

**Comparative Study of Bhutan's Consumer Protection Act with Other National and
Multinational Consumer Protection Framework**

1. Background

The Consumer Protection Act 2012 (CPAB) forms the legal foundation for safeguarding consumer rights, ensuring fair trade practices, and fostering trust between businesses and consumers. The Act enshrines fundamental consumer rights while emphasizing businesses' obligations to uphold transparency, quality assurance and ethical practices. Since its enactment, the Act has achieved notable progress. It has increased consumer awareness and contributed to fairer markets, redressing consumer issues and reducing instances of deceptive practices.

Despite the existence of a legal framework for consumer protection, challenges still persist in effectively resolving every consumer issue. The evolving marketplace has introduced new consumer risks, such as online scams, unfair contract terms, limited safeguards against informal business operators, and increasingly complex transaction processes. Some important areas, such as class actions, referral selling, pyramid schemes, product adulteration, lay-by agreements, and unfair contract terms, are also not covered under the Act and the existing penalty provisions are often general and difficult to calculate at times.

Globally, organizations such as the United Nations Conference on Trade and Development (UNCTAD) and the European Union (EU) offer comprehensive guidelines to strengthen consumer protection. Similarly, countries in the South Asian Association for Regional Cooperation (SAARC) region have developed varied measures tailored to their specific socio-economic contexts. A comparative study of Bhutan's Consumer Protection Act against these frameworks can reveal valuable insights, highlight areas for improvement, and suggest ways to align with international standards. This study therefore examines Bhutan's legislation through a regional and global perspective, aiming to identify opportunities to enhance consumer protection in an increasingly interconnected marketplace. The findings will support the ongoing efforts to review and update the CPAB.

2. Objective

To improve Bhutan's Consumer Protection Act by drawing from national and multinational consumer protection frameworks.

3. Methodology

- This study adopts a qualitative comparative analysis approach to review Consumer Protection Act of Bhutan in relation to selected international and regional consumer protection laws. The jurisdictions chosen for comparison include India's Consumer

Protection Act (ICPA), Australia's Consumer Law (ACL), the EU Directives on Consumer Protection, and the UN Guidelines for Consumer Protection.

- The analysis primarily focuses on identifying and highlighting key differences between Bhutan's consumer protection act and those of the selected jurisdictions. These differences are examined in terms of scope, enforcement mechanisms, institutional frameworks, consumer rights coverage, redressal systems, and business obligations.
- While similar provisions are acknowledged during the review process, they are not included in the findings, as the study aims to shed light on the gaps and areas for potential improvement in Bhutan's consumer protection act.

4. Findings and Discussion

4.1 Definition

4.1.1 Consumer

In CPAB 2012 (chapter xiv section 123), consumer means a natural person: (i) Who buys goods and services for personal, family or household use with no intention of resale, (ii) And shall include farmers

ICPA 2019 defines consumer (chapter 1, section 2) as any person who buys goods or hires services for a consideration (paid, promised, partly paid/promised, or on deferred payment), for personal use and not for resale or commercial purposes. It also includes anyone who uses the goods or benefits from the services with the buyer's or hirer's approval, but excludes those who obtain them for resale or commercial use.

As per ACL 2010, Chapter 1 section 3, Consumer is someone who buys goods or services mainly for personal, household, or domestic use. If the purchase price is \$40,000 or less, the buyer is considered a consumer, regardless of what they buy. However, even if the price is over \$40,000, the buyer is still a consumer if the goods are normally used for personal or household purposes, like a car or home appliances. But if the purchase is for business, resale, or manufacturing, the buyer is not considered a consumer, no matter the price.

As per the EU Directive 2011/83 (chapter 1, article 2) 'consumer' means any natural person who is acting for purposes which are outside his trade, business, craft or profession.

The definition of a consumer across all the laws is tailored to their own needs, however, in Bhutan's case, the definition of consumer as 'a natural person who buys goods and services for personal, family or household use with no intention of resale' is good enough to cover any natural person without explicitly mentioning farmers. Mentioning "farmers" explicitly as consumers could create ambiguity and mislead readers into thinking that farmers are always consumers, and they are exempted from the obligations of business even when they act as sellers or suppliers.

