

CONSUMER PROTECTION LAWS TOWARDS E-COMMERCE IN THE EMERGING DIGITAL SOCIETY OF SRI LANKA

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Introduction

E-commerce can be identified as a distance trading and purchasing method using electronic devices. The usage of the internet became easily accessible nowadays, causing an increase in the participation of electronic transactions all over the world in the past two decades. McClafferty states that;

“The Internet is becoming an increasingly popular means for the sale of goods and more and more transactions are being made online”¹

The smooth and fast access to the online stores without time and venue constraints through a range of devices, to a variety of goods and services, including digital content and physical products, has made purchasing more convenient for the consumers. Also, it allows consumers to compare competitive prices with convenient payment options. On the other end, small-medium enterprises to multinational companies intend to do their businesses through e-commerce platforms, because maintaining an e-commerce store is more convenient and cost-effective.

E-commerce has more future potential for making sales agreements with unknown parties without territorial borders. The transactions are being made without any physical interactions between the parties, only depending on the shared information and online communication.

“Where the process has been simplified, this has greatly increased issues of consumer protection, since direct awareness is only rarely found among online users.”²

Though convenient to consumers,, there is considerable potential in E-commerce for violating consumer rights, depending on given information and the complexity of the sales agreements. McClafferty further states that;

“The increase in online transactions raises the issues whether or not there is sufficient protection for the e-consumer. Due to the risks inherent in online transactions there is a need for these types of transactions to be

¹ McClafferty. A, Effective Protection for the E-Consumer in light of the Consumer Rights Directive, *Hibernian Law Journal*, p.85-121

² Rahim Dahiyat, E.A, Consumer Protection in Electronic Commerce: Some Remarks on the Jordanian Electronic Transactions Law, *Journal of Consumer Policy*, (2011), p.423

specifically acknowledged and regulated”³

According to the above statement, there is a risk of an issue arising at any time though consumers have sufficient protection. Therefore, in a situation where country is moving to a digital era, the laws relating to e-consumer protection should be implemented and regulated simultaneously. The legal framework has an enormous impact on the protection of consumer rights. Averitt, N.W. emphasizes the duty of the law to strengthen the consumer as follows;

*“Laws for consumer protection are specifically required to enable consumers to strengthen their position in case they come across dishonest practices from sellers at any stage of supply, production or distribution”*⁴

Do the existing laws protect the e-consumers in Sri Lanka?

The Consumer Affairs Authority Act, No. 09 of 2003 (Hereinafter referred to as CAAA), is the general legislation for consumer protection in Sri Lanka. The CAAA has been established to provide better protection for consumers and traders against unfair trade practices and restrictive trade practices.⁵ The act neither covers any specific remedy for the e-consumers nor does it regulates e-traders.

However, the interpretation of the term ‘Consumer’ has a broad scope under the Act;

*“Any actual or potential user of any goods or services made available for a consideration by any trader or manufacturer”*⁶

An argument can be raised that this covers e-consumers. However, Ariyaratna, R. argues that; it is obvious that the complex nature of online transactions require more solid protection, particularly when addressing online consumer protection, and the CAAA has failed to provide a mechanism for protecting the online consumer rights.⁷

Electronic Transaction Act, No. 09 of 2006 (Hereinafter referred to as ETA), can be identified as a significant step towards e-commerce in Sri Lanka. The ETA is mainly focused on recognizing and facilitating the electronic contracts, data messages, electronic documents, and e-signatures. However, the objectives of ETA address e-commerce as follows;

“To facilitate domestic and international electronic commerce by eliminating legal barriers and establishing legal certainty & to

³ Ibid.1

⁴ Averitt, N.W. and Lande, R.H. 'Consumer Sovereignty: A Unified Theory of Antitrust and Consumer Protection Law', *Antitrust Law Journal*, (1997), p.716

⁵ Consumer Affairs Authority Act, No. 09 of 2003, S. 04

⁶ Ibid. S. 75

⁷ Ariyaratna, B.A.R.R, Protection of Consumer Rights on the Internet: Prospects and Challenges for the Sri Lankan Legal System, *OUSL Journal*, p.5-23

encourage the use of reliable forms of electronic commerce”⁸

It can be argued that the ETA has given the legitimacy to electronically formed sales agreements,⁹ thus it covers the e-consumer rights effectively. However, no specific remedy can be seen in the ETA that covers e-consumer other than the remedies for a breach of contract. Further, there are more things to be considered such as security of information, data protection, transactions and cancellation, refund policies, and dispute resolution that is more likely to happen very often. Ariyaratna, R. states that;

