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The Right To Repair In India: A Consumer's Right

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ABSTRACT

The Right to Repair (R2R) movement has gained momentum globally as consumers advocate for greater access to repair information, tools, and parts for the products they own. The 'Right to Repair' movement signifies a transformative shift in consumer rights, sustainability endeavours, and legal frameworks, both internationally and within India. This paper explores India's proactive measures in implementing the Right to Repair, including the establishment of the Right to Repair Portal and proposed legislative frameworks, demonstrating a commitment to address consumer needs amidst restrictive trade practices. By identifying key sectors and leveraging existing legal precedents, India aims to balance intellectual property rights with consumer choices effectively. Legal precedents, including the Shamsher Kataria v. Honda Siel Cars India Ltd. and Sanjeev Nirwani v. HCL cases, contribute to evolving jurisprudence on the Right to Repair, emphasizing the intersection of competition law, consumer protection, and repair rights. While initiatives like the Right to Repair Portal signify progress, challenges and opportunities for refinement remain. Enhancing portal functionality, expanding its scope, and addressing manufacturers' concerns are crucial for empowering consumers and promoting sustainable practices. Ultimately, this paper explores that how the Right to Repair movement holds significant promise for advancing consumer rights, fostering environmental sustainability, and driving innovation in India and beyond, contingent upon ongoing collaboration and dialogue amongst stakeholders.

KEYWORDS

Right to Repair, Consumer Rights, Sustainability, India, Legal Frameworks

Introduction

The expanding 'right-to-repair' legislative movement aims to enhance consumers' ability to repair their products affordably and conveniently. This involves mandating manufacturers to disclose repair information, offer diagnostic tools, and supply necessary parts. This movement has gained traction globally, with several countries considering and implementing right-to-repair laws. For instance, in Europe, manufacturers are obligated by law to provide spare parts for their products for a period of up to 10 years. U.S. President Joe Biden issued an executive order in July 2021 urging the Federal Trade Commission (FTC) to intervene and prohibit companies from imposing restrictions that prevent customers from repairing their own products, spanning from laptops and smartphones to cars, washing machines, and heavy manufacturing equipment. President Biden's executive order directed the Federal Trade Commission (FTC) to develop new regulations supporting the right to repair.[1] Additionally, various U.S. states have enacted their versions of right-to-repair legislation, reflecting the growing interest and momentum behind this movement.[2]

As products increasingly become challenging to repair, activists and consumer organizations are championing the 'Right to Repair' movement. This movement seeks to empower consumers to independently repair their electronic products or enlist the services of third-party technicians. Thus, the concept of the 'right to repair' is straightforward and crucial- when individuals purchase a product, they should have full ownership and control over it. This includes the freedom to use, modify, or repair the product as desired. However, despite legal provisions allowing for repairs, consumers often face restrictions imposed by manufacturers. These limitations, such as restricted access to repair tools, documentation, and firmware, curtail owners' ability to repair their products themselves or enlist third-party technicians.

Consumers invest significant sums in technology that quickly becomes outdated, leading to a cycle of discarding and replacing devices due to costly or impossible repairs. Technological giants exacerbate this issue by withholding repair documentation, using proprietary screws to impede repairs, and limiting compatibility with third-party products. For instance, popular wireless earbuds like Apple AirPods and Samsung Galaxy Buds are notoriously difficult to repair without causing irreparable damage. Additionally, manufacturers sometimes employ 'planned obsolescence', deliberately designing products with shorter lifespans to prompt frequent replacements.

At the core of the 'right to repair' movement is the recognition that without competition, manufacturers can exploit consumers by charging exorbitant repair costs and limiting alternative repair options. Consequently, there is a global push by governments and antitrust regulators to

[1] Ramasubramanian, S. (2021, July 21). Right To Repair movement and how Big Tech is reacting to it. The Hindu. Retrieved from https://www.thehindu.com/sci-tech/technology/right-to-repair-movement-explained/article35440170.ece

[2] Yang, L., Jin, C., & Zhu, C. (2023). The Unintended Consequences of Right-to-Repair Laws. Harvard Business Review Home, January 19. Retrieved from https://hbr.org/2023/01/research-the-unintended-consequences-of-right-to-repair-laws

acknowledge and protect this right.[3] While India has yet to formally recognize the right to repair, other jurisdictions have introduced policies or proposed legislation in its favour. In this context, this research paper aims to examine the evolving discourse surrounding the 'right to repair' within the realms of competition law and the digital landscape in India.

Right To Repair: Concept And Meaning

The concept of the right to repair emphasizes consumers' entitlement to maintain and modify the products they purchase. It asserts that consumers should have the autonomy to repair their own electronic devices, appliances, and other goods, either independently or with the assistance of third-party technicians. This concept challenges restrictive practices employed by manufacturers, such as withholding repair manuals and diagnostic tools or implementing software locks that hinder unauthorized repairs. By promoting repairability, the right to repair aims to reduce electronic waste, empower consumers, and foster a more competitive marketplace. The concept of the right to repair is grounded in the idea that consumers should have the freedom and capability to repair, modify, and maintain the products they own. It extends beyond the initial purchase transaction, emphasizing an ongoing relationship between consumers and their possessions. Key elements of the right to repair concept include:

i. ***Autonomy And Control-*** The right to repair underscores the principle that ownership of a product involves more than just its initial purchase. Consumers should have control over the repair and modification of their possessions, allowing them to extend the lifespan of products and make choices that align with their preferences and needs.
ii. ***Transparency And Information Access***- Manufacturers are often criticized for restricting access to essential information, such as repair manuals, diagnostic tools, and spare parts. The right to repair advocates for transparent practices that enable consumers to access the information required for repairing their products. This includes providing documentation, guidelines, and tools necessary for effective repairs.
iii. ***Environmental Sustainability***- Recognizing the environmental impact of electronic waste, the right to repair promotes sustainable practices by encouraging consumers to repair and reuse products instead of discarding them. By reducing the overall volume of electronic waste, this concept aligns with broader environmental conservation efforts.
iv. ***Economic Considerations***- Repairing products can be a cost-effective alternative to replacement, particularly for high-value items like smartphones and appliances. The right to repair concept aims to empower consumers economically by providing them with options to repair their products at a reasonable cost, potentially mitigating financial burdens associated with frequent replacements.
v. ***Promoting Innovation and Competition***- Advocates argue that granting consumers the right to repair fosters innovation and healthy competition. Opening up repair

