Chapter 3

QUALITY CONTROL: ADMINISTRATIVE MEASURES

Industrialization and mass production of consumer goods in many respects put the consumers in a disadvantageous position. The legislatures around the world began to intervene to ensure and protect the health and safety of consumers. Earlier enactments on consumer affairs thus concentrated mainly to the health and safety of people and quality of products like bread and beer\(^1\). Right to safety and health, and the right against the sale and supply of hazardous products are recognized as basic consumer rights\(^2\). For translation of these rights into practice, legislature has enacted many laws\(^3\). However, proper implementation of these laws can be achieved only through the establishment of elaborate administrative machineries. The legislation imposes civil and criminal liability for violation of its provisions. But the standard of quality to be maintained are often determined by the administrative agency. Similarly, monitoring of the quality control measures can only be done by administrative bodies. Identification of violations that occur and initiation of prosecution are also the functions of administration. For this purpose, maintenance of records and submission of periodical returns becomes necessary. Inspection and search of the premises may also become necessary to check violations of law. However, the rationale in exercising administrative controls is to be examined in a liberalized economy.

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\(^1\) For a discussion on development of the earlier law, see supra Chap.1.


\(^3\) Provisions in the Indian Penal Code, 1860, the Essential Commodities Act, 1955, Prevention of Food Adulteration Act, 1954 and the Drugs and Cosmetics Act, 1940 are some of the examples.
Civil and criminal liabilities are imposed after an injury is suffered by the consumer due to the poor quality in goods or services. Loss of life or permanent disablement caused as a result of the defective product cannot be adequately compensated. What can be done is to give an amount as a consolation. So it is recognized in all civilized countries including liberal economies that preventive measures are to be taken to achieve product safety. In India also administrative measures are aimed at preventing hazards to life and property by products of dubious quality. What is required is an efficient administrative machinery and proper check on abuse of powers by them. Judicial review of administrative action has developed as an effective tool to control the abuse of administrative power.

Administrative measures for quality control adopted in India include delegated legislation and administrative adjudication. Administrative adjudication is effected by licensing, registration, certification, labeling, issuing of permits, inspection and investigation. Quasi-judicial powers are also exercised by administrative agencies. Right to information of consumers, especially about quality of products is protected mainly through advertising controls. All these administrative measures need a detailed examination to assess the usefulness of this method.

Administrative Rule Making

All statutes regulating quality of goods confer power on executive governments to make rules for the purpose of implementation of the law. It is by the exercise of this power that detailed procedures for administration of the Act are formulated. For example, quality, price, storage and equitable distribution of essential

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4 Damages for personal injuries and death are often quantified in an arbitrary manner since the real value of life or injury cannot be determined in an abstract sense. For a discussion on this topic see Munkman, Damages for Personal Injuries and Death, Butterworths, London (1973).
goods are regulated by the Essential Commodities Act, 1955. This enactment confers on the Central Government extensive power to control production, supply and distribution of essential commodities. The Government can also regulate or even prohibit any commercial activity if non-regulation or absence of prohibition would be detrimental to the public interest. In exercise of these powers, the Central Government has issued a large number of orders. These orders very often prescribe the quality standards that goods of different varieties should maintain. The orders empower the administrative agencies to call for information, to give directions and also to enter and inspect any premises and seize any goods for contravention of the provisions of the Act and the orders. The Act also empowers the executive to issue licenses or permits and to lay down the conditions to be followed by the licensees. It can accept security for due compliance of these conditions. The conditions can include among others, stipulations as to quality mark certification for goods under licence.

Similarly, the Prevention of Food Adulteration Act, 1954 enables state governments to make rules prescribing the forms of licence for the manufacture for

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5 The Essential Commodities Act, 1955, s. 3.
6 Id. sub-section 3(2)(g). Also see, the Cement (Quality Control) Order, 1995. Para 3 of this order prohibits the manufacture, sale and storage of cement, which is not of the prescribed standards of quality. It also prohibits the storage, sale and distribution of cement that does not bear the standard mark of quality assigned to it. Similarly, the Cement Control Regulation of Production Order, 1981, introduces prohibition regarding production of certain varieties of cement. For further instances of prohibition orders see, the Cold Storage Order, 1980 clause 3; the Electrical Wires, Cables, Appliances and Accessories (Quality Control) Order, 1993, clause 3 and the General Service Electric Lamps (Quality Control) order, 1983, clause 3.
7 See infra.
8 See for example, the General Service Electric Lamps (Quality Control) Order, 1989 and the Household Electrical Appliances (Quality Control) Order, 1981. Both these orders prohibit manufacture, sale etc. of electrical appliances which are not of the standards prescribed by the Bureau of Indian Standards (BIS).
sale, storage, or distribution of articles of food. State governments can also lay down the conditions subject to which such licenses may be granted and to accept cash security for the due performance of the conditions of licence. The circumstances under which the licenses are to be suspended and the security sum to be forfeited can also be prescribed by the rules. Quality of the goods can constitute a condition of the licence that may be issued under the Act.

Administrative regulations, which are wider in scope and amplitude, are contained in the Drugs and Cosmetics Act, 1940. The Act empowers the Central Government to make rules for various purposes. The Central Government has prescribed the methods of test or analysis to be employed in determining whether a drug or a cosmetic is of standard quality. It can specify the drugs or classes of drugs or cosmetics for which a licence is required and prescribe the form and conditions of such licence. The rules made under the Act stipulate that the licencee shall submit an undertaking stating his intention to conform to the conditions. The undertaking includes the applicant's assurance to keep and maintain the standards of strength, purity and quality conforming to those prescribed under the Act. Breach of conditions of licence entails either suspension or cancellation of the licence.

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10 The Prevention of Food Adulteration Act, 1954, s.24.
11 Id., s. 24 (2)(b).
12 Ibid.
13 The Prevention of Food Adulteration Rules, 1955 prescribes the quality of many of the articles used as food.
14 Id., s.12.
15 The Drugs and Cosmetics Act, 1940 s. 12(2)(b).
16 Ibid.
17 The Drugs and Cosmetics Rules, 1945.
18 In form 9.
19 Ibid.
20 The Drugs and Cosmetics Rules, 1945, rule 85-1.
Administrative powers conferred on executive governments may even go to the extent of conferring power to prohibit certain activities in public interest. Thus the Dangerous Drugs Act, 1930 also confers powers on governments to regulate the traffic in drugs and advertisements.

Similar rule making powers can also be seen in other quality control enactments. In all these cases, delegated legislation in the form of rules, regulations, statutory orders, circulars and clarifications are issued by governments and subordinate functionaries. There are many occasions where complaints are made against the abuse of these powers by executive governments and the agencies established for this purpose. The attitude of the judiciary in relation to these complaints is relevant in deciding the efficacy of the rule making powers.

Rule Making Power: Judicial Controls

Judicial review of administrative rule making is subject to the normal rules governing review of administrative action. This power of the judiciary to review the rules made by administrative agencies and executive governments cannot be foreclosed in any manner by the enabling Act. Following are the normal grounds on which the judiciary may nullify the rules made.