4.2 Unfair Trade Practices

4.2.1 Unsolicited Supplies

ACL 2010 division 2 section 162, mentions unsolicited supplies, which refer to goods or services sent to a consumer without their request or agreement. It mentions that a business cannot demand payment for unsolicited goods or services as follows;

1. No Obligation to Pay:
 - Consumers do not have to pay for unsolicited goods or services.
 - If a business demands payment, it is illegal.
2. Consumer's Right to Keep Goods:
 - If unsolicited goods are not collected within 3 months, the consumer can keep them for free.
 - If the sender requests collection, they must do so within 1 month after the consumer informs them.
3. Business Conduct Restrictions:
 - Businesses cannot threaten legal action for non-payment.
 - If they demand payment or mislead consumers, it is considered misleading and deceptive conduct.
4. Exceptions:
 - If a consumer agrees to receive the goods/services but later refuses to pay, it is not unsolicited

The Consumer Protection Acts of both Bhutan and India currently do not explicitly address practices such as unsolicited supplies, which may emerge as a consumer issue with the evolving nature of commerce. In light of changing business models and consumer transactions, it would be prudent to incorporate provisions on unsolicited supplies in our Act. Doing so would strengthen the legal framework and ensure preparedness to address such issues should they arise in the future.

4.2.2 Referral selling

As per ACL section 167, a person must not, in trade or commerce, induce a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for: (a) giving the person the names of prospective customers; or (b) otherwise assisting the person to supply goods or services to other consumers; if receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made. A person commits an offence if:

(a) the person, in trade or commerce, induces a consumer to acquire goods or services by representing that the consumer will, after the contract for the acquisition of the goods or services is made, receive a rebate, commission or other benefit in return for: (i) giving the person the names

of prospective customers; or (ii) otherwise assisting the person to supply goods or services to other consumers; and

(b) the receipt of the rebate, commission or other benefit is contingent on an event occurring after that contract is made. Penalty: (a) if the person is a body corporate—\$1,100,000; or (b) if the person is not a body corporate—\$220,000.

The practice of referral selling, is not explicitly addressed in the Consumer Protection Acts of Bhutan and India although there is mention of pyramid and money circulation schemes. As business models become more complex and marketing tactics more aggressive, the absence of specific provisions on referral selling may leave consumers vulnerable to misleading schemes. Therefore, it would be advisable to incorporate clear prohibitions on such practices together with penalties within our Act to strengthen consumer safeguards and ensure legal readiness for emerging forms of unfair trade practices.

4.2.3 Harassment and coercion

A person commits an offence if: (a) the person uses physical force, or undue harassment or coercion; and (b) the physical force, or undue harassment or coercion is used in connection with:

- (i) the supply or possible supply of goods or services; or
- (ii) the payment for goods or services; or
- (iii) the sale or grant, or the possible sale or grant, of an interest in land; or
- (iv) the payment for an interest in land.

Penalty: (a) if the person is a body corporate—\$1,100,000; or (b) if the person is not a body corporate—\$220,000.

Bhutan's Consumer Protection Act currently includes provisions restricting the use of coercion and harassment against consumers. However, there are no specified penalties for violations of these provisions. This gap limits the effectiveness of the law in deterring such unfair trade practices. Therefore, it is recommended that clear penalty provisions be introduced for such offences while the exact amounts for penalties can be decided during the legislative review process.

4.2.4 Multiple pricing

A person commits an offence if: (a) the person, in trade or commerce, supplies goods; and (b) the goods have more than one displayed price; and (c) the supply takes place for a price that is not the lower, or lowest, of the displayed prices. Penalty: (a) if the person is a body corporate—\$5,000; or (b) if the person is not a body corporate—\$1,000. (2) Subsection (1) is an offence of strict liability.

While Bhutan's consumer protection act acknowledges the issue of multiple pricing, there is currently no penalty provision associated with this practice. The absence of a defined sanction reduces the deterrent effect and may allow such misleading practices to persist. Therefore, it is recommended that a clear penalty be incorporated while penalty amounts may be determined during the legislative review process.

4.2.5 Failure to inform consumer of the delays (force majeure)

Under both ACL and EU Consumer Directives, failure to inform the consumers of the delays including force majeure (unforeseeable events beyond a seller's control) is considered unfair and misleading leading to legal actions; where a consumer can terminate contract and request refund or a business can be fined.

