

ISSN 2321-1059

Journal of Legal Studies

International Refereed Peer-Reviewed Legal Journal

M NAVTA
S MAJIK
S ANSTHA
MUGHALSARAI CHANDALI U.P.

Published By:

Manavta Samajik Sanstha
Mughalsarai, Chandauli, U.P. India

Cite this Volume as *JLS* Vol. 11, Issue II, July, 2023

The Journal of Legal Studies is an International Refereed Peer-Reviewed Journal of Legal Studies is published biannually in the month of January and July. The Journal focused on gathering knowledge on the different issues of Law. The Journal welcomes and encourages original legal research papers and articles in not more than 3000-5000 words in English. Main body A-4 size paper 11 pt. font Size in Times New Roman Font in single space.

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Journal of Legal Studies, International Refereed Peer-Reviewed Journal
ISSN 2321-1059, Vol. 10, Issue II, July 2023
www.journaloflegalstudies.co.in

Journal

of Legal Studies

International Refereed Peer-Reviewed Legal Journal

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*Journal
of Legal Studies*

International Refereed Peer-Reviewed Legal Journal

ISSN	2321-1059
Volume, Issue and Year	Vol. 11, Issue II, July, 2023
Place of Publication	Varanasi
Language	English
Periodicity	Biannual in the month of January and July
Printer's Name, Nationality and Address	Poddar Foundation, Varanasi, Uttar Pradesh, India, Pin Code-221005
Publisher's Name, Nationality and Address	Dr. Pradeep Kumar Manavta Samajik Sanstha Mughalsarai, Chandauli, U.P. India Pin Code-232101
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Product Liability Under the Consumer Protection Act, 2019: A Paradigm Shift

*Dr. Rupam Lal Howlader¹
&
Dr. Hemant Kumar Varun²*

Abstract

Since last two decades, the world has experienced a considerable growth in technology and ecommerce resulting thereby a challenge to face overgrowing issues like defect and deficiency in consumerism. Every product entering the market has to meet the test of legitimate expectation of safety and standard quality to consumers. As far as Indian scenario is concerned, the earlier 1986 Consumer Protection Act (hereinafter 1986 Act) did not address these issues towards utmost satisfaction of the consumers. Besides, if the goods or services fall short of prescribed standards, the consequences can be very detrimental for the rights of the consumers. Over again, the cases of defective products have been on the rise from all sectors, viz, food and beverages, pharmaceuticals, personal care products, domestic appliances, motor vehicles, farm machinery, and many others. To come up with these challenges, Chapter VI of the 2019 Consumer Protection Act (hereinafter 2019 Act) introduces the concept of “product liability” for the first time in Indian consumer law and contains specific provisions laying down the liability for the manufacturers, sellers, and service providers. This paper provides a careful scrutiny of the product liability and working of the provisions of product liability action in the 2019 Act.³

Key words: Consumer Protection; Product Liability; Product Liability Action; Defect and deficiency, *Caveat Venditor* etc.

Introduction

Product liability law in India is now entering into a new era with the recent enactment of the 2019 Act which introduces a new system of liability in respect of loss or damage caused by defective products.⁴ The new law offers the victims of defective products an additional

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³ This article is an outcome of Three-Day Training Programme on “The Consumer Protection Act, 2019” for The President and Members of Puducherry, Tamil Nadu, Andhra Pradesh and Telangana State Consumer Dispute Redressal Commissions organized by Dr. Ambedkar Government Law College, Puducherry under the aegis of Ministry of Consumer Affairs, Food & Public Distribution, Government of India held from 27th to 29th October 2023. Authors are highly indebted to Justice A. P. Sahi, President, National Consumer Disputes Redressal Commission, New Delhi and Prof. (Dr.) Ashok R. Patil, Vice-Chancellor, National University of Study Research and Law, Ranchi for their the valuable inputs towards conceptualization of this article.

⁴ Based on the recommendations of the Law Commission of India, The Consumer Protection Bill, 2019, was introduced in Lok Sabha by the Minister of Consumer Affairs, Food and Public Distribution on July 8, 2019. The said Bill received presidential assent on August 9, 2019, and came into force on July 20, 2020. For a comprehensive analysis, see Ashok R. Patil, “Product Liability Action: A Tooth to Strengthen Consumer Protection,” 10 *International Journal on Consumer Law and Practice* (2022) pp. 99-119.

remedy to existing remedies under the law of contract and tort. While dealing with the Product Liability either in day-to-day transaction or at the time of entering into any commercial relationship, one should always acknowledge the responsibility and accountability of not only buyers but also sellers towards the products or services that are being marketed in to. The famous traditional rule *Caveat Emptor* wherein buyer has to take the responsibility of the products and services that he's been purchasing and availing, has been reversed now and the burden has been shifted on seller.⁵ As per the 2019 Act, "product liability" means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto.⁶ Besides, products containing inherent defects that cause harm to a consumer of the product would be the subjects of products liability suits.

Product Liability under the 2019 Act Setting the Context

Prior to 2019, there was no specific legal enforcement mechanism relating to product liability under consumer law in India. Moreover, there was no statutory regime of lemon law,⁷ as in some other countries such as the United States. In absence of product liability, a claim was lodged within the existing laws of contract and tort. In absence of specific regime governing product liability, such claims were founded and derived from legislations such as the 1972 Indian Contract Act, the 1930 Sale of Goods Act, the 1986 Consumer Protection Act etc.; and the these claims were also based on judicial decisions, both in the civil and criminal aspects, leading to much confusion and different approaches.

However, certain sector-specific laws touching upon principles of product liability such as the 1945 Drugs and Cosmetics Act, the erstwhile 1954 Prevention of Food Adulteration Act (which stood repealed by the 2006 Food Safety and Standards Act), 2009 Legal Metrology Act, 2016 Bureau of Indian Standards Act 2016 etc. were also relied upon. Therefore, the 2019 Act is the first legislation of its kind that expressly defines and contains provisions related to product liability. It codifies the principle of product liability concerning sale or supply of defective products or delivery of defective services to consumers against the product manufacturer, product service provider, product sellers, exceptions to product liability action.

⁵With an aim to provide stricter and more enhanced protection to consumers, the 2019 Act made significant amendments to the erstwhile Consumer Protection Act, 1986, along with addition of new provisions. The introduction of product liability under the 2019 Act marked an end of the *buyer beware* doctrine and the introduction of *seller beware* as the new doctrine governing the Consumer Protection Act.

⁶ Section 2(35), The Consumer Protection Act, 2019.

⁷Lemon laws are laws that provide a remedy for purchasers of cars and other consumer goods in order to compensate for products that repeatedly fail to meet standards of quality and performance. See Lee. D. Dahringer and Denise R. Johnson, "Lemon Laws: Intent, Experience and a Pro-Consumer Model," 22(1) *Journal of Consumer Affairs* (2005) pp. 158-170; Brian Shaffer and Daniel T. Ostas, "Exploring the Political Economy of Consumer Legislation: The Development of Automobile Lemon Laws," 3(1) *Business and Politics* (2001) pp. 65-76.

Nature of Product Liability

Product liability refers to the legal liability that manufacturers and sellers have when consumers are harmed by a defective product service deficiency.⁸ The 2019 Act introduces product liability, holding manufacturers, sellers, and service providers liable for any harm caused by defective products or deficient services. It expands the scope of liability beyond just the manufacturer to include all stakeholders in the supply chain.⁹ Individuals who buy or use products have a right to expect not to be injured when the product is used as intended. If they are hurt because of a problem with the item, they can pursue a civil claim to recover compensation for their resulting damages.

Product liability laws will govern these types of cases and will determine if manufacturers or sellers should be held accountable and forced to pay out money for losses. If any entity involved with the product is held accountable, this is an example of product liability. Consumers must show that they were injured because of the faulty product. Liability is determined based on who caused the fault. For example, in a car accident case, the plaintiff would need to show that any reasonable person would have been more prudent than the defendant in the same situation. If the defendant's lack of care can be directly shown to have harmed the plaintiff, then the defendant would need to pay damages.

For further illustration, if a person gets injured in an accident because the air bags in the vehicle were defective, then the injured person can hold the vehicle's manufacturer liable. If the airbags were damaged because the seller made alterations, the seller could be held liable. The service provider could be liable if the airbags were damaged because the repairs were not done properly. In such a case, the manufacturer of the product as a whole could be held liable, as could the manufacturer of its parts. For example, if defective airbags are put into a car, the manufacturer of the airbags and the manufacturer of the vehicle could both potentially be sued under product liability law. This can make it easier for victims harmed by products to prevail in a civil case and get the compensation they need after a product adversely impacts their health or well-being of the consumers.

Scope and Ambit of Product Liability: Definitions

Product

What types of products are covered by the 2019 Act? This is one of the most cardinal aspects to be addressed since the scope of the 2019 Act depends upon the meaning given to "product." Therefore, to begin with the notion of product liability under the 2019 Act, it is obvious to define the term "product." Product means any article or goods or substance or raw material or

⁸For detail discussion on nature of product liability, see Ashutosh V. Panchbhai, Vivek V. Neman and Vaibhav B. Sonule, "Product Liability Law in India - A Critique," 6(4) *Journal of Positive School Psychology* (2022) pp. 561-567; Vincent S. Walkowiak, "Product Liability Litigation and the Concept of Defective Goods: Reasonableness Revisited," 44(4) *Journal of Air Law and Commerce* (1979) pp. 705-746; Friedrich Kessler, "Products Liability," 76(887) *The Yale Law Journal* (1967) pp.887-938.

⁹S. Ramesh, "A Comparative Analysis of Consumer Protection Act 1986 and Consumer Protection Act 2019 in India: Strengthening Consumer Rights and Redressal," 3(5) *Journal of Legal Subjects* (2023) pp. 1-4 at p. 3.

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.¹⁰ From the definition under the 2019 Act, it is clear that product is a broader term than goods and products can also be used for commercial purposes. They can be raw materials or intermediate products. It would not include human body components.

Product Liability

A consumer as per the provisions of 2019 Act only purchases goods which is a part of a wider term of products. If any person uses or purchases a product for commerce, that person is not a consumer. Hence, whenever any product suffers from any defect or damage the product manufacturer or seller can be held liable by the consumer. Whereas, “product liability” means the responsibility of a product manufacturer or product seller, of any product or service, to compensate for any harm caused to a consumer by such defective product manufactured or sold or by deficiency in services relating thereto.¹¹

Thus the scope of the doctrine of “product liability”, under the 2019 Act is limited in comparison to the doctrine laid down in the *Elmore v. American Motors Corporation*¹² where the product manufacturer was held liable to the innocent bystanders randomly injured by the defective products, as the liability under the Act is confined to compensate the “consumer” which does not include the bystander. This is because the foundation of the action is the contractual relationship between the buyer of the product and the seller or manufacturer.¹³

Therefore, a product should be both merchantable and marketable. Any defect in this part would bring liability on the one who sold the product or the one who manufactured it. The consumer cannot be expected by the seller or the manufacturer to specifically examine every aspect of the product. It is well understood that if the price liability would fall on the consumer, the product liability should fall on the seller or manufacturer.

Harm

In order to realise the scope and ambit of product liability under the 2019 Act it will be necessary to understand the meaning of “harm.” With respect to product liability, “harm” includes: (i) damage to any property, other than the product itself; (ii) personal injury, illness or death; (iii) mental agony or emotional distress attendant to personal injury or illness or damage to property; or (iv) any loss of consortium or services or other loss resulting from a

¹⁰ The Consumer Protection Act, 2019, Section 2(33).

¹¹ Ibid, Section 2(34).

¹² *Elmore v. American Motors Corporation*, 70 Cal. 2d 578 (1969).

¹³ See W. Kennedy Simpson et al., “Recent Developments in Products, General Liability, and Consumer Law,” 38 *Tort Trial and Insurance Practice Law Journal* (2002) pp. 625-656; Donald M. Jenkins, “The Product Liability of Manufacturers: An Understanding and Exploration,” 4(2) *Akron Law Review* (1972) pp.135-208; P. N. Legh-Jones, “Products Liability: Consumer Protection in America,” 27(1) *The Cambridge Law Journal* (1969) pp. 54-80.

harm referred to in sub-clause (i) or sub-clause (ii) or sub-clause (iii), but shall not include any harm caused to a product itself or any damage to the property on account of breach of warranty conditions or any commercial or economic loss, including any direct, incidental or consequential loss relating thereto. This definition is not exhaustive though it covers majority of the different kinds of tangible and intangible losses which a consumer may suffer due to defective product or deficient service.

Product Liability Action

It is imperative to define “product liability action,” which means a complaint filed by a person before a District Commission or State Commission or National Commission, as the case may be, for claiming compensation for the harm caused to him. Therefore, the consumer can claim compensation for any harm caused by a defective product manufactured by a manufacturer or serviced by a service provider or sold by a seller. Therefore, impact is that it is not only the manufacturer but also the service provider and seller.¹⁴

Product Liability Action under the 2019 Act

Extent of Product Liability: Classification

Sections 82 to 87, appearing in Chapter VI of the 2019 Act comprehensively deals with the product liability action which extends to every claim for compensation under a product liability action by a complainant for any harm caused by a defective product manufactured by a product manufacturer or serviced by a product service provider or sold by a product seller.¹⁵ It lays down the components of a product liability action when a product manufacturer, product service provider, or product seller can be held liable subject to the exceptions to a product liability action. It is pertinent to mention that the 2019 Act, expressly or by necessary implication, does not indicate that these new provisions of product liability will also apply to product liability actions already pending before various consumer fora. However, since these provisions create new rights and liabilities, there is a presumption in law that they are prospective in operation.

A product liability action may be brought by a complainant against a product manufacturer or a product service provider or a product seller, as the case may be, for any harm caused to him on account of a defective product. The 2019 Act defines each of these expressions in very wide terms to bring within their jurisdiction every possible aspect of a product liability claim. The 2019 Act also delineates the situations in which they will be held liable. While the concept of product liability envisaged under the 2019 Act are quite exhaustive and there is nothing to indicate that these would be the only situations where liability will arise.

¹⁴See Balachandran Viswanathan and Anunima K.V., “A Study on Consumer Protection Act 2019 and Its Implications on the Pillars of Integrated Communication Channel,” 23(9) *IOSR Journal of Business and Management* (2021) pp. 59-67.

¹⁵ The Consumer Protection Act, 2019, Section 82.

Further, Section 83 of the 2019 Act provides *that* “a product liability action may be brought by a complainant against a product manufacturer or a product service provider or a product seller, as the case may be, for any harm caused to him on account of a defective product.” A careful observation of the provision states that there shall be three essential ingredients to satisfy a product liability action against the respondent i.e., (i) harm caused to the complainant; (ii) the harm caused on account of a defective product; and (iii) product manufacturer or product service provider or product seller should be held responsible for the defect in the product. It also classifies three different types’ respondents under the product liability action where action lies against a product manufacturer or a product service provider or a product seller who may be held jointly or severally liable for any harm caused to him due to the defective product.

Liability of Product Manufacturer

Under the purview of 2019 Act, manufacturer means a person who (i) makes any goods or parts thereof; or (ii) assembles any goods or parts thereof made by others; or (iii) puts or causes to be put his own mark on any goods made by any other person.¹⁶ A product manufacturer shall be liable in a product liability action, if (i) the product contains a manufacturing defect; or (ii) the product is defective in design; or (iii) there is a deviation from manufacturing specifications; or (iv) the product does not conform to the express warranty; or (v) the product fails to contain adequate instructions of correct usage to prevent any harm or any warning regarding improper or incorrect usage. A product manufacturer may also be held liable even in cases where it is established that there was no negligence or fraud in making the express warranty of a product.¹⁷

Liability of Product Service Provider

In relation to a product, product service provider means a person who provides any service in respect of such product.¹⁸ Service means variety description which is made available to potential users and includes, but not limited to, the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, telecom, boarding or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service.¹⁹ “Spurious goods” means such goods which are falsely claimed to product service provider shall be liable in a product liability action, if (i) the service provided by him was faulty or imperfect or deficient or inadequate in quality, nature or manner of performance which is required to be provided by or under any law for the time being in force, or pursuant to any contract or otherwise; or (ii) there was an act of omission or commission or negligence or conscious withholding any information which caused harm; or (iii) the service provider did not issue adequate instructions or warnings to

¹⁶ Ibid, Section 2(36).

¹⁷ Ibid, Section 84.

¹⁸ Ibid, Section 2(38).

¹⁹ Ibid, Section 2(42).

prevent any harm; or (iv) the service did not conform to express warranty or the terms and conditions of the contract.²⁰

Liability of Product Seller

Product seller is defined as a person who, in the course of business, imports, sells, distributes, leases, installs, prepares, packages, labels, markets, repairs, maintains, or otherwise is involved in placing such product for commercial purpose and includes (i) a manufacturer who is also a product seller; or (ii) a service provider.²¹ A product seller may be held liable only if he is not a manufacturer of the product. If a product seller is also a manufacturer of the product, then the product seller shall be held liable under Section 84 of the 2019 Act as a product manufacturer.

Therefore, liability of the product seller arises if (i) he has exercised substantial control over the designing, testing, manufacturing, packaging or labelling of a product that caused harm; or (ii) he has altered or modified the product and such alteration or modification was the substantial factor in causing the harm; or (iii) he has made an express warranty of a product independent of any express warranty made by a manufacturer and such product failed to conform to the express warranty made by the product seller which caused the harm; or (iv) the product has been sold by him and the identity of product manufacturer of such product is not known, or if known, the service of notice or process or warrant cannot be effected on him or he is not subject to the law which is in force in India or the order, if any, passed or to be passed cannot be enforced against him; or (v) he failed to exercise reasonable care in assembling, inspecting or maintaining such product or he did not pass on the warnings or instructions of the product manufacturer regarding the dangers involved or proper usage of the product while selling such product and such failure was the proximate cause of the harm.²²

Exceptions to Product Liability Action

Section 87 of the 2019 Act specifically provides for conditions under which a product liability action cannot be brought against product seller or product manufacturer. A product liability action cannot be brought against the product seller if, at the time of harm, the product was misused, altered, or modified.²³ Similarly, product liability action based on the failure to provide adequate warnings or instructions, the 2019 Act exempts liability of the product manufacturer if (i) the product was purchased by an employer for use at the workplace and the product manufacturer had provided warnings or instructions to such employer; (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; (iii) 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

²⁰ Ibid, Section 85.

²¹ Ibid, Section 2(37).

²² Ibid, Section 86.

²³ Ibid, Section 87(1).

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 (iv) 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.²⁴ In addition, 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.²⁵

Paradigm Shift: Caveat Emptor to Caveat Venditor

Before the 2019 Act came into force, product liability claims were mostly based on principle of negligence and strict liability under the law of torts and the principle of warranty under the law of contract to claim damages for product liabilities. Earlier, the notion of *caveat emptor*, “let the buyer beware” found its place in common law.²⁶ As a result, the buyer of the product had to protect himself against obvious (patent) as well as hidden (latent) defects in the goods. Thus, no remedy could be claimed against the seller of defective goods unless there was an express warranty or condition to that effect in the contract.²⁷

In *Gardiner v. Gray*,²⁸ the English Courts replaced the rule of *caveat emptor* with precisely the opposite doctrine that the seller impliedly ‘warrants’²⁹ that his products contain no hidden defects. Further, the buyer was protected against obvious defects in goods if he “had no opportunity to inspect the commodity.” Thus, the buyer could now sue the seller of defective goods without any express contractual stipulations for damages or diminution in price. However, he could not repudiate the contract and compel the seller to take back the product. This common law rule was further modified by Section 16(2) of the 1930 Sale of Goods Act, to provide additional protection to the buyers of goods. As per Section 16(2) of the 1930 Act, there is an implied “condition” of merchantable quality for goods bought by description from the seller who deals in goods of that description.³⁰ Thus, a buyer was protected against both,

²⁴ Ibid, Section 87(2).

²⁵ Ibid, Section 87(3).

²⁶David G. Owen, “The Evolution of Product Liability Law,” 26 *The Review of Litigation* (2007) pp. 955-989 at p. 958.

²⁷ *Raghava Menon v. Kuttappan Nair*, AIR 1962 Ker. 318.

²⁸ (1815) 171 Eng. Rep. 46, 47 (N.P).

²⁹A “warranty” is collateral to the main purpose of the contract which entitles the buyer of the goods to sue the seller for damages or for diminution of the price of the product. On the other hand, a “condition” is essential to main purpose of the contract that entitles the buyer to repudiate the contract, reject the goods and sue for damages. For discussion in detail on warranty and condition, see D.N. Prabhakar Murthy, and Wallace R. Blischke, “Product Warranty,” *Warranty Management and Product Manufacture* (2006) pp. 35-61; V. S. Sebastian, “Quality Control in Sale of Goods,” 7 *Cochin University Law Review* (1983) pp. 281-294; George L. Priest, “A Theory of the Consumer Product Warranty,” 90(6) *The Yale Law Journal* (1981) pp. 1297-1352, J. W. CARTER and C. HODGEKISS, “Conditions and Warranties : Forebears and Descendants,” 8 *Sydney Law Review* (1976) pp. 31-67.

³⁰In *Grant v. Australian Knitting Mills*, AIR 1936 PC 34, the Judicial Committee of the Privy Council was considering Section 14 of the South Australia Sale of Goods Act which is equivalent to Section 16 of the Indian 1930 Sale of Goods Act, 1930. The Court held that the goods are not merchantable if “it has defects unfitting it for

obvious and hidden defects in goods.³¹ Further, the buyer would lose protection against the seller for obvious defects only if actually “inspected the goods” as opposed to “a mere opportunity to inspect” being granted to him.³²

Hence, if there was any defect in the product, the buyer could reject the goods and sue for the price of the goods.³³ In the alternative, it was also open to the buyer to accept the goods and sue on the basis of warranty for damages or diminution in the price of the product.³⁴ Though considerable progress was made by law of warranties in according protection to the consumers, doctrine of privity was a serious limitation with this approach. Thus, only immediate buyers of the product could sue only the immediate sellers of the product.³⁵ For instance, in *Winterbottom v. Wright*,³⁶ the driver of a stagecoach who suffered injury because of a defect in the product was refused damages as he was not a party to the contract between the seller and the buyer.

After the commencement of 2019 Act, there is a statutory liability imposed on product manufacturers and product sellers for any defective product. Moreover, such liability is strict in nature as it can hold them liable just based on the defective product without the consumer having to prove actual negligence. It derives its base from the concept of *caveat venditor* which means that the seller must beware thereby making the seller liable for any harm caused by the product to the consumer.³⁷ Generally, product liability claims are brought under the legal rounds of negligence, strict liability, or breach of warranty. Selling of the concerned product in the market is a prerequisite condition to incur a product liability.

Conclusion

In compare to 1986 Act, the 2019 Act is far more comprehensive and in line with other consumer protection laws across the globe. Product liability system is of the most commendable aspects of the 2019 Act, which establishes a customer-friendly process for resolving consumer disputes. Chapter VI of the 2019 Act introduced a new system of liability for injury caused by a defective product into Indian consumer law. This is unquestionably a

its only proper use but not apparent on ordinary examination”. See *Ranbirsingh Shankarsingh Thakur v. Hindusthan General Electric Corporation Ltd.*, AIR 1971 Bom 97.

³¹ Id.

³²Section 16(2) of the Sale of Goods Act, 1930; *National Traders v. Hindustan Soap Works*, AIR 1959 Mad. 11; See *Ranbirsingh Shankarsingh Thakur v. Hindusthan General Electric Corporation Ltd.*, AIR 1971 Bom 97.

³³ *National Traders v. Hindustan Soap Works*, AIR 1959; Section 12(2) of the 1930 Sale of Goods Act.

³⁴*National Traders v. Hindustan Soap Works*, AIR 1959 Mad 112; Section 59 of the Sale of Goods Act, 1930; *Board of Trustees of the Port of Calcutta v. Bengal Corporation Pvt. Ltd.* AIR 1979 Cal. 142.

³⁵Mathias Reimann, “Liability for Defective Products at the Beginning of the Twenty-First Century: Emergence of a Worldwide Standard,” 51(4) *American Journal of Comparative Law* (2003) pp. 751-838 at p. 793.

³⁶ (1842) 152 Eng. Rep. 402 (Ex.)

³⁷See Charles T. Levin, “Caveat Emptor Versus Caveat Venditor,” 7(3) *Maryland Law Review* (1943) pp. 177-200; see also Shalu Nigam, “From Caveat Emptor to Caveat Venditor: The Consumer Protection Act 2019 and the Consumer Rights,” 33(3) *Legal News and Views* (2020) pp. 2-7; Aryan Tulsyan, “Relocating Responsibility: Evolving From Caveat Emptor to Caveat Venditor vis-à-vis The Indian Sale of Goods Act,” 2(2) *National Journal for Legal Research and Innovative Ideas* (2022) pp. 43-49.

significant legislative change in the area of consumer protection in general and product liability in particular. This law guarantees to make up as much money as possible for the harm or injury done to a person who was harmed by a defective product. The goal of the legislation is to strike a balance between the interests of the product's manufacturer/seller and those of the consumers. Since the legislation is relatively new, there aren't many judgments that can be used to identify the general trend in the use of strict product liability claims against manufacturers, seller or service provider.

However, the idea of "buyer beware" has obviously given way to "seller beware," as the 2019 Act introduced the concept of transparency in transactions and held sellers and endorsers accountable for the products they are endorsing, thereby theoretically ushering in a reform in the field of consumer rights. This appears to be a step forward from the contract law principle of "Let the Buyer Beware" (*caveat emptor*) to "Let the Seller Beware" (*caveat venditor*).

Nevertheless, it is obvious that the goal of include product liability in the 2019 Act is to improve the protection offered to the consumers. Without the support of its customers, a market cannot thrive, and producers cannot expect their patronage if consumers lack faith in the market. The 2019 Act would support the national economy by strengthening the market and safeguarding consumer interests through the product liability framework. Thus, it would not be incorrect to argue that the notion of product liability under the 2019 Act is a clear attempt to create a certain level of equilibrium between the conflicting interests of the vendor, manufacturer, or service provider on the one hand, and the best interest of the consumer on the other.



Smart Contracts and Blockchain: A remedy for the disparities in Consumer Bargaining Power

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&
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Abstract

The increasing reliance on technology, applications, and the internet of things has placed average consumers at a disadvantage when dealing with standard form contracts, often leading them to agree to terms and conditions they don't fully comprehend. Paradoxically, this surge in technology could hold the key to addressing the imbalance in power between consumers and corporations in these contractual agreements. This paper explores the existing issues within consumer law and introduces the concepts of Blockchain and Smart Contract. It contends that the implementation of such technologies, has the potential to rebalance the scales and grant consumers more equitable bargaining power, all while preserving their privacy. The paper examines the current applications of these technologies in fields like insurance, flight compensation, and service contracts, illustrating how they can provide better solutions for issues related to the enforcement of consumer rights. The research holds significance in providing a more comprehensive exploration of the relatively uncharted domain of Consumer protection with respect to smart contracts in India. Furthermore, it posits that these technologies promote trust, confidentiality, and efficiency, while also eliminating jurisdictional obstacles in international trade and commerce. Nevertheless, for these technologies to be formally incorporated into consumer law, lawmakers must undertake substantial revisions of legal standards and statutory requirements. In conclusion, the paper suggests that with the support of policymakers, Blockchain and Smart Contracts have the potential to facilitate freely negotiated consumer contracts.

Keywords: Blockchain, Smart Contracts, Decentralised Ledger Technology, Consumer Protection, Data Privacy, etc.

Introduction

“The blockchain is an asset normalization platform that can enable a new liquidity in transactions, hence creating large networks of usage and value effects with benefits in speed, cost, quality, or outcomes.”³

- William Mougayar

The world is in a constant state of transformation, driven by technological innovations that have a profound impact on our way of life and business practices. The course of global economic history is intricately entwined with the march of technological progress.⁴ In the

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³ What is Blockchain Technology? | IBM, <https://www.ibm.com/topics/blockchain> (last visited Oct 24, 2023).

