
RESTRICTIVE AND UNFAIR TRADE PRACTICES IN INDIA: A CRITICAL REVIEW OF LEGAL AND JUDICIAL TRENDS

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ABSTARCT

The rapid development of the Indian digital economy has proven that the legal and institutional framework of control over oppressive and unfair trade practices has severe loopholes. The current structures do not react to the following problems: algorithm collusion, predatory pricing in the online market, and deceitful consumer behavior, which leads to the immediate need to reflect on the adequacy of the current competition and consumer protection laws. In this context, the liberalization and digitalization of India, represented by the introduction of the Competition Act, 2002, and the Consumer Protection Act, 2019, provide the regulatory background to the interests of beneficial competition and consumers. The current research paper is focused on the critical assessment of the responsiveness of these statutes and the responsible institutions to the evolving risks of the online market. It proposes the changes that could be implemented to improve the market's fairness and the consumer's welfare. The research methodology will be based on a doctrinal and analytical approach, and it will be anchored on statutory interpretation, judicial precedents, regulatory orders, scholarly materials, and the experience of other jurisdictions, particularly the United States, the European Union, and the United Kingdom. The discussion reveals that, despite the conceptual and progressive nature of the Indian legal system, the system has issues of definition, duplication of jurisdictions between the Competition Commission of India and the Central Consumer Protection Authority, adjudicative slowness, and an unsuccessful preparedness to handle emergent dangers in a data-driven economy. It is a limitation of the research because the researchers utilize the available legal sources and secondary literature, compared to field research. Nevertheless, the findings directly affect policymakers, regulators, and the judiciary. They provide a clue on aligning the legal techniques with the dynamics of a rapidly changing digitizing economy. The research is original and valuable to the existing literature because it uses the lenses of competition law and consumer protection to provide a comprehensive view that reflects the nexus existing between market fairness and consumer welfare, and, therefore, prevents the

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current debate of modernization of the regulation marketplace of the digital market in India.

Keywords: Unfair trade practices, Restrictive trade practices, MRTP Act, Competition Act, Consumer Protection Act, Competition Commission of India.

1. Introduction

The world market has experienced an exceptional change in recent years due to liberalization, globalization, and most importantly, the digital revolution. Businesses and consumer behavior have changed significantly and brought about opportunities that have never been witnessed before. This puts economies in the hands of new types of risks and exploitation.² The increasing influence of online space, the rise in the popularity of the e-commerce market, and the attempts to use algorithms in the price formation and other advertising mechanisms have formed a business environment in which the traditional legal regulations are expected to fall behind.³ Even in this dynamic environment, the concept of free and fair competition is still perverted by restrictive trade practices based on cartels, predatory pricing, abuse of dominance, unfair trade practices such as misleading advertisements, misrepresenting goods and services, and unfair contract terms. Although these practices have been applied in the traditional markets, their manifestations in the digital economy are more intricate and far-reaching, and it is doubtful whether the existing laws and institutions can regulate them adequately.⁴

The specified issue has become especially significant in India because of the country's active economic growth and digitalization.⁵ The initial move towards introducing a new competitive regulation landscape was to adopt the Competition Act, 2002,⁶ and the Consumer Protection Act, 2019,⁷ to balance fair competition and consumer protection. Such regulations and the institutional role of the Competition Commission of India (CCI) and the Central Consumer Protection Authority (CCPA) are the Indian response to the challenge of regulating, restricting,

² K. Puri, Protection Against Monopolistic and Unfair Trade Practices in India, 34 J. Indian L. Inst.(1992) <http://www.jstor.org/stable/43951454>.

³ D.P. V. Krishna Rao & K.P. Sastry, Unfair Trade Practices Policy in India, 32 Antitrust Bull. (1987), <https://doi.org/10.1177/0003603X8703200409>

⁴ Ibid.

⁵ Ibid.

⁶ The Competition Act, No. 12 of 2002, INDIA CODE (2002).

⁷ The Consumer Protection Act, No. 35 of 2019, INDIA CODE (2019).

and unspecified practices in a liberal economy.⁸ However, despite such positive shifts, specific problems associated with the lack of clarity of definitions, delays in implementation, a lack of jurisdiction, and the lack of willingness to deal with the arising issues regarding the digital and data-driven marketplace can still be mentioned.

Therefore, the paper aims to critically review the legal framework and institutional procedures in dealing with prohibitive and discriminatory trade practices in India. The basic objective of this article is to evaluate the scope and weaknesses of the prevailing legal provisions and how they are relevant within the context of the transforming economic realities. The study has a few main objectives in its endeavor to understand the effectiveness of the Competition Act⁹ and the Consumer Protection Act¹⁰ in controlling the unfair and restrictive trade practices and weigh the scope and limitation of the existing legal provisions including the Competition Act and the Consumer Protection Act on the issue of restrictive and unfair trade practices in the digital world that presents an enforcement challenge to the current legal provisions, to analyze the role of the judiciary in shaping the interpretation and enforcement of the laws that deal with the restrictive and unfair trade practices, to examine the role played by the institutions and the performance of the CCI.¹¹

The methodology of this paper is a doctrinal and analytical one, as it is supported by a close interpretation of the statutory provisions, judicial pronouncements, and regulatory orders; however, it is also supported by the knowledge acquired in other jurisdictions such as the United States, the European Union, and the United Kingdom.¹² The doctrinal analysis answers the question posed by the law, compared to the comparative and analytical aspects. The research can explore how the provisions are applicable and prepared to meet the new challenges of the global economy. This approach provides a broad plan to understand the theoretical and practical effectiveness of the Indian regulatory systems.

