

Empowering Consumer Right and Protection from Unfair Trade Practices

T. Gayathri¹, P. Sanjai²

¹IV-Year B.A., LL.B., student, Chennai Dr. Ambedkar Government Law College, Pudupakkam

²V-Year B. A, LL.B., Student, Chennai Dr. Ambedkar Government Law College, Pudupakkam



I. INTRODUCTION

Consumer protection is extremely important in India because the country is still expanding economically. Many customers can lack the information and resources necessary to successfully traverse the market due to the size and diversity of the population. Strong consumer protection procedures aid in building trust between buyers and sellers and promote a thriving market. It guards against exploitation, maintains the security of the goods, and encourages just competition. Consumer protection is a part of sustainable development as India's economy expands, and sustaining consumer confidence becomes essential for further economic growth.

II. CONSUMER MEANS

2.1 A consumer is a person who consumes a product or service. The word consumer is often used interchangeably with the word customer. Section -2(7) of the consumer protection act, 2019 defines consumer Consumer means any person who buys any goods for a consideration which has been paid or promised or partly promised, or under any system of deferred payment and include any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or 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 for resale or for any commercial purpose. Hires or avails of any service for consideration which has been paid or promised or

partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the service for consideration, but does not include a person who avails of such service for any commercial purpose.

III. NEEDS FOR CONSUMER PROTECTION LAW

3.1. Objectives:

Specified Consumer Protection Act provides Consumer Rights to prevent consumers from fraud or unfair practices. These rights ensure that consumers can make better choices in the marketplace and get help with complaints.

3.1.1. The consumer protection act, 2019:

An act to provide for protection of the interest of consumers and for the interest of consumer and for the said purpose, to establish authorities for timely and effective administration and settlement of consumers disputes and for matters connected therewith or incidental thereto.

3.1.2. Consumer rights:

Section – 2(9) defines “Consumer Rights” includes,

- a) The right to be protected against the marketing of goods, products or services which are hazardous to life and property.
- b) The right to be informed about the quality, quantity, potency, purity, standard and price of goods, product or services, the case may be, so as to protect the consumer against unfair trade; practice.
- c) The right to be assured, wherever possible, access to a variety of goods, product or services at competitive price.
- d) The right to be heard and to be assured that consumer’s interest will receive due consideration at appropriate fora. The right to be heard and to be assured that consumer’s interest will receive due consideration The right to seek redressal against unfair trade practice or restrictive trade practices exploitation of consumer; and
- e) The right to consumer awareness

These are rights available for consumers under consumer protection act 2019.

CASE LAW: Shri A. G. Sawant vs. Shri Sanjay D. Berde on 18 July, 2013

By this writ petition under Article 226 of the Constitution of India read with Section 482 of the Code of Criminal Procedure, 1973, the Petitioner seeks to quash the orders passed by the Maharashtra State dgm 2 903-wp-3879-12 with appw-99-13.sxw Consumer Disputes Redressal Commission, Mumbai dated 5 August and 9 July 2012 which have been delivered in Execution Application No. 10/2011 in Consumer Complaint No.06/2007. And/or in the alternative the provisions of Sec.27(3) Consumer Protection Act be declared illegal and invalid for being in direct contravention of the procedural law laid down under Cr.P.C being applicable to the proceeding’s U/s 27 of Consumer Protection Act 1986.

Mr. Kadam, learned counsel appearing on behalf of the Petitioner, submits that Section 27(3) of the Consumer Protection Act, 1986 (for short, "Act of 186") is null, void and unconstitutional. It is ultravires Article 14 of the Constitution of India. It also violates the mandate of Article 21 of the Constitution of India inasmuch as by Section 27,

IV. ‘EMPOWERING CONSUMERS: UNDERSTANDING RIGHTS, SAFEGUARDING INTERESTS’

4.1. Needs for consumer protection:

When making a purchase, most people primarily focus on whether the price fits their budget, often neglecting other crucial considerations such as durability or expiry dates. This tendency marks the starting point of consumer awareness. Consumers frequently face exploitation from traders who provide incomplete or incorrect information, manipulate weights, overcharge, or sell substandard goods. These practices can harm customers not just financially but also pose health risks and mental stress.

4.2. Impact of globalization:

In today’s competitive, globalized landscape, manufacturers prioritize profit maximization, often resorting to aggressive and misleading advertising that disregards consumer interests. Therefore, it becomes crucial for consumers to be well-informed about the products or services they purchase, safeguarding their interests by understanding their rights, checking product details, scrutinizing legal documents before signing, and taking precautions, especially in significant purchases like property.

