Chapter 8

CONCLUSIONS AND SUGGESTIONS

In the past, it was considered that every contract is the result of a common agreement between the parties. A contract of sale was also treated on par with any other type of contract. The simplicity involved in identifying and assessing the quality of the goods one purchases at that time paved the way for evolution of the principle of *caveat emptor* – let the buyer beware. In those simple and closely-knit societies, the judicial and legislative attitude was to accord fuller recognition of the concept and afford protection to the manufacturers and sellers since the national economy was largely depended on them.

The advent of mass production and distribution consequent to industrialization has resulted in consumers facing an information gap whenever they enter to transactions involving the purchase of goods. Articles are now being marketed in such a manner that it is extremely difficult for consumers to judge their qualities and performance properly. The advances in science and technology have made large variety of consumer products that are very much complex and complicated. Apart from questions of judgment, style and taste, a very high degree expertise is essential to appreciate properly the features of most of these modern products. A non-expert examination will not divulge many of the important characteristics of the items available in the market. Therefore, they fall below the threshold of perception of the ordinary consumers. The disparity in knowledge and resources between the consumers and sellers, put the consuming public in a very disadvantages position.
The problems created by the modern marketing techniques like advertisements added fuel to the consumer ethos further. Advertisements far from being a useful business tool, turned to be purveyors of false and misleading information to the consumers. Literacy, in the context of advertisement, has been painfully stated as a curse since it tempts innocent to read and believe and to go for shopping believing the propaganda to be true not knowing that every glittering purchase is a treachery practiced by unscrupulous corporate pickpockets.

Basic Consumer Rights

The engine of consumer protection can be stated to have been kick-started by the U.S. President John F. Kennedy in 1962 through his landmark message made in the Senate. He attributed four basic rights to the consumer and suggested means for the realization of the same. They are:

(i) The right to safety: This means that the consumers are to be protected against the marketing of goods, which are hazardous to health or life.

(ii) The right to be informed: This encompasses protection against fraudulent, deceitful or grossly misleading information, advertising, labeling or other practices. It includes delivery of positive information based on facts, which are necessary to assist the consumer for an informed choice.

(iii) The right to choose: Consumer is to be assured, wherever possible, of access to variety of products and services at competitive prices and assurance of satisfactory quality of goods and services at fair price.

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(iv) **The right to be heard:** Consumer is to be assured that his interest will receive full and sympathetic consideration at all levels of administration including information of governmental policies\(^2\).

In order to promote fuller realization of these consumer rights, it is necessary that the existing governmental programmes are strengthened and in certain areas new legislation be enacted. Soon after this famous pronouncement by Kennedy, we notice a remarkable change in governmental attitude towards consumer and their problems all over the world. These proclaimed rights are further enlarged at national and international levels on many occasions. However, the right of the consumers to be informed about the quality standards and their right to be protected against substandard goods remain solid.

Quality of goods, which is always a matter of great concern for the consumers, is rapidly becoming the most significant factor in customer decisions. This is true even if the purchaser is a housewife, a large industrial corporation or a military procurement agency. It is even a subject of importance to industrialists and businessmen of all types since quality is considered as the modern mantra to woo more consumers.

Traditionally, quality control and quality assurance was considered a managerial function and hence the law has very little role to play. However, large number of unscrupulous manufacturers has started marketing goods of poor quality to

\(^2\) William G. Haemmel *et al., Text, Cases and Materials on Consumer Law*, West Publishing Co., Minnesota (1975) pp.15-16. However, M.K. Gandhi, while he was in South Africa in 1890, had in his speech said the nicest words ever known to the world about how a consumer is to be treated by businessmen. He said: “A customer is the most important visitor on our premises. He is not dependant on us. We are dependant on him. He is not an interruption of our work. He is the purpose of it. He is not an outsider of our business. He is part of it. We are not doing him a favour by serving him. He is doing us a favour by giving us an opportunity to do so”.
the dismay of all concerned. Degraded quality in goods not only failed in giving ‘value for the money’ to its consumers, but also posed severe health and safety problems to the public at large. The state could not in those situations stick on to its ‘neutral arbiter’ position any longer. Society at large and consumers in particular has started looking towards the various organs of the state to tackle the difficulties created out of marketing goods of substandard quality with a view to get a helping hand to the suffering mass of consumers. Thus we observe large number of enactments and judicial decisions favoring consumers of poor quality goods and services. However, this transition was not with sufficient intensity that the situation warranted. Therefore, large variety of consumer problems remained unsolved both by the judiciary and legislatures. Efforts to achieve improvements quality of goods can be summarised under the following heads.

