

# **RECOGNITION OF RIGHT TO REPAIR AS A CONSUMER RIGHT IN INDIA: THE WAY FORWARD**

“Right to repair will strengthen after sale services of goods and build trustworthiness and credibility.”

...Department of Consumer Affairs, Government of India

## **Abstract**

The concept of right to repair is intended to require manufacturer of goods to give consumers with manuals, relevant information's, parts and tools of their products. This novel right enables the consumer to repair or modify a product by himself or by a service provider of his choice without any technical or manufacturer restriction. In recent years, the movement for 'right to repair' as a consumer right has been drawing attention in United States, United Kingdom, European Union and many other countries. India also has started initiative to develop a comprehensive legal framework on right to repair and established 'Right to Repair Portal India.' The author will discuss in this paper the concept of right to repair and its genesis and growth at international and national level. This paper will also discuss various pros and cons of right to repair and technical and legal hurdles which are being faced by different nations including India in the recognition of right to repair.

## **I Introduction**

CONSUMPTION IS the main aspect of life. In the era of globalization, privatization, liberalization and technological innovations, the scope and magnitude of consumption has broadened. Since the markets and products are becoming more and more intricate, there is requirement for educating and empowering the consumers and to make them informed and skilled so that they can appreciate their rights and duties.<sup>1</sup>

Consumers play a very important role in the financial structure of any country. Consumers are the main players in the souk place and their consumption patterns greatly influence the economy and society. In the contemporary philosophy of marketing, the consumer is believed to be the 'king' and industry is projected to offer uppermost potential satisfaction to customers. Technological developments have made it possible to consumers available various kinds of goods and services from across the world, which are just only a click away. Novel goods and services host the bazaar daily, many of which vanish very quickly. In this era of technology and globalization, the customers are facing new challenges namely plastic money, cyber-crime, global warming, unsustainable consumption etc., which affects them in many aspects. The consumer who is regarded to as 'king' is really a 'victim' of the market unprofessional conduct. Manufacturers and vendors have only one motto; to make the most of

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1 Consumer Handbook, Department of Consumer Affairs, Government of India, (2015).

profit by engaging in all types of harmful practices and making goods that do not qualify acceptable quality standards. Many producers of goods abuse customers by supplying cheap quality of goods at high prices to make maximum profits.<sup>2</sup> Recently, a new right namely right to repair is being added as one more feather in the wings of consumer rights.

The concept of right to repair means that a person who buys a product must own it completely, and therefore he should have the right to repair, modify or service it without any technical or manufacturer restrictions. The right to repair consumer goods means permitting consumers, end users and businesses to repair their owned devices by himself or any service person without any technical and manufacturer restrictions. The design behind the right to repair is that if a consumer owns something than he should be capable to repairing it himself or by a technician of his choice.<sup>3</sup> It signifies that the customers should be able to modify and repair the merchandise at a reasonable cost and with ease, without being incarcerated to the whims of manufacturers for repairs.<sup>4</sup> For example, a customer who buys a smartphone should be able to take it to any local phone repair shop of his choice for service. He should not be restrained only to service centers which are under the control or franchisee of manufacturing company.

The rationale and justification behind the “right to repair” is that a person who buys a product must possess it entirely. This means that customers must be capable to repair and amend the merchandise the way they want to apart from being able to utilize the product.<sup>5</sup> In other words, when a customer buys a product then it should be inherent that he must have it completely. The consumers must be able to repair their products and make modifications to them with ease and a reasonable cost without any restrictions of manufacturers. Nevertheless, in the past three decades, it has been experienced that the right to repair is being severely restricted due to anti-competitive practices, lack of repair manuals, planned obsolescence *etc.* There has not been only a considerable delay in repair but at times the products are repaired at an extremely high price and the buyer who has once purchased the merchandise is

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2 *Ibid.*

3 About Right to Repair Portal India, *available at*: <https://righttorepairindia.gov.in/about-us.php> (last visited on May 23, 2025).

4 PTI, ‘Govt Plans Right to Repair’ Framework to Facilitate Self, Third Party Repair of Products’ *The Hindu* (New Delhi, July 14, 2022), *available at*: <https://www.thehindu.com/sci-tech/technology/govt-plans-right-to-repair-framework-to-facilitate-self-third-party-repair-of-products/article65639446.ece> (last visited on May 25, 2025).

