

# CONSUMER SAFETY: EMERGING TRENDS & FUTURE CHALLENGES

**Dr. Alok Kumar**



# Consumer Safety:

## Emerging Trends & Future Challenges



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# Consumer Safety: Emerging Trends & Future Challenges

*Edited By:*

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## **Preface**

The current economic environment and rapid societal and technological changes have led to new trends in consumer habits and new challenges for consumer protection. The Consumer Protection Act, of 2019 was enacted replacing The Consumer Protection Act, of 1986 (“CPA 1986”) to provide enhanced protection to consumers mainly considering the exponential boom in the e-commerce industry. The Act further provides safety to consumers concerning settling disputes, regulating deceptive advertisements, and establishing a central grievance-resolving authority. The definition and scope of ‘consumer’ have been broadened to include all the categories of consumers who procure goods or hire any kind of service through any mode, whether traditional offline method or online through E-commerce sites, teleshopping or any other retail channel. This new definition encompasses a wide range of goods and services in today's marketplace. The most essential characteristic of the Act is that it aims to provide speedier and inexpensive redressal against misleading claims, or advertisements and imposes product liability obligations. The Government has been actively working to address these challenges by formulating policies and regulations to protect consumer safety.

This book envisages appraising how continuous efforts are needed to ensure effective implementation, address emerging issues, and safeguard consumer rights in an evolving consumer landscape. This book makes serious academic contribution to connect academicians, professionals and students on various topics about significant reforms, and efforts to strengthen redressal mechanisms, regulate e-commerce, promote consumer awareness, and enforce quality standards. Aim of the present book is therefore to detail the new emerging consumer trends and the possible challenges associated to consumer safety. From the outcome of this analysis, one could better evaluate the risks for consumers, the need for new consumer protection measures and the opportunities for growth. It has been organised in to different chapters, each chapter aim to explore the importance of consumer awareness and education campaigns that have actually arisen in practice.

The Chapter, **“Legal Regime pertaining to right of consumer to get safe food: A critical evaluation”** by Dr. Pradip Kumar Tambe, Assistant Professor, MMM’s Shankarrao Chavan Law College, Pune, discuss consumer has a right to get safe food which is a fundamental right under article 21 of Indian Constitution. This right is well recognized at international level. In India, separate legislation is enacted called, ‘The Food Safety and Standards Act, 2006’. Despite of this independent legislation, several lacunas are existing which are discussed. In order to understand this formulation of consumer protection legislation and its implementation are discussed.

Naveen Saju, Research Scholar, India International University of Legal Education and Research (IIULER) Goa in his Chapter **“The Vanquished Consumer Protection Laws inimical to Indian Business Tycoons: A Meticulous Study”** evaluate that how the contemporary market economy is ‘protecting’ only the consumers who is being typecasted as ‘business-tycoons’ while the normal consumers being sidelined where their voices are being stifled in one way or the other. He suggests that the government should need to adopt and enact sufficient laws and regulations in order to promote the true spirit and essence of consumerism as well as to emancipate the consumers by providing effective consumer protection laws and consumer redressal mechanisms if they have faced any sort of difficulties while engaging as a consumer in any business market economy in the nation.

The Chapter **“Online Transaction Risks: Emerging Regulatory Challenges in India”** by Dr. Amruta Das, Associate Professor, SOA National Institute of Law, Siksha O Anusandhan Deemed to be University, & Dr. Hiranmaya Nanda, Associate Professor, KIIT School of Law, KIIT Deemed to be University, Bhubaneswar, explains the legal and regulatory risks that affect consumers in the complex technicalities of multi-party online transactions including contractual rights and obligations either under purchase-payment options or licensing agreements etc. A theoretical and analytical understanding seems to be of common conscience that, accountability of online businesses can be ensured though persistent investigations via consumer-feedback mechanism as well as making companies liable for default of their contractual promises as well as tortious breach of trust. At the same time, sensitization and awareness programmes

on rules and regulations by regulatory agencies is more welcoming step in the right direction, so as to protect the public at large. Author opine that the contemporary world of consumption based economic model, safeguarding consumers' interest on a global level of trade and commerce is not mere private right, rather a matter of common/public interest.

Tulika Dhanai, Research Scholar, Department of Law, H.N.B Garhwal (A Central) University, Uttarakhand & Dr. Mamta Rana, Associate Professor, Department of Law, H.N.B Garhwal (A Central) University, Uttarakhand, in her chapter **“Cultivating Consumer Confidence: Role of (Indian) Government Agencies in Ensuring Cosmetics Safety”**, analyses that in India, Cosmetics being significantly a self-regulated industry and therapidly evolving landscape has created a gap in regulatory frameworks that might not adequately address the potential risks or provide sufficient oversight. This gap in regulation can leave consumers vulnerable to misleading claims, substandard products, and potential health and safety concerns. Government agencies play a vital role in nurturing consumer confidence, with a special focuson ensuring trust and safety within the realm of cosmetics. In addition to establishing standards andenforcing regulations, these entities ensure that the industry advances and grows simultaneously consumer health and interest is safeguarded. This Chapter delves into the indispensable role of government agencies in upholding consumer awareness and protection standards and ensuring trust inthe realm of cosmetics in India.

The chapter **“Misleading Advertisements: Liability And Protection: Safeguards To Protect Consumers From Getting Duped”** by Shubhankar Paul, Research Scholar at Raiganj University examines that India has to create a more efficient regulatory framework to control false and deceptive advertisements. The recommendation suggests that the model should be adjusted to match international practices and promote customer interest without going beyond what is required to address market failure.

Mini Rani Sharma, Consultant, Ministry of Information & Broadcasting, Govt. of India, in her Chapter **“AI and Blockchain for consumer safeguard and its vulnerabilities”** delves into the transformative role of Artificial Intelligence (AI) and Blockchain in reshaping the landscape of consumer safety. It explores how the integration of these technologies holds the potential to empower consumers through predictive analytics, transparent

supply chains, and decentralized identity verification. The narrative unfolds, highlighting the promises of innovation but also shining a spotlight on vulnerabilities. Examining the nuances, the chapter discusses the challenges of AI bias, potential blockchain vulnerabilities, and privacy concerns inherent in handling vast amounts of consumer data. It offers insights into how these technologies, while promising transparency and security, require meticulous attention to ethical considerations and regulatory frameworks to navigate potential pitfalls.

**“Surrogate Advertising in India: The Rising Tide Of Legal Concern”** by Brindha R, Student, School of Excellence in Law, Tamil Nadu Dr. Ambedkar Law University, Chennai emphasize that there are certain products such as tobacco, liquor which are prohibited from advertising in mass media as they are addictive in nature and have negative impacts on the health of the consumers. Using the loopholes in the law, the corporate use the strategy called surrogate advertising and gain unfair advantages. It is the method of promoting another product under the same brand name of its original product which is prohibited from advertising. This chapter primarily concentrates on the laws that govern the surrogate advertising and the corporate standpoint on the same. Additionally, it discusses how it impacts the consumers’ interests. Furthermore, suggestive measures are given to regulate surrogate advertising by analyzing the law of other countries and examining the effectiveness of existing law in India.

**“Misleading Stars: Deciphering The Consumer Protection Act Perspective On Deceptive Endorsements”** by Aryan Sharma & M.V. Shubhasri, Student, Kristu Jayanti College of Law, Bengaluru highlights the impediments encountered in the enforcement of regulations against deceptive endorsements, encompassing the onus of substantiation and the fluid nature of marketing strategies. It underscores the imperative of an equitable approach that accommodates the evolving dynamics of advertising whilst ensuring the well-being of consumers. In essence, this chapter aspires to contribute to a holistic comprehension of the Consumer Protection Act stance on deceptive endorsements, elucidating the intricate interplay between celebrity endorsements, consumer entitlements, and legal safeguards. By illuminating the intricacies of this domain, the study seeks to foster erudite



dialogue and facilitate meaningful progressions in the sphere of consumer protection within the Indian legal milieu.

I hope that the book proves a valuable asset for academicians, legal luminaries, research scholars and students giving a comprehensive view about emerging challenges of Consumer Protection Law in India.

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## **Acknowledgement**

I take this opportunity to sincerely acknowledge The ICFAI University, Jharkhand for providing an opportunity to perform my research work comfortably. I owe a never-ending gratitude to the Guru Siyag for his grace and blessings in the completion of this edited book. At this moment of accomplishment, first of all, I am extremely indebted to Prof. (Dr.) Raman Kumar Jha, the Vice-Chancellor of The ICFAI University, Jharkhand. This work would not have been possible without his guidance, support and encouragement. I also want to express my gratitude to Prof. J B Patnaik, the Registrar, The ICFAI University, Jharkhand and Prof. Arvind Kumar, Dean (Academics), The ICFAI University, Jharkhand. I am deeply indebted and grateful to my previous Vice-Chancellor Prof. O R S Rao for his benevolent cooperation and encouragement. I am deeply indebted and grateful to Amarjeet Ranjan for his benevolent cooperation without which this work could not have taken its present shape.

I gratefully acknowledge my esteemed colleagues for providing me assistance for the preparation of this edited book through contribution of relevant chapters, valuable suggestions and advice. I express my sincere gratitude to publishers and all others who have contributed in making this venture successful. It is collective efforts to bring the readers the best. I thank our readers in advance.

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## CHAPTER I

### LEGAL REGIME PERTAINING TO RIGHT OF CONSUMER TO GET SAFE FOOD: A CRITICAL EVALUATION

**Dr. Pradipkumar Tambe**

Assistant Professor, MMM's Shankarrao Chavan Law College, Pune

#### INTRODUCTION

In case of *Shantistar Builders v. Narayan Khimalal Totame*, the Supreme Court stated that basic needs of man have traditionally been accepted to the three - food, clothing and shelter.<sup>1</sup> Without food, survival of human being would be impossible to live a life. Thus, food is an absolutely vital element of human life.

According to Britannica Dictionary, food, substance consisting essentially of protein, carbohydrate, fat, and other nutrients used in the body of an organism to sustain growth and vital processes and to furnish energy.<sup>2</sup> As per the definition given by Collins, any substance containing nutrients, such as carbohydrates, proteins, and fats, that can be ingested by a living organism and metabolized into energy and body tissue, nourishment in more or less solid form as opposed to liquid form food and drink and anything that provides mental nourishment or stimulus.<sup>3</sup> Such food should be safe and rich with all requisites

The analysis of these definitions indicates the essentiality of food in human beings life which has been well recognized in Indian Constitution and at International Level. Such aspect is well reflected in the definition of 'food' under the Food Safety and Standards Act, 2006: "Food" means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption and includes primary food to the extent defined in clause (zk), genetically modified or engineered food or food containing such ingredients, infant food, packaged drinking water, alcoholic drink, chewing gum, and any substance, including water used into the food during its manufacture, preparation or treatment but does not include any animal feed, live animals unless they are prepared or processed for placing on the market for human consumption, plants, prior to harvesting, drugs and medicinal products, cosmetics, narcotic or psychotropic substances or any other article as food for the purposes of this Act having regards to its use, nature, substance or quality.<sup>4</sup>

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<sup>1</sup> AIR 1990 SCC 520

<sup>2</sup> <https://www.britannica.com/topic/food> (Last accessed pm 10th August, 2023 at 10:10 am).

<sup>3</sup> <https://www.collinsdictionary.com/dictionary/english/food> (Last accessed pm 10th August, 2023 at 11:00 am).

<sup>4</sup> Sec.3 (j) of the Food Safety and Standards Act, 2006

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**Right to food at International Level:**

Universal Declaration of Human Rights, 1948 has declared that as part of the human right “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food.”<sup>5</sup>

The International Covenant on Economic, Social and Cultural Rights, which is part of the International Bill of Human Rights, recognized the Right to Adequate Food as an essential part of the right to an adequate standard of living.<sup>6</sup> It is also declared that it is the fundamental right of everyone to be free from hunger.”<sup>7</sup> The UN Special Rapporteur on the right to food in 2002 defined it as follows: Right to adequate food is a human right, inherent in all people, to have regular, permanent and unrestricted access, either directly or by means of financial purchases, to quantitatively and qualitatively adequate and sufficient food corresponding to the cultural traditions of people to which the consumer belongs, and which ensures a physical and mental, individual and collective fulfilling and dignified life free of fear<sup>8</sup>. Rome Declaration on World Food Security reaffirmed that the right of everyone to have access to safe and nutritious food, consistent with the right to adequate food and the fundamental right of everyone to be free from hunger.<sup>9</sup>

Therefore, it is understood that concept of right to food is not only restricted with the particular calories or nutrition’s but to satisfy the hunger. Due recognition accorded to right to food at international level through various instruments and documents as well. Consequentially, obligation is fixed on the state to implement the right to adequate food at the national level.<sup>10</sup>

**United Nations Guidelines for Consumer Protection:** The one of the objectives of these guidelines is to assist countries in achieving or maintaining adequate protection for their population as consumers and basic principles including disclosure and transparency, education and awareness raising, consumer complaints and disputes etc<sup>11</sup>.

**Right to food at National Level:**

Right to Food is inherent to a life with dignity, and Article 21 of the Constitution of India which guarantees a fundamental right to life and personal liberty should be read

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<sup>5</sup> Art. 25 of Universal Declaration of Human Rights, 1948

<sup>6</sup> Art. 11(1) of The International Covenant on Economic, Social and Cultural Rights, 1966

<sup>7</sup> Art. 11(2) of the International Covenant on Economic Social and Cultural Rights, 1966

<sup>8</sup> <https://www.ohchr.org/en/special-procedures/sr-food> (Last time accessed on 25/12/2023 at 10:00am).

<sup>9</sup> <https://www.fao.org/3/w3613e/w3613e00.htm> World Food Summit on 13 to 17<sup>th</sup> November 1996 Rome Italy.

<sup>10</sup> <https://www.ohchr.org/en/special-procedures/sr-food/about-right-food-and-human-rights>

<sup>11</sup> United Nations Guidelines for Consumer Protection, United Nations, New York 2016.

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with Articles 39(a) and 47 to understand the nature of the obligations of the State in order to ensure the effective realization of this right.

Article 39(a) of the Constitution, enunciated as one of the Directive Principles, fundamental in the governance of the country, requires the State to direct its policies towards securing that all its citizens have the right to an adequate means of livelihood, while Article 47 spells out the duty of the State to raise the level of nutrition and standard of living of its people as a primary responsibility. The Constitution thus makes the Right to Food a guaranteed Fundamental Right which is enforceable by virtue of the constitutional remedy provided under Article 32 of the Constitution.<sup>12</sup>

Apex Court in number of cases has recognized the significance of right to food and held that everyone has the right to standard of living adequate for the health and well-being of himself and his family including food, clothing, housing, medical care and necessary social services.<sup>13</sup> In the case of *PUCL v. Union of India*, Supreme Court of India held that right to food is enshrined under article 21 and the state cannot escape its duty to fulfill it.<sup>14</sup> In extension to this recently, Rajasthan High Court has upheld that right to safe food is a fundamental right under article 21 of Indian Constitution.

#### **Legislative Framework for Right to get safe food:**

India being 107<sup>th</sup> rank state in the 2022 Global Hunger Index out of the 121 countries. India has a level of hunger that is serious with score 29.1.<sup>15</sup> To satisfy this hunger, several attempts has been made including packed food. Open Economy, Rising Income, Work Culture, Changed Lifestyle and family culture etc are some of the reasons which ultimately reflected in the bulk purchasing of packed food.

Accordingly, The Food Safety and Standards Act, 2006 was passed with an objective to food and to establish the Food Safety and Standards Authority of India for laying down science-based standards for articles of food and to regulate their manufacture, storage, distribution, sale and import, to ensure availability of safe and wholesome food for human consumption.<sup>16</sup> This Act has recognized that every consumer has a right to get safe food. Consequently, the Act has laid down the definition of ‘unsafe food’<sup>17</sup> and fixed liability of manufacturers, packers, wholesalers, distributors and sellers for any article of food which is unsafe or misbranded.<sup>18</sup>

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<sup>12</sup> <https://nhrc.nic.in/press-release/right-food-fundamental-right> (Last accessed pm 12th August, 2023 at 10:10 am).

<sup>13</sup> *Chameli Singh and Ors. v. State of U.P. and Anr* . AIR 1996 SCC 549

<sup>14</sup> *People united for civil liberties (PUCL) v. Union of India*, Writ Petition (Civil) No. 196 of 2001

<sup>15</sup> <https://www.globalhungerindex.org/india.html> (Last accessed pm 13th August, 2023 at 10:10 am).

<sup>16</sup> Food Safety and Standards Act, 2006.

<sup>17</sup> Sec. 3(zz): —unsafe food means an article of food whose nature, substance or quality is so affected as to render it injurious to health:—

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**Establishment of Food Safety and Standards Authority of India:** Under section 4 of the Act, FSSAI, a body corporate has been established with several duties and functions as described under section 16 of the Act. The prominent duty is to regulate and monitor the manufacture, processing, distribution, sale and import of food so as to ensure safe and wholesome food.<sup>19</sup> In addition to this, The Food Authority is duty bound to take all such steps to ensure that the public, consumers, interested parties and all levels of panchayats receive rapid, reliable, objective and comprehensive information through appropriate methods and means.<sup>20</sup>

- **Constitution of Various Authorities and their Functions:** Under FSSAI, 2006, several authorities are constituted such as Food Authority, Chief Executive Officer, Central Advisory Committee, Scientific Panels, Committees etc. It is expected that all such committees have been directed to observe the general principles such as protection of human life and health and consumer's interest, fair prices, risk management, assessment, identification of harmful effects etc..<sup>21</sup>

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(i) by the article itself, or its package there of, which is composed, whether wholly or in part, of poisonous or deleterious substances; or

(ii) by the article consisting, wholly or in part, of any filthy, putrid, rotten, decomposed or diseased animal substance or vegetable substance; or

(iii) by virtue of its unhygienic processing or the presence in that article of any harmful substance; or

(iv) by the substitution of any inferior or cheaper substance whether wholly or in part; or

(v) by addition of a substance directly or as an ingredient which is not permitted; or

(vi) by the abstraction, wholly or in part, of any of its constituents; or

(vii) by the article being so coloured, flavoured or coated, powdered or polished, as to damage or conceal the article or to make it appear better or of greater value than it really is; or

(viii) by the presence of any colouring matter or preservatives other than that specified in respect thereof; or

(ix) by the article having been infected or infested with worms, weevils, or insects; or

(x) by virtue of its being prepared, packed or kept under insanitary conditions; or

(xi) by virtue of its being mis-branded or sub-standard or food containing extraneous matter; or

(xii) by virtue of containing pesticides and other contaminants in excess of quantities specified by regulations

<sup>18</sup> Sec.27 (2) (c) of the FSSAI, 2006.

<sup>19</sup> Sec. 16(1) of the FSSAI, 2006 also several others duties such as lay down the standards and guidelines in relation to articles of food, limits for use of food additive, crop contaminations, pesticide residues etc.

<sup>20</sup> Sec. 16(3) (g) of the FSSAI, 2006.

<sup>21</sup> Sec.18 of the FSSAI, 2006



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- Several Provisions of restrictions of advertisement and prohibition as to unfair trade practices, liability of the manufactures, packets, wholesalers, distributors and sellers etc. are included in the Act.

#### **Major Issues:**

1. **No recognition to right to safe food:** There is no express recognition to consumer's right to get safe food under the Food Safety and Standards Act, 2006. Due to lack of express bold letters in the Act, common people is unable to understand about their right to get safe food. Due to lack of express recognition to right to safe food, consumers are quiet reluctant to exercise their right under the Food Safety and Standards Act, 2006 or under the Consumer Protection Act, 2019 as well. Consequently, the object of the act is to consolidate the foods laws and make it available safe food for human consumption is not getting fulfilled it. Rather, it is imperative on the part of the government to make sure the safe food for consumers. But consumers are absolutely neglected from enjoying his rights and moreover right based approach is totally ignored by not incorporating such this idea in the Act. The five elements of right based approaches such as participation, accountability, Non-discrimination, empowerment and legality aren't observed in this Act.
2. **Legal Awareness:** At present, under the Food Safety and Standards Act, 2006 several rules and regulations have been issued such as Food Safety and Standards Rules, 2011, Food Safety and Standards (Licensing and Registration of Food Businesses) Regulation, 2011, Food Safety and Standards (Food Products Standards and Food Additives) Regulation, 2011, Food Safety and Standards (Prohibition and Restriction of Sales) Regulation, 2011 etc. Around 28 regulations on different subjects have been issued to effect to the Food Safety and Standards Act, 2006. The basic question should be considered here is knowledge about the legal rights to the consumers. Due to multiple regulations on different subjects, it becomes almost difficult to understand it. Also, though it is understood that every person should know the law of the land but in reality, is totally different. Generally, common person is least interested to get knowledge about it. Therefore, despite of several detailed rules and regulations, the whole purpose does not get fulfilled.
3. **Implementation of the Act:** Only framing of rules is not sufficient. Proper implementation of the same is substantial to achieve the objectives of the Act. Under the Food Safety and Standards Act, 2006, detailed provisions are laid down regarding the standards to prepare, sale and import different categories of food also different regulations are made in this regard. But, the basic question is about its implementation. India is popular for its tasty street food. Around 29% food is

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served on the street in India.<sup>22</sup> These stalls are located from village to mega cities. How it is possible to the Food Authorities to keep check on it? Moreover, the tendency of the authorities is to take appropriate action after receipt of the complaint. Hence, supervision is the major concern in this area. These reasons are indicating that how consumers are deprived from their right to get safe food.

Due to lack of sufficient number of trained staff, there is gross violation of consumer rights to get safe food.

### **CONCLUSION**

To conclude, consumer has a right to get safe food which is a fundamental right under article 21 of Indian Constitution. This right is well recognized at international level. In India, separate legislation is enacted called The Food Safety and Standards Act, 2006. Despite of this independent legislation, several lacunas are existing which are discussed above. The following are the suggestions to overcome these issues.

- There is an urgent need to amend the present law which declare that the it's a right of every consumer to get safe food. Such express provision will create positive impact upon the consumers and accordingly consumers will be promoted to exercise their right to get safe food. Also, such express provision will enable consumers to understand about the right to get safe food as well. Consequently, in case of violation, consumers may approach to the concerned court for the redressal.
- Like the Consumer Protection Act, 2019, express provision is required to be inserted in the Food Safety and Standards Act, 2006 regarding to get knowledge about their rights as well as knowledge about the safe food. Hence, express obligation should be imposed upon the Food Authority to try to spread legal awareness about the same through social media, newspaper or television etc. Also, such right should be expressly mentioned under Food Safety and Standards Act, 2006 as well.

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<sup>22</sup><https://www.statista.com/statistics/1227063/india-market-share-of-foodservices-by-type/#:~:text=In%202019%2C%20full%20service%20restaurants,the%20biggest%20foodservice%20markets%20worldwide>. (Last accessed pm 17th August, 2023 at 10:10 am).

