

ENHANCING CONSUMER PROTECTION LAWS FOR EQUITABLE MARKET PARTICIPATION AS A PATH TO INCLUSIVE GROWTH IN EMERGING ECONOMIES: CRITICAL ANALYSIS ON SRI LANKAN LAW

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ABSTRACT

Consumer rights are integral to foster equitable and inclusive trade practices in an increasingly interconnected global economy. This research critically examines the consumer protection frameworks of Sri Lanka, India, and the United Kingdom, with a focus on their relationship to trade development and adherence to international standards. By identifying key principles, challenges, and best practices, the study highlights the vital role of consumer rights in promoting sustainable and inclusive market participation. The research addresses the critical issue of inadequate consumer protection and the ineffective enforcement of existing laws in Sri Lanka. This deficiency undermines consumer trust and confidence in the market, leading to dissatisfaction and hesitancy in engaging with both domestic and international trade systems. In a globalized economy, consumer protection plays a pivotal role in fostering trade development by ensuring fairness, transparency, and accountability in market transactions. However, the weak regulatory frameworks and enforcement mechanisms in Sri Lanka not only exacerbate consumer grievances but also impede the growth of trade and economic inclusivity. The lack of robust consumer protection laws deters foreign investment, reduces the competitiveness of Sri Lankan products in international markets, and creates barriers to equitable market participation. This ultimately affects trade dynamics, disrupts the balance of economic growth, and hinders the country's ability to align with global standards of trade and commerce. By juxtaposing Sri Lanka's legislative and enforcement structures with those of comparative jurisdictions, this research aims to highlight the critical gaps and propose strategies to strengthen consumer rights. A more effective consumer protection regime is essential not only for safeguarding individual rights but also for facilitating sustainable trade development and contributing to the broader goals of global economic growth and inclusivity. Additionally, the study explores the influence of consumer activism and the involvement of international organizations in strengthening consumer rights and shaping trade policies. Employing a qualitative methodology, including a black-letter approach and comparative analysis, the research examines legal frameworks, regulatory mechanisms, and cases. The findings reveal significant gaps in Sri Lankan consumer protection laws, and the study proposes reforms based on lessons drawn from the comparative analysis. The recommendations aim to strengthen Sri Lanka's consumer protection framework, enabling sustainable trade development and advancing inclusive economic growth.

Keywords: Consumer protection, trade development

1. INTRODUCTION

"Consumers, by definition, include us all. They are the largest economic group, affecting and affected by almost every public and private economic decision. Yet they are the only important group... whose views are often not heard".

It is correctly said that the only group that creates rights for the entire life of all human beings is the 'consumer' who play a vital role in the society from various perspectives, including economics, sociology, psychology, public policy, environmental perspective and corporate law.

In an economic perspective, consumers are the driving force behind demand in the economy. Their preferences, choices, and purchasing power influence the production and allocation of goods and services. In addition, consumer behavior guides market efficiency by signaling producers about their needs and desires through the prices they are willing to pay. Also, consumer spending accounts for a significant portion of economic activity, contributing to GDP growth and employment opportunities.

In a sociological perspective, the consumption patterns often reflect social identities, values, and aspirations. What people buy and consume can be closely tied to their social status and group affiliations. Further, consumption practices are deeply embedded in cultural norms and rituals, influencing social cohesion and shaping cultural landscapes.

Psychological Perspective gives us an understanding that consumer psychology is essential for businesses to design effective marketing strategies and products that meet consumer needs and desires. Research in behavioral economics highlights various cognitive biases and heuristics that influence consumer decision-making processes, impacting individual choices and market outcomes.

In a public policy perspective, welfare Governments formulate policies and regulations to protect consumers from unfair practices, ensuring product safety, fair pricing, and transparent information disclosure. Moreover, consumption behaviors can have significant implications for public health. Policies targeting areas such as food safety (including the promotion of organic food), tobacco control, and restrictive advertising policies aim to promote healthier consumption habits and protect the well-being of society.

In an environmental perspective, consumer choices have profound implications for environmental sustainability. Encouraging responsible consumption practices, such as recycling, reducing waste, and opting for eco-friendly products is crucial for addressing environmental challenges like climate change and resource depletion.

In a corporate law perspective, the corporates have the best practices that are embodied in their Corporate Governance which is ethics more than law. MNCs who contribute to the GDP are under the duty to adopt good governance or best practices.

Corporate Social Responsibility that is a part of Corporate Governance or *vice versa*, requires the companies to have regard to the consumers in their business in making profits.

These reasons indicate the importance of consumer rights which have a close causal link with trade development. Consumer rights are essential for sustainable trade development, ensuring that consumers are treated fairly and have access to safe, environmentally friendly, and socially responsible products and services. In today's globalized economy, it is crucial for consumers to be informed about their rights and responsibilities when making purchasing decisions. By empowering consumers with the knowledge and tools to make informed choices, we can contribute to a more sustainable and ethical global marketplace.

Moreover, it is argued by certain experts that, protection of the individual consumer is perceived as part of maintaining human dignity, especially against big business organizations, monopolies, cartels, and multinational corporations in a consumer-oriented society. They argue that well-accepted doctrines of human rights, such as the emphasis on an individual's prosperity, honour and dignity, therefore, can serve as the basis for recognizing consumer rights as human rights.

