



JOURNAL OF CYBER GOVERNANCE AND INTELLECTUAL PROPERTY

Volume 1

Article 16

Evolving Liability of E- Commerce Platforms for Counterfeit Goods

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Recommended Citation:

Tiwari (2026) “Evolving Liability of E- Commerce Platforms for Counterfeit Goods” Journal of Cyber Governance and Intellectual Property, Vol. 1, Article 16. (DOI)

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ABSTRACT

As we know, E-commerce platforms work as mediators between customers and sellers. They handle work from product display to customer services. They facilitate negotiation to resolve disputes between customer and seller. In this paper we are going to understand the liability of E-commerce platforms for the sale of counterfeit goods. The primary focus is on counterfeit goods, e-commerce platforms, India's legislative and judicial development along with work of the European Union and United States.

Legal framework under Trademarks act, Information Technology act (IT act), Consumer Protection (E-Commerce) Rules and other provisions related to it and thoroughly examine the conditional immunity of Safe harbour (sec 79 IT act 2000). We will also discuss key legal doctrines - intermediary liability, contributory infringement, and due diligence obligations, Vicarious Liability and other principles.

This research paper follows the doctrinal and comparative methodology to study on topic. Through case laws we will get to know how the laws work and the approach of courts evolve regarding accountability of e-commerce platforms. In the end we know why we need to balance liability standards to protect consumers while sustaining digital innovation.

KEYWORDS

E-commerce, counterfeit goods, intermediary liability, safe harbor, Section 79 IT Act, Consumer Protection E-Commerce Rules.

INTRODUCTION

In the present world where online shopping is not just a necessity but has become an integral part of life. Where people even for small needs like snacks, soaps, shampoos etc. depend on online shopping. Although people are aware of the risk, even after taking due care many times fraud accrue to them. It is not easy to deduct the genuineness of the product and seller. Let's understand this with an example of 'Adivasi hair oil' . This product is easily found on any known and trusted platform like- Amazon, Myntra or Flipkart. When you search for this product you find almost the same product (size, quantity, ingredient etc.) with a bit different or same price. People end up buying counterfeit products. But how? getting tag of authorised seller or misleading information are primary reasons. Approximately 35% of urban consumers in India reported purchasing fake goods in the past year¹. This caused huge harm to customers, platforms, brands as well as our economy. Here emerges the question: what are the liabilities of that e-commerce platform in relation to counterfeit goods.

OVERVIEW OF EXISTING LEGAL LITERATURE

As for understanding the topic I read and analysed the existing framework along with articles, journals and case laws. In the rapidly growing world of technology E-commerce has transformed global trade as well as brought many challenges. Here we discuss the liability of e-commerce platforms regarding counterfeit goods. In India under Information Technology Act, 2000 particularly intermediaries have Safe Harbour protection (section 79) and liability of due diligence [section 79(2)(c)]. IT Rules (intermediary guidelines) 2011 which replaced IT Rules (Intermediary Guidelines and Digital Media Ethics Code) 2021 comparing both 2021 rules provide stricter guidelines under (rule 3). Along with these I also understand Consumer Protection Act, 2019(replacing the 1986 act) and Consumer Protection (E-Commerce) Rules, 2020 which made it mandatory to check listing, sellers and provide consumer complaint facility etc. section 2(9) of the act provides some rights to consumers.

¹ Nearly 35% of Urban Consumers in India Admitted to Having Bought Fake Products in the Last Year: Report, The Economic Times,(accessed on Mar. 15, 2026), <https://economictimes.indiatimes.com/industry/services/retail/nearly-35-of-urban-consumers-in-india-admitted-to-having-bought-fake-products-in-the-last-year-report/articleshow/129606855.cms>.

Not only this, also evaluate Trade Mark act, 1999 and Copyright act 1957 in relation to counterfeit goods and intermediary liability. Also examine the criminal liabilities specifically under BNS, 2023 and DPDP act, 2023 (personal data of 1.5 million Zivame customer on sale, 2023²). I have done the comparative analysis of law in the USA and European Union to know the liabilities of intermediaries worldwide.