⁴ Dewani Dhanraj Nisha ET AL., Handbook of Research On Cyber Law, Data Protection, And Privacy (2022).

contemporary world, agreements, taking into consideration negotiations and transactions, constitute the fundamental underpinning of economic, social, and political relationships within society. The global community grapples with the challenges associated with overseeing these agreements, contracts, and transactions when they are executed and referred to. Smart Contracts, underpinned by foundational technologies like Blockchain, serve as a comprehensive solution that, in addition to generating a digitalized transaction ledger, also establishes a practical and efficient system for enforcement.⁵

The environment in which consumers engage is on the cusp of a transformation. The prevalence of “smart contracting” is steadily on the rise.⁶ The foundational technology for smart contracts, blockchain, initially associated with Bitcoin, has extended its reach to encompass large corporations of the world. Consequently, it is of paramount importance to scrutinize the potential implications for consumers as blockchain and smart contracting become increasingly integrated into consumer interfaces.

A growing discourse surrounds the adoption of smart contracts. Many applaud the benefits, while others caution against their use due to the risks they may expose consumers to. However, what remains conspicuously absent from the conversation is an examination of how smart contracts intersect with existing consumer protection regulations. The inexorable progression of smart contracts necessitates an examination of how consumer law will react in the current landscape.

By applying smart contracts within the existing consumer protection frameworks, insight can be gained into both their advantages and shortcomings. This research paper ultimately aims to demonstrate that whether the existing Consumer Protection laws in India offers a solid foundation for future reforms.⁷ Consumer law is a domain that demands consistency and coherence to ensure consumers have a clear understanding of how their interests are protected. While novel technological advancements may appear complex and daunting, prioritizing progressive reforms over radical changes, whenever feasible, is paramount.

⁵ *treasurXL, Article | Blockchain: Playing in the Sandbox by Carlo de Meijer | treasuryXL, TREASURYXL | THE TREASURY COMMUNITY (Sep. 13, 2016), <https://treasuryxl.com/blog/blockchain-playing-sandbox-carlo-de-meijer/> (last visited Oct 25, 2023).*

⁶ As far back as the 1990s, the concept of a "smart contract" first emerged. Nick Szabo, a legal expert and cryptographer, identified that the decentralized aspect of cryptography had the potential to be harnessed in the realm of smart contracts. These smart contracts essentially function as self-executing agreements, guaranteeing the fulfillment of virtual arrangements through the utilization of blockchain technology, thereby streamlining the execution of contracts. See Nick Szabo -- Smart Contracts: Building Blocks for Digital Markets, https://www.fon.hum.uva.nl/rob/Courses/InformationInSpeech/CDROM/Literature/LOTwinterschool2006/szabo.best.vwh.net/smart_contracts_2.html (last visited Oct 24, 2023). Gwyneth Iredale, List of Top 50 Companies Using Blockchain Technology, 101 *Blockchains* (2020), <https://101blockchains.com/companies-using-blockchain-technology/> (last visited Oct 24, 2023).

⁷ Zibin Zheng et. al., “An Overview on Smart Contracts: Challenges, Advances and Platforms”, 105 *FUTURE GENER. COMPUT. SYST.* 475 (2020), <http://arxiv.org/abs/1912.10370> (last visited Oct 25, 2023).

Smart Contracts and Blockchain

There has been significant excitement worldwide regarding Bitcoins and cryptocurrencies. While several governments have taken measures to prohibit them, some regions have warmly embraced this technology. In certain jurisdictions, such as India, the government initially imposed a complete ban, but the judiciary overturned it. Enthusiasts of technology have painted a promising future for artificial intelligence and cryptocurrencies.⁸ The potential of Distributed Ledger Technology (DLT) for consumers is immense, and it could potentially upend the long-standing tradition of consumers being at a disadvantage in negotiations.

However, it is crucial for governments and consumers to first gain a comprehensive understanding of these technologies to prevent unwarranted biases against their use and adoption.

Block Chain

It is essentially a decentralized, peer-validated cryptographic ledger. "It consists of a network of nodes that maintain permanent chronological records."⁹ It is like a public register that anyone can access and contribute to. However, once an entry is recorded, it cannot be altered without the unanimous consent of all participants. As a result, there is no information imbalance, no room for fraud, no potential for data corruption or manipulation, and no intermediary controlling the register. This is the core concept of Blockchain or DLT.¹⁰

A great illustration of this technology in action is its application in the logistics industry. As goods move from being shipped to being in transit and ultimately delivered, each participant in the Blockchain network has immediate access to this real-time information.¹¹

A blockchain serves as a communal digital framework designed for the secure storage of data and facilitating the exchange of data with external entities. In this regard, blockchains can be categorized as a distinct form of distributed database. Blockchain stands as a reliable decentralized repository of information. In a blockchain system, when data is input into a ledger, this ledger is duplicated across numerous identical databases, each managed by a vested entity.¹² Notably, any alterations made to one database are simultaneously reflected in all others. Moreover, the blocks within the chain are interconnected through the inclusion of the previous block's hash. Consequently, as transactions take place, a permanent record of the exchanged value and assets is etched into all ledgers. This effectively eradicates any external intervention when it comes to auditing or monitoring various transaction types.

⁸ "What are smart contracts on blockchain?" | IBM, <https://www.ibm.com/topics/smart-contracts> (last visited Oct 26, 2023).

⁹ "Blockchains and Smart Contracts for the Internet of Things | IEEE Journals & Magazine | IEEE Xplore, <https://ieeexplore.ieee.org/abstract/document/7467408>" (last visited Oct 26, 2023).

¹⁰ What is Blockchain Technology?, *supra* note 3.

¹¹ Zheng et al., *supra* note 7.

¹² "Use of Blockchain Technology for Legal Contracts: Will Smart Contracts Replace Lawyers???", RESEARCH.COM (2021), <https://research.com/tutorials/use-of-blockchain-technology-for-legal-contracts> (last visited Oct 26, 2023).

Smart Contracts

Smart contracts are essentially agreements wherein the terms and conditions are translated into software code. These agreements are subsequently deployed on a blockchain, and every transaction carried out by the contract is recorded as a block on the blockchain platform. This process creates an unalterable audit trail that is highly resistant to deletion or modification. Smart contracts, due to their ability to encode terms and conditions, excel in scenarios that rely on conditional logic, such as ‘if-then’ situations, where specific obligations are automatically enforced when certain conditions are met. This makes smart contracts particularly suitable for industries that frequently use conditional agreements.

Smart contracts are on the brink of transforming everyday transactions by providing an alternative to the traditional legal framework. Historically, trust alone was considered inadequate to ensure agreement compliance, necessitating the intervention of a higher “common authority” to enforce performance.¹³ This role was traditionally filled by the legal system, which offered mechanisms and structures that are binding to uphold commitments of such contracts.¹⁴ These contracts are automated, with computer code executing the terms of the agreement.¹⁵ Moreover, smart contracts possess inherent immutability, making them resistant to tampering and immune to external influence. “While traditional contracts rely on legal enforcement for operation and compliance, smart contracts have the capability to autonomously achieve these objectives.”¹⁶

An example of smart contracts is “the vending machine, originally conceived by Nick Szabo.”¹⁷ This analogy highlights two crucial aspects of smart contracts. Firstly, it illustrates the ability to embed contractual terms within hardware or software. Secondly, a vending machine is designed in a way that makes breaching the contract costly or even prohibitively expensive for the breaching party.

Smart contracts facilitate secure transaction execution between two involved parties. The core concept behind a smart contract is that when one party is set to receive something valuable from the second party as collateral, the second party is unambiguously ensured exclusive priority over that collateral. Achieving this level of assurance in the physical world would be challenging, as numerous other variables, including third-party involvement or foreign entities, could potentially complicate the contractual scenario.

Why to Use Smart Contracts?

Many analysts have identified advantages in smart contracts, which, in turn, promote their adoption. “The two primary features of “self-execution” and “self-enforcement” have been

¹³ Electronic Signatures Legality in India (2023 Overview), PANDADOC, <https://www.pandadoc.com/electronic-signature-law/india/> (last visited Oct 26, 2023).

¹⁴ Ruth Orpwood, “Electronic Contracts: Where We’ve Come From, Where We Are, and Where We Should Be Going.”

¹⁵ Zheng et al., *supra* note 7.

¹⁶ N L Gurjar, “E-Contracts in India: The Legal Framework, Issues and Challenges, 6 (2019).”

¹⁷ DHANRAJ ET AL., *supra* note 4.

viewed as favourable attributes.”¹⁸ While it is acknowledged that smart contracts may have limitations and may not always be the optimal choice for every contractual situation, the benefits of smart contracts are numerous enough to ensure their utilization in specific cases or to prompt further refinement and development.

The attribute of self-execution primarily contributes to enhanced precision. Because of the automated structure, “all the contract's terms are expressed conditionally, through if-then statements.” For effective operation, “all terms and conditions within the smart contract must be clearly defined,”¹⁹ which reduces the applicability of contract law doctrines related to errors and misrepresentations.

Self-execution also fosters transparency when a contract is placed on a blockchain. Smart contracts not only mandate that terms are explicitly outlined but also make these terms “explicitly visible to different network participants on the specific blockchain.” “The transaction is monitored and regulated by other network nodes within the blockchain, promoting transparency and minimizing issues related to fraud.”²⁰

As contracts would automatically execute when the seller's account is debited and not refunded, the responsibility for initiating a claim would shift to the company, thereby reversing the burden of proof. This shift may curtail, if not entirely eliminate, instances of consumer harassment by large corporations with substantial resources to support protracted legal battles. This often coerces innocent consumers into settling with the company due to frustration or a lack of financial means to sustain the fight, particularly in the case of small claims.

Further self-enforcement, offers benefits in terms of security and the reduction of trust requirements. Parties don't need to trust each other because blockchain technology ensures the security of the transaction.²¹ Moreover, smart contracts enforce their own rules. “If one party fails to fulfill their end of the agreement, the smart contract won't execute the exchange. This also eliminates the need for an intermediary, allowing parties to enter into contracts without relying on trust in each other.”²²

¹⁸ Tatiana Cutts, “Smart Contract and Consumers,” 122 W. Va. Law Rev. (2019), <https://researchrepository.wvu.edu/wvlr/vol122/iss2/4>.

¹⁹ Silas Nzuba, “Smart Contracts Implementation, Applications, Benefits, and Limitations”, 9 J. Inf. Eng. Appl. 63 (2019), <https://core.ac.uk/download/pdf/234677472.pdf> (last visited Oct 24, 2023).

²⁰ Guest, “The Legality of Smart Contracts in India, IndiaCorpLaw (Dec. 10, 2017), <https://indiacorplaw.in/2017/12/legality-smart-contracts-india.html>” (last visited Oct 26, 2023).

²¹ Joshua Fairfield, “*Smart Contracts, Bitcoin Bots, and Consumer Protection*,” 71 WASH. LEE LAW REV. ONLINE 36 (2014), <https://scholarlycommons.law.wlu.edu/wlulr-online/vol71/iss2/3>.”

²² “Cutts, *supra* note 18.

The elimination of intermediaries saves costs. In the context of self-enforcement, “cost reductions occur at every stage, from negotiation to enforcement, especially when replacing judicial enforcement with automated mechanisms.”²³

These contracts operate without the need for third-party intermediaries. Once such terms are recorded in the Contract, they become immutable, preventing any party from altering the agreement for their benefit in the future. This immutability guarantees that all agreement details are meticulously documented, ultimately benefiting both parties involved. Transactions executed through Smart Contracts are exceptionally swift due to their software-based nature, in contrast to traditional contracts that can take several days for finalization, signing, and execution.

Law and the Consumer Protection

The self-enforcement aspect of smart contracts has raised discussions about their relationship with traditional contract enforcement through legal means. Some experts have taken the stance that smart contracts operate independently of the legal system, contending that they can function without the need for an overarching legal framework.²⁴ In practice, they are seen as a technological alternative to the entire legal system.

International Regime

The UNCITRAL Model Law served as the foundation upon which Canada, the United States, and various other countries developed their respective electronic commerce legislation or model law frameworks.²⁵

US adopted “Uniform Electronic Transactions Act” (UETA). UETA established regulations governing electronic contracts, records, and signatures, affirming the validity of electronic contracts and acknowledging electronic signatures as an acceptable method for manifesting consent in contracts.²⁶

However, by 2017, several US states recognized the necessity for tailored regulations to facilitate the widespread use of smart contracts. Consequently, states like Arizona introduced legislation acknowledging the validity of signatures in smart contracts facilitated by blockchain technology.²⁷ Additionally, states such as Vermont and Nevada passed laws, granting explicit legitimacy to smart contracts.²⁸ Legislation was also enacted to permit the use of smart contracts as admissible evidence in case of disputes.

²³ Nicolas Cornell & Kevin Werbach, “Contracts Ex Machina, 67 Duke Law J. 313 (2017), <https://scholarship.law.duke.edu/dlj/vol67/iss2/2>.”

²⁴ Cutts, *supra* note 18.

²⁵ Orpwood, *supra* note 14.

²⁶ Paul Catchlove, “Smart Contracts: A New Era of Contract Use, (2017), <https://papers.ssrn.com/abstract=3090226> (last visited Oct 26, 2023).”

²⁷ Article 5, HB 2417, State of Arizona, 53rd Legislature, 2017, *supra* note 27.

²⁸ “SENATE BILL NO. 398–SENATOR KIECKHEFER, https://www.leg.state.nv.us/Session/79th2017/Bills/SB/SB398_R1.pdf” (last visited Oct 24, 2023).

The United Kingdom is actively pursuing the integration of smart contracts into its legal framework. The UK Law Commission, has initiated a research initiative aimed at proposing reforms that would provide legal clarity to the utilization of smart contracts.

Smart contracts offer the advantage of enhancing "confidence and certainty" while improving the efficiency of business-to-business transactions. Consequently, these efforts aim to modernize the existing UK legal system to align with evolving technology and promote economic growth."²⁹

Several nations, led by the United Kingdom, including Hong Kong, Australia, Singapore, and Abu Dhabi, initiated the exploration of "regulatory sandboxes" for Blockchain innovation during the early part of the previous decade.³⁰ Luxembourg's government has legally recognized Distributed Ledger Technology since 2001. In July 2020, Luxembourg amended its laws on dematerialized securities and the primary financial sector law to further accommodate the use of Smart Contracts within their financial system.³¹ Numerous jurisdictions have established specific laws to regulate e-contracts, and these laws are also applicable to smart contracts.

India

In accordance with "Section 10 of the Indian Contract Act", the following conditions must be met for a contract to be valid: Competence of the contracting parties, Soundness of mind of the parties, Free and willing consent, Legality of consideration and object, Absence of an express declaration rendering the agreement void.³² The Indian Contract Act, 1872, does not indicate the presence of the following requisites: A written contract, unless there exists a legal obligation for the contract to be in writing or a physical or electronic signature.

Smart contracts serve as a platform for entering into agreements with parties, whether known or unknown, and entail potential risks. While smart contracts may hold enforceability under Indian law, it is crucial to exercise caution when dealing with the counterparties. In the event of a failed transaction, individuals must bear the consequences individually, as the legal system lacks a comprehensive framework to regulate smart contracts.³³

²⁹ "Bitcoin, Blockchain and Consumer Protection Laws | Insights | Holland & Knight, <https://www.hklaw.com/en/insights/publications/2018/01/bitcoin-blockchain-and-consumer-protection-laws>" (last visited Oct 26, 2023).

³⁰ treasuryXL, *supra* note 5.

³¹ Laurent Massinon Nickel Christina, "Luxembourg Draft Law on Dematerialized Securities, Blockchain and Distributed Ledger Technologies, TECHNOLOGY'S LEGAL EDGE (2020), <https://www.technologyslegaledge.com/2020/08/luxembourg-draft-law-on-dematerialized-securities-blockchain-and-distributed-ledger-technologies/>" (last visited Oct 25, 2023).

³² "What are Smart Contracts and Are They Legal in India?, INDIA BRIEFING NEWS (2022), <https://www.india-briefing.com/news/what-are-smart-contracts-and-are-they-legal-in-india-25343.html>" (last visited Oct 26, 2023).

³³ Oscar Borgogno, "Usefulness and Dangers of Smart Contracts in Consumer Transactions, in THE CAMBRIDGE HANDBOOK OF SMART CONTRACTS, BLOCKCHAIN TECHNOLOGY AND DIGITAL PLATFORMS 288 (Cristina Poncibò, Larry A. DiMatteo, & Michel Cannarsa eds., 2019)", <https://www.cambridge.org/core/books/cambridge-handbook->

Indian courts generally require contracts to have mutual consideration for validity.³⁴ However, smart contracts lacking mutual consideration can still be executed through code. Nevertheless, if such a contract is breached, Indian courts may not recognize it as a breach due to the absence of mutual consideration, a fundamental element of contract law.

The legality of smart contracts in India permits their use, but it does not extend legal protection to the involved parties in case of liability or damages. This is because there is no established regulatory framework governing smart contracts. The extent of legal assistance will depend on whether the smart contract aligns with the boundaries of contract law as defined in statute.

The legality of such electronic agreements is further substantiated by Section 10A of the Information Technology Act and Section 85A of the Indian Evidence Act, as mentioned earlier.³⁵ Smart Contracts utilize cryptographic coding within a ledger-based system, and they also rely on digital signatures for authentication and secure restricted access. The primary concern here is that the digital signatures created using Blockchain Technology do not conform to the authorized forms outlined in the IT Act.

Section 5 of the IT Act, 2000 affirms, “the validity of e-signatures as a means of providing consent for contract formation, but it mandates that these e-signatures should be obtained from a government-designated certifying authority”.³⁶

“Section 85B” of the Evidence Act recognizes “the legality of e-contracts, on the condition that the digital signatures adhere to the provisions of the Information Technology Act, 2000. As the IT Act only allows government-certified e-signatures, signatures generated through blockchain technology are considered invalid”. Section 88A permits the admissibility of e-contracts in legal courts, but it stipulates that these contracts must align with the IT Act.³⁷

The case of *International Fze. Limited v. Vedanta Aluminium Limited*³⁸ is a pivotal legal precedent concerning e-contracts. The Supreme Court ruled that the “unconditional acceptance of a contract, whether concluded orally, in writing, or via email, and the mere absence of a formally signed contract, would not impede the unconditional acceptance of the contract or its enforcement.”³⁹

of-smart-contracts-blockchain-technology-and-digital-platforms/usefulness-and-dangers-of-smart-contracts-in-consumer-transactions/EF1E89AE07194C7F4ECF6BF89A36D13D (last visited Oct 26, 2023).

³⁴ Electronic Signatures Legality in India (2023 Overview), *supra* note 13.

³⁵ Guest, *supra* note 20.

³⁶ Mateja Durovic & André Janssen, “Formation of Smart Contracts under Contract Law, in *The Cambridge Handbook of Smart Contracts, Blockchain Technology and Digital Platforms* 61 (Cristina Poncibò, Larry A. DiMatteo, & Michel Cannarsa eds., 2019)”, <https://www.cambridge.org/core/books/cambridge-handbook-of-smart-contracts-blockchain-technology-and-digital-platforms/formation-of-smart-contracts-under-contract-law/5935C0C4FE5AB265B25697D8107D8D25> (last visited Oct 26, 2023).

³⁷ Cutts, *supra* note 18.

³⁸ (2010) 3 SCC1.

³⁹ *id.*

However, the Supreme Court emphasized that proof of the contract remains necessary, and it should adhere to the principles established under Indian Evidence Law. Furthermore, the words exchanged during electronic communication should indicate the parties' intention to form a contract.

In a similar vein, the case of *Ambalal Sarabhai v. KS Infraspace*⁴⁰ offers clarity on contract law in the context of contracts executed through social media platforms such as WhatsApp. Nevertheless, it's important to note that there is no specific judicial precedent in India that explicitly addresses Smart Contracts.

Developments and Legal Challenges

Developments

“Based on the Global Opportunity Analysis and Industry Forecast for 2021-2026, the market size of smart contracts was 106.7 million in 2019, with a projected growth to 345.4 million by 2026.”⁴¹ Beyond the aspect of contract enforcement, this technology has the potential to revolutionize the execution of contracts. Hence, it is increasingly imperative for the Indian government to take proactive steps in formulating guidelines for the adoption of smart contracts.

Once these regulatory frameworks are established, technological solutions and innovations can flourish, providing highly efficient and cost-effective results, ensuring security and trustworthiness, all without the concerns of legal liabilities for contracting parties. Presently, regulatory bodies have initiated preliminary efforts to comprehend and facilitate the development and implementation of such technologies.⁴²

In November 2017, the Indian Government established a “High-Level Inter-Ministerial Committee” with the objective of studying the emergence of virtual currencies within the country. In the course of their exploration of virtual currencies, the committee conducted a thorough examination of the underlying technologies that underpin these virtual currencies. The primary focus of this investigation was Distributed Ledger Technology (DLT).⁴³ While the committee ultimately arrived at a negative conclusion concerning virtual currencies, it expressed strong support for the utilization of Blockchain, a specific form of Distributed Ledger Technology, in various sectors, including insurance, financial technology, and even traditional businesses.

The committee did not raise significant concerns regarding the legality of Smart Contracts. Furthermore, the committee recommended that government agencies, particularly the Department of Economic Affairs, should actively promote the use of technologies like

⁴⁰ (2020) SCC Online 1

⁴¹ “Bitcoin, Blockchain and Consumer Protection Laws | Insights | Holland & Knight, <https://www.hklaw.com/en/insights/publications/2018/01/bitcoin-blockchain-and-consumer-protection-laws>” (last visited Oct 26, 2023).

⁴² Durovic and Janssen, *supra* note 38.

⁴³ Alexander Savelyev, “Contract Law 2.0: «Smart» Contracts As the Beginning of the End of Classic Contract Law,” (2016), <https://papers.ssrn.com/abstract=2885241> (last visited Oct 24, 2023).

Blockchain. In the same vein, the committee suggested that Distributed Ledger Technology could be harnessed to streamline Know Your Customer (KYC) compliance requirements and reduce associated costs.⁴⁴

Legal Challenges

There are numerous legal obstacles to overcome before this vision can materialize, depending on several factors:

1. The degree of automation in executing Smart Contracts.
2. Discrepancies between agreed-upon terms and the Smart Contract code.
3. Custodial rights and discretion within the Smart Contract and its execution.

Many traditional contract law principles remain relevant:

- Contract formation, involving the concept of offer and acceptance, applies to Smart Contracts. Cryptographic private keys, used in Blockchain, serve as proof of commitment and consent. Parties can demonstrate acceptance through conduct. For example, transferring control of a digital asset on the Blockchain signifies unequivocal acceptance.⁴⁵
- Parties opt for an alternative regulation system. This does not negate their intention to create legally binding obligations, and mainstream law firms advise creating legal 'wrappers' for the sake of certainty.⁴⁶ Capacity and free consent issues are not adequately addressed by Smart Contracts and Blockchain technology.
- The main challenge of smart contracts lies in translating written textual clauses into lines of code that can be integrated into a network of systems. Broadly, there are two types of smart contracts. Those created and deployed without a corresponding enforceable text-based contract do not pose issues related to interpretation, as no traditional clauses exist, leaving no room for multiple interpretations.
- Suspension and termination of Smart Contracts pose challenges, as they cannot be voluntarily stopped by parties, central entities, courts, or supervisors, even in cases of changed circumstances or party intent.⁴⁷
- Enforcing smart contracts raises long-term issues related to contract law principles. For instance, the principle of privity of contract, common in common law, bestows rights and duties exclusively upon the contracting parties. Satisfying this principle on Blockchain platforms is challenging, as all transactions are public and accessible to all permissioned

⁴⁴ Gregory M. Megaw, "Phishing within E-Commerce: Reducing the Risk, Increasing Trust" (2010), http://vital.seals.ac.za:8080/vital/access/manager/Repository/vital:11131?site_name=GlobalView&exact=sm_create%3A%22Megaw%2C+Gregory+M%22&sort=sort_ss_title%2F (last visited Oct 26, 2023).

⁴⁵ Nzuva, *supra* note 19.

⁴⁶ N L Gurjar, "E-Contracts in India: The Legal Framework, Issues and Challenges", 6 (2019).

⁴⁷ Nicolas Cornell and Kevin Werbach, *supra* note 23.

Blockchain users.⁴⁸ Consequently, meeting all the conditions outlined by contract law remains a complex task.

- Parties may struggle to anticipate all scenarios and code in advance. An approach could involve legal requirements for parties to use their keys to terminate the contract, leading to traditional litigation if self-execution ceases. Smart Contracts must adapt to these requirements, potentially involving certification bodies and statutory protections.⁴⁹
- Additionally, the lack of clarity on ownership and jurisdictions poses difficulties, particularly in long-term contracts with multiple payments spread over an extended duration. For instance, when large conglomerates in different cities engage in mergers and acquisitions, the absence of well-defined government regulations presents obstacles for these companies when using Smart Contracts.

Although significant challenges exist, Smart Contracts and Blockchain have the potential to transform contract law and consumer protections. However, achieving this transformation requires creative solutions and legislative adjustments to address complex legal issues.

The legal framework should establish that any party aggrieved by the autonomous execution of a smart contract is entitled to a prompt appeals procedure, and the onus of proving the absence of fraudulent conduct must rest with the more dominant party. To mitigate concerns regarding the enforceability of void and unlawful contracts, the law must mandate that authors of smart contracts obtain an official license from the relevant regulatory authority. Any smart contract authored by an individual lacking the requisite license should be rendered null and void, and such an author should be subject to legal sanctions, potentially including imprisonment.

The regulatory body should also possess the authority to revoke the author's license in cases where they draft a smart contract that enforces an illegal agreement, and the author should face criminal charges if they intentionally compose an illegal or null contract. To prevent the enforcement of contracts deemed anti-competitive, agreements of this nature should be classified as illegal contracts. It should be obligatory for the smart contract's code to be translated into a human-readable contract at the moment of execution, with the same translation provided to the less powerful party during the contract execution and submitted to the court in instances of contractual disputes.

Conclusion

The adoption of Smart Contracts and Blockchain could serve as an effective solution as consumers already grapple with legal terminology and lengthy contracts. The most significant

⁴⁸ "Smart-Contracts-Blockchain—Evolving-Jurisprudence-in-India.pdf," <https://calr.in/wp-content/uploads/2021/01/Smart-Contracts-Blockchain-%E2%80%93Evolving-Jurisprudence-in-India.pdf> (last visited Oct 26, 2023).

⁴⁹ "Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts", 095 OJ L (1993), <http://data.europa.eu/eli/dir/1993/13/oj/eng> (last visited Oct 25, 2023).

challenge appears to lie in crafting these intricate contracts and ensuring that consumers comprehend the agreements they enter into, there is no denying that the integration of smart contracts has the potential to be revolutionary and could lead to substantial reductions in overhead costs amounting to billions of dollars. Simultaneously, it can enhance the overall security of various processes.

However, concerns on the regulatory front persist, particularly in India, where there is a lack of detailed regulations pertaining to smart contracts. Achieving widespread adoption of this technology may necessitate government amendments to the statutes if specific regulatory measures are not enacted. Moreover, in terms of the ability to encode certain types of clauses, industries should make efforts to establish a clear interpretation for clauses that might be perceived as ambiguous. Despite the enhanced efficiency of these contract forms compared to traditional contracts, there is currently no established legal framework in place to govern them. In 2018, the Telecom Regulatory Authority of India released a notification defining the term 'Smart Contract.'

However, beyond this notification, Smart Contracts have not been acknowledged within the entire Indian legal system. Nevertheless, the Indian regulatory framework has lagged behind technological progress, failing to establish rules and regulations to oversee these innovations. Consequently, consumers may face challenges. When aggrieved consumers who have entered into such Contracts seek legal remedies, they encounter uncertainty regarding the enforceability of these contracts in a court of law. It is now imperative for these contracts to be formally recognized and encouraged by the Indian Government. Such recognition is essential to eliminate obstacles hindering technological advancements that have the potential to stimulate our industrial sector and provide greater security and insurance to consumers.



