CHAPTER 3

REVIEW OF LAWS HAVING BEARING ON CONSUMER PROTECTION
The objective of this chapter is to study and review the major laws which have bearing on consumer protection, with a view to find out the adequacy of the provisions keeping the interest of consumer in focus and also see their state of implementation and recommend amendments wherever needed.

The following laws have been reviewed.

1. The Indian Contract Act, 1872
2. The Sales Of Goods Act, 1930
3. The Law Of Torts
4. The Hire and Purchase Act, 1972
8. The Essential Commodities Act, 1955
11. The Agriculture Produce (Grading and Marketing) Act, 1937
14. The Drug and Cosmetic Act, 1940.
15. The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954.

16. The Drugs (Control) Act, 1950. and The Drugs Price (Control) Order 1987

17. The MRTP Act, 1969.


The Main Provisions under the constitution of India having direct bearing on consumer and certain provisions of Indian Penal code, 1860 have also been discussed wherever applicable.

3.1 The India Contract Act, 1872

3.1.1 Background and objectives

The relations between two persons may arise from agreement reached between them, or these may be the outcome of operation of law. The law of contract deals with the former case when the parties intend establishing these relations through express agreement or these relations may be implied by their conduct. The relations which are the outcome of operation of law are dealt under the Law of Tort. The law of contract is very important from consumer's viewpoint. We consciously or unconsciously get into contract every day. When we travel in a bus, train or aeroplane, purchase a cinema ticket to see a movie, keep our luggage in a cloak room, or park scooter/car in a paid parking lot, give our clothes for dry-cleaning etc; we are actually getting into a contract. The law of contract is given in Indian Contract Act, 1872.
3.1.2 Main provisions affecting consumer

Under the Act the contract is defined as "An agreement enforceable by law" [Sec.2(h)] The Act defines the "agreement" as every promise or every set of promises forming consideration for each other. Thus the agreement is aggregate of offer and acceptance. Sec. 10 lays down that all agreements are contracts if they are made by free consent of the parties competent to contract. Not only the parties must be competent to enter into a contract but the object and consideration must be lawful. No consideration - no contract is a well settled dictum. However, there are certain exceptions.

Legality of consideration and object

The consideration in simple words means some thing in return. It need not be money, it may be a promise to do or to abstain from doing some act, it may be in kind. The consideration or object of an agreement is lawful unless it is forbidden by law, it is of such a nature that if permitted, it would defeat the provisions of any law, it is fraudulent, if it involves or implies injury to the person or property of another and if the court regards it as immoral, or opposed to public policy. The doctrine of 'public policy' covers a very wide ground. It includes political, social or economic grounds of objection, outside the common topic of morality. When ever any contract conflicts with the morals of the time and adversely effect any established interest of society, it is void as being against public policy or disqualified by law of contract.

Requirement of free consent

The other important requirement of the law for any agreement to be enforceable in law is that the consent must be free which means it should not have been obtained through coercion, undue influence, fraud, misrepresentation or mistake (in certain cases). 51

In case the consent to an agreement is caused by coercion, fraud, misrepresentation or undue influence the agreement is a contract voidable at the option of the party whose consent was so caused whereas, the contract is void where both the parties are under mistake as to matter of fact. These provisions are very important from consumer's point of view and provide the required protection in case his consent was obtained through coercion, fraud, misrepresentation, undue influence, mutual mistake of fact or of foreign law. The consumer can also challenge the terms of contract if these are found to be against public policy. The concept of public policy covers a very wide ground. Under this the courts can look into contracts the terms of which are unconscionable.

The party to a contract whose consent was caused by fraud may insist that the contract shall be performed and that he shall be put in the position in which he would have been if the representation made had been true. The contract is not rendered voidable due to fraud if such a

51. For Explanation refer to Sec. 15 and 72 for coercion, Sec.16 for undue influence 17 and 19 for fraud and Sec. 18 for Misrepresentation. Sec. 21 and 22 deal with Mistake.
fraud did not cause the consent of the party on which such fraud was practised. The main difference between 'fraud' and 'misrepresentation' is that in the case of fraud there must be 'intention' to deceive or induce the party to enter into contract. In both the cases false statement is there but, in the case of misrepresentation there is no intention to deceive.

A contact is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. A contract is not voidable because it was caused by a mistake as to any law in force in India. Ignorance of law is no excuse is an accepted and well settled rule. However, ignorance of foreign law, is treated as mistake of fact. (section 21 and 22)

A person to whom money has been paid or anything delivered under coercion must repay or return it. If some benefit has been received by the party entitled to avoid it then, upon conditions and terms as the court may deem just.

3.1.3 Critical Appraisal

When ever a consumer wishes to avail of any service/facility or wants to purchase a consumer durable or wants to apply for electric/water connection or for a locker facility; in all such cases he receives a standard form contract giving the conditions, terms which have been devised by the other party. He has no option but to accept them or go without the product, facility or membership. In the absence of any negotiations,
the interpretation of the terms may be different in the mind of the acceptor and the supplier. He has to adhere to the terms and as such these contracts are also called 'Contract of adhesion'. The problem is very much acute in respect of 'Public Utility' which are also monopolies.

The question arises about their validity and interpretation. As regard the validity any one who signs, deems to accept the conditions unless his acceptance has been obtained through coercion, undue influence, fraud or misrepresentation or when there is mistake of facts on the part of both the parties.

"The courts have endeavoured to alleviate the position of the consumer by requiring certain standard of notice in respect of the onerous terms, and by constructing the document wherever possible in his favour. What the measures of protection which these rules offer are very slender and can easily be circumvented by experienced draftsmen. A person who signs a document containing terms is normally bound by them even though he has not read them. But if the document is not signed but merely delivered to him then the question arises whether the terms of document were adequately brought to his notice.

1. In order that a term should become binding it must be brought to the notice of contracting party before or at the time the contract is made.

2. In case of railway or cloak room ticket, which the person
receiving it, puts in his pocket unread, three general rules have been laid down by the courts

(i) If the person receiving the ticket did not see or know that there was any writing on the ticket, he is not bound by the conditions.

(ii) If he knew there was writing and believed that the writing contained conditions, then he is bound by the conditions.

(iii) If he knew that there was writing on the ticket but did not know that the writing contained conditions never the less he will be bound if the delivering of the ticket to him was in such a manner that he could see that there was writing upon it, it is reasonable notice that the writing contained conditions.

3. 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 contract which can be described as 'Fundamental'.

4. Exemption clauses are constructed strictly, particularly where they are so widely drawn as to be unreasonable and doubts if any, are resolved in favour of the weaker party.
5. 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 were repugnant to public policy.

6. Again where goods are supplied or services rendered under a contract which exempt the supplier from liability and a third party is injured by the use of them, the supplier is liable to him, not with standing that he has purchased his exemption from the other party to the contract”.

These agreement may not be ‘ad idem’ the consent is not free as the customer has no alternative but to accept the conditions as they are and particularly, in the case of monopolies a customer has no choice but so ever. However, these could be challenged on the ground of being patently ‘unfair’ and thus against ‘public policy’. The terms which are patently unreasonable like clauses which exclude liability of a trader for death, injury or damage to property arising out of use of product can be easily challenged on the ground of being against ‘public policy’. Similarly any contractual obligation which has arisen due to dominating position of the other party can be challenged on the grounds of consent having been given under 'undue influence'.

The courts have come to the rescue of the consumers but still there is a felt need of having model warranties and a commission

consisting of among others consumers representatives which should vet all warranties and standard form contracts before these are allowed to be used as such.

3.2. The Sales of Goods Act, 1930

3.2.1 Background and objectives

The rights and obligations of buyer and seller pertaining to sales of goods i.e. all type of movable property except actionable claims and money, are governed by Sales of Goods Act 1930. The sale of immovable property is governed by the Transfer of Property Act 1882. The money transactions are governed by RBI Act. Before the enactment of the Sales of Goods Act, the law pertaining to sale of goods was contained in the Indian Contract Act 1872 (Sec.76-123). The general provisions of the Contract Act would apply to a contract of Sales of Goods in so far as they are not inconsistent with the express provisions of the Act.

3.2.2 Main Provisions

A contract of sale is made by an offer and its acceptance, like any other contract. Subject to the provisions of any law for the time being in force, a contract may be made in writing or word of mouth or it may be implied from the conduct of parties. Thus we can say that the contract of sales of goods requires no special formalities. The parties have the full freedom to agree to any terms regarding the time and manner of
delivery and payment of price.

The concept of 'Free consent' is very much applicable in the contract of sales of goods. This freedom to negotiate terms and conditions depends on the bargaining power of the parties. Consumer is not in a position to strike a better bargain for himself. However, the law provides certain safeguards to the buyer known as Implied 'conditions' and 'warranties'. (Section 14-17) However, law can not imply any condition or warranty in a contract of sale if

(i) the contract provides to the contrary i.e. the contract negatives these stipulations;
(ii) the course of dealings between the parties; leave no scope for such implications;
(iii) the usage or custom of trade does not permit such stipulations to be implied. But the usage should be binding on both the parties (Sec. 62)

It may be noted that section 7 of the UK Consumer Protection Act 1987 prohibits limiting or excluding by contract or otherwise, liability for damages caused by defective product.

**Conditions and Warranties in brief**

Subject to the contrary intention there is an implied condition on the part of the seller that in the case of sale, he has right to sell the goods and that in the case of an agreement to sell he will have a right to sell the good at the time when the property is to pass, an implied
warranty that buyer shall have and enjoy quite possession of the goods and the goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer at the time of contract. The goods must answer the description and correspond to the sample in the case of sale by description/sample.

*Merchantability and Quality of Fitness of Goods*

There is no implied condition or warranty as to the quality or fitness for any particular purpose of goods supplied under contract of sale, and the rule of "*caveat emptor*" is to operate, except as follows.

