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**A Study on Consumer Protection Through  
Maintenance of Product Safety &  
Standards in India**

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# A STUDY ON CONSUMER PROTECTION THROUGH MAINTENANCE OF PRODUCT SAFETY & STANDARDS IN INDIA

ASHOK R. PATIL\*

## I. INTRODUCTION

Over the years, an increasing number of defective and unsafe products are being marketed to make a quick buck. A product may become unsafe because it was manufactured without due regard to the user's safety. Sometimes even after taking due care, the product might be unsafe for reasons other than the manufacturer's carelessness, such as when it has a defective component. And at the other extreme, a product may be inherently dangerous.<sup>1</sup>

A product's safety standard and quality are often the buyer's main considerations when making a purchase. They are also the most effective means of ensuring consumer satisfaction and loyalty. Besides these two, a product's functional features, design, colour, style, packaging, and the assurance of a trouble-free service during its expected lifespan are other considerations which affect consumer satisfaction.

Given the scourge of widespread consumer exploitation, it is no surprise that consumer protection has gained immense importance worldwide. In the age of globalization, consumer protection guidelines and legislation are necessary at the international and national level to ensure the safety of consumers.

It is with this in mind that the United Nations General Assembly adopted guidelines for consumer protection through a resolution passed on 9<sup>th</sup> April 1985. The guidelines provide a framework for governments, particularly those of developing countries, to use in elaborating and strengthening their consumer protection policies and legislation. These guidelines are also intended to encourage international co-operation in this field. The basic objectives of the guidelines are, –<sup>2</sup>

- (a) To assist countries in achieving or maintaining adequate protection for their population as consumers;
- (b) To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- (c) To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;

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<sup>1</sup> D. N. Saraf, *The Law of Consumer Protection in India*, 2d ed. (Bombay: N.M. Tripathi Pvt. Ltd., 1995) at 1.

<sup>2</sup> *Consumer Protection*, GA Res. 39/248, UN GAOR, 39th Sess., Supp. No. 51, Annex, Agenda Item 1, UN Doc. A/248 (1985) 179.

- (d) To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- (e) To facilitate the development of independent consumer groups;
- (f) To further international co-operation in the field of consumer protection;
- (g) To encourage the development of market conditions which provide consumers with greater choice at lower prices.

The guidelines apply both to home-produced goods and services and to imports. “In applying any procedures or regulations for consumer protection, due regard should be given to ensuring that they do not become barriers to international trade and that they are consistent with international trade obligations.”<sup>3</sup> The guidelines deal with the following matters – physical safety, promotion and protection of consumers’ economic interests, standards for the safety and quality of consumer goods and services, distribution facilities for essential consumer goods and services, measures enabling consumers to obtain redress, education and information programmes, measures relating to specific areas. The resolution also provides specific guidelines on prioritised “areas of essential concern for the health of the consumer, such as food, water and pharmaceuticals.”<sup>4</sup>

The objective of this paper is to review and critique the various pieces of legislation passed thus far in India in relation to consumer protection.

## II. CONSUMER PROTECTION IN INDIA

In India, the need for consumer protection is paramount in view of the ever-increasing population and the consequent need for many goods and services of which is no matching supply. India’s increased consumer exploitation could be attributed to the lack of education, poverty, illiteracy, lack of information, traditional outlook of Indians to suffer in silence and their ignorance of the available legal remedies in such cases.

Consumerism in India is as old as trade and commerce. In Kautilya’s Arthashastra, there are references to the concept of consumer protection against exploitation such as through the manipulation of weights and measures, and adulteration. The same book also provides for the punishment for these offences.<sup>5</sup> Chapter II, “The Removal of Thorns” in Book IV, of Kautilya’s Arthashastra deals with consumer protection against merchants in depth.<sup>6</sup> When a trader sells or mortgages inferior commodities by misrepresenting them as superior ones, or adulterates grains, oils, salts, scents, and medical articles with similar articles of lower quality, the said trader is not only to be punished with a fine but also be compelled to make good the loss.

<sup>3</sup> *Ibid.* at 180, Agenda Items 7-8.

<sup>4</sup> *Ibid.* at 181, Agenda Item 38.

<sup>5</sup> *Kautilya’s Arthashastra*, 8th ed., trans. by R. Shamasastri (Mysore: Mysore Printing and Publishing House, 1967) at 115.

<sup>6</sup> *Ibid.*

## A. Constitution of India

It is the State's duty to guarantee the right to live with human dignity, free from exploitation, of everyone living in it. This right to live with human dignity is enshrined in the Indian Constitution and derives its life's breath from the directive principles of state policy.<sup>7</sup> According to article 38 of the *Indian Constitution*, the State shall secure a social order for the promotion of the people's welfare and shall effectively work to achieve a "social order in which justice, economic and political, shall inform all the institutions of the national life."<sup>8</sup> In addition, the State has a duty to raise the level of nutrition and the standard of living to improve public health, and to prohibit consumption of intoxicating drinks or drugs which are injurious to health.<sup>9</sup> This is considered a primary duty of the State.

