

**CONSUMER PROTECTION LAW
AND
THE SWEDISH APPROACH**

MIZANUR RAHAMN

**PRUDENTIAL PUBLICATIONS
1994**

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THE SWEDISH APPROACH

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First Edition

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III

Dedicated to

my parents -

who never failed to remind me that

it is Bangladesh I come from,

it is Bangladesh I ought to serve.

PREFACE

My acquaintance with the Swedish legal system dates back to 1984-85 while I was a participant of the Postgraduate Diploma in Legal Studies programme at the Faculty of Law, University of Stockholm. Though I concentrated then on other areas of the Swedish legal system, consumer law appeared to me to be one of the fast developing branches of law bearing more specificities of the well known Swedish model than most others. My interest in Swedish consumer law never faded and rather accelerated upon discovering that this particular branch is almost a forgotten area in the legal system of my native land - Bangladesh. As a prelude to a future study on consumer policy in Bangladesh I decided to get a general picture of the Swedish consumer law, the outcome of which is the present work - Consumer Protection Law and the Swedish Approach.

It should, however, be made clear at the outset that the object of the study is purely of informative nature and hence, I have restricted myself to describing basic Swedish consumer protection institutions and legislation in very general terms without going into a critical analysis of them. Nevertheless, for a better comprehension of the strength and novelties of the Swedish consumer policy a comparative, albeit brief, analysis of the development trends in consumer law in other countries of Europe has been placed in chapter 2. Section 2.4 of the study deals with some aspects of consumer policy in the countries of western Europe. However, the information contained therein has for obvious reasons how become obsolete and is interesting only from a historical point of view.

Keeping in view the special interest of the Bangladeshi reader and similarly of aliens interesting in the legal system of Bangladesh a separate section on consumer protection law in Bangladesh has been placed in Annexure I.

In accomplishing the study I am enormously indebted to *Prof. Hugo Tiber*, Dean of International Studies at the Faculty of Law, University of Stockholm without whose guidance and advice many nuances of the Swedish consumer policy would have remained to me obscured.

My stay in Sweden and consequently the study would not have been possible without the Research Fellowship granted by the *Swedish Institute*. I express my sincerest gratitude to the Institute, especially to Ms. Karin Dif of the Department of Education and Research Exchange.

I also express my thanks to Ms. Christina Ramstedt, Information Secretary, The National Swedish Board for Consumer Policies (*Konsumentverket/Ko*) for supplying me with an English text of the concerned Swedish laws and for her remarkable patience in bearing with my endless questions and requests.

Thanks are also due to my friends- Ghazi Z. Ahmed, Dr. Sharif Yusuf Zai, Dr. Mahbulul Alam and to those whose names do not appear here, for their moral support, especially during the initial days of my stay in Sweden.

The Publication of this book, must confess, would not have been possible without generous support from Mr. Motahar Hossain Choudhury and Ms. Shamsunnahar Mizan, respectively Chairman and Managing Director of the Prudential Publications.

Lastly, certainly not least, a very special thanks to my wife - Muni - and to my daughter - Arpeta - symbols of my unceasing inspiration - just for being by my side.

**Faculty of Law
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April 15, 1994.**

Mizanur Rahman

CONSUMER PROTECTION LAW AND THE SWEDISH APPROACH

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CHAPTER 1. THE CONCEPT OF CONSUMER PROTECTION

1.1. INTRODUCTION

In its perception of the relationship in which an individual - a consumer- obtains a product or service to meet his private needs from a person who earns his living from manufacturing, selling or entrepreneurial activity, conventional economic doctrine relies on a number of assumptions: the end of all economic activities is consumption, consumer demand is the free and willing expression of consumer needs, the two poles in the relationship are perceived as discrete units for analytical purposes, the market place is the only place where commercial relationships can be formed.¹ Only the market "gives consumers the opportunity to express the needs they feel through demand..., enables the producer to gain knowledge of this demand and to deploy the resources needed to meet it,... formalizes the trade relationship between the isolated buyer and the individual seller".² However, the advent of mass consumption has resulted in consumers facing an information gap when they enter transactions involving the purchaser of products or the provision of services. Products are now being marketed in such a number and in such a manner that it is more difficult for consumers to judge their quality adequately. The advance of technology means that many consumer products are quite complex. Quite apart from questions of judgement, style and taste, expert knowledge is essential to appreciate the features of many modern products which fall below the threshold of perception of the ordinary consumer. One author

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1. J. M. Keynes. *Theorie generale*, Petite bibl. Paris, 1971, p. 122, p. 85.
 2. Th. Bourgoignie, G. Delvax et al. *L aide juridique au consommateur*, Bruxelles, 1981, p.6.

opines that "the course of innovations has thus quickly dated consumers' experience and knowledge, for example what was known about natural fibres like wool, and cotton has little bearing on the characteristics and performance of nylon".³ Characterising the US market, Ralph Nader goes so far as to argue that "consumers are being manipulated, defrauded and injured not just by marginal businesses or fly-by-night huchsters, but by the US blue-chip business firms.....".⁴

The imbalance, if not antagonism, in the consumer/supplier relationship is highlighted by the results of various empirical surveys describing the respective legal positions of the parties.⁵ For the isolated consumer, all that freedom of contract means is an obligation placed on him to comply with the terms of a contract—probably pre-drafted—which he has no power to influence, generally in the absence of any alternative in the market concerned.⁶ Expressions of a specific demand and negotiation of the conditions of the transaction are made difficult, if not impossible, by the impersonality of distribution networks and the standardization of contracts.⁷ Even if the consumer has the determination to negotiate the terms of a transaction before entering into it, he will still need the necessary technical and legal competence and access to the relevant information.

Moreover, several doctrinal and empirical studies have pointed to the financial, psychological and cultural barriers preventing the

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3. J. Mitchell. The consumer movement and technological change. - *Int. Soc. Sci. Journal*, Vol. 25, 1972, p. 358.
 4. R. Nader. The Great American GYP, *N. T. Rev. of Books*, Vol. 11, 21 Nov. 1968, p. 28.
 5. See. M. L. Blum. *Psychology and Consumer Affairs*, New York, 1977.
 6. Th. Bourgoignic (ed). *European Consumer Law*, Cabay, 1982, p. 20.
 7. P. S. Atiyah. *The rise and fall of freedom of contract*, Oxford, 1979.

traditional - individualist and judicial - model of access to justice and settlement of disputes from being applied satisfactorily to the settlement of disputes arising out of relations between consumers and traders.⁸ Therefore, legal "rules are required to redress the natural imbalance between the individual consumer and them".⁹

Thus, imbalances and failures which arise in the course of the development of an economic system based on the free play of market forces account for the emergence of a deep seated social movement whose first demand is for the reestablishment of market conditions making for a real balance between suppliers and consumers. The purpose of consumer law thus consists in "defining standards and rules and setting up procedures and structures which serve to promote the interests of the consumers on the market. However, it extends well beyond the mere protection of economic interests of the consumers, to become part of more general social policy on consumer affairs."¹⁰

1.2. CONSUMER PROTECTION AND CONSUMER LAW

It has quite aptly been mentioned in literature that one aspect of consumer protection which has failed to receive adequate attention is the need of consumers for protection from themselves.¹¹ Economic development has given consumers tremendous increases in purchasing power while at the same time prompting changes in the market which have significantly weakened their bargaining position. This problem bears particularly heavily on the poor. It is

8. For a list of relevant studies see *supra* note 6 at p. 22.

9. G. Borrie and A. L. Diamond. *The Consumer, Society and the Law*. New York, 1983, p.9.

10. *Supra* note 6 at p. i.

11. See James E. Sheldon. *Consumer Protection and Standard Contracts: The Swedish experiment in Administrative control*. - *Am. J. of CL*, Vol. 22, No. 1, 1974, p. 17.

now a matter of no contention that consumer protection is not simply a middle-class issue but a matter of vital importance for the less well-off members of society.¹² Despite these peculiarities, little or no development has occurred in the west in the legal concepts which govern the much altered supplier/manufacturer—consumer relationship in the market.

Behind this shadow of a long hidden vacuum in the regulation of the supplier-consumer relationship, there has for some time existed a growing realization that the law as it stands does not give sufficient protection to the consumer. As a matter of fact, the term *consumer* is by origin an economic concept and until quite recently, it was simply foreign to legal usage and conceptualization. However, with the growing realization of the need for special legislation for the protection of consumers and only consumers, it became important to give the term *consumer* a fixed legal meaning.

It should, however, be kept in mind that to make for less antagonism and a more real balance between contracting parties, the legal formalization of consumer relationships, or the processing of bringing them within the scope of the law, must necessarily entail the development of new regulatory instruments or adjustment, if this is sufficient, of existing rules and procedures. The various initiatives and approaches taken in this direction reflect the aims of consumer law.

(According to a leading European author on the subject, consumer law comprises "the body of standards, rules and instruments representing the juridical fruit borne by the various efforts that have been made to secure or improve the protection of the consumer on the economic market.) By recognizing a number of consumer rights

12. This point has been emphasized in David Caplovitz, *The poor pay more*, New York, Free Press, 1963.

and establishing a specific normative framework, it is conducive to the achievement of the aims of the movement seeking to promote the interests of the consumer" prominent among which is the aim to establish a balance of power between consumers and their economic partners or, probably more realistically, to define the means whereby the existing imbalance can be reduced.¹³

Some authors have tended to define consumer law either from a narrow or from a wide perspective. According to the former approach consumer law "focuses mainly on citizens entering transactions to obtain products and services from commercial enterprises.... it is what is generally regarded as the thrust of consumer protection legislation, such legislation confines itself to transactions involving goods and services."¹⁴ According to the wider view of the consumer interest, the term "consumer" is virtually equated with the term "citizen" (It is said that the consumer interest is involved when citizens enter exchange relationships with institutions like hospitals, libraries, police forces and various government agencies, as well as with businesses).¹⁵

It has, however, been quite strongly argued that even the concept of the consumer as citizen is limited, because it implicitly accepts the existing order of things.¹⁶ Much has been written about how advertising creates needs, generates consumption and thus perpetuates capitalism. Curbing advertising abuse does not affect this fact. It has further been argued that the notions of consumer

13. See *supra* note 6 at pp. 23-24.

14. R. Cranston. *Consumers and the Law*. London, 1984, pp. 6-7.

15. David A. Aaker and George S. Day. *Consumerism*. New York, Free Press, 1974, p. XVII.

16. R. Cranston. *op cit.* p.8.

protection may lead to such negative effects as deprivation and consequently divisions in society.¹⁷

In the opinion of some writers it is rather difficult to formulate a definition of consumer law of any legal value which is widely acceptable. But they opine that for practical purposes (consumer law is meant to cover the rules which govern relations between professionals (producers and traders) and consumers, as well as those rules which intend to protect consumers though not directly applicable to them)¹⁸

In a marked departure from the above mentioned approaches it has been accepted in Sweden and other Scandinavian countries that the "legal consumer concept must be confined to private persons who are acquiring goods, services or anything else of value mainly for their own use and not for resale or use in business."¹⁹ In this sense, it is about what the Germans call *Endverbraucher* or the ultimate consumer. Such a delimited consumer concept has of late gained international recognition and may be traced back to the American UCC which defines consumer goods as goods "used or bought for use primarily for personal, family or household purposes", (§9-109)²⁰. However, even in Swedish legislation the notion of consumer protection and law has not always been constant and has undergone changes through the years. Thus, under the Swedish **Marketing Practices Act Of 1975**, the term was still very fuzzy and included anyone who acquired goods or services

17. *Ibid.*

18. **L. Kramer et al.** Some legal problems in harmonizing European Consumer Law. In : **Th. Bourgoignie (ed)**, op. cit. p. 156.

19. **Ulf Bernitz and John Draper.** Consumer protection in Sweden. Legislation, Institutions, and Practice. Stockholm, 1986, p.11.

20. UCC. §9-109

for his own use. It was not limited to private persons and seemed to include business also.

In the opinion of Professor Ulf Bernitz, leading Scandinavian expert on consumer law, the most sophisticated definition of the term at present is to be found in the Swedish Consumer Sales Act of 1973.²¹ This Act, renewed in 1991, is applicable "where a consumer buys from a merchant goods which are intended mainly for private use and which are sold in the course of the merchant's professional activities." This definition, in the opinion of Prof. Bernitz is also applicable to consumer services where they are intended for private purposes rather than private use. "Consumer purchase is thus a narrower concept than non-commercial purchase and relates only to sales from a merchant to a consumer. Outside this concept are all cases where the purchaser is a businessman, a legal person or a person who mainly intends to use article in his professional activities. Transactions between private persons also fall outside the definition."²²

Notwithstanding such a clear concept of consumer protection, confusion still creeps in as to the true legal nature of some transactions. Thus, in practice it may prove difficult for a seller to decide, within the framework of his ordinary rapid sales routines, whether a purchaser is a consumer or not - a matter which according to the Swedish approach depends on the purchaser's intention in buying the goods for himself. The English method of limiting the scope of legislation on the basis of commodity groups i.e. restricting the application to what can be regarded as typical consumer goods, does not seem to help resolve the problem either. Such limitation, in the opinion of many experts, would appear to be an unnecessary curtailment of the scope of consumer protection.

21.. *Supra* note 18 at p. 12.

22. *ibid.*

Prof. Bernitz rightly claims that in reality the sale to persons other than consumers of what appears to be typical consumer goods normally takes place on standard conditions which fulfill the requirements of consumer legislation and thus seems to be in complete harmony with commercial realities.²³ Thus, in short, it may be concluded that consumer protection is the achieved or intended result of consumer policy.

1.3 AIMS OF CONSUMER PROTECTION *subject*

It is now generally accepted that consumer policy and consumer protection are concepts closely interlinked and sometimes even interchangeable. Professor Bernitz remarks that "when trying to define the scope of consumer policy, the greater part of the community activity and lawmaking is ultimately aimed at providing the individual citizens, the consumers, with protection and support in various aspects."²⁴

The scope of consumer protection is quite vast and engulfs even newer interests and aspects. The Consumer Protection Charter of the council of Europe²⁵ and the Consumer Policy Program adopted by the European Community in April, 1975,²⁶ contains what may be termed the scope of consumer protection and covers a broad spectrum of goods and services - everyday goods and consumer capital goods such as domestic appliances, cars and boats, repair and maintenance works, private houses and vacation cottages, travel and insurance - as well as broader issues such as planning alternatives and costs for housing, the household and the use of leisure-time.

23. *ibid.* p. 14.

24. *ibid.* p. 15.

25. Council of Europe. Res. No. 543/1973.

26. Official Journal of the European Community. No. C92, April 14, 1975.

Although the scope of these objects may be identical to that in Nordic countries, the latter do not regard consumer protective aims to be fundamental rights as has been done in the above mentioned two European documents.

The aims of consumer protection require the fulfillment of several conditions which *inter alia* include the following :

- i. Consumer information, without which it is almost impossible for the consumer to exercise his real freedom of choice. Information is required primarily in three areas : the quality and safety of goods and services available on the market; the price of goods and services offered and the rights that consumers can exercise in their dealings with suppliers;²⁷
- ii. a genuine network of legal advice services which are readily accessible and competent in consumer affairs;
- iii. there must be **effective protection** of consumers against excessive examples of imbalance in their relations with suppliers;
- iv. consumers must be given real opportunities to defend their rights and obtain redress for any damage suffered;
- v. consumers must be involved, through consultation and representation, in decision making, not only by public authorities but actually within companies which affect their interests. Participation by consumers in the law making process is an essential factor in the development of specific consumer law;

27. Stern. Consumer Protection via increased information. In : D. Aaker and G. Day. Consumerism : Search for the consumer interest. Brussels Seminar, Nov. 1977.

- vi. education on consumer problems needs to be organized, so that the citizen is in a position to make active use of the legal aid which it is intended to make available to him. In a broad sense, law reform has to be accompanied by consumer education since there is no denying the fact that "you cannot legislate for fools".

This enumeration of the types of action needed to promote consumers interests provides an accurate indication of the fields in which consumer law should come to play, foremost among which are :

- a. protection against risks of physical injury to persons or property and against useless products,
- b. protection against improper marketing measures and inadequate information,
- c. protection against one-sided contract terms and risks of economic damage,
- d. provision of effective and impulsive dispute resolution procedures for the consumer,
- e. monitoring of the mechanism whereby prices and rates are fixed on the consumer goods and services market,
- f. surveillance of practices or agreements jeopardizing the competitive structure of a market sector,
- g. planning of a consumer education programme.)

The edifice of law that must be constructed on these institutions is bound to mark a significant departure from the conventional principles of the liberal legal system, denouncing the imaginary protections which is all that the consumer can expect of it. The instruments that it is called to use are drawn from various traditional categories of law: the mechanisms of private-law, the

rules of economic control, civil, administrative and criminal sanctions, the rules of prejudicial or judicial proceedings etc. Prof. Bernitz summarizes the picture in the following words: "It calls for several bold reform and new interpretations: greater formalism in contracts, increased responsibilities for suppliers to provide consumers with positive information, compulsory definition of certain clauses in contracts, introduction of mechanisms departing from the ordinary law of contract to give consumers an opportunity to think things over, introduction of bans or requirements for prior authorization under public or administrative law, etc." 28

Thus, we can conclude that consumer protection is a large area, covering a diverse range of laws and policies. It includes such topics as the regulation of market-place relations (contract terms, advertising), the establishment of health and safety standards for products sold to consumers, and regulation of the provision of certain services (credit, professions, public services etc.). In short, consumer protection law is designed to protect citizens/consumers against injuries thought to occur in unregulated markets.

1.4. A COMMON LAW BACKGROUND OF CONSUMER PROTECTION

Probably it would not be improper to claim that the concept and rules of consumer protection primarily evolved within the system of common law, and it is deemed relevant to touch upon, albeit in very condensed form, the common law origin of the concept.

Norms of consumer protection like any other branch of common law, were developed by judges in the course of deciding cases/specific disputes which came before them - a process which

28. Ulf Bernitz. Consumer Protection.: Aims, methods and trends in Swedish consumer law. - *Scan. St. in Law*, 1976, p. 36.

had its origins in the early middle ages.²⁹ Rules laid down as to the duties of Innkeepers in medieval England provide a glaring example: in an age of rugged individualism, when judges shrank from imposing obligations on men other than for deliberate acts, when there was not yet the concept of sanctity of agreements, when damage caused by negligence rarely led to legal liability, innkeepers were still held liable for the loss of goods belonging to their guests. They were responsible even if, for example, the goods were stolen despite every precaution on their part. The *raison d'être* of such imposition of strict liability in cases as early as 1368 was that innkeepers had "greater opportunity for theft than most other people."³⁰

Such a clear illustration of consumer protection, however, did not reflect the general judicial attitude, and as late as up to the last decades of the nineteenth century the courts placed far more emphasis on the maxim *-caveat emptor -* let the buyer beware, which also had its origin deep in the Middle Ages. In those times, when transactions of sale, and even of barter, were a rarity, it was taken for granted that the buyer relied on his own judgement in transactions with strangers, and the idea of *caveat emptor* merely reflected an actual practice. Even then the adage did not mean that a buyer never had a remedy if he was the victim of unprincipled salesmanship. Writing in the sixteenth century, Mr. Justice Fitzherbert, author of one of the earliest legal text books on common law, noted: "If a man sell unto another man a horse, and warrant him to be sound and good, if the horse be lame or diseased, that he cannot work, he shall have an action against him..."³¹

29. See in detail S. F. C. Milsom. *Historical Foundations of the Common Law*, London, 1969.

30. *Supra* note 9 at p. 18.

31. Cited in G. Borrie and G. Diamond. *op. cit.* p. 19.

By the beginning of the nineteenth century such an approach started gaining an upper hand. However, one can easily detect lack of consistency in the relevant judicial decisions of the century reflecting the conflict between the *laissez faire* outlook which characterized the convictions of most influential men in that age and the desire of judges to do justice in individual cases. The view was gaining ground that, though it was still for the buyer to look out for himself, there were situations where *caveat emptor* could no longer represent the practice of even the most prudent buyer — situations, becoming more common in an era of increasing trade, where the buyer had no opportunity to examine the good before the sale. This shift in judicial attitude found material expression in the decision of *Gardiner v. Gray* in 1815 in the words of the Chief Justice: "The goods must be saleable under the denominations mentioned in the contract between them. The purchaser cannot be supposed to buy goods to lay them on a dunghill." 32

That the seller was under increasing scrutiny of the court was evident some years later in *Jones v. Bright* (1829). The Chief Justice could not have been more explicit: "It is the duty of the Court in administering the law to lay down rules calculated to prevent fraud, to protect persons who are necessarily ignorant of the qualities of a commodity they purchase, and to make it the interest of manufacturers and those who sell to furnish the best article that can be supplied. I wish to put the case on a broad principle. If a man sell an article he thereby warrants that it is merchantable - that is, fit for some purpose. If he sells it for a particular purpose he thereby warrants it for that purpose." 33

From its earliest days the common law had differentiated between the obligations of the ordinary man and the duties of those who

32. *Gardiner v. Gray* (1815) 4 Camp. 144.

33. *Jones v. Bright* (1829) 5 Bing. 533

professed a particular calling and whose goods or services were available to all. The followers of these "common callings" were subjected to liabilities that arose not out of agreement, but rather from their status and from the idea that it was in the interest of the community that people who offered their services to the public at large should show care, skill and honesty in their dealings. In doing so, however, the common law, as it was created and applied by judges, showed the utmost prudence not to underestimate the basic principle of the sanctity of contract — the basis of the relationship of the seller/manufacturer with the consumer. The scope of the present work though does not permit us to follow the different stages of the development of the principle of sanctity of contract up to modern times; it may, however, be stated here that over the times the rights and duties of the parties to a contract became so interpreted as not to jeopardize the position of the "less equal" party to the contract i. e. the individual consumer. And thus evolved another basic principle of consumer protection law — the duty to take care — which though it existed for centuries in certain limited fields such as for carriers and surgeons, is essentially a concept of the twentieth century. It was only in 1932 in the climacteric decision in *Donoghue v. Stevenson*, otherwise known as the "snail in the ginger-beer bottle" case, that the fundamental position of the duty to take reasonable care was firmly established in common law. Hence, the case merits special mention.

The facts of *Donoghue v. Stevenson* were that a shop assistant, Mrs. Donoghue, went with a lady friend to a cafe run by one Minchella. The friend bought her a bottle of ginger²beer and some ice-cream. The bottle was made of dark opaque glass and Mrs. Donoghue had no reason to suspect that it contained anything but pure ginger-beer. After taking a few sips the remainder of the bottle was poured into a tumbler containing ice-cream when a snail, in a

state of complete decomposition, floated out of the bottle. As a result of what Mrs. Donoghue described as the "nauseating sight of the snail", and the impurities of the ginger-beer already consumed, Mrs. Donoghue suffered from shock and gastro-enteritis. (She brought an action against Stevenson, the manufacturer of the ginger-beer and the person responsible for its bottling.)

The importance of Donoghue v. Stevenson which came to the House of Lords in 1932 was the decision of the majority judges that the manufacturer of goods owes a duty to the ultimate consumer, with whom he is not in any contractual relationship. Lord Atkin expressed himself thus: "The rule that you are to love your neighbour becomes in law, you must not injure your neighbour." ³⁴ And to the self-posed question - "in law who is my neighbour?" - Lord Atkin answers "persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question." ³⁵

Therefore, not only does the manufacturer owe a duty to the buyer of his goods, he owes the duty to all persons whom he ought reasonably to have in contemplation. In the just narrated case, Mrs. Donoghue was not the buyer (if she had been, she could have sued the cafe proprietor for breach of contract), nevertheless, the manufacturer of the ginger-beer ought to have contemplated that persons other than purchasers would drink the beer, and that they would be closely and directly affected by his acts in making and bottling the ginger-beer. He, consequently, owed Mrs. Donoghue a legal duty to be careful. Lord Atkin put it beyond all doubts: ".... a manufacturer of products, which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in

34. Donoghue v. Stevenson (1932) A. C. 562.

35. Ibid.

which they left him with no reasonable possibility of intermediate examination, and with the knowledge that the absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumers' life or property, owes a duty to the consumer to take that reasonable care." ³⁶ And thus, by imposing such an obligation on a manufacturer, **Donoghue v. Stevenson** as a matter of fact, laid legal liability at the door of the person primarily responsible and thereby accorded extension of legal protection for the consumer.

