



Schema of justice management in strengthening rule of product liability

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Abstract

The concept of liability from the point of contemporary jurisprudence is treated as something done in return for the wrong done. In other words it allows the sufferer to be remedied for the loss sustained. But in many cases, sufferer is not provided equivalent remedy for the actual loss due to various reasons particularly legislative and judicial silence. As a general rule, in India, the principles of English Law have been deemed to be applicable if they are in consonance with the rules of justice, equity and good conscience suitable to Indian conditions. In India the rule of 'product liability' is a broad but inchoate subject as all components of the law in it are intertwined therefore, it is difficult to contemplate one part without having examined the whole genus of jurisprudence of liability. Product Liability arises from the damages caused by defective products or services for which relating consumers and their rights area to be tuned legislatively and judicially. The author of this paper tries to highlight the need and necessity of justice management in strengthening the rule of product liability with suggestions for this.

Keywords: rule of product liability, justice management, absolute product liability

Introduction

The concept of liability ^[1], from the point of compensatory jurisprudence is treated as 'something done in return for the wrong done'. In other words it allows the sufferer to be remedied for the loss sustained. But in many cases, sufferer is not provided equivalent remedy for the actual loss due to various reasons particularly legislative and judicial silence. Hence, reasons of change in the concept of liability are necessary, particularly in the administration of civil justice, so as to enable the courts to manage justice system to provide 'relatively perfect justice' to the sufferers of imperfect goods and defective services. This is possible through legislative activism and judicial activism in strengthening certain concepts such as...strict liability, absolute liability, absolute product liability. Consequently, the compensatory justice system is supposed to be acknowledged as the best contentment for the deprived parties thereby the legislative gaps between liability and remedy are reduced and removed legislatively and judicially. In case of 'product liability' ^[2], consumers as individuals are harmed by unsafe products and defective services; consumers may have a course of action against the manufacturers for their negligence ^[1] in the manufacturing process. In fact the 'rule of relation' ^[3] is not a defense under product liability law. In India the rule of 'Product Liability', is a broad but inchoate subject as all components of the law on it are intertwined therefore, it is difficult to contemplate one part without having examined the whole of the jurisprudence of liability. Generally product liability arises from the damages caused by defective products, defective production and posterior services for which laws relating consumers and their rights are expected to be tuned legislatively as well as judicially so that the deprived consumer is safeguarded accordingly.

From Caveat Emptor to Caveat Vendor: Rule in Privity of Contract: UBI Jus IBE Remedium

As a general rule, in India, the principles of English Law have been deemed to be applicable if they are in consonance with the rules of justice, equity and good conscience suitable to Indian conditions. Globalization, Liberalization and Privatization have opened the doors for the entry of multinationals and by the reason of this the Indian economy has been undergone a sea change in terms of consumer market and consequently the status of consumers is not in the hands market forces. As a result of this striking change, the age old English principle 'caveat emptor' ^[4] has undergone phenomenal and radical swift influencing the production and service sectors and this empowered the consumer's decision making power. Now consumer is the king of the market hence it is not 'let the buyer beware but let the vendor beware' in dealing the consumer regarding product and services after sale of such product. "Ubi jus iberemedium" ^[5] is appropriately workable in matters of consumerism rather than leaving consumer in vain in cases of exploitation in the hands of manufacturer, distributor, retailer and vendor.

The principle of 'Privity of Contract', the basic structure of Law of Contracts, was the controlling principle even in the matters of consumer disputes. Unless the aggrieved consumer had to establish the relation between himself/herself and the manufacturer, the damage sustained by the so called consumer was not supposed to be remedied. Therefore, the unfortunate consumer was left remediless and his right to safety of goods and services was not the subject of jurisdiction of courts. The onset of free market economy and free trade and merchandise, the consumer has become enlightened thereby empowered as a vigilant person to assert his/her rights as consumer. The principle of Privity of contract only helps when a consumer

has purchased goods from manufacturer directly and this is generally possible for the distributors and retailers who purchases goods from manufacturer directly as 'customers' and it establishes the contractual relationship between these two parties. So under privity of contract rule, manufacturer is under contractual obligation towards costumers generally and not to consumers in particular.

