

# LAW ON PRODUCT LIABILITY IN INDIA WITH COMPARATIVE PERSPECTIVE

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## Abstract

Online marketplaces are being used by consumers to meet their demands for goods and services. The future of market apps will be impacted by the dependability and security of the goods and services offered by these marketplaces. Since both product responsibility and liability for intellectual property infringements are murkier areas, products offered by third parties on market platforms may have an impact on e-commerce platforms. Before 2019, courts regularly ruled that e-commerce sites were not responsible for any harm or accidents brought on by the goods they sold. These platforms are viewed by courts as nothing more than intermediaries for third-party transactions. Local suppliers supplied goods and services in pre-digital India. Customers addressed the manufacturer if they were harmed by defective products, but there was little legal recourse. However, global supply chains, increased international trade, and the quick development of e-commerce have all evolved in the contemporary consumer products and services sector. Customers now have additional alternatives, opportunities, and new delivery methods for both foreign and Indian items. Comprehensive products liability legislation is necessary in light of shifting production locations, new consumer behaviors, the digital revolution, and the sharp increase in faulty goods, consumer deception, and fraud. Additionally, e-commerce has made consumers more susceptible to new types of dishonest and fraudulent business practices, such as the sale of goods based on false information and advertisements. The Consumer Protection Act of 2019 was submitted by the Ministry of Consumer Affairs, Food, and Public Distribution as a legislative framework to regulate producers and safeguard customers' interests. This article looks at how new laws might be able to restrict e-commerce and product responsibility in the future.

**Keywords:** Negligence, Strict Liability, No-Fault Liability, Absolute Liability, Product liability

## Introduction

Strict responsibility and absolute liability standards are outliers since they hold people accountable for actions that are not their fault. The "no-fault liability principle" is how these guidelines are stated. The main distinction between these two laws is that the rule of absolute liability offers no exceptions at all, whereas the

rule of strict liability includes few. Two important rulings served as the foundation for these regulations. *M.C. Mehta v. Union of India*<sup>1</sup> established the notion of absolute liability, while *Rylands v. Fletcher*<sup>2</sup> established the norm of strict liability.

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<sup>1</sup>AIR 1987 S.C 1086.

<sup>2</sup>(1868) LR 3 HL 330.

According to the strict liability principle, a man who retains dangerous materials on his property bears responsibility if such materials leak and cause harm, even if the person who kept them was not negligent. According to the rule of absolute liability, an enterprise that engages in a risky or dangerous activity and injures someone as a result of a mishap due to that activity will be held fully accountable for compensating all parties impacted by the accident.

### **Origin of Strict Liability**

The *Rylands v. Fletcher* decision in 1868 established the strict liability rule, which states that if someone retains a hazardous material on his property and it escapes and hurts someone else, he will be held accountable. Whether the defendant took proper care or not, or if he was negligent, would not matter. Even if someone had taken the right precautions, they would still be held accountable because liability is not based on their fault or carelessness, but rather on the fact that they kept something harmful on their property and it escaped and caused damage. It is known as the "rule of strict liability" because it applies even in cases where the defendant did not act negligently. However, there are requirements that determine whether a liability is a strict liability or not, and a strict liability can only be imposed if the following requirements are met.

### **Essential qualifications of Strict Liability**

(i). *Substance must be dangerous*: Damages will only be attributed to the defendant if something "dangerous" breaks out of his premises. The word "dangerous" implies that if it left the defendant's domain, some sort of suffering would ensue. Items that have been deemed dangerous if they escape from the owner's property include gasoline, electricity, bombs, flagpoles, hazardous smoke, vibration, poisonous trees, sewage, and even electric lines.

(ii). *Dangerous thing must escape*

"Escape" is another crucial component of strict liability, which states that anything that injures someone else must leave the owner's property.

(iii). *Use must be non-natural use*

*It indicates that if material is used for a natural use like home purpose, then person cannot be held liable for any injury caused due to it, but if it is used for any non-natural use like big quantity of water in Rylands v. Fletcher<sup>3</sup>, then defendant would be liable.*

### **Exceptions or defences to the rule of Strict Liability**

1. *Plaintiff's own fault*: One strong defense is that the plaintiff's own fault caused the damage that resulted from the escape. The plaintiff has no right to file a complaint if his own encroachment onto the defendant's property causes him harm.

2. *Act of God*: The defendant cannot be held liable for any liability resulting from an incident that happens as a result of an unforeseen circumstance over which a human body has no control.

3. *Plaintiff's Consent*: The defendant will not be held accountable if the plaintiff has willingly agreed to endure injury for the mutual benefit of both parties.

4. *Act of third-party*: If the plaintiff suffers harm that is not the defendant's fault but rather the result of a third person who was neither the defendant's servant nor related to the defendant, the defendant will not be held accountable.

Therefore, there is no need to prove guilt, carelessness, or intent under the concept of strict responsibility. In this case, the defendant bears responsibility without assigning blame for things like negligence or malicious intent. The plaintiff only needs to demonstrate that the defendant is at fault and that an injustice has occurred. By taking all reasonable precautions, the Act discourages

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<sup>3</sup>*Supra Note 1.*

reckless behavior and needless damage by imposing strict or absolute liability on cases it deems potentially dangerous. In strict responsibility, a claimant may receive punitive damages in certain countries if they can show that the defendant knew about the flaw at the time the harm occurred.

### Origin of the Principle of Absolute Liability

In the case of *M.C. Mehta v. Union of India*<sup>4</sup>, also referred to as the Oleum Gas leak case<sup>5</sup>, the legal idea of absolute liability was developed in India. There are no exceptions to this principle, which is similar to strict liability. It implies that the defendant will not be permitted to raise any defenses under this concept, unlike in *Rylands v. Fletcher*<sup>6</sup>.

In *M.C. Mehta v. Union of India*, the Supreme Court of India ruled that the defendant must be held accountable for his actions and that such an offense should not be contested. The strict responsibility and absolute liability standards in tort law are nearly identical, with the exception that strict liability holds one accountable for damages caused by the use of dangerous objects, their escape, and their unnatural usage, but there are several exceptions. A much expansive definition of this responsibility is absolute responsibility. The problem was that if all tragedies resulting from massive productions were covered by the exclusions, then criminals would be protected from the consequences of their actions. The Supreme Court ruled that although the *Rylands v. Fletcher* ruling, which established the Rule of Strict Liability, also applied to the facts of this case, people who established risky and dangerous businesses in and around densely populated areas could escape the damage they caused by utilizing certain exceptions. Thus, Justice (Retd.) P.N. Bhagwati, the Chief Justice of

India at the time, created the new idea of "Absolute Liability." According to the requirements of the law at the time, the Honorable Supreme Court ruled that the law established in *Rylands v. Fletcher* was justified. However, Indian courts are under no obligation to adhere closely to the 19th-century ruling. With the advancement of science and technology, industrial society has advanced to the point where it is now essential to operate industries that are hazardous or intrinsically dangerous in order to continue developing. Such advancements in science and technology had not occurred when the *Rylands v. Fletcher* ruling was made in the 19th century. The law must adapt to the demands of society; it cannot afford to stay the same. To effectively address the issues of a newly industrialized economy, we must develop new concepts and establish updated regulations. We cannot permit judges to limit their reasoning to the laws established in England or any other nation. Thus, the absolute liability idea was established.

### Rules for establishing absolute liability

1. *Hazardous or inherently dangerous activities:* As per the principle of absolute liability, an individual who is involved in an activity that is inherently dangerous or hazardous and causes harm to another person as a result of an accident that occurs while performing such an activity will be held fully accountable for the incident.

