



A CRITICAL STUDY ON INTERMEDIARY LIABILITY UNDER THE PRETEXT OF SAFE HARBOURING –WITH REFERENCE TO CONSUMER PROTECTION (E-COMMERCE) RULES, 2020.

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Abstract : The digital era has invoked an emergence of lifting the age of tradition form of commercial business into an E-commerce. An E-commerce is an easily accessible platform by the consumers within the utilisation of mobile internet. The protection of intermediary or online website is protected by our parent legislation on digital India; The Information Technology Act 2000, which act as a protective phase of excluding the liability of the intermediary under the veil of safe harboring. The cross path arises when the liability on the intermediary veiled by the concept of safe harboring under the provision of section 79 of Information Technology Act, 2000. This legislative immunity escapes the online business platform to hold the product liability in relation to fake advertisements of the product and product details, unless and until it is found that the intermediary is found conspired, abated, induced or played along for the commission of unlawful activity or in case of failure to remove the or disable the access expeditiously of such unlawful information or on information upon the knowledge of unlawful information, unless in contrary the intermediary shall not be liable. The e-commerce platform is also an e-commerce entity and intermediary who claims the protection of safe harbouring and escapes from the clutches of law as it has acted under the due diligence. This research paper tries to torch the applicability of safe harbouring concept for the e-commerce entity as an intermediary and to balance down the recent rule on consumer protection (E-commerce) Rule 2020.

Keywords *E-commerce, safe harbour, E-commerce Entity, intermediary, due diligence.*

I. INTRODUCTION

The transmission of tradition of commercial business into E-Commerce has made the consumer to easy access on the goods and services through the medium of electronic or virtual mode of purchasing, a visible image that is posted in a commercial website. The advent of information technology and right to access internet which is accessed by the world population of

over 7.8 million ¹ are using internet specially the statistics shows over 93.5% of global internet users have purchased products online and by the year of 2040 it was estimated that 95% of the purchase will be through e commerce site². Over 58.4% of internet users buy something online every week and the categories with more spending are consumer electronics (\$988.4 billion) and fashion (\$904.5 billion).³ The availability of the produced in the doorstep of the consumers, the virtual description of the produced with various dimensional reflex of the products are purchased by the consumer at other end of the world. The electronic fund transfer⁴ means of money transfer and electronic data interchange (Business to Business interface)⁵ facilitates the growth of business platform as information and communication technology enabled commercial transaction which is called as e-commerce.

¹ Key internet statistics to know in internet 2022(including module),broadband search, Available in : <https://www.broadbandsearch.net/blog/internet-statistics> accessed on 21.03.2022

² Ogi Djuraskovic, eCommerce Statistics, Facts, and Trends 2022, <: <https://firstsiteguide.com/e-commerce-stats/#:~:text=Interesting%20eCommerce%20Statistics%3A%201%20By%20the%20year%202040%2C,during%20the%20holiday%20season%20are%20done%20on%20smartphones>. Accessed on 22.03.2022

³ Ecommerce Statistics for Retailers and Online Shopping in 2022, < : <https://ecommerceguide.com/e-commerce-statistics/> accessed on 22.04.2022.

⁴ Electronic funds transfer (EFT) is the electronic exchange or transfer of money from one account to another, either within a single financial institution or across multiple institutions, through computer-based systems.

The Ministry of consumer Affairs, Food and Public Distribution strived to enact an effective legislation of the protection of consumer protection by the enactment of Consumer Protection Act, 2019 (CPA 2019) and in order to protect the interest of the consumers in e-commerce “consumer Protection (E-commerce) Rules 2020 (E-commerce Rule)⁶ is ruled out in order to out weight the check and balance on the commercial websites who sells or distribute the product in online. The E-commerce Rules provides a legal regulation on the marketing, sale and purchase of goods and service provided online. The primary goal of enacting this rule to prevent the unfair trade practice and to address their reacted concern in relation to unfair trade practices⁷ and it invoked the Information Technology Act 2000⁸ (the cyber / information technology facilitated crime curbing legislation) and the business ethical concept formulated consumer protection in consumer protection Act 2019⁹ contribution to intrude in the path of consumer protection and liability of the online websites who sells their product by the facilitation of internet service providers.

