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Product Liability in the New Consumer Law Regime: Concept and Concerns

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ABSTRACT

Product liability makes manufacturers, sellers, and service providers accountable for harm caused by a defective product or a deficiency in service. The Consumer Protection Act 2019 gives this concept fresh statutory recognition in India, defining product liability, defect, and product, and setting out the grounds of liability of manufacturers, service providers, and sellers, together with the exceptions to a product liability action. This paper examines the concept and its theoretical foundations in negligence, misrepresentation, strict liability, and market-share liability, compares the position under the United Kingdom's Consumer Protection Act 1987 and the United States' State-based regimes, and analyses Chapter VI of the 2019 Act. It concludes that, while the statutory framework meaningfully strengthens consumer protection and accountability, the concept remains at a nascent stage whose utility in promoting consumer justice will be tested over time.

Keywords: *product liability, Consumer Protection Act 2019, defective product, strict liability, consumer rights, manufacturer liability, product seller, express warranty*

I. I. INTRODUCTION

A product seller, manufacturer, or provider of product services may be held accountable for damage or injury resulting from a defective product or a deficiency in service. This accountability is known as product liability, and its existence discourages manufacturers and service providers from offering substandard products or services. Any one or more of the following may serve as the foundation for such an action:

a manufacturing defect; a design defect; a deviation from manufacturing specifications; non-conformity with an express warranty; a failure to provide adequate instructions for correct use; or a faulty, imperfect, or deficient service.

In other words, the question of product liability arises when a person is injured by using a purchased product. It may also come to the forefront when a product has not been designed properly or when the expected safety measures have been compromised. The branch of law

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dealing with consumer rights makes manufacturers, producers, sellers, and distributors accountable for any injury inflicted during the use of a product.

II. II. Defining product liability

According to section 2(34) of the Act, product liability is 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."[1]

The term "defect" is to be interpreted in accordance with section 2(10) of the Act, which defines it as "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 or product."[2]

To understand product liability, it is also pertinent to ask what constitutes a product. Essentially, a product is any tangible object that a customer purchases and makes their own property, and the object must be movable at the time of sale.

Under section 2(33) of the Consumer Protection Act 2019, a product is defined as "any article or goods or substance or raw material or any extended cycle of such product, which may be in gaseous, liquid, or solid state possessing intrinsic value which is capable of delivery either as wholly assembled or as a component part and is produced for introduction to trade or commerce, but does not include human tissues, blood, blood products and organs."[3]

III. III. Theoretical foundation of liability

The Consumer Protection Act 2019 grants fresh statutory recognition to the concept of product liability, but the concept is not a new one for determining liability within the Indian judicial system. Its theoretical foundation rests on negligence, misrepresentation, strict liability, and the market-share liability concept. The principal trajectories of the concept are confined to the theories of manufacturing defect, design defect, and warning defect, together with non-conformity to an express warranty by way of sample, description, or model. The product-defect theories may be stated as follows.

(a) Manufacturing defect theory. A manufacturing defect occurs when a product deviates from its planned design or expected manufacturing quality and thereby causes injury. It may arise

[1] Consumer Protection Act, 2019, s. 2(34).
[2] Consumer Protection Act, 2019, s. 2(10).
[3] Consumer Protection Act, 2019, s. 2(33).

even though proper care was taken in manufacturing the product; the cause must be some problem related to the manufacture of the product.

(b) Design defect theory. It is common experience that a company sometimes withdraws a product already launched in the market. The reasons may be several, but an improper design is sometimes among them. Where an improper design renders the product innately defective, it may cause injury despite being used as intended.

(c) Warning defect theory. A product may be free from any manufacturing or design defect yet require particular care and caution in its use. Where the seller does not furnish adequate warnings for the intended use of the product, so that there is an inadequate warning or none at all, injury may be caused even during intended use. Such injury could be avoided if an adequate warning were given.

(d) Non-conformity to an express warranty. An express warranty is a specific, affirmative guarantee or promise made by a seller to a buyer regarding the quality, performance, or features of a product or service. It assures the buyer that the item will meet certain standards, and if it fails to do so, the seller is legally obliged to repair, replace, or refund it. Where a product does not satisfy the express warranty, a product liability action may follow. The deviation may be from a sample, a description, or a model.

Product liability may accordingly rest on any of the following bases.

(i) Negligence. Harm of this kind is generally not intended, but it results from the use of the product. It is caused by the producer's want of proper care, which renders the product unsafe for its intended use. The producer is expected to take proper care in designing, manufacturing, and assembling products; proper inspection and testing are a sine qua non; and sufficient warning tags must be affixed. Where such care is wanting, product liability arises in negligence. A notable illustration occurred in the manufacture of a pressure cooker in which a safety valve had not been inserted, resulting in harm to the user.

(ii) Misrepresentation. Under section 18 of the Indian Contract Act 1872, "misrepresentation" means and includes: first, the positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true; secondly, any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or to anyone claiming under him, by misleading another to his prejudice or to the prejudice of anyone claiming under him; and thirdly, causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing that is the subject of the agreement.[4] In most

[4] Indian Contract Act, 1872, s. 18.

