



Consumer Rights in the Context of Human Rights: A Legal Analysis

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Abstract

Consumers are regarded as one of the most important economic groups in a country's economy. At the international level, the United Nations Guidelines on Consumer Protection (UNGCP) recognizes several consumer rights as legitimate consumer needs, such as the right to safety, the right to be informed, the right to choose, the right to be heard, and so on. However, the concept of consumer rights receives less attention than other right-based approaches such as human rights. Therefore, there is an ongoing debate about whether consumer rights could be considered as human rights or not. Since there are no exclusive lists of human rights, and consumer rights are individual rights rather than group rights, arguments are emerging to consider consumer rights as soft human rights at the very least. Therefore, the main objective of this paper is to analyze the proposition to consider consumer rights in the context of human rights and to highlight the significance as well as the benefits of elevating the concept of consumer right into the umbrella concept of human rights. This study is a doctrinal legal study that employs a qualitative research paradigm as the primary research method. Data is gathered using primary and secondary sources of literature.

Keywords: *Consumer Rights, Human Rights, Consumerism, Third Generation Human Rights*

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Introduction

The concept of consumer rights is a much broader concept which encapsulates a wide range of rights and privileges entitled by general consumers. As Larson and Lawson clearly opine ‘the extent and coverage’ of consumer rights have been subjected to numerous changes from time to time¹. Therefore, as the authors argue, it is difficult to determine ‘the purpose and scope’ of consumer rights precisely². In general, consumer rights can be defined a body of rights and privileges entitled by general consumers.

However, presently, the United Nations Guidelines on Consumer Rights (UNGCP) and some other international legal instruments recognize certain rights such as the right to safety, right to be informed, right to choose, right to be heard etc. as the basic consumer rights³. Also, there is an ongoing debate about whether consumer rights could be considered as human rights or not. As Devi highlights, some of the basic human rights concepts such as “the concepts of life, liberty, equality, and dignity are very well connected with consumer behavior”⁴. The main objective of this paper is to analyze the argument of considering consumer rights in the context of human rights and to highlight the importance as well as the benefits of elevating the concept of consumer rights into the broad range of human rights. In order to obtain an in-depth understanding of the concept, the first few sections of this paper shall discuss the origin and evolution of the concept of consumer rights, consumerism and human rights. Later, this paper shall analyses the supposing and opposing view for recognizing the concept of consumer rights in the context of human rights. In conclusion, this paper shall draw attention to the utility of upgrading the concept of consumer rights as a human right.

This study is a doctrinal legal study that employs a qualitative research paradigm as the primary research method. Data is gathered

¹ G Larsen and R Lawson, “Consumer Rights: An Assessment of Justice” (2012) 112 *Journal of Business Ethics* 515

² *ibid*

³ See Guideline 5 of the UNGCP

⁴ Devi T, “Legal Regime for the Consumer Protection and Its Human Rights Perspective” (2015) 3 *International Journal of Law and Legal Jurisprudence Studies* 316

using primary and secondary sources of literature. This study looks at international legal instruments pertaining to consumer rights and human rights, Constitutions of the selected countries and legislations as primary sources. Secondary sources of the research include journal articles, research papers, books, and web resources, among other things.

Evolution of Consumer Rights

In ancient legal history, it is difficult to identify a separate legal category referred to as 'consumer law' or 'consumer rights'. This is because as Benohr explains, "buyer was not believed to be in need of special legal protection"⁵. It can be assumed that due to the agricultural economy, only limited occasions of consumer-supplier transactions could have occurred and in such a context, it was obvious that the legal system paid minimal attention to develop a separate consumer law. However, as many legal scholars denote, the buyer's interests were protected against the fraudulent acts of the merchants even in the ancient times⁶.

In ancient Roman Law, there were many contractual obligations and actions against the seller in order to protect the buyer's interests. Roman law recognized the contract of buying and selling as *ex consensus*, which implied the consensus among buyer and the supplier⁷. Benohr provides two examples for the legal mandates against the seller which intended to protect buyers interests in Roman Law. Those are i) "action against the seller in order to protect buyers from any hidden defects of goods purchased" and ii) "principles of seller had to be good faith in seeking not to cause damage to the buyer"⁸. Moreover, as the principle of *culpa levis in abstracto* emphasized, "the seller had to keep the asset in good condition as a good householder, being liable for any damage caused by its fault"⁹. Therefore, it is evident that, though the term 'consumer rights' was not stipulated, the Roman Law recognized the buyer's or consumer's rights to some extent.