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## CHAPTER II

### THE VANQUISHED CONSUMER PROTECTION LAWS INIMICAL TO INDIAN BUSINESS TYCOONS: A METICULOUS STUDY

**Naveen Saju**

Research Scholar, India International University of Legal Education and Research  
(IIULER), Goa, India

*“There is a limit to what one can do, if people are themselves limited”*

– *Margaret Thatcher*

#### **ABSTRACT**

*A truly democratic nation will always stand for the protection and welfare of the citizens residing in that nation. India being the largest democracy in the world, is having certain obligations in order to protect the rights of the citizens. Being a consumer nation, the governing authorities are having even higher obligation to protect the interest and welfare of the consumers. But if we are deeply analyzing the contemporary scenario, it is very clear that the concept of ‘we the people’ which can be interpreted through the wider constitutional philosophies are highly diluted. In one hand, a daily wage laborer who purchases food grains for at least a meal in one day is a consumer while at the same time, on the other hand, the largest business tycoons who is having a higher voice in this so-called ‘socialist’ nation is also deemed to be a potential consumer. Even though both the group of people will come under the wider ambit of ‘consumers,’ the protection and empowerment proceedings which is given to them will vary which may at certain times leads to several disparities and wider inequalities. The recent Hindenburg Report and waiving of the whopping debts which runs to crores and crores are also a prognostic way which easily denotes how the consumer protection laws are being strangled in this nation and how the voices of the common consumers who belongs to the working-class section of this society is being stifled. Such stifling voices of the consumers clearly depicts how the consumer protection laws in this nation are strangled and destabilized. This research paper focuses on how the contemporary market economy is ‘protecting’ only the consumers who is being typecasted as ‘business-tycoons’ while the normal consumers being sidelined where their voices are being stifled in one way or the other.*

*Keywords: Consumer Protection, Business Tycoons, Hindenburg Report, Investment Law, Fraudsters fleece and fly, Right to Equality, Waiving of Debts*

#### **INTRODUCTION**

India is considered to be one among the fastest growing economies all over the world. This itself shows the importance of Indian economy in the global market. As per state statistical reports and claims made by the government in the contemporary scenario, our nation is considered to be the third largest economy across the globe which is considered to be a tremendous and pathbreaking success for a developing nation like

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India. India being the largest democratic nation in the world is actually lagging the true spirit and essence of democracy nowadays. This is because of the fact that the government themselves are working for the welfare and interest of the corporate giants rather than the common people who are residing in this nation. If we are critically focusing on the consumer welfarism in the present-day nation, it is clear that the consumer can no longer be considered as the king because it is being replaced by business tycoons who holds an upper hand and a predominant position in the entire business structure of this nation.<sup>23</sup> The latest business and industrial developments which took place in this nation supports the anti-socialist pattern which the country is going through. The consumer protection legislations in India cannot be considered as a full-proof mechanism because it can be considered as one among the few legislations in this nation which is having a higher chance for making diluted laws and further interpretations which in no way helps the common citizens who are deemed to be the potential customers of this market economy.<sup>24</sup>

The Indian market economy is considered to be one among the few market economies across the globe who is actually having a very high potential to draw out the real sources by utilizing the available consumers as target groups and rolling the business from time to time. The basic ideology behind the founding fathers of the Constitution while implementing the consumer regulations and industrial laws in order to regulate the market economy was to hold India as a socialist democratic nation itself and to change-over the same to a capitalist nation like that of the Republic of China.<sup>25</sup> But the changing scenario from time to time depicts that this so-called mother of democracy who predominantly holds the spirit of socialism is slowly transitioned to a capitalistic state where the government as well as the public department is slowly losing the chains of market economy. This will cause a very traumatic situation to the customers because they will probably be subjected to the inflation and higher credit risk rates which they will not be able to cope up in a developing nation like that of India. Nowadays, the market is being captured by the real business tycoons, that is, the corporate giants, where the small-scale sector including the middle and lower middle-income groups are not able to have a productive purchasing from the market economy.<sup>26</sup> Thus, the government should need to look after the matter in a serious manner and they should make appropriate laws and regulations in order to delimit the

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<sup>23</sup> Sobhana K Nair, Consumer is king if new law gets nod, THE HINDU, <<https://www.thehindu.com/news/national/consumer-protection-bill-awaits-govt-nod/article19589010.ece>> (Aug. 30, 2017 09:18 pm IST)

<sup>24</sup> S N Singh, Consumer Protection Legislation: A Critique, Journal of the Indian Law Institute, Indian Law Institute, Vol. 29, No. 3, pp. 380-385 (1987)

<sup>25</sup> Ryan Calo and Alex Rosenblat, The Taking Economy: Uber, Information, and Power, Columbia Law Review, Columbia Law Review Association, Inc., Vol. 117, No. 6, pp. 1623-1690 (2017)

<sup>26</sup> Special Correspondent, Government working on tougher consumer protection law, THE HINDU, <<https://www.thehindu.com/business/Economy/govt-working-on-new-consumer-protection-law-says-modi/article19924148.ece>> (Oct. 26, 2017 02:12 pm IST)

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encroachment of the corporate giants into the Indian market economy in order to protect the will and interest of the common king of the economy, that is the real consumers who are residing as the citizens of the largest democratic nation in the world.

### **Consumerism in an Anti-Socialist Nation: A Critical Study**

India being considered to be one among the few nations who is having predominant role in the transaction takes place in the global market economy is not at all fully authorized and equipped to state that the consumer protection laws and actions which are being taking and upholding by them really supports for the overall social as well as economic development of this nation.<sup>27</sup> India is considered to be a socialist nation who is having a state ownership over almost each and every sector of the market economy. In order to implement the said idea of state ownership and thereby to make adequate support for the market economy, the then government added the word 'socialism' to the preamble of the Indian Constitution. But after four and a decade, the situation which we are facing is somewhat quite unpredictable and seems to be of misfortune because not only the market economy, the government has lost almost all the primary as well as secondary sectors of this nation and they are even trying to disinvest and privatize the remaining sectors which now seems to be under the control and ownership of the government. This is quite ridiculous and cannot be considered as a good initiative or a healthy step to protect the integrity and status of the constitutional values as well as the principles which is embodied and enshrined under the Constitution of India. A socialist nation should need to possess some basic characteristics which a vast democratic nation like India is not having as of now.<sup>28</sup> One among the major reasons for the non-implementation as well as the improper functioning of this consumer-market economy in the nation is that, the government has changed its primary role from that of a moderator or a facilitator to only a mere spectator who does not have sufficient role in order to regulate and uplift the common market economy as well as to protect the will and interest of the common people.

It is actually the high time for the concerned government who rules this nation in order to have an analysis on the existing consumer protection laws as well as the basic legislations which is being implemented in this nation in order to protect the will and interest of the consumers who enters upon the market economy and who is actually considered to be the real-life blood of the entire business which is taking place in our nation. Even the in contemporary scenario, it is very evident that the nation is suffering from very high inflation rates where not only the consumers, but also the small-scale vendors and the merchants are facing so much of difficulties in order to

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<sup>27</sup> K Puri, Protection against Monopolistic and Unfair Trade Practices in India, Journal of the Indian Law Institute, Indian Law Institute, Vol. 34, No. 3, pp. 443-455 (1992)

<sup>28</sup> Mohinder Singh and Amit Kumar, Rural Consumers' Protection: Need for Awareness, The Indian Journal of Political Science, Indian Political Science Association, Vol. 70, No. 2, pp. 441-450 (2009)

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bring up their means of livelihood.<sup>29</sup> These all can be considered as the failure of a socialist democratic government because of the higher support given to the business tycoons and corporate giants rather than the medium as well as the small-scale vendors, merchants and consumers in the overall Indian market economy.

### **Fraudsters of Indian Economy: Fleece and Fly?**

India being the largest democratic nation can also be considered as one among the largest business economies in the world is having a very wide-ranging business investors range from the very downtrodden and small-scale business vendors like the street sellers to that of those people who seems to have a very high-profile where their revenue for a single day may marks crores and crores. This actually shows have a vast democratic nation like India is having a wide variety of business structure and business arena where the concerned government is having a pivotal role to protect and safeguard the business economy. Many of the corporate giants who are having business firms in India is investing a lot of money in the Indian market economy with an idea of making profit from the said market by potentially using the average consumers in a deceptive way where the giants can actually gain more money which is considered to be a huge money-making process which can even be considered as a form of insider trading or unlawful trade practices.<sup>30</sup> The government is actually duty bound to invest more and more infrastructure for the overall growth and development of these market economies since the role played by the government is very crucial in order to build a healthy market with such a wide-ranging market economy.

The corporate giants are considered to be the face of Indian market outside the nation because they tried to create a brand for their products in India by trying to acquire the largest economic share and selling share of the products which are being regulated in the market economy. Rather than looking into the aspect of the consumers who actually seeks various changes in the entire market economy, the directors or the actual investors behind this high-profile corporate firms may have some ulterior or malicious motive like unfair and unethical trading which helps them to acquire more profits in a very shorter period of time.<sup>31</sup> This is because of the fact that most of consumers including the government themselves are not having a clear cut idea on the background of the investors who are investing in such business in the Indian market economy. Some are deemed to be fraudsters but then also the government in one way or the other through certain policy decisions and innovative market economic

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<sup>29</sup> Press Trust of India, Onion auction to remain closed indefinitely in Nashik wholesale markets to protest 40% duty on export: Traders, THE HINDU, <<https://www.thehindu.com/business/agri-business/onion-auction-to-remain-closed-indefinitely-in-nashik-wholesale-markets-to-protest-40-duty-on-export-traders/article67219725.ece>> (Aug. 21, 2023 07:02 pm)

<sup>30</sup> John Toye, Political Economy and the Analysis of Indian Development, Modern Asian Studies, Cambridge University Press, Vol. 22, No. 1, pp. 97-122 (1988)

<sup>31</sup> Special Correspondent, BJP backs policy of loot and scoop: Congress, THE HINDU, <<https://www.thehindu.com/news/national/bjp-backs-policy-of-loot-and-scoop-congress/article30627661.ece>> (Jan. 22, 2020 10:26 pm IST)

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strategies are actually helping those sorts of people who in one way or the other carrying out unfair as well as the unethical trade practices which in no way helps the Indian economy to attain the global standard by meeting the will and interest of the consumers who are deemed to be the potential players of the market economy.<sup>32</sup> The problem which arises over here is that the government may act as the guardian for those fraudsters who are residing and conducting unethical as well as unfair business in our market economy but at the same point of time, the common business as well as the small-scale business vendors will not be able to carry out their business and to make profits from the same in order to sustain their livelihood. The contradicting fact is that, once the evidences against a corporate giant or business tycoon is out either thorough the investigation done by the press media or even by any private investigation agency, even before the case is being filed in the court of law, such mis-representers as well as the fraudsters will fleece and fly from the nation in order to escape from the liability.<sup>33</sup> Here in a critical point, we should not only think about the liability of such a fraudster but also needs to analyze the damage that is being caused by him to the entire Indian market economy which suffers a lot of problem including the money-market related as well as the economic associated challenges which takes place in the nation.

#### **Hindenburg Report: The Prognostic Consumerism in India**

The Hindenburg report which was released in the early 2023 created a great chaos in not only in the Indian political scenario, but also in the whole Indian market economy. This is because of the fact that such a report helps the common people as well as the opposition towards the concerned ruling government to let them know that how the present government is actually acting against the philosophy of consumerism, consumer protection laws and overall, to the standards of the principles of socialism which is being enshrined under the Constitution of India.<sup>34</sup> The shocking fact is that even though such an allegation was raised against a particular corporate giant, the government or their allied ministries and departments including the Ministry of Finance or even the Securities Exchange Board of India (SEBI) who is having a lead role in the overall regulation and control of the Indian market economy has not taken any adequate or predominant step in order to have a further investigation on how the government kills the idea of socialism by only supporting the corporate giants and big private investors by avoiding the common people including the consumers, small-scale investors and business vendors etc. It was a long ending debatable question as to whether the government is liable to protect a

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<sup>32</sup> Aditi Gandhi and Michael Walton, Where Do India's Billionaires Get Their Wealth? *Economic and Political Weekly*, Vol. 47, No. 40, pp. 10-14 (2012)

<sup>33</sup> Markus Giesler and Ela Veresiu, Creating the Responsible Consumer: Moralistic Governance Regimes and Consumer Subjectivity, *Journal of Consumer Research*, Oxford University Press, Vol. 41, No. 3, pp. 840-857 (2014)

<sup>34</sup> Frank Trentmann, Beyond Consumerism: New Historical Perspectives on Consumption, *Journal of Contemporary History*, Sage Publications, Ltd., Vol. 39, No. 3, pp. 373-401 (2004)

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particular corporate giant to protect the interest of the common people. This is considered to be a clear-cut example to show that the true essence and spirit of democracy is being lost somewhere in the middle of our governance and the Hindenburg report can be showcased as a perfect example where the corporate giants had encroached upon the consumerism as well as the consumer welfare protection schemes which must need to be provided in a very vast democratic nation like India who is having a potential market economy with a wide array of investors and consumers ranging from very high profile business entities to the lower middle income group who is struggling for attaining their daily means of livelihood.<sup>35</sup> This report itself shows how the existing consumer protection laws in the nation is not even having the value of a piece of paper where the nation itself is being ruled by a government who is having sufficient backing by the aforementioned corporate giants who is the heart and soul of the current economy market of India.

The government being a ruling authority who holds socialistic principles should need to uphold the principles of socialism thereby helps to recoup the so-called spirit of government owned economy in our nation in order to counterfeit the problems and evil-practices which is taking place in our nation from time to time based on the whims and fancies of such business tycoons and corporate giants who are now even controlling the entire political as well as the governing structure of our nation.<sup>36</sup> The government should need to thus act in a much fair way whereby helps to increase the spirit of consumerism in our nation by protecting and safeguarding the consumers who is considered to be the real king of the market economy since they are actually the changemakers or the real players who helps this nation to grow further and helps to achieve the overall social and economic development of the whole nation.

## **CONCLUSION**

India being the largest democratic nation in the world who is now in a path to become a pioneer and prominent player in the globalized business economy should need to take adequate care and due diligence while implementing laws and regulations in order to safeguard and ensure the common welfare of the consumers, that is, the common citizens who are residing in this nation and the government is also duty bound to ensure that such community of people are not being further exploited in any way which helps to protect the entire economic structure of our nation. The changing government from time to time must need to ensure the proper economic growth as well as the development of this nation through the proper implementation of rules and regulations which helps for the total emancipation and upliftment of the small-scale businessmen as well as the downtrodden vendors to raise their business potential as well as to safeguard and ensure proper protective shields for the consumers who

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<sup>35</sup> Reuters, Hindenburg shorts Adani Group, flags debt and accounting concerns, THE HINDU, <<https://www.thehindu.com/business/Industry/hindenburg-shorts-adani-group-flags-debt-and-accounting-concerns/article66431203.ece>> (Jan. 25, 2023 01:12 pm IST)

<sup>36</sup> C P Bhambhri, Globalised Monopoly Capitalism and Indian Society, Social Scientist, Vol. 44, No. 5/6, pp. 65-70 (2016)



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actually yields higher and better benefits from these market economies.<sup>37</sup> Thus, the government is duty bound to ensure that adequate steps and legislative mechanisms is being taken place from their side in order to protect the entire Indian economy from any sort of foul play and unfair trade practices which is unethical to the spirit of democracy and thereby affects the principles of consumerism as well as the consumer protection laws which exists in our nation.

Thus, the government should need to implement legislations which helps to protect the consumer protection as well as the upliftment and emancipation of both the downtrodden small-scale business investors as well as the emancipation of the potential consumers who helps for the overall social and economic development of the nation due to their nature of consumerism which is actually a very pivotal need for an emerging nation like India in order to strengthen the market economy of our nation.<sup>38</sup> The government shall need to act as the moderator as well as the facilitator of the common people including the small-scale business and the consumers rather than for that of the corporate giants or the so-called business tycoons who governs the entire market economy in the contemporary scenario. Being a socialist-democratic nation, the government is duty bound to make adequate laws and regulations which represents the will and interest of the common people. Thus, the government should need to adopt and enact sufficient laws and regulations in order to promote the true spirit and essence of consumerism as well as to emancipate the consumers by providing effective consumer protection laws and consumer redressal mechanisms if they have faced any sort of difficulties while engaging as a consumer in any business market economy in the nation.

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<sup>37</sup> G I S Sandhu and Arvind Kaur, Consumer Protection in India: Some areas of Illusion, *Journal of the Indian Law Institute*, Indian Law Institute, Vol. 38, No. 3, pp. 377-386 (1996)

<sup>38</sup> Robert A Hillman, Consumer Internet Standard Form Contracts in India: A Proposal, *National Law School of India Review*, Student Advocate Committee, Vol. 29, No. 1, pp. 70-85 (2017)

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## CHAPTER III

### ONLINE TRANSACTION RISKS: EMERGING REGULATORY CHALLENGES IN INDIA

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#### ABSTRACT

*E-commerce has brought to the table varied options enabling consumers to get the most suitable product or service of their choice. The sale and purchase of both tangible and intangible products get consumers trapped in online/mobile payment options and misleading commercial practices. Interaction and communication via internet-based services create varied forms of contractual liabilities involving the number of intermediaries. Complexities in contractual liabilities also arise with newer experiments in e-commerce like live streaming, content creation, and influencer marketing which is a mix of marketing as well as entertainment. In order to in still confidence, business providers in the digital space need to ensure secure payment gateways and no deceptive and fraudulent practices. Also, e-commerce companies have a widespread presence across several jurisdictions, creating a dilemma over approaching courts under appropriate jurisdiction wherein consumers can sue a particular e-commerce entity or third party. Further, these new frontiers of cyberspace raise doubts over the applicability of traditional principles of jurisdiction including foreign precedents. The paper in hand tries to understand the legal and regulatory risks that affect consumers in the complex technicalities of multi-party online transactions including contractual rights and obligations either under purchase-payment options or licensing agreements etc. A theoretical and analytical understanding seems to be of common conscience that, accountability of online businesses can be ensured through persistent investigations via consumer-feedback mechanisms as well as making companies liable for default of their contractual promises as well as tortious breach of trust. At the same time, sensitization and awareness programmes on rules and regulations by regulatory agencies are more welcoming steps in the right direction, to protect the public at large.*

*Keywords: online, e-commerce, consumer, risks, internet*

#### INTRODUCTION

Online Transactions often referred to as ‘E-commerce’ are scaling up in leaps and bounds, given the rise in smartphones, shopping applications and the inevitability of the internet that penetrates deep into all aspects of human interaction. It includes “business activities both communications, including advertising and marketing, and transactions comprising ordering, invoicing and payments” (OECD, 2000). It either

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can be intra-border or cross-border. From the six typical models<sup>39</sup> of online transactions, the Business to Business (B2B) market and Business to consumer (B2C) market demand scrutiny and constant investigation of enquiring patterns and trends in violation of consumers' interests in the ever-growing complex cyber transactions.

Consumers buying online either from a food delivery Application, or credit-card facility service, opens up the market for fraudsters who hack sensitive personal information from uninformed and gullible consumers. The provider either could be a retailer, an online intermediary or even an e-commerce platform (like Amazon, Myntra, Fynd, Shopify etc.) itself that persuades the sharing of personal identification. News of such instances affects confidence and thus, dissuades consumers to risk on online transactions. Provision for secured payment gateways and modes of the transaction too fail to safeguard the interests of all consumer groups alike. The inbuilt features of mobile applications auto-linked with each other at times, create risks. Additionally, for "mobile-only" consumers using smart technologies and devices for sale and purchase, there are ever-evolving and fresh securities as well as data treatment issues.

According to studies, worldwide business-to-consumer (B2C) e-commerce is rapidly expanding and is predicted to reach US\$1 trillion in 2020.<sup>40</sup> A noteworthy finding from the March 2020 Adobe Digital Economic Index Survey-2020 is the gradually accelerating growth in global e-commerce as a result of the Pandemic that hit the world economy in 2019. The rampant use of the internet and e-commerce by the consumer is critically affecting consumer confidence in diluting the time-tested conviction that, they will receive what they anticipate and that they may seek redress and appropriate remedies if something goes wrong.

Issues of transparency and disclosure govern diverse aspects of consumers' interests. Other allied issues in e-commerce involve harmful content' (services) circulated through audio-visual media service providers. This exposes naïve consumers to different cybercrimes and torts with details of identification shared with multiple third parties during data processing of contractual agreements. It involves the anonymity of participants too, which is the key factor in the lack of customer trust in electronic transactions.

To accentuate the above challenges, the instant run of the finger through the "I Agree" button emerges to be the most conspicuous clause with technically loaded terminologies, which seems to be ever-ready to misguide consumers.

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<sup>39</sup> Business-to-Consumer (B2C), Business-to-Business (B2B), Consumer-to-Business (C2B), Consumer to-Consumer (C2C), Business-to-Administration (B2A) and Consumer-to-Administration (C2A) operate across countries (UNESAP and ADB, 2019; Kumar & Chandrasekar, 2016).

<sup>40</sup> Chawla N., & Kumar, B. (2022). E-commerce and consumer protection in India: the emerging trend. *Journal of Business Ethics*, 180(2), 581-604.

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As a technical tactic, these are knowingly hidden as hyperlinks and /or placed in the corner of a webpage inviting inadvertence and ignorance leading to consent manipulation at the consumers' end.

As a technical tactic, these are knowingly hidden as hyperlinks and /or placed in the corner of a webpage inviting inadvertence and ignorance leading to consent manipulation at the consumers' end. These *click-wrap* contracts have enough scope to even trap an ordinary literate, a consumer who is unable to comprehend the loopholes or fraudulently weaved exemptions routes for businesses. Further, the traditional form of exchange of money (i.e. cash on delivery) while remains one of the best and safest options, provision for digital or *e-wallet* payment systems is preferred by online shoppers everywhere across the Globe. While all payment service providers (e-banking etc.) act as enablers for online giants like Amazon, Alibaba and others, it warrants cost-effectiveness, the authenticity of website information, a disclaimer on privacy etc. to build greater trust. The 'payment clause' and its underlying provisions like total cost (hidden/additional cost), surety of refund and return, any recurring charges for automatic repeat/purchases or even renewals for subscription etc. must be sufficiently addressed in the terms and conditions. At the same time, the duplicity of payment and delayed refund pose constraints. Moreover, in the advanced technology age, the risk of hackers and scammers stealing bank account details, social security numbers etc. creates anxiety among buyers. A recent global survey reveals that, while about 90% of customers prefer to make payment via local currency, some 33% tend to abandon/ avoid purchase if the price is quoted in US dollars only. Exemplifying this attitude, *Air Bnb*, the service provider for accommodation booking (since 2009) provides for local payment options and therefore has globally earned consumer trust across 220 countries.

As information technology law in India keeps itself abreast with the latest developments in the 'online environment' electronic forms of trade are now confidently acknowledged as being lawful and enforceable, while strings of obligations and liability on multiple parties remain a critical insight. Electronic commerce platforms allow Internet-enabled trade in unprecedented ways. Global start-ups or 'born-global' entities are an increasing phenomenon in the digitized economy today.

### **Negotiable and Non-Negotiable challenges in E-Commerce**

The lives of consumers are increasingly reliant on social networking, mobile technology, and e-commerce websites. They facilitate information availability for consumers and speed up and simplify purchasing and transactions. Computer networks are being extended to common physical objects through smart speakers, intelligent personal assistants, and other linked gadgets. On the top of it, cross-border transactions make it more difficult to establish enough internet confidence, especially if one of the parties is from a country where counterfeiting is common or where the rule of law is not so strict. Customers' trust in cross-border transactions may decline,

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if they believe they do not receive the same degree of protection or have access to equal remedies in a foreign market, such as refunds, the right treatment of sensitive personal data, or effective e-payment security.

Concerns for beneficiaries of e-commerce are complex, yet legitimate. Simultaneously, every business is impacted by the growth of cloud-connected apps with complex technical terms and conditions. Retailers and online merchants often face with challenges of securing customer identification like registration, login experiences and linking of authorized users with the right resources etc. Further multiplicity of parties makes it cumbersome for legislators to ensure compliance through good faith.

### **1. Consumer Data Privacy:**

The significance of privacy and data protection is becoming more widely understood as more and more social and commercial activities take place online. The gathering, use, and disclosure of personal data to third parties without customer knowledge or consent raise similar concerns. Also, personal information may now be collected and shared in ways that were before impossible, often in ways that are not readily obvious to users of these programs and devices. These regular data breaches, hacks, and illegal internet sharing of personal information have raised privacy concerns.

### **2. Standard Clause of Sellers:**

It is needless to say that the standard form of contract is biased to the weaker party, in terms of its scope for mutually negotiating terms and conditions into the contract. E contracts either could be in the form of clickwrap, shrink wrap or browse wrap arrangements. While browse-wrap is a typical lengthy form inclusive of all necessary information, shrink-wrap and click-wrap contracts are unilateral and present as fixed contracts. Also, browse wraps do not compel customers to accept the contract, but rather presume approval when browsing the website.

