



CONSUMER RIGHTS IN COMMERCIAL LAW: A FOCUS ON PRODUCT LIABILITY

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ABSTRACT

Product liability serves as a fundamental pillar of consumer protection within the broader framework of commercial law. It ensures that manufacturers, distributors, and sellers are held legally responsible for releasing defective products into the market that pose risks to consumer safety. This accountability helps maintain trust in the marketplace by providing consumers with legal recourse in cases of harm or injury caused by faulty goods. In essence, product liability laws are designed to protect consumers from unsafe products, encouraging businesses to adhere to quality and safety standards to avoid potential lawsuits. The article delves into the legal landscape governing product liability in Nepal, offering a detailed examination of the relevant statutes, particularly the Consumer Protection Act, 2075 (2018). It addresses the rights of consumers to seek redress when harmed by defective products and the corresponding obligations imposed on businesses to ensure the safety and reliability of their goods. The article scrutinizes the practical aspects of how product liability claims are processed within the Nepali legal system, highlighting existing gaps and challenges that hinder consumers from successfully pursuing compensation. For example, judicial delays, lack of consumer awareness, and weak regulatory oversight often obstruct the timely and fair resolution of such claims. In addition to exploring the domestic legal framework, the article offers a comparative analysis of international standards in product liability, drawing

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from jurisdictions such as the United States and the European Union. These regions have more established consumer protection mechanisms, where strict liability is imposed on manufacturers, meaning they can be held liable even if they exercised due care. Comparing these legal models, the article suggests that Nepal could benefit from adopting similar provisions, which would strengthen the protection of consumer rights and enhance product safety. This comparative perspective provides valuable insights into how Nepal might reform its legal structures to foster a more consumer-friendly environment, aligning with global best practices.

Key Words: Consumer rights, commercial law, product liability, defective products, manufacturer responsibility, consumer protection, legal framework, Nepal, product safety, compensation.

INTRODUCTION

In today's consumer-driven society, the protection of individuals from unsafe and defective products has become a critical aspect of commercial law. As the global economy evolves, consumers are increasingly reliant on goods produced and distributed by a wide range of manufacturers and sellers. With this growing dependency, ensuring the safety, quality, and reliability of products has emerged as a paramount legal concern, especially in countries with developing economies. The legal concept of product liability plays a vital role in addressing these concerns, as it establishes the responsibility of manufacturers, sellers, and distributors to ensure that their products do not pose harm to consumers. Product liability laws act as a safeguard for consumers by providing legal recourse in situations where products cause injury or damage¹. These laws are designed to protect the public by imposing accountability on businesses that fail to meet safety standards or produce defective goods. Doing so, product liability reinforces the need for businesses to maintain rigorous safety protocols and quality control measures throughout their production and distribution processes². In this

¹ Product Liability and Personal Injury Law: Understanding Defects and Legal Recourse. PSRB Law (Pellegrini, Seeley, Ryan & Blakesley, P.C.), <https://www.psrblaw.com/blog-posts/product-liability-and-personal-injury-law-understanding-defects-and-legal-recourse> (last visited Nov. 14, 2024).

² Lessons from the Pandemic: Mitigating Product Liability Risk in Supply Chains. MPO Mag (Medical Product Outsourcing), July 1, 2024, https://www.mpo-mag.com/issues/2024-07-01/view_features/lessons-from-the-pandemic-mitigating-product-liability-risk-in-supply-chains/.

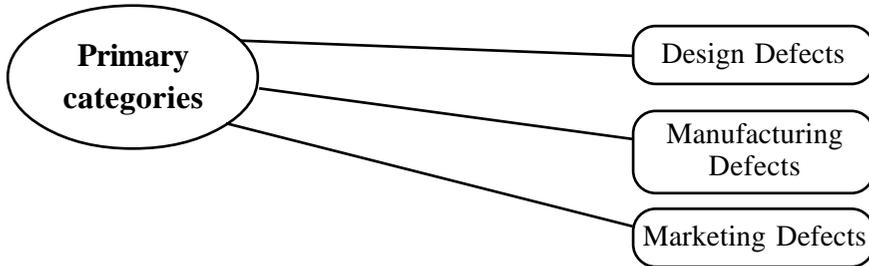
article the legal framework surrounding product liability, with a specific focus on how it operates within the context of commercial law in Nepal has been explored. The analysis has examined the impact of product liability on consumer rights, identifying the challenges faced by consumers when seeking redress for damages caused by defective products. Additionally, it has consider the broader implications of product liability on businesses and the necessity for robust enforcement mechanisms to protect consumer interests. The discussion has highlighted the gaps and limitations within Nepal's legal system regarding product liability, alongside a comparative perspective of international practices. This comparison has drawn insights from countries with more established consumer protection frameworks, providing recommendations for how Nepal could strengthen its product liability laws to ensure greater consumer safety and confidence in the market.

