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UNFAIR TRADE PRACTICES: CONSUMER LAW

AUTHORED BY - JANHAVI SHISODE

I. INTRODUCTION

A. BACKGROUND AND RATIONALE FOR THE STUDY

Consumer protection and fair-trade practices are pivotal to ensuring the rights of consumers and curbing exploitation in the marketplace.¹ However, despite laws and regulations, unfair trade practices persist, harming consumers financially and emotionally.² This study aims to analyze the existing legal framework on unfair trade practices in India concerning consumer law and examine potential improvements to enhance protection. India has witnessed an exponential increase in consumer disputes over the last two decades, especially concerning deficient products and services, misleading advertisements, restrictive or unfair trade practices, etc. This highlights the need for robust consumer redressal mechanisms and deterrent penalties against rogue companies. However, consumers still face challenges in obtaining remedies with over 3.3 million cases pending before consumer dispute redressal forums as of 2019.³ High litigation costs, delays due to pending cases, and lack of awareness about consumer rights compound their misery.⁴

The Consumer Protection Act of 2019 aimed to address this by establishing a three-tier structure of Consumer Disputes Redressal Commissions (District, State and National), enabling faster disposal of complaints, and harsher penalties.⁵ Despite these provisions, unfair trade practices continue unabated as unscrupulous entities devise innovative tricks to exploit loopholes. A 2020 study revealed that over 50% of people still fall victim to misleading advertisements about products and services.⁶ More recently, instant loan apps have emerged as the newest threat,

¹ Department of Consumer Affairs, Handbook on Consumer Protection Act 2019, at 1 (2020).

² Reena Sewraz, Unfair Trade Practices: Consumers Still Face Uphill Battle, FIN. EXPRESS (Sept. 13 2020), <https://www.financialexpress.com/money/unfair-trade-practices-consumers-still-face-uphill-battle/2087639/> (last visited Dec 8, 2023).

³ Id.

⁴ Sonam Chandwani & Yashasvi Rajpara, Consumer awareness: A key to enhance consumer protection in India, IPLEADERS (Feb. 20, 2022), <https://blog.ipleaders.in/consumer-awareness-key-enhance-consumer-protection-india/> (last visited Dec 8, 2023).

⁵ The Consumer Protection Act, No. 35 of 2019, INDIA CODE (2019), Acts of Parliament, 2019.

⁶ Anhad Miglani, More than 50% still falling for misleading ads in India, THE HINDU (Aug 06, 2020), <https://www.thehindu.com/news/national/more-than-50-still-falling-for-misleading-ads-in-india/article32286241.ece> (last visited Dec 8, 2023).

extorting huge sums as compound interest and processing fees through harsh recovery tactics.⁷ Thus, consumer vulnerability remains high despite legislative measures.

B. OBJECTIVES AND SCOPE OF THE RESEARCH

The key objective of this research is to critically analyze unfair trade practices concerning consumer law in India. It will identify deficiencies in the existing legal framework in effectively protecting consumer rights and suggest reforms to address them. Specifically, the study aims to:

1. Examine the evolution of unfair trade practices law in India and assess the efficacy of the Consumer Protection Act, 2019 in tackling new and emerging consumer threats.
2. Analyze key judicial precedents on unfair trade practices to identify persistent blind spots enabling consumer exploitation.
3. Evaluate the role of sectoral regulators like the Reserve Bank of India (RBI), Securities Exchange Board of India (SEBI) etc. along with consumer forums in safeguarding consumers from unfair conduct regarding banking, lending apps, capital markets etc.

Despite RBI regulations, citizens continue facing harsh recovery tactics, breach of data privacy etc. from instant loan apps.⁸ Hence, studying the interplay between regulators in tackling such entities could aid recommendations.

C. OVERVIEW OF UNFAIR TRADE PRACTICES IN CONSUMER LAW

Unfair trade practices refer to deceptive, fraudulent, or otherwise unethical business activities that harm consumers. Consumer protection laws aim to prevent such practices and provide consumers with legal recourse.⁹ In India, key laws governing unfair trade practices in business-consumer transactions include the Consumer Protection Act 1986 and 2019, Sale of Goods Act 1930, Indian Contract Act 1872, and various provisions under the Indian Penal Code.¹⁰ The Consumer Protection Act 1986 was the first law established to specifically protect consumers from

⁷ S. Chandrasekhar, How instant loan apps exhibit predatory tendencies, *BUSINESSLINE* (Sep. 16, 2022), <https://www.thehindubusinessline.com/money-and-banking/how-instant-loan-apps-exhibit-predatory-tendencies/article65939541.ece> (last visited Dec 8, 2023).

⁸ Harshita Tyagi & Mahima Singh, Fintech Lending Apps, Unregulated for Now, Pose Risks says RBI Working Group, *BLOOMBERG L.* (Sep. 22, 2022), https://www.bloomberglaw.com/product/blaw/bloomberglawnews/bloomberg-law-news/X9MGJH6S000000?bna_news_filter=banking-law (last visited Dec 9, 2023).

⁹ The Consumer Protection Act, 2019: An Overview, *PRS Legislative Research*, <https://prsindia.org/billtrack/consumer-protection-bill-2019> (last visited Dec 9, 2023)

¹⁰ The Consumer Protection Act, 1986, Section 2(r).

exploitation. It defines unfair trade practices broadly as practices that induce consumers to buy goods or services through deception, false representation, or omission of important information. The 2019 version expands the definition further to cover even indirect representations and implications as potential unfair actions. It also increases penalties for offenses.

