

## **Consumer Dispute Resolution in B2C E-commerce in Sri Lanka: A Comparative Legal Analysis**

Ariyaratna, B.A.R.R.

*Department of Legal Studies, Faculty of Humanities and Social Sciences,*

*The Open University of Sri Lanka*

[ruwanthika.ariyaratna@gmail.com](mailto:ruwanthika.ariyaratna@gmail.com)

### **Abstract**

E-commerce has emerged as a significant turning factor of the global economy since the last quarter of the 20<sup>th</sup> century. As a result of the convenient and efficient nature of the e-commerce traditional consumer transactions have rapidly been changed into online transactions. However, it is evident that online consumers have to expose serious violations of their consumer rights other than the offline consumers during a Business to Consumer (B2C) transaction. One of the major problems arises in the post-purchasing stage of a B2C transaction is dispute resolution between consumer and the trader. If goods are not delivered or delivered in an unsatisfactory condition, consumers may have difficulties to communicating with the trader. This situation becomes more complicated when the consumer and the trader are in two jurisdictions particularly in cross-border disputes. As the United Nations Guidelines on Consumer Protection declares fair, effective and transparent dispute resolution mechanism is much necessary to uphold the consumer's right to redress. Therefore, at present, most of the countries, including European Union, South Africa and United Kingdom have focused on more flexible, out of court solutions such as Alternative Dispute Resolution (ADR) and Online Dispute Resolution (ODR). However, in the Sri Lankan context, the existing consumer dispute resolution mechanism under the Consumer Affairs Authority Act is completely proceeding in an offline context. Therefore, this research intends to analyze whether the existing consumer dispute resolution mechanism in Sri Lanka is adequate to address the disputes arise in B2C e-commerce transactions. Comparative legal analysis method has been utilized in order to identify the drawbacks in Sri Lankan law and suggest recommendations. Accordingly, the findings of the research revealed that the existing consumer dispute mechanism under the Consumer Affairs Authority Act in Sri Lanka needs to be amended in order to accommodate easy to use, out of court mechanism to resolve domestic and cross border e-commerce disputes in a timely manner. This mechanism can be utilized as an ADR or ODR system, which allows consumers to file their complaints electronically and reach a decision within a reasonable time period.

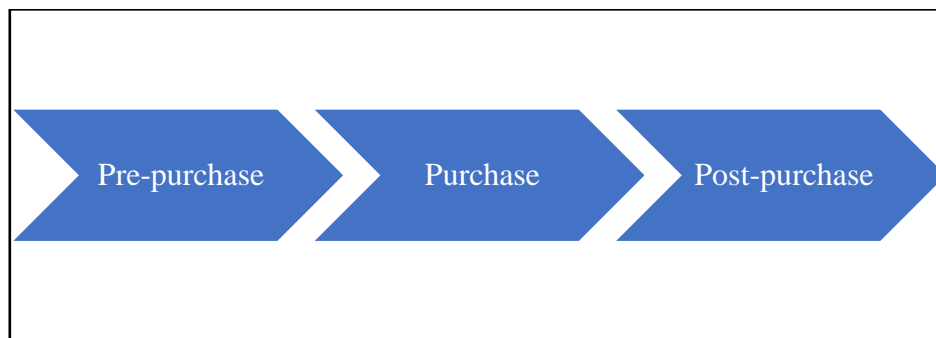
**Keywords:** Consumer Dispute Resolution, E-commerce, B2C Transactions, Alternative Dispute Resolution, Online Dispute Resolutions

### **INTRODUCTION**

E-commerce and electronic contracts are more common terms all over the world today. When the internet technology was invented in the last quarter of the 20<sup>th</sup> Century, many sectors used its remarkable features to enlarge their capabilities. Accordingly, the commercial and business entities

also expanded their capacities by absorbing technological advancements into their business transactions (Yuthoyotin, 2015). As a result, e-commerce has emerged as a significant turning factor of the global economy. However, Prins (2003) notes that the internet implies new risks for consumers. Consumers may become stronger as a result of some advanced features of the internet on the one hand and the complex and vulnerable features of the internet may lead consumer into a more weaker position, on the other (Prins 2003; Waite, 1999, Kavier, 2011).