Donoghue v. Stevenson has been followed by several important developments in law in tune with the ever-felt necessity of protection of individual consumers in the context of the over increasing complications in the consumer market. This reflects the latent strength of common law. Prof. W. Friedmann had once commented that it was almost certain that the common law would no longer exist if great judges had not from time to time accepted the challenge and boldly laid down new principles to meet new social problems.³⁷ In spite of these developments, however, **Donoghue v. Stevenson** is still considered to be the guiding star in matters of consumer protection.

36. *ibid.*

37. W. Friedmann. *Law in a changing society*. New York, 1971.

CHAPTER 2 : RECENT TRENDS IN CONSUMER PROTECTION LAW IN EUROPE

2.1. INTRODUCTION

The movement for consumer protection achieved massive character in the countries of the West only from the beginning of the 1960s when there was a sharp increase in the production of durable consumer goods like automobiles, household electrical and radio-technical appliances etc. marked also by extension of domestic chemical products and consequently, of the service sector. Increase in the production of consumer goods, however, unleashed practical "helplessness" and "insecurity" of the consumer vis-a-vis producers and sellers of such goods who joined hands in numerous producer/ seller unions. Facts of deception of the consumers, misleading advertisement, production of health-hazard products, artificial fixation of prices of consumer goods etc. have been revealed by the press.¹ These reports helped to motivate the public opinion in the countries concerned in such a manner that a strong social movement, sometimes dubbed as "consumerism", for protection of consumer interests gained strength. Very soon, consumer protection found its place in the manifesto of different political parties, consumer societies, trade-unions etc. It is not out of place to mention the Message of the US President, John F. Kennedy, to the Congress in 1962 in which the president outlined the fundamental postulates of US State Policy towards consumer protection.² According to these principles a consumer must be guaranteed the "right to information", "right to

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1. See for example : M. Mints, D. Koen. *America Incorporated : Who owns and rules the USA*. Moscow, 1973 (in russian).
 2. See : M. I. Kulagin. *Zaschita interesov potrebitelei vo grazhdanskom prave kapitalistichiskikh stran*. In: *Pravovoe regulirovanie otnoshenii vo sfere obsluzhivaniya grazhdan*. Moscow, 1983, p. 33.

security", "right to satisfactory choice" and "the right to be heard". Similar consumer rights were also included in the First and Second Programmes for the Implementation of Consumer Protection Policy and Information adopted by the Council of Ministers of the EEC in 1974 and 1981 respectively.³

Massive consumer associations can now be found in almost all the countries in the West.⁴ National Organization of Consumers were established in the USA (1936), in Great Britain (1957), Federal Republic of Germany (1953), Holland (1953), France (1951), Canada (1960), and Japan (1961).⁵ The International Organization of Consumer Unions was founded in 1960. There are also some regional organizations like the European Bureau of Consumer Unions founded in 1962.

Main functions of the above mentioned Unions include *inter alia* to make available to consumers objective information about goods and services available in the market. To achieve this end these Unions carry out comparative test of goods the results of which are published in the journals owned by the Unions themselves.⁶ Also included in the functions is representation and protection of consumers in different state organs like planning, standardization etc. and even in the courts of law. In the majority of Western countries consumer unions and certain other social organizations are empowered to sue in case of direct, or even indirect, damage caused to the collective interest of the consumers. One British

3. *ibid.* p. 34.

4. N. D. Ivenskaya. *Zarubezhnie Soyuzii potrebitel'ei*. Obzor, Moscow, 1968.

5. See. V. A. Voina. *Mezhdunarodnaya Organizatsia Potrebitelskikh Soyuzob*. Obzor, Moscow, 1971.

6. For a short list of such journals in the EC countries. see: N. Reich, H-W. Mickwitz (ed). *Consumer Legislation in the EC countries. A comparative analysis*. New York, 1980, pp. 4-5.

lawyer has quite rightly noticed that "if there was a coherent theme to the 1970s, it was the rapid growth in the phenomenon which ultimately came to be called **consumer protection** or simply **consumerism**." ⁷ In this chapter an attempt is made to focus, from a comparative approach, various aspects of consumer protection law in Europe and the USA, and trace possible future trends of development in this vital field.

2.2 SOME BASIC FEATURES OF CONSUMER PROTECTION IN THE WEST

There has been a remarkable development in the Western countries in the field of consumer protection in the last two decades: many governmental and semi-governmental bodies have been set up to formulate and implement policies safeguarding the interests of individual consumers.⁸ In Canada, for example, a special Ministry of Consumer Protection has been created. Several organs have also been set up in the governmental machinery in the USA e.g. the Commission on security of consumer products, Department of Consumer Protection within the Ministry of Justice etc. In the United Kingdom two separate organs, Department of Trade and the Consultative Committee for Protection of consumers were established in accordance with the **Fair Trading Act, 1973**. This Act provided for the nomination of a Director General of fair trading. In tune with Art. 2 of the Act, the Director General is obliged to regulate and control commercial activities in the field of sale of goods and services in Great Britain. Under the 1973 Act it is the duty of the Director General of Fair Trading to keep under

7. Richard Lawson. Consumer Protection : A world perspective. In-ICC.. Consumer Legislation, Paris, 1981, p. 33.

8. For a country wise study of such organisations see **supra note 6** at 5-10.

review commercial activities relating to the supply of goods and services to consumers (section 2 of the Act). The Act also sets up a **Consumer Protection Advisory Committee** to which the Director or the appropriate minister can refer "consumer trade practices" (section 14). These include the terms and conditions on which goods or services are to be supplied to consumers, and the manner in which those terms and conditions are communicated to consumers (section 13) (a) and (b). If the terms in question are "so adverse to the consumers as to be inequitable" (section 17(2) (d)), the Director General can induce the Minister to legislate by Statutory Instrument against the practice (section 22) and to make it an offence to continue the practice. (section 23)

In France, mainly two separate organs deal with consumer protection problems: **National Committee on consumption** and the **National Institute on consumption**. In 1976 **European Consultative Committee on consumption** was established within the framework of the EEC. Expert group on European consumer laws was also formed in the same year.

Significant changes have been made in legal regulation of relations among producers, sellers/servicing enterprises and consumers of respective goods and services. Classical western civil law (whether one speaks of the Common law or the Romano-Germanic legal system), founded on the principles of **equality of parties** and **freedom of contract**, in reality ignores the immanent economic inequality of parties — producing or selling company on one side and the individual consumer on the other. Consequently, the consumer is rather unable, in the sense of not possessing real potentialities, to realize his contractual rights. Changes or reforms made in this field, as a matter of fact, are directed towards creating an equilibrium of rights and obligations of both the parties, creating a balance between parties with the aid of legal mechanism

by placing extra obligations on the shoulder of the producer/servicing company and awarding the individual consumer corresponding rights and guarantees.

It deserves special mentioning that consumer protection in the West is realized not only with the help of legal norms of civil and commercial law, but also with the active influence of institutes of other branches of law: administrative law, procedural law, criminal law etc. Nevertheless, private law methods form the basis of the so-called **Consumer Law**.

It hardly needs mentioning that consumer law is far from being homogeneous in nature. In Western legal literature, the complex nature of consumer law is well accepted. It has been acclaimed that "majority of the problems of commercial law could be interpreted from the view point of the consumer."⁹ The notion "consumer" has not been used in legal literature in any specific, single connotation. Both in legislation and in the court practice "consumer" appeared in different legal qualities e. g. buyer, hirer, aggrieved party, etc.

The need of consumer protection necessitated amendments in existing laws and review of court practice in the West. The **Constitution of Spain, 1978** declared consumer protection to be one of the fundamental directions of the economic policy of the state. **Art. 51** of the Constitution states: "The state-powers guarantee safeguarding of interests of the consumers by protecting their security, health and their lawful economic interests in effective manners."

Some countries adopted the policy of enacting very general laws in order to protect consumer interests. In **Japan**, for example, such

9. **A. Shavan**. Introduction. In : **D. Bauman**. *Droit de la consommation*. Paris, 1977, p. VII.

an act was put into force in 1968. Respective laws in force in France are Law no. 78-23 concerning Protection and Information of Consumers of goods and services of January 10, 1978, and the Decree of June 5, 1978, adopted for the purpose of implementation of the earlier law. In Finland, Laws on Protection of consumers No. 38-43 are in force from Sept. 1, 1978. Analogous law is in force in Austria from 1979. Canadian law of 1978 consolidated the till then existing norms on conditions of consumer contracts, on restrictive business practices, on methods of protection of consumer rights etc. Two dominant laws in the field of consumer protection in Ireland are the Law on sale of goods and services, 1980, and the Law on information of consumers, 1978. Similar laws and norms have also been enacted in a number of other European and even, developing countries.

During the last decade, in almost all the countries in the West, laws concerning Standard Term Contracts have been extensively reformed. For example, Sweden put into effect a new law in 1971 prohibiting unfair trade practices. The law was further amended in 1975. In the Federal Republic of Germany, special law regulating conditions of standard contracts was enacted on Dec. 9, 1976 which came into force from April 1, 1977. In the U. K. analogous laws are the Fair Trading Act, 1973, supplemented by the Unfair contract Terms Act, 1977, and the Consumer Protection Act, 1987.

Relations concerning consumer credit are now regulated by special legislative acts. In the USA, for example, a special Federal Law on Consumer Credit Protection has been enacted. Some US states follow the Uniform Consumer-Credit Code. In 1974, Act on Consumer Credit was enacted in England. At the same time, steps are being taken to harmonize consumer protection laws within the framework of the EEC.

2.3. DEVELOPMENT TRENDS IN CIVIL & COMMERCIAL LAW WITH RESPECT TO CONSUMER PROTECTION

Making available to consumers full and objective information relating to quality of goods and services has characterized the development trend in civil and commercial law of the Western countries. Different legal instruments are used for this purpose. Restrictive business practices are dealt with the help of anti-trust laws. In accordance with the law of contract rules, the seller of the goods and services is burdened with the so-called "information obligation" i.e. the obligation to give the consumer all relevant information necessary for effective and safe exploitation of the products purchased.

Court practices amply testify that the "information obligation" might be given somewhat wide interpretation. One of the leading cases in this direction was resolved in the Court of Lyon in 1973.¹⁰ Facts of the case are as follows : Due to a faulty heating system one of the dancing floors in the city of Lyon caught fire. The walls of the dancing floor which were covered with a synthetic fibre burnt to ashes. 146 persons could not make their way out of the burning floor and died. Relatives of the deceased filed compensation suits against the owner of the floor on the ground that the floor did not have sufficient number of emergency exits, against the person who installed the defective heating system, against the Mayor of the city for having given permission to open a dancing floor without proper security arrangements, and lastly, against the supplier of the synthetic fibre. **La Cour d' Instance** granted the suit and ordered all against whom the suit was filed to compensate for the damages. **La Cour d' appel** approved of the decision and mentioned in its ruling *inter alia*

10. See Lyon 13 Juill, 1973. *Gaz. Pal.* 1973, 2, 830. 102

that the supplier of the synthetic fibre, having been aware of the purpose for which the fibre was bought by the owner of the dancing floor, should have cautioned the owner against such use. In the opinion of the Court, rules regarding the use of the product and technical instructions attached with the product do not sufficiently guarantee consumer interests because these instructions are generally addressed to and may only be understood by professionals, whereas in the given case, the product was sold to a common consumer.

In relation to technically complicated products, "information obligation" further includes offering the consumer necessary help, consultation and advice for as long as the consumer might not be in a position to handle the product independently. It has quite aptly been said by the French lawyer Grelon that "Consultative obligation exists in all cases where one of the parties is a professional and the other - a client- who does not possess special knowledge. More apprehensive the risk, wider is the obligation."¹¹ Non-fulfillment of this obligation allows the consumer to demand annulment of the contract and payment of compensation for likely damages.¹²

Information obligation on the part of producers/suppliers have led to the emergence of the institute of labelling of products, insertion of quality marks to trade marks etc. At present, information-labelling is in practice in almost all the countries of Europe and the USA. However, labelling of products is not an obligation of the producer/seller but his right.

Special importance attached to the question of consumer protection in Western countries has led many of them to impose a ban on the production of certain goods for reasons of their "special

11. B. Grelon. *Les entreprises de services*. Paris, 1978, p. 32.

12. *supra* note 2 at 38.

aggressiveness", or for being **"dangerous to consumer interests"**. Thus, for example, the French Decree of February 9, 1961, prohibits sending of unbooked products with open offer to either return them or pay for them. Certain forms of retail sales like door-to-door sales, sale with bonus etc. are now tightly regulated and to a great extent restricted.

In recent times, legislators in the West have demonstrated a drastic shift in their attitude towards **"standard contracts"**. "These are contracts" - remarks a French lawyer, "in which one party, owing to its economic power creates law for the other party and dictates him conditions which the latter is not in a position even to discuss." ¹³ In the words of Trietel, "... a third and less defensible object of standard forms has been to exploit and abuse the economic power in contracts between suppliers of goods and services and private consumers." ¹⁴

As a general rule, the consumer is ignorant of the conditions of such contracts. "For one thing, he would not generally read the printed forms : indeed, if he did so, its main purpose (of saving time) would be defeated." ¹⁵ As Lord Danning had sarcastically put it: "Not one in thousand consumers ever reads these clauses. If he did so, he is sure to have missed the ship or the train." ¹⁶

Very often standard term contracts contain clauses which significantly curtail the rights of the consumers. The supplier can use a standard form contract to limit or exclude a liability to which he would normally be subject. He may have a near or absolute monopoly, or he may belong to an association whose members

13. A. Colin, H. Capitant. Cours élémentaire de droit civil Française, V. II, Paris, 1939, p. 364.

14. G. H. Trietel. The law of contract. London, 1970, p. 172.

15. G. H. Trietel. An outline of the law of contract. London, 1989, p. 72.

16. *Thornton v. Shoe Xane Parking Ltd* (1971) 2 QB 163.

control the entire supply of some commodity or service, and who all use the same standard form. Further, in order to avoid conflicts of standard form contracts with existing laws of the land, clauses concerning specific means of performance and resolution of disputes are inserted in the contract. Thus, an extensive area of social relations which otherwise would have been regulated by existing laws of the land is taken away from its jurisdiction and regulated by "special rules" formulated by the monopolies or associations of producers/suppliers.

The legislators could not turn a deaf ear to such cases of abuse of economic power. As a result, various enactments were adopted to regulate the exemption clauses in the standard contracts.¹⁷ These new enactments, including some of the earlier adopted laws, prohibit insertion of clauses which adversely affect the rights of private consumers. For example, the Law on Unfair Standard Terms of April 30, 1971 in Sweden empowers the court to prohibit private entrepreneurs from concluding standard term contracts in the future if such a contract under the disposal of the court contains clauses evidently unfair to the consumer. Moreover, liability of the seller cannot be excluded simply by mutual agreement of the parties save when the agreement fosters protection of interests of the consumers. The Uniform Commercial Code (UCC) of the USA further allows the court to evaluate the content of the contract. §2-302 of the UCC stipulates:

17. For an idea on such reforms see : Ewoud H. Hondius. Unfair contract Terms : New control systems. - *The American Journal of comparative Law*, V. XXVI, 1987, N. 4.

See also : Otto Sandrock. The Standard Terms Act 1976 of West Germany. - *The American Journal of Comparative Law*, 1978, N. 4.

"(I) If the Court as a matter of law finds the contract or any clause of the contract to have been unconscionable at the time it was made the Court may refuse to enforce the contract, or it may enforce the remainder of the contract without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result." 18

Recent Western legislation in this field does not allow insertion into the contract of clauses which exclude liability of the sellers for sale of low quality goods or which contain less rigorous liability as compared to liability imposed by the existing law. According to the Sale of Goods Act, 1979 of **England**, any clause excluding the liability of the seller referred to in § 13, § 14 and § 15 either wholly or partly must be declared null and void.¹⁹ Court practice in **England** also corresponds to this rule. English courts have developed a new concept of "**fundamental breach**" of the contract. In the opinion of the court, if the breach is "**fundamental**", any limitation or exclusion of liability by mutual agreement of the parties are considered void.²⁰

The essence and substance of "**product liability**" have also undergone colossal changes over the last few years in the West.²¹ Extension of liability of the producer/seller is primarily manifest in the institute of "**strict liability**" for damages caused by

18. **Uniform Laws Annotated**. Uniform Commercial Code. Master Edition, V. 1, 1968, p. 137.

19. **Sale of Goods Act, 1979**.

20: See. **A. A. Komarov**. The concept and content of contractual liability in the U. K. and the USA. - Summary of the Ph. D. thesis. Moscow, 1981, P. 11 (in russian).

21. More on this topic see : **La responsabilite des fabricants et distributeurs**. Paris, 1975.

defective products in which case liability arises even in the absence of *culpa/negligence* of the producer/seller. Almost all the states in the USA have incorporated strict liability clause in their legislation, and in states, where it has not been incorporated, *culpa/negligence* of the producer/seller is, however, presumed. French court practice also adheres to the principle of strict liability of professional seller/producer for damages caused by defective products.

According to the French Civil Code, liability of the seller of defective products depends on his conscientiousness. If the seller was not aware of the defects beforehand, he is obliged to return the price and compensate the consumer/buyer for expenses incurred in relation with the transaction. But if even after knowing of the defects he sells the product, he is bound to return the price and compensate for all losses caused to the consumer by the defective product.²²

However, beginning from the early 50s, the French courts started penalizing the seller to the extent of paying for damages caused to the consumer by defective products irrespective of whether the seller was aware or could not be aware of the latent defects.²³ Liability of the seller remains unaffected even if the product has passed through quality control and acquired specific certificate to that effect. Quite obviously, the doctrine had to take into account this remarkable shift in the attitude of the French courts. The prevailing situation has been depicted by Dennis Bauman in the following words: "The seller/manufacturer or simply the professional seller accepts responsibilities in relation to the end-result: he must sell products which can perform their normal functions. The seller by selling a product which fails to satisfy the

22. Art. 1645, Code Civil, Paris.

23. *Supra* note 2 at 41.

consumer violates the contract irrespective of his intentions, reasons or circumstances. The seller must guarantee the consumer against all damages caused by the purchase, and is liable on a similar footing as the unconscientious seller in the manner referred to in the Civil Code."²⁴

At present, court practice in the USA, U.K, France, Italy, Germany, etc. recognise the right of the consumer to sue, for damages caused by defective products, not only the seller but also the producer directly. Section 2-318 of the UCC as adopted by the State of Virginia, for example, states :

"Lack of privity between plaintiff and defendant shall be no defense in any action brought against the manufacturer or seller of goods to recover damages for breach of warranty, express or implied, or for negligence, although the plaintiff did not purchase the goods from the defendant, if the plaintiff was a person whom the manufacturer or seller might reasonably have expected to use, consume, or be affected by the goods."²⁵

Court practice in many countries even allow bringing a damage suit of this nature against any person who has been found to take part in the chain of distribution of that defective product. Suit may be brought not only by the buyer but by any person adversely affected by that product.

24. *Supra* note 9 at 113-114.

25. Section 2-318 of the Uniform Commercial Code. In: Report No. 2 of the Permanent Editorial Board for the UCC, p. 39.

See also : R. Corley, W. Robert. Fundamentals of Business Law. Englewood Cliffs, N. J. 1974, p. 392.

Sharp increase in product-liability has, as a consequence, led to extensive practice of liability insurance in almost all the countries under review.

In recent years there has been a traceable tendency against product liability and strict liability. Draft legislation in some states within the USA, Draft law of the EEC etc. propose limitation of liability of the seller/manufacturer. It is stipulated, for example, that their liability is limited only by the time-period subscribed by law. Some drafts even propose a maximum limit of compensation etc.

It should, however, be remembered that in their pursuit of maximum protection of consumers, more attention is now paid to standardization of products especially of everyday use like food-stuffs, medicine etc. For example, **Part II of the Consumer Protection Act, 1987 of England** makes it an offence to supply goods which do not comply with legislative safety standards. The act gives a civil remedy to persons affected by contravention of these standards, and that liability cannot be excluded by contract.²⁶

2.4 CONSUMER PROTECTION IN COUNTRIES OF EASTERN EUROPE

In Eastern Europe consumer protection had all along been a neglected field suppressed by the euphoria of ideological supremacy of socialism over capitalism, and of priority of collective/social interests over those of individuals. Although recent upheavals and revolutionary changes in Eastern Europe have unleashed the palatable condition of the consumer in its proper magnitude and perspective, voices could be heard, even before, describing the helplessness of the individual consumer. Speaking of consumer

26. **Consumer Protection Act, 1978, ss. 10, 41 (4) and 4.**

protection in socialist countries the soviet lawyer E. Sukhanov had noted: "Methods and forms of classical law of obligation with its abstract figures of creditor and debtor in cases of consumer protection only help to overshadow the real (economic) inequality of the parties - individuals and specialized organizations - and enable the latter to create privileged position in relation to the clients (consumers - M. R.)." ²⁷ Compared to other countries of Eastern Europe, the situation in the now independent states of the former Soviet Union had been worse. It is not without reason that the XXVIth Congress of CPSU stressed the urgency to study the experience of "Other socialist countries in the field of consumer protection." ²⁸

Consumer protection in these countries did not lead to what could have been analogous to Western Consumer Law. Consumer protection continue to be regulated mainly by norms of the civil code. During more than four decades of socialism only Czechoslovakia and former East Germany took definite steps, albeit within the boundaries of their respective civil codes, to regulate consumer protection. For obvious reasons of German reunification, the East German practice carries little, if any, practical importance now.

In Czechoslovakia norms regulating all kinds of service to consumers by organizations of the service sector have been placed in separate chapter in the Civil code. ²⁹ The term service has been defined in the code very broadly so as to include even those

27. E. A. Sukhanov in *supra* note 2 at 29.

28. *ibid*, p. 28.

29. §222-238 of Civil Code of Czechoslovakia. For a more detail study on consumer protection law in Czechoslovakia see : Thomas Wilhelmsson & Jiri Svestka (ed). Consumer Protection in Czechoslovakia and Finland. Helsinki, 1989.

services which have not been mentioned in the code.³⁰ The code also contains classification of services into headings and sub-headings (10 such headings in the civil code). While thus developing the law of obligations, Czechoslovakian legislators, in their desire to ensure "maximum satisfaction of consumer demands" inserted new sections introducing elevated liability of the service-offering organizations, corresponding rights of the individual clients, material liability of service-offering organizations, improvement in the procedure of suing the organizations and extension of judicial protection of individual customers/consumers.

One unique phenomenon in the Czechoslovakian practice is the emergence of pre-contract obligation of the service-offering organizations to conclude contracts with consumers. In accordance with this principle, refusal by the organization to give service to a client (or even refusal to sign a contract with the client) is considered to constitute a violation of consumer rights and may be pleaded in the court. The organization is also law bound to ensure uninterrupted and qualified satisfaction of the needs of the clients/consumers.³¹

Certain consumer rights relating to defective products are now guaranteed in Hungary and Czechoslovakia. For example, private consumer has the right to lodge complaint relating to defective products with any organization engaged in business in analogous goods if lodging of complaint with the seller of the defective product requires "extra expenses" for him. The consumer also enjoys the right to be compensated for all expenses

30. *ibid.*, §222.

31. *ibid.*, §223-224.

relating to the lodging of such complaints.³² The law also prohibits "exemption clauses" i. e. clauses limiting or excluding the liability of the seller/manufacturer, and even provides for "strict liability" in some cases.³³ The civil code of Czechoslovakia, for example, contains provisions under which the service-offering organization is liable irrespective of its culpa/negligence for any damage or loss of goods deposited with the organization by the consumers (e. g. clothes for dry-cleaning).