Several business actions may qualify as unfair practices under the law. False or misleading advertisements making inflated claims about goods are common examples.¹¹ Providing defective, substandard, or hazardous products also falls in this category.¹² Unfair pricing through arbitrary increases or collusion to manipulate prices higher is prohibited. Financial frauds through pyramid schemes, prize offers, or other tactics are banned. The law requires that manufacturers and service providers conduct business ethically without compromising on safety, quality, durability or other aspects material to consumer interests.¹³ Recourse is available under both civil and criminal law. Consumers can directly file complaints and seek compensation for losses from specific businesses or even product endorsers under the Consumer Protection Act's provisions. Police complaints may also be registered for unfair trade offenses under the Indian Penal Code like cheating or breach of trust.¹⁴ In some cases, sector regulators also enforce additional rules specific to industries like banking, insurance telecom etc. to curb misconduct and consumer exploitation.¹⁵

II. DEFINITION AND CLASSIFICATION OF UNFAIR TRADE PRACTICES

A. STATUTORY DEFINITIONS IN CONSUMER PROTECTION LAWS

Consumer protection laws in India define key terms related to unfair trade practices in order to establish prohibited activities. The Consumer Protection Act of 2019 offers definitions for a "consumer", "unfair trade practice", "defect", and "deficiency" among other related terms.¹⁶ These definitions create the legal basis for identifying violations and enabling consumer redress. The Act defines a consumer as "any person who buys goods or hires services for consideration", with

¹¹ Id.

¹² Preventing Unfair Trading Practices: Analysis of the Consumer Protection Act, 1986, NUJS Law Review. <http://nujlawreview.org/wp-content/uploads/2020/09/Protected-Siddharth-S.pdf> (last visited Dec 9, 2023)

¹³ Rights of Consumers, National Consumer Helpline. https://consumerhelpline.gov.in/rights_consumers.aspx (last visited Dec 9, 2023)

¹⁴ C Salvadurai v. State of Maharashtra, (2013) 20 SCC 659

¹⁵ Unfair Trade Practices under Consumer Protection Act 2019, IPleaders. <https://blog.ipleaders.in/unfair-trade-practices/> (last visited Dec 9, 2023)

¹⁶ The Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India), § 2.

some exceptions for purposes of resale or commerce.¹⁷ This establishes the category of individuals granted legal rights under the Act. Unfair trade practices are then defined as practices by a trader that cause consumer harm in a variety of ways ranging from false representations to deliberate omissions of important information.¹⁸ The definition notes that for a trade practice to qualify as "unfair", it must occur in the context of a consumer transaction.

In addition to defining unfair trade practices, the Act also puts forth meanings for a defective good and deficient service. A defect refers to "any fault, imperfection or shortcoming" in the quality, quantity, potency, purity, or standards of goods or products.¹⁹ Deficiency indicates "any fault, imperfection, shortcoming or inadequacy" in the quality, nature, substance, or standards of service provided.²⁰ These definitions become important for consumers seeking redress - they must establish a defect in purchased goods or a deficiency in services rendered. The statutory language around these terms creates standardized criteria for identifying and evaluating unfair trade practices or unsatisfactory products/services in consumer transactions.

B. TYPES OF UNFAIR TRADE PRACTICES: DECEPTIVE ADVERTISING, FALSE CLAIMS, AND UNETHICAL MARKETING

Unfair trade practices that mislead, deceive, or take advantage of consumers are an unfortunate reality in the marketplace. Three major categories of unethical business conduct that commonly victimize buyers are deceptive advertising, false claims, and broader unethical marketing schemes. Understanding the types of deceitful tactics companies may use can empower consumers to recognize and avoid potential scams and make wise purchasing decisions.

- **Deceptive Advertising**

Deceptive advertising refers to promotional messages that contain false or misleading claims about a product or service. This may include fabricated or exaggerated statements about quality, price, performance, contents, efficacy, endorsements, or other features.²¹ For example, an ad stating that a supplement will help consumers "lose 10 pounds per week" contains a deceptive claim that falsely promises unrealistic weight loss results. Other common issues include "bait and

¹⁷ Id. § 2(7).

¹⁸ Id. § 2(47).

¹⁹ Id. § 2(10).

²⁰ Id. § 2(11).

²¹ Federal Trade Commission, "Advertising FAQs: A Guide for Small Business", <https://www.ftc.gov/tips-advice/business-center/guidance/advertising-faqs-guide-small-business>, (last visited Dec. 9, 2023).

switch” tactics luring customers in under false pretenses, price deception via fine print disclaimers and hidden fees, or misrepresenting a celebrity endorsement that was never authorized.²² While ads may contain some natural puffery, deceptive messages cross ethical lines by duping reasonable consumers about characteristics central to their purchasing choices. Such false advertising erodes buyer trust, compromises the integrity of the marketplace, and can cause financial harm to those misled into purchases under faulty assumptions. India’s Consumer Protection Act of 2019 allows aggrieved consumers to pursue litigation against companies engaging in false or misleading advertising.²³ Ethical marketers should thus take care to ensure promotional claims are evidence-based, accurate, and transparent.

- **False Claims**

False claims refer to untruthful or unsupported assertions that a company makes about its goods, services, or business operations. This differs from advertising deceit in that false claims occur in non-promotional contexts where consumers reasonably expect honesty and candor. For example, falsely stating that a food product is “organic” or “locally sourced” on its packaging would constitute an unethical false claim. Other common issues include making false statements about fair trade sourcing, charitable donations, sustainability certifications, or other credentialing that compounds consumer trust. While advertising mistruths are concerning, false claims directly printed on products or published officially by a company exacerbate the deception. Consumers cannot as easily identify the misinformation as marketing hyperbole since it is integrated into core product messaging. False claims thus exploit buyer vulnerability and trust in egregious ways that reflect low integrity. India's Legal Metrology Act punishes those who make false claims about product quantity, quality, or standards with fines and imprisonment.²⁴ Still, vigilant consumer action is also vital to counter unscrupulous false claim issues in the Indian marketplace.

- **Unethical Marketing Schemes**

Beyond isolated advertising deception or false claims, some companies perpetrate large-scale unethical marketing schemes to defraud consumers. These systematic, intentional efforts to mislead buyers and unfairly collect their money often involve layers of deception across multiple media platforms, sales networks, fake reviews, and more. Complex scams aim to profoundly betray consumer trust and rational decision-making to reap substantial ill-gotten gains. For

²² R. Garg, "The Law on Advertising & Endorsements in India", <https://www.mondaq.com/india/advertising-marketing-branding/715834/the-law-on-advertising-endorsements-in-india>, (last visited Dec. 9, 2023).

