

Demystifying The Concept Of Right To Repair: A Contemporary Desideratum

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INTRODUCTION

Consumer awareness has not been a novel concept especially post internet and smartphone technology invention. As internet allows people worldwide to connect and share ideas at a common platform, a present day consumer or a purchaser is on a swarming mode into gaining knowledge about the products purchased online or offline, the durability and efficiency, the pricing and comparison of specifications with similar products etc., on the tips of his or fingers. In the present times a prompt and an educated consumer is also concerned with the environmental effects of a product he is or she purchases. But when it comes to electronic products, owing to lack of technical and scientific education a user probably has no option other than to choose a product which is trending in the market and because of the specifications assimilated and advertised by a company which in turn suffices the inquisitiveness, professional and personal requirements of the user. The user in turn is unable to trace the effects and the extent of damage caused by these electronic products on personal health as well as on the environment.

Another elementary issue that did not bother the users during the beginning of the 21st century but has now surfaced, is the user's right to get an electronic product or device repaired by the same company that has manufactured it without charging a heavy fee for repair; also known as the "right to repair" which is receiving worldwide acclamation from the users' point of view and has taken the shape of a movement but is receiving disapproval and resistance from the giant technology players i.e. the technology motivated companies like Amazon, Apple, Microsoft, etc. The concept of "right to repair" suggests that the ownership being established the moment a product or a device is sold to a purchaser or a user should be inclusive of his right to get it repaired rather than getting it recycled. Recycling and replacement of a product or a device should be posed as an alternative to the users and not as the last resort.

Designing of a product or device by the companies in such a manner that the technology on which it is based becomes obsolete in a few years of its usage, restricting consumer's access to the tools and spare parts of such devices, thus leaving the user with no choice but to discard the product or get it replaced with an advanced version of the same; is more or a less a limitation or constraint on the ownership rights of a user and at the same time an expensive affair. Apart from the consumer preferences today are witnessing a paradigm shift from automated technology to green technology and from "linear economy" to "circular economy". The concept of "linear economy" suggests the conversion of raw materials into a product that ultimately gets discarded after its consumption and maximum usage over a period of time leaving no scope of subjecting it to recycling; whereas as the "circular economy" is intrinsically a closed loop of process of designing products in such a manner so as to make it reusable in a sustainable manner. It not only leads to innovation and new businesses but also generates employment and skills. However the "right to repair" movement and the concept of "circular economy" is facing constant impediment from the giant technological players or manufacturing companies because of their belief that promoting this right of users; might compromise their intellectual property rights in one or the other way and might cause danger and damage to the security system and data designed as well as managed by them.

FACETS OF RIGHT TO REPAIR

When a device malfunctions the consumer is left with the options like approaching the manufacturer or the seller, or a repair center authorized by the manufacturer or an independent repair service provider; or owing to scientific and technical knowledge or skill they can repair the device themselves; or lastly replace or dispose it off. Often the word "repair" is synonymously used with the word "maintenance" but both differ from each other as the latter is anticipatory in nature and refers to taking steps to maintain the longevity of a product while it is still functional whereas the former is reactionary in nature as it refers to the efforts made to mend or reconstruct a product after it becomes dysfunctional or gets damaged.

There are two set of views regarding the services that render repair. The first one says that repair can be either “open access” or “closed access” to repair services, where the former caters to the right of the consumers to decide the trouble-shooter or the repairer whereas the latter attributes to the restrictions imposed by the original manufacturer on the right of consumers to opt for the repair services of their own choice.¹ The second set of views suggests that repair can be categorised into assembling, moderate repair and progressive level of repair; where assembling is the simplest form of repair where a damaged device can be mended by simply assembling the parts. The moderate level of repair requires knowledge and skill up to a certain extent; to perform the task of repairing and lastly the progressive level of repair requires advanced skill and knowledge to repair a device.²

The actors and supporters of “right to repair movement” have certain demands like the design and the model of a particular electronic device should be such that it could be easily repaired; and access to be provided to the users as well as the independent service providers of the components as well as tools including both software and physical parts of a product; and access to be provided by the original manufacturer in the documented form of authorised user manual pertaining to repair of a particular device by the user who is the ultimate owner of that device. But the legal and technical restrictions imposed by the technological giants on the right of users pose a user as a “projected owner” rather than being an ultimate owner or preferably an end user. In ordinary sense it can be said that that “right to repair” requires a manufacturer to design or construct a device or a product in such a manner that it allows and extends the liberty to his consumers to repair it in case it becomes defective. It is also inclusive of the right of the consumer as to decide the time, repair service provider, the extent to which repairing is required and the imposition of reasonable charges.

