In a liberal economy, guided by the principles of competition, it is possible to question the necessity of a legal regime to control quality. It may be argued that the market forces by themselves will be able to ensure quality and fairness in consumer affairs. Therefore, no external controls are required. The consumer who happens to be the victim of a bad bargain would certainly avoid a second purchase from the same producer. He may opt to go for another producer who produces superior quality goods. Consumer dissatisfaction reflected in this way would throw the manufacturer of low quality goods out from the market. Only producers of quality goods would develop and prosper. In this way it is arguable that quality control does not require legislative, administrative or executive interference. Laws are required only to ensure fair competition in the market.

Quality control through market mechanisms may work well in an ideal market situation where manufacturers and sellers compete fairly. But such ideal situations never come up and subsist for long in any economy. Hence legal interference becomes necessary. The notion of consumer's control of quality by his preference for standard goods also may not work in all instances. For example, poor quality of the product may lead to injury to consumer. It may cause severe harm to the society at large. Here, if quality or safety requirements are left exclusively to the market forces to determine, society will have to suffer. Since quality and safety requirements are so interlinked, unsafe products on many occasions are likely to cause threat not only to the purchaser of the product but also to the general public. Quality control in this
sense is not only a concern for the consumer, but also to the public at large. In instances where irreversible injury or damage is likely to occur to the citizenry, it becomes the duty of the state to come to the rescue of its subjects.

The effort made in this study is to have a humble but juristic travel into the various legal mechanisms that are generally switched on to ensure quality of the goods. How far these measures reach the target groups? To what extend the present legal regime is capable of meeting the challenges posed by economic liberalisation? Does the law require any change and if necessary in what manner? These are some of the poignant questions that warrant detailed enquiry.

Relevance of Quality Control in Protecting Consumers.

Manufacturers often misrepresent the quality, price, and measure of the goods and services they provide. They issue false and misleading advertisements to lure the consuming public. A good number of them indulge in unethical trade practices. Consumers are to be protected from these unscrupulous traders and manufacturers.

The old concept of 'consensus ad idem' finds no place in modern contracts. Manufacturers and sellers generally prescribe the terms of their contracts in advance. These 'standard form' contracts, besides being a tool for commercial convenience, have turned out to be an instrument of consumer exploitation. Businessmen usually insert in it as many provisions they can which are favourable to them. Besides, these contracts would generally include provisions limiting or excluding their liability to the

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1 The term means "meeting of minds". The medieval notion was that every contract is the result of a common agreement between the parties. Therefore, it is none of the business of the government or the judiciary to dismantle what the parties have agreed upon while they entered in to the contract. For a detailed discussion on this concept, see P.S. Atiyah, An Introduction to the Law of Contract, Clarendon Press, Oxford (1989).
consumer for obstreperous articles. The consumer is unable to make an amendment to
the terms of the contract since in most of the situations he is placed in a position to
accept what is offered in toto or to go without it. Since the consumer cannot do away
with such essential goods and services, he has to accept it on terms offered to him.
This prejudicial situation that subsists in the market necessarily calls for adequate
legal control.

Defect in goods also causes loss or damage to the consumer. The early rule
insisted on was caveat emptor. In the present day, commodities in the market consist
of very complicated products. The caveat emptor rule designed in primitive
agricultural society is outdated and unfriendly to the modern consumer. The principles
of negligence under tort law or the principles of freedom of contract, render little help
to the consumer. The manufacturers and sellers always dominate the market.
Disunity and ignorance among the vast majority of consumers paved the way for their
economic exploitation in terms of quality and price. Assurance to quality ensures
value for the money spend by consumers. Qualitatively degraded products in the
market put the consumers in an economically disadvantageous position. In this sorry
state of affairs, the consumers need the support of the state to ensure their economic
well-being and fair deal in the market.

Products primarily used as food and drugs may cause severe health hazards
unless they are safe. Quality assurance is essential here to prevent injury to

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2 This is true with regard to all essential goods and services, offered either through a monopolistic
public corporation or a powerful private company.
3 This maxim means, "let the buyer beware". The buyer as per this doctrine is supposed to know
whatever information he need about the goods and the seller is not responsible for the defects in
goods.
consumers. Mandatory quality standards may become essential. It may be made possible only through sovereign interference.

If the market is to function in an efficient manner, consumers need to be supplied with adequate information about the products and services available from competing traders. Possession of this information enables the consumer to make a prudent purchasing decision. If the consumer is adequately informed, he can indicate his preferences by himself. Enthusiasm among traders to satisfy the consumer preferences will lead to competition among them. However, if the necessary information about price and quality is not made available, the extent of competition created through the consumer preference mechanism will be marginal. The level of information therefore is to be adequate.

In England the Monoly Committee examined these matters in detail and made the following proposals for consumer protection.

(i) Arrangements are to be made to give the consumer a positive assurance that the goods on offer are safe and of sound quality;

(ii) Provisions are to be made for information annexed to the goods, which will assist the consumer to judge for himself whether or not they will satisfy his particular requirement;

(iii) The assessment of the merits of the goods on offer by independent agencies;

(iv) The availability of adequate means whereby the aggrieved shopper may obtain fair redressal of his grievances;

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5 This is otherwise known as 'information labeling'.
(v) The restraint of mis-description of the significant characteristics of the goods on offer and

(vi) The restraint of objectionable sales promotion methods, whether in the form of advertisements or otherwise, which are calculated to divert the shopper from a proper judgement of his best interests.  

This philosophy is consistent with the legitimate needs of consumers.

The modern consumer law is an attempt to rectify the inequality of bargaining power, which exists between the individual consumer and the powerful suppliers of goods or services. Quality control law is one major aspect of this branch. The law of consumer protection is in substance the use of legal machinery to allocate consumer losses between the purchaser or user of goods and services, and the vendor manufacturer or others concerned with the production and distribution of goods and services.