5 Vershika Sharma and Mehek Bajpai, “The Right to Repair” *The Hindu* 8 (Lucknow, India, April 19, 2022).

barely given any choice. Often, the consumers will have to suffer from great harassment and distress because of the non-availability of spare part in the market.<sup>6</sup>

## II Nature, scope and advantages of right to repair

Right to Repair permits a consumer to enlarge the life of his phones, electric appliances, or other devices, by giving access to repair alternatives by original equipment manufacturers or third-party repairers. The objective is to encourage repair as an alternative to extreme replacement of devices. This would assist in the fight against e-waste production, which contributes to increase climate change.<sup>7</sup> Another aim of right to repair is to ensure that the manufacturers are not engaging in anti-competitive practices by restraining the amount of information they share about the product, eliminating third-party repairs and controlling who repairs their products.<sup>8</sup>

The right to repair is opposed by the manufacturers on the ground that they reduce cybersecurity risks, promotes consumer safety and protects their intellectual property rights.<sup>9</sup> On the contrary, the supporters of right to repair counter that manufacturers' practices are inefficient and anti-competitive, infringe on consumer property rights, contribute to an increasing amount of e-waste.<sup>10</sup>

The lack of repair manuals signifies that producers of goods seize near-monopoly over repair workshops with the intention to arraign from customers excessive prices. The contention of Tech Giants is that the privacy and security concerns may cultivate if products which have been patented and are based on technology are opened by third parties. However, several nations have adopted policies, taken initiatives, and even tried to enact laws that recognize the right to repair to diminish electronic squander.<sup>11</sup>

Tech giants and manufacturers including Microsoft, Apple, Google and Amazon have constantly contested the principles underlying the contemporary right to repair

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6 Press Information Bureau, Ministry of Consumer Affairs, Food and Public Distribution, Government of India, 'Department of Consumer Affairs sets up committee to develop comprehensive framework on the Right to Repair' (New Delhi, July 14, 2022), *available at*: <file:///c:/research%20paper-%202023-%20iv/r2r%20in%20india.html> (last visited on May 23, 2025).

7 Divya j Shekhar, "Right to Repair: When Can We Stop Shopping and Start Repairing" *Forbes India* (New Delhi, April 27, 2023), *available at*: <https://www.forbesindia.com/article/take-one-big-story-of-the-day/right-to-repair-when-can-we-stop-shopping-and-start-repairing/84637/1> (last visited on May 3, 2023).

8 *Ibid.*

9 Kyle Wiens, "You Bought That Gadget, and Damit, You Should be Able to Fix It", *available at*: <https://www.wired.com/2017/03/right-to-repair-laws/> (last visited on May 25, 2025).

10 *Ibid.*

11 *Supra* note 5.

movement.<sup>12</sup> The concerns of cybersecurity and data privacy are the leading justification for heavy restrictions on consumer repair from these companies. For instance, Microsoft justified that customers encounter substantial risks when turning in their devices to non-authorized mechanics for repair.<sup>13</sup> Often, electronic devices contain with personal information, like documents, pictures, financial records and passwords.<sup>14</sup> Technicians would have access during repairs to a whole device using analytic instruments, potentially placing customers susceptible information at risk.<sup>15</sup>

Further, manufacturers contend that the physical security of consumers' devices may be compromised during third-party repairs. For instance, Microsoft and other manufacturing companies implant 'hardware security technology' into all their devices 'hardware security technology' to protect user data. Repair by untrained technicians can disable hardware security technology due to which devices may be vulnerable to hacking or other malware.<sup>16</sup> Another objection on behalf of manufacturers is that sharing the information contained in repair manuals and plans jeopardizes their intellectual property rights of trademark and copyright.<sup>17</sup> There is also the danger of escape of trade secrets to unauthorized persons.<sup>18</sup>

Technology businesses have been engaged and accused of planned obsolescence.<sup>19</sup> "Things used to be made to last—but the life span of modern electronics is much shorter than it once was, and keeps getting shorter. The trend means more sales for manufacturers, and there is increasing concern that our products are designed to become obsolete more quickly."<sup>20</sup>

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12 Anne Marie Green, 'Who Doesn't Want the Right to Repair? Companies Worth Over \$10 trillion' *U. S. Pub. Int. Rsch. Gr.* (May 3 2021), *available at*: <https://uspirg.org/blogs/blog/usp/whodoesn%E2%80%99t-want-right-repair-companies-worth-over-10-trillion> (last visited on May 23, 2025).