Consumer Justice is a vital component of social justice and invariably implies justice to consumers of goods and services provided by manufacturers as manufacturers make these for the ultimate consumers but not for middle men like distributors, retailers, etc. Let the consumer be the king of the market and not the victim of the market is supposed to be the ideal of consumer justice. If this ideal is ignored, every consumer is exploited at market...not only in the hands of vendors, retailers and distributors but obviously in the hands of manufacturers. Recognizing this catastrophe in 1932, Lord Macmillian in *Donoghue v. Stevenson*^[6] has rightly observed that, "in the daily contacts of social and business life, human beings are thrown into or place themselves in an infinite variety of relations with their fellow-men and the law can refer only to the standards of the reasonable man in order to determine whether any particular relation gives rise to a duty of care as between those who stand in that relation to each other". The *locus classicus* of this has been expanded further by Lord Atkin in a later case^[7] and made a dissent opinion and said, "Every person, whether discharging a public duty or not, is under a common law obligation to some person in some circumstances to conduct himself with reasonable care so as not to injure those who are likely to be affected by his want of care"^[8]. In fact and as a matter of fact, these observations in these two cases, paved a way to legislate a law to protect the rights of consumers in India apart from consumer agitation and revolution for sustainable consumerism resulting in the passing of 'The Consumer Protection Act, 1986'. Still, the destiny of consumer justice is not met with due to a variety of lacunae in the said Act. The considerable dearth of it is the absence of a clear provision to fix product liability on the manufacturer. The Supreme Court of India, long back, i.e. in the year of 2000, clearly said in *Charan Singh. v. Healing Touch Hospital*^[9] that, "The CPA is one of the benevolent pieces of legislation intended to protect a large body of consumers from exploitation". Still the consumers' rights are at stake in spite of legislative and judicial activism and the principle of Caveat Emptor is dominating the consumer market.

The Gray Area Is Lack of Definition of Product Liability

The product liability has not been defined in any consumer related statutes in India; hence the courts have been borrowing principles of English Law. This silence of legislature helps manufacturers to pushing and passing off their defective and dangerous products into the market. The general idea of product liability is that, 'the liability of a manufacturer for goods and services provided by him is to compensate the exploited consumer for the injury caused by defective merchandise that he has provided for sale of such product'^[10]. 'Where there is a right, there is a remedy' is the governing principle even in cases of product liability as against the rule of 'caveat emptor'. The 'corpus juris'^[11] in India is of two

ways, viz, civil and criminal. The distinction between these two lies in the remedy provided by the law of the land. The rudimentary form of civil wrong in terms of elements is still present and therefore the remedy in is based on the 'right' involved in the wrong. The product liability in India is inasmuch as a civil, particularly of tort nature and of course criminal in few cases. The Supreme Court observed In the case of *P.Rathinan vs. Union of India*^[12] the Supreme Court observed that, "In a way there is no distinction between crime and tort, inasmuch as a tort harms an individual where as a crime is supposed to harm society, A society is made of individuals. Harm to an individual is ultimately harmed to society". Therefore product liability rule envisages the right, doesn't matter whether such right is of individual or public, must be adjudged according to the nature of wrong that is breached. Therefore the rule 'where there is a right, there is a remedy' is applied both for criminal and civil wrongs including torts. This condition has been reiterated by the Supreme Court in a catena of decisions^[13]. So, the bottom-line of product liability assumes remedial as well as penal in the administration of consumer justice. The so called manufacturing defect in the product is the pre-condition of liability of manufacturer as it comes under liability rule which says that the liability arises when wrong doer commits either an act or omission and negligence. Therefore the liability of manufacturer arises under a duty created by the law which falls both under remedial and penal liability. Once the product is ready for consumer the product liability begins at the door steps of manufacturer and ends up with the payment of compensation, if consumer's right is breached so the product liability is inherent aspect of every defective product which cannot be averted.

Product Liability: Judicial Activism On duty of Care

The conceptual aspect of 'Negligence'^[14] has been legally designed in *Donoghue vs. Stevenson* case^[15] which mostly dealt 'objective theory' of negligence^[16]. As a consequence, this land mark decision^[17] has done away with the contractual theory of 'privity of contract' from the ambit of torts. The rule of product liability, as mentioned in *Donoghue vs. Stevenson*, has been adopted in India in plethora of cases^[18], but mostly interms of 'civil nature of liability' governed by the Consumer Protection Act, 1986; Sale of Goods Act, 1930; The Competition Act, 2002; The Law of Torts based on Precedents, The Food Adulteration Act, 1954, The Food Safety and Standards Act, 2006, The Drugs and Cosmetics Act, 1940, etc., to mention few.