The Target of Protection

It is appropriate here to consider whom the law purports to protect. The immediate reply is 'consumer'. Literally, the term 'consumer' means one who purchases goods or services. In this sense any user of goods or services supplied by another would be a consumer. The term 'consumer' understood in this wider sense is 'everybody all the time'. This encompasses even the manufacturer or producer who consumes his own goods or goods manufactured by others. Ralph Nader, the American doyen of consumerism, has expressed the view that the term 'consumer'

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should be equated with the word 'citizen' and the consumer protection law should be regarded as an aspect of the protection of civil rights of citizenry.\footnote{David Oughton and John Lowry, Text Book on Consumer Law, Blackstone Press Ltd., London (1997), p.1.}

However, under (Indian) Consumer Protection Act 1986, the term 'consumer' has a narrower meaning. This is based on the capacity in which the consumer and the supplier of goods or services have acted. This definition is in tune with the law and practice followed in western countries.\footnote{See for example the following provisions contained in the British enactments viz., the Unfair Contract Terms Act,1977, s. 25 (1); the Sale of Goods Act, 1979, s. 61 (1); the Consumer Arbitration Agreements Act,1988,s. 3 (1); the Consumer Transactions (Restriction on Statements) Order,1976, clause 2(1); the Consumer Protection (Cancelling of Contracts Concluded away from Business Premises) Regulations, 1987, regulation 2 (c) and the Unfair Terms in Consumer Contract Regulations, 1994, regulation 2 (1).} In the limited sense, 'consumer' means one who acquires goods or services for private use or consumption\footnote{See the Final Report of the Monoly Committee on Consumer Protection (Commd.1781), 1962, para.2. as quoted in J.A. Jolowicz, "The Protection of the Consumer and the Purchaser of the Goods under the English Law", 32 M.L.R. (1969), p.1.} and not for business purposes. The picture provided by modern consumer protection legislation is of an individual dealing with a commercial enterprise, public or private. A consumer transaction is thus a purchase, lease or borrowing by an individual for primarily personal, family or household purpose.\footnote{James R., McCall, Consumer Protection: Cases, Notes and Materials, West Publishing Co., Minnesota (1977), p.2.} Generally, a consumer is regarded as a non-business purchaser of goods or services.

A consumer transaction in simple terms involves at least three elements. (1) The consumer must be an individual who does not act in a business capacity. (2) The supplier must be acting in a business capacity. (3) The goods or services supplied must be intended for private use and not for commercial purpose.\footnote{See supra n. 8 at p.2. A non-business purchase by an individual in all circumstances may not make him a consumer. For example a person who purchases at an auction sale is not regarded as a consumer under the Unfair Contract Terms Act, 1977 (U.K.), s.12 (2).} While western
enactments totally exclude purchases by individual for commercial or business purposes from the definition of consumer, the Indian law provides for an exception. Under Indian Law commercial purpose does not include use by a consumer of goods exclusively for the purpose of earning a livelihood by means self employment. The Consumer Protection Act, 1986 defines 'consumer' as any person who buys any goods or hires any service for consideration. Any user of such goods or the beneficiary of the services will also be treated as consumer if such use or availing of service is made with the approval of the first person.

But a person who obtains such goods for resale or for any commercial purpose will not be treated as consumer. However, a person who purchases goods to be used by him exclusively for the purpose of earning his livelihood by means of self-employment will not be considered as commercial purchaser. Even if the goods are sold for commercial purpose, the purchaser will certainly be a consumer under the Act in respect of any services rendered or promised to be performed by the seller for the proper functioning of the goods during the period of warranty.

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14 The Consumer Protection Act, 1986, s.2 (1)(d).
15 Ibid.
16 Id., s.2 (1) (d). The consideration might have been paid or promised to be paid or partly paid and partly promised.
17 Ibid.
18 Ibid.
19 Id., explanation to the definition. This explanation has been inserted by the Consumer Protection (Amendment) Act, 1993. Even before this legislative action, the National Commission had taken a similar view. See for example, Secretary, Consumer Guidance and Research Society of India v. B.P.L. India Ltd., (1992) 1 C.P.J.140 (N.C.) and Jyothi Marketing and Projects Ltd. v. M. Fondian, (1992) 1 C.P.J.337 (N.C.).
Judicial Interpretation of the Term 'Consumer'

The definition of the term 'consumer' under the Consumer Protection Act, 1986 had been interpreted by the Supreme Court on various occasions. In Lucknow Development Authority v. M.K. Gupta, the Supreme Court observed that the term 'consumer' under the Act has two parts. The first part covers purchaser of goods and the other hirer or beneficiary of services. This part contains (i) the substantive part which defines the consumer to mean buyer of any goods for a consideration; (ii) the inclusive part which widens the scope of the definition to include users of such goods with the approval of the buyer and (iii) the exclusionary part; which exclude from the definition those persons who obtain goods for 'resale' or for any 'commercial purpose'. Consideration for the purchase of goods could be executed, executory or past.

The second part of the definition relates to services. This also contain (a) the substantive part, which defines the consumer to mean hirer of any service for consideration and (b) the inclusive part which expands the reach of the definition to include in it the beneficiary of such service who uses such service with the approval of such hirer.

The words in the explanation are simple and precise. Purchase of goods will not be for a commercial purpose if, (i) the purchased goods are used by the purchaser himself exclusively, (ii) such use is by means of self-employment and (iii) it is for earning his livelihood.

Thus the judicial construction of the term 'consumer' has shown the real metal, nature, scope and extent of the terminology. According to the court, the broad statement of the term 'consumer' in the Act is purposive to include anyone who consumes goods or services at the end of the chain of production. The comprehensive definition aims at covering everyman who pays money as the price or cost of goods and services.22

However, only a buyer under a concluded sale can be a consumer of goods. In M.N. Narsimha Reddy v. Managing Director, Maruti Udyog Limited,23 the complainant had booked a car by depositing Rs.10,000/-. The defendant subsequently varied the procedure for booking, which was challenged. The National Consumer Disputes Redressal Commission dismissed the petition on the ground that since sale was not complete, there cannot be an action for defect in goods. The Commission said:

"It is thus seen that the scheme of the Act is that a transaction of sale and purchase of goods should have already taken place and the complaint must relate either to any defect from which the goods supplied to the complainant suffer or the charging of excessive price by the trader for the goods supplied"24.

Similarly, in Swaraj Mazda Ltd. v. Mohan Kumar Bhandari25 the complainant had deposited a sum of money for the purchase of a mini-bus. But it was not made available. Eventually the uncashed demand draft was returned to the complainant. When the complainant approached the National Commission, it held that 'there had

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24 Id. at p. 349.
25 (1993) 1 C.P.J. 54 (N.C.)
been no sale of any goods nor had the opposite parties undertaken to render any service for hire'. Since he had neither purchased any goods nor hired any service for consideration, the complainant was held not to be a consumer.