Until very recent times court practice in the East European countries did not/could not play the role of their Western counterparts in safeguarding consumer rights. But under changed circumstances, given necessary prudence, they are likely to activate their role even with the aid of the existing civil law mechanism. For example, sec. 209 and §2, sec. 237 of the Civil Code of Hungary stipulate that "the court has the right to declare any contract null and void if it contains clauses giving unilateral advantage to one party or adversely affecting the interests of one of the parties." This provision, in our opinion, provides enough room for non-enforcement by the court of standard-term contracts or contracts with discriminatory clauses and pave the way for protection of consumers who had long been residing beyond the scope of legal protection.

2.5. CONCLUSION

This brief study reveals that consumer protection as a philosophy and as a legal institute has achieved an universal character. Recent

32. See : Par. 2, Civil Code of Czechoslovakia and Par. 1, sec. 309 of civil Code of Hungary.

33. Par. 3, sec. 233 of Civil Code of Czechoslovakia and Par. 2, sec. 314 of Civil Code of Hungary.

trends in the development of law in this aspect give enough space to conclude that the emergence of **Western/international consumer protection law** is no longer a utopia. If law has always been a tool for "social engineering" devoted to the ultimate well-being of the individual, consumer protection deserves the attention that legal thinkers and legislators in the West have been attaching to it. Under these circumstances, it is hard to agree with the view that "where trade and industry organise themselves at european or even international level, consumers cannot hope to receive an adequate amount of protection or information by local, regional or national steps." ³⁴ Fortunately enough, recent practice of the European countries establish the contrary - consumer protection law is achieving strength and progress, albeit inch by inch, and is sure to remain in the centre of attention of the legislators and more importantly, of individuals, for years to come.

34. Ludwig Kraener, European Consumer Protection - A Progress Report. In : Geoffrey Woodroffe (ed). Consumer Law in the EEC. London, 1984, p. 37.

CHAPTER 3. CONSUMER PROTECTION INSTITUTIONS IN SWEDEN : AN OVERVIEW

3.1. INTRODUCTION

In the contemporary world when ideology has finally ceased to be the dominating factor both in internal and external affairs of a state, the individual as a consumer is gaining increasing attention as the primary objective of national policy. The need for consumer protection has long been recognized in countries throughout the world. While Sweden is no exception, it has developed some major innovative approaches to consumer protection both in respect of institutions and legislation. The following is a brief overview of the development of institutional framework in the sphere concerned.

Consumer information has been a government responsibility in Sweden since 1940. At that time shortage of goods and the emergence of substitute products motivated the setting up of a government information bureau known as Active Housekeeping.¹ The purpose of the Bureau was to supply information which would assist the individual household in working the best of the available resources.

The Bureau operated independently until 1954 when it was merged with the Home Research Institute which had been founded earlier.² The main purpose of the Institute was to make house

1. Consumer Committee Report. Summary. P. 25. Swedish Government publication. SOU 1971:37

2. *ibid.*

work more efficient by research concerning domestic commodities and tools and by information.

In 1957 the Government assumed financial responsibility for the organization and changed its name to National Institute for Consumer Information. The central purpose of the Institute was "to promote the improvement of working efficiency in private homes and collective households and to encourage the production and consumption of goods and useful consumer goods"³ It was the special function of the Institute to conduct research and supply information concerning the technical, economic, hygienic and other problems which are associated with homes and households as centres of consumption and as workplaces. The Institute supplied advice and information to consumers by regionally located "home consultants".

In 1951 the VDN Institute for Informative Labelling was founded. Although it was private, its organizational charter and by-laws were approved by the government. The principle objective of the Institute was "to promote the wider use of informative labelling on consumer goods". The labels should include "product specifications that are uniformly formulated and also details of the goods material and functional qualities".⁴

Two important steps toward consumer protection was taken in 1957 : The National Council for Consumer Goods Research and Consumer Information was created to sponsor research on consumer matters and to co-ordinate consumer information programmes of the Institute and other bodies. The Council set up a Public Complaints Board, as an

3. Consumer Committee Report. op. cit.

4. *ibid.*

experimental undertaking to receive complaints from consumers relating to goods and services and resolution thereof.

In the same year, the National Price and Cartel Office was established for investigating and researching problems of pricing and restrictive practices.

From the mid- 1960 questions relating to consumer information aroused steadily growing interest in Sweden which was manifest in the appointment of several special commissions.

However, it was not until the beginning of the 1970s that consumer protection became a major issue and significant steps taken to effectuate such policies. On June 29, 1970, a new law called the Market Court Act was passed.⁵ This Act became effective January 1, 1971. This Act established a special new court to deal with unfair marketing practices and improper terms in consumer contracts. In connection with it a Consumer Ombudsman (KO) was established which is now universally recognized as a major innovation in consumer protection institutions. Less directly affecting consumer is the Freedom of Commerce Ombudsman whose function is to enforce legislation promoting fair competition in business and prohibit restraints on trade.

In May 1971, the Swedish Consumer Committee which had been appointed earlier, published a major report advocating that three existing governmental agencies working for some aspects of consumer protection be consolidated into one major agency.⁶ This new super consumer Agency would develop broad consumer

5. The Market Court Act, Act of 29 June, 1970 (1970:417)

6. SOU 1971:37SOU 1971:37

policies and take over the work of a number of the separate agencies concerned with consumer protection.

In 1972, a bill was introduced in the Parliament for the establishment of the proposed new consumer agency and passed. In 1973, the new agency, the National Board for Consumer Policies (Konsumentverket) began its operations and the earlier established Consumer Institute, the Consumer Council and VDN were abolished at the same time.

The legislation administered by the Consumer Ombudsman (KO) was expanded in 1976 when Konsumentverket and KO were amalgamated. Now Konsumentverkets Director General is also the KO.

Over the years a variety of mass movements—trade unions and political organisations, womens organisations and adult education associations— have shown a great deal of interest in consumer affairs. They take part in the making of consumer policy parallel to and jointly with Konsumentverket and the municipal consumer guidance officers.⁷ Local consumer support activities exist in nearly all of Swedens 284 municipalities.

Certain of the Swedish institutions for consumer protection have never been tried elsewhere. They are of great importance to the swedish consumer and also offer other countries possible models of consumer protection. Such major innovations, therefore, merit a closer look.

3.2 CONSUMER OMBUDSMAN AND THE NATIONAL CONSUMER BOARD

While the institution of "ombudsman" is old and well established in Sweden, with the Ombudsman of the Parliament established in

7. The National Swedish Board for Consumer Policies. Information Booklet. Orebro, 1990.

1809, the idea of a consumer ombudsman is relatively new, and its creation has been dubbed as a "most novel approach to the problem of consumer protection".⁸ It is the first such Ombudsman created anywhere and reflects the complexity and importance attached to consumer protection in Sweden.

The office of the Consumer Ombudsman (referred to as KO) was established at the beginning of 1971 on the effective date of the **Marketing Practices Act**.⁹ It provides that "for questions concerning marketing practices there shall be a consumer ombudsman".¹⁰ He "shall be appointed by the King-in-Council for a specified term and shall be legally qualified".¹¹ This signifies that the KO is not legally answerable to the Parliament and subject to political pressures. Rather his position is like that of other civil servants.

The KO is directed to protect individuals as consumers and to act as a special prosecutor when necessary. He is also expected to take initiatives of his own and to respond to complaints from the public. However, the KO is supposed to police the business community and not the government bureaucracy. Moreover, the KO does not intercede in specific disputes. He is directed to protect consumers as a group by way of negotiation and petitions to the Market Court.¹²

8. Donald B. King. *Consumer Protection Experiments in Sweden*. 1974, p.3

9. **The Marketing Practices Act**, Act of June 29, 1970 (1970:412)

10. *ibid.*

11. *ibid.*

12. For a distinction of KO from other categories of Ombudsman, especially the Parliamentary Ombudsman see **Fact Sheets on Sweden**. FS 71 odc. The Swedish Institute, July, 1990.

Six months after the Marketing Practices Act became effective, the KO was assigned the additional responsibility of enforcing the Contract Terms Act discussed in the next chapter. However, as indicated earlier, in 1976 the KO was merged with the National Consumer Board, created in 1973, into one super agency with the KO retaining his separate identity as the prosecuting authority under the Marketing Practices Act and the Contract Terms Act. The KO was at the same time made **Director General** of the new super agency, designated **Konsumentverket/KO**.¹³

Konsumentverkets Board of directors is composed of **ten members**. The Director General of the agency is the Chairman of the board. Two members are representatives of consumer and one of labour interests. Two members are representatives of the business community. Two are members of Parliament, and there is one representative of the municipalities. The Director General of the National Food Administration makes the tenth member. In addition, two representatives of the agency staff serve in an advisory capacity. The Agency's Director General is appointed for six years and the Board's other members for three years. It is the duty of the Board to set a general policy for the agency, including the allocation of resources among various functions performed within the agency. This includes setting the budget for taking cases to the Market Court under the Marketing Practices Act and Contract Terms Act by the Director General in his capacity as Consumer Ombudsman.

In a nutshell, the work of the Board refers to the following fields among others:

13. *Supra* note 7. See also : Prop. 1975/76:34 at 96-97, 114-117. Structure of the Agency/Board is shown in Annex. II *Supra* P. 88-89.

~~i.~~ household economies

~~ii.~~ product safety

~~iii.~~ corporate marketing and contract terms.

The Board's principle means of furthering the objectives of consumer policy are as follows¹⁴ :

(i) Activities to influence the market situation in order to ensure that goods, services, marketing methods and contract terms are adopted to consumers needs. The Board carries out tests and evaluates different kinds of goods and services, company marketing activities and the terms of contracts. The Board also contacts producers, distributors and marketers to seek to influence products in a direction favourable for consumers. KO also acts to introduce standard contract forms in areas where they are not used and to generally investigate the fairness of contract terms in entire areas. If voluntary agreement is not possible, the KO may act as a prosecutor in the Market Court on behalf of consumers in those matters regulated in any of the following four laws : the Marketing Act, the Consumer Contract Terms Act, the Consumer Credit Act and the Product Safety Act.

(ii) Activities to improve the general situation of consumers. In the sphere of education the Board sees to it that consumer matters receive attention in school curricula at all levels, produces teaching aids and keeps in touch with schools and universities.

The new focus of consumer policy implies greater decentralization and wider duties for municipal consumer advice organizations. The Board's task is to encourage municipal consumer advisers by

14. See. Fact Sheets on Sweden. FS 81 mQC. The Swedish Institute. Nov. 1990.

supplying them with information and other services. Municipal activities are based on voluntary undertakings.

One of the main aims of municipal consumer policy is to provide individual consumers with guidance in various questions. Other aims are to provide general information on consumer issues, to report on consumer problems to central authorities, to provide statements of opinion concerning consumer matters, and to support other consumer policy activities in the community.

(iii) General information to the consumers. One of the Board's central functions is to provide information. The goal is to disseminate information which will familiarize consumers with matters of consumer policy and which will give them guidance in selecting goods and services as well as in household planning. For this reason the Board publishes periodicals, fact sheets, research reports, booklets etc. Particular mention may be made of **Rad & Ron (Advice and Results)** which publishes information and reports on consumer products.

The duties of the Director General in his capacity as the KO have been largely delegated to the KO Secretariat. The secretariat brings action before the Market Court in cases concerning marketing practices, dangerous products or unfair terms. It also deals with prosecution matters.

When the Board, either as the result of a notification from outside or in the course of its own scrutiny, notices an undesirable marketing action or condition in a contract, it attempts first to have the matter put right voluntarily, by discussing with those responsible. If a correction cannot be agreed upon, the KO can refer the case to the Market Court, requesting that the entrepreneur be prohibited from continuing to use the undesirable marketing practice or condition in the contract.

Preliminary injunctions may be sought in the Market Court by the KO when it is necessary to bring the practice in question to an immediate halt. He has this power under both the Marketing Practices Act (§13) and the Contract Terms Act (§5). However, a preliminary injunction will be granted only if it appears very likely that a permanent injunction will follow.¹⁵

The KO is empowered to subpoena documents, information, product samples and the like necessary to carry out investigations. Subpoenas are issued when companies refuse to supply to carry out investigations. Subpoenas are issued when companies refuse to supply requested materials, and the subpoenas, like the decisions of the Market Court are complemented by specific fines.¹⁶

Violations which clearly fall within existing precedents of the Market Court may be dealt with by a method called Consent Orders which are provided for under both the Marketing Practices Act and the Contract Terms Act.¹⁷ Once the businessman has agreed to a consent order proposed by the KO, the Order has the same force and effect as an injunction of the Market Court.¹⁸

Depending on the nature of a complaint KO can issue a recall injunction, requiring the company to repair, exchange and recall hazardous products which it has sold.

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15. Ulf Bernitz & John Draper. Consumer Protection in Sweden. Legislation, Institutions and Practice. Stockholm, 1986, p.71.
 16. Marketing Practices Act §11 and §22 contract Terms Act §3a.
 17. Marketing Practices Act §14, §15, Contract Terms Act §6.
 18. More on Consent Orders see : Konsumenträtt och Ekonomi, 1977, No. 2 at 38, Konsumenträtt och Ekonomi, 1977, No. 6 at 30.

Injunctions are always combined with contingent fines i. e. a substantial penalty which the company can be made to pay if it continues an activity which has been prohibited or fails to supply important information.

Konsumentverket/KO deals with around 4000 cases every year, almost half of which concerning the Marketing Act. About 20 cases a year are referred to the Market Court.¹⁹ Once the KO receives a complaint it is thoroughly investigated. This investigation, together with selection and careful preparation of cases contributes to a very high percent of cases won by the KO in the Market Court.²⁰

3.3. THE MARKET COURT

In most countries, cases concerning consumer protection must be brought in the regular courts with corresponding delays and lack of special judicial insight into consumer problems, and obviously, with no priority for such cases. In Sweden, on the other hand, there exists a special court- **The Market Court**- which has aptly been regarded by some authors as the "**Consumers court**".²¹ This court constitutes another novelty in consumer protection institutions in Sweden.

The Market Court was created by the **Market Court Act (1970:41)** simultaneously with the office of the KO. Its main function is to serve as the precedent-setting authority for the interpretation of the Marketing Practices Act and the Contract

19. *Supra* note 12

20. For example, in the first 20 cases KO brought before the Court, he lost only one. *Supra* note 8 at 8.

21. *Supra* note 8 at 15

Terms Act. It is the first and the last instance for the KO to settle disputes with businessmen/companies arising under these acts. It also enjoys exclusive national jurisdiction under the **Restraint of Trade Act** (§1).

The Market Court is composed of a president or chairman, a vice-chairman and six lay members representing in equal numbers business interests and consumer/labour interests. In addition, two economic experts are members of the court, one having special knowledge of trade and industry and handling cases under the Restraint of Trade Act, and the other having special knowledge of consumer problems and handling cases under the Marketing Practices Act and the Terms of Contract Act (§3, §5). Each member has one or more deputies. Members and deputies as well as the Chairman and Vice-chairman are appointed by the King-in-Council (§6). The Act requires the Chairman and Vice-chairman to be learned in the law and have judicial experience (§4). The Chairman serves for a term of six years and the other members for three years each.

The procedure before the Market Court in a case under the Marketing Practices Act is as follows : the KO submits a written petition setting out the activity complained of and the reasons for which it should be enjoined by the Court. The Court then forwards the petition to the respondent who must answer within 21 days. The Court, if it so wishes, may ask for **amicus** briefs, although this is seldom done.)

Statistically, the respondent is represented by a little more than half of the cases.²² A pretrial conference is often held with the chairman of the Court. Almost half of the cases under the Marketing Practices Act are then decided without a hearing before the Court. In cases which do go to hearing, the Court will take

22. See Ulf Bernitz & John Draper. op. cit. p. 92.

evidence and hear argument by the parties or their lawyers. A quorum of the Court is constituted by the Chairman and four other members representing equally consumer and business interests (§9).

The Market Courts power is exercised in the form of injunctions. It enjoins businessmen from engaging in misleading advertising or using improper terms of contract. It generally includes in the injunction a provision that failure to follow it is subject to fine.

If the injunction is violated, the matter will be called to the attention of the public prosecutor who will bring an action in regular courts to collect the fine.

The decisions of the Market Court are summarized in the periodical "Konsumentratt och Ekonomi" (Consumer law and Economy) published by Konsumentverket. It subscribes to wider awareness both among the business community and lay consumers.

3.4. THE PUBLIC COMPLAINTS BOARD

An overwhelming majority of consumer disputes in Sweden are referred to the Public Complaints Board (Allmänna Reklamationsnämnden) which is often regarded as "a third major innovation for consumer protection developed in Sweden".²³ This Board was established in its present form in 1968²⁴ and functions from 1981 as an independent agency. A consumer may go to this Board if he is unable to get any satisfaction from his seller. The importance and confidence attached to the Board by

23. *Supra* note 8 at 19.

24. For further information on Public Complaints Board see : Jan Hellner. *The Consumers Access to Justice in Sweden*, 40 *Rebels Zeitschrift*, 1976, p. 727. See also, S O U 1978:40.

consumers is illustrated by the fact that nearly 3000 complaints per year are lodged with the Board since its creation.²⁵

The Public Complaints Board is headed by a chairman and seven vice-chairman who are learned in the law and have judicial experience. The Board also has approximately seventy four members chosen in equal numbers from business and consumer entities, to certain extent similar to the make up of the Market Court.)

The Board is divided into ten divisions : travel, motor vehicles, electrical appliances, boats, textiles, laundry and cleaning, footwear, furs, insurance and miscellaneous. Six to ten members serve in each of these divisions. The Board also has a staff which advises consumers and prepares disputes for resolution by the appropriate divisions.)

The consumer complains to one of the divisions. The complaint is then investigated and the office contacts the seller or manufacturer and asks for its side of the story. If the complaint appears justified, the Board may then hold a hearing on the matter. While each party could appear before the Board to argue its case, the usual procedure is for the Board to review the written reports and written arguments presented by the consumer and the business and reach its decision on this basis. It is worthwhile to note that in its discussions the Board centres more upon the question of what is fair as contrasted to legal issues.

Another striking feature of the decision of the Board is that, although a judgement in favour of the consumer will state the amount of damages to which the consumer is entitled according to the division concerned, the decision is not enforceable as a matter

25. Memo of November 16, 1972 on **Main Features of Swedish Consumer Policy**, by the office of the Consumer Ombudsman at p. 6.

of law - it is merely a recommendation and as such, may be disregarded by the Business. In such a case of non-compliance, the business, however, risks being entered on "blacklist" of uncooperative companies in newspapers and in the publications of the Consumer Board and digest corresponding consequences of such negative publicity. This, it must be construed, has had a marked positive effect on the behavior of the business. While in the early years of the Board forty percent of the recommendations were not followed, the figure has in recent years dropped to less than fifteen percent.²⁶ The statistics by themselves speak of the positive effect of the Board on the business community and thereby, on consumer protection. And in fact, a number of business organizations have bound themselves to follow the recommendations of the consumer Board and have taken definite steps to that direction.

3.5. THE SMALL CLAIMS PROCEDURE

The concept of the small claims procedure is that persons may come to such a court without having to hire an attorney. Legal formalities and technicalities are stripped away from this type of procedure. The claimant may simply present his case and the judge, after hearing both sides, renders his decision. Justice is thus obtained without expense, delay or the complexities of the usual legal system. Another feature of this procedure as indicated by its name, is that the court handles cases wherein claims do not exceed a certain amount defined by law. The absence of a lawyer, however, presents a drawback in that the case will not be as thoroughly considered and that the risk of substantive miscarriage of justice is much greater — a sacrifice accepted for the advantages mentioned above.

26. Ulf Bernitz et al. op. cit. p. 99.

The innovative character of the Swedish Small Claims Procedure may be found in that it places primary emphasis on consumer problems.

The Small claims Procedure was established in accordance with the passing in 1974 of the **Small Claims Act i. e. the Act on Simplified Legal Procedure**.²⁷ Professor Ulf Bernitz maintains that this court was created to "facilitate the assertion of claims by consumers" under the consumer legislation and "to circumvent shortcomings of the procedures of the Public Complaints Board".²⁸

Non-admission of oral testimony in proceedings before the Public Complaints Board make it quite unattractive to plaintiffs, especially where oral testimony is thought to be necessary, such as in cases arising under the **Door-to-Door Sales Act** where the commitments by the salesman in the consumers home is at issue. Unlike the decision of the Public Complaints Board, the judgement of the court in a Small Claims case is enforceable. This is an obvious advantage over Public Complaints Board.

Anyone, not just a consumer, may initiate an action in the Small Claims Court, and in practice, many actions are brought by businessmen to collect debts owed by consumers.

As has been indicated above, there is upper limit to the size of a claim brought in the form of a Small Claims case.²⁹ This limit, however, does not apply if the matter has already been heard by the Public Complaints Board and the party refers to the Boards decision in connection with his request that the case be tried under the Small

27. **Lagen (1974:8) om rättegången i tvistemål om mindre värden.** See Ulf Bernitz. *Standardavtalsrätt* 48, 3rd Revised Edition, Stockholm, 1978.

28. *Supra* not 26 at 102, 103.

29. The limit in 1991 was SEK 16, 100. 1USD is approximately equivalent to 6 crowns (Kronor).

Claims Act. The Boards decision, however, is not *res. judicata* in the Small Claims Court.

There are several other provisions of the Act whose aim is to cut down expenses for the consumer and expedite the resolution of the dispute. The Act, contrary to usual practice, allows the consumer to sue the respondent in the consumers home district, resulting in significant advantage to the consumer. Moreover, appeals to decisions in the Small Claims case may only be taken with the consent of the **Appelate Court**, thus bypassing the usual procedure of appeal to the regional courts of appeal. The consequence is that, a case may come to a final solution much sooner than is generally true. Statistics show that the average time between the filing of the complaint and the Courts decision has been about two months, even shorter than the time for cases before the Public Complaints Board.³⁰

3.6. CONCLUSION

The aforementioned institutions established with the underlying objective of consumer protection reflect the importance of and emphasis on safeguarding of consumer interests in Sweden. Consumer protection has indeed achieved wide recognition as constituting an important element of the "**quality of life**". The establishment of specialized institutions solely for the purpose of consumer protection also manifests the novelty and uniqueness of the **swedish approach**.

The existence of a **Consumer Ombudsman** gives a national focus to consumer problems. It also furnishes an effective means for obtaining major consumer protection through negotiation as well as court proceedings. Interwinding of Consumer Ombudsman

30. *Supra* note 26 at 104.

and the **Konsumentverket** also helped avoid duplicity in consumer protection measures and added more substance to the institutional mechanism of safeguarding consumer interests.

The Market Court with its wide jurisdiction in specific areas of consumer protection is a unique Swedish brainchild and has so far produced commendable results. The necessity of having a court with expertise in consumer problems hardly needs to be overemphasised.

Consumer problems are necessarily connected with interests of the business community, and individual consumer and businessman/company/seller constitute the opposing parties in any consumer dispute. The nature of such disputes demands immediate and, in many cases, extra-judicial resolution. These purposes are met in the Swedish model by the **Public Complaints Board** and the **Small Claims Court**. While the former puts pressure on resolution through decisions which are not binding, the latter ensures immediate resolution by summary trials.

Thus, the Swedish model provides a picture of institutional set-up for protection of consumer interests which can well be termed **full and complete**.