Quality Control Through Self-regulation

(a) Code of Practices

When we look upon law as an instrument to control quality of goods and services, many modalities would come to the forefront. Quality control far from being an agenda for action by lawmakers and law enforcers can be a priority concern for the producers and consumers also. Producers can take up quality control as a matter of volition in their establishment so as to attract better consumer preference. But business houses that formulate and implement business codes voluntarily are very rare. Only those businessmen who have already established a stake on their goodwill in the market may opt for that since codes may enhance their goodwill further among consumers. Many businessmen often strive to do business only in the short run and to make maximum economic advantage out of that. Manufacturers and sellers who aim
at long term returns alone are generally formulating voluntary codes as a matter of self-discipline and others may not. However, it is possible to encourage traders to go for voluntary codes by governmental actions. It can give tax concessions and preference in purchases from producers of quality goods. Various agencies of the Government can also be instructed to follow the line.

Producers and sellers as a class can formulate business codes through their trade organisations. Codes thus made is generally supervised and enforced by the association of traders itself. Business codes invariably contain provisions ensuring quality standards for goods and services. This form of quality control is otherwise known as self-regulation.

In self-discipline, we have noticed that traders who long for short term gain generally will disregard voluntary codes. However, codes formulated and administered by trade associations cannot be neglected even by firms intended to earn short-term gains, since no trader can withstand for long, ostracisation by the trading community. However, rogues in any businesses cannot be caught so easily in this way.

The utility and value of voluntary codes remains to be resounding so long as its implementation and supervision are properly done to ensure better compliance. But it is always said that codes are not rigorously implemented and a lenient view is taken in most cases since trade associations apprehend loss of membership if actions turn to be rigid.
Voluntary codes, being a reflection of the trades' commitment to the society and the consumers, it is often suggested as the best method to dispense with many consumer problems including degraded standards in quality. Even though codes are widely encouraged and practiced in many western countries, what we observe in India is a totally different scene. Business codes as a tool to protect consumers and to ensure quality, finds no wider acceptance in India. But for few trades, code procedures are unpopular here. Requirement of an agency to encourage businessmen to go for this form of self-regulation is absolutely necessary to provide speedy and inexpensive consumer justice.

(b) Self-regulation Through Commercial Guarantees

Consumer guarantees offered to purchasers by producers and sellers more often than not contain clauses assuring the quality of the products in question. Guarantees can be either 'legal guarantee'—that emerge directly from law—or 'commercial guarantee'—that is offered voluntarily by the producer or seller. The rights and obligations of a legal guarantee are laid down by law. Commercial guarantee terms are unilaterally determined by the guarantor and therefore its availability is always subject to the conditions and procedures prescribed by that person. One of the fundamental problems facing consumers at present springs from the general absence of a legal framework applicable to commercial guarantees. Commercial guarantees are often offered in small print and contain terms limiting the liability of manufacturers. This in effect undermines the usefulness of the guarantees. The consumer dissatisfaction that galore about commercial guarantees led the European Commission and the Directorate of Trade and industry of England, to issue specific directives to improve the situation. Commercial guarantees in
England are made legally enforceable. Under the English law, a commercial guarantee should necessarily confer additional benefits on the consumer over and above those prescribed by legal guarantees.

However, the Indian scenario on commercial guarantees is in its infancy. Express provisions of law in this regard are lacking. But it is possible to treat commercial guarantees as 'defects' in the goods, if any imperfection or shortcoming in quality happens to be contrary to the claim made by the trader, under the Consumer Protection Act, 1986 and therefore actionable. Similarly, the term 'unfair trade practice' takes in its fold guarantees and warranties and is made actionable both under the Consumer Protection Act and the Monopolies and Restrictive Trade Practices Act, 1969. However, that much alone is not adequate. A more legible and comprehensive legal package promoting and streamlining commercial guarantees is necessary in the new globalised market situations.

(c) Self-regulation Through Information, Inspection and Rejection

If consumer is properly informed about the product and is given sufficient opportunity to inspect the goods, many complaints that may come up after the purchase can be avoided. A legal framework that insists for providing necessary information to consumers together with a right to inspection and rejection would be a strong source of protection of consumer interest. Through this process of inspection and rejection, consumers can determine the qualities of their purchase. Consumer appreciation depicted in this way would be a source for manufacturers and sellers to assess the areas that require modifications and improvements in their products.

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3 The Competition Act, 2001, which is yet to be brought into force, replaces the Monopolies and Restrictive Trade Practices Act, 1969.
Since the self-regulatory regime is largely self-supporting, these forms of protective measures are to be encouraged to the maximum extent possible. A system that allows the operators in the market to discipline themselves, will afford sufficient flexibility and ensure better compliance. Self-regulatory regime would ultimately prove to be a boon to the exchequer since it can save enormous amount of money that it will have to invest if any other alternative system of control is to be brought in.

