



Examining India's product liability framework in the context of the food sector: A comparative study with reference to the United States of America

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Abstract

Over the years there has been a dramatic shift in the role and impact of the marketplace on the people. It has been estimated that many the population across the globe has suffered on account of defective or hazardous products and services. Initially, the theory of 'caveat emptor' i.e., let the buyer beware, dominated the consumer law jurisprudence. The Industrial Revolution led to an increase in production levels, the development of the economy and consequent upliftment in living standards. Further, with the advent of technology and globalization of markets, producing and supplying hazardous or defective products became rampant. As a result of the evils of the modern marketplace, the notion of consumerism necessitated a robust legal framework for product liability. In the Indian context, the Consumer Protection Act of 1986 lacked a specific well-defined legal framework for product liability. In consequence, the Consumer Protection Act 2019 substituted the erstwhile legislation and established a legal framework for product liability in the country. The present paper attempts to understand the legal framework of product liability in India before and after the commencement of the Consumer Protection Act 2019 with special reference to the concept of product liability. In addition, the paper will study the food sector from the consumer safety perspective. Further, the paper will seek to make a comparative study between the product liability regime of India and the United States of America with the help of relevant decisions of consumer protection authorities.

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1. Introduction

In India the concept of liability for harm caused by defective goods or services has been present since long and despite several legislations in different sectors securing the interests of the people in the context of harmful products; the legal framework of the country did not embody any specific and comprehensive definition and legal framework of 'Product liability' prior to 2019. In August 2019, the Consumer Protection Act, of 1986 was substituted by the

Consumer Protection Act, of 2019 with an aim to ensure better protection for consumers through stricter provisions. Although the new Act embodies several significant amendments to the old legislation, the introduction of the concept of Product liability marks a momentous shift in the approach of consumer protection laws.

2. Product Liability Regime in India

In India, prior to 2019, there was no specific law regarding product liability and the legal framework with regard to the same was scattered in Tort law apart from different legislations like the Consumer Protection Act, 1986; the Sale of Goods Act 1930; the Indian Contract Act 1872 etc. However, as has been stated in the foregoing paragraphs, with the enactment of the Consumer Protection Act, 2019 (hereinafter referred to as the Act of 2019), the concept and legal framework with regard to product liability has been expressly established in India.

2.1. Consumer Protection Act, 1986

According to the Consumer Protection Act, 1986, the ambit of the word 'complaint' included written allegation against the trader or service provider for selling or offering for sale goods [1] and services [2] hazardous to life and safety of the people or otherwise defective. This is the major provision hinting at the recognition of liability for unsafe products and services.

2.2. Indian Contract Act 1872 and Sale of Goods Act 1930

Broadly stated, the law governing the sale of goods is embodied in the Sale of Goods Act 1930 and the Indian Contract Act 1872. The Indian Contract Act provides for a general law relating to contracts whereas the Sale of Goods Act especially pertains to contracts regarding sale of goods. However, it is to be noted that both the aforementioned laws are complementary to each other, and the Indian Contract Act further fulfils the gaps in the Sale of Goods Act. A general duty has been imposed by the Sale of Goods Act [3] that the goods should be of merchantable quality, otherwise, it would be the responsibility of the seller; additionally, the Act stipulates that in cases of sale by description [4] and sample [5] it would be the responsibility of the seller if the goods do not correspond to the description or sample.

2.3. Tort law

In the law of tort, several principles governing faulty or hazardous products (including services) have evolved with the passage of time. In *Donoghue v Stevenson* [6] when a decomposed body of a snail was found by the buyer after consuming a portion of the drink, the manufacturer of the ginger beer bottle was held responsible. It was decided by the House of Lords that it was the duty of the manufacturer to exercise reasonable diligence to ensure that no dangerous or noxious substance was contained in the bottle. This case reaffirmed that the doctrine of privity of contract was not applicable in cases of tort. It is noteworthy that this case is one of the first cases pertaining to liability for hazardous or dangerous products and liability was imposed by virtue of tort of negligence. Further, in *PGIMER Chandigarh v Jaspal Singh* [7] tortious liability resulting from medical negligence was imposed when the patient died due to a mismatch in transfusion of blood. Similarly, taking a cue from the rule of Strict liability formulated in *Rylands* [1] case, the Indian courts formulated a stricter rule i.e., the rule of Absolute Liability in *M.C. Mehta* [9]. Herein, it was established that when harm is caused due to the operation of hazardous or

inherently dangerous activity of an enterprise then it is liable to compensate, and such liability is not subject to any exceptions applicable with regard to the rule of strict liability. For instance, in the *U.P. State Electricity Board*, [10] it was clearly established that 'electricity' was a hazardous substance as it could injure or even result in death.

