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***Title: Seller Be Fair, Buyer Be Aware, Authored By: Riddhima Singh,
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ABSTRACT

“This book chapter delves into the dark principality of unfair trade practices, meticulously dissecting its nuances and implications. Beginning with a comprehensive definition of a consumer, the chapter elucidates the symbiotic relationship between the Constitution and consumer law, in India, while illuminating the legal framework governing consumer protection. Drawing upon seminal research, including surveys by United Nations Conference on Trade and Development (UNCTAD) and Associated Chambers of Commerce and Industry in India (ASSOCHAM), it offers insights into global trends and challenges.

This chapter scrutinises consumer rights, delineated and contextualised with contemporary market dynamics, which include the insidious phenomenon of “dark patterns” in consumer interface, meticulously examining the Guidelines for Prevention and Regulation of Dark Patterns, 2023, offering a roadmap for safeguarding consumer interests in the digital age. Moreover, the chapter presents a compelling analysis of deceptive advertisement as a fraudulent practice, through a detailed case study, unravelling the mechanisms employed to manipulate the consumers perceptions that force them to make certain choices against their will. It further scrutinises the scourge of price gouging, emphasising the ethical imperatives for fair prising and a rise in this phenomenon during the wake of COVID-19. Concluding with a poignant reflection on consumer responsibilities, the chapter advocates for empowered and conscientious consumer engagement in shaping equitable market dynamics”.

SELLER BE FAIR, BUYER BE AWARE

“As New Yorkers scrambled to stock up on food, one of the nation’s largest egg producers raised prices to unprecedented levels and made it harder for New Yorkers to feed their families,” said Attorney General James who delivered 1.2 million eggs to New Yorkers in

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2021¹, describing an unfair trade practice that gripped the world by its throat in the wake of COVID-19: Price Gouging. Not just price gouging, but there are other trade practices that are unfair; for instance deceptive advertisement. This concept can be understood by a single quote of the State Consumer Dispute Redressal Commission, Chandigarh made against VLCC, “*The appellants are very much held liable to refund the amount paid by the respondent purely on the basis of their own advertisement, ‘Lose 4 Kgs in 30 days or take your money back!’*”²

On the basis of aforementioned cases, it might seem simple to decipher which practice may be unfair. But, in reality there is vast jurisprudential literature that helps in ascertaining the same.

1. CONSUMER VS NON-CONSUMER:

Consumer law, in its core, is utilitarian according to Durkheimian’s ‘Rule Utilitarianism’ which focuses on rules of conduct (as it is employee centric and not employer centric). That is to say, consumer is king!

So for this purpose, one must define who a consumer is.

According to section 2 (7) of the Consumer Protection Act, 2019 defines “consumer” as any person who—

- (i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose;
or

¹ *People v. Hillandale Farms Corp. et al.*, Index No. 451650/20202, Dkt. No. 1 (Compl.)

² *VLCC Health Care Ltd. v. Vijay Aggarwal*, Appeal No. 14 Of 2022, decided on 10-08-2022.

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- (ii) hires or avails of any service for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such service other than the person who hires or avails of the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person, but does not include a person who avails of such service for any commercial purpose.

Thus, by definition, consumer includes us all. And from time to time, depending on the nature of our work, we switch from being a consumer to being a non-consumer. A 'non-consumer' includes A person who obtains; goods free of charge, who avails services free of charge, who obtains goods for resale or for any commercial purposes, who avails services for any commercial purposes, who avails services under contract of service.³

2. UNFAIR TRADE PRACTICES:

2.1 CONSTITUTION AND THE CONSUMER:

According to the 'pure theory of law', Constitution is the grundnorm; i.e., the basic underlying principle. Any practice or law becomes instantly illegal or invalid if it does not match up to the country's Constitution. Even though the Constitution of India does not explicitly speak of unfair trade practices, it does put emphasis on social, economic and political justice and consumer justice is the crux of Consumer Law.

Article 38 of the Indian Constitution states that, "*The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life*" effectively making consumer redressal paramount.

³ Who is not a consumer? <https://consumeraffairs.nic.in/sites/default/files/file-uploads/latestnews/FAQ.pdf>

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This is also enshrined in Articles 14, 19 and 21 of the Constitution that talk about equality before law, freedom of speech and expression and protection of life and personal liberty.