According to a survey conducted during 2019-2020, on around 7500 male and female respondents corresponding to the census data pertaining to the year 2010, constituting the American population (USA) that the support for the “right to repair” manoeuvre is directly proportional to the familiarity of consumers with the concept of right to repair.³ Further it suggested that the stumbling blocks for repair laws were increased costs imposed by the original manufacturer, restricted access to parts and tools as well as legal restrictions imposed by the intellectual property rights of the manufacturers. The interpretation and application of intellectual property laws in this situation makes the advocacy and enforcement of the “right to repair” a complicated affair for the stakeholders.⁴

Among the other blockages for the access to repair includes:

(a) the terms of agreement between the consumer and the manufacturer owing to the lengthy terms and conditions framed by the companies especially the ones pertaining to the smart phone technology which the user does not spare time to read entirely and agree to it to save time and resources, as well as lack of legal knowledge and intricate language of the agreement leading to breach of contract; or
 (b) lack of appreciation and knowledge among the consumers about the “right to repair”; or
 (c) misleading information spread by the tech-companies to distract the consumers from engaging into activities of unauthorized repair in order to jeopardize their efforts by making them cautious of the implications like violation of legal terms or an implied concordat for that matter; or
 (d) “Planned Obsolescence”- this term has gained wide popularity worldwide in fairly a short span of time considering the impact it leaves on the mind of the readers and a prompt as well as a curious end user. The term has been defined various activists and media houses as a toxic strategy deployed by the manufacturing companies to design or build a product in such a manner either by deploying the kinds of parts and tools or by designing such a software so as to limit its functional life causing the owner of such product to replace it with new one and engage into frequent purchasing on regular intervals of time. It is a deliberate move to encourage the consumers to engage in active replacement policies or patterns as it can also be practiced by the manufacturers by the regular practice of introducing advanced versions or models of a product without even subjecting the previous model to obsolescence. One of the most authentic instances is the acceptance by the tech-company Apple of being involved in “planned or premature obsolescence” in the year 2018 to encourage sales of replacement models.⁵ By the critics of obsolescence this kind of practice is considered to be unethical, and infringement of consumer rights as well as exploitation of the economic resources as well as financial capacity owned by the end users; or

¹ Svensson S., Richter J. L., Maitre-Ekern E., Pihlajarinne T., Maigret A., & Dalhammar C., “The Emerging ‘Right to Repair’ legislation in the EU and the U.S.” (2018), available at https://lucris.lub.lu.se/ws/portalfiles/portal/63585584/Svensson_et_al._Going_Green_CARE_INNOVATION_2018_PREPRINT.pdf (last visited on April 25th, 2024)

² Ricardo J Hernandez , Constanza Miranda & Julian Goni, “Empowering Sustainable Consumption by Giving Back to Consumers the ‘Right to Repair’”, *Sustainability* 4 (2020), available at <https://www.mdpi.com/2071-1050/12/3/850/pdf> (last visited on April 25th, 2024)

³ Aaron Perzanowski, “Consumer Perceptions of the Right to Repair”, *Indiana Law Journal* 96 (2021), available at <https://ssrn.com/abstract=3584377> (last visited on April 27th, 2024)

(e) Absence of legal obligation on the part of manufacturers to provide the consumers with the documentation regarding dismantling and repair of the products designed and sold by them.

