Chapter VII


Introduction

There are certain important provisions in the Companies Acts, 1956, relating to the consumers, such as Minority Rights, Investigation, Amalgamation, Prevention of oppression and mismanagement and powers of Central Government to direct special audit in certain cases, Board of Directors, Shareholders, etc. These are the salient features of the Companies Act, 1956 for the betterment and protection of consumers.

The aim of this Chapter is to introduce the economic and social background so as to protect the interest of the consumers i.e. members of the company.
(3) **Provisions of the Companies Act 1956.**

The word 'Company' ordinarily means an association of a number of individuals formed for some common purpose and registered under the Companies Act. Formation of a company is based on contract of the subscribers. There is not much evidence to show that in ancient Hindu law there was any general theory of contract to govern partnership. A company is a refined form of partnership. A corporation is an artificial person created by law with perpetual succession and a common seal. It is similar to a natural person in many respects. Like a human being a corporation has parents (i.e. promoters), birth (i.e. registration), rights and duties quite distinct from the promoters, marriage (i.e. merger or amalgamation) and death (i.e. winding-up). The distinction between a corporation and natural person lies in its contractual power. Corporation always contracts through an agent, it is of impersonal character.

The members of the association are so numerous that it can not aptly be described as a firm or a partnership and a member may transfer his interest in the association without the consent of the other members. Such an association may be incorporated according to law whereupon it becomes a body corporate or what is usually called a corporation with perpetual succession and a common seal, and regarded in law as distinct and separate from its members. Companies are created by means of memorandum and articles association. Sir Francis Palmer called it as the "Magna Curta of Co-operative Enterprise".
Company law is not a "field of legislation" in which "finality is to be expected", as the law "falls to be applied to a growing and changing subject matter" and the growing uses of the Company system as an instrument of business and finance and possibilities of abuse inherent in that system.

The company is legal institution, a legal device for the attainment of any social or economic end. It is a combined political, social, economic and legal institution.

It is an intricate, centralised, economic administrative structure run by professional managers who hire capital from the investor. A company has an independent life in the sense that it continues to exist without regard to the death of the individuals involved in its corporate affairs or the transfer by them of their interests in the company, even the death of all its members does not end the company i.e. company survives.

A company, though a person having nationality and a domicile is not a citizen. It cannot exercise the right of franchise, nor can it be punished, in its own person, by imprisonment for criminal offences.

As the company is not a citizen and can act only through natural persons, it has no fundamental rights under the constitution.

Companies may be public or private, limited by shares, by guarantee, holding and subsidiary and Government Company etc. A private company is one in which the Articles of Association contain the following restrictions:-
(1) That the number of its members shall not exceed so.

(2) That it shall make no invitation to the members of the public for shares or debentures,

(3) There shall be some restrictions with regard to the right of its members to transfer shares held by them in the company where the company is limited by shares.

(4) The minimum number with which a private company can be founded is only two.

(5) A private company is required to have at only two directors.

(6) A private company may issue any kinds of shares and even with disproportionate voting rights.

(7) It can not invite subscription from public.

PUBLIC COMPANIES:

1) The minimum number with which a public company can be formed is seven.

2) There is no limitation to the maximum number of members.

3) It required 3 directors.

4) It can invite subscription from public.

5) The shares are freely transferable.

6) It can issue only preference and equity shares.
Formation of Company

The promoters must file with the Registrar of the State in which the registered office of the Company is to be situate:-

1. The Memorandum of Association,
2. The Articles of Association.
3. A statement of nominal capital and where it exceeds 25 lakhs, a certificate from the Central Government permitting the issue of capital,
4. The agreement, if any, which the company proposes to enter into the proposed managing agent or secretaries and treasurer,
5. A statutory declaration by a advocate or an attorney or a chartered accountant, engaged in the formation of the company or by a director or any other officer of the company that all requirements of the Act and Rules thereunder in respect of registration have been complied with.

The above documents are all that a private company has to file.

A public company having a share capital must file, in addition to the above, the following documents:-

6. A list of persons who have consented to be directors of the Company.
7. A written consent duly signed to act as directors.
8. An undertaking in writing signed by each such director to take and pay for their qualification shares, if any.
Both the private and public companies will file the notice of their addresses of the Registered Office at once or within 30 days after the date of incorporation.

When the necessary stamp duty and the registration fee have been paid and the Registrar is satisfied that everything is in order, he will enter the name of the company in the register of companies maintained by him and issue a Certificate of Incorporation which gives the company a legal existence from the date given on it. This is conclusive evidence.

Issue of a prospectus or delivery to the Registrar of a statement in lieu of prospectus.

Appointment of Directors

A company being a sui juris requires constant guardianship of certain persons for management and administration of its affairs. In this regard a company is a perpetual pupil. A company being a creature of law lacks both body and mind. Unlike a natural person it can not act by itself. It is intangible and invisible but functions through the complex mechanism of human agency. At the helm of its affairs lie few elected human agents who govern the company under the title "directors". It is therefore necessary for every company to have certain directors for its administration and management. Section 252 of the Companies Act, 1956 provides for at least three directors of a public company and for at least two directors of every other company.
According to Section 253 of the Companies Act, 1956, he must be a natural person and not a body corporate, association or firm. In addition to these, he will hold share qualification. The reason for holding share qualification by a director is to create a personal interest in the company. The qualification of a director of a company limited by shares shall be the holding of at least one share in the Company. In a case of a public company share qualification is usually provided for in the articles. It has been provided in Section 270 (3) of the 1956 Act that in no case will the nominal value of the qualification shares exceed five thousand rupees or the nominal value of one share exceed five thousand rupees.

After the commencement of the Act a person can not be a director of the same time in more than twenty companies.

Secretary

A company must have a secretary. The word "Secretary" has been defined as "any individual, possessing the prescribed qualifications appointed to perform the duties which may be performed by a secretary under this Act and any other ministerial or administrative duties. A full time secretary is a "Clerk or Servant" of a company and as such is entitled to preferential payment of his salary.

Meetings

The general meeting of the members of a company is a forum where the will of the company is expressed in the form of a resolution. It is like a direct democratic government in which important policy relating to a company is formulated.
There are three classes of general meetings held by a company. These are, namely (1) statutory meeting (2) annual general meeting and (3) extraordinary general meeting.

**Shares**

Section 2(46) defines a share as "a share in the share capital of a company and includes stock except where a distinction between stock and shares is expressed or implied". Farewell J. has defined a share as "the interest of a shareholder in the company measured by a sum of money (i.e. the nominal amount), for the purpose of liability in the first place, and of interest in the second, but also consisting of a series of mutual covenants entered into by all the shareholders inter se". Shares represent equal portions into which the capital divided, each shareholder being entitled to a portion of the company's profits corresponding to the number of shares he holds. By Section 82 of the Companies Act 1956 the shares or other interest of any member in the company is movable property, transferable in the manner provided by the articles of the company, and according to the sale of Goods Act, 1930, share are goods. Shares are of various classes and the most common varieties are:

Preference, Equity, Deferred or Founders. A private company may issue all or any of these classes. But a public company can now issue only two kinds of shares. Preference and Equity (Section 86 of the Companies Act, 1956).
Auditors

The provisions dealing with auditors of a company are set out in Sections 224 to 233 B of the Companies Act, 1956. The first auditor of a company must be appointed by the Board of Directors within one month of the date of registration of the Company. His main function is the examination of the accounts maintained by the Company. In the modern business world the auditors are those persons who are qualified accountants from the recognised institutes. The appointment of the auditor is regulated by the statutory provisions of the company law. He is to keep a watch on the accounts of the company in the interest of the share holders.

Auditor has the right to receive accounts, books and vouchers and all necessary information relating to the same.

The auditor's report must state whether, in his opinion, and to the best of information supplied to him and explanations given to them, the accounts of the company give all the information required under the Companies Act. Though auditor is supposed to be good watch-dogs, he must be alert and must report to the share-holders.

Investigation and Inspection

If any creditor of a company or if any contributory alleges before the Registrar that the business of the company is carried on fraudulently or is in fraud of the creditors or persons dealing with the company, the Registrar may, after giving the company, by written order, an opportunity of being
heard, require the company to provide such information and explanation as he may require and specify in the written order served. On the receipt of such order by the Company, the officers of the company must furnish the information to the Registrar within the time specified in his order. The court may also compel the company to furnish, such documents as may reasonably be required by the Registrar. If information is not furnished within the time specified by the Registrar, or if the Registrar is not satisfied with the information or explanation or with any document produced before him, he must report in writing, to the Central Government which may appoint inspectors to investigate into the matter.

Investigators to investigate into the affairs of a company may also be appointed in other cases viz, in the case of a company having a share-capital, on the application of at least 200 members or of members holding at least one-tenth of the total voting power therein. In the case of a company not having a share-capital, inspectors may be appointed on the application of at least one-tenth in number of the persons on the registrar of members of the company. The Central Government must appoint an inspector, if the company, by a special resolution, decides that the affairs of the company ought to be investigated by an inspector. The Central Government may, in its discretion, appoint an inspector, if, in its opinion, there are circumstances suggesting that the business of the company is being conducted with a view to defrauding the creditors, members or any other persons or otherwise for an unlawful or fraudulent purpose, or in a manner oppressive to any of its members or that the company was formed for an unlawful or fraudulent purpose.
Prevention of Oppression and Mismanagement

The words "Oppression" and "Mismanagement" are not defined in the Act. These words carry more than one meaning. The meanings of these words for the purpose of the company law should be used not in strict literal sense but in a broad generic sense.

Lord Cooner in Elder V. Elder & Watson Ltd. has attributed meaning to the word "Oppression":1 "The essence of the matter seems to be that the conduct complained of should at the lowest involve a visible departure from the standards of fair dealing, and a violation of the conditions of fair play on which every shareholder is entitled to rely". In effect, it prescribed a limitation on the supremacy of majority which is one of the cardinal rules of Company Law. This rule is found to have been abused on several occasions, and the whip of the majority is found to have produced results utterly prejudicial to the best interests of the Company. The Sections 397 to 409 of the Companies Act, 1956 envisage prevention of oppression and mismanagement. These sections are designed to relieve the oppressed minorities from hardships without their having to petition to the Court for winding up the company. The Section also empowered the Central Government to apply for relief where it is satisfied, either on a complaint made by any shareholder or as a result of its own independent inquiry or otherwise, that the company is being managed to the detriment of its interests or that the minority of its members is being oppressed by the majority in a manner prejudicial to their interest.2

1 1952 S.C. 49

2 Adopted by the Supreme Court in Shantiprasad Jain V. Kalinga Tubes Ltd. 1965 (1) Comp.L.J. 193, 204 AIR 1965 SC. 1535.
Section 397 of the Companies Act, 1956 provides that any members of a company who complain that the affairs of the company are being conducted in a manner prejudicial to public interest or oppressive to any member or members may apply to the Court for appropriate relief, and the Court may, on being satisfied that the company's affairs are being conducted in the manner alleged, and that to wind up the company, though justified on the facts, would unfairly prejudice such member or members, make such order as it thinks fit with a view to bringing to an end the matters complained of.

Not every person is entitled to apply to the Court. The following members of a company have the right to apply to the Court as per Section 399 of the Companies Act, 1956:

(a) In the case of a Company having a share capital, not less one hundred members of the company or not less one-tenth of the total number of its members whichever is less or any member or members holding not less than one-tenth of the issued share capital of the company, proved that the applicant or applicants have paid all calls and other sums due on the shares.

(b) In the case of a company not having a share capital, not less than one-tenth of the total number of its members.
Amalgamation of Companies

Amalgamation means a state of things under which two companies are so joined as to form a third entity, one company is absorbed into and blended with another company. There are three principal modes of amalgamation: (1) There is a formation and promotion of a new (purchasing) company to take over the assets, etc., of two or more existing companies. The existing companies are wound up on completion of transfer. (2) There may be amalgamation by absorption. In this case one existing company purchases and takes over the entire business of another company, and the latter is wound up. (3) There may be amalgamation by the acquirement of a controlling interest where one company purchases not less than three-fourths of the issued capital of another company and both the companies retain their separate existence. Lindley M.R. observes that "amalgamation does not mean the formation of a new company to carry on the business of an old company. It includes that, but is not confined to that". The transaction is in the nature of offer and acceptance. There should be consumers and ideas between the transferor company and the transferee company in the matter of amalgamation. The indica of such consumers initiates from the transferor company as an offer which is accepted by the transferee company.
Scheme for "take-over" of shares.

In take-over, the another company makes an offer to take over all the shares or the whole of any class of shares of a company, if the offer is accepted, the necessary arrangement for transfer is made subject to the protection of interest of dissenting shareholders. The transferee company has power to acquire the shares of dissenting shareholders of the transferor company on fulfilment of the following conditions Section 395 (1) of the Companies Act, 1956.

a)) There must be a scheme or contract involving the transfer of shares or any class of shares in the transferor company to the transferee company.

b)) Within four months after the making of the offer in that behalf by the transferee company, the offer has been approved by the holders of not less than nine-tenths in value of the shares whose transfer is involved.

The transferee company may, then at any time within two months after the expiry of the said four months, give notice in the prescribed manner to any dissenting shareholder that it desires to acquire his shares. The dissenting shareholder is empowered to make an application to the Court within one month from the date of the notice to prevent the transferee company from acquiring the shares of the dissenting shareholders. The court will order otherwise than compulsory acquisition of the shares of the dissenting shareholders by the transferee company if the scheme is unreasonable or unfair. Heavy Burden is cast
on the dissenting shareholders to prove the unfairness of the scheme. The stock exchange quotation is taken as the prima facie value of the shares. The offeror, the transferee company is for all practical purposes entirely equivalent to the nine-tenths of the shareholders who have accepted the offer, would make the case possible for take one scheme.

Winding up and dissolution of Companies

Winding up of a company is a process by which the life is put to an end, and its net assets, if any, are distributed among the members as the successors of the company dissolved. Like the death of a natural person, the winding up is the death-knell of a company. The death warrant of a company becomes final on appointment of an administrator under the title of a liquidator.

The object of winding up a company is to realise the assets and pay the debts of the company expeditiously and fairly in accordance with the law. This object must not be exploited for the advantage or benefit of any class or a person entitled to petition for winding up a company.

There are three principal makes of winding up of a company:-

(1) Winding up by the Court i.e. compulsory winding up.
(2) Voluntary winding up and
(3) Winding up subject to the supervision of the court
   (a) creditors' voluntary winding up and Members' Voluntary winding up.
The winding up of a company will be governed as per provisions laid down in Section 425 of the Companies Act, 1956. The winding up of a company by the court is similar to a trial in which the court signs the death penalty for a convict. On the other hand, voluntary winding up of a company amounts to natural death of a person. With regard to third mode of winding up, it is like a normal death of a person whose successors or creditors are dubious of impartial realisation and distribution of the assets and as such want the court to keep a judicial eye on the whole affairs.

A winding up by order of the court is deemed to commence not from the date of the order by the Court but from the date at which the petition was presented before the court for winding up.

When the company proves itself solvent, the voluntary winding up is a Members' Voluntary winding-up, in which case the members appoint the liquidator and have control over the affairs of the winding up. But where the company has not filed the Rederation of Solvency, the voluntary winding-up is always a creditors voluntary winding up, in which case the creditors have a dominating control over the winding up and take part in the appointment of the liquidator.

A company, any creditor or creditors of the company, any contributory or contributories or all or any of these parties or the Registrar of Companies, can present a petition to the court for winding up of the company. A contributory can present a petition, if the number of members of the company has fallen below two in the case of a private company or below seven in the case of a public company.
Reasources for Winding-up.

A Company may be wound-up by the court when any one of the following occasions arises as per Section 433 of the Companies Act, 1956:

1) The company has resolved by special resolution to be wound up by the Court.

2) Default is made in delivering the statutory report to the Registrar or in holding the statutory meeting.

3) The company does not commence its business within a year from its incorporation or suspends its business for a whole year.

4) The number of members is reduced, in the case of a public company, below seven and in a case of a private company, below two.

5) The Company is unable to pay its debits.

6) The Court is of opinion that it is just and equitable that the company should be wound up.
In the development of corporate ethics, a stage has been reached where the question of social responsibility of business to the community can no longer be scoffed at. As the company is performing a social purpose in the development of the courtsy, it has failed to reach the stage of social responsiveness.

As openness in corporate affairs is the first principle in seeming responsible behaviour, which is lacking by the companies. No enlightened management remain aloof to the National problems such as unemployment, over population, rural development, environmental protection, including conservation of resources, control of pollution and provision for clean drinking water which the companies fail in scoffing-up.

As the company is understood, generally, economic viable, has failed to pass the test of social responsiveness, as the company does not give social report along with directors' report.

As per Section 397 of the Companies Act, 1956, a single shareholder can not complain about the affairs of the company being conducted in a manner prejudicial to public interest is oppression of the interest of.

Twin proof requirements in Section 397 of the Companies Act, 1956, namely, a continuous course of oppressive, conduct and circumstances justifying winding up of companies is onerous.

An application to the court under Section 397 in respect of oppression and mismanagement by the majority to the minority share holders, can be made, duly signed by at least 100 members.
of the Company or by one-tenth of the total number of its members, whichever is less where the company is with a share capital or by any member or members holding one-tenth of the issued share capital of the company. If the company is without share capital, the application has to be signed by one fifth of the total number of its members.

There is no provision, for recognition of the shareholders' Association on the same lines as of recognizing stock exchange, in the Companies Act, 1956.

Second proviso to Section 394 (1) of the Companies Act, 1956 envisages a report by the official liquidator in case of amalgamation instead of amalgamation be dealt with only by district courts.

There is no amicable provision in the Companies Act, 1956 in respect of dissident shareholders in minority. There is compulsion on the minority dissident shareholders to transfer shares to the transferee company against their wills even served notice of the intention to take-over the shares by the transferee company being oppressed.

According to Section 395 of the Companies Act, 1956, 10 p.c. of the dissident shareholders have no other go but to transfer their shares as 90 p.c. transferred, being oppressed of the majority.

There is no provision in the companies Act, 1956 regarding following abuses of the "insiders" (Directors and Controllers):

(a) Abuse of inside information relating to an impending bid by purchasing shares from the existing shareholders before price rise as a result of the bid, enabling "insiders" making profit at the cost of the "outsiders" (Ordinary shareholders).
(b) Directors or Controllers obtaining for themselves special financial benefits as a price of supporting the bid and parting with their controlling shares.

(c) Unfairly resisting a genuine good bid for the purpose of preserving their own control and financial benefits and thereby depriving the other shareholders of a higher value for their shares than can be obtained in the market.

There is no provision in the Companies Act, 1956 regarding An International Accounting Standards (IAS) of which India is a founder member.

Shareholders have no power to participate in the management shareholders are no longer proprietor or quasi-partner in the company. Shareholders are powerless owners of the Company.

The position of a director of a public corporation now be equated to the position of a professional man like a doctor, lawyer or auditor, inspite of that there is no implied warranty by a director that he is a competent.

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The plaintiff was a shareholder of the respondent company. One of the objects of the company was: "To advance money at interest on the security of land, houses, machinery and other property situated in India. The plaintiff complained that several investments have been made by the company without adequate security and contrary to the provisions of the memorandum and, therefore, prayed for a perpetual injunction to restrain it from making such investments".

The Court observed that, the broad rule in such cases is no doubt that in all matters of internal management of a company, the company itself is the judge of its affairs and the court should not interfere. But application of the assets of a company is not a matter of mere internal management. It is alleged that directors are acting ultravires in their application of the funds of the company. Under these circumstances a single member can maintain a suit for a declaration as to the true construction of the article in question.

1 AIR 1935 Lab 792.
Case - 2. *Nagappa Chettiar V. Madras Race Club.*

In this case, the Court observed "A shareholder is entitled to enforce his individual rights against the company, such as his right to vote, the right to have his vote recorded or his right to stand as a director of a company at an election."

Case - 3. *Dhekeshwar Cotton Mills Ltd. V. Nil Kamal Chakravarty.*

There are certain acts which can only be done by passing a special resolution at a general meeting of shareholders. Accordingly, if majority purport to do any such act by passing only an ordinary resolution or without passing special resolution in the manner required by law, any member or members can bring an action to restrain the majority.

Case - 4. *J.P. Singh V. Chairman, Metropolitan Council.*

Sometimes an obvious wrong may have been done to the Company, but the controlling shareholders would not permit an action to be brought against the wrongdoer. In such cases, to safeguard the interest of the company, any member or members may bring an action in the name of the company, as recognised in *Fors V. Harbottle.*

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1 (1949) 1 MLJ 662, 667.
2 AIR 1937 Cal. 645.
3 AIR 1969 Delhi 295.
In this case FALL ALI J. restates all the cases in which a shareholder can take steps to redress a wrong done to the company.

In this case, at a meeting of a company, it was proposed to elect some directors by separate elections. The plaintiff was a candidate and he contested the election, but was defeated. He was proposed as a candidate again to fill up the second vacancy. But the Chairman, on account of his previous defeat, disqualified him. In his action against this ruling, the court held that he was entitled to a declaration that the proceedings of the meeting as regards the election of directors were null and void. " An individual membership right implies that the individual shareholders can insist on strict observance of the legal rules, statutory provisions and the provisions in the memorandum and articles which can not be waived by a bare majority of shareholders. Every shareholder can assert such a right in his own name.
Case - 7. *Shantiprasad Jain V. Kalinga Tubes.*

The question of applicability of § 397 came up for decision before the Supreme Court in Shantiprasad Jain V. Kalinga Tubes.

"The essence of the matter seems to be that the conduct complained of should at the lowest involve a visible departure from the standards of fair dealing and a violation of the conditions of fair play on which every shareholder who entrusts his money to the company is entitled to rely ". The complaining shareholder must be under a burden which is unjust or harsh or tyrannical.

"A persistent and persisting course of unjust conduct must be shown".

In the said case, A private company consisted of three groups of shareholders, the petitioner and the two respondents holding shares in equal proportion and with equal representation on the board. They had agreed in writing to maintain this equilibrium. But no such agreement was incorporated in the articles of the company. Subsequently, in order to obtain certain loan facilities, the company was converted into a public company and it was proposed to issue 39,000 more shares. Ordinarily, according to Section 81 such new shares should have been offered to the existing shareholders. But the majority of the shareholders consisting of the two respondents' groups passed a resolution to offer these shares to outsiders, which was accordingly done. The petitioner contended that the allottees were friends of the majority group and the allotment had been made purposely to them with the malafide intention to increase their voting strength and to squeeze out the petitioner. Thus, contended was oppression within the meaning of Section 397 of the Companies Act, 1956.

1 AIR 1965 SC 1535. (1965) 1 Comp L.J. 193.
In this case, the directors of the company had the majority backing did not call any general meeting of the company nor did they make any gesture to place before the shareholders the balance sheet of the year ending 31-12-1955. As a matter of fact, the shareholders were kept completely in the dark as to what was being done with regard to the company's affairs. Under the articles of the company, 1/3rd of the directors were required to retire every year by rotation but the directors continued wrongfully to act as such and dealt with the company's money in any manner they liked to the prejudice of the interest of the company. It was held that it was the case where the powers under 38 397, 398 and 402 should be justly involved since it was manifest that not only there had been oppression of the minority shareholders of the company but also the affairs of the company had been conducted in a manner prejudicial to the interest of the Company.

1 AIR 1961 Cal. 443.
Company Petition No. 100 of 1988 has been filed under Section 397 and 398 of the Companies Act by one set of shareholders. Along with that petition, company application No. 196 of 1988 was filed for restraining the respondents from transferring the assets of the company. That company application came up for motion hearing on November 26, 1988 and the following order was passed by M. M. Panchhi J.

"Notice for December 3, 1988, Assets of the Company be not transferred till further orders".


Company Application No. 87 of 1989 has been moved for vacation order dated November 26, 1988. It is stated in the application that the company was in arrears of Government taxes and it could not pay even token tax arrears. Buses of the company were attached for recovery of Government dues. Buses of the company were attached for recovery of Government dues. The applicant purchased the shareholding of the minority shareholders and revived the business of the company by making a huge investment. They discharged all the tax liabilities of the company and got 16 buses released. The buses attached by the Government remained parked in the police

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1 Reports of Company Cases Vol. 66 Part 6 P. 531 (15-9-89)
lines for more than four years and were not motorable. These made motorable on making considerable investment. The applicant further states that after they had purchased the shareholding, the company purchased about 26 buses and that at present a flat of 52 buses is operating. Mr. Baldev Kapoo, on getting instructions from his client, present in Court today, states that four new buses will be added on June 3, 1989 and three more buses will be added by June 15, 1989. The addition of new buses indicates that a good deal of progress has been made by the purchases after they have purchased the shareholdings of the company. The fact that they have discharged the tax liability to the extent of 19 lakhs indicate their bonafides. It has further been brought to the notice that a penalty of about Rs.8.40 lakhs was imposed by the transport authorities for delay in the payment of token tax. That order has been challenged in a writ petition in this Court and recovery of penalty amount has been stayed.

The buses which remained idle in the police lines for more than four years can not be in good condition. In order to safeguard the interest of the company, of the shareholders and of the purchasers, the following directions are given:

(i) The buses will be sold by private negotiations in the presence of the Local Commissioner appointed by this Court. The Local Commissioner will ensure that the sale price received from the prospective purchasers is deposited in a scheduled bank.

(ii) In case those shareholders offer to purchase the buses at
prices higher than the prices for which company intending to sell the buses, the buses will be sold to those shareholders.

Accordingly, a Local Commissioner appointed, with fixing his fees at Rs.5000/-. Thus application disposed of accordingly.
Case 10a (In the Karnataka High Court)

Shri Bala Il Textile Mills Pvt. Ltd., and another

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Ashok Kayle and others.

The petitioner who are shareholders of respondent No. 1 Company had filed a petition under the provisions of Sections 397 and 398 of the Act against respondent No. 1 the Company and respondent No. 2, the ex-director of the first respondent company.

In the statement of objections filed by the respondents, a plea was taken that the petition is not maintainable in view of the fact that the membership of the petitioners in the first respondent company is not in accordance with the requirements of section 41 of the Act. It should be noticed at this stage that, in the statement of objections filed by respondents, they have stated amongst other things:

"The respondents herein dispute and deny that the petitioners or any of them is/are members/shareholders of respondent No. 1 and therefore, the answering respondents are advised that all valid and available defences open to them in regard to the challenge to the petitioners as members/shareholders of respondent No. 1 new not be placed in extense in these proceedings but they reserve their right to plead by way defence in any other appropriate proceedings that may be initiated for rectification in the register of registered members under the Companies Act or by way of suit in an appropriate Court of Law".

1 Reports of Company Cases Vol. 66 Parts - 8, 15-10-89 E.No.654 to 670.
But, no specific defence was taken in the statement of objections repudiating the rights of the petitioners who claim to be shareholders of the first respondent company on the ground that their membership was violative of the requirement of Section 41(2) of the Act.

The learned Company judge further observed:

"Equally commendable is the view that any form of writing from which it is possible to infer that a member has consented to be a member should be sufficient compliance with the requirement of the said sub-section".

"Definition of 'member'"

In our view (Court view) that by itself does not throw any light on the scope of Section 41 of the Act. The word "member" is also defined under Sub-Section (27) of Section 2 of the Act. Sub-Section (27) of Section 2 of the Act reads as follows:

" 'member' in relation a company, does not include a bearer of a share-warrant of the Company issued in pursuance of Section 114".

The difference in the language of Section 2(24) of definition clause of member and Section 41 dealing with the membership of the company should be noticed.

A combined reading of Sections 397, 398 and 399 of the Act makes it clear that the meaning of the word "member" of a company should be understood in the context in which it is used and that meaning can not be tagged on to the membership clause in Section
41 (2) of the Act. The clause which is applicable to test whether a member satisfies the requirement of Sections 397 and 398 of the Act would be section 2 (24) of the Act and not the provisions of Section 41 (2) of the Act.

"In the case of members other than the subscribers to the memorandum, two essential conditions have to be satisfied to constitute a person a member; as per Palmer’s Company Law Vol. 1, 23rd edition, at Page 683.

(1) an agreement to become a member and
(2) entry on the register.

A person desirous of acquiring shares may express his agreement to do so in one of two firms. He may apply to the company for shares and may have them allotted to him or he may have the shares transferred to him in pursuance of a contract of sale other transaction. There is no difference, as Chitty J. said to Nicol’s Case (1885) 29 Ch. D. 421, between a contract to take shares and any other contract. A formal contract is not necessary. If, in substance, an agreement is made, the form is not material."

If this commentary is read as a whole, the emphasis is that there should be consent of the member before he is registered as a member. The underlying purpose of Section 41(2) is that a person must give his consent in unequivocal terms by applying in writing for allotment of shares. But it has not mean that the company law can not allot the shares even when a person has not complied with the requirement of Section 41 (2) of the Act.
The Supreme Court has observed as follows (P. 864 of 33 (1963) Company Law:-

"The word 'allotment' has not been defined in the companies Act either in our country or in England. But we think that the meaning of that word is well understood and no decision has been brought to our notice to indicate that any doubt has ever been entertained as to it. As Chitty J. put it in In re Florence Sand and Public Works Co: (1885) LR 29 Ch. D. 421 at P 426.

"What is termed 'allotment' is generally neither more nor less than the acceptance by the company of the offer to shares. This constitutes a binding contract to take that number according to the offer and acceptance. To my mind there is no magic whatever in the term "allotment" as used in these circumstances. It is said that the allotment is an appropriation of a specific number of shares. The process described by Chitty J. is very familiar in Company Law.

"The company proceeds to issue the shares depending on the condition of the market. That only means inviting applications for those shares. When the applications are received, it accepts them and this is what is generally called allotment. No doubt there may be an allotment of shares without an application but no instance exists where that word is used to describe a transaction whereby one becomes a share holder otherwise than by appropriation to him of a share out of the previously unappropriated share capital."
These observations will go to show that if a shareholder who claims under Sections 397 and 398 of the Act, satisfies the Company Court that he is a shareholder of a company by virtue of allotment of shares in his favour which is evidenced not only by the register of members maintained by the company, as per Section 150 of the Act, but also by the statutory returns and documents maintained and filed by the company, it is not open to the contesting respondents to contend that for the purpose of Section 397 and 398 of the Act, a shareholder must comply with the condition precedent stipulated in Section 41(2) of the Act.

...
Large industrial undertakings, whether private or public, national or international, dominate markets. It is imperative to control these bodies to ensure consumer protection.

In a country like India, where consumer protection laws are sidely scattered and inadequately catered, provisions contained in company legislation can be fruitfully used to protect the consumer interests to a great extent.

Logically, a corporation being an artificial juridical person, having no mind or soul of its own, cannot commit a crime which needs 'mens rea'. However, there is broad consumer opinion among academic writers and judges that a corporation may be indicated for criminal offences which do not involve personal violence or misdemeanor in order to protect consumers.

Modern legislation on consumer protection specifically provides that when a consumer offence is committed by a company, the company and its top managerial men may be prosecuted.

Law should clearly provide that when a consumer offence is committed by a company, all illegal profits accruing from such offence should invariably be confiscated. Companies occupy a vital and prestigious position in our society. Imposition of small fines will not deter them from committing offences. Hence enhanced penalties should be provided for violation of consumer laws by companies. If such violations are caused due to their personal profits, the laws caused to the company should be recovered from such managerial men.
The acceptance of the concept of social responsibility should be reflected in the information and disclosure that the Company makes available for the benefits of its various constituents like the shareholders, creditors, employees, consumers and the community. In order to ensure implementation of concept of a social responsibility and dissemination of adequate information, a provision should be made in the Companies Act that every company shall present a social report along with the directors' report indicating and quantifying the various activities relating to the social responsibilities carried out by the Company.

Control of Companies is suggested as under:-

(1) Control through almost complete ownership

(2) Majority Control

(3) Control through a legal device without majority control

(4) Minority control and

(5) Management Control

Control through almost complete ownership and majority control are orthodox types, is still married to control.

