

AMENDED NEED FOR GOVERNMENT INITIATED PRODUCT RECALL IN INDIA

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Abstract *With the rise in consumer base, there has been a steep increase in the consumer goods. As the production of goods has increased, the need to produce merchantable goods has also come up. Hence, any product which is not fit for use has to be taken back from the market before they create customer dissatisfaction. Thus, the concept of product recall came up. It can be defined as a mechanism through which a company on its own or through a Government initiative recalls a specific product, which has already been sold in the market.*

The Paper would be based on a doctrinal research and the objective of the paper is to analyze the trend of product recalls in India and the reasons behind it. The paper will also analyze whether there are any legislations or pending legislative bills which deal with the subject of product recall.

I. INTRODUCTION

The concept of product recall has become old music to the ears now. It has already become common in recent times. It was not an idea that came up out of the blue, it has always been there but now it became more efficiently used because of the awareness amongst the consumers.

Before dwelling into the concept, the term “*Product*” has to be understood. In layman terms a *product* is anything that provides services or goods. It is either manufactured or refined for sale.¹ It can be physical or in

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¹ “Product”, *English Oxford Living Dictionary*. Available from <https://en.oxforddictionaries.com/definition/product>.

virtual or cyber form. Every product is made at a cost and each is sold at a price. Therefore, a product can be anything that is manufactured at a certain cost and thereafter sold at a certain price with a commercial purpose, i.e. with a motive of earning profit.² The process of setting uniform characteristics for a particular good or service is called product standardization.³

The recent Consumer Bill of 2018 has taken an initiative to define the term 'Product'. It is an effort to include anything and everything that may fall under the domain of Product. According to the Bill, a product is:

“any article or goods or substance or raw material or any extended cycle of such product, which may be in gaseous, liquid, or solid state possessing intrinsic value which is capable of delivery either as wholly assembled or as a component part and is produced for introduction to trade or commerce, but does not include human tissues, blood, blood products and organs”

With the technological advancement there has been so much that in production of a particular commodity by a brand that has been completely done away with. Thus, when several units of the same commodity are sold there must be zero scope for any anomalies created by human intervention. In such a situation the makers of the product may provide certain specifications regarding the product and it becomes the consumer's right to get a product, which is actually true to all such specifications. Thus, if in a particular unit there is any anomaly regarding a particular trait then the consumer may on his own demand a replacement of the product whereas when a substantial portion of a particular product released by a manufacturer suffers from identical anomalies then it is desirable that the manufacturer should recall all such products and make necessary improvements in the product, this has led to the creation of the mechanism of Product Recall. It is in the interest of the consumer and it is also desirable that the government on the discovery of any product must be able to initiate a product recall through a dedicated authority created especially for this purpose; thereby leading to the idea of Government initiated Product Recall.

A defect in the Product needs to be removed or minimised. The defect cannot continue to subsist for the detriment of the consumer. Government initiated product recall has also become necessary because entrepreneurs

² “Product”, *Law Dictionary*. Available from <http://thelawdictionary.org/product/>.

³ Definition of “Product Standardization”, *Business Dictionary*. Available from <http://www.businessdictionary.com/definition/product-standardization.html>.

who work purely for the profit motive may be reluctant to carry out a recall on their own in case of anomalies in a substantial portion of the total output of a specific product.

Over the past few years, there has been a huge decline in the manual form of production, as technology has become the dominant factor in the era of mass production. A firm producing a particular commodity ends up making identical units of that commodity, so, for example if an automobile company produces a particular model say 'X' then all the units of X will be identical, i.e. every unit of X will have similar characteristics and quality. Accordingly, as this phenomenon has become universal the consumers also have developed a legitimate expectation of getting a product that conforms with certain pre-determined set standards.

Therefore, the consumers tend to deny any product with anomalies especially if the anomaly in question compromises with the safety of the consumer. This, in turn, has compelled large-scale manufacturers to make product recalls in order to enhance consumer satisfaction in case of any technological defaults in mass production.