The Supreme Court in *Morgan Stanley* has affirmed the observations of the National Commission\(^{26}\). The Court said:

"In order to satisfy the requirement of above definition of consumer, it is clear that there must be a transaction of buying goods for consideration under clause 2(1) (d) (i) of the said Act. The definition contemplates the pre-existence of a completed transaction of sale and purchase. If regard is had to the definition complaint under the Act, it will be clear that no prospective investor could fall under the Act".\(^{27}\)

Therefore, to be a consumer under the Act, the transaction of sale and purchase of goods should have been completed. So, unless the property in the goods had been transferred, the purchaser will not become a 'consumer'.

The 1993 amendment\(^{28}\) permits the lodging of a complaint even on allegations that the goods *agreed to be bought* by a person suffer from one or more defects. However, a corresponding amendment has not been made to the definition of the term 'consumer'.\(^{29}\) So a person who agrees to buy goods does not become a 'consumer', in spite of the amended definition of 'complainant'.\(^{30}\)

\(^{26}\) See supra n.22.

\(^{27}\) *Id.* at p.16. This decision was subsequently followed by the National Commission in *Tata Timken Ltd. v. Consumer Protection Council*, (1995) 2 C.P.J. 164 (N.C)

\(^{28}\) See the Consumer Protection Act 1986, s. 2(i) C (ii)

\(^{29}\) *Id.*, s. 2 (1)(d)(i).

\(^{30}\) S.2 (1) (c) of the Consumer Protection Act,1986 as amended in 1993 ,reads as follows: "complaint" means any allegation in writing made by the complainant that –  
... (ii) that the goods bought by him or *agreed to be bought by him* suffer from one or more defects; 
(iii) that the services hired or availed or *agreed to be hired or availed of by him* suffer from any deficiency in any respect,... (Italics supplied).
However, in cases concerning deficiency in services, it has been held that the contract in its entirety need not be completed so as to make the receiver of services a consumer\textsuperscript{31}. The extent to which people can benefit out of these findings can be a subject of debate.

Even though, the Consumer Protection Act, 1986 defines 'consumer' in a limited sense, the general connotation of the term is wide enough to encompass the whole consumer society. The limited meaning is used only to determine the jurisdiction of consumer fora. For the purpose of quality control, consumer is to be understood in its wider sense. Quality is essentially a concern for the entire community. Hence in this study the term is used to include the whole society.

**Quality Control: Meaning and Definition.**

The word "quality" has both in philosophy and in ordinary speech, a long history. It appeared in English as a translation of the Latin "qualitas" a word coined by Cicero.\textsuperscript{32} The ordinary use of the word may be broadly distinguished under two headings. First, the word is sometimes employed as a synonym of 'property' or 'characteristic'. In this sense, it would cover almost anything that might be ascribed to an object for the purpose of describing it; its colour, shape, dimensions and so on. In the same sense, honesty and prudence may be spoken as 'qualities of character'. Secondly, the word is used, perhaps more commonly, in contexts where the merit, grade or value is in question. For example, when two kinds of cloth are said to "differ in quality", it would usually be meant not merely that they differ, but that one kind is better (by appropriate standards) than the other. It is usually in this way that the word


'quality' is to be understood. The word is also often employed by itself in the sense of 'good quality'.

When one purchases a product or avails of a service, he expects it to serve a purpose. The product may be a consumable or durable item. Likewise, the service may be any of the numerous services one needs in society. When the product or service meets his needs and expectations, the consumer is satisfied. Then it is considered as a 'quality' product or service. Apart from meeting the need, customer satisfaction also depends on two more factors, 'cost' and 'timeliness'. Thus a product or service available to a customer satisfying the customers' needs and expectations at the right price and right time is deemed by him as of right quality. Obviously, quality is what the customer discerns and not necessarily what the supplier claims. The customer is the arbiter of quality. Thus the essence of quality is customer satisfaction.

Quality is often treated as 'expensive' or a 'luxury'. This is not true. If properly understood and practiced, quality is inexpensive and necessary to meet the needs and desires of consumers. It is quality, which makes an organisation succeed in the fulfillment of its mission, profitability, growth, image and leadership. Quality is no more an 'option' but an imperative in a free market economy.

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33 Ibid.
35 Ibid. Also see, Janak Mehta, 'Myths Discourage Adoption of TQM', The Hindu, Trivandrum, 4 January 1997, p.18.
For the purpose of legal control, quality can be defined as the composite of those characteristics that differentiate individual units of a product and have significance in determining the acceptability of that unit by the buyer. In relation to food, quality embraces intrinsic composition, nutritive value and even aesthetic considerations. In short, quality means all those attributes that the buyer considers to be present in the goods he purchases.

Since the quality of an article comprises of many things, its elements cannot be few. Bertrand L. Hansen opines that at least in three areas of operation of a business, quality control is important. They are (1) quality of design, (2) quality of conformance to design and (3) quality of performance.

Quality of design of a product is concerned with the stringency of specifications for manufacturing the product. Generally, the greater the requirement for strength, life, function and interchangeability of a manufactured item, the better the quality of design. Quality control as it has been known and used in the past has been closely associated with conformance to quality.

When the product is put to work, how it performs largely depends upon both the quality of design and quality of conformance. It can be the best design possible, but poor conformance control can cause poor performance. Conversely, the best conformance control in the world cannot make a product function properly, if the design is not right.

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36 See, Central Institute of Fisheries Technology, *Quality Control in Fish Processing* (1979).


38 Ibid.
The term quality is defined in the Sale of Goods Act, 1930. Under this Act, quality of goods includes their state or condition. The (British) Sale of Goods Act, 1979, considers the following aspects also as part of the quality of goods.

(a) Fitness for all purposes for which goods of the kind in question are commonly supplied.
(b) Appearance and finish.
(c) Freedom from minor defects.
(d) Safety; and
(e) Durability.

In the case of agricultural produce, quality includes the state and condition of those articles.

Based on the origin, quality can be broadly grouped as intrinsic and extrinsic. Intrinsic quality is inherent in the material or species in which it belongs. Extrinsic quality is the sum total of the effects of all the treatments the material receive till they reach the consumer. It is obvious that ordinarily intrinsic qualities are beyond direct control, while extrinsic qualities can be effectively controlled. Among the extrinsic quality factors, degree of freshness, conformity to the desired mode of presentation, weight, size, ingredients and packing methods are important.