Quality Control Through Administrative Actions

For controlling the quality of goods, diverse administrative techniques are used. In the present day world of liberalization and privatization, there are many who question the desirability of administrative regulations. The craving for freedom of action by the market operators necessitates substantial reduction of governmental interference. But that doesn’t mean that parties are to be given an unbridled freedom of action. Administrative measures rather facilitate the proper exercise of the freedom by regulating and limiting chances of excesses and abuses.

Administrative regulation in product quality generally is in the form of granting of licenses to manufacture, distribute and sell. Conditions are imposed on licenses at all stages with a view to attain the desired results. The eligibility of the licensees is scrutinized and an undertaking from them is also taken to ensure compliance with the terms of licenses. On many occasions, it is insisted that the producer shall seek necessary quality certification from accredited agencies. This is done with a view to ensure quality assurance. For example, quality standards are formulated for food products under the Prevention of Food Adulteration Act, 1954 and for drugs under the Drugs and Cosmetics Act, 1940 through the administrative
agencies created under it. Department of Legal Metrology created under the Standards of Weights and Measures Act, 1976 also supervises the standards in weights and measures.

Flexibility of action and the efficacy in supervision and implementation are considered the dominant virtues of administrative controls. In issues concerning product quality, administrative steps taken often ensure standards of performance, safety and durability of diverse goods that come to the market. The conduct of manufacturers and sellers are kept under constant vigil by the administrative agencies. Periodical inspections, searches and seizures enable the deviant among them to come to the main stream. Severe offenders are thrown out of their business by cancellation of the trade licenses granted to them, others properly warned and punished as found necessary.

The major objection against administrative controls is the hefty amount of money required in meeting the expenses involved in the proper monitoring of the scheme. It is also said that administrative agencies create unnecessary bottlenecks and there may be the possibility of abuse of power. If these apprehensions are successfully removed, it can become an acceptable mechanism of quality control. Increased participation by consumers and consumer organizations, together with sufficient transparency in to the procedures, can reduce the administrative excesses and bottlenecks considerably.

The issue of administrative costs can be justified from many angles. State is in any way destined to protect the health and safety of its citizens and financial constraints are not generally taken seriously in issues concerning health and safety.
However, it can be suggested that state and the trade in an agreeable proportion share the cost. It is also possible to charge the licensees sufficiently to earn money to cater to the needs of maintaining the agency. The licensees can pass it on to its consumers who alone need to bear the burden and not others.

**Quality Control Through Independent Agencies**

'Quality of products can best be assured, if standards are set, implemented and supervised by an independent agency. If the logo of standardization adopted by the agency is prominently affixed on the products, consumers can depend on them as it depicts a minimum quality standard. Standardisation of products through this mechanism is seen used globally to sub serve public good. However, for the success of this system of quality assurance, it is necessary that producers are encouraged to adopt standardisation and consumers are made aware of the virtues and benefits if they prefer to purchase such standardised goods. But the extent to which manufacturers can be encouraged to volunteer for adoption of quality standardisation is far from clear. Even though improvement of quality standards is necessary for any business to survive in this era of global competition; many of them keep themselves out from the main stream. Consumer illiteracy that pervades in the markets of developing economies may not adequately compensate the producers who prefer to adopt standardisation. High quality goods are generally priced high and consumers in poor economies may not opt for such goods since their purchasing power is low. In these state of affairs, producers with the intention of grabbing short-term gains will come to the market with substandard and low priced goods to woo the consumers who can easily afford to buy their products.
Degradation in quality, would among others, gives rise to health and safety problems not only to consumers but also to the general public. Quality cannot be left out as a matter of volition for the manufacturers and sellers. The perils that substandard goods may produce cannot be compensated adequately in many instances. Dangers occurred to life, health and property might not be compensated adequately in terms of money. All these suggest the necessity for introduction of a compulsory standardisation scheme. But, considering the state of the national economy, such a compulsory scheme can only be introduced incrementally.

The Bureau of Indian Standards is the national agency in India to formulate and implement quality standards for various goods. It is established to provide third party assurance to common consumer about quality. The Bureau has in fact done a commendable job in laying down quality standards to a large number of goods. It has incorporated many international standards into Indian standards so as to bridge the gap between national and international standards. It offers technical services to willing entrepreneurs to introduce a system of quality control in their establishments. The Bureau also organises seminars and conferences to spread its message to all concerned including consumers. However, the quality certification scheme of the Bureau remains largely voluntary which producers may adopt if they so desire. This makes the legitimate expectation of consumers for quality goods a dream.

