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UNFAIR TRADE PRACTICES IN INDIA: **A CRITICAL ANALYSIS**

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ABSTRACT

The term "Unfair Trade Practice" refers to fraudulent conduct that are forbidden by statutes and laws, such as deception and misrepresentation, and that are subject to legal action. The effects of unfair trade practices on the economy and business create a situation in which there is no open awareness of the problem, consumers are misled, small businesses are treated unfairly, and the overall welfare of the public collapses. The meaning of unfair trade practice as it developed from the Monopolistic and Restrictive Trade Practice Act to the Consumer Protection Act is explained below. The acts of unfair trade practices in many industries will be covered in more detail in this article. Finally, the paper will address a few significant cases.

The modern world is a linked with global economy, unlike those that existed prior to the industrial revolution and the rapid growth of international trade. Due to this sector's boom, an extensive variety of services and consumer goods have been produced to meet the continuously shifting needs of consumers. Suppliers and distributors have also become increasingly structured at the same period. As a result, there was a difference in the weaker party's bargaining position during the customer interaction. To deter and safeguard against consumer abuse, numerous legislative measures have been implemented, along with the formulation of rules and regulations on a national and international scale. To safeguard the interests of consumers, India has enacted the Consumer Protection Act 1986.

Keywords: Unfair Trade Practice, Consumer Protection, Deceptive Practices, Industry

INTRODUCTION

Unfair trade practice is defined as any dishonest, false, or deceptive exchange practice, or business deception of the goods or services that are regularly sold, that is prohibited by law or that has been deemed important by a court¹ of law. Unfair Trade Practice involves a number of violations which includes financial loss caused by misleading or misappropriation actions. Among the legal doctrines that can be asserted are claims for misappropriation of trade secrets, unfair competition, deceptive advertising, passing off, reduction, and disparagement. Generally, unfair trade practices can include things like unlawfully declining to complete a deal, misleadingly attracting clients, unfairly interfering with competitor's business operations, and unfairly excluding competitors. In the fiercely competitive modern corporate and financial world, entrepreneurs are willing to resort to unethical trade practices in order to get an advantage over their rivals. They might gain an advantage in the short term, but in the long run, this has an impact on the company and ultimately the entire sector and community. Any type of misrepresentation of the items may occur. In addition, a number of torts are encouraged by unfair commercial practices, which may cause sellers² to suffer unexpected economical losses. The consumer remains vulnerable to numerous unfair market techniques employed by manufacturers and merchants in an effort to increase sales, revenues and profits, despite efforts to elevate the customer's status and make them the king. The pricing of products is a subject of extensive manipulation.

UNFAIR TRADE PRACTICES IN INDIAN SCENARIO

Before 2002, India's primary legislation to address unfair trade practices was the Monopolies and Restrictive Trade Practices Act (MRTP), which was created to prohibit monopolies and restrictive trade practices. The Competition Act, 2002 replaced the MRTP Act, which was repealed. As a result, all pending cases in the MRTPC were transferred to the Competition Commission of India (CCI) for decision-making based on their current status. However, the Competition Act lacked a provision to address unfair commercial practices; as a result, this was implemented under the Consumer Protection Act of 1986 (COPRA), which addressed unfair trade practices³ in any case.

¹ Beena Deewan, Unfair Trade Practices and its Emerging Challenges, ANMRJR Vol 4 Issue 12, https://abhinavjournal.com/journal/index.php/ISSN-2277-1166/article/viewFile/871/pdf_195

² Pham, Alice, "Competition Law in Vietnam: A Toolkit", CUTS HRC, Hanoi,; http://www.cutsinternational.org/HRC/pdf/Vietnam_Toolkit.pdf

³. Sharad Vadehra, Growing Incidences of Unfair Trade Practice in India, Mondaq, <http://www.mondaq.com/india/x/343952/Consumer+Trading+Unfair+Trading/Growing+Incidences+Of+Unfair+Trade+Practices+In+India>

Section 2(r) of the **Consumer Protection Act 1986** defines unfair trade practices as⁴:-

"A trade practice that adopts any unfair method or unfair or deceptive practice, including any of the following methods, in order to protect the interest of consumers. The Monopolies and Restrictive Trade Practices Act was designed to safeguard consumers, however it failed insufficient in this regard. As a result, the” **Sachar Committee's recommendations**” led to an amendment in 1984 that included a section on unfair commercial practices promote the sale, usage, or supply of any goods or for the provision of any service. These recommendations have significance in relation to unfair trade practices involving pricing, even though they were made in the light of a retailer's or manufacturer's obligations and responsibilities regarding their advertisements and fulfillment of consumer expectations and promises.