Misleading Advertisement in India: Is the Contemporary Framework Sufficient? A Critical Analysis

*Shubhankar Paul*¹

Abstract

It is hard to conceive of modern life without advertisements and a consumerist society. In today's interconnected world, a corporation or its products' public image can make or break it. Advertising's key aims are educating consumers, swaying their ideas, and keeping the products and services in their thoughts. Marketing aims to raise interest in a company's goods or services among potential buyers. Therefore, advertising aims to do two things: get people interested in the advertised products and give them the tools they need to make informed purchases. However, advertising has been panned for various reasons, including the fact that it pollutes people's minds intellectually and morally, is sexist, promotes harmful items, wastes resources, and is dishonest and manipulative. Today's business sector has an ethical challenge in the form of deceptive advertising, which can affect consumers and competitors. Misleading advertising is becoming an increasing problem. Advertising today incites undesirable and divisive attitudes and actions, such as class consciousness, materialism, and ostentatious spending. While laws ban overtly misleading advertising, proving more subtle forms of deceit can be challenging. Therefore, misleading advertising and the means to counter it are of paramount importance to the modern economy. Stricter regulations on the media and improved critical discernment training for media consumers are both necessary for an effective defence against deceptive advertising. After briefly examining the lack of efficacy of the current Indian legal and regulatory framework in dealing with the challenges posed by the menace of deceptive and misleading advertisements, the research paper contends that India needs to improve its regulatory strategy in order to curb deceptive marketing. It also claims that numerous nations have strengthened their legislation and oversight of advertising throughout the last decade. This paper also certifies specific suggestions that, if implemented, would have far-reaching consequences.

Keywords: Consumer Protection Act Amendment 2019, Misleading Advertisement, Consumer Rights, Communication, Potent Customers, Efficiency of the Featured Product, Reality Check, People's Feedback, etc.

Introduction

Commercial advertising has evolved into an inseparable component of marketing strategy and consumer culture. In this age of globalization, it is widely acknowledged as a driving force behind the free market economy. The concept of "consumer sovereignty" is an integral part of the modern period, and its proponents say that advertisements are suitable to customers because they provide vital information to consumers, which is essential to the concept of "consumer sovereignty."

The vast majority of countries have recognized the importance of advertising to the functioning of the current economic system and the growth of the market, and as a result, they have granted it the status of free speech. If it is done ethically, advertising can be a helpful tool.

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However, this prerequisite must be met. The issue, however, emerges when advertisers employ dishonest and fraudulent advertising strategies intending to recruit customers by alluring them with incorrect or misleading information about the items, their attributes, and the utilities they provide. False and misleading advertising violates a consumer's "right to be informed" and hurts both the consumer market and the commercial brands of businesses that are in direct competition with the advertiser.

Since the primary purpose of advertising is to garner interest in a good or service, the manner in which they sing the praises of the item being advertised is likely to be embellished in some way. Nevertheless, when it goes further than that and intentionally communicates a lie or tries to falsify facts in order to mislead the target audience, then it becomes inappropriate.

Misleading Advertisement: Meaning and Contours

With advertisements, customers can be educated, convinced, and reminded of important information. As a direct consequence of this, their points of view and attitudes have undergone substantial development and improvement. However, if an advertisement:

- delivers untrue assertions about the goods or
- wants to induce disarray by utilizing its presentation or
- is designed to deceive or is likely to delude the consumers to whom it is addressed or
- demonstrates prospective assurances regarding the performance of their merchandise, which are hyperbolic to such a degree that what is advertised cannot convey; or
- seeks to disguise the ill effects of the products deliberately;

and when such falsehood or fabrication has the potential to mislead consumers, the advertisement is considered misleading. For instance, an example of misleading advertising is a commercial for cooking oil that suggests its consumers will not experience heart problems so long as they stick to using that oil. Again, it would be misleading to advertise a water purification technology that just screens for bacteria (and not viruses) as producing completely safe drinking water.

There is a high likelihood of being misled by these advertisements because they present an erroneous impression or utilize confusing language. Therefore, to a rational guy viewing the commercial, they are not merely an immaterial danger. Either the stated or unstated interpretation of the advertisement would be false or misleading. Customers' "right to be informed" about the quality, quantity, purity, and safety of the product or service they are purchasing can be negatively impacted by inaccurate and misleading advertising, the goal of which is to convince customers to engage in commercial transactions they might otherwise refuse.

The phrase "right to be informed" refers to the requirement that consumers have access to factually correct and reliable information regarding the goods and services they purchase and utilize in their daily lives. In order to make an educated purchase decision, consumers have a right to receive complete and accurate information about the product or service.

Therefore, in economic terms, "market failure" occurs when incorrect and misleading advertisements produce information asymmetry, which is not adequately addressed through legal and regulatory authorities. When markets fail due to information asymmetry, it has unanticipated and undesirable effects and hinders the ability to compete.

Consumers' rights are also negatively impacted when misleading advertising causes them to make poor financial decisions. This type of marketing for pharmaceuticals and food products has a major negative effect on people's health. There will be irreversible harm to consumer welfare, consumer rights, and market efficiency if the circumstance persists without adequate legal and policy-based intervention measures.

National Framework on False and Misleading Advertisement

The Indian government has enacted several laws and appointed several regulatory authorities to protect its citizens against misleading advertising and sales tactics. The following legislations of India have dealt with misleading advertising comprehensively:

- "The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954"
- "Cable Television Networks (Regulation) Act, 1995"
- "Food Safety and Standards Act, 2006"
- "Drugs and Cosmetics Act, 1940"
- "The Bureau of Indian Standards Act, 1986"
- "The Infant Milk Substitute, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Act, 1992 and the Infant Milk Substitute, Feeding Bottles and Infant Foods (Regulation of Production, Supply and Distribution) Amendment Act, 2002"
- "Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003"
- "The Consumer Protection Act 1986 and Consumer Protection Act Amendment 2019"

According to the "Consumer Protection Act 1986", the primary law, "misleading advertisement," is defined as an unfair trade practice. When a consumer forum finds a complaint of misleading advertisement, it has the authority to require the advertised company to take down the commercial, pay compensation, or issue correctional advertisements that mitigate the effect of the misleading advertisement at the advertiser's expense. The Drugs and Magic Remedies (Objectionable Advertisements) Act, of 1954 prohibits pharmaceutical commercials that contain any information that conveys a false impression of the genuine nature of the drug, generates false statements about the drug, or is otherwise misleading or untrue. Section 24 of the Food Safety and Standards Act, 2006 says, "*No advertisement shall be made of any food which is misleading or deceiving or contravenes the provisions of this Act, the rules and regulations made thereunder*".

The "Bureau of Indian Standards (Certification) Regulations, 1988" Rule 7 (1) (l), (g) and (h) prohibits misleading advertisements. The regulations that SEBI, TRAI, and IRDA created each have their unique manner of defining what constitutes misleading advertising. The SEBI, TRAI, etc. are all independent regulators having the jurisdiction to consider complaints related

to their respective industries and impose penalties, similar to what Consumer Courts do for claims concerning misleading and deceptive advertising submitted under the Consumer Protection Act.

The several courts and independent bodies that make up India do not adhere to a single set of criteria or standards that can be used to identify misleading advertising. The courts in India have decided that it is not automatically unethical or illegal for a merchant to display his wares in a manner that is extremely passionate, possibly exaggerated, and obviously biased against them. Similarly, no regulation governs the duty of celebrities who advocate a brand through dishonest or false advertising. However, consumers in other jurisdictions have recently initiated novel legal claims against celebrity endorsers of products and services, claiming that they were injured due to relying on the endorsements.

Misleading advertisements in India are also monitored and supervised by the "Advertising Standards Council of India" (ASCI), an independent not-for-profit body with no legal enforcement of its decisions. The ASCI promulgated a Code of Self-Regulation in Advertising to curb advertisements' potentially harmful content. A consumer or enterprise can file a complaint with ASCI if they believe an advertisement violates the code or is potentially inaccurate or misleading. Consumers are encouraged to report anything they perceive to be dishonest, deceptive, or unethical advertising in ASCI's commercials. Advertisements released regularly by ASCI state, "If an ad is wrong, we will set it right; if an ad is misleading, we will set it right; if an ad is dishonest, we will set it right." No matter where it was created or published, if an advertisement is aimed at Indian consumers in India, it needs to stick to the ASCI code. However, implementing the ASCI code is not obligatory in any way.

The Inadequacy of the Existing Legal and Regulatory Framework in India to Confront the Challenges

A commentary² examining the effectiveness of the present framework for preventing deceptive advertising has made the following observation: "*[T]hough comprehensive legal framework for the control of unfair, deceptive, and misleading advertising in India exists, the practice continues almost unabated.*" Since 1984, when provisions to prohibit unfair trade practices were incorporated in the "Monopolies and Restrictive Trade Practices Act", the MRTP Commission is said to have made judgements on around 1,500 cases of misleading and deceptive advertising.

In most cases, the Commission took a firm stance on these instances, issuing "cease and desist" orders or accepting undertakings from respondents in accordance with Section 36D(2)

² D P S Verma, *Regulating Misleading Advertisements: Legal Provisions and Institutional Framework*, Vikalpa: The Journal for Decision Makers (April, 2001), <https://journals.sagepub.com/doi/abs/10.1177/0256090920010205>

of the MRTP Act that the unfair advertising activity in question would be terminated and not repeated in the future.

The number of cases that are brought before the Consumer Courts, which were established as part of the Consumer Protection Act, has also increased during the past several years. Nevertheless, despite the possibility of legal redress against unethical advertising, the stream of misleading and deceptive commercials in the media continues unabated. Rarely, the MRTP Commission or Consumer Courts have ordered an advertiser to take down a misleading advertisement and publish a rectification advertisement in line with the Acts.

The amount of time it takes for consumer courts to issue remedies and for appeals to be handled is another important concern that has to be addressed. Famous consumer activist Smt. Pushpa Girimaji used the seminal case of *Buddhist Mission Dental College and Hospital v. Bhupesh Khurana*³ to illustrate the issue. Eleven kids brought the lawsuit, but there may be many more victims who did not. It took fifteen years and the loss of academic time for those eleven students to finally win their case.⁴

Retired Indian Supreme Court Justice Ashok Bhan recently spoke about the successes and failures of the Consumer Protection Act, noting that it has not done enough to address the problem of misleading advertising. According to him, consumer courts lack the authority to probe allegations of deceptive advertising and the resources to regulate the industry. He also said that the Law in India is entirely inadequate regarding the question of accountability for celebrity endorsement of firms and products that engage in fraudulent and misleading advertising.⁵

Similarly, the Parliamentary Standing Committee Report on Proposed Amendments to Consumer Protection Act has observed: "*The Committee finds that there are innumerable service providers such as Airlines, Communication Industries, Utility Industries, Banks and other agencies/institutions who are not providing what they are supposed to. Most of the agencies/institutions/ service providers are befooling the consumers by making tall and false claims through misleading advertisements (electronic and print media) and due to which exploitation and suffering of consumers are rampant. There are no stringent laws to deal with such kind of misleading advertisements. The Committee feels that as amendment in the Act is under way, there is a strong need to warn the advertisers to refrain from publicizing such misleading advertisement, which fall under unfair trade practices.*"⁶

³ *Buddhist Mission Dental College and Hospital v. Bhupesh Khurana*, (2009) 4 SCC 484.

⁴ Pushpa Girimaji, *Misleading Advertisements and Consumer*, [consumeraffairs.nic.in](https://consumeraffairs.nic.in/sites/default/files/file-uploads/misleading-advertisements/misleading_advertisment_and_consumer%20%281%29_0.pdf) (Aug. 28, 2023, 10:00 AM), https://consumeraffairs.nic.in/sites/default/files/file-uploads/misleading-advertisements/misleading_advertisment_and_consumer%20%281%29_0.pdf.

⁵ Justice Ashok Bhan, *Inaugural Speech at the National Conference on 25 Years of Consumer Protection Act: Challenges and the Way Forward in 25 Years of Consumer Protection Act: Challenges and the Way Forward* 5 (Ashok R. Patil ed., 2014)

⁶ Twenty Sixth Report of the Standing Committee on Food, Consumer Affairs and Public Distribution (15th Lok Sabha, New Delhi, 2012-2013), https://eparlib.nic.in/handle/123456789/64213?view_type=browse.

In 2012, a voluntary consumer organization called Consumer Unity and Trust Society compiled and disseminated a study titled "Status of Law Enforcement for Misleading Advertisements in India." The report concludes that despite the fact that the Consumer Protection Act and various other pieces of legislation contain mechanisms to deal with deceptive marketing, there are still very few situations in which a complaint of this kind has been lodged.

The main deficiencies emphasized in the report are the ineptitude of legal and regulatory bodies in investigating and prosecuting complaints of misleading advertisement, the excessive delays in pronouncement of the final judgment, and the reality that self-regulation does not replace statutory legislation. Although self-regulation is commendable, the gap between a claim not supported by facts and the implementation of corrective steps is too large and cannot be tolerated.⁷

Based on the data presented above, it is clear that India's current legislative and voluntary attempts to combat misleading advertisements have mostly failed. There has been very little success with the legal structure. It works well in some contexts but fails spectacularly in others. At the moment, there is a significant backlog of complaints in India against misleading advertisements in the print and online media.

There is a low volume of complaints about deceptive advertising brought before courts or independent regulators across the country because of ineffective investigation and punishment. Furthermore, there is no universal agreement on what constitutes "false and misleading" advertising. Currently, "false and misleading" advertising is defined in a variety of ways by various rules and regulations. There is also no consistent criterion used by the courts to decide whether or not an advertisement is deceptive. Today, many deceptive commercials fool consumers, and the regulators in India are not doing enough to address the issue. The gaps are primarily in the execution.

Furthermore, there is no preventative oversight of false advertising. It is impossible to detect deceptive commercials unless complaints are filed. The self-regulatory body's main accomplishment is halting several forms of advertising long after the campaign has ended. The offender is often allowed off the hook after writing an apologetic letter. The current self-regulation approach (ASCI) likewise falls short of sufficient and adequate. Fewer complaints are filed because fewer people are aware of the complaint mechanism. The advertising code is outdated and cannot adapt to new trends; the process is mainly receptive in its approach and takes longer to take a final call.

⁷ Consumer Unity & Trust Society (CUTS), *Study on the Status of Law Enforcement for Misleading Advertisements in India and its Impact on Consumers*, cuts-cart.org (Aug. 28,2023.10.00 AM), http://cuts-international.org/cart/pdf/Study_on_the_Status_of_Law_Enforcement_for_Misleading_Advertisements_in_India.pdf.

The government has recently taken several proactive measures, including the constitution of an Inter-Ministerial Monitoring Group¹⁷ to improve the monitoring of deceptive advertising, the launch of a web-based complaint resolution system to address complaints about such advertisements⁸, and the introduction of a proposal to amend the Consumer Protection Act in order to establish a federal regulatory authority with broad regulations governing making. However, due to the complexity and disjointed nature of the various laws and regulators, these attempts are either short-lived or unsuccessful. A more comprehensive strategy, spotlighting consumer rights, is needed immediately to fix the current situation and solve the problem. India needs a unified law with a single regulator that follows international best practices.

International Framework on False and Misleading Advertisement

The problem of regulating advertisements presents a substantial obstacle to overcome in legal terms. Despite this, most jurisdictions have concluded that it is necessary to apply some advertising control. In the past decade, nations all around the world have taken unique approaches when it comes to regulating the advertising industry. The method by which the United States of America regulates advertising is one of the most striking features of consumer protection programs. The "Federal Trade Commission" acts as the principal institution in the model. Over the years, the organization has developed a widely accepted set of rules for regulating due to increased complexity in the evaluation of advertising and its effects.

The portions of the Competition Act that deal with false or misleading assertions and deceptive marketing tactics are supervised by the Competition Bureau of Canada, which is also responsible for ensuring that advertisements are truthful. A general restriction against making assertions that are materially false or misleading is included in the provisions of the Competition Act in Canada. The Council of the European Union has acknowledged that "*advertising, regardless of whether or not it induces a contract, affects the economic welfare of consumers.*" This has resulted in the European Union adopting a directive to regulate misleading advertisements.

The EU Council has also decided that there are times when it is necessary to eliminate misleading advertisements before they are even released to the public. The European Union has initiated a program to implement its policy on the protection and information of consumers. In addition, the Consumer Protection from Unfair Trading Regulations of 2008 are the fundamental laws that oversee the system in the United Kingdom. The United Kingdom has pioneered a novel approach to the regulation of businesses, which it refers to as "mandated self-regulation." Under this model, an effort is made to "make associative, self-interested collective action contribute to the achievement of public policy objectives." The methodology used in the UK is an example of combining delegation with improved accountability achieved via the use of independent third parties.

⁸ Department of Consumer Affairs, Government of India launched web portal named GAMA (Grievances Against Misleading Advertisements) in March 2015, <http://gama.gov.in/Default.aspx>.

The employment of celebrities in India's advertising industry is nothing new, but there have been hardly any documented harm done to consumers due to their induced dependence. There is no precedent in the law regarding the responsibility of celebrities for the deceptive and misleading advertising of products they endorse. Alternatively, in the event of harm to consumers' legitimate interests, the "Guides Concerning the Use of Endorsements and Testimonials in Advertising" issued by the "Federal Trade Commission" in the United States or the "joint and equal responsibility" liability provisions of Chinese law are much more effective. By virtue of these provisions, customers can sue celebrities and other well-off defendants for damages after suffering losses because they trusted the recommendations.

Recent Developments

Consumer Protection Act, 2019

In order to harmonize consumer protection laws across India and better safeguard consumer rights, the "Consumer Protection Act, 2019" was enacted to replace the "Consumer Protection Act 1986". Among the highlights of the revised Act are a "Central Consumer Protection Authority" (CCPA) tailored to the requirements of consumer redressal commissions, stringent guidelines for e-commerce and e-service providers, the flexibility of seeking a court hearing via videoconferencing, and severe repercussions for misleading advertisements. This Act is a practical response to the needs of Indian consumers in the age of e-commerce and online purchasing. Because of their negative effects on society as a whole, abuses of consumers' rights, unfair trade practices, and misleading advertisements are all subject to regulation under the Act.

According to Section 2 (28) of the Act

"misleading advertisement in relation to any product or service means an advertisement, which— (i) falsely describes such product or service; or (ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or (iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or (iv) deliberately conceals important information;"

It sets the precedent for how the Indian judicial system would deal with cases involving misleading advertisements. This Act leverages the existing decentralized public administration structure while creating a separate appellate authority. The District Collector is authorized to investigate complaints of probable infringements on consumers' rights due to misleading advertisements and to submit a report to the CCPA pursuant to Section 16 of the Act.

If the CCPA determines that a commercial is misleading or otherwise violates consumers' rights, it may issue a cease-and-desist order to the relevant endorser, trader, advertiser, or manufacturer in accordance with Section 21, subsection 1 of the Act. The Act also gives the CCPA the authority to impose fines for violations of the same. A fine of up to INR 10 lakh and/or two years in prison is envisaged. A subsequent offence may result in a fine of up to 50 lacks INR and up to five years in prison. The CCPA can order the offender to issue

rectification advertisements to counteract the impact of misleading advertisements and stop the spread of the misleading commercial.

Guidelines For Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022

As an exercise of the powers entrusted to it by Section 18 of the "Consumer Protection Act, 2019", the "Central Consumer Protection Authority" has, as of the 9th of June, 2022, issued the "Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022". The Implementation Date for the Guidelines is June 10th, 2022. The guidelines have been issued with the intention of preventing misleading and fraudulent advertising and safeguarding the interests of consumers.

The standards are fairly extensive. These Guidelines broaden the scope of the existing rules by setting out the particular criteria of what is acceptable and what is banned. Although the "Consumer Protection Act, 2019" already provides general measures for the prevention of misleading advertisements, these Guidelines broaden the breadth of the current regulations. The principles are intended to protect consumers from being misled by untrue claims, overstated commitments, incorrect information, and fraudulent claims. Consumers have a number of rights that are being violated by these commercials, including the right to be informed, the freedom to select, and the right to be protected from potentially harmful products and services.

In addition, novel concepts about "bait advertisements," "free claims advertisements," and "children-targeted advertisements" have been included in the Guidelines. Furthermore, the consequences for disobeying the Guidelines are spelt out in detail. When it comes to misleading advertisements, the CCPA has the authority to levy fines of up to 10 lakh rupees against producers, advertisers, and endorsers. In the event of repeated violations, the CCPA reserves the right to levy a penalty of up to fifty lakh rupees. The Authority has the power to prevent the endorser of misleading commercials from making any endorsements for a period of up to one year, and for consecutive violations, this restriction can be extended to a period of up to three years.

Recent Awards by Consumer Disputes Redressal Forum

Recently on 30th day of July 2022 "CONSUMER DISPUTES REDRESSAL FORUM at THRISSUR" in Saudhamini.P.P Thottiparambil House,Chewoor,Thrissur v. Kairaly Ford Kerala cars Pvt Ltd, represented by Managing Director, Puzhakkal, Thrissur & Ford India Pvt Ltd, Rmz Millenia Business Park,Chennai represented by Managing Director⁹ awarded 3.10 lakhs compensation to a car owner who complained that the car was not offering the mileage as advertised. According to the findings of the Forum, the real mileage was far lower than the number of 32 kilometres per litre that was advertised. According to what the court decided,

⁹ Saudhamini.P.P Thottiparambil House,Chewoor,Thrissur v. Kairaly Ford Kerala cars Pvt Ltd, represented by Managing Director, Puzhakkal, Thrissur & Ford India Pvt Ltd, Rmz Millenia Business Park,Chennai represented by Managing Director, CC 717/15 filed on 21/11/2015.

the "misleading advertisement highlighting an exaggerated mileage" constitutes an unfair business activity.

Again on 10th day of August 2022 in VLCC Health Care Ltd v. Sh. Vijay Aggarwal¹⁰, "STATE CONSUMER DISPUTES REDRESSAL COMMISSION, U.T. at CHANDIGARH" has ruled that misleading or fraudulent representations made concerning diet and exercise programs constitute unfair trade practices. The respondent engaged in VLCC's weight reduction program (A)+(B) in March 2015 and paid an initial charge of Rs. 50,000 to shed 5 kilos of body fat and 4 inches off her waistline in 30 days. It appears that nothing came of respondent's attendance at the sittings of VLCC.

The respondent contacted VLCC to express his disappointment that he had not lost any weight after 30 sessions and had only been able to lose 1 kilogram with rigorous dietary management. The respondent was shown a high-priced, imported machine by VLCC in an effort to convince him to undergo the therapy. Respondent signed up for the program and paid an additional Rs.28,000 on March 31 because of the 30-day money-back guarantee. However, the respondent took the matter to court after noticing no improvement in his or her weight or waist circumference.

The State Commission, in rejecting VLCC's appeal of the District Commission's order to return the complainant the full amount of the program fee plus compensation for emotional distress, made the following observation:

"The act of the appellants of giving false assurances on one hand by way of misleading advertisements and on the other hand, obtaining declaration from the consumers qua no guarantee/assurance regarding the result and outcome of the programme, is a clear example of unfair trade practices adopted by them, for which, the consumers (respondent in this case), could not be made to suffer at the hands of the appellants."

Conclusion and Suggestions

The problems caused by "false and misleading advertisements" in India are incapable of being solved by the prevailing framework that includes several laws and authorities. A holistic strategy is needed in India. The emerging consensus is that a regulatory policy model should be developed implementing comprehensive legislation that aims to strike an equilibrium among voluntary restraint, self-regulation, and more restrictive regulatory provision as and when required, and that does away with the current several legal and regulatory systems. However, the advertising business as a whole is what has to be regulated, not the bad actors inside it. Education, prevention, and punishment are all necessary tools in the fight against the scourge of misleading, fraudulent, and obnoxious advertising.

¹⁰ VLCC Health Care Ltd v. Sh. Vijay Aggarwal, Appeal No. 14 of 2022 (MANU/ SF/0082/2022).

Streamlining efforts can be aided by following the United Kingdom's lead and consolidating numerous laws into a single, all-encompassing statute. All parts of the legislation should consistently have the same framework for defining terminology. All parts of the bill must be consistent, and the table of contents should make sense. This simplification drive would make it easier for legislators, administrators, lawyers, and financiers to interpret and apply the law. The law must be applied consistently, eliminating any inconsistencies that may have existed previously, and repeal any preexisting laws that may have contributed to the problem by leaving loopholes or duplicating efforts.

The proposed Indian legislation must follow the EU Council and UK example by requiring the identification and, if deemed acceptable, prohibition of misleading advertising before publication. The law should provide a regulatory regime that balances companies' "right to advertise" and consumers' "right to be informed." The legislative and organizational framework should have a legal system of responsibility for the regulators and offer clarity of objectives, authority, and responsibilities. Care must be taken to guarantee that customers who are aggrieved by advertisements have access to a simple, low-cost, efficient, and efficacious remedy under the suggested comprehensive legislation regulating advertisements.

The emphasis of this fresh strategy should be on self-control and creative pursuits. The ASCI mechanisms need to be robust. More power should be granted to ASCI to ensure its decision is followed every time a violation is reported. Instead of taking different approaches, government agencies should work together to create a unified code and advocate for the use of the ASCI standard in the advertising industry. The ASCI code should be extensively disseminated, its language should be user-friendly, and the mechanisms for filing grievances ought to be streamlined.



The Guardian of Consumers: Unveiling the Power and Perils of Artificial Intelligence in Consumer Protection

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&
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Abstract

The proliferation of artificial intelligence (AI) in the digital era has had significant implications for consumer protection. While businesses are leveraging AI to better understand and influence consumer behaviours, concerns are mounting regarding the potential threats posed to consumer privacy, autonomy, and overall well-being. Businesses' capacity to gather and analyse enormous volumes of personal data has brought up concerns about the necessity of consumer empowerment and regulatory protections. Despite existing laws, enforcing consumer rights remains challenging, largely due to the lack of awareness about data techniques employed by businesses. To address these concerns, a paradigm shift is necessary, emphasising consumer empowerment alongside effective regulation. This paper argues that AI can play a crucial role in empowering consumers and organisations, enabling them to protect their rights, ensure privacy, and avoid unfair business practices. The inadequacy of current legislative efforts and the need for a comprehensive framework for protecting consumers in the realm of AI are highlighted. The paper emphasises the importance of fostering collaboration between domain specialists, technologists, and legal experts to develop AI applications that go beyond data-driven methods and incorporate a sound understanding of legal principles. Moreover, it stresses the importance of encouraging companies to employ AI not only for profit maximisation but also for internal compliance with consumer protection laws. Potential risks and difficulties of using AI widely for consumer protection are also listed in the paper. Issues such as data protection, privacy, discrimination, price differentiation, manipulation, and market concentration are highlighted, underscoring the need for privacy-by-design principles and ethical guidelines in AI development. Additionally, the paper advocates for the expansion of non-discrimination laws to cover potential biases arising from AI applications. In conclusion, the paper advocates for a paradigm shift in the approach to consumer protection, emphasising the need to view consumer exploitation as a criminal offence. It calls for the establishment of online grievance redressal units equipped with AI capabilities and stresses the importance of stringent penalties to deter exploitative practices. Overall, the paper underscores the urgency of integrating AI-driven solutions into the framework of consumer protection, thereby ensuring a balance between technological advancements and ethical considerations.

Keywords: Ethics, Consumer rights, AI, Consumer protection, Privacy, etc.