1. Where the buyer expressly or by implication makes known to the seller the particular purpose for which the goods are required so as to show that the buyer relies on the seller's skill or judgment and the goods are of a description which is in the course of the seller business to supply. There is an implied condition that the goods shall reasonably fit for such purpose provided that in case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose. (sec. 16)

If the buyer has examined the goods there shall be no implied condition as regards defects which such examination ought to have revealed. "*Merchantable*" does not mean that the thing is saleable in the market simply because it looks all right; it is not merchantable in that
event if it has defects unfilling it for its only proper use but not apparent on ordinary examination (Grant Vs Australian Knitting Mills Ltd. 1936 AC 85). Goods are not of merchantable quality if in the form in which they were tendered they were of no use for any purpose for which the goods which complied with the description would normally be used. (Brown V. Craiks Ltd.) 1970 All ER 823 (Mitra’s legal and commercial dictionary, Third Ed. 1979). In the case of eatables and provisions the principle of merchantability implies that these must be wholesome and sound, i.e. fit for human consumption. Any implied warranty or condition as to quality or fitness for a particular purpose may be annexed by usage of trade. [section 16(3)].

An express warranty or condition does not negative a warranty or condition implied by the Act unless inconsistent there with.

Remedies Available to Buyers

In case of breach of any condition express or implied the buyer may.

i) Repudiate the contract

ii) Consider condition as warranty and claim damages

iii) Damages for Non delivery of goods (Sec.57)

iv) Damages for breach of warranty (Sec.59)

v) Sue for specific performance (Sec.58)

3.2.3 Critical Appraisal

The Act protects the buyer through application of implied conditions and warranties which are exception to the maxim of 'caveat
emptor’. However, the buyer must remain ever vigilant as (Sec.62) of the Act lays down that “where any right, duty or liability would arise under a contract of sale by implication of law it may be negatived or varied by an express agreement or by course of dealings between the parties, or by usage or custom of trade, if the usage is such as to bind both parties to the contract. For example the implied condition that goods must fit buyer’s purpose is negatived by a notice/statement on the bill that “goods once sold cannot be returned or exchanged” In such a case when on discovering that the goods do not fit his purpose, he goes back to return the goods his attention will be drawn towards the notice or statement on the bill and this being the express condition the implied warranty of fitness for buyer’s purpose be negatived. “In some cases the Courts have held that even where there is an express agreement to exclude implied conditions/warranties, they apply if the facts and circumstances of the case are so eloquent”53

The Act entitles a buyer to get the goods which are reasonably fit for the purpose for which they are required provided the buyer has declared his purpose to the seller and had depended upon the skill and judgement of the seller and provided the seller deals in goods of that description as part of his business. In case the goods do not serve the purpose for which purchased the buyer may return the goods and repudiate the contract. The goods can also be returned and the contract repudiated if the goods do not answer the description or the bulk does not compare with the sample in case of sale by sample or when these are not of merchantable quality.

53. Ms. Rani Advani: Warranties and Guarantees - Reading the small Print: CERC, Ahmedabad (P - 4)
The buyer can also claim damages in case the buyer suffers physical or financial harm due to the transaction. However, the remedy is available to buyer and buyer alone, this is due to the 'privity' of contract. If the buyer is himself not the user which is quite often the case, and the user gets injured, due to defective product he can not claim damages as he is not a party to the contract. Similarly, the manufacturer of the defective product, who is actually responsible for the defect, can also not be sued under Sales of Goods Act due to again the "privity principle". Most of the times we purchase goods but, user is some one else, i.e. a family member, a guest or even at times a stranger. In case a guest who is invited for food and drinks, falls sick after consuming food ordered from a Hotel and suffers physical discomfort and incurs financial loss due to hospitalisation, medicine and remaining off work, who is responsible? The seller can not be held liable since, the guest was not a party to the contract of sales.

From consumer point of view, the requirement of privity of contract appears to be very much undesirable. It is really strange but true that the consumer's right to sue a hotel owner under Sales of Goods Act for having supplied poisonous/noxious food, depends on the fact whether he himself paid for the food or it was paid by his or her host. Further, if the sickness was due to the same drinks/food, which was received by the seller in sealed tins/bottles or containers from the manufacturer then the seller is actually not blameworthy. In the classical cases of Donoghue Vs Stevenson and Grant Vs Australian knitting Mills Ltd., no remedy could be given for injuries suffered by the actual consumers on the ground of breach of implied terms. In the former case, the lady who became severely
ill as a result of drinking the snail contaminated ginger beer was not the buyer herself, in the second case the person who was affected with the dermatitis, resulting from the underwear was the buyer himself, but the seller in both the cases only served the articles in the original conditions as delivered by the manufacturer. No. third party can recover anything from the seller with or without proof of negligence. The remedy against the manufacturer lies not in contract, but in Tort on grounds of negligence. The Sales of Goods Act does not provide any protection to consumer if he is not the buyer himself. The Act also does not give protection against the manufacturer due to the principle of 'Privity of contract'.

3.3 The Law of Torts

3.3.1 Background and objectives

The French word 'Tort' means 'wrong' according to Rattan Lal and Dheeraj Lal [The leading Indian Authors of Law of Torts.] a tort is defined as a 'Civil wrong independent of Contract, for which the appropriate remedy is an action for damages'\(^{54}\). The law of 'torts' deals with those relations which are the out come of operation of law. Thus the parties through mutual agreement may abridge/limit the liability vis-vi each other as such, it can be said that the law of tort is subject to contract. However, tortious liability is neither based on contract nor it can be imposed if it is not intended in the contract. The law of tort is not contained

in any Act like other laws. The rules of English Law which is based on common law are to be applied so far as they are applicable to Indian Society and circumstances. Bombay High Court observed that when in a given case statutes or customary law does not exist courts in India will be guided by principles of justice, equity and good conscious.543

3.3.2 Main Provisions

Tort Defined

There must be some act or omission on the part of the person committing the tort. This act or omissions must not have arisen from contractual obligation or from trust. Whenever, there is an infringement of anybody's legal right it constitutes legal injury. In tort when we talk about right it is a right in rem i.e. a right available against the whole world and not a right in perso nem where the right is available against a particular person as in a contract. Every person has a right to quite possession and enjoyment of the property; everyone else is under obligation not to step on his land. This right is available against the whole world. The remedy in tort lies in action for unliquidated damages.

It was seen during discussions on The Sales of Goods Act, that it does not provide any effective remedy to the ultimate consumer if he is not the buyer himself. If the seller has merely delivered the goods in the condition which he received and there is no possibility of intermediate physical examination of goods like contents in sealed containers. The remedy against manufacture lies only in Tort and it is this which makes the law of tort important from consumer's view point. From consumers' 54a. 'Ibid'

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point of view the tort of Negligence and fraud are very important.

Negligence

In ordinary case which does not, involve special skill, negligence means some failure to do some act which a reasonable person in the circumstances would do, or doing some act which a reasonable person in the circumstances would not do. In law, negligence is defined as “the breach of a duty caused by omission to do something which a reasonable man (guided by those considerations which ordinarily regulate the conduct of human affairs) would do or doing something which a prudent and reasonable man would not do.” At law negligence and duty are co-related to each other when there is no breach of a legal duty or if there is no legal obligation, there can not be negligence actionable in law. Negligence is want of some care which we are bound to exercise by law. Similarly there is no negligence actionable in law if there is no consequential damage. The degree of care, required of a person will vary with the risk involved. If the danger of doing injury to other person or property by an act or omissions is great, great care is necessary. The standard by which the degree of care is judged is the conduct of a prudent person (a prudent person is diligent, careful person). In the suites for negligence, the plaintiff (the person who is going to the court with the assertion that his legal right is infringed)

55. For fuller discussion on ‘negligence’, concept of duty of care and standard of degree of care and explanation of res ipsa loquitur and the case law on the subject refer to Law of Torts by Noshirvan N. Jhabvala (P - 170-80)
must prove the following in order to succeed:

i) That the defendant was under a legal duty to exercise due care and skill.

ii) That the defendant failed to exercise that care and skill required of him.

iii) That the duty was towards the plaintiff.

iv) That the failure on the part of defendant was the direct and proximate cause of the damage caused to the plaintiff.

v) That the damage could have been foreseen by the defendant.

Motive as a rule is irrelevant in the law of torts. A good motive can not excuse a person from liability if the act done by him is a legal injury and at the same time an act which is lawful can not become unlawful merely on the ground of evil motive.

It is clear from the foregoing that there must be a breach of legal duty which must be the direct cause of damage to the plaintiff and such damage must be reasonably foreseeable. There is no negligence without duty and there is no cause of action without damage. The burden of proving negligence lies on the plaintiff. However under certain special circumstances, the mere happening of an accident may be sufficient to conclude that the defendant was negligent; *res ipsa loquitur* (the thing speaks for itself).

**Negligence in other Laws**

Indian Penal Code (IPC) deals with negligence under section 304 A where in the offence is made out if death is caused by rash or
negligent act. This is a cognizable offence for which an imprisonment for two years or/and fine or both can be awarded. This is bailable offence and can be tried by any magistrate of the first class.

_Fraud or Deceit_56

The another ground for suing under the law of torts is ‘Fraud’ which has been defined as “a false representation of a fact made with the knowledge of its falsehood without belief in its truth or reckless statement whether it be true or false, with intent to induce a person to act in reliance upon it, with the result that the person acts on it and suffers damage”.

3.3.3. _Consumer and the Law of Torts_

_Liability of Manufacturer_

It is already seen that an act could be both a tort and breach of contract. In order to fall under contractual liability, there must be ‘privity of contract’, a third party can not sue in contract. Whereas in law of Tort, the liability arises as there is an infringement of a right in rem- against the whole world. So, manufacturer is duty-bound to see that there is no negligence during manufacturing/producing/preparing/packing, transportation in cases where transportation is part of manufacturer’s duty, and as a result of his negligence any injury takes place he shall be liable to the aggrieved party for the loss suffered. The aggrieved party could be a buyer or a final consumer. Negligence on the part of his employees is also covered under vicarious responsibility and the manufacturer/producer

56. For fuller discussion on ‘fraud’, refer to Law of Torts by Noshirvan N. Jhabvala (Pp 195-98)
becomes liable for the acts or omission of his ward. When the act/omission is both a tort as well as breach of contract, injured party may file a suit either in tort or in contract. In case of contract, 'privity of contract', will apply and the user/consumer, who is not the purchaser will only be able to sue in tort. Here he has to prove not only damage suffered but also that the opposite party was negligent. In case of a contract, the proof of negligence is not required.