In Bhutan, several consumer complaints have involved businesses failing to inform customers about order delays, yet the CCAA has only been able to issue advisories rather than take action, even in repeated cases. Introducing a provision specifically addressing failure to inform consumers of delays would help tackle such recurring issues and enhance accountability.

4.2.6 False and Misleading Advertisement

CPAB 2012 in its rules and regulation under section 33, mentions that no service provider, supplier or manufacturer shall make any advertisement: a) that is likely to imply a false or misleading representation of goods or services; b) in a manner that is misleading, fraudulent or deceptive with regard to the nature, properties, advantages or usage of the goods or services. Violation of this provision leads to paying a fine equivalent to the value of the goods or services; or rectifying the misleading representation within 14 days. If a service provider, manufacturer and supplier fails to rectify the false and misleading representation or pay the fine equivalent to the value of the goods and services then the service provider, manufacturer and supplier shall be liable to: (a) Pay a fine equivalent to the value of the goods or services in question; and (b) Cancellation of business license in consultation with relevant licensing authority.

ICPA 2019 (Chapter vii, section 89) mentions that 'any manufacturer or service provider who causes a false or misleading advertisement shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees; and for every subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees'.

ACL 2010 chapter 2 section 18 mentions that a person must not, in trade or commerce, engage in conduct that is misleading or deceptive or is likely to mislead or deceive. A pecuniary penalty may

be imposed for a contravention of this subsection: a) if the person is a body corporate - \$1.1 million; or (b) if the person is not a body corporate - \$220,000.

While Bhutan, India, and Australia all prohibit misleading advertising, their enforcement differs; Bhutan emphasizes corrective action, India imposes criminal penalties, and Australia levies civil fines. To enhance Bhutan's law, both civil and criminal liabilities should be included based on the severity of the offence - for example, criminal penalties for misleading ads involving medicines, and civil penalties for normal goods. A combined penalty approach is also recommended; either a value-based fine or a fixed-slab penalty - whichever is higher, to ensure fairness and effective enforcement even when the value of goods is low or difficult to calculate.

4.2.7 Product Adulteration

As per ICPA 2019 chapter vii section 90, whoever manufactures for sale or stores or sells or distributes or imports any product containing an adulterant shall be punished, if such act;

(a) does not result in any injury to the consumer, with imprisonment for a term which may extend to six months and with fine which may extend to one lakh rupees;

(b) causing injury not amounting to grievous hurt to the consumer, with imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees;

(c) causing injury resulting in grievous hurt to the consumer, with imprisonment for a term which may extend to seven years and with fine which may extend to five lakh rupees; and

(d) results in the death of a consumer, with imprisonment for a term which shall not be less than seven years, but which may extend to imprisonment for life and with fine which shall not be less than ten lakh rupees.

While CPAB 2012 lacks a specific provision on product adulteration and only imposes value-based penalties, this is inadequate given the serious risks to consumer health. Adulteration should be explicitly addressed in the Consumer Protection Act, treated as a criminal offence in line with existing laws, with clear penalties. A dual penalty approach - value-based fines or a slab system (whichever is higher) - should be adopted, along with mandatory compensation to affected consumers.

4.2.8 Pyramid Schemes

The regulatory frameworks of CCAA only identify the Pyramid Scheme as unfair trade practice and currently there are no definition and penalty provisions for it.

The Consumer Protection Direct Selling Rules, 2021, notified under the ICPA 2019, in its section 3 explicitly prohibit the promotion or participation in pyramid schemes. The rule defines a pyramid scheme as a multi-layered network where participants enroll others to receive benefits, directly or indirectly, from the recruitment of additional participants. The Act imposes the following penalties: Imprisonment up to 5 years and fine up to ₹10 lakh (1 million).