It is possible under the Bureau of Indian Standards Act, 1986 to make the quality certification scheme compulsory. At any point of time, the Central Government may by notification in its official gazette, make any quality standards of

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4 Till March 2001, the BIS has formulated 17,600 Indian Standards out of which nearly 2000 are for products that are of direct interest to common consumers. See D.P.S.Verma, "Developments in Consumer Protection in India", 25 Journal of Consumer Policy, 107 (2002).
the Bureau, compulsory. But instances in which the government is seen to have exercised its power under the Act are only few. The government ought to have considered the wider public interest involved in declaring and making the standards compulsory at least in cases in which the health and safety of consumers are in question.

Even though notifications under the Bureau of Indian Standards Act, 1986, making Indian standards compulsory are few, we find its application in plenty under the Essential Commodities Act, 1955. A catena of orders issued under this Act, make the certification of the Bureau quality control scheme compulsory. In addition to this, the Fruit Products Order, 1955, lays down separate quality standards for fruit products and insists that every manufacturer shall obtain a license for manufacturing fruit products.

**Quality Control Through Grading and Labeling**

(a) *Agmark*

Grading and labeling is yet another method of standardisation popular among consumers. The 'agmark' labeling envisaged under the Agricultural Produce (Grading and Marketing) Act, 1937 is intended for quality marking in agricultural produces including horticulture and livestock products. However, grading and marking under this Act remains voluntary. By an amendment made in 1986, it has now become possible for the Central Government to make grading and labeling under the Act compulsory for any produce. It is in the interest of consumers and public that the government may exercise this power liberally at least in stage-by-stage to improve upon the quality of products under the Act.
(b) Eco-mark

The 'eco-mark' labeling ensure the quality and eco-friendly nature of the products in question. Increasing concern for environment the world over signifies the necessity of adoption of 'eco-mark' labeling of diverse products. True that the Government of India, under the Environmental Protection Act, 1986, has formulated a scheme for certification of eco-friendly products. But the scheme is entirely optional for the producers. Voluntary schemes, however attractive and beneficial it may be, will be slow in adoption and implementation. Measures are to be formulated to encourage and inspire producers to go for eco-marking. Financial and other incentives can be considered. When better consumer awareness is generated through educational exercises, it is likely that they may prefer to purchase eco-friendly products. Consumer preferences reflected in this way would certainly confer better commercial advantage to manufacturers.

Encouraging Adoption of International Standards

The concepts of global village and global market necessitate the introduction of international standards than national standards into the manufacturing process. In this highly competitive economy, quality standards occupy a unique position in the market. Gone are the days when national standards are treated as an adequate answer to questions of quality. Global competitiveness warrants global standards. Consumers are becoming more and more aware about quality and standardisation and the benefits that it confers on them. Therefore manufacturers and sellers should strive to adopt standardisation not only as answer to global competitiveness but also to show their concern and commitment to the consuming public. Together with these voluntary efforts, incremental introduction of mandatory schemes of standardisation
would certainly confer positive advantages to the consuming mass. Executive activism in the area of compulsory standardisation seems to be a strong desire of the consumers for long.

**Merchantable Quality and Satisfactory Quality**

Legislative response to consumers' desire for goods of standard quality can be best seen in the provisions implying terms and conditions in the law of sale of goods. The Sale of Goods Act, 1893 of England can be said to be the pioneer in the law of quality assurance. This Act reads into the contract of sales many terms. In all sales of goods, the Act implies that the goods are of 'merchantable' quality. The Act does not give any definition to the term 'merchantable'. Hence judiciary ventured to find out its meaning. This gave rise to large amount of legal literature. However the uncertainties attached to the definitions given by the judiciary gave rise to introduction of a new term of 'satisfactory quality' instead of merchantable quality in Britain. The Sale of Goods Act, 1979 of England after its amendment in 1994, consider goods to be of 'satisfactory quality' if they meet the standards that a reasonable person would regard as satisfactory, taking into account any description of the goods, the price and all other circumstances. The fitness for all purposes for which goods of the same kind are commonly supplied, its appearance and finish, freedom from minor defects, safety and durability will also be considered as relevant in appropriate cases. Eventhough the English law has bid a farewell to the uncertain term of 'merchantability'; India has not taken any step in this direction. We still loiter around the earlier 'merchantable quality' doctrine. As a positive step towards better protection of consumers, it is necessary to clear ambiguity in the existing law.
The sales law generally presumes that the buyer is the best judge to determine the nature and quality of the goods that he purchases. However, if the purchaser informs the seller either expressly or by implication the purpose of his purchase, law implies a condition that the goods supplied are fit for the purpose of the buyer. But this legal implication may not be available if the buyer relies on any particular patent or trade name. The inference drawn in such instance will be that the buyer is not relying on the skill or judgement of the seller and therefore, he need not be saddled with the obligation prescribed by law. However, what can be noticed at present is that most goods are sold under a trademark or trade name. The trademark or trade name may be used by the consumer to identify a product and not with the intention of excluding the seller from his liability. It can therefore be seen that in England and America, this proviso has been removed from the statute book. India has to take initiative in this direction.

