

## Nexus between Law & Economics with respect to Consumer Protection Act & Tort Law – A Comparative Analysis

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### Abstract

With the enactment of new Consumer Protection Act 2019 in India, consumers in India have been benefitted in many aspects be it regulations for e-commerce or penalties for misleading advertisements, moreover the most important part of this new act was the product liability concept. This paper aims to provide an economic analysis of law with reference to product liability rule and the law of torts. Further, with the approach of the product obligation laws in India, it would be likewise interesting to study how economics and law forms a piece of working machinery through legislation and enactments in recent developments. In this paper a detailed comparative analysis has been provided for the product liability rule in United Kingdom, United States of America & India. How the concept of product liability evolved has been explained along with the case law development that took place in the evolution of the concept all around the world. In the end the authors have provided the landmark cases of India in relation to product liability concept along with the recommendation for the Consumer Law in India.

**Keywords:** Product Liability, Consumer, negligence, manufacturer

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## Introduction

Product Liability law furnishes the buyers with the legal responsibility for any injuries suffered by a flawed product. It is assessed that huge number of individuals around the planet are contrarily influenced by imperfect products and that the manufacturers or merchants wind up paying huge sums for product liability insurance and damages. A product is needed to meet the common assumptions for a customer, subsequently, the liability lies with the manufacturers and the vendors to guarantee the wellbeing and nature of the product according to depiction. This has not generally been the situation. The principle of *caveat emptor*, which means *let the buyer be aware*, represented the overall consumer law from the 18th century up until the mid-20th century. There was a time when the way of life was humble and all the products were privately made, and consequently any consumer who experienced any defects or flaws on some product could straightforwardly go up against the manufacturer and the intervention of courts or law-making body was not needed. However, the adjustments in the methods for creation and utilization, for example, modern unrest, mechanical turns of events, among others, have prompted the improvement of product liability law because of the ascent in issues emerging out of blemished products.

## Evolution of Product Liability Law

Product liability law discovers its beginning in the common law idea of “*caveat venditor*”, signifying “*let the seller be aware*”, setting the onus on the seller for any issue that the purchaser may experience with a service or a product. Product liability implies the duty of a manufacturer or seller of products to compensate for injury brought about by a damaged product that it has accommodated deal. Product liability cases have thus prompted advancement in all standards of contract law and tort law; wherein in contract law, product liability depends on the principle of ‘*warranty*’, and in tort law, product liability depends on the standards of ‘*negligence*’ and ‘*strict liability*’.

The beginning of product liability law rotated around the standards of contract law wherein remedies were granted upon breach of any warranty made on the product. A warranty is interchangeable with a guarantee<sup>3</sup>, it can either be implied or express and is the appearance of nature or quality of commodities that frames the basis of a buy. In this way, any disagreement

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<sup>3</sup>The Indian Contract Act, 1872, §126-146, No. 9, 1872, Act of Parliament, (India).

with the ensured nature or quality of commodities may bring about a product liability action by a customer. However, the principle of warranty is frequently exposed to the doctrine of privity of contract that expresses that an affected individual can sue a careless individual on the off chance that the person in question was involved with the exchange with the affected individual. The deficiency of security offered by contract law in product liability cases, has driven the courts to move towards tort law standards of negligence and strict liability to ensure the interests of the consumers.

In the famous case of *Winterbottom v. Wright*<sup>4</sup>, the concept of strict liability and negligence for the manufacturer evolved upholding the requirement of privity.

In this case, the plaintiff (Winterbottom) contracted with the postmaster general to drive the mail coach supplied by the postmaster, and then the postmaster vested the responsibility of the safety of the coach to the defendant (Wright). The plaintiff<sup>5</sup>, hired by the official 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 driving force couldn't get over the coach company because the plaintiff wasn't a celebration to the contract for maintenance between the coach company and the postmaster general.

A decade later, the case of *MacPherson v. Buick Motor Co*<sup>6</sup> the necessity of privity of contract for negligence was eliminated. The plaintiff, Donald C. MacPherson, was harmed when one of the wooden wheels of his 1909 "Buick Runabout" collapsed. The defendant, Buick Motor Company, had produced the vehicle, yet not the wheel because the wheel was manufactured by some other party but it was installed by the defendant. Proof proposed that the imperfection might have been found through sensible investigation, however, no review had been done. The defendant denied obligation because the plaintiff party had bought the auto from a seller, not straightforwardly from the respondent. Judge Cardozo of the New York Court of Appeals held that if an organization was careless, at that point it was subject to product liability, regardless of whether it had no privity of agreement with the victim. Unexpectedly, the idea of "privity of contract" was disposed of and as per legitimate pundits it was "the success of tort over the contract."

