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## **Introduction**

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## **Preface**

The Indian Journal of Legal Affairs and Research is a testament to our unwavering commitment to excellence in legal scholarship. This volume presents a curated selection of articles that reflect the diverse and dynamic nature of legal studies today. Our contributors, ranging from esteemed legal scholars to emerging academics, bring forward a rich tapestry of insights that address critical legal issues and offer novel contributions to the field. We are grateful to our editorial board, reviewers, and authors for their dedication and hard work, which have made this publication possible. It is our hope that this journal will serve as a valuable resource for researchers, practitioners, and policymakers, and will inspire further inquiry and debate within the legal community.

## **Description**

The Indian Journal of Legal Affairs and Research is an academic journal that publishes peer-reviewed articles on a wide range of legal topics. Each issue is designed to provide a platform for legal scholars, practitioners, and students to share their research findings, theoretical explorations, and practical insights. Our journal covers various branches of law, including but not limited to constitutional law, international law, criminal law, commercial law, human rights, and environmental law. We are dedicated to ensuring that the articles published in our journal adhere to the highest standards of academic rigor and contribute meaningfully to the understanding and development of legal theories and practices.

# **REGULATORY VACUUM AND UNFAIR TRADE PRACTICES IN DIGITAL TRADE OF PHYTOEXTRACTS**

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## **Abstract**

The rapid digitalization of trade has transformed the marketing and distribution of phytoextracts and nutraceutical ingredients. While digital platforms have enhanced market access, they have simultaneously created a regulatory vacuum that enables unfair trade practices such as misleading health claims, algorithmic discrimination, platform dominance, and information asymmetry. Unlike heavily regulated sectors such as telecommunications, the digital trade of phytoextracts operates within fragmented and inadequate regulatory oversight. This article examines the nature of unfair trade practices prevalent in the digital phytoextract market, analyses the existing legal framework in India, and highlights regulatory gaps that facilitate consumer and MSME exploitation. By drawing comparative insights from telecom regulation and competition law jurisprudence, the article argues for the development of a coherent regulatory framework to address unfair trade practices in the digital trade of phytoextracts and nutraceutical products.

**Keywords:** Unfair Trade Practices, Digital Markets, Phytoextracts, Nutraceuticals, Regulatory Vacuum, Consumer Protection, Competition Law

## 1. Introduction

The rapid expansion of digital platforms as central intermediaries in contemporary trade has fundamentally altered the structure and functioning of markets across sectors. Digitalisation has transformed traditional commercial relationships by reconfiguring how goods are produced, marketed, distributed, and consumed. Online marketplaces, platform-based advertising ecosystems, and algorithm-driven recommendation systems have replaced or displaced conventional intermediaries, enabling transactions to occur at unprecedented speed and scale. While these developments have generated efficiencies and expanded market access, they have also concentrated economic power within a small number of platform operators who exercise significant control over information flows, contractual terms, and market visibility.<sup>1</sup>

This concentration of power poses acute regulatory challenges in markets involving health-linked products. Phytoextracts and nutraceutical ingredients—derived from plant sources and widely marketed for therapeutic, preventive, or wellness-related benefits—occupy a sensitive position in contemporary commerce. bioactive compounds are frequently promoted using scientific or quasi-scientific claims relating to immunity enhancement, anti-inflammatory effects, or disease prevention. In digital environments, these claims are amplified through targeted advertising, influencer endorsements, and algorithmic promotion, often without corresponding regulatory scrutiny or scientific substantiation.<sup>2</sup>

Unlike traditional retail settings, digital platforms do not merely host product listings. They actively shape market outcomes by determining search rankings, advertising visibility, consumer targeting, and pricing signals through opaque algorithmic systems. These processes are largely insulated from external scrutiny, either due to claims of commercial confidentiality or the technical complexity involved in assessing algorithmic conduct. As a result, consumers and smaller market participants frequently lack the information necessary to make informed choices or to challenge the basis on which economic decisions affecting them are made.<sup>3</sup>