**Implied Terms and Conditions**

Implied conditions as to sale by description and by sample are also intended to ensure that the consumer gets goods of the quality he desired for. The conditions and warranties implied under the sales law no doubt remain as beacon lights for consumers. However, the Sale of Good Act itself contains a provision enabling the parties to exclude all or any of the conditions and warranties implied by law. Eventhough the provision is intended to recognise the principle of freedom of contract, in the hands of businessmen it became a powerful weapon for consumer exploitation. The exclusion clauses in standard form contracts became so rampant even to suggest that it neutralized the beneficial provisions in the Act protecting consumers. Before any legislative attempt to remedy the evil effects of exclusion
clauses, the judiciary seems to have understood the regressive trend of exclusion clauses. Hence the courts started interpreting the exclusion clauses in a way to subserve the interests of consumers.

Legislative endeavors that followed in England are highly oriented towards protecting the legitimate interests of consumers. Britain enacted at least two enactments to contain the evil effects of exclusion clauses. The Supply of Good (Implied Terms) Act, 1973 and the Unfair Contract Terms Act, 1977 are the obvious examples of legislative enthusiasm shown in England. The cumulative effect of these enactments is to invalidate the effect of all exclusion clauses that limit the liability of sellers for breach of implied terms under the sales law. In consumer sales such exclusion clauses are declared void and in non-consumer dealings, the exemption clauses are subjected to a severe test of reasonableness to assess its maintainability.

In effect, the implied terms in sales law become mandatory in consumer dealings and even in commercial sales the seller can exclude them only if he is able to satisfy the court that the term excluding or limiting liability was in all circumstances reasonable. Exemption from liability under the pretext of manufacturers' guarantees is also sought to be regulated under the Unfair Contract Terms Act, 1977. It has been stated that liability for loss or damage resulted out of defect in goods or due to the negligence of the manufacturer cannot be excluded through the garb of guarantees. Consumer contracts in England have been regulated further by the Unfair Terms in Consumer Contracts Regulations, 1994.

The device of implying terms relating to quality in goods in sales contracts has been a powerful tool of quality control. But this device happened to be weakened by
the emphasis given to the principle of freedom of contract through exemption clauses. The result was disastrous. The exemption clauses virtually negated the implications of implying terms and the usefulness of this device became defunct. It was at this stage that the judicial trend turned towards consumers. Legislative endeavours that followed were encouraging. However the legislative enthusiasm visible in western countries has not shown its presence in India so far. Therefore, the Indian consumers remain as victims of exemption clauses in sales contract. A change in trend is highly necessary for better protection of the consuming public in India.

**Increased Use of Criminal Sanctions**

In order to prevent trading abuses and thereby to ensure quality, the tool of criminal sanctions are used extensively all over the world. While civil remedies provide compensation for the injury caused to the consumer, criminal law prohibits certain undesirable trade practices. Activities that are criminalized for consumer welfare are mostly ‘strict liability’ offences. Criminal law being enforced by public authorities, consumers are relieved of the expenses of prosecution. In strict liability offences, the prosecution is relieved of from the burden of proving the offender’s guilty mind.

Many criminal enactments make it an offence to indulge in trade practices that are adverse to consumer interests. The Indian Penal Code, 1860 itself contain provisions penalizing manufacturing and selling of false implements for weighing and measuring. Even though weights and measures are not related to quality, there exists an inseparable link between weight, ‘value for the money’ and quality. A far more comprehensive enactment that regulates standards in weights and measures is the
Standards of Weights and Measures Act, 1976. This Act keeps the issue of weights and measures under the administrative control of the Department of Legal Metrology. A major weakness of the 1976 Act probably is the provision intended for punishing officers for vexatious actions, inspection and seizures. Erring officers must necessarily be punished. However, if they are punished in the same way as the people who violate the standards of weights and measures, it is likely to dissuade them from performing their duties sincerely. Therefore, aggrieved parties can be permitted to deal with the abuse of power by officers departmentally or through private action.

