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Data: 16/11/2026 16:22:30

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Right to Repair: A Reflective Facet of Consumer Justice

Prawo do naprawy jako przejaw sprawiedliwości konsumenckiej

ABSTRACT

In recent years, consumer electronics marked momentum in consumer durables, but unfortunately repair activities of products suffered setbacks as it relatively involved higher costs due to a lack of repair infrastructure. The study focused on the freedom and rights of consumers to fix their own faulty devices as per the repair manual or to select the service provider of their choice without being mandated by manufacturer's whims. The research undertaken is methodological in nature and aims to empower consumers through synchronizing trade between manufacturers and third-party sellers and buyers while ensuring sustainability in consumption of products by reducing e-waste with implications for policy-makers, researchers, public in framing strategies sustainable economic development. The survey of 112 respondents identifies the scope and need for the right, which has significant benefits to consumers whereby a plurality of respondents expressed a pragmatic unequivocal perspective towards recognition of a right to repair. The statistical representations reflect the original response collected on a pan-India basis through a survey-based structured questionnaire method. This ensures free and fair trade in prioritizing consumer protection while sketching the need for a discrete piece

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Data: 16/11/2026 16:22:30

of legislation on the Right to Repair. The aim of the article is an attempt to identify digital reality along with digital maturity to embrace the consumer's decision-making process. It intends to prevent unfair trade while promoting free trade and proposing discrete legislation on the Right to Repair so that it may be efficacious for the policy-makers in encompassing the provisions of the right to repair spelled with recognizing and reclaiming consumer protection as well.

Keywords: consumer electronics; consumer justice; Right to Repair; manufacturer; third-party seller; buyer

INTRODUCTION

While proposing competitive advantage, consumer electronics manufacturers are deploying emerging technologies along with capitalizing their own old technology invariably driving a hold on sales outcomes and initiating prospective business propositions. However, electronic gadgets encrusted within manufacturer's warranty reflect a whopping surge in trending value growth for consumer technology-based products largely steered by tech support. Consumer buying behavior engulfs consumer's decision-making process involving purchase of products enriched to add value to consumer's choice and experience regardless of the capacity to purchase. Consumer protection engulfs freedom to repair faulty products while burking planned obsolescence. Repair Rights seek to promote sustainable consumption of consumer electronics as well as initiate employment avenues by permitting third-party repair. Exposed to a variety of dilemmas while purchasing the product, a consumer's choice often needs to be streamlined with committed durability and easy, cost-effective reparability.

With mushrooming of potential technologies, digital reality as well as digital maturity embraces the decision-making process of a consumer. Knowingly, in recent years, consumers are purchasing electronic gadgets with marked prudency that the product purchased would hastily turn to be obsolete with launch of a latest upgraded and updated version of the same product with some additional captivating features by the manufacturer. In due course, when the product wears out, slows down and almost turns to be inutile, consumers are in the clutches of manufacturers who eventually fabricates the Right to Repair or Right to Fix the gadgets either by charging exorbitant price or designating specified repair outlets to extend the life of the malfunctioning device. Today, often many consumer products are increasingly onerous to maintain and harder to fix owing to exigency in finding spare parts, access to proprietary distinctive diagnostic troubleshooting software and indispensability of specialized appliance. Likewise, Apple, the American multinational technology company specialized in consumer electronics, prompts to avert independent repair by restricting access to spare parts indispensable to restore and rebuild. Subsequently, the practice finds place particularly in laptop, car and

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Data: 16/11/2026 16:22:30

mobile phone manufacturing industries while imposing limitation on consumer's choice to repair. The manufacturers often retain proprietary control over products as well as on spare parts and technical information resulting in high priced repairs that compel consumers to depend on the whims of manufacturers.

The objective of the paper seeks to underline unfair restrictions on repair options intentionally imposed by manufacturers fabricating repair exasperating and extortionate. The thrust of such restriction is unjust, unsustainable, and unethical that calls for the right to repair as restoration of abridged repair rights of consumers. However, technology-based companies have posed a challenge to the consumer population by deliberately fabricating an artificial undersupply of spare parts and unavailability of technical know-how shaping the situation difficult in terms of repair. This has raised concern about the rapid mushrooming of global e-waste generated from electronic solid wastes. Moreover, the restrictions on repair provisions have jeopardized consumer rights, endangered ecology, imperiled environment, and threatened consumer justice.

The consumer tech industry thronged with electronic products strives to reset consumer expectations through new tech trends without acknowledging independent repair provisions of impaired products. Ownership of a product confers and assigns the right to own, repair, upgrade, or sell the product which an individual owns once he pays consideration and takes possession. It implies that a consumer on purchase of a product has freedom to fix his own faulty device when it breaks down or to select the service provider of his own choice without being compulsorily barred by manufacturer's dictate. While vehemently opposing "repair", the manufacturers insist on "replacement" leading to monopoly of high-tech giant manufacturing companies who predominantly intend to become behemoths of the tech industry with monopoly right over repair units. The next viable alternative a consumer is bound to adhere is to approach an independent repair shop but the manufacturers often cite security and privacy issues in terms of technology as concerns for such repair. For instance, digital warranty cards are glaring examples which reflect to establish that a customer loses his right to claim a warranty on purchasing a device from a "non-authorized" or "non-recognized" retailer. As a result of the COVID-19 pandemic many leading chain stores have refrained from offering on-site repairs which compelled consumers to resort to authorized repair[1] outlets to fix their devices. However, the crisis has exacerbated effects of repair restrictions on consumer population. This paper seeks to pave strategies to render consumer protection in the perspective of repair restrictions through accessibility of means

[1] E.S. Povich, *Pandemic Drives Phone, Computer 'Right-to-Repair' Bills*, 11.3.2021, https://pewtrusts.org/en/research-and-analysis/blogs/stateline/2021/03/11/pandemic-drives-phone-computer-right-to-repair-bills (access: 20.9.2022).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 16/11/2026 16:22:30

and measures to consumers to fix and modify faulty gadgets while steering unfair practices to restrain competition.

Repairing implies restoring faulty products while ensuring transparency in the entire process of restoration and rebuilding. The spare replacement parts, service manuals, diagnostic tools, and techniques involved in repair assure easy availability to customers and repair shops while embracing ethical norms in business practices. It is therefore important:

- to promote anti-competitive practices incidental to repair markets,
- to perpetuate consumer protection through safeguarding consumer's rights relating to repair restrictions,
- to protect the rights of manufacturers too,
- to preserve environmental sustainability by reducing e-waste in relation to the shelf life of spare parts.