JOURNEY OF THIS MANUEVER – LEGISLATIVE EFFORTS WORLDWIDE

The journey of this movement owes its origin to the early 1920's when automobile sector was marked with competition between automobile industry players like General motors and Ford where one company which strategically constructed spare parts of its products ore automobiles in such a manner that they needed to be changed on a frequent basis so as to increase the demand of customers on annual basis the moment a new model was launched with an advanced version. Following it the other automobile companies also dropped in the field with similar strategies so as to discourage the independent service providers from making pace with the ownership of alternatives to repair the original model by a company as well competing with the service providers exclusively authorised by the original manufacturer. This in turn was a calculated move ploy to psychologically motivate the consumers into purchasing new or advanced versions of the same model rather than opting for repairing of the purchased product. By the end of 1950s another strategic gimmick that came into play was to restrict access to spare parts of a particular product or an automobile model so as to create monopoly on the repairing services apart from manufacturing and selling as well. This strategy extended to other industries with the advent of internet, smart phone technology as well as other advanced technologies including artificial intelligence.

The first legislative effort towards the “right to repair movement” was “Right to repair Bill” in the US which imposed an obligation on the manufacturers in the automobile sector to treat the third-party repair service providers with authorised service providers and retailer with regard to the information regarding reparability of products but it failed proper implementation until the “Motor Vehicle Owners’ Right to Repair Act” which was enacted in 2012 post which the first US Bill on motor-vehicle owners’ right to repair was finalised by Massachusetts in 2014. To this piece of legislation an amendment has been proposed in the year 2020 which shall require the manufacturers to render cooperation for providing open access to repair for the consumers as well as the independent service providers through mobile applications. Most of the legislative efforts in US have gained backing from a confederation known as the Repair association formed in 2013 which advocated for laws, rules, regulations and stratagem promoting repair. Recently in 2021 an executive order has been brought by the US President Joe Biden to ask the Federal trade Commission (FTC) to make it mandatory for the “original equipment manufacturers” (OEMs) to permit and acknowledge the right of consumers to repair their own electrical devices or get it repaired by an independent service provider of their own choice.⁶ The order also required the FTC to bring those tech-companies who are trying to limit the above mentioned right by imposing restrictive policies; under scrutiny. However this executive order is being antagonized by various tech companies on the ground that it might turn out to be a threat to cyber security of a device along with compromising the intellectual property rights of the original manufacturer and the creator of the design or software. The significance of freedom to repair has been highlighted with an incident of urgency in Los Angeles during the 2019 pandemic of repairing approximately 170 ventilators that had worn out, and that task of repairing was done by a private firm rather than relying on the original manufacturer.⁷

As far as United Kingdom is concerned the “right to repair” laws recognize the right of skillful repairmen to have access to spare parts and specialized technical information to be provided by the original manufacturers; effecting from July 1, 2021. The repair laws of UK are more focused and dedicated towards achieving the concept of “circular economy” by adopting green and energy efficient technology. They are trying to enforce such rules and regulations that will work towards generating such products, services and models that are susceptible to sustainability; the examples being the “Eco-design for Energy-Related Products and Energy Information Regulations 2021” and the “CEAP-Circular Economy Action Plan, 2020”.⁸ The Eco-Design regulations of 2021 aim at achieving:

- (a) Environment protection and reduction of electronic waste in the UK.
- (b) Extension of shelf life or longevity of certain household goods.
- (c) Imposition of legal obligation on the original manufacturers and the sellers to make available skilled repairmen and the consumers the spare parts and tools to perform the repair of their electronic goods on their own; for a period of approximately 7-10 years effective from the date on which the last model of a particular device has been available in the market. However a relaxation period of 2 years is provided to the original manufacturers for making available the spare parts and tools.
- (d) Obligation of the original manufacturers to make available information or manual of directions of repair and maintenance; to the professional third-party or independent service providers.
- (e) Replacing the policy of discard and recycle with repair.
- (f) Sustainable use of energy and raw materials in designing and manufacturing products.