[3] Ganesh BL, & Ahuja, Muskaan. (2021, November 28). The Need for a "Right to Repair" in India. IndiaCorpLaw. Retrieved from https://indiacorplaw.in/2021/11/the-need-for-a-right-to-repair-in-india.html

options to independent technicians and third-party services can stimulate a more competitive market, leading to improved products, better service quality, and potentially lower overall costs.

vi. ***Legislative And Policy Initiatives***- The right to repair has spurred legislative and policy initiatives globally. Some jurisdictions are considering or implementing laws that compel manufacturers to make repair information, tools, and spare parts more accessible to consumers. These efforts aim to institutionalize the principles of the right to repair and protect consumer rights.[4]

In this way, the concept of the right to repair embodies a multifaceted approach that encompasses consumer rights, environmental sustainability, economic considerations, and the promotion of innovation and competition within the marketplace. It reflects a shift towards empowering consumers to actively engage in the lifecycle management of their possessions, aligning with broader goals of sustainability and responsible consumption.

Overview Of Right To Repair Movement

Imagine purchasing a smartphone at a considerable expense a few years ago, only to find that it struggles to hold a charge now, despite the initial investment. This inconvenience forces you to keep the phone constantly plugged into a power source, defeating its purpose as a mobile device. Discovering that installing a new battery is impossible adds to the frustration. Consequently, you feel compelled to spend yet another substantial sum on a new smartphone, even though the old one functions perfectly well in every other aspect. This scenario is all too familiar, affecting consumers across various electronic devices such as computers, cell phones, smartwatches, wireless headsets, and even cars. Amidst these challenges, a growing movement advocating for the 'right-to-repair' has emerged, pushing for legislation that guarantees access to necessary repair equipment. This movement gains momentum as repairing various devices becomes increasingly difficult, coinciding with global crises stemming from climate change.[5]

The right-to-repair movement advocates for consumer rights, aiming to empower individuals and small businesses to repair and modify their electronic devices, including smartphones, laptops, and vehicles like John Deere tractors.[6] Hatta offers a comprehensive historical overview of this movement, which challenges restrictive policies imposed by large manufacturers that hinder customers from repairing or modifying their products independently.[7] Central to the right-to-repair movement's argument is the contention that the inability to repair products not only limits consumers' freedom to use and maintain their purchases but also

[4] *Ibid.*

[5] Ozturkcan, S. (2023). The right-to-repair movement: Sustainability and consumer rights. Journal of Information Technology Teaching Cases, 0(0), 1–6. Retrieved from https://journals.sagepub.com/home/jittc

[6] Bradley, K., & Persson, O. (2022). Community repair in the circular economy- fixing more than stuff. Local Environment, 27, 1321–1337.

[7] Hatta, M. (2020). The right to repair, the right to tinker, and the right to innovate. Annals of Business Administrative Science, 19, 143–157.

contributes to unnecessary electronic waste[8] and escalates the cost of electronic devices.[9] At its core, the right to repair movement seeks to address the following key issues:

i. ***Obstacles To Repair***- Many manufacturers make it difficult or impossible for consumers to repair their own products by implementing restrictive practices such as using proprietary parts, withholding repair manuals and diagnostic tools, and employing software locks that prevent unauthorized repairs.
ii. ***Environmental Impact***- The inability to repair products leads to increased electronic waste as consumers are forced to discard and replace items that could otherwise be repaired and reused. By promoting repairability, the movement aims to reduce the environmental footprint of consumer electronics and appliances.
iii. ***Consumer Choice And Empowerment***- Advocates argue that the right to repair is essential for preserving consumer rights and promoting economic competition. Allowing consumers to repair their own products or choose independent repair services fosters a more competitive marketplace and gives consumers greater control over their purchases.
iv. ***Economic Implications***- Repairing products can be more cost-effective than replacing them, particularly for expensive items like smartphones and appliances. By enabling consumers to repair their own devices or seek affordable repair services, the right to repair movement aims to reduce the financial burden on consumers and promote a more sustainable approach to consumption.

The right to repair movement has gained momentum in recent years, with legislators, policymakers, and consumer advocacy groups around the world taking action to address issues related to product repairability and consumer rights. In response to growing public pressure, some jurisdictions have introduced legislation aimed at mandating manufacturers to provide access to repair information, spare parts, and diagnostic tools, while others have launched initiatives to raise awareness about the importance of repairability and sustainable consumption practices. The right-to-repair movement has gained significant traction, prompting legislative action in various states across the United States, as well as in the European Union and other countries. This movement has been propelled forward by a diverse coalition of stakeholders, including farmers, independent repair shops, consumer advocates, environmental groups, and technology enthusiasts. Together, they have been advocating for policies that empower consumers to repair their own electronic devices and equipment, thereby promoting sustainability, consumer choice, and economic empowerment.[10]

[8] O'Neill, S. (2021). European Union puts teeth in right to repair. Engineering, 7, 1197–1198.
[9] Eckersall, P., & Grehan, H. (2021). Necessity or choice. Performance Research, 26, 1–4.
[10] Mirr, NA. "Defending the right to repair: an argument for federal legislation guaranteeing the right to repair." Iowa Law Review 105 (2020): 2393–2424.

Right To Repair And Sustainability

The issue of electronic waste (e-waste) has become a pressing concern globally as the proliferation of electronic devices continues unabated. When these devices are designed with limited repairability or intentionally made obsolete, they contribute significantly to the ever-growing e-waste problem. This accumulation of discarded electronics not only poses environmental risks due to hazardous materials but also represents a considerable loss of resources. Recognizing the urgent need to address this issue, countries worldwide are increasingly focusing on managing the entire life cycle of electronic products. This involves not only manufacturing and consumption but also responsible disposal and recycling at the end of a product's life. In this context, ensuring that products are designed to be durable and repairable becomes crucial, as it allows for extended use and reduces the frequency of disposal. However, many manufacturers adopt practices that discourage repairability. They often withhold essential repair information and employ planned obsolescence tactics to incentivize consumers to purchase newer models rather than repairing their existing devices. This strategy perpetuates a culture of disposability and undermines consumers' ability to make informed choices about their purchases. In response to these challenges, the concept of the 'right to repair' has gained traction. Initially, the debate primarily centred on the conflict between manufacturers' proprietary rights and consumers' desire for repairability. However, with growing awareness of environmental concerns, the focus has shifted towards empowering consumers to make sustainable choices and hold manufacturers accountable for their products' life spans. In India, the Department of Consumer Affairs has taken a proactive approach by developing a framework for the 'Right to Repair.' This initiative aims to promote sustainable consumption practices by encouraging manufacturers to prioritize product durability and repairability. By embracing the principles of the 'LiFE' movement (Long-lasting, Full-featured, and Easily repairable), India seeks to not only reduce e-waste but also foster job creation through third-party repair services.

