INTRODUCTION OF PRODUCT LIABILITY ACTIONS IN INDIA UNDER THE CONSUMER PROTECTION ACT, 2019 - A WAY FORWARD

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ABSTRACT

Product liability can be broadly defined as a right of a consumer (and corresponding duty on the manufacturer or seller) to be compensated for damage or loss caused as a consequence of usage of products or services. Though familiar and akin to liability created under the Consumer Protection Act, 1986 ("Act, 1986"), the term "product liability" or any permutation thereof were absent from the Act, 1986. This absence resulted in contradictory judgments which either allowed compensation for consequential damage arising out of usage of a product or refused to entertain such claims calling them incidental and distant to the product manufacturer/ seller. Now however, the Consumer Protection Act, 2019 ("Act, 2019") has introduced a new regime of product liability and dedicated Chapter VI to further enumerate liability of a product manufacturer, product service provider or product seller. Though these provisions related to product liability can be considered as derivations from more mature product liability regimes such as those in the United States of America, differences in socio-economic and judicial systems would necessitate that Consumer Commissions implement these provisions with extreme caution and while taking guidance from best practices in other jurisdictions. This paper would examine the product liability regime introduced by the Act, 2019 specifically suggesting prudent manners of its implementation for not only ensuring just compensation and restitution to aggrieved consumers but to also regulate manufacturers, product service providers and product sellers without resorting to excess regulation by legislative intervention into every element of commerce and trade.

I. INTRODUCTION

The Consumer Protection Act, 1986 ("**Act, 1986**") was undoubtedly a proactive move towards a more transparent marketspace and sought to ensure that the Indian consumer enjoyed rights which were alien to most

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developing countries at the time. It also roughly coincided with the opening up of the Indian economy which gradually resulted in a flood of new products & services in the marketspace which constantly led to a variety of interactions between consumers and manufacturers, sellers, retailers, service providers etc. However, it has been long understood that an entitlement to recover a purchase price or compensation if goods or services are deficient would not necessarily imply a right to claim compensation for injury which results from their usage. Such a right or rather corresponding duty on the manufacturer or seller, to compensate for damage or loss caused as a consequence of usage of products or services has been referred to as 'product liability' in common law. The Act, 1986 however never used the expression 'product liability' nor provided for any separate provision expressly dealing with such expression. The manner of enforcement of the Act, 1986 by various consumer fora however, did not reflect such inadequacy. Though the term 'consequential damage' has been sparsely used by such erstwhile fora, there are numerous instances where these tribunals have exercised their ingenuity to grant compensation for injury arising out of usage of products or services.[1] On the other hand, consumer fora have also hesitated to grant consequential damages calling such claims beyond the purview of the Act, 1986.[2] In this context, the Act, 2019 has now not only introduced definitions of product liability and expressly included a product liability action under the definition of a complaint; but the Act has also dedicated Chapter VI to product liability actions. This paper would discuss the concept and legislative structure of product liability as introduced by the Consumer Protection Act, 2019 ("**Act, 2019**") in the context of both existing jurisprudence under the Act, 1986 and experiences in more mature product liability jurisdictions, such as the United States of America ("**USA**"), and suggest a prudent manner of adjudicating over product liability actions.

[1] Asia Tea Company v. On Behalf of Commissioner, Civil Supplies and Consumer Protection Department, (2017) CPJ 461 (NC); Tata Motors v. Rajesh Tyagi, (2014) (1) CPC 267.

[2] H&R Johnson (India) Ltd. v. Lourdes Society Snehanjali Girls Hostel, (2013) CPJ 475 (NC).