4.3. Consumer rights related to service:

For items like groceries and food products, checking manufacturing and expiry dates and the contents list becomes imperative to avoid health hazards like food poisoning. Understanding consumer rights in the realm of services is equally complex. Many are unaware of their rights, leading to instances where hospitals or financial entities manipulate individuals into signing incomprehensible forms, later using these as evidence of consent, much to the detriment of the consumer.

4.4. Major Legislations for Consumer Protection in India:

- The Drugs and Cosmetics Act, 1940
- The Drugs (Control) Act, 1950
- The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- The Essential Commodities Act, 1955
- The Agriculture Produce (Grading and Marking) Act, 1937
- The Standards of Weights and Measures Act, 1976
- The Standards of Weights and Measures (Packaged Commodities) Rules, 1977
- The Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980
- The Consumer Protection Act, 1986
- The Bureau of Indian Standards Act, 1986
- The Competition Act, 2002
- The Trade Marks Act, 1999 (w.e.f. September 2003)
- The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003
- The Food Safety and Standards Act, 2006

4.4.1. Government initiatives beyond above mentioned:

Moreover, the government has introduced standards and measures such as ISI marks, Hallmarks for jewelry, and RERA for real estate, aiming to shield consumers from malpractices. Government initiatives like DBT and Ujjawala also aim to protect citizens from falling victim to fraudulent schemes.

However, while the government implements schemes, consumers must also familiarize themselves with available grievance redressal mechanisms. Consumer redressal mechanisms, integrated into the Consumer Protection Act, include forums like lok adalats, district and national consumer dispute redressal authorities, where consumers can seek redressal for grievances.

Moreover, various measures such as National Consumer Helpline, INGRAM portal, Smart Consumer application, GAMA portal against misleading advertisements, and Online Consumer Mediation Center aim to empower consumers, provide redressal mechanisms, and enhance consumer awareness.

Overall, a robust implementation of consumer protection laws not only ensures consumer rights but also contributes to good governance, promoting transparency, ethics, accountability, and empowerment while fostering a fair marketplace for all.

V. CONSUMER RIGHTS IN INDIA:

1. Right to be information
2. Right to choose
3. Right to be heard
4. Right to seek redressal and
5. Right to consumer education

These are notable consumer rights in India in order to protect consumer from unfair and restrictive trade practices.

5.1. Right to be information:

The definition of Consumer right is 'the right to have information about the quality, potency, quantity, purity, price and standard of goods or services', as it may be the case, but the consumer is to be protected against any unfair practices of trade. It is very essential for the consumers to know these rights.

5.1.1. In general, the consumer rights in India are listed below:

1. The right to be protected from all kind of hazardous goods and services
2. The right to be fully informed about the performance and quality of all goods and services
3. The right to free choice of goods and services

4. The right to be heard in all decision-making processes related to consumer interest
5. The right to seek redressal, whenever consumer rights have been infringed and
6. The right to complete consumer education

5.2. How advertisement plays important role:

Advertising is a powerful tool that can help you attract customers, inform them about your products and build customer trust. Most companies use some type of advertisement to help them promote their products or service. Section [(2)(1)] – Defines, Advertisement means any audio or visual publicity, representation, endorsement or pronouncement made by means of light, sound, smoke, gas, print, electronic media, internet or website and includes any notice, circular, label, wrapper, invoice or such other documents.

5.2.1. Evolution Of Broadcasting Laws in India:

DHOORDARSHAN CASE on 21 January, 2003

A case the court says consumers have right to get information through television, radio, advertisement so this type of broadcasting plays important role to choose product and services for consumers. so, court said Dhordarshan not mislead consumers by providing false information.

5.2.2. Background of Dhordarshan:

Dhordarshan, popularly known as DD, is an autonomous broadcaster for public service founded by the Government of India in 1959. The motto of Dhordarshan is “Satyam Shivam Sundaram”. In 1959, Dhordarshan was just a small transmitter. The regular transmission started in 1965 when it became a part of All India Radio. The television services of Dhordarshan were started in 1972 in Mumbai and Amritsar. It was the sole service of television in India. And this service was extended to seven cities till 1975. The nationwide telecast of Dhordarshan was done in 1982. Today it has grown to a wide area. It has 46 Dhordarshan studios now. It is also broadcasted internationally in 146 countries.

