

PRODUCT LIABILITY AND CONSUMER PROTECTION ACT 2019

*By Kashvi Dalal**

ABSTRACT

It is estimated that millions of individuals globally are negatively impacted by such products, leading to substantial financial compensation paid by manufacturers or sellers in the form of product liability insurance and damages. This phenomenon is underpinned by a common-law principle known as "caveat venditor," or "let the seller beware," which places the onus of responsibility on the seller regarding the consumer's issues with the product. Product liability delineates the responsibilities of producers to compensate for injuries caused by defective items sold for consumer use. The principle of product liability allows consumers to seek legal remedies for injuries caused by faulty products, highlighting the idea of caveat venditor (let the seller beware). The Consumer Protection Act of 2019 represents a major legislative improvement in India, creating a clear framework for product liability and consumer rights. This Act builds on the earlier 1986 law by adding important elements such as accountability for defective products, unfair contracts, mediation processes, and the creation of the Central Consumer Protection Authority. The research indicates a transition from caveat emptor to caveat venditor, increasing the responsibility of manufacturers and sellers. It also explores the development of product liability in India in relation to international legal trends. Although the Act is comprehensive, there are still challenges in its enforcement and interpretation in courts due to its recent implementation. The paper concludes that the 2019 Act enhances consumer rights, aligns Indian legislation with global practices, and creates a more equitable system for resolving product-related issues.

Keywords- Consumer Protection, Product Liability, *caveat venditor* etc.

* I Year B.B.A.LL.B(Hons.), National Forensic Sciences University, Delhi Campus, India. Email: kashvi.dalal13@gmail.com.

I. INTRODUCTION

The Indian government has recently enacted the Consumer Protection Act, which supersedes and repeals the Consumer Protection Act of 1986. The evolution of consumer protection legislation in India commenced with the introduction of the original Consumer Protection Act in 1986. The Consumer Protection Act of 2019 does not explicitly address any theory of product liability. In the absence of specific statutory provisions, courts rely on constitutional and common law principles of justice, equity, and good conscience. The emergence of new technologies and advancements in e-commerce has facilitated cross-border trade, thereby offering consumers a wider array of choices and more affordable products delivered to their homes. However, these developments have also presented consumers with various challenges, one of which is the prevalence of products manufactured with substandard safety and quality measures.

Consumer protection encompasses both social and economic initiatives, necessitating that governments and businesses ensure consumer satisfaction with goods and services. Historically, even prior to India's independence, consumer protection was a responsibility of the ruling authorities. The enactment of the Consumer Protection Act of 2019 has significantly enhanced the level of consumer protection. This legislation not only amends provisions from the previous Act of 1986 but also introduces several transformative features, such as the concept of "unfair contracts," mediation as a method for resolving consumer disputes, the establishment of a central regulatory body known as the Central Protection Agency, which possesses investigative powers and the authority to issue cease-and-desist orders, as well as a new framework addressing offences and penalties. Legal actions related to product liability often culminate in the establishment of various doctrines within contract and tort law, including the concepts of 'warranty' in contract law and 'negligence' and 'strict liability' in tort law.

Consequently, this situation has generated new surveillance and enforcement difficulties for national authorities, complicating the identification of accountability as products traverse international borders. To address these escalating issues, Chapter VI of the Consumer Protection Act of 2019 introduces the concept of 'product liability' within Indian consumer law for the first time. Product liability refers to the responsibility of manufacturers, sellers, or service providers for any harm inflicted upon consumers by defective products or inadequate

services. In such cases, consumers are required to demonstrate that their injuries resulted from the defective product.

The concept of negligence and strict liability has been formalised further by a number a case from the famous English case of *Winterbottom v. Wright (1842)*¹ to the case of *Mac Pherson v. Buik Motor Co, 1916*² where the courts first acknowledged the concept of product liability in the US. This was followed by *Greenman v. Yuba Power Products, Inc of 1963*, wherein the Supreme Court of California State formulated and adopted the doctrine of strict liability in tort for defective products.³ Later the liability was extended to all parties including the retailer of the products⁴ and the protective umbrella of this doctrine was extended to benefit even innocent bystanders randomly injured by the defective products as well.⁵