The cross path arises when the liability on the intermediary veiled by the concept of safe harboring under the provision of section 79 of Information Technology Act, 2000. The liability of E-commerce company are safe guarded by the existing sole cyber law section 79 of Information Technology Act, 2000 and Information Technology (Intermediary) Rules 2011, (IT Rules). This legislative back born is protecting the intermediary against the liability for the third-party information, a data or communication link hosted in their E-commerce platform. This legislative immunity may escape the online business platform to hold the liability in relation to fake advertisements of the product and product details. unless and until the it is found that the intermediary is found conspired, abated, induced or played along for the commission of unlawful activity or in case of failure to remove the or disable the access expeditiously of such unlawful information or on information upon the knowledge of unlawful information, unless in contrary the intermediary shall not be liable. This is known as notice and takedown’ approach under the IT Act¹⁰.

The major question involve is the liability of online platform(intermediary) in the listing of fake products in their website and through that listing if the consumers are at stake, whether the consumer protection be bypassed by the protection of intermediary as safe harbouring concept? And the next concern arises on the trademark infringements on the brands and breach of trust to consumers. The research paper tries to scrutinize the liability of the intermediary under the pretext of safe harbouring principle and in the light of consumer protection in the e-commerce with reference to the recent E-Commerce Rule, 2020¹¹ passed by the parliament in the protection of E-consumers.

II. RATIONALE ON CONSUMER PROTECTION IN E-COMMERCE AND INTERNATIONAL CONCERN TOWARDS IT:

E-commerce or the electronic commerce is an activity that means buying or selling of goods or product by the facilitation of information and communication technology (ICT)¹². E-commerce platform refers to the mechanism which mediates the investors to target the customers in easy way by the description of product in virtual mode or the product which is described as branded and used by people of fame as model or fashion in the sense. The online business transaction is more flexible in nature and multiple choices are available to the consumers. Every consumer who purchases the products online shall be person who participate in e-commerce economy¹³. E-commerce platforms like Amazon Business, Shopify plus, Big Commerce Enterprise, Magento, WooCommerce etc.

Electronic mode of business through business to business (B2B) these e-commerce platforms act as an intermediary to sell the products from the manufactures to other retailers the other major role played by the e-commerce platform is acting as intermediary between the producer and consumer as in the mode of Business to consumer (B2C) like Amazon, Flipkart, eBay, Meesho, Ajio, etc. by the year of 1999 the promising guideline for the renaissance of E-commerce raised from the Organisation for Economic Cooperation and Development guidelines formally known as OECD guideline for the consumer protection in the context of electronic commerce (1999)¹⁴ approved by OECD council is embedded the essential dimensions as follows to protect the consumers in e-commerce and access to e-commerce for all the consumers, secondly the consumers need to be comparatively safe guarded like they purchase from their local stores, the other character that this guideline stress is to protect the consumer whoever

⁵ Electronic Data Interchange (EDI) is the computer-to-computer exchange of business documents in a standard electronic format between business partners.

⁶ Consumer Protection (E-Commerce) Rules, 2020 <: <https://consumeraffairs.nic.in/en/theconsumerprotection/consumer-protection-e-commerce-rules-2020>

⁷ Dr. Gargi Rajvanshi, Assistant Director, The ICSI, Consumer Protection (E-Commerce) Rules, 2020 : An Overview, available in https://www.icsi.edu/media/webmodules/Consumer_Protection_E-Commerce_Rules_2020.pdf accessed on 21.04.2022.,

⁸ Information Technology Act, 2000,

< <https://www.meity.gov.in/writereaddata/files/The%20Information%20Technology%20Act%2C%202000%283%29.pdf>

⁹ THE CONSUMER PROTECTION ACT, 2019,

< https://www.indiacode.nic.in/bitstream/123456789/15256/1/AA2019_35consumer.pdf

¹⁰ Liability of e-commerce companies as intermediaries in India, < <https://www.cfo-india.in/cmsarticle/opinions/liability-of-e-commerce-companies-as-intermediaries-in-india/> accessed on 25.03.2022.

¹¹ Consumer Protection (E-Commerce) Rules, 2020 <: <https://consumeraffairs.nic.in/en/theconsumerprotection/consumer-protection-e-commerce-rules-2020>

¹² Electronic Commerce, <https://ecommerceguide.com/guides/what-is-ecommerce/> accessed on : 24.04.2025.