In conclusion it can be seen that the law of torts provides protection to consumer in cases where the Sales of Goods Act and the contract Act are not in a position to protect him due to 'privity' of contract. Thus, the manufacturer can be sued even in case of negligence of his employees under the principle of 'vicarious' responsibility. Another noteworthy point is that motive is not relevant. However there must be loss/injury as a result of the tort.

3.4 The Hire Purchase Act, 1972

3.4.1 Background and objectives

These days the purchase of flats, houses and in some cases the consumers durables is done through hire purchase arrangements. A hire purchase agreement is a hybrid transaction which, starting as a contract of hire, may culminate in a sale. It is an agreement for hire, with an option to the hirer to purchase the goods. This is quite a good arrangement as it does not burden the buyer with one lump sum payment. The Act regulates
the hire purchase transactions to protect the interest of the hirer and also creates obligations in certain respects.

3.4.2 Main provisions

The Act provides that the hirer understands the true nature and implications of the agreement, (Sec 3) and gives the hirer a right to obtain, from time to time, the current state of his account in relation to the agreement. The Act also provides for purchase at any time with rebate and also for the termination of agreement at any time. (Sec 9 & Sec 10) The rights of hirer are protected in case of seizure of goods by owner. (Sec 17) The Act also puts restriction on owner's right to recover possession of goods otherwise than by proceeding through court of law after a specified proportion of hire-purchase price has been paid. (Sec 20).

There are two implied warranties i.e. of Quiet possession and freedom of the goods from any charge or encumbrances in favour of any third party at the time when the property is to pass (Sec 6). This provision is akin to implied conditions in the 'Sales of Goods Act, 1930'.

Obligations of Hirer

The hirer has obligation concerning the use of goods (sec 15). He is required to give information about where about of goods (Sec.16).
3.4.3 Critical Appraisal

The Act seeks to provide protection to hirer of goods who is in a weak bargaining position. His interests are safe guarded through beneficial provisions and implied warranties. The Act restricts the right of owner of seizure and recovery of possession. However, it has not become an Act, it remains in hold.

3.5 Law of Weights and Measures

3.5.1 Background and Objectives

To get proper value for money, not only a consumer must get the right quality but also he should get the right quantity. In the marketplace, a consumer is very often cheated in terms of accuracy in weights and measures of goods purchased by him/her. Before independence of the country, different states had different standards of weights and measures which necessitated introduction of uniform standards of weights and measures in the entire country and the Parliament passed a law on the subject in 1956. This was substituted by the Standards of Weights and Measures Act, 1976. The Standards of Weights and Measures (Packaged Commodities) Rules 1977, were framed under this Act to regulate the packaged commodities. At that time, the enforcement of standards was left to the States. Subsequently, the subject was brought on the concurrent list and the Central Government passed a Comprehensive Act, entitled “The Standards of Weights and Measures (Enforcement) Act, 1985” to ensure uniform enforcement of standards and connected matters in Weights and Measures throughout the country. To protect consumer in this area before the specific laws were enacted, certain provisions already existed in The Criminal Procedure Code 1973
The Indian Penal Code.

The Code of Criminal Procedure 1973

According to Section 153 of CrPC, an officer in charge of a police station may without warrant, enter any place within the limits of such station for the purpose of inspecting or searching for any weights or measures or instruments for weighing, used or kept therein. He can also seize the weights measures or instruments for weighing, if there are reasons to believe that these are false, and send information of such seizure to a magistrate having jurisdiction.

Indian Penal Code, 1860

Indian Penal Code, 1860 contains certain provisions concerning Weights and Measures which attempt to protect consumer. The code makes fraudulent use of any false instrument for weighing, (sec. 264) false weight or measure of length or capacity, (sec. 265) use of any weight or any measure of length or capacity as a different weight or measure from what it is, the possession of any instrument for weighing, or of any weight or of any measure of length or capacity, which he knows to be false, intending that the same may be fraudulently used, an offence which attracts punishment of imprisonment for a term which may extend to one year, or with fine or with both (sec. 266) Making or selling false weight or measure which the person knows to be false in order the same may be used as true, or knowing that the same is likely to be used as true, is also an offence and punishable with imprisonment for a term which may extend to one year, or with fine, or with both. (Sec. 267)
The offences under IPC in U/S 264-267 are based on the doctrine of 'mens rea'. The knowledge regarding the false weight or measure or their fraudulent use is necessary to constitute the same as an offence. To prove 'mens rea' is not that easy and the offender has an escape route by establishing that he was either ignorant of their being false or did not intend deceiving the customer by using the Weights and Measures. This necessitated the enactment of the specific Acts to deal with Weights and Measures. However, the Indian Penal Code, 1860 and the specific laws on Weights and Measures i.e., Standards of Weights and Measures Act, 1976, Standards of Weights and Measures (Packaged Commodities) Rules 1977 and Standards or Weights (Enforcement) Act, 1985. are independent of each other.

3.5.2 Main provisions

The Act standardises Weights and Measures by allowing only international system of units e.g., metric system. It controls manufacture and sale of Weights and Measures by providing for the approval (before manufacture) of model of Weighing and Measuring Instruments and providing for verification and stamping of Weights and Measures sent from one State to another and regulation of packaged commodities sold or intended to be sold in the course of inter-state trade or commerce.\ 57

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57. Sec. 4 (i) Lays down that only metric system should be used. Sec. 21 Prohibit manufacture of non standard weight and measure except when permitted by Central Government for scientific investigation or experiment. Sec. 37 makes it mandatory for manufacturers of weights and measures to have licence. Sec. 41 lays down verification and stamping of weights and measures.
The responsibility for enforcing the Act rests with the State Government/U.T. Administrations. In every State, a separate enforcement machinery headed by the Controller of Weights and Measures, exists for this purpose. The director and officers authorised to exercise powers under the Act, can enter, and inspect the premises and carry out search; they can seize Weights, Measures and other goods as evidence [sec. 29]. Every false /unverified Weight and Measure and package can be forfeited to Central Government [sec. 30]. The Central Government can direct that certain commodities can be packed only in prescribed standard quantities or numbers [sec. 39 (5)]. There are 12 items of mass consumption covered under this, like baby food, bread, salt, tea, coffee, etc. These are required to be packed in specified quantities and sizes.

Standards of Weight & Measures (Packaged Commodities) Rules, 1977 provide that Every package intended for retail sale must carry following information on its package or on a label securely affixed thereto:

(a) The common or generic name of the commodity contained in the package;
(b) The name and address of the manufacturer/packer;
(c) The net quantity;
(d) The month & year in which the commodity was manufactured/packed except in case of certified specified commodities e.g. liquid milk, package containing bread, butter, ice cream, uncanned
vegetables, fruits etc;

(e) The sale price, this price can be printed either
in the form “Maximum Retail Price” inclusive of
all taxes or in the form of Maximum price-local
taxes extra.

( refer Rule 6(i) and Sec 39)

This is also applicable in case of packages imported into
India for retail sales (Rule 33). If imported package does not contain
required details, repacking and re-labelling is required before retail sale. In
case of soft drinks, ready to serve beverages or the like, where bottles are
returned and refilled, the retail price can be given on the crown cap or
bottle or both [Rule 8 (b)] added w.e.f. 13 July 1995. The above
declaration on the packages/label should be conspicuous, legible, definite,
plain and unambiguous. The Rules also make it obligatory for retailers to
display the rates of local taxes prominently at their premises. The Rules
also provide for the commodities to be packed in specified quantity as
prescribed in the Rules. The Rules also provide for test checking of packages
on the spot i.e. on the premises of manufacturers/ packers or retailers.
The rules on price increase provide that advertisement in two newspapers,
papers, a circular to dealers and the Director of Meteorology of Central
Government/Controlar of metereology state government must be given
and increased price can only be charged on packages which are marked
with month in which taxes were increased and on following month. If taxes
are lowered all packages will be sold at lower price. If no month and year
is required to be printed then price change can not be allowed. Obliteration
smudging of printed price on packages is not allowed. The responsibility for enforcing the these Rules rests with the State Government/U.T. Administrations.

The Standards of Weight & Measures (Enforcement) Act, 1985 makes further provisions for the enforcement of the main legislation. The Act extends legal control to cover commercial transactions, industrial measurements and measurements involved in ensuring public health and human safety. It provides for the registration of users of weights and measures and for periodical verification and stamping of Weights and Measure and for the effective enforcement machinery in the States and for the regulation of packaged commodities sold or distributed in the course of intra-state trade and commerce.

Penalties

The contraventions of any provision which constitute an offence attracts penalty which may range between fine and imprisonment upto five years. The Penalties are more severe for a repeat offence. It may be noted that non-printing of requisite information on packaged commodities attracts a fine only which may be upto Rs. 2,000/- where as the maximum for obstructing any authorised officer including Director/Controller Weights and Measures in performing their lawful duty, like entering into premises for inspection or verification of any Weights and Measures attracts for the first offence imprisonment upto 2 years and for subsequent offence upto 5 years and fine; this is the maximum under the Act.
Who can File a Complaint

In 1986, The Standards of Weights and Measures Act, 1976 and Standards of Weights and Measures (Enforcement) Act, 1985 were amended to confer powers on consumer and recognized consumer organisations to file complaint in the court. Hitherto, such powers were vested in government officials only i.e., the Director or Controller of Weights and Measures and any other authorised officer.

Where to file complaint

In case of defective weights & measures, the complaint can be filed in any one of the following places:

(i) With the local weights and measures Inspector or with Controller of weights and measures in the States/UTs. A complaint can be filed on a simple piece of paper.

(ii) A complaint can be filed in any District Court, High Court or Supreme Court as per procedure prescribed by them.

3.5.3 Critical Appraisal

The Weights and Measures laws and Rules made there in, are quite comprehensive. These provide for quite heavy penalties in keeping with the requirement of consumer protection. However, the situation on the ground is far from being satisfactory. For example, petrol pumps seldom give the required quantity, the LPG cylinders are found less filled, taxi and scooter ricksha meters are often found defective. The situation in Delhi was Highlighted through a Public Interest Litigation where in a direction
was given by Delhi High Court to Central and Delhi Government to look into the growing complaints of faults in taxi and autoriksha meters in response to Public Interest Litigation (PIL) by a NGO “Hum Aap Ke” 58. A few media reports are cited below to bring out the situation prevailing in Chandigarh.