RESEARCH METHODOLOGY AND OBJECTIVE

The research adopts a doctrinal and analytical legal-research methodology. For the purpose of examining the grounds of protection as well as liabilities of intermediary. Here we not just discussed statutory provision but also did comparative analysis of the USA and EU laws. With the help of case-laws we understand the approach of the judiciary in relation to intermediaries.

The objective of my research is to trace the evolution of intermediary liability of E-commerce platforms in India. The changing landscape of the liabilities after the case of Avnish Bajaj vs State of N.C.T., 2005. What precautions are used by the government (due diligence) to control counterfeit sale. Also going to understand why safe harbour protection is so important.

COUNTERFEIT GOODS

The word “Counterfeit” is derived from the French words ‘contre’ meaning "counter or against", and ‘faire’, meaning "to make" that means to make in imitation or fake copy³. Goods means any kind of product for sale. Counterfeit goods are the product made to imitate the original product by copying trademark, logo, packing etc. with intent to deceive consumers to believing they are original and authentic⁴. Indian laws specifically do not define the term counterfeit goods but read in trademark infringement (section 29) under Trade Marks act 1999, copyright infringement (section 51) under Copyright act 1957, also section

² Zivame Data Breach: Personal Info of Thousands of Indian Women Customers Up for Sale Online, India Today (accessed on May 22, 2023), <https://www.indiatoday.in/technology/story/zivame-data-breach-leak-personal-info-indian-women-2382614-2023-05-22>.

³ Khurana & Khurana, India’s Stand on Counterfeit Goods, (accessed on Apr. 15, 2022), <https://www.khuranaandkhurana.com/2022/04/15/indias-stand-on-counterfeit-goods>.

⁴Khurana & Khurana, India’s Stand on Counterfeit Goods, (accessed on Apr. 15, 2022), <https://www.khuranaandkhurana.com/2022/04/15/indias-stand-on-counterfeit-goods>.

11 of customer act 1962 prohibited import export of counterfeit goods. The word 'counterfeit' defined under [section 2(4)] of Bhartiya Nyaya Sanhita (BNS) - *A person is said to "counterfeit" who causes one thing to resemble another thing, intending by means of that resemblance to practice deception, or knowing it to be likely that deception will thereby be practised.* TRIPS Agreement (Agreement on Trade-Related Aspects of Intellectual Property Rights) defines "counterfeit trademark goods"⁵- *any goods, including packaging, bearing without authorization a trademark that is identical to or indistinguishable from a validly registered trademark, which infringes the rights of the owner under the laws of the country of importation.*

Cadbury India Limited and Ors. vs Neeraj Food Products on 2007⁶

Cadbury sued Neeraj Food Products for using a deceptively similar packaging, colour scheme, and font for their product "James" to confuse consumers, mimicking Cadbury's "Gems." The Delhi High Court took a decision in favour of Cadbury, upholding the brand's distinct reputation and intellectual property rights. A counterfeit court said the goods are copies of the original, thus only proof of the existence of such goods is enough to constitute counterfeit.

E- COMMERCE PLATFORM

E- commerce platforms are the digital (online) platform which helps businesses set up and run an online store. It handles product displays, search, cart, payment processing, order management, logistics and customer services etc. In India Amazon, Flipkart, Myntra and Meesho are the leading platforms where wide range of electronics, clothing, cosmetics, home décor and grocery is available⁷. Blinkit, Zepto, Big Basket are some examples of a fast- paced segment of the e- commerce industry which is also known as quick- commerce. All these platforms operate as multi- seller marketplaces.

⁵Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1C, 1869 U.N.T.S. 299, 33 I.L.M. 1197 (1994), (accessed on May 22, 2023) available at https://www.wto.org/english/docs_e/legal_e/27-trips.pdf.

⁶Cadbury India Ltd. & Ors. v. Neeraj Food Prods., 2007 (138) DLT 323 (Del).

⁷ An Overview of Electronic Commerce (e-Commerce), ResearchGate, (accessed May 22, 2023)

https://www.researchgate.net/publication/351775073_An_Overview_of_Electronic_Commerce_e-Commerce

E-commerce platforms also called intermediary which is defined under section 2(1)(w) of IT Act 2000 as- '*intermediary*⁸' means 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.