Introduction

In the digital age, artificial intelligence (AI) technologies have entered every aspect of our lives as consumers. Businesses are using AI as a way to comprehend and affect the habits and behaviours of their customers. The public is becoming more conscious of this activity, which has been viewed with growing concern and anxiety as posing hazards to consumers' privacy, autonomy, and well-being. The massive quantities of data that businesses can gather

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and analyse about the behaviours and personal traits of individuals enable them to anticipate and manage the behaviour of their customers. Technologies about big data robotics and algorithms are being examined from the standpoint of protecting customers under the general heading of artificial intelligence. Several laws that were passed throughout time to safeguard consumers and data subjects are now under consideration. It is challenging for customers to assert their rights and fight any possible wrongdoing. One of the main causes of this failure is that customers find it hard to identify unfair or illegal behaviour as they don't know what data techniques businesses use. All things considered, new safeguards must be put into place immediately. A shift in perspective is required, and empowerment of consumers must go hand in hand with regulation.

At this point, artificial intelligence (AI) has the potential to be extremely important in advancing technologies that empower customers and their organisations by helping them protect their rights, maintain their privacy, and avoid unfair business practices. It is necessary to remove the challenges consumers and regulatory authorities face in enforcing the law, not to create tools that represent substitutes for it.

Rather, a true efficient counter-power of consumers against producers and facilitators must be established. To do this, several people must step up and spend a great deal of empowerment-related work. Domain specialists should, first of all, start a collaborative conversation between technologists and attorneys. In addition, scholars and researchers need to work toward utilising modern AI technologies for the benefit of consumer agencies and organisations,³ as well as individual consumers. Additionally, companies could be encouraged to employ AI not just to increase revenue but also to internally check for adherence to consumer laws. It will take innovative technologies that are relevant to society to create such a process.

Specifically, we contend that AI that empowers consumers need to go beyond merely data-driven methods; it needs to be able to improve the ability to reason and learn from prior legal knowledge—enabling AI to leave academic laboratories and find its way into the lives of real customers and non-profit organisations operating in the market. These include encouraging cooperation between academics and industry professionals, developing creative financing models, and, in general, altering how society views artificial intelligence's relationship with customers.

Causes

Disappointing Use of Technology

In the modern era of technology, machines effectively replace human labour daily. Not only is the industry replacing itself, but family affairs are as well. Automation is advancing at a rapid pace in industrial affairs, particularly in manufacturing operations. This includes the Internet of Things (IoT), cloud-based computing, artificial intelligence (AI), Smart Factory, and more.

³ Hunt, S. (2018) Available on <https://competitionandmarkets.blog.gov.uk/2018/10/24/cmas-new-data-unit-exciting-opportunities-for-data-scientists/> accessed 24 October 2023.

At a rapid rate, society continues to embrace the same and transition to an automated, intelligent, and artificial intelligence (AI)-equipped culture.

On the other hand, consumer protection lags significantly in this comparison. Though there have been some advancements in the use of technology to safeguard consumers—such as the use of barcoding techniques to prevent duplication in product descriptions—new frontiers in technological intervention for consumer protection remain unexplored. Among these is the application of artificial intelligence (AI). Unfortunately, not much has been done to safeguard consumers in the area of artificial intelligence (AI), even though AI has the potential to be influential.

Ineffective Legislative efforts

Following the passage of the Consumer Protection Act of 2019⁴, a new, civil strategy was developed by the amended legislation. Giant MNCs are not impacted by the civil character of consumer protection, and the ineffectiveness of the legal system makes it much more difficult. The moment is now to present the idea of "Consumer Crimes," as civil litigation has shown to be ineffective and insufficient. The idea of "consumer crimes" might significantly alter how customers are protected. The phrase "Bhay bin hoy na preet"⁵ (from Ramcharitmanas in "Sundar Kand") signifies that "punishment is sometimes necessary to correct the situation." By adopting the notion of "Consumer Crimes" and certain related mechanisms, a significant number of incidents of abuse of consumers can be controlled.

Use of Artificial Intelligence (AI) for Consumer Protection

Rapid changes are evident as Industry 4.0 is being embraced globally. Understanding the notion of Industry 4.0 is crucial in the present scenario. It explains how advancements in technology and procedures in the manufacturing sector are beginning to move toward automation and data exchange. Examples of these trends include the Internet of Things (IoT), Industrial Internet of Things (IIoT), Cyber-physical systems (CPS), Smart Manufacturing, Smart Factories, Cloud Computing, Cognitive Computing, and the most remarkable Artificial intelligence. AI is the way of future technology, and it will eventually influence practically every aspect of existence.

AI stands for artificial intelligence. A program for the computer with artificial intelligence can do tasks and find solutions that often call for human intellect. This computer software can behave like that of humans, but not exactly. Some of this computer program's intelligence and skills include speech recognition, vision, and decision-making, among others, which allow it to do and complete the duties that are assigned to it.⁶

⁴ Consumer Protection Act, 2019, No. 35 of 2019, Acts of Parliament, 2019 (India).

⁵ G Tulsidas, *Ramcharitmanas* (Gita Press 2015).

⁶ Available on Britannica, <https://www.britannica.com/technology/artificial-intelligence>, accessed 27 October 2023.

Consumer protection and artificial intelligence (AI) are the long legal procedures and basic legislation that are ineffective when it comes to consumer protection, which is a major concern. Artificial Intelligence in particular is a technology that can resolve this problem. In this sense, some infrastructure development is required.

Challenges and risks

Risks and difficulties do, however, accompany the advantages. Naturally, the first things that occur to mind when discussing AI and customers are problems with:

Privacy and Data Protection:

AI systems require a massive volume of training data as input. Big data sets are produced by continuously collecting customer information through consumer behaviour tracking, both online and offline, storing it, merging it with other data sources, and processing it to profile the consumer and extract more information.⁷ The public is mainly unaware of the data industry's explosive expansion and the volume of personal data exchanged between public and commercial organisations, but, because of the unique problems with discrimination, prejudice, and manipulation that might result from AI usage.

More significantly, the average person is unaware of the extent to which third parties are collecting personal information about them, or how commercial companies and the government are beginning to use this information against them. People's online actions have been and still are monitored, resulting in massive databases. Typically, these data sets include personal transaction information, email correspondence, video, photos, clickstream, logs, search queries, medical records, and social media activities.⁸

Moreover, offline sources that supply personal data on their clients include credit agencies, hospitals, clinics, shops' sales data, public documents (including deeds, criminal histories, and corporate filings), and credit agencies. Ultimately, an astounding quantity of data is being collected from the ever-growing array of smart devices, ranging from smartphones and GPS satellites to traffic and security cameras, as well as other AI-powered devices like Google Assistant and Alexa that can record and send data. Another often-mentioned concern is the possibility that consumer data may be unlawfully accessed or disclosed to unaffiliated third parties after being obtained, whether legally or illegally. There are two scenarios when devastating data breaches might occur.

⁷ Valletti, Tommaso M. & Wu, Jiahua, Consumer Profiling with Data Requirements (April 07, 2016), <https://papers.ssrn.com/sol3/papers.cfm?abstractid=2760276>

⁸ Omer Tene & Jules Polonetsky, Big Data for All: Privacy and User Control in the Age of Analytics, *Northwestern Journal of Technology and Intellectual Property*, 2013, Available on <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1191&context=njtip>

In the first instance, a data collection business knowingly discloses personal information in a way that falls short of providing adequate privacy protection for people.⁹ The second possibility is that the organisation in charge of the data fails to implement sufficient security measures, making the data they have collected accessible to a third party.¹⁰

Additionally, users' privacy is placed at risk by mobile applications' access to some of their most private data. It has been found that Amazon's Alexa captures private conversations and forwards them to unaffiliated parties.¹¹ The privacy risks are the same with Google Assistant.¹² Furthermore, the unauthorised use of such data might lead to the emergence of new threats, such as the development of deepfake and unwanted social network profiles.¹³

Discrimination

The Bias is more likely to occur when AI is used in business and other social and economic endeavours. Unlike humans, whose choices and actions are subject to prejudice and emotional influence, machines are built to make decisions and carry out actions based on facts. But the quality of the data we give AI systems will ultimately dictate how well they perform. Incorrect data may contain implicit biases related to race, gender, or ideology. This problem will not go away since a lot of AI systems will still be trained on faulty data.

Naturally, the other source of bias in the AI system is the algorithmic model. It is established that advertisements are provided in a way that discriminates against certain races and genders.¹⁴ AI advertising systems may only show advertisements to consumers who have already used a service or have made similar decisions, depending on the data fed into these systems. This might incite prejudice against clients who might not be familiar with the service or good.¹⁵

Price Differentiation

Big data and AI have enabled corporations to accurately determine a customer's willingness to pay for a certain product. There have been claims made that doing this boosts productivity. However, what if there are other non-monetary benefits at work? What happens if a business, like an airline, decides to selectively increase its pricing to bar members of a specific ethnic or religious group from using its services? Because it thinks that by doing this, more customers would appreciate it and, as a result, the profits will rise. Businesses may use AI, big data, and

⁹ Forbes, How Target figured out a teen girl was pregnant before her father did, at: Available on www.forbes.com/sites/kashmirhill/2012/02/16/how-target-figured-out-a-teen-girl-was-pregnant-before-her-father-did/#625f5be06668

¹⁰ Fox Business, Study: Data breaches pose a greater risk, at www.foxbusiness.com/features/study-data-breaches-pose-a-greater-risk

¹¹ Available on www.theguardian.com/technology/2018/may/24/amazon-alexa-recorded-conversation

¹² Available on www.computerworld.com/article/3128791/data-privacy/how-google-homes-always-on-will-affect-privacy.html

¹³ Available on www.fairplanet.org/story/does-ai-threats-digital-human-rights-in-the-global-south/

¹⁴ Available on www.infoworld.com/article/3269060/data-mining/the-hidden-hand-of-data-bias.html

¹⁵ Giovanni SARTOR, Artificial Intelligence: Challenges for EU Citizens and Consumers, European Parliament, 2019.

personalised marketing strategies to identify the traits of each customer, as well as their desire to pay, and provide them with a price that exceeds their means.

Even in the best-case scenario, when businesses do not purposefully present some of us with a deliberately high price to dissuade us from using their services or purchasing their goods, dynamic pricing requires customers to pay the price they are willing to pay. This may soon happen offline as well, given the advancements in facial recognition and emotion identification technologies. These days, it happens online.

Administration

With all the big data and AI-powered platforms, businesses today have a greater grasp of client preferences and behaviour than the customers themselves. Recommendation systems, or the capacity to show tailored business practises like offers, suggestions, and ads such as "you might be interested in this product," "others like you also bought this service," etc. may occasionally be advantageous for customers. But there's also a possibility of unjust influence. AI systems may utilise big data to forecast consumer behaviour and try to provoke desired reactions. As a result, customers could be duped, misled, and convinced to make careless purchases or other bad choices. Customers are beginning to realise that this kind of targeted advertising is pushing them to buy unnecessary items, making them overspend, and creating compulsive online shopping habits.¹⁶

Loss of Control by Consumers

Although modern smart gadgets are meant to make our lives simpler and healthier, critics have shown that they are also capable of achieving some micro and macro goals that serve the interests of their creators and designers rather than the user, even when the users are the ones who own the devices in issue. Examples of such behaviour include buying a smartphone for a partner or spouse and then controlling when and how they use it, or utilising the "Find My iPhone" app to track a partner's whereabouts.

Furthermore, since more and more products like cars rely on software, intellectual property rights or IPRs are becoming increasingly significant. Important components that used to be part of the product are now licenced to customers and are thus subject to new conditions. These licences might restrict the amount of time that items are supported, instantly deactivate particular functionality, etc. In this particular setting, copyright regulations and their enforcement through Digital Rights Management (DRM) are expected to significantly impact customers' day-to-day lives. It is already undermining the conventional notion of a customer's "ownership" of a product.

Collusion and Concentration in the Market

Due to the nature of AI technology, markets that rely on it are more susceptible to market concentration and collusion, which ultimately results in fewer alternatives and higher prices

¹⁶ Consumer International "Artificial Intelligence : Consumer Experiences with New Technology" 2018, Available on <http://www.consumersinternational.org/media/261949/ai-consumerexperiencesinnewtech.pdf>

for customers. Additionally included in studies are M2M (machine-to-machine) communications and self-learning algorithms that determine how to coordinate prices without the developers' or users' awareness. Additionally, the use of pricing algorithms in conjunction with increasing market openness may result in implicit collusion.¹⁷ Vertical integration and economies of scale such as large fixed costs for gathering training data and training AI applications may also have an impact on the creation and use of certain AI applications. When AI systems develop better via practical application, Netflix recommendation and personalisation algorithms, for example, market concentration occurs as a result of more user involvement, big businesses and early adopters stand to gain.¹⁸

Conversely, however, it is easier to force users into a product of a manufacturer or a closed ecosystem without Access or compatibility due to certain hardware and software combinations, or between a certain product and its companion services. Because there is less market competition, customers may have fewer alternatives, which might result in price increases. They may also be unable to hire independent service providers, acquire maintenance services, or mix and match different devices and equipment as they see fit. Companies utilising AI, civic society, consumer research groups, and regulatory bodies all need to think about and discuss these issues.

Privacy by design

Encouraging technology businesses and AI-driven startups to include privacy-by-design concepts in their systems might help them comply with data protection laws that are being adopted by nations worldwide. The fundamental idea behind privacy by design is that as soon as data is gathered, an AI system or piece of software should be configured to safeguard privacy by default. In situations when customers are not offered the choice to opt out of sharing their data, this is crucial.¹⁹ Transparency is a key component of privacy by design. One way to do this would be to include a notification system in the AI architecture that alerts consumers when their data is being collected, processed, and used.

Despite this, engineers working on AI development must embrace and comprehend these concepts. A multi-stakeholder discussion involving engineers and IT businesses will thus also address any limitations that such a design would place on innovation. Simultaneously, this increases their comprehension of the viewpoint of the customer and alerts them to the hazards and difficulties that consumers have while using AI-powered services. By doing so, privacy would be improved through design principles for the benefit of customers.

¹⁷ See for example, <http://www.freshfields.com/globalassets/our-thinking/campaigns/digital/mediainternet/pdf/freshfields-digital—pricing-algorithms—the-digital-collusion-scenarios.pdf>.

¹⁸ See for example, <https://medium.com/netflix-techblog/artwork-personalization-c589f074ad76>

¹⁹“ Privacy by Design - The 7 Foundational Principles,” see <https://iapp.org/resources/article/privacy-by-design-the-7-foundational-principles/>

Ethical use of AI

Discussions about the moral implications of bias, discrimination, manipulation, and other immoral uses of AI are warranted. Developing effective legislative frameworks for consumer protection might begin with technology firms adopting guidelines for the ethical use of AI. Project Maven Saga is one such effort that promoted the moral use of AI. It was pitched in opposition to Google's employment of AI technology in military hardware and equipment. Three thousand Google workers signed a petition that the activists circulated in opposition to Google's decision.²⁰

Non-discrimination Law

The applicability of current anti-discrimination legislation must be expanded to cover indirect discrimination or potential new types of biases brought about by AI. To build adaptable non-discrimination rules, a multi-stakeholder consultation will shed light on past, present, and future instances of bias in AI. This would provide customers with a channel for reporting issues and seeking resolution while new legislative frameworks for AI regulation are being developed.²¹ This might be achieved by rejecting particular categories of discrimination based on caste, religion, gender, and other factors in favour of general guiding principles.

Conclusion

Therefore, it is possible to conclude that consumer cases are changing from their customary civil character to a different kind, and the portions show that this change is happening towards a criminal nature. It's time to embrace technology and include the idea of "consumer crime," as the courts have demonstrated an interest in technology and the cautious deployment of artificial intelligence.

They have also interpreted the criminal nature of consumer cases side by side and even imprisoned the exploiter several times. Many legislative measures and court rulings have endorsed the conclusions.

Thus, it might be argued that consumer exploitation needs to be considered a crime and given the name "Consumer Crimes." It is interesting that consumers prefer civil courts for both big and minor consumer matters, and that criminal law is becoming more and more important in the sphere of consumer protection.

"Criminal law has a respectable pedigree and a high functional value in the field of consumer protection," it has been noted. Another finding is that efforts have been made to see consumer protection as "a public interest issue rather than a private issue" that should be resolved by individuals in court.

²⁰ Available on Global News "What Is Project Maven? The Pentagon AI Project Google Employees Want out Of," <https://globalnews.ca/news/4125382/google-pentagon-ai-project-maven/>

²¹ Zuiderveen Borgesius, F. "Discrimination, artificial intelligence, and algorithmic decision-making." Council of Europe (2018). Available on [https://dare.uva.nl/personal/pure/en/publications/discrimination-artificialintelligence-and-algorithmic-decisionmaking\(7bdabff5-c1d9-484f-81f2-e469e03e2360\).html](https://dare.uva.nl/personal/pure/en/publications/discrimination-artificialintelligence-and-algorithmic-decisionmaking(7bdabff5-c1d9-484f-81f2-e469e03e2360).html)

A heavy fine, the seizure of all goods and licences, and severe punishments are some of the measures that must be applied to wrongdoers if activities of consumer exploitation are carried out or repeated.

These measures include online complaint or mobile grievance redressal units that comprise the experts of that area to consult immediately and to resolve the issue on the spot, using Artificial Intelligence. It can be done such that by designating consumer exploitation as a crime against consumers, the threat of physical harm and property confiscation may put pressure on the consumer exploiter to refrain from engaging in consumer exploitation.



Tracing the Rights of a Consumer-Antiquity to the Modern Era

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&
Ayushi Kashyap²**

Abstract

This research paper is an observed fragmentation consumption of the framework of internationalization. After touching the plateau of the historical view of consumers, their movement, different consumer abilities within India or outside, problems and corrective actions. Starting with the Backbone of Consumer Law Manu Smriti, Kautilya's Artha Shastra. It makes the case for a powerful and coordinated consumer movement to establish conditions that will protect consumers' interests from Medieval to British rule till the rise of Consumerization in India. The Consumerization of UNGCP in UN Nation and the case of India, at the very least, the illusion of consumer sovereignty in the market. The conclusion part contains how the system in place to safeguard consumers' interests isn't perfect just now, with the tint scratch of observation. In addition to raising people's incomes and attainment of knowledge, it is crucial that we additionally teach them about the reasons behind their current situation, our research paper informs them of their legal entitlements and advantages as consumers, and instruct them on the steps that need to be taken to make these goals a reality, and live their life as consumer fullest.

Keywords: Manu Smriti, Artha Shastra, Consumer Rights, Consumerism Movement, Consumer Protection Legislation, UNGP, etc.

A consumer is the most important visitor in our premises. He is not dependent on us, we are dependent on him. He is not an interruption in our work, he is the purpose of it. He is not an outsider in our business, he is part of it. We are not doing him a favour by serving him. He is giving us a favour by giving us an opportunity to do so.

....Mahatma Gandhi.

Introduction

Introduction to Consumer Protection:

The evolution of every nook and cranny in the consumer world has been remembered since the prehistoric age. Customers assimilate towards us and visa-versa. The starting point 1960s Consumer revolves around the areas of these rights incorporating the right to protection, the right to be updated, the right to choose, the right to be heard, the right to seek redressal, and the right to consumer instruction.³ Let's first outline the term "consumer" before delving into the history and notion of consumer rights.

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³ Sahil Liaqat, *Consumer Rights & Responsibilities*, 1 IJLMH 1, 3 (2018) <https://www.ijlmh.com/wp-content/uploads/2019/03/Consumer-Rights-Responsibilities.pdf>.

The term "consumer," which was originally derived from the Latin word "*Consumere*," was initially used in French before spreading to other European languages. It meant using up food, candles, and other resources.⁴ But, according to the Consumer Protection Act, of 1986, "*Consumer means any person who buys any goods or services for a consideration which has been paid or promised or partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person but does not include a person who obtains such goods or services for resale or any commercial purpose*".⁵

Every citizen is also an *ipso facto* (by that very fact or act) consumer. As famously stated at the very beginning of the development of consumer law by President Kennedy⁶ "*Consumers, by definition, includes us all*".⁷ While consumer protection is a modern creation, the idea of safeguarding consumers dates to the Copper Age. The rules of sale and purchase and the penalty for not adhering to them were mentioned in ancient scripts like Manu Smriti and Artha Shastra. Consumer protection remained the top precedence for Monarchs during the Medieval period.⁸

Under the aforementioned pointers, the Government also keeps its close eye on the outlines of consumers' rights and interests to accelerate their priorities via different aspects and roads which leads to acts, laws, and regulations. This article revolves around every possible facet, diving into the depth of historical vintage chronology until the modern outcome and possibilities of the future.

Research Methodology

The problem was handled in the endeavor utilizing the doctrinal methodology of analysis. This type of source-based research gathers information from both conventional and modern written text sources, as well as text-based sources such as books, journals, newspapers, and internet sources. This strategy blends the two types of elements. The initiative's issues have been thoroughly examined by a thorough review of the literature. The information has all been thoroughly examined by the researcher, who has produced an informed and perceptive report. The opinions of academics, scientists, and other experts who have researched this topic have been incorporated as a genuine contribution to this study.

Review of literature

Many pieces of research have already been conducted globally about the history of Consumer rights one such research is Dr. A. Rajendra Prasad's, *A bird's eye view*.⁹ This research paper

⁴ Frank Trentmann, *How Humans Became 'Consumers': A History*, THE ATLANTA (Nov. 28, 2016), <https://www.theatlantic.com/business/archive/2016/11/how-humans-became-consumers/508700/>.

⁵ The Consumer Protection Act, 2019, § 2(7), No. 35, Act of Parliament, 2019 (India).

⁶ For more information: (*The White House*)

⁷ John F. Kennedy, THE AMERICAN PRESIDENCY AIM (Mar. 15, 1962), <https://www.presidency.ucsb.edu/documents/special-message-the-congress-protecting-the-consumer-interest>.

⁸ See, A. Rajendra Prasad, *A bird's eye view*, 11(3) JCCL 132, 134 (2008), http://www.jtexconsumerlaw.com/V11N3/JCCL_India.pdf.

⁹ *Id.* at 132.

gives a broader view of the history of Consumer Rights. The author referred to several journals, books, articles, Ancient Scripts (translated into English), and data based on Annual reports submitted to the Government of India. His research points out how the effective mechanism of Consumer forums posed a great legal challenge to the traditional courts, which conduct litigation in orthodox ways.¹⁰

Much like Dr. A. Rajendra Prasad, there is another article published by Namrata S.¹¹, where she also mentioned the history and evolution of Consumer rights. But what distinguishes her article from the aforementioned research paper is the reasons mentioned by the author for which consumer protection is needed, ways and means that help in achieving the objectives of consumer protection in India, and the ways for the redressal of grievances of consumers. This article gives an all-overview of the history and evolution of consumer protection, consumer awareness, and remedies available to Consumers under Redressal commissions.

Relevancy of literature

Much of the research concluded that the Consumer Protection Act is an effective piece of legislation, that deals with the interests of consumers very quickly and provides remedies to them in no time. However, research has also been done on consumer knowledge of consumer rights and consumer protection legislation, which runs counter to those results. Research conducted by P. Uma Maheswari Devi and B. Sankara Rao¹² found that learning did not design much disagreement in the degree of knowledge, the lead of the customers do not know consumer fairness with regulation¹³ Besides that, a case study conducted by Dr. M. A. Lokhande¹⁴ on consumer awareness in Jalna City disclosed that 55.56% of the 90 defendants from Jalna City were ignorant of consumer protection acts, consumer redressal machinery such as Ward Consumer Debate, Municipal or Main Commission.¹⁵ It is clear from research and case studies that merely passing laws won't result in significant change, but making people aware of the laws can.

Antiquity of Consumer Protection

Manu Smriti

In the ancient days, Vedas were considered God's words and said to have divine origin. Dharmas were derived from Vedas and used to be the guiding principle of human relations and social norms¹⁶ in the Copper Age. These principles were collectively written in an ancient

¹⁰ *Id.* at 135.

¹¹ Namrata S, *Consumer Protection in India*, BUSINESS MANAGEMENT IDEAS (Sept. 24, 2023), <https://www.businessmanagementideas.com/consumer-protection/consumer-protection-in-india/20676>.

¹² P. Uma Maheswari Devi & B. Sankara Rao, *Consumer Protection Consciousness – Protagonist of Learning*, 4 Universal Journal of Industrial and Business Management 97, 97-103 (2016).

¹³ *Id.* at 97.

¹⁴ M. A. Lokhande, *Consumer Awareness- A Case Study of Jalna City*, Indian Journal of Marketing 23, 23-28 (2006).

¹⁵ *Id.* at 27.

¹⁶A. Rajendra Prasad, *supra* note 8, at 132.

script called “Manu Smriti” by ‘Acharya Manu’¹⁷ in 3200 BC. Manu Smriti describes the social cultural and economic conditions of ancient society.¹⁸

Besides, it also prescribed rules for ethical trade practices and punishment for not adhering to them. Manu Smriti deals with different unscrupulous trade practices like fraudulent sales or mortgages. It says “A fraudulent mortgage or sale, a fraudulent gift or acceptance, and any transaction where he detects fraud, the (judge) shall declare null and void”.¹⁹ Manu also referred to one of the dilemmas of those days, food adulteration. He said that “one commodity mixed with another must not be sold (as pure) nor a bad one (as good), nor less than the proper quantity or weight nor anything that is not at hand or that is concealed”.²⁰ Manu also prescribed the ability to enter into the contract.²¹ He said “A contract made by a person intoxicated, or insane, or grievously disordered (by disease and so forth), or wholly dependent, by an infant or very aged man or by an unauthorized (party) is invalid”.²²

Manu also mentioned the duties of the king. It was written in Manu Smriti that the king fixed the rates for purchasing and selling all marketable goods.²³ King publicly settled the pricing for retailers at the end of each two weeks or once every five evenings.²⁴ King re-examined all the weights and measures once in six months that were duly marked.²⁵

Kautilya’s Artha Shastra

Chanakya, who was popularly known as “Kautilya” or “Vishnu Gupta” was the chief minister to the emperor “Chandragupta Maurya”, the founder of the Mauryan dynasty in 300 BCE.²⁶ Kautilya wrote the book “Artha Shastra”, which means “the science of politics”.²⁷ Towards Chandragupta Maurya, Artha Shastra served as a sort of manual that taught them ways to rule an empire and encouraged him to take proactive steps in resolving social problems sans mind for morality.²⁸

Kautilya in his book Artha Shastra mentioned that there are four sciences from where all that concerns righteousness and wealth is learnt ANVIKSHAKI, the triple Vedas (trayi), Varta

¹⁷ Shukra Raj Adhikari, *Manu Smriti as the protection of female in Hindu Philosophy: In the dimension of structural-functionalism*, 10, PHILOSOPHY STUDY 706, 708 (2020) <https://www.davidpublisher.com/Public/uploads/Contribute/5fc46e1e14808.pdf>.

¹⁸A. Rajendra Prasad, *supra* note 8, at 133.

¹⁹ GEORGE BUHLER, *THE LAWS OF MANU* 120 (Oxford: Clarendon Press 1886).

²⁰ *Id.* at pg. 123, §203.

²¹ See, A. Rajendra Prasad, *supra* note 8, at 133.

²² George Buhler, *supra* note 19, pg. 121, §204.

²³ *Id.* at pg. 138, §401.

²⁴ See, *Id.* at pg. 138, §402.

²⁵ See, *Id.* at pg. 138, §403.

²⁶ The Editors of Encyclopedia Britannica, *Artha-shastra*, Britannica (Oct. 6, 2023, 6:11 PM), <https://www.britannica.com/biography/Chanakya>.

²⁷ L. N. RANGARAJAN, *THE ARTHA SHASTRA*, 15 (Penguin Books 1992).

²⁸ Joshua J. Mark, *Artha shastra*, World History Encyclopedia (Oct. 6, 2023, 6:21 PM) <https://www.worldhistory.org/Arthashastra/>.

(trading, farming, and raising bovine), and Danda-Niti (public learning). Varta is one of such fields that studies consumer rights in ancient.

