

A PROPOSAL FOR INTRODUCING MANDATORY PRODUCT RECALL IN THE CONSUMER PROTECTION ACT

*Mr. Abhishek Choudhary**

ABSTRACT

The recent inability of the National Consumer Disputes Redressal Commission and the Food Safety and Standards Authority of India to order the recall of hazardous batches of Nestle's Maggi Noodles brings to the fore the issue of consumer protection in cases of large-scale product deficiencies. In India, the vulnerability of consumers is exacerbated by the unwillingness of companies that do not see sufficient costs arising out of product liability suits to order voluntary recalls.

The researcher begins by providing an introduction to the theory of product recall and outlining the sparse history of voluntary recalls in India. In the second section, the extant provisions of the Consumer Protection Act, 1986 are discussed, and the need for provisions enabling product recall has sought to be justified by highlighting the harm to consumer sovereignty in its absence. The author then moves on to suggest a model amendment to the Consumer Protection Act, so that the State Commissions may be empowered to order product recalls. Throughout the paper, the researcher argues for the introduction of a provision for mandatory product recall in the Consumer Protection Act, 1986. It is contended that the absence of such a provision is odious to certain basic tenets of consumer protection, and further, that this lacuna cannot simply be corrected by encouraging more voluntary product recalls. The answer, in the author's mind, lies in empowering consumer courts in India to order product recalls in exceptional cases.

INTRODUCTION

One of the cardinal objectives of the Consumer Protection Act, as enshrined in its Statement of Objects and Reasons, is to protect consumers

* 2nd Year, B.A. LL.B. (Hons.), National Law School of India University, Bengaluru. India.

from hazardous goods. Yet, for nearly twenty-five years after the passage of the Consumer Protection Act, there remains no provision for withdrawing an entire consignment of goods that have been identified as hazardous. This burden of securing consumer sovereignty has been given to the consumers themselves, and manufacturers are liable to replace hazardous goods on a case-to-case basis only. The unhappy nature of the current legal framework when it comes to consumer protection against a macro despatch of spurious goods is best illustrated by the fact that even during the recent uproar over the levels of monosodium glutamate in Nestle's Maggi Noodles, no product recalls could be ordered by the National Consumer Disputes Redressal Commission, or the Food Safety and Standards Authority of India, though both have taken "serious note" of the issue.¹ In India, the vulnerability of consumers is exacerbated by the situation that firms rarely ever order voluntary product recalls. Most countries, in the West and elsewhere, have reconciled their laws to include provisions for mandatory product recalls, and it is argued by the author that India should do the same.

The researcher begins by providing an introduction to the theory of product recall and by outlining the history of voluntary recalls in India. The unwillingness to order such recalls is examined thereafter, and the consequent harm to consumer rights is discussed in this context. In the second section, the extant provisions of the Consumer Protection Act are discussed, and the need for Product Recall is legally justified. The author then moves on to suggest a model amendment to the Consumer Protection Act, so that the State Commissions may be empowered to order product recalls. The modalities of this amendment are examined thereunder, and a justification for giving the State Commission original jurisdiction over Product Recalls in stead of other alternatives is also discussed. The researcher ends with a set of draft regulations to serve as a framework for implementing the model amendment.

1 *Govt. takes 'serious' note of Maggi issue; FSSAI to examine*, THE HINDU, May 29, 2015, available at <http://www.thehindu.com/news/national/govt-takes-serious-note-of-maggi-issue-fssai-to-examine/article7260473.ece>.

RESEARCH METHODOLOGY

2.1. THESIS STATEMENT

Through this paper, the researcher argues for the introduction of a provision for mandatory product recall in the Consumer Protection Act, 1986. It is contended that the absence of such a provision is odious to certain basic tenets of consumer sovereignty, and that this lacuna cannot simply be corrected by encouraging more voluntary product recalls, but by empowering consumer courts in India to order product recalls in exceptional cases. To this effect, the author has drafted a model amendment to the Consumer Protection Act and a subsequent set of Regulations enabling product recall.