Overall, the 'Right to Repair' movement represents a significant step towards creating a more sustainable and consumer-centric approach to product consumption. By empowering consumers with the tools and information needed to repair and maintain their devices, India can play a vital role in addressing the global e-waste crisis and promoting environmental stewardship for future generations.[11]

Emerging Consumer Need

The evolving landscape of product repair reflects a growing consumer need for accessible and sustainable solutions in maintaining their electronic devices. In recent years, repairing products has become increasingly challenging due to various factors such as limited availability of third-party parts, complex designs that prevent easy access to components, and restrictions on installing custom software to extend device lifespan beyond the manufacturer's support period. This trend is exemplified by products like AirPods, which are engineered to have a relatively

[11] Kundu, S., Mukherjee, V., & Mukherjee, A. (2022, October 19). "Right to Repair"- A Concept and the Indian Road Ahead

short lifespan before being deemed obsolete, contributing to the accumulation of electronic waste.[12]

Manufacturers have employed various strategies to impede repair efforts, including the use of specialized screws, withholding repair instructions, and utilizing adhesives to seal components. While resources like iFixit provide valuable teardowns and repair guides, they may not cover the full spectrum of products available in the market, leaving consumers with limited access to comprehensive repair documentation. Traditionally, consumers have assumed that the products they purchase can be repaired or upgraded over time. However, this assumption is increasingly being challenged as manufacturers prioritize design elements that prioritize convenience or proprietary interests over repairability. Consequently, consumers are seeking ways to advocate for increased repairability, which not only extends the lifespan of devices but also contributes to reducing electronic waste by promoting reuse and repurposing.[13]

One key aspect of enhancing repairability is ensuring access to replacement parts and repair documentation from manufacturers. By empowering consumers with the resources and knowledge necessary to repair their devices, policymakers and consumer advocates aim to shift towards a more sustainable and environmentally conscious approach to product consumption and disposal. Additionally, emphasizing the importance of repairability in product design and manufacturing processes can incentivize manufacturers to prioritize longevity and ease of repair, ultimately benefiting both consumers and the environment.

Industry Resistance

Efforts to introduce 'right-to-repair' legislation aimed at simplifying and reducing the cost of product maintenance for consumers faced resistance from certain quarters. Opponents of these laws, including some businesses and lobbyists, raised concerns about potential security risks, safety hazards, and intellectual property issues associated with granting access to technical information.[14] According to TechNet, an industry group, there were apprehensions that allowing unauthorized repair could create opportunities for criminal exploitation, leading to fraud, data theft, and other security breaches. They cautioned against providing unvetted third parties access to sensitive diagnostic information and tools, citing potential risks to consumer safety. Despite these concerns, advocates for right-to-repair legislation argued that monopolizing aftermarket service parts and maintenance was unjust to consumers. They contended that the modern interconnectedness of devices should not result in exclusive control over repair services. Additionally, the Federal Trade Commission (FTC) examined these arguments and found many of them lacking in merit.[15]

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[12] Taffel, S. (2023). AirPods and the earth: digital technologies, planned obsolescence and the Capitalocene. Environment and Planning E: Nature and Space, 6, 433–454.

[13] *Ibid.*

[14] van der Velden, M. (2021). 'Fixing the world one thing at a time': community repair and a sustainable circular economy. Journal of Cleaner Production, 304, 127151.

[15] FTC. (2021). Nixing the Fix: An FTC Report to Congress on Repair Restrictions. Washington, DC: Federal Trade Commission.

Research conducted by Yang et al. (2023) suggested that the outcomes of right-to-repair policies might not necessarily benefit consumers or the environment. Their study, which focused on 'durable items' like cars, tractors, and cell phones, analysed how manufacturers adjusted pricing strategies in response to repair legislation. Their findings revealed that manufacturers' reactive pricing strategies could have nuanced effects on consumer welfare and environmental sustainability.[16]

A significant argument against advocating for the right to repair revolves around user safety. With the evolution of technology, devices have become more complex and interconnected, making DIY repairs increasingly risky for consumers. Unlike simpler gadgets of the past, modern devices contain combustible materials and intricate components that can pose safety hazards if mishandled. This risk is compounded by the potential for serious injury, tarnishing a company's reputation, as exemplified by the Samsung Galaxy Note 7 incidents. The trend towards miniaturization in technology poses another obstacle to repairability. Unlike older devices that could be repaired with common tools, modern gadgets require specialized equipment and knowledge due to their compact designs and intricate hardware. Some companies, like Apple, intentionally use proprietary screws to prevent unauthorized repairs, thus necessitating certification from the manufacturer for access to specialized tools. Modern tech products are meticulously designed to maximize efficiency within their limited form factors. Additionally, enhancing repairability often requires compromises in efficiency and performance, which may not align with consumer expectations or industry standards. Manufacturers face pressure to maintain competitive edge through optimization, making it challenging to prioritize repairability without sacrificing product efficiency. In a fiercely competitive market, prioritizing repairability can present long-term challenges for manufacturers. Encouraging longevity in products could undermine future sales and revenue streams, as customers repair rather than replace their devices. Subscription-based models offer an alternative revenue stream, leveraging ongoing software updates to generate income from long-term device usage.[17]

Also, the increasing repairability can disrupt the equilibrium of supply and demand, leading to market instability and reduced consumer choice. As product quality decreases due to repairability enhancements, prices may decline, impacting profitability for manufacturers and limiting options for consumers. Maintaining market competition is crucial to ensuring consumer welfare and choice. Further, a lack of incentive to innovate emerges when repairability extends product lifespans and reduces demand for new devices. Manufacturers rely on consumer turnover and technological advancements to drive innovation and justify research and development (R&D) investments. Without a market demand for new products, innovation may stagnate, hindering technological progress and industry growth.[18]

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[16] Yang, L., Jin, C., & Zhu, C. (2023). The Unintended Consequences of Right-to-Repair Laws [Online]. Harvard Business Review. Available at: https://hbr.org/2023/01/research-the-unintended-consequences-of-right-to-repair-laws

[17] See *Supra* Note 14.

