of the Sales of Goods Act my apply, because the buyer makes known to the seller, by implication, the purpose for which he purchases the watch and also relies on the seller's skill or judgment."¹⁷

4.2. The above shows that where a buyer seeks to enforce his remedy in a court of law and is able to establish that the commodity is not of merchantable quality or that spurious parts have been added, he might successfully enforce his rights against the seller.

4.3. But times have changed. In our country, due to developmental activities, a wide variety of goods are manufactured. People are beginning to enjoy the fruits of industrial advance made in this country. In these days of production and sale of sophisticated electrical gadgets, a purchaser of these articles may not be able to establish that parts are defective or that there has been substitution of genuine parts by substandard or imitation parts. It is to this aspect of the matter that we address ourselves to in the report.

¹⁵See Brian W. Harvey, (note 9 *Supra*) at p. 98.

¹⁶AIR 1962 Kerala 318.

¹⁷*Ibid* at p. 320

4.4. We have given careful consideration whether the Indian Sale of Goods Act should also be amended suitably on the lines of U.K. Supply of Goods (Implied Terms) Act, 1973 as subsequently amended in 1979. We had earlier noticed how the existing provisions were interpreted by the courts. Even in U.K., in spite of the amendments to law, a learned commentator expresses the view that the consumer is still not adequately protected from avoidable and common problems in consumer sales.¹⁸

4.5. It would, therefore, appear that mere amendment to Sale of Goods Act will not solve the problem of consumer protection. Our main aim is to suggest preventive steps rather than suggesting amendments to the law, on the lines of amendments made to U.K. Sale of Goods Act. Besides, it does not appear that many consumers have sought to enforce the remedies even under the existing provisions of law. In such a situation it seems to us that the best way is to suggest a method where a consumer can ensure that the goods he purchases are tested as to the quality and standard at the time of purchase, if necessary on payment of a small fee, rather than suggest elaborate amendments to existing law on sale of goods, which, as earlier noted, are a matter of opinion, whether they have served their purpose, even in U.K.

CHAPTER 5

COMMENTS RECEIVED ON THE WORKING PAPER

5.1. The Law Commission had,¹⁹ before formulating its conclusions, prepared a Working Paper setting forth the present position and inviting the views of interested persons and bodies on the subject, on certain tentative proposals. A large number of comments have been received on the Working Paper. The Commission is grateful to those who have taken the trouble of expressing their views on the Working Paper.

Professor Manubhai Shah, Managing Trustee, Consumer Education and Research Centre, Ahmedabad who met the Member-Secretary of the Commission, has made certain valuable suggestions regarding legislation for the protection of the consumer. The Commission appreciates his keen interest in the subject. The points made by him will be referred to later in this Chapter, at the appropriate place.²⁰

The Commission was also happy to have a meeting with the Secretary to the Government of India in the concerned Department, where the Government's points of view could be ascertained in detail. A gist of the points made by him will be given in this Chapter at the appropriate place.²¹

We now proceed to give in the succeeding paragraphs, a gist of the views expressed in the various comments.²²

¹⁸See Brian W Harvey, (note 9 *supra*) at p. 98.

¹⁹Law Commission of India, Working Paper on Quality Control and Inspection of Consumer Goods, April, 1984.

²⁰Paragraph 5.12, *infra*.

²¹Paragraph 5.13, *infra*.

²²All comments received upto the date of signing this Report have been taken into account.

5.2. By and large, the comments received on the Working Paper²³ favour the proposals put forth in the Working Paper, the only exception being one State Government.²⁴

One of the comments, while agreeing with the main proposals, does not favour the creation of an Advisory Council.²⁵

Some of the comments suggest the enactment of legislation much wider in scope than had been proposed in the Working Paper.²⁶

A few comments suggest the incorporation of more stringent sanctions than those that were proposed in the Working Paper.²⁷

The points made in the various comments are dealt with in this Chapter, at the appropriate place.

5.3. As already stated,²⁸ the vast majority of comments received on the Working Paper issued by the Commission favour the proposals that were put forth in the Working Paper, which were substantially the same as the recommendations that are going to be made in this Report.