PRODUCT LIABILITY: A DEFINITIONS

Product liability refers to the legal responsibility of manufacturers, distributors, and sellers for damages caused by defective or hazardous products that they place on the market³. *When a product defect leads to injury, harm, or loss suffered by a consumer, product liability laws ensure that the responsible parties are held accountable.* These laws provide an essential layer of consumer protection by creating a legal framework where consumers can seek redress for injuries caused by unsafe products. Product liability applies to various stages of a product's lifecycle—from its design and manufacture to its marketing and distribution. Under this legal doctrine, companies are expected to guarantee the safety and usability of their products, ensuring that they meet quality standards before reaching the consumer. If a defect occurs and causes harm, product liability laws permit affected consumers to file claims for compensation.\

There are three primary categories of defects that form the basis of product liability claims:

³ Product Liability. ScienceDirect, <https://www.sciencedirect.com/topics/earth-and-planetary-sciences/product-liability> (last visited Nov. 14, 2024).



- **Design Defects:** These occur when the product’s design itself is inherently flawed, making it dangerous to use even if it is manufactured according to specifications. A design defect means that every product produced from that design will have the same inherent risk. An example might be a child’s toy designed with small, detachable parts that pose a choking hazard.
- **Manufacturing Defects:** These defects arise during the production or assembly process, where something goes wrong in the making of the product. Even if the design is safe, errors in manufacturing could result in a dangerous product. For instance, a batch of cars may have faulty brakes due to errors in the assembly line.
- **Marketing Defects:** These defects involve failures related to the labeling, instructions, or warnings that accompany the product. If a product lacks clear instructions for safe use or fails to warn consumers of potential dangers, it can lead to misuse and injuries. A common example is a pharmaceutical drug that fails to include warnings about side effects.

One of the key features of product liability law is the imposition of strict liability *on manufacturers and sellers*. Under strict liability, companies can be held responsible for damages caused by a defective product even if they exercised due care during its design, manufacturing, and distribution⁴. This means that companies cannot escape liability by proving that they followed all safety protocols or were unaware of the defect. The law is structured this way to place the burden of safety

⁴ Product Liability Lawsuits: Holding Manufacturers Accountable for Harmful Products. Drake Law Group, Aug. 29, 2024, <https://www.drakelawgroup.com/post/product-liability-lawsuits-holding-manufacturers-accountable-for-harmful-products> (last visited Nov. 14, 2024).

squarely on businesses, ensuring that they take all necessary steps to prevent harmful products from entering the market.

THE LEGAL FRAMEWORK IN NEPAL

In Nepal, consumer protection has taken significant steps forward with the enactment of the *Consumer Protection Act, 2075 (2018)*⁵, a pivotal piece of legislation aimed at safeguarding consumer rights. This Act outlines the responsibilities of manufacturers, sellers, and service providers, holding them accountable for defective or dangerous products that cause harm to consumers. However, despite this progressive law, the practical enforcement of product liability claims in Nepal remains a challenge due to several factors.

- a. **Lack of Awareness:** One of the critical hurdles in enforcing consumer rights, including product liability claims, is the widespread lack of awareness among the public. Section 3 of the Act ensures the right to quality goods and services, yet many consumers are not aware of these rights. This limited awareness restricts consumers from filing product liability claims when harmed by defective products. The Act also provides rights such as the “*right to be informed*” (Section 3(2)(c)) about the **quality, quantity, and price of products and services**, but consumers often do not exercise these rights due to insufficient public knowledge about legal protections.
- b. **Judicial Delays:** The Nepalese court system often faces delays, which discourages consumers from pursuing legal action. While the Consumer Protection Act establishes the right to compensation for harm caused by defective products (Section 50), the court’s capacity to handle such cases is hindered by inefficiency. Although the Act provides for the establishment of Consumer Courts (Section 41), these specialized courts are not yet operational in many areas, forcing consumers to navigate the general court system, which is often slow and burdensome. Additionally, the lack of fast-track mechanisms for consumer disputes further aggravates the issue, leaving consumers without timely redress.

