CRIMINAL SANCTIONS, PRODUCT-LIABILITY REGIME AND EMERGING ISSUES OVER AI AND ROBOTICS UNDER THE CONSUMER PROTECTION ACT, 2019

[*]Arjun Chatterjee & [**]Vageesh Sharma

ABSTRACT

The introduction of Consumer Protection Act, 2019 ("Act") has critically affected the liability framework in cases pertaining to consumer disputes. Though monetary compensation has been provided as recourse to a wronged consumer under several existing laws, the new legislation takes a step ahead by imposing criminal sanctions on different stakeholders ranging from manufacturers of a product to its sellers. We will examine the Act in light of the prevalent international standards and it will be argued that the criminal punishment will not serve as a blanket boon to consumers across all the industries.

Another significant contribution of the Act is the 'product-liability' framework. With the advent of consumer capitalism, we are increasingly living in a commodified world. We will look at how product liability laws have developed over the years and has helped balance the skewed power relations between consumers and corporations. As a codified law, we will analyze the remedies available under the product-liability regime vis-à-vis other special laws with the help of judicial precedents.

The advancement of technology in the creation of Artificial Intelligence ("AI") system and robots has led to many challenges in imputing the liability. These new technologies have influenced the patterns of consumption and have created new vulnerabilities for consumers. The paper furthers a discussion on their personal safety and data security. In view of the existing legal vacuum in India, we shall make some suggestions in addressing the concerns.

[*] Arjun Chatterjee, Graduate of 2013-18 batch, WBNUJS, Kolkata.
[**] Vageesh Sharma, Graduate of 2013-18 batch, WBNUJS, Kolkata, and a practicing Advocate in the State of Rajasthan.

I. INTRODUCTION

The Consumer Protection Act, 2019 ("**Act**") considerably expanded the focus of consumer law in India by the introduction of new aspects: the imposition of criminal liabilities in consumer actions and product liability for defective products. The Act also comes at the cusp of an anticipated technological revolution in Artificial Intelligence ("**AI**") and Robotics. Our primary focus in this work therefore is to critically evaluate the new introductions in law while anticipating future challenges that may arise. Our article is divided into three parts. In Part I, we examine the consumer protection laws in China and the United States of America ("**USA**") to comprehend the strict applicability of criminal liability and high compensation, respectively in both countries. Subsequently, we proceed to argue that the introduction of criminal liability remains ineffective for ensuring consumer protection except in cases of misleading advertisements, where the intentional wrongdoing of the different stakeholders ought to attract criminal sanctions. In Part II, the product liability regime, as introduced by the new legislation, is thoroughly discussed. Tracing its origins, the paper highlights that the modern law provides considerable scope for imposing liability on third party intermediaries in the supply chain. In Part III, the imposition of liability on artificial intelligence systems is explored within the present legislation and the future challenges in attributing different forms of liability on AI systems are presented.

PART- I

II. CONSUMER PROTECTION LAWS IN INDIA AND FOREIGN COUNTRIES: AN OUTLOOK

The term 'consumer' has been widely drafted under Indian law[1] and interpreted by the courts in various domains of life. A consumer can mean

[1] S. 2 (1) (d), The Consumer Protection Act, 1986 (stands repealed). It defines 'consumer' as a person who:
(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system

the intended beneficiary of goods or services with the due consent of the original purchaser in a material transaction[2] or a landowner who entrusted his house construction to a contractor.[3] Even a car purchaser, who intends to use it as a taxi for self-employment, is held to be a consumer.[4] The omnipresence of consumers led the government and senior economists[5] to advise strong policy measures and prioritize their protection in the market.[6] In pursuance of the objectives enshrined in the National Action Plan, the government formed working groups to identify major consumer interests

of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or
(ii)[hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purpose].
See Kishore Lal v. Chairman, Employees' State Insurance Corpn., (2007) 4 SCC 579- The Supreme Court of India held:
"*The definition of "consumer" in the CP Act is apparently wide enough and encompasses within its fold not only the goods but also the services, bought or hired, for consideration. Such consideration may be paid or promised or partly paid or partly promised under any system of deferred payment and includes any beneficiary of such person other than the person who hires the service for consideration. The Act being a beneficial legislation, aims to protect the interests of a consumer as understood in the business parlance. The important characteristics of goods and services under the Act are that they are supplied at a price to cover the costs and generate profit or income for the seller of goods or provider of services. The comprehensive definition aims at covering every man who pays money as the price or cost of goods and services. However, by virtue of the definition, the person who obtains goods for resale or for any commercial purpose is excluded, but the services hired for consideration even for commercial purposes are not excluded. The term "service" unambiguously indicates in the definition that the definition is not restrictive and includes within its ambit such services as well which are specified therein. However, a service hired or availed, which does not cost anything or can be said free of charge, or under a contract of personal service, is not included within the meaning of "service" for the purposes of the CP Act.*"
[2] Lucknow Development Authority v. M.K. Gupta, (1994) 1 SCC 243.
[3] Faqir Chand Gulati v. Uppal Agencies Pvt. Ltd., (2008) 10 SCC 345; Bunga Daniel Babu v. Sri Vasudeva Constructions, (2016) 8 SCC 429; Sujit Kumar Banerjee v. Rameshwaran, (2008) 10 SCC 366.
[4] Hindustan Motors Ltd. v. N.P. Tamankar, (1996) CPJ 313 (NC).
[5] Dr. H. A. C. Prasad & R. Sathish, *Policy for India's Services Sector*, Working Paper No.1/2010-DEA, 22, Department of Economic Affairs, Government of India (2010) available at https://dea.gov.in/sites/default/files/policy%20Paper%20on%20Services%20Sector.pdf, last seen on 02/11/2020.
[6] Ministry of Consumer Affairs, Food and Public Distribution, Government of India, *Report of the Working Group on Consumer Protection Twelfth Plan (2012-17) Volume – I,* available at https://niti.gov.in/planningcommission.gov.in/docs/aboutus/committee/wrkgrp12/pp/wg_cp1.pdf, last seen on 02/11/2020.
(The subject of Consumer Protection was included as the one of the subjects in the priority areas of Niti Aayog, erstwhile Planning Commission's 12th Plan. As a consequence, a working group was formulated to suggest policies and strategies for a better consumer protection regime).

in 6 crucial areas across the country[7] and proposed to utilize INR 200 crores for effectively informing the consumers about their rights and entitlements.[8] Furthermore, the creation of informal modes of dispute resolution led to the redressal of nearly 95 percent of the consumer grievances in the financial year 2018-19[9], which raises the discussion on the nature of liabilities and consequent consumer satisfaction enlisted under the traditional legal regime of consumer protection laws in India.

Similar to most common law countries, the dispensation of justice under Indian consumer law is governed by the statutory quasi-judicial forums, which have powers similar to those vested in a court of law.[10] After duly following the established procedure by appreciating evidence[11] and hearing both the parties, if in the opinion of the forum(s), the averments in a 'complaint'[12] stand proven, then the opposite party may be liable for restoring the *status quo* of the consumer.[13] The failure of either of the

---

[7] *National Action Plan For Consumer Awareness*, Consumer Affairs, available at https://consumeraffairs.nic.in/organisation-and-units/division/consumer-welfare-fund/national-action-plan-for-consumer-awareness, last seen on 02/11/2020. (The six marked areas were food safety, misleading advertisements, drugs pharmaceuticals and medical devices/equipment, consumer health & safety concerning tobacco products, counterfeit/fake/spurious/contraband products, and proposals to amend the existing consumer laws incorporating the aspects of product liability law, unfair terms of contract act, builders' licensing boards act and whistle blowers act).

[8] Ibid.

[9] Ministry of Consumer Affairs, Food and Public Distribution, Government of India, *Annual Report 2018-19,* available at https://consumerhelpline.gov.in/assets/annual-reports/Annual_Report_2018-19.pdf, last seen on 02/11/2020. (The government set up a National Consumer Helpline vide an Integrated Grievance Redressal Mechanism (INGRAM) which provides a platform for all the concerned stakeholders to resolve the grievances. Notably the maximum number of complaints/grievances were registered in the e-commerce sector and a maximum of 99% grievances were resolved through this process in the financial year 2017-18).

[10] Laxmi Engineering Works v. P.S.G. Industrial Institute, (1995) 3 SCC 583. The Supreme Court held:

"*A review of the provisions of the Act discloses that the quasi-judicial bodies/authorities/agencies created by the Act known as District Forums, State Commissions and the National Commission are not courts though invested with some of the powers of a civil court. They are quasi-judicial tribunals brought into existence to render inexpensive and speedy remedies to consumers. It is equally clear that these forums/commissions were not supposed to supplant but supplement the existing judicial system. The idea was to provide an additional forum providing inexpensive and speedy resolution of disputes arising between consumers and suppliers of goods and services.*"

For the purposes of this part of the essay, the three forums namely, the National Commission, State Commission and the District Forum are collectively referred to as forums.

[11] S. 13, The Consumer Protection Act, 1986. (stands repealed)

[12] Ibid, S. 2 (1) (c).

[13] Ibid, S. 14 (The opposite party may be asked to *inter alia* remove the identified defect in the product, or replace the goods with new ones, or return the price(s)/charges paid by the consumer, or pay compensation for any the loss suffered by the consumer or the opposite party may be liable for punitive damages).

contesting parties to abide by an order passed by any of the forums attracts criminal liability.[14] While the erstwhile Indian consumer statute provided for criminal punishment only in cases of non-adherence to the order of forums, other countries, for instance, China and the USA, enlist such penalties if any harm is proved to a consumer, thereby following a stricter punishment regime. The paper highlights the consumer laws therein and argues that even the strictest of punishments lack credibility and support from the consumer industry. These States are selected for this paper to show that even the most rigid and inflexible consumer laws from the common and civil law countries remain of very little help when it comes to ensuring justice to the consumers.

Although the Indian jurisdiction permitted criminal sanctions in specific circumstances, the data revealing complaints' disposal indicates utmost satisfaction. As per the latest available statistics by the government, slightly over 80 percent of the complaints filed in these forums at the state and national level have been disposed of, whereas the figure is over ninety percent at the district level.[15] However, do the rates of disposal reflect squarely on a consumer's desired needs? As per a research conducted in 2018, a majority of the respondents expressed their contentment at the judgments rendered by the forums[16] but, interestingly, more than half of the dissatisfied respondents reasoned delay and insufficient compensation as contributing elements to their disapproval of the decisions.[17] Previous studies also suggest that the number of consumer complaints across the three forums has uniformly increased and, despite the disposal of a substantial number of complaints, there is considerable delay in the process.[18]

---

[14] Ibid, S. 27.
[15] Supra 9.
[16] Marinal Gupta & Sarang Narula, *Complainant Satisfaction with Reference to Consumer Dispute Redressal Forum*, 3 International Journal of Social Science & Economic Research 2012, 2021(2012), available at http://ijsser.org/2018files/ijsser_03__139.pdf, last seen on 03/11/2020.
[17] Ibid, at 2025.
[18] Elwin Paul Konattu & V.K. Sudhakaran, *A Critical Evaluation on the Performance of Consumer Disputes Redressal Commission in India*, 20 IOSR Journal of Business and Management 47, 50-51 (2018), available at http://www.iosrjournals.org/iosr-jbm/papers/Vol20-issue9/Version-4/F2009044752.pdf, last seen on 03/11/2020.

The paper selects a few relevant legislations to inform the reader about the nature of liabilities and grievance redressal mechanisms stipulated therein. While these legislations are specifically consumer-oriented and provide for criminal punishments and monetary compensation in case of a violation, the domestic scenario reveals that both the aforesaid remedies do not suffice and therefore, there remains a requirement for the state to act preventively by means of stricter pre-harm actions. Thus, even if the forums adjudicate consumer disputes by awarding suitable compensation as damages to cure the harm, the delay caused in the process remains a major disincentive for the consumer to approach such forums. Alternatively, criminal punishments imposed in civil countries such as China seemingly appear to be an efficacious remedy, but only suitable prevention mechanisms by the state can fully aid in ensuring a consumer-friendly environment.

1. China

The most relevant example of a civil law country that provides for seemingly stringent regulations in cases of consumer harm remains that of China. In 2008, the notorious sentencing of Sanlu officials to life imprisonment, for being associated with the illicit contamination of the drinking milk, enlarged the state's role in successfully prosecuting those involved in a deliberate attempt to harm its citizens[19], in what is considered as one of the most hazardous incidents relating to consumers' health across the globe. However, this incident raised the pertinent question of the primary liability of the state itself.