¹³ Ibid

¹⁴ OECD Guidelines for Consumer Protection in the Context of Electronic Commerce (1999), <

<https://www.oecd.org/sti/consumer/oecdguidelinesforconsumerprotectioninthecontextofelectroniccommerce1999.htm#:~:text=The%20Guidelines%20for%20Consumer%20Protection%20in%20the%20Context,the%20local%20store%20or%20order%20from%20a%20catalogue>. Accessed on 30.03.2025

in relation with business-to-consumer transactions, the guidelines are intended to eliminate the uncertainties where both the consumers and businesses encounter when buying and selling online.

The growth of internet has led the OECD to revise its 1999 guideline in 2016¹⁵ to enumerate number of consumer protections which majorly aim on fair business includes ethical advertising and marketing practices, online business identity's clear information, offers and the terms and conditions of any transaction in related to the goods or service, to ensure a transparent process for the confirmation of transactions and secure payment mechanisms, encourage dispute resolution and redress and privacy protection of the consumer¹⁶. This era on consumer protection e-commerce has been gradually increasing day by day and the exemptions or evasion from being liable for the act committed by the intermediary through its e-commerce platform is still veiled by the prenotation on stating the act as done by third party and the company has taken the due diligence in protection of consumer interest which is well called as "safe harbouring" the same protection is upheld in European Union Directive as intermediaries are exempted from liability for the content they manage if they fulfil certain conditions as service providers hosting illegal need to remove it or disable access to it as fast as possible once they are aware of the illegal nature of it.

The liability be exempted covers only the services who play a neutral, merely technical and passive role towards the hosted content and the member States cannot force any general content monitoring obligation on intermediaries.¹⁷ The very next question raised is whether the consumer protection outweighs the protection of intermediary?

III. SAFE HARBOUR PROTECTION FOR E-COMMERCE PLATFORMS VS. DUE DILIGENCE:

The online market place is an intermediary under the scope of section 2(w) of the Information Technology Act, 2000 as intermediary to "receives, stores, or transmits a particular electronic record or provides service with respect to the record"¹⁸ A marketplace e-commerce entity, which acts as a third-party facilitator or conduit for transactions between clearly identifiable buyers and sellers, would be considered as an intermediary as per the definition of 'intermediary' under the Information Technology Act, 2000 ("IT Act"), but an e-commerce entity operating under the inventory-based model to sell goods/ services owned by it directly to customers will not qualify as an intermediary.

The rights which are guaranteed to the intermediary come along with the liability of the intermediary too. The issue on liability over intermediary is raised for the first time in the case of *Avnish Bajaj v. State of NCT*¹⁹ Hon'ble High Court of Delhi has quashed the criminal proceedings initiated against the CEO of Bazee.com, now it is called as eBay.in. The Court ruled that the website hosting the impugned video can be held liable under the Indian Penal Code and section 67 read with section 85 of the IT Act under the notion of deemed criminal liability of director(s)/manager(s) of an intermediary entity as responsible for publishing or transmitting content which are sexually explicit in nature. After this pioneering judgement, section 79 of IT (Amendment) Act 2008 is legislated with the principle of safe harbouring, which exempts the intermediaries from liability over the third-party content made available on its E-Commerce platform.

Immunity from third-party content in India is primarily governed by section 79 of the IT Act read with the Information Technology (Intermediaries Guidelines) Rules, 2011 (IT Rules). Rule 3 of the Information Technology (Intermediaries Guidelines) Rules, 2011 provided that, an intermediary should uphold the caution as *due diligence*, which will absolve the intermediaries from the liability for third-party content. Due diligence will include publishing its rules and regulations such as user agreement and privacy policy by this the consumers shall upload any information which is misleading/fake and infringes trademark, patent copyright or any other proprietary rights²⁰

IV. JUDICIAL INTERPRETATION ON "SAFE HARBOURING" IN E-COMMERCE:

The Information Technology Act, 2000; saves the intermediary from being victim or be blamed for the act of third party through the principle of safe harbouring under section 79 of the Information Technology Act 2000, though safe harbouring nourished to protect the internet service provider and the intermediaries the enactment of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 ("2021 Intermediary Rules"), has ensued a spat on social media and internet service providers. When the table turns on intermediary specially on online E-Commerce platforms the government of

¹⁵ Consumer Protection in E-commerce OECD Recommendation, 2016, OECD (2016), Consumer Protection in E-commerce: OECD Recommendation, OECD Publishing, Paris, < <https://www.oecd.org/sti/consumer/ECommerce-Recommendation-2016.pdf> accessed on 01.04.2025.