Historical Evolution of Quality Control Laws

Quality control is as old as the industrial civilization itself. From the time man began to manufacture, there has been an interest in the quality of output. As far back
as the middle ages, the medieval guilds insisted on a long period of training for apprentices and required that those who seek to become master craftsmen must offer evidence of their quality. Such rules were in fact intended for the maintenance of quality.

Ancient Indian history on consumer protection and quality control dates back to the Vedic age (5000 B.C.). Adulteration of articles of food, charging of excessive prices, tampering with weights and measures and the selling of articles forbidden by statutory prescriptions were considered criminal acts in the ancient texts of Smritis and Kautilya's Arthasastra. Manu and Yajanavalkya in their smritis have recommended a punishment of maiming for dealing in impure gold and unclean meat. The meat sellers were required to follow certain rules ensuring the purity and freshness of the meat they sell. They were to sell the flesh of freshly killed animals and rotten flesh and flesh of dead animals was not to be sold. If the meat supplied is found lesser in weight, the punishment prescribed was eight times the loss suffered by the customer. Punishments are also seen prescribed for adulteration of different commodities in Arthasastra and the Smritis. Manusmriti has stated that all weights and measures used be duly marked by the King and be re-examined in every six months. Arthasastra has provided for appointment of superintendents of Weights and Measures with a view to minimize the likelihood of fraud being committed on

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45 Popular Smritis are: Manusmriti, Yajanavalkyasmitri, Naradasmriti and Brihaspastasmriti. See *Id.* at pp. 93-95.
48 *Id.* at p.150.
consumers. The Agni Purana has laid down that the merchants dealing fraudulently with honest men either in respect of the quality or price of a commodity shall be punished and their goods shall be confiscated to the State.

During the British regime, governmental policies were attuned towards protecting and promoting the British commercial interests than advancing the welfare of the natives. However, some pieces of legislation, which protected the overall public interest though not necessarily the consumer interest, were in existence. Prominent among these were the Indian Penal Code 1860, the Sale of Goods Act, 1930, the Dangerous Drugs Act, 1930, the Drugs and Cosmetics Acts, 1940 and the Prevention of Food Adulteration Act, 1954.

Throughout the eighteenth century, by consumer protection, it was meant (a) protection from excessive prices levied on commodities and (b) protection from short measurement. Bread, beer, meat and fuel were singled out from earliest times as being commodities that the crown, through the agency of justices or other local courts should regulate both as to quantity and quality. The Justices of Peace were therefore empowered to fix the weight and price of Bread and Bakers and had to mark their loaves with their size and quality. Basically, this involved setting the price and

49 Id., p.80.
ensuring that the vessels made of wood, earth, glass, horn or leather should be made and sized and stamped or marked.\textsuperscript{53}

The medieval court's contribution to the assessment of quality was made largely through the investigations of its officer designated as Ale Conner. The Ale Conners can be termed as the direct ancestors of the modern Weights and Measures Inspectors. But the job of the Ale Conner was far more interesting in one respect that he was under a duty to undertake spot checks of the quality of beer and baked food by tasting it. His duties were officially described in a contemporary record. He was to examine bread and beer kept for sale, ensure its weights and measures, and to make a return of persons who offend the standards prescribed by authority.\textsuperscript{54}

By the very nature of the volume of procurement, the defence agencies of the government have always had a great influence on promulgation and use of quality control techniques both directly and indirectly. Defence insistence upon requisite quality paved the way for the development of quality control. Growth of quality control measures can be attributed directly to the changing attitudes of defence agencies. Later, emphasis shifted to the \textit{promotion} of the use of quality control techniques by the supplier, accompanied by \textit{assurance} methods used by the inspection agencies of defense departments. Even now, emphasis on \textit{promotion} and \textit{assurance} still holds good. To these has been added an emphasis on the quality of design and

\textsuperscript{53} A reference in this regard is seen in Shakespeare's drama \textit{Taming of the Shrew}. In induction Scene II, the First servant says to Christopher Sly...

"And rail upon the hostess of the house,
And say you would present her at the Leet,
Because she bought stone jugs and \textit{no sealed quarts}".  

\textsuperscript{54} See supra n.21 at p.3.
function, which has resulted in a new term — reliability. Reliability is essentially the quality control of design, development and function.\textsuperscript{55}

Consumer protection law is quite often considered as a recent phenomenon typical of the twentieth century. However, many of the present statutes which now emphasize consumer protection, had its origin in the distant past.

In the past, consumer contract was the result of a consensus between the parties. Much of the contract law was based on the freedom of the individual to enter into whatever contracts he likes. This was on the assumption that all contracting parties have roughly equal bargaining strength. Any interference on this freedom was looked down upon. The state and its instrumentalities were supposed to remain neutral as far as possible. This common law attitude worked well in a mixed economy in which transactions were left to market forces operating according to the laws of demand and supply. With reference to any article available in the market the buyer and seller had equal knowledge. It was assumed that the buyer would act rationally while taking a decision to purchase. The principle prevalent was \textit{caveat emptor}\textsuperscript{56} and the parties were not obliged to volunteer information about the quality of the goods. If these informations were intended to become part of the transaction, parties should specifically contract for that and pay accordingly. The principle of \textit{caveat emptor} was consistent with the principles of freedom of contract and self-reliance. This approach may well have been justified at that time since few goods would have warranted common law protection.\textsuperscript{57} The attitude of the judiciary and the

\textsuperscript{55} \textit{Id} at p.4.

\textsuperscript{56} This maxim means "buyer beware".

legislature was to afford protection to the manufacturers and sellers since the national economy was mainly dependent on them.

**Quality Control Under Common Law**

In the past the legislature had shown very little concern in recognition and enforcement of the rights of the consumer. Law accorded equal treatment to all its subjects. This equal treatment of people from different income brackets had caused great injustice. This attitude failed to guarantee any effective consumer protection measure. The judge, according to the traditional concept, was regarded as a neutral arbiter who did not take any interest in the outcome of the case but simply applied the law to the facts presented to him. He was not allowed to help one party, for instance a consumer, to state his case more favourably.

So, when the consumer was supplied with goods, which were subsequently discovered to be unsuitable for his intended purpose, or of defective in quality, the only remedy available to him was to sue for damages under the contract with the seller.