2. *No need to flee:* It is not required to flee a dangerous object from one's own property in order to be held fully liable. It implies that both people hurt on the property and those hurt off it are subject to the law of absolute culpability.

3. *No exception:* If a case falls under one of the strict liability exceptions the defendant is not held accountable for that act. There is no defense of

<sup>4</sup>*Supra Note 2.*

<sup>5</sup> Tyagi, Anamika, Reiterating the Principle of Absolute Liability in Light of Oleum Gas Leakage Case (2020), [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=36974](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=36974)

<sup>513109</sup>; International Journal of Law Management & Humanities [Vol. 4 Issue 3; 3104] © 2021. Reviews evolution of absolute liability.

<sup>6</sup>*Supra Note 1.*

exceptions under absolute liability, and the defendant is responsible for making restitution.

4. Applies to both natural and non-natural uses of land: While the Ryland v. Fletcher rule only applies to non-natural uses of property, the rule of absolute liability applies to even natural uses. If someone uses a dangerous material, which may be a natural use of the land, and it escapes, they will still be held responsible even if they followed the appropriate safeguards.

5. *Extent of damages*: While the Ryland v. Fletcher rule only applies to non-natural uses of property, the rule of absolute liability covers even natural uses. If someone uses a dangerous material, which may be a natural usage of the land, and it escapes, they will still be held responsible even if the right safeguards were followed.

### **Origin & Evolution of Product Liability Law in India**

Law of Product liability enables an aggrieved consumer a legal remedy for injuries suffered from any defective product. It is the responsibility of manufacturers and sellers to ensure the safety and quality of their product as per the prescribed standards. In earlier product liability cases, the principle adopted was *caveat emptor* which says that let the buyer beware.<sup>7</sup> However, Consumer Protection Act, 2019 (hereinafter referred as CPA 2019) introduced concept of product liability. The CPA 2019 introduced detailed ambit on product liability with specific responsibilities and liabilities of a 'product manufacturer'<sup>8</sup>, 'product service provider'<sup>9</sup> or 'product seller,'<sup>10</sup> of any product or service so that compensation for any harm caused to consumer by such defective

product manufactured or sold or deficient in services may be fixed.

Caveat Vendor, which translates to "let the seller beware," is a common law doctrine that is the foundation of product liability law. It places the responsibility for any flaw or issue that the buyer may have with the seller's goods or services on the seller. Product liability refers to the obligation of a product's maker or seller to pay damages for harm brought on by faulty products that are sold. General principles of contract law and tort law were developed as a result of case law on product liability. In contract law, product liability is founded on the "warranty" basis, whereas in tort law, it is founded on the "negligence" and "strict liability" principles. A warranty, whether explicit or implied, is a crucial indication of the type or caliber of the product and is one of the main reasons for buying it. Therefore, any deviation from the guaranteed nature or quality of the goods could lead to a consumer's product liability case. However, the law of privity of contract, which stipulates that an injured party can only sue a negligent party if that person was a party to the transaction that impacted them, applies to the warranty principle. The courts decided on tort law concepts of strict liability and negligence to safeguard consumers because contract law was insufficient in protecting them in product liability claims. Negligence is defined as failing to exercise due or reasonable caution, creating flawed designs, failing to provide warnings, etc. Sellers are deemed negligent if they do not use the appropriate care or prudence. However, proximate cause, contributory carelessness, subsequent product tampering, product misuse, and the plaintiff's assumption of risk are defenses against a negligence claim. When the defendant's

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<sup>7</sup>Don Mayer, Daniel M. Warner, George J. Siedel and Jethro K. Lieberman, "Basics of Product Liability, Sales, and Contracts". Available at <https://2012books.lardbucket.org/pdfs/basics-of-product-liability-sales-and-contracts.pdf> last accessed on 3<sup>rd</sup> April 2022.

<sup>8</sup>Sections 2(36) and 84 of the Consumer Protection Act, 2019.

<sup>9</sup>Sections 2(38) and 85 of the Consumer Protection Act, 2019.

<sup>10</sup>Sections 2(37) and 86 of the Consumer Protection Act, 2019.

carelessness and warranty failed to safeguard consumers, the courts adopted the strict liability concept, which states that if a product is unsafe and faulty, the seller is responsible for any human injury or property loss. This principle does, however, contain caveats regarding product liability, recovery limitations, and potentially non-recoverable economic losses. The Consumer Protection Act of 2019 (CPA2019) outlines a number of particular exclusions from a product liability lawsuit.<sup>11</sup>

### **Jurisprudence on Negligence and Strict Liability in Tort**

*Winterbottom v. Wright* (1842)<sup>12</sup> maintained strict responsibility in torts and the privity criterion in the concept of negligence. The coach company in this instance entered into an agreement with the postmaster general to supply coaches for mail services and assumed responsibility for coach upkeep. The postmaster general hired the plaintiff's driver to operate the coach and deliver the mail. He filed a lawsuit against the coach firm after being hurt when the vehicle collapsed as a result of inadequate maintenance. However, because he was never a party to the maintenance agreement between the bus company and the postmaster general, the court determined that the driver could not get compensation from the coach company.

However, the condition of privity of contract for negligence was eliminated by the court in *MacPherson v. Buick Motor Co.* (1916)<sup>13</sup>. MacPherson, the plaintiff in this case, suffered injuries when his car's wooden wheel disintegrated. The car was made by the defendant, Buick Motor Company, but the wheel was made by a different company. However, the defendant mounted the wheel. There was evidence that a

reasonable check might have quickly discovered the fault, yet the wheel was not inspected. Because the plaintiff had bought the car from a dealer rather than the company directly, the defendant denied any liability. Even though the company did not have a privity of contract with the victim, the New York Court of Appeals ruled that it was still liable if it was negligent. Thus, the idea of "privity of contract" was abandoned for the first time, which resulted in the "conquest of tort over the contract"<sup>14</sup>.

Therefore, it is important to demonstrate the defendant's negligence in order to establish a tort claim of negligence. The plaintiff must demonstrate that the defendant's actions fell short of the applicable standards of care. However, establishing a standard of care, a breach, or the reasons for carelessness proved difficult. Therefore, strict liability was established by courts in the 20th century when they deemed it unjust to require a critically harmed consumer to show negligence claims against the makers or sellers.

Plaintiff watched its functioning as demonstrated by a retailer and studied brochure prepared by the manufacturer. Plaintiff's wife purchased and gave it to plaintiff. Plaintiff purchased necessary attachments for use of 'Shop smith' as a lathe. He worked with lathe several times without any difficulty, but it suddenly threw a piece of wood striking him on his head causing serious injuries. Plaintiff sued both the retailer and manufacturer. Appellate Court affirmed lower court decision that consumer could sue manufacturer for breach of warranty. It was sufficient that the consumer proved that he was injured while using the product in a way it was intended and that his injury was as a result of a defect in the design and manufacturing

<sup>11</sup>Section 87 of the Consumer Protection Act, 2019.

<sup>12</sup>10 M & W 109.

<sup>13</sup>217 N.Y. 382.