In a way, every state needs to protect the rights of the consumer and to ensure the use of public utilities in the best possible manner. However, it cannot be ignored that in every nation, there are large segments of people who have insufficient resources to live within reasonably good conditions of health and decency. If one considers that the society in which they live in has the obligation to provide support and that support is not to be seen as a privilege but as a citizen's right,<sup>10</sup> it becomes imperative that this right be brought within the scope of any law which can be envisaged for the consumer's promotion.

## B. Law of Torts and Product Safety Standards

It is to be noted that common law tortious remedies are still available to consumers in India in addition to the various legislation related to consumer protection. This is especially important in such a situation – An injured consumer of goods cannot claim damages under the law of contract even if he is harmed by them if he is not the buyer of the goods, but some subsequent user. Such a user might be an employee or member of the primary buyer's family, or someone else inadvertently coming into contact with the goods, such as a passer-by or a donee. In these cases, common law contractual remedies are not available as there is no privity of contract between the victim and the retailer or dealer. Tort remedies may nonetheless be available against parties who owe a tortious liability to such ultimate consumers. Such parties may include the manufacturer, supplier, importer, distributor or retailer, or two or more of them together.

A tort is a civil wrong that is not a breach of contract or a breach of trust. Intentional torts involve deliberate actions which may cause injury; the tort of negligence involves injuries following a failure to use *reasonable care* even if this is not deliberate; strict liability torts impose legal responsibility for injury even though the party liable had neither intentionally nor negligently caused the injury.

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<sup>7</sup> *The Constitution of India of 1950* (India), 1950, art. 21 [*Indian Constitution*].

<sup>8</sup> *Ibid.*, art. 38.

<sup>9</sup> *Ibid.*, art. 47.

<sup>10</sup> Charles A. Reich, "Individual Rights and Social Welfare: The Emerging Legal Issues" (1965) 74 *Yale L.J.* 1245 at 1256.

The foundation of such a tortious remedy can be traced back to the case of *Donoghue v. Stevenson*<sup>11</sup> which laid down the principle that a manufacturer owes a duty of care to every possible consumer of his product, and that such a consumer can bring an action against the manufacturer even if there is no contract between both parties. The plaintiff consumer here is entitled to damages for loss caused by any defective, unfit or dangerous product, and this liability may arise from the following situations – where the defendant is negligent; where the defendant has defrauded the plaintiff; or where he has committed a willful act. In cases of fraud, the tort of deceit enables the plaintiff consumer to recover damages for fraud practiced on him by the defendant. If the defendant is negligent, the tort of negligence would provide the consumer an avenue to seek redress for the damage suffered due to the defective and unsafe product. This tort of negligence is also available in the case of deficiency in service.

The rule of strict liability<sup>12</sup> used to play very significant role in tort cases, but this has changed along with the rapid industrialization, scientific and technological advancement in today's world. Such progress has led to increased industrial and environmental hazards. A few industrial accidents in the eighties has led to significant changes in the laws of no-fault liability.

The Supreme Court of India introduced the rule of *absolute* liability, supplanting the rule of strict liability laid down in the case of *Rylands v. Fletcher* which had some exceptions.<sup>13</sup> The term 'absolute' in itself means total or without any exception. In this new formulation of absolute liability, there are no exceptions on which the defendant can rely upon to escape liability.

### C. Sale of Goods

The *Sale of Goods Act, 1930* provides certain safeguards for the buyer of goods.<sup>14</sup> Where a buyer is injured by a product transferred to him under a contract of sale, subject to certain exceptions, he may rely on "implied conditions and warranties"<sup>15</sup> as well as express undertakings of the seller. Section 16 of this Act deals with implied conditions as to quality or fitness.<sup>16</sup> Section 16(1) deals with the implied condition relating to "fitness for purpose" and section 16(2) deals with the implied condition regarding "merchantable quality".<sup>17</sup>

Merchantable quality has to satisfy four aspects –

- (i) genuine according to name, kind and description;

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<sup>11</sup> [1932] AC 562 (H.L.).

<sup>12</sup> *Rylands v. Fletcher* (1868), L.R. 3 H.L. 330 [*Rylands v. Fletcher*].

<sup>13</sup> *M.C. Mehta and others v. Union of India and others* AIR 1987 S.C.1086. This case is also known as the Oleum Gas Leak Case.

<sup>14</sup> *Sale of Goods Act, 1930* (India), 1930.