¹⁶ Neelam Chawla · Basanta Kumar, E-Commerce and Consumer Protection in India: The Emerging Trend, Journal of Business Ethics <https://doi.org/10.1007/s10551-021-04884-3>, < <https://link.springer.com/content/pdf/10.1007/s10551-021-04884-3.pdf>, accessed on 01.04.2022

¹⁷ e-Commerce Directive, < <https://digital-strategy.ec.europa.eu/en/policies/e-commerce-directive> accessed on 02.04.2022.

¹⁸ Section 2(w) of Information Technology Act, 2000, "intermediary" under Section 2(w) of the Information Technology Act, 2002 which defines it as, "any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes"

¹⁹ Avnish Bajaj v. State of NCT [2005 (79) DRJ 576]

²⁰ Siddharth Varshney, Can E-Commerce Intermediaries Be Held Liable For Sale Of Counterfeit Goods On Their Platforms? < <https://www.algindia.com/can-e-commerce-intermediaries-be-held-liable-for-sale-of-counterfeit-goods-on-their-platforms/>> accessed on 20.03.2022

India's The ministry of consumer Affairs, Food and Public Distribution has enacted E-commerce rules 2020²¹. The pioneering question rise is the role and extend of intermediary participation towards the act of third-party act in its host E- commercial site as, Whether the intermediary is active or passive participant in departing the information made by the third party in their online platform? Section 79(1) of the Information Technology Act 2000 states that an intermediary shall not be liable for any third-party information, data, or communication link made available or hosted by it and provided that the intermediary fulfils the conditions prescribed under in Section 79(2) and Section 79(3) of IT Act, 2000.

In Louboutin Case ²²on deciding the liability of e-commerce platform *darveys.com* for the infringement of trademark rights of Christian Louboutin where its products were being sold on the darveys.com online platform. The Hon'ble Delhi High court drew a distinction between 'active' and 'passive' intermediaries by stating that e-commerce platform is entitled for *safe harbour* protection under Section 79(1) of IT Act provided that protection depend on whether it plays an 'active' or a 'passive' role while operating such a platform. The court has further identified certain list of factors including identification of the seller and providing details of the seller, , packaging of the product with its own packing, transportation, delivery and advertising products on the platform ,providing quality assurance, authenticity guarantees or storage facilities, assistance for placing a booking of the product , creating listing of the product, etc., involvement in which by the e-commerce entity would make such entity as an 'active participant' and further observed that "*when an e-commerce website is involved in or conducts its business , which would see the presence of a large number of elements enumerated above, it could be said to cross the line from being an intermediary to an active participant*" then, "*any active contribution by the platform or online marketplace completely removes the ring of protection or exemption which exists for intermediaries under Section 79 of Information Technology Act.*"²³

Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd. and Ors. (Amazon Case)²⁴ the Division Bench of the Delhi High Court dealt with the question that, whether provision of incidental services like warehousing, packaging, storage, entering into fresh warranties etc., by Amazon, Cloudtail, Snapdeal could deprive them of the protection under Section 79 , the court observed that section 79 does not draw any demarcation between active and passive intermediaries and so far the availability of safe harbour provision's concerned can be availed so long as the relevant intermediary complies with the conditions laid down in Section 79(2) and Section 79(3) of the IT Act²⁵. This amazon case has set aside the categorization of intermediaries as active or passive participants for the purposes of determining availability of safe harbour protection. The same safe harbour protection for e commerce platform is upheld in *Kunal Bahl and Ors. v. State of Karnataka*²⁶ case too.