Based on the objectives, the study framed the following two hypotheses:

H1: Independent repair shops fail to provide remedy to the consumers because of manufacturer's monopolistic nature of unfair trade practices in the name of "technological sovereignty".

H2: Existing rules relating to the Right to Repair in India do not ensure "consumer justice".

GENESIS OF THE "RIGHT TO REPAIR"

Buzzing of consumer goods with slight upgradation through introduction of superior replacement model drives technological progress. Over the years the right to repair movement advocating consumer's right to fix their own devices experienced overwhelming impulse with many countries initiating policies to enact legislation to recognize the right to repair of consumers. In 1956, an antitrust suit was initiated against IBM challenging the element of repairability as a consumer right.[2] The decree passed by the court directed the tech giant to offer its spare parts and sub-assemblies to its customers, seeking repair, at a fair and reasonable price. Recently, some progressive efforts have rolled out and designed initiatives to shape reforms. The first effort called the Right to Repair Movement based on Automotive Right to Repair Law[3] was noticed in Massachusetts in 2012. More precisely, the 2012 Massachusetts Motor Vehicle Owners' Right to Repair Act issues a mandate for automobile manufacturers to provide spare parts and diagnostic manuals to con-

[2] Judgment of the United States District Court for Southern District of New York of 1956, United States of America v. International Business Machines Corporation, No. 72-344.

[3] S. Shekhar, *Ontario MPP Wants to Bring 'Right to Repair' Movement to Canada*, 18.2.2019, https://mobilesyrup.com/2019/02/18/Ontario-mpp-right-repair (access: 24.9.2022).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 16/11/2026 16:22:30

sumers and independent repair shops. The movement did not gain momentum until 2016. Ultimately, in 2021, the United Kingdom pronounced it as legally binding for manufacturers to provide spare parts and tools. The Federal Trade Commission in July 2021 published a statement[4] approving prioritization of aggressive action against manufacturers imposing unfair repair restrictions on consumers and independent repair shops. Following the trend Apple, a longtime rival of repairability, recently announced a self-service repair[5] programme for permitting customers access to purchase genuine spare parts and tools directly in order to perform their own repairs after reading the available online repair manuals.[6] This has been a commendable initiative to empower consumers by letting them fix the cameras, broken screens, and batteries of the latest iPhones while using Apple's own spare parts and toolkits.

On June 3, 2022, the New York State Legislature of the United States passed the first electronic right to repair law, titled the Digital Fair Repair Act, permitting consumers to repair their faulty digital electronic goods without entailing manufacturers into consideration. This piece of law attempts to address the repairability of consumer electronic devices. The state of New York passed a right to repair bill ensuring repair rights broadly on electronics excluding home appliances, agricultural equipment, and medical devices whereas the Massachusetts law applies to automobile[7] or car data. In addition, Colorado's right to repair bill focuses on powered wheelchairs.[8] Likewise, the United Kingdom and European Union has passed measures such as Right to Repair Regulations[9] and Right to Repair[10] respectively. Concurrently, France has implemented the new 2020 Anti-Waste Law,[11] which

[4] Federal Trade Commission, *Policy Statement of the Federal Trade Commission on Repair Restrictions Imposed by Manufacturers and Sellers*, July 2021, https://www.ftc.gov/system/files/documents/public_statements/1592330/p194400repairrestrictionspolicystatement.pdf (access: 8.5.2023).

[5] Apple Media, *Apple Announces Self Service Repair*, 17.11.2021, https://www.apple.com/in/newsroom/2021/11/apple-announces-self-service-repair (access: 19.9.2022).

[6] Reuters, *Apple to Sell Spare Parts to Consumers to Repair iPhones, Macs*, 18.11.2021, https://indianexpress.com/article/technology/tech-news-technology/apple-to-sell-spare-parts-to-consumers-to-repair-iphones-macs-7627883/lite (access: 19.9.2022).

[7] A. Robertson, *Massachusetts Passes 'Right to Repair' Law to Open Up Car Data*, 4.11.2020, https://www.theverge.com/2020/11/4/21549129/massachusetts-right-to-repair-question-1-wireless-car-data-passes (access: 24.11.2022).

[8] R. Brandom, *New York State Passes First-Ever 'Right to Repair' Law for Electronics*, 3.6.2022, https://www.theverge.com/2022/6/3/23153504/right-to-repair-new-york-state-law-ifixit-repairability-diy (access: 19.9.2022).

[9] L. Conway, *Right to Repair Regulations*, Research Briefing no. 9302, 24.9.2021, https://researchbriefings.files.parliament.uk/documents/CBP-9302/CBP-9302.pdf (access: 9.5.2023).

[10] N. Šajn, *Right to Repair*, January 2022, https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/698869/EPRS_BRI(2022)698869_EN.pdf (access: 8.5.2023).

[11] International Telecommunication Union, *France's Repairability Index Inches Toward Circular Economy*, 25.10.2021, https://www.itu.int/hub/2021/10/frances-repairability-index-inches-toward-circular-economy (access: 10.11.2022).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 16/11/2026 16:22:30

mandates to share repair information with users before purchase thereby drawing an ease and expedite to repair.

Of late in India, the Department of Consumer Affairs[12] under the chairmanship of Smt. Nidhi Khare, Additional Secretary of the Department, formed a committee to advance a comprehensive framework on the Right to Repair. The committee has proposed to recognize some key sectors, as mobile phones/tablets, automobile and automobile equipment, consumer durables, and farming equipment,[13] for the right to repair.

The tech giants – Apple, Amazon, Tesla, and Microsoft[14] – opposed the move claiming a threat to trade secret while posing a challenge to intellectual property protection. Moreover, Google and Microsoft[15] emphasized to uphold that accessibility to repair would render ingress to restricted software and discreet data.

SCOPE AND *MODUS OPERANDI*

In the epoch of technology, electronic gadgets have been replaced by smart-tech sophisticated gadgets. Devices with single-use version are often rendered as impossible to be repaired as they happen to be completely sealed when manufactured in order to ensure its damage when attempted for repair. However, product design convolutions, repair complexities, and technical complications restrict the scope of repairability thereby modeling repairing irrationally expensive[16] as a result of technological obsolescence. For instance, Apple Inc. (AAPL) uses pentalobe screws[17] in iPhone 6s which deliberately pose difficulty for consumers to get it removed and repaired. Identical issue persists with most of the wireless earbuds such as Samsung Galaxy Buds or Apple Air Pods tagging them impossible to repair without damaging them permanently. Fabricating availability of spare parts as irrationally

[12] Department of Consumer Affairs, https://consumeraffairs.nic.in (access: 10.11.2022).