2.4. Bureau of Indian Standards Act, 2016

A statutory body at the national level has been established i.e., the Bureau of Indian Standards (BIS) by virtue of the Bureau of Indian Standards Act, 2016, [11]. The said body comes within the ambit and control of various departments such as Food & Public Distribution, Ministry of Consumer Affairs etc. The BIS has been established as a body responsible for standardisation of goods, articles, processes, systems or services, across the country [12]. For ensuring compliance and furtherance of such standards, the BIS is equipped with the power to impose penalties and fines in case of non-conformity [13] or non-compliance including the offences committed by companies [14]. At present, the BIS is responsible for maintaining standards and ensuring quality checks of a plethora of products and services across as many as fourteen different sectors [15].

2.5. Consumer Protection Act, 2019

The new legislation has replaced the Consumer Protection Act, of 1986 and although it was enacted in 2019, many of its provisions were enforced in 2020. The new Act has been hailed as an overhaul of the erstwhile law on account of several much-needed provisions in the wake of the advancement of technology apart from increased privatization across various sectors. As has been stated previously, many noteworthy provisions such as – the introduction of the Central Consumer Protection Authority (CCPA), [16] increasing the pecuniary jurisdiction, [17] and e-filing of complaints [18] i.e. change relating to electronic filing mechanisms other than offline filing subsequently launched by National Consumer Disputes Redressal Commission (NCDRC) on 7th Sept. 2020 [19] Consequently, under the new legislation, consumers now have the option to submit their complaints via either offline or online methods [20]. Moreover, the definition of a 'consumer' [21] has been expanded to encompass individuals who purchase goods or services through a range of avenues, including offline and online transactions (such as e-commerce), [22] teleshopping, direct selling, and multi-level marketing. Regarding pecuniary jurisdiction, the 2019 Act has raised the monetary limits for adjudication, with the District Commission now handling cases up to ₹1 crore, the State Commission managing cases between ₹1 crore and ₹10 crore, and the National Commission presiding over cases exceeding ₹10 crores [23]. This represents a substantial increase from the 1986 Act, which had thresholds of ₹25 lakhs for the District Commission, ₹25 lakhs to ₹1 crore for the State Commission, and cases exceeding ₹1 crore for the National Commission [24]. These adjustments have been deemed necessary to accommodate the evolving landscape of business models and consumer behaviour. However, keeping in view the scope and purpose of the present study, the discussion would mainly

¹*Rylands v Fletcher*, [1868] LR 3 HL 330.

pertain to the concept of 'Product liability'[25] which is broadly explained as an obligation of a product manufacturer or seller, for any product or service, to provide compensation when a consumer is harmed due to a defect in the product they manufactured or sold or due to a deficiency in the related services. Further, a claim of product liability lies against the product manufacturer, product seller or product service provider [26]. The Act of 2019 laid down the legal framework regarding liability in cases of defective products or services in Chapter VI. It has been specified that action for product liability can be brought in case of harm suffered due to any defective product or service [27]. It is pertinent to note that the product manufacturer can be held liable in an action for product liability even if it is established that an express warranty of a product was given without committing any negligence or fraud [28]. This provision seems to be in adherence to the concept of absolute liability which was firmly established by the Supreme Court in the *Oleum gas leak* [29] case, in which an accident at Shriram Food and Fertiliser Industries took place, involving the release of toxic oleum gas in a factory, resulting in environmental damage and potential harm to nearby communities. This incident assumed importance in influencing the liability norms for companies involved in risky operations, as well as in addressing environmental and public safety issues. The new Act goes a step further in making the product seller also liable even if the person is not the manufacturer [30]. The said liability can be imposed on a number of grounds such as reasonable care not taken in inspection, maintenance or assembling of the product and such failure was the proximate cause of harm to the complainant. Apart from embodying the specific conditions for imposing liability of defective service on the service provider [31]; the defences [32] available against product liability and offences and penalties to be imposed are also specified in the Act of 2019 [33].

3. Food Sector from the Lens of Consumer Welfare

In any society, food is one of the essential requirements for the survival and sustenance of the human race. Needless to say, with the development of civilization, the concept of food has also gone through a pervasive revolution. In every society food is not just an essential commodity it also signifies the traditions and rituals peculiar to every society and culture. With the advent of technology, food processing has become a fast-developing and ever expansive industry. It is often regarded as an upcoming industry by virtue of the fact that it has the potential to uplift the agricultural economy, giving impetus to the hotel and food chain businesses apart from generating large scale employment.