When we look at the Indian legal system, product liability related claims were addressed by a collection of supplementary statutes and laws such as the Sale of Goods Act, Prevention of Food Adulteration Act, Weight and Measurements Act, Law of Torts, Indian Penal Code, etc. These statutes were at the disposal of consumers who fell victim of defective or hazardous goods, over pricing, under weighing, perennial shortage due to hoarding, and adulteration of the goods; gross deficiencies in various kinds of services like banking, housing, insurance, communication, transportation and especially the medical services.⁶

II. PRODUCT LIABILITY: DEFINITIONS

A. Product:

What categories of products are encompassed by the 2019 Act? This inquiry represents a fundamental aspect that necessitates examination, as the applicability of the 2019 Act is contingent upon the interpretation of the term "product." To initiate a discussion on product liability as delineated in the 2019 Act, it is essential to define the term "product."

According to the 2019 Act, a product is defined as any article, goods, substance, or raw material, including any extended cycle of such items, which may exist in gaseous, liquid,

¹ Winterbottom v Wright (1842) 10 M&W 109

² MacPherson v Buick Motor Co. 217 N.Y. 382, 111 N.E. 1050 (1916)

³ Ashutosh Panchbhai, 'Product Liability Law In India-A Critique' Journal of Positive School Psychology (2022), Vol. 6, No. 4, 561-567

⁴ Vandermark v Ford Motor Co 37 Cal. Rptr. 896

⁵ Elmore v. American Motors Corporation 75 Cal. Rptr. 652

⁶ Prasad A. R, 'Historical Evolution of Consumer Protection and Law in India', 11(3) JTCL132, 136 (2008)

or solid states and possesses intrinsic value. This definition encompasses products that can be delivered either as fully assembled items or as component parts, and which are produced for the purpose of being introduced into trade or commerce. However, it explicitly excludes human tissues, blood, blood products, and organs.

From this definition, it is evident that the term "product" is broader than "goods," as it also includes items intended for commercial use, such as raw materials or intermediate products. Notably, human body components are not included within this definition.

B. . Product Liability:

Under the provisions of the 2019 Act, a consumer is defined as an individual who purchases goods, which fall under the broader category of products. Conversely, if an individual utilizes or acquires a product for commercial purposes, that individual does not qualify as a consumer. Consequently, in instances where a product is found to be defective or damaged, the manufacturer or seller of the product may be held liable by the consumer. Whereas, "product liability" means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto.⁷

Because the liability under the Act is limited to compensating the "consumer," which excludes the bystander, the scope of the doctrine of "product liability" under the 2019 Act is therefore narrower than that established in the *Elmore v. American Motors Corporation* case, where the product manufacturer was held liable to innocent bystanders who were randomly injured by defective products.

This is because the foundation of the action is the contractual relationship between the buyer of the product and the seller or manufacturer.⁸ Therefore, a product should be both merchantable and marketable. Any defect in this part would bring liability on the one who sold the product or the one who manufactured it. The consumer cannot be expected by the seller or the manufacturer to specifically examine every aspect of the product. It is well

⁷ Section 2(34)

⁸ See W. Kennedy Simpson et al., "Recent Developments in Products, General Liability, and Consumer Law," 38 *Tort Trial and Insurance Practice Law Journal* (2002) pp. 625- 656; Donald M. Jenkins, "The Product Liability of Manufacturers: An Understanding and Exploration," 4(2) *Akron Law Review* (1972) pp.135-208; P. N. Legh-Jones, "Products Liability: Consumer Protection in America," 27(1) *The Cambridge Law Journal* (1969) pp. 54-80

understood that if the price liability would fall on the consumer, the product liability should fall on the seller or manufacturer.

C. Product Liability Action:

It is imperative to define “product liability action,” which means a complaint filed by a person before a District Commission or State Commission or National Commission, as the case may be, for claiming compensation for the harm caused to him. Therefore, the consumer can claim compensation for any harm caused by a defective product manufactured by a manufacturer or serviced by a service provider or sold by a seller. Therefore, impact is that it is not only the manufacturer but also the service provider and seller.⁹

III. DEVELOPMENT OF PRODUCT LIABILITY IN INDIA

Prior to the enactment of the Consumer Protection Act of 2019 (CPA 2019), the Consumer Protection Act of 1986 (CPA 1986) served as the primary legislative framework for consumer protection in India. Although the CPA 1986 did not explicitly employ the term "product liability," it provided consumers with avenues for redress through the concepts of "defect" and "deficiency." Specifically, Sections 2(1)(f) and 2(1)(g) of the CPA 1986 define "defect" and "deficiency," respectively, indicating that any breach of standards established by consumer welfare legislation or contractual obligations renders a product or service defective under the CPA 1986.