Control through a legal device without majority control are:

(a) Pyramiding
(b) Use of non-voting stock
(c) Voting Trust.

This evidence of the beginning of separation of control from ownership.
Minority Control

This is a phenomenon arising out of dispersion of share holding and is the usual pattern of reasonably large companies.

Management Control

This form of control evidences the complete divorce of ownership from control in a corporation.

Workers' participation in the management of the affairs of the company is suggested. The concept of workers' participation has its roots in the human relations movement in the demand of industrial organisations since the humanitarian approach to labour brought about a new set of values for labour and management, replacing power by persuasion, authoritarianism by democracy and compulsion by co-operation.

Workers' participation is based on the fundamental concept, that the ordinary worker invests his labour in and ties his fate to his place of work and that, therefore, he has a legitimate right to have a share in influencing the various aspects to company policy.

The concept of workers' participation in management is an essential ingredient of industrial democracy and indicates an attempt on the part of an employer to build his employees into a team which works towards the realisation of a common objective.

The twin proof requirements in Section 397, is one rows. Singh act of oppression should be sufficient to attract section 397 and 398 of the companies Act, 1956 to involve oppression and
mismanagement of the majority share holders.

It is suggested that the company should recognise the share holders Association on the same lines as recognised stock exchange.

It is suggested that a single share holder should be entitled to apply to the court under Sections 397 and 398.

The above are the suggestions made for shareholders' protections.
(F) CONCLUSION

By developing a system of checks and controls, company legislation in India protects the consumer interests and attempts to reduce the dominance and monopoly of large corporations.

Small firms producing basic consumer products need promotion. Government should give them and licence of companies violating consumer protection requirements should be revoked.

Disclosure provisions should be made more effective and realistic. Company's accounts should be simple so as to understand by ordinary men. Cost audit should be made compulsory for all manufacturing companies.

Control over pricing should be made effective. Stock exchange facilities should be denied to companies which violate consumer standards frequently.

Every recognised consumer council or 25 or more consumers should be given power to enforce consumer protection provisions on companies.

Encouragement should be given to co-operative consumer societies, to fight the evils of exploitation by intermediary sellers.

The distribution and supply of consumer products should be entrusted to consumer co-operative societies.
Consumer protection organisations should be encouraged and provided with financial assistance so as to safeguard the interests of the consumers.

Considering the importance of company in protecting consumer interests, the corporate law should be remodelled in the interest of the consumers and in turn Nation at large.
Chapter VII

Monopolies and Restrictive Trade Practices Act - 1969

(a) INTRODUCTION:

The Monopolies and Restrictive Trade Practices Act - 1969 has its genesis in the Directive principles of the State policy embodied in the Constitution of India:

The MRTP Act 1969, lays down a dual machinery for the enforcement of its provisions. These are the Central Government and the Monopolies and Restrictive Trade Practices Commission. The functions of the Central Government are to ensure that the operation of economic system does not result in the concentration of economic power to the common detriment and to control monopolies. The powers in this regard are exercisable by the Government in consultation with the Commission (MRTP), which has only an advisory role to play. The MRTP Commission on the other hand is vested with the independent powers to inquire into restrictive and unfair trade practices and to pass final orders, to protect the ultimate consumers from false representation, misleading advertisements, bargain sales, switch selling and unscrupulous exploitation etc.

The Monopolies and Restrictive Trade Practice Commission (the "MRTP Commission") is a quasi-judicial body, set-up by the Central Government for purposes of the Monopolies and Restrictive Trade Practices Act, 1969 (the "MRTP Act"). The Act has two objects: (1) to ensure that the operation of the economic system in the Country does not result in the concentration of economic power to the common detriment, and (2) to promote competition among private enterprises at the various levels of production and the distribution of goods and services by controlling monopolistic and restrictive trade practices. Thus, the Act seeks to establish efficiency in the economy and to protect consumer interest at large, motivating the manufacturers and their distributors to have a healthy competition of the twin-points, of price and quality. The Act does not apply to public sector undertakings.

The Monopolies and Restrictive Trade Practices Commission enjoys the powers of a civil court for certain purposes. The proceedings before it are deemed to be of judicial nature for these purposes. It enjoys absolute powers to regulate the procedure and conduct of its business.

With matters relating to the prevention of concentration of economic power and the control of monopolies and monopolistic trade practices, the Commission's functions are of an advisory nature. However, the control of restrictive trade practices enjoys an autonomous status and its orders are of a mandatory nature. In restrictive trade practice inquiry, the Commission's orders have judicial force and finality, and are subject to a supreme court appeal.
As a consumer protection agency, the Commission has three functions:-

(1) Control of restrictive trade practices,

(ii) Control of monopolistic trade practices and

(iii) Prevention of concentration of economic power.

(COSTLY PROCEEDINGS:-)

Prior to 1977, the Commission consistently held that the ten trade practices mentioned in Section 33 of the Act were restrictive. This view was set aside by the Supreme Court in the case of Tata Engineering and Locomotive Co. Ltd., (TELCO) (AIR 1977 SC. 943). The Court ruled that the various trade practices mentioned in Section 33 were only enumerative and were not restrictive trade practices per se. According to the Supreme Court, for a trade practice to be held as restrictive, it was necessary to prove an adverse effect on competition as laid down in the definition in Section 2(o). This ruling of the Supreme Court came under some doubt by its subsequent decision in the case of Hindustan Lever Ltd., (AIR 1977 SC 1285). However, the Commission started following the Supreme Court's decision in the TELCO case and held in a number of cases that proved adverse effect on competition. One of its explicit and notable decision is in the case of Chiranjilal Chandrakhan Bhan delivered on December 12, 1977 in Restrictive Trade Practices Enquiry No. 19 of 1975. The doubt has now been set at rest by the Supreme Court's decision in the case of Mahindra and Mahindra Ltd., delivered on 20-1-1977 in Civil Appeal No. 860 of 1978. In Mahindra's case the Supreme Court had dissented from the Hindustan Lever's decisions and has re-affirmed the decision in the TELCO case. The latest decisions of the
Monopolies and Restrictive Trade Practices Commission and the Supreme Court have rendered the task of enforcement of the anti-Restrictive Trade Practices law very difficult. The proceedings have become very elaborate, laborious, time-consuming and costly. The need for reform and simplification, therefore, became inevitable.


The definition of a 'restrictive trade practice' is a very important part of the legislation on restrictive trade practices, which in turn were one kind of unfair practices. The definition should be such that a law-abiding citizen or ordinary prudence is able to understand it without going to a lawyer and avoid infringement of the law before he is hauled-up by a notice by the Monopolies and Restrictive Trade Practices Commission. After considering the evidence tendered it by various witness and bearing in mind the provisions of contemporary legislation in other countries, the Sachar Panel in its Report presented in 1978 (Paras 19, 21, 28 & 29) has advocated a more practical procedure with a somewhat predominant role for the 'per se' approach. The words 'per se' mean "finding illegality on the face of an agreement or practice". Under the 'per se' approach the specified the business practices are considered illegal, independently of any examination of their effect in a particular case of the circumstances which give rise to them. The 'per se' approach is different from the approach of 'rule of reason' where a finding is arrived at after due examination. The Government has now sought to give new thrust to consumer protection legislation by introducing on December 22, 1983 in the Rajya Sabha the Monopolies and Restrictive Trade
Practices (Amendment) Bill, 1983. The bill amongst other amendments to the Monopolies and Restrictive Trade Practices Act seeks to simplify and strengthen the anti-Monopolises and Restrictive Trade Practices Law and for the first time has taken initiative to add a chapter to the Monopolies and Restrictive Trade Practices Act to combat unfair Trade Practices. With the suggestion by the Sachar Committee, the Monopolies and Restrictive Trade Practices (Amendment) Act, 1984 amended in 1984 w.e.f. 1-8-84, incorporating new provisions relating to unfair trade practices to protect the interest of the consumers effectively. (Sections 36A to 36E, Chapter V, Part - B). These new measures may now be briefly noted.


What constitute an unfair trade practice ? The definition is to be found in Section 36-A of the Act.

Unfair trade practice means a trade practice which for the purpose of promoting the sale, use or supply of any goods or for the provision of any services, adopts one or more of the following practices and thereby causes loss or injury to the consumers of such goods or services, whether by eliminating or restricting competition or otherwise:-

Clauses (1) to (5) of the Section 36-A classify the various forms of unfair trade practices such as false representation, bargain sale, offering gifts and conducting promotional contests, supply of products which do not comply with the safety standards, and hoarding and destruction of goods.
Unfair trade practice means a trade practice which is detrimental to the interests of the consumers whether the interests are economic interest or interest in respect of health, safety or other matters which ought to be regarded as unfair to the consumers.

Sub-Clause (vi) inserted by the Monopolies and Restrictive Trade Practices (Amendment) Act 1984, to Section 2 (i) which defines 'monopolistic trade practice' refers to the practice of preventing or lessening competition in the production, supply or distribution of any goods or in the provision or maintenance of any services by the adoption of unfair methods or unfair or deceptive practices.

Although Part B to Chapter V of the Monopolies and Restrictive Trade Practices Act has been inserted as a consumer protection measure by the Amendment Act, 1984, and the term 'consumer' has specifically been used in Section 36-A.

It seeks to make an important change by empowering the Monopolies and Restrictive Trade Practices Commission to initiate suo-moto proceedings into any monopolistic trade practices and report its findings to the Central Government Section 32 expressly provide that every monopolistic trade practice would be 'per se' prejudicial to public interest except where such practice is permitted by the Government in certain cases. This is a clear and candid instance of acceptance of the 'per se' approach.

The basic objective of any anti-monopoly legislation is to afford protection to the consumers by keeping competition alive in the relevant market. When a big suppliers dominate the market there will ordinarily be a high probability of their coming to some kind of agreement or understanding about the price and output by which the competition is restricted. They may restraint competition between themselves by mutual agreements or understandings. In order to have a check over such agreements, the anti-trust legislations of many countries have provided for their compulsory registration. Section 33 of the Monopolies and Restrictive Trade Practices Act, 1969 is the king-pin of the Act, providing the categories of registrable agreements covering a wide-range of activities. Such agreements cover sale and purchase, production and distribution, horizontal and vertical arrangements, price and non-price discrimination, territorial and customer allocation, resale price maintenance and predatory price cutting. The Registration provisions apply to restrictive trade agreements relating to provision of services.
Section 33 (i) of the Act sets out various type of agreements relating to restrictive trade practices, which are required to be registered, namely:

(a) Refusal to deal
(b) Typing agreements or full line forcing
(c) Exclusive dealing
(d) Collective or concerted action
(e) Discriminatory dealings or differential concessions or benefits.
(f) Resale price maintenance
(g) Restricting on output or supply of goods
(h) Control of manufacturing process
(i) Boycott
(j) Price control agreements
(ja) Restricting the persons from whom goods may be bought
(jb) Offering bids or abstaining from bidding
(k) Agreements to be notified by the Central Government as being those relating to restrictive trade practices
(l) Any agreement to enforce agreement relating to restrictive trade practices.

The term 'restrictive trade practice' is defined in Section 2(0) to means a trade practice which has or may have the effect of preventing, distorting or restricting competition in any manner in particular -

(i) Which tends to obstruct the flow of capital or resources into the stream of production or
(ii) Which tends to bring about manipulation of prices, or conditions of delivery, or to affect the flow of supplies
in market relating to goods or services in such manner as to impose on the consumers unjustified costs or restriction.

The whole thrust of Section 2 (o) defining a restrictive trade practice is entirely on the effect of the trade practice on the relevant competitive situation. The effect on competition is touchstone under Section 2(o).

(iv) **Control of Restrictive Trade Practices.**

The Act purports to control restrictive trade practices for the regulation of restrictive trade practices.

(1) by making such practices registrable under Section 35 of Monopolies and Restrictive Trade Practices Act 1969,

(2) Providing jurisdiction to the Monopolies and Restrictive Trade Practices Commission under Section 10 to inquire into any restrictive trade practice.

The Commission may initiate an inquiry into any restrictive trade practices are (i) complaints from 25 or more consumers from a trade or consumer's association, having a membership of 25 or more persons, (ii) a reference from the Central Government or a State Government. (iii) an application of the Registrar of Restrictive Trade Agreements (RRTA) and (iv) its own knowledge or information.

(3) The trade practices specified in Section 33 (1) are "Per se" restrictive and these are associable before the Commission without any further enquiry about their economic impact.
A restrictive trade practice inquiry is conducted by the Commission in accordance with the procedure laid down in the Monopolies and Restrictive Trade Practices Commission Regulations, 1974. The hearing before the Commission is open to public and can be attended by any member of the public, except in special circumstances.

A Restrictive trade practice is deemed to be prejudicial to the public interest, unless the Commission is satisfied of any one of the eight circumstances specified under the Act (commonly referred to as "Public interest gateways"). The party concerned can claim that the circumstances in which the restrictive trade practice has been resorted to would result in certain advantages which out weigh the disadvantages or detriment caused by it, or that the impugned restrictive trade to a material extent. If this claim is substantiated, the inquiry is closed.

If the claim is not substantiated to the satisfaction of the Commission and if it is of the opinion that the practice is prejudicial to the public interest, it can direct the party concerned to discontinue the practice and not to repeat the same referred to as a "Cease and desist" order and declare the agreement relating thereto, if any would avoid in respect of such restrictive trade practice, Moreover, the party can be directed to modify the agreement in the specified manner.

The Commission is also empowered to permit any party, on its request, to take such steps within the specified times, as to ensure that the trade practice is no longer prejudicial to the public interest. If the Commission is satisfied that the
necessary steps have been taken within the specified time, it may drop the inquiry.

Before arriving at a conclusion that the trade practice in question amounts to a restrictive trade practice, the commission has to inquire into the actual and probable effects of the practice on the relevant trade. The effect on compulsion is also of crucial importance in the regulation of restrictive trade practices of exclusive dealing, tie-in-sales, full line forcing, price discrimination, resale price maintenance, limiting, restricting or withholding of goods, territorial restriction, collusive price fixation, formation of cartels, boycott, price control agreement, refusal to supply goods etc. These agreements are required to be registered with the RRTA. Although the RRTA holds an office independent of the commission, he has a functional relationship with it. The Commission is empowered to lay down the RRTA's duties and functions within the frame work of the Monopolies and Restrictive Trade Practices Act.

The registration of restrictive trade agreements serves useful purpose in controlling restrictive trade practices and thereby protecting the consumer interest. The proceeding before the Commission is quasi-judicial. The nature of complaint under Section 10(a) is more like a plaint filed before a Civil Court or a criminal complaint filed before a Criminal Court. Just as a Civil Court may reject a plaint for want of cause of action, the Commission may not act upon a complaint under Section 10(a), if, with or without the investigation by the Director General, it comes to the conclusion that there is no sufficient cause for it to proceed further. Similar to a plaint which is not
rejected for want of a cause of action and a complaint which is registered as disclosing a prima-facie case becomes the starting point of a Civil or Criminal proceeding, the complaint under Section 10(a) becomes the starting point of the proceeding for the investigation into restrictive trade practices under Section 37, which smoothens the proceedings in the interest of consumers.

The application by the Director General under Section 10(a) (iii) must be in accordance with Regulation 55 of the Monopolies and Restrictive Trade Practices Regulations, 1974. The Supreme Court in Tata Engineering & Locomotive Co. Ltd. (TELCO) V/s. R.R.T.A. held that under the regulation an application under this sub-clause must contain facts which, in the Registrar's (now Director General) opinion, constitute a restrictive trade practice, and if it is in relation to any agreement, set out such portions of the agreement as may be necessary to bring out the facts complained of.

Compulsory registration of agreements provides a census of the restrictive trade practices in operation in the country so as to form a basis for detailed examination and, thereafter, being brought, before the Commission for inquiry and adjudication.

Case : (1) Restrictive trade practice in Re Ballarpur Industries Ltd. V/s Monopolies and Restrictive Trade Practices Commission 2

A Division bench of the Delhi High Court, have dismissed the writ petition filed by Ballarpur Industries Ltd, challenging the

1 AIR 1977 S.C. 973.
validity of the notice of enquiry issued by the Monopolies and Restrictive Trade Practices Commission under Section 10(a)(i) and 10(a)(iv) of the Monopolies and Restrictive Trade Practices Act 1969. The Commission had issued the notice on the basis of two preliminary investigation reports submitted by the Director General of (I&R), Ministry of Industry, Department of Company Affairs on a complaint filed by 31 distributors and sellers who were marketing and selling paper manufactured and supplied by Ballarpur Industries Ltd. The Commission had earlier during the course of enquiry, rejected an application of Ballarpur Industries Ltd, IA No. 5 of 1985 by its order dated February 18, 1986, pleading that the issue of notice of enquiry under two Sub-Clauses viz, Section 10(a)(i) and 10(a)(iv) was void ab initio because all the four sub-clauses of Section 10(a)(i) were exclusive and could not be combined with one another. The notice of enquiry could relate to only one of the alternatives as provided in Section 10(a) of the Act. The said application also challenged the notice of enquiry on the ground that the complaint by 31 traders did not satisfy the provisions of Section 10(a)(i) of the Act. The traders not being consumers and the signatures of some of them having been obtained on blank sheets on the plea that they were required to make representations to the company for increase of the supply of paper, the complaint of the traders fell short of the requisite number required under Section 10(a)(i) of the Act. The writ petition was filed in the wake of the Commission's order dated February 18, 1986, rejecting the above contentions. It is held that the Commission could proceed under Section 10(a)(iv) of the Act. The Commission is a high-powered body constituted of a Chairman, a person who is or has been or is qualified to be a
judge of the Supreme Court or a High Court, and the members who are persons of ability, integrity and standing having adequate knowledge or experience of or have shown capacity with problems relating to economics, law, commerce, accountancy, industry, public affairs or administration. Only such a high powered body had been entrusted with the job to administer the Act, the object of which is to provide that the operation of the economic system does not result in the concentration of economic power to the common detriment, for the control of monopolies, for the prohibition of monopolistic and restrictive trade practices and such other matters connected therewith or incidental thereto.

The provisions of the Act and the objects provide enough guidance for the Commission to act under Clause (iv) of Section 10(a). Therefore, the argument that Section 10(a)(iv) is invalid has been rejected by the said Court.

The judges dismissed the writ petition of Ballarpur Industries Ltd. with costs.

In view of the above judgement, the Monopolies and Restrictive Trade Practices Commission will now proceed with the restrictive trade practice enquiry against Ballarpur Industries Ltd.

Case : (2) *Director General of (I&R) V/s Hindustan Lever Ltd.*

The respondent is a public limited company manufacturing, interalia, toilet soaps, washing soaps, detergents etc. It has a sales and distribution network operating all over India. In an enquiry instituted by the Director General of (I&R) allegations of restrictive trade practices were made against the Company.

1 Company Cases 1989 Vol. 65 P. 51.
The Company, it was alleged, despatched goods to its retailers, without reference to orders placed by them, and forced the latter to accept the unordered goods. These included slow-moving items such as "Surf" and "Rin" and "Lifebuoy" soap, which the retailers were coerced into accepting, if they wanted supplies of fast-moving items such as "Lux" and "Liril". The Company sought to ensure the charge of off-loading or dumping of unwanted goods, and of tie-up of sales, stating that the Company's sales were on a principal to principal basis under contracts entered into between the Company and its re-distribution stockists. It was also alleged that the Company had indulged in the restrictive trade practice of refusal to deal with or supply to re-distribution stockists, whose stockistship had been terminated.

Held, that (i) from the affidavits and evidence of the re-distribution stockists and retailers, it could be seen that the sales network of the company was such that it could, through the Area Sales Managers and the Territory Sales Incharge, dictate to its re-distribution stockists and retailers the amounts of the various products they were to purchase and accept from the Company. The supreme Court had held in the case of the respondent Company itself (Hindustan Lever Ltd. v/s Monopolies and Restrictive Trade Practices Commission (1977) AIR 1977 SC 1285), that where the stockist could be dictated to purchase such goods and in such combination as the Company may decide, Section 33(1)(b) of the Monopolies and Restrictive Trade Practices Act 1969 came into operation.
(ii) That with a market power of 70% in toilet soaps and 54% in detergents and 21% in laundry soaps (figures supplied by the DGTD) at its command, the Company was well-equipped to ensure that all the three varieties of its products were lifted by its re-distribution stockists in the manner it chose and not necessarily in response to market demand. It was well-known that "Surf" was too highly priced to compete successfully with cheaper brands of detergents manufactured by the small and medium sector. In the context of these facts, it did not need an elaborate survey to see how the anti-competitive thrust of tying-up sales of fast and slow moving items was heightened. There was hardly any economic fact relevant, which could show that the restraint placed by tying arrangements on the Company's re-distribution stockists regulated trade in any way. It was merely a case of use of the Company's market power to dispose of products which did not have a genuine competitive edge over similar products manufactured by other industrialists. This was bound to distort competition and was a restrictive trade practice within the meaning of Section 2(o) of the Act.

(iii) that every trader had a right to select his customer or to refuse to deal with a particular customer, if such a right was exercised on the basis of business considerations such as creditworthiness and integrity. But the Commission could intervene if such a right was exercised to thwart or distort competition or to perpetrate a restrictive trade practice. It was not a pure coincidence that prior to the termination of stockistship of one of the re-distribution stockists, he had complained of the Company's practice of sending unordered goods. Even if the Company brought a scheme of rationalisation of the distribution system to reduce
uneconomic outlets, there was a preponderance of probability that this stockist was covered by the scheme mainly because he was protesting against the Company's practice of sending more slow-moving goods than fast-moving goods. As far as this stockist was concerned, refusal to deal was a restrictive trade practice.

Having held that the respondent has been indulging in the restrictive trade practices of (1) tying up sales of its slow-moving with fast-moving products and dictating to its re-distribution stockists to purchase such goods and in such combination as the respondent may decide, and (2) terminating the stockistship of its stockists resulting in refusal to deal with him, and having held that the presumption in regard to such restrictive trade practices being prejudicial to public interest has not been rebutted. Court now proceed under Section 37(1) and directs that the aforesaid restrictive trade practices shall be discontinued and shall not be repeated by the respondent. It logically follows that the respondent shall restore the stockistship of M/s. Jain General Stores, Pulsudhar, the affected RS and resume dealings with him.

Having regard to the protracted proceedings consisting of a large number of hearings in this case, Court directs that the respondent shall pay a sum of Rs. 10,000/- as costs to the Director General of (I&R) within 60 days from today i.e. 4-8-1987. The respondent will file an affidavit of compliance within 60 days from the date of this order.

Major restrictive trade practices which have been found to be prevalent in India, and which the Commission has sought to curb, are, price discrimination, resale price maintenance, territorial restriction on dealers, exclusive dealing, refused to supply goods,
tie-up sale, full-line forcing, and collective collusive pricing. In a majority of cases, the Commission has either passed a "cease and desist" order against the company concerned or has terminated the inquiry after being satisfied that the Company had taken necessary steps to see that the trade practice was no longer harmful to the public interest.

(V) Prevention of Concentration of Economic Power

The provisions relating to the prevention of concentration of economic power and the control of monopolies apply to the following types of undertakings:

(a) Any undertaking having assets of not less than \(100\) crores and dominant undertaking having assets of not less than \(1\) crore would come under the purview of the Monopolies and Restrictive Trade Practices Act. The Commission advises the Central Government in two matters concerning these undertakings (i) substantial expansion, establishment of new undertaking, merger, amalgamation and take-over of undertakings. (ii) the division of an undertaking or its trade, when its working is found to be prejudicial to public interest or when it indulges in any monopolistic or restrictive trade.

In matters stated at (i) above, a reference by the Central Government to the Commission is optional and the Commission's advice to the Government is not binding. However, in matters stated

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1 Rs. 100 crores substituted for Rs. 20 crores vide the Monopolies and Restrictive Trade Practices (Amendment) Act 1985 because of considerable increase in the cost and the economic size of projects that has taken place since then.
at (ii) above, reference to the Commission is mandatory and the division of an undertaking can be affected only if the Commission has so recommended.

While exercising their powers in the above mentioned matters both the Government and the Commission are required to follow certain guidelines, the considerations relate to meet the defence requirements, the need of home and overseas markets, attaining economic scale, efficient production, efficient use of men, materials, industrial capacity and other resources, effecting technical and technological improvements, encouraging new enterprises, balanced regional growth and development of backward areas.

The proposals of the large industrial houses are approved after ensuring that their implementation will subserve the common good of the Country and will serve the best interest of the national economy. In fact, the common good has largely been the touchstone for testing such proposals. In these matters the Commission has merely advisory functions and that too, on a reference made to it by Central Government.

The High-Powered Expert Committee appointed by the Central Government in 1977, to review the working of the Companies Act and the Monopolies and Restrictive Trade Practices Act (the Sarchar Committee), recommended certain amendments in the provisions which would lead to the compulsory reference to be made by the Central Government in a large majority of cases and would confer power on the Commission for passing final orders in the cases referred to it. Fortunately the recommendation of the Committee has been accepted by the Central Government since the Monopolies and Restrictive Trade Practices Commission (Amendment) Regulation, 1984. Thus,
where the regulations are silent, the provisions of the Code of Civil Procedure, 1908, to the extent as may be deemed expedient by the Commission, shall apply to the proceedings, subject to the provisions of Section 12(1) of the Act.

The direct impact of the provisions relating to the prevention of concentration of economic power and of the guidelines provided for the Central Government and the Commission in this context is on the structure of industries, the degree of market power possessed by the individual firms, and competitive relationships between them, indirectly and in the long run, has the effect of transferring of resources from less to more efficient uses, the encouragement of cost reducing innovations, and an acceptable marging between prices and costs, profit rates that are not excessive, the stimulus to improve product quality and services, the introduction of new products and the reduction of wide cost and efficiently differentials between firms in particular industries.
(C) Major Handicaps

The Commission has not been able to serve as an effective consumer protection agency. The major problems and handicaps are as follows:

(1) The Commission can issue a "cease and desist" order only in restrictive trade practices or to permit the party itself to modify the agreement so that it is no longer prejudicial to public interest. This means that the party can continue to indulge in any restrictive trade practice without suffering any adverse consequences until called before the Commission. At the most when a party is so called and a restrictive trade practice is established, it may be directed to discontinue it and only if it indulges in it thereafter that it becomes punishable for contravening an order made under Sections 31 and 37 as provided in Section 50 of the Act.

(2) Unlike the Courts where the investigating agency like the police is not under its direct control under the Monopolies and Restrictive Trade Practices Act.

(3) As distinct from the justice meted out by the Courts which act more as referees in the dispute between two parties, the Monopolies and Restrictive Trade Practices Commission takes on the responsibility of causing an investigation on the complaint through the Director General of Investigation and Registration and then acting on the basis of finding in general public interest.
(4) The procedure of the Monopolies and Restrictive Trade Practices Commission to deal with the consumers' complaints is very cumbersome, lengthy and costly. The industrial houses against whom complaints were lodged can afford to engage lawyers at a huge cost, the consumer organisations can not afford that luxury expenditure. It is very difficult for them to produce witnesses from far off places at their own expenses.

(5) It does not have jurisdiction over public sector undertakings which have been exempted from the provisions of the Monopolies and Restrictive Trade Practices Act.

(6) The Monopolies and Restrictive Trade Practices Act is not applicable to any financial institution.

(7) The Act is not applicable to any undertaking owned by a co-operative society formed and registered under any Central, provincial or State Act relating to co-operative societies.
(1) **Cases:** (1) In the case of Asian Townsville Farms Ltd., a high return on the project was projected in the feasibility report got presentation made in the advertisement in the brochure regarding secured high return and guaranteed return on the funds invested by the investors. The assurance in regard to a secured return and guaranteed return can be truthfully given only if such return is guaranteed by the Government or is supported by the assets already created and deposited as security. The Commission held that there was no such back up and the presentation in the manner in which it was made in the advertisement was misleading within the ambit of Sub-Clauses (i), (ii) (v) & (viii) of Section 36A (1)\(^1\).

Case : (2) In Universal Luggage Manufacturing Co. Ltd.

The respondent issued equity-linked-debentures and also issued advertisements and prospectus about such public issue. The claims made by the respondent were found misleading viz. (i) The projection of growth of turnover was found unrealistic and over-optimistic (ii) the figures of gross fixed assets and net worth were found inflated and contentions without any disclosure of the accounting changes made (iii) the claim of "established dividend paying company" was found misleading as dividend was\(^2\)

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\(^1\) The Director General (I&R) V/s Asian Townsville Farms Ltd., UTPE 170 of 1986, decision on 31-10-86 (Monopolies and Restrictive Trade Practices Commission).

\(^2\) The Director General (I&R) V/s Universal Luggage Mfg. Co. Ltd., UTPE 27 of 49 1187, Order dated 29-1-87 (MRTPC).
declared only in the last two years during the preceding five years. It was held that the above misrepresentations were unfair trade practices within Sub-Clauses (i), (ii), (iv) & (viii) of Section 36A(1) of the Act and also prejudicial to the public interest. Thus, the commission granted temporary injunction to safeguard the investing public.

Case : (3) In the Case of Ravi Foundation.

The Respondent claimed in its advertisement that with its diet treatment offered to women before pregnancy one could give birth to a boy or a girl of one's choice. The claim and guarantee were found false and baseless on the basis of expert medical opinion. It was held to be an unfair trade practice under Sub-Clause (ii), (iv), (vi) & (viii) of Section 36A(1) of the Act and also prejudicial to public interest.

Case : (4) In the case of Burroughs Welcome (India) Ltd.

The respondent issued an advertisement of its medicine 'Ridake Paracetamol Tablets' to the effect that the medicine was the safest way to clear headaches and did not have the side effects like Aspirin. The respondent supported the advertisement by an article of British Medical Journal which dealt with side-effects of Aspirin but suppressed the view of the said journal to the effect that Paracetamol adversely affects the liver. The Commission held that the advertisement that Ridake had no side-effects, was a misrepresentation about the quality of the said medicine and was,

1 The Director General (I&R) V/s. Ravi Foundation Bombay, UTPE 93 of 1986, orders dated 4-7-1986 and 6-11-86.

therefore, unfair Trade Practice within the meaning of Sub-Clause (i) of Section 36-A (1).

Case: (5) In a case an enquiry was instituted on the basis of an advertisement that M/s Kelvinator of India was manufacturing 150 CC Avanti Scooters in technical collaboration of a foreign company. During enquiry it came to the notice of the Monopolies and Restrictive Trade Practices Commission that no such collaboration was entered into. The respondent gave an undertaking to the Commission to remove in all its future advertisements the taint which goes with unfair trade practice of false representation about the collaboration. The Commission closed the enquiry obtaining undertaking from the respondent to abide by the undertaking.

Case: (6) The Institute of correspondence course, Hyderabad, was offering AMIETE/AMIE (Engineering) degrees. The Commission found that the Institute was neither recognised nor affiliated to the aforesaid bodies. The Commission passed an ex-parte interim injunction order against the Institute, staying it from continuing the unfair trade practice by giving false advertisements.

1 Re-Kelvinator India Ltd. 15th Annual Report pertaining to the execution of the provisions of Monopolies and Restrictive Trade Practices Act PP. 138 - 139.

2 In Re-Institute of correspondence courses, Hyderabad, reported in Times of India Dated 20-3-88.
Case : (7)  In Re-Manage Tech-Development Institute, Bhopal.