<sup>15</sup> *Ibid.*, ss. 12-17.

<sup>16</sup> *Ibid.*, s. 16.

<sup>17</sup> *Ibid.*

- (ii) saleable in the market under the designation;
- (iii) fit for the ordinary use and purpose of such goods; and
- (iv) free from defects interfering with sale or ordinary use.

Comparing both subsections of section 16, although merchantable quality overlaps with fitness for purpose, it is of much wider import.<sup>18</sup> This means that the seller will be liable if the goods do not meet the standard required by the law even if he has taken all possible care. As regards to product liability, these standards are implied by the *Sale of Goods Act*. In cases of breach of contract, the consumers have many remedies under this Act.<sup>19</sup> Due to these reasons, the doctrine of *caveat emptor* has now been replaced by the doctrine of *caveat venditor*. The enactment of the *Consumer Protection Act, 1986* is a step in this direction.<sup>20</sup> It protects the interests of consumers better.

#### **D. Bureau of Indian Standards Act**

The *Indian Standards Institution (Certification Marks) Act, 1952* has been replaced by the *Bureau of Indian Standards Act, 1986*.<sup>21</sup> Together with this replacement, the Indian Standards Institution has also been renamed as Bureau of Indian Standards (BIS). However, the symbol of 'ISI' on products continues. The BIS is a National Standards Body of India. It is a non-profit statutory organization under the *BIS Act* and has its headquarters at New Delhi, 5 regional offices, 19 branch offices, 5 inspection offices and 8 well-equipped laboratories located in different parts of India.<sup>22</sup>

The Indian Standards were formulated in view of the national programmes prioritising industrial development, technical needs, export promotion, consumer welfare, health, safety, etc. There are currently over 18,000 licences in operation, covering 1,200 products. The following are some examples of products under the mandatory certification list – milk powder, condensed milk and infant milk food, food colours and additives, cement, LPG cylinders, oil pressure stoves, vanaspati, dry cell batteries, electric appliances & accessories, pumps, irons, immersion heaters, stoves, minors' safety boots and shoes, steel tubes, etc. Other products like bags and briefcases, slippers, bicycles, paints, inks, typewriter ribbons, cotton vests, razor blades, soaps and handloom cloths, biscuits, common salt, chewing gum etc. are covered under the voluntary certification scheme.

These standards emerged based on mutual consensus, having been developed by a network of technical committees comprising of different stakeholders like representatives from the industries, research and development organizations, consumers, testing and laboratory experts, government etc. The standards formulated fall within the following

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<sup>18</sup> M. Krishnan Nair, "Quality Control: Conditions and Warranties in Sale of Goods" in Leelakrishnan, ed., *Consumer Protection & Legal Control* (Lucknow: Eastern Book Company, 1981) 143.

<sup>19</sup> *Supra* note 14, ss. 55-61.

<sup>20</sup> *Consumer Protection Act, 1986* (India), 1986, s. 3 [CPA].

<sup>21</sup> *Indian Standards Institution (Certification Marks) Act, 1952* (India), 1952 as rep. by *Bureau of Indian Standards Act, 1986* (India) 1986 [BIS Act].

<sup>22</sup> The numbers may be derived from this map of the various BIS machineries; BIS, *BIS Location on Map*, online: Bureau of Indian Standards <<http://www.bis.org.in/org/map1.htm>>.

categories – basic standards, products specification, methods of tests, systems, codes of practices, and guidelines etc. The main emphasis of the organization is to –

- Formulate standards expeditiously,
- Review the standards regularly to keep them contemporary in the context of modern technological developments, and
- Harmonize the standards with international standards for facilitating international trade.<sup>23</sup>

To ensure compliance with the standards, any person who contravenes the provisions of sections 11 to 15

shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to fifty thousand rupees, or with both.<sup>24</sup>

### **E. Indian Penal Code**

The first ever notable provisions for consumer protection adopted in India are found in the *Indian Penal Code, 1860*.<sup>25</sup> The *IPC* acts as a deterrent against any potential offenders and thus protects the consumer. Through this indirect process, consumers may not get any compensation, but may instead receive an indirect and remote benefit. Sections 272 and 273 of the *IPC* deal with the offences affecting public health by making the respective offences of the adulteration of food or drink intended for sale, and the sale of noxious food or drink, both punishable with up to six months imprisonment, or a fine up to one thousand rupees, or both. Sections 274 to 276 accordingly, makes the offences of adulteration of drugs intended for sale<sup>26</sup>, the sale of adulterated drugs,<sup>27</sup> and the sale of a drug as a different drug or preparation<sup>28</sup> punishable with similar sentences.