3.1. Regulation of Food Industry

In view of the fact that food impacts the health and as a result the general well-being of any country, regulation of the food industry is vital. Consequently, the Indian legal landscape has provided for laws pertaining to the regulation and subsidization of food through a plethora of laws over the years. Initially, a number of legislations such as the Prevention of Food Adulteration, [34] the Fruit Products Order, [35] the Essential Commodities Act, [36] the Vegetable Oil Products (Control) Order [37], the Meat Food Products Order, [38] the Milk and Milk Products Order [39] and the Edible Oils Packaging (Regulation) Order,[40] were

present, however, in 2006, all the existing laws on the subject were consolidated with the enactment of the Food Safety and Standards Act. The said law firmly established the Food Safety and Standards Authority of India (FSSAI) [41], as one of the major watchdogs of the food industry and all domestic food operators are required to be licensed by the FSSAI [42]. Many issues such as prevention of adulteration, maintenance of hygiene, labelling for packaged food, permitted additives in food, microbiological requirements [43] etc. have been sought to be addressed by the concerned law. In India, the FSSAI has been introduced as an establishment under the Food Safety and Standards Act, 2006, [44] by consolidating various food related Acts and Orders. It is a body corporate with having head office in Delhi and has the power to exercise and perform the functions relating to food safety in India [45]. It comprises a Chairperson and other 22 members out of which one shall be women [46]. The Chairperson and members hold office for a term of three years from the date of appointment and will be eligible for reappointment for a further period of three years (only if not crossed the age of sixty-five years for the Chairperson and sixty-two years in case of a member) [47]. The FSSAI is created on science-based standards for food items and for regulating the manufacturing, storage, distribution, sale and import to ensure the availability of safe and wholesome food for proper human consumption [48]. Further, they are bound to perform various functions such as – circulation of standards and guidelines relating to food items; accreditation and certification of bodies and laboratories enforcement of quality control etc [49]. In addition to that, they are supposed to provide scientific advice and technical support to Central and State Governments in policy matters and rules regarding food safety and nutrition and ensure that all the consumers and other stakeholders receive prompt, reliable, reasonable and comprehensive information [50]. Further, they also ensure that food products are properly marked and labelled by the manufacturer, distributor, seller or any agent for delivery before it is in the market [51] and strive to prevent any misleading advertisement or unfair trade practice [52]. Regarding enforcement, the FSSAI has to ensure that Food Business Operators (FBOs) are complying with the prescribed requirements of law [53]. The Commissioner of FSSAI can also prohibit the manufacture, storage, distribution or sale of any food product in a State wholly or partly for a period of not more than one year [54]. Hence, it demonstrates that the FSSAI has been equipped with significant and efficient powers to prevent and handle any food safety related issues in a proper manner. Although the FSSAI has the power to restrict the production of substandard or hazardous food products, the same can be appealed before the Consumer Forum under the Act of 2019. On account of numerous decisions, the FSSAI has remarkably showcased its role in food safety. A few landmark cases have already been discussed in the foregoing section of the study wherein the FSSAI has put prohibitions on manufacturers and sellers for product liability in cases including *Nestle India Ltd.* [55], *Omkar Agency* [56] and *Academy of Nutrition Improvement* [57]. With the establishment of FSSAI, there has been a major shift in the culture and conduct of the food industry due to the need for compliance with a plethora of rules and regulations pertaining to food safety. It is the duty of FSSAI to ensure that the consumers are not exposed to contaminants, heavy metals, pesticides or any other substance hazardous to human

life [58]. However, for proper and effective implementation of the provisions of the Act, awareness of nutrition and health among all the stakeholders is an essential prerequisite. Keeping this in mind, the FSSAI has been actively engaged in creating sensitization and spreading awareness with regard to safe food and basic nutrition among consumers. It is pertinent to note that where on one hand compromised quality due to issues like adulteration, presence of heavy metals etc. continue to pose a threat to food safety and nutritional balance; at the same time with the advent of social media the concerned stakeholders like food companies are subjected to increased scrutiny by the regulators and consumers both which will be discussed and reasoned in the later part of the study.