⁸ C. Bianchi, F. Mariotti, E. Verger, & J.F. Huneau, Pregnancy Requires Major Changes in the Quality of the Diet for Nutritional Adequacy: Simulations in the French and the United States Populations, 11(3) PLOS ONE e0149858 (2016).

⁹ The Competition Act, No. 12 of 2002, INDIA CODE (2002).

¹⁰ The Consumer Protection Act, No. 35 of 2019, INDIA CODE (2019).

¹¹ Aadi Mandani & Tanushree Jain, A Study of Unfair Trade Practice: An Indian Experience, 5 Indian J.L. & Legal Rsch. 1 (2023), <https://heinonline.org/HOL/P?h=hein.journals/injlw10&i=323>

¹² Richa Sharma, *Consumer Protection and Unfair Trade Practices in the Digital Era: An Indian Perspective*, 12 Indian J.L. & Tech. 45 (2020).

The study is designed to progress to the area of the current research, the restrictive and unfair trade practices within the dual framework of the competition and consumer protection law. By uniting these two realms of regulation, the paper will show the overlaps and intersections between the two. The predatory pricing by one of the leading enterprises is one such example that can be both a competition act under the Competition Act and an unfair act under the Consumer Protection Act. Equally, misleading internet advertisements or predatory conditions in online transaction contracts are related to competition and consumer law. This overlap can be identified to provide a more holistic perspective of the issue and avoid the piecemeal approach of existing literature. This paper's significance is that in this integrative method, the assessment of the statutory and institutional frameworks is not just a check of the broader socio-economic context of the fast-digitizing Indian economy, but also places it.

This paper theorizes that the Indian legal framework on restrictive and unfair trade practices is progressive and is relatively full-fledged in theory. Nevertheless, it has specific flaws in terms of its organization and functionality. The ambiguity of definitions, slowness in adjudication, and institutional barriers blur its impact,¹³ And the inability to address the issues of the digital economy, such as algorithm collusion and the dominance of platforms. Such a disconnect between a law and its application in practice is likely to carry on to consumer protection failures and market fairness, unless legislative change, institutional improvement, and judicial efficiencies are sought.

2. Literature review

In the article by Farheen Fatma and Axita Shrivastav,¹⁴ the authors explain how unfair trade practices in India have been transformed under the MRTP Act to the Consumer Protection Act, 2019. Still, there is a gap in assessing how the judicial and regulatory authorities have implemented these measures. So, incorporating empirical data, including consumer complaint statistics and regulatory reports, and using international legal frameworks, such as the U.S. FTC Act and the EU Unfair Commercial Practices Directive, reinforces a good analysis of cross-border issues. In the same way, Raj Karni¹⁵ observes that although the paper follows the

¹³ Sandeep Gopalan, *Competition Law in India: Policy, Issues and Developments*, 5 J. World Trade & Invest. 211 (2004).

¹⁴ Farheen Fatma & Axita Shrivastav, A Study of Unfair Trade Practices in India, 4(3) JUS CORPUS L.J. 494 (2023), <https://heinonline.org/HOL/P?h=hein.journals/juscrp3&i=5870>

¹⁵ Raj Karni, Unfair Trade Practices, 4(3) INT'L J.L. MGMT. & HUM. 1945 (2021), <https://heinonline.org/HOL/P?h=hein.journals/ijlmhs11&i=1996>

constitutional and statutory history of UTP regulation, it does not consider modern digital issues like dark patterns. It is proposed that the post-2019 changes in the digital UTP, specifically the dark-pattern rules and enforcement measures of the CCPA, be assessed to establish the sufficiency of the existing legislation. Krishna P.V. Rao and K.P. Sastry¹⁶ stress the historical policy shift to the UTPs in the MRTP framework, yet their research does not contain any judicial analysis or empirical data. Using precedent cases and other foreign laws, like the EU Unfair Commercial Practices Directive, to evaluate the efficiency of Indian law. Raman Mittal, Sumit Sonkar, and Parineet Kaur¹⁷ note the ineffectiveness of substantive and procedural capacity in consumer dispute redressal agencies, but they do not address post-2019 online UTPs. This can be fulfilled by reviewing the CCPA competencies, the regulation of misleading advertising in e-commerce, and new challenges of algorithmic discrimination and targeted advertising. Rajat Sethi and Simran Dhir¹⁸ identify ambiguities in the Competition Act, 2002, and the lack of performance of CCI, but fail to offer the critical case law analysis and assessment of the institutional weaknesses; they raise research concerning the autonomy of CCI, its resources, and delays in decisions to propose a set of reforms and more straightforward guidelines.

In his article, D.N. Saraf,¹⁹ the author, fails to note that the MRTP Commission was faulty in its consumer protection procedures. However, it does not touch on the question of consumer law creation after the repeal of the MRTP Act or modern challenges in digital trade. Suggestions are that the post-MRTP legal regime, particularly one based on the Consumer Protection Act, 2019, has addressed these structural vulnerabilities, and recommends comparing the methods adopted by other countries to reinforce the framework. Bhupendra Yadav finds the economic and social evils of UTPs dumping and price fixing,²⁰ but does not consider the legal provisions and case law. He proposes a legal and theological summary to think about how the digital era has been received by the reactions of the legislation and the courts to these threats. In the same

¹⁶ Krishna P.V. Rao & K.P. Sastry, Unfair Trade Practices in India, 32 ANTITRUST BULL. 1051 (1987), <https://heinonline.org/HOL/P?h=hein.journals/antibull32&i=1055>

