



# **THE GAINS, CHALLENGES AND UNANSWERED QUESTIONS OF CONSUMER PROTECTION**

A KEYNOTE ADDRESS BY

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Association of Consumer Law**

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# Protocol

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- The **President**, International Association of Consumer Law (IACL), distinguished **consumer law experts** from different parts of the globe, **consumer advocates, regulators**, and **all participants** gathered here today, good morning.
- It is really my pleasure to address this forum of leading international scholars, practitioners, representatives of consumer organisations, public authorities and businesses.



# Introduction

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## Theme:

Challenges and Unanswered Questions of  
**Consumer Law**  
(Conference)

The gains, challenges and unanswered questions of  
**Consumer Protection**  
(Keynote address)



# Introduction...

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- I must commend the efforts of the organisers of this conference in coming up with these **fitting theme and sub-themes** which are obviously relevant in today's contemporary world.
- The **liberty** given to contributors to address consumer protection in their **individual countries** is commendable as it shows that the organisers are mindful of the disparity in the development of consumer law in different countries.
- It is expected that overall, the conference will produce **a balanced outcome** that helps to shape consumer law across the globe.



# Meaning of Consumer protection

**Consumer protection:**  
**wide issues of laws, policies, acts and regulations** that protect the rights and interests of consumers

**Consumer protection policies include the laws, regulations, rules, frameworks, procedures, decisions, mechanisms and programmes of Member States**, as well as private sector standards and recommendations that **protect consumer rights and interests and promote consumer welfare**

(UN guidelines for Consumer Protection 2016)



# Meaning of Consumer protection...

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- The guidelines define the term '**consumer**' generally as **a natural person**, regardless of nationality, acting primarily for personal, family or household purposes
- Member States are allowed to adopt **differing definitions** to address specific domestic needs.



# Development of Consumer protection over the years

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- Steady growth
- **National laws and policies**
- (Globally): **the United Nations Guidelines for Consumer Protection 2016**
- There are also **many consumer protection laws covering various sectors and different goods and service**
- **Numerous countries now have some consumer protection laws**

(United Nations Conference on Trade and Development (UNCTAD))

- **National constitutions of some countries**



# Global Overview of Consumer Protection

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A study by the United Nations Conference on Trade and Development (UNCTAD) shows the state of consumer protection in different areas. The following indicators were used for the study:

- Countries with **consumer protection law**
- Countries with **policy making powers**
- Countries with **enforcement powers**
- Countries with **cooperation agreements**
- Countries with **education initiatives**