3.2. Judicial Responses on Food Product Liability

As has been stated in the relevant section of the study, cases of 'product liability' arising out of hazardous or substandard food products are rampant in the country, however for the purposes of the present study, a few landmark cases are elucidated in the ensuing paragraphs. Among them, one of the prominent cases in recent times was the *Nestle India Limited v. The Food Safety and Standards*, [59] wherein the issue arose when certain samples of Maggie Noodles were collected and examined by Uttar Pradesh's Food Safety and Drug Administration and the same were found to have lead and Monosodium Glutamate (MSG). The company in question is a subsidiary of the Swiss Company 'Nestle' and is engaged in the business of manufacturing food products including manufacturing and marketing of Maggie. On 5th June 2015, the FSSAI Delhi, [60] in its order, observed the presence of MSG and lead in excess of maximum permissible levels of 2.5 ppm along with misleading and false information on the package which read as - "no added MSG". Hence, for violating a plethora of sections of the Food Safety and Standards Act 2006 [61], the FSSAI issued a show cause notice and directed Nestle India Ltd. to withdraw and recall all the nine approved variants of Maggie instant noodles from the market as they were found to be unsafe and hazardous for human consumption [62]. Moreover, it was instructed to cease the manufacturing, processing, importing, distributing, and selling of these products immediately. Additionally, the recall of "Maggi Oats Masala Noodles with Tastemaker" was mandated because it had not yet received approval from the relevant authority. The FSSAI cites the U.S. Food and Drug Administration's findings to substantiate their claim of deceptive advertising [63]. In response to the aforementioned directive, Nestle India initiated a writ petition before the Bombay High Court [64] The Court, in its deliberation, interpreted the show cause notice as an outright "ban order" and concluded that such an abrupt prohibition of a company's product, without affording them an opportunity to present their case, violated the fundamental principles of natural justice. Consequently, the High Court ruled in favour of Nestle India Ltd. by nullifying the order issued by the FSSAI, which had sought to halt the sale of Maggie noodles. It's worth noting that the FSSAI maintained that the action was merely a show cause notice initiated in the public interest during the review process and not a ban order. Subsequently, an appeal before the Supreme Court (SC) was filed, [65] in which the FSSAI contended that, given their observation that 30 out of 32 samples exceeded the permissible limits for lead, the show cause notice they issued should not have been

characterized as 'arbitrary, unreasonable, and lacking transparency' by the Bombay High Court. The FISSI also contended the High Court's erroneous judgment, asserting that it had disregarded the reports of two duly notified and National Accreditation Board for Testing and Calibration Laboratories (NABL) accredited entities, which had reaffirmed the excessive lead levels. During the pendency of the proceedings, the Central Government based on the order to ban FSSAI, parallelly filed a complaint (using the provision for the first time in the nearly three decades old Consumer Protection Act) [66] against the company before the NCDRC [67] claiming ₹ 640 crores by way of compensation for allegedly selling the noodles containing lead and MSG to consumers [68] Consequently, the company approached the SC and urged it to put a stay on the NCDRC proceedings and for rejection of the Government's claims. Accordingly, the Apex Court stayed the proceedings and directed the Mysuru-based NABL-accredited, Central Food Technology Research Institute Laboratory (CFTRI), to submit its report [69]. It is notable that the Central Government objected to the CFTRI report as it gave a clean chit by claiming that lead and MSG in Maggie Noodles are well within the permissible limits but there was some amount of lead in various other products. Finally, the SC while accepting the said objection of the Govt., permitted the NCDRC to proceed with the class action suit brought against the Maggie Noodle [70]. It was reasoned by the SC that in view of the CFTRI report, it should be evaluated by NCDRC and not pre-empt the jurisdiction of NCDRC [71]. Therefore, the SC vacated the stay order and referred the matter back to the NCDRC which remains pending to date. Hence, this case highlighted the relevance of food safety regulations, consumer protection, legal procedures, and corporate responsibility in the context of a widely publicized dispute over Maggie noodles' safety and quality. In another subsequent case *Omkar Agency v. Food Safety and Standard Authority of India*, [72] the characteristics of food item and the role of FSSAI was questioned. In this case, the petitioners who were the manufacturers of tobacco products including Pan Masala and Zarda filed a writ petition before the Patna High Court, against the order of the FSSAI for prohibiting the manufacture, storage, distribution, or sale of Zarda, Pan Masala and Gutkha [73]. The main issues, in this case, were related to inherent inconsistency between the Food Act and Cigarette and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce Production, Supply and Distribution) Act, 2003 (COTPA) and whether the FSSAI had the authority under Food Act, to prohibit such manufacturing, sale, and production of tobacco products? It was argued by the petitioner that the prohibition was not permissible as the products were permitted under the COTPA. Further, it was argued that the petitioners do not come within the ambit of food business operators under the Food Act and thus not required to comply with the requirements of the Food Act.