2.2. RESEARCH QUESTIONS

The primary issues, or research questions that have been examined through the course of this project are:

1. The Theory of Product Recall. What exactly do recalls entail, and what has been the history of recalls in Western countries and in India?
2. What influences a firm to order a voluntary product recall, and is there a need to force them to carry out recalls in certain cases? Is this compatible with the economic imperative to allow for the unimpeded development of market forces in the country?
3. If yes, how can the Consumer Protection Act be oriented to address this particular aspect of *Product Liability*?
4. What regulations must be issued to buttress the application of a proposed amendment to the Consumer Protection Act?

2.3. LIMITATIONS

The researcher limits himself to the exigent need for mandatory product recall in India, and does not expressly examine similar provisions of law in other countries. However, they have been discussed tangentially while

justifying the proposal included hereunder. The proposal to introduce similar provisions for mandatory recalls in the Food Safety and Standards Act has not been dealt with here either. Given the paucity (near absence, rather) of case law on *product liability* in India, the researcher was compelled to adopt a theoretical and statute premised approach, with only little case law being discussed.

THE THEORY OF PRODUCT RECALL

As universally understood, a product recall can be simply defined as a request made by the manufacturer of a good to its customers at large to return an entire batch or production-run of a product due to the subsequent diagnosis of a safety hazard in the product.² In some cases, the good may be restored to the customer after the safety issue has been neutralized; in others, especially those involving deficient goods within a warranty period, the company may be compelled to replace the product or pay damages (or both). This, of course, depends greatly on the policies of individual firms, as guided by marketing considerations, and on the virility of the consumer protection laws of that particular country.

In trying to understand product recalls, it is vital to make a distinction between *voluntary* product recalls that manufacturers undertake based on a profit-oriented set of motives, and *mandatory* product recalls that carry the force of law—often through a statutory instrument granting a regulatory authority the power to order recalls of expressly hazardous goods, and sometimes even prescribing the modality of such recalls.

Beginning with the first such product recall in the USA in the year 1978,³ firms worldwide have voluntarily adopted the mechanism of recalls to limit their product liability claims, especially in Western countries where

2 James A. Henderson, *Product Liability: Problems and Processes* 381 (6th ed. 2008).

3 The first-ever instance of a major automobile recall was precipitated by the identification of steering linkage failures in the 1959-60 model of the Cadillac. Nearly twenty years after the production of the model, General Motors requested the owners of the model to return it, so that the defect could be corrected.

stringent product liability laws have been enacted.⁴ In India, however, producers have shown no such alacrity in ordering volitional product recalls, though a few exceptions do come to mind.⁵ For instance, in 2011, Honda recalled its iconic sedan, the Honda City.⁶ Similarly, other multinational manufacturers such as Philips,⁷ Mattel,⁸ and Ford⁹ have also recalled their products over the past few years. It is to be noted that nearly all such recalls involve multinational companies and were part of a wider, overarching global strategy.

THE NEED FOR COMPULSORY PRODUCT RECALL IN INDIA

4.1. THE RARE NATURE OF VOLUNTARY RECALLS

The history of recalls in India suggests that both multinational corporations and Indian firms alike have initiated recalls only as appendages