[13] Ministry of Consumer Affairs, Food & Public Distribution, *Department of Consumer Affairs Sets Up Committee to Develop Comprehensive Framework on the Right to Repair*, 14.7.2022, https://pib.gov.in/PressReleasePage.aspx?PRID=1841403 (access: 13.11.2022).

[14] M. Bergen, *Microsoft and Apple Wage War on Gadget Right-to-Repair Laws*, 20.5.2021, https://www.bloomberg.com/news/articles/2021-05-20/microsoft-and-apple-wage-war-on-gadget-right-to-repair-laws?leadSource=uverify%20wall (access: 16.11.2022).

[15] S. Subramanian, *Explained: Right to Repair Movement and How Big Tech Is Reacting to It*, 21.7.2021, https://www.thehindu.com/sci-tech/technology/right-to-repair-movement-explained/article35440170.ece (access: 16.11.2022).

[16] G.S. Bajpai, V. Sharma, M. Bajpai, *Upholding the Right to Repair*, 19.4.2022, https://indianexpress.com/article/opinion/columns/upholding-the-right-to-repair-apple-products-7875632 (access: 16.11.2022).

[17] G. Madway, *Apple Tightens the Screws on iPhone 4: Sources*, 21.1.2011, https://www.reuters.com/article/us-apple-screws-idUKTRE70K0BO20110121 (access: 19.9.2022).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 16/11/2026 16:22:30

expensive or inaccessible steers consumers to easily replace products rather than repair them. Right to Repair proposes to save cost, time, and e-waste involved in the process of purchasing a new product or getting the faulty one repaired from an authorized repair shop. Refurbishing old faulty devices may reduce e-scraps and remove barriers to repair. Repair restrictions imposed by manufacturers in order to protect intellectual property rights and prevent adverse consequences of erroneous repair involve unavailability and unaffordability of spare parts, dearth of repair information, product designs that complicate repair and marks repair unsafe from independent repair shops, policies that compel consumers to resort to manufacturer's authorized repair networks, application of patent rights and enforceability of trademarks, software security and end user license agreements.[18] Intellectual property laws and antitrust laws, in general, promote competition and innovation but misuse of intellectual property rights engenders significant impediments to independent repairs paving way to harm fair competition.

However, the practice of preventing repairs by promoting single-use version of devices, even when they can be repaired, leading to "planned obsolescence" deliberately transmogrified into "perceived obsolescence". Planned obsolescence entails the deliberate designing and manufacturing of products[19] for a fixed tenure or life span with an intent to continuously engage people in buying through escalating consumer demand at consumer's expense and ensuring revenue generation for the manufacturing company. Apple Inc. has often been placed at the cynosure of skeptical consumer discourse[20] with active involvement in planned obsolescence. Recently, Apple manages to settle down a consumer fraud lawsuit known as "batterygate" reporting compelling degradation of speed in older iPhones with unexpected shutdowns and records reveal earlier in 2020.[21] Apple reached out to settle a class action lawsuit with iPhone users too. It was alleged that by deliberately concealing facts of performance problem of older iPhones; Apple tried to escalate sales of new iPhones leading to consumer fraud. In contrast, perceived obsolescence is a situation that results when a product becomes outdated in terms of fashion, though being durable in nature. Often products are purchased for their

[18] Federal Trade Commission, *Nixing the Fix: An FTC Report to Congress on Repair Restrictions*, May 2021, 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 (access: 9.5.2023).

[19] V. Thakur, *Planned Obsolescence: Why Are Things Built to Fail?*, 22.1.2022, https://www.scienceabc.com/innovation/planned-obsolescence-things-built-fail.html (access: 19.9.2022).

[20] W. Kenton, *What Is Planned Obsolescence? How Strategy Works and Example*, 27.12.2022, https://www.investopedia.com/terms/p/planned_obsolescence.asp (access: 19.9.2022).

[21] M. Kolakowski, *Apple (AAPL) Reaches Settlement over iPhone 'Batterygate'*, 20.11.2020, https://www.investopedia.com/apple-aapl-reaches-settlement-over-iphone-batterygate-5088300 (access: 24.9.2022).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 16/11/2026 16:22:30

aesthetic value rather than focusing on their functionality.[22] This practice finds prevalence in the electronic product market too as cutting-edge competition with new launched upgraded devices strives to replace the old outdated ones. Whereas systematic obsolescence implies denial of products in the ecosystem of the company thereby eventuating the product obsolete. The case of non-permitting older iPhone updates on the new iOS version has been a glaring instance of driving users to buy newly launched upgraded model. Programmed obsolescence relates to a practice of designing products to label them obsolete after being used for a certain number of times. The mention of Inkjet printers with smart chips[23] that restrict the use of printer after being used certain number of pages finds relevance.

At Ford, the aspect of repairability was a critical attribute of product design.[24] Research from the French Environment and Energy Management Agency (ADEME) reveals that digital technology remains accountable for 4% of the world's carbon footprint while recording 80% and 90% of carbon emissions during the production phase of smartphone.[25] Unfortunately, in India, the movement lacks impetus and propulsion for recognition. Legal restrictions coupled with technological advancement happen to pose a threat to the cause.

JURISPRUDENCE BEHIND THE RIGHT TO REPAIR

Consumers exposed to dereliction of services while opting to repair a faulty product often experience unfair trade practices, monopolistic conduct, abuse of dominance, predatory pricing, anti-competitive agreements, enticing and misleading advertisements that augments the dejected state of consumers. Time and again, manufacturers are noted to reduce durability of products by restricting repairability that either prompts and compels consumers to repurchase or opt out for repair from an authorized repair workshop at an inordinate price. This practice happens to infringe consumer's rights, specifically the right to choose, the right to information, the right to bargain, and the right to redressal. The sacrosanct Indian Constitution is an epitome of the law and legal system of the nation scripted to achieve social, economic, and political justice for sustainable development of a nation. The Preamble of the Indian Constitution broached Justice, Liberty, Equality, and Fraternity as not mere jugglery of words but rather steered towards welfare state which beyond

[22] R. Brandom, *op. cit*.

[23] *Ibidem*.

[24] M. Hatta, *The Right to Repair, the Right to Tinker, and the Right to Innovate*, "Annals of Business Administrative Science" 2020, vol. 19(4), p. 4.

