

Consumer Protection Environment through UNGCP

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ABSTRACT

Off late there is lot of improvement in the consumer protectionism all over the world and now the trend is improving not only in the developed countries but also in the developing and underdeveloped countries. All the legislations that were implemented 30 to 40 years are also being changed as per the latest scenarios in wake of the consumer awareness, ecommerce business models and easy access to the grievance and legal aid to the consumers. International organisations and specifically **UNGCP** (United Nations Guidelines on Consumer Protection) is also are actively involved in providing the updated guidelines that is matching the market scenarios and consumer expectations and even monitoring the adoption of these guidelines through respective local legislations by the member states. India have recently revamped its Consumer Protection Act 1986 and come out with a new act Consumer Protection Act 2019 notified on 20.07.2020 to come into force, which is not got just amendment but in-fact entire act itself is repealed and replaced with new act.

Key Words: Consumer Protection, UNGCP, Consumerism, Underdeveloped, Developing Country, Industrialization

FULL PAPER

Introduction:

In the process of civilisation there is improvement to the living standards to the human beings on regular basis. If there is no improvement there is a need to consider that civilisation is

stalled. There is improvement on all walks of life, right from the technological advancement, health care standards etc. Higher expectations of the customers are a by-product of this improvement and they become restless if they don't get the same. This sparked consumer movement in many developed countries and slowly spread to the developing and underdeveloped countries.

According to Karl-Marx's description, product is not developed for the purpose of the consumption rather with an intention of the selling in the market and based on this point commodity is considered is not having the use-value but retains the exchange value. Based on that value of commodity is depend not on the usage value but based on the capitalist production determined by the labour and social relations and the also the availability of the raw material and the time spent. Even though Karl-Marx's undermined the capitalism and failed to predict the extent that consumerism becomes a way of life, but provided an insight of the role of consumption in the rise of capitalism (Miles, 1998).

The term "consumerism" was first used in 1915 to refer to "advocacy of the rights and interests of consumers" (Oxford English Dictionary). Consumerism" can be defined as a social and economic trend that stimulates the purchase of goods and services in ever-greater amounts. (Kotler, 1972). The sociologist Thorsten Veblen, analysed that consumer goods became vehicles of the social status and prestige. He coined the terms conspicuous consumption and conspicuous leisure and influence by the media culture (Papasolomou, 2014).

Consumerism described as a social force framed in the view to assist and protect the rights of consumers legally. Major causes for the consumer movement are growing modern technology, convolutions of the sellers' techniques, unethical and misleading ads. So, awareness of consumers on these is the most important point. Governments are making various legitimate provisions towards protection of consumers, but, not sufficient if consumers not aware of their rights and responsibilities. Every manufacture is a consumer of the other product but fails to maintain the standards that are expected. This led to the unrest among the consumers a whole as the number of consumers is more compared to the manufactures. The main issues involved in the consumer movement are consumer choice, consumer protection and product information (Kaynak, 1985).

a. Features of Consumer Movement:

1. It is a democratic movement for basic rights.
2. It is a movement to aid groups of consumer.
3. General public, consumers, corporations are voluntarily taking initiative for this movement.
4. Even though the movement is not sponsored by the govt., it is recognized and supported by the government in some countries and some countries are not putting restrictions to the peaceful protests.

Major causes for the consumer movement are growing modern technology, complexities of the sellers' techniques, unethical and misleading ads etc. So, Awareness of consumers on these is the most important point. Governments made various legitimate provisions towards protection of consumers, but it is difficult if consumers not aware of their rights and responsibility (Sopanara, 2014).

Consumerism led to consumer movements and influenced the democratic countries to understand the genuine grievances and constituted committees and commissions to look at the scope of possibilities to address the demand of the consumer groups and based on their reports adopted several suggestions and brought them into force in the form of legislations. Some of the important and early legislations came from USA, EU and others.

b. Legislation of Different States

i. Legislation on Consumer protection in EU

Consumer protection, in European Union, was started when it planned to develop three-year plans to synchronize various laws by the European countries from early 1990s. But, the 1st three year plan did not succeed due to transportation and application of same laws by member states.