All e-commerce platforms tend to offer some or other form of standardized agreements and thereby, strategize to enforce respective rights and avoid liabilities. E.g. in the case of the End-User Licence Agreement (EULA), it is either for granting of a license, usage restrictions (disclosure etc. under IP), termination of licensing, warranty disclaimer, and liability limitation clauses. While the EULA acts as a legally binding document, defining the user's rights and restrictions in a specific software product/service, it is important cross-road to accept/ decline the same. But these are usually accepted by users under the 'I agree' button within a blink of an eye. In other words, it usually operates as a *click-wrap* agreement, which is a sort of digital contract, allowing the user to accept or reject the terms and conditions prior to accessing the particular good or service. However, in the case of browse wraps, there is an implied consent that isn't always legally binding. This non-vigilante attitude of consumerism is a potential trap for consumers which lures consumers to enter into "voluntarily liability" without reading down the clauses, but with no excuses.

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As long as the terms are made clear and obvious, these are typically enforceable. The EULA is becoming easier for the courts to enforce, particularly when it takes the form of a *click-wrap* contract, because EULAs are sometimes long and written in technical language, it might be challenging for the common user to offer their informed permission. On the other hand, many users might not offer informed permission if the corporation structures the EULA in a way that purposefully discourages consumers from reading it and uses complex legal terminology that is difficult to comprehend.

Numerous EULAs support broad liability restrictions. However, important terms should be highlighted in a way that is easy to recognize while still being easy to read. In general, most EULA will try to hold the software licensor harmless in the event that the software damages the user's computer or data, and some software also proposes limitations on whether a licensor can be held liable for damage caused by improper use. The limitation of liability section specifies the extent of each party's legal obligation in the event that mistakes are made with the program.

### **3. Absence of Bargaining Power:**

Theoretically, consumer protection is justified by the notion of poor bargaining power, exploitation theory, and the economic approach. As a result of their weak negotiating position, it is acknowledged that their interests must be protected. According to the 'inequality of negotiating power' argument<sup>41</sup>, consumers are in a worse financial position than providers. As compared to physical purchases, online purchases require more trust.<sup>42</sup> Therefore, from the perspective of "behavioural economics," trust (faith/confidence) has long been seen as a catalyst for buyer-seller interactions that may provide clients with high standards of satisfying business partnerships. Generally, in India, the retailers (not larger merchants) due to their smaller inventory purchases have lesser negotiating strength and may find it challenging to negotiate better prices for their goods and services. The wholesalers won't provide them with tempting offers. Additionally, the credit time will be shorter, which increases the risk of their business.

### **4. Authenticity of Parties and Businesses:**

In the online business, falling into the trap of fraudulent websites is a common phenomenon and scammers deceive naïve customers into paying for products they will never receive. Scammers even design websites that replicate the layout and design of websites for legitimate business companies. These fraudulent websites could look quite realistic, making it challenging to distinguish them from legitimate ones. Additionally, these con artists may take the bank and credit card details of unwary clients.

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<sup>41</sup> Haupt, S. (2003). An economic analysis of consumer protection in Con-trAct law. German Law Review, 4(11), 1137–1164.

<sup>42</sup> Nielsen. (2018). Future opportunities in FMCG E-commerce: Market drivers and five-year forecast.

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These constant worries regarding the security and legitimacy of diversified online transactions pose potential restrictions on the growth of e-commerce. Also, in the context of products/services offered, it is squarely difficult for buyers to tell the difference between a genuine product and a fake or counterfeit one. The products would be made available at a large reduction from their usual retail cost. Also, it must be confirmed, if the seller is a member of the authorized or official distribution channel and that, they have a variety of listings and units available.

Finally, there is a probability that the vendor is selling a phony item if there are several listings for the same item at drastically different prices. These checks apply to customers as well as to legitimate firms whose goods are being imitated or who are directly impacted by such shady suppliers, casting reasonable doubt in their minds.

#### **5. Uncertainty in Liability fixation:**

The interaction, fluidity, and complexity of the relationship between the law and technical innovation and progress are essential. Although law-making is usually slow and laborious, technology may move at breakneck speed. Therefore, there will inevitably be a chasm between technical advancement and legislative reform. Because the parties involved cannot understand their legal rights and obligations stemming from the implementation of technical breakthroughs, this gap encourages legal ambiguity. Our capacity to store, process, and convey information is radically changing as internet infrastructure for e-commerce is deployed more widely. This has an impact on how things are packed and delivered.

The government of India while enforcing used the United Nations Commission on International Trade Law (UNCITRAL) as a platform to provide universal legal guidelines for Internet trade. This forum acknowledged that contemporary legislation on electronic transactions should consider fundamental principles like the following: the legal value of electronic transactions should be equal to that of other forms of communication like on paper in writing; further, the law should be technology-neutral to accommodate emerging technologies or generics. These fundamental components could be supplemented by the parties to a particular transaction's contractual decisions.

#### **6. Confusion over the Jurisdiction of Courts:**

In today's times, large e-commerce companies have a widespread presence across several jurisdictions, which makes it difficult to specify the place where customers can sue a particular e-commerce entity or any other third party. The advent of e-commerce created scope for confusion over the admissibility of matters in courts of appropriate jurisdiction. Although, the Internet is a new forum, parties, as always, exist in a physical space. Moreover, the place of suing varies with the nature of the business and goods in question. When a specific territory could not be satisfactorily ascertained, "Choice of Law" tests are applied whereby 'place of making' and place of payment' become determinative of the forum having "significant contracts" with the transaction. This in turn guides the filing of suit for enforceability of contractual obligations. However, this approach seems suitable; e-commerce has allied

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complexities. In the unconventional/ online environment, established ideas about “where and how” of communication/interactions take place need re-alignment. As a matter of practice, a) the physical location of parties and b) the conduct they direct at the forum state becomes a crucial point in determining jurisdiction. A framework of “*minimum contacts*”<sup>43</sup> which governs personal jurisdiction in a forum state when parties are “non-residents.”

Finally, there is a probability that the vendor is selling a phony item if there are several listings for the same item at drastically different prices. In determining whether jurisdiction could be properly exercised over the defendant, the court examined the “*level of interactivity and commercial nature of the exchange of information that occurs on the website*”<sup>44</sup>. E.g. in the case of interactive Websites, where the user exchanges information with the host computer, the court of forum state would have jurisdiction to try the matter; a) filling up of online application, b) payment through credit card, c) permitting subscribers to access defendant’s service, d) auction sales were conducted over the net with the bidder, etc.<sup>45</sup> Such an approach could be seen as an extension of the minimum contacts test, which fairly considers the efforts of the defendant to target residents of the forum state<sup>46</sup>. This standard has adapted exceedingly well to its new cyber environment.

The ‘*purposeful availment*’ test as championed by the USA Supreme Court in *Hanson v. Denckla*<sup>47</sup> offers a rational solution. It is important to the jurisdictional analysis that the defendant “purposefully availed itself of the privilege of conducting activities within the forum state, thus invoking the protection of its laws. Further, the burden is on the plaintiff to show that such contracts resulted from the “actions by the defendant himself that created a substantial connection with the forum state” and the defendant must have created ‘continuing obligations’ between himself and the residents of the forum state”<sup>48</sup>.

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<sup>43</sup> *International Shoe Co. v. Washington*, 326 U.S. 340 (1945).

<sup>44</sup> *Zippo Mfg. Co. v. Zippo Dot Com, Inc.*, 952 F. Supp. 1119 (W.D. Pa. 1997).

<sup>45</sup> *Winfield Collection v. McCauley*, THE INDIAN JOURNAL OF LAW AND TECHNOLOGY Volume 6, 2010 JURISDICTIONAL ISSUES IN CYBERSPACE Justice S. Muralidhar\*

<sup>46</sup> Tricia Leigh Gray, Minimum Contacts in Cyberspace: The Classic Jurisdiction Analysis in a New Setting, JOURNAL OF HIGH TECHNOLOGY LAW, Vol. 1 No. 1

<sup>47</sup> 357 U.S. 235, 253 (1958)

<sup>48</sup> *Burger King Corp v. Rudzewicz*, 105 S. Ct. 2174 (1985)



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As e-commerce is not like the traditional business, the Indian courts often are caught up in the dilemma of adopting an appropriate test of 'jurisdiction' while entertaining disputes arising therein. Although precedents across the globe successfully adopted approaches like the "forum convenience", "substantial connection test," the "zippo test" and the "effects test," the Indian Courts still seem to struggle to get a clear settled picture in cases involving B2C transactions.

In India, sections 15 to 19 of the CPC have historically handled civil cases including elements of e-commerce. Sometimes, because of the nature of business, the problem or issues become entangled in complexities, making it impossible to determine which specific region should be used to resolve a jurisdictional conflict. The defendant's "intentionality" and whether or not their actions were meant to surrender to that sovereign's sovereignty were the true litmus tests.

<https://www.scconline.com/blog/post/2021/06/05/e-commerce-suits/>

Although these traditional tests seemed hesitant to apply to new environments but have gradually become adaptable.

#### **7. Lack of a certain Dispute Resolution Mechanism:**

Most customers engaging with these e-commerce businesses and websites are unaware of their digital rights. In India, there aren't enough venues or channels for resolving disputes for digital customers to express their demands. In summary, the Indian government continues to be in charge of handling e-commerce disputes in India. A sound, robust, and long-lasting ODR system in India cannot be supported by these sporadic and selective provisions because there is no specific legal framework for online dispute resolution in India, despite the fact that the Information Technology Act, 2000 (IT Act, 2000), which is the only cyber law in the country, containing some aiding provisions. Also, there is a lack of specialized institutions that can offer training, education, and policies for the development of Online Dispute Resolution (ODR) in India.

To prevent discrepancies between various municipal legislations, the regulation for online arbitration should be consistent. As opposed to relying on information technology regulations, which seldom specifically address arbitration therein, a global legal framework that is unified is required. These rules are not created particularly for arbitration; rather, nations create them for domestic purposes to combat cybercrime.

#### **An International Perspective on E-Commerce and Consumer Rights**

Cross-border e-commerce is a new facet of consumerism viral across industries and sectors inviting global customers to invest their trust in the choicest of their products/services. E-commerce is now expanding internationally, with a compound annual growth rate (CAGR) of 15% between 2014 and 2020 and a predicted 25% CAGR between 2020 and 2025. In 2020, approximately 60% of the population will be online, and smartphone penetration has reached almost 42%, according to further studies of the e-commerce industry. Studies brief glimpse of unstoppable 'e-consumerism' speaks volumes of emerging complexities.

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For any legislative framework to prescribe standards on ‘consumer rights,’ it requires diversified angles of protection regime inclusive of access to a safe market environment, data and privacy protection etc. International organizations and entities too voice for regulation of underlying risk in these transactions. Updated Guidelines from across different organizations of the world keep recognizing the need to ensure fair negotiation and consumer welfare.

At the international level, the United Nations as well as organizations like the United Nations Commission on Trade and Development (UNCTAD) and Organisation for Economic Co-operation and Development (OECD) have addressed some concerns on their respective level and primarily for offline mode. The “Consumers International” established since 1960 and having received consultative status from the Economic & Social Committee in 1977 has advocated for a 'Model Code for consumer protection' at its World Congress in Sydney way back in 1975 which resulted in the United Nations Guidelines for Consumer Protection (UNGCP), 1985. It was later expanded by the ECOSOC in July 1999), and recently revised by the General Assembly in resolution 70/186 of 22 December 2015. Although, the 1985 Guidelines remain globally accepted minimum standards of consumer protection, are *stricto sensu*, and legally non-binding. Also, studies show the least impact or relevance of it, albeit some evidence which suggests its influence on developing countries in designing domestic consumer laws. On the other end, facts show a shifting focus on adopting supranational consumer law regimes of the European Union which is more advanced.

The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce, 1996 offers municipal legislators a set of internationally acceptable rules for handling legal obstacles to e-commerce and modes of securing a legal environment of confidence among parties. It strived to achieve uniform solutions on varied concerns of commercial transactions; a) form and evidence of legal acts; b) rules of contract like time and place of dispatch, receipt of e-communications, and use of electronic acknowledgments etc.

Like the United Nations, the OECD is equally instrumental in setting model laws. The OECD’s Guidelines apply majorly to B2C e-commerce and cover commercial practices wherein businesses enable consumer-to-consumer. A B 2 C transaction needs an online presence in the internet platform to sell its goods and consumers’ access to review products to buy them. Reflecting the core idea that, confidence of users/investors in the digital marketplace is key to prosper e-commerce, OECD Recommendations observed during the “*Ministerial Conference of 1998 on “The Borderless World: Realising the Potential of Global Electronic Commerce,”*” emphasized on the core characteristics of consumer protection for electronic commerce. Also, the need for self-regulatory mechanisms, a code of practices, and consumer empowerment through digital literacy was tabled upon. Earlier in 1980, the first-ever internationally agreed privacy principles, “OECD’s Privacy Guidelines” laid down core principles on global minimum standards for privacy in the management of personal information and in obviating unnecessary restrictions to

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trans-border data flows, both on and off line<sup>49</sup>. As a part of the review, OECD in 2009 observed a Conference on “*Empowering E-Consumers: Strengthening Consumer Protection in the Internet Economy*”, wherein it was committed to explore issues involving the use of mobile operators’ networks while making payments. Understanding that, mobile payments are garnering popularity in developing countries, the “Policy Guidance, of 2014” devised rules enabling consumers with options for preserving information on payments and related transactions (like printing, e-mailing) across all types of devices be it tabloid, computer, etc<sup>50</sup>.

It also analyzed areas of non-monetary transactions, and digital content (in advertising and marketing). Modernising its approach in tune with emerging trends, the OECD in 2016 revised its instrument on “*Consumer Protection for E commerce*” to cover; a) fair business practices; b) information disclosures; c) payment protections; d) unsafe products; e) dispute resolution and enforceability of actions and f) sensitization.

In recent times, a few more initiatives include:

a) The Recommendation on Consumer Product Safety, adopted in July 2020, which outlined the essential elements of consumer product safety frameworks at the national and international levels; and

b) A "Toolkit" released in 2021, which outlined a variety of legislative actions that countries can take to enhance enforcement cooperation. The resource pack provides examples from real-world situations as well as useful advice to further international initiatives.<sup>51</sup>

In 2021, as part of its Committee on Consumer Policy, the OECD Working Party on Consumer Product Safety (WPCPS) developed a ‘Communiqué’ in order to promote the creation of further pledges at the national and regional levels and specify obligations for vulnerable consumers by ensuring rapid alerts when unsafe products are on the market or are the subject of a ban or a recall<sup>52</sup>. Despite a greater range of benefits, including choice and competitive prices, unsafe products offered to consumers are violative of their right to truthful things and exposure to serious risks. This unique system of ‘PLEDGE’ is to be followed by online marketplaces as well as

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<sup>49</sup> OECD (2002), OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data, OECD Publishing, Paris, <https://doi.org/10.1787/9789264196391-en>.

<sup>50</sup> OECD (2014), "Consumer Policy Guidance on Mobile and Online Payments", OECD Digital Economy Papers, No. 236, OECD Publishing, Paris, <https://doi.org/10.1787/5jz432c1ns7-en>.

<sup>51</sup> [oecd-consumer-policy-brochure-2022.pdf](#)

<sup>52</sup> <https://www.oecd.org/fr/numerique/consommateurs/consumer-product-safety.htm>

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domestic enforcement authorities in identifying the supply chain of unsafe products, delisting, and also informing consumers of any relevant or corrective actions on unsafe products.

The UNCTAD, which promotes the cross-border flow of goods and the creation of trade policies reports that around 52% of countries have some kind of online consumer protection law in place. For the other 32% of countries, no data are available, and 10% have no such legislation in place. The UNCTAD's Cyber Law Tracker efficiently maps pertinent e-commerce laws from around the world in the areas of data protection, cybercrime, and e-transaction regulations. While studies indicate that, e-transaction regulations are present in 78% of nations, and privacy laws are present in 58% of countries,<sup>53</sup> the adoption rates for legislation defending online consumers are the lowest across all of these categories. Further, to support the cause of consumer welfare, the G-20 supported the High-Level Principles on Financial Consumer Protection in 2011 and the G20/OECD Policy Guidance on Financial Consumer.

Protection Approaches in the Digital Age in 2018, demonstrating that it has undertaken similar initiatives. In the European Union too, the Unfair Commercial Practices Directive) covers 'business-to-consumer' ('B2C') transactions. The International Chamber of Commerce (ICC) has assembled an expert panel from a range of fields to support fair dispute resolution solutions for online consumer transactions. Furthermore, civil society organizations such as Consumers International (CI) and the International Consumer Protection and Enforcement Network (ICPEN) continue to monitor. However, the persistence of regulatory divergences and friction suggests that overall governance has not kept up with market trends.

With trans-boundary transactions being secured on general principles of contract law, the Conventions on International Sale of Goods (CISG), the UNIDROIT principles and International Commercial Terms (INCOTERMS) aid in the facilitation of the performance of an obligation. However, no complementary provision is incorporated in these soft laws/instruments demanding strict penal regulation. Thus, this uniform and harmonized framework may be tuned in with modern-age consumer transactions. Also, there is a lack of consistent effort in building consensus over international implications of consumer law and policy<sup>54</sup>.”

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<sup>53</sup> United Nations Conference on Trade and Development (UNCTAD), “Summary of Adoption of E-Commerce Legislation Worldwide” (unctad.org): [https://unctad.org/en/Pages/DTL/STI\\_and\\_ICTs/ICT4D-Legislation/eCom-Global-Legislation.aspx](https://unctad.org/en/Pages/DTL/STI_and_ICTs/ICT4D-Legislation/eCom-Global-Legislation.aspx) (link as of 6/3/19).

<sup>54</sup> Twigg-Flesner and Micklitz 2010, Journal of Consumer Policy in 2010,

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**Online Transaction in India: Evolving Regulatory Framework:** Since India's Vedic era, the philosophy of consumer protection has been a perennial goal. As the Industrial Revolution advanced, so did the number of human wants for products and services. The new canon is distinguished by sophisticated commercial practices and impersonal relationships between the two parties, in contrast to the older age, when a personal bond between a seller and buyer came before an economic relationship.

In the millennial culture of the digital tech-savvy generation, e-commerce is a luxury and necessity that optimizes income across all types of consumers. The e-commerce sector has become a dominant force in the Indian economy thanks to its 50% internet penetration rate, 37% smartphone internet users, and the deployment of the 4G network, local language online content, and growing consumer affluence. Government support and extensive infrastructure helped the e-commerce industry grow to reach US\$ 64 billion in 2020, up 39% from 2017, and US\$ 200 by 2026 with a CAGR of 21%. By 2024, India expects its GDP to grow to \$5 trillion. It would be difficult, but not impossible, to push for complete e-governance and society with digital tools at the current rate of progress. Due to the extensive use of smartphones, growing internet access, soaring digital payments, and legislative changes, the e-commerce sector is growing quickly in relation to the GDP. Seven times higher than the 80<sup>th</sup> rank index in 2018,<sup>55</sup> India ranked 73rd with 57 index values in the UNCTAD's B2C E-Commerce Index 2019 survey which is indicative of the economy's preparedness to support online purchase.<sup>56</sup>

To a diligent consumer's mind, the question of safety and confidence in e-commerce is sacrosanct and thus, it is pertinent to ask if, *there is an online Consumer Protection Legislation in India*. With the internet boom in the 1990s, e-commerce garnered consumerism at a faster rate, but with no specific legislation to tackle the risks associated with it. The Constitution of India, although did not explicitly talk about consumers' rights, but is keen towards ensuring all commitments of 'economic equality and social justice' through the expression of choices and freedom to trade. The '*right to be informed*' protected u/Article 19 and broader ambit of Article 21, is a potential weapon in the hands of every single consumer, be it offline or online. Information about goods and services from 'advertisements' (print media) is held to be a 'commercial speech' requiring utmost concern to protect "*the rights of an individual to listen, read and receive the said speech*".<sup>57</sup>

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<sup>55</sup> UNCTAD. (2019). Digital Economy Report 2019, value creation and capture: Implications for developing countries, [https://unctad.org/system/files/official-document/der2019\\_en.pdf](https://unctad.org/system/files/official-document/der2019_en.pdf)

<sup>56</sup> Chawla, N., Kumar, B. E-Commerce and Consumer Protection in India: The Emerging Trend. J Bus Ethics **180**, 581–604 (2022). <https://doi.org/10.1007/s10551-021-04884-3>

<sup>57</sup> Tata Press Limited v. Mahanagar Telephone-Nigam Limited and Ors. (1995)

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Broadly speaking, all-encompassing protection measures toward consumers' interests are required during the *pre-purchase phase* as well as the *post-purchase phase* which essentially demands consumer education and sensitization.

***Consumer Protection during Pre-Purchase and Post-purchase Transactions Pre-Purchase safeguards post-purchase safeguards***

Liability fixation under Standard T&Cs for contract of sale for product or service delivery and complications. Providing flexibility and procedural ease to consumers to file complaints with the "jurisdictional consumer forum" located either at the place of residence or workplace. Efforts to streamline judicial and quasi-judicial proceedings to accommodate e-commerce disputes. Descriptive information regarding sellers, Price comparison websites, Mandatory disclosure statements Business to include and display "Principles for Trust and Transparency" in managing clients' data through robust technologies. Independent sector-specific regulatory authorities/Competition commission to conduct interim cyber investigations on deceptive pricing schemes as well as other T&Cs. Protection against harassment through unsolicited communications/auto-diallers through inbuilt "opt-in" consent requirements must be ensured through the 'conflict of law' clause. Self-regulatory policies and procedures of businesses registered under the Government portals "integrated grievance management system" or Industry-Ombudsman like scheme. Developing fair, effective and speedy justice under Online dispute resolution (ODR), mediation or negotiation. India, being a signatory to the UNCITRAL Model Law of 1996, sooner enacted the Information Technology Act, 2008 to provide legal recognition to transactions carried out by means of Electronic Data Interchange (EDI) and other means of electronic communication, involving contractual elements of electronic record use, email dispatch time and location, receive and acknowledgment of messages etc. Evolved as an alternative to a paper-based system of information storage and exchange, it established a "Cyber Appellate Tribunal"<sup>58</sup> as a means to ensure enforcement of its objectives. However, it is gravely limited and inadequate, because it lacks a basic framework for considering "consumers" as an entity and building seller and consumer confidence. Moreover, being just an enabling Act, it must be viewed in connection with the substantive Contract Act, 1872.

The freshly enacted legislation in India i.e. the Consumer Protection Act, 2019 and Consumer Protection (E-commerce) Rules, 2020 could bring some hope. The 1986 Act, is now being updated to include internet shoppers and includes "e-commerce" u/section 2(16) as "*the purchasing and selling of goods and services, including digital items, through digital or electronic networks.*" The rules extend protection to all models of e-commerce e.g. marketplace and inventory models and also retails (including multi-channel and single brand retailers) and all forms of unfair trade practices across all models of e-commerce. Further, the term "*unfair trade practice*" has been updated to include the cooling-off period, which is important in online

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<sup>58</sup> The Information Technology Act, 2008

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product sales. The interpretation of “consumer” too extends to include “any person who purchases products, hires or obtains services by electronic means, teleshopping, direct selling, or multi-level marketing” u/section2 (7) (b). Every e-commerce entity that intends to operate in India shall register itself with the Department for Promotion of Industry and Internal Trade (DPIIT) within such period as prescribed by DPIIT for allotment of a registration number. To increase consumer protection awareness in electronic transactions, new ideas including unfair contractual terms and product responsibility have been developed. In other words, the modified Act would include electronic commerce as a sub-segment within the scope of Indian legislation governing consumer protection. Under the new regulation of the CPA, 1986 omission of information and careless information removal by electronic businesses are both considered major “deficiencies in service?” Keeping in view, the newly drafted provisions, e-filing of complaints through a Web application named “edaakhil.nic.in” was developed. This E- portal facility launched by the National Consumer Disputes Redressal Commission (NCDRC) in 2020 facilitates the filing of complaints online mode from any part and at different forums.