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<sup>4</sup>(1842)10 M.W. 109; (1842) 152 ER 402

<sup>5</sup> Anindya Ghosh & Nabarun Chandra Ray, *Product Liability Law in India: An Evolution*, Mondaq, (Mar. 02, 2021, 10:35 AM), <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/974270/product-liability-law-in-india-an-evolution>.

<sup>6</sup> (1916)111 N.E. 1050, 217 N.Y. 382

To demonstrate negligence concerning the respondent the plaintiff party is needed to demonstrate that the respondent's conduct fell underneath the applicable standard of care. However, it is very hard to prove the standard of care, breach, and causation of negligence. Therefore, in the early 20<sup>th</sup> century, numerous courts discovered that it was unfair to require the truly harmed consumer plaintiff parties to demonstrate negligence claims against manufacturers and slanted to impose strict liability. In *Escola v. Coca Cola Bottling Co.*<sup>7</sup>, Justice Traynor communicated that:

*"In my opinion<sup>8</sup>, 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 an inspection, proves to have a defect that causes injury to human beings".*

Further, courts started to search for facts in the cases which they could describe as an express or implied guarantee from the manufacturer to the consumer. The principle of *res ipsa loquitur* i.e. *"the thing justifies itself"* was additionally extended to lessen the plaintiff's burden of proof. Furthermore, the theory of implied guarantee of security was conceptualised in *Henningsen v. Bloomfield Motors, Inc.*

In *Airbus Industry v. Laura Howell Linton*<sup>9</sup>, where one airplane, a scheduled passenger flight from Bombay to Bangalore, throughout the flight while trying to land at Bangalore air terminal reached ground roughly 2,300 feet before the start of the runway and promptly hit the boundary wall. Thereafter, the fuselage, the wings, and different pieces of the airplane broke down. As an outcome of such breakage, 92 travellers and 4 crew members died and the remaining 54 survivors suffered wounds of different levels of seriousness. In a suit by the appellants to claim compensation from the airplane manufacturers, airlines, and airport authority of India, a case by the respondents was made that the Texas court was a better discussion forum as India had no law on strict product liability. In this regard, the Karnataka High Court dismissed the case of the respondents and considered the obligation of the appellants based on precedent-based law ideas of causation and standards of carelessness as opposed to exacting product liability and presumed that *"a simple reality that the Indian Courts does not have the severe product obligation law, it isn't shrewd to say that in such a circumstance and gatherings can abandon any cure."*

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<sup>7</sup>24 Cal.2d 453, 150 P.2d 436 (1944).

<sup>8</sup> CASEMINE, <https://www.casemine.com/judgement/us/5914a232add7b04934694c93>, (Mar. 02, 2021, 10.50 AM).

<sup>9</sup> ILR 1994 KAR 1370.

As it was done in *Charan Lal Sahu v. Union of India*<sup>10</sup> that “such antiquated acts can be drastically amended or fresh legislation should be enacted to save the situation.”

As the legal speculations concerning product liability keep on developing, we hope to find in the future further intriguing decisions penned by the courts and new resolutions and statutes coming into power. Further, with the appearance of the product liability laws in India, it would be likewise intriguing to perceive how the industries and judiciary with the increase in unscrupulous and deceitful exercises by some consumers tackle such a menace and whether these provisions are abused by specific buyers to enjoy fraudulent activities.

### Current status of Product Liability Law

Negligence<sup>11</sup> is the breach of a duty caused by the omission to do something which a reasonable man, guided by those considerations which ordinarily regulate the conduct of human affairs would do, or doing something which a prudent and reasonable man would not do; and Negligence is often effective in the cases of manufacturing defects, defects in designing of the products, warnings given in the product & privity as well.

