



## **UNFAIR TRADE PRACTICES AND THEIR EFFECTS IN INDIA**

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### **ABSTRACT**

The concept of Unfair Trade Practise (UTPs) encompasses any trade practise that employs an unfair or deceptive method to promote the sale, use, or supply of goods or services. Such practises are prohibited by law or have been deemed actionable by a court ruling. The present study pertains to the rationale for including the notion of unfair trade practises within the purview of Consumer Laws as opposed to its inclusion within Competition Laws. The present study undertakes an analysis of the notion of unfair trade practises in India, through a comparative examination of the regulatory frameworks established by the Competition Law and Consumer Law. The objective of this scholarly article is to elucidate the status of Unfair Trade Practises (UTPs) in India and scrutinise the interplay between competition law and consumer law within a theoretical framework. Additionally, this article examines the divergent interpretations of 'consumer welfare' in relation to UTPs as stipulated in the legislation. This paper will provide a comprehensive analysis of the evolution of Unfair Trade Practises (UTPs) in the context of the Monopolies and Restrictive Trade Practises (MRTP) Act, Consumer Protection Act, and Competition Act. The paper will examine the abolition of the MRTP Act, the measures recommended by the Sachar Committee and the Raghavan Committee, and the establishment of the Competition Commission of India (CCI) and Competition Act, 2002. Additionally, the paper will explore the legal framework governing UTPs in consumer and competition laws, the rationale behind their inclusion in consumer laws, the various components of UTPs, and the relevant authorities and agencies responsible for addressing UTPs.

**Keywords:** Unfair Trade Practices (UTPs), Incorporation of UTPs, Consumer Welfare, Overlapping Provisions.

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## **INTRODUCTION**

The concept of Unfair Trade Practise (UTPs) encompasses any trade practise that employs an unjust method or an unfair or deceitful practise to promote the sale, use, or provision of goods or services. Such practises are prohibited by law or have been deemed actionable by a court ruling. Misrepresentations may pertain to any attribute, factual or perceived, of a product or service. As a result, regulations that forbid unjust trade practises frequently incorporate a broad clause and additional particular clauses that tackle some of the prevalent forms of misrepresentations. Unjust trade practises encompass a wide range of civil wrongs, which entail financial harm caused by fraudulent or wrongful behaviour. The potential legal doctrines that may be invoked encompass allegations such as the unauthorised utilisation of trade secrets, unjust business practises, deceptive marketing, misrepresentation of source, weakening of brand recognition, and defamation.

## **POSITION OF UTPs IN CONSUMER & COMPETITION LAWS**

Following the recommendation of the Raghavan committee, the Competition Act of 2002 was implemented, which led to the introduction of a distinct section pertaining to Unfair Trade Practises (UTPs) under the Consumer Protection Act of 1986.<sup>1</sup> The committee opined that UTPs should not be imposed on the Competition Act, and therefore, the Consumer Protection Act, which was already addressing unfair trade practises, was utilised to enforce this provision. The transfer of provisions on unfair trade practises from the MRTP Act to the Consumer Protection Act was necessitated by the need to safeguard consumers from not only defective goods and deficient service but also unfair trade practises.

The Consumer Protection Act pertains to the vertical relationship that exists between a producer or manufacturer and a consumer, while the Competition Act pertains to the horizontal relationship that exists between manufacturers and producers. Both phenomena pertain to market distortions, which are expected to arise from the interplay between supply and demand in the market. The implementation of anti-competitive practises such as price fixing or exclusionary practises has the potential to distort the supply side of the market by limiting the availability of goods and services and driving up prices. Unethical trade practises, such as the utilisation of deceptive or misleading advertising, have the potential to manipulate the demand side of the market by creating a false perception of a product or service's value that exceeds its actual worth.

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<sup>1</sup> Consumer Protection Act 1986.