Moreover, consumers may pursue remedies under other specialized legislation in conjunction with the CPA 1986 or the CPA 2019, as the latter is intended to complement rather than supersede existing laws.

The CPA 2019 introduced a comprehensive legal framework for product liability, dedicating an entire chapter (Chapter VI) to delineate the circumstances under which claims for compensation may be pursued for "harm" resulting from a "defective" product. This liability extends to products manufactured by producers, serviced by service providers, or sold by retailers. The term "harm" encompasses various forms of damage, including (i) damage to

⁹ See Balachandran Viswanathan and Anunima K.V., “A Study on Consumer Protection Act 2019 and Its Implications on the Pillars of Integrated Communication Channel,” 23(9) IOSR Journal of Business and Management (2021) pp. 59-67.

property other than the product itself; (ii) personal injury, illness, or death; and (iii) mental anguish or emotional distress, among others. It may be noted that this does not include any harm caused to a product itself or any damage to the property on account of breach of warranty conditions or any commercial or economic loss including any direct, incidental or consequential loss relating thereto.¹⁰

Further, the Act defines 'defect' to mean any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard, which is required to be maintained by or under any law or contract, express or implied or as is claimed by the trader in any manner whatsoever in relation to any goods or product.¹¹

As the aforementioned makes clear, a consumer must prove that a "defective" product caused "harm" in order to initiate a product liability claim. The 2019 Act outlines distinct requirements for attracting product liability proceedings against each of the three parties—product producer, product seller, and service provider.

It expands the scope of liability beyond just the manufacturer to include all stakeholders in the supply chain.¹² Individuals who buy or use products have a right to expect not to be injured when the product is used as intended. If they are hurt because of a problem with the item, they can pursue a civil claim to recover compensation for their resulting damages.

Product liability laws are applicable to cases involving injuries or damages resulting from defective products, determining the accountability of manufacturers or sellers for financial restitution. In order for consumers to establish liability, they must demonstrate that their injuries were directly caused by the defective product. The determination of liability hinges on the identification of the party responsible for the defect.

For instance, in the context of a vehicular accident, the plaintiff must provide evidence that a reasonable individual would have exercised greater caution than the defendant under similar circumstances. If it can be conclusively shown that the defendant's negligence directly resulted in harm to the plaintiff, the defendant may be required to compensate for damages.

¹⁰ Section 2(22), Consumer Protection Act, 2019

¹¹ Section 2(10), Consumer protection Act, 2019

¹² S. Ramesh, "A Comparative Analysis of Consumer Protection Act 1986 and Consumer Protection Act 2019 in India: Strengthening Consumer Rights and Redressal," 3(5) Journal of Legal Subjects (2023) pp. 1-4 at p. 3.

To further elucidate, consider a scenario in which an individual sustains injuries due to malfunctioning airbags in a vehicle. In this case, the injured party may seek to hold the vehicle's manufacturer liable for the defect. Conversely, if the airbags were compromised due to modifications made by the seller, the seller could be deemed liable. Additionally, if improper repairs led to the malfunction of the airbags, the service provider may also bear responsibility. Consequently, liability may extend to the manufacturer of the product as a whole, as well as to the manufacturers of its individual components. For example, if defective airbags are installed in a vehicle, both the airbag manufacturer and the vehicle manufacturer could potentially face legal action under product liability statutes. This framework facilitates the ability of victims adversely affected by defective products to succeed in civil litigation and obtain necessary compensation for the impact on their health or well-being.

EXCEPTIONS TO PRODUCT LIABILITY ACTION

Section 87 of the 2019 Act specifically provides for conditions under which a product liability action cannot be brought against product seller or product manufacturer. A product liability action cannot be brought against the product seller if, at the time of harm, the product was misused, altered, or modified.¹³

Similarly, product liability action based on the failure to provide adequate warnings or instructions, the 2019 Act exempts liability of the product manufacturer if