The provided clause to avail safe harbour protection is the strict compliance of due diligence principle held in section 79(2)(c) and Section 79(3) in IT Act, 2000. The concept of due diligence is thrust in certain cases like *My Space Inc. vs Super Cassettes Industries Ltd*²⁷ Hon'ble Delhi High court has observed that an intermediary could avail the protection under section 79 if it is not involved in the initiation of the transmission, selection of receiver, and modification of the information as per section 79 (2) (b) of the IT Act, 2000 in furtherance to that, an intermediary has to comply with due diligence provision under section 79 (2)(c) of the IT Act and Rule 3 of the Information Technology (Intermediary guidelines) Rules, 2011. A) Whether there is initiation of transmission by the online platform? B) Whether there is selection of receiver of transmission by the online platform? and C) Whether there is modification of information contained in the transmission by the online platform?

In Myspace Case²⁸, the Delhi High court has held that the website has complied with section 79 (2) (b) (iii) whereas the intermediary has engaged only in the modification of format and not the content uploading which is made by the users over the website and over the process of automatic processing of modification of format has made by the myspace website's tacit or expressed control or knowledge , since the myspace is an social network site, the above observation may not squarely apply to an E-commerce platform²⁹. The arguable point the e commerce platforms does not alter nor it modify the nature of type of the product posted by the customer over its platform, thus E commerce platform does not fall under the diagonal of provided clause of Section 79(2)(b)(iii) of IT Act for "initiate the transmission"³⁰

V.E-COMMERCE RULE 2020 AND ITS MAGNITUDE IN PROTECTION OF E-CONSUMERS:

The existing parent legislation, The consumer Protection Act, 2019 serves as a rescuer against the unfair trade practices in e-commerce and to protect the interest of the consumers participating in e-commerce in furtherance regulation specifically to facilitate fairness and operational transparency by the e commerce entity this Consumer Protection (E-Commerce) Rules,2020 passed (E-Commerce Rule, 2020)³¹.

²¹ Ibid (n.6)

²² Christian Louboutin SAS v. Nakul Bajaj and Ors, 253(2018)DLT728

²³ Ibid

²⁴ Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises Pvt. Ltd. and Ors 2020(81)PTC399(Del)

²⁵ India – Safe Harbour Protection For E-Commerce Platforms., < <https://conventuslaw.com/report/india-safe-harbour-protection-for-e-commerce/>> accessed on 22.04.2025.

²⁶ Kunal Bahl and Ors. v. State of Karnataka 2021(2)KarLJ254

²⁷ Myspace Inc. v. Super Cassettes Industries Ltd. (2017) 236 DLT 478 (DB)

²⁸ Myspace Inc. v. Super Cassettes Industries Ltd. 236(2017)DLT478

²⁹ Mukul Sharma, Ishita Khandelwal, Sanchit Garg & Astha Tambi safe Harbour Protection for E-Commerce platforms < <https://corporate.cyrilamarchandblogs.com/2021/07/safe-harbour-protection-for-e-commerce-platforms/> > accessed on 20.04.2022

³⁰ Section 79 of The Information Technology Act, 2000 < <https://indiankanoon.org/doc/844026/>> accessed on 24.02.2022.

³¹New E-Commerce Rules for Consumer Protection in India 2020,< <https://taxguru.in/corporate-law/e-commerce-rules-consumer-protection-india-2020-complete-details.html>> accessed on 21.03.2022.

The E-commerce Rule, 2020 defines “E-Commerce entity” as any person who owns, operates, or manages a digital or electronic facility or platform through an online interface in the form of software including the process of mobile application or website for the access of electronic commerce³². The E-commerce entity is generally categorised as (2) an inventory E-commerce entity where the inventory entity sells the goods or services directly to the consumers like apple, Reebok, Nike- single brand retailers (b) second is the market place entity where they assist the transaction between the sellers and the consumers. the E-commerce rules require the e commerce entity to be either a company incorporated under companies Act, 1956 or Company Act, 2013 or a foreign company as per companies Act 2013 or, an office or agency as per Foreign Exchange Management Act 1999.

The said E-Commerce Rule , 2020 apply to (i) all goods and services bought or sold over digital or electronic networks,(ii) all models of e-commerce (marketplace and inventory models) and (iii) all e-commerce retail, including multi-channel single brand retailers and single brand retailers , (iv) all forms of unfair trade practices over all the models of e-commerce:³³ The Rules govern e-commerce entities (“Platforms”), which shall act as platform to own, operate , manage, digital or electronic facility for electronic commerce and act as a seller of products and services.