5.3. What cannot be advertised:

Any advertisement which derides caste, color, creed, and nationality are not allowed to be broadcasted on Dhordarshan. The Constitution of India imparts in itself the principle of non-discrimination based on race, caste, color, creed, and nationality. This principle

is embedded in the code for commercial advertisements.

5.3.1. Against constitutional provisions:

The Constitution of India is the fundamental law of the country. No institution can go against the provisions provided in the Indian Constitution. The code for commercial advertisement expressly forbids the advertisement which is against the provisions of the Constitution.

5.3.2. Promoting intoxication:

Intoxicants like cigarettes, tobacco, liquor, wines, etc. are prevented from being promoted in advertisements by the code. The key point here is that such products are not stopped from being advertisement. But the promotion of such products is prevented. Such products are advertised with a caution showing their harmfulness. It makes people aware of the fact of its harmfulness. This prevents the advertisement from promoting such products and leaving it on the choice of people, either to get aware or to take the risk of taking them.

5.3.3. Attacking national symbols or leaders:

An advertisement which adversely affects the position of the national emblem is prohibited the code. Leaders and state dignitaries shall not be depicted wrongly in the advertisements.

5.3.4. Attacking religion:

Advertisements attacking any religion or religious feeling of people are prohibited to be advertised. God or Prophet of any religion shall not be depicted in a wrong manner in any advertisement.

5.4. Law’s governing advertisements in India:

In the previous few years, advertisement in India has seen the vast transformation. From the Dhordarshan and Prasar Bharti way of advertising to the modern television channel and media, however with increasing misuse such as promoting a prohibited medicine, promotion of alcohol, promotion of toxic substance such as cigarette tobacco, etc. forced the government to pass several laws to keep in check such sought of advertisements. Let’s take a look at the several | In India several laws and acts related to advertisement control. Let’s mention a few of them.

5.4.1 In India several laws and acts related to advertisement control. Let's mention a few of them:

The consumer protection Act, 1986 and advertising The Section 6 of this Act grants consumers the right to be informed about the quality, quantity, potency, purity, standard and price of goods or services, as the case may be to protect the consumer against unfair trade practices. Section 2(r) of the Act, under the definition the term "unfair trade practice", it also covers the gamut of false advertisements including misrepresentations or false allurements. And to redress against such unfair trade practices on false advertisements may be sought under the Act.

The cable television networks Act, 1995 & the Cable Television Amendment Act, 2006 and advertising Code:

- Section 6 of the Cable Television Networks (Regulations) Act, 1995 provides that no person shall send or transmit through a cable service any advertisement unless such advertisement is in conformity with the advertisement code prescribed under the Cable Television Networks (Amendment) Rules, 2006. However, the provision above does not apply to programs of foreign satellite channels which can be received without the use of any specialized gadgets or decoder.
- Also, the Rule 7 of the Cable Television Networks (Amendment) Rules, 2006 lays down the "Advertising Code" for cable services which have been formulated to conform to the laws of the country and to ensure that advertisements do not offend morality, decency and religious susceptibilities of the subscribe

Restrictions on advertising under the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply, and Distribution) Act, 2003:

Section 5 of this Act, prohibits both direct & indirect advertisement of tobacco products in all forms of audio, visual and print media.

Advertising regulations under Drug and Magic Remedies Act, 1954 & Drugs and Cosmetics Act, 1940:

This Act is for regulating the advertisements of drugs in certain cases and to prohibit the advertising for

certain purposes of remedies alleged to have magic qualities and to give for matters connected therewith; Section 29 of the Drugs and Cosmetics Act, 1940 imposes a penalty upon whoever uses any report of a test or analysis made by the Central Drugs Laboratory or by a Government Analyst, or any extract from such report, for the purpose of advertising any drug. The punishment prescribed for such an offense is fine which may extend up to five hundred rupees and imprisonment up to ten years upon subsequent conviction.

Advertising restrictions under Prenatal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 & Young Persons (Harmful Publications) Act, 1956

Advertisement in any manner regarding facilities of pre-natal determination of sex available at any genetic counseling center, laboratory, clinic or any other place is prohibited under this Act and has been made a punishable offence under the Act (Section 22); Section 3 of the young person harmful Publication Act, 1956, inter alia, imposes penalty for advertising or making known by any means whatsoever that any harmful publication (as defined in the Act) can be procured from or through any person.

The Indian Penal Code and criminality of advertisements:

The IPC, vide an array of provisions, prohibits obscene, defamatory publication, publication of a lottery and statements creating or promoting disharmony/ enmity in the society. While it is not implicitly written, any advertisement that related to an offence, like hiring a contract killer or inciting violence, terrorism or a crime is illegal and will be punished under IPC or other applicable provisions.