- (i) the product was purchased by an employer for use at the workplace and the product manufacturer had provided warnings or instructions to such employer;
- (ii) the product was sold as a component or material to be used in another product and necessary warnings or instructions were given by the product manufacturer to the purchaser of such component or material, but the harm was caused to the complainant by use of the end product in which such component or material was used;
- (iii) the product was one which was legally meant to be used or dispensed only by or under the supervision of an expert or a class of experts and the product manufacturer had employed reasonable means to give the warnings or instructions for usage of such product to such expert or class of experts; or

¹³ Section 87(1)

- (iv) the complainant, while using such product, was under the influence of alcohol or any prescription drug which had not been prescribed by a medical practitioner.¹⁴ In addition, a product manufacturer shall not be liable for failure to instruct or warn about a danger which is obvious or commonly known to the user or consumer of such product or which, such user or consumer, ought to have known, taking into account the characteristics of such product.¹⁵

IV. A SHIFT FROM CAVEAT EMPTOR TO CAVEAT VENDITOR

The products liability claims, in case the 2019 Act have not come into effect prior, were largely dependent upon the principle of negligence along with strict liability as has been provided in the torts law and also for damages on product liabilities have recourse under the contract law pertaining to the principle of warranty. The common law place of the earlier principle is seen in caveat emptor, "let the buyer beware".

Thus, it was the buyer of the product who needed to safeguard himself against both patent and latent defects in goods. Thus, no remedy could be claimed against the seller of defective goods unless there was an express warranty or condition to that effect in the contract.¹⁶ In *Gardiner v. Gray*,¹⁷ the English Courts replaced the rule of caveat emptor with precisely the opposite doctrine that the seller impliedly 'warrants'¹⁸ that his products contain no hidden defects. Besides, the buyer was protected against patent defects in goods if he "had no opportunity to inspect the commodity."

Therefore, the buyer could now bring an action against the seller of defective goods without any express contractual stipulations for damages or diminution in price. However, he could not repudiate the contract and compel the seller to take back the product. This common law rule was further modified by Section 16(2) of the 1930 Sale of Goods Act so that this may provide

¹⁴ Section 87(2)

¹⁵ Section 87(3)

¹⁶ *Raghava Menon v. Kuttappan Nair*, AIR 1962 Ker. 318.

¹⁷ (1815) 171 Eng. Rep. 46, 47 (N.P).

¹⁸ A "warranty" is collateral to the main purpose of the contract which entitles the buyer of the goods to sue the seller for damages or for diminution of the price of the product. On the other hand, a "condition" is essential to main purpose of the contract that entitles the buyer to repudiate the contract, reject the goods and sue for damages. For discussion in detail on warranty and condition, see D.N. Prabhakar Murthy, and Wallace R. Blischke, "Product Warranty," *Warranty Management and Product Manufacture* (2006) pp. 35-61; V. S. Sebastian, "Quality Control in Sale of Goods," 7 *Cochin University Law Review* (1983) pp. 281-294; George L. Priest, "A Theory of the Consumer Product Warranty," 90(6) *The Yale Law Journal* (1981) pp. 1297-1352, J. W. CARTER and C. HODGEKISS, "Conditions and Warranties : Forebears and Descendants," 8 *Sydney Law Review* (1976)pp. 31-67

further protection to buyers of goods. As per Section 16(2) of the 1930 Act, there existed an implied "condition" of merchantable quality for goods sold by description from the seller who deals in goods of that description.¹⁹

Thus, a buyer was protected against, both obvious and hidden defects in goods. Further the buyer would lose protection against the seller only in case of obvious defects, if he actually "inspected the goods", as opposed to "a mere opportunity to inspect", being granted to him.²⁰

Hence, if there were any defects in the product the buyer could reject the goods and sue for the price of the goods.²¹ It was also open to the buyer to accept the goods, and sue on the basis of warranty for damages, or diminution in the price of the product.²²

Though considerable progress was made by law of the *doctrines of warranties* in accordance protection of consumers had this limitation was pretty serious, i.e. that only immediate buyers of the product could sue only the immediate sellers of the product.²³ Thus for example in *Winterbottom v. Wright*, he who happened to be driving the driver of a stagecoach that had been injured on account of some defect in the product refused damages since he was no party to the contract between the seller and the buyer.

