

Theoretical and Conceptual Framework for Consumer Protection

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Abstract

The classification of consumer rights and protection is situated within the realm of public law, as society and states quite appropriately consider the consumer as the vulnerable party in the tripartite relationship involving the producers of goods and services, with Government acting as regulator. Consequently, legislation, standards, regulatory guidelines, and treaties have been established to protect consumer interests. This paper considered the theoretical foundation and conceptual framework critical for consumer protection, it examines the historical and philosophical justification, applying briefly, a comparative analysis, with the position of the United States and the European Union. The paper identified areas of conflict, particularly on who is covered under Nigerian Laws as a consumer. This paper considered and comparatively analyses these identified heads, including Consumer right advocacy, with a view to clarifying some historical inaccuracies and concludes with recommendation for robust expansion and coverage both as to scope and who is covered as a consumer under current Nigerian legislation.

Keywords: *Consumer, Consumer rights, Consumer Protection, Consumer Rights Advocacy.*

1. Introduction:

Conceptually, the framework for the protection of consumer rights goes beyond the identification and articulations of those rights, the various legislative and regulatory interventions and robust enforcement mechanisms both to prevent breach and to penalize infractions. It requires a clear determination of who and what parties are involved and qualifies as a consumer and therefore the beneficiary of such rights to be protected, the scope and definition of the rights, the historical foundation, development and basis for consumer rights through the ages in various societies, the theoretical basis and philosophical justification for the protection of the rights of the consumer as well as the role and history of consumer advocacy applying the comparative compass while reflecting on the Nigeria current position.¹

2. Conceptual Analysis

2.1 Consumer

There was no mention of the word 'consumer' or 'consumer rights' in the Constitution of the Federal Republic of Nigeria 1999² as amended and neither was it specifically mentioned under Parts 1 and 2 of the Second Schedule detailing legislative lists and nor was it listed as a sub-head in section 251³ of the Constitution under matters within the jurisdictions of the Federal High Court, although matters relating to establishment of a body to prescribe and enforce

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¹ Federal Competition and Consumer Protection Act (FCCPA) 2018.

² Cap. C23 LFN. 2004

³ ss. 4, 251 and the second sch. pts1 and 2 of the Constitution of the Federal Republic of Nigeria (CFRN), 1999.

standards of goods and commodities, offer for sale, price control, drugs, commercial and industrial monopolies all of which relates to consumer protection are listed under the Exclusive Legislative List.

Despite this shortcoming, however, it is this writer's view that the Constitution did recognize consumer rights, in that arguably, Sections 16, 17, 18 & 20 of the Constitution, incorporated some of the objects and principles of consumer rights and protection (such principles are as embedded in economics, social, educational and environmental objectives) as fundamental objectives and directive principles of state.

Another major setback in identifying the Nigerian consumer is the latest definition of a consumer as provided in the interpretation section⁴of the Federal Competition and Consumer Protection Act⁵. This section defines Consumer as including:

any person who purchases or offers to purchase goods otherwise than for the purpose of resale but does not include a person who purchases any goods for the purpose of using them in the production or manufactured of any other goods or articles for sale or to whom services is rendered.

To effectively critique this definition, an examination of the texts of other legislation in this area of law is necessary. Of particular interest and contrast is the definition of the word "consumer" in the repealed 'Consumer Protection Council Act', which in section 32 provides that the 'Consumer means an individual who purchases, uses, maintains or disposes of products and services.'⁶

It is equally important to mention that in other relevant legislations to the subject under consideration, the word 'consumer' is often commonly exchanged with words such as 'the public' or 'users' especially in the description of sales of products and services to the consumers, this, of course, is a convenient approach, as it avoids the controversial rigidity often associated with, who is covered by the word 'consumer'. Nigerian Legislations referred to above, includes the Criminal Code,⁷the Penal Code,⁸ the National Agency for Food, Drugs and Administrative Control Act⁹ and the Standard Organization of Nigeria Act.¹⁰

What appears common and central to all the definitions of the word 'consumer' by most writers and legislations is that there are indeed two parties interacting, one being the producer, manufacturer, sellers of a goods and services and the second party been the buyer, who they all agreed, mostly must be a natural person or groups of persons and that the buyer must have purchase the goods or services not for no other purposes other than usage or consumption.

⁴s167(1), Federal Competition and Consumer Protection Act (FCCPA) 2018

⁵This Act repeals the Consumer Protection Council Act, 1992, CAP. C25, LFN 2004 and established The Federal Competition and Consumer Protection Commission and the Competition and Consumer Protection Tribunal for the Promotion of Competition in the Nigerian markets at all levels by eliminating monopolies, prohibiting abuse of a dominant market position and penalizing other restrictive trade and business practices. See also the explanatory memorandum to the Act.

