

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Unfair Trade Practices

RAJ KARN¹

ABSTRACT

Unfair trade practices refer to “any fraudulent, dishonest trade practice or business practices which is prohibited by a statute”. It can be use of any unfair method or unfair or deceptive practice for the purpose of promoting the sale or use or supply of any goods. This research paper will deal with the reason for the incorporation of a law for unfair trade practice. The paper will further analyse the concept of unfair trade practice in India and the law governing it. The paper will also try to analyse about the evolution of this term and will try to discuss about the evolution of UTP. Further the paper will try to highlight the position of ‘unfair trade practices’ in India.

Keywords: *Consumer Protection Act, Unfair Trade Practice, Misleading, Falsity, Internet Fraud*

I. INTRODUCTION

“It is not the consumer who is the king, but it is the large corporation who is the king in the economy. Whatever happened is not because the consumer wants it but because large and powerful corporations prefer it that way” – John K. Galbraith

The Indian economy's exponential expansion, the global economy's increasing interdependence, and the widespread adoption of modern communication and information processing technology have resulted in substantial economic and social shifts that have revolutionized how markets serve customers. They've also assisted in the creation of a universal emphasis on the safety and advancement of consumer rights. Consumers all over the world are expecting more value for their wealth in the form of quality products and services.

Consumers are abused by a variety of dishonest and discriminatory tactics, including misleading advertising, toxic goods, defective goods, spurious drugs, adulteration of food, poor quality, deficient services, dubious hire purchase plans, high cost of products, deficient services and black marketing, among others, as a result of globalisation and technical developments. Consumers are tricked and forced to pay for goods they did not wish to purchase by clever businessmen using misleading advertising strategies and glamorous false advertisements about

¹ Author is a student at NMIMS Kirit P. Mehta School of Law, India.

their goods by the clever businessmen.

Further, with the emergence of the e-commerce websites and the growth of the information technology, the consumer now are more deprived of the complete information of the product and they have to rely on the information that has been provided on the ecommerce websites.

‘Unfair Trade Practices’ is a part of tort which mainly involves the economic injury caused due to a wrongful conduct. The legal theories that are involved in UTP are trade secret misappropriation, unfair competition, false advertising, Palming off, dilution and disparagement.

The following trade practices have been considered unfair at international levels by the World Bank and OECD (Organization for Economic Cooperation and Development)²: -

- Information that can be false or misleading and that are capable of harming firms’ business interests
- Conveying misleading or false information or information missing important or reasonable basis about the price, character, place of production, method of production or quality of product to the consumers
- Comparing the goods in false or misleading way for the process of advertisements.
- Wrongful use of another’s firm name, trade mark or product.
- Use of confidential information related to science and technology, production, business or trade. Using any unauthorized receipts

The constitution of India, under Article 38 and 39 of the constitution of India, which are the part Directive Principles of State Policy, mandate the state to guide its policies toward ensuring: that the community's financial resources are allocated in such a way that they better benefit the common good; and that the economic system's activity does not result in the accumulation of capital and means of production to the detriment of the common good.

(A) Research Objective:

The Research objective of this paper is to:

- To analyse the definition of unfair trade practices as provided in the ‘Consumer Protection Act, 2019’

² A Framework for the Design and Implementation of Competition Law and Policy, OECD, <https://www.oecd.org/regreform/sectors/aframeworkforthedesignandimplementationofcompetitionlawandpolicy.htm>. (last visited Apr 5, 2021).

- To understand about the reasons for the cause of UTP
- To analyse the difference between the law of India with other countries.

(B) Research Question

The rise of trade and commerce has given rise to false and misleading trade practices this makes the consumer afraid. So, there is the need for a legal frame work to tackle the issue of Unfair Trade practices so the research question arising out of this are:

- How the evolution of the concept ‘unfair trade practice’ took place?
- How the new act has changed and what changes it brought in the definition of ‘Unfair Trade Practice’?
- What are the reason for the “unfair trade practices”?

(C) Hypothesis

Before starting the paper we had the notion that the change in the law had bring the positive effect in the definition of the term “unfair Trade Practices”. Also, we have a notion that the evolution of this term arose from the consumer protection act, 1986

(D) Methodology

Keeping in mind the research question and the nature of topic, secondary research is the only way to write a research paper. We will to figure out different articles, bare act and case laws to understand the concept. We will also take the help of Internet and try to analyse different sources for the same.