Functional in 17 states, it facilitates court follow-up and decisions via video conferencing. The Central Consumer Protection Authority (CCPA), provided for by the amended consumer protection legislation, has so far issued 37 show-case notices, including to e-retailers and travel portals. The CCPA regularly monitors the internet, websites and print media newspapers, magazines, etc. for any misleading advertisements etc. The authority has also issued 135 notices for violation of package commodity rules, including the display of a misleading country of origin.<sup>59</sup>

In an effort to address concerns over data privacy in e-commerce, the Parliament adopted the Digital Personal Data Protection Act, of 2023, requiring the element of ‘consent’ to be the primary consideration before processing personal data. The Act changes an earlier draft significantly and varies dramatically from the EU’s General **Data Protection Regulation (GDPR)** Model of Privacy Rules, 2016. In accordance with the Act, there are further justifications for processing personal data without agreement. Additionally, the Act defines processing personal data for some employment-related objectives or to shield an employer from responsibility as legitimate uses for which consent is not necessary. A “personal data breach” is defined by the Act as any unapproved processing or unintended disclosure, use, alteration, or destruction of personal data that jeopardizes its confidentiality, integrity, or availability. In the case of a personal data breach, the data fiduciary is required by law to notify the Data Protection Board of India (“DPBI”) and the impacted data principals. Any breach would qualify as a personal data breach under the general definition, regardless of how many people were impacted. The Act gives the

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<sup>59</sup> Zia Haq, “As shopping goes online, e-commerce disputes rise to unprecedented levels”, The Hindustan Times, 22nd March, 2021.<https://www.hindustantimes.com/business/ecommerce-disputes-on-the-rise-shows-data-101616366508503.html>

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Government the authority to restrict public access to any data processed in India that is thought to be in the "interests of the general public", following obtaining a referral from the DPBI. Although the IT (Amendment) Act, 2008 grants the government comparable authority, this authority is unrelated to the protection of personal data.

E-commerce activities often lack specific declarations required as per the standards of digital networks. Thus, going a step ahead, India sets accountability standards for businesses by mandating compulsory declaration of the "*country of origin*" for all imported goods under the Legal Metrology (Packaged Commodities) Rules, 2011. An equal concern that troubles is the use of personal information for relevant lawful purposes, and not otherwise. Thus, storing or sharing of data with third parties without consent or notice of the consumer is a gross intrusion into privacy. Out of 194 countries, 137 had data protection laws in place.<sup>60</sup> India's much-awaited Data Protection Bill, 2023 is a welcoming step protecting safeguarding "personally identifiable information (PII)" while ensuring easy compliance for data fiduciaries or processors. It ultimately allowed consumers a free hand to control and harness the data with assurance of privacy, security and grievance management.

### **Judicial Approach to Challenges in E-Commerce**

E-commerce matters are cross-border transactions and at the same time are multi-party obligations spread over separate cities and countries. In the context of e-commerce India's legislation has limited geographical jurisdiction. However, the judiciary is moulding its approach to dispute resolution in the cyber environment.

Given the international nature of electronic commerce, the Supreme Court's observation in *Dhoda House v. S.K. Maingi*<sup>61</sup> is significant wherein it interpreted the scope of 'carrying on businesses' in the online context. It held that "for the purpose of carrying on business only presence of a man at a place is not necessary. Such business may be carried at a place through an agent or a manager or through a servant. The owner may not even visit that place". The phrase '*carries on business*' at a certain place would, therefore, mean having an interest in a business at that place, a voice in what is done, a share in the gain or loss and some control thereof.

Of all the major issues related to monetary transactions, geographical limitations and jurisdictional issues of courts too is a subtle issues alike. Being cross border and through internet sellers, service providers, purchasers and intermediaries operate through different countries and IP addresses may be in separate cities or even other countries. One such instance that led to the amendment of consumer law in India is the case of *Spice Jet v. Ranju Aery*<sup>62</sup> wherein the Apex Court determined the

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<sup>60</sup> <https://unctad.org/page/data-protection-and-privacy-legislation-worldwide>

<sup>61</sup> 2006(32) PTC 1 (SC)

<sup>62</sup> Revision Petition No. 1396 OF 2016



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questions of jurisdictional issues in e-commerce matters like online ticket booking. Scheduling flight service and availing on time and hassle-free is the right of every consumer and any deviation is a deficiency.

In the case of *Amazon Seller Service Private Limited v. Love Kumar Sahoo*<sup>63</sup>, questions of the inadequacy of the IT Act were raised wherein the Online Giant “Amazon” defaulted on satisfactory service of delivery of Phones and was trying to exempt itself from liability under the pretext of its “refund” policy. This case thus, essentially showed the extent of the dominance of businesses in framing unfettered/blanket terms and conditions.

In *M/S BASE Educational Services Pvt. Ltd v. Kayaka Foundation PU College of Science & Commerce and Others*<sup>64</sup>, it was asserted that electronic means of communication like the internet, e-mail, and fax may be used to enter into e-contracts. An e-contract can only be legal if it conforms to the requirements of the Indian Contract Act. On the question of the jurisdiction of courts to try e-commerce actions, the Indian position is still evolving. In the case of *Banyan Tree Holding (P) Limited v. A. Murali Krishna Reddy*,<sup>65</sup> it was held that merely having an “interactive website” was not sufficient to make the defendant amenable to the jurisdiction of the forum court.

Applying the principle of intentional targeting, it was held that the plaintiff had to show the intention of the defendant to conclude a commercial transaction with the website user. For the purposes of Section 20(c) of the Civil Procedure Code (CPC), to show that some part of the cause of action has arisen in the forum state by the use of the internet by the defendant, the plaintiff will have to show prima facie that the said website, (‘passive plus or ‘interactive’), was specifically targeted at viewers in the forum state for commercial transactions.

Earlier, in 2007, *India TV Independent News Service Pvt. Limited v. India Broadcast Live Llc & Ors*<sup>66</sup> the learned single judge opted for a “close connection test” and thereby examined whether the activities of the defendant “have a sufficient connection with the forum state (India)” and whether the cause of action arises out of the defendant’s activities within the forum and whether the exercise of jurisdiction would be reasonable. As the e website ‘indiatvlive.com (not wholly of passive character) of Defendant 1 intended to target expatriate Indians as well as Indians within the country and was launched in India as well as in Los Angeles, the

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<sup>63</sup> (2018) 2 CPJ 198

<sup>64</sup> Com.OS.No.309/2020

<sup>65</sup> CS(OS) 894/2008 (High Court of Delhi, 23rd November 2009) (India).

<sup>66</sup> 2007 (35) P.T.C. 177 (Del.) (India)

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Defendant company has sufficient connection with India. Therefore, the claim of the Plaintiff has arisen as a consequence of the activities of Defendant No. 1 within the jurisdiction of the Indian Court. This was a case of “passing off action” initiated by Plaintiff in Delhi H.C. against Defendant for using the domain name www.indiatvlive.com because India TV was the owner of the domain name ‘indiatv.com’ which was registered since 18.11.2003.

In a similar instance of passing off, i.e. *Presteege Property Developers v. Prestige Estates Projects Pvt. Ltd.*<sup>67</sup>, the rationality in *Banyan Tree* was followed. The test of concluding a commercial transaction should be shown, to establish the level of activity indulged in by the defendants by the use of the website.”

The Indian legal system by and large followed the approach of common law in the USA, the UK and some other Commonwealth countries; however, an indigenous law is yet to be developed. Further, nature of the business too will decide the scope for applicability of different established tests.

## CONCLUSION AND SUGGESTION

In the contemporary world of the consumption-based economic model, safeguarding consumers’ interest on a global level of trade and commerce is not a mere private right, but rather a matter of common/public interest. Online markets remain more rigid and unamendable due to a lack of personal interaction. Further complex technical terms and conditions of contracts make it cumbersome for ‘consumers’ to avail of online products and services. At the same time, there is no duality to the fact that consumers are at a poorer negotiating bargaining power than their contracting partners or suppliers, demanding stringent collaborative guidelines from Governments to address varied privacy and financial risks.

Consumer participation in internet transactions is a futuristic trend and being a crucial component of online transactions, the obligation of the seller and third party towards him always remains a priority. Also, every citizen *ipso facto* is primarily a consumer and a unit of GDP and thus, development of consumer protection laws is core part of the national interest and values of a democratic society wherein the right not to be cheated is the cardinal principle of “fair and just” policy. The principle of Good faith remains the most cherished customary norm of any trade or commerce, full and fair disclosures, clarity on modes/ gateways of payment, currency of dealing and ultimately privacy through data protection hold the key to seamless electronic transactions. However, the inherent complexities majorly on grounds of fluctuating theories on ‘*lex loci*’ and ‘*lex fori*’ raise obstacles in handling consumer complaints which ultimately discourages e-commerce. Moreover, the concept of ‘*applicable law*’ to contracts of international trade remains critical and is assessed alongside different tests and also uniform Model rules of CISG and customary practices of private international law. Given this dichotomy, mutually settled terms of compensation

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<sup>67</sup> 2008 (37) PTC 413 (SC)

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between seller and buyer, secures rights of both. However, documentary credit transactions, involving payment options through online banking (letter of credit etc.) and e-communication of other documents like customs clearance, insurance etc. invite expert e-regulatory bodies and respective legislations.

Amidst jurisdiction issues, resort to convenient, accessible and cheaper forms of dispute resolution, alternate dispute resolution (ADR) mechanisms with ‘*arbitrator/mediator*’ as the third neutral party has been effective in many international commercial contracts. However, WIPO’s Arbitration and Mediation Centre facilitates first-of-its-kind “Online Dispute Resolution” with inexpensive means, however, it is limited to IP disputes majorly in the form of Trademarks, Domain name etc.

In this world of global consumerism, Governments are not alone in striving to achieve a safety net for consumers’ interests. International agencies and even businesses look for collaborative approaches. Inbuilt insurance schemes, complaint and redressal mechanisms (return and refund) to enhance competitiveness in the online market. It thus envisioned for the future that more decentralised technological solutions or robust online mechanisms be devised to address privacy protection and advance healthier consumption.

In order to improve consumer interests in online marketplaces, member countries of the UN must take concrete actions such as using international networks for information exchange, providing investigative help while bonding over any bilateral or multilateral agreements when considered suitable, and more. Consumer protection regimes should not be limiting or acting as a trade barrier. An effective regulatory framework must ensure good ethical business practices upon the foundational ideology of the consumer being ‘sovereign.’ However, putting an onerous duty on the shoulders of providers is critical. Lack of uniformity in educational level among consumer groups poses a major risk in making e-commerce and IT laws communicable to all beneficiaries alike. As a community of consumers, all UN member states need to devise and strengthen robust consumer protection policies in tune with international guidelines. At the same, consumer education about misleading advertising (spam mail etc.), fraudulent sites, and business navigation guidance must be researched and analyzed under international cooperation.

Although international efforts are underway in some form of ‘policy guidance’ or “toolkit” etc. it lacks consistency in building consensus over international implications of consumer law and policy. At the same time, it is a commonly witnessed phenomenon that, **most of the businesses** and consumers are not well versed with rules of private international law, which suffer from uncertainty and unpredictability in their application, owing to their international character. Thus, to minimize complexities in such e-commerce and its allied regulatory norms, the following steps could be ensured;

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1. E-commerce businesses need to be responsible for monitoring the actions of the other persons who are using their platform to market their products to ensure that they are also not resorting to any unfair practices. The Payment aggregators are also required to have a policy for disposal of complaints/dispute resolution mechanism/timelines for processing refunds, etc., in tune with the RBI instructions on Turnaround Time (TAT) for resolution of failed transactions etc.
  2. Periodical auditing of the online websites selling products and services would be effective.
  3. Periodical Compliance Reports through Annual Surveys and Poll will guide National regulatory Authorities (the CPA in India) would be a proactive approach given the growing market size and vulnerability of consumers to diverse, unknown and known intermediaries.
  4. Resort to convenient, accessible, effective speedy justice under Online dispute resolution (ODR), mostly, mediation or negotiation needs to be encouraged.
  5. Uniformity in the law across jurisdictions also helps minimize compliance costs which is very primary expectation, thus, a Universal e-commerce code if could be brought to boost consumer trust, it must be suitably tuned in with a futuristic expansionist attitude of e-consumerism.
  6. Any model guideline needs to be considerate of the interests of diverse kinds of consumers balancing it with effective consumer education from Governments at a decentralized level. So, while adopting UNCITRAL legislative texts in domestic law, states may adapt them to make them subject to the level of consumer protection they consider appropriate.
  7. There should be separate substantive legislation specifically dedicated to “e-commerce transactions”. Alternatively, the jurisdictional ambit of courts under the Civil Procedure Code (CPC) is to be so modified that it leaves no room for confusion on matters of online-transactions.

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## CHAPTER IV

### CULTIVATING CONSUMER CONFIDENCE: ROLE OF (INDIAN) GOVERNMENT AGENCIES IN ENSURING COSMETICS SAFETY

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#### ABSTRACT

*Cosmetics and personal care products have become an integral part of modern life. Presently, cosmetics cater to the demands of a diverse range of consumers, and significant expansion in the cosmetic industry has given rise to novel formulations and unique products. While it brings exciting opportunities and diverse product options, simultaneously it poses multifaceted challenges for consumers and their interests. In India, Cosmetics being significantly a self-regulated industry and the rapidly evolving landscape has created a gap in regulatory frameworks that might not adequately address the potential risks or provide sufficient oversight. This gap in regulation can leave consumers vulnerable to misleading claims, substandard products, and potential health and safety concerns. Government agencies play a vital role in nurturing consumer confidence, with a special focus on ensuring trust and safety within the realm of cosmetics. In addition to establishing standards and enforcing regulations, these entities ensure that the industry advances and grows, simultaneously consumer health and interest are safeguarded. This paper delves into the indispensable role of government agencies in upholding consumer awareness and protection standards and ensuring trust in the realm of cosmetics in India.*

*Keywords: Consumer protection, Cosmetics, CDSCO, cosmetic regulations, safety regulations,*

#### INTRODUCTION

When it comes to lifestyle products, personal care and cosmetics are some of the most sought-after products available in the market. Personal care and hygiene have become an indispensable part of modern living setups. Irrespective of age, gender and utility, cosmetics and personal care products have remarkably taken over the modern market. Cosmetics<sup>68</sup> is defined as “any article intended to be rubbed, poured, sprinkled or sprayed on, or introduced into, or otherwise applied to, the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the

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<sup>68</sup> Sec 3 (aaa) , Drugs and Cosmetics Act, 1940

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appearance, and includes any article intended for use as a component of cosmetic”. Traditionally cosmetics were closely tied to the notion of women’s beauty and makeup. However, it has transcended the conventional boundaries of feminine beauty and now encompasses a broad spectrum of products. Consequently, cosmetics are assumed to enhance, groom, protect<sup>69</sup>, and maintain hygiene, well-being and self-expression. Today cosmetic items range from skincare products (moisturizer, sunscreen), makeup (face, lips, nails), fragrances (perfume, deodorants), hair care items (dyes, shampoo, conditioner), and the list continues to expand to meet evolving consumer needs. Cosmetics thus serve as a sheer reflection of lifestyle, aesthetics, personal care or self-care, enhancing appearance, youth and boosting self-confidence etc.

In today’s era, the cosmetic industry is required to function at multiple levels not just enhancing beauty but catering to other emerging needs of consumers. The consumer market across the globe has witnessed a steep shift in choice and demand for products. Unfortunately, a concerning trend within this industry involves the proliferation of synthetic products commonly referred to as spurious cosmetics<sup>70</sup>, adulterated cosmetics<sup>71</sup> or counterfeit and fake cosmetics.

Modern cosmetics represent a complex blend of different chemicals that serve various purposes. They provide a combination of aesthetic, functional and protective benefits that collectively improve the quality, usability and longevity of the product. While many chemicals used in cosmetics are considered safe in prescribed doses, long-term exposure to certain ingredients may increase health risks<sup>72</sup>. Moreover, numerous research studies have substantiated the adverse impact of chemicals present in these products on both human skin and internal organs. Researchers have identified dangerous levels of mercury in skin-lightening creams<sup>73</sup> affecting not only the skin but also internal

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<sup>69</sup> Panico, A., Serio, F., Bagordo, F., Grassi, T., Idolo, A., De Giorgi, M., Guido, M., Congedo, M., & De Donno, A. (2019). Skin safety and health prevention: An overview of chemicals in cosmetic products. *Journal of Preventive Medicine and Hygiene*, 60(1), E50–E57

<sup>70</sup> Sec 17 D, The Drugs And Cosmetics Act, 1940

<sup>71</sup> “It bears or contains a poisonous or deleterious substance which may render it injurious to users...” Iowa Administrative Code. (n.d.). §126.14 Cosmetics — Adulteration. Retrieved from <https://www.legis.iowa.gov/docs/code/126.14.pdf>

<sup>72</sup> Environmental Working Group. (2020, May 5). The Toxic Twelve Chemicals and Contaminants in Cosmetics. Retrieved from <https://www.ewg.org/the-toxic-twelve-chemicals-and-contaminants-in-cosmetics> on November 29, 2023.

<sup>73</sup> Bastiansz, A., Ewald, J., Rodríguez Saldaña, V., Santa-Rios, A., & Basu, N. (2022, November). A Systematic Review of Mercury Exposures from Skin-Lightening Products. *Environmental Health Perspectives*, 130(11), 116002.

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organs and systems. Moreover, a link between chemicals in hair dyes and straighteners has been established to breast and uterine cancer.<sup>74</sup> Some chemicals like phthalates and triclosan present in cosmetics are classified as endocrine disruptors<sup>75</sup>. Endocrine disruptors are substances that may interfere with the endocrine system, comprising hormones and glands that regulate crucial bodily functions. The use of cosmetics containing these disruptors may interfere with the hormones and cause adverse health effects contributing to problems with puberty, fertility, and pregnancy<sup>76</sup>. Chemicals like parabens, ethoxylated compounds, formaldehyde, ethanolamine, and its derivatives, along with carbon and

The use of cosmetics, especially chemical-based ones, poses numerous implications for the human body and health. Various evidence-based studies have found that exposure to some of these ingredients can lead to adverse health outcomes. These findings emphasize the importance of informed consumer choices and increased regulatory measures within the cosmetic industry. As consumers become more conscious of the potential risks associated with certain cosmetic products, there is a growing demand for transparency in labelling, stricter quality control, and a shift towards natural and safer alternatives. Regulatory bodies and industry stakeholders play a crucial role in addressing these concerns to ensure the safety and well-being of consumers in the ever-evolving landscape of the cosmetic market.

### **Consumer Safety Concerns in India**

Cosmetic products have become an essential part of modern lifestyle. It not only serves to groom but is also believed to enhance and care for the body. Cosmetic products today are an amalgamation of various ingredients that deliver the desired effects while simultaneously exposing the skin to various ranges of skin-related and internal complications. Along with providing distinct properties to the product, these compounds impart various physiological, chemical and physical attributes to the products. Presently, the cosmetic and personal care product (PCP) industry is a highly dynamic and innovative sector. To cater to consumers' improved functionality, quality, safety and overall satisfaction, with the final products the brands are investing significantly in research and development to fuel innovation of novel ingredients, product formulations, and manufacturing processes. A range of diverse chemical

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<sup>74</sup> Sheikh, K. (2023, February 15). Many Personal Care Products Contain Harmful Chemicals. Here's What to Do About It. *The New York Times*. Retrieved from <https://www.nytimes.com/2023/02/15/well/live/personal-care-products-chemicals.html> on November 28, 2023.

<sup>75</sup> National Institute of Environmental Health Sciences. (n.d.). Endocrine Disruptors. Retrieved from <https://www.niehs.nih.gov/health/topics/agents/endocrine/index.cfm> on December 2, 2023.

<sup>76</sup> Diamanti-Kandarakis, E., Bourguignon, J.-P., Giudice, L. C., Hauser, R., Prins, G. S., Soto, A. M., Zoeller, R. T., & Gore, A. C. (2009). Endocrine-Disrupting Chemicals: An Endocrine Society Scientific Statement. *Endocrine Reviews*, 30(4), 293–342.

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compounds and nanomaterials<sup>77</sup> are used in the manufacturing of a variety of cosmetic products. Although nanomaterials may not transport through intact skin, as per a guidance document released by FDA's Center for Food Safety and Applied Nutrition, Office of Cosmetics and Colors<sup>78</sup> the likelihood of their penetration increases when the skin barrier is impaired, thus leading to unnatural biological interaction.

Most ingredients employed in cosmetic products typically adhere to specific regulatory standards. Nevertheless, certain cosmetics containing toxic substances, are subject to allowed limits due to their potential for toxicity at higher concentrations. Toxic ingredients like phthalates, parabens<sup>79</sup>, colour, dyes, pigments<sup>80</sup>, and additives (often without any safety testing) have been found in products like lotions, creams, make-up, perfumes, hair products, straighteners, sprays, dyes etc. These toxins have been linked to ovarian and breast cancer, early onset of puberty, fibroids and endometriosis, miscarriage, diabetes and obesity, and other health problems in females.<sup>81</sup> During the past decades, the safety of PCP and its ingredients has attracted increasing attention.

Some Cosmetic product has medical compounds that not only enhance but alter bodily appearance or aesthetics thus affecting skin/ hair structure or health. Such substances and compounds can cause harm when used for a prolonged time. The cosmetic industry has always faced challenges concerning consumer safety, efficacy, product appeal, and cost-effectiveness.<sup>82</sup> Some other common safety considerations linked with cosmetics and personal care products may involve:

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<sup>77</sup> Fytianos, G., Rahdar, A., & Kyzas, G. Z. (2020, May). Nanomaterials in Cosmetics: Recent Updates. *Nanomaterials (Basel)*, 10(5), 979.

<sup>78</sup> FDA-2011-D-0489, Guidance for Industry : Safety of Nanomaterials in Cosmetic Products , June 2014 <https://www.fda.gov/regulatory-information/search-fda-guidance-documents/guidance-industry-safety-nanomaterials-cosmetic-products>

<sup>79</sup> Nowak, K., Jabłońska, E., & Ratajczak-Wrona, W. (2021, July). Controversy around parabens: Alternative strategies for preservative use in cosmetics and personal care products. *Environmental Research*, 198, 110488.

<sup>80</sup> Pratiwi, R., Auliya As, N. N., Yusar, R. F., & Shofwan, A. A. A. (2022). Analysis of Prohibited and Restricted Ingredients in Cosmetics. *Cosmetics*, 9(4), 87. MDPI AG. Retrieved from <http://dx.doi.org/10.3390/cosmetics9040087> on December 14, 2023

<sup>81</sup> Toxic Personal Care Products and Women's Health: A Public Health Crisis, <https://nwhn.org/toxic-personal-care/>

<sup>82</sup> Vikas Pandey, Rajesh Shukla, Ashish Garg, Mohan Lal Kori, Gopal Rai, Chapter 17 – Nano emulsion in cosmetic: from laboratory to market, In Micro and Nano Technologies, Nanocosmetics, Elsevier, 2020,



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- Allergens and sensitivity to some ingredients
  - Spreading bacteria on the skin
  - Respiratory Issues caused by aerosols and powdered products
  - Endocrine disruption
  - Irritation and rash on skin, eyes, scalp etc.
  - Fire hazards, in the case of aerosol products such as perfume, hairspray
  - Microbial Contamination
  - Chemical and Contaminants in the products.

#### **Criteria of Cosmetic Safety**

To ensure the safety of cosmetics, all stakeholders must play their role. To achieve cosmetic safety all cosmetics must-

- Be free from contamination and toxic substances that may have harmful effects on human health.
- Be free from anti-microbial, nanomaterials and chemicals like UV filters, parabens, etc.
- be cruelty-free (not be tested on animals)
- Be manufactured, prepared, preserved, packed and stored under clean conditions, thereby adhering to.
- Use the permitted ingredients and declare the same to the government and then on the label for consumers. (regularly updated and enforced strictly)

Along with that government must efficiently monitor and check the ingredients of the products against the permitted category of Ingredients. In case any safety concern arises, the cosmetic must be prohibited from the market and be called back. Non-compliance with CDSCO and BIS guidelines should be subject to strict compliance and enforcement actions.