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1. The Drugs and Cosmetics Act, 1940, ss.10-A and 26-A.
3. For instance, see the Drugs and Magic Remedies (Objectionable Advertisements ) Act,1954, s.16; the Dangerous Drugs Act, 1930, s.36: the Opium Act, 1857, s.31 and the Opium Act, 1878, s.5.
4. Among the diverse devices for controlling the rule making power, judicial review is only one among them. Consultation, publication and legislative scrutiny are the other methods of control. For a detailed discussion on these methods, see P.P.Craig, Administrative Law, Sweet & Maxwell, London (1999), Chapter 12. Also see I.P. Massey, Administrative Law, Eastern Book Company, Lucknow (1995), pp.90-105.
5. Statements such as "shall not be called in question in any court" or the rules made and published in official gazette which would be treated "as if enacted" in the Act cannot take away the power of judicial review. See for example, State of Kerala v. K.M.C.Abdulla & Co., A.I.R.1965 S.C.1585 and G.O.C. v. Subash Chandra Yadav, A.I.R.1951 S.C.332.
(i) The Enabling Act is *Ultra Vires* the Constitution

If the court is of opinion that the enabling Act itself has crossed the permissible limits of the constitution and thus *ultra vires* the Constitution, the rules and regulations framed there under would also be void. Therefore, in *Re Delhi Laws Act*, when the court found that the Act confers power on the administrative agency to repeal a law, which in the opinion of the court was essentially a legislative function, the Act itself was held *ultra vires* the Constitution. Similarly, legislative interference into the fundamental rights guaranteed under Part III of the Constitution may also make an enactment constitutionally invalid. In *Chintaman Rao v. State of M.P.*28, the Supreme Court observed that the Central Province Regulation of Manufacturers of Bidis Act, 1948 and the rules framed there under are *ultra vires* as it gave unbridled powers to the Commissioner to prohibit manufacture of bidis during agricultural season.

(ii) The Rule Itself is *ultra vires* the Constitution

Even if the enabling Act is constitutionally valid, the rules and regulations framed there under may violate the provisions of the constitution. The Act remaining *intra vires*, it is possible that the rules are *ultra vires* the constitution and hence void. So, when the Coal Control Order issued under the Essential Supplies Temporary Powers Act, 1946 conferred arbitrary powers on the State Coal Controller, the Supreme Court held that it is *ultra vires* the Constitution. Similarly, the A.P.
Catering Establishments (Fixation and Display of Prices of Food stuffs) Order, 1978

issued under the Essential Commodities Act, 1955, made it compulsory for hoteliers
to sell all the seven eatable items provided in the schedule. The A.P. High Court has
held that such a prescription directing a person to carry on a business against his will is
violative of Article 19(1)(g) of the Constitution and therefore void\(^{32}\). Administrative
rule making can also be challenged on the ground that it is discriminatory and hence
constitutionally void\(^{34}\).

(iii) Rules are *Ultra vires* the Enabling Act

Administrative rule making can be impeached on the ground that it is *ultra vires* the enabling Act. Courts may strike down the rules, if it is of opinion that the rules are in excess of the powers conferred by the enabling Act. In *Dwarka Nath v. Municipal Corporation*\(^{35}\) the Supreme Court was confronted with an issue of this kind. Section 23(1) of the Prevention of Food Adulteration Act, 1954 authorised the Central Government to make rules for restricting the packing and labeling of any article of food with a view to prevent the public from being deceived as to the quality and quantity of the article. Rule 32 framed there under by government provided that there shall be specified on every label the name and business address of the manufacturer and batch number or code number. Action was initiated against the appellants for violation of rule 32. The appellants had written on their ghee tins only

“Mohan Ghee Laboratories, Delhi-5”. The company argued that the requirements as

\(^{32}\) The Court found that though the Act made a prohibition to deal in coal without licence, the order permitted exemptions at the discretion of the State Coal Controller, which in the opinion of the Court was arbitrary.


per section 23(1) is restricted to “quantity and quality” of the goods and not as to details of the manufacturer. Accepting the argument, the Supreme Court held that the rule is *ultra vires* the Act and hence void.

The rules made can also be declared invalid if it is in direct conflict with any provision of the enabling Act. If the administrative authority fails to follow the procedure laid down by the enabling Act while exercising the rule making power, the rules made may be declared invalid. Unreasonableness of administrative rule making has been recognized as a ground that affects its validity in countries like America and England. But in India, though arbitrariness, unreasonableness and discrimination are recognized grounds for judicial review under the constitution, they cannot be the grounds of challenge in the case of a statute or rules. This position of law has been criticized as an instance of judicial restraint.

Administrative rules made can also be challenged on the ground of *malafides* or ulterior purposes. Similarly, if it arbitrarily encroaches upon the common law rights of citizens, it is possible to question its validity. The common law rights of individuals can be interfered with by administrative rule making, only if expressly

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41 See I.P. Massey, *supra* n. 39 at p.112.

42 Id. at p.116.

authorised in the enabling Act. Absence of such express authorisation invites invalidity to the rules.

In many cases it is possible that the rules made conflicts with the provisions of some other statute. This conflict can be a ground of invalidity of the rule in spite of express authorisation to that effect in the parent Act. Courts have held that the power to repeal or amend a statute by administrative rule making is unconstitutional and hence void.

Rules declared as ultra vires by court become null and void and will be considered as not in existence at all. Judicial interference through the diverse ways stated above puts the administrative rule making in its correct track. It ensures fairness in administrative action.

Licensing of Trade

Licensing is the widely used method of administrative regulation. In the field of quality control, this mechanism is used in several legislations. The significance of licensing is that business must satisfy certain pre-requisites before engaging in a specified commercial activity. In theory, licensing permits beneficial activity. At the same time it prevents its harmful consequences. Licensing may be sought for engaging in a trade. It may also be made necessary for more specific activities, like

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44 Ibid.
45 Under English law, conflict with the statute law can be a ground of invalidity of the rules only when the empowering statute does not grant such power. See I.P. Massey op.cit. at p.117.
46 In re Delhi Laws Act, A.I.R.1951 S.C. 332. However, if there is no express repeal or amendment but only a by passing of the existing law, the rules are held valid. See for instance, Harishanker Bagla v. State of M.P., A.I.R. 1954 S.C.465 and A.V.Nachane v. Union of India, A.I.R. 1982 S.C. 1126.
47 For example, the Prevention of Food Adulteration Act, 1954, the Drugs and Cosmetics Act, 1940 and the Essential Commodities Act, 1955 contain elaborate provisions for licensing.
marketing of each product. In this sense, licensing operates as regulatory and prohibitive at the functional level. By allowing only those who satisfy the required standards alone to function, it prohibits others from entering into the trade. The licensing authority can modify the standards and insist that it will issue fresh licenses or renew the existing ones only to those who comply with the revised standards.