These include—

- (a) Three State Governments;²⁹ (West Bengal, Andhra Pradesh and Sikkim):
- (b) two High Courts;³⁰
- (c) One lawyers' association (the Incorporated Law Society of Calcutta,³¹ though it has suggested certain changes;
- (d) One trade association, namely, the All India Motor & Transport Congress, New Delhi.³²

5.4. One State Government (Government of Haryana) has expressed its disagreement with the proposals that had been put forth in the Working Paper³³. It has stated that the proposed legislation, instead of rendering justice cheap and speedy, would make it more expensive and cumbersome, as the consumer shall have to supply the samples of costly goods for examination and then make himself available to the Public Analyst for cross-examination at his own expense. On the first aspect, we may state that without supply of purchased goods for examination by the Public Analyst, it would not be possible to establish that sub-standard or spurious goods were supplied to the consumer. As regards the second aspect of the State Government's comments, namely, that the consumer has to make himself available for cross-examination at his own expense, it may be pointed out that the proposal of the Commission does not envisage cross-examination of the purchaser by the Public Analyst. All that is sought to be

²³Paragraph 5.3, *infra*.

²⁴Paragraph 5.4, *infra*.

²⁵Paragraph 5.5, *infra*.

²⁶Paragraphs 5.6, 5.7 and 5.9, *infra*.

²⁷See *infra*.

²⁸Paragraph 5.2, *supra*.

²⁹Law Commission File No. F.2(1)84-LC S. No. 7, 9 and 10.

³⁰Law Commission File No. F.2(1)84-LC S. No. 16 and 17.

³¹Law Commission File No. F.2(1)/84-LC S. No. 11.

³²Law Commission File No. F.2(1)/84-LC S. No. 5.

³³Law Commission File No. F.2(1)/84-LC S. No. 17.

provided is that the purchaser who has purchased the goods, if he so doubts its quality, could take it to the Public Analyst and (on paying a reasonable fee) can get a report on the quality of the goods purchased. We do not think that this can be regarded as too burdensome.

5.5. One High Court³⁴ has suggested that the provision relating to constitution of advisory council (as envisaged in the proposal of the Commission) would defeat its purpose, and cause delay.

We have given careful consideration to this aspect. It is possible that consultation with the Advisory Board may cause some delay in implementation of the regulatory measures envisaged by proposed legislation. But we believe that that would not be too big a price to pay for the other benefits expected to accrue from such consultation. In legislation which may affect various sections of the community, it appears to be wise to provide for consultation with the interests likely to be affected.

5.6. Some of the comments on the Working Paper have made a plea for giving a wider scope to the proposals. For example, the All India Motor & Transport Congress, New Delhi, has suggested that the proposals should cover automobile parts also, in order to protect the consumer from exploitation by unscrupulous manufacturers who supply spurious and sub-standard automobile parts.³⁵ One State Government (Government of Andhra Pradesh) has also suggested that the proposals should be more comprehensive.³⁶

One High Court also favours a wider coverage of consumer goods, particularly, automobiles and automobile spares, and points out that defects in such products may have disastrous consequences on human life or safety.³⁷

5.7. Some suggestions have been made for higher or additional sanctions. For example, the Government of Andhra Pradesh favours rigid quality control and test checking of the products at the stage of manufacture itself.³⁸

Professor Manubhai Shah, in his meeting with the Member-Secretary, has suggested that there should be a system of recalling of goods, to ensure that either the manufacturer himself recalls goods not fit for consumption or a governmental agency is empowered to do it.³⁹

5.8. In regard to the comments which suggest a wider coverage, we may observe straightaway that the scope of the present report is limited to the protection of the consumer in respect of certain types of electrical appliances which are costly and which are purchased only once in a way. One of the reasons in so limiting the proposal has been our consciousness that infrastructural facilities of the nature and magnitude that would be needed if the coverage is made very wide do not, at present, exist in the country. In particular, public analysts may not be available in sufficient number for testing the quality of all goods within a reasonable time and at reasonable fees. Without such facilities on an adequate scale, consumer protection in the area dealt with in this Report would not be a reality.

³⁴Law Commission File No. F.2(1)/84-LC S. No. 17.

³⁵Law Commission File No. F.2(1)/84-LC S. No. 5.

³⁶Law Commission File No. F.2(1)/84-LC S. No. 9.

³⁷Law Commission File No. F.2(1)/84-LC S. No. 16.