As aforementioned 'Varta' deals with matters related to wealth and further it is divided into several parts. In the part of 'Rescission of purchase and sale,' it was mentioned that "If a vendor refuses to provide the goods he purchased, he will be penalized 12 panas, provided the goods are harmful, inherently flawed, or unbearable. Furthermore, Kautilya established the phrases "inherently negative," "intrusive," & "intolerable." Items with intrinsic flaws are referred to be inherently terrible. Anything that could be seized by the monarch, be destroyed by flames, hurricanes, or robbers is considered harmful, and anything that is made by the dead or is completely lacking in quality is deemed unbearable.²⁹

Adulteration of various commodities was a major concern in those days. So, referring to the problem, Kautilya said "When a trader sells or mortgages inferior or superior commodities, articles of some other locality, as the produce of a particular locality, adulterated things, or deceitful mixtures, or when he dexterously substitutes other articles for those just sold (*Samutparivartamam*), he shall not only be punished with a fine of 54 panas but also be compelled to make good the loss".³⁰ Punishment of 12 panas was attracted by the merchants who adulterated grains, oils, alkalis, salt, scents, and medicinal articles with similar articles of no quality.³¹

Apart from the rules to protect purchasers, Kautilya also throws light on valid and invalid transactions through Artha Shastra. He stated that those agreements are deemed to be void and were entered into an interest, in isolation, interior the lodges, in the empty of nighttime, in forests, in secrets, or with fraud. Even accords made by a person with authorization are null and invalid if the person was insane or disturbed at the point of the contract, or if he was provoked, anxious, or intoxicated.³²

From the rules that are written in Artha Shastra and the punishment for offenders, it is obvious that Mauryans succeeded in protecting the interests of purchasers during the rule of Chandragupta Maurya.

Medieval India Consumer Protection

The Medieval India period can be considered as the period between 800AD to 1800AD. The thousand-year period between the eighth century and eighteenth century saw important changes in India.³³ The Medieval India period was the rule of Muslims. Though the emergence of Muslim rule started at the beginning of the eighth century, it took centuries to

²⁹ See, *Id.* at 268.

³⁰ *Id.* at 292.

³¹ See, *Id.* at 292.

³² *Id.* at 213.

³³ SATISH CHANDRA, HISTORY OF MEDIEVAL INDIA I (Orient Blackswan Pvt. Ltd. 2007).

be firmly established.³⁴ Trades with foreign countries were very prevalent during their rule. India had long-standing trade and cultural relations with countries around the Mediterranean Sea.³⁵ India imported articles of luxury from China. Low customs duties during the Muslim rule afforded great encouragement to foreign traders.³⁶

The rule of Alauddin Khilji demonstrates that they had managed foreign trade as well as defending the rights of consumers on the same hand. Alauddin Khilji, who was a true militarist, cheapened the necessities of life and fixed the prices of all commodities required for daily use to maintain a standing army.³⁷ Even though he did that for the standing army, it increased the happiness of the people.³⁸ All the articles brought by merchants were exposed to sale at *Serai adl* (an open space inside the Badaon gate) so that the merchants could sell in large quantities.³⁹ To prevent merchants who buying at cheap rates and selling them at higher prices, the permits were issued by diwan to those Maliks and Amirs who purchased costly articles. The sellers and vendors were punished cruelly for malpractice. Consequently, the bazaar folks stopped using deception, were obedient, and frequently contributed more than the required amount.⁴⁰ During the rule of Akbar, the Kotwal (an officer who was responsible for maintaining peace in the cities) was enumerated with the obligation to examine weights and measures.⁴¹

The strict practices and cruel punishments to deceitful sellers during the rule of Alauddin Khilji and the administration of Kotwal during the rule of Akbar disclose that the Sultans succeeded in countering wrongful practices towards the purchasers.

British Rule Consumer Protection

The British rule in India was the aftermath of the sepoy mutiny in 1857. Thus, the direct British rule in India started in 1858. The British government replaced the East India Company with administrative sovereignty over India.⁴² The establishment of a single legal framework that covered the entire nation with similar civil and criminal laws constitutes one of the major accomplishments of the British administration.⁴³ The English legal system was established to dispense law throughout the British era, revolutionizing the Indian legal system. It's crucial to

³⁴ Tanvir Anjum, *The emergence of Muslim rule in India: some historical disconnects and missing links*, 46 *Islamic Studies* 217, 217 (2007), https://www.jstor.org/stable/pdf/20839068.pdf?refreqid=fastly-default%bc1qre8jdw2azrg6tf49wmp652w00xltdxmpk98xp&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=&acceptTC=1.

³⁵ Satish Chandra, *supra* note 33, at 1.

³⁶ ISHWARI PRASAD, *A SHORT HISTORY OF MUSLIM RULE IN INDIA* 749 (2nd ed. 1936).

³⁷ See, *Id.* at 124.

³⁸ See, *Id.* at 125.

³⁹ See, *Id.* at 124.

⁴⁰ See, *Id.* at 125.

⁴¹ See, *Id.* at 445.

⁴² Stanley A. Wolpert, *British Raj*, BRITANNICA (Oct. 11, 2023, 10:08 PM), <https://www.britannica.com/event/British-raj>.

⁴³ M. S. Rajan, *The Impact of British Rule in India*, 4 *Journal of Contemporary History* 89, 96 (1969), https://www.jstor.org/stable/pdf/259793.pdf?refreqid=fastlydefault%bc1qre8jdw2azrg6tf49wmp652w00xltdxmpk98xp&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=&acceptTC=1.

remember, nevertheless, that the traditions and practices of the Indian judicial system have been taken into consideration.⁴⁴

During British rule, the interests of consumers were duly cared for through various legislations. The legislations are the Indian Contract Act of 1872,⁴⁵ the Sale of Goods Act of 1930,⁴⁶ the Indian Penal Code of 1860,⁴⁷ the Drugs and Cosmetics Act of 1940,⁴⁸ the Usurious Loans Act of 1918,⁴⁹ the Agriculture Procedure (grading and Marketing Act) of 1937.⁵⁰

Among these, the Sale of Goods Act, of 1930 (hereafter referred to as 'SGA') played a pivotal role in protecting the interests of consumers for 55 years, the SGA was the exclusive source of consumer protection in India. Section 16 of the SGA provides exceptions to the *Caveat emptor*, which interprets the meaning as 'let the buyer beware'.⁵¹ *Legally or grammatically, caveat emptor is not an indication that the consumer must take an opportunity. Thus, the consumer needs to exercise caution.*⁵² But the maxim "*Caveat emptor*" was backlashed for the first time in an English case law i.e., *Priest v. Last* (1903).⁵³ In this case, the Court held the seller liable for the sale of a good that is not merchantable for the purpose mentioned by the buyer. However, as aforementioned section 16 of the SGA provides exceptions to the principle of '*Caveat emptor*'.

Section 16(1) interprets that when the buyer, either expressly or by implication makes known to the seller that he is buying the goods for a particular purpose which shows that the items are of a description that is within the purview of the vendor to provide, and the customer depends upon the vendor's capacity or discretion. The commodities must be suitable for this kind of use, as suggested.⁵⁴ The terms like 'merchantable quality' in section 16(2) also provide exceptions to the *Caveat emptor* protecting the interests of consumers.

During the British Raj, the Indian Penal Code of 1860 (hereafter referred to as 'IPC') also played its role in protecting the interests of consumers—sections 272 to 276 of the IPC deal with various offenses affecting public health.⁵⁵ For example, section 272 provides that selling

⁴⁴ Rajib Bhattacharya, *An Analysis on the Various Aspects of Consumer Protection in India*, 1 IJR 9, 10 (2014), 265168254_International_Journal_of_Research_IJR_ISSN_23486848/links/54038f240cf23d9765a5cf2c/International-Journal-of-Research-IJR-ISSN-23486848.pdf?_sg%5B0%5D=started_experiment_milestone&origin=journal_Detail&_rtd=e30.

⁴⁵ The Indian Contract Act, 1872, §1, No. 9 of 1872, Acts of Parliament, 1872 (India).

⁴⁶ The Sale of Goods Act, 1930, §1, No. 3 of 1930, Acts of Parliament, 1930 (India).

⁴⁷ The Indian Penal Code, §1, No. 45 of 1860, Acts of Parliament, 1860 (India).

⁴⁸ The Drugs and Cosmetics Act, 1940, §1, No. 23 of 1940, Acts of Parliament, 1940 (India).

⁴⁹ The Usurious Loans Act, 1918, §1, No. 10 of 1918, Acts of Parliament, 1918 (India).

⁵⁰ The Agricultural Produce (Grading and Marking) Act, 1937, §1, No. 1 of 1937, Acts of Parliament, 1937 (India).

⁵¹ See, A. Rajendra Prasad, *supra* note 8, at 134.

⁵² See, *Wallis v. Russell*, (1902) 2 IR 585 (CA).

⁵³ *Priest v. Last*, (1903)2K.B. 148.

⁵⁴ See, The Sale of Goods Act, 1930, *supra* note 46, at §16(1).

⁵⁵ See, The Indian Penal Code, *supra* note 47, at 94.

adulterated food or drink is a punishable offense.⁵⁶ Section 273 penalizes the offenders who sell noxious food or drink.⁵⁷ Section 274 and Section 275 talk about the adulteration of drugs and the sale of adulterated drugs.⁵⁸ Any person who sells one drug as a different drug will be punished under section 276 of IPC. All these offenses attract fines which may extend up to a thousand rupees or imprisonment which may extend up to 6 months, or both.⁵⁹

Also, chapter XIII of the IPC penalizes offenses involving weightiness and instruments like illegal management of forged instruments for evaluating,⁶⁰ deceptive application of fake mass or measure,⁶¹ owning incorrect weight or determine,⁶² and making or selling false weight or measure.⁶³ These sections provided within the Indian Penal Code of 1860 ensure the interests of consumers from India's criminal justice system.⁶⁴

The Indian Contract Act, 1872 which primarily focuses on contracts and contractual obligations also protects consumers' interests. When a party to a contract, breaches or restrains from its contractual obligations then the other party suffers a loss. To protect the suffered party chapter VI of the Indian Contract Act, 1872 provides some remedies. These remedies are based on Unjust Enrichment, which means enrichment of a person at the expense of the other.⁶⁵ This is derived commencing the aged maxim of Roman law, "*Nemo debet locupletari ex aliena jactura*", which indicates no man should raise wealth out of another person's debit.⁶⁶ The section under Chapter VI and various other sections deals with unjust enrichment. For example, Section 73 of the Indian Contract Act of 1872 provides for compensation for loss or damage caused by breach of contract.

Legislations like the Essential Commodities Act of 1955,⁶⁷ the Prevention of Food Adulteration Act of 1954,⁶⁸ and the Weights and Measures Act of 1976⁶⁹ were enacted after India's Independence. Such acts have the advantage of not requiring customers to establish *mens rea*. Instead, there is severe culpability for these actions, regardless of intent or understanding.⁷⁰ Before India's consumer protection laws were enacted, during British rule, these laws served to safeguard consumers' interests from being jeopardized.

⁵⁶ See, *Id.* at §272.

⁵⁷ See, *Id.* at §273.

⁵⁸ See, *Id.* at 96.

⁵⁹ See, *Id.* at §276.

⁶⁰ *Id.* at §264.

⁶¹ *Id.* at §265.

⁶² *Id.* at §266.

⁶³ *Id.* at §267.

⁶⁴ See, A. Rajendra Prasad, *supra* note 8, at 134.

⁶⁵ Ernest J. Weinrib, *The Structure of Unjustness*, 92 Boston University Law Review 1067, 1070 (2012), <https://www.bu.edu/law/journals-archive/bulr/documents/weinrib.pdf>.

⁶⁶ Ruchir Rai, *The Principle of Unjust Enrichment*, SSRN (Oct. 11, 2023, 11:42 PM), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2353502.

⁶⁷ The Essential Commodities Act, 1955, §1, No. 10 of 1955, Acts of Parliament, 1955 (India).

⁶⁸ The Prevention of Food Adulteration Act, 1954, §1, No. 37 of 1954, Acts of Parliament, 1954 (India).

⁶⁹ The Weights and Measures Act, §1, No. 14 of 1976, Acts of Parliament, 1976 (India).

⁷⁰ Rajib Bhattacharya, *supra* note 52, at 10.

Consumerism Movement and Enactment of UNGCP in the United Nations

The United Nations adopted the First Consumer Protection Legislation.⁷¹ Authorities having authority over certain goods and operations impacting consumers were established over time as a result of particular catastrophes and elections.⁷² The major changes took place when Upton Sinclair in his book *The Jungle* exposed the unsanitary conditions in the Chicago meat factory and the outrage of the same led to the enactment of the Pure Food and Drug Act, of 1906.⁷³

However, inflation, the great depression, and World War I led to the dissipation of consumer issues during the early 1900's.⁷⁴ "The New Deal" policy introduced by Franklin D Roosevelt to counter inflation and the great depression, led to the further growth of consumer protection.⁷⁵ One of the famous consumer organizations was formed with the publication of the book "*Your Money's Worth*" by "F. J. Schlink and Stuart Chase".⁷⁶ The consumer organization thus formed was the "Consumers Research" in 1929.⁷⁷

But, a group of subscribers broke off from Consumer Research and formed "Consumers Union".⁷⁸ Consumers Union besides dealing with consumer problems also looked after social problems.⁷⁹ In three years, the Consumers Union grew bigger than Consumers Research and was able to help new consumer organizations.⁸⁰ The growing influence of the consumer movement was temporarily stunted by World War II.⁸¹

Consumer Protection in the contemporary period began on 15th March 1962, which was observed as "World Consumer Rights Day",⁸² when John F Kennedy enlisted four rights of consumers as a part of the message to Congress.⁸³ The four rights were:

- i. *The right to protection.*⁸⁴
- ii. *The right to be learned.*⁸⁵

⁷¹ Spencer Weber Waller, Jilian G. Brady, R. J. Acosta, Jennifer Fair & Jacob Morse, *Consumer Protection in the United States: An Overview*, European Journal of Consumer Law, 1, 1 (2011), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1000226#paper-citations-widget.

⁷² See, *Id.* at 1.

⁷³ See, Kathleen Browne Ittig, *The Consumer Movement in the United States*, 2 Bridgewater Review 7, 8 (1983), https://vc.bridgew.edu/cgi/viewcontent.cgi?article=1796&context=br_rev.

⁷⁴ See, *Id.* at 8.

⁷⁵ Spencer Waber Waller, *supra* note 71, at 1.

⁷⁶ See, Kathleen Browne Ittig, *supra* note 73, at 8.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 9.

⁸² Shobit Gupta, *World Consumer Rights Day 2023: History, Significance, Theme*, HINDUSTAN TIMES (Mar. 15, 2023, 08:12 AM), <https://www.hindustantimes.com/world-news/world-consumer-rights-day-2023-history-significance-theme-101678847703994.html>.

⁸³ See, Kathleen Browne Ittig, *supra* note 73, at 9.

⁸⁴ *Id.*

⁸⁵ *Id.*

iii. *The right to select.*⁸⁶

iv. *The right to be overheard.*⁸⁷

Words by J. Kennedy about the Consumer in “Special message to the congress on protecting the consumer interest” are:

*“If consumers are offered inferior products, if the prices are exorbitant, if drugs are unsafe or worthless if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and the national interest suffers”.*⁸⁸

Regulation was the responsibility of President Lyndon B. Johnson's presidency following the killing of John F. Kennedy.⁸⁹ In January 1964, President Johnson also instituted the President's Panel on Consumer Concerns and introduced the position of Special Assistant for Consumer Affairs in the presidential branch.⁹⁰ Ralph Nader, through his publication “Unsafe at any Speed” in 1965, fueled the consumer movements and attacked the poor engineering design and Construction of automobiles through his writings, which led to the enactment of the Highway Safety Act, of 1966.⁹¹

Consumer movements in the United Nations came to an end when the UN General Assembly adopted the United Nations Guidelines for Consumer Protection (UNGCP) in 1985, which is a milestone in the history of Consumer Protection. The guidelines that UNGP provides to ensure consumer protection include:

- a. Consumers can access necessary items and services.⁹²
- b. The safeguard of susceptible and disadvantaged individuals.⁹³
- c. The safeguard of consumers from hazardous substances to their physical condition and safety.⁹⁴
- d. The marketing and defense of the economy of consumers.⁹⁵
- e. Entrance by consumers to applicable information qualifies them to make learned choices according to characteristic desires and needs.⁹⁶
- f. Consumer instruction, counting learning on the conservation, social, and economic impacts of consumer choice.⁹⁷
- g. Accessibility of successful consumer disagreement outcome and compensation.⁹⁸

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ John F Kennedy, *supra* note 7.

⁸⁹ See, Kathleen Browne Ittig, *supra* note 73, at 9.

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² United Nations Guidelines for Consumer Protection, G. A. Res. 70/186, U. N. Doc. A/RES/70/186 (Dec. 22, 2015).

⁹³ *Id.*

⁹⁴ *Id.*

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.*

Other nations have found how the UNGCP serves as a foundation for developing laws and policies that are appropriate for their unique financial, social, and environmental conditions. After that, the law was updated in 1999 as well as in 2015 to make sure it handled the actual issues that real individuals were facing.⁹⁹

Consumerism in India

The word “Consumerism” has various definitions. ‘Consumerism’ is defined as ‘the buying and using of goods and services; the belief that it is good for a society or a person to buy and use a large quantity of goods and service’ in the Oxford English Dictionary.¹⁰⁰ But, in the contemporary days, Consumerism is a movement directed to protect consumers to ensure in terms of satisfaction that the consumer gets the best return in exchange for the money he spends.¹⁰¹ The 1960s and 1970s saw a significant rise in consumerism in India, which surpassed the upper middle elite in the 1980s.¹⁰²

Yet, because of the court delays and uncertain evidence of the necessary *Mens Rea*, buyers were unable to pay for the luxuries of tortuous, costly, and time-consuming legal proceedings necessary for the protection of the liberties granted under the broader law.¹⁰³ Thus, to deal effectively with the interests of consumers, the consumer protection legislation was enacted on 24 December 1986 after the enactment of UNGCP, which turned out to be a base for formulating consumer protection policies and measures in many developing countries including India.¹⁰⁴

Consumer Protection Legislation in India

Legislations like the Sales of Goods Act of 1930, the Drugs and Cosmetics Act of 1940, and manifold played a pivotal role in protecting the interests of consumers. However unscrupulous trade practices from well-organized manufacturers exploited consumers and the time-consuming litigation process was unsuccessful in providing remedies to the consumers due to various reasons. The need for legislation is felt. Thus, the Consumer Protection Act of 1986 (COPRA) was enacted on 24 December 1986,¹⁰⁵ which was a subsequent effect of the

⁹⁹ *Consumer Protection: Why it Matters to You*, CONSUMER INTERNATIONAL, 2016, at 5.

¹⁰⁰ Oxford Advanced Learner’s Dictionary, *Definition of the word Consumerism*, OXFORD ADVANCED LEARNERS DICTIONARY (Oct. 19. 2023, 12:05 PM), <https://www.oxfordlearnersdictionaries.com/definition/english/consumerism>.

¹⁰¹ Harpreet Kaur, *Consumer Activism and Globalisation of Consumerism: An Overview*, SCC ONLINE (Oct. 18. 2023, 11:44 PM), <http://www.sconline.com/DocumentLink/s4P4mqv4>.

¹⁰² G. I. S. Sandhu & Arvind Kaur, *Consumer Protection in India: Some Areas of Illusion*, 38 *Journal of Indian Law Institute* 377, 378 (1996), https://www.jstor.org/stable/pdf/43952391.pdf?refreqid=fastly-default%bc1qre8jdw2azrg6tf49wmp652w00xltdxmpk98xp&ab_segments=0%2Fbasic_search_gsv2%2Fcontrol&origin=&initiator=se-arch-results&acceptTC=1.

¹⁰³ *Id.*

¹⁰⁴ M Rajanikanth, *A Study on Evolution of Consumer Protection Act in India-CPA 1986*, 6 *IJAIE* 133, 133 (2017), https://www.researchgate.net/profile/Rajanikanth-Mekala/publication/331298509_A_Study_on_Evolution_of_Consumer_Protection_Act_in_India_-_CPA1986/links/5ccab8614585156cd7c1c902/A-Study-on-Evolution-of-Consumer-Protection-Act-in-India-CPA1986.pdf.

¹⁰⁵ The Consumer Protection Act, 1986, §1, No. 68, Acts of Parliament, 1986 (India).

consumerism movement in India. The enactment of the Consumer Protection Act, of 1986 is one of the greatest significant achievements in Consumer Protection in the Country.¹⁰⁶ Consumer Protection allows for the establishment of policies to advance and defend consumers' rights against the sale of products that pose a risk to lives or material.¹⁰⁷

Unlike, the litigation process, to provide speed, inexpensive, and simple redress to consumer disputes, section 9 of the COPRA, 1986 has provided for the establishment of Redressal Commissions.¹⁰⁸ These Redressal Commissions are *quasi-judicial* bodies.¹⁰⁹ Under the National Consumer Disputes Redressal Commission at the top, there are currently 678 Local Commissions, 35 Provincial Commissions, and one National Council.¹¹⁰

These commissions vest with separate jurisdiction of each provided by COPRA, 1986. The Regional Council is empowered to consider grievances in cases where the total cost of the goods or services complained about is less than twenty lakh rupees.¹¹¹ State Commissions are vested with the jurisdiction to entertain the appeals from District Commissions and to consider grievances in cases where the goods or services at issue are valued at more than Rs. 20 lakhs but less than Rs. 1 crore.¹¹²

National Redressal Council, which is known toward be apex level has jurisdiction over the appeals from State Commissions as well as the complaints where the value of goods and services exceeds rupees one crore.¹¹³ Any person aggrieved by an order made by the National Commission can appeal in the Supreme Court.¹¹⁴ The rights of consumers provided by COPRA, 1986 include:

- a) *Right to be defended.*¹¹⁵
- b) *Right to be educated.*¹¹⁶
- c) *Right to be secure.*¹¹⁷
- d) *Right to be overheard.*¹¹⁸
- e) *Right to pursue redressal.*¹¹⁹
- f) *Right to consumer learning.*¹²⁰

¹⁰⁶ See, M Rajanikanth, *supra* note 104, at 133.

¹⁰⁷ Mohammad Azvar Khan, *Consumer Protection Under Indian Legal Framework*, 12 J Cardiovasc. Dis. Res. 656, 660 (2021), <https://www.jcdonline.org/admin/Uploads/Files/6311ab39d4da62.23187963.pdf>.

¹⁰⁸ See, The Consumer Protection Act, 1986, *supra* note 105, §9.

¹⁰⁹ National Consumer Disputes Redressal Commission, *History*, NATIONAL CONSUMER DISPUTES REDRESSAL COMMISSION, <https://ncdr.nic.in/history.html#> (last visited Oct. 22, 2023).

¹¹⁰ *Id.*

¹¹¹ See, The Consumer Protection Act, 1986, *supra* note 105, §11.

¹¹² See, *Id.* at §17.

¹¹³ See, *Id.* at §21.

¹¹⁴ See, *Id.* at §23.

¹¹⁵ See, *Id.* at §6(a).

¹¹⁶ See, *Id.* at §6(b).

¹¹⁷ See, *Id.* at §6(c).

¹¹⁸ See, *Id.* at §6(d).

¹¹⁹ See, *Id.* at §6(e).

¹²⁰ See, *Id.* at §6(f).

The COPRA, 1986 was amended four times respectively in 1991, 1993, 2002, and 2010¹²¹ to make it more consumer-friendly. COPRA does not bring all people who buy any goods or avail themselves of any services into its purview. As it is mentioned in section 2(d) of the said act, it does not comprise a being who gains such possessions for reselling or for any mercantile person.¹²² The same was held through the Supreme Court in the case of *Laxmi Engineering Works v. P. S. G. Industrial Institute*.¹²³ In this case, the apex court further interpreted 'Consumer' and defined 'Commercial Purpose' as follows:

*"The statute doesn't clarify what "commercial aim" is. Without a description, one must presume its common connotation. "Commercial" means "about business."; it means "connected with or engaged in commerce; mercantile; having profit as the main aim" whereas the word 'commerce' means "financial transactions especially buying and selling of merchandise, on a large scale".*¹²⁴

The Supreme Court in this case further agreed with the view of the National Commission i.e., "a person purchases goods 'intending to use such goods for carrying on any activity on a large scale to earn profit' He won't be considered a "Consumer" per the law's subsection 2(d)(i).¹²⁵

COPRA brings all types of goods and services into its ambit, which includes medical services. The Supreme Court in the case of *Indian Medical Association v. V. P. Shanta*¹²⁶ included 'medical negligence' and 'medical service' in the Consumer Protection Act. It further held that medical negligence falls under the purview of deficiency of service.¹²⁷ *Bank of India v. Mustafa Ibrahim Nadiadwala*,¹²⁸ in this case, the NCDRC ordered the bank to pay the compensation, due to deficiency in service.¹²⁹ Similarly, the Consumer Protection Act dealt with several situations when consumer's interests were violated.

Global distribution networks, increased international trade, & and the quick growth of the internet have created new ways for goods and assistance to be delivered, giving customers more choices and possibilities in the contemporary period.¹³⁰ Consumer protection is facing increasing difficulties from deceptive advertising, telephone advertising, pyramid schemes, salespeople, and online commerce.¹³¹

¹²¹ See, M Rajanikanth, *supra* note 104, at 136.

¹²² See, The Consumer Protection Act, 1986, *supra* note 105, §2(d).

¹²³ *Laxmi Engineering Works v. P.S.G. Industrial Institute*, (1995) 3 SCC 583.

¹²⁴ *Id.* at 584.

¹²⁵ *Id.*

¹²⁶ *Indian Medical Assn. v. V.P. Shantha*, (1995) 6 SCC 651.

¹²⁷ *Id.* at 681.

¹²⁸ *Bank of India v. Mustafa Ibrahim Nadiadwala*, (2017) CPJ 180 (NC).

¹²⁹ See, *Id.*

¹³⁰ See, The Consumer Protection Act, 2019, *supra* note 5, at 5.

¹³¹ *Id.*

Therefore, to bring e-commerce transactions into the ambit of consumer protection, to counter the emerging vulnerabilities of consumers,¹³² and to safeguard the interests of consumers, the Consumer Protection Act, of 1986 was repealed and the *Consumer Protection Act, of 2019 (CPA)* was re-enacted. The major changes in the CPA, 2019 are:

- i. The characterization of 'Consumer' would contain both disconnected and virtual customers. The phrase "buys any goods and hires or avails any activities" would apply to digital transactions made offline or online, as well as teleshopping, in-person sales, multi-level advertising, and telephone ads.¹³³
- ii. To advance and defend the interests of consumers, Section 10 of the Consumer Protection Act, 2019 calls for the creation of the Central Consumer Protection Authority (CCPA), a body with a variety of authorities.¹³⁴
- iii. The CPA, 2019 extended the jurisdiction of redressal commissions. The jurisdiction of the District Commission increased to rupees one crore,¹³⁵ the jurisdiction of the State Commission increased from rupees one crore to rupees ten crore,¹³⁶ and the National Commission deals with those cases where the value of goods and services exceeds rupees ten crores.¹³⁷

The CPA's customer panels have shown to be successful, resolving countless claims without few procedures and paving the path for India's development of sound consumer law.¹³⁸

Conclusion

Consumer protection remained the priority to the rulers in the Ancient and Medieval periods and to the Government in the modern era. Ancient scripts like Manu Smriti, Artha Shastra, and many more with well-settled Sastras and Dharmas defined the unfair trade practices and punishments for the offenders, which were severe. This made the merchants and vendors abide by the law. The rulers in the Medieval period started to use standardized weights and measures. The vendors who underweighted the goods were punished brutally. Things changed when it came to the modern period.

Legislations were passed and rights were provided to consumers to protect them from unscrupulous trade practices. Councils and Redressal Commissions were established to promote consumer rights and resolve consumer disputes. *However, providing rights without awareness is just pointless.* Because an individual who does not know his rights cannot

¹³² *Id.*

¹³³ Sheetal Kapoor, *Consumer Protection Act, 2019: A New Milestone in Empowering Consumers*, Yojana 53, 55 (2019), https://www.researchgate.net/profile/SheetalKapoor/publication/343399260_Consumer_Protection_Act_2019A_New_Milestone_in_Empowering_Consumers/links/5f281d00458515b729febde7/Consumer-Protection-Act-2019-A-New-Milestone-in-Empowering-Consumers.pdf.