[18] *Ibid.*

Global Advancements On Right To Repair

In the realm of global repair law, the pace of progress has been relatively slow, especially in developed nations where influential corporations such as Tesla, Apple, and Microsoft wield significant lobbying power. These industry behemoths have actively opposed the advancement of repair legislation, citing various concerns that have effectively impeded legislative initiatives. One major argument put forth by these corporations is the assertion that allowing consumers or third-party repair technicians to tamper with their products poses risks to consumer safety. They argue that unauthorized repairs could compromise the integrity of the devices, leading to potential malfunctions or accidents that could harm users. This concern over safety is often emphasized as a primary reason to maintain strict control over repair processes and access to repair information. Additionally, these companies raise objections related to intellectual property (IP) rights, contending that liberalizing repair regulations could lead to unauthorized replication or modification of patented technologies. They argue that providing access to repair manuals, diagnostic tools, or spare parts could facilitate reverse engineering or unauthorized modifications, potentially infringing upon their intellectual property and undermining their competitive advantage in the market. By leveraging their considerable influence and resources, these corporations have successfully lobbied policymakers to either oppose or water down proposed repair legislation, effectively stalling progress in this area. As a result, efforts to enact comprehensive right-to-repair laws have faced significant hurdles, leaving consumers with limited options for repairing or modifying their electronic devices and appliances.

- ***Position In United States Of America***

In the United States, the Right to Repair Bill has gained momentum, with proposals introduced in a majority of the 50 states. This widespread effort demonstrates growing recognition of the importance of repair rights among policymakers and consumers alike. However, despite these widespread introductions, substantive progress has been slow, with only New York's Senate thus far voting in favour of such legislation. A notable exception to this trend is Massachusetts, which has emerged as a trailblazer in the right-to-repair movement. Massachusetts became the first and only state to successfully pass comprehensive right-to-repair legislation, marking a significant milestone in the fight for consumer repair rights. This landmark legislation has set a precedent for other states to follow and has sparked renewed momentum in the push for broader repair rights across the country. The passage of comprehensive right-to-repair legislation in Massachusetts represents a significant victory for consumers, empowering them with greater control over the repair and maintenance of their electronic devices and appliances. By enshrining the right to access repair information, tools, and parts, this legislation promotes competition, fosters innovation, and enhances consumer choice in the marketplace. Moving forward, advocates of the right-to-repair movement continue to push for similar legislation in other states, aiming to build on the success of Massachusetts and expand repair rights to consumers nationwide. While challenges and opposition persist, the momentum generated by the passage of right-to-repair laws in Massachusetts and other jurisdictions

underscores the growing demand for greater transparency, accountability, and consumer empowerment in the realm of product repair and maintenance.[19]

- ***Position In United Kingdom***

Across the Atlantic, in the United Kingdom (UK), efforts to address repair rights have led to the enactment of regulations aimed at bolstering consumer access to spare parts. These regulations mandate manufacturers to make spare parts available to consumers, marking a significant step towards enhancing repairability and consumer choice. However, it is important to note that these regulations have a narrow focus, primarily targeting 'electrical appliances.' While the mandate to provide spare parts for electrical appliances represents a positive development, it also highlights a limitation in the scope of repair rights legislation. By narrowly defining the applicability of these regulations to specific product categories, other essential items, such as electronic devices, may fall outside the purview of repair rights legislation. This leaves consumers with limited options for repairing a wide range of products beyond electrical appliances. Despite this limitation, the enactment of regulations mandating spare parts availability for electrical appliances reflects a growing recognition of the importance of repairability and consumer empowerment in the UK. It represents a crucial step towards fostering a culture of sustainability and extending the lifespan of products through repair and maintenance. Moving forward, advocates and policymakers may seek to broaden the scope of repair rights legislation to encompass a wider range of products, ensuring that consumers have access to essential repair resources across various product categories. By addressing gaps in current regulations and expanding repair rights to cover a broader spectrum of goods, the UK can further strengthen consumer protections and promote a more sustainable approach to product usage and disposal.[20]

- ***Position In France***

France has taken proactive steps to enhance repairability by implementing regulations mandating electronics manufacturers to include labels displaying a repairability index on their products. This initiative is aimed at providing consumers with valuable information about the repairability of electronic devices, empowering them to make more informed purchasing decisions. However, despite the apparent benefits of this labelling scheme, there are lingering concerns about its efficacy and transparency. One major issue is the reliance on manufacturers to determine and assign repairability indices to their products. This potential for bias raises doubts about the accuracy and reliability of the information provided to consumers. Critics argue that manufacturers may inflate repairability scores or manipulate the criteria to present their products in a more favourable light, ultimately undermining the integrity of the labelling scheme. Despite these challenges, the introduction of repairability labelling represents a significant step towards promoting consumer rights and sustainability in France. By raising awareness about

[19] Raghuvanshi, P., & Hooda, A. (2021, October 11). IP vs. the right to repair: deciphering the legal conundrum. The Leaflet. Retrieved from https://theleaflet.in/ip-vs-the-right-to-repair-deciphering-the-legal-conundrum/
[20] *Ibid.*

product repairability and encouraging manufacturers to prioritize design for repair, these regulations have the potential to drive positive change in the electronics industry.[21]