[25] C. Donnelly, *Eradicating E-Waste: Why the UK's Right to Repair Laws Are in Urgent Need of an Upgrade*, 21.4.2022, https://www.computerweekly.com/blog/Green-Tech/Eradicating-e-waste-Why-the-UKs-right-to-repair-laws-are-in-urgent-need-of-an-upgrade (access: 24.4.2022).

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 16/11/2026 16:22:30

doubt stipulates to frame mechanism to wipe out tears of duped consumers.[26] The term "socialism" was subsumed in the Indian Constitution by the 42nd Amendment Act, 1976, which intends equal distribution of resources without urging for illegitimate accumulation of wealth in few hands of authority. The Constitution framers proposed to model a mixed economy which does not restrict monopoly alike market economy.[27] Remarkably Article 14 of the Indian Constitution extends to guarantee equal and fair treatment to consumers during any transaction with traders or service providers,[28] postulates the doctrine of legitimate expectation. Needless to mention Article 19 (1) (a) predicates the "right to know" which seeks to ensure rights to information of consumers including freedom of opinion as well. This engulfs the liberty and right of consumers to know about product attributes along with service attributes too. Article 21 holds the real essence of dignified life ensuring the right to life and liberty. A consumer on purchasing a product owns it completely and enjoys the liberty to repair the product if required. Article 39A proposes to constitute a legal system promoting justice to citizens irrespective of any discrimination. This paves the way to consumer justice[29] in India. Article 46 legally compels the State to end all forms of exploitation in congruence with Article 47 directing the State to raise standard of living. Consequently, Article 46 synchronized with Article 47 attempts to revamp the plight of consumers.[30]

The 2019 Consumer Protection Act extends to recognize consumer's Right to Choose but the monopolistic conduct that manufacturers hold in repair world attempts to jeopardize such right. According to Section 2 (9) of this Act, the Right to Repair finds implicit mention in the provision dealing with consumer rights. This section states to include the right to be informed about the quality, quantity, potency, purity, standard, and price of products or services in order to protect consumers from unfair trade practices.[31] This aspires to provide relief to consumers by extending repair related liability on various repair providers. Additionally, Section 84[32] of the above-mentioned Act, comprehensively dealing with product liability, can be amplified and amended to include and impose liability on product manufacturer arising from various reparability related variables of the product. This section sets to identify harm caused by product manufacturer, product seller and service provider

[26] K.M. Rao, *Cases and Materials on the Consumer Protection Act, 1986*, Cochin 2015, p. 32.

[27] S.K. Roy, *Consumer Justice: A Symbol of Economic Prosperity and Social Progressiveness*, "Hasanuddin Law Review" 2016, vol. 2(2), pp. 170–181.

[28] *Ibidem*.

[29] *Ibidem*.

[30] *Ibidem*.

[31] Consumer Protection Act, 2019, https://www.indiacode.nic.in/handle/123456789/15256?view_type=browse&sam_handle=123456789/1362 (access: 9.5.2023).

[32] *Ibidem*.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 16/11/2026 16:22:30

network distinctly to initiate product liability action. Furthermore, to enhance the compliance segment this section includes repairers too.

In the Indian context, though the Right to Repair has not been explicitly recognized statutory right but a few judicial pronouncements have implicitly accorded recognition. In sequence, the Consumer Disputes Code has stepped to the fore to partly recognize the Right to Repair. Remarkably, certain consumer disputes have acknowledged the right to repair. In the instance of *Tekla Corporation v. Survo Ghosh*,[33] the Delhi High Court on 16 May 2014 observed that there cannot be any contractual restriction to encumber rights of consumers to use a product post its sale. In *Shamsher Kataria v. Honda Siel Cars India Ltd. & Others*,[34] the Competition Commission of India (CCI) pronounced that anti-competitive practice bears a deleterious effect on consumer welfare. Further, the CCI ruled that restrictions imposed and denials formulated, on independent automobile repair shops with regard to accessibility of spare parts, through end-user license agreement was evidently anti-competitive. The unfair trade practice of the OEMs (original equipment manufacturers) to ascertain that only licensed repair shops and OEMs could repair automobiles was sought to an abuse of dominance under the purview of the 2002 Competition Act of India. The relevant Section 4 (2) (b) and Section 4 (2) (e)[35] of the aforesaid Act find traces of mention in this regard. This case happens to be known as the first auto spare-parts case of India.[36] Further, the 2019 Consumer Protection Act recognizes that any monopolistic attitude on repair methods seeks to violate customer's Right to Choose. Thus, accordingly, the provisions of this Act along with the decision of the Competition Commission of India strive to acknowledge the Right to Repair.

Likewise, while sketching nexus between consumer justice and intellectual property rights (IPR) protection laws, the doctrine of exhaustion strives to place an embargo on patentee's rights by imposing restrictions on use, sale, resale, and distribution of the sold patented product. In other words, the underlying rationale behind the principle of exhaustion marks to curb the repeated profits incurred, from sold patented item, once the very first authorized sale transaction is materialized. The term "exhaustion" was coined for the first time in a case decided by the German Supreme Court – Reichsgericht[37] (1879–1945). However, the doctrine attempts to cease rights of intellectual property owners since the realization of first sale. Thus, resulting in exhaustion of patent rights, often, referred as First Sale Doctrine. The

[33] Judgment of the Delhi High Court of 16 May 2014, AIR 2014, Delhi, 121.

[34] Judgment of the Competition Commission of India of 25 August 2014, SCC Online, CCI95.

[35] *Ibidem*.

[36] Fair Competition for Greater Good, Case No. 03/2011, https://www.cci.gov.in/images/antitrustorder/en/0320111652434256.pdf (access: 19.9.2022).

[37] European Council, *Records of the Luxemburg Conference on the Community Patent 1975*, vol. 1: *Free Movement and Competition Law*, Oxford 2003, p. 75.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 16/11/2026 16:22:30

doctrine sets to limit patent holder's extent of monopoly over the patented goods while promoting fair trade practices. Moreover, the exhaustion doctrine seeks to sketch the relationship between intellectual property and market competition.

RESEARCH AND RESULTS

The present study is exclusively based on primary data with 112 respondents on pan-India basis comprising of students (mostly research scholars), manufacturers, government employees, private sector employees, professionals, and homemakers. The prime reason behind considering a wide varied sample of the population for the study is to have a large number of responses in the form of data from respondents of demographic inequality. The primary data is collected through a survey-based structured questionnaire method involving high representativeness that extends to record statistically significant results.