[19] Yungsuk Karen Yoo, *Tainted milk: What Kind of Justice for Victims' Families in China*, 33(2) Hastings Int'l & Comp. L. Rev. 555,557 (2010), available at https://repository.uchastings.edu/cgi/viewcontent.cgi?article=1745&context=hastings_international_comparative_law_review, last seen on 31/10/2020. Though a few young infants were directly affected by the contaminated milk, the strenuous state action in ensuring imprisonment for the responsible officers reflected the plight of the affected parents as concerned citizens; See Exim Brickell LLC v. PDVSA Services INC., 516 Fed. Appx. 742 (2013, Court of Appeals for the Eleventh Circuit). Although the appeals' court upheld the decision of the district court in awarding partial damages to the purchaser Bariven S.A., a Venezuelan state-owned company, as per the agreed contractual terms in a civil dispute which involved an inter-country milk trade, the judgment observed that after the discovery of melamine contamination in the milk, the Chinese government barged in the industry and prohibited further sale of the milk.

Even though the present Chinese law penalizes the violation of the hygiene standards with a heavy compensation[20] and exposes the offenders to criminal prosecution in cases of harm to human health[21], its critics remain skeptical of its implementation in punishing every stakeholder involved in the process.[22] They argue that since the state was the most crucial stakeholder in ensuring safety to its citizens, it was required to act preventively and maintain the consumers' confidence in the market.[23] To its contrary, the news reports suggest that the aggrieved parents of the deceased and infected infants demanded strict legal action against the state officials for having left uncontrolled the contaminated element used in the milk, and censured its offer of a meagre compensation.[24] Therefore, even the strictest liability regime prevalent in the country could not prove satisfactory to the aggrieved consumers.

2. United States of America

[20] Article 39, The Food Hygiene Law of the People's Republic of China 1982, (China).
[21] Article 41, The Food Hygiene Law of the People's Republic of China 1982, (China).
[22] Shumein Chen, *Sham or Shame: Rethinking the China's Milk Powder Scandal from a Legal Perspective*, 12 Journal of Risk Research 725,734 (2009), available at https://www.tandfonline.com/doi/pdf/10.1080/13669870902927251?needAccess=true, last seen on 28/10/2020; See Frederic Keck, *The Contaminated Milk Affair,* 2009/1 China Perspectives 88, 88 (01/04/2009), available at https://journals.openedition.org/chinaperspectives/4780, last seen on 30/10/2020.
[23] Zhe Chen, *The Melamine Milk Scandal and Its Implication for Food Safety Policy in China* 37 (2015) (Published Thesis, Oregon State University) available at https://ir.library.oregonstate.edu/concern/graduate_projects/2r36v0290, last seen on 30/10/2020. The thesis argued that since the contaminated element, namely Melamine, was not regulated by the state and could be accessed by anyone in the market, its potential to be misused increased significantly. As a result, the producers at Sanlu, misused the element in causing death of six infants and severely causing bodily injuries to over three lakh children. Due to the widespread damage, the consumers' faith in the dairy producers and retailers faced a downturn and the government was subjected to heavy criticisms by the consumer industry. For a detailed explanation of the state's significant omissions, See Yanjie Li, *The Aftermath of the Milk Scandal of 2008- The Challenges of Chinese Systemic Governance and Food Safety Regulation* 32 (2015) (Published Thesis, University of Warwick, School of Law) available at http://wrap.warwick.ac.uk/98045/1/WRAP_Theses_Li_2015.pdf, last seen on 29/10/2020.
[24] The Associated Press, *Parents in China's Milk Scandal Criticize Payout,* NBC News (31/12/2008), available at https://www.nbcnews.com/health/health-news/parents-chinas-milk-scandal-criticize-payout-flna1C9444094, last seen on 30/10/2020.

Although consumer rights are regulated under different State and Federal laws in the USA[25], in some cases, the latter pre-empts the former.[26] The central objective across different state laws, for instance, in California, is to highlight the liability of the manufacturers who provide implied warranties to the consumers.[27] In this jurisdiction, as opposed to the civil law of China, the consumers are ensured with a huge financial penalty in case of a breach of their rights[28]. Yet, the desired consequence of the deterrence effect upon the manufacturers remains far from reality.[29] While the state laws focus on

[25] Jacques Delisle & Elizabeth Trujillo, *Consumer Protection in Transnational Contexts,* 58 AM. J. COMP. L. 135, 136 (2010), available at https://scholarship.law.tamu.edu/cgi/viewcontent.cgi?article=1802&context=facscholar, last seen on 31/10/2020.

[26] Trans World Airlines v. Mattox., 712 E Supp. 99 (1989, U.S. District Court for the Western District of Texas)- The central issue in this litigation was whether the allegedly deceptive advertisements issued by the plaintiff can be regulated by issuance of an injunction order following the states' statutes above the Airline Deregulation Act of 1978 which was the prevalent federal law. The district court ruled in favour of the plaintiff by holding that the injunction order cannot be issued by the states under the purview of regulating the advertisements and the view was upheld by the Supreme Court in Morales v. Trans World Airlines, 504 U.S. 374 (1992, U.S. Supreme Court); See Colin Provost, *The Politics of Consumer Protection: Explaining State Attorney General Participation in Multi-State Lawsuits*, 59 Political Research Quarterly 609, 610 (2006), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2579833, last seen on 31/10/2020.

[27] Eileen K. Jenkins, *Consumer Protection: The Effect of the Song-Beverly Consumer Warranty Act*, 4 Pac. L. J. 183, 196 (1973), available at https://scholarlycommons.pacific.edu/cgi/viewcontent.cgi?article=1510&context=mlr, last seen on 01/11/2020; See Greenman v. Yuba Power Products Inc., 59 Cal.2d 57 (1963, Supreme Court of California)- The Supreme Court while awarding the damages to the plaintiff held, that a manufacturer need not give an express warranty of a product. It is sufficient for the plaintiff to show that he suffered damage out of a defective product which was placed on the market by the manufacturer knowing the purpose for which it was to be used. The Court held the manufacturer liable on the principle of strict liability.

[28] The Song-Beverely Consumer Warranty Act (1970) S. 1793.2(d) (United States).

[29] Shauhin A. Talesh, *The Privatization of Public Legal Rights: How Manufacturers Construct the Meaning of Consumer Law*, 43 Law & Society Review 527, 554 (2009), available at https://www.jstor.org/stable/40538715?seq=1, last seen on 01/11/2020; See The Song-Beverely Consumer Warranty Act (1970) S. 1794.2 (United States)- The primary reason of the failure to achieve the desired legislative intent behind this law was the evacuative route provided within it. The manufacturers used this provision to argue that they are not liable to the consumers as they adopted the third-party resolution process and furthermore, the buyer did not issue a notice as provided in the provisions. Even in cases where the buyer supplied the manufacturer with a notice, the latter's compliance of paragraph (2) of subdivision (d) of Section 1793.2 will relieve him from its civil penalty towards the buyer. Paragraph (2) of subdivision (d) of Section 1793.2 is reiterated herein: "*If the manufacturer or its representative in this state is unable to service or repair a new motor vehicle, as that term is defined in paragraph (2) of subdivision (e) of Section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle in accordance with subparagraph (A) or promptly make restitution to the buyer in accordance with subparagraph (B). However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle.*" Thus, the maximum relief that a buyer could receive is that of restitution of his defective products from the manufacturer.

high compensation, some of the federal laws focus on prohibiting the "unfair trade practices" causing harm to the consumers.[30] Even though the anti-competitive measures are duly regulated, heavy compensations fail in ensuring consumer satisfaction in the country.[31]

III. INCORPORATION OF CRIMINAL LIABILITY UNDER THE CONSUMER PROTECTION ACT, 2019- A STEP AHEAD?

With a significant increase in foreign investment in the consumer goods industry of the Indian economy and owing to increasing demand, the production of goods has increased proportionately,[32] leading to a rise in the possibility of manufacturing errors and irregularities. Since consumers are the ultimate desired recipients of the goods and services[33] and their satisfaction is of paramount importance in India's economic growth,[34] the central consumer protection law has been revamped with provisions relating to criminal prosecution[35] and prompt deliverance of justice, with the fundamental assumption that the institutional mechanism will adequately serve the consumers.

The Indian Parliament passed the Consumer Protection Act, 2019 on 6th August, 2019 with the 'swift executive remedy'[36] of criminal punishment. Besides the provisions for mediation[37] and a central authority to regulate consumer protection,[38] the Act provides for prosecution for both an act

---

[30] 15 U.S.C. S. 52 (United States).
[31] Ibid, at 29.
[32] *Indian Consumer Durables Industry Analysis*, Indian Brand Equity Foundation, available at https://www.ibef.org/industry/consumer-durables-presentation, last seen on 03/11/2020.
[33] Rameshchandra Kachardas Porwa v. State of Maharashtra, (1981) 2 SCC 722. (The Supreme Court held: "*The marketing of agricultural produce is not con-fined to the first transaction of sale by the producer to the trader but must necessarily include all subsequent transactions in the course of the movement of the commodity into the ultimate hands of the consumer, so long, of course, as the commodity retains its original character as agricultural produce.*").
[34] Sanjeev Saxena & Mayank Jindal, *Customer Satisfaction on Banking Services in Indian Growing Economy Nainital District,* 9 International Journal of Engineering and Management Research 74, 74 (2019), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3479582, last seen on 03/11/2020.
[35] The pre-requisites of criminal liability along with its socio-legal implications in the consumer protection law are discussed in the next section.
[36] *Landmark Consumer Protection Bill, 2019 gets Parliamentary approval*, Press Information Bureau, available at https://pib.gov.in/PressReleseDetailm.aspx?PRID=1581384, last seen on 03/11/2020.
[37] S. 37, The Consumer Protection Act, 2019.
[38] Ibid, S. 10.

and an omission that leads to different forms of injuries.[39] The Parliamentary Standing Committee on Food, Consumer Affairs and Public Distribution observed that the existing legal framework does not offer strong protection to the consumers and has remained unsuccessful in generating sufficient deterrence for the wrongdoers.[40]

The United Nations (**"UN"**) Guidelines[41] stipulate that the maximum penalty, in cases of defective/hazardous products, is their repair and/or replacement with its equivalent, or adequate compensation, if the former is not feasible within a reasonable time. While the guidelines are mere recommendations and non-binding on the nation-states,[42] it is argued that the criminal sanctions will serve no purpose in disputes where no harm is caused to the consumers.[43] Although there are no uniform standards for adopting the nature of liabilities at the global level, research in the field of consumer protection suggests that increased financial penalty will be the most appropriate relief for addressing a consumer's grievance in the Indian jurisdiction and the criminal prosecutions should be saved for the gravest of crimes and repeat offenders.[44]

---

[39] Ibid, S. 88.

[40] Standing Committee on Food, Consumer Affairs and Public Distribution, Lok Sabha, *The Consumer Protection Bill, 2015*, 2016. (The Committee noted that eminent personalities, as brand ambassadors, endorse products which is appealing to the consumers. As a result, several unrealistic claims are made by the promoters of a product which, seemingly impossible, are relied upon by the consumers in their daily lives. Thus, the Committee recommended that there should be a strict deterrent action to regulate the misleading advertisements as well as fixation of liability on the endorsers/celebrities). The term 'wrongdoers' is further discussed in the forthcoming section; See Ministry of Health and Family Welfare, Government of India, *Report of the Expert Committee on a Comprehensive Examination of Drug Regulatory Issues including the problem of Spurious Drugs*, available at https://pharmaceuticals.gov.in/sites/default/files/MashelkarCommitteeReport.pdf, last seen on 04/11/2020. (The Expert Committee observed that there should be severe punitive action on the criminal acts of the manufacturers and distributors of drugs, which can potentially lead to mortality or a threat to the life of innocent consumers).

[41] U.N. General Assembly, *United Nations Guidelines for Consumer Protection*, Res. 39/248, 12, available at https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf, last seen on 04/11/2020.

[42] David Harland, *Implementing the Principles of the United Nations Guidelines for Consumer Protection*, 33 Journal of the Indian Law Institute 189,196 (1991), available at http://14.139.60.114:8080/jspui/bitstream/123456789/17362/1/005_Implementing%20the%20Principles%20of%20the%20United%20Nations%20Guidelines%20for%20Consumer%20Protection%20%28189-245%29.pdf, last seen on 04/11/2020.

[43] See section 'C'.