(A) **The primary duties of the E- commerce entities are** (a) clear visibility of the legal name of the e-commerce entity, principal geographic address of the e-commerce entity headquarters and further the entity shall disclose its branches details. The name and full details of the website of e-commerce platform with contact details as e- mail address, fax, landline and mobile numbers of the consumer care as aggrievance officer., (b) e- commerce entity should establish an adequate grievance redressal mechanism as ordinarily received or addressed in India display the name, contact details, and designation of such officer on its platform.,(c) Every e commerce entity should ensure the grievance officers appointed for addressing the grievance of the consumers should properly acknowledge and provide receipts of consumer complaints within 48 hours from the date of receipt of the complaint., (d) e- commerce entity shall mention the details of the imported goods or products which are posted to be sold in its website., (e) Every E- commerce entity shall be partner in the central government’s National Consumer Helpline (f) e-commerce entity should not impose any cancellation charges over the consumers on the cancellation unless similar charges born by e-commerce entity over the cancellation of purchase orders unilaterally for any reason ., (g) the e-commerce entity should record the consent of the consumers over the purchase of any goods or services which are purchased from its online platform and that consent should be in an express ed form which should be of explicit and affirmative one, the consent should not be prefilled one as like pre-ticked checkboxes., (h) every transaction in relation to acceptance of payment and refunding should comply with the norms prescribed by Reserve Bank of India or norm prescribed by any other authority authorized by Indian law to govern e- commerce entity as time being in force ., (i) regarding the fabrication of goods and to prevent the unfair trade practices the E-commerce rule ,2020 has strictly mandated the e commerce entity not to manipulated the price of goods or service which are offered in its platform which could directly result in gain or unreasonable profit to the e-commerce entity which are considered as an unjustified price in the accordance to the market condition or, in accordance to the value of goods or services ,or any other consideration in relevant for the determination of charges which are justifiable.

(B) **The Duties of the E-commerce entity:** The duties and liability of E-commerce entity is enumerated in Rule 6 of the E-commerce rule 2020³⁴, all the rights are reciprocated with the duties , (i) Rule 6 imposes strict regulation on the sellers in market in order to prevent the unfair trade practice , the E-commerce rule 2020 does not contain a definite explanation for the term unfair trade practices , unfair trade practices is defined under Section 2(r) of the Consumer Protection Act 1986 as *“A trade practice for which is used for the purpose of promoting the sale, any unfair practice to use or supply of any goods or for the provision of any service, any unfair method adopted , or implementing any deceptive practice, such as falsely representation of goods or service, representation of second hand rebuilt one has new good; representing that the goods or services holds sponsorship, approval , performance , accessories and benefits where actually the think never exist in the goods. Promising the false longevity of the product where the actual test of lasting has not made ; disclosing any false or misleading representation concerning the need or about the usefulness of any goods or services”*³⁵ , these above sorted unfair trade practices are taking place in the e-commerce platform too and to added upon, these acts are commenced in electronic mode of commercial space.(ii) the seller who are offering the goods or services in through the market place of e-commerce entity should not refuse refund the paid consideration in case if the goods or services are defective, deficient , spurious or not in good features.. (iii) appointment of grievance officer for the consumer redressal and the seller need to ensure whether the grievance is resolved within 48 hours. The sellers should provide all business details regarding the communication of its principal and geographical address of its headquarter and all the branches need to be disclosed to the E- commerce entity with the name of its website, e-mail address, customer care contact and its GSTIN and PAN details of its companies registered. These duties show the high responsibility on the sellers in e-commerce platform and protection of entity is entrusted here, despite the entity sells a fabricated products in their market, they certainly to the protection as intermediary and bypasses their responsibility as an entity to protect the interest of the consumers who approach their platform with the trust.

³² Rule 3 (1)(b) “e-commerce entity” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce, but does not include a seller offering his goods or services for sale on a marketplace e-commerce entity of Consumer Protection (E-Commerce) Rules, 2020.

³³ Section 2 , Consumer Protection (E-Commerce) Rules, 2020.

³⁴ Rule 6 . Duties of sellers on marketplace, Consumer Protection (E-Commerce) Rules, 2020.

³⁵ Section 2(r), The Consumer Protection Act 1986, No.68 of 1986.

