

Law and Policy Review (LPR)

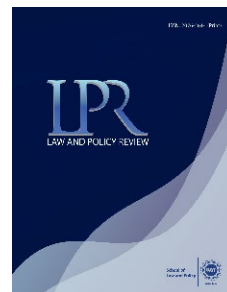
Volume 2 Issue 2, Fall 2023

ISSN(p): 2076-5614

Homepage: <https://journals.umt.edu.pk/index.php/lpr>



Article QR



- Title:** Analysis of Approaches on the Protection of Consumer Rights
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- DOI:** <https://doi.org/10.5349/lpr.22.02>
- History:** Received: September 4, 2023, Revised: November 30, 2023, Accepted: December 27, 2023, Published: December 29, 2023
- Citation:** Gujjar, M. W., Manzoor, B., Rana, A., & Ahmad, M. (2023). Analysis of approaches on the protection of consumer rights. *Law and Policy Review*, 2(2), 26–36. <https://doi.org/10.5349/lpr.22.02>
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- Conflict of Interest:** Author(s) declared no conflict of interest



UMT

A publication of
School of Law and Policy
University of Management and Technology, Lahore, Pakistan

Analysis of Approaches on the Protection of Consumer Rights

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Abstract

In an era, characterized by striking globalization affecting every field of life, the very foundations of consumer rights and mechanisms designed to uphold them have undergone a significant evolution on a global scale as well. With the increased inclination towards online shopping, the attitude of consumer and the vendor both have evolved. This evolved attitude tends to call for more diverse regulations at international and domestic level. The current study is an exposition on the consumer rights with the pretext of emerging legal, economic, and social scenarios with the focus on the impact of globalization worldwide. After liberalization of trade, private entities now sell their products directly to the consumers by sitting in one country across the world. The role of big companies has increased in a globalized world especially over the past recent years. Cross-border consumer contracts have become frequent between traders and consumers. Keeping in view the rapid spread of globalization and its effects on consumer rights, there is a significant need for a harmonious and effective mechanism of international rules and regulations for their protection.

Keywords: choice of law, consumer rights, globalization, harmonization, private international law, supranational

Introduction

In international legal system, very minimal attention has been given to the field of consumer rights protection due to which the respective area is considered to be less developed. Consumer protection rights are often less prioritized in international law because other essential rights are considered more crucial. These include rights of refugees, humanitarian rights, children's rights, rights of prisoners of war, rights of women, and rights of migrant workers. Additionally, the amount of work done by the scholars of international law in the field of international consumer rights is quite less when it is compared with the international environmental law, humanitarian

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law, intellectual property law, and investment law. There is no proper organization or association for the protection of consumer rights in the international arena. It is because these organizations and associations are available for the protection of industrialists or producers and labors who work for such industries or for producers.

Status of Consumer Rights in International Law

Many legal scholarships are available in the area of trade, investment, and human rights law as compared to legal scholarships in the area of consumer law. There are resolutions, declarations, and guidelines related to consumer rights protection by some international bodies and associations, however, they are not adequate. These guidelines provide persuasive power for states to make laws on consumer protection. The resolutions and guidelines formulated by international bodies are unable to create a required harmony in the consumer protection laws. Regional organizations make efforts at regional level, such as European Union (EU), that has developed a mechanism for consumer protection nevertheless, that mechanism is formulated at the regional level. The rules of Private International Law (PIL) of various countries are workable in this field, however, no harmonization creates complexities between them.

In cross-border consumer transactions, traders and consumers are located in different territories of sovereign states. Therefore, sovereign states have adopted different approaches to protect consumer rights in these transactions. Some states have adopted the principle excluding choice of law, while others have adopted the principle of limiting it. Some states under the rules of PIL, are in favor of liberty to select the law. While, some states favor rule of habitual residence of party for protecting the consumer's rights. There is no harmony between these states to deal with the issue of cross-border transactions, related to consumer rights protections. Therefore, there is a need to develop a mechanism to harmonize consumer protection laws or to establish institutions at international level in order to deal with this issue.

