

“RIGHT VS CHOICE TO REPAIR” IN INDIAN CONTEXT



A DETAILED ASSESSMENT

MAIT

Manufacturers' Association
for Information Technology

RIGHT VS CHOICE TO REPAIR

Based on a National Study conducted for
Manufacturers Association for Information Technology (MAIT)

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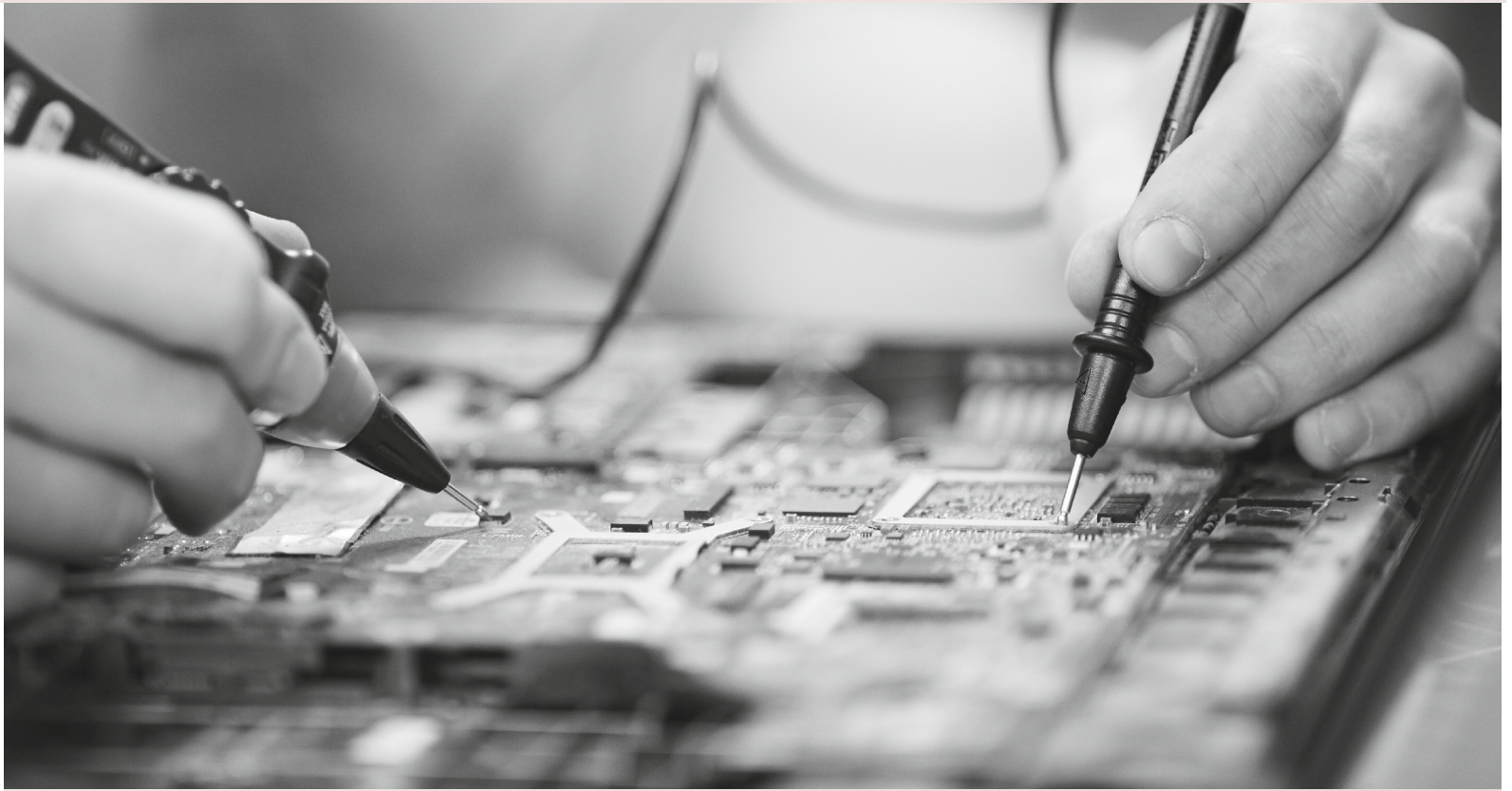
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1. Executive Summary

- 1.1 The Department of Consumer Affairs has set up a committee to develop a comprehensive framework w.r.t 'Right to Repair' in India. That *via* the Press Note dated 14.07.2022 released by the Department sectors like farming equipment, mobile phones / tablets, consumer durables and automobiles / automobile equipment, have been identified and earmarked to be brought within this proposed framework.
- 1.2 In the Press Note, the Department of Consumer Affairs states that when a consumer buys a product, it is inherent that he must own it completely, repair and modify the product with ease and at reasonable cost. The Press Note further goes on to say that monopoly in repair processes infringes the consumer's right to choose and practices like planned obsolescence, Digital Rights Management (**'DRM'**) and Technological Protection Measure (**'TPM'**) make the consumers captive to the whims of the Original Equipment Manufacturers (**'OEMs'**).
- 1.3 The Press Note also mentions that similar issues have led to the 'Right to Repair' framework having been recognized in many countries across the globe including the USA, UK and EU etc. and an effort should be made to introduce international best practices in the Indian scenario. The Press Note states that in USA and UK, laws have been promulgated providing *inter-alia* that all the electronic appliance manufacturers should provide consumers with spare for getting the repair done either by themselves or by local repair shops.
- 1.4 The Press Note further mentions about the concept of LiFE movement (Lifestyle for Environment) in India, which includes the concept of reuse and recycling various consumer products. The Press Note states that repair is a critical function of all forms of re-use and even for the sustainable life of the products and a product that cannot be repaired, not only becomes e-waste but also forces the consumers to buy new products for want of any repair to reuse it.

2. Assessment of existing repair ecosystem - formal and informal:

- 2.1 The Press Note is based on certain assumptions, which require to be dealt with factually and to enable the same, the industry has furnished inputs which have been incorporated in this Assessment.
- 2.2 The present formal and informal repair ecosystem, in India provides a wide range of repair options / choices with varying levels of quality, price, and convenience to the consumers. The access to spare-parts in India is not restricted, and a large-scale presence of informal sector i.e., brand and device neutral plus affordable along with a formal service network established by the OEMs, provides a wide-ranging choice to the consumers for their repair needs.
- 2.2 A As an illustration, one could consider the presence of informal service repair network in relation to products like mobile phones, desktops, and laptops etc. Many local repairing shops have sprung up in almost all the cities of India, which provide repair services to the growing number of mobile phone subscribers. As the Indian economy grows, a wide category of mobile phones right from basic low-cost phones to high-end smart phones are available to millions of subscribers and simultaneously, the informal service sector supporting the servicing and maintenance of these handsets, grows. This is an addition to the ever-increasing service-network of handsets producing manufacturers. In such a scenario, the consumer has a choice to approach informal service provider, instead of the service network set-up by the OEMs.