### **F. Agricultural Produce (Marking and Grading) Act, 1937**

The regulatory measures for standardization and quality control of agricultural commodities are contained in the *Agricultural Produce (Marking and Grading) Act, 1937*, which is the pioneer legislation in the field of quality control and standardization in India.<sup>29</sup> These standards signify an agricultural seal ensuring purity and quality. Section 3 of the Act empowers the Central Government to make rules to carry out the functions of prescribing grade designations. These include

<sup>23</sup> “Final Report on Implementation Arrangements for TBT Agreement in India”, online: (2005) United Nations Conference on Trade and Development (India) <[http://www.unctadindia.org/uploadFile.asp?upFile=Publications\\_TBTIndiaImplementationFinalReportFromCRISI-Dec2005.pdf](http://www.unctadindia.org/uploadFile.asp?upFile=Publications_TBTIndiaImplementationFinalReportFromCRISI-Dec2005.pdf)>.

<sup>24</sup> *BIS Act*, *supra* note 21, s. 33(1).

<sup>25</sup> *Indian Penal Code, 1860*, (India), 1860 [*IPC*].

<sup>26</sup> *Ibid.*, s. 274.

<sup>27</sup> *Ibid.*, s. 275.

<sup>28</sup> *Ibid.*, s. 276.

<sup>29</sup> *Agricultural Produce (Marking and Grading) Act, 1937* (India), 1937.



- (a) fixing grade designation to indicate the quality of any scheduled article,
- (b) defining the quality indicated by every grade designation,
- (c) specifying grade designation marks to represent particular grade designations,<sup>30</sup>

prescribing the manner in which articles could be packed, sealed and marked, authorizing a person or group to use the grade designation mark on prescribed articles,<sup>31</sup> and

- (g) providing for the confiscation and disposal of produce marked otherwise than in accordance with the prescribed conditions with a grade designation mark[.]<sup>32</sup>

Grading under this Act is ordinarily voluntary in nature. The standardization is carried out by the Directorate of Marking and Inspection established for the purpose of this Act. The Act stipulates the conditions which govern the use of standards and lays down the procedure for grading, marking and packing of agricultural produce. The quality mark, provided under the Act, is known as 'AGMARK', an acronym for Agricultural Marketing. The grade standards are based on physical as well as internal attributes of the commodity, such as the weight, colour and the commodity's material contents. The specifications for physical and internal attributes are worked out after analysing samples of each commodity. The views of the representative producers and dealers are also taken into consideration in determining the grade standards. The standards and grade specifications are subject to periodical revision in light of the changing needs and wants of buyers, and new production techniques.

The articles covered under the Act have been specified in the Schedule appended to it.<sup>33</sup> These include fruits, vegetables, eggs, dairy produce and poultry products, food grains, oilseeds, oils and cakes, spices condiments, forest produce, edible nuts, tobacco, tea, honey, wheat, flour, besan, etc. The consumers are directly benefited by the AGMARK scheme since the mark is considered a symbol of purity and quality, making it easier for the consumer to select a product bearing the mark for consumption.

### **G. Drugs and Cosmetics Act, 1940**

Special measures are provided, under the Indian *Drugs and Cosmetics Act, 1940*, for the standardization and quality control for the import, manufacture, distribution, and sale of drugs and cosmetics.<sup>34</sup> Originally, the Act contained solely provisions for drugs. Cosmetics were only brought within the regulatory framework subsequently in 1964.<sup>35</sup> Special provisions have been made for the Ayurvedic, Siddha and Unani systems of

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<sup>30</sup> *Ibid.*, ss. 3(2)(a)-(c).

<sup>31</sup> *Ibid.*, s. 3(2)(d)-(e).

<sup>32</sup> *Ibid.*, s. 3(2)(g).

<sup>33</sup> *Ibid.*, Schedule.

<sup>34</sup> *Drugs and Cosmetics Act, 1940* (India), 1940 [*Drugs and Cosmetics Act*].

<sup>35</sup> *Drugs (Amendment) Act 1962* (India), 1962. The Act came into force on 27 July 1964.

medicines, and these were inserted collectively as Chapter IV-A of the *Drugs and Cosmetics Act*. The provisions are, in many ways, similar to those for other drugs.

The objective of the Act is to prevent the supply of sub-standard drugs and cosmetics so as to maintain high standards of medical and health care.