The Court, in nullifying the FSSAI's order, established that a prohibition order can only be issued when there is concrete evidence that a specific brand fails to meet the prescribed standards. It was firmly stated that a broad prohibition of all Pan Masala products through a blanket order is impermissible. Furthermore, it was noted that the permissible duration for such prohibition is one year, and the Food Authority had repeatedly exceeded this limit, which

constituted an arbitrary exercise of power. Similarly, in *ITC Ltd. v. Agricultural Produce Market Committee*, [74] the SC held that tobacco is not a food item and COTPA is the exclusive law dealing with tobacco products. Thus, only prohibited mixing of food with tobacco can be covered under the Food Act. These above-mentioned cases demonstrate the major loopholes in our earlier legislative framework relating to the identification of food products or reasoning of juridical which somehow was expected to be removed with the new consumer protection laws in relation to Food Safety Act. Earlier in the *Academy of Nutrition Improvement & Ors. v. Union of India*, [75] the petitioner being a Non-Governmental Organization representing consumers, salt producers, medical experts, academics etc., opposed the compulsory iodization of salt for human consumption as provided under the Food Act. The Apex Court while deciding in favour of the company held that where any item of food is in natural form, is unadulterated and not injurious to health, any rule cannot prohibit or put a ban on manufacturing, storage and sale of such food item because the population can use a medicated form of such food. Further, the Court held that presently there is no material to show that universal salt iodization is injurious to health and thus such a rule is ultra vires in nature and hence not valid. Therefore, the Court ordered the Central Govt. to review the compulsory iodization policy and bring appropriate legislation in that regard. The above-mentioned decisions showed how the court has interpreted the food products being manufactured and sold by the company and not making them liable due to non-characteristics of food products as harmful to health or lack of evidence against the party in deficiency of service.

3.3. Food Safety Authorities in India and the US

In view of the fact that food is a necessity for survival, food safety measures are necessary to prepare, handle and store food to prevent and properly manage any foodborne illnesses and injuries. In this part, attempts will be made to discuss and compare the food safety regulators in India with the Food safety authorities in the US. As already discussed, the FSSAI being a regulatory body established under the Food Safety and Standards Act, of 2006, consolidated all earlier food-related laws and dealt with enforcing science-based food standards, overseeing manufacturing, storage, distribution and import, ensuring safe food, monitoring labelling, policy advice to governments, preventing misleading advertising and regulating overall food business operators in India. When it comes to the U.S., there are three federal government organizations that govern food safety i.e., the Food and Drug Administration (FDA), the Food Safety and Inspection Service (FSIS) and the Center for Disease Control and Prevention (CDC) [76]. This section will exclusively address the FDA and FSIS since these are the primary authorities responsible for enforcing current food safety laws. The FDA and FSIS have specific roles, which encompass overseeing food production and distribution while ensuring the absence of contamination in food supplied to retail establishments, restaurants, and consumers. In the US, although there are smaller organizations involved in the safe distribution of food products, the FDA and FSIS are the most prominent regulators actively dedicated to ensuring food safety and the prevention of foodborne illnesses. The FDA, for instance, was established in response to the Federal Food Drug and

Cosmetic Act of 1938 (FFDC), enacted following a tragic incident where a legally marketed toxic elixir resulted in the deaths of approximately 107 people, including numerous people [77]. The Act authorized the FDA to inspect the safety of new drugs, and circulating standards for food and conduct the factory inspection [78]. With regard to punishments, the FFDC provides strict prohibitions (being enforced by FDA) on grounds such as adulteration or misbranding [79]. The FDA possesses the jurisdiction to impose penalties on FBOs, including imprisonment for up to one year, a fine of no more than \$10,000 or both [80] In instances of repeated violations following a conviction, the punishment can extend to three years in prison or a fine of up to \$10,000 [81]. Consequently, it's evident that the FDA enforces more stringent penalties when contrasted with the FSSAI. It's worth noting that the FDA's regulatory scope covers approximately 75% of food products, excluding meat, poultry and certain egg products, [82] which fall under the purview of the FSIS [83]. The FSIS was established on the basis of the Federal Meat Inspection Act, of 1906, the Poultry Products Inspection Act, of 1957, the Egg Products Inspection Act, of 1970 and other amendments [84]. The FSIS has the power to implement safe, wholesome, branded egg, poultry and meat products in every state of the U.S. and currently is the agency under the U.S. Department of Agriculture. Further, in *Bussey v. E.S.C Rests.*, [85] the restaurant owner was found responsible for negligence and a breach of warranty in the preparation of food that led to the consumer experiencing food poisoning. In this particular instance, the plaintiff had ordered beef tips at a restaurant and subsequently suffered from food poisoning after consuming the meal. She raised concerns about the unpleasant odor of the meat, which had an adverse impact on her health. The attending physician, who has testified on behalf of the plaintiff and treated her, specifically attributed her symptoms to food poisoning resulting from the consumption of the beef, as she had not consumed anything else prior to the beef tips. The Court, in holding the restaurant accountable, emphasized that the burden of proof rested with the plaintiff (the consumer) to demonstrate the hazardous nature of the food, thereby confirming the occurrence of food poisoning. Similarly, in prior instances, the U.S. Court had maintained a strict stance regarding the shortcomings in a company's service. For example, in the *Newport News v. Babb* [86] case, the court noted that negligence could be established if a foreign substance was discovered in a bottle, provided that the bottle had not been confirmed as tampered with after leaving the local retailer or manufacturer. Likewise, in the *Norfolk Coca-Cola* [87] Case (involving a bottle of cola containing a worm) and the *Blythe* [88] case (pertaining to the sale of foods without proper sealing), the court held the manufacturer accountable for negligence and imposed an implied warranty that the product must be suitable for human consumption. Furthermore, in the case of *Brockett v. Harrel Bros.*, [89] the plaintiff acquired ham from a retailer and unfortunately broke her tooth when biting into a piece of buckshot that had become embedded in the ham during processing and packing by Harrel Bros., Inc. In response, she filed a lawsuit against the retailer, alleging negligence and violations of both express and implied warranties. The Appellate Court ruled that both the manufacturer and the retailer bear liability in cases of product liability, as the implied warranty extends to both parties, obligating them to ensure the food's fitness for consumption.

