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CONSUMER EXPLOITATION THROUGH IMPLEMENTATION OF PERSONALISED MARKETING STRATEGIES: A LEGAL REVIEW

ABSTRACT:

This research delves into the intriguing realm of personalised marketing, aiming to shed light on both its promising and potential pitfalls. With businesses increasingly adopting personalised strategies to tailor their offerings to individual consumers, the quest for enhancing customer satisfaction unfolds alongside concerns about the darker side of exploitation. At the heart of this exploration lies the interplay between personalisation and consumer rights, especially the legal facets regulating this dynamic. Through a meticulous analysis that spans legal precedents and scholarly discourse, we embark on a journey to decipher the intricate relationship between personalisation and consumer vulnerability. This voyage unveils a tapestry of ethical dilemmas and legal perspectives that surround personalised marketing strategies. Beyond philosophical debates, this study extends its reach to pragmatic considerations. It scrutinizes the applicability of Indian tort law in the context of consumer exploitation and assesses the practical avenues for legal recourse and implementation. Our findings not only enrich the existing reservoir of knowledge in consumer protection and tort law but also serve as a compass for policymakers, legal practitioners, enterprises, and consumers alike. Our collective mission is to champion consumer rights while nurturing the innovative landscape of personalised marketing. Join us as we navigate this evolving terrain, where the balance between consumer protection and the boundless horizon of customised marketing beckons.

Keywords: Personalised Advertising, Vulnerable Consumers, Unfair Commercial Practices, Personalised Marketing, Consumer Exploitation, Ethical Implications.

INTRODUCTION:

In our contemporary digital landscape, businesses are harnessing the formidable power of customization as a marketing tool to cultivate deeper connections with their clientele. The essence of personalisation is to elevate customer satisfaction and engagement by tailoring products, services, and marketing communications to the unique tastes of everyone. Yet, within the realms

of this promising frontier, concerns have arisen regarding the potential for exploitation of consumers through precisely targeted advertising. This article embarks on an intricate exploration of the intricate relationship between customization and consumer vulnerability, with a particular focus on the legal implications in the context of established consumer protection statutes.¹ At its core, customization in marketing hinges on the collection and analysis of extensive consumer data to formulate highly specific marketing strategies.² Contemporary technology and sophisticated algorithms empower businesses with profound insights into their customers' preferences, from their likes and dislikes to their habits and online pursuits. While personalisation holds the allure of heightened customer satisfaction, augmented engagement, and enriched user experiences, it also casts a shadow of concern. In the relentless pursuit of profit, some enterprises transgress the boundaries of consumer rights, privacy, and autonomy, manipulating their behaviour or misusing their data in the name of profit. This complex landscape triggers a confluence of ethical, legal, and cultural concerns, necessitating a nuanced examination of the contours of targeted advertising and the imperative to safeguard consumer privacy.³

The overarching aim of this endeavour is to illuminate the role of Indian tort law as a safeguard against consumer exploitation through tailored marketing. Tort law, the pillar of jurisprudence that codifies regulations for civil wrongs and provides redress for those harmed by the negligence of others, holds a pivotal position in our exploration. Our quest is to fathom how Indian consumer protection laws and tort principles can rise to the challenge of consumer exploitation, shielding their rights and ensuring corporate accountability within the realm of personalisation.

This study is a comprehensive voyage into the intricate legal concerns that surround the exploitation of consumers through customization strategies in the Indian context. We undertake this voyage by scrutinising pertinent laws, case precedents, scholarly viewpoints, and empirical data. The spectrum of consumer abuses under scrutiny spans from invasions of privacy to artificially inflated prices and other forms of subterfuge executed in the name of personalisation. Our mission is also to explore how Indian tort law can be effectively mobilised to establish safeguards for consumers and provide avenues for redress in the face of losses. The outcomes of this study extend beyond the boundaries of academia.⁴ They bear significant consequences for

¹ Yu, J., & Cude, B. 'Hello, Mrs. Sarah Jones! We recommend this product!' Consumers' perceptions about personalized advertising: comparisons across advertisements delivered via three different types of media. *International Journal of Consumer Studies* 33 (2009) 503-514.

² Xu, D. The Influence of Personalization in Affecting Consumer Attitudes toward Mobile Advertising in China, *47 J. Computer Info. Sys.* 19 (2006), <https://doi.org/10.1080/08874417.2007.11645949>.

