

Unfair Trade Practices in Consumer Law

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Abstract -- The concept of Unfair Trade Practice (UTP) pertains to any dishonest, fraudulent exchange activity, deceptive, or corporate fraud of the goods or services that are regularly delivered and sold, which is denied by law or has been recognized as significant by a judgment of the Hon'ble court. In order to warfare effectively UTPs in India, it will be required to continue developing and enforcing stringent laws and regulations, as well as to increase consumer education and awareness. By collaborating, policymakers, businesses, and consumers can create a more equitable and fairer marketplace that benefits all parties. UTP often includes dishonestly recruiting clients, dishonestly hindering competing companies' business operations, and illegally refusing any transaction.

Hugely various corporates adopt unethical tactics to outcompete rivals in a world of fierce rivalry. They could gain from this in the short term, but in the long run, the institution suffers, and eventually, the entire business community and the economy as a whole are affected. By collaborating, policymakers, businesses, and consumers can create a more equitable and fairer marketplace that benefits all parties.

The current provisions in the Indian statutes, legislation, numerous policies, and programmes being used by the Indian Government, the future of the consumer justice mechanism in our country is improving. The rights that consumers who lack literacy can use to defend themselves against these unjust tactics used by large corporations with market monopolies should be made more widely known. Consumers are rarely the target of UTPs by large companies, and those who are purchasing become an easy target for their fierce rivalry.

Keywords-- Unfair Trade Practices, Policy Makers, Consumers, MRTP Act, Legal Protection

I. INTRODUCTION

The unfair trade practices are the prevailed sort of mostly false advertising. This indulges misleading statements about a product's features, deceptive claims about a product's efficacy, and exaggerated claims about a product's benefits. As a result of deceptive advertising, consumers may make purchasing decisions based on false information, which can be detrimental to them. Falsely representing products or services is another type of UTP.¹

The Consumer Protection Act expands the definition of unfair trade practices to include a broader range of practices, including misleading advertising, false or deceptive representations about the nature or quality of goods or services, and unfair trade practices that exploit vulnerable or disadvantaged consumers.

In addition, it establishes new penalties and enforcement mechanisms to deter businesses from engaging in UTPs and to give consumers more recourse in cases of malfeasance. The Consumer Protection Act (CPA) of 2019 reflects a remarkable milestone in this regard, as it broadens the scope of UTPs and provides consumers with broader protections against deceptive or fraudulent business practices.²

Safety of Food and unfair means in trade regarding the quality and quantity of the food commodities has been a major and vital issue. The cases of adding of chemicals such as additives and adulterants with an aim of disguising low-quality products, contaminating or having undue profits or food contamination on the stage of production, processing, packaging and storage has been witnessed by almost everyone. Such unethical and unfair means are considered as serious offence since they can pose serious threat to the final customer's health. Additionally, false advertising can also result in misrepresentation. An insurance firm, for example, may make statements in its marketing that are not supported by their policy. As a result, policyholders may be deceived about the coverage they will receive. Misrepresentation can have serious consequences for policyholders.

II. UNFAIR TRADE PRACTICES IN INSURANCE SECTOR

The prevalent form of unfair business practice, misrepresentation happens when an insurance company or its agents lie about the terms, conditions, or benefits of an insurance policy. This can be a violation of state and federal laws prohibiting such conduct. For instance, a broker might provide the impression that a certain illness or injury is covered by a policy when in reality that is not the case. This might result in policyholders being misled, and they may acquire a policy that does not cater to their requirements as a result of their decision.

Misrepresentation can have serious consequences for policyholders. It may lead to them purchasing policies that do not meet their needs or provide the necessary coverage. This might result in financial losses as well as substantial mental pain. Regulatory authorities have made steps to combat deception in the insurance industry. In the United States, for example, the National Association of Insurance Commissioners (NAIC) has provided rules to insurers and brokers to guarantee that policyholders receive accurate and truthful information.

¹ Quoted in Press Release issued by the Commission dated 5.1.1988.

