

ANALYSIS OF CONSUMER RIGHTS IN COSMETIC INDUSTRY IN INDIA

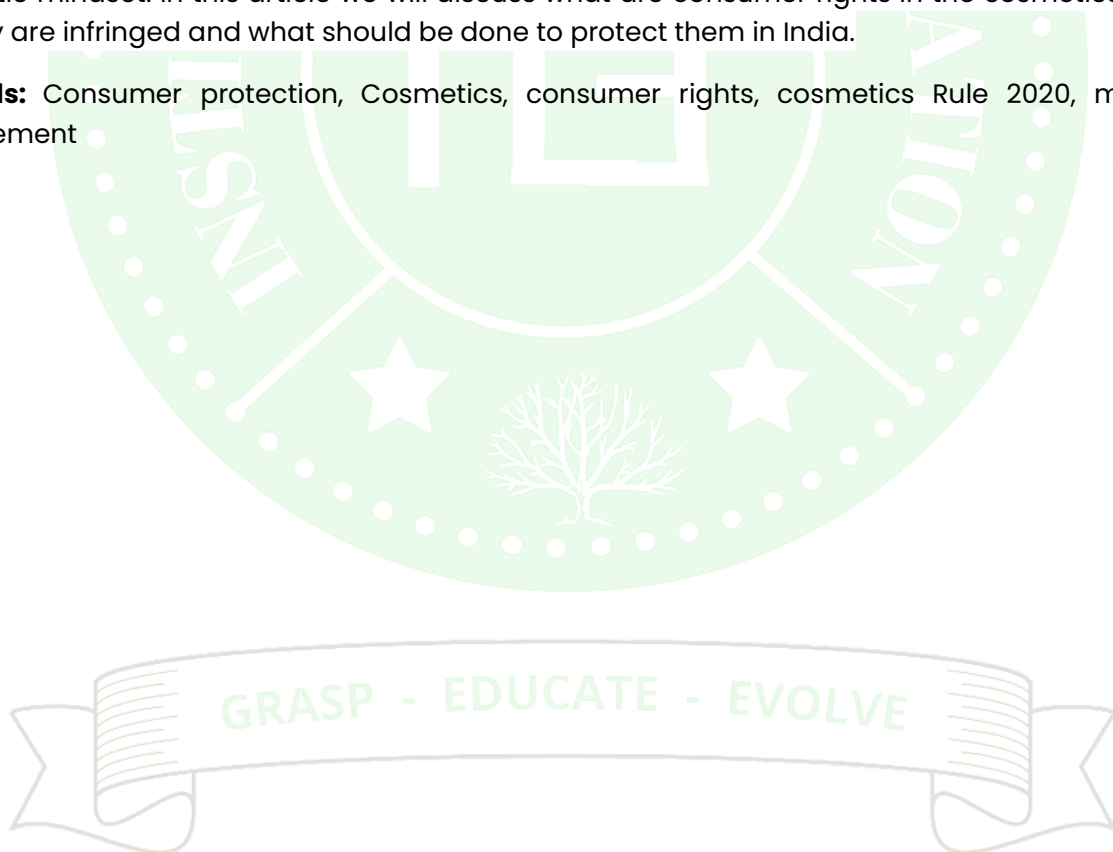
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Abstract

There is a very famous saying “The most beautiful makeup of a woman is passion. But cosmetics are easier to buy.” — **Yves Saint Laurent** (French fashion designer). But nowadays cosmetic is no more limited only to women, also becoming more popular and acceptable among men too. Nowadays cosmetics are playing as important role as a pair of neat and clean clothes on the body of a person. With the flourishing fashion and entertainment industry, the demand for latest cosmetic is increasing significantly. Changing lifestyles, and growing awareness contributed to a significant development in India’s cosmetic industry. India is ranked fourth globally for generating the highest revenue from the beauty and personal care market in 2021⁷⁸⁵. This boom in cosmetic industry, brings new challenges with itself. Consumer protection is one of that major and most ignorant threat pose by the cosmetics. Globalisation becomes serious hurdle in the path of consumer rights especially in the country with the capitalistic mindset. In this article we will discuss what are consumer rights in the cosmetics industry, how they are infringed and what should be done to protect them in India.

