

Right to Repair law: The Balance between Environment and Cost Efficiency.

Introduction:

The COVID-19 pandemic and the subsequent lockdowns have had a significant impact on contemporary life. A rise in the demand for electronic items as a result of more people telecommuting for work, school, and pleasure has put pressure on upstream mineral supplies and resources as well as global manufacturing supply networks. With rise of such gadgets, a huge pile of e-waste is going to get created as manufacturers of these products force consumers to replace the electronic gadget instead of repairing it, encouraging a “use and throw culture” instead of a “repair and re-use culture”. Gone are the days when you could just unscrew the back of your phone or laptop and replace the battery or upgrade RAMs and Hard Disks and could re-use it for a longer period of time. Nowadays, even simple repairs require specialist knowledge and equipment due to embedded computer chips, software, and other technology. Sadly, for users, Original Equipment Manufacturers (OEMs) have used these product complexities as a strategy to limit the capabilities of independent repair shops and self-repairing consumers in a variety of ways so as to generate profits by selling new devices in a shorter period of time or by selling spare parts through authorized repair shops only, charging exorbitant amount of money for basic repairs. Thus, these high repairing costs force consumer to move towards newer devices than repairing the older one. Although this technique may be seen as being based on a valid need for quality control, it becomes more concerning when manufacturers combine it with deceptive repair instructions and a refusal to provide spares on the free market. Furthermore, some OEMs use their intellectual property rights to exert greater control over the market for their products' repairs. Independent repairers cannot be granted access to make modification to a programme within a device as it would infringe the copyright of the software manufacturer and would also become a potential threat to cyber-security. The digital rights management ("DRM") provisions of the Indian Copyright Act, 1957 which permit software developers to exercise excessive control over how technology is used, can also be used to restrict reparability of a device because of which, any form of repair involving software may be seen as illegal. Further, End User License Agreements (EULAs) obligate contractual relationships to enforce restrictions on transfer, reverse engineering and warranty of products. Software that are licensed instead of being sold, permits the licensor to create planned

obsolescence. Due to such monopolistic exercises, the consumers, independent repair vendors and environmentalists from all across the globe came together to protest against such practices, which is now better known as the “Right to Repair movement”.

What is Right to Repair?

In the simplest words, the "Right to Repair" can be explained as a "freedom", wherein a consumer has the freedom to repair their own equipment or to hire an independent service provider rather than being forced to return to the manufacturer's authorized service centre. The aim of this movement is to get manufacturers and large conglomerates to create spare parts, tools to repair devices and information on device schematics available to customers and local repair shops so as to increase longevity of the products and preventing them from ending up in garbage heap, thereby generating less e-waste. It also aims to create laws that prevent OEMs from manufacturing products through “planned obsolescence”.

What is Planned Obsolescence?

The term "planned obsolescence" refers to a strategy used to ensure that a product's current iteration will become outdated in a predetermined amount of time. It can be defined as a deliberate move by manufacturers of a product where the products that we use are made to fail after a certain amount of time or have specific dates of expiry where they can no longer be used to increase consumerism for the purpose of generating profits. The practice of strategic planned obsolescence can be traced back to 1930s when the infamous “Phoebus Cartel” existed. Currently, many tech giants have been following the same strategy to earn profits and continue to grow their business. Planned obsolescence in phones and computers is a really big problem, considering that they require non-recyclable alloys of rare metals, which are running out. This could make the digital revolution collapse in a generation.

Aim of the “Right to Repair” movement:

The movement has several demands, with one of the major demands being focused on pushing a policy regarding “right to repair” of various products such as smartphones, medical devices, vehicles, household electronic items categorised as white goods etc. through state legislatures. Another demand of the ongoing movement is to bring in changes to the Digital Millennium Copyright Act (DMCA), which has given manufacturers yet another important legal ground for preventing repairs. Environmental concerns, consumer autonomy, and competition are the movement's basic agendas for the proposed legislation.