It lays down the standards of quality for drugs and cosmetics which can be imported, manufactured, sold, and distributed in India. For example, according to the Act, no person is allowed to manufacture, sell, stock or exhibit or offer for sale or distribute

- (i) any drug which is not of a standard quality, or is misbranded, adulterated or spurious;
- (ii) any cosmetic which is not of a standard quality or is misbranded or spurious;
- (iii) any patent or proprietary medicine, unless there is displayed in the prescribed manner on the label or container thereof the true formula or list of active ingredients contained in it together with the quantities thereof;<sup>36</sup>

any drug claiming magical effect; and any unsafe or hazardous cosmetics.<sup>37</sup>

Furthermore, drugs must comply with the standards set out in the Second Schedule of the Act, and cosmetics must comply with the standards prescribed by the Government.<sup>38</sup>

Severe penalties are imposed for offences under the Act. Failure to comply with the standards set out by the Act, such as through the manufacturing, sale or distribution of sub-standard, adulterated and spurious drugs and cosmetics, and the manufacture, sale or distribution of drugs and cosmetics without a licence, are punishable with imprisonment ranging from a minimum of one year to a maximum of a life term, besides a fine.<sup>39</sup>

## H. Prevention of Food Adulteration Act, 1954

Food is one of the essentials of life. One would expect it to be pure, nutritious and free from any type of adulteration for the proper maintenance of human health. It is thus the duty of every government, India included, to make pure food available to its countrymen in sufficient quantities.<sup>40</sup> However, adulteration of foodstuff in India was so rampant and persistent that a somewhat drastic remedy in the form of a comprehensive legislation became the need of the hour.

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<sup>36</sup> *Ibid.*, ss. 18(a)(i)-(iii).

<sup>37</sup> *Ibid.*, s. 18(a)(iv)-(v).

<sup>38</sup> *Ibid.*, ss. 10-10A.

<sup>39</sup> *Ibid.*, ss. 27-31.

<sup>40</sup> *Indian Constitution*, *supra* note 7, art. 47.

In response to this, the Government of India passed the *Prevention of Food Adulteration Act, 1954*.<sup>41</sup> This piece of legislation came into force on June 1, 1955. To give effect to the provisions of the Act, the *Prevention of Food Adulteration Rules, 1955* were introduced and came into force on December 1, 1956.<sup>42</sup> Although the Act and *Rules* were enacted by the Central Legislature, the responsibility of implementation was entrusted to the State Governments and Union Territories. Each State Government and Union Territory has thus created its own organisation for implementation of the Act and *Rules* framed thereunder.

### I. Food Safety and Standards Act, 2006 (FSSA)<sup>43</sup>

To strengthen food safety and standards, the Parliament passed new legislation in 2006 called the *Food Safety and Standards Act (FSSA)*.<sup>44</sup> The *FSSA* ameliorated the confusion caused among consumers by the enactment of too many food-related legislations. This was done by the *FSSA*'s consolidation of the laws relating to food and its establishment of the Food Safety and Standards Authority of India. The Authority laid down scientific standards for food articles and regulated their manufacture, storage, distribution, sale and import, ensuring the availability of safe and wholesome food for human consumption and for matters connected therewith or incidental thereto. The Bill which culminated in the *FSSA* was drafted parallel to the *Food Safety Act, 1990* and *Food Standards Act, 1999* of the United Kingdom with changes made to suit Indian conditions.<sup>45</sup>

Following the enactment of the *FSSA*, the following legislation and orders were repealed, namely the *Prevention of Food Adulteration Act, 1954*<sup>46</sup>; *Fruit Products Order, 1955*<sup>47</sup>; *Meat Food Products Order, 1973*<sup>48</sup>; *Vegetable Oil Products (Regulation) Order, 1947*<sup>49</sup>; *Edible Oils Packaging (Regulation) Order, 1998*<sup>50</sup>; *Solvent Extracted Oil, De-Oiled Meal, and Edible Flour (Control) Order, 1967*<sup>51</sup>; *Milk and Milk Products Order, 1992*<sup>52</sup>; and all other orders issued under the *Essential Commodities Act, 1955*<sup>53</sup> relating to goods.<sup>54</sup>

#### (i) Special Responsibilities of the Food Business Operators

<sup>41</sup> *Prevention of Food Adulteration Act, 1954* (India), 1954 as rep. by *Food Safety and Standards Act, 2006* (India), 2006.

<sup>42</sup> *Prevention of Food Adulteration Rules, 1955* (India), 1955 [*Rules*].

<sup>43</sup> *Food Safety and Standards Act, 2006* (India), 2006 [*FSSA*].

<sup>44</sup> *Ibid.*

<sup>45</sup> *Food Safety Act 1990* (U.K.), 1990, c. 16; *Food Standards Act 1999* (U.K.), 1999, c. 28.

<sup>46</sup> *Supra* note 41.

<sup>47</sup> *Fruit Products Order 1955* (India), S.R. & O. 1955/ 1052.

<sup>48</sup> *Meat Food Products Order 1973* (India), S.O. 1973/ 176(E).

<sup>49</sup> *Vegetable Oil Products (Regulation) Order 1998* (India), G.S.R. 1998/741(E).