The United Nations Conference on Trade and Development (UNCTAD) identifies three stages of a consumer-business relationship in e-commerce, where consumer rights violations and consumer protection issues could be raised (UNCTAD Secretariat, 2017). Figure 1 highlights the aforementioned stages as follows



*Figure 1: Three stages of the consumer business relationship (UNCTAD Secretariat, 2017)*

Lack of dispute resolution and redress mechanism are the major problems which online consumers can be subjected to during post purchasing. Instead of the offline transactions in an online context, consumers do not have face to face engagement with traders (Waite, 1999). As a result, if goods are not delivered or delivered in an unsatisfactory condition, consumers may have difficulties to communicating with the trader. Notably, this situation becomes more complicated when the consumer and the trader are in two jurisdictions particularly in cross-border disputes (Waite, 1999; Liyanage, 2012). Therefore, this paper investigates the problem and the legal consequences of inadequate dispute resolution mechanism in B2C transactions particularly within the Sri Lankan context.

Accordingly, this paper aims to analyze importance of consumer dispute resolution in online context and the adequacy of the existing consumer dispute resolution mechanism in Sri Lanka comparing with the advanced features of European Union, South Africa and Indian Jurisdictions. Finally, this paper will propose recommendations for enhancing the existing Sri Lankan legal framework.

## **METHODOLOGY**

This research has basically used the qualitative research paradigm. Moreover, this research utilized the comparative legal research method in order to illustrate the emerging trends in other jurisdictions with regard to the research focus. Since online consumer protection is a novel concept for the Sri Lankan jurisdiction, this comparative study aims to compare and contrast the existing Sri Lankan legal framework with the advanced features of EU, South African and Indian jurisdictions. The EU legal framework has provided very advanced framework for dispute resolution in electronic transactions. South African approach has also been considered as an example because, both South Africa and Sri Lankan legal frameworks have Roman Dutch Law influence. As the neighboring country to Sri Lanka, the Indian approach signifies a recent way forward to protect consumer rights in online context by enacting Consumer Protection Act in 2019.

In this research, the researcher used the desk review/literature review approach as the main method of data collection. Accordingly, both primary and secondary legal sources were examined in order to identify the research gaps and legal framework in the Sri Lankan context. Furthermore, the comparative study between Sri Lanka and the EU, South African and Indian jurisdiction is totally based on the analysis of primary and secondary sources.

## **RESULTS AND DISCUSSION**

This section primarily deals with a comprehensive discussion of findings gathered from primary and secondary sources of literature and comparative analysis.

### **Right to Redress as a Consumer Right**

In 1962, the former President of the United States (hereinafter the US), John F. Kennedy, declared a broad meaning for the term ‘consumer’ in a very progressive manner. According to his words; Consumers by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private economic decision. Two-thirds of all spending in the economy is by consumers. But they are the only important group in the economy who is not effectively organized whose views are often not heard(Consumer Protection Manual, 2016).

Later, this idea was embodied in various international legal instruments. As mentioned in Guideline 3 of the United Nations Guidelines on Consumer Protection in 2016 (hereinafter the UNGCP) the term ‘consumer’ generally referred to as “natural person regardless of nationality, acting primarily

for personal, family or household purposes”. Article 2.1 of the European Union Consumer Rights Directive also provides a similar definition to ‘consumer’ as “any natural person who is acting for purposes which are outside his trade, business, craft or profession”. Both these definitions denote that a consumer as a person who is acting only for his or her personal purposes instead of any other professional or business purposes.