2. CONSUMER RIGHTS FOR TRADE DEVELOPMENT

It is well accepted that consumer rights affect international trade. The link between consumer rights and trade development is multifaceted and can be understood from various perspectives.

2.1 MARKET ACCESS AND COMPETITION

Consumer rights, such as the right to choose and access to information are essential for fostering competition within markets. When consumers have access to accurate information about products and services, they can make informed choices, thereby encouraging businesses to innovate and compete to meet consumer demands. Such competition can drive trade development by creating incentives for firms to expand their market reach and explore international trade opportunities.

2.2 QUALITY AND STANDARDS

Consumer rights often include the right to quality products and services. Ensuring that goods meet certain standards of quality and safety not only protects consumers but also enhances the reputation of exporting countries in global markets. Compliance with international quality standards can facilitate trade by reducing barriers related to product acceptance and regulatory requirements in importing countries.

2.3 CONSUMER CONFIDENCE AND MARKET INTEGRATION

Strong consumer rights frameworks contribute to building consumer confidence in domestic and international markets. When consumers trust that their rights are protected, they are more likely to engage in cross-border trade and consumption. This confidence fosters market integration by promoting the exchange of goods and services across borders, ultimately driving trade development and economic growth.

2.4 REGULATORY HARMONIZATION

Consumer rights regulations often intersect with trade agreements and negotiations. Harmonizing consumer protection standards across countries can facilitate trade by reducing regulatory barriers and promoting smoother market access. Mutual recognition of standards and regulatory convergence can simplify trade procedures, encourage investment, and enhance the competitiveness of businesses operating in global markets. Bringing consumer protection within trade agreements challenges the traditional frontier between consumer law and trade law, and an exponent argues that directly incorporating consumer rights into preferential trade agreements is a good development overall.

2.5 SUSTAINABLE TRADE PRACTICES

Consumer rights advocacy often extends to issues related to sustainability, ethical sourcing, and corporate social responsibility of corporations. Encouraging responsible trade practices, such as fair labor conditions, environmental sustainability, and ethical supply chains not only benefits consumers but also enhances the reputation of trading partners in global markets. Sustainable trade practices can lead to increased consumer trust, brand loyalty, and market access opportunities.

2.6 FOREIGN INVESTMENT

Countries with robust consumer protection frameworks are often seen as more attractive destinations for foreign investment. Investors are more likely to enter markets where consumer rights are protected, as this reduces the risk of reputational damage and legal issues. Therefore, strong consumer protection can attract foreign capital and expertise, contributing to trade development.

Hence, it is submitted that consumer rights and trade development are interconnected in various ways. Strong consumer protection frameworks enhance market competition, build consumer confidence, promote regulatory harmonization, and support sustainable trade practices, all of which contribute to the expansion and development of international trade which is essential for equitable market participation that is a path to inclusive growth in emerging economies.

3. METHODOLOGY

The research aims to critically evaluate the adequacy and effectiveness of Sri Lanka's consumer protection laws and enforcement mechanisms, focusing on their role in ensuring equitable market participation and fostering consumer trust. By addressing the shortcomings in the existing legislative and regulatory framework, the study seeks to highlight the specific ways in which inadequate consumer protection affects trade dynamics, impedes economic inclusivity, and limits the country's ability to integrate effectively into the global market.

Through a comparative analysis, the research examines international best practices and draws insights from the consumer protection frameworks of emerging economies such as India and developed jurisdictions like the United Kingdom. This cross-jurisdictional approach aims to identify practical and contextually appropriate reforms that can be implemented in Sri Lanka to bridge existing gaps and improve the enforcement of consumer rights.

The ultimate objective is to propose actionable reforms that not only enhance the protection of consumers but also create a more equitable and competitive marketplace. By doing so, the research seeks to contribute to the broader goal of fostering inclusive economic growth, strengthening Sri Lanka's position in international trade, and promoting sustainable development that benefits consumers, businesses, and the economy as a whole.

3.1 PROBLEM STATEMENT

Inclusive growth in emerging economies is intrinsically linked to the facilitation, regulation, and promotion of trade. While international conventions have sought to harmonize global trade through standardized rules, the role of modern States extends beyond adherence to these rules to include robust regulation of trade. Central to this regulation is the protection of consumer rights, as consumers are the cornerstone of trade and economic activity. However, the existence of laws and regulations alone does not guarantee consumer protection or economic growth. Without effective enforcement mechanisms, laws remain ineffective, leading to diminished consumer trust and satisfaction. This, in turn, hampers trade and undermines the prospects of inclusive economic growth.

Therefore, enhancing consumer protection laws and their enforcement is critical for ensuring equitable market participation and fostering inclusive growth in emerging economies like Sri Lanka.

3.2 RESEARCH QUESTIONS

The research is answering the main research question of how can enhancing consumer protection laws contribute to equitable market participation and inclusive growth in emerging economies, with a specific focus on Sri Lanka?

The sub-questions are:

1. How do consumer protection laws influence trade facilitation and regulation in the context of inclusive economic growth?
2. What are the key gaps in the existing consumer protection laws and enforcement mechanisms in Sri Lanka?
3. To what extent are Sri Lanka's consumer protection laws aligned with international best practices and standards?
4. How do inadequate enforcement mechanisms impact consumer satisfaction and trade in emerging economies?
5. How can enforcement mechanisms be strengthened to ensure the effective implementation of consumer protection laws?
6. What lessons can Sri Lanka learn from other emerging economies that have successfully enhanced consumer protection to promote inclusive growth?