As a linchpin of the enforcement machinery, licensing system has many advantages. It provides an extremely powerful deterrent against deliberate law breaking. The offender risks not merely civil actions or even penalty, but the most drastic punishment of extinction from trade. The mere threat of its imposition is sufficient in many instances to discourage the licensees from breaking conditions of license. On the other hand, a licensee who infringes the conditions due to his inadvertence can be cautioned without the need for resorting to the rigour of sanctions being used against him. The most valuable enforcement work of trading standards is achieved in England by friendly caution rather than by prosecution.

The licensing system has even more advantages. The value judgment that is invariably involved in determining the suitability of an applicant for the grant or renewal of a licence gives a measure of flexibility. It allows the licensing authority to take into account all facts known about the applicant. Through a central licensing system, consistency can be secured in standards of conduct insisted and imposed on licensees and in the approach to enforcement.

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49 Ibid.
51 Ibid.
Governmental schemes of licensing can function as an efficient method of quality control when mere reputation of the trader cannot. Certain products having inherent risks such as prescription drugs and firearms are sold only through licensed screeners. They help the consumer to understand the delicate qualities of the product. Such licensed screeners are capable of testing the products for risks that would elude individual consumers. They can put their knowledge of past consumer product complaints to the advantage of subsequent purchasers.

**The Standards Required in Licenses**

Licensing schemes may vary depending on the reasons for adoption of this particular form of control. In many cases the unacceptable incidents of malpractices in trade is the major reason for introducing licensing. Therefore, good business practice is sought to be achieved by licensing. The need for high standards in quality and performance is an important factor behind this. In some cases, financial solvency may also be a crucial factor. In such cases, financial soundness is insisted to ensure that the trader has sufficient financial backing to compensate consumers if things go wrong.

Safety and hygienic conditions of premises and utensils where goods are produced and stored may be a condition precedent for granting of licence. Similarly, qualifications of the staff engaged in the production and distribution

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53 Ibid.
54 See *supra* n. 50, p.380.
55 Hence, under the Civil Aviation Act, 1971 (U.K.) ss.21-22, the license can be refused by the Civil Aviation Authority on the ground that the travel organizers who applied for the licence are not financially sound.
56 For example, see the Prevention of Food Adulteration Rules, 1955, rules 49 and 50. Also see the Kerala Prevention of Food Adulteration Rules, 1957, rule 7 (a).
processes and facilities for storage and transportation may be insisted for issuing licences. It can be seen that the requirements for issuing licence vary depending on the objectives of control.

**Licensing in Food and Drugs**

The prevention of Food Adulteration Rules, 1955, prohibits the manufacture, storage distribution, sale or exhibition for sale any article of food without a license. For issuing licenses for this purpose the state governments or local authorities appoint licensing authorities. The licensing authority, before granting a license, inspect the premises to satisfy itself that it is free from any sanitary defects. If the licensing authority is of the opinion that any alterations to the premises are to be made, the applicant is directed accordingly. The licensee undertakes many responsibilities as conditions of the licence. Violation of these conditions may lead to penal consequences or even cancellation of the licence. The duration of licence is normally one year, which may be renewed. If the licence is not renewed before the expiry of the period or has not made an application for renewal, such person cannot continue his engagement in selling, storing or preparing articles of food any further.

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57 For example the Drugs and Cosmetics Rules, 1945, rule 65 (1).
58 Id., rule 64.
59 The Prevention of Food Adulteration Rules, 1955, rule 50.
60 Id., rule 50(2).
61 Id., rule 50(5).
62 Ibid.
63 See for example, the licensee should give notice containing the cooking medium used. He should not employ persons with contagious diseases. Vessels and containers used should be covered. Maintenance of a register of manufacture, wearing of badges by venders and display of notice boards are also insisted.
64 Id., s.16 (1) a (ii)(i).
65 Id., s.16 (1-D).
66 Rule 51. Rule 8 of the Kerala Prevention of Food Adulteration Rules, 1957, has fixed the duration of licence to be for one year.
The Act also provides for cancellation of the licence by court in cases where the
licensee is a second offender.\(^{68}\)

The Drugs and Cosmetics Act, 1940 also prohibits the manufacture for sale, distribution, storage or exhibition for sale of any drug or cosmetic except under a licence.\(^{69}\) This Act prohibits sale or distribution of sub-standard, misbranded or adulterated drugs. The contravention of the requirement of licence is not merely an irregularity but an illegality punishable under the Act.\(^{70}\) Nobody is permitted to store drugs without a licence.\(^{71}\) The license once granted can be renewed.\(^{72}\)

For the purpose of granting licences under the Act, state governments are empowered to appoint licensing authorities.\(^{73}\) The licensing authorities are responsible for the issue, renewal and cancellation of licences. Different conditions are prescribed for manufacture, storage, distribution and sale of drugs.\(^{74}\) For the sale or compounding of a prescription drug, licenses will be issued only after satisfying the amenities like space and equipments available for preservation of drugs. The Licensing authority is also supposed to ensure the personal qualifications of the applicants.\(^{75}\)

**Licensing in Britain**

In Britain, the Medicines Act, 1968 stipulates that sale, procurement for sale, supply or exportation of any medicinal product, shall only be done in accordance with

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\(^{68}\) The Prevention of Food Adulteration Act, 1954, s.16 (1-D)

\(^{69}\) The Drugs and Cosmetics Act, 1940, s.18(c).

\(^{70}\) Id., s. 27 (b)(ii).


\(^{72}\) See the Drugs and Cosmetics Rules, 1945, rules 59 and 63.

\(^{73}\) Id., rule 59.

\(^{74}\) Id., rules 61-65.

\(^{75}\) Id., rule 71.
a license issued under the Act.\textsuperscript{76} For the import of any medicinal product also license is necessary.\textsuperscript{77} The manufacturers and wholesale dealers of medicinal products are also required to obtain license for that purpose.\textsuperscript{78} An application for license is generally made in the prescribed form containing the prescribed details\textsuperscript{79}. The licensing authorities are required to consider factors such as safety, efficacy and quality of the medicinal products while granting dealership licenses\textsuperscript{80}. If the license applied for is manufacturer's license, factors such as hygiene of the premises, condition of equipments and qualification of persons are also to be looked into\textsuperscript{81}. For wholesale dealer's license, premises where the medicinal products are proposed to be stored, the equipments used for storage and also the facilities available for distribution will be taken up as the prime factors.\textsuperscript{82} The licensing authorities can refuse to grant a license on grounds relating to the safety, quality or efficacy of the medicinal products. But such a decision to refuse a license will be taken only after its consultation with the committee or commission established for advising the authority for this purpose\textsuperscript{83}. If the licensing authority proposes to refuse a license, it shall give an opportunity to the applicant to raise his objections against it\textsuperscript{84}. Licenses granted under the Act shall remain in force for a period of 5 years and can be renewed\textsuperscript{85}.