The paper herein focuses majorly on the Indian Automobile Industry related Product Recall. It has merged with all form of societies around the world. It discusses the law in place in relation to such recalls. The authors have divided the paper into different sections wherein each section contributes to the concept in one manner or the other. The first and foremost section deals with the recent instances of product recall within India. The next section deals with the comparative analysis of product recall mechanism between different countries i.e. US and Australia. Then finally followed up by the conclusion reached by the authors that will determine whether there is a need for the establishment of a dedicated government authority in India empowered to set production standards or societies ensuring voluntary compliances are enough.

The paper would be based on a doctrinal research aiming to place the pieces of jigsaw puzzle in its appropriate manner and the researcher relies heavily on the secondary resources and tries to gather information through news clippings, Internet sources like sites, articles or journals, famous blog having authentic information about the topic.

II. INSTANCES OF PRODUCT RECALL

In the recent past, almost all the manufacturing sectors in India have recorded an emerging trend of product recalls, some of them have taken up voluntary product recalls whereas some were initiated by a Governmental body.

Following is the analysis of such recalls by different manufacturers in the automobile sector with an analysis on whether there is a need of a product recall agency and whether there is such an existing law empowering a Government Agency to bring the product recall mechanism in motion in case of breach of safety norms.

In the Automobile sector, there have been several instances of product recall in this sector and almost all major manufacturers have recalled a number of their sold units mostly on account of technical glitches in interest of consumer safety. In just 3 months post the beginning of 2018, about 1.12 lakh of cars have already been recalled.

A few other product recalls over the years have been:

A. Recall by Honda Cars India Ltd. (HCIL)

In 2016, Honda Cars India Ltd. (HCIL) recalled 1.9 lakh cars; it was a mark of the fourth Takata-related recall by the company in less than a year.⁴

Previously on 18th September 2015, it had announced the biggest ever product recall and announced that it will voluntarily replace airbag inflators of 223,578 vehicles of previous generations of CR-V, Civic, City and Jazz as part of Honda's preventive global recall campaign concerning airbag inflators.⁵

Thus, the product recall was concerned with a threat to the security of the consumers; it has the effect of shaking the public confidence as there was an inherent flaw with the 24.5 million cars of the Japanese manufacturer worldwide which compelled it to recall such units globally to fix Takata Airbag issue. Honda City which was sold between 2007 and 2012

⁴ 'Honda recalls 41580 cars in India to replace airbag inflators', The Times of India. Available from <http://timesofindia.indiatimes.com/auto/cars/honda-recalls-41580-cars-in-india-to-replace-airbag-inflators/articleshow/56895333.cms>.

⁵ J. Srikant & Nabeel A. Khan, 'honda-recalls-over-2-2-lakh-cars-in-india', The Economic Times. Available from <http://auto.economictimes.indiatimes.com/news/passenger-vehicle/cars/honda-recalls-over-2-2-lakh-cars-in-india/49013987.com>.

were recalled. 54,200 units of Honda Civic too were recalled and those sold between 2003 and 2012 were recalled, making it the longest period of recall for any of its models.

B. Recall by General Motors

The General Motors in July 2015 announced yet another recall of 1.55 Lakh vehicles in India, its largest such exercise in the country, to fix problems related to a remote keyless entry accessory that allows opening of cars without a mechanical key.⁶ This was then the second biggest product recall in the automobile sector of the Indian Economy. “The remote keyless entry accessory meets all the relevant regulatory standards; however, GM India has been made aware of some isolated cases where certain Chevrolet Spark, Beat and Enjoy vehicles were fitted with a faulty accessory” the company said in a statement. An official at the company added that GM had found a potential wiring fault that could make the accessory malfunction and lock customers out. GM India has asked customers facing problems with their remote keyless entry accessory to go to their Chevrolet dealer.⁷