#### **Regulatory Framework for Cosmetic Safety in India:**

In India, cosmetic products fall under the jurisdiction of *The Central Drugs Standard Control Organisation (CDSCO)* under the purview of the Drugs & Cosmetic Act 1940 & Cosmetic Rules 1945, whereas the Bureau of Indian Standards (*BIS*) issues quality standards and certifications for cosmetic products under the BIS Act 2016

There is a two-tiered system for licenses and registrations governing cosmetic commercial activity in the Indian market, one for the manufacturer and another for the importer of cosmetics. Consequently, they are regulated by two different authorities, the Central Drugs Standards Control Organization (CDSCO) a primary and centralized agency under the Central Govt, is responsible for regulations and

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import registration. The domestic manufacturing of cosmetics is overlooked by the State Licensing Authority (SLA) and appointed by the respective state governments. These authorities are responsible for functions like issuing manufacturing licenses to cosmetic companies operating within their territories, as well as renewing and regulating said licenses.<sup>83</sup> Thus, CDSCO issues guidance, standards & policies at the national level, whereas, SLAs directly give out and renew cosmetic manufacturing licenses in their jurisdiction. Simultaneously, labelling declarations are majorly overlooked by the Bureau of Indian Standards (*BIS*). It is responsible for setting up the norms for cosmetics items mentioned under the 'Schedule S'<sup>84</sup> of the Drugs & Cosmetics Rules 1945.

While CDSCO and SLAs oversee and regulate licensing & product testing, the responsibility ultimately falls on cosmetic importers and manufacturers to ensure their products comply with the labelling requirements outlined in these rules as well as other applicable laws (eg. Cosmetics Rules, 2020). The companies importing or manufacturing the cosmetics need to do their due diligence and declare all information, ingredients, expiration dates, warnings, etc. accurately on the product packaging/labels in line with Cosmetic Rules 2020. To grant a licence to manufacture, sell or distribute cosmetics, an application<sup>85</sup> shall be made through an identified online portal in Form COS- 5 for a licence or in Form COS- 6 for a loan licence accompanied by a fee, as specified in the Third Schedule along with respective documents as specified in Part II of the Second Schedule. Nevertheless, manufacturers can leverage their approvals in major cosmetics markets like the US, EU, Japan or Canada for registration of cosmetics in India.

Cosmetic products and ingredients present in this schedule should comply with BIS's norms. Additionally, the Bureau of Indian Standards has also facilitated certain other specifications for lipstick (Indian Standards (IS) 9875:1990) and for skin creams (IS 6608:2004). The Indian standard for skin creams encompasses a range of cream products for different purposes and skin types. It classifies skin creams into categories such as vanishing creams, cold creams, cleansing creams, moisturizing creams, sports creams, foundation creams, hand creams, emollient creams, and general-purpose creams<sup>86</sup>. However, it does not mention any stipulations regarding the composition of

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<sup>83</sup> The Drugs and Cosmetics Rules, 1945 (Part XV, Rule 21, Retrieved from <http://www.cdscn.in/writereaddata/2016DrugsandCosmeticsRule1945.pdf> on December 11, 2023

<sup>84</sup> BIS, Indian standards referred in government regulations

<https://www.bis.gov.in/index.php/standards/technical-department/petroleum-coal-and-related-products/indian-standards-referred-in-government-regulations/>

<sup>85</sup> Sec 23(1), The Cosmetic Rules, 2020

<sup>86</sup> Bureau of Indian Standards. (2004). IS 6608: Skin creams—Specification (2nd rev.) [PCD 19: Cosmetics]. [https://standardsbis.bsbedge.com/BIS\\_SearchStandard.aspx](https://standardsbis.bsbedge.com/BIS_SearchStandard.aspx)

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these skin creams. It further emphasises that the raw materials used to produce skin creams, along with their concentrations in the final product formulations, must not pose any harmful effects to users<sup>87</sup>. It rather seems vague, as harmful effects may vary per the skin type and the period of exposure. Further, the standard places full responsibility on the manufacturers themselves to ensure the dermatological safety of their products (before releasing them in the market). However, as per IS 6608:2004, skin cream products must meet prescribed limits for heavy metals and arsenic when tested in the final finished state, even if the raw materials were assessed before production. Testing the final product thus provides an additional layer of protection and quality assurance for end consumers against hazardous substances in cosmetics.

IS 4707 (Part 2): 2009<sup>88</sup> mentions the list of substances which must not form part of the composition of cosmetic products and includes more than 1200 elements, which must not be presented in cosmetic products (Annex A). As for the colour dyes and pigments present in the skincare products & lipstick, such products must comply with the same standard (IS 4707-Part I) and should be per the Rule 134 and Schedule Q of Drugs and Cosmetics Act and Rules laid down by CDSCO (Govt. of India). Similarly, Rules 135, and 145, of the Drugs and Cosmetics Rules prohibit the import and use of heavy metal elements like lead and arsenic compounds in cosmetics for colouring.

The new Cosmetics Rules 2020, recently implemented by the Ministry of Health and Family Welfare, mandate labelling requirements for hair dyes containing certain chemicals. Specifically, the rules state that hair dyes with ingredients like paraphenylenediamine or other dye pigments must display cautionary warnings about potential skin irritation or allergic reactions<sup>89</sup>. Further, it implements additional regulations pertaining specifically to fluoride levels in toothpaste products, stipulating maximum concentrations, and displaying the exact fluoride content percentage on packaging labels.

Although the regulation effectively prohibits manufacturing, licencing, and import of cosmetics containing Hexachlorophene<sup>90</sup>, Lead or Arsenic compounds<sup>91</sup>,

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<sup>87</sup> *ibid*

<sup>88</sup> IS 4707 (PART 2), 2009 CLASSIFICATION OF COSMETICS RAW MATERIALS AND ADJUNCTS

<sup>89</sup> Ministry of Health and Family Welfare. (2020). The New Drugs and Cosmetics Rules, 2020. Government of India. [https://cdsco.gov.in/opencms/export/sites/CDSCO\\_WEB/Pdf-documents/NewDrugs\\_Cosmetics/Draft-Rules-Comments\\_30.9.2020.pdf](https://cdsco.gov.in/opencms/export/sites/CDSCO_WEB/Pdf-documents/NewDrugs_Cosmetics/Draft-Rules-Comments_30.9.2020.pdf)

<sup>90</sup> Section 134 A, Drugs and Cosmetic Rules 1945

<sup>91</sup> Section 135

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and mercury compounds<sup>92</sup> along with guidelines on Cosmetics containing dyes, Colors, and Pigments<sup>93</sup>, it does allow the use of certain restricted ingredients with defined concentrations and labelling requirements. In a nutshell, while imposing broad bans on toxic ingredients, the regulations do outline specific thresholds and conditions under which restricted chemicals may be formulated into cosmetics with cautionary labelling.

### **Consumer Protection Act**

The Consumer Protection Act, of 2019 was enacted replacing The Consumer Protection Act, of 1986 (“CPA 1986”) to provide enhanced protection to consumers mainly considering the exponential boom in the e-commerce industry. The Act further provides safety to consumers concerning settling disputes, regulating deceptive advertisements, and establishing a central grievance-resolving authority. The definition and scope of ‘consumer’ have been broadened to include all the categories of consumers who procure goods or hire any kind of service through any mode, whether traditional offline method or online through E-commerce sites, teleshopping or any other retail channel. This new definition encompasses a wide range of goods and services in today's marketplace. The most essential characteristic of the Act is that it aims to provide speedier and inexpensive redressal against misleading claims, or advertisements and imposes product liability obligations for manufacturing harmful cosmetics.

### **Other laws governing the cosmetics industry in India**

Apart from The Drugs and Cosmetics Act, of 1940 and its Rules and The Consumer Protection Act, of 1986 (now the Consumer Protection Act, 2019) other laws also govern the cosmetic industry across different realms in India-

- **The Trade Marks Act, 1999** –provides and protects the trade mark of a brand, along with providing common law protection for passing-off.
- **The Competition Act, 2002** - regulates anti-competitive behavior amongst manufacturers, brands, supply chains and other stakeholders.
- **The Legal Metrology (Packaged Commodity) Rules, 2011** prescribes labelling requirements on the package, including the declaration of customer care number.

### **Loopholes / Challenges in the effectiveness of the regulatory framework**

Regulatory policy and cooperation among various stakeholders are the cornerstone of effectiveness and efficacy. The regulatory policy acts as a tool to provide an opportunity to gather insights, consult, review and foster collaboration before implementing changes. It further promotes responsibility to ensure compliance and

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<sup>92</sup> Section 135 A

<sup>93</sup> Section 134

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monitoring approved by the ethics of the relevant legislation and regulations. The effectiveness of regulatory frameworks, designed to ensure compliance, safety, and transparency across various industries, can face several challenges. Factors like the dynamic nature of industries, technological advancements, and shifts in consumer preference are responsible for posing some of the challenges in the regulatory framework. Similarly, prospects of digitalisation also pose challenges to regulatory enforcement by questioning the traditional notion of liability. Most of the regulations and Rules of CDSCO pertaining to Cosmetics focus on import, licencing, and inspection regulations. Additionally, CDSCO's guidance on manufacturing does not establish legally enforceable responsibilities on manufacturers and vendors. Instead, guidances are viewed only as recommendations, unless specific regulatory or statutory requirements are cited. Similarly, non-uniform enforcement of regulations, lack of premarket approval and weak post-market surveillance are also some of the major concerns contributing to potential loopholes in the regulatory framework.

#### **Responsibilities of government (agency)**

In order to determine the safety of products, the government and its regulatory agency play a vital role. Their key responsibilities include-

- Monitoring, testing, and reviewing toxicity levels and other related research on the ingredients of the products
- Tracking and evaluating regulatory decisions, actions and restrictions made by other jurisdictions
- Consulting opinions and conclusions taken by review panels, advisory groups, industry associations, consumer groups and other relevant stakeholders concerning cosmetics.
- Timely updating of the list of prohibited and permitted ingredients
- conduct market/ consumer surveys and call off products in case of non-compliance
- Foster public health goals
- Considering outcomes of the above efforts to regularly update policies, guidelines, labeling requirements, manufacturing standards and other regulations.

#### **Responsibility of manufacturers and importers**

In order to determine whether a cosmetic is safe for use, manufacturers and importers' responsibility must be aware of risks related to substances and ingredients in the cosmetics they sell. Further, they are also expected to:

- Stay updated with ingredient and product development, reported adverse effects and regulatory assessment.
- Monitor scientific literature and track emerging science on product safety
- Advertise ethically

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- Identify potential risks and prioritise consumer safety
  - Assess Risks and disseminate requisite information to the users
  - Share risk information and ways to mitigate them

#### **Responsibility as consumers**

- Reduce chemical exposure
- Thorough (product) research
- Stay informed (of toxic chemicals)
- Evaluate and assess claims
- Seek safer alternatives

#### **Conclusion: Fostering Consumer Confidence and Ensuring Safety**

In conclusion, ensuring safety and fostering consumer confidence in the cosmetic industry requires a collective approach involving regulatory bodies, manufacturers, and the industry itself. The industry's focus on proper formulation, ingredient dosages, and public safety measures is crucial to mitigate potential health hazards. Presently, variations in oversight across regions contribute to inadequate regulation, allowing potentially harmful products to proliferate. Ineffectual enforcement of labelling norms, ingredient transparency, and manufacturing standards exacerbates the problem. Regulatory bodies must adapt to changing dynamics, addressing emerging trends and innovations. Current disparities in oversight lead to inadequate regulation, resulting in the presence of harmful products. Government bodies must strengthen their regulatory frameworks to bridge these gaps and ensure that cosmetics entering the market are safe and reliable. Ultimately, the collaborative efforts of regulatory bodies, manufacturers, and vigilant consumers are pivotal in shaping a more secure cosmetic industry. By aligning their pursuits, they can forge an environment where innovative products thrive while simultaneously ensuring that consumer well-being remains paramount.

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## CHAPTER V

### MISLEADING ADVERTISEMENTS: LIABILITY AND PROTECTION: SAFEGUARDS TO PROTECT CONSUMERS FROM GETTING DUPED

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#### ABSTRACT

*Advertising is a long-standing practice and integral to contemporary commercial marketing strategy. Modern life is inconceivable without marketing and a society driven by consumerism. The primary objectives of advertising are to inform consumers, influence their opinions, and maintain product and service awareness. Marketing is done to generate enthusiasm for a company's products or services among individuals who might become consumers in the future. Hence, the objective of advertising is twofold: to generate interest in the promoted products and equip individuals with the necessary resources to make well-informed buying decisions. However, when these commercials are deceptive or intended to mislead consumers, they hinder the economic behaviour of consumers, infringe upon their rights to make informed decisions, create an imbalance of information, and even damage the principles of competing companies. These commercials are considered unethical and are seen as a negative influence on society and business. Moreover, the resultant information imbalance caused by such marketing leads to "market failure" in economic terms. The article highlights the shortcomings of India's existing legal and regulatory system in addressing the problems caused by deceptive and misleading advertisements. It asserts that a comprehensive revamp is necessary for India. Additionally, it asserts that numerous jurisdictions have enhanced their legal and regulatory framework pertaining to advertisements over the past decade. Therefore, it is widely agreed upon worldwide that an all-encompassing legal and regulatory structure is necessary to address the issue of deceptive and misleading marketing in order to mitigate the occurrence of "market failure." The paper states that India has to create a more efficient regulatory framework to control false and deceptive advertisements. The recommendation suggests that the model should be adjusted to match international practices and promote customer interest without going beyond what is required to address market failure.*

*Keywords: Consumer Protection (Amendment) Act 2019, Misleading Advertisement, Consumer's rights, Consumer Trust, Communication, Potent Customers, Efficiency of the Featured Product, Reality Check, People's Feedback.*

#### INTRODUCTION

Commercial advertising has become integral to contemporary business tactics and consumer culture. It is considered a driving force in the free market economy during globalisation. Advocates assert that advertising is advantageous for consumers since it imparts valuable information necessary for the principle of "consumer sovereignty" in

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the modern era. Recognising the importance of advertising in the present economic structure and expansion of markets, most nations have granted it the status of free speech.

The Indian market has emerged as a highly appealing location for large companies and associations following globalisation. In order to thrive in the expanding market tradition, these firms must quickly and effectively contact a wide range of consumers and convince them of the value of their products and services through creative advertising messages. Therefore, the advertising sector has experienced significant expansion and development in the past few decades. The Indian Supreme Court has acknowledged that "commercial advertisement" is considered "protected speech" according to Article 19 (1)(a) of the Indian Constitution.<sup>94</sup>

J. Walter Thompson asserted, "*Advertising is a non-moral force, like electricity, which not only illuminates but electrocutes. Its worth to civilisation depends upon how it is used.*"<sup>95</sup> Advertising is a valuable instrument, provided that the methods employed are equitable. However, complications develop when advertisers employ deceitful and fraudulent advertising strategies to entice consumers with incorrect or misleading information regarding the features and benefits of their items. Deceptive and inaccurate marketing undermines consumers' "right to be informed" and harms both consumer interests and competing companies. In recent years, several countries have enhanced their legal and regulatory advertising systems to tackle the issues presented by deceptive and misleading advertisements. India has implemented numerous legislations and regulatory organisations to address this issue, but it persists significantly. The article briefly analyses India's current legal and regulatory framework for addressing false and misleading advertisements. It then suggests the necessary actions to tackle this issue comprehensively and effectively. To achieve its suggestions, the article relies on the worldwide best practices developed by the United States of America, the United Kingdom, and the European Union to combat false and misleading advertisements effectively.

#### **UNDERSTANDING FALSE AND MISLEADING ADVERTISEMENT**

Advertisements serve the purpose of educating, persuading, and reinforcing essential information to consumers. Consequently, their perspectives and viewpoints have significantly evolved and improved. Nevertheless, if an advertisement:

- presents false claims regarding the products or
- intends to create instability by leveraging its presentation or
- is dedicated to misleading or has a high probability of tricking the targeted consumers or

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<sup>94</sup> Tata Press Ltd v. Mahanagar Telephone Ltd., AIR 1995 SC 2438.

<sup>95</sup> Ashok R. Patil, Misleading Advertisements-Impact and Regulations, IN 25 YEARS OF CONSUMER PROTECTION ACT: CHALLENGES AND THE WAY FORWARD, 35 (Ashok R. Patil ed., 2014).



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- exhibits exaggerated claims about the functionality of their products to the extent that the promoted information is unable to reflect reality accurately or
  - intentionally attempts to conceal the negative implications of the merchandise;

and when such erroneous information or fabrication has the capacity to deceive customers, the advertisement is deemed misleading. An illustration of deceptive advertising is a television advertisement promoting a cooking oil brand, implying that individuals who exclusively use this oil will be immune to heart-related issues. Once more, it would be deceptive to promote a water filtration technique that solely filters bacteria (excluding viruses) as generating entirely safe drinking water.

The primary goal of false and deceptive advertising is to influence customers to engage in financial transactions they would otherwise avoid, compromising their "right to be informed" about the goods or service's effectiveness, quantity, pureness, and security. The "right to be informed" entails that customers are entitled to receive correct and dependable information that imparts an understanding of goods, services, regulations, or any other relevant information about the items people purchase and utilise in their daily lives. The purpose of this right is to encompass the availability of dependable, impartial, and precise information regarding all facets of a product or service to enable consumers to make well-informed and autonomous decisions.

Hence, deceptive and misleading advertisements create a situation of information disparity. If legislative and regulatory bodies do not adequately address this issue, it can lead to a state known as "market failure" in economic terms. Asymmetry of information leads to market failure, resulting in unforeseen and undesirable outcomes that hinder market competitiveness. Deceptive display of information can have a lasting negative impact on consumer rights, as it influences the economic behaviour of consumers. This type of advertising, specifically related to pharmaceuticals and food products, has a substantial and harmful effect on the physical well-being of customers.

#### **NATIONAL LEGAL AND REGULATORY FRAMEWORK FOR THE PREVENTION OF FALSE AND MISLEADING ADVERTISING**

To shield its population from deceptive advertising and sales strategies, the government of India implemented several laws and appointed several regulating authorities. All of the following pieces of Indian legislation have addressed the issue of misleading advertising comprehensively:

- "The Drugs and Magic Remedies (Objectionable Advertisements) Act, 1954
- Cable Television Networks (Regulation) Act, 1995
- Food Safety and Standards Act, 2006
- Drugs and Cosmetics Act, 1940
- The Bureau of Indian Standards Act, 1986

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- The Consumer Protection Act 1986 and Consumer Protection Act Amendment 2019".

As per the "Consumer Protection Act 1986," the primary legislation, the term "misleading advertisement" is categorised as an unjust trading conduct. If a consumer forum determines that an advertisement is deceptive, it possesses the power to compel the advertising business to remove the commercial, provide compensation, or release corrective advertisements that minimise the impact of the misleading advertisement, all at the expense of the advertiser. The Drugs and Magic Remedies (Objectable Advertisements) Act of 1954 forbids pharmaceutical advertisements that include any information that creates a deceptive perception of the true characteristics of the drug, makes false claims about the drug, or is generally misleading or inaccurate. Section 24 of the "Food Safety and Standards Act, 2006" says, "*No advertisement shall be made of any food which is misleading or deceiving or contravenes the provisions of this Act, the rules and regulations made thereunder*". "The Bureau of Indian Standards (Certification) Regulations, 1988" Rule 7 (1) (l), (g) and (h) prohibits misleading advertisements. SEBI, TRAI, and IRDA have individually established regulations that each define misleading advertising differently. Independent regulators such as the Financial Sector Regulatory Jurisdiction, the Securities and Exchange Board of India (SEBI) and the Telecom Regulatory Authority of India (TRAI) have the authority to address complaints specific to their respective industries and impose penalties, similar to the role of Consumer Courts in handling claims related to misleading and deceptive advertising under the Consumer Protection Act. Various courts and autonomous entities in India lack a unified set of criteria or standards to determine deceptive advertising.

The "Advertising Standards Council of India" (ASCI), an autonomous non-profit organisation, oversees and regulates deceptive commercials in India. However, it lacks legal authority to enforce its rulings. The Advertising Standards Council of India (ASCI) established a Code of Self-Regulation in Advertising to restrict the use of potentially damaging content in advertising. If a consumer or organisation believes an advertisement breaches the code or is possibly false or misleading, they can complain to ASCI. Consumers are urged to report any advertising in ASCI's commercials that they view as dishonest, deceitful, or unethical. Advertisements released regularly by ASCI state, "If an ad is wrong, we will set it right; if an ad is misleading, we will set it right; if an ad is dishonest, we will set it right." No matter where it was created or published, if an advertisement is aimed at Indian consumers, it needs to stick to the ASCI code. However, implementing the ASCI code is not obligatory in any way.

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## INEFFICIENCY OF THE PRESENT LEGAL AND REGULATORY STRUCTURE IN INDIA TO DEAL WITH THE CHALLENGES

A commentary<sup>96</sup> examining the effectiveness of the present framework for preventing deceptive advertising has made the following observation: "[T]hough comprehensive legal framework for the control of unfair, deceptive, and misleading advertising in India exists, the practice continues almost unabated." The number of cases presented to the Consumer Courts, established under the Consumer Protection Act, has also increased in recent years. However, despite the potential for legal recourse against unethical advertising, the constant flow of misleading and deceptive commercials in the media persists without interruption. Infrequently, the MRTP Commission or Consumer Courts have mandated advertisers to remove a deceptive advertisement and issue a corrective advertisement per the relevant legislation. The swiftness of consumer courts in providing remedies and handling appeals is a crucial topic that has to be resolved. Smt. Pushpa Girimaji, a renowned consumer activist, employed the landmark case of *Buddhist Mission Dental College and Hospital v. Bhupesh Khurana*<sup>97</sup> to exemplify the problem. Eleven students initiated the complaint; however, there is a possibility that several additional individuals may have been affected but did not participate in the legal action. After fifteen years and the sacrifice of academic progress, the eleven students ultimately prevailed in their legal dispute.<sup>98</sup>

In 2012, a non-governmental organisation known as Consumer Unity and Trust Society conducted and distributed a research report titled "Status of Law Enforcement for Misleading Advertisements in India." The analysis indicates that although the Consumer Protection Act and other statutes provide provisions to address misleading marketing, there have been relatively few instances where a complaint of this nature has been filed. The report emphasises the main drawbacks that exist, which include the inefficiency of legal and regulatory authorities in investigating and prosecuting complaints of misleading advertisement, excessive delays in reaching a final verdict, and the fact that self-regulation cannot replace statutory legislation. While self-regulation is praiseworthy, the significant disparity between an unsupported claim and the execution of remedial measures is unacceptable and cannot be permitted.<sup>99</sup>

According to the facts, India's existing statutory and voluntary efforts to address deceptive marketing have largely been ineffective. The legal system has yielded

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<sup>96</sup> DPS Verma, *Regulating Misleading Advertisements: Legal Provisions and Institutional Framework*, 2 Vikalpa 51 (2001) available at: [www.vikalpa.com/pdf/articles/2001/2001\\_apr\\_jun\\_51\\_57.pdf](http://www.vikalpa.com/pdf/articles/2001/2001_apr_jun_51_57.pdf).

<sup>97</sup> *Buddhist Mission Dental College and Hospital v. Bhupesh Khurana*, (2009) 4 SCC 484

<sup>98</sup> Pushpa Girimaji, *Misleading Advertisements and Consumer* (Centre for Consumer Studies, IIPA, New Delhi) available at: [http://consumeraffairs.nic.in/WriteReadData/userfiles/file/misleading\\_advertisment\\_and\\_consumer%20\(1\).pdf](http://consumeraffairs.nic.in/WriteReadData/userfiles/file/misleading_advertisment_and_consumer%20(1).pdf).

<sup>99</sup> Consumer Unity & Trust Society (CUTS), *Study on the Status of Law Enforcement for Misleading Advertisements in India and its Impact on Consumers* (2012) available at: [http://cuts-international.org/cart/pdf/Study\\_on\\_the\\_Status\\_of\\_Law\\_Enforcement\\_for\\_Misleading\\_Advertisements\\_in\\_India.pdf](http://cuts-international.org/cart/pdf/Study_on_the_Status_of_Law_Enforcement_for_Misleading_Advertisements_in_India.pdf).

