THE PRIVITY GAP IN E-COMMERCE: INTERMEDIARY PLATFORMS AND THE INADEQUACY OF LIABILITY ALLOCATION UNDER THE SALE OF GOODS ACT, 1930

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ABSTRACT

The Sale of Goods Act, 1930 is a system that is designed for bilateral transactions between two identified persons, one of whom is the seller through the ownership of the title. By exerting significant control over sales, including price listing, product display, payment processing, and grievance redressal, while never possessing title to the commodities themselves, e-commerce platforms have upended this system. This is because platforms define themselves as intermediaries and avoid seller obligations under this Act, despite the fact that consumers interact with them for every practical part of the transaction, creating a structural vacuum in liability allocation. By analysing landmark cases in ecommerce liability allocation, this article investigates how Indian courts have addressed this issue. It contends that rather than being a void that other laws can appropriately fill, the courts' dependence on the Information Technology Act, the Consumer Protection Act and even the Criminal law is a reflection of the Sale of Goods Act's conceptual insufficiency. The paper suggests structural changes to the Sale of Goods Act itself, including an expanded definition of "seller" that takes functional control into account and a "deemed seller" clause that is activated by particular indicators like payment processing, product guarantees and control over listings. These changes are based on comparative jurisprudence from the US and the EU. The paper comes to the conclusion that, under sales law, the liability must follow the party that organises the transaction, not merely the party that holds title.

1. INTRODUCTION

The rapid expansion of e-commerce has fundamentally altered commercial transactions without a corresponding change in the legal principles governing sale relationships. A consumer purchasing a good through any e-commerce platform interacts only with the platform interface, thus rarely interacting with the actual seller. The curated listings are done by the platform, payment is processed through it, any grievances are to be addressed through platform systems. The majority control over the transaction is held by these platforms and yet they escape the liabilities of a "seller" under the Sale of Goods Act, 1930[1] ("SOGA") by claiming themselves to be mere intermediaries. The law further continues to recognise the liability against the actual seller.

The central problem is therefore not merely regulatory but doctrinal. The SOGA is structured such that a transfer of title occurs only in a bilateral buyer-seller relationship. However, an e-commerce platform distributes control between various parties while the platform retaining control heavily. Scholars have increasingly argued that platform economies blur the distinction between intermediaries and sellers and this has led to renewed debate over whether traditional privity-based doctrines remain adequate for digital commerce.[2] This paper argues that the Act's title based conception of the seller creates a structural "privity gap" in e-commerce transactions, allowing platforms that exercise substantial control over sales to evade liability. By analysing judicial responses and comparative approaches, the paper demonstrates that such gap cannot be fragmented by other frameworks and requires structural reform of the definition of "seller" under the SOGA.

2. THE CONCEPTUAL ARCHITECTURE OF SOGA: WHY PLATFORMS ARE LEGALLY INVISIBLE

2.1 The ownership-based seller concept

The definition of seller[3] reflects an ownership based concept in a contract of sale. Read with section 4, the statute becomes very clear tying the act of selling to the transfer of ownership and not merely facilitation of the transaction. Hence, the liability under the

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[1] Sale of Goods Act 1930 (SOGA 1930)
[2] Andrea Bertolini et al, 'Liability of Online Platforms' (Study, European Parliamentary Research Service, February 2021) PE 656.318, 3.
[3] SOGA 1930, s 2(13)

statute is fixated on the seller who actually owns the title to the goods and not the entity that controls the transactions. This was adequate in traditional transactions where the person offering the goods was the same as the one holding the title. Since the online platforms don't hold the title to the goods, it can't, by definition, be a "seller" under the Act. This is how platforms circumvent responsibility and liability under the SOGA.

