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Product Liability under the Consumer Protection Act, 2019: A Critical Study

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Abstract

The Consumer Protection Act, 2019 represents a major shift from the older law, which mainly focused on defects and deficiencies, by formally introducing product liability into Indian legislation. Chapter VI (Sections 82-87) lays down when manufacturers, sellers, or service providers can be held responsible for harm caused by faulty products or related services. This paper critically examines the framework, tracing its roots in Indian law. It evaluates the grounds on which liability can be imposed, the defences available, and the institutional mechanisms for resolving disputes. The study argues that while the 2019 Act is a progressive step, it does not go as far as imposing liability without fault like mature strict-liability systems. It also leaves open questions about e-commerce platforms, burden of proof, and punitive damages. The paper concludes with recommendations for judicial and legislative improvements to strengthen the regrme.

Key words: Product Liability, Consumer Protection Act, 2019, Strict Liability, defects, judicial trends

Introduction

The bond between producers and consumers has historically been unequal. Earlier, the common law relied on the principle of *caveat emptor* - "let the buyer beware" -which meant that buyers themselves had to uncover defects in goods. Over time, this approach softened. Contract law began to imply conditions of quality and fitness into every sale, while tort law recognised that manufacturers owe a duty of care to consumers even without a direct contract between them which was reflected in *Donoghue v Stevenson*[1].

India followed a similar path. Initially, consumer rights were shaped by the Law of Contract Act,1872 and Sale of Goods Act, 1930, and later by the Consumer Protection Act, 1986, which created specialised commissions. However, the 1986 Act did not contain a clear chapter on product

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1 *Donoghue v Stevenson,* 1932 AC 562

liability. Complaints about defective goods had to be forced into broad categories like "defect in goods" or "deficiency in service."

The Consumer Protection Act, 2019 (CPA 2019) repealed the earlier law and introduced a dedicated chapter on product liability (Sections 82-87). This change was intentional. Lawmakers recognised that in today's global, technology-driven marketplace -where goods may be made in one country, sold through an intermediary in another, and delivered via online platforms - the vague language of "defect" and "deficiency" was no longer enough. The new Act provides a more precise framework.

III. Statutory Framework: Chapter VI of the Consumer Protection Act, 2019

Section 2(34) of the Act defines "product liability" as 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 to the product[1]. This definition is deliberately broad enough to capture both the sale of a defective good and the deficient performance of a service that is integrally connected with a product — for instance, the installation, repair or maintenance of an appliance. The Act then defines, in separate sub-clauses of Section 2, the three categories of persons against whom a product liability action may lie: the "product manufacturer," who includes a person who makes, assembles or processes a product, or puts a mark on it holding it out as their own, or who designs, produces, fabricates or constructs the product before its sale; the "product seller," who includes a person engaged in the business of selling, distributing, leasing, installing, preparing, packaging, labelling, marketing, repairing, maintaining or otherwise placing a product for commercial purpose; and the "product service provider," who is any person who provides any service in respect of a product[2]. "Harm," for the purposes of a product liability action, is also given an inclusive definition covering damage to any property (other than the product itself), personal injury, illness or death, mental agony or emotional distress, and any loss of consortium or services resulting from such injury[3], though the Act expressly excludes from "harm" any damage caused to the product itself, or any damage to property arising out of a breach of warranty concerning purely commercial or economic loss unaccompanied by personal injury.

A. Institution of a Product Liability Action

Section 82 provides that a complainant is entitled to bring a product liability action against a product manufacturer, a product service provider, or a product seller, as the case may be, wherever applicable, for any harm caused by a defective product[4]. This is a significant structural choice: rather than requiring the consumer to first establish which of several possible defendants — the manufacturer, the distributor, the retailer, or an associated service provider — is truly at fault, the Act allows the consumer to proceed against any or all of them, leaving the question of inter se allocation of liability to be worked out among the defendants themselves.

B. Liability of the Product Manufacturer

Section 84 lays down the grounds on which a product manufacturer may be held liable in a product liability action. Broadly, liability attaches where the product contains a manufacturing defect; where the product is defective in design; where the product deviates from the manufacturing specifications; where the product does not conform to an express warranty made by the manufacturer; or where the product fails to contain adequate

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[1]CPA 2019, S 2(34)

[2]CPA 2019, S.2(36), S.2(37), S.S2(38)

[3]CPA 2019, S. 2(22)

[4]CPA 2019, S.82

instructions for correct use, or adequate warnings regarding improper or incorrect usage, so as to prevent harm[5]. Notably, the Act does not require the complainant to prove that the manufacturer was negligent in causing any of these defects; it is enough to establish that the defect existed and that it caused the harm complained of. To this extent the 2019 Act moves the Indian position closer to a fault-independent, or quasi-strict, standard of liability, although — as discussed in Part IX below — it stops short of the pure strict liability model that some other jurisdictions have adopted, because the manufacturer retains recourse to certain statutory defences under Section 87.