Similarly, in the case of *Swift & Co. v. Wells*, [90] the issue revolved around the responsibility of the food product manufacturer for damages and personal injuries suffered by a consumer due to the unwholesomeness of the food. The consumer had purchased meat from a local retailer and subsequently fell ill with food poisoning after consumption. The Supreme Court of Virginia, in upholding the trial court's decision, held the manufacturer liable under the implied warranty of wholesomeness. Recently, in the case of *Bolger v. Amazon.com, LLC*, [91] the U.S. Consumer Court acknowledged the responsibility of the e-commerce industry concerning unsafe or faulty products and found the company accountable. In this particular case, a customer named 'Bolger purchased a replacement laptop battery through Amazon, a well-known online shopping platform, from a seller named 'E-Life', operating on Amazon under the name Leonge Technology Ltd. The issue arose when the battery exploded several months after the purchase, resulting in injuries and severe burns to Bolger. On that, Amazon argued that it should be subject to strict liability or any tort theories because it neither distributed, manufactured, nor sold the product. Further, Amazon contended that it merely operated as an 'online marketplace', with E-Life (Leonge) being the actual product seller, not Amazon. However, the Appellate Court of California ruled that strict liability did apply, and Amazon was found liable in this case. Therefore, from the above-mentioned decisions, it can be said that in the realm of modern e-shopping, online platforms such as Amazon, Flipkart, Snapdeal and others can be deemed responsible for any issues arising from third-party products listed on their websites. These issues may encompass receiving incorrect products, product damage, or delayed deliveries. In all the above legal precedents, it has been found that both product manufacturers and retailers can be held accountable for deceptive practices on their websites, including false product descriptions, misleading warranties, conveying inaccurate representations, or intentionally withholding information from customers.

4. Comparative Appraisal of Product Liability Regime

In the U.S. the law on product liability is largely uncodified and at the same time, it is embodied in various State and federal legislations. Initially, the product liability regime in the U.S. was derived from the precedents set by various Courts. With the passage of time based on established practices by virtue of such precedents, the same were adopted as codified laws in some State legislatures. So, at present there is no specific codified law dealing comprehensively with the concept of product liability in the U.S. In contrast to this, as has been enumerated in the previous sections of the study, the Indian legal system does embody numerous laws pertaining to product liability such as the Consumer Protection Act, 1986; the Sale of Goods Act; and the Indian Contract Act etc. It is pertinent to note that even though India had a number of codified legislations with regard to product liability till 2019 i.e., until the enactment of the Consumer Protection Act, 2019, none of the laws dealt comprehensively with the subject. In addition to this like the U.S., various principles established by virtue of tort law were the starting point of product liability laws in India. So, for instance – concepts like negligence, strict liability and breach of warranty continue to be an important basis for establishing product liability in India which is similar to the U.S.

