

Consumer Protection Laws in Asia: Prevailing Trends & Commonalities

Consumer law, here defined to mean the legal manifestation of the desire to protect the consumer interest, is a relatively new phenomenon in Asia. The 'consumer' is a recently recognised subject in law. In fact, forty years ago, no statute in any Asian country defined the term 'consumer' or included it in any laws. However, though consumer protection law is often regarded as a modern phenomenon, many of what we regard as laws with an emphasis on consumers have been there for long.

The focus in the early phases of law reform was still very much the buyer and seller of goods and services. No responsibility to the consumer was imposed on the manufacturer and importer of goods, and, no protection was extended to the user of the goods and services and other affected persons if they were not the buyers or purchasers of the goods and services concerned. It was a considerable period of time before the statutes would begin to remedy the seller-buyer focus and instead deal with the producer-consumer relationship. In Malaysia, for instance, the term 'consumer' first entered the statute books only in 1991 and that by way of an amendment to the Hire-Purchase Act 1967.

In time, the campaign shifted towards obtaining new statutes that focused on specific problems such as trade descriptions, advertising in specific trades (pharmaceuticals, food, financial services, housing, etc.), door-to-door sales, distance selling, and safety of particular products (electrical goods, children's products, household goods, etc). Consumers were given added protection in these statutes.

Piecemeal legislation, however, has severe limitations. New problems keep coming to the fore and the law focusing on specific areas is inadequate to deal with the new problems. For instance, legislation specifically crafted to deal with door-to-door sales cannot curb mal-practices in mail order sales or electronic media sales. In the area of consumer credit, for instance, the piecemeal approach focusing on such areas as money lending, pawn broking, hire-purchase, etc, has resulted in separate statutes that lack any functional basis, and distinctions between one type of transaction and another are drawn on the basis of legal abstraction rather than on the basis of commercial reality. More significantly, such piecemeal legislation fail to extend consumer protection to many forms of credit transactions, for example credit and charge cards, instalment payments, and revolving credit and confusion arises as to what law applies to many consumer transactions. Consumer protection in many Asian countries, including Malaysia, Singapore, and Hongkong, is still very much in this phase.

One areas of consumer protection in which progress has been particularly slow in coming is the area of product liability. In many countries, it was possible on the basis of contract law to make the seller strictly liable for damage caused by defective products. Liability was for personal injury and death of the buyer, damage to her property and such consequential loss as she may have suffered. However, there was no contractual relationship between the manufacturer and the buyer, and other users of the product. It was therefore not possible for the buyer or other users of the product to sue the manufacturer for breach of contract. Similarly, there was no contractual relationship between the seller and users of the product who were not the buyers. Again, it was not possible for the other users to sue the seller on the basis of contract law.

In some countries, especially those which have inherited the English tort law pertaining to negligence, it is possible for an end-user and a buyer to bring an action against the manufacturer,

or indeed any party whose negligence causes personal injury or death or consequential loss. But the law of negligence requires the 'fault' of the negligent party to be established and this the injured consumer finds particularly difficult. It was to overcome these particular difficulties that a new product liability law was enacted in the European Community and many other OECD countries.

The novelty of the new product liability law is essentially two-fold. The first is that they extend the protection afforded by the concept of strict liability, already a feature of contract law which governed the buyer-seller relationship, to all users of the goods, i.e. to all consumers. The second is that the liability is not confined to the seller of the goods and services, but is extended also to all those involved in the production and sale of the product. No longer is it necessary for the consumer to rely on the fault-based law of negligence to impose liability on the producer. The new product liability laws have not been introduced in the vast majority of Asian countries because of objections from producer interests, though its introduction in Japan in 1995 has served to increase demands for such laws in other countries.

Since 1979, several Asian countries have enacted statutes specifically titled as Consumer Protection Acts. Sri Lanka and Thailand were the first to enact such statutes, both in 1979. The move for such an act in the Philippines also began about this time, and that of India was enacted in 1986. The Philippines Act became law only in 1993 and the Law of the People's Republic of China on the Protection of Consumer Rights and Interests was adopted in China in the same year.

Though the statutes of each of these countries have the same name, they are vastly different in content. The new genre of statutes has introduced a number of very progressive features. Some of these features may be noted as follows:

- (i) Some of the statutes state the rights of consumers as rights that are protected in law – rights such as that for safety, choice, information, fair prices, representation and redress.
- (ii) They frequently cover the delivery of both consumer goods and services, and some even include the provision of professional services such as doctors, dentists, engineers, architects, etc.
- (iii) The statutes vest existing or newly created agencies with rule-making power to enable a swift response to evolving malpractice. In some instances, the rule-making power is vested in the executive branch of the government, but advisory committees comprising both consumer and industry representatives are permitted to formulate recommendations of the regulations to be promulgated.
- (iv) Special tribunals with simplified rules of procedure and evidence are created to hear consumer complaints.
- (v) The statutes permit individual consumer to seek redress. Importantly, they confer upon a public officer (such as the Director of Trade Practices etc) and in some instances social action groups such as consumer organisations, the right to commence litigation on behalf of a consumer or a group of consumer.
- (vi) A range of remedies, including rescission, the right to damages, and injunctive and declaratory relief are provided for. This is in recognition of the fact that the

absence of a full, balanced and flexible range of remedies has the effect of emasculating the rights that such statutes seek to confer upon the consumer.