“The ETA does not expressly deal with the online consumer protection issues. Moreover, the ETA fails to provide adequate data protection mechanism which can secure consumer privacy in the cyberspace.”¹⁰

The Computer Crime Act, No. 04 of 2007 (Hereinafter referred to as CCA), is enacted to identify computer crimes, provide investigation procedures, and prevent such crimes. The CCA covers a variety of crimes based on computer activities such as computer hacking, cracking, data misusing, unauthorized exporting, importing, and copying. It can be considered as a positive step towards e-consumers in terms of privacy data

protection¹¹. However, Ariyaratna, R. argues that;

“CCA provide protection for unauthorized information disclosure in online transactions, that single provision cannot address other complicated issues faced by online consumers such as payment security, online fraud, and dispute settlement.”¹²

After considering the CAAA, ETA, and CAA, it can be argued that there is a lacuna in existing laws towards e-consumer protection in Sri Lanka. According to Fernando, J.¹³ from the consumer rights perspective; Sri Lankan e-consumers are in great danger in cyberspace.

International Guidelines and Recommendations for Implementing e-Consumer Rights

United Nations Guidelines for Consumer Protection (Hereinafter referred to as the UNGCP) is one of the comprehensive and contemporary updated set of principles that point out the main characteristics of effective consumer protection legislation for the member states. It has been formed in the general assembly of the United Nations Conference of Trade and Development (UNCTAD) on 16 April 1985; recently revised and adopted in December

⁸ Electronic Transactions Act, No. 09 of 2006, S. 02

⁹ Ibid. S.11

¹⁰ Ibid.7

¹¹ Computer Crime Act, No. 04 of 2007, S.10

¹² Ariyaratna, B.A.R.R, Protection of Consumer Rights on the Internet: Prospects and Challenges for the Sri Lankan Legal System, *OUSL Journal*, p.5-23

¹³ Fernando, J. E-Transactions to M-Transactions - Serving Next Generation Customers, *Annual Bulletin - 25th Anniversary Convention*, p.119-138

2015. These guidelines assist member states in formulating and enforcing domestic and regional laws, rules, and regulations.

The general guidelines of UNGCP emphasize e-consumer protection as follows;

(j) A level of protection for consumers using electronic commerce that is not less than that afforded in other forms of commerce;

(k) The protection of consumer privacy and the global free flow of information.¹⁴

UNGCP further gives direction for the member states to implement secure payment mechanisms and fair, affordable, and speedy dispute resolution and redress for the consumer protection of e-consumers.¹⁵ Further, UNGCP highlights the government's responsibility to provide consumer education and information programs focusing on e-commerce.¹⁶ The chapter 'I' of the guidelines expressly points out the scope of the legislation to address the e-consumer protection. It suggests to enhance the consumer confidence in e-commerce by transparent and consumer protection policies.

Member States should, where appropriate, review existing consumer protection policies to accommodate

the special features of electronic commerce and ensure that consumers and businesses are informed and aware of their rights and obligations in the digital marketplace.¹⁷

UNGCP suggests member states to adopt international guidelines to their extent, as well as collaborate with other member states in their implementation across borders.¹⁸ These guidelines can be considered as an overall structure to implement a proper process for e-consumer protection and enhance the consumer's trust and confidence in cyberspace.

The Organization for Economic Co-operation and Development (Hereinafter referred to as the OECD) has introduced separate guidelines named Consumer Protection in the Context of Electronic Commerce focusing on fair and transparent business and advertising practices, information about businesses, goods and services, transactions, as well as adequate dispute resolution and redress mechanisms, payment protection, privacy, and education. OECD guidelines recognize the tendency of e-consumer rights violations as;

“The need to address a number of consumer challenges related to information disclosure, misleading or unfair commercial practices,

¹⁴ United Nations Guidelines for Consumer Protection, III, 5(j)(k)

¹⁵ Ibid, V, (A) 14 (f)(g)

¹⁶ Ibid, G, 44 (g)

¹⁷ Ibid, I, 64

¹⁸ Ibid, I, 65

confirmation and payment, fraud and identity theft, and dispute resolution and redress”¹⁹

It has identified the need for equipping consumer protection enforcement authorities with the ability to effectively protect consumers in e-commerce and to exchange information and co-operate in cross-border matters. Moreover, the mindfulness of the increased privacy and security risks faced by consumers in e-commerce and the need to effectively address those risks to enhance consumer trust in e-commerce, should be consistent with Privacy Guidelines and Security Risk Recommendations. It is obvious that the OECD guidelines suggest comprehensive protection from the perspective of e-consumers.