[44] *Best Practices for Consumer Policy: Report on the Effectiveness of Enforcement Regimes*, The University of Manchester, available at https://www.research.manchester.ac.uk/portal/en/publications/best-practices-for-

1. Issue of Jurisdiction: A Precursor in Establishing Liability

There has been a noticeable shift in the consumer markets with foreign brands acquiring a substantial portion in the country's domestic market.[45] Furthermore, the local consumers appreciate the products manufactured in other countries,[46] which raises the pertinent issue of jurisdiction in a case that involves undesirable goods or services received by a particular consumer in his jurisdiction from a specified country. These transactions often occur through the internet network, wherein the consumers are tempted by products in a foreign territory, leading to transnational business.[47] In this regard, the e-commerce rules recently enacted by the Indian Parliament remain fairly comprehensive. The said rules are applicable to nearly every entity that deals in e-commerce[48] and cover all goods and services transacted through such means.[49]

The basic tenets of international law provide that the laws formed in a nation-state apply within its geographical boundaries.[50] Generally, a similar principle applies to the criminal law of a country.[51] But since the Indian criminal law applies extraterritorially, it implies that, if any person outside Indian jurisdiction commits a punishable offence under any Indian law,[52] he can be tried within the realms of the Indian jurisdiction.

---

consumer-policy-report-on-the-effectiveness-of-enforcement-regimes(fe0b58d3-d8ac-452f-b118-8e9eeaede8d5).html, last seen on 04/11/2020.

[45] S.L. Rao, *India's Rapidly Changing Consumer Markets*, 35(40) Economic & Political Weekly 3570, 3571 (2000) available at https://www.jstor.org/stable/pdf/4409803.pdf?refreqid=excelsior%3A6541163c68fab77f5c1bd2e3534de577, last seen on 04/11/2020.

[46] Robert D. Schooler & Don H. Sunoo, *Consumer Perceptions of International Products: Regional vs. National Labelling*, 49(4) WILEY 886, 887 (1969) available at https://www.jstor.org/stable/pdf/42859967.pdf?refreqid=excelsior%3A2f80a22fa3245ab499362076554fabec, last seen on 04/11/2020.

[47] Lee A Bygrave & Dan Svantesson, *Jurisdictional Issues and Consumer Protection in Cyberspace: The View from Down Under,* 12 Cyber L. Res. (2001) available at http://www.austlii.edu.au/au/other/CyberLRes/2001/12/, last seen on 03/11/2020.

[48] Rule 3(b), Consumer Protection (E-Commerce) Rules, 2020.

[49] Ibid, Rule 2(a).

[50] John Goldring, *Globalization and Consumer Protection Laws*, 8 Macquarie L.J. 79, 83 (2008) available at http://www.austlii.edu.au/au/journals/MqLawJl/2008/6.pdf, last seen on 04/11/2020.

[51] *Consumer Protection, the Nation-State, Law, Globalization, and Democracy*, Wiley Online Library, available at https://onlinelibrary.wiley.com/doi/full/10.1111/j.1083-6101.1996.tb00057.x, last seen on 04/11/2020.

[52] S. 3, The Indian Penal Code, 1860 (The Indian Penal Code permits the trial of any person who is liable under Indian law by committing an offence outside India); See Rule

2. Who is Liable?

Before the enactment of the new consumer protection law, the Indian courts acknowledged the prevalent rule of trade practice through the interpretation of similar consumer protection laws.[53] The Courts remarked on the difference in bargaining power between the consumers and the traders, observing that the dominant capacity of the traders is often to the detriment of the consumers.[54] Moreover, the use of anti-competitive practices by several dominant market holders to manipulate consumer choices was also analyzed in detail,[55] which raises the question of imposing liability on the concerned stakeholders.

---

2 (2), Consumer Protection (E-Commerce) Rules, 2020 (The rule is relevant in the context of e-commerce transactions. Although the term is not specifically defined, it broadly covers the online medium which is used for many business activities including sale transactions. The rule covers any entity which is dealing in e-commerce transactions and does not have an establishment in India).

[53] Lakhanpal National Limited v. M.R.T.P. Commission, (1989) 3 SCC 251. (The Supreme Court interpreted S. 36A of the Monopolies and Restrictive Trade Practices Act, 1969 (now repealed), which defined 'unfair trade practices'. The court opined "*When a problem arises as to whether a particular act can be condemned as an unfair trade practice or not, the key to the solution would be to examine whether it contains a false statement and is misleading and further what is the effect of such a representation made by the manufacturer on the common man? Does it lead a reasonable person in the position of a buyer to a wrong conclusion? The issue cannot be resolved by merely examining whether the representation is correct or incorrect in the literal sense. A representation containing a statement apparently correct in the technical sense may have the effect of misleading the buyer by using tricky language. Similarly, a statement, which may be inaccurate in the technical literal sense car, convey the truth and sometimes more effectively than a literally correct statement.*"

[54] Philips Medical Systems (Cleveland) v. Indian MRI Diagnostic and Research Limited and Another, (2008) 10 SCC 227. Markandey Katju J. held "*It is a settled principle of interpretation that when an amendment is made to an Act, or when a new enactment is made, Heydon's mischief rule is often utilized in interpreting the same. Applying this principle, we are of the opinion that Section 36A was inserted in the MRTP Act because there was no provision therein for protection of consumers against false or misleading advertisement or other similar unfair trade practices. It is well-known that in trade suppliers often have a dominant bargaining position, and the bargaining power in the market is often weighed against the consumer. In this situation, it was realized by Parliament in its wisdom when it inserted Section 36A that the public must be prevented from being made victims of false representations about the products sold, even though it may have no adverse effect on competition*."
See Excel Crop Care Limited v. Competition Commission of India, (2017) 8 SCC 47, C. Venkatachalam v. Ajitkumar C. Shah and Ors., (2011) 12 SCC 497.

[55] Telefonaktiebolaget LM Ericsson (PUBL) v. Competition Commission of India, 2016 CompLR 497 (Delhi); In re: Matrimony.com Limited v. Google LLC, Case No. 07 of 2012, (Competition Commission of India, 08/02/2018). Although the Director General who conducted the investigation, found the dominant player, Google in this case, in abuse of its dominant position, by denying the market access to its rival competitors, thereby seriously affecting the consumer choices, the Commission overruled these findings owing to a sheer lack of evidence of any loss or negative influence caused by the firm. It held that a mere position of dominance is not a concern, but the Commission should intervene when the players adopt practices which hamper new innovation or reduce consumer welfare.

The broad definition of 'product seller' under the Act excludes a person who is not a retailer.[56] By deduction, a shop retailer will be covered under the definition. Assuming that there is no express warranty by a retailer, his liability may accrue if the manufacturer cannot be served or is exempt from Indian law,[57] barring the exceptions.[58] In a given case, the retailer may be exempted for acting in good faith.[59] In a proceeding for product liability, a manufacturer can be sentenced to imprisonment for a given period depending upon the nature of the harm suffered by the consumer, even if he proves the absence of negligence or fraudulence in making an express warranty related to a product.[60] This raises a pertinent question: whether the pre-requisites of criminal liability are diluted by the application of different provisions of the Act? The answer can be traced in the next section.

3. Criminal Liability: An Ineffective Tool for Consumer Protection

As highlighted previously, the erstwhile consumer law addressed the consumer grievances by entitling him/her with either a replaced good or suitable compensation, or any other relief as provided therein by an order of the quasi-judicial forums.[61] The Act, in addition to attending to the consumer grievances, enables the consumer to pursue compensation claims for product liability and also provides for criminal litigation against the stakeholders with a corrupt mind.[62]

---

[56] S. 2 (37) (c), The Consumer Protection Act, 2019.
[57] Ibid, S. 86 (d); See Ibid, 2 (20).
[58] Ibid, S. 87.
[59] Ibid, S. 98.
[60] Ibid, S. 84 (2).
[61] Supra 15.
[62] Supra 43; See Mathias Schuz, *Virtue Ethics, Corporate Identity and Success*, 105,106 in *Intrinsic CSR and Competition Doing Well amongst European SMEs* (Walter Wehrmeyer, Mara Del Baldo & Stephanie Looser, 1st ed., 2020). (This article discusses the infamous 'dieselgate scandal' wherein the top executives of the German company Volkswagen, admitted to the U.S. authorities that the company installed 'defeat devices' in cars, which became active while a vehicle is subject to testing and activated equipments, which reduced the emissions of Nitrogen Oxides. Whereas in the regular course of driving the emissions were large in numbers. Apart from achieving its multibillion objectives of dominating the U.S. market through adopting illegal means, the vehicle manufacturer "duped" the consumers by breaching their faith and confidence trusting the brand).

Common prudence suggests that there are multiple reasons to attribute liability on manufacturers, sellers, retailers, and distributors amongst others, as provided under the Act. Primarily, a person aggrieved from suffering an unmediated consequence by the use of a product manufactured by a particular entity in the market, would seek a recourse against that particular entity based on the reason of trust.[63] Secondly, these entities are well-off in the market to securitize their own products.[64] In other words, their market stability accrues from the financial independence which they can utilize to prevent any mishap with a prepared product. Their liability is often vested in civil law, though some jurisdictions have taken a leap ahead in imposing criminal sanctions. However, it's important to analyze the impact of criminal law in society.

As opposed to other laws, the central objective of criminal law as has been aptly described by Joshua Kleinfeld, Professor at Northwestern Pritzker School of Law, is to withhold a community's normative social order.[65] In other words, with the operation of criminal law, a society maintains the ethical standards of living which form the basis of a common order. This inherent social discipline is maintained by the deterrence of a crime's natural consequence, punishment.[66]

Now, let us look at the procedures for initiating criminal actions under different consumer-oriented laws and the interplay between the imposition of criminal punishments and consumer protection. In light of the Covid-19 pandemic, several experts advised people to adopt caution and strictly

[63] Although there arise civil breaches of contract between the consumer-retailers and the consumer-manufacturers above the principle of privity of contract for which a consumer can claim compensation under civil law, this paper's scope covers only the criminal liability.

[64] Fleming James, *General Products-Should Manufacturers be Liable without Negligence*, 24 Tenn. L. Rev. 923, 925 (1997) available at https://digitalcommons.law.yale.edu/cgi/viewcontent.cgi?article=4176&context=fss_papers, last seen on 08/11/2020.

[65] Joshua Kleinfeld, *Reconstructivism: The Place of Criminal law in Ethical Life*, 129 Harv. L. Rev. 1485, 1489 (2016) available at https://harvardlawreview.org/wp-content/uploads/2016/04/1485-1565-Online.pdf, last seen on 05/11/2020.

[66] S. W. Dyde, *Hegel's Conception of Crime and Punishment*, 7 The Philosophical Review 62, 64 (1898) available at https://www.jstor.org/stable/pdf/2175548.pdf, last seen on 05/11/2020.

avoid the use of fake drugs.[67] The reasoning behind the advice was simple: to prevent any adverse effects on their health. The law applicable to drugs in India imposes fines and a punishment stipulating different years of imprisonment on importers, manufacturers, sellers, and distributors of drugs, which are not in accordance with the other provisions of the Act.[68] The criteria for framing charges is the likelihood of a person's death or harm as stipulated in the corresponding provision.[69] Though, the law was drafted during colonial times and subsequently subjected to multiple amendments by the Indian Parliament, the provision for a special court was inserted in the year 2009.[70] This indicates that the lawmakers designed a separate forum for prosecution of the alleged offenders to ensure faster conduct of the trial in public interest.

Similarly, to ensure food safety and avoid any degradation in the food products, provisions related to imprisonment were incorporated in a separate legislation.[71] The punishment was based on the harm caused by the degradation ranging from no injury to death of a person,[72] similar to the protection accorded by the present consumer protection law. But the initiation of the procedure has been clearly defined. Under the food safety law, a food safety officer may collect a sample of the product, which in his opinion is required for any proceedings under the law, and submit it to the food analyst,[73] who then prepares a report and on finding irregularities (if any) in the sample, sends the report to the designated officer.[74] In cases where the sample is found to be in contravention of the standards and is punishable with imprisonment,[75] the designated officer shall recommend prosecution to the Commissioner, who initiates the proceedings against the

[67] *Beware of Fake Anti-COVID Drug Ads: Experts*, National Herald (04/08/2020), available at https://www.nationalheraldindia.com/india/beware-of-fake-anti-covid-drug-ads-experts, last seen on 05/11/2020.
[68] Ss. 13 & 27, The Drugs and Cosmetics Act, 1940.
[69] S. 320, The Indian Penal Code, 1860.
[70] Supra 68, S. 36AB.
[71] S. 59, Food Safety and Standards Act, 2006.
[72] Ibid.
[73] Ibid, S. 38 (1) (c).
[74] Ibid, S. 40 (2).
[75] Ibid, S. 42 (3).

alleged defaulters in a court of law through the designated officer and the food safety officer.[76]

Notably, in the aforementioned examples, either an inspector or a food safety officer may highlight the irregularities in the products through an inspection that could ultimately lead to the punishment of the responsible persons, but the Act does not clarify the procedure for initiating criminal prosecution. Although it can be inferred that prosecution can be initiated through the District Commission, based either on a complaint regarding a defective good,[77] or a derogation of safety standards in place,[78] this aspect needs clarification from government sources, which is presently unavailable to the authors. Furthermore, the Act is a mere reiteration and compilation of the existing laws regarding consumable goods.[79] Even though the provisions are to act in addition to the existing laws,[80] in our view, it adds no substantial provisions including the provisions for prosecution.