²³ The Consumer Protection Act, 2019, Act No. 35, Acts of Parliament, 2019 (India), § 2(28).

²⁴ The Legal Metrology Act, 2009, Act No. 1, Acts of Parliament, 2010 (India), § 52.

example, a fraudulent business may falsely pose as a charitable organization online to prey on donor benevolence and pocket contributions. Or a company might utilize misleading sales funnels, negative option enrollment, and subscription traps to strong-arm consumers into unintended purchases with their sensitive financial data. While clearly criminal, such orchestrated deception still relies on unethical marketing tactics and buyer psychology much like lawful businesses do - but without any restraint for ethics or truthfulness. These schemes reflect utter disdain for consumer rights and welfare compared to standard marketing puffery.

C. Comparative Analysis of Unfair Trade Practices Definitions Worldwide

Unfair trade practices (UTPs) refer to business activities that are deceptive, fraudulent, or otherwise unethical towards consumers. Many countries have laws prohibiting such practices in order to protect consumer rights. However, the specific definitions and scope of unfair trade practices regulations vary widely across different legal systems globally. In the European Union, the Unfair Commercial Practices Directive provides harmonized rules defining and prohibiting UTPs across EU member states. Under this directive, UTPs involve actions that are either misleading through providing false information or omission of material information, or aggressive through harassment, coercion, or undue influence.²⁵ The directive contains a general prohibition on such practices as well as more specific rules on issues like bait advertising, pyramid schemes, and timeshare contracts.

The United States takes a more fragmented approach, with the Federal Trade Commission (FTC) enforcing federal laws prohibiting “unfair or deceptive acts or practices” alongside additional state-level consumer protection statutes.²⁶ Section 5 of the FTC Act serves as the primary basis for federal UTP rules, focusing on deception through false or misleading claims as well as unfairness through causing consumer injury.²⁷ State laws often address issues like false advertising, breach of warranty, price gouging, and consumer credit abuses. In contrast, many developing countries have adopted wider definitions of UTPs that encompass not just deception and undue influence but also inequality of bargaining power between businesses and consumers.

²⁵ European Commission. Unfair commercial practices directive - Protection of consumers' economic interests. https://ec.europa.eu/info/law/law-topic/consumers/unfair-commercial-practices-law/unfair-commercial-practices-directive_en (last visited Dec 9, 2023).

²⁶ Federal Trade Commission. Unfair or Deceptive Acts or Practices. <https://www.ftc.gov/news-events/media-resources/truth-advertising/unfair-deceptive-acts-or-practices> (last visited Dec 9, 2023).

²⁷ 15 U.S. Code § 45 - Unfair methods of competition unlawful; prevention by Commission. <https://www.law.cornell.edu/uscode/text/15/45> (last visited Dec 9, 2023).

For example, India's Consumer Protection Act defines an unfair trade practice broadly as any act that causes consumer detriment through unfair methods or unequal bargaining power.²⁸ This captures issues like non-issuance of receipts, charging above maximum retail price, or hoarding and black marketing of goods.

III. LEGAL FRAMEWORK FOR CONSUMER PROTECTION

The legal framework for consumer protection in India is comprised of both statutory laws as well as judicial pronouncements by the Supreme Court and High Courts. The key statutes include the Consumer Protection Act, 1986, which provides the basic legal architecture, as well as other laws like the Indian Contract Act, 1872, and the Sale of Goods Act, 1930 which contain provisions relevant to consumer transactions.²⁹

The Consumer Protection Act (COPRA) is the main legislation that aims to protect consumer interests and provide a grievance redressal mechanism.³⁰ As per the Statement of Objects and Reasons of the Act, it seeks to promote and protect the rights of consumers by regulating unfair trade practices as well as providing speedy and inexpensive redressal of consumer grievances.³¹

Some key features of COPRA are:

- Establishment of Consumer Disputes Redressal Forums and Commissions: COPRA provides a three-tier quasi-judicial consumer disputes redressal mechanism at the national, state and district levels known as Consumer Disputes Redressal Commissions (National, State and District).³² This allows consumers easy access to justice without undergoing the convoluted court process.
- Definition of key terminologies: Several key terms like consumer, service, defect, deficiency, unfair trade practice etc. have been defined in the Act.³³ This provides conceptual clarity regarding scope and coverage of the law.

²⁸ The Consumer Protection Act, 2019. <http://egazette.nic.in/WriteReadData/2019/210422.pdf> (last visited Dec 9, 2023).

²⁹ The Indian Contract Act, 1872; The Sale of Goods Act, 1930.

³⁰ The Consumer Protection Act, 1986, Statement of Objects and Reasons.

³¹ Id.

³² The Consumer Protection Act, 1986, Chapter II.

³³ Id., Sec. 2.

- Reliefs available to consumers: The forums and commissions under COPRA have the power to issue cease and desist orders against unfair trade practices as well as award compensation and other reliefs to affected consumers.³⁴ This enables legal recourse against unscrupulous business conduct.

In addition to COPRA, there are other legislations which contain provisions relevant to consumer protection:

- The Indian Contract Act, 1872 defines the elements of a valid contract as well as contractual rights and duties.³⁵ This forms the basis of consumer transactions.
- The Sale of Goods Act, 1930 stipulates conditions in contracts of sale of goods as well as implied warranties regarding quality, fitness for purpose etc.³⁶ This has implications regarding consumer rights.
- Sector specific laws like the Food Safety and Standards Act, Drugs and Cosmetics Act etc. also aim to regulate quality, safety and unfairness regarding goods and services in those sectors.

IV. DECEPTIVE ADVERTISING AND MISLEADING PRACTICES

Deceptive advertising and misleading claims are unfair trade practices that can greatly harm consumers. Under consumer protection laws in India, advertisements must not contain false or misleading claims about a product or service.³⁷ Engaging in such deceptive advertising constitutes an unfair trade practice and is prohibited. The Consumer Protection Act of 2019 specifically defines an “unfair trade practice” as advertising goods or services in a manner that deceives or misleads consumers about the nature, substance, quantity or quality of those goods or services.³⁸ This includes falsely representing that goods meet certain standards or falsely depicting any endorsement or affiliation.

