

ROLE OF TORTS IN CONSUMER PROTECTION AND PRODUCT LIABILITY IN INDIA

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I. ABSTRACT

This study examines the complex interplay between the Consumer Protection Act of 1986 and Tort Law, highlighting how both contribute to the welfare of Indian consumers. As industrialisation and mass consumption increase, people are more vulnerable to subpar products and services. With a particular focus on the application of tortious concepts like strict liability and negligence in the context of product liability, the article examines the legal framework governing consumer rights and remedies. Important legal issues are investigated using the IRAC (Issue, Rule, Application, Conclusion) process, including the liability of product makers, medical practitioners, and transportation service providers under both tort and consumer protection laws. To demonstrate changing judicial patterns, case laws such as *Donoghue v. Stevenson*, *Indian Medical Association v. V.P. Shantha*, and *Hindustan Antibiotic Ltd. v. Lalita Devi* are examined. The study's conclusion emphasises the necessity of more expansive legal definitions and strict enforcement in order to preserve consumer confidence and advance a responsible, balanced market system.

II. INTRODUCTION :-

In today's modern era, everything is industrialised. Every good that we consume as a customer is produced in industries. We, being a consumer, want all goods and services to be sold at a much lesser price which results in lower quality. So, in order to protect the interests and demands of the consumers the Indian parliament enacted Consumer Protection Act, 1986. It is rightly pointed out by Prof. W. Friedmann, "the modern state functions as a protector or dispenser of social service, industrial manager, economic controllers and as arbitrator, and has to take within its functional ambit the protection of the consumers".²⁵⁶

Both Tort and Consumer Protection laws are crucial for protecting the rights of consumers. Torts provides the means of legal remedies to an individual who have suffered harm/ injury, on the contrary, the laws governing Consumer Protection seeks to protect the consumers from

fraudulent acts related to the goods and services.

This research project through the IRAC (Issues, Rules, Application and Conclusion) method delves into the role of torts in consumer protection and product liability and there subsequent interdependence on each other.

III. ISSUES :-

1. Whether medical services are covered under the Consumer Protection Act of 1986 ? Does denial to an emergency case by the hospital amounts to liability ?
2. Whether and how does the Consumer Protection Act of 1986 cover the issues related to transport sector negligence ?
3. Whether a No- Fault Liability is valid in case of defects in product ?

IV. RULES :-

Tort originated from a latin word "tortum" meaning twisted or crooked. It can be described as a civil wrong. Everyone in the society is expected to act in a rational and

²⁵⁶ W. FRIEDMANN, LAW IN A CHANGING SOCIETY 506-08 (1972).

straightforward manner and those who deviate from this path commits a civil wrong, thereby, are liable to pay damages for the same. The law of Torts takes into consideration the reasonable and rational behaviour of an individual. It includes both intentional and unintentional wrongs. For a Tort to be done, it is important for an act or omission to have taken place and subsequent injury caused by the same. The aim or purpose of law of Tort is to safeguard the rights of an individual and restoration of the rights if violated through damages/compensation.²⁵⁷

Consumer protection on the other hand was enacted for the welfare of the consumers. Consumers here include people of all sections who are purchasing their goods and services from the market. 'Consumer interest' is synonymous to public interest, and the duty of a democratic state is to ensure common good and safety for all.²⁵⁸ 'Consumer' can be anyone who is the final user of the goods and services obtained either through online or direct shopping. 'Product' is defined as any goods and services used to manufacture, process and assemble for sale, lease or hire and can be the raw material or even the final good. Consumer Protection as a concept was brought by the enactment of Consumer Protection Act, 1986 and further renewed under Consumer Protection Act, 2019.