Reports from other common law jurisdictions suggest that, while government policies should prioritize consumer welfare rather than ensuring punishment to the traders, a huge compensation can deter the affluent manufacturing corporations.[81] A similar stance has recently been adopted by the Indian legislature. For example, in the automobile industry, the failure to adhere to the basic standards required for the construction of automobiles attracts a maximum penalty of one crore INR.[82] It is argued that the Indian consumer law should emphasize achieving the utmost welfare of the consumers and the state should adhere to preventive measures in order to ensure maximum consumer welfare, especially in the automobile industry. For example, the Central Government is statutorily empowered to recall such vehicles which can cause a potential loss to either

[76] Ibid, S. 42(4).
[77] Supra 37, S. 38 (2)(c).
[78] Ibid, S. 2 (6)(v).
[79] S. 16, The Prevention of Food Adulteration Act, 1954.
[80] Supra 67.
[81] *The Role of Prosecution in Consumer Protection*, The Australian Federation of Consumer Organizations INC., available at https://www.anu.edu.au/fellows/jbraithwaite/_documents/Articles/The%20role%20of%20prosecution%20in%20consumer%20protection.pdf, last seen on 06/11/2020.
[82] S. 182A (2), Motor Vehicles (Amendment) Act, 2019; See Rule 93, The Central Motor Vehicle Rules, 1989.

the environment or any other person on road, including the drivers.[83] Since the agencies certifying the compliance of the manufacturing standards are statutorily empowered and responsible to the government,[84] it shall act as a more proactive stakeholder in preventing any mishap with the consumers of the automobile industry.

Another criticism of the imposition of criminal sanctions in the continuously evolving automobile industry is that with the advancement of technology, it may be entirely impossible for the prosecution to prove, without doubt, that a particular manufacturer or distributor is at fault for producing a defective product.[85] Moreover, the Act stipulates that imprisonment shall also be levelled in cases where adulteration in a product does not cause any injury.[86] In such cases, there is no harm caused to the people at large, thus the gravity of punishment has to be likewise. It is suggested that a heavy compensation of 50 lakhs INR (or above) to the consumer along with a heavy penalty on the manufacturers and sellers, is required to be provisioned in the Act. In a few jurisdictions such as the USA, a fault-based liability is applicable, as per which, a manufacturer could be held under a deemed liability for designing a more risk-prone product (considering its foreseeable risks) that could be avoided by a less-risk-posing product.[87] But scholars have criticized its application on the grounds that the plaintiff consumers will not be able to successfully refute the design of the alleged products and produce a more effective product due to the lack of know-how of the industry standards.[88]

A deeper analysis of the Act reveals that the liability imposed therein, is in the nature of a no-fault liability which would be strictly applicable over the

[83] Ibid, S. 110A(1)(a); Supra 37, S. 20 (a) (The power to recall unsafe or hazardous products has been vested with the Central Consumer Protection Authority which has been established by the Central Government with effect from 24th July, 2020).
[84] Rule 126, The Central Motor Vehicle Rules, 1989.
[85] Thanuja Rodrigo, *Enhancing Sri Lankan Consumer Protection Through Consumer Guarantees and Strict Liability for Defective Goods-Lessons from the Australian Model of Consumer*, 21 Competition & Consumer Law Journal 165, 177 (2013) available at https://core.ac.uk/download/pdf/143889842.pdf, last seen on 07/11/2020.
[86] Supra 37, S. 90 (1) (a).
[87] Richard C. Ausness, *Product Liability 's Parallel Universe: Fault-Based Liability Theories and Modern Products Liability Law*, 74 Brooklyn Law Review 635, 654 (2009) available at https://brooklynworks.brooklaw.edu/cgi/viewcontent.cgi?article=1274&context=blr, last seen on 07/11/2020.
[88] Ibid, at 656.

manufacturers and sellers, predominantly. The liability accrues owing to the presumption that a product released in the market should be devoid of any potential harming element, and in case it is found to be harmful, the stakeholders are to be strictly held liable.[89] With the advent of criminal prosecutions in the Act and the standard of proof naturally being increased to that of 'beyond reasonable doubt', the pertinent question of successfully proving the guilt of the charged within a reasonable time needs deliberation. The authors are skeptical that long-run criminal trials would, in any circumstance, add to the relief of the consumers.

IV. CONSUMER PROTECTION FROM MISLEADING ADVERTISEMENTS

With the objective of effectively combating the issue of food and health safety in the country, the regulatory authorities resorted to cogent steps in order to ensure due prevention of any misleading information to the consumers and quick redressal in cases of losses suffered by such information.[90] The sincerity of their efforts became more evident when the government issued cautionary orders stipulating stringent directions to prevent the spreading of fake information.[91] Even the courts played a proactive role in preventing big corporations from misleading the public at large.[92]

---

[89] Alani Golanski, *Paradigm Shifts in Products Liability and Negligence*, 71 University of Pittsburg Law Review 673,682 (2010) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1960619, last seen on 07/11/2020.

[90] *Food Safety and Standards Authority of India (FSSAI) Signs Mou with ASCI to Address Misleading Advertisements in the F&B Sector,* FSSAI, available at https://fssai.gov.in/upload/uploadfiles/files/Press_Release_MOU_ASCI_28_06_2016.pdf, last seen on 07/11/2020.

[91] *Order F. No. Z 25023 /09/2018-2020-DCC (AYUSH),* Ministry of Ayurveda, Yoga & Naturopathy, Unani, Siddha and Homoeopathy (AYUSH), available at https://www.ayush.gov.in/docs/121.pdf, last seen on 07/11/2020.

[92] Arudra Engineers Private Limited v. Patanjali Ayurved Limited, O.A.No.258 of 2020 and A.Nos.1532 & 1533 of 2020 in C.S.No.163 of 2020 (Madras High Court, 06/08/2020). Even though the plaintiffs filed a suit for trademark infringement against the defendants and the relief of injunction, as prayed was granted by the single bench of the High Court, the court on paragraph 126 observed, *"As stated above, there is no evidence that it is a cure for Coronavirus. Then most certainly coinage of the term 'Coronil' by the defendants is without due cause and in fact that intention to mislead the general public. They can always market the products, but they should be honest and declare that it is not a direct cure for Coronavirus, but rather an immunity booster. Usage of the word 'Coronil' and usage of the common pictorial image of Coronavirus are to put it very mildly, misleading and cannot be permitted and is therefore prohibited*". The order passed by the single bench disallowing the defendant Patanjali to continue using the name 'Coronil' was stayed by operation of an order passed by a division bench of the same high

The incorporation of a separate and wide definition of 'misleading advertisement'[93] in the Act as opposed to the issue being regulated as an unfair trade practice in the erstwhile legislation,[94] depicts a clear legislative intent to curb the exponential rise in the deceptive practices adopted by market competitors, which negatively influence consumer choices.[95] Moreover, the Act penalizes an incorrect or concealed narration of true facts, either through oral or written communications by a manufacturer or a service provider, with imprisonment extending up to two years and a liability amount extending up to fifty lakhs INR, in case of every subsequent offence.[96] These penalties can be levied by the statutorily formed Central Authority if, based on a complaint, it is necessary to do so and it appears to the Central Authority that a *prima facie* case exists against the manufacturer or an endorser with regards to a false or a misleading advertisement.[97] Here, it is argued that such grave penalties including criminal sanctions seem to be justified upon the manufacturers and dealers as their *mala fide* intention is patently reflected either through unreal promises or incorrect facts.

During 2008-15, the Volkswagen group in America claimed that its vehicles emitted low levels of nitrogen oxides, a major pollutant for environmental pollution than the permitted levels under the country standards. Its extensive advertising resulted in two separate actions initiated by the government's environmental agency and the justice department in the year 2016.[98] The evident reason was the sale of nearly five lakh fifty thousand vehicles across the country with emissions multiple times higher than existing standards. As a result, there were two major consequences. Firstly,

court and the Supreme Court of India refused to interfere with the judgment passed by the Division bench. In a case where the respondents were deceived regarding the affiliation of their prospective college, the Court also ordered for punitive damages, compensatory relief and necessary litigation costs to the aggrieved parties; See Buddhist Mission Dental College and Hospital v. Bhupesh Khurana, (2009) 4 SCC 484.

[93] Supra 37, S. 2 (28).

[94] Supra 1, S. 2 (1) (r) (2).

[95] Pushpa Girimaji, *Misleading Advertisements and Consumer*, 1 (1st ed., 2013).

[96] Supra 37, S. 89.

[97] Ibid, S. 21 (2).

[98] *FTC Charges Volkswagen Deceived Consumers with Its "Clean Diesel" Campaign*, Federal Trade Commission, available at https://www.ftc.gov/news-events/press-releases/2016/03/ftc-charges-volkswagen-deceived-consumers-its-clean-diesel, last seen on 08/11/2020.

consumers on a large scale were duped regarding the emission quality of the vehicles and, secondly, there was more damage to the environment than permissible under the laws.[99]

Therefore, it seems clear that misleading advertisements are willfully adopted tactics of the manufacturers or the endorsers in order to illegally gain an advantage by causing losses to the consumers. Criminal sanctions, thus, should be imposed on such corrupt and deceiving market influencers.

PART- II

V. PRODUCT LIABILITY UNDER CONSUMER PROTECTION ACT, 2019

1. The Early Origins of Product Liability

One of the earliest judicial precedents taught in the field of product-based liability remains that of *Carlill* v. *Carbolic Smoke Ball Co* ("**Carlill**").[100] In the time of an influenza epidemic in England, the case involved the sale of a "Smoke Ball" said to be effective in preventing the influenza flu. The advertising for the product promised a hundred pounds reward to anyone who used the ball as directed and still caught the flu. Carlill (the consumer) purchased the smoke ball and used it as directed but still managed to contract the influenza flu. In this case, the major question was whether a contractual relationship was established between Carlill (the consumer) and the Company, based on the advertisement alone.[101] Aside from the advertisement, there was no interaction between the Company and Carlill i.e., she was a "consumer" who purchased the smoke ball being sold in the retail market to anyone who would purchase it. Could the company be held

[99] Daniel Attas, *What's Wrong with "Deceptive" Advertising?*, 21 Journal of Business Ethics 49, 56 (1999) available at https://www.jstor.org/stable/pdf/25074154.pdf?refreqid=excelsior%3Ab2eaf58d74b558316f2adb1e499d8aa0, last seen on 09/11/2020 (By loss, the authors signify that moral culpability of the advertisers in hurting the sentiments of people who rely on such eye catching advertisements, and even if no personal/financial loss is suffered, the moral conscience of people in voluntarily making a choice does not remain independent and is not based on real facts and circumstances).

[100] Carlill v. Carbolic Smoke Ball Company, EWCA Civ 1(1892, Court of Appeal)

[101] Ibid, Bowen, L.J. "…It is also contended that the advertisement is rather in the nature of a puff or a proclamation than a promise or offer intended to mature into a contract when accepted. But the main point seems to be that the vagueness of the document shews that no contract whatever was intended."

accountable for promises made to prospective consumers in the advertisement, or was it a mere case of advertising gimmick?[102]

The Court held that a contractual relationship had in fact been established between the two parties. The fundamental requirements of a contract were fulfilled and there was a meeting of minds of the parties.[103] It meant that a consumer could be protected against a misleading and false advertisement and foundations for consumer protection were laid.[104] Therefore, while the case is significant from the perspective of contract law, it is also a significant early example relevant to consumer protection law, and a case from 1892 which is still good law in the United Kingdom being cited as recently as 2008.[105]

In Tort Law, *Donoghue* v. *Stevenson*[106] ("**Donoghue**") is another case that helped lay the foundations for the law of product liability. The case originated in Scotland where Ms. May Donoghue consumed a bottle of ginger beer and, while drinking it, noticed the presence of a dead snail inside the bottle. Falling sick from the consumption of the beverage, she brought an action against Stevenson (the manufacturer) in a court of law. It was claimed by May that the manufacturer, Stevenson, had a duty of care to ensure that the product was safe to consume (i.e., did not contain poisonous dead snails inside them).[107] May could not establish, however, that she had a contractual relationship with Stevenson or, in the absence thereof, that there was any legal duty of care owed by the manufacturer of

[102] Supra 100.
[103] Supra 100. "I cannot picture to myself the view of the law on which the contrary could be held when you have once found who are the contracting parties. If I say to a person, "If you use such and such a medicine for a week, I will give you 5l.," and he uses it, there is ample consideration for the promise."
[104] See Catherine Baksi*, Landmarks in Law: Louisa Carlill and the Fake Flu Cure,* The Guardian (25/6/2020), available at https://www.theguardian.com/law/2020/jun/25/landmarks-in-law-louisa-carlill-and-the-fake-flu-cure, last seen on 14/11/2020; Clive Coleman, *Carbolic Smoke Ball: Fake or Cure?,* BBC (5/11/2009), available at http://news.bbc.co.uk/2/hi/business/8340276.stm, last seen on 14/11/2020.
[105] Soulsbury v. Soulsbury EWCA Civ 969 (2007, Court of Appeal).
[106] A.C. 562 (1932, House of Lords); See Martin R. Taylor QC, *Mrs. Donoghue's Journey,* Scottish Law Reports, available at https://www.scottishlawreports.org.uk/resources/donoghue-v-stevenson/mrs-donoghue-s-journey/#one, last seen on 14/11/2020.
[107] Ibid. Ms. Donoghue's position is well explained in Martin R. Taylor QC.

a product to its consumers.[108] She also failed to establish that there was any negligence on the part of Stevenson in manufacturing the ginger beer.[109] Therefore the case failed in the first two instances.