\textsuperscript{76} The Medicines Act, 1968 s.7 (2).
\textsuperscript{77} Id., s.7 (3).
\textsuperscript{78} Id., s.8.
\textsuperscript{79} Id., s.18.
\textsuperscript{80} Id., s.19 (1).
\textsuperscript{81} Id., s.19 (5).
\textsuperscript{82} Id., s.19 (6).
\textsuperscript{83} Id., s.20 (3). The committee or commission, consists of skilled experts in the field who are competent to render opinion about the matters referred to it.
\textsuperscript{84} Id., s.22.
\textsuperscript{85} Id., s.24.
Power of suspension and revocation of licences have also been conferred on the licensing authorities. Many are the grounds on which the licensing authority can exercise this power. In all these circumstances, the licensing authority should hear the licensee before it takes a decision to revoke or suspend a licence.

It is through registration that the enforcement authorities under the British Food Safety Act, 1990 exercise its control. But the registration procedures established by the Act do not amount to a system of licensing. In spite of widespread support among opposition parties and consumer groups for a system of licensing in food in the interests of consumer safety, it has been rejected since the experience under the Consumer Credit Act, 1974, which introduced occupational licensing, was found to be very expensive and time consuming.

However, the Director General of Fair Trading, who is the competent authority under the Consumer Credit Act, will have to consider many factors to decide whether a licence under the Act is to be granted to an applicant. His enquiry into these facts ensures the fitness of the applicant to carry on the business to the best advantage of the consumers.

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86 Id., s.28.
87 Ibid.
88 Id., s.29.
90 Under section 25 of the Act, the Director General of Fair Trading is supposed to consider whether an applicant for a license is a fit person to carry on that business. The burden of proving fitness is on the applicant. Among the multitude of factors which the Director General is expected to consider while determining whether an applicant is a fit person, issues such as previous conviction of the applicant for offences of fraud, dishonesty or violence, or whether he has practiced discrimination on grounds of sex, colour, race, or national origin, or he has engaged in any oppressive or deceitful business practice etc. are relevant factors.
Licensing system obviously is a very powerful tool for controlling abusive trade practices since it serves to deny the opportunity to engage in a business. Therefore, it provides a wider network than what is possible with specific controls in individual transactions. Moreover, the administrative agency has flexibility in the licensing programme. They can exercise their discretion in every case individually, which may not be possible by law. It can dissuade businesses from engaging in undesirable but lawful practices. Licensing as a means of control of business practices allows consistency of approach by the licensing agencies. By this process they can implement uniform standards of conduct required from licensees. The licensing system also has other advantages. It will provide considerable amount of information to the licensing authority on the specified area of business covered by the licensing regime. This enables the licensing authority to identify emerging business practices that require further legislative action.

But advantages of a licensing system are to be set against its disadvantages. The most important disadvantage is the cost of administration. This cost can be borne by the public purse without much pain since the relative advantages that dwell on the consuming public is very large. It is also possible to make a licensing system self-supporting by charging necessary fees that will be sufficient to meet the costs in administering it. It can also be introduced on a cost-sharing basis where the traders and the governments equally bear the burden.

93 It is said that the general cost of the licensing system has caused concern to the Department of Trade and Industry, in England. For details see Ibid.
Judicial Scrutiny of the Licensing Process

Administrative controls by the grant, suspension, revocation and renewal of licences are matters of severe civil consequences. Courts have been often called upon to decide the validity of actions taken by administrative authorities in this regard. The principles formulated by judiciary in its effort to scrutinize administrative actions are popularly known as judicial review. Under the Constitution of India, judicial review has been recognized as an integral part, which cannot be abolished even by an amendment\textsuperscript{94}. Judicial review has been stated to be the soul of democracy and rule of law\textsuperscript{95}. Judiciary exercises this function by virtue of the powers given to the Supreme Court under Article 32 and 136,\textsuperscript{96} and the High Courts under Articles 226 and 227\textsuperscript{97}.

The purpose of judicial review is not the review of the administrative authority but of the decision making process. Review power is essentially supervisory in nature. Therefore, the courts will not assume appellate jurisdiction and re-appreciate the fact finding by the administrative agency\textsuperscript{98}.

Judicial review of administrative action is possible under the Constitution\textsuperscript{99} where the higher judiciary set right administrative derailment by the issuing of prerogative writs or other appropriate orders. The review by ordinary courts in


\textsuperscript{95} Minerva Mills v. Union of India, (1980) 3 S.C.C. 625.

\textsuperscript{96} For a brief discussion on the powers of judicial review of the Supreme Court, see I.P. Massey, Administrative Law, Eastern Book Company, Lucknow (1995), pp. 201-204.

\textsuperscript{97} For a summary of the powers of the High Court, see, id. at pp. 205-207.


\textsuperscript{99} The constitutional review is also called as 'public law' review. For a detailed discussion on the grounds on which judicial review under the constitution is exercised by the higher judiciary, see I.P. Massey, supra n. 96 at pp.249-265.
accordance with the ordinary law of the land\textsuperscript{100} is exercised through injunction, declaratory action and suit for damages\textsuperscript{101}.

Judicial scrutiny of the licensing process, like any other type of administrative action, ensures fairness and avoids arbitrariness. Judicial review in this sense makes the administrative machineries more viable and dependable.

**Administrative Control by Registration**

The devices of registration and certification are some other effective administrative tools used for ensuring safety and quality standards in goods and services. This method is used where compliance with technical specifications are essential to ensure the safety of any product. The safety of products may depend upon several factors including the quality of the raw materials required for production, good workmanship and adoption of sufficient safety standards in the manufacturing process. Registration of automobiles and ships are good examples where this form of administrative controls are effectively used.

**Certification as a Method of Quality Control**

In the case of many agricultural and industrial products, certification is used as a method to ensure desirable standards of quality and safety. For this purpose, a technical committee, in consultation with all the interests affected determines the minimum standards of quality in relation to various products in advance\textsuperscript{102}. In the process of certification, the goods are compared with the standards prescribed earlier. Products that comply with the prescribed standards are permitted to be marketed

\textsuperscript{100} Review by ordinary courts is otherwise called as 'private law' review.

\textsuperscript{101} For a discussion on the exercise of review by ordinary courts, see I.P. Massey, \textit{op. cit.} at pp.265-277.
under a quality certification mark like 'agmark'; FPO mark, 'wool mark' and ISI mark

Registration, Certification and Licensing: Distinction

Distinction can be drawn between registration, certification and licensing. Registration requires that individuals must simply list their names in an official register. It is insisted generally to enable governments to identify those who are engaged in a particular activity. All those who are willing to do the job can get themselves registered\(^{104}\). The Food Safety Act, 1990 of the U.K. can be cited as example for use of registration as a means of control. This Act requires that the premises where articles of food are sold be registered with the authority under it\(^{105}\). Certification goes a step further, where an individual must demonstrate that he has reached a certain standard. But the government does not prevent the practice of skills by those who have not obtained a certificate. Certification of goods also mean more or less the same. Licensing proper is much more restrictive. Here, once individuals meet certain criteria, they are given the exclusive right to engage in a particular trade or occupation.