The Monopolies and Restrictive Trade Practices Commission has restrained forthwith coaching institute, namely, Manage Tech-Development Institute, Sharda Bhawan, South T.T. Nagar, Bhopal, from indulging in the unfair trade practice of making misleading conferment of degrees and diplomas of International University of Missouri. The Director General conducted an investigation on the complaint of Shri P. S. Jain and found that though the high sounding name, Manage Tech-Development Institute, was used, it was actually a sole proprietorship of Shri K.S. Srivastava. The enquiries made by the Director General from the United States Educational Foundation pointed out that the International Accrediting Commission for Schools, Colleges and Theological Seminaries appears in the FBI list. It was submitted by the Director General that in the light of the views expressed by the U.S. Educational Foundation, the M.B.A. Degree of International University can be of no utility to students and further submitted that despite the fact that the respondent was aware that the International University of Missouri is not accredited or recognised by the U.S. Education Department, it claimed in its advertisement that in the "course - transforms students into management - professional of high calibre ". It was pointed out that thus the respondent has made a false and misleading representation about the quality and standard of his services in regard to conferment of degrees of the International University of Missouri which is prima-facie an unfair Trade Practice and should be restrained forthwith indulging therein.

The respondent was found charging Rs. 4700 + 50 US$ for the so-called M.B.A. Degree.


A bench of the Monopolies and Restrictive Trade Practices Commission comprising Shri D. C. Aggarwal, Member, and Shri H.C. Gupta, Member, has passed an ad-interim ex-parte, injunction restraining Shri K.C. Bhardwaj (Prop) M/s. Gift Centre, L-212 S.N. Puri, New Delhi, 110 065 from issuing any advertisement in respect of the gift scheme as announced by advertisement dated 16th January, 1988 or by any other similar one. The respondent is also restrained from instituting any gift scheme till further orders.

The investigation conducted by the office of the Director General of (I&R) revealed that the respondent issued an advertising inviting the public to join in its "Nipur Campaign" in a widely circulated Bengali newspaper viz. Ananda Bazar Patrika, offering various prizes to the tune of Rs. 10 lakhs. The interested persons were asked to make a figure of 44 instead of figure of 40 in a game skill involving calculations. According to the scheme, the customer is required to solve the puzzle and send the solution with an entry form to the respondent. Thereupon, the customer was asked to send a sum of Rs. 29 to cover the fee and incidental charges for sending the prize i.e. one Sony

National Two-in-one, whose market price was Rs.1000 to Rs.1500.
One complainant remitted the amount of Rs.29 and a VPP was
realised by him after paying a sum of Rs.270. The gift parcel
received by him contained a small radio, that too in damaged
condition.

Case: (9) Monopolies and Restrictive Trade Practices
Commission Unfair Trade Practices - In re-Vijay
Tutorials, Puttur South Kanara.

The Hon'ble Monopolies and Restrictive Trade Practices
Commission restrained the educational institution i.e. Vijay
Tutorials, Puttur South Kanara, from misleading the students
about the quality and standard of degrees of the so called
Maithili University, Darbhanga.

It has been restrained from claiming that the degree
awarded by Maithili University are recognised by the Government
of India for employment purposes. The Commission has further
restrained the Maithili University, Darbhanga from describing
itself as University or having the word "University", associated
with its name in any manner whatsoever and from conferring degrees
of B.A, B.Com, M.A, M.Com, and M.B.A. to the students. A Bench
of the Hon'ble Monopolies and Restrictive Trade Practices
Commission passed an ex-parte interim injunction on the application
moved by the Director General of Investigation and Registration
seeking to restrain the above parties from misleading the gullible
public. The Director General (I&R) on investigation of a
complaint received from Consumers Education Trust of Mangalore,

1 In Re-Vijay Tutorials, Puttur, South Kanara. Company Cases
discovered that Vijay Tutorials, a teaching shop owned by Sat. S. Lima Martin, was misleading the students by issue of letters that they could obtain bid and another degrees of Maithili University, Darbhanga, by postal/personal coaching. The Vijay Tutorials further misrepresented to the students that B.Ed. Degrees awarded by the Maithili University were recognised by the Government of India for employment purposes. This lured a large number of students to enroll themselves for various degree courses of the so called Maithili University.

The enquiries made from the Association of Indian Universities and University Grants Commission by the Director General revealed that the Maithili University, Darbhanga, was only a society and was not a bonafide University. The Monopolies and Restrictive Trade Practices Commission, while accepting the prayer of the Director General of (I&R) observed that it is beyond doubt that the provisions of the law of the land which govern University education, namely, Section 22 and 23 of the University Grants Commission Act, prohibit the Maithili Vishwavidyapith from describing itself as a University and debar it from conferring or granting or holding himself or itself out as entitled to confer or grant any degrees as the Maithili Vishwavidyapith, Darbhanga, does not satisfy the conditions laid down by these sections. The Commission has issued ex-parte and interim injunction to avoid further delay because the prospective candidates with continue to be lured by the false representations made by the two respondents.
Case: (40) In Re-Bombay Saree Emporium, New Delhi

The Monopolies and Restrictive Trade Practices Commission has once again swung into action to curb the unfair trade practices of announcing discount sales. The Commission have passed a stay order restraining M/s. Bombay Saree Emporium of 92-S/1, Pratap Market, Munirka, New Delhi, from indulging in the unfair trade practices of issuing pamphlets announcing discounts but without giving discounts at the rates announced and also restrained them from announcing gifts on purchase of Rs. 100/- upwards without offering them to the consumers.

The Director General of (I&R) found that M/s. Bombay Saree Emporium, engaged in selling clothes and dress material, had issued several pamphlets and hand-bills announcing the sale offering discount ranging from 20% to 50% and also announcing at the time of their opening ceremony on 10th December, 1988, a gift plan by way of gift for each purchase for Rs. 100 or more. On investigation, the Director General found that though the respondent announced discount ranging from 20% to 50%, actually on none of the items was the discount of 50% being allowed. It was also found that the respondent was misleading the customers that they will be given gifts on account of opening ceremony of the show room but such gifts were not being or were given reluctantly on being insisted upon by the customers. The quality of the goods on which the discount was offered e.g. whether fresh stock or old stock, was not indicated in the hand bills and some of the items on which the discount has been given were

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also found to be shop-soiled. The period of discount was also not stated in the hand-bills with the result that a consumer going to the premises had the likelihood of going to the showroom and finding that the discount sale had already been closed. The pamphlets, however, indicated that the sale will continue daily. In view of the above unfair trade practices, the Director General moved the Monopolies and Restrictive Trade Practices Commission for granting an ex parte stay. The Joint Director-General (Senior) who argued the matter before the Commission stated that unless the firm is immediately restrained from making misleading statements in hand-bills/pamphlets or in other forms of advertisement, it is likely that the customers may continue to be lured to visit the showroom for their purchases on the basis of the misleading advertisement and thereby continue to suffer the loss, and as such an interim stay order was in the public interest. The Commission granted ex parte injunction that the respondents shall retrain from making public announcement by a hand-bills, posters and statements which may have misleading effect.


An official spokesman of Monopolies and Restrictive Trade Practices Commission said that the temporary injunction issued on the Pink City on Dadri, Noida-Kasna Highway, H Chowdhary Estates Pvt. Ltd. under Section 12 A of Monopolies and Restrictive Trade Practices Act, was issued by the Monopolies and Restrictive Trade Practices Commission on 2-5-39.

1 Hindustan Times daily dated 4-6-39.
By the temporary injunction, the Commission restricted the builder from indulging in unfair trade practices and simultaneously ordered the bankers of the builder Canara Bank (Sadar Bazar Branch) not to make any payment from the current account, the spokesman said.

Meanwhile, as a token of their solvency, H. Chowdhary Estates Pvt. Ltd. deposited a sum of ₹53 lakh in the Ashok Vihar branch of Syndicate Bank.
(E) Suggestions

Consumer protection is a vast subject. From this brief study mainly confined to the provisions of the Monopolies and Restrictive Trade Practices Act the following points emerge simplification or strengthening the law and procedure.

(i) Section 3 of the Monopolies and Restrictive Trade Practices Act lays down that the Act does not apply to Government Undertakings. However, it is common knowledge that these undertakings also indulge in unfair and restrictive trade practices. Government should constitute a cell in the Department of Company Affairs for redressal of grievances against such practices by Government undertakings. This is desirable to avoid litigation in Courts by consumers' organisations.

(ii) The definition of restrictive trade practice in Section 2(a) of the Monopolies and Restrictive Trade Practices Act should be modified in the light of the Sachar Committee's recommendation and to bring it in harmony with the proposed amendment of Section 33 of the Monopolies and Restrictive Trade Practices Act. This is necessary to eliminate litigation and to make the definition simple so that it can be understood by the common man. A consumer protection organisation is a registered public charitable trust or society, should recognised as a complainant under Section 10 of the Monopolies and Restrictive Trade Practices Act without the requirement that complaint shall be signed by 25 or more members.
(iii) The proposed provisions relating to unfair trade practices are new. The Monopolies and Restrictive Trade Practices Commission should frame rules for speedy disposal or proceedings. To prevent hardship in bonafide cases of error by companies suitable defence on the lines recommended by the Sachar(Committee) Panel should be incorporated in the Monopolies and Restrictive Trade Practices Bill, before its passage through Parliament.

(iv) The present court and Monopolies and Restrictive Trade Practices procedures are costly both in terms of money and time. Government should simplify the Monopolies and Restrictive Trade Practices procedures to provide cheaper and expeditious legal redress.

(v) The Government should exercise "a drastic revision" in the Monopolies and Restrictive Trade Practices legislations and a major change of attitude to achieve higher volumes of exports, sharp reduction in the cost of production and greater productivity in the economy. There should be drastic amendment of Monopolies and Restrictive Trade Practices provisions regarding determination of monopoly, definition of large houses and inter connections of Companies.

(vi) Industrial licensing restrictions on the Monopolies and Restrictive Trade Practices Companies should be removed totally from the capital goods sector and the Government should give up industries which are likely to be either uncompetitive or technologically weak.
(vii) Companies manufacturing products having less than 50% of the market share should be exempt from the purview of the Monopolies and Restrictive Trade Practices Act.

(viii) Monopolies and Restrictive Trade Practices Act should be amended in three major areas, namely, asset limits, dominant undertakings and interconnections so as to make the Act growth oriented. The Monopolies and Restrictive Trade Practices Act has been one of the main constraints in achieving faster industrial growth. The Act should be given new orientation so that it facilitates rather than restricts country’s industrial development. Asset limit should not be less than ₹500 crore as against ₹100 crore at present. The size of the business enterprise cannot be detrimental to "common interest". The current asset limit is highly unrealistic in the context of high cost of projects with minimum economic capacity. Only productive assets should be considered for the purpose of ascertaining the concentration of economic power. For this purpose the fixed assets as shown by the books of the Company could be taken. There is no point in taking current assets as they fluctuate on a day to day basis.

(ix) There is provision in the Monopolies and Restrictive Trade Practices Act that the Units with a project size of upto ₹50 crore are exempt from industrial licensing, if set up in certain backward areas. The project costs include only fixed the long term assets and not current assets. But it is not possible for entrepreneurs to set up a ₹50 crore project in a backward area without coming under the purview
of the Monopolies and Restrictive Trade Practices Act since the ration of current assets of $3/4$ invariably, the total value of the assets would definitely cross Rs. 100 crore. It is suggested that the definition of dominant undertaking the asset limit of Rs. 1 crore fixed should be changed and increased to Rs. 25 crore.

For determining "dominance" the capacities established by small and medium scale industries should also be taken into account irrespective of the fact whether they hold industrial licence or are registered. Since these units also contribute to the demand and supply pattern in the country.

Inter connection on the basis of common directors of one body corporate also constituting either by themselves or together with their relatives, majority of Directors of other body corporate. In reckoning such majority of directors, employee directors and institutional nominees should not be included. In fact, companies in which the financial institutions hold more than one third of the total voting power should be kept outside the inter connection ambit since the institutions have an overriding say in the management of such companies.

(x) As regards the restrictive trade practice arising out of bilateral agreement, it is suggested that the following restrictive trade practices should be prohibited:-
Resale Price Maintenance

(1) Any agreement purporting to charge, or providing for the charging, minimum price or resale of the goods in India.

(2) Withholding supplies of goods from any person seeking to obtain them for resale in India on the ground that he has sold in India at a price below the resale price goods, obtained either directly or indirectly from that supplier or has supplied such goods indirectly to a third party who had done so.

(xi) It is suggested that the Monopolies and Restrictive Trade Practices Act should arm the commission including in the Act the provision for the recovery of damages, that will meet the ends of justice.

(xii) The Commission should be given powers to transfer any of the proceedings to the Court of magistrate of the first class if it considers it expedient in the interest of justice and if the circumstance of any particular case so require.

(xiii) There is no justification for exempting the newspapers from the provisions of the Monopolies and Restrictive Trade Practices Act (Paragraph 19 - 28 - 19 - 33).

(xiv) It is suggested that all monopolistic trade practices should be prohibited.
CONCLUSION

It is hoped that the above useful for taking up the matter from appropriate forum. The new initiative to combat monopolistic and restrictive trade practices by the pragmatic method or predominant role for the "per se" approach and enactment of new legislation to fight unfair trade practices is a boon to the ultimate customer to avail of the goods and services readily and reasonably. Company executives and managers will be well advised to study carefully the relevant proposed changes and adjust the affairs of their companies in good time to escape infringement of the law and the growing consumer movement becomes more active to secure better compliance with the law through public litigation.

(A) INTRODUCTION

The Prevention of Food Adulteration Act is a piece of consumer legislation. It regulates to some extent the consumer-supplier relations. Consumers demand enforcement of discipline among the producers or manufacturers of food to ensure safety in the realm of good. The consumer's legitimate ignorance and his almost total dependence on the fairness and competence of those who supply his daily needs, have made him a ready target for exploitation. The Act is intended to protect the consumer from outright fraud.

The object of the Act is to prevent adulteration of food stuffs, and the manufacture, storing and sale of adulterated food stuffs for human consumption. The Act is covered by the Entry 18, list III of the seventh schedule to the Constitution of India.

The aim of this chapter is to introduce economic, background, wholesome articles of food, strict observance of standards of qualities of the various articles of foods fixed by the Government in order to protect the consumers from the evil effects of adulteration.
(i) "Adulterant" - Defined.

As per Section 2(i) of the Prevention of Food Adulteration Act, 1954, adulterant, means any material which is or could be employed for the purposes of adulteration. The definition of "adulterant" has been inserted by Act 34 of 1976. This is a new provision in the law relating to food adulteration. In view of the fact that there were traders and entrepreneurs who produce or manufacture adulterants for sale, the manufacture, sale or distribution of such adulterants has been made punishable under the Act.

(ii) "ADULTERATED"

Section 2 (ia): Sub-clauses (a) to (i) of the Prevention of Food Adulteration Act, 1954, has defined the word "Adulterated". These Sub-clauses lay down the conditions differing from each other, which would render an article of food adulterated. However, the Act makes a distinction between adulteration of food and misbranding of food. Although both offences are dealt with under the same provision of law, namely, Section 7 read with Section 16, they constitute different offences requiring of different facts.

But Sub-clauses (a) to (d) are relevant only in a case in which the article is not of the nature, substance or quality demanded by the purchase or contains any other substance which affects injuriously the nature, substance or the quality thereof,
or if constituents of inferior or cheaper substance have been added or abstracted or in part of the article.

Under Sub-Clauses (e) to (i) an article is deemed to be adulterated if the article demanded by the purchaser was prepared packed or kept under the insanitary conditions whereby the article becomes contaminated or injurious to health, or if the article consisted any filthy, putrid, roffen, decomposed or diseased animal or vegetable substance or was insect-infested or was otherwise unfit for human consumption or if the article was obtained from a diseased animal or if the article contained any poisonous or other ingredients which rendered it injurious to health, or if the article was composed whether wholly or in part of any poisonous or deleterious substance which renders its contents injurious to health.

Sub-Clause (j) to (l) define adulteration as including cases where the colouring matter is other than that prescribed or if the colouring matter is not within the limits of prescription or if the article contains any prohibited preservative or a permitted preservative in excess of the prescribed limits.

This Section does not consider an article to be an adulterated one if the quality or purity of the article has fallen below the prescribed standards solely due to natural causes beyond the control of human agency. All kinds of adulteration for sale whether injurious to human health or not are prohibited in the interest of the general public because it is not possible for the average man to detect all the contents of all articles and to determine whether they are injurious to health or not.
(iii) "MISBRANDED" - DEFINED

The term "misbranded" in relation to food has newly been defined under Section 2 (ix) of the Prevention of Food Adulteration Act, 1954. An article of food shall be deemed to be misbranded (a) if the article is an imitation of or a substitute for or resembles so as deceiving or (b) is falsely stated to be the product of any place or country, or (c) is sold in the name of another article or (d) if coloured, coated or flavoured, powered or polished, the damage to the article is concealed or if it seems better than it actually is or (e) if false claims are shown on the labels or (f) if sold in packages, the contents are not conspicuously or correctly stated outside thereof or (g) if ingredients or substance on the label of the package are misleading or (h) if the label of the package bears the name of a fictitious individual or company as the manufacturer or producer or (i) if it is represented as being for special dietary use unless its label bears prescribed information of its properties or (j) if it consists of any artificial colouring or flavouring or chemical preservative without a declaratory label or (k) if it is not labelled in accordance the provisions of this Act or the Rules made thereunder.

An article of food is presumed to be misbranded if it resembles, in a manner likely to deceive, another article of food under the name of which it is sold and is not plainly and conspicuously labelled in such a manner as to indicate its true character. Therefore, as regards, the misbranding of any food article, all that has to be ascertained in every case is whether
there is such a resemblance to another article of food as to deceive a purchaser using ordinary caution.

"FOOD" - DEFINED

Section 2(v) of the Prevention of Food Adulteration Act, 1954:

"Food" means any article used as food or drink for human consumption other than drugs and water and includes (a) any article which ordinarily enters into or is used in the composition or preparation of human food (b) any flavouring matter or condiments and (c) any other article which the Central Government may having regard to its use, nature, substance or quality, declare, by notification in the official Gazette, as food for the purposes of this Act.

The meaning of common words relating to common articles consumed by the common people, available commonly and contained in a statute intended to protect the community generally, must be gathered from the common sense understanding of the word. The Act defines, 'food' very widely as covering any article used as food and every component which enters into it, and even flavouring matter and condiments. It is common place knowledge that the word 'food' is a very general term and applies to all that is eaten by human being for nourishment and takes in subsidiaries.

The word 'food' is ordinarily understood to include only those articles which are eaten by men in order to sustain life and growth and provide nourishment.
Rules 55 framed under the Act or Appendix 'B' which enumerates certain articles with their prescribed standards, do not provide complete list. They enumerate only such articles of food for which a definite standard of purity has been prescribed. Appendix 'B' is not exhaustive with respect to articles of food. Any article whether included in Appendix 'B' or not is food if it falls under this clause. Purpose for which article is sold is irrelevant.

**Used as food or drink for human consumption**

According to the definition of 'food' for the purposes and any article which ordinarily enters into or is used in the composition or preparation of human food is 'food.' It is not necessary that it is intended for human consumption or for preparation of human food. It is enough if the article is generally or commonly used for human consumption or in the preparation of human food.

**Flavouring matters and condiments**

Flavouring materials which may not be directly taken as human food are also food as they are used in the preparation of human food.

Condiments means a substance used to give relish to food, seasoning. It includes spices. These may also not be taken directly as food but are used in the preparation thereof.
Primary Food - Clause (xii-a)

Primary food means any article of food, being a produce of agriculture or horticulture in its natural form.

The importance of this definition lies in the fact that in the circumstances mentioned in the proviso to sub-clause (m) of clause (ia) of Section 2 and in the explanation appended at the end of clause (ia) article of the primary food is not to be deemed to be adulterated. Further, under the proviso to Section 16, an offence in respect of an article of primary food is punishable with a higher sentence.

According to the concise oxford Dictionary 'agriculture' means the science or practice of cultivating the soil and rearing animals and 'horticulture' means the art of garden cultivation. It is the produce of agriculture or horticulture which is primary food. If the article of primary food is processed into a different article it ceases to be primary food.

'Milk' will be primary food if it comes from the rural areas and will not be primary food if it comes from the urban areas.

Sale - Clause (xiii) of Section 2 of the Act

'Sale' with its grammatical variations and cognate expressions means the sale of any article of food, whether for cash or in credit or by way of exchange and whether by wholesale or retail, for human consumption or use or for analysis and includes an agreement for sale, an offer for sale, the exposing for sale or having in possession for sale.
of any such article, and includes also an attempt to sell any such article.

The definition is designedly wide. It seems a real sale as well as an 'embryonic' sale (e.g. offer for sale, possession for sale, attempt at sale) are sales for the purposes of the Act. Thus every kind, manner and method of sale are covered.

It is important to bear in mind that the definition of sale in clause (xiii) is in respect of an "article of food as defined in clause (v) i.e. of an article generally or commonly used for human consumption or in the preparation of human food.

The Section gives a special definition of the word 'sale'. The definition given in the clause is so wide as to cover even cases where the property does not pass to the buyer and even no consideration is received. It covers cases of sale by every seller, manufacturer and distributor. Purpose of the sale is irrelevant.

The definition of 'sale' extends to the sale of any article of food regardless of the use to which it is put.

**Sale to Food Inspector**

The purchase by the Food Inspector of an article of food for analysis is a sale within the meaning of clause (xiii) even if it was not intended to sell that article as such.
Samples: Clause (xiv)

'Sample' means a sample of any article of food taken under the provisions of this Act or of any rules made thereunder.

'Sample' means a small separated part of something illustrating the qualities of the mass etc.

The sample may be taken for analysis by a Food Inspector. A private individual is also authorised to get the article analysed by the Public Analyst for the purpose of this Act.

Sample can be taken from any person selling, conveying, delivering or preparing to deliver the article of food and also from consigue after delivery of article to him. It can not be taken from a person having the article of food for his own consumption.

Unwholesome and Noxious clause (xv)

'Noxious' means harmful to health or unwholesome. It does not mean dangerous to life.

The Central Committee for Food Standards

As per Section 3 of the Act, the Central Government shall constitute a committee called the Central Committee for Food Standards to advise the Central Government and the State Governments on matters arising out of the administration of this Act and to carry out the other functions assigned to it under this Act.
The Committee shall consist of the Director - General, Health Services as the Chairman, the Director or Directors of the Central Food Laboratory, ex-officio, two experts nominated by the Central Governments, One representative, each of the Departments of Food & Agriculture, in the Central Ministry of Food & Agriculture, of Commerce, Defence, Industry and Supply and Railways.

One representative each nominated by each respective State Government, two representatives nominated by the Central Government to represent the Union Territories, One representative each nominated by the Central Government, to represent the agricultural, commercial and industrial interests, 5 representatives nominated by the Central Government to represent the consumers' interests, one of whom shall be from the hotel industry, One representative of the medical profession nominated by the Indian Council of Medical Research, One representative nominated by the Indian Standards Institution referred to in clause (e) of Section 2 of the Indian Standards Institution (Certification Marks) Act, 1952.

Central Food Laboratory

As per Section 4 of the Act, the Central Government shall establish one or more Central Food Laboratory to carry out the functions entrusted by this Act.
Functions:

The Director of the Laboratory is to receive from the Customs Collector or any other of the Government authorised by the Central Government in this behalf.

The Director is to send his report after analysis of the sample.

Prohibition of import of certain articles of food.

Section 5 of the Prevention of Food Adulteration Act, 1954, prohibits of imports into India, any adulterated food, misbranded food or of any food for the import of which a licence is prescribed. The provisions of this Section are not applicable where there is no importing into India of the offending articles of food.

Public Analysts

As per Section 8 of the Act both the Central and State Government can, by notification in the official Gazette, appoint such persons as it thinks fit, having the prescribed qualifications to be the public Analyst, and no financial interest in the manufacture, import or sale of any article of food.

Food Inspectors

As per Section 9 of the Act Food Inspectors can be appointed by the Central and State Government, to work in their respective areas assigned to them by the respective Governments, Sanitary Inspectors can be appointed as Food Inspectors.
**Duties:-**

The duties enjoined on the Food Inspectors are to inspect the licensed establishments dealing in manufacture, storage or sale of articles of food, to see conditions of licenses are being observed, to procure and send samples for analysis, to investigate into complaints made in respect of any contravention of the provisions of the Act or Rules.

**Powers:-**

A food inspector has been given power to take sample of any article of food from any person selling such article or from any person in the course of conveying, delivering or preparing to deliver such article to a purchaser or for consignee or from a consignee after delivery of any such article or to enter and inspect any plan where any article of food is manufactured, stored or exposed for sale and take samples of such articles of food for analysis. He is empowered to seize the article intended for food which appears to him to be adulterated or misbranded.

An article of food seized under Section 10 of the Act is to be produced by him before a Magistrate as soon as possible and not later than seven days after the receipt of the report of the Public Analyst.
Purchaser may have food analysed.

As per Section 12 of the Act, a private purchaser or a recognised consumer association may purchase the article analysed by the Public Analyst on payment of the prescribed fees and may receive the report from the Public Analyst on payment of such fees as may be prescribed.

If the purchaser of an article of food inspects or has reason to believe that the article is adulterated, he may, on payment of the prescribed fees, send the article to the Public Analyst for analysis, and get refund of the fees paid upon the report of the Public Analyst that the article is adulterated.

(V) Warranty

According to Section 14 of the Prevention of Food Adulteration Act, 1954, no manufacturer or distributor or dealer in any article of food shall sell such article to any vendor unless he also gives a warranty in writing in the prescribed form about the nature and quality of such article to the vendor, provided that a bill, cash memo or invoice in respect of sale of any article of food given by a manufacturer or distributor of or dealer in, such article to the vendor thereof shall be deemed to be a warranty given by such manufacturer, distributor or dealer under this Section.
In this Section, in Sub-Section 2 of Section 19 and in Section 20-A, the expression "distributor" shall include a commission agent.

Warranty should be in the prescribed form to be a valid defence under Section 19(2) of the Act. The retail dealers in articles of food have to safeguard their rights by taking a warranty in writing in the prescribed form from the manufacturer or distributor or dealer in such articles of food.

Under Section 19(2) the vendor will not be liable for prosecution for the sale of any adulterated or misbranded article of food if he has purchased that article from a manufacturer, distributor, or dealer under a written warranty in the prescribed form. It may be noted that the Section prohibits the sale to the vendors unless the warranty is given. No responsibility arises where the dealer sells the article to a consumer who again sells it to another consumer.

The term, "warranty" is nowhere defined in the Act or under the Rules. It means a sort of guarantee and should be interpreted as contemplated under the law of contract.

Penalties:

Under Section 15 of the Act if any person imports into India or manufacturers for sale, or stores, sells or distributes any article of food which is adulterated within the meaning of Sub-Clause (m) of Clause (ia) of Section 2 or misbranded within the meaning of Clause (ix) of that Section or the sale of which
is prohibited under any provision of this Act or any rule made thereunder or by an order of the Food (Health) Authority, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to three years and with fine which shall not be less than one thousand rupees.

Cognizance and trial of offence

Under Section 20 of the Act, a prosecution for an offence under this Act can not be instituted except by an officer of the Central or a State Government or with their written consent. However, a prosecution for an offence under this Act may also be instituted by a purchaser referred to in Section 12 if he produces in Court a copy of the report of the public analyst alongwith the complaint.

Only a Metropolitan Magistrate or a Judicial Magistrate of the |Forest First Class| can try an offence under this Act. It is non-bailable offence.
Drawbacks

(1) At the 3rd All India Conference on Consumer Protection held at Surat in the month of November 1976, Mr. Justice P.N. Bhagwati of the Supreme Court did well to describe the adulteration of foodstuffs as a major social security risk to the community at large. No strict and recentless enforcement of the Prevention of Food Adulteration Act, 1954 is exercised.

(2) Most of the cases lodged in the courts by enforcement agencies are the cases against the lesser infringers of the law, tradesmen milk-vendors and grocers. The big fish seems to escape from the law as they do not have any direct dealings with purchasers.

(3) Offences relating to food adulteration are sometimes called white collar crimes as crimes committed by persons of respectability and social status in the course of their occupation.¹

(4) We have not a law quite parallel to the Consumers Protection Act, in England, as there are sufficient provisions in the Prevention of Food Adulteration Act, 1954, to convict those whose actions are calculated to the prejudice of consumers.

¹ Sutherland E.H. "White Collar Crimes (1949) p.49."
Procedures laid down in the Act are lengthy and time consuming somewhat difficult and giving rise to delays in prosecution. The aims of the Act are unexceptionable.

(5) The process of getting justice is too, tedious that consumers prefer to put up with their losses quietly and many of them do not inform others about their unfortunate experience.

(6) Section 12 of the Act provides that a purchaser of any article of food may also have such article analysed by the Public Analyst on payment of fees prescribed for this purpose and receive a report of his analysis. The purchaser, however, must inform the vendor, at the time of purchase of his intention to have the article analysed, renders material information to the vendor to hush-up such adulterated article and thereby give chance to exercise adequate influence to hush-up the chapter.

(7) The use of the word store (storage) in Section 7 and 16 of the Prevention of Food Adulteration Act has been a matter of judicial interpretation is detective some of the High Courts have been of the opinion that the interpretation of the expression "Store" as it appears in Section 7 and 16 of the Act without reference to the purpose of storage is likely to lead to confusions. Storing simpliciter of adulterated food is not offence.

\[1\] Girdhari Ballani V. Calculatta Corporation A.I.R. 1966 Cal. 534.
The Act does not prohibit a house holder from adultering any food for consumption or even for a distribution otherwise than by way of sale.

(8) The provisions of the Food Adulteration Act are stringent and if enforced properly, can go a long way in making available wholesome and pure food stuff to the consumers. The Act is enforced, by and large, by the local bodies in the states. The enforcement of the Act is as yet nowhere in proportion to the magnitude of the problem. The local bodies have neither the manpower nor the resources for the purpose.

(9) Consumer organisations all over the country are hamstrung by lack of legal authority. They have no power to seize or demand the sealing of a tin of edible oil, suspected to be adulterated. They have to take their complaints to the municipal authorities. By the time a complaint is registered, and a food inspector pays a visit to the shop, there is often no trace left of the offending material.

(10) The food adulteration has become a big business was highlighted by the "beef tallow" controversy in Parliament in 1983. Manifestation of a malady has permeated the entire food trade from the street vendor to five star hotels and large scale manufacturers and traders.
(11) Public distribution system is deteriorated in the standards of milling and storage of foodgrains. In October 1983, at least 200 people died in Bihar's Sitamari district after consuming sub-standard wheat flour allegedly supplied through public distribution system.

(12) There is no adequate check on the duties of the food inspectors and many state rules do not prescribe maintenance of records of food inspectors to balance their existence showing their activities and duties enabling the controlling officer to supervise. There is no effective system to supervise his activities. The food inspectors have been given a wide discretion to pick and choose persons for prosecution.

It is not working that hardly and any distributors, manufacturers and big vendors are prosecuted.

Private markets and vendors operating outside the municipal zone are often the most offenders.
Behala in South-West Calcutta witnessed a pathetic procession on March 26 of 1989 when a few hundred "adulterated oil victims" in July 1988, about 900 persons were affected, demonstrated against Government apathy.

The processionists, rendered paralysed after consuming the adulterated rapeseed oil sold from a ration ship in July 1988, used crutches, calipers and walking sticks to support themselves.

The oil victims, organised under the banner of "Patients' Welfare Committee". Consumer unity and trust society has filed a petition on the tragedy with the National Consumer Protection Forum.

1 Hindustan Times daily dt. 31-3-89.
Dr. P. K. Ray, Director of Industrial Toxicology Research Centre urged the enforcement authorities to check adulteration of edible oils and the contents of pesticides present in it. Dr. Ray said both the pesticides and adulteration in the edible oils are very harmful to health and in many a case paralysis of the lower limbs has been reported.

The Director ITRC has sent a team of scientists to Bhakanli Village near Barabanki, Raghavpur near Hardoi and to Bani, Banthra recently. The household edible oil samples were analysed, about 150 open market samples of mustard oil from the epidemic prone areas and the presence of argemone oil in the samples was confirmed.