⁴ Ibid

⁵ Forbes media privacy statement, available at <https://www.forbes.com/fdc/privacy.html> (last visited on May 12, 2024)

Under the latest developments on “right to repair movement” in Europe, the continent on the path to become a climate-pacifistic, under the aegis of the European Commission adopted and released on March 22, 2023, common rules under a proposal for promoting repairing of the goods (hereinafter referred as the Repair Proposal). The main objectives of the repair proposal include:

- (a) Promoting more sustainable consumption through repair of used products and preventing the early discarding of usable consumer items while maintaining a high standard of safety for consumers, thus leading to prevention from creating unnecessary waste.
- (b) To grant a ‘right of request’ to the consumers for repairing of the product within and beyond the guarantee period, subject to “requirements of reparability”; from the manufacturers. Such requirements should be such as to enable the goods apart from being worthy of repair, easy to disable, open to access of spare parts and components, repair supporting information and tools.
- (c) Unlike the EU laws which although promote repair but do not oblige the manufacturers to providing repairing services, the new repair proposal requires the manufacturers to make the repairs, either on their own or with the help of independent repairers.
- (d) To impose duty on the manufacturers to inform their consumers both about their obligation to repair and to provide intimation regarding repair services.⁹
- (e) Establishing a common online platform enabling the consumers to locate and compare repair services corresponding to respective repairing conditions and to choose repair and reuse services as a substitute to purchasing a new product. The online platform will also provide the consumers an option to find sellers, restored goods and buyers of goods to restore them; of their own choice after comparing and analysing. Further the online forum has been proposed keeping in view of the inabilities of the vulnerable individuals like the physically disabled, aged etc.¹⁰
- (f) Making a provision for the consumers to avail a form regarding repair related information the terms and conditions of which cannot be modified by the repairer until 30 days; from the repairer to be able to compare the cost of repair and choose the best services.¹¹

But with the European Commission’s proposal, as promising as it appears to be, the actual scenario is quite different because there exist numerous problems at this stage. Some of them being issues regarding implementation and enforceability of the rules, failure maintain a balance between right of repair and replacement, etc..

As far as India is concerned there is clear absence of any legislative efforts let alone enactment of any piece of legislation or statutory recognition to “freedom to repair” which can be considered to be the coinage of repair laws unlike USA and UK. However the major sectors that have been fairly considered by the Indian Consumers Affairs Department for the application and protection of the “right to repair” include cultivation and agricultural equipment, automobile sector, mobile phones and tabloids, equipment supporting consumer durability; and have created a portal for the Indian consumers; which claims to provide an easy access to a consolidated list of details pertaining contact for consumer care.¹² The portal also claims to list the names of certain companies or the product names as well as details regarding terms and conditions, warranty, product related services, automated links meant to directly connect to the authorized service centres or even independent (third-party) service providers, pricing and other details of the spare parts and components that are consumable, etc.¹³ This portal created by the Ministry of Consumer Affairs also acts as a medium for the consumers to directly reach out to bodies like National Consumer Helpline, the Department of Consumer Affairs, the National Consumer Disputes Redressal Commission (NCDRC), Bureau of Indian Standard (BIS), Centralized Public Grievance Redress And Monitoring System (CPGRAMS) etc. for create a sense of awareness regarding consumer affairs as well as for seeking help for the same.¹⁴ However there is no awareness among larger part of the population about such an online facility especially amongst the educated masses; whereas the uneducated cannot be presumed to have awareness regarding their basic consumer rights.

The Consumer Protection Act of 2019 however does not provide a statutory recognition to “right to repair” but promotes certain consumers’ rights like “right to choose”, “right to consumer education”, “right to address grievance and seek remedy”, and “right to be heard”. It also requires the manufacturers to provide quality goods and services to the consumers that are fit according to the basic standards.¹⁵ Further the Competition Act, 2002 in the interests of consumers, deals with prohibition of monopolistic (anti-competitive) agreements and practices to promote fair competition in the market and to prohibit market abuse by dominant business enterprises.

⁶ The Daily Guardian, <https://thedailyguardian.com/category/news/politically-speaking/> (last visited on May 23, 2024)

⁷ Supra note 3 at 3.