The rapid growth in online market places also brought the issue of intermediary liability, which was first addressed in case of *Avnish Bajaj vs State of N.C.T., 2005*⁹ where the Delhi high court quashed the criminal proceedings initiated against the CEO of Baze.com (now eBay.in). The court held liable the entity under IPC section 292 and 294 which declared selling, distribution or public exhibition of obscene material is prohibited and punishable and section 67 read with section 85 of IT Act, 2000 which made a corporation liable for publishing or transmitting content containing sexually explicit acts. After this case an amendment took place in 2008 through which provided exemption from liability of intermediary in certain cases in section 79. This provision is also known as safe harbour provision which exempt intermediary liability for third-party content and Information Technology (Intermediary Guidelines) Rules, 2011 provided further. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Amendment Rules, 2025, effective from November 15, 2025 is also come up with tightened procedures although it majorly deals with social media platforms.

SAFE HARBOUR PROTECTION (SECTION 79)

Safe harbour is a legal protection to the intermediaries from liability of the illegal act by third parties while using their platform. This doctrine protects digital commerce globally. Evolution of this doctrine traced in USA under Communications Decency Act, 1996 and Digital Millennium Copyright Act, 1998 where to protect innovations and market ethics platforms were not liable for third party act and a system of notice and takedown provided to ensure accountability on platforms. The European Union later came up with the E-Commerce Directive, 2000 and coined the provision as 'hosting immunity'.

⁸The Information Technology Act, No. 21 of 2000, 79, available at https://www.indiacode.nic.in/bitstream/123456789/13116/1/it_act_2000_updated.pdf (accessed on May 22, 2023)

⁹Avnish Bajaj v. State (NCT of Delhi), 2004 SCC OnLine Del 1423, (accessed on May 22, 2023) available at <https://indiankanoon.org/doc/1308347/>

In India law on safe harbour protection before 2008 was not very protective¹⁰It provided little protection under IT act 2000 which caused platforms to take legal actions against them. In 2004 a CD containing an obscene clip was posted for sale by a user on the online auction site as a result of this, both the user and the CEO of the site were arrested and charged with the same offence [Avnish Bajaj vs State of N.C.T., 2005]. This case highlighted the lacuna in law, where liability on material that is not generated by site but only provided a platform to publish/circulate will be charged for the same. This threatened the growth of technology and e-commerce in India. It questioned the law and demands for reform. The Information Technology (Amendment) Act, 2008 came into light which broadened the scope of Safe Harbour Protection available to intermediaries. It introduced a provision stating that intermediaries, which function merely as platforms for information transmission, would not be held liable for any offenses committed on their platform without their knowledge. It was clarified that an intermediary's eligibility to claim safe harbour largely depends on two crucial factors – whether they had actual knowledge of any unlawful activity and whether they fulfilled their due diligence obligations as prescribed by the law¹¹. Let's understand both the concepts in depth.

- **Actual knowledge-** It means that the intermediaries has been formally made aware of unlawful content or activity on their platform. Before the case of *Shreya Singhal v. Union of India 2015*¹² Section 79 read with the old Intermediary Guidelines Rules, 2011 define actual knowledge in its wider sense. A user complaint, private notices from individuals or companies and platforms own awareness are considered as actual knowledge but platforms had to decide themselves whether content was illegal, unethical, misleading or inappropriate due to these arbitrary takedown actions or content is over censored to prevent liabilities. The case of Shreya Singhal v. Union of India 2015 came to light where the Supreme Court of India struck down Section 66A of the Information Technology Act, 2000 because the terms 'annoying', 'grossly offensive' and similar phrases were undefined and vague, making the law susceptible to abuse. Mentioned that the online free speech is a core constitutional right under Article 19(1)(a) along with Article 14 & 21 of the Constitution of India. After the

¹⁰ Intermediary Liability: Evolution of Safe Harbour Law in India (Part I), Ikigai L.,(accessed on May 22, 2023) <https://www.ikigailaw.com/article/362/intermediary-liability-evolution-of-safe-harbour-law-in-india-part-i>

¹¹Priyanka Tanwar and Dr. Chandra Parkash Liability of E-Commerce Platforms for Online Counterfeit Goods, 6 Int'l J. Res. Publ'n & Revs. 55094 (2025), (accessed on May 22, 2023), available at <https://ijrpr.com/uploads/V6ISSUE11/IJRPR55094.pdf>

¹²Shreya Singhal v. Union of India, (2015) 5 SCC 1, Writ Petn. (Criminal) No. 167 of 2012, (accessed on May 23, 2023) available at <https://indiankanoon.org/doc/110813550/>.

case, the Supreme Court narrowed the meaning of actual knowledge. Now Actual knowledge arises only when a court order, government-authorized notification or appropriate authority directs the intermediary to remove content. Section 79(3)(b) provides for a ‘notice and take down’ regime, wherein an intermediary is required to take down infringing content upon receiving actual knowledge of its existence.