Recent studies have shown that the informal service repair ecosystem, which has far lesser entry barriers, is thriving and is providing boost to entrepreneurship/creating skill-based employment for millions of people in India and providing an option to the consumers to avail affordable services, at least for low and medium end mobiles. The same scenario is playing out for desktops and laptops and various other electronic items. Therefore, the plethora of informal repair service providers are providing consumers the choice to approach any of these for their repair needs. This availability of choice to the consumers is of vital importance and should be kept in mind before arriving at any conclusion. Policy intervention, at this stage should be based on empirical studies only and not merely on *ipse dixit*.





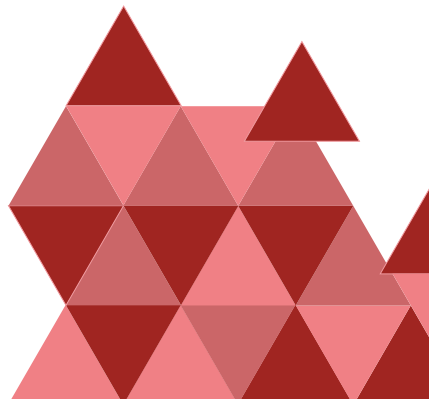
2.2B Interestingly, the informal and formal service sectors are in their own way facilitating a circular economy by cannibalising old products by providing spare parts or refurbishing the old electronic items for resale, but it is not to suggest in any way that the existing practice of making available refurbished products or spares encourages any form of grey market.

2.3 It is pertinent to mention here that even the Press Note recognizes this reality and categorically states that:

“in our country, there exists a vibrant repair service sector and third-party repairs, including those who cannibalize the products for providing spare parts for circular economy.”

The above affirmative statement in the Press Note should be seen in the context of the size of this ever-expanding informal repair industry in India. Therefore, the circular economy is being subserved by this informal repair industry across the length and breadth of India.

- 2.3A The expanse of the informal sector in India is an ample proof that the market regulates itself and therefore, the focus at the moment ought to be on integrating the formal and informal sector, which will in the long run be beneficial for the end customer.
- 2.4 This ecosystem of formal and informal sectors has come into place without any legislative intervention and is based only on the market requirements and demand. In-fact, any immediate intervention in the form of any legislation or mandate may give rise to and put to risk the well-established repair eco-system and hence there is a real possibility of marketplace getting distorted. Therefore, the naturally evolved market and the circular economy itself, may get jeopardised, in case any intervention is made, without undertaking the requisite study and research.
- 2.5 The international best practices, even if they are presumed to exist, cannot be a guiding force for India, as the market realities, compared to other economies like EU nations, USA, Australia etc. are vastly different. India should continue to monitor the global developments in this space, but not simply follow other global legislative practices blindly. India should evaluate its own position considering its aspirations to be a key contender as a global electronics manufacturing and repair hub for a variety of devices and products. The price sensitivity, digital adoption and inclusivity qua India are not comparable with EU or any other country. Any policy decision to be taken in India w.r.t any specific regulation in any other country, should only be done upon a detailed evaluation of the likely impact of such implementation in a market like India and the aspiration to be an “Aatma Nirbhar” nation. It is widely accepted that Indian market has its own sets of peculiarity and challenges, quite in distinction to any other jurisdiction or market internationally.

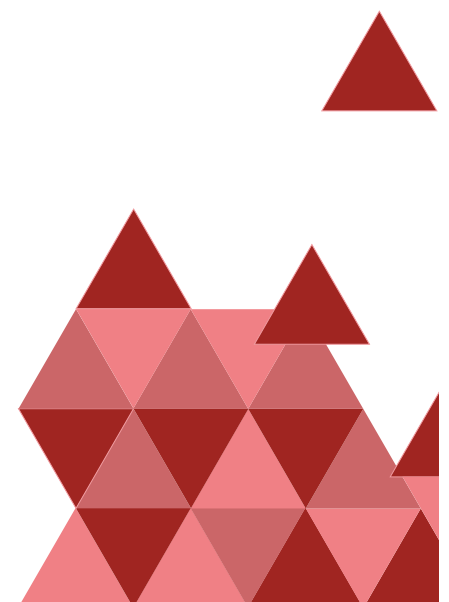
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- 2.6 Pertinently, the high cost of repair in developed economies is owing to several factors like scarcity of skilled manpower, cost of technology, cost of logistics, cost of IP acquired, R&D setups, etc., and any framework to address the issue may not be relevant for India.
- 2.7 As already stated, informal repair ecosystem is providing the consumers with an alternate choice, which is at times affordable and effective. The choice and discretion is with the consumer. The informal sector is further encouraging a circular economy and refurbished electronic items are easily available. Millions of middle-class Indians, though highly cost conscious, desire to own high-tech electronic equipment and to fulfil their aspirations they settle for second hand refurbished devices. Any unwarranted legislative intervention might put to peril this ecosystem.
- 2.8 Imposing a framework based on market conditions as prevailing in other advanced economies without accounting for the subtle, but important differences, might compromise the consumer interests rather than promote the same, thus impacting the repair eco-system. There is a pressing need to address the concerns from different perspectives i.e., industry, consumers, legislative, and overall economic perspective.
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2.9 India is a huge market from a domestic consumption perspective and there has been a great reliance on imports to meet this requirement of electronic products. India's priority at this point is to develop the electronic manufacturing capability and be a lead contender in the global value chain ecosystem. This requires building a competitive, scalable, export-oriented electronics manufacturing ecosystem and this will ultimately lead to more jobs, revenue, increased exports and foreign exchange inflows. Compromising this aspiration through any legislative intervention, will undermine the strides made so far on the manufacturing front, while also dampening the prospects of future investments. It is therefore imperative that while embarking on any legislative intervention in this domain, the aspiration of Indian Electronics Manufacturing industry to achieve the target of US \$ 300 billion mark by the year 2025-26 may be kept in focus. This is a considerable economic possibility and can become reality if all stakeholders including the government work in unison.

2.10 No generalization can be made *viz.* the provision of repair service for all digital / IT products. Different sectors / products pose different challenges. There is a thriving refurbished product market for electronic goods in India and huge investments are being made in this sector.



- 2.11 It is therefore necessary to possibly explore through a pilot, the inclusion of products and sectors to protect consumers' interests without compromising commercial viability along with protecting IP and proprietary rights of the OEMs. The same should be brought in a phased manner, that helps guide the stakeholders and not as a mandate to start with, so that neither the interest of consumers nor the industry is compromised.
- 2.12 Emphasis must also be made on the point that the Press Note presumes that a common ground has already been taken in advanced countries like USA, EU, Australia, and Canada, and that such practices ought to be introduced in the Indian market with respect to Right to Repair. This presumption is far from reality. Different countries are approaching this issue / concern differently. Pertinently, nowhere in the world, highly technical and advanced IT products have been brought under the ambit of the 'Right to Repair' framework, as it is generally recognized that any such mandate may be a stumbling block for technological innovation.