These are some legislative measures to prevent consumer from misleading advertisements.

5.4.2. The advertisement makers must follow the following ethical values:

1. Should be true.
2. Must not be illegal and
3. Must not misguide the society, especially children.

It must be however the duty of the related authorities to offer a safeguard against the violators. The aim of such bodies must be as follows:

- To provide a safeguard against the indiscriminate use of advertising for the promotion of products which are regarded as hazardous to society or people to a degree or of a type that is not acceptable for the society at large.
- To ensure that advertisements observe fairness in the competition so that the consumer's need to be informed of choices in the marketplace and the canons of generally accepted competitive behavior in business is both served.
- No advertisement shall be permitted that derides any race, caste, nationality. Also, such advertisements must be avoided which is against the constitution of India, presents criminality as desirable, exploits national emblem or security.

VI. INTERNATIONAL CONSUMER RIGHTS

Consumers International (CI), international consortium of consumer-advocacy groups that promotes the rights and interests of consumers. CI was founded as the International Organization of Consumers Unions (IOCU) in 1960 and by the early 21st century had grown to include more than 200 member organizations in more than 100 countries. It is headquartered in London and has offices in Kuala Lumpur, Malay. And in Santiago.

CI defends what it considers to be eight basic consumer rights: the right to protection from unsafe products, the right to product information, the right to a range of product choices, the right to representation in government policy, the right to products that satisfy basic needs, the right to redress for grievances concerning unsatisfactory products, the right to consumer education, and the right to an environment that is not threatening to human well-being. CI acts through its member organizations to influence local and international policies that affect consumers, and it campaigns to promote corporate accountability and to protect consumers from deceptive marketing practices. To raise consumer awareness, the group also publishes research on product-safety issues and abuses in the marketplace.

CI is represented on a number of influential global-policy organizations, including the World Health Organization (WHO), the Codex Alimentarius Commission, UNICEF (United Nations Children's Fund), and the World Trade Organization (WTO). It is

also involved in various issue-based campaigns with organizations such as the Baby Food Action Network, the Pesticide CI is funded by membership fees and grants from governments, multilateral agencies, and nongovernmental organizations. It is governed by a general assembly that elects a president and a 13-member council to renewable four-year tenure.

VII. UNFAIR TRADE PRACTICES

Methods the unfair trade practice is business practice, when a manufacturer uses unfair or any fraudulent and deceptive methods, to promote his sale or services, which are prohibited by a statute or any law. In simpler terms illegal methods used by employer to increase his profit by cheating the customer, through misleading information regarding price, quality etc.

7.1. Consumer protection act and unfair trade practices:

Section 2(47)-defines "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopt any unfair method or unfair or deceptive practice including any of the following practice, namely

- (1) The practice of making any statement, whether orally or in writing or by visible representation which
 - (i). Falsely represents that the goods are of particular standard, quality, quantity, grade, composition, style or model;
 - (ii). Falsely represents that the services are of a particular standard, quality or grade;
 - (iii). Falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;
 - (iv). Represents that the goods or services have sponsorship, approval performance, characteristics, accessories, and uses or benefits which such goods or services do not have;
 - (v). Represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;
 - (vi). Makes false or misleading statement concerning the need for, or the usefulness of, any goods or services;
 - (vii). Gives to the public any warranty or guarantee of the performance, efficacy or length of life of a

product or of any goods that is not based on an adequate or proper test thereof;

- (viii). Makes to the public a representation in a form that purports to be a warranty or guarantee of a product or of any goods or services; or a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result, if such reported warranty or guarantee or promise is materially misleading. These are the provisions related to unfair trade practices. if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;
- (ix). Materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly specified 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 other representation is made
- (x). Gives false or misleading facts disparaging the goods, services or trade of another person.

Note: A statement is said to be made to public when it is

- a) Expressed on an article offered or displayed for sale, or on its wrapper or container; or
- b) Expressed on anything attached to, inserted in, or accompanying, an article offered or displayed for sale, or on anything on which the article is mounted for display or sale; or
- c) Contained in or on anything that is sold, sent, delivered, transmitted or in any other manner whatsoever made available to a member of the public, by the person who had caused the statement to be so expressed, made or contained.