Keywords: Consumer protection, Cosmetics, consumer rights, cosmetics Rule 2020, misleading Advertisement



⁷⁸⁵ Market size of beauty and personal care in 20 countries worldwide 2022 <https://www.statista.com/topics/5039/beauty-industry-in-india> (published on Sep 28, 2022)

I. Introduction

Cosmetics is not a concept of modern society but it is as old as Indus Valley Civilization. The earliest records of cosmetics have been found date back to Circa 2500 and 1500 B.C. to Indus Valley Civilization. People were very conscious related to fashion used cinnabar as cosmetic and face paint, lipstick and collyrium (eyeliner) were also known to them.⁷⁸⁶

Earlier India did not use chemical cosmetics but it is the colonial era during which Britishers introduced chemical cosmetics to the country. Due to immediate, quick results and easy application people started loving them. It begins the era of chemical loaded cosmetics in India.⁷⁸⁷

What are cosmetics?

cosmetics is a substance that is applied on a face or body to make it more beautiful or attractive.

As per Drugs And Cosmetics Act 1940 Cosmetic is defined as "any item that is intended to be sprayed purged rubbed or sprinkled on introduce into or applied to the human body or any part of it for cleansing beautifying promoting attractiveness or altering appearance it also includes any items intended for use as a cosmetic component."⁷⁸⁸

II. Why Consumer Rights Are Important to Be Protected in Cosmetic Industry?

As per the John F. Kennedy⁷⁸⁹

"Consumers, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision. Two-thirds of all spending in the economy is by consumers. But they are the only important group in the economy who are not effectively organized, whose views are often not heard.

The federal Government--by nature the highest spokesman for all the people--has a special obligation to be alert to the consumer's needs and to advance the consumer's interests. If consumers are offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and the national interest suffers.⁷⁹⁰

Consumer protection is a big issue which will never run out and will always be a hot topic for discussion in the community. Therefore, consumer protection issue needs to be considered. Globalisation flooded the markets with wide range of goods which are circulated among people through promotions, advertisement or by direct sampling-trial method.

If consumers are not that smart in choosing the correct and safe cosmetic product then it may impact their health money and rights. This concern become much more important in the cosmetic industry as cosmetic is direct applied on the skin face or body parts which can immensely harm the consumer safety. Following are the prime main reasons why consumer rights are important in cosmetic industry

1. product safety
2. Information and transparency regarding ingredients
3. false and exaggerated advertisement
4. lack of consumer awareness
5. exploitative practises by sellers and big manufacturers

⁷⁸⁶ NCERT, An Introduction to Indian Art part I (New Delhi Sep, 2012)

⁷⁸⁷ Rayed Merchant, INDIAN BEAUTY INDUSTRY & THE STORY OF ITS EVOLUTION, PUBLISHED ON MARCH 31, 2020

⁷⁸⁸ Section 3(aaa)

⁷⁸⁹ 35th President of the United States: 1961 - 1963

⁷⁹⁰ John F. Kennedy, Special Message to the Congress on Protecting the Consumer Interest Special Message to the Congress on Protecting the Consumer Interest. | The American Presidency Project (ucsb.edu). (Visited on May 20, 2023)

III. Available Legislation in India for Protecting Consumer Rights in Cosmetics

There is no specific law to protect consumer rights in cosmetic industry in India but here are some laws which regulates cosmetics and another separate law to protect consumer rights. These are as:

- i) Drugs and Cosmetics Act, 1940
- ii) Cosmetics rules, 2020
- iii) The Consumer Protection Act, 2019

In India, CDSCO that is Central Drug Standard Control Organisation is the central authority for discharging regulatory functions relating to drugs and cosmetics. it is a statutory authority established under the Drugs and Cosmetics Act, 1940. The main function of CDSCO is to ensure safety, efficiency and quality of cosmetics.

The Bureau of Indian Standards is another statutory authority which lays down standards for cosmetics.

Under Drugs and Cosmetics Act 1940: some key points regarding consumer rights in the cosmetic industry under this act or as follows:

1. labelling manufacturer must provide clear and accurate labelling on cosmetic products including the list of ingredients used batch numbers and manufacturing date
2. Cosmetics should not contain any harmful substance and must meet quality standards to ensure consumer safety
3. The Act specifies certain ingredients that are prohibited in cosmetics ensuring consumers are not exposed to harmful substances
4. Manufacturers cannot make false or misleading claims about their products benefits or effects
5. Some cosmetic products require registration with the Central Drugs Standard Control Organisation to legally market it in India

6. only licenced manufactured can produce and distribute cosmetics in the country

7. The government can confiscate the offended cosmetics

8. No person shall important any cosmetic which is not for stranded quality and misbranded cosmetic spurious cosmetics and any cosmetic containing any ingredient which may be unsafe or harmful

9. Any contravention of above will be punishable with imprisonment for 3 years or with fine which may extend to 5000 Rs or with both.⁷⁹¹

Under Cosmetic rules 2020: The main aim to ensure the safety and quality of cosmetic products it makes the cosmetic laws in India little more stringent than before.

