
DUTY OF CARE IN WATER PARK SAFETY: RECENT LEGAL DEVELOPMENTS

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ABSTRACT

Water Park or amusement parks which have been a centre and hub of recreation for decades, are also the sites where accidents happen. Therefore, it is certainly essential to the study the intricacies involving dangers and risks at such places and the liability of the authorities concerned. The research hypothesizes that a thorough examination of duty of care in water park safety will reveal significant variations in legal frameworks and safety standards across different regions. It is recognised in the study that a proper classification for the types of risk or the equipment is important to decide the appropriate duty of care and the consequent liabilities of the managing staff. By comparing the Indian safety provisions, as outlined in the Code of Recommended Practice, with the European standard EN 13814-2019, the study anticipates identifying potential gaps and strengths in each system. By comparing some established codes and provisions it becomes convenient for countries like India to identify the gaps and potential areas of improvement. Additionally, the research predicts that an exploration of legal principles and precedents related to water park incidents, such as the case of *The Managing Director, Kerala Tourism Development Corporation Ltd. v. Deepti Singh*, will explain the key factors influencing the liability of water park authorities. However, the landmark judgments on water park safety are limited due to the highly specific field of discussion, but that is what makes it equally important at the same time. Through this research, the aim is to formulate informed recommendations for enhancing safety regulations and duty of care practices in water parks, promoting a balance between the responsibilities of park authorities and the enjoyment of visitors.

Keywords: Water Parks, safety, risks, liability, duty of care, *volenti non fit injuria*, inevitable accidents.

Introduction:

Exploring the world of water parks, where fun and thrills collide, we embark on a journey to understand the crucial concept of duty of care in ensuring the safety of the individuals. Water parks, with their exciting water slides and attractions, offer a refreshing escape for families and friends. However, between the enjoyment, it is vital to shine a light on the responsibility, 'the duty of care' that is the responsibility of the concerned authorities of the water and other amusement parks. Whenever accidents or unforeseen circumstances occur, the parties who have faced wrongful losses should get compensated and taken responsibility for in order to assure proper justice and active functioning of law in maintaining order. Further, there is also a need for an established code for controlling and directing the conduct of water park managers and controlling authorities.

Research Methodology:

This study used secondary data sources to analyse the subject using a qualitative methodology. A thorough review of relevant sources, including online databases, scholarly journals, and reliable websites, was conducted. The chosen sources were examined for dependability, applicability, and reliability. The study arranged important themes, concepts, and patterns based on the research goals and questions. Different Statutes were also analysed and used to compare the currently present and required provisions.

Research Questions:

- What is the duty of care in water park safety and to what extent can the liability for breach arise?
- What is the position of current statutes as per the recent developments of law and what are its limitations?

Descriptive Analysis:

Water Parks, one of many lucrative sources of recreation for people worldwide. Water Parks certainly do have many attractions including thrilling water rides and aquatic themed decorations which make them a great source for entertainment and a place to visit with one's family and friends. However, there are various risks attached to this exhilarating experience as

many people consider it. There is always a variety of rides available in water and amusement parks. Some of them are referred as regular and some “more dangerous”. Due to the countless variations in water-ride designs, features, operation methods, and potential riders, courts face a challenging task in consistently distinguishing between extreme rides, which require a heightened standard, and ‘not-so-dangerous’ rides¹. This fact is undeniable that classifying rides as per the risk measure is certainly a good idea because in practice, it is important to demarcate the rides and their following liability standards and the related duty of care².

The Code of Recommended Practice for Safety in Water Parks³ explains and includes the Terminology, General requirements, Safety requirements and Instructions for water parks and the authorities. This code also includes Classification of different rides applicable all over the water parks in India⁴. Water Rides have been categorized into 7 types. The characteristics divisional features of the 7 types are as follows:

Type 1: *‘A ‘Straight individual slide’ with a maximum average inclination of seventy percent, not surpassing three meters in height above the water level, and two point seven meters above ground⁵.*

Type 2: *An individual slide with an average inclination ranging from ten to eighteen percent (excluding the final part), not exceeding three meters in height above water level, and two point seven meters above ground⁶.*

Type 3: *An individual slide without height restrictions, featuring a maximum average inclination of thirteen percent (excluding the final part), allowing users to achieve an average speed of five meters per second and a maximum speed of seven meters per second⁷.*

Type 4: *A speed individual slide with an average inclination between ten and twenty percent (excluding the final part), enabling users to reach an average speed of ten meters per second and a maximum speed of fourteen meters per second⁸.*

¹ Gomez v. Superior Court, 113 P.3d 41, 45-49 (2005).

² Chavez v. Cedar Fair, LP, No. WD 75373 (2013).

³ The Code of Recommended Practice for Safety in Water Parks B 15492 Part 1 (2004).

⁴ The Code of Recommended Practice for Safety in Water Parks B 15492 Part 2 (2004).

⁵ B 15492 § 3.1.

⁶ B 15492 § 3.2.

⁷ B 15492 § 3.3.

⁸ B 15492 § 3.4.

Type 5: *A high-speed individual slide with an average inclination of at least twenty percent (excluding the final part), permitting users to attain a speed exceeding fourteen meters per second*⁹.

Type 6: *“multi-track slide in the form of Type 3 with separate parallel tracks”*¹⁰.