1. Expressing any claim, whether verbally, in writing, or by a visual depiction that:

- Makes a misleading claim about the goods' standard, quality, quantity, grade, composition, style, or model.
- Falsely claims that the services meet a specific standard or level of quality.
- Falsely claims that any reconstructed, used, refurbished, or old items are brand-new items.
- This implies that the products or services have support, approval, performance, attributes, uses, or advantages that the products or services don't.
- Falsely claims to have a sponsorship, permission, or relationship that the seller or provider does not have.
- Represents in a dishonest or deceptive manner the necessity or value of any products or services.
- Provides the public with any assurance or warranty on the functionality, effectiveness, or lifespan of a product or other items that isn't supported by sufficient or appropriate testing.
- Makes a representation to the public in a way that claims to be -:
- A warranty or guarantee of a product or of any goods or services.
- A contract to return or keep up service until a predetermined outcome is reached, or to replace, maintain, or repair an item or any portion of it should the alleged guarantee, promise, or warranty be grossly deceptive, or should there be no realistic chance that the promise, guarantee, or warranty will be fulfilled.

⁴ Section 2(r), The Consumer Protection Act 1986, No.68 of 1986(India)

- A price representation for this purpose will be interpreted as corresponding to the price at which the product or goods or services have or have been sold by sellers or provided by suppliers generally in the relevant market, unless it is expressly stated to be the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made. Materially misleading the public regarding the price at which a product or like products or goods or services, have been, or are, ordinarily sold or provided.
 - Presents fabricated or deceptive information that discredits another person's products, services, or industry.
- ii) Allows the publication of any advertisement, whether in a newspaper or not, for the sale or supply of goods or services at a discount rate that are not meant to be offered for sale or supply at the discount prices, or for a reasonable amount of time and for a reasonable price, taking into account the type of market, the business is conducted in, the size and nature of the business, and the advertisement itself.
- iii) **It allows:-**
- a) The act of presenting gifts, prizes, or other products with the goal to withhold them from being provided as promised or to give the impression that something is being supplied or given away for free while in fact it is partially or entirely covered by the total sum charged for the transaction.
 - b) The organizing of any lottery, game of skill, or contest with the intention of directly or indirectly expanding the supply, usage, or sale of any good or service or commercial interest.
- iv) It allows the selling or supply of products that are meant to be used, or that are likely to be used by consumers, despite knowing or having reason to believe that the products don't meet the demands set out by an appropriate authority in terms of efficiency, arrangement, materials, manufacturing, finishing, or packaging as these are essential to preventing or minimizing the risk of harm to the user.
- v) It allows items to be stored or destroyed, or fails to sell the commodities or make them accessible for purchase, or refuses to perform any service, if doing so will increase the price of those or similar goods or services, or if doing so tends to raise the price of those goods or services⁵.
- vi) Unfair harm to consumers is a major factor in unfair trade practices; such damage must be severe, unbalanced by benefits to the customer, not detrimental to competition, and

⁵ *Ibid*

- impossible for the consumer to have reasonably prevented⁶. From this, it follows that no harm will be deemed to be "unfair." Among other things⁷, financial loss, harm to the health of customers, intimidation, and knowledge imbalance are examples of severe injury.
- vii) Emotional disturbances or distress and mental harm are considered as exception to the Unfair Trade Practices. The Consumer Forums and Commissions consider the financial losses suffered by the involved company as well as the costs to society, including less innovation and increased restrictions on the free exchange of information⁸.
 - viii) In India, buyer-seller relationships were governed by the **caveat emptor**, or "let the buyer beware," concept before to the passage of the "Consumer Protection Act 1986" and the "Monopolies and Restrictive Trade Practices Act⁹ 1969. It was expected of the customers to know adequate information about the goods or services before making a purchase.
 - ix) However, increased globalization and competition in the modern era have given rise to some instances of unfair trade practices. There are others who even argue that we are entering the age of "let the seller beware," or **caveat venditor**. Although the author does not entirely concur with that sentiment, we must acknowledge that consumers have benefited much from the creation of the Consumer Protection Act of 1986.
 - x) Charging more than the Maximum Retail Price indicated on the exterior package is one of the unfair trading practices. On the same product, with the same quality, a higher MRP has occasionally been printed and intended for sale at a different location. These locations frequently include five-star hotels, shopping centers, stations, airports, and multiplexes.