So far as the sample size is concerned, the larger is the sample size, the greater is the representativeness of the sample, and thus, more is the reliability of the results.[38]

The present study attempts to investigate and analyze people's perspectives, as consumers, on repair vs replacement while exploring the exigency of implementing a discrete law on the Right to Repair. Based on the subject of investigation, various parameters have been considered, namely the protection of consumers rights, fair competition, intellectual property rights, and environmental sustainability. Each parameter includes a set of statements in the form of questions shared with respondents through a structured questionnaire. The participants shared their opinion on a series of questions pertaining to demography and consumer perspective on the existing repair provisions on a 5-point rating scale with a value ranging between 1 to 5, where 1 as *strongly disagree*, 2 as *disagree*, 3 as *neither agree nor disagree*, 4 as *agree*, and 5 as *strongly agree*.

Issue nos. 1 to 6 are demographic in nature that relates to personal information as age, gender, occupational association, income bracket, number of earning members in the family, and geographic residential area. Issue nos. 7 to 21 narrates the set of statements in the form of questions shared with respondents through structured questionnaire are as under:

Issue 7: Familiarity with the concept of Right to Repair.

Issue 8: Ability of consumers to fix their own broken electronic devices.

Issue 9: Repair v. replacement of consumer electronic product.

Issue 10: Repair incurs huge expense in comparison to new purchase.

Issue 11: Right to Repair negatively affects purchasing power of consumers.

[38] M. Saunders, P. Lewis, A. Thornhill, *Research Methods for Business Students*, London 2009.

Pobrane z czasopisma Studia Iuridica Lublinensia **http://studiaiuridica.umcs.pl**
Data: 16/11/2026 16:22:30

Issue 12: Purchasing new advanced technology-based product is environment friendly than refurbishing faulty products.

Issue 13: Repair reduces e-waste generation.

Issue 14: Right to Repair restricts monopoly and prevents unfair competition among manufacturers.

Issue 15: Manufacturer's proprietary control on spare parts and repair processes infringes consumers Right to Choose.

Issue 16: Mandatory Vehicle Scrappage Policy 2021 restricts consumers Right to Choose.

Issue 17: Right to Repair promotes and ensures consumer protection.

Issue 18: Repairable products are more expensive than non-repairable ones.

Issue 19: Repair economy promotes customer loyalty and accelerates profit.

Issue 20: Intellectual property rights prevent implementation of repair laws.

Issue 21: Need for a discrete piece of law on Right to Repair.

Protection of Consumers' Rights: Requiring specialized tools, information manual, and spare parts to repair a damaged product raised the cost of repair involved in the process with an implied threat to privacy, security, and quality of the product.

Fair Competition: Manufacturer's opposing individual consumer repair seeks to hold a monopolistic right on their spare parts, tool kits, and repair manuals that results in unfair competition with discriminatory price among competitors. This calls to promote anti-competitive strategies to ensure fair trade.

Intellectual Property Rights: Manufacturer's enabling replacement parts and repair manuals accessible to consumers and repair shops could involve a whole gamut of intellectual property laws affecting trade secrets while holding monopoly on spare parts might amount to patent exclusivity. An attempt to modify internal structure of the product would infringe the provisions of patent and copyright.

Environmental Sustainability: The alarming statistics recorded 48.6 million tons (53.6 million metric tons) of e-waste was being generated globally in 2019 which marked an escalation by 21% from 2014–2019.[39] Experts reported that by 2030, an estimate of 67 million tons of e-waste[40] will be produced globally.

This research work is the result of both the doctrinal and non-doctrinal studies. It is based on the analytical study on the justification of the Right to Repair considering the environmental aspects, its impact and consequences on intellectual property rights, the ongoing repair movement, international politics related to repair and its penetration on the class-based society, legislations and policies concerning demand

[39] Toner Buzz., *Staggering E-Waste Facts & Statistics 2022*, 9.3.2022, https://www.tonerbuzz.com/blog/e-waste-facts-statistics (access: 20.9.2022).

[40] T. Charboneau, *Right to Repair Plus Recycling May Be Key to Slashing E-Waste: All About Circuits*, 22.2.2022, https://www.allaboutcircuits.com/news/right-to-repair-plus-recycling-may-be-key-to-slashing-ewaste (access: 24.9.2022).

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for repair. Theoretical argument has taken into account both the environmental and economic grievances along with the rationality behind the demand for the Right to Repair coupled with barriers behind the repair. This research work strongly argues in favour of the Right to Access repair based on the available literature highlighting the technological and economic aspects concerning repair movement in the light of policy and regulatory provisions. Through analytical interpretation, the researchers intend to justify the Right to Repair to address consumers frustration mapping with the rights of the manufacturers and the reasons for opposing the same. Apart from the above systematic approach, an online survey was carried on to determine the consumers' awareness on repair compatible with consumer behaviour, consumer culture and their opinion on regulatory mechanism so as to establish the right to repair with concentric circles, i.e. personal right like the right to repair one's own devices compatible with other circles inducts the other elements of rights to establish the right to repair which will ultimately help the policy-makers to implement the same considering all other ancillaries and consequences.

DISCUSSION OF THE STUDY

This part of the study deals with enumeration of respondents' profiles along with their background including occupational status with income level.

Table 1 depicts the demographic details of the selected 112 respondents. Amongst 112 participants, 68.8% are male while 31.2% are female with maximum respondents in the age bracket of (21–40 years) recording 68.7%. And amongst the total respondents, 42% earn within 25,001–50,000 per month.

Table 1. Respondent demographics ($N = 112$)

Demographic characteristics	Characteristics	Frequency	Percentage (%)
Gender	male	77	68.8
	female	35	31.2
Total		112	100.0
Age (years)	below 20	1	0.9
	21–40	77	68.7
	41–60	31	27.7
	above 60	3	2.7
Total		112	100.0
Income (monthly)	less than 25,000	24	21.4
	25,001–50,000	47	42.0
	50,001–75,000	19	17.0
	75,001–100,000	11	9.8
	above 100,000	11	9.8
Total		112	100.0

Source: Authors' own elaboration.

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Data: 16/11/2026 16:22:30

Table 2 seeks to share the professional association of the respondents along with their geographical location indicator. This furnishes an understanding of the interest, in terms of percentage, that consumers keep in the Right to Repair irrespective of locational background and professional exposure.

Table 2. Background of the respondents

Professional category	Rural	Semi-urban	Urban	Grand total
Entrepreneur/manufacturer	2	–	–	2
Government sector employee	16	1	8	25
Homemaker	2	–	–	2
Private sector employee	30	4	7	41
Professional	10	3	11	24
Student	6	7	5	18
Grand total	66	15	31	112

Source: Authors' own elaboration.