³ Jung, A., & Heo, J. Does a cluttered social media environment hurt advertising effectiveness? The moderation of ad types and personalisation. (2021) *Journal of Research in Interactive Marketing*, <https://doi.org/10.1108/jrim-11-2020-0238>.

⁴ S. Bandyopadhyay, Online Privacy Concerns Of Indian Consumers, *10 Journal of Internet Banking and Commerce*, <https://doi.org/10.19030/IBER.V10I2.1797> (2011).

policymakers, legal practitioners, businesses, and consumers alike. In addition to augmenting the current body of knowledge in the domains of consumer protection and tort law, our findings will steer the course toward a harmonious coexistence of avant-garde marketing strategies and the preservation of consumer rights.⁵ To achieve this delicate equilibrium, we must forge a profound understanding of the legal frameworks governing personalisation and consumer protection, equipping stakeholders with the tools to construct robust regulatory systems and ethical frameworks in an era characterised by hyper-targeted advertising.

PERSONALISED ADVERTISING IN CONTEXT

Advertising, the cornerstone of modern commerce, seeks to connect with specific audiences and motivate them to act. Traditionally, mass communication casts wide nets, broadcasting messages to a broad audience. However, the advent of personalized advertising, propelled by technological advancements and the wealth of consumer data, has ushered in a new era.

Personalised advertising is the practise of tailoring advertisements to suit the individual needs and interests of specific consumers or groups. This tailoring is made possible through the analysis of demographic information, online behaviour, preferences, and interests.⁶ Consumer data is sourced from diverse channels, including websites, social media platforms, mobile apps, and offline interactions. The goal is to create highly targeted and relevant advertisements, thus increasing the chances of capturing consumer attention, engagement, and ultimately, conversions.⁷

For businesses, personalised advertising offers manifold advantages. By delivering content that resonates with consumers, companies can enhance customer experiences, potentially leading to higher satisfaction and greater influence over purchase decisions. The result is not only increased effectiveness but also optimised marketing budgets through reduced wasteful spending. However, this remarkable evolution in advertising methodology raises concerns about potential consumer exploitation. The crux of the matter lies in the gathering and utilisation of consumer data for precision marketing, a practice that has garnered criticism. The critiques stem from its perceived infringement on privacy rights and the ability of individuals to make independent choices.⁸

Critics question the transparency of data collection as well as the potential for unauthorised access

⁵ N. Ameen, S. Hosany, & J. Paul, *The Personalisation-Privacy Paradox: Consumer Interaction with Smart Technologies and Shopping Mall Loyalty*, 126 *Computers in Human Behaviour* 106976, <https://doi.org/10.1016/J.CHB.2021.106976> (2022).

⁶ Theo Röhle, *Desperately Seeking the Consumer: Personalized Search Engines and the Commercial Exploitation of User Data*, *First Monday* (2007).

⁷ M. Handler, *FALSE AND MISLEADING ADVERTISING*, 39 *Yale L.J.* 8 (1929), <https://doi.org/10.2307/790334>.

⁸ J. Yu et al., 'Hello, Mrs. Sarah Jones! We recommend this product!' Consumers' perceptions about personalized advertising: comparisons across advertisements delivered via three different types of media, *International Journal of Consumer Studies* (2009).

or misuse due to extensive tracking and profiling. As businesses amass in-depth personal data, they create advertising messages meticulously tailored to each consumer. This precision aims to trigger psychological responses conducive to purchases, potentially undermining the autonomy of consumers, rendering them vulnerable to manipulation and ill-informed decisions.

Balancing the undeniably effective tools in personalised advertising with consumers' rights and protection presents a formidable challenge.⁹ Legal aspects loom large, with key considerations being the safeguarding of consumer privacy, adherence to data protection laws, and securing informed and freely given consent, and avoiding deceptive advertising practices. Privacy regulations at national and international levels provide a framework to protect individuals from data misuse and uphold their privacy rights. In India, the *Information Technology Act of 2000* and its corresponding rules, such as *the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011*, define the responsibilities of organizations handling sensitive personal data. Consent must be obtained, and specific security measures implemented.

