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# Consumer Empowerment in E-commerce India and International Perspective

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PRAGYA RATHI<sup>1</sup>

## ABSTRACT

*Economies worldwide base their existence on a sole entity - consumers. Commerce and trading mechanisms of any economy primarily run on the behavioural pattern of consumers. Such mechanisms have been regulated by Consumer protection laws. These laws have time and again upheld the interests of consumers against the market entities. However, catering to the needs and rights of consumers has never been more imperative for nations than it is today. Speaking of contemporary times e-commerce has become a dominant feature of the consumer landscape and it has singlehandedly increased the complexities of consumer protection. As a response to this, countries and the international community have codified laws and regulations to further protect the interest of consumers in e-commerce. However, these changing times and constant technological advancements pose a threat to the dynamic wellbeing and the inherent rights of the consumers. This paper seeks to analyse the consumer law reforms in e-commerce sector. The author will compare the laws of India with various nations in the light of the international regulations and examine as to how different or similar they are. Thereafter, an effort will be made to determine whether the new laws and reforms have truly led to consumer empowerment in the e-commerce sector?*

*Keywords: E-commerce, Online Transactions, Consumer Protection, Consumerism, Goods & Services, Data Protection*

## I. CONSUMER PROTECTION: SOCIAL AND ECONOMIC SIGNIFICANCE

Consumer is the focus of all economic activity. Starting from agriculture to the energy sector, all economic activity revolves around making goods and services available to consumers at household level. Consumers fall at the end of a chain the starting point of which is, production of goods. Adam Smith defined consumption as the “*sole end and purpose of all production.*”<sup>2</sup> A closer look reveals that his definition had already laid down the foundation of consumer protections laws of countries across the globe.

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<sup>1</sup> Author is a LLM Student at University of Petroleum and Energy Studies, School of Law, Dehradun, India.

<sup>2</sup> Smith, Adam. 1776. *An Inquiry into the Nature and Causes of the Wealth of Nations*. London: Methuen & Co (Book IV, chapter 8, 49)

The idea of consumer protection has both social and economic significance. The social significance is based on the proposition that the food a household buys, the clothes that an individual chooses to purchase, the type of goods or category of services that a family decides to spend money on is highly influenced by personal beliefs and pre-existing norms of that particular household. It is extremely subjective in nature. It has a social phenomenon attached to it. The choices of a household on which goods and services to consume can be only understood if we study the social setting in which the household exists. The choice of a consumer reflects some needs and desires in his/her purchase decision. These “needs” are influenced by both culture and personality which then culminate into wants and subsequently demand<sup>3</sup>. As far as the economic perspective is concerned, we can gladly connect it with the idea of consumerism. The Encyclopedia of Corporate Social Responsibility defines Consumerism as an *ideology which postulates that consumers’ happiness and well-being can be achieved through consumption*<sup>4</sup>. The idea of consumerism works on a footing that the demand of consumers has the potential to sway the prices of goods and services from one end of the graph to another. It has the capability to regulate and influence the conduct of sellers and manufacturers in their business strategy and advertisement mechanisms. Since the demand of consumers affects major decisions of companies, it automatically becomes part of an economic setting where goods are produced and consumed constantly in a never ending manner. It is for this very reason that the consumer as an economy entity will retain its vital role in a market setting.

The protection of consumers came as a response to the scope of possible exploitation by production, manufacturing and selling entities. Slowly and gradually the market activities expanded and the commerce industry became dynamic and complex. The means to provide goods and services also changed and so did the ways of duping the consumers. The early consumer protection organizations were founded in Denmark in 1947 and thereafter in Great Britain in 1955 where the Government created the Consumer Council.<sup>5</sup> With the expansion of economic activities, the simultaneous development of consumer protection became a necessity. Today, nations have well defined consumer protection laws that govern the acts of commercial entities in the light of consumer protection. The same will be studied in the coming parts of the

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<sup>3</sup> Aytekin FIRAT “et al” *Consumption, Consumer Culture And Consumer Society*, Journal of Community Positive Practices, XIII(1) 2013, ISSN Print: 1582-8344; Electronic: 2247-6571, pg182-203.

<sup>4</sup> Murphy, P. (2000). *The commodified self in consumer culture: A cross-cultural perspective*. The Journal of Social Psychology, 40(October), pg.636–647

<sup>5</sup> Antonella Corradi, *International Law and Consumer Protection: The history of consumer protection*, Hauser Global Law School Program, (Oct 30, 2020, 10:30 AM) [https://www.nyulawglobal.org/globalex/International\\_Law\\_Consumer\\_Protection.html#\\_ednref2](https://www.nyulawglobal.org/globalex/International_Law_Consumer_Protection.html#_ednref2)

paper.

## II. E-COMMERCE: TRENDS & CHALLENGES IN CONSUMER LANDSCAPE

The commerce industry has witnessed drastic changes in its functioning. New mechanisms such as e-shopping and online transactions altered the pre-existing concept of 'buying goods and services'. Such new mechanisms quickly gathered momentum and became an integral part of the commerce industry of this country.

E-commerce has touched our lived in many ways. It has drastically altered the traditional ways of buying and selling. Innovation, advancement in technology and availability of affordable internet services has truly contributed to this change in trading and commerce mechanisms. Goods and services are now available on online platforms and can be availed at the click of a button. The convenience that e-commerce has given to the consumers is unmatched. It has provided the opportunity to bring a physical store at the doorstep of the consumer. The entire concept of market access has been compressed and made available into the hands of the consumer. Anyone with a smart phone and internet service can derive benefits of the e-commerce industry. The purchase decisions and rating of other buyers also influence the consumer in an online platform. However, this has not been restricted to just buying and selling. E-commerce has also provided a whole range on online activities where anyone can sell, rent and even become intermediaries for other consumers.<sup>6</sup>