Deceptive advertising often manifests when advertisements contain partial truths about a product,

³⁴ Id., Sec. 14.

³⁵ The Indian Contract Act, 1872, Sections 1-75.

³⁶ The Sale of Goods Act, 1930, Sections 12-16.

³⁷ The Consumer Protection Act 2019, No. 35, Acts of Parliament, 2019 (India), § 2(47).

³⁸ Id.

using clever wording to avoid blatantly lying but still misleading the average consumer.³⁹ For example, a skin cream may claim to “reduce wrinkles” without clarifying that the effect is extremely minor or achieved under specific conditions. Or a weight loss pill could advertise “clinically proven” results while the trial supporting this had serious flaws. Such strategic omissions and carefully phrased statements can propagate consumer deception. Businesses may also exaggerate or overemphasize certain attributes of a product or make broad claims without sufficient evidence, preying on consumers’ desires for better health, appearance, performance etc. Products marketed as “miracle cures” often utilize this tactic. Claims about a supplement treating disease or boosting immunity with no credible research would constitute misleading advertising.

The line between “puffery” and deception is not always clear. Subjective claims like “best-tasting coffee” may be considered puffery which no reasonable consumer would wholly believe as fact. But objective claims regarding a product’s safety, effectiveness, speed, composition etc can easily cross into deception without proper qualification and substantiation. Determining deceptiveness requires evaluating an ad’s overall presentation and the net impression on a reasonable consumer, not just presence or absence of literal falsehoods. In law, for an advertisement to qualify as deception, five elements must be satisfied – there must be a false statement of fact; the advertiser must know the statement is false; the statement must have intent to induce consumer reliance; it must mislead the average or “reasonable” consumer; and the consumer’s reliance must lead to damages. While seeming straightforward, each criterion involves nuances around interpretation.

Responsibility for deceptive advertising applies not only to advertisers but all parties involved in disseminating false claims, including ad agencies, product suppliers, endorsers, publishers etc.⁴⁰ Under vicarious liability principles, these parties can share blame regardless of whether they created the deceptive message themselves. A publisher running an ad with bogus claims could still face charges for enabling the deception. However, publishers can protect themselves by screening ads and requiring substantiation from advertisers. Recourse against deceptive advertising in India foremost involves consumer complaints to the Consumer Disputes Redressal Commissions, which can award damages to harmed consumers.⁴¹ Beyond individual remedies, class action suits, often initiated by consumer organizations, allow collective relief. Regulatory responses also curb deception - bodies like the Advertising Standards Council of India enforce

³⁹ Dee Pridgen, *Consumer Protection and the Law* § 9:23, at 9-126 (2008).

⁴⁰ *Charles of the Ritz Distributors Corporation v. F.T.C.*, 143 F.2d 676 (2d Cir. 1944).

⁴¹ *The Consumer Protection Act 2019*, No. 35, Acts of Parliament, 2019 (India), § 38 (India).

codes against misleading ads.⁴² And the 2019 Consumer Act expanded powers to punish false advertising with fines, bans, imprisonment and more.⁴³

UNFAIR CONTRACT TERMS AND CONSUMER AGREEMENTS

Consumer contracts often contain unfair terms that unjustly favor the business over the consumer. These imbalanced agreements reflect the unequal bargaining power between consumers and companies, allowing businesses to impose unfair risk allocation, prices, dispute resolution processes, and other one-sided provisions. Many jurisdictions have passed legislation to protect consumers from such abusive contract terms and provide recourse when agreements contain unfair elements. In India, the Consumer Protection Act of 2019 and previous consumer protection laws aim to safeguard buyers from exploitation through unfair contracts.⁴⁴ The laws render certain terms as "null and void" when they cause a "significant imbalance" favoring sellers and cause "detriment" to consumers.⁴⁵ Terms may also be considered "unfair" when contrary to good faith or fair dealing standards.⁴⁶

Some examples of potentially unfair contract terms in the Indian context include:

- **Excessive Prices:** Contracts that impose excessive, inflated prices for goods or services take unfair advantage of consumers in a way that outrages standards of fair dealing. For example, charging INR 50,000 for a smartphone worth INR 15,000 could constitute an unfair term.
- **Harsh Dispute Resolution Processes:** Terms that force consumers to resolve claims exclusively through arbitration, at venues far from the consumer's residence, or at the consumer's expense create procedural barriers deterring valid complaints, unjustly protecting the business from accountability.

⁴² About ASCI, Advertising Standards Council of India, <https://ascionline.org/index.php/about-asci/introduction.html> (last visited Dec. 9, 2023).

⁴³ The Consumer Protection Act 2019, No. 35, Acts of Parliament, 2019 (India), §§ 21, 89-91 (India).

⁴⁴ The Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India), <http://egazette.nic.in/WriteReadData/2019/210422.pdf> (last visited Dec 10, 2023).

⁴⁵ *Id.*

⁴⁶ Ghoshray, S., Mapping the Contours of India's Unfair Contract Terms Law, XV. NUJS L. Rev. 4 (2022).

- **Overbroad Disclaimers:** Disclaimers or liability limitations that exempt the business from responsibility for issues clearly within their control, like manufacturing defects, fail to accord with reasonable expectations and good faith dealings.
- **Burdensome Termination Fees:** Penalties for early contract termination that exceed reasonable compensation for the seller aim to lock consumers into commitments, limiting free choice and fair play.
- **Deceptive Default Provisions:** Pre-selected options that stealthily sign up buyers for extra services without adequate disclosure abuse the psychology of default choices to trap consumers.

The above examples, though not exhaustive, provide an overview of the types of unfair terms that routinely appear in consumer contracts. Identifying and prohibiting such provisions remains an ongoing regulatory challenge. Even terms that seem facially neutral may impose unfair surprise or hardship in practice. To provide enhanced protection, India's consumer laws adopt both substantive and procedural measures.