3.3 DATA & ANALYSIS

This research is based on secondary data collected from books, journal articles, and internet sources. In addition, statutes and case law have been used to analyse.

The researcher used doctrinal legal research methodology and combined descriptive and analytical approaches to analyse in detail the concepts, statutory provisions, comments of exponents and opinion of judges. The idea behind this method is to gather data, select the appropriate ones, categorize those, critically analyse the law, provide commentary on the sources used to arrive at a finding. The doctrinal methodology best suited the researcher for a critical qualitative analysis. This study is a critical analysis of Sri Lankan laws. The researcher has also used a comparative legal methodology to compare the existing laws of Sri Lanka with that of UK and India. This helped the researcher to highlight the loopholes in Sri Lankan laws and to arrive at a conclusion that Sri Lankan law desperately needs reformation.

The research questions aim to provide a comprehensive exploration of the topic, addressing both the theoretical and practical dimensions of consumer protection and its role in fostering inclusive growth.

3.4 SIGNIFICANT CONTRIBUTION

This research makes a significant contribution by addressing a critical and underexplored intersection between consumer protection, trade development, and economic inclusivity. While existing literature often focuses on consumer protection as a standalone issue or examines trade and economic growth from a macroeconomic perspective, this study uniquely bridges these

areas, demonstrating how robust consumer protection laws and enforcement mechanisms can directly influence trade dynamics and contribute to equitable economic development.

By situating the analysis within the context of Sri Lanka, the research highlights specific challenges faced by an emerging economy in balancing consumer rights with market competitiveness. It goes beyond traditional analyses by providing a comparative cross-jurisdictional perspective, drawing lessons from both developed economies like the UK and emerging economies such as India. This approach enables the identification of practical reforms that are tailored to Sri Lanka's socio-economic realities.

The study's contribution is twofold. First, it fills a gap in the existing body of knowledge by establishing the link between consumer protection and its broader implications for trade and economic development. Second, it provides actionable recommendations that have the potential to improve market participation, foster consumer confidence, and enhance Sri Lanka's competitiveness in international trade.

Ultimately, this research advances the discourse on consumer protection by positioning it as a pivotal factor in achieving sustainable and inclusive economic growth, offering valuable insights for policymakers, academics, and industry stakeholders in Sri Lanka and beyond.

4. CONSUMER PROTECTION AS A CONCEPT

The term 'consumer' encompasses within it, purchasers of all commodities and users of all types of services. As Ross Cranston suggested consumers need protection and it was quoted by the said author that confident consumers making informed decisions in modern competitive markets promote the development of good value products. The modern law of commercial transactions recognizes this and protect consumers.

The contra concept of *caveat emptor* expects the buyer to be beware. This old Latin maxim of *caveat emptor* means 'Let the Buyer Beware' and it is one of the first in relation to the rights of the buyer and seller. This casts upon the buyer the entire burden when purchases are made. According to this maxim the buyer is at a disadvantage and forced to rely upon the skill, judgment, and honesty of the seller. It developed in the law of commercial transactions that the buyer purchases at his own risk in the absence of an express warranty in the contract. This early common law maxim well suited to buying and selling carried on in the open marketplace or among close neighbours. The writer contends that *caveat emptor* cannot be accepted in consumer transactions since the buyers are innocent consumers.

Statutes of welfare governments are now towards exemptions from the concept of *caveat emptor*. This is mainly seen where the parties to the transaction are not on equal footing. It is the exact situation in consumer law where the consumer is the weaker party. It is therefore clear that legislation is intended to safeguard consumers. The assumption of the need for protection of consumers is based on the experience that consumers are usually and structurally inferior to providers of commodities and services due to lack of resources, professional knowledge, information or experience.

Though there are laws in place, there should be powers and resources for the regulatory authorities to enforce them. Hence, compliance of the law is an important aspect and unless non-compliance is backed with sanctions, no trader will ever comply with the provisions. Thus, the regulatory authorities should take part in the enforcement process for both non-compliance and contravention. However, it is not an easy task due to the large volumes of trading activities taking place. As a result, illegal activities intrude and hinder the smooth function of the market and its reputation.

This was the position for a long time and under the principle of *caveat emptor*, where the buyer could not recover damages from the seller for defects on the property that rendered the property unfit for ordinary purposes (although there were exceptions such as misrepresentation and fraud in the transaction). The later development of the law improved the vulnerable status of the buyer who was categorized as consumer. The common law relating to consumers moved away from the *caveat emptor* model since the decision in *Donoghue v Stevenson*. Moreover, the welfare States started to be concerned over the rights of consumers. As a result, statutes were enacted that have enhanced consumer rights and allowed greater leeway to consumers. The Sale of Goods Act 1893 of UK which was subsequently repealed and replaced by the Sale of Goods Act 1979, Consumer Rights Act 2015 etc are good example for a consumer protective regime. The Sale of Goods Ordinance 1897 of Sri Lanka is almost a copy of the English Act of 1893, but a discussion of it will be outside the ambit of this research. (However, it is to be noted that there are strong schools of thought [such as Chicago School of Economists] that consumer protection legislations are undesirable departure from the principle of *caveat emptor*. This is because the government regulation in the consumer interest is superfluous, and the consumers are afforded adequate protection through the operation of the market and the common law.