¹⁷ Raman Mittal, Sumit Sonkar & Parineet Kaur, Regulating Unfair Trade Practices: An Analysis of the Past and Present Indian Legislative Models, 39 J. CONSUMER POL'Y 91 (2016), <https://heinonline.org/HOL/P?h=hein.journals/jrncpy39&i=91>

¹⁸ Rajat Sethi & Simran Dhir, Anti-Competitive Agreements Under the Competition Act, 2002, 24 NAT'L L. SCH. INDIA REV. 32 (2013), <https://heinonline.org/HOL/P?h=hein.journals/nlsind24&i=212>

¹⁹ D.N. Saraf, Monopoly and Restrictive Trade Practices Commission in Action—Some Reflection on Consumer Protection, 31 J. INDIAN L. INST. 289 (1989), <http://www.jstor.org/stable/43951245>

²⁰ Bhupendra Yadav, Unfair Trade Practices and Their Impact in India, 5(2) INDIAN J.L. & LEGAL RSCH. 1 (2023), <https://heinonline.org/HOL/P?h=hein.journals/injlo1w11&i=7784>

vein, R. Khurana and N. Dholakia²¹ research early antimonopoly law, but do not mention the UTPs, in particular, or examine the mechanisms of consumer protection; they propose to evaluate the restrictive and unfair trade practices with the help of the current framework of competition and consumer law and examine the judicial trends. A. Pathak²² falls under the category of the promotion schemes under the liberalized economy, and it is not attentive to the current Consumer Protection Act, 2019, and the operations of the CCPA. So, by looking at the existing law protection, recent cases, and regulation developments, we can balance innovation and consumer protection. Finally, D.P.S. Verma²³ provides a history of the development of consumer protection and leaves the issue of their practical efficiency and judicial interpretation. He recommends evaluating how the courts and the consumer fora have viewed such developments and whether the consumer redressal systems are in operation today. To address these gaps in the research, cumulatively, the proposed approach will be to integrate, first, the doctrinal analysis of the post-2019 statutory changes, and, second, the empirical analysis of the process of consumer-forum and, third, the CCPA enforcement, and compare the adequacy of the current Indian regime in addressing the current digital and cross-border unfair trading practices.

3. Scope and Limitations of Legal Framework

a. Evolution of Legislative Regulation

Tracing the history, the law relating to UTPs was initially seen as a part of unfair competition, which dealt with distracting customers from honest competitors and negatively affecting their interests. Therefore, many countries have included rules against UTPs in competition laws. However, with the advance of consumerism, the concept of UTPs has been included within the law designed to protect consumers from the commercial malpractices of traders. Hence, the right to fight UTPs has come to be exercised by individual consumers and their organizations.²⁴

²¹ R. Khurana & N. Dholakia, The Working of the Anti-Monopoly Law in India: An Exploratory Study and Some Comparative Insights, in PROCEEDING THE 1982 AMS ANNUAL CONF. (2015), https://link.springer.com/chapter/10.1007/978-3-319-16946-0_195

²² A. Pathak, Legal Responses to Economic Liberalization: The Case of Unfair Trade Practices, VILAPA (2004), <https://journals.sagepub.com/doi/abs/10.1177/0256090920040305>

²³ D.P.S. Verma, Developments in Consumer Protection in India, J. CONSUMER POL'Y (2002), <https://link.springer.com/article/10.1023/a:1014533317418>.

²⁴ Raman Mittal, Sumit Sonkar & Parineet Kaur, Regulating Unfair Trade Practices: An Analysis of the Past and Present Indian Legislative Models, 39 J. CONSUMER POL'y 91 (March 2016).

Misleading or dumping consumers through false or deceptive advertisements or similar acts evolved the legal framework of unfair trade practices. There was a need for a law to protect the customers from wrongful acts used in trade and industry.²⁵

The Indian law concerning the regulation of restrictive and unfair trade practices (RTPs and UTPs) can be traced back to the Monopolies and Restrictive Trade Practices Act, 1969 (MRTP Act).²⁶ The rationale behind the MRTP Act was to ensure that economic power was not concentrated and that the Behavior of Monopolistic power was curtailed. The previous act became outdated due to its excessive regulation and inability to keep pace with the liberalization of the economy after 1991.²⁷ Consequently, it was repealed, and a new Competition Act was enacted.²⁸ It was passed in 2002. This marked a massive change towards regulating monopolies and facilitating competition, innovation, and consumer welfare. Similarly, the Consumer Protection Act also safeguarded the interests of consumers in 1986.²⁹ This was subsequently changed to a new Consumer Protection Act, 2019, to integrate the modern issues such as deceptive advertisements, unjust contracts, and electronic commerce. The Competition and Consumer Protection Acts and UTPs became the opposite extremes of legal response to RTPs in India.³⁰

b. Implications of the Competition Act and the Consumer Protection Act.

As the movement towards consumer protection gathered momentum in India, a specific legislation for additional protection of the interests of consumers was enacted in 1986³¹ In the form of the Consumer Protection Act (Law Commission of India 2006; Sen 2015).³² This statute incorporated the same concept of UTPs as in the MRTP Act of 1969.³³

²⁵ Raj Karn, Unfair Trade Practices, 4 INT'l J.L. MGMT. & HUMAN. 1945 (2021).

²⁶ The Monopolies and Restrictive Trade Practices Act, No. 54 of 1969, INDIA CODE (1969).

²⁷ Report of the High-Powered Expert Committee on Companies and MRTP Acts, Ministry of Law, Justice & Co. Affairs, Gov't of India, New Delhi, Aug. 1978, Committees & Commissions in India, 1977, Vol. 15, Pt. B.

²⁸ The Competition Act, No. 12 of 2002, INDIA CODE (2002).