1. All posts manufactured in India are imported for sale need to be registered with CDSCO
2. The rules outlined permissible and prohibited ingredients to ensure the safety of the consumers
3. Cosmetics must have proper labelling mentioning the ingredients, direction for use, precautions, expiry date etc.
4. manufacturers must Conduct Safety Testing of their products and maintain records for the same
5. Cosmetic advertisement must not make false claims or mislead consumers
6. Manufacturers are required to report adverse reactions in case of a product defect they must initiate a recall it is based on Voluntary Recall Mechanism by companies.

Under Consumer Protection Act, 2019

Earlier there was a principle of caveat emptor in trade but as the trade is becoming much more complex it has become outdated. It is the time of consumer rights protection.

⁷⁹¹ Section 13

Section 2(9) of the Act discuss consumer right^{792s}:

1. *Right to safety or protection against hazardous goods* - consumers have the right to expect that the cosmetics they use will not cause any harm or adverse effect to them in short term as well as long term both.

2. *Right to information*- consumers have the right to know the exact ingredients of the cosmetics, name and address of manufacturers, country of origin, quantity, manufacturing date, expiry date, usage, instructions and precautionary warning etc.

3. *Right to choose or right of access to variety of goods or services at competitive prices* - Consumers have the right to make a free choice and inform choice while purchasing cosmetics. they should not be misled by exaggerated advertisement, labelling, deceitful practises by manufacturers or having varieties of cosmetics according to their skin colour etc.

4. *Right to be heard or right to due attention to appropriate forums*- consumers have right to be hurt by authorities under the act they complain against cosmetics then consumer will receive due attention and consideration from such redressal forums.

5. *Right to seek redressal*: If consumer faces any issue with cosmetic products or receive any defective item, misleded by advertisement, harmed from the product then he has the right to seek redressal .he can file complaint to a consumer dispute redressal forums such as district consumer dispute redressal commission depending on the value of their claim.

6. *Right to consumer education*- consumers have the right to be educated about their rights and responsibilities under the consumer protection act and they should also be aware of their remedies or rights when exploited by big cosmetic companies.

Product liability if consumer is harmed by any product due to deficiency, unfair trade practises etc. then manufacturers will be liable for the damages, injury or loss of the consumer occurred due to him by using cosmetic product.

State of Karnataka vs Vishwa Bharti House Building Society (2003) 2 SCC 412 in this case the Supreme Court held that remedies under the acts are in addition not in derogation of the remedies under other laws. the provision of this act should be interpreted as broadly as possible subject to the condition that he must be a consumer under the CPA.⁷⁹³

Thus, the Consumer Protection Act 2019 does not have explicit provision to protect consumer rights in the cosmetic industry but cosmetic is a good in itself and the provision of this act will be applicable on it too.

IV. How Consumer Rights are infringed in the Cosmetic Industry?

1. *Hidden and harmful chemicals*- Some manufacturers may use harmful chemicals like super glue in lipsticks lead, asbestos, talc, Parabens etc in makeups that can be harmful for the health. It may affect in short term as well as in long term. Harmful chemicals in cosmetics can lead to endocrine disruptions, hormonal imbalance, ovarian cancers, infertility, skin allergies etc⁷⁹⁴

2. *Misleading advertisement*- manufacturer may use misleading or false claims in their advertising meant to attract consumers. this could include exaggerating benefits of a product, misrepresenting the results or using deceptive images to create a unrealistic expectations.

For example, L'Oreal claim that its products were clinically proven to boost genes activity and stimulate the production of youth proteins that would result in visible younger skin in seven

⁷⁹² Mayank Madhav, Law of Torts including Consumer Protection Act 2019, Singhal law publications

⁷⁹³ Supra 8

⁷⁹⁴ National Institute for environment health sciences- Cosmetics and hair dye fact sheet

days, Federal Trade Commission held L’Oreal for misleading advertisement.⁷⁹⁵

3. Product mislabelling- Inaccurate or inadequate labelling on cosmetic products can lead to consumer confusion and safety concerns missing or incorrect information about the ingredients, usage, instructions or potential side effects can put consumers at risk.

4. Counterfeit products- counterfeit cosmetics often sold at lower prices may be falsely labelled and formulated with harmful ingredients consumers who unknowingly purchase these counterfeit items risk serious health issue and online shopping of cosmetics increase the huge number of counterfeit cosmetics in the market.

5. Unethical sales practice- unscrupulous sales practices such as pressuring consumers into buying a unnecessary product.