President Johnson of the USA once said, *“For too long, the consumer has had too little voice and too little weight in the government. As a worker, as a business man as a farmer, as a lawyer or as a doctor, the citizens are well represented. But as a consumer, he has had to take a back seat. That situation is changing. The consumer is moving forward, we cannot rest content until he is in the front row, not displacing the interest of the producer, yet gaining equal rank and representation with that interest. What is the new is the concern for the total interest of the consumer, recognition of certain basic consumer rights: right to safety, right to be informed, the right to choose and the right to be heard”*⁴ clearly expressing his concern regarding the lack of representation for the consumers. And this is the global truth.

To combat this problem in India and provide adequate means of redressal, the Consumer Protection Act of 1986 was enacted and later, due to the advent of e-commerce an increase in unfair and fraudulent trade practices, the Consumer Protection Act of 2019 replaced the previous Act with tightened rules that provided added protection to the consumers.

The 2019 Act provides for establishment for Central Consumer Protection Authority, strict norms for misleading advertisements, product liability, certain additions in the clause of ‘unfair trade practice’, unfair contract and mediation among other things.

2.2 WHERE DOES THE PROBLEM LIE?

In the survey conducted by the United Nations Conference on Trade and Development (UNCTAD) to understand the relevant indicators and information on the status of consumer

⁴ President Lyndon B. Johnson of USA, Special Message to the Congress on “Consumers Interest” on February 5, 1964, available at <https://www.presidency.ucsb.edu/ws/?pid=26058>, accessed on 11/12/2013.

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law and policy worldwide, it was reported that India had skipped answering the question on whether it carries out education initiatives for its consumer law despite of the provisions of the same being made under the Consumer Protection Act⁵. A simple conclusion that can be drawn from this: the Indian consumer is unaware. A study conducted by Associated Chambers of Commerce & Industry in India (ASSOCHAM)⁶ noted that Majority of Indians remain ignorant, complacent and ill-informed about their consumer rights⁷.

2.3 CONSUMER RIGHTS:

There are certain rights that are guaranteed to the consumers by Section 2 (9) of the Consumer Protection Act, 2019. Let's analyse them.

2.3.1. PROTECTION AGAINST FRAUDULENT MARKETING:

Section 2(9)(i), the right to be protected against the marketing of goods, products or services which are hazardous to life and property.

This sub-section aims to protect the consumers from being misled by deceptive and hoax marketing schemes.

One of the most popular case of deceptive marketing is the Volkswagen case⁸ Volkswagen cheated emissions tests, reporting that their cars were up to the standards they should have been and they deceived customers about how "eco-friendly" their vehicles were in marketing communications.

⁵ World Consumer Protection Map - <https://unctad.org/topic/competition-and-consumer-protection/consumer-protection-map>

⁶ <https://www.assochem.org>

⁷ Most Indians Unaware of Consumer Rights: Study, 2014 by Deccan Herald

⁸ In Final Court Summary, FTC Reports Volkswagen Repaid More Than \$9.5 Billion To Car Buyers Who Were Deceived by "Clean Diesel" Ad Campaign, Federal Trade Commission - <https://www.ftc.gov>

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2.3.2. RIGHT TO INFORMATION

Section 2(9)(ii), the right to be informed about the quality, quantity, potency, purity, standard and price of goods, products or services, as the case may be, so as to protect the consumer against unfair trade practices.

Consumer is king, and he must know, transparently, everything he is consuming; right from the product's quality to its price in detail.

For instance, the practice of making parents and children to sign a one-sided agreement is an unfair trade practice, as explained in the case of FIITJEE vs. Shinjini Tiwari⁹

In the present case, the parents of the Respondent child had paid the fees in advance for a two-year coaching programme. However, due to acute medical reasons, it became impossible for the child to attend the coaching classes. On this account, the parents asked for a refund but the same was denied by the Appellant organisation. The Appellant had relied on the judgements of the same consumer forum in FIITJEE Ltd. v. Harish Soni, and FIITJEE Ltd. v. Vikram Seth to argue that the Complainant is not entitled to any refund in terms of provisions of the enrolment form, which was duly signed by the Complainant at the time of admission of her son. The forum rejected this claim by citing FIITJEE Ltd. v. Dr. Minathi Rath where it was held that FIITJEE Ltd. could not charge full advance fee for two years and held the Complainant entitled for receipt of refund of fee taken in advance from him by FIITJEE.¹⁰

This case established that no one will be allowed to be on an advantageous position and the interests of, especially, the poor customers are paramount.

2.3.3. RIGHT TO ASSURED ACCESS:

9 (Appeal No. 109 of 2019) Chandigarh CDR.