-
- 4 Product liability is the domain of consumer protection law in which manufacturers, suppliers, retailers, and their ilk are held responsible for the injuries caused by their products. However, product recalls, as an instrument of consumer protection, hold only the manufacturer liable for deficient goods.
 - 5 A provision mandating recalls is enshrined in the Food Safety and Standards Act, 2006. However, it remains toothless because of no available guidelines detailing the modalities of such recalls. Section 28, Food Safety and Standards Act, 2006: If a food business operator considers or has reasons to believe that a food which he has processed, manufactured or distributed is not in compliance with this Act, or the rules or regulations, made thereunder, he shall immediately initiate the procedures to withdraw, the food in question from the market and consumers indicating reasons for its withdrawal and inform the competent authorities thereof. Every food business operator shall follow such conditions and guidelines relating to food recall procedures as the Food Authority may specify by regulations.
 - 6 The company, which runs its operations in India through a joint venture with the New Delhi-based Siel Group issued a recall notification to replace a faulty engine part in September 2011 only after similar recalls had been notified in Japan and the USA. *Honda recalls 72,115 City cars*, THE TIMES OF INDIA, September 6, 2011, available at http://articles.timesofindia.indiatimes.com/2011-09-06/india-business/30118005_1_faulty-part-city-sedan-global-exercise.
 - 7 In August 2011, the Dutch electronics manufacturer undertook the remarkable effort of issuing advertisements in all major national dailies requesting the return, and subsequent replacement of its foldable hairdryers sold between 2008 and 2011. For an enumeration of volitional recalls carried out by multinational firms in India, refer to: S. Verma, *Total Recall*, THE TELEGRAPH, August 1, 2011, available at http://www.telegraphindia.com/1110801/jsp/atleisure/story_1416116.jsp.
 - 8 S. Ray, *Mattel India to recall made-in-China toys*, BUSINESS STANDARD, August 3, 2007, available at http://www.business-standard.com/article/companies/mattel-india-to-r3ecall-made-in-china-toys107080301110_1.html.
 - 9 Y. Chaudhari, *Ford India recalls 1.66 lakh cars*, DNA, September 14, 2013, available at <http://www.dnaindia.com/money/report-ford-india-recalls-1-66-lakh-cars-1888684>.

to their global policy, rather than orienting recall measures on an India-specific basis. Though there are early signals of a shift in the thinking of Indian firms, as evinced by the potentially bellwether recall carried out by Maruti in November 2013,¹⁰ there still remains a pervasive unwillingness in the market to recall products.

This could be for a variety of factors: firms may deem it imprudent to order recalls out of the belief that most consumers do not have the inclination, or the resources, to enforce their legal rights through unwieldy legal processes; and the few who do can be compensated at a relatively low price. In the firm's ultimate cost-benefit analysis, avoiding the substantial charges attached with a recall will—in most cases—seem the immediate choice. This must then be attributed to the slow march of consumerism in the country.¹¹ Another, perhaps less correctable, factor for the apathy to recalls could be the lack of development in the consumer market sector, which makes a product recall a cumbersome, if not an impossible exercise in certain cases: India's mostly undocumented supply networks render recalls an unviable proposition for most goods.

This does not mean though that consumers must necessarily be left to fend for themselves in all situations, especially in instances where a recall is easily practicable—in the automobile and pharmaceutical industry, for example. Protecting consumer sovereignty must be a priority for any welfare state, and a law mandating product recall in certain cases can (and has, as is shown in the next section) effectively protect consumers from safety hazards. It must be recognized that in certain exigent cases, the potential

10 The recent recall made by domestic automobile giant Maruti Suzuki in November 2013 stands as an exception here. However, it would be presumptuous to regard this as necessarily prefiguring a change in mindset; C. Chauhan, *Maruti to recall 1492 vehicles comprising Ertiga, Swift, Dzire & A-Star models*, ECONOMIC TIMES, November 27, 2013, available at http://articles.economictimes.indiatimes.com/2013-11/27/news/44520252_1_maruti-suzuki-india-dzire-steering-problem.

11 It must also be noted that the norm amongst Indian firms is to sell under a warranty or guarantee that limit the liability of the producer to removing the defect or replacing a good through a stipulated period of time.

harm to customers can be so egregious that it cannot be left to a firm's benevolence to withdraw goods *en masse*.

Nor, in the author's mind, is it true that product recalls always negatively impact the profit margins of producers, and it is instead contended that, under normal circumstances, there is greater scope for a salutary effect than an adverse one. If unaware customers are not stopped from using deficient goods even after a serious safety threat has been diagnosed, it will inexorably lead to claims of compensation, which when the law is implemented in whole and there are enough claimants, will tilt the economic balance in favour of a recall. Moreover, other intangible results such as a loss in public image that is likely to ensue from adverse verdicts in product liability litigations coupled with consumer activism will surely result in loss of sales and damage to the company's reputation.¹² Many producers in the West have also taken to risk-mitigation exercises such as insurance policies that minimize the impact of recalls.¹³