⁶Consumer Protection Council Act, 1992, CAP. C25 LFN 2004(*repealed*).

⁷Criminal Code Act, Cap.C38, LFN 2004.

⁸Penal Code (Northern States) Federal Provisions Act, Cap.P3, LFN 2004.

⁹National Agency for Food and Drug Administration and Control Act, Cap. N1, LFN 2004.

¹⁰Standard Organisation of Nigeria Act, Cap.S9, LFN,2004.

The preference of one definition over the other is not merely a question of semantic as it will shortly be demonstrated; as the composition of each definition under consideration, clearly also defines the concept and limit the scope of consumer rights, and who is entitled to those rights.

2.2 Consumer Protection

Concise Law Dictionary defines consumer protection as 'legislations which protects the interest of the consumer'. Discounting the definition in the Concise Law Dictionary¹¹ as too restrictive, a Felicia Monye¹² provides a broader definition of what consumer protection is. She stated that consumer protection is an act of safeguarding the interest of the consumers in matters relating to the supply of goods and services fraudulent and hazardous practices as well as environmental degradation.

Badaiki¹³ considered consumer protection as the legal means to secure the consumer's interest against all forms of exploitation and unfair dealings including environmental and health issues by those who supply goods, services and credit facilities in the course of a business. The Manual on Consumer Protection prepared under the auspices of UNCTAD¹⁴ surmise that, consumer protection addresses intrinsic disparities found in the consumer - supplier relationship including bargaining power, knowledge and other resources.

Clearly it is widely acceptable that the average consumer is at a disadvantage when dealing with the producer/supplier, hence the imperative to protect him within the ambit of the law against exploitation by the producer/supplier. Kanyip¹⁵ after analyzing the words separately thereafter concluded; thus, "taking the cumulative meanings of the terms consumer and protection, consumer protection therefore means the prevention or reduction of wrongs or injuries and the provision of redress for an individual purchaser, user or disposer of any product or services. In this writer's view, consumer protection is thus a combination of laws regulations, judicial or arbitral decisions and its enforcement that serves to protect the consumer in the marketplace.

2.3 Consumer Rights

Right is defined¹⁶ as 'a power, privilege or immunity guaranteed under a constitution, statute or decisional laws or claimed as a respect of long usage'. The Supreme Court of Nigeria in *Afolayan v. Ogurinde*¹⁷ held that the right is an interest recognized and protected by law and that every right involves a three-fold relation in which the owner of it stands, viz: - It is a right against some person or persons. - It is a right to some act or omission of such person or persons. - It is a right over or to something to which the act or omission relates.

¹¹ *Concise Law Dictionary 7th Ed.* 90 (London sweet x Maxwell, 1983)

¹² Felicia Monye, *Law of Consumer Protection*, (Spectrum Books Ltd., Ibadan, 2003)

¹³ A.D Badaiki, 'Deceptive and Unfair Trade' (1988) vol.2 no. 3 *NJFIL* 184

¹⁴ UNCTAD's Manual on Consumer Protection. Accessed online on 26th oct 2020 on <www.unctad.org manual on consumer protection>

¹⁵ B.B Kanyip, *Consumer Protection in Nigeria: Law; Theory and Policy*. (Rekon Books Ltd, 2004)

¹⁶ *Black's Law Dictionary, 9th Ed.* 1436 (West, 2009)

¹⁷ (1990) NWLR (p. 127), P. 369

Consumer rights are those demands, claims, privileges or immunities, which society recognizes as proper for consumers to enjoy in relations to goods, services, environment, development, information, education and redress¹⁸. They are either imposed by law or accepted as a respect of long usage. Consumer rights is a concept that imposes a duty on individuals, groups and institutions to act at all times to secure the well-being and satisfaction of consumers. The respect and recognition accorded these rights will help mankind attain a peaceful and egalitarian society.

It is generally agreed that the basic consumer rights include¹⁹ the right to be informed, right to choose, right to safety, right to Consumer education, right to healthy environment, rights not to be exploited, rights to basic needs, sustainable development and the right to redress.

The question of what constitute consumer rights is better answered by reflecting on the evolving historical development of consumer protection itself.²⁰ Many writers including Corradi,²¹ Hilton,²² Igweike,²³ and Kanyip²⁴ have all concluded that since the beginning of civilization, some rudimentary form of protection has always been in the system of human governance, albeit sometimes crude, sometimes base on religion²⁵ and moral value and at other times, imposed by conquering army of another state²⁶ or civilization. This consensus among writers of the existence, in one form or another of consumer protection in all human societies that has evolved from Hobbes²⁷ state of nature where might is always right, is borne out, by verifiable historical facts.