The legislation offers consumers multiple pathways to challenge unfair contract terms, including:

- Filing complaints with consumer dispute redressal forums and commissions to seek declaration of the term as null and void
- Pursuing class action suits that allow groups to efficiently contest common unfair provisions
- Reporting exploitative terms to regulators like the Central Consumer Protection Authority to spur investigations and enforcement actions against non-compliant companies.

The consumer protection regime also encourages businesses to self-regulate by integrating standard form contracts, service guides, and other instruments that comply with principles of good faith and fair dealings. Industry associations frequently formulate voluntary codes of conduct rejecting unreasonably one-sided terms.⁴⁷

PRICE MANIPULATION AND UNFAIR COMPETITION

Price manipulation refers to unfair business practices where a dominant enterprise deliberately alters the prices of goods or services to harm competitors or exploit consumers. It enables

⁴⁷ Consumer Protection Group Model Framework, 2021, <https://www.cpgroups.org> (last visited Dec 10, 2023).

enterprises to charge higher prices due to reduced competition, thereby directly impacting consumer interests. Common forms of price manipulation include predatory pricing, price fixing, and price gouging.⁴⁸

- **Predatory Pricing**

Predatory pricing involves a dominant player pricing goods or services at such a low level with the aim to eliminate competition and subsequently raise prices to exploit the consumer.⁴⁹ Section 4 of the Competition Act, 2002 prohibits dominant enterprises from directly or indirectly imposing unfair purchase or selling prices to drive existing competitors out of the market.⁵⁰ In *MCX Stock Exchange Ltd v. National Stock Exchange of India Ltd*⁵¹, the Competition Commission of India (CCI) held the National Stock Exchange (NSE) guilty of predatory pricing by charging zero transaction fees to broker members despite being in a dominant position. This prevented other stock exchanges from competing, thereby harming consumer interest. The NSE was directed to modify its zero-pricing policy to introduce a minimum transaction fee.

- **Price Fixing**

Price fixing refers to an agreement between enterprises to set prices or trading terms on goods or services outside the operation of independent market forces of supply and demand. As per Section 3(3) of the Competition Act, 2002, enterprises are prohibited from entering anti-competitive agreements to determine purchase or sale prices, limit technical development, allocate markets, or apply dissimilar conditions to similar transactions.⁵² In *Builder's Association of India v. Cement Manufacturers Association*, the CCI found the Cement Manufacturers Association and major cement companies guilty of cartelization to control production and prices of cement. Such price fixing was held to directly impact the cost of construction and thereby exploitation of consumers at large. The parties were ordered to cease and desist from anti-competitive practices and pay monetary penalties.

- **Price Gouging**

Price gouging involves traders taking unfair advantage of spikes in demand by charging excessively higher prices from consumers. While rising prices due to supply-demand dynamics

⁴⁸ CUTS, "Understanding Price Manipulation as an Unfair Trade Practice" (2020) https://cuts-ccier.org/pdf/Understanding_Price_Manipulation_as_an_Unfair_Trade_Practice.pdf (last visited Dec 10, 2023)

⁴⁹ Rahul Singh, "Predatory Pricing: A Proposed Framework for India" (2021) <https://www.epw.in/engage/article/predatory-pricing-proposed-framework-india> (last visited Dec 10, 2023)

⁵⁰ The Competition Act 2002, No. 12, Acts of Parliament, 2003 (India), s 4.

⁵¹ *MCX Stock Exchange Ltd v National Stock Exchange of India Ltd* (2009) COMPAT 7.

⁵² The Competition Act 2002, No. 12, Acts of Parliament, 2003 (India), s 3(3).

may be inevitable during crises, unjustifiable price hikes qualify as exploitation.⁵³ For instance, during the COVID-19 pandemic, the Ministry of Consumer Affairs warned e-commerce platforms against allowing sellers to charge exorbitant prices for hand sanitizers, face masks and similar products due to sudden spikes in demand.⁵⁴ However, specific legal provisions are still required to combat such emergent situations more effectively.

CONSUMER REMEDIES AND REDRESS MECHANISMS

In India, consumer protection and remedies against unfair trade practices find recognition under various statutes and through judicial pronouncements. The Consumer Protection Act, 1986 (COPRA) is the key legislation dealing with consumer grievances and unfair trade practices. It provides a three-tier quasi-judicial redress mechanism at the district, state and national levels in the form of consumer dispute redressal forums and commissions.⁵⁵ These consumer fora have jurisdiction to entertaining complaints regarding defects in goods sold or services provided, unfair or restrictive trade practices, excessive pricing, and deficiencies in services, among others.⁵⁶ In addition to COPRA, sector-specific regulations by sectoral regulators also prohibit unfair practices and enable consumer redress. Judicially evolved doctrines also enable consumer protection against exploitation in contracts and transactions.

- **Remedies under Consumer Protection Act**

COPRA provides a range of remedies that consumers can seek before consumer fora against errant manufacturers, traders, service providers, advertisers and endorsers for indulging in unfair trade practices. These include:

Removal of Defects and Deficiencies: Consumers can seek replacement or removal of manufacturing defects, correction of service deficiencies, refund of price paid, or compensation for loss or damage suffered.⁵⁷

- **Unfair Trade Practices:** In case of false or misleading advertisements, consumers have remedy of corrective advertisement at the cost of opposite party.⁵⁸ For an unfair contract,

⁵³ Udai S Mehta, “Curbing price gouging in times of crisis” (2020) <https://www.financialexpress.com/opinion/curbing-price-gouging-in-times-of-crisis/1892553/> (last visited Dec 10, 2023).

⁵⁴ Press Information Bureau, “Government takes steps to ensure availability of mask, hand sanitizers and gloves at affordable rates” (Mar 19, 2020) <https://pib.gov.in/PressReleasePage.aspx?PRID=1607345> (last visited Dec 10, 2023).

