

India

Gowree Gokhale, Huzefa Tavawalla and Debargha Basu

Nishith Desai Associates

Civil litigation system

1 The court system

What is the structure of the civil court system?

Supreme Court of India

The Supreme Court of India is the highest court of appeal and is the final interpreter of the Constitution and the laws of the land. The Constitution gives an extensive original jurisdiction to the Supreme Court in regard to enforcement of fundamental rights. It is empowered to issue directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari. The Supreme Court has also a very wide appellate jurisdiction over all courts and tribunals in India in as much as it may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. The Supreme Court also hears appeals from any judgment, decree or final order of a high court, in both civil and criminal cases, involving substantial questions of law as to the interpretation of the Constitution.

High courts

The high courts are placed directly under the Supreme Court. The high courts entertain appeals from the subordinate courts and tribunals situated in the state or states over which they exercise jurisdiction. They also act as courts of revision for the subordinate courts and tribunals. Some high courts also exercise original jurisdiction in civil and admiralty matters. Apart from the original and appellate jurisdiction, the Constitution vests in the high courts the power to issue writs or orders for the enforcement of fundamental rights or for any other specified purpose such as public interest litigation. High courts have the power of superintendence, judicial and administrative, over all courts and tribunals in the state or states over which they exercise jurisdiction, except those dealing with armed forces.

Subordinate courts

Next in the hierarchy of the courts are the subordinate courts and tribunals. The highest court in each district is that of the court of district and sessions judge. This is the principal court of civil jurisdiction. This is also a court of sessions. There are many other courts subordinate to the court of district and sessions judge. On the civil side, at the lowest level is the court of civil judge (junior division) deciding civil cases of specified pecuniary limits. At the middle of the hierarchy there is the court of civil judge (senior division) on the civil side which usually decides civil cases of any valuation, subject to certain exceptions. There are many additional courts, like that of an additional district judge and additional civil judge (senior division). The jurisdiction of these additional courts is the same as that of the district judge or that of the civil judge (senior division), as the case may be.

Appeals normally lie from these courts to the district courts and/or high courts, as the case may be.

Tribunals

Specialised tribunals are established under various acts such as:

- the Income Tax Appellate Tribunal;
- the Company Law Board;
- the Sales Tax Appellate Tribunal;
- the Central and State Administrative Tribunals;
- the Debt Recovery Tribunal; and
- the Intellectual Property Appellate Tribunal.

All these tribunals are under the superintendence of the high court within whose territorial jurisdiction they function.

Consumer forums

District consumer forums have the jurisdiction to entertain complaints where the value of the goods or services and the compensation claimed, if any, does not exceed 2 million rupees.

State commissions are empowered to entertain complaints where the value of the goods or services and compensation claimed, if any, exceeds 2 million rupees but does not exceed 10 million rupees, and they also entertain appeals against the orders of any district forum within the state.

The National Commission is empowered to entertain complaints where the value of the goods or services and compensation claimed, if any, exceeds 10 million rupees, and they also entertain appeals against the orders of any state commission.

2 Judges and juries

What is the role of the judge in civil proceedings and what is the role of the jury?

As the Indian legal regime is based on the common law system, the court system is adversarial and an impartial judge is required to pass judgments after hearing the advocates representing the party litigants. They do not investigate cases on their own.

The jury system does not exist in India.

3 Pleadings and timing

What are the basic pleadings filed with the court to institute, prosecute and defend the product liability action and what is the sequence and timing for filing them?

Pleadings before the civil court

The Code of Civil Procedure 1908 (CPC) defines pleading as a plaint or a written statement. The plaint is the document that is required to be filed to institute a civil proceeding in a court of law. The plaint is the plaintiff's pleading, a statement of claims in which it sets out its

cause of action with all necessary particulars. The document that is required to be filed to institute proceedings in a tribunal is called the original application.

After the defendant or defendants have been served with a copy of the plaint, the defendant's written statement is then required to be filed in the court within 30 days from the date of service and a copy must be handed over to the plaintiff. The written statement is the defendant's response to the plaint, admitting or specifically denying each material fact alleged by the plaintiff in the plaint. The defendant may set out any additional facts as may be relevant to the case. Any legal objections to the claim of the plaintiff may also be set out in the written statement.

Should the plaintiff wish to deny any of the statements in the written statement, or respond to any allegation made by the defendant by adding further material facts, it may file a rejoinder. However, the defendant may file an additional written statement only with the leave of the court.