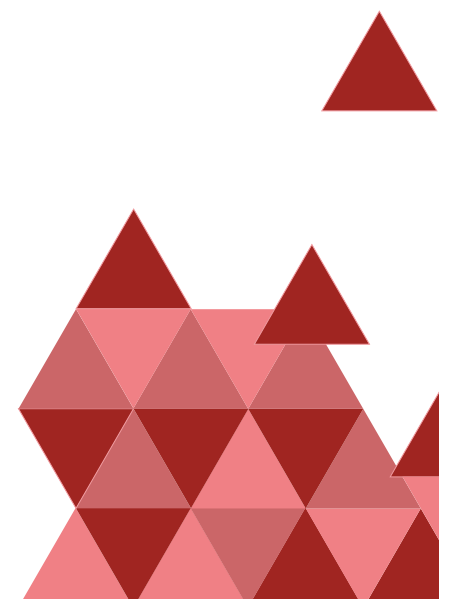
2.13 At this stage it would be relevant to point out the opinion furnished by Internal Market and Consumer Protection Committee of European Parliament in its draft motion for regulation dated 07.03.2022:

“... the initiative on a right to repair must be proportionate, evidence-based, cost-efficient, and balance the principles of sustainability, consumer protection and a highly competitive social market economy, in order for all relevant stakeholders to embrace the opportunities inherent in the green transition;”

2.14 It is a matter of fact that the Regulators / policy makers in EU and Australia have come on record to state that empirical data is required to conclude this issue / concern. A similar approach should be adopted for India. The right of a consumer to get the device repaired is enforced under the warranty clause which is provided along with the bill. Additional warranty and maintenance & repair support is also provided wherever required. Consumers have the choice to opt for repair from a formal / OEM sector or an informal space. Therefore, unless there is any evidence of consumers being denied repairs despite the product being under warranty or on any other legitimate grounds, there is no need for a legislative mandate to be enforced. In some circumstances delay in repairs may happen due to some unavoidable circumstances e.g., a part may not be available readily or the repair requires shipment of the product to the factory, however, these are exceptional cases and should not lead to a conclusion or generalisation that there are undue delays by OEMs in providing support services to consumers.



2.15 It is therefore imperative that before taking a decision, a detailed and comprehensive consultation process is undertaken to strike right balance between consumer's right to choose and safeguarding & encouraging innovation by protecting IPR rights of OEM's. Any drastic measure to force the OEMs to provide unhindered access to the underlying technology, will in the long run, discourage investment in research and innovation, and ultimately be counterproductive not only to economic growth but to the rights of the consumers themselves. The consultation process should also focus on likely impact of the framework on issues of product liability, warranty & guarantee obligations of the OEMs, and the discretion the OEMs ought to have on such issues. Likely impact of the Right to Repair framework on cyber security and unauthorised disclosure of consumers data, e-waste management etc., are some other relevant focus areas and any mandate without proper and detailed appreciation of impact of the framework on these aspects could have unwarranted implications for both consumers, OEM's and the informal repair eco-system.



3. *Proposed “Right to Repair” framework impacts other legislations*

- 3.1 Important aspect the regulators ought to consider is the probable impact of the proposed ‘Right to Repair’ framework on the existing legislations *viz.* – There are many existing legislations which will need to be amended to align with the proposed Right to Repair framework. Some of these are mentioned below. Industry is already complying with the various requirements and any change will have a huge impact on it, including compliance and cost burden.
- a. **Copyright Laws** - OEMs invest significantly in the development of products and services and therefore the desire to protect their intellectual property (‘IP’) is a legitimate right / expectation. For a vibrant and innovative technology industry, protection of IP is imperative.

Digital products use firmware, which is subject to protection under the Copyright Act, thereby preventing bad actors from tampering with the DRM, that copyright owners used to protect the software. There is also TPM which the Copyright law postulates to protect innovation.

Making repairs to hardware components may necessitate modifying the firmware. The firmware may also control various other functions and sharing this proprietary information could imply the potential of tampering with sensitive functions like security features.

The Indian Copyright Act, 1957 clearly recognizes DRM and TPM as a statutory right of IP holders.

Section 65A of the Indian Copyright Act, 1957 provides that: -

“Protection of technological measures. –

(1) Any person who circumvents an effective technological measure applied for the purpose of protecting any of the rights conferred by this Act, with the intention of infringing such rights, shall be punishable with imprisonment which may extend to two years and shall also be liable to fine.”

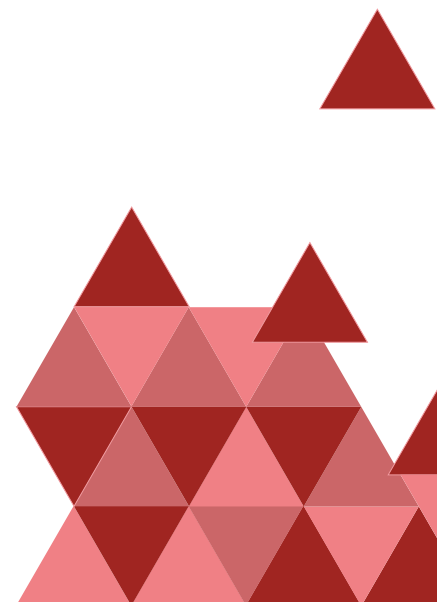
Any unfettered right with independent repairers to seek and obtain the firmware from OEMs, could result in few bad actors modifying the hardware and firmware and spreading the knowledge via social media and other online channels having a detrimental impact on the industry.


Importantly, the framework as suggested equates authorized service providers with independent repair providers but without any restriction / protection or contractual obligations. This might lead to consumer rights being severely impacted, which means that their data would be at risk.

With access to technical information, criminals can more easily circumvent security protections, harming not only the product but everyone who shares their network.




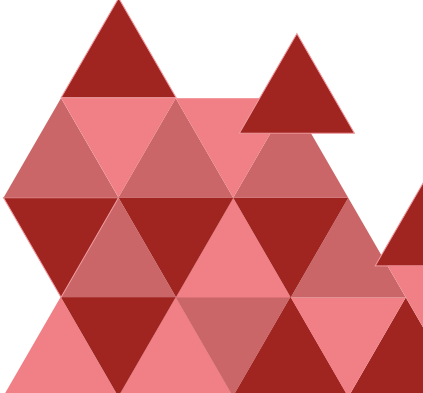
(Note: It is interesting to note that the Industry and Industry associations have been contending, in all the major jurisdictions where the 'Right to Repair' framework is currently being debated that consumer electronics use on-board software (i.e., firmware) to help control the product, which is subject to copyright under the relevant Copyright Acts. The provisions of Copyright Act ensures that bad actors cannot tamper with the digital rights management that copyright owners use to protect this software under the garb of 'Right to Repair'. However, the regulators in Canada, USA and Australia have opined that to the extent the present 'Right to Repair' framework has been made applicable, the TPM regime under the relevant Copyright Acts be amended to better facilitate repairers' access to embedded information protected by TPMs necessary for diagnosis and repair.)