II. ORIGINS OF PRODUCT LIABILITY

The foundations of product liability in English Law can be traced to jurisprudence pertaining to contractual and tortious liability. A liability under a contract for supply of goods and services primarily resorts to compensating a purchaser for unfulfilled expectations from such goods or services. Such liability though strict in nature, suffers from the requirement of privity, more specifically vertical privity.[3] Hence contractual liability would restrict remedy of a purchaser only to an immediate vendor and such was the interpretation given by English courts. A tortious liability therefore sought to ease restrictions placed by a contractual liability.[4] However, it was not until the celebrated decision of the House of Lords in *Donoghue* v. *Stevenson*[5] ***("Donoghue")*** that courts came to recognize independent and concurrent duty of manufacturers or suppliers to third parties, other than the immediate purchaser. It is argued, however, that even up until *Donoghue* courts had begun imposing a number of exceptions to non-liability due to lack of privity. Such exceptions were a natural development of case law since the market space and consumer behavior was constantly changing in more developed nations. It was becoming clearer, for example, that a supplier was to refrain from misrepresentation and disclose potential danger, prevent mishandling of hazardous goods (inherently dangerous goods) etc.[6] These principles not only formed the basis of general consumer laws as they exist today, but also contributed significantly to the development of product liability principles in the modern context. Similar to the importance that *Donoghue* holds in common law, the law of product liability in the US pivoted around the decision in *Macpherson* v. *Buick Motor Co.*[7] ***("Macpherson")***. It is also prudent to state that before *Macpherson*, courts in the USA also followed a path similar to English courts in following non-liability and general exceptions such as fraud, failure to disclose dangers etc. However, the courts in the USA expanded upon the definition of "inherently dangerous goods" more proactively. Thus, not

[3] D. Fairgrieve & R. S. Goldberg, *Product Liability*, 25 (2nd ed., 2020).
[4] Ibid at 527.
[5] Donoghue v. Stevenson, (1932) AC 562 (1932, House of Lords).
[6] Longmeid v. Holliday, (1851) 6 Ex 761 (1851, Court of Exchequer).
[7] Macpherson v. Buick Motor Co., 217 N.Y. 382 (1916, New York Court of Appeals).

only hazardous goods such as explosives or poison were considered as "dangerous in themselves", but also pharmaceuticals, food and drinks. The following passage from *Macpherson* by Justice Cardozo is worth reproducing:

> If the nature of a thing is such that it is reasonably certain to place life and limb in peril when negligently made, it is then a thing of danger. Its nature gives warning of the consequences to be expected. If to the element of danger there is added knowledge that the thing will be used by persons other than the purchaser, and used without new tests, then, irrespective of contract, the manufacturer of this thing of danger is under a duty to make it carefully.

Privity therefore came to be rightly neglected in *Macpherson* to provide protection to all reasonable users of a product. Any such user would be liable to compensation if the product was negligently made and caused peril to life and limb. In the years to follow, USA courts expanded upon the definition of 'inherently dangerous goods' and recovery was permitted even when injury was arising out of simple items such as ladders, dresses or perfume.[8] To the credit of courts in the USA, no uniform product liability statute exists in the USA and product liability claims are governed by a myriad of state, federal and common law principles. However, such lack of uniform law has not hampered development of a rich jurisprudence of product liability in the USA. Though an attempt to summarize the entirety of USA product liability laws would be a rhetorical exercise, it would be proper to state that a cause of action in product liability in the USA may be based upon negligence, breach of warranty or strict liability.[9] Negligence, as aforementioned, refers to the negligence of a manufacturer in either designing a product, manufacturing a product or in warning or instructing a consumer of uses and hazards of such product.[10]

In the Indian context, product safety and standards for specific products are governed by special legislation such as the Drugs and Cosmetics Act, 1940, Food Safety and Standards Act, 2006, Essential Commodities Act,

[8] Supra 3, at 15.
[9] M.S. Moller & P. Indig, *Products Liability Law Revisited: A Realistic Perspective*, 31(4) Tort & Insurance Law Journal 879, 882 (1996).
[10] P.A. Sexton, A.T. Suroff & L.N. McDowell, *Recent Developments in Product Liability Law*, 47(1) Tort Trial & Insurance Practice Law Journal 415, 415 (2011).