The defendant may also claim a set-off or make a counterclaim in the written statement. A set-off is any ascertained sum of money legally recoverable by the defendant against the plaintiff, which would be 'set off' against the plaintiff's claim, effectively reducing the value of the plaintiff's claim to the extent of the value of the set-off. A counterclaim is any right or claim of the defendant against the plaintiff in respect of a cause of action accruing to the defendant against the plaintiff at a point in time before the defendant has delivered its defence in the current suit.

In the event of a set-off or counterclaim being alleged by the defendant in a written statement, it shall be treated as a cross-suit and the plaintiff in turn is entitled to respond with a written statement, either admitting or making specific denial of each material fact.

Pleadings under the Consumer Protection Act (CPA)

An action before a consumer forum is brought by way of a complaint which contains the basis on which the complainant alleges defects in the products. Once the complaint is admitted and upon receipt of notice and the copy of the complaint, the opposite party is entitled to file a defence statement which is called the opposition. Since the proceedings before the consumer forum are summary in nature, the complainant is entitled to file its evidence by way of an affidavit. Once the evidence on affidavit is filed, the opposite party is entitled to file a questionnaire in the form of interrogatories seeking for replies from the complainant. Once the questionnaire is replied to by the complainant, the opposite party is entitled to file a reply thereto, if it so wishes. Once these pleadings are complete, the matter is posted for final hearing.

4 Pre-filing requirements

Are there any pre-filing requirements that must be satisfied before a formal lawsuit may be commenced by the product liability claimant?

Though there are no mandatory pre-filing requirements which must be satisfied before a suit is brought into being, parties may contractually agree to include a conciliation mechanism before the disputes are brought before a court of law. In that event, the parties are contractually bound to follow such conciliation mechanism.

An advocates' notice is also often issued to trigger the legal proceedings and to afford an opportunity to the defaulting person to make good the grievances of the party alleging so.

It is pertinent to note that in a contractual dispute, if an arbitration clause exists and if a suit is filed by the plaintiff claiming certain reliefs, and if an application is filed by the defendant for referring the parties to arbitration before filing the written statement, the parties are mandatorily referred to arbitration.

5 Trials

What is the basic trial structure?

The Indian court system is adversarial and an impartial judge is required to pass judgments after hearing the advocates representing the party litigants. Judges do not investigate cases on their own.

Owing to the pressure of litigation on Indian courts, trials almost never run on consecutive days and dates are fixed on a periodic basis. Live testimony is very common, and even though documents are filed in court as evidence, they have to be proved through oral evidence and cross-examination. All civil proceedings in India are public and held in open court.

The basic trial structure is as follows.

Framing of issues by the court

After the plaint has been filed by the plaintiff and the written statement filed by the defendant in court, the court then frames the issues. The framing of issues involves identifying issues that raise specific questions of law and separating those issues from irrelevant facts of the case. After the framing of issues by the court, the parties to the suit decide which relevant documents are to be provided to the court. The parties would have to submit these documents and prove their originality to the court.

Filing documents and leading evidence

Without exceeding 15 days after the framing of issues, the parties are expected to present a list of witnesses. For this purpose, any party to the suit may apply to the court for the issuance of summons to persons whom they propose to call as witnesses.

The parties to the suit are provided reasonable opportunity to lead evidence. After the parties have cross-examined the witnesses on both sides (including re-examination), the next stage of trial is the arguments put forward by the opposing parties.

Posting for final arguments

The right to begin or the privilege of opening the case is determined by the rules of evidence. The general rule is that the party on whom the burden of proof lies should begin first. However, where there are several issues to be proved, and the burden of proving some of which lies on either party, the plaintiff may choose either to go into the whole case in the first instance or may merely adduce evidence on those issues which lie upon it, reserving its right to rebutting the evidence should its opponent make out a prima facie case.

Arguments by both sides are intended to brief the judge with a summary and gist of the evidence produced by each side. At this stage there are examinations and submissions by the parties in order to prove their point or substantiate their argument, which involves three steps:

- (i) examination-in-chief: the examination of a witness by the party who calls him or her shall be called his or her examination-in-chief. It is a prerogative of a party by whom the witness is called to examine him or her in chief for the purpose of eliciting from the witness all the material facts within his or her knowledge which tend to prove the party's case. Examination-in-chief is also known as direct examination;
- (ii) cross-examination: the examination of a witness by the adverse party shall be called his or her cross-examination; and
- (iii) re-examination: the examination of a witness, subsequent to the cross-examination by the party who called him or her, shall be called his or her re-examination.