13 *Ibid.*

14 Claire Hoplin, "Search and Seizures – Abandoned, Surrendered, or Disclaimed Items: The Unique Sensitivity of Cell Phones" 96 *N.D. L. REV.* 81(2021).

15 F.T.C., "Nixing the Fix: An FTC Report to Congress on Repair Restrictions" 1(May 2021), *available at*: [https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing\\_the\\_fix\\_report\\_final\\_5521\\_630pm-508\\_002.pdf](https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf)( last visited on May 23, 2025).

16 *Id.* at 30.

17 Marissa Mac Aneney, 'If It Is Broken, You Should Not Fix It: The Threat Fair Repair Legislation Poses to the Manufacturer and the Consumer'[2018] 92 *St. John's Law Review* 346.

18 *Ibid.*

19 'CTA's Alcorn Spars with Right-to-Repair Advocates at FTC "Nixing the Fix" Workshop, Washington Internet Daily' (July 17, 2019), *available at*: [https://advance.lexis.com/document?crd=4\\_62370fd-b934-4bd2-a552-3b4da5dcaea4&pddocfullpath=%2Fshared%2Fdocument%2F\\_legalnews%2Furn%3AcontentItem%3A5WKY-MRH1-DYRJ-819B-00000-00&pdoccontent\\_componentid=272155&pdmfid=1000516&pdisurlapi=true](https://advance.lexis.com/document?crd=4_62370fd-b934-4bd2-a552-3b4da5dcaea4&pddocfullpath=%2Fshared%2Fdocument%2F_legalnews%2Furn%3AcontentItem%3A5WKY-MRH1-DYRJ-819B-00000-00&pdoccontent_componentid=272155&pdmfid=1000516&pdisurlapi=true) [https://perma.cc/UB8M-YS7M (last visited on May 20, 2025)].

20 *Ibid.*

### III International perspective of right to repair

The right to repair has been acknowledged and recognized in several nations worldwide. These countries include United States, United Kingdom, European Union, Australia, France and many other nations.<sup>21</sup>

In United States, the idea of 'right to repair' originated from the automobile industry. The contemporary right to repair movement in America, which stresses extensive consumer choice, was the result of a high-profile anti monopoly litigation.<sup>22</sup> In 1956, the United States Department of Justice held responsible International Business Machines Corporation (IBM), a key technology company, for making breach of antitrust laws. In this case, IBM abolished a purchaser's choice to purchase punch-card machines outright, instead of leasing them.<sup>23</sup> Later in 1970, automotive right to repair was laid down.

The Clean Air Act, 1990 made it compulsory for automakers to provide information to independents about their emissions systems so that emission systems could be maintained. Computer technology made a lot of space in the automobile industry and machines were kept out. The basic idea behind developing computerized automated machines was to give dominance to the manufacturers over the advanced machine.<sup>24</sup>

The right to repair movement apparently started in California in the year 1999. According to the California Air Resources Board (CARB), only 'certified technicians' could undertake the work on the vehicle's on 'board diagnostic system.'<sup>25</sup> In 2001, the Vehicle Owners Right to Repair Act of 2001 was introduced in the United States Congress. This bill could not be passed for about six years and Congress introduced the Right to Repair Bill in two states namely Massachusetts and New Jersey. Both states were considered consumer friendly. Right to Repair could not be passed in New Jersey. However, Right to Repair Bill was passed in Massachusetts in the year 2012. It is called the Massachusetts Right to Repair Act, 2012.<sup>26</sup> This Act mandates to automobile manufacturers to give to the consumers and independent third-party mechanics diagnostics and spare parts.<sup>27</sup>

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21 *Supra* note 6.

22 See 'History, The Repair Association' available at: <<https://www.repair.org/history>> (last visited on May 7, 2024).

23 *Ibid.*

24 'The right-to-repair movement has even bigger plans for 2021' available at: <<https://www.protocol.com/right-to-repair-ifixit>> (last visited on May 8, 2024).

25 'The History of Right to Repair' available at: <<https://www.accc.gov.au/system/files/GPC%20The%20History%20of%20Right%20to%20Repair.pdf>> (last visited on May 20, 2024)

26 *Ibid.*

27 *Supra* note 5.