- **Due diligence-** Due diligence refers to the reasonable steps and precautions an intermediary must take to prevent misuse of its platform. Rule 3(1) of Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 provide ‘due diligence by an intermediary’. Under these rule key due diligence Requirements are- rule 3(1)(a) Publish rules, regulations, privacy policy and User Agreement easily accessible to users on their platforms. They should be written in clear and understandable language, informing users about their rights and responsibilities. Rule 3(1)(b) the intermediary shall inform the user not to host, display, upload, modify, publish, transmit, store, update or share any information which provided under (i) to (ix) in the rule i.e. other persons privacy, harmful to child, infringes any patent, trademark, copyright or other proprietary right, threatens the unity, integrity, defence, security or sovereignty of India etc. Rule 3(1)(c) provided that an intermediary shall periodically inform its users, at least once every year, that in case of non-compliance with rules and regulations, privacy policy or user agreement for access or usage of the computer resource of such intermediary, it has the right to terminate the access or usage rights of the users to the computer resource immediately or remove noncompliant information or both, as the case may be. Rule 3(2) provides ‘Grievance redressal mechanism of intermediary¹³’ where intermediaries appoint a grievance officer. The intermediary shall also publish the name of the grievance officer and his/her contact details as well as mechanism for complaint. Grievance Officer shall acknowledge the complaint within 24 hours and resolve it within 15 days from the date of its receipt. Intermediaries are also required to remove or disable access to any content which exposes the private area of any person, or shows nudity or sexual act or conduct including artificially morphed images within twenty-four hours from the receipt of a complaint. If we specifically talk about e-commerce sites

¹³Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021, G.S.R. 191(E), (accessed on Feb. 25, 2021), No. GSR 191(E), issued by the Ministry of Electronics and Information Technology, Government of India, (accessed on May 22, 2023) available at <https://www.meity.gov.in/static/uploads/2024/02/IT-Intermediary-Rules-2021-updated-on-28.10.2022-2.pdf>.

they have to provide guidelines against fake products, ban on selling illegal products, remove listings on notice, verify sellers and ignore repeat-infringer patterns etc.

Another aspect of safe harbour protection is the active and passive role of the platform. A platform is considered passive when it acts merely as an intermediary without controlling or influencing transactions like- eBay and OLX. Provides general infrastructure like- hosts listings created by sellers, does not select or modify product descriptions or does not control pricing or inventory etc. platforms act as a neutral (passive) marketplace and get safe harbour protection. On other hand a platform is considered active when it goes beyond neutrality and participates in or controls aspects of the sale like- Amazon and Flipkart. It provides guarantees on authenticity, curating or promoting specific products and sellers, warehousing, setting prices or influencing product presentation and using algorithms to optimize sales of certain goods etc. In case of active role platforms may be lost or get limited safe harbour protection and the platform can be held liable for counterfeit goods.

LEGAL INFRASTRUCTURE IN INDIA

In India, the legal framework and liability of e-commerce platforms for counterfeit goods is shaped by a multi-layered laws comprising information-technology laws, intellectual-property laws, consumer-protection laws and criminal-law provisions. Over time, this framework has evolved from granting broad immunity to intermediaries toward imposing conditional liability and stricter due diligence obligations. Each layer defines the platform's status, rights, duties, and exposure to liability and together they define and filter safe-harbour regime in India.