²⁹ The Consumer Protection Act, No. 35 of 2019, INDIA CODE (2019).

³⁰ Bradbury, M. S. (1970). Control of Monopolies and Mergers. Palgrave Macmillan UK EBooks. https://doi.org/10.1007/978-1-349-15733-4_4

³¹ Ruchi Mittal, Shubham Sonkar & Prabhjot Kaur, Regulating Unfair Trade Practices: An Analysis of the Past and Present Indian Legislative Models, 38 J. Consumer Pol'y (2015), <https://doi.org/10.1007/s10603-015-9302-8>

³² Raman Mittal, Sumit Sonkar & Parineet Kaur, Regulating Unfair Trade Practices: An Analysis of the Past and Present Indian Legislative Models, 39 J. CONSUMER POL'y 91 (March 2016).

³³ The Monopolies and Restrictive Trade Practices Act, No. 54 of 1969, INDIA CODE (1969).

The Competition Act, 2002 gives broad provisions to address anti-competitive agreements (Section 3), abuse of dominant position (Section 4), and regulation of combinations (mergers and acquisitions) (Sections 5 and 6).³⁴ It gives the Competition Commission of India (CCI) the power to probe cartels, predatory prices, discriminatory trade practices, and denial of entry to the market. The Act aims to create a level playing field by outlawing practices that have an appreciable negative impact on competition.³⁵

However, the Consumer Protection Act, 2019, broadens the definition of consumer rights and recognizes unfair contracts, liability of products, and misleading advertisements. The Act has also established the Central Consumer Protection Authority (CCPA), which is mandated to deal with unfair trade practices, fines, and recall goods. Interestingly, the Act also applies to e-commerce websites where misleading adverts, wrongly listed and randomly stipulated service terms are the day's order. Through this, the two laws collectively aim to regulate market competition and safeguard the consumer, giving the law a broad scope.

c. Limitations and Structural Gaps

Although the Competition Act and the Consumer Protection Act have a broad jurisdictional scope, both pieces of legislation have long-term weaknesses that undermine their ability to combat contemporary market abuse. The main problem is a lack of definitive clarity.³⁶ A significant issue is a lack of definition - the laws are not precise enough to define phenomena due to digital markets. Our constitution was brought from the UK. It can be easily understood and implemented by comparing its laws with India's.³⁷ The significant point is that the UK has national laws governing consumer protection from UTP.³⁸ For instance, algorithmic pricing strategies—where self-learning pricing algorithms might encourage or promote collusive behavior by observing competitor prices—challenge conventional understandings of predatory pricing.³⁹ Existing legislation finds it hard to distinguish between aggressive pricing that helps

³⁴ Competition Act, No. 12 of 2003, ss 3–6, INDIA CODE.

³⁵ N.S. Gopalakrishnan, Competition Law and Unfair Trade Practices: An Overview, 35 Econ. & Pol. Wkly. 45 (2019).

³⁶ Unfair Trade Practices and Institutional Challenges in India: An Analysis, [http://www.cutsccier.org/pdf/UnfairTradePracticesandInstitutionalChallenges in India-An Analysis.pdf](http://www.cutsccier.org/pdf/UnfairTradePracticesandInstitutionalChallenges%20in%20India-An%20Analysis.pdf)

³⁷ Kaylene C. Williams & Robert A. Page, Jr., Comparative Advertising as a Competitive Tool, J. Mgmt. & Marketing Rsch. (2015), http://www.nabusinesspress.com/JMDC/WilliamsKC_Web7_4_.pdf

³⁸ S. Roy & N. Samanta, A Comparative Analysis of Advertising Rules and Regulations in India and the EU, 1 LSEU Addnl. (2013).

³⁹ Alochan Journal, A Critical Analysis of Algorithmic Predation in Competition Law in India, 170 (2024), <https://alochana.org/wp-content/uploads/14-AJ2442.pdf>

the consumer and behavior that erodes competition. Moreover, deep discounting and special treatment on digital platforms also bring up abuse of dominance issues; however, according to legal scholars, such mechanisms are not explicitly defined or outlawed by current laws, allowing companies to abuse grey areas and get away with it.⁴⁰ The present system of protection against UTPs under the Consumer Protection Act is blighted by a strict and restrictive definition of consumer, lack of an in-house enquiry and investigation system, incompetence of traders and trade associations to pursue cases, and lack of inherent power of the Consumer Dispute Redressal Agencies to suo motu take up matters.⁴¹ Despite its broad mandate, the Monopolies and Restrictive Trade Practices Act (MRTP) often failed to prevent concentration of economic power in a few hands.⁴²

This also weakens the regulatory framework as there is a jurisdictional overlap between the Competition Commission of India (CCI) and the Central Consumer Protection Authority (CCPA). The practice of deep-discounting, misuse of data, or deceptive listing moves beyond the jurisdiction limits when both consumer and competition laws are at risk. Academic commentary underscores that the absence of binding consultation can yield fragmented enforcement: parallel jurisdiction without binding consultation mechanisms often produces fragmented outcomes.⁴³ Even legislative efforts, such as consultation provisions under Sections 21 and 21A of the Competition Act,⁴⁴ Remain underutilized, leaving inter-agency conflict unresolved.⁴⁵

Procedural barriers aggravate these. CCI investigations are often lengthy, reducing the law's deterrent effect. Similarly, consumer forums are not used fully as they are neither publicly aware nor available to small businesses and individual consumers. Implementation is therefore weakest in areas where law design is strongest in principle.

⁴⁰ N.S. Gopalakrishnan, Competition Law and Unfair Trade Practices: An Overview, 35 Econ. & Pol. Wkly. 45 (2019).