Indian consumer protection and competition law have long recognised that markets characterised by information asymmetry and unequal bargaining power are particularly vulnerable to

exploitation. Judicial interventions across sectors have acknowledged that the classical assumptions of informed consumer choice and equal negotiating capacity are often unrealistic. However, the application of these principles to digital markets remains uneven. Existing legal frameworks rely predominantly on ex-post enforcement mechanisms that are ill-suited to address real-time, algorithm-driven misconduct. This gap between legal norms and market realities has produced what may be described as a regulatory vacuum: a condition in which formal legal protections exist but fail to provide effective governance over platform-mediated trade.<sup>4</sup>

The digital trade of phytoextracts exemplifies the consequences of this regulatory vacuum. Health-related claims, technical complexity, platform dependency, and fragmented regulatory oversight combine to create conditions conducive to unfair trade practices. Misleading representations, selective disclosure, discriminatory platform practices, and exploitative contractual arrangements can proliferate with limited deterrence. These practices harm consumers directly, distort competition by disadvantaging compliant manufacturers, and undermine public trust in digital markets.<sup>5</sup>

Against this backdrop, this chapter examines the regulatory vacuum governing the digital trade of phytoextracts and its role in enabling unfair trade practices. The analysis proceeds on the premise that digital unfairness represents not a doctrinal rupture but an evolution of established forms of commercial misconduct. By situating digital phytoextract trade within the broader framework of unfair trade practice jurisprudence and drawing comparative insights from telecom regulation, the chapter argues for a sector-sensitive regulatory approach grounded in transparency, accountability, and consumer welfare.

## **2. Evolution of Digital Trade and Platform Intermediation**

Digital trade represents a qualitative shift from traditional forms of commerce, not merely in the medium through which transactions occur but in the allocation of power within the market. Conventional trade structures were characterised by identifiable intermediaries—wholesalers, distributors, retailers—whose roles were relatively transparent and subject to established legal obligations. Digital platforms, by contrast, operate as multi-sided markets that simultaneously

serve sellers, consumers, advertisers, and data brokers. Their economic influence derives not only from facilitating transactions but from controlling the infrastructure through which market interactions occur.<sup>6</sup>

Platform intermediation has introduced new forms of dependency. Sellers increasingly rely on a limited number of dominant platforms for market access, visibility, logistics, and payment processing. This dependency is particularly pronounced for micro, small, and medium enterprises (MSMEs), which often lack alternative distribution channels. While digital platforms are frequently celebrated for lowering entry barriers, this narrative obscures the structural barriers created by platform dependency. Once sellers are embedded within a platform ecosystem, their ability to operate independently diminishes, allowing platforms to impose unilateral contractual terms and alter market conditions without meaningful negotiation.

A defining feature of digital platforms is their reliance on algorithmic governance. Algorithms determine which products are displayed, in what order, to which consumers, and at what price points. These decisions are informed by vast quantities of data relating to consumer behaviour, preferences, and purchasing history. The opacity of these systems creates a significant information imbalance. Platforms possess granular insights into market dynamics, while sellers and consumers remain largely unaware of the criteria governing visibility and prioritisation.<sup>7</sup>

This asymmetry has profound implications for market fairness. In traditional markets, unfair practices such as deceptive advertising or discriminatory pricing were often visible and traceable to specific actors. In digital markets, unfairness may be embedded within algorithmic design choices that are neither transparent nor easily attributable. Preferential treatment of certain sellers, suppression of negative information, or manipulation of consumer choice architecture can occur without overt misrepresentation. Yet the economic effects of such practices—distorted competition and misled consumers—are no less significant.<sup>8</sup>

Digital trade has also intensified cross-border transactions. Platforms facilitate international trade by connecting buyers and sellers across jurisdictions, often through standardised digital contracts. While this has expanded market opportunities, it has also complicated regulatory oversight.

Jurisdictional fragmentation, choice-of-law clauses, and procedural barriers limit the effectiveness of traditional enforcement mechanisms. For sellers engaged in export-oriented digital trade, particularly in specialised sectors such as phytoextracts, these challenges exacerbate vulnerability to unfair contractual practices and delayed payments.