⁵ Iris Benöhr, *EU Consumer Law and Human Rights* (Oxford University Press 2013)

⁶ SB Zharkenova and LS Kulmakhanova, "Consumer Rights Protection in International and Municipal Law: Problems and Perspectives" (2015) 18 *European Research Studies* 147; Benohr (n5)

⁷ M Radin, "Fundamental Concepts of the Roman Law" (1924) 12 *California Law Review* 393

⁸ Benohr (n 5)

⁹ Olariyu M, "Contracts in Roman Law" (RePEc) <<http://www.rebe.rau.ro/RePEc/rau/cliuei/SP14/CLI-SP14-A9.pdf>> accessed August 01, 2021

In addition to the Roman law, ancient Indian society also recognized the protection of buyer's rights. As Devi highlights, from the ancient Vedic period (5000 BC to-2500 BC) many pieces of evidence could be found with regard to protecting consumer interest¹⁰. According to Manu's Code of Conduct to Traders, "man who behaves dishonestly to honest customers or cheats in his prices shall be fined in the first or in the middlemost amercement"¹¹. Furthermore, *Kautilya's Arthashastra* mentioned that "using of unstamped weights and measures, pressing and forging false weight and measures....etc. are considered as cheating and was fined heavily"¹².

Both these ancient Roman and Indian examples reveal that the concept of consumer rights originated from a very early period although it was not categorized as a separate law. The modern application of the concept of consumer rights could be found in the early 1960s¹³. Particularly in the American context, consumer rights are subjected to huge political attention and opened the doors to constitute separate consumer policies due to the serious damage caused to the consumers as a result of the power imbalance between consumers and the suppliers in the health sector¹⁴.

This background paved the way for U.S President John F. Kennedy's historic speech on consumer rights in 1962. President Kennedy in his Congressional speech declared four basic rights as the consumer rights; namely, the right to safety, the right to choose freely, the right to be informed and the right to be heard¹⁵. In this speech, President Kennedy was deeply concerned about the consumer's needs and elaborated the importance of protecting consumer rights as follows:

If consumers are offered inferior products, if prices are exorbitant, if drugs are unsafe or worthless, if the consumer is unable to

¹⁰ Devi (n 4)

¹¹ AR Prasad, "Historical Evolution of Consumer Protection and Law in India" [2008] Journal of Texas Consumer Law 132

¹² Devi (n 4); Prasad (n 11)

¹³ Benohr (n 5)

¹⁴ *ibid*

¹⁵ Larson and Lawson (n 1)

choose on an informed basis, then his dollar is wasted, his health and safety may be threatened, and the national interest suffers. On the other hand, increased efforts to make the best possible use of their incomes can contribute more to the well-being of most families than equivalent efforts to raise their incomes¹⁶.

As a result of President Kennedy's revolutionary approach, various consumer movements were established and later in 1985, the United Nations constituted the UNGCP by expanding Kennedy's "Bill of Consumer Rights". The UNGCP was revised in 1999 and 2016. Most importantly, Guideline 5 of the Revised UNGCP indicates the legitimate needs which the guidelines are intended to meet. According to the Guideline 5, the legitimate needs are;

- a) Access by consumers to essential good and services
- b) Protection of vulnerable and disadvantaged consumers
- c) Protection of consumers from hazards to their health and safety
- d) Promotion and protection of the economic interests of the consumers
- e) Access by consumers to adequate information
- f) Consumer education
- g) Availability of effective consumer dispute resolution and redress
- h) Freedom to form consumer and other relevant groups or organizations
- i) Promotion of sustainable consumption patterns
- j) Protection for using electronic commerce that is not less than the other form of commerce
- k) Protection of consumer privacy.

Hence, it is evident that the UNGCP considered the protection of consumers using e-commerce and the protection of consumer privacy as parts of the legitimate needs¹⁷. Thus, it can be argued that the concept of consumer rights has widened its scope from time to time according to the needs of society and modern consumers.