The Competition Act maintains a differentiation between cases that fall under the categories of "per se" and "rule of reason". The crucial aspect of the term 'per se' is whether the conduct or practise took place, without the need for any additional investigation into its impact on the market or the motives of the individuals involved in the practise. The "rule of reason" doctrine involves the application of a comprehensive evaluation of the circumstances, wherein the court assesses whether the practise in question promotes or hinders market competition. This is because the conduct or practise may have both detrimental and advantageous outcomes. Demonstrating adverse market effects is a requisite.

The consideration of intent and motive may hold significance in forecasting future outcomes in the context of a rule of reason examination. In cases where ambiguity arises, a presumption is commonly held in support of the rule of reason. A conduct that leads consumers astray will be classified as a 'deceptive practise' and is likely to impact consumers' purchasing decisions. Deceptive practises are considered to be unjust towards consumers.

The initial category of abuse of dominant position, as stipulated by the Competition Act, encompasses unfair or discriminatory trade practises. Hence, the Competition Act will encompass instances of unjust trade practises solely in cases where the enterprise holds a dominant position. As per the Consumer Protection Act, individuals have the right to file a complaint against any trader or service provider who has engaged in unfair trade practises or restrictive trade practises that have resulted in loss or damage to the complainant, defects in goods, or deficiencies in services.

## **UNFAIR PRACTICES VIS-À-VIS THEIR EFFECTS**

Almost every sector of the economy, including the retail, service, and industrial sectors, engages in unfair trade practises. These practises have been a major problem in India, where they have cost consumers money and made the business climate less competitive. The purpose of this article is to examine the many unfair trade practises in India and how they affect the national economy.

Price manipulation is one of the most widespread unfair trade practises in India. Customers are overcharged in this method when they get products or services. It is common in the retail sector, when during times of crisis or scarcity, businesses charge high rates for necessities like food and medication. Price manipulation may worsen the financial situation of the poor and middle class by increasing inflation and lowering consumer buying power.

Advertisements that are deceptive are another typical unfair commercial practise in India. To get consumers to purchase their goods, businesses often overestimate the advantages of their

offerings, make untrue statements, and use misleading advertising. Customers may wind up buying things that fall short of their expectations as a result of such advertising. It may also result in resource waste and a loss in a company's reputation.

Selling shoddy or phoney goods is another kind of unfair commercial practise. Consumers may be sold inferior products by producers and merchants, which not only hurts them but also gives rivals an unfair advantage. When purchasing fake goods, consumers are tricked into thinking they are purchasing the real thing when, in fact, they are purchasing counterfeit goods. This practise is widespread in the pharmaceutical sector, where fake medications may be lethal or very harmful.

Another kind of unfair commercial practise that is common in India is collusion. In order to control pricing, stifle competition, and divide markets, two or more rivals must collude. This practise is common in markets controlled by a small number of firms, such as those in the cement, steel, and car sectors. Consumer prices may increase as a result of collusion, which may also hinder new competitors from joining the market and foster an atmosphere devoid of competition.

The economy may be harmed by monopolies and dominating market positions, two other unfair trade practises. In India, anti-competitive tactics such predatory pricing, exclusive dealing, and tying agreements are often used to establish monopolies and dominating market positions. These actions restrict the entry of new companies and provide the market's current participants an unfair edge, raising consumer costs and stifling innovation. The Indian economy is significantly impacted by unfair trade practises. They not only hurt consumers but also make it difficult for businesses to compete, which slows economic growth. To stop unfair trade practises in India, the government has taken a number of actions. One such move towards establishing a fair and competitive market in India is the Competition Act, 2002. The law seeks to stop anti-competitive behaviour, promote fair competition, and safeguard consumer interests. Another piece of legislation to shield customers from dishonest business practises is the Consumer Protection Act of 2019. The legislation calls for the creation of consumer courts, which have the authority to compel businesses to compensate customers who have been injured by deceptive business practises. The legislation also calls for the creation of a central consumer protection agency that has the jurisdiction to impose sanctions on businesses that engage in deceptive business practises. To safeguard the interests of consumers in India, the government has established the Department of Consumer Affairs. The agency is in charge of upholding consumer protection legislation, encouraging ethical business conduct, and educating consumers about their legal rights. In India, unfair business practises are a serious problem that hurt both consumers and enterprises. Typical unfair

commercial practises in India include price gouging, deceptive advertising, the sale of inferior or fraudulent goods, collusion, monopolies, and dominating market positions.