¹⁰ *Landmark Judgements on Consumer Law and Practice, 2008-2020*, by Prof. Dr. Ashok R. Patil, published by Ministry of Consumer Affairs, Food & Public Distribution, Government of India, New Delhi & Chair on Consumer Law and Practice, National Law School of India University, Bengaluru, Karnataka

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Section 2(9)(iii), the right to be assured, wherever possible, access to a variety of goods, products or services at competitive prices.

Right to be informed has been categorically given to the consumers under the Consumer Protection Act, 2019, and this includes the information about competitive pricing of goods and services.

Where two firms have got into aggressive and competitive trade practices to entice the customers. These practices raise questions about truthfulness and fairness of representation of products, services, advertisements, and schemes and modalities for promotion of products and services¹¹.

In a 2021 case¹², the Competition Commission of India penalised Maruti Suzuki India Limited to the tune of INR 2 billion (approx. USD 27 million) for restricting and controlling the discounts offered by its dealers to the end consumers. Such conduct by India's leading passenger vehicle manufacturer was held to be anti-competitive resale price maintenance (RPM) and said, "*...RPM can prevent effective competition both at the intra-brand level as well as at the inter-brand level. When a minimum RPM is imposed by the manufacturer upon the distributors, the distributors are prevented from decreasing the sale prices beyond the imposed limit. In other words, the mechanism does not allow the distributors to compete effectively on price.*"¹³

Even though the above case was violative of Competition Act, 2000, it is important to know that competition law and consumer law work like hands and glove to provide the consumer with healthy demand and supply environment.

¹¹ Legal Responses to Economic Liberalization: The Case of Unfair Trade Practices, Akhileshwar Pathak, Vikalpa, Volume 29, No 3, July - September 2004

¹² Competition Commission of India, Suo Moto Case No. 1 of 2019

¹³ Penalty for penalty: CCI penalises Maruti Suzuki for indulging in resale price maintenance, By Kirthi Srinivas, Shreya Joshi & CAM Competition Team on August 31, 2021

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2.3.4. RIGHT TO BE HEARD:

Section 2(9)(iv), the right to be heard and to be assured that consumer's interests will receive due consideration at appropriate forum.

Section 2(9)(v), the right to seek redressal against unfair trade practice or restrictive trade practices or unscrupulous exploitation of consumers.

The right to be heard can be found in the Act by its consumer redressal provisions¹⁴. Provisions have been made under the New Act to establish the Central Consumer Protection Authority¹⁵ to regulate matters relating to violation of rights of consumers, unfair trade practices and false or misleading advertisements which are prejudicial to the interests of public and consumers and to promote, protect and enforce the rights of consumers as a class.

The 2019 Act provides for a robust mechanism with three redressal agencies on a district¹⁶, state¹⁷ and national¹⁸ level. The District Commission can hear cases upto Rupees One Crore, the State Commission hears cases that are more than One Crore Rupees upto Rupees Ten Crore, and the National Commission hears cases above Rupees Ten Crores.

The 2019 Act also provides for online/e-filing of complaints with the Consumer Commission present near the place to their residence or work.

Provisions are made for hearing and/or examination of parties through video-conferencing.

2.3.5. RIGHT TO EDUCATION AND AWARENESS

Section 2(vi) the right to consumer awareness.

¹⁴ Chapter IV of the Consumer Protection Act 2019

¹⁵ Section 10 of the Consumer Protection Act 2019

¹⁶ Section 28 of the Consumer Protection Act 2019

¹⁷ Section 42 of the Consumer Protection Act 2019

¹⁸ Section 53 of the Consumer Protection Act 2019

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The famous “Jaago Grahak Jaago” slogan from the multimedia awareness campaign undertaken by the Department of Consumer Affairs can be traced down to the right to education and awareness of the consumers.

Section 18 of the 2019 Act makes provisions for the Central Government to spread and promote awareness on consumer rights.

3. FRAUDULENT PRACTICES:

3.1 DARK PATTERNS:

With the advancement of e-commerce and making purchases online, the competition has risen exponentially. The retailers are resorting to manipulative trade practices to influence the choices of the consumers. These practices are (in)famously called ‘dark patterns’.