CHAPTER 4. CONSUMER PROTECTION LEGISLATION IN SWEDEN

4.1 INTRODUCTION

In the preceding chapters we have discussed the concept of consumer protection, its necessity and the institutional means of protection of consumer interests. Needless to say that all these are ensured by a well developed and elaborate system of legal norms which may be regarded as consumer protection legislation. Some authors have drawn clear lines of distinction between different categories of consumer legislation. Professor Ulf Bernitz, for example, distinguishes three types of such legislation: market law, private law and procedural law.¹ In Bernitz's opinion, market law consists of those rules which regulate the carrying on of business activities and the actions of enterprises in the marketplace; private law legislation consists of such purely private contract rules as apply directly to individual transactions in the market, such as sales between businessmen and individual consumers; and procedural law consists of legislation intended to make it easier on the procedural plane for consumers to assert their rights.² Such a classification stems obviously from the nature, aims and objectives of different groups of legislation. For the purposes of this study, however, we shall limit ourselves to simply stating the main features of the most important consumer

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1. See. Ulf Bernitz. Market law as a legal discipline. - *Scandinavian Studies in Law*, Vol. 23, 1979. See also his *Marknadsratt*, Stockholm, 1969, pp. 11-88.
 2. Ulf Bernitz, John Draper. *Consumer Protection in Sweden. Legislation, Institutions and Practice*. 2nd ed. Stockholm, 1986, p.27.29.

protection legislation in Sweden without examining the particular class/group they belong to.

4.2 THE MARKETING PRACTICES ACT (1975:1418)

The Marketing Practices Act, one of the main laws related to consumer protection was enacted in 1975. The object of this act as enunciated by the legislature was "to promote consumers' interests in connection with the marketing of goods, services and other commodities by tradesmen and to counteract improper marketing which adversely affects consumers or other tradesmen"³

The Act does not intend to resolve disputes between consumers and businessmen in individual cases. Rather, as pointed out by Professor Bernitz, "the purpose of the act is to protect consumers as a group from being subjected to unacceptable marketing methods"⁴.

The Act has three general provisions dealing with **improper marketing, information and safety of products and services** :

- i. An entrepreneur whose advertisements or other marketing practices are misleading or otherwise unfair to consumers may be prohibited by the Market Court from continuing with them (Art. 2)
- ii. An entrepreneur who in his marketing neglects to give information of particular significance to consumers may be enjoined by the Market Court to give such information (Art. 3)

3. The Marketing Practices Act (1975:1418), Article 1. The author has used the English translation of the Act done by the Konsumentverket.

4. *Supra* note 2 at 121.

- iii. An entrepreneur who offers for sale goods for personal use may be prohibited by the Market Court from continuing to do so if the goods are manifestly unfit for their main purpose (Art. 4) e.g. in case of the so called **dangerous products**.

These general clauses which may also be regarded as the core of the Act carry the sanction of injunction (Art.5) and are implemented by the consumer ombudsman (Art. 10) and the Market Court (Art.14)

The Act also contains criminal provisions which outlaw intentionally misleading advertising (Art.6), trading stamps (Art.7) and certain types of combination offers (Art.8). Upon the request or with the the consent of the consumer ombudsman these provisions can be prosecuted in the regular court system by the public prosecutors (Art. 17).

Moreover, the Act provides for a cause of action in damages in favour of the competing businessman injured by violation of any of the criminal sections or violation of an injunction of the Market Court under article 2 ((Art. 19). This provides room for constituting that the Act also provides certain protection to persons other than consumers, namely businessmen. This results from the fact that the agrieved businessmen's interests in the use by his competitors of fair marketing methods will very often coincide with the interest consumers have in proper marketing techniques.

The present Act is an elaborated and developed version of an earlier act bearing same name (**Marketing practices Act, 1970:412**) which it abolished. It entered into force on July 1, 1976.

4.3. THE TERMS OF CONTRACT ACT (1971:112 as amended 1985 : 213)

The Terms of Contract in Consumer Relations Act, otherwise known as the **Terms of Contract Act** primarily seeks to

protect consumers against unfair clauses appearing in printed/written contracts used in the sale of goods and services. Enacted in 1971, the Act consists of seven sections of which only one - section 1 - contains substantive provisions and hence merits full citation :⁵

"If any tradesman in his commercial activities, when offering any goods, services or other commodity to a consumer for primarily personal use, applies a term, which, in regard to the payment and other circumstances, is to be considered as improper on the part of the consumer, the Market Court may, if so is called for from a public point of view, issue an injunction prohibiting the tradesman from using that term or in the main the same term in similar cases in the future. The injunction shall be issued under penalty of fine, unless for special reasons this is deemed unnecessary."

The provisions of the first paragraph shall apply correspondingly to terms which a tradesman uses in his commercial activities as conveying, from a tradesman or someone else, an offer as referred to in the first paragraph.

"An injunction may also be issued to any employee of the tradesman and to any other person who is acting on his behalf."

A close examination of the section reveals that it deals mainly with the so called **standard contracts**, though no mention of this is made in the Act itself. However, it is clear that the phraseology "**from a public point of view**" indicates that the Act is concerned primarily with terms applied time after time in widespread consumer transactions, i.e. standard contracts.

5. Translation by Ulf Bernitz and John Draper. *Supra* note 2 at 327.

The principal distinguishing feature of the Act is that the general clause (section 1) provides no protection for businessmen and protection is accorded exclusively to consumers. In practice, transactions, entered into by a purchaser for personal purposes and for business purposes are regulated by it as long as the personal purposes dominate.

It is interesting to note that the Act, to be applicable, requires only that a businessman have "used" the term in question. It does not require that a contract containing the term has actually been entered into, nor is it necessary that the term be included in an offer made to a consumer. It is sufficient that a businessman has requested an offer from a consumer and has proposed that the term in question be included in the offer. The motive behind this broad concept of "use a contract term" is to bring under the scope of the Act mainly those door-to-door sales in which the consumer is placed in the position of an offeror. The point is that, under Swedish contract law no consideration is necessary to keep an offer open. Unless modified by the offer, a "reasonable" time is granted to the offeree to accept the offer, during which time the consumer/offeree is bound and the seller is not. The broad concept of "use the contract term" is a guarantee to circumvent an "unequal" position of the consumer vis-a-vis the seller.

As is the case with the Marketing Practices Act, if voluntary agreement is not possible the Consumer Ombudsman can bring the case to the Market Court, which may prohibit the tradesman from using the term in question or a substantially identical term in the future.

The application of the Act has been greatly widened in recent years.⁶ It now applies to contracts for the transfer of goods,

6. As early as 1979 the Market court for the first time prohibited a landlord from using certain unreasonable contract terms in rental agreements with consumers. See MD 1979:9 (Case of Herta Anupold)

services or anything else of value. In short, it is applicable practically throughout the whole field of consumer transactions, the only notable exclusions being banking and insurance transactions.

4.4. THE CONSUMER CREDIT ACT (1977:981)

The Consumer Credit Act was enacted in 1977 and went into effect July 1, 1979. In enacting this Act the lawmakers were mainly guided by the necessity of curtailing the disadvantages of consumer credit namely, the tying up of future income, the difficulty created for consumers in times of economic hardship, the large cost of credit and the difficulty of ascertaining that cost accurately.

The Act constitutes a considerable strengthening of the position of the consumer vis-a-vis the trader. In the first place, it lays down rules concerning the information to be supplied in connection with credit transactions. For example, advertisements, window displays and such marketing arrangements relating to credit purchases have to include a statement of the "effective interest rate" (section 5) which the transaction entails. The effective interest rate is the sum of all interest, surcharges and other credit costs that the consumer must pay, as a percentage of the amount borrowed.⁷ In addition, if a specific item or service is involved, the item's cash price and the absolute money amount of all interest, surcharges and other costs must be stated. It is also required that this information be given to the individual consumer in writing before the transaction is consummated (section 6). Provisions relating to informational requirements are ensured under threat of injunction issued by the Market Court under either section 2 (improper marketing) or section 3 (duty to supply information) of the Marketing Practices Act (section 7).

7. *Supra* note 2 at 54.

The Act also includes rules concerning cash deposit required for credit purchases. Section 8 of the Act states :

“with respect to credit sales the seller shall require from the buyer an initial cash payment consistent with good commercial practices in the market. This initial payment shall correspond to no less than 20 percent of the cash price of the goods unless a different amount is justified by special circumstances.”

The obvious purpose of this provision is to prevent ill-considered credit purchases and with that end in view section 8 further states that :

“payment with money borrowed by the buyer from the seller or some other creditor under an agreement between that creditor and the seller shall not be considered an initial cash payment.”

The requirement of the Act concerning down payments is enforced by the **Consumer Board** and the **Market Court** in accordance with section 2 of the Marketing practices Act (section 9).

Another important and innovative provision of the Act concerns limitations on the right of the seller to retain a security interest, meaning “any clause in an agreement entitling the creditor to take back the goods if the buyer fails to fulfill his part of the credit sale agreement” (section 15). In this case, the lawmakers were moved by the fact that the security interest in many cases served, not so much as security for the actual debt, but as a means by which the creditor could force further payments or concessions out of the consumer.

The Act also includes provisions giving the consumer the right to prepayment (section 19) and to protection from repossession

where a default of payment is insignificant (section 17). In addition, the Act includes important provisions protecting the consumers right to assert against third-party creditors all claims he has against the seller (section 10).

4.5. THE DOOR-TO-DOOR SALES ACT (1981:1361)

The Door-to-Door Sales Act entered into force on July 1, 1982 and represents an improvement over similarly named Act of 1971 (1971:238) initially passed to counteract oppressive methods then prevalent in door-to-door sales. The Act applies only to consumer transactions i.e. sales by businessmen to consumers who intend to use the product or service primarily for private purposes.

The Act is applicable to sales at places other than the sellers, or his representatives normal place of business. It applies to sales at the consumers place of employment, to sales at temporarily leased quarters and to so-called "home parties".⁸ It also extends coverage to telephone sales, e.g. agreements entered into in telephone conversations initiated by a company as part of its telephone sales operations (section 1).

The most important purpose of this Act is to protect the consumer from "ill-considered purchases", and in this sense it may be regarded as a departure from the venerable maxim of *pacta sunt servanda* i.e. contracts are binding. If the consumer buys something offered at any place not defined as normal trade premises, or by telephone, he is legally entitled to cancel the deal within seven days of taking delivery (section 6). Thus, following an Anglo-american initiative, the Act provides for a

8. "Home parties" consists of a private person cooperating with a company by inviting friends and acquaintances to his home for the purpose of selling the company's products.

“cooling-off” period or a “second-thoughts week”. If, however, at the time of entering into the contract the consumer has not had an opportunity to examine the goods he has agreed to buy, or similar goods, the cooling-off period normally runs from the day on which he receives the goods.

Section 4 of the Act sets out certain formal requirements that must be satisfied in order to create a binding contract. It requires that the consumer be notified of his rights in the form of being handed a copy of the Act. Any violation of this provision will free the consumer from the binding force of the contract (section 5).

In another substantive provision, the Act vests upon a traders representative full authority to act on behalf of the trader. Section 12 is explicit in stating that “the trader cannot restrict this authority to the detriment of the consumer”. Thus, the Act creates an atmosphere in which the selling company cannot untie itself from promises or representation to the consumer made by his salesman.

4.6. THE CONSUMER SALES ACT (1990:932)

This is considered to be the most important private-law consumer protection legislation, and came into effect on January 1, 1991. Prior to it another act with identical name was in force from the beginning of 1974.⁹ The Consumer Sales Act applies only to the sale of goods to consumers. This includes the sale of both new and used goods. The seller must be a businessman for the sale to be regulated by provisions of this Act (Section 1, par. 1). However, the Act may also be enforced in cases “where the seller is not engaged in business activities, etc. ... and the sale is effected on behalf of the seller by a person engaged in business activities”

9. **Konsumentkoplagen (1973:877)**

(Section 1, par. 2). Swedish law, however, has developed a broad and unitary concept of this notion—**businessman**. A businessman is "any person, physical or legal, who carries on, by way of profession, an activity of an economic nature, irrespective of whether the activity is directed towards profit or not."¹⁰ It is not necessary that the activity be carried on regularly or as the main occupation of the person concerned. Part-time and off-hour work may qualify. It is an important principle that national and local governmental bodies which carry on business activities are also regarded as businessman and thus come within the scope of the legislation.

The consumer Sales Act is largely directed at exemption clauses that have been employed frequently by businesses in consumer transactions. Its provisions are mandatory, and the protection thereby afforded the consumer cannot be diminished by agreement of the parties.

Section 3 of the Act stipulates: "Terms of contract which in comparison with the provisions of this Act are to the detriment of the buyer are **null and void** in claims against the buyer ..."

The Act contains quite detailed provisions concerning delivery of goods, delay in delivery/acceptance of goods, damage arising therefrom, avoidance (cancellation) of the contract etc. It has been argued that the main thrust of the Consumer Sales Act is to give the consumer **self-help remedies** with which he can force the seller to perform his obligations.¹¹ The self-help remedies consist of withholding payment and cancelling the contract. The buyer can withhold payment if the goods are not delivered in time. Section 11 of the Act states: "The buyer may withhold as much of the payment as is required to give him the security for his claims on

10. *Supra* note 2 at 12-13.

11. *ibid.* p. 34

grounds of the delay." He can also resort to this, in accordance with Section 25 of the Act, if the goods are defective.

The consumers' other self-help remedy is **avoidance (cancellation)** of the contract. However, the conditions under which such avoidance of contract may be invoked are very complex. The Act contains provisions, identical to those in the 1973 Act, whereby the seller or manufacturer takes it upon himself to repair defects. **Section 27** states: "Even though the buyer does not so demand, the seller has the right to rectify non-conformity or make substitute delivery at his own expense, if, when the buyer makes a complaint, he offers without delay to rectify non-conformity or make substitute delivery and such measures can take place within a reasonable time after the claim is presented and without cost or substantial inconvenience to the buyer."

If the question of rectification or the delivery of substitute goods has not been raised or does not take place within reasonable time after the complaint is lodged, the consumer may demand a price reduction corresponding to the non-conformity (**section 28**) or may even declare the contract avoided under the condition provided in **section 29**: "The buyer may declare the contract avoided if non-conformity is of substantial importance to him."

The Act deals, rather elaborately, with the nature and characteristics of the goods sold by the seller. It is indicated that "The goods must comply with what is implied by the contract as regards type, quantity, quality, other characteristics and also the packing or packaging. They shall be accompanied by the necessary directions for their assembly, use, storage and care" (**Section 16, part. 1**).

In what may be interpreted as a clear development over the Consumer Sales Act, 1973, the present Act further elucidates what

is meant by **part. 1** of the just quoted **section**. "The goods", it is stated,

1. shall be fit for the purposes for which goods of the same description would ordinarily be used,
2. shall be fit for the specific purpose for which the goods were intended to be used, if the seller at the time of the sale must have understood such specific purposes and the buyer had reasonable cause to rely on the sellers skill and judgement.
3. shall possess the qualities of goods which the seller has referred to in providing samples or models..." (Section 16, par. 2).

Among other circumstances, goods are to be considered as not conforming with the contract i.e. defective, if they are sold in breach of prohibitions under **section 4** of the **Marketing Practice Act** i.e. sale of goods manifestly unfit for their main purpose, or **section 6** of the **Act on Product Safety** i.e. sale of a product or service involving a special risk of injury or damage (section 18). Above all, goods do not conform with the contract if the seller has failed to provide the information about the qualities or use of the goods which he is obliged to provide under the **Marketing Practices Act (1975:1418)** or has failed to provide safety information about the goods as it is his obligation to provide under the **Act on Product Safety (1988:1604 section 19)**

Section 17 of the Act is directed towards the quite common practice of selling goods "in their existing condition" ("as is") This section stipulates : "Notwithstanding the fact that the goods have been sold "in their existing condition" or with any other similar general reservation, they shall be considered non-conforming if they are in a condition which is inferior to that

which the buyer had good reason to expect considering the price of the goods and other circumstances ...”

In the opinion of Prof. Ulf Bernitz, this section is intended to have impact on three types of situations. The first is the one in which the seller, after making express warranties as to the quality of the product, seeks to disclaim these warranties by including the “in their existing condition” clause in the written contract. The section provides that the product is defective if it is not such as the buyer had reason to expect and the seller must have realized this but failed to correct the buyers mis-impression.

In the second situation to which the section applies, the seller has a duty to inform the buyer specifically of any respect in which the product does not measure up to what the buyer had reason to expect in view of the price and other circumstances. In case of a failure to make sufficient disclosures, the product is to be considered non-conforming with the contract.

In the third situation, a product is considered not to conform with the contract where its poor quality is obviously inconsistent with the price and other circumstances despite the presence of the “in their existing condition” clause.¹²

The Act also includes a **burden-of-proof rule** in section 21. When the seller, or any other party on his behalf, e.g. the manufacturer, specifically guarantees product for a stated period of time, he has the burden of showing that any defect is the result of an accident or comparable incident or negligence or abnormal use of the product or similar circumstances attributable to the buyer.

The buyer, however, is required to give the seller notice of a defect, although the Act provides no specific time in which such notice has to be made. **Section 23, part. 1** states : “The buyer

12. *Supra* note 2, p. 40-42

may not claim that the goods do not conform with the contract unless he has notified the seller of the non-conformity within reasonable time after he noticed or should have noticed the non-conformity (complaint)..."

The time within which the buyer should have noticed a defect is dependent upon his duty to inspect the product. In determining what constitutes "a reasonable time", the Courts are directed to give considerable weight to the buyers personal circumstances. However, section 23, part. 3 sets a two-year limit on complaint period: "If the buyer does not make a complaint about non-conformity in the goods within two years of having received them, he forfeits the right to do so, unless other provisions are contained in a guarantee or similar pledge."

The foregoing description of the Consumer Sales Act establishes that the principal aim of the Act is to regulate the rights of the individual consumer in cases involving defective goods and goods not delivered in time. The Act further includes provisions on damages for delay by the seller and for merchandise defects. The seller incurs "control liability" for matters within his control.¹³ The buyer enjoys the possibility of cancelling an order for merchandise before it has been delivered (section 37). In that case the seller is entitled to a certain measure of compensation (section 41). The Act also includes certain provisions on the purchasers ability to file claims against businessmen at an earlier stage of production and distribution (section 46). In its total of 47 sections, the Consumer Sales Act may rightly be singled out as the most important consumer protection legislation in force in Sweden.

13. The Swedish Institute. Swedish Consumer Policy. - Fact Sheets on Sweden. Fs 81 m Qc, Nov. 1990.

4.7 ADDITIONAL LEGISLATION

The complex nature of consumer protection problems explains for the need of different legislation to regulate their diverse aspects. While the Acts under discussion in the foregoing paragraphs of this chapter account for the fundamental consumer protection legislation, there remain numerous other acts which also, directly or indirectly, protect consumer rights and interests. Within the scope of this study it is relevant to name a few of them.

The **Product Safety Act (1988:1604)** aims at preventing goods and services from causing injury or damage. To this end entrepreneurs may be ordered to stop the sale of hazardous goods or services, or required to supply relevant safety information in the marketing of such goods or services. Furthermore, the Act stipulates an obligation on entrepreneurs to recall hazardous goods or services and to warn the public of risks connected with their use. Cases concerning the Act are adjudicated by the **Market Court** upon request from the **Consumer Ombudsman**.

The **Food Act (1971:511)** is aimed above all at protecting consumers from foodstuffs which are harmful, infected or otherwise unfit for human consumption. Statutory provisions concerning the states, handling, labelling and sale of foodstuffs, and concerning personnel hygiene and inspection are framed expressly for this purpose. The **National Food Administration (Statens Livsmedelverk)** is the central enforcement body in the food sector and issues regulations concerning the implementation of the Food Act. It directs and coordinates the inspection of food, drinking water included, which is mainly conducted by municipal environment and health committees.

The main legislation on chemical substances and products generally is the **Chemical Products Act (1986:426)**. Among other things, this Act provides that chemical products are to be handled

in such a way as to avoid any damage to health and environment. Hazardous chemical products are to be replaced by less hazardous ones. The Act is administered by the **National Chemicals Inspectorate (Kemikalieinspektionen)**, which issues regulations to supplement the statutory provisions. The main responsibility for achieving the aims of chemical controls devolves on the companies which handle chemical products. The primary task of the Chemicals Inspectorate is to ensure that these companies do what is required of them in order to eliminate health hazards and pollution risks.

The **Travel Agencies Act (1972:204)** specifies that a travel agency must deposit security for the estimated expenses of providing accommodation and/or transportation home in the event that the agency does not carry out the agreed travel arrangements due to bankruptcy or other reasons.

The purpose of the **Consumer Insurance Act (1980:890)** is to strengthen the position of consumers vis-a-vis insurance companies. This Act applies to the commonest property damage insurance policies taken out by consumers for private purposes. It includes rules about information to be supplied to consumers, entitlement to take out an insurance, the renewal of insurance policies, premium payments and to a great extent limits the right to employ certain types of substantive liability clauses.

An **Act on Real Estate Agents (1984:81)** came into force in 1984. Under the Act, all agents must be registered with the county administration. To be registered, an agent must have an insurance covering his commitments to sellers and buyers, satisfactory training and be considered suitable for the trade. The Act further contains provisions regarding inter alia the advice and information that the agent must give to buyers and sellers, e.g. about the condition of the property in question and about the total

estimated housing costs. The agent can be made economically responsible for losses caused by not complying with the Act.

An **Insurance Brokerage Act (1989:508)** entered into force in January 1990. This Act requires every insurance broker to be registered with the **Private Insurance Supervisory Service** and to come under its supervision. A broker can be registered for all types of insurance, for personal insurance only or for property insurance only. Among other things the broker must have liability insurance coverage, he must be adequately trained and must in other respects be suitable for this type of business, which he must conduct with care and in compliance with accepted brokerage practice. He is required to clarify his clients insurance requirements and to suggest suitable arrangements.

4.8. CONCLUSION

Consumer policy in Sweden is well established and can look back on a long tradition. Its aim is to support consumers and strengthen their position in the market. In 1986 the Swedish Parliament (**Riksdag**) enacted a partial revision of consumer policy, with greater emphasis on matters of household economics, at the same time affirming the interrelationship of price, competition and consumer policies.

Much of the work of implementing consumer policy builds upon results that can be brought about through agreements, recommendations etc. But since that approach is not always successful, consumer policy must also rely on compulsory legislation and other more direct interventions. Compared to the situation in most other countries, the stress put in Sweden on the legal approach to many consumer problems and their solution is very characteristic.

Consumer legislation in Sweden speaks both of acceptance of well-defined principles of other legal systems and major novelties. It appears well constructed that in this respect, especially the **Terms of Contract Act** and the provisions on information in the **Marketing Practices Act** manifest new achievements in the legal field, even by international standards. The **Consumer Sales Act** of 1991 by its rather wide definition of consumer purchases stretches legal protection into new areas and can justifiably claim to novelty by international standards.

Broadly speaking, consumer legislation in Sweden is well accepted and faithfully implemented in business circles. An important factor in achieving this result has been the ability to carry through legislative measures with a fairly high degree of consensus. Much, however still needs to be done to drive home to consumers, by information activities, the existence and meaning of the legislation in such a way that they will be prepared to assert their rights. Meanwhile, the unceasing revision of consumer protection legislation speaks of the determination of the Swedish legislature to bring under protection those consumer rights and interests which are threatened by undue application of the developments of modern science and technology.

CONSUMER PROTECTION IN BANGLADESH

1.1. INTRODUCTION

Any inquiry into the problem of consumer protection in a least developed country like Bangladesh should begin with the existing fundamental difference between consumer protection philosophy in the developed and in the developing countries of the world. While a consumer in a developed economy is literally submerged in an ocean of alternative choices, his counterpart in a developing economy suffers from acute lack of purchasing power. So for him the question is not **What to buy**, but **How to buy**? Hence, from a third world point of view, most important consumer right is the right to satisfaction of basic needs, which under pressure from the developing countries was subsequently incorporated as one of the eight basic rights of consumers in the UN Guidelines for Consumer protection.¹ The remaining consumer rights, now internationally recognised, are the right to safety, right to be informed, the right to complaints and representation, the right to choose and get things at fair price, the right to get compensation, the right to consumer education and the right to healthy environment. Needless to say that in a country like Bangladesh where "poverty for the great majority of the people is a grim struggle for survival"² consumer rights have little, if any,

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1. See United Nations Guidelines on Consumer Protection. Comment by International Organisation of Consumer Unions, the Hague, 1983, p.3. Initially the Guidelines consisted of seven rights. Right to satisfaction of basic needs was subsequently incorporated as one of the consumer rights upon recommendation from the Bangkok Conference of IOCU in 1985.
 2. Jansen, W. H. Profiles of poverty in Bangladesh. Programme Office, US AID Mission to Bangladesh, Dhaka (Mimeo), 1978, p.14

practical appeal to general people. The government, on the other hand, could not also attach due importance to consumer protection since the inception of this tiny nation-state.