1955, Bureau of Indian Standards Act, 2016, Legal Metrology Act, 2009 among others. However, these special legislations mostly provided minimum standards and penal provisions for violation of such standards. The element of compensation to the end user who might be affected by such violation, was missing from the regulatory regime in India until the enactment of the Act, 2019.

III. PRODUCT LIABILITY UNDER THE ACT, 2019

The Act, 2019 defines product liability under Section 2(34). The essential elements of the newly introduced definition can be broken up as follows:

i. It is the duty/responsibility upon a manufacturer or product seller to compensate for harm.
ii. Harm should be caused to a consumer by a defective product or service related to such product.

The definition therefore follows a scheme which is similar to counterparts in common law by including essential ingredients of duty to compensate and consequent harm. The legislature has also made the effort to provide an inclusive definition of 'harm' under Section 2(22) specifically relating to product liability actions. Harm has therefore been defined to include damage to property, injury to person, injury to mental state/emotional state and loss of consortium. Such damage and injury should be arising out of usage of a defective product or deficient service related to such product. Reading of Sections 2(34) and 2(22) of the Act, 2019, however, appears to put an unnecessary onus on a complainant to prove that a product by which harm has been caused, was defective.

The term 'defect' and 'defective' as defined by the Act, 2019 would imply that for a product to be defective it needs to be faulty, imperfect or of inadequate quality or standard in accordance with contract or law.[11] Therefore, for harm to be compensated in a product liability claim, a consumer on a strict reading of these provisions would have to sufficiently satisfy the Commission that the product was inherently defective as per the provisions of the Act, 2019. Imposition of such a standard would be

[11] S. 2(10), The Consumer Protection Act, 2019.

contrary to established jurisprudence in the United Kingdom (**"UK"**) and the USA. It is now understood that even though a good or service may not be defective or deficient, but due to improper 'labeling', insufficient warning or instructions, harm caused from a product would fall within the domain of product liability.[12]

To address this contradiction among others, Chapter VI of the Act, 2019 has been specifically provided and dedicated to product liability actions. It is therefore imperative that while implementing provisions pertaining to product liability actions, Consumer Commissions are wary of specific provisions of Chapter VI which expand upon the strict definitions provided by the Act, 2019 as aforementioned. Accordingly, a combined reading of Sections 2(34), 2(22), 2(10) and 84 of the Act, 2019 would mean that a product manufacturer shall also be liable in a product liability action if the product fails to contain adequate instructions of correct usage or warning. Such non-inclusion of instructions or warning may not *stricto sensu* imply a defect in the product, but would invoke product liability actions and consequent liability of a manufacturer. It would be proper to state at this juncture that it would have been more appropriate to omit the word 'defective' in Section 2(34); however, in the present state of the Act, a harmonious reading of Chapter VI and Section 2(34) would be beneficial to the ultimate objective of the Act, 2019.

As aforementioned, Section 2(22) of the Act, 2019 provides an inclusive definition of 'harm' in the context of a product liability action. However, the Section also states that such harm shall not include harm to the product itself, damage to property on account of breach of warranty conditions or any commercial or economic loss. It is interesting to note that exclusion of damage due to breach of warranty conditions has been limited to damage to property. An extremely liberal reading of such exclusion would imply that injury to person, illness or death caused even on account of breach of warranty of a product would be considered as 'harm' for the purposes of a product liability action. Such liability would not only be strict i.e., irrespective of negligence on the part of the manufacturer or service

[12] M. Ursic, *Product Safety Warnings: A Legal Review,* 4 Journal of Public Policy & Marketing 80, 83 (1985).