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- b. **Environmental Laws** - The E-waste (Management) Rules 2022, promulgated on November 02, 2022 and shall come into effect from April 01, 2023, seek to obligate OEMs and their authorized service partners to collect and dispose e-waste in an environmentally friendly manner.

If the 'Right to Repair' framework requiring OEMs to provide spares to independent service providers is brought into force, serious deliberations will have to be held to ensure that the e-waste likely to be generated by independent service providers at their sites, is dealt with in a manner to further the objectives of the Rules of 2022. This will require suitable amendments to the Draft Rules.

In its present form, the 'Right to Repair' framework might lead to electronic waste being generated and spread across the length and breadth of the country. Regulatory oversight at the sites of independent service provider might pose significant challenges for the regulators, thus severely undermining the efforts of the IT industry to reduce e-waste.

- c. **Product liability legislations** – OEMs cannot be saddled with the liability under its warranties and guaranties, if the product is serviced through an informal / unauthorized service provider.
- d. **Consumer Protection Laws** - The 'Right to Repair' framework could have serious implications on Consumer Rights. Given the fact that the repairs would have been carried out by untrained individuals or unprofessional repairers, OEMs would have the right to declare that the warranties and guarantees shall stand discharged if on account of such unauthorized repairs, the product performance deteriorates, or it becomes completely un-operational or sub-standard / spurious spares are used.
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The Consumer Protection Act would have to balance the rights of both the consumers and OEMs in such scenarios.

Section 87(1) of the Consumer Protection Act provides that: -

“A product liability action cannot be brought against the product seller if, at the time of harm, the product was misused, altered, or modified.”

In a developing country like India, where IT literacy as well as repair and service facilities are still in the nascent stage of development, the likelihood of litigations arising on account of faulty repairs is appreciably high and might not be in the best interest of the industry as well as the consumers. In-fact, in case of some category of products, if the repair is not done by a skilled professional, there may be a threat to life and limb, as electronic items if not handled property by trained hands, may lead to accidents and resultant complications.

- e. **Cyber Laws** – The framework has the potential to weaken the privacy and security features of various electronic products as the unscrupulous un-authorized service providers could grant illegal access to user data through their devices and hardware and if placed in the hands of predators, criminals or the make shifters, it could harm the consumers by installing malware and spyware into devices and also onto anyone who shares the network.

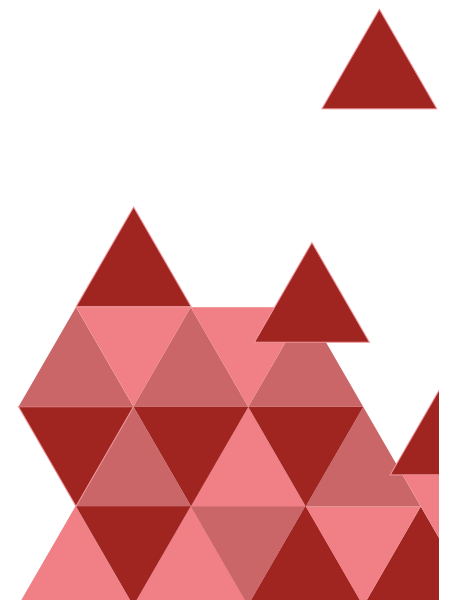
As India adopts digital economy, the ‘Right to Repair’ framework has the potential to expose consumers into losing their sensitive personal information and placing the same in the hands of predators and criminals.

4. *Other considerations for repairs from the formal sector:*

- 4.1 Apart from some of the aforesaid legislative challenges, potentially, consumers would be put to significant risks, some of which are enlisted below:
- a. Proper repair is complex and requires technical skill. OEMs want to ensure that their products, especially the high-end products, are serviced by professionals who understand the intricacies of the products and have spent time obtaining the requisite knowledge necessary to safely repair the device. Independent / untrained service providers may compromise these standards. Additionally, untrained independent repairers could violate consumer privacy apart from exposing trade secrets and compromising cyber security;
 - b. Without the requisite training and other quality assurance requirements of authorized service providers, manufacturers would not be able to vouch for their work, warranties, Technical support and ongoing training;
 - c. Concerns about the safety of the independent repairers or the consumers who may cause themselves or others harm, including but not limited to permanent loss of limb, eyesight or even death, by undertaking certain repairs without proper training, e.g., repairs undertaken in cases where products contain high energy lithium-ion batteries, etc.



- 4.2 The proposed framework should further, both in letter and spirit, clearly acknowledge that electronic product manufacturers have already developed robust policies and programs to ensure that they continuously improve sustainability of their product *viz.* from design to material sourcing, product performance, re-use and responsible end of life management and expansion of their service centre network.



5. International Legislative Landscape of major developed economies

- 5.1 The 'Right to Repair' movement has gained traction in EU, USA, UK, Canada, Australia among other advanced economies. The regulators believe that 'Right to Repair' movement encourages a circular economy, fosters efficient and sustainable use of resources, reduces waste by encouraging extended use and reuse of products & strengthens consumer rights.
- 5.2 The Implementation of the 'Right to Repair' movement in these jurisdictions has had its fair share of controversy and debate. This debate includes inter-alia the following issues: -
 - i. Which products to be included;
 - ii. Does the consumer have unfettered rights to self-repair;
 - iii. The extent of information disclosure by OEMs;
 - iv. Independent repair service providers vs. Professional repairers.
- 5.3 The below-mentioned sections pertaining to the status of Right to Repair framework in multiple other countries clearly shows that the debate on this issue is wide open:

Name of the Country	Status of 'Right to Repair' implemented	Year of the initiation of debate on R2Rnted	Products covered	Digital / electronic products covered or not
United Kingdom	YES	2015	electric motors, washing machines / washer dryers, dishwashers, household refrigeration and electronic display	NO
European Union	NO	2006	lighting products, electronic displays, refrigerators, washing machines, dishwashers, windows, and insulation materials	NO
Australia	NO	2019	Recommended to undertake a market study of the mobile phone and tablet market	
Canada	NO	2009	Considering promulgating the Right to Repair Bill for Automotive Industry only	NO
France	YES	2017	Brought into force provisions relating to "repair index", applicable to	YES

Name of the Country	Status of 'Right to Repair' implemented	Year of the initiation of debate on R2Rnted	Products covered	Digital / electronic products covered or not
			5 category of products – smartphones, laptops, television, washing machines and lawnmower. Repair index slated to be replaced by a durability index in the next 2 years.	
United States of America	YES	2001	Bill titled “Fair Repair Act, 2021” has been passed which covers all digital electronic equipment sold in USA.	YES (Only in State of New York.)