¹⁶ "John F. Kennedy: Special Message to the Congress on Protecting the Consumer Interest." (The American Presidency Project 1999) <<http://www.presidency.ucsb.edu/ws/?pid=9108>> accessed 23 May, 2021

¹⁷ UNCTAD secretariat, "Consumer Protection in Electronic Commerce Note by the UNCTAD Secretariat" (United Nations Conference on Trade and Development 2017) <https://unctad.org/meetings/en/SessionalDocuments/cicplpd7_en.pdf> accessed October 14, 2021

Consumer Protection and Consumerism

As a result of the evolution and recognition of consumer rights, different parties like international organizations, State parties and Non-Governmental Organizations (hereinafter NGOs) worked towards to safeguard consumer rights. As Chaudhry, Chandhiok and Dewan correctly define, “consumer protection means safeguarding the rights and interests of consumers. It includes all the measures aimed at protecting the rights and interests of consumers”¹⁸. The UNGCP is the main international legal instrument which aims to provide comprehensive consumer protection mechanisms at the global level.

As a result of the growing global and regional attention for consumer rights protection, the concept of consumerism has emerged as a revolutionary concept. The term ‘consumerism’ denotes the idea of consumer movements or consumer activism¹⁹. Moreover, Devi has further observed that it refers to “the broad range of activities of government, business, and independent organizations that are designed to protect individuals from policies that infringe upon their rights as consumers”²⁰. One of the main objectives of consumerism is to reduce the power imbalance between the supplier and the consumer²¹. Therefore, it can be argued that on the one hand, consumerism is a positive social force which encourages and compels all the stakeholders to safeguard the consumer interest. On the other hand, consumerism can be considered as a leading concept which empowers the consumers in order to be aware and safeguard their own rights²².

Notably, as Devi points out, there were various reasons behind the rise of consumerism historically. Particularly, the increase of literacy and education, the rise of prices of products, product variations and competition of the market, as well as the state intervention on consumer-supplier relationship have tremendously influenced consumers to be

¹⁸ K Chaudhry, T Chandhiok and P Dewan, “Consumer Protection and Consumerism in India” (2011) 1 International Journal of Multidisciplinary Research 83

¹⁹ Devi (n4)

²⁰ *ibid*

²¹ KB Bello, JB Suleiman and I Danjuma I, “Perspectives on Consumerism and Consumer Protection Act in Nigeria” (2012) 4 European Journal of Business and Management 72

²² Devi (n 4)

more aware of their rights and stand against the monopolistic powers of the traders and multinational companies²³. Then, as a result of the consumerism and consumer movements, the traditional contract law principle of *caveat emptor*-let the buyer beware- is no longer valid in the modern commercial contracts and instead of that, the concept of *caveat venditor*-let the vendor beware- is prevailed²⁴. Steiner and Steiner have clearly emphasized this argument as follows;

Consumerism does not mean *Caveat Emptor*-Let the Buyer Beware. It is replaced by *Caveat Venditor*-Let the Seller Beware. It does mean, however, that protecting the consumer is politically acceptable and that the government will survey consumer demands for better treatment and respond to them with new guidelines for regulations over business²⁵.

Therefore, it can be argued that the concept of consumerism has directly or indirectly impacted on the establishment of consumer protection mechanisms at the global, as well as the domestic level. However, in the Sri Lankan context, consumerism is still in a very primitive position. According to Dr. Saman Kalegama, the Executive Director of the IPS, “in Sri Lanka, consumerism and consumer activism are less organized and less powerful”²⁶.

Consumer Rights in Human Rights Context

As discussed in the previous section, as a result of consumerism and other positive movements for safeguarding consumer rights, the concept of consumer rights has been subjected to legal recognition at the international and domestic levels. UNCTAD highlights that presently, 51 percent of the countries worldwide are having separate consumer protection legislation²⁷. As a result of this focused attention,

²³ *ibid*

²⁴ G Kaur, “Concept of E-Consumerism: A Need to Revamp Movement for E-Consumerism in India” [2015] SSRN Electronic Journal; Narveson J, “Consumers Rights in the Laissez-Faire Economy: How Much Caveat for the Emptor” (2004) 7 *Chapman Law Review* 181; Devi (n 6)