- (2) Permits the publication of any advertisement whether in any newspaper or otherwise, for the sale or supply at a bargain price, of goods or services that are not intended to be offered for sale or supply at the bargain price, or for a period that is, and in quantities that are, reasonable, having regard to the nature of the market in which the business is carried on, the nature and

size of business, and the nature of the advertisement.

Note: "Bargain price" means—

- d) A price that is stated in any advertisement to be a bargain price, by reference to an ordinary price or otherwise, or
- e) A price that a person who reads, hears or sees the advertisement, would reasonably understand to be bargain price having regard to the prices at which the product advertised or like products are ordinarily sold.

- (3) Permits the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole; or the conduct of any contest, lottery, game of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;
- (4) Permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;
- (5) Permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

These are the provisions included in consumer protection act 2019

7.2. What are unfair commercial practices?

Unfair commercial practices are any business-to-consumer practices involving act, course of conduct or commercial representation (including advertising and marketing) by a trader that is objectively contrary to the requirements of professional diligence and good faith.

This definition covers two main types of unfair commercial practices:

- Misleading practices, either through action (giving false information) or omission (leaving out important information).
- Aggressive practices whereby consumers are pressured into buying.

Such practices affect the behavior and decisions of the consumers they are aimed at, and may lead those consumers to make a decision on a purchase which, had there been adequate information and clarity, they would not have taken.

7.3. Understanding Unfair Trade Practices:

Unfair trade practices are commonly seen in the purchase of goods and services by consumers, tenancy, insurance claims and settlements, and debt collection. Most states' unfair trade practices statutes were originally enacted between the 1960s and 1970s. Since then, many states have adopted these laws to prevent unfair trade practices. Consumers who have been victimized should examine the unfair trade practice statute in their state to determine whether they have a cause of action.

7.3.1. Federal Trade Commission Act, 1914:

Protecting the public from deceptive or unfair business practices and from unfair methods of competition through law enforcement, advocacy, research, and education. In order to protect consumers from above said unfair trade practice activity Federal Trade Commission Act, 1914 was established. The federal trade commission was created on September 26, 1914, when president Woodrow Wilson signed the Federal Trade commission Act into law. The FTC opened its doors on March 16, 1915. This act mission is to protect consumers and promote competition. A vibrant economy fueled by fair competition and an empowered, informed public.

In the United States, unfair trade practices are addressed in Section 5(a) of the Federal Trade Commission Act, which prohibits "unfair or deceptive acts or practices in or affecting commerce." It applies to all individuals engaged in commerce, including banks, and sets the legal standard for unfair trade practices, which may be deemed unfair, deceptive, or both. Below are lists of unfair and deceptive practices as per the rule:

7.3.1.2. Deceptive Practices:

An act or practice is deceptive when it meets the following criteria:

- A representation, omission, or practice misleads or is likely to mislead the consumer.
- A consumer's interpretation of the representation, omission, or practice is considered reasonable under the circumstances.
- The misleading representation, omission, or practice is material

7.4. Modes of unfair trade practices:

A tort is something that causes injury or wrong to another. When one person sues another for this wrongdoing, the court can impose liability which can result in fines for punishments. An important part of tort law involves unfair competition which can result in litigation. Unfair competition is generally defined as an intentional tort that causes economic harm to another person's business. It is divided into two categories.

7.4.1. Government initiatives to protect from unfair trade practices:

The Government of India understood the need to protect the consumers from being cheated by suppliers. Several laws have been enacted for this purpose. The Indian Contract Act, the Prevention of Food Adulteration Act, the Dangerous Drugs Act, the Sales of Goods Act, the Bureau of Indian Standards Act, etc., are remedial acts for aggrieved consumers. However, these laws involve a lengthy legal process which is very expensive and time-consuming because the consumer has to initiate action by way of a civil suit. The Consumer Protection Act, 1986 was enacted to provide quicker and simpler access to redressal of consumer grievances. The Act provided machinery to aggrieved consumers. But the consumers have undergone a drastic transformation since the enactment of the Consumer Protection Act, 1986. Therefore, it has become inescapable to replace the Act with CPA, 2019 to address the emerging vulnerabilities of the consumer. The Consumer Protection Act, 2019 was the old CPA 1986. The CPA 2019 establishes an executive agency known as the Central Consumer Protection Authority. The task of prevention of or acting against unfair trade practices is vested in it. The term "unfair trade practice" describes the use of deceptive, fraudulent, or unethical methods to gain business advantage or to cause injury to a

consumer. Unfair trade practices are considered unlawful under the Consumer Protection Act. The purpose of the law is to ensure that consumers have the opportunity to make informed, rational decisions about the goods and services they purchase.