The *laissez-faire* economy recognised two concepts, viz. freedom of contract and *caveat emptor*. It was considered that the government had nothing to do with contracts. Its duty was confined to preservation of law and order, defending the country from its enemies and promoting trade. Industry was left free to look after its own interests. The reflection of this judicial philosophy can be observed in the words of Sir George Jessel, M.R. He said:

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“If there is one thing more than another which public policy requires; it is that they of full age and competent understanding shall have the utmost liberty in contracting, and that their contracts, when entered into freely and voluntarily shall be held sacred and shall be enforced by the courts of justice”.59

In spite of the fact that the common law recognized the principle of freedom of contract to its optimal level, the courts could cut open quite a large number of leeways into it. It was through these leeways that the common law courts of England administered justice to consumers. In many cases the courts made use of the defeasible concepts of undue influence, misrepresentation and fraud and also its power to interpret the terms of the contract to render justice to the consumers. An excellent summary of the ancient case law where the court was prepared to nullify a contract can be seen in the Court of Appeal decision rendered by Lord Denning M.R. in Lloyds Bank v. Bundy60. In the opinion of his Lordship there are at least five such circumstances. In the first instance is ‘duress of goods’. One is in a weak bargaining position and is urgently in need of certain goods. If the other who is in a superior bargaining position collects more from the other, courts would permit the recovery of the excess61. In the second type of cases, a purchase is made from a poor and ignorant man at a gross undervalue by another who is stronger. Even in the absence of fraud or misrepresentation the courts would be willing to set aside the transaction62. This

61 For example, see Astley v. Reynolds (1731) and Green v. Ducket (1883) 11 Q.B.D. 275, as quoted in C.J. Miller & Brian W. Harvey, Consumer and Trading Law Cases and Materials, Butterworths, London (1985), p.266.
category covered all cases where an unfair advantage has been gained by the use of power by a stronger party against the weaker\textsuperscript{63}.

The third situation is that of 'undue influence'. This itself is divided into two classes as stated by Cotton L.J. in \textit{Allcard v. Skinner}\textsuperscript{64}.

(i) The stronger has been found to be guilty of fraud or wrongful act in express terms whereby he has gained some advantage from the weaker.

(ii) The stronger, through the relationship that existed between him and the weaker, gained some advantage. Often, the relationship may give raise a presumption of undue influence\textsuperscript{65}.

The fourth category identified was that of 'undue pressure'. It occurs where one party stipulates for an unfair advantage to which the other party has no option but to submit.\textsuperscript{66} The last category might find expression in certain salvage agreements. In vessel distress instances, the rescuer is in a strong bargaining position. The parties cannot be said to be on equal terms. In such circumstances of manifest unfairness that are apparent on its face, the courts will disregard it\textsuperscript{67}.

All these instances rest on a single thread of 'inequality of bargaining power'. By virtue of this principle the Common law was giving relief to a contracting party who without independent advice entered into a contract on terms which were very unfair. The inference of unfairness could be established by evidence or through the facts and circumstances of each case. Through this tool of interpretation, it became

\textsuperscript{63} \textit{The Halsbury's Laws of England}, (3\textsuperscript{rd} Edn.) vol.17, p.682.

\textsuperscript{64} (1887) 36 Ch.D.145 at p.171.

\textsuperscript{65} For example, see Tate \textit{v. Williamson}, (1866) 2 Ch. App.55 and Tufton \textit{v. Spern} [1952] 2 T.L.R. 516, as quoted in Miller &Harvey op. cit. p. 266.

possible for the English courts to render justice to the consuming mass who were often placed in a poor bargaining position. The twentieth century has witnessed increased intervention by both the judiciary and legislature on behalf of the consumer. This is due to the recognition of the fact that in many transactions there is a significant inequality of bargaining power between the buyer and the seller. It is accordingly felt as unrealistic to ascribe to the buyer a freedom of contract especially when there is little choice to him but to accept on those terms of the offer.

**Early British Statutes on Quality Control**

There is a widespread notion that legislative measures to protect consumers are of recent origin. It is true that the notion of consumer protection as understood today was scarcely prevalent in ancient times. However, a wide variety of statutory documents existed which were meant to regulate diverse market activities. Therefore, we notice the existence of statutes to prevent adulteration of tea, to prevent the inclusion of burnt vegetable substances in coffee, adulteration of beer and bread. These enactments turned largely ineffective due to the lack of necessary scientific skills for detection of adulteration at that time. The situation remained the same till adequate knowledge of analytical chemistry and microscopic examination came in.

Use of customary weights and measures, all different from each other became an obstacle to fairness in commercial dealings. Legislative efforts to provide a simple

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67 See for example, *Akerblom v. Price* (1881) 7 Q.B.D. 129
69 Statutes of 1730 and 1777 were passed to prevent adulteration of tea. *(Ibid.)*
70 Statutes of 1718, 1724 and 1803 tried to stop adulteration in Coffee. *(Ibid.)*
71 Statutes of 1761, 1816 and 1819 were passed to prevent adulteration of beer. *(Ibid.)*
72 Statutes of 1758, 1822 and 1836 were passed to prevent use of alum in bread. *(Ibid.)*
and uniform set of weights and measures were evident from various enactments made from 1795 onwards. The Act of 1795 had provided for the appointment of local Inspectors with power to enter into shops, examine weights and measures in use and to certify its accuracy.

The Act of 1824 had tried to standardise measurements of length and volume as well as weights. All contracts made otherwise than in the standard weights and measures were declared null and void. Amendments that followed tightened up many of the requirements of previous Acts and insisted that commodities are to be sold only by weight.

History of marking the quality and purity of gold and silver goes back even to the middle ages. Between 1770 and 1870 several Acts were passed on this subject. The practice that existed in England regarding marking of purity of gold and silver had resulted in maintenance of a high degree of excellence for all British hallmarked wares, which in fact raised the reputation of British workmanship.

Enactments on similar lines can be found in the case of trade marks and trade names, prevention of fraud, fixation of maximum rate of interest, licensing of

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73 Major enactments are the Acts of 1795, 1796, 1797, 1815, 1824, 1835, 1859 and 1867. See supra n.37.
74 See supra n. 37 at p.547.
75 Id. at p.548.
76 Ibid.
77 The Act of 1835. See Ibid.
78 See the Report of the Departmental Committee on Hallmarking (1959), Cmd.163, Part II.
79 The Acts of 1772, 1784, 1788, 1790, 1798, 1807, 1819, 1824, 1844, 1854 and 1867 are all cited as examples. See id., Appendix A.
80 Id., Appendix B.
81 See the Merchandise Marks Act, 1842.
82 The Hop Trade Acts of 1800, 1808, 1814 and 1866. These Acts were intended to prevent fraud by mixing goods of different qualities together.
83 For example, the Usury Acts of 1790, 1816 and 1818.
doctors and so on. Developments that occurred later can be said to be extensions and modifications effected to suit the needs of the changing society.