⁵⁵ The Consumer Protection Act 2019, Section 2(4)

⁵⁶ The Consumer Protection Act 2019, Section 2(6)

⁵⁷ The Consumer Protection Act 2019, Section 2(1)(f), 14 and 21

⁵⁸ Packed Spices Case, Ernakulam District Consumer Disputes Redressal Forum, decided on 22-11-2021

consumer fora can issue cease and desist orders.⁵⁹

- Excessive Pricing: Consumer fora have wide discretion to adjudicate on 'unfair price' of goods or services and can direct appropriate reduction in prices.
- Damages and Costs: Apart from above reliefs, consumer fora can also impose punitive damages on opposite party and litigation costs on either party.⁶⁰

Therefore, COPRA provides simple, speedy, affordable and accessible remedies geared towards relief against exploitative and unfair trade practices affecting consumers.

- **Sectoral Regulators**

Apart from COPRA 1986, sector-specific regulators also have mandate regarding consumer protection in their respective sectors through prohibitions on unfair practices and enabling consumer grievance mechanisms. These include regulators in banking,⁶¹ insurance, telecom, electricity, securities market, etc. They issue regulatory directives, enable complaint filing and dispute resolution mechanisms and impose penalties to check unfair trade practices in regulated sectors.

- **Judicial Doctrines**

Indian judiciary has also contributed significantly to evolution of doctrines enabling consumer protection against unfair bargaining power, unreasonable contractual terms, misleading representations, etc. through progressive interpretation of existing laws. These include doctrine of unconscionability in contracts,⁶² product liability,⁶³ strict liability against dangerous products,⁶⁴ and doctrine of promissory estoppel⁶⁵ among others. Judiciary has applied these doctrines.

REGULATORY ENFORCEMENT AND CONSUMER ADVOCACY

In India, regulatory bodies and consumer advocacy groups play a crucial role in enforcing consumer protection laws and regulations against unfair trade practices. Key agencies involved

⁵⁹ iPhone Case, SCDRC Karnataka at Bangalore decided on 05-10-2022

⁶⁰ The Consumer Protection Act 2019, Sections 21(b) and 38

⁶¹ RBI Charter of Customer Rights, 2014

⁶² Central Inland Water Transport Corporation V Brojo Nath Ganguly, AIR 1986 SC 1571

⁶³ Abraham v. Johns and Wales Enterprises Ltd., (1987) Q.B. 267; (1987) 3 All E.R. 289

⁶⁴ Indian Council For Envirolegal Action v. UOI, (2011) 8 SCC 161

⁶⁵ Motilal Padampat Sugar Mills v. State of Uttar Pradesh, (1979) 2 SCC 409

in enforcement and advocacy efforts include the Department of Consumer Affairs, the Central Consumer Protection Authority (CCPA), state-level consumer disputes redressal forums and commissions, consumer advocacy groups, and self-regulatory industry associations. The Department of Consumer Affairs is the nodal agency responsible for framing policies and guidelines for consumer protection in India.⁶⁶ It aims to promote and protect the rights of consumers by preventing unfair trade practices, raising awareness, and ensuring effective redressal mechanisms.⁶⁷ The department oversees the implementation of key consumer protection legislation including the Consumer Protection Act 2019, which comprehensively revised India's consumer protection framework.⁶⁸

A major recent development has been the establishment of the Central Consumer Protection Authority (CCPA) under the 2019 Consumer Protection Act. The CCPA has been endowed with extensive powers of enforcement, including investigating violations, ordering recalls of defective products, imposing penalties, and enabling class action lawsuits. Through 2022, the CCPA intervened in over 100 cases to protect consumer interests and enforce standards against misleading advertisements and unfair trade practices.⁶⁹ Its actions demonstrate robust regulatory oversight over consumer product safety, e-commerce, service delivery standards, and transparency norms. At the state level, consumer disputes redressal forums and commissions have seen their scope expanded under recent legislative amendments. These quasi-judicial bodies can now hear claims up to 10 crore rupees and rule on matters involving product liability, unfair contracts, misleading advertisements, and deficient services. Their decisions uphold consumer rights while creating legal precedence and deterrence mechanisms against exploitative business conduct. However, these forums face challenges of long adjudication timelines, capacity constraints, and delays in execution of orders.⁷⁰ Ongoing reforms aim to strengthen their functioning through modern case management tools, increased benching, and monitoring of order implementation.

⁶⁶ The Consumer Protection Act, 2019, No. 35, Acts of Parliament, 2019 (India), <https://legislative.gov.in/sites/default/files/A2019-35.pdf>.

⁶⁷ About the Department of Consumer Affairs, Department of Consumer Affairs, Ministry of Consumer Affairs, Food & Public Distribution, Last Updated On: 27 Apr 2022. <https://consumeraffairs.nic.in/about-us>.

⁶⁸ Pradeep S Mehta, Secretary, CCPA, India's New Consumer Protection Law in Action, CUTS International, <https://cuts-international.org/indias-new-consumer-protection-law-action/>, last visited Dec 12, 2022.

⁶⁹ CCPA in 2022: Key highlights of the year and the road ahead, Business Standard, Dec 26, 2022. https://www.business-standard.com/article/economy-policy/ccpa-in-2022-key-highlights-of-the-year-and-the-road-ahead-112122600408_1.html, last visited Dec 30, 2022.

⁷⁰ Reforming Consumer Dispute Redressal Agencies, Economic Survey 2020-2021, Ministry of Finance, Government of India. <https://www.indiabudget.gov.in/economicsurvey/doc/echapter/echap11.pdf>, last visited Dec 30, 2022.

Consumer advocacy groups comprise civil society organizations that create awareness, field complaints, conduct investigations, mobilize public interest litigation, and engage with policymakers on consumer protection issues.⁷¹ Key national groups include the Consumer Unity & Trust Society (CUTS), Consumer Online Foundation, Mumbai Grahak Panchayat, and Consumer Guidance Society of India. They have driven significant advocacy efforts on grievance redressal mechanisms, product safety standards, sustainable consumption, and bridging rural-urban divides in consumer vulnerability.⁷² Collaboration between regulators and consumer groups creates important synergies in furthering consumer welfare. Industry and trade associations play a complementary function through self-regulation, voluntary codes of conduct, and consumer awareness activities.⁷³ Bodies like the Advertising Standards Council of India, News Broadcasters Federation's NBA Regulations, and Indian Direct Selling Association's Codes have instituted checks against misleading claims, exploitative microfinancing schemes, and unhealthy body image promotion. Co-regulation balancing state oversight and industry ethics has emerged as an effective model.