The official data released by the United Nations Conference on Trade and Development (UNCTAD) with respect to Business to Customer(B2C) and Business to Business(B2B) sales in the major e-commerce markets reveal that it reached to a mark of USD 25.3 trillion in 2015. The data also suggested that while B2B represented the largest share of e-commerce, B2C was expanding faster than that. More recently speaking the Digital Economy Report released by UNCTAD in 2019 stated that the global value of e-commerce is estimated to have reached \$29 trillion in 2017.<sup>7</sup> Global B2C e-commerce was \$3.9 trillion in the year 2017. As far as 2018 is concerned, E-commerce sales hit \$25.6 trillion globally in 2018, up 8% from 2017<sup>8</sup>. This data has provided sufficient evidence for us to conclude that ecommerce has become an integral part of consumer landscape. The convenience it offers along with the diversity of goods and services coupled with the opportunity of assessment (of goods and services) in accordance with the ratings

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<sup>6</sup>OECD, *Consumers in Digital Economy*, (Nov 10, 2020, 3:32 PM) <http://www.oecd.org/sti/consumer/consumersinthedigitaleconomy.htm>

<sup>7</sup> United Nations, *Digital Economy Report 2019* (Nov 10, 2020, 4:32 PM) [https://unctad.org/system/files/official-document/der2019\\_en.pdf](https://unctad.org/system/files/official-document/der2019_en.pdf)

<sup>8</sup>UNCTAD, *Global e-commerce Estimates*, (Nov 11, 2020, 5:07 PM) <https://unctad.org/press-material/global-e-commerce-hits-256-trillion-latest-unctad-estimates>

of previous buyers has significantly improved the sale and purchase mechanisms.

One dominant feature of e-commerce is that it involves multiple intermediaries. All goods and services before reaching the consumer has to necessarily pass through various checkpoints that are formally known as e-intermediaries. Going by the literal definition, Intermediaries are entities that regulate trade between producers, consumers and their information, products, services, thus making it become a more convenient and cheaper economic organization.<sup>9</sup> With the inclusion of various intermediaries, the supply chain of the online platform becomes much longer and complex. Take for example an individual located in one corner of a country is willing to purchase a designer clothing that is only available with a seller who is situated in a different state. Although the online platform has made it convenient for the purchaser to afford that clothing without having to leave his house, but at the same time this purchase consists of various intermediaries who are entrusted with the task of getting that good delivered at the doorstep of the purchaser. This task consists of providing the same quality, style and kind of clothing that was promised on the online platform. This is where the challenge begins.

The ordinary concept of purchase and sale involved two or more parties exchanging goods and services for consideration while being present at the same counter and being simultaneously aware of the exact details of goods and services that are to be availed. However, in an e-commerce scenario, the case is entirely different. The consumer happens to select the good and services solely according to the ratings and description mentioned on the website of the seller/manufacturer and does not get to see in person, the exact purchase that he is about to make. In simple terms, the possibility to mislead the consumer is increased by a much higher degree than it ordinarily is under a sale and purchase done in physical presence. Once the transaction has taken place, and the purchase is made online, starting from the placement or order until the delivery of goods, there will always remain a scope to provide inadequate and deficient goods and services to the consumer. A grievance redressal now has to take place in cyberspace that has to go through a chain of middlemen.

With the advent of electronic commerce, the scope of deficiency in goods and services has increased considerably. Online Platforms have eliminated the opportunity to identify and approve the products in person. The products that were earlier identified and approved by the purchaser at the time of purchasing are displayed as photoshopped pictures on online platforms. The purchaser has no other alternative than to rely upon the description available on such online

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<sup>9</sup> Wei Rong, *The evolution of the intermediaries in e-commerce environment*, International Journal of Business and Social Science Vol. 5, No. 5(1); April 2014 45, Shanghai University of Engineering Science (Oct 31, 2020, 11:32AM) [https://ijbssnet.com/journals/Vol\\_5\\_No\\_5\\_1\\_April\\_2014/5.pdf](https://ijbssnet.com/journals/Vol_5_No_5_1_April_2014/5.pdf)

platforms. Moreover, with the existence of multiple intermediaries, it becomes altogether difficult to identify as to who or at which point did the deficiency really occur. This is where the state must assume its welfare role and take the responsibility of protecting the consumer from possible exploitation and a breach of their trust.

### III. COMPARATIVE ENQUIRY

The challenges discussed in the previous section can be clubbed into three major categories namely, *liability of intermediaries, data protection of consumer and alternate dispute resolution*. However, this is not an exhaustive list of all the issues that arise in electronic platforms. These four categories comprise of the primary challenges that a consumer can possibly face while performing an online purchase. An attempt will be made to understand as to how India, USA and the European Union dealt with the protection of consumer in electronic commerce landscape. The official statistics released by the United Nations Conference on Trade and Development shows that Going by percentage, 56% of countries had legislations for protection of consumer in e-commerce landscape, 6% had draft Legislations, 9% were without any legislations and 29% had no data.<sup>10</sup> However, the focus of our study is going to be restricted to the consumer protection laws in India, USA and the laws of European Union

#### INDIA

According to the data released by The Minister Of State Consumer Affairs, Food And Public Distribution in 2018, the complaints regarding unsatisfactory delivery of goods and services received at the National Consumer Helpline (NCH) run by the Department of Consumer Affairs rose from a mere 5,408 in 2013-14 to 78,088 in 2017-18. The reasons accounting towards deficiency in goods and services ranged from non-delivery of product, delivery of defective/wrong product, late/ delay in delivery of product, not returning/ refunding under replacement warranty to not getting product back after repair/replacement, missing of product Accessories etc.<sup>11</sup> The data also suggested that the complaints have been increasing on a yearly basis. The country has recently passed the Consumer Protection Act of 2019 that aims to incorporate online transactions as part of the consumer protection landscape. Let us understand this in the light of the four primary categories:

A dominant feature of the Consumer Protection Act 2019 is that it has been incorporated with

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<sup>10</sup> UNCTAD, *Online Consumer Protection Legislation Worldwide*, (Nov 11, 2020, 4:35 PM) <https://unctad.org/page/online-consumer-protection-legislation-worldwide>

<sup>11</sup> Data Provided by The Ministry Of State Consumer Affairs, Food And Public Distribution <https://164.100.158.235/question/annex/246/Au384.pdf>

specific provisions that give due recognition of online portals in the forms of sellers, manufacturers or be it service providers. The proper adoption of online transactions within the act was a necessary step in empowering the consumer in e-commerce. Section 2 clause 7 explanation b of the act states that buying of goods or hiring of services means both online as well as offline transactions. This provision has the consequence of incorporating all the goods bought or services availed on online portals under purview of the act. Further Clause 16 defined e-commerce" as buying or selling of goods or services including digital products over digital or electronic network. This provision identifies e-commerce as under the purview of the act. The act has even defined misleading advertisements as the one that falsely describes such product or service and misleads the consumers as to the nature, substance, quantity or quality of such product or service. This way, the advertisements given on online portals can form the basis of complaint under the consumer protection Act 2019.