This meant that the corpus of law and precedent as it stood at the time stood against May's path for legal remedy. In that regard, Lord Atkin's famous reasoning in *Donoghue* did not rest upon strictly legal principles and precedents but upon a conception of morality which might even seem vague in today's day and age.[110] His reasoning was based upon the moral principle that a person ought not to do harm to his neighbor which, when translated into legal terms, became the famed 'Neighbor Principle'.[111] He stated,

> The rule that you are to love your neighbor becomes in law, you must not injure your neighbor: and the lawyer's question, who is my neighbor? receives a restricted reply. You must take reasonable care to avoid acts or omissions which you can reasonably foresee would be likely to injure your neighbor. Who, then, in law, is my neighbor? The answer seems to be—persons who are so closely and directly affected by my act that I ought reasonably to have them in contemplation as being so affected when I am directing my mind to the acts or omissions which are called in question.[112]

So, the House of Lords went above and beyond existing law and precedent to give relief to the appellant. It meant extending the duty of care to an extent never recognized by courts before. The judgement remains a

---

[108] The failure to establish a contractual relationship was the reason that the case failed in Scottish Court of Appeal; See Ibid Martin R. Taylor QC. The reasoning was based upon the finding in Mullen v. A.G. Barr & Co. Ltd.; M'Gowan v. Barr & Co. S.C. 461 (1929, Court of Session) or the "mouse in the bottle case". That case was similar in fact to the present case, however in the absence of legal duty being established the case was ruled in favour of the manufacturers.

[109] Ibid. "The law of both countries appears to be that, in order to support an action for damages for negligence, the complainant has to show that he has been injured by the breach of a duty owed to him in the circumstances by the defendant to take reasonable care to avoid such injury. In the present case we are not concerned with the breach of the duty…"

[110] The moral and religious principles on which the Neighbour Principle was based is discussed in detail in Richard Castle, *Lord Atkin and the Neighbour Test: Origins of the Principles of Negligence in Donoghue v. Stevenson,* 7(33) Ecclesiastical Law Journal 210, 210 (2003), available at https://www.cambridge.org/core/journals/ecclesiastical-law-journal/article/lord-atkin-and-the-neighbour-test-origins-of-the-principles-of-negligence-in-donoghue-v-stevenson/CBCF36E5E5998EB037E232CAAE3317ED, last seen on 14/11/2020.

[111] Ibid.

[112] Supra 110.

landmark judgement in the law of tort. The first case found a contract where there was essentially none, and the second case did away with the requirement for a contract altogether.[113] In practical terms, both of these advanced the state of law at the time to make it simpler for consumers to get relief, when they were harmed by products they had purchased. Advancement of the state of law meant that more consumers could now approach the Courts for relief.[114] Therefore, these were important early steps in founding the law of consumer protection as it is known today. This advancement has also been linked to the technological revolution of the industrial revolution.[115]

2. The Development of the Doctrine of Strict Liability

In the USA, case law pronouncements further extended the protection of consumers as the doctrine of strict liability emerged in the 20th century. A combination of factors leading to the unique development of American consumer capitalism and changing social relations between the home and the manufacturers of goods is said to have necessitated the advancement of law to match it.[116] In the case of *Escola* v. *Coca Cola Bottling Co*[117] ("**Escola**"), the doctrine of strict liability for manufacturers in case of harm flowing from defects was pronounced. Arguably, the principle given in this case was equally as revolutionary as the one in *Donoghue*, and as time went on it was more or less directly incorporated into consumer protection laws around the world, including in India.[118]

Justice Traynor opined:

---

[113] F. Ferrari, *Donoghue v. Stevenson's 60th Anniversary,* 1(1) Annual Survey of International & Comparative Law 81, 84 (1994), available at https://digitalcommons.law.ggu.edu/annlsurvey/vol1/iss1/4/ last seen on 14/11/2020.
[114] Ibid, at 89. The case continues to "breathe new life" into the law of torts.
[115] As the means of production changed, newer forms of injury necessitated new legal pathways to remedy. The advancement of Tort Law was thus linked to the advancement of technology; Donald G. Gifford, *Technological Triggers to Tort Revolutions: Steam Locomotives, Autonomous Vehicles and Accident Compensation,* Journal of Tort Law (Forthcoming, 2018) available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3090636, last seen on 14/11/2020.
[116] Supra 17, at 50. With the industrial revolution and development of railways, manufacturers of goods became remote from the home i.e., people no longer relied upon local handicrafts but on manufacturers whose factories were often located far away.
[117] Also known as the case of exploding glass bottles. Escola v. Coca-Cola Bottling Co. 24 C2d 453 (1944, Supreme Court of California).
[118] See the part on "Strict Liability Principles- An Effective Protection".

> In my opinion it should now be recognized that a manufacturer incurs an absolute liability when an article that he has placed on the market, knowing that it is to be used without inspection, proves to have a defect that causes injury to human beings.[119]

Twenty years later, the principle was tempered down from an 'absolute liability' to a 'strict liability' in *Greenman* v. *Yuba Power Products*[120] ("**Greenman**") by the very same Justice Traynor. In other words, the manufacturers will strictly bear the burden of liability but they would not be made liable under the garb of absolute liability.[121] The purpose of the principle of law established in *Escola* was clear: that the liability would have to be borne by manufacturers in case harm flows from their products. The reasoning given was based on both humanistic and economic concerns.[122] Firstly, it was noted that the consumers are in a considerably weaker position when it comes to inspecting the goods and checking for their safety before they are purchased. It is the responsibility of the manufacturers to ensure the safety of the articles, and that responsibility must be assumed by them at a higher degree than retailers and other intermediaries, even if it is not them who perform the task of checking, inspecting, and ensuring the safety of the products.[123] They are merely the intermediaries who relay the product to the consumers. Secondly, from an economic perspective, the manufacturers are most suited for liability because, by assuming the costs involved therein, they may suitably price the product, thereby distributing the costs back towards the consumers i.e., even though the manufacturers would assume the costs at the first instance, they would be distributed amongst the consumers finally.[124]

---

[119] Supra 117.

[120] Greenman v. Yuba Power Products, 59 Cal.2d 57 (1963, Supreme Court of California). As cited in GJ Adler, *Strict Products Liability: The Implied Warranty of Safety, and Negligence with Hindsight as Tests of Defect,* 2 Hofstra Law Review, available at https://scholarlycommons.law.hofstra.edu/hlr/vol2/iss2/9/, last seen on 15/11/2020.

[121] Ibid, GJ Adler 581. Absolute liability differs from strict liability in that not all harms flowing from a product would incur liability under strict liability.

[122] Supra 117. The following arguments are based on Justice Traynor's extensive explanations in *Escola.*

[123] Ibid. "*Manufacturing processes, frequently valuable secrets, are ordinarily either inaccessible to or beyond the ken of the general public. The consumer no longer has means or skill enough to investigate for himself the soundness of a product, even when it is not contained in a sealed package*."

[124] Supra 117. "*The cost of an injury and the loss of time or health may be an overwhelming misfortune to the person injured, and a needless one, for the risk of injury can be insured by the manufacturer and distributed among the public as a cost of doing business*."

From a legal point of view, the doctrine of strict liability made a significant contribution to the protection of consumers. Strict liability meant that neither privity of contract nor 'fault' based torts like negligence and misrepresentation would have to be proven in order for consumers to hold manufacturers liable.[125] The humanistic standard of *Donoghue* shined through once again, which was based on a much more general conception of duty on part of the manufacturers. Similarly, the requirement for privity of contract was discarded in an earlier case namely *MacPherson* v. *Buick Motor Co.*[126] The judgement in *Escola* showed a deliberate effort to sever the doctrine of strict liability from the law of contract and the doctrine of negligence in tort. It was finally recognized in this case that the variety of legal fictions would not be required to protect consumers under the doctrine of strict liability.[127]

The doctrine of strict liability in *Escola* and *Greenman* later spread across USA as consumer protection became more and more important.[128] Finally, in 1985, the EU too enacted the Council Directive 85/374/EEC,[129] introducing product liability based on a very similar language as the one used by Justice Traynor in *Escola.*[130] This led to the development of consumer protection laws in most other countries as well, including in

[125] Infra 140.

[126] In the United States, the requirement of privity of contract was done away with in the case of *Macpherson v. Buick Motor co.*, 217 N.Y. 382, 111 N.E. 1050 (Court of Appeals, New York).

[127] Supra 117. "In the food products cases the courts have resorted to various fictions to rationalize the extension of the manufacturer's warranty to the consumer: that a warranty runs with the chattel; that the cause of action of the dealer is assigned to the consumer; that the consumer is a third-party beneficiary of the manufacturer's contract with the dealer. They have also held the manufacturer liable on a mere fiction of negligence. Such fictions are not necessary to fix the manufacturer's liability under a warranty if the warranty is severed from the contract of sale between the dealer and the consumer and based on the law of torts."

[128] It was accepted into a majority of state jurisdictions in the United States and was later codified as S. 402A "SPECIAL LIABILITY"; Mathias Reimann, *Product Liability* 250, 251 in *Comparative Tort Law* (M. Bussani & A. Sebok, 1st ed., 2015).

[129] Council Directive 85/374/EEC of 25 July 1985 "on the approximation of the laws, regulations and administrative provisions of the Member States concerning liability for defective products".

[130] Ibid, at 257. It has been argued that there is a "common core" of principles in the worldwide spread of product liability law. The influence of US case law on the development of product liability law is also discussed at length by the same author in Mathias Reimann, *Liability for Defective Products at the Beginning of the Twenty-First Century: Emergence of a Worldwide Standard,* 51(4) The American Journal of Comparative Law 751 (2003).

Eastern Europe, South America, and Asia.[131] However, product liability as such made an appearance in India only as late as 2019.

3. Product Liability Regime: The Indian Perspective

The Act codified product liability law for the first time for the Indian jurisdiction.[132] It is by no means, however, exclusively governing the field of product liability claims. A number of laws may be relevant for product liability, from the Indian Contract Act, 1872, the Sale of Goods Act, 1930, and the Indian Penal Code, 1860 to sector-specific laws like the Bureau of Indian Standards Act, 2016 ("**BIS Act**"), Food Safety and Standards Authority of India, 2006 ("**FSSA Act**"), Drugs and Cosmetics Act, 1940 and the Motor Vehicles Act, 1988.[133] Having previously discussed that the regime of warranties in contract and negligence were precluded by the introduction of the strict liability regime, we would not go into discussing those laws in this section. We have discussed the applicability of the criminal laws for consumer protection claims in detail in the previous section.[134] Therefore, in this section, we shall focus on the new provisions introducing product liability in the Act, with the intent to analyze the provisions in light of the development of the laws abroad, as has been seen above.