Consumer Protection Act, 2019 (CPA, 2019) introduced Section 83 which explains product liability as the responsibility of the manufacturer, seller and service provider of a particular good and services which ought to be defective. Section 84 of CPA, 2019 establishes the liability of a product manufacturer in cases of manufacturing defect in a product, defective design of the product, deviation from manufacturing specifications etc.²⁵⁹

According to Tort Law in terms of consumer protection, negligence is the breach of duty of care by the manufacturer/seller/service provider that can result in product liability. Imposition of strict liability can also take place because the manufacturer has a responsibility to ensure that the product they sell isn't defected.²⁶⁰

Alderson B said "Negligence is the omission to do or not do something which a reasonable man guided upon those considerations which ordinarily regulate the conduct of human affairs, would do, or doing something which a prudent and reasonable man would not do"²⁶¹. In the case of *Donoghue v. Stevenson*, there are 3 essentials of negligence which are established :-

1. Duty of Care - It is a standard of care that a reasonable man must follow. If someone fails to adhere to such duty of care then he/she is liable for negligence. Those acts/omissions which can reasonably foreseen come under it. The principle of proximity The duty of care is different and is subjective according to different cases.
2. Breach of Duty - The plaintiff needs to prove that the standard duty of care was breached by the defendant and that he owed such duty of care towards the plaintiff. The test of neighbour and foreseeability is applicable here as well. In *Rural Transport Service v. Bezhum Bibi*, the bus conductor asked the passengers to sit on the roof of the bus even when it was fully loaded. While the bus was moving, one of the passengers were hit by a branch of tree and he sustained a lot of

²⁵⁷ CAROL HARLOW, UNDERSTANDING TORT LAW (3d ed. 2010).

²⁵⁸ Dr. J.N. PANDEY, LAW OF TORTS WITH CONSUMER PROTECTION AND MOTOR VEHICLES ACT 443 (11th ed., Cent. L. Publ'ns 2020).

²⁵⁹ M. Anshika & Boobesh S., Comparative Analysis of the Consumer Protection Act, 1986 and Consumer Protection Act, 2019, 5 *Indian J.L. & Legal Res.* (2).

²⁶⁰ Ashok R. Patil, Product Liability Action: A Tooth to Strengthen Consumer Protection, 10 *Int'l J. on Consumer L. & Prac.*, art. 6 (2022).

²⁶¹ Blyth v. Birmingham Water Works Co., (1856) 11 Ex. 781 (Eng.).

injuries, eventually dying. The defendant was held liable for the same by the court.²⁶²

3. Damage caused by breach of duty – Once the plaintiff proves the breach of duty of care, it is essential for him to establish that damage has been caused by the same. Damage in this case might be caused to an individual or a property. Mental shock is also included under injuries. The damage caused due to breach of duty of care by the defendant must not be remote.²⁶³

The principles of Strict Liability are also valid under Consumer Protection Act and product liability. It states that if the defendant makes non-natural usage of land carrying extensive risk and something dangerous escapes out from the land causing harm to the plaintiff then the defendant would be liable under strict liability without requiring the intention or proof of negligence. Strict liability as a legal doctrine finds its origin in the case of *Rylands v. Fletcher*.²⁶⁴

V. APPLICATION :-

A. NEGLIGENCE – Mostly, in case of deficiency of services or defect in product, the principle of negligence is applicable. Some of the sectors where the negligence is applied in relation to consumer protection and product liability are :-

i.) Medical Negligence –

In the historic judgement given by the Supreme Court in *Indian Medical Association v. V.P. Shantha*, it was held that medical services are under the scope of Consumer Protection Act. The doctors as professionals are expected to deal their medical cases

with ordinary skills, care and expertise.²⁶⁵ These duties are laid down in the *Laxman Balakrishnan Joshi v. J.M. Bapu*. In *Pravat Kumar Mukherjee v. Ruby General Hospital*, the plaintiff filed a suit against the hospital for medical negligence which led to the death of his son. Herein the plaintiff's son faced an accident and was denied treatment by the hospital on delay in depositing security amount. The court stated that the and injured person shouldn't be denied of medical aid, regardless of the fact if there is deposit or consent of attendants for the treatment and therefore the hospital was held liable.²⁶⁶

ii.) Transport Sector –

The definition of services as mentioned under the section 2(1)(o) of the Consumer Protection Act, 1986, includes this kind of service, therefore any deficiency in the services will amount to legal consequences. In *Jose Philip Mampillil v. M/s. Premier Automobiles Ltd.*, the plaintiff bought a brand new car which was defected. On complaint to the seller, there were no actions taken by them to rectify it thereby amounting to failure in services. The Supreme court then granted a compensation of Rs. 1 lakh to the buyer.²⁶⁷