The concept of ‘consumers rights’ is considered as a part of the social rights which individuals are entitled to claim in modern society (Consumer Protection Manual, 2016). As Larson and Lawson (2013) suggest, the notion of consumer rights integrates with various forms of justice such as distributive justice, commutative justice, procedural justice etc. This concept was first highlighted by President Kennedy in his congressional speech. Accordingly, every consumer should have four basic rights and these rights include;

- 1). Right to safety- to be protected against products or services which are hazardous to health or life
- 2). Right to be informed –to be protected against misleading advertising, information and labeling and to be informed with facts which need to make a good choice.
- 3). Right to choose – to be able to access various products and services at competitive and reasonable prices.
- 4) Right to be heard – to be able to represent consumer’s interest in making government policies (Larson & Lawson, 2013; The American Presidency Project, 1999)

In 1985, the General Assembly of the United Nations adopted the UNGCP as the leading international instrument in protecting consumer rights (Larson & Lawson, 2013).The UNGCP encourages fair, effective, transparent and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolution, including cross-border cases which is much necessary to uphold the consumer’s right to redress. However, as many scholars argue, conventional court system or other dispute resolution mechanisms are not effective in resolving online consumer disputes (Cortes,2010; Liyanage, 2012; Liyanage, 2010; Waite,1999).

Therefore, Liyanage (2012) emphasizes that Online Dispute Resolution (hereinafter ODR) related regulatory approach is much more appropriate for protecting online consumer’s rights. However, most of the developing countries, including Sri Lanka are still having many obstacles to establishing proper ODR systems for online consumer dispute resolution (Cupido, 2016; Weragoda, 2017). Accordingly, it is evident that consumers are exposed to many consumer rights violations in all these three stages of consumer business transaction. Therefore, state intervention is vital for striking a fair balance between consumers and traders rights in an online context. Next section briefly discusses the need for state intervention as a guardian of consumer rights in electronic contracts.

## **Necessity of Effective Dispute Resolution Mechanism for Online Transactions**

As mentioned, dispute resolution is one of the pragmatic challenges faced by online consumers during the post-purchase stage. As Liyanage (2010) highlights, cross border electronic commerce disputes have increased rapidly as a result of the development of the e-commercial transactions. These disputes pave the way to enormous challenges to online consumers such as “the applicable law, cost of litigation; and 'clickwrap' terms and conditions” (Liyanage, 2010). Rolland (2014) also support this view and points out, e-commerce as a causing factor which decreases the state’s ability to protect its consumers who engage with cross border transactions.

O’Sullivan (2015) contends that access to justice is more critical for consumers who are shopping online. As he further points out during shopping online, consumers frequently encounter problems such as nondelivery of goods, the supply of faulty goods, mismatch of the content with what has been displayed on the website. Therefore O’Sullivan (2015) denotes that online consumers should have an efficient way to access justice. The researcher also agrees with the Sullivan’s opinion because, unlike a consumer who purchase goods from a super market, online consumers have to shop in a virtual market without knowing the identity of the sellers and without touching and feeling the goods.

As Liyanage (2012) correctly argues, there should be an ODR mechanism to resolve B2C electronic commercial disputes. Liyanage(2012 and 2010) in both studies attempt to emphasize the importance of separate ODR system in online consumer disputes. However, due to the lack of governmental initiatives in this regard, he argues that ODR mechanism should be a part of an online consumer protection mechanism and he provides some concrete examples from effective ODR mechanisms in other countries. Sullivan (2015) also provides the same opinion with regard to the ODR system.

Presently, many developed as well as developing countries have established advance mechanisms for online dispute resolution. This paper will look at the European Union, South African and Indian approaches with regard to the online consumer dispute resolution in order to compare with existing Sri Lankan legal framework.

## **Experiences from Comparative Jurisdictions**

### **European Union:**

A study conducted by the European Commission in 2010 revealed that due to the delay and expenses of traditional court cases, most of the consumers are refraining to seek judicial redress for their disputes against traders (Page and Bonnyman, 2016). Therefore, in order to improve the consumer

access to justice, the European legislator has focused on Alternative Dispute Resolution (hereinafter ADR) mechanism (Ruhl, 2015). As Page and Bonnyman (2016) define, “ADR is an umbrella term for different types of procedures that help parties resolve their disputes out of court, usually through the help of a third party such as an arbitrator, mediator or ombudsman”.