5. IMPORTANCE OF SUSTAINABLE TRADE DEVELOPMENT THROUGH CONSUMER PROTECTION

Consumer protection is a wider notion applicable under many areas of law that include trade law. The term 'consumer protection' encapsulates the entirety of efforts and activities to observe, safeguard and enforce the rights and claims of a person in his/her role as a consumer. This includes, mainly, enforceable legal rights. It is widely accepted that countries with stronger consumer protections tend to grow faster than those with poor consumer protection. On the other hand, if the extent of the regulations is over burdensome, the traders might be disappointed, which will result in low trading activities. What should be borne in mind is providing consumer protection should not be at the cost of disappointing traders in their active part of contributing to the economy. As the marketplace is said to be pragmatic, the commercial realities of the trade activities should not eclipse while providing protection to the consumers. Hence there should be a proper balance between consumer protection and the measures taken for trade development. The involvement of the regulator in the regulation of consumer protection and trade development becomes essential as a result. Nevertheless, the issue remains as to whether the available provisions are enforced by the Regulatory Authorities. Therefore, utmost concern must be placed by the regulators of the market in providing adequate safeguards to the consumers while encouraging traders who market their products and services. It is therefore emphasised that the role of the regulators in the regulation of consumer protection should be for the development of a fair and efficient market or trading, bearing in mind the paramount importance of consumer protection.

The writer identifies the following as causal links between consumer protection and trade development:

Firstly, it is well accepted that there is no nation that is self-sufficient. Therefore, movements of goods and services across nations are inevitable. Countries look for positive trade balances, but it may not be possible to reach such positive levels for developing countries like Sri Lanka. To reach a positive level, the exports must be increased. To increase exports, the exporting country (seller) will have to satisfy the needs of the importing (buyer) country. It means the goods imported should meet the demands of the local consumers of the importing country. This results in emphasizing the importance of consumer rights. The writer argues therefore that there is a close link between consumer rights and trade development.

Secondly, it is common knowledge that in business transactions quite often promises are made at one time and the performances follow later. In such a situation if either of the parties were free to go back on his / her / its promise without incurring any liability, there would be endless complications, and it would be impossible to carry on trade and commerce. Such a going back on the promise is taking place in the case of every dissatisfied consumer. Consumer dissatisfaction will affect the trade adversely. Certain Nations depend on imports and the said consumer dissatisfaction will result in lowering or cancelling the concerned imports and to look for alternates.

Thirdly, the global trading system is evolving into a more complex and interconnected sphere of activity than ever before. The norms and values that guide it keep changing, requiring States to respond with a rapidity that demand analysis of, and adaptation to, many facets that influence its scope and nature. In the modern context, the impact of trading rules felt even in areas previously considered to be unconnected. Consumer right is one of such that is interconnected with global trading.

Fourthly, consumer protection is important for protecting consumers and instilling confidence in different institutions within the country. The laws can guarantee safety and quality of the products and services consumers use. A country can only experience a growth in economic activities when consumers have trust in the producers, so the producers must work to provide the assurance required to win the trust of consumers.

Fifthly, consumers in developed countries such as the USA and UK are much more conscious of their rights than developing countries. But in countries such as India, because of poverty, illiteracy and lack of awareness of legal rights consumers are quite a vulnerable for defective, adulteration and unsafe products. As a result, manufacturers and suppliers of goods and services generally exploit the consumers by adopting unfair and restrictive trade practices. This is well suited for Sri Lanka as well.

Finally, the argument often goes that trade liberalization, amongst other things, leads to lower prices, better quality products, and increased choice for consumers. Yet, in recent years, consumer organizations have renewed demands for the prioritization of consumers in international trade governance frameworks. An expert considers these demands and argues that they mask two important points. First, they highlight a normative quest to redefine the aims of trade liberalization. Second, they expose a possible dissatisfaction with the current international consumer protection regime. Against this background, the exponent concludes that these two underlying points should inform any policy and academic engagements with the demands highlighted.

6. THE LEGAL FRAMEWORK

Trade activities and the resultant economic development of any nation is dependent on consumers who contribute liquidity. When consumers finance by way of purchasing either commodities or services, they automatically obtain certain rights or powers that need protection through the enforcement of laws and regulations. Some of these rights may include value for money, right quality, expectation of timely information by disclosure etc. However, consumer protection is not embodied in just one set of rules/regulations, instead number of general or sector wise laws must be analysed. Legislations of certain countries have gone very far to protect the interest of the consumers while certain countries haven't.

7. CONSUMER RIGHTS IN SRI LANKA

Sri Lanka is committed to ensure consumer rights. In this regard, the Article 27 of the Constitution provides for the Directive Principles of the State Policy that shall guide the Parliament in the enactment of laws and the governance of Sri Lanka for the establishment of a just and free society. Thereby the State is pledged to establish in the society, (*inter alia*) the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities. To give effect to this, a number of legislations have been enacted from time to time. However, it is controversy that right to life is not expressly provided under the Constitution of Sri Lanka, other than indirect provisions such as the one stated above.