In one of the biggest recalls, the General Motors India, in July 2013 had recalled 1,14,000 units of Chevrolet Tavera, manufactured between 2005 and 2013 to address emissions and specification issues.⁸

C. Recall by Ford India

In April 2016, Ford was all set to recall 42,300 units of Figo, Aspire in India in order to fix some software glitch that could possibly lead to malfunctioning of airbags during a collision.⁹ Preceding recall had taken place in November 2015, the Company yet again recalled 16,444 units of Ford Ecosport, the models manufactured between November 2013 and April 2014.¹⁰

⁶ Yuthika Bhargava, ‘General Motors to recall 1.55 lakh cars in India’, The Hindu. Available from <http://www.thehindu.com/business/Industry/gm-to-recall-chevrolet-spark-beat-and-enjoy-manufactured-between-2007-and-2014/article7417613.ece>.

⁷ ‘GM to recall 155,000 vehicles in India to fix wiring trouble’, Reuters.com. Available from <http://www.reuters.com/article/us-gm-india-recall-idUSKCN0PN0ID20150713>.

⁸ ‘General Motors recalls 1.14 lakh units of Chevrolet Tavera’, The Hindu. Available from <http://www.thehindu.com/business/Industry/gm-recalls-114-lakh-units-of-chevrolet-tavera/article4948429.ece>.

⁹ ‘Ford Recall’, The Hindu. Available from <http://www.thehindu.com/business/Industry/ford-to-recall-42300-units-of-figo-aspire-in-india/article8509823.ece>.

¹⁰ Pankaj Doval, ‘Ford-India-recalls-16444-units-of-compact-SUV-EcoSport’, The Times of India. Available from <http://timesofindia.indiatimes.com/business/india-business/Ford-India-recalls-16444-units-of-compact-SUV-EcoSport/articleshow/49770531.cms>.

It had also recalled before that in September 2013, when its few models encountered certain problems related to steering and rear suspension.¹¹ This was the then biggest product recall in the manufacturing sector in India.

D. Recall by Maruti Suzuki India Ltd. (MSIL)

Maruti Suzuki India Ltd. (MSIL) has the largest market share in the automobile industry amounting to around 45% as far as passenger car segment is concerned, but one of its major weaknesses has been reflected in the product recalls of some of its most popular models in the recent past.

MSIL has recently i.e. in 2017 recalled 151 units of Grand Vitara, which were manufactured from 2008 to 2013. They were recalled due to due to some transmission issue.¹² Not even a complete year ago, it had recalled more than 75,000 units of the Baleno and some Dzires.¹³

It had recalled over 33,000 of its Alto 800 and Alto K10 models in March 2015. Even in April 2011, MSIL had recalled over 13,000 cars manufactured in November and December 2010, which included models of its bestselling cars.

In February 2010, the Maruti Suzuki recalled 100,000 cars in India and overseas markets due to potential fuel leakage problems including 50,000 units of A-Star, a major model in the hatchback segment.¹⁴

E. Recall by Toyota Kirloskar Motor (TKM)

In July 2015, Japanese car giant Toyota announced recall of 7,129 units of Toyota Corolla, its executive Sedan Model, to fix faulty passenger side airbags as part of its global exercise. The units being recalled were manufactured between April 2007 and July 2008.¹⁵

¹¹ 'Ford-to-recall-166-lakh-units-of-figo-classic-models', The Hindu. Available from <http://www.thehindu.com/business/Industry/ford-to-recall-166-lakh-units-of-figo-classic-models/article5124662.ece>.

¹² Maruti Suzuki India Ltd. Available from <http://www.marutisuzuki.com/Information.aspx>.

¹³ Yuthika Bhargava (n 6).

¹⁴ 'Maruti Suzuki recalling 100,000 cars with faulty fuel tank from India, abroad', The Times of India. Available from <http://timesofindia.indiatimes.com/business/india-business/Maruti-Suzuki-recalling-100000-cars-with-faulty-fuel-tank-from-India-abroad/article-show/5607773.cms>.