**Liability of Intermediaries:** The Consumer Protection Act 2019 was passed by the Parliament of India on the lines of e-commerce. The Act has come up with the concept of 'Product Liability'. The product liability seeks covers the whole supply chain that a commodity sold online, must go through before reaching the consumer. As defined under the act<sup>12</sup>, product liability seeks to hold the manufacturer, seller and service provider against any defect or deficiency in goods or services. Section 85 of the Act also holds the product service provider individually without any intervention of the manufacturer or the seller. The act has separately defined product manufacturer, product seller and supplier under various head and has attached them with a liability in relation to defective good or deficient service. The act has expanded the purview of the protection and has recognised majority of entities who have a substantial control over the goods or services before it reaches the consumer. This holds a greater significance in online transactions. Before the amendment, when a defect or deficiency used to appear and the dispute as moved to court, the online platforms often used to run away with the responsibility in the name of being "mere intermediaries". Take for example in the matter of **Rediff.com India Ltd. v/s Urmil Munjal**<sup>13</sup> where the petitioner claimed to be an intermediary/facilitator between vendor and consumer who facilitates the sellers and buyers through its online portal, the National Consumer forum held that *the opposite party is primarily engaged in providing services through its internet portal to interested buyers and sellers by acting as a means of communication between them and bringing into existence contracts of*

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<sup>12</sup> Section 2 Clause 34: *the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services.*

<sup>13</sup> Rediff.com India Ltd. v/s Urmil Munjal NCDRC Revision Petition No.4656 Of 2012

*sale and purchase of movable goods. A similar case was of Amazon Seller Services Private vs Vishwajit Tapia*<sup>14</sup> wherein the court held that *If an online intermediary has specific knowledge or has reasonable belief based on information supplied by the right holder about the contents and the intermediary fails to act despite such knowledge, online intermediary can be held liable for infringement.*” Many likewise decisions have held online portals liable by virtue of being agents of the manufacturer and having a declared business interest in the transactions.<sup>15</sup> However, now with the incorporation of product liability, the online websites and portals can be held liable individually and the new consumer protection act gives due recognition to it. A comprehensive regime is laid down where rights and liabilities of manufacturer, seller as well as service provider are well defined. These provisions have the effect of enforcing the duty on part of seller and manufacturers to maintain the quality of goods and services.

**Protection of Data:** As far as protection of personal information of the consumer is concerned, Section 2(7)(ix) expressly mentions it as an unfair trading practice. The Act penalises the act of disclosing to other person any personal information given in confidence by the consumer unless such disclosure is made in accordance with the provisions of law. Even otherwise, the Personal Data Protection Bill 2019 lies as a draft legislation that will ensure adequate data protection of that is available online. The bill has proposed the prohibition of processing personal data in an unfair manner<sup>16</sup> and for purposes other than those consented by the person whose data it is.<sup>17</sup> This gives us sufficient insight into the fact that the government is making an effort to protect the data of consumers being uploaded online such as credit and debit card details, net banking details etc. Section 11 of the bill prohibits the processing of personal information except on the consent of the person to whom the data relations. Section 7 obligates the data fiduciary (the one who processes the data) to give notice to the person that his data has been collected stating the purposes for the usage of such data. The collector of the data shall also disclose his identity and contact details. Section 9 states that the data fiduciary shall not retain any personal data beyond the period necessary to satisfy the purpose for which it is processed and thereafter delete the same. The bill also gives certain rights to the person whose data is being collected that includes the right to access the details of all data collectors or data

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<sup>14</sup>Amazon Seller Services Private vs Vishwajit Tapia First Appeal No.544 of 2019

<sup>15</sup> Indiatimes shopping and Others v. Shivanand Narain and Others SCDRC Chandigarh, Appeal case No.219/2009, Emerging India Real Assets Pvt. Ltd. & Anr. Vs Kamer Chand & Anr. First Appeal No. 51 of 2016, Amazon Sellers Service Private Limited v. Gopal Krishan and others, Appeal No 27 of 2017,

<sup>16</sup> Consumer Data protection Bill Section 5 Clause a

<sup>17</sup> Consumer Data protection Bill Section 5 Clause b



fiduciaries with whom his personal information was shared<sup>18</sup>. The bill also gives a right to be forgotten to the person by allowing him to restrict or prevent the continued disclosure of his information.

**Alternate Dispute Resolution:** The new consumer protection Act has expanded the dispute redressal mechanism. Apart from filing complaints under the state district and national consumer protection Authority, the act has provided for mediation for amicable settlement of disputes. Mediation has come up as an alternate dispute redressal mechanism with the intention of reducing the burden on court. Chapter V of the act establishes a Mediation Cell each in connection with district, state, or national commission. It offers the parties an option to settle disputes outside the court. The proceedings of the mediation are to be in accordance with the principles of natural justice. Failure of mediation will result in continuation of proceedings from the court. The mediation procedure adopted by the act will also induce a faster and expeditious disposal of cases as compared to the court. It offers a flexible procedure unlike the procedure followed in courts. Mediation process as given by the act will definitely be a useful and beneficial provision for quick and smooth redressal of consumer complaints.