UNFAIR TRADE PRACTICES IN VARIOUS SECTORS IN INDIA

A number of instances of unfair trade practices have surfaced in the recent past. Unfair business practices have entered into the Indian economy through a number of sectors. Several of them are related to the food processing, pharmaceutical, insurance, and educational sectors, etc. Some instances are as follow:-

PHARMACEUTICAL SECTOR:-

There is ongoing competition between vendors of generic and prescription drugs. Such competitions have a tendency to get unpleasant at times, resulting in several instances of unfair

⁶ J.N. Barowalia, COMMENTARY ON CONSUMER PROTECTION ACT, 1986, 13, (2008)

⁷ Majumdar, *Supra* note 3, p. at 102

⁸ Lydia Kerketta, Unfair Trade Practices in India, (July 13, 2015), LEGAL SERVICES INDIA, available at <http://www.legalservicesindia.com/article/article/unfair-trade-practice-in-india-1861-1.html> (Last visited on December 1, 2015).

⁹ Monopolies and Restrictive Trade Practices Act, 1969.

trade practices in the pharmaceutical industry. It is well known that the pharmaceutical business has a significant impact on doctors' prescribing practices when it comes to prescription drugs, where the doctor serves as the decision maker for the patient. Information and promotion are fundamentally different from one another. Precompetitive effects may arise when a medical representative informs doctors about new treatments, including their efficacy and utility. Businesses' use of marketing techniques, such as providing doctors with gifts like smart-phones, vehicles, or even sponsored assisted living facilities, may minimize the demand side and drive up costs for consumers¹⁰. Short pants that cure gas, acidity, prostate, piles, urinary system issues, ladies briefs for menstrual issues, bed sheets for paralysis strokes, brassieres for breast cancer, and sun shades for migraines and sun strokes were among the products that the company was found to be promoting and distributing. Other products included socks for acidity, pillow covers for spondylitis, palm guards for Parkinson's disease, eye shades for sinusitis, and T-shirts for high and low blood pressure.

FOOD PROCESSING SECTOR:-

Food safety and unfair trade practices in the quantity and quality of food products have raised concerns on a global scale. Most people have heard of instances where chemicals, such as adulterates and additives, have been purposefully added to products in order to mask poor products, contaminated them or make more money, or contaminate food all through the manufacture, manufacturing, packaging, and storage stages. Such unethical and unfair trade tactics are extremely dangerous since they directly endanger the health of consumers. sRecently, during a raid at Pune mango trader's store, Food and Drugs Administration (FDA) agents found 500 kg of mangoes valued at Rs. 25,000 that were being artificially ripened using calcium carbide. Preventing food adulteration by employing carbide for artificial ripening is prohibited by law. When ingested in large amounts, the substance harms internal organs. The mangoes had been destroyed by FDA authorities at a dumping ground, and the chemical samples were submitted to a public health laboratory in the city for additional analysis. The Nestle Maggi case is the most recent contentious issue involving unfair commercial tactics. The National Consumer Dispute Redressal Commission received a complaint alleging unfair trade practises against the corporation, submitted by the Indian government, under Section 12(1)(d).The product's deceptive ads were the source of the problem. Before that, the Food Safety and Standards of India had requested that the company remove the recently released Maggi Noodle varieties from the market,

¹⁰ CENTAD, “*Competition Law and Indian Pharmaceutical Industry*”, 2010, <http://www.cci.gov.in/images/media/completed/PharmInd230611.pdf>

including the products' unfitness for human consumption as a result of excess lead content, mislabeled MSG¹¹ content, and a failure to maintain the required standard of quality.

INSURANCE SECTOR

A significant component of the financial services industry that serves individuals is insurance, and the number of people using insurance is rising continuously. Unfair commercial practices in this industry are becoming more prevalent as the number of consumers rises. Insurance is a guarantee that the insured will receive a specific payment or reimbursement for a loss or harm in the event of an unforeseen circumstance at a later time. A lack of service would result in a delay or inability to keep that promise. As a result, it is clear that insurance companies heavily depends on the public's belief that the promises made would be kept. Businesses frequently use attractive offers to attract customers, then attempt to break their promises¹². They have numerous comprehensive exemption and restriction provisions that are advantageous to big business. The advantageous terms are frequently hidden in tiny type, which the person never reads because it would take a lot of effort and money to find out what these terms are¹³.