"About one third of the petrol pumps in the city were found selling short measured petrol during surprised raid organised by weights and measures organisations." 59

During a raid by the Weights and Measures department, Chandigarh, 10 out of 26 LPG agencies in the city were challenged for under filling gas cylinders which weighed any things between 1-4 kgs. less 60. According to another report 15 out of 26 were challaned for supplying under weighed LPG cylinders to consumers and indulging in other irregularities. 61 Similarly in another raid LPG cylinders were found to be under weight by as much as 5.2 Kg. 62

There have been cases where the actual weight of the packed

58. ‘HC orders action on taxis, autos with faulty meters ‘: The Times Of India: July 22, 1997.
commodity was found to be less than the weight claimed on the label even keeping in mind the variation allowed. CERC, Ahmedabad after the test found that all the 17 brands of toilet soaps and bathing bars weighting less than claimed.63

If one goes to any fruit/vegetable market or rural market or notices the weights and measures of venders/hawkers/feriwalas then finding a correctly verified and stamped weights and weighing instruments will be an exception. Seeing these vendors with weighing balance with wooden beam is quite a common sight. How is it that the department which is to enforce these laws keeps its eyes closed in this respect? The researcher has personally noticed these discrepancies. When asked most of the venders and feriwalas pleaded their ignorance in the matter of requirements of these Laws and Rules. Another provision which causes confusion in the mind of consumer is regarding the price indicated on the package under "The Standards of Weights and Measures (Packaged Commodities) Rules, 1977, which requires the price to be given as the maximum retail price inclusive of all taxes". This provision has been made full use of by trade an industry. Normally highly inflated price is given under this head since nothing more than this can be charged however, there is no bar on charging less than this. No wonder quite a number of packaged commodities are being sold at much less than the printed price. Paints in particular are heading the list. The consumer is under the impression that the printed price is the only right price. The survey also showed that most of the

consumers themselves were ignorant about these Laws and Rules.

3.6 The Essential Commodities Act, 1955

3.6.1 Background and objectives

In a democratic welfare state, it is the duty of the government to ensure equitable distribution of essential commodities to citizens at fair/reasonable prices. This becomes all the more important during the period of scarcity and in those commodities where the competitions is non existent. Prior to and during the second world war (1939-45), India faced severe shortage in many commodities which necessitated taking certain steps to control production, supply and distribution of certain items under defence of India Rules. As the shortages continued, a permanent law was enacted to control essential commodities. The constitution was amended in 1954 and entry No. 33 to list 3 (concurrent list) of 7th schedule was added. The Essential Commodities Act, 1955 was passed which aims at controlling production, supply and distribution of essential commodities and trade and commerce there in, and to secure equitable distribution and availability at fair prices of essential commodities in the general interest of public. The Prevention of Black Marketing and Maintenance of supplies of Essential Commodities, Act, 1980 amends The Essential Commodities Act, 1955 and gives more power to the government to deal effectively with hoarders and black marketeers. The Act provides for detention of a person under certain circumstances, with the object of preventing him from acting in a manner prejudicial to maintenance of supplies considered essential to the community. The Essential commodity (Special provisions) Act, 1981 was passed
which came into effect in 1982 and contains provision of special courts.64 These provisions were originally meant for 5 years but these have been extended twice and are valid now up to 31st Aug, 1997.

3.6.2 Main provisions

Essential commodity has been defined U/S 2(a) of the Act and includes cattle fodder, coal, automobiles components, cotton and woollen textiles, drugs, Foodstuffs, iron and steel, Paper, Petroleum and petroleum products, Raw cotton and Raw jute. The central government can declare by notified order any commodity as essential commodity with respect to which parliament has power to make law by virtue of entry 33 in list III in the seventh schedule (concurrent list). If the central Government is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of any or for securing their equitable distribution and availability at fair prices or for securing any essential commodity for the defence of India or the efficient conduct of military operations, it may, by an order provide for regulating or prohibiting the production, supply, distribution there of and trade and commerce there in [section 3 (1)].

The Central/State government through various control orders u/s 3 read in conjunction with sec.5 can ensure equitable distribution of commodities at fair prices. The Drugs (Price Control) order the latest being of 1995 envisages price control of scheduled drugs and formulations. Presently there are 76 bulk drugs which are covered under this. The

64. Refer Sec. 12A and 12AA
Government can also control formulations which are manufactured with the use of any scheduled bulk drug in combination with other drugs. House hold electrical appliance (Quality Control) order 1976 provides that house hold appliances must be made as per specified Indian standard specifications. The sample can be checked by the Directorate of Industries. The Mild Steel Tubes (Quality Control) order 1978 was promulgated to maintain the quality of mild steel tubes which are used in building construction and otherwise for conveying water. Their quality is of paramount importance as any leakage due to poor quality and corrosion can cause contamination of water giving rise to water borne diseases and if fitted internally in building it can cause serious damage to building structure. The government can also fix the price by notification at which the food stuff is to be sold in a particular locality. This order remains valid for a maximum period of three months (Sec 3(A)). The Government can also fix the sale price of sugar [section 3 (c)], fix procurement price of food grains, edible oil or edible oil seeds [section 3 (b)].

Non compliance of any order is a very serious offence and may lead to confiscation of essential commodity [6 (a)], and result in prosecution and fine of the person who is liable [7(1)(a)]. The property in question can also be forfeited [7(1)(b)] and the container/packing, receptacle containing the property and the vehicle/vessel/animal carrying it can also be a forfeited [7(1) (c)]. The Act [section 6(a)] provides for confiscation of food grains, edible oil and edible oil seeds. Pursuant to order made u/s 3 of the Act if any essential commodity is seized a report to collector of Distt. or presidency town is to be made without reasonable
delay. A show cause notice is required to be given before confiscation.

Cognizance of offence

An officer not below the rank of an officer in charge of police station or any police officer authorised by him in this behalf in writing, can arrest any person accused of committing an offence punishable under this Act. The court shall presume culpable mental state where required in respect of a person accused of any offence under the Act. The onus to prove that he had no such intention is on the offender. Cognizance of offence can only be taken by court on receipt of a report in writing of facts constituting such offence made by

(i) a person who is a public servant as defined in section 21 of IPC (45 of 1860) or
(ii) Any person aggrieved or
(iii) Any recognised consumer association whether such a person is a member of the association or not (recognised consumed association means a voluntary consumer association registered under companies act, 1956 (1 of 1956) or any other law for the time being enforce.

The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities, Act, 1980 provides for detention of persons involved in hoarding, black marketing or acting in any manner prejudicial to maintenance of supplies of commodities essential to the

65. Sec. 10AA was added to the Essential commodity Act in 1992.
community. An officer not below the Joint Secy, in the case of central
government and secy, in the case of state government, specially empowered
by appropriate government, may if satisfied, that a person is acting in a
manner prejudicial to the community, order his detention. Distt.
magistrates, Commissioner of police, wherever they have been appointed
may also, of satisfied, exercise the power conferred on them by state
government concerned.

The detention order can be executed any where in India
like warrant of arrest under Cr. P.C., 1973 the place and condition of
detention can be regulated by appropriate government the grounds for
detention must be made known in the detention order and these along
with the representation of the detained person must be placed before the
Advisory board for opinion on the existence of sufficient grounds for
detention. On receipt of the report by the board, the appropriate
government may confirm the detention or revoke it setting the person
free.

Special Courts

The state govt's may, for the purpose of providing speedy
trial of offences under this act, by notification in the official gazette
constitute as many special courts as may be necessary for such areas as may
be specified in the notification. All offence under this Act, shall be triable
by special courts only.
3.6.3 Critical Appraisal

Under the liberalised economy it is felt that too much control is counter productive. It was seen earlier in the case of cement and sugar, decontrol helped in both the cases and improved the supply position. The market forces are good enough check in this regard. There is also a demand to do away with the Essential Commodities (Special Provisions) Act, 1981., as it is felt that this has been used more to harass the traders than for the good of consumer.

The implementation of these Acts, fall short of the desired level. Mild steel tubes which were brought under compulsory quality control under the Essential Commodities Act, 1955., [Mild steel tubes (quality control) order 1978] to protect the consumer. This was done to prevent leakage which could result due to corrosion of the tubes if used internally in construction of buildings thus causing damage to the building and secondly against contamination of water caused due to corroded material leading to diseases like gastroenteritis and other water borne diseases, not only the material but its thickness, galvanisation is required to be of specified standard. However in a raid of a godown in Bombay by Bureau of Indian Standards (BIS) during March 1994 substandard galvanised pipes worth Rs. 1 corer were confiscated. Similarly sub standard tubes were also seized at Bangalore in another raid.66 Not withstanding The House hold Electrical Appliance (Quality Control) order 1976, switches of 8 well known brands carrying BIS mark were tested by Consumer Education and

66. Pushpa Girimaji: 'Raid a warning to steel tube units': The Tribune, April 1, 1994

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3.7 The Bureau of Indian Standards (BIS) Act, 1986

3.7.1 Background and objectives

The Product Safety is of paramount importance for consumer. The market is full of duplicate and shoddy products which not only are substandard but at times hazardous also. This denies the consumer full value for his money and puts him in a situation which could be hazardous and may be fatal at times in cases like electrical gadgets etc. If a product is manufactured / produced according to certain laid down procedures and adhering to certain norms of quality and safety it will be beneficial to the consumer as he can be assured of getting the product of desired quality.

The Bureau of Indian standards Act 1986 was enacted with the purpose of developing the activities of standardisation, marking and quality certification of products to help consumer choose certified safe and quality product. A third party quality assurance ensures that the product was produced inspected and tested according to laid down system. The main activities of the Bureau of Indian Standard are Standard Formulation

and Certification Marking. The standards are formulated in almost all sectors of economy through technical committees which represent various interests like scientists and technologist, govt deptt, industry trade and commerce, consumer organisation and research and testing institutions. Product standards generally prescribe optimum levels of quality, safety and performance. Standards are very useful for consumer safety.