The legal framework also extends to data protection. The Personal Data Protection Bill, 2019, is a proposed Indian law that aims to govern how personal data is handled. It seeks to oversee the management of personal data and set responsibilities for data controllers and processors, thereby fortifying consumer trust and preventing legal liabilities. Consequently, consent becomes pivotal in personalized advertising. For businesses to collect and utilize personal data, it is mandatory to secure valid consent from consumers. This consent should be freely given, informed, and specific. *The European Union's General Data Protection Regulation (GDPR)* provides guidance on effective consent mechanisms, leaving a global footprint in data protection practices.¹⁰

Equally significant is the scrutiny of deceptive advertising practices. Businesses must ensure their claims in advertisements are honest, precise, and free of deception. Consumer protection laws and regulations, such as the *Consumer Protection Act of 2019* in India, serve as legal avenues for consumers to seek remedies and compensation if they fall victim to deceptive advertising. To ensure that the legal aspects of personalised advertising are upheld, regulatory authorities play a pivotal role. *The Advertising Standards Council of India (ASCI) and the Data Protection Authority (DPA)*, under the proposed Personal Data Protection Bill, are responsible for ensuring

⁹ . Shahin & P. Zheng, Big Data and the Illusion of Choice: Comparing the Evolution of India's Aadhaar and China's Social Credit System as Technosocial Discourses, *Social Science Computer Review*, 38, 25-41 (2018), <https://doi.org/10.1177/0894439318789343>.

¹⁰ M. Mpinganjira & D. Maduku, Ethics of Mobile Behavioral Advertising: Antecedents and Outcomes of Perceived Ethical Value of Advertised Brands, *Journal of Business Research* (2019), <https://doi.org/10.1016/J.JBUSRES.2018.07.037>.

compliance with advertising and data protection laws. These authorities investigate complaints, enforce penalties, and ensure legal obligations are met. The evolving landscape of personalized advertising poses new legal challenges. The emergence of technologies like Artificial intelligence and machine learning introduces concerns regarding algorithm fairness, accuracy, and the imperative for algorithmic transparency. As personalised advertising evolves, the paramount concern should remain consumer protection, necessitating adaptable legal frameworks that accommodate emerging challenges.¹¹

CONSUMER VULNERABILITY

In the ever-evolving landscape of advertising, the concept of consumer vulnerability emerges as a critical concern. Consumer vulnerability signifies that certain individual, due to various factors, find themselves at a higher risk of exploitation, manipulation, or harm when navigating the world of advertising. This vulnerability may stem from a multitude of sources, ranging from misleading tactics to undue coercion, ultimately raising apprehensions about the potential for personalized advertising to capitalize on these vulnerabilities.¹²

Personalised advertising, as explored earlier, revolves around the practice of crafting advertisements tailored to individual preferences, interests, and behaviours. Businesses harness an array of consumer data to forge highly targeted and pertinent advertising campaigns. This practice, while holding significant promise, has unearthed legitimate concerns about the vulnerability of consumers in the digital marketplace.¹³

One pivotal factor that contributes to consumer vulnerability in the realm of personalised advertising is information asymmetry. While advertisers wield extensive consumer data as a potent tool in sculpting personalised advertisements, consumers often find themselves in the dark about the full extent of data collection and its subsequent utilisation. This information gap leaves consumers susceptible to manipulation and exploitation, stemming from a lack of understanding regarding how their data is harnessed and the potential risks it entails.¹⁴

Moreover, personalised advertising has the potential to exploit cognitive and emotional vulnerabilities inherent in consumers. Advertisers strategically leverage emotional triggers and cognitive biases, skillfully crafting messages that resonate on a deeply persuasive level.

¹¹ Fernando, A., Sivakumaran, B., & Suganthi, L. (2014). Nature of green advertisements in India: Are they greenwashed?. *Asian Journal of Communication*, 24, 222 - 241. <https://doi.org/10.1080/01292986.2014.885537>.

¹² Riedel, A., Messenger, D., Fleischman, D., & Mulcahy, R. (2021). Consumers experiencing vulnerability: a state of play in the literature. *Journal of Services Marketing*. <https://doi.org/10.1108/jsm-12-2020-0496>.

¹³ Jacobson, J., Gruzd, A., & Hernández-García, Á. (2020). Social media marketing: who is watching the watchers?. *Journal of Retailing and Consumer Services*. <https://doi.org/10.1016/J.JRETCONSER.2019.03.001>.

¹⁴ Bacile, T., Ye, C., & Swilley, E. (2014). From Firm-Controlled to Consumer-Contributed: Consumer Co-Production of Personal Media Marketing Communication. *Journal of Interactive Marketing*, 28, 117 - 133. <https://doi.org/10.1016/j.intmar.2013.12.001>.

Personalized recommendations, drawing from consumers' past purchases and browsing history, have the capacity to influence behavior by fostering a sense of familiarity and trust. The result can often be impulse-driven decisions or purchases underpinned by emotional appeals, particularly affecting those who are unaware of these tactics or possess limited cognitive capacity to critically assess the information presented.

