

AMOGHVARTA

ISSN : 2583-3189



Consumer's Right to Repair Under Indian Law: An Analysis

ORIGINAL ARTICLE



Authors

Dr. Haribansh Singh
Associate Professor

Kaushal Kumar
Research Scholar
Department of Law
University of Allahabad
Prayagraj, Uttar Pradesh, INDIA

Abstract

In the earlier, a consumer was treated as king because he has money that a marketer wants. The sellers or a manufacturers were dependent on customers for their business activity. But the position of the customer has changed due to advent of new technology and consumer is now at receiving end. The marketers have exploited their consumers by making unfair implementation in their products such as making products of non-repairable design, unavailability of spare parts, unfair warranty conditions, etc. In this paper it has been tried to identify the unfair practice strategies, which is prevalent in the Indian market. Right to repair, its advantages or disadvantages have also been analysed.

Key Words

Consumer Right, Non-biodegradable, e-waste, Right to Repair, Manufacturer, Indian Law.

Introduction

The concept of 'consumer's right to repair' lies in the notion that manufacturers must be compelled by the legislation to provide reasonable repair services to their customers to whom they had sold their goods and allow them to repair and modify the goods. Apart from providing repair services, the legislation must also ensure that the repair cost is reasonable; it should be proportional to the original price of the sold product.

For a long time most of the technology companies had made some significant changes in their products and policies where the parts of the sold products and repair documents are refused for the local technicians as they are prohibited to repair the goods. For instance- the products like ear buds, PCB and Compressor of refrigerator, are comes under the category of unrepairable even for their authorize service center. However if the product is under warranty then it is replaced by new one. It seems to be an unfair market strategy where in order to gain more profit the manufacturers make it impossible to repair the goods by designing the products in such a sealed way that they are almost impossible to repair without causing permanent damage to it. The purpose of the whole practice is to maximise the profit by compelling the consumers to take new products while such products can be easily repaired.

Historical Background

The emergence of the Right to Repair is not a recent development but it is evolved gradually. The earliest history starts in the 1920s, when General Motors (GM) an automotive companies started to manufacture

their cars which is harder to do independent repairs¹. In 2001, for the first time Motor Vehicles Right to Repair Act was brought up but it failed. This was the first of many attempts to establish a Right to Repair for automobiles.

In 2012, the idea of right to repair was got recognition when Massachusetts passed the United States first Motor Vehicle Owners' Right to Repair Act 2012. This Act obligates the manufacturers to provide necessary documents such as repairing manuals and other necessary information for the convenience of unauthorised technicians. In India's context, currently there is no regulation regarding the right to repair in India. On December 2022 Ministry of Food and Consumer Affairs launched Right to Repair Portal for Consumers.

Advantages of 'Right to Repair'

The 'Consumers right to repair' refers to the concept that they have absolute right to repair, modify and maintain their owned product without facing any burden from manufacturer. This concept is more significant in the context of electronic goods and also in few other mechanical goods. Following points are advocating for the advantages of right to repair:

1. **Ownership and Control:** Consumer is the owner of the product so he has absolute right to repair his product independently without any fear of loss of warranty coverage or end of company support. It also includes freedom to choose where and how he/she wants to repair their devices.
2. **Cost Savings:** It empowers the consumers' to access affordable repair options or fixing possible faults by themselves instead of paying for expensive manufacturer repairs or replacements. So, it is saving money of consumer.
3. **Environmental Impact:** On the one hand world is facing unpredicted environmental problem. On the other hand companies are involving in the practice of generating unnecessary products which caused pollution in the environment. Repairing and extending the lifespan of products can reduce the need for premature disposal of non-biodegradable waste, which is significant for environmental concern. It promotes a more sustainable environment.
4. **Competition in the Repair Market:** Competition is always good for consumer and market. Allowing third-party repair services to compete with manufacturing company can contribute in new innovations, cost-effective solutions and efficiency in the repair industry.
5. **Availability of Spare Parts:** Production of ample amount of every spare possible spare parts by Manufacturer Company helps the unauthorized professional technicians to repair. So that a consumer's product should not remain useless due to unavailability of spare parts.

Disadvantages of 'Right to Repair'

Advantages and disadvantages are the opposite side of the point. Right to repair add the utility an option to the consumer. But there are some potential disadvantages and concerns also. These are as concerns related to product safety. Unauthorized repairer may result in less life span of goods because they use cheap and unsuitable components in repairing which caused breach of data and privacy, safety hazards, etc.² Therefore, it is necessary that there should check on it. Only an authorized technicians should be allowed to perform the repair in the interests of consumer safety. Following are the major advantages are identified which affect right of the consumer:

1. **Consumer Safety:** Allowing unskilled, untrained technician to repair devices may lead to safety issues and accidents or damage to the products. Improper repairing may affect the consumer safety.
2. **Complexity of Modern Devices:** With the development of science and technologies most of the modern electronic devices are possess very complex engineering so it is very difficult for consumers or third-party repair shops to perform repairs without adequate knowledge and training.