4.2. THE CURRENT PROVISIONS UNDER THE CONSUMER PROTECTION ACT

The Consumer Protection Act, 1986, unlike most corresponding statutes in other nations, does not contain a provision granting consumer courts the authority to order compulsory product recalls. Under the Indian Consumer Protection Act, the seller is under an obligation to address each aggrieved consumer on a case-to-case basis, with no provision for a recall of an entire

12 For a contrarian perspective on the adverse effects to brand image by recalling a product, see J. C. Mowen, *Further Information on Consumer Perceptions of Product Recalls*, 7(2) *ADVANCES IN CONSUMER RESEARCH* 519, 523 (1980). Mowen performed this seminal experimental investigation into consumer perceptions of product recalls through a mathematical factorial design, he manipulated the severity of injury resulting from the defective product, the length of time the company took to decide to make the recall, and the number of previous recalls made by the company. The results of the study revealed that the extent of injury, the number of previous product recalls, and the length of time to recall the product each influenced consumer perceptions of the corporation and their intention to purchase a replacement product made by the company.

13 They generally cover exposures against media announcements and public relations costs, shipping costs, additional labour and warehousing costs, product repair or replacement costs, loss of profits, and brand rehabilitation.

consignment that maybe defective or unsafe—the first paragraph of Section 14 of the Consumer Protection Act (that lays down the orders a District Forum can decree¹⁴) gives the District Forum the power to adjudicate on individual complaints filed under Section 13.¹⁵ Section 14 does provide a host of potent instruments though: the consumer is given the right to have the defect removed;¹⁶ the defective good replaced;¹⁷ be recompensed the price of the good;¹⁸ and receive any damages she may have suffered as a result thereof.¹⁹ Section 14 (g) does not limit itself to addressing a complaint in isolation, but seeks to protect the larger interest of consumer sovereignty by providing courts with the option of banning a certain good from further sale;²⁰ similarly Section 14 (h) the authority to ask producers to withdraw goods from sale.²¹ However, Section 14 does not avail any recourse to address the safety of those unidentifiable persons, which may be threatened by a defective good.

The UN Guidelines on Consumer Protection, 1985 impelled the enactment of the Consumer Protection Act in India, urge governments to adopt laws that mandate product recall if a product is found to be “seriously defective” or a “substantial and severe hazard”.²² In its 2001

14 The State Commission is similarly empowered under Section 18; and the National Commission under Section 22, albeit with certain additional powers.

15 It reads: Finding of the District Forum.-(l) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to do one or more of the following things, namely:- .

16 Section 14 (a): to remove the defect pointed but by the appropriate laboratory from the goods in question;

17 Section 14 (b): to replace the goods with new goods of similar description which shall be free from any defect;

18 Section 14 (c): to return to the complainant the price, or, as the case may be, the charges paid by the complainant;

19 Section 14 (d): to pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party;

20 Section 14 (g): not to offer the hazardous goods for sale;

21 Section 14 (h): to withdraw the hazardous goods from being offered for sale;

22 Clause 14 of the United Nations Guidelines for Consumer Protection, 1985 (as expanded in 1999): Governments should, where appropriate, adopt policies under which, if a product is found to be seriously defective and/or to constitute a substantial and severe

appraisal on the implementation of the aforesaid guidelines in India, the Consumer Unity and Trust Society (CUTS) advocated the establishment of an “Independent Consumer Safety Commission” with the authority to compel product recalls.²³ The proposal deserves considerable merit and the Union Government at the time would have done well to implement it rather than sit idle. However, the author submits that given the possible conjunctive nature of petitions to recall products and those seeking other remedies under Section 14, such petitions would be more effectively handled by a Redressal Forum by saving the consumer of the burden to approach two separate fora. Moreover, the indolence of extant institutions such as the Central Consumer Protection Council²⁴ evince that the creation of new institutions rarely leads to tangible results; in fact, the responsibilities envisaged under the said Independent Commission could just as easily be handled by the Central Council. This view is elaborated in the Regulations that are proposed at the end of the paper; it is suggested that the concerned Ministry/Department of Consumer Affairs at the level of the state be made the nodal agency in executing product recalls, while the State Commission would be the appropriate forum to adjudicate on such complaints.