Quality control by licensing, registration and certification will be effective only if the violators are promptly identified and punished. For this purpose elaborate arrangements are made under quality control laws\(^ {106}\) for inspection and search of the

\(^{102}\) For example, see the Agricultural Produce (Grading and Marking) Act, 1937, and the Bureau of Indian Standards Act, 1986.

\(^{103}\) For a detailed discussion on certification process, see Chapter 4 Infra.

\(^{104}\) Registration of motor vehicles can be cited as an example. Standards are prescribed for vehicles in advance and its compliance is checked up at the time of registration.

\(^{105}\) The Food Safety Act, 1990, s. 19.

\(^{106}\) For example, see the Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954; the Standards of Weights and Measures Act, 1976; the Dangerous Drugs Act, 1930; the Essential Commodities Act, 1955; the Preventions of Food Adulteration Act, 1954 and the Drugs and Cosmetics Act, 1940.
premises of traders who have obtained administrative sanctions for running the business. The premises of traders who unauthorisedly carry on the business can also be inspected to ensure compliance with the law. Efficient utilization of this power is necessary to ensure quality control. The working of this system of quality control may be explained in the light of the working of the Prevention of Food Adulteration Act, 1954 and the Drugs and Cosmetics Act, 1940.

**Inspection, Search and Seizure**

Supervision and control over licensees under the Food Adulteration Act, 1954 is exercised through the officers designated as Food Inspectors appointed under it. In order to ensure that the licensees comply with the provisions of the Act, rules and term of license, the Food Inspectors are entrusted with many powers. The powers of inspection, search and seizure\(^{107}\) are few among them. The variety of powers conferred on him places the Food Inspector in a pivotal position. He is empowered to enter and inspect any place where any article of food is manufactured, stored or exposed for sale\(^ {108}\). In exercise of this power the Food Inspector can break open any package in which any article of food may be contained\(^ {109}\). He can break open the door of any premises where any article of food may be kept for sale\(^ {110}\). The Food Inspector is also empowered to seize any article intended for food, which in his opinion appears to have been adulterated\(^ {111}\). He can also seize books of accounts or other documents, which is relevant for investigation and prosecution\(^ {112}\). Further, he is

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\(^{107}\) These powers are in addition to the power to take samples and send it for analysis in order to assure compliance with the quality and other stipulations made under the Act. See the Prevention of Food Adulteration Act, 1954, s.10. Also see the Prevention of Food Adulteration Rules, 1955, rule 9.

\(^{108}\) *Id.*, s.10 (2).

\(^{109}\) *Id.*, s.10 (5).

\(^{110}\) *Ibid.*

\(^{111}\) *Id.*, s.10 (4 - A).

\(^{112}\) *Id.*, s.10 (6).
also given the powers of a police officer\textsuperscript{113}. The powers entrusted upon the Food Inspectors are not confined to the licensees alone. It also extends to others who may not have any license at all.

The Food Inspectors are empowered to take samples of food articles and send it for analysis\textsuperscript{114}. The analysis and preparation of report are done by Public Analysts\textsuperscript{115} appointed under the Act. Detailed procedures for taking of samples, packing and sending it for analysis are given in the Act\textsuperscript{116}. The procedures to be followed by Public Analysts are also prescribed\textsuperscript{117}. These procedures are made mandatory\textsuperscript{118}. Any lapse in this regard may lead to acquittal of the offender\textsuperscript{119}. Importance of these procedures for inspection, search, seizure and testing of samples are evident from the judicial decisions made in this regard\textsuperscript{120}.

However, it appears that the legislature is apprehensive of the possible abuse of the wide powers that are conferred on the Food Inspectors. Hence vexatious or unreasonable seizures made by them are made punishable with a minimum penalty on conviction\textsuperscript{121}.

\textsuperscript{113} Id., s.10 (8). The Inspector has the same powers of a Police Officer under section 42 of the Code of Criminal Procedure, 1973. But this power is only for the limited purpose of ascertaining the name and residence of the person from whom the sample is taken or an article of food is seized.

\textsuperscript{114} The Prevention of Food Adulteration Act, 1954, s.10(1)(a) and (b).

\textsuperscript{115} Id., s.8. Public Analysts are appointed by the Central or State Governments.

\textsuperscript{116} Id., s.11.

\textsuperscript{117} The Prevention of Food Adulteration Rules, 1955, rule 7.

\textsuperscript{118} See Chintaman i v. State, 1984 All.L.J.893.


\textsuperscript{120} For judicial decisions on these procedures, see R.N.Bhardwaj, Cases and Materials on Prevention of Food Adulteration Act, Nasik Law House, Aurangabad (1998).

\textsuperscript{121} Id., s.10 (9).
The powers given to the Inspectors of drugs by the Drugs and Cosmetics Act, 1940 is also similar\textsuperscript{122} to that of the Food Inspectors. The procedures that the Inspector of drugs will have to follow while taking samples and sending it for analysis are also similar\textsuperscript{123}. Procedural formalities stated in the Act are intended for ensuring fairness and if they are not properly complied with, the entire prosecution is likely to be vitiated. This may end up in the acquittal of the accused persons\textsuperscript{124}.

**Initiating Prosecution**

Quality control legislation in India invariably provides punishment for violation of its provisions\textsuperscript{125}. Until recently, administrative machinery established under respective Acts alone were authorised to initiate prosecution for violation. In the mid nineteen eighties this power was extended to consumers and recognized consumer organisations as well\textsuperscript{126}. However, the decision of the administrative authority either to prosecute or not is of great importance even today. The consumers and consumer associations may take the lead only after the injury has taken place. But the administrative authorities can proceed even as a preventive measure. The offender can be punished only if the administration exercises their function in an effective and efficient manner\textsuperscript{127}.

\textsuperscript{122} The Drugs and Cosmetics Act, 1940, s.22
\textsuperscript{123} Id., rule 23.
\textsuperscript{125} See for example, the Prevention of Food Adulteration Act, 1954; the Drugs and Cosmetics Act, 1940 and the Essential Commodities Act, 1955.
\textsuperscript{126} See for example, the Prevention of Food Adulteration Act, 1954, s. 20. This section has been amended in 1986 to allow consumer associations to launch prosecution for violation of its provisions. This amendment was made in the wake of the enactment of the Consumer Protection Act in 1986. Also see the Essential Commodities Act, 1955.
\textsuperscript{127} For a detailed discussion on the procedures and precautions to be taken by the administrative agencies in prosecuting the offenders, see Infra. Chap.6.
Control over Advertising and Quality

The fight for consumer protection has often been considered as a battle for quality in goods and services. For this, fairness in advertising\textsuperscript{128} and promotion of honesty in the market place are essential\textsuperscript{129}.

What is advertising?