C. Liability of the Product Seller

Section 83 addresses the circumstances in which a product seller — who, unlike the manufacturer, has typically had no role in designing or fabricating the product — may nonetheless be made liable. A product seller who is not otherwise a product manufacturer may be held liable in a product liability action where the seller has exercised substantial control over the design, testing, manufacture, packaging or labelling of the product that caused the harm; where the seller has altered or modified the product and such alteration or modification was a substantial factor in causing the harm; where the seller has made an express warranty independent of the manufacturer's warranty and the product failed to conform to it; where the product manufacturer cannot be identified; where the seller failed to exercise reasonable care in assembling, inspecting or maintaining the product, or failed to pass on the manufacturer's warnings or instructions adequately; or where the manufacturer is not subject to the jurisdiction of the relevant authority, or is a person against whom the order, if any, cannot be enforced[6]. This provision performs an important protective function for consumers dealing with intermediaries and online marketplaces: even where the actual manufacturer is unknown, insolvent, or beyond the practical reach of the Indian consumer forum, the seller who placed the product into the stream of commerce may still answer for the harm it caused, provided one of the statutory grounds is satisfied.

D. Liability of the Product Service Provider

Section 85 extends analogous liability to a product service provider, who may be held liable where the service provided was faulty, imperfect, deficient or inadequate in quality, nature or manner of performance; where there was an act of omission or commission or negligence, or a conscious withholding of information which caused harm; where the service provider did not issue adequate instructions or warnings to prevent harm; or where the service did not conform to an express warranty or the terms and conditions of the contract[7]. This provision is of particular relevance to composite transactions — for example, the sale and installation of a home appliance, or the sale of a vehicle bundled with a maintenance contract — where harm may originate not from a defect in the product as manufactured but from the manner in which an associated service was rendered.

E. Exceptions to Product Liability Action

Section 87 carves out circumstances in which a product liability action will not lie notwithstanding the existence of a defect. A manufacturer is not liable, for instance, where it is established that the product was misused, altered or modified at the time of the harm, and such misuse, alteration or modification was the proximate cause of the harm; the section further recognises a species of "informed user" defence in relation to certain products, and addresses the position where a component or raw material supplied by a party other than the manufacturer is itself found to be defective and was used in accordance with the specifications provided by the manufacturer[8]. These exceptions mirror, in broad outline, defences long recognised in comparative product liability law —

[5]CPA 2019, S. 84(1)
[6]CPA 2019, S. 83(1)–(2)
[7]CPA 2019, S. 85
[8]CPA 2019, S. 87

namely, that liability should not attach where the causal chain between the manufacturer's conduct and the consumer's harm has been broken by an intervening and unforeseeable act of the consumer or a third party.

Judicial Trends

Because Chapter VI of the 2019 Act is of comparatively recent vintage, a substantial body of appellate case law construing its specific provisions has not yet developed. It is nonetheless possible to identify judicial trends, developed principally under the 1986 Act, that are likely to continue to inform the interpretation of the new provisions, since Indian consumer commissions have historically approached defect-based claims with a consumer-protective, purposive orientation. In Indian Medical Association v. V.P. Shantha, the Supreme Court held that services rendered for consideration, including medical services other than those rendered free of charge or under a contract of personal service, fall within the scope of "service" under the Act[9], a holding whose underlying reasoning — that the Act should be construed liberally so as to advance its consumer-protective purpose — has repeatedly been invoked in later cases and is likely to inform how courts read the newer product-service-provider provisions of Section 85. Similarly, in Spring Meadows Hospital v. Harjol Ahluwalia, the Court recognised that parents of a child harmed by medical negligence could themselves be treated as consumers entitled to compensation for their own distress, illustrating the judiciary's willingness to read the concept of "harm" and "consumer" expansively in order to ensure that the remedial purpose of the Act is not defeated by an unduly technical construction[10]. Given this interpretive tradition, it is reasonable to anticipate that consumer commissions applying the new product liability chapter will similarly construe the definitions of "harm," "defect" and "product" generously in favour of complainants, and will be cautious about permitting the statutory exceptions in Section 87 to be used as a means of defeating claims on narrow technical grounds.

At the same time, courts have historically been alert to the risk of converting the consumer forum into a vehicle for speculative or unsubstantiated claims, insisting that a complainant establish, at minimum, a causal link between the alleged defect and the harm suffered, rather than relying on the mere occurrence of an adverse event as proof of defect. This evidentiary caution is likely to persist under the 2019 Act and will continue to shape how commissions apply the threshold requirements of Sections 84 and 85.