(vii) They do not repeal existing laws but instead build on the existing laws.

SUMMARY OF FUNDAMENTAL PROVISIONS OF CONSUMER PROTECTION LAWS OF SOME COUNTRIES IN ASIA			
No.	Countries	Name of legislation/ Objectives	Major Content
1	Thailand	<i>Consumer Protection Act 1979 (amended in 1998)</i>	<ul style="list-style-type: none"> - Consumers' rights - Consumer protection authorities (functions, responsibilities, powers and organisation); - Resolving conflicts between consumer protection laws and other sectoral laws - Consumer protection in advertising - Consumer protection in goods labelling - Consumer claims - Fines
2	Singapore	<i>Consumer Protection (Fair Trading) Act 2003</i> <i>Consumer Protection (Trade Description & Safety Requirements) Act 1975</i>	<ul style="list-style-type: none"> - Regulations prohibiting false trade descriptions - Regulations on safety and information requirements of goods - Forms of handling violations
3	Japan	<i>Consumer Protection Fundamental Act 1968 (the "CPFA")</i> The CPFA aims to secure the stability of and improvement in the consumption life of the people.	<ul style="list-style-type: none"> - Responsibilities of the State and local governments - Responsibilities of manufacturers - The role of consumers; - Relevant methods for consumer protection (the prevention of risk, weights and measures, standardization, labelling, securing of fair trade and competition, consumer education, consumer representation, testing and inspection and complaints redress). - Consumer Protection Authorities

4	Hongkong	<i>Consumer Council Ordinance (Cap 216)</i>	<ul style="list-style-type: none"> - Consumer Protection Authorities (Consumer Council): functions, responsibilities and membership
5	India	<p><i>Consumer Protection Act 1986</i></p> <p>➔ For better protection of the interests of consumers</p>	<ul style="list-style-type: none"> - Defining concepts and determining the regulatory scope of the law - Consumer protection authorities, dispute settlement procedures (claims, proclamation of district court, appeal...) - Other provisions (excluding right, rights of setting up principles and submitting principles)
6	Korea	<p><i>Consumer Protection Act of 1980, as amended in 1995, 1997, 1999 & 2001</i></p> <p>The purpose of the CPA, as stated in Article 1 thereof, is to provide for the duties of the State, local governments and enterprisers and the roles of consumers and consumer organizations in order to protect the fundamental rights and interests of consumers, and also to provide for basic matters necessary for facilitating comprehensively the policy for protection of consumers, and to accomplish thereby the improvement and rationalization of their daily lives as consumers.</p>	<ul style="list-style-type: none"> - State' responsibilities; - Consumers' role - Ways for consumer protection (standardizing measurement system, standardizing goods quality, supporting consumer protection associations, educating consumers, establishing inspection and supervision means) - Safety for consumers - Trade indications and advertisement - Consumer protection agencies - Remedies - Handling conflicts between consumer protection law and other sectoral laws.
10	China	<p><i>Law on Protection of the Rights and Interests of the Consumers 1993</i></p> <p>➔ To protect the legitimate rights and interests of consumers, maintain the economic order of the society, and encourage the healthy development of the socialistic economy.</p>	<ul style="list-style-type: none"> - General regulations (on consumer protection policy) - Consumers' rights - Merchants' obligations - Consumer protection role of the State - Consumer associations - Handling disputes - Legal responsibilities

11	Malaysia	<i>Consumer Protection Act 1999</i>	<ul style="list-style-type: none"> - General regulations (about the principles of law application - Prohibition of deceitful and misleading acts, distorting introduction and unhealthy activities - Safety requirement for goods and services - Violating, justifying and handling the above-mentioned acts - Warranty in supply of goods - Rights (of consumers) to suppliers regarding warranty in supply of goods - Rights (of consumers) to manufacturers regarding warranty in supply of goods - Warranty in the provision of services - Rights (of consumers) to suppliers regarding warranty in the provision of services - Product liability - National Consumer Complaints Centre (NCCC) - Courts for handling consumers' claims - Law implementation (on consumer protection)
12	Taiwan	<i>Consumer Protection Law 1994</i> → To protect consumers' rights, create conditions for safety and improved quality of people' consumption lives.	<ul style="list-style-type: none"> - General regulations (on consumer protection policy) - Consumers' right and benefits (safety and health, standard contract, special buying and selling, regulation on information to consumers) - Consumers protection groups - Administrative management - Handling consumer disputes - Remedies

In light of the ongoing process for drafting a consumer protection law for Vietnam, it would be useful to review these laws and the experiences of other countries in establishing and developing

an effective consumer protection regime. The work can be done by the policymakers themselves or can come as submissions from civil society organisations such as VINASTAS.