It is not unusual for customers to add products to an e-com shopping cart, only to abandon the cart and move on to another website. This is potentially a loss to the seller, who then resorts to explicit, deceitful design choices that manipulate the user into proceeding with the purchase, or making choices that they might not have otherwise done¹⁹. Gray et al. (2018) defines dark patterns as explicit, deceptive design choices that are created by understanding human psychology and manipulating it in a way that are not in the user’s best interest²⁰. To curb this practice, the Department of Consumer Affairs issued a press note in August 2023 for e-commerce companies and industries to refrain from dark practices²¹. In its Guidelines for Prevention and Regulation of Dark Patterns, 2023, the Department of Consumer Affairs has enumerated specific practices of dark patterns²². They are given below with suitable illustrations²³ for better understanding:

¹⁹ Gray, Kou, Battles, Hoggatt and Toombs 2018 in Dark Patterns and their use in E-Commerce, Emma Nevala, 2020

²⁰ *Supra*.

²¹ Press Information Bureau, Department of Consumer Affairs proactively tackling challenges presented by ever-evolving online sector

²² Annexure 1, Central Consumer Protection Authority Notification vide 30th November 2023

²³ *Supra*

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i. False Urgency

Presenting false data on high demand without appropriate context. For instance, “Only 2 rooms left! 30 others are looking at this right now”.

ii. Basket Sneaking (includes of additional items such as products, services, payments to charity or donation at the time of checkout from a platform, without the consent of the user).

Automatic addition of paid ancillary services with a pre-ticked box or otherwise to the cart when a consumer is purchasing a product or service; automatically adding travel insurance while a user purchases a flight ticket.

iii. Confirm Shaming (means using a phrase, video, audio or any other means to create a sense of fear or shame or ridicule or guilt in the mind of the user)

A platform for booking flight tickets using the phrase “I will stay unsecured”, when a user does not include insurance in their cart;

iv. Forced Action

Forcing a user to share personal information linked with Aadhar or credit card, even when such details are not necessary for making the intended purchase.

v. Subscription Trap

Making cancellation of a paid subscription impossible or a complex and lengthy process; or hiding the cancellation option for a subscription.

vi. Interface Interference

A ‘X’ icon on the top-right corner of a pop-up screen leading to opening-up of another advertisement rather than closing it.

vii. “Bait and Switch”

A seller offers a quality product at a cheap price but when the consumer is about to pay or buy, the seller states that the product is no longer available and instead offers a similar looking product but more expensive.

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viii. Drip Pricing (whereby elements of price are not revealed upfront)

A consumer is booking a flight, the online platform showcases the price as X at the checkout page, and when payment is being made, price Y (which is more than X) has been charged by the platform to the consumer.

ix. Disguised Advertisement

Posing, masking advertisements as other types of content such as user generated content or new articles or false advertisements, which are designed to blend in with the rest of an interface in order to trick customers into clicking on them.

The expression “disguised advertisement” shall also include misleading advertisement as defined in clause 2(28) of the Act and the “Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022”.

x. Nagging

Websites asking a user to download their app, again and again.

xi. Trick Question

While giving a choice to opt, “Do you wish to opt out of receiving updates on our collection and discounts forever?” using phrases like, “Yes. I would like to receive updates” and “Not Now”, instead of the option, “Yes”.

xii. SaaS billing (refers to the process of generating and collecting payments from consumers on a recurring basis in a software as a service (SaaS) business model)

No notification is given to the user when free trial is converted to paid.

xiii. Rogue Malwares (using a ransomware or scareware to mislead or trick user into believing there is a virus on their computer).

When a pirating website/app promises the consumer to provide free content (audio or audio-visual or others) but actually leads to an imbedded malware when the link is accessed.

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3.2 DECEPTIVE ADVERTISING:

“Redbull gives you wings”. Does it really? Will this famous slogan by the FMGC company Red Bull Pvt. Ltd. come under the purview of deceptive advertising since it claims to give you something that a fizzy beverage cannot? Well, Red Bull was sued for disappointing its customers with the claims it made in its slogan in 2014 and had to pay \$13 Million in compensation to settle a class action suit.

3.2.1 HOW TO KNOW WHICH ADVERTISEMENT IS MISLEADING?

3.2.1.1 DEFINITION OF MISLEADING ADVERTISEMENT

The 2019 Act defines a misleading advertisement as, “an advertisement, which — (i) falsely describes such product or service; or (ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or (iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or (iv) deliberately conceals important information”²⁴.

This definition acts as a barometer of testing the intention of an advertisement.

3.2.1.2 THE THEORY OF NECESSARY IMPLICATION

Additionally, while trying to decipher if an advertisement is deceiving, one must rely upon the ‘theory of necessary implication’ which states that only evidence which are so strong that they cannot be ignored and are taken to be ‘probably true’, no matter how indirect, are admissible in a court of law.