⁴¹ Mittal & Raman; Sonkar & Sumit; Kaur & Parineet, Regulating Unfair Trade Practices: An Analysis of the Past and Present Indian Legislative Models, 39, J. Consumer Pol.Y., 91(2016).

⁴² Khurana R. & Dholakia N., The Working of Anti-Monopoly Law in India: An Exploratory Study and Comparative Insights, Proceedings of the 1982 AMS Annual Conf., (2015).

⁴³ Bhumika Indulia, Competition Commission of India's Jurisdiction Across All Sectoral Boundaries, SCC Online (Sept. 20, 2024)

⁴⁴ Competition Act, No. 12 of 2003, ss 21–21A, INDIA CODE.

⁴⁵ Neetini Yaman, CCI vs Sectoral Regulators: Jurisdictional Conflict in India,(2025) <https://neetiniyaman.com/cci-vs-sectoral-regulators-jurisdiction-conflict-part-3>

d. Emerging Challenges in the Digital Marketplace.

The emergence of markets propelled by algorithms has revealed other weaknesses. The new threat of competition is algorithmic collusion, or collusion organized by autonomous regimes instead of explicit agreements. Such coordination occurs when algorithms interact in ways that lead to harmful or anti-competitive outcomes.⁴⁶ Effectively bypassing traditional definitions of “agreement” under competition law. This up-and-coming form of collusion leaves enforcement loopholes that the existing laws are not well-positioned to fill.

e. Need to Modernize Legislative and Institutional Framework.

These gaps must be filled through reform. Algorithms Collusion Algorithms Collusion based on platforms and algorithms should be outlined in the Competition Act. Improvements that include special digital economy departments in the CCI and more powerful suo motu and time-limited adjudication systems are needed to reinforce enforcement. Also, informal coordination links between the CCI and the CCPA would enhance redundancy and coherence in complex market behaviour responses.

4. The Digital Economy and Enforcement Problems.**a. Algorithmic pricing and collusion**

Digitization has revolutionized the way trade is conducted in India. Conventional conceptualizations of restrictive and unfair trade practices are becoming less satisfactory in meeting the challenges of platform-based markets. A very tough frontier is algorithmic pricing and collusion. In digital markets, prices are dynamically fixed by algorithms, and sometimes the results are anti-competitive, without conscious human coordination. Algorithmic collusion represents a frontier challenge for competition law as it produces anti-competitive outcomes without the traditional ‘meeting of minds’ required for cartelisation.⁴⁷ The liberalization of the Indian economy in the 1990s created new growth opportunities and gave rise to complex and

⁴⁶ Shambhavi Jha & Simran Nagra, *An Analysis of Algorithmic Collusion under Indian Competition Law: Comparative Study with EU and US*, 5(1) *Jus Corpus L.J.* (2025).

⁴⁷ Shambhavi Jha & Simran Nagra, *An Analysis of Algorithmic Collusion under Indian Competition Law: Comparative Study with EU and US*, 5 (1) *Jus Corpus L.J.* (2025). <https://www.juscorpus.com/wp-content/uploads/2025/01/3>.

sophisticated unfair trade practices that existing laws struggled to regulate.⁴⁸

b. Preferential listing and Deep Discounting.

They also offer deep discounts and preferential listings on digital platforms. Even though discounting is helpful to the consumer, it will likely have long-term exclusionary implications for small sellers and traditional retailers. The competition regime in India swings between a consumer welfare approach, which justifies discounting, and a structuralist approach, which considers it exclusionary, leading to interpretive uncertainty.⁴⁹ Without sector-specific digital guidance, regulators must make ad hoc interpretations of abuse of dominance requirements.

c. Data Misuse and Jurisdictional Conflicts.

The third most challenging task is the use of consumer information. Platforms facilitate the monetization and centralization of revenues on personal and transactional data volumes, and in the vast majority of cases, they generate uncontrolled market power. The absence of a specific data protection regime and a weak understanding of data as a power in the market indicate that Indian regulators are not best placed to address digital monopolies.⁵⁰ Jurisdictional fragmentation between the CCI and CCPA subjects the regulator to regulatory hesitation in favor of the strong firms at the expense of consumer and competition protection in real time.⁵¹

d. Enforcement Recommendations

Unfair trade practices can take many forms, including price fixing, collusion, and misleading advertising.⁵² So, the CCI needs more substantial power, technical competence, and time-limited adjudication processes to solve these issues. Strengthening inter-agency coordination among CCI, CCPA, and emerging data regulators is essential. Reporting and compliance may also be enhanced by consumer and small business awareness campaigns. Devoid of these, anti-competitive behavior in the digital markets will remain unmitigated, compromising healthy

⁴⁸ Pathak A., *Legal Responses to Economic Liberalization: the Case of Unfair Trade Practices*, Vilapa, (2004).

⁴⁹ Pradeep S. Mehta, *Digital Platforms and the Challenge of Competition Law Enforcement in India*, *Econ. & Pol. Wkly.* (2021).

⁵⁰ Rahul Singh, *Data and Competition Law: The Indian Experience*, *Indian J.L. & Tech.* (2020). <https://www.nls.ac.in/faculty/rahul-singh/>.

⁵¹ Rajani Ranjan Jha, *Competition Law and Consumer Protection in India: The Problem of Overlapping Jurisdiction*, *Indian J.L. & Tech.* (2020).

