CHAPTER V

STANDARDS PRESCRIBED FOR SERVICES RENDERED
"We see our customers as invited guests to a party, and we are the hosts. It's our job every day to make every important aspect of the customer experience a little bit better".

Jeff Bezos

5.1 INTRODUCTION

According to the new style of governance, the consumer is the "king", and therefore his interest has to be protected, and he has to be provided with a quality service at reasonable costs. Further, his complaints as regards poor quality of services must be quickly redressed. Even before the introduction of regulatory legislation in sectors such as housing, insurance, electricity, telecom, or ports, the Consumer Protection Act (CPA), 1986, sought to promote and protect the following rights of the consumers;

a) The right to be protected against marketing of goods and services which are hazardous to life and property,

b) The right to be informed about quality, purity, standard and price of goods or services as the case may be, so as to protect the consumer against unfair trade practices,

c) The right to be assured, whenever, possible, access to a variety of goods and services at competitive prices,

d) The right to be heard, and to be assured that consumer's interests will receive due consideration at appropriate forum,

A complaint under the Act also includes any allegation relating to “the services hired or availed for or agreed to be hired or availed by him, if he suffers from one or more deficiency". Further, a "deficiency" is defined as "any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of

1 http://www.woopidoo.com/business_quotes/customer-quotes.htm dt. 30.03.10
performance which is required to be maintained by or under any law for the
time being in force or has been undertaken to be performed by a person in
pursuance of a contract or otherwise in relation to any service”. Section 2(1)
(o) of the Act defines the term “service” as “service as any description which is
made available to potential users and includes the provision of facilities in
connection with banking, financing, insurance, housing, transport,
processing, supply of electrical energy or other energy, boarding, or lodging
....., but does not include the rendering any service free of charge or under a
contract of personal service”. To address the consumer grievances under the
Act, there are three tier Consumer Fora at every District, in various States as
well at the National level.

The previous Chapter has analyzed the importance of services rendered by
housing and insurance sector. It also mentions various Authorities established
in settlement of claims by the consumers. Whenever services are provided to
the consumer the service provider is required to follow minimum standards
prescribed at International and National level. Standard to be followed by the
service provider varies from one service to other. There is no hard and fast rule
to be applied to verify the standards followed by the service provider while
providing service.

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2 Sec. 2 (1) (g) of the Consumer Protection Act, 1986
The present Chapter verifies the law governing in other countries especially United Kingdom and United States of America, in case the service provider fails to satisfy the consumer or provides a substandard service to the consumer.

4.2 LAW APPLICABLE IN UK AND USA:

‘Quality of service’ would depend on the sector under consideration. Parameters that measure quality in a given sector also vary across countries. The quality of service should not be static, rather dynamic. Thus, depending on the stages of development in a particular sector, the parameters governing quality of service in a given sector could vary over time.

For example, development indicators (such as telephone density) are not QOS (quality of service) indicators in UK, while they are in India. In UK’s electricity sector, ‘keeping appointment’ with the utility is one of the indicators, but it is not so in India. Typically, a network industry such as telecommunication or electricity industry is expected to ensure high quality of service, if combination of network quality and service quality to its customer improves, the former being the core of the overall quality of service.

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3 http://static.teriin.org/discussion/regu-ip-htm dt. 27.10.06
4 Ibid
4.2.1 STANDARDS IN U K AND USA

British Parliament has paid less attention to the standard of services. Absence of legislation is because of the reason that services lacked the element of large volume trading at a distance which applied in the case of sales. In the absence of commercial need there was no reason for the Parliament to depart from the principle of not legislating extensively in the business area. Individuals were thus left to resort to the common law when they were dissatisfied with the quality of services. The judiciary has implied terms in contracts for services along the lines of those of products in the Sale of Goods Act, 1893. The absence of legislation has meant that the reform in favour of consumers has lagged behind in the case of services. Exemption clauses are effective in excluding liability for the quality of services unless, pursuant to the Unfair Contract Terms Act, 1977.

Consumer can often invoke general principles of contract law if they are dissatisfied with the quality of services. At this juncture the judiciary played an important role to lay down various implied standards to be followed by the service provider. English law identifies three types of contract involving services where it implies terms as to quality, contract of hire, contract for work and materials and contracts for services simpliciter.

With contract of hire, the courts imply a term as to fitness or quality of the product hired, although there is some uncertainty about its extent. As per the

5 Cranston Ross, Consumers and the Law, (Weidenfeld and Nicolson, London, 1978) at 133
6 Id at 133 - 139
implied terms the service should be fit for the purpose for which it is availed. It means that the provider of service should apply reasonable care and skill.

In contract for work and materials the courts imply terms that the materials are of normal quality and suitable for the purpose. The implied terms are strict and a business is liable for latent defects in materials even though it has exercised reasonable care. The leading case is *Young & Marten v. McManus Child's*\(^7\), the House of Lords held, that building contractors were liable for latent defects in the tiles they had used although they had purchased them from a nominated manufacturer. The implied term as to suitability for purpose was negated because the tiles came from a nominated source of supply, but that did not relieve the contractors from using materials of normal quality, even though the defects were latent and not apparent on reasonable examination.