EMERGING ISSUES: E-COMMERCE AND DIGITAL MARKETPLACES

The growth of e-commerce and online marketplaces has brought immense benefits to consumers in terms of convenience, price transparency, and product variety. However, it has also given rise to new and complex issues regarding unfair trade practices that require addressing through legal provisions and consumer protection frameworks. In India, with increasing internet and smartphone penetration, the e-commerce sector has witnessed exponential growth over the last decade. As per industry reports, the Indian e-commerce market is expected to grow to US\$ 200 billion by 2026 from US\$ 38.5 billion in 2017.⁷⁴ Much of this growth is being driven by digital marketplaces like Amazon, Flipkart, Myntra etc. that provide a platform for sellers to connect with buyers.

⁷¹ Role of Voluntary Consumer Organisations in Consumer Protection, Indian Institute of Public Administration, <http://consumeraffairs.nic.in/WriteReadData/userfiles/file/Role%20of%20Voluntary%20Consumer%20Organisati on%20in%20Consumer%20Protection.pdf>, last visited Dec 28, 2022.

⁷² Key Highlights of the Decisions taken in the meeting of Advisory Committee on Consumer Affairs, PIB Delhi, Ministry of Consumer Affairs, Food & Public Distribution. <https://pib.gov.in/PressReleasePage.aspx?PRID=1773088>, last visited Dec 29, 2022.

⁷³ Tanushree Banerjee, How self-regulation impacts credibility, LiveMint, Jan 28, 2022. <https://www.livemint.com/companies/how-selfregulation-impacts-credibility-11643321606186.html>, last visited Dec 29, 2022.

⁷⁴ Indian e-commerce market size 2013-2027. (2021, August 9). Statista. <https://www.statista.com/statistics/717805/india-ecommerce-market-size/>

While these online marketplaces offer convenience, they also pose certain risks for consumers in terms of unfair trade practices. Some key issues that have emerged are discussed below:

- **Misleading Advertisements and False Representation**

E-commerce platforms frequently resort to misleading advertisements and false claims to attract consumers. This includes showing false discounts by inflating the maximum retail price (MRP), promising unrealistic delivery timelines, advertising fake reviews and ratings, or falsely representing product features or qualities. As per a survey, over 75% of online shoppers in India have encountered misleading information about products or services on digital platforms. Such false representation erodes consumer trust in online shopping.

- **Bait and Switch Offers**

Some sellers advertise products at very attractive prices to bait customers, but later inform that the product is out of stock. They then try to switch and sell a higher-priced substitute product to the customer instead. This results in customers paying more than what they budgeted for. With no direct way for customers to physically verify stocks, such bait and switch tactics are rampant in online sales.

- **Counterfeit or Fake Products**

The sale of counterfeit and fake products is another key concern, especially in marketplaces having thousands of sellers. Products sold may be fakes imitating popular brands, used or refurbished products sold as new, products with expired warranties, or products not meeting advertised quality and standards.⁷⁵ Lack of effective checks by marketplaces poses health, safety and financial risks for buyers.

- **Unauthorized Sale of Data**

As online purchases require entering significant personal data, its unauthorized sale or sharing for marketing poses threats regarding data privacy and identity theft. Marketplaces collect vast amounts of buyer data which they often share or sell to third parties without taking adequate consent. Globally, unauthorized sale of customer data has become an emerging risk area.

To address such issues, several guidelines and reports have recommended additional measures for consumer protection in e-commerce:

⁷⁵ Menon, S. (2021, December 1). Fake reviews to substandard products: E-commerce giants face the heat. The Week. <https://www.theweek.in/news/biz-tech/2021/12/01/fake-reviews-to-substandard-products-e-commerce-giants-face-the-heat.html>

- Enhanced verification processes for sellers listed on online marketplaces⁷⁶
- Independent product quality checks and controls against counterfeit goods⁷⁷
- Fair and truthful presentation of discounts, deals and product features in ads
- Informed and explicit consent requirements before sharing personally identifiable customer data⁷⁸
- Time-bound grievance redressal systems for reporting fraudulent transactions or unfair trade activities

However, the adoption of these measures by digital marketplaces remains slow and uneven. Further policy and regulatory action is needed to balance business interests with consumer rights. Truth-in-advertising standards must apply equally to offline and online commerce.

CHALLENGES AND CRITIQUES IN CONSUMER PROTECTION LAWS

Consumer protection laws in India have evolved over the years to safeguard consumers from unfair trade practices. However, there are some key challenges and critiques that still need to be addressed:

- **Inadequate Enforcement Mechanisms**

One of the main challenges with consumer protection legislation in India is poor enforcement.⁷⁹ Although India has a well-developed legal framework consisting of legislations like the Consumer Protection Act 2019, many consumers are unaware of their rights. Further, the redressal forums are bogged down by delays and inefficiencies. There have been calls for strengthening the existing infrastructure as well as enhancing penalties to ensure better compliance by businesses. More consumer courts, better training for the judiciary, use of technology etc. have been suggested as potential solutions.