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Interestingly enough some of the landmark evolutions in the product liability jurisprudence of India are attributable to a few landmark cases of the U.S. For instance –the doctrine of privity in cases of tortious liability was finally done away with by the New York Court of Appeals. Essentially, the doctrine of privity refers to the rule that only people who are party to a contract have the right to sue for enforcement of their rights. By virtue of the same, in cases of defective products or services people who were not directly involved in the transaction did not have the locus standi to sue in case of damages suffered on account of defective or hazardous products or services. So, making a departure from the said doctrine, in *MacPherson v. Buick Motor* [92], when the defendant denied liability on the ground that the defective automobile was purchased from a dealer and not from the defendant, Justice Cardozo while rejecting the said contention affirmed that – in cases of negligence liability would be imposed and in such cases privity of contract would not be applicable. The said precedent was again followed in the United Kingdom in the case of *Donoghue v Stevenson* [93]. which is also regarded as one of the first notable precedents establishing a manufacturer's liability for defective products. The breach of warranty is another major ground for action of product liability in various legal systems. Broadly speaking, a warranty is an assurance given by the seller regarding the safety of the products or services being sold by them and their conformity to the prescribed standards of safety and reliability [94]. In the United States, in cases of breach of either express [95] or implied [96] warranty, the consumer has the right to sue under the Uniform Commercial Code (Code). The said Code is a broad set of laws pertaining to commercial transactions in the US, however, it is not a federal law but over the years it has been uniformly adopted. In contrast to this, the Sale of Goods Act of Indian origin expressly includes the responsibility of the seller to undertake an implied warranty regarding the fitness and merchantable quality of the product sold [97]. Similarly, as per the Act of 2019, unfair trade practice includes – the issuance of a warranty or guarantee regarding performance, efficacy etc. of a product or of any goods that is not based on an adequate or proper test [98]. The Sale of Goods Act only applies to movable goods whereas the Act of 2019 applies to both goods and services. Unlike the U.S., both the aforementioned laws are applicable throughout the country. In the Indian context, the manufacturer, seller or service provider can be held liable for product liability [99]. On the other hand, in the U.S., any entity in the chain of production and supply can be held liable for a defective product. This includes several stakeholders such as – raw material suppliers, manufacturers, retailers etc [100]. This consequently makes the framework of duties and obligations to be complex as they are dependent on the entity in question.

5. Potential Challenges in Relation to Product Liability Regime in India

Although the Consumer Protection Act of 2019 in India is a significant piece of legislation that addressed several aspects of consumer protection including product liability (which was missing in the earlier legislations or approach of government making them company friendly more as compared to consumer), the change in relation to product liability still has some potential challenges which the researcher wants to point out. One of the key challenges was in determining what

constitutes a 'defective product' [101] under the new Act. Although it has not been defined and required to be interpreted through the definition of 'defect' and 'product liability', it still does not provide the necessary safety a consumer is entitled to expect the interpretation can be subjective, making it challenging to establish liability. Another issue has been found in relation to consumer i.e., proving that a defective product directly caused harm or injury to a consumer which can be complex. It has been seen in the discussed case studies, that causation is a crucial element in product liability cases, and establishing a clear link between the product's defect and the consumer's injury can be challenging. Thus, a consumer is required to prove the product liability by establishing a clear link between the deficiency and injury to get entitled to damages or compensation. Further, as the Act 2019, provides liability for manufacturers, distributors, and retailers (e-commerce), hence a case involving multiple entities in the supply chain, can create problems for consumers in determining who can be more liable for a defective product. It has been found through case studies that even the Act of 2019 puts the burden of proof on the complainant (consumer in maximum cases) to demonstrate that the product is defective, and that the product caused the harm or injury which requires substantial evidence and expertise. Thus, a proper awareness program regarding this is required to be done to make consumers more active towards their rights under the Act. In addition to that, the limitation period within which consumers need to file complaints, becomes challenging, especially if the consumer is unaware of the defect or injury until after the limitation period has expired. Even the determination of appropriate compensation and remedies for consumers who have suffered harm due to defective products is found to be quite challenging. Although not many consumer cases have been dealt with after the new Act 2019, but still adequate resources, expertise and infrastructure are still essential to investigate and address any typical product liability cases promptly. Moreover, with global investment in domestic sectors and global supply chains, it is challenging to trace the origin of a defective product and identify all parties involved. This complexity can hinder efforts to hold responsible parties accountable. Additionally, it has been found that many consumers are not aware of their rights under the new Act, for instance, the expansion of the dimensions of the complainant (consumer) to file a complaint i.e., where the complainant ordinarily resides, carries on business, personally works for gain, or the cause of action has arisen [102]. Earlier it was only for the Opposite party i.e., the company, now it is in addition to it. Therefore, non-awareness of legal change, becomes challenging for consumers to seek redress in cases of product liability. When such product liability is related to the food sector, the food producing companies are made responsible for bringing quality food products and in case of any grievances from any consumer, to redress it in a prominent manner. Recently, in one of the cases, [103] the Chandigarh District Commission dismissed the contention of consumers due to a lack of credible evidence. The Court held that mere allegations of finding dead spiders in food products are not enough and the consumer needs to provide substantial evidence to make the company liable for deficiency in service. Therefore, in such cases, consumer awareness in relation to product liability becomes relevant. Although in another cases [104] the