In *Indian Airlines v. K Balachandran Thampi*, was a case about the delay and cancellation of flights wherein it was held that the airlines must compensate if the passengers are made to wait for more than 6 to 8 hours without any information. This is a case of gross negligence on the

²⁶² *Rural Transport Serv. v. Bezhum Bibi*, AIR 1980 Cal. 165 (India).

²⁶³ **S.P. SINGH**, LAW OF TORT INCLUDING COMPENSATION UNDER THE CONSUMER PROTECTION ACT ch. 14, at 151 (5th ed., Universal L. Publ'g Co.).

²⁶⁴ **RATANLAL & DHIRAJLAL**, *THE LAW OF TORTS* ch. 19 (27th ed., LexisNexis 2024).

²⁶⁵ *Indian Medical Association v. V.P. Shantha*, (1995) 6 S.C.C. 651 (India).

²⁶⁶ *Pravat Kumar Mukherjee v. Ruby Gen. Hosp.*, (2005) 4 CLJ 328 (Cal).

²⁶⁷ *Jose Philip Mampillil v. Premier Automobiles Ltd.*, AIR 2004 SCW 648.

part of airlines and cause immense inconvenience to the passengers.²⁶⁸

B. STRICT LIABILITY – A person in this case is liable for his actions for the injury caused even when he has maintained a standard of care. This is also called a No – Fault Liability. We can further divide the claims under 3 subheads –

i.) Design Defect –

It makes the manufacturer liable due to presence of a defect in a product causing injury to the consumer regardless of the fact if it was produced with outmost duty of care. In *Fatehchand Shah v. Hindustan Aeronautics Ltd.*, the manufacturers were held liable due to a design defect in the aeroplane, making it risky to fly.

ii.) Manufacturing Defect –

Here the during the manufacturing of a product, there is deviation from the set standard and method which results into defects. In the case of *Maruti Udyog v. Hasmukh Lakshmichand*, a complaint was filed against the faulty body earthing of the car which was newly bought by the complainant. Due to the defect, current used to pass through the steering and the whole body of the car. The manufacturing company was held liable for the defects and injury caused to the complainant.²⁶⁹

iii.) Defect of Failure to Warn –

There are some products which carry an inherently dangerous use and hence it becomes important for the manufacturers to install product warnings.

Failure to do so can amount to a no-fault liability on the manufacturer if injury is caused. In *Hindustan Antibiotic Ltd. v. Lalita Devi*, the antibiotic produced by the company has several side effects for the person consuming it. The company failed to provide a warning because of which were held liable and court considered this as a restraint on their right to information.²⁷⁰

VI. CONCLUSION :-

Tort plays an important role when dealing with matters related to Consumer Protection and product liability. It provides a proper mechanism for the redressal of injuries and damages caused. But this has its own set of challenges. Increased litigation costs and striking the right balance between consumer's interest and not over burdening the business are the major concerns.

As a suggestion, this law must expand the definitions of terms like “consumer”, “complaint” and “product liability action” so as to make it less ambiguous and increase its scope by encompassing various other issues. A market cannot survive without the backing of the consumers and for that they must have the confidence on the system which governs it therefore this act by protecting the interest of consumers will strengthen the market in general and promote the country's economy. Hence, India has realised the importance of strengthening and promoting a strict product liability regime along with torts so that the consumers and public at large are protected.

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²⁶⁸ Indian Airlines v. K. Balachandran Thampi, (2013) CPJ 459 (NCDRC).

²⁶⁹ Maruti Udyog v. Hasmukh Lakshmichand, (2001) 1 CPJ 144 (NCDRC).

²⁷⁰ Hindustan Antibiotic Ltd. v. Lalita Devi, (1974) 2 SCC 640.

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