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# Evolution of Product Liability Law in India

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**Abstract:**
The modern market for consumers for goods as well as services have undergone drastic transformation with the emergence of global supply chains, rise in international trade and the rapid development of e-commerce have led to not only plethora of products and services but also new delivery systems, options and opportunities for consumers. It has also rendered the consumer vulnerable to new forms of unethical and fraudulent practices and sale of products based on misleading information. Therefore, a robust legal framework is required to regulate the industries and protect the interests of consumers.
**Keywords:** modern market, consumers, global supply chains

## Introduction

Product liability law provides the consumers with legal recourse for any injuries suffered from a defective product. It is estimated that millions of people around the globe are negatively affected by defective products, and that the manufacturers or sellers end up paying large amounts for products-liability insurance as well as damages. A product is required to meet the ordinary expectations of a consumer, therefore, responsibility lies with the manufacturers and the sellers to ensure safety and quality of the product as per description. This, however, has not always been the case. The theory of *caveat emptor*, meaning let the buyer beware, governed the general consumer law from 18th century up until early 20th century. Where the lifestyle was modest and all the products that were locally made, and therefore any consumer who suffered any damages from a defective product could directly confront the manufacturer and the intervention of courts or legislature was not required. However, with the changes in the means of production and consumption, such as industrial revolution, technological developments, among others, have led to the development of products-liability law due to the rise in issues arising out of defective products.

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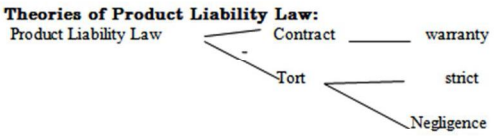
Very recently, the Indian Ministry of Consumer Affairs, Food and Public Distribution made the new Consumer Protection Act, 2019 ("CPA 2019") effective which replaced the erstwhile Consumer Protection Act, 1986 in

entirety[33]. One of the key features of the Consumer Protection Act 2019 is the concept of product liability. Prior to this there was no specific provision under any statutes in India which governed product liability and also there was no comprehensive legislation regarding this. Law related to product liability in India was essentially governed by contracts and generally under the Consumer Protection Act, 1986, the Sales of Goods Act, 1930, the Indian Penal Code, 1860 and certain specific statutes pertaining to specific goods and standardization. The Consumer Protection Act 2019 now provides for detailed ambit on product liability with specific responsibilities and liabilities of a 'product manufacturer'[34], 'product service provider'[35] or 'product seller'[36], 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. To understand the genesis of these specific provisions and the overall concepts of product liability introduced in the Consumer Protection Act 2019, it is pertinent to be aware of the principle and the historic evolution of the product liability law.

Principles of Product Liability Law: Product liability law finds its origin in the common law concept of caveat venditor, meaning "let the seller beware", placing the onus on the seller for any problem that the buyer might encounter with a service or product. Product liability implies the responsibility of a manufacturer or vendor of goods to compensate for injury caused by defective merchandise that it has provided for sale. Product-liability cases have consequently led to development in general principles of contract law and tort law; wherein in contract law, product liability is based on the principle of 'warranty', and in tort law product liability is based on the principles of 'negligence' and 'strict liability'.




The early days of product liability jurisprudence revolved around the principles of contract law wherein remedies were awarded by courts upon breach of any warranty made on the product. A warranty is synonymous to a guarantee, it can either be implied or express, and is essentially the manifestation of nature or quality of goods that forms the basis of a purchase. Therefore, any non-conformity with guaranteed nature or quality of goods may result in a product liability action by a consumer. There is however a blurry line between a warranty and trade-talk, for instance, representations by a salesperson of a faulty car as "in A-1 shape" and "mechanically perfect" can be construed as an express

[33] The Consumer Protection Act, 2019 (New Act) received the assent of the President of India after being passed by the Parliament and was published in the official gazette on 9 August 2019. The New Act came into force on 24th July 2020 as the Central Government notified. It aims to protect the rights of consumers by establishing authorities for timely and effective administration and settlement of consumers' dispute.

[34] sections 2(36) and 84 of the CPA 2019.

[35] sections 2(38) and 85 of the CPA 2019.

[36] sections 2(37) and 86 of the CPA 2019.

warranty[37] whereas the representations made by a salesperson of a faulty bull that would "put the buyer on the map" and that "his father was the greatest living dairy bull" can just be just trade-talk.[38] Further, the principle of warranty is often subjected to the doctrine of privity of contract, that states that an effected person can only sue a negligent person if he or she was a party to the transaction with the effected person. The inadequacy of protection offered by contract law in product liability cases, led the courts to move towards tort law principles of negligence and strict liability to protect the interests of the consumers.

