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Consumer Product Safety

Contribution

CUTS International

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Sixth Intergovernmental Group of Experts on Consumer Law and Policy (IGE Consumer)

CUTS Submission on Consumer Product Safety

Introduction

India has the highest proportion of people worried about the safety of consumer goods and products, especially food items and children's products. This is because in 2017 among the world's top four consumer markets, including the US, China and Germany, it is India that consumers have suffered the highest number of product safety incidents in the last five years.¹

This holds true even now as a recent study conducted across the country to gauge consumer response towards receiving defective high-value products, it was found that nearly one in two Indian consumers reported being stuck with one or more high-value faulty products.²

Indian consumers are broadly segregated among urban and rural markets and catching the attention of marketers from across the globe. The sector includes a massive middle class, comparatively a smaller wealthy class and a larger economically disadvantaged class. Together, their spending across India amounted to over 23 trillion rupees as of January 2022.³

India is expected to become the third-largest consumer market by 2030. Thus, the global conglomerates view India as one of the key consumer markets for goods and services.

Though various studies targeting Indian consumers have established that product quality and safety are gaining more importance among consumers in India yet, nothing great has happened. Not a day passes when one does not come across news of death/injury from unsafe products or services. Until recently, consumer safety issues in India have been dealt with in about 25 legislations and there are constitutional provisions, international conventions and various regulations issued by different regulatory agencies on the issue of safety.

The recent enactment of the Consumer Protection Act, 2019 has now set on to change the legal landscape of India regarding product liability. Until then, a product liability claim was lodged under the existing contract and tort laws. The absence of a specific law governing

¹ Product safety lowest in India among world's top 4 markets, yet brand rules, The Time of India, May 10 2017. Accessible at <<https://timesofindia.indiatimes.com/business/india-business/product-safety-lowest-in-india-among-worlds-top-4-markets-yet-brand-rules/articleshow/58585945.cms>>

² One in two Indian consumers stuck with high value defective products: Survey, Livemint, 31 March 2022. Accessible at <www.livemint.com/industry/retail/one-in-two-indian-consumers-stuck-with-high-value-defective-products-survey-11648706907758.html>

³ Consumer spending in India 2017-2022, Statista, 16 March 2022. Accessible at <www.statista.com/statistics/233108/india-consumer-spending/>

product liability forced judicial experts to make claims interpreting various legislations such as the *Sale of Goods Act, 1930*; the *Consumer Protection Act, 1986*; and the *Indian Contract Act, 1872*. Most of these claims were also based on case laws, both in the civil and criminal aspects, leading to much confusion and different approaches.

Judicial Interventions

Initially, the Product liability legislations in India were narrowly interpreted by the Indian Courts. But in recent times, the Courts gradually started adopting a consumer-centric approach. The Courts have moved to award punitive rather than compensatory damages in cases involving product liability.

*Jagrut Nagrik and others v Proprietor, Baroda Automobiles Sales and Service, Vadodara, Gujarat and others*⁴, the National Commission held that the manufacturer of the car, as well as the sales and service dealer, are liable to pay unless, under some agreement, the liability to pay is only that of the dealer alone. This case strengthened product liability and is greatly appreciated for creating a strict liability regime in the country.

In *C.N. Anantharam v. Fiat India Ltd. and Ors.*⁵ in addition to the directions given by the National Commission, the Supreme Court directed that if the independent technical expert believes that there are inherent manufacturing defects in the vehicle, the aggrieved consumer will be entitled to refund of the price of the vehicle and the lifetime tax and EMI along with interest @ 12% per annum and costs, as directed by the State Commission. This court decision is greatly appreciated for upholding higher product liability standards in India. With the industrial growth and numerous manufacturers producing varied products, higher standards are imperative.

A couple of months back, the Central Consumer Protection Authority (CCPA) *suo moto* took a stand against companies selling substandard items. It passed orders against prominent online sellers for allowing the sale of non-BIS-compliant domestic pressure cookers on their e-commerce platforms. It directed both e-commerce entities to notify consumers of such pressure cookers, recall the pressure cookers sold, reimburse the prices to the consumers and submit a compliance report within 45 days. It also directed them to pay a penalty of INR 0.1 million for allowing the sale of pressure cookers in violation of the compulsory standard and violating the rights of consumers.

⁴ 2010 SCC OnLine NCDRC 250

⁵ AIR 2011 SC 523

Product Liability in India: From Caveat Emptor to Caveat Venditor and Strict Liability

Before 2019, the Consumer Protection Act of India had no direct reference to product liability and product safety. However, through the recent legislation – the 2019 Act has “Product Liability” added that defines product liability as the responsibility of a manufacturer or vendor of goods or service provider to compensate for injury or damage caused to a consumer by defective products sold to a consumer or deficiency in services.

Important features of these newly added provisions on Product Liability are that it assigns statutory liability not only to the product manufacturer but also to the seller in case the manufacturer is not identified and the provision that makes the seller liable when the manufacturer is outside the jurisdiction of the State. Moreover, such liability is strict as it can hold them accountable based on the defective product without the consumer having to prove actual negligence. This is derived from the concept of ‘caveat venditor’, which means that the seller must beware, thereby making the seller liable for any harm caused by the product to the consumer.

Product Safety – Post COVID Scenario

The sudden shift in needs and demand of consumers during the pandemic had its repercussions as most of the “new essential products” filled up the market at a rapid phase, most often with the least quality checks and enforcement to keep up with the growing demand. Rapid changes were seen across various products, most commonly in healthcare and cleaning products.