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such cases the representation proves harmful even where it was harmless and unintentional, and safety standards may be wholly disregarded. As an illustration, one may consider an air-bag system that should have comprised four units but was fitted with only two.

(iii) Strict liability. This basis rests on no-fault liability. It arises where a delivered product, though it may be reasonably safe, causes physical hurt, and where the defective product and defective conditions are the proximate cause of the harm. Under section 84(2) of the Consumer Protection Act 2019, a product manufacturer may be subject to a product liability action even where it made the express warranty without being negligent or fraudulent.[5]

(iv) Market-share liability. This arises where several defendants are linked to the production of a faulty product. The liability of each defendant is fixed in proportion to the market share held by it.

IV. IV. Product liability in the United Kingdom

Strict product safety and strict accountability for defective goods are the principal objects of the United Kingdom's Consumer Protection Act 1987. Where a defective product results in death, physical injury, or damage to other property, the Act enables claimants to pursue compensation from the manufacturer.[6] Section 2(1) of the 1987 Act provides that, where any damage is caused wholly or partly by a defect in a product, every person to whom subsection (2) applies shall be liable for the damage. Section 2(2) provides that the subsection applies to:

(a) the producer of the product;

(b) any person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be its producer;

(c) any person who has, in the course of a business, imported the product into the United Kingdom in order to supply it to another.

Under section 2(3), and subject to the foregoing, any person who supplied the product, whether to the person who suffered the damage, to the producer of any product in which the product in question is comprised, or to any other person, is liable for damage caused wholly or partly by a defect in the product where:

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[5] Consumer Protection Act, 2019, s. 84(2); see Taxmann's Consumer Protection Law & Practice 1.107 (2020).

[6] Consumer Protection Act 1987 (UK), c. 43, s. 2(1); see *Claims Under the Consumer Protection Act 1987*, LexisNexis (UK).

(a) the person who suffered the damage requests the supplier to identify one or more of the persons (whether still in existence or not) to whom subsection (2) applies in relation to the product;

(b) that request is made within a reasonable period after the damage occurs and at a time when it is not reasonably practicable for the person making the request to identify all those persons; and

(c) the supplier fails, within a reasonable period after receiving the request, either to comply with it or to identify the person who supplied the product to him.

Where this section makes two or more persons liable for the same damage, their liability is joint and several.[7]

Under the 1987 Act a claimant can succeed only on demonstrating a sufficient connection between the defect in the product and the harm sustained. The courts have established and upheld this principle in several cases. *Baker v. KTM Sportmotorcycle UK Ltd*[8] is a leading decision on product liability, in which the Court of Appeal held that a claimant need not identify or prove a specific design or manufacturing defect to succeed under the 1987 Act, provided he can show that the product malfunctioned during normal use. In February 2010 the claimant, an experienced motorcyclist, was thrown off while riding his KTM Supermoto 990. He alleged that, owing to a defect in the motorcycle, the front brake suddenly seized, causing him to fall and to sustain severe personal injuries. The trial court decided in his favour on the footing that the motorcycle had been properly maintained and serviced and that the cause of the accident was galvanic corrosion, which could not have occurred without a defect in design or manufacture.

Busby v. Berkshire Bed Co Ltd[9] is another significant decision on product liability. There the claimant fell off the edge of a bed and sustained injuries, which she attributed to an alleged defect consisting of a difference in level of about one degree caused by two missing gliders. The court accepted that, in principle, the level of safety a product is required to provide falls to be assessed by reference to what persons generally are entitled to expect, and that a supplier who brands beds as its own may be answerable as their producer even though it did not manufacture them. On the facts, however, the claim in negligence, in contract, and under the 1987 Act failed, because the alleged defect was not the cause of the claimant's loss of balance and fall.

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[7] Consumer Protection Act 1987 (UK), c. 43, s. 2(5).
[8] *Baker v. KTM Sportmotorcycle UK Ltd* [2017] EWCA Civ 378 (Eng.).
[9] *Busby v. Berkshire Bed Co Ltd* [2018] EWHC 2976 (QB) (Eng.).

In *Al-Iqra v. DSG Retail Ltd*[10] two young children suffered life-changing injuries in an August 2011 house fire caused by a malfunctioning Matsui MRHE 1800 tower oscillating fan heater. The court decided in favour of the claimants and held the supplier liable on the basis of strict liability. It observed that, to recover damages, a claimant need prove only that the product was the source of the harm and that it was defective, defect being understood as a failure to provide the safety that persons generally are entitled to expect. The court further held that it did not matter that the claimants could not identify the exact electrical or mechanical cause of ignition.