provider, but also has the potential of negating the effect of any contributory negligence on the part of the consumer. The Consumer Commissions however, need to exercise caution while interpreting 'harm' in product liability actions. It would be prudent to suggest that a mere violation of a condition of warranty by a consumer should not exclude harm caused by a product. The alleged breach of warranty should have a nexus to the damage caused for such breach to be sufficient to discharge the manufacturer from liability. An unconnected breach of warranty conditions should not by itself convince Consumer Commissions to reject product liability claims by consumers for damage to property. On the contrary, even though breach of warranty causing injury to a person may not be expressly mentioned as an exclusion, it would be unreasonable for a manufacturer to incur liability when the sole reason or cause of personal injury was violation of a condition of warranty. It would then be imperative upon the Commission to examine whether the consequences of violation of such condition of warranty have been displayed by the manufacturer sufficiently so as to warn the consumer.

Another exclusion from the definition of harm, that warrants discussion is exclusion of commercial or economic loss. The usage of the term 'commercial' in this exclusion seems appropriate since the Act, 1986 or the present Act, 2019 are not meant to deal with disputes pertaining to commercial losses arising out of deficient goods.[13] Such commercial losses have always been the domain of contractual disputes subject to jurisdiction of commercial courts or civil courts, as the case may be.[14] However the term 'economic loss' as used in the exclusion should not be read independently of the term 'commercial', since exclusion of all economic loss from the definition of harm would lead to absurdity and defeat the purpose of introduction of the product liability provisions. A loss of income therefore should be differentiated from loss of profit; while the former may be purely an economic loss as a consequence of deficient product or services, the latter has commercial tones pertaining to expected

[13] See definition of Consumer and exclusion clause in S. 2 (7), The Consumer Protection Act, 2019.
[14] S. 2 (1) (c), The Commercial Courts Act, 2015.

financial gains. The Act, 2019 does not envisage exclusion of all economic loss from harm to be compensated under product liability actions. A parallel can be drawn from strict liability provisions of the Motor Vehicles Act,[15] where a rich jurisprudence of case law has determined formulas for calculation of loss of life, injury and consequential loss of income, consortium, mental agony etc.[16] In the present case as well, if loss of life or injury leads to long term loss of income or employment, the product manufacturer or seller if found liable should be made to compensate for such economic loss.

At this juncture it would be appropriate to discuss in some detail provisions specifically contained in Chapter VI of the Act, 2019. A perusal of Sections 82 and 83 clearly shows that a consumer complaint disclosing a claim for product liability i.e., a product liability action can be brought against the following three categories of persons:

i. Product Manufacturer
ii. Product Service Provider
iii. Product Seller

1. Defect, Defective Design and Manufacturing Specifications

The definitions of the above-mentioned category of persons discloses that the three terms encompass within them all possible roles such as making/assembling a product, rebranding or marking, selling, distribution, leasing, installing, repairing, maintaining, designing, fabricating etc.[17] However, the Act, 2019 creates three separate categories of instances when either the Product Manufacturer, the Service Provider or the Seller would be liable. Under Section 84 of the Act, liability for a Product Manufacturer is provided in five specific instances as follows:

i. Manufacturing defect;
ii. Defective design;
iii. Deviation from manufacturing specifications;
iv. Violation of express warranty;

[15] S. 140, The Motor Vehicles Act, 1988 (now omitted vide Section 50, The Motor Vehicles (Amendment) Act, 2019).
[16] Sarla Verma (Smt.) v. Delhi Transport Corporation, 2009 (6) SCC 121.
[17] See S. 2(36) and 2(37), The Consumer Protection Act, 2019.

v. Failure to provide adequate instructions or warnings.