2.2 The Bilateral Assumption

As examined earlier, the SOGA only recognises two parties in a contract of sale i.e. the buyer and the seller. Sections 14 to 17 stipulate certain conditions into the contract regarding the quality, fitness and title of the goods that explicitly bind the buyer and the seller to these terms only. If an e-commerce platform is simply an intermediary, they are not bound by the sections above and aren't legally liable for the non-compliance of such conditions. An intermediary is in charge of almost every significant step in the product being made available to the end consumer, including but not limited to, price listings, description and the presentation of the products, payment processing, exchange/return policies. Yet, these platforms remain outside the statutory framework of the sales law governing this country, resulting in them being legally invisible when the liability for defect in goods is questioned.

2.3 Why platforms fit neither category

The difficulty of placing the e-commerce platforms into the definitions of seller, buyer and even agents is quite problematic. Under the traditional agency principles, an e-commerce platform cannot be an agency.[4] This is due to the existence of the terms and conditions of the platform, example Amazon, that expressly state that the transaction is between the vendor and the buyer only, thus releasing the platform from any contractual obligations.[5] The judiciary has largely recognised e-commerce platforms as intermediaries.[6]

[4] Indian Contract Act 1872, s 226

[5] "Conditions of use- Amazon Customer Service" https://www.amazon.in/gp/help/customer/display.html?nodeId=GLSBYFE9MGKKQXXM#:~:text=You%20agree%2C%20understand%20and%20acknowledge%20that%20the,between%20you%20and%20the%20sellers%20on%20Amazon.in. accessed 5 March 2026

[6] *Amazon Seller Services Pvt. Ltd. v. Amway India Enterprises* [2020] SCC Online Del 278

3. THE DOCTRINAL MISDIRECTION: HOW INTERMEDIARY ANALYSIS EXPOSES SOGA'S OBSOLESCENCE.

3.1 The Amazon Case: What becomes the default consumer remedy?

The Bombay High Court's significant ruling in the case of *Amazon India vs. State of Maharashtra* revealed the structural inadequacies of the SOGA's framework by the heavy reliance of the judiciary over the IT Act and the Consumer Protection Act for remedies.[7] The consumer completed payment for a good that wasn't delivered.[8] This resulted in the filing of a criminal complaint under section 420 IPC for cheating.[9] The need to invoke criminal charges against what is essentially a breach of contract (a failed commercial transaction) signifies the very failure of the SOGA, 1930 and exposes the remedial vacuum that it creates.

Amazon's defence was claiming its position as an intermediary under the IT Act, 2000.[10] This defence was successful because SOGA's privity concept meant that the consumer's contract existed solely with the seller, not with the platform. The court noted that Amazon has minimal human contact beyond customer service.[11] Amazon's participation in processing payments, hosting the product listing and providing an "A to Z Guarantee" may have produced enough indicia of control to impose a duty of care.[12] But, the courts failed to take that into consideration. Additionally, it did not investigate whether unjust enrichment principles would be applicable in situations where a platform makes payment easier but the consideration is insufficient.[13] Rather, the inquiry completely shifted onto whether Amazon's conduct amounted to cheating under the IPC, which requires proof of fraudulent intent *ab initio*.[14]

This reliance on criminal law is fundamentally illogical because even if there is persistent and unexplained breach of contract, dishonest intent is required at the start to constitute

[7] *Amazon India vs. State of Maharashtra* (Bombay High Court, Writ Petition No 3047 of 2021, 28 October 2021).
[8] Ibid [4]-[5]
[9] Ibid [6]
[10] Ibid [4], [14]
[11] Ibid [14]
[12] Ibid [4] (referencing to the 'A to Z Guarantee' mentioned in the complaint)
[13] On unjust enrichment in failed contracts, see *Fibrosa Spolka Akcyjna v. Fairbairn Lawson Combe Barbour Ltd* [1943] AC 32 (HL) 53 (Lord Wright), recognising restitution where consideration wholly fails.
[14] *Harmanpreet Singh Ahluwalia v. State of Punjab* (2009) 7 SCC 712 [12] (holding that for cheating under Section 415 IPC, the dishonest intention must exist at the time of inducement, not merely arise subsequently).

criminal fraud. Hence, the court rightly found no such intent.[15] In the end, the consumer was left with no remedy under any law governing sales.