This has confirmed the malpractices of mixing argemone oil in mustard oil in some areas. The situation thus warrants renewed and stricter measures to check such adulteration.

The institute had sometime back analysed 661 samples of powered red chillies and 668 samples of turmeric powder collected both from the rural and city markets of all the 57 districts of Uttar Pradesh. An average 20 percent adulteration due to non-permitted synthetic colours found in red chillie while the adulteration in turmeric powder was about four percent.

1 Hindustan Times daily Dt. 8-11-88.
The report of the Public Analyst is admissible as substantive evidence to prove the fact that the specimen seal tallied with the seals affixed on the sample.

From a plan reading of Sub Section (5) of S.13 it is clear that the report of the Public Analyst is admissible as evidence of all the facts stated therein and not merely the facts relating to the result of the analysis. The said provision apparently has been made with a view to secure formal evidence of facts without requiring the Public Analyst to attend the Court and to give evidence in every case, and in the interest of effective administration of the Act. As the Public Analyst has to send many reports every day, it can not be expected of him to write down everything in his own hand and as it is open to him to serve off the relevant printed portion regarding the seals and to write that the seals did not tally, the fact that the report has to be in printed form does not by itself show that the Public Analyst had not observed the seal at all and he had not applied his mind to that aspect.

Desai J. in Cr. A. No. 30/83 the following point, namely, whether the report of the Public Analyst is admissible as substantive evidence to prove the fact that the specimen seal tallied with the seals affixed on the sample, has been referred to the Full Bench. In Food Inspector V.V.V. Gangadharan (1983) 2 Kant L.J. 142 (1983) Cri.L.J. 1732, it is held that the report

\footnote{AIR 1989 (Karnataka) 115, Vol. 76. Part 904.}
of the Public Analyst is substantive evidence in the case and the received in the certificate that the specimen seal tallied with seals affixed on the bottles is admissible in proof of the fact.

In State of Karnataka v. Dolphy Albuguergue, (1983) 2 Kant L.J. 481 (1984 Cri. L.J. N.O. 148) it is held that it is obligatory for the prosecution to prove that the seal on the container and the outer cover of the sample sent to the Analyst were compared with the specimen sent separately and that the condition of the seals thereon was noted and what is stated in the report of the Analyst about the comparision of the seals can not be read as substantive evidence. The same view was taken in Food Inspector v. A.G. Suvarna, 142 (1984) 2 Kant 752 (1985 Cri.L.J. 709). In view of the said conflicting decisions of the Division Bench of this court, the said point has been referred to the Full Bench.

The learned State Public Prosecutor and Mr. R.G.Devadhar, Counsel for the appellant in Cr. A. 322/86 supported the view taken in Gangadham's case referred to above. Mr. T. J. Chouta and Mr. V. V. Upadhyaya learned Advocates for the respondents accused in Cr. A. No. 30/83 supported the view taken in Suvarna's case.

In suvarna's case (1985 Cr. L.J. 709) (Kant) it has been held that it can not be laid down as a general proposition of law that if once the Public Analyst issues a report regarding, the result of the analysis, it may also be presumed that the Public Analyst or the person authorised by him has discharged his duties in compliance with Rule 7 (1) of the Rules. The
decision of the Supreme Court in Kassim Kunju Pookunju v.
Ramakrishna Pillai, 1969 Ker LT 50 is a complete answer to
the said contention. In that case, the report of the Public
Analyst stated inter alia that he had received from the Food
Inspector a sample for analysis, properly sealed and packed
and that he had found the seal intact and unbroken. Therefore,
the said view of the Division Bench to the contrary in Suvarna's
case (1985 Cri. L.J. 709) (Kant) cannot be sustained.

In Municipal Corporation, Delhi v. Jai Dayal Jawandamal,
AIR 1964 Punj. 520 (1964 (2) Cri. L.J. 726) the Division Bench
of the Punjab High Court was pleased to hold that the statement
in report of the Public Analyst to the effect that the sample
was kept in refrigerator before analysis is admissible in
evidence without the production of the Analyst as a witness.
This also supports the view that the report of the Public
Analyst is admissible in proof of the facts stated therein
apart from the result of the analysis without production of
the Analyst as a witness.

In view the said reasons, with respect, we disagree with
the view taken in Gangadharan's case (1985 Cri L.J. 1732) and
held that the report of the Public Analyst is admissible as
substantive evidence to prove the fact that the specimen seal
tailed with the seals affixed on the sample. Hence, we answer
the point referred to the full Bench accordingly. The appeals
may be posted before the concerned Bench for disposal according
to law in the light of the said opinion of the Full Bench.
Prevention of Food Adulteration Act (37 of 1954) S.S.2 (ia) (j) 7 E 23 Prevention of Food Adulteration Rules (1955) R. 2a(f) (m) "Adulterated" permitted coal tar dye. Betal nut (supara) containing permitted coal tar dye. It is still adulterated, not being ferrit product within R 29(f) nor flavouring agent within R 29(m) statute, a social defence legislation. Appropriate construction. It is one which suppresses mischief of food adulteration.

Interpretation of statutes - social defence legislation.

In the context of Food Adulteration Act, it would be a strain on the statutory language and the statutory scheme to include "Supara", (betal nut) within "Fruit Products" as understood in clause (f) to Rule 29 and it also not being a "flavouring agent" within meaning of (m) of R.29, it is "adulterated" when it contains yellow basic coal tar dye which is a permitted coal tar dye. In the case in question, a wider construction of "Fruit Products" in clause (f) which is in the nature of exception to Rule 29 results automatically in a corresponding narrower construction of the substantive provision in Rule 29. This is not a case of a relieving provision excepting from the definition of an offence where the Rule of construction against doubtful penalisation operates.

1 AIR 1989 S.C. 1011 (From Gujarat) JJ Ranganath Misra and M.N. Venkatachaha.
The offence is really a violation of a prohibition imposed on a penalty as a social defence mechanism in a socio-economic legislation.

The object and purpose of the Act are to eliminate the danger to human life from the sale of unwholesome articles of food. The legislation is on the topic "Adulteration of Food Stuffs and other Goods" (Entry 13 List III Seventh Schedule). It is enacted to curb the widespread evil of food adulteration and is a legislative measure for social defence. It is intended to suppress a social and economic mischief, an evil which attempts to poison, for monetary gains, the very sources of sustenance of life and the well-being of the community. The offences under the "Act" are really acts prohibited by the police powers of the State, in the interest of public health and well-being. The prohibition is backed by the sanction of a penalty. The offences are strict statutory offences. Intention or mental state is irrelevant, plea of ignorance of law is not available.

Special leave is granted and the appeal is taken up against the order of the Chief Judicial Magistrate, Valsad and the judgement of the High Court of Gujarat for the offence under the Prevention of Food Adulteration Act, 1954.

Appellant was charged before the Chief Judicial Magistrate, Valsad, by the Food Inspector, with the offence of selling "Kesari coloured sweet supari sali" alleged to have been adulterated with "Yellow basic & coal tar dye". The learned Magistrate found the appellant guilty of the offence and imposed an year's simple imprisonment and a fine of Rs.2000/- under Section 16(1)A (i) of the Act.
The Learned Sessions Judge, Valsad, set aside the conviction and acquitted the appellant of the charge.

On further appeal by the State against the said acquitted, the High Court of Gujarat allowed the appeal and reversed the judgement of acquittal of the Sessions Judge, restored the conviction and the sentence passed by the learned Chief Judicial Magistrate.

Appellant’s counsel contended that "supari" or "Betel-nut" is basically a yield of the Areca-Palm and must be held to fall under "Fruit products" within Rule 29(f) of the Prevention of Food Adulteration Rules, 1955.

It was not disputed that supari was an article of food. The argument that "Supari" or "Betel-nut" is a "Flavouring-Agent" has clearly no substance.

"World a house-holder when asked to bring home fruits or vegetables for the evening meal bring home salted peanuts, cashew nuts or nuts of any sort? The answer is obviously 'No'.

Held, that the offence is really a violation of a prohibition imposed on a penalty as a social defence mechanism in a socio-economic legislation.

The expression "Fruit-Products" in the context of what the delegated legislative authority really meant and wanted to convey was not a model of precision. The degree of precision should be such that not only those who read it in good faith understand but also that those who read it in bad faith do not misunderstand.

The appeal is dismissed.
The plaintiff, a druggist, purchased "Sweetin" (Saccharin sodium) a food article from the defendant and sold the same to the public. The article was included as food article in Appendix B only 3 days prior to the purchase by the plaintiff. The food article on analysis was found not conforming to the standard of quality prescribed under Appendix B. Accordingly, the plaintiff was prosecuted and convicted under Section 16, but was released on probation. The plaintiff filed a suit against the defendant for damages or indemnity for expenses incurred in defending the criminal case and for mental agony suffered by him. In such case, both the plaintiff and defendant must be presumed to have knowledge of the inclusion of the article in question as food article in Appendix B and the standard of quality prescribed therein. The plaintiff was tortfeasor as much as the defendant was. The plaintiff contravened the provisions of the Act and the Rules as much as the defendant did. As both were joint tortfeasors, the suit for indemnity against the defendant was not maintainable.
Case - 6. Food Inspector, Municipal Council, Alleppey
V. Karappaiya Nader.?

In this case the court held that the sale of black gram flour containing 95.9% calcium carbonate and 3.6% sand with no black gram flour is a sale of misbranded food and hence the respondent was held guilty of the crime of misbranding.

Case - 7. Laxamandas Servottandas Deshi & Co;
V. State of Maharashtra.2

In this case prohibited colours to attract customers or to suppress the true quality of the article of food amounts to misbranding. The Bombay High, held that the accused liable for selling 'tur dal' (gram) coloured with coal tar dye (tartrazine) as misbranded.

1. 1959 Cri.L.J. 840
2 (1975) 2 FAC 153
This appeal by special leave is directed against the appellate judgement of the Himachal Pradesh High Court reversing the appellate judgement of acquittal of the Sessions Judge and convicting the appellant under Section 16(1)(a)(i) of the Prevention of Food Adulteration Act and the sentence of six month's rigorous imprisonment and a fine of Rs.1,000/-.

The appellant was called upon to face the following charge

"That on 9-7-80, in the area of Bijbri, you were found in possession of 4 kgs. of Masur whole for sale, kept in your shop out of which the complainant purchased from you a sample weighing 600 grams for the purposes of analysis against cash payment of Rs.1.68, which on analysis by the Public Analyst, Punjab was found to contain living and dead insects along with fragments of dead insects in abundance and about one fourth of the sample contains larva inside the grains, and the sample contained 36.0 per cent insect damaged grains against the maximum prescribed standard of 10.0 per cent and you thereby committed an offence punishable under Section 16(1)(a) read with Section 7 of the Prevention of Food Adulteration Act and within the cognizance of this Court".

1 AIR 1988 S.C. 1789.
The High Court found:

"Clause (a) of Section 2 (i-a) and the proviso thereto, however, would be attracted only in case the sample in question even of primary food with quality or purify thereof falling below the prescribed standard or its constituents being present in quantities not within the prescribed limits of variability, does not render it injurious to health. Thus, in the instant case the court is required to see whether the adulteration present in the sample in question renders it injurious to health or unfit for human consumption within the meaning of clause (f) of Section 2 (i-a) of the Act. The finding already extracted above of the Public Analyst would show that "it contained living and dead insects along with fragments of dead insects in abundance and about 1/4th of sample contained larva inside the grains. Besides this, it also contained 36 per cent insect damaged grains against the maximum prescribed standard of 10 percent". No doubt, the public Analyst has not opined whether or not on account of these findings the article of food in question had become unfit for human consumption or had been rendered injurious to health but this is of no consequence and the court is not debarred from coming to its own conclusion on the basis of the findings recorded by the Public Analyst. I have no doubt that these findings of the Public Analyst clearly make out a case that the article of food in question was not only insect infested but was also insect damaged to the extent of 36 percent against the maximum prescribed standard of 10 percent and was thus unfit for human consumption and also injurious to health."
A Division Bench of this Court in Cri. Revision No. 100 of 1983, Banarsi Dass v. The State of H.P. decided on August 8, 1986 (reported in 1987 Cri. L.J. 671), has held that the clauses (f) and (m) of Section 2 (i-a) are independent of each other and mutually exclusive and this in case the article of food is found to be insect infested under clause (f) it would not have the benefit of the proviso to clause (m) and the article of food even if it be primary food must be held to be adulterated.

Further, as I have already observed, the law requires that even under clause (m) the deficiencies or variabilities beyond the prescribed standard should not render the article of food as injurious to health and in case the court comes to the conclusion that these factors have rendered the article of food as injurious to health, no benefit of the proviso to clause (m) of the Act can be extended to the accused and it would rather fall within the mischief of clause (1)".

The difference between clauses (f) and (m) may now be noticed, Section 2 (i-a) defines "adulterated" and in the clauses (a) to (m) different situations have been indicated. These two clauses provide:-

"adulterated" - an article of food shall be deemed to be adulterated.

(f) if the article consists wholly or in part of any filthy, putrid, ratten, decomposed or diseased animal or vegetable substance or is insect infested or is otherwise unfit for human consumption.

(m) if the quality or purity of the article falls below the
prescribed standard or its constituents are present in quantities not within the prescribed limits of variability but which does not render it injurious to health.

Provided that, where the quality or purity of the article, being primary food, has a fallen below the prescribed standards or its constituents are present in quantities not within the prescribed limits of variability in either course, solely due to natural causes and beyond the control of human agency, then, such article shall not be deemed to be adulterated within the meaning of this sub-clause".

Appellant's counsel maintained in this court that there is no statutory prescription for "Masur", the article of food in question. Respondent's counsel was given the opportunity to meet this argument. He has not been able to show any notification prescribing the standard for "Masur". Clause (m) of the definition, therefor, would not apply.

The point next for consideration is as to whether the conviction can be sustained with reference to clause (f), while reversing the acquittal, the High Court now here specified that the case was covered either by clause (f) or clause (m) but the discussion in its judgment, however, indicates that the court did consider the provisions of clause (f). In the charge sheet, there was no mention of either of the clauses though at one place reference was made to the prescribed standard of 10 percent. The High Court has not clearly referred to clause (f) of the definition and has come to the conclusion that the article was insect infested. It has also recorded a finding that on account of the presence of the contents indicated in the Public Analyst's
Report, the article was otherwise unfit for human consumption. Seeing the extent of contents of adulterating materials, as noticed in the Report, we do not think there is any justification to take a view different from the High Court. Even if there be no prescription of standard for "Masur" and the definition in Clause (m) is not attracted, the situation squarely comes under Clause (f) and we agree with the view taken by the High Court. Therefore, the appellant's conviction is not open to attack.

Coming to the question of sentence, we find that the appellant had been acquitted by the trial court and the High Court while reversing the judgment of acquittal made by the appellate Judge has not made clear reference to clause (f). The occurrence took place about more than 8 years back. Records show that the appellant has already suffered a part of the imprisonment. We do not find any useful purpose would be served in sending the appellant to said at this point of time for undergoing the remaining period of the sentence; through ordinarily in an anti-social offence punishable under the Prevention of Food Adulteration Act the court should take strict view of such matter.

While dismissing the appeal, we would, however, limit the sentence of imprisonment to the period already undergone and sustain the fine alongwith the default sentence.

Order accordingly.
In spite of legislative efforts and favourable judicial response against adulteration the crime of adulteration is on increase. The problem needs to be tackled from various angles; such as legal, social, economic and by making consumers conscious of their rights.

It will be essential to impose tortious liability against sellers, distributors, manufacturers of adulterated articles of food or drinks. The consumers should be provided with statutory remedy in tort for claiming damages against adulterators.

There is a need of deplaying the concept of consumerism through consumer organisations. Government should such organisations with financial and to combat the adulteration in food.

The distributors, manufacturers and big vendors are hardly prosecuted. Such practice should be discouraged and prosecutions be initiated against different cross sections of adulterators - big, small, distributors, manufacturers and retailers.
Dr. Radhakrishnan, once said: "The practitioners of evil, the hoarders, the profiteers, the black-marketeers and speculators are the worst enemies of our society. They have to be dealt with sternly, however well, placed, important and influential they may be, if we acquiesce in wrong doing, people will lose faith in us." 7

5) Proper training facilities should be provided to the persons responsible for implementation of the provisions of the Act. Service conditions should be made lucrative to attract qualified persons.

6) At a conference of State Health Ministers in New Delhi in September, 1984, the Director General of Health Services proposed that a complete ban be imposed on the use of coal tar dyes in food articles. As these days are known to cause blood cancer but are nevertheless, freely used in ice-creams, lollipops, sweets and sherbats exposing children as well as adults to blood cancer.

7) The Central and State Governments winster enough political will and provide necessary facilities for prevention of food adulteration, and for quick and deterrent punishment to those who are slow-poisoning the nation.

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8) Special Courts need to be set up to try the offenders under the Act expeditiously and the procedure should be further simplified for summary disposal of more cases. The machinery in charge of prevention of food adulteration needs to be considerably strengthened, particularly the inspecting, testing, intelligence and legal wings.

9) Vigorous enforcement of the Act, to be extended to rural areas, so that adequate facilities to check the adulteration of food stuffs are built there.

10) The voluntary organisations, particularly those of women, should be encouraged to play their role in the quality control of food. It is suggested that consultative committees should be established at the Central, State and District levels to guide, monitor and supervise the programmes for prevention of food adulteration.

11) People's participation in an organised form is essential in the Government's drive against adulteration. In order to eliminate the corruption among food inspectors, some selected housewives should be given legal authority to inspect fair price shops and challan the culprits.

12) It is suggested to create mobile laboratories with chemists, food inspectors and social workers to check food adulteration and develop quality consciousness among the consumers.

13) New centres as to teach the poor purchasers nutritimal courses be introduced. Even at school and college levels
these courses dealing with socio-economic context must be oriented.

14) Hotels, restaurants, confectioners, shops and stalls should clearly display a complete list of food articles along with a warranty of their quality.

15) The Government should control the prices of permitted colours, ensure their easy availability as well as encourage the production and use of harmless natural pigments. This would motivate manufacturers to stop using cheap and poisonous colouring agents.

16) Wide publicity should be given to the names and addresses of persons, firms and corporations convicted under the Prevention of Food Adulteration Act so that they are objects of public censure.

17) Federation of Indian Chambers of Commerce and Industry, president has suggested that Central and State Governments should set-up advisory cells for overseeing the implementation of Prevention of Food Adulteration Act. It should have adequate representation from consumer organisations, food industries and trade.

Stressing the need for shifting the attention from Prosecution to prevention for implementing food laws and co-ordination between the Ministry of Health and the Ministry of Agriculture for improving quality at the farmer's

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1 Hindustan Times Dt. 3-5-88.
level is important, seminars, symposier etc. should be organised from educating manufacturers from medium and small scale sector and dealers about good manufacturing practices, storage handling, transport practices etc.

A study should be undertaken about the products where incidence of food adulteration is high.

It is suggested that appropriate action has to be taken to check the use of non-permitted colours. The industry, consumer organisations and the Government has to co-ordinate to create public awareness on colours permitted in foods, labelling conditions in such cases etc.

It is suggested that the "judicious approach" should be adopted by the Prevention of Food Adulteration in examining adulterated articles.
The philosophy of a quality is a close knit chain. It runs eight from the concept of product design, selection of raw materials, processing, testing, packing, storing, distributing and ultimately to consumer satisfaction.

Adulteration of all sorts articles of food is so widely rampant that it is difficult to procure pure and unadulterated articles despite existing laws and Government vigilance, people have lost the confidence that they can get, for a price, any nourishing article of food or drink in its pure form. Since business today is no longer an economic adventure but a national and sociological institution, the consumer and the community are the best judges of a business and its products.

The consumer in India is generally full of doubt about the ethics of businessmen engaged in trade in articles of food. Indian consumers are not quality conscious. Till such consciousness is developed compulsory quality controls are necessary.

The pressing need in our country is for compulsory legislation preventing the marketing of goods which have not been certified by the B.S.I. or by Government agencies. Such certificates should be publicity displayed and failure to obtain certification should be punishable.

The protection of the consumer demands that the standards in respect of various articles of food and drink be revised and raised at least to the level of optimum standards.
Good nutrition is a primary need and an indispensable means for sustaining human life on earth. Health depends not on how much money is spent on food, but on what food the money is spent.

Nothing we eat seems to be pure or safe. Consumers contribute to this situation because of their ignorance and their propensity to going in for the cheapest food stuffs without any regard as to whether the dealers are authorised or unauthorised.

The adulteration of food stuffs is a major social security risk to the community at large. Offences relating to food adulteration are sometimes white collar crimes, committed during the course of business by members of the trading or manufacturing class. To protect the public rather than the individual is the standard of moral conduct in trade. The consumer and the community are the best judges of the utility of articles of trade. Ensuring the quality of goods is a part of the social responsibilities of business.

The Prevention of Food Adulteration Act, 1954, is a piece of consumer legislation for the protection and benefit of the consumers.

In conclusion, some basic precautions must be observed by consumers in general and people in the food service industry in particular to preserve the quality and wholesomeness of food.
(a) INTRODUCTION

The Environment Protection Act 1986 is the creation of recent needs of the Nation to protect the living being on the planet-earth. Concern for the environment is not a luxury but vital needs for the whole universe. The rapid growth of human population, industrialisation by the scientific and nuclear technology has put higher demands on the environment to protect the bio-species from the destruction due to pollution of air, water and land.

Justice Bhagwati, former Chief Justice of India, once observed that the right of life and liberty is meaningless if this right to life is not supplemented or accompanied by the right to enjoy the supporting system of i.e., clean water, clean environment, including oxygen requirements.

Consumers are more concerned with purity in water, land and air while consuming these three vital needs. Modern living being is far more knowledgeable and concerned about environmental matters than previous generations and this interest is growing which led the Parliament to enact the Environment Protection Act 1986.

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1 Man, Nature & Environmental Law by G. S. Nathawat, Satish Shastri & J.P. Vyas, P.No.9.
The aim of this Chapter is to introduce and safeguard the purity in Natural resources viz Water, Air and Land in order to save the bio-species on our home planet i.e. earth. The source of life is water, oxygen and purity on earth and these are to be protected from pollution. We have to protect that fountain for the welfare of living creatures. We are probably the only country having an article on environment in our constitution.


Word Pollution is derived from the Latin Word "Pollutus" which means 'defiled'. An objective definition of pollution is that it occurs when organism (plants and animals) are harmed as a result of abnormal transfer rates of some form of undesirable materials or energy.

As Justice S. N. Bhargava of Rajasthan High Court, Jaipur has stated that "In India, people have been worshipping the nature from time immemorial and it is nature which is environment of the ecology of man. According to Indian people and mythology based on the scientific data, the whole universe i.e. the nature comprises of five basic elements 'Agni' (Fire) 'Vayoo' (Air) 'Jal' (Water) 'Prithvi' (Land or earth) and 'Aalsash' (Biosphere) Since the very beginning of the Indian culture, people worship these five basic elements which keep the environment clean. Hindus worship trees and plants as their religious duty, and it is believed that cutting a tree will amount doing a sin, and planting a tree will be a 'Punja' sacred work. Therefore the good old people used to love nature and protect the trees to
Environment includes the air, water and land, their inter-relationship with human beings, other bring creatures, plants, micro-organism and property. Therefore, Indian Legislation has enacted the following Acts in order to protect environment:

(1) **Water Pollution**
   
   (a) The River Boards Act, 1956
   (b) The Merchant Shipping (Amendment) Act, 1970
   (c) The Water (Prevention and Control of Pollution) Act, 1974.
   (d) The Water Prevention and Control of Pollution Cess Act, 1977.

(2) **Air Pollution**

   (a) The Indian Boiler's Act 1923
   (b) The Mines and Minerals (Regulation and Development) Act, 1947
   (c) The Factories Act, 1948
   (d) The Industries (Development and Regulation) Act, 1951
   (e) The Air (Prevention and Control of Pollution) Act, 1981.

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1 Man Nature & Environmental Law, by G.S. Nathawat, Satish Shastri & J.P. Vyas Page No. 43.
(3) **Radiation**

(a) The Atomic Energy Act, 1962

(b) The Radiation Protection Rules 1971

(4) **Pesticides**

(a) The Poison Act, 1919

(b) The Factors Act, 1948

(c) The Insecticides Act, 1968

(5) **Others**

(a) The Indian Fisheries Act 1897

(b) The Indian Forest Act, 1927

(c) The Prevention of Food Adulteration Act, 1954

(d) The Ancient Monuments and Archaeological Sites and Remains Act, 1956

(e) The Wild Life (Protection) Act, 1972

(f) The Urban Land (Ceiling and Regulation) Act, 1976 and

(6) **Environment Protection Act, 1986.**

1. **The Water (Prevention and Control of Pollution) Act, 1974.**

The problem of pollution is faced largely in connection with water. Water pollution has adverse effects on various facts of human life e.g. human health, recreation, fishing, estheviscs, agriculture and industrial need. To protect the public health hazards due to pollution like typhoid, dysentry
and salmonellosis and many other diseases, water must be located to high levels before it is fit for drinking. Recreational activities such as boating, swimming and fishing are hampered by water pollution.

Faced with all these problems the Indian Legislature had to consider the need to legislate on the point and ultimately passed Water (Prevention and Control of Pollution) Act, 1974.

The problem of pollution of rivers and streams has assumed considerable importance and urgency in recent years as a result of the growth of industries and the increasing tendency to urbanisation. It is essential to ensure that the domestic and industrial effluents are not allowed to be discharged into the water courses without adequate treatment as such discharged into the water unsuitable as source of drinking water as well as for supporting fish life and for use in irrigation. Pollution of rivers and streams also causes increasing damage to the country's economy. Therefore, comprehensive legislation enacted viz. Water (Prevention and Control of Pollution) Act, 1974.

It applies to the whole of the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal and the Union Territories and it shall apply to such other State which adopts this Act by resolution passed in that behalf under clause (1) of Act 252 of the Constitution.
Constitution of Central Board

According to Section 3 of the Water (Prevention & Control of Pollution) Act, 1974 Central Board is to constitute headed by the Chairman, having special knowledge or practical experience in respect of and officials not exceeding five to be nominated by the Central Government to represent that Government, and persons not exceeding five to be nominated by the Central Government from amongst the members of the State Boards, of whom not exceeding two shall be from local authorities within the State and three to be nominated by the Central Government to represent the interests of agriculture, fishery or industry or trade or any other interest which in the opinion of the Central Government, to be represented, two persons to represent the companies or corporations owned, controlled or managed by the Central Government, to be nominated by that Government and a full time member - secretary qualified in public health engineering having practical experience in respect of matters relating to environmental protection to be appointed by the Central Government.

The Central Board shall be a body corporate with the name aforesaid with perpetual succession and a common seal with power to require, hold and dispose of property and to contract and many sue or be sued by the aforesaid name.
Constitution of State Boards

According Section 4 of the Water Act, 1974, the State Government shall constitute State Board by notification in the official Gazette under this Act.

It has a Chairman, five members to be nominated by the State Government to represent that Government and three non-officials to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or any other interest which ought to be represented, two persons to be nominated by State Government to represent the companies or corporation owned, controlled or managed by the State Government, a full-time secretary qualified in public health engineering to be appointed by the State Government.

Every State Board shall be a body corporate, perpetual succession and a common seal with power to acquire, hold and dispose of property and to contract, may sue or be sued by the said name.

Terms:

A member of a Board, other than member-secretary, shall hold office for a term of three years from the date of his nomination.

Disqualifications:

No person shall be a member of a Board, who is adjudged insolvent, or of unsound mind or is convicted of an offence which involves moral turpitude or has directly or indirectly by himself or by any partner, any share or interest in any
firm or company carrying on the Business of manufacture, sale or hire of machinery, plant, equipment or is a director or a secretary, manager, or other salaried officer or has so abused as to render his continuance on the Board detrimental to the interest of the general public.

(iii) Meetings :-

A board shall meet at least once in every three months, Chairman (Board) can convene urgent meeting of if thinks fit for the purpose.

Constitution of Committees

A Board may constitute as many committees consisting wholly of members or wholly of other persons and for such purpose as it may think fit. This committee shall meet at such time and place as may be prescribed.

Joint Boards

An agreement may be entered into by two or more Governments of Contiguous States or by the Central Government in respect of one or more Union territories or more Governments of States contiguous to such Union territory or Union territories.

An agreement under this Section may make such incidental and ancillary provisions as may be deemed necessary to the agreement. Agreement shall be published in the official Gazette of the participating States or Union territories.
Composition of Joint Boards

A joint Board shall consist of a full-time Chairman, two officials from each States, one non-official, two persons to be nominated by the Central Government or State Governments, a full-time Secretary qualified in public health engineering.

The Joint Board shall be competent to give any direction under this case, relating to a matter within the exclusive territorial jurisdiction.

Powers and Functions of Boards

According to the Section 16 of the Act, the Central Board may advice the Central Government on any matter concerning the prevention and control of water pollution, provide technical assistance and guidance to the State Boards, carry out investigations and research, plan and organise training of persons engaged for the prevention, control of water pollution etc.

Functions of State Board

According to Section 17 of the Act the State Board shall carry out a comprehensive programme for the prevention and control of pollution of streams and wells in the State, shall advise the State Government on any matter concerning the prevention and control of water pollution, to collect and disseminate information, to encourage, conduct and participate in investigations, to inspect sewage or trade effluents, works and plants, to envolve economical and reliable methods of treatment of sewage and trade effluents etc, for the prevention,
control or abatement of water pollution.

Civ; Prohibition on use of Stream or Well for disposal of Polluting matter.

According to Section 24 of the Water (Prevention and Control of Pollution) Act 1974 no person shall knowingly cause or remit any poisonous, noxious or polluting matter as determined by the State Board.

No person shall knowingly cause or permit to enter into any stream, any other matter which may tend, either directly or in combination with similar matters, to impale the proper flow of the water of the Stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences.

Appeals:-

Any aggrieved person by an order make by the State Board under Section 25, 26 or 27, may, within thirty days from the date on which the order is communicated, prefer an appeal to such authority, as the State Government may think fit to constitute.

Power of Board to make application to Courts

According to Section 33 of this Act the Board is empowered to make an application in the Court of a Magistrate of the first class for restraining the person who is to cause such pollution from so causing.
Whoever founds to comply any direction issued by a Court under Sub Section (2) of Section 33, on connection, be punishable with imprisonment for a term which may extend to 3 months or with fine which may extend to five thousand rupees or with both, as Section 41 of the Act.

As per the provisions of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 without the previous consent of the State Board no person shall bring into use any new or altered outlet for the discharge of sewage effluent or trade effluent into a stream or well or sewer or on land or begin to make any new discharge of sewage effluent or trade effluent into a stream or well or sewer or on land.

New industries have to obtain a "No Objection Certificate" from pollution angle from the State Board.

As per Section 58 of the Water Act, which stipulates that no Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter for which an appellate authority constituted under the Water Act is empowered by or under the Water Act to determine and no injunction shall be granted by any Court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under the Water Act. Remedy under Article 226/32 of the constitution is not barred under this Section.

As per Section 53 of the Water Act, the Central Government is empowered to appoint such persons as it thinks fit and having the prescribed qualifications to be Government analysis for the purpose of analysis of samples of water or of sewage or trade
effluent sent for analysis to any laboratory established or specified under Sub-Section (1) of Section 51 of the Water Act.

(2) **Air (Prevention and Control of Pollution) Act 1981.**

With the increasing industrialisation and the tendency of the majority of industries to congregate in areas which are already heavily industrialised, the problem of air pollution has begun to be felt in the country. The problem is more acute in those heavily industrialised areas which are also abusely populated. Short-term studies conducted by the National Environmental Engineering Research Institute, Nagpur, have confirmed that the cities of Calcutta, Bombay, Delhi etc. are facing the impact of air pollution on a steadily increasing level.