²⁴ Section 2(28) Consumer Protection Act, 2019

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3.2.1.3 GUIDELINES FOR PREVENTION OF MISLEADING ADVERTISEMENTS AND ENDORSEMENTS FOR MISLEADING ADVERTISEMENTS

The Central Consumer Protection Authority issues specific guidelines in 2022 for prevention of misleading advertisements and endorsements for misleading advertisements.

The guidelines are applicable to all types of advertisements published on television, radio, print, and social media. They are in addition to and not in derogation of such regulations in other laws like the Press Council Act, 1978 (37 of 1978) and the Cable Television Networks (Regulation) Act, 1995 (7 of 1995)²⁵.

This notification lays down conditions²⁶ for the advertisements to be non-misleading and valid.

An advertisement shall be considered to be valid and not misleading, if–

- a. it contains truthful and honest representation;
- b. it does not mislead consumers by exaggerating the accuracy, scientific validity or practical usefulness or capability or performance or service of the goods or product;
- c. it does not present rights conferred on consumers by any law as a distinctive feature of advertiser's offer;
- d. it does not suggest that the claims made in such advertisement are universally accepted if there is a significant division of informed or scientific opinion pertaining to such claims;
- e. it does not mislead about the nature or extent of the risk to consumers' personal security, or that of their family if they fail to purchase the advertised goods, product or service;
- f. it ensures that the claims that have not been independently substantiated but are based merely on the content of a publication do not mislead consumers;

²⁵ CCPA's guidelines on 'Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022', by Keerthana Thangavel, Citizen Consumer and Civic Action Group

²⁶ Section 4 of Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022

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- g. it complies with the provisions contained in any other sector specific law and the rules and regulations made thereunder.
- h.

3.2.1.4 CASE STUDY

To understand the application of the abovementioned definitions, theory and guidelines, let us take a look at the case of *VLCC Health Care Ltd. Vijay Aggarwal*²⁷:

In March 2015, the respondent took VLCC's weight loss program (A)+(B) for reduction of 5 kg weight and 4-inch loss of tummy circumference within one month, and paid advance for the program amounting to Rs. 50,000. The respondent visited VLCC for the sittings as detailed by them but there was no visible result. The respondent even discussed the matter with VLCC stating that he had undertaken 30 sessions but there has been no progress on weight loss, and he could manage to lose 1Kg by diet control only, and thus sought refund. In order to allure the respondent, VLCC showed him an imported costly machine through which the treatment would be done. Thus, the respondent was induced to take up the program and money back guarantee and pay another amount of Rs.28,000 again on 31-03-2017. However, upon observing no improvement in weight loss and inch reduction, the respondent took the matter to the concerned Court, i.e., State Consumer Dispute Redressal Commission in Chandigarh.

VLCC argued that the respondent was satisfied with his first weight loss program which is why he chose to purchase the new treatment; if there was any sort of dissatisfaction, the respondent would not have gone ahead to buy the second program. It was further argued that the respondent did not remain regular for the treatment nor followed his diet as per the terms of the treatment despite several suggestions by VLCC's representatives. The futility of the weight loss program

²⁷ VLCC Health Care Ltd. v. Vijay Aggarwal, Appeal No. 14 Of 2022, decided on 10-08-2022.

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was due to the respondent's own unhealthy dietary habits and not due VLCC's alleged deficient service. It was submitted that the respondent had given a specific undertaking duly signed by him that he understands that no guarantee could be given to him regarding the result and outcome of the program and in circumstances of unsatisfactory results due to factors beyond the control of the staff of VLCC, he shall not be entitled to claim/damages or to hold VLCC or its staff liable.

Perusing the facts, contentions and reasoning behind the District Commission's Order, the Bench pointed out that the contention raised by VLCC vis-a-vis the disclaimer is not sustainable in the eyes of the law because VLCC's own advertisement loudly and proudly claimed- "*Lose 4 Kgs in 30 days or take your money back!*" The State Commission relied on its precedent in *Shipra Sachdeva v. VLCC Health Care Ltd.*, [First Appeal No.93 of 2008], which dealt with similar issues as raised in the instant appeal. The State Commission also relied on NCDRC's decision in *Divya Sood v. Gurdeep Kaur Bhuhi*, 92006 SCC OnLine NCDRC 760, which raised the concerns surrounding "*tempting advertisements, giving misleading statements (...) persons lured to pay large amount to such bodies in a hope that they can reduce their weight by undergoing the so-called treatment*". It was observed that the acts of allurements and unfair trade practice via misleading emails and advertisements, wasted the respondent's precious time, energy and money over a weight loss program that was not fruitful eventually. With the afore-stated observations, the State Commission held that VLCC's advertisements claiming, "*Lose 4 Kgs in 30 days or take your money back*", squarely falls under the definition of 'misleading advertisement' as defined in Section 2(28) of the Consumer Protection Act, 2019. Therefore, the appeal was dismissed.²⁸

Clearly, the SCDRC's judgement was based on the parameters laid down under the 2019 Act and the 2022 Guidelines.

