

“Paving way for the Consumer Right to Repair: A Pivotal Role in increasing Sustainability”

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ABSTRACT

In the modern era, the Right to Repair movement has significantly gained recognition which empowers consumers to repair, modify, and maintain their products purchased by them. This movement advocates that consumers can fix or repair their own defective or faulty products as per the repair manual or they are at liberty to repair their products with any independent repairer without being under the compulsion of the manufacturer's whims. The right to repair has drawn a lot of attention on an international level. India does not have any legal framework on the right to repair but recently a committee has been formed by the Department of Consumer Affairs to develop a comprehensive framework on the right to repair. Products manufactured in today's time have built-in obsolescence which restricts the consumer's right to repair it. Ensuring the right to repair will seek to bring a balance between societal rights and corporate interests. This article will examine and provide an overview of the right to repair and the need for a framework in India to protect this pivotal consumer right.

Keywords: Right to repair, Consumer protection, Sustainability, Manufacturers.

INTRODUCTION

We have come across various Consumer rights, but the right to repair is a new one, which needs to be protected and promoted. Protecting Consumer rights is important for safeguarding consumer interests which will ensure responsible business practices and fair competition thereby directly boosting the confidence of consumers. The consumer right to repair has many implications. It encourages consumer the autonomy to decide how and where to repair their products. This in turn leads to cost savings, as consumers have the option to choose independent repair shops. There is no legislation in India that provides consumers the ability to repair devices generally or specifically in the technology sector. As potential technologies develop, digital reality and digital maturity embrace the consumer's decision-making process. When a manufacturer releases an updated, upgraded version of a product with some new, intriguing features, consumers buy electronic devices with notable caution, knowing that the product they buy will soon become outdated. When products malfunction, slow down, and almost become unusable, consumers eventually find themselves at the whims of manufacturers. Then, these manufacturers establish the Right to Repair, either by charging exorbitant costs or designating specific repair outlets, in order to prolong the life of the defective device. Manufacturers frequently maintain exclusive control over products, spare parts, and technical knowledge,

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which leads to costly repairs that force customers to rely on the whims of the manufacturer². Consumer electronics have gained popularity in the consumer durables market recently, but sadly, product repair has been difficult because of a lack of infrastructure. As a result, expenses have increased proportionally to the value of the product. In Europe and the United States, there has been a lot of interest in the right to repair. In February 2021, the European Commission declared that it would set up a mechanism that would allow laptops, tablets, and phones to be repaired. US President Joe Biden issued an executive order on July 9, 2021, instructing the Federal Trade Commission (FTC) to create legislation that will let users fix their electronic devices at their discretion. Advancement in technology is one of the driving factors to the right to repair. It is always said that products manufactured in the olden times, lasted till eternity, but this concept is not applicable in the 21st century where wear and tear of products takes place in no time. This ultimately makes the consumer dispose of the same. Manufacturers and Companies portray their products as robust or “resistant to daily wear and tear,” in actuality, their products are made to have short lifespans. This is known as “planned obsolescence”. The effects of these planned obsolescence are then seen in the economy, society, and the environment. An important question that arises is whether the non-functional product can be repaired instead of being disposed of by the consumer. By doing so we will contribute to a sustainable future. The Consumer Protection Act, 2019, does not make provision for the right to repair, Furthermore, the right to repair is not expressly mentioned in the Competition Act of 2002, the law protects market competition, which helps in preventing manufacturers from unjustly limiting consumer's alternatives for repairs³.

CONCEPT OF PLANNED OBSOLESCENCE

Planned obsolescence refers to the standard marketing practice or a business strategy wherein products are intentionally or deliberately manufactured with a limited lifespan which in turn encourages the consumer to make a new purchase or upgrade to a newer one. This practice unduly affects consumers decisions. Planned obsolescence has a serious impact on the environment, a huge amount of e-waste which directly contributes to environmental degradation is something that needs to be looked upon. Manufacturers resort to such practices with the aim of maximizing sales and profits.

ELEMENTS OF THE RIGHT TO REPAIR

The following are the essential elements that constitute the concept of the right to repair⁴:

² Roy Subir & Sen Nabanita. (2023). Right to Repair: A Reflective Facet of Consumer Justice. *Studia Iuridica Lublinensia*. 32. 11-34. 10.17951/sil.2023.32.2.11-34.

³ Kumar, Dr & Malik, Ausaf. (2023), Right to Repair Is a Child of the 21st Century: A Critical Study. Xi. 1047-1059.