Bangladesh emerged as an independent state on December 16, 1971 following the war of independence which began on March 25 of the same year against the Pakistan occupation army. After partition of India by the British Raj in 1947, Bangladesh, then known as East Pakistan, constituted the eastern province of Pakistan. It was a part of the State of Pakistan for almost 24 years before finally seceding in 1971 to be an independent and sovereign state known as the Peoples Republic of Bangladesh. The emergence of Bangladesh bears testimony to establishment of the right to self-determination and economic emancipation from semi-colonial domination of Pakistan.

Unfortunately, the history of Bangladesh, neither before nor after liberation, was characterised by political stability and democracy, with exception of only a couple of years. In the absence of democracy when human rights violations were rampant, consumer protection was but a far cry. It must, however, be kept in mind that legal foundation for consumer protection was erected in the initial years of the Republic by the Constitution of Bangladesh, 1972.

1.2. CONSUMERISM IN BANGLADESH

Consumer movement in Bangladesh, to put it plainly, is still in its nascent stage. Consumer vigilance grows with literacy and knowledge. Only 29.2 percent of total population in the country is literate.³ This explains why "consumer movement is a complicated social step in our present socio-economic condition. Unlimited desire for profiteering having no control brings

3. Halim, M. A. Social Welfare Legislation in Bangladesh. Oihik, Dhaka, 1993, p. 10

unbearable sufferings for the consumers and particularly for the people of limited income as they cannot adjust themselves with the great and sudden change in price level. At present with the price hike, adulterated and imitated articles of essential goods flooded the market, and no protest and agitation from the innocent and silent consumers is making the situation all the more worse".⁴ The vast population are revolving in the vicious circle of poverty, illiteracy and fatalism. They blame their luck and accept the sub-human life as natural.⁵ Under existing socio-economic and political circumstances the attention of the government has been shifted to more urgent necessities and notwithstanding the decision of the 1990 Bangkok Conference of the countries of Asia and the Pacific to adopt by 1995, consumer protection measures in the member-states in accordance with the UN Guidelines, 1985, no practical, unidirectional step has yet been taken in Bangladesh.

1.3. CONSUMER PROTECTION LEGISLATION

The specific constitutional provision which paved the way for consumer protection legislation in Bangladesh is stated in **Article 18 of the constitution** :⁶

"The state shall regard the raising of the level of nutrition and the improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health."

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4. Cited in : Hasan, S. R. Consumers of Bangladesh: Helplessness and Redressal.- Consumers Association of Bangladesh (CAB), Dhaka, 1992, p. 25
 5. *ibid.* p. 24
 6. Ministry of Law and Justice. The Constitution of the Peoples Republic of Bangladesh, Art. 18

Moreover, it may be inferred from **Article 15** of the Constitution which makes provision of basic necessities a fundamental responsibility of the state, that the responsibility of the state to provide education would also include consumer education in the sense the term has been used in the UN Guidelines, 1985.

Both the above mentioned articles of the Constitution though are defined as fundamental principles of state policy and *stricto-sensu* are non-enforceable in the courts of law, contemporary jurisprudence attaches to them high degree of significance and even interpretes them in a manner as to establish their binding nature in legal proceedings.⁷ Furthermore, these constitutional provisions indicate the importance attached to the nutritional status of the people and basic principles and measures for protection of consumers from health hazard products, processes and services.

Beyond these broad principles of consumer protection, specific legislation is rather scanty and scattered over a whole range of other enactments only indirectly related to protection of consumer interests. To get a true picture of the legal status of consumers in Bangladesh, a brief reference to these different laws does not seem to be a futile exercise.

1.3.1. CONTROL OF ESSENTIAL COMMODITIES ACT, 1956

This Act⁸ was passed by the East Pakistan Provincial Assembly on September 19, 1956. This act empowers the government to declare from time to time, some commodities to be essential and hence may control their production, distribution, preservation, use,

7. See. Hossain, Dr. K. Interaction of Fundamental principles of state policy and Fundamental rights. Paper presented in the International seminar on Rights in search of Remedies in Dhaka, October 30 & 31, 1992.

8. For a text of the Act see. Dhaka Gazette, Extraordinary, 1956.

business etc. To achieve this end, the act introduced the system of licence and permit of certain goods so as to keep their price fixed, keep a proper account of sale of essential commodities and prevent hoarding of such commodities. Any breach of this act may entail three years of imprisonment or fines or both punishments together.

1.3.2. PURE FOOD ORDINANCE, 1959

This Ordinance⁹ was promulgated on October 14, 1959 and later amended in 1966. The Ordinance was initiated to ascertain production, supply and distribution of pure food stuff. It regulates the production and distribution of certain essential foods of day to day use like flour, oil, ghee etc. It also prohibits persons with infected diseases like T. B., leprosy and any other disease as may be notified by the government from time to time, from taking part in the preparation, sale or distribution of food stuff. The Directorate of Public Health has been entrusted with the duty to inspect and examine the quality of food stuff prepared for sale in the market and take into cognizance any breach of the provisions of the ordinance. The first breach is punishable by a fine of up to 1000 taka or by imprisonment for six weeks to one year. Any subsequent breach is punishable with a fine of 1000-4000 taka and imprisonment for three months to one year.

It should, however, be mentioned here that lack of manpower and financial constraints have drastically curtailed the effectivity and implementation of this otherwise useful ordinance.¹⁰ One study reveals that only 1.5 percent of the population is aware of this ordinance.¹¹

9. Pure Food Ordinance, 1959. Dhaka Gazette.

10. Farouk, A. Commodity distribution system in Bangladesh (in Bengali) Bangla Academy, Dhaka, 1983, p. 189

11. Ali Quazi M. Consumer protection : An evaluation. - Daily Khabor, March 15, 1986.

1.3.3. THE PRICE AND DISTRIBUTION OF ESSENTIAL COMMODITIES ORDINANCE, 1970

The main object of this ordinance promulgated in the final year of unified Pakistan is to ensure the correct price and distribution of essential commodities in the country so that importers, producers and the businessmen may not earn unjustified profits. Under this ordinance the prices of commodities should be attached to them and the list of the prices should be hanged in a place open to clear vision and a receipt for sale of goods must be delivered to the purchaser.

1.3.4. BANGLADESH DRUGS CONTROL ORDINANCE, 1982

It might be surprising to note that during the first decade after the emergence of Bangladesh as a sovereign entity no law was enacted to safeguard the consumer rights. The first significant move was however made in 1982 with the promulgation of the Drugs Control Ordinance.¹² This ordinance has been widely acclaimed, both within and outside of Bangladesh as a "historic step" towards protection of consumer rights and interests.¹³

This ordinance empowers the government to establish control over manufacture, import distribution and sale of drugs. Immediately after its promulgation, manufacture, import and distribution of 1707 medicines were prohibited and registration or license with regard to them stood cancelled.

12. Drugs (Control) Ordinance, 1982. Bangladesh Gazette, Extraordinary, June 12, 1982.

13. Ali Quazi M. Consumer protection Law in Bangladesh : An assessment. - CAB, 1987, p. 15 (in Bengali)

This enactment makes provisions for constituting a **Drugs Control Committee** (now known as the Drug Administration). No medicine of any kind can be manufactured for sale, or be imported, distributed or sold unless it is registered with the Committee. The government may fix the maximum price at which any medicine may be sold and pharmaceutical raw material may be imported or sold. While manufacturing drugs, the firms are advised to follow the recommendations of the World Health Organization (WHO). Breach of this ordinance may entail punishment in the form of fines (upto 200,000 taka) or imprisonment (upto ten years) or both together. The ordinance also makes room for a **Drug Court** to handle cases involving violations of the ordinance. This, however, is yet to be given material shape.

1.3.5. BREAST-MILK SUBSTITUTE (REGULATION OF MARKETING) ORDINANCE, 1984

For promoting breast feeding by regulating the marketing of breastmilk substitutes, this ordinance was promulgated on May 24, 1984.¹⁴ This ordinance has been drafted under direct impact of the International Code of Marketing of Breast-Milk Substitutes, 1981 adopted by WHO in its 36th annual session.¹⁵ The ordinance categorically mentions that no person shall make, exhibit, distribute, circulate, display or publish any advertisement promoting the use of any breastmilk substitute or implying or designing to create the belief or impression that breast-milk substitute is either equivalent or superior to breast-feeding. It is now considered to be a breach of law if any person promotes and

14. For the text of the Breast-Milk Substitute (Regulation of Marketing) Ordinance, 1984 See. Bangladesh Gazette, Extraordinary, May 24, 1984.

15. Ali Quazi, M. op. cit. p. 12

induces others to buy any breast-milk substitute either by advertisement or by offering or giving any gift, prize, discount coupons, or other free items or by any other means. The ordinance explicitly prohibits that the container of the breast-milk substitute or any literature inside the container shall have any picture of infant or any such picture or appeal which might incline and induce the purchaser of the substitute. The ordinance now makes it obligatory to inscribe the words "**there is no substitute to breast-feeding**" on the container/package of the substitute. Violators of this provision may be subjected to imprisonment for two years, or a fine of 5000 taka or both together.

The ordinance makes provision for the government to appoint an advisory committee the function of which shall be to advise the government on the proper observation of the International Code of Marketing of Breast-Milk Substitute. The Committee like the ordinance itself are yet to take effect.

1.3.6. TOBACCO GOODS MARKETING (CONTROL) ACT, 1988

Bangladesh formally joined the international anti-smoking campaign with the enactment of the Tobacco Goods Marketing (Control) Act on October 27, 1988.¹⁶ The object of the act is to control and discourage the use of tobacco goods under threat of penalty. Sellers/manufacturers of tobacco goods are directed to inscript the warning note "**smoking is injurious to health**" either on the packet or in any part of the container in vernacular. As a matter of fact, in tune with the international practice, the act makes it a punishable offence to display or advertise any tobacco

16. For a text of the Act see. Bangladesh Gazette, Extraordinary, October 27, 1988.

goods if unaccompanied by the warning note "Smoking is injurious to health".

1.3.7. ADDITIONAL LEGISLATION

In addition to the provisions of the above mentioned laws certain other legislative acts also bear direct significance for protection of consumer interests. The main thrust of such laws though encompass quite different and distinct areas of social relations, their relevance, however remote, for consumer protection should not be questioned.

Penal Code, 1860,¹⁷ one of the oldest statutes of the country and enforced during the British Raj, contains rules having direct bearing on consumer protection. Many of these provisions have subsequently been elaborated in separate legislative acts mainly in the Bangladesh era. Thus there exists a situation of overlapping of certain provisions and the consumer is at liberty to seek redress under that particular law which he deems suitable.

Section 272 of the Code states that whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell them, shall be punished with imprisonment for a period of upto six months or with fine which might extend to one thousand taka, or with both. **Section 273** provides for similar punishment for sale or exposure for sale of goods indicated in sec. 272. **Section 274** provides that whoever adulterates any drug or medical preparation in such a manner as to lessen the efficiency or change the operation of such drugs or medical preparation, or to make it noxious, intending that

17. For the text of the Penal Code, 1860, see, Bangladesh Code, Vol. 1 Govt. Printing Press, Dhaka, 1987.

it shall be sold or used for any medical purpose, as if it had not undergone such adulteration, shall be punished with imprisonment for a term which may extend to six months or with fine extending upto one thousand taka or both. The two following sections i. e. **Section 275 & Section 276** provide for similar punishment for sale or exposure for sale of drugs coming within the ambit of **Section 274**.

Section 482 read with sections **478, 479, 480 and 481** provides that whoever uses any false trade mark or any false property mark shall be punished with imprisonment for a period of upto one year or with fine. According to **Section 483** counterfeiting a trade mark is a crime punishable by imprisonment or fine or both together.

Section 267 read with section **264, 265 and 266** provides that whoever makes, sells or disposes any instrument for weighing etc. which he knows to be false, in order that the same may be used as true, shall be punished with imprisonment for a period of upto one year or with fine or with both simultaneously.

The Special Powers Act, 1974¹⁸ provides for more severe penalties for hoarding, black-marketeering, smuggling, adulteration of or sale of adulterated food, drink, drugs or cosmetics.

The Dangerous Drugs Act, 1930¹⁹ empowers the government to exercise control over certain operations relating to "dangerous drugs" such as cultivation of cocoa-plant, manufacture and possession of opium, cultivation of poppy etc. - and to increase the penalties for offences relating to such operations.

18. For the text of the Act see. GOB. Special Powers Act, 1974. Govt. Printing Press, Dhaka, 1988.

19. For the text of the Act see. Bangladesh Code, Vol. XI, P.81.

The Trade Mark Act, 1940²⁰ provides that every manufactured commodity should bear a trade mark so that consumers may choose that commodity from among other commodities of same nature. There are provisions regarding registration of trade marks in which case the owners of the mark is protected from unauthorised use of the trade mark by other tradesmen. The provisions of the Act are enforced under threat of penalty involving imprisonment for a period of upto two years or imposition of fine or both simultaneously.

The Standards of Weights and Measures Ordinance, 1982²¹ has been promulgated to make provisions for the establishment of standards of weights and measures based on metric system and units of measurement. The units of weights and measures to be used throughout the country shall be known as system International (SI) Units.

This uniformity was essential to facilitate international trade and commerce.

Provisions having some remote bearing on consumer protection may be traced in a number of other legislative enactments too, but which seem to reside beyond the scope of this study.²²

20. For the text of the Act see. Gazette of India, 1940.

21. For the text of the Ordinance see. Bangladesh Gazette, Extraordinary, June 26, 1982.

22. For a survey of such laws in force in Bangladesh the interested reader may look into : Patwari, Dr. M. I. Protection of consumers in Bangladesh : Law and Practice. Paper Presented at the international seminar on consumer protection held in Kualalampur, Malayasia in 1993.

1.4. INSTITUTIONAL FRAMEWORK : CONSUMERS' ASSOCIATION OF BANGLADESH (CAB)

The history of the consumer protection movement throughout the world has amply established that the good intentions of the legislature alone were never able to unihandedly protect the otherwise 'helpless' consumers from the tyranny of the market/tradesmen. Rather, good intentions of the legislature has been the outcome of the continuous and uniring efforts of various social and voluntary organisations and pressure groups in mobilising public opinion in favour of consumer protection legislation. In the second chapter of the book reference has been made to several such national consumers associations, now united under the umbrella of the **International Organisation of Consumer Unions (IOCU)**, established in 1960.²³

Notwithstanding the crucial role played by national consumers' associations in the field of consumer protection, Bangladesh experienced a belated start. In the initial years of the Republic, like during the years preceeding the independence, consumers were left at the mercy of the market forces. But with the international consumer protection movement gaining momentum, the first non-governmental, voluntary organisation — the **Consumers' Association of Bangladesh (CAB)** — for the protection of consumer rights unveiled itself on February 28, 1978.²⁴ After much efforts, CAB gained government recognition five years after

23. Gaedeke R. M. & Etcheson W. W. *Consumerism - Viewpoints from Business, Government and the Public interest*. Confield Press, USA, 1972, p. 17

24. *Consumers Association of Bangladesh (CAB). Establish Consumers Associations.* (a CAB brochure in Bengali), Dhaka, May, 1992, p.3

its inception in 1983 when it was registered with the Department of Social Welfare.²⁵

For more than a decade and a half CAB has been working relentlessly for the protection of the rights of the consumers in Bangladesh, to grow awareness among them and to organise them. In the opinion of an author 'as a result of the untiring efforts of the Consumers' Association of Bangladesh, consumer movement gained a sound foundation here and consumers of different categories are becoming conscious of their rights.'²⁶

In the Subsequent years, although several other voluntary organisations like Adhunik, Health for All; Society for Protection of Consumer Rights etc. sprang up with the aim of consumer protection, it is still CAB Playing the role of the north star in this sphere.

Today, the CAB network is spread throughout Bangladesh through the so-called '**consumer groups**'.²⁷ The base of the organisational structure of CAB is **Thana**. Each thana may have several '**groups**'. CAB, owing mainly to financial constraints, has not yet been successful in establishing its units in all the thanas of the country, but it is still able to stretch its arms well over the whole country through the different '**working groups**'. CAB also maintains regional offices in Barisal, Khulna, Mymensing, Bogra and Sylhet. The regional offices are under the supervision of the **national committee** which sits at the CAB head-office in the capital city - Dhaka.

25. Registration No- D. H. A-01247 dt. 14.3.1983. *ibid*.

26. Hassan S. R. *op. cit.* p. 21

27. These practical information about CAB' was collected by the author in his interview with the General secretary of CAB at the CAB head-office in Dhaka on October 20, 1993.

An evaluation of CAB activities for the last decade or so allows to construe that it has crossed the initial difficulties and obstacles and grown into a mature organisation. It has not kept itself confined in the sphere of control of commodity price and adulterations only, but has diversified its activities over a whole range of issues including social, economic and environmental interests of the consumers. In its consumer education programme, CAB publishes a regular newsletter -- *Consumer Voice* -- engulfing relevant features of consumer interests. Several 'cells' function within CAB to monitor the development in respective fields. Featuring prominently among them are Drug policy cell, Complaint section to deal with individual consumer complaints, Environmental cell etc.

CAB activities directed against breast-milk substitutes started as early as in 1981, well ahead of international efforts in the field. Its agitation for a new drug policy prompted the government to formulate the **National Drug Policy in 1982**, the **1985 Rules on Pesticides** were also promulgated under pressure from CAB. The author has been informed that the Government in close association with the CAB is contemplating to draft a **Consumer Protection Law**. Thus on a national level, CAB has been quite successful in breaking the ice for a better protection of consumer interests.

CAB success on the individual plane is equally commendable. In early 1993, during the most important religious festival of the EID, the price of onion in the market suddenly soared from taka 12 to taka 20 per KG in the capital city. CAB took up the case with the concerned ministry. During the talks it was revealed that the immediate reason for price hike was the detention by customs officials of 30 trucks carrying onions from India through the Benapol border. CAB demanded immediate release of the trucks,

concerned authorities responded positively and consequently the price came down to the normal market level.

Another incident took place when an individual consumer bought two TV sets from a shop at the Stadium market in Dhaka. He, not being a resident of the capital and being ignorant of the prevailing market price for such commodities, was made to pay an inflated price amounting to taka 900 over the normal price. Later on, upon discovery that he was highly over priced, the consumer went to the shop and demanded a refund of the excess amount paid. The shopkeeper refused saying that the purchase was complete. As the consumer kept on insisting, the relevant **Market Committee** (an association of shopowners) intervened, sided with the seller and even insulted the consumer/buyer. The lone, helpless consumer then sought help of CAB, upon whose intervention the excess amount was refunded and consumer's interests protected.

One incident involving a larger section of the community took place quite recently at Kaliakair, a thana few kilometers from the capital. The local '**consumer group**' was instructed by the national committee to conduct a survey on the efficiency of the Thana health services. This was required in the context of wide complains from the local residents to the fact that although the necessary infrastructure for offering good health services (medical centre, physicians, medicines, ambulances etc.) existed the patients were not given proper treatment and care. The survey conducted over a period of several days exhibited an awful scene of negligence and maltreatment of patients by the Health Complex officials. Local consumer group brought it to the notice of the **Thana Nirbahi Officer**, the local administrator, but no remedy followed. Thereafter, the Deputy Commissioner of the District was approached, but again to no avail. Subsequently CAB petitioned the Director General of the National Health Directorate, who personally inspected the Thana Health Complex and being

convinced of the awful situation took immediate measures to improve the standard of health care services. Today, the overall general service of that Health Complex is one of the most efficient in the country and any CAB member is regarded with high esteem in the locality.

Such success stories involving individual consumers may be multiplied. But the path has not always been a plain one. In cases involving large business interests or multinational enterprises, very often CAB is given threats and is pressurized to drop a particular case from pursuing or making it public. Moreover, in a situation when the *Locus standi* of CAB to represent individual consumers in litigations before the courts is yet to be established, CAB for redress of grievances, is compelled to initially approach the government officials. Practice of the last few years have shown that big business has far more avenues to influence the bureaucracy in its favour than CAB can even contemplate. Thus many flagrant violations of the existing consumer protection laws are left unpunished.²⁸ Recently, a number of such violations have been reported in the press, and there is a quite strong public opinion in support of strong consumer protection legislation. If CAB and the other consumer associations can positively manipulate this public opinion, that itself might be the real safeguard for consumer protection in Bangladesh.

1.5. CONCLUSION

The foregoing success stories should not lead one to the belief that the consumer protection movement in Bangladesh is remarkable. Individual successful attempts though has played a positive role in

28. One such grave violation took place quite recently involving the paracetamol syrup (a suspension for children) leading to the death of a considerable number of babies throughout the country. For an inside story of the case see, Pereira F & Mahmud Z. H. Paracetamol peril. Dhaka Courier, Vol. 9, Issue 37, April, 1993.

arousing awareness among the general consumers as regards their rights, the state of consumer protection legislation and practice is still palatable. Reasons for this are not difficult to locate, and are manifold, among which the following, in our opinion, feature quite prominently :

Firstly, the absence of what might be named as '**consumer protection law**', has worsened the position of consumers. Few legislative acts that more or less affect consumer interests are scattered and difficult to find. This also makes the consumer education programme a formidable one.

Secondly, provisions in the aforementioned laws as regards filing a case for breach of consumer rights are really cumbersome and detrimental to consumer interests. Most of these laws, if not all, do not empower a common consumer to initiate any legal action against the wrong-doer. Rather, it is provided in the laws that only competent government officials are entitled to institute a case against any person accused of violations of 'consumer laws'. For example, Drugs (Control) Ordinance, 1982 provides that only the Drug Authority may institute legal proceedings against persons/firms accused of violation of the ordinance.²⁹

Thirdly, even in those rare cases when a consumer decides to bring a violation of his legal rights to the notice of the competent government authority, he is likely to find that the concerned official is almost 'unapproachable'. Very soon the consumer is sure to feel discouraged by the bureaucratic hassles and try to forget the whole affair.

Fourthly, in an environment of unfair market forces, influential government officials are more often 'managed' by business interest groups than affected by the moral persuasion of individual

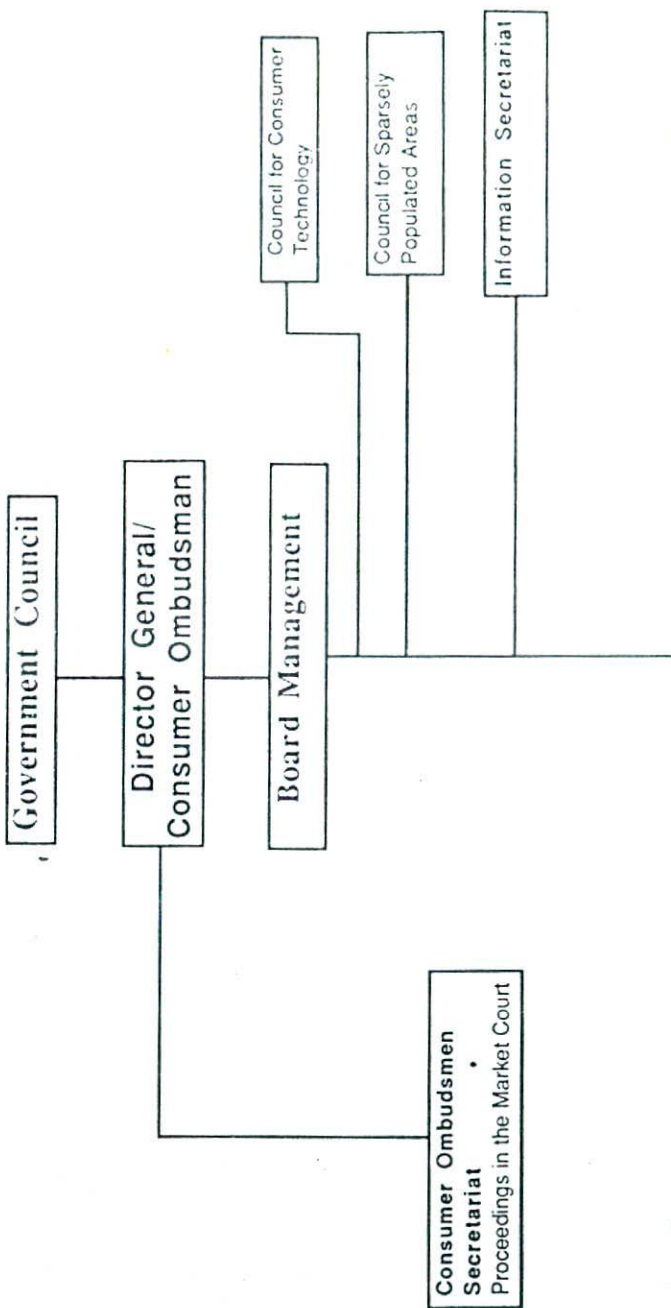
29. Pereira F & Mahmud Z. H. op. cit.