As a result, the European Union in 2013 adopted the Directive 2013/11/EU on Alternative Dispute Resolution for Consumer Dispute (hereinafter ‘Consumer ADR Directive’) and Regulation No 524/2013 on Online Dispute Resolution for Consumer Dispute (hereinafter ‘ODR Regulation’). Both these mechanisms are intended to provide out of court solutions for consumer-trader disputes with a low cost and efficient means of access to justice (Ruhl, 2015).

According to Article 1 of the Consumer ADR Directive, the purpose of this Directive is, through the achievement of a high level of consumer protection, to contribute to the proper functioning of the internal market by ensuring that consumers can, on a voluntary basis, submit complaints against traders to entities offering independent, impartial, transparent, effective, fast and fair alternative dispute resolution procedures.

Page and Bonnyman (2016) note that the scope of the ADR Directive is very broad because it applies to both domestic and cross-border disputes. The Directive mandates all member states to facilitate access by consumers to ADR procedures through ADR entities which complies with the requirement set out in the Directive. Thus, as further mentioned in Article 5, the ADR entities should maintain an up-to-date website which provides the parties with easy access to information concerning the ADR procedure. Also, ADR entities should allow consumers to submit their complaint offline and they can exchange further information by e-mail or by post. Most importantly, Article 6 requires State parties to ensure that the natural persons in charge of ADR possess the necessary expertise and are independent and impartial. As Creutzfeldt (2016) opine, the purpose of these mandatory requirements is to create high-quality standards and best practices among these ADR bodies.

As envisaged in Article 1, the main objective of the ODR Regulation is to “facilitate the independent, impartial, transparent, effective, fast and fair out-of-court resolution of disputes between consumers and traders online by providing a European ODR platform”. Page and Bonnyman (2016) point out that the main limitation of the ODR platform is that it is limited to disputes that arise between consumers and traders in the context of online sales of goods and services. As Article 5 of the ODR Regulation emphasize, the ODR platform should be a user-friendly single point of entry for consumers and traders seeking t out-of-court resolution. Furthermore, it shall be an interactive website which can be accessed electronically and free of charge in all the official languages of the institutions of the Union. The functions of the ODR platform is as follows;

The consumer fills the electronic complaint form and submits to the ODR platform.

Inform the respondent party about the complaint.

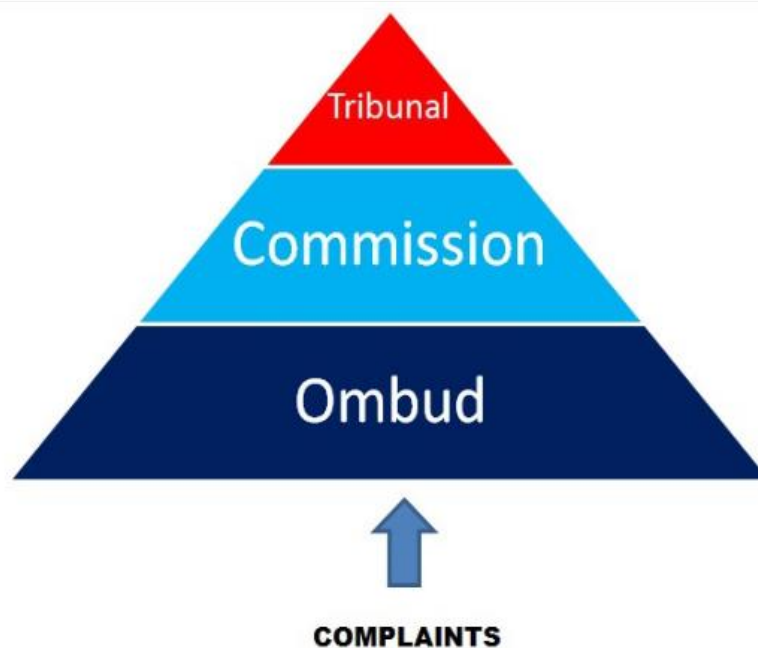
Identify the competent ADR entity or entities and transmit the complaint to the ADR entity.

The ADR entity handles the case fully online and reach a decision within 90 days period.

Hence it is evident that the smooth functioning of the ODR platform provides very effective and time saving out of court settlement for consumer disputes. As Creutzfeldt (2016) aptly points out, “the legislation on ADR and ODR introduces significant change to the existing civil justice landscape in Europe by creating an additional pathway for consumers to obtain accessible, timely, and cost-effective redress”.