3. **Environmental Impact:** Although right to repair helps in reducing non bio-degradable waste but it might also lead to improper and premature disposal of goods or its components if repairs are improper and done by unexperienced and unqualified technicians. Thus, ending in more non-biodegradable waste especially e-waste.
4. **Data Security:** Allowing third-party to access software, firmware, or other electronic systems for repair may increase the risk of data security and privacy concerns. An authorized technician repairer have strict protocols to protect user data during authorized repairs to prevent user data.³
5. **Publishing of Repair Documents:** Under this policy a manufacturing company is bound to publish the repair documents which would help the independent repair professionals to perform repairs. It includes repair manuals, diagnostic tools, and necessary software to identify and fix issues with their products. Compelling to publish such documents might be infringement of their rights because it may include some strategic information related to the field, which might be get copied from other manufactures.

Recent Development

In India, currently, there is no any express legislation on right to repair policy. In 2014 the Competition Commission of India (CCI) upheld a landmark judgement in the case of *Shri Shamsher Kataria v. Honda Siel Cars Limited & Ors*⁴. Under this judgement 14 automobile manufacturing companies were held liable for indulging in anti- competitive practices by selling spare parts only to authorised dealers and restricted for others.

Similarly in the case of *Sanjeev Nirwani v. HCL*, the District Consumer Disputes Redressed Forum (East), NCT OF Delhi, observed that the term “services” under the Consumer Protection Act of 1986 is not restricted to warranty period but in fact it extends to beyond the warranty period for paid services. Therefore a manufacturer company is under an obligation to supply the spare parts of product even after the expiry period of product.

On 13th July 2022, the Department of Consumer Affairs had constituted a committee to develop a framework for ‘Right to Repair’ chaired by Nidhi Khare (additional secretary of the Department of Consumer Affairs).⁵ After this on December 2022 Food and Consumer Affairs Minister Piyush Goyal launched Right to Repair Portal for Consumers.

Under this portal it is mandatory for manufacturers to share their product details such as repair manuals, diagnostic tools, etc. with their customers so that they have multiple options to repair their product either by themselves or by some third party technician instead of solely depending upon manufacturer. The companies like Samsung, Apple, Xiaomi, OPPO, Realme, Nokia, etc. are registered under this portal.⁶

Under this portal a customer can register his grievances, where after registration a distinct complaint number and a deadline for resolution are assigned to the customer. Moreover, customers can also use this portal to get precise information related to their product.

Apart from the above, a few other laws are also indirectly relevant in the context of the right to repair. Such as:

1. **Consumer Protection Act, 2019:** This act is the main legislation for safeguarding consumers’ rights in India. Although, it doesn’t specifically mentions the right to repair but it provides a broader framework that could be interpreted to include right to repair also, especially against unfair trade practices.
2. **Competition Act, 2002:** This Act was enacted to prevent unfair practices that have an adverse effect on competition and to protect the interests of consumers. Since, it prohibits anti-competitive practices so it also includes those practices that could the hinder consumers’ ability to repair their products. For example, if a company prevents independent repair from third party by keeping them debarred from spare parts or repair manuals, then it could be considered as an anti-competitive practice.

3. **E-Waste (Management) Rules, 2016:** This act mandates the manufacturers to facilitate the recycling of e-waste to mitigate its environmental impact. By this, it indirectly influence right to repair by urging the manufactures to make products of repairable design.
4. **Intellectual Property Right Laws:** These are the laws that gives exclusive rights to people from infringement for their creation or invention. However, “doctrine of exhaustion” to this which limits the rights of intellectual property owner for after the sale of their products⁷. Thus, a consumer have absolute right to do whatever he/she wants to do with his purchased product including right to repair.