This is an important stage in a case, since the judge may not be able to read and assimilate lengthy documents covering evidences on both sides, but is capable of perceiving and assimilating what is stated in the arguments.

Judgment and decree

After the conclusion of arguments the judge pronounces the judgment or passes a decree in favour of either the plaintiff or the defendant and dismisses the suit as the case may be. Due to the large number of cases pending in Indian courts, the stage of final hearing of the suit easily takes up to five or 10 years from the date of filing the suit, if not longer. After the judgment becomes final (ie, appeals are dismissed, or no appeal is filed within the prescribed period of limitation) the judgment is required to be transformed into a decree. It is in the form of a decree that a judgment can be enforced.

Execution of the decree

The party in whose favour the decree is passed is called the decree holder. The other party is called the judgment debtor. The judgment debtor has to abide by and honour the decree. If one fails to honour the decree passed against it, the decree holder can seek execution of the decree by filing an execution petition in the court. The execution petition has to be filed in the court at the place where the judgment debtor resides. If immovable property is to be attached, it should be filed in the court at the place where the property is located. For this purpose the judgment-decree has to be transferred to the concerned court in the first instance.

6 Group actions

Are there class, group or other collective action mechanisms available to product liability claimants? Can such actions be brought by representative bodies?

The Consumer Protection Act 1986 (CPA) recognises any voluntary consumer association registered under the Companies Act 1956 or under any other law for the time being in force can file a consumer complaint, and more than one consumer, where there are numerous consumers having the same interest, can file a consumer complaint with the leave of the court (forum).

7 Timing

How long does it typically take a product liability action to get to the trial stage and what is the duration of a trial?

Proceedings before the civil court

In practice, a civil suit typically takes two to three years to get to the trial stage and another five years for final disposal, while in a consumer forum a typical case gets disposed of within one to two years.

Please refer to question 2 regarding the timelines provided for the completion of pleadings in a civil court; however, no timelines as such have been prescribed for final disposal of cases. The situation is unique in a proceeding before a consumer forum where timelines for all stages of proceedings are provided for.

Proceedings under the CPA

Once the complaint is received by the district forum, the district forum may either admit or reject a complaint, ordinarily within 21 days from the date from which the complaint is received by the forum.

Once the complaint is admitted, if it relates to goods, the district forum shall refer a copy of the admitted complaint within 21 days from the date of its admission to the opposite party mentioned in the complaint, directing it to give its version of the case within a period of 30 days or such extended period (not exceeding 15 days) as may be granted by the forum.

It is the specific mandate of the CPA that the district forum shall endeavour to decide a complaint within a period of three months from the date of receipt of notice by the opposite party where the complaint does not require analysis or testing of commodities, and within five months if it requires analysis or testing of commodities.

It is the specific mandate of the CPA that an appeal filed before the state commission or the National Commission shall be heard and finally disposed of within a period of 90 days from the date of its admission.

Evidentiary issues and damages

8 Pre-trial discovery and disclosure

What is the nature and extent of pre-trial preservation and disclosure of documents and other evidence? Are there any avenues for pre-trial discovery?

At any time during the pendency of any suit or complaint, the court or the consumer forum can ask any party to produce, upon oath, such documents which are in its possession or power.

9 Evidence

How is evidence presented in the courtroom and how is the evidence cross-examined by the opposing party?

Proceedings before the civil court

Please see question 4 for details on presenting evidence before the civil court.

Proceedings under the CPA

Documentary evidence, including evidence in electronic form, along with oral evidence is admissible in consumer forums.

Evidence is led by way of affidavits. Defendants lead evidence through questionnaires. In a summary proceedings under the CPA leading oral evidence and cross-examination cannot be claimed as a matter of right by the defendant and are rare.

10 Expert evidence

May the court appoint experts? May the parties influence the appointment and may they present the evidence of experts they selected?

Experts may be appointed by courts or consumer forums, depending upon the facts and circumstances of each case. However, the case should be complicated enough to require the opinion of an expert.

11 Compensatory damages

What types of compensatory damages are available to product liability claimants and what limitations apply?