Figures 1 and 2 seek to outline consumers' awareness of the Right to Repair. The first illustrates local representation of respondents, with 59% of rural respondent as maximum involved, followed by 28% from urban area, and 13% from semi-urban.

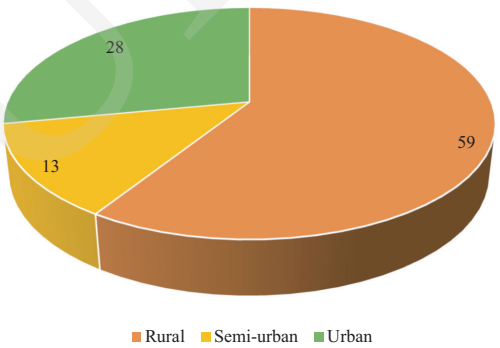


Figure 1. Local representation of respondents (%)

Source: Authors' own elaboration.

Designing products with escalated durability and enlarged scope of repairability would strive an effort to add value to the existing brand. Expectation of consumers and their attitudes incur to acquire reasoned review for framing policy as well as legal doctrine. Furthermore, the recently launched National Automobile Scrappage Policy (2021),[41] recommending mandatory scrapping, of more than 20 and 15 years

[41] The Times of India, *Vehicle Scrappage Policy: Details, Benefits, Rules and More*, 14.8.2021, https://timesofindia.indiatimes.com/business/india-business/vehicle-scrappage-policy-details-benefits-rules-and-more/articleshow/85309762.cms (access: 24.9.2022).

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Data: 16/11/2026 16:22:30

old private as well as commercial vehicle, in absence of fitness certificate expects to acquire cheap raw material from scrapped vehicles noting a decline in price of vehicles while boosting the sales. This implies surge in production, generation of employment opportunities and an increase in savings of consumers thereby extending benefit to all stakeholders.

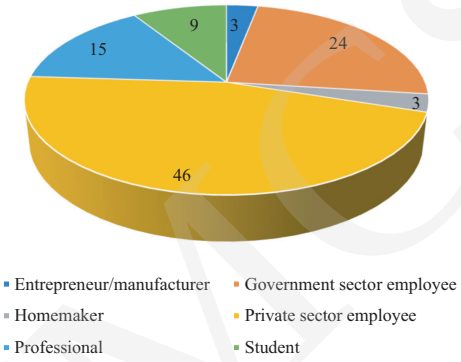


Figure 2. Professional representation of respondents (%)

Source: Authors' own elaboration.

This part attempts to outline progressive involvement to recognize consumer's rights as well as to ensure manufacturer's concerns.

Table 3 relates to the respondents' perception of the Right to Repair. This segment engulfs insight into the concept, mindset to opt for repair, and views in prioritizing repair in comparison to replacement. The majority awareness counts with a positive note to favour repair over replacement. This reports to record 68.75% of respondents (out of 112 total respondents) in convincing opinion of availability of repair option.

Table 3. Respondents' perception of the Right to Repair

Awareness counts	Yes	No	Total
Idea of the Right to Repair	63 (56.25%)	49 (43.75%)	112
Fix their own broken electronic devices	64 (57.14%)	48 (42.85%)	112
Better to repair than to replace a consumer electronic product	77 (68.75%)	35 (31.25%)	112

Source: Authors' own elaboration.

Furthermore, the bar graphical representation on "perception about right to repair" attempts to elucidate the above three set of parameters namely: idea of right to repair, fixing one's own broken electronic devices and repair versus replacement of consumer electronic products.

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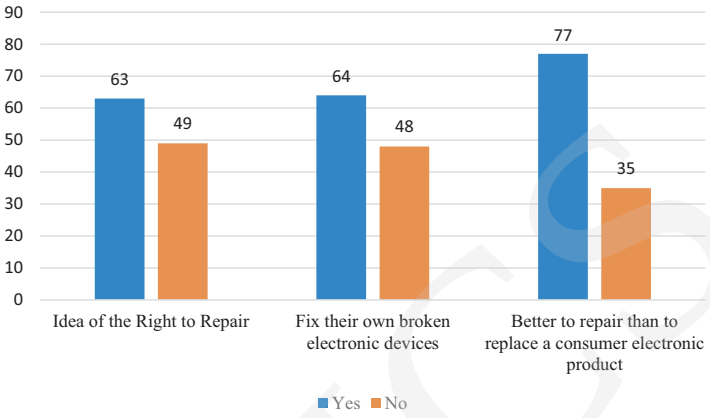


Figure 3. Respondents' perception of the Right to Repair

Source: Authors' own elaboration.

Table 4 strives to illustrate the deciding factors for the Right to Repair. Out of the total of 112 respondents, 68.75% of respondents (35 respondents agreed along with 42 respondents strongly agreed) observe repair services as extortionate in comparison to purchase of new product which often curtails repair concerns and thwarts a consumer to take up repair of faulty products. The repair activities involving high expense oppose repairability of discarded products and dissuade consumers from repairing obsolete products.[42]

In continuance, 66.07% of respondents (27 respondents agreed along with 47 respondents strongly agreed) contend to support repair option as opposed to new purchase. This implies to reflect strong propensity to repair faulty products.

As many as 75% of respondents (25 respondents agreed along with 59 respondents strongly agreed) advocate to endorse that repair of faulty products reduces electronic waste (e-waste) which implies to state that impaired gadgets, tend to cause environmental degradation, should withstand repair provisions in order to protect and promote a sustainable environment. This strives to urge for reusing and recycling of electronic products in order to foster safe ecology while upholding the Right to Repair broken electronic products.

With 38.4% of respondents (43 respondents agreed) contending that availability of repair rights would lead to imposition of restriction on monopolistic practices of unfair trade among manufacturers, however, attempts to guarantee the "freedom to choose" of consumers. This reports to record 65.2% (numerical 37 respondents agreed along with 36 respondents strongly agreed) of respondents endorsing the notion.

[42] J. McCollough, *Factors Impacting the Demand for Repair Services of Household Products: The Disappearing Repair Trades and the Throwaway Society*, "International Journal of Consumer Studies" 2009, vol. 33(6), pp. 619–626.

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The majority of 58.9% of respondents (40 respondents agreed along with 26 respondents strongly agreed) acknowledge Mandatory Policy Scrappage Vehicle 2021 as restrictive to the Right to Choose, incidentally, seeks to downsize the freedom of consumers. As a result, the situation drives aversion to repairability for consumers favouring repair. As many as 64.28% of respondents (40 respondents agreed along with 32 respondents strongly agreed) affirm to hold the proposition that the Right to Repair promotes consumer protection and seeks to furnish consumer justice.