The courts imply a number of terms regarding the work element in contracts for work and materials and contracts for services. There is an obligation to perform the undertaking unless performance is rendered impossible by circumstances beyond business's control, as where a product to be repaired is accidentally destroyed by fire. Where no time is fixed the undertaking must be performed within reasonable time.

The most important implied term regarding work is obligation to exercise reasonable skill and care. In *Australia* this common law standard has been incorporated in legislation, and *Sec. 74 of the Trade Practices Act, 1974*

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\(^7\) (1969) 1 AC 454
provides an implied warranty that services will be rendered with due skill and care and that they shall be in accordance with any particular purposes made known expressly or by implication. The implied term at common law requires that a business must use the skill appropriate to a reasonable competent member of the relevant trade. For example, a lower standard of care is required from a jeweller piercing ears than from a medical practitioner. In holding itself out as qualified to do certain work, however, a business warrants that it possesses those skills and so may be held to a high standard.

Reasonableness is defined as the appropriate standard on the basis that, a person who has performed the work, frequently specifies its nature and extent—very often, we can refer to the cost, and the minimum necessary standard of skill and care. Reasonable skill and care as the standard for workmanship means that decisions turn on the nature of the trade and the particular circumstances involved. In building contracts where there is an implied term that a newly constructed house must be finished in a workmanlike, manner, may mean for example, fittings like water taps, and baths must be properly installed and walls must be plastered. Medical practitioners must bring to bear a reasonable degree of skill and knowledge, though the British courts are lenient when compared with those in the United States.

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8 Supra note. 5 at 136
Person performing the service is not in the same position as a seller, in that he is controlled by the customer's instructions. He can not require a customer to order a complete overhaul or even an adequate repair. Rules of servicing must therefore differ from rules governing the sale of goods and it would seem impracticable to require more than that the repair or service ordered by the customer should be competently performed and that it should not be defective or hazardous in itself, and that if it would in itself render the article's use more hazardous, it should not be carried out 10.

Recently the Parliament incorporated in legislation the terms about quality to be implied in contracts for the sale of products. To ensure clarity and consistency it is time that similar action was taken for contracts of hire, work and materials and services. At the same time other specific steps should be taken if standards are to be improved. Voluntary efforts are one approach, and the Office of Fair Trading has negotiated a number of Codes of practice focusing on the servicing and repair of consumer durables. There is also a need for more government regulations 11.

To eliminate shoddy work in house building, the Ontario New Home Warranties Plan Act 1976 creates a statutory warranty on the part of builder and developers selling newly constructed homes, that a home be constructed in a workmanlike manner, be free from defects in material, be constructed in accordance with the Ontario Building Code and be free from major structural

11 Supra note. 5 at 138
defects\textsuperscript{12}. The warranty does not apply to defects in materials, design or workmanship supplied by the owner, to consequential damage caused by defects, or to surface defects in workmanship and materials specified and accepted in writing by the purchaser\textsuperscript{13}. The warranty applies to complaints made within a year (five years if major structural defects are involved) and can be made by subsequent owners in that period despite an absence of privity of contract. Sec. 13 (4) to (5). When a purchaser has a claim under the warranty of financial loss resulting from the vendor's bankruptcy or failure to perform, he is entitled to be paid out of a guarantee fund if action against the vendor is for some reason impossible\textsuperscript{14}.

Public regulations cannot solve all the problems. There may be shortage of skilled tradesmen in service industries, but it will go part of the way to eliminate abuses and to ensure the minimum standards required by the civil law\textsuperscript{15}.

In the US, the Office of Rate Payers Advocates (ORA) attached to the Public Undertaking Corporations (PUC) represents the consumers in the proceeding before the Commission. In Pennsylvania, the government funds certain consumer groups who can hire necessary expertise for defending their interests before the commission. In India, there is a need to devise a system so that

\textsuperscript{12} Sec. 13 (1), The Act also includes licenses of Builders (s.6)
\textsuperscript{13} Sec. 13 (2)
\textsuperscript{14} Sec. 14
\textsuperscript{15} Supra note. 5 at 139
consumers are well represented during the regulatory process and are suitably empowered to interact effectively with the regulators.

Existing literature on quality of service, argue that monopolistic and even some competitive environments are not conducive to promote quality. Although a competitive environment is expected to maximize consumer welfare, it does not always satisfy individual’s heterogenous price-quality preferences. It is evident from the literature that monopolies tend to distort quality of service by either over supply or under supply quality depending on various factors such as elasticity of demand. Even in a competitive environment when firms have a better understanding of their product and quality than most consumers and therefore, charge a higher price, customers by agreeing to pay no more than the price for average quality of goods for services, can induce the firms to lower quality leading to a downward cycle in prices and quality. Although higher quality of service would entail high cost of providing such service, this may not lead to lower level of profit in view of transfer of costs, such as costs towards complaint handling, or payment of compensation to improve in service, in addition to having higher volume of use of services, new customers, etc

Careful analysis of literature proves that there are certain standards prescribed for services through enactments, customs and practices followed in the market place. But these standards are not uniform. They may vary in each and every country, society and place of business. After going through the standards prescribed to be followed while providing services in different countries let us

\[16\] Supra note. 3
verify the standards laid down at international level to protect the interest of consumers.