- ***Position In Australia***

In Australia, while there isn't a specific law dedicated to enforcing the 'Right to Repair,' the concept is recognized, particularly concerning Motor Vehicles, mirroring the stance taken in the US. A significant legal precedent illustrating this is the case of *Calidad Pty Ltd* v. *Seiko Epson Corporation*[22] heard by the High Court of Australia. In this case, the court elucidated the definition of repairing a patented product. The dispute involved cartridges initially designed for single use but modified by Calidad to allow for multiple uses. The court highlighted two pivotal doctrines in patent law- the doctrine of exhaustion and the doctrine of implied license. The doctrine of exhaustion asserts that a patentee's rights over a product are depleted upon its first sale, while the implied license doctrine posits that each sale of a product includes an implicit license, subjecting the product to the manufacturer's restrictions regardless of subsequent sales. However, the court ruled in favour of the doctrine of exhaustion, emphasizing that consumers retain the right to repair a product notwithstanding any intellectual property rights held by the manufacturer. Importantly, the court clarified that while consumers have the right to repair, they are not entitled to modify the product itself, respecting the boundaries of intellectual property rights.[23]

However, achieving comprehensive and enforceable repair rights for consumers remains an ongoing challenge on a global scale. The debate surrounding repair legislation highlights the complex dynamics between consumer interests, corporate practices, and regulatory frameworks. As policymakers continue to navigate these complexities, it is essential to prioritize the development of robust and transparent mechanisms that empower consumers to exercise their right to repair while holding manufacturers accountable for their products' longevity and sustainability.

Legal Framework In India

In the Indian context, the concept of the 'right to repair' is not explicitly recognized as a statutory right, but it has gained implicit acknowledgment through certain legal pronouncements, particularly within the framework of antitrust regulations. One significant case that addressed this issue was the *Shamsher Kataria* v. *Honda Siel Cars India Ltd. & Ors*.[24], heard by the erstwhile Competition Appellate Tribunal (COMPAT). In this case, COMPAT scrutinized the practice adopted by Original Equipment Manufacturers (OEMs) of automobiles and automobile components/spare parts. These OEMs implemented end user license agreements to restrict and deny access to spare automobile parts for independent repairers. By doing so, they aimed to monopolize automobile repairs, excluding independent repairers from the market.

[21] *Ibid.*
[22] [2020] HCA 41 - 01-23-2021.
[23] See *Supra* Note 11.
[24] Case No 03/2011, decided on 25/08/2014.

While COMPAT did not explicitly endorse the concept of the right to repair, it deemed any restriction imposed by dominant enterprises to establish dominance in an adjacent market as an abuse of dominance under sections 4(2)(b) and 4(2)(e) of the Competition Act of India, 2002. This ruling highlighted the adverse consequences of such restrictions, emphasizing their impact on both independent repairers and consumer welfare. By limiting consumers' access to cost-effective repair services, these restrictions hindered their ability to exercise their right to repair. To determine the applicability of its ruling, COMPAT introduced certain qualifiers.

- Firstly, it examined whether consumers had the capability to conduct a comprehensive whole life cost analysis of the product before purchasing it. This analysis involves evaluating the total cost of ownership, including repair expenses, based on available information. COMPAT acknowledged the challenges consumers faced in assessing the whole life cost, particularly due to limited access to technical repair information protected under intellectual property laws.
- Secondly, COMPAT evaluated whether consumers would be locked into using brand-specific components without access to substitutable alternatives. If products from independent manufacturers were not viable substitutes, consumers could be unfairly constrained to using only brand-specific components, thereby compromising their freedom of choice. This assessment aimed to ensure that consumers retained access to competitive alternatives in the repair market, fostering a more equitable and consumer-friendly environment.[25]

India has embarked on the legislative journey towards enshrining the 'right to repair'. A committee established by the Department of Consumer Affairs has identified several sectors for the implementation of this right, including Farming Equipment, Mobile Phones/Tablets, Consumer Durables, and Automobiles/Automobile Equipment. Recognizing the importance of extending product life alongside reuse and recycling for sustainability, regulators are increasingly emphasizing customer-enabled repair. This approach not only promotes sustainability but also reduces logistics and carbon footprint. For instance, the Securities and Exchange Board of India (SEBI) has introduced the Business Responsibility and Sustainability Report (BRSR), which aligns with the 'Right to Repair' in the emerging era of sustainability.

- Principle 2 of BRSR mandates businesses to provide goods and services sustainably and safely, emphasizing processes for reclaiming products for reuse, recycling, and end-of-life disposal.
- Principle 6 urges businesses to protect and restore the environment, requiring disclosures on waste generation and recovery efforts.

However, challenges lie ahead, primarily stemming from manufacturers' objections regarding the exposure of intellectual property to third-party or amateur repair services. They argue that this could lead to exploitation and device security risks. The existing legal framework in India also poses hurdles, with Section 52 of the Copyright Act, 1957, only permitting software

[25] *Shamsher Kataria* v. *Honda Siel Cars India Ltd. & Ors.,* Case No 03/2011, decided on 25/08/2014.

modification for non-commercial purposes without explicitly addressing repair issues. Additionally, provisions of Digital Rights Management (DRM) under India's Copyright Act grant software manufacturers excessive control over technology use, effectively deeming software-related repair work illegal.[26]

In the case of *Shamsher Kataria* v. *Honda Siel Cars India Ltd.*[27], the Competition Commission of India (CCI) found 14 automobile manufacturers guilty of anti-competitive practices and abusing their dominant position. They did so by exclusively selling spare parts to authorized dealers, restricting access to the open market. The CCI emphasized that the 'right to repair' is implicitly encompassed within the definition of 'Consumer rights' outlined in section 2(9) of the Consumer Protection Act, 2019. The OEMs, acting as car manufacturers, were found to monopolize the secondary spare parts market, thus impeding independent and non-authorized repairers' access to this market.