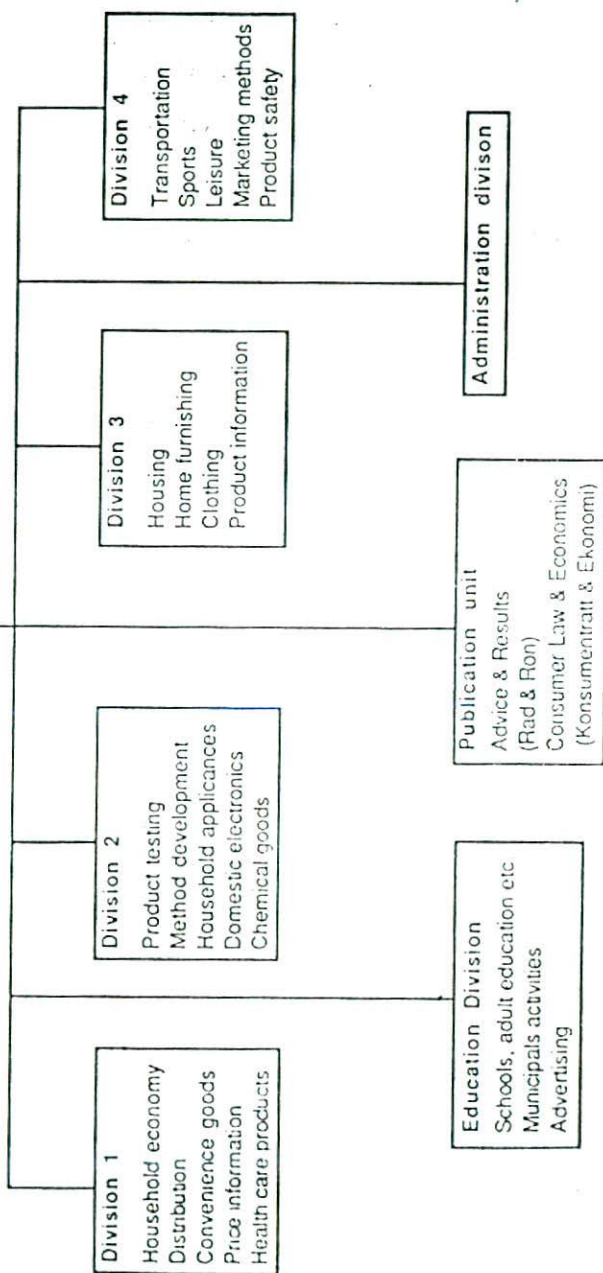
consumers or their associations. Sometimes, consumer conflicts with big businesses are viewed by interested quarters as the 'fate-awarded opportunity' to enrich their material condition. In some occasions, threat of physical coercion and intimidation are also exerted to refrain consumers or their pressure groups from taking any serious step which might adversely affect business interests.

Finally, the human factor has also not been serious enough in pursuing the cause of consumer protection. In other words, there is no political commitment and programme as regards the protection of consumers. Political parties are found to be dependent on businessmen and industrialists for funds, patronage etc. and when in power, seems to be very unwilling to undertake any unfriendly gesture against their 'friends in need'.

However, the fact that most important legislations were adopted only after Bangladesh attained independence, should be viewed as the golden ray of hope that the successive governments have been taking a more positive attitude towards consumer protection. The Government's good intentions coupled with mass consumer awareness may be the real keys to future successful implementation of any consumer protection legislation in Bangladesh.

The National Board for Consumer Policies





SOURCE - KONSUMENTVERKET/KO

THE MARKET COURT ACT
(1970: as last amended 1985 : 927)

Introductory Provisions

Section 1

The Market Court shall deal with cases under the Act (1953:603) to Counteract Restraint of Competition in Business in Certain Instances and the Marketing Practices Act (1970:412).

Section 2

No appeal shall lie from decisions of the Market Court in cases as referred to in Section 1. The same shall apply to other decisions of the Court under this Act.

COMPOSITION OF THE MARKET COURT

Section 3

The Market Court shall consist of a Chairman and a Vice-Chairman and eight other members, of whom two shall be special members, one for cases concerning restraint of competition and one for cases concerning marketing practices.

Section 4

The Chairman and the Vice-Chairman shall be learned in the law and shall have judicial experience. The member for cases concerning restraint of competition shall have a special knowledge of trade and industry and the member for cases concerning marketing practices shall have a special knowledge of consumer problems. The Chairman, the Vice-Chairman and the special members may not be appointed from among persons who can be considered to represent either the interests of entrepreneurs or the interests of consumers and employees.

For the Vice-Chairman and for each of the special members there shall be appointed one more deputies. The provisions concerning the Vice-Chairman and the special members shall also apply to their deputies.

Section 5

Of the other members, three shall be appointed from among persons representing the interests of entrepreneurs and three from among persons representing the interests of consumers and employees.

For each member as referred to in the first paragraph there shall be one or more deputies. The provisions concerning members shall also apply to their deputies.

Section 6

The King in Council shall appoint the Chairman, the Vice-Chairman, the other members and the deputies of the Market Court. Members and deputies shall be appointed for a specified term.

Section 7

Members and deputies of the Market Court shall be Swedish citizens of legal age. No member or deputy shall begin to serve on the Court before he has sworn the judicial oath.

Section 8

The provisions in Chapter 4 of the Judicial procedure concerning challenge of judges shall, where applicable, apply to the members of the Market Court.

Section 9

A quorum of the Market Court shall be constituted when the Chairman and four other members are present. An equal number of members representing the interests of entrepreneurs and of

members representing the interests of consumers and employees must be present when a decision is taken by the Court.

Of the special members there shall participate at the consideration of cases concerning restraint of competition only the member who has been appointed for such cases, and in the consideration of cases concerning marketing practices there shall participate only the member who has been appointed for such cases.

The Chairman may, on behalf of the Court, undertake preparatory measures and consider the question of dismissing a case without the participation of other members.

Section 10

The opinion on which the majority of the members are agreed or, where there is an equal numbers of votes, the opinion supported by the Chairman shall be considered a decision of the Marker Court.

THE FREEDOM OF COMMERCE OMBUDSMAN AND THE CONSUMER OMBUDSMAN

Section 11

For questions concerning restraint of competition there shall be a Freedom of Commerce Ombudsman, and for questions concerning marketing practices there shall be a Consumer Ombudsman.

Each Ombudsman shall be appointed by the king in Council for a specified term and shall be learned in the law.

PROCEDURE IN RESTRAINT OF COMPETITION CASES

Section 12

Special provisions concerning the procedure in cases concerning restraint of competition are contained in the Act (1953:603) to Counteract Restraint of Competition in Business in Certain instances.

PROCEDURE IN MARKETING PRACTICES CASES

Section 13

Applications for injunction under Section 1 of the Marketing Practices Act (1970: 412) shall be submitted in writing. The application shall state the reasons on which the application is based and the facts and other circumstances considered relevant by the applicant.

Section 14

The applicant and his opposite party shall be given opportunity at a meeting held before the Market Court to present their views and to put forward facts and circumstances which they wish to submit. The Consumer Ombudsman shall be invited to attend such meeting, even if he is not the applicant.

Prior to the meeting oral or written preparatory proceeding may take place to such extent as the Court may determine.

Section 15

Cases may be decided without a meeting as referred to in Section 14 first paragraph, if satisfactory documentation exists and a party does not request a meeting. An application which manifestly does not merit consideration may be dismissed without such a meeting.

Question concerning the imposition of an injunction under Section 8 or the Act (1970: 412) on Marketing practices may be considered without a meeting as referred to in Section 14, first paragraph. Such injunction may not, however, be issued without an opportunity having been given to the person to whom the injunction relates to express his views on the question, unless there is reason to assume that he has absconded or otherwise abstained from appearing.

GENERAL PROVISIONS ON THE PROCEDURE

Section 16

The provisions in Chapter 5 of the Code of Judicial Procedure concerning admission of the public to courts of law shall, where applicable, apply to the Market Court.

Notwithstanding the first paragraph the Market Court may direct that a meeting held to deal with a case concerning restraint of competition shall be held *in camera* if it can be assumed that the negotiations in the case would be impeded if the meeting were held in public.

Section 17

At meetings of the Market Court records shall be kept.

Section 18

The Market court may summon a party or other person, who may be resumed to have information relevant to the case, to appear in person before the Court, on pain of a fine.

A party may also be summoned, on pain of a fine, to make available to the Court books of account, correspondence and other documents which may be relevant to the case. This, however, does not imply an obligation to divulge trade secrets of a technical nature.

A person who, not being a party, has appeared before the Court after summons has a right to receive compensation in accordance with the provisions in the Code of Judicial Procedure concerning compensation to witnesses or experts. In cases where an Ombudsman is presenting the case there shall be applied the provisions for criminal law procedure, and in other cases the provisions for civil law procedure. If the compensation is to be

given by the parties jointly and severally the Court shall finally distribute the cost between them equally.

In a decision of the Market Court whereby a case is settled the reasons on which the decision was based shall be stated. The decision shall be sent to the parties on the day on which it is rendered.

Section 20

If a petition, summons, order, decision or other document has to be communicated to a party or other person this shall be done by serving the document.

Other Provisions

Section 21

A person who unduly divulges anything which by decision of the Market Court may not be made public shall be liable to fine or to imprisonment for a term not exceeding one year, unless the action is punishable under the Criminal code.

Section 22

Questions concerning the imposition of fines in accordance with section 18 shall be considered by the Market Court.

THE MARKETING PRACTICES ACT (1975: 1418)**OBJECT OF THE ACT**

Article 1. The object of this Act is to promote consumers interests in connection with the marketing of goods, services and other commodities by tradesmen and to counteract improper marketing which adversely affects consumers or other tradesmen.

IMPROPER MARKETING

Article 2. A tradesman who, in the marketing of any goods, service or other commodity, advertises or takes other action which, by conflicting with good commercial standards or otherwise, adversely affects consumers or tradesmen, may be prohibited by the Market Court from continuing therewith or undertaking any similar action. A prohibition may also be issued to an employee of a tradesman and to any other acting on behalf of a tradesman, as well as to any other person who has substantially contributed to the action.

Information

Article 3. A Tradesman who, in the marketing of and any good, service or other commodity, omits to deliver information of particular significance to consumers, may be enjoined by the Market Court to give such information. An injunction may also be issued to an employee of a tradesman and to any other person acting on behalf of a tradesman.

An injunction referred to in the first paragraph may stipulate that the information shall

1. be given through marking of the goods or be furnished in other form at the place of sale,
2. be given in advertisements or other representations used by the tradesman for marketing purposes,

3. be given in a certain form to a consumer who so desires.

(The requirements for information of particular significance to consumers regarding the safety of goods of services are regulated in the Product Safety Act.)

GOODS MANIFESTLY UNFIT FOR THEIR MAIN PURPOSE

Article 4. A tradesman who offers for sale to consumers goods, which are manifestly unfit for their main purpose, may be prohibited by the Market Court continuing therewith.

The same applies if a producer or importer sell this type of goods to tradesmen.

A prohibition may also be issued to an employee of a tradesman and to any other person acting on behalf of a tradesman.

The first to third paragraph shall be applicable likewise if the consumer is invited to hire goods for personal use.

A prohibition under this Article may not be issued insofar as a statute or a resolution of a public authority contains special regulations concerning the goods, with the same purpose as the prohibition would fulfil.

PENALTY CLAUSE

Article 5. A prohibition or injunction under Articles 2-4 shall be issued under penalty of a fine, unless for special reasons this is deemed unnecessary.

PUNISHABLE PRACTICES

Article 6. A tradesman who, in the marketing of any goods, service or other commodity, intentionally uses a misleading representation relating to his own or to another's business and likely to affect the demand for the commodity shall be liable to a fine or to imprisonment for a term not exceeding one year.

The first paragraph shall apply likewise to an employee of a tradesman and to any other person acting on behalf of a tradesman.

Article 7. A tradesman who, in return for a stamp or other certificate supplied in connection with the sale of goods, service or other commodity, offers to a consumer a consideration other than money shall be liable to a fine or to imprisonment for a term not exceeding one year. This shall not apply, however, if the certificate confers the right only to overhaul, repair, or the like, in respect of the sold commodity.

Article 8. A tradesman who, in a case other than referred to in Article 7, offers, to a consumer two or more items of goods at an all-in price, or offers to a consumer who purchases any item of goods the acquisition of another item without payment or at a particularly low price, shall, if the goods manifestly lack any natural connection and such action makes it difficult for the consumer to judge the value of the offer, be liable to imprisonment for a term not exceeding one year. The Provisions of this Article concerning goods apply also to services and other commodities.

Article 9. A person who has contravened an injunction issued under penalty of a fine shall not be held liable for a criminal offence under this Act as a result of an act embraced by the prohibition. If the crime is petty no punishment shall be imposed for an offence referred to in Articles 6 - 8.

RULES OF PROCEDURE

Article 10. A question concerning the issuing of a prohibition or injunction under Articles 2 - 4 shall be considered upon an application. An application shall be lodged by the Consumer Ombudsman. If, in a certain case, the latter decides not to lodge an application, this may be done by an association of consumers employees or tradesmen or, as regards a prohibition under Article 2, by a tradesman affected by the act complained of.

Article 11. On demand by the Consumer Ombudsman a tradesman shall submit a statement or explanation in a matter concerning the application of Articles 2-4. In a matter where it may be presumed that a decision to issue a prohibition or injunction may be made, a tradesman is also under obligation, on demand by the Consumer Ombudsman, to furnish documents, merchandise samples and the like which may be of significance for the inquiry in the case.

If a demand as stated in the first paragraph is not complied with the Consumer Ombudsman may order the tradesman to discharge his obligation under penalty of a fine not exceeding 10,000 crowns.

If special reasons exist, the Consumer Ombudsman shall pay compensation for a merchandise sample and the like furnished as stated in the first paragraph.

Article 12. A decision concerning the issuing of a prohibition or injunction under Articles 2-4 shall not constitute a hindrance to reconsideration of the matter in question if altered circumstances or other special reasons give occasion therefor.

Article 13. Under special circumstances, a prohibition or injunction as stated in Articles 2-4 may be issued also in respect of the period elapsing until a final decision is reached.

PROHIBITION ORDER

Article 14. A question concerning the issuing of a prohibition under Article 2 or 4 may, in a case of minor importance, be dealt with by the Consumer Ombudsman by submitting a cease and desist order.

The submission of a cease and desist order implies that there is submitted to a person who is presumed to have committed an action referred to in Article 2 or 4, for acceptance immediately or within a specified period, an order prohibiting him from

continuing such action or, in a case referred to in Article 2, undertaking other similar action, under penalty of a fine.

If such an order has been accepted, it shall have the effect of a prohibition issued by the Market Court under Article 2 or 4. An Acceptance which takes Place after the time appointed in the order has expired shall, however, be without effect.

INFORMATION ORDER

Article 15. A question concerning the issuing of an injunction under Article 3 may, in a case of minor importance, be dealt with by the Consumer Ombudsman by submitting an information order.

The submission of an information order implies that there is submitted to a person who is presumed to have been guilty of an omission referred to in Article 3, for acceptance immediately or within a specified period, an order to furnish information as stated therein, under penalty of a fine.

If such an order has been accepted, it shall have the effect of an injunction issued by the Market Court under Article 3. An acceptance which takes place after the time appointed in the order has expired shall, however, be without effect.

SUPERVISION, ETC.

Article 16. A person who is subject of prohibition or injunction under Articles 2 - 4 shall, on demand by the Consumer Ombudsman, furnish information, documentation, merchandise samples and the like needed for supervision that the prohibition or injunction is obeyed. If such a demand is not complied with, the Ombudsman may order the person concerned to fulfil his obligation under penalty of a fine not exceeding 10.000 crowns.

For a merchandise sample and the like furnished as stated in the first paragraph the Ombudsman will pay compensation if special reasons exist.

Regulations governing the obligation for a person who furnishes merchandise samples and the like as stated in the first paragraph to bear the costs of the Consumer Ombudsman for sampling and examination of samples will be issued by the government or by an authority appointed by the government.

Article 17. Proceedings regarding non-compliance with a prohibition issued under penalty of a fine shall be brought before an ordinary court of law by a public prosecutor. Such a proceeding may be brought only after notification by the Consumer Ombudsman or, as regards a penalty as stated in Article 5, by other who has applied to the Market Court for the prohibition or injunction.

A public prosecution for an offence against this Act may be brought only after notification by or permission of the Consumer Ombudsman.

Article 18. In the event of non-compliance with a prohibition issued under penalty of a fine as stated in Article 2 or of the provisions of Articles 6 - 8 an ordinary court of law may, in so far as it deems reasonable, direct that a misleading representation which appears on any goods, packaging, advertising matter, commercial document or the like shall be deleted or altered in such a way that it is no longer misleading. If this aim cannot be attained by other means, the court may order that the property be destroyed.

Property referred to in the first paragraph may be seized pending the court's order. Such seizure shall be governed by the stipulations, where applicable, concerning seizure under criminal law.

The first and second paragraphs shall apply likewise to an offer referred to in Article 7.

DAMAGES

Article 19. A person who disobeys a prohibition referred to in Article 2 or the provisions of Articles 6 - 8 shall make good a loss thereby caused to a competing tradesman. The right to such

compensation shall be forfeited if the claim is not instituted within five years from the time when the loss was incurred.

A consumer's right to damages is governed by special regulations.

OTHER REGULATIONS

Article 20. The government may direct that the following provisions shall apply in respect of a foreign State.

As regards any goods carrying an incorrect or misleading designation of origin which directly or indirectly indicates that the goods have been produced or manufactured in the foreign State: or at any place situated therein, an ordinary court of law may issue directions as stated in Article 18 also in cases other than those referred to. This shall not apply, however, if according to commercial custom the designation serves solely to characterize the nature of the goods or if it is accompanied by a state statement which clearly indicates that the goods were not produced or manufactured in the State or at the place named.

An application for such directions as stated in the second paragraph may be made by a prosecutor or, if the latter has decided not to make an application, by a person conducting business in goods of the same kind as those to which the application relates.

Article 22. An appeal may not be made against a demand by the Consumer Ombudsman as stated in Article 11, first paragraph, first sentence, or, after such a demand, against an order under penalty of a fine.

A complaint against a decision of the Consumer Ombudsman in any other matter referred to in Article 11 or in a matter referred to in Article 16, first and second paragraphs, may be made by appeal to the Fiscal Court of Appeal. The same applies to a complaint against a decision of a public authority according to regulations as stated in Article 16, last paragraph.

**THE TERMS OF CONTRACT IN CONSUMER
RELATIONS ACT****Act Prohibiting Improper Terms of Contract****(1971 : 112 as last amended 1985:213)**

Section 1. If any tradesman in his commercial activities, when offering any goods, service or other commodity to a consumer for primarily personal use, applies a term which, in regard to the payment and other circumstances, is to be considered as improper on the part of the consumer, the Market Court may, if so is called for from a public point of view, issue an injunction prohibiting the tradesman from using that term or in the main the same term in similar cases in the future. The injunction shall be issued under penalty of a fine, unless for special reasons this is deemed unnecessary.

The provisions of the first paragraph shall apply correspondingly to term which a tradesman applied in his commercial activities when conveying, from a tradesman or someone else, an offer as referred to in the first paragraph.

An injunction may also be issued to any employee of the tradesman and to any other person who is acting on his behalf.

Section 2. This Act Shall not apply to activities which are under the supervision of the Bank Inspection Board or the National Private Insurance Supervisory Service.

Section 3. Questions concerning the issuing of an injunction shall be considered upon an application. Such an application shall be made by the Consumer Ombudsman. If, in a certain case, the Ombudsman decides not to make an application, an application may be made by any association of tradesman, consumers or employees.

Section 3. A tradesman is obligated upon request by the Consumer Ombudsman to submit an opinion or information in a matter under this Act. Failing compliance with such a request, the Ombudsman may enjoin on the tradesman to discharge his obligation on pain of a fine of at most 10.000 crowns.

Appeal may not be lodged against the Ombudsman's decision enjoining such conditional fine.

Section 4. Decisions concerning the issuing of an injunction shall constitute no obstacle to reconsideration of the matter in question, where altered circumstances or other special reasons give cause for it.

Section 5. If special reasons give cause for it, an injunction may be issued also in respect of the period before a final decision is reached (interim injunction).

Section 6. Questions concerning the issuing of an injunction may, in cases which are not of great importance, be dealt with by the consumer ombudsman by submitting to the tradesman a cease and desist order for acceptance.

If such an order has been accepted it shall have the effect of an injunction issued by the Market Court. An acceptance which takes place after the time set out in the submission of the order has expired is, however, without effect.

Further provisions on the submission of cease and desist orders for acceptance shall be issued by the Government.

Section 7. Proceeding for the imposition of a fine shall be instituted in an ordinary court of law by the Consumer Ombudsman. If the Market Court has issued an injunction under penalty of a fine upon an application by some other, the latter may also institute proceedings for the imposition of the fine.

THE CONSUMER CREDIT ACT

(1977 : 981, as last amended 1980 : 524)

INTRODUCTORY PROVISIONS

Section 1. This Act concerns credit arrangements (delays of payment or loans) primarily relating to private use which are granted or offered to a consumer by a tradesman in the course of the latter's business activities.

The Act shall apply correspondingly also in matters concerning credit granted by persons other than a tradesman if the credit is negotiated by a tradesman as an agent of the credit grantor.

Section 2. In this Act the terms listed below are defined as follows:

Creditor : a person granting credit or taking over the original creditor's claim,

cash price : the price at which the goods, service or other commodity can usually be obtained by the consumer through cash payment, credit amount : in respect of delays of payment, that part of the cash price for which a delay is granted and, as regards loans, the amount borrowed,

Cost of the credit : the total amount of all interest, supplements and other costs payable by the consumer in connection with the credit,

effective interest : the cost of the credit described in terms of annual interest calculated on the credit amount, where applicable taking into account that the instalments shall be paid during the credit period in question,

credit claim : sum total of the credit amount and the cost of the credit.

Section 3. Credit sale shall mean sale of goods whereby the seller grants the buyer a delay for payment of part of the price or some part of the payment is covered by amounts lent to the buyer by the seller or some other credit grantor and the seller.

Should the contract be described as a lease or payment as compensation for use of goods, it shall nonetheless be considered as credit sale if the intention is that the party to whom the goods are delivered shall become the owner thereof.

Section 4. Contract clauses restricting the consumer's rights or benefits under this Act shall be void.