5.3 STANDARDS UNDER INTERNATIONAL REGIME

One of the most important Non Governmental Organizations set up at international level to set standards to be followed by all other nations in the world is International Organization for Standardization (ISO).

1. ISO Standardization

ISO is a global network that identifies what International Standards are required by business, government and society. It develops in a partnership with the sectors that will put them to use, adopts them by transparent procedures based on national input and delivers them to be implemented worldwide.

ISO standards distil an international consensus from the broadest possible base of stakeholder groups. Expert inputs come from those closest to the needs for the standards and also to the results of implementing them. In this way, although voluntary, ISO standards are widely respected and accepted by public and private sectors internationally.

ISO's work programme ranges from standards for traditional activities, such as agriculture and construction, through mechanical engineering, manufacturing and distribution, to transport, medical devices, the latest in

17 www.iso.org dt. 10.08.2008
information and communication technology development and standard of service.

Its standards specify the requirements for products, services, processes, materials and systems, and for good conformity assessment, managerial and organizational practice. ISO standards are designed to be implemented worldwide\textsuperscript{18}.

International Organization for Standardization is a worldwide federation of National Standards Bodies, which aims to promote the development of standardization and related activities in the world with a view to facilitating international exchange of goods and services, and to developing cooperation in the spheres of intellectual, scientific, technological and economic activity. The results of its technical work are published as International Standards. The ISO 9000 family of standards represent an international consensus on good management practices with the aim of ensuring that the Organization can deliver the product or services that meet the consumer’s quality requirements.

ISO 9001:2000 is one of the core standards in the family of ISO 9000 standards which deals with the requirements of Quality Management Systems. The main benefits of implementing these requirements and getting certification licence under Quality Management Systems Certification Scheme are that it\textsuperscript{19}

\begin{itemize}
  \item[(i)] Provides an opportunity to increase value of the activities of the Organization,
\end{itemize}

\textsuperscript{18} \textit{Ibid}

\textsuperscript{19} \textit{Ibid}
(ii) provides clear indication of firm's capabilities as well as strong evidence of its commitment to quality,

(iii) improves the performance of processes/activities continually,

(iv) Leads to less material wastage, production down time, rework, etc. through an increase in 'quality know-how' and efficiency,

(v) Provides satisfaction to consumers by assuring them quality of products,

(vi) facilitates proper implementation of statutory and regulatory requirements related to products/services, and

(vii) facilitates better resource management.

2. **ISO's Partners**\(^{20}\)

ISO is a Non-Governmental Organization consisting of a federation of the National Standard Bodies of 157 countries, one per country, from all regions of the world, including developed, developing and transitional economies.

Each of the members is the Principal Standards Organization in its country. The members propose the new standards, participate in their development and provide support in collaboration with ISO Central Secretariat for the 3000 technical groups that actually develop the standards.

The members appoint National Delegations to Standards Committees. In all, there are some 50000 experts contributing annually to the work of the Organization. When their work is published as an ISO International Standard, it may be adopted as a national standard by the ISO members and translated.

\(^{20}\) *Supra* note. 17
ISO collaborates with its partners in international standardization, the IEC (International Electro Technical Commission) and the ITU-T (International Telecommunication Union), particularly in the field of information and communication technology. They have established the World Standards Cooperation (WSC) as the focus for their combined strategic activity.

It has a strategic partnership with the World Trade Organization (WTO) aiming to promote a free and fair global trading system. Signatories to the WTO Agreement on Technical Barriers to Trade (TBT) commit themselves to promoting and using international standards of the type developed by ISO.

ISO cooperates closely with most of the specialized agencies and bodies of the United Nations that are involved in technical harmonization and assistance to developing countries.

It also maintains close working relations with Regional Standards Organizations, many members of the Regional Organization belong to ISO. In addition, several hundred specialized organizations representing trade and regulatory sectors participate in developing ISO standards.

ISO’s work programme ranges from standards for traditional activities such as agriculture and construction, through mechanical engineering, manufacturing and distribution, to transport, medical devices, the latest in information and communication technology development and standard of
service. Further the ISO Standards and Guide for conformity assessment –
covering all aspects from supplier’s declaration of conformity to third-
party certification and accreditation - which is becoming a vital component
of business transactions, global trade and regulatory requirements²¹.

Quality Standards prescribed by ISO are followed by various countries in
global trade and commerce. These standards prescribes international consensus
of good management practice, while delivering products and services. BIS is a
founder member of ISO and represents India in ISO. Now let us analyze the
standards recognized in India to protect interest of the consumer in the market
place.

5.4 INDIAN LAW AND MINIMUM STANDARDS

There is no separate legislation in India that governs standard of service
provided by the various service providers. The present research is concerned
with the services provided by housing and insurance sector. Generally in these
sectors standard of services is provided between the parties through a contract
or agreement among them. All the terms and conditions are clearly laid down
in that agreement in relation to the standards to be followed by the service
provider. In case of breach, the remedy is available under the Law of Contract.
Contract law is applicable if the service provider fails to provide quality of
service as specified in the agreement. Service provider cannot enter in an
agreement according to his whims and fancies. The agreement should consist
of certain specific terms and conditions. These terms and conditions are

²¹ Ibid
governed by standard form of contract. If the agreement is not as per this standard form of contract it amounts to breach, and remedy is available under the Law of Contract.