The Penal Code also encompass provisions ensuring quality of food articles, drugs and medicinal preparation by punishing persons who interfere with their purity by adulteration. The Prevention of Food Adulteration Act, 1954 and the Drugs and Cosmetics Act, 1940 enlarge the scope and amplitude of the issue of prevention of adulteration. Standards for diverse food articles and medicinal preparations under different systems of treatment have been prescribed. Laboratories are established and Analysts and Inspectors are appointed to carry out the purpose of these enactments. Depending up on the gravity of the offence, different punishments are prescribed. State amendments made to the Acts by certain states have prescribed very heavy penalties. However, the convivial trend prevailing in various courts in India is distressing. The magnitude of the issue of adulteration and its repercussion on consumer's health and safety are not seen appreciated in its true perspective. Even the prescription of a statutory minimum punishment for adulteration is found neglected in many cases. This type of laxity in attitude is not confined to judiciary alone. The rigid quality control measures envisaged by these enactments are not strictly implemented either due to paucity of qualified staff or due to absence of
necessary enthusiasm required from the governments. Proper executive and judicial vigil is called for in this area to improve the situation.

The spread of criminal law into other areas of consumer interest must be made. In the area of consumer safety, consumer credit and trade descriptions we find the use of criminal sanctions in Britain. Consumer safety and false trade description including misleading advertisements are fertile areas of consumer deception in India. It is high time that India must learn from the experiments and experiences from others to afford better protection to its consumers from the domestic and global operators in our market.

*Encouraging GMP for Consumer Products*

Quality of drugs and pharmaceutical products occupy an important position in consumer protection. This is an area where the World Health Organisation has made significant contributions. WHO has expressed the international concern for health and safety of mankind through the formulation of a draft text on ‘Good Manufacturing Practice’. The GMP advocates for quality in pharmaceutical products through sampling, specification and testing together with documentation and release procedures. These methods ensure that necessary tests are actually carried out before materials and products of medicinal use are released for supply. Diverse testing procedures are provided to ensure safety and quality of drugs and pharmaceutical products. However, many nations including India have not made GMP a condition for licensing in drug manufacture and distribution. The reasons cited are economic among others. Considering the severe threat that sub standard drugs may pose in any society, it is mandatory for the state to adopt and implement the GMP as a
compulsory requirement in the production of any drug. The health and safety of its citizens shall not be allowed to be sacrificed in the altar of financial constraints.

The war against production and marketing of substandard articles of food and drugs must be fought seriously. In the lines of the ‘Good Manufacturing practice’ formulated by the World Health Organisation for drugs and pharmaceutical products, it is essential to make and get implemented a code of good production and distribution practice for food products also. Proper implementation of these practice codes must inspire all concerned to the best advantage of the consuming public.

Civil Liability and Compensation

In order to discipline the trade and to bring them in tune with consumer expectations, law envisages diverse methods. Apart from the criminal liability already discussed, creation of civil liability for loss or damages that has occurred due to defects in quality standards is the other remedy. Even the fundamental law of the land viz., the Constitution of India, through the instrumentalities of public interest litigation and class actions, enable citizens to compel traders to follow quality standards. It is also felt that free and fair competition among producers and sellers can evoke quality consciousness among traders and consumers alike.

The contribution of the common law towards consumer protection can be seen embedded in the legal principles of contracts and torts. The common law courts while sticking on to the principle of contractual freedom rendered many judgements making the manufacturers and sellers liable for defective quality of the goods they sold. The courts attributed a ‘duty to take reasonable care’ towards any one who come across their product. Compensation was awarded not only for physical injury, damage or
financial loss but also for distress and disappointment. However, it was burdensome for consumers to establish a breach of ‘duty to take care’ by manufacturers. Judicial attempts to take stock of the situation, paved the way for development of the principles of strict liability and absolute liability. Courts used these principles in those grave situations that perpetuated large-scale consumer injustice. Still, it was not clear in what all situations the courts will be applying these principles, which made the legal system to that extent fluid and vague.

Trademark Law

The law of trademarks is traditionally considered as a branch that protects the private property rights of its proprietors or licensed users. However, through protection of the proprietary rights of its owners, the consumers are also benefited. Long and continued sustenance of a trademark or trade name in the market place may give rise evolution of good will and reputation among consumers. Consumers through the trademark or trade name attached to the product often identify manufacturers and sellers. Protection accorded to trademarks and trade names from invasion or imitation by imprudent tradesmen saves the consumers also from deception. The quality standards of goods marketed through trademarks and trade names would have won consumer confidence. Others to reap its economic advantages may subject consumer dependence on the product identified through the trademark to exploitation. Unauthorised use of the trademark or use of a deceptively similar trademark is visited with civil ad criminal consequences by actions for infringement and passing off.
But the civil actions for infringement and passing off can be initiated only at the instance of the proprietor or licensed users of the trademarks. The consumers who are deceived by the falsified trademarks find no remedy under the Trade and Merchandise Marks Act, 1958. Consumers and consumer associations can effectively check the injustices perpetuated to them if they are also permitted to approach the court under the trademark law.