⁴ Zongwe, Dunia; GS, Mahantesh; and R, Mamatha (2023) "The Economics of Repair: Fixing Planned Obsolescence by Activating the Right to Repair in India," *International Journal on Consumer Law and Practice*: Vol. 11, Article 6

1) CONSUMER OWNERSHIP AND CONTROL

The right to repair emphasizes that consumers own and have control over the products they purchase, including the option to fix the item themselves or have it fixed by an independent repairer.

2) ACCESS TO REPAIR INFORMATION, TOOLS AND AVAILABILITY OF SPARE PARTS

In order to facilitate repairs, the right to repair focuses on giving customers access to repair manuals, replacement parts, diagnostic tools, and other repair-related information. Manufacturers should make sure that spare parts are readily available to consumers and independent repairers to carry out the repair effectively and efficiently.

3) PROTECTION AGAINST ANTI-REPAIR MEASURES

Anti-repair measures, like software locks or technological protection measures (TPMs), that limit customers' ability to fix their own products are addressed by the right to repair. In order to allow repairs, it makes the case for their removal.

DEVELOPMENT

The Right to repair movement has developed in response to a range of factors. Throughout time, this movement has gained incredible momentum, leading many countries to establish policies to acknowledge this right. This movement originated in the 1950s. In 1956, “an antitrust suit was initiated against IBM challenging the element of repairability as a consumer right. The decree passed by the court directed the tech giant to offer its spare parts and sub-assemblies to its customers, seeking repair, at a fair and reasonable price”⁵. In 2012 the first effort and emergence of the Right to Repair Movement was seen which was based on the Automotive Right to Repair Law in Massachusetts. More specifically, automobile manufacturers are required by the 2012 Massachusetts Motor Vehicle Owners Right to Repair Act to provide consumers and independent repair shops with diagnostic manuals and spare parts. Until 2016 there was no momentum. In 2021, the United Kingdom declared that manufacturers were legally required to supply tools and spare parts. In July 2021, the Federal Trade Commission released a statement endorsing action against manufacturers who impose unfair repair restrictions on independent repair shops and consumers⁶. The first electronic right to repair law, known as the Digital Fair Repair Act, was passed by the New York State Legislature on June 3, 2022, and it allows customers to fix their defective digital electronics. The objective of this law is to address consumer electronics devices repairability. While the Massachusetts law only covers automobiles or car data, the state of New York passed a right

⁵ Judgment of the United States District Court for Southern District of New York of 1956, United States of America v. International Business Machines Corporation, No. 72-344.

⁶ Federal Trade Commission, Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Manufacturers and Sellers, July 2021, https://www.ftc.gov/system/files/documents/public_statements/1592330/p194400repairrestrictionspolicystatement.pdf (Last accessed: 26.12.2023)

to repair Bill that guarantees repair rights for electronics generally, with the exception of home appliances, agricultural equipment, and medical devices. In 2019, the European Union introduced the Right to Repair Rules, which aim to create a digital product circular economy by providing consumers with consumer appliance repair tools. The United Kingdom enacted the Right to Repair Regulations in July 2021, mandating that manufacturers provide their customers and other third parties with access to spare parts.

INDIAN SCENARIO

In the case of *Shamsher Kataria V. Honda Siel Cars India Ltd*⁷. “Fourteen automobile manufacturing companies were found liable for engaging in anti-competitive practices and abusing their dominant position by only selling spare parts to authorized dealers and not to independent markets. The Competition Commission of India order allowed customers to choose between independent mechanics and authorised dealers, as well as assisting independent mechanics in providing aftermarket services and ensuring healthy market competition”. Currently, there is no legislation dealing exclusively with the consumer right to repair in India. In the year 2022, “the Department of Consumer Affairs set up a committee under the chairmanship of Smt. Nidhi Khare, Additional Secretary of the department to develop a framework on the right to repair. The main aim of developing such a framework is to empower consumers and product buyers in the local market, to harmonize trade between the original equipment manufacturers and the third-party buyers and sellers, and to emphasize developing sustainable consumption of products and reduction in e-waste. The committee has proposed to recognize some key sectors, such as mobile phones/tablets, automobile and automobile equipment, consumer durables, and farming equipment”⁸. Among the relevant issues brought up at the meeting was the fact that businesses refrain from publishing user-friendly repair manuals. It was said that Manufacturers have proprietary control over spare parts of the products they are encouraging a culture of ‘planned obsolescence. It was stated that maintaining a monopoly over repair processes violated the consumer's right to choose. It was decided during the discussion that the tech companies ought to give users full access to manuals, schematics, and software updates, and that the software license shouldn't restrict how transparent the sold product is. The role of the judiciary in India has been limited in interpreting this right. In the case of *Kirti Singh V. Oriental Insurance Company Limited*⁹, The Delhi State Consumer Disputes Redressal Commission held “that an insurance company cannot refuse to cover repair costs simply because the repairs were not done at an authorized service centre, The Commission stated that insurance companies cannot impose arbitrary conditions on consumer's right to choose where they want their vehicles to be repaired”.