(E) Limitation of the Research

Since considering the nature of the topic and the act has just been enacted, there is the lack of relevant content. Also, the major difficulty arises in studying the case law related to the act and the definition as the act is new and not many cases have been settled with accordance to this Law

(F) Review of Literature

Article: India: Growing Incidences of Unfair Trade Practice

Author: Sharad Vadehra

The author talks about how “Unfair Trade Practices” doesn’t have any universal standard definition. However, he says that the broad definition of UTP refers to fraudulent, deceptive or dishonest trade practice. He then discusses about the general unfair trades which may include

unfair assistance. He then discusses about the history of 'Unfair Trade Practice' how it started from Monopolies and Restrictive Trade Practices Act and till 2002 it was enacted to prevent monopolies and restrictive trade practices. After that in 2002 the competition act was enacted instead of MRTP and then the section of Unfair Trade Practices was shifted from MRTPC to Consumer Protection Act, 1986. Then the author talks about the definition of the 'Unfair Trade Practice' as defined in the COPRA. At last the author elaborates by examples the benefits of this legal Framework.

Article: Consumer Protection Act 2019: Enhancing Consumer Rights.

Author: Satvik Varma

The author talks about how the Consumer Protection act, 2019 brought the fundamental change in 1986 legislation. But he says that how now Central Consumer Protection Authority has been Granted much more power and control.

The author says how the COPRA,2019 received the assent of the President and repealed the 1986 act. He says that how the earlier legislation was amended many a times to bring it accordance to the time and the social change brought due to liberalisation, globalisation of market and digitalisation of products and services. He talks about the new addition to the act and how now the act also includes the misleading electronic advisements the author gives a broad overview of the new act and talks about the challenges that the act may seek in the future.

Article: China is Hurting Innovation,

Author: Sintia Radu

The article talks about the unfair trade practice by china has caused the slowdown in global innovation. The author says that how China's support for its own Industry has harmed the technological progress of countries like UK and US. The author clarifies about the wrong and unfair trade practice china uses to support its own business and industry. According to the author China's unconditional support to the industry and low rate funds does not amount to fair competition and this amounts to the risk in global innovation

II. ANALYSIS

(A) Evolution of Unfair Trade Practices

The misleading of consumers or dumping them through false or misleading advertisement or similar act gave the evolution of the legal framework of 'unfair trade practices. There was the need of a law for the protection of the customers from the wrongful act used in trade and industry.

In 1969 The Monopolies and Restrictive Trade practices act was passed but there was no mention of the term 'unfair trade practice'. But in 1984 by the amendment the section for 'unfair trade practices' was introduced. As per the recommendation of Sachar committee separate chapter defining various 'unfair trade practices' was introduced so that the consumer, the manufacturer, the supplier, the trade and other persons in the market can easily identify the practices which are prohibited.

In 1985 "Consumer Protection Resolution No. 39/248" was passed in United Nations General Assembly which indicate the guideline for the government which the government can adopt for better protection of their consumer's interest. Being the signatory of the resolution, the Indian Government enacted the 'Consumer protection Act, 1986' which provided simpler and quicker redressal of consumer's grievances

With the growing need of a better mechanism for regulating business practice and setting dispute due to the liberalization and globalization the Raghavan Committee recommended for the enactment of Competition Act. And Competition Act,2002 was enacted. After enactment as per the Raghavan Committee a separate chapter was added to 'Consumer Protection Act,1986' relating to 'Unfair trade practices. As the committee was of the opinion that UTP should not be in the Competition Act.

The provisions of 'Unfair Trade practices' was transferred from MRTP Act to Consumer Protection Act since the consumer needed protection not only from the defective goods but from unfair trade practice.

(B) Consumer Protection Act, 2019

The government presented the new Consumer protection bill in the parliament and was passed. And the president gave his assent and the Consumer Protection Act, 2019 was enacted for the purpose of providing timely and effective administration.

(C) What are 'Unfair Trade Practices'?

For decades, protecting consumers from unethical and misleading market practices has been a matter of government concern. And laws have been framed to tackle these problems.

'Unfair Trade Practices' is a part of the tort and it encompass a broad array of torts. All of these torts include economic injury done by misleading or wrongful conduct. The legal terms used for the unfair means include "trade secret misappropriation, unfair competition, false advertising, palming-off, dilution and disparagement. 'Unfair trade Practices' can arise in any form of business and can also arise in the intellectual property claims like patent, trademark

and copyright infringement”.

(D) Reason for the ‘Unfair Trade Practice’

1. Lack of Awareness

The lack of customer knowledge about their rights to be told about the product, quality, price, safety against dangerous products, access to a range of goods at competitive prices, consumer education, and other issues magnifies the issue of ‘Unfair Trade Practice’³.