¹³⁴ See, The Consumer Protection Act, 2019, *supra* note 5, at §10.

¹³⁵ See, *Id.* at §34.

¹³⁶ See, *Id.* at §47.

¹³⁷ See, *Id.* at §58.

¹³⁸ A. Rajendra Prasad, *supra* note 8, at 135.

exercise them. The awareness campaigns run by the Government are just reaching metropolitan cities and urban areas. The people who are at the rural level are still vulnerable to unfair trade practices, which is due to a lack of awareness.

This is the reason for the infringement of consumer rights even after enacting various legislation and several amendments. It is suggested to spread awareness about consumer protection and consumer rights to the deepest roots rather than enacting mere legislation. This could yield greater results than it is now.



Effectiveness of Alternative Dispute Resolution Mechanism in Consumer Cases

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&
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Abstract

In 1976, the Indian government amended the constitution to create a number of commissions, boards, tribunals, and special courts in an effort to address the increasing amount of litigation and reduce the backlog. Meanwhile, the structure for ADR, or alternative dispute resolution, began to take shape. ADR is an informal process that includes discussion, mediation, and arbitration that is used to handle complaints from customers and protect their rights. The Consumer Protection Act, 1986" is a noteworthy welfare law in India that provides immediate help and safeguards the interests of consumers. Six essential rights are granted to consumers by this act: the rights to safety, information, choice, remedy, and consumer education. A three-tier hierarchy of redressal agencies was also established. There were 5,141,696 consumer complaints submitted with these three-tier authorities as of June 13, 2019, of which 4,679,910 cases had been resolved and 461,786 cases were still outstanding, for a disposal rate of 91.02%. The Consumer Protection Act, 2019 is the result of numerous modifications to the consumer law. By establishing authorities, this new law hopes to expedite and improve the handling and settlement of consumer disputes. The efficiency of alternative dispute resolution (ADR) procedures, such as negotiation, mediation, arbitration, and Lok-Adalat, in addressing customer complaints is evaluated in this assignment.

Keywords: Consumer, ADR, ODR, Mediation, Negotiation, Consumer Protection, etc.

Introduction

In today's fast-paced and interconnected world, consumers engage in a wide assortment of transactions and interactions with businesses on a daily basis. While many of these exchanges go successfully, disputes are unavoidable. These issues might range from faulty items and inadequate service to billing discrepancies and contract disputes. When such problems arise, consumers frequently seek efficient and cost-effective ways to resolve them, which is where Alternative Dispute Resolution (ADR) comes in as a saviour. In the Indian legal system, consumer disputes can be easily resolved through the employment of suitable dispute resolution procedures including arbitration, conciliation, mediation, and Lok Adalat. These approaches focus more intently on the underlying reasons for the problem, restore relationships, are less formal, stimulate communication and active participation in finding solutions, and result in significant time and cost savings.³

ADR (Alternative Dispute Resolution) is the term used to describe a variety of procedures and techniques intended to settle disputes and matters of law outside of the traditional courtroom litigation process. ADR processes are frequently less formal, quicker, and more economical

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³ Omkar Anuroop and Krishnamurthy Kritika, The Art of Negotiation and Mediation (LexisNexis 2015).

than going to court. They are designed to make conflicting parties' interactions, negotiations, and agreements easier. ADR procedures are useful for resolving conflicts related to civil rights, business, family, labour, and community. The practice of settling a conflict without going to court with the assistance of an impartial third party is known as alternative dispute resolution, or ADR. In comparison to going to court, this kind of consumer dispute resolution is quicker, less expensive, and simpler⁴.

In other words, typically, the term alternative dispute resolution (ADR) refers to formal processes when disputing parties meet with an expert "third party" who helps them reach a settlement, cooperate, cancel, etc.⁵ Mediation, Arbitration, Negotiation, Online Dispute Resolution (ODR), etc. are different types of ADR since they provide an alternative to court proceedings. Consumer cases cover an extensive spectrum of issues, from product warranty and quality disputes to contractual clauses such as service agreements and purchase agreements. ADR mechanisms tailored to consumer cases include negotiation, mediation, arbitration, and various online dispute resolution platforms. Each of these techniques has its own set of pros and cons and can be selected based on the nature and complexity of the dispute, the preferences of the parties involved, and the available resources.

Significance of ADR Mechanism in India

The Legal Services Authority Act of 1987 aimed to establish legal services authorities that could offer competent and free legal services to the most vulnerable members of society. These authorities would thereafter be responsible for organizing Lok Adalats and ensuring that the legal system promotes justice on an equitable basis. In India, the Lok Adalat idea has developed into a successful, ground-breaking, and calming dispute resolution method rather than just a test project. This process is well known for being an economical, effective, informal, and quick approach to resolving disputes. It represents a blend of mediation, negotiation, arbitration, and active participation. The fundamental principle underlying Lok Adalat's dispute resolution is mutual consent, where parties willingly accept conciliation with the assistance of an adviser. It stands as a participatory, and potent Alternative Dispute Resolution (ADR) mechanism. Among the various ADR methods, mediation is especially well-suited for a country like India, given that, in rural areas in particular, people prefer amicably resolving their disputes.⁶

It is imperative to raise knowledge and promote these techniques in order to guarantee the effectiveness of mediation. These initiatives have already been started by the Department of Consumer Affairs as part of particular projects. It is crucial to conduct training sessions on Alternative Dispute Resolution (ADR) techniques. Organizations such as the Indian Institute of Public Administration (IIPA) and state-level judicial academies might function as facilitators or actively participate in this initiative. Think about testing the idea of a consumer

⁴ Alternative dispute resolution for consumers, European Union, (Oct 02 2023, 10:40 pm), <https://drupal.alliance.edu.in/drupal/node/4817>.

⁵ Vol.2, Dr.S.C.Tripathi, Alternative Dispute Resolution [ADR], pg.1, (Central Law Publications 2016)

⁶ Vol.II, Government of India, Department of Consumer Affairs, Report of the Working Group on Consumer Protection, 33-34, (2012-17).

court-based mobile alternative dispute resolution (ADR) mediator system. Like a traffic mobile magistrate, this system might help customers who are being exploited in the marketplace and deliver justice quickly. It is equally crucial to raise awareness among consumers and those they may have disputes with regarding the value of ADR. This awareness campaign should extend to national, state, and district commissions, as well as government bodies. Activities such as giving lectures in consumer clubs, distributing informational leaflets, and conducting public relations efforts can be highly effective.⁷

ADR an Innovative and Practical Method

It is essential to adopt fast-track options to guarantee that harmed consumers receive justice quickly due to the rising number of cases that are pending in consumer courts and the delays in receiving remedies.

In the Indian Legal System, various alternative methods, including arbitration, conciliation, mediation, and Lok Adalat, can be employed to facilitate more accessible and efficient resolution of consumer disputes. These approaches, characterized by their informality, foster communication and active involvement of parties in seeking solutions, address the underlying causes of conflicts, help preserve relationships, and result in substantial time and cost savings⁸. Innovative approaches like ADR offer procedural flexibility, cost and time savings, and relieve the stress associated with traditional trials. It is advisable to implement a three-tier hierarchy structure. ADR serves as a means to resolve disputes between conflicting parties without resorting to formal adjudication. Utilizing ADR can be an effective strategy for expediting dispute resolution and alleviating the burden on consumer forums. The 2019 Consumer Protection Bill has also included mediation as a tool for direct negotiation to resolve disputes.

ADR Mechanism in Consumer Dispute Resolution

The Bengal Regulation Act of 1772 serves as the foundation for India's adoption of alternative dispute resolution (ADR) procedures. This act stipulated that parties must submit contested records to mediators, whose rulings would be definitive and unchallengeable. The Regulation Act of 1781 further stated that the arbitration award of the mediator could only be overturned if two witnesses could show that the mediator acted with blatant bias or error and that judges should counsel parties to submit their disputes to a person of their choosing. In reference to arbitration, Sir Charleswood recommended that the Second Law Commission create a unified legal framework. What followed was the creation of the Code of Civil Procedure in 1859. The Indian Contract Act of 1872 also recognized arbitration agreements as exceptions to Section 28, which renders void any contract that restricts recourse to legal proceedings.

Subsequently, the Arbitration Act of 1899 was enacted to facilitate the resolution of disputes outside of court in the presidency towns. The Arbitration Statute of 1940 took its place after

⁷ *Ibid.*

⁸ Vol.I, Omkar Anuroop and Krishnamurthy Kritika, *The Art of Negotiation and Mediation*, 35-40, (LexisNexis, 2d ed. 2021)

this statute was ultimately repealed. In order to carry out its pledge, India passed the Arbitration (Protocol and Convention) Act after signing the Geneva Convention's arbitration protocol. India likewise ratified the New York Convention, which resulted in the 1961 passing of the Foreign Awards (Recognition and Enforcement) Act. The Arbitration and Conciliation Act of 1996 was passed in the wake of India's economic liberalization in the 1990s. This statute brought about major improvements in the arbitration area and replaced the 1940 statute. It also introduced the concept of conciliation with the goal of expeditiously settling mainly business-related issues and disputes.

A portion of the significant points of interest in alternative dispute resolution are:

- (a). **Cost-effectiveness:** ADR processes are generally less expensive than litigation.
- (b). **Time efficiency:** ADR is typically quicker than going through the formal court system
- (c). **Less formality:** ADR proceedings are less formal and bureaucratic than court proceedings.
- (d). **Privacy:** Parties can freely discuss their differences without the concern of their disputes becoming public records in a courtroom.
- (e). **Perceived fairness:** ADR often provides parties with a sense that there are no clear winners or losers, promoting a more balanced outcome.

Classification of ADR

Various ADR mechanisms can be categorized as:

- (a). Arbitration
- (b). Mediation
- (c). Negotiations
- (d). Negotiations
- (e). Conciliation
- (f). Judicial Settlements inclusive of Lok Adalat's

Arbitration

In this type of ADR, referred to as arbitration, the disputing parties jointly choose a neutral arbiter to hear their case and reach a mutually agreeable resolution. The principal objective of arbitration is to efficiently and economically reach a fair and unbiased tribunal decision in a just and equitable manner.

Conciliation

In the conciliation process, the primary aim is to assist parties in reaching a resolution. Importantly, the parties are not compelled or restricted by conciliation; they can continue negotiations until they reach a mutually satisfactory agreement. An impartial third party, referred to as the conciliator, manages this process. The conciliator actively participates by engaging in discussions, and negotiations, and fostering a harmonious settlement.

Mediation

A mediator plays a role in aiding disputing parties to achieve an agreement. It is the parties in dispute who establish the terms of the settlement they wish to reach. The role of the mediator is to facilitate discussion between the parties, not to force any decisions on them.

Lok Adalat

The Legal Services Authorities Act of 1987 introduced the Lok Adalat system of dispute settlement with the goal of accelerating the process. A resolution through mutual consent may be possible for conflicts in Lok Adalat at the pre-litigation phase.

Negotiation

In alternative dispute resolution, this is the method that is most commonly employed. In order to arrive at a solution that is acceptable to both parties, the parties hold non-binding talks without the assistance of a third party. In business, non-profit organizations, government agencies, court cases, international relations, and private affairs including marriage, divorce, childrearing, and daily living, among other contexts, negotiations take place.

Purpose of Studying ADR

The primary focus of this study is to assess the efficacy of Alternative Dispute Resolution (ADR) systems in India, particularly in terms of reducing the caseload in the courts. Additionally, the study aims to provide concrete recommendations for the establishment of a robust institutional ADR framework in India. In accordance with the terms of reference, the Indian Law Institute was tasked with examining the following:

- Evaluation of the current legal framework and regulations governing the resolution of commercial disputes through ADR. This entails a thorough review of the Arbitration and Conciliation Act, 1996, with the objective of identifying and suggesting remedies for any deficiencies. The study will also include an assessment of the implementation of Section 89 of the Code of Civil Procedure, aimed at enhancing its effectiveness, and exploring potential contributions from the Indian Council of Arbitration (ICADR) in improving the implementation of this provision.
- The study revolves around examining the incentive systems governing the utilization of both the court system and Alternative Dispute Resolution (ADR) methods for addressing specific dispute categories. It also delves into the incentive framework influencing different stakeholders in either advocating for or opposing specific ADR mechanisms for case types, involving a stakeholder analysis. Importantly, it's worth noting that the study was specified to be non-data based.
- Identifying the types of cases that can be effectively managed through arbitration, mediation, and other Alternative Dispute Resolution (ADR) methods. It also explores the potential selection of cases suitable for ADR.
- Investigating the feasibility of incorporating Intellectual Property Rights (IPR) cases into ADR mechanisms.
- Assessing the impact of resolving cases through arbitration, mediation, and other ADR processes on reducing the caseload in traditional courts.

- Exploring the necessary measures to enhance case resolution and attract more cases for dispute settlement through ADR.
- Examining the potential for establishing institutional ADR systems in India, akin to well-known international ADR institutions.

The Scope of ADR Mechanism in New Consumer Act, 2019

The Consumer Protection Bill, 2019 was enacted by the Indian Parliament on August 6, 2019, in response to the growing issues that customers are facing in the digital age. This historic law aims to guarantee the efficient and timely handling of consumer complaints. After being approved by the president, the Consumer Protection Act, 2019 (New Act) was officially published on August 9, 2019. On a date declared by the Central Government, the New Act took the place of the over thirty-year-old CPA of 1986.⁹

The New Act of 2019 introduces mediation as an Alternative Dispute Resolution mechanism, streamlining the operations of resolving disputes and expediting the adjudication process. This change is expected to result in faster dispute resolution and alleviate the backlog of cases in consumer courts, which are currently burdened with numerous pending cases.

Institution of Consumer Mediation Cell:

Section 74 of the law outlines the establishment and functions of consumer mediation cells:

1. The establishment of a consumer mediation cell must be mandated by each state government, and it must be notified formally and attached to the state and district commissions in that state.
2. It is also necessary for the Central Government to notify the National Commission and its regional Benches about the creation of a consumer mediation cell.
3. As mandated by regulations, a consumer mediation cell must consist of individuals.
4. Each consumer mediation cell is responsible for maintaining:
 - (a). roster of impaneled mediators.
 - (b). A record of cases handled by the cell.
 - (c). Records of proceedings.
 - (d). Any other information as specified by regulations.
5. Each consumer mediation cell must provide a quarterly report, together with an attachment, to the appropriate Commission (National Commission, State Commission, District Commission, or State Commission). Submission procedures should follow established guidelines.¹⁰

Procedure for Mediation

Section 79 of the law outlines the mediation process:

⁹ Stuti Galiya, India: Consumer Protection Act, 2019 – Key Highlights, mondaq connecting knowledge & people, (Oct.27.2023, 10:00 AM), <https://www.mondaq.com/india/dodd-frank-consumer-protection-act/838108/consumer-protection-act-2019--key-highlights>.

¹⁰ The Consumer Protection Act, 2019, no.35, Act of Parliament, 2019 (India)

1. Consumer mediation sessions will be held in the consumer mediation cell affiliated with the relevant District, State, or National Commission.
2. When a consumer dispute is sent to mediation by the District Commission, State Commission, or National Commission, the mediator chosen by the corresponding Commission is required to consider a number of factors, such as the parties' rights and obligations, any applicable trade practices, the circumstances that led to the dispute, and any other relevant factors. Over the mediation process, the mediator is also constrained by the natural justice principles.
3. The nominated mediator is responsible for conducting the mediation within the timeframe and in the manner specified by regulations.

Settlement through Mediation

Under Section 80 -

1. In accordance with mediation, any agreement reached between the parties regarding all or just some of the issues in the consumer dispute must be documented in writing and signed by the parties involved or by their designated representatives.
2. The mediator is responsible for drafting a settlement report, which includes the signed agreement, and sending it to the relevant Commission.
3. In cases where no agreement is reached within the stipulated time or if the mediator deems settlement to be unfeasible, the mediator should create a report reflecting this situation and submit it to the relevant Commission.

Judicial Trends

A substantial contribution to the evolution of consumer protection law has been made by the Supreme Court of India and other Indian High Courts, which have continuously interpreted the terms of the Consumer Protection Act (C.P. Act) in a way that benefits consumers. Numerous topics have been addressed by these interpretations, such as medical malpractice, housing services, and shortcomings in public utility services including rail, insurance, and telecommunication.

For instance, in the case of *Salem Advocate Bar Association Tamil Nadu v. Union of India*¹¹, the Supreme Court of India directed the drafting of draft model rules for Alternative Dispute Resolution (ADR) and draft rules for mediation under section 82(2)(d) of the Code of Civil Procedure, 1908. As a result of this decision, the Law Commission drafted a set of draft rules that are divided into two parts:

- (a). The first part outlines the procedure to be followed by the parties and the court when selecting a specific ADR method.
- (b). The second part comprises draft rules for mediation under section 82(2)(d) of the Civil Procedure Code, 1908.

The terms "mediation" and "conciliation" have important differences. The law and the UNCITRAL model, according to Justice *M. Jagannadha Rao*, somewhat lessens the role of a

¹¹*Salem Advocate Bar Association Tamil Nadu v. Union of India*, AIR 2005 SC 3353, (India)

mediator than that of a "conciliator." As per the Arbitration and Conciliation Act, 1986, Part III, a "conciliator" is endowed with more powers than a "mediator" due to their ability to propose settlement proposals. This distinction in the roles of a 'mediator' and 'conciliator' is evident, and it is also relevant in the context of Section 89 of the Code of Civil Procedure.

Justice Rao further emphasizes the need for training judges and lawyers in this field. Workshops, seminars, and conferences should be regularly conducted in both districts and courts, with a focus on making ADR a compulsory subject within Bar Councils. There could even be a separate examination on ADR, with passing it being a requirement for obtaining a practice license, underscoring the importance of ADR methods. If there are changes to be implemented, they cannot rely solely on minor legislative amendments; it requires self-motivation and encouraging others to bring about these changes. However, it is essential to exercise caution when it comes to settlements in mediation and conciliation. All settlements should be deliberate, the process must be fair, and none of the parties should feel subjected to bias. Settlements must be the result of sensible influence.

In the case of *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy & Anr*¹², it is commonly observed that consumers tend to threaten traders with legal action even for minor issues. This has led to the perception that Indian consumers have significant bargaining power over traders. However, in reality, traders often have the upper hand due to a cunning tactic. They include mandatory arbitration or exclusive jurisdiction clauses in standard contracts. Since most consumers accept these terms without thoroughly reviewing them, it is common to see consumers struggling to challenge the enforcement of such clauses.

But, In the case of *Magma Leasing & Finance v. Poluri Madhavalata*¹³, the Supreme Court stressed that when a valid arbitration agreement exists, the court is compelled to refer the subject to arbitration. In *Booz Allen and Hamilton Inc. v. SBI Finance Ltd*¹⁴, the binding force of the same has been diluted over the course of time. However, this principle has been somewhat weakened over time, primarily due to the emergence of the 'arbitrability doctrine.' Consequently, disputing the arbitrability of a subject matter, or whether a matter is suitable for arbitration, has become a common strategy. This has become the first line of defence for resisting an application filed under section 8, which seeks mandatory arbitration.¹⁵

Limitations of Alternative Dispute Resolution

Numerous drawbacks hinder the path to successful dispute resolution, often creating a challenging environment for both parties seeking a compromise. Some of these disadvantages include:

(a). **Imbalanced Negotiating Power:**

¹² *National Seeds Corporation Ltd. v. M. Madhusudhan Reddy & Anr*, (2017) ibclaw.in 503 SC, (India)

¹³ *Magma Leasing & Finance v. Poluri Madhavalata*, AIR 2010 SC 488, (India)

¹⁴ *Booz Allen and Hamilton Inc. v. SBI Finance Ltd*, (AIR 2011 SC 2507), (India)

¹⁵ *Ayyasamy v. A. Paramasivam*, (2016) 10 SCC 386, (India)

In certain scenarios, one party may wield significantly more influence than the other, leading to a notable power imbalance. This is particularly evident in cases such as employment disputes and divorces, where the courts may be a more equitable choice for the weaker party.

(b). **Lack of Legal Expertise:**

In disputes involving complex legal matters, it is unlikely that a mediator or arbitrator possesses the same level of legal expertise and knowledge as a judge. Disputes can span various domains, including commercial, social, and legal conflicts, necessitating specialized mediators. Often, the mediator may not provide the perspective of a judge.

(c). **Lack of Specific Precedent:**

Anticipating the outcome of a dispute resolved through ADR can be challenging due to the absence of a precedent system. This makes it easier to obtain evidence from the opposing party in a lawsuit, leading to uncertainty in predicting outcomes.

(d). **Enforceability:**

In most cases, ADR is not legally binding, making the enforcement of awards a complex process. Legal arbitration typically has procedures for internal appeals, with the outcome being subject to review by the court.

(e). **Necessity of Court Action:**

If one of the parties refuses to accept the arbitrator's decision, it may require court intervention. This not only leads to confusion but also raises concerns about the arbitrator's impartiality. Additionally, there is limited scope for judicial review of an arbitrator's decision.

(f). **Restrictions on Discovery Process:**

ADR often lacks the robust discovery mechanisms available in litigation. Courts typically grant significant leeway in the discovery process, which is not as prevalent in alternative dispute resolution.

Conclusion

The Consumer Protection Act, 2019 states in its preamble that its goal is to protect consumers' interests. In order to do this, it creates authorities for the prompt and efficient administration and resolution of consumer disputes. Additionally, it seeks to prevent consumer exploitation and offers channels for bringing consumer complaints before appropriate consumer courts or Alternative Dispute Resolution (ADR) processes like mediation, arbitration, and negotiation. Ultimately, the goal is to provide consumers with justice. The court's decision in the case of *Lucknow Development Authority v. M. K. Gupta*¹⁶ underlines that the act's importance resides in its ability to actively involve consumers in the market economy, thus improving societal welfare.

¹⁶ *Lucknow Development Authority v. M. K. Gupta*, AIR 1994 SC 787.

ADR techniques including arbitration, mediation, and negotiation are frequently less expensive and time-consuming than traditional court procedures. This benefit is particularly significant for consumers, who may not have the financial resources or the time to engage in protracted legal battles. ADR also allows for more flexible and informal procedures, which can facilitate communication between the parties and, in many cases, lead to mutually satisfactory resolutions.

The CPA of 1986, which had been in place for more than three decades, was replaced by the New Act on a date announced by the Central Government. In order to expedite the adjudication process and streamline the dispute resolution process, the New Act of 2019 incorporates mediation as an Alternative Dispute Resolution option. This change is expected to result in faster dispute resolution and alleviate the backlog of cases in consumer courts, which are currently burdened with numerous pending cases.

The analysis presented in this paper has highlighted several key benefits of establishing a Consumer Mediation Cell. It provides consumers with a specialized and accessible avenue to resolve disputes, fostering trust and confidence in the marketplace. By offering a structured process for mediation, this cell helps streamline the resolution of consumer grievances, reducing the burden on already congested legal systems. It is essential to acknowledge that the effectiveness of ADR in consumer cases is not without its challenges.

For instance, ensuring that ADR processes are fair and impartial, and that consumers have access to knowledgeable and unbiased mediators or arbitrators, is crucial. Additionally, there may be situations where one party possesses significantly more power or resources, potentially resulting in an uneven playing field during ADR proceedings. The effectiveness of alternative dispute resolution (ADR) mechanisms in consumer issues is evident; yet, to mitigate their limitations and guarantee that ADR methods continue to be a practical and equitable choice for every party involved, these processes must be continuously improved. ADR may provide customers a more effective and satisfying way to resolve disputes, but in order to safeguard the rights and interests of all parties involved, it must be carefully administered and regulated.



Unfair Trade Practice and Consumer Protection

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Abstract

This chapter delves into the realm of Unfair Trade Practices (UTPs) and their significance in the context of Indian consumer protection rights and competition laws. UTPs encompass trade practices that employ unfair or deceptive methods for the purpose of promoting degraded goods or services, for gaining undue profits, (actions that are prohibited by statute). The chapter investigates the rationale behind incorporating the concept of unfair trade practices within the ambit of consumer protection laws rather than classifying them solely under competition laws. This study provides an in-depth analysis of unfair trade practices in India by drawing comparisons between the provisions in competition and consumer laws. It also aims to explore the interface between competition law and consumer law, taking into account the diverse interpretations of 'consumer welfare' in both legislative contexts. This chapter further investigates the evolution of UTPs within the Monopolistic and Restrictive Trade Practices (MRTP) Act, Consumer Protection Act, and Competition Act, tracing the historical changes and developments. It examines the abolition of the MRTP Act, reviews the recommendations of the Sachar Committee and the Raghavan Committee, and explores the establishment of the Competition Commission of India (CCI) and the Competition Act of 2002. Additionally, the chapter delves into the reasons for incorporating UTPs within consumer laws, dissects the various components of UTPs, and assesses the authorities and agencies responsible for addressing UTPs. Through this comprehensive exploration, the chapter offers insights into the legal framework aimed at safeguarding consumer interests, regulating business practices, and promoting fair competition. It underscores the vital role these laws play in protecting consumers from the challenges posed by unfair trade practices while fostering economic growth and consumer well-being.

Keywords: Unfair Trade Practices, Consumer Protection, Competition Law, Indian Legal Framework, Regulatory Evolution, etc.

Introduction

In the ever-evolving landscape of commerce and trade, Unfair Trade Practices (UTPs) have become a focal point of concern, reflecting a range of deceptive or wrongful behaviors that impact not only the economic fabric of businesses but also the rights and interests of consumers. UTPs encompass a broad spectrum of activities in which businesses adopt unfair, misleading, or deceptive practices to promote the sale, use, or provision of goods and services, often crossing legal boundaries. These practices may involve misrepresentations concerning any aspect of a product or service, whether real or imagined.

In this context, consumer protection laws play a pivotal role in safeguarding the interests of individuals and ensuring fair, transparent, and ethical business conduct. UTPs are not only detrimental to businesses, competitors, and the market but also have far-reaching consequences for consumers who may fall victim to these unscrupulous tactics. This chapter

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delves into the intricate web of UTPs and explores the intricate connections between these practices and the laws designed to protect consumers. By examining legal theories such as trade secret misappropriation, unfair competition, false advertising, palming off, dilution, and disparagement, we aim to shed light on the mechanisms through which UTPs are addressed and the pivotal role of consumer protection laws in upholding fairness and integrity in the marketplace.

What are Unfair Trade Practices?

The term “unfair trade practice” in the Indian legal framework is a crucial aspect of both the Indian Consumer Protection Act of 1986 and the Competition Act of 2002. In the Consumer Protection Act 1986, this term is explicitly defined under Section 2(1)(r)³ which encompasses a wide range of practices that employ deceptive or unfair means to promote the sale, use, or supply of goods and services. These practices include, but are not limited to, false representations regarding the standard, quality, or nature of goods or services, misleading warranties, and false claims disparaging the goods, services, or trade of another party. This definition within the Consumer Protection Act 1986 is aimed at safeguarding consumer rights and ensuring that individuals are not misled or deceived by businesses in the marketplace.

Conversely, the Competition Act 2002 establishes the Competition Commission of India (CCI), primarily focused on preserving fair competition within the Indian marketplace. While the erstwhile Monopolies and Restrictive Trade Practices (MRTP) Commission was empowered to address unfair trade practices, the CCI's core objective differs. It is tasked with preventing agreements and practices that could have an adverse impact on competition. This delineation underscores the distinct objectives of these two legislative acts, with one primarily emphasizing consumer protection and the other concentrating on maintaining healthy competition in the Indian economy⁴.

What's Unfair in such Trade Practices?