The advertisement is performing a highly important function viz., informing prospective buyers and users about the availability and quality of a product. The effectiveness of any market economy depends upon the satisfaction of consumer demands. Thus producers survey consumer preferences and buyers seek information about available products in order to make their purchasing decisions. Advertising thus serves to facilitate this process of matching products with consumers. Advertising also acts as the communication link between someone with something to sell and someone who needs something. Advertising no doubt is the most efficient means of reaching people with product information. Advertising which is expected to play an informative role is seen as a manipulative device, which creates a scheme of wants in consumer by rearranging his motives.\textsuperscript{130}

Studies and surveys show that people at large believe that advertisements mostly are misleading\textsuperscript{131} or dishonest.\textsuperscript{132} Since the consumer is paying for the cost of

\textsuperscript{128} The Council Directive of the European Economic Community has provided a meaningful definition to the term ‘advertising’—“Advertising” means the making of a representation in any form in connection with a trade, business, craft or profession in order to promote the supply of goods or services including immovable property, rights and obligations”


\textsuperscript{131} The Council Directive of the EEC has defined misleading advertising to mean any advertising which in any way, including its presentation, deceives or is likely to deceive the person to whom it is addressed or whom it reaches and which, by reason of its deceptive nature, is likely to affect their economic behaviour or which, for those reasons, injures or is likely to injure a competitor. See the Council Directive Relating to the Approximation of the Laws, Regulations and Administrative Provisions of the Member States Concerning Misleading Advertising, 1984 (84/450/EEC), Article 2, Clause 2).
the advertisement, fair play requires that he is made aware about the comparative merits of competing brands. He must be assured of being given only truthful and correct information. Legal prescription of truth in advertising can be one method. This can be implemented only by constant monitoring of commercial advertisements. For this, administrative agencies are established in many civilized countries.

Administrative Controls on Advertisements in England

The common law of England, though in a limited sense, had afforded the consumers, protection against misleading advertisements. If a statement in an advertisement amounts to a misrepresentation, it can be initiated. It also made false advertisements actionable if it amounted to negligent misstatement. But the remedy for breach of these common law rules is generally by way of damages or rescission of the contract made with the advertiser. Such rules are unlikely to serve a preventive role. The policing of advertisers and marketers in England are largely fulfilled by the criminal law along with voluntary codes.

132 See, Sakuntala Narasimhan, Advertisements: the Hidden Persuaders, Consumer Education and Research Centre, Ahmedabad (1992), (Introduction). In a survey conducted in Delhi, a majority of 92% agreed that most advertisements are exaggerated and do not present a true picture of the product. The author also cites a study conducted by the EEC Commission among the people of the community. 80% said that advertising often made people to buy things they did not really need. Studies in Britain revealed that 67% of people believe that advertisements mislead them. The Californian experience is also not different. See Howard G. Schultz and Marianne Casey, "Consumer Perceptions of Advertising as Misleading", 15 Journal of Consumer Affairs, 340 (1981).

133 See, Beale v. Taylor, [1967] 1 W.L.R. 1193. In this case, the advertisement described the car purchased by the consumer as "1961 Herald Convertible". The car was found unroadworthy by virtue of the fact that it consisted of two different cars welded together. Court held the seller liable.

134 The liability lies under the rule in Hedley Byrne & Co. Ltd., v. Heller & Partners Ltd., [1964] A.C. 465. Subsequent decisions rendered by the House of Lords seem to restrict the liability. In Caparo Industries v. Dickman, [1990] 2 A.C. 605, the House of Lords held that the maker of a statement will be liable only when the following three conditions are satisfied. (1) It must be foreseeable for the defendant that the petitioner will suffer damages in consequence of the reliance on the statement; (2) There must be a close relationship between the maker of the statement and the person to whom it is communicated and (3) It must be just and reasonable to impose liability on the maker of the statement (Id. at p.617-18 per Lord Bridge of Harwich).

135 See for example, the British Code of Advertising and Sales Promotion, 1999.
Many legislation in England contain provisions for criminal sanctions for unfair trade practices, including false and misleading advertisements. The Trade Descriptions Act, 1968 prohibits the application of false or misleading trade descriptions on goods or services and also false indications as to price of goods. Violation of the provisions is made an offence. It is possible for the Board of Trade to order the inclusion of any information, which it deems expedient in public interest, in the advertisement. Non-compliance with the order issued by the Board of Trade is also treated as an offence.

The Control of Misleading Advertisements Regulations, 1988 empowers the Director General of Fair Trading to consider any complaint made to him that an advertisement is misleading unless he feels it as frivolous or vexatious. If he finds that the advertisement is misleading, the regulation empowers him to take such measures necessary for seeking an injunction against any person concerned with the publication of the advertisement. The court may require the person responsible for the publication of the advertisement to furnish evidence of the accuracy of any claim made by him in the advertisement. If no evidence is furnished, or the evidence submitted in the opinion of the court is inadequate to substantiate the claim made in the advertisement, the injunction prayed for by the Director will be

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137 Trade Description Act, 1968, s.1.
138 The term 'trade description' is defined in s. 2 of the Trade Descriptions Act, 1968.
139 Id., s.9.
140 Except for matters specifically assigned to the Independent Television Commission, Radio Authority or the Welsh Authority, the Director General can decide whether an advertisement is misleading or not. See the Control of Misleading Advertisements Regulations, 1988, regulation 4.
141 Id., regulation 5.
142 Id., regulation 6.
granted. The injunction may prohibit the publication or the continued publication of an advertisement. Powers similar in nature are conferred on the Independent Television Commission, the Radio Authority and the Welsh Authority to control misleading advertisements.

The most important control on advertising and sales promotion in England is through self-regulatory codes. The Codes of Practice in itself do not carry with them much sanction apart from market deterrence of withdrawal of advertising space and adverse publicity. But the administrative agency, namely the Office of Fair Trading has power to regulate self-regulatory codes. In exercise of this power, the OFT has issued guidelines on self-regulatory codes. The guidelines insist that all advertisements must be legal, decent, honest and truthful. The Code of Practice also urges advertisers not to exploit the credulity, lack of knowledge or inexperience of consumers. The advertisements should not mislead by inaccuracy, ambiguity, exaggeration or omission. The OFT can persuade the trade associations to formulate self-regulatory codes. It may also issue directions towards revision of the existing code if in its opinion such a change is necessary to safeguard the interest

143 Ibid.
144 Ibid.
145 Id., regulations 9 and 10.
146 See the British Code of Advertising and Sales Promotion, 1999. The codes are devised by the Committee of Advertising Practice (CAP). CAP members include persons from advertising, sales promotion and media business. CAP provides for a free and confidential Copy Advice Service for the industry.
147 Hereafter referred to as OFT.
148 See the Fair Trading Act, 1973, s. 124.
149 For a detailed discussion on the guidelines, see supra, Chap. 2
150 See OFT, Guidelines on Self-regulatory Codes.
152 Id., para. 7.1.
153 See the Fair Trading Act, 1973, s. 124 (3). This section places a duty upon the Director General of Fair Trading to encourage associations to prepare and disseminate codes of practice.
of consumers. Failure to comply with the directions may lead to proceedings being initiated against for non-compliance before the Restrictive Trade Practices Court. Similarly, the Advertising Standards Authority can refer a misleading advertisement to the OFT. The OFT can obtain an injunction from the Restrictive Practices Court established under the Fair Trading Act, 1973, to prevent advertisers from using the same or similar claims in future advertisements.