ACL 2010 division 3 section 44, also specifically mentions about pyramid schemes and its penalties if the person participates in it as follows;

- i) A person must not participate in a pyramid scheme.
- ii) A person must not induce, or attempt to induce, another person to participate in a pyramid scheme.
- iii) To participate in a pyramid scheme is: to establish or promote the scheme (whether alone or together with another person); or to take part in the scheme in any capacity (whether or not as an employee or agent of a person who establishes or promotes the scheme, or who otherwise takes part in the scheme). It imposes pecuniary penalty for a contravention of this subsection as follows;
 - a) A person commits an offence if the person participates in a pyramid scheme. Penalty: (i) if the person is a body corporate—\$1,100,000; or (ii) if the person is not a body corporate—\$220,000.
 - b) A person commits an offence if the person induces another person to participate in a pyramid scheme. Penalty: (a) if the person is a body corporate—\$1,100,000; or (b) if the person is not a body corporate—\$220,000. Subsections (a) and (b) are offences of strict liability.

Unlike CPAB, both Indian and Australian consumer laws explicitly define pyramid schemes and prescribe clear legal consequences. The absence of such specific provisions in our Act significantly weakens enforcement and makes it difficult to penalize perpetrators. Therefore, it is strongly recommended to clearly define pyramid schemes and include stringent penalties to deter such exploitative practices.

4.3 Key Provisions

4.3.1 Failure to Compliance with the Authorities Direction

Under ICPA 2019, chapter vii section 88, whoever fails to comply with any direction of the Central Consumer Protection Authority (CCPA) shall be punished with imprisonment for a term which may extend to six months or with fine which may extend to twenty lakh rupees, or with both.

Currently the consumer protection regulatory framework in Bhutan is silent on this. Therefore, it is recommended that such provisions should be included in our act to give statutory power to the authority to impose penalties and initiate prosecution, ensuring quicker and more autonomous enforcement.

4.3.2 Transactions in contravention of standard weight or measure

The Indian Legal Metrology Act 2009 outlines that whoever

- (a) in selling any article or thing by weight, measure or number, delivers or causes to be delivered to the purchaser any quantity or number of that article or thing less than the quantity or number contracted for or paid for; or

- (b) in rendering any service by weight, measure or number, renders that service less than the service contracted for or paid for; or
- (c) in buying any article or thing by weight, measure or number, fraudulently receives, or causes to be received any quantity or number of that article or thing in excess of the quantity or number contracted for or paid for; or
- (d) in obtaining any service by weight, measure or number, obtains that service in excess of the service contracted for or paid for,

shall be punished with fine which may extend to ten thousand rupees, and, for the second or subsequent offence, with imprisonment for a term which may extend to one year, or with fine, or with both. It also outlines the penalty for use of unverified weight or measure (section 33) as whoever, sells, distributes, delivers or otherwise transfers or uses any unverified weight or measure shall be punished with fine which shall not be less than two thousand rupees but which may extend to ten thousand rupees and, for the second or subsequent offence, with imprisonment for a term which may extend to one year and also with fine.

Such provisions are also not there in CPAB 2012 and the fines are all based on the value of goods. It would further strengthen the act to have such provisions.

4.3.3 Offences relating to information standards

As per ACL, a person commits an offence if: (a) the person, in trade or commerce, supplies goods of a particular kind; and (b) an information standard for goods of that kind is in force; and (c) the person has not complied with the standard in relation to the goods. Penalty: (a) if the person is a body corporate - \$1,100,000; or (b) if the person is not a body corporate - \$220,000. Violating requirements for goods, such as labeling or disclosure of prices, can result in fines up to 200 fine units (One fine unit is currently €4.) for individuals and up to €3,200 for legal entities as per Estonia CPA, a member of EU.

To strengthen transparency and ensure informed consumer choices, it is recommended to include offences relating to information standards in our act.

4.3.4 Offences relating to substantiation notices

- (1) A person commits an offence if the person: (a) is given a substantiation notice; and (b) refuses or fails to comply with it within the substantiation notice compliance period for the notice. Penalty: (a) if the person is a body corporate - \$16,500; or (b) if the person is not a body corporate - \$3,300.

A person commits an offence if the person, in compliance or purported compliance with a substantiation notice given by the regulator: (a) gives to the regulator false or misleading information; or (b) produces to the regulator documents that contain false or misleading information. Penalty: (a) if the person is a body corporate—\$27,500; or (b) if the person is not a

body corporate—\$5,500. (2) This section does not apply to: (a) information that the person could not have known was false or misleading; or (b) the production to the regulator of a document containing false or misleading information if the document is accompanied by a statement of the person that the information is false or misleading.