Following the enactment of the 2019 Act, a statutory obligation has been established for product manufacturers and sellers concerning any defective products. This liability is characterized as strict, meaning that manufacturers and sellers can be held accountable solely based on the defectiveness of the product, without the necessity for the consumer to demonstrate actual negligence. This principle is rooted in the doctrine of caveat venditor, which asserts that the seller must exercise caution, thereby rendering them liable for any harm inflicted on the consumer by the product. Typically, claims related to product liability are pursued under the legal frameworks of negligence, strict liability, or breach of warranty. It is

¹⁹ In *Grant v. Australian Knitting Mills*, AIR 1936 PC 34, the Judicial Committee of the Privy Council was considering Section 14 of the South Australia Sale of Goods Act which is equivalent to Section 16 of the Indian 1930 Sale of Goods Act, 1930. The Court held that the goods are not merchantable if "it has defects unfitting it for its only proper use but not apparent on ordinary examination". See *Ranbir Singh Shankar Singh Thakur v. Hindusthan General Electric Corporation Ltd.*, AIR 1971 Bom 97.

²⁰ Section 16(2) of the Sale of Goods Act, 1930; *National Traders v. Hindustan Soap Works*, AIR 1959 Mad. 11; See *Ranbir Singh Shankar Singh Thakur v. Hindusthan General Electric Corporation Ltd.*, AIR 1971 Bom 97.

²¹ *National Traders v. Hindustan Soap Works*, AIR 1959; Section 12(2) of the 1930 Sale of Goods Act.

²² *National Traders v. Hindustan Soap Works*, AIR 1959 Mad 112; Section 59 of the Sale of Goods Act, 1930; *Board of Trustees of the Port of Calcutta v. Bengal Corporation Pvt. Ltd.* AIR 1979 Cal. 142.

²³ Mathias Reimann, "Liability for Defective Products at the Beginning of the Twenty-First Century: Emergence of a Worldwide Standard," 51(4) *American Journal of Comparative Law* (2003) pp. 751-838 at p. 793.

essential that the product in question has been sold in the marketplace to establish a basis for product liability.

Besides, the 2019 Act further provides punishment, which includes imprisonment or fine or both, for manufacturing for sale or storing, selling or distributing or importing products containing adulterant or spurious goods.²⁴

V. DEFENSES IN THE PRODUCT LIABILITY ACTION

The Consumer Protection Act, while prioritizing the rights of consumers, also acknowledges the necessity of safeguarding the interests of manufacturers and sellers. As stipulated in Section 87 of the Act, a product liability claim cannot be pursued against a seller if the product in question was altered, misused, or modified at the time the damage occurred. Furthermore, a product manufacturer is not liable in product liability cases for failing to provide adequate instructions or warnings if the product was acquired by an employer for workplace use, provided that the manufacturer had issued sufficient guidance to the employer.

Additionally, a manufacturer is not held liable when a product is sold as a material or component intended for incorporation into another product, assuming that the manufacturer has supplied the necessary warnings or instructions to the purchaser of the material or component. In such cases, liability does not arise if the harm to the complainant results from the use of the final product that incorporates the component or material.

Moreover, liability is not applicable when the product is designed to be used or dispensed solely by or under the supervision of qualified experts, and the manufacturer has taken reasonable steps to provide appropriate warnings or instructions to these experts. The manufacturer is also not liable if the consumer was under the influence of alcohol or any prescription medication not prescribed by a medical professional at the time of use. Lastly, a manufacturer cannot be held responsible for failing to provide warnings or instructions regarding dangers that are obvious or commonly known to the user, or that the user should reasonably have been aware of, given the nature of the product.

²⁴ Section 90 and 91

VI. CONCLUSION

The 2019 Act represents a comprehensive framework that aligns with international standards of consumer protection law. A notable aspect of this legislation is its incorporation of product liability law, which offers a consumer-friendly mechanism for addressing grievances. Specifically, Chapter VI of the 2019 Act established a novel liability framework concerning injuries resulting from defective products within the Indian consumer law context. This legislative development marks a significant advancement in consumer protection, particularly in the realm of product liability, as it aims to ensure adequate compensation for victims harmed by defective products. Given the recency of this legislation, there is a limited number of judicial decisions available to discern overarching trends in the enforcement of strict product liability claims against manufacturers, sellers, or service providers.

Moreover, the traditional principle of "caveat emptor" has been effectively supplanted by the notion of "caveat venditor," as the 2019 Act mandates greater transparency in commercial transactions and holds sellers and endorsers accountable for the products they promote. This shift signifies a transformative change in consumer rights, moving from the contractual principle of "Let the Buyer Beware" to "Let the Seller Beware."