<https://www.indiacode.nic.in/bitstream/123456789/6922/1/consumer_protection_act_1986.pdf> accessed on 21.04.2022.

The liabilities of E-commerce entity: a market place E-commerce entity is an entity which provides an Information Technology (IT) or a digital platform or an electronic network to facilitate the electronic form of business or transaction between the buyers and the sellers³⁶. The market place entities are the big tycoons to turn \$1 trillion market capita by the year of 2022³⁷. These marketplace entities are seeking an exemption from being liable under section 79 of the Information Technology Act(IT Act), 2000 for the fabrication in relation to the goods or sales displayed in its own e-commerce market place by the protective word as third-party liability and they are further protected under the rule of Information Technology (Intermediary Guidelines) Rules, 2011 also. In addition to the due diligence entrusted under section 79(2) and section 79(3) of the Information Technology Act, 2000 the E-commerce Rule , 2020 enlist a number of responsibility on the marketplace e-commerce entity as;(1) (i)every market place E-commerce entity shall require the sellers to take an undertaking to ensure the description, image and other related contented pertaining to the goods or services which is to be shown be and which should be need to be corresponded directly with the appearance , nature, quality, the purpose and other general features of such good or service to be accurate.,(ii) market place E-commerce entity should provide information about the following in clear and accessible manner ,such as the details of details of the sellers who are offering goods and service with the clear description of the sellers name of their business, the registration details of the seller, the geographic address of the seller, customer care number, disclosure of the rating or its related other aggregated feedback about the seller, and any other information necessary for enabling consumers to make informed decisions at the pre-purchase stage. Even after the purchase of the goods or products the marketplace e-commerce entity shall, on a request in writing made by a consumer provide with information in relation to the principal geographic address of its headquarters and all branches, name and details of its website, its email address and any other information necessary for communication with the seller for effective dispute resolution., (iii) a ticket number for each lodged need to be generated and by that the consumer can track the status of their complaint made.,(iv) the information relating to the return, refund, exchange , warranty and guarantee details need to be described along with the other details like delivery, Shipment, payment tracking includes mode lor payment, grievance redressal mechanism and any other similar information in relation to the information required by the consumer to make any informed decision.,(v) information relating to the availability of payment methods, security of those payment modes , fee chargeable , procedure to cancel the payment, charge-back options and the contact information of the relevant payment service providers.,(vi) all the above details information to be made as easily accessible and publicly available description drafted in plain and intelligible language which could be understood by the consumers.(vii) Every marketplace e-commerce entity should include its generally governing terms and condition detailing its relationship with sellers on its platform.,(viii) Every marketplace E-commerce entity should take reasonable efforts to maintain a record on relevant information for the identification of all sellers who were repeatedly offered goods or services that was previously been removed or access was been disabled under the Copyright Act, 1957 (14 of 1957), the Trade Marks Act, 1999 (47 of 1999) or the Information Technology Act, 2000 (21 of 2000).. Provided that no such e-commerce entity shall be required to terminate the access of such seller to its platform voluntarily unless it satisfy the above rule.

- (C) **Duties and Liabilities of Inventory E-Commerce entities:** - “Inventory E-commerce entities” are another form of E-commerce entities which owns the inventory of goods or services and sells such goods or services directly to the consumers as a single brand retailer through multi-channel single brand retailers³⁸. Rule 7 of E-commerce Rule 2020, describes the duties and liability of the Inventory E-commerce Entity to provide the information in clear and accessible mode to the users as the duties and liabilities follows (i) the information relating to the return, refund, exchange , warranty and guarantee details need to be described along with the other details like delivery, Shipment, payment tracking includes mode for payment, grievance redressal mechanism and any other similar information in relation to the information required by the consumer to make any informed decision., (ii) mandatory notice and information required by law need to be disclosed.,(iii)information related to available payment method and mode of payment transaction , fee payable and information of the relevant service provider need to informed .,(iv) contractual information related and required to be disclosed according to the law.,(v) total price figure of single figure good or service along with the breakup price of the goods or services.,(vi) generate ticket number for each complaint lodged by which the consumer can track the status of their complaint.,(2) inventory e-commerce entity should not falsely represent itself as a consumer and post reviews about goods and services in order to misrepresent the quality or the features of its goods or services that may cause an unfair trade practice.,(3) marketing advertisements on its goods or services need to describe the actual characteristics, access and usage conditions of such goods or services.,(4) inventory e-commerce entity should not refuse to take back goods, or withdraw or discontinue services purchased or agreed to be purchased, or refuse to refund the paid consideration on such goods or services which are found defective, deficient spurious or if the goods or services are not of the characteristics as same as advertised or agreed to be.,(5) if an e-commerce entity explicitly or implicitly vouches for the authenticity of the goods or services sold by it then the guarantees on such goods or service’s authentic, the entity should bear the appropriate liability in any action related to the authenticity of such good or service.