After that, in the 2nd three year plans during 1993-1995, On February 7, 1992 a new legislation Maastricht Treaty was is ratified by Law No. 454 of November 3, 1992 for consumer protection. This new legislation came with a new structure in order to protect and support the member states towards protection of consumers' economic interests through ensuring adequate information. The main focus of this legislation was to provide justice or alternative dispute resolution to consumers.

During 1996-1997, the 3rd three-year plan was brought with abundant changes in order to “train” consumers by providing legal and technical assistance to Central and Eastern Europe to implement this legislation effectively. European commission also created National Union of Consumers for effective implementation of this legislation in EU Countries.

On October 2, 2001 a green paper was produced through Communication No. 531 by European Commission with the main agenda of launching public consultation to decide better ways possible in order to regulate unfair commercial practices (Corradi, 2015, February).

Some of the major legislations towards consumer protection are listed below (Corradi, 2015)

Legislation	Main Objective
Decree of May 24, 1998 n.244, EC Directive 85/574 Decree n.5 of 1991	Responsibility of Producer on damage of the product by defects during production. Guarantees for the consumer’s i.e., mobile property, supply of food, insurance and financial services.
Decree 174/95 Directive 2000/31, June 8, 2000	The right of withdrawal within 30 days from signing a Life Insurance Policy E-commerce Directive to give protection from information society service providers
Directive 89/552, October 3, 1989	Concerns the television broadcasting activities
Directive 97/36 Decree n. 21 of 2014	Commercial communications through broadcasting Renovation of consumer code – withdrawal period extended up to 12 months, prohibition of cost increase of goods bought using debit/credit cards
Initiative called ‘New Deal’ for customers in April 2018.	The European Commission adopted for more transparency.

i. United States of America Legislation

In USA also various kinds of legislations passed for consumer protection and which is precisely implemented by a system of rules and case law operated from offices established adhoc. However, the American legislator had developed a series of legislative acts towards

consumer protection in United States with the collaboration of various agencies and institutions. Some of the main legislations implementing in USA: Economy analysis of Law Act which deals with enterprise costs of defective products; Product Liability Law which puts on direct responsibility of the enterprise to the consumer in case of harmful events occurred due to manufacture and sale of products. Another important law in US is Class of Action which entails in the action to not only an individual but the members of a group or category is entitled for the loss happened to consumer (Corradi, 2015).

John F. Kennedy played key role in passing the Consumer Bills of Rights in 1962 and due to which the four rights of consumers are created (Commonwealth of Massachusetts, 2020).

They are:

1. Right to Safety
2. Right to Be Informed
3. Right to Choose
4. Right to Be Heard

ii. **Consumer Movement in Developing and Underdeveloped Countries**

In developing and underdeveloped countries like Brazil, India, Uganda, Bangladesh etc this Consumerism concept is still in early stage of growth. In these emerging countries, there is need of awareness and concern on consumerism because here complaints rising on very basic consumer needs like lack of shelter, clothing and food. To overcome such issues this countries should focus on Consumer information reforms, consumer protection and consumer education.

i. **Consumerism in Brazil (Developing Country):**

Brazil is a developing country with the estimated population of 120 million people and is the seventh largest population country in world. The four major reasons for consumer movement in Brazil are: 1. Advances in income and education,

2. Progression in technology
3. Exploitation of environment
4. Discrepancies in quality of local and export products.

Government and business leaders will play a major role in controlling the consumer movement in any country. But, in Brazil, due to not realizing and ignoring the early signs of consumerism, the government and business leaders failed in controlling the consumer movement. The multinational corporations in Brazil trying to improve the consumer

protection against the consumer movement by developing and modifying the codes and procedures based on the consumer needs and rights rather than reject changes in proposals. In developing countries, government plays a vital role and it has significant position on consumerism activities through its both positive and negative implications (Stanton, et.al, 1981).

iii. Consumerism in Underdeveloped countries or Less Developed countries:

In these Less Developed Countries (LDCs), even though both public and private corporations are playing vital role in the economy, they are not considering about the consumer protection. In recent years, rising of consumer complaints leads to a thought about preventive measures to be taken by government and private corporations in LDCs. For this purpose, in some LDCs, Voluntary Consumer Protection Associations have been established as a remedy and overcome this situation.