When the Sellers or product manufacturers fail to exercise caution and care during the manufacturing of the product or selling of the product they fall into trap of the negligence. However, the plaintiff has the defense regarding the same such as:

- (i) Assumption of Risk
- (ii) Contributory Negligence
- (iii) Misuse of Products
- (iv) Subsequent Alteration of Products
- (v) Comparative Negligence

The Court saw that the pleas for warranty and negligence were failing consistently, so the strict liability principle came to be developed by the courts, whereby for any loss or personal injury caused by the defective or dangerous product the seller or the manufacturer will be held liable. However, it is not correct to say that the principle of strict liability is absolute- the reason behind this is that there may be disclaimers on recovery limit or product liability or the loss suffered economically may not be recoverable.

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<sup>10</sup>1990 AIR 1480, 1989 SCR Supl. (2) 597.

<sup>11</sup>Justice GP Singh, Ratanlal & Dhirajlal: The Law of Torts, 427 (26<sup>th</sup> ed. 2013).

Based on this principle, we can see that the Consumer Protection Act, 2019 also brings out some **specific exceptions** to an action for product liability.

**Section 87<sup>12</sup>** of the Consumer Protection Act, 2019 deals with exceptions to product liability which states that:

1. *A product liability action cannot be brought against the product seller if, at the time of harm, the product was misused, altered, or modified.*
2. *In any product liability action based on the failure to provide adequate warnings or instructions, the product manufacturer shall not be liable, if-*
  - a) *the product was purchased by an employer for use at the workplace and the product manufacturer had provided warnings or instructions to such employer;*
  - b) *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;*
  - c) *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*
  - d) *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.*
3. *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.*

### **Central Research question**

*Is the Consumer Protection Act, 2019 successful enough to provide economic justice?*

### **Research Findings**

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<sup>12</sup>The Consumer Protection Act, 2019, § 87, No. 35, Act of Parliament, 2019 (India).

Yes, Consumer Protection Act 2019 has successfully justified its presence to provide economic justice to the people at a large by introducing **strict penalties** under its Chapter VII for guidelines & punishment for the makers of **misleading advertisements** and having stringent guidelines for **e-commerce regulation**.

Consumer markets for goods and services have gone through significant change since the sanctioning of the Customer Protection Act in 1986. Before the 2019 Act and the principles made thereunder, there was uncertainty in the Indian legal structure for product liability. Previously Consumer Protection Act, 1986 was amended twice in the years 1993 & 2002 regarding the product liability concept but the amendments failed to introduce the concept of product liability by that time.

The consumer protection bills of 2011, 2015, and 2018 likewise showed the supportive approach of government and asked for the updating of laws, to address the legal uncertainty and lack of precedents.

All the above occurrences have step by step prompted the sanctioning of the new Consumer Protection Act 2019, which has laid down provisions related to product liability, based on the principle of strict liability of tort law and the statute set by the courts. Furthermore, the e-commerce rules outlined under the 2019 act order the web-based business elements to embrace product liability while expecting them to disclose appropriate data to buyers, in this way empowering transparency and more insurance to the shoppers. Further, the provisions under the Indian Penal Code, 1860, the Sale of Goods Act, 1930, and certain particular statutes relating 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 proceed as an extra measure for the security of consumers.

### **Applicability of Economic Analysis of Law**

Recently, interest has grown in the integrated study of “law and economics”, for which the economic analysis of law is a superior depiction. Anybody with an interest in the institutional system, administering financial activity, will discover the financial aspects of law helpful in understanding how laws affect human incentives. The financial aspects of law might be characterized as the utilization of monetary standards to lawful instruments, questions, and techniques. It has numerous practical applications, like assisting with the drafting of laws, or in evaluating the number of damages needed to restore an individual to the level of welfare enjoyed before an accident occurred.

Legal instruments are gadgets like damages for breach of contract that highlight consistently in the general set of laws and have suggestions for economic incentives. Legal inquiries, for example, regardless whether it is fitting to grant damages for the interference to production following an oil spill from a tanker, are additionally amiable to economic analysis.

The nature of a nation's law and the dependence on its legal system directly affect monetary performance, as demonstrated by the “law and finance” literature. Nations having autonomous, solid, and generally corruption-free legal systems show higher development, less inflation, and more elevated levels of employment. The connection between the legal system and the economy is unquestionably a two-way connection and the concept of “law and finance” even recommends that common law frameworks are the best aspect for advancing economic productivity and development.