The court or forum is empowered to award as compensation any amount to the consumer or plaintiff for any loss or injury suffered due to the negligence of the seller. Please see question 12 for further details.

12 Non-compensatory damages

Are punitive, exemplary, moral or other non-compensatory damages available to product liability claimants?

Proceedings before the civil court

Under the Indian Contract Act 1872 (ICA), the party who suffers loss on account of breach of a contract by the other party is entitled to receive, from the party who has breached the contract, compensation for any loss or damage caused to it, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

However, no compensation is to be given for any remote and indirect loss of damage sustained by reason of the breach. Thus, as per Indian law, indirect damages cannot be awarded.

Damages such as consequential, incidental, special, punitive and exemplary damages are not specifically provided for under Indian

law. However, it would be a question of fact whether such heads of damages (such as consequential and incidental damage) could be construed as damages which arise as a natural and proximate consequence of the breach and thus fall within the ambit of damages which can be awarded under Indian law. As far as the award of punitive and exemplary damages is concerned, such damages can only be allowed at the discretion of the courts and in certain exceptional cases.

Further, in the case of *Union Carbide Corporation etc v Union of India* (1991) 4 SCC 584 the Supreme Court, in addition to the compensation, directed Union Carbide Corporation to bear the expenses towards the setting up of specialised medical and research equipment for periodical medical checkups for victims of a toxic leak. Thus, in this case it has been witnessed that the Court awarded damages towards the costs of medical surveillance.

Proceedings under the CPA

Depending on the facts and circumstances of each case, consumer forums have awarded punitive damages.

Litigation funding, fees and costs

13 Legal aid

Is public funding such as legal aid available? If so, may potential defendants make submissions or otherwise contest the grant of such aid?

Legal aid in the form of free legal services may be availed as per the provisions of the Legal Services Authority Act 1987.

14 Third-party litigation funding

Is third-party litigation funding permissible?

Third-party litigation funding is available only through legal aid and is subject to the terms as specified under the Legal Services Authority Act 1987.

15 Contingency fees

Are contingency or conditional fee arrangements permissible?

Contingency or conditional fee arrangements are not permitted in India.

16 'Loser pays' rule

Can the successful party recover its legal fees and expenses from the unsuccessful party?

Courts and consumer forums may grant costs at their own discretion.

Sources of law

17 Product liability statutes

Is there a statute that governs product liability litigation?

There are no specific Indian statutes that govern product liability litigation; however, product liability claims could be ascertained under the following.

The Consumer Protection Act 1986

The Consumer Protection Act 1986 (CPA) was enacted to provide simpler and quicker access to redressal of consumer grievances. The CPA for the first time introduced the concept of 'consumer' and conferred express additional rights on him or her. It is interesting to note that the CPA doesn't seek to protect every consumer within the literal meaning of the term; the protection is meant for the person who fits in the definition of 'consumer' under the CPA. Further, persons or entities who purchase goods for 'commercial purposes' (other than

those persons who have purchased goods for using them to earn their livelihood by means of self-employment) cannot initiate proceedings under the CPA.

For information about the consumer forums recognised under the CPA, please see question 1.

The Indian Contract Act 1872 and the Sale of Goods Act 1930

The Indian law relating to sale of goods is codified under two pieces of legislation: the Sale of Goods Act 1930 (SGA) and the Indian Contract Act 1872 (ICA). The ICA deals with the general law pertaining to contracts (including provisions pertaining to the contracts for sale of goods) entered into between parties for a particular purpose, while the SGA deals with contracts pertaining to the sale of goods between parties. In terms of settling on which Act precedes the other in respect of contracts for sale of goods, the SGA provides that the provisions of the ICA will continue to apply to such contracts for sale of goods provided they are not inconsistent with the express provisions of the SGA. The provisions of the ICA fill up any lacunae appearing in the SGA (for instance, the ICA as well as the SGA contains provisions governing damages). However, as a general rule, the circumstances under which damages may be awarded are stated in the SGA while the measure of damages is to be determined in accordance with the provisions of the ICA.

Statutes pertaining to specific goods

Remedies and cause of action may also depend on whether the goods sold are subject to any specific statutes (eg: Drug and Cosmetics Act 1940; Prevention of Food Adulteration Act 1954; Essential Commodity (supply) Act 1955; and Standard of Weights and Measures Act 1976).