<sup>14</sup>Werro, Franz and Büyüksagis, Erdem, The Bounds between Negligence and Strict Liability (2021),

[https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=37927153110](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=37927153110); International Journal of Law Management & Humanities [Vol. 4 Issue 3; 3104]© 2021. International Journal of Law Management & Humanities [ISSN 2581-5369].

of 'Shop smith' which made the product unsafe for its intended use which he was not aware of it.<sup>15</sup>

Theory of implied warranty of safety was applied in *Henningsen v. Bloomfield Motors, Inc.* (1960)<sup>16</sup>, wherein plaintiff bought a car from defendant's dealer. Few days after delivery, steering of car malfunctioned and plaintiff's wife was injured in an accident due to it. Plaintiff sued the car dealer and manufacturer. But dealer argued that there was a clause in warranty which freed the defendant from any liability for personal injuries and it was signed by the plaintiff. The warranty was only for the replacement of defective parts for a period of 90 days or 4000 miles whichever was earlier. Court awarded damages to Henningsen holding that with sale of every object there is an implied warranty of safety and defendant cannot claim exemption from liability on the ground that it was Henningsen's wife who had suffered damages. Court held that warranty extends to every foreseeable user of the product. Thus, jurisprudence of product liability developed holding the manufacturer liable for negligence in event of an injury sustained by the ultimate consumer due to any manufacturing defect, irrespective of the fact that no contract existed between such affected consumer and the manufacturer. Cases in India on the issue of product liability were also dealt by Courts on the principles of negligence and strict liability, while Statutes remained silent on provisions for liability of seller or manufactures for defective or faulty products and services.<sup>17</sup>

In *A.S. Mittal v. State of U.P.*<sup>18</sup> Supreme Court considered an important question of law involving product liability and held that it would depend upon the facts and evidence presented. In *Airbus*

*Industries v. Laura Howell Linton*,<sup>19</sup> a flight from Bombay to Bangalore, during its landing at Bangalore airport touched the ground approximately 2,300 feet before the beginning of runway and hit the boundary wall, its fuselage, wings and other parts disintegrated, with a result that 92 passengers and four crew members died, and 54 survivors sustained injuries of varying degrees of severity. All of the defendants argued that the Texas court was the proper venue for the appellants' case to obtain damages against the Indian airport authority, airlines, and aircraft manufacturer because Indian courts lacked a strict product liability law. The Karnataka High Court dismissed the respondents' claim and examined liability based on common law notions of causation and negligence principles rather than strict product liability. It came to the conclusion that, simply because Indian courts lack strict product liability legislation, it is not prudent to state that parties in such a situation can forego a remedy. It was held in *Charan Lal Sahu v. Union of India*<sup>20</sup> (Bhopal Gas Disaster), that antiquated acts should be drastically amended, or fresh legislation should be enacted to save such situation. Consumer Protection Bills of 2011, 2015 and 2018 showed pro-consumer approach and government urged for updating of laws to correct the legal uncertainty and lack of precedents. Enactment of new CPA 2019 removed uncertainty and ambiguity in the Indian legal framework for product liability. It provided provisions in relation to product liability, based upon the strict liability principle of tort law and the jurisprudence laid down by the courts. E-commerce guidelines framed under the CPA 2019 mandated e-commerce entities to endorse product liability construct while requiring them to disclose proper information to consumers, thereby

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<sup>15</sup>Raffa, Mohamed. (2018). Strict and Absolute Liability in Common Law Practice. (2018), [https://www.researchgate.net/publication/324415453\\_Strict\\_and\\_Absolute\\_Liability\\_in\\_Common\\_Law\\_Practice\\_3108](https://www.researchgate.net/publication/324415453_Strict_and_Absolute_Liability_in_Common_Law_Practice_3108) accessed on April 15<sup>th</sup> 2022.

<sup>16</sup>32 N.J. 358.

<sup>17</sup>See *Manubhai Punamchand Upadhyaya v. Indian Railways* (1995), and *Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy* (2009).

<sup>18</sup>A.I.R 1989 SC 1570.

<sup>19</sup>ILR 1994 KAR 1370.

<sup>20</sup>A.I.R 1990 SC 1480.

enabling transparency and more protection to the consumers. Provisions under the Indian Penal Code, 1860, the Sales of Goods Act, 1930 and specific statutes pertaining to specific goods and standardization (like the Drugs and Cosmetics Act, 1945, Prevention of Food Adulteration Act, 1954, Food Safety and Standards Act, 2006, Bureau of the Indian Standards Act, 1986, Agricultural Produce (Grading and Marking) Act, 1937 etc.) continue to be as additional measures for the protection of consumers. As the legal theories regarding product liability continue to mature, interesting judgments were delivered by the courts. With advent of the product liability laws in India it would be necessary to see as to how the industry and judiciary deal with increase in unethical and fraudulent activities.

### **Consumer Protection Act, 2019 & Product Liability**

By including additional provisions, the Consumer Protection Act of 2019 gives customers' stronger and better protection. For the first time, this Act established product liability as the obligation of a product's producer, seller, or service provider to make up for any damages a customer may sustain as a result of a defective product that is created or sold, or from a lack of product-related services. This Act ended the buyer-beware theory and established the seller-beware theory by establishing product liability. In order to list the circumstances in which a consumer could seek compensation under a product liability action for any harm caused by a defective product made by a product manufacturer, serviced by a product service provider, or sold by a product seller, the 2019 Act included an entire Chapter VI.<sup>21</sup> (i) damage to any property other than the product itself; (ii) personal injury, illness, or death; (iii) mental agony or emotional distress, etc., are all considered "harm" in relation to product liability, according to the 2019 Act. However, "harm" does not include damage to the goods itself, property

damage resulting from a warranty violation, or any business or economic loss, including direct, incidental, or consequential losses associated with it.<sup>22</sup>

The Act further defined a "defect" as any flaw, imperfection, or shortcoming in the quality, quantity, potency, purity, or standard that must be upheld by any law or contract, whether explicit or implied, or that the trader asserts in any way with regard to any goods or product<sup>23</sup>. In order to file a product liability lawsuit, a customer must prove that a "defective" product caused "harm." The 2019 Act also made a distinction between the functions of a product seller, product maker, and service provider, and as a result, it established distinct standards for generating product liability claims against each of these parties:

#### **(1) Liability of a Product Manufacturer:**

According to CPA 2019 Section 2(36), a "product manufacturer" is defined as an individual who: (a) manufactures a product or parts of it; (b) assembles parts of it made by others; (c) places or causes to be placed his own mark on any product made by another person; (d) manufactures a product and sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or is otherwise involved in placing such a product for commercial purposes; (e) designs, manufactures, fabricates, constructs, or re-manufactures a product before it is sold; or (f) is a product seller who also manufactures a product. Within the parameters of the definition, it encompasses all parties involved in the sale process.

#### **(2) Liability of a Product Service Provider:**

Product service provider under CPA 2019 means a person who provides a service in respect of any product.<sup>24</sup> This definition of a product service provider has been specifically added so as to cover services such as

<sup>21</sup>Section 82, Consumer Protection Act, 2019.

<sup>22</sup>Section 2(22), Consumer Protection Act, 2019.

<sup>23</sup>Section 2(10), Consumer Protection Act, 2019.

<sup>24</sup>Section 2(38), Consumer Protection Act, 2019.

maintenance or repair where the service and the product are inherently related, and the service has a direct bearing upon the performance of the product. A product service provider may be held accountable in a product liability lawsuit for damages resulting from a defective product that the provider services, as listed in Section 85 of the Act. Among these are the following situations: (a) If the service it rendered was flawed, imperfect, poor, or insufficient in terms of quality, nature, or performance style. The same must be evaluated in accordance with the requirements of any currently enacted laws or contracts; (b) A product service provider will also be held accountable if an act of negligence, omission, or deliberate withholding of any information resulted in harm.; (c) product service provider shall be liable if it does not issue adequate instructions or warnings to prevent any harm;(d) product service provider shall be liable in a product liability action if the service did not conform to express warranty or the terms and conditions of the contract.