The Consumer Protection Act of Bhutan does not address offences related to substantiation notices. Including such provision would help ensure that businesses can back up their claims with credible evidence when requested, thereby discouraging false information.

4.3.5 Refund and Replacement

ACL 2010 does not give consumers the right to a refund or replacement in all cases. Consumers are only entitled to one if the product has a major failure (unsafe, not as described, or unfit for purpose) or a minor failure that the business fails to fix in a reasonable time. However, consumers cannot get a refund or replacement if they change their mind, damage the item, or wait too long. Consumers have the right to reject goods and request a refund, replacement, or repair if the goods fail to meet consumer guarantees, including:

1. Major Failures – If the failure is serious and cannot be easily remedied, such as:
 - The goods are unsafe.
 - The goods are significantly different from their description or sample.
 - The goods are substantially unfit for their normal purpose or a purpose the consumer made known before purchase.
 - A reasonable consumer would not have purchased the goods knowing the defect.
2. Minor Failures – If the failure is not major and can be fixed, the supplier must repair the goods within a reasonable time. If the supplier refuses or fails, the consumer can:
 - Get the goods repaired elsewhere and recover the costs.
 - Reject the goods and seek a refund or replacement.

And Consumers are not entitled to reject goods if:

- The rejection period has ended – The consumer waited too long before reporting the issue.
- The goods were lost, destroyed, or disposed of by the consumer after purchase.
- The goods were damaged by the consumer (not due to a defect).
- The goods were attached or incorporated into property (e.g., installed in a building) and cannot be removed without damage.

If the goods have a major failure, the consumer can choose a refund or replacement under Australian Consumer Law.

The ICPA 2019 also gives consumers the right to a refund or replacement if a product or service is defective, deficient, unsafe, or not as advertised. However, refunds or replacements are not

guaranteed if the consumer changes their mind, misuses the product, or delays the complaint beyond the prescribed time limit, which is the same as CPAB 2012.

There is no need to improve this provision as it is adequately covered in the consumer protection act of Bhutan.

4.3.6 Unfair Contract Terms

The ACL defines unfair contract terms including with examples while CPAB 2012 does not have it. There is no specific provision on unfair contract terms in CPAB, making it harder to challenge exploitative contracts.

1. Definition of Unfair Terms:
 - A term is unfair if it causes significant imbalance in rights and obligations between parties.
 - The term is not necessary to protect the interests of the advantaged party.
 - It detracts from one party (financially or otherwise) if enforced.
2. Transparency:
 - Terms must be in plain language, legible, and clear for all affected parties.
3. Examples of Unfair Terms:
 - One-sided terms allow a party to avoid performance, terminate the contract, or penalize the other party.
 - Terms that limit the other party's legal rights, impose unfair burdens of proof, or restrict legal action.
4. Exceptions:
 - Terms defining the main subject matter or setting the upfront price are exempt from being deemed unfair.
5. Standard Form Contracts:
 - These are presumed to be unfair if one party has most of the bargaining power and the other party is forced to accept the terms without negotiation.

Examples of Unfair Contract Terms:

1. Avoiding Performance: A term that allows one party to not fulfill their obligations but doesn't allow the other party to do the same.
2. Termination: A term that lets one party end the contract but doesn't allow the other party to do so.

3. Penalties: A term that punishes one party for breaking the contract but doesn't impose the same punishment on the other party.
4. Changing Contract Terms: A term that allows one party to change the contract terms without the other party's agreement.
5. Renewal or Non-Renewal: A term that gives one party the power to decide whether to renew or not renew the contract, while the other party has no say.
6. Changing the Price: A term that lets one party increase the price in the contract, but doesn't let the other party cancel the contract.
7. Changing the Goods or Services: A term that allows one party to unilaterally change the type or quality of goods or services provided under the contract.
8. Unilateral Breach Determination: A term that allows one party to decide whether the other party has breached the contract and how to interpret the contract's meaning.
9. Limiting Liability: A term that limits one party's responsibility for their actions or those of their agents.
10. Assigning the Contract: A term that lets one party transfer the contract to someone else without the other party's consent.
11. Limiting the Right to Sue: A term that restricts one party from taking legal action against the other.
12. Limiting Evidence: A term that prevents one party from using certain evidence if they need to take the matter to court.
13. Imposing Burden of Proof: A term that forces one party to prove something in court, even if it should be the other party's responsibility to prove their case.