Challenges in Implimentation of Right to Repair Policy in India

The concept of right to repair policy enables the consumers to get repairing servicers on his choice and convenience even by third party rather than solely depending on original manufacturer company. But at the same time there are some serious challenges in implementation of right to repair policy. Thus it is necessary to strike a balance between consumer rights and legitimate concerns of manufacturers. These challenges are as follows:

1. **Capital Loss to Manufacturer Company:** Allowing consumer to get repair his product at his own choice will result in serious capital losses to the company because few percentage of income source of company is generated from their authorised service centres.
2. **Quality Control:** Manufacturers may argue that permitting third-party repairs may Compromise the quality and reliability of the devices because it only authorized service centres which possess the necessary expertise and genuine parts to ensure proper repairs.
3. **Brand Reputation:** Allowing third-party repair services could void warranties or lead to unsafe modifications. It could potentially compromise safety standards which is infringement to brand reputation. Therefore restricting customers or third party repairers from repairs helps to maintain brand reputation of manufacturer.
4. **Protection of Intellectual Property:** Manufacturers often claim that allowing third party unauthorized repair services may lead to intellectual property theft of proprietary technologies.
5. **Consumers Awareness:** Raising awareness among consumers about their right to repair is the fundamental aspect of this policy without which the purpose of this policy would be defeated. It may lead to exploitation of either consumers or manufacturers.
6. **Prohibition on Software Locking:** Most of the times manufacturing companies imposes software locks on electronic devices to prevent unauthorized technicians from doing repair. Allowing consumer or a professional repairer to bypass such restrictions without facing any complexities is convenient in repairing but at the safe time it might be risky for their cybersecurity and data security.

Conclusion and Suggestions

The right to repair is a multi-dimensional concept that plays a crucial role in balancing consumer rights and manufacturer’s concerns, preserving the sustainability of environment, promotes marginalised repairers, promotes innovation and cost effective repairs, etc. In India, though there is no any direct statutory legislation to regulate affairs related to consumer repairs, Ministry of Food and Consumer Affairs is credited in launching the Repair Portal for Consumers. The consumers grievances related to product service can be addressed by this portal. But the effect of this is portal is very limited like canine without teeth, because it lacks the support of legislation.

To combat/balance the interest of consumers and manufacturers are also the serious issue which requires conduction by the policy makers. In order to preserve the interest of consumer, environment and third party service provider following are some important suggestions for the implementation of right-to-repair policy:

1. **Formation of Statute:** for the proper implementation of ‘right to repair’ policy it is crucial that there must be specific legislation.

2. **Clear Provisions:** The enacted legislation should incorporate specific rules with suitable punishment for the noncompliance of laws. The legislation shall also prescribed time period within which the proceeding of cases must be disposed.
3. **Appeal and Advisory Board:** An appeal and advisory board should constituted for considering the appeals in case, if consumer is not satisfied from previous award and for recommending necessary changes.
4. **Access to Information:** All the manufacturing company must publish their possible information. Such as repair manuals, diagnostic tools, software details etc.
5. **Convenient Design:** From a long time many products are designed by manufacturers in such war that there repair is almost impossible without causing permanent damage to the product. Such as compressor of refrigerator, ear buds, etc. Thus in order to implement right to repair policy it is crucial to designed products in repairable design. Encourage eco-friendly and sustainable product design practices.
6. **Availability of Spare Parts:** The monopoly of manufacturers that only service centers have availability of spare parts needs to be abolished. Rather it should be made mandatory for companies to ensure the availability of ample amount of spare parts for the purchase by consumers and third-party repair shops at reasonable prices.
7. **Training Programs:** It is necessary to provide training facilities for the third party repairers so that repairs conducted by third-party repair in same prudent manner as an agent of manufacturer. This would also help in service centers to consider the products under warranty even it has been repaired by some third party repairer.

References

1. Ahuja, V.K. (2013) *Law Relating to Intellectual Property Rights*, Lexis Nexis, Gurgaon, 2nd edn., Page Number ????
2. Maxham, Alexander (2022) "What is Right to Repair? Everything You Need To Know!" *Android Headlines*, available at : <https://www.androidheadlines.com/right-to-repair.html> (last visited January 30, 2024).
3. "Department of Consumer Affairs sets up committee to develop comprehensive framework on the Right to Repair," available at : <https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1841403> (last visited January 31, 2024).
4. "Right to Repair India," available at : <https://righttorepairindia.gov.in/> (last visited January 31, 2024).
5. "Shri Shamsheer Kataria vs Honda Sael Cars India Ltd. & Ors on 25 August, 2014," available at : <https://indiankanoon.org/doc/100402341/> (last visited April 14, 2024).
6. "The Right to Repair Act in India: Exploring Some Pros and Cons," available at : <https://www.linkedin.com/pulse/right-repair-act-india-exploring-some-pros-cons> (last visited January 31, 2024).
7. "The Right to Repair: Recent Developments in the USA," available at : https://www.wipo.int/wipo_magazine_digital/en/2023/article_0023.html (last visited January 30, 2024).

---==00==---