<sup>50</sup> *Edible Oils Packaging (Regulation) Order 1998* (India), G.O.Ms. 1998/271.

<sup>51</sup> *Solvent-Extracted Oil, De-Oiled Meal, and Edible Flour (Control) Order 1967* (India), G.S.R. 1967/ 410.

<sup>52</sup> *Milk and Milk Products Order 1992* (India) S.O. 1992/405(E). This has since been renamed as the *Milk & Milk Product Regulations 2009*.

<sup>53</sup> *Essential Commodities Act 1955* (India), 1955.

<sup>54</sup> *FSSA*, *supra* note 43, s. 97 and the Second Schedule.

The responsibilities of the food business operator are discussed in section 26. This section states that

- (1) Every food business operator shall ensure that the articles of food satisfy the requirements of [the] Act and the rules and regulations made thereunder at all stages of production, processing, import, distribution and sale within the business under his control.
- (2) No food business operator shall himself or by any person on his behalf manufacture, store, sell or distribute any article of food –
  - (i) which is unsafe; or
  - (ii) which is misbranded or sub-standard or contains extraneous matter; or
  - (iii) for which a licence is required, except in accordance with the conditions of the licence; or
  - (iv) which is for the time being prohibited by the Food Authority or the Central Government or the State Government in the interest of public health; or
  - (v) in contravention of any other provision of [the] Act or of any rule or regulation made thereunder.
- (3) No food business operator shall employ any person who is suffering from infectious, contagious or loathsome disease.
- (4) No food business operator shall sell or offer for sale any article of food to any vendor unless he also give a guarantee in writing in the form specified by regulations about the nature and quality of such article to the vendor;

Provided that a bill, cash memo, or invoice in respect of the sale of any article of food given by a food business operator to the vendor shall be deemed to be a guarantee under this section, even if a guarantee in the specified form is not included in the bill, cash memo or invoice.

- (5) Where any food which is unsafe is part of a batch, lot or consignment of food of the same class or description, it shall be presumed that all the food in that batch, lot or consignment is also unsafe, unless following a detailed assessment within a specified time, it is found that there is no evidence that the rest of the batch, lot or consignment is unsafe;

Provided that any conformity of a food with specific provisions applicable to that food shall be without prejudice to the competent authorities taking appropriate measures to impose restrictions on that food being placed on the market or to require its withdrawal from the market for the reasons to be recorded in writing where such authorities suspect that, despite the conformity, the food is unsafe.<sup>55</sup>

*(ii) Liability of the Manufacturers, Distributors and Sellers*

Then the liability of the manufacturers, distributors and sellers is dealt in section 27 of the Act. It states as follows –

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<sup>55</sup> *Ibid.*, s. 26.

- (1) The manufacturer [...] of an article of food shall be liable for such article of food if it does not meet the requirements of [the] Act and the rules and regulations made thereunder.
- (2) The [...] distributor shall be liable under [the] Act for any article of food which is–
  - (a) supplied after the date of its expiry; or
  - (b) stored or supplied in violation of the safety instructions of the manufacturer; or
  - (c) unsafe or misbranded; or
  - (d) unidentifiable of manufacturer from whom the article of food have been received; or
  - (e) stored or handled or kept in violation of the provisions of [the] Act, the rules and regulations made thereunder.
  - (f) received by him with knowledge of being unsafe.
- (3) The seller shall be liable under [the] Act for any article of food which is –
  - (a) sold after the date of its expiry; or
  - (b) handled or kept in unhygienic conditions; or
  - (c) misbranded; or
  - (d) unidentifiable of the manufacturer or the distributor from whom such articles of food were received; or
  - (e) received by him with knowledge of being unsafe.<sup>56</sup>

*(iii) Food Recall Procedures*

Food recall procedures are discussed in section 28 of the Act. It states as follows –

- (1) If a food business operator considers or has reasons to believe that a food which he has processed, manufactured or distributed is not in compliance with [the] Act, or the rules and regulations made thereunder, he shall immediately initiate procedures to withdraw the food in question from the market and consumers indicating reasons for its withdrawal and inform the competent authorities thereof.
- (2) A food business operator shall immediately inform the competent authorities and co-operate with them, if he considers or has reasons to believe that a food which he has placed on the market may be unsafe for the consumers.
- (3) The food business operator shall inform the competent authorities of the action taken to prevent risks to the consumer and shall not prevent or discourage any person from co-operating, in accordance with this Act, with the competent authorities, where this may prevent, reduce or eliminate a risk arising from a food.
- (4) Every food business operator shall follow such conditions and guidelines relating to food recall procedures as the Food Authority may specify by regulations.<sup>57</sup>

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<sup>56</sup> *Ibid.*, s. 27.