Many institutions have been established at the international level, such as United Nations High Commission for Refugees (UNHCR), and for investment protection, there is World Trade Organisation (WTO). Unfortunately, for the protection of consumer rights, there is no such institution since this area is still considered less important. Economy is the

backbone of every society and consumers play an essential role in it, who are still without any protection at international level.

International, Regional, and National Approaches

In national and international transactions, consumers lack bargaining power. The protection of consumer rights is there in the form of national or local laws, directives, conventions, resolutions, agreement and guidelines at national, regional and international level. Globalization has increased cross-border consumer transactions. There are two approaches to protect the consumer's rights. One approach is in the form of uniform supranational law and the other is the protection of rights through traditional rules of PIL. In universal approach in PIL, the contracts are reigned over by the law chosen by parties.

PIL provides mechanism to tackle the impact of globalization on cross-border consumer transactions. These contemporary developments pertaining to the consumer transactions need to be protected to deal with the choice of law, since other areas of law did not come to main picture prior to the mid-twentieth century. The impact of globalization on consumer transactions resulted in the consumer rights' movements during 1960s and 1970s (Ruhl, [2011](#)). These movements prompted the legislations, academic writings, and Courts' decisions to incorporate the idea of consumer protection in the choice of law. One of the first legislation was introduced in 1970s along with five other European Conventions on the law applicable to the contractual obligation (Rome Convention) (Lando, [1987](#)). Swiss Act on PIL added choice of law clause as a result of voices on the consumer rights in cross-border transactions (Coyle, [2017](#)). The independence to choose law for consumer rights is an important part of legal structure of the countries in the globalized world (Ruhl, [2011](#)).

A debate, on the jurisdiction of Court, gained momentum recently. The law that determines the Court's jurisdiction has been introduced in the Brussels Convention of 1968 and the Brussels Convention of 1968 commerce (e-commerce) is going through debates for the revision of rules in jurisdiction of Court after the proposal made by the Commission of the European Communities (Foss & Bygrave, [2000](#)).

The choice of law principles and rules for the contractual transaction have been introduced in Rome Convention which is an internationally recognised treaty (Hill, [2004](#)). The choice of law rules unification are there

in the Rome Convention which fairly protect the cross-border consumer transactions among the state members (Behr, [2010](#)). This resulted in convenient implementation for the United Kingdom (UK). The European Commission desired replacement of the Convention with the regulations (Gillies, [2007](#)).

After negotiation, Rome I came in 2009 and these regulations are applicable in UK (EUR-Lex, [2008](#)). Article 3 of the Rome I regulation provides the prerogative to the parties for choice of law. This prerogative, to select a particular law, protects their interest. Consumer, who is a weaker party, may benefit from this principle. Article 6 deals with the liberty to select the law for consumer contracts. Rome I regulation is for contractual obligation, whereas Rome II regulation is for non-contractual obligation (Pepe, [2010](#)). These regulations create harmonization of rules in choice of law for European Union (EU). The party autonomy rules, in cross-border consumer contracts, make the law certain and predictable in protecting their interest, irrespective of weaker party. Almost 81 countries are part of Hague Conference, which is son commercial contracts, however, Pakistan is not its part.

Brussels regime (Brussels Convention 1968) provides the set of rules pertaining to the choice of jurisdiction of Courts for any dispute, related to commercial transactions. States, which were not eligible to become a part of it, became part of Lugano Convention (Lugano Convention 1988). Apart from these conventions, EU signed a separate agreement (EU-Denmark Agreement 2007) with Denmark for choice of jurisdiction of courts in consumer contracts between EU and Denmark (Delbrück, [1993](#)).

Consumerism was initiated in USA in early 1900s. Two Acts were introduced namely Food and Drug Act (1906) and Meat Inspection Act (1906). In 1914, Federal Trade Commission for Protection of Consumer interests was entrenched. After this, USA passed many consumer related laws. FTC is a federal level agency. It is an independent agency which is free from other departments and is executive. It was established in 1914. It has Consumer Protection Bureau apart from Bureau of Economics and Bureau of Competition. FTCA prohibits prejudiced or misleading acts or practices in or affecting the commerce. It has power for relief, litigation, civil litigation, adjudication, criminal prosecution, and rule-making. The rules are to be contemplated as hard laws. The World Federation of Consumer Groups namely, Consumer International, was founded in 1960.

