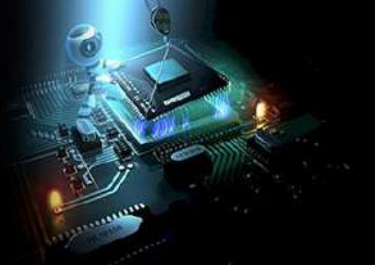


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A critical study of product liability and analysis with special reference to India

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Abstract

Consumers have legal redress for any harm brought on by a faulty product under product liability law. According to estimates, faulty items have a detrimental impact on millions of individuals throughout the world, and the sellers or producers wind up shelling out a sizable sum for products-liability insurance as well as damages. A product must satisfy a consumer's reasonable expectations, thus it is the duty of the producers and the buyers to guarantee the product's safety and quality in accordance with its description. A modest way of life and locally produced goods meant that anybody who experienced harm from a faulty product could deal with the maker directly without the need for legal action or government regulation. However, owing to the growth in problems emerging from faulty goods, changes in the instruments of production and consumption, such as the industrial revolution and technical advancements, among others, have led to the establishment of products-liability law. To safeguard the rights of its customers and the general public at large, India is recognising and realising the need of developing and implementing a strong product liability framework. In specifically, the article addresses the importance of product liability and professional indemnity insurance plans in India as well as some significant developments and their impact on liability insurance. The Act's whole chapter devoted to product liability provides insight into the anticipated effect on liability insurance.

Keywords: Product liability, analysis of products, sellers, manufacturers, and products in India

Introduction

The new Consumer Protection Act 2019 (CPA 2019) has included a new chapter on product liability that went into force on July 20, 2020, although India does not have a comprehensive legislation on product responsibility ^[1, 2]. According to the Consumer Protection Act of 1986, "defect" is defined as "any fault, imperfection, or shortfalls in the quality, quantity, potency, purity, or requirement that is mandated to be maintained by or according to any law for the time being in force or under any contract, express or implied, or as is claimed by any person" when referring to goods that are dangerous to life and safety (in violation of any standards imposed by law) or otherwise defective ^[1].

According to the definition in the CPA 2019, all three parties are now accountable under section 83 "for any injury caused by a faulty product created by a product manufacturer, maintained by a product service provider, or sold by a product seller." By expanding the number of reasons of action listed under what constitutes a complaint, the CPA 2019 aims to change ^[2] the law ^[3] in favour of consumers ^[3, 4]. It expands the definition of "buy" to encompass online transactions and introduces "a claim for Product Liability action against the product producers, product seller, or product service provider." The first definition of consumer rights includes the protection against "marketing of goods, products or services which are hazardous to life and property" as well as the right to "information about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, in order to protect the consumer against unfair trade practises." Interestingly, the CPA 2019 expands the scope for action against not only the manufacturer, seller, trader, and service provider, but also against the person endorsing the relevant goods (such as an actor or well-known personality known as the "endorser"). This liability is imposed upon individuals who endorse an advertisement "which makes the consumer to believe that it reflects the opinion, finding, or experience of the person making such endorsement." Damage to any property other than the product itself is included in the new definition of "harm" in regard to product liability. Therefore, damage is defined to encompass any loss of consortium, services, or other loss arising from the aforementioned. It also includes personal injury, disease, or death.

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Injury has been clearly defined to encompass "any injury whatsoever unlawfully committed to any person, in body, mind, or property" (unlike the Warsaw/Hague/Montreal Convention in Civil Aviation). Product liability is also broadly defined in the CPA 2019 to encompass a manufacturer's or seller's obligation to make up for any damage done to a customer by a faulty product they made or sold, or by any services they provided in connection with it. The terms "product seller," "product maker," and "product service provider" have broad definitions that include all parties involved in the selling process. The Central Consumer Protection Authority has been established and given the authority to promote, safeguard, and uphold the rights of all consumers [5]. The CPA 2019 also includes the first legal provision for the mandatory recall of products or services that are hazardous, unsafe, or dangerously dangerous, as well as for the compensation of the cost of such things. Exists a consumer protection law that offers remedies, imposes obligations, or has any other implications for parties pursuing product liability claims?

Refund the purchase price or other consideration to the consumer who filed the complaint; Pay the consumer any amount that may be awarded as compensation for any loss or injury the consumer suffered due to the negligence of the other party, and in a proper case, award punitive damages; Cease or refrain from engaging in the unfair trade practise or restrictive trade practice in question.

The Consumer Protection Act of 2019 (CPA) makes provision that impose new statutory obligations and has been created to allow claims against services, products, or things that might endanger life or security when it is used or made accessible for sale to the general public, as well as claims against fraudulent or deceptive advertising. Any faults, flaws, or shortcomings in excellence, volume, effectiveness, clarity, or requirements that must be maintained during the statute's relevant time, as well as any declared or implied contract, are covered by the CPA 2019's general requirements. In the case of defective goods or products, the CPA 2019 grants complete authority to the districts commissioner, state commissions, and NCDRC to give any of the following remedies, depending on the requested amount.