Negligence simply means the lack of due or reasonable care, and is often effective in cases of defective designs, warnings, and privity. Sellers that fail to exercise due caution, fall in the trap of negligence. However, there are many possible defences to a claim of negligence, that make holes in such claims, such as, proximate cause, contributory negligence, subsequent alteration of product, misuse of product, and assumption of risk by the plaintiff.

As the pleas of warranty and negligence failed, courts developed the strict liability principle, wherein products that were unreasonably defective and dangerous that the seller would be made liable for any proprietary loss or personal injury. However, to say that this principle is absolute would not be correct, as there maybe disclaimers on liability of the product, or a recovery limit, or the economic loss may not recoverable. Basis this qualified principle, we note that the Consumer Protection Act 2019 also envisages some specific exceptions to a product liability action.[39]

## Judicial Interpretation of Concept of Product Liability :

The concept of negligence and strict liability in tort for manufacturer evolved in response to the issue posed by famous English case Winter bottom v. Wright[40] ,upholding the privity requirement. In that case, a coach company contracted with the postmaster general to provide coaches for the mail service and to take responsibility for the maintenance of the coaches. The plaintiff, hired by the postmaster general to drive the coach and deliver the mail, was subsequently injured when the coach collapsed as a result of poor maintenance. The plaintiff sued the coach company. The court held that the driver could not recover from the coach company because the plaintiff was not a party to the contract for maintenance between the coach company and the postmaster general.

About a decade later, another famous case MacPherson v. Buick Motor Co[41] removed the requirement of privity of contract for negligence. The plaintiff, Donald C. MacPherson, was injured when one of the wooden wheels of his 1909 "Buick Runabout" collapsed. The defendant,Buick Motor Company, had manufactured the vehicle, but not the wheel, which had been manufactured by another party. However, the wheel was

[37] Wat Henry Pontiac Co. v. Bradley, 210 P.2d 348 (Okla. 1949).
[38] Frederickson v. Hackney, 198 N.W. 806 (Minn. 1924).
[39] section 87 of the CPA 2019.
[40] (1842) 10 M&W 109
[41] (1916) 111 N.E. 1050, 217 N.Y. 382

installed by the defendant. Evidence suggested that the defect could have been discovered through reasonable inspection, but no inspection was carried out. The defendant denied liability because the plaintiff had purchased the automobile from a dealer, not directly from the defendant. Judge Cardozo of the New York Court of Appeals held that if a company was negligent, then it was liable, even if it had no privity of contract with the sufferer. For the first time, the concept of "privity of contract" was discarded and according to legal commentators it was "the conquest of tort over contract."

To prove negligence on the part of the defendant the plaintiff is required to prove that the defendant's conduct fell below the relevant standard of care. However, as a matter fact it is quite difficult to prove the standard of care, breach, and causation of negligence. Therefore, in the early 20th century, many courts found it was unfair to require seriously injured consumer plaintiffs to prove negligence claims against manufacturers or retailers and inclined to impose strict liability. Justice Traynor in a concurring opinion in Escola v. Coca Cola Bottling Co[42].expressed that "In my opinion it should now be recognized that a manufacturer incurs an absolute liability when an article that he has placed on the market, knowing that it is to be used without inspection, proves to have a defect that causes injury to human beings". Further, courts began to look for facts in the cases which they could characterize as an express or implied warranty from the manufacturer to the consumer. The doctrine of res ipsa loquitur"the thing speaks for itself" was also stretched to reduce the plaintiff's burden of proof. The concept of strict liability on manufacturer developed further with Greenman v. Yuba Power Products, Inc. and the theory of implied warranty of safety came with Henningsen v. Bloomfield Motors, Inc.

In Greenman v. Yuba Power Products, Inc[43] Greenman (the plaintiff) had bought a gadget called "Shopsmith," which was a combination power tool that could be used as a saw, drill, and wood lathe. The plaintiff watched a Shopsmith being demonstrated by the retailer and studied a brochure prepared by the manufacturer. Later his wife bought and gave him one such Shopsmith. He bought the necessary attachments to use the Shopsmith as a lathe. After working with the lathe several times without difficulty, it suddenly threw a piece of wood striking him in the head inflicting serious injuries. He sued both the retailer and the manufacturer. A unanimous court held affirming the lower court decision that the consumer could sue the manufacturer for breach of warranty. It was sufficient that the consumer proved that he was injured while using the product in a way it was intended and that his injury was as a result of a defect in the design and manufacture, of which he was not aware and which made the product unsafe for its intended use.