As for judicial development, before the introduction of the Act, there was no significant development with regard to strict liability.[135] Though English common law precedents related to tort law may have had some applicability, the principle of strict liability was not introduced through judicial pronouncement. In *Airbus Industrie* v. *Laura Howell Linton*[136]*,* the Karnataka High Court clarified that there is no law of strict product liability

[131] Supra 757.
[132] Majumdar & Partners, *Important Changes to India's Product Liability and Consumer Laws,* Lexology, available at https://www.lexology.com/library/detail.aspx?g=8a2ece1d-773a-4a51-bcd4-982d85a064c6, last seen on 14/11/2020.
[133] Amir Singh Pasrich & Amit Ranjan Singh, *In Brief: The Sources of Product Liability Law in India,* Lexology, available at: https://www.lexology.com/library/detail.aspx?g=22a07bfd-59dc-4772-8133-7f515a52f5ed, last seen on: 14/11/2020.
[134] See Section "Criminal Liability- An ineffective tool for consumer protection".
[135] A. Ghosh & N. C. Ray, *India: Product Liability Law In India: An Evolution,* Mondaq, available at: https://www.mondaq.com/india/dodd-frank-consumer-protection-act/974270/product-liability-law-in-india-an-evolution, last seen on 15/11/2020.
[136] Ibid., See Airbus Industrie v. Laura Howell Linton, ILR 1994 Kar 1370.

in India. The plaintiffs in that case, who were victims of an aircraft crash, were not allowed to prefer the USA jurisdiction for a product liability claim. The judges commented that,

> A mere fact that the Indian Courts does not have the strict product liability law, it is not wise to say that in such a situation and parties can go without any remedy. As it was done in *Charan Lal Sahu v. Union of India* (Bhopal Gas Disaster) that such antiquated acts can be drastically amended or fresh legislation should be enacted to save the situation.[137]

Relief came to consumers finally in the form of product liability in the Act.[138] The relevant sections of the Act introduce a comprehensive legal framework for assessing product liability claims by the Commissions empowered by the Act. While this paper has previously discussed some of the foundational cases that led to the introduction of product liability laws and the spirit that inspired them, the following discussion would consider some of the provisions of the Act based upon that standard. We would not go into the legalistic arguments but would rather analyze it in terms of the practical, social and economic impact that the law would have in action.

3.1 "Defects: Does the Law Expect too much from Consumers?

Product liability involves the *"claim for … any harm caused by a defective product."*[139] Undoubtedly, this is the language that was used in the *Escola* case and later again inspired the EU and UK laws as we saw in the previous section of this paper. For this purpose, the Act creates detailed provisions defining defects & deficiencies[140] and also a detailed procedure for proving the fact of the defect in such situations where alleged defects *"cannot be determined without proper analysis or test of the goods."*[141] This is followed by a lengthy process of sending defective goods for independent analysis, followed by a procedure for the parties to dispute the conclusions of the independent laboratory.[142] Decisions of the National Consumer Dispute Redressal Commission (**"NCDRC"**) also indicate the burden of proof,

[137] Ibid.
[138] See Chapter VI on "Product Liability", The Consumer Protection Act 2019.
[139] Supra 37, S. 82.
[140] Ibid, Ss. 2(10) & 2(11).
[141] Supra 37, S. 38(2).
[142] Ibid, Ss. 38(2)(c)-(g).

ordinarily, being upon the one who alleges the defect.[143] Indeed the standard followed by the NCDRC, at least before the implementation of the Act, was closer to negligence than strict liability.[144] In other decisions, the principle of *res ipsa loquitur* was followed.[145]

The very first question we ask involves whether the Act, as codified law, provides adequate clarity about the burden of proof with regards to the defect in product or service. Does the burden of proof lie upon the complainant or is it the manufacturers who have to answer for the harm caused by the use of their goods in a reasonable manner? Indeed, there are a number of alternative theories which may be relevant in deciding this question.[146] There are indications that 'strict liability' of the *Escola* type fell out of fashion in the USA by the 1980s, as Courts reverted to a negligence-based standard.[147] *Escola* seemed to indicate that the claimant just has to prove that in the ordinary and reasonable use of the product, he has bought placing his faith upon the name of the manufacturer, harm has befallen him from the product itself. Whereas, the standard demanded in the Act could be reasonably interpreted as demanding direct proof of defect and its co-relation to the damage suffered by the claimant.[148]

Is it a betrayal to the spirit of *Escola?* As manufacturing processes get more technical, complicated, and secretive, we do not think it can be reasonably expected for an ordinary consumer to establish defects in the process of manufacturing known only to the manufacturer himself (or otherwise, for

[143] Jai Prakash Verma v. J.K. Lakshmi Cement Ltd, (2013) CPJ 54 (NC).
[144] "It is well acknowledged crystallized by a catena of decisions that mere loss or injury without negligence was not contemplated by section 14(1)(d) of CP Act, 1986 …." as held in Madhusudhan Rao v. Air France, Revision Petition No. 3792 of 2008 (NCDRC, 01/04/2010).
[145] In the case of a child losing her life because of a poorly maintained escalator by the Airport Authority, the doctrine of *res ipsa loquitur* was allowed in Geeta Jethani v. Airports Authority of India III, 2004 CPJ 106 NC.
[146] Three approaches taken by Courts in US product liability are mentioned as: 1) The direct proof method, where direct proof and expert testimony were required to show a direct correlation between the defect and the damage caused. 2) The *Res ipsa loquitur* method where defect would be inferred by circumstantial evidence 3) Where showing that the product did not perform as expected was enough; DS Niss, Products Liability: Methods of Pleading and Proof for the Plaintiff, 49(1) North Dakota Law Review 105, 109 (1972), available at https://commons.und.edu/ndlr/vol49/iss1/7, last seen 15/11/2020.
[147] Supra 126 at 53.
[148] Infra 154.

services).[149] It can also be said that the process itself imagined in the Act, gives too much leverage to the manufacturers or other persons to influence the procedure of establishing defects.[150] It has to be remembered that, ordinarily, manufacturers are vastly more empowered than ordinary consumers, and the Commission has to determine whether the claim of the complainant is genuine or not; without going into too much detail about the 'fault' of the manufacturers of the product or service in question. Relieving complainants from undue burden in proving the fault of manufacturers in such situations would perhaps be more in the interest of consumer protection.[151] Fault-based liability is the realm of negligence law, whereas strict liability was brought in to do away with the complications of proving faults on the part of the manufacturers.[152] Therefore, it is argued that manufacturers should be strictly liable for the losses caused to the consumers in order to maintain the power balance between them and the manufacturers, as well as relieving the complainants/consumers from the difficulty of proving the liability of the wrongdoers.

3.2 The Liability of Third Parties: Clarity Required!

Now the Act provides for product liability claims to be filed against 'manufacturers, product sellers or product service providers'.[153] In *Escola*, considerable discussion was dedicated to the reason behind affixing liability upon the manufacturer himself.[154] The first reason is the economic one, that by making producers liable, they are able to distribute the costs of liability to the end consumers themselves by pricing the products higher.

---

[149] Supra 117. "*As handicrafts have been replaced by mass production with its great markets and transportation facilities, the close relationship between the producer and consumer of a product has been altered. Manufacturing processes, frequently valuable secrets, are ordinarily either inaccessible to or beyond the ken of the general public. The consumer no longer has means or skill enough to investigate for himself the soundness of a product, even when it is not contained in a sealed package, and his erstwhile vigilance has been lulled by the steady efforts of manufacturers to build up confidence by advertising and marketing devices such as trade-marks*."

[150] Infra 154.

[151] Supra 132.

[152] Supra 139.

[153] Supra 37, S. 2(6)(vi).

[154] Supra 117. "*The manufacturer's obligation to the consumer must keep pace with the changing relationship between them; it cannot be escaped because the marketing of a product has become so complicated as to require one or more […] intermediaries. Certainly, there is greater reason to impose liability on the manufacturer than on the retailer who is but a conduit of a product that he is not himself able to test*."

Indeed, it is the manufacturers who authorize others like wholesalers and dealers to bring the products to the consumers.

Here, it is important to consider the position of the producer of the goods with regards the intermediaries of the product.[155] In the process of production, a manufacturer has to consider carefully from where and at what cost and quality he would acquire the materials and components which are used in the final product. He has to decide who would be authorized to act as intermediaries between him and his consumers as well, i.e., he enters into careful considerations about the entire supply chain. If he gives up any aspect of control over the production of the goods, it is at his discretion, and establishing where the 'fault' lies in causing the defect and affixing the liability is an exercise which would only lengthen proceedings excessively when, it is the producers who are responsible in bringing the elements together and managing the supply chain of the product. Consequently, the consumer relies upon the brand value of and advertisements by the producers, rather than that of the intermediaries, while purchasing a product.[156]

Making reference to the language of the EU Directive,[157]

> Whereas liability without fault on the part of the producer is the sole means of adequately solving the problem. Whereas the protection of the consumer requires that the liability of the producer remains unaffected by acts or omissions of other persons having contributed to cause the damage; whereas, however, the contributory negligence of the injured person may be taken into account to reduce or disallow such liability.

There is considerable emphasis on the liability being fixed primarily upon the producers who have affixed their brand name upon the product. Evidently, the NCDRC has also preferred this approach in the past.[158]

---

[155] The intermediaries are the wholesalers, retailers, distributors, service providers and others who bring the product to the consumer.

[156] Supra 117. "…his (consumer's) erstwhile vigilance has been lulled by the steady efforts of manufacturers to build up confidence by advertising and marketing devices such as trade-marks. Manufacturers have sought to justify that faith by increasingly high standards of inspection and a readiness to make good on defective products by way of replacements and refunds."

[157] Supra 32.

[158] There is a line of cases which provide for the liability of the manufacturer in cases of product liability. See Hind Motors India Ltd. v. Jodh Singh 2016 (3) CPR 35; Rama

Although the liability under a product liability action is primarily based on a product's manufacturer or its seller, the latter's definition under the Act is comprehensive to include various intermediaries like distributors and installers, amongst others.[159] Thus, it can be inferred that a wide definition would encompass similar intermediaries such as transporters, though any binding precedents in the future would make the liability more unambiguous.

The spirit of justice that brings relief to the masses of people was what brought *Donoghue* and *Escola* and other landmark cases to their prominent positions in the laws of the countries where they were written. These were cases that went far beyond existing law and precedent in order to bring relief to those who came to the Courts seeking justice. It is therefore completely understandable why the principles in these cases could not stay confined to their home jurisdictions, but spread across the world and became famed. In that light, we tried to analyze the introduction of product liability in the Act. Certainly, extensive efforts have been made to create comprehensive legislation and the Act provides an up-to-date framework to deal with cases of product liability. That being said, we found that the Act could have done more to provide adequate clarity over the technicalities of product liability law. Some of the provisions could indeed be interpreted in a way that doesn't do justice to the spirit of consumer protection law and may end up placing an undue burden over claimants in the consumer forums. Whereas we have discussed the aspect of the standard of defects and the liability of intermediaries in this light, more aspects like contributory negligence of complainants,[160] and the applicability of special laws in regard to product liability[161] may be explored

Shankar Yadav vs. J.P Associate Ltd. (2012) CPJ, 110 (NC); Mantu Chandra Roy v. The Proprietor of Great Eastern Trading Co. (DCDRC Decision, 2018).

[159] Supra 37, S. 2(37).

[160] Supra 132 at 599.

[161] Supra 145. Special Laws overlap with the Consumer Protection Act 2019 in providing a remedy for defective products. These laws contain provisions for recall of products and may become relevant in cases where defective products have been sold *en masse* to consumers and must be recalled by the companies in question. These laws may also impose other requirements on manufacturers. For an introductory discussion, refer to V. Bajaj, K Raghavan, S. Kaul, *India: Product Liability Laws and Regulations 2020*, ICLG, available at (https://iclg.com/practice-areas/product-liability-laws-and regulations/india), last seen on 15/11/2020.

more deeply. Finally, it is also worth exploring the conditions for product liability law to succeed exist in India.[162] However, it can be reasonably expected that product liability law would become more important as India further develops economically and as technology plays a bigger role in the lives of people.

PART- III

VI. REGULATING ARTIFICIAL INTELLIGENCE UNDER INDIAN CONSUMER LAW: A FORESEEABLE FUTURE OR A DISTANT REALITY?

In the last decade, numerous efforts have been made in the field of AI and future technology and its effect on society at large: from doomsday predictions over the rise of autonomous machines and 'war-robots',[163] to concern over the rise of BigTech giants and their exceeding leverage over society.[164] Indeed, we are seeing a greater role of machines in carrying out processes which were earlier thought only possible by human beings and, therefore, a greater role of machines in our day-to-day social, economic and cultural lives, especially for the consumers. A popular example is that of the hassle-free recommendations of the YouTube videos based on prior utilization of consumers' time on that giant platform.

As per the recent statistics released by Oxford Insights and the International Research Development Centre (**"IDRC"**), India has been

[162] Supra 140 at 810. The law of product liability is far more developed in the United States than any other jurisdiction in terms of the number of cases, the size of awards, class-action suits, and other factors including the amount of publicity any particular case may get. Further, factors like industrialization and the advancement of consumer capitalism are also linked to the development of product liability law.