Recently, the New York state in United States has passed the Fair Repair Act, 2021 on December 28, 2022 and it will be applicable in the state on or after July 1, 2023. This Act mandates manufacturers to provide repair information, spare parts and tools to independent repair shops along with their usual partner workshop and stores. This allows consumers with the right to repair and revamp their purchased products.<sup>28</sup> Further, the Federal Trade Commission (FTC) has instructed manufacturers to resolve unfair anti-competitive practices. It also directed that it should be ensured that consumers can make repairs, either by themselves or by a third-party technician.<sup>29</sup>

In United Kingdom, the European Union Parliament laid down some suggestions for member states to consider right to repair proposals. In July 2021, the Britain government accepted the proposals and laid down the 'Right to Repair' law. This Act makes it much simpler to purchase and repair daily items like washing machines and televisions.<sup>30</sup> Recently, a law has been passed which mandates that all the electric device manufacturers to afford to the customers with spare parts for getting the repair done either by the local repair shops of their choice or themselves.<sup>31</sup>

In Australia, there has been no specific legislation providing for right to repair, however the idea of right to repair exists in relation of motor vehicles. Thus, their position is like United States in this regard.<sup>32</sup> In the case of *Calidad Pty Ltd v. Seiko Epson Corporation*,<sup>33</sup> the High Court of Australia expressly defined the meaning of right to repair of a patented product. The court held that "while a consumer has the right to repair regardless of the Intellectual Property Rights that a manufacturer might hold over a product, he cannot modify the product itself." Furthermore, Repair Cafes are an incredible characteristic of the Australian system. These Cafes are free meeting spots where volunteer mechanics assemble to share their repairing skills with public who brings in items such as clothing, bikes, household goods and appliances which require restoration.<sup>34</sup>

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28 Vershika and Mehak Bajpai, 'Upholding the Right to Repair' *The Hindu* (New Delhi, June 14, 2022), available at: <https://www.thehindu.com/opinion/op-ed/the-right-to-repair/article65523775.ece> (last visited on May 30, 2025).

29 *Ibid.*

30 'Explained: What is Right to Repair Movement' July 14, 2021 available at: <https://indianexpress.com/article/explained/explained-what-is-the-right-to-repair-movement-7400287/> (last visited on May 30, 2025).

31 *Ibid.*

32 'Right to Repair'- A Concept and the Indian Road Ahead' Oct. 19, 2022, available at: <https://lexplosion.in/right-to-repair-a-concept-and-the-indian-road-ahead> (last visited on May 30, 2025).

33 [2020] HCA 41.

34 *Supra* note 5.

In France, manufacturers are required to exhibit a reparability table on their goods which comprises of five factors. This chart will be helpful to consumers to understand that whether the products can be repaired or not.<sup>35</sup>

In European Union, European Union's Guidelines on Eco-design for Energy Related Products and Energy Information Regulations, 2021 lays down that it is mandatory for every manufacturer to provide spare parts for up to ten years to prevent untimely obsolescence.<sup>36</sup>

#### IV Right to repair in India

Consumer rights were laid down under the Consumer Protection Act, 1986. This Act provides the right to repair, replace or refund to the customers only if a product purchased by the buyers is found to be defective. However, the business enterprises did not recognize right to repair till recently and declined to concede these rights of consumers and admit their responsibility.<sup>37</sup> Recently, this Act was repealed and replaced by the Consumer Protection Act, 2019. There has been no express provision providing for the right to repair in this Act. However, the right to repair can be read impliedly in section 2(9) and many other provisions of the Consumer Protection Act, 2019.<sup>38</sup>

In India, there has been no legislation or any provision of law providing exclusively to deal with the right to repair as compared to United States of America, United Kingdom and many other countries. However, in the case of *Shamsher Kataria v. Honda Sael Cars India Ltd.*<sup>39</sup> the Competition Commission of India has recognized right to repair and held that "restricting the access of independent automobile repair units to spare parts by way of end user license is anti-competitive." In this case, 14 automobile manufacturing companies were held liable for adopting anti-competitive practices and abuse of dominant position by selling spare parts only to authorized dealers. Therefore, the customers were allowed to choose between authorized dealers and independent mechanics by the Competition Commission of India. It also helps independent mechanics in providing aftermarket services and ensures fair competition in the market.