(*** A detailed analysis of international legislative landscape, pertaining to the Right to Repair framework is annexed herewith and marked as Annexure A.)

5.4 The above table clearly demonstrates:

- i. Electronics products have not been made part of the R2R framework in any part of the world, except for US, that too in one state – New York, the implementation of which is yet to be tested.
- ii. The conversation on Right to Repair, in the above countries have been in the pipeline for the many years with no clear outcome/solution.
- iii. Given the complexity of the issue and the respective policy priorities, there is no uniformity in approach adopted by any of the developed nations.
- iv. Large focus of the deliberations worldwide has been on consumer electronics.

5.5. Press Note of the Department of Consumer Affairs presumes that Right to Repair has been recognized in many countries across the globe.

The debate on which products to be included in the ‘Right to Repair’ framework, especially the digital products, is still not settled. UK, Canada, and Australia and even in the EU, the electronic appliances like mobile phones, tablets etc. have not yet been covered under the existing ‘Right to Repair’ framework.

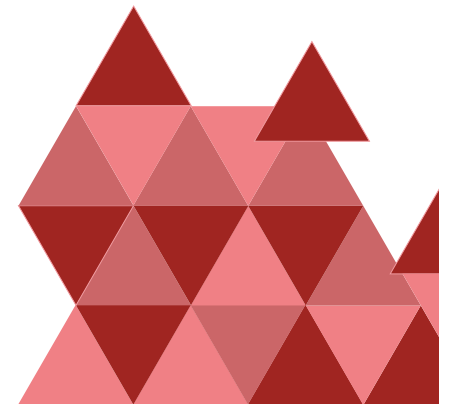
The regulators have realized that ‘Right to Repair’ should not stifle innovation or place disproportionate financial burden on OEMs, should encourage investments in suitable technologies and balance consumers’ protection and create a highly competitive market economy.

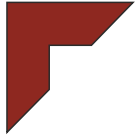
6. Fact File on the Presumptions and Assumptions in the Press Note. (Product Life, Technological Innovation, Upgradation & Sustainability)

Sr. No.	Para No. of Press Nototed	Specific language of the Press Note	Assumption s made in the Press Note	Industry's Views
1.	2	The aim of developing a framework on right to repair in India is to empower consumers and product buyers in the local market, harmonize trade between the original equipment manufacturers and the third- party buyers and sellers, emphasize on developing sustainable consumption of products and reduction in e-waste.	Legislative intervention is necessary for safeguard of consumer	Even at present, consumers have ample choice in the form of repair options – OEMs' in-house repair centres, third-party authorized service centres and even local repair service providers. The market provides a wide range of consumer choices with varying level of quality, price, and convenience .

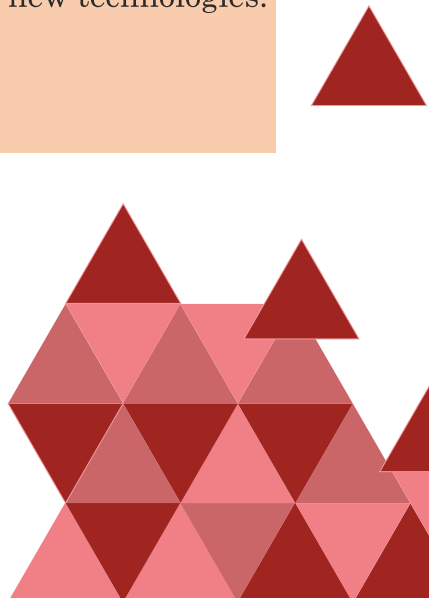


		Once it is rolled out in India, it will become a game-changer both for the sustainability of the products and as well as serve as a catalyst for employment generation through Aatmanirbhar Bharat by allowing third- party repairs.		
2.	6	During the deliberations, it was felt that the tech companies should provide complete knowledge and access to manuals, schematics, and software updates and to which the software license shouldn't limit the transparency of the product in sale. The parts and tools to service devices, including diagnostic tools should be made available to third parties, including individuals so that	Independent repair service providers will demonstrate competency and reliability and would have the necessary repair facilities, tools etc. to meet the OEMs' standards	The independent repair service providers may not have the necessary skills to understand extremely detailed, complicated repairs. Without any enforceable legal contract, accountability and protection of consumer rights will be severely impacted.





		<p>the product can be repaired if there are minor glitches. Fortunately, in our country, there exists a vibrant repair service sector and third party repairs, including those who cannibalize the products for providing spare parts for circular economy.</p>		
3.	9	<p>Last month, Prime Minister Shri Narendra Modi launched the concept of LiFE movement (Lifestyle for Environment) in India. This includes the concept of reuse and recycling various consumer products. Repair is a critical function of all forms of re-use and even for the sustainable life of the products. A product that cannot be repaired or falls under planned obsolescence i.e.</p>	<p>The Right to Repair framework will lead to reduction of e-waste</p>	<p>The policies and programs being implemented by OEMs to improve sustainability, reuse, and responsible end of life management, have been completely overlooked. The amount of generation of waste is expected to decline in the coming years and the industry has been proactively investing in innovation of new technologies.</p>







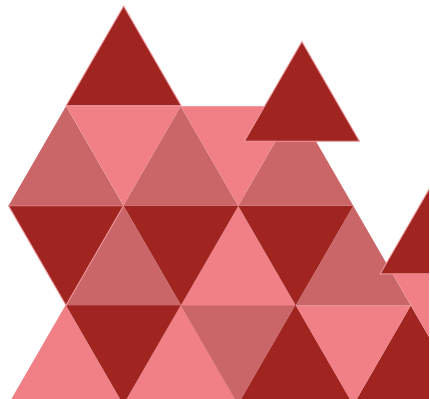
designing a product with an artificially limited useful life, not only becomes e-waste but also forces the consumers to buy new products for want of any repair to reuse it. Thus, restricting the repair of products forces consumers to deliberately make a choice to purchase a new model of that product.

- 6.1 The proposed 'Right to Repair' framework should consider the likely impact of these measures on data security as also the protection of the IT network. The inappropriate or fraudulent use of OEMs proprietary information could lead to malicious cyber-attacks and other cyber-crimes.
- 6.2 The independent repair service providers may not have the necessary skills to understand extremely detailed, complicated repairs. Without any enforceable legal contract, accountability and protection of consumer rights will be severely impacted.
- 6.3 'Right to Repair' legislations seek to establish inappropriate interventions in the marketplace. By mandating the distribution of diagnostic and repair information to anyone who asks, in contravention to any established contractual relations, the marketplace is distorted unnecessarily.