¹⁵ 'Toyota recalls 7,129 units of Corolla in India to fix airbags', The Times of India. Available from <http://timesofindia.indiatimes.com/business/india-business/Toyota-recalls-7129-units-of-Corolla-in-India-to-fix-airbags/articleshow/47970852.cms>.

On April 9, 2014, Toyota announced the recall of 45,000 units of Innova in India as part of its global recall of 6.39 Million vehicles announced by Japanese parent Toyota Motor Corp, one of its Multi-Purpose Vehicles manufactured between February 2005 and December 2008 to rectify a faulty cable on the steering wheel.¹⁶

Thus, marking a huge increase in the number of recalls in the previous decade itself. The contributing reason could either be that the consumer/customer awareness has increased manifold in the previous decade or the qualities of the goods have gone down exponentially. Whatever may have been the reason, a clear consequence of it is the shattering of consumer confidence in the product or the brand.

III. GOVERNMENT INITIATED PRODUCT RECALL MECHANISM IS AUTOMOBILE SECTOR: WHETHER NEEDED

From the above instances, it is amply clear that in the recent past there have been several instances of voluntary product recall, some of them being rather massive in scale; almost all the major car manufacturers have announced recall of several units on account of several grounds. Moreover, many of such recalls have been made due to safety related issues, for instance defects in the Airbags or braking system.

There is not an iota of doubt about the fact that car manufacturers, must comply with their specifications in general and specifications of safety components in particular to make sure that Road Safety which is a rather critical issue in India is not compromised and not deteriorated to a deplorable level. Therefore, a government initiated product recall mechanism in at least the automobile sector is a must on account of increased manufacturing and ever increasing road traffic along with a shaken public confidence out of such recalls, in order to avoid a situation where the automobile manufacturers do not consider product recalls to prevent increased costs, Government initiated Product Recall is the only mechanism which can tackle any such situation and improve standards of road safety as far as the component of vehicle specifications is concerned apart from fulfilling consumer satisfaction.

¹⁶ 'Toyota to Recall 45,000 units of Innova in India', India Today. Available from <http://india-today.intoday.in/story/toyota-to-recall-45000-units-of-innova-in-india/1/354841.html>.

IV. ANALYSIS OF CURRENT PRODUCT RECALL MECHANISM

India is among the top seven automotive markets in the world but the country lacks a well-established recall policy. The Society of Indian Automobile Manufacturers (SIAM) had announced a voluntary recall policy in July 2012, specifying that companies must follow standard procedures on detecting manufacturing defects. The policy specified that all makers of motor vehicles need to rectify all errors in any of the units sold by a manufacturer ranging from two wheelers to commercial vehicles and even those imported by the automobile manufacturers, all such rectifications related to errors related with consumer safety were to be made free of cost and the policy also recommended the Government to intervene in case of proven violations.¹⁷ Hence, an amendment such as Motor Vehicles (Amendment) Bill, 2016 is the change that is required.

V. MOTOR VEHICLES (AMENDMENT) BILL, 2016

India has been having a lacuna in relation to legislation with respect to Product Recall. It just has a society, which helps it in executing voluntary product recall in relation to Automobiles but yet, it lacked appropriate mechanism that could provide a legal backing to the customers. They were not ensured of having a proper protection against receiving a defective product or about which authority to approach to redress such an issue wherein most products of similar nature were defective. The parliament must have sensed this lacuna, as it decided to finally inculcate some sections in the amendment of one of its Acts. It therefore, has recently passed the Motor Vehicles (Amendment) Bill, 2016 which was an amendment to The Motor Vehicles Act, 1988.