# UNCTAD Consumer protection world map

## E-commerce



Countries with  
consumer  
protection law on  
e-commerce



Countries with  
policy making  
powers on e-  
commerce



Countries with  
enforcement  
powers on e-  
commerce



Countries having  
cooperation  
agreements on e-  
commerce



Countries having  
education  
initiatives on e-  
commerce

**Source:** <https://unctad.org/topic/competition-and-consumer-protection/consumer-protection-map>



# UNCTAD Consumer protection world map

## Dispute resolution



Countries with  
consumer protection  
law on dispute  
resolution



Countries with policy  
making powers on  
dispute resolution



Countries with  
enforcement powers  
dispute resolution



Countries having  
cooperation agreements  
on dispute resolution

**Source:** <https://unctad.org/topic/competition-and-consumer-protection/consumer-protection-map>



# UNCTAD Consumer protection world map

## Consumer financial services



Countries with  
consumer  
protection law on  
financial services



Countries with  
policy making  
powers on  
financial services



Countries with  
enforcement  
powers on  
financial services



Countries having  
cooperation  
agreements on  
financial services



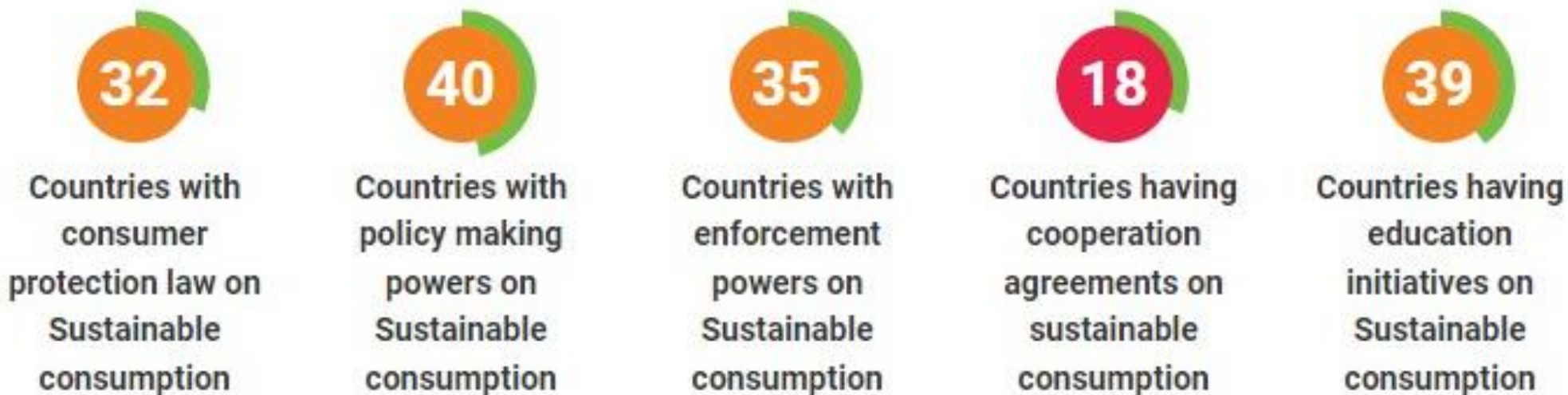
Countries having  
education  
initiatives on  
financial services

**Source:** <https://unctad.org/topic/competition-and-consumer-protection/consumer-protection-map>



# UNCTAD Consumer protection world map

## Sustainable consumption



**Source:** <https://unctad.org/topic/competition-and-consumer-protection/consumer-protection-map>



# UNCTAD Consumer protection world map

## Consumer product safety



Source: <https://unctad.org/topic/competition-and-consumer-protection/consumer-protection-map>



# Gains of consumer protection

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- Adoption of **international conventions and guidelines** for consumer protection
- Enactment of **national consumer protection laws**
- Establishment of **dedicated agencies and commissions** to regulate and implement consumer laws and policies



# Gains...

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- Rise in the number of **non-governmental consumer protection organisations**
- Inclusion of **consumer representation provisions** in consumer protection laws
- Consumer **awareness creation programmes** in some countries



# Gains...

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- Mandatory **financial literacy programmes** for consumers by providers of financial services
- **Competition and anti-monopoly measures** in some countries
- **Landmark judicial decisions that clarify** and improve the rights and ability of consumers to enforce their rights





# Challenges of consumer protection

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- **Inaccessibility and unaffordability** of essential products and services
- Risks associated with **new technologies**
- **Digital divide** and the associated problems of digitally **unserved or underserved populations**
- Absence or **inaccessible consumer redress channels**



# Challenges...

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- **Unclear obligations of online suppliers** of products and services in e-commerce
- **Ineffective redress** channels for **consumers shopping online**
- **Greenwashing**
- **Non-disclosure** of adverse features of some products and services
- Unsolicited **tele-marketing** and emails



# Challenges...

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- **Complexity** of modern products and services
- **Complex redress procedures**
- **Information asymmetry**
- **Inundating digital payment apps**
- **E-frauds** that cut across different sectors



# Challenges...

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- Data and **privacy breaches**
- **Non-inclusion of vulnerable consumers** in essential goods and services such as people with disabilities, rural dwellers, women, the unemployed and the under-employed



# Challenges - new areas of concern

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- **Sustainable consumption**
- **Plastic pollution**
- **Intensive advertising**
- **Deceptive patterns** (dark patterns)
- **Energy inefficiency**



# Challenges - new areas of concern...

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- **Unfair food prices**
- **Complexity of digital products**
- **Corporate might** which is skewed against the consumer due to factors such as knowledge deficiency and poverty
- **Globalisation** without corresponding effective redress channels



# Essential areas of consumer protection to be prioritised by countries

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## ➤ Starting point - legitimate needs

[Art III, paragraph (5) of the United Nations Guidelines for Consumer Protection]

