

Unfair Trade Practices and Institutional Challenges in India *An Analysis*

Background & Context

The term Unfair Trade Practice (UTP) broadly refers to any fraudulent, deceptive or dishonest trade practice; or business misrepresentation of the products or services that are being sold; which is prohibited by a statute or has been recognised as actionable under law by a judgement of the court. UTPs can arise in any line of business.

Specific types of UTPs prohibited in domestic law depend on the law of a particular country. UTPs not only harm the consumers, but also victimise other market players in the process and may also cause damage to the market as a whole. For this reason, there has been a fair amount of uncertainty across countries regarding how to deal with them, in theory as well as in practice. In some countries, UTPs fall within the purview of the competition statutes, in some others, that of the consumer protection one, and in some other cases, they are dealt with by a separate law/Act.

UTPs in India are presently covered under the aegis of Consumer Protection Act, 1986 (COPRA), which is an important milestone in the field of consumer protection, establishing consumer dispute redressal agencies at district, state and central level. These quasi-judicial redressal agencies have the power to adjudicate consumer complaints against, *inter alia*, unfair trade practices. But these agencies do not have any investigative powers and suffer from a lack of infrastructure and qualified personnel, especially at the local level. As a consequence consumer confidence in the redressal system is low and cases take years to be finally decided upon.

Goal & Objectives

In light of the above background, Ministry of Consumer Affairs (MoCA) identified the need to review the present institutional set up dealing with UTPs in India and to analyse the fruitfulness of the idea of establishing an enforcement body on consumer protection i.e. a Consumer Protection Agency (CPA) to investigate cases like unfair trade practices. The project was supported by GIZ, India.

The specific objectives of the research study conducted by CUTS were:

- (a) assess the prevailing social and legal scenario of the UTPs in India and comparison of the same with the laws in other countries;
- (b) document the real unfair trade practices prevailing in the Indian markets;
- (c) identify gaps in the present institutional set-up to deal with UTPs;

- (d) assess the manner in which UTPs must be dealt with in India; and
- (e) suggest regulatory recommendations and way forwards on efficient dealing with such practices.

Outputs

The study produced a Research Report titled, “*Unfair Trade Practices and Institutional Challenges in India: An Analysis*”. The same can be accessed at: http://www.cuts-ccier.org/UTP/pdf/Unfair_Trade_Practices_and_Institutional_Challenges_in_India-An_Analysis.pdf

Methodology

The research was mainly carried out through desk research, comprising of review of relevant laws and

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literature review to capture experience of other developing countries. Based on the preliminary desk research, questionnaires were prepared to interview the stakeholders; to understand the present status of unfair trade practices in India and identify gaps, if any.

The total project time was 18 months and given the paucity of time, only a selective sample of stakeholders was chosen for the interviews. The stakeholders included academicians, lawyers, government officials, regulators, representatives from notable consumer organisations, chambers of commerce and industry, etc.

Major Findings

Upon analysing the present institutional set-up to deal with UTPs in the country, both through desk research and through stakeholder interviews, the following major challenges were identified:

1. Business to business disputes not covered under COPRA;
2. Inordinate delays in the delivery of justice, enforcement of orders, etc.;
3. Dominance of Judge's opinion over other members of the consumer forum;
4. No power with consumer authorities under COPRA to take up a case *suo motu*;
5. COPRA mainly a compensatory legislation;
6. Lack of investigatory powers under COPRA to deal with consumer issues;
7. Lack of awareness among consumers;
8. Concurrence of sectoral regulations along with COPRA leading to confusion about the

appropriate forum to be approached which may also lead to forum shopping;

9. Cross-Border disputes not covered in COPRA;
10. UTPs remain an issue of low significance when compared to the high profile of other antitrust/competition issues;
11. Lack of infrastructure and qualified personnel in the consumer forums especially at the local level;
12. Government penalties for providing misleading information or perpetuating consumer fraud, although may be high, but are imposed tardily or not imposed at all.

Finally, the research report suggested the way forward and highlighted a need for amendment in the current institutional set-up in the country. One of the way suggested was to set-up an independent and specialised consumer protection agency within the MoCA, with horizontal powers for catering to consumer protection in India, including UTPs. Another view which seems more efficient and is also endorsed by CUTS International is to strengthen the institutions already functional under COPRA.

Outcomes

The final outcome of the study included:

- Better understanding and awareness for MoCA on issues pertaining to UTPs; and
- Suggestion of effective and efficient policy actions by the government to deal with UTPs.