### **South Africa:**

The Consumer Protection Act No, 68 of 2008 (CPA) is the main consumer law related legislation in South Africa. For the purpose of dispute resolution and enforcement of the Act, the CPA has set up the National Consumer Commission (hereinafter NCC) and the Tribunal in terms of Section 85. Most importantly, in 2015, a Consumer Goods and Service Ombudsman (hereinafter CGSO) has been set up in line with the CPA (cgso.org, nd ). The main objective of the CGSO is to assist in resolving complaints by consumers. After formulating the CGSO, some functions of the NCC like resolving disputes and enforce the rights of the consumers were transferred to the CGSO. Accordingly, the following procedure will be used to settle consumer disputes under the current practice.



*Figure 2: Dispute Resolution procedure under the CPA (Source, cgso.org)*

As demonstrated in Figure 2, when the consumer has an unresolved complaint against the supplier, his or her first attempt should be using an ADR mechanism with the assistance of the Ombud. If only

the supplier refuses to cooperate or the CGSO is unable to resolve the matter, then it will be referred to the NCC, which has the legal power to investigate the complaint and impose a compliance notice on the supplier. If parties are not satisfied with the outcome of the NCC, they can refer it to the tribunal to reconsider the matter. It is apparent that this procedure allows consumers to save their time and cost by using a more efficient system of dispute resolution.

**India:**

India is now moving forward to the flexible legal framework which can facilitate the growth of e-commerce. The Consumer Protection Act, No 35 of 2019 is the most recent development of Indian consumer law. This significant piece of legislation has expanded the coverage of consumer protection by including both online as well as offline consumers into the term ‘consumer’ under Section 2 (8) of the Act.

Section 10 of the Act establishes the Central Consumer Protection Authority which aims to regulate matters relating to violations of rights of consumers, unfair trade practices and misleading advertisements. Moreover, the Act constitutes Consumer Dispute Redressal Commission in National, State and district level for resolving consumer complaints. In addition, Consumer Mediation Cell will be established in order to promote mediation as a consumer dispute resolution mechanism. The following Figure 3 briefly demonstrates the overall picture of the dispute resolution mechanism proposed under the Bill



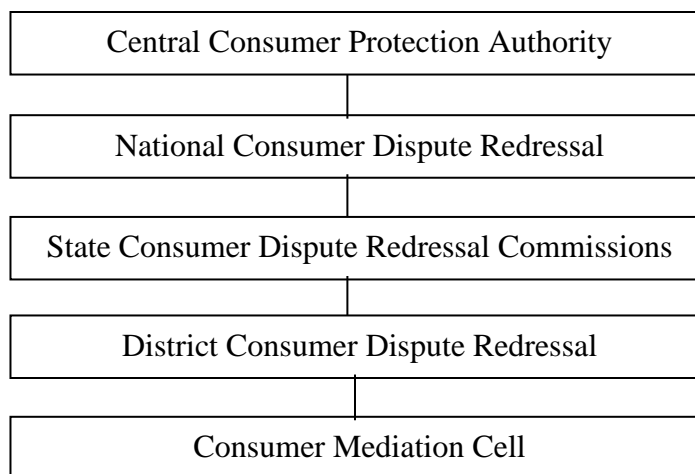


Figure 3 : Dispute resolution mechanism under the Consumer Protection Act

As Section 32 of the Act states, consumers can fill the complaint electronically and payment of fees for such complaints can be done electronically. Therefore, Gholap (2018) emphasizes that this procedure will be a time saving and effective mechanism for online consumers.

After examining all the key features of the EU, South Africa, and Indian approaches, it can be identified that all these three jurisdictions provide effective mechanisms to regulate consumer dispute in online context. Among them, the European Union approach is significant, because it facilitates both ODR and ADR to handle consumer disputes in electronic transactions. The next section will critically examine the existing Sri Lanka legal framework comparing with EU, South African and Indian jurisdictions.