7. Suggestions/Recommendations:

- 7.1 A long-term roadmap / journey to proposed 'Right to Repair' framework requires a thorough and detailed study of the Indian market and consumer preferences. From the justifications provided as above, it is evident that the effort of the ministry should be on expanding "Choice" as against a "Right" to consumers. The right is already there otherwise how will a thriving electronics manufacturing repair eco-system would have ever existed. All relevant stakeholders including various government ministries, OEMs and their associations should focus on finding a balance between consumers right to choose, innovation and investment, while keeping in focus the marketing and technological developments and evolving choice of the consumers. Placing any disproportionate burdens on the OEMs might stifle innovation and investment in the fledging IT manufacturing sector in India.
- 7.2 To reiterate, continued consultation with the various stakeholder groups is imperative, in addition to various ministries of the government including *inter-alia* MeitY, Ministry of Environment etc. to ensure that the framework does not overreach by including products or by imposing prescriptions which may, in the long run, hamper investments in India, without having any significant impact on the consumers' rights.
- 7.3 The international context must be understood in the right perspective including the differences in the market conditions and stage of development of the IT industry, prior to replicating any legislation from a foreign jurisdiction.

- 7.4 India wishes to lead the world in manufacturing and repairs. In the past 24 months due to various incentives given by the government, the nation has showcased exponential growth in the sector. To abruptly bring the Right to Repair framework right now, would not only hamper the ongoing growth of the nation but it could also create a handicap which could permanently stall the aspirations of the Country.
- 7.5 The government can play a critical role in creating a formal repair economy. Thrust of the government should also be to:
- (i) act as a catalyst for the employment generation (Aatma Nirbhar Mission) by skill building especially in the IT sector;
 - (ii) encourage and incentivize the OEMs to be an important player in skill building;
 - (iii) incentivize existing informal repair network into the formal space;
 - (iv) incentivize OEMs to take within their fold the informal sector under appropriate contractual arrangements;
 - (v) incentivize OEMs to deepen their service center network and start independent repair programs;
 - (vi) encourage OEMs to extend the post repair warranty of the products and extend the general warranty of new products at a reasonable cost;
 - (vii) encourage OEMs to provide location agnostic repair services - to increase accessibility;
 - (viii) The Government should create more vocational, ITI institutes to impart skill-based courses and training to match the evolving practices in the repair ecosystem. One of the ways could be in the form of public- private partnerships to keep abreast with the latest technological developments in the repair ecosystem.

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- (ix) Formal and informal sector players have been serving different ends of the spectrum for decades, yet the vibrant repair economy in India continues to present opportunities to serve the consumer better. Government can encourage formal sector multi-brand start-ups as an alternative that will to a large extent address concerns about price sensitivity, security and trust as well as last mile accessibility for repair in both B2C and B2B context.
 - (x) The recently launched R2R portal by the government is an important step towards providing access to repair and servicing related information for consumers. This portal can become a repository for disseminating information, which will in turn enable consumer awareness and consumer choice.
 - (xi) educate and enhance consumer awareness to enable them to exercise their choice more effectively while purchasing a digital product or seeking repair services;
 - (xii) encourage OEMs to introduce the concept of Self Repair for issues which do not require technical knowledge i.e., for consumers who do not have experience of repairing electronic devices, visiting a professional repair provider is the safest way to get repairs. For consumers who are experienced with the complexities of repairing electronic devices and wish to repair their products on their own, can either buy tool kits or get them on rent from OEMs.
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8. *In Conclusion*

- 8.1 In view of the above challenges and recommendations provided, a mandatory legislative framework is not required for India at this time.
- 8.2 Legislators and regulators should assess the existing network of qualified repair options and consider carefully whether government action is even warranted. Officials must ensure that any policies to further expand product repair to third-party providers guarantee that these providers are qualified and can deliver the same high-quality results as authorized manufacturer programs or certified third-party technicians. Otherwise, consumer privacy and safety, manufacturer trade secrets, environmental protection and cybersecurity will be placed at risk and a functioning marketplace will be disrupted.
- 8.3 The OEMs support responsible product repair options that defend consumer privacy and safety, safeguard intellectual property, ensure cybersecurity, and protect the environment. These objectives can be met via manufacturer's Authorized Service Program (ASP) and by certified, qualified and accountable independent repair providers.
- 8.4 The government will need to handhold both the consumers and the OEMs to ensure that the rights of both are safeguarded and there is no or minimum impact on India's manufacturing aspirations.

ANNEXURE A

International Legislative Landscape

1. United Kingdom:

UK - Eco-design for Energy – Related Products and Energy Information Regulations 2021 (SI 2021 No. 745)

Products covered - electric motors, washing machines / washer dryers, dishwashers, household refrigeration and electronic display.

Digital / electronic products “not covered” under the ambit of the Act. OEMs mandated to provide spare parts to professional repairers and not to product owners.

2. European Union:

EU has been debating the ‘Right to Repair’ framework for several years but no legislative proposal covering digital products has yet been passed.

Eco-design directives which cover areas like durability i.e., expected lifetime, better access to spare parts etc. apply only to energy related products like: - lighting products, electronic displays, refrigerators, washing machines, dishwashers, windows, and insulation materials.

EU - The European Parliament’s Committee on the Internal Market and Consumer Protection, in its draft motion for resolution dated 07/03/2022 clearly stated as under: -

“... the initiative on a right to repair must be proportionate, evidence-based, cost-efficient, and balance the principles of sustainability, consumer protection and a highly competitive social market economy, in order for all relevant stakeholders to embrace the opportunities inherent in the green transition;

... an effective right to repair should create significant competitive advantages for European businesses whilst refraining from placing any form of disproportionate financial burden on them, and should inspire innovation, encourage investments in sustainable technologies, always taking into account market developments and consumers’ evolving needs;”

The European Parliament's Research Service in a briefing on Right to Repair clearly recognized that: -

“Business organisations were more likely to oppose consumer-led repairs. Business Europe said that for certain products, the trader must have a say on who can repair the product, to ensure quality and safety, while access to information on reparability should not infringe business secrets. Business Europe favoured deciding on the right to repair on a case-by-case basis, noting that reparability was not always the best option and that sometimes, for environmental, energy efficiency or cost reasons, repair was 'less optimal' than other forms of consumer redress. Business Europe also called for harmonised criteria for measuring reparability; avoiding 'overdosing' consumers with information on durability and sustainability; and putting incentives in place that would ensure there were enough specialised workers for repair and reconditioning.”

3. Australia

The Australian government constituted a committee titled “Productivity Commission” to give an overview and its recommendations on the ‘Right to Repair’.

The Commission after a detailed study of the market for smartphones and tablets concluded that: -

“due to data limitations and some countervailing considerations (for example, high product turnover that can lessen consumer lock-in) the evidence on the extent of harm due to restricting access to specialized tools and information required to repair the devices, is not yet strong enough to justify specific policy interventions at this time.”