² Terence G. Ison, Credit Marketing & Consumer Protection II(979)



Insurers must give clear and simple information according to regulations about policy terms and conditions, explain any exclusions or limits, and ensure that all advertising is truthful and not misleading. In addition to statutory safeguards, policyholders can protect themselves from misrepresentation by inquiring and obtaining clarification about a policy's terms and conditions. They should also carefully examine the insurance documentation to ensure they understand all of the exclusions and limitations. If policyholders believe they have been misled, they should contact regulatory authorities or seek legal counsel.

One of the most common types of unfair commercial practices in the insurance industry is misrepresentation. It can occur at any point of the insurance purchasing process, from the initial sale to policy renewal. Deceptive advertising, deceptive promises, and hiding vital facts are all examples of misrepresentation. When an insurance agent or corporation makes misleading statements about the terms, conditions, or benefits of a policy, this is an example of misrepresentation. An agent, for example, may falsely state that a policy covers a certain illness or damage when it does not.

III. LEGAL SCOPE OF UNFAIR TRADE PRACTICES IN INDIA

India has adopted and adhered since attaining independence, 1947 to policies comprising what are commonly referred to as "command and control" laws, rules, regulations, and executive orders for the majority of the subsequent half century. During those times, government influence and control pervaded practically all aspects of economic activity in the country. In a number of critical industries, the government determined plant sizes, plant locations, prices, and the allocation of limited financial resources. Primarily as a result of government policies and strategies, market competition during that time period was severely constrained. This was the context in which the MRTTP Act of 1969 went into effect. In 1991, extensive economic reforms were enacted, and as a result, the transition from a "command and control" economy to one based on free market principles began in earnest.³

The Monopolies and Restrictive Trade Practices Act of 1969 established a regulatory mechanism that operated within a system of checks and balances and a laissez-faire milieu. It aimed to limit the concentration of economic power in private hands to the detriment of society as a whole.

The MRTTP Act was enacted during the license and permit raj era, which vigorously lobbied for the imposition of regulations on commerce and industry. Monopoly in business and industry was considered unethical and illegal at the time. Despite the fact that the aforementioned Act was based on public interest and consumer welfare, the concept of market economy was in its infancy and primitive stage at the time. The Monopolies and Restrictive Trade Practices Act, 1969, has been revised 50 times since 1970 to reflect changing economic conditions in India. In addition to this, the large commercial enterprises had the additional benefit of being able to acquire financial resources from various bankers and financial organizations.⁴

As there was no proper system in place for allocating licenses, the officers in charge of doing so had a vital tendency to favor men who had already demonstrated their capabilities by being successful in large business endeavours in the past over men who had not yet established their ability. As a result of all of this, a small number of business houses were able to get permission as well as consent ahead of time, resulting in a concentration of wealth in a few hands.⁵ As a result, the control system, which took the shape of industrial license, limited the freedom of entry into industry. This was done to prevent economic power from becoming concentrated in the hands of a small number of individuals or a group of business enterprises.

IV. HISTORICAL ASPECT OF THE MRTTP ACT, 1969

The Constitution of India compels the state to direct its policies toward the creation of a just and compassionate society in order to achieve this goal. Articles 38 and 39 of the Indian Constitution, which are included in the Directive Principles of State Policy mandate, inter alia, that the State shall strive to promote the benefit of the citizens by securing and protecting as effectively as possible a social order in which - social, economic, and political considerations shall inform all institutions of national life, and the State shall direct its policy towards securing the following: firstly, ownership and management of the community's material resources are dispersed in such a way that they best serve the common good and secondly, the operation of the economic system does not lead to the concentration of wealth and means of production to the detriment of the common good.

Basically, UTPs were not specifically addressed under federal law until the 1930s. The Federal Trade Commission Act of 1914 established the FTC, which was tasked with implementing federal antitrust laws and regulating UTPs.

³ S.D.Isran "Competition Law in India - A story of work in progress". Executive Chartered Secretary.