7.4 CONSUMER AFFAIRS AUTHORITY ACT NO. 9 OF 2003

The Consumer Affairs Authority Act No.9 of 2003 as amended was enacted with the objectives of *inter alia* the promotion of effective competition and the protection of consumers and for the regulation of internal trade. The statute emphasizes that it is the policy of the Government of Sri Lanka to provide for the better protection of consumers through the regulation of trade and the prices of goods and services and to protect traders and manufacturers against unfair trade practices and restrictive trade practices. Thereby the Act provides for powers to the Consumer Affairs Authority (CAA) to issue general or special directions for the protection of the consumers; determine standards; inquire into complaints regarding the production, manufacture, storage or sale of any goods which do not conform to the standards and specifications determined. The Act creates offences for which penal sanctions are provided for. This indicates the commitment of the government to enhance trade through consumer protection. However, in reality, whether these provisions are enforced is a question. No definition for consumer rights under the Act, no proper mechanism for the raids conducted by the CAA for the purpose of enforcement, no laboratory at CAA to verify the samples under complaint and therefore waits for reports from the government analyst when reports are requested (which takes nearly 3+ months), very few awareness programmes, when traders are caught for non-compliances, the traders escape using a known defence of 'this is not our product, it is a duplicate'(since there is no mandatory bar code system) and litigation at the lowest court of criminal jurisdiction, that is the Magistrate's Court where the traders play with time are some of the short comings of the Act.

6.2 FOOD ACT 26 OF 1980 AS AMENDED

The Food Act 1980 SL prohibits manufacture, importation, sale, exposure for sale, storage and distribution of food that has any deleterious substance which renders it injurious to health, consists of any foreign element or is adulterated. Several wide terminologies are used to cover all sorts of malpractices in a food industry. However, the statute has shortcomings where it includes a very nominal fine for contravention that is not of deterrence nature, jurisdiction to the lowest criminal court, no adequate enforcement mechanism and failure to create awareness among public are some of those. In practice, most of the provisions are not enforced due to lack of resources. The Act is regulated by the local authority, the Ministry of health and also by the Divisional Secretariat and this results in 'too many cooks spoil the soup'.

7.5 OTHER STATUTES

There are few other statutes that regulate matters relating to consumers. Sri Lanka Standards Institutions Act No.6 of 1984, Sale of Goods Ordinance No.11 of 1896, Weights and Measures Ordinance 37 of 1946, Cosmetic Devices and Drugs Act 27 of 1980, Electronic Transactions Act No 19 of 2006, Utilities Commission Act 35 of 2002; Telecommunication Regulatory Commission Act 25 of 1991; Unfair Contract Terms Act No.26 of 1997 are some of those.

Sri Lanka Standard is referred to as the 'SLS' that is certified by Sri Lanka Standards Institution (SLSI). The Consumer Affairs Authority may, by a gazette notification, provide for a mandatory requirement for any product to obtain SLS standard certification. The Sale of Goods Ordinance resembles the Sale of Goods Act 1893 of UK which has been repealed long time ago in UK. Sri Lanka has not kept pace, and the 128-year-old Act is still in force without a single amendment.

Electronic Transactions Act validates all electronic contracts, and it is to be noted that other existing statutes are not amended to include e-commerce that is widely practiced by many consumers. It means, Sri Lankan law has not kept up with technological changes that have taken place or lacks precision or where it is couched in legalistic language.

8. CONSUMER RIGHTS IN INDIA

India's consumer rights laws include mainly the Consumer Protection Act, 2019 and other laws such as the Sale of Goods Act of 1930, and the Standards of Weights and Measures Act of 1975. The Consumer Protection Act of 2019 (CPA 2019 – India) has made certain remarkable changes including the following:

1. The Act provides for a clear definition for crucial phrases such as 'consumer rights', 'product liability', 'restrictive trade practices' etc.;
2. The provision of 'unfair contract' was also introduced, defined as a contract that can cause a change in the rights of a consumer;
3. Three new unfair/deceptive trade practices are added to the already existed six types.
4. The concept of product liability was introduced to overcome the uncertainties in the common law;
5. New provision for direct selling and e-commerce, which elaborates basic consumer rights;
6. Power to investigate any advertisement that is false or misleading and is prejudicial to the interest of any consumer or is in contravention of consumer rights;
7. Referring disputes initially to mediation;
8. Mandates that mediation cells should be attached to State, District and National level Commissions;
9. Creation of the Central Consumer Protection Authority to promote, protect and enforce the rights of consumers;
10. The Central Authority is empowered to re-call products or withdraw services if violation of consumer rights or unfair trade practice by a person is found.

It is remarkable that the new 2019 Act has strengthened transparency and accountability and thereby empowered consumer rights. It has also enabled the consumers to make logical and informed decisions before availing themselves of any services or purchasing anything.

Even under the previous Consumer Protection Act 1986, India had easy and approachable redressal method. Consumers can complain to a District Forum or to a State Commission (at State level) or to the National Commission that is at Central Government level. An aggrieved consumer need not go to civil court, which is costly and time consuming. This layered method eases the burden on consumers and they are encouraged to complain and enforce their rights.