1. Standard form of Contract

Standard form of contract has arisen out of the modern ‘large scale and widespread’ practice of concluding contracts in standardized forms. In the present society it would be difficult to draw up a separate contract with each and every individual by any Corporation or Organization. Therefore, they maintain printed forms of contract. Such standard contract contains a large number of terms and conditions, which restrict and often exclude liability under the contract. The individual can hardly bargain with the massive Organizations. He cannot alter those terms or even discuss them, they are there for him to take or leave.

This gives a unique opportunity to the Company or the Organization to exploit the weakness of the consumer by imposing upon him various terms and conditions. These terms and conditions look like a kind of private legislation which may go to the extent of exempting the Corporation or Organization from all the liability under the contract. As a result many cases have come before the court in this regard. The courts have found it very difficult to come to the rescue of the consumer particularly where he has signed the document without bare reading. In such situation the courts have been constrained to hold that he

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22 Examples like LIC of India, Railway Administration, Courier Services, Transport Services, Dry Cleaners etc.
23 Singh Avatar, *Contract and Specific Relief*, (Eastern Book Co, Lucknow, 10th Ed. 2008) at 69
will be bound by the document even if he never acquainted himself with its terms and conditions\textsuperscript{24}.

There is a need therefore, to protect the consumer who has entered into standard form of contract. Following are some of the modes of protection that have been evolved by the courts from time to time;

a) Reasonable notice,
b) Notice should be contemporaneous with contract,
c) Theory of fundamental breach,
d) Strict construction,
e) Liability in tort,
f) Unreasonable terms,
g) Exemption clauses and third parties

\textbf{a) Reasonable Notice}

It is the duty of the person delivering a document, to give adequate notice to the offeree of the printed terms and conditions. If this is not done, the acceptor will not be bound by the terms. The House of Lords in \textit{Henderson v. Stevenson}\textsuperscript{25} held that the plaintiff could not have accepted a term ‘which he has not seen, of which he knew nothing, and which is not in any way ostensibly connected with that which is printed and written upon the face of the contract presented to him’. There was nothing to attract the attention of the passenger to the place where the conditions were printed.

\textsuperscript{24} \textit{Ibid}
\textsuperscript{25} (1875) 2 HL SC App 470
If a folded up ticket was handed over to a passenger and the conditions printed on it were also obliterated in part by a stamp in red ink\(^{26}\), and in another case, the words on a ticket, "for conditions see back" were obliterated by the date stamp\(^{27}\), it was held that in either case no proper notice of the terms had been given.

In case where written contract is signed by the party accepting, he becomes bound by all its terms, whether he has read it or not. "An action is brought on a written agreement which is signed by the defendant, the agreement is proved by proving his signature and, in the absence of fraud, it is wholly immaterial that he has not read the agreement and does not know its contents"\(^{28}\). This statement was relied upon by the Madras High Court in deciding *Madras Railway Co v. Govinda Rau*\(^{29}\), and Gautam *Constructions and Fisheries Ltd v. National Bank for Agricultural and Rural Development*\(^{30}\). Further the court held that the Arbitrators and Courts must adhere to the contract terms. The court did not approve interference in rates for construction and the interest rates.

**b) Notice should be contemporaneous with contract**

Secondly, notice of the terms should be given before or at the time of the contract. A subsequent notification will indeed amount to a modification of the original contact and will not bind the other party unless he has assented thereto.

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26 Richardson, Spence & Co v. Routree (1894) AC 217
27 Sugar v. London Midland & Scottish Railway Co. (1941) 1 All ER 172
28 Parker v. South Eastern Railway Co. (1872) 2 CPD 416
29 (1898) 21 Mad. 172
30 (2000) 6 SCC 519
In *Olley v. Marlborough Court Ltd*[^31^], a man and his wife hired a room in a hotel and paid a week's rent in advance. When they went up to occupy the room there was a notice on one of the walls to the effect that 'the proprietors will not hold themselves responsible for articles lost or stolen, unless handed to the managers for safe custody'. Property of the man having been stolen owing to the negligence of the hotel staff, the defendants were held liable as the court held that the notice was not a part of the agreement.

c) **Theory of fundamental breach**

The third method is the doctrine of fundamental breach. It is a method of controlling unreasonable consequences of wide and sweeping exemption clause. Even where adequate notice of the terms and conditions in a document has been given, the party imposing the conditions may not be able to rely on them if he has committed a breach of the contract which can be described as 'fundamental'[^32^].

Every contract contains a core or fundamental obligation which must be performed. If one party fails to perform this fundamental obligation, he will be guilty of a breach of the contract whether or not any exempting clause has been inserted which purports to protect him.