In the categories of cases mentioned above, consumer fora have a healthy jurisprudence pertaining to manufacturing defects. However, the terms 'defective in design' and 'manufacturing specifications' contained in the Section warrant some analysis. Design or manufacturing specifications in the Indian context are generally governed only for a limited set of products by special legislations governing such products. The Bureau of Indian Standards Act, the Rules and the Notifications issued thereunder, govern the minimum standard of some products such as cement, electrical appliances, processed foods etc.[18] Similarly the Drugs and Cosmetics Act, the Rules thereunder govern pharmaceutical products.[19] The Consumer Commissions therefore while examining minimum standards to be maintained, and while examining design or manufacturing specifications of goods governed by specific legislation, need to mandatorily borrow definitions and standards laid down by such rules or notifications. Even when the goods are not mandatorily regulated by the special legislation, guidance can be sought from these specific legislations while examining recommended standards or standards for similar goods. The Consumer Commissions also need to be wary of the fact that merely because a product has been manufactured in accordance with the manufacturer's own manufacturing specifications or design would not mean that such product is incapable of causing harm. The reasonableness of such design or specifications has to be examined by examining similar goods or by taking expert assistance in ascertaining whether such specifications or design are proper. It is time that the Consumer Commissions force manufacturers to adhere to the highest possible manufacturing standards and even unhygienic or hazardous manufacturing conditions should be considered as violation of specifications and a manufacturing defect.

2. Instructions and Warnings

Perhaps one of the most important categories of liability of manufacturers is Section 84(1)(e) i.e., when the product fails to contain adequate

[18] The Bureau of Indian Standards Act, 2016.
[19] The Drugs and Cosmetics Act, 1940.

instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage. Though, for most hazardous goods, specific legislations compulsorily force manufacturers to display instructions and warnings merely because an item is not inherently hazardous to life or property would not mean that a manufacturer would not be liable to examine all possible hazards of such a product and display them. Further, the mandate of proper instructions of usage and display of warnings should not be treated as a mere formality by Consumer Commissions while adjudicating a product liability claim arising out of harm caused as a consequence of such instruction or warning. That is to say, even if there exists no legal mandate to display instructions and warnings in a particular manner, such text and images should be displayed prominently, clearly and without obstruction.

The Consumer Commission should examine such text and images on the basis of reasonable understanding of the final intended consumer or any reasonable user.[20] For instance, a warning/instruction solely in English or Hindi language on an item which is to be used in agricultural or domestic use all over the country would not be sufficient warning, since its intended user can be reasonably assumed to have limited knowledge of only local languages. From experience in more mature product liability jurisdictions such as the USA, it has also become amply clear that a manufacturer ought to foresee possible and reasonable uses and misuses of a product and provide reasonable warning related to such unintended uses.[21] A classic example for such cases is that of a chair, where it is reasonably assumed that a consumer during the course of the product's usage might stand on the chair for support, etc. In such a case if the chair can be hazardous and is incapable of such usage, the manufacturer has a duty to warn the consumer about such misuse and its consequences.

It may be argued by manufacturers that putting such a heavy burden of mandatory warnings and instructions even for unforeseeable risks, for

[20] F.C. Schafrick, *Product Liability suits for failure to warn of the hazards of regulated products,* 32(3) Tort & Insurance Law Journal 833, 837 (1997).
[21] V.E. Schwartz, *Continuing Duty to Warn: An Opportunity for Liability Prevention or Exposure*, 17(1) Journal of Public Policy & Marketing 124, 125 (1998).

products which are inherently not dangerous or hazardous is beyond the intent of product liability provisions under the Act, 2019. However, in the absence of any specific exclusion clause in Section 84 and usage of broad terms such as 'adequate instructions' and 'any warnings' it is amply clear that the legislature intended to place a heavy burden upon the manufacturer. The same is further solidified by jurisprudence and legislations in jurisdictions such as the USA and the UK.[22] It is imperative that the Consumer Commissions recognize the importance of these provisions in self-regulating the marketspace without actual legislative interference in every minute detail of packaging, labeling or marking of the product. It may also be noted that the Central Government has been granted rule making powers under the Act, 2019 to further enable enforcement of its provisions. It would be prudent for the Central government to deliberate upon creating product liability rules to clarify terms aforementioned and lay down minimum standards for unregulated goods. Such an exercise of delegated legislation would sufficiently guide the Consumer Commissions in ensuring the maximum effect of product liability provisions under the Act.