In 1962, a bill for consumer protection was introduced before Congress by the President of USA, John F. Kennedy. The US President Gerald R. Ford in 1970s, added Consumer Education to the Consumer Protection Bill (Ansari, [2013](#)).

A United Nations Convention has been formulated on contracts for the International Sale of Goods (Vienna, 1980) (CISG). Moreover, a UN Draft resolution has also been formulated on consumer contracts along with the United Nation's guidelines on consumers as well. The General Assembly of the United Nations adopted eight consumer rights in 1985 to protect consumers from abuse and fraud. These rights are considered fundamental. This step enhanced strong consumer protection policies globally (Khan et al., [2014](#)).

Foreign judgements and foreign laws are recognized in the Code of Civil Procedure, 1909, Qanun-e-Shahadat Order, 1984 and some other laws in Pakistan. The common law approach, to deal with cross-border consumer transactions, is available under these laws. Pakistan has drafted laws to deal with consumer rights, namely the Islamabad Consumer Protection Act 1995, the N.W.F.P Consumer Protection Act 1997, the Baluchistan Consumer Protection Act 2003, Punjab Consumer Protection Act 2005, and the Sindh Consumer Protection Ordinance 2007. These laws are not harmonious in Pakistan as each federating unit has legislated separate law, from their provincial legislature house, for consumer rights protection that is applicable jurisdiction of province. (Shabbir, [2013](#)).

The protection of consumer rights should be a top priority in Pakistan, especially in this era of globalization similar to the developed countries including UK, Australia, China, and United States of America (Shabbir, [2013](#)). Globalization is leading to an increase in cross-border consumer transactions in Pakistan as well. Therefore, there is a need to place it in federal legislative list in the Constitution of Pakistan, 1973 for the purpose of harmonization of laws. In *Abdul Razzak v. The East Asiatic Co. Ltd.*, the Supreme Court stated that agreement between the parties on choice of law is against public policy and sovereignty. Pakistan is maintaining this position so far (Gandapur et al., [2014](#)).

Effect of Globalization on Consumer Rights

Globalization refers to the process of interaction between people, companies, and governments worldwide. It is an important phenomenon of

the modern world. One of the most crucial elements for the spread of globalization is consumerism. Trillions of dollar trade occurs daily among the states across the world and the target of this trade is to sell products to consumers for consumption. It is pertinent to mention here that, more than anything, globalisation may be considered as the spread of market. In international market, international laws protect the investment of traders and producers in foreign countries. These investors can go to international organizations, such as World Trade Organisation (WTO), International Chamber of Commerce (ICC), International Chamber for Settlement of Investment Disputes (ICSID), and some others, for the protection of their investments. While, no such forum is available for consumers on the other side. Globalisation refers to the spread of capitalist market and protection of capitalist class. This capitalist class influences the international organizations. Though, these international organizations, capitalist class can dictate their terms to sovereign states since they may influence these supranational bodies. Sovereign states feel trapped in the mechanism provided by these supranational organizations (Dinu, [2014](#)).

Consumerism refers to the supply chain of products. It includes protection for consumers. There is a significant increase in the cross-border consumer transactions in the globalization. Consumers are entering into different types of contracts which include international sales contracts, service contracts, and interstate contracts. General contract law mostly governs these contracts, and sometimes there is also a choice of law in these contracts. These contracts are an essential factor of the economy in the free competitive market (Jubas, [2007](#)).