This is one of the cases that the courts should've been able to address in accordance with the sales law. But due to the lack of provisions existing for tripartite contracts under SOGA, 1930 and non-existence of any framework holding the platform accountable, the courts are forced to rely upon other remedial statutes like the IT Act, RBI circulars and the CPA.[16] The court was left to determine whether Amazon's acts qualified as criminal cheating, a standard that is fundamentally at odds with the nature of the case. The necessity that a client prove fraudulent intent in order to recover money for undelivered products purchased through a major platform demonstrates the extent to which SOGA has abdicated its responsibilities pertaining to e-commerce transactions.

3.2 The Louboutin Framework.

The Delhi High Court's ruling in the case of *Christian Louboutin v. Nakul Bajaj* exhibits the difficulty of the court of automatically classifying a platform as an intermediary.[17]

a. Courts are cautious about the Intermediary status

The courts have emphasized that mere declaration by e-commerce platforms do not result in them being classified as an intermediary.[18] Further, it also does not immediately entitle them to the safe harbour protection.[19] The court denied all claims of the defendant being merely an intermediary due to control Darveys.com exhibited over transactions. Therefore, a functional test of platform involvement was added by the court's reasoning: the more control a platform has over the representation, legitimacy, and logistics of commodities, the less likely it is that it is a neutral intermediary. Darveys.com was charging membership fees, guaranteeing product authenticity, performing quality checks, packages in its own packaging,[20] and hence, is much more than an "intermediary", crossing the line from a

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[15] *Amazon India* (n 1) [17]

[16] On the regulatory framework for e-commerce payments, see RBI Circular RBI/2009-10/231 (24 November 2009) on opening and operation of accounts and settlement of payments for electronic payment transactions involving intermediaries, cited in Amazon India (n 1) [4].

[17] *Christian Louboutin SAS v Nakul Bajaj* AIRONLINE 2018 DEL 1962

[18] ibid [64]

[19] The Information Technology Act 2000, s 79

[20] *Christian Louboutin SAS* [56]

passive conduit to an active participant.[21]

Nevertheless, the ruling only addresses this matter in terms of intermediary liability. The question it poses is, "Did the platform exercise sufficient control to lose protection for IP claims?" This is fundamentally different from the question of law or a consumer's question, "Did the platform bear adequate liability for it to be classified as a seller when goods are defected or undelivered?" These are not only distinct questions but also fundamentally incommensurate. A platform may be entirely "passive" under the Louboutin considerations even if it is the sole visible entity in the transaction when the seller cannot be identified. However, a platform may be very "active" (assuring legitimacy and handling logistics) while still evading the tag of a seller as it never formally transfers any title.

Even after declaring Darveys.com to be "much more than an intermediary", the judiciary stops short of declaring it as a "seller" under sales law. This analysis is due to the ignorance of the fundamental questions posed by the SOGA: Who is the seller? Who bears the risk?

The judgement itself recognises the doctrinal mismatch of applying an intermediary liability framework, designed for policing user-generated content, to the entirely different setting of commercial sales transactions. This is evident from the court's reliance on rulings in the *Shreya Singhal vs. Union of India*[22] (which deals with social media content) and *MySpace Inc. v. Super Casettes Industries Ltd.* (which deals with protected music uploads).[23] Further, the courts own acknowledgement while discussing *Shreya Singhal*[24] is proof that the court grafts content based law onto commercial sales transactions, without mentioning the fundamental difference between the two.[25] Since the SOGA provides no structure for assigning responsibility in multi-party platform transactions, the court was forced borrow from intellectual property and technology law to construct an appearance of accountability.