### **UNITED STATES OF AMERICA**

The United States of America is presently witnessing increasing use of what they have called counterfeit and pirated e-commerce goods. Counterfeit goods owing to their poor quality harm not only the goodwill of the brand but also deprive the consumers of their right to receive good quality products for the purchase they make. In January 2020, A report titled *Combating Trafficking in Counterfeit and Pirated Goods* was made to the President of the United States that dwelled upon the increased usage of counterfeit goods in the supply chains of e-commerce platforms and why the platforms themselves need to be held accountable for the threats posed to consumers<sup>19</sup>. The report mentioned the founding of U.S. Government Accountability Office (GAO) that a wide variety of products are being produced by counterfeiters and the same are being sold alongside authentic products.<sup>20</sup> The report while dwelling upon the dangers of counterfeit goods stated that they pose inherent risk to health and safety of consumers. The report calls online portals as third party marketplaces and emphasises upon how they pose a significant risk both for consumers as well as the economy. Let us understand the protection

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<sup>18</sup> Consumer Data Protection Bill 2019 Chapter V

<sup>19</sup> May Cheng, *How e-commerce platforms get drawn into global war on counterfeit goods*, 2020 <https://www.osler.com/en/resources/regulations/2020/how-e-commerce-platforms-get-drawn-into-global-war-on-counterfeit-goods> (Nov 28,2020 05:32PM)

<sup>20</sup>Combating Trafficking in Counterfeit and Pirated Goods, Report to the President of the United States January 24, 2020 [https://www.dhs.gov/sites/default/files/publications/20\\_0124\\_plcy\\_counterfeit-pirated-goods-report\\_01.pdf](https://www.dhs.gov/sites/default/files/publications/20_0124_plcy_counterfeit-pirated-goods-report_01.pdf) (Nov 29,2020 05:48PM)

offered by American Laws for this rise in risks towards consumers in online third party marketplaces.

### Liability of intermediaries:

The law of product liability or liability of intermediaries in America has been developed in a non uniform way. Owing to it being a judge made law, it has developed differently in each state. Product liability law finds its origin in common law after which it was adopted with or without modifications in state laws<sup>21</sup> Let us understand the evolution of this law. The first recognition was made in tort law of USA, more specifically speaking - Section 402A of the Restatement (Second) of Torts<sup>22</sup>. The section majorly focused on the product being in a defective condition and being unreasonably dangerous to the consumer. The intention of this section was to eliminate privity, so as to enable the injured person injured by defect in the product to directly sue the manufacturer and members of the chain of distribution<sup>23</sup>. The oldest instance where products liability was mentioned by American Courts was in the case of **Escola v. Coca Cola Bottling Co**<sup>24</sup>. wherein the court stated that *Even if there is no negligence, however, public policy demands that responsibility be fixed wherever it will most effectively reduce the hazards...in defective products that reach the market...the manufacturer can anticipate some hazards and guard against the recurrence of others, as the public cannot*. Later on the case in **Greenman v. Yuba Power Products, Inc.**<sup>25</sup> expanded the liability by introducing an independent cause of action for strict products<sup>26</sup>. These two cases culminated into Section 420A of Restatement Tort. It was thereafter developed into Restatement (Third)

<sup>21</sup> Kenneth Ross, "et al", *Product liability and safety in the United States: overview* [https://uk.practicallaw.thomsonreuters.com/w-012-8129?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/w-012-8129?transitionType=Default&contextData=(sc.Default)&firstPage=true) (Nov 28, 2020, 7:27PM)

<sup>22</sup> Section 402A. SPECIAL LIABILITY OF SELLER OF PRODUCT FOR PHYSICAL HARM TO USER OR CONSUMER

(1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if

(a) the seller is engaged in the business of selling such a product, and

(b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

(2) The rule stated in Subsection (1) applies although

(a) the seller has exercised all possible care in the preparation and sale of his product, and

(b) the user or consumer has not bought the product from or entered into any contractual relation with the seller.

<sup>23</sup> Spencer H. Silverglate, *The Restatement (Third) Of Torts Products Liability: The Tension Between Product Design And Product Warnings*, Florida Bar Journal, Vol. 75, No11, December 2001, Pg 10

<https://www.floridabar.org/the-florida-bar-journal/the-restatement-third-of-torts-products-liability-the-tension-between-product-design-and-product-warnings/>

<sup>24</sup> *Escola v. Coca Cola Bottling Co. of Fresno*, 150 P 2d 436 (Cal, 1944)

<sup>25</sup> *Greenman v. Yuba Power Products, Inc* 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1962).

<sup>26</sup> Robert F. Harchut, *Products Liability - Restatement (Second) of Torts - Section 402A - Uncertain Standards of Responsibility in Design Defect Cases*, 24 Vill. L. Rev. 1035 (1979). (Dec 01, 2020, 10:03AM) <https://digitalcommons.law.villanova.edu/cgi/viewcontent.cgi?article=2249&context=vlr>

of Torts. Apart from this, the two major tests that helped develop the products liability were: the consumer expectations test<sup>27</sup> and the risk-utility test.<sup>28</sup> The liability of intermediaries in American laws are based on strict liability doctrine<sup>29</sup>. Presently, under California product liability law, all the entities involved from manufacture to sale are strictly liable for harm caused by a defective product.<sup>30</sup> The discussion till now is based upon how the products liability developed in its early stages. Speaking of involvement of e-commerce in this, the most recent development in this regard is the judgement of United States Court of Appeal (3<sup>rd</sup> Circuit) in the matter of **Heather R. Oberdorf; Michael A. Oberdorf, V. Amazon.Com Inc**<sup>31</sup>. In the present matter, the appellant got injured due to defective product that he has ordered from Amazon which resulted in permanent loss of an eye. The court upheld Amazon as a 'seller' stating that its *involvement in transactions extends beyond a mere editorial function; it plays a large role in the actual sales process*.<sup>32</sup> In another case of **Angela Bolger V. Amazon.Com, LLC**<sup>33</sup> the court was of the opinion that *Amazon...plays a substantial part in ensuring the products listed on its website are safe...and it has the ability to adjust the cost of liability between itself and its third-party sellers*. The court held Amazon liable under the principles of strict liability. These cases tell us that the American courts have identified the role of online platforms as something that is beyond intermediaries.