- Access by consumers to **essential goods and services**;
- The protection of the **vulnerable and disadvantaged consumers**;
- The protection of consumers from **hazards to their health and safety**;
- The protection and promotion of the **economic interests of consumers**;
- Access by consumers to **adequate information** to enable them to make informed choices according to individual wishes and needs;



# Essential areas ...

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- **Consumer education** including education on the environmental, social and economic consequences of consumer choice;
- Availability of **effective consumer dispute resolution and redress**
- Freedom to form consumer and other **relevant groups and organisations** and the opportunity of such organisations to present their views in decision-making processes affecting them;
- The promotion of **sustainable consumption patterns**;





# Essential areas...

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- A level of **protection for consumers using electronic commerce** that is not less than that afforded in other forms of commerce;
- The protection of **consumer privacy** and the global free flow of information
- While **in some countries many of the above rights are now taken for granted**, in others a good number of these essential needs **are either absent, inadequate or present but poorly implemented**
- Indeed, in addition to the above list, **countries should be proactive in extending protection to other areas of need for their countries**



# Unanswered questions of consumer protection

Why are suppliers of products and services **reluctant to disclose** the pieces of information that help consumers to make rational choices?

Who should bear the **responsibility for e-fraud in digital financial services** – the service provider or the consumer?

Why do manufacturers **engage in intensive advertising** rather than measures that improve the quality of their products?

Why are manufacturers **quick to deny liability** but instead, spend huge sums of money defending authentic consumer claims?

How are consumers **coping** with the **ever-changing technologies**?



# Roles of consumer experts and advocates

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- Contribution to **national and international laws and policies** that protect the interests of consumers
- Participation in **measures that address today's e-commerce** that transverses the global landscape
- **Proposals for effective enforcement and implementation** measures for protection of consumer rights nationally and globally



# Roles of consumer experts and advocates...

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- **Adoption of international codes on enforcement of consumer rights in online transactions**
- Consideration of **consumer inclusiveness** in the provision of different products and services
- **New laws** that are appropriate for emerging technologies



# Roles of consumer experts and advocates...

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- **Measures that increase consumer awareness**, representation and knowledge level
- Work with national authorities on the **adoption of relevant provisions of the United Nations Guidelines for Consumer Protection** particularly those on essential consumer needs
- **Collaboration and information sharing**



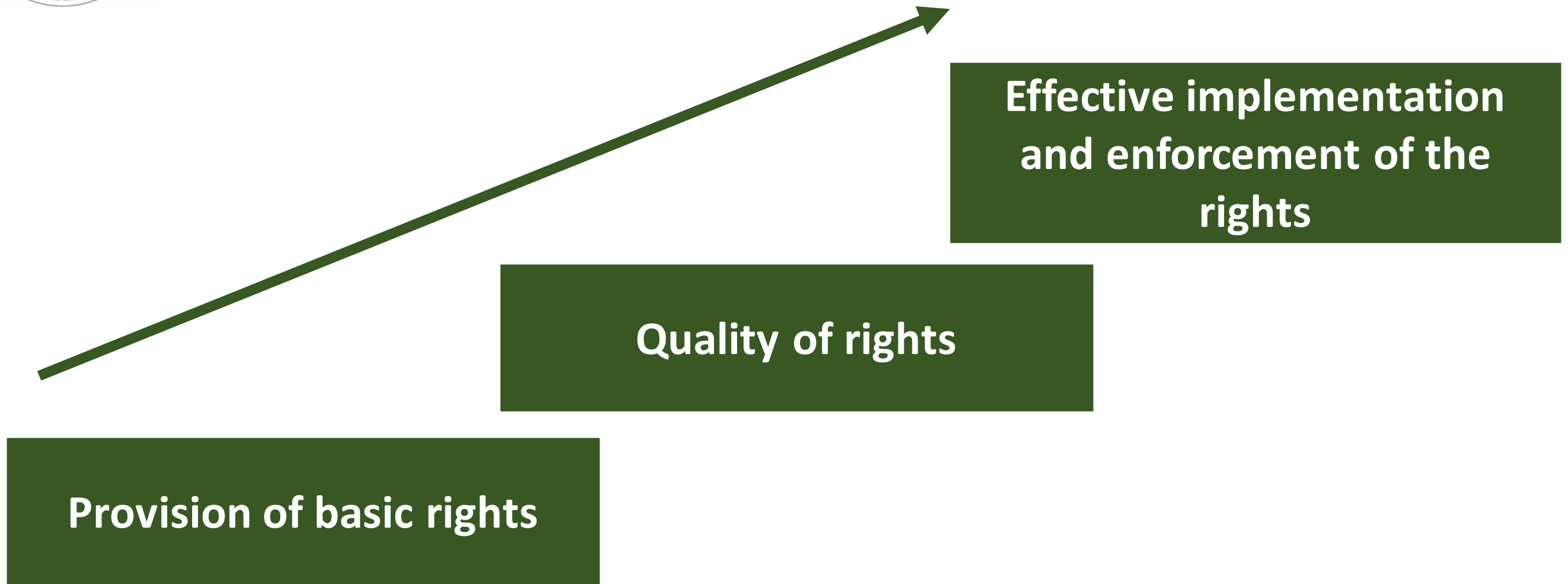
# Roles of consumer experts and advocates...