There are other conceptual difficulties with the ruling's orders. Darveys.com must now obtain guarantees and certificates of authenticity from its suppliers; this creates a paradox. The platform must do verification and screening processes, which by definition, make it

[21] Ibid [63]
[22] *Shreya Singhal v. Union of India* (2015) 5 SCC 1.
[23] MySpace Inc. v. Super Cassettes Industries Ltd. (2016) 236 DLT 478.
[24] *Shreya Singhal v. Union of India* (2015) 5 SCC 1.
[25] Ibid [43].

more "active", affecting it's identity as a passive middleman (and so avoiding liability). Furthermore, the court's strategy for handling the problem of foreign dealers is practically impractical. The platform is required to "obtain concurrence" from every trademark owner before listing any product, which is an impractical requirement that may be challenged as an unfair trade restriction. The fundamental issue of a consumer's redress against an anonymous, impenetrable foreign vendor is completely ignored by this remedy, which was developed from a trademark perspective and ignores the business realities of a worldwide economy.

b. The divergence: Fragmentation as a proof of failure

In *Puma SE v. IndiaMART Intermesh Ltd,*[26] the Delhi High Court (Division Bench) overturned a Single Judge's conclusion of platform liability, demonstrating the conceptual ambiguity. The court described IndiaMART as a neutral listing service that is entitled to safe harbour. However, a contrasting judgement was passed in the consumer court in the case of *Ashwini Chawla v. Flipkart Internet Ltd. and Ors*[27] wherein the court rejected Flipkart's defence of being an intermediary completely. The court held Flipkart, the seller and the manufacturer jointly and severally liable for selling a used phone as a new one to the consumer. The commission held that Flipkart made an offer by listing the product and the complainant placed the order by accepting the offer and hence the agreement stood completed between the parties.

This judgement recognises and highlights the difficulties that a consumer faces to get remedies for a defective product.[28] If the SOGA clearly identified who the seller is in e-commerce transactions, the consumer wouldn't have had to run from pillar to post searching for a remedy. Similarly, in the case of *Raja Vikrant Sharma v. Swiggy Limited & 2 Ors,*[29] the district commission again rejected the intermediary defence of Swiggy relying on the "tax-invoice and the statutory duties of e-commerce entities under the Consumer

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[26] *Puma SE v. IndiaMART Intermesh Ltd.* [2025] SCC OnLine Del 4165.

[27] *Ashwani Chawla v. Flipkart Internet Pvt Ltd and Ors* (State Consumer Disputes Redressal Commission, Chandigarh, Complaint Case No. 211 of 2023, 20 February 2024).

[28] Consumer Commission imposes ₹30,000 fine on Flipkart and OnePlus retailer for selling used phone as new' *Bar & Bench* (20 February 2024) https://www.barandbench.com/news/consumer-commission-30000-fine-flipkart-oneplus-retailer-selling-used-phone-as-new accessed 5 March 2026.

[29] *Raja Vikrant Sharma v. Swiggy Limited & 2 Ors* (District Consumer Disputes Redressal Commission-I, Chandigarh, Complaint Case No. DC/44/CC/78/2025, 3 November 2025).

Protection framework".[30]

In the above discussed cases, it is prevalent that three disparate frameworks (IT Act, CPA and IPC) are being used to govern platform accountability. However, none ask the question that should be addressed by sales law: When a platform has functional control over every part of a transaction except the formal title, should it take on seller liability? Further, the inconsistencies in the judgements highlights the reason for the need for provisions under the SOGA to ensure uniform access to justice.

4. THE STRUCTURAL INADEQUACY: WHY EXISTING FRAMEWORKS FAIL

4.1 The Consumer Protection Act, 2019's Limited Reach

The CPA, 2019 and the E-commerce rules, 2020 impose obligations on the platform for addressing grievances, process refunds and ensure transparency. In the case of *Ashwini Chawla,*[31] compensation was awarded for the defective good provided by claiming deficiency in service.[32] However, this compensation is awarded for the failure of the conduct of the platform such as unfair trade practices or redressal of grievances, not for the defect in the goods. The ultimate responsibility for the defect in goods remains with the seller and as established, the platform is not the seller. Therefore, rather than only the existence of a defective product, recovery from the platform is dependent on inappropriate handling of the complaint. The platform's responsibility is therefore secondary rather than primary.