The theory of fundamental breach has not found statutory recognition to some extent in the *British Unfair Contract Terms Act, 1977*. This Act says that a party who commits breach of his contract cannot take the advantage of any

[^31^]: (1949) 1 All ER 127, CA
[^32^]: *Supra* note. 23 at 78
clause in the contract which either excludes or limits his liability. Further, if there is any provision in the contract to the effect that ‘no performance’ or ‘substantially different performance’ will be taken as equivalent to performance that will be of no avail. Thus the term breach will include a performance which is substantially different from that contemplated by the contract.\textsuperscript{33}

d) **Strict construction**

Exemption clauses are construed strictly particularly where a clause is so widely expressed as to be highly unreasonable. Any ambiguity in the mode of expressing an exemption clause is resolved in favour of the weaker party. Where under a housing scheme, the price to be charged is made expressly variable, the allottees cannot claim any estoppel against variations nor seek refund on the ground of any proposed, but reasonable variation.

The Supreme Court has held that the power to vary terms relating to quantum of work cannot be unlimited. Any clause giving absolute power to one party to modify the contract terms would amount to interfering with the integrity of the contract. Under the general law of contract, once the contract is entered into, any clause giving power to one party to modify the terms of the contract at his sweet will or to cancel the contract would be in essence negation of the contract.\textsuperscript{34}

\textsuperscript{33} Id at. 84
\textsuperscript{34} National Fertilizers v. Puran Chand Nangia (2008) 8 SCC 343
e) Liability in tort

Any exemption clause is exhaustive enough to exclude all kinds of liability under the contract; it may not exclude liability in tort. It is, however open to the parties to exclude liability even for negligence by express words or necessary implication. The British Unfair Contract Terms Act, 1977 expressly provides that any clauses in a contract which excludes or restricts liability for death or personal injury resulting from negligence shall be absolutely void. The expression ‘negligence’ is defined in the Act to mean the breach of any common law or contractual duty.\(^{35}\)

f) Unreasonable terms

Another mode of protection is to exclude unreasonable terms from the contract. A term is unreasonable if it would defeat the very purpose of the contract or if it is repugnant to public policy. The principle of excluding unreasonable clauses has now found statutory recognition in the British Unfair Contract Terms Act, 1977. The Act provides that in respect of any loss caused by the breach of contract, any restricting or excluding clause shall be void unless it satisfies the requirements of reasonableness. A term will be regarded as reasonable if it is a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been known to or in the contemplation of the parties when the contract was made.\(^{36}\)

\(^{35}\) Supra note. 23 at 90  
\(^{36}\) Id at 92
g) Exemption clauses and third parties

One of the most important principles of contract is that a contract is a contract only between the parties to it and no third party can either enjoy any rights or suffer any liability under it. This should apply to standard form of contracts also. The effect would be that where goods are supplied or services rendered under a contract which exempts the supplier from liability, and a third party is injured by the use of them, the supplier is liable to him notwithstanding that he has purchased his exemption from the other party to the contract. If a contractor agrees to maintain and repair a lift in certain premises under contract with the owner who exempts him from liability, the exemption would be of no avail to the contractor against a person who is injured owing to bad repairs. If this were not so, the life and security of millions of people would be in the hands of the two parties to a contract. They would then make law not only for themselves, but also legislate for countless others. Therefore, in Haseldine v. C A Daw & Son Ltd, the lift case the defendants were held liable for the tort of negligence. The court stated that 'the duty to the third party does not arise out of contract, but independently of it'

Services provided by the contractor in case of housing and insurance are governed by standard form of contract as mentioned above. There are no separate standards prescribed in this regard. Housing and insurance service provider should follow this standard form of contract. In case of insurance sector a new regulatory authority was set to govern insurance contract.

37 (1941) 2 KB 343
2. Regulation of Insurance Business
   Insurance Regulatory Development Authority Act, 1999 (IRDA)

The changing economic scenario, liberalization and globalization of economy and economic reforms prompted the government to appoint a high powered Committee under the Chairmanship of Sri. RN Malhotra, former Governor of Reserve Bank of India to examine the structure of insurance industry and suggest changes in other parts of financial system of the economy. The Committee has recommended the establishment of strong and effective insurance regulatory authority in the form of a Statutory Board. On the recommendations of the Committee, the Government by resolution appointed an Interim Insurance Regulatory Authority pending the enactment of comprehensive legislation. Though this was introduced in 1996 it was however not passed. In 1998, amendments were proposed to Sec. 30 of LIC Act, 1956 and Sec. 24 of the GIC Act, 1972 to permit the entry of private Indian Companies into the insurance business and statutory provisions was accorded to Insurance Regulatory Authority. The Insurance Regulatory Authority is replaced by the Act passed in 1999, known as the ‘Insurance Regulatory and Development Authority Act, 1999’. There after some more additional provisions were made to the Act by inserting new supplementary Acts to it. In this Act, the powers and functions of the Body are defined along with area and scope of operation. This Act is a landmark in the insurance legislation by which
the need to regulate the private and Government Corporations engaged in the insurance business, is recognized and fulfilled\textsuperscript{38}.