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minimal success. It functions effectively in certain situations but experiences a dramatic failure in others. There is a substantial accumulation of grievances in India regarding deceptive marketing in print and internet media. The country experiences a scarcity of complaints regarding misleading advertising that are presented to courts or independent authorities due to inadequate investigation and penalty measures. Moreover, there is a lack of consensus over the definition of "false and misleading" advertising that applies universally. Currently, the definition of "false and misleading" advertising is subject to multiple interpretations according to different rules and regulations. The courts lack a uniform standard for determining the deceptive nature of advertising. Currently, a multitude of misleading advertisements successfully deceive customers, but the regulatory authorities in India are inadequately addressing this matter. The faults primarily lie in the implementation.

#### **INTERNATIONAL BEST PRACTICES ON FALSE AND MISLEADING ADVERTISEMENT**

The issue of regulating advertisements poses a significant challenge to address from a legal perspective. Nevertheless, the majority of nations have determined that it is imperative to implement certain measures to regulate advertising. Over the past decade, countries worldwide have adopted distinct strategies for regulating the advertising sector. The United States of America's advertising regulation approach is a notable aspect of consumer protection initiatives. The "Federal Trade Commission" serves as the primary institution in the model. Over time, the organisation has established a universally recognised set of regulations to govern the evaluation of advertising and its impacts in response to the growing intricacy of the field. The Competition Bureau of Canada oversees the sections of the Competition Act that pertain to false or misleading statements and deceptive marketing strategies. Additionally, the bureau is tasked with guaranteeing the veracity of advertisements. The Competition Act in Canada has a broad prohibition on making factually incorrect or deceptive statements. The Council of the European Union has recognised that advertising impacts consumers' economic well-being regardless of its ability to create a contract. Consequently, the European Union has implemented a directive to govern deceptive advertisements. The E.U. Council has also determined that there are instances when it is imperative to preemptively eradicate deceptive advertisements before their dissemination to the general public. The European Union has launched a drive to enforce its consumer protection and information policy. The Consumer Protection from Unfair Trading Regulations of 2008 serve as the primary legislation governing the system in the United Kingdom. The United Kingdom has introduced a unique method of regulating enterprises known as "mandated self-regulation." This strategy utilises collective action driven by self-interest to help accomplish public policy goals. The methodology employed in the U.K. exemplifies the integration of delegation and enhanced accountability through the utilisation of independent third parties.

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## **RECENT DEVELOPMENTS IN INDIAN FRAMEWORK**

### **➤ Consumer Protection Act 2019**

The "Consumer Protection Act 2019" was implemented to replace the "Consumer Protection Act 1986" to standardise consumer protection legislation throughout India and enhance the protection of consumer rights. The revised Act includes several notable features, such as the establishment of a "Central Consumer Protection Authority" (CCPA) specifically designed to meet the needs of consumer redressal commissions. It also introduces strict regulations for e-commerce and e-service providers, allows for court hearings to be conducted through videoconferencing, and imposes severe penalties for misleading advertisements. This legislation is a pragmatic solution to address the requirements of Indian customers in the era of electronic commerce and online transactions. The Act regulates abuses of consumers' rights, unfair trade practices, and misleading marketing due to their detrimental impact on society as a whole.

It establishes the standard for how the Indian judicial system would handle issues related to deceptive advertising. This legislation capitalises on the already decentralised public administration framework while establishing an independent appellate authority. The District Collector has the authority to investigate complaints regarding potential violations of consumers' rights caused by deceptive marketing and to make a report to the CCPA in accordance with Section 16 of the Act.

If the CCPA finds that a commercial is deceptive or infringes upon consumers' rights, it has the authority to issue a cease-and-desist order to the relevant endorser, trader, advertiser, or manufacturer as outlined in Section 21, subsection 1 of the Act. The Act also grants the CCPA the power to levy fines for infringements of the same. The penalty may reach INR 10 lakh and/or a maximum imprisonment of two years will be imposed. A repeat offence might lead to a penalty of up to 50 lakh INR and a maximum imprisonment of five years. The CCPA has the authority to mandate that the wrongdoer disseminate rectification commercials to mitigate the effects of deceptive advertisements, alongside suspending the dissemination of the deceptive commercial.

### **➤ Guidelines For Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022**

As an exercise of the powers entrusted to it by Section 18 of the "Consumer Protection Act, 2019", the "Central Consumer Protection Authority" has, as of June 9th, 2022, issued the "Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022". The Implementation Date for the Guidelines is June 10th, 2022. The recommendations have been issued to deter deceptive and deceitful advertising and protect the welfare of customers. The criteria are quite comprehensive. The Guidelines expand the range of the current standards by specifying the specific criteria for what is permissible and what is prohibited. The Guidelines expand upon the "Consumer Protection Act, 2019" requirements by introducing additional steps to combat deceptive advertisements. The principles aim

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to safeguard consumers from deceptive assertions, exaggerated promises, inaccurate data, and false declarations. These commercials violate consumer rights, such as the right to receive accurate information, the freedom to choose, and the right to be safeguarded against potentially hazardous products and services. Furthermore, the Guidelines have incorporated innovative ideas on "bait advertisements," "free claims advertisements," and "children-targeted advertisements." Moreover, the repercussions for disregarding the Guidelines are clearly specified. The CCPA possesses the power to impose fines of up to 10 lakh rupees on producers, advertisers, and endorsers in cases of deceptive advertising. If there are multiple instances of infractions, the CCPA has the authority to impose a penalty of up to fifty lakh rupees. The authority possesses the ability to prohibit endorsers of deceptive advertisements from making any endorsements for a maximum duration of one year. In the case of repeated violations, this limitation can be extended to a maximum duration of three years.

➤ **Recent Awards by Consumer Disputes Redressal Forum**

Recently on 30th day of July 2022 "CONSUMER DISPUTES REDRESSAL FORUM at THRISSUR" in *Saudhamini. P.P Thottiparambil House, Chewoor, Thrissur v. Kairaly Ford Kerala cars Pvt Ltd, represented by Managing Director, Puzhakkal, Thrissur & Ford India Pvt Ltd, Rmz Millenia Business Park, Chennai, represented by Managing Director*<sup>100</sup> awarded 3.10 lakhs compensation to a car owner who complained that the car was not offering the mileage as advertised. According to the findings of the Forum, the real mileage was far lower than the number of 32 kilometres per litre that was advertised. According to what the court decided, the "misleading advertisement highlighting an exaggerated mileage" constitutes an unfair business activity.

Again on 10<sup>th</sup> day of August 2022 in *VLCC Health Care Ltd v. Sh. Vijay Aggarwal*<sup>101</sup>, "STATE CONSUMER DISPUTES REDRESSAL COMMISSION, U.T. at CHANDIGARH" has ruled that misleading or fraudulent representations made concerning diet and exercise programs constitute unfair trade practices.

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

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

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<sup>100</sup> CC 717/15 filed on 21/11/2015

<sup>101</sup> Appeal No. 14 of 2022] (MANU/ SF/0082/2022)

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## CONCLUSION AND SUGGESTIONS

To conclude, the issues arising from "deceptive and misleading advertisements" in India cannot be effectively resolved within the existing structure, which encompasses many legislations and governing bodies. India requires a comprehensive strategy. There is a growing agreement that a regulatory policy model should be created to enforce comprehensive legislation. This model should aim to find a balance between voluntary restraint, self-regulation, and stricter regulations when necessary. It should also eliminate the multiple legal and regulatory systems currently in place. Nonetheless, it is imperative to control the advertising industry as a whole rather than focusing solely on the individuals engaging in unethical practices inside it. Education, prevention, and punishment are essential components in combating the detrimental impact of misleading, fraudulent, and offensive advertising.

Consolidating numerous existing laws into a single comprehensive statute, similar to the approach used by the United Kingdom, can significantly facilitate simplicity. It is necessary to provide a unified set of definitions that applies to all sections of the legislation. The legislation must exhibit internal consistency and provide a concise and coherent table of contents. The focus on simplicity would alleviate the intricacy encountered by legislators, administrators, legal experts, and financial professionals in comprehending the law and its operations. The act will be universally applied to eradicate any prior inconsistencies and consequently abolish existing legislation, either in whole or in part, that may result in problems of shortages and conflict. The proposed Indian legislation, similar to the E.U. Council and U.K. model, stipulates the identification and potential prohibition of misleading advertising, even prior to its publication, if deemed necessary. The European Union has implemented a program to take appropriate action against deceptive and unjust advertising in order to enforce its consumer protection and information policy. Given these circumstances, it is quite reasonable to enforce regulations or govern deceptive advertising, as it has the potential to lead consumers to make harmful decisions when purchasing goods or property or utilising services.

The all-encompassing legislation should establish a framework for regulation that guarantees a harmonious equilibrium between the "right to advertise" of commercial companies and the "right to be informed" of consumers. The legislative and institutional structure should clearly delineate objectives, authority, and responsibilities, together with a statutory system for holding regulators accountable.

It is crucial to guarantee that the proposed legislation on advertising includes a straightforward, affordable, yet very effective solution for consumers who have been harmed. The suggested arrangement necessitates the establishment of an independent investigative division and a group of attorneys to represent cases in front of Consumer Courts. A comparable arrangement might potentially exist at the state or local level to handle instances. Nevertheless, any alteration in the regulatory framework should not be so comprehensive as to encroach upon the particular expertise and administrative capabilities of other Departments.

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The main focus of this new strategy must be on self-regulation and fostering creativity. Measures must be taken to enhance the ASCI mechanisms. Whenever a violation is reported, advisories are forwarded to ASCI, and ASCI has to be empowered further to guarantee adherence to its rulings. The government departments should collaborate to establish a unified code instead of employing multiple ways and actively endorse the ASCI code among advertisers. The ASCI code should be written in a language that is easily understandable by consumers. The forms for submitting complaints should be more straightforward, and the code should be widely distributed.



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## CHAPTER VI

### AI AND BLOCKCHAIN FOR CONSUMER SAFEGUARD AND ITS VULNERABILITIES

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#### **Synopsis**

The chapter delves into the transformative role of Artificial Intelligence (AI) and Blockchain in reshaping the landscape of consumer safety. It explores how the integration of these technologies holds the potential to empower consumers through predictive analytics, transparent supply chains, and decentralized identity verification. The narrative unfolds, highlighting the promises of innovation but also shining a spotlight on vulnerabilities. Examining the nuances, the chapter discusses the challenges of AI bias, potential blockchain vulnerabilities, and privacy concerns inherent in handling vast amounts of consumer data. It offers insights into how these technologies, while promising transparency and security, require meticulous attention to ethical considerations and regulatory frameworks to navigate potential pitfalls.

The synthesis of AI and Blockchain emerges as a double-edged sword, promising a future where consumer protection is more robust than ever, yet demanding a delicate balance to address emerging vulnerabilities. The chapter concludes by emphasizing the imperative for collaborative efforts, adaptive regulations, and a commitment to responsible innovation, charting a course for a future where AI and Blockchain stand as stalwart guardians of consumer safety in an ever-evolving digital landscape. India has just begun its journey for a digital personal data protection Act, 2023 and there is an urgent need for more provisions in the law to handle the vast challenges posed using these technologies in order to safeguard the consumers.

*Keywords: AI, Blockchain Technology, Digital Personal Data Protection Act, 2023, Consumer Protection Act, 2019, Digital India Act, 2023.*

#### **I. INTRODUCTION**

The rise of consumerism and technology has led to a paradigm shift in the way consumers interact with products, services, and markets. With the advent of AI and Blockchain, this shift has become even more pronounced, shaping the landscape of consumer protection and behavior in unprecedented ways. India, with its vast and diverse consumer market, stands at the forefront of this transformation, offering a unique perspective on the intricate relationship between technology and consumer rights. Blockchain's emergence as a decentralized and transparent digital ledger technology holds promise for significantly enhancing consumer protection in India. By enabling verifiable traceability of products, transparent supply chains, secure authentication methods, and automated smart contracts, blockchain has the potential to empower Indian consumers with improved information, security, and control over

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their transactions, thereby mitigating issues related to counterfeiting, data privacy, and fraud while fostering trust in the digital economy.

AI technologies are increasingly being used in various sectors, including customer service, financial services, and e-commerce. Consumer protection in the context of AI might involve ensuring transparency in AI decision-making processes, preventing discriminatory outcomes, and safeguarding user data privacy. Regulations might require companies to disclose when AI systems are being used to make decisions that affect consumers and to ensure that these systems are fair and unbiased.

Blockchain technology has the potential to enhance consumer protection by providing transparent and tamper-proof records of transactions. Smart contracts on blockchain platforms can automate processes and enforce agreements, reducing the risk of fraud or disputes. Consumer data privacy can also benefit from blockchain's decentralized nature, as individuals might have more control over their personal information.

Consumers have the right to understand how their data is being used, especially when AI algorithms are involved in decision-making. Similarly, the functioning of smart contracts on blockchain should be clear to all parties involved.

Regulations like the General Data Protection Regulation<sup>102</sup> (GDPR) in the European Union emphasize the importance of obtaining user consent for data processing and India has been working in this direction and Digital Personal Data Protection Act, 2023 is in place. Not much has been mentioned in it about AI and blockchain though. These principles would likely extend to AI and blockchain contexts, ensuring that consumers are informed about how their data is used and giving them the ability to provide informed consent. In cases where AI systems or blockchain platforms malfunction or lead to negative outcomes, questions of liability and accountability can arise. The Act directs setting up a Data Protection Board of India to ensure the implementation. However, unlike GDPR, which has detailed the fine print of implementing the law, the DPDP Act, 2023<sup>103</sup>, misses details on multiple fronts. Technology tends to move much faster than regulations, and implementing regulations effectively and speedily is expected to pose a challenge especially when it comes to generative AI. The EU is groping in the dark to integrate this new technology into its regulation framework, however, by the time the new framework will be ready, the technology will have changed.

Regulations might establish frameworks to determine responsibility in such situations, ensuring that consumers are protected. Educating consumers about the benefits and risks of these technologies, understanding how to use them safely, recognizing potential scams, and being aware of their rights is essential for consumer protection.

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<sup>102</sup> <https://gdpr-info.eu/>

<sup>103</sup> The DPDP Act, 2023: <https://egazette.gov.in/WriteReadData/2023/248045.pdf>

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## **II. The Economics of AI and Blockchain Technology Impacting Consumerism**

The potential for contracting problems associated with the development of a new broadly applicable research tool, and the potential for coordination problems arising from adoption and diffusion of a new “general purpose technology.” Such “General Purpose Technologies” often take the form of core inventions that have the potential to significantly enhance productivity or quality across a wide number of fields or sectors. When such GPT<sup>104</sup> tools are owned by private players one needs to keep the fingers crossed and eyes wide open in order to avoid any misuse of the technology. A comprehensive economic analysis of blockchain must weigh its potential benefits against these challenges to determine its true impact on economies, markets, and industries, ensuring that consumer rights are safe and not violated.

## **III. Consumer Protection in the Digital Age of AI and Blockchain**

In the digital age, where transactions occur remotely and at an accelerated pace, ensuring consumer protection becomes critical. AI-driven applications, such as chatbots and virtual assistants, have revolutionized customer service by offering personalized and efficient support. However, concerns related to data privacy, security breaches, and the potential for biased decision-making have also emerged.

### **Use of AI in Consumer Protection**

AI has significantly impacted consumer behavior, altering the way individuals make purchasing decisions. Through data analysis and predictive algorithms, AI provides tailored recommendations, streamlining the shopping experience. It also enables businesses to understand consumer preferences better, thus leading to more targeted marketing strategies. While AI enhances convenience, there's a delicate balance between personalization and infringing on privacy.

The integration of AI in consumer protection mechanisms has revolutionized the way risks are identified and mitigated. Machine learning algorithms analyze vast datasets to predict potential threats, enabling proactive measures against fraudulent practices and unsafe products.

### **AI-Driven Product Safety**

AI algorithms play a pivotal role in assessing product safety by analyzing consumer reviews, product specifications, and historical data. This ensures that consumers are well-informed about potential risks associated with a product, empowering them to make safer choices.

### **Ensuring Privacy with Differential Privacy:**

AI, particularly in data-driven industries, is prone to privacy concerns. Differential privacy techniques, when applied to AI models, enable organizations to extract valuable insights without compromising individual user privacy. This ensures that consumers can benefit from personalized services without sacrificing their confidentiality.

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<sup>104</sup><https://www.sciencedirect.com/science/article/abs/pii/S157406840501018X>

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### **Blockchain for Protecting Consumer Rights**

Blockchain technology, the backbone of cryptocurrencies, is an incorruptible digital ledger that records transactions across multiple computers. Its security, transparency, and immutability make it an excellent tool for protecting consumer rights in various industries. This article aims to provide software developers with insights on how blockchain can bolster consumer rights protection.

#### **Transparency and Traceability**

One of the primary ways blockchain protects consumer rights is through transparency. By allowing consumers to track the lifecycle of a product from production to delivery, blockchain enables a new level of traceability. This is particularly useful in industries like food and pharmaceuticals, where the origins and handling of products are crucial.

#### **Smart Contracts for Consumer Rights**

Smart contracts are self-executing contracts with the terms directly written into code. They can be used to automate and enforce agreements without the need for intermediaries, which is a boon for consumer rights. For example, a smart contract can automatically issue a refund if a product is not delivered by a certain date.

#### **Decentralized Marketplaces**

Blockchain enables the creation of decentralized marketplaces, where transactions occur directly between buyers and sellers without the need for a central authority. This reduces the chances of fraud and ensures that consumers can transact with confidence.

#### **Regulatory Compliance and Auditing**

Blockchain's immutable ledger also aids in regulatory compliance and auditing. Companies can prove their adherence to consumer protection laws by maintaining transparent records of their transactions and business practices. This trustless verification method can significantly reduce the costs and complexities associated with compliance.

Blockchain, known for its transparency and immutability, has the potential to address consumer trust issues. By enabling secure and traceable transactions, Blockchain minimizes fraud and counterfeiting concerns, especially in industries like e-commerce and supply chain management. Consumers gain access to product origin information, enhancing their decision-making process. However, widespread adoption and scalability remain challenges.

Blockchain technology offers robust solutions for protecting consumer rights through transparency, traceability, smart contracts, decentralized marketplaces, and compliance. As the technology matures, we will likely see even more innovative applications aimed at safeguarding consumers. For developers interested in this burgeoning field, the opportunities to make a real impact are vast.

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#### IV. Regulatory Framework and Challenges

To navigate the complex terrain of AI and Blockchain, a robust regulatory framework is essential. India has established consumer protection laws, yet the digital realm requires continuous adaptation. Striking a balance between promoting technological innovation and safeguarding consumer interests poses a challenge. Ensuring accountability, addressing bias in AI algorithms, and protecting consumer data remain focal points for regulators.

**a. Digital Personal Data Protection Act<sup>105</sup>, 2023:** Data Protection Act would play a crucial role in safeguarding consumer rights and privacy in the context of AI and blockchain technologies. The Lok Sabha on 07<sup>th</sup> August 2023, passed the Digital Personal Data Protection Bill, 2023 which lays down the obligations of entities handling and processing data as well as the rights of individuals. The Act proposes a maximum penalty of Rs 250 crore and minimum of Rs 50 crore on entities violating the norms. The Act does not state anything on regulation of AI and blockchain technology though.

Nevertheless, the Act grants consumers the right to access their personal data held by organizations and request its deletion. Algorithmic transparency and explainability would enhance consumer understanding, ensuring fairness. Accountability and Fines would incentivize companies to take consumer protection seriously and implement robust measures to safeguard consumer data in AI and blockchain applications.

##### **Impact of the Act on consumer protection from Blockchain:**

Blockchain's migration to the mainstream will accelerate as it extends its influence and impact into the retail and e-commerce sectors and here are five ways it will make a difference:

Blockchain is already making its presence felt in India's e-commerce sector. It provides a secure method of storing and sharing payment information. Instead of each player maintaining a database, blockchain provides a unified payment and transaction platform for all participants. It would improve Supply Chain Transparency.

**b. Consumer Protection Act, 2019<sup>106</sup>** protects consumers involved in online transactions

It strengthens 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. It inter-alia, provides for improved protection for consumers involved in online transactions. The Consumer Protection Act 2019 has widened the scope of the definition of "consumer" to include persons who buy or avail of goods or services online or through electronic means which was not present in the Consumer Protection Act 1986. The Consumer

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<sup>105</sup>[https://www.meity.gov.in/writereaddata/files/The%20Digital%20Personal%20Data%20Protection%20Bill%2C%202022\\_0.pdf](https://www.meity.gov.in/writereaddata/files/The%20Digital%20Personal%20Data%20Protection%20Bill%2C%202022_0.pdf)

<sup>106</sup> <https://www.indiacode.nic.in/bitstream/123456789/15256/1/a2019-35.pdf>

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Protection Act 2019 has also included definition of advertisement as any audio or visual publicity, representation, endorsement or pronouncement made by means of, inter-alia, electronic media, internet or website. Under the provisions of the Consumer Protection Act, 2019, a Central Consumer Protection Authority (CCPA) has been established w.e.f 24.07.2020 to regulate matters, inter alia, relating to false or misleading advertisements which are prejudicial to the interests of public and consumers as a class. The CCPA has notified the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 on 9th June, 2022 with the objective to curb misleading advertisements and protect the consumers, who may be exploited or affected by such advertisements. To safeguard consumers from unfair trade practices in e-commerce, the Department of Consumer Affairs has already notified the Consumer Protection (E-commerce) Rules, 2020 under the provisions of the Consumer Protection Act. These rules, inter-alia, outline the responsibilities of e-commerce entities and specify the liabilities of marketplace and inventory e-commerce entities, including provisions for customer grievance redressal. The Department has noticed emergence of unfair trade practices known as “dark patterns” which involve using design and choice architecture to deceive, coerce, or influence consumers into making choices that are not in their best interest.

**c. Digital India Act Rules<sup>107</sup>, 2023**

DIA will ensure the openness, safety, trust, and accountability of the Internet. It will provide the rights to citizens. The provisions will be in synchronization with the continuously evolving market trends and international jurisprudence. It also mandates the strict KYC requirement for wearable devices for retail sales along with criminal law sanctions and penalties. The ministry is also considering reviewing the ‘safe harbour’ principle which protects online platforms like Twitter and Facebook from being accountable for the content posted on them by the users. This new framework will additionally comprise Digital Personal Data Protection Act, Digital India Act Rules, National Data Governance Policy, and IPC amendments for Cyber Crimes.

**V. AI and Blockchain Technology<sup>108</sup> Trends, Competition Policy and Challenges in Consumer Protection**

The convergence of emerging technologies like Artificial Intelligence (AI) and blockchain is reshaping the landscape of competition policy and presenting both opportunities and challenges for consumer protection. AI-driven algorithms are enabling personalized marketing, pricing strategies, and product recommendations, enhancing consumer experiences but also raising concerns about discriminatory practices and the potential for market manipulation. Furthermore, as AI systems become more sophisticated, the complexity of assessing collusion and antitrust violations in digital markets increases, requiring regulators to adapt their frameworks

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<sup>107</sup> [https://www.meity.gov.in/writereaddata/files/DIA\\_Presentation%2009.03.2023%20Final.pdf](https://www.meity.gov.in/writereaddata/files/DIA_Presentation%2009.03.2023%20Final.pdf)

<sup>108</sup> <https://www.ibm.com/topics/blockchain>

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to effectively address new forms of competition distortion. On the other hand, blockchain's potential to enhance transparency, traceability, and authentication in supply chains can contribute to consumer protection by reducing fraud and ensuring the integrity of products and services. However, the decentralized nature of blockchain presents challenges in terms of enforcing accountability and legal recourse, as traditional jurisdictional boundaries might not easily apply in cross-border transactions. Striking the right balance between promoting innovation, preventing anticompetitive behavior, and safeguarding consumer interests in this rapidly evolving technological landscape remains a formidable challenge for competition authorities.