In July 2022, the Department of Consumer Affairs, Government of India constituted a committee to build up a comprehensive legal framework for right to repair. It was based on the lines of the LiFE (Lifestyle for Environment) initiative which was launched by Prime Minister of India Narendra Modi on mindful and sustainable consumption.

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35 *Supra* note 28.

36 *Ibid.*

37 Aarti Mohan Kalnawat and Nuzwat Rizvi, "The Right to Repair Movement: Impact and Implications" Vol. X (Issue- I) *Russian Law Journal* 43 (2022).

38 *Supra* note 28.

39 2014 SCC OnLine CCI 95.

Later in November 2022, Government of India framed and notified the E-Waste (Management) Rules, 2022, which replaced the E-Waste (Management) Rules, 2016. These Rules, 2022 came in to force on April 1, 2023.<sup>40</sup> The Department of Consumer Affairs, Government of India has taken a momentous step for evolving a general framework for the right to repair in a bid to emphasize on LiFE (Lifestyle for the Environment) movement through sustainable consumption. The LiFE movement requires a mindful and deliberate consumption of products. It involves the concept of recycling and re-use of several consumer goods. Repair is a significant function of every type of re-use and for the sustainable life of the goods. Manufactured goods which come into planned obsolescence and cannot be refurbished compel the customers to purchase new products for want of any restoration to reuse and results in e-waste. Hence, restrictions on the repair of goods compel customers to deliberately make a choice to buy a new model of that product.<sup>41</sup>

The objective of developing a framework on right to repair in India is to create harmony in trade among the original equipment manufacturers and the third-party sellers and buyers, to empower product buyers and consumers in the local market and to emphasize on the need of growing sustainable consumption of goods and decrease in E-waste.<sup>42</sup>

It was declared that right to repair in India can prove to be a game changer both for generation of employment through Aatmanirbhar Bharat by permitting third-party repairs as well as for the sustainability of the products. Therefore, a high-powered Committee was set up under the Chairmanship of Nidhi Khare, Additional Secretary, Department of Consumer Affairs, Government of India. This committee comprises Ashok Patil, Chair of Consumer Law and Practice, National Law School of India University, Bangalore, Paramjeet Singh Dhaliwal J., Former Judge of Punjab and Haryana High Court, Former President of State Consumer Dispute Redressal Commission, Punjab, ShriAnupam Mishra, Joint Secretary DoCA, Prof. G.S. Bajpai, Vice-Chancellor, National Law University, New Delhi and representatives from several stakeholders like SIAM, ICEA, Consumer Organizations and Consumer Activists as members. The committee convened its first meeting on July 13, 2022 wherein important sectors for right to repair were identified which included Farming Equipment, Mobile Phones/Tablets, Consumer Durables and Automobiles/Automobile Equipment. The committee has been deliberating various issues in respect of right to repair and providing necessary suggestions to the government.<sup>43</sup>

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40 *Supra* note 7.

41 *Supra* note 6.

42 *Ibid.*

43 *Ibid.*



Further, the Department of Consumer Affairs, Government of India has launched 'Right to Repair Portal India' to establish and strengthen right to repair framework in India. This portal will aid as a single platform to give easy access to basic information on repair and maintenance of goods to buyers. The framework is important as it will grant customers a chance to repair their goods at the best price as an alternative to purchasing new products completely. It will also encourage business for small repair shops, which are an important part of local economies and assist in the reduction of the vast mountain of electrical waste (E-waste) that stacks up every year on the land. It will also contribute to circular economy objectives by upgrading the life span, re-use, maintenance, upgrade, recyclability, and waste handling of appliances and save customers money.<sup>44</sup> This Portal reveals that 17 companies have registered on the Portal till now which includes Apple India Pvt. Ltd., Hero MotoCorp, Samsung India, Havells, Kent, BoAt, HP, Oppo, Luminous, Panasonic, Microtek, LG, RDP, Realme, SSP Computers, Honda Motorcycles and TAFE Motors and Tractors.<sup>45</sup>

### V Right to repair: The way forward

The customer's right to choose is being infringed due to monopoly on repair processes by the product manufacturers as recognized by the Consumer Protection Act, 2019. There has been high production of electronic goods in this era technology which becomes obsolete very soon. Often, the repair options of such electronic goods are very less, irrationally expensive or impossible.<sup>46</sup> Explicitly, this approach squashes upon the right to procure products at reasonable prices, the right to obtain information about the quality of the product and the right to get redressal against dodgy practices.<sup>47</sup>