The presence in air, beyond certain limits of various pollutants discharged through industrial omissions and from certain human activities connected with traffic, heating, use of domestic fuel, refuse incinerations etc, has a detrimental effect on the health of the people as also on animal life, vegetation and property.

It is felt that there should be an integrated approach for tackling the environmental problems relating to pollution and there the Air (Prevention and Control of Pollution) Act, 1981 enacted.
"Air Pollutant" means any solid, liquid or gaseous substance present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.

"Air Pollution" means the presence in the atmosphere of any air pollutant.

Central Boards :-

According Section 3 of the Air Act, 1981, the Central Board for the prevention and Control of Water Pollution Constituted under Section 3 of the Water (Prevention and Control of Pollution) Act, 1974 shall without prejudice to the exercise and performance of its powers and functions under that Act, exercise the powers and perform the functions of the Central Board for the Prevention and Control of Air Pollution under this Act.

State Board :-

In any State in which the Water Act, 1974, is in force and State Government has constituted for that State a State Board for the Prevention and Control of Water Pollution under Section 4 of that Act, such State Board shall be deemed to be the State Board for the Prevention and Control of Air Pollution constituted under Section 5 of this Act and accordingly that State Board for the exercise and performance of its powers and functions under that Act, exercise the powers and perform the functions of the State Board for the Prevention and Control of Air Pollution under this Act.
Constitution of State Boards

As per Section 5 of the Air Act 1981, the State Board shall consist of a Chairman, nominated by the State Government, having special knowledge relating to environmental protection. It shall consist of 5 official members nominated by the State Government to represent that Government. Five persons to be nominated by the State Government from amongst the members of the local authorities within the State.

It shall consist of non-officials, not exceeding five, to be nominated by the State Government to represent the interests of agriculture, fishery or industry or trade or labour or any other interest, ought to be represented.

Two persons to represent the companies or corporations owned, controlled or managed by the State Government nominated by that Government.

A full time member-secretary having practical experience relating to environmental protection and administrative experience, to be appointed by the State Government.

Disqualifications:

A member of a State Board should be of sound mind, solvent, not involved in moral turpitude, having no interest in any firm or company, not salaried person.

Meetings of Board:

A Board shall meet at least once in every three months.
Constitution of Committees :-

A Board may constitute as many committees consisting wholly of members or partly of members and partly of other persons. A committee shall meet at such time and place as may be prescribed.

Powers and functions of Boards :-

Functions of Central Board :-

According to Section 16 of the Act, Central Board may advise the Central Government regarding improvement of the quality of air and the prevention, control or abatement of air pollution, co-ordinate the activities of the State Boards, provide technical assistance and guidance to the State Boards, carry out investigations and research relating to problems of air pollution, prevention and control of air pollution, plan and organise the training of persons engaged for the prevention, control of air pollution, organise through mass media a comprehensive programme regarding the prevention, control or abatement of air pollution, collect, compile and publish technical and statistical data relating to air pollution, lay down standards for the quality of air, disseminate the information in respect of matters relating to air pollution.
Functions of State Boards

According to Section 17 of the Act, the functions of a State Board shall be to plan a comprehensive programme for the prevention, control or abatement of air pollution, to advise the State Government on matter concerning the prevention, control or abatement of air pollution, to collect and discriminate information relating to our pollution, to inspect and control equipment for the prevention and control of air pollution, to lay down standards for emission of air pollutants, and to do such other thing and to perform such other acts as it may think necessary for the proper discharge of its functions of this Act.

The State Government may after consultation with the State Board, declare areas within the State as air pollution control area.

Appeals :-

As per Section 31 of the Air Act, any person aggrieved by an order made by the State Board may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority as the State Government may think fit to constitute.

Penalties :-

According to Section 37 of the Air Act, whoever fails to comply with the provisions of this Act, shall be punishable with imprisonment for three months or with fine ₹ 10,000/- or with both.
Bar of Jurisdiction:

No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which an appellate authority constituted under this Act is empowered by or under this Act to determine and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

The Environment Protection Act 1986

At the United Nations Conference on the Human Environment held at Stockholm in June, 1972, where in India participated to take appropriate steps for the protection and improvement of human environment.

"Nature, as Mahatma Gandhi has taught us, has enough to provide for man's needs, but can never provide for his greed, which is by its very definition, insatiable".

There are existing laws dealing directly or indirectly, with several environmental matters, it is necessary to have a general legislation for environmental protection. Existing laws generally forms on specific types of pollution or on specific categories of hazardous substance. Some major areas of environmental hazards are not covered. Because of a multiplicity of regulatory agencies, there is need for an authority which can assume the lead role for standing, planning and implementing long-term requirements of environmental safety and to give direction to emergency situations threatening the environment.
In view of the above, there is urgent need for the enactment of a general legislation on Environmental protection, regulation of discharge of environmental pollutants and deterrent punishment to those who endanger human environment, safety and health.

The Environment Protection Act, 1986 extends to the whole of India. This is the first kind of Act in the world.

Definitions:

Environment Protection Act, 1986, defines environment to include "water, air and land and the enter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property".

General Powers of the Central Government

Central Government is empowered to take all such measures expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. The following are such measures, namely

(1) Co-ordination of actions by the State Government,

(2) Planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution,

(3) laying down standard for the quality of environment in its various aspects,
(4) laying down standards for emission & discharge of environmental pollutants from various sources,

(5) restriction of areas in which any industries, operations or class of industries, processes shall not be carried out or shall be carried out subject to certain safeguards,

(6) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents,

(7) laying down procedures and safeguards for the handling of hazardous substances,

(8) carrying out and sponsoring investigations and research relating to problems of environmental pollution,

(9) recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act,

(10) prevention of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution.

As per Section 7 of the Environment Protection Act 1986 no person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed.

Where the discharge of any environmental pollutant in excess of the prescribed standards occurs due to any accident
or other unforeseen act or event, the person responsible for such discharge is bound to prevent or mitigate the environmental pollution.

If any person wilfully delays or obstructs any person empowered by the Central Government, shall be guilty of an offence under this Act.

The provisions of the code of Criminal Procedure, 1973, shall apply to any search or seizure made under authority of a warrant issued under Section 94 of the said code.

The Central Government or any officer empowered by it in this behalf, shall have power to take, for the purpose of analysis, samples of air, water, soil or other substance from any factory, premises or other place in such manner as may be prescribed.

The Central Government may establish one or more environmental laboratories as per Section 12 of the Act,

As per Section 15 of the Act, whoever fails to comply with any of the provisions of this Act, shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees or with both, and in case the failure continues, the additional fine which may extend to ₹5000/- for every day during which such failure continues.

Rule of Evidence

It is well settled that a rule of evidence or a deeming fiction of the law are not to be pleaded as such. Indeed, it must be noticed that in a particular case the prosecution charge may be one of direct, deliberate and wilful commission of the offence.

Cognizance of Offences

No Court shall take cognizance of any offence under this Act except on a complaint made by the Central Government or any person who has given notice not less than 60 days of the alleged offence and of his intention to make a complaint, to the Central Government.

Bar of Jurisdiction

No Civil Court shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken or order or direction issued by the Central Government in relation to its or his functions under this Act as per Section 23.
(1) The last few years have witnessed an increase in global concern over the widespread water and air pollution. There are 30 major enactments for the control of pollution being administered by the centre and the State Governments. Even then, these Acts are too vague, open to many interpretations and hence, too ineffective in curbing the wanton destruction of nature's precious resources. Despite so much breast-beating by the Government about punitive measures taken against the notorious polluter units, little success have been achieved.

The biggest culprit in realising desired results is the industrialist, State combine which frequently succeeded in twisting the rule book. It could be seen in the latest report of Central Canga Authority which clearly pointed out that even now 27 major industrial units, out of which 13 were the Central Government Undertakings, had not paid adequate attention to the Pollution Control Board's directives.

(2) There are numerous other examples where both the Government undertakings and private units have been willfully flouting water pollution laws.

The Indraprastha Thermal Power Station, one of the largest pollutants in the capital has been dilly-dallying in installing the required equipment because it would have to spend between five to ten crore rupees.

1 The Hindustan Times daily dated 16-3-88.
Delhi, ETP, have been installed or are under installation for only 16 out of 63 polluting units. A large number of units have been evading the populations considering them unnecessary expenditure.

In some cases, even after the culprits have been caught, they have installed pollution control equipment just to satisfy laws. Maintenance of equipment had been totally neglected in a number of units. There has been 13 cases where the ETP, have remained shut for more than six months because of equipment failure caused by neglect of maintenance. On the other hand, a few State Boards themselves have become a law of corruption where industrialists could easily buy certificates from clerks and typists and influentials.

(3) Moreover, most of these Boards are extremely weak due to inadequate funds and lack of sufficient and well-qualified personnel. The latest example is the Ganga Action Plan which became operational in September, 1983. A 291 crore ambitions Ganga Purifying Project's progress report has been pathetic.

(4) There is no separate Environment Court's dealing with specific pollution cases. Then, the technicalities of the courts have their own problems.

(5) There is no devolution of power but the power is centred on Central and State Boards only thereby use of the power under the Act remains not much fruitful.

(6) The main culprits are the municipalities of cities along the banks and industrial plants, which do not administer the Acts adequately and strictly due to inadequate staff, untrained
personnel and lack of fund to administer the provisions of Water & Air Act 1974 and 1981 respectively.

(7) Boards have no advisory cells to provide free consultancy and guidelines with respect to air and water pollution to the industries.

(8) Stress should be on the role of the mass media in creating awareness regarding protection of environment.

(9) Definitions of important and relevant terms like "Pollutant", "discharge of pollutant", "Toxic pollutant" etc. are not given in the Act. In the definition of pollution, "radiological" integrity of water is not considered. Punishment is provided only if the violation is done "knowingly". It is not provided for "negligent" acts.

(10) No citizen can proceed against polluter except either on a complaint made by or with the prior sanction of the Water Board as per Section 49 of the Act.

(11) The principal Act designated as the Water (Prevention and Control of Pollution) Act, 1974 gives powers under Section 4 to the State Governments to constitute State Boards as well as to designate them as they think fit. But the names which the Board have been designated are very lengthy and confusing. The State Boards have also been given powers under the Air (Prevention and Control of Pollution) Act 1981, which speaks of State Board for the prevention and Control of Air Pollution. This indicates as if there are two Boards in existence whereas only one and the same Board is discharging the functions and exercising the powers under both the Acts.
(12) The primacy is given to the results of the Government analyst over the results of the Board analyst as per Section 22 (4) of the Water Act 1974.

(13) Section 29(1) provides for revision by the Government of the orders made by the Board under Section 25, 26 and 27 for the purposes of satisfying itself as to the legality or propriety of any such order. But it does not provide any time limit for such revision as in the case of appeals.

(14) Section 33(1) speaks of powers of the Board to make an application to the Court for restraining the apprehended pollution of water in streams of wells. For this purpose the Board can make an application to the Court of First Class Magistrate for restraining the person who is likely to cause such pollution. Under Section 33(3) the Court can issue an order to a person causing pollution or an order authorising the Board to undertake the removal of pollution. It is submitted that under Section 30 of the Board already has statutory powers for the purposes of carrying out works to remove pollution at the cost of the industry, when the Board can do it suo motu, it need not more the court to get a direction from it to undertake the removal of pollution of its own. Accordingly Section 33(3) (ii) and 33(4) rendered superfluous and should be deleted.

(15) Whereas Section 25(1) and 26 speaks of permission to discharge trade effluents on "land". Under Section 33(1) Board can initiate action only when the trade effluents are discharged into a stream or well and not on land.
(16) There is no provision for controlling the refuse of a mine or quarry which may be washed by rain into a stream.

(17) The Board consist of 15 members in addition to the Chairman and the Member - Secretary. These members are persons having no experience or knowledge whatsoever with any activity connected with pollution control.
Drawbacks - Air Act 1981

(1) The State Boards for Prevention and Control of Water Pollution functions as the State Board for Prevention and Control of Air Pollution. The Board as such does not include a person who has a special or practical knowledge.

The composition of the Boards does not include persons having special knowledge of law.

(2) The increasing growth of pollution in India has been due to the failure to enforce the existing legislative measures effectively rather than the absence of legislative provisions. The reasons for this are (a) lack of money, technical knowledge and personnel. (b) Non-implementation as well as inadequacy of penal provisions.

(2) As regards legal processes, there can be delay in the launching of prosecutions and decisions and the penalties imposed are not deterrent.

(3) There is over-dose of Governmental Control. All nominations are to be made by the Government. Under the Act there is no criteria on qualifications or experience of the would be nominees. The Government is free to nominate anybody. Non-Official or non-official members who are burdened with other assignments and who do not have any interest in pollution control are nominated.
Drawbacks - Environmental Protection Act, 1986.

(1) Its radical approach regarding the rule of locus-standi is rendered ineffective by the requirement of 60 days notice which gives a long enough time to the offender to make, amend and escape liability under the Act.

(2) There are inadequate linkage in handling matters of industrial and environmental safety.

(3) Control mechanisms to guard against slow, invidious build-up of hazardous substances, especially new chemicals in the environment, are weak.

(4) The present Pollution Control Boards seem to have adopted a soft line vis-a-vis the industry and prefer to be pursuasive rather than punitive.

(5) There is undue centralisation under the Act and that all power is vested in the Central Government and even the authorities constituted to implement are subject to the supervision and control of the Central Government.

(6) Section 24(2) rears as follows:-

"Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act". This provision is anomalous, since many offences would also be punishable under the previous pollution laws which prescribed a lesser punishment and hence in such cases the new Act will only prove to be paper tiger.
(7) The new Act is also surprisingly silence with regard to conservation of forests which is a subject of supreme importance in a country like India.

(8) The Act, however clearly reflects the profound anxiety of the law-maker, to give effect to the solemn resolutions at the 1972 Stockholm Conference on Human Environment.

(9) There is no provision in any of our laws making an environmental impact study compulsory. For example, the Water Act. Before it decides to grant or not to grant consent for discharge of effluents, the Board is not statutorily bound either to make an inquiry in an objective manner or to examine the environmental impact of its decision.

(10) Litigation is uncertain due to complexities of the laws. Boards feel frustrated when there is lack of fund to get as good a larger for prosecution. The Boards can do nothing once the case is sub-judice. In M/s. Zuari Agro Chemicals Ltd. V Union Territory of Goa, where the case dragged on for years due to various administrative problems.1

1 Annual Report (1979-80) P. 23.
Annual Reports of the Central Board for the Prevention & Control of Pollution.
(11) The Laws of Evidence are tortious with consideration to the infringement of Environmental Laws. The litigation in M/s. Modern Bakeries V Union Territory of Delhi illustrates the concerned issues. The case revolved round the establishing of sufficient evidence, and was finally dropped.

(12) The Board is busy trying to catch the small fish while the large ones causing more pollution are beyond its reach. Such as corporations or groups, slum dwellers etc.

(13) Successful application of criminal law presupposes the possibility of identifying violators. It is not always easy in environmental problems to lay the responsibility on a specific person or body as evident in the Bhopal tragedy case, where the blame shifts from the manager to some workers and then to the incorporeal body called Union Carbide.

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1 Annual Report (1980-81)
Annual Reports of the Central Board for the Prevention & Control of Pollution.
Residents of a locality within limits of Ratlam Municipality tormented by stench and stink caused by open drains and public excretion by nearby slum-dwellers moved the Magistrate under Section 133 of Criminal Procedure Code to require the Municipality to do its duty towards the members of the public. The Magistrate gives directions to Municipality to draft a plan within six months for remaining nuisance. In appeal, Sessions Court reversed the order. The High Court approved of the order of Magistrate. In further appeal, the Supreme Court also affirmed the Magistrate's Order.

The Supreme Court if its judgement categorically laid down that where there existed a nuisance in a locality due to open drains, heaps of dirt, pits and excretion by human for want of lavatories and consequential breeding of mosquitoes the court could require municipality, under Section 133 of the Criminal Procedure Code which provides for public nuisance, to abate the nuisance by taking affirmative action on a time bound basis. The Municipality can not plea that financial inability validly exonerated it from statutory liability.

1 AIR 1960 S.C. 1622.
The Supreme Court further said that public nuisance because of pollutants being discharged by big factories, to the detriment of the poorer sections, is the challenge to the social said justice component of the rule of law. Thus judiciary realised the gravity of pollution.

Long standing concern for the purity of water and atmosphere generally is evident from Sections 277 & 278 of the Indian Penal Code 1960. Factories Act 1948, Section 12, provides for effective arrangement by every factory for disposal of wastes & effluents.
Case - 2 Rural Litigation and Entitlement Kendra Dehradun
V State of U.P.

The Supreme Court again delivered a historic judgement and held,

"We are clearly of the view that so far as the limestone quarries classified in category 'C' in the Bhargav Committee Report are concerned which have already been closed down under the directions of Bhargav Committee should not be allowed to be operated. If the leases of these limestone quarries have obtained any stay order from any Court permitting them to continue the mining operations, such stay order will stand dissolved and if there are any subsisting leases in respect of any of these limestone quarries they shall stand terminated without any liability against the State of Uttar Pradesh. If there are any suits or writ petitions for continuance of expired or un-expired leases in respect of any of these limestone quarries pending, they will stand dismissed."

This is the first case of its kind in the country involving the issues relating to environment and ecological balance.

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1 AIR 1985 SC 652.
Case - 3  
Gujarat High Court in Janki Nathubhai Chhara and others V. Sardar Nagar Municipality.

Gujarat High Court persuaded the State Government to sanction Rs. 7,58,000/- to execute the scheme for underground drainage and sewerage in Chharanagar area of Sardarnagar. The writ petition was filed by the inhabitants of the locality complaining about the insanitary conditions in the area.

Case - 4  
Kerala High Court in Kerala State Board (Prevention & Control) of Pollution Kawadia V. The Gwalior Rayon Silk Manufacturing Co. Ltd. Kozhikale.

In this case it has been observed that ninety five percent of the nations in the world have watery coasts. Water influences life and health of the people, prominently and pronouncelly. It constitutes an important and integral part of our environment. The main purpose of the Act is to ensure that trade effluents discharged in to the river is so regulated as not to cause any health hazard to the public. Section 24 of the Water Act, 1981 contains a prohibition of use of stream (including river, water course, inland water, substerraneous water, sea or tidal) or well for disposal of pollution matter, otherwise than in accordance with the standards laid down by the Board.

1 AIR 1986 Guj. 49.
2 AIR 1986 Ker. 256.
In this case due to leakage of oleum gas from one of the units of Shriram Food and Fertilizer Industries affected several persons and killing one advocate. The Supreme Court has made judicial history in giving judgement in this case. The Supreme Court has given judgement on one part of the case i.e. re-opening of the factory will certain conditions.

Held, "We are not inclined at the present moment to vacate these two orders (which were for closure) because the permission which we are granting by this judgement to Shriram to reopen these plants is as a temporary measure to be reviewed at some point of time in the future and suspend the operation of these two orders until further directions with a view to enabling Shriram to re-start these plants. But we are laying down certain conditions which shall be strictly and scrupulously followed by Shriram and if at any time it is found that any one or more of these conditions are violated the permission granted by us will be liable to be withdrawn".

The Supreme Court ordered the industry to pay ₹10,000/- to the petitioner as a token of appreciation of his work, and ₹20/- lacs to be deposited for the payment of compensation for the claims to be made by the affected persons.

1 AIR 1987 SC 965
Case - 6 Premier Paper and Board Mills Kota, Rajasthan.

It was reported sometime back that the Chief Judicial Magistrate of Kota (Rajasthan) had convicted a Paper Mill of Kota for violation of the Water Act 1974 and had imposed a fine of Rs.2000/- on the Premier Paper and Board Mills, Kota, and awarded two years' simple imprisonment plus a fine of Rs.2000/- to the Manager of the Mill under Sections 43 and 44 of the Water (Prevention and Control of Pollution) Act 1974. In its complaint, the Board had pointed out to the Court that the Paper Mill was polluting the Kansuwa nullah which discharged its water into the Chambu river. It was also pointed out that Mill, without prior permission from the Rajasthan Pollution Control Board started production, not putting up even a waste treatment plant before discharging its effluents into the nullah. The Board had prayed the Court that the Mill be punished under Sections 43 and 44 of the Water Act, 1974 for violating Sections 24 and 25 of the same Act.

1 "Paper Mill fined for Water Pollution" Financial Express
   Date 14-8-85 & Page 234 of Environment Protection - By Paras Diwan.
Andhra Pradesh High Court observed that "Protection of Environment is not only the duty of the citizens but is also the obligation of the State and all other State organs including courts."

The Karnataka High Court observed that Air (Prevention & Control of Pollution) Act 1981 is designed to prevent control and abatement of air pollution, the provision relate to preservation of quality of air and control of pollution, as the factory deals in pulverising dolomite stone emitting dust and polluting or affecting the health of the workers and the nearby areas. The remedial measures contemplated must be understood as such measures which mitigate the emission of air pollution. The Court directed that the industry should have sufficient and adequate remedial measures as are necessary to mitigate emission of air pollution. For contravening the standards laid down by the Government, penalties have been provided under the Act.  

1 AIR 1987 A.P. 171.  
2 AIR 1987 Kart. 82.
Case - 9  Union Carbide Corporation (India) v/s. Union of India & Vice Versa.

On 2-12-1984 (night) in the world's worst industrial disaster, happened due to leakage of Methyle Iso-cyanate (M/c) gas at the Union Carbide (India) Ltd. plant in Bhopal. About 2660 died and between 30,000 to 40,000 persons sustained serious injuries (blindness & crippled). The disaster was also responsible for destroying other animal life and environment of the city.

An appeal and a cross appeal were filed in the Supreme Court by the Union of India for enhancement of interim compensation and UCC for maintability of an order for payment of interim compensation. These were heard from November 1988 and two orders passed on February 14th and 15th 1989. The orders settled the controversy between the Union of India and the UCC. The quantum of compensation was fixed at US $ 470 million to gas victims. The Supreme Court ordered:-

Order dated 14-2-89:

(1) Having given our careful consideration for these several days to the facts and circumstances of the case placed before us by the parties in these proceedings including the pleadings of the parties, the mass of data placed before us, the material relating to the proceedings in the Courts in the United States of America, the offers and counter-offers made between the parties at different stages during the various proceedings, as well as the

1 AIR 1989 (1) SC 296 & 337.
complex issues of law and fact revised before us and the submission made thereon and in particular the enormity of human suffering occasioned by the Bhopal Gas Disaster and the pressing urgency to provide immediate and substantial relief to victims of the disaster, we are of the opinion that the case is pre-eminently fit for an overall settlement between the parties covering all litigations, claims, rights and liabilities related to and arising out of the disaster and we held it just, equitable and reasonable to pass the following order:—

(2) We Order:—

(1) The Union Carbide Corporation shall pay a sum of US Dollars 470 millions to the Union of India in full settlement of all claims, rights and liabilities related to and arising out of the Bhopal Gas Disaster.

(2) The aforesaid sum shall be paid by the Union Carbide Corporation to the Union of India on or before 31 March 1989.

(3) To enable the effectuation of the settlement, all civil proceedings related to arising out of the Bhopal Gas Disaster shall hereby stand transferred to this Court and shall stand concluded in terms of the settlement, and all criminal proceedings related to and arising out of the disaster shall stand quashed wherever these may be pending.

Having heard learned counsel for the parties, and having taken into account the written memorandum filed by them, we make the following order further to our order dated 14 February 1989 which shall be read with and subject to this order.

(1) Union Carbide, India Ltd, which is already a party in numering suits filed in the District Court at Bhopal and which have been stayed by an order dated 31-12-1985 of the District Court, Bhopal, is joined as a necessary party in order to effectuate the terms and conditions of our order dated 14-2-1989 as supplemented by this order.

(2) Payment to the order passed on 14-2-1989 the payment of the sum of US $ 470 millions directed by the Court to be paid on or before 31-3-1989 will be made in the manner following :

a) A sum of US $ 425 millions shall be paid on or before 23-3-89 by Union Carbide Corporation to the Union of India less $ 5 millions already paid by the Union Carbide Corporation pursuant to the order dated 7-6-85 of Judge Keenan in the Court proceedings taken in the United States of America.

b) Union Carbide India Ltd, will pay on or before 23-3-89 to the Union of India the rupee equivalent of US $ 45 millions at the exchange rate providing at the date of payment.
(3) Upon full payment of the sum referred to in paragraph 2 above:

(a) The Union of India and the State of Madhya Pradesh shall take all steps which may in future become necessary in order to implement and give effect to this order including but not limited to ensuring that any suits, claims or civil or criminal complaints which may be filed in future against any corporation, company or person referred to in this settlement are defended by them and disposed of in terms of this order.

(b) Any such suits, claims or civil or criminal proceedings filed or to be filed before any Court or authority are hereby enjoined and shall not be produced with before such Court or authority except for dismissal or quashing in terms of this order.

(4) Upon full payment in accordance with the Court's directions:

a) The undertaking given by Union Carbide Corporation pursuant to the order dated 30-11-1986 in the District Court, Bhopal shall stand discharged and all orders passed in suit No. 1113 of 1986 and/or in revision therefrom shall also stand discharged.
b) Any action for contempt initiated against conversed or parties relating to this case and arising out of proceedings in the Courts below shall be treated as dropped.

(5) The amounts payable to the Union of India under these orders of the Court shall be deposited to the credit of the Registrar of this Court in a Bank under directions to be taken from this Court.

This order will be sufficient authority for the Registrar of the Supreme Court to have the amount transferred to his credit which is lying unutilised with Indian Red Cross Society pursuant to the direction from the International Red Cross Society.

(6) The terms of settlement filed by learned consul on the first Tuesday of April 1989.

Terms of settlement consequential to the Directions and orders passed by this Hon'ble Court,

1) The parties acknowledge that the order dated 14-2-89, as supplemented by the order dated 15-2-89, disposes of in its entirely all proceedings in suit No. 1113 of 1986. This settlement shall finally dispose of all past, present and future claims, causes of action and civil and criminal proceedings (of any nature whatsoever wherever pending) by all Indian citizens and all public and private entities with respect to all past, present and future deaths, personal injuries,
health effects, compensation, losses, damages and civil and criminal complaints of any nature whatsoever against UCC, Union Carbide India Limited, Union Carbide Eastern, and all of their subsidiaries and affiliates as well as each of their present and former directors, employees, agents, representatives, attorneys, advocates and solicitors arising out of relating to or connected with the Bhopal gas leak disaster, including past, present and future claims, courses of action and proceedings against each other. All such claims and causes of action whether within or outside India or Indian citizens, public or private entities are hereby extinguished, including without limitation each of the claims filed or to be filed under the Bhopal Gas Leak Disaster (Registration and Proceedings of claims) Scheme, 1985 and all such civil proceedings in India are hereby transferred to this court and are dismissed with prejudice and all such criminal proceedings including contempt proceedings stand quashed and accused deemed to be acquitted.

2) Upon full payment in accordance with the Court's directions the undertaking given by UCC pursuant to the order dated 30-11-1986 in the District Court, Bhopal stands discharged, and all orders passed in suit No. 1113 of 1986 and or in any revision therefrom also stand discharged.
Suggestions:

The Tiwari Committee suggested that:

1) Comprehensive review and reformation of some Central and State Acts (such as the Insecticides Act, 1968, the Water (Prevention & Control of Pollution) Act, 1974, and the Indian Forest Act, 1927).

2) New legislation for areas of action not covered by the present laws (such as those concerning toxic substances).

Committee suggested for harsher laws to solve the problems. It is suggested that scientific approach to environmental approach to environmental laws is to be adopted, schematize them systematically in terms of their functions and structure.

Planning of legislation concerning production and distribution is suggested by the Committee.

It is suggested that general awareness concerning protection of environment from pollution should be created among people. Remind the people through the media of TV, Radio, Newspapers etc, how to keep your kerosene oil stove in proper working order or the machine of your automobile in a proper ideal condition is just one instance of the strategy of saving precious fuel and also effectively controlling the potential source of pollution such an awareness would eventually enable society to regard the environment as not something which belongs to nobody but something which belongs to everybody.

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The Boards shall be endowed with more powers for the expediting and argumenting the implementation of the authority vested with them for the protection of the environment and for the prevention of water pollution in particular.

More "Advisory Committees" with the necessary experience and expertise shall be constituted to feed the Boards with sufficient data regarding possible and probable acts of commissions and omissions leading to pollution and violations.

Strong public opinion has to be created alongwith public participation against pollution case studies and empirical research projects shall be launched with the help of modern technology, methodology, applied science and envolve new methods of prevention.

Separate courts or tribunals shall be established for trying cases connected with environmental pollution. As Justice V. R. Krishna Iyer has suggested an "Environmental Ombudsman" can be established and shall be endowed with the jurisdiction to try matters connected with the environmental pollution.

Regulations, Rules and prescribed standards should be suitable to the changing conditions in society with growing industrialisation following sophisticated methods of production. When private rights and public interests clash, there is a general trend in favour of the latter and the legislation shall be so modified to suit such actions launched by the authorities.

As Justice V.R. Krishna Iyer, suggested for Environment Courts to be provided for public interest litigation, affirmative action wider rules of access to justice to combat environmental pollution.
It is suggested that the constitution should be amended to declare water as national property and especially the river water should be brought under the central jurisdiction as it bring the property of the entire Nation.

Research should be encouraged to device indigenous process which are less expensive and unconventional but efficient in controlling pollution. The process of recycling of the industrial waters so as to use them as by product for sister industry and develop their secondary uses.

The pollution can be controlled to some extent by proper industrial and town planning. Centralise the small identical industries at one place, a single treatment plant is installed for the whole area.

Self help is the best help. People should be encouraged through mass education campaign to fight against this social evil. The Government should launch mass education programmes in a big way especially in suburban areas and villages where problem can not be effectively tackled by the rudimentary legal enactments.

Now industrial licences should be granted only subject to the condition of anti-pollution technology. Water Board should see it to that waste treatment technology insisted upon are reality available and economically feasible.

It is suggested among other things that steps should be taken to teach environmental law in our law schools.

Instead of entrusting the task to a Governmental authority or advisory body it is better to vest in an independent agency the
responsibility of assessing the impact and preparing and monitoring environmental impact issue.

It has been suggested that pollution problem should be made a poll issue. The then Deputy Minister for Environment, Digvijay Singh said that "people must be made aware of the problem of environmental pollution by making it an election issue. This is important at the village and corporate level where air and water pollution is perceived reality."

It is the need of have that individual municipalities should be funded for specific projects. There should be separate budgets for water supply and water treatment.

Department of Environment should closely interact with the Ministries of Industry in all the States in order to ensure that no licences are given to individual units until they meet the requirements set by the Pollution Control Board.

Prime Minister V.P. Singh inaugurating the 7th Session of the Indian Science Congress on 7-2-90 at Cochin said that scientists should find more renewable sources of energy as carbon dioxide generated by development activities and industrialisation - challenging the very existence of mankind.

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2 The Hindustan Times daily dated 5-2-90.
Indian Science Congress Association President Yash Pal in his presidential address called for a "planet assurance programme" to be evolved through the efforts of sociologists, economists, scientists, technologists and grassroots workers.1

Eminent environmentalist Dr. T. N. Khoshoo, while delivering the foundation day lecture on "Man in Nature - Past, Present and Future", at the National Museum of Natural History on the occasion of the World Environment Day i.e. 5th June said to meet the threat to environment there is a need to have global ethics or a "Dharma of Ecology".2

Dharma of Ecology, have certain principles, namely, protecting and augmenting regenerability of life support system. Fair sharing of resources, awareness regarding concealed social, economic, and environmental costs of consumerism, meeting genuine social needs by blending economic and environmental imperatives.