⁵ Can be Accessed on : <https://daodarchula.moha.gov.np/en/post/consumer-protection-act-2075>

- c. Regulatory Oversight:** Weak regulatory enforcement exacerbates the problem of unsafe products entering the market. While the Act mandates the government to regulate the quality, pricing, and labeling of goods (Section 4), enforcement remains inconsistent. Regulatory bodies, such as the Consumer Protection Council and the Central Market Monitoring Committee (Sections 22 and 25), are tasked with ensuring that substandard products do not reach consumers. However, the effectiveness of these bodies is often undermined by limited resources, insufficient personnel, and inadequate coordination between agencies.

The Act provides clear provisions on the liabilities of manufacturers, sellers, and distributors. For instance, Section 7 obligates producers to provide quality goods and prohibits the production of defective products. Similarly, Section 6 requires producers to affix proper labeling, ensuring transparency about product contents and usage. Failure to comply with these obligations results in liability for harm caused to consumers. Despite these strong provisions, the lack of stringent market surveillance allows substandard goods to be sold, and consumers face difficulties proving fault in legal claims.

- d. Proving Fault and Liability:** One of the most significant hurdles for consumers in product liability cases is the difficulty in proving fault. Section 50 of the Act allows consumers to seek compensation for harm caused by defective products, but the burden of proof falls on the consumer to demonstrate that the defect in the product directly caused the harm. In many cases, especially those involving complex products such as electronics, pharmaceuticals, or machinery, proving a defect in design, manufacturing, or labeling can be highly technical and challenging. Consumers may not have the expertise or resources to gather the necessary evidence, making it difficult to hold manufacturers accountable.

Moreover, Section 7(2) emphasizes that liability is contingent upon proving that the harm was caused by the actual producer or seller of the product. This requires establishing a direct link between the

product's defect and the harm, which can be complicated by factors such as improper usage, third-party modifications, or the availability of counterfeit products in the market. These complexities make it harder for consumers to succeed in legal claims, especially in cases where the defect is not immediately apparent.

- e. **Costs of Litigation:** Another significant barrier to accessing justice under the Consumer Protection Act is the high cost of litigation. Although the Act empowers consumers to seek compensation, the process of filing claims, gathering evidence, and navigating the court system can be financially prohibitive, particularly for low-income consumers. Legal fees, court costs, and the potential for drawn-out legal battles deter many from pursuing their rightful claims, even when they have suffered genuine harm from defective products. This financial burden is exacerbated by the lengthy judicial process, where delayed resolutions increase the cost and complexity of seeking redress. Section 50 of the Act provides for the possibility of compensation for bodily, mental, or financial harm, but without effective mechanisms for free or subsidized legal aid, many consumers are left unable to afford the pursuit of such claims. This lack of access to affordable justice undermines the effectiveness of the Consumer Protection Act, creating a justice gap that leaves vulnerable consumers without recourse.
- f. **Lack of Specialized Expertise in the Judiciary:** While the Act calls for the establishment of Consumer Courts under Section 41, specialized courts are still not operational in many areas. Even where consumer cases are handled by the general court system, judges and legal professionals may lack the specialized knowledge required to adjudicate complex product liability cases. Such cases often involve technical details related to manufacturing processes, product design, or safety standards, which can be difficult to assess without proper expertise. The absence of specialized Consumer Courts means that many disputes are left to judges who may not have the technical background to fully understand the intricacies of product liability. This can lead to inconsistent rulings, delays, and the possibility of dismissing valid

claims due to a lack of technical insight. As a result, consumers are further discouraged from pursuing legal action, contributing to the overall inefficiency in handling consumer disputes.