It has also been observed that the people living in rural areas are particularly more prone to such harms since they don’t have adequate knowledge about their rights of information, choice, and redressals. The rural customer is subjected to poor quality goods and services, adulterated foods, fraudulent commercials, dangerous medications, and high costs, as well as unfulfilled manufacturing guarantees and plenty of other ills, due to ignorance and a lack of knowledge.

2. Misleading advertisement

When an advertisement misleads viewers, changes nature, and influences purchasing decisions, it is referred to as misleading advertising. Advertisements have a significant impact on consumer decision-making. Advertisements play a critical role in attracting the target audience's full concentration, influencing the curiosity in the offering, instilling a passion for the goods and services, and assisting in the brand building and image creation

False and misleading advertisement are not just immoral and unethical but they also harm the competition and affect the consumer choice. The false and the misleading advertisement not only influence consumers but also violates several basic rights of the consumer which include the right to information, the right to choose and the right to be protected against unsafe goods and services.

(C) Effect of UTP on the consumer.

The law made for the ‘Unfair Trade Practices’ serves many purposes. It protects the rights of the consumer. It also protects and enhance the economy by creating the investment opportunities. It also protects the good will of the business and the consumers. It does also promote clarity and stability by enhancing the customer and merchant relation. It also increases the competition in the market so that better product and service are offered.

(D) Different sectors where UTP is applicable:

³ Misra Suresh and Pathania Mamta, “Changing Profile of Rural Consumers in India - Need for Education and Awareness”, *Consumer Protection in India: Issues and Concerns*, Editors: Suresh Mishra and Sapna Chadah, Indian Institute of Public Administration, New Delhi, 2012.

Today almost every day many incidents of unfair Trade practice has been witnessed across the globe. UTP can be applicable in various sectors and on number of product and services. UTP can be applicable in food processing industry, pharma sector, education, finance sector or others.

There are also different laws are government different unfair trade practices in different sectors some of them are:

In Pharma sector there are laws which prohibit Unfair trade practice which include

- The Drugs and Magic Remedies Act, 1954
- Drugs and Cosmetics Act, 1940
- Or the whistle-blower policy

Similarly, for financial institution also there are different law governing UTP which includes:

- Insurance Act, 1938 and relevant rules and regulations
- The IRDA regulation, 2000
- The SEBI act, 1992
- Prohibition of Insider Trading Regulations, 1992

Similarly, in Food processing Industries there are legal framework for the protection of Unfair Trade practice which includes

- Food and Standards Act, 2006.

And different others sectors have their specific law and legal framework for the unfair Trade Practices.

III. COMPARATIVE ANALYSIS OF UNFAIR TRADE PRACTICES IN CONSUMER PROTECTION ACT, 1986 AND CONSUMER PROTECTION ACT, 2019

Initially “in Consumer Protection Act, 1986 included six types of such unfair practices like the false representation, misleading advertisements,” etc.

Whereas the new act adds another three types of Practices to the list, which include: the failure to issue a bill or receipt may amount to unfair trade practice, refusal to accept a product within thirty days of its buying period, disclosing any personal information that is given under the confidence such information can only be disclosed if required by law or in public interest. Contest and lotteries don't fall in the ambit of unfair trade practice.

The new act focusses mainly on filling the gap that arose due to the increasing outreach of the internet. The act clearly defines the term of online trade and also made the provision for online

fraud and online trade practices. The definition of the unfair trade practices in the new act also makes it clear that bill and receipt is must and if trader denies to give the same than it also amounts to unfair trade. The new definition also adds the point of returning the product in specific period of time and if a person or institution denies the same it also amounts to UTP

IV. PROTECTION FROM INTERNET FRAUD:

In the consumer protection Act,2019 Section 94 talks about the “Measures to Prevent unfair trade practices in e-commerce, direct selling etc.” the section says “For the purposes of preventing unfair trade practices in e-commerce, direct selling and also to protect the interest and rights of consumers, the Central Government may take such measures in the manner as may be prescribed.” This section try to minimize the fraud or false trade practices arising due to the internet. Since with the increase in the internet users the fraud relating to the internet has increased over the time this section helps to prevent them from those frauds.

V. COMPARATIVE STUDY WITH DIFFERENT COUNTRIES

(A) United State of America

In USA every state has a UTP statue of some type. All states allow private parties to sue under some circumstances. Many states have modelled their ‘Unfair Trade Practice’ statues on section 5 of the FTC act. In almost 32 states, court look to Federal trade commission decision and federal case law under section 5 as a guide.