In addition, the Consumer Protection (E-Commerce) Rules 2020 provide that where an e-commerce entity is a company incorporated under the Companies Act, 1956/ 2013 or an office, branch or agency outside India owned or controlled by a person resident in India, it shall appoint a nodal officer or an alternate senior designated functionary who is resident in India, to ensure compliance with the provisions of the Act or the rules made thereunder. This regulation gives confidence to consumers who are now more and more engaging in e-transactions.

There established a Price Monitoring Division (PMD) in the Department of Consumer Affairs which is responsible for monitoring prices of selected essential commodities. The activities of the division include monitoring the retail and wholesale prices, and spot and future prices of selected essential commodities on a daily basis. This is a noteworthy service given the fact that majority of the consumers are from middle or low-income groups.

Unlike Sri Lankan, Indian consumers are at their rights. The number of complaints and cases filed are evidence that the consumer rights are actually known and exercised in India. The total number of consumer complaints filed online through *e-Daakhil* portal (as on 24.01.2023) in the country was 35,898. However, only few complaints are resolved. In addition, around 93 percent of the consumers never make a formal complaint for any consumer issue as majority of them rate the grievance redressal process as 'difficult', according to a survey conducted in 2011. There is no evidence for improvement from this position.

The Act 2019 has created a behemoth regulatory body in the form of the CCPA. Its powers of investigation and injunctive action can have huge ramifications in the manner in which the Indian market is perceived by manufacturers, sellers, service providers and advertisers alike, opined an author.

9 CONSUMER RIGHTS LAW IN UK (CONSUMER RIGHTS ACT 2015 - UK)

The starting point of consumer rights anywhere in the world can be said to be the landmark decision in *Donoghue v Stevenson*. Lord Atkin pronounced that,

'A manufacturer of products, which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, and with the knowledge that the absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumer's life or property, owes a duty to the consumer to take that reasonable care'.

This was at a time when there was nothing known as consumer law.

The present UK has a modern and robust consumer protection framework by way of the Consumer Rights Act 2015 (CRA 2015 – UK) which is the main statute that ensures consumer protection in many aspects. The Act is in three Parts, namely, consumer contracts for goods, digital content and services; unfair terms; and miscellaneous and general, including investigatory powers.

Part I sets out the standards that goods must meet, provides remedies available to consumers for goods supplied under different contract types, sets a time period of 30 days for consumers to reject substandard goods and be entitled to a full refund, limits the number of repairs or replacements, introduces a new category of digital content and tailored remedies if the digital content rights are not met, introduces a new statutory right that if a trader provides information in relation to a service, and the consumer takes this information into account, the service must comply with that information and remedies when things go wrong with a service. With regard to the move towards digital era, the CRA 2015 addresses this issue by establishing 'digital content' as a new category of product, covering any data which are produced and supplied in digital form. It seeks to apply familiar consumer rights to digital content as predictably as possible, bringing the consumer rights regime into the 21st century.

Part II consolidates the legislation governing unfair contract terms in relation to consumer contracts, making clearer the circumstances when the price or subject matter of the contract cannot be considered for fairness and clarifies what unfair is or the so-called 'grey list'.

Part III Consolidates and simplifies the investigatory powers of consumer law enforcers and promotes ADR for competition cases.

On the whole, the Act ensures (*inter alia*) that the goods must be of satisfactory quality, fit for purpose, that the consumers have the right to a repair, replacement, or refund if goods are faulty, similar rights to digital content, services must be provided with reasonable care and skill, contract terms must be fair and transparent, and any unfair terms are not enforceable against consumers.

Other consumer related laws such as Financial Services and Markets Act 2000, the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015 are out of the ambit of this paper.

The CRA 2015- UK consolidated and repealed many earlier statutes. It is praiseworthy that all digital contents including music, films, software and computer games are now covered irrespective of the fact that it was supplied for a price or supplied as a free incentive on the purchase of other goods or services. This is because now the sales should be fit for purpose, be of satisfactory quality and match the product's description even if it is a digital content.

Further, Unfair Contract Terms Act 1977 is repealed and therefore the test of reasonableness is not directly in force after the CRA 2015, which provides for its own "fairness test" that applies to consumer contracts. This effectively replaces the UCTA's reasonableness test in that context; however, the UCTA's reasonableness test still applies to business-to-business contracts where the Consumer Rights Act does not apply. Still, individual terms can now be deemed unfair even if they have been specifically negotiated with the consumer and fairness must be considered by the courts even if not raised by the consumer – meaning businesses must be all the more careful to ensure their terms could not be regarded as "unfair".

With regard to unfair and unenforceable terms, the law already recognised certain terms as being likely to be unfair and unenforceable. There are now specific additions to that list, namely terms which purport to allow unilateral changes to what the trader has to supply or the price to be paid; disproportionate charging; and allow charges to be made after termination of a contract for services which have not been provided.

The CRA 2015 – UK has not focused on immediate redressal methods. In a western context, whether it is a weakness or not is to be assessed. The act imposes a duty on traders to provide reasonable care and the consumer can invoke price reduction

10 INTERNATIONAL ARENA

10.1 UN GUIDELINES

The United Nations guidelines were prepared with the main objective of assisting countries in achieving or maintaining adequate protection for their population as consumers. These are said to be valuable set of principles for setting out effective consumer protection legislation in the respective countries. It was prepared considering the interests and needs of consumers in all Member States, particularly in developing ones, recognizing that consumers often face imbalances in economic terms, educational levels and bargaining power and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the right to promote just, equitable and sustainable economic and social development and environmental protection.