The then Prime Minister, Mr. Rajiv Gandhi proposed for the setting up of a "Planet Protection Fund at the non-aligned summit, to combat the global environmental pollution problem".3

Three day National Seminar on air pollution organised by the Birla Institutes of Scientific Research held at Hyderabad, discussed the "alaruming" contribution of poverty to pollution and suggested ways to discourage use of firewood and cowdung as fuel and provide for biogas and natural gas stoves for the masses.4

1 Hindustan Times daily dated 5-2-90
2 Hindustan Times daily dated 7-6-89
3 Hindustan Times daily dated 17-10-89
4 Hindustan Times daily dated 31-3-89
It also recommended the use of appropriate vegetation (poly species) as an additional tool to air pollution and undertaking proper landscaping in urban industrial establishment.

The seminar recommended use of continuous monitoring of air pollution levels of industries, which should be purveyed to the public through mass media on the lines of weather reports.

The Prime Minister Rajiv Gandhi, supported the idea of establishment of sanctuaries where possible on the Ganga at the fifth meeting of the Central Ganga Authority. The meeting also approved the idea of prioritisation of afforestation work in the Ganga basin on the basis of ecological significance with regard to the well-being of the Ganga.

To encourage more business houses to take up pollution control measures, Federation of Indian Chambers of Commerce and Industry (FICCI) has suggested that industries having effluent treatment plants should be given incentives by the Government by way of low taxes, tax-rebates, subsidised power, relaxation in cess collection etc in the year when pollution is controlled to a specified level.

Dr. Khemsingh Gill, Vice-Chancellor of the Punjab Agricultural University while presiding over the first annual function of the Forest Science Club of the Department of Forestry and Natural Resources said at Ludhiana, that forests "played a vital role in maintaining the ecological balance and a clean environment". There is a tremendous scope of genetic improvement in the discipline of viticulture through tissue culture and bio-technology.

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1 Hindustan Times daily dated 14-9-89
2 Hindustan Times daily dated 26-10-89
3 Hindustan Times daily dated 13-1-90
He said that the farmers, should be properly educated about the importance of tree plantation which provided them fuel, timber and fodder and also checked soil erosion.

Andhra Pradesh Forest Department has launched novel scheme. Under the scheme, 50,000 seedlings of fruit-bearing and other type of trees are given to unmarried girls of scheduled castes & Tribes, to able to earn ₹.450 to 500 p.m. by selling the produce. Besides, helping other members in the family, savings from these earnings would help in getting the beneficiaries married.¹

It is suggested that time has come to half and restrict the build-up of green-house gases through stricter emission control on power stations, factories and vehicles, energy conservation, use of new and renewable energy sources, afforestation and minimisation of indiscriminate destruction of forests.

¹ Hindustan Times daily dated 2-7-89.
CONCLUSIONS:

After examination the efforts for environmental protection, it is obvious that the existing measures go a long way in combating and controlling the environmental pollution. No doubt, the problem of environmental pollution is not so acute in India as in Western Countries. But constitutional, Administrative and Legislative measures adopted by our country are timely right steps to control the pollution. There is no dearth of environmental protection laws but we need a firm hand to implement them.

The essence of law lies in its spirit and not in its better for the better is significant only as being the external manifestation of the intention that underline it. Viewed in Indian perspective of legal control for protection of environment, there is flood of legislation, so the purpose for which pollution control laws have been enacted ought to be considered. The philosophy of jurisprudence of environmental laws exists in umpteen number of legislation. Indeed, the whole purpose of the law regulating man's conduct from outside is to invoke eventually his spirit from within.

It is clear that the situation of water pollution is taking a serious turn. But the Ganga Action Plan is inevitable to clean the water and pollution too.

Our crazy race for economic upliftment through industrialisation, ignoring the importance of pollution control would ultimately lead to disaster. The day may not be too far when man would only see pollution, eat pollution and breathe pollution, will live to die a miserable death coupled with unmerous diseases
like cancer, various types of allergies, jaundice diseases of
the intensive, hypertension and what not where, necessary, the
Act should be enforced without reservations. Deterent penalties
be imposed, but innocents may not be allowed to be played.

From zenith to the bowels of the earth is the domain of
man's activity today. New jurisprudential techniques may have
to be devised to deal adequately with problems of pollution
control.

Environmental groups in India have been cited as the most
active in the Third world and a shining example for other countries
to tackle their enormous ecological problems. A study released
by the Washington based Worldwatch Institute has concluded that
voluntary organisations in India have inspired grassroots movements
like the Chipko movement of Uttar Pradesh hills acclorimed
community forest movement that shows how grassroots action to
defend or resource can grow into far more

"What do the forest bear
soil, water and pure air
soil, water and pure air
Are the basis of our life",

a slogan given by Bachni Devi of Advani for the "Chipko"
movement.

Above all, it is necessary to make the best out of the
existing state of affairs by generating social consciousness
about environment by forming action groups and the importance of
people's contribution in fighting the increasing menace of water
pollution.
Our Nation has adopted new dynamic for the protection of environment, particularly on cleaning our rivers, including Ganga and Jamuna and of reforestation. A united effort by the Government and people is the imperative need of the hour. The enforceability of a fundamental duty under our Constitution, perhaps, for this reason is seen or sought, reminding us of our innate liability. It is hoped that the Environment Protection Act, 1986 will help in achieving our objectives.
The subject of Drugs Laws has assumed great importance since the last three decades and witnessed remarkable advance in recent times. Part II of the Article 47 of the Constitution of India enjoined on the State to take steps to bring about prohibition of the consumption of intoxicating and spurious drugs.

Drugs are the best friends and can be the worst enemies of human beings and their health. The purity of food, drink and the existence of sanitary surroundings are very essential for warding off the appearance of diseases. Handling life saving drugs as well as dealing in them need a high standard of care not only from the persons producing, cultivating or keeping such drugs for sale but even from those persons who are to use them viz consumers.

No care or attention is bestowed upon good health of citizens of India.

The aim of this Chapter is to administer and safeguard the purity in drugs and curing spurious substance and or misbranded drugs in the market in order to prevent the poor customers from evil effects thereof, and best on National health thereby.
Provisions of the Drugs and Cosmetics Act, 1940.

This Act may be called the Drugs and Cosmetics Act, 1940. It extends to the whole of India by the Act 19 of 1972 Section 2(i). Purpose of enforcement of provisions of the Act is to see that no substandard drug is sold in the market and no genuine drug is sold without licence.

Definitions:

As per Section 3(aaa) of the Drugs and Cosmetics Act 1940, "Cosmetics" means any article intended to be rubbed, poured, sprinkled or sprayed on or introduced into or otherwise applied to the human body or any part thereof for cleaning, beautifying, promoting attractiveness or altering the appearance and includes any article intended for use as a component of cosmetics. The term cosmetics has been defined as substance used in decorating the human body or any part thereof and these substances are used externally to beautify the complexion, skin or hair.

Drugs:

As per Section 3(b) of the Drugs and Cosmetics Act 1940, all medicines for internal or external use on human beings or animals, and all substances intended to be used for the diagnosis, cure, treatment, mitigation or prevention of diseases in human body for the purpose of repelling insects like mosquitoes and are substances other than food, intended to effect the structure of the human body or any function thereof, or intended to be used for the destruction of vermins or insects which cause diseases in human beings or animals as may be specified by the
Central Government. It also includes substances for use as components of a drug, empty gelatin capsules and such devices intended for above purpose as may be specified from time to time by the Central Government by notification in the official Gazette after consultation with the Board. The words "substance" and "device" inserted in the Section 3(b) have enlarged the scope of the word "drug". Now the definition is comprehensive enough to include any thing which may be in any form solid, liquid or gaseous. The word "device" includes any contrivance which the Central Government with the consultation of the Board makes for the diagnosis, treatment, mitigation or prevention of any disease or disorder in human beings or animals.

"Manufacturer" in relation to any drug or cosmetic includes any process or part of a process for making or altering, ornamenting, finishing, packing, labelling, breaking up or otherwise treating or adopting any drug and cosmetic with a to its sole distribution but does not include the compounding or dispensing of any drug, or the packing of any drug or cosmetic in the ordinary course of retail business, repacker is also manufacturer.

"Patent or Proprietary medicine" means in relation to Ayurvedic or Unani systems of medicine all formulations containing only such ingredients mentioned in the formular described in the authoritative books of Ayurvedic or Unani systems of medicine specified in the first schedule.
The Drugs Technical Advisory Board Section 5 of the Act.

The Central Government may constitute a Board to be called the Drugs Technical Advisory Board to advise the Governments Central and State of technical matters arising out of the administration of this Act and to carry out functions assigned to it.

The Board shall consist of the Director General of Health Services, ex-officio Chairman, the Drugs Controller of India, ex-officio, Director of the Central Drugs Laboratory, Calcutta, ex-officio, the Director of the Central Research Institute, Izatnagar, ex-officio, the Director of the Indian Veterinary Research Institute, Izatnagar ex-officio, the President of the Medical Council of India, ex-officio, the President of the Pharmacy Council of India, ex-officio, the Director of the Central Drugs Research Institute, Lucknow, ex-officio, two persons to be nominated by the Central Government from Drugs Control in the States, one person to be elected by the Executive Committee of the Medical Council of India from teachers in pharmacy, chemistry on the staff of an Indian University or College, one person to be elected by the Executive Committee to the Medical Council of India, from teachers in medicine on the staff of an Indian University, one person to be nominated by the Central Government from the pharmaceutical industry, one pharmacologist to be elected by the Governing body of the Indian Council of Medical Research, one person to be elected by the Central Council of the Medical Association, one person to be elected by the Council of the Indian Pharmaceutical Association, two persons holding the appointment
of Government Analyst under this Act, to be nominated by the Central Government.

The nominated and elected members of the Board shall hold office for 3 years. The Board may make by-laws, and shall constitute sub-committees.

The Central Drugs Laboratory: Section 6 of the Act.

The Central Government shall establish a Central Drugs Laboratory under the control of a Director to carry out the functions to it by this Act.

The Central Government may make rules prescribing the functions of the Central Drugs Laboratory, and such other matters as expedient after consultation with the Board.

The Drugs Consultative Committee: Section 7 of the Act.

The Central Government may constitute an advisory committee to be called the Drugs Consultative Committee to advise the Central/State Governments and the Drugs Technical Advisory Board.

It shall consist of two representatives of the Central Government to be nominated by the Government and one representative of each State Government to be nominated by the State Government. It shall meet when required to do so by the Central Government.
"Standard Quality" in relation to drugs has been defined under Section 8 and Section 16 of the Drugs and Cosmetics Act 1940 to mean that the drug shall comply with the standard set out in the second schedule of the Act but in relation to cosmetics it means that the cosmetics complies with such standard as may be prescribed by the Central Government. In relation to second schedule, the Central Government may amend it but after consultation with the Drugs Technical Advisory Board constituted under Section 5 of the Act after giving three month's notice of its intention to do so by notification in the official Gazette. The Central Government under Section 12 and 33 of the Act is empowered to frame rules prescribing the methods of test or analysis to be employed for determining whether a drug is of standard quality. The rules prescribed for the purpose are contained in rules 31, 111 to 114, 121 and 121A of the Drug Rules 1977.

Misbranded Drugs:

Section 9 of the Act, a drugs shall be deemed to be misbranded if it is so coloured, coated powdered or polished that damage is concealed a if it is make to appear of better or greater therapeutic value than it really is or if it is not labelled in the prescribed manner or if its label bears any statement, design or device which makes any false claim for the drug or which is false or misleading.
Adulterated Drugs — Section 9-A of the Act.

A drug shall be deemed to be adulterated if it consists of any filthy, putrid or decomposed substance or prepared, packed or stocked under insanitary conditions whereby it may have been rendered injurious to health or its container is composed of any poisoning substance injurious to health or it bears a colour other than is prescribed or it contains any toxic substance or any substance mixed therewith so as to reduce its quality or strength.

Spurious Drugs — Section 9-B of the Act.

A drug shall be deemed to be spurious if it is imported under a name which belongs to another drug or imitation of or substitute for another, drug assembles another drug in a manner likely to deceive or bears upon its label or container the name of another drug unless it is plainly and conspicuously marked so as to reveal its true character and its lack of identity with such other drug or if the container bears the name of an individual or company purporting to be the manufacturer of the drug, which individual or company is fictitious or does not exist or if it has been substituted wholly or in part by another drugs or substance or if it purports to be the product of a manufacturer of whom it is not truly a product.
Misbranded Cosmetics - Section 9-C of the Act.

A cosmetics shall be deemed to be misbranded if it contains a colour which is not prescribed or not labelled in the prescribed manner or a label or container bears any statement which is false or misleading in any particular.

Spurious Cosmetics - Section 9-D of the Act.

A cosmetic shall be deemed to be spurious if it is imported under a name which belongs to another cosmetic or if it is a imitation of or is a substitute for another cosmetic or resembles another cosmetic in a manner likely to deceive or bears upon a label the name of another cosmetic, unless it is plainly and conspicuously marked as to reveal its true character and its lack of identity with such other cosmetic or the label bears the name of an individual or a company purporting to be the manufacturer of the cosmetic which individual or company fictitious or does not exist or it purports to be the product of a manufacturer of whom it is not truly a product.

Prohibition of import of certain drugs - Section 10 of the Act.

No person shall import any drug or cosmetic which is not of standard quality, is misbranded or spurious and for the import of which a licence is prescribed otherwise than under and in accordance with such licence. No person shall import any patent medicine unless there is displayed in the prescribed manner on the label thereof, the true formula of active ingredients contained in it. No person shall import any cosmetic containing
any ingredient which may render it unsafe. No person shall import any drug or cosmetic which is prohibited by rule made under this Chapter III, provided that nothing in this Section shall apply to the import subject to prescribed conditions of small quantities of any drug for the purpose of examination, test or analysis or for personal use, provided that the Central Government may permit subject to any conditions in the notification, the import of any drug or class of drugs not being of standard quality.

Customs Officers are empowered to detain any important package which he suspects to contain any drug or cosmetic, the import of which is prohibited under this chapter vide Section 11 of this Act.

Powers of Central Government to make rules -
Section 12 of the Act.

The Central Government may after consultation with or on the recommendation of the Board and after previous publication by notification in the Gazette, make rules for the purpose of giving effect to the provisions of this Chapter III and specify the drugs or cosmetics the import of which a licence is required under prescribed form and conditions.

Offences - Section 13 of the Act.

Whoever himself or by other person on his behalf imports any drug or cosmetic deemed to be adulterated, or spurious shall be punishable with imprisonment for a term which may extend to 3 years and a fine which may extend to Rs.5000/-.
Any drug or cosmetic other than a drug or cosmetic referred to in Clause (a), the import of which is prohibited under Section 10, shall be punishable with imprisonment for a term which may extend to 6 months or with fine which may extend to ₹500/- or with both.

Any drug or cosmetic in contravention of the provisions of any notification issued under Section 10-A, shall be punishable with imprisonment for a term which may extend to 3 years or with fine which may extend to ₹5000/- or with both.

Whoever having been convicted of an offence is again convicted, shall be punishable with imprisonment for a term which may extend to 5 years or with fine which may extend to ₹10,000/- or with both.

Confiscation : Section 14 of the Act.

The consignment of the drugs or cosmetics in respect of which the offence has been committed under Section 13 shall be liable to confiscation.

Jurisdiction: No Court interior to that of a Judicial Magistrate of the first class shall try an offence punishable under Section 13 of the Act.

The term standards quality, misbranded drug, Adulterated drugs, spurious drugs, Misbranded cosmetics, & spurious cosmetics under the Act have been defined in two different chapters, Chapter III dealing with the import of the drugs and the Chapter IV dealing with the manufacture, stock, exhibition for sale or
distribution. The said terms under the former Chapter have been defined under Section 8, 9, 9A, 9B, 9C and 9D, while under the latter Chapter Section 16, 17, 17A, 17B, 17C and 17D of the Act.

(jii) **Prohibition of manufacture and sale of certain drugs : Section 18 of the Act.**

No person shall himself or by any other persons on his behalf manufacture for sale, for distribution or sell, stock, exhibit for sell or distribute any drug or cosmetic which is not of a standard quality, or is misbranded, adulterated or spurious, except a licence issued for such purpose.

Every person, not being manufacturer of a drug or cosmetic, of his agent for the distribution thereof, shall, if so required, disclose to the Inspector the name address and other particulars of the person from whom he acquired the drug or cosmetic as per Section 18-A of the Act,

It is the duty of the prosecution to prove the accused ignorant of the nature, substance or quality of the drug or cosmetic.

**Government Analyst : Section 20 of the Act.**

Central/State Government may appoint Government Analyst having the prescribed qualifications for such areas in respect of such drugs and cosmetic, having no financial interest in the import, manufacture or sale of drugs or cosmetics.
Inspectors : Section 21 of the Act.

The Central/State Government may appoint such persons as Inspector who possesses prescribed qualifications for Inspector and who does not have any financial interest in the import, manufacture or sale of drugs or cosmetics. He shall be the public servant within the meaning of Section 21 of the Indian Penal Code. Inspector, within the local limits of the area, may inspect any premises where in any drug or cosmetic is being manufactured, sold, stocked or exhibited or offered for sale or distributed. He may also take samples at all reasonable times. He may enter and search any place and person. He may order in writing the person who has committed offence, not to dispose of any stock for a period not exceeding twenty days. It is the duty of the Inspector to send the container forthwith to the Government Analyst for test or analysis.

Any person or any recognised association, shall be entitled to submit any drug or cosmetic for test or analysis to a Government Analyst Section 26 of the Act.

Section 26-A of the Act tests power in Central Government to decide which drug should be banned and that a decision taken by the Central Government in exercise of statutory power conferred upon it, should not be interfered with by a Court. Judicial proceeding is not an appropriate medium for determination of questions, that arise when the issue is whether the manufacture and sake of drug should or should not be banned.
Whoever himself or by any other person on his behalf, manufactures for sale or for distribution or sells or stock or exhibits or offers for sale or distributes any drug deemed to be adulterated under Section 17-A or spurious under Section 17B, is likely to cause death or harm, would amount to grievous hurt within the meaning of Section 30 of the Indian Penal Code, shall be punishable with imprisonment for a term which shall not be less than 5 years, which may extend to a term life and with fine which shall not be less than ₹10,000/-, as per Section 27(a) of the Act.

Any drug deemed to be adulterated or without a valid licence shall be punishable with imprisonment for a term which shall not be less than one year which may extend to 3 years and with fine which shall not be less than ₹5000/-, section 27(b) of the Act.

For any spurious drug, imprisonment for a term not less than 3 years, which may extend to 5 years with fine not less than ₹5000/- Section 27(c).

Whenever himself or by any other person on his behalf manufactures for sale or for distribution or sells or exhibits or offers for sale any cosmetic deemed to be spurious, shall be punishable with imprisonment for a term which may extend to 3 years with fine Section 27-A of the Act.

The Central Government shall constitute a Ayurvedic and Unani drugs Technical Advisory Board to advise to Central/State Governments as per Section 33-C of the Act.
The Central Government may constitute an Advisory Committee to be called the Ayurvedic and Unani Drugs Consultative Committee to advise the Central/State Governments Section 33-D of the Act.
(C) **Drawbacks:**

1) There is no adequate Governmental machinery to Control the Drug industry and rising in price. Manufacturers are profit prove.

2) There no educational programme to assist the poor and illiterate consumer in purchasing drugs.

3) Indian Drug Industry is in crisis. There is non-availability of drugs. The Indian industry has to depend on foreign industry for most of the life saving drugs and devices.

4) Government taxes/levies constitutes about 40% of the drug prices as paid by consumers, makes the drug costly.

5) The Laws in the country are mainly concerned with the standard and quality of drugs, controlling the manufacture, sale and distribution of the drugs but are not concerned strictly with perversion of the drug to interiority.

6) None of the drug enactments has ever defined the term 'sale', though it is vital so to do.

7) In drug Acts there are several but scattered provisions in relation to limitation of time in filing suits, sending samples for analysis providing opportunities to the accused.
8) There is no separate and direct section under the Act dealing with a warranty like Section 14 of the Prevention of Food Adulteration Act, 1954. This is a falling under the Act.

9) Legislative, Executive and Judicial is dismal in elimination hazardous and irrational drugs.

10) Drug production does not conform to the disease pattern at all.

11) Hathi Committee (1974) identified approximately 116 essential drugs, despite the long list of drug formulations, some of the essential drugs are not available e.g. anti-TB and anti-malarial drugs are not available.

12) Despite the various statutory and administrative powers, the Central Government and State Governments have not been able to ensure availability of essential drugs at affordable prices. B.C.G. vaccines are found to be ineffective in combating T.B. Costly drugs, Rifampirin and Ethambutol, are not available to the poor.

13) Drugs like streptomycin (an anti-T.B. drug) are used in irrational and sometimes hazardous, combinations. Though there is an acute shortage of streptomycin for treating T.B., plenty of it is found in combination with other antibiotics such as penicillin and chloramphenical.

14) Recommendations by the Indian Council of Medical Research and Campaign by women, health and consumer groups a notification under Section 26-A of Drugs and Cosmetics Act,
1940, issued by the Drug Controller of India banning the manufacture of high dose EP (Estrogen Progesterone) Drugs from 31-12-82 and their sale and distribution from 30-6-83. Surprisingly the ban was only in respect of EP tablets and not injectables when the Government knew fully well that injectables comprised a large proportion of high dose EP drugs.

15)) Lables and inserts are highly technical and in English language beyond the comprehension of an average patient.
Case - 1. Vincent Panikuzlangara Petitioner
V/s Union of India & Others, Respondents.

Constitution of India, Act, 32 Public interest litigation
Banning of injurious drugs - Judicial proceeding is not appropriate
forum. Issue being of National importance, certain directions
given by the Supreme Court (Drugs and Cosmetics Act (23 of 1940)

In the instant case, directions are sought from the Supreme
Court in public interest, banning import, manufacture, sale and
distribution of such drugs which have been recommended for banning
by the drugs consultative committee and has also asked for
cancellation of all licences authorising import, manufacture, sale
and distribution in respect of such drugs. The issues raised are
of vital importance as they relate to maintenance of approved
standards of drugs in general. The issues that fall for conside-
ration are not only relating to technical and specialised matter
relating to therapeutic value, justification and harmful side
effect of drugs but also involve examination of the eotness of
action taken by the Government on the basis of advice, the matter
also involves the interest of manufacturers and traders of drugs
as also the interest of patients who require drugs for their
treatment,

\[1\] AIR 1987 S.C. 990.
Having regard to the magnitude, complexity and technical nature of the enquiry involved in the matter and keeping in view the far reaching implications of the total ban of certain medicines, for which appropriate direction is sought, the Supreme Court observed that a judicial proceeding of the nature initiated is not an appropriate one for determination of such matters. A healthy body is the very foundation for all human activities. In a Welfare State, therefore, it is the obligation of the State to ensure the creation and the sustaining of conditions congenial to good health, offending to public health, therefore, is of high priority perhaps the one at the top.

The petitioner, an advocate by profession is the General Secretary of Public interest law service society, Cochin. In his application under Act 32 of the constitution he has asked for directions, in public interest, banning import, manufacture, sale and distribution of such drugs which have been recommended for banning by the Drugs Consultative Committee and has asked for cancellation of all licences authorising import, manufacture, sale and distribution in respect of such drugs. He has also asked for a direction to the Central Government to constitute a high powered Authority to go into the hazards suffered by people of the country on account of such drugs being in circulation and suggest remedial measures including award of compensation. He has further prayed that directions should be given for framing of strict regulations to ensure the quality and standard of approved drugs and to ensure weeding out of same, harmful as also injurious drugs from the market.
In 1980, the Drug Consultative Committee set up a Sub-Committee of experts for screening the formulations of drugs prevalent in the Indian market from the point of therapeutic rationale in order that irrational and harmful combinations of drugs could be banned. The said Committee of experts recommended banning of twenty fixed dose combinations of drugs. The report was duly approved by the Committee as also the Ministry of Health in 1981. The Central Drugs Controller issued directions to the State authorities to strictly enforce the ban of drugs pertaining to these combinations.

The legislation in the field is the Drugs and Cosmetics Act, 1940. The Act was amended in 1982 and the definition of "drug" was amended and SS 10-A and 26-A were inserted into the Act conferring power on the Central Government to prohibit import of drugs and cosmetics in public interest as also to prohibit manufacture, sale or distribution thereof.

A circular letter was issued by the Central Drug Controller to the State Drugs Control Authorities in the matter of banning of "Destrogens and Progestins". The Director General of Indian Council of Medical Research communicated the recommendations as under:

"Fixed dose combinations of destrogens and progestozen may be totally banned in the country even for the treatment of secondary amenorrhoeq as other substitutes are available in the market for management of secondary amenorrhoeq".

On the basis of same the Ministry of Health took a decision to ban fixed dose combinations of these medicines in the country.
Having regard to the magnitude, complexity and technical nature of the enquiry involved in the matter and keeping in view the far reaching implications of the total ban of certain medicines for which the petitioner has prayed, we must at the outset clearly indicate that a judicial proceeding of the nature initiated is not an appropriate one for determination of such matters. There is perhaps force in the contention of the petitioner that the Hathl Committee too was not one which could be considered of the as an authoritative body competent to reach definite conclusions. No adverse opinion can be framed against the Central Government for not acting up to its recommendations.

A healthy body is very foundation for all human activities. That is why the adage "saziramadyam khalu dharma sadhanam". In a welfare state, it is the obligation of the state to ensure the creation and the sustaining of conditions congenial to good health.

The Supreme Court laid the guidelines on this score, injurious drugs should be totally eliminated from the market. Undue competition in the matter of production of drugs by allowing too many substitutes should be reduced as it introduces unhealthy practice and ultimately tends to affect quality. The State's obligation to enforce production of qualitative drugs and elimination of the injurious ones from the market must take within its sweep an obligation to make useful drugs available at recognisable price so as to be within the commonman's reach.
Petitioner is a pharmaceutical company engaged in the manufacture of a variety of drugs and pharmaceutical products, one of the products manufactured is a drug known as "Trinergic". The product is brought out in two forms viz. capsules and injections. Trinergic is a combination of Anabolic Steroid known as Methandienone and Vitamins D1, B6 and B12 M's. Ciba Geigy of Basle, Switzerland took a decision to withdraw their Anabolic steroid, a preparation of Methandienone being marketed under the brand name "Dianabol" from the world market. His Indian subsidiary informed the Director General of Health services of this decision and the reason is indicated by him to the Drugs Controller was thus:—

"Clinical evaluation has indicated that the balance between clinical benefit on the one hand and side effects such as visualisation on the other, now appears to be less favourable, except possibly in osteoporosis and in the management of certain forms of anaemia. Moreover, the drug is being also used by athletes to improve their physical performance."

On receipt of the above intimation, the Drugs Controller wrote to the Director General of Indian Council of Medical Research on May 20, 1983, to ascertain the Council's response. The matter was discussed at a meeting of experts assembled for the purpose on November 24, 1983. The meeting reached certain
conclusions and the important ones which have a relevance to this petition were worded thus:

(1) Anabolic steroid should not be used in combination with any other class of drugs.

(2) There should be warning in bold letters that long term use of Anabolic steroids can produce cancer, especially of prostate, liver and the breast.

The Drugs Technical Advisory Board, functioning under Section 5 of the Drugs and Cosmetics Act, 1940, considered the matter on 19th December, 1984 and approved the reasons which had tentatively weighed with the Government in banning the marketing of combinations of Anabolic steroid with other drugs. Purporting to act under Section 26-A of the Drugs Act, the Central Government on 22nd November, 1985 issued the impugned notification banning the combination of Anabolic steroid with other drugs and citing this as being necessitated because its use (i) likely to involve risk to human beings, and (ii) no therapeutic justification. These two reasons remarked it necessary and expedient in the public interest to issue the ban order. The manufacturer of Trinergic viz. the petitioner aggrieved by the ban order have come to this Court questioning the same. It is contented that there was no material in support of the decision taken by the Central Government. The Committee of experts had been convened to discuss a ban on Anabolic Steroid. The Committee had examined the question and came to the conclusion that the steroid was a useful product. It had recommended that the product could exert its optimal effect only when supplemented by adequate protein and calories intake.
The short issue for determination is whether the total ban imposed on Anabolic Steroid with a combination of Vitamins B1, B6 and B12 is within the terms of Section 26-A of the Act? This Court of Bombay record a negative answer to this question.

Section 26-A of the Act which came on the statute book by virtue of the Drugs and Cosmetics (Amendment) Act, 1980 is worded thus:—

"Without prejudice to any other provision contained in this Chapter, if the Central Government is satisfied, that the use of any drug or cosmetic is likely to involve any risk to human beings or animals or that any drug does not have the therapeutic value claimed and or purported to be claimed for it or contains ingredients and in such quantity for which there is no therapeutic justification and that in the public interest it is necessary or expedient so to do, then, that Government may, by notification in the official Gazette prohibit the manufacture, sale or distribution of such drug or cosmetic".

This Court said that the notification issued by the Government does not furnish any justification for the ban imposed. Counsel for the respondent relies upon a Supreme Court decision in Vincent Panikurlangara V. Union of India AIR 1987 Section 990. It contents that Section 26-A of the Act vests power in the Central Government to decide which drug should be banned and that a decision taken by the Central Government in exercise of a statutory power conferred upon it, should not be interfered with by a Court. Now it is true that the Supreme Court in the aforementioned case did caution against the intervention of Courts with decisions of authorities
constituted under the Drugs Act. In fact in the decision aforementioned, it has been clearly stated that a judicial providing is not an appropriate medium for determination of questions that arise when the issue is whether the manufacture and sale of a drug should or should not be banned. If the Central Government had given reasons in support of ban imposed by it. I for one would not have gone further into the matter. But the position then would be that the statutory authority had discharged its task and this Court did not have the power or the expertise to examine the correctness or otherwise of the decision reached. Here, however, we have the were ipse dixit of the Central Government which in terms rest upon the bare opinion of the Committee of experts and the Board. Therefore, such a decision can not be sustained.
(E) SUGGESTIONS:

(1) In spite of legislative efforts and favourable judicial response against adulteration, the crime of adulteration is on increase. The problem needs to be tackled upon various angles, viz. legal, social, economic and by making consumers conscious of their rights.

(2) In view of the large number of acquittals for non-observance of technicalities by the Inspectors and others, it is suggested that proper training facilities be provided to the persons responsible for implementation of the provisions of the Act. Service conditions should be made lucrative to attract qualified person.

(3) "What is that life which can not bring comfort to others", this slogan should be made compulsory for manufacturers and should be given with publicity through various media such as T.V. Radio, Newspapers, Magazine and film slides etc.

(4) Misuse of drugs is a widespread social disease which can be minimised by due care and attention of the people and the Government.

(5) It is suggested that regulations governing the safe custody of controlled drugs should make strict and to give directions prohibiting a practitioner or pharmacist or certain officers from possessing or supplying them or prohibiting a practitioner who is prescribing, administering or supplying such drugs in an irresponsible manner.
(6) It is suggested that India like England needs a unified codification in place of scattered drug provisions.

(7) It is suggested that manufacturers should control their products by chemical analysis, physiological and bacteriological experimentation and other means to assure the public that, within reasonable limits, their preparations will not result in harm to the consumer.

(8) The manufacturer should produce and market only products which are beyond a reasonable doubt, of district value to the consumer.

(9) The Government should issue licences for opening new shops of druggists and chemists only to those who have gone under a prescribed training course.

(10) The pharmacist should dispense medicines as per prescription bearing the prescriber's usual signature with address and dates, without altering wholly or in part any ingredient without permission of the prescriber.

(11) The prescription form should be a National Health Insurance Form for which the Government is to introduce a National Health Insurance Scheme.

(12) The pharmacist should refuse to prescribe any alternative medicines which deserve the attention of a physician and should confirm the authenticity and accuracy of any questionable prescription by calling the physician on the phone.
(13) Awakening of social consciousness through educative propaganda by the media of newspapers, pamphlets, radio broadcasts, movies has proved very beneficial in enforcing any legislation among the people of the Nation. The Government ought to adopt measures accordingly.