The Productivity Commission thereafter in its inquiry report recommended: -

“The Australian Competition and Consumer Commission should undertake a market study of the mobile phone and tablet market, to further examine the nature of the market, the magnitude of harm from repair barriers, and the merits of different policy responses (such as a repair supplies obligation on manufacturers).”

4. Canada

Canada is considering promulgating the Right to Repair Bill for Automotive Industry only.

5. France

In 2021, France brought into force provisions relating to “repair index”, applicable to 5 category of products – smartphones, laptops, television, washing machines and lawnmowers.

The index assesses 5 criteria – documentation, disassembly, availability of spare parts, price of spare parts and product specific aspects.

The repairability index represents part of France’s effort to combat obsolescence, the intentional creation of products with a finite lifespan transition to a more circular economy (“waste is minimized”). France has taken a very diverging stand compared to UK and USA.

Approximately after two years of the introduction of the repairability index, it will be replaced by “durability index”, the work towards “durability index” has already began in spring 2022 and is ongoing. This new index will initially concern the pilot products of the repairability index i.e., front loading washing machine, smartphone, laptop, computer, lawn mower and television, with starting from 2024, whereby manufacturers will disclose not only how repairable their goods are but also describe the full lifecycle for each product.

6. United States of America

‘Right to Repair’ bill is being currently debated in more than 20 states.

State of New York is the only state where the bill titled “Fair Repair Act, 2021” has been passed.

The Fair Repair Act, 2021 covers all digital electronic equipment sold in USA.

The Fair Repair Act, 2021 defines digital electronic equipment sold or used in USA as:

“The term “digital electronic equipment” means any product that depends for its functioning, in whole or in part, on digital electronics embedded in or attached to the product.”

The Bill obligates OEMs to make available documentation, parts, and tools, inclusive of any updates to information or embedded software to independent repair providers or owners of such equipment in a timely manner and on fair and reasonable terms.

For the purposes of diagnosis, maintenance, or repair of digital electronic equipment the term “tools” and “independent repair providers” are defined as below:

“The term “tools” mean any software program, hardware implement, or other apparatus used for diagnosis, maintenance, or repair of digital electronic equipment, including software or other mechanisms that provision, program, or pair a new part, calibrate functionality, or perform any other function required to bring the equipment back to fully functional condition.”

“The term “independent repair provider” means with respect to an OEM, a person that is not affiliated with OEM.....”

The New York State has been empowered to enforce the provisions of this Bill by imposing / obtaining civil penalties and damages, restitution, or other compensation on behalf of residents of the State.

(The consent granted by the Governor of New York via letter dated December 28, 2022 is annexed herewith and marked as Annexure B.)***

ANNEXURE B



STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

APPROVAL #93
CHAPTER # 810

December 28, 2022

MEMORANDUM filed with Senate Bill 4104-A, entitled:

“AN ACT to amend the general business law, in relation to the sale of digital electronic equipment and providing diagnostic and repair information”

APPROVED

This bill requires original equipment manufacturers of digital electronic products to provide materials to product owners and independent repair providers in New York to facilitate repairs. Such materials include documents like manuals and diagrams, and tools like diagnostics and parts. The bill exempts certain products and industries from the bill's requirements, including home appliances, motor vehicles, medical devices, and off-road equipment.

As technology and smart devices become increasingly essential to the lives of New Yorkers, it is important for consumers to be able to fix the devices that they rely on in a timely fashion. This legislation would enhance consumer options in the repair markets by granting them greater access to the parts, tools and documents needed for repairs. Encouraging consumers to maximize the lifespan of their devices through repairs is a laudable goal to save money and reduce electronic waste.

The legislation as drafted included technical issues that could put safety and security at risk, as well as heighten the risk of injury from physical repair projects, and I am pleased to have reached an agreement with the legislature to address these issues. This agreement eliminates the bill's original requirement calling for original equipment manufacturers to provide to the public any passwords, security codes or materials to override security features, and allows for original equipment manufacturers may provide assemblies of parts rather than individual components when the risk of improper installation heightens the risk of injury. We have also agreed to clarify that original equipment manufacturers, who either contract with authorized third-party repair shops or who themselves offer repair services, are required to provide parts, tools and documents at reasonable costs to device owners and independent repair shops to facilitate repair, and that digital products that are the subject of business-to-business or business-to-government sales and that otherwise are not offered for sale by retailers, are exempt. Finally, we have agreed to changes to ensure original equipment manufacturers will not be required to license any intellectual property, and that this new law's requirements will apply to digital electronic equipment that is both manufactured for the first time as well as sold or used in New York for the first time on or after July 1, 2023.

Based on this agreement, I am pleased to sign this bill into law.

This bill is approved.

Ruth Hochul

ANNEXURE C



Ministry of Consumer Affairs, Food & Public Distribution

Department of Consumer Affairs sets up committee to develop comprehensive framework on the Right to Repair

Farming Equipment, Mobile Phones/ Tablets, Consumer Durables and Automobiles/Automobile Equipment among sectors identified for right to repair in the 1st meeting of committee

Right to repair to generate employment through Aatmanirbhar Bharat by allowing third-party and self-repairing of products

Framework to be in synchronization with call for global initiative of LiFE movement by the Hon'ble Prime Minister

Posted On: 14 JUL 2022 11:51AM by PIB Delhi

In a bid to emphasize on LiFE (Lifestyle for the Environment) movement through sustainable consumption, the Department of Consumer Affairs has taken a significant step for developing an overall framework for the Right to Repair.

The aim of developing a framework on right to repair in India is to empower consumers and product buyers in the local market, harmonize trade between the original equipment manufacturers and the third-party buyers and sellers, emphasize on developing sustainable consumption of products and reduction in e-waste. Once it is rolled out in



India, it will become a game-changer both for the sustainability of the products and as well as serve as a catalyst for employment generation through Aatmanirbhar Bharat by flowing third-party repairs.

The Department in this regard, has set up a committee which shall be chaired by Smt. Inildhi Khare, Additional Secretary Department of Consumer Affairs, Government of India. The committee includes Shri Anupam Mishra, Joint Secretary DoCA, Justice Paramjeet Singh Dhaliwal, former Judge of Punjab and Haryana High Court, Former President of State Consumer Dispute Redressal Commission, Punjab, Prof. (Dr) G.S. Bajpai Vice-Chancellor, Rajiv Gandhi National University of Law, Patiala, Prof. Shri Ashok Patil, Chair of Consumer Law and Practice and representatives from various stakeholders like CEA, SIAM, Consumer Activists & Consumer Organizations as members.

The committee held its first meeting on 13th July, 2022 wherein important sectors for right to repair were identified. The sectors identified include Farming Equipment, Mobile Phones/ Tablets, Consumer Durables and Automobiles/Automobile Equipment.