(3) ***Liability of a Product Seller:*** Any individual who imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise participates in placing such a product for commercial purposes is considered a product seller under the CPA 2019; this includes (a) manufacturers who also sell products or (b) service providers. Certain individuals are expressly excluded from the definition of a product seller in this clause. Among these are: (1) a seller of real estate cannot also be a product seller unless they are involved in the construction or sale of a house or apartment building; (2) A person who provides professional services will not be considered a product seller if the skill or service is the main component of the transaction and the sale or use of the product

is only incidental to it; (3) a person will not be considered a product seller if they (a) act solely in a financial capacity with regard to the sale of that product, (b) are not a manufacturer, wholesaler, distributor, retailer, direct seller, or electronic service provider, or (c) lease a product without having a reasonable opportunity to inspect and find defects in the product under a lease agreement where the lessor controls the product's selection, possession, maintenance, and operation.<sup>25</sup> According to Section 86 of the CPA 2019, a product seller who is not a product producer may be held accountable in a product liability lawsuit for damages brought on by a defective product that the seller sold. These include: (a) if the product seller had significant control over the product's design, testing, manufacturing, packaging, or labeling and that control resulted in harm; (b) if the product seller makes changes to the product and those changes or modifications constitute a significant contributing factor to the harm; (c) if the product seller made an express warranty on the product, separate from the manufacturer's express guarantee, and the product did not meet the seller's express warranty, resulting in the harm;(d) if the product seller has sold a product and the product manufacturer's identity is unknown, or if known, the product manufacturer cannot be served with a notice, process, or warrant; if the product manufacturer is exempt from Indian law; or if an order, if any, has been passed or is about to be passed, it cannot be enforced against the product manufacturer.:(e) if product seller fails to exercise reasonable care in assembling, inspecting or maintaining such product or if it does not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the

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<sup>25</sup>Section 2(37), Consumer Protection Act, 2019.

product while selling such product and such failure was the proximate cause of the harm.

### **Penalties imposed by CPA 2019**

Compared to the Consumer Protection Act of 1986, the CPA 2019 stipulates harsher penalties since it seeks to give customers better protection. According to CPA, 2019, a consumer forum may, among other things, impose one or more of the following sanctions if it determines that the product is flawed or if any other complaint made by the complainant regarding service, unfair trade practices, or product liability is validated: defect removal, product replacement, reimbursement of the customer's purchase price plus interest, punitive damages for carelessness, cessation of unfair business practices, and removal of dangerous or hazardous products, direction to cease the manufacturing of hazardous goods or cease to offer the sale of hazardous services, compensation for product liability action, cease and desist from issuing misleading advertisement or direction to issue corrective advertisement.

The CPA 2019 defines 'unfair contracts'<sup>26</sup> as contracts between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which causes significant changes in the rights of such consumer. These include (a) requiring excess security deposits from consumers; (b) imposing disproportionate penalty upon the consumer for breach of contract; (c) refusing to accept early repayment of debt; (d) entitling unilateral termination; (e) permitting assignment of contract to the detriment of customer without his/her consent; (f) imposing on consumer any unreasonable charge, obligation or condition, which puts such consumer at a disadvantage. Both State Commission<sup>27</sup> and National

Commission also have the powers<sup>28</sup> to declare such contracts null and void.

### **Establishment of Central Consumer Protection Authority (CCPA)**

A Central Consumer Protection Authority (CCPA) is established by CPA 2019. The CCPA is a regulatory body having the ability to conduct inquiries, conduct investigations, and issue injunctions. The CCPA controls issues related to unfair trade practices, consumer rights violations, including deceptive or false advertising that harms the public's and consumers' interests.<sup>29</sup> CCPA has power to direct recall of goods or withdrawal of services that are dangerous, hazardous or unsafe.<sup>30</sup> CCPA can also direct reimbursement of prices of goods or services so recalled to purchasers.<sup>31</sup> CCPA is empowered to direct discontinuation of practices that are unfair and prejudicial to consumers' interest.<sup>32</sup> CPA 2019 also addresses the issue of misleading advertisements. Both Consumer fora and CCPA have powers to issue directions and penalties against false or misleading advertisements.

Any manufacturer or service provider who makes a false or misleading advertisement that harms the interests of customer's faces up to two years in prison and a fine of up to ten lakh rupees. If the offense is committed again, the penalty increases to five years in prison and a fine of up to fifty lakh rupees. Additionally, the CCPA has the authority to order the affected party—whether a publisher, manufacturer, endorser, trader, or advertiser—to stop or alter deceptive advertising<sup>33</sup>. The CCPA has the authority to fine the producer or endorser ten lakh rupees, with the possibility of an additional fifty lakh rupees for future violations.<sup>34</sup> Similarly, a publisher or a person who

<sup>26</sup>Section 2(46), Consumer Protection Act, 2019.

<sup>27</sup>Section 49(2), Consumer Protection Act, 2019.

<sup>28</sup>Section 59(2), Consumer Protection Act, 2019.

<sup>29</sup>Section 10(1), Consumer Protection Act, 2019.

<sup>30</sup>Section 20(a), Consumer Protection Act, 2019.

<sup>31</sup>Section 20(b), Consumer Protection Act, 2019.

<sup>32</sup>Section 20(c), Consumer Protection Act, 2019.

<sup>33</sup>Section 21(1), Consumer Protection Act, 2019.

<sup>34</sup>Section 21(2), Consumer Protection Act, 2019.

is party to such publication may also be penalized for an amount upto rupees ten lakhs.<sup>35</sup>

In addition to the above penalties, CPA also empowers the CCPA to prohibit the endorser of a false or misleading advertisement from making endorsement of any product or service for a period which may extend to one year and in case of subsequent contravention to three years.<sup>36</sup> However, Act provides defences for endorsers and publishers in certain cases. An endorser is exempted from penalty under Section 21 of the Act if he/she exercised due diligence to verify the veracity of the claims made in the advertisement regarding the product or service being endorsed.<sup>37</sup> Similarly, a person will not be liable if he/she published or arranged for publication of false or misleading advertisement in the ordinary course of business. However, this defence would not be available if the person had previous knowledge of an order passed by CCPA, regarding withdrawal or modification of the advertisement.<sup>38</sup> In order to ensure compliance with the order of the CCPA, Section 88 of the Act criminalizes failure to comply with the directions of CCPA and makes it punishable with imprisonment upto 6 months or with fine which may extend to twenty lakh rupees or both.<sup>39</sup> Further, Act also provides for punishment, including imprisonment or fine or both, for manufacturing, selling, storing, or distributing or importing products containing adulterant or spurious goods.<sup>40</sup>

### **Defences to an action of Product Liability**

According to the definition of "product liability," the complainant must prove that a "defective" product caused the "harm" in order to prove product liability. Therefore, a product's lack of "defectiveness" and the absence of any "harm" that the product's usage may bring to the user are unquestionably defenses against a product liability

claim. Furthermore, further defenses to a product liability action are envisioned in Section 87 of the Act. These consist of: (1) It would be a legitimate defense in a claim against a product seller that the product was misused, changed, or modified at the time of the alleged harm; (2) The following would be acceptable defenses in the event that a product manufacturer is sued for failing to provide sufficient warnings or instructions: (i) An employer purchased the product to use at work, and the manufacturer gave the employer instructions or warnings; (ii) the product was sold as a component or material to be used in another product, and the manufacturer of the product gave the buyer the necessary warnings or instructions, but the complainant was harmed by the use of the final product in which the component or material was used; (iii) the product was one that was legally intended to be used or dispensed only by or under the supervision of an expert or class of experts, and the manufacturer of the product used reasonable means to provide the expert or class of experts with the warnings or usage instructions; or (iv) The complainant was under the influence of alcohol or any other drug that was not prescribed by a doctor while using the product; (3) A product manufacturer is not responsible for failing to warn or instruct about a danger that the user or consumer of the product should have known given its characteristics or that is obvious or commonly known to them. A product liability claim necessitates prompt action, beginning with expert analysis and internal investigation, then proper preventive measures, including sufficient disclosures and, if necessary, recalls.