The Bill elaborately discussed that the Central Government by order would be able to direct a manufacturer to recall motor vehicles of a particular type or its variants, if there is a defect in a particular type of motor vehicle that may cause harm to the environment or to the driver or occupants of such motor vehicle or other road users¹⁸ and it has been reported to the Central Government¹⁹ by such percentage of owners, as the Central

¹⁷ 'Society of Indian Automobile Manufacturers announces recall policy', The Economic Times. Available from http://articles.economictimes.indiatimes.com/2012-07-03/news/32523689_1_manufacturers-for-such-violation-vehicles-nhtsa.

¹⁸ The Motor Vehicles (Amendment) Bill, 2016, s110A(1)(a), (Pending).

¹⁹ The Motor Vehicles (Amendment) Bill, 2016, s110A(1)(b), (Pending).

Government, may have specified in its Official Gazette notification²⁰ or by a testing agency²¹ or through any other source.²² This ensures an active role of the Central Government in ensuring the awareness towards consumers and the responsibility that a manufacturer of goods own towards them. In fact in case of a defect in its component, such component must be recalled as well.²³

If such an aforementioned scenario do arise then the buyer whose vehicle has been recalled may either be reimbursed for the full cost of the motor vehicle (subjected to any hire-purchase or lease-hypothecation agreement)²⁴ or replace the defective motor vehicle with another motor vehicle of similar or better specifications which complies with the standards specified under this Act or repair it²⁵ and pay such fines.²⁶ In place of the buyer, if the manufacturer notices such defect then he is under an obligation to notify the central government and recall such product, in such cases the manufacturer shall not be liable to pay fine.²⁷

The Central Government may authorize any officer to conduct investigation in relation to the given matter and who shall have all the powers of a civil court, while trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, which may include summoning and enforcing the attendance of any person and examining him on oath²⁸, requiring the discovery and production of any document²⁹, receiving evidence on affidavit³⁰ and any other matter as may be prescribed.³¹ The Central Government would even have the power to make rules for regulating the recall of such motor vehicles, of a particular type or its variants, for any defect, which in its opinion, may cause harm to the environment or to the driver or occupants of such motor vehicle or to other road users.

²⁰ *Ibid* (i), (Pending).

²¹ The Motor Vehicles (Amendment) Bill, 2016 (n 19) (ii), (Pending).

²² The Motor Vehicles (Amendment) Bill, 2016 (n 19) (iii), (Pending).

²³ The Motor Vehicles (Amendment) Bill, 2016, s110(2), (Pending).

²⁴ The Motor Vehicles (Amendment) Bill, 2016, s110(3)(a), (Pending).

²⁵ The Motor Vehicles (Amendment) Bill, 2016, s110(3)(b), (Pending).

²⁶ The Motor Vehicles (Amendment) Bill, 2016, s110(3)(c), (Pending).

²⁷ The Motor Vehicles (Amendment) Bill, 2016, s110(4), (Pending).

²⁸ The Motor Vehicles (Amendment) Bill, 2016, s110(5)(a), (Pending).

²⁹ The Motor Vehicles (Amendment) Bill, 2016, s110(5)(b), (Pending).

³⁰ The Motor Vehicles (Amendment) Bill, 2016, s110(5)(c), (Pending).

³¹ The Motor Vehicles (Amendment) Bill, 2016, s110(5)(d), (Pending).

The testing agency that has granted it the certificate shall be liable for its accreditation and registration to be cancelled in case such motor vehicle having a type-approval certificate is recalled.³²

Hence, It is ample evident that obligations will be bestowed on the manufacturer and he may even be made liable for any such recall that he may initiate.³³ Since, the legislation has not yet been effectuated. This need must be addressed as efficiently as possible. The legislation deals with only sector and therefore it may be construed as only a small step towards the establishment of a regime where products with mass defects could be compulsorily recalled by the Government. However, the significance of this legislative bill cannot be undermined as it may pave the way for this much needed regulatory reform.