Unfair trade practices include false representation of a good or service, targeting vulnerable populations, false advertising, tied selling, false free prize or gift offers, false or deceptive pricing, and non-compliance with manufacturing standards. Alternative names for unfair trade practices are “deceptive practices” or “unfair business practices.”

7.5. Types of unfair trade practices:

7.5.1. Unfair trade practices:

UNFAIR TRADE PRACTICE means a trade practice or a business practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice.

7.5.1.1. Unfair Trade Practices may be categorized as under:

7.5.1.1.1. False Representation:

The practice of making any oral or written statement or representation which:

1. Falsely suggests that the goods are of a particular standard quality, quantity, grade, composition, style or model;
2. Falsely suggests that the services are of a particular standard, quantity or grade;
3. Falsely suggests any re-built, second-hand renovated, reconditioned or old goods as new goods;
4. Represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which they do not have;
5. Represents that the seller or the supplier has a sponsorship or approval or affiliation which it does not have;
6. Makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
7. Gives any warranty or guarantee of the performance, efficacy or length of life of the goods, that is not based on an adequate or proper test;
8. Makes to the public a representation in the form that purports to be a warranty or guarantee of the goods or services;

9. A promise to replace, maintain or repair the goods until it has achieved a specified result, If such promise is materially misleading or there is no reasonable prospect that such warranty, guarantee or promise will be fulfilled Materially misleads about the prices at which such goods or services are available in the market; or Gives false or misleading facts disparaging the goods, services or trade of another person.

False Offer of ‘Bargain Price’:

Where an advertisement is published in a newspaper or otherwise, whereby goods or services are offered at a bargain price when in fact there is no intention that the same may be offered at that price, for a reasonable period or reasonable quantity, it shall amount to an Unfair Trade Practice. The ‘Bargain Price’, for this purpose means.

1. The price stated in the advertisement in such manner as suggests that it is lesser than the ordinary price, or
2. The price which any person coming across the advertisement would believe to be better than the price at which such goods are ordinarily sold.

Free ‘Gift Offer’ and ‘Prize Scheme’:

The unfair trade practices under this category are:

1. Offering any gifts, prizes or other items along with the goods when the real intention is different, or Creating impression that something is being offered free along with the goods,
2. when in fact the price is wholly or partly covered by the price of the article sold, or offering some prizes to the buyers by the conduct of any contest, lottery or game of chance or skill, with real intention to promote sales or business.

Non-compliance of Prescribed Standards:

Any sale or supply of goods, for use by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by some competent authority, in relation to their performance, composition, contents, design, construction, finishing or packing, as are necessary to prevent or reduce the risk of injury to the person using such goods, shall amount to an ‘Unfair Trade Practice’.

Hoarding, Destruction:

Any practice that permits the hoarding or destruction of goods, or refusal to sell the goods or provide any

services, with an intention to raise the cost of those or other similar goods or services, shall be an 'Unfair Trade Practice'.

Monopoly and competition:

When a specific person or enterprise is the only supplier of a particular commodity a monopoly exists. 'Monopolies' are thus characterized by a lack of economic competition to produce goods or services and a lack of similar goods. The verb "monopolize" refers to the process by which a company gains the ability to raise prices or exclude competitors. In economics, a monopoly is a single seller. In law, a monopoly is a business entity that has significant market power, that is, the power, to charge high prices. Although 'Monopolies' may be big businesses, size is not a characteristic of a monopoly. A small business may still have the power to raise prices in a small industry.

Holding a dominant position or a monopoly of a market is not illegal in itself. However certain categories of behavior can, when a business is dominant, be considered abusive and therefore incur legal sanctions. A government granted monopoly or legal monopoly, by contrast, is sanctioned by the State, often to provide an incentive to invest in a risky venture or enrich a domestic interest group. Patents, copyright and trademarks, are sometimes used as examples of government granted monopolies, but they rarely provide market power. The government may also reserve the venture for itself, thus forming a government monopoly

7.6. Redressal against unfair trade practices:

The Consumer Protection Act, 1986:

The Consumer Protection Act, 1986 is an Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith. While consumers are protected under this Act the small businessmen are protected under the Competition Act mentioned below.