## CASE LAWS

### • *In HMM Ltd. Case*<sup>2</sup>

“In this case, HMM Ltd. manufactured and marketed Horlicks advertised a scheme called Hidden Wealth Price Offer. In this scheme, if any lucky purchaser from Delhi found any coupon inside the bottle of Horlicks. Coupons contain prizes of five hotline color Television and other cash prizes. The commission held this scheme under unfair trade practices as getting coupon is nothing but a lottery system. But the Supreme Court concluded that the coupons inside Horlicks bottles were not a lottery.”

### • *In Panasonic India Private Ltd. Case*<sup>3</sup>

“In this case, Panasonic has launched a contest in which a person had to buy a Panasonic Television to enter the prize contest. The first prize winner has a chance to witness the Winter Olympics trip for two persons. The second prize was two Mini Hi-Fi systems with five CD Chargers, and the third prize was three Panasonic G-400 cellular phones with 500 consolation prizes.”

### • *Mantra Oil Products Private Ltd. v Oriental Insurance Corporation*<sup>4</sup>

“In this case, the complainant alleged that he had booked a tractor with the respondent by depositing advanced money. But respondent delivers to others on a pick and choose basis and postponed the delivery to the appellant. Meanwhile, the price of the tractor goes up. The appellant received the tractor at an enhanced rate and suffered a loss. The respondent was held liable.”

### • *Ravinder Rai v Competent Motors Corporation Private Limited*

“In this case, the court held that if there is a delay in delivery because of the imposition of newly enhanced exercise duty, it is not unfair trade practice.”

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<sup>2</sup> H. M. M. Limited v/s Director General, Monopolies and Restrictive Trade Practices Commission (1989) Civil Appeal No. 2939 of 1989.

<sup>3</sup> Panasonic India Pvt. Ltd. Vs. Shah Aircon Through Its Proprietor Shadab Raza [2022] ARB.P. 621/2021.

<sup>4</sup> Mantra Oil Products Private Ltd. v Oriental Insurance Corporation [1990] C.A. no. 873 of 1992.

• *Buddhist Mission Dental College and Hospital v. Bhupesh Khurana*<sup>5</sup>

“In this case, the court held that misrepresentation by a college about its affiliation with a university is an unfair trade practice.”

## CONCLUSION AND SUGGESTION

There exists a significant overlap between the domains of competition policy and law, and consumer protection policy and law. A competition policy that is successful in its objectives reduces the obstacles to entry and exit, and fosters an environment that is conducive to the advancement of entrepreneurship.<sup>6</sup> This, in turn, creates opportunities for the expansion of small and medium-sized enterprises, leading to an increase in employment opportunities.

The field of competition law is focused on preserving the competitive process among businesses, and aims to address any issues related to behaviour or structure that may hinder the establishment of effective competition within the market. As a result, there is an increase in economic efficiency, a boost in innovation, and an improvement in consumer welfare. As a result, the consumer is able to access a broader range of options and benefit from increased product availability at reasonable costs.

In contrast, the policies and laws related to consumer protection are predominantly focused on the characteristics of consumer transactions, with the aim of enhancing market conditions to facilitate optimal utilisation of consumer choice.

The two fields of study concentrate on distinct market imperfections and provide distinct solutions, yet share the common objective of preserving properly functioning, competitive markets that foster consumer well-being. The two fields exhibit a symbiotic relationship, wherein each strengthens and supports the other. In my view, it is imperative for the Competition Laws to clearly define the parameters of unfair trade practises, similar to the Consumer Laws, as both legislations are geared towards safeguarding consumer welfare.

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<sup>5</sup> *Buddhist Mission Dental College and Hospital v. Bhupesh Khurana* [2009] C.A. No. 1135 of 2001.

<sup>6</sup> OECD, *The Interface between Competition and Consumer Policies* [2008] OECD 131.