3. Product Service Provider and Seller

A product service provider under the Act, 2019 is defined to mean any person who provides a service in respect of any product.[23] This definition has been added specifically to deal with services such as maintenance or repair services where the service and product are inherently related and the service has a direct consequence upon the performance of the product. Needless to state, a deficient service provided by a product service provider can render the product defective/damaged thereby causing harm to the consumer. It is for this reason that Chapter VI of the Act specifically deals with liability of a product service provider in certain specific instances.[24] These instances are similar to liability of a manufacturer under Section 84 and are focused upon the service element of the harm caused by the

[22] J. J. Argo & K. J. Main, *Meta-Analyses of the Effectiveness of Warning Labels,* 23(2) Journal of Public Policy & Marketing 193, 205 (2004).
[23] S. 2 (38), The Consumer Protection Act, 2019.
[24] S. 85, The Consumer Protection Act, 2019.

product. The product service provider therefore has a clear onus of providing good quality services while disclosing all information, instructions and warnings.

A product service provider may be exclusively liable if harm is caused due to an incident triggered by deficiency in services that render the original product defective. In cases involving deficient product services such as repair or maintenance, a consumer while filing a complaint would in most cases implead both the manufacturer and the product service provider as parties to the dispute, since as a consumer the complainant cannot be assumed to possess expert knowledge as to whether the harm has been caused due to a defective product or a deficient product service. In such cases, Consumer Commissions should not hesitate in granting compensation to a complainant if the liability cannot be pinpointed on either the manufacturer or service provider. In such cases both the manufacturer and service provider should be considered jointly liable to provide compensation to the complainant if the evidence suggests that harm has been caused by a product deficiency, though not strictly attributable to one of the parties. The Consumer Commissions should also in such joint liability cases, avoid scientifically distributing the liability in the final decree. The aforementioned examination would obviously be subject to the fact that such product service should not be in violation of warranty conditions i.e., in an unauthorized manner. If such unauthorized service leads to harm from a product, reasonably the manufacturer should not be held liable.

The Act, 2019 has proactively included within the fold of product liability actions not just a product manufacturer or product service provider but also a product seller. Liability of a product seller however, is attracted only in specific conditions enumerated in the Act.[25] The basis of this liability is control over the product. Accordingly, if a product seller has control over designing, testing, manufacturing or labelling of a product or has altered or modified the product, then product liability claims are maintainable against the product seller. Additionally, if the product seller has exercised any

[25] S. 86, The Consumer Protection Act, 2019.

control in assembling or maintaining the product, or gives any warranty in excess of the manufacturer's warranty, he can be liable under the Act, 2019 for any consequent harm caused. The two most important elements of this provision however, are:

i. Vicarious liability under Section 86(d)
ii. Failure to warn under Section 86(e)

Liability under Section 86(d) is being categorized as vicarious because under this sub-section no immediate fault, negligence or control is attributable to the product seller and merely by virtue of sale of the product, liability can be attracted in the following instances:

i. Identity of product manufacturer is not known,
ii. Service of notice or process cannot be affected on product manufacturer
iii. Manufacturer is not subject to the law which is in force in India
iv. Order if passed cannot be enforced against him.

This Section therefore imposes a strict no-fault liability upon a product seller if any of the aforementioned conditions are fulfilled. This nature of liability becomes extremely important in cases involving online intermediaries and e-commerce platforms. Furthermore, in cases involving sale of imported goods, the onus of ensuring quality of goods is squarely placed upon the person selling such goods since if the manufacturer does not have offices in India, according to this section, the entire liability of any harm arising out of such goods would lie upon the product seller in India. The aggrieved consumer would also not be deprived of compensation if the product manufacturer evades service of summons/court process issued by the Consumer Commissions and in such cases the product seller would be liable to compensate the consumer in product liability action. Though this provision is extremely consumer friendly and is oriented towards ensuring that rights of a consumer are not hampered by virtue of non-existence or non-responsiveness of a manufacturer; the Commissions should be extremely cautious in not summarily allowing manufacturers to evade service in each product liability case and thereby forcing product sellers to incur such liability. If the Commissions tacitly become parties to such evasion by the manufacturers,

the regulatory purpose of the product liability provisions would be defeated and it would not effectively deter marketspaces to become more equitable.