3.7.2 Main provisions

Operation of the Scheme

In the interest of product safety and larger interest of consumer, it is essential that the product is not only fit for the purpose it is used but it must be of a standard or quality which ensures its safety and reliability. The ISI marking scheme is largely voluntary in nature but, in the case of products involving safety and public health the government can make standardisation compulsory. Standard, on infant milk food and infant formula ensures that there are required nutrients for the proper growth of elements important to health. Standards for toxic emissions from industries and automobile, help environmental protection. Standards on electric equipment ensure consumer safety. The Central Government may in the interest of public notify any article or process of any scheduled

government69 conform to BIS standard directing the use of BIS mark under licence. Government of India has made BIS certification compulsory for certain items of mass consumption. According to the latest information available with the Bureau 121 items have been brought under compulsory certification scheme. The products are food additives, milk powder, cement, LPG cylinders, flexible packs for packing edible oils and vanaspati, oil pressure stoves multipurpose dry bell batteries, general service electric lamps, electric irons, electric immersion rods and electric stoves70. Interested manufacturers are granted licences to mark their products with Bureau's standard mark known as ISI after bureau satisfies itself to the effect that the manufacturer has the necessary

i) Infrastructure for manufacturing the product in question with an effective quality control mechanism, prescribed testing facilities qualified quality control and testing personnel.

ii) The sample drawn from the declared production must conform to the relevant Indian standard.

BIS carries out regular monitoring of the scheme through its Regional and branch offices by

i) Surprise checks of the licensed units to ensure that the certification scheme is properly implemented.

ii) By taking samples to see whether the sample conforms to the standard laid down. These sample could also be taken from the

69. The expression schedules Industry has the same meaning as is assigned to it under the Industries Development and Regulation Act, 1951.
70. 'Mandatory Certification', Bureau of Indian Standards, Manak Bhavan, 9, Bahadur Shah Zafar Marg, New Delhi,
market for testing.

iii) Investigation of consumer complaints.

The licence granted to any units not of a permanent nature; it is initially for one year and renewed only after rigorous evaluation of the implementation of the scheme by thorough inspection. According to BIS, over 1200 products are covered under the Bureau's certification marks scheme through over 11000 licences which includes more then 30 percent products of common consumer interest.

Environmental Protection

Min of Env. & Forests (GOI) has instituted a scheme for labelling products which are environment friendly known as ECO mark scheme. These products must also carry an ISI marks in addition to ECO mark; thus, the product will not only ensure quality but will also show that its production and use will not degrade environment it has compiled with requirement of environment friendliness.

Consumer Information

BIS standards certification scheme also provides for giving certain minimum information on the label/packing/product. BIS certified product has to provide the prescribed information on the label/container or on the product. This ensures proper information to the consumer.

In sum, the scheme is very useful for protection of consumer as it ensures quality standards and thus improving the usefulness and
reliability of the product beside providing the necessary information about the product.

Who can file a complaint?

The complaints regarding improper use of standard mark can be made by or under the authority of

i. Government Bureau or any officer appointed in this behalf by the Government or Bureau.

ii. By any consumer association recognised in this behalf by central/state government

Penalties for improper use of ISI Mark

No person can use standard mark in relation to any article or process, or in the title or patent, or in any trade mark the process, or colourable imitation thereof, except under a licence granted thereof and further unless such article or process conforms to the Indian Standard. Use of standard mark or its colourable imitation by those not licensed by BIS is an offence under BIS Act, 1986. It is punishable with imprisonment extending to one year and fine upto Rs. 50,000.

Consumer Grievance Redressal

There is a grievance handling machinery for handling complaints from consumers. A separate Deptt. of Consumer Affairs and Public Grievance operates at BIS Headquarters, Bahadur Shah Zafar Marg, New Delhi. Every regional/branch officer has a public Grievance Office (PGO) designated as such all over India. Any consumer who feels dissatisfied about
the quality of the product with ISI mark can lodge a complaint at any of these offices. If the products are found unsatisfactory, action can be taken by BIS which can amount to temporary stoppage of lease of ISI mark (until such time the manufacturer takes suitable corrective measures and demonstrates them to the satisfaction of BIS) cancellation of licence.

3.7.3 Critical Appraisal

The scheme of ISI marking is comparatively well understood as was evident from the survey on consumer awareness carried out by the researcher. The implementation of the scheme is very poor. As per the General Service Electric lamps (Quality Control) order 1989, every bulb should conform to the prescribed Indian Standard and be certified by BIS; it can’t be sold otherwise. But according to the test report of CERC Ahmedabad, five brands including well known brands failed the prescribed quality standards. Another revealing point which came to light was that although according to rough estimates there are about 1000 bulb manufacturer in the country but only 110 have the required licence to manufacture.71 Where is the enforcement of the mandatory quality control order on electric bulbs? The story of Mild Steel Tubes (Quality Control) order 1978 and House hold Electrical Appliances (Quality Control) order 1976 has been already discussed while discussing The Essential Commodities Act, 1955. It was seen that those orders were also flouted.

■ Under the Cement (Quality Control) order passed under The Essential Commodities Act., 1955 cement can’t be sold without ISI marking. Violation of the order attracts punishments up to 7 years yet it is not difficult to get adulterated/spurious cement openly sold in the market.72

■ In the case of LPG cylinders which also come under compulsory standardisation scheme of BIS but fake cylinders could be found circulating in the marketing according to press reports.73

■ Another prevalent practice at misleading the buying public is using legends like 'conforming to ISI' or 'as per ISI'. This is not a BIS certification but a self declaration. These give a false impression to unsuspecting consumer that it meets the required safety and quality requirements but, it may not. There is no guarantee. BIS should 'Suo moto' institute inquiry to find out whether the declaration is true and can be substantiated or not. After all the name of BIS has been used /misused. The consumer can send this product to BIS lab. and it can be found out if it was true or not, if not the case can be taken up with MRTPC or Consumer Dispute Redressel Agency (CDRA).

CERC Ahmedabad tested 17 brands of electrical iron and found only three brands worthy of the ISI mark they were carrying similar finding have been noted in the case of domestic electrical switches.

There is a need to bring more products under mandatory standardisation and certification scheme. The scheme and the quality control orders made under The Essential Commodities Act, 1955., must be closely monitored.

It is also felt that we should also have Consumer Products Safety Commission (CPSC) like the one in the United States which can act as a watch dog for ensuring the safety of products.

The industry is also critical of "bureacritisation" of the professional body like BIS. According to Federation of Indian Chambers of Commerce and Industry president Deepak Banker, "it has to be a professional body with a professional approach if India has to play a global role in the age of liberalisation". Similar views here expressed by Confederation of Indian Industry president Shekhar Dutta. He was of the opinion that "In the era of globalisation, leadership of a professional institution should preferable be given to a person from the relevant technical background because ultimately ISI, has to translate into International

74. The Times of India 19 Sept., 1997
75. Times of India 18 Nov. 1997
76. In the U.S. the Consumers Product Safety Commission is an independent federal Regulation agency which is created under Consumer Product safety Act, 1972.
Standards. This was reaction to secy. Civil supplies taking over the additional charge of Addl. charge of DG of BIS.77

- The BIS Act 1986 can be as effective as its implementation. No law by itself can bring relief to the people whose interest are sought to be protected unless the public is vigilant and the enforcing machinery does its job.

3.8 The Agriculture Produce (Grading and Marking) Act, 1937

3.8.1 Background and objectives

The quality of food articles, Drugs and Agriculture Produce needs to be of high quality/standard in the interest of human health and well being. There are separate laws to control the quality and purity of food articles and Drugs. The main objective of The Agriculture Produce (Grading and Marking) Act, 1973 is to provide for grading and marking of Agricultural and other produce. The Directorate of Marketing and Inspection since its inception in 1935 (originally called the 'office of the Agricultural Marketing Adviser to the government of India') has been responsible for integrated development of Agriculture produce by promoting Grading and Quality Control and framing of grade specifications.78 Under the Act the central Government can enact rules for prescribing grade standards for agricultural and live stock products.

78. A very useful reading on the subject is 'Activities of the Directorate of Marketing and Inspection' by Directorate of Marketing and Inspection, Ministry of Agriculture and Rural Development Government of India, Faridabad.
defining quality, prescribing methods of marking, packaging, sealing and laying down conditions for issue of "Certificate of authorisation" for carrying out the grading.

3.8.2 Main provisions

The scheme of grading and marking of the produce for the domestic market is voluntary, however, the central government is empowered to prescribe compulsory grade designation in respect of certain scheduled articles if it is of the opinion that it is necessary in the public interest or for protection of consumers that any scheduled article shall not be sold or distributed except after such article or class of articles is marked with grade designation marks. The word 'AGMARK' which signifies agricultural marketing and stands for a statutory seal ensuring quality and purity. The Act provides for setting up of Export Inspection council to enforce compulsory quality control on commodities meant for export. For some products a compulsory grading and marking has been prescribed by Agriculture Marketing advisor under the (Export Quality and Inspection) Act 1963. The Directorate of Marketing and Inspection acts as inspection agency on behalf of Export Inspection council. As per the latest figures available 41 commodities are being graded compulsorily before export.

The producers and manufacturer of agriculture products interested in making their products under AG MARK are to obtain a licence to implement the AG MARK Scheme. The producer/manufacturer must have the required internal quality control systems at every stage of production, processing and packaging. To ensure quality sample are taken
from various outlets and tested at different regional Ag mark laboratories set up by the directorate. In case a product is found substandard the authorised packer is directed to withdraw the entire batch from the market.

Implementation

The Act is implemented by the Directorate of marketing and inspection, Deptt. of Rural Development, Ministry of Rural Areas and Employment, Govt of India through a network to its offices and laboratories located different parts of the country.

An article is deemed to be misgraded if

i) The article is not of the quality prescribed for the grade designation with which it is marked.

ii) The composition of the article offered for grading is altered in any way after the sample has been drawn for analysis and determination of the grade designation of the article in accordance with the rules made under the Act.

iii) The article is tampered with in any manner.

iv) Any false claim is made for the quality prescribed for its grade designation upon the label or through advertisement in any other manner.

Penalties

The Act provides for penalties in case of

i) Unauthorised marking with grade designation mark.

ii) Counterfeiting grade designation mark.
iii) Selling misgraded articles.

Who can make a complaint?

The following are entitled to make a complaint for taking cognizance of an offence punishable under the act.

i) The Central/ state Government or any officer authorised by it in writing.

ii) Aggrieved person.

iii) Recognised consumer Association whether the person aggrieve in the members that organisation/ association or not.