⁵² Yadav & Bhupendra, *Unfair Trade Practices and their Impact in India*, 5(2), *Indian J.L. & Legal Rsch.*, (2023).

competition and benefiting consumers. Section 3 of the Competition Act, 2002⁵³ It is drafted widely. However, its usage in practice has been curtailed by the bashfulness of the Competition Commission of India, which has been hesitant, first of all, to enforce strict liability in the context of vertical agreements.⁵⁴

5. Role of the CCI

The Competition Act, 2002, created the Competition Commission of India (CCI) as the most essential instrument in India's regulation, restraint, and unfair trade practices. It has to deter anti-competitive contracts and anti-dominant positions, and control combinations that may significantly influence competition. Nevertheless, its efficiency and performance at the institutional level are doubtful, especially in the evolving digital market and a dynamic business environment.

a. Institutional mandate and achievements.

CCI was adapted to achieve the post-liberalization objective of facilitating free markets. The Act is also an essential improvement of the old competition regime, in that it avoids monopolistic disposition and promotes competition as an instrument of consumer welfare and innovation.⁵⁵ The CCI has been important in transforming the Indian competition law environment since its inception. It has engaged landmark cases to address cartelisation in the cement and tyre industry, imposed fines on automotive businesses involving restrictive deals with dealerships, and scrutinized online multinational corporations such as Google, Amazon, and Flipkart in the areas of abuse of dominance and preference position. The CCI has acted simultaneously as a regulator and market reformer, balancing punishment and guidance to ensure the market behaves correctly.⁵⁶

However, despite the active approach that the CCI has taken, it has been inconsistent in converting orders into sustainable market reforms. Research indicates that despite their

⁵³ Competition Act, No. 12 of 2003, s 3, INDIA CODE.

⁵⁴ Sethi & Rajat, Anti-Competitive Agreements Under the Competition Act 2002, 24, Nat'l L. Sch. India Rev., 32(2013).

⁵⁵ D.S. Lund, *A Competition Act by India, for India: The First Three Years*, Colum. J. Asian L. (2013), available at https://scholarship.law.columbia.edu/faculty_scholarship/5416

⁵⁶ Pradeep S. Mehta & Abir Roy, *Ten Years of Indian Competition Law: A Balance Sheet*, 57 (3) Econ. & Pol. Wkly. 41 (2022), available at <https://www.epw.in/journal/2022/3>

considerable size, fines fail to discourage a repeat offense, especially where multinationals with vast amounts of capital are involved.

b. Institutional and Structural Challenges.

The enforcement ability of the CCI has been compromised by judicial interference and the apparent overlapping of jurisdictions, even though the CCI was established as an independent regulator. Indian courts have downgraded the Competition Commission of India's position in the adjudicatory hierarchy by requiring it to await the findings of sectoral regulators.⁵⁷ The regulatory delay is the practical consequence that, in deciding whether there is jurisdiction to combat anti-competitive conduct, the conduct continues without restraint. Consumer protection in India has gradually evolved from a paternalistic model towards a rights-based framework, but enforcement continues to be weak and fragmented.⁵⁸

In addition, the proactive ability of the CCI is limited by the lack of suo motu powers in some settings. Although it can be used to start investigations, the reluctance of the institution and the inflexibility of procedures impede a quick implementation. The deterrent value of penalties is diluted by long-term investigations, which often require several years. When it comes to international online companies such as Google, by the time the verdicts are passed, the market might have already passed irrevocably in favour of the established players.

c. Digital economy challenges.

The digital economy has increased the limitations of the CCI. Algorithms, collusion, deep discounting, preferential listing, and data exploitation are some practices that lie in grey areas that cannot be easily tackled using the existing laws. Traditional notions of tacit collusion and hub-and-spoke should be reconstrued in the context of digital markets.⁵⁹ On the same note, when e-commerce giants favor their labels over their competitors, they blur the distinction between a competitive strategy and exploitative dominance.⁶⁰

⁵⁷ Madhavi Singh, The Competition for India's Antitrust Jurisdiction: Competition Commission Versus Sectoral Regulators, 11(1) J. Antitrust Enf't 91, 91 (2023)

⁵⁸ Verma DPS., Developments in Consumer Protection in India, J. of Consumer Policy, (2002).

⁵⁹ Nikita Koradia & Kiran Manokaran, *Algorithmic Collusion and Indian Competition Act: Suggestions to Tackle Inadequacies and Naivety*, in *Digital Economy and Competition Law in Asia* 127 (2021)

⁶⁰ K.S. Ramanathan, Competition Law Enforcement in India: Issues and Challenges, 16 J. Competition L. & Pol'y 323 (2019).

The CCI has tried to address these issues by launching inquiries into Amazon, Flipkart, Google, and food delivery services. Nevertheless, even these cases tend to be protracted and appealed to higher courts. Also, the Competition Act does not mention algorithmic collusion or data-based exclusionary practices. Yet, the CCI must interpret the current provisions, which introduce the risk of interpretative inconsistency.⁶¹

d. Approaches to strengthen the institutional capacity.

Having known these constraints, scholars have come out to articulate the necessity of empowering the institution of the CCI. It has been proposed that specialized units of the digital economy be created with data scientists, economists, and legal experts trained in platform economics. Assuming it is enacted, the proposed Digital Competition Bill, 2024, will give the CCI more statutory authority to act against algorithmic collusion, self-preferencing, and data exploitation. Moreover, adjudication must be time-bound; the longer the litigation period, the worse the deterrence and consumer confidence in the regulatory regime.⁶² It is also necessary to have improved inter-agency coordination. Although CCI and CCPA control different aspects of competition and consumer rights, numerous unfair trade practices can be subject to both.⁶³ To minimize jurisdictional conflict and create a more efficient enforcement process, joint task forces or memoranda of understanding between the two bodies may help reduce jurisdictional conflict. Enhancing suo motu authority in industries would enable the CCI to be proactive instead of inactive until an industry or consumer complains, most of whom have no resources or awareness to go to court.