VI. CONSUMER PROTECTION BILL, 2018

Donoghue v. Stevenson is the landmark case that revolves around the definition of a consumer and discusses the range of consumer liability on streamlining the defect. It brought consumer awareness and redressal under the proper ambit of law. Subsequent to this case, any liability for a complaint brought for a defect in a product has been satisfied only by a proper compensation.

The Consumer Protection Bill of 2018 (Bill) is all set out to replace the erstwhile Consumer Protection Act of 1986. It has been recently placed in front of the parliament and sets out to address consumer rights, and provides a mechanism for redressal of complaints regarding defect in goods and deficiency in services. Product Recall is one such concept which can fall under this domain of deficiency in Service. It addresses on the liabilities brought in due to a defect in massive product recalls and even provides the penal provision to addressing such defects.

Section 20 of the Bill has provided the Central Authority to withdraw or recall goods. It states that a reasonable opportunity must be given to the goods or consumer manufacturer or the service provider before a recall is directed. It states that the Authority has the power to recall goods which are dangerous or hazardous in nature, to reimburse the purchaser of such

³² The Motor Vehicles (Amendment) Bill (n 29).

³³ 'Law to be introduced to regulate automobile product recalls in India', Economic Times. Available from <http://auto.economictimes.indiatimes.com/autologue/law-to-be-introduced-to-regulate-automobile-product-recalls-in-india/2286>.

goods or services and to disable a product or service manufacturer or provider from continuing an act that is unfair and prejudicial to the consumer interest.³⁴

Chapter VI of The Bill aims to cover the liability for the harm caused due to defective product manufactured or services provided either by a service provider or the seller.³⁵ The Bill addresses any harm caused, including harm to the property damage or a personal injury, illness, or death as well as mental agony or emotional harm caused due to the situation.³⁶

Under the Bill, the liability of a producer ranges from a simple defect in manufacturing, designing or distinction in specification and extends to non-conformity to express warranty and to extend to even include any inadequacy of instructions to prevent any harm warning regarding improper or incorrect usage.³⁷ Instances, in which a car manufacturer who installs the air bag system and fails to mention the essential detail that such front seat (wherein the airbags are installed) are not meant for children can be held liable. The product liability action brought under this bill shall arise even if he proves that he was not negligent or fraudulent in making the express warranty of a product.³⁸

The chapter VI of the legislative Bill provides a clear intent of the legislature to establish elaborate framework on the liabilities faced. The liabilities and the limitation of the manufacturer shall stand dispensed in the following cases, wherein:

“Where at the time of harm, the product was misused, altered, or modified.

In any product liability action based on the failure to provide adequate warnings or instructions, the product manufacturer shall not be liable, if—

(a) the product was purchased by an employer for use at the workplace and the product manufacturer had provided warnings or instructions to such employer;

³⁴ The Consumer Protection Bill, 2018, s20, (Pending).

³⁵ The Consumer Protection Bill, 2018, s83, (Pending).

³⁶ ‘The Consumer protection Legislative Brief’, *PrsIndia*. Available from <http://www.prsindia.org/uploads/media/Consumer%20Protection,%202018/Legislative%20Brief%20%20Consumer%20Protection%20Bill,%202018.pdf>.

³⁷ The Consumer Protection Bill, 2018, s84(1), (Pending).

³⁸ The Consumer Protection Bill, 2018, s84(2), (Pending).