- g. Limited Consumer Advocacy and Support Systems:** Although the Act recognizes the role of consumer associations under Section 2(e) to protect and promote consumer rights, the actual number of active and effective consumer advocacy groups in Nepal remains limited. These groups are meant to raise awareness, provide support to consumers in filing claims, and lobby for stronger enforcement of consumer rights. However, their impact is constrained by a lack of resources, funding, and government support. Without a strong network of consumer advocacy organizations, individuals are left to navigate the complex legal landscape on their own, further diminishing the likelihood of successful product liability claims. Moreover, Section 22 of the Act establishes the Consumer Protection Council, which is tasked with developing policies and strategies to protect consumer rights. However, the implementation and enforcement of these policies are often weak, as the Council itself may suffer from bureaucratic inefficiency and limited governmental coordination. Strengthening consumer advocacy organizations and ensuring the active functioning of consumer protection bodies are critical steps toward improving the enforcement of the Consumer Protection Act.
- h. Absence of Alternative Dispute Resolution Mechanisms:** While litigation is the primary means for resolving consumer disputes under the Consumer Protection Act, there is a noticeable lack of alternative dispute resolution (ADR) mechanisms, such as mediation or arbitration. ADR offers a more efficient, cost-effective, and less formal route for resolving disputes, which can be particularly beneficial in cases where the harm caused by defective products is minor or the value of the claim is low. Without ADR options, consumers are left with the burdensome and costly process of formal litigation, which can discourage them from seeking justice. Section 60 of the Act mentions the use of summary procedures for certain cases, but these provisions are not enough to alleviate the heavy reliance on formal court

processes. The establishment of ADR mechanisms specifically tailored for consumer disputes could greatly enhance access to justice by offering faster, more affordable solutions.

CHALLENGES FACED BY CONSUMERS IN PRODUCT LIABILITY CASES

Despite the legal framework provided by Nepal's Consumer Protection Act, 2075 (2018), consumers still face significant hurdles when seeking compensation for damages caused by defective products. While the Act is designed to protect consumers and ensure accountability for harmful products, the practical implementation of these legal provisions is often limited, leaving consumers vulnerable and without sufficient recourse. The primary challenges include proving fault, accessing justice, and the lack of regulatory enforcement, all of which are compounded by specific weaknesses in the law and its enforcement mechanisms.

a. Proving Fault

One of the most significant challenges for consumers in product liability cases is the burden of proving that a product defect directly caused harm or injury. Section 7(2) of the **Consumer Protection Act**⁶ specifies that producers, importers, and sellers are liable if harm occurs due to a defect in the production, design, labeling, or construction of a product. However, this provision requires the consumer to establish a clear causal link between the defect and the harm suffered. In many cases, the technical nature of proving such defects—whether in design, manufacturing, or marketing—can be overwhelming for consumers. Defective products may not exhibit obvious faults, and proving a design or manufacturing flaw often requires expert testimony, technical reports, or laboratory tests, which are difficult and expensive for ordinary consumers to obtain. For instance, a design defect (e.g., a vehicle's faulty braking system) might only become apparent under specific conditions, requiring technical expertise to demonstrate the flaw. Additionally, Section 50 of the Act allows consumers to claim compensation for physical, mental, or financial harm caused by

⁶ Ibid

defective products. Yet, the lack of comprehensive guidelines on the evidentiary standards consumers must meet further complicates the process of proving fault. In the absence of expert legal or technical assistance, many consumers are unable to substantiate their claims, leaving them without effective remedies.

b. Access to Justice

Accessing justice in product liability cases in Nepal is another formidable challenge. Although the Consumer Protection Act provides consumers with the right to file claims for compensation, the judicial process remains slow, costly, and often inaccessible for the average consumer. Section 41 of the Act establishes the framework for Consumer Courts, specialized tribunals intended to expedite consumer-related disputes. However, these courts are not yet operational in many parts of Nepal, forcing consumers to rely on the general court system. The general court system is frequently burdened with delays, making it an inefficient mechanism for resolving consumer disputes. Even if consumers are entitled to compensation under Section 50, the cost and time required to pursue a legal case can often outweigh the potential financial benefit, particularly for minor injuries or low-cost products. For example, if a consumer suffers a minor injury due to a defective kitchen appliance, the legal expenses and court fees involved in filing a product liability claim may discourage the individual from pursuing justice, even though they have the legal right to compensation. The absence of fast-track procedures for resolving consumer disputes further exacerbates this issue. Despite the Act's intention to protect consumers, the reality is that only a fraction of claims are pursued due to the time-consuming and expensive nature of litigation. The lack of affordable legal representation and financial assistance for consumers further limits their ability to access justice, especially for low-income individuals.