Types of UTP claims

- i. Per se violation
- ii. Deception
- iii. Aggravated breaches of contract
- iv. “Direct Unfairness” claims
- v. Unfair methods of competition

Due to the initiative and efforts by individual states, special agencies have been established at the state level for dealing in such UTP

In many states of the USA, “Uniform Deceptive Trade Practices Act (1964/1966) (UDTPA). The laws help in protecting the rights of both be it the consumer or the competitors.⁴

⁴ 2010 Illinois Code :: CHAPTER 815 BUSINESS TRANSACTIONS :: 815 ILCS 510/ Uniform Deceptive Trade Practices Act., JUSTIA LAW, <https://law.justia.com/codes/illinois/2010/chapter815/2357.html> (last visited Apr 6, 2021).

In the state of California, it has a specific law i.e., California's unfair competition law. This law was enacted in the year 1933 and was on the model of FTC act, that protect 'unfair trade practices. According to this UTP include untrue or fraudulent business act or practice, untrue or misleading advertisement or others." The definition of UTP is not restricted in UCL and can be extended to even unlawful business practice and the person even may sue for unfair practice to everyone.

(B) Russia

In Russia the protection of Competition, 2006 law govern the competition. And the Article 14 of this act talks and specify about the unfair competition incidents which may include "distribution of false information capable of causing financial losses or harm to another business reputation; publication of incorrect product comparisons; falsification or confusion of consumers about the maker, quality, or other information about goods; improper use of trademarks or other intellectual property; and improper receipt or use of secret or proprietary information". The law is governed by Federal Anti-Monopoly Service.

VI. DEFINITION OF "UNFAIR TRADE PRACTICES" AS PER THE CONSUMER PROTECTION ACT, 2019

The term 'Unfair Trade Practices has been defined in the Consumer Protection Act, 2019⁵

"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, adopts any unfair method or unfair or deceptive practice including any of the following practices." (the practices have been defined in the bare act.)

VII. CONCLUSION

The 1986 act was amended to bring the new consumer protection act. With the new act their came new parts which were added and similarly in the definition of unfair trade practice also new things were added. With the change in society and the increase effect of liberalization and globalization there was the need of adding new provisions to the act. The 2019 act modified the definition of 'Unfair trade Practices' and added the aspect of online trade. With the increase in the internet services and cheap data rates internet has already made its presence in all part of the world and with the increase in the internet users the trade related to the online trade had also increased exponentially. The new act defined consumers as both one who purchases online and the one who purchases offline. Even the telecom sector has also been added to the new

⁵ Consumer Protection Act, 2019, sec. 2

law. Unfair trade practices are basically misleading and falsely selling good and service. The new act helps to prevent any false and misleading trade.

VIII. FINDING

The new definition of the ‘unfair trade practices’ added the term “unfair trade practices in e-commerce” and also added the term of personal information. The new act make it easy to shop freely online and with the increasing reach of the internet it was very important we had a law governing this aspect of trade. In the definition of UTP it has been said that disclosing of any personal information which is given in confidence shall amount to unfair trade practice. And since we all know how with the increase in the globalization has made data a very precious tool and how these data’s have been used to manipulate people therefore there was the great need of such a legal framework which according to the time help the consumer.

IX. SUGGESTION

Since the old act after lots of amendment also was bot able to provide the redressal to the consumer, the new act was enacted and the new act tried to focus on all the aspect of todays society and circumstances. But mere enactment of a good act doesn’t make it beneficial. To make this act worthy government need to educate people about the act and the unfair trade. People when educated about their rights and know what exactly is the unfair trade can take full benefit of the changes.

X. BIBLIOGRAPHY:

1. 2010 Illinois Code :: CHAPTER 815 BUSINESS TRANSACTIONS :: 815 ILCS 510/ Uniform Deceptive Trade Practices Act., JUSTIA LAW, <https://law.justia.com/codes/illinois/2010/chapter815/2357.html> (last visited Apr 6, 2021).
2. Admin, WHAT IS CONSUMER PROTECTION ACT? MEANING, DEFINITION, RIGHTS AND RESPONSIBILITIES BYJUS (2021), <https://byjus.com/commerce/what-is-the-consumer-protection-act/> (last visited Apr 8, 2021).
3. A Framework for the Design and Implementation of Competition Law and Policy, OECD, <https://www.oecd.org/regreform/sectors/aframeworkforthedesigndimplementationofcompetitionlawandpolicy.htm> (last visited Apr 5, 2021).
4. Unfair Trade Practice Legal Definition, MERRIAM-WEBSTER, <https://www.merriam-webster.com/legal/unfair%20trade%20practice> (last visited Apr 2, 2021).
5. The Worlds Largest B2B Marketplace Network Online Expos 24/7/365 Exhibit FREE FOR LIFE Now!, INTERNET TRADE SHOWS - ITS, <https://internettradeshows.com/> (last visited Apr 4, 2021).