As a result, CPA 2019 tackles the problem of product liability and improves compliance for those involved in the selling process, such as endorsers, importers, marketers, and repairers, in addition to product producers, sellers, and service providers. A formal framework for the recall of

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<sup>35</sup>Section 21(4), Consumer Protection Act, 2019.

<sup>36</sup>Section 21(3), Consumer Protection Act, 2019.

<sup>37</sup>Section 21(5), Consumer Protection Act, 2019.

<sup>38</sup>Section 21(6), Consumer Protection Act, 2019.

<sup>39</sup>Section 88, Consumer Protection Act, 2019.

<sup>40</sup>Section 90 and 91, Consumer Protection Act, 2019.

defective motor vehicles has been introduced through an amendment to the Motor Vehicles Act of 1988. The Motor Vehicles Act also stipulates that manufacturers, importers, and dealers who violate the standards for the manufacture, upkeep, sale, and modification of motor vehicles will be subject to penalties. A fine, incarceration, or both may be used as forms of punishment. Therefore, it is imperative that product producers, service providers, and others exercise particular caution about regulatory compliance under sector-specific rules and regulations as a result of the ongoing construction of product liability regimes under numerous legislations. Manufacturers of goods, traders, and service providers must also review their contracts to make sure they do not fall under the category of "unfair contract."

### **Consumer Protection (E-Commerce) Rules, 2020**

E-commerce has grown rapidly thanks to digital technology, which has also made a new legal and regulatory framework necessary to control trade-related transactions, product liability, and e-commerce. The Consumer Protection Act of 2019 established a new framework for product liability laws to safeguard the interests of stakeholders, including consumers. The government has created the Consumer Protection (E-Commerce) Rules, 2020 to support the new e-commerce regulations. The caveat emptor (let the buyer beware) principle is replaced with the caveat *venditor* (let the seller beware) principle in the Act and its implementing regulations. Rules' objects are:

(i). *Mandatory registration*: Every e-commerce entity carrying out or intending to carry out e-commerce will be required to register and comply with all conditions for carrying out e- business.

(ii). *Transparency and obligations*: Sellers will clearly and openly reveal information about their e-commerce entities on their portals, such as their legal names, addresses, phone numbers, website names, sold goods, and so forth. Additionally, e-

commerce companies will publish payment terms, conditions of delivery and shipment, grievance redressal procedures, warranty and guarantee policies, refund and exchange policies, and terms of return. They must also make sure that they don't show deceptive or fraudulent product advertising and that they clearly state other pertinent facts, such as product shelf life, payment method security, health and safety information, and any price breakdown. E-commerce entities will protect, use and store personal identification information of its consumers in compliance with the law. E-commerce companies will unconditionally accept return of goods that are delivered late or are defective; it will include even counterfeit and wrongly advertised products and provide refund within a reasonable time.

(iii). *Unfair contracts*: Under the act, consumers can register complaints and contest contracts that are arbitrary or unjust thanks to the idea of unfair contracts. Contractual provisions are essential for e-commerce businesses to reduce risk exposure and protect their interests from third-party liability. When customers register on an online platform or buy electronic goods or services, they are bound by the terms and conditions, which are typically in the form of a click-through agreement. To meet the requirements of e-commerce regulations, certain standard terms and conditions must be used.

(iv). *Sale of spurious products*: The Consumer Protection Act, 2019 prescribes penalties for manufacture, sale, storage, distribution or import of spurious products, including imprisonment and suspension or cancellation of trading licences. Act ensures that e-commerce entities do not allow their platforms to facilitate counterfeiters and also ensure authenticity of goods sold on their platforms. They must accept return of spurious or counterfeit goods and refund purchase amount within a reasonable time.

(v). *Level playing field*: To maintain a parity between bricks-and-mortar stores and e-commerce platforms, Act ensure that smaller players are not disadvantaged by predatory pricing and deep discounting. E-commerce entities are to refrain, directly or indirectly from influencing the price of goods or services sold through their portals.

(vi). *Redressal Procedures*: E-commerce companies must designate grievance officers and make their contact information public. They will outline the steps for customers to file concerns. Within a month after receiving the complaint, grievance officers must handle it. The rules also address additional channels for complaints, including the phone, email, and website. E-commerce platform sellers must adhere to these rules when they enter into written contracts with entities prior to soliciting sales on their platforms. These requirements include providing fair and reasonable delivery terms, taking responsibility for warranties, and providing mandatory information related to sales, such as unit price, taxes, fees, delivery charges, and display requirements under legal metrology rules.

### **Product Liability Protection in E-Commerce via Insurance**

Customers who file product liability claims against online retailers are held accountable, but these sellers typically believe that the manufacturer has full responsibility for any harm brought on by a dangerous product. The Consumer Protection Act of 2019 now mandates that shops make sure the goods they sell are safe to use. Retailers may face legal action if they fail to fulfill their obligations and a customer is hurt. Therefore, product liability insurance is also necessary for online businesses. This kind of business insurance was created especially to shield a company from monetary responsibility in the event that a product they produced, sold, imported, exported, or examined results in property damage or personal injury to a customer. Products liability insurance

protects online business from liability due to any failure of the product, whether it is failure to deliver promised results or other failures.

(1). *What is E-commerce?* Buying and selling goods and services, as well as sending money or data, over an electronic network—most commonly the internet—is known as e-commerce. The term "e-commerce" describes a system that facilitates sales of goods and services via the Internet or electronic means. An online e-commerce market is a location or website where numerous buyers and sellers transact on the same platform. One can find different brands of products coming from multiple merchants, shops or persons presented on same site. The marketplace owner is responsible for attracting clients and process transactions, while the third-party suppliers deal with the manufacturing and delivery. Online marketplaces expedite sales with a single, easy-to-use platform, allowing producers to offer their goods directly to customers without keeping inventory. An e-commerce company does not necessarily manufacture, sell, or distribute these products and globally there are more than 160 such e-commerce websites such as Amazon, e-Bay, Walmart, Flipkart etc. engaged in selling various products and services across the world.

(2). *What is Product Liability Insurance?* Manufacturers, distributors, importers, retailers, and everyone else in the supply chain who might be sued for physical harm or property damage from the sold goods are all covered by product liability insurance. Although a product liability claim may sometimes involve allegations of negligence, strict responsibility is the legal theory most frequently applied in product liability cases. Strict liability places the onus of proof on product suppliers and is applied regardless of carelessness or wrongdoing. The burden of proof for an injured person or plaintiff is to demonstrate that a manufacturing, design, or instruction/warning flaw caused the injury.