The evolution of digital trade thus necessitates a reassessment of regulatory assumptions. The notion that platforms function merely as neutral intermediaries is increasingly untenable. Where platforms exercise decisive influence over market outcomes, information dissemination, and contractual relations, their role extends beyond facilitation to governance. Recognising this shift is essential for understanding how unfair trade practices emerge and persist in platform-mediated markets.

### **3. Conceptual Foundations of Unfair Trade Practices**

Unfair trade practices occupy a central place in consumer protection jurisprudence and have been interpreted expansively by Indian courts. Rather than confining the concept to rigid categories of misconduct, judicial interpretation has focused on the substantive effect of a practice on consumer choice, market fairness, and bargaining power. Practices that mislead consumers, distort informed decision-making, or exploit structural vulnerabilities have been brought within the ambit of unfairness irrespective of their form or technological sophistication.<sup>9</sup>

Historically, unfair trade practices were associated with tangible acts such as false advertising, mislabelling, or hidden charges. These practices were often identifiable through direct observation and could be addressed through post-hoc adjudication. However, the emergence of digital markets has altered the modalities through which unfairness operates. Platform intermediation, algorithmic decision-making, and data-driven targeting have obscured the locus of responsibility and complicated regulatory oversight.

A key doctrinal element underlying unfair trade practice jurisprudence is information asymmetry. Classical economic theory assumes that markets function efficiently when participants possess adequate information to make rational decisions. Indian courts have repeatedly acknowledged that

this assumption often fails in real-world markets, particularly where products or services involve technical complexity. In such contexts, the law imposes heightened disclosure obligations on traders to compensate for consumer disadvantage.<sup>10</sup>

Digital markets exacerbate information asymmetry by concentrating information in the hands of platform operators. Platforms collect, analyse, and monetise vast quantities of data relating to consumer behaviour while consumers remain largely unaware of how this data influences the options presented to them. Recommendation systems, personalised pricing, and targeted advertising enable platforms to steer consumer behaviour in subtle yet impactful ways. Although these practices may not involve explicit falsehoods, their cumulative effect can undermine informed consent and distort consumer autonomy.<sup>11</sup>

Another foundational concept is unequal bargaining power. Consumer protection jurisprudence has long recognised that formal freedom of contract does not guarantee substantive fairness where parties possess vastly different negotiating capacities. Standard-form contracts, particularly those imposed on a take-it-or-leave-it basis, have been scrutinised for unconscionability and unfairness. In digital markets, such contracts are ubiquitous. Platform terms governing seller participation and consumer transactions are typically non-negotiable, complex, and subject to unilateral modification.

From a competition law perspective, unfair trade practices intersect with concerns about market distortion and abuse of economic power. Practices that mislead consumers often simultaneously disadvantage compliant competitors, creating incentives for regulatory non-compliance. Indian competition jurisprudence has acknowledged that abuse of dominance may occur even in the absence of traditional monopolistic behaviour, particularly in markets characterised by network effects and platform dependency.<sup>12</sup>

Importantly, Indian courts have emphasised that legal assessment must focus on substance rather than form. Technological novelty does not immunise commercial conduct from scrutiny. Where practices produce effects analogous to traditional forms of unfairness, they fall within the scope of established legal doctrine. This principle ensures doctrinal continuity and guards against regulatory

paralysis driven by the perceived novelty of digital markets.

#### **4. Digital Markets, Algorithms, and Choice Architecture<sup>13</sup>**

Algorithmic governance lies at the heart of contemporary digital markets. Algorithms determine product rankings, advertising exposure, and recommendations, shaping consumer perception and market outcomes. These systems are designed to optimise engagement and revenue, often prioritising commercial objectives over accuracy or fairness. The criteria governing algorithmic decisions are typically proprietary and shielded from scrutiny, creating significant accountability gaps.<sup>14</sup>

The concept of choice architecture provides a useful analytical lens for examining algorithmic unfairness. Design features such as default options, ranking order, and interface layout influence consumer decisions without overt coercion. Practices commonly described as dark patterns exploit cognitive biases and information gaps to induce consent or purchases. Although such practices may not involve explicit deception, their cumulative effect undermines informed choice and consumer autonomy.<sup>15</sup>