Principles and theories of product liability law

Only with introduction of global supply chain operations, the growth of international trade, and the quick rise of e-commerce, the modern consumer market has undergone a significant transformation, providing consumers with not only a plethora of products and services, and also new delivery methods, options, and possibilities. It has also opened up new opportunities for dishonest businesses to trick customers into buying items with false or misleading claims. There must be strict laws in place to govern businesses and safeguard customers [6].

Several Indian statutes are largely responsible for safeguarding consumers' rights in the country

- Consumer Protection Act, 2019 (Consumer Protection Act)
- Consumer Protection (E-Commerce) Rules, 2020
- Consumer Protection (Mediation) Regulations, 2020
- The Consumer Protection (Consumer Dispute Redressal Commissions) Rules, 2020
- The Consumer Protection (General) Rules, 2020 [6]

To further safeguard consumers, many more rules and regulations have been passed, particularly in the areas of food, pharmaceuticals, and cosmetics.

A. Principles of product liability law

The principle of caveat venditor, or "let the seller beware," which places responsibility for any problems a consumer may experience on the seller, is the genesis of product liability law. The term "product liability" refers to the legal obligation of a business to pay victims of harm caused by its faulty products. As a result of product-liability cases, general principles of contract law and tort law have evolved, with the doctrine of "warranty" providing the foundation for product liability in contract law and the doctrines of "carelessness" and "limitation of liability" providing the foundation for product liability in tort law.

B. Theories of product liability law

In the early days of product liability law, courts would award remedies for a breach of guarantee based on contract law grounds. It is the representation of the type or quality of the commodities upon which a purchase is made, and it may be either implicit or stated. As a consequence, a customer may take legal action for product responsibility if the purchased product is defective or otherwise fails to meet the guarantee's description or standard. However, the line here between warranty and mere trade-talk is often difficult to delineate; for instance, a salesperson's claims that a defective car is "in A-1 shape" and "mechanically perfect" could be interpreted as an express warranty, while a salesperson's claims that a defective bull would "put the buyer on the map" and that "his father was the world's greatest dairy bull" could be interpreted as mere trade-talk. Furthermore, the idea of privity of contract is sometimes applied to the principle of warranty, which provides that a person who has been harmed may only sue a negligent person if the negligent person was a participant to the transactions with the harmed person. Rather of relying on the inadequate safeguards provided by contract law, courts have increasingly turned to tort law doctrines of negligence and strict responsibility in product liability claims. Defective designs, inadequate warnings, and lack of privity are common scenarios where negligence may be used successfully. Those in the selling profession who don't take reasonable precautions risk being sued for carelessness. However, several alternative defences exist that might poke holes in a negligence claim, such as proximate causation, contributory negligence, later changing of goods, abuse of product, and acceptance of risk by the plaintiff. After finding that arguments based on implied guarantee and negligence were unpersuasive, the courts established the strict responsibility concept, which holds the seller responsible for any property damage or injuries caused by a product that is unreasonably faulty or hazardous. It would be incorrect, however, to suggest that this concept is absolute, since there may be limitations on recovery or exclusions of economic damage, or product liability disclaimers. In India, the term "product liability" refers to the "responsibility of a product manufacturer or product seller, of the any product or service, to recompense for any damage done by a customer by such faulty product manufactured or sold or by deficiency in services relating thereto," as stated in the recently enacted Consumer Protection Act, 2019 (CPA 2019). No prior law has

provided a definition for the word in question. As part of the broader rule of law, product liability is governed by a number of statutes as well as other general and industry-specific legislation. Depending on the specific industry and circumstances, there may be occasions when two or more laws or rules overlap^[7].

C. Developments in India's Product Liability Law

Constant reinterpretation and adjustment have resulted in India's product liability laws being a major pillar of the country's social framework for consumer protection. Although product liability law in India was originally designed to protect consumers, its wide interpretation has rendered the law mostly ineffective. However, due to the courts' pro-consumer posture, there has been a shift in the trend lately. Damages and compensation awarded by Indian courts lately have been more punitive than monetary. Established in its current form in 2002, ICPEN today counts 64 national consumer protection agencies as members and 6 as observers. India joined in 2019. (COMESA, EU, GPEN, FIAGC, OECD and UNCTAD). This framework somehow doesn't regulate financial products or product safety, but it does address coordination and cooperation on enforcement problems related to consumer protection, distribute data on security trends, and exchange best practises on consumer protection legislation. By using the resources provided by econsumer.gov The Federal Trade Commission (FTC) and the International Consortium to Protect Electronic Commerce (ICPEN) have joined forces to combat global online fraud. Footnote4 Econsumer.gov is an international organization comprised of consumer protection authorities from 41 different nations^[8, 9].

Lottery, sweepstake, and prize scams are commonplace, as are imposters posing as loved ones, government officials, business partners, or romantic interests while trying to get you to send money or provide personal information^[7].