Section 86(e) of the Act, 2019 rightly and proactively puts a heavy burden of conveying relevant information, instruction and warning with regard to any product to the consumer. If it is proven in a product liability action that the proximate cause of harm is failure to convey such information or warning, the product seller would also be rendered liable. Such duty to warn is regularly administered in the domain of drugs and cosmetics where only a registered pharmacist is allowed to sell pharmaceutical products while clearly conveying all information and warning to the consumers. Introduction of this positive duty in all consumer goods, is a monumental step in ensuring a more transparent and safer marketspace. It is therefore imperative upon the Ministry of Consumer Affairs to develop information modules and marketing material to inform all product sellers including online marketspaces, individual retailers etc. about the nature of basic information to be shared with consumers while selling different categories of goods. It would be prudent for the central government to enact specific rules highlighting categories of goods, relevant information, warnings etc. to guide the marketspace more efficiently. A case-to-case analysis in each dispute which arises; of whether what nature of information should have been conveyed by a seller to an aggrieved consumer would render the scheme of this section liable to vague outcomes.

IV. CLASS ACTION OR THE CENTRAL CONSUMER PROTECTION AUTHORITY?

One of the primary arsenals of courts in the USA for regulating marketspaces is class action suits arising out of product liability claims. These behemoth cases, if successful, can have financial ramifications affecting the entire business operations of companies. Courts in the USA have therefore converted *inter se* disputes between consumers and manufacturers/service providers as a tool of *in rem* regulation of market behavior.[26] There are of course abundant safeguards in place to ensure that

[26] See S. Acker, *Improving Your Response to Product Liability Claims*, 105 SAE Transactions 220, 228 (1996). Product liability claims have forced manufacturers to develop methods

these litigations are fair and transparent for both parties. In the Indian context unfortunately, though the Act, 1986 allowed for a class of consumers to file consumer complaints for common causes of action; class action or similar large-scale litigation never gained significance like its American counterparts. This was primarily a result of narrow interpretations given by consumer fora and reluctance in granting punitive damages which would have any deterrent value. A consumer dispute in India therefore *prima facie* remains an *inter se* dispute between one consumer and one manufacturer/service provider and compensation is awarded more or less considering the retail price of the product/service vis-a-vis inconvenience or loss caused. The paying capacity of the manufacturer/service provider and the overall ramification of the product to the public at large is not considered as a relevant fact and hence, exemplary or punitive damages are seldom awarded.

The situation under the Act, 2019 more or less remains the same as far as adjudication of consumer complaints is concerned. However, if the same reasoning is extended to product liability claims, then a manufacturer can potentially introduce hazardous, dangerous goods with a calculated risk of potential claims if and when filed. Since these claims would arise in their own respective silos of territorial jurisdiction etc., the financial ramification of these claims would not be sufficient to deter the manufacturer from introducing these goods in the future or withdrawing hazardous goods. Additionally, due to a low-cost conundrum, most low retail price goods which cause harm to consumers would go unassailed before the Consumer Commissions since it would not make financial sense for a single consumer to file consumer complaints for such consideration or minor harm.[27]

One solution to this problem is of course training of Consumer Commissions to ensure that the complaints filed by multiple consumers on common cause of action related to product liability may be dealt with strictly while considering the potential harm of such product on the entire

to document product development, specifications and ascertain all possible hazards in usage of the product.