Two subtypes:

6.1: *An average speed of five metres per second and a maximum speed of seven metres per second can be achieved by user.*

6.2: *An average speed of ten metres per second and of fourteen metres per second at maximum can be achieved by the user.*

Type 7: *A wide straight slide with a maximum inclination of twenty-five percent, not surpassing eight meters in height above water level and seven point seven meters above the ground, allowing users to reach a maximum speed of seven meters per second.*¹¹.

In the case of *The Managing Director, Kerala Tourism Development Corporation Ltd. v. Deepti Singh and Ors.*¹², Ms. Deepti Singh filed a consumer complaint against Kerala Tourism Development Corporation Ltd. (KTDC) for alleged deficiency of service at Hotel Samudra in Kovalam. The complaint involved an incident where the spouse of the complainant drowned in the hotel's swimming pool. Negligence involves a legal duty to exercise due care, breach of duty, and consequential damages. Hotel breached its duty of care by assigning lifeguard additional duties, leading to delayed response in the drowning incident. The NCDRC awarded compensation of Rs. 62,50,000 to the complainants, considering the deceased's age, occupation, income, and family's loss of support. The nature of the loss deemed incapable of being fully compensated in monetary terms.

Volenti non fit injuria

In *Amusement Slides Corp. v. Lehman*¹³, Plaintiff was injured on water slide. The authorities

⁹ B 15492 § 3.5.

¹⁰ B 15492 § 3.6.

¹¹ B 15492 § 3.7.

¹² *The Managing Director, Kerala Tourism Development Corporation Ltd. v. Deepti Singh and Ors.*, MANU/SC/0418/2019.

¹³ *Amusement Slides Corp. v. Lehman*, [1977], 217 Va. 815, 232 S.E.2d 803.

claimed that the accident could have been prevented if the instructions were followed. It was claimed that the accident occurred because of the fault and inactiveness on the part of the employees of the defendant. The plaintiff did not assume risk of amusement parks.

Now the cases like the one stated above raise the question of the consent of plaintiff and the reasonable duty of care by the authorities. For the application of *Volenti non fit injuria* the two essentials are to be fulfilled¹⁴. First, the plaintiff must have the knowledge of the risk and secondly the plaintiff must have given free consent to suffer the harm.

Hence it is true that if these two essentials are satisfied and there is presence of consent of the plaintiff, then damages can not be claimed.

Inevitable accidents

Inevitable accidents are those unforeseeable circumstances which cannot be predetermined by a person of ordinary prudence. Now, if accidents in a water park occur due to such circumstances which are out of the control of human or unintentional in a way that it was not at all expected, then the authorities cannot be held liable. In *Fardon v. Hercourt*¹⁵, Lord Dunedin had said that, “A man must be vigilant to guard against probable incidents, not against imaginary incidents”.

Comparative Scope and Limitations

The European standard *EN 13814-2019*¹⁶, is an important provision which ensures safety measures for amusement rides and devices. It is divided into three major parts.

EN 13814-1: Design of Amusement Rides and Devices- This part of this particular statute tends to focus on the very fundamental principles for designing the rides to be installed in amusement parks and the devices which are capable of ensuring the safety and reliability for people. This part sets a basic standard for such machinery including water slides and other leisure activities. The primary objective is to minimize the risks associated by focusing on the core elements.

¹⁴ Gandhi, S., *Volenti Non-Fit Injuria: Damage Suffered by Consent Is Not a Cause of Action*, 2 Indian J. Integrated Rsch. L. 1 (2022).

¹⁵ *Fardon v. Hercourt*, [1932] 146 LT 391.

¹⁶ EN 13814 ‘Safety of Amusement Rides and Amusement Devices’ (2019).

This one thing that Indian provisions lack is not giving enough attention and create statutory provisions focusing specifically on the making of rides and devices used in water parks and amusement parks. This is a very efficient method of ensuring safety and can assist in actually reducing the related risks. Hence, if a provision, setting the standard for the machinery used in water parks ensuring good quality along with the use of updated technology, is passed, a lot of safety threats will be resolved.

EN 13814-2: Maintenance and Safe Operation- This part is the design phase. The focus is more on the on going maintained of the installed rides and machinery. Here, majorly standards are set for maintaining, operating, controlling and testing rides and machinery in amusement parks.

This is another aspect where Indian provisions can focus more to ensure a systematic and regulated approach towards securing recreational sites. This will help to maintain long term safety and enhance efficiency.

EN 13814-3: Monitoring and Inspection- Once best available quality designs and maintenance is ensured it is also essential to monitor and inspect the proper functioning. These standards outline specific requirements applicable to controls, encompassing the review of design documents, manufacturing process control, periodic tests, and inspection of electrical equipment. It provides guidelines to professionals on what to look for during inspections, encouraging an approach to identify and address potential safety issues.

The third focus to be made by Indian legislations is identifying the importance of regular inspections and monitor the proper working of the devices and machineries used. This is because without monitoring even the best provided resources can decay and depreciate over time lacking discipline and the identification of the related responsibilities of the authorities.

Conclusion:

To conclude, water park safety is an issue that requires more focus of the legal framework. It is important to differentiate the variety of resources involved and the related duty of care of the individuals as well as the managing authorities. The presence of elements such as *Volenti non fit injuria* and inevitable accident also needs to be studied to actually classify the liability accordingly. In addition to this, it is important to study the similar statutes of other countries or

unions as well to find the flaws in our statutes and the gaps which can be covered since there is always a scope of betterment with this era of continuously developing technology. Contant efforts for updating the security measures need to made to ensure maximum safety and a sense of security for all the individuals who wish to enjoy and spend time with their nears and dears in such locations.