

## NEED FOR INTERNATIONAL CONSUMER PROTECTION FRAMEWORK AND POLICY- LEGAL CONCERNS

*Abhinav R. Pisharody*

Symbiosis Law School, Hyderabad

*The national markets constantly developing due to the economic globalization has placed the consumers in such a diverse position about the decisions that they have to take to full fill their needs. The consumers have to face many problems while acting in the global environment. The main issue is of protecting their rights in the international market. Though by globalization the consumers have got a huge opportunity in terms of choices it has raised concerns over the issue of consumer protection. Addressing these challenges include the identification of the limitations and advantages of the current technology also knowing the balance between the governmental intervention and self-regulations by the corporates. The issues related to the national consumers are dealt with the national laws formulated by the government. There is vagueness about the law that governs the international market. In the current circumstances each country has different law related to consumer protection. In some countries even there is absence of consumer protection laws. The law of the different countries refutes each other at many situations. Even United Nations has raised the need for framing an international framework on consumer protection by proclaiming certain guidelines. The research is about the implications of such an international framework and also its relation with the Indian law. The author through this paper would like to highlight the main provisions of the Indian law that will create certain obstacles while creating such a framework. The research paper would also identify the provisions in the Indian consumer protection act in relation to the international market. The author through this research shows that though with all these diversities in laws of the countries we can achieve the idea of Consumer Protection law to govern the international market uniformly with the combined effort of the world countries.*

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### INTRODUCTION

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The society from long back has tolerated many risks associated with the product procurement. In this globalized world the risk allied with these practices of buying is higher. In such a situation the laws of consumer protection have got a major role to play in protecting them from various risks. Recently we have seen that many developed countries in Europe and some in Asia have enacted consumer protection laws. But they are mainly geographical and national laws. In the globalized world we have transactions dealing from different parts of the world. They can be protected by only laws which are totally democratically formed and if they fail to do so then the people may question their relevancy and also the government forming such rules. In various situations there is conflict between

laws of different countries and that cause a huge hindrance for the enactment of such laws in the international context. In the present globalized world where the trade has crossed all the political and geographical boundaries it is very difficult to track the production, marketing and distribution of the goods in the world and identify the proper physical and juristic locality. Unless and until this locality is identified proper legal control cannot be implemented. Facing these challenges can be done by analyzing the advantages and limitations of the new technology and also the various existing consumer protection laws in the world. It also requires identification of the balance between the various government regulations and also the self-regulation by the corporates. The Indian law can only be exercised on the Indian territory, in today's globalized world where the people can do transactions with a click on the mouse the laws that is to be enforced is a big question in front of the judiciary. The way to answer this question is only creating a law that has universal application. The United Nations taking this into considerations have delivered consumer protection guidelines in the international level. The guidelines were adopted in 1985. The United Nations guidelines for consumer protection (UNGCP) is an international reference point of the consumer movement. This paper deals with the difficulties that are to be faced while preparing such a law.

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## HISTORY OF CONSUMER PROTECTION

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The consumer always constitutes to be the starting point of the economic activity and also considered as the factor of development of the economy. The adequate consumer protection allows the economy to consolidate the citizen's rights. The Old Testament talks about the consumer protection also the old code of Hammurabi, but only in the mercantile perspective. A movement for the protection of the consumers began from the place of origin of monopolistic and oligopolistic capitalism has been started that is the United States. Till 18<sup>th</sup> century consumers wanted to verify themselves the product and its quality and only in the presence of gross negligence the producers could have been held liable. The struggle against capitalism and the atrocities against consumers were prevalent but became more powerful in 1950's which also saw the entry of European countries into the movement. The first consumer organization was born in Denmark in 1947 which was used to express themselves in issues related to producers and sellers. But the real breakthrough came with the single European act. Though after all these measures it still lacked solid foundation in consumer protection.<sup>1</sup>

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## HOW DOES GLOBALIZATION INFLUENCE CONSUMER PROTECTION?