*(iv) Offences and Penalties*

Different types of offences and stringent punishments are prescribed to reduce the offences under this Act. Sections 48 to 67 of the Act deal with offences and penalties. Sections 48 and 49 of the Act deal respectively with the general provisions relating to offences and penalties, while the remaining provisions deal with specific penalties and punishments.

### **J. Standards of Weights and Measures Act, 1976**

The *Standards of Weights and Measures Act, 1976* prescribes specifications for measuring instruments used in commercial transaction, industrial productions and measurements involving in public health and human safety, and basically regulates all businesses related to weights and measures.<sup>58</sup> Some examples include inter-state trade and commerce in weights and measures; commodities sold, distributed or supplied by weights and measures; pre-packed commodities sold or intended to be sold in the course of inter-state commerce; and controls and regulates the export and import of commodities in packaged form. It also governs the approval of weights and measures intended to be manufactured following the commencement of the Act. The Act further charges the Central Government to survey and collect statistics to ascertain the extent

to which any standard of weight, measure or numeration established by or under [the] Act has been implemented in any area or in relation to any class of undertakings, users or goods<sup>59</sup>

to facilitate the planning and enforcement of it, and to serve as a standard for inspecting weights and measuring instruments during their use to prevent fraudulent practices and ensure consumer protection.

### **K. Consumer Protection Act, 1986 (CPA)**

The main object of the *Consumer Protection Act, 1986*, *Consumer Protection Rules, 1987*, and the *Consumer Protection Regulations, 2005* is the promotion of the basic rights of consumers, namely the right to safety, the right to be informed of quality, potency and purity of products, the right to have access to a variety of goods of competitive prices, the right to redress grievances and the right to consumer education. The essential feature of the Act is its provision of procedures and fora for the resolution of consumer disputes. The CPA has thus been amended three times in the years 1991, 1993 and 2002 to achieve this objective by plugging the gaps. The CPA is a marked improvement from the existing laws for consumer protection as it is compensatory in nature, and its remedies are in addition to and not in derogation of the provisions of any other law for the time being in force. The remedies available to a consumer under the Act constitute an additional dispensation.<sup>60</sup> This improves the previously existing laws system whereby remedies under them are

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<sup>57</sup> *Ibid.*, s. 28.

<sup>58</sup> *Standards of Weights and Measures Act, 1976* (India), 1976.

<sup>59</sup> *Ibid.*, s. 78.

<sup>60</sup> CPA, *supra* note 20, s. 2(1)(d).

basically punitive or preventive in nature and are designed to provide relief only in specific situations.

Since the *CPA* does not derogate from existing laws and is supplementary in nature, its provisions do not debar a consumer from going to a civil court to seek compensation for loss or damage caused to him by a defect in the goods purchased by him. Therefore, a consumer may initiate proceedings in a civil court under the law of contract, sale of goods, law of torts, or any other existing law depending on the circumstances. The *CPA* merely provides a separate enforcement machinery and redressal forum with the aim of giving consumers a simple and expeditious solution to consumer problems. The Act has established a hierarchy of special courts known as ‘Consumer Redressal Forums’ for deciding consumer disputes at three levels *viz.* ‘District Forum’ at the lower level<sup>61</sup> (up to 20 lakhs)<sup>62</sup>, ‘State Commission’ at state level<sup>63</sup> (more than 20 lakhs to 1 crore)<sup>64</sup> and the ‘National Commission’ at national level<sup>65</sup> (more than 1 crore)<sup>66</sup>.

Under this Act, the Consumer Dispute Redressal Agencies are given authority to provide relief to consumers who suffer losses due to defective products. The complaint can be made in relation to those goods<sup>67</sup> which suffer from one or more defects<sup>68</sup>; or when goods which will be hazardous to life and safety when used are being offered for sale to the public in contravention of any standards relating to safety of such goods as required to be complied with, by or under any law for the time being in force; or if the trader could have known with due diligence that the goods so offered are unsafe to the public.<sup>69</sup> The *CPA* also prohibits “unfair trade practice[s]”.<sup>70</sup> If there exists the trade

practice[s] of making any statement, whether orally or in writing or by visible representation which, –

- (i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model<sup>71</sup>; [...]
- (ii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods<sup>72</sup> [...or the trade practices involve the]
- (6) manufacture of spurious goods or offering such goods for sale or adopts deceptive practices in the provision of services<sup>73</sup>

they will be considered as unfair trade practices.

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<sup>61</sup> *Ibid.*, s. 10.

<sup>62</sup> *Ibid.*, s. 11(1).

<sup>63</sup> *Ibid.*, s. 16.

<sup>64</sup> *Ibid.*, s. 17(1)(a)(i).