Regardless of increased enthusiasm in consumerism in both developed and under developed and Less Developed Countries, so many consumer legislations and By-laws have been developed and implemented in all countries all over world. But, still there are some problems to extend consumer protection in LDCs and the main reasons are:

1. Lack of information and knowledge on consumer legislations and laws,
2. Less relevant of consumer protection measures applied in developed countries to LDCs
3. Another reason which is also applicable for developing countries is mostly middle and upper class people can benefit of these laws and legislations rather than the people who are need actually.
4. Especially, because of the following Macro-Economic Environment differences between developed and Less Developed countries it is getting very difficult to deploy the consumer legislations in LDCs when comparing to developed countries.

Table 1: Macro-Economic Environment differences (Kaynak, & Wikström,1985).

Sr.NO	Context	Less Developed Country	Developed Country
1	Standard of Living	Less	High
2	Aspiration levels	Low	High
3	Market Conditions prevailed	In favor of sellers	In favor of Buyer
4	Consumer information	Outreach is very low	Enough Information
5	Constant Problem	Less information	Consumers engage

			in constant problem
6	Expectations from product	Lower Level	High level of standard
7	Organization of consumer	Not organized well	Well organized
8	Consumerism	Is a matter of legislation and its efficient implementation	Is a matter of engaged public support

i. Actions to be taken to increase consumer protection activities in LDCs:

There are mainly two ways to increase the consumerism in LDCs:

- It needs to increase the production of good and services provide in such a way as the efforts of industrialisation towards benefits the final consumer.
- It also needs to provide an equal distribution of income improvement of educational levels.

In LDCs, consumerism as a movement leads to demand more information of product like procedure of manufacturing, materials in the product etc. and also more protection against defective products. To prevent the consumer complaints against the products/services of the company it would be better to collect “consumer’s opinion” and the finished product should pass the “social usefulness” test from consumer point of view rather than manufacturing company or service provider. Pricing is another important point to consider in consumer getting satisfaction. So, the method of pricing to be simplified and obscure pricing methods as well as false pricing comparison should not take place while pricing the product. Finally, whether it is developed or Less Developed or developing country, the consumerism activities to be developed as it matches the offerings by manufacturers or service providers with the expectations or demands of consumers (Kaynak, 1985).

I. Role of International Organisations:

a. UN International Legislation

The General Assembly in 1985, adopted the Guidelines which were originally drafted by the Economic and Social Council and the same were expanded in 1999. After that in 2012 in

Geneva first Ad Hoc Expert Meeting on Consumer Protection was held for major consolidation and also discussed on the member states adoption of the various guidelines on different heading such as physical safety, economic interest, quality of standards, distribution of essential services and facilities, consumer redressal forums, awareness programmes, promotion of sustainable consumption, international cooperation etc and also need for the new guidelines on the e-commerce and the financial services(UNCTAD, 2013).

In United Nation, during 1985, a for the first time international consumer law principles have been set and new amendments made to this by including three key points – Decent business practices, fiscal safety and increasing e-commerce transactions in 1999 and again in 2015. Nevertheless, these guidelines are not lawfully applicable to member states because these ae only soft law provisions (UNCTAD, 2016).

The UN in 1985 added four more rights to the existing four rights of the consumer.

1. Right to Satisfaction of Basic Needs
2. The Right to Redress
3. Right to Consumer Education
4. Right to a Healthy Environment (Josh, 2016)

The United Nations Guidelines on Consumer Protection is undertaken by The United Nations Conference on Trade and Development (UNCTAD) and along with that some other organisation involved are the Organization of American States (OAS), Organization for Economic Cooperation and Development (OECD), the United Nations Industrial Development Organization and the United Nations Commission on International Trade Law (UNCITRAL) (UNCTAD, 2013).

UNCTAD upholds the guidelines and puts the burden on the member states for creation of the awareness to the consumers, manufactures and business owners, social groups for consumer protection promotion in private and public services and goods.