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While the information acquisition cost for the consumers are increasing the choice and the need of the consumers are increasing rapidly. But the consumers are now extensively being victimized to the same extent of the fraud that was being carried out in the domestic

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<sup>1</sup> "The International Law And Consumer Protection: The History of consumer protection", by Antonella Corradi, Published on- January/ February 2015, Retrieved on- February 28 2017.

market in the newly developed global market. The main issue is who will protect the people from these vulnerabilities.

On the national level the consumers are protected through the appropriate laws for the protection of consumers. The national consumer protection is developed from the internal political, social, economic pressures as well as external forces. From other point of view, the consumers would develop themselves as they get better education and knowledge due to the free trade environment. The consumer groups claim that the globalization in general and liberalization in particular exert the pressure on national consumer protection laws and would lead to stringency in the lower level law. On the contrary the supporters of the free trade argue that the globalization not only fails to undermine the consumers but also in fact promotes consumer protection standards as the healthy and wealthy jurisdiction can promote greater regulatory stringency.

The result of the diversity in the national approaches leads to the situations which can cause tensions not only domestically but also in the global and bilateral trading environment. If such conflicts are not resolved amicably then the international free trade system would be at stake by which the whole idea of free trade for consumers and the sellers would be at stake. The solution is harmonization of the whole system of individualized consumer protection among the countries as the consumers are no more confined among the country's boundaries. So an international approach is required in the consumer protection system to avoid such conflicts would lead to the failure of the whole reason for which the free trade was started. But making such a law has an issue of two strategic dilemmas. First which set of the standards and regulatory rules/laws should be adopted where several equilibria are possible. Two solve this problem the agenda setting should be given to the individual organizations (as in case of the European Commission for European Union) which would come up with a dynamic law applicable to the whole world.

The record at the international level is not up to the mark, as to date, true multilateral initiatives on consumer protection are not very effective. The only two examples of international harmonization is the agreements formed by the members of the World Trade Organization, the only organization in the world dealing with the trade between the countries. Although they are not directly formed for the protection of the consumers they indirectly deal with the regulation of the problems and reduce the ambiguities regarding international trade.

Their main objective is to promote harmonization of national standards, urging the use, as benchmarks for establishing national regulations, of international standards set specialized organisms. By adopting and harmonizing with these international standards when appropriate, national economies are able to achieve regulatory goals while minimizing unwanted impediments to international trade concerning consumer protection. These

approaches can increase the similarity of regulatory environments and thus can facilitate the access and presence of consumers and producers across international markets.<sup>2</sup>

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### ICPEN (INTERNATIONAL CONSUMER PROTECTION AND ENFORCEMENT NETWORK)

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The initiative of Danish Consumer Ombudsman to form an informal network of the consumers from all over the world led to the development of such a network for consumer protection. Following up on that initiative, participants at a 1992 meeting in London hosted by UK's Office of Fair Trading agreed to a Memorandum on the Establishment and Operation of the ICPEN (the "ICPEN MOU") which formally established the International Marketing Supervision Network. The network was focused on tackling the issues related to the international and cross border transactions and dealings in both goods and consumers. It also focused on exchanging information among the people for better understanding for the consumers. To better reflect the work of the Network, at a meeting held in Sydney in September 2002 the name of the Network was changed to the International Consumer Protection and Enforcement Network (ICPEN). The ICPEN MOU has also been amended a number of times since 1992.<sup>3</sup>

#### Participants of the network

Delegates from Australia, Austria, Belgium, Canada, Denmark, France, Finland, Germany, the Netherlands, Hungary, Ireland, Japan, New Zealand, Norway, Portugal, Spain, Sweden, Switzerland, the United Kingdom, and the United States established the Network in 1992, with participation from representatives of the OECD and the EU. Greece, Italy, and Luxembourg joined shortly thereafter. Mexico became a member of the Network in 1994. Malta, the Republic of Korea, Poland, Slovakia, and the Czech Republic joined in 1996, Latvia and Estonia in 2002, Lithuania in 2003, Cyprus and Chile in 2005, Azerbaijan and China in 2006, Costa Rica, Egypt, El Salvador and Turkey in 2010, Barbados in February 2011, Panama in June 2011, Bulgaria in January 2012, Mongolia and Papua New Guinea in June 2012, Israel, Nigeria and Vietnam in April 2013, Colombia in September 2013, Dominican Republic, Philippines and Seychelles in January 2014, Zambia in March 2014, Angola in January 2015, Suriname in June 2015, Peru in October 2015, Kenya in March 2016, and Kosovo in April 2016.<sup>4</sup>