⁴ New York Times, January 21, 1973, page 15, column1-5 for other comments by businessmen critical of comparative advertising

⁵ The provision of clause (e) of section 53 of the Trade Practices Act, 1974 (Australia)



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The Wheeler-Lea Act of 1938 revised the Federal Trade Commission Act to make "unfair or deceptive acts or practices" in commerce illegal. The FTC's authority was expanded to include not only antitrust offences but also UTPs. Since then, the FTC has used its jurisdiction to file enforcement cases against UTP firms.

The MRTP Act of 1969 was enacted to fulfil the explicit mandate outlined in the Directive Principles of Part-IV of the Indian Constitution, namely the prevention of economic power concentration. The MRTP Act was significantly influenced by the Sherman Act and Clayton Act of the United States, the Monopolies and Restrictive Trade Practices (Inquiry and Control) Act of 1948, the Resale Prices Act of 1964, and the Restrictive Trade Practices Act of 1964 of the United Kingdom. The US Federal Trade Commission Act of 1914, as amended in 1938, and the Canadian Combines Investigation Act of 1910 also had an impact on the creation of this act.

V. CONCLUSION

The government and regulators must continue to be vigilant in enforcing UTP laws and promoting fair competition in all sectors. The enforcement of UTP laws is critical to ensure a level playing field for businesses and protect consumers' interests. By doing so, India can promote innovation, boost economic growth, and ensure that consumers have access to quality goods and services at fair prices. The implementation of UTP laws has helped to promote fair competition and protect consumers' interests. Additionally, UTPs have still had significant effects on businesses and consumers in India. Still, UTPs have negatively impacted competition and stifled innovation in various sectors, leading to higher prices and reduced choices for consumers.

In India, UTPs have changed through various means such as new technologies, business models, and market dynamics have emerged. For example, in recent years, the rise of e-commerce platforms has created new challenges for enforcing UTP laws, such as the misuse of data, discriminatory pricing, and exclusive tie-ups with suppliers. Different hurdles experienced by UTPs in India include inadequate resources and capacity for enforcement agencies, lack of awareness among consumers and businesses, and delays in formal process of legal proceedings.

However, India also has chances to resolve UTPs effectively. The government of India has introduced different methods to enhance transparency, ease of doing business, and digitalization, which can help reduce opportunities for UTPs.

Moreover, the CCI has been proactive in addressing new challenges posed by emerging technologies, such as through the formation of a dedicated digital markets unit and conducting studies on e-commerce and online advertising. To lessen UTPs' negative effects on the country's economy and society, several measures can be taken. Firstly, there is a need for greater awareness among consumers and businesses about UTPs and their impact on competition and consumer welfare.

VI. SUGGESTIONS

1. There is a need to create higher awareness and education among consumers about UTPs, and provide them with effective mediums to report and seek Redressal for UTPs.
2. To examines new modes such as the use of big data analytics, artificial intelligence, and blockchain, to detect and prevent UTPs more effectively. As a result of which this can aid to overcome some of the obstacles posed by the complex and dynamic nature of modern markets.
3. Unfair trade practices can provide valuable insights into the specific challenges and opportunities for addressing UTPs in different sectors.
4. Mostly, production, finance, telecommunications and deep studies could help policymakers and regulators design sector-specific strategies to address UTPs.
5. Explore the role of technology, especially digital platforms, in facilitating or mitigating UTPs in various sectors. This can provide insights into how digital platforms can be harnessed to promote fair competition and consumer welfare.
6. Even, the role of Non- Governmental Organizations plays a crucial role to combat unfair trade practices, protect consumers rights and advocate for ethical supply chains.

REFERENCES

- [1] Press Release issued by the Commission
- [2] New York Times, January 21, 1973, page 15, column1-5 for other comments by businessmen critical of comparative advertising
- [3] S.D.Isran "Competition Law in India - A story of work in progress". Executive Chartered Secretary
- [4] The Directive Principles of State Policy are aimed at establishing a welfare State. These principles, though fundamental in the formulation of policies by the State yet they are explicitly made as non-enforceable against the State.
- [5] Constitution of India; Article 39 (C)
- [6] Consumer Education and Research vs British Physical Laboratories.