c. Lack of Regulatory Enforcement

Weak regulatory enforcement is perhaps one of the most glaring issues in the implementation of product liability laws in Nepal. The Consumer Protection Act outlines several mechanisms intended to safeguard

consumers from defective products, including provisions for market monitoring and quality control. Section 4 mandates the government to regulate the supply, pricing, and quality of goods and services in order to protect consumer rights. Additionally, Sections 22 and 25 establish the Consumer Protection Council and the Central Market Monitoring Committee, respectively, to oversee the enforcement of product safety standards and prevent substandard goods from reaching the market. Despite these provisions, the enforcement of the Act remains inconsistent and weak. Regulatory bodies often lack the resources, personnel, and coordination necessary to effectively monitor and enforce quality control measures. Section 7(1)(d) explicitly prohibits the production and sale of defective products, but without stringent market surveillance and proactive enforcement, many unsafe products continue to be sold, posing risks to consumers. For instance, food items, pharmaceuticals, and electronic goods often escape rigorous inspection, and substandard or counterfeit products frequently reach consumers without adequate intervention from regulatory authorities. This lack of enforcement leaves consumers exposed to a wide range of defective products, from low-quality electronics to dangerous food products. Section 6 of the Act requires that producers properly label their goods with essential information such as ingredients, manufacturing details, and usage instructions. However, in practice, many products in the market either lack proper labeling or provide misleading information, making it difficult for consumers to make informed purchasing decisions. As a result, consumers remain at risk of using unsafe products, and when harm occurs, they face difficulties in holding manufacturers accountable.

d. Limited Remedies for Consumers

Even when consumers successfully navigate the legal and regulatory hurdles, the remedies available under the Act may not fully compensate them for the harm suffered. Section 50 of the Act entitles consumers to claim compensation for damages caused by defective products. However, the compensation process can be lengthy, and the amounts awarded may not always cover the full extent of the harm, especially in cases involving severe injury or significant financial

losses. The Act also does not provide clear guidelines on the calculation of compensation for different types of harm, leading to inconsistent outcomes in court rulings. Moreover, the Act does not sufficiently address the need for preventive measures to stop defective products from entering the market in the first place. While Section 5 allows the government to set quality standards for goods, enforcement is limited, and there is no mandatory recall mechanism for defective products already in circulation. This leaves consumers vulnerable, as the burden is placed on them to identify defects and seek redress, rather than on manufacturers and regulators to prevent harm.

INTERNATIONAL PERSPECTIVES ON PRODUCT LIABILITY

a. United States Product Liability Framework

In the United States, product liability law is governed by the **Uniform Commercial Code (UCC)**⁷ and various state statutes, which collectively create a comprehensive legal environment for consumer protection. Key features include:

- **Strict Liability:** Manufacturers can be held liable for defective products regardless of fault. This means that if a product cause's harm due to a defect, the injured party does not need to prove negligence on the part of the manufacturer⁸.
- **Consumer Rights:** Victims are empowered to seek compensation for damages through civil litigation, which has led to a robust system where injured parties can claim for personal injury or property damage caused by defective products⁹.

b. European Union Product Liability Directive

The European Union has established a harmonized approach to product liability through the **Product Liability Directive (PLD)**.¹⁰ This

⁷ Uniform Commercial Code. Uniform Law Commission, <https://www.uniformlaws.org/acts/ucc> (last visited Nov. 14, 2024).

⁸ Liability for Defective Products. European Commission, https://single-market-economy.ec.europa.eu/single-market/goods/free-movement-sectors/liability-defective-products_en (last visited Nov. 14, 2024).

⁹ The EU's New Product Liability Directive. Clyde & Co, Apr. 2024, <https://www.clydeco.com/en/insights/2024/04/the-eu-s-new-product-liability-directive> (last visited Nov. 14, 2024).

¹⁰ European Parliament, Product Liability Directive Expands to Cover Digital Technology. European Parliament Research Service, 2023, [https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739341/EPRS_BRI\(2023\)739341_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/BRIE/2023/739341/EPRS_BRI(2023)739341_EN.pdf).

directive has undergone revisions to adapt to modern challenges, particularly in light of technological advancements. Key aspects include:

- **No-Fault Liability:** The PLD imposes strict liability on producers for defective products, meaning that consumers can claim compensation without needing to demonstrate fault or negligence¹¹. This is particularly relevant in cases involving complex products like software and AI systems.
- **Broad Definition of Products:** The directive defines “products” broadly to include not only physical goods but also digital products and components, thereby extending liability to a wider range of goods¹².
- **Ease of Claiming Compensation:** The PLD simplifies the process for consumers by reducing their burden of proof. Once a claimant establishes that a product is defective and that damage occurred, the burden shifts to the manufacturer to disprove liability¹³.