In contrast, the issue involving overprice of repairable products counts 67.85% (49 respondents agreed along with 27 respondents strongly agreed) as strong adherents while 11.60% (4 respondents strongly disagreed along with 9 respondents disagreed) as adversaries.

As many as 61.60% of respondents (43 respondents agreed along with 26 respondents strongly agreed) approve customer loyalty as an attribute of repair market that poses to probe into long term profitability of the economy.

In contrast, 60.71% of respondents (40 respondents agreed along with 28 respondents strongly agreed) submit to opine that intellectual property laws are stumbling blocks for implementation of laws on repair. This chalks to shrink the gravity of legislating and implementing a discrete law with repair provisions.

Table 4. Deciding factors for the Right to Repair (5-point scale: numerical representation)

Deciding factors	Strongly disagree (1)	Disagree (2)	Neither agree nor disagree (3)	Agree (4)	Strongly agree (5)
Repair is more expensive than purchasing new product	4	9	22	35	42
Right to Repair negatively affects purchasing power of consumers	13	19	25	32	23
Purchase v. repair	4	15	19	27	47
Repairing reduces e-waste	4	9	15	25	59
Right to Repair restricts monopoly and prevents unfair competition among manufacturers	3	9	28	43	29
Manufacturer's proprietary control infringes consumer's Right to Choose	2	16	21	37	36
Mandatory Vehicle Scrappage Policy 2021 restricts customer's Right to Choose	3	13	30	40	26
Right to Repair promotes and ensures consumer protection	1	13	26	40	32
Repairable products are more expensive than non-repairable products	4	9	23	49	27
Repair economy promotes customer loyalty and accelerates profits	0	13	30	43	26
Intellectual property rights prevent implementation of repair laws	2	14	28	40	28

Source: Authors' own elaboration.

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Data: 16/11/2026 16:22:30

Figure 4 shows the deciding factors in favour of the Right to Repair. A 5-point scale was used (*strongly disagree*, *disagree*, *neither agree nor disagree*, *agree*, *strongly agree*).

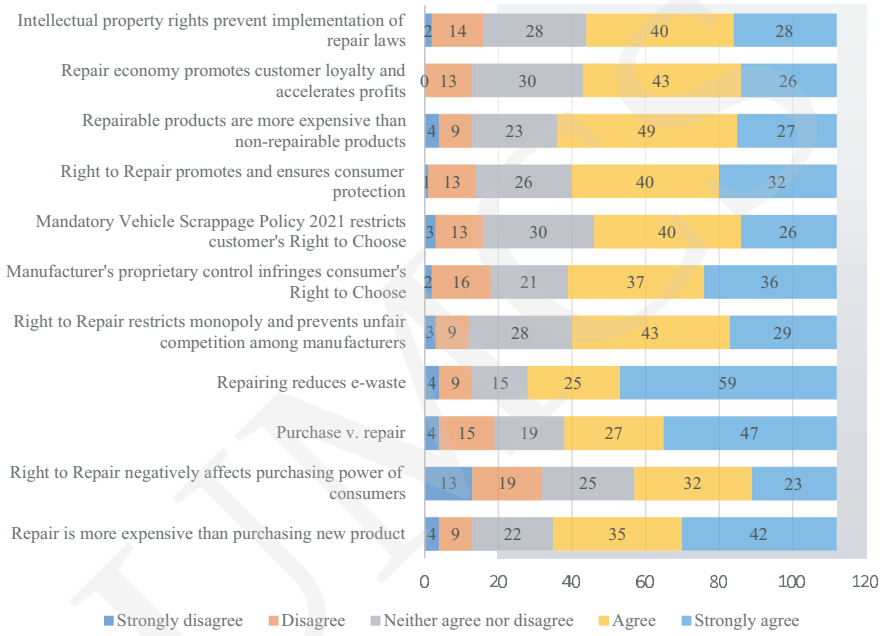


Figure 4. Deciding factors for the Right to Repair

Source: Authors' own elaboration.

Table 5 shows the need for discrete legislation on the Right to Repair. As many as 78.57% of respondents (42 respondents agreed along with 46 respondents strongly agreed) supported the proposal in quest of consumer justice.

Table 5. Need for discrete legislation on the Right to Repair

Legislative need	Strongly disagree (1)	Disagree (2)	Neither agree nor disagree (3)	Agree (4)	Strongly agree (5)
Need for a discrete piece of law pertaining to the Right to Repair	3	4	17	42	46

Source: Authors' own elaboration.

Figure 5 presents the percentage representation of the opinion-based survey, analysed on a 5-point scale (*strongly disagree*, *disagree*, *neither agree nor disagree*, *agree*, *strongly agree*) taking into consideration the need for discrete legislation on the Right to Repair.

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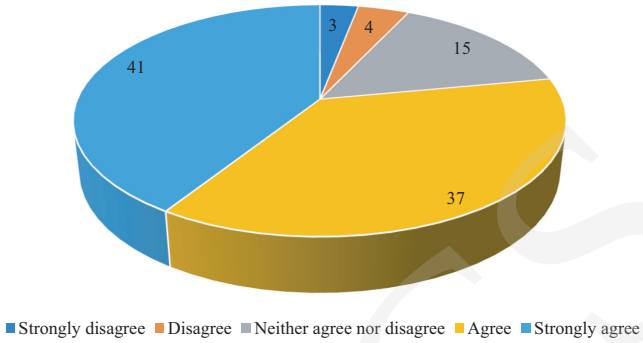


Figure 5. Need for discrete legislation on the Right to Repair (%)

Source: Authors' own elaboration.

The study divulges to reflect the results of a nationwide survey of consumers perspective about repairability of electronic gadgets and explores multi-dimensional implications of the right that majority population of respondents urge to be ensured.

TASK AHEAD

With an intention to have cost-effective and comprehensive[43] repairs the paper attempts to propose interventions embracing far-reaching impact:

1. Interventions for policy framework. Initiatives to prevent crooked trade practices frames to recommend policies to ensure free and fair trade along with protection and promotion of intellectual property rights. Engendering awareness and imparting training series, through consumer education, with focus on consumer's Right to Repair faulty products on their own or get that repaired by an independent repair shop without paying heed to repair restrictions in relation to the product warranty that often jeopardizes the available rights of consumers. Policies framed should ensure that consumers who purchase and own products should have choices when products require repair. However, if the corporates manufacture products with the option of self-regulation which might facilitate multiple avenues or options for consumers to repair faulty products. Repair restrictions intensify financial burden and disproportionately affect low-income consumers. Anti-trust policymaking should be proposed and realized immediately.
2. Interventions for legislative framework. A meticulously drafted legislation with an intent to explicitly recognize and uphold the right to repair of consumers while striking a harmonious balance between competition law

[43] R. Brandom, *op. cit*.