As per the Council of European Communities unfair contract terms refer to the one that has not been individually negotiated and creates a significant imbalance in the rights and obligations of the parties, harming the consumer. If a term is pre-drafted and the consumer has no influence over it, especially in a standard contract, it is considered unfair. Even if parts of a contract are negotiated, the rest may still be deemed unfair if it remains a standard contract. The seller or supplier must prove if a term was individually negotiated.

The annex contains an indicative and non-exhaustive list of the terms which may be regarded as unfair.

- (a) Excludes or limits the seller's liability for a consumer's death or personal injury caused by their act or omission.
- (b) Unfairly excludes or limits the consumer's legal rights in case of total or partial non-performance or inadequate performance by the seller, including the right to offset debts.
- (c) Binds the consumer to an agreement while making the seller's service provision conditional on their own discretion.
- (d) Allows the seller to retain payments if the consumer cancels the contract without providing equivalent compensation if the seller cancels.
- (e) Imposes a disproportionately high penalty on the consumer for failing to fulfill obligations.
- (f) Grants the seller unilateral authority to dissolve the contract without offering the same right to the consumer or allows the seller to retain payments for unperformed services upon dissolution.
- (g) Permits the seller to terminate an indefinite contract without reasonable notice, except for justified reasons.
- (h) Automatically extends a fixed-term contract unless the consumer objects within an unreasonably early deadline.
- (i) Irrevocably binds the consumer to terms they had no real opportunity to review before concluding the contract.
- (j) Allows the seller to unilaterally modify contract terms without a valid reason specified in the contract.
- (k) Permits the seller to alter product or service characteristics without valid justification.
- (l) Allows the seller to set the final price at delivery or increase the price without granting the consumer the right to cancel if the price becomes excessive.
- (m) Grants the seller the sole authority to determine whether the goods or services conform to the contract or to interpret contract terms exclusively.
- (n) Limits the seller's obligation to honor commitments made by their agents or makes commitments subject to specific formalities.
- (o) Requires the consumer to fulfill all obligations even if the seller fails to perform theirs.
- (p) Allows the seller to transfer contractual rights and obligations in a manner that reduces consumer protections without their consent.
- (q) Restricts or hinders the consumer's right to legal action or remedy, including forcing disputes into arbitration outside legal provisions, limiting evidence, or shifting the burden of proof unfairly.

As per the ICPA unfair contract means a contract between a manufacturer or trader or service provider on one hand, and a consumer on the other, having such terms which cause significant change in the rights of such consumer, including the following, namely: (i) requiring manifestly excessive security deposits to be given by a consumer for the performance of contractual obligations; or (ii) imposing any penalty on the consumer, for the breach of contract thereof which

is wholly disproportionate to the loss occurred due to such breach to the other party to the contract; or (iii) refusing to accept early repayment of debts on payment of applicable penalty; or (iv) entitling a party to the contract to terminate such contract unilaterally, without reasonable cause; or (v) permitting or has the effect of permitting one party to assign the contract to the detriment of the other party who is a consumer, without his consent; or (vi) imposing on the consumer any unreasonable charge, obligation or condition which puts such consumer to disadvantage.

The current Consumer Protection Act of Bhutan does not explicitly address unfair contract terms. Introducing a clear provision on unfair contract terms similar to the reviewed laws, would strengthen consumer rights by protecting them from one-sided or excessively harsh terms imposed by businesses. This addition would also encourage businesses to adopt clearer, more transparent contract practices, fostering greater trust and confidence in the marketplace

4.3.7 Termination of Consumer Contracts

1. Unsolicited Consumer Agreements (Unsolicited Contracts): An unsolicited contract occurs when a business approaches a consumer unexpectedly, such as through door-to-door sales, telemarketing, or uninvited sales calls.

Key Features of Unsolicited Agreements:

The business initiates contact with the consumer, not the other way around.

The agreement involves goods or services worth more than \$100 (or an undisclosed price).

The consumer did not actively request the business to come to them.