**Comprehensive Legislation for Consumer Safety**

An overall picture presented by the law granting civil remedies to consumers in India is not encouraging. Compensatory provisions for defect in goods are so scattered and avoid easy perception. In spite of provisions for damages for loss or injury, there are still ambiguities about the extent to which the safety and health standards are maintained through compensation. Minimum quality standards for all goods to ensure safety and health of consumers and public are to be prescribed by law. For this purpose a comprehensive legislation is essential.

A remarkable change in consumer grievance redressal is seen effected through the Consumer Protection Act, 1986. It has provided for the establishment of consumer grievance redressal agencies all over the country at the district, state and national levels. Unlike in ordinary civil litigations, this enactment has dispensed with court fee. Simple and speedy disposal of through summary procedure is contemplated. For over a decade, consumers in India have started enjoying the benefit provided by this Act. However, these agencies, under the pretext of disposing cases summarily, have often abdicate their responsibilities by dismissing cases involving complicated questions of facts. In the threshold of speedy and summary disposal, consumer justice
has been denied. But the latest decision of the Supreme Court of India in *J.J.Merchant v. Shrinath Chaturvedi*, has provided sufficient relief to Indian consumers. Their Lordships of the Supreme Court has rejected the plea that complicated question of facts cannot be decided in summary proceedings. It was held that consumer forum is an alternative forum established to discharge the functions of a civil court. Hence delay in disposal of complaint cannot be a ground for rejecting it and directing the complainant to approach the civil court. The court also upheld the competency of the fora to decide issues of facts and law. It also advocated for using the latest techniques of video or telephone conferencing in the examination and cross-examination of witnesses.

The Consumer Protection Act, 1986 is amended and many far reaching changes have been made. It has introduced a court fee system for adjudicating disputes as in ordinary civil courts. An initial screening to determine its maintainability is also there. Even though an initial screening of cases filed to determine its maintainability is not going to create much harm to consumers, introduction of a court fee system is highly detrimental. Most of the consumers who are vulnerable to injustices are poor. Court fee system would certainly deter many of them from approaching the fora. If at all court fees is to charged, it can be levied from the erring respondents in addition to and along with the compensation granted to

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6 Id. at p.2933.
7 Id.at p.2935.
8 Id. at.p.2937.
9 See the Consumer Protection Amendment Act, 2001.
10 Ibid.
11 Ibid.
the petitioners. Such a scheme would be more in consonance with the ideals of consumer justice and also less burdensome to the revenue of the exchequer.

Consumer rights sought to be protected under the Consumer Protection Act, 1986 are many. These rights are within the functional domain of the Consumer Protection Councils established at the center, states and districts. These councils are to be provided with sufficient funds for its proper functioning. From the compensatory costs collected from the respondents as said above, funds may be diverted to meet its expenditure. Similarly, the present status of functioning of consumer associations in India is far from satisfactory. Consumer associations may be asked in appropriate cases to negotiate, mediate and arbitrate consumer disputes. Empowerment of the consumer associations in this way by law would make their role far more significant. This would encourage consumers in taking membership in consumer associations, which would strengthen the associations considerably. State may finance the consumer associations liberally since strong associations would help in the proper administration of the Act to the best advantage of all. Administrative costs of the Act could be reduced considerably if consumer associations are strong enough to fight out large number of evils that their members confront in the market. Strong consumer associations are necessary to neutralize the power that corporate houses wield in the market. Balancing the power ensured through measures adopted to strengthen the weaker would create a level playing ground where both the contestants can compete fairly. The state in this way can withdraw from its role as a powerful administrator in the marketplace.
Paying higher price for low quality goods is considered as a necessary incidence of poverty. However, the plight of the teeming millions in India cannot be thrown to the destiny. Positive action from all possible quarters is necessary to render justice to them. But the Indian society is yet to understand the behaviour and problems of different groups of consumers and sellers in the market place and the relationship between this private behaviour and the activity within the official legal system. The issues are far more than of mere academic significance. It has been stated that in developed countries the public opinion is much cooler towards consumer protection efforts than it was a decade before. For many, consumer protection has become a synonym for bureaucracy and inefficiency of governmental regulations.

In the opinion of Sir Robert B. Reich, people have started a retreat towards consumer protection. He said:

"Consumer Protection was fine when the economy was buoyant, but in times of belt-tightening, it is regarded as an unaffordable luxury, since its benefits are often less immediately apparent than its costs. Ask the average consumer whether he wants unsafe cars, adulterated foods, dangerous toys etc. he will answer with a resounding “no”. But ask him whether government regulators should intervene to remedy these problems; his response is likely to be ambivalent. In its crudest form, the question has become: whom do you trust less – big businesses or the government? Recent history offers no particular reasons for trusting either."