²⁵ Steiner GA and Steiner JF, *Business, Government, and Society: a Managerial Perspective: Text and Cases* (Random House Business Division 1980)

²⁶ Nanayakkara S, “Sri Lankan Consumers Seen as Powerless” (The Island 2015) <http://www.island.lk/index.php?page_cat=article-details&page=article-details&code_title=121569> accessed October 11, 2021

²⁷ “Online Consumer Protection Legislation Worldwide” (Unctad.org) <https://unctad.org/en/Pages/DTL/STI_and ICTs/ICT4D-Legislation/eCom-Consumer-Protection-Laws.aspx>

some scholars argue that consumer rights should be included and protected as human rights²⁸. Therefore, this section analyses this ongoing debate and the benefits of strengthening consumer rights protection in an online context.

Nature and Scope of Human Rights

The term 'rights' is "itself controversial" and subjected to scholarly debate²⁹. According to the natural law perspective, rights are inherent to mankind by nature and it reflects the social value of the community³⁰. As John Lock has emphasized in his social contract theory, in the state of nature every man was entitled to some inalienable rights as the right to life, liberty, and property. As a result of the social contract between the citizens and ruling government, the Government in power should have an obligation to ensure the rights and wellbeing of the citizens³¹. Conversely, the positivist approach highlighted that "if a rule of conduct cannot be enforced, it is meaningless to describe it as a law"³². Therefore, positivism only accepted the specific rights derived from the legal order or the constitutional structure of the legal system³³. All these theoretical underpinnings have influenced to develop the concept of human rights which has widespread acceptance in the global community today.

The United Nations defines human rights as "rights inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status"³⁴. Former Commonwealth Secretary, Sridath S. Rampal provided a very interesting introduction for human rights as follows;

Human rights are as old as human society itself, for they derive from every person's need to realize his essential humanity.

²⁸ FO Ukwueze, "Towards a New Consumer Rights Paradigm: Elevating Consumer Rights to Human Rights in South Africa" (2016) 32 South African Journal on Human Rights 248; Devi (n 6); S Deutch, "Are Consumer Rights Human Rights" (1994) 32 Osgoode Hall Law Journal 538

²⁹ Shaw M, International Law (5th edn Cambridge University Press 2003)

³⁰ Ibid

³¹ MDA Freeman, Lloyds Introduction to Jurisprudence (6th edn Sweet & Maxwell 1994); P Sieghart, The International Law of Human Rights (2nd edn Clarendon Press 2003)

³² Ibid

³³ Show (n 29)

³⁴ UN.Org, "Human Rights" <<http://www.un.org/en/sections/issues-depth/human-rights/>> accessed June 11, 2021

They are not ephemeral, not alterable with time and place and circumstances....they are important, sometimes essential elements of the machinery for their protection and enforcement; but they do not give rise to them. They were born not of man, but with man³⁵”.

As this statement highlights, human rights can be defined as an indispensable set of rights inherent to mankind without any discrimination. The United Nations Declaration of Human Rights (hereinafter UDHR) in 1948 was the first attempt to safeguard human rights and fundamental freedoms by the United Nations³⁶ (hereinafter UN). The preamble of the UDHR emphasizes that “recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world”. In 1966, the International Covenant on Civil and Political Rights (hereinafter ICCPR) and the International Covenant on Economic Social and Cultural Rights (hereinafter ICESCR) were adopted by the UN and the most importantly, both these covenants have binding authority, unlike the UDHR.

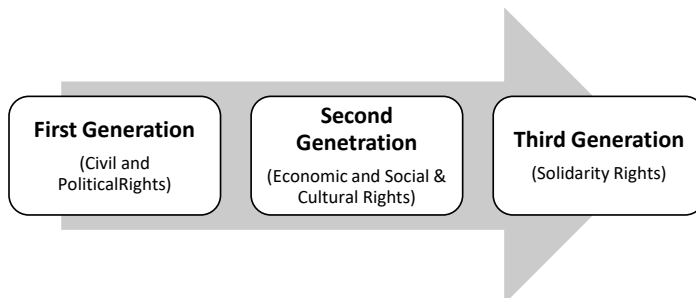
All the rights included in the UDHR, ICCPR, ICESCR and other human rights treaties can be classified into different categories and generations. Basically, human rights are categorized as civil, political, economic social and cultural rights. Today, three generations of rights are discussed as a modern classification of human rights³⁷. First time in 1977, a French jurist Karel Vesak characterized human rights in term of ‘three generations’³⁸. The following figure 1 presents the three generations of human rights.