(14) State should exercise control and make it safe against any adverse effects.

(15) The Central Government should set up regional drug laboratories in addition to the Central Laboratory as provided by Section 6 of the Act to facilitate and promote research and co-coordinate actively in that regard.
CONCLUSIONS:

It is very necessary that Government should adopt a policy of drafting personnel from industry in Government on short-term contracts. This will lead to improvement in the technical capabilities of Drugs Control Organisation in the Country.

It has now become necessary for all social action groups acting on the issue of health to combine forces and intervene at all levels in a united manner and defeat the perpetrators of the social evil of producing drugs for profits.

Consumer group consisting mainly of doctors and professionals who are active on the issue of health and safety, more particularly on the issue of drugs and material and child health.

The basic idea that the health of all the people is fundamental to the attainment of peace and security and is dependent on the full co-operation of individuals and the State has been accepted by almost all the countries of the world.

Public health laws are that body of statutes, regulations and precedents which have for their purpose the protection and promotion of individual and community health.

Drugs are almost as important to human beings as food and drink. They protect health and ward off different kinds of diseases which affect the human body.

Great care regarding standards and quality is called for in the manufacture and storage of drugs. Drug standards serve public health by ensuring the purity and uniformity of the contents.
On October 30, 1986, the Vice-President of India, Mr. Hidayatulla speaking for consumers and existing socio-economic and legal conditions suggested to form consumer associations and keep vigilance over trade malpractices of the businessmen.
The Essential Commodities Act was passed by Parliament on 1st April, 1955. It provides, in the interest of the general public, for the Control of the production, supply and distribution of, and trade and commerce in, the various essential commodities. The list of essential commodities is not, however, exhaustive, as the Central Government is empowered to declare, by notified order, as an "essential commodity for the purpose of the Act, any commodity with respect to which Parliament has power to make laws by virtue of entry 33 List III.

Consumer protection has very wide implications. It covers a very large range of goods and services and includes almost everything viz quality, weights and measures, price, consumer services and the like. It is necessary to protect consumers' interest at least within a limited sphere of commodities identified as essential.

The aim of this chapter is to introduce production, supply and distribution of essential commodities so as to meet the requirements of the community viz consumers.
(B) **PROVISIONS:**

The following are the salient provisions of the Essential Commodities Act, 1955:

(i) **Definitions:**

**Section 2 (a)** "Collector" includes an Additional Collector and such others officer, not below the rank of Sub-Divisional Officer as may be authorised by the Collector.

**Section 2 (a)** "Essential Commodity" means any of the following classes of commodities:

(i) Cattle folder, including oilcakes and other concentrates,

(ii) Coal, coke and other derivatives,

(iii) Component parts and accessories of automobiles.

(iv) Cotton and wollen textiles.

(iva) drugs, drug has the meaning assigned to it in clause (b) of Section 3 of the Drugs and Cosmetics Act, 1940.

(v) Food stuffs, including edible oilseeds and oils.

(vi) Iron and steel, including manufactured products of iron and steel.

(vii) Paper, including newsprint, paper board and straw board,
(viii) Petroleum and petroleum products,
(ix) raw cotton, whether ginned or unginned and cotton seed,
(x) raw jute,
(xi) any other class of commodity which the Central Government may, by notified order, declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of entry 33 in List III in the Seventh Schedule to the constitution.

(b) "food-crops" includes crops of sugar cane,
(c) "notified order" means an order notified in the Official Gazette.
(d) "State Government" in relation to a Union Territory, means the administrator thereof.

(e) "Sugar" means -
(i) any form of sugar containing more than ninety percent of sucrose, including sugar candy.
(ii) Khandsari sugar or pure crushed sugar or any sugar in crystalline or powdered form or
(iii) sugar in process in vacuum pan sugar factory or raw sugar produced therein.
According to Section 3 (1), the Central Government may, by order, provide for regulating or prohibiting the production, supply and distribution of an essential commodity, and trade commerce therein if it is of the opinion that it is necessary or expedient so to do for maintaining or increasing supplies of the commodity or for securing their equitable distribution, and availability at fair prices. Without restricting the generality of the above, provision may specifically be made for the following:

(a) for regulating by licences, permits or otherwise the production or manufacture, storage, transport, distribution, disposal, acquisition, use or consumption, of an essential commodity,

(b) for bringing under cultivation any water or arable land for growing, and for otherwise maintaining or increasing the cultivation of food crops,

(c) for controlling the price at which any essential commodity may be bought or sold,

(d) for prohibiting the withholding from sale of any essential commodity ordinarily kept for sale,

(e) for requiring any person holding in stock any essential commodity to sell the whole or a specified part thereof to the Central or State Government or to its officer or agent or to such other person and in such circumstances as are specified in the order,
(f) for regulating or prohibiting any class of commercial or financial transactions relating to food stuffs or cotton textiles which, in the opinion of the authority making the order, are or are likely to be detrimental to the public interest,

(g) for collecting any information or statistics for regulating or prohibiting any of the aforesaid matters,

(h) for requiring the production and maintenance of books, accounts and business records and furnishing of information specified in the order, by those engaged in production etc of an essential commodity,

(i) for the grant or issue of licences, permits or other documents, the charging of fees therefor, requiring deposit of securities for due performance of conditions of licence and forfeiture of such deposit for breach of conditions;

(j) for any incidental and supplementary matters including search of premises etc; seizure by an authorised person of articles in respect of which he has reason to believe that a contravention of order might take place.
Section 3(3) prescribes the following barge for granting compensation to a person selling any essential commodity under clause (e) above

(a) he is to be paid the agreed price, if it can be agreed upon, consistently with the controlled price, if any

(b) in case no such agreement can be reached, price is to be calculated with reference to the controlled price, if any,

(c) in other cases, the price is to be the market rate providing in the locality on the date of sale.

Section 3(3)A: A rather drastic provision, relating to food stuffs, says that on Government issuing a notification under it the price payable for the food stuffs under clause (e) is to be regulated as follows:

(a) the agreed price, if it can be agreed, upon consistently with the controlled price of the food stuffs or

(b) if no such agreement can be reached, the price calculated with reference to the controlled price or

(c) where none of the first two opinions applies, the price calculated with reference to the average market rate prevailing in the locality during the period of three months immediately preceding the date of the notification, the "average market rate" being determined by an officer authorised by the Central Government with reference to the prevailing market rates for which published figures
are available in respect of that locality or a neighbouring locality. The average market rate so determined is to be final and is not to be called in question in any court.

Appointment of an authorised controller

Under Section 3 (4) of the Essential Commodities Act, the Government is empowered to appoint an authorised controller for an undertaking engaged in the production and supply of an essential commodity. The Government can do so if it is of opinion that it is necessary for maintaining or increasing the production and supply of the commodity. He exercise his function in accordance with Government instructions.

Who can make orders

The power to make orders under Section 3 has been vested primarily in the Central Government, or under Section 5 (1) may be delegated by it, by a notified order, to any of its officers or authorities. Under Section 5 (b), the Central Government can also delegate the power to make orders under Section 3 to a State Government or any officer or authority subordinate thereto.

An order under Section 2 (a) (xi) adding an item to the list of essential commodities, can be make only by the Central Government and the power cannot be delegated.
Publication of Orders

The Central Government can exercise its power under the Essential Commodities Act either by an "order" or a "notified Order" or a "notification" in the gazette. An order may be of general application, of general nature, one which affects a class persons, or may be directed to a specified individual. According to Section 3 (5), an order of a general nature is to be notified in the official gazette. An order on an individual need not be so notified; it is to be served on the individual concerned by delivering or tendering it to him or if it can not be so delivered, by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives. An order not fulfilling the conditions of publication can not be enforced.

Penalty Provisions

Section 7 prescribes the penalties for contravention of any order made under Section 3. For contravention of an order (a) under clause (g) or (h), the punishment is to be imprisonment up to one year and also fine, (b) under any other clause, the punishment is to be imprisonment, up to three years and fine, though the court has an option to impose only fine, for reasons to be recorded, if it is of opinion that it will meet the ends of justice.

According to Section 8, an attempt or abetment to contravene an order is to be deemed as contravention of the order. According to Section 9 making of a false statement or furnishing false information knowingly is to be punishable with imprisonment up to three years or with fine or with both.
Section 10 provides for punishment in case an offence is committed by a company. In such a case, the company and every person in charge of, and responsible for, the company for the conduct of its business at the time the order is contravened, are liable to be punished. A person is not to be able to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent the contravention. Every offence punishable under this Act shall be cognizable Section 10 A.

According Section 14, the burden of proving that he has a licence, permit etc. is on the person who is being prosecuted for contravening an order prohibiting him from doing any act or possessing a thing without such permit etc.

The usual immunity from judicial action for anything done or intended to be done in good faith is contained in Section 15(1). Also, Government is protected from being sued for any damage caused or likely to be caused by anything sued or intended to be done in good faith under any order.

No court is to false cognizance of any offence under this Act except on a report in writing of the facts constituting such offence made by a public servant as defined in Section 21 of the Indian Penal Code or any person aggrieved or any recognised consumer association, whether such person is a member of that association or not Section 11.

As per Section 12 notwithstanding anything contained in Section 29 of the Code of Criminal Procedure, 1973 (2 of 1974) it shall be lawful for any Metropolitan Magistrate or any Judicial
Magistrate or any Judicial Magistrate of the first class specially empowered by the State Government in this behalf, to pass a sentence of fine exceeding five thousand rupees on any person convicted of contraventing any order made under Section 3.

Power to try summarily:

Section 12-A (1) If the Central Government is of opinion that a situation has arisen where in the interests of production, supply or distribution of any essential commodity not being an essential commodity referred to a Clause (a) of sub-section (2) or trade or commerce therein and other relevant considerations, it is necessary that the contravention of any order made under Section 3 in relation to such essential commodity should be tried summarily, the Central Government may, by notification in the official Gazette, specify such order to be a special order for purposes of summary trial under this Section, and every such notification shall be laid, as soon as may be after it is issued, before both Houses of Parliament, provided that (a) Every such notification issued after the commencement of the Essential Commodities (Amendment) Act 1971, shall, unless sooner rescinded, cease to operate at the expiration of two years after the publication of such notification in the official gazette, (b) every such notification in force immediately before such commencement shall, unless sooner rescinded, cease to operate at the expiration of two years after such commencement, provided further that nothing in the foregoing proviso shall affect any case relating to the contravention of a special order specified in any such notification if proceedings by way of summary trial have commenced before that notification is rescinded or ceases to operate and the provisions of this section shall continue to apply to that case as if that
notification had not been rescinded or had not ceased to operate.

Section 12-A(2) Notwithstanding anything contained in the Code of Criminal Procedure 1973 (2 of 1974) all offences relating to

(a) the contravention of an order make under Section 3 with respect to
   (i) cotton or woolen textiles or
   (ii) food stuffs, including edible oilseeds and oils or
   (iii) drugs and

(b) Where any notification issued under Sub Section (1) in relation to a special order is in force, the contravention of such special order shall be tried in a summary way by a Judicial Magistrate of the first class and the provisions of Sections 262 to 265 of the Criminal Procedure Code 1973 shall apply to such trial.

(3) Notwithstanding anything to the contrary contained in the Criminal Procedure Code 1973, there shall be no appeal by a convicted person in any case tried summarily under this section in which the magistrate passes a sentence of imprisonment not exceeding one month or of the fine not exceeding 2000/- rupees whether or not any order of forfeiture of property or an order under Section 452 of the said code is made in addition to such sentence, but an appeal shall lie where any sentence in excess excess of the aforesaid limits is passed by the magistrate.
Section 16 of the Essential Commodities Act. The following laws are hereby repeated:


b) Any other law in force in any state immediately before the commencement of this Act in so far as such law controls or authorizes the control of the production, supply and distribution of and trade any commerce in, any essential commodity.
(C) **Drawbacks**

(1) As Central Government has enacted, the Essential Commodities Act, 1955 to avail easily all those commodities at fair price to all the consumers of the country, ensuring availability of these commodities means free flow of these commodities from outside the State, as the State depends on other States for most of these commodities. In the case of bulk movement of stock from other parts of the country, availability often depends on easy wagon availability and quick rail movements. Failure to provide these facilities often results in pockets of scarcity even in the midst of plenitude.

(2) In India, labour problems are draconian, speedier movement of essential commodities is prevented as a result of labour issues. The existing legal processes and remedies are time consuming and hence come in the way quick movement of essential stock from one point to another.

(3) If we go to the various orders issued under the Essential Commodities Act, 1955 it will be noticed that nowhere it is spelt out how to fix fair price of the essential commodity. The existing pricing policy is that it allows unrestricted freedom to the trader and the producer to usurp the economic power of the weaker sections.

(4) The Essential Commodities Act, 1955 nowhere lays down the uniform rates of taxation which leads the general consumer in the jungle of taxation and eventually becomes the prey of the traders.
(5) There is dearth of commodities as listed under the essential commodities. Consumers are thriving to avail those commodities and have to pass through the various administrative machaneries.

(6) Extreme reliance is made on the delegation and sub-delegation of powers on the administrative authorities.

(7) Capacity for purchasing commodities, listed in the essential commodities Act, 1955, is concentrated in few hands.

(8) Section 6-A of the Act empowers the collector to his satisfaction to confiscate the commodities on the contravention of the order framed under Section 3 of the essential commodities Act, 1955, without giving chance of hearing the parties. This is a very drastic provision, usurp the fundamental rights of the citizen.

(9) A lacuna exists in the Essential Commodities Act, 1955 so far as the laying provision is concerned. Section 3(6) applies only to the orders made by the Central Government, or by any of its officers or authorities. Duty such orders need be laid before Parliament. It is known that many orders under Section 3(1) are made by the State Governments and their officers, under powers delegated to them by the Central Government under Section 5(b). There is no corresponding provision in the Act requiring that the State orders be laid before the State Legislators.
(12) Under Clause (e) of Sub Section (1) of Section 124 A of the Act a special court can take cognisance of an offence for violation of the provisions of the Act, only if a report to the effect is made by the police and not by any other officer of Government. Thus has been causing avoidable delay in taking action under the Act by the officials of the Food and civil supplies Department of the Government against persons violating the provisions of the Act.

(11) The Act of present does not confer any right on the aggrieved consumer or to their associations to file a complaint in Court.

Under Entry list 33 in list III the Parliament has power to make laws relating to Trade and Commerce in, and the production, supply and distribution of cement if its control by the union has been declared by the Parliament by law to be expedient in the public interest. This has been done by the Parliament by enacting Industries Development and Regulation Act, 1951. Cement is specified in the first schedule to the Act as required under S.2. Therefore, both the requirements of clause (xi) of Section 2(a) of the Essential Commodities Act have been fulfilled and the cement is an Essential Commodity as defined under Section 2(9) (xi) of the Act.

Petitioner has impugned the Delhi Cement (Licensing and Control) order 1982, submission of the petitioner is that such a
control order for cement could not be issued under Section 3(2) (e) of the Essential Commodities Act, 1955 as cement is not an essential commodity. Under Section 3 of the Essential Commodities Act, 1955, the production supply and distribution can be controlled of the essential commodities. Essential Commodity is defined in Section 2 (a) Clauses (i) to (xi) of the Act. Clause (xi) of Section 2 (a) provides as under:

"any other class of commodity which the Central Government may be notified order, declare to be an essential commodity for the purposes of this Act, being a commodity with respect to which Parliament has power to make laws by virtue of Entry 33 in list III in the seventh schedule to the constitution."

A personal of this clause shows that a commodity would sail under clause (xi) of Section 2(a) of (1) to it is declared an essential commodity by the Central Government by a notified order and (2) it is a commodity with respect to which Parliament has power to make laws by virtue of Entry 33 in list III in the 7th Schedule to the constitution. The Central Government has declared cement to be an essential commodity for the purpose of the Essential Commodities Act, 1955 by notified order No. SO 3594(E(A)/1/62 dated 24th November 1962, Annexure P.9.

2. The contention of harmed counsel for the petitioner is that the second requirement does not exist in as much as cement was not a commodity with respect to which Parliament has power to make laws by virtue of Entry 33 in list III in the Seventh Schedule to the Constitution Relevant part of Entry 33 of list III in the Seventh Schedule reads as under:
"Trade and Commerce in, and the production, supply and distribution of -

(a) The products of any industry where the control of such industry by the Union is declared by Parliament by law to be expedient in the public interest and imported goods of the same kinds as such products.

3. Under this entry the Parliament has power to make laws relating to Trade and commerce in, and the production, supply and distribution of cement if its control by the Union has been declared by the Parliament by law to be expedient in the public interest. This has been done by the Parliament by enacting Industries (Development and Regulations) Act, 1951, Section 2 of the Industries (Development and Regulations) Act, 1951, provides as under:

"It is hereby declared that it is expedient in the public interest that the Union should take under its control the industries specified in the first schedule.

Cement is specified in the first schedule. Therefore, both the requirements of Clause (xi) of Section 2 (a) of the Essential Commodities Act have been fulfilled and the Cement is an essential commodity as defined under Section 2 (a) (xi) of the Act. The petition, therefore, has no merits and is dismissed."
(E) Suggestions:

1. All offences under the Essential Commodities Act, 1955 should be non-bailable.

2. Basic amenities to the citizen, especially, all essential commodities, should be made easily available to the people.

3. India having mixed economy, the distribution policy should be so organised as to enhance the real income of the common man.

4. It is suggested that the essential commodities should be available at fair prices through Government sponsored organisations and co-operatives.

5. It is suggested to evolve procurement policies for removing middle man and for ensuring economic price for the product and a fair price for the consumer.

6. To provide, legal provisions for removing time consuming process of labour laws so as to ensure quick movements of essential commodities.

7. To provide, legal provisions for clearly spelling out fair prices of commodities.

8. It is suggested to provide legal provisions for uniform
consumer prices under the Packaged Commodities Order.

(9) It is suggested to mention the price with applicable state rate of taxes on each package of commodities to enable the consumers to pay the price of the commodities.

(10) It is suggested that the agency or agencies required for procurement, storage and movement may either be a National Organisation or a network of regional organisations with a common perspective and purpose.

(11) It is suggested that consumer industries should be evenly distributed all over the country in order to forge a sense of equitable availability.

(12) In order to expedite the process of prosecutions under the principal Act, it is proposed to provide:
(i) for the trial, in a summary way, of all offences under that Act and
(ii) for the constitution, for the purposes of such trial, of special courts, consisting of a single judge who shall be appointed by a high court and who shall be a person who is qualified to be a judge of a high court or who is or has been a sessions Judge or an Additional Sessions Judge, for not less than one year,
(b) to strengthen the penal provisions of the principal Act with a view to deerring persons indulging in hoarding and black marketing in essential commodities from contravening the provisions of the principal Act, it is proposed to provide for -

(i) minimum mandatory imprisonment for a period of not less than three months for all offences under the principal Act except an offence of abatement in regard to drugs by them for their own use or for the use of any member of their family, and not for the purpose of carrying on any business or trade which is proposed to be punishable which fine only.

(ii) enhancement of the term of imprisonment awardable in case of conviction in a summary trial from one year to two years,

(iii) granting of bail by the trial Court after giving the prosecution an opportunity to oppose the application and only in the exceptional cases specified in the new Section 12 AA proposed to be inserted, to a person accused or suspected the commission to be inserted, to a person accused or suspected of the commission of an offence under the principal Act if there appear reasonable grounds for believing that he is quitly of the offence concerned, and
(c) (i) for sale of all seized essential commodities, the retail sale prices whereof have been fixed by the Central Government or the State Government, as the case may be, through the public distribution system by enlarging the scope of Section 6-A (2). The existing provision covers only foodgrains to be sold through fair price shops and

(ii) for preferring appeal against the order of confiscation passed by the Collector of a district to the State Government instead of to a judicial authority.

(13) It is suggested to suitably amend clause (e) of Sub Section (1) of Section 12 AA to enable authorised officers of the Central and State Governments also to make a report to the Special Court.
CONCLUSIONS

Due to the emergence of the concept of a socialistic pattern of society, Government regulation of trade and commerce is the order of the day. A number of laws have been enacted creating a vast regulatory mechanism, in this class is the Essential Commodities Act, 1955, which has conferred on the Government vast power to regulate the economic life of the country. Under this Act, a system of control and regulation of production, supply, trade and commerce of a number of commodities have come into force.

To achieve the very object of the Act, to secure effective administration of justice to ensure a free and fair dealings to the general public, it is desirable to confer specific rights on the consumer and recognised consumer associations. To allow them to check the fair price shops surprisingly.

It is essential that the normal demand for all important essential commodities is assessed scientifically, and a commodity budget prepared to ensure free and fair availability of the essential commodities and their equal distribution too.
The Sale of Goods Act - 1930

(a) INTRODUCTION

It has been recognised from very early times that in mercantile transactions conflict of laws should be avoided. The English Sale of Goods Act, which acknowledged to be one of the best pieces of English Legislation and Provisions of which were found by experience to work well in practice, has been adopted as the model for legislation on sale of movables. The Indian legislature has adopted as the basis for this enactment the provisions of the English Act as they are more comprehensive in treatment and more logical in arrangement.

However, the sale of Goods Act has not proved one of the more successful pieces of codification undertaken by Parliament towards the end of the nineteenth century. The principal reason for this may well be that there has been a change in the type of sale of goods cases coming before the Courts. Since the passing of the sale of Goods Act 1930 a large proportion of the cases coming before the Courts appear to have been sales by retailers to the consuming public. In view of the very different social and economic nature of these transactions, both of which are in law sales of goods, it is not surprising that an Act devised principally for the one has not always worked satisfactorily for the other. It is now noticeable that one of the principal trends of modern legislative change is to discriminate between consumer and non-consumer transactions.
Indian Contract Act of 1872 contained the law relating to the sale of goods or moveables. With the passage of time many defects were revealed in the Act and it became necessary to remove them to keep the law in tune with the modern trade practices. As a result a separate enactment the Indian Sale of Goods Act, came into force in 1930.

The law relating to the sale of goods appertains mainly to mercantile transactions. It embodies the principle that the question whether a contract for sale of goods, does or does not pass the property in the goods contracted to be sold must in all cases be determined by the intention of the parties to the contract.

The Act codifies the rules by which that intention is to be ascertained, but the inference based on the rules may always be displaced by the terms of the contract itself or the surrounding circumstances, including the conduct of the parties and trade usages or trade customs.

Lord Mansfield is said to be the Father of Mercantile Law and also of the Law of Sale of Goods. Pothier, the great jurist of France who lived in the 18th Century, influenced the law of sale of goods through his monumental Traité des obligations and Traité des contract de vente on which the French Commercial Code is based.

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Blackburn wrote the classical work, Contract of Sale in 1845 and it is the most authoritative text book today. Benjamin on sale published in 1868 also belongs to this category. Towards the end of the 19th Century the process of commercial codification began in England which found in Sir Mackenzie Chalmers a great jurist as well as a great draftsman.

Indian Sale of Goods Act 1930, has been codified with a intention to have clear idea about the terms and provisions of the goods, warranties, conditions, price, merchantable quality and market overt etc. In this Act, it has been provided safety-valve which judges can use to get out of some awkward position. Section 66 (1) (e) saves rules of law not inconsistent with the Act. It includes, case law, customary law and personal law.

In this Chapter I have attempted to examine analytically provisions of the Sale of Goods Act 1930 to keep the law in tune with the modern trade practices with case laws and provisions embodied therein.

(B) **Provisions of the Sale of Goods Act 1930.**

(i) **Conditions & Warranties:**

**Core of the Contract**

Intention of the parties is significant as evident from the terms of the contract. In the contract of Sale of Goods a stipulation may be either a condition or a warranty. A condition is a stipulation essential to the main purpose of the contract, the breach of which entitles the injured party to repudiate the contract, refuse the goods and if he has already paid the money, to recover the price (Sec. 12)

A warranty or promise is a stipulation collateral to the main purpose of the contract which gives rise to a claim for damage, but not a right to reject the goods and repudiate the contract. Whether a stipulation in a contract of sale is a condition or a warranty depends in each case on the construction of the contract. A stipulation may be a condition, though called a warranty in a contract.

The Section 13 of the Sale of Goods Act provides that where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition or decide to treat the breach of condition as a breach of warranty so as not to treat the contract as repudiated. Where a contract of sale is not severable and the buyer accepted the goods or part of it, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, expressed or implied to that effect.
The ordinary rule is that in sale of goods, conditions and warranty are not implied and that the buyer must make his stipulations or take his chance. The importance of the Sale of Goods Act is that it provides several important exceptions to this rule all of which benefit the buyer.

A warranty is a minor term of the contract, which a condition is a major term. Government of India in 1929 appointed a Select Committee consisting of the Honourable Law Member, Sir Dinsha Mulla, Mr. Krishnaswami Ayyar, the Advocate General of Madras and M.R. Jayakar, Barister at Law, M.L.A. to consider generally the question of amending the law relating to sale of goods contained in chapter VII of the Indian Contract Act, 1872 and in particular to examine the draft bill. The said Select Committee has added the words "and treat the contract as repudiated" in Sub Clause (3) of Section 12 of the Sale of Goods Act 1930.

The parties may insert what stipulations they like in a contract of sale but the law has to interpret them. The term "warranty" has a peculiar and technical meaning in the law of sale. Suppose that a man buys a particular house, which is warranted quiet to ride and drive. If the house turns out to be vicious the buyer's only remedy is to claim damages, unless he has expressely reserved a right to return it. But if, instead of buying a particular house, a man applies to a dealer to supply him with a quiet house and the dealer supplies him with a vicious

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one, the stipulation is a condition. The buyer can either return the house or keep it and claim damages. Of course the right of rejection must be exercised within a reasonable time.

A stipulation in a contract is a condition or warranty or neither, would naturally depend on the construction of the contract in each case.

The implied warranties and conditions provided for in the Sale of Goods Act play an important role in quality control and consumer protection.

A condition is vital term of a contract going to the rest of the contract, whereas a warranty is not a vital term, it is subsidiary. It may be made orally or in writing.

Whether a term in a contract is a warranty or condition is a question of the intention of the parties to be deluted from the circumstances of the case. The use by the parties of the term "Warranty" and "Condition" is not conclusive of their meaning. Thus the term "Condition" may be used as a lawyer's term of art or in its common meaning as simply denoting a stipulation and when ascertaining what meaning the parties intended to give to that term a reasonable meaning should be attributed to it. In the Marine Insurance Act 1906 the term "Warranty" is used as meaning what is here described as a "Condition".

The Sale of Goods Act 1930 as far as the contract of sale is concerned, founded on the distinction of conditions and warranties.

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Remedies:

The remedies of the buyer arising from a breach by the seller of a condition and a breach of a warranty are different. In both cases the buyer is entitled to damages. But in the case of a breach of a condition he has the option of another remedy, namely of treating the contract as repudiated and rejecting the goods altogether, provided he has not accepted the goods or any part thereof, or in the case of specific goods, the property has not passed to him.

Conditions & Warranties, Express or Implied

Conditions and warranties are either express or they are implied by law. As regards express conditions and warranties, no particular form of words is necessary to create a condition or warranty. It depends on the intention of the parties. Whether they intended a term or stipulation should operate as a condition entitling the buyer to treat the contract as repudiated and to reject the goods on non-fulfillment of the stipulation or that it should operate as a mere collateral contract or warranty for the breach of which the remedy of the buyer is an action for damages. Where the contract is in writing and it is not ambiguous, it is conclusive evidence of their intention and to put a meaning on the contract is simply a question of construction for the Court. If the contract is ambiguous, so that the intention can not be read on the face of the document, the Court may look at the surrounding facts and circumstances to determine what the parties intended. A stipulation may be a condition, though called a warranty in the contract. It is important to note that an express condition or warranty does not
negative a condition or warranty implied by the Act unless inconsistent therewith.

There is always implied condition as to title on the part of the seller in every contract of sale unless the circumstances of the contract are such as to show a different intention e.g. in case of sale he has a right to sell the goods.

There is always implied warranty of quiet possession of the goods. Implied warranty that goods are free from encumbrances.

There is implied condition in sales by description. If the goods correspond with the description but are of inferior quality or damaged or unfit for some particular purpose, the buyer is entitled to reject them or whether he takes the risk as to their quality and condition. It depends on maxim "caveat emptor".

(ii) Exceptions to the implied Warranty or Condition:

Section 16 of the Sale of Goods Act 1930 begins with an enunciation of the rule involved in the maxim Caveat Emptor. It proceeds to lay down three exceptions to the rule, the first in sub-section (1), the second in sub-section (2) and the third in sub-section (3). It says that there is no implied warranty or condition as to the quality or fitness for any particular purpose of the goods supplied under a contract of sale except in two cases. In the first case Sub-Section (1) & (3), there is an implied condition that the goods are reasonably fit for the purpose for which they are required. In the second case sub-section (2) there is an implied condition that the goods are of merchantable quality.
Exception (1) Implied conditions as to quality or fitness:

(i) The buyer makes known to the seller the particular purpose for which the goods are required, either expressly or by implication.

(ii) The buyer relies on the seller's skill or judgement and

(iii) The goods are of a description dealt in by the seller, whether he be the manufacturer or not.

Reasonable fitness means fitness for general purposes as well as for specific purposes. It does not however require that the goods are absolutely suitable for their purpose nor proof against misuse, nor suitable for purpose outside the range of purposes foreseeable by the seller, nor proof against an abnormal peculiarity or sensitivity of the buyer unknown to the seller. A defect in the tiniest instrument may cause a huge finished product to become a source of danger.

Exception (2) Implied condition as to merchantability:

Merchantable quality has been commented as a term creating puzzling questions. It would cover three aspects:

(1) Genuine according to name, kind and description.

(ii) Saleable in the market under designation.

(iii) Fit for the ordinary use and purpose of such goods.

(iv) Free from defects interfering with sale or ordinary use.

Merchantable quality though over lapping with fitness for purpose is in a way of much wider import. In order to be of merchantable quality the goods must not violate any specific statute. The word "merchantable" can only mean "commercially saleable".
Where seller sells goods in the course of a business, there is an implied condition that the goods supplied under the contract are of merchantable quality.

(jii) Sale under Trade Names

Under the proviso to section 16(1) of the Sale of Goods Act, 1930, in case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition as to its fitness for any particular purpose. The reason is that the buyer defines by his order the particular article to be supplied and the contract is performed accordingly.
A serious handicap of the consumers in this country is the absence of adequate legislation to ensure that the goods produced and sold conform to the quality and the quantity as stated by the seller or as asked for by the purchaser.

In a jet-age buyer has no time to inspect the goods bought or about to buy. The buyer has no knowledge about warranty, its rules and procedure, and as a result he fails in establishing his claim and victimized of the seller's skill.

Indian buyers are greedy of purchasing goods at a low prices and hasty in purchase.

The Indian Sale of Goods Act 1930 is silent when goods are examined by the purchaser before purchase and no defects discovered at that time.

The Indian Sale of Goods Act 1930 is silent about rights and liabilities of the private seller, who does not sell in the course of a business.

The Indian Sale of Goods Act 1930, has not provided remedies which the consumer most wants, a right to have the defective goods repaired or replaced by the seller. The principle buyer beware (caveat emptor) is not severely eroded.

There is no implied condition or warranty about the quality or fitness for any particular purpose of goods supplied under a contract of sale.
The Act is silent in hybrid situation, when a dealer who sells in the course of a business as agent for a private seller. That dealer does not inform prospective buyers of his private status.

There is no provision in the Sale of Goods Act 1930 to the person other than party to the contract i.e. except seller and buyer. The conditions of merchantable quality and fitness are implied as between seller and buyer. For example, a lady buys an unmerchantable washing machine and gives it to her daughter as a present, the daughter has no claim against the supplier if it breaks down. The mother would have a claim but she might find it difficult to prove damage flowing from the breach. The question of "who made the contract" is relevant.