A MODEL AMENDMENT ENABLING MANDATORY PRODUCT RECALL

The Consumer Protection Act was legislated to secure greater protection of consumer rights in India, and this vision is reflected in the objects and reasons that serve as a precursor to the act. As stated by Justice Dalveer

hazard even when properly used, manufacturers and/or distributors should recall it and replace or modify it, or substitute another product for it; if it is not possible to do this within a reasonable period of time, the consumer should be adequately compensated. Issued by the UN Department on Economic and Social Affairs (2003), *available at* http://www.un.org/esa/sustdev/publications/consumption_en.pdf.

- 23 State of the Indian Consumer: Analyses of the Implementation of the United Nations Guidelines for Consumer Protection, 1985 in India, CONSUMER UNITY AND TRUST SOCIETY 94, 95 (2001), *available at* http://www.cuts-international.org/CART/pdf/State_of_the_Indian_Consumer.pdf.
- 24 The establishment of which is enshrined under Section 4 of the Consumer Protection Act, 1986.

Bhandari in *C. Venkatachalam v. Ajitkumar C. Shah*,²⁵ the spirit of the Act ultimately lays in its purported objectives, and the legislature and judiciary must together strive to further empower consumers through this instrument of social welfare.²⁶ The very first objective of the Act states that the act seeks to protect the right of the consumer “to be protected against marketing of goods which are hazardous to life and property”.²⁷ How then can the legislature justify not securing consumers against lingering safety defects, even though they might not themselves have initiated legal action? It can be no one’s contention that a man who does not have full access to the legal process should not be protected from hazardous goods. The courts, then, need a special tool like product recall to fulfill the objects of consumer protection.

This pitfall in the law can easily be rectified by making an amendment to the Consumer Protection Act that authorizes consumer courts in the country to order product recalls in certain exceptional cases. Since product recalls involve immense cost and effort on the part of the producer, and severely impact their public perception in the short-term,²⁸ it is contended that one must restrict their invocation in exceptional circumstances only—a principle that is recognized the world over. This concern is further exacerbated by the underdeveloped nature of the Indian economy that makes it imperative to not allow product liability laws to make business unattractive for producers.

To maintain this *principle of equanimity*, it is the author’s proposal that this power may be granted exclusively to the State Commission; and since decisions of the State Commission can be appealed against in the National Commission and in the apex court, consequently to the National Commission and the Supreme Court of India as well. If the power were

25 *C. Venkatachalam v. Ajitkumar C. Shah*, (2011) 9 SCC 707.

26 *Lucknow Development Authority v. M.K. Gandhi*, 1994 AIR 787.

27 The Consumer Protection Act, 1986, Statement of Objects and Reasons.

28 An interesting study of the cascading marketing losses suffered due to loss in prestige capital by two firms—Bridgestone Corporation and Ford Motors is offered by a team of scholars. See S. Govindaraj et al., *Market Overreaction to Product Recall Revisited—The Case of Firestone Tires and the Ford Explorer*, 23(1) REVIEW OF QUANTITATIVE FINANCE AND ACCOUNTING 31 (2004).

given to District Forums as well, a floodgate of recalls would likely be opened, causing great uncertainty in the consumer market. It is essential that product recalls not be ordered in an arbitrary manner; and when ordered, be done so only after due consultation with experts. This opportunity to conveniently co-opt expert opinion through the formation of a panel affords itself only to the State Commission and its superior bodies, and it is, in my mind, the apposite body to order recalls.

The proposed amendment to the Consumer Protection Act must begin with a definition of a product recall. An insertion to Section 2²⁹ in the form of sub-section (s) may be made:

2(s): “product recall” refers to the recall by the manufacturer of a batch, consignment, or production-run of a deficient good that is deemed to be seriously defective, or constitutes a substantial and severe safety hazard.