Common law principles (eg, tort law)

As per common law principles, claims in relation to negligence may be brought if it can be shown that there was a breach of a duty to take care and an injury or loss resulted from such breach. In case of faulty products, claims may also be brought against traders, in addition to the manufacturer, if the fault can be attributed to such traders.

Thus, if a person does not fall within the definition of a 'consumer' under the CPA, his or her relief in relation to defects in products would lie in a civil court.

18 Traditional theories of liability

What other theories of liability are available to product liability claimants?

There is no product liability theory in India. In the absence of statutory or customary law applicable in a case, courts are guided by the principles of justice, equity and good conscience, and often English common law, especially the ratio contained in *Donoghue v Stevenson* which states that, where that other person owed the first person a reasonable 'duty of care' and harmed that person through their conduct in breach of that duty, he or she shall be liable for negligence irrespective of whether any contractual relationship exists or not.

19 Consumer legislation

Is there a consumer protection statute that provides remedies, imposes duties or otherwise affects product liability litigants?

Laws (including: the ICA; the SGA; the Dangerous Drugs Act; the Agricultural Produce (Grading and Marketing) Act; the Indian Standards Institution (Certification Marks) Act; the Prevention of Food Adulteration Act; and the Standards of Weights and Measures

Act) deal with product liability and to some extent protect consumer interests. However, these laws require the consumer to initiate action by way of a civil suit involving a lengthy legal process which is very expensive and time-consuming. The CPA was enacted to provide simpler and quicker access to redressal of consumer grievances (see question 17).

Any or all of the below remedies can be claimed by an aggrieved party under Indian law:

- to remove the defect from the goods;
- to seek replacement of the goods with new goods of similar description which shall be free from any defect;
- to seek refund of the purchase price;
- to seek discontinuance of unfair trade practice or restrictive trade practice, as the case may be;
- to seek cease and desist orders in the manufacturing of hazardous goods; and
- to seek withdrawal of hazardous goods from being offered for sale.

20 Criminal law

Can criminal sanctions be imposed for the sale or distribution of defective products?

Under the CPA, where a trader or a person against whom a complaint is made or the complainant fails or omits to comply with any order made by the district forum, the state commission or the National Commission, as the case may be, such trader or person or complainant shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years; a fine, which shall not be less than 2,000 rupees but which may extend to 10,000 rupees; or both.

Criminal sanctions may also be imposed under other statutes specifically providing for such sanctions.

21 Novel theories

Are any novel theories available or emerging for product liability claimants?

Although the jurisprudence in product liability cases and claims is evolving in India, we have not yet witnessed any novel theories being applied. However, with the passage of time we do foresee emerging trends in relation to the same. For academic purposes, we shall keep you informed in the event that we learn about any such novel theories.

22 Product defect

What breaches of duties or other theories can be used to establish product defect?

As per the provisions of the SGA, there is an implied warranty or condition as to the quality or fitness for any particular purpose for the goods sold in the following circumstances:

- where the buyer, expressly or by implication, makes known to the seller the particular purpose for which the goods are required, so as to show that the buyer relies on the seller's skill or judgment, and the goods are of a description which it is in the course of the seller's business to supply, then there is an implied condition that the goods shall be reasonably fit for such purpose provided that, in the case of a contract for the sale of a specified article under its patent or other trade name, there is no implied condition to its fitness for any particular purpose;
- where the goods are bought by description from a seller who deals in goods of that description, then there is an implied condition that the goods shall be of merchantable quality provided that, if the buyer has examined the goods, there shall be no

implied conditions as regards defects which such examination ought to have revealed; and

- where a particular purpose may be annexed to the goods by the usage of trade.

Thus, unless there is a contract to the contrary, the buyer has the right to initiate a product liability claim in furtherance of the above implied grounds. Further, if the seller has failed to fulfil its fundamental obligation under a contract then no term or terms in the contract can relieve it of its duty (eg, if there is a contract to sell pens and the seller instead of supplying pens supplies pencils, then the seller's liability cannot be discharged even if the parties have agreed to contractual disclaimers). Further, certain product-specific legislations require certain warnings to be stated on the packaging (eg, product description, product labels) of certain products such as foods, insecticides and so forth. Any breach by the seller would be subject to liability under such product-specific legislation.

Please also see question 23.

23 Defect standard and burden of proof

By what standards may a product be deemed defective and who bears the burden of proof? May that burden be shifted to the opposing party? What is the standard of proof?