Unfair trade practices, as defined under the Competition Act, can be broadly categorised into:

1. ***Anti-Competitive Agreements:***

These are agreements related to the production, supply, distribution, storage, acquisition, or control of goods or services. They are deemed unfair if they cause or have the potential to cause significant adverse effects on competition within India. Essentially, any agreements that hinder or reduce competition are considered anti-competitive.

2. ***Abuse of Dominant Position:***

Unfair trade practices also encompass instances where a dominant firm or group of firms in a market engages in conduct with the intent to eliminate or discipline a competitor or

³ Section 2(r), The Consumer Protection Act 1986, No.68 of 1986(India)

⁴ Sharad Vadehra, Growing Incidences of Unfair Trade Practice in India, Mondaq, <https://www.mondaq.com/india/consumer-trading--unfair-trading/343952/growing-incidences-of-unfair-trade-practices-in-india>

deter new entrants. This behavior ultimately results in a substantial reduction in competition within the market, making it unfair to competitors and consumers alike.

Why these Practices are Unfair?

The core reason these trade practices are considered unfair lies in their detrimental impact on fair competition and the overall health of the market. Here is why they are deemed unfair:

1. ***Undermining Competition:***

Anti-competitive agreements can suppress competition by limiting the choices available to consumers and the opportunities for new businesses to enter the market. This hampers the natural forces of supply and demand, leading to higher prices and reduced innovation.

2. ***Excessive Market Control:***

The abuse of a dominant position allows a single firm or a group of firms to exert undue influence over the market. This control can lead to monopolistic tendencies, pricing abuses, and the exclusion of potential competitors, all of which can harm consumer welfare.

3. ***Consumer Detriment:***

Unfair trade practices often result in consumers paying higher prices for goods and services. Additionally, they may be left with fewer options and reduced access to innovative products or services, ultimately disadvantageous to consumers.

In essence, unfair trade practices are deemed unfair because they erode the fundamental principles of competition, which are crucial for economic growth, consumer choice, and innovation. To safeguard these principles, the Competition Commission of India was established to enforce the Competition Act, thereby preventing activities that negatively impact competition and ensuring a level playing field for all market participants.

Sectors Impacted by Unfair Trade Practices:

A Comprehensive Overview

Unfair Trade Practices (UTP) have become a pervasive issue in numerous sectors across the globe. These practices can manifest in a wide array of industries, including but not limited to food processing, pharmaceuticals, education, finance, and more. The detrimental effects of UTP are felt by both consumers and businesses, making it imperative to have legal frameworks in place to combat them.

In the pharmaceutical sector, UTP is a significant concern, prompting the enactment of several laws aimed at preventing and addressing such practices. These include the Drugs and Magic Remedies Act of 1954, the Drugs and Cosmetics Act of 1940, and the implementation of whistleblower policies to encourage reporting and deter deceptive actions.

Financial institutions are not immune to the impacts of UTP. They are subject to a range of regulatory measures designed to curb such practices. These include the Insurance Act of 1938, accompanied by relevant rules and regulations, the comprehensive Insurance Regulatory and Development Authority (IRDA) regulations of 2000, as well as the Securities and Exchange

Board of India (SEBI) Act of 1992 and the Prohibition of Insider Trading Regulations from 1992.

In the realm of food processing, the threat of UTP is addressed through legal frameworks that safeguard consumers and the integrity of the industry. The Food and Standards Act of 2006 is a notable example of legislation aimed at preventing and penalizing unfair trade practices within this sector.

Various other sectors also have their own distinct laws and legal mechanisms in place to combat UTP effectively. Recognizing the pervasive nature of these practices and the need for sector-specific interventions, authorities and regulatory bodies continue to evolve and adapt to ensure fair and ethical business conduct across industries. Understanding the prevalence of UTP and its impact on these sectors is essential for consumers, businesses, and policymakers as they collectively strive for a more equitable and transparent marketplace.

What does Consumer Protection refers to?

A 'consumer' is an individual defined under both the Consumer Protection Act, 2019, and the Consumer Protection Act, 1986. According to these legal definitions, a consumer can be broadly described as a person who engages with products or services in various ways. This involvement includes the act of purchasing products, availing services with either a completed or promised payment, or participating in delayed payment systems.

Consumer protection refers to the comprehensive set of measures and principles aimed at safeguarding the interests of individuals in the marketplace, extending from birth to death, regardless of their age, financial status, or other factors. It entails ensuring that every consumer can make informed decisions about the value of their money and that their rights are fully protected.

Prohibition is advocating for responsible choices and protecting our communities from the adverse effects of harmful substances.

Statutes and Legal Judgements that prohibits Unfair Trade Practice and Supports Consumer Protection:

Monopolies and Restrictive Trade Practices Act, 1969:

- In 1969: The MRTP Act was enacted to address monopolies and restrictive trade practices in India.
- Primarily focused on regulating monopolistic and anti-competitive behavior.
- Included provisions to deal with restrictive trade practices.
- Established the Director General of Investigation and Registration (DGIR) for investigating complaints.
- The MRTP Commission was created to adjudicate on matters related to monopolies and restrictive trade practices.

- The MRTP Commission could order the cessation of unfair trade practices if found prejudicial to the public interest or consumer welfare.

Consumer Protection Act, 1986.

- Unfair trade practices, previously under the MRTP Act, were no longer covered under the Competition Act.
- The provisions related to unfair trade practices were shifted to the Consumer Protection Act of 1986 (COPRA).
- The COPRA introduced a three-tier quasi-judicial system to address consumer grievances, including complaints against unfair trade practices.

Competition Commission of India

Analysing the Landscape

The economic landscape in India changed significantly due to liberalization and globalization. The need for more comprehensive mechanisms to regulate business practices and promote competition became evident.

The Competition Commission of India was formed to enhance competition in the Indian economy

1. In the case of *Sh. Ravi Beriwal v. Lexus Motors Ltd (2017)*: The Commission clarified that allegations of unfair trade practices are not inherently covered under the Competition Act, 2002.

The Commission evaluated the allegations from the standpoint of Section 4 of the CA, 2002, which addresses the abuse of a dominant position in the market.

2. *M/s Kiran Enterprise v. M/s Abbott Healthcare Pvt. Ltd (2017)*: The informant alleged that the opposite party was engaged in unfair trade practices.

However, the CCI, after reviewing the evidence, chose to examine the case based on Sections 3 and 4 of the CA, 2002.

In its final order, the CCI concluded that the opposite party had not violated any provisions of Sections 3 and 4 of the CA, 2002. These sections relate to anti-competitive agreements and abuse of a dominant position, respectively.

3. *M/s Indiacan Education Pvt. Ltd v. M/s Aldine Ventures Pvt. Ltd & others (2016)*: The informant filed a case against the opposite party under Section 19 of the CA, 2002.

The grounds for the case were that the opposite party's alleged conduct amounted to unfair trade practices and could have an adverse effect on competition in India.

However, the CCI, in this instance as well, examined the matter under the provisions of Sections 3 and 4 of the CA, 2002.

The CCI determined that the opposite party did not hold a dominant position in the market, and therefore, the issue of abusing a dominant position did not arise.

In summary, these cases reveal that the CCI does not directly investigate unfair trade practices. Instead, it focuses on assessing anti-competitive agreements (Section 3 of the CA, 2002) and potential abuses of dominant positions (Section 4 of the CA, 2002) under Section 19 of the Competition Act, 2002.

The Competition Act, 2002

- The MRTP Act was repealed, and the Competition Act was introduced to replace it.
- The Competition Act focused on promoting and preserving competition in India's markets.
- Unlike the MRTP Act, the Competition Act did not explicitly address unfair trade practices.
- The Competition Act dealt with various aspects of competition law, including anti-competitive agreements, abuse of dominance, and regulation of combinations.

The evolution of addressing unfair trade practices in India is a multifaceted journey. It commenced with the introduction of the Monopolies and Restrictive Trade Practices (MRTP) Act of 1969, primarily designed to counteract monopolistic and restrictive trade behaviors. In 1984, an important amendment was made, augmenting the MRTP Act with an additional chapter explicitly targeting unfair trade practices. This expansion of scope led to the establishment of a vital regulatory body known as the Director General of Investigation and Registration (DGIR). The DGIR was vested with the authority to investigate complaints pertaining to both restrictive and unfair trade practices. To adjudicate such cases, the MRTP Commission was instituted as a judicial body, endowed with the power to issue cease and desist orders against unfair trade practices that were found to be prejudicial to public interest or consumer welfare.

The landscape of trade practices in India underwent a seismic transformation with the advent of liberalization and globalization, necessitating a more robust regulatory framework. In response to this, the Competition Commission of India emerged as a key institution responsible for promoting and preserving competition in the economy. This shift in approach led to the eventual repeal of the MRTP Act. Consequently, the responsibility for addressing unfair trade practices was transferred to the Consumer Protection Act of 1986 (COPRA), which marked a pivotal moment in the realm of consumer protection.

The COPRA introduced a three-tier quasi-judicial structure comprising the District Forum, State Forum, and National Forum, providing avenues for consumers to seek redress for grievances against defective goods, deficient services, and unfair trade practices. However, a

significant shift occurred within the COPRA - while the MRTP Act allowed individual consumers to initiate cases of unfair trade practices, the COPRA restricted this authority to consumer associations and governmental bodies.

Although the COPRA represented a significant step forward in consumer protection, it encountered a series of challenges. Notably, the quasi-judicial redressal bodies established under the COPRA lacked investigative powers and faced infrastructural limitations, especially at the local level. This reality led to low consumer confidence in the dispute resolution system, with cases often languishing for years before reaching a final verdict.

In response to these challenges, there is a recognized need to establish a dedicated Consumer Protection Agency in India. This agency would focus on investigating cases involving unfair trade practices, misleading advertisements, and unsafe products that affect a substantial number of consumers. The research study aims to document prevalent unfair trade practices in the Indian market, ultimately informing the development of guidelines and recommendations for the establishment of such an agency.

Through the collection of anecdotal evidence, this research endeavor seeks to influence improvements in the legal and regulatory framework, ensuring its alignment with the unique needs and developmental stage of the Indian economy and markets, rather than relying on borrowed concepts from other jurisdictions.

How is the Act of Consumer Protection 2019 different from Consumer Protection Act, 1986?

The implementation of the Consumer Protection Act, 2019 in India on July 20th, 2020, marks a significant transformation in the landscape of consumer rights and protection within the country. These guidelines have been introduced to address the evolving nature of consumer issues, particularly in the context of the growing e-commerce sector. Let us delve into the various aspects of these guidelines:

1. ***Geographical Convenience:***

The Act offers consumers the convenience of filing complaints from their own place of residence, simplifying the process of seeking redress. Additionally, e-filing of complaints streamlines this further, embracing the digital age.

2. ***Fee Waiver:***

To the benefit of consumers, claims up to Rs 5 lakhs no longer require fees, reducing financial barriers to seeking justice.

3. ***Consumer Empowerment:***

Consumers can now take control of their cases by representing themselves through video conferencing, reducing the reliance on hiring legal professionals. This empowers individuals to take direct action in protecting their rights.

4. Product Liability:

The introduction of the concept of product liability ensures that manufacturers and service providers are held accountable for negligence. This means that consumers can seek substantial compensation when harmed by substandard products or services.

5. Class Action Suits:

Inspired by practices from the United States, these suits enable groups of aggrieved consumers to join forces, reducing legal costs and improving the chances of resolving disputes and securing settlements.

6. Legal Consequences:

The guidelines bring forth strict penalties, including imprisonment, for producers of counterfeit goods and those involved in misleading advertising. While celebrities endorsing products may not face legal penalties, they can be prohibited from endorsing if the advertisement is deceptive.

7. E-commerce Regulation:

The Act places stringent regulations on e-commerce companies, compelling them to disclose essential product information, including the country of origin. Moreover, they are required to address consumer grievances within prescribed timeframes, enhancing the protection of consumers in online transactions.

8. Mediation and Dispute Resolution:

The guidelines actively promote the use of mediation for the resolution of consumer disputes. This approach not only saves time and resources but also provides a more efficient and less adversarial means of resolving issues.

9. Empowering Consumer Rights:

The Act grants consumers a set of rights, including the right to safety, information, choice, redressal, and the right to be heard. Moreover, it emphasises the importance of consumer education and the option of mediated settlements.

These guidelines place a significant responsibility on businesses that cater to consumers. They are required to exercise heightened care and vigilance in ensuring the quality, quantity, and safety of their products and services. The establishment of Consumer Affairs Committees and the availability of online mediation options provide businesses with the opportunity to proactively address consumer complaints, potentially avoiding the expenses associated with defending cases in remote consumer courts and safeguarding their reputation.

In summary, these new guidelines represent a major step towards prioritizing consumer welfare, aligning India's consumer protection regulations with contemporary challenges and expectations, and ensuring that consumers' rights are protected in an increasingly digital and global marketplace.

In Brief: Competition Law vs. Consumer Protection Law

The comparison between competition law and consumer protection law, particularly in the context of addressing unfair trade practices, is crucial for safeguarding consumer welfare. Both areas of law play distinct but complementary roles in ensuring fair and competitive markets, protecting consumers, and promoting economic well-being. Here is a detailed comparison:

Competition Law:

Focus:

Competition law primarily concentrates on maintaining a level playing field in the marketplace by preventing anti-competitive behavior and preserving fair competition.

Regulatory Body:

Competition law in India is enforced by the Competition Commission of India (CCI).

Legal Framework:

In India, competition law is primarily governed by the Competition Act, 2002.

Key Provisions:

Competition law addresses issues like anti-competitive agreements (Section 3), abuse of dominant position (Section 4), and regulation of combinations (Section 6).

Objective:

The primary objective of competition law is to promote economic efficiency, innovation, and consumer choice by ensuring that businesses compete fairly and do not engage in practices that stifle competition.

Consumer Protection Law:

Focus: Consumer protection law is geared toward safeguarding consumers from unfair and deceptive trade practices and ensuring that they receive goods and services that meet certain standards.

Regulatory Body:

In India, the National Consumer Disputes Redressal Commission and State Commissions are responsible for enforcing consumer protection law.

Legal Framework:

Consumer protection law in India is primarily governed by the Consumer Protection Act, 1986 (COPRA).

Key Provisions:

Consumer protection law includes provisions to address unfair trade practices (Section 2(r)), misleading advertising, and product liability, among others.

Objective

The primary objective of consumer protection law is to protect consumers from deceptive and harmful practices, ensure they receive fair treatment, and have a means of seeking redress when their rights are violated.

Why Are Consumer Laws Made and What Are These Law Doing?**Consumer Protection Laws in India**

In India, one of the most significant consumer protection laws is the Consumer Protection Act, 1986. This law grants various rights to individuals, firms, and entities for the purchase of goods and services. The primary functions of these laws in India include:

1. **Consumer Redressal:**
Offering consumers a platform to seek redress against unfair practices, substandard products, or services.
2. **Information and Transparency:**
Ensuring that consumers have access to essential information about products and services, including their quality, price, and safety.
3. **Quality Assurance:**
Setting quality and safety standards for products, protecting consumers from health or safety risks.
4. **Dissuading Unethical Practices:**
By imposing penalties and legal consequences, these laws act as a deterrent against businesses engaging in deceptive or harmful practices.

Consumer protection laws are a crucial component of a fair and functioning market economy. They serve to protect consumers from exploitation, promote fair competition, and ensure that businesses adhere to ethical and transparent practices, ultimately contributing to the overall well-being and empowerment of consumers.

Unfair trade practices in the market have profound effects on both the market and consumers, necessitating the creation of consumer protection laws to address these issues. These laws play a crucial role in safeguarding consumer rights and interests.

Barriers to Consumer Protection

In recent years, consumers have faced a multitude of challenges when it comes to effectively exercising their consumer protection rights. These barriers have become increasingly apparent as the marketplace has evolved, especially with the growth of e-commerce. Addressing these obstacles is crucial to ensure that consumers can confidently assert their rights.

1. **Outdated Legislation:**
One of the primary issues has been the inadequacy of existing consumer protection laws. The Consumer Protection Acts, which was created long before the advent of e-commerce

and digital transactions, has proven to be inefficient in addressing modern consumer concerns.

2. ***Administrative Delays:***

The consumer dispute redressal forums, tasked with resolving complaints, have been plagued by administrative inefficiencies and backlogs. The extensive delays in handling consumer grievances have deterred many from seeking justice.

3. ***Lack of Awareness:***

A significant number of consumers are unaware of their rights or lack the knowledge required to navigate the intricate legal procedures necessary to assert those rights. This lack of awareness has, in many cases, left consumers feeling powerless.

4. ***Jurisdictional Challenges:***

The internet's borderless nature has posed a considerable challenge regarding jurisdiction in online transactions. Traditional principles of jurisdiction struggle to address disputes that transcend geographical boundaries.

Opinions on the Dynamics

Recent efforts have aimed to improve the situation and empower consumers to fully utilize their protection rights:

1. ***Legislative Reforms:***

The introduction of the Consumer Protection Bill 2015 represents a substantial step towards addressing the inadequacies of outdated legislation. This bill includes provisions for product liability and the establishment of the Central Consumer Protection Authority (COPRA) to protect consumer rights.

2. ***Streamlined Redressal Mechanisms:***

The revamping of consumer dispute redressal forums is critical. Measures to expedite the resolution of complaints and reduce backlogs should be put in place. Alternative dispute resolution mechanisms, such as mediation, can be promoted for swifter resolution.

3. ***E-commerce Inclusion:***

Given the exponential growth of e-commerce, it is essential that consumer protection laws encompass digital transactions comprehensively. Provisions for electronic complaints and jurisdiction based on the complainant's residence should be enforced.

4. ***Stringent Enforcement:***

Recent years have seen calls for stricter enforcement measures to combat misleading advertisements. Holding endorsers and celebrities accountable for their claims can act as a deterrent against deceptive marketing practices.

In conclusion, barriers to consumers' effective utilization of their protection rights have become more pronounced in recent years. To address this, a holistic approach involving legislative reforms, efficient redressal mechanisms, consumer education, and stringent enforcement is necessary. By overcoming these challenges, the aim is to provide consumers

with stronger protection in an evolving marketplace, fostering greater consumer confidence and satisfaction.

Responsible Authorities

In India, there are several entities responsible for handling Unfair Trade Practices:

Under The Consumer Protection Act, 2019:

1. Central, State, and District Consumer Protection Councils are established by the Indian government to serve as advisory bodies for consumer rights protection at various administrative levels.
2. The Central Consumer Protection Authority, formed by the government, has the role of overseeing and regulating matters related to consumer rights violations, unfair trade practices, and deceptive advertising that may harm the interests of the public. Its primary objective is to safeguard and enforce consumer rights as a collective.
3. District Consumer Disputes Redressal Commissions are local entities that offer consumers a platform to file complaints in cases where they feel deceived or misled by service providers or traders. These commissions are the lowest level of consumer courts, handling matters with a value of goods or services up to one crore rupees.
4. State Consumer Disputes Redressal Commissions, established under Section 42 of the Consumer Protection Act, 2019, operate at the state level and deal with cases where the value of goods or services exceeds one crore rupees but does not exceed ten crore rupees.
5. The National Consumer Disputes Redressal Commission, created by the central government under Section 53 of the Act, serves as the highest authority in consumer dispute resolution. It supervises the functioning of state commissions and district forums. The national commission handles cases with goods or services valued at more than ten crore rupees.
6. In case a person is dissatisfied with a decision made by the national commission, they have the right to appeal to the Supreme Court within 30 days from the date of the order. This period can be extended under certain circumstances. The Supreme Court only entertains such appeals when the appellant has deposited 50% of the amount in a prescribed manner.
7. To facilitate dispute resolution through mediation, both the State and Central Governments establish Consumer Mediation Cells. These cells are attached to District Commissions and State Commissions at the state level, as well as to the National Commission and regional Benches at the national level.

Regarding the Competition Commission of India:

The Competition Commission of India (CCI) operates as a separate corporate entity with the authority to enter into contracts and initiate legal proceedings in its own name. It comprises a chairperson and a minimum of two, and a maximum of ten, additional members.

The primary duty of the CCI is to identify and eliminate practices that negatively affect competition in the Indian market. It also promotes and sustains healthy competition, safeguards the interests of consumers, and ensures the free exchange of goods and services.

Additionally, the CCI is tasked with offering opinions on competition-related matters when referred by statutory authorities under various laws. It engages in competition advocacy, raising public awareness, and providing training on competition issues. The Commission holds the power to investigate and address anti-competitive agreements and cases of abuse of dominant market positions.

Comparing Legislation: UK, USA, RUSSIA

A comprehensive examination of the regulatory landscape concerning unfair trade practices in India, the United States, the United Kingdom, and Russia underscores the significant distinctions in their legal frameworks and enforcement mechanisms.

The United Kingdom boasts a well-structured consumer protection system, with central legislation offering a consistent regime of regulation and enforcement. Notably, its scope is intentionally broad, designed to address not only present but also future scenarios, even incorporating special provisions for digital content within the Consumer Rights Act.

In contrast, the United States relies on general consumer protection legislation, but a key divergence lies in the fact that individual states have the autonomy to establish their laws to combat unfair trade practices.

This results in considerable heterogeneity across states, with some lacking private cause of action, limiting consumers' ability to file suits in court. Furthermore, in the US, proving intent to commit a breach is often a prerequisite, unlike the UK, where breaches of the general prohibition demand a demonstration of the trader's knowing or reckless actions, albeit with certain offenses adhering to strict liability.

Moving to India, the scenario is unique, reflecting the nation's distinctive legal landscape. India has its own set of laws and regulatory bodies to safeguard consumer interests, where agencies like the Competition Commission of India play a pivotal role. The Indian legal framework is evolving to address contemporary consumer protection challenges effectively.

Meanwhile, Russia operates under the Competition Law of 2006, regulated by the Federal Anti-Monopoly Service. This law specifies various forms of unfair competition, such as the distribution of false information, incorrect product comparisons, and the misuse of intellectual property. However, like India, Russia's legal system differs significantly from the Western counterparts.

This comparative analysis illuminates the rich tapestry of global consumer protection and competition regulations, each country reflecting its cultural and legal nuances. Understanding these differences is essential for researchers, policymakers, and businesses operating in these regions to navigate the complex terrain of unfair trade practices effectively.

Conclusion

The chapter underscores the significance of Unfair Trade Practices (UTPs) within the Indian legal framework, particularly in the context of consumer protection and competition laws. UTPs encompass unfair and deceptive methods used to promote goods and services, necessitating their inclusion in consumer laws to safeguard consumer interests.

This distinction reflects the nuanced relationship between consumer welfare and competition. The evolution of UTPs from the Monopolistic and Restrictive Trade Practices (MRTP) Act to the Competition Act highlights legal adaptations. Consumer protection and competition laws play a pivotal role in addressing UTP challenges, ensuring fair trade, and enhancing consumer well-being, fostering trust and equity in a dynamic marketplace.



Consumer Protection in the Era of Artificial Intelligence

Dr. Mahendra Kumar¹

Abstract

In the era of liberalization and globalization, the consumer and his rights have gained paramount importance, not just locally but also globally. Consumer welfare means the maximization of consumer utility within the constraints faced by the consumer in terms of income, availability of goods, access, quality, etc. Artificial Intelligence (AI) maximizes consumer welfare by reducing the effect of these constraints through increasing efficiency and reducing time spent on certain activities. The advance of AI technologies has brought with it many benefits for consumers, in the form of new or improved products and services, more intelligent and faster delivery, reduced search and transaction costs, and increased safety. Furthermore, AI has proved to be beneficial for recognizing contracts and policies that are biased against consumers. Such pre-screening might be beneficial in developing economies where consumers might be incapacitated to understand the nuances and legalese within such contracts and policies. For this, the role of consumer rights organizations and civil society are very important for recognizing the areas where AI can be used to empower consumers through AI providing consumers information about their rights, alerting them about data breaches, etc. This research paper will highlight the risks and challenges posed to consumers in the context of the use of AI; the author will establish the future building blocks for the optimum use of technology especially artificial intelligence towards consumer welfare.

Keywords: Algorithm, Artificial Intelligence, Consumer Welfare, Discrimination, Ethical, Globalization and Liberalization, Privacy.

Introduction

A consumer is a natural person who engages in a legal transaction with an entrepreneur that is not immediately linked to his business or professional activity, but to his own daily and life-sustaining requirements. We may all be consumers, according to this definition. As a result, every natural person engages in numerous consumer transactions, including those in the financial market. Consumers are increasingly coming into touch with artificial intelligence systems in the context of completed transactions, which have been evolving rapidly in recent years. Artificial intelligence is rapidly being applied in consumer transactions. Consumers, on the other hand, are the weaker side in the transaction since they are not professional participants in the economic turnover. The asymmetry of knowledge and market power is a distinguishing feature of transactions in which customers are participants. Entrepreneurs who are the transaction's other party have a market advantage since, as professional entities, they have greater expertise, experience, and market information.

This advantage extends to their commercial power. The goal of consumer protection law is to address precisely this asymmetric market condition between consumers and enterprises. The

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introduction of artificial intelligence may pose new risks to consumers, since its rapid progress in recent years has resulted in a variety of issues, including those relevant to many fields of law. They are also concerned about consumer protection legislation. The concern is if the advancement of artificial intelligence will also endanger consumers. If so, should the consumer protection legislation be modified to improve their protection against these dangers in order to safeguard them? "Artificial intelligence" is a challenging topic to describe.² For example, it can be characterised as "a branch of computer science concerned with the design of machines and algorithms whose operation bears the hallmarks of intelligence."

As a result, the purpose of this paper's research is to address the following research questions. To begin, would the use of artificial intelligence pose new risks to consumers? Second, would the use of artificial intelligence in transactions need more consumer protection, and if so, to what extent? The topic is connected to the advanced technology sector, which includes, among other things, aircraft, robotics, electronics, nuclear physics, biotechnology and pharmaceuticals, telecommunications and media, and computer science. Artificial technology and its normative consequences are the focus of efforts in EU law. Naturally, the significance of emerging artificial technologies as a source of innovation is also emphasised.

The significance of the concerns examined is further supported by the fact that efforts are being made at the European Union level to safeguard consumers in the event of automated decision-making procedures. The European Parliament resolution stated unequivocally that the innovative potential of an automated decision-making system (e.g. virtual assistants and virtual advisers) is linked to their being properly informed about how the system works, how to reach people with decision-making powers, and how to control and correct decisions made by the system. As a result, one of the challenges for consumer protection law in the context of artificial intelligence will be to provide consumers with reliable information about these systems so that, in the event of contact with artificial intelligence, consumer decisions are aware of their consequences.

AI Impacts on Consumers

The growing influence of artificial intelligence (AI) in consumer-oriented sectors has transformed the way businesses operate and how individuals interact with products and services. Here's a brief overview of AI's impact in key sectors:

- AI is extensively used in e-commerce for personalized recommendations, targeted advertising, and efficient inventory management.
- Chatbots powered by AI facilitate customer interactions, providing real-time assistance, answering queries, and enhancing the overall shopping experience. Predictive analytics helps optimize pricing strategies and supply chain management, improving efficiency and customer satisfaction.
- Finance: AI plays a crucial role in the financial sector through algorithmic trading, fraud detection, and risk management. Chatbots and virtual assistants are employed for

² Available on <https://ms.serbian-books.se/book/22226001/434435/big-data-a-game-changer-for-insurance-industry.html>

customer support and financial advice. AI-driven credit scoring models analyze a vast array of data to assess creditworthiness, enabling more accurate lending decisions.