³⁸Law Commission File No. F.2(1)/84-LC S. No. 9.

³⁹See paragraph 5.12, item (2) *infra*.

5.9. One High Court, in its comment⁴⁰ on the Working Paper, has stated that the proposal should cover not only consumer goods, but also consumer services like dry cleaning, accommodation in public auditoria and the like. While we appreciate the suggestion that consumer services also may have to be regulated, the proposal of the Commission is only with reference to consumer protection of costly electrical appliances. Any legislation that may be required in regard to regulation of consumer services will naturally have to run on different lines.

5.10. The Government of West Bengal has suggested that there should be penal provisions which could be put into operation if the specified articles do not conform to the prescribed standards. An emphasis on prosecution has also been placed by the Government of Andhra Pradesh.⁴¹⁻⁴²

5.11. After careful consideration, the Commission does not favour the inclusion of penal provisions in the legislation recommended in the present Report. Proposals of the nature put forth here are primarily intended to give effective relief to the consumer. No doubt, penal provisions for large scale violations of consumer laws may not necessarily be ruled out. But the insertion of such a liability will be a question involving a consideration of several aspects, including the gravity of the deviation, the requisite mental element and the aspect of enforcement. It will also necessitate a consideration of the question whether the provisions of the general criminal law and also of certain special Acts which impose criminal liability—are not, for all practical purposes, sufficient.

5.12. It may at this stage be mentioned that Professor Manubhai Shah, Managing Trustee, Consumer Education and Research Centre, Ahmedabad, visited the Law Commission and had an informal discussion with the Member-Secretary on the subject of Consumer Protection. A gist of the general observations made in this behalf by Professor Shah is given below :—

- (1) *Standard*.—In case of inherently dangerous goods, the system of compulsory certification should be introduced.
- (2) *Recalling*.—A system of recalling of goods should be introduced. Steps should be taken to ensure that either the manufacturer himself recalls the goods which are not fit for consumption, or a Governmental agency does it.
- (3) *Standards*.—The role of the Indian Standards Institution should not be confined to putting its marks on the products. It may also be empowered to issue compulsory certificates. It may further be entrusted with supervisory role in such matters.
- (4) *Remedy*.—Government should establish a forum which could be approached by the consumers to obtain proper remedies for the goods which are detrimental to the general health of the public.
- (5) *Testing any product*.—A system should be devised whereby, either on a complaint being made by a Member of the public or otherwise, any product could be tested by the manufacturer.
- (6) *Cost of testing*.—It may also be necessary to provide for cases of liability to bear the cost, that is to say, who should bear the cost of test-

⁴⁰Law Commission File No. F.2(1)/84-LC S. No. 16.

^{41,42}Law Commission File No. F.2(1)/84-LC S. No. 7 & 9.

ing the products, the manufacturer or the consumer? There is every likelihood of the goods getting damaged during testing, in either of the two ways:—

- (i) the process of testing itself requires the breaking of the product/goods.
- (ii) the breaking of the goods in the process of testing owing to negligence or mishandling.

Suitable provision should be made in this behalf to ensure liability.

We have made a note of these suggestions made by Professor Shah. The suggestions at (1) to (4) are outside the range of this Report, whose scope is linked as already pointed out. The suggestion at (5) also raise practical problems of administrative machinery and the like.

The point raised at (6) above should, we think, be taken care of by rules. However, practical difficulties experienced in the working of the proposed legislation could, and should be tackled by appropriate amendment.

5.13. We may finally refer to the views expressed by the Secretary, Ministry of Food and Civil Supplies, Department of Civil Supplies, in reply to the Working Paper issued by the Commission. Shri M. Subramanian, Secretary, Department of Civil Supplies, appeared before the Commission on 4th September, 1984, and informed us that Government has under consideration proposals to amend the Indian Standards Institution (Certification of Marks) Act, 1952 and the Standards of Weights and Measures Enforcement Act, by a Bill which was introduced in the last session of Parliament.⁴³ According to Shri Subramanian, Government seeks to empower itself to prescribe certain standards in respect of consumer goods and it is envisaged that a suitable enforcement machinery be set up by simplifying the procedures in the Courts to give quick relief to the consumers. During the course of the discussion, he appreciated the suggestion of the Commission in the Working Paper to provide a right to the consumer to obtain test report of the specified products from a Public Analyst. He informed us that Government would duly consider incorporating the Commission's recommendations in the proposed legislation which the Government contemplated to undertake in the forthcoming session of Parliament. He also informed that the Government is contemplating to set up a statutory All India Consumers Protection Council. He also mentioned that the Delhi Administration and the Government of Madhya Pradesh have initiated legislation on consumer protection.