Though the world of consumer technology is bustling with electronic goods, options to get them repaired are getting fewer. Repairing is becoming unreasonably expensive or pretty much impossible because of technology becoming obsolete. Companies avoid the publication of manuals that can help users make repairs easily, manufacturers have proprietary control over spare parts and most firms refuse to make their products compatible with those of other firms. Planned obsolescence results in products breaking down too soon and buying a replacement is often cheaper and easier than repairing them.<sup>48</sup>

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44 'About- Right to Repair India: The Value of the Portal to Consumers in India', *available at*: <https://righttorepairindia.gov.in> (last visited on May 30, 2025).

45 *Ibid.*

46 *Supra* note 5

47 *Supra* note 28.

48 *Supra* note 5

However, this trend is changing in several parts of the world. Apple recently announced that consumers will have the right to purchase spare components of their products, following an order of the Federal Trade Commission of the United States, which directs manufacturers to remedy unfair anti-competitive practice and ask them to make sure that consumers can make repairs, either themselves or by a third-party agency. The momentum is, however, not so strong in India.<sup>49</sup>

The access to information manuals and spare parts is imperative because it will ensure repair of consumer products in a cost-effective, timely and safe manner, either by repairing it by themselves or getting the services from a service center of their choice. In India, there has been urgent requirement to pass a well-designed law which will be not only helpful in upholding the right to repair as a consumer right but can also assist in striking a much desirable equilibrium between competitive laws and intellectual property rights in India.<sup>50</sup>

The enormous technological development resulted in eruption of right to repair movement in the United States.<sup>51</sup> American consumers of all sorts, the FTC, and even the European Union have been supporting this movement. Although American big tech companies are opposing it on concerns related to data privacy and cybersecurity despite lack of substantial evidence advocating these contentions.<sup>52</sup> The advantages of a right to repair still outweigh the negative effects as claimed by big tech lobbyists who control the discussion around right to repair.<sup>53</sup>

The right to repair as a consumer right has not been expressly mentioned under the Consumer Protection Act, 2019. However, the right to repair can be impliedly read in section 2(9) of the Consumer Protection Act, 2019. This may be of some relief to consumers. Although, there is an urgent need for incorporation of a right to repair statutory provision under the Consumer Protection Act, 2019. This will provide tooth to an already implied right, make consumers more alert and help in furthering repair related responsibility on many stakeholders, along with policy commendations, relevant modifications and even a specific law incorporating the right to repair to better implement it. For example, the product liability provided under section 84 may be amended and product liability relating to repair issues can be incorporated in this section.<sup>54</sup>

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49 *Ibid.*

50 *Ibid.*

51 See History, The Repair Association, available at: <https://www.repair.org/history> [<https://perma.cc/XVZ3-GYFD>] (last visited on May 30, 2025).

52 *Supra* note 14.

53 Jared A. Mark, 'Realizing A New Right: The Right to Repair at the Federal Stage' 23 (2) *North Carolina Journal of Law and Policy* 382, 2021. Available at: <https://scholarship.law.unc.edu/ncjolt/vol23/iss2/5> (last visited on May 30, 2025).

54 *Supra* note 28.

The scope of the right to repair should be designed in the internal context of a nation. There has been vast use of machinery in today's world as compared to past. For example, fans and coolers have been replaced by air conditioners. This technological change results in the denied of right to conduct business of an entire service class because they do not have the parts, tools, guidelines and technological knowledge to refurbish these high-technical products. Further, the want of licensing or certification of repairers is considered as lack of skills on their part. Nevertheless, a repair license or certificate can be granted to the workers who pass certain standards and skill examinations. This process may be helpful in protection of the right to livelihood of the workers.<sup>55</sup>

Often, it is contended by the manufacturers that the functioning as well as quality of the good will be badly affected if repair of goods by customers and third-parties are permitted. This contention seems to be good and not baseless, because in the absence of supervision, who will guarantee the repair technique and the quality of spare parts? The manufacturers are very much anxious and therefore, they provide warranty clauses under which the warranty of the product will end if a product is repaired by a third party and not by authorized workshop. Although essential clauses to preserve the quality of the product should be incorporated, a complete waiver needs to be avoided. For example, the quality warranty clause should be included for usage of certified repair shops and company-recommended spare parts. The repair manuals can be made accessible to authorized business proprietors to strike a balance between the rights of consumers and manufacturers.<sup>56</sup>