6. Lack of Recourse- consumer may find it challenging to secret wrestle for their grievances due to complex and tang consuming complaint processor lack of response from manufacturers

V. Case Study of Patanjali Misleading Advertisement⁷⁹⁶⁷⁹⁷

ASCI rapped Patanjali Ayurveda for false and misleading claims in its various advertisement including its hair oil ‘Kesh Kanti’ and toothpaste ‘Dant Kanti’. Baba Ramdev’s Patanjali Ayurveda brand may be fastest growing consumer good in India but it came into controversy due to its over exaggerating misleading claims in advertisement. the main point of selling of Patanjali is that their product contains natural products only, safe ingredients and promote them as healthy. But in actual these were found to be all misleading claims.

⁷⁹⁵ L’Oreal Settles FTC Charges Alleging Deceptive Advertising for Anti-Aging Cosmetics June 30, 2014 available at <https://www.ftc.gov/news-events/news/press-releases/2014/06/loreal-settles-ftc-charges-alleging-deceptive-advertising-anti-aging-cosmetics>

⁷⁹⁶ Rohit Sinha, Misleading Advertisements in India: A Critical Study on Violation of Consumer’s Right by Patanjali Ayurved Limited.

⁷⁹⁷ <https://www.thequint.com/news/india/25-out-of-33-patanjali-ads-found-making-misleading-false-claims-baba-ramdev-electronic-print-media#read-more>

Patanjali advertisement campaign of facewash, ‘Aishwarya and Saundarya’ where one of them was shamed and tagged as ‘wannabe’ for using “chemical and non-herbal” products. They violated the right of choice through this advertisement by making sure that through the mere use of Patanjali herbal products, a girl is described as traditional and those not using their products are mocked on the streets.

This is how companies affect the decision-making power of consumers.

Johnson & Johnson is facing a largest class action suit in USA for product liability of its baby powder which caused cancer due to presence of talc in it. Despite knowing the fact company never put warning on its label. This is how cosmetics become life threatening.⁷⁹⁸

VI. Conclusion

Cosmetics plays an important role in everyday life. They are used for the purpose of care and beauty higher the level of prosperity of a country, higher the need of cosmetics. Social media and aggressive marketing tactic by companies formed the opinion that cosmetics as the essential part of lifestyle and influence them to buy different cosmetic products. Basically, hygiene and use of cosmetics are linked together in modern day. Those who use cosmetics are considered to be hygienic people by the elite society. Yes, consumers are unaware about their rights in the cosmetics industry but the powerful campaign by the companies create a perception in the mind of consumer that if cosmetic is making them attractive or beautiful then they can tolerate the little side effects of cosmetics. For example, lip plumping cosmetics causes burning sensation or lips but still women use them to enhance their lips shape⁷⁹⁹. But this is not true in all cases some consumers want protection but unaware

⁷⁹⁸ New York times, <https://www.nytimes.com/2018/12/14/business/baby-powder-asbestos-johnson-johnson.htm>

⁷⁹⁹ Ammar Awadh, Azmar, Ahmad, Hazrina Hadi, Juliana Jaffri’Malaysian consumers’ awareness, perception, and attitude toward cosmetic products: Questionnaire development and pilot testing

of the facts that company is infringing their consumer rights.

To protect such consumers there should be some steps taken by the Government of India:

1. increase post market surveillance
2. Bann more ingredients like European Union and Canada which are carcinogenic in nature. In India there is a certain limit applied on these ingredients but country like Canada completely banned those ingredients which seems to be little bit harmful to the health of people⁸⁰⁰.
3. Government should increase cosmetovigilance i.e., monitoring system to monitor the adverse effects of cosmetic products and prevent their adverse effects by taking appropriate measures⁸⁰¹.
4. To invest in research and development related to studies of cosmetics and their impact on health.
5. To update Drugs and Cosmetics Act, 1940 that is outdated law to deal with modern day complexity of cosmetics market
6. there should be some stringent punishment and strict liability of the manufacturers, sellers, suppliers for harming the people through cosmetics.
7. Cosmetics company should also start to have ethical and sustainable practices in trade so that they can sustain for long lasting period. As one day people will become aware of all these things, they will certainly choose alternate of it.

Government alone cannot control over these things as in the time of globalization and free trade practices it becomes more difficult to track and test all such products so it should be the duty of consumer himself to check the ingredients to update themselves regularly and choose alternate cosmetics like clean cosmetics, organic cosmetics, herbal cosmetics, yes these are also not 100 percent

healthy but at least little healthier than chemical cosmetics.

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⁸⁰⁰ Shreya samal, Legal compliances for cosmetic business in India

⁸⁰¹ <https://en.wikipedia.org/wiki/Cosmetovigilance>