The terms implied by courts under common law were given recognition by statutes during the nineteenth century itself. While assessing the remedies of the disappointed buyer of goods, the Sale of Goods Act, 1893, allowed the implying of various conditions into the contract. However, this Act also recognised the freedom of the contracting parties and permitted them to contract out by express terms to that effect, the conditions and warranties implied by law. Legislative endeavors that began during 1960's were meant enactment of provisions to control the exclusion of the terms and conditions implied by law.

In consequence of the permissive provisions contained in the Sale of Goods Act, the manufacturers and sellers began to standardise their contractual terms. These standard form contracts though justified on the ground of business efficacy, in many cases contained provisions exempting their liability to the consumers. Judicial attempts to mitigate the rigour of exemption clauses though provided some help to the consumers that by itself could not contain the malady. Legislative intervention was called for and two enactments were made to set right the issue. The Supply of Goods (Implied Terms) Act, 1973 and the Unfair Contract Terms Act, 1977 came in to cover the field of exemption clauses. The thrust of these enactments was to reduce

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84 For example, the Medical Act, 1858.
89 It has been stated that for longtime there existed a tug of war between the courts and the draftsmen of exemption clauses. While the latter would prefer to recast the clauses to ensure its sustainability, the courts developed new strategies to strike it down as ineffective and void. See D.N. Saraf, Law of Consumer Protection in India, N.M.Tripathi, Bombay (1995), p.9.
the issue of blank exemptions from liability and to ensure fairness in consumer dealings. These objectives were achieved by placing restrictions on the authority of the seller to contract out the terms implied by law in any sales contract. Sales are classified into consumer and non-consumer dealings. More rigorous attitude towards consumer sales was sought to be taken by making void all clauses exempting the sellers from liability arising out of the implied conditions and warranties in sale of goods. In case of non-consumer dealings, exemption clauses are subjected to a test of reasonableness. Only when the clauses satisfy this test as applied by courts, then only the clauses are allowed to sustain.

Legislative attempts to bring in the notion of fairness in the market led to the passing of other enactments. Thus we find law regulating consumer credit transactions90, Hire purchases91, Competition92, Monopolies and restrictive trade practices93, Unfair trade descriptions94 and so on.

Flow of many products that posed threat to the health and safety of consumers and public resulted in the enactment of consumer safety laws95. These Acts provided for safety obligations on manufacturers to ensure consumer safety while the products are in use. It was also intended to compensate the consumer and the public if the obligations are violated96. When the Consumer Protection Act was enacted in 1987, it included - in addition to provisions for compensating the consumer for defect in goods and deficiency in services- a part set exclusively for regulating consumer safety

90 The Consumer Credit Act, 1974.
94 The Trade Descriptions Act, 1968.
and health. In effect the consumer protection law in Britain has taken into account the overall regulation of the business activity and its response to the consumer and society.

Quality Control: International Efforts

Cross border movement of goods and services in the 20th century led to formulation of quality control measures at the international level. Along with this, the increased concern for safe products among the consumers resulted in establishment of non-governmental international organizations for promoting consumer interests. The International Organisation of Consumer Unions and other similar organizations influenced the specialized agencies of United Nations to formulate their own consumer policies. Ultimately the United Nations General Assembly adopted certain guidelines for consumer protection. Regional international organizations like the European Economic Community also established norms regulating product quality and safety. At present the non-governmental organizations, the specialized agencies of UN, the regional international organizations and the UN itself provide useful assistance promoting the interest of consumers.

Role of Intergovernmental Organizations

Much before the adoption of Guidelines for Consumer Protection by the General Assembly of the United Nations in 1985, intergovernmental organisations like, the Organisation for Economic Co-operation and Development, Economic and

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97 The Consumer Protection Act, 1987, part II.
98 Hereinafter referred to as EEC.
99 Hereinafter referred to as OECD.
Social Commission for Asia and Pacific\textsuperscript{100} and the Economic and Social Council\textsuperscript{101} made several efforts to promote the quality of goods available in the market.

(i) OECD

The OECD Committee on Consumer Policy was started in 1969. The voluntary guidelines and policy studies by the Committee have had sufficient impact on national legislation of member states and served as a key to policy formulation in other international bodies especially the European Economic Community. Annual reports of the OECD on consumer policy development in member states have provided useful information on actions being taken by governments. OECD council decisions are binding on member countries. Its recommendations and guidelines are usually implemented as a moral obligation.

The most notable work of the OECD has been in the area of product safety. On this subject alone OECD has produced till 1987, nine reports\textsuperscript{102}. These reports include labeling and comparative testing, compulsory packaging of repacked consumer products, protection against the toxicity of cosmetics and household products, safety requirements for toys, data collection systems related to injuries involving consumer products and recall procedures for useless products. Product safety measures to protect children, developing and implementing product safety measures, role of risk management and cost benefit analysis for safety of products are other notable subjects taken up by OECD\textsuperscript{103}.

\textsuperscript{100} Hereinafter referred to as ESCAP.
\textsuperscript{101} Herein after referred to as ECOSOC.
\textsuperscript{102} John Joseph, \textit{Evolution of Consumerism and its Future Role}, The Education and Research Institute for Consumer Affairs, New Delhi, p.133.
\textsuperscript{103} \textit{Ibid.}
Consumer policy issues of the OCED member states are often brought to the Committee on Consumer Policy. The experiences and approaches adopted in other member states are discussed to resolve the problems through regulatory measures.

(ii) ESCAP

The ESCAP has had a direct influence on the development of consumer protection policy. In 1978, ESCAP and the International Organisation of Consumers' Unions\(^{104}\) held joint consultation to examine the role of the U.N. in consumer protection. In 1981, many specific recommendations were made suggesting remedies for major consumer problems in developing countries\(^{105}\). These recommendations also had significant impact on the final version of the U.N. Guidelines for Consumer Protection\(^{106}\).