The United Nations Guidelines for Consumer Protection (UNGCP) are "a valuable set of principles for setting out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems and for assisting interested Member States in formulating and enforcing domestic and regional laws, rules and regulations that are suitable to their own economic and social and environmental circumstances, as well as promoting international enforcement cooperation among Member States and encouraging the sharing of experiences in consumer protection (UNCTAD, 2020).

b. The Guidelines include a number of key additions in Guidelines 2015:

1. Recognition of essential goods and service and protection of customers.
2. Consumer protection and privacy in e-commerce business.
3. Improved guidelines on fiscal services, good business practices and public utilities.
4. A forum for exchange of information has been developed to protect, monitor and implementation of Intergovernmental Group of Experts (IGE).
5. The key guideline in 2015 amendment is a section made on good business practices by assigning the responsibility on consumer protection to the corporates directly.
6. UNGCP aims to set “benchmarks for good practices” to boost “high levels of ethical conduct” in the manufacturing and service providing organizations (Section IV, Guideline 1c) (Consumers association of India., n.d.).

There is a shift in the 2015 Guidelines, where there is focus on the corporate social responsibility and encouraging companies for best standards and practices unlike earlier guidelines were focused on the member states to implement the guidelines.

c. The following factors considered for development of consumer laws in UN:

1. Newly improving Technologies and declining of trade barriers
2. Support from International Organizations
3. High level principles and practices made by OCED and the World Bank.
4. Establishment of “The International Financial Consumer Protection Organization (FinCoNet) (Benohr, 2020).

II. Role of Governments:

As discussed previously, the laws and legislations are in the form of Soft copy only in UN because here, the member states have full control on implementation of these guidelines and practices. To help cross-border trade, various international resolutions and customs have been assumed as follows:

- The United Nations Convention on Contracts for International Sale of Goods (CISG 1980 of UNCITRAL),
- Principles of International Commercial Contracts (PICC 2004 of UNIDROIT),
- International Rules for the Interpretation of Trade Terms (INCOTERMS of ICC),
- Uniform Customs and Practice for Documentary Credits (UCP) 600,
- The rules on the issuance and use of letters of credit.

Using international measures in implementing national consumer laws will strengthen the consumer protection international wide. But, there are some problems arise in adopting these guidelines by member states practically, such as:

- A variation in member states various aspects – legal, economic, culture, political etc.
- Every member state should comprehend the significance of consumer protection and strictly take efforts towards implementation of the best system
- A committee to be formed with experts under the UNCTAD to address any specific problems facing by member states.
- With help of this committee member states have to design a system of procedures and practices to consumer protection
- It is also important to monitor the progress in member states (Gulligan, et.al, 2015).

a. Implementation of UNGCP by its member states:

Even though various guidelines, strategies are available, the major problems most of the consumers in some countries are non-revision of Consumer Protection Acts (CPAs). For instance, in Indonesia since 1999, in Brazil since 1990 the CPAs not revised. In some countries like France and Nicaragua are under process. In Korea recently in 2011 revised the guidelines after 1980 (Korea Consumer Agency, 2017). India's major revision on Consumer Protection Act is in 2019 after 1985.

Progress of consumer protection also uneven among the member states as in most of the countries like high-income Hong Kong, low-income Mali there is no specific CPA till now. Some countries are facing impediments in solving consumer problems and providing consumer protections as well implementation of such guidelines under CPA. For example, in Pakistan, the Consumer Protection Act is available but is provincial and in Sindh province it has lapsed (Rachagan , et, al, 2019).

From all the above, one can say that at first all the countries need to adopt a CPA before making and improving policies and strategies. It should also consider while developing policies to follow a strategic plan that can includes legal laws and legislations. Anyway, this is not that much easy to implement practically due to unexpected number of factors to be overtaken by government such as floods, droughts, wars, fiscal crisis which effects food prices, energy prices and sometimes within days' time government has to measures to resolve the problems.

At first in developing countries mostly in emerged Africa and Asia the consumer protection organizations to be developed and regional meeting also be conducted. But undoubtedly, in developing countries there is need to put consumer rights in their statute books (Lloyd, 2010):

International Organisations are using technology even to know the implementation and UNCTAD is using a Global Cyberlaw Tracker to know the status of the adoption of the 194 member states. Recently collected data on the specific consumer protection laws with respect to the e-commerce is provided by the UNCTAD as on 02/04/2020. As per that 57 countries data is not available and 134 countries data is only available out of which 110 states have adopted e-commerce related legislation in consumer protection laws.