(3) *E-Commerce & Insurance perspective*: A buyer purchased a laptop battery replacement from an independent Amazon seller. The customer was hospitalized after it burst a few months later, severely burning her. The claimant and his bedroom were injured by fire when another customer purchased a toy scooter from a Chinese manufacturer through a third-party vendor on Amazon Marketplace. Such events are common, especially during times of global lockdown when traditional shopping became frightening and challenging. The number of online shoppers increased. Additionally, COVID-19 increased digital transactions and caused a spike in e-commerce. People can now buy and sell any kind of product or service without ever having to go to a real store thanks to e-commerce. However, there were risks and obstacles to e-commerce growth as well.

(4). *Risks associated with e-commerce and their insurability*: Online and brick-and-mortar retailers both have risks associated with their business methods. Because there are fewer middlemen involved, e-commerce is more economical and time-efficient. It also saves money on gas and travel time when buying goods and services. Customers are now more tech-savvy and aware of their rights thanks to e-commerce.

(5). *Are Marketplaces Liable for Product Defects?* The reason for this is that, whether they are selling software or toys, any product or service has the potential to malfunction and cause harm, thus even retailers, such as e-commerce companies, are concerned about product liability risks. If a product has a flaw, the maker is responsible. In the case of online sales, online retailers are also liable, even if they only offer a platform and a manufacturer or seller uses it to sell their goods. Online retailers are now the first port of action for any harm or damage brought on by the products sold, regardless of who manufactured them, due to

consumer protection regulations in practically every country in the world. Liability suits are frequent in e-commerce businesses due to changing product liability laws, and as the number of manufacturers, exporters, and retailers rises rapidly, so does the risk of lawsuits for online marketers. In India, any electronic merchants registered in India or overseas that provide products and services to Indian consumers are subject to the Consumer Protection Act, 2019 and the Consumer Protection (E-Commerce) Rules, 2020. The Consumer Protection Act, 2019 applies to buying/selling of goods or services over the digital or electronic network, including digital products<sup>41</sup> and to a person who provides technologies enabling a product to engage in advertising/selling goods/services to a consumer. Various stakeholders engaged in e-commerce have been defined in the Act, like 'Consumer' is a person who buys any goods and hires or avails any service online through electronic media.<sup>42</sup> 'Seller' is an electronic service provider who is a product seller and has same duties, responsibilities and liabilities as a product seller.<sup>43</sup> Unfair Trade Practice means that electronic service provider discloses to another person any personal information given in confidence by the customer.<sup>44</sup> Therefore, any consumer may bring a Product Liability action against a product manufacturer or a product service provider or a product seller for any harm caused to him on account of a defective product and seeks financial compensation. Product Liability Insurance is therefore of paramount importance for an e-commerce company.

(6) *Intellectual Property Rights Insurance*: It is another risk cover in e-commerce. Even if a company is insured against risk of infringement of patent, trademark, copyright, right of publicity etc. an e-commerce website could face liability claim related to a third party's advertisement hosted on its website, if that advertisement is

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<sup>41</sup> Section 2(16), Consumer Protection Act, 2019.

<sup>42</sup> Section 2(7), Consumer Protection Act, 2019.

<sup>43</sup> Section 2(37), Consumer Protection Act, 2019.

<sup>44</sup> Section 2(47), Consumer Protection Act, 2019.

infringing on some other party's intellectual property. Lot of money is involved in Intellectual Property infringement lawsuits.

(7). *Cyber Risks Insurance*: E-commerce websites collect lots of personal information from customers including their bank accounts, credit card details and process business transactions online. Such activity exposes the customers to risks of hackers and cybercriminals wherein sensitive personal information may be leaked, stolen or used elsewhere. All potential lawsuits, fines, penalties, settlements, discovery and investigation expenses arising out of such Cyber-attacks and/or Data breach maybe covered under Cyber Insurance Policy.

(8). *Directors & Officers (D&O) liability Insurance*: e-commerce company also need to protect its top management against lawsuits arising due to breach of fiduciary duty or mismanagement. D&O insurance allows them to run the company confidently without fear of personal financial loss.

(9) *Employees' Compensation Insurance*: E-commerce Company has to employ workers and it is necessary to buy Employees' Compensation Insurance to cover any liability arising due to death, medical costs and loss of wages resulting from an employee's work-related injury.

(10) *Marine Cargo Insurance*: If an e-commerce company owns a warehouse and relies upon third party to store their goods, or ship products directly to customers and other distributors, then it is necessary to go for cargo insurance which will provide protection from physical loss.

## **Comparative Study**

Litigation on product liability for products

designed or produced in one country but sold and used in another country is increasing. But legal system on product liability is not the same in all the countries. So, it is important for the e-companies and professionals to understand product liability system of all other countries who sell their product in home country's market. The purpose of comparative study is not to find as to law of which country is better, but for legal understanding.

### **(1) Product Liability in the United States**

The law of product liability in the United States involves three theories of liability i.e., negligence, breach of contract/warranty and strict liability. In U.S., strict liability originated in *Greenman v. Yuba Power Products, Inc.*<sup>45</sup>. US Consumer law holds all those in a supply chain liable for injuries caused due to defective products;<sup>46</sup> But earlier US case law did not address the issue of e-commerce on whether e-commerce platforms that host product by third parties could be liable as sellers or as part of supply chain. U.S consumer protection jurisprudence, till 2019 held that online marketplaces such as Amazon, eBay etc, are similar to shopping malls who rent their space to retailers, so they could not be held liable for injuries caused by defective products sold by third-party sellers on their platforms. In *Carpenter v. Amazon.com*<sup>47</sup> it was held that Amazon was not liable for bringing defective hover boards to consumers because market would have otherwise existed. In *Eberhart v. Amazon.com*<sup>48</sup> it was held that Amazon was not within the coffee maker's chain of distribution as it did not take title to the defective product. **However**, since *Bolger v. Amazon.com*,<sup>49</sup> US Courts are holding that e-commerce platforms are liable under the products liability theories. More recent is fixing liability for defective products sold by third parties on e-commerce platforms which range from exploding

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<sup>45</sup> (1963) 59 Cal. 2d 57.

<sup>46</sup> See *MacPherson v. Buick Motor Co.*, 217 N.Y. 382, 389-90 (1916).

<sup>47</sup> 17-cv-03221, 2019 WL 1259158, at 5 (N.D. Cal. March 19, 2019).

<sup>48</sup> 325 F. Supp. 3d 393, 398 (S.D.N.Y. 2018).

<sup>49</sup> 267 Cal. Rptr. 3d 601, 604 (Cal. Ct. App. 2020).

batteries to defective thermostats. California Courts examined whether e-commerce platform can be considered as a key part of the supply chain or whether it was integral to sale of defective product while imposing products liability. In August 2020, a California appellate court reversed a lower court decision which held that Amazon was not liable for an exploding battery because Amazon was merely an online marketplace that did not distribute, manufacture, or sell the product in question.<sup>50</sup> Citing Amazon's ownership and storage of products, their registration in its system, and their packing and delivery in Amazon-branded packaging, the appellate court further determined that Amazon had a crucial role in getting the product to the customer. According to the court, Amazon's business strategy encourages customers to deal with the company directly rather than through independent retailers. Amazon handles returns (if any) and sales transactions. Additionally, courts acknowledged that California law does not impose liability solely on sellers for product flaws. Despite these formalities, the California strict responsibility theory compensates plaintiffs for harm brought on by faulty products. The Court also raised concerns that consumers may have trouble getting compensation from foreign or unidentified third parties, while Amazon is easily recognizable and may be able to pay for consumers' injuries, particularly since the name "Amazon" implies safety and allows it to modify prices to reflect liability. Based on these circumstances, the court reversed the trial court's ruling and concluded that Amazon was a link in the product distribution chain. In December 2020, New York Court in *State Farm Fire & Cas. Co. v. Amazon.com Services*.<sup>51</sup> where a thermostat put a house on fire, held that Amazon exercised sufficient control over a thermostat to be considered as a 'seller' even if it did not take title, because it had the power to refuse product