Information Technology Act, 2000-

This act is the core statutory protection intermediary. Although the whole act is related to use of technology, section 2(1)(w)¹⁴ defines the 'intermediary' and section 79 specifically deals with safe harbour protection which grants immunity from liability for third-party information. Section 79(1)¹⁵-*Notwithstanding anything contained in any law for the time being in force but subject to the provisions of sub-sections (2) and (3), an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.* Which means it provides basic immunity to intermediaries as long as they act as mere hosts

¹⁴ *Information Technology Act, 2000*, No. 21 of 2000, § 2(1)(w)

¹⁵ *Information Technology Act, 2000*, No. 21 of 2000, § 79.

not controlling any process. Section 79(2) (a) & (b) conditions under which online intermediaries qualify for safe harbour protection. The term due diligence is nowhere defined in the IT Act. Instead, it is broadly referenced in Section 79(2)(c) and operationalized by subordinate legislation specifically, the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Section 79(3)(a) *The provisions of sub-section (1) shall not apply if—the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act*, according to this any unlawful done or promoted by intermediary lose the protection. Section 79(3)(b) Intermediaries lose immunity if they fail to remove unlawful content upon government notification. The Act was amended in 2008 and 2015 to address evolving cyber challenges. In case of *Lifestyle Equities CV & Anr. v. Amazon Technologies, Inc. & Ors. 2025*¹⁶ Delhi high court judgment restricted safe harbour immunity, ruling that platforms acting as active sellers rather than passive intermediaries cannot use safe harbour to avoid liability for trademark infringement. In this case Amazon's "Symbol" brand was found to be using a logo deceptively similar to the Beverly Hills Polo Club horse-rider logo, causing "e- trademark infringement" where Delhi high court ordered a massive injunction and damage Rs.336 crore, plus costs of Rs. 3.23 crore, due to non-appearance of Amazon, which later stayed by Supreme Court because of issues with the service of summons, proper service is crucial to jurisdiction but dismissed the plaintiff's appeal.

The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021

Information Technology (Intermediaries guidelines) Rules, 2011 significantly transformed by The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021. Comparing the requirement in IT Rules of 2011, minimal compliance was sufficient to claim safe harbour protection but now due diligence made it obligatory to claim immunity. The 2021 Rules essentially expand the 2011 Rules, making them stricter, more detailed, and extending regulation to digital media and social media platforms. The changes brought by IT rules 2021 are- it just does not deal with intermediaries provided under section 2(1)(w) of IT act 2000 but also includes news publishers, OTT platforms, and digital media. It adds more detailed compliance steps in due diligence like- stricter timelines, proactive

¹⁶Lifestyle Equities C.V. & Anr. v. Amazon Technologies, Inc., Delhi High Court, Original Suit (Commercial) No. _ of 2024, judgment dated Feb. 25, 2025, (accessed on May 23, 2023) available at <https://indiankanoon.org/doc/38072391/>

measures, and record-keeping. List of categories of unlawful content that intermediary must not allow given under rule 3(2) of 2011 rules which were expanded by rule 3(1)(b) of 2021 rules include fake news made for financial gain, gender-based harassment, deep-fake abuse and other AI based fraud. For Grievance redressal requires a grievance officer and mechanism for users to complain, but with relatively minimal procedural detail in previous rules but now prescribes a more structured mechanism, 24-hour acknowledgment, 15-day resolution for user complaints and annual compliance reports under rule 3(2) and 3A. one of the most important add on is it creates a new category of “Significant Social Media Intermediaries¹⁷” (SSMIs) with additional obligations like- appointment of chief compliance officer (key managerial personnel), nodal contact person, proactive measures, and stricter traceability requirements for messaging services under rule 4(1).

Consumer Protection Laws

Consumer protection norms for e-commerce and online transactions mainly come from the Consumer Protection Act 2019 (CPA,2019) and the Consumer Protection (E-Commerce) Rules, 2020. Together they protect intermediaries from liability of third-party content and provide strong statutory rights against unfair trade practices and defective goods and service to consumers. Section 2(7) of CPA 2019 defines who qualifies as a consumer.¹⁸ Section 2(9) of the act provides six rights which equally applicable on e-commerce platforms are- right to safety, right to information, right to choose, right to be heard, right to redressal, right to consumer education.¹⁹ Section 2(16) define “*e-commerce*” means *buying or selling of goods or services including digital products over digital or electronic networks.*²⁰ It established a Central Consumer Protection Authority (CCPA) to regulate, investigate, and enforce compliance in consumer-related issues. Consumers can now file complaints electronically, ensuring easier access.