[163] The development of fully autonomous robots designed to make war may not be very far away technologically. These machines may be programmed with the capability to break the fundamental rules which govern robots and thus go "terminator"; See DC Vladeck, *Machines Without Principals: Liability Rules and Artificial Intelligence*, 89 Wash. L. Rev. 117, 123 (2014), available at https://digitalcommons.law.uw.edu/cgi/viewcontent.cgi?article=4800&context=wlr, last seen on 13/11/2020.

[164] See E Mik, *The Erosion of Autonomy in Online Consumer Transactions,* 8 Law, Innovation and Technology 1 (2016), available at https://ink.library.smu.edu.sg/cgi/viewcontent.cgi?article=3688&context=sol_research, last seen on 15/11/2020.

ranked 40th in terms of its government's readiness to adopt AI,[165] with primary areas of focus to be infrastructure and access to high-quality data.[166] Although the term AI has been related with different connotations[167] highlighting the importance of the concept, the Hon'ble Prime Minister of India has taken a leap ahead and referred to AI as a tribute to human intellectualism in the recent RAISE 2020 summit hosted by the nation.[168] Such praise can be justified due to the achievements possible owing to AI technology.[169] But what does AI mean? Broadly, AI refers to the use of algorithmic combinations to prepare automated systems that can perform different tasks based on self-recommendations and thinking.[170] Such independent compositions (often called robots) can not only effectively demonstrate the use of AI but are often found to be friendly companions to humans.[171]

The existing literature on AI shows that there is a continuous evolution in the field[172] which leads lawmakers around the globe to cogitate about the possibilities of recognizing and entitling such systems with rights and duties

---

165 *Government AI Readiness Index 2022*, Oxford Insights, available at https://static1.squarespace.com/static/58b2e92c1e5b6c828058484e/t/5f7747f29ca3c20ecb598f7c/1601653137399/AI+Readiness+Report.pdf, last seen on 10/11/2020.

166 Id, at 99.

167 See *Smart Strategy Turns AI into Action*, Accenture, available at https://www.accenture.com/in-en/services/ai-artificial-intelligence-index, last seen on 12/11/2020; *Artificial Intelligence (AI)*, IBM, available at https://www.ibm.com/cloud/learn/what-is-artificial-intelligence#toc-what-is-ar-DhYPPT4m, last seen on 13/11/2020.

168 *"Artificial Intelligence is a Tribute to Human Intellectual Power," Prime Minister Narendra Modi*, IndiaAI, available at https://indiaai.gov.in/article/artificial-intelligence-is-a-tribute-to-human-intellectual-power-prime-minister-narendra-modi, last seen on 12/11/2020.

169 *This AI Can Identify The Coughs Of Asymptomatic People With Covid-19*, Mashable India, available at https://in.mashable.com/tech/18015/this-ai-can-identify-the-coughs-of-asymptomatic-people-with-covid-19, last seen on 13/11/2020.

170 *CCBE Considerations on the Legal Aspects of Artificial Intelligence*, Council of Bars and Law Societies of Europe, available at https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/IT_LAW/ITL_Guides_recommendations/EN_ITL_20200220_CCBE-considerations-on-the-Legal-Aspects-of-AI.pdf, last seen on 13/11/2020.

171 Dilip V. Jeste et al., *Beyond Artificial Intelligence: Exploring Artificial Wisdom*, 32 International Psychogeriatrics 993, 997 (2020), available at https://www.cambridge.org/core/services/aop-cambridge-core/content/view/AEFF76E8D643E2B7210995E3ABDAA722/S1041610220000927a.pdf/beyond_artificial_intelligence_exploring_artificial_wisdom.pdf, last seen on 14/11/2020.

172 Olivia Cuthbert, *Saudi Arabia Becomes First Country to Grant Citizenship to a Robot*, Arab News (26/10/2017) available at https://www.arabnews.com/node/1183166/saudi-arabia, last seen on 14/11/2020.

as applicable to *homo sapiens*.[173] Although in some jurisdictions, limited use of AI technology is prevalent, the absence of legislation governing such systems calls for a discussion.[174] Under the Indian consumer protection law, however, the inclusive definition of the term 'person' to include an artificial juridical person[175], has widened the debate for imputing liability but the imputation still remains far from reality. The reason is that the liability for a default in a good or service can only be attached to a real human being, may it be its manufacturer, seller, and an artificial system remains far from being liable for any harm caused to a consumer. Furthermore, the Act does not envisage the imposition of liability over a networking system or any intermediary technological advancement in manufacturing a product, rather the creator of the product itself.[176]

However, before stipulating liabilities, it is imperative to possess a codified mechanism that can regulate AI. In the Indian context, the discussion paper on National Strategy for AI highlights that sector-specific reforms, along with comprehensive participation of the different stakeholders with effective control of the government, are required for the country to emerge as a leader in the field of AI.[177] The said paper identifies *inter alia* core research, lack of infrastructure, and unawareness of AI technology as the underlining challenges in the AI field in India.[178] Other related issues involve the use of data in AI systems and the lack of legal personality of AI.[179] Thus, with ongoing research and analysis of the different policy

[173] Simon Chesterman, *Artificial Intelligence and the Limits of Legal Personality*, 49 ICLQ 819, 820 (2020), available at https://www.cambridge.org/core/services/aop-cambridge-core/content/view/1859C6E12F75046309C60C150AB31A29/S0020589320000366a.pdf/artificial_intelligence_and_the_limits_of_legal_personality.pdf, last seen on 14/11/2020.

[174] *Liability for Artificial Intelligence and Other Emerging Digital Technologies*, European Commission, available at https://ec.europa.eu/transparency/regexpert/index.cfm?do=groupDetail.groupMeetingDoc&docid=36608, last seen on 14/11/2020.

[175] Supra, 37, S. 2 (31) (vii).

[176] Ibid, S. 2 (36).

[177] *National Strategy for Artificial Intelligence# AI For All*, IndiaAI, available at https://raise2020.indiaai.gov.in/src/images/pdf/NationalStrategy-for-AI-Discussion-Paper.pdf, last seen on 14/11/2020.

[178] Ibid, at 46.

[179] Chris Reed, *How Should We Regulate Artificial Intelligence*, Phil. Trans. R. Soc. A 1, 4 (2018), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6107539/pdf/rsta20170360.pdf, last seen on 14/11/2020.

issues related to AI, in this part, it is attempted to explore the different liability regimes with respect to AI and seek to contribute valuable inputs in this emerging field.

1. Early Conflicts and Controversies

Whether the fears would become real or not, we are yet to see. The beginning of legal action against Big Tech, however, has begun with cases creeping up from different jurisdictions. In Australia, the 'Robodebt scandal' is an early example of how algorithm-based AI led to a financial scandal where hundreds of thousands of people were affected.[180] Robodebt here refers to an automated debt collection system created to collect debt on behalf of the Government of Australia.[181] The system would compare the financial data of individuals to calculate the 'robo-debt' they owed based on discrepancies in their financial data. The system went from being semi-automated in 2011 to fully automated by 2016.[182] As a result, false debt notices were sent to hundreds of thousands of people who went through the harrowing process of contesting numbers calculated by a machine.[183] Finally, the Australian Government was forced to take back the Robodebt scheme and pay back the individuals whose debt was wrongly calculated.[184]

The scandal is an early example of how AI-driven automated decision-making systems can lead to discrepancies and cause harm to ordinary citizens.[185] These types of systems are now being used for diversified tasks:

---

[180] LH Gomes, *Robodebt: Government to Refund 470,000 Unlawful Centrelink Debts Worth $721m,* The Guardian (29/05/2020), available at https://www.theguardian.com/australia-news/2020/may/29/robodebt-government-to-repay-470000-unlawful-centrelink-debts-worth-721m, last seen on 15/11/2020.

[181] For a detailed report on the Robodebt system, See Gillian Tersiz, *Austerity is an Algorithm,* Logic (01/12/2017), available at https://logicmag.io/justice/austerity-is-an-algorithm/, last seen on 15/11/2020.

[182] Ibid.

[183] Supra 181.

[184] Supra 181. It has presently become the subject of a class-action suit against the Government of Australia, See *Centrelink Robodebt Class Actions Lawsuit to be Brought Against the Federal Government*, ABC News (17/09/2019), available at https://www.abc.net.au/news/2019-09-17/centrelink-robodebt-class-action-lawsuit-announced/11520338, last seen on 15/11/2020.

[185] There's a difference between Decision Making System and Decision Supporting System, specifically, in the degree of autonomy that the system has. Decision making systems may be authorised to process information and also to initiate further actions by themselves. See *The Difference Between Decision Support Systems and Decision Management Systems*

from automating administrative tasks, human resources and recruitment decisions to making complex human predictions.[186] There are other more controversial uses of such systems too, for example, in profiling criminal offenders and assessing the likelihood of repeat offenses.[187] From being profiled for one's political or religious views by automated systems on social media, to financially profiled or credit-rated, they may help or harm their human targets. On the other hand, the same data may be used by corporations to profit off the very same consumers by carefully targeted advertising.[188]

Thus, comes a second concern over the role of Big Tech in our day-to-day lives: data privacy.[189] When it comes to data, it seems that everyone wants a slice of that pie. Data is equally valuable for governments,[190] as it is for corporations,[191] and for intellectuals who may wish to understand better how human beings act and think. But what about the users themselves? As we have already waived the rights to our data to major corporations, what if we wish to sign off? An important concern raised in Italian Corporate & Consumer Authority against the 2016 WhatsApp-Facebook merger was that after the merger of WhatsApp and Facebook (which were already

for Decision Automation, James Taylor, available at http://www.decisionmanagementsolutions.com/the-difference-between-decision-support-systems-and-decision-management-systems-for-decision-automation/#:~:text=Decision%20Management%20Systems%2C%20unlike%20Decision,the%20actions%20to%20be%20taken, last seen on 15/11/2020.

[186] UNHCR Innovation Service, *7 Ways You Can Automate Decision Making for Good,* Medium, available at https://medium.com/unhcr-innovation-service/7-ways-you-can-automate-decision-making-for-good-14005fedf6a5, last seen on 15/11/2020.

[187] Ibid. See *COMPAS,* State of Wisconsin-Department of Corrections, available at https://doc.wi.gov/Pages/AboutDOC/COMPAS.aspx, last seen on 15/11/2020. The system is criticised for systematic biases.

[188] For an excellent documentary on the same See *The Social Dilemma*, Netflix, available at https://www.netflix.com/search?q=The%20social%20dilemma&jbv=81254224"Netflix", last seen on 15/11/2020.

[189] See section on "Regulated Autonomy" in A. Jabłonowska, M. Kuziemski, AM Nowak, HW Micklitz, P Pałka & GSartor, *Consumer Law and Artificial Intelligence: Challenges to the EU Consumer Law and Policy Stemming from Business' Use of Artificial Intelligence- Final Report of the ARTSY Project,* EUI Working Paper LAW 2018/11, European University Institute 12 (2018).

[190] Two methods governments may access private data include direct access into private-sector databases without intervention of the service providers and access with the intervention of service providers. See IS Rubenstein, GT Nojeim & RD Lee, *Systematic Government Access to Personal Data: A Comparative Analysis,* 4(2) International Data Privacy Law 96 (2014).