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14 Id. at p. 120.
It is therefore necessary that consumer protection efforts including measures for quality control be channeled through the least costly and most effective mechanisms and institutions.

What is good for the consumer is good for the business also. Many businessmen know this and build their trade on this philosophy. There is no better foundation for any business than assuring that the product or services produced is worthy of acceptance by the consuming public.

**Specific Performance with Compensation**

As stated earlier, under the general principles of contract, the ordinary remedy for breach of contractual obligations is to give damages from such breach. A consumer who has suffered loss or injury due to a defect in the quality of the goods he purchased has only a contractual remedy of compensation. This leaves the seller free to cause small amounts of damage to many people without fear of retribution. He can run the business profitably even after payment of damages. Therefore, an action for damages and compensation is not an effective and equitable remedy in many consumer complaints. Compelling the seller for specific performance and to compensate the aggrieved buyer for the loss can be suggested as a better remedy to the purchaser. This remedy would have a dual effect (1) to compensate for the loss and (2) to exert a pressure to remove the defects and thereby to improve the quality of the goods supplied.

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Strengthening of Consumer Associations

Consumer problems are generally individual in nature. The individual consumer in most cases will be unsuccessful in his move against the big corporate houses. Therefore, successful consumer protection lies in measures, which are capable of reconceptualising little injustices as collective harms. Only if individuals become conscious that they suffer as a group, there is likely to be the possibility of a change in the social perception of accepting low quality goods as an inevitable part of life. There may be difficult cultural and social barriers to the recognition of a group consumer interest. However, the aggregation of consumer claims and the mobilization of public opinion are important steps towards the success in the resolution of individual problems. Consumer activists in general, recognize the value of effective class action provisions in dealing with consumer affairs. A class action provision that enables a right to recover damages would hold the seller accountable for the total loss caused to many individuals. This would provide a useful deterrent against violation of quality standards that are even in minor amounts would give rise to huge savings or profits to the enterprises. Reforms must concentrate on the facilitation of sustained collective activity by consumers at all levels of government — legislative, executive and judicial.

Consumer associations exist to offer advice on individual problems. They are very common in the United States and Britain. Although the scope of their activities is wider than just advice on consumer problems, advice accounts for a fair proportion

17 See Iain D.C. Ramsay, op. cit. at pp. 146-147.
18 However, The judicial opinion expressed by Fletcher Moulton L.J. in Markit & Co. Ltd. v. Knight S.S. Company [1910] 2 K.B. 1021 (C.A.) about class actions is not encouraging. His Lordship opined that since damages are personal to the person suffering them, there is no common interest among those who have suffered the damage. This attitude requires change.
of their work. It supplies the consumer with information about products and services by testing them and publishing the results in their magazines. These organisations can be either sponsored by the government and local authorities or by its member subscribers. They through its network of offices even help the consumers in getting satisfaction when they feel unhappy about faulty goods or poor services and also give advice before they purchase goods.\footnote{For a brief account of the functioning of the Consumer Organisations in U.K., see Anthea Worsdall, \textit{Consumer Law for the Motor Trade}, Butterworths, London (1981), p.177 \textit{en. seq.}} Through these associations the consumers have a ready source of help close at hand. They will act as close associates of the market place. Consumer associations shall remember that their journey is long and the enemy is strong. Their functioning will persuade the business community to go for self-regulation to improve the quality of the goods and services.\footnote{The major consumer organisation in U.S.A. is the Council of Better Business Bureau (CBBB) that came into existence in 1970. The CBBB besides other services provides for consumer arbitration for consumer justice and also consumer education programmes. See William G. Haemmel \textit{et al.}, \textit{op. cit} at p.100.}

In India, there is a need of strong consumer organisations. After the enactment of the Consumer Protection Act, 1986, many consumer associations have been formed. Their scope and reach seems to be limited. Many toil out of paucity of funds and many are mere paper associations. The Consumer Education and Research Centre, Ahmedabad is one of the consumer organisation which functions at the national level rendering all services that the consumers require. They publish consumer guides, carry out product testing, conduct training and education programmes, render aid and advice on individual consumer issues and spreads consumer literacy. They are the watchdogs in consumer markets. India should strive for more consumer associations of this kind all over India. Consumer gains strength and wield power only when they are organized under able consumer activists.
Governments, Central and States, should encourage by all efforts the formation and functioning of consumer organisations. Organised consumers would be a powerful watchdog against trade abuses of all sorts including marketing of substandard goods. This in effect facilitates the evolution of a system in which the market operators themselves regulate their behavior.

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