⁸ Lorraine Conway, “Right to Repair Regulations”, House of Commons Library, 7, September 24, 2021, available at <https://researchbriefings.files.parliament.uk/documents/CBP-9302/CBP-9302.pdf> (last visited on May 24, 2024)

In order to restrict these practices the Act confers power on the Competition Commission of India (CCI) to investigate and penalise such practices.¹⁶ The Act however does not directly deal with the 'right to repair' but promotes it indirectly by maintaining and protecting competition in the market. Apart from this in 2020 the Ministry of Road Transport and Highways had issued guidelines for commute-support services like 'Uber' and 'Ola',

requiring vehicle maintenance and repair according to manufacturer's specifications without restrictions as to where such repairs are to be made.¹⁷

However the efforts of Indian judiciary could be seen through a judgment where certain companies belonging to the automobile sector were made liable for encouraging anti-competitiveness and misusing their power by creating monopoly of authorised dealers on the spare parts and tools and discouraging the independent service providers.¹⁸ The judgment highlighted the need of enforcing the freedom of consumers to make a choice between authorised and independent repairers and also promoted the significance of healthy competition in the industry by encouraging the skill and employment opportunities for independent repairmen. The Competition Commission (CCI) has clearly highlighted that "right to repair" is implicit in the "Consumer Rights" definition of Section 2(9) of the Consumer Protection Act, 2019 and also highlighted the monopoly being established by the manufacturers of the original equipment over market generating secondary spare parts of the similar or like equipment thus leading the expropriation of the rights of accessing of the freewheeling and off base repairers.¹⁹ It has also been held by the National Consumer Disputes Redressal Commission that consumers in case of vehicles cannot be forced by the producers to opt only those repairing centres that are authorised by the producers and they have the 'right to choose' the service centres provided the vehicle is being handled by professional handlers using genuine components.²⁰

Further *Sanjeev Nirwani v HCL*²¹ is one of the most important incidents highlighting the detrimental effects of the "unfair trade practices" on consumer welfare forcing the consumers to dissipate the product and forcibly purchase an advanced version of the same product; which in turn helps the manufacturers to intensify the profits and sale of the newly introduced products. The Consumer Protection Act under the term 'services' includes the services within the warranty period pertaining to the terms and the conditions of warranty and post warranty services that are rendered on cost. That latter shall be deemed to include an obligation on the part of the manufacturer to provide to the consumer both the spare as well as utilizable parts that are exclusive to the product.

The State Consumer Disputes Redressal Commission at Delhi has also observed in another issue that an insurance company shall be obliged to cover the cost of repairing and cannot simply deny it on the basis that the repairing service was done at an unauthorized centre.²² The Commission clarified that insurance companies are not permitted to place unreasonable restrictions on consumers' ability to select where they want their vehicles fixed.²³

This restriction placed by the manufacturers on the consumers negatively affects their "right to choose" protected under the Consumer Protection Act. These instances imply that the "right to repair" is developing as a fundamental consumer's right in India and that the consumers have the freedom to select the location where their items will be repaired for any defect, so long as the repairs are made by qualified technicians using legitimate components. To safeguard this right and make sure that producers and suppliers of services do not unfairly limit customers' options, more extensive regulatory and legal structures are still required.

ENVIRONMENTAL IMPACT OF DENYING REPAIRABILITY

The primary impact of denying reparability is the generation of electronic waste which has become a great cause of concern for the entire globe. The discarded electronic items especially smart phones and computers or spare parts owing to culmination of their shelf-life and functionality, absence of scope of recycle and repair constitute the major portion of electronic waste generated worldwide annually. Considering the absence of repair laws in India, the country itself ranks on third number after the U.S and the China for being the world's largest producers of electronic waste.²⁴ If the majority of the waste can be handled by the informal sector than the question arises that why cannot the informal sector be provided with authorisation by the original manufacturers as well as the skill and information regarding repairing requirements of certain electronic equipments, if they fulfill the criteria of authorization.

Another significant impact of the denial of rights of reparability is the exploitation of sustainable energy and raw materials. The hunger of the techno-giants to produce more and more models and advanced versions of

⁹ European Commission Press release , Right to repair: Commission introduces new consumer rights for easy and attractive repairs, Brussels (March 22, 2023) available at <https://ec.europa.eu/commission/press-corner/detail>

/en/ip_23_1794 (last visited on June 7, 2023)

¹⁰ Ibid

¹¹ Supra Note 9 at 7

¹² <https://righttorepairindia.gov.in> (last visited on June 11, 2023)

¹³ Ibid

their electronic products on a regular basis to promote and enhance frequent purchasing or visual merchandising by the consumers, has the tendency of exploiting raw materials rather than encouraging repair and recycling; which today has resulted into giant mountains of electronic waste, serious health concerns like cancer, plastic pollution, release of hazardous chemicals and substances in the ecosystem affecting humans as well as all the other organism directly or indirectly.