registration, process customer returns, and prepare products for shipment, all while taking a cut off from profits and shipping product in Amazon-branded packaging. Court held that Amazon have all the benefits of traditional brick and mortar store without any of the responsibilities. Pennsylvania law also in *Oberdorf v. Amazon.com*<sup>52</sup> and *Oberdorf v. Amazon.com*<sup>53</sup> held that Amazon was a 'seller' for the purpose of products liability. Court reasoned its ruling on Amazon's role as primary contact for consumers, its ability to exert pressure on third-party vendors, its ability to stem the circulation of defective products, and its better position to allocate costs. The court also ruled that Amazon was in a good position to distribute risk and bears accountability for putting a faulty goods into sale. Because of its connections to independent sellers and the way its online marketplace was set up, the New Jersey district court in *Papatarosv. Amazon.com* also determined that Amazon was a "seller" and that it had authority over the merchandise. However, e-commerce sites are not being held accountable by state courts for subpar goods sold by third parties. Illinois Court in *Great N. Ins. Co. v. Amazon.com*,<sup>54</sup> held that a products liability claim could not stand where the e-commerce platform never took possession of the product and company 'lodestar' was exercising control over the *product*, and not over the *purchasing process*. Thus, United States laws on products liability differ from state to state and courts have reached different conclusions with respect to whether e-commerce platforms should be held liable for defective products sold by third parties on their sites. E-commerce platforms sell products from their site in every state, yet litigation will be brought in states with least favourable jurisprudence.

On June 21, 2018, in [South Dakota v. Wayfair](#)<sup>55</sup>, the Supreme Court of the United States addressed

<sup>50</sup> See *Bolger v. Amazon.com*, 267 Cal. Rptr. 3d 601, 604 (Cal. Ct. App. 2020).

<sup>51</sup> 137 N.Y.S.3d 884, 887-88 (N.Y. Sup. Ct. 2020).

<sup>52</sup> 930 F.3d 136, 147-48 (3d Cir. 2019).

<sup>53</sup> 818 F. App'x. 138, 139 (3d Cir. 2020).

<sup>54</sup> 19-c-684, 2021 WL 872949, at 4 (N.D. III. March 9, 2021).

<sup>55</sup> 201 L. Ed. 2d 403.

uncertainty relating to whether or not a business must have a physical presence in a state before that state can require the collection of sales taxes. According to a Supreme Court decision, governments have the authority to mandate that companies who do not have a physical presence in their state collect and remit sales tax. In light of this decision, any e-commerce company should aim to guarantee adherence to state sales tax regulations for two reasons. First, laws requiring the collection of sales taxes from online sales are already in place in a number of states. Second, there may be severe consequences for noncompliance. For instance, regardless of any corporate structure designed to protect owners from personal liability, Indiana law includes personal liability of the company's owners or members for payments not paid. After *Wayfair* decision many states have enacted legislation in response to *Wayfair* that exempts smaller e-commerce businesses from tax collection obligations. Some states have special laws that apply to "marketplace seller."

A marketplace seller is a seller that, instead of launching an independent website, opens a seller account on websites such as Amazon, eBay, or Etsy as a third-party seller. Consumer may buy a product from Amazon's website, but he is actually buying product from "XYZ Third-Party Seller" with Amazon merely facilitating the sale. Different strategies have been used by US states to collect sales taxes from marketplace vendors. Only a small number of states require marketplace operators, like Amazon, to collect sales tax on behalf of marketplace vendors. Certain states handle marketplace vendors in the same manner as they do regular online retailers. In some states, marketplace vendors are required to collect sales tax only for keeping goods in their state. A subset of Amazon merchants known as Fulfillment by Amazon, or FBA, sellers are obviously the target of such rules. These vendors take advantage of a unique service offered by Amazon, which involves delivering their merchandise to several

Amazon warehouses where it is kept until it is bought. For FBA sellers, it is important to ensure compliance with these new sales tax laws because such sellers have no control over where their products are sold or a very limited control as to where their products are stored, leading to significant unintended sales tax liabilities. Many states have legislation for sales tax on internet sales and many states are modifying legislation to comply with *Wayfair*. Therefore, it is important for e-commerce companies to not only be aware of existing laws but also have a system in place to monitor the changes in states' laws.

## **(2) Product Liability in China**

Prior to 1990, the quality of Chinese items was quite poor, and there were many counterfeit goods available. Despite several mishaps brought on by faulty or counterfeit goods, litigants were never compensated for their losses. Product liability was not specifically covered by any laws. According to Article 122 of "The Principles of Chinese Tort Law," manufacturers and retailers are accountable for any harm to people or property brought on by faulty goods. Following the 1990s, consumer demands centered on safeguarding consumers' legal rights, enhancing oversight and control over product quality, defining liability, and defending users' and consumers' legitimate rights and interests. After that, China adopted 'The Law of the People's Republic of China on Product Quality' in 1993 and also enacted 'Law of the People's Republic of China on 'Protecting Consumer's Right and Interests'.

**Defect Identification:** The most challenging issue in a product liability case is identifying a product's defect. Generally speaking, there are three categories of defects: warning, design, manufacturing, and instruction. "The unreasonable danger existing in a product which endangers the safety and human life or another person's property, where there are national or trade standards with a view to safeguarding the health of people and safety of human life and property" is

the definition of a defect under Chinese product quality law. "Defect" also refers to any deviation from these norms.

### **(3) Comparative Consumer Statutes**

Different laws have been passed at various levels in nations with federal systems, especially the United States and Canada. If we exclude state laws, the United States has over seven federal statutes that address consumer laws. The Dodd-Frank Wall Street Reform and Consumer Protection Act, the Federal Trade Commission Act, the Gramm-Leach-Bliley Act, the Truth in Lending Act, the Consumer Product Safety Act, and others are a few examples. The Competition and Consumer Act of 2010 is the main law in Australia. The Consumer Rights Act of 2015 is the only law in the United Kingdom; however, it is supplemented by the General Product Safety Regulations of 2005, the Consumer Protection from Unfair Trading Regulations of 2008, and the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations of 2013.

### **(4) Definition of "Consumer"**

In USA, there are varied definitions of 'consumer', but Dodd-Frank Wall Street Reform and Consumer Protection Act defines 'consumer' as an individual or an agent, or representative acting on behalf of an individual. Under Fair Credit Reporting Act, 'consumer' simply means an individual.

The U.K. Consumer Protection Act, 2019 defines a consumer as a natural person acting for purposes that are entirely or mostly outside of that person's trade, business, craft, or profession (section 2(7)). The concept deviates from the custom of encompassing all individuals, whether they are natural or artificial. The practice of removing business transactions outside the purview of consumer protection law is incorporated into the definition's latter section

In Australia, according to Australian Consumer Law, a person is a 'consumer' if he acquires goods or services that are priced at less than \$40,000. A person is also a 'consumer' if he acquires goods or services that are priced at more than \$40,000 but they are 'of a kind ordinarily acquired for personal, domestic or household use or consumption'

European Commission's Consumer Rights Directive states that definition of 'consumer' should cover natural persons who are acting outside their trade, business, craft, or profession.