³⁶ Rule 3(1)(g) , Consumer Protection (E-Commerce) Rules, 2020 “marketplace e-commerce entity” means an e-commerce entity which provides an information technology platform on a digital or electronic network to facilitate transactions between buyers and sellers;

³⁷ Amazon Statistics (2022) - Business of Apps,< <https://www.businessofapps.com/data/amazon-statistics/>> accessed on 27.04.2022

³⁸ Rule 3(1)(f) , Consumer Protection (E-Commerce) Rules, 2020 “inventory e-commerce entity” means an e-commerce entity which owns the inventory of goods or services and sells such goods or services directly to the consumers and shall include single brand retailers and multi-channel single brand retailers

VI. CONCLUSION:

Consumer protection should be the backbone of Indian economy and commercial market system. The very new era on digitalisation of commerce is been used by majority of people through quick access mode of internet. The intermediary is the person who acts as a person on behalf who receives, stores or transmit the record or provides any services including online market place. The judicial interpretation of the concept of intermediary definition as the E-commerce entity could not completely confine the e-commerce platform under the concept of intermediary, the unending conundrum on the demarcation of active and passive participation of the e-commerce platform is till need to setback. The immunity over the e-commerce entity as an intermediary from section 79 of Information Technology Act, 2000 and Information Technology (Intermediary) Rules 2011 with the additional protective rule emerged from consumer protection Act 2019 which is known as Consumer Protection (E-Commerce) Rules, 2020. Rule 5 of the E-commerce Rules allows the marketplace E-commerce entity to avail the exemption from liability under section 79 of the Information Technology Act, 2000 under the provided clauses of sections 79 (2) and 79 (3) of the IT Act as “due diligence”., However in the same Rule 8 of E-commerce Rule, 2020 states that in case of any violation of the e-commerce Rules by the E-commerce entity, the provisions of the Consumer Protection Act, 2019 will apply. This shows that there is some uncertainty in the application of section 79 of the Information Technology Act 2000, as whether the marketplace e-commerce entity would be exempted under in case of any violation of the E-commerce Rules, 2020. The E-commerce Rule, 2020 carries a primary objective to protect the rights and interests of consumers, prevent unfair trade practices, fraudulent transactions, and control sale of counterfeits. These specified E-Commerce Rules 2020 must be adhered to with an immediate effect and non-conformity with the E-commerce Rule ,2020 should be considered as a penal action against the e-commerce entity under Consumer Protection Act, 2019., where this address on non-compliance of safe harbour and penal sanction towards the e-commerce intermediary is not reduced down in section 79 of the Information Technology Act, 2000.

The existing legislation on safe harbouring by intermediary need to be revamp and Indian judiciary need to conclusively lay down the tests to be applied to determine compliance by e-commerce platforms of the conditions under Section 79 of the IT Act for such platforms to successfully claim safe harbour protection as in the case of My Space Inc. vs Super Cassettes Industries Ltd., *“Section 79 is neither an enforcement provision nor does it list out any penal consequences for non-compliance. It only sets up a scheme where intermediaries have to follow certain minimum standards to avoid liability; it provides for an affirmative defence and not a blanket immunity from liability.”* The E-commerce intermediaries are more than the actual intermediary defined under Information Technology Act, 2000 to control the transmission of information or, the transactions undertaken or otherwise conspiring, abetting, aiding or inducing the alleged infringing act on its platform, and accordingly, whether such intermediary can seek protection under Section 79(1) of the IT Act. Thus, the judicial interpretation and application of safe harbouring protection on E-commerce entity as an intermediary need a revamp to identify the exact liability on E-commerce intermediary as well in protection of consumers in E-commerce.

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