3.8.3 Critical Appraisal

It is a pity that the scheme of "Agmark" has not been widely understood though the Act is very old. Consumers in general are really not sure as to what 'Ag mark' really indicates and what are the specific advantages to purchase food articles which bear this mark. This was also confirmed by the consumer survey under taken as a part of this study. Thus there is a need to popularise this very beneficial scheme; once consumers start demanding Ag mark articles the industry will definitely like to make their products under the scheme. It is also recommended that more food articles should be included under 'compulsory grade designation' scheme.

The researcher found visit to the regional office located at
Chandigarh and to one of the publicity campaign launched by the Director of Directorate of Marketing and Inspection very useful. The Directorate had made good arrangements to explain the menace of food adulteration and also educated the public about the desirability of purchasing food stuff which is marked and graded. Simple methods of detection of adulteration in food articles were also explained. A pamphlet giving the background and importance of the scheme included some important information on ‘Ag mark’ products which included the adulterants and their possible effects.

3.9 The Trade and Merchandise Marks Act, 1958

3.9.1 Background and objectives

Customers generally identify and associate quality and standard of a product by its trade mark. The trade mark gives certain degree of reliability to the product. It establishes connection between the goods and its manufacturer. The trade marks acquire reputation about the goods with which they are associated, the consumer mostly are familiar with the trade marks and not manufacturers. Coca cola, Liberty, Philips, Bata etc. are so well established that certain reliability and quality is associated with them. Trade mark is a mark by way of words, drawing or pictures, emblem or monogram etc., which distinguish the goods of different manufacturers.

The law on property mark under IPC

Before enactment of The Trade and Merchandise Marks Act, 1958, the law dealing with property marks was contained in chapter xviii.
of the IPC. Under IPC (Section 486) selling goods marked with a counterfeit trade mark is an offence. The section reads “who ever sells, though exposes, or has in possession for sale, any goods or things with a counterfeit property mark affixed to though impressed upon the same or to or upon any case, package or other receptacle in which such goods are contained, shall unless he proves (a) that having taken all reasonable precautions against committing an offence against this section, he had at the time of the commission of the alleged offence no reason to suspect the genuineness of the mark (b) that on demand made by or on behalf of prosecutor he gave all the information in his power with respect to the persons from where he obtained such goods or things or (c) that otherwise he had acted innocently be punished with imprisonment of either description for a term which may extend to one year or with fine or with both”.

3.9.2 Main provisions

The Trade and Merchandise Marks Act, 1958 provides for registration and better protection of trade marks and for the prevention of the use of fraudulent marks on merchandise. A registered trade mark confers rights to a person in whose name the trade mark is registered. In the case of a registered trade mark, in the event of infringement he has a legal remedy; this is not so in the case of unregistered trade mark.

The Act protects consumer interest by ensuring

(1) that a trade mark which is likely to deceive or cause confusion, use of which is contrary to law in force, which comprises

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scandalous or obscene matter can’t be registered (Sec. 11) It may be noted that the world ‘likely’ signifies that what is required is only a probability of deception or confusion and there may not be actual confusion or deception.

(ii) similarly, a trade mark can’t be registered in respect of any goods which is identical with or deceptively similar to a trade mark which is already registered in the name of different proprietor in respect of the same goods (Sec. 12).

Deceptively similar means near resemblance as to be likely to deceive or cause confusion. An action far “passing off” can be maintained if sufficient use of the mark can be proved so as to create valuable good will of business connected with the goods.

The Act gives the same treatment to non-nationals from convention countries [section 131(1)]. as it gives to its own nationals. A person from convention country can apply for registration in India within 6 months of applying in his own country. In such cases the trade mark will be registered from the original date. An alien not being an enemy subject can restrain another person from ‘passing off’ goods as and for his goods.79 “Passing off” action can be taken in respect of foreign trade mark not registered in India. If plaintiff establishes that his goods enjoy a particular reputation and they have acquired a distinctive meaning in connection

with the business. He has to establish a certain degree of protectable reputation. The plaintiff need not prove actual damage.\textsuperscript{80} Similarly Hon’ble Delhi High Court issued injunction to shriram group from using "whirlpool" brand name even though it was not registered in India.\textsuperscript{81}

The Act also provides for prevention of use of fraudulent marks on merchandise in the public interest. The Act provides that on the sale or in the contract for the sale of any goods to which a trade mark or trade description has been applied, there shall be deemed to be an implied warranty that the mark is a genuine mark and not falsely applied, or that the trade description is not a false trade description, unless contrary is expressed in some writing signed by or on behalf of the seller and delivered at the time of the sale or contract to sell and agreed by the buyer (Sec.96). Thus the Act protects the interest of both the owner of registered trade mark as well as public in general.

Penalties

The Act provides penalties for

i. Applying false trade mark, trade description, falsifying trade mark etc. (Imprisonment upto 3 years or fine or both).

ii. Selling goods to which false trade mark or trade description is applied. (Imprisonment upto 3 years or with fine or both).

\textsuperscript{80} Refer Case : Hilton Tabacco Pvt. Ltd. V.Souza Curz Sa - (1994) 17 CLA (Snr) 20 APHC.

\textsuperscript{81} Refer case : Whirlpool corporation Vs N. R. Dongre 1994 Delhi lawyers 157 (Delhi High Court)
iii. Removing piece goods etc. (Contrary to Sec. 74 of the Act)
Fine upto Rs. 1000/- and forfeiture of piece goods)

iv. Falsely representing a trade mark as registered, (Imprisonment upto 6 month, or with fine or both).

v. Improperly describing a place of business as connected with trade marks office (Imprisonment upto 6 months or with fine or both).

vi. Falsification of entries in Register (Imprisonment upto 2 years or fine or both)

3.9.3 Critical Appraisal

India is a signatory to GATT/WTO agreement. Our Laws in the Area of Patents and Trade Marks are needed to be brought in line with WTO requirements. Trade Marks Bill, 1995 has already been passed by Lok Sabha on 29, May, 1995, it still has to be passed by the Rajya Sabha before it becomes a Law,

Thus we can see that the Act which is basically meant to protect the right holder also protects consumer interest by Prohibiting the registration of a trade mark which has been already registered by some other manufacturer / producer or which is deceptively similar to a trade mark which is already registered. 'Passing off' provides protection to trade marks which are famous but might not have been registered ; this way the consumer also gets protected. Strict penalties are provided for applying false trademark or trade description. This acts as a deterrent. The implied warranty on the sale or in the contract for the sale of any goods to which
a trade mark or trade description has been applied, that the mark is a genuine mark and not falsely applied. This provides a very good protection to consumer. The Act not only protects the interest of owner of a registered trade mark but protects public in general as well.

3.10 Food Laws

3.10.1 Background and objectives.

Good nutrition and proper provision of medicines and medical facilities go a long way in promoting health and happiness of community. A healthy community is a national asset. It helps in improving productivity and overall progress of society as a whole. According to UNDP report, increase in intake of calories can lead to increase in labour productivity of upto 47 percent. "The over all contribution of a healthy population to economic growth is evident from a cross- country study showing that a 10 per cent increase in life expectancy raises the growth rate by an estimated one per cent part year"82

"Right to life" has been made a fundamental right guaranteed under constitution of India (Art. 21) and this is available to not only citizen but all persons in the country can avail of this. Art 47 of our constitution under Directive Principles of State Policy, chapter IV, deal directly with the duty of the state to protect and improve public health. The state by enacting and implementing suitable laws ensures that prescribed standard of quality and purity is maintained and adulterated mis - branded

82. 'Wealth and well being': The Times of India: April 11, 1997.
food articles and spurious medicines are not allowed to adversely effect the health of people. The laws also arm the government to effectively deal with the offenders.

The general name given to the offences affecting the health of human beings is "public nuisance" in the Indian Penal Code (IPC). The offence of public nuisance has been defined under section 268 of IPC as an "act or commission which may cause any injury, obstruction, danger to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury obstruction, danger or annoyance to persons who may have occasion to use any public right. If any person contravenes any such prohibition, he is guilty of causing public nuisance."

The code (section 269-278) deal with certain specific public nuisances. Adulteration and Sale of noxious food or drink is contained in section 272 and 273. Under Indian Penal Code (IPC), the offence is made out only when adulterated articles of food or drink becomes noxious for consumption. Unless the food article becomes noxious for human consumption, adulteration by itself by harmless ingredients does not attract prosecution or penalty. Thus water mixed in milk or sugar mixed in honey does not come under the preview of Indian Penal Code and is, therefore, not punishable under IPC. Secondly to prove the offence under IPC, not only the offender must be having knowledge of its being adulterated and noxious but 'mens rea' or guilty mind needs also to be proved. This is quite a difficult task and provides lot of room to the offender for defence.

In view of these shortcomings IPC can not be considered

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as an effective legislation for the prevention of the menace of adulteration. A need was, therefore, felt to effectively deal with food adulteration and thus, came The Prevention of Food and Adulteration Act, 1954. The main objective of the Act is to eliminate danger to human life from the antisocial evil of food adulteration and to ensure purity in articles of food. The Act follows the Principle of 'Strict liability' unlike the provisions of IPC (Sec 272, 273) where 'mens rea' was necessary ingredient. The Act covers wide range of food articles and defines the standard of quality required of large variety of food stuffs.

3.10.2 Main provisions

Definition of Food

The definition of 'food' is quite exhaustive. Food means any article used as food or drink for human consumption other than drugs and water and includes any article which ordinarily enters into or is used in the composition or preparation of human food, any flavouring matter or condiments and any other article which the central government may declare by notification. [sec 2 (v)]. It may be noted that water is not included in 'food' although water enters into preparation of most of the food items.

An article of food shall be deemed to be adulterated if it is different from what it is declared to be, contains toxic or injurious substances, is prepared, packed and kept under unhygienic conditions, or is unfit for Human Consumption due to presence of rotten, putrid, filthy
or insect infected matter. Presence of prohibited preservatives or permitted once in excess of permitted level also makes a food stuff adulterated.