- (b) *the product was sold as a component or material to be used in another product and necessary warnings or instructions were given by the product manufacturer to the purchaser of such component or material, but the harm was caused to the complainant by use of the end product in which such component or material was used;*
- (c) *the product was one which was legally meant to be used or dispensed only by or under the supervision of an expert or a class of experts and the product manufacturer had employed reasonable means to give the warnings or instructions for usage of such product to such expert or class of experts; or*
- (d) *the complainant, while using such product, was under the influence of alcohol or any prescription drug which had not been prescribed by a medical practitioner.*

A product manufacturer shall not be liable for failure to instruct or warn about a danger which is obvious or commonly known to the user or consumer of such product or which, such user or consumer, ought to have known, taking into account the characteristics of such product.”³⁹

The Bill is a comprehensive legislation which also discusses the penal liability of the manufacturer for causing such harm. It impose a penalties for manufacturing, selling, storing, distributing or importing adulterated products as well as spurious products.⁴⁰

The growth of recall in various industries has been really high; therefore, a need to regulate the functioning of liability needs to be brought in. A Bill preventing consumer detrimental situations arising from unfair trade practices and initiate class action including enforcing recall, refund and return of products is required in today’s competitive world. Thus, the bill acts an active attempt to address the growing consumer complaints.

This Bill along with the Motor Cycle Amendment Bill can safely lead to consumer to obtain a structured reason for such liabilities and ensure proper compliance. It moreover, creates a deterrence effect and due to the wide

³⁹ The Consumer Protection Bill, 2018, s87, (Pending).

⁴⁰ The Consumer Protection Bill, 2018, s90 and s91, (Pending).

ranges of liability the compliances requirements, many product defects shall be addressed effectively.

Thus, both the Bills are a need for today's product recall scenarios and provide a way forward for all such instances.

VII. COMPARATIVE ANALYSIS WITH PRODUCT RECALL MECHANISM OF OTHER COUNTRIES

It is beyond doubt that product recalls is emerging as a dominant phenomenon in the Indian Economy, increasing product recalls hint at decreasing product quality, and the declining level of consumer safety and satisfaction, therefore, in order to ascertain whether the Indian Product Recall Mechanism is adequate to deal with the issue of increasing recalls, there is a need to make a comparative analysis of the Indian Product Recall Mechanism with the product recall mechanism provisions of other countries which also face similar issue of product recalls.

For the purpose of this paper, a comparative analysis is made with the Product Recall Mechanism with two countries, the US and Australia, having effective product recall mechanisms establishing a Government Agency to initiate Product Recalls.

VIII. PRODUCT RECALL MECHANISM IN THE US

US Law does not establish a single Agency through which the Government can initiate Product Recalls but it has six Federal Agencies through which product recalls can be initiated. These Federal Agencies have vastly different and separate jurisdictions based on product categories. Therefore, the US Consumer Product Safety Commission (CPSC) has jurisdiction over more than 15,000 Consumer Products, related to everyday household consumption. The National Highway Traffic Safety Administration (NHTSA) of the US Department of Transportation governs the recalls under the Automobile Sector and deals with recall information consisting of vehicle and equipment changes since 1966 till date. The US law also empowers the US Coast Guard to investigate into consumer complaints about recreational boats and safety norms.

Thus, even though the US does not have a Government Agency empowered to recall a Product in case it flaunts any safety norm, it establishes an extensive umbrella mechanism on product recalls and the six Federal Agencies deal with all the major industrial sectors. Moreover, the US also

provides a common online Government platform where complaints can be made by the Consumers regarding any product which can be recalled by a Federal Agency.

IX. PRODUCT RECALL MECHANISM IN THE AUSTRALIA

During the past 2 decades about 10,000 products have been recalled in Australia⁴¹. The responsibility of the general consumer product recalls are of the Australian Competition and Consumer Commission (ACCC).

The Australian Energy Regulator (AER) shares staff, resources and facilities with the ACCC (AER).⁴² It is Australia's national energy market regulator and has an independent board.

The ACCC and AER, two distinct bodies share many common objectives and both working to protect, strengthen and supplement competitive market processes.

The ACCC is an independent statutory authority, which got established in the year 1995 to administer the Trade Practices Act 1974 and other acts. Trade Practice Act, 1974 was later renamed as the Competition and Consumer Act 2010 on 1st January 2011. Appointments to the ACCC involve participation by Commonwealth, state and territory governments. ACCC also promotes competition and fair trade in markets to benefit consumers, businesses, and the community. Its primary responsibility is to ensure that individuals and businesses comply with Australian competition, fair-trading, and consumer protection laws - in particular the Competition and Consumer Act 2010.