Under the CPA

The CPA defines 'defect' as any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods.

A grievance in regards to any other defects which do not fall within the scope of this definition cannot be made a subject matter under the CPA. If the defect is caused due to misuse by the buyer then it is not a defect.

Where a complainant alleges a defect in the goods which cannot be determined without proper analysis or tests, then the relevant consumer forum shall obtain a sample of the goods from the complainant and refer such sample to the appropriate laboratory along with a direction that such laboratory make an analysis or test, whichever may be necessary, with a view to finding out whether such goods suffer from the defect alleged.

When the buyer is unable to prove that the cause of action for which he or she is seeking the compensation arose due to any defect in the product then the complaint is liable to be rejected. A product which is as per statutory standards cannot be called defective even if it caused some damage to the consumer.

Under civil suits

The standards by which a product may be deemed defective usually depend upon the terms and conditions of the contract along with any warranties or guarantees provided under such contract. The burden of proof lies on the party who is alleging the defect.

Please also see question 22.

24 Possible respondents

Who may be found liable for injuries and damages caused by defective products?

Any person who trades in the goods (manufacturer, importer, distributor, wholesaler, etc) may be made liable under Indian law. As per the CPA, the definition of trader and manufacturer is exhaustive and includes any person who:

- sells or distributes any goods for sale;
- makes or manufactures any goods or parts thereof;

- does not make or manufacture any goods but assembles parts thereof made or manufactured by others and claims the end-product to be goods manufactured by himself or herself; or
- puts or causes to be put his or her own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself or herself.

Similar principles would also apply in a civil suit.

Bearing in mind the law on privity of a contract, if a consumer finds a defect in the goods, he or she usually sues the person from whom he or she has bought the goods. However, if the defect is a manufacturing defect, then the consumer may sue the manufacturer along with the seller. This is an option for the consumer.

25 Causation

What is the standard by which causation between defect and injury or damages must be established? Who bears the burden and may it be shifted to the opposing party?

When the buyer is unable to prove that the cause of action for which he or she is seeking compensation arose due to any defect in the product, then the complaint may be rejected. The burden of proof lies with the complainant.

26 Post-sale duties

What post-sale duties may be imposed on potentially responsible parties and how might liability be imposed upon their breach?

Statutorily, there are no post-sale duties which are prescribed under Indian law and all such duties and responsibilities are subject to the contract between the parties. However, the Indian courts in the past, and subject to the terms of the contract, have instructed the breaching party to replace the goods which caused the product liability claim.

Limitations and defences

27 Limitation periods

What are the applicable limitation periods?

Action under the CPA

The district forum, the state commission or the National Commission shall not admit consumer complaints unless they are filed within two years from the date on which the cause of action has arisen.

Action under the ICA, SGA and other applicable statutes

As per the limitation statute, a person will not be able to initiate a product liability claim after three years from the date on which the cause of action (product defect) arises which gives the right to initiate a product liability claim.

28 State-of-the-art and development risk defence

Is it a defence to a product liability action that the product defect was not discoverable within the limitations of science and technology at the time of distribution? If so, who bears the burden and what is the standard of proof?

Though the jurisprudence in product liability cases and claims is evolving in India, we have not yet witnessed any state-of-the-art defences being applied. However, with the passage of time we do foresee emerging trends in relation to the same. For academic purposes, we shall keep you informed in the event that we learn about any such novel defences.

29 Compliance with standards or requirements

Is it a defence that the product complied with mandatory (or voluntary) standards or requirements with respect to the alleged defect?

Yes. If the product complies with statutory standards then the same can be argued as a defence.

30 Other defences

What other defences may be available to a product liability defendant?

A probable defence could be that the defect had occurred due to the negligence or contributory negligence of the buyer. An additional defence would be that the buyer had examined the goods prior to purchase. Further, the parties can rely on contractually agreed warranties or waivers or disclaimers and clauses on limitation of liability.

The expiration of limitation periods for filing or initiating claims can also be a defence.

Please also see question 27.

31 Appeals

What appeals are available to the unsuccessful party in the trial court?

Action under the CPA

Any person aggrieved by an order made by the district forum may refer an appeal against such order to the state commission within a period of 30 days from the date of the order. Provided the appeal is referred by a person who is required to pay any amount in terms of an order of the district forum, the appeal shall be entertained by the state commission only if the appellant has deposited in the prescribed manner 50 per cent of that amount or 25,000 rupees, whichever is less.