The Competition Act, 2002:

The Competition Act 2002 has been enacted to promote competition in India. The ultimate aim of

competition law is to protect consumer welfare as competition in a market ensures that market players are looking to find the most efficient means of production (resulting in good quality services and goods at lower prices). However, unlike the previous Indian competition law, the Monopolies and Restrictive Trade Practices Act (commonly called the MRPT Act), the Competition Act 2002 does not apply to all "unfair trade practices". So, while many consumer disputes would have come under the MRTP Act, the new Competition Act will not always apply to such cases.

The Competition Act basically does three things. It prohibits:

1. Anti-Competitive Agreements - Anti-competitive practices are practices that prevent or reduce competition in the market. Agreements in respect of Production, supply, distribution, storage, acquisition or control of goods or provision of services that cause or are likely to cause appreciable adverse effects on competition within India are anti-competitive agreements.
2. The Abuse of Dominant Position - Abuse of a dominant position occurs when a dominant firm in a market, or a dominant group of firms, engages in conduct that is intended to eliminate or discipline a competitor or to deter future entry by new competitors, with the result that competition is prevented or lessened substantially.
3. Competition Commission of India- is a body of the Government of India responsible for enforcing The Competition Act, 2002 throughout India and to prevent activities that have an adverse effect on competition in India. It was established on 14 October 2003. It became fully functional in May, 2009.

7.7. COMPETITION COMMISSION OF INDIA:

Competition Commission of India is a body of the Government of India responsible for enforcing The Competition Act, 2002 throughout India and to prevent activities that have an adverse effect on competition in India. It was established on 14 October 2003. It became fully functional in May, 2009. The Competition Commission of India performs the following functions:

1. Make the markets work for the benefit and welfare of consumers.

2. Ensure fair and healthy competition in economic activities in the country for faster and inclusive growth and development of economy.
3. Implement competition policies with an aim to effectuate the most efficient utilization of economic resources.
4. Develop and nurture effective relations and interactions with sectoral regulators to ensure smooth alignment of sectoral regulatory laws in tandem with the competition law.
5. Effectively carry out competition advocacy and spread the information on benefits of competition among all stakeholders to establish and nurture competition culture in Indian economy.

7.8 Unfair practices may be categorized as under:

1. False representation
2. False offer of bargain price
3. Non-compliance of prescribed standards
4. Free gifts offer and prize schemes and
5. Hoarding, destruction, etc.

Anti-Competitive Agreements –

Anti-competitive practices are practices that prevent or reduce competition in the market. Agreements in respect of Production, supply, distribution, storage, acquisition or control of goods or provision of services that cause or are likely to cause appreciable adverse effects on competition within India are anti-competitive agreements.

The Abuse of Dominant Position -

Abuse of a dominant position occurs when a dominant firm in a market, or a dominant group of firms, engages in conduct that is intended to eliminate or discipline a competitor or to deter future entry by new competitors, with the result that competition is prevented or lessened substantially.

VIII. ROLES OF REGULATORY BODIES AGAINST UNFAIR TRADE PRACTICE

The Competition Commission of India (CCI) plays a crucial role in regulating unfair trade practices that have an adverse effect on competition in the market. Under the Competition Act, 2002, the CCI has the power to investigate and penalize anti-competitive agreements, abuse of dominant position, and unfair

trade practices. Additionally, the Consumer Protection Act (CCPA) established consumer commission at the district, state, and national levels to adjudicate consumer disputes arising from unfair trade practices.

8.1. Central Consumer Protection Authority: -

The Central Authority shall have an Investigation Wing headed by a Director General for the purpose of conducting inquiry or investigation under this Act as may be directed by the Central Authority. The inquiries or the investigations made by the Director-General shall be submitted to the Central Authority in such form, in such manner and within such time, as may be specified by regulations.

The District Collector (by whatever name called) may, on a complaint or on a reference made to him by the Central Authority or the Commissioner of a regional office, inquire into or investigate complaints regarding violation of rights of consumers as a class, on matters relating to violations of consumer rights, unfair trade practices and false or misleading advertisements, within his jurisdiction and submit his report to the Central Authority or to the Commissioner of a regional office, as the case may be.

A complaint relating to violation of consumer rights or unfair trade practices or false or misleading advertisements which are prejudicial to the interests of consumers as a class, may be forwarded either in writing or in electronic mode, to any one of the authorities, namely, the District Collector or the Commissioner of regional office or the Central Authority.