²⁸ SCDRC| Consumers should not suffer due to VLCC's unfair trade practices of giving misleading ads and then slapping them with a disclaimer regarding outcome of their programs – SCC Online Times

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3.3 PRICE GOUGING

The phenomenon of price gouging occurs when companies raise the price of their goods and services unfairly and excessively. And this unfair trade practise usually happens during a crisis like a national or an environmental emergency. It will be interesting to note that India does not have specific legislations to target this faulty practice. But states, from time to time and emergency to emergency implement measures to control price gouging. Additionally, India has the Essential Commodities Act of 1955 that empowers the government to regulate and monitor the production, preservation, supply, distribution and price of the products that are enumerated in the Act as “essential”.

But price gouging should not be confused with inflation. Inflation is a general increase in price caused by economic factors such supply and demand, whereas, price gouging is an unfair trade practice used to force consumers to buy goods at a higher rate due to emergencies.

3.3.1 ABUSE OF DOMINANT POSITION

By the virtue of various legislations and orders issued from time to time, it is clear that the sellers, distributors...essentially non-consumers²⁹ abuse their dominant position in the market to manipulate the prices of essential commodities and leave no choice to the customers.

Under the Competition Act, 2002, dominant position is defined under Section 4 to mean a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to: operate independently of competitive forces prevailing in the relevant market; or affect its competitors or consumers or the relevant market in its favour.

And abuse is defined under the same section as:

²⁹ Refer to Consumer vs Non-Consumer section of this chapter.

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(2) There shall be an abuse of dominant position 4 [under sub-section (1), if an enterprise or a group].—

(a) directly or indirectly, imposes unfair or discriminatory—

(i) condition in purchase or sale of goods or service; or

(ii) price in purchase or sale (including predatory price) of goods or service.

In the time of the COVID-19 pandemic, price gouging was seen globally. Essential items like food, water and off-the counter medication were being sold at exponential prices. But those fall under Section 3 of the Essential Commodities Act, 1955; what about face masks and sanitisers? To curb this, the Ministry of Consumer Affairs, Food and Public Distribution issued an order adding surgical and N95 masks and hand sanitizers to the list of essential commodities under the 1955 Act³⁰ and the State governments were advised to take measures to maintain the demand-supply balance of sanitizers³¹.

Other legislations such as Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, Competition Act, 2002 and Industries (Development and Regulation) Act, 1951 also provide a framework for checks and balance on price gouging. Moreover, Indian Courts possess the inherent power to pass orders on the basis of justice and equity.

But, if the pandemic has taught us anything, it is that India should uphold its commitment to the United Nations Guiding Principles on Business and Human Rights and introduce price gouging laws.

4. RESPONSIBILITIES OF A CONSUMER

³⁰ Ministry of Consumer Affairs, Food And Public Distribution (Department Of Consumer Affairs) Notification New Delhi, the 13th March, 2020

³¹ No. 1(2)/2020-SP-I, Government of India, Ministry of Consumer Affairs, Food and Public Distribution, 19th March, 2020

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The only fair conclusion to this chapter would be listing down the responsibilities of the consumers to help prevent fraudulent trade practices.

- i. Education: Several articles are printed online and offline about the trade practices and trends in India and around the world. Similarly, the government also publishes guidelines and notifications that can be accessed for free. It is the duty of the consumer to keep themselves updated.
- ii. Awareness about the quality of product: Most product and services have the details about its production and manufacturing written, either on the product, or on the website. Additionally, with the advent of the internet, there are abundances of reviews provided by fellow consumers. These are essential information that should be thoroughly read and researched before making a purchase.
- iii. Exercise of Rights: As mentioned in the chapter, there are district, state and national level forums available to aid the consumers. Besides this, there are provisions made for online filing/e-filing of complaints. The consumers must make full use of this against any unfair trade practice.