The Economic and Social Council

The Economic and Social Council, in 1978, resolved to request to the Secretary General of the United Nations to produce a report which is supposed to form a background information for ECOSOC for its consideration towards some possible action in the field of consumer protection\(^{107}\). It was decided to pursue the elaboration of a set of general guidelines taking into account the needs of developing countries. The 1978 Report was followed by a number of further reports and documents. This has finally led to the formulation of the U.N. Guidelines on Consumer Protection, 1985.

\(^{104}\) IOCU, presently, Consumers International (CI).
\(^{105}\) Id. at p.134.
\(^{106}\) Ibid.

The U.N. Guidelines for Consumer Protection adopted by the General Assembly on April 9, 1985 is the final culmination of the international efforts and movements stated above. It was adopted by consensus. The object clause of the guidelines recognises the fact that consumers often face imbalances in economic terms, educational levels, and bargaining power. It declares that consumers should have the right to promote just, equitable and sustainable economic and social development. The guidelines urge the governments to develop, strengthen or maintain a strong consumer protection policy, in accordance with the economic and social circumstances of the country. It recognises six rights for consumers. They essentially restate the basic consumer rights, asserted by the U.S. President, John F. Kennedy, in his message to the United States Congress on 15 March 1962.

The Guidelines emphasize the importance of ensuring that consumer protection provisions do not become barriers to international trade. It also calls for international co-operation in consumer policy matters.

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109 Ibid.
110 Id., para.2.
111 Id., para 3. They are :
(a) The protection of consumers from hazards to their health and safety;
(b) The promotion and protection of the economic interests of consumers;
(c) Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
(d) Consumer education;
(e) Availability of effective consumer redress;
(f) Freedom to form consumer and other relevant groups or organisations and the opportunity of such organizations to present their views in decision-making processes affecting them.

112 Supra n.76 at p.4.
113 The guidelines are arranged under 7 headings:
(a) Physical safety.
(b) Promotion and protection of consumers' economic interests.
(c) Standards for the safety and quality of consumer goods and services.
(d) Distribution facilities for essential consumer goods and services.
(e) Measures enabling consumers to obtain redress.
(f) Education and information programmes.
(g) Measures relating to specific areas (principally food, water and pharmaceuticals).
The Guidelines seek recognition from the world community that consumers often face imbalances in terms of economy, education and bargaining power in comparison to the manufacturers and sellers. Therefore, measures calculated to afford protection to the consuming population by facilitating the production and distribution patterns responding positively to the needs and desires of the consumers are emphasised. Abusive business practices by national and international enterprises are to be curbed. High levels of ethical conduct for those engaging in the production and distribution of goods and services are also visualized.

The Guidelines invariably emphasis the need for protecting the consumers' health, safety and economic interests. Standards for safety and quality of consumer goods and services have been dealt with in the guidelines under a separate caption. It urges the governments to formulate and promote the elaboration and implementation of standards at the national and international levels for the safety and quality of goods and services. Review of the national standards is to be made from time to time with a view to ensure their compliance with the generally accepted international standards. Governmental efforts in encouraging and ensuring the availability of facilities for testing and certification of the standards of safety, quality and performance of all essential consumer goods and services, are declared as a desideratum in the Guidelines.

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114 Id., Article 1.
115 Ibid.
116 Id., part II.
117 Id., part III, Clause C.
118 Id. at para. 24.
119 Id. at para. 26.
The U.N. guidelines for consumer protection have had a significant influence on consumer policy actions by both governments and consumer organisations in many countries. This is evident from the report submitted by the Director General of U.N. in 1992.

The Guidelines however, does not contain any provision for continued monitoring and review. In July 1988, the Economic and Social Council of the U.N. passed a resolution urging all governments to implement the guidelines. It also requested the Secretary General to continue to promote the implementation of the guidelines and continue to provide assistance to governments in implementing them. This resolution was reaffirmed in 1990 and the Secretary General was requested to develop a programme of action for the next five years on the implementation of the Guidelines.

Evolution of Quality Control Laws in India

In India, until independence, there was hardly any legislation enacted to protect the interest of consumers. However, statutes made to safeguard public interest were in existence, which accorded protection to consumers also. Certain provisions in the Indian Penal Code that sought to curtail adulteration in food and drugs were intended to ensure the quality of food and thereby public health. Similarly, sale or offer or exposure for sale articles of food or drink, which has become noxious or made noxious by adulteration, for human consumption has also been stated to be an

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121 Id. at p.10.  
122 Id. at p.12.  
123 See the Indian Penal Code 1872, s.272. For a detailed discussion on these provisions, see infra chapter 6.
offence. Adulteration of medicinal preparations in a manner to lessen its efficacy and its sale will also attract the penal provisions of the Indian Penal Code. The Penal Code also makes it an offence the use of false weight or measure, its possession, manufacture and sale. Quality formulation and grade marking as a system of quality control finds its finest expression in the Agricultural Produce (Grading and Marking) Act, 1937. This Act empowers the Central Government to fix the grade designation and to lay down the standards of quality of agricultural produces listed in the Schedule. However, this Act made no provision for marking of grade designations mandatory.

The civil remedies available under the common law system were used extensively by Indian judiciary, since India was under British rule. The post independence era witnessed enactment of few legislation which had a direct thrust on quality control. The first among them was the Indian Standards Institution (Certification Marks) Act, 1952. This act had provisions for fixation of national standards for diverse commodities with powers on the Central Government to make the standards thus formulated mandatory.

The Standards of Weights and Measures Act, 1956, which was enacted to provide a coherent system for measurement, had been in the forefront to save the consumers from deception due to short measure. In all these provisions, quality

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124 Id., s. 273.
125 Id., s. 274.
126 Id., s. 275.
127 Id., ss. 264 and 265.
128 Id., s. 266.
129 Id., s. 267. For a detailed discussion on these provisions, see infra Chapter 6.
130 For a detailed discussion on the civil remedies, see infra Chapter 7.
assurance was merely collateral. The main thrust was public safety, health and fairness in measure and weight.

Later enactments like the Dangerous Drugs Act, 1930, Drugs and Cosmetics Act, 1940, the Prevention of Food Adulteration Act, 1954, and the Drugs (Magic Remedies) Objectionable Advertisements Act, 1955 contain elaborate provisions for fixation and implementation of quality standards. The Monopolies and Restrictive Trade Practices Act, 1969 and the Consumer Protection Act, 1986 are mere extensions and developments of the old quality control law regime that were in existence.