If a product or service is plagued with a safety risk or fails to comply with the prescribed imperative standards, it may be recalled. Many suppliers voluntarily undertake product recalls after observing material defects in their products. The suppliers initiating a voluntary product recall are needed to notify about the same to the Commonwealth Minister responsible for competition and consumer policy within two days of initiating the product recall and in case any injury or death has been caused by the reason of the

⁴¹ Australian Competition Consumer Commission, Australian Government. Available from <https://www.accc.gov.au/about-us/australian-competition-consumer-commission/about-the-accc>.

⁴² AER & ACCC, Australian Government. Available from <http://www.aer.gov.au/>.

product being defective there is also a provision for mandatory reporting to the ACCC.⁴³

In the alternative, if suppliers are identified as being unsafe or non-complaint, product recalls may be initiated by the Australian Competition and Consumer Commission. It may even advise that the Commonwealth Minister initiate a compulsory recall in order to protect the public from an unsafe product.

The power of determining the manner in which a compulsory recall is to be undertaken and the procedure of its enforcement vests wholly in the ACCC.⁴⁴

X. CONCLUSION

The Indian Economy has seen an overhaul in relation to such recalls in the past decade. It has been highlighted and presented by many media houses. One such recall example, which is known to all households in India, is of Maggi. In 2016, due to a growing concern of it having lead content the product was recalled.

As far as automobile sector is concern the same trend of growing recall has been seen. It is amply clear that there has been a definite increase in the instances of recent recalls in India. Such rising trend can be attributed to our ever-increasing economic activity and completely mechanized mode of production in certain sectors, which leads to uniform flaws in a particular product line.

Several manufacturers till now have been coming forward and making efforts for recall in order maintaining their customer base and trust intact. But, there is a possibility that many other cases are still going unnoticed because of lack of proper vigilant Authority in place. As the bill is still pending and hasn't been passed yet. Serious concerns are caused, as any delay with respect to the passing of the bill could be detrimental to society as lives of many may be at risk because of the non-assurance of compliance.

⁴³ Treating customers fairly, Australian Competition Consumer Commission. Available from <https://www.accc.gov.au/business/treating-customers-fairly/product-safety#recalls>.

⁴⁴ 'Guidance for suppliers: Product Safety', Australian Government. Available from <https://www.productsafety.gov.au/recalls/guidance-for-suppliers/conducting-a-recall?source=recalls#when-a-recall-is-required>.

In addition to this, according to the comparative analysis of the two other countries i.e. the US and Australia, they either have an Agency, which is fully entrusted to govern issues in relation to such recalls, or there are a host of agencies that are dealing with separate sectors of the economy. In fact in the case of Australia, the ACCC is not only a powerful body initiating product recalls but it also provides for certain safeguards where the producer itself undertakes a product recall even as certain material defects appear.

Therefore, it is prime facie evident that India has at least taken a prospective step towards establishing one such mechanism in the case of automobile sector wherein the Government will look to check the supply of a defective product or service and move closer towards ensuring fair competition and consumer protection.

The passing of the bill may be one such initiative that will be taken up by India to ensure proper compliance and creating such obligation on the Manufacturer. Since, the present Authorities have very minimal power in their hands and hence, exercising it renders them ineffective.

With the recent bills in place, there is a scope of the government directing the flow of recall in a proper structured manner. The conversion of this bill into an act shall lead many consumer issues to be addressed in a proper manner. It is a change worth welcoming. The ultimate aim of the legislature should be to move towards a regime where a single authority or a host of authorities are established dealing with every major sector and ensuring that instances of pecuniary or personal injuries due to defective products is minimized and a rightful obligation is imposed upon the producer in the greater interest of the consumer.