Any person aggrieved by an order made by the state commission may refer an appeal against such order to the National Commission within a period of 30 days from the date of the order. Provided the appeal is referred by a person who is required to pay any amount in terms of an order of the state commission, the appeal shall be entertained by the state commission only if the appellant has deposited in the prescribed manner 50 per cent of that amount or 35,000 rupees, whichever is less.

Any person aggrieved by an order made by the National Commission may refer an appeal against such order to the Supreme Court within a period of 30 days from the date of the order. Provided the appeal is referred by a person who is required to pay any amount in terms of an order of the National Commission, the appeal shall be entertained by the Supreme Court only if the appellant has deposited in the prescribed manner 50 per cent of that amount or 50,000 rupees, whichever is less.

Action under civil courts

A suit is instituted in the lowest court competent to try such suit. An order or a decree passed by a district court is appealable before the high court. An order passed by the high court is appealable to the Supreme Court, which is the apex court.

Jurisdiction analysis

32 Status of product liability law and development

Can you characterise the maturity of product liability law in terms of its legal development and utilisation to redress perceived wrongs?

In India there is no product liability law, although there is the CPA, where punitive measures are based only on compensation. The Indian consumer movement is not presently very strong, although it is gradually developing. A separate Department of Consumer Affairs was also created in the central and state governments to exclusively

focus on ensuring the rights of consumers as enshrined under the CPA. The special feature of the CPA is to provide speedy and inexpensive redressal to the grievance of the consumer and provide him or her relief of a specific nature and award compensation wherever appropriate. The aim is to also ensure the rights of the consumer (viz, the right of choice, safety, information, redressal, public hearing and consumer education). The most important feature of the CPA is the provision for setting up a three-tier quasi-judicial machinery popularly known as 'consumer courts' at national, state and district levels. The apex court (the National Commission) functions in Delhi. Every state government has a state commission. The third tier in each district is called the district forum. Consumers can also file consumer complaints through the internet now, thus providing aggrieved consumers with a very efficient grievance redressal system.

33 Product liability litigation milestones and trends

Have there been any recent noteworthy events or cases that have particularly shaped product liability law? Has there been any change in the frequency or nature of product liability cases launched in the past 12 months?

Since the advent of the CPA there have been many noteworthy cases which have shaped consumer protection in India. In the *Lobia machine* case, the seller had collected advance deposits for scooters from customers and then had defaulted in delivering the scooters. The Mumbai Consumer Disputes Redressal Commission developed a term called 'other similarly circumstanced customers', and granted relief to not only the plaintiff, but to 422,000 other customers as well who were aggrieved in the similar matter. Further, the Indian government

has been relaying advertisements via Jago Grahak, a government awareness programme which seeks to raise consumer awareness by advertising consumer rights both in the print media as well as the electronic media.

The trend of compensation awarded in the last 10 years under the CPA due to defects in goods has resulted in the consumer forums awarding a repayment of the principal amount as well as damages, which could range anywhere from 10 per cent to 20 per cent, along with litigation costs.

34 Climate for litigation

Please describe the level of 'consumerism' in your country and consumers' knowledge of, and propensity to use, product liability litigation to redress perceived wrongs?

Consumerism is increasing in India along with the increase in awareness of consumer rights. Several consumer organisations routinely carry out testing of important products. However, as compared with developed countries, the level of consumerism and consumer knowledge is much less. This can be accorded to the fact that in a country with such a vast population it is very difficult to create awareness as many of the consumers are uneducated and ill-informed. However, non-governmental organisations, such as the Consumer's Association of India, the Consumers' Forum and the Citizen Consumer and Civil Action Group, are striving towards increasing awareness and informing consumers with regards to their rights to safety, information, choice, grievance redressal and their right to consumer education as enshrined in section 6 of the CPA. Thus, consumerism and consumers' knowledge and propensity to use consumer protection rights is on the rise in India.

Nishith Desai Associates

Legal & Tax Counseling Worldwide

Mumbai • Silicon Valley • Bangalore • Singapore • Basel • New Delhi

Gowree Gokhale

gowree@nishithdesai.com

93-B Mittal Court
Nariman Point
400021 Mumbai
Maharashtra
India

Tel: +91 22 6669 5000
Fax: +91 22 6669 5001
www.nishithdesai.com