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### INDIAN CONSUMER PROTECTION

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India is among the countries that have adopted a separate law to protect the consumers. In 1986 the Indian Consumer Protection Act came into existence for the protection of

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<sup>2</sup> Globalisation and Consumer Protection, by Gheorghiu Gabriela, Bunda Nicotela Ramona, Popovici Veronica, Retrieved on 02/03/2017

<sup>3</sup> Official Website of ICPEN, <https://www.icpen.org/for-consumer-experts/who-we-are/history>, Retrieved on 23/02/2017

<sup>4</sup> Official Website of ICPEN, <https://www.icpen.org/for-consumer-experts/who-we-are/participants>, Retrieved on 23/02/2017

consumers in the commerce world. Some important features of the Indian Consumer Protection Act:

- The act provides speedy redressal to the consumers through consumer protection councils set at different levels through the consumer protection act. The consumer redressal forums are set up at district, state and national levels. The complaints are usually filed in the district forum if more than the claim of 10 lakh then in state forums.
- The act provides voluntary movement of the consumers through setting up consumer protection councils at state and center.
- It applies to all goods as well as services except some which are exempted by the central Government.
- The provisions of the law are an addition and not derogation to any law for the time being enforced.
- Required penal and punitive provisions are added for effective protection of the consumers.
- The complaints can be filed by an individual and also by organizations.
- The complaints can be filed for damages caused due to faulty, defective products, priced more than the price marked on the packet etc.

Some drawbacks of the Indian Consumer Protection Law are as follows:

- The law can be enforced only on the Indian Territory. So it causes problem to the enforceability in cases which include overseas transactions.
- The law does not give any provisions for the transactions which include parties not from India.
- Increased number of appeals to the State and National commissions.
- The consumer protection act of 1986 gives assistance to the consumers as defined under the act which talks about consideration. Thus a person using a voluntary service is not bound by the Indian consumer protection act 1986. They cannot get any remedy for the loss that he/she incurs.

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## UNITED STATES' FTC & INTERNATIONAL CONSUMER PROTECTION

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The globalization and technological advancement has caused unprecedented new opportunities for the consumers. The FTC pursues an international market based consumer protection model which focuses on protection of the consumers along with increasing the economic benefit. These developments have posed certain new problems to American consumers. It ranges from the online thefts to spoofed mails and hacking. The FTC have challenges such as speed of the internet and also anonymity of the person trading with over internet. As US companies do business in international market and making consumer protection an international issue FTC's work focuses on International Corporation. The FTC works with more than 100 organizations from different countries around the world, corporates with authorities in enforcement and policy matters through formal and informal agreements. In area of enforcement FTC focuses on following 4 key

factors: (1) Information Sharing, (2) Investigative assistance, (3) cross-border jurisdictional authority, (4) enforcement relationship.<sup>5</sup>

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## CONCLUSION

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Faced with the increased opportunities and choices in the global market the consumers are exposed to similar risks that they have to face in the local market. Now this is the situation when the national laws become ineffective to maintain the situations offered by the exercise of the consumption function. Although the consumers in the global market are well aware of their rights and other matters related to the trade the diversity created by the national laws play a key role in posing obstacles in shopping elsewhere in the world. In this context it becomes very important the joint venture of the countries in the world at regional and global level to avoid any disputes that may arise in the international trade relations and related consumer protection. Various solutions available in the society, the best is to have an international law for all countries which all of them should comply with, which is hard to achieve. But it is the only way to assure a safer environment for consumers to act in the global environment.

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<sup>5</sup> Official Website of FTC, <https://www.ftc.gov/policy/international/international-consumer-protection>, Retrieved on- 27/02/2017.