Economics of law has a decent family. On prior occasions, it was normal for ‘political economists’ (as economists were once known) to have had exposure to legal training and to deal with institutional inquiries. It is just new that numerous economists have become barely specialized and have overlooked institutional inquiries. Following closely the 2008 depression influencing Europe and America, the exorbitantly specialized nature of economics criticized, even to the degree of certain economists composing a letter to the Queen criticizing the mainstream profession, after the ruler had inquired as to why such countless economists seemed to have missed precisely foreseeing the beginning of the depression. It is a decent and ideal opportunity to build one’s institutional concentration by considering law and economics.

## **Positions of Product liability law in the United States and the United Kingdom**



## Position in the UK

### Framework

Product liability law in England & Wales derived itself from three sources:

- **The Law of Contract-** On entering into a contract, the relationship between the parties becomes administered by the express terms of their agreement. In contracts for the sale of goods, the express terms are enhanced by terms inferred by the Sale of Goods Act 1979 (corresponding to business-to-business contracts) and the Consumer Rights Act 2015 (comparable to business-to-consumer contracts).
- **The Common Law of Tort-** Those associated with the manufacturing, importation, and sale of items are under an obligation to try their best to avoid any potential harm caused to the individuals who may sensibly be affected by their negligence. The obligation, however, isn't restricted to consumers and end users of products. Manufacturers are additionally under an obligation not to make deceptive and misleading statements regarding the sale of their products.
- **Legislation-** Legislations are derived dominantly from the European Union and developed around the two pillars of the Product Liability Directive of 1985 and the General Product Safety Directive of 2001. Those Orders were reflected in English law by the Consumer Protection Act 1987 (CPA) and the General Product Safety Regulations 2005 (GPSR) respectively. The Consumer Protection Act makes a strict liability compensation strategy regarding defective products and the GPSR requires customer products to be protected.

### Regulatory Administration

Even though there is a huge volume of legislation that applies to specific products falling inside specific areas, the overall necessities of product security are set out in the GPSR. The GPSR applies to all commodities that are proposed for or are probably going to be utilized by purchasers<sup>13</sup>, and requires that those products be protected. GPSR characterizes a safe product as one that, under normal or reasonably foreseeable

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<sup>13</sup>The General Product Safety Regulations 2005 § 2, No.1803, 2005, (United Kingdom).

situations of utilization, does not present a danger, or stances just the minimum danger that is viable with the product's utilization, considered to be satisfactory and reliable with a significant degree of security for the wellbeing and soundness of people.

GPSR likewise administers the review of unsafe products<sup>14</sup>. The disclosure of an unsafe product should be notified to Trading Standards, the government body that implements product safety legislation in England and Wales. Trading Standards chooses which steps ought to be taken, including whether to trigger RAPEX, the EU-ready framework for risky customer products<sup>15</sup>.

Any individual who puts a hazardous item available is in breach of GPSR. This includes a producer inside an EU Member State, an organization setting its name on the product, an organization that reconditions the product, where the product isn't manufactured in the EU, the merchant of that product into a Member State and any expert in the supply chain whose activities may affect the security of a product<sup>16</sup>.

Breach of GPSR comprises a strict liability criminal offense that is punishable with a limit of a year's detainment, a fine of £20,000, or both<sup>17</sup>. The authorities have the discretion to prosecute and will take into account any steps that the organization has taken to remedy or mitigate the danger presented by the unsafe product. GPSR imposes a few more obligations on manufacturers and distributors of products along with the obligation on a distributor to not promote or supply any product that it knows, or should know, is risky<sup>18</sup>. The most extreme punishment is a year's detainment, a £20,000 fine, or both.

An individual in breach of GPSR can waive liability by exhibiting that all reasonable steps were taken to avoid the offense<sup>19</sup>. However, practically speaking, this is a high threshold.

### Causes of Actions

There are generally four causes of action:

1. **Breach of contract**- A purchaser may claim against the seller for any injury, damage, or loss brought about by any product's non-compliance with contractual terms. Such

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<sup>14</sup>The General Product Safety Regulations 2005 § 7(3), No.1803, 2005, (United Kingdom).

<sup>15</sup>Rapid Exchange of Information System

<sup>16</sup>The General Product Safety Regulations 2005 § 2, No.1803, 2005, (United Kingdom).

<sup>17</sup>The General Product Safety Regulations 2005 § 20, No.1803, 2005, (United Kingdom).

<sup>18</sup>The General Product Safety Regulations 2005 § 8(1), No.1803, 2005, (United Kingdom).