### **Consumer Dispute Resolution in Sri Lankan Legal Framework**

The Consumer Affairs Authority Act, No 9 of 2003 (CAAA) provides the main legal framework for consumer protection in Sri Lanka. According to the Rodrigo (2013), “in the Sri Lankan context the introduction of the CAAA as the key consumer legislation, marks a significant legislative development in the area of consumer protection”. The CAAA intends to afford general protection for consumers and traders by establishing consumer Affairs Authority (hereinafter CAA).

One of the main objectives of establishing the CAA and CAC under the Act is to investigate, inquire and adjudicate consumer matters (Rodrigo, 2013). Under Section 13 of the CAAA, the CAA can inquire complaints regarding two matters such as complaints relating to standards and specifications determined under section 12 and complaints regarding warranty or guarantee given by the manufacturer or trader. Complaints should be made to the Authority in writing within three months. The initial decision of the Authority is final and if the manufacturer or trader fails or refuses to comply

with an order, then the CAA can initiate legal action in the appropriate Magistrate Court on behalf of the consumer.

On the other hand, the CAC has powers to settle the dispute by hearing and determining all applications and references made to it under Section 37 and 38 of the CAAA. Under Section 37, the CAA can refer matters to the CAC in relating to anti-competitive practices. According to Section 38, a consumer or a trader or any organization of consumers or any association of traders can directly make an application to the Council. As Section 41 provides, the Council should make its order on such applications within one month of its receipt. Rodrigo (2013) comments, that this dispute resolution mechanism can be considered as a low cost and effective remedy for consumers. However, as Rodrigo further argues, “there is a lack of procedural fairness in this adjudication system because it makes no provision for appeal to the judicial system against an order of the council”.

When examining all these provisions, it is evident that the CAAA attempts to provide a dispute resolution system for the consumers through the functions of the CAA and the CAC. However, as Segarajasingham (2010) points out there are many practical problems associated with this redress mechanism that makes the whole purpose ineffective. As Segarajasingham (2010) correctly points out “formulation of Consumer Redressal Agencies at the district level and Consumer Court at the provincial level, based on Indian Law to give easy redress to the aggrieved consumer”. In this context, the Indian example provides a very effective approach which is based on different levels of dispute resolution agencies and different methods of dispute resolution like mediation.

Moreover, when specifically concern about the consumer issues in online context, it is questionable whether this kind of traditional dispute resolution system is adequate to address the cross border consumer issues. Weragoda (2017) criticized that, “the CAAA is not adequate as a dispute resolution mechanism in the current digital era where transactions take place in online trading platforms”. As discussed in the previous section, the EU legal framework facilitates effective ADR and ODR mechanism in order to resolve the cross border consumer disputes in electronic contracts. These dispute resolution platforms are user-friendly out of court solutions which provide more efficient settlement options for both traders and consumers. Therefore, as Liyanage (2012) suggests, the CAAA in Sri Lanka also needs to be amended, ensuring the legal validity of online consumer arbitration clauses.

## **CONCLUSION AND RECOMMENDATIONS**

As previously discussed, it is apparent that due to the delay and expenses in traditional court cases most of the consumers are refraining to access justice against unjust and deceptive conducts of the

online traders. ADR and ODR mechanisms are still not familiar with the consumer dispute resolution in Sri Lanka. Although, the CAA and CAC act as consumer dispute resolution and adjudication bodies under the CAAA, those two mechanisms are not much effective for online consumers. The CAAA does not provide any facility to handle the complaint in online or electronically. Therefore, implementing ODR is still difficult in the Sri Lankan context (Weragoda, 2017).

Based on these drawbacks this paper suggests following recommendations. First recommendation is to implement easy to use, out of court mechanism to resolve domestic and cross border e-commerce disputes in a timely manner as a recommendation. Secondly, it is recommended that proposed mechanism should be utilized as an ADR or ODR system, which allows consumers to file their complaints electronically and reach a decision within a reasonable time period. In this context, the researcher further recommends expanding the powers and functions of the CAC to adjudicate online consumer complaints. Then It will be a good way forward to enhance the consumer trust and confidence on e-commerce sector in Sri Lanka.

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