**Data Protection and Consumer Privacy:** In the year 2016, 209.6 million people within the American territory had accessed online portals for sale and purchase at least once. This number is estimated to reach 230.5 million in 2021, making United States as of one the leading e-commerce markets<sup>34</sup>. This puts an enormous amount of consumer data at risk. America has in recent times shown a high degree of sensitivity towards privacy laws. The California Consumer Privacy Act was enacted in June 2018 to enforce a comprehensive and stringent privacy law for the residents of California. Section 2 of the Act while focusing on how businesses tend to

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<sup>27</sup> The Third Restatement omitted consumer expectations test.

<sup>28</sup> Keith N. Hylto, *The Law and Economics of Products Liability*, Notre Dam Law Review, Vol 88 Issue 5 <https://scholarship.law.nd.edu/cgi/viewcontent.cgi?referer=&httpsredir=1&article=1681&context=ndlr> pg2457-2514)

<sup>29</sup> Toke, Michael J. (1996) *Restatement (Third) of Torts and Design Defectiveness in American Products Liability Law*, Cornell Journal of Law and Public Policy: Vol. 5: Iss. 2, Article 5. Available at: <http://scholarship.law.cornell.edu/cjlp/vol5/iss2/5> , (pg 239-287)

<sup>30</sup> Fundamentals of Ecommerce Product Liability, <https://caseygerry.com/fundamentals-of-ecommerce-product-liability/> (Dec 12, 2020, 08:00AM)

<sup>31</sup> Heather R. Oberdorf; Michael A. Oberdorf, V. Amazon.Com Inc (D.C. Civil No. 4-16-cv-01127)

<sup>32</sup> Heather R. Oberdorf; Michael A. Oberdorf, V. Amazon.Com Inc (D.C. Civil No. 4-16-cv-01127) <https://www2.ca3.uscourts.gov/opinarch/181041p.pdf> (Dec 20,2020, 2:32PM)

<sup>33</sup> Angela Bolger V. Amazon.Com, LLC, Super. Ct. No. 37-2017- 00003009-CU-PL-CTL, <https://timesofsandiego.com/wp-content/uploads/2020/08/Bolger-ruling.pdf> (Dec 21,2020, 03:43PM)

<sup>34</sup> Estimates US Digital Shoppers 2016-2021, <https://www.statista.com/statistics/183755/number-of-us-internet-shoppers-since-2009/> (Dec 25,2020, 2:03PM)

collect personal information of the consumers laid down consumers rights to privacy that includes inter alia the right to know what personal information is taken and whether the same is being sold or disclosed and to whom. The act also gives them the right to refuse from giving any personal information and also the opportunity to opt out at any given time in case they wish to discontinue the sale of their personal information. The provision 1798.125. states that no discrimination of any sort shall be done in case the consumer decides to exercise any of his rights. The Act has defined personal information.<sup>35</sup> These provisions do vest certain degree of power in the hands of the consumer whilst enabling him to be aware of the information that is going to the businesses. After California, Nevada's Consumer Privacy Law has also been set into motion. The Law as officially enforced from October 1, 2019. The act, has a specific application only to "Operators," who are defined as the ones who own or operate websites or online services for commercial purposes that collect and maintain. This Act has been specifically made for online platforms and regulates the data that is being uploaded to such platforms. The act obligates the operator to duly inform the consumers as to how their data is being managed and processed. The amendment of SB 220 to the act further expands the scope of protection by offering consumers a right to refuse the sale of any information that was so collected by the operator.<sup>36</sup> More recently speaking the state of Maine has passed a law titled Broadband Internet Access Service Customer Privacy with regard to protection of data of consumers. The law prohibits the usage and disclosure of information except with the consent of the customer.<sup>37</sup>

**Alternate Dispute Resolution:** US agency of Federal Trade Commission works in collaboration with other federal agencies to administration of consumer protection Laws. Their main objective is to make a deception free market available to the consumer that offers highest quality products. It is an independent federal agency and was created in 1914. It performs two main functions: firstly to protect consumers by preventing fraud, deception, and unfair business practices in the marketplace and secondly to maintain competition by preventing anticompetitive business practices.<sup>38</sup> The commission has been given powers to investigate and

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<sup>35</sup>California Consumer Privacy Act 2018, Section 1798.140. (o) : real name, alias, postal address, unique personal identifier, online identifier, internet Protocol address, email address, account name, social security number, driver's license number, passport number etc <https://www.pbwt.com/content/uploads/2018/06/California-Consumer-Privacy-Act1.pdf> (Dec 04, 2020, 08:23AM)

<sup>36</sup>Divya Taneja, "et al", Nevada Consumer Opt-Out Right from Sale of Personal Information Goes into Effect <https://privacylaw.proskauer.com/2019/09/articles/privacy-law/nevada-consumer-opt-out-right-from-sale-of-personal-information-goes-into-effect/> (Dec 04, 2020, 08:00AM)

<sup>37</sup> An Act To Protect the Privacy of Online Customer Information, Nevada, [https://www.mainelegislature.org/legis/bills/bills\\_129th/billtexts/SP027501.asp#:~:text=This%20bill%20prohibits%20a%20provider,%2C%20disclosure%2C%20sale%20or%20access.](https://www.mainelegislature.org/legis/bills/bills_129th/billtexts/SP027501.asp#:~:text=This%20bill%20prohibits%20a%20provider,%2C%20disclosure%2C%20sale%20or%20access.) (Dec 19, 2020, 02:12PM)

<sup>38</sup> Federal Trade Commission, US, <https://www.ftc.gov/about-ftc> (Dec 06, 2020, 08:25AM)

pass orders with regard to consumer redress and unfair business practices.<sup>39</sup> Another agency that deals in consumer protection is the Bureau of Consumer Financial Protection. It is empowered to conduct financial education programs; collecting, investigating, and responding to consumer complaints. Like the FTC it has also been entrusted with investigative powers and can look into the violation of any law or provision. Its orders are appealable to the US courts of Appeal. The bureau has powers to take action against any violations of federal consumer financial protection law.<sup>40</sup>