Rule 2 of Consumer Protection (E-Commerce) Rules, 2020 ‘Scope and Applicability’ that include goods and services bought or sold digitally, all models of e-commerce, all forms of e-commerce retail, and all foreign entities selling to Indian consumers.²¹ It also includes service providers such as cab-hailing or sharing companies, event management or ticket

¹⁷ TaxGuru, Intermediary Liability Guidelines and Due Diligence in India, (accessed on May 7, 2025), <https://taxguru.in/corporate-law/intermediary-liability-guidelines-due-diligence-india.html>.

¹⁸ *Consumer Protection Act, 2019*, No. 35 of 2019, § 2(7).

¹⁹ *Consumer Protection Act, 2019*, No. 35 of 2019, § 2(9).

²⁰ *Consumer Protection Act, 2019*, No. 35 of 2019, § 2(16).

²¹ *Consumer Protection (E-Commerce) Rules, 2020*, G.S.R. 462(E), Rule 2 (July 23, 2020).

vending platforms, food delivery companies, content streaming platforms, etc. Rule 4 expresses the ‘duties of e-commerce entities’ that it must provide information on return, refund, exchange, warranty and guarantee of products.²² It provides that they must ensure grievance redressal mechanisms with a designated grievance officer. Grievance officers must acknowledge complaints within 48 hours and resolve them within 30 days. There shall be transparency in terms of price, delivery charges, and seller details, and prohibition of Unfair Trade Practices like- misleading advertisements, manipulation of consumer reviews.

Criminal Laws

An intermediary can be prosecuted under general criminal statutes under the Bharatiya Nyaya Sanhita 2023 and allied laws like- Protection of Children from Sexual Offences Act 2012 (POCSO), Unlawful Activities (Prevention) Act, 1967 (UAPA), Digital Personal Data Protection Act, 2023 (DPDP) if it is shown to have actively participated or abetted unlawful acts. If the platform aided or conspired in offences such as fraud, cheating, defamation, or publishing pornographic material, courts can treat it as an accomplice, not just a passive host. Under BNS where intermediaries facilitate fake listings, payment-fraud, or phishing, provisions relating to cheating, forgery, and criminal breach of trust, defamation and hate speech may be invoked. If the platform knowingly hosts or processes transactions linked to fraud or other money related offences the Prevention of Money-Laundering Act (PMLA), 2002 can be used too.

Although the intermediaries are protected by safe harbour provision yet liabilities are enforced in many laws. They can also be liable under Patents Act 1970, Copyright Act 1957, Trade Marks Act 1999 and Designs Act 2000 for infringing intellectual property and mislead through that.

COMPARATIVE VIEWPOINT

USA- Compared to Indian laws USA provides very broad immunity to intermediary platforms for third-party content even allowing them to exercise editorial-like control without losing safe-harbour protection under Section 230 of the Communications Decency Act

²² *Consumer Protection (E-Commerce) Rules, 2020*, G.S.R. 462(E), Rule 4 (July 23, 2020).

1996.²³ Limited governmental intervention gives a strong platform-centric immunity.²⁴ Platforms are often shielded from direct trademark infringement if they are not the seller of the product, but can face secondary liability i.e. contributory and vicarious liability where they knowingly facilitate or profit from infringement. Cases like *Tiffany v. eBay* 2010²⁵ and *Ohio State University v. Redbubble* 2019²⁶ show that courts distinguish between passive listing and platforms that actively participate in procurement, pricing or fulfilment.

European union²⁷ – Under digital services act (DSA) provides a horizontal safe-harbour for mere conduits, caching, and hosting services. They do not have actual knowledge of illegal content and act expeditiously to remove it once informed and related IP-enforcement instruments impose higher obligations on very large online platforms to prevent and remove illegal goods including counterfeits. It has a moderate level of government interference but has constant supervision under DSA. In comparison to India, the EU has a more balanced ecosystem of safe harbour protection.

Kent RO Systems Ltd. v. Amit Kotak, 2017²⁸, it was a case concerned trademark infringement, passing off and unfair competition in relation to water purification products. Kent RO alleged that Amit Kotak was using deceptively similar marks and packaging on products that created confusion among consumers and diluting the goodwill of Kent's trademarks. The Delhi High Court examined the visual, phonetic, and conceptual similarities between the plaintiff's and defendant's marks and packaging. The court held that using near-identical get-up and trade dress amounted to infringement and passing off under the Trade Marks Act, because it influences purchasing decisions of consumers.