Apart from this practice of planning obsolescence for designing products and devices also has lead to the exploitation of economic resources burdening the consumers to frustrate their economic capacity to meet their needs of having a technology efficient lifestyle. Since the process of e-waste management includes stages of production, collection, segregation, and treatment of the disposed waste; the management of such is waste is appearing to be a mammoth task because the inefficiency of the stakeholders to treat such waste. The recyclers are adopting inadvisable and harmful methods like burning, melting and converting it into such materials and products that appear to be harmful after reuse and have adverse health effects on the general public. Clearly the E- waste management Rules of 2011 and the similar regulations have failed to achieve the target of collection, treatment and prevention of production of electronic waste as compared to the efforts of other countries.²⁵ However the amended e-waste management rules of 2022 and the waste management rules of 2024 have expanded the scope of 'Extended Producer Responsibility' and have mandated for the producers of electronic waste to ensure various fixed targets of collection and recycling of electronic waste by the years 2023, 2024 and 2025 and to report it on the official portal of the Central Pollution Control Board. ²⁶ But implementation of these rules will bring India below in ranking of producing electronic waste raises a debatable question; India being the third largest producer of electronic waste after China and USA where India is producing half of the amount of waste produced by USA but the recycling rate is only 1 percent with that of China and USA being upto 16 and 15 percent.²⁷

CONCLUDING OBSERVATIONS

Considering the harmful and exhausting effects of electronic waste and exploitation of consumers' rights as well as their ownership and individual capacity to reduce their economic burden, the enforcement of repair laws should be considered as a matter of urgency by the world community. In a nation like India, the right to repair is crucial not just from the standpoint of access but also for economic and environmental reasons. A right to repair law will not only encourage and support small scale repair shops but they will also benefit users who are unable to regularly swap out their technology. It is arguable that planned obsolescence promotes economic monopolies and has detrimental effects on the environment. A legislative framework that grants repairers restricted access and rights solely in support of repair can properly handle the issues of the protection of intellectual property and ownership rights. Dependency on technology cannot be dispensed with or completely ignored for the larger population. Therefore it is required to balance the interests of stakeholders i.e. the manufacturers as well as the consumers for the purpose of introducing the "right to repair" as a common practice.

While the Indian scenario is considered the presence of repairing services provided by the informal sector is already present but considering the exigency of sustainability goals there is a need for the original manufacturers to authorise a large portion of this informal sector also popularly known as the "second-hand market", with the right and freedom to repair electronic goods by having access to the spare parts and tools authorised by the original manufacturing enterprises. Apart from the lack of legislative framework concerning the present movement in India, the other obstacles include lack of consumer awareness, limited access and availability of services offering repair, discrepancies regarding quality of services and safety of the product post repairing. This ultimately calls for an urgent effort by the Union Legislature on framing of repair laws in India in consonance with the environmental, contractual, consumer, intellectual property and competition laws.

¹⁵ Dr. Rajesh Kumar et.al., "Right to Repair is a child of the 21st Century: A critical study" 11 Russian Law Journal 1054 (2023)

¹⁶ Id. at 1055

¹⁷ Ibid

¹⁸ Shri Shamsher Kataria v. Honda Sael Cars India Ltd. & Ors, C-03/2011

¹⁹ Ibid

²⁰ Tata Motors Ltd.v. Hitesh Bhatt, 2015

²¹ CC/618/2014

²² Kirti Singh v. Oriental Insurance Company, (2021) 2 SCC 166

²³ Ibid

²⁴ Supra note 7 at 6

²⁵ E-Waste (Management and Handling) Rules, 2011.

²⁶ <https://cpcb.nic.in/rules-6/> , (last visited on June 15, 2023)

²⁷ <https://www.geeksforgeeks.org/top-10-electronic-waste-producing-countries-in-the-world/> (last visited on June 15, 2023)