5.14. We have noted these developments as intimated to us. We should, in this context, record that, as stated earlier, the object of the present proposal is to give relief to consumers in respect of certain costly electrical appliances. Whether, having regard to the information and the resources available, the scope of quality control should be enlarged to cover all consumer goods, are wider questions which are outside this Report.

5.15. Having considered the views expressed on the Working Paper, we proceed to set out our detailed recommendations in the next Chapter.

⁴³Law Commission File No. F.2(1)/84-LC, S. No. 12.

CHAPTER VI

FURTHER CONSIDERATION AND RECOMMENDATIONS

6.1. It may not be out of place to mention that the Law Commission in its Eighth Report considered the revision of Sale of Goods Act, 1930. While considering whether any amendment to section 16 of the Act is necessary, the Commission left it to the Union and State Governments whether as a matter of policy, they should undertake legislation, having regard to the observations made by the Commission therein.⁴⁴ No amendment to that section has been undertaken so far. We shall deal with the Commission's recommendations later on this report.

6.2. At the same time, we feel that the existing law is inadequate and needs to be strengthened to meet a situation where a purchaser intends to ensure about the quality of goods at the time of purchase. It would seem that a law providing not only for certain minimum standards of quality of the goods but also machinery to ensure such standards, is necessary in our country. It should provide for a machinery to get the quality of the goods tested by any interested purchaser.

6.3. As pointed out by the Law Commission⁴⁵ earlier, there are some Acts which lay down or provide for the making of rules to prescribe standards of quality, such as the Agricultural Produce (Grading and Marketing) Act, 1937 and the Drugs Act, 1940. There are subsequent enactments also, e.g. The Prevention of Food Adulteration Act and the Export (Quality Control and Inspection) Act, 1963. These provide that articles should conform to certain minimum standards. They also provide a penalty if they do not conform to those standards. The Drugs Act prohibits the sale of goods which are not of the standard quality. The Export (Quality Control and Inspection) Act, 1963, *inter-alia* empowers the Government to notify commodities which shall be subject to quality control or inspection or both prior to exports. The State is also empowered to lay down standards to which exported goods have to conform.

6.4. Standards are laid down by the Indian Standards Institution, set up under the I.S.I. (Classification of Marks) Act, 1952. As pointed out earlier, a large variety of consumer goods are produced now in our country and large number of middle class families purchase them. Some of them, like T.V., Refrigerator, etc. are purchased only once in a way. It is necessary that Parliament enact a law that these electrical gadgets etc. sold in the market conform to minimum standards prescribed under a Parliamentary Act.

6.5. It may be pointed out that Parliament is empowered to make a law with regard to industries, the control of which has been declared by Parliament by law to be expedient in the public interest. It is thus possible for Parliament to control the quality of products of the industries mentioned in the Schedule to Industries (Development and Regulation) Act, 1951. Just as Parliament made law seeking to ensure the quality of goods meant for export, we recommend that Parliament may enact a law for conforming to quality laid down under the Act in respect of internal trade also. There can be no doubt that Parliament is competent to enact such a law. Such a law would be a reasonable restriction on the right to carry on a business in the public interest.

6.6. The Export (Quality, Control and Inspection) Act, 1963 *inter-alia*, provides that the Export Inspection Council established under the Act, shall

⁴⁴Law Commission of India, Eighth Report, Page 8.

⁴⁵Law Commission, of India Eighth Report, Para 18.

advise the Government regarding measures for the enforcement of quality control and inspection in relation to commodities intended for export. Under that Act, the Government may, by notification, establish agencies for quality control or inspection, or both. An agency so appointed by the Government may hold or cause to be held such examination as it thinks fit relating to quality control or inspection, or both. An agency so appointed by the Government may hold or cause to be held such examination as it thinks fit relating to quality control or inspection of notified commodities either at the time of export or earlier in such testing houses or by such surveyors or samplers as are approved by the Central Government in that behalf. Under that Act the Central Government after consulting the Export Inspection Council notify commodities which shall be subject to quality control or inspection and establish standard specifications for any notified commodity.