Administration of the Act

The Act provides for establishment of a central committee consisting of 30 members including chairman to advise the central and state govt.s on matters arising out of the administration of the Act and carry out functions assigned to it. The committee among others comprises of 5 representatives nominated by the central government to represent consumer's interests, one from Indian Standards Institutions and one medical professional nominated by Indian council of medical research (sec. 3). The Act also empowers the central govt to establish one or more central food laboratories to carry out the function entrusted to it. The central govt, may also specify any laboratory or institute as central food laboratory by notification. There are 4 such laboratories having defined area under their jurisdiction.

Regulation of Import of Food Articles

Import of Food articles which are adulterated or mis-branded or in contravention of conditions of licence is prohibited. The custom officer or any officer authorised by central govt may detain any parcel containing or suspected to contain any prohibited food article. He shall forth with inform Director of Central Food Laboratory and if required send the parcel/s sample to the said laboratory. [sec 6]
Regulation of Manufacture, sale or storage of food Articles

Sale, storage for sale or manufacture of adulterated or misbranded article of food is prohibited [sec 7]. The sale of food article for which licence is required is prohibited except under the conditions of licence. Similarly article of food, the sale of which is prohibited by Food (Health) Authority, Sale of any Adulterant, or sale of food article in contravention of any other provisions of this Act is also prohibited.

The Act is administered through Food (Health) Authority. The important functionaries in the field are the Public Analysts and Food Inspectors appointed by Central / State Government. Both are public servants within the meaning of sec 21 of IPC. The public analyst can be appointed for a local area, different analyst may be appointed for different article of food.

The Food Inspector can take samples\textsuperscript{83} of food from any person selling or in the course of conveying delivering or preparing to deliver such food articles to purchaser or consignee or from a consignee after the article has been delivered to him and send the sample to public analyst for analysis. However, a consignee does not include a person who purchases for his own consumption. He is empowered to prohibit sale of any food article in the interest of public health with the previous approval.

\textsuperscript{83} The procedure for taking samples is given under section 11 of the Act. It is quite elaborate calling for giving notice in writing before taking sample, the sample needs to be divided in three parts and sealed and signature/thumb impression of person from whom sample is taken needs to be taken etc. This procedure is required to be followed by an individual Consumer who wishes to get the sample analysed.
of local (Health) authority or Food (Health) authority. For this purpose he can enter and inspect any place where any article of food is manufactured or stored for sale or where any adulterant is manufactured or kept. He is empowered to seize such food article which appears to be adulterated or mis-branded. He may take samples and send it to Public Analyst for analysis. The authority extends to break opening the package/break opening the door of premises where any article of food may be kept for sale. However, this can only be done when the vendor refuses to open the package or the door. While conducting search he has to follow the provisions of criminal procedure code, 1973. The burden of proving that the adulterant in possession of a person is not for adulteration rests on the person in whose possession the adulterant is found. Relevant documents to any investigation and books can also be seized by the inspector.

Obligation of Manufacture of Food Articles

Unless the label/cash memo. contains any warranty to the effect that the food contained in the package or container is the same in nature, substance and quality as it purports to be, the manufacturer or distributor or dealer in any article of food is required to give warranty to the vendor in the prescribed manner about the nature, substance and quality of food article. (section 14) The vendor is duty bound to disclose from where the food article was purchased. (section 14A)

Imposition of Duty on Private Medical Practitioners

The central and state govs can impose a duty on private practitioners to report all cases of food poisoning coming to their knowledge
to specified authority. (section 15)

Request for Analysis of Food Articles

A purchaser or regd. consumer association may also get any food article analysed on payment of requisite fee after declaring their intention of getting it analysed to the vendor. A purchaser or recognized consumer association can also institute prosecution an production of public analyst’s report along with the complaint to the court. (section 12)

Penalties.

Contravention of provisions of the Act will entail prosecution and on conviction the following penalties:

(i) Fine and or
(ii) Imprisonment
(iii) Publication of names of offenders
(iv) Forfeiture of property/deprivation of entire quantity of food.

Under a provision inserted in 1976, adulteration causing death or “grievous"84 hurt is punishable with imprisonment from 3 years to a life term and fine of not less than Rs. 5,000/- . The Act provides for summary trial of offences by judicial magistrate of the first class specially empowered in this behalf by the state government or by a metropolitan magistrate.85

84. For definition of ‘grievous hurt’ refer to section 320 of IPC (45 of 1860)
85. On conviction in summary trial the sentence upto one year only can be passed. (section 16A)
3.10.3 Critical Appraisal

The Act empowers registered consumer Associations and individual consumer to take samples and get them analysed from public Analyst, according to procedure as given in sec 11 of the Act. The procedure in brief lays down that a notice in writing must be served on the vendor/manufacture about the intention of the purchaser to get the sample analysed the vendor must put his signature there on, failing which one or more witnesses must sign, then the sample must be divided in 3 parts and sealed, one part must be sent to public Analysis of the area and the remaining two parts to Public Health Authority. This is not an easy task which an individual consumer will be able to accomplish in a market place.

The Act also suffers from another deficiency, i.e. the definition of 'food' does not include water although impure water is a source of lot of diseases. It is used for drinking and also goes into the making of many other food articles. There is a need to include mineral water in the definition of food. BIS has already made the standard for it.

Implementation of PFA and Extent of Prevalent Adulteration

The extent of adulteration can be gauged from some of the reports which appeared in the press. "Samples taken for testing at the Public Food Analysis Undertaking, Lucknow, were found to be having toxic substances in mustard oil, arhar dal and grams. Of the 10 samples of mustard oil and six of pulses at least half tested positive. The mustard oil was found to
be processed after mixing poisonous seeds of Katayya or Katilaa thorny plant, which is often found in agricultural field. The basin and dal arhar were found adulterated with highly toxic substances".86

There have been also reports of synthetic milk being sold in the market. According to scientists, "synthetic milk made by mixing refined oil, caustic soda, urea and detergent poses a health hazard to pregnant women, old people and persons who are already having heart and kidney problems, in addition to children who are at a greater risk." Milk samples taken of established brands were found to be sub-standard by Food Research and Analysis Centre (FRAC) an independent Government recognised laboratories located at Delhi. 60% of the 33 milk centres collection from in and around Delhi and tested at FRAC were not found to be conforming to the standards laid down under the PFA Act.87

The Indian Council of Medical Research, ICMR collected 249 samples of turmeric from rural and urban markets of Assam, Maharashtra, Karnataka and Andhra Pradesh, on testing these were found to contain Arsenic, cadmium, zinc and lead. However, except for lead the level of metals did not exceed the tolerance limits prescribed under PFA Act. In 6 samples the lead level exceeded the limit. Lead poisoning can cause acute abdominal pain and anaemia, acute or chronic encephalopathy,

86. 'The Times of India' August 28, 1996.
87. Aditi Kapoor : 'Milk Samples are found sub-standard': The Times of India : April 27, 1996
peripheral naturopathy and chronic nephropathy.\textsuperscript{88}

Although the sale of food colours without ISI mark is prohibited, yet colours without these marks are known to be sold and used by sweet meat sellers. The halwais are ignorant about the maximum quantity which can be mixed as per the laid down standards of PFA. Instead of silver covering aluminium foils are being used by some of the sweet meat sellers. Saccharine though prohibited in sweets under PFA is known to be used. 6 to 10 per cent of samples of sweets were found to be adulterated.\textsuperscript{89}

According to another report 15 per cent sand was found in the wheat meant for mid-day meals for school children of Jirrapur Sub-Division in RajGarh Distt in Madhya Pradesh.\textsuperscript{90}

In more than 80 per cent of food samples from various states collected and tested by ICMR, detectable samples of alpha, beta and gamma isomers of HCH, a highly poisonous were found. According to the report in 1996 net Rs. 1,000 corer worth of Indian Agricultural Products were rejected by the western countries due to high pesticide residue contents in them according to Mr. Singal, President of All India Bio-tech Association.\textsuperscript{91}

\textsuperscript{88} Pushpa Girimaji : The Tribune : Guard Against Adulterated Turmeric Power Nov. 17, 1995.
\textsuperscript{89} Vijay : Adultration Act have heyday: Chandigarh Newsline in 6 Nov. 1996.
\textsuperscript{91} Pesticides causing cancer still in use : The Times of India : June 11, 1997.
Another problem is the use of insecticides and chemical food additives, which are hazardous to human health. In a recent judgement the Supreme Court of India have asked the Union Government to set up a committee of 4 senior officers to decide on either banning or restricting the use of insecticides and chemical food additives, which are hazardous to human health. Mr. Justice S.C. Agrawal and Mr. Justice G.B. Pattanaik constituting the branch expressed concern in the matter of unrestricted use of insecticides and chemicals and said that amendments to the Insecticide Act. 1968 were necessary.

The result of analysis by Indian Council of Medical Research (ICMR) of 198 samples of commercial brands of infant formulae arsenic was found in 50 per cent, Cadmium in 80 per cent and lead in 96 per cent and copper and zinc was found in 99 and 100 per cent of the samples. The report suggests that statutory limits for metal contaminants specifically for infant formulae needs to be laid down in the Prevention of Food Adultration Act. 92

82 out of 100 samples of milk supplied by milkmen to Chandigarh residents tested by Punjab Dairy Development Department in Chandigarh and Mohall were found to be substandard i.e. lacking in fat content and Solid Not Fat (SNF) 93

According to Dr. D.D. Sharma, local health authority, Chandigarh, some of the problems in effective implementation of PFA are

92. Pushpa Girimaji; The Tribune; 20 Aug. 1993
i. Lack of proper infrastructure
ii. Lack of food inspectors of impeccable integrity
iii. Deficiency in the strength of Food Inspectors
iv. Non-Co-operation by consumers
v. Large number of vendors who are migratory in character.

According to him there is to be one food inspector for 50,000 population but for Chandigarh he has only four inspectors although the population over six lacs. For effective surprise raids on milk vendors who come on high speed motorcycles, police protection is required. This does not come whenever needed due to over involvement of police in all other areas of maintenance of law and order. The only Jeep is an old vintage model in a highly depleted state and can not cope up with the high speed motor cycles of the milk vendors. It is also very difficult to keep a close watch on the Inspectors who normally operate individually. Their integrity becomes of paramount importance. But it cannot be guaranteed. At times the consumers also do not extend the needed operation when prosecution is initiated. In Chandigarh, large number of vendors are from the states of U.P., Bihar and other neighbouring states. It becomes difficult to procure their attendance during prosecution.