IRDA is acting as a tool to check the accounting system and reporting system of insurers. The Act has made it mandatory to present systematic formats for submission of the accounts. The Act has permitted the Authority or the representative of the Authority to inspect the insurance offices or sites or discuss with the staff or the groups of the insured to arrive at requirements of the insurance business. The Authority is authorized to recommend enacting new laws required to meet the needs of the insurance business. It has the powers to make regulations in the field of licensing of insurers, agents, intermediaries, in relation to the capital, investment and securities, etc, with their powers, authorities, regulating the insurance business\textsuperscript{39}.

There is no specific legislation to prescribe standards for services provided by the service providers in India. Service providers are government by the rules and regulations made in between the parties at the time of entering in to a contract. Contract entered between the parties should be in conformity with standard form of contract, as explained. If the contract is not in conformity then the consumer can avail the remedy by approaching the court. Further, each and every service provider had their own Regulatory Authorities to dissolve the disputes filed by the consumer. Except these Regulatory Departmental

\textsuperscript{38} Legal Environment Business, (ICFAI University Press, Hyderabad, 2007) at 253
\textsuperscript{39} Id at 254
Authorities, and standard form of contract no other standards are prescribed in relation to services.

There is no uniform approach in the regulatory legislation to the question whether regulation should deal with consumer complaints or not. The TRAI (Amendment) Act 2000 also, is silent on the regulator’s relationship with individual consumer or group of consumers, although the TDSAT (Telecom Dispute Settlement and Appellate Tribunal) is empowered to deal with disputes between the service providers and group of consumers. In the absence of clear regulatory mandate on handling consumer complaints, the regulator’s role in consumer protection is not clear.

It would appear that an individual consumer or a group of consumers can either approach Consumer Court or a regulator for a remedy against poor quality of infrastructure services. An occasion could arise when these two institutions are called upon to address a similar complaint filed by a consumer or a group of consumers. The relationship between the two institutions has not been clarified in the existing regulation; nor has any provision been made for the two to cooperate and assist each other.

There is also ambiguity in the existing legislation as to whether a non-performance of the standard of the service, as set by the regulators, would give rise to sufficient conditions for attracting provisions relating to "deficiency" of service under the Consumer Protection Act, 1986.
While the Consumer Forum can award compensation to a consumer for the damages caused by the opposite party, the regulators cannot do so. Further, there is no mechanism by which the non-fulfillment of QOS (Quality of Service) standard by the utilities/service providers would result in automatic compensations to the consumers.

The issues raised above would indicate that there is lack of clarity in our approach to the legislative process and mechanism to specifically address consumer interests\textsuperscript{40}.

The regulator has to balance the private and public interests during the regulatory process. If there is information asymmetry on the part of the various stakeholders including the consumers, or if the consumers are not adequately represented during such process, the regulator process is likely to be inefficient. In India, there are more than 10,000 consumer organizations who are yet to get fully associated with the regulatory process. The need for empowering such consumer organizations with proper training on regulatory issues and regulatory basics has to be recognized. Their involvement in such process would make qualitative changes in regulatory governance\textsuperscript{41}.

After careful analysis of the standard form of contract and Regulatory Authorities established in dealing with consumer disputes in relation to services provided by service providers. Let us verify the standards and various

\textsuperscript{40} Supra note.3
\textsuperscript{41} Ibid
authorities established in laying down the standards in relation to services in India.

3. Standards Prescribed for Goods in India

In relation to goods purchased, distributed or supplied by the seller, the goods should confirm with the standards prescribed by different standards prescribed by different Authorities. One of such Authority is Bureau of Indian Standards (BIS). This BIS is engaged in formulation of need-based Indian Standards in line with national priorities as well as harmonizing these National standards with regional and international standards\(^{42}\).

It has been set up under Bureau of Indian Standards Act, 1986 (BIS Act, 1986) as the National Standards Body of India. It mainly performs two types of activities, namely, formulation of quality standards of goods or services, and their certification through Product Certification Scheme/ Quality Certification Scheme. BIS Act, 1986 seeks to protect the interests of the consumers and promote their welfare by formulating and enforcing the standardization, marking and quality certification of goods. Quality Management Systems serve as an indicator of the ability of the firm to meet quality needs of the consumers\(^{43}\).

The product certification scheme is basically voluntary and aims at providing quality, safety and dependability to the ultimate customer. Presence of certification mark known as Standard Mark on a product is an assurance of

\(^{42}\) http://business.gov.in/consumer_rights/current_scenario.php dt. 27.02.09

\(^{43}\) Ibid
conformity to the specifications. The conformity is ensured by regular surveillance of the licensee's performance by surprise inspections and testing of samples, drawn both from the factory and the market⁴⁴.

The BIS product certification scheme is essentially voluntary in nature, and is largely based on ISO Guide 28, which provides general rules for third party certification system of determining conformity with product standards through initial testing and assessment of a Factory Quality Management System and its acceptance followed by surveillance that takes into account the Factory Quality Management System and the testing of samples from the factory and the open market. All BIS certification is carried out on Indian Standards, which have been found amenable to product certification. A sizable number of Indian Standards have however, been harmonized with ISO/IEC Standards and some are dual numbered as IS/ISO or IS/IEC Standards. A large number of operational elements of the BIS product certification scheme correspond with the requirements of ISO Guide 65.