[191] Advertising revenues from data are said to be considerable. On the other hand, social media companies may be able to improve User Experience through more and more data. Supra 173.

instant messaging giants before the merger),[192] Facebook would have access to the data of even those persons who were not Facebook users but only users of WhatsApp.[193] Privacy concerns are, thus, exacerbated by the recent mergers of data giants like Facebook-WhatsApp-Instagram & YouTube-Google.[194]

In light of this, it is understandable why considerable interest is being generated in the USA to break up these companies.[195] While the arguments against these corporations are based on competition laws, data rights and consumer rights are also important factors that underpin these actions because these difficulties only arise due to extensive consumer data accumulation on the part of social media giants.[196] Political interference and manipulation from social media platforms has also been a concern, especially after the Cambridge Analytica Scandal.[197] These concerns were raised again in the 2020 US General Elections, where it was alleged that major social media companies had themselves played an unlawful role of 'censoring' content belonging to one political group.[198] Whether the allegations are true or not, it is beyond doubt that social media giants certainly have the wherewithal to unilaterally interfere in political processes without any requirements for transparency or accountability to their

[192] For a full review of the case, See N Zingales, *Between a Rock and Two Hard Places: WhatsApp at the Crossroad of Competition, Data Protection and Consumer Protection Law,* Computer Law and Security Review (2017).
[193] LB Moses, *Recurring Dilemmas: The Law's Race to Keep up with Technological Change,* 4 (2017), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=979861, last seen on 15/11/2020.
[194] Ibid.
[195] Matt Peterson, *For Tim Wu, Breaking Up Facebook is Just the Beginning,* The Atlantic (28/01/2019), available at https://www.theatlantic.com/membership/archive/2019/01/for-tim-wu-breaking-up-facebook-is-just-the-beginning/581485/, last seen on 15/11/2020; See Kaitlyn Tiffany, *A simple plan to dissolve Facebook, Google, and Amazon*, Vox (8/11/2018), available at https://www.vox.com/the-goods/2018/11/8/18076440/facebook-monopoly-curse-of-bigness-tim-wu-interview, last seen on 15/11/2020.
[196] Supra 192. These issues exist at the "crossroads of competition, data protection and consumer protection law." Italian authorities found numerous consumer rights and data privacy violations in the act of WhatsApp changing their Terms of Service unilaterally after the merger with Facebook.
[197] See Issie Lapowsky, *How Cambridge Analytica Sparked the Great Privacy Awakening,* Wired 17/03/2019, available at https://www.wired.com/story/cambridge-analytica-facebook-privacy-awakening/, last seen on 15/11/2020.
[198] *Facebook, Twitter Accused of Censoring Article Critical of Biden,* The Times of India (15/10/2020), available at https://timesofindia.indiatimes.com/world/us/us-presidential-elections/facebook-twitter-accused-of-censoring-article-critical-of-biden/articleshow/78672510.cms, last seen on 15/11/2020.

consumers or the society at large. The usual defense to allegations of malpractice by social media giants has been that they are mere 'platforms' that do not interfere in the content posted by their users.[199] However, they have a proven capacity to manipulate traffic on their websites,[200] and therefore, there are increasing calls to treat social media giants as 'publishers' rather than 'platforms'.[201]

That may still be a long way ahead as lawmakers, academics, and commentators try to piece together a narrative that makes sense while balancing concerns on either side of the dichotomy.[202] As it stands, consumers of the services do have certain important rights that must be kept in mind. For example, the 'right to be informed', the 'right to awareness' and the 'right to seek redressal against unfair trade practices'.[203] As for personal data rights, the Personal Data Protection Bill, 2018 does include extensive rights for the protection of users.[204] At the preliminary stage, it may be questioned why such extensive procedural requirements for a person to delete his own personal data under the 'Right to be Forgotten'[205] are justified. In the dichotomy of corporations and regulators, a third nix is thereby added: the individual (user or consumer). Without any

[199] Platforms have a lesser regulatory burden as compared to publishers. This sort of concession is available in India as well under Section 79-II of the Information Technology Act, 2000. Though the demand for more regulation for social media giants is increasing. See *In the United States:* Adam Candeub, *Social Media Platforms or Publishers? Rethinking Section 230*, The American Conservative (21/06/2019), available at https://www.theamericanconservative.com/articles/social-media-platforms-or-publishers-rethinking-section-230/, last seen on 15/11/2020; *In India:* AS Mankotia & A Chaturvedi, *New Clause added to IT Act: Onus of Content not Generated by users on social media platforms,* The Economic Times 07/02/2020, available at https://economictimes.indiatimes.com/tech/internet/new-clause-added-to-it-act-onus-of-content-not-generated-by-users-on-social-media-platforms/articleshow/73996954.cms?from=mdr, last seen on 15/11/2020

[200] Supra 173.

[201] Supra 199.

[202] Supra 201.

[203] Supra 37, S. 2 (9). Generally, rights of this type are available in most consumer protection legislations around the world including in India.

[204] See Chapter V, The Personal Data Protection Bill, 2018.

[205] "The data economy" right now is like a door once opened that cannot be closed again; once we are plugged in, we are irreversibly trapped in the system. It is questionable why one would need to approach the Data Authority for being removed from the online world if one so wishes. See "Right to be Forgotten", S. 27(2), Personal Data Protection Bill, 2018.

definitive 'right to ownership of personal data',[206] it does not seem that the individual would win any time soon.

2. Imposing Liability on AI Systems and Robots

The previous research in the AI field shows that the opinion on imposing criminal liability is muddled. One section of scholars think that at some point in the future, criminality can be analyzed vis-à-vis AI machines, but presently there is no such scope.[207] Although the thinkers in this line of though agree that the mental element is nearly unsatisfied in all the suggestive models of imposing criminal liability,[208] they are keen to use the 'natural probable consequence model' to argue that even the unintended or undesired consequences of the technological inputs in the machines should make the liability vest on the machines.[209] We think that this approach is totally miscalculated on multiple grounds. Firstly, it overlooks the possibility of the machine malfunctioning and attributes the liability merely to the consequences. Secondly, it completely neglects the mental framework of emotions and feelings fed to the machine, which can lead the machine to act in a defensive manner or out of several compulsions.[210] The other opinion is that if any harm is caused by a morally conscious

[206] There is considerable hesitation over recognition of a right to ownership of personal data. Arguably, it is not the ownership of personal data that is in question but rather the temporary access given by an individual to certain data which they should hypothetically be able to take back at any time. See CF Kerry, and JB Morris Jr., *Why Data Ownership is the Wrong Approach to Protecting Privacy,* Brookings (26/6/2019), available at https://www.brookings.edu/blog/techtank/2019/06/26/why-data-ownership-is-the-wrong-approach-to-protecting-privacy/, last seen on 15/11/2020.

[207] Supra 172 at 124.

[208] Gabriel Hallevy, *The Criminal Liability of Artificial Intelligence Entities*, 1, 23 (2010), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1564096, last seen on 14/11/2020. (Out of the three models for imposing criminal liability suggested by Professor Gabriel, which are perpetration by another liability model, natural probable consequence liability model and direct liability model, none argue, even remotely, that a mala fide intention can be bestowed upon the AI systems, without which no criminal liability can be imposed upon either an AI system or robots. Here, it needs to be clarified that the imposition of criminal liability on AI systems is to be separately dealt with that of either its programmer or an identified user, which according to Professor Gabriel, are the liable stakeholders for imposing criminal liability).

[209] Gabriel Hallevy, *I, Robot - I, Criminal: When Science Fiction Becomes Reality: Legal Liability of AI Robots Committing Criminal Offenses*, 22 Syracuse Sci. & TECH. L. REP. 1, 14 (2010).

[210] See Chapter IV "General Exceptions", The Indian Penal Code, 1860. (If an AI built machine or a robot is found to act under any of the defences available under domestic and global criminal laws, then such act should be exempted from liability).

robot, it may be held liable and not otherwise.[211] To elaborate, the proponents of attributing criminal liability assume that the AI system is aware of the wrongs that it commits and does not merely perform the act with an intention to fulfil the directions given by the system manufacturer.[212]

Under the Indian context, it appears to us that to attribute any form of liability to AI systems, it is imperative to define the systems under the definition clauses in the law. While the Indian criminal law is sufficiently wide to include AI systems within its applicability,[213] there is no such provision in modern consumer legislation. Notably, the Act delves into a limited discussion regarding a product's design, and not its internal components,[214] thereby limiting the scope to a product's appearance and usage, instead of the inbuilt mechanism. Moreover, the existing challenges in the AI industry, including that of infrastructure and access to tech-knowledge have to be conquered prior to establishing a criminal sanction on an AI system.

3. Strict Liability Principles: An Effective Protection?

Challenges regarding the role of Big Tech in our lives, the necessity of innovation, the regulation thereof, and the importance of the rights of individuals are without any clear answers yet. The process of social churning with the pull and push of different sides is continuously going on in this fast-evolving realm. In the meantime, we may wonder whether the existing legal machinery we have at hand yields the principles of law that may serve to effectively protect the general public from the dangers of future technology.

The question was dealt with extensively by Vladeck in Machines Without Principals: Liability Rules and Artificial Intelligence.[215] He argues that the

[211] Ying Hu, *Robot Criminals*, 52 U. Mich. J. L. 487, 512 (2019), available at https://repository.law.umich.edu/cgi/viewcontent.cgi?article=1806&context=mjlr, last seen on 14/11/2020.
[212] Ibid, at 522.
[213] S. 11, The Indian Penal Code, 1860.
[214] Supra 37, S. 2 (12).
[215] Supra 173.

principles of strict liability[216] may be able to provide an effective remedy for consumers of future technologies, while acknowledging that manufacturers may be able to escape liabilities because of the even more complicated relation between manufacturers and suppliers of components in case of future technologies. For any harm caused to consumers, the question asked is 'who pays?'. How would liability be apportioned amongst the many different parties involved in designing, testing, manufacturing these vehicles?[217] Personally, for reasons stated in the earlier section, it is believed that it is the manufacturer who is to be primarily held liable. This is on account of the immense reputation carried by the manufacturers, who are presumed to have tested the nitty-gritties of a product before launching it in the market. Certainly, after procuring the services of every component manufacturer, designer, part engineer, software engineer and others, the manufacturer adds a significant dividend to the costs as profits for himself. So, it is believed by us that the primary liability in case of harm caused by defects should primarily be borne by the manufacturer himself. Here, the view that liability, if any, imposed on the AI systems instead of the manufacturers will benefit the consumers is outrightly rejected on dual grounds. Firstly, being purely mechanical in nature, AI systems will not be able to address consumer grievances, in terms of providing compensation for the latter's losses or even assuring them better future performance. Secondly, being bereft of human emotions, AI systems may not be able to comprehend the real and pressing predicaments of the consumers. For instance, the consumers' demand for a specific quality product may not be addressed by an unnatural system such as AI.

In light of cases such as *Donoghue* and later *Escola,* where there is a genuine case of harm, the barriers towards legal redressal and remedy should be minimized as much as possible.[218] Practically, the legal mechanism can itself become the barrier to justice but, in those cases, an example was set whereby a very general and humanistic principle was applied in order to

[216] Supra 173 at 146.
[217] Supra 173 at 128.
[218] RJ Currie, *Of Neighbours and Netizens, or Duty of Care in the Tech Age: A Comment on Cooper v. Hobart*, 3(2) Canadian Journal of Law and Technology 81, 87 (2004), available at https://ojs.library.dal.ca/CJLT/article/viewFile/6095/5414, last seen on 15/11/2020.

provide justice even where no previous law would be able to deliver it. It seems to us that, it is the spirit that runs through the doctrine of strict liability and the codified regimes of product liability which are based thereupon.

Thus, while there is still a legal vacuum in regulations of advanced systems such as AI & robotics around the world, it appears that the doctrine of strict liability over manufacturers and producers of all products and services including AI systems could prove to be an effective means for combating the liability issue, in cases of harm caused to the consumers.

VII. CONCLUSION

With a continuous increase in the investment opportunities in the consumer industry, the emerging technology and stiff competition amongst the market-dominating stakeholders leads to new challenges for legislators across the globe. The enactment of a reformed legislation by the Indian Parliament seeks to enforce a stronger deterrence and overcome the problems posed by the enforcement of the erstwhile consumer law. In Part 1 of this paper, the examples of prevalent consumer laws in China and the USA helped to understand the consumer grievance models based on heavy compensation and criminal sanctions, though each model remains heavily critiqued by the domestic scholars and it is inferred that neither model can adequately address the delay under the Indian procedure. In the Indian context, although the criminal law applies extraterritorially, having the potential to hold different stakeholders including manufacturers, retailers, sellers, and distributors criminally liable, the same shall not prove to be an effective tool for consumer protection, especially in the automobile industry, for multiple reasons. It must be noted that, since this industry has the potential to include stakeholders from multiple jurisdictions, the same was selected for the present discussion. The time involved in criminal prosecutions cannot be side-lined. Moreover, the new legislation does not clarify the procedure for initiating the criminal penalties. Therefore, we suggest having 'consumer-oriented' legislation instead of 'punishment-oriented' by entitling a heavy compensation to the consumers. For the consumers deceived by misleading advertisements, it is argued that the

criminal sanctions are an effective means as the advertisers' criminal intent is reflected in the deliberate and inaccurate representations.

Part 2 traced the origins of product liability from the contractual understanding out of the *Carlill* judgment and the strict liability theory as applied in the *Escola* judgment. It is argued that due to the dominating role of manufacturers in their relationship with a consumer, strict liability upon them strongly enforces consumer protection. However, some clarity is required in the liability of the intermediaries such as wholesalers and service providers as they also rely on the branding performed by the producers.

The emerging field of Artificial Intelligence has attracted significant research across borders. In Part 3, we analyzed that AI systems carry a significant potential to cause widespread damage with the help of the Robodebt scandal in Australia, and dug into the possibilities of imposing strict and criminal liability upon the AI systems and robots. It can be seen that both liabilities conveniently blame the producer of an AI machine, but remain unsuccessful in imposing the liability on the advanced systems. A similar line of approach is followed in the present consumer legislation. Therefore, in order to successfully address the question of imputing liability over AI systems, it is imperative to make amendments in the law to incorporate definitional clauses highlighting the inbuilt artificial mechanisms of a product.