In the past, monarchs used to issue directives for consumer protection rights. Similarly, monarchs used to control cross-border transactions in the interest of consumers. In sub-continent history consumer protection was present in the system (Ahmad & Mangalam, [2009](#)). In the current scenario of the world, modern wave of consumerism is a result of industrial revolution, internet, and globalization. A cross-border consumer transaction is an issue of the modern world which mostly gained prominence after World War II. The establishment of international institutions such as WTO, EU, NAFTA, and some others played an essential role in the development of this concept. In this age of globalization, there is a dire need of a proper mechanism for consumer protection (Sitnikov & Bocean, [2021](#)).

Consumers find it easy to purchase online. The Internet catalyzes the spread of globalization which includes increase of business and trade. Internet is cost effective and provides more options and information about the product of the company which saves their time as a result and the product is available round the clock on the website. The consumer can read reviews about that product. The commercial activity on internet has increased rapidly and significantly in the past recent years (Binding & Purnhagen, [2011](#)).

The world community sees and recognizes the significant growth of e-commerce. There is a need to regularize these activities properly for the benefit of all. There should be regularization at state level and transnational level. These regularizations would increase the capacity of state to keep a check on these kinds of transactions which would also help in tax collection, which, in turn, would increase the revenue of state. These laws increase the confidence of consumers in online market. The regularization of cross-border transactions help to increase the businesses of suppliers. The structured mechanism is vital for state and other international organizations dealing with a trade to play its role in developing a mechanism for regularisation of such kinds of consumer contracts (Hilton, [2018](#)).

The important area related to consumer rights is online cross-border consumer contracts in which a consumer can buy a product by sitting in Maldives from America because the website is accessible through internet. Hundreds of contracts of such nature are made every hour. Due to this reason, the role of international organization has become quite important. There is a need to develop a transnational mechanism in this regard, so it can be efficiently dealt with the fundamental questions of the place of business and place of performance (Virgil et al., [2015](#)).

Due to the increased facility of transportations in a globalized world, consumers frequently travel from one country to another for shopping. Mostly, they are unaware of their rights provided by the host country. Some traders may deceive them due to their ignorance about the laws of the host country. On return to their home country, the sold products may be discovered as defective. Owing to the given facts and to overcome such issues, there is a need for some international mechanism which should promote harmonization of laws on consumer rights among states and can solve these issues of the globalized world (Kaynak & Hassan, [2014](#)).

Consumers are the most vulnerable in the globalized market. They have less bargaining power in comparison with big Multi-National Companies (MNCs). MNCs are in a position to dictate their terms in a cross-border contract which can be detrimental to consumers. These companies can hire the services of best lawyers to frame the terms and conditions of contracts which are favorable to them. The terms of such contracts often protect the interests of companies but unfortunately the rights of consumers are ignored. In such situation, there is a dire need of consumer protection laws at international level (Setiodjati & Wiwoho, [2021](#)).

The role of MNCs has greatly expanded due to globalization. They are leading players who can manipulate the world economy. Today in the globalized world, these companies earn more revenue than many states in the world. These companies have great influential power in world politics for the protection of their interest. The pace of economic power of these companies is expanding at a faster rate than Least Developed Countries (LDCs). These companies even exploit the sources of LDCs on the conditions that are not considered acceptable, however, they still manage to secure agreements due to their economic might and by pressurizing these countries. MNCs easily influence LDCs to sell off their sub-standard products to the consumers. Generally, in this scenario, states are helpless for the protection of consumer rights of their citizens. MNCs have their offices in different states. The situation can become complicated in case of holding them liable. A consumer lacks such sources for their protection (Goldring, 1998; as cited in Goldring, [2008](#)).

Conclusion

The flow of economy is crucial for the society to grow. Since the economy is the back bone of any society, in the same way consumers are the backbone of that economic growth. The lack of effective legal regimes indicates that consumers have become more vulnerable due to the effect of globalization. The consumer's rights require recognition and enforcement at national and transnational level. The domestic laws of most of the countries demand evolution to deal with the striking impact of globalization on cross-border consumer transactions. The given circumstances stand in the need of worldwide harmonization of laws and establishment of supranational regimes which will help to create laws more certain and predictable. Resultantly, it would benefit all and consumer rights would get the required protection in the era of globalized world.

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