- **Healthcare:** AI is revolutionizing healthcare with applications in diagnostic imaging, drug discovery, and personalized medicine. Machine learning algorithms analyze medical data to identify patterns and assist in early disease detection. Telehealth platforms utilize AI for virtual consultations, predictive analytics, and remote patient monitoring, improving accessibility and healthcare outcomes.
- **Smart Devices:** AI is embedded in smart devices such as smartphones, smart speakers, and other wearables. Virtual assistants like Siri, Google Assistant, and Alexa leverage AI for natural language processing and contextual understanding, enhancing user interactions. Smart home devices use AI to learn user preferences, automate tasks, and optimize energy consumption.
- **Automotive:** In the automotive industry, AI is integral to the development of autonomous vehicles, enhancing safety and efficiency. AI-powered navigation systems provide real-time traffic updates and optimize routes for drivers. Predictive maintenance using AI helps prevent vehicle breakdowns by anticipating potential issues based on data analysis.
- **Customer Service:** AI-driven chatbots and virtual agents are increasingly used in customer service across various sectors. Natural Language Processing (NLP) enables these systems to understand and respond to customer inquiries, improving response times and efficiency. Sentiment analysis helps businesses gauge customer satisfaction and identify areas for improvement.³
- **Education:** AI is employed in educational technology for personalized learning experiences, adapting content to individual student needs. Intelligent tutoring systems use machine learning to assess student performance and provide targeted assistance. Automated grading and assessment tools streamline the evaluation process for educators.⁴

Transformative benefits and potential pitfalls for consumers in the age of AI

In the age of artificial intelligence (AI), there are transformative benefits that have the potential to significantly impact consumers positively. However, alongside these benefits, some potential pitfalls and challenges need careful consideration. Here's an overview of the transformative benefits and potential pitfalls for consumers in the age of AI:

Transformative Benefits

1. **Personalization and Improved Services:** AI enables the customization of products and services based on individual preferences and behaviours, providing consumers with highly personalized experiences. For Example, Personalized recommendations on

³ Available on <https://fastercapital.com/content/Why-ai-marketing-tools-are-secret-to-personalizing-customers-experiences.html>.

⁴ Available on <https://www.quora.com/Which-learning-management-system-LMS-is-more-suitable-for-distance-virtual-education-or-e-learning-in-higher-educational-institutions-HEIs>.

streaming platforms or e-commerce sites enhance user satisfaction and engagement. (Alexa, Google Home)

2. **Efficiency and Convenience:** AI automates routine tasks, reducing the time and effort required for various activities, leading to increased efficiency and convenience. For Example, Chatbots in customer service streamline query resolution, providing quick and efficient support.
3. **Healthcare Advancements:** AI contributes to advancements in healthcare, including faster diagnostics, personalized treatment plans, and improved patient care. *For Example:* AI algorithms analyzing medical images can assist in the early detection of diseases.
4. **Enhanced Decision-Making:** AI systems process vast amounts of data to assist in decision-making, providing valuable insights and improving the quality of choices. *For Example,* Financial institutions use AI for risk assessment, aiding in more accurate lending decisions.
5. **Automation in Daily Life:** AI-driven devices and systems automate daily tasks, making life more convenient and allowing individuals to focus on more meaningful activities. *For Example,* Smart home devices use AI to learn user preferences and automate lighting, temperature control, and security.

Potential Pitfalls

1. **Privacy Concerns:** The extensive use of AI often involves the collection and analysis of large amounts of personal data, raising concerns about privacy infringement. *For Example,* Personalized advertising based on user behaviour may lead to concerns about data exploitation.
2. **Algorithmic Bias:** AI systems can inherit biases present in training data, leading to discriminatory outcomes and reinforcing existing societal inequalities. *For Example,* Biased algorithms in hiring processes may perpetuate gender or racial biases.
3. **Job Displacement:** Automation driven by AI technologies can lead to job displacement in certain industries, impacting employment opportunities for certain demographics. *For Example,* Manufacturing jobs are being replaced by AI-driven robotic systems.
4. **Security Risks:** The integration of AI into critical systems poses security risks, as malicious actors could exploit vulnerabilities in AI algorithms. *For Example,* Cyber-attacks targeting AI-driven infrastructure in finance or healthcare can have serious consequences.
5. **Lack of Transparency:** The complexity of AI algorithms can lead to a lack of transparency, making it challenging for consumers to understand how decisions affecting them are made. *For Example,* Unexplained algorithmic decisions in credit scoring may lead to distrust among consumers.

Recognizing these transformative benefits and potential pitfalls is crucial for policymakers, businesses, and consumers to work together in creating a responsible and ethical framework for the development and deployment of AI technologies. This approach ensures that the benefits of AI are maximized while minimizing the risks and negative consequences for consumers.

Data Privacy and Security

Data privacy and security are paramount considerations in the development and deployment of AI systems that involve the collection, processing, and storage of consumer data. Prioritizing data privacy and security in AI systems involves adopting a holistic approach that encompasses technical, organizational, and legal measures. By integrating these principles and practices, organizations can mitigate risks, protect consumer privacy, and foster trust in the deployment of AI technologies.

Current Regulations and Framework around the World

Several regulations and frameworks around the world address data protection, with a focus on safeguarding individuals' privacy and ensuring responsible handling of personal data. One of the most notable regulations is the General Data Protection Regulation (GDPR) in the European Union.⁵ Additionally, various countries have implemented or are in the process of developing their own data protection initiatives. Here's an examination of the GDPR and some examples of emerging national initiatives:

General Data Protection Regulation (GDPR) The GDPR is a comprehensive data protection regulation that applies to all EU member states and has extraterritorial reach, affecting organizations that process the personal data of EU residents. The *Key Principles of this GDPR is as follows*⁶:

- **Lawfulness, Fairness, and Transparency:** Data processing must be lawful, fair, and transparent.
- **Purpose Limitation:** Data should be collected for specified, explicit, and legitimate purposes.
- **Data Minimization:** Only necessary data should be processed.
- **Accuracy:** Data must be accurate, and reasonable steps should be taken to rectify inaccuracies.
- **Storage Limitation:** Data should be stored only for as long as necessary.
- **Integrity and Confidentiality:** Secure processing to ensure data integrity and confidentiality.

There are certain Rights related to Data Subjects which are provided by GDPR is:

- **Right to Access:** Individuals have the right to know whether their data is being processed and for what purpose.
- **Right to Erasure (Right to be Forgotten):** Individuals can request the deletion of their personal data under certain conditions.
- **Right to Data Portability:** Individuals can request their data in a commonly used format for transfer to another service.

⁵ Available on <https://www.shrm.org/topics-tools/news/talent-acquisition/new-eu-data-law-will-change-how-engage-job-applicants>.

⁶ Available on <https://secureframe.com/blog/gdpr-compliance-checklist>.

Along with such principles and rights GDPR grants supervisory authorities the power to enforce compliance and impose fines for violations, with penalties of up to 4% of a company's global annual revenue or €20 million (whichever is higher)⁷

Data Protection Laws in India

Data protection has been of growing concern in India since the Supreme Court of India declared privacy a fundamental right in the *Puttaswamy*⁸ case in 2017. Following the Supreme Court's decision, from 2018 to 2022 there were multiple legislative attempts to enact a comprehensive data privacy law.⁹

The Indian legislator's efforts culminated with the enactment of the Act in August 2023. The Act regulates the processing of digital personal data and provides for a maximum penalty of INR 250 crore (approx. \$31 million) for the breach of its provisions. Importantly, the entry into force of the Act is to be announced by the Indian Government via notification in the Official Gazette.¹⁰

Notably, the Act only applies to digital personal data, imposes obligations on entities that qualify as 'data fiduciaries', establishes data subject rights for 'data principals', and generally allows outward transfers of data from India. In line with international standards, the Act establishes lawful grounds for data processing, and data subject rights, and introduces requirements including the appointment of a consent manager, vendor management, and data security.

The Act is accompanied by other legislation which provides personal data protections, namely the Information Technology Act, 2000 ('the IT Act'), as amended by the Act, and the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011 (the SPDI Rules) issued thereunder.¹¹

Measures to ensure the security of Consumer Data

Ensuring the secure handling, storage, and transmission of consumer data is critical for safeguarding privacy and maintaining trust. Organizations must implement robust measures to protect sensitive information from unauthorized access, data breaches, and other security threats. Here are key measures to enhance the security of consumer data:¹²

- Use secure communication protocols (e.g., HTTPS) to encrypt data during transmission over networks. Implement encryption for data stored in databases, servers, or cloud environments to protect against unauthorized access.

⁷ Available on <https://moleremovalservice.com/megnut-leaks>.

⁸ (2017) 10 SCC 1

⁹ Available on <https://www.dataguidance.com/jurisdiction/india>.

¹⁰ Available on <https://www.dataguidance.com/news/india-digital-personal-data-protection-act-published>.

¹¹ Available on <https://www.dataguidance.com/jurisdiction/india>.

¹² Available on <https://www.linkedin.com/advice/1/how-do-you-manage-software-project-implementation-cauxc>.

- Assign access rights based on roles to ensure that only authorized personnel can access specific data and implement strong authentication mechanisms such as multi-factor authentication to verify the identity of users.
- Collect only the minimum amount of data necessary for the intended purpose to reduce the potential impact of a data breach.
- Conduct regular security audits to identify vulnerabilities and weaknesses in systems. Implement continuous monitoring to detect and respond to security incidents promptly.
- Store sensitive data in secure environments with restricted access and regularly update and patch systems to address known vulnerabilities.
- Regularly back up consumer data to prevent data loss in case of accidental deletion, system failures, or cyber-attacks as well as test the restoration process to ensure the integrity of backups.
- Use secure protocols (e.g., TLS/SSL) for transmitting sensitive data over networks. Avoid transmitting sensitive information over unsecured channels.¹³
- Educate employees on data security best practices, including the importance of strong passwords and the identification of phishing attempts. Conduct regular training sessions to keep staff informed about evolving cybersecurity threats.
- Implement data masking to replace sensitive information with non-sensitive placeholders in non-production environments. Consider anonymizing data to protect individual identities while maintaining data utility.
- Follow secure coding practices during the development of applications and software to mitigate vulnerabilities. Regularly update and patch software to address security vulnerabilities.
- Develop and maintain an incident response plan to guide actions in the event of a security incident. Conduct regular drills and simulations to ensure a swift and effective response.
- Stay informed about data protection regulations applicable to your industry and location (e.g., GDPR, CCPA). Ensure compliance with legal requirements related to the handling and storage of consumer data.
- Assess the security practices of third-party vendors and service providers who handle consumer data. Ensure that vendors follow security standards and have appropriate safeguards in place.¹⁴
- Secure physical access to data storage facilities, data centres, and other locations where consumer data is stored. Implement security measures to protect against physical theft or tampering.

Conclusion and Suggestions

Consumer protection in the era of technology requires a multifaceted approach that combines legal frameworks, technological innovation, and consumer empowerment. By addressing privacy concerns, enhancing security measures, and promoting ethical business practices,

¹³Available on <https://www.breachesense.com/blog/vulnerabilities-cause-data-loss>.

¹⁴ *Ibid.*

society can navigate the digital landscape while ensuring the well-being of consumers. The integration of AI in these consumer-oriented sectors not only enhances efficiency and personalization but also presents challenges related to privacy, security, and ethical considerations, emphasizing the need for robust consumer protection measures in the AI era.

In order to navigate the challenges posed by the integration of artificial intelligence (AI) and ensure a fair, transparent, and secure AI landscape, a collaborative effort is essential. A call to action for various stakeholders—policymakers, businesses, and consumers—can contribute to the development of responsible AI practices. Policymakers should enact and update legislation that addresses the unique challenges of AI, ensuring clear guidelines on data protection, algorithmic transparency, and ethical AI development. Stakeholders should foster collaboration with other nations to establish harmonized global standards for AI governance, recognizing the cross-border nature of AI technologies.

Business houses should prioritize ethical considerations in the development and deployment of AI systems, focusing on transparency, fairness, and accountability. They can allocate resources to educate consumers about AI technologies, their rights, and the measures in place to protect their data and privacy. Consumers can demand transparency from businesses and demand clear explanations of how AI systems make decisions that impact consumers.

They should invest in personal data literacy to understand the implications of data sharing and the potential risks associated with AI technologies. Consumers must choose products and services from companies that prioritize ethical AI development, transparency, and user rights. By heeding this call to action, stakeholders can contribute to the establishment of an AI landscape that prioritizes fairness, transparency, and security. Through ongoing collaboration and a commitment to responsible AI practices, we can harness the benefits of AI while safeguarding the rights and well-being of individuals.



Consumer Culture and Democratic Function

Dr. Vijay Kumar¹

Abstract

The preferred political arrangement around the globe is democracy, while most of the nation states have organised themselves around capitalist market economy. While democracy requires citizens, capitalist economy requires consumers. In a capitalist market economy, Individual as consumer exercises its choice, preferences and bargaining power vis-à-vis market forces or other consumers as stand-alone entity. However, citizenship as very distinct identity of Individual in a democracy though makes them as bearers of all kinds of political rights but it also requires them to have some kind of duty, responsibility positive feelings for fellow citizens and most importantly requires them to act in unison with them. Therefore, according the contemporary political-- economic arrangement in a nation state, Individual role as a citizen and as a consumer intersect with each other, which at some situation and point reinforce each other. However, simultaneously, at a different point of time because of this dual role, there emerge contradictions. In this back ground, while taking some of the pertinent issues of contemporary times such as (1) fast spread commodification of all sectors of society including the public goods (i.e. health and education) (2) persistence of economic inequality among individual in a society as a result of capitalist market function (3) the use and influence of consumer- market strategy in democratic functioning, this paper tries to argues that though consumerism as a activity in its own right plays an important role in human life and their development , the spread of consumer culture and its influence on democratic politics really turns out detrimental and plays stultifying role for democratic politics as such.

Keywords: Consumerist culture, democracy, Democratic Function, Economic inequality, Privatization

Introduction

Consumerist culture has been defying spirit of modern time. More than anything, it has become the sole criteria, symbol and parameter of individual success as well as having meaningful life. Consumer culture is a kind of culture which justifies and create the conditions for unrestrained and uncontrolled pattern of consuming, buying and possessing all kinds of goods, service and product even beyond one's purposeful wants, need and requirements. This consumer culture has become so pervasive in current times that it has become reflective of once personality, overall status and identity². Other deeply needed individual qualities such as honesty, sincerity, truthfulness doesn't find much resonance in the absence of individual most sought after role as consumer in a market society.

Human being as consumer of good and services existed with the beginning of human history, though in a quite different forms and manner i.e. people in initial stage of civilization had

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² Stearns, Peter N. *Consumerism in World History the Global Transformation of Desire*; 2nd Edition, February 2006; London Routledge; Kerryn Higgs. "How the world embraced consumerism"; 21st January 2021; available on <https://www.bbc.com/future/article/20210120-how-the-world-became-consumerist>

meagre wants and needs and were simply dependent on natural produces/products. However, as subsequent development changes society from simple to complex and the consequent diversification of every sector of society led to spurts in various scientific innovation and economic developments which intensified human necessity, wants and desire fourfold and in fact all the three aspects reinforce each other's. Most importantly the exponential growth of wants and needs--- as an ultimate pillars of consumer culture--- owe its origin to the advent of capitalist market economy which has been main propelling force behind the spread of consumer culture.

As far as democracy is concern, as a political organizing principle or method it has been emerge as the most advanced and desirable arrangement to govern the human society. However, this arrangement depends on following certain norms and ethics could not be assumed as fix framework, incorruptible and unbreakable in nature. In fact, these norms and ethos is a matter regular practice which must be get reflected through citizens acts and behaviour. Therefore, democracy only gets success when it becomes habit of heart and mind of the people.

The hard reality is, in the absence of democratic ethics and value this political arrangement loses its relevance and becomes instrument in the hand of fewer individuals to get benefited in the name of larger masses while leaving them in their own fate and destiny. In this context, more than political system, it becomes ethical value. Even democracy requires not in acting alone but in togetherness- as act of concert. However, current consumer culture ---as transactional and ad- hoc commitment between potential consumer and seller -become deterrent to the success of democracy, which requires solid foundation of mutuality, reciprocity and trust on other fellow citizens.

Privatization, commodification drive and consumer culture

As has been mention initially in the paper that, capitalist political economy has become the default economic system around the globe. In most of the nation this economic model is coexisting with all kinds of political system i.e. monarchy, military rule and authoritarian regimes as well as democracy. The driving principle of capitalist economy has been unrestrained motivation of profit maximization and here market becomes the main arbiter determining the relationship between consumer, commodity and their sellers. Slowly but steadily governments around the world are withdrawing from economic activities and the void is being filled by either private entity or private individual.

Now with capitalist economy coming to its new phase known as neo-liberal economy, the drive of privatization of the various economic sector has reached its zenith. In this economic setup, the belief in some of the goods and service i.e. health, education, various kind of social security majors being not as commodity item but as common good which should be available to everyone irrespective of one's economic status is also getting challenged regularly on various platforms such as university seminars, research articles, media and more so through various governmental legislation. This privatization mantra under the aegis of neo- liberal economy also has a new but detrimental effect—it has slowly changed and still on a driving

spree to turn everything and anything as commodity including naturally produced water, air as well as space. The accompanied consequent impact is- everything has now turned into commodity available in market for purchasing and selling. And it is not just about the use value of the commodity but the product also becomes important in terms of its exchange value.

It means thing not just become valuable because of its satisfying needs (use value) but also how it could be converted into other things i.e. money, other products. This kind of commodification either reduce or priorities Individual identities just as a potential consumer or buyers in the market place, being indifferent to all kinds of equally important other identities i.e. Individual as citizen. Talking in the same vein while addressing the different issue, classical political philosopher John Stuart Mill, a British philosopher and economist, was of the view that “wage labour undermines some of the characteristics and capacities that political democracy depends on. For him wage labourers are not free to exercise their political rights and that they are vulnerable to exploitation by their employers. Mill argues that the state should intervene to protect workers’ rights and that workers should have a say in the decisions that affect their lives”³.

In opposition to the increasing spread and reach of marketization to all most every sector of society including sperm, embryo and human body parts, prominent political philosopher Michel Sandel has outlined the moral limits of markets and argues that human life gets vitiated when market started to allocate everything for human being⁴. Because there is substantive value attached to many things which could neither be sell nor could be purchased i.e. giving money to incentivises the study could make children to study many books but it could not really propel them to be concerned for substantive meaning/ message of the books.

Therefore, market and money propel formal act while less concerned for substantive value which is the most important aspect. In addition to this, the craze of consumerism has tendency to rewards even those activities which has no major productive role for common people such as the proliferation of middle man activities as well as contract business in all sectors of society. On the other hand, there are other important activities such as care works (taking care of children in their initial stage, looking after the people in their latter phase (old age) of life, as well as attending the seek people, people involved in infrastructure development work (labour, supervisors engineers) as well much foundational work of the society (such as teaching and medication) does not get paid properly.

Therefore, rather than substantiative value it is symbolic value and status which drives the consumer culture and puts one kind of profession and their practitioners in a much disadvantageous position than the people involved in other kinds of profession. Therefore, this

³ Satz, Debra, “What Is Wrong with the Commodification of Human Labor Power: The Argument from “Democratic Character”, in Julian David Jonker, and Grant J. Rozeboom (eds), Working as Equals: Relational Egalitarianism and the Workplace.

⁴ Sandel, Michael J. *What Money Can't Buy: The Moral Limits of Markets*. 2012 Farrar, Straus and Giroux.

kind of lopsided approach to disproportionately rewards some of the inconsequential activities vis-à-vis the more important activities creates status hierarchy in a society which in turn breeds cynicism, anger, jealousy, anxiety and frustration among the people.

Therefore, rather than bringing prosperity and well-being for every one this culture brings common disappointment and hopelessness among the people. And ultimately, rather than bringing people to act together which is the basic requirement for the success of democratic politics, it alienates them from each other. Overall, this spread of consumer culture could neither be a suitable nor be considered to be a desirable development as far as the function and sustenance of democracy is concerned. Though one could think of moral, social, political and ecological limits on the marketizing drives of everything.

However, it seems, in current times market ethics or consumer culture has colonized the popular understanding to such a level that except ecological limits nothing could be seen standing in front of marketization juggernaut and consumerist culture⁵. However, to save the very spirit of democracy and norms there has been suggestion of “decommodification” -if not all but some quintessential goods and services, as being mentioned above, considered to be common goods (having same value and importance for every one). Once de-commodified, government would have legal and moral obligation to make it available for every one irrespective of their purchasing capacity as consumers⁶. And it will at least create a condition for every one being equal in some sense, which will surely help in creating strong democratic foundation and its function.

Economic Inequality and (democratic) Participatory Ethos

So as democracy requires equality in terms of people's status and identity as citizens and having similar political rights, capitalist political economy which has been the main driving force behind the consumerist culture and vice-versa, creates inequality among citizens on the basis of their dissimilar economic status and purchasing power as consumers. Though capitalist economic system and its accompanied method of consumerism produces huge economic resources. However, the uneven distribution pattern of existing resources and money gets reflected in people's unequal patterns of standard of living as well as overall lifestyle.

This kind of inequality and hierarchy even gets reflected in newly developed, fully furnished and properly arranged gated residential areas as an isolated island in a messy or unorganized society. These gated residential areas and their residents living as independent and isolated communities don't find outside vicinity as safe and secured places as theirs and this kind of uprooted feeling prevents them from having any kind of mutuality, communality and reciprocity with outsiders. Even outsiders don't find any kind of connections either with these areas or with those people who live here. This kind of vast difference in resources, living standards and life

⁵ Hermann, Christoph, 'Limits to Commodification', *The Critique of Commodification: Contours of a Post-Capitalist Society*, New York, 2021

⁶ Esping-Andersen, G. *The three worlds of welfare capitalism*. 1990 Cambridge: Polity Press; Esping-Andersen, G. 'Multi-dimensional Decommodification: a Reply to Graham Room', 2000 *Policy & Politics* 28 (3): 353—9.

style reflects and perpetuate the inequality among the citizens which make it difficult for having any common ground for attachments and reorganization of each other. Even certain government support for the people gets portrayed either as dole, charity or freebies.

Taking neoliberal formulations as ultimate truth it has been argued with much vigour that helping needy is not the government responsibility and doing away with it sooner or later would serve the nation well. People should live their own and does not expect any help from the government. This argument goes further, and all the important sector should hand over to the private individual or entity either through selling or through lease. Government work is not to manage the economic affairs but look after the law and order. In the pretext of critiquing the freebies as inconsequential and unsustainable method of government support, and rightly so, here the effort is to devaluing people's right for welfare majors claims as sign for the absence of industriousness, hardworking nature, self-reliant and economic conservative in the sense of being non-adjusting with the new norms of economic life as being self-reliant and self-dependent.

In order to address this issue and to prevent the dominance of one sector of society such as economy over another sectors of life i.e. social, political, Philosopher Michel Walzer has suggested the concept of "complex equality" which unlike principal of "simple equality" does not negates difference among people in terms of money and private property, though what he suggests that people having money should not be allowed to influence or dominates the other aspect of social life⁷. Though, in spite of being highly innovative this turn out to be quite demanding principle. And the main challenge is how to extricate one sector of society from the other sector. Though, at any rate inequality could not be an appropriate condition for the normal functioning of democracy.

Consumer and Citizen: Similar or Different?

Consumer plays most important role in a market place. As a consumer, not only one is simply treated as buyers of certain good and services but there are many rights attached to consumer role, which makes him/her as valuable stakeholder in a market society. As a consumer, Individual exercise choice and freedom in terms of what to purchase and what not to buy; he also exercises the right to get the service at par with his paid money.

In the sense that, consumers are entitled to avail exactly the same value of things or the service which are being claimed by product manufacturer and its seller, this could be other name of honouring the commitment. Even consumers rights get protected through the consumer rights law. Because of these attached features that makes consumers as important stakeholders in market apart from sellers, manufacturers or producers, there has been discussion that, could it be appropriate to use the same norms, principles and framework of consumer -market -sellers in the democratic political function too. In the sense of, democratic politics as market place and citizens or voters as consumers.

⁷ Walzer, Michael. *Spheres of Justice: A Defence of Pluralism and Equality*. Basic Books, 2010.

As has been mentioned initially, the same individual in democratic market society plays dual role, one as consumer in market place and the other as citizen in democratic politics in a nation state. And these two different roles are indispensable in its own right and could not be done away with. Because of this aspect, it has been an important issue of discussion that whether it would be appropriate to treat citizen in a democratic system with the same manner, principals and norms as it gets as consumer in market place: as consumer gets some kind of guarantee about the sellers and market claims regarding commodity through consumer laws, in the same manner there must be honour of poll promises and electoral manifestos by the leaders and party in a democracy.

And if commitment does not get fulfilled consumer are entitled to get compensation. Though at the surface level, using this consumer -market model in a democracy seems pretty rational idea and could have some validity, however beneath this rationality there is a question of ethics involved in it. Though in the face value, this so-called freedom and choice of democracy could be treated as truism without having any fault.

However, the reality is in a market arrangement, the way consumers are day in and day out targeted with multiple advertisements of the products through various sources of information such as print, electronic as well social media regarding the various kinds of claims and counter- claims about the product quality and their benefits, thinking of consumer's exercising free choice and freedom cannot hold the ground. And though there are various kind of mechanism such as consumer laws and consumers courts which protect the market there are other kinds of pull and pressure which checks consumers rights and their choices. Simultaneously, it is quite difficult to check the veracity of every claim of the manufacturer. Therefore, in spite of having some of really sustentative features worthy of emulation in a democracy.

Democracy works on quite different logic and norms. In this regard, political scientist CB Macpherson persuasively argues that the tendency of some of the democratic theory such as elite and pluralist tries to treat democracy as market place where political leaders compete for their votes in every five years and once the citizens exercise their choice their role ends and now it is the work of political leaders to rule the nation⁸. And for him, it could not be considered as appropriate theories of democracy. Because whereas the classical theory of democracy had throughout treated democracy as a human aspiration to get equal recognitions at par with the other fellow being- a kind of emancipatory project which always tries to bring powerless, deprives and downtrodden at the forefront of the society.

However, while treating simply as means through which human being could register their wants as political consumer in political market could not be right approach in understanding of democracy. Therefore, rather than elitist and pluralist model, it is a participatory model of democracy which is the most appropriate forms of democracy. Participatory democracy takes

⁸ Macpherson, CB, *Democratic theory-Essays in Retrieval* 1973, Oxford, Clarendon Press.

participation as the basis of democracy. Participation denotes active involvement of citizen in democratic politics. Here cooperation, reciprocity, duty vis-à-vis fellow citizen becomes the foundation of democracy for achieving good life to all citizens.

Conclusion

The role of Individual being as buyers of goods and services is one the most important role human being plays for its survival and well-being. However, neither the effort to convert everything as commodity in the influence of consumer culture is healthy sign for normal life, nor the reduction of Individual multiple and identity into a single identity of consumer could be consider as appropriate. In a market place, only the availability of money in one hand and their purchasing power enables them to occupy the important front row. And, those without having money gets relegated in the last row without any value or less value. Even the consumerist culture has negative impact in another sense: when it comes to share the burden of consumerist culture i.e. dwindling of natural resource, global warming due to unfettered industrialization drive, the increase in problematic health issues due to pollution etc everyone gets equally impacted.

However, irrespective of individual status and power as consumer in market place, in a democratic politics every one finds the same political rights as citizens as well as exercise equivalent voting right: one person one vote. At the surface level it seems that there is nothing problematic and even people appreciate it as major achievements of democratic politics which does not discriminates people on the basis their purchasing capacity of commodity in a market place. However, the negligible role of individual in market as consumer having bearing on the reality of being equal in terms of democratic rights and voting rights. In a capitalist economy market plays most important role in allocating the resource and goods to the individual. Even government of any/every hue and ideology could not ignore the importance of market operation and either the smooth or an uneven function of market influence the government function i.e. price fluctuation in market as well government monetary and fiscal policy hugely impact the government function.

Simultaneously, various kind of market force such as business lobby, investment caucus and traders' groups play very important role in the formation of government as well as try to influence to advance their business and trade interest. In the situation like this people having no resource find no voice and become either become less significant or without any value without having substantive voice and say in democracy. Consumer culture also creates hierarchy and difference between citizens on the basis their possession of particular product which erects invisible wall between citizens of the same nation. It hampers the feelings and act of togetherness, multiutility and cooperation among citizen which is a bedrock of on which foundation of democracy stands.