4.2 The IT Act's Conceptual Mismatch

The IT Act, 2000 governs intermediary liability for third party content and does include e-commerce platforms under section 79, providing safe harbour. Consumer complaints concerning faulty products are philosophically incompatible with this approach. A platform is accountable for aiding and abetting intellectual property infringement even after losing safe harbour, but not for the faulty product itself. The IT Act cannot create privity where SOGA denies it. It cannot transform a platform into a seller and only answers the question,

[30] 24law, "Chandigarh Consumer Commission Fines Swiggy & Instamart for Delivering Underweight Oranges, Finds Deficiency in Service" Chandigarh Consumer Commission Fines Swiggy & Instamart for Delivering Underweight Oranges, Finds Deficiency in Service.

[31] *Ashwani Chawla* (28)

[32] CPA 2019, s 2(11)

"Whether the platform is immune from liability for third party content?" and not "Who bears the responsibility of defective goods?"

4.3 SOGA's Exclusive Domain

The only statute that can attach liability in the event of defect in goods is the Sales of Goods Act, 1930 and no other statute can fill this lacuna. The Sales act defines who the seller is and who has to comply with the quality and fitness conditions under section 15, 16 and 17 of the Act. The existence of multiple remedies for one problem is the bug, not the solution. It is an argument for reform and not against reform. When a consumer has to chase three different pathways each leading to a different outcome,[33] it reflects the failure of the presence of one clear rule. The entity that describes, structures, facilitates and profits from the transaction should bear the burden when that transaction fails. The problem is, hence, structural and specific to SOGA.

5. COMPARITIVE LESSONS: WHAT FOREIGN JURISDICTIONS REVEAL

5.1 United States

American courts have moved towards confronting platform liability and rejected the formalistic focus on title as in Indian sales law. In *Oberdorf v. Amazon.com Inc.*,[34] the court held Amazon liable as a "seller" for the good even though Amazon neither manufactured nor designed it as it still exerted substantial control over the distribution chain.[35] In another significant ruling *Bolger v. Amazon,*[36] The Bolger court concluded that bringing the product to the consumer is important, no matter what Amazon's role is describes as.[37]And Importantly, both judges dismissed the claims of protection because Amazon's actions were the basis for responsibility.[38] Under American product liability theory, even if entities do not formally transfer title to the goods, organizations that significantly contribute to the launch of a product may be held strictly accountable. These decisions not only expand the definition of the seller but also accept that such platforms have a greater commercial

[33] *Amazon India* (8)
[34] *Oberdorf v Amazon.com Inc* [2019] 930 F 3d 136 (3rd Cir).
[35] Ibid 16 https://law.justia.com/cases/federal/appellate-courts/ca3/18-1041/18-1041-2019-07-03.html accessed 6 March 2026.
[36] *Bolger v Amazon.com* LLC (2020) 53 Cal App 5th 431.
[37] Ibid.
[38] Ibid https://caselaw.findlaw.com/court/ca-court-of-appeal/2080950.html.

responsibility in which liability flows beyond the mere title in the goods.

More significantly, the US approach is based on tort law rather than sales law. Strict product liability applies to companies throughout the distribution chain, regardless of title. This is conceptually distinct from the SOGA contractual framework. Transferring Oberdorf to India would require reinterpreting SOGA as a tort statute, which is not the case.

5.2 European Union

In contrast, the Digital Services Act (DSA) of the European Union still maintains the safe harbour structure, but it now requires platforms to do due diligence and be transparent. However, because national courts interpret the laws inconsistently. Platforms are not held collectively responsible when things are not up to par. Hence, the DSA's approach is regulatory rather than contractual; it creates obligations under public law as opposed to private law consumer rights. A study commissioned by the EPRS recommends that platforms should be held to a higher standard and to a stricter liability.[39] And it thus reinforces a critical insight that regulatory frameworks don’t substitute for a coherent private law assigning contractual responsibility within the transaction itself.

6. LESSONS FOR INDIA: REFORMS

The comparative experience shows that the contractual gap caused by platform trade cannot be filled by either tort based remedies or regulatory control alone. Therefore, in order for liability to match the functional realities of digital markets, Indian sales legislation needs to be specifically reformed inside SOGA itself.

