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**Third Intergovernmental Group of Experts  
on  
Consumer Protection Law and Policy  
July 9-10, 2018, Geneva**

**CUTS Submission on Consumer Product Safety**

**Introduction**

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

Indian consumers are broadly segregated among urban and rural markets and are catching the attention of marketers from across the globe. The sector includes massive middle class, comparatively a smaller wealthy class and a larger economically disadvantaged class. Together their spending is expected to touch more than US\$2.4tn by 2018-19, as per an Economist Intelligence Unit (EIU) study. 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 goods or services. When reading such horrendous reports of death/injury, one wonders if there is no law or agency for tackling such a menace.

In reality, 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 objective of all these legislations is to 'ensure safety of the consumer'. Even the Consumer Protection Bill, 2018, a new law to replace the old Consumer Protection Act, 1986, has a chapter to enforce product liability against manufacturers or sellers and even make them recall the product from the market.

**Product Safety-Global Concern**

Ensuring product safety has become even more difficult in recent times because of the increase in international trade in consumer products. Standards and enforcement of every economy differ considerably thereby posing hurdles to the overall consumer protection efforts. A product considered safe in one jurisdiction is perhaps considered unsafe in another due to difference in their standards or the concept of what constitutes an unsafe product.

*Common international standards and agreement* on the concept of what would constitute safe and unsafe products can definitely aid in addressing some of the challenges faced by product safety agencies.

Besides *sharing information* on emerging problems and co-ordinating enforcement actions, where necessary, are vital within the country and between countries. Currently, information exchanged between and among countries is limited. According to OECD study, this is largely either because of the national legislations or due to intellectual property and data protection laws. Other than these, confidentiality and liability rules affecting civil servants, protection of on-going investigations or legal proceedings and information sharing reciprocity are also major factors. Language barrier may limit the utility, even when the information is available.

Likewise, consumers across the globe need clearer *information about the products* they purchase, in terms of product labelling, warnings and instructions for use to make an informed decision. This would also help *to improve the traceability* of products, which are exported and imported so as to take appropriate action at the country of origin. But, for this to happen, international cooperation must be improved and legal barriers need to be tackled. It is often seen that the product labelling is inadequate, especially while doing online purchasing from far across borders. Either labelling rules are inconsistent or given information about the product are in regional language making it futile. Some form of standard rules for product labelling, instructions and safety warnings are therefore vital.

Comprehensive and timely *information about unsafe products* on international platforms are also essential to take appropriate decision. Such international data on unsafe products would act as a check on dumping of products that are condemned in one country and being sold in other markets where authorities, and consumers, are unaware of its history. (Consumers International, 2018)

Creation of a new national oversight body ‘Office for Product Safety and Standards’ tasked with identifying consumer risks and managing responses to large-scale product recalls and repairs by the Government of UK is commendable. The new office will enable UK to meet the evolving challenges of product safety by responding to expanding international trade, the growth in online shopping and the increasing rate of product innovation.

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

In the existing Consumer Protection Act of India, there is no direct reference to the term product liability and product safety. A new Chapter VI “Product Liability” has been added in the new Consumer Protection Bill, 2018 (which is yet to be passed by the Parliament of India), 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 this newly added proposed provisions on Product Liability is a provision, which assigns liability to the seller, in case manufacturer is not identified and the

provision that makes seller liable when the manufacturer is outside the jurisdiction of the State.

### **Product Safety- Indian Scenario**

Though in India, common law tortious liabilities are still available to protect the consumers. The foundation of such tortious remedy can be traced back to the case of *Donoghue v. Stevenson* ([1932] AC 562 (H.L)) which laid the principle that manufacturer owes a duty of care to every possible consumer of his product.

The other regulations which protect the consumers are Sale of Goods Act of 1930, Consumer Protection Act of 1986 and statutes pertaining to specific goods. There is no dedicated law on product safety.

### **CUTS Findings from the Study - State of Indian Consumer**

The state of consumer safety in India has never been encouraging. As evident from the 'State of Indian Consumer Report 2012' prepared by CUTS (with support from Department of Consumer Affairs, Government of India), it was found that there was a serious lack of consumer awareness about safety standards/certification. Only 22 percent consumers reported that they always assessed products or services in terms of their potential to cause threat/hazard. In fact, 32 percent consumers never considered the safety aspect of a product before making a purchase. The proportion of such people is more in rural area as compared to urban area as most of the rural consumers are often illiterate and/or ignorant of their rights.

The need for consumer awareness and empowerment are becoming the clarion call in almost all the sectors. Consumers cannot be cheated and callously exploited by the seller and the service providers. Quality assurance and safety of products and services are central to preventing consumer detriment. But, Indian safety standards are far behind when compared to countries like United Kingdom and America.

Most of the manufacturers often just do the bare minimum to meet the standards. In service sector particularly, India is still in the process of establishing the systems to protect consumers' right to safety despite services being such a crucial part of the country's economy. Right to safety means the right of the consumer to be protected against products, production processes and services which are hazardous to health or life. It includes concern for consumers' long-term interests as well as their immediate requirements.

Like other consumer rights, the right to safety is an important area of consumer protection which needs timely inspection and evaluation. The UN Guidelines for Consumer Protection clearly mention the right to safety as one of the inalienable rights of the consumer. The Constitution of India and other legislations also have provisions regarding the right to safety. But in India, to realize the right to safety, it is not enough to just have safety acts and policies in place. It is equally important that acts and policies are implemented well, monitored and popularized among the masses, so that the people

too can play a constructive and participatory role to ensure their own safety. By empowering consumers, visibility, accountability and functioning of agencies mandated to ensure consumers' right to safety in India would be enhanced.

### **Role of Consumer Organisations**

*Consumer organisations* have an important role to play in *empowering* and *protecting consumers* by assisting victimised consumers and acting as watchdogs and advocates. They should be given adequate governmental support to perform this role. They can help to improve global market conditions through education and spreading the awareness about the global market.

But, for anything to happen positively across the globe, what is more important is the need for *strong and effective governance* within each country, with independent oversight, that prioritises consumer safety. Unfortunately, though majority of the countries have some sort of consumer product safety legislations, most of the countries hardly have a strong enforcement.

### **Conclusion**

While the world has developed into a single market, it has become imperative for every country to learn from the 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. Improving mechanism for enhancing communication, mutual sharing of best practices, products banned and recalled, creating new initiatives for capacity building and starting joint campaigns with regard to product safety need to be pushed and pursued in larger interest.

It is a fact that without people's active participation, the laws and regulation won't alone solve the purpose, their effectiveness will only rely on the alertness and awareness of consumers and a responsive government.