The guidelines are under the following headings:

- (i) National policies for consumer protection – which require policies that encourage good business practices, provide adequate, clear and timely information, transparent process for the confirmation, cancellation, return and Secure payment mechanism, speedy dispute resolution, consumer education etc.;
- (ii) Physical safety of products;
- (iii) Promotion and protection of the economic interests of consumers;
- (iv) Standards for the safety and quality of consumer goods and services;
- (v) Distribution facilities for essential consumer goods and services;
- (vi) Dispute resolution and redress;
- (vii) Education and information programmes;
- (viii) Promotion of sustainable consumption;
- (ix) Electronic commerce;
- (x) Financial services;
- (xi) Measures relating to specific areas such as food, water, pharmaceutical, energy, public utilities and tourism.

The following table is an attempt to do a comparison between Sri Lankan, Indian and UK laws with that of the international standards, namely the UN Guidelines.

UN Guidelines	Indian Law	UK Law	Sri Lankan Law
National policies	In place. Central Consumer Protection Council, an advisory body on promotion & protection of consumer rights; also established State and District CP council – ss.3-9 Powers to search & seize, recall – ss. 20-22	Not clearly found in the statute	Objectives of CAAA 2003 reflects national policies. Preamble & s.7
Physical safety of products	In place. Product Liability – Ch.VII, Offences – Ch.VII	In place.ss.9-18	In place s.12, 15-17
(i) Economic interests of consumers (unfair practices, adulteration etc	In place Ch. - VIII	In place under Part II	s.2 Food Act & ss.30,31 CAAA. Ss.34-36 on anti- competitive practices
Standards for the safety and quality of consumer goods and services	In place. Product Liability – Ch.VII, Offences – Ch.VII	In place.ss.9-18	Provisions creating offences and implied warranty available under s.32
Distribution facilities for essential consumer goods and services	Distribution not specifically provided. Services are	Not specifically provided for	Not provided

	defined to include transportation		
Dispute resolution and redress	Comprehensive mechanism in place. At 4 levels - Ch.IV Mediation - Ch.V	In place. Ss.19-24, ss.42-45 for digital content, ss.54-56 for services. Powers of court specifically provided under s.58;	s.13
Education and information programmes	None specifically	Not specifically provided for	Not available though <i>ad hoc</i> awareness programmes are conducted
Promotion of sustainable consumption	None specifically	Not specifically provided for	Not specifically provided for
Electronic commerce	Rules mandate every e-commerce entity to display the country of origin.	In place separately under Ch.3	Separate statute, Electronic Transactions Act available. No amendments to the Consumer statutes
Financial services	Banking & financing services are covered – s.1(42).	Although ‘services’ include financial services and ‘trader’ includes financial service provider, there is nothing specific. May be because there is a Financial Services and Markets Act 200 in force.	Banking and financing are included under the definition for ‘services’ under s.75

10.2 INTERNATIONAL SURVEY

Consumer Protection and Empowerment Index by ‘Consumer International’ (2020-2021) shows an overall consumer protection at 53% only which indicates that there is still substantial room for improvement across all areas of consumer protection and empowerment.

Further, PWC has done surveys since they are of the view that in today’s challenging marketplace, it is vital for companies to connect with consumers higher up the purchasing process and address the point of decision. Their June 2023 Global Consumer Insights Pulse Survey of 8,975 consumers in 25 countries and territories reinforces a clear imperative for companies seeking a competitive advantage: empower their consumers by providing them with the necessary tools, information, technology and support for their decision-making. 2024 report reveals that there are good and bad aspects seen in consumer purchase pattern. The good news for leaders of consumer-facing businesses is that the global consumer markets are set to continue expanding. The global consumer class, comprised of those spending US\$12 or more per day, reached 4 billion last year, and is projected to reach 5 billion people by 2031. The bad news is that there is a widening gap between the trust that executives think consumers place in their companies and the ‘trust’ that consumers actually have in them. To maintain and grow market share, companies must figure out how to build trust in several dimensions.

In addition, the Global State of Financial Inclusion and Consumer Protection Report survey is a recognition for consumer protection as a tool for global financial inclusion. UNCTAD has done a survey on World Consumer Protections and statistics. However, data specifically on Sri Lanka in this regard is not available.

11. CONSUMERISM

The consumers constitute the starting point of economic activities and its role has always been valued by the development of the market. The reason being obvious that there is no economy without trade and there is no trade without consumers. In effect, adequate consumer protection allows the economic systems to work through the consolidation of the rights of the citizens. Concern over the interests of consumers has spawned consumer activism, where organized activists do research, and through education and advocacy try to improve the offer of products and services. An early form of consumerism in defense of consumers, and it was born in countries over the birth and development of monopoly and oligopolistic capitalism. Until the 18th century, the consumers had to verify the quality of the goods they purchased and only in presence of gross negligence the seller could have been held liable. The struggle against capitalism and food fraud started the first phase of consumerism. The first consumers’ organizations were born in Denmark in 1947 and in Great Britain in 1955 where the Government created the Consumer Council in order to enable consumers to express themselves on issues reserved to producers and traders. Over the years, some important changes were made, and modern legislation paved the way for a wider consumer policy. In Europe itself there are many consumers’ organizations. The Regulation on Consumer Protection Cooperation (CPC) is applicable in the European Economic Area. The International Consumer Protection and Enforcement Network is a worldwide organization involving more than 40 countries, most of which are members of the OECD and formed with the objective of sharing information about cross-border commercial activities that affect consumer interests, and to encourage international cooperation among law enforcement agencies. The Organization for Economic Cooperation and Development addresses a wide range of issues relevant to consumers.