Similarly, in the case of *Sanjeev Nirwani* v. *HCL,*[28] the District Consumer Disputes Redressal Forum (East), NCT OF Delhi, ruled that 'services' encompass paid post-warranty period services. Therefore, OEMs are obligated to provide spare parts and consumable items like batteries for laptop operation. The forum concluded that such activities restricting or impeding customers' right to repair must be categorized as 'restrictive trade practices' under the Consumer Protection Act.[29]

Analysis Of Existing Consumer Protection Laws

The Indian legal landscape regarding the 'right to repair' is primarily shaped by judicial decisions rather than explicit legislative provisions. As discussed in the previous section also, the significant ruling in this realm arose from the Competition Commission of India (CCI) in the case of *Shri Shamsher Kataria* v. *Honda Siel Cars Limited & Ors.*[30] This landmark judgment, subsequently upheld by the now-defunct Competition Appellate Tribunal (COMPAT), stands out as a pivotal moment in challenging anti-competitive practices within the automotive industry, all under the banner of intellectual property (IP) rights. In this case, the CCI scrutinized the actions of 14 automobile companies accused of engaging in anti-competitive behaviour. Specifically, these companies were alleged to have restricted the sale of goods and services exclusively through their authorized dealerships and denied independent repairers access to spare parts. The crux of the matter lay in the companies' assertion of IP rights to justify these restrictive practices. The CCI's ruling in favour of Shamsher Kataria represented a significant departure from the status quo, signalling a shift in the interpretation of IP rights within the context of competition law. By affirming that IP rights cannot serve as a shield to perpetuate anti-competitive behaviour, the commission sent a clear message that consumer welfare should take precedence over

[26] See *Supra* Note 11.
[27] Case No 03/2011, decided on 25/08/2014.
[28] CC/618/2014, decided on March 18, 2015.
[29] See *Supra* Note 11.
[30] Case No 03/2011, decided on 25/08/2014.

corporate interests. This decision not only addressed the immediate concerns raised by the case but also set a precedent for future disputes involving the intersection of IP rights and consumer rights in India. It underscored the importance of striking a balance between protecting IP rights and safeguarding competition and consumer choice, thereby contributing to the ongoing discourse surrounding the 'right to repair' in the country's legal framework. The court's findings in this case revealed the culpability of 14 automobile companies for engaging in anti-competitive practices by imposing restrictions on the purchase and sale of goods and services exclusively through their authorized dealerships. Additionally, these companies were found guilty of denying independent repairers access to spare parts, thereby creating a monopoly-like environment in the automotive repair industry.

A crucial aspect of the court's ruling was its assertion that intellectual property (IP) rights cannot be invoked as a shield to evade compliance with Indian competition law. This underscores the principle that while IP rights are essential for innovation and creativity, they should not be used as a pretext to stifle competition or undermine consumer rights. By holding these companies accountable for their anti-competitive behaviour, the court sent a clear message that consumer welfare must take precedence over corporate interests. This landmark ruling serves as a significant deterrent against companies seeking to exploit their dominant market position at the expense of consumers. It reinforces the importance of fair competition and underscores the need for a level playing field in the marketplace.

In the case of *Sanjeev Nirwani* v. *HCL*,[31] heard by the District Consumer Disputes Redressal Forum (East Delhi), an important precedent regarding companies' obligations beyond warranty periods was established. The forum ruled that companies have a responsibility to provide spare and consumable parts even after the expiration of the warranty period, albeit as paid services. This decision was grounded in the principle of consumer protection, aiming to prevent unfair trade practices that compel consumers to prematurely discard functional products due to the unavailability of spare parts. The forum's characterization of the non-availability of spare parts as an unfair trade practice underscores the detrimental impact such practices have on consumers. By creating barriers to repair and maintenance services, companies effectively coerce consumers into purchasing new products, perpetuating a culture of planned obsolescence. This strategy, aimed at accelerating consumer turnover, has been widely criticized for its adverse environmental and economic implications. Despite companies' assertions that enacting 'right to repair' legislation would impinge upon their intellectual property (IP) rights, a thorough examination of India's IP laws is necessary to assess the validity of such arguments. Balancing the rights of consumers with the interests of manufacturers is crucial in crafting legislation that promotes fair competition, protects consumer rights, and fosters innovation.

The pervasive practice of 'planned obsolescence' creates a cultural phenomenon compelling individuals to invest in new gadgets, electronics, or automobiles. This systematic approach achieves its objectives by strategically inflating repair service costs or withholding access to vital spare parts. Despite growing advocacy for 'right to repair' legislation, companies

[31] CC/618/2014, decided on March 18, 2015.

and manufacturers consistently argue that such regulations would encroach upon their intellectual property (IP) rights.[32] To gauge the potential for a 'right to repair' for consumers in India, a thorough analysis of specific sections within the country's IP laws becomes imperative. This examination involves a nuanced exploration of the legal landscape governing IP rights, aiming to discern how consumer repair rights align with existing regulations. By navigating the complexities of IP statutes, policymakers can delineate a framework that both preserves IP interests and ensures consumers' equitable access to repair services. Striking this delicate balance is essential for cultivating an environment that fosters innovation, upholds consumer rights, and advocates for sustainable consumption practices.

1. Trademark Act, 1999

Section 29(1) of the Trade Marks Act, 1999 is a crucial legal provision that governs trademark infringement. It stipulates that the unauthorized use of a trademark, which can potentially create confusion among consumers or dilute the distinctiveness of the trademark, constitutes infringement. However, there are exceptions to this rule, particularly when the use of the trademark is for private purposes and does not occur 'in the course of trade.'

In the context of repair activities, this provision becomes relevant when individuals or independent repairers engage in modifying or repairing products bearing trademarks. If such alterations or repairs result in changes to the normal functioning or condition of the product, it could be construed as trademark infringement. This interpretation aims to protect the integrity and reputation of trademarks by preventing unauthorized modifications that could undermine consumer trust or brand recognition. Additionally, the procurement of spare parts for repair purposes may also implicate trademark law. Whether spare parts are obtained from authorized dealers or alternative sources, the act of using trademarks in the process of repair can potentially infringe upon the rights of trademark owners. This highlights the complex legal landscape surrounding repair activities, especially when they intersect with intellectual property rights.

For independent repairers offering commercial repair services, the risk of trademark infringement becomes particularly salient. Any commercial use of trademarks in the context of repair services, including the procurement of spare parts, could expose repairers to legal liability for trademark infringement. As a result, repair businesses must navigate these legal considerations carefully to ensure compliance with trademark law while providing repair services to consumers.