Consumer Rights for Unsolicited Contracts:

Cooling-Off Period: Consumers have a 10-business-day cooling-off period, allowing them to cancel the contract without penalty.

No Payment Required During Cooling-Off: Businesses cannot accept payment or supply services during this period unless it is a basic utility (e.g., electricity).

Written Contract Required: The agreement must be in writing and include the consumer's right to cancel.

2. Standard Business Contracts (Solicited Contracts): A solicited contract is one where the consumer actively seeks out a product or service from a business. This includes:

Buying goods/services in-store or online.

Signing up for a subscription, gym membership, or phone plan.

Hiring a contractor for a service (e.g., renovation, legal services).

Consumer Rights for Standard Contracts:

No automatic cooling-off period unless specified.

Consumers can only cancel if:

The business breaches the contract.

The contract contains unfair terms.

The product/service does not meet consumer guarantees.

Consumer goods, or product related services, associated with death or serious injury or illness

There is also a need to introduce separate provisions where consumers can terminate the consumers contracts as discussed above by separately mentioning different types of contracts. This would ensure that consumer rights are explicit, context-sensitive, and enforceable across diverse purchasing situations.

4.3.8 Lay-By Agreement

A lay-by agreement is a type of purchase agreement where a consumer pays for goods in installments and receives the item only after full payment is made. It is regulated under the Australian Consumer Law (ACL) to protect consumers.

Key Features of a Lay-By Agreement:

- The goods are set aside for the consumer until the full price is paid.
- The consumer does not receive the goods until the final payment is made.
- It is considered a lay-by if at least two payments are required (or full payment is delayed).
- The price is fixed at the time of the agreement.

Consumer Rights Under a Lay-By Agreement:

1. Right to Cancel – Consumers can cancel a lay-by at any time.
 - If the consumer cancels, the business can charge a termination fee (if stated in the contract).
 - If the business cancels (except for consumer default), they must refund all amounts paid.
2. Prohibited Unfair Terms – A business cannot change the price of the lay-by item after the agreement is signed.
3. Refunds and Consumer Guarantees – If the product is faulty or not as described, the consumer has the right to a refund, repair, or replacement under ACL consumer guarantees.

Termination charges (1) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if the agreement requires the consumer to pay a termination charge. Penalty: (a) if the person is a body corporate—\$30,000; or (b) if the person is not a body corporate—\$6,000.

Refund of amounts (1) A supplier of consumer goods who is a party to a lay-by agreement commits an offence if: (a) the agreement is terminated by a party to the agreement; and (b) the supplier fails to refund to the consumer all the amounts paid by the consumer under the agreement (other than any termination charge that is payable under the agreement). Penalty: (a) if the person is a body

corporate—\$30,000; or (b) if the person is not a body corporate—\$6,000. (2) Subsection (1) is an offence of strict liability.

Since the current Consumer Protection Act does not address lay-by agreements, incorporating specific provisions on this matter would be prudent. Anticipating that businesses may adopt such practices in the future, having clear provisions in place will enable effective management and resolution of potential disputes that may arise.

4.3.9 Interim bans on consumer goods

ACL grants a responsible Minister to impose interim bans, by written notice published on the internet, on consumer goods of a particular kind if:

(a) it appears to the responsible Minister that: (i) consumer goods of that kind will or may cause injury to any person; or (ii) a reasonably foreseeable use (including a misuse) of consumer goods of that kind will or may cause injury to any person; or

(b) another responsible Minister has imposed, under paragraph (a), an interim ban: (i) on consumer goods of the same kind; or (ii) on consumer goods of a kind that includes those goods; and that ban is still in force.

Supplying etc. consumer goods covered by a ban.

A person commits an offence if: (a) the person, in trade or commerce, supplies consumer goods of a particular kind; and (b) either: (i) an interim ban on goods of that kind is in force in the place where the supply occurs; or (ii) a permanent ban on goods of that kind is in force. Penalty: (a) if the person is a body corporate—\$1,100,000; or (b) if the person is not a body corporate—\$220,000.

In the current act, there is no mention of interim bans on consumer goods. Having such provisions would help the investigating teams give time before they could ascertain the claims, allowing for a precautionary suspension of potentially harmful products from the market. This would better protect consumers from immediate risks while investigations are ongoing and prevent further harm or loss until a final decision is made.