### **EUROPEAN UNION LAWS**

A report published by the European Consumer Centres Network in the year 2015 stated that e-commerce complaints in 2014 accounted for two-thirds of the total complaints received by the consumers. And One in six businesses now sells online. The report also suggests that e-commerce services was among the top five reasons of consumer complaints and distance and online sales remained to be at the top of the list.<sup>41</sup> Over the years the EU has built a European framework to combat unfair trade practices, unfair contract terms, misleading advertising, to ensure consumers' right to withdraw from the contract and to claim damages<sup>42</sup>. At present, around 90 EU directives cover consumer protection issues, and that is why the consumer acquis remains complex and sometimes inconsistent<sup>43</sup> Let us now understand the consumer protection in ecommerce sector of the European Union.

**Liability of Intermediaries:** An empirical study conducted by Danish Chamber of Commerce consisted of 50 test purchases in online market places such in the year 2019<sup>44</sup>. It revealed that none of the 50 sales complied with the relevant EU consumer rights legislation. The study also stated that online marketplaces have given an easy access to sellers who have no regard to the

<sup>39</sup>Federal Trade Commission Act Incorporating U.S. SAFE WEB Act amendments of 2006 [https://www.ftc.gov/sites/default/files/documents/statutes/federal-trade-commission-act/ftc\\_act\\_incorporatingus\\_safe\\_web\\_act.pdf](https://www.ftc.gov/sites/default/files/documents/statutes/federal-trade-commission-act/ftc_act_incorporatingus_safe_web_act.pdf)

<sup>40</sup>Spencer Weber Waller, "et al", Consumer Protection in the United States: An Overview, Loyola University Chicago, [https://www.researchgate.net/publication/228208216\\_Consumer\\_Protection\\_in\\_the\\_United\\_States\\_An\\_Overview?enrichId=rgreq-a90bc705d8fe396cde62b1da727bb77f-XXX&enrichSource=Y292ZXJQYWdlOzIyODIwODIwODIxNjBUzo5NzAyNzY4NTg3OTgyMkAxNDAwMTQ0NjEyMDY1&el=1\\_x\\_3&\\_esc=publicationCoverPdf](https://www.researchgate.net/publication/228208216_Consumer_Protection_in_the_United_States_An_Overview?enrichId=rgreq-a90bc705d8fe396cde62b1da727bb77f-XXX&enrichSource=Y292ZXJQYWdlOzIyODIwODIxNjBUzo5NzAyNzY4NTg3OTgyMkAxNDAwMTQ0NjEyMDY1&el=1_x_3&_esc=publicationCoverPdf)

<sup>41</sup>European Union 2015, Report The European Consumer Centres Network [https://www.eccnederland.nl/sites/default/files/images/publications/rapport\\_tienjarig\\_bestaan\\_ecc-net.pdf](https://www.eccnederland.nl/sites/default/files/images/publications/rapport_tienjarig_bestaan_ecc-net.pdf)

<sup>42</sup> Catalina Soriana "et al", *Ways to Reduce Consumer Complaints – the EU Perspective*, Amfiteatru Economic Journal, ISSN 2247-9104, (2014) <https://www.econstor.eu/bitstream/10419/168828/1/aej-v16-i35-p0336.pdf> (Nov 30,2020 11:53AM)

<sup>43</sup> Jana Valant, Consumer protection in the EU, European Parliament, [https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS\\_IDA\(2015\)565904\\_EN.pdf](https://www.europarl.europa.eu/RegData/etudes/IDAN/2015/565904/EPRS_IDA(2015)565904_EN.pdf) (Dec 26,2020 12:45PM)

<sup>44</sup>Report by Danish Chamber of Commerce, <https://www.danskerhverv.dk/politik-og-analyser/e-handel/study-of-unsafe-and-dangerous-products-on-platforms/> (Dec 30,2020 1:00PM)

EU laws on product safety and consumer laws. The report also suggested that is also a severe lack of jurisdiction and enforcement mechanisms against these sellers who are usually of cross border origin. In EU, online marketplace is majorly dominated by Amazon, AliExpress, E-bay and Wish. Due to their increased presence in online markets, online platform have altogether become a retail.<sup>45</sup> Product liability is not new to EU laws. The Council Directive dated 25 July 1985<sup>46</sup> has incorporated product liability as part of the consumer protection laws in the European Commission. The preamble of the directive vests the liability of the defective product in the hands of producers involved in the production process. Simultaneously, it also extends the liability to the importers of the product who are connected with the trade either by bringing the product into a community or by presenting themselves as producers by either using their name or trademark in connection with the goods.<sup>47</sup> Article 3 of the directive stated that even the supplier of product whose producer cannot be traced can be held liable. However, times have changed now and digital economy has taken over physical markets. There is no doubt that the provisions of the directive still hold high degree of relevance, but digital goods have now made the circumstances even more complex. To tackle these complexities, many efforts were made by the European Parliament. The Committee on the Internal Market and Consumer Protection (IMCO) which is an association of the European Parliament moved a motion titled to review the Directive and consider adapting such concepts as ‘product’ ‘damage’ and ‘defect’ as well as adapting the rules governing the burden of proof in February 2020<sup>48</sup>. Thereafter, the European Parliament published its White Paper on Artificial Intelligence with the motive of reviewing and improving the Product Liability Directive. The prima facie reading of this paper tells us the legal framework with regard to the liability in case of digital goods predominantly revolves around “Product Safety”. The report states that the producer is to remain responsible for the safety of the product irrespective of how complex the value chain is.<sup>49</sup> Further, the report has also stated that the Product Liability regime is based on the concept of strict liability