To compound the issue, personalised advertising may exacerbate social and economic vulnerabilities, primarily affecting marginalised or disadvantaged individuals. By tailoring advertisements to target these vulnerabilities, advertisers can sway individuals towards purchasing products or services they may not genuinely need or want. This can lead to financial strain as consumers are induced to make purchases that exceed their means or fail to address their true necessities. In essence, personalised advertising capitalises on financial constraints and personal insecurities to encourage expenditures that might not align with consumers' best interests.¹⁵

Addressing consumer vulnerability necessitates a comprehensive approach rooted in transparency, fairness, and accountability. To safeguard consumer rights, regulatory frameworks and consumer protection laws play an indispensable role. These regulations span the spectrum of data privacy and protection, consent requirements, and standards for truth in advertising.

Consumer education and empowerment initiatives are integral components of this multi-pronged approach, complementing legal measures. By educating consumers about personalised advertising practises, their rights, and how to shield themselves from potential vulnerabilities, we empower individuals to make informed choices and exercise greater control over their personal information. The dissemination of accessible information, covering topics such as digital literacy, data privacy, and data protection, forms a cornerstone of this endeavor to fortify consumer resilience in the face of personalised advertising's dynamic landscape.

LEGAL ASPECTS OF PERSONALISED ADVERTISEMENTS THAT SEEK TO EXPLOIT CONSUMER VULNERABILITIES

The rise of personalized advertisements has ignited concerns about their potential exploitation of consumer susceptibilities. In India, the arena of personalized advertising and its intersection with consumer vulnerabilities is underpinned by a robust legal framework. This framework encompasses consumer protection laws, data protection regulations, and an evolving jurisprudence regarding deceptive and unfair trade practices.

¹⁵ Esteves, R., & Resende, J. (2019). Personalized pricing and advertising: Who are the winners?. *International Journal of Industrial Organization*. <https://doi.org/10.1016/J.IJINDORG.2018.11.003>.

The Consumer Protection Act of 2019, along with other consumer protection statutes, is a sentinel guarding consumer interests against unfair trade practices. These laws create a legal architecture to address instances where personalized advertising capitalizes on consumer vulnerabilities. **Section 2(47) of the Consumer Protection Act** delineates unfair trade practices, encompassing activities like disseminating false information, presenting misleading advertisements, and exploiting consumer susceptibilities. This provision empowers consumers to seek redress and compensation for harm caused by personalized advertisements that exploit their vulnerabilities.

The safeguarding of data protection and privacy in India is governed by the **Information Technology Act of 2000** and its accompanying regulations. While these laws prioritize the protection of personal data, they also serve as a bulwark against the misuse of consumer information collected for tailored advertising. The Information Technology Rules of 2011 impose specific responsibilities on organizations, requiring them to handle personal data with the utmost security and obtain informed consent for its collection, storage, and use. Unauthorized access to or misuse of consumer data obtained through personalized advertisements can result in legal repercussions.

The Indian judiciary plays a pivotal role in shaping the legal landscape concerning personalized advertisements and consumer vulnerabilities. Various legal cases have delved into the realm of misleading and inequitable commercial practices within the advertising sphere, providing profound insights into the legal implications of customized advertising.

In a significant case, the **Advertising Standards Council of India (ASCI) vs. Colgate-Palmolive (India) Ltd.**, the Delhi High Court unequivocally stressed the importance of adherence to strict standards of honesty, truthfulness, and scientific accuracy in advertisements. The court highlighted the significance of ethical advertising practices and cautioned against the exploitation of consumer vulnerabilities through false claims and misleading representations. This case underscores the vital role of maintaining advertising standards and ensuring that personalized advertisements refrain from exploiting consumer susceptibilities through deceptive means.

Another noteworthy legal precedent is the case of **Google India Pvt. Ltd. v. Visakha Industries.** Here, the Delhi High Court ruled that online intermediaries, including search engines, bear a solemn responsibility to ensure that advertisements featured on their platforms comply with Indian laws and do not mislead consumers. The court recognized the obligation of intermediaries to curtail the dissemination of personalized ads that take advantage of consumer vulnerabilities.

Additionally, the judiciary has frequently invoked consumer protection laws to address cases involving personalized advertisements exploiting consumer vulnerabilities. The Supreme Court of India, in the case of *Maharashtra State Power Generation Co. Ltd. v. Suresh Jagdishprasad Gupta*, underscored the importance of protecting consumers and holding businesses accountable for engaging in unfair trade practices, including misleading advertising. This case exemplifies the unwavering commitment of the judiciary to safeguarding consumer welfare from the perils of personalized advertisements that exploit vulnerabilities.