The pertinent issues highlighted during the meeting include companies avoid the publication of manuals that can help users make repairs easily. Manufacturers have proprietary control over spare parts (regarding the kind of design they use for screws and other). Monopoly on repair processes infringes the customer's "right to choose". Digital warranty cards, for instance, ensure that by getting a product from a "non-recognized" outfit, a customer loses the right to claim a warranty. Controversy Surrounding Digital Rights Management (DRM) and Technological Protection Measure (TPM), DRM is a great relief for copyright holders. Manufacturers are encouraging a culture of 'planned obsolescence'. This is a system whereby the design of any gadget is such that it lasts a particular time only and after that particular period it has to be mandatorily replaced. When contracts fail to cede full control to the buyer-the legal right of owners are damaged.

During the deliberations, it was felt that the tech companies should provide complete knowledge and access to manuals, schematics, and software updates and to which the software license shouldn't limit the transparency of the product in sale. The parts and tools to service devices, including diagnostic tools should be made available to third parties, including individuals so that the product can be repaired if there are minor glitches. Fortunately, in our country, there exists a vibrant repair service sector and third party repairs, including those who cannibalize the products for providing spare parts for circular economy.

Further, the international best practices, steps that have been taken by other countries and how the same could be included in the Indian scenario were also discussed in the meeting. The right to repair has been recognized in many countries across the globe, including the U.S.A, U.K and European Union. In USA, the Federal Trade Commission has directed manufacturers to remedy unfair anti-competitive practices and asked them to make sure that consumers can make repairs, either themselves or by a third-party agency.

Recently, the U.K has also passed a law that includes all the electronic appliance manufacturers to provide the consumers with spare parts for getting the repair done either by themselves or by the local repair shops. In Australia, repair cafes are a remarkable feature of the Australian system. These are free meeting places where volunteer repairmen gather to share their repairing skills. Further, the European Union passed legislation that required manufacturers to supply parts of products to professional repairmen for a time of 10 years.

Last month, Prime Minister Shri Narendra Modi launched the concept of LiFE movement (Lifestyle for Environment) in India. This includes the concept of reuse and recycling various consumer products. Repair is a critical function of all forms of re-use and even for the sustainable life of the products. A product that cannot be repaired or falls under planned obsolescence i.e. designing a product with an artificially limited useful life, not only becomes e-waste but also forces the consumers to buy new products for want of any repair to reuse it. Thus, restricting the repair of products forces consumers to deliberately make a choice to purchase a new model of that product.

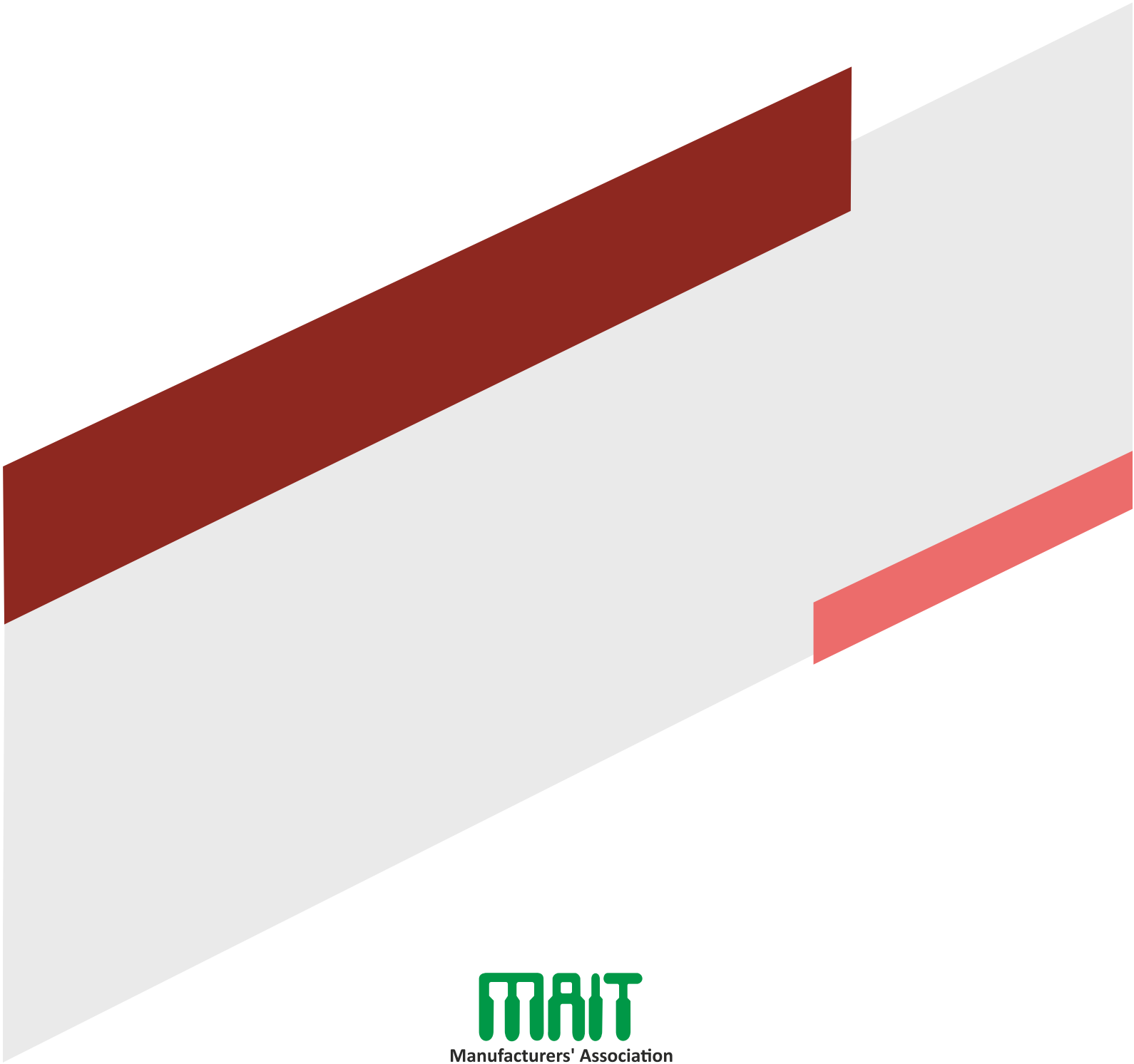
The LiFE movement calls for mindful and deliberate utilization of product. The rationale behind the “Right to Repair” is that when we buy a product, it is inherent that we must own it completely for which the consumers should be able to repair and modify the product with ease and at reasonable cost, without being captive to the whims of manufacturers for repairs. However, over a period of time it has been observed that the Right to Repair is getting severely restricted, and not only there is a considerable delay in repair but at times the products are repaired at an exorbitantly high price and the consumer who has once bought the product is hardly given any choice. Often the spare parts are not available, which causes consumers great distress and harassment.

AM/NS

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**Manufacturers' Association
for Information Technology**

PHD House, Ramakrishna Dalmia Wing
4th Floor, 4/2, Siri Institutional Area, August Kranti Marg, New Delhi 110 016, India