CASE LAWS:-

Godfrey Philips India Ltd v Ajay Kumar¹⁴

The cigarette firm filed a complaint in regard to the disputed commercial. The product was marketed under the name "red & White," and the packaging included a paragraph about the negative effects of smoking in addition to the statement, "Red & White smokers are one of kind." The package additionally included an image of the star actor Akshay Kumar. The complaint was satisfied that the image of a well-known actor endorsing the tag lined cigarette conveyed the idea that the actor could perform similar acts. Additionally, this would divert the client's focus from the caution. Due to the fact that the complaint was also filed in civil court, it was dismissed in district forum. When the matter came before the National Commission, the appellants claimed there was no proof the advertisement had caused any injury. The National Commission ruled that the complainant was unable to lodge complaint, since the complaint was not made on behalf of a volunteer organization. The appeal was granted without any fees.

¹¹ Sonuk Mitra, *Government Drags Nestle to Consumer Court Seeking Compensation*, LiveMint, Aug 12 2015, <http://www.livemint.com/Companies/5rWThfcBq5qYp0uW2b83KP/Govt-to-see-Rs426-crore-as-damages-from-Nestle-India.html>

¹² *Ibid.*

¹³ al, Lokesh, "*Unfair Terms in Contract and Legal Remed Available in India*", Corporate Law Dossier, <http://coporatelaws.wordpress.com/2010/05/13/unfair-terms-in-contract-and-legalremedy-available-in-india>

¹⁴ Godfrey Philips v Ajay Kumar AIR 2008 SC 1828

Pooja Roy v. Krishnango Bhattacharya¹⁵

M/s Kasko India, a wholesale license drug dealer, was accused of distributing counterfeit pharmaceuticals and changing the manufacturer's original labels by pasting new labels with an extended expiration date. This was seen by the pharmaceutical industry as an unfair trading practice.

Consumer Guidance Society v. Amway India Enterprises¹⁶

The Amway Enterprises, which sells various kinds of nutritional supplements and consumer goods. It was discovered that a few Amway items were adulterated and mislabeled. Products such as Nutrilite Protein and Amway Madrid Safad Musli had ingredients of a lower quality than what was claimed on the label. Based on the results, it was decided that Amway resorted to using unfair business practices. As a result, they were ordered to pay compensation, stop using their counterfeited products, and update their advertising.

EXCEPTIONS:-

- The first exception is in cases where the manufacturer or retailer took the required measures to obtain a quantity of the product that would have been reasonable given the advertising's goal, but was unable to do so due to uncontrollably occurring events that were not reasonably expected¹⁷.
- With the exception of relating to the product's quantity and lead time for acquiring,. If the product becomes more popular than anticipated, he or she cannot be held accountable if they are unable to provide the demand.
- The third exception relates to the product's characteristics such as its affordable pricing and high quality. If the retailer made the efforts that a reasonable person would make to supply the same product or any comparable product of the same or higher quality, then he should be released from liability.

CONCLUSIONS:-

The most prominent sellers regularly use unethical trade methods against their customers, and customers are falling victim to their intense competition. In the contemporary world, consumers are becoming more conscious of their rights under the Consumer Protection Act and are actively

¹⁵ Pooja Roy v. Krishnango Bhattacharya (2008) C.R.R 2796 of 2008 Calcutta H.C

¹⁶ Consumer Guidance Society v. Amway India Enterprises (2007) C.C 140 of 2007

¹⁷ High Powered Expert (Sachar) Committee on Companies Act and MRTP Act, 252 (1978).

pursuing remedies for unfair trade practices. The future of the consumer justice system in our nation seems promising given the provisions found in Indian statutes and legislation, as well as the numerous proactive initiatives and programs the government is implementing. Customers who lack literacy should be informed of their rights so they can protect themselves against the monopolists' unjust business practices. The government ought to take action to inform the public about the different avenues for redress available to them in the event that their consumer rights are violated. It is imperative that trade and industry, civil society organizations, and consumers themselves get involved in order to prevent unfair trade practices in the future.