The Central Authority shall

(a) protect, promote and enforce the rights of consumers as a class, and prevent violation of consumer's rights under this Act;

(b) prevent unfair trade practices and ensure that no person engages himself in unfair trade practices;

Without prejudice to the generality of the provisions contained in sub-section (1), the Central Authority may, for any of the purposes aforesaid, (a) inquire or cause an inquiry or investigation to be made into violations of consumer rights or unfair trade practices, either suo motu or on a complaint received or on the directions from the Central Government.

8.2. Redressal Mechanisms: -

Files a complaint before the District Commission, the State Commission or the National Commission, as the case may be, under this Act; The CPA provides various redressal mechanisms for consumers aggrieved by unfair trade practices. Consumers can file complaints with the appropriate consumer commission seeking compensation, refund, or other appropriate relief. This commission has the authority to summoning to the parties and conducts the hearings, and pass orders to remedy the injustice caused to consumers. However, the effectiveness of these redressal mechanisms is often hampered by procedural delays, lack of awareness among consumers, and inadequate enforcement of orders.

Consumer Disputes Redressal Commissions (CDRCs) at the district, state, and national levels play vital roles in addressing unfair trade practices (UTP) and safeguarding consumer rights and interests. Now consumer can file a complaint in online mode and attending there hearing in virtual mode and our Indian government introduced E-dakil and Confonet App, so now speedy disposal of consumer complaint and the consumer also get speedy remedy.

Our food corporation ministry launches The National Consumer Helpline 1930. This help line (NCH) is a significant initiative established by the Government of India to empower consumers and address their grievances effectively. The National Consumer Helpline 1930 operates a toll-free number, which is easily accessible to consumers across India. This toll-free number provides a convenient and cost-free means for consumers to seek assistance, guidance, and redressal for various consumer-related issues, including unfair trade practices.

IV. NEED TO IMPROVE MECHANISMS

Despite the existence of legal provisions and redressal mechanisms, there is a pressing need to improve the effectiveness of combating unfair trade practices in India. This requires streamlining redressal processes, enhancing consumer awareness, strengthening enforcement mechanisms, and imposing stricter penalties on violators. Additionally, there is a need for collaboration between regulatory bodies, consumer organizations, and other stakeholders to address the root causes of unfair trade practices and prevent their recurrence.

X. LANDMARK JUDGMENTS IN UNFAIR TRADE PRACTICES:

Several landmark judgments have shaped the legal landscape concerning unfair trade practices in India. One such case is in case of

Ireo Grace Real Tech Pvt. Ltd. VS Abhishek Khanna & Others, on 19 July, 2021

The supreme court held that incorporation of one sided and unreasonable clauses in Apartment Buyer's Agreement constitutes an unfair trade practice.

The Hindustan Lever Ltd. v. Ashok Vishnu Kate & Ors, 1996AIR 285

where the Supreme Court held that a manufacturer's liability extends to the advertisements promoting its products. Another notable case is

The Cadbury India Ltd. v. State of Maharashtra & others, AIR 18 August, 2017

where the Bombay High Court held that misleading advertisements violate consumer rights and constitute unfair trade practices. These judgments have set important precedents and underscored the need for stringent enforcement of consumer protection laws.

XI. WHAT DOES CAVEAT EMPTOR MEAN?

Caveat emptor is a Latin phrase that translates to "let the buyer beware." It means that an individual buys at their own risk. Potential buyers are warned by the phrase to do their research and ask pointed questions of the seller. The seller isn't responsible for problems that the buyer encounters with the product after the sale. Caveat emptor is sometimes used in legal contracts as a type of disclaimer. In many jurisdictions, it is the contract law principle that places the onus on the buyer to perform due diligence before making a purchase.

The term is commonly used in real property transactions. It relates to adverse situations that may arise with real estate after the date of closing. It also applies to transactions that involve other types of goods, such as cars or items at thrift stores or yard sales.

XII. CONCLUSION:

In the Final Analysis, Empowering Consumer Right and Protection from Unfair Trade Practices paper highlights the point of empowering the consumer rights and to promote a fair market along the perfect competition together it contains various legislation in India. In particular, India has the Consumer Protection Act, 1986, that seeks, inter alia, to promote and protect the rights of consumers such as (a) the right to be protected against marketing of goods which are hazardous to life and property; (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices; (c) the right to be assured, wherever possible, access to an authority of goods at competitive prices;(d) the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums; (e) the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and (f) right to consumer education .To further strengthen the provisions for consumer protection especially in the new era of globalization, online platforms, e-commerce markets etc., the Consumer Protection Act, 2019 was enacted to replace the consumer protection act 1986. Its inter-alia, provides for improved protection for consumer involved in online transaction.