Table 2: Online Consumer Protection Legislation Worldwide data (UNCTAD, 2020).

Online Consumer Protection Legislation Worldwide	Status of Legislation	Countries with legislation	Countries with Draft legislation	Countries with NO legislation	Countries with NO data
	Worldwide percentage	56 %	6%	9 %	29 %

Challenges due to lack of proper indicators:

There are several challenges faced by the international organisations also in getting them adopted and also on monitoring their success with proper indicators (Thorun ,2017).

1. According to UNCATA Survey one of the difficulties for data protection law making is the lack of the skill or trained personnel (60 %) and lawmakers (40 %).
2. There is lack of proper indicators and corresponding methodologies which allows creating a gap of cross country comparable metrics trust.
3. UNGCP have derived 8 indicators on digital consumer protection and empowerment, but they needed to be in details covering the regulatory context, business conduct and consumer outcomes.

Apart from the challenges to monitor progress there are also several regional and sovereign interest also play in adopting the consumer laws also. Indian Government and UNCTAD had took an initiative to discuss on the “ Empowering consumers in New Markets”

in 2017 through an international conference specifically for protection of the South, South East and East Asian Nations which helped to discuss on the revised UNGCP and also with an objective of regional cooperation more better.

III. Consumer Protection Act in Indian Perspective:

In 1986, Consumer Protection Act was enacted in India and enacted the same in 2019 by working on some provisions made in 2015 UN guidelines on consumer protection. India announced 15th of March every year as the “National Consumers’ Day” since 1989. Black marketing, food adulteration and monopolistic practices were controlled after the CPA 1986. The Consumer Protection Act 1986 had got lot of acceptance due to its less expensive litigation, flexible legal framework and wider jurisdiction. Even though several other laws are there that are used in the consumer protection, but The Competition Act, 2002 helped consumers by taking action against the business entities which will impact the market and that in turn put burden on the end user i.e customer. The below table shows the newly introduced provisions and developments to the old CPA Act 1986 in the new CPA Act 2019 (Government of India, 2020) :

Table 3: Comparison of the old and new Indian Consumer Protection Acts.

The comparison is not exhaustive and show that the important additions as per UNGCP 2015 guidelines were such as e-commerce, recognition of access to goods and services, protection to vulnerable consumers, adoption of international covenants and practices on consumer rights that were adopted. This table allows as a case study to understand the improvements made recently comparing to the old act and also that gives an idea about the major changes from the UNGCP old guidelines to the new guidelines.

Conclusion:

The Sustainable Development Goals (SDGs) that were adopted are matching with the UN Guidelines were revised. Governments are getting support from UNGCP in getting implemented through these goals such as access to safe and healthy diet and also protecting consumers from unsafe products. It is clear that there is some progress being made. For example, in areas such as consumer safety, financial services and healthcare a wide range of consumer protection measures are in place in the majority of countries.

However, despite these positive developments some serious gaps remain. As might be expected, in many cases there appears to be a strong link between income level and the

development of consumer protection measures and many LICs (Less Income Countries) are yet to implement some of the most basic protections. A failure to effectively enforce existing legislation is a major weakness in consumer protection regimes around the world. It follows from this that the existence of legal measures - whether legislative or constitutional - does not guarantee consumer protection.

The concerns of consumer groups are widely held and cannot easily be divided into 'developed' and 'developing' country issues. The active involvement and participation from all the stakeholders i.e. the Central and State Governments, the educational institutions, the NGO's , the media and the trade and industry and the citizen's charter by the service providers are necessary to see that the consumers get their due.

The UNGCP are not common with template is uniform by any means and member states should use them based on their own priorities in accordance with the social, economic and environmental circumstances based on the cost based analysis. Even member states can go beyond the scope of the guidelines in the interest of the consumers. There is a hope that a day will also come in near future putting consumer interests first and bring true the vision of the consumer movements.

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