³⁵ International Commission of Jurists, *Development of Human Rights and the Rule of Law* (Pergamon Press 1981)

³⁶ Sieghart (n 31)

³⁷ SH Sadeghi, MR Sarani and H Ravandeh, “The Concept of ‘Right’ and Its Three Generations” 5 *International Journal of Scientific Study* 37

³⁸ P Macklem, “Human Rights in International Law: Three Generations or One?” (2015) 3 *London Review of International Law* 61

Figure 1: Three generations of human rights

According to Vesak's classification, first-generation rights include civil and political rights such as the right to life, freedom of expression, equality before the law, right to vote etc. Particularly, those rights are enshrined in both the UDHR and ICCPR³⁹. The Second generation is concerned with economic, social and cultural rights including the right to work, freedom of association, the right to education etc. Mainly, the ICESCR contains the second generational rights⁴⁰. Most importantly, Vesak recognizes the third generation as "one that the international community is now embarking on"⁴¹. Sadeghi and others opine that the third generation ascertained as a result of 'new needs of human'⁴². Vesak has named them as 'solidarity rights' which include the right to development, right to a healthy environment, right to self-determination etc⁴³. However, in contrast to the Vesak's three-generation approach, Macklem argue that understanding human rights in three generations is inaccurate and misguided⁴⁴.

When analyzing consumer rights in the human rights context, there is an ongoing debate about whether consumer rights could be considered as a third generation right? Moreover, it is questionable whether consumer rights have the potential to become "soft human

³⁹ *ibid*; Cornescu A, "The Generations of Human Rights," the Conference Proceedings, Masaryk University (2009)

⁴⁰ Cornescu (n 39)

⁴¹ Macklem (n 37)

⁴² Sadeghi, Sarani and Ravandeh (n38)

⁴³ Macklem (n 43); Cornescu (n 37)

⁴⁴ Macklem (n 37)

rights^{45?}". The following section briefly demonstrates the positive and negative arguments for considering consumer rights as human rights.

Are Consumer Rights Human Rights?

The concept of consumer rights has become more relevant since the end of Second World War II⁴⁶. As discussed in the previous section, human rights have also gained great importance and widespread acceptance in the global community through the UDHR, ICCPR, ICESR and other international and regional legal instruments. In recent decades, several scholars have paid attention to include consumer rights into the human rights context. Deutch has made a significant contribution to develop this argument by suggesting that "consumer rights have the potential to become soft human rights leading finally to full recognition as human rights⁴⁷".

In order to build up this thesis, Deutch has used several arguments. First, he contends that there is no exclusive list of human rights and there are no common criteria to determine or accept a particular claim as a human right. Also, human needs have changed from time to time and therefore he argues "there is no reason to prevent the inclusion of additional rights". Second, he recognizes consumer rights as individual rights instead of group rights⁴⁸. Thus, Deutch argues that consumer rights should be acknowledged as human rights. Third, he emphasizes the co-relation between the right to human dignity and consumer rights as follows:

In a consumer society, protection of (the) individual consumer is part of maintaining human dignity. If not given the right to fair trade, the right to a fair contract and the right of access to court a person's dignity is disregarded⁴⁹.

⁴⁵ Kingisepp M, "The Constitutional Approach to Basic Consumer Rights." [2012] *Juridica International* 49

⁴⁶ Imperatore L, "Consumer Rights under International Law" (Nomodos2018) <<http://nomodos-ilocantoredelleleggi.it/2018/03/22/consumers-rights-under-international-law/>> accessed October 16, 2021; Deutch (n 33)

⁴⁷ Deutch (n28)

⁴⁸ *ibid*

⁴⁹ *ibid*

Ukwueze also supports this argument and emphasizes that protecting the consumer is not only limited to protecting human life but it also embodies the notion of protecting human dignity against monopolistic powers of companies⁵⁰. Fourth, Deutch argues that some of the modern theories of human rights such as the theory of justice, principles of fairness and equality also provide the basis for consumer protection and accordingly it can be justified consumer rights as human rights⁵¹.