4.3.10 Increased transparency in price reduction

In their price reduction (i.e. discount) announcement, traders shall indicate the prior price applied during a period of time not shorter than 30 days prior to the application of the price reduction in EU directive on indication of the prices of products offered to consumers. Such provisions are also needed in our act.

4.3.11 Supplying etc. consumer goods that do not comply with safety standards

(1) A person commits an offence if: (a) the person, in trade or commerce, supplies consumer goods of a particular kind; and (b) a safety standard for consumer goods of that kind is in force; and (c) those goods do not comply with the standard. Penalty: (a) if the person is a body corporate—\$1,100,000; or (b) if the person is not a body corporate—\$220,000.

Currently, while the law requires businesses to comply with safety standards for consumer goods, it does not specify penalties for non-compliance. Introducing clear penalty provisions would strengthen enforcement mechanisms and encourage greater adherence to safety regulations, thereby better protecting consumers in cases of violations.

4. Recommendations

4.1 Introduce a separate provision for consumer contracts: Introduce a separate provision for consumer contract by defining what an unfair contract is with the features of unfair contract as mentioned in ACL, Indian Law and EU Guidelines. Also, developing a toolkit for determining the fairness of contract terms where businesses can review their contracts before use and giving CCAA the authority to revoke unfair contracts even after signing by both the parties.

4.2 Criminalize Participation in Pyramid Schemes: Explicitly define pyramid and Ponzi schemes in the Act and include strict penalties (including imprisonment and fines) for participation, promotion and inducing others to participate. This would help our current challenge of not being able to stop such schemes and people victimising each other and seeking remedies from CCAA.

4.3 Introduce Tiered Penalties for Product Adulteration: Incorporate graded penalties for product adulteration based on severity - ranging from fines to imprisonment for serious harm or death. This would help deter unethical practices by aligning the punishment with the gravity of the offense, enhance consumer safety, and send a strong message to businesses about the legal consequences of endangering public health through adulterated products.

4.4 Introduce a referral selling provision: A provision defining referral selling with the penalties for it.

4.5 Failure to inform consumers of the delays (force majeure): Introduce a provision on failure to inform consumers of the delays under unforeseeable circumstances with the penalty provision for it and rights of the consumers under such circumstances. This would help solve our current challenge of receiving consumer cases where businesses do not take the responsibility of informing consumers of the delays.

4.6 Violating requirements for goods: The current CPA does not have a penalty provision for businesses not complying with requirements for goods, such as labeling or disclosure of prices, leading to enforcement challenges. Introducing a provision on requirements for goods would help strengthen compliance, ensure transparency for consumers, and empower enforcement authorities to take appropriate action against violators, thereby promoting fair trading practices and protecting consumer rights.

4.7 Embed penalty clauses directly within the relevant provisions: it is observed that most of the consumer protection laws referred to - such as the Australian Consumer Law (ACL 2010) and

India's Consumer Protection Act (ICPA 2019) - tend to include provisions and penalties within the same section. This approach enhances clarity, enforcement efficiency, and public understanding of legal obligations and consequences without having to refer to different sections to understand the penalties.

4.8 Revise Penalty Framework for Violations: The existing Act mandates penalties equivalent to the value of the goods or services involved in violations. However, this approach often poses challenges in accurately assessing the value, and in cases where the value is low, it fails to serve as an effective deterrent. To enhance enforcement and ensure meaningful consequences for offenders, it is advisable to adopt a dual penalty system where the fine imposed is either equivalent to the value of the goods or services or a predetermined slab amount - whichever is higher. This approach will provide greater flexibility, fairness, and stronger deterrence against violations

5. Conclusion

This comparative study highlights that while Bhutan's Consumer Protection Act 2012 has laid a foundational framework for consumer rights, it lacks the comprehensive enforcement mechanisms and detailed penalty provisions as evident in the laws of India, Australia, and EU Directives. Key gaps were identified in areas such as false advertising, non-compliance with authority directives, product adulteration, pyramid schemes, weights and measures and unfair contract terms etc. Strengthening these areas through legislative amendments and aligning with international practices will enhance consumer protection and ensure more effective market regulation in Bhutan.

6. References

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