In addition to: phones, mobile devices, and phone services anything else, regarding.

Identity and financial data are prime targets for cybercriminals. Fraudsters who prey on people who make purchases or make transactions via the internet are a major source of stress in the online trading industry^[10].

D. Discussion

Product liability actions under the CPA 2019 may be filed against any (or all, depending on the nature of the complaint) of something like the following parties:

- Product manufacturer
- Product service provider
- Product seller

In recent years, India has strengthened its product liability system and seen increased interest from the country's exporting community in product liability insurance and other forms of insurance.

Products that do not conform to an express warranty, regardless of whether the manufacturer was negligent in trying to make such express warranty, products that do not contain instructions of proper terminology to prevent any harm, and products that fail to contain any warning regarding impending danger all make the Product Manufacturer liable in a product liability action. If the service given was defective, imperfect, deficient, or insufficient in quality, character, or mode of performance,

which is required under any law or according to any contract, then the Product Service Provider would be held accountable in a product liability lawsuit.

Ii. Damage was brought about by someone's omission, action, carelessness, or willful concealment of relevant facts.

The service did not meet the requirements of the contract or the provisions of the explicit guarantee; iii. Adequate instructions or warnings were not provided to avoid injury; Product sellers (as opposed to manufacturers) may be held liable in a product liability action if either I they had significant input into the product's development, testing, production, packaging, or labelling that resulted in injury, or (ii) they made material changes to the product that contributed significantly to that injury. The product has been decided to sell by the product seller and the identity of the manufacturer of such product is unknown, or service of notification or process or warrant could be effected on the product manufacturer, or the product manufacturer is not subject to the law.

E. Remedies for Consumers

A person is considered to be a Consumer if they purchase any goods or avail themselves of any services for a consideration that has been paid or promise to pay, or partly paid or system of deferred payment, or under any scheme of deferred payment. This definition comes from the Consumer Protection Act 2019, which was passed in 2019. A person is considered a consumer if they are utilizing the products or are the beneficiary of the service with the consent of the buyer. This definition applies to transactions that take place both online and offline using electronic methods such as teleshopping, direct selling, or multilevel marketing. It is vital to defend these customers and their interests from the malpractices or unfair trade practises of enterprises, which gives rise to the concept of consumer protection. Consumer protection is short for "consumer safety." The Consumer Protection Act is a piece of legislation that prevents corporations from engaging in unethical, exploitative, or unfair commercial practices. As a result, it affords customers the protection they need from these types of activities (including manufacturers and service providers). If a product has a flaw for which it cannot be used or which causes harm to the customer, the consumer has the right to seek compensation from the seller of the product, the manufacturer of the product, or the provider of the service that is associated with the product.

Consumers are granted a variety of rights, reliefs, and remedies in order to shield them from the potentially harmful effects of unfair commercial practices carried out by merchants. Consumers who have submitted complaints may be eligible for various reliefs and remedies.

- A customer has the right to have the problems with the service fixed at no cost to them.
- They have the option of having the faulty product exchanged for a brand-new, error-free version of the same item.
- The customers also have the option of requesting a refund of the amount previously paid for the goods or the fees associated with the provision of the service.
- Relief is also available to consumers in the form of the removal or withdrawal of potentially harmful items from the market.
- If the consumer has a loss or harm as a result of the

carelessness of the other party, then he or she will be relieved to know that they are eligible to get a reasonable amount of compensation for their troubles.

- The cessation of trade practices that are unjust or restrictive and the reduction of the likelihood that these practices will be used again in the future
 - A customer can have some peace of mind by demanding that the maker of hazardous items stop making those things and demanding that service providers stop providing hazardous services
 - To provide an additional financial compensation payment to the customer as a form of reparation for the harm that was caused to them by the other party. It is also referred to as the payment of punitive damages in instances where it is warranted.
 - To compensate the party that was wronged with an appropriate amount of money.
 - To put an end to the practice of false advertising that is being perpetuated by both manufacturers and advertisers.
 - The District Commission, the State Commission, and the National Commission all have the authority to declare a contract null and invalid if they determine that it was entered into in an unfair manner.
 - To put an end to the practice of selling potentially dangerous items.
 - To recompense the customer for any injuries or losses they may have had as a result of a product liability lawsuit; and to put a stop to the sale of dangerous items by retailers, wholesalers, manufacturers, and anyone else involved in the supply chain.
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F. Conclusion & Future Work

This research examines the present Indian legislative framework that safeguards the rights of online consumers in light of the fact that the fast expansion and developing trend of e-commerce have altered consumers' attitudes toward online purchasing. Important takeaways include the recognition that e-businesses need a trustworthy system to function, the prominence of cash-on-delivery as a payment method for online purchases, and the importance of thorough website content and efficient customer care services in gaining customers' confidence. The new rules have the potential to protect and preserve the rights of online customers while also fostering the development of the e-commerce industry in India. Customers' faith in online businesses is affected by more than just the usual suspects like safety, privacy, guarantees, support, and transparency.

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