All these arguments presented by Deutch and other scholars indicate that consumer rights have the potential to be considered as third generation human rights. As mentioned earlier third-generation human rights have emerged as a result of the new needs of the people. But still, those rights are considered as soft laws, which only have limited binding force. As Benohr denotes, third generation rights play a subordinate role and remain contested⁵². Therefore, as these scholars claim there is a need to include the consumer rights also into the category of the third generation until it obtains the full recognition as human rights.

Moreover, scholars point out that consumer rights protection as a base for acknowledging and implementing some human rights which are enshrined in the international human rights instruments. Benohr claims this as “implicit consumer protection in human rights agreements⁵³”. The first example of this argument is the right to an adequate standard of living. As Imperatore highlights “in modern society (the) right to consume seems to be an essential part of the right to the adequate standard of living⁵⁴”. Article 25 (1) of the UDHR recognizes the right to the adequate standard of living as follows;

“Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing, and medical care and necessary social services...”

⁵⁰ Ukwueze (n 28)

⁵¹ Deutch (n28)

⁵² Benohr (n 5)

⁵³ *ibid*

⁵⁴ Imperator (n 48)

Accordingly, it can be argued that although the UDHR does not include the particular term of consumer protection, in a broad sense Article 25 (1) serves as a basis for consumer protection.

Moreover, Article 11 of the International Covenant on Economic Social and Cultural Rights (ICESCR) also highlights the right to an adequate standard of living including the “right to adequate food, clothing, housing and to continuous improvement of living conditions”. Deutch emphasizes that consumer protection as an implementation of these rights and means to achieve these goals⁵⁵. Following Deutch’s argument Ukwueze highlights the same opinion and states that “adequate food necessarily includes the quality of food, safety, information and fair price, all of which are achieved through consumer protection legislation⁵⁶”.

Furthermore, Article 12 of the ICESCR envisages the right to physical and mental health. It further includes the “improvement of environmental and industrial hygiene and the prevention of disease”. Right to safety and prevention of individuals from hazardous products is also one of the basic rights of consumers, as well as the main goal of consumer protection⁵⁷. Therefore, it can be argued that Article 12 of the ICESCR also impliedly acknowledges consumer rights as human rights.

Ukwueze and Benohr further observe that, right to access to justice, right to fair trial and right to redress which are enshrined in the many international human rights instruments are closely connected with consumer protection⁵⁸. Article 8 of the UDHR states that “everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted him by the constitution or by law”. As mentioned in the Guideline 37 of the UNGCP, development of a fair, effective, transparent, and impartial mechanism to address consumer complaints is an essential task of consumer protection process. In addition to that, the right to education, which is embodied in Article 13 of the ICESCR is also compatible with the consumer’s right to

55 Deutch (n 28)

56 Ukwueze (n 28)

57 Ibid; Benohr (n 5)

58 Ibid

education enshrined in the Guideline 42 of the UNGCP⁵⁹.

In addition to international human rights instruments, some regional human rights instruments also expressly and impliedly recognize consumer rights protection as a part of human rights. For example, Article 38 of the Charter of Fundamental Rights of the European Union (hereinafter ‘the Charter’), highlights that “Union policies shall ensure a high level of consumer protection⁶⁰”. It can be argued that this provision is a direct recognition of consumer protection as human rights. However, Kingisepp contends that this provision forms “only a broader constitutional view that a high level of consumer protection is part of the Union’s mission⁶¹”. Nevertheless, as Benohr argues some provisions of the European Convention of Human Rights (hereinafter ECHR) impliedly acknowledges consumer rights as human rights. As she observes, Article 10 and 11 of the ECHR include freedom of expression and freedom of association, “which may protect the right of consumers or consumer organizations to form opinions and to receive and divulge information⁶²”.

Moreover, in the international level, the UNGCP acts as the major legal instrument for the protection of consumer rights. Even though the UNGCP does not have a binding force as same as an international convention, the global acceptance of the UNGCP can be considered as a general recognition of consumer protection as a universal right⁶³. In its early stages, Deutch viewed the UNGCP as an implementation of ICESR and the UDHR. Therefore, it can be argued that today, consumer rights are in the process of acquiring their validity as a third-generation human rights in the international arena.