In conclusion, the CCI is only effective when the imposition of fines influences the industry's behavior by providing guidance, compliance programs, and clear expectations of the regulations. The CCI will fall behind the pace of advancement in digital markets unless it is given statutory clarity, institutional capability, and digital skills.

6. The role of the judiciary on RTPs and UTPs in India.

The judiciary in India has played a key role in defining the outlines of restrictive and unfair trade practices (RTPs and UTPs) through its interpretation of the statutory provisions and its

⁶¹ Competition Comm'n of India, *Annual Report 2022–23* (2023), <https://cci.gov.in>.

⁶² C.A. Krishnan, Market Dominance and Abuse of Dominance under the Competition Act, 2002, 9 J. Bus. L. & Ethics 45 (2016).

⁶³ Competition Comm'n of India, *Market Study on E-commerce in India* (Jan. 2020), <https://cci.gov.in>.

supervision of regulatory activities. Although the Competition Act, 2002, and the Consumer Protection Act, 2019⁶⁴, apply. The judiciary has become the ultimate arbiter of law on detecting abuse of dominance, unjust contracts, misleading advertisements, and algorithmic collusion. Such court decisions have not only ruled on the cases but also have stipulated specific guidelines to be followed by other bodies like the Competition Commission of India (CCI) and the Central Consumer Protection Authority (CCPA). At the same time, numerous gaps and discrepancies in the application approaches to the court degrade enforcement, highlighting the urgency of reform.

a. Judicial Landmarks in Regulating Trade Practices

In most cases, the judiciary has expanded the scope of enforcement. In *DLF Ltd. v. Competition Commission of India*,⁶⁵ the Competition Appellate Tribunal (COMPAT) supported the ruling by the Competition Commission to establish that DLF had taken advantage of its superiority to provide one-sided contractual terms to builder-buyers. The landmark case established that unfair trade practices can be exploitative contract terms imposed on builder-buyers by a dominant enterprise. In like manner, *Belaire Owners Association v. The National Consumer Disputes Redressal Commission (NCDRC)* reiterated that such against-off-putting contractual terms were against the consumer's rights. Thus, the judiciary was proactive in ensuring fairness.⁶⁶

The judiciary has taken remarkable measures in the digital economy to deal with platform dominance. In *Google LLC v. National Company Law Appellate Tribunal (NCLAT)*,⁶⁷ The court imposed heavy fines on Google because of dominance abuse in the Android ecosystem, which involved conditioning its services to smartphone manufacturers. It was a significant move towards recognizing how digital platforms can manipulate competition and establishing a precedent to regulate algorithmic bias and data-driven exclusionary practices.

Another instance in which the judiciary acknowledged the possible dangers of algorithmic collusion is *Samir Agrawal v. ANI Technologies Pvt. Ltd.*⁶⁸ In which the Supreme Court recognized that setting prices by Ola and Uber algorithms could be used to achieve a collusive

⁶⁴ The Consumer Protection Act, No. 35 of 2019, INDIA CODE (2019).

⁶⁵ *DLF Ltd. v. Competition Comm'n of India*, (2013) 4 SCC 673.

⁶⁶ *Belaire Owners' Ass'n v. DLF Ltd.*, (2011) NCDRC 403.

⁶⁷ *Google LLC v. National Company Law Appellate Tribunal*, (2023) 9 SCC 714.

⁶⁸ *Samir Agrawal v. ANI Techs. Pvt. Ltd.*, (2021) 3 SCC 136

effect similar to that of a cartel. This was the first instance where the highest court looked at algorithm-based practices as a potential means of restrictive trade practices.

Courts have broadened the unfair trade practices in consumer protection. More recently, in *Indian Medical Association v. V.P. Shantha*,⁶⁹ The Supreme Court has also decided that the Consumer Protection Act applies to medical services and has expanded consumer rights—*Rapid v Patanjali Ayurved Ltd.*⁷⁰ The Delhi High Court condemned misleading advertisements and emphasized that no corporation could manipulate the vulnerability of consumers via misleading claims.

b. Judicial Limitations and Loopholes

Despite these developments, the judiciary has not been doing everything well, either creating lapses in implementation. One of the strongest criticisms is the inconsistency of the decisions. The example of this is that, whereas consumers are highly safeguarded in the case of *DLF Ltd.*, courts have generally been reluctant to delineate a strict boundary between pro-consumer pricing and predatory pricing when it comes to cases of deep-discounting of products by e-commerce service providers like Amazon and Flipkart. This absence of standard interpretation poses confusion to businesses and to the regulators.

Lack of prompt judgment also undermines judicial performance. *Google LLC v. CCI*⁷¹ The proceedings of a years-long CCI, where the disputed practices continued, diluted the deterrent impact of the ruling. Scholars have observed that judicial delay in India significantly dilutes the deterrent impact of competition law enforcement.⁷²

The courts have also been unable to assert the legal definitions to suit the new-age practices. Whereas even as the Supreme Court recognized the existence of algorithmic collusion, it did not go to the extent of laying down a clear test of identifying and controlling such collusion, and the regulators were left without a clear direction. Equally, courts have been reluctant to regard preferential listing or self-preferencing by e-commerce platforms as anti-competitive

⁶⁹ *Indian Med. Ass'n v. V.P. Shantha*, (1995) 6 SCC 651.

⁷⁰ *Central Consumer Protection Authority v. Patanjali Ayurved Ltd.*, 2023 SCC OnLine Del 2560

⁷¹ *Google LLC v. Competition Comm'n of India*, 2023 SCC OnLine NCLAT 31.