The Act is silent about goods sold at a charity or tennis club bazar or jumble sale.

The Act is silent about the merchantable quality of the bottle or tin carries the content.

The Act has no provision to the following questions:

(i) If a new article is delivered with minor defects does that make it unmerchantable?

(ii) What standard is required for second hand goods?

(iii) For how long must the goods remain merchantable?

The Act does not spell out any obligation of durability of merchantability.

1 Consumer Law and Practice - Lowe and Woodroffe (second edition)
The general public does not understand the meaning and difference of guarantee and warranty, and act has remedied.

The consumer may buy an "extended guarantee" or "extended warranty" which may become worthless if the "guarantor" goes out of business during the extended period. There is no remedy to this fact in the Act.

In an ordinary contract of Sale of Goods, the buyer promises that he will pay the price and will take delivery of the goods, while the seller promises that he will deliver the goods and also that the goods are in accordance with their description and in some cases, that they are merchantable and also that they are fit for the purpose for which they were sold. There is no legal difference between a term of the one kind and a term of the other kind.

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1 An Introduction to The Law of Contract - By P.S. Atiyah second edition Page No. 119.
(a) Cases:


The word "merchantable" can only mean "commercially saleable" if the description is a familiar one and it may be that in practice only one quality of goods answers that description then that quality and only that quality is merchantable quality. This is the stand taken by the Calcutta High Court.

Case (2): Priest V/s Last

The famous hot water bottle case provides an ideal fact situation for appreciating the significance of the implied condition. The purchaser of a hot water bottle in Priest V/s Last was told by the seller that it was suitable for hot water but not for boiling water. The purchaser was able to recover from the seller the expenses incurred for treatment of his wife's injuries as the hot water bottle burst on being used.

The same approach was taken in Wallis V/s Russel. 'A' went to a fishmonger and told him that he wanted "two nice fresh crabs" for tea. The fishmonger told him that he had no live crabs but that he had boiled ones of which he selected two and sold them to 'A'. It turned out that the crabs were not fresh. 'A' became seriously ill after eating them. The fishmonger was to pay damages.

1 AIR 1979 Cal. 142.
2 Consumer Protection and Legal Control - By P. Leelakrishnan P. No. 149.
3 Consumer Protection and Legal Control - By P. Leelakrishnan P. No. 149 & 150.
Case (3): "Evans v/s Stello Benjamin"

This is a Calcutta case, where in ordinary mechanical trouble or deficiency was taken into consideration to amount to a breach of an implied condition. A refrigerator performed all other acts which a refrigerator usually does but failed to make ice.

Case (4): "Bengal Corporation Pvt. Ltd. v/s Commissioner for the Port of Calcutta."

The scope and extent of Section 16(1) was considered in this case. Three conditions are to be satisfied before a buyer can involve the implied condition that the goods supplied shall be reasonably fit for a particular purpose. They are as follows:

(i) The buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required.

(ii) This making known to the seller of the purpose would show that the buyer relies on the seller's skill or judgment.

(iii) The goods are of a description which it is in the course of the seller's business to supply.

The Court has to find as a fact whether these three conditions are satisfied. The onus of proof is on the buyer to show that the three conditions are satisfied.

1 AIR 1961 Cal. 470.

2 AIR 1971 Cal. 357.
Case (5):  
V/s Mochmed Saiyed & Abdul Rehman's Co.  

A stipulation in a contract is a condition or warranty or neither, would naturally depend on the construction of the contract in each case.

Case (6):  
Frost V/s Aylesbury Dairy Co.  

A goes to a milk dealer and buys milk for family use. At the time of sale the milk dealer gives a printed statement that the milk was free from the germs of disease. The milk supplied contains typhoid germs, in consequence whereof A's wife is infected and dies. Here the purpose for which the milk was supplied was sufficiently made known by the buyer to the seller by its description. There was therefore an implied condition that the milk was reasonably fit for human consumption. The milk, not being so fit, the milk dealer is liable in damages for a breach of warranty.

Case (7):  
Griffiths V/s Peter Conway Ltd.  

A Lady bought a Harris tweed coat. She had an abnormally sensitive skin and contracted dermatitis from wearing the coat. The evidence showed that the coat would not have caused problems apart from this one special fact. It was held that as this fact had not been disclosed to the seller, he was not liable.

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1 G.L.R. P. 272, 275 & 276.


3 Consumer Law And Practice - By Lowe & Woodhouse - Second Edition Page No.56.
Case (8) : Ingham V/s Ems

A lady who knew that she was allergic to a particular hair dye, developed dermatitis as a result of having her hair dyed with that substance. She did not disclose her allergy to the hairdresser. Held, the hairdresser was not liable for breach of the implied condition as to the fitness of the hair dye since that condition extended only to the dyeing of the hair of a normal person.

Case (9) : Youngs and Marten Ltd. V/s McManus Childs Ltd.

The respondents were building new houses and they sub-contracted the roofing work to the appellants, specifying that "Somerset 13" tiles were to be used. These tiles were obtainable from only one manufacturer. After the work was completed, a previously latent defect appeared in the tiles. Held, the appellants were liable in damages for breach of the implied term that they would be of good quality. The fact that the tiles were specified by the respondents and were obtainable from only one manufacturer was not a circumstance excluding the implied term.

Case (10) : Contaminated milk kills Two of family.

Two members of a family died and an equal number sell unconscious after consuming contaminated milk in Meerut (UP). Zaiuddin's wife Radhia and daughter Mohneesh died soon after consuming milk mixed with a chemical, which kills mosquitot.

3 Hindustan Times (English Daily) dated 2-4-89.
Suggestions

Conditions have sometimes been described as obligations which go directly to the substance of the contract, or in other words, are so essential to its very nature that their non-performance may fairly be considered by the other party as a substantial failure to perform the contract at all. The use of the word fairly in this quotation is an indication of the important fact that an element of objective judgement is involved in this decision.

Whether it is correct to treat a promise as a warranty or as a promissory condition depends in many cases on whether justice is best served by the one course or the other. Despite the constant reference of the question to the 'intention of the parties' the law has in fact developed more useful criteria and generally speaking, one would not go far wrong if one simply said that a condition is a vital term of the contract, while a warranty is a subsidiary term.

Of course the test is subject to the expressed intention of the parties and they may choose to elevate into a promissory condition a term which is of incidental importance only.

The term conditions and warranties has been much criticized and may not always be exhaustive. Effect of breach of some terms depends on the consequences of the breach. The reason for this is that the right of party to repudiate a contract for breach ought to depend on the granting of the breach rather than on the classification of the

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Terms which appear to be crucial to a contract may be broken in a minor respect with trivial consequences, and there seems no reason why such a breach should give a right to repudiate. Unfortunately the condition/warranty dichotomy is already enshrined in the Sale of Goods Act 1930 and can not be wholly uprooted without legislation.

Sir David Hughes Parry has recently written, "We must at all times keep in mind the question whether the time is not fast approaching when the whole structure of contract law, with its preconceived ideas and nineteenth century doctrines, has not become so rigid and static that it can not be expected to bear on all fronts the strains and stresses of modern economic and social pressure."

It is suggested that general public should be made aware regarding the standard-form contract. Wide publicity should be made, so that people can understand about the standard-form contract. General public should be made aware about the use and benefit of the warranty and its limitations etc.

It is suggested that the terms and conditions of the standard-form and warranty should be subject to the approval by the judicial or semi-judicial body.

In a seller's market where the number of buyers far out number the limited products, the availability of spurious, sub-standard or imitation goods is very high and not many eyebrows are raised at this. Today Delhi's market is flooded with such goods as almost every.

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2 Hindustan Times (English Daily) dated 25-2-89.
The Delhi Administration is not learnt to have done any large scale survey to find out the extent of spurious goods being sold in capital. The necessity of having one done at the earliest is clear.

One of the main reasons why the authorities are not taking a keen interest in this is perhaps because they feel it was primarily the job of the manufacturers to deal with those selling spurious and imitation goods.

The level of spurious and imitation goods in the market can be gauged from the shocking statistics given by the Crime Branch of Delhi Police which raided and recovered last year ₹5 lakh worth of spurious hair oil, more than ₹11 lakh worth of imitation electric goods, fake tubes worth ₹1.70 lakh, fake fans worth ₹9 lakh, ₹2 lakh worth of fake pipes.

In most of these cases the raids were conducted by the police only after some well-known companies approached them after getting warrants issued from Court.

Shocking police does not have any role to play because making spurious and substandard goods or violating brand name is not a cognisable offence.

It is suggested that to make the offence cognisable and empowering police so that they may be able to directly arrest or take action against people indulging in the manufacture of spurious, substandard or fake items, may act as a deterrent and stop the spread of this menace.
It is suggested that the consumers should check brand names accurately where they may be duped with change of a single alphabet. They must also see that the logo printed on cloth is proper one and not a similar one to any other famous brand.

It is suggested that more and more consumer organisations should take up the issue of creating awareness among the consumers regarding how to make out fake from genuine in many exhibitions known as Asli-Naqli exhibitions.

It is suggested that besides a change in the law finally it will be the awareness among the consumers to be one up on the tricks used by the manufacturers of spurious goods which will bring about a change in the present dark scenario.

It is suggested that the more and more publicity should be made about the Bureau of Indian Standards mark on the product to be seen before purchase to avoid loss to the property and body, too.

In order to make the implied terms - conditions and warranties more effective to compel the supplier to give only goods of quality and merchantability the following proposals and suggestions should be considered:

(i) The requirement to show that buyer relies on the "seller's skill or judgement" shall be given up by deleting the same from subsection (1) of the Section 16 of the Sale of Goods Act - 1930.

(ii) The proviso to Section 16(1) excluding sales under a patent or trade name shall be dropped.

(iii) The requirements that the goods are to be of "a description which it is in the course of the seller's business to supply"
in Section 16(1) and "from a seller who deals in goods of
that description" in Section 16(2) shall be modified as
"goods sold by way of trade".

(iv) The proviso to Section 16(2) shall also be omitted. The
proviso reads, "If the buyer has examined the goods, there
shall be no implied condition as regards defects which such
examination ought to have revealed".

(v) New implied warranties regarding durability, repairs and
servicing shall also be added.

(vi) The institutions like Consumer Ombudsman on Swedish lines
or Director General of Fair Trading in United Kingdom shall
be introduced to protect the consumer against defective goods.

(vii) Legal literacy must be propagated by publishing book lets,
monographs, etc., similar to the one titled, "Your Rights
when Buying Goods" published by the Department of Trade and
Industry in United Kingdom.

(viii) Legal Aid Centres or Clinics or Consumer Organisations or
such other bodies should come forward to take up cases of the
aggrieved consumers referred to them.

(ix) Reliefs by way of tortious liability shall be afforded to the
consumers more expeditiously and liberally.

The above suggestions will certainly strengthen the buyer-
seller relations and co-ordination among all will be generated.
CONCLUSIONS

Starting with the age-old rule of Caveat Emptor, the law and the judges were in favour of the seller. In the limited areas of merchantable transactions with limited number of products put to sale this rule was taken to be quite satisfactory and logical too. The nineteenth century provisions are quite inadequate to deal with the twentieth century methods of buying and selling.

With the development of new commercial practices, new methods of trade transactions, varieties of hire purchase systems and consumer credits, self-service shops with sophisticated articles including those with scientific intricacies and so on, the buyer was found to be in a difficult situation. The law came to his rescue. A number of implied conditions and warranties came to be imposed in spite of the exemption clauses agreed to.

In countries like the United States there arose a "Strict Product Liability" boom with the result that defences in favour of the supplier were to be formulated.

Either as an alternative or as collateral relief, civil liability in tort also developed in favour of the consumer.

Uniform exemption clauses have either been controlled or modified or completely disallowed by the intervention of law.

Consumerism and consumer protection achieved a new impetus that institutions like "Director of Fair Trading" who may be called the "Consumer Ombudsman" have come into existence.
New legislations with implied terms and prohibition of unfair contract terms have come into operation.

Old trend of buyer-beware is reducing and trend as seller-beware is taking place owing to general awareness, mass-advertisement, implementation of Bureau of Indian Standard and Government keen interest in the subsistence and development of the trading market.

Trend of Courts is now changing from seller to the buyer favour, as gamut that everybody is consumer by one way or other.

## Introduction

There are certain important provisions in the Standards of Weights and Measures Act, 1976 relating to the safeguard of the consumers, such as punishment for the short weight or measures, not mentioning the maximum price, manufacturing date, not weight contained, certified weighing scales etc.

The above are the salient provisions of the standards of Weights and Measures Act, 1976 which the Central and State Government are in strict observance, implementation and in case of default exercising strict punishment.

The aim of this Chapter is to introduce best use of the provisions under the Act in order to serve the consumers to their benefit at large and in turn the Nation too.
This Act may be called the Standards of Weights and Measures Act, 1976. It extends to the whole of India.

It shall come into force on such date as the Central Government may be notification, appoint and different dates may be appointed for different:

(a) Provisions of this Act,
(b) areas,
(c) classes of undertakings,
(d) classes of goods,
(e) classes of weights and measures or
(f) classes of users of weights and measures.

Definitions:

According to Section 2 (a) "calibration" means all the operations which are necessary for the purpose of determining the values of the errors of a weight or measure and, if necessary, to determine the other metrological properties of such weight or measure, and includes the actual fixing of the positions of the gauge marks or scale marks of a weight or measure or in some cases, of certain principal marks only, in relation to the corresponding values of the quantity to be measured.

Calibration may also be carried out with a view to permitting the use of a weight or measure as a standard, (b) "Commodity in packaged form" means commodity packaged, whether in any bottle, tin, wrapper or otherwise, in units suitable for sale, whether wholesale or retail.
The word "package" refers to the outer cover in which the goods may be wrapped or the container in which the goods may be found.

(c) "dealer" in relation to any weight or measure, means a person who, or a firm or a Hindu undivided family which, carries on, directly or otherwise, the business of buying, selling, supplying or distributing any such weight or measure, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration and includes:

(i) a commission agent who carries on such business on behalf of any principal,

(ii) an importer who sells, supplies, distributes or otherwise delivers any weight or measure to any person or category of persons referred to in this clause,

(d) "False package" means any package which does not conform to the provisions of this Act or any rule or order made thereunder in relation to such package,

(e) "False weight or measure" means any weight or measure which does not conform to the standards established by or under this Act in relation to that weight or measure;

(f) "International prototype of the kilogram" means the prototype sanctioned by the First General conference on Weights and Measures held in Paris in 1889, and deposited at the International Bureau of Weights and Measures;

(g) "inter-state trade or commerce", in relation to any weight or measures or other goods which are bought, sold, supplied,
distributed or delivered by weight, measure, or number, means the purchase, sale, supply, distribution or delivery which —

(i) occasions the movement of such weight, measure or other goods from one State to another, or

(ii) is effected by a transfer of documents of title to such weight, measure or other goods during its movement from one State to another,

(h) "cabel" means any written, marked, stamped, printed or graphic matter affixed to or appearing upon, any commodity or package containing any commodity;

(i) "manufacturer", in relation to any weight or measure, means a person who or a firm or a Hindu undivided family which:

(i) makes or manufactures such weight or measure,

(ii) makes or manufactures one or more parts, and acquires the other parts, of such weight or measure and after assembling those parts, claims the end product to be a weight or measure manufactured by himself or itself, as the case may be,

(iii) does not make or manufacture any part of such weight or measure but assembles parts thereof made or manufactured by others and claims the end product to be a weight or measure manufactured by himself or itself, as the case may be,

(iv) puts or causes to be put, his own mark on any complete weight or measure made or manufactured by any other person and claims such product to be a weight or measure made or manufactured by himself or itself, as the case may be.
(j) "Person" includes -

(i) every department or office,
(ii) every organisation established or constituted by Government
(iii) every local authority within the territory of India,
(iv) every co-operative society,
(v) every other society registered under the societies
   Registration Act, 1860.

(k) "Premises" includes -

(i) a plan where any business industry, production or trade is
   carried on by a person, whether by himself or through an agent,
   by whatever name called,
(ii) a warehouse, godown or other place where any weight, measure
    or other goods are stored or exhibited,
(iii) a place where any books of account or other documents pertaining
    to any trade or transaction are kept,
(iv) a dwelling house, if any part thereof is used for the purpose
    of carrying on any business, industry, production or trade.

"Plan" includes a vehicle or vessel or any other mobile device,
with the help of which any trade or business is carried on, and also
includes any measuring instrument mounted on a vehicle, vessel or
other mobile device.

(l) "reference standard" means the set of standard, weight or
measure which is made or manufactured by or on behalf of the Central
Government for the verification of any secondary standard,
(m) "repairer" includes a person who adjusts, cleans, lubricates, or paints any weight or measure or renders any other service to such weight or measure to ensure that such weight or measures conforms for the standards established by or under this Act;

(n) "Sale", with its grammatical variations and cognate expressions, means transfer of property in any weight, measure or other goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of any weight, measure or other goods on the hire purchase system or any other system of payment by instalments, but does not include a mortgage or hypothecation of or a charge or pledge on, such weight, measure or other goods.

(o) "Seal" means a device or process by which a stamp is made, and includes any wire or other accessory which is used for ensuring the integrity of any stamp,

(p) "Secondary Standard" means the set of standard weight or measure which is made or manufactured by or on behalf of the Central or State Government for the verification of any working standard,

(q) "Stamp" means a mark, which is made on, or in relation to, any weight or measure with a view to -

(i) Certifying that such weight or measure conforms to the standard specified by or under this Act, or

(ii) indicating that any mark which was previously made thereon certifying that such weight or measure conforms to the standards specified by or under this Act, has been obliterated.
A stamp may be made impressing, casting, engraving, etching, branding or any other process,

(r) "transaction" means

(i) any contract whether for sale, purchase, exchange or any other purpose or

(ii) any assessment of royalty, toll, duty or other dues or

(iii) the assessment of any work done, ways due or services rendered,

(s) "Unverified weight or measure" means a weight or measure which, being required to be verified and stamped under this Act, has not been so verified and stamped,

(t) "Verification", with its grammatical variations and cognate expressions, includes, in relation to any weight or measure, the process of comparing, checking, testing or adjusting such weight or measure with a view to ensuring that such weight or measure conforms to the standards established by or under this Act, and also includes re-verification and calibration;

(u) "Weighing or measuring instruments" means any object, instrument, apparatus or device or any combination thereof, which is or is intended to be, used, exclusively or additionally, for the purpose of making any weighment or measurement and includes any appliance, necessary or part associated with any such object, instrument, apparatus or device.
(v) "Working Standard" means the set of standard weight or measure which is made or manufactured by or on behalf of Government for the verification of any standard weight or measure, other than a national prototype or national reference or secondary standard.

As per Section 4 of this Act every unit of weight or measure shall be based on the units of the metric system.

The base unit of length shall be the metre. The "metre" is the length equal to 1650 763-73 wave lengths in vacuum of the redration corresponding to the transition between the levels 2 p 10 and 5 d 5 of the Krypton 85 atom.

The base unit of time shall be the second. The second is the direction of 2 192 631 770 periods of the radiation corresponding to the transition between the two hyperfine levels of the ground State of the Caesium-133 atom. The base unit of electric current shall be the ampere. The base unit of thermodynamic temperature shall be the Kelvin. The Kelvin is the fraction 1/2+3 1b of the thermodynamic temperature of the triple point of water. The base unit of numeration shall be the unit of the international form of Indian numerals i.e. decimal system.

According Section 21 of the Standards of Weights and Measures Act, 1976, no weight, measure or unmeral other than the standard weight, measure or unmeral shall be used as a standard of weight, measure or numeral.

Secondary of or working standard shall be certified by the Central Government upon conforming to the prescribed standard is tantamounting of duty stamped as per Section 27 of this Act.
Appointment of Director and other staff Section 28 of this Act:

As per Section 28 of this Act, the Central Government may appoint a Director of Legal Metrology and as many Additional Joint Deputy or Assistant Directors and other officers and staff as may be necessary.

The above officers are authorised to enter at any reasonable time into premises where any weight or measure or other goods in relation to which any inter-state trade or commerce has taken place or is intended to take place, and inspect and seize any weight, measure or other goods in relation to which inter-state trade or commerce has taken place or is intended so take place. Where any goods seized are subject to speedy or natural decay, the authorised person may dispose of such goods in a manner as prescribed.

As per Section 33 of the Standards of Weights and Measures Act, 1976, no person shall in relation to any goods, thing or service quote or make announcement, whether by word of mouth or otherwise any price or charge or issue or exhibit any price list, invoice, cash memo or prepare or publish any advertisement, poster or indicate the contents of any package either on itself or on any label, carton, container or express any quantity or dimension otherwise than in accordance with the standard unit of weight, measure or numeration.
Any custom, usage, practice or method of whatever nature which permits a person to demand, receive or cause to be demanded or received any quantity of article, thing or service in excess of or less than, the quantity specified by, measure or number in the contract or other agreement in relation to the said article, thing or service, shall be void.

1) The "Unit Sale Price" means the price according to such unit of weight, measure or number as may be prescribed.

2) Every package of a commodity shall bear thereon the name of the manufacturer and also of the packer or distributor. And label shall bear a statement as to the net quantity, net weight, measure or number of the contents, when packed as per Section 39(4) of the Standards of Weights and Measures Act, 1976.

The retail price of a commodity in packaged form to which this chapter IV of this Act, applies is stated in any advertisement there shall be included in the advertisement, a conspicuous declaration as to the net quantity or number of the commodity contained in the package and retain unit sale price thereof, as per Section 39(6) of this Act.

According Section 39(4) of this Act, no person shall sell, distribute or deliver for sale a package containing or commodity which is filled less than the prescribed capacity of such package except where it is proved by such person that the package was so filled with a view to -
(a) giving protection to the contents of such package
or
(b) meeting the requirements of machines used for enclosing
the contents of such package.

The Central Government is competent to specify the classes
of commodities of packages in relation to which all or any of
the provisions of this Section vize 39(9) shall not apply or
shall apply with such exception or modifications as may be
specified therein.

No dealer or manufacturer shall export or import any weight
or measure unless he is registered under this Section (Section 47(1)
as such exporter or importer as the case may be.

Penalties:-

Whoever uses any weight or measure or makes any numeration
otherwise than in accordance with the standards of weight or
measure or the standards of numeration, shall be punished with
imprisonment for a term which may extend to six months, or with
fine ₹1000/- or with both and for the second or subsequent
offences, with imprisonment for a term which may extend to two
years and also with fine.

Punishment of imprisonment of two years and fine of ₹5000/-
has been prescribed for those whoever tampers with or alters, in
any way, any reference standard, secondary standard or working
standard; Section 51.
Fine of ₹.2000/- shall be made whoever contravenes any provisions of this Act for the contravention of which no punishment has been separately provided.

Metropolitan Magistrate or a Judicial Magistrate of the first class is empowered to take cognizance of an offence punishable under this Act upon a complaint in writing made by:

(i) The Director,
(ii) any other authorised officer,
(iii) any person aggrieved or
(iv) a recognised consumer association whether the person aggrieved is a member of such association or not. Section 72 of this Act.

The provisions of the Indian Penal Code 1860 shall not apply to any offence which is punishable under this Act in so far as such provisions relate to offences with regard to weights and measures, Section 75 of this Act.

Appeals:

Any aggrieved person by an order made under Section 30 or Section 36 may prefer an appeal against the order to the Director or to the Central Government where the order has been made by the Director, within 60 days from the date on which the impugned order is made.

An appellate authority shall give reasonable opportunity of being heard after making an enquiry, and confirm, modify or reverse the order as the case may be as per Section 81 of this Act.
Drawbacks:-

(1) An important and general complaint involves short weighing. The responsibility for ensuring that goods are correctly weighed or measured at the time of sale rests with the State Governments. But the administrative machinery to take sufficient initiative to detect short weights and measures is meagre and hollow.

(2) Malpractice is widely prevalent so long as weights and measures are concerned. A kilo is always nearer 950 grams. This is true not only where the petty-shopkeeper sells his goods. Even sealed packages are sometime found to be short in weight.

(3) Weighing scales are not available in most rural markets. Women in rural areas are illiterate and do not know the gram or kilo and therefore, they are at the mercy of dishonest sellers.

(4) Package commodities are deceptive, contains non-standard quantities, making unit price comparison difficult.

(5) The standards of Weights and Measures Act, 1976, operates in the criminal area only it does not give any direct civil remedy to the misguided consumer.

(6) Products do not mention the various ingredients that make-up e.g. soft drinks, instead of B.V.O. (Brominated Vegetable Oils), what is the substitute of B.V.O. that make-up the soft drinks tasty. No nutritional value is mention on the package.
(7) The net quantity on the average is sometimes less than the quantity marked on the packages.

(8) Sometimes, the number of packages showing an error greater than the negative volerance limit specified viz. it exceeds 5% of the sample lot.

(9) In India it is estimated that 80-85 per cent of products offered for sale in retail shops are in packaged form. It displays "Maximum Price + Local Taxes extra". This creates confusion to the consumers about, the rate of local taxes and fear of over charged by the traders in the name of local taxes extra.

(10) The standards of Weights and Measures Act, 1976 is silent about the ingredients in goods without packages i.e. loose goods and therefore liable to short weights.

(11) In India there are plenty laws relating consumer protection, but plethora of consumer protection laws have turned out to be a close preserve of the bureaucracy. Besides the statutory orders that can be enforced under the rulemaking powers of the Government at all levels. Yet these have not afforded the kind of protection the grillible consumer is undoubtedly in need of.

(12) The "Maitra Committee" modesty estimated our national less through under measuring and under weighing at Rs. 1500/- crores per year. Today it will be double the figure. The Government's attitude, too towards the plight of poor consumers is largely one of unconcern.
The nature of the container to be used is left to the manufacturers which cost the price more than the true quantity of commodities.
Case: Mohan Meakin Breweries Ltd., Lucknow, Appellant

v/s

Controller of Weights and Measures, U.P., Lucknow and others. Respondents

And

Mis. Modi Industries Ltd., Modinagar, Appellant.

v/s

Controller of Weights and Measures, U.P., Lucknow and others. Respondents.

And

Mohan Meakin Breweries Ltd., Ghaziabad and another Appellant.

v/s

Controller of Weights and Measures, U.P., Lucknow and others. Respondents.

The appellants are engaged in the business of manufacture and sale of Indian made foreign liquor and country liquor, under licence granted to them under the provisions of UP Excise Act. The Appellants have installed vats in their Breweries' premises for the storage of liquor. The Inspector of Weights and Measures issued notices to the appellants calling upon them to get their vats verified, calibrated and stamped in accordance with the provisions of the U.P. Weights and Measures (Enforcement) Act, 1959.
The appellants preferred appeals against the notice issued by the Inspector on the ground that the provisions of the Act were not applicable to the appellants' undertaking, manufacturing alcohol but the appeal was dismissed by the Controller of Weights and Measures. The appellants made petitions under Act 226 of the Constitution before the High Court of Allahabad challenging the orders of the respondents. The appellants contended before the High Court that the provisions of the Act were attracted to the appellants' undertaking only at the stage of sale and anything done in the process of manufacture and storage of liquor could not be subjected to the provisions of the Act and the notice issued by the Inspector of Weights and Measures was without any authority of law. It was further urged that the calibration of vats strong liquor was not necessary and the direction issued by the respondents was without any authority of law. The Division Bench of the High Court by a common judgment and order dated December 5, 1985 dismissed the petitions and notices issued by the respondents for the calibration of the storage vats were legal and valid. Aggrieved the appellants have preferred the present petitions for special leave to appeal.

Shri L.M. Singhvi, learned counsel for the appellants urged that the High Court committed error in holding that the storage vats are required to be calibrated under the provisions of the Act. He added that the provisions of the Act would apply if measures are used for transaction in trade and commerce, but keeping alcohol in storage vats does not amount to transactions in trade or commerce. In order to appreciate the contention, the High Court briefly referred to the relevant provisions of the Act.
Section 7 of the Act imposes prohibition on use of Weights and Measures other than standards Weights and Measures. It provides that no writ of mass or measure other than the Standard Weights or Measures shall be used in any transaction for trade or commerce or any dealing or contract or for any work to be done or goods to be sold or delivered. Section 10 of the Act further imposes prohibition on the sale or use of unstamped commercial or measuring instrument in trade or commerce unless it has been verified or reverified and stamped in the prescribed manner by an Inspector with stamp on verification. These provisions impose legislative prohibition that no weight or measure or weighing or measuring instrument shall be used or be kept for use in any transaction for trade or for being sold, unless it has been verified by the Inspector of the Department in the prescribed manner. Section 2 (JJ) defines the expression "Use in transaction for trade or commerce with its grammatical variations and cognate expressions, means use of for the purposes of determining or declaring the quantity of anything in terms of measurement of length, area, volume, capacity or weight in or in connection with:

(a) any contract, whether by way of sale, purchase, exchange or otherwise or

(b) any assessment of royalty, toll, duty or other dues or

(c) the assessment of any work done or services rendered, otherwise than in relation to research or scientific studies or in individual households for household purposes.
Under the aforesaid definition clause the legislative has given an artificial extended meaning to the expression "Use in transaction for trade or commerce". According to the definition it means use for the purposes of determining or declaring the quantity of any thing in terms of measurement of length or capacity or weight in or in connection with the clauses (a) and (b) mentioned therein.

Clause (b) refers to any assessment of royalty, toll, duty or other dues. According to the extended meaning given by the legislature the provisions of the Act would be attracted if the assessment of royalty, toll, duty or dues is to be determined on the basis of the quantity of anything in terms of measurement of length, area, volume or weight. Division Bench, therefore, in agreement with the view taken by the High Court.

The appeals fail and the same are accordingly dismissed.
Suggestions:

1) Local taxes should be mentioned on the packages along with maximum price.

2) Ensure that the shop keepers use correct weights.

3) Boycott shops which overcharge and sell at high prices.

4) Pay the correct price, check with the price lists.

5) Know the relation of quality to cost.

6) Insist on cash memos.

7) Introduce Swedish aseptic packaging system to protect short weights.

8) It is suggested that the package and label disclosure should be clear, simple and to the point. No concealment of important information by the use of small print obscure placement or poorly contrasted colour.

9) Cheating on weights and measures should be punished severally so as to set example to the trader in default or mischief.

10) It is suggested that the manufacturers should be compelled to declare that cost price along with sale price in order to enable the consumers to know the reality of the price.

11) It is suggested that the retailers should display prominently at a conspicuous place of the premises the rates at which local taxes are leviable in respect of the
commodities sold in packaged form. This can be enforced by proper implementation of the rules.

12) It is suggested that the consumers should be educated about the local taxes through various medias such as T.V., Radio, Seminar, Newspapers etc. that the non-display of the rates of local taxes by the retailer is an offence.

13) It is suggested that the statement of ingredients must be provided to complete the recipe. It is important to mention the ingredients in terms of weight, volumetric measure or physical measure of count or content.

14) Rural people should be acquainted with various scales and measures to avoid circumvention.

15) At least for specified commodities of common consumption there should be uniform rates of local taxes throughout India. So that it will help the consumer protecting him from being charged excessive prices. Food products, edible oils, soaps, toothpaste, medicines, etc., shall come under this proposal.
The true responsibility of business leadership is to make appraisal of the social effects flowing from its strategic policy decisions. Having made some judgements as to the social effects of its activities, business must make the effort and see what kind of action should be taken and by whom, to meet the problems of the change.

The greater government involvement in solving various consumer problems is required. Government should exercise more responsibility relating to various marketing activities of manufacturers such as advertising, product quality, quantity, net weight, measure, sales and pricing.

Weights and Measures Act relates to the problem of consumerism which is a complex, multidimensional and diverse one, can be successfully tackled only by the concerted efforts of the several institutions involved in the consumer movement, viz. business, government, voluntary organisations and the consumers themselves. Thus for the consumers to guard against short weighing.