Furthermore, there are instances of constitutional recognition of consumer rights in the domestic level⁶⁴. Article 60 (1) of the Constitution of the Portuguese Republic recognizes consumer rights as constitutional rights. According to Article 60 (1);

⁵⁹ Deutch (n 28)

⁶⁰ Kingsapp (n 45)

⁶¹ *ibid*

⁶² Benohr (n 5)

⁶³ *ibid*; Ukwueze (n 28)

⁶⁴ (Kingisepp (n 45)

Consumers shall possess the right to good quality of the goods and services consumed; to training and information; to the protection of health, safety, and their economic interests; and to reparation for damage.

This provision has more importance when considering consumer rights as human rights because it directly recognizes consumer rights as fundamental rights⁶⁵. In addition, the Constitution of Spain also includes a provision in Chapter III, which deals with “the Guiding Principles of Economic and Social Policy”. Accordingly, Article 51 of the Constitution of Spain states that “the public authorities shall guarantee the protection of consumers and shall, by means of the effective measures safeguard their safety, health and legitimate economic interests”. Both these constitutional initiatives paved the way for making a strong argument in favor of upgrading consumer rights into a similar level of human rights⁶⁶.

Notably, the aforementioned arguments and examples clearly support the view of considering consumer rights as a part of human rights. However, there are some opposing arguments which refute the view of elevating consumer rights into the context of human rights. On the one hand, there is a common hesitation in the international legal sphere to upgrade new rights as human rights. As Benohr has correctly pointed out, “the gradual proliferation of new human rights claims in law and politics has led to some skepticism and suggestions for stronger quality controls of these rights⁶⁷”. On the other hand, some scholars like Kingisepp argue that there is no need to recognize consumer rights as human rights. He pointed out two reasons for refusing human rights value of the consumer rights. First, as he argues, a violation of a human right leads to death or dire suffering and, in contrast, violation of a consumer rights does not normally cause such drastic consequences. Second, consumer rights do not contain the characteristic of ‘abstractness’ which include human rights⁶⁸.

⁶⁵ Ukwueze (n 28); Kingisepp (n 45); Deutch (n 28)

⁶⁶ Ukwueze (n 28)

⁶⁷ Benohr (n 5)

⁶⁸ Kingisepp (n 48)

However, according to the researcher's point of view, it is difficult to accept Kingisepp's first argument because, as discussed earlier basic consumer rights like the right to safety, right to be informed etc. are directly connected with right to life and right to health. Therefore, it is submitted that any violation of basic consumer rights have a serious impact on human lives.

Conclusion

The main theoretical analysis of this paper focuses on the existing debate on recognizing consumer rights in the context of human rights. Generally, it is evident that the concept of consumer rights has less attention compared to the other right based approaches like human rights. Notably, in addition to the UNGCP, there is no internationally recognized legal instrument which is directly relevant to the consumer rights protection. From the International law perspective, as mentioned earlier, the UNGCP is a soft law which does not have legally binding force towards the state parties⁶⁹.

Conversely, human rights are a well-known and globally accepted, legally enforceable phenomenon through several international conventions and protocols. Therefore, elevating consumer rights as a part of human rights would positively impact on safeguarding consumer rights in various ways. First, it will cause to gain more attention to consumer rights violations occurring when face to face as well as online consumer transactions. Second, it is obvious that, if consumer rights are recognized as human rights, it will strengthen consumer rights protection⁷⁰. Particularly, some basic consumer rights including the right to privacy, right to information and right to redress could be implemented as human rights and it will enhance the protection given for consumers against serious infringement of their rights.

⁶⁹ Y Yu and DJ Galligan, "Due Process of Consumer Protection: A Study of the United Nations Guidelines on Consumer Protection" [2015] FLJS <https://www.law.ox.ac.uk/sites/files/oxlaw/oxford_ungcp_due_process_w_fljs_logo.pdf. > accessed July 8, 2021

⁷⁰ M Eseyin and CW Chukwuemeka, "Articulating Consumer's Rights as Human Rights in Nigeria" (2018) 72 Journal of Law, Policy and Globalization 124