<sup>65</sup> *Ibid.*, s. 20.

<sup>66</sup> *Ibid.*, s. 21(a)(i).

<sup>67</sup> *Ibid.*, s. 2(1)(i).

<sup>68</sup> *Ibid.*, s. 2(1)(c)(ii).

<sup>69</sup> *Ibid.*, s. 2(1)(c)(iii).

<sup>70</sup> *Ibid.*, s. 2(1)(r).

<sup>71</sup> *Ibid.*, s. 2(1)(r)(1)(i).

<sup>72</sup> *Ibid.*, s. 2(1)(r)(1)(iii).

<sup>73</sup> *Ibid.*, s. 2(1)(r)(6).

It is the duty of the Central Consumer Protection Council

to promote and protect the rights of the consumer such as, –

- a. the right to be protected against the marketing of goods and services which are hazardous to life and property;<sup>74</sup>
- b. the right to be informed about the quality, quantity, potency, purity, standard and price of goods [or services, as the case may be,] so as to protect the consumer against unfair trade practices.<sup>75</sup>

The CPA deals with the twin concepts of defect in goods and deficiency in services and provides for a comprehensive definition of consumer in section 2(1)(d) in relation to goods and services. The consumer is a person who buys any goods or hires or avails of any services for consideration.<sup>76</sup> The user of such goods, with the approval of the buyer, and any beneficiary of such services with the approval of the hirer, have also been included within the ambit of the concept of consumer, enlarging its scope to a great extent.<sup>77</sup> The consideration for goods or services can either be paid or promised or partly promised or covered under any system of deferred payment.<sup>78</sup> However, a person who, in the case of goods, obtains the goods for resale or for any commercial purpose or who, in case of services, avails of such services, for any commercial purpose is excluded from the definition of consumer. The explanation further states that the expression ‘commercial purpose’ does not include use by a buyer of such goods or hirer of services, exclusively for the purpose of earning his livelihood by means of self employment.<sup>79</sup>

Under section 2(1)(f), “defect” in goods means

any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or [under any contract, express or implied, or] as is claimed by the trader in any manner whatsoever in relation to any goods.

The expression ‘service’ has been defined in the Act in section 2(1)(o). ‘Service’ refers to any service of any description which is made available to potential users and includes, but is not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.<sup>80</sup> The deficiency in service is one of the grounds for filing a complaint under the Act. Presently, the majority of complaints before the adjudicatory bodies provided for in the Act relate to the deficiency in service of various service providers. The term ‘deficiency’ has also been defined in section 2(1)(g) of the Act. It means

any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under

<sup>74</sup> *Ibid.*, s. 6(a).

<sup>75</sup> *Ibid.*, s. 6(b).

<sup>76</sup> *Ibid.*, s. 2(1)(d)(ii).

<sup>77</sup> *Ibid.*, s. 2(1)(d)(i).

<sup>78</sup> *Ibid.*

<sup>79</sup> *Ibid.*, footnote 1 of s. 2(1)(d).

<sup>80</sup> *Ibid.*, s. 2(1)(o).



any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

The Consumer Forums have proven to be very effective. As of 06-09-2010, the details regarding the total number of consumer complaints filed/disposed under the CPA are as follows:

Sl. No.	Name of Agency	Cases Filed Since Inception	Cases Disposed of Since Inception	Cases Pending	% of Total Disposal
1	<b>National Commission (1)</b>	<b>65,849</b>	<b>57,626</b>	<b>8,223</b>	<b>87.51%</b>
2	State Commissions (34)	515,527	407,143	108,384	78.98%
3	District Forums (587)	2,875,132	2,622,983	252,149	91.23%
	<b>TOTAL</b>	<b>3,456,508</b>	<b>3,087,752</b>	<b>368,756</b>	<b>89.33</b>

*Diagram 1: Total Number of Consumer Complaints Filed/Disposed since Inception Under the Consumer Protection Act, 1986 (1987 to the time of latest update on 06-09-2010)<sup>81</sup>*

### III. CONCLUSION

Product safety standards play an important role in our daily lives. As standards are developed in response to our needs, it is difficult to imagine modern life without them. In one way or another, standards make life easier, safer and more comfortable.

It is a known fact that without the People's active participation, the Government, as a lone body, cannot protect consumers from defective products. There are plenty of laws to take care of consumers and their numbers are constantly increasing. However, it leaves much to be said that their effectiveness has to rely upon the alertness of consumers, and the sincerity of the authorities in their implementation.

<sup>81</sup> NCDRC, *Total Number of Consumer Complaints Filed / Disposed since inception Under Consumer Protection Law*, online: National Consumer Disputes Redressal Commission <<http://www.ncdrc.nic.in/statistics.html>>.