The International Consumer Protection Enforcement Network (Hereinafter referred to as ICPEN) is a membership organization consisting of consumer protection law enforcement authorities across the world. ICPEN provides a forum for developing and maintaining regular contact between consumer protection agencies, to facilitate consumer protection concerns. It has an extraordinary impact on guiding member countries to adjust their laws and regulations for better consumer protection. Sri Lanka has become a member of ICEPN since 2007. The main objectives of the organization is to generate and share information on

consumer protection issues, share best legislative and enforcement practices to consumer protection, take action to combat cross-border breaches of consumer protection laws, and facilitate cross-border remedies. A member of ICEPN has considerable potential for e-consumer protection in cross-border issues.

Consumer Rights Directive (Hereinafter referred to as the CRD) can be identified as a significant step towards e-consumer protection in the European Union. Article 7 of the CRD identifies the main objective as;

*“In order to ensure legal certainty and consumer confidence, this Directive must lay down a clear and general framework to cover certain legal aspects of electronic commerce in the internal market.”*²⁰

CRD provides comprehensive information and communication between consumers and the trader such as accurate description, identification of the trader, geographical details, final and concluded price. CRD addresses the regulations on the security of personal information, online gambling and lotteries, data protection, digital products, payment security, personal cookies policy, and online marketing regulations. Therefore Ariyaratna, R. argues that;

¹⁹ Consumer Protection in the Context of Electronic Commerce, OECD Guidelines, 9

²⁰ Consumer Rights Directive on Electronic Commerce, A. 7

“EU approach on e-consumer protection is a more solid and broad approach and it can be argued that the EU law has expanded its protection beyond the international legal framework.”²¹

The aforementioned international regulations and directives have made an excellent effort in supporting to introduce contemporary legal frameworks that have significant value in the digital era. Macaulay, S. states as;

“Consumer protection forms one important area in contemporary legislation that has surfaced with the emergence of technology and globalisation; it has gained significant level of attention, especially in developed countries”²²

Conclusion

It can be seen the existing legal frame of Sri Lanka towards consumer protection in e-commerce has lacunas. It reflects reluctance in the engagement of e-consumers. Peiris, P.M identifies that;

“Our study provides meaningful insight into why consumer adoption

rates of e-commerce in Sri Lanka are so low. One reason for consumer reluctance is their concern about security risks - a valid concern in view of the increasing number of security vulnerabilities and poor security measures to protect personal information.”²³

Trust is one of the significant factors in actively engaging e-commerce from the perspective of consumers. Therefore, the authorities may draw the attention to build the consumer trust by implementing a robust legal framework that can be confidently relied on. Ward, B.T argues that;

“The success of e-commerce in any state or jurisdiction largely depends upon the suitability, predictability and reliability of their legal frameworks.”²⁴

Thus, it is necessary to introduce a comprehensive legal framework in Sri Lanka towards consumer protection under e-commerce in this digital era, to motivate and protect e-consumers in cyberspace.

²¹ Ariyaratna, B.A.R.R, Protection of Consumer Rights on the Internet: Prospects and Challenges for the Sri Lankan Legal System, *OUSL Journal*, p.5-23

²² Macaulay, S. 'Lawyers and Consumer Protection Laws', *Law & Society Review*, (1979), p.115

²³ Padmali Manesha Peiris, An Empirical Study of Customer Adoption of E-Commerce: A Customer Trust Model to Support the Adoption of E-Commerce

Among Small- and Medium-Sized Enterprises in Sri Lanka, *International Journal of Business and Information*, p.491-518

²⁴ B.T. Ward, J.C. Sipiior and L. Volonino, 'Internet Jurisdiction for E-Commerce.' *Journal of Internet Commerce*, (2016), p.201