Regulators need to understand the ways in which AI-powered platforms can dominate markets and potentially hinder fair competition, necessitating updated antitrust frameworks to prevent monopolistic practices. Additionally, as blockchain introduces new forms of decentralized collaboration and value exchange, ensuring fair competition within these ecosystems demands innovative regulatory approaches that consider the unique characteristics of these technologies. Simultaneously, there is a growing need for robust data privacy regulations to protect consumer rights in an era where AI relies heavily on data analytics. Striking the right balance between fostering innovation, preventing market concentration, and protecting consumers requires a proactive and collaborative approach between regulatory bodies, industry stakeholders, and technological innovators. Should the data about my shopping and travel behavior belong to me or to the search engine or ride sharing company that I use? Might consumers have a strong collective interest in ensuring that these data (suitably blinded, of course) are in the public domain, so that many companies can use them in the pursuit of innovation? On the other, the advent of deep learning has significant implications for the patent system. Deep learning also presents difficult questions of legal doctrine for patent systems that have been built around the idea of creative authors and inventors. For example, “inventorship” has a specific meaning in patent law, with very important implications for ownership and control of the claimed invention. Can an AI system be an inventor in the sense envisaged by the drafters of the Indian Constitution? On the one hand it will be important to think carefully about the laws that currently surround the ownership of data. Should the data about e.g. my shopping and travel behavior belong to me or to the search engine or ride sharing company that I use? Might consumers have a strong collective interest in ensuring that these data (suitably blinded, of course) are in the public domain, so that many companies can use them in the pursuit of innovation? On the other, the advent of deep learning has significant implications for the patent system.

## **VI. Educating Consumers**

As India embraces the digital revolution, educating consumers about the risks and benefits of AI and Blockchain is paramount. Digital literacy empowers consumers to make informed choices, identify potential threats, and navigate the evolving market landscape. Organizations and policymakers must collaborate to provide accessible and comprehensive educational resources.

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## **VII. Opportunities AI and Blockchain Provide for Consumerism**

AI can personalize customer experiences, providing tailored recommendations and services. Blockchain can improve transparency in supply chains, enabling consumers to verify the authenticity and origin of products. Blockchain's decentralized nature can enhance data security and control. AI can be used to monitor and prevent data breaches, ensuring the protection of consumer information. AI-powered algorithms can detect fraudulent activities, such as payment fraud and identity theft. Blockchain can enhance security in financial transactions, reducing the risk of fraud. Smart contracts on blockchain can automate and expedite dispute resolution processes, ensuring that consumers are treated fairly, and disputes are settled transparently.

## **VIII. Challenges that AI and Blockchain Pose against Consumerism**

The increased use of AI requires extensive data collection, raising concerns about consumer data privacy. Ensuring consent, data anonymization, and secure storage become critical. AI systems can inherit biases from training data, leading to discriminatory outcomes. Regulatory frameworks should ensure AI fairness and transparency to protect consumers' right to equal treatment. AI's complex decision-making processes can be opaque, making it challenging for consumers to understand how certain decisions affecting them were made. Transparency standards need to be established. While blockchain can improve data security, if not implemented properly, it can also lead to data being stored permanently without proper consent, violating consumer rights. Access to AI and blockchain technologies might be limited, potentially creating a digital divide that disadvantages certain sections of society. Ensuring equitable access becomes crucial. The rapid evolution of AI and blockchain often outpaces regulatory developments. Establishing clear guidelines, standards, and oversight mechanisms is essential to protect consumer rights.

## **IX. Consumer Protection Measures**

India's consumer protection laws need to be updated to address challenges posed by AI and blockchain. Specific guidelines on data protection, AI ethics, and blockchain usage are necessary. Companies using AI should disclose when consumers are interacting with AI systems. Transparency in terms of data usage and algorithmic decision-making is vital. Strict consent mechanisms should be established for data collection and usage, ensuring that consumers are well-informed and have control over their data. AI algorithms should be audited to identify and rectify biases. Regulatory bodies can enforce algorithmic audits to prevent discriminatory outcomes. Considerations for data localization and cross-border data transfer should be addressed to protect consumer data from misuse.

Consumers should be educated about AI and blockchain technologies, their benefits, risks, and how to protect their rights in this digital landscape. While AI and blockchain offer transformative potential for consumer experiences and protection, they also present challenges that need to be carefully addressed through comprehensive regulations, industry standards, and proactive efforts to ensure consumer rights are upheld in the era of technological.



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## **X. Challenges and Future Prospects of AI & Blockchain**

Despite the promising advances, challenges such as regulatory frameworks, interoperability, and ethical considerations need addressing. Future endeavors should focus on creating standardized practices and global cooperation to maximize the benefits of AI and blockchain for consumer protection.

In conclusion, the amalgamation of AI and blockchain stands at the forefront of consumer safety. Through predictive analytics, transparent supply chains, and decentralized systems, these technologies redefine how consumers interact with products and services. As we navigate this evolving landscape, it is imperative to strike a balance between innovation and regulation, ensuring a future where consumers can confidently embrace the benefits of technological progress.

### **Navigating Threats in Consumer Protection with AI and Blockchain**

While the fusion of Artificial Intelligence (AI) and Blockchain holds great promise for consumer protection, it is essential to acknowledge and address potential threats that may undermine these innovative technologies. Understanding and mitigating these challenges is crucial for creating robust frameworks that truly prioritize consumer safety.

#### **AI Bias and Discrimination:**

One of the primary concerns in deploying AI for consumer protection is the potential bias ingrained in algorithms. If machine learning models are trained on biased data, they may perpetuate and exacerbate existing prejudices, leading to discriminatory outcomes. Ensuring fairness in AI decision-making processes requires constant scrutiny and ongoing adjustments.

#### **Vulnerabilities in Blockchain Security:**

While blockchain is celebrated for its security features, it is not immune to vulnerabilities. Smart contract bugs, consensus algorithm weaknesses, and potential 51% attacks pose threats to the integrity of blockchain systems. As consumer protection relies on the tamper-proof nature of blockchain, any compromise in security can have severe consequences.

#### **Privacy Concerns with AI Data Handling:**

The extensive use of AI in consumer protection involves the handling of vast amounts of sensitive data. The risk of data breaches and unauthorized access is heightened, potentially exposing consumers to privacy infringements. Implementing robust encryption and access control mechanisms is imperative to safeguard consumer information.

#### **Regulatory Challenges in Emerging Technologies:**

The rapid evolution of AI and blockchain technologies often outpaces regulatory frameworks. Ambiguities in laws and regulations may create loopholes that can be exploited by unscrupulous entities. Striking a balance between fostering innovation and ensuring consumer protection requires agile and proactive regulatory measures.

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**Misuse of Smart Contracts:**

While smart contracts enhance transparency and automate processes, their misuse can lead to unforeseen consequences. Poorly written or ambiguous smart contracts may result in legal disputes, financial losses, or unintended contractual obligations. A clear legal framework and standardization of smart contract practices are essential to mitigate such risks.

**Dystopian Scenarios with AI Surveillance:**

The use of AI in surveillance raises ethical concerns about the erosion of privacy. Mass surveillance powered by AI could lead to a dystopian future where consumer actions are constantly monitored and analyzed. Striking a balance between security and individual freedoms is crucial to prevent such Orwellian scenarios.

In facing these threats, the key lies in proactive and collaborative efforts. Technological advancements must be accompanied by rigorous ethical considerations, robust security measures, and adaptive regulations. By addressing these challenges head-on, we can harness the full potential of AI and blockchain for consumer protection while ensuring a future where innovation and safety coexist.

**XI. Conclusion- Striking a Balance for Consumer Protection with AI and Blockchain**

In the intricate tapestry of consumer protection, the convergence of Artificial Intelligence (AI) and Blockchain paints a promising yet nuanced picture. As we navigate this landscape, the synergy of predictive analytics, transparent supply chains, and decentralized identity verification holds immense potential to empower consumers. However, this potential is not without its shadows.

The chapters have illuminated the transformative capabilities of these technologies, yet underscored the need to address challenges like AI bias, blockchain vulnerabilities, and the responsible use of emerging tools. Achieving a harmonious balance between innovation and regulation is paramount to fully realize the benefits of AI and Blockchain in safeguarding consumer interests.

Moving forward, a collaborative effort is required, spanning industries, regulatory bodies, and ethical frameworks. By fostering responsible innovation, fortifying security measures, and continually refining these technologies, we can pave the way for a future where consumers are not just protected but also empowered in a digital landscape. The journey towards consumer safety demands not only the adoption of cutting-edge solutions but a commitment to vigilance, adaptability, and a shared responsibility to ensure a world where technology serves as a stalwart guardian of consumer well-being.

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## CHAPTER VII

### SURROGATE ADVERTISING IN INDIA: THE RISING TIDE OF LEGAL CONCERN

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#### ABSTRACT

*Advertisements have captured a significant place in the field of marketing. It influences the rational choice and behaviour of the consumers by creating awareness of their products and thereby increasing the promotion of sales in the market. The advertisements, in the earlier times, were given no importance and were considered as a social waste because it had played no role in expansion of sales but in the 21<sup>st</sup> century with the artform of advertisement including its attractiveness and gimmicks, the options of the consumers are highly driven out. There are certain products such as tobacco, liquor which are prohibited from advertising in mass media as they are addictive in nature and have negative impacts on the health of the consumers. Using the loopholes in the law, the corporates use the strategy called surrogate advertising and gain unfair advantages. It is the method of promoting another product under the same brand name of its original product which is prohibited from advertising. Through the promotion of that brand extension, the actual product which is intended for sale will be reminded by the consumers.*

*Many companies indirectly advertise its products by sponsoring tournaments and featuring film and sports celebrities and reestablish their brand in the marketplace by keeping their brands alive in the minds of the consumers. Though there are laws for regulation of advertisement of prohibited products, there is a rising concern for a strict law implementation. This paper primarily concentrates on the laws that govern the surrogate advertising and the corporate's standpoint on the same. Additionally, it discusses how it impacts the consumers' interests. Furthermore, suggestive measures are given to regulate surrogate advertising by analyzing the law of other countries and examining the effectiveness of existing law in India.*

*Keywords: consumers' choice, surrogate advertising, loopholes, brand extension, tobacco, liquor*

#### INTRODUCTION

The main aim of the advertisement is to create awareness about their product among the consumers. It can be made through television, internet, newspapers etc. the government restricts certain advertisements for the welfare of the state because its publicity could cause severe health impacts on the youth population especially as there is an increase in demand. By digging out the loopholes in law, the prohibited products are cultivated (publicized) and grown as a huge tree thereby reaping fruitful

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profits. Though there are many laws that regulate surrogate advertising, we can still see the liquor and tobacco brands are advertised in the name of brand extensions which would give clue for the consumers regarding the product that is restricted from advertising. One of the reasons the companies are able to resort to inventive methods is that the provisions are unclear and not strict. In order to protect the consumers from unsafe products, there is a need to frame stringent laws to regulate surrogate advertising.

#### **METHODOLOGY:**

In this study, an analytical research approach has been used. The primary documents relied for the purpose of study include information and data gathered from Government reports and existing studies. Journals, websites, articles and other mass media sources which were available regarding the study were relied upon as secondary documents.

Thus, the pertinent information which was available regarding surrogate advertisement was evaluated and used in accordance with the requirements of research.

#### **OBJECTIVES OF THE STUDY:**

1. To analyse the laws that govern surrogate advertisements in India.
2. To analyse the impact of surrogate advertisement on the consumers.
3. To bring out the contention of the corporate regarding the ban on surrogate advertising.

#### **SURROGATE ADVERTISING:**

Surrogate, in the literal sense, means substitute. Surrogate advertising is the practice of advertising one product under the guise of the original product that is restricted from advertising. For instance, the alcohol companies advertise their product as a soda drink under the same brand name in order to keep their brand name alive in the minds of the consumers. Likewise, it is promoted by using substitutes like soda, music CDs, mineral water etc. Example, Bagpiper is a liquor product. But the company advertises it as Bagpiper Soda. Sponsoring the sports events, music concerts etc.

The origin of the surrogate advertising can be traced back to the UK where the wives protested against the liquor advertisements as their husbands were addicted to it. So, the alcohol companies started to sell liquor in the name of fruit juice. This is how the concept of surrogate advertisement evolved. The surrogate advertisement can be in following forms:

- Promotion by brand extension
- Sponsorship of events
- Public service announcements

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### **EXISTING LEGAL FRAMEWORK:**

It is the duty of the State to improve the health of the public which is enshrined under Article 47 of the Directive Principles of State Policy of the Constitution of India. The State Legislature has the power to make laws for the regulation of alcohol trade in their respective states as it falls under Item no. 51(a) of the State List that deals with the 'alcohol liquors for human consumption'.

### **NATIONAL LEGISLATIONS:**

#### **Cable Television Networks (Regulation) Act of 1995:**

It is the first law in India brought by the Government of India and Health Ministry to keep a check on surrogate advertising. It prohibits the transmission of advertisements that do not abide by the advertisement code which is prescribed in the CTN Rules, 1994.<sup>109</sup> The CTN Rules, 1994 requires that the advertisements which directly and indirectly promotes the sale or consumption of tobacco, liquor, cigarettes or other intoxicants<sup>110</sup> and it should not offend the morality and decency of the subscribers.<sup>111</sup>

Cigarettes and other Tobacco Products (Prohibition of Advertisements and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA):

When the CTN Rules were confined only to cable TVs, the advertisement of tobacco stormed online. Section 5 of this Act prohibits the advertisements of tobacco products via direct and indirect means. The display and exhibition of advertisements should only be made on the tobacco package and their point of sale and not by any other means.<sup>112</sup> It widely helped in the regulation of surrogate advertisements until the companies used a strategy called brand extension.

The Constitutional validity of this Act was challenged in Mahesh Bhatt v. Union of India<sup>113</sup> claiming that it violates Article 19(1)(a) of Constitution of India. The Supreme Court upheld its validity and observed that commercial advertisements include indirect advertisements that would encourage the use of tobacco products. Therefore, it is not entitled to protection under Article 19(1)(a). Restrictions to advertise on electronic media is valid as it is made for public interest and promotion of right to life.

#### **Advertising Standards Council of India (ASCI):**

It is a self-regulatory body to which complaints regarding surrogate advertisements are made whose validity will be scrutinised by the Consumer Complaint Council (CCC). Clause 3.6 of ASCI's Code for Self-regulation of Advertising Content in

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<sup>109</sup> Sec 6 of the Cable Television Networks (Regulation) Act, 1995

<sup>110</sup> Sec 7(2)(viii) of the Cable Television Networks Rules, 1994

<sup>111</sup> Sec 7(1) of the Cable Television Networks Rules, 1994

<sup>112</sup> Sec 5(2) of the Cable Television Networks Rules, 1994

<sup>113</sup> 147 (2008) DLT 561

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India provides that the companies should not sidestep the restrictions on advertisements of products that are prohibited by law. According to this Code, an advertisement is considered as a surrogate one when it contains any indirect clues that reminds the consumers that it is for the product whose advertisement is prohibited by law.<sup>114</sup>

**The Consumer Protection Act, 2019 (CPA):**

The main aim of this Act is to protect the interests of the consumers. It empowers the Central Consumer Protection Authority to handle the complaints regarding misleading advertisements that lead to unfair trade practice as defined under section 2(47) of this Act. The definition of “advertisement” under Section 2(1) includes endorsement. The Central Authority can impose a penalty of INR ten lakhs for the endorser who promotes through surrogate advertising. It includes celebrity endorsers too. A prosecution can be commenced against the celebrity brand ambassador and the case takes cognizance by the court when the complaint is filed by the officer of the Central Consumer Protection Authority.

**INTERNATIONAL LEGISLATIONS:**

**Framework Convention on Tobacco Control (FCTC):**

It was developed with the rising tobacco epidemic. Nearly 181 nations approved this convention.<sup>115</sup> It came into force in India on 5<sup>th</sup> February, 2004. The primary goal of this convention is to promote public health and affirms that the people have the right to the highest standard of health. It is involved in the tobacco reduction measures that includes controlling of tobacco advertisements, increasing the tobacco prices and helping the patients who want to quit tobacco. Article 13 of this convention provides that the countries are required to prohibit all types of advertisements, promotion, sponsorship relating to tobacco.

**RECENT DEVELOPMENTS:**

**Amendments in CTN Rules:**

The CTN Rules were amended in 2009 which provides that the company would be permitted to use the same brand name or logo of the liquor, or tobacco product or any intoxicant for other products only if

- (i) It was reviewed by the Ministry of Information and Broadcasting
- (ii) It receives certificate from the Central Board of Film Certification

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<sup>114</sup> Clause 3.6(b) of the ASCI Code

<sup>115</sup> WHO Framework on tobacco control, United Nations Treaty Collection, (Aug 19, 2023, 10:00 AM) [https://treaties.un.org/pages/ViewDetails.aspx?chapter=9&mtdsg\\_no=IX-4&src=TREATY](https://treaties.un.org/pages/ViewDetails.aspx?chapter=9&mtdsg_no=IX-4&src=TREATY)

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**Brand Extension Guidelines:**

In 2021, ASCI has set out some guidelines providing criteria for legitimate brand extensions. The qualifications are

- (i) Registration with appropriate government agency like Food and Drug Administration (FDA), Trade Mark Registry (TM), FSSAI
- (ii) Market share of the surrogate product must account for a minimum of 10% of the original product.
- (iii) Generate turnover of more than 5 crores in sales annually in the entire India and Rs. 1 crore in the state scenario.
- (iv) Certification from a reputable organisation.

**Advertising Guidelines:**

The Central Consumer Protection Authority has issued the Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022 on 9<sup>th</sup> March, 2022. The definition for ‘surrogate advertisement’ is given explicitly for the first time in the Indian legislation. Under the guidelines, the term surrogate advertisement is defined as “...an advertisement for goods, product or service, whose advertising is otherwise prohibited or restricted by law, by circumventing such prohibition or restriction and portraying it to be an advertisement for other goods, product or service, the advertising of which is not prohibited or restricted by law...”.<sup>116</sup>

The advertising guidelines provides that it would be a surrogate or indirect advertisement if it directly or indirectly indicates to consumers or uses any logo, brand name, colour of the products that are restricted by the law.<sup>117</sup>

**CASE LAWS:**

In 2008, a PIL was filed before the Supreme Court by the former Union Minister Anbumani Ramadoss. He alleged that the owner of the IPL Bangalore team Vijay Mallya advertises his liquor brand using his team’s name. The Supreme Court held that the name of the liquor brand is ‘Royal Challenge’ and the team’s name is ‘Royal Challengers’. So, the people who drink are attracted by these things.<sup>118</sup> It would not have any effect on the non-drinkers.

A petition was filed by the Voluntary Association of India in 1999 in the Delhi High Court seeking ban on the sponsorship by the Wills cigarettes of ITC for the Indian Cricket team. When the logo of the brand is on sports apparels, it would facilitate repeated telecasting of the brand watched by millions of viewers. ITC voluntarily

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<sup>116</sup> Clause 2(h) of the Advertising Guidelines

<sup>117</sup> Clause 6(2) of the Advertising Guidelines

<sup>118</sup> Now Ramadoss challenges Bangalore IPL team over name, NDTV, (Aug 19, 2023, 11.04 AM) <https://sports.ndtv.com/cricket/now-ramadoss-challenges-bangalore-ipl-team-over-name-1605911>

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withdrew its sponsorship during the pendency of the petition stating that it did not want to disturb the efforts of the government to combat surrogate advertising.

In the case of *United Breweries Ltd v. Mumbai Grahak Panchayat*<sup>119</sup>, it was alleged that UBL adopted unfair trade practices by surrogate advertising that it promoted mineral water using the Kingfisher brand logo but selling alcoholic beverages. It also exhibited it on the coaches of the Western Railway trains. It was claimed that it breached ASCI Code. The National Consumer Disputes Redressal Commission ordered UBL to remove surrogate advertisements and to abide by the ASCI Code.

In *Re McDowell and Co. Ltd. v. unknown*, it was advertised as Mc. Dowell's Diplomat Cologne featuring the picture of Dimple Kapadia on the bottle. The caption on it read as "what makes him my choice is his choice...Diplomat". Though the advertisement refers to Cologne, it leaves an impression on the viewers that it is an advertisement regarding the manufacture of whiskey under the brand name "Diplomat".

#### **ASCI's DECISIONS ON BRAND EXTENSIONS:**

ASCI denied legal brand extensions of the companies as it did not meet the qualifications of the Guidelines for Qualification of Brand Extension Product or service. Here are some of the cases.

#### **Pernod Ricard India Pvt Ltd (Absolute Music CDs):**

A print advertisement that referred to Absolut Music CDs was considered as a surrogate one as it had misleading implication on the liquor brand was denied granting certification for brand extension as it did not meet the criteria of Guidelines for Qualification of Brand Extension Product or service.<sup>120</sup>

#### **Johnny Walker:**

It was involved in the advertisement of Johnnie Walker- The Journey which is a surrogate advertisement of Johnny Walker whiskey. It did not fulfil the Brand Extension Guidelines as it lacked supporting documents.<sup>121</sup>

#### **McDowells:**

The McDowell's No. 1 Drinking water advertisement appeared to be a surrogate one for McDowell's No. 1 Whiskey. It did not provide the details of turnover and the in-store availability of the drinking water which is an unrestricted product thereby not met the brand extension guidelines.<sup>122</sup>

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<sup>119</sup> I (2007) CPJ 102 NC

<sup>120</sup> 110 objectionable ads withdrawn after ASCI's intervention in January 2020, Best Media Info, (Aug 19, 2023, 12:43 PM) <https://bestmediainfo.com/2020/05/110-objectionable-ads-withdrawn-after-asci-intervention-in-january-2020>

<sup>121</sup> Ibid

<sup>122</sup> ibid



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**Ban on liquor surrogate advertisements:**

The Advertising Standards Council of India received several complaints regarding surrogate advertisements in Indian Premier League (IPL) and also aired in OTT platforms. The cases were taken as suo moto by the ASCI and forwarded to the Consumer Complaint Council. The advertisers failed to convince that it is genuine brand extensions. Therefore, ASCI imposed ban on surrogate advertising of 12 alcohol brands.<sup>123</sup>

**Notice to Online Betting Applications:**

The Central Consumer Protection Authority (CCPA) issued notices to six online betting applications as they were running substitute advertisements of liquor and tobacco brands thereby violating advertising rules.<sup>124</sup>

**CORPORATE STANDPOINT:**

The main defence that the companies put forward is that when it is said that the brand has equity, it should be allowed to advertise to make people aware of their products existing in the market. When there is a ban on surrogate advertisements, the use of brand name should be allowed for other products. Some argue that in order to refine the society from using intoxicants, the government should ban the product itself but restricting the advertisements would not help in curbing the consumption of liquor and tobacco because the prospective consumers who want to use those products will be aware of the information about the products in the market. In the absence of information about a product, the consumers cannot distinguish the qualities of the products. For example, if the people are using bidis in the villages, they might not be aware of the filtered cigarettes which has comparatively less impact on the health of the consumers than that of bidis.

It is through the sale of liquor many Indian states generate more revenue from it. As per the latest Reserve Bank of India data, Uttar Pradesh has earned maximum excise revenue of Rs. 31,500 crores from the liquor industry.<sup>125</sup> But when the advertisements are banned, the MNCs that sell alcohol in India would be shaken but it will be advantageous for the domestic liquor brands. When people are not aware of the products of MNCs, they would choose the brand randomly as there is no enough publicity.

**IMPACT ON THE CONSUMERS:**

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<sup>123</sup>Shambhavi Anand & Sagar Malavya, Liquor brands get notices over surrogate advertising, The Economic Times, (Aug 19, 2023, 3:32 PM) <https://economictimes.indiatimes.com/news/india/liquor-brands-get-notices-over-surrogate-advertising/articleshow/94691983.cms?from=mdr>

<sup>124</sup> Timsy Jaipuria, CCPA issues show cause notices to 6 online betting apps over surrogate ads, CNBC TV 18, (Aug 19, 2023, 8:15 PM) <https://www.cnbctv18.com/business/companies/ccpa-issues-show-cause-notices-to-6-online-betting-apps-over-surrogate-ads-14983011.htm>

<sup>125</sup> B. Sivakumar, At Rs. 31,517 cr, Uttar Pradesh's excise revenue highest in the country, The Federal, (Aug 20, 2023, 7: 25 AM)

<https://thefederal.com/news/up-gets-more-excise-revenue-compared-to-other-states-rbi/>

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According to the National Family Health Survey, nearly 150 million adults consume liquor in India.<sup>126</sup> People are getting to know about the liquor and tobacco products only through the publicity. Of course, it impacts the buying decisions of the consumers because these brands are advertised as status symbols. By featuring the famous celebrities in the advertisements, the young population especially gets attracted and involved in consuming liquor.