6.7. The Prevention of Food Adulteration Act, 1954, empowers the Central Government or the State Government to appoint Public Analysts for such areas, as may be assigned. Under that Act, Government also may appoint Food Inspectors who shall have the powers to take samples of any article of food from any persons selling such articles and to send such samples for analysis to the Public Analyst for the respective area with a view to ensure that the articles of food are not adulterated.

6.8. It would appear to us, on a careful consideration, that similar machinery should be set up by the Government under a Parliamentary enactment, whereby analysts appointed under the Act, would have power to examine any electrical gadget or other consumer goods notified under the Act, and sold in the market, to ensure that they conform to the quality laid down under the Act. This examination may be on the application of the purchaser and on payment of a small fee. We recommend enactment of a law by Parliament in this regard.

6.9. We are of the considered opinion that such a law would go a long way in checking the malpractices prevalent in the production/sale of goods with sub-standard/spurious parts.

6.10. As stated earlier,⁶ the Law Commission has dealt with amendments to Sale of Goods Act, 1980. While considering section 16 (implied conditions as to quality or fitness), the Commission referred to its discussions with Deputy Director, ISI who suggested an amendment to section 16, *inter-alia*, to provide that when Government lays down any standard for any purpose, the products sold should conform to that standard. The Commission observed:—

“What is necessary to achieve the object in view is a provision which will imply in such cases a condition or warranty regarding the quality of the goods, to the effect that the goods sold are of the quality which the standard or other mark carries with it. In the absence of an express or implied condition or warranty regarding the quality of the goods, the purchaser would not be able to claim a right to repudiate the contract or claim damages for breach of the warranty. He may be liable for the penalties provided under the Acts. The enactment of a statutory condition or warranty may affect a large class of merchants and middlemen. It is a matter of policy to be decided by the Union and the State Governments whether they should undertake such legislation. In the circumstances we do not propose to make any recommendation on the question raised by the Deputy Director.”

⁶Law Commission of India, Eighth Report.

6.11. But times have changed. It would appear that with the increasing tempo in production of wide variety of goods and of the abuses in marketing them, a law to ensure quality of goods for sale, is called for.

6.12. As a result of the discussions contained in the preceding Chapters, we recommend enactment of a law:

- (i) to ensure that the quality of goods sold are according to the standards laid down under the proposed law.
- (ii) for the constitution of advisory councils with reference to particular classes of goods or particular industries.
- (iii) for the appointment of public analysts for such areas as may be assigned, with power to examine any notified goods and sold in the market, to ensure that they conform to the quality laid down under the Act.

6.13. To give a concrete shape to our recommendations, we annex a draft Bill.

(K. K. MATHEW)

Chairman

(J. P. CHATURVEDI)

Member

(DR. M. B. RAO)

Member

(P. M. BAKSHI)

Part-time Member

(VEPA P. SARATHI)

Part-time Member

(A. K. SRINIVASAMURTHY)

Member-Secretary

DATED

APPENDIX

DRAFT BILLS

(CONSUMER GOODS TESTING OF QUALITY)

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(to be drafted)

**THE CONSUMER GOODS
(TESTING OF QUALITY) BILL 198**

A
BILL

to make provision for the testing of the quality of certain goods, in the interests of consumers.

Be it enacted by Parliament in the _____ year of the Republic of India as follows :-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Consumer Goods (Testing of Quality) Act 198—.

Short title, extent and commencement.

(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 in this behalf.

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

Interpretation.

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

(b) "Public Analysts" means a Public Analyst appointed under this Act;

(c) "specified goods" means goods to which this Act applies for the time being; and

(d) words and expressions used but not defined in this Act, but defined in the Sale of Goods Act, 1900, have the meanings respectively assigned to them in that Act.

3. (1) This Act applies in the first instance to all electrical appliances, the manufacture of which is subject to the provisions of the Industries (Development and Regulation) Act, 1951, for the time being.

Goods to which this Act applies.

(2) The Central Government may, by notification in the Official Gazette and subject to the provisions of this section, declare that the provisions of this Act shall apply also to such goods as may be mentioned in the notification.