The horizons of product liability, in India, have been continuously expanding through judicial activism, both in the nature of civil liability and criminal liability. The product liability and laws pertaining to consumers differ from nation to nation. The Consumer Protection Act, 1986, mostly based on American Consumer Laws, wherein 'strict product liability' is rule of law. The application of strict liability rule in product liability is to determine the liability of manufacturer/supplier even if the risk could not have been recognized at the time of sale of the product. The product liability in India is legally designed as a confluence of English decisions such as *Donoghue vs. Stevenson* and *Rylands vs. Fletcher*^[19], the former says non-observance of duty of care

towards others and the later strict liability even without the existence of negligence on the part of defendant thereby the Indian judiciary has transformed into more 'pro-consumer oriented'.

Product Liability: From Strict Liability to Absolute Liability: Role of the Supreme Court

In India, the fate of consumers is at stake as there is no codified law on torts nor the Consumer Forums are not able to address unfortunate and illiterate consumer's plight. This may be because there is legislative silence on the law of product liability. The Apex Court of India, from time to time enlarging the ambit of constitutional protection and safety of consumers. It is so pertinent to stare at the ideology of the Supreme Court of India in *M.C.Mehta vs. Union of India* ^[20] of 1987 which demonstrated a fine judicial activism. Here, the Supreme Court of India observed in the words, "We have to evolve new principles and lay down new norms which will adequately deal with new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constructed by reference to the law as it prevails in England or for the matter of that in any foreign country. We are certainly prepared to receive light from whatever source it comes but we have to build our own jurisprudence." Conversely the doors of Indian Legislature are closed to halt the passage of light of new principles resulting in the darkness of the intention of legislature to enhance its legislative activism. Hence, it is the need of the hour for the Legislature to make objective and substantial law on product liability 'to strengthening the core aspect and spirit of consumerism, both in letter and spirit. Indian Judiciary, as part of constitutional mandate of social justice has rarefy and designed the Strict Liability ^[21] rule of Bhopal Gas Tragedy case into 'Absolute Liability' ^[22] in a universally acknowledged land mark seminal judgment in *M.C.Mehta. v. Union Of India* popularly known as *SriramFoods and Fertilizers Case* ^[23]. The Supreme Court of India took a bold decision holding that it was not bound to follow the 19th century rule of English Law and it could evolve a rule suitable to the social and economic conditions prevailing in India at the present day ^[24], a true example of 'judicial activism'.

The absolute product liability evolved in the above mentioned case ^[25] shall be a rule which may be taken in to consideration even for the consumers' community to protect their rights against manufacturers, distributors, retailers who usually passing-off ^[26] their defective or dangerous goods and products, at bay. If absolute product liability is recognized statutorily, it provides an effective relief to consumers and of course for the consumer forums to effectively combat exploitation of manufacturer thereby the untold plight of consumers means the existence of 'absolute product liability rule' as the more a decisive factor.

Suggestions and Conclusion

All aspects of human life, from womb to tomb, are being controlled and thereby encompassed by The Consumer Protection Act. An enlightened consumer is an empowered consumer. The concept of LPG ^[27] has enabled Indian consumers to realize their dominantly valuable role in the governance of consumerism at all spears of life. The poor

Indian consumer is week at consumer literacy ^[28]. By reason of this condition, Indian consumer is subjected to exploitation at the hands of manufacturer, distributors and retailers. Consumer literacy is not growing to the extent of consumer revolution. Both these must go hand in hand to provide virtual consumer justice which is essentially a constitutional goal. This is possible only when there is a clarion legislative activism on product liability is manifested. Multi-national products and On-line shopping are dominating Indian market. The 'make in India' policy is augmenting, and still, our law on product liability is not able to cater the deprived an untold miseries of consumers. The Consumer Fora and the judiciary, many a time, expressed a serious concern over the silence of the Legislature in making the pro-consumer legislations. To overcome this vacillation, the scheme of justice management of the Supreme Court shall be clear to enhance the rule of product liability under its constitutional powers, then it may be possible to safeguard the consumers altogether. For this the following suggestions may be contemplated:

- a. To strengthen liability provision, consumer counseling centers must be empowered.
- b. While manufacturing, the providers of goods and services should remember that they are living in the most civilized society regulated by the rule of law and primarily they are for the consumers only.
- c. There must be clear policies that are needed to protect rural consumers through consumer awareness platforms.
- d. In view of free market economy and trade and merchandise, enlarging the scope of consumer law to provide more protection for consumers, against exploitation at market place, is to be addressed.
- e. In view of revolutionary change in e-commerce, the CP Act either to be amended or enact a new law to encourage and regulate online transactions.
- f. The provision of 'negligence' must be read with 'rule of product liability' which covers negligence and breach of warranty. To deal with corporate consumers' disputes, Corporate Consumer Forums must be established to lighten the burden of regular consumer courts. The functioning of 3 tier consumer forums must create a clear sense of liability in the minds of manufacturers as to mandate every manufacturer to be careful enough to curtail 'mesmerism' of 'passing-off' tactics of duplication.
- g. The existing law of product liability is not virtually suitable to provide consumer justice. It is felt that the legislature must harden the liability provision by including 'absolute product liability principle' so that the consumer forums are able to protect the rights of consumers. It may be said that instead of consumers forums, it is practicable to establish separate consumers' courts at all levels to sanctify the virtual consumerism.
- h. The rights of consumers must be considered as fundamental under the roof of 'right to life', as it is of 'Inclusive nature', because everyone is considered as a consumer at any point from womb to tomb.

References

1. According to Salmond, liability means, "a liability or responsibility is the bond of necessity that exists between

- the wrongdoer and the remedy of the wrong”. Manajan V D, “*Jurisprudence and Legal Theory*”. Reprint of 5thEdn. Eastern Book Company, Lucknow, at. 2006, 417.
2. Product Liability means, ‘a manufacturer of products, which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, and with the knowledge that the absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumer's life or property, owes a duty to the consumer to take that reasonable care.’ In many cases, Manufacturers, Distributors and Retailers are held liable for passing-off defective and dangerous products. (House of Lord *sin Donoghue v. Stevenson* case in, 1932.
 3. Rule of Relation, popularly known as privity of contract, a Common Law doctrine, means, ‘a contract cannot be questioned by a person who is not a party of that contract.
 4. It is a Latin phrase which means ‘let the buyer beware’. In other words it is the buyer who needs to be careful at the time of purchasing of goods, failure of which exhausts a right to question the defects of such product.
 5. It means, where there is a right, there is a remedy’. In other words, if no right to cause of action, there is no remedy in law.
 6. AC,1932, 562.
 7. *East Suffolk Rivers Catchment Board v. Kent*, AC, 1941 74.
 8. Ibid, at. 89.
 9. 7 SCC, 2000, 668.
 10. See also supra note 2.
 11. A Body of Law of a Nation.
 12. AIR SC, 1994, 1844.
 13. Amongst many cases, *Rudul Shah v. State of Bihar*, AIR 1983 SC 1086 wherein awarded compensation for injuries at the hands of government officers; *Peoples’ Union for Democratic Rights v. State of Bihar*, AIR SC wherein awarded compensation for police atrocities are deserve to mention, 1987, 355.
 14. Negligence as a tort has been defined by the Supreme Court in *Jacob Mathew v. State of Punjab* (AIR SC) as ‘Negligence is the branch of duty caused by the omission to do something which a reasonable man would do..... or doing something which a prudent and reasonable man would not do, 2005, 3180.
 15. Supra note 7.
 16. It says the negligence in the sense of ‘conduct’ refers to the behavior of a person who, although innocent of any intention to bring about the result in question, has failed nevertheless to act up to the standard set by law. Pillai PSA, *Law of Tort*, 9thEdn, 2004, Eastern Book Company, Lucknow.
 17. Supra notes 7 and 15.
 18. *Indian Oil Corpn. V. Consumer Protection Council*, 1 SCC 397, probably based on English case, *Daniels and Daniels v. R. White & Sons Ltd*, All ER. 1994-1938; 4:258.
 19. LR 3 HL, 1868, 330.
 20. 1 SCC, 1987, 395.
 21. Liability is strict, imposed on defendant irrespective of mental state, due to escape of things from his control. But defenses are recognized to avoid this liability.
 22. Here, the liability is absolute and no defenses, recognized under strict liability, are not allowed to avoid liability.
 23. Supra note 20.
 24. Bangia RK, *Law of Torts*, Reprint in of 23rdEdn., Allahabad Law Agency. Haryana, 2016.
 25. Supra notes 21 and 24.
 26. A wrong of passing off goods for sale to create an impression that the goods are of another person, a kind of wrong misleading consumers.
 27. Localization, Privatization and Globalization.