In the United Kingdom, the Consumer Rights Act 2015 was enacted to protect the rights of consumers, but it did not wholly replace the Consumer Protection Act 1987. The two operate side by side, covering distinct legal territories, the 2015 Act addressing the economic rights of consumers.[11] The primary legislation regulating consumer product safety remains the General Product Safety Regulations 2005 and the Consumer Protection Act 1987.[12]

V. V. Product liability in the United States

There is no single, uniform federal law in the United States that governs all product liability claims nationwide. The various State legislatures have enacted their own statutes to deal with such claims, and claims are for the most part determined under contract law or under tort law by way of negligence or strict liability.[13]

VI. VI. Product liability under the Consumer Protection Act 2019

A. (a) Concept and liability action

The introduction of the concept of product liability is a noteworthy feature of the new legislation, dealt with in Chapter VI. That Chapter applies to every claim for compensation under a product liability action by a complainant for harm caused by a defective product manufactured, serviced, or sold by a product manufacturer, product service provider, or product seller.[14] Under section 83, a product liability action may be brought against a product manufacturer, a product service provider, or a product seller for harm caused by a defective product.[15]

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[10] *Al-Iqra v. DSG Retail Ltd* [2019] EWHC 429 (QB) (Eng.).
[11] Consumer Rights Act 2015 (UK), c. 15; see *The UK Consumer Rights Act 2015: Key Changes That Every Consumer Business Should Be Aware Of*, Lexology (Oct. 1, 2015).
[12] *Id.*; General Product Safety Regulations 2005, SI 2005/1803 (UK).
[13] Pranjal Choubey, *Product Liability Under Consumer Protection Act 2019*, 7 Indian J.L. & Legal Rsch. 3319 (Issue II).
[14] Consumer Protection Act, 2019, s. 82.
[15] Consumer Protection Act, 2019, s. 83.

Section 84(1) holds a product manufacturer liable where the product contains a manufacturing defect, is defective in design, deviates from manufacturing specifications, does not conform to the express warranty, or fails to contain adequate instructions for correct use to prevent harm or any warning regarding improper or incorrect use. Section 84(2) is broad enough to hold the manufacturer accountable even where it made the express warranty without negligence or fraud. Section 85 governs the liability of a product service provider, who is liable where the service was faulty, imperfect, deficient, or inadequate in quality, nature, or manner of performance as required by law or contract; where the provider gave no adequate warnings or instructions to prevent harm; or where the service did not conform to the terms of the contract or the express warranty.[16] A product seller who is not a product manufacturer is liable under section 86 where he exercised substantial control over the design, testing, manufacture, packaging, or labelling of the product; where he altered or modified the product in a manner that was a substantial factor in causing the harm; where the product failed to conform to an express warranty made by him independently of the manufacturer; where the product was sold by him and the identity of the manufacturer is unknown, or, if known, cannot be served with process or against whom any order is incapable of enforcement; or where he caused harm by assembling, inspecting, or maintaining the product, or by failing to pass on the manufacturer's warnings or instructions as to its dangers or proper use.[17]

B. (b) Exceptions to a product liability action

Section 87 establishes the exceptions to liability. A product seller is not liable where, at the time of harm, the product was misused, altered, or modified. A product manufacturer is not liable for want of adequate warnings or instructions in a product liability action where: the product was purchased by an employer for use at the workplace and the manufacturer had provided warnings or instructions to that employer; the product was sold as a component or material to be used in another product and the manufacturer had provided warnings or instructions to the purchaser of the component; the product was legally intended to be used or dispensed only by or under the supervision of an expert or a class of experts and the manufacturer took reasonable steps to provide usage instructions or warnings; or the complainant, while using the product, was under the influence of alcohol or of a medication not prescribed by a medical practitioner. Further, a manufacturer is not liable for failing to warn about a danger that is obvious or commonly known

[16] Consumer Protection Act, 2019, s. 85.
[17] Consumer Protection Act, 2019, s. 86.

to the user or consumer, or that the user or consumer ought to have appreciated having regard to the characteristics of the product.[18]

VII. VII. CONCLUDING OBSERVATIONS

The new Consumer Protection Act 2019 establishes consumer commissions at three levels, vested with authority to provide simple, affordable, and speedy justice. The Act is to be commended for introducing the novel notion of product liability, which holds producers and manufacturers responsible for harm or injury caused to consumers. The enactment of dedicated legislation has demonstrably increased awareness of consumer rights. The Act stipulates penalties and imprisonment for supplying products that do not meet minimum requirements. Furthermore, under the Bharatiya Nyaya Sanhita 2023, an offending party may incur punishment commensurate with its contribution where criminal intent can be attributed to the offence.

The burden of proof in product liability cases lies on the complainant who alleges a defect or a deficiency in service. The rules governing the burden of proof in civil and criminal matters are provided in the Bharatiya Sakshya Adhiniyam 2023. As a general rule the claimant bears the burden of proof, subject to certain exceptions stipulated in the Act. Where a complainant submits a claim, the Consumer Commission applies the standard of the preponderance of probabilities. In a criminal case involving product liability or a defect, the prosecution's obligation to discharge the evidentiary burden is clear and applicable, save where the statute provides otherwise.

Accountability in cases of product liability under this law is not merely a promise but a reality, for the relevant provisions make room to impose a heavy penalty on negligent product manufacturers or service providers. The concept nonetheless remains at a nascent stage, and time alone will testify to its utility in promoting consumer justice in India.

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[18] Consumer Protection Act, 2019, s. 87.

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