(3) No notification shall be issued under this section in respect of any goods unless a law regulating the production of such goods is within the legislative competence of Parliament.

(4) The issue of a notification under this section shall be subject to the condition of previous publication, and the provisions of the General Clauses Act, 1897, shall apply in relation to such notification as they apply in relation to rules which are subject to the condition of previous publication, the minimum period of pre-publication for this purpose being three months.

(5) No such notification shall be issued except on the recommendation of the advisory Council constituted under section 9.

CHAPTER 2
TESTING OF GOODS

Testing of goods.

4. (1) Where, in an agreement for the sale of goods to which this section applies,---

- (a) there is an express term as to the quality of the goods to be delivered thereunder, being a term which adopts any standard laid down by or under any enactment for the time being in force, or
- (b) a condition or warranty as to such quality is implied by or under any enactment for the time being in force,

then the purchaser to whom the goods have been delivered under such agreement may make an application in writing to the Public Analyst for testing the goods with reference to such term, condition or warranty, as the case may be.

(2) This section applies to every agreement for the sale of specified goods at retail.

Contents of the application, and fees.

5. (1) Every application under section 4 shall specify, in reasonable detail,---

- (a) the names and addresses of the purchaser and the seller;
- (b) the goods purchased, and the price paid;
- (c) the date of purchase;
- (d) the term, condition or warranty which may be applicable, and in what respects it has been violated.

(2) The application shall further state that a copy thereof has been delivered or posted to the seller on a date to be mentioned in the application.

(3) The application shall be accompanied by the prescribed fee.

Testing and report by Public Analyst.

6. (1) On receipt of the application mentioned in section 4 and on being satisfied that the application is in all respects in accordance with the provisions of this Act, the Public Analyst shall test the goods for ascertaining whether the goods are in accordance with the term, condition or warranty specified in section 4.

(2) For the purpose of holding such test, the Public Analyst shall take, from the purchaser, a sample of the goods after giving at least one week's notice to the purchaser and the seller of his proposal to take such sample, and such notice shall specify the date, time and place fixed for taking the sample.

(3) On completion of the test, the Public Analyst shall record his report under his signature, copies whereof shall be posted by him to the purchaser as well as to the seller.

(4) The Public Analyst may decline to give a report and direct refund of the fees to the applicant, if for reasons to be recorded, it is impracticable to conduct a test of quality in the circumstances of the case.

(5) The Public Analyst shall record his report within two months of the application, except where prevented by unavoidable cause from doing so.

Use of report in evidence.

7. The report of the Public Analyst recorded under section 6 shall be admissible in evidence of the matters to which it relates in any suit between the

purchaser and the seller arising out of the agreement for sale to which the report relates, without summoning the Public Analyst in court; but nothing in this section shall affect the right of any party to any such proceeding to examine or cross-examine the Public Analyst in court.

CHAPTER 3

MISCELLANEOUS

8. (1) The Central Government may, by notification in the Official Gazette, appoint as Public Analysts for the purposes of this Act, such number of persons as may be needed. ^{Appoint of Public Analysts.}

(2) Such Public Analysts may be appointed for particular classes of goods or particular industries, as may be considered appropriate.

9. (1) The Central Government shall, by notification in the Official Gazette, constitute Advisory Councils for performing the functions to be performed under this Act by such Councils. ^{Advisory Councils.}

(2) Separate Advisory Councils may be constituted with reference to particular classes of goods or particular industries as may be considered appropriate.

(3) Each Advisory Council shall consist of the following persons, to be appointed by the Central Government:—

- (a) Chairman, who shall be a person with experience or expertise in business or industry;
- (b) two members representing business or industry; and
- (c) two members representing consumers.

(4) No person shall be appointed as a Chairman who is actively engaged in business or industry.

(5) The procedure to be followed by Advisory Councils and administrative matters concerning them shall be such as may be prescribed.

10. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act. ^{Rules.}

(2) Without prejudice to the generality of the provisions of sub-section (1) and in particular, such rules may provide for the following matters, namely:—

- (a) the fees to be charged under sub-section (3) of section 5;
- (b) the procedure to be followed by, and administrative matters concerning, Advisory Councils constituted under section 10; and
- (c) such other matters as are required or allowed to be prescribed.

(3) Every rule made by the Central Government under this section 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 in which it is so laid 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.