India is active in consumerism while Sri Lanka not. The CPA 2019 recognises consumerism by allowing complaints to be lodged by consumer associations on behalf of consumers. S.22 of CAAA 2003 – SL provides that any association may request the Director General to investigate any matter. The National Movement for the Protection of Consumer Rights of Sri Lanka raises voice on and off and it is inadequate to the deficiencies that are found in Sri Lankan law.

Many activists acknowledge that consumer capitalism can redefine itself in ways that accommodate some of their demands. This may take the form of creating niche markets (for ethical or green products) or by accepting a degree of regulation as a necessity for its continuing legitimization.

12 COMPARATIVE ANALYSIS

- (i) **Legislative Reforms in UK**
The UK has repealed laws such as the Sale of Goods Act 1979 and the Unfair Contract Terms Act and consolidated relevant provisions into the Consumer Rights Act (CRA) 2015. This includes implied conditions and warranties which were previously part of the Sale of Goods Act 1979. In contrast, India and Sri Lanka continue to rely on their older statutes without significant modernization.
- (ii) **Exemption Clauses**
Section 31 of the CRA 2015 in the UK outlines liabilities that cannot be excluded or restricted. This strengthens consumer protection by rendering exemption clauses in favour of traders being unenforceable, effectively placing consumers in a position of power. Sri Lanka could take inspiration from this provision to bolster consumer rights. This may be a lesson for Sri Lanka.
- (iii) **Price Monitoring**
The Consumer Protection Act (CPA) 2019 of India establishes a Price Monitoring Division (PMD) under the Department of Consumer Affairs to regulate the prices of essential commodities. This provision is commendable as it directly addresses core consumer needs. In Sri Lanka, while the CAAA 2003 grants powers under Section 13 to issue maximum retail prices (MRP) and includes a Pricing Management Division, enforcement is weak. Although indicative prices are gazetted, inadequate mechanisms ensure traders' compliance, leaving consumers vulnerable.
- (iv) **Product Liability**
Sri Lanka lacks a comprehensive product liability regime. It is crucial for the country to expand its consumer protection laws to address liability for defective products effectively.
- (v) **Mandatory Receipts**
Section 28 of the CAAA 2003 requires traders to issue receipts upon request. This provision should be amended to mandate the issuance of receipts, either printed or electronic, for all transactions. Many consumers who wish to file complaints later discover they lack proof of purchase, which undermines their ability to seek redress.
- (vi) **Redressal Mechanisms**
India's redressal mechanisms under the CPA 2019 are robust, offering tiered, no-cost remedies at district, state, and national levels. Sri Lanka could benefit from adopting a similar framework to provide consumers with accessible, cost-effective, and speedy solutions before resorting to litigation.
- (vii) **E-Commerce Transactions**
The CAAA 2003 and the Sale of Goods Ordinance in Sri Lanka should be amended to address the growing prevalence of e-commerce transactions. Current statutes are outdated and do not adequately protect consumers in online marketplace.
- (viii) **Sustainability**
Practically possible standards are not visible in statutes.

Sri Lanka's trade balance indicated a negative figure in the past. The writer argues that inadequate consumer protection also has contributed to such minus figures. The deficiencies referred above in support with the argument.

12. CONCLUSION

The research effectively addressed the critical issue of inadequate consumer protection in Sri Lanka and its adverse impact on trade development and economic inclusivity. Through a comparative analysis of legislative frameworks and enforcement mechanisms in the UK and India, the study underscores the significant strides these jurisdictions have made in modernizing their consumer protection regimes. By juxtaposing these advancements with Sri Lanka's existing framework, the research identifies key gaps and areas requiring urgent reform.

The UK's comprehensive consolidation of consumer laws, coupled with stringent restrictions on exemption clauses, demonstrates how clarity and consumer-centric legislation can foster trust and accountability in the marketplace. Similarly, India's proactive measures, such as price regulation, digital consumer protection, and robust redressal systems, provide a practical model for addressing emerging challenges, including those posed by e-commerce and defective products. These insights align closely with the objectives of the research, offering actionable strategies to improve consumer confidence and promote equitable market participation in Sri Lanka.

The study achieves its primary objective by proposing targeted reforms tailored to Sri Lanka's socio-economic context. These include strengthening enforcement mechanisms, mandating the issuance of purchase receipts, and addressing contemporary challenges like weak price regulation and the lack of consumer safeguards in digital transactions. By integrating these measures,

Sri Lanka can enhance consumer protection, foster greater market inclusivity, and position itself as a competitive participant in the global trade arena.

In conclusion, the research establishes the critical role of consumer protection in driving trade development and inclusive economic growth. By bridging the gap between consumer rights and market dynamics, the study not only addresses the research problem but also provides a roadmap for Sri Lanka to align its consumer protection laws with global best practices. This alignment is essential for creating a fairer, more inclusive marketplace that benefits consumers, businesses, and the broader economy.

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