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- **Collaboration with service providers and regulators** to evolve measures that combat fraudulent practices against consumers
- Proposals on **effective enforcement and implementation of consumer protection laws and policies**
- **Information-sharing on funding opportunities**
- **Evidence-based research** that shows the trend and level of consumer protection



# Consumer Protection Ladder





# Landmark judicial decisions on consumer protection

**House of Lords**  
*Donoghue v Stevenson*

**India**  
*Hindustan Coca-Cola Beverages Pvt. Ltd v Purushottam Gaur*  
Manufacturer's liability for sale of substandard drinks

**Nigeria**  
*Mekwunye v Emirates Airlines*  
A party in breach of a fundamental term of his contract would not be allowed to rely on an exemption clause to escape liability



# How do we describe today's consumer?



King



Important stakeholder



# How do we describe today's consumer?

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**“...the forgotten man of  
the Indian economy...”**

Justice R. K. Agrawal (Former Judge, Supreme Court of India and President, National  
Consumer Disputes Redressal Commission)

Foreword to the *Landmark Judgments on Consumer Law and Practice: 2008-2020*.



# The way forward

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- Comprehensive **legal and regulatory framework at national and international levels** for the protection of consumer rights to provide a good foundation for research, advocacy and enforcement
- Advocacy is moving towards **digital enforcement**. A project conducted under the UNCTAD makes a strong case for this form of enforcement [See keynote on cross-border enforcement of consumer law]
- There is a need to pursue this approach given the **popularity of e-commerce across the globe**. Digital enforcement will facilitate consumer dispute resolution



# The way forward...

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- **Judicial activism** that produces landmark decisions in different areas of consumer protection
- **Evidence-based research and documentation** that show the trend and state of consumer protection nationally and globally to aid future planning regarding consumer law and policy



# The way forward...

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- **Awareness creation** for consumers of products and services. Consumers are the ultimate beneficiaries of consumer laws and policies. There is, therefore, a need to empower consumers with the knowledge to enforce their rights and ensure that consumer protection laws do not remain dormant in the statute book
- Effective and accessible **consumer redress channels**



# Endnotes

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- <<https://unctad.org/topic/competition-and-consumer-protection/consumer-protection-map>> accessed 5 July 2023.
- *Donoghue v Stevenson* [1932] AC 562.
- *Hindustan Coca-Cola Beverages Pvt. Ltd v Purushottam Gaur* 2014 SCC Online NCDRC 7.
- *Mekwunye v Emirates Airlines* [2019] 9 NWLR (Pt 1677) 191 (SC).
- The forgotten man of the Indian economy - Foreword to the *Landmark Judgments on Consumer Law and Practice: 2008-2020*, Edited by Prof. (Dr.) Ashok R. Patil, Chair on Consumer Law and Practice NLSIU, Bengaluru, published by Ministry of Consumer Affairs, Food & Public Distribution, Government of India 2021.
- Keynote Address on 'Cross-Border Enforcement of Consumer Law: Looking to the Future', by Christine Riefa, Reading University, UK. <<https://www.crossborderenforcement.com/about-5>> accessed 5 July 2023.



# THANK YOU

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