Although, the scheme itself offers voluntary licensing, the Government of India, on considerations of public health and safety, and mass consumption has enforced mandatory certification on various products through Orders issued from time to time under various Acts. While the Bureau continues to grant licenses only on application, the enforcement of compulsory certification is done by the notified authorities. Given later in this document is a list of items

⁴⁴ http://www.bis.org.in/cert/procert.htm dt. 12.11.2008
brought under mandatory certification, together with the corresponding Indian Standard Number, and the authorities responsible for enforcing the orders\textsuperscript{45}.

Under separate arrangements with statutory agencies some products have been placed under special certification schemes of lot or batch inspection, carried out by BIS inspecting officers. A majority of Gas cylinders and valves are certified through such schemes. Under agreement with UNICEF, deep well hand-pumps, a critical potable water supply source for rural areas is also licensed under a lot inspection scheme.

For all other products, the manufacturer is permitted to self certify the products after ascertaining its conformity to the Standard licensed for. Through its surveillance operations, the Bureau maintains a close vigil on the quality of goods certified.

Provision exists for sub-contracting certification surveillance activities to competent agencies in specific areas. Some steel products, rubber products and electronic products are presently under such surveillance agreements\textsuperscript{46}.

The BIS Product Certification Scheme is open to manufacturers in all countries without discrimination. While a licence can be granted for any Indian Standard, specifying product characteristics, which is amenable to certification, the broad areas of technologies now under certification are\textsuperscript{47};

\textsuperscript{45} Ibid
\textsuperscript{46} Ibid
\textsuperscript{47} Ibid
a) Textiles,
b) Chemicals and Pesticides /Rubber and Plastic products /Cement and concrete products,
c) Basic metals and fabricated metal products /Machinery and equipment,
d) Electrical, electronics and optical equipment /Automotive components,
e) Agriculture, food, beverages and tobaccos /Leather products /Wood products,
f) Paper and pulp products /Testing instruments /Building materials,
g) Pumping, irrigation, drainage and sewage equipment.

Bureau of Indian Standards (BIS), is the main Authority which has been promoting the industrial development in the country by formulation of National Standards, Operation of Product Certification Scheme, Management Systems, Certification Schemes and Training.

The **Product Certification Scheme of BIS** aims to provide the third party Guarantee of quality, safety and reliability of products to the ultimate consumers. Under the scheme, BIS grants licenses to manufacturers after assuring that their product quality conform to the prescribed national standards/specifications. The certification permits the licensees to use **ISI** certification mark, known as Standard Mark, on their product. This conformity is ensured by regular surveillance of the licensee's performance by surprise inspections and testing of samples, drawn from both the market and factory.

ISI Mark holds a good brand image in the eyes of consumers as it gives assurance about the quality of product. Therefore, the consumer as well as
organized purchaser gives preference to the ISI marked products over non-ISI products.

The Product Certification Scheme is basically voluntary in nature and is largely based on ISO Guide 28, which provides general rules for third party certification system for determining conformity of product quality with standards.

However, for a number of items affecting health and safety of the consumer and those of mass consumption, this Scheme has been made mandatory by the Government through various statutory measures such as Prevention of Food Adulteration Act, Mines Act, Gas Cylinders Rules, along with Bureau of Indian Standards Act, 1986. Some of such items brought under mandatory certification are LPG Cylinders, pressure stoves, self ballasted lamps for general lighting services (commonly known as CFL), processed cereal based complementary foods for infants, sweetened ultra high temperature treated condensed milk, skimmed milk powder, constant speed compression ignition (diesel) engines for general purposes (up to 20 KW), Refillable Seamless Steel Gas Cylinders, clinical thermometers, packaged drinking water, different types of cement, etc.

To complement and support the activity of product certification, BIS have established a chain of 8 laboratories in five regions, that is, Sahibabad, Kolkata, Mohali, Mumbai and Chennai as well as a network of 33 Branch Offices set up in the State capitals or major industrial towns. Out of this, six laboratories have
been accredited by National Accreditation Board for Testing and Calibration Laboratories (NABL) for their testing facilities. Electrical Calibration Laboratory at Sahibabad has been accredited for its calibration facility.

BIS has also introduced Certification Schemes for foreign manufacturers and Indian importers. Under these schemes, foreign manufacturers can seek certification from BIS for marking their products with BIS Standard Mark and Indian importers can also seek BIS certification for applying BIS Standard Mark on the products being imported into the country. Under the BIS Certification scheme for foreign manufacturers, 65 licenses have been granted and three licenses have been granted to importers. Besides, there is BIS Certification Scheme for Hallmarking of Gold Jewellery, which has been launched to protect consumers against any fraudulent practices due to irregular gold quality. It, thus, instills confidence in the consumer about the purity of gold jewellery and seeks to develop India as a leading gold market centre in the world. The scheme is voluntary in nature and operates through BIS network of regional and branch offices located across the country. Under this, a jeweller has to obtain certification mark licence from BIS to get his jewellery hallmarked from a BIS recognized Assaying and Hallmarking Centre. The recognition of these Centers is done by BIS after ensuring that the Centre are following BIS Criteria for Hallmarking based on laid down norms for sampling, assaying and hallmarking as well as have adequate testing facilities, trained and competent manpower.
Another major Scheme being operated by BIS is the Quality Management Systems Certification Scheme, which is operating as per IS/ISO 9001:2000 standard. The scheme was launched in 1991 covering a wide range of industry as well as service sectors including engineering, chemicals, pharmaceutical, cement, ceramics, food, textiles, automotives, mechanical, metallurgical, electronics, aeronautics, hospitals, financial, banking services, construction, hospitals, wholesale and retail trade, education and training, hotel, power, printing, telecommunications, testing laboratories and information technology. This scheme has received accreditation in 23 technology sectors from the Raad Voor Accreditatie (RVA) of Netherlands, an international accreditation body of repute and in 9 technology sectors from Quality Council of India (QCI). In simpler terms, accreditation refers to certification of the certification body\textsuperscript{48}.