In the case Henningsen v. Bloomfield Motors, Inc[44] the plaintiff bought a car from the defendant's dealership. Just ten days after delivery, the steering malfunctioned and the plaintiff's wife was involved in an accident. The plaintiff

[42] (1944) 24 Cal.2d 453, 150 P.2d 436

[43] 59 Cal. 2d 57, 377 P. ... 697, 1963 Cal.

[44] (1960) 32 N.J. 358; 161 A.2d 69

sued the dealer and the car manufacturer. The dealer argued that there was a clause in the warranty signed by the plaintiff that freed the defendant from any liability for personal injuries. The warranty was only for replacement of defective parts for the period of 90 days or 4000 miles. But the court awarded damages to Henningsen. It was concluded that with the sale of every object there was an implied warranty of safety. Further defendant couldn't argue that since it was Henningsen's wife who suffered damages, it was not responsible. According to the court, the warranty extended "to every foreseeable user of the product."

With the advancement of time, the jurisprudence of product liability cases have progressed on the lines of holding the manufacturer liable for negligence in the event of an injury sustained by the ultimate consumer due to a manufacturing defect, irrespective of the fact that no contract existed between such effected consumer and the manufacturer.

Cases in India on issues of product liability have been dealt by courts basis the principles of negligence and strict liability,[45] while statues have been historically silent on the provisions for liability of seller or manufactures for defective or faulty products and services.

The Apex Court in A.S. Mittal v. State of U.P[46]. considered a question of law involving product liability and held that the same would depend on the facts and evidence presented. In Airbus Industries v. Laura Howell Linton[47] where one aircraft, a scheduled passenger flight from Bombay to Bangalore, in the course of flight while attempting to land at Bangalore airport contacted ground approximately 2,300 feet before the beginning of the runway and immediately hit the boundary wall. As a result, the fuselage, the wings and other parts of the aircraft disintegrated. With the result, 92 passengers and four crew members perished and the remaining 54 survivors sustained injuries of varying degrees of severity. In action by the appellants to recover compensation from the aircraft manufactures, airlines and airport authority of India, a claim by the respondents were made that the Texas court was a more appropriate forum as India had no law on strict product liability. In this regard, the Karnataka High Court rejected the claim of the respondents and considered the liability of the appellants on the basis of common law concepts of causation and principles of negligence rather than strict product liability and concluded that "a mere fact that the Indian Courts does not have the strict product liability law, it is not wise to say that in such a situation and parties can go without any remedy. As it was done in Charan Lal Sahu v. Union of India (Bhopal Gas Disaster) that such antiquated acts can be drastically amended or fresh legislation should be enacted to save the situation."

Consumer markets for goods and services have undergone profound transformation since the enactment of the Consumer Protection Act in 1986. Prior to the

[45] Manubhai Punamchand Upadhya v. Indian Railways, 1 (1998) ACC 39. and Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy. 2003 (27) PTC 265 (Del.).

[46] AIR 1570, 1989 SCR (3) 241.

[47] ILR 1994 KAR 1370.

Consumer Protection Act 2019 and the rules made there under, there was uncertainty and ambiguity in the Indian legal framework for product liability. The amendment to the Consumer Protection Act, 1986 in 1993 and 2002, failed to contemplate provisions in relation to product liability. The consumer protection bills of 2011, 2015 and 2018 also showed the pro-consumer approach of government and urged for the updation of laws, to correct the legal uncertainty and lack of precedents.

All the above instances have gradually led to the enactment of the new Consumer Protection Act 2019, that has provided provisions in relation to product liability, built on the strict liability principle of tort law and the jurisprudence laid down by the courts. Further, the e-commerce guidelines framed under the 2019 mandate the e-commerce entities to endorse product liability construct while requiring them to disclose proper information to consumers, thereby enabling transparency and more protection to the consumers. Further, the provisions under the Indian Penal Code, 1860, the Sales of Goods Act, 1930 and certain specific statutes pertaining to specific goods and standardization (like the Drugs and Cosmetics Act, 1945; Prevention of Food Adulteration Act, 1954, Food Safety and Standards Act, 2006; Bureau of the Indian Standards Act, 1986; Agricultural Produce (Grading and Marking) Act, 1937; among others) continue as an additional measure for the protection of consumers.

As the legal theories regarding product liability continue to mature, we expect to see in future further interesting judgments delivered by the courts and new statutes coming into force. Further, with the advent of the product liability laws in India it would be also interesting to see how the industry and judiciary deal with the increasing unethical and fraudulent activities by certain consumers and whether these provisions are misused by certain consumers to indulge in fraudulent activities.