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<sup>45</sup>Nordic Commerce Sector, *Revision of the E-commerce directive/Digital services act* [https://www.danskerhverv.dk/siteassets/mediafolder/dokumenter/04-politik/final---revision-of-the-e-commerce-directive\\_dsa\\_the-position-of-the-nordic-commerce-sector.pdf](https://www.danskerhverv.dk/siteassets/mediafolder/dokumenter/04-politik/final---revision-of-the-e-commerce-directive_dsa_the-position-of-the-nordic-commerce-sector.pdf) (Dec 30,2020 2:00PM)

<sup>46</sup> Directive (85/374/EEC)

<sup>47</sup> *Whereas protection of the consumer requires that all producers involved in the production process should be made liable, in so far as their finished product, component part or any raw material supplied by them was defective ; whereas, for the same reason, liability should extend to importers of products into the Community and to persons who present themselves as producers by affixing their name, trade mark or other distinguishing feature or who supply a product the producer of which cannot be identified*

<sup>48</sup> European Parliament, Motion for Resolution [https://www.europarl.europa.eu/doceo/document/B-9-2020-0094\\_EN.html](https://www.europarl.europa.eu/doceo/document/B-9-2020-0094_EN.html) (Dec 17,2020, 11:28AM)

<sup>49</sup> EC, Brussels, Report From The Commission To The European Parliament, The Council And The European Economic And Social Committee, 19.2.2020 COM(2020) 64 final <https://ec.europa.eu/transparency/regdoc/rep/1/2020/EN/COM-2020-64-F1-EN-MAIN-PART-1.PDF> (Dec 17,2020, 9:32AM)

of the producer against the defect in their products. Such liability is remedied by compensation to the injured party. The aim of the laws is to ensure that products and services, operate safely, reliably and consistently and that damage having occurred is remedied efficiently. High levels of safety for product on digital markets must be necessarily ensured.<sup>50</sup>

**Data Protection:** European Commission has passed the General Data Protection Regulation (Regulation (EU) 2016/679) in the year 2016 to regulate data privacy laws in Europe. The main aim of the regulation is to impose a uniform data security law on all EU members.<sup>51</sup> The regulations consists of 99 articles whilst recognising that The protection of natural persons in relation to the processing of personal data is a fundamental right. Article 5 of the regulation states that personal data should be processed lawfully and be collected for legitimate purposes. Article 13 of the regulation makes obligates the collector of data to disclose his identity and purpose of data collection to the person whose data has been collected. Further, Article 17 establishes the right to erasure or the right to be forgotten. The controller of the data has an obligation to remove the data of the person concerned if the purpose of the same has been fulfilled or if it has been unlawfully processed. Apart from these the regulation has provided various other rights to provide a holistic protection to the consumers such as right to object to processing of personal data at any time and the responsibility of the controller to establish proper technical infrastructure to ensure security of data.<sup>52</sup>

**Grievance redressal:** Apart from the court procedures, there are Alternate Dispute Resolution laws that govern disputes under consumer protection Laws. The ADR Directive (2013/11/EU) sets out the law with regard to ADR in consumer landscape. Article 5 of the directive obligates Member States to facilitate access by consumers to ADR procedures. It also obligates the traders to ensure that their internal complain handling procedures must also be available on their websites before the parties approach the ADR.<sup>53</sup> The directive also makes it clear that there is no obligations on traders to participate in ADR procedures and the outcome of the ADR is also not binding upon the parties.<sup>54</sup> Apart from this, there is a system of Online Dispute Resolution was launched by the European Commission as a dispute resolution platform in 2016

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<sup>50</sup> Same as above

<sup>51</sup> Juliana De Groot, *What is the General Data Protection Regulation*, [https://digitalguardian.com/blog/what-gdpr-general-data-protection-regulation-understanding-and-complying-gdpr-data-protection#:~:text=The%20General%20Data%20Protection%20Regulation%20\(GDPR\)%2C%20agreed%20upon%20by,protect%20EU%20citizens'%20personal%20data.&text=Requiring%20the%20consent%20of%20subjects%20for%20data%20processing](https://digitalguardian.com/blog/what-gdpr-general-data-protection-regulation-understanding-and-complying-gdpr-data-protection#:~:text=The%20General%20Data%20Protection%20Regulation%20(GDPR)%2C%20agreed%20upon%20by,protect%20EU%20citizens'%20personal%20data.&text=Requiring%20the%20consent%20of%20subjects%20for%20data%20processing) (Dec 12, 2020, 12:10PM)

<sup>52</sup> Data Protection Regulation (Regulation (EU) 2016/679) Article 15(e), Article 21, Article 24

<sup>53</sup> Directive 2013/11/EU, The European Parliament dated 21 May 201

<sup>54</sup> Directive 2013/11/EU Clause 49

to help consumers and traders solve disputes online over purchases made online.<sup>55</sup> The Consumer ODR Regulation of 524/2013 that came into force in 2016 lays down the procedure that begins at acceptance of electronic complaint and goes till obligation of traders in providing electronic links for their own ODR platforms(Article 14).

#### IV. COMPARATIVE ANALYSIS: SIMILARITIES & DIFFERENCES

**Liability of Intermediaries:** The analysis of consumer protection Act 2019 passed by the Indian Parliament has highlighted that online intermediaries can be directly and absolutely<sup>56</sup> be held liable for the defect and deficiencies in the product. liabilities of intermediaries of online portals direct liability has been introduced by CPA 2019. It is the first move that has been made by the legislature. The court used to adjudicate e-commerce disputes under the principles of vicarious liability and principal agent relationship. Now with the new law, the courts can hold every entity in the supply chain as individually liable without the involvement of other entities<sup>57</sup>. The Act has separately defined product manufacturer, product seller as well as product service provider and also provides that individual claims can be initiated against them by the complainant<sup>58</sup>. This way, the online intermediaries cannot take advantage of being a mere seller or a mere middleman. The law makes them directly liable and the principle of vicarious liability or principal agent is not required anymore. However, the way the court adjudicated the cases before the enforcement of the new act shows us that the law with regard to online intermediaries in India began with the foundation of torts. Here, we can trace a similarity with the laws America. Although product liability originated in the courts of America, yet it was culminated as a part of Tort law.<sup>59</sup> The motive of the American laws remains same as India, i.e. making the intermediaries liable so that the consumer can directly sue members of the supply chain. The American Courts went a step further to incorporate the provisions of negligence and strict liability in order to hold intermediaries liable instead of resorting to the concept of vicarious liability. The examination of recent cases in the previous section has revealed this point. Further the courts have held the role online portals and websites as substantial in online selling and purchasing while determining their liabilities in the transaction. As far as European Laws are concerned, we came across recent empirical study that was conducted by agency of the EU Parliament as well as the revision Product Liability

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<sup>55</sup>UNCTAD, Consumer protection in electronic commerce, [https://unctad.org/system/files/official-document/cicplpd7\\_en.pdf](https://unctad.org/system/files/official-document/cicplpd7_en.pdf), (Dec 10, 2020, 12:34PM)

<sup>56</sup> Individual Liability of seller.