Regulation of Advertising in India

In India, in case of drugs, a total ban has been imposed on all advertisements alleged to possess magic qualities. An advertisement of drugs, which is false or misleading, is also prohibited. So publishing an advertisement, which contains any matter, which directly or indirectly gives a false impression regarding the true character of any drug, is an offence. Imports or exports of such advertisements are also prohibited. Sending out advertisements within the territories of India amounts to publication. These restrictions are in consonance with public interest and public morality. The advertisements banned under the heading ‘drugs possessing magic qualities’ are those, which are meant for procurement of miscarriage, prevention of conception and correction of menstrual disorders.

In order to ascertain whether there is any contravention of the provisions of the Act, the person authorized by state governments or persons authorized by them

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154 Id., s.34. This section empowers the Director General of the Office of Fair Trading to use his best endeavors to set right a course of business conduct detrimental to the interest of consumers.
155 Id., s. 35.
156 Id., s.37.
157 The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, s. 3.
158 Id., s. 4.
159 Ibid.
160 Id., s. 6.
161 Ibid.
162 Id., s. 3.
can order the manufacturer, packer, distributor or seller of the drug who issued such advertisement, to give information regarding composition of the drug for the purpose of scrutiny of the advertisement. The manufacturer or packer is under a duty to comply with such order. The officials authorized are empowered to enter and search any place, which they have reason to believe to be a place where an offence under the Act has been or is being committed. They can seize any advertisement that in their opinion contravenes the provisions of the Act.

The Supreme Court of India in *Hamdard Dawakhana v. Union of India* examined the constitutional validity of these powers. The Court ruled that the purpose of control is to prevent objectionable and unethical advertisements in order to discourage self-medication and self-treatment. The necessary condition for terming an advertisement as objectionable is that the advertisement induces others in using the drug advertised. It is not necessary that there has been a habitual contravention.

In India, self-regulatory codes that regulate advertisements of products by trade associations are few. The Advertising Standards Council of India, a non-statutory organization of advertisers and publishers has adopted a Code of Advertising Practice for its members. Similarly, the Ministry of Information and Broadcasting, Govt. of India has also adopted a code of practice for advertising in Doordarsan and

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163 The Drugs and Magic Remedies (Objectionable Advertisements) Rules, 1955, rule 3.
164 The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954, s. 8(1)(a).
165 Id., s. 8(1)(b).
167 Id., at p. 565, per Kapur J.
Radio. But these codes are not supervised or controlled by any independent administrative agency. However, the misleading or false nature of any advertisement relating to the quality or performance of any product can be the subject matter of adjudication by quasi-judicial bodies like Consumer fora under the Consumer Protection Act and the Monopolies and Restrictive Trade Practices Commission under the Monopolies and Restrictive Trade Practices Act.

Grading and Marking of Products

Extensive powers are conferred on administrative authorities to prescribe minimum quality standards for products. In the case of agricultural produces, the administrative agency exercises powers to grade the produces based on product standards prescribed and allow the use of grade marking. In the case of industrial products the Bureau of Indian Standards determines minimum standards and authorises the use of quality marks of the institution.

Labeling and Quality Control

The most common method of disclosing quality information is through compositional labeling. Consumer gets information about the goods from the labels or marking attached to the goods or from the sale literature that accompanies them. Traditionally, compositional labelling was confined to processed food; but in recent

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172 A complaint for the purpose of the Consumer Protection Act, 1986, includes a false or misleading advertisement relating to the quality, place of origin or usefulness of a product. See the Consumer Protection Act, 1986, s. 2(1)(c)(1). This subsection brings within its purview as ‘unfair trade practice’, false and misleading advertisements. Id., s. 2(1)(r).

173 See the Monopolies and Restrictive Trade Practices Act, 1969, s.36A. The definition of ‘unfair trade practice’ under this provision includes false and misleading advertisements. For a brief discussion on the quasi-judicial powers, see infra.

174 See the Agricultural Produce (Grading and Marking) Act, 1937.

175 See the Bureau of Indian Standards Act, 1986.
years it has been extended to a wide range of products. Labeling of complex products
to a great extent, assist the consumer to assess its quality. All E.E.C. countries\textsuperscript{176}, the
United States\textsuperscript{177} and Canada\textsuperscript{178} compel fiber content labeling for textiles.

In India, mandatory labelling is insisted for drugs\textsuperscript{179} and packaged
commodities. The Drugs and Cosmetic Rules, 1945, formulated under the Drugs and
Cosmetics Act, 1940, lays down that no person shall sell or distribute any drug unless
it is labelled in accordance with the rules. The method of labeling to be adopted and
its contents are prescribed\textsuperscript{180}. The Packaged Commodities (Regulation) Order, 1975
attempts to strike a balance between the consumers right to know the contents of the
packet and the sellers desire to keep the packet intact. The Order stipulates\textsuperscript{181} the
particulars to be indicated on every package, whether big or small. The package
should invariably contain a label as to the identity of the package, its quantity, month
and year of packing and its price together with the name and address of the packer or

\textsuperscript{176} Ross Cranston, \textit{op.cit.} at p.283. A broad statement of the EEC Directive is that the names of
fibers must be specified on a garment or in advertisements together with the percentage of the
different fibers used. Further, the limited number of generic names mentioned in the directive
must be used to describe fibers and restrictions are placed on the use of words such as 'pure' when
referring to fibre content.

\textsuperscript{177} See the Textile Fiber Products Identification Act, 15 U.S.C. s.70 (b).

\textsuperscript{178} See the Textile Labeling Act, 1970 (Canada).

\textsuperscript{179} The Drugs and Cosmetics Rules, 1945, rule 95. Rule 96 prescribes the manner in which drugs and
cosmetics are to be labelled.

\textsuperscript{180} The Drugs and Cosmetics Rules, 1945, rule 96. The manner of labeling includes the name of the
drug, statement as to its net content, the name and address of the manufacturer and his licence
number.

\textsuperscript{181} Clause 3 of the Order reads: -
"No person shall pre-pack for retail sale or cause to be pre-packed for retail sale any commodity
unless each retail package in which such commodity is pre-packed bears thereon a label securely
affixed thereto, a declaration as to-
(i) the identity of the commodity in the package except it is identifiable through a transparent
container,
(ii) the quality in terms of standard units of measurement, if solid in number, the accurate
number of the commodity contained in the package,
(iii) the month and year in which the commodity is packed-except to liquid milk, aerated
water etc.
(iv) the price of the package".
manufacturer. Restriction is imposed on the sale or distribution of goods that does not comply with the orders. Provision is also made for checking the packages at the premises of the manufacturer or packer for the purpose of verifying whether the quantity of the commodity corresponds with the quantity declared on the label. Compliance with the requirements of labelling is ensured by administrative authorities like the Drugs Controllers and Inspectors and the Officers under the Legal Metrology Department of the governments.