Critical Appraisal and Emerging Challenges

A. The Burden of Proof in Practice

Although Chapter VI dispenses with the need to prove negligence, it does not dispense with the need to prove the existence of a defect and its causal connection to the harm suffered, and this residual burden can be a formidable practical obstacle for an ordinary consumer. Establishing a manufacturing defect, and still more a design defect, will very often require expert technical evidence — metallurgical analysis, engineering assessment, or comparative testing against industry safety standards — that an individual consumer bringing a claim before a District Commission is poorly placed to commission. Unlike some comparative regimes, the 2019 Act does not expressly shift the evidentiary burden onto the manufacturer once the consumer has made out a prima facie case of harm consistent with a product defect, leaving open a real risk that the promise of fault-independent liability will, in practice, be undermined by an evidentiary burden that only well-resourced complainants can discharge.

B. E-Commerce and Marketplace Liability

The 2019 Act was drafted with evident awareness of the growth of e-commerce, and it separately defines "e-

[9]Indian Medical Association v. V.P. Shantha, (1995) 6 SCC 651.

[10]Spring Meadows Hospital v. Harjol Ahluwalia, (1998) 4 SCC 39.

commerce" and "electronic service provider" , while the Consumer Protection (E-Commerce) Rules, 2020 impose a range of disclosure and due-diligence obligations on e-commerce entities . Even so, the interaction between the product liability chapter and the position of a marketplace e-commerce entity — which typically neither manufactures nor takes title to the goods sold on its platform, but merely provides the technological infrastructure connecting third-party sellers to consumers — remains a live and only partly settled question. Whether such an entity can be brought within the definition of "product seller" under Section 2, and thereby exposed to liability under Section 83, is likely to depend heavily on the degree of "substantial control" the platform exercises over listing, packaging, fulfilment and delivery in a given transaction, an inherently fact-sensitive inquiry that the Act itself does not resolve with any precision.

C. Absence of a Development-Risks Defence

As noted in Part VI, the 2019 Act contains no express development-risks or state-of-the-art defence comparable to that found in the UK Consumer Protection Act 1987. For manufacturers of pharmaceuticals, medical devices and other technologically advanced products, this omission is significant: a manufacturer that exercised the highest standard of care and complied fully with the state of scientific knowledge available at the time of manufacture may nonetheless be exposed to liability for a defect that could not then have been discovered. Whether Indian consumer commissions will read such a defence into the general causation requirements of Section 84, or whether the absence of an express provision will be treated as a deliberate legislative choice to impose a more exacting standard on manufacturers of high-risk products, is a question that only future adjudication can settle.

D. Quantification of Harm and Punitive Damages

Finally, the Act's provision for punitive damages under Section 39, while a welcome deterrent mechanism, is not accompanied by any statutory guidance on the factors relevant to quantification — such as the manufacturer's turnover, the degree of its knowledge of the defect, or the number of consumers affected — leaving individual commissions to develop their own, potentially inconsistent, approaches to the assessment of such damages across cases involving comparable harm.

Conclusion

The Consumer Protection Act, 2019 marks a meaningful improvement in India's consumer law by creating a specific legal framework for product liability. It goes beyond the older, vague categories of "defect" and "deficiency" and gives consumers clearer ways to hold manufacturers, sellers, and service providers accountable when products cause harm. However, the law does not fully adopt a pure strict-liability approach. Because it preserves several statutory defences and leaves open practical questions especially about online marketplaces, how evidence is allocated, and when punitive damages should apply, the regime remains a work in progress. In short, the 2019 Act is a significant step forward, but further clarification and refinement are needed to make the system fully effective and fair.

Recommendations

1. **Clarify liability for online marketplaces and intermediaries.** Lawmakers and courts should make it clearer when and how e-commerce platforms and third-party sellers can be held responsible, so consumers are not left without a remedy when manufacturers are hard to identify or are outside

the jurisdiction.

2. **Ease the evidentiary burden on consumers.** Because consumers often lack access to technical records and internal documents, the law should shift more of the burden of proof onto manufacturers or create procedural tools (like discovery powers or presumptions) that help claimants establish causation and defect.
3. **Provide clear rules on punitive damages.** The statute allows punitive awards, but courts would benefit guidance when such damages are appropriate and how they should be calculated so that penalties deter unsafe conduct without being arbitrary.
4. **Strengthen coordination between the CCPA and Consumer Commissions.** Administrative actions by the Central Consumer Protection Authority-such as recalls or safety orders-should be used more systematically to support individual claims and to create a clearer record of product hazards.
5. **Encourage judicially guided standards for design-defect claims.** Courts should develop consistent tests for design defects (for example, how to assess feasible alternative designs) so that claimants and manufacturers can predict legal outcomes and design safer products.
6. **Promote transparency** in **supply chains.** Rules or incentives that improve traceability of components and suppliers will help allocate responsibility fairly and reduce the practical difficulties of identifying the correct defendant in complex, multi-tiered manufacturing systems.