In markets involving health-linked products, the implications of algorithmic choice architecture are particularly serious. Consumers seeking nutraceuticals or phytoextracts may be motivated by health concerns or vulnerability, making them more susceptible to persuasive design. Algorithmic prioritisation of certain products can create perceptions of efficacy or credibility unrelated to scientific substantiation. When combined with influencer endorsements and targeted advertising, these practices amplify the risk of deception.<sup>16</sup>

The opacity of algorithmic systems also affects sellers. Independent manufacturers may be unable to understand why their products receive limited visibility or why competitors are promoted. This lack of transparency undermines fair competition and reinforces platform dependency. Sellers may feel compelled to invest in paid promotions or adopt aggressive marketing strategies to remain visible, further distorting market dynamics.

Regulatory responses to algorithmic unfairness remain limited. Existing legal frameworks focus on outcomes rather than processes, making it difficult to address embedded biases or discriminatory design choices. Yet without some degree of algorithmic accountability, unfair trade practices can become normalised and entrenched. Recognising algorithms as instruments of market governance rather than neutral tools is therefore essential for effective regulation.

## **5. Phytoextracts and Nutraceuticals: Market Characteristics and Vulnerabilities**

Phytoextracts and nutraceutical ingredients occupy a distinctive position within contemporary commerce due to their hybrid nature and health-related claims. Derived from plant sources and used in pharmaceuticals, functional foods, dietary supplements, and traditional medicine systems, these products are often marketed as substances capable of promoting health or preventing disease. This positioning blurs the boundary between food and medicine, creating regulatory ambiguity.<sup>17</sup> Regulatory classification of phytoextracts frequently depends on intended use, dosage, and marketing claims rather than composition alone. As a result, products may fall under different regulatory regimes with varying standards of approval and disclosure. This ambiguity creates opportunities for regulatory arbitrage, where products are positioned to avoid stricter oversight while retaining health-oriented marketing narratives.<sup>18</sup>

Consumers generally lack the technical expertise required to assess claims relating to extraction methods, concentration levels, bioavailability, or therapeutic efficacy. Purchasing decisions are therefore heavily influenced by seller representations and platform-mediated disclosures. Indian consumer jurisprudence has consistently held that markets characterised by technical complexity impose heightened duties of truthful and complete disclosure on traders.

Digital platforms intensify these vulnerabilities by controlling information flows. Algorithmic promotion can confer perceived credibility on products irrespective of regulatory compliance. Compliant manufacturers may be disadvantaged, while misleading sellers gain visibility. The persuasive power of digital advertising and influencer marketing further complicates consumer evaluation, blurring the distinction between genuine information and commercial promotion.

The contractual environment of digital phytoextract trade also reflects significant imbalance. Standard-form contracts imposed by platforms often include unilateral modification clauses, restrictive dispute resolution mechanisms, and asymmetrical risk allocation. For MSMEs, these conditions reinforce dependency and discourage challenges to unfair practices. Combined with fragmented regulatory oversight, these factors create an environment in which unfair trade practices can flourish.

## **6. Regulatory Vacuum in Digital Phytoextract Trade**

The structural vulnerabilities identified in earlier sections are significantly exacerbated by the absence of a coherent regulatory framework capable of addressing the realities of digital trade in phytoextracts. The notion of a regulatory vacuum in this context does not imply the total absence of law. Rather, it denotes a condition in which existing legal frameworks are fragmented, reactive, and institutionally mismatched to the nature of platform-mediated markets.<sup>19</sup>

Indian regulation of phytoextracts is dispersed across consumer protection law, food safety regulation, competition law, and advertising controls. Each of these regimes addresses a limited aspect of market conduct, yet none is specifically designed to govern algorithmic promotion, platform-induced discrimination, or digital advertising architectures. As a result, regulatory oversight remains piecemeal. Platforms facilitating the trade of nutraceuticals and phytoextracts operate within these interstices, benefiting from legal ambiguity while avoiding comprehensive accountability.