**Administrative Adjudication of Disputes Relating to Quality**

Administrative and quasi-judicial authorities exercise adjudicatory powers under various enactments. Administrative adjudication mainly relates to the granting or refusal of license or permits, prohibition on use of certification marks or logos, prohibiting trade by refusing permits and powers of similar nature. The important quasi-judicial agencies exercising adjudicatory power in India are the consumer fora and the Monopolies and Restrictive Trade Practices Commission.

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1. Clause 4 of the Order reads as follows:

   Every packer shall indicate on each package the name and complete address of the manufacturer or of the packer, if no manufacturer. If the smallness of the package is such that it is not reasonable to indicate the complete address of the manufacturer or packer, it shall be sufficient compliance, if a mark or inscription, which would enable the consumer to identify the manufacturer or packer, is made on such package.

2. Id., clause 5.
3. Id., clause 8.
4. The Drugs and Cosmetics Rules, 1945, rules 50 and 51. These agencies ensure compliance about labelling by making labeling a condition of licence. Id., rule 65(19).
5. It is through the Controllers and Inspectors appointed under the Standards of Weights and Measures Act, 1976 that the labeling requirements in respect of ordinary goods are administered. See also, the standards of Weights and Measures (Packaged Commodities) Rules, 1977, Standards of Weights and Measures (Enforcement) Rules, 1985, Standards of Weights and Measures (General) Rules, 1987 and Standards of Weights and Measures (National Standards) Rules, 1988.
6. These powers have been discussed in the chapter at appropriate places.
(a) Consumer Forum

The Consumer Protection Act, 1986 envisages a hierarchy of three redressal agencies viz. the District forums, the State Commissions and a National Commission to adjudicate on consumer disputes. Consumers who are aggrieved by defects in quality of any purchase they made can approach either of these agencies subject to territorial and pecuniary limitations. The procedures adopted by these grievance redressal agencies are summary in nature and devoid of the intricacies of evidentiary complexities found in other adjudicatory agencies. Moreover, no court fee is levied for redressal of consumer grievances and services rendered by the fora are absolutely free.

Shortfall in quality of any product may occur if any fault, imperfection or shortcoming as to purity or standard required to be maintained by any law or by contract between parties or as claimed by the trader, turn to the contrary. In all these circumstances the aggrieved consumer is provided with the remedies of compensation or repair or replacement of the goods as the forum may deem fit. Compensation for the mental agony and suffering can also be allowed.

(b) The Monopolies and Restrictive Trade Practices Commission

Manufacturers and sellers often misrepresent the quality of the goods they produce or sell. They may raise tall and false claims that their products are of a

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190 The territorial jurisdiction of a district forum will be the Revenue district and that of the State Commission, that state and the National commission, the whole of India.

191 The pecuniary jurisdiction of the District forum is up to 5 lakhs. State commission, it is 20 lakhs and National Commission, above 20 lakhs. The State and National Commissions also have appellate jurisdictions.

192 The Consumer Protection Act, 1986, s. 2(1)(f).

particular standard, quality or grade. They may issue misleading information about
the quality and performance of their products. They may give warranties about their
goods without any intention to perform. Trade practices of these kinds are intended to
lure the public. These unfair trade practices are subject to the rigour of legal action by
the Monopolies and Restrictive Trade Practices Commission\textsuperscript{194} established under the
Monopolies and Restrictive Trade Practices Act,\textsuperscript{195} 1969. Any consumer or a
consumer association can lodge a complaint to the MRTP Commission alleging unfair
trade practice by the seller\textsuperscript{196}. It can by order direct the discontinuance of the
practice,\textsuperscript{197} grant injunction\textsuperscript{198} and also award compensation\textsuperscript{199} for the injury or loss
suffered by the Consumer\textsuperscript{200}.

\textbf{Administrative Techniques of Quality Control: an Appraisal}

Administrative techniques adopted to control quality are varied. A single
method in itself will not assure the desired objective. One important issue that
surfaces in the context of liberalized economic policies followed at present is the
extent to which the administrative intervention can be permitted. Economic
liberalization calls for more and more freedom of action for the market operators and
least interference by governmental agencies. But this does not mean that there shall
not be any control at all and the operators enjoy an unbridled freedom of action.
Administrative measures in fact facilitate the proper exercise of the freedom by

\begin{itemize}
\item \textsuperscript{194} Hereinafter referred to as the MRTP Commission. The Competition Act, 2000 repeals the MRTP
Act and seeks to establish a Competition Commission instead of the MRTP Commission.
\item \textsuperscript{195} Hereinafter referred to as the MRTP Act.
\item \textsuperscript{196} See the Monopolies and Restrictive Trade Practices Act, 1969, s.36-B
\item \textsuperscript{197} \textit{Id.}, s.36-D.
\item \textsuperscript{198} \textit{Id.}, s. 12-A.
\item \textsuperscript{199} \textit{Id.}, s. 12-B.
\item \textsuperscript{200} For a detailed discussion on the powers and functions of the MRTP Commission, see S.M. Dugar,
\end{itemize}
regulating and limiting chances of excesses and abuses. In this sense it is not to be treated as a clog on freedom of action. Instead, it can be treated as facilitator of events.

Flexibility of action, efficacy in supervision and implementation are the dominant virtues of administrative controls. It is being used extensively in the sphere of consumer protection all over the world inspite of the cost factor. Its positive advantages over other systems of controls places administrative measures in a high pedestal. In product quality matters, they ensure quality of products reaching the market. This is achieved by exercising controls in anticipation of any mischief that may occur to the consuming public before the product leaves the manufacturers' premises. Remedial measures provided in administrative controls are quite often initiated *suo moto* by the administrative agencies. However, efficacy of the system largely depends on the sensitivity of the administrative machinery.

The main objection against administrative controls is the avoidable bottlenecks created by the agency itself, the expenses of administration and the possible abuse of powers by the administrators. If these apprehensions are removed, it can become an acceptable mechanism of quality control. Allowing increased participation of consumers and consumer organizations and bringing more transparency into the procedures can reduce administrative bottlenecks and abuse of power to a considerable extent. In the matter of administrative expenses, it can be argued that the state is in any way duty bound to protect the health and safety of its citizens by all possible means. So financial constraints that come in the way of its due discharge of this duty cannot be cited as a hurdle. The only question is whether
administrative expenses are to be met from the state revenue or by levies from manufacturers. It is suggested that the amount necessary to meet the administrative expenses shall be collected from the manufacturers as license fees who can later transfer it to the consumers of their products. If the other option is exercised, the entire public, irrespective of the fact that they use the product or not, will be bound to pay.

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