⁷⁶ Standing Committee on Finance. (2021). E-commerce in India - Key Policy Issues & Areas of Intervention (Report No. 95). Lok Sabha Secretariat. <https://prsindia.org/files/policy/committee-reports/scr2021/SCR%20-%20Ecommerce%20in%20India.pdf>

⁷⁷ Draft National E-Commerce Policy. (2019). Department for Promotion of Industry and Internal Trade. https://dipp.gov.in/sites/default/files/DraftNational_e-commerce_Policy_23February2019.pdf

⁷⁸ Menon, N. (2022, August 30). Time has come to regulate online purchases, streamline dispute resolution process. The Hindu. <https://www.thehindu.com/business/time-has-come-to-regulate-online-purchases-streamline-dispute-resolution-process/article65849640.ece>

⁷⁹ Challenges in enforcement of consumer laws in India, Livemint (Dec 10, 2023) <https://www.livemint.com/Opinion/ZqeTellBbwbYVbLEmtVBaJ/Challenges-in-enforcement-of-consumer-laws-in-India.html>

- **Restrictive Definition of 'Consumer'**

The definition of a 'consumer' under the Consumer Protection Act has also attracted critique. It only covers goods and services availed for 'personal use', leaving out many small businesses and entrepreneurs.⁸⁰ This restrictive scope ends up excluding many unfair trade practice cases from the ambit of consumer laws. Experts have recommended that the definition be expanded to cover unincorporated entities that procure goods and services that are not for resale or commerce.

- **Overlapping Legislations**

Yet another challenge is the existence of overlapping legislations leading to confusion over jurisdiction of consumer forums. There are sector-specific regulators like TRAI, SEBI etc. that also deal with consumer disputes in their respective industries. Jurisdictional issues often arise - for instance, in case of disputes related to e-commerce entities or banking services. There is a need for greater clarity on which legislation will prevail in case of overlaps.

- **Issues with E-Commerce Transactions**

The steady growth of e-commerce transactions and online shopping in India has also posed unique challenges when it comes to consumer protection. Redressal becomes complicated when buyers and sellers are located across different states and jurisdictions. There are also rising unfair trade practices like fake reviews, false advertising, breach of data privacy norms etc. Adaptations like enabling easy e-filing of complaints, limiting liability of intermediaries, electronic service of notices etc. have been suggested to boost consumer trust.⁸¹

FUTURE TRENDS AND LEGAL REFORMS

As consumer awareness and activism rises in India, there will likely be increasing demands for more robust legal frameworks and enforcement mechanisms to protect consumers from unfair trade practices. Several key trends and potential legal reforms can be expected in the coming years.

- **Expansion of Unfair Trade Practices Definition**

The definition of "unfair trade practice" under the Consumer Protection Act is likely to be expanded to cover emerging e-commerce models and digital technologies. Practices like

⁸⁰ Analysis of the Consumer Protection Act, 2019, Legal Services India (Dec 10, 2023) <https://www.legalserviceindia.com/legal/article-4558-analysis-of-the-consumer-protection-act-2019.html>

⁸¹ The Consumer Protection Act, 2019: A Boon or a Bane for E-Commerce in India?, LiveLaw (Dec 10, 2023) https://www.livelaw.in/pdf_upload/pdf_upload-378707.pdf

undisclosed paid advertising or sponsored reviews on social media may be brought under the ambit of laws prohibiting false representations and unfair conduct. More precise definitions will reduce ambiguity for businesses while strengthening consumer rights.

- **Strengthening Regulatory Frameworks**

Industry-specific regulators are expected to issue tighter norms and compliance requirements, with higher penalties for violations. For instance, the Reserve Bank of India recently expanded its ombudsman scheme for systematic grievance redress in the banking and financial space. Similar dedicated consumer grievance cells and ombudsman schemes can be instituted across sectors like telecom, healthcare, housing etc. to bolster consumer trust. Stricter quality certifications may also be introduced for products and services.

- **Special Focus on Digital Rights**

Rapid digitization necessitates special legal provisions and institutional support for upholding consumer interests in online transactions. Areas like e-commerce, fintech, online media/content require dedicated regulations beyond conventional consumer protection laws. Emerging issues like privacy infringements, unfair contractual terms, digital frauds and platform-based harms need to be addressed through legislative reforms as well as technological measures for traceability and accountability. A balanced approach supporting innovation along with consumer welfare will be key.

- **Access to Justice and Awareness Building**

Complexities of complaint procedures often impede consumers, especially in rural areas, from seeking legal recourse. Procedural barriers need to be lowered by strengthening alternative dispute resolution mechanisms like mediation cells and Lok Adalats backed by legal aid so that even disadvantaged sections can uphold their consumer rights. Simultaneously, through campaigns across media, easy-to-understand resources and community engagement, public awareness on consumer rights and responsibilities will be boosted for preventing unfair trade in the first place.

CONCLUSION

Robust consumer protection frameworks that deter unfair trade are vital for India as its economy rapidly grows and digitalizes. While legislative measures like the Consumer Protection Act, 2019 have expanded the scope of consumer rights and grievance redressal mechanisms, continued

strengthening of regulatory oversight and easing of access to justice is essential. On analyzing key issues and future trends, several priority areas for policy and institutional reforms emerge. First, clearer definitions of unfair trade practices should be framed based on rising instances of misinformation, false claims and exploitation in e-commerce or digital financial domains. Rights-based legislation explicitly focused on digital consumer protection can plug gaps beyond conventional laws.

Second, specialized ombudsman and grievance redress structures across industries like banking, insurance, housing and e-commerce require formalization beyond current self-regulatory mechanisms dependent on sectors' discretion. Statutory powers for such redress bodies will boost their efficacy, along with technological integration for tracking and easier submission of consumer complaints. Third, encouraging alternative dispute resolution through strengthened consumer courts and mediation procedures can circumvent cumbersome litigation for small grievances and also reduce pendency pressures on lower judiciary. Layered capacity building of consumer commission officials coupled with nationwide legal awareness drives should enhance accessibility and speedy redress, upholding citizen's constitutional right to consumer justice irrespective of socio-economic privilege.

However, the success of India's consumer protection landscape ultimately lies not in punitive action alone but in nurturing an ethical market culture founded on fairness, choice and transparency. Businesses should proactively self-regulate by evolving best practices based on global standards around product safety, accurate labelling, responsible advertising and customer data use. Industry associations must encourage self-correction while providing guidance on changing compliances. Such responsible conduct will not only help consumers but also bolster India's global reputation among trade partners and investors for its business ecosystems.