A central limitation of the existing framework lies in its reliance on ex-post enforcement. Consumer protection authorities typically intervene only after harm has occurred and complaints have been lodged. In digital markets, however, unfair trade practices may operate subtly and cumulatively, often escaping consumer awareness altogether. Algorithmic ranking, selective disclosure, and targeted advertising do not always produce immediately visible harm, yet they gradually distort consumer choice and competitive conditions. By the time enforcement mechanisms are activated, market distortions may have become entrenched.<sup>20</sup>

Competition law, while theoretically capable of addressing exclusionary platform practices, is similarly constrained. Proceedings under competition law are complex, resource-intensive, and slow. Establishing dominance, relevant market boundaries, and appreciable adverse effects requires extensive economic analysis. Such an approach is ill-suited to addressing fast-moving digital misconduct, particularly in markets characterised by numerous small sellers and diffuse consumer harm. Consequently, competition law operates more as a corrective mechanism than a preventive one.

The regulatory vacuum is further reinforced by the intermediary posture adopted by digital platforms. By characterising themselves as neutral facilitators, platforms disclaim responsibility for the accuracy of health claims, the fairness of listings, or the transparency of contractual terms. This stance enables platforms to externalise regulatory risk while internalising economic benefits derived from high-volume trade in health-linked products. The resulting accountability gap undermines the objectives of consumer protection and fair competition alike.

## **7. Forms of Unfair Trade Practices in Digital Phytoextract Markets**

Within this regulatory vacuum, several distinct yet interrelated forms of unfair trade practices have emerged in digital phytoextract markets. These practices exploit information asymmetry, platform dependency, and consumer vulnerability, often operating below the threshold of overt illegality while producing significant cumulative harm.<sup>21</sup>

### **7.1 Misleading Health and Therapeutic Claims**

Misrepresentation of health benefits constitutes one of the most pervasive unfair trade practices in digital nutraceutical markets. Products are frequently marketed using scientific or quasi-scientific terminology—such as “clinically proven,” “research-backed,” or “medically recommended”—without adequate substantiation. Consumers, lacking the technical expertise to verify such claims, may reasonably infer a level of scientific consensus or regulatory approval that does not exist.<sup>22</sup>

Digital platforms amplify the impact of misleading claims through targeted advertising and influencer endorsements. Algorithms enable sellers to reach consumers based on health concerns, age, or behavioural indicators, thereby exploiting vulnerability associated with illness or wellness

aspirations. Influencer marketing further blurs the distinction between personal testimony and paid promotion, undermining transparency and informed consent.

### **7.2 Information Asymmetry and Economic Exploitation<sup>23</sup>**

Information asymmetry is not incidental in phytoextract trade; it is structural. Consumers typically lack access to reliable information regarding extraction processes, concentration levels, bioavailability, or regulatory compliance. Digital marketplaces compound this disadvantage by curating information within platform-controlled ecosystems that prioritise engagement and sales.<sup>24</sup> This asymmetry facilitates economic exploitation. Consumers may be induced to pay premium prices based on perceived efficacy or quality that is not objectively substantiated. From a legal standpoint, extracting economic benefit through exploitation of informational disadvantage aligns squarely with the core mischief targeted by unfair trade practice jurisprudence.

### **7.3 Platform-Induced Discrimination and Market Distortion**

Platforms exercise significant control over access, visibility, and transaction conditions. Practices such as preferential listing, self-preferencing, and discriminatory access distort competitive neutrality. Independent MSME sellers, despite regulatory compliance or product quality, may be relegated to obscurity due to algorithmic prioritisation favouring sponsored or affiliated products.<sup>25</sup> These practices undermine both consumer welfare and market integrity. Consumers are misled into perceiving promoted products as superior, while compliant sellers are disadvantaged. The convergence of consumer protection and competition concerns is particularly evident in such platform-mediated discrimination.

### **7.4 Cross-Border Digital Contractual Exploitation**

Cross-border digital trade introduces additional dimensions of unfairness. Standard-form contracts governing platform participation and international sales often contain unilateral modification clauses, restrictive dispute resolution mechanisms, and jurisdictional asymmetries. MSMEs engaged in export-oriented digital trade frequently lack the resources to challenge such terms, resulting in dependency and vulnerability.

Jurisdictional fragmentation further limits enforcement. Choice-of-law clauses and procedural barriers restrict access to effective remedies, allowing unfair practices to persist with minimal consequence.