Global Stance:

Globally the Right to Repair movement has gained a huge momentum through social media and has even pushed the tech giants to make changes to their policy and further support the campaign. Previous year, the US President Joe Biden directed the Federal Trade Commission through an executive order to control the unfair practices that restrict competition in third-party repairs and recently the right to repair bill was passed in New York state legislature and is now referred as the “Fair repair Act”.

United Kingdom also recently adopted the right to repair legislation, which came into effect from July 8 to curb planned obsolescence practices and reduce e-waste but fails to solve the issues and requires amendments wherein the issue of affordability is addressed and is not limited to white goods. It has also provided a two-year time frame to manufacturers to make the necessary changes to their business and make spare parts commercially available to consumers. A law adopted by the EU mandates that manufacturers to provide product parts to professional repairmen for a period of 10 years. This year, the European Parliament voted in favour of making batteries more sustainable including making them removable and replaceable. The new regulations are expected to cut the 1.5 million tonnes of electrical waste that will be produced in the UK annually and to help lower overall carbon emissions. The new regulations aim to tighten product stands so that more electrical devices can be maintained rather than discarded, returning more money to consumers' purses while safeguarding the environment.

France, since 2019 has adopted a unique way to address the issues around Right to repair by implementing a reparability index on different categories of electronic devices. The law requires mandatory display of clear information regarding reparability of technological devices to the consumers. Currently, it is limited to five categories of products, i.e., smartphones, laptops, televisions, washing machines and lawn mowers. The index is based on 5 key aspects of a device its goal is to encourage consumers to buy easy to repair products and manufacturers to make their products easy to repair. By the end of 2024, France intends to supersede its reparability index with “durability index”, under which manufacturers will declare the full life-cycle of their products along with its reparability index.

India's Position:

Although there are no laws that govern the right to repair in India but recently the government of India has proposed to introduce a Right to Repair law which it aims to make individuals self-sufficient and contribute to a sustainable environment. A committee has been established by

the consumer affairs department of India to create a complete framework. The committee is led by Nidhi Khare, additional secretary for consumer affairs and its other members are representatives from business and industry, such as the Society of Indian Automobile Manufacturers (SIAM), India Cellular and Electronics Association (ICEA) and other various environmental activists and consumer organizations. The proposed framework will enable support for “Third party and self-repairing of devices”. Additionally, this framework also aims to generate employment under the Atmanirbhar Bharat initiative. Currently, to address the new set of challenges in the digital age faced by consumers, the new Consumer Protection Act, 2019 was introduced which expressly recognizes the ‘right to choose’. Section 2 of the said act implies that a customer must have access to goods and services at competitive prices so as to determine fair prices while maintaining the quality of the same. In the case of *Shri Shamsher Kataria vs Honda Siel Cars Limited & Ors (2014)*, fourteen automobile companies were held liable for being involved in anti-competitive practices by taking intellectual property rights as defence. The manufacturers denied access of spare parts to independent repairers of automobiles and allowed purchase/sale of the same only through their authorized sellers. The CCI upheld the judgement of COMPAT, which mentioned that “*IP rights cannot work as a shield for violating Indian competition law*”.

The road ahead:

The process of manufacturing of an electronic device is extremely polluting and there is a general apathy towards repair in our never-ending consumerism. Through well-enforced legislations, relaxed copyright provisions and environmental-friendly practices, one can try to minimize the e-waste generated. OEMs shall be made legally obliged to make spare parts of products available for a period of minimum 10 years. The government shall come up with a policy for smartphone manufacturers to provide software support for least 5 years and further introduce durability & repairability index for various devices, which is already implemented in France. The right to repair movement is a tussle between the giant profitable businesses and consumers who are not willing to jeopardize the environment and burn holes in their pocket as the device gets older. Thus, a legislation is the need of hour which shall not only protect the interest of the consumers but also create a balance between the market competitiveness and protection of intellectual property.

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