<sup>19</sup>The General Product Safety Regulations 2005 § 29, No.1803, 2005, (United Kingdom).

terms might be express or implied. The terms implied into business-to-business contracts are set out in the Sale of Goods Act 1979 as follows:

- i. The product supplied will be of satisfactory quality<sup>20</sup>. This is an objective standard, based on what a reasonable person would consider as being satisfactory in the circumstances, taking into account all relevant factors such as, for example, the price of the product;
  - ii. The product supplied will be fit for the purpose<sup>21</sup>. If the buyer makes known to the seller (explicitly or implicitly) a particular purpose for which the product is being bought, the product must be reasonably fit for that purpose. This is the case even if the purpose is not the normal use of the product. However, this concept will not apply where the buyer does not rely upon, or it is unreasonable for him or her to rely, on the judgment of the seller concerning the suitability of the product;
  - iii. A product sold by sample should be of the same quality as the sample that was supplied to the buyer<sup>22</sup>. This requires goods to be free from any defects that would not have been apparent on a reasonable examination of the sample; and
  - iv. A product sold by description should correspond with that description<sup>23</sup>.
2. **Negligence**- Any person who has endured injury or damage to their property because of the utilization of a defective product may have a privilege of right of action against the producer, seller, or importer of the product, regardless of whether there is no contract set up between them. A reason for the activity will emerge if the claimant can show that-
- a. A duty of care was owed by the defendant
  - b. Breach of that duty of care
  - c. The breach caused damages/injury
  - d. The injury/damage was a reasonably foreseeable consequence of the breach
3. **Deceitful and negligent misrepresentations**- The tort law inflicts a general obligation not to make misrepresentations regarding the sale of products. Liability for

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<sup>20</sup>Sale of Goods Act 1979, § 14(2), Chapter 54, 1979, (United Kingdom).

<sup>21</sup>Sale of Goods Act 1979, § 14(3), Chapter 54, 1979, (United Kingdom).

<sup>22</sup>Sale of Goods Act 1979, § 15, Chapter 54, 1979, (United Kingdom).

<sup>23</sup>Sale of Goods Act 1979, § 13, Chapter 54, 1979, (United Kingdom).

misrepresentation can connect not just to the seller of a product but additionally, in suitable conditions, to the importer or producer as well. For example, an engine company's professed representation of vehicle emissions attributes, repeated through its business network, frames a focal piece of the civil cases emerging from the Diesel gate scandal of 2015.

A respondent might be held liable for creating a beguiling misrepresentation if the claimant can show that-

- a. A false representation was made to the claimant by the respondent
- b. The respondent knew of the false representation or was reckless as to whether it is true
- c. The claimant's reliance on that representation was intended by the respondent
- d. The claimant relied on that representation to its detriment<sup>24</sup> and action under the Consumer Protection Act 1987.

## Position in the USA

### Framework

In the United States of America, the Product Liability rule is a bit complex in nature and is evolving consistently and this law is governed by the federal government. Each state in the US has developed its statutory framework and by the decision of courts, its common laws.

Owing to the uniqueness of the US federal system, product liability lawsuits sometimes find themselves in federal courts, which must nonetheless apply the applicable state's law of product liability. Many industries are heavily regulated by federal and federal regulations. All this results in a classy, interesting, and sometimes confusing, interaction between state and federal law. Fortunately, many of the foremost important principles of product liability are similar throughout these jurisdictions.

So, we can clearly state that the US product liability law at its present state favours the right of a customer or consumer who has suffered an injury to sue the manufacturer or the seller of a defective product.

### Regulatory Administration

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<sup>24</sup>*Eco 3 Capital Ltd and others v. Ludsin Overseas Ltd* (2013) EWCA Civ. 413.

The federal government of the US to regulate the safety of the consumers has created several agencies such as

- Consumer Product Safety Commission
- Food & Drug Administration (FDA)
- National Highway Traffic Safety Administration
- The Federal Aviation Administration
- The Federal Railroad Administration
- The Occupational Safety & Health Administration

The rules and regulations promulgated by these federal agencies may anticipate the conflicting state of the law by barring another viable product liability claim under certain circumstances. Moreover, each state has its laws, regulations, agencies to regulate some aspects of product safety.

### Causes of Action

#### ❖ **Strict Liability**

One of the most plaintiff-friendly causes of action is the doctrine of strict liability. In the majority of states, the doctrine of strict liability is recognized through either common law or by statutes. According to the doctrine of strict liability, a manufacturer can still be held liable if he acted reasonably to manufacture the product or designing the product but ended up producing a product that is defective in nature.