## **8. Comparative Insights from Telecom Regulation**

The challenges observed in digital phytoextract markets are not unprecedented. The telecommunications sector historically exhibited similar structural vulnerabilities, including information asymmetry, network effects, and concentrated economic power. Recognising these risks, Indian telecom regulation evolved to incorporate anticipatory mechanisms aimed at preventing unfair trade practices before they became systemic.

Telecom regulation introduced licensing regimes, tariff transparency requirements, quality-of-service standards, and consumer grievance redressal mechanisms. These measures were justified not as restraints on competition but as safeguards necessary to ensure fair and sustainable markets. Judicial endorsement of telecom regulation reflects an acceptance that markets characterised by systemic imbalance cannot rely solely on post-facto adjudication.

The parallels with digital platform markets are striking. Digital platforms, like telecom operators, control essential infrastructure and influence consumer choice. Applying regulatory principles of transparency, non-discrimination, and accountability to digital phytoextract trade would therefore represent doctrinal continuity rather than regulatory overreach.

## **9. Indian Legal Framework: Adequacy and Limitations**

Indian consumer protection and competition laws provide a broad normative foundation for addressing unfair trade practices. The Consumer Protection Act adopts an expansive definition of unfair trade practices, encompassing misleading representations and deceptive conduct. Courts have emphasised purposive interpretation to ensure that statutory objectives are not defeated by technological change.

Despite this doctrinal flexibility, enforcement remains largely reactive. The burden of detection and redress falls on consumers who may lack awareness or resources. In digital phytoextract markets, where harm may be subtle or cumulative, this reliance on complaint-driven enforcement significantly limits effectiveness.

Competition law faces analogous constraints. While digital platforms have been scrutinised for exclusionary conduct, the evidentiary burdens associated with establishing dominance and competitive harm render competition law an imperfect tool for addressing pervasive digital unfairness. Institutional separation between consumer protection and competition authorities further limits coordinated responses.

## **10. Policy Imperatives and Regulatory Reform**

Addressing unfair trade practices in digital phytoextract markets requires regulatory recalibration rather than wholesale legal reform. A central policy imperative is the development of platform accountability norms aligned with actual economic influence rather than formal classification. Platforms that shape market outcomes must bear corresponding responsibilities.

Algorithmic transparency represents another critical reform dimension. While disclosure of proprietary code may be impractical, baseline transparency regarding ranking parameters and safeguards against self-preferencing would enhance accountability and deter manipulation.

Sector-specific digital trade guidelines for health-linked products are also essential. Such guidelines could mandate standardised disclosures regarding composition, scientific substantiation of health claims, and regulatory compliance, while addressing influencer marketing and targeted advertising practices.

Crucially, regulatory reform must be anticipatory. Reactive enforcement cannot adequately address the speed and scale of digital misconduct. Proactive oversight informed by interdisciplinary expertise offers a more effective approach.

## 11. Conclusion

The digital trade of phytoextracts exemplifies how regulatory vacuums enable unfair trade practices to become normalised. While digital platforms have expanded market access, they have also intensified information asymmetry, platform dependency, and consumer vulnerability. Existing legal frameworks, though normatively robust, remain institutionally mismatched to these realities.

This chapter has demonstrated that digital unfairness represents an evolution rather than a departure from established doctrine. Drawing on consumer protection jurisprudence, competition law principles, and comparative telecom regulation, it argues for a sector-sensitive regulatory framework grounded in transparency, accountability, and consumer welfare.

Unless addressed through coherent and anticipatory regulation, digital phytoextract markets risk replicating—and amplifying—the very market failures that prompted regulatory intervention in other sectors. The legal tools necessary to respond already exist. What remains is their adaptation to the realities of platform-mediated trade.

### Footnotes:

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- <sup>20</sup> Telecom Regulatory Authority of India Act, 1997.
- <sup>21</sup> *Bharti Airtel Ltd v Union of India* (2015) 12 SCC 1.
- <sup>22</sup> *Reliance Jio Infocomm Ltd v Union of India* (2017) 7 SCC 1.
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