Consumer protection has always been one of the main thrust areas of policy formulation. One of the way to achieve this is to ensure accuracy and reliability in Weights and Measures of goods and services purchased by the consumers. Use of proper and accurate standards, weights and measures is very important for effective functioning of any economy, as it plays an indispensable role in promoting welfare of consumers. Through this, consumers are protected from malpractice of underweight or under measure. They get the right and exact amount of product for the money spent by them. Further, the marking and certification of quality of products bring confidence and satisfaction to the consumers. Their purchase decisions become simplified and they are assured.

\textsuperscript{48} Supra note. 42
that their needs for quality will be met. Hence, protection of consumers is accomplished by setting minimum quality specifications and safety standards for both goods and services as well as by establishing mechanisms to redress their grievances.

The Weights and Measures Unit, under the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, has been set up to promote use of exact and correct weighing and measuring instruments. For this, various legislations have been enacted like Standards of Weights and Measures Act, 1976, Standards of Weights and Measures (Enforcement) Act 1985, Standards of Weights and Measures (General) Rules 1987 and Standards of Weights and Measures (Packaged commodities) Rules, 1977. All such regulations aimed to ensure that consumers get the exact quantity of commodities, with mandatory declaration of relevant information on the package of goods; as well as facilitate use of standard weighing and measuring instruments in trade and commerce activities. Further, there are also Weights and Measures Departments/Wings or Department of Legal Metrology in various States and Union Territories to regulate all such provisions of weights and measures.

Marking and quality certification of products and services has become very important in today's rapidly changing business scenario. These facilitate the production of quality goods/services as well as make them available for the satisfaction of consumers at large. Because of this, consumers get better choice

49 Ibid
and assurance of consistency in quality of product/service with its timely delivery. Further, they also get to monitor the firm's supplies and clear indication of its capabilities. Hence, their time and money is saved in doing the assessment of the suppliers. This system of certification and marking is also beneficial for producers as well. This helps them to gain a competitive edge in domestic as well as global market. Disruptions created to their routine due to multiple assessments by various customers are also reduced. They have greater liability of producing quality goods matching international standards\(^50\).

Service standard, in short 'standards of service' means more than service delivery to the targets such as waiting time and hours of operation. Everyone is entitled to know what they expect from the service provider, how services will be provided and at what cost, and lastly what the consumer can do if the service is not acceptable. Service provider must follow the five essential elements while providing service to the consumer\(^51\). They are:

a) Description of the service,

b) Principle describing the quality of service,

c) Delivery targets,

d) Cost of delivering the service, and

e) Redressal mechanism that can be used by the consumer

While each of these elements can exist on their own, it is expected that, in most cases, service standards will eventually cover all elements. If these essentials are followed by the service provider we can avoid consumer litigation.

\(^50\) Ibid

\(^51\) [Link](http://www.tbs-sct.gc.ca/pubs_pol/opepubs/th_d3/GUID-eng.asp) dt. 03.07.09
This chapter deals with standards to be followed while providing services to the consumer at international and national level. In India no separate legislation is made to prescribe standards for service providers. In India we are following standard form of contract to protect the interest of consumer. There is a need to make a specific law to prohibit the seller from providing sub standard service to the consumer. In relation to goods, various authorities are established to grant certification mark to identify the standard followed by the manufacturer.

In the matters relating to Insurance, changes were introduced mainly to protect the interest of policy holders by IRDA (Protection of Policyholders Interest) Amendment Regulation, 2002. Recently, Insurance Laws (Amendment) Bill, 2008 has been introduced, and is pending before the Parliament. This Bill tries to amend three enactments, vis., Insurance Act, 1938, the General Insurance Business (Nationalization) Act, 1972 and the IRDA Act, 1999. This Bill makes the insurer responsible for appointing insurance agents and the IRDA for regulating their eligibility and qualification. One of the important feature of the Bill is that, no life insurance policy shall be questioned on any grounds what so ever after five years from the date of the policy. It also limits the grounds for challenge with in the period of five years. It is important to pass this Insurance Amendment Bill, 2008 as early as possible to protect the interest of insurer\(^{52}\).

In the next chapter the researcher has analyzed the statistical data and data collected from people associated with the functioning of Consumer Redressal Agencies functioning in the State of Goa.