To claim the strict liability doctrine, the plaintiff needs to prove certain elements:

- There was a defect in the product
- The defect existed at the time when it was put out of the control of the manufacturer
- Due to the defect, the product became dangerous in nature
- The defect was the main reason behind the injury of the plaintiff.

In general, a manufacturer may be strictly liable for 3 types of defects

- i. Manufacturing defect
- ii. Defect in the design of the product
- iii. Defect in labelling

To prove that there was a manufacturing defect the plaintiff needs to show that the defect became so dangerous in nature that it was the sole reason for the injury caused to the plaintiff.

#### ❖ **Negligence**

To prove an act of negligence the plaintiff needs to prove that the defendant owed the duty towards the plaintiff<sup>25</sup>, the defendant made a breach of the duty and as a result of that, the plaintiff suffered damage. It is frequently stated that negligence focuses on the actual conduct of the manufacturer and strict liability focuses more on the product's condition.

According to the general rule of the law of torts, every person has a duty to act in a 'reasonable' manner; keeping in mind this principle the manufacturer owes duty towards the use that he designs and constructs the products that are reasonably safe for their consumers or customers. Whereas the supplier owes a duty that the product which he is supplying to the consumers are safe and defect-free in nature.

#### ❖ Failure to Warn

Failure to Warn claim is another important and popular cause of action in the product liability law in the US. Here the plaintiff alleges that the manufacturer failed to provide adequate instructions and warnings and the list of dangers associated with the use of the product manufactured by him.

All of these claims are mostly premised on the rule of strict liability or the tort of negligence. There is no clearly laid down criteria for claiming *Failure to Warn* it varies from state to state and from situation to situation. Here, however, it is the duty of the plaintiff to claim the damages from the manufacturer and assert that the manufacturer owed a duty toward the plaintiff/consumer to warn about the risks involved in the product and that his failure to do so has resulted in the plaintiff's injuries. It may happen sometimes that the product contains a latent defect that will not make itself apparent immediately but will do so after several months or years after the product is sold, so here the manufacturers have to warn the customers regarding the dangers associated with the use of its products when the manufacturer knows that such a danger exists or should know about these probable dangers. For this reason, several states in the US impose a continuing duty on the manufacturer to warn about the hazard of the product to the consumers to whom they are selling the products. It is also important to note that many jurisdictions in the US hold that the manufacturers have no duty to warn the consumers about the dangers associated with the products.

#### ❖ Fraud or Misrepresentation

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<sup>25</sup>Dr. Narendar Kumar, *The Law of Torts including Motor Vehicles Act, Consumer Protection Act & Competition Act*, Dr. R.K Bangia, 228 (24<sup>th</sup> ed. 2018).

A product liability claimant may allege that the manufacturer had committed fraud or misrepresented the claimant via affirmative acts such as misleading advertisements, failure to disclose the defect in the product, or any other such non-disclosures of information which was a must for the claimant to know before using the product.

To claim compensation, the claimant needs to establish in the court of law that the manufacturer is guilty of fraud or misrepresentation of material facts.

❖ **Breach of Warranty**

In the context of product liability actions for the breach of warranty are somewhat unique and they are largely governed by Contract Law rather than Law of Torts. Uniform Commercial Code (UCC) has been adopted by most of the states in the US. Article 2 of the UCC provides for the Sale of Goods and also provides for express and implied warranties. Most of the Product Liability Litigation is generated by the implied warranties.

## Landmark Indian Judgements related to Product Liability Law

### ❖ Klaus Mittelbachert v. East India Hotels Ltd.<sup>26</sup>

This case deals with the liability of a five-star hotel against a visitor who got severely injured while taking a dive in the swimming pool, to which it was observed that when the question arises in regards to safety of the guests, there remains no difference between the hotel owner and insurer. Any defect or flaw in the structure or service which can be insecure to the visitors will give rise to strict liability and compensation for the following breach of duty is liable to be given.

### ❖ Municipal Corporation of Delhi v. Subhagwanti<sup>27</sup>

This case finds its significance due to the massive death havoc created by the collapse of the clock tower at New Delhi, which belonged to the Delhi Municipal Corporation and was exclusively under its control. It was held by the Supreme Court that “the fall of Clock Tower tells its own story in raising an inference of negligence on the part of the defendant”.