MARKETING OF CREDIT

Section 5. In connection with advertising, display or similar marketing practices in respect of credit, a tradesman shall supply information about the effective interest for the credit. With respect to credit for the acquisition of a particular article, service or other commodity, the cost of the credit and the cash price shall also be indicated.

The information referred to in the foregoing paragraph need not be provided if the credit concerns a small sum or if there are special circumstances.

Section 6. Before a credit agreement is concluded, a tradesman granting or negotiating credit shall supply information to the consumer in the respects and to the extent referred to in Section 5. Such information shall be provided in writing.

Section 7. In the event of failure to provide the information referred to in Sections 5 and 6 or information which may otherwise be of particular importance from the consumer's point of view, the provisions of the Marketing Practices Act (1975:1418) shall apply.

PROVISIONS REGARDING CREDIT SALES

Initial cash payments

Section 8. With respect to credit sales the seller shall require from the buyer an initial cash payment consistent with good commercial practices in the market. This initial payment shall correspond to no less than 20 percent of the cash price of the goods unless a different amount is justified by special circumstances.

Payment with money borrowed by the buyer from the seller or some other creditor under an agreement between that creditor and the seller shall not be considered an initial cash payment.

Section 9. The sale of goods by a tradesman on his own or someone else's account without complying with the provisions of section 8 shall be regarded as an action referred to in Section 2 of the Marketing Practices Act (1975:1418).

THE BUYER'S RIGHTS VIS-A-VIS CREDITORS OTHER THAN THE SELLER

Section 10. With respect to credit sales, the buyer may raise the same defenses on the basis of the sale against a creditor's claim for payment as he is entitled to raise against the seller.

In the event of the buyer, on account of the purchase, having a claim against the seller for refund of the price, damages or other payment, the creditor shall be equally liable with the seller for satisfaction of this claim. The creditor shall not, however, be required to pay more than he has received from the buyer as a result of the credit.

Prohibition of certain instruments of claim

Section 11. The creditor may not receive a bill of exchange issued by the buyer regarding claims connected with the credit sale. Neither may he as proof for his claim receive a negotiable

promissory note or any other instrument of debt issued by the latter, transfer or pledging of which restricts the buyer's right to raise defenses based on the purchase should a new creditor acquire the instrument of claim in good faith.

The first sentence of the foregoing paragraph shall not apply to personal checks drawn on a banking company, a saving bank or a credit union within the agricultural credit system.

Any person intentionally failing to comply with this paragraph shall be sentenced to a fine.

Payments ahead of time

Section 12. In credit sales, the buyer shall always be entitled to pay his debt to the creditor ahead of time.

The creditor shall only be entitled to demand payment in advance if there is a special clause to this effect and if the buyer is at least a month overdue in paying a part of the credit claim exceeding one tenth of the entire credit claim, or, if two or more payments due at different times are overdue, more than one twentieth of the whole credit claim.

The second paragraph does not preclude a bank or other creditor from imposing stricter conditions concerning payment ahead of time if other statutory provisions so require.

Section 13. With regard to payments ahead of time pursuant to section 12. When calculating the creditor's claim, the unpaid part of the credit according to accounting principles consistent with good commercial practices in the market, corresponds to the unused credit period. If such advance payment is made at a time other than a payment date designated in the contract, the unused credit period shall be calculated from the first designated payment date following the advance payment.

With respect to calculations pursuant to the first paragraph of the section, the creditor may include in the (unpaid part of the) credit claim the entire cost of arranging for the credit, if such cost is expressly stated in the contract and is not unreasonable.

Prohibition of certain accounting procedures

Section 14. A sum paid by the buyer on a particular credit claim in connection with a credit sale may not first be credited against any other claim by the creditor in satisfaction.

Security interests

Section 15. By reservation of a security interest is meant any clause in an agreement entitling the creditor to take back the goods if the buyer fails to fulfill his part of the credit sale agreement.

A reservation of security interests may be invoked only if the clause has been inserted by the seller in connection with the sale for the purposes of securing his right to payment and the buyer is more than a month overdue in paying a part of the credit claim exceeding one tenth of the entire credit claim, or, if two or more payments due at different times are overdue, more than one twentieth of the whole credit claim.

Should a tradesman avail himself of a provision reserving a security interest in connection with the sale of goods which by virtue of their nature or value or on account of market conditions are not suitable as security, he may be enjoined from using the provision in the future in similar instances. With regard to injunctions, the provisions of the Act Prohibiting improper contract Terms (1971 : 112) shall apply correspondingly.

Section 16. Should the buyer, after expiration of the period specified in Section 15, second paragraph, but before the goods have been taken back, pay the amount he failed to pay when it fell due, together with interest and costs as set out in Section 17 third

to fifth paragraphs, the creditor may not take back the goods on the basis of the delay. Nor may the creditor in such cases invoke the clauses referred to in Section 12, second paragraph.

Settlement with respect to the repossession of goods

Section 17. Should the creditor wish to avail himself of the right to take back goods, there shall be a settlement of accounts between him and the buyer.

In this connection the buyer shall be credited with the value of the goods at the time of their return. The value is calculated according to what the creditor can be expected to receive for the goods by way of a suitable sale of the goods.

The creditor shall be credited with the unpaid part of the credit claim after adjustment in accordance with Section 13, together with interest for default where applicable, though such interest rates may not exceed those laid down in section 6 of the Interest Rates Act (1975:635).

In this connection the creditor may demand compensation for the following costs for recovery of the goods : fees for the recovery procedure, reasonable costs for transport of the goods, as well as costs for appearance at recovery proceedings if such appearance has been necessary to safeguard the creditor's rights. When determining compensation for the cost of such appearance, the regulations governing the calculation of compensation from public funds to witnesses shall apply correspondingly.

In recovery proceedings, the creditor may, as shall be specified in greater detail in government regulations, demand compensation for his own work in connection with the case as well as fees to a representative assistant.

Section 18. If, when accounts are settled, the buyer is credited with a larger sum than the creditor, the latter shall not be entitled to take

back the goods unless either he repays the difference to the buyer or, if the goods have been valued by the distrainor, the amount is deposited with the latter.

If the creditor has been required to pay debts of the buyer in order to be able to take back the goods or to make it possible for him to use the goods as intended after recovery, the creditor may, in applying the foregoing paragraph, affect such payment against the amount due to the buyer.

Should the creditor be credited with a larger sum than the buyer, he shall not be entitled to require payment of the difference (outstanding debt) in cases other than those in which the goods have experienced a significant decline in value because the buyer has failed to properly care for the goods.

Redemption of goods that have been taken back

Section 19. The buyer may redeem goods that have been taken back within fourteen days. Should the buyer wish to redeem the goods, he shall pay the creditor the value of the goods at the time of repossession as well as any outstanding debt that may exist according to the settlement of accounts.

Assistance in the recovery of goods etc.

Section 20. The creditor may apply to the distrainor for assistance in the recovery of goods, provided that the credit sale has been accompanied by a written instrument drawn up by the parties comprising a clause reserving a security interest as well as information on the cash price, the credit amount, the cost of the credit, the credit period, the credit claim and the intervals at which payment falls due.

Applications for assistance shall be submitted in writing and state how large a part of the credit claim is outstanding. If the creditor demands interest for the delay in payment, the application shall

also state what the creditor claims in that regard. A certified copy of the document referred to in the first paragraph shall be appended.

Section 21. Assistance may only be given if it is obvious that the conditions set out in Section 15, second paragraph, are satisfied.

Should a clause reserving a security interest have been used contrary to the prohibition contained in section 15, third paragraph, assistance shall not be granted.

Assistance or enforcement of a judgement requiring the buyer to return goods sold subject to a security interest shall not be granted with regard to goods which under Section 65 of the Execution Act (187:31 p.1) are exempted from distraint.

Section 22. With respect to assistance and execution of Judgment referred to in Section 21, third paragraph, Section 12, second and third paragraphs and Sections 14-18 of the Act (1978:599) on conditional Sales among Tradesmen and Others shall apply correspondingly. In this connection the reference in Section 16, third paragraph, to section 10, first paragraph, shall be read as applying to section 18, first paragraph, of this Act.

Prohibition against separate distraint

Section 23. Goods sold subject to the reservation of security interests may not be levied upon to satisfy a separate judgment arising out of the credit sale.

Liability for loss of credit card, etc.

Section 24. A clause making the credit cardholder liable for amounts charged to an account as result of use of the credit card by an unauthorised person may be invoked only if the cardholder or other person entitled under the credit agreement to use the credit card.

1. has given the card to someone else,

2. has lost the card as a result of gross negligence,
3. in some other way has lost possession of the card and failed after discovery of the loss to notify the creditor as soon as possible.

With respect to amounts charged to the account in a manner specified in the foregoing paragraph after the creditor has received notification that the cardholder or other person authorised under the credit agreement to use the credit card no longer has the card in his possession, the cardholder is liable only for payment if he has acted fraudulently.

Enforcement etc.

Section 25. The consumer Board shall supervise compliance with this Act. Such supervision shall not apply, however, to the Bank of Sweden, the Swedish investment Bank, activities controlled by the Bank inspection Board or the Private insurance inspectorate or the activities of execution authorities.

Such supervision shall be exercised in such a way as to cause as little cost or inconvenience as possible.

Section 26. In the exercise of such supervision, the Consumer Board or a person designated by the Board shall be authorised to undertake inspections of a tradesman selling goods or, in the course of his commercial activities, negotiating or taking over credit referred to in this act, and shall have access to any documents necessary for the supervision. The tradesman shall provide any information on his activities requested for this purpose.

Should a tradesman fail to give access to documents or to provide information in cases specified in the foregoing paragraph, the Consumer Board may order him to fulfill his obligations subject to a fine of a maximum of 10.000 Crowns.

Section 27. The public prosecutor shall institute proceedings before the ordinary courts in regard to the imposition of fines referred to in Section 26. Such proceedings may only be instituted on notification by the Consumer Board.

Section 28. Repealed.

Section 29. Should the Consumer Board under Section 26, second paragraph, have ordered a tradesman to produce documents, an appeal against this decision may be lodged with the Fiscal Court of Appeal. Appeals may not be lodged against any other decision of the consumer Board under Section 26.

Section 30. The provisions of Section 8 and 9 shall not apply to credit sales with respect to which regulations concerning initial cash payments have been promulgated under the Act (1975:90) authorising the Promulgation of Regulations Regarding Terms of Payment in the Commercial Sale of Automobiles. The provisions of Sections 8 and 9 shall also have no application to credit sales for which regulations have been promulgated pursuant to the Act (1980:523) Authorizing Promulgation of Regulations Regarding Terms of Payment in Credit Card Transactions.

This Act shall enter into force on July 1, 1979. The provisions of Section 24 shall be applicable even in cases where the credit agreement was entered into before the effective date of this Act.

THE DOOR-TO-DOOR SALES ACT (SFS 1981:1361)

INTRODUCTORY PROVISIONS

Article 1

This Act is to be applied when a trader-during a visit to a private home or in the course of a telephone conversation which constitutes a part of telephone sales -sells movables (this term covers both goods and rights) on a commercial basis to a consumer mainly for personal use. It is a "visit to a private home" when a trader goes to see a consumer at his residence or at any other place where the consumer is not only to be found for a short while.

The Act is also to be applied when a trader, under the conditions set out in the first paragraph, undertakes to carry out for remuneration continuous service of a nature such as the maintenance or supervision of property, instruction or the like.

The Act is, however, not to be applied if the total price payable by the consumer is less than 300 Swedish kronor. Nor does it apply to the sale of foodstuffs or to securities referred to in the securities Trading Act (1985:571).

Article 2

When a consumer has made an offer to a trader who has not made an immediate decision on the matter, what is stated in this Act in regard to contracts shall instead apply to the offer.

Article 3

Contract terms which, in comparison with the provisions of this Act, are to the consumer's disadvantage are not valid in regard to the latter.

THE TRADER'S OBLIGATION TO PROVIDE INFORMATION ETC.

Article 4

When a contract is concluded during a visit to a private home, the trader shall at the same time give the consumer a document which informs him about the contents of this Act. The consumer shall sign one copy of the document to confirm that he has received it. With the inforamatory document that is to be handed to the consumer, there shall also be a form which the consumer can use if he wishes to change his mind and exercise his right to cancel the contract pursuant to Article 6.

When a contract is concluded on the telephone, the trader, within three days, shall hand or send to the consumer confirmation of what has been agreed, with the document and the form referred to in the first paragraph.

The document and the form which are referred to in the first and second paragraphs shall be in accordance with a leaflet approved by the Government or the authority decided by the Government.

Article 5

If the provisions of Article 4 are not observed, the consumer is not bound by the contract.

If the consumer wishes the contract to be annulled pursuant to the first paragraph, the trader must be notified to this effect within a year of the contract-where the purchase of movables is concerned -receiving the goods or a substantial portion of the same or -where the contract concerns a continuous service -within a year of the trader commencing the performance of the service. Failing this, the consumer's right to demand annulment of the contract will be forfeit.

THE RIGHT OF A CONSUMER TO CANCEL A CONTRACT

Article 6

The consumer has the right to waive a binding contract (right to

cancel) by handing or sending to the trader a written communication to this effect within a week from the day stated in Article 7 (cooling-off-period).

If a consumer waives an offer such as is referred to in Article 2, a contract concluded by the acceptance of the offer becomes void.

Article 7

Where the purchase of movables is concerned, the cooling-off period begins to run from the day when the consumer received the goods or a substantial portion of the same or previously examined the goods or similar goods, but on no account earlier than the day when the documents referred to in Article 4 were received by the consumer.

Where the contract concern a continuous service, the cooling-off period begins to run from the day when the documents referred to in Article 4 are received by the consumer. The same holds good in the purchase of movables if the trader has agreed, in writing, to this with the consumer in cases where

- the goods have been manufactured or substantially changed in accordance with the special wishes of the consumer, or
- due to the goods being bulky or for some comparable reason, it would not be reasonable for the cooling-off period to be deferred until the consumer had received the goods or a substantial portion of the same or had previously examined the goods or similar goods.

Article 8

In the purchase of movables, the consumer may only exercise his right to cancel a contract if the goods he has received are, in essentials, in an unchanged condition. However, this does not apply if the goods have been damaged or been changed on account of some step that has been necessary so as to enable the consumer

to examine the goods or on account of some circumstance for which the consumer cannot be deemed responsible.

THE EFFECT OF A CONSUMER EXERCISING HIS RIGHT TO CANCEL A CONT

Article 9

If in the purchase of movables, the consumer exercises his right to cancel a contract, the goods which he has received shall be made available at the place where they have been received. However, the goods may be made available at some other place indicated by the consumer if the trader can fetch them from that place without inconvenience.

If the goods have been sent by post to the consumer, the latter shall send them back in the same way provided that the trader supplies suitable packaging and the consumer does not need to defray the cost of return postage.

Article 10

If, in the purchase of movables, the consumer exercises his right to cancel a contract, the trader shall return the sum the consumer has paid. The consumer is entitled to retain the goods until the trader has complied with that obligation.

If, in cases such as are referred to in Article 9, first paragraph, a trader does not fetch the goods within three months from the day the cooling-off period begins to run, the goods become the property of the consumer free of charge. The same is true if, in cases such as are referred to in Article 9, second paragraph, the trader does not return what the consumer has paid within that time.

Article 11

If, in the case of a contract concerning a continuous service, a consumer exercises his right to cancel a contract, the trader shall return the sum the consumer has paid.

AUTHORITY VESTED IN A TRADER'S REPRESENTATIVE

article 12

If a trader makes use of the services of a representative, the latter shall always be regarded as having authority to act on behalf of the trader when it is a matter of entering into contracts such as are referred to in this Act, of pledging benefits which are intended to be included in such a contract and of receiving payment on behalf of the trader. The trader cannot restrict this authority to the detriment of the consumer.

In regard to commercial agents and commercial travellers there are special provisions in the Act (1914:45) regarding Factors, Commercial Agents and Commercial Travellers.

Product Safety Act (SFS 1988 : 1604)

Preamble

Section 1

The purpose of this Act is to prevent goods and services from causing injury or damage. To this end, a tradesman may

1. Be required to supply *safety information*.
2. Be forbidden to supply goods and services (*saljförbud*).
3. Be required to supply *cautionary information*.
4. Be required to recall goods and services (*recall*).

This Act applies to goods and services which are supplied commercially and which consumers use or may come to use for private purposes to more than a negligible extent.

Section 2

The provisions of this Act concerning the supply and transfer of a product also apply to the offer and transfer of the use of a product.

Section 3.

An injunction or prohibition under this Act is precluded insofar as any other enactment or official decision includes special provisions concerning the product or service and having the same purpose as would be served by the injunction or prohibition.

Section 4

Compliance with this Act and regulations issued by authority of the same is to be supervised by the National Board for Consumer Policies. An authority appointed by some other enactment or statutory instrument to ensure that rules of product safety with regard to certain goods or services are complied with shall,

however, also be the supervisory authority under this Act and under regulations issued by authority of the same.

The question of injunction or prohibition under this Act may always be raised with the National Board of Consumer Policies. If the Board is not the supervisory authority regarding the goods or service in question, then the question, unless manifestly groundless, is to be referred to the supervisory authority.

Injunction to supply cautionary information

Section 5

A tradesman supplying a product or service without supplying information of particular importance in preventing that product or service from causing injury or damage may be issued by the Market court with an injunction to supply such information. The injunction may also refer to other, similar products or services involving the same risk of injury or damage.

The injunction may stipulate that the information must

1. Be supplied by marking the product or the property to which the service refers or in the form of instructions for use accompanying the product or property.
2. Be supplied in some other form at sale points.
3. Be supplied in advertisements or other representations employed by the tradesman in connection with marketing.
4. Be supplied in a particular form to consumers requesting the same.

Sales prohibition etc.

Section 6

Any tradesmen supplying a product or service involving a special risk of injury or damage may be forbidden by the Market Court to

continue doing so. The prohibition may also refer to other, similar products or services involving the same risk of injury or damage.

Injunction concerning cautionary information

Section 7

A tradesman who has transferred a product or performed a service involving a special risk of injury or damage may be issued by the Market Court with an injunction to supply information concerning the risk of injury or damage and means of averting the same. Such information is to be supplied to the person who has possession of the product or for whom the service was performed, or who is in possession of the property to which the service referred.

The information is to be supplied in such a way that it will presumably come to the knowledge of the persons concerned, either through direct messages, or in advertisements or other representations used by tradesmen in connection with marketing. The information is to be supplied on a reasonable scale in relation to the need for preventing injury or damage.

Recall injunction

Section 8

A tradesman who has transferred a product involving a special risk of injury or damage may be issued by the Market Court with an injunction to recall the product from the persons possessing the same with a view to using it. The recall is to be effected on a reasonable scale in relation to the need for preventing injury or damage.

The injunction is to require the tradesman to

1. Rectify the fault to which the risk of injury or damage relates (*rectification*).
2. Recall the product and supply another, flawless product of the same or a similar kind (*replacement*).

3. Recall the product and pay compensation for it (*refund*).

The injunction is to make it the duty of the tradesman to make the users an offer whereby he will take the measure concerned on certain conditions. Those conditions are to be defined in such a way that the users can be expected to accept the offer. The conditions thus provide that the offer is to be fulfilled within a reasonable time and without any substantial expense or inconvenience to the persons accepting it. In the event of a refund, reimbursement for what is returned must equal the cost of procuring a new product of the same or a similar kind. If there are special grounds for doing so, a deduction may be made from the refund payment to allow for the benefit which the users may be deemed to have derived from the product.

The Market Court may issue the tradesman with an injunction to have the recalled products destroyed or otherwise rendered harmless, if there are special reasons for doing so as a means of preventing those specimens of a product which have been recalled in connection with replacement or refund causing serious injury or damage.

Section 9

A tradesman who has performed a service in such a way that a special risk of injury or damage has arisen may be issued by the Market Court with an injunction to recall the service from the persons to whom it was rendered. The same shall apply with regard to persons in possession of property to which the service referred with a view to its use. Recall is to be effected on a reasonable scale in relation to the need for preventing injury or damage.

The injunction is to require the tradesman himself to rectify the fault to which the risk of injury or damage relates or to provide compensation for rectification of the fault by a third party.

Compensation, when payable, shall if necessary also cover the cost of restoring to its original state the property to which the service related.

Recall as referred to in subsection of this section is to be subject to the first three sentences of section 8 (3).

Section 10

An injunction under Section 8 or 9 shall make it the duty of the tradesman to publish the offer and conditions for the same as well as the risk of injury or damage. Publication is to be subject to Section 7 (2), concerning cautionary information.

Common provisions on injunctions concerning cautionary information and recall

Section 11

An injunction under Sections 7-9 may only be issued if it may be expected to have the effect of preventing damage or injury to more than a negligible extent. In the consideration of such questions, the risk of damage or injury and the other attendant circumstances are to be taken into account. If the product or service in question related to property, special consideration is to be given to the extent to which the product or property may be presumed still to be in existence and in use.

Section 12

An injunction under Sections 7.9 which may refer to several tradesmen may be restricted to apply to one or a selected number of them. In such restriction, it should be considered who is in the best position to accomplish the purpose of the injunction, who first put the product or service on the market and what effect the injunction will have on the tradesman.

An injunction to recall a product or service applies to all specimens of the product or service unless it is apparent that a particular

specimen has not been supplied by the tradesman issued with the injunction.

A tradesman who can be issued with an injunction under Sections 7-9 may instead be issued by the Market Court with an injunction to assist in the implementation of an injunction issued to another tradesman.

Section 13

If more than ten years have passed since the tradesman ceased to supply the product or service, he may not be issued with an injunction for recall unless recall has been demanded in writing, before the expiry of the ten year limitation period, by an association of the kind referred to in Section. 17 (2).

Section 14

If an injunction under Sections 7-9 cannot be issued to any tradesman capable of giving effect to the measure concerned, the supervisory authority may supply cautionary information on a reasonable scale, insofar as this is necessary to the prevention of injury or damage.

Contingent fines

Section 15

An injunction or prohibition under Sections 5-8 or Section 12 (3) is to be accompanied by a contingent fine, except where this is unnecessary for particular reasons.

Rules of procedure

Section 16

In the event of measures under this Act being necessary to prevent a product or service from causing injury or damage, the supervisory authority should open negotiations with a tradesman who can be

issued with an injunction or prohibition, with a view to the tradesman undertaking to carry out the measures that are needed. The aforesaid shall not apply, however, if the matter is of an urgent nature or if circumstances otherwise exclude the opening of negotiations.

Section 17

A supervisory authority finding that an injunction or prohibition under sections 5-9 or Section 12 (3) is needed shall refer the question to the Consumer Ombudsman. If the Consumer Ombudsman shares the supervisory authority's opinion, he is to petition the Market Court for an injunction or prohibition of the kind concerned.

If, in a particular case, a supervisory authority decides not to make a request as aforesaid or the Consumer Ombudsman decides not to petition the Market court, a petition may be submitted by an association of consumers, employees or tradesmen.

Section 18

Questions concerning injunctions or prohibitions under Sections 5-9 or Section 12 (3) are to be considered by the Market Court when petitioned to do so.

Section 19

It is the duty of a tradesman, when called upon to do so by a supervisory authority or the Consumer Ombudsman, to return a statement and supply information in a matter coming under Sections 5-9 or Section 12 (3). It is also the duty of the tradesman to supply documents, product specimens and suchlike which may be of relevance to the inquiry.

If a demand as aforesaid is not acceded to, the supervisory authority or the Consumer Ombudsman may subpoena the tradesman to discharge his duty.

The tradesman is entitled, subject to special cause, to compensation from the supervisory authority, or Consumer Ombudsman for specimens and suchlike supplied in pursuance of subsection one.

Section 20

A decision with respect to an injunction or prohibition under Sections 5-9 or Section 12 (3) shall not preclude the same question being re-examined when changed circumstances or some other special reason so demand. Proceedings for re-examination shall be subject to Sections 17 and 18, except when filed by the tradesman concerned.