Christian Louboutin SAS v. Nakul Bajaj & Ors 2018²⁹, is landmark judgement where Delhi HC court examined jurisprudence from the EU and US, as well as Indian precedents

²³ Communications Decency Act of 1996, 47 U.S.C. § 230 (2024).

²⁴ Traversing the Contours of Safe Harbour: Comparison of India and US (Part I), TechLaw Forum, NALSAR University of Law, (accessed on May 23, 2023) available at <https://techlawforum.nalsar.ac.in/traversing-the-contours-of-safe-harbour-comparison-of-india-and-us-part-i/>.

²⁵ *Tiffany (NJ) Inc. v. eBay, Inc.*, 600 F.3d 93 (2d Cir. 2010) on file with WIPO Lex, Judgment No. 941, (accessed on May 23, 2023) <https://www.wipo.int/wipolex/en/judgments/details/941>

²⁶ *Ohio State University v. Redbubble* 369 F. Supp. 3d 840 (S.D. Ohio 2019).

²⁷ AN ANALYSIS OF INTERMEDIARY LIABILITY IN INDIA AND THE EUROPEAN UNION, Articles Manupatra, (accessed on May 23, 2023) <https://articles.manupatra.com/article-details/>

²⁸ *Kent RO Systems Ltd. v. Amit Kotak*, 2017 (69) PTC 551 (Del).

²⁹ Aahana Acharya, *Christian Louboutin SAS v. Nakul Bajaj & Ors* (AIR Online 2018 Del 1962), 2 Int'l J. Legal Stud. & Soc. Scis. 1 (2024), (accessed on May 22, 2023) <https://ijlsss.com/wp-content/uploads/2024/08/1.-Aahana-Acharya.pdf>

such as *Myspace Inc. v. Super Cassettes Industries Ltd, 2016* (leading case on copyright infringement) and concluded that intermediaries who actively engaged in commerce, guaranteed authenticity, handled logistics, and promoted product exceeding a neutral intermediary role. Hence, platform found actively participating and to have abetted trademark infringement, loses its immunity under Section 79(3)(a).

Amazon Seller Services v Amway India Enterprises 2020³⁰Delhi HC held that e-commerce platforms cannot escape liability by merely claiming to be intermediaries if they actively participate in sale, advertising or warranty processes.

Flipkart Internet Pvt. Ltd. v. State of NCT of Delhi & Anr 2022³¹Delhi HC held that Section 79 safe-harbour protection to intermediaries from civil liability and this protection should extend to criminal prosecution where a higher level of culpability is required, unless the intermediary plays an active role in the commission of the offence.

Overall the judiciary supports neutral hosts, courts have repeatedly held that innocent intermediaries who observe due-diligence and act on valid notices, deserve protection, this is seen as essential for digital innovation and free expression. Imposing fines and restrictions in case of revoking the conditions, also protects consumers and user rights.

CONCLUSION

In the era of AI digital marketplaces transforming the world and writing the new definition of online purchase. This research has shown the doctrine of safe harbour under Section 79 of the IT Act 2000, how it works in protection of intermediaries but not an absolute shield, especially in high-risk environments such as counterfeit-goods trade. After covid Indian market sees growth of 20% in online purchase³². That increased the fraud as well, laws come as per needs like- IT Act 2000 and IT Rules 2011 replaced by IT Rules 2021. This paper recommends strengthening institutional cooperation and updating rules and regulations from time to time.

³⁰ Amazon Seller Services v Amway India Enterprises (2020) 267 DLT 228 (DB).

³¹ Flipkart Internet Pvt. Ltd. v. State of NCT of Delhi & Anr AIR 2022 DHC 3072 .

³² The Impact of COVID-19 Pandemic on E-commerce: Primary Evidence from India, IMIB J. Innovation & Mgmt., (accessed on May 23, 2023)

<https://jim.imibh.edu.in/pages/table-of-contents/fulltext/?id=70&title=The+Impact+of+COVID-19+Pandemic+on+E-commerce:+Primary+Evidence+from+India>