### **(5) Enforcement Agencies for consumer protection**

In the UK, Chapter 1 of Part 3 of the Consumer Rights Act, 2015 contains the enforcement provisions, while Chapter 2 of Part 1 deals with the remedies available to consumers in the event that their statutory rights under a goods contract are not fulfilled. The UK has two main enforcement agencies: the Competition and Markets Authority, which is the highest authority in the country for regulating competition law, and Trading Standard Services, which enforces at the local level and occasionally expands to the regional or national level. Additionally, consumers can use the legal system to actively assert their rights.

In USA, various federal agencies enforce consumer protection law. These include Federal Trading Commission, Consumer Financial Protection Bureau, Food and Drug Administration, etc. Different state attorneys also bear the responsibility for investigation and enforcement of these laws. The advantage of this system is that they get specialised and adept at enforcing a particular sector given smaller area of focus.

Territory consumer protection agencies and the Australian Competition and Consumer Commission at the federal and state levels, respectively, are responsible for enforcing

Australia's consumer law. At the central level, the Commission bears the weight of all duties while guaranteeing a single authority for all subjects.

The majority of consumer protection laws in Japan are enforced by the Consumer Affairs Agency (CAA), a federal authority. Other specialist entities under other ministries are also in charge of executing particular legislation. For example, the Instalment Sales Act (for credit transactions, etc.) is governed by the Ministry of Economy, Trade, and Industry.

#### **(6) Check on Quality of Goods and Services**

Ensuring that the products or services offered in the market meet specific standards is the primary goal of consumer protection laws. Different laws address this in different ways to guarantee that a certain standard of quality is upheld and expected of the merchants; if this is not the case, the harmed customer may take specific action.

Under Chapter VI of the Consumer Protection Act of 2019, provisions for product responsibility were established in India, enabling claims for damages resulting from defective products. State and federal administrations differ in the United States. While the majority of products are typically governed by a Uniform Commercial Code, others, such as groceries and medications, are subject to central regulation. The administration at the central level is very strong in USA.

In Japan, there is Households Goods Quality Labelling Act, Food Labelling Act, etc. which set certain specific standards and respective redressal in case of breach.

Every transaction in Australia and the UK includes clearly defined standard universal terms. For instance, the concept of "consumer guarantees"—that is, specific conditions pertaining to the calibre of products and services that are automatically

applicable to every supply made to a consumer—is found in Australian Consumer Law. In addition to setting a reasonable standard and providing restitution in the event of a breach, such a clear "guarantee" guarantees a particular degree of quality with every commodity and service that a consumer receives. As a result, suppliers are required to guarantee that the products are defect-free and suitable for their intended use.

In UK, the Consumer Rights Act (CRA) provides statutory protections which are deemed included in contracts, such as goods must be of satisfactory quality<sup>56</sup> and they must be fit for their purpose<sup>57</sup> etc. Similarly, traders are required to provide certain information with regard to goods when introducing them for sale. The nature of provisions in UK seems to be clearly focussed on putting duties on traders rather than enforcing them as rights of consumers. This approach doesn't allow the traders to use irregular defences in court to avoid liability. The strict approach of Australia and UK with a singular central Act is admirable as it leaves little or no room for traders to escape liability.

#### **Liability of E-Commerce Entities under The Consumer Protection Act, 2019**

The Consumer Protection Act, 2019 has introduced specific provisions to regulate functioning of electronic service providers and to ensure protection of consumer rights on the e-commerce platform. The term 'e-commerce' has been defined under Section 2(16) of the Act which means '*buying or selling of goods or services including digital products over digital or electronic network*'. This broad definition includes different types of online retail services. E-commerce transactions are usually conducted through an online intermediary, such as Amazon, Flipkart etc. So, term 'electronic service providers' has been defined to include such intermediaries.<sup>58</sup>

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<sup>56</sup> Section 9, UK Consumer Rights Act.

<sup>57</sup> Section 10, UK Consumer Rights Act.

<sup>58</sup> Section 2(17) – *electronic service provider means a person who provides technologies or processes to enable a*

The obligations that electronic service providers have to customers who use their platforms are outlined in the Consumer Protection Act and related regulations. According to Section 38 of the Act, the District Commission has the authority to request any electronic service provider to produce any records, documents, or information that would be needed as proof in order to resolve a pending consumer complaint. Under Sections 49 and 59 of the Act, respectively, the State Commission and National Commission are granted the same authority to carry out their original functions. Therefore, the Commissions created under the Act have the authority to order an electronic service provider to provide the necessary information in cases involving e-commerce or otherwise where the provider may have important documents, records, or information that could be relevant to a dispute. Non-compliance with such directions can invite penal sanctions, as the Commissions are granted the powers of a Civil Court under the Code of Civil procedure, 1908, *inter alia*, for the purposes of collection of evidence. The Central Government has also been empowered under Section 94 of the Act to take measures prescribed for the purposes of preventing unfair trade practices in e-commerce. Section 101 provides a list of subjects pertaining to which rules may be framed by Central Government, and the said list includes measures for prevention of unfair trade practices in e-commerce. In furtherance of the same, the Central Government has framed the Consumer Protection (E-Commerce) Rules, 2020.

### **E-Commerce Rules**

Among other things, the Rules were created to combat unfair trading practices in the e-commerce industry by advancing Section 94 read with Section 101 of the Consumer Protection Act. If products and services are being offered in India, the Rules' applicability encompasses all e-commerce models and platforms that fall under its

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*product seller to engage in advertising or selling of goods or services to a consumer and includes any online marketplace or online auction sites.*

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purview, both domestically and internationally. The following types of entities are defined under the Rules, along with their responsibilities:

1. **E-Commerce entity:** Includes any person operating or managing an online platform for e-commerce but does not include the sellers operating on a Marketplace E-Commerce entity.

2. **Marketplace E-commerce entity:** A company that offers an online marketplace to help buyers and sellers transact. Businesses such as Amazon, Flipkart, and others would be included in this definition. The definition of an e-commerce entity does not include sellers that operate on such platforms.

3. **Inventory E-Commerce Entity:** An organization that possesses a stock of products that it sells to clients directly via an internet platform. This also applies to companies that advertise and sell their own goods on their own website. Inventory E-Commerce firms are the ones who sell the goods that are sold on their online platform, whereas Marketplace E-Commerce entities offer a venue for interaction between buyers and sellers.

### **Conclusion**

E-commerce players must comply with the rules to ensure transparency in e-commerce process and to ensure expeditious disposal of customers' grievances. However, following rules may require reconsideration:

1. Duties prescribed for 'Marketplace E-Commerce Entity' provides that such entities must comply with Section 79 of the IT Act and the Information Technology (Intermediaries Guidelines) Rules, 2011, to claim exemption from liability for any third-party content published on their platform. But the fact is that all E-Commerce Entities because of their mode and manner of operation fall into definition of 'intermediary', as defined under the IT Act, and would have to

satisfy conditions of Section 79, in order to claim exemption. Hence, no need to make specific reference only qua Marketplace E-Commerce entities.

2. A specific time period for effecting refunds or returns for defective/spurious products ought to be specified in the Rules in order to prevent unnecessary delays on part of the e-commerce entities or sellers.

3. Schedule of grievance redressal system may be added to Rules to provide direction to e-commerce entities on the general structure which may be appointed for their internal grievance redressal mechanisms. The same would assist in streamlining such internal mechanisms and improving their effectiveness.

4. Appointment of a nodal officer to ensure compliance with the provisions of the CP Act and Rules has been mandated for all e-commerce entities. However, no provisions have been made for personal liability of nodal officer, in event of any breach of compliance. The appointment of a nodal officer may not provide its due benefit unless some personal liability is attached to such appointment.

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