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Data: 16/11/2026 16:22:30

and intellectual property laws has been a pressing priority of the hour. The proposed legislation on Right to Repair should frame provisions to address unlawful repair restrictions along with stringent punitive measures to be resorted when required. The giant corporates often through their product's warranty guidelines happen to hold unlawful restrictions on repair policies. This takes a far-reaching note of consideration for legislative framework assuring consumer protection. A distinct specific law pertaining to Right to Repair would be an accelerated thrust to counter the threat of e-scraps resulting from repair restrictions.

CONCLUSIONS

Advocating the Right to Repair for consumers attempts to accost the rights of manufacturers too. This paves way in legislating policy proposals, considering apposite amendments and framing a distinct outlined law encompassing the provisions of Right to Repair while recognizing and reclaiming consumer protection. Laws framed in harmonization with safeguarding of consumers interest seeks to redress grievances that extends statutory shield to deceived consumers being victims of exploitative and unfair market strategies. Extending lifespan of electronic gadgets through maintaining, repairing, reusing, recycling, upgrading, and waste managing paves to promote and achieve the set goals of circular economy. Largely consumer durables, electronic gadgets and farm equipment market experienced replacement, of malfunctioning products, with new product purchase rather initiating repair of the particular defective part of the faulty device. Often batteries of mobile phones are found damaged, that might make the gadget inoperative and when replaced with new battery the mobile becomes functional. But astoundingly companies manufacture mobiles with in-build batteries that seems to render the product completely obsolete. Furthermore, when companies launch new versions of a product, they introduce some modification to the ancillary parts and equipment. For instance, charging ports differ from one handset to the other though they may belong to a parent brand. This happens with laptop, tablets, smartphones, Bluetooth charging headsets accompanied with varied charging ports. This has driven consumers to purchase new product while contributing exponentially to the global e-scrap. Corresponding to the present scenario, the proposed concept of "one nation one charger" has gained momentum whereby by 2024[44] all smartphones in India would mandatorily have USB Type-C charging port. Apple has also been a part of

[44] ET Bureau, *One Nation, Many Devices, One Charger*, 21.8.2022, https://economictimes.indiatimes.com/opinion/et-editorial/one-nation-many-devices-one-charger/articleshow/93695682.cms (access: 10.12.2022).

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this proposition. In addition, introduction of mandatory rating system to a product would extent to expedite consumer's decision in purchasing a product as rating products with stars defines product durability and service extendibility in years. Therefore, if a product's function goes on the blink within the guaranteed time frame, the manufacturing company is held liable to replace the faulty product. In a nutshell, these proposed measures are framed to advocate consumer justice with brand sustainability along with business leverage over global competitors.

Issues experiencing change in consumer behavior coupled with profound impact of electronics at a surging scale marked the significance of proposing a distinct Right to Repair legislation or amending the existing 2019 Consumer Protection Act. With an urge to initiate measure against anti-repair manufacturers while framing new rules to forbid deceptive and unfair repair restrictions in repair market seeks to uncover various unjustified activities practiced by these billion-dollar corporations. Unfortunately, our markets are riddled with monopoly but, however, the Right to Repair framework offers to safeguard consumers as well as independent repair shops have access to spare parts, technical instruction manuals, and diagnostic software imperative for repair coverage. Thus, the desired objective of discrete legislation on the Right to Repair intends to prevent unfair trade practices with an adverse effect on competition, protect consumer's interest and seeks to ensure freedom of trade. Equally further the legislation would strive to strike parity between protection of intellectual property and prevailing market competition. Eventually, this calls to empower consumers through consumer justice!

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Judgment of the United States District Court for Southern District of New York of 1956, *United States of America v. International Business Machines Corporation*, No. 72-344.

ABSTRAKT

W ostatnich latach elektronika użytkowa notuje wzrost pośród dóbr konsumpcyjnych trwałego użytku, ale niestety odsetek naprawianych produktów spada, ponieważ naprawa pociąga za sobą relatywnie wyższe koszty ze względu na brak infrastruktury naprawczej. W przeprowadzonym badaniu skoncentrowano się na wolności i prawach konsumentów do samodzielnej naprawy wadliwego urządzenia zgodnie z instrukcją naprawy oraz do swobodnego wyboru usługodawcy bez podlegania uznaniu producenta. Podjęte badanie związane jest z potrzebą upodmiotowienia konsumentów poprzez powiązanie handlu pomiędzy producentami i pośrednikami a nabywcami, z jednoczesnym zapewnieniem zrównoważonego zużycia produktów poprzez ograniczanie ilości elektrośmieci, z konsekwencjami dla decydentów, naukowców i opinii publicznej wynikającymi z propozycji strategii zrównoważonego rozwoju gospodarczego. Badanie, w którym wzięło udział 112 respondentów, określa zakres i potrzebę prawa do naprawy, które niesie znaczne korzyści dla konsumentów, przy czym wielu respondentów wyraziło pragmatyczną, jednoznaczną perspektywę uznania prawa do na-

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prawy. Dane statystyczne odzwierciedlają oryginalne odpowiedzi zebrane w postaci ankiet na próbie ogólnoindyjskiej w oparciu o metodę kwestionariusza ustrukturyzowanego. Potwierdza to poparcie dla swobodnego i sprawiedliwego handlu w zakresie priorytetowego traktowania ochrony konsumentów przy jednoczesnym zarysowaniu potrzeby przyjęcia odrębnego aktu prawnego dotyczącego „prawa do naprawy". Celem artykułu jest próba identyfikacji rzeczywistości cyfrowej wraz z dojrzałością cyfrową do objęcia procesu decyzyjnego konsumenta. Ma ona na celu zapobieganie nieuczciwemu handlowi przy jednoczesnym promowaniu wolności handlu i proponowaniu odrębnej legislacji dotyczącej „prawa do naprawy", tak aby decydenci mogli skutecznie łączyć przepisy dotyczące prawa do naprawy z uznaniem i przywróceniem ochrony konsumenta.

Słowa kluczowe: elektronika użytkowa; sprawiedliwość konsumencka; prawo do naprawy; producent; pośrednik; nabywca

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