2. Copyright Act, 1957

Section 52 of the Copyright Act, 1957 in India provides certain rights and exceptions related to the modification of copyrighted works, particularly in the context of software. This section allows individuals to modify software for personal and non-commercial purposes, essentially recognizing a limited right of adaptation. However, it does not explicitly address

[32] See *Supra* Note 19.

repair activities, leaving a legal gray-area regarding the extent to which repair activities involving software modification are permissible. When independent repairers engage in repair services for commercial purposes, their activities cannot be considered as non-commercial adaptation or modification of computer programs. This distinction is crucial as it affects the applicability of copyright law to repair activities, particularly those involving software manipulation. Digital Rights Management (DRM) provisions under the Copyright Act grant software manufacturers considerable control over the use of their software. DRM mechanisms can restrict repair activities that involve software manipulation, as they allow manufacturers to regulate access to and use of their software products. This can hinder independent repairers from accessing and modifying software components necessary for repair purposes.

End User License Agreements (EULAs) are contractual agreements that play a significant role in shaping consumer rights in the context of software repair. These agreements often impose various restrictions on consumers, including limitations on software transfer, warranty restrictions, and prohibitions on reverse engineering for repair purposes. By licensing software rather than selling it outright, manufacturers can maintain control over the product lifecycle and potentially facilitate planned obsolescence. In the legal realm, the case of *Tekla Corporation & Another* v. *Survo Ghosh & Anr*.[33] sets an important precedent regarding consumer rights post-sale. The Delhi High Court ruled that contractual restrictions that curtail or impede consumer rights after the sale of a product cannot be enforced in a court of law. This decision underscores the need to balance manufacturers' interests with consumer rights, particularly in the context of repair and maintenance of software-enabled products.

3. Patent Act, 1970

Section 140 of the Patents Act, 1970 in India serves as a pivotal provision in evaluating the legality of restrictions placed on purchasers in patent licensing agreements. This section provides a broad framework within which certain restrictions imposed on buyers can be deemed unlawful. In various jurisdictions, including India, there are different approaches to the concept of implied license, which may implicitly include the right to repair within a patent license agreement. Conversely, consumers may also be explicitly barred from making modifications to patented products, depending on the terms of the agreement. In *Impression Products, Inc.* v. *Lexmark International Inc.,*[34] the U.S. Supreme Court rendered a groundbreaking decision that significantly influenced the legal landscape surrounding patent rights and consumer ownership. The case centred on Lexmark's practice of selling patented printer ink cartridges with single-use restrictions, attempting to prevent buyers from refilling and reusing the cartridges. Impression Products, Inc., a third-party ink cartridge remanufacturer, challenged Lexmark's ability to enforce patent rights over cartridges that had been sold to consumers. The Supreme Court's ruling in this case established a crucial principle: once a patented product is lawfully sold, the patent holder exhausts their patent rights with regard to that specific product. In other words, once the ink cartridges were sold by Lexmark, the company could not assert patent infringement claims

[33] CS (OS) 2414/2011, decided on 16th May, 2014.
[34] Federal circuit No. 15–1189, decided on 30th May, 2017.

against purchasers who subsequently refilled and reused the cartridges, even if there were contractual restrictions attempting to prevent such actions. This decision affirmed the principle of patent exhaustion, which holds that the initial authorized sale of a patented product exhausts the patent holder's rights over that particular item. As a result, subsequent purchasers are free to use, repair, or resell the product without fear of infringing the patent holder's rights. The Impression Products case set a significant precedent for clarifying the boundaries of patent rights and consumer ownership, particularly in situations where manufacturers attempt to impose post-sale restrictions on the use or repair of patented products. This ruling reaffirmed the importance of ensuring that patent law strikes a balance between protecting innovation and promoting consumer rights.

Under Indian law, contractual arrangements similar to those observed in the U.S. exist, particularly concerning package licensing and coercive package licensing. Package licensing, whereby a patent owner grants a licensee access to multiple patents, is permissible if the licensee voluntarily agrees to each patent. Conversely, coercive package licensing, wherein the licensee is compelled to obtain licenses for patents they do not require, is deemed unenforceable under Section 140 of the Patents Act in India. Section 140 of the Patents Act grants the judiciary authority to address issues related to anti-competitive practices in patent licensing agreements. This provision underscores the importance of striking a delicate balance between intellectual property rights and consumer rights, notably the right to repair. It highlights the need for lawmakers to interpret IP laws in a manner that safeguards consumer rights without excessively hindering innovation and the protection of intellectual property. Such an approach aims to optimize overall social welfare by ensuring a fair and equitable balance between competing interests.

4. Consumer Protection Act, 2019

In addition to intellectual property (IP) rights considerations, any activity that restricts or hinders a customer's right to repair should be classified as a 'restrictive trade practice' under Section 2 of the Consumer Protection Act, 2019. This legislation explicitly recognizes the 'right to choose,' which implies that customers should have access to goods and services at competitive prices. This enables a competitive market to determine fair prices while upholding the quality of goods or services offered. When companies monopolize repair services, they infringe upon customers' 'right to choose' by denying them access to third-party repair services or spare parts. This restriction limits consumers' options for repairing their products and can ultimately lead to higher costs and reduced quality of service. Therefore, such monopolistic practices undermine the principles of fair competition and consumer rights enshrined in the Consumer Protection Act.

Right To Repair Portal 2023

The Right to Repair Portal 2023, initiated by the Indian government, stands as a testament to the evolving landscape of consumer rights and technological empowerment. Designed to address the pressing need for accessible avenues for product repair and maintenance, this official platform under the Ministry of Consumer Affairs Food and Public Distribution serves as a beacon of

consumer protection in the digital age. The Right to Repair Portal is an innovative online platform designed to empower consumers by providing them with access to the manual details of various products. This enables consumers to undertake repairs themselves or engage third-party repair services, fostering self-sufficiency and reducing dependency on manufacturers. This was officially launched by National Food and Consumer Affairs Minister Piyush Goyal on National Consumer Day. This initiative underscores the government's commitment to consumer empowerment and signifies a proactive step towards addressing consumer grievances and fostering a culture of self-reliance.[35]

Upon submission of a complaint through the portal, the Right to Repair Portal team undertakes a thorough review. Within a timeframe of 90 to 150 days, the team endeavours to address and resolve the reported issue, ensuring timely assistance and redressal for consumers. This portal has been launched with the following objectives:

i. ***Consumer Empowerment***- At its core, the Right to Repair Portal is a manifestation of the government's commitment to consumer empowerment. By providing online assistance and access to customer service agents, the portal bridges the gap between consumers and manufacturers, ensuring that consumer grievances are addressed promptly and effectively. This empowerment extends beyond mere complaint resolution, empowering consumers with knowledge of their rights, legal procedures, and avenues for seeking redressal.