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Ernakulam District Consumer Disputes Redressal Commission ordered Chennai based online pet supplier JJ Pet Zone to compensate Palluruthy resident Harigovind approximately Rs. 20,000 for failing to deliver two 10kg Smart Heart Powerpack Puppy Dry food packets, despite a promise of two-day delivery. In order to navigate these challenges, the legal framework minds need to look into the term 'defective product' and how it should be interpreted under the new law and the consumers and businesses should seek legal advice when dealing with product liability issues. Additionally, staying informed about updates to consumer protection laws will be essential in ensuring compliance and mitigating potential liabilities. Therefore, product liability can stem from service deficiencies, including issues like the discovery of insects or foreign objects in food products, the provision of perishable items to consumers after their expiry dates, or delays in service, among other factors.

6. Conclusions

As per the discussion in the study, it can be concluded that the new Act of 2019 was undoubtedly a watershed moment in consumer law. Also keeping in mind, the increasing consumerism and consequent role of the marketplace in the lives of people, it was the need of the hour to have stricter provisions and more efficient forums for speedy redressal of the consumer disputes. In addition to this, the new Act of 2019 has expressly provided for the imposition of liability for defective or hazardous products and services on manufacturer, seller, and service provider. Whereas in the Consumer Protection Act of 1986, the manufacturers and service providers were liable for deficiency, but the provision was very vague and incomplete which ultimately was incapable of enforcing the rights and protection of consumers. Apart from the fact that the erstwhile legislation did not embody any express provisions for the concept of product liability, provisions relating to liability for misleading advertisement, including any false description; false guarantees; or express or implied representation constituting an unfair trade practice were also absent unlike the Act of 2019. Also, the introduction and establishment of the Central Consumer Protection Council (CCPC) in the Act of 2019, with the power to recall or withdraw goods, reimburse the price, and discontinue the practices of the company in default etc and the introduction of Consumer Mediation Cell (CMC), a provision for alternate dispute resolution mechanism is another appreciable feature of the new law. A plain reading of Chapter VI pertaining to product liability of the Act of 2019 clearly depicts that an attempt has been made to incorporate internationally acceptable standards for imposing product liability. The same can be well substantiated by the fact that – firstly, liability can be imposed on essentially four conditions – defective product, negligence, defect in design and non-conformity to express warranty; these conditions are like the grounds followed in the United States and the same has been mentioned in the relevant section of the study. Secondly, like the U.S. the new law seeks to impose liability not just on the manufacturer but also seller and service provider apart from the fact that the seller includes several members in the production and supply chain like – marketing, installation, packaging etc. However, in view of the researcher, mere imposition of liability on concerned stakeholders of the production and supply chain without a clear enumeration of responsibilities of all the

mentioned stakeholders would render the effectiveness and compliance to be vague and invite frivolous litigation. Further, to make the law more efficient for consumers, there is a need to conquer some formidable obstacles like redefining the concept of a 'defective product' within the context of our legal landscape. Simultaneously, consumers and businesses should undertake a noble quest to seek the guidance of wise legal counsel when entangled in the intricate web of product liability. Additionally, embracing the knowledge of ever-changing consumer protection laws will serve as the knight's armor, safeguarding compliance and vanquishing the looming specter of potential liabilities. The inclusion of e-commerce transactions within the ambit of 'product liability' still remains a debatable issue because nowhere does the new Act enumerate the duties and responsibilities of such platforms for the protection of consumer rights. The mere addition of a provision enabling the Central Govt to make suitable law in this regard cannot be said to be a comprehensive provision in the new law. With regard to comparison with the U.S. it can be said that even though the product liability regime in the country is a mix of common law and State-specific scattered legislations, the rich jurisprudence of the U.S. cannot be ignored on the issue. On the other hand, though India had a number of laws dealing indirectly with the concept of product liability, none of them could be said to be model legislation in this regard. Lastly, in the context of the new Act of 2019, it can be affirmed that there has been a jurisprudential shift as the new law emphasises the principle of letting the seller beware whereas the erstwhile law essentially operated on the principle of letting the buyer beware. As we venture deeper into this labyrinthine realm, it becomes evident that product liability, a formidable adversary, often arises not only from tangible defects but also from insidious service shortcomings. These misfortunes may manifest as unexpected encounters with insects or foreign objects concealed within food products, the treacherous distribution of perishable items beyond their expiry, or frustrating delays in delivery. In this tumultuous journey knowledge, vigilance and strategic thinking shall be our noble companions in our quest for justice and protection.

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