6.1 Expand the definition of “seller” under SOGA

An amendment to SOGA will resolve the problem of intermediaries escaping liability. The amendment would include a definition that specifies any entity holding a substantial control over the sale of transaction to be included in “seller” and not merely a title to the goods. The current e-commerce platform cannot be included in this definition since it is too limited. Therefore, the reform must broaden the Act's purview to encompass organizations

[39] Bertolini et al, Liability of Online Platforms (2)

that carry out the necessary tasks of a sale without ever possessing ownership.

Proposed Amendment to Section 2(13):

(c) An electronic commerce operator who uses a digital interface to enable a sale of goods between a buyer and a third-party seller while maintaining substantial control over the transaction shall be included in "seller".

6.2 The introduction of deemed seller concept

A "deemed seller" or a "functional seller" provision could be introduced within SOGA which assumes a platform or an e-commerce website to become a seller when certain specific conditions are met by the platform while conducting their business. This new section could act as a form of control and would define the exhaustive list of conditions required for the platform to meet to ensure liability is not escaped. The logic for this section can directly be drawn from US jurisprudence and Indian judgements that are already followed by some courts. Some of the conditions to be met could be as follows:

a. Platform processing payment

b. Platform describing or presenting the product

c. Platform controlling listing and pricing mechanisms

d. Platform coordinating delivery

e. Platform managing refunds/exchange/grievances

f. Platform offering product guarantees

The above following suggestion of conditions prevent intermediaries from exercising significant control over products and simultaneously escaping liabilities.

The limitations under the SOGA become more apparent when it is contrasted with other parallel statutes in India such as the CGST Act, 2017.[40] Legislative recognition of the platform's effective control over online transactions is reflected in the treatment of

[40] **The** Central Goods and Service Tax Act, 2017 (CGST, 2017)

electronic commerce operators as suppliers for restricted fiscal purposes under section 9(5) of the CGST Act, 2017. However, there has been no such development in the area of sale of goods liability, as platforms continue to avoid accountability even if they carry out tasks that are typically performed by sellers. Hence, the concept of "deemed seller" is a viable option.

6.3 Operationalisation of liability

Along with the definition of seller being broadened, there is a need to include the extent of which the liability will be applicable onto the e-commerce platforms. Liability cannot be extensive, it requires to be specified and to be of a relevant nature. The Act could be further amended to add a new section which unambiguously defines the extent of the liabilities of the platform which could include:

1. The e-commerce platform should be made jointly and severally liable with the actual seller of the goods for any defect in goods or breach of contract, as if the platform were the seller. And such platform shall retain any right to ask the actual seller for any contribution towards any payment required to be made to the consumer.

2. This proposed section should not apply to any intermediary who is passive in nature and does not exercise considerable amount of control over the transactions between the buyer and the seller.

This arrangement achieves several goals. Firstly, it protects the consumer by providing a transparent and reliable financial entity (the platform) against which a claim may be filed. Second, by internalizing the cost of fraud, it provides a powerful incentive for the platform to invest in dependable seller verification and monitoring technology. Third, by granting it a **right** of contribution against the actual seller, it preserves the platform's ability to pursue remedies without making it an absolute insurer.

7. CONCLUSION

The analysis above demonstrates that the SOGA, 1930 relies on the bilateral structure in a contract and the current e-commerce marketplaces cannot be adequately addressed as such platforms exercise significant transactional control. Ultimately, the issue is not merely one of consumer protection but of doctrinal coherence. When the entity that structures, facilitates and profits from a transaction is legally invisible within the governing sales framework, the law fails to align responsibility with control. Reforming the definition of seller within SOGA would therefore not expand liability arbitrarily but restore the basic contractual principle that accountability should follow the party that organises the transactions. In the absence of such reform, the law of sale runs the risk of staying rooted in a bilateral understanding of commerce that no longer takes into account the institutional realities of modern digital marketplaces.

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