ii. ***Alignment With Consumer Protection Laws***- The objectives of the Right to Repair Portal are deeply rooted in the principles of consumer protection enshrined in the Indian legal framework. By providing a dedicated platform for consumers to seek legal counsel and file complaints, the portal upholds the spirit of the Consumer Protection Act, which aims to safeguard consumer interests and ensure fair practices in the marketplace.

iii. ***Comprehensive Coverage***- The inclusivity of the Right to Repair Portal is reflected in its comprehensive coverage of products and services. From purifiers to mobile phones, refrigerators to audio devices, the portal caters to a diverse range of consumer electronics and appliances, ensuring that no consumer is left behind in their quest for product repair and resolution.

iv. ***Transparency And Accountability***- Central to the ethos of the Right to Repair Portal is transparency and accountability. By offering features such as repair status tracking and access to customer care support, the portal fosters trust and confidence among consumers, assuring them that their grievances are being heard and addressed in a timely manner.

v. ***Promoting Sustainable Consumption***- Beyond individual consumer rights, the Right to Repair Portal plays a pivotal role in promoting sustainable consumption practices.

[35] "Right To Repair Portal India." Right to Repair India. Retrieved from https://righttorepairindia.org.

By empowering consumers to extend the lifespan of their products through repair and maintenance, the portal contributes to the reduction of electronic waste and environmental impact, aligning with broader sustainability goals.

vi. ***Continual Improvement***- As a dynamic platform, the Right to Repair Portal is poised for continual improvement and enhancement. Through feedback mechanisms and iterative updates, the portal can adapt to evolving consumer needs and emerging technological trends, ensuring its relevance and effectiveness in the years to come.[36]

In this way, the Right to Repair Portal 2023 represents a paradigm shift in consumer engagement and product stewardship. By embracing principles of empowerment, inclusivity, and sustainability, the portal stands as a beacon of hope for consumers seeking to assert their rights in an increasingly complex marketplace. The introduction of the Right to Repair Portal by the Government of India (GoI) is undoubtedly a positive stride forward. By providing customers with curated and precise information regarding repair and after-sales services, the portal effectively reduces search costs and mitigates the risk of fraud for less tech-savvy individuals. However, the portal's current functionality is somewhat limited. It primarily serves as a compilation of verified links and blogs, offering little beyond what tech-savvy users can find through basic online searches.[37]

To unlock the full potential of the portal, Government of India should consider making it mandatory for manufacturers to register and provide repair-related information. This mandatory registration system would significantly enhance the portal's effectiveness and provide consumers with a more comprehensive resource for repair and after-sales service inquiries. Following global best practices, the Right to Repair Portal could also incorporate a product repairability index. This index would inform consumers about the ease or difficulty of repairing specific products, empowering them to make informed purchasing decisions and facilitating comparisons across different brands. Additionally, the portal could host 3D models and design specifications for older parts not covered by intellectual property rights (IPR) or voluntarily provided by companies, rather than mandating the stocking of these parts. To enhance user convenience and reduce product misuse, implementing a customer identity portal linked to Aadhar containing all product purchase details, warranty information, and other relevant data would be beneficial for both customers and companies. While enacting Right to Repair legislation, it's essential to address manufacturers' concerns about potential impacts on their IPR. As India strives to become a global manufacturing hub, striking a balance between consumer rights and manufacturers' concerns is crucial. Strengthening Right to Repair policies should consider both consumer grievances regarding product ownership rights and manufacturers' apprehensions about IPR protection. This approach will ensure a fair and equitable framework that benefits all stakeholders involved in the repair ecosystem.[38]

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[36] *Ibid*.

[37] *Ibid*.

[38] Chowdhury, S., & Verma, N. K. (2023, October 23). Right To Repair: India's Step In The Right Direction. Forbes India. Retrieved from https://www.forbesindia.com/article/iim-bangalore/right-to-repair-indias-step-in-the-right-direction/89135/1

Conclusion

In light of the information presented, it is evident that the 'Right to Repair' movement represents a significant paradigm shift in consumer rights, sustainability efforts, and legal frameworks, both globally and within India. The initiatives undertaken by various stakeholders, including governments, regulatory bodies, manufacturers, and consumer advocates, underscore the growing recognition of the importance of empowering consumers and promoting environmental sustainability in the modern economy. India's steps towards implementing the Right to Repair, such as the establishment of the Right to Repair Portal and proposed legislative frameworks, reflect a proactive approach to addressing the evolving needs of consumers and the challenges posed by restrictive trade practices. By identifying key sectors for implementation and leveraging existing legal precedents, India is poised to strike a balance between protecting intellectual property rights and enhancing consumer choices.

The integration of sustainability principles into the Right to Repair discourse, as evidenced by the 'LiFE' movement and alignment with frameworks like the Business Responsibility and Sustainability Report, highlights the interconnectedness of consumer rights, environmental stewardship, and corporate responsibility. These efforts signal a holistic approach to addressing the lifecycle management of electronic products and reducing electronic waste. Legal precedents, such as the *Shamsher Kataria* v. *Honda Siel Cars India Ltd.* and *Sanjeev Nirwani* v. *HCL* cases, contribute to the evolving jurisprudence surrounding the Right to Repair in India, illustrating the intersection of competition law, consumer protection, and repair rights. These cases underscore the need for a nuanced understanding of intellectual property rights and consumer ownership rights in the context of repairability. While initiatives like the Right to Repair Portal represent positive steps forward, there remain challenges and opportunities for further refinement. Enhancing the portal's functionality, expanding its scope, and addressing manufacturers' concerns are essential considerations for maximizing its utility and effectiveness in empowering consumers and promoting sustainable practices.

In conclusion, the Right to Repair movement holds immense promise for advancing consumer rights, fostering environmental sustainability, and promoting innovation in India and beyond. Through continued collaboration, dialogue, and refinement of legal frameworks, stakeholders can navigate the complexities of this evolving landscape and realize the full potential of the Right to Repair in promoting a more equitable, sustainable, and consumer-centric economy.