[27] V. K. Singh & A. K. Singh, *Central Consumer Protection Authority - A Critical Analysis*, 8 International Journal on Consumer Law and Practice 59, 65 (2020).

marketspace. Consumer Commissions must exercise powers of awarding punitive damages in such appropriate cases and punitive damages must be calculated on the basis of the potential harm caused to public at large and approximate profit earned by sale of such defective product/service.[28] Further, the Commissions must be proactive in issuing injunctive relief such as withdrawing goods from sale, cease manufacture and sale of hazardous goods etc.[29]

However, this still leaves two potential lacunae, firstly, Consumer Commissions are primarily adjudicatory bodies *in personam* and do not exercise jurisdiction *in rem;* and secondly, Consumer Commissions have no powers of *suo motu* exercise of jurisdiction and must wait for actual harm to be caused for exercise of its powers. It is in these circumstances that the newly created Central Consumer Protection Authority (**"CCPA"**) becomes extremely relevant. The CCPA is a regulatory authority created under the Act, 2019 with powers of investigation, inquiry and injunctive actions.[30] The CCPA can exercise *suo motu* jurisdiction in cases involving violation of consumer rights where such violation is prejudicial to the public interest or to the interests of consumers as a class.[31] In product liability actions which may come to the attention of the CCPA whether filed before the Commissions or through public/social media; the CCPA can initiate *suo motu* preliminary inquiry into such alleged potentially harmful goods. If the preliminary inquiry discloses violation of consumer rights such as hazardous goods/services, absence of instructions/warnings, false warranties etc.; detailed investigation can be initiated by the CCPA's investigative wing.[32] Such investigation can include search and seizure, discovery of documents and recording of evidence upon issuing show cause notices to the manufacturer/product service provider. Thus, even before filing of a complaint after actual harm has occurred, the CCPA can *suo motu* regulate the market after following due process of law. If such

[28] See Liebeck v. McDonald's Restaurants, 1995 WL 360309 (1995, District Court of New Mexico). Punitive damages were calculated on the basis of daily profit of McDonald's Restaurants. Similar provision exists in S. 39, The Consumer Protection Act, 2019.
[29] Power to grant injunctive relief is inherent under S. 39 (1), The Consumer Protection Act, 2019.
[30] Chapter III, The Consumer Protection Act, 2019.
[31] S. 18 (2) (a), The Consumer Protection Act, 2019.
[32] S. 19 (2), The Consumer Protection Act, 2019.

investigation reveals harm caused to large number of consumers, the CCPA can direct a product manufacturer or product service provider to provide reimbursement, compensation, recall and repair goods, prohibition on sale of goods to each and every consumer who had purchased such a product or availed such a product service.[33] The heavy burden of adducing evidence by each affected consumer would be satisfied by the investigative powers of the CCPA.

V. CONCLUSION

The provisions related to product liability actions as introduced by Chapter VI of the Act, 2019 and supplemented by the definition section are undoubtedly a derivation from more mature product liability regimes such as the USA. Though some experiences from such jurisdictions can act as guiding principles to Indian tribunals as discussed in this paper, given the differences in social, economic and judicial systems between India and other jurisdictions, Consumer Commissions need to implement product liability provisions with extreme caution and while balancing the intent of the Act, interest of the consumer and of the marketplace. The Consumer Commissions also need to ignore specific jurisprudence under the Act, 1986 so as not to get restricted by judicial pronouncements which were delivered in a different legislative framework and socio-economic background. With a growing economy and ever-increasing profit margins of manufacturers, sellers, service providers and online marketplaces; it is the duty of the Consumer Commissions to ensure a more equitable and transparent market for a common consumer.

If implemented in a just, fair and reasonable manner, product liability regime as has been introduced by the Act, 2019 has the potential of not only ensuring just compensation and restitution to aggrieved consumers but to also regulate manufacturers, product service providers and product sellers without resorting to excess regulation by legislative intervention into every element of commerce and trade.

[33] S. 20, The Consumer Protection Act, 2019.