STRENGTHENING CONSUMER PROTECTION IN NEPAL

Improving the protection of consumer rights in Nepal, particularly in relation to product liability, requires a comprehensive approach that addresses the current weaknesses in enforcement, awareness, and legal frameworks. One of the foremost priorities is raising consumer awareness. Many consumers in Nepal remain unaware of their rights under the Consumer Protection Act, 2075 (2018), which hampers their ability to seek redress when harmed by defective products. Educational campaigns and public outreach initiatives are essential to inform consumers about their legal entitlements and the processes involved in filing product liability claims. This awareness would empower individuals to hold manufacturers and sellers accountable, fostering a culture of consumer vigilance and

¹¹ The EU’s Product Liability Directive Expands to Cover Digital Technology. RPC Legal, Summer 2024, <https://www.rpclegal.com/snapshots/consumer/summer-2024/the-eus-product-liability-directive-expands-to-cover-digital-technology/> (last visited Nov. 14, 2024).

¹² Liability for Defective Products. European Commission, https://single-market-economy.ec.europa.eu/single-market/goods/free-movement-sectors/liability-defective-products_en (last visited Nov. 14, 2024).

¹³ *Ibid*

safety. Simultaneously, enhancing the legal framework surrounding product liability is crucial. While the Consumer Protection Act provides a basic structure for holding businesses accountable, more detailed and stringent laws could offer stronger protections. These laws should clearly define the responsibilities of manufacturers, distributors, and sellers, and establish clearer guidelines for determining liability. For instance, introducing specific regulations on how defects are identified and proven, along with clearer penalties for non-compliance, would make it easier for consumers to seek compensation. Additionally, there is a need to *refine the laws to include mandatory recall systems for defective products*, ensuring that harmful goods are removed from the market before they cause harm.

Another key area for improvement lies in strengthening regulatory oversight. Regulatory bodies such as the **Consumer Protection Council** need to be better equipped with resources, personnel, and authority to enforce product safety standards. Enhancing these bodies' capacity to monitor goods in the market, inspect manufacturing facilities, and take swift action against non-compliance, the government can prevent unsafe products from reaching consumers. Effective regulation not only protects consumers but also holds businesses accountable for maintaining high safety standards, thus improving overall market integrity.

CONCLUSION

Product liability plays a crucial role in protecting consumer rights and ensuring fair practices within commercial law. It holds manufacturers, distributors, and retailers accountable for the safety and quality of the products they offer, ensuring that consumers can seek redress in cases where products are defective, unsafe, or harmful. In Nepal, while the legal framework provides a basic level of protection, it remains insufficient in fully addressing the growing challenges posed by defective and unsafe products in the marketplace. Nepal's existing laws on product liability are somewhat underdeveloped and require stronger enforcement mechanisms. Currently, consumers may struggle to access justice when faced with defective products, primarily due to gaps in legal provisions, lack of clarity

in enforcement, and limited access to compensation. Additionally, there is a significant gap in consumer education—many individuals are unaware of their rights or the recourse available to them in the event of harm caused by faulty products. Without proper knowledge, consumers often hesitate to seek redress or are unaware that their rights are being violated. One of the key areas where Nepal can improve is in enhancing its enforcement capabilities. This includes ensuring that regulatory bodies are adequately empowered and resourced to inspect and take action against unsafe products and irresponsible manufacturers. The judicial system must also be better equipped to handle product liability cases swiftly and effectively. At the same time, there is an urgent need to establish clear legal guidelines and standards that manufacturers must meet to ensure product safety. Another crucial step is the implementation of robust consumer education programs. These initiatives could inform individuals about their rights regarding product safety, warranties, and how to lodge complaints when faced with defective or dangerous products. Empowering consumers with knowledge can act as a deterrent against irresponsible business practices and promote safer consumer markets. Addressing the current gaps in product liability laws, improving enforcement, and educating consumers, Nepal can build a more robust framework that enhances consumer protection.

This will lead to increased consumer confidence, ensuring that individuals feel safe when purchasing goods, knowing they are protected from defective or unsafe products. A more effective product liability system would not only benefit consumers but also improve the reputation of Nepal's commercial markets, attracting both domestic and international investments. Ultimately, a strengthened approach to product liability will contribute to a safer, fairer, and more reliable marketplace for all. The Government of Nepal has recently established the consumer court for the proper protection of consumer rights.