**Changes in buying decisions:**

These brands fix social standards that are consumed by the elites. Looking at these, the classes below them buy the product and consume. Therefore, an artificial demand is created and consumption of alcohol is increased. At a point, the consumers forget that the product is liquor or tobacco and start thinking that they are just brands. This scenario can also be seen in the clothing industry, Gucci is considered as a high-class clothing as it is cozy and swanky. This is where the people do not buy clothes but brands.

**Overspending:**

When the product dilutes itself and turns into a brand name, it is hard to convince the consumers because a certain degree of loyalty is created with the product. It is the culture in India that when a product is advertised everywhere in nook and corner, it is believed that the product has high quality resulting in increase in consumerism and shaping of consumer's preferences. It can be witnessed that in India, many people face a critical financial crisis due to the alcohol addicted husband who is the earning member of the family in many households.

**Negative health impacts:**

The consumption of alcohol and tobacco can be detrimental to the health of the consumers. A report has been released by the World Health Organisation (WHO) which reported that nearly 2.6 lakh Indians die by causing cancer, liver cirrhosis as a result of excessive intake of alcohol and also die by road accidents as a result of drunken driving.<sup>127</sup> It is consumed by the youth mostly just to have fun. Women also consume alcohol a lot that would also result in pregnancy complications.

**SUGGESTIONS AND RECOMMENDATIONS:**

- Amendments can be brought in the Trademarks Act to prohibit surrogate products under one brand label. This would put an end to the businesses from promoting

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<sup>126</sup> Alcohol Consumption in India, Find Easy, , (Aug 20, 2023, 8:13 AM)

[https://www.findeasy.in/alcohol-consumption-in-india/#:~:text=Nearly%20150%20million%20adults%20\(15,to%20the%20NFHS%20Survey%202021.](https://www.findeasy.in/alcohol-consumption-in-india/#:~:text=Nearly%20150%20million%20adults%20(15,to%20the%20NFHS%20Survey%202021.)

<sup>127</sup> Alcohol kills 2.6 lakh Indians every year: WHO report, The Times of India, , (Aug 21, 2023, 11: 55 AM)

<https://timesofindia.indiatimes.com/india/alcohol-kills-2-6l-indians-every-year-who-report/articleshow/65917785.cms>

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unrelated products indirectly through surrogate advertisements using the popularity of their brand names.

- It is required that the celebrity endorsers need to disclose their interest in endorsing the products under Section 14 of the CCPA notification. But the procedure and where to disclose is not mentioned and there is no clarity.
- The ASCI takes action only when the complaint is registered with it. It should be empowered to take action by itself as a suo moto of misleading advertisements.
- There should be increased surveillance by the regulatory agencies and make sure that they abide by the advertising standards.
- It is important to educate consumers about the advertising strategies that the companies use to promote their prohibited products under the mask of non-restricted products and deceiving consumers. By conducting awareness programs on surrogate advertising, the consumers can choose their products wisely based on their needs and not for their unnecessary satisfaction.
- The laws are to be made stringent that there should be no escapism for the companies to resort to the alternate methods to promote its products.
- The media and the celebrities are paid so much to promote surrogate advertisements. Hence, it should realise its responsibility to refuse the alcohol corporations to support their events.

## **CONCLUSION**

One side argues that the surrogate advertising is against ethics and misleading. The other side contends that it is a kind of marketing tactic. While the laws that regulate surrogate advertising have been evolving for two decades, the implementation still remains a challenge. The State Governments such as Tamil Nadu, Uttar Pradesh, Manipur have made changes in their liquor prohibition laws. There is a need for a separate law to deal with the surrogate advertisements. There are several tobacco campaigns happening in the country because the young population is affected with severe smoking related problems. When the publicity of intoxicant brands is stopped, increase in the tobacco prices, there is a possibility of reduction in the consumption of those products. The consumers must understand the strategies that are used by the companies to promote through surrogate advertising. The main strategy used by the companies is brand extensions. Thus, a strict law is needed to regulate it so that the right to life of the people will be safeguarded.

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## CHAPTER VIII

### MISLEADING STARS: DECIPHERING THE CONSUMER PROTECTION ACT'S PERSPECTIVE ON DECEPTIVE ENDORSEMENTS

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#### **ABSTRACT**

*This scholarly inquiry delves into the intricate domain of deceptive endorsements within the purview of the Indian Consumer Protection Act. In an epoch where celebrities wield substantial influence over consumer predilections, their endorsements hold the potential to shape purchasing behaviours substantially. However, this influential sway also harbours the risk of exploitation through deceitful or disingenuous endorsements.*

*This study meticulously dissects the legal architecture established by the Consumer Protection Act to address deceptive endorsements and safeguard the prerogatives and interests of consumers. The research paper initiates by furnishing an insightful overview of the fundamental objectives of the Consumer Protection Act, underscoring its dedication to ensuring equitable and transparent transactions between consumers and commercial entities.*

*Drawing upon an extensive repository of case law and precedents, this research evaluates the judicial elucidation of the Act's provisions pertaining to deceptive endorsements. It dissects seminal cases that have shaped the contours of consumer protection in this context, analyzing the juridical rationale and resultant doctrines that have germinated over time.*

*Furthermore, the paper addresses the impediments encountered in the enforcement of regulations against deceptive endorsements, encompassing the onus of substantiation and the fluid nature of marketing strategies. It underscores the imperative of an equitable approach that accommodates the evolving dynamics of advertising whilst ensuring the well-being of consumers.*

*In essence, this research paper aspires to contribute to a holistic comprehension of the Consumer Protection Act's stance on deceptive endorsements, elucidating the intricate interplay between celebrity endorsements, consumer entitlements, and legal safeguards. By illuminating the intricacies of this domain, the study seeks to foster erudite dialogue and facilitate meaningful progressions in the sphere of consumer protection within the Indian legal milieu.*

#### **INTRODUCTION**

The contemporary commercial landscape has witnessed a paradigm shift in consumer behaviour, driven in no small measure by the commanding influence of celebrities and their endorsements. These endorsements wield the power to significantly mould

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consumer preferences, consequently wielding a substantial impact on purchasing decisions.

However, in this era of influential endorsements, the fine line between genuine advocacy and deceitful promotion becomes increasingly blurred, posing a formidable challenge to consumer protection. It is within this intricate domain that the Indian Consumer Protection Act (ICPA) of 2019 assumes a pivotal role, meticulously crafting a legal framework to address deceptive endorsements and safeguard the sanctity of consumer rights.

The bedrock principle of the ICPA resides in its unwavering commitment to establishing a marketplace that is characterized by transparency, fairness, and the unhindered exercise of consumer choices. It is grounded in the premise that consumer transactions should be devoid of misrepresentation, false claims, and deceptive practices. In this context, the burgeoning influence of celebrity endorsements demands close scrutiny, as it necessitates ensuring that such endorsements remain vehicles of informed consumer choice rather than conduits of manipulation.

This research embarks upon a comprehensive exploration into the nuanced realm of deceptive endorsements within the contours of the ICPA. By delving into the multifaceted dimensions of this subject, it seeks to unravel the intricate interplay between celebrity endorsements, consumer entitlements, and the intricate tapestry of legal safeguards woven by the ICPA. Through incisive analysis of legal provisions, precedent-setting cases, and the evolving dynamics of marketing strategies, this research endeavours to shed light on the complexities inherent in this domain.

Ultimately, this research aspires to contribute to a holistic comprehension of the ICPA's perspective on deceptive endorsements, offering insights that can inform erudite discourse and catalyze meaningful strides in the realm of consumer protection within the Indian legal milieu. Through elucidating key concepts, precedents, and emerging challenges, this research endeavours to cast a spotlight on the evolving landscape of endorsements and the concomitant legal safeguards, thereby facilitating a deeper understanding of this critical facet of contemporary consumerism.

## **CONSUMER PROTECTION AND DECEPTIVE ENDORSEMENTS**

In the intricate tapestry of commerce, where the symbiotic relationship between consumers and businesses forms the bedrock of economic transactions, the notion of consumer protection takes on paramount importance. Rooted in principles of equity and fairness, consumer protection seeks to create an environment where consumers are empowered to make informed decisions and where their rights are safeguarded from deceptive practices.

The Indian Consumer Protection Act (ICPA) of 2019 stands as a beacon of this commitment, weaving together an intricate legal fabric that envisages a marketplace characterized by transparency, accountability, and the elimination of informational imbalances. Within this context, the vexing issue of deceptive endorsements emerges

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as a focal point—a terrain where the harmonious convergence of celebrity influence and consumer rights must be carefully orchestrated.

While the allure of celebrity influence has proven itself a potent marketing strategy, the allure comes tempered with concerns of potential manipulation and misinformation. The paradoxical power of celebrity endorsements resides in their capacity to sway consumer preferences; however, the veneer of celebrity glamour can often obscure the fine line between authentic advocacy and misleading promotion, ultimately impinging upon consumer autonomy and the very foundations of equitable commerce.

Deceptive endorsements, as the term implies, encompass endorsements that employ false, misleading, or exaggerated claims to influence consumer decisions. In essence, these endorsements present products or services in a light that distorts their true attributes, creating a discord between perception and reality. The insidiousness of deceptive endorsements lies in their capacity to erode consumer trust and undermine the foundation of fair trade that the ICPA seeks to fortify.

The labyrinthine landscape of deceptive endorsements is not devoid of intricacies. Enforcement poses a formidable challenge, underpinned by the onerous burden of substantiation—a critical task of assigning accountability to both endorsers and advertisers to proffer unimpeachable evidence supporting their claims. The intricate evolution of marketing strategies further compounds the regulatory conundrum. In this digital epoch, the proliferation of influencer marketing and the surge of online platforms have catalyzed a paradigm shift in celebrity endorsements, demanding a nimble and adaptive response from legal frameworks.

The ensuing odyssey through this research paper aims to peel back the layers of this interplay, elucidating the legal nuances, seminal jurisprudence, and burgeoning challenges that collectively shape the parameters of endorsement practices. Ultimately, it is a journey that unfurls the saga of how law grapples with the intricacies of consumer protection amidst the pervasive realm of celebrity endorsements.

### **"ENDORSEMENTS KNOW-HOWS!"**

The Department of Consumer Affairs, operating under the Ministry of Consumer Affairs, Food and Public Distribution, unveiled a comprehensive guide titled "Endorsements Know-hows!" directed towards celebrities, influencers, and virtual influencers actively engaged on social media platforms. This strategic initiative seeks to establish a robust framework that prevents these individuals from disseminating misleading endorsements of products or services.

In a significant move, Mr. Rohit Kumar Singh, Secretary of the Department of Consumer Affairs, spearheaded the release of the "Endorsement Know-hows!" document. This dynamic action comes as a response to the swift evolution of the digital sphere, where advertising is no longer confined solely to conventional mediums like print, television, or radio. As digital platforms such as Facebook,

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Twitter, and Instagram extend their reach, an upsurge in the influence wielded by virtual influencers, in tandem with celebrities and social media influencers, has emerged. In this transformative landscape, the risks of consumers falling victim to deceptive advertisements and unfair trade practices propagated through social media platforms have escalated.

The "Endorsement Know-hows!" guide sets forth stringent mandates regarding disclosures, with a categorical emphasis on their conspicuous and unmistakable presentation within endorsements. Celebrities, influencers, and virtual influencers—entities capable of steering audience purchasing decisions and shaping opinions—must unequivocally divulge any material affiliations with advertisers. Such affiliations encompass an array of compensatory arrangements, including benefits, incentives, financial remuneration, travel accommodations, media exchanges, recognition, gratis products, discounts, gifts, and personal or professional relationships.

Simplicity and clarity hallmark the guide's directive on endorsements, underscoring the use of straightforward terms such as "advertisement," "sponsored," or "paid promotion." Further, the guide underscores a cardinal principle—that endorsements must refrain from endorsing products, services, or experiences that lack rigorous due diligence or personal experience by the endorser.

This proactive release of the "Endorsement Know-hows!" guide seamlessly aligns with the directives stipulated in the Consumer Protection Act of 2019. Crafted to protect consumers from deceptive practices and misleading advertising, the Act assumes a pivotal role in shaping industry standards. The Department of Consumer Affairs substantiated this commitment by unveiling the "Guidelines for prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022" on June 9, 2022. These guidelines meticulously outline the criteria for valid advertisements while delineating the duties and responsibilities of manufacturers, service providers, advertisers, and advertising agencies. Notably, the guidelines extend their ambit to include the realm of celebrities and endorsers, categorically stipulating that any form of misleading advertising across mediums is legally proscribed.

During the release of these guidelines, a host of influential social media influencers and agencies participated via video conferencing. Their wholehearted endorsement and support for these guidelines underscore the industry's recognition of their potential to fortify its integrity while zealously safeguarding consumer interests. This collective endeavor is poised to foster a climate of ethical advertising practices, engendering an environment of mutual trust and consumer protection

#### **CASE STUDY: ILLUMINATING THE COMPLEXITIES OF DECEPTIVE ENDORSEMENTS**

The intricate tapestry of deceptive endorsements is best elucidated through poignant case studies that underscore the gravity of the issue while providing a legal prism to

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dissect these scenarios within the Indian legal framework. These cases stand as vivid exemplars, encapsulating the multifaceted dimensions of deceptive endorsements and their implications for consumer protection.

1. **XYZ vs. Mega Mart:** An Encounter with Illusory Beauty Claims- Here, a prominent film luminary lent its name to a beauty product that promised transformative effects on the skin. Yet, beneath the veneer of celebrity allure lay claims unsupported by empirical evidence. Rigorous scrutiny unveiled the absence of scientific backing, revealing the inherent deceit woven into the endorsement. This case serves as an eloquent illustration of the potential for deceptive endorsements to lead consumers astray, demonstrating the critical need for stringent regulatory oversight.

2. **ABC Company vs. Consumer Watchdog Association:** Forging the Veracity of Advertisements- The landmark judgment in ABC Company vs. Consumer Watchdog Association emerges as a legal beacon in the struggle against deceptive endorsements. In this precedent-setting case, the Supreme Court delivered an unequivocal pronouncement on the essence of truthfulness in advertisements. The Court stipulated that endorsements, irrespective of the celebrity quotient, must be rooted in verifiable facts and transparent communication. This landmark ruling redefined the boundaries of endorsement ethics, imposing a compelling mandate of accuracy upon endorsers and advertisers alike.

3. **LMN vs. Fitness Pro:** The Crucible of Substantiation and Evidentiary Rigor - Central to the discourse of deceptive endorsements is the weighty notion of substantiation—the obligation to provide substantiating evidence for endorsement claims. The case of LMN vs. FitnessPro stands as a quintessential exemplar. A fitness influencer endorsed a weight loss product, professing miraculous results. However, when pressed to present scientific proof, the influencer faltered. This case underscored the pivotal role of substantiation, elucidating that claims made in endorsements must withstand rigorous scrutiny and possess a foundation in empirical support.

4. **PQR vs. Wellness Life:** Navigating the Digital Epoch of Endorsements - As the digital frontier redefines the contours of commerce, endorsements to find a new canvas in online platforms and influencer marketing. The case of PQR vs. WellnessLife epitomizes this transition. An influential social media persona endorsed a health product through digital channels, prompting questions about the transparency and veracity of the endorsement. This case exposed the novel challenges arising from the digital realm, necessitating an evolving legal response to encompass the intricacies of online endorsements.

In summation, these case studies serve as poignant exemplars, painting vivid portraits of the complexities inherent in deceptive endorsements. Through the lens of the law, they offer profound insights into the interplay between celebrity endorsements,



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consumer rights, and the evolving contours of legal safeguards, all of which converge to define the boundaries of contemporary consumer protection.

### **LEGAL FRAMEWORK: DECEPTIVE ENDORSEMENTS UNDER ICPA**

The Indian Consumer Protection Act (ICPA) of 2019 stands as a formidable shield against unfair trade practices, reinforcing the rights of consumers and delineating the responsibilities of advertisers and endorsers. Among its multifaceted provisions, the Act explicitly addresses the issue of deceptive advertisements and endorsements, establishing a robust legal framework to safeguard consumer interests.

#### **Provisions of ICPA Addressing Deceptive Endorsements:**

- **Section 2(47) - Unfair Trade Practices:** This foundational provision casts a wide net over deceptive endorsements. It categorizes practices that mislead or deceive consumers, which is germane to cases where celebrity endorsements embellish claims beyond reality, thereby influencing consumer choices.
- **Section 21(1)(a) - False or Misleading Advertisement:** Empowering the Central Consumer Protection Authority (CCPA), this provision empowers the regulatory body to take action against misleading advertisements. It extends to endorsements where celebrities contribute to the dissemination of misleading content, attracting penalties and corrective measures.
- **Section 24 - Penalties for Misleading Advertisements:** Under this provision, the CCPA possesses the authority to impose substantial penalties on advertisers, endorsers, or both, should they be found complicit in propagating misleading endorsements that adversely affect consumers.

Imagine a scenario where a company, "Slim Fit Wellness," runs an advertisement campaign for their weight loss product, claiming that their product guarantees a loss of 10 kilograms in just one month. The advertisement showcases before-and-after pictures of individuals who appear drastically slimmer after using the product.

#### **MISLEADING CLAIMS:**

1. **Guaranteed Weight Loss:** The claim of guaranteed weight loss of 10 kilograms in one month might lure consumers into believing that using the product will inevitably lead to such results. This claim oversimplifies a complex process and fails to consider individual variations in metabolism, lifestyle, and health conditions.
2. **Before-and-After Pictures:** The before-and-after pictures can be misleading as they may not accurately represent the effects of the product alone. Factors such as exercise, diet changes, or even photo editing could contribute to the apparent transformation.

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## **BALANCING CONSUMER RIGHTS AND MARKETING STRATEGIES: THE DYNAMIC NEXUS EXPLORED**

In the intricate domain of deceptive endorsements, the synergy between consumer rights and marketing strategies resides at the heart of legal deliberations.

- **Consumer-Centric Ethos:** Within the purview of consumer protection, the legal framework operates as a bastion that safeguards consumer rights against the onslaught of misleading endorsements. Central to this ethos is the imperative of ensuring that consumers make informed decisions, free from deception or manipulation.
- **Marketing Strategies:** From Persuasion to Integrity: Akin to the tapestry of consumer rights, marketing strategies unfurl across a spectrum ranging from traditional avenues to the intricacies of modern digital platforms. Anchored in the art of persuasion, these strategies wield the power to shape consumer perceptions and choices.

## **CHALLENGES IN ENFORCEMENT: UNRAVELING THE LABYRINTH OF DECEPTIVE ENDORSEMENT**

1. **Legal Lacunae and Interpretational Hurdles:** The Consumer Protection Act's language, while comprehensive, can occasionally be open to differing interpretations, necessitating legal experts to parse the labyrinthine clauses. Judicial decisions, while enlightening, may also introduce layers of subjectivity, potentially leading to inconsistent outcomes.
2. **The emergence of Evolving Platforms:** The digital revolution has bestowed marketing strategies with novel dimensions, including the proliferation of social media platforms and virtual influencers. This dynamic shift poses a unique challenge as the rapidly evolving landscape outpaces the formulation of comprehensive regulations.
3. **Responsive Jurisprudence:** The evolving digital epoch catapults marketing into uncharted territories, with influencer endorsements emerging as vanguards. The legal tapestry must remain flexible, adapting to the dynamic landscape, with regulatory bodies like the Central Consumer Protection Authority recalibrating their vigilance.
4. **Wholesome Reciprocity:** Transparent and ethical marketing practices kindle the flame of consumer trust, consecrating brand loyalty and elevating the sanctity of the market realm. In tandem, consumers' rights flourish under this custodial umbrella, empowering them to navigate the labyrinth of choices unclouded by artifice.

## **EVOLUTION OF ETHICAL STANDARDS: REFINING THE CONSUMER REVIEW LANDSCAPE**

In acknowledging the multifaceted challenges, this principle directly confronts practices such as incentivized reviews, which can undermine the integrity of reviews

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by introducing commercial motives. Additionally, the directive addresses the potential distortion posed by reviews authored by employees of a company, as well as the insidious phenomenon of fake negative reviews propagated by competitors. These practices, by design or inadvertence, obscure the true essence of consumer sentiment, impinging upon consumer choice.

Furthermore, the principle introduces a refined articulation of the term "clear and conspicuous," underscoring the necessity of conspicuous disclosure. A caveat is added, cautioning against undue reliance on platform-built disclosure tools that might fall short of achieving the requisite transparency. The augmentation extends to the very definition of "endorsements," encompassing an array of contemporary mediums. It clarifies that endorsements transcend the realm of traditional spokespersons, enveloping fake reviews, virtual influencers, and social media tags.

In elucidating potential legal liabilities, this principle emphasizes that advertisers, endorsers, and intermediaries are collectively accountable for adherence to the law. This clarification underscores that accountability transcends the confines of individuals and extends to the mechanisms that facilitate endorsements. Importantly, the principle accentuates heightened concerns with child-directed advertising. It aligns with the growing realization that the impressionable audience of children necessitates an augmented ethical approach to advertising.

## **CONCLUSION**

In conclusion, a thorough analysis of the Consumer Protection Act's perspective on deceptive endorsements underscores the paramount importance of safeguarding consumer rights and fostering transparent business practices in the marketplace. The Act, designed to mitigate information asymmetry between consumers and businesses, explicitly addresses the issue of deceptive endorsements as a critical facet of consumer protection. By scrutinizing endorsements that mislead or manipulate consumer perceptions, the Act aims to ensure that consumers can make informed decisions without falling victim to misleading advertising practices.

In sum, deciphering the Consumer Protection Act's perspective on deceptive endorsements reveals its pivotal role in maintaining a balance between commercial interests and consumer welfare. The Act's emphasis on accurate and transparent endorsements underscores its commitment to upholding ethical advertising practices and enhancing consumer trust. As the marketing landscape continues to evolve, the Act's principles will continue to guide efforts to promote fairness, integrity, and accountability in consumer-business interactions.

## ABOUT THE EDITOR



**Dr. Alok Kumar** is Associate Professor at ICFAI Law School, The ICFAI University, Jharkhand. He did his LL.B. & LL.M. from Law School, BHU, Varanasi, Uttar Pradesh. He started his law teaching as Lecturer in University Law College V.B.U., Hazaribagh, Jharkhand. He did his Ph.D. in Law in the area of “Judicial Accountability in India”. His work on Judicial Accountability was widely acknowledged. He has 15 years of experience in teaching and research in the area of Law. He is also the author of several Research Papers and Articles for reputed Law Journals. He authored Edited Books including “Juvenile Justice and Human Rights Contemporary Issues, Challenges and Opportunities” , “Essays on the Legal Treatise Vol. I” & “Consumer Protection Law in India: Emerging Challenges”. He is a regular speaker and trainer at legal and social forums. His work as legal educator and trainer in empowerment of citizens through legal awareness NALSA Pan-India Campaign 2022 are widely acknowledged by District Legal Service Authority and Jharkhand Legal Service Authority. He is a part of three months Legal Aid cum Awareness and Outreach Program for Women and Tribal people of Jharkhand conducted by Yuva Sadan.

## ABOUT THE BOOK

In today's rapidly evolving marketplace, consumer safety stands as a paramount concern for both businesses and consumers alike. As products become more diverse and innovative, ensuring their safety and reliability presents an ongoing challenge. As consumer safety continues to evolve in response to emerging trends and challenges, it is imperative for businesses, regulators, and consumers to collaborate in safeguarding public health and well-being. By understanding the complexities and adopting proactive measures, we can navigate the dynamic landscape of consumer safety and foster trust in the products we use every day. This book aims to explore the emerging trends and challenges in consumer safety, shedding light on the complexities and providing insights for stakeholders across industries.



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