Section 17(a) of the Consumer Protection Act 21 specifies the jurisdiction of the State Commission to entertain cases. Sub-section (b) gives it the authority to call for the records of cases from the district forum, and is irrelevant here. Section 17(a) reads:

Jurisdiction of the State Commission.—Subject to the other provisions of this Act, the State Commission shall have jurisdiction- (a) to entertain-

- (i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees [exceeds rupees twenty lakhs but does not exceed rupees one crore]; and*
- (ii) appeals against the orders of any District Forum within the State; and ...*

29 The section of the Consumer Protection Act, 1986 which contains Definitions.

For augmenting the State Commission's jurisdiction in the case of product recalls, a third clause to sub-section (a) should be inserted. It may read:

(iii) complaints where there exists a legitimate demand to recall a product that is seriously defective or constitutes a substantial and severe safety hazard, as determined by the State Commission; and

Section 18 stipulates the powers and procedures to be followed by the State Commission, and a corresponding amendment will need to be made to this section as well. It currently reads:

Procedure applicable to State Commissions.—The provisions of Sections 12, 13 and 14 and the rules made thereunder for the disposal of complaints by the District Forum shall, with such modifications as may be necessary, be applicable to the disposal of disputes by the State Commission.

An amendment inserting Section 18A should also be included in the same bill. It may read:

Section 18A: Power to order product recall: After admitting, and hearing a complaint seeking a mandatory product recall, the State Commission may, if it deems fit, order such a recall under the Product Recall Regulations.³⁰

The Commission can require the opposite party to either replace the hazardous good, or to remove such a hazard from the product, or to compensate to the extent it deems fit. The power to order such a recall do not act in derogation of the commission's other powers under Section 18.

30 The Product Recall Regulations must be issued alongwith the proposed amendment, and are presented in the next section.

PROSPECTIVE PRODUCT RECALL REGULATIONS TO BOOKEND THE MODEL AMENDMENT

The following regulations seek to provide a framework for both volitional and mandatory product recalls ordered under Section 18A of the Consumer Protection Act, 1986:

REG. 1. RECALL CLASSIFICATION:

- i. Type A: This type of a recall involves a product that may cause serious, adverse health consequences, or present the possibility of causing death. The State Commission is empowered to order the opposite party to conduct a total mandatory recall of such a consignment of deficient goods, and can initiate such action on a *suo moto* basis.
- ii. Type B: This type of a recall involves a product that poses a remote possibility of causing adverse health consequences, yet does not conform to established legal requirements under the Consumer Protection Act or the Rules and Regulations thereunder. A total recall is not to be conducted in such cases, and the opposite party is only required to issue a public notification (*vide* regulation 4) announcing the optional return of the goods in question.

REG. 2. INITIATION OF A PRODUCT RECALL:

- i. In case of a Type A recall, once an order has been passed by the court mandating product recall, the opposite party is required to submit a Recall Plan detailing its proposals for recall including communication to its downstream distributors, suppliers, and retailers; instructions to be issued for the transfer of deficient goods back to the opposite party; and a draft public notification announcing recall (*vide* Regulation 4) to the Secretary of the Ministry/Department in charge of consumer affairs in the state within seven (7) days of receiving the order.

- ii. The Ministry/Department will then vet the Recall Plan with reference to the actions it considers appropriate for the level of the hazard the defective goods pose as well as the guidelines mentioned hereunder. It must direct the opposite party to make appropriate changes to its Plan within five (5) days of receiving the original Recall Plan.
- iii. The company must initiate communication of the Recall after incorporating the Ministry/Department's changes within three (3) days of receiving the Ministry/Department's proposed changes.

REG. 3. COMMUNICATION OF RECALL:

- i. The manufacturer shall be responsible for notifying each of its affected downstream suppliers and retailers about the recall. The format of such a recall notification shall include instructions as approved by the Ministry/Department.
- ii. Such recall communication shall be accomplished by post, electronic mail, fax or a combination thereof. The notification shall begin with the words "Product Recall" and have the word "urgent" conspicuously marked on it, with both written in a conspicuous fashion—preferably in red, bold font. Telephone calls shall be followed and confirmed by one of the above vehicles of communication.
- iii. Suppliers and retailers who receive the recall notification shall carry out the instructions set forth by the manufacturer within 24 hours; and when necessary, pass a copy of the recall notification to its own downstream distributors.