According to a report,⁶ incidents of substandard and falsified medical products in India increased by almost 47 percent from 2020-2021. Products like soaps, hand washes, toilet paper, tissues, wet wipes, face masks and other personal protective equipment’s, sanitizers and floor cleaners were flying off the shelves as they landed. The never seen rush for these products encouraged the proliferation of their sub-standard and fake products.

According to the Preventive Wear Manufacturers Association of India, almost 150 new manufacturing units have been set up in just three months in India during this pandemic, of which most are counterfeiting brands.

⁶ Substandard, fake medical products increased by almost 47% from 2020-2021 during pandemic: Report, The Hindu, 29 March 2022. Accessible at <www.thehindu.com/news/national/substandard-fake-medical-products-increased-by-almost-47-from-2020-to-2021-during-pandemic-report/article65270728.ece>

It has been reported⁷ that Interpol's global pharmaceutical crime-fighting unit is seizing dangerous pharmaceuticals worth millions of dollars annually across various countries since the onset of the pandemic. Such illegal and dangerous trade is more rampant in Asian countries where standards and regulations are not that strictly enforced compared to their western counterparts.

Besides, loss of job and economic recession due to pandemic has considerably affected the consumer's purchasing power. Most of the population even knowingly purchase low-quality products that are seldom manufactured following standard procedures. Matter aggravated further when consumers relied more upon online purchases, exposing themselves to online scams and illegally sold products.

Act Proactively – Make Standards Mandatory⁸

Weak and inconsistent regulatory frameworks of most countries to prevent, deter and punish offenders who manufacture or traffic substandard consumer goods have thus become more evident in the rapidly evolving circumstances of the pandemic. Given this miserable situation, responsibility largely lies upon the government and enforcement officials to act proactively and enforce standards, thereby protecting the interest of consumers. It should be remembered that substandard and counterfeit consumer products are most likely to reach consumers in situations where there is constrained access to quality and safe products, poor governance and weak technical capacity.

So there is an imperative need to regularly monitor the marketplace to verify whether consumer products comply with the national or international standards and do not pose a danger to human health or safety. Such stringent enforcement of standards can considerably help in reducing the threat of the pandemic cause, though it cannot aid in eradicating it.

Unfortunately, in India, the Bureau of Indian Standards has more than 21,901 quality standards for different products and services, but only around 361 products are under mandatory certification.⁹ Like in most other Asian countries, most products come under voluntary certification, encouraging the production and distribution of substandard products. Bringing products within the ambit of mandatory certification would substantially discourage the production and sale of substandard and fake goods. This will also promote the spirit of production and push the domestic manufacturers of various products and services in line with international practices.

⁷ Global operation sees a rise in fake medical products related to COVID-19, Interpol, 19 March 2020. Accessible at <www.interpol.int/en/News-and-Events/News/2020/Global-operation-sees-a-rise-in-fake-medical-products-related-to-COVID-19>

⁸ George Cheriyan, Simi TB, Standards Driven Culture Can Manage Global Crisis Better Standards Asia Magazine, May 04, 2021. Accessible at <<https://cuts-cart.org/pdf/article-standards-driven-culture-can-manage-global-crisis-better-may4-2021.pdf>>

⁹ BIS Annual Report 2020-21 Review Statement. Accessible at <www.bis.gov.in/wp-content/uploads/2022/02/Review-Statement-BIS-AR-2020-21.pdf>

Apart from protecting consumers and instilling confidence in them, substantial growth in trade can be realised through effective standards management, technical regulations and conformity assessment. More importantly, it can effectively curb the import of all sub-standard products flooding domestic markets. So such a move would play an important role in enhancing competitiveness and market access and help supply chains be more transparent and secure.

The establishment and enforcement of standards, therefore, not only becomes vital to raise the competitiveness of the industry but also promote and ensure the global health and wellness of the consumers. For these reasons, viz. international trade, industry competitiveness, sustainable development and consumer protection, standards-driven culture has become pertinent and a vital ingredient in the supportive infrastructure of a country to manage the global crises better.

Major Points to Address

- ✓ Make standards mandatory for more products that impact the health and safety of the consumer. For instance, electrical appliances, electronics, IT and telecom products, medical devices, industrial safety and fire safety equipment, plastic and other material used for food packaging.
- ✓ Government and regulators should focus more on ensuring the safety of products linked to new technologies and on the challenges posed by online sales growth.
- ✓ The world has developed into a single market, it has become imperative for every country to learn from each other and arrive at a common understanding. Working towards a sub-regional, regional and global coalition for consumer protection needs to be looked into with much more vigour.
- ✓ Product labelling is inadequate, especially online purchasing from far across borders. Either labelling rules are inconsistent or given information about the product is in regional language, making it futile. Some standard rules for product labelling, instructions and safety warnings are vital.
- ✓ Improve mechanism for enhancing communication, sharing best practices, banned and recalled products, and creating new initiatives for capacity building.
- ✓ Carry out large-scale campaigns about product safety in the larger interest of the public. Consumers must be sensitised on basic aspects like Maximum Retail Price (MRP), Gold Hall Marking, Indian Standard Institute (ISI) mark on products, and expiry dates.
- ✓ Ensure better and more stringent rules enforcement and drastically improve market surveillance regularly.
- ✓ Educate consumers to read and understand food labels and encourage them to use them effectively at the time of purchase, given the rise in NCDs and other food-related illnesses.