Furthermore, manufacturing companies may enter in to a non-disclosure agreement to protect their Intellectual Property Rights with the authorized businesses or repairers. The independent repairers may be approached by the customers who may have access to genuine parts. Such service providers may offer their own warranty instead of the original manufacturer's warranty. The goal should be to give protection to the rights of all participants in the market.<sup>57</sup>

It is pertinent to mention here that the Right to Repair law passed by New York state of United States highlights that there is urgent need to recognize the right to repair of consumers in India and to strike a balance between consumers right to repair and rights of manufacturers. Therefore, India should change its policy and recognize right to repair by either passing new legislation or by amending the provisions of the Consumer Protection Act, 2019.<sup>58</sup>

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55 *Ibid.*

56 *Ibid.*

57 *Ibid.*

58 *Ibid.*

There has been no provision of law providing for right to repair as a consumer right in India. However, a Right to Repair India Portal has been established by the Ministry of Consumer Affairs, Government of India and a committee has been established in July 2022 to recommend for laying down a comprehensive legal framework for right to repair in India. This Committee has convened several meetings and highlighted many issues in establishment of right to repair framework in India.<sup>59</sup>

The significant issues are that the corporates avoid publishing service/user instruction manuals which may be helpful to consumers to repair their products easily. Manufacturing companies have exclusive proprietary control upon the design, techniques and spare parts of products. The consumer's 'right to choose' is infringed because of the monopoly of the manufacturers on repair methods. For example, terms and conditions of digital warranty cards enumerate that if a product is repaired by a non-recognized outfit than the customer will lose a warranty undertaken by the company.<sup>60</sup>

Controversy Surrounding Technological Protection Measure (TPM) and Digital Rights Management (DRM) is a splendid aid for copyright owners. Producers are encouraging a system of 'planned obsolescence.' Planned obsolescence means that a system under which the technique and design of any device is such that it remains operational for a specific period only and after that specific time it needs to be compulsorily replaced. Often, planned obsolescence results in infringement of the legal right of the consumers whenever agreements fail to concede full control to the customer.<sup>61</sup>

However, during the committee discussions, it was believed that the technological companies should give access to service manuals, schematics and complete knowledge of the product and software updates and to which the software license must not restrict the transparency of the product in sale. The diagnostic tools and parts to repair devices must be made accessible to consumers and third parties so that the goods can be refurbished if there are trivial hitches. Unfortunately, there has been existence of a lively repair service sector and third-party repair shops in India, but spare parts are not accessible to consumers and third-party repairers. Further, it was also discussed during the committee meeting that India should take in to consideration while laying recognizing and laying down right to repair the measures which have been adopted by other nations, the global best practices and how the same can be incorporated in the Indian situations.<sup>62</sup>

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59 *Supra* note 6.

60 *Ibid.*

61 *Ibid.*

62 *Ibid.*

## VI Conclusion

The right to repair is founded on theories of consumer autonomy and utilitarianism and to bring power back to consumers. In this era of day to day growing technology worldwide, as the right to repair as a consumer right movement has been gathering momentum, there is need to make in depth study on it. Restrictions on the right to repair can present severe anti-competitive effects. The right to repair movement is normally supported by citizens of almost all countries and countered by big giant technological companies with big pockets. Contentions favoring the right to repair include to maintain fair and competitive market, efficiency in business practices, reduction of E-waste and consumer empowerment. The grounds of opposition of right to repair include data privacy, cybersecurity and breach of Intellectual Property Rights.

In India, there has been no provision of law laying down right to repair as consumer right. The Consumer Protection Act, 2019 also fails to incorporate the right to repair expressly till now. However, the Ministry of Consumer Affairs, Government of India has launched Right to Repair India Portal which is a welcome step to protect consumer rights. Further, a committee has been set up to formulate legal framework of right to repair in India. It is a high time not only to recognize right to repair as a consumer right in India but also to strike a fair balance between consumer's right to repair and rights of the manufacturers. Therefore, the right to repair as a consumer right should be laid down either under the Consumer Protection Act, 2019 or by passing a separate legislation to incorporate this right. Further, such a framework must address the issues of sustainable living, educating consumers about planned obsolescence, recycling and repairing and the circular economy.

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