### ❖ Alka v. Union of India<sup>28</sup>

An electric pump was installed in a room within the compound of Telephone Exchange which was accessible to the children near a residential complex. As a result of negligence of the defendants, the pump room was left open and the plaintiff (6 year old girl) strayed into the room and unaware of the consequences, put her hand on the belt of the pump and sustained multiple injuries on her body along with total damage of 2 fingers of her right hand. They were held liable to pay compensation of Rs.1,50,000/-.

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<sup>26</sup> A.I.R. 1997 Delhi 201.

<sup>27</sup> A.I.R. 1966 SCR (3) 649

<sup>28</sup> A.I.R. 1993 Delhi 267.



## Conclusion

Looking at the overall paper, we can see that in this money-oriented world, the field of trade and business is at its peak and common sense speaks that in order to promote trade and business, selling of products is very essential and this balance can only be made by being a continuous trustworthy to the consumers. Product liability law found its origin at contract law and tort law by the concept of “warranty” & “strict liability/negligence” respectively, as already discussed in the paper. Various case laws bringing up the concept of product liability has been discussed which clearly displays the path of its origin. This origin finally paved its way to the Consumer Protection Act, 2019 which mentions about product liability of a manufacturer, seller and service provider, which definitely is a standing pillar for creation of economic justice.

On making a comparative study of product liability law of UK and USA with India, we found both similarities and differences with respect to product liability law in India. For example- origin of product liability law in UK also derives itself from legislations which came up from time to time and that of USA derives itself from the product liability laws made from the federal government and the product liability law in USA is dynamic and varies from state to state. We can also find many landmark cases in respect to product liability and the liability imposed upon the defendant. We can say that the Consumer Protection Act is worthy enough in matters of economic justice, especially after repealing the 1986 act and enforcing the new act of 2019 and introduction of crucial points as discussed in the recommendation.

As the legal speculations with respect to product liability keep on developing, we hope to find in future further intriguing decisions conveyed by the courts and new resolutions and statutes coming into power. Further, with the appearance of the product liability laws in India, it would be likewise intriguing to perceive how the industries and judiciary with the increasing with the expanding unscrupulous and deceitful exercises by some consumers and whether these provisions are abused by specific buyers to enjoy fraudulent activities.

## Recommendations

### ❖ Broadening the concept of 'consumer'

Section 2(7) of Consumer Protection Act, 2019 has introduced a broad meaning of the term "consumer" which involves people who buy goods and services through e-commerce or by telescoping or direct selling or multi-level marketing. Before this amendment, the meaning of "consumer", did not include the concept of e-commerce transactions specifically.

Along with that, Consumer Protection (E-Commerce) Rules, 2020 was notified, which are applicable to inventory e-commerce entities, market-place e-commerce entities, e-retailers registered in India or abroad provided that goods and services are offered in India, and to all forms of unfair trade practices. The primary objective of the E-Commerce Rules, 2020 is to put on legal obligations upon e-commerce entities, and their consumers respectively.

### ❖ Advancement of Pecuniary Jurisdiction

The pecuniary jurisdiction of District Commission (District Forum) has been altered from Rs. 20,00,000 to Rs. 1,00,00,000/-. Similarly, the State Commissions and the National Commission will exercise jurisdiction over cases with pecuniary value between 1,00,00,000/- to Rs, 10,00,00,000/- and more than Rs.10,00,00,000/- respectively.

### ❖ Territorial jurisdiction

Consumer Protection Act, 2019 states that complaints will be filed at the place where the complainant resides or conducts business. The 1986 Act provided filing of the complaint at the place where the defendant(s) resided, which created many difficulties on deciding the territorial jurisdiction in cases with more than one defendant. 2019 Act provides a solution for this.

### ❖ Misleading advertisements

Section 2 (28) talks about misleading advertisements as those which display a false guarantee about any product/service which ultimately misleads a consumer about the product, thus protecting consumers from coming under the trap of misleading advertisements.

Overall, we can see that Consumer Protection Act, 2019 is fair enough to deal with any trade related issue. All major gaps have been filled up by 2019 act, which was lacking in the 1986

act. But if we look deep down, we can observe that there can even be misuse of the provisions by complaining a false statement about any producer or marketer, in order to gain self-interest and extra money. Other than this, the act is successful enough to provide economic justice.