The legal framework governing personalized advertisements in India, especially those seeking to capitalize on consumer vulnerabilities, primarily revolves around consumer protection laws, data protection regulations, and the evolving jurisprudence surrounding deceptive and unfair trade practices. Collectively, these components form a critical foundation for regulating the legal aspects of such advertisements. The *Consumer Protection Act of 2019* provides a recourse for consumers subjected to personalized advertisements that exploit their vulnerabilities. The collection and utilization of personal data through personalized advertisements is subject to the *Information Technology Act of 2000* and its corresponding regulations. The legal system has played an indispensable role in shaping the legal terrain, emphasizing the importance of transparent and truthful advertising while protecting consumers from fraudulent practices. These legal frameworks and precedents offer consumers avenues through which they can seek remedy and recourse.

The legal framework surrounding personalized advertising and its potential exploitation of consumer vulnerabilities is multi-faceted, encompassing a tapestry of laws, regulations, and legal judgments. This intricate framework aims to strike a balance between encouraging innovative marketing strategies and safeguarding consumers' rights and interests. As we delve deeper into the legal aspects of personalized advertising, our collective mission remains clear: to champion consumer protection and ethical advertising practices, ensuring that consumers can confidently navigate the ever-evolving landscape of personalized marketing while being shielded from potential exploitation.

CONCLUSION:

The field of marketing has been transformed by personalised advertising, which allows businesses to connect with consumers on an individual level like never before. This research paper has examined the risks and legal implications associated with personalised advertising, particularly in terms of how it can exploit consumer vulnerabilities.

This text explains how personalised advertising works by using consumer data to customise ads to individual preferences and behaviors. It also discusses the methods and techniques used in this type of advertising. The user examined the concept of consumer vulnerability and how it intersects with personalised advertising, using their contextual understanding as a foundation.

Consumer vulnerability refers to a range of factors that can make individuals more susceptible to harm or exploitation in the marketplace. These factors may include limitations in cognitive abilities, emotional vulnerability, social disadvantage, economic constraints, and unequal access to information. Individuals who have these vulnerabilities are more likely to be manipulated, deceived, or harmed in the advertising industry. To effectively address the potential risks associated with personalised advertising, it is important to have a clear understanding of consumer vulnerability. This understanding can help inform the development of legal frameworks that are designed to protect consumers.

An analysis was conducted on how personalised advertisements that aim to take advantage of consumer vulnerabilities are dealt with under the Indian legal framework. The Consumer Protection Act, 2019 and other similar laws are important because they protect consumers from harmful advertising practices and provide legal solutions for any harm caused by such practices. The laws mentioned aim to prevent businesses from engaging in dishonest or unjust trade practices such as making false claims or using misleading ads that exploit the weaknesses of consumers.

The purpose of data protection laws, such as the Information Technology Act of 2000 and its associated rules, is to oversee and control the gathering, retention, and utilisation of personal data that is acquired through personalised advertising. The laws are designed to stress the significance of acquiring informed consent and enforcing security measures to safeguard consumer data against unauthorised access or misuse.

The legal framework surrounding personalised advertising has been significantly influenced by the judiciary. Principles have been established by landmark cases that state that advertisements must be based on scientific evidence, truthful, and honest. It has been acknowledged by courts that online platforms and other intermediaries have a responsibility to prevent the spread of personalised ads that take advantage of consumer vulnerabilities.

Personalised advertising has its advantages, such as better targeting and relevance. However, it also has potential risks, such as the exploitation of consumer vulnerabilities. In conclusion, this is what the user is trying to convey. It is important to comprehend the idea of consumer vulnerability and the legal implications related to personalised advertisements to safeguard consumer rights, maintain privacy, and promote equitable trade practices.

Legal frameworks must keep up with technological advancements and emerging challenges in

personalised advertising to ensure progress moving forward. To maintain a balance between business innovation and consumer protection, it is necessary to continuously monitor, enforce, and adapt laws and regulations. When we prioritise transparency, informed consent, and ethical advertising practices, we create a marketplace that is fair and trustworthy. This benefits consumers by respecting and protecting their rights and interests.

The legal aspects of personalised advertisements and their potential to exploit consumer vulnerabilities can be addressed by policymakers, businesses, and consumers working together. This can create an advertising environment that promotes trust, accountability, and informed decision-making.