⁷² S. Chakraborty & M. Singh, *Judicial Delays and Competition Law Enforcement in India*, 12(2) Indian J.L. & Econ. 215 (2021)

per se, which leaves a grey area where e-commerce firms can easily find loopholes.

Furthermore, in instances like *Coordination Committee of Artists and Technicians v. Union of India*,⁷³ The Supreme Court does not appear to be proactive in controlling business practices that may be anti-competitive, with the implication that it adopts a conservative approach in some instances.

c. Critical Analysis

The role of the judiciary has been twofold. On the one hand, rulings such as *DLF and Google* indicate the readiness of judicial institutions to change according to the market conditions and safeguard consumers. Conversely, the effect of judicial interventions is thinned out by inconsistency and delay. Courts have tended to switch between a consumer-welfare and a market-freedom focus, making enforcement unpredictable. For example, where one group of cases reflects consumer-based understandings, others, especially in digital trade, show reluctance to provide explicit limits within which practices can be carried out.⁷⁴ The judicial system, says the lack of specificity in the statutes, has been effectively turned into a quasi-legislative system, leading to piecemeal decisions that fail to prevent unfair practices by the powerful firms.⁷⁵

7. Conclusion and Suggestions

The restrictive trade practices (RTPs) and unfair trade practices (UTPs) regulation in India underlines the ongoing conflict between legislative intentions and realities of implementation. The Competition Act, 2002, and the Consumer Protection Act, 2019, are the two pillars of the regulatory framework, and ambiguous definitions, jurisdictional overlap, and time lag in adjudication undermine their ineffectiveness.⁷⁶ This has been further amplified by the advent of the digital economy, in which algorithmic collusion, preference listing, and deep discounting have revealed gaps that the old laws were not set up to handle.

⁷³ *Coordination Comm. of Artists & Technicians of W.B. Film & Television v. Union of India*, (2017) 5 SCC 17.

⁷⁴ Arghya Sengupta, *Competition Law in India: Policy, Issues, and Developments*, 12 Nat'l L. Sch. India Rev. 85 (2000).

⁷⁵ Sumit Sonkar & Parineet Kaur, *Regulating Unfair Trade Practices: An Analysis of the Past and Present Indian Legislative Models*, 58(3) J. Indian L. Inst. 423 (2016)

⁷⁶ Ministry of Corporate Affairs (India), *Report of the Committee on Digital Competition Law* (2023).

The court interventions have been instrumental in the future of competition and consumer law, as evidenced in landmark decisions like *DLF Ltd. v. CCI*.⁷⁷ And *Google LLC v. CCI*.⁷⁸ Such rulings confirm a readiness of the judicial system to make major companies responsible, yet they also expose inconsistencies and gaps, particularly involving digital platforms. Sometimes, the courts have been reluctant to deal with algorithmic practices or do so piecemeal, leaving the regulators and businesses unsure.⁷⁹

The Competition Commission of India (CCI) is the primary enforcement mechanism, failing to manage systemic problems. Investigations continue to lag, there is no institutional knowledge of the digital markets, and there is poor coordination with the Consumer Protection Authority and the regulators of the sectors. All these limitations will compromise deterrence and may render the CCI responsive and not proactive.⁸⁰

Reforms are needed to overcome these shortcomings. First, legislative clarity is required to explicitly define algorithmic collusion and self-preferencing practices. Second, institutional capabilities of the CCI need to be enhanced with digital economy skills, suo motu investigative authority, and time-limited adjudication. Third, the judicial reforms, such as special competition benches and specific training of judges, are essential to foster a consistent interpretation. Lastly, a more balanced enforcement ecosystem will be established through inter-agency coordination and consumer empowerment through awareness and available grievance mechanisms.

In conclusion, the issue in India is not that there is no regulation but that the laws must be responsive to market factors. The legal modernization, institutional strengthening, and judicial consistency have to be a holistic approach that should be used to protect the welfare of consumers and provide fair competition. Only through this can India have a competitive, transparent, and just marketplace. Systemic reforms are necessary to strengthen the judiciary in controlling RTPs and UTPs. First, competition benches should be set up at the High Courts or the Supreme Court, where there would be expertise and less time wastage. Second, educating judges on digital economy practice (especially algorithms, data exploitation, and platform

⁷⁷ *DLF Ltd. v. Competition Comm'n of India*, C.A. No. 6328 of 2014 (S.C. Ind.).

⁷⁸ *Google LLC v. Competition Comm'n of India*, Competition Appeal (AT) No. 1 of 2023 (NCLAT Mar. 29, 2023).

⁷⁹ Roy S. & Samanta N., *A Comparative Analysis of Advertising Rules and Regulations in India and the EU*, 1 LSEU Addnl. 233 (2013).

⁸⁰ D.N. Saraf, *Monopoly and Restrictive Trade Practices Commission Action—Some Reflection on Consumer Protection*, 31 J. Indian L. Inst. 289 (1989)

economics) would result in better case resolution in new fields. Third, the courts must establish consistency by deploying jurisprudential tests of predatory pricing, algorithmic collusion, and self-preferencing. Finally, there would be increased coordination of the courts, the CCI, and the consumer fora, which would mean that there are fewer conflicts of jurisdiction and that there is wholesome enforcement.

Finally, the judicial system has been excessively controlled with unfriendly and unreasonable trading tactics; its authority is weakened by the absence of uniformity, slowness, and unwillingness to adapt to suit the new millennium. The development of judicial professionalism and the rationalization of adjudication are of great importance in making sure that the legal system of the Indian market can follow the dynamics of the new markets.