⁷ 2014 SCC Online CCI 95

⁸ Ministry of Consumer Affairs, Food & Public Distribution, Department of Consumer Affairs Sets Up Committee to Develop Comprehensive Framework on the Right to Repair, 14.7.2022, [https:// pib.gov.in/PressReleasePage.aspx?PRID=1841403](https://pib.gov.in/PressReleasePage.aspx?PRID=1841403) (Last accessed: 26.12.2023)

⁹ (2021) 2 SCC 166

NEED / PROPONENTS VIEW

The Right to Repair concept plays a major role in today's world where technology is developing to such an extent. The need or importance of this right is seen as follows:

Right to repair helps to save time and money. Repairing a defective product is said to be more cost-effective than replacing or purchasing a new one. Consumers can repair their faulty products in a quick or time-efficient manner themselves. Next, repairing products will ensure a longer lifespan which will promote sustainability by reducing the demand for new products and the associated environmental impact of manufacturing and disposal, this will help to reduce the amount of e-waste that ends up in landfills. cost-effective. Proponents are of the view “that throw-away culture is unsustainable because it contributes to an ever-increasing amount of e-waste”¹⁰. Next, the right to repair allows the consumers to choose who can repair their products whether by a technician or by themselves, and have access to the necessary tools, parts, and manual of repair. Right to repair will ensure transparency and accountability when the manufacturers provide access to repair manuals, diagnostic tools, and spare parts of products to the consumers. Also recognising the right to repair will help to create employment and aid to support small businesses such as independent repair shops.

CHALLENGES / OPPONENTS VIEW

There are numerous reasons for the need for the right to repair. Along with it, many challenges or drawbacks are prevalent that need to be addressed. The following are some of them:

Since the right to repair is still a relatively new idea in India, many consumers might not be aware of it or the advantages of having their products repaired. Opponents maintain that right to repair legislation will infringe on manufacturer's intellectual property rights including copyright, trademark, and trade secrets¹¹. Next, the right to repair is opposed because of safety and security concerns. Consumers may not possess the required expertise and knowledge to perform the repair safely and securely. At times some electronic devices possess some hazards that are not looked upon by the consumers which in turn compromises their safety.

CONCLUSION & SUGGESTIONS

The main objective of this new right is to increase the lifespan of product through repair and refurbishment which can in turn aid in lowering e-waste thereby contributing to a sustainable environment and preserving the survival of the labour markets for repair and refurbishment by providing the consumers with diagnostic tools, repair manuals, and replacement parts. The right to repair is an essential right benefiting consumers, society, the economy, and the environment at large by cutting costs, reducing e-waste, and thereby helping create employment. By

¹⁰ Kyle Wiens, Unfixable Computers Are Leading Humanity Down a Perilous Path, WIRED, <http://www.wired.com/2012/06/apples-unfixable-devices/>.(Last accessed: 26.12.2023)

¹¹ See U.S. Copyright Office, Section 1201 Rulemaking: Seventh Triennial Proceeding to Determine Exemptions to The Prohibition on Circumvention 214 (Oct. 2018), http://Cdn.Loc.Gov/Copyright/1201/2018/2018_Section_1201_Acting_Registers_Recommendation.Pdf.

enacting particular laws, increasing consumer awareness, and promoting the growth of an independent repair industry, India can make substantial progress toward recognising the right to repair as a fundamental consumer right. There arises a need to amend the Consumer Protection Act 2019 to incorporate the right-to-repair provision which will intend to protect the interests of consumers. The right-to-repair movement can be seen as an opportunity and challenge for the manufacturers but they need to be addressed by a proper framework. The Government should recognise this right and ensure that proper guidelines are provided with regard to independent repair shops, access to repair manuals, diagnostic tools, etc. Consumer's awareness of the right to repair is in need of the hour, which can be done through various means. Dedicated helplines can be set up by the government to assist with the right to repair for the public. For all these measures to be taken into account a specific legislation should be enacted which will help in the development and protection of consumers rights and interests. By embracing the principles of the right to repair, stakeholders have the opportunity to create a more sustainable and consumer-centered marketplace.