<sup>57</sup> Consumer Protection Act 2019, Section 84,85,86

<sup>58</sup> Consumer Protection Act 2019, Section2, clause 6(vii)

<sup>59</sup> Restatement (Third) of Torts



Directive that was introduced in January 2020. These two were sufficient to determine the intention of the lawmakers towards consumer protection in e-commerce. The liability of intermediaries was already incorporated in the original text of Product Liability directive dated 1985 that held producers and entities who presented themselves as producers and the suppliers of the product as liable for the defective goods sold to a consumer. Now the revision to the directive seeks to make the laws better suited for drastic nature of the digital market. We can again find a similarity with the American Laws as the directive mentions the liability of the producer as a strict liability that is countered by compensation to the aggrieved.

**Data Protection:** The Consumer Data Protection Bill 2019 has laid down the legislative framework that the parliament seeks to establish in India. The bill expressly prohibits the processing of personal information except in the cases of lawful purpose that has been consented by the person whose data is collected. This gives us sufficient insight into the fact that the government is making an effort to protect the data of consumers being uploaded online such as financial data like credit and debit card details, health data and includes transgender status, caste/tribe and even religious and political affiliations. The bills also seeks to give rights to persons such as right to access the details of data collectors, rights to discontinue his consent for processing his personal data, right to erasure or the right to be forgotten by allowing him to restrict or prevent the continued disclosure of his information. As far as the American Laws on data protection is concerned, the recent enactments in California, Nevada and the state of Maine incorporate the right of persons to know what personal information belonging to them is being shared and to whom. The laws have also incorporated the right to refusal in case the person wants to discontinue the processing of data. All the three laws speak of consumer consent to be given before the data collector commences the processing, usage or selling of personal data. It is pertinent to note herein that the Indian statute has no provision pertaining to selling of personal information like it is incorporated in the laws of California, Nevada or Maine. Coming to the laws of European Union, the General Data Protection Regulation passed in the year 2016 is the recent development in the field of data protection. The regulation analyses data protection as a fundamental right and speaks of consent of person whose data is being collected as necessary for processing of his personal data. The directive provides various rights similar to that of India and America, such as the right to be forgotten, right to have object to the processing of personal data. The regulations places obligation on part of data collector to disclose his identity and as well as the purpose of collection of personal data. However, the Directive is much more comprehensive in nature and contains 99 articles that establish both the obligations of data collectors as well as responsibilities of data controllers. Both the EU directive and Data

Protection Bill 2019 gives the right to data portability to a person wherein he has a right to receive all personal information given to the data controller in a structured way. This examination shows us that there is a high degree of similarity in the laws of India, America and the European Union.

**Alternate Dispute Resolution:** The Consumer Protection Act 2019 has introduced mediation procedure wherein parties can resort to an out of court settlement and resolve their disputes through mediation. The outcome of the mediation will thereafter be converted into a settlement report that will be sent to the Consumer Commission. The ADR Directive (2013/11/EU) of European Union was enforced in the year 2016. It places Online Dispute resolution as an effective means to address e-commerce disputes. The directive encourages online traders to have their own internal ODR mechanism for resolution of disputes. Further the parties have the liberty to Mediation, ombudsman or complaints board in order to resolve their disputes.<sup>60</sup> One main feature of ADR directive is that it does not make the outcome of the procedure as binding upon the parties. This is where the procedure is rendered inherently weak. Mediation procedure in India on the other hand has to be conducted under a mediation cell that will be attached to the National, District and State Commissions. This gives the procedure a stronger force of law. Speaking of America, two agencies namely, the Federal Trade Commission and the Bureau of Consumer Financial Protection. Both the agencies work under the Government of United States. Both the agencies have been given powers to take cognizance of consumer complaints and pass orders. The agencies have been vested with investigative and adjudicatory powers. The Bureau has also established an independent body of BCFP Ombudsman wherein consumer concerns are informally addressed before the commencement of litigation.<sup>61</sup> The parties can resort to any procedure of mediation, discussions, shuttle diplomacy etc.

This discussion has led us into concluding that there are both similarities and differences in the approach of laws of India, America and European Union. The basis for choosing the three for comparison is that American and European markets have experienced a major expansion in ecommerce sector and they continue to dominate the global e-commerce markets. India is currently undergoing that expansion and is making laws suitable for this transition toward digital economy. The study of the legal system that is currently established in America and Europe has highlighted that there is a high degree of similarity between the laws of the countries. Despite the approach being different, like that of ADR mechanisms, yet the intention

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<sup>60</sup> EU, Alternative dispute resolution for consumer disputes, <https://eur-lex.europa.eu/legal-content/EN/LSU/?uri=CELEX:32013L0011> (Jan 1, 2020, 2:20PM)

<sup>61</sup> BCFP Ombudsman Charter, <https://www.consumerfinance.gov/cfpb-ombudsman/ombudsman-charter/> (Jan 1, 2020, 4:32PM)

behind the laws remains to be same. Unlike India, the ADR mechanisms offered by the other two laws have high degree of part autonomy. They are institutions that are completely separated from the courts of law. India's mediation procedure however, has been linked to the courts itself. The analysis has shown that although the laws relating to product liability and data protection of consumers remain similar in nature, the provisions of alternate dispute resolution appear different.

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