Section 21

If there is special cause for doing so, an injunction or prohibition under Sections 5-9 or Section 12 (3), the Consumer Ombudsman, following a request as referred to in Section 17, may subpoena the tradesman

1. To supply safety information or cautionary information or to contribute towards cautionary information as provided in Section 12 (3) (*information order*).
2. To cease supplying a product or service (*prohibition order*).
3. To recall a product or service or to assist in its recall as provided in Section 12 (3) (*recall order*).

The order is only valid if approved immediately or within a certain period. An approved order counts as an injunction or prohibition by the Market Court under Sections 5-9 or Section 12 (3). Approval received after the expiry of the time limit defined in the order shall be null and void.

Section 23

The provisions of Section 20 are to apply concerning information, prohibition and recall orders.

Supervision etc.**Section 24**

It is the duty of a tradesman, having been issued with an injunction or prohibition under sections 5-9 or Section 12 (3), to supply, when called upon to do so by the supervisory authority, a statement and information required for supervision of compliance with the injunction or prohibition. It is also the duty of the tradesman, when called upon to do so by the authority, to supply documents, specimens and suchlike needed for the purpose of supervision.

A tradesman not complying with a demand as referred to in subsection one may be subpoenaed to do so by the supervisory authority.

The tradesman is entitled, subject to special cause, to compensation from the supervisory authority for specimens and suchlike supplied in pursuance of subsection one.

The Government or an authority appointed by the same may issue regulations concerning liability on the part of the person who is to supply specimens and suchlike under subsection one to reimburse the supervisory authority for the cost of taking and examining specimens.

Section 25

Actions for the exaction of contingent fines imposed by a supervisory authority or the Consumer Ombudsman are to be brought in a common court by the person issuing the order. If the contingent fine has been imposed by the Market Court, the action is to be brought by the Consumer Ombudsman. If the contingent fine has been imposed at the instance of an association as referred to in Section 17 (2), proceedings for the exaction of the fine may also be brought by that association.

Appeals**Section 26**

The following decisions under this Act are final :

1. Decisions by the National Board for Consumer Policies under Section 4 (2), second sentence.
2. Decisions by a supervisory authority under Sections 14, 16 or 17.
3. Decisions by the Consumer Ombudsman under Section 17.
4. Decisions by a supervisory authority or by the Consumer Ombudsman concerning demands as referred to in Section 19 (1), first sentence, or concerning contingent fines following such demands.
5. Decisions by the Consumer Ombudsman Concerning information, prohibition or recall orders under Section 22.
6. Decisions by the Consumer Ombudsman or a supervisory authority under Section 25.

Appeals against decisions by a supervisory authority or by the Consumer Ombudsman in other questions referred to in Section 19 or by a supervisory authority in a matter relating to Section 24 (1) - (3) may be filed with an administrative court of appeal. The same shall apply to decisions by a supervisory authority under regulations referred to in Section 24 (4).

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1. This Act enters into force on 1st July 1989.
 2. An injunction under Sections 7-9 or Section 12 (3) may only be issued to a tradesman if, subsequent to the said entry into force, he has transferred goods or rendered services or a kind to which the injunction can refer.
 3. If a prohibition order or an information order relating to product safety has been issued under the Marketing Act (1975 : 1418) prior to the said entry into force, and if the limitation period for approval defined in the order has not expired, approval may be given within the specified period. The order will then have the same effect as a corresponding order as provided in section 22 of this Act.

THE CONSUMER SALES ACT (1990 : 1932)

Introductory Provisions

Sphere of Application

Section 1

This Act applies to sales of personal property which a person engaged in business activities, etc. sells in the course of such activities to a consumer principally for private use.

The Act also applies in cases where the seller is not engaged in business activities, etc. as referred to in the previous paragraph and the sale is effected on behalf of the seller by a person engaged in business activities, etc in the course of such activities. In such cases, both the person engaged in business activities, etc and the seller are responsible for the seller's obligations under this Act.

Where applicable this Act also applies to exchanges of personal property.

Section 2

This Act applies to orders for goods which are to be manufactured, except where the party ordering the goods undertakes to supply a substantial proportion of the materials.

This Act does not apply to contracts in which the party supplying the goods shall also undertake the labour or other services, if the services comprise the predominant proportion of the obligations of this party.

Contractual Terms which Deviate from the Act

Section 3

Terms of contract which in comparison with the provisions of this Act are to the detriment of the buyer are null and void in claims

against the buyer unless the Act specifies otherwise.

The first paragraph does not apply to sales of building construction components if the buyer is assured of protection by a guarantee, insurance and contract complying with the terms for public housing financing.

Nor does the first paragraph apply to the sale of gas supplied by conduit, if the general terms of the contract applied in connection with such supplies have been approved by the National Board for Consumer Policies.

Delivery of the Goods

Place of Delivery

Section 4

Unless other provisions are implied in the contract, the goods shall be made available for collection at the seller's place of business at the time the contract was concluded.

Time of Delivery

Section 5

Unless it is implied in the contract that the goods shall be delivered at a specific time, on request or without delay, they shall be delivered within reasonable time after the conclusion of the contract.

If the buyer has not received credit, the seller is not liable to hand over the goods until they have been paid for.

Delivery

Section 6

The goods have been delivered when they are in the possession of the buyer.

Costs Arising from the Goods

Section 7

Unless other provisions are contained in the contract, the seller shall be responsible for transport costs and other costs for the goods which occur before delivery and which are not due to delayed delivery as a result of circumstances attributable to the buyer.

Risk for the Goods

Section 8

If the buyer bears the risk for the goods, he is liable to pay for the goods even if they have been spoiled, lost, have deteriorated or are diminished through events which are not attributable to the seller.

The risk for the goods passes to the buyer when the goods are delivered.

If sale on approval has been agreed and the goods have been handed over, the buyer bears the risk until the goods have been returned.

Delay by the Seller

What Constitutes Delay

Section 9

There is delay on the part of the seller if the goods are not delivered or are delivered too late and this is not attributable to the buyer or to circumstances which are attributable to the buyer.

Remedies in the Case of Delay

Section 10

In the case of delay on the part of the seller, the buyer may withhold payment in accordance with Section 11. He may choose

between demanding that the seller fulfil the contract in accordance with Section 12 and declaring the contract avoided (cancelled) in accordance with Section 13. Furthermore, the buyer may claim damages from the seller in accordance with Section 14.

Right to Withhold Payment

Section 11

The buyer may withhold as much of the payment as is required to give him security for his claim on grounds of the delay.

Right to Claim Performance by the Seller

Section 12

The buyer may adhere to the sale and demand performance by the seller.

However, the seller is not liable to fulfil his obligations if there is an impediment to his performance which he cannot overcome or if performance would require sacrifices which are unreasonable in view of the buyer's interest in fulfilment of the contract by the seller. If the above-mentioned circumstances cease within reasonable time, the buyer may demand that the seller fulfil the contract.

The buyer forfeits the right to demand that the seller fulfil the contract, if he waits for an unreasonably long time before presenting his claim.

Right to Declare the Contract Avoided

Section 13

The buyer may declare the contract avoided if the seller's delay in delivering the goods is of substantial importance to him.

If the buyer has allowed the seller a fixed additional period of time for delivery of the goods and if this period of time is not unreasonably short, the buyer may also declare the contract avoided if the goods are not handed over within the additional period of time. During the additional period of time, the buyer may only declare the contract avoided if the seller notifies him that he will not fulfil the contract within this time.

If the buyer has claimed performance by the seller and has not allowed him any additional time, the buyer may declare the contract avoided if the goods are not delivered within reasonable time after the claim was presented.

If the sale refers to goods which are to be manufactured or acquired especially for the buyer in accordance with the buyer's instructions or wishes, and if the seller cannot make use of the goods in any other way without substantial loss, the buyer may only declare the contract avoided if his purpose in entering into the contract is essentially frustrated by the delay in delivery and the seller was aware of this or should have been aware of this.

Right to Damages

Section 14

The buyer has the right to compensation for the damage he suffers as a result of the seller's delay in delivering the goods, unless the seller proves that the delay has been caused by an impediment beyond his control which he could not reasonably be expected to take into account at the time of the sale and whose consequences he could not reasonably have avoided or overcome.

If the delay is caused by a party the seller has engaged to wholly or partly fulfil the contract, the seller is free from liability to pay damages only if the party he engaged is also free from liability under the preceding paragraph. This also applies if the delay is due

to a supplier engaged by the seller or by any other party at an earlier stage in the sales transaction.

Notice of Avoidance and Damages

Section 15

If the goods have been delivered too late, the buyer may not declare the contract avoided or claim damages on grounds of the delay, unless he notifies the seller that he is declaring the contract avoided or wishes to claim damages within reasonable time after having been informed of the delivery. However, if the buyer declares the contract avoided, he does not need to specially notify the seller that he does not need to specially notify the seller that he also wishes to claim damages.

In cases specified in Section 1, paragraph two, notification of avoidance or claim for damages may instead be made to the person engaged in business activities, etc.

Goods Which Do Not Conform with the Contract

What Constitutes Non-Conformity

Section 16

The goods must comply with what is implied by the contract as regards type, quantity, quality, other characteristics and also the packing or packaging. They shall be accompanied by the necessary directions for their assembly, use, storage and care.

Unless the contract implies otherwise, the goods'

1. shall be fit for the purposes for which goods of the same description would ordinarily be used.
2. shall be fit for the specific purposes for which the goods were intended to be used, if the seller at the time of the sale must have

understood such specific purposes and the buyer had reasonable cause to rely on the seller's skill and judgement.

3. shall possess the qualities of goods which the seller has referred to in providing samples or models and
4. Shall be contained or packaged in a customary or otherwise adequate manner, if packaging is required to preserve or protect the goods.

It shall be considered that the goods are non-conforming,

1. if they do not comply with the provisions of paragraphs one and two
2. if, prior to conclusion of the contract, the seller has failed to inform the buyer of circumstances concerning the qualities or use of the goods which he was aware of or should have been aware of and which the buyer could justifiably expect to be informed of, providing that his failure to inform the buyer can be assumed to have influenced the contract or,
3. if the goods do not comply in any other respect with what the buyer could justifiably assume.

Section 17

Notwithstanding the fact that the goods have been sold "in their existing condition" or with any other similar general reservation, they shall be considered non-conforming if they are in a condition which is inferior to that which the buyer had good reason to expect considering the price of the goods and other circumstances.

When second-hand goods have been sold by auction, they are considered to be sold "in their existing condition". In applying the preceding paragraph, regard shall be given to the price estimated or indicated by the auctioneer.

Section 18

The goods do not conform with the contract if they

1. are sold in breach of prohibitions under Section 4 of the Marketing Act (1975 : 1418) or Section 6 of the Act on Product Safety (1988 : 1604) or in breach of any other prohibition on sale notified in legislation or by an authority, fundamentally for the purpose of preventing the user of the goods from suffering ill health or accident or of otherwise preventing the use of goods which are not reliable from a safety aspect, or
2. are so defective that use of them involves manifest danger to life or health.

Section 19

It shall also be considered that the goods do not conform with the contract if they do not conform with descriptions of the qualities or use of the goods provided by the seller in marketing the goods, or in other contexts prior to the sale and which may be assumed to have influenced the sale.

The goods shall further be considered to be non-conforming if they do not conform with descriptions of the characteristics or use of the goods which a party other than the seller at an earlier stage in the sales transaction or on behalf of the seller, has given in marketing the goods prior to the sale, and which can be assumed to have influenced the sale. However, the goods shall not be considered to be non-conforming if the seller was neither aware of these descriptions nor should have been aware of them.

The preceding paragraphs do not apply if the descriptions have been corrected in time and in a clear manner.

It shall also be considered that the goods do not conform with the contract if the seller has failed to provide the information about the

qualities or use of the goods which he is obliged to provide under the Marketing Act (1975 : 1418) or has failed to provide safety information about the goods which it is his obligation to provide under the Act on Product Safety (1988 : 1604). This also applies if the manufacturer of the goods or any other party who has been involved in transactions with the goods at an earlier stage has been notified of this obligation and the seller was aware of, or should have been aware of, the neglect in fulfilling this obligation. However, a prerequisite for considering that the goods do not conform with the contract in accordance with this paragraph is that failure to notify the buyer may be assumed to have influenced the contract.

Section 20

When judging the question of whether the goods do not conform with the contract, heed shall be paid to the condition of the goods at the time when the goods are handed over. The seller is responsible for any failure to conform with the contract which exists at this time, even though such non-conformity does not appear until later.

However, if the buyer fails to collect or receive at the right time goods which are made available for him, the seller is not responsible for deterioration which occurs subsequently and which is due exclusively to the nature of the goods.

If the goods deteriorate after delivery, the goods shall be considered not to conform with the contract if the deterioration is the result of breach of contract by the seller.

Section 21

If the seller has undertaken, or any other party has undertaken on his behalf, by guarantee or a similar pledge to be responsible for the goods, or a proportion thereof, or for a characteristic of the

goods during a certain period, the goods shall be considered not to conform with the contract if, during the specified period, they deteriorate in the respect covered by the pledge.

The preceding paragraph does not apply if it is probable that the deterioration is due to an accident or comparable incident or to negligence, abnormal use or similar circumstances attributable to the buyer.

Remedies in the Case of Goods Which do Not Conform with the Contract

Section 22

If the goods do not conform with the contract, under Sections 23 - 29 the buyer may claim rectification, delivery of substitute goods, price reduction, or compensation to rectify the non-conformity, or may declare the contract avoided. In addition, he may claim damages under Section 30 - 32. He may also withhold payment under Section 25.

Complaint

Section 23

The buyer may not claim that the goods do not conform with the contract unless he has notified the seller of the non-conformity within reasonable time after he noticed or should have noticed the non-conformity (complaint). However, in cases referred to in Section 1, paragraph two, notification of non-conformity may be made to the person engaged in business activities, etc.

If a party other than the seller has undertaken to rectify non-conformity in goods on behalf of the seller, the complaint may be lodged with this party.

If the buyer does not make a complaint about non-conformity in the goods within two years of having received them, he forfeits the

right to do so, unless other provisions are contained in a guarantee or similar pledge.

Section 24

Notwithstanding Section 23, the buyer may claim that the goods do not conform with the contract, if the seller has acted with gross negligence or in breach of faith and honour or if non-conformity is of a nature as described in Section 18.

Right to Withhold Payment

Section 25

The buyer may withhold as much of the payment as is required to give him security for his demands on the grounds that the goods do not conform with the contract.

Section 26

The buyer is entitled to demand that the seller rectifies non-conformity or delivers substitute goods if this can be achieved without unreasonable cost or inconvenience to the seller.

Rectification or delivery of substitute goods shall take place within a reasonable time after the seller has presented his demand and without cost or substantial inconvenience for the buyer.

Section 27

Even though the buyer does not so demand, the seller has the right to rectify non-conformity or make substitute delivery at his own expense if, when the buyer makes a complaint, he offers without delay to rectify non-conformity or make substitute delivery and such measures can take place within a reasonable time after the claim is presented and without cost or substantial inconvenience to the buyer.

The seller may not claim that he was not given the opportunity to rectify non-conformity or make a delivery of substitute goods if the

buyer has rectified the non-conformity and, in view of the circumstances, the buyer could not reasonably be required to wait for rectification or delivery of substitute goods by the seller.

Right to Price Reduction or Avoidance

Section 28

If the question of rectification or the delivery of substitute goods has not been raised or does not take place within reasonable time after complaint is made, the buyer may demand a price reduction which corresponds to the non-conformity or may declare the contract avoided in accordance with Section 29.

Furthermore, the buyer is entitled to compensation for the cost of rectifying non-conformity, where this cost is not unreasonably high or is covered by a price reduction received by the buyer.

However, the buyer is not entitled to price reduction for the sale of second-hand goods at an auction.

Section 29

The buyer may declare the contract avoided if non-conformity is of substantial importance to him.

Damages

Section 30

The buyer is entitled to compensation for the damage he suffers because the goods do not conform with the contract unless the seller proves that failure to deliver goods which conform with the contract is due to an impediment beyond his control which he could not reasonably be expected to have taken into account at the time of the sale and whose consequences he could not reasonably have avoided or surmounted.

If failure to deliver goods which conform with the contract is due to a person entrusted by the seller to wholly or partially fulfil the

contract, the seller is only free from liability for damages if this person is also free from liability in accordance with the first paragraph. This also applies if non-conformity is due to a supplier whom the seller has engaged or any other party at an earlier stage in the sales transaction.

The buyer is always entitled to compensation if, at the time of the sale, the goods deviated from what the seller had especially pledged.

Section 31

The seller's liability for damages in accordance with Section 30 also covers damage, due to defect in the goods sold, which is caused to other property belonging to the buyer or any member of his household and which is primarily intended for private purposes.

Extent of Damages in the Case of the seller's Delay and in the Case of Goods which Do Not Conform with the Contract

Section 32

Damages due to delay on the part of the seller or goods which do not conform with the contract cover compensation for expenses, loss of income, price difference as referred to in Section 33 and other loss due to the delay or the non-conformity of the goods.

Damages under this Act, except in cases referred to in Section 31, do not cover compensation for loss which the buyer suffers as a result of damage to anything other than the goods sold.

The seller and the buyer may reach agreement that compensation in accordance with the first or second paragraph shall not cover loss in a commercial or business undertaking.

Price Difference

Section 33

If the contract has been declared avoided and the buyer has made a cover compensation for the price difference between the sales price and the covering purchase price if the covering purchase was made with sufficient care and within a reasonable time after the contract was declared avoided. Otherwise, if the current price for such goods as are covered by the sale at the time of avoidance exceeds the price under the terms of sale, damages cover this price difference.

Adjustment of Damages

Section 34

If the obligation to pay damages due to the seller's delay or goods which do not conform with the contract is unreasonably burdensome in view of the financial circumstances of the party liable for damages, damages may be adjusted in accordance with what is reasonable. In this connection, existing insurances and insurance opportunities on the buyer's side, the possibilities of the liable party to foresee and prevent the damage and any other special circumstances shall also be taken into account.

Price, etc

Price to be Paid by the Buyer

Section 35

If the price is not implied or stated in the contract, the buyer shall pay what is reasonable with regard to the nature and condition of the goods, the current price at the time of the sale and other circumstances.

Time of Payment

Section 36

If the time when payment is to be made is not implied by the contract, the buyer shall pay when the seller so requires, but not until the goods are placed at the disposal of the buyer.

Cancellation of the Order

Section 37

If the buyer cancels an order for the goods before the goods have been delivered, the seller does not have the right to insist on the sale and to demand payment. Instead, he is entitled to compensation in accordance with Section 41.

Delay by the Buyer

What is Meant by Delay

Section 38

Delay on the part of the buyer occurs if the price is not paid at the right time and where this is not due to the seller or to any circumstance attributable to the seller.

Remedies in the case of Delay

Section 39

In the case of delay on the part of the buyer, the seller may retain the goods in accordance with section 5. The seller may choose between requiring that the buyer make payment or declaring the contract avoided in accordance with Section 40. If the seller declares the contract avoided, he may also claim damages from the buyer in accordance with Section 41.

Avoidance

Section 40

The seller may declare the contract avoided if the buyer's delay in making payment constitutes a substantial breach of contract.

If the seller has prescribed a specific additional time for payment and this period is not unreasonably short, the contract may also be declared avoided if the buyer notifies him that he will not make payment within this period.

If the goods have come into the possession of the buyer, the seller may only declare the contract avoided if he has reserved the right to avoidance or if the buyer rejects the goods. Once the price has been paid in full, the seller may not declare the contract avoided.

Damages

Section 41

If the seller declares the contract avoided or the buyer cancels the order for the goods, under Section 37 the seller is entitled to compensation for

1. special costs incurred in order to enter into or to fulfil the contract, to the extent that he cannot profit from such costs in some other way,
2. special costs resulting from avoidance of the contract or cancellation of the order, and
3. other loss with a sum which is reasonable with regard to the price of the goods, the time of avoidance of the contract or cancellation of the order, the extent of work undertaken and other circumstances.

The seller may reserve the right to receive compensation determined in advance in the case of avoidance of the contract or cancellation of the order if such compensation is reasonable with regard to what a seller may normally be assumed to receive as compensation in accordance with the first paragraph.

The seller is not entitled to compensation in accordance with the first and second paragraphs if the buyer cancels the order for goods before the seller has accepted an offer which the buyer has made to the seller. Furthermore, the seller is not entitled to compensation if the buyer proves that the delay or the failure or breakdown in public transport or means of effecting payment or other similar impediment which the buyer could not reasonably have anticipated in connection with the sale and the results of which he could not reasonably have avoided or overcome.

Joint Provisions

Limitation of Damage

Section 42

The injured party shall take reasonable measures to limit his damage. If he neglects to take such measures, he must himself bear a corresponding proportion of the loss.

Effects of Avoidance and Delivery of Substitute Goods

Section 43

If the contract is declared avoided, the seller's obligation to hand over the goods and the buyer's obligation to pay the purchase price no longer apply.

To the extent that the sale has been completed, either party may require the other party to return what he has received. In this

connection, each party may retain what he has received until the other party supplies what he is to return and also makes payment or provides acceptable security for damages and interest for which he may be liable.

If the seller is to undertake the delivery of substitute goods, the buyer may retain what he has received until delivery of substitute goods takes place.

Section 44

If the contract is declared avoided, the buyer shall pay for any gain he has made from the goods and also pay reasonable compensation if he has had any other benefit from the goods.

If the seller is to return payment made, he shall pay interest from the day on which he received payment.

Lapse of the Right to Avoidance and Delivery of Substitute Goods

Section 45

The buyer may only declare the contract avoided or require delivery of substitute goods if he can return the goods in a substantially unchanged and undiminished state.

However, the right to declare the contract avoided or to require delivery of substitute goods is not forfeited if :

1. the goods have been spoiled, lost, impaired or diminished as a result of their nature or of any other circumstance which is not due to the buyer,
2. the goods have been spoiled, impaired or diminished as a result of a measure which was required to investigate whether the goods were without fault, or
3. the goods have been used by the buyer for anticipated use before he was aware of or should have been aware of the non-conformity

which gives him cause to declare the contract avoided or to require delivery of substitute goods.

Furthermore, the right to declare the contract avoided or to require delivery of substitute goods is not forfeited if the buyer compensates the seller for the loss in the value of the goods which is the result of the deterioration or the diminution of the goods.

Claim against a Person Engaged in Business Activities, etc. at an Earlier Stage in the Sales Transaction

Section 46

If the seller is insolvent, has discontinued his business activity or cannot be contacted, the buyer is entitled to make a claim on the grounds that the goods do not conform with the contract against a person engaged in business activities, etc at an earlier stage in the sales transaction who has transferred the goods for resale.

The first paragraph only applied to the extent that a corresponding claim on the grounds that the goods do not conform with the contract might have been asserted against the person involved in business activities, etc at an earlier stage in the sales transaction by the party who acquired the goods from such a person. However, a contract which restricts the right to assert a claim may only be cited against the buyer if such a restriction might have been agreed, with legally binding effect, between the buyer and the seller. Failure to complain at an earlier stage does not affect the buyer's right.

If the buyer wishes to make a claim under this Section against a person involved in business activities, etc at an earlier stage in the sales transaction, a complaint in accordance with Section 23 may be made to such a person or to the seller. If complaint has not been

made to a person involved in business activities, etc at an earlier stage in the sales transaction, the buyer forfeits his right against this person unless he notifies this person of his claim within a reasonable time after he has realized or should have realized that he had cause to present the claim.

Certain Notifications

Section 47

If a notification which the buyer shall make to the seller or to anyone else in accordance with Section 15, 23, 26 or 46 has been dispatched in an appropriate manner, the notification may be cited, even if it has been delayed, distorted or has not arrived. This also applies to notification regarding prescription of an additional period of time which the seller may make to the buyer in accordance with Section 40.

This Act enters into force on 1 January 1991.

This Act constitutes annulment of the Consumer Sales Act (1973:877).

However, previous provisions apply as regards contracts entered into before this Act came into force.

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