3.11 Drug Laws

3.11.1 Background and objectives

In any welfare State Health Care becomes a most important priority area for the government in India “Right to Life” as enshrined in Art.
21 of constitution of India is a fundamental right: This cannot be enjoyed without being assured of provision of right medicines at affordable price. The supreme court in (Paschim Bang Khet Mazdoor Samiti, V State of West Bengal), has held that failure on the part of government hospital to provide timely medical treatment to a person in need of such treatment results in violation of the right to life. It can thus be seen that unadulterated and pure drugs are a part of medical treatment and it is the duty of any government to make sure their availability at affordable price. Adulteration in drugs is the most serious crime against humanity and must be curbed with iron hand.

Drug Adulteration under IPC

Adulteration of drugs and their sale is banned under sec. 274-275 of IPC. These sections deal with these offences and lay down the penalty for offences. Section 276 makes the sale, offering / exposing for sale or issue from dispensary of drug as a different drug, provided, the person knows that the drug is not what it purports to be. Offences under these sections attract imprisonment up to a maximum of 6 months and or fine upto Rs. 1,000/- or with both. A careful examination of these sections reveals that an offence is made out even if the drug has not become noxious but its efficacy has been reduced and not only sale but, even offering of adulterated drug is an offence and further an offence is constituted if the drug is not in fact, what it purports to be.

The provisions of IPC, require proving that the person who was involved in adulteration, sale of adulterated/mis-branded drug was in

the knowledge of it. Thus, these provision did not follow the principle of “strict liability”. These also did not regulate import of adulterated/misbranded drugs. A need was felt to have specific legislation to have effective control on drugs and cosmetics in the public interest. This gave rise to the enactment of The Drug and Cosmetic Act, 1940 and other associated laws like The Drugs and Magic Remedies. (Objectionable Advertisements) Act, 1954 and The Drugs (Control) Act, 1950.

The main objective of the The Drugs and Cosmetics Act, 1940 Act is to ensure the Availability of drugs and cosmetics of required quality, purity and strength and that the packing gives necessary information about contents. The Act provides for regulation of import, manufacture and sale of drugs; all systems i.e. Allopathy, Ayurvedic, unani and sidha are covered under this Act. The main purpose of the Act is to safeguard the health and safety of consumer by ensuring standards in drugs, so that high standard of medical treatment is maintained thus serving the cause of public health as enshrined in the Directive Principle of State policy [Art 47] Constitution of India. The offences under the Act are of 'strict liability' unlike under IPC even if the person selling or offering for sale a spurious/adulterated drug was ignorant of its nature or state he is liable.

The main objective of The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954 is to control advertisements of drugs in any media, relating to alleged cures for venereal diseases, sexual stimulants and diseases and conditions peculiar to women and to prohibit the advertisements for magic remedies. Thus, the main purpose of the Act
is to protect the ignorant and uneducated people against self medication with harmful drugs and appliances and approach quacks as a result of such advertisements. The term 'magic remedy' as given in Sec 2(c) includes a talisman, mantra, kavacha, any other charm of any kind which is alleged to possess miraculous powers for or in the diagnosis, cure, mitigation, treatment or prevention of any disease in human beings or animals or for affecting or influencing in any way the structure or any organic function of the body of human beings or animals.

The main purpose of The Drugs (Control) act, 1950 is to ensure the easy availability of essential imported drugs and medicines at reasonable price by controlling the sale, supply and distribution of drugs. The Central Government can declare any drug to be essential for the purposes of the Act by notification and fix the price.

The main purpose of Narcotic Drug & Psychotropic Substances Act, 1985 is to consolidate under and amend the various Acts existing on the subject of control and regulation of operations of Narcotic Drugs and psychotropic substances, The Act also makes the penalty more stringent for any offence relating to the operations of narcotic and psychographic substances.

3.11.2 The main provisions

The Act provides for establishment of Drugs Technical Advisory Boards at National and State Levels Known as central and state drugs Tech. Advisory boards respectively, Drugs consultative committee and Central
and Regional Drug Laboratories. The boards give advice to central and state
govts. on technical matters arising out of Drug control. The central government
is required to consult Central Drug Technical Advisory Boards before making
any rule. Rules can be made only after Consultation with the board. The Drugs
consultative committee has drugs control officials of central as well as state as
its members. The committee’s main function is to advise the central government
& state government on any matter which brings in uniformity in enforcing the
drug Central laws. The Act also provides for setting up central as well as
regional Drug Laboratories.

Operation of the Act

The Act empowers the central government to exercise
necessary control on the import, manufacture, sale and distribution of drugs
and cosmetics. The main aim being to protect the consumer from sub-
standard drugs and cosmetics. (Sec.10). The Central Government may
however permit the import of any drug or class of drugs, not being of
standard quality. Similarly the state government holds executive power to
exercise effective control on manufacture, Sale and Distribution of Drugs
and cosmetics. (Sec 18). State government may prohibit, manufacture,
sale and distribution of certain drugs and cosmetics.

Consumer/ Consumer Association May Get Drugs Analysed

Any person or any recognised consumer Association, Which
has purchased drug or cosmetic can send it for analysis to the government
Analyst on payment of prescribed fee and report.
Prosecution of violaters

The following persons can prosecute any one who violates the provision of the Act.

i) Inspector

ii) Aggrieved person

iii) Recognised consumer Association.

Advertisements suggesting or calculated to lead to use of the drug for the procurement of miscarriage in women or prevention of conception in women; or the maintenance or improvement of the capacity of human beings for sexual pleasure; or the correction of menstrual disorder in women; or the diagnosis, care, mitigation, treatment or prevention of any disease, disorder or condition specified in the Schedule of the Act, or any other disease, disorder or condition (by whatever name called) which may be specified in the rules made under this Act are prohibited [Sec.3]

Similarly misleading advertisement relating to drugs are prohibited .(sec4)

The advertisement of magic remedies refering to the purposes specified in u/s 3 are prohibited [sec. 5].

The Drug Control Act, 1950 makes it obligatory on the part of chemist to give cash memo if the amount of purchase is above Rs. 5/-.. However, on request, cash memo must be given even if the sale is below Rs.5/-. The consumers in their own interest must insist on cash memo to protect themselves from spurious/substandard drugs. The maximum quantity of drug which a chemist can possess at any time and also the maximum which he can sell at any one time may also be limited by the
government by an order.

3.11.3 Critical Appraisal

The Drug laws basically try to ensure that people get pure drugs at reasonable price and there is no advertisements of magic remedies or cure for incurable diseases as given under the relevant laws. Let us examine the effectiveness of these laws and their implementation in the light of the object of these laws.

The ineffectiveness of these laws can be understood from the fact that globally banned drugs like mexaform which is also banned in India continues to be prescribed by road side quakes and sold by them clandestinely in India.95 CHLORMEZANONE, a banned muscle relaxant which has serious side effects is freely being used in India by drug manufacturers. 96

According to a recent studies undertaken by AIIMS, New Delhi a number of commonly used herbal medicinal preparations contain toxic heavy metals like lead and arsenic. 21 sample of commonly used drugs analysed were not only found to contain toxic metals but the formulations also varied in terms of ingredients and quantities form batch to

95. The Chandigarh News Line Feb. 15, 1997
The World Health Organisation (WHO) recommends that the patient be given written information on the use of drug and its side effects. However, it is seen that most of the private practitioners do not give any information but most of them do sell medicines themselves. The need to have written prescription, warning about its side effects if any and the manner and method of its use, can not be over emphasised. According to a Chandigarh based surgeon, steroids are being given as desi dawayeea, these are potent and could be dangerous. Chemist sell medicines without prescription. There is no effective check on these mal-practices.

The Supreme Court has ruled in May 1996 against 'Therapeutic pluralism' which forbids a doctor trained in one system of medicine to practice/prescribe medicines from other system but, this practice is quite prevalent and is potentially dangerous.

In a study conducted by A.R.Phadke from Foundation for Research in community health revealed that irrational and even hazardous drugs were being prescribed by qualified doctors to patients suffering from common ailments. The two cases of prevalence of such practice were decided by Chandigarh Dispute Redressal Commission, in one an RMP was made.

97. Kalpana Jain : 'Many herbal medicines contain lead, arsenic' : AIIMS study : The Times of India : Dec. 6, 1996). The study was conducted by Dr. S.B. Lall of AIIMS.
to pay Rs. 70,000 as compensation for recommending an injection which led to partial paralysis of the patient. In the second case an ayurvedic doctor was fined for prescribing an allopathic medicine.\(^{101}\)

The validity of the claim of "Memory plus" a memory enhancing tablet developed by Council of Scientific and Industrial Research (CSIR) Laboratory, is being questioned now by The Indian Council of Medical Research (ICMR) on the basis that no clinical trials were conducted before launching. According to ICMR the drug should at least state that it is not to be used during pregnancy to avoid the possibility of any disastrous results.\(^{102}\)

In the recent past media was full of reports about 'fish medicine for Asthma' According to a report at least 1,300 asthma patients left Guwahati for Hyderabad by 'Asthma Special' The century old tradition practised by the bgathina family is said to have originated from a chance meeting of a family ancestor with a sadhu who gave him the formula which is now nation wide craze. The medicine administered by first putting it into a small fish, has to be swallowed on the spot.\(^{103}\)

Has the medicine which is put into a small fish been clinically tested? What are its ingredients? Why live fish? Is it a magical cure? Can it be advertised in the national dailies and given publicity? Do the people practising it hold any medical degree? Are they not quacks then? These are

\(^{101}\) Nonika Singh; 'A bitter dose'; The Chandigarh Newsline; 5 July 1996.
\(^{103}\) News item: The Indian Express June 6, 1997
some of the puzzling questions.

The National Pharmaceutical Pricing Authority (NPPA) whose main function is to regulate the drug price control and revision of prices of essential drugs has still not become operational despite the declaration made during the last drug policy (1994) that NPPA would be set up within six months.

The prevailing situation is far from satisfactory, Spurious, adulterated and banned drugs are openly found and sold in the Indian Market. Warning about the side effect/injurious nature is at times, not adequate on/about certain drugs. Advertisements like “fish therapy“ and such advertisements of magic cure are not uncommon. Thus, there is need for more exemplary punishments and stricter enforcement of the existing laws.