Evolution of Quality Control Enactments: A Critical Overview

The above discussion on the evolution of the laws relating to quality control at the national and global levels shows that increased emphasis is given to ensure quality of products and services available in the market. Even during the hey days of laissez-faire, the courts and legislatures tried to ensure product quality by resorting to different techniques. The judiciary achieved this objective by a process of progressive interpretation of the existing legal principles of contract and tort. The legislature, on the other hand, imposed criminal sanctions for trading in unsafe and hazardous products. In matters of civil damages, terms were implied in to the contract to benefit the consumers. Quality of the product is one of the terms usually implied in this way. For the administration of these laws, machineries with various functions were also created. The overall picture is summarised below.
(i) Self-regulation by Traders and Consumers

In ideal market situations, businessmen may prefer to have their activity regulated by them either individually or by associations of producers. Trades' regulation confers positive advantages to the consuming public in terms of better consumer-trader relationship and inexpensive administrative procedures. Traders are benefited by better consumer satisfaction and preference. They can by self-regulation prevent legislative interference, which may be rigorous, strict and difficult to be complied with. Businessmen often use setting up of standards of quality for goods through self-regulatory codes as a measure for ensuring customer satisfaction. Similarly, consumers also can ensure the quality of the goods they purchase by exercising prudent choice. The laisser-faire concept promoted this to a large extent. Modern legislative developments in England show that legislature encourages adoption of self-regulatory codes by traders and self help programmes by consumers. In India, these methods are hardly used. A detailed study of these methods is necessary to evolve an advantageous use of these techniques.

(ii) Quality control by Administrative Sanctions

Administrative controls are often used as a preventive measure. Sanctions, civil or criminal, generally operate as punitive and curative rather than being preventive. Administrative measures however, anticipate the malady. It formulates rules and regulations with a view to prevent the happening of the undesirable act. Many are the ways with which the executive government and its agencies mobilize the administrative set up to ensure quality of products and services. Licensing and advertising controls can be cited as examples. How is this regulatory system function in ensuring quality of goods? Does it require any improvement functionally and
otherwise? How far this mode of regulation would survive in the era of de-regulation syndrome? These areas require cogent investigation.

(iii) Quality Control by Standardization

The assessment of the quality of goods by a statutory body and its marking with a logo to identify its quality is adopted as another method to ensure quality. In the case of agricultural produce and industrial products this method is often used. Grade marking \(^{132}\) would encourage the producers \(^{137}\) to improve the quality. The consumers are also assured of certain specified quality the grade designation mark suggests. We find statutory specifications as to quality in respect of food\(^{134}\) and beverages, and drugs and cosmetics.\(^{135}\) The manufacture, storage and keeping \(^{136}\) of or sale of foodstuffs that does not conform to the stipulated standards of purity and quality are prohibited.\(^{137}\) Stringent standards of quality are prescribed for drugs and cosmetics.\(^{138}\)

Standard setting is often done by a national standards organisation like the Bureau of Indian Standards. In prescribing standards, national and international practices are considered. All affected interests are also consulted as well. The finally adopted standards are implemented either compulsorily or by persuasion. The working of the scheme of standard setting and implementation require and in depth analysis.

\(^{132}\) See the Agricultural Produce (Grading and Marking) Act, 1937.

\(^{133}\) Agricultural produces that meet the standards of grade would naturally fetch more prices. Therefore, it would be a positive source of encouragement for the producers to secure better quality to earn the grade and to reap more profits out of it.

\(^{134}\) See the Prevention of Food Adulteration Act, 1954.

\(^{135}\) The Drugs and Cosmetics Act, 1940.

\(^{136}\) The Prevention of Food Adulteration Act, 1954, s. 7.

\(^{137}\) The Prevention of Food Adulteration Rules, 1955, rule 5.

\(^{138}\) See the Drugs and Cosmetics Act, 1940.
(iv) **Role of Implied Conditions in Promoting Quality**

The study shows that the law relating to implied conditions in sale and supply of goods is undergoing drastic changes in England. The concept of merchantable quality has been substituted by the doctrine of satisfactory quality. The ingredients of satisfactory quality are more flexible and capable of adaptations to meet the needs of changes in the market. Similarly, restrictions are increasingly imposed on exclusion of terms implied by law. In some cases exclusion is totally prohibited. The desirability of suitable legislation in India is to be examined in the light of the developments in England and EEC countries.

(v) **Quality Control by Criminal Sanctions**

Legal insistence on quality through the instrumentality of criminal law is largely used in the present day. Criminal liability on manufacturers and sellers are imposed over and above the civil liability to compensate the consumers suffering losses. We have many provisions in various enactments providing for criminal sanctions for not complying with statutory prescriptions concerning quality. Should criminal law be used to deal with a transaction that is essentially civil in nature? The judicial interpretation and application of criminal law provisions is helpful to find an answer to these questions.

(vi) **Civil Damages and Quality of Products**

Civil action for compensation has long been recognised as the remedy available to a consumer who suffered loss or damage due to a defect in the product he purchased. The law of torts, contractual principles and consumer protection enactments contain provisions enabling the consumer to recover compensation from the manufacturers and sellers of defective products. Compensation and quality are
undoubtedly different concepts. But liability created by law to compensate the defects in goods is expected to persuade the producers and sellers to improve the quality of the goods they produce or sell. This will enable them to reduce their burden to compensate large number of consumers. Moreover, goods that are least complained of are mostly preferred by the consuming public. This will certainly boost up the sales and thereby the possibility of earning more profit. In the competitive market quality and customer satisfaction are the key factors that would provide a better foundation towards the prosperity of any business. The study shows that the compensatory schemes have been strengthened by legislative action. Giving of warranties and guaranties by manufacturers and sellers and making false and misleading claims are also brought within the scope of civil claims. Trading in products not conforming to the prescribed quality standards or violating implied terms in sale contracts can also be matters of civil dispute. These techniques are frequently used under the Indian law as well. A detailed study of these measures is undertaken to evaluate the efficacy of this mechanism.

Diverse ways and means for ensuring quality of products exist in the present day society. A proper understanding and implementation of these measures may lead to the desired goal of better consumer satisfaction. This study is an examination of this proposition in the light of statutory provisions and judicial decisions.

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