REG. 4: PUBLIC NOTIFICATION OF RECALL:

- i. In case of a Type A recall the opposite party shall issue public notifications in the affected area of the recall (district, state, or group of states) within three (3) days of receiving the recommendations of the Ministry/Department. The public notification may take the form of a press release, an individual letter to the affected parties, or

paid advertisements in the print and electronic media, in a manner mandated by the Ministry/Department under Regulation 2.

- ii. Such public notification shall contain, where possible, the following information:
 - A. The name of the manufacturer recalling the product;
 - B. The name of the product brand name, package size, batch and code number (if present), and the date of manufacture;
 - C. The safety hazard in the good, and the cause for recall;
 - D. A health warning, and possible temporary precautionary warnings;
 - E. The measure to be taken by the consumer in order to return the product;
 - F. A contact number for possible questions consumers may have.
- iii. In case of a Type B recall, the opposite party must submit a draft public notification to the Ministry/Department within seven (7) days of receiving the order of the State Commission. The Ministry/Department must recommend changes to the draft within five (5) days of receiving it. The opposite party must issue the public notification within three (3) days of receiving the Ministry/Department's recommended changes.

REG. 5. STATUS REPORT:

- i. The manufacturer shall submit periodic status reports to the Secretary of the Ministry/Department in charge of consumer affairs in the state after the notification of the recall. The frequency of such reports will be determined by the relative urgency of the recall and will be specified by the Ministry/Department after the first such report is submitted. However, in any case the reporting interval shall not be more than four (4) days.

- ii. Along with other information that the Ministry/Department may require, the status report shall must contain the following information:
 - A. The date and method of communication of product recall to downstream suppliers;
 - B. The number of distributors, suppliers, and retailers responding to the recall, and the quantity of the defective good each holds;
 - C. The number of distributors, suppliers, and retailers that haven't responded to the recall, and the quantity of the defective goods originally dispatched to each of them;
 - D. The quantity of the recalled goods, and the result of the subsequent investigation;
 - E. The proposed method of disposal of the defective goods;
 - F. The anticipated time limit for completion of the recall.

REG. 6. POST-RECALL REPORT AND TERMINATION

- i. The manufacturer is to submit a post-recall report after the recall of the defective good has been completed, so that the Ministry/Department may appraise the efficacy of the recall.
- ii. The effectiveness of a recall shall be assessed on the grounds of the quantity of deficient goods returned as a proportion of the quantity of deficient goods that were dispatched by the manufacturer.
- iii. The manufacturer may request the termination of the recall by submitting a written request to the Ministry/Department, while attaching with it the post-recall report.
- iv. The request to terminate a product recall may be accepted by the Ministry/Department if it determines that the manufacturer has exhausted all reasonable efforts, and it is reasonable to assume that the defective good subject to the recall has been removed.

REG. 7. PROCEDURE TO BE FOLLOWED FOR VOLUNTARY RECALL:

- i. In the case company by itself, independent of any consumer complaint, believes its goods to be seriously defective, or substantially and severely hazardous, it may submit a Recall Plan to the Secretary of the Ministry/Department in charge of consumer affairs in the state.
- ii. Thereafter, the same procedure and deadlines mandated by the current regulations must be followed.

CONCLUSION

The researcher would like to conclude by affirming his faith in the need and desirability of introducing mandatory Product Recall in the Consumer Protection Act. The author holds that voluntary product recalls in India have been insufficient in securing customers' rights, and that the judiciary must be given the right to order such recalls in exceptional cases. While recognizing the policy importance of allowing manufacturing firms to conduct their operations in a predictable environment, one cannot forget the imperative of consumer sovereignty. To ensure greater efficacy of this proposal, the author has proposed giving it only to the National Commission. A model amendment adding a definition clause, and insertions to Section 17 and 18 of the Consumer Protection Act, was also included in the project.

Further, since the amendments would be meaningless without a certain enabling framework, the author also deliberated upon certain regulations that must be provided for. These draft regulations are not to be considered as exhaustive principles, but mere suggestions that must be included in any ultimate law on Product Recall that claims to be wholesome.