¹⁸ Ebitu.E 'Consumer Rights, Consumer Protection and Public Policy in Nigeria' *International Business Research*, (November 2014). Accessed on 12/4/2021 at: <https://www.researchgate.net/publication/287603936>

¹⁹ United Nations Guidelines for Consumer Protection created by UN Resolution of 39/248 of 1985 with the guidelines further reviewed and updated in 2016. This, together with UNCTAD (A United Nations Agency) publication titled "Manual on Consumer Rights Protection. See also P.A Aaker and G.S Day, *Consumerism* 2nd ed. (New York free press 1974).

²⁰ *Ibid*

²¹ Corradi,A: "The History of Consumer Protection". *NYU Law Journal* Accessed on 29/10/2020 <<http://www.nyulawglobal.org/globalex/international.law.consumer-protection/html>>.

²² also Hilton, M, 'The death of a consumer Society' published in transaction of the *RHS (2008)* 211-36© <Royal Historical doi:10/1017/5008044010800716>, also accessed on 29/10/2020.

²³ Igweike,K.I "Consumer Protection in a Depressed Economy: The Nigeria Experiment" in I.A Ayua and D.A Guobadia (ed) *Political Reform and Economic Recovery in Nigeria* (NIALS: Lagos) 2001. 349.

²⁴ B.B Kanyip, *Consumer Protection in Nigeria: Law; Theory and Policy*. (Rekon Books Ltd, 2004).

²⁵ Human religions preach good values and often the protection of the poor in society and are abhorrent of injustice. These characteristics is not limited to popularly notional world religion such as Christianity, Islam, Buddhism and is well reflected in most African traditional religion and other lesser known religion and cultures.

²⁶ Igweike,K.I "Consumer Protection in a Depressed Economy: The Nigeria Experiment" in I.A Ayua and D.A Guobadia (ed) *Political Reform and Economic Recovery in Nigeria* (NIALS: Lagos) 2001. 349.

²⁷ Thomas Hobbes (1588-1679) 17th century English Philosopher – propound the social contract political theory as the start of the state in which all human beings agreed to submit their self-sovereignty to the state. His main argument was prior to the formation of the society – State of Nature - life of man was short in a state brutishness and misery- in such conditions there is no place for industry, because the fruits thereof is uncertain; and consequently no culture of the earth, no navigation nor use of the commodities that may be imported by sea, no commodious buildings, no instrument of moving, such things as required much forces; no knowledge of the face of the earth; no account of time; no arts; no letters; no society; and which is worst of all, continual fear and danger violent death and the life of man was solitary poor, nasty, brutish and short" chapter xiii: of Natural Condition of mankind as concerning their felicity and misery" *Leviathan*. Accessed on 30/10/2020 <www.wikipedia.org>. See also the works of Jean-Jacques Rousseau (1712-1778) Philosopher writer of the social contract political philosophy.

There is no controversy as human history all over the world is full, with evidence of one form of protection or the other, of the consumer in all spheres of lives as far back as the medieval time²⁸ and beyond, while some forms or elements of consumer protection are also recorded in religions books.

In the Bible, the following chapters are of interest.²⁹

Deuteronomy chapter 25, verse 13-16

Do not have two different weights in your bags- one heavy, one light, do not have two different measures in your house- one large, one small. You must have accurate and honest weight and measures so that you may live long in the land your lord has given to you”.

The Book of Amos chapter 8 verse 4-7:

⁴Hear this, you who trample the needy and do away with the poor of the land,

⁵Saying: when will the new moon be over that we may sell grain, and the sabbath may end that we may market wheat? Skimping the measure, boosting the price and cheating with dishonest sales,

⁶Buying the poor with silver and the needy for a pair of sandals, selling even the sweepings with the wheat,

⁷The lord has sworn by the Pride of Jacob, I will never forget anything that they have done.

In Islam,³⁰ the Quran and Hadith laid down the basic structure of consumer protection, some 1400 years ago which are as valid today as in the golden age of Prophet Muhammed (peace be upon him) and the rightly guided caliphs. Quran categorically denounces all unfair means in Surah-An-Nisa ‘you who believe, eat not up your property among yourself in vanities; but let there be amongst you traffic and trade by mutual good will (Quran 4:29)’

Surah Mutafifin prohibits all kinds of mischief’s traders including misrepresentation, adulteration and fraudulent products collectively called as “Tatfeef”. Woe to those that deal in fraud; those who when they take a measure from people, take in full. But when they have to give by measure or weight to them, give less than due” (Quran, 83: 1-3). While passing by a seller, Allah’s messenger once come upon a heap of grain and when he puts his hand inside it, he felt some dampness, he asked the owner, “Why is this dampness?” The owner replied rain have fallen on it, O Allah’s messenger, the Prophet (peace be upon him) said, why did you not put the damp part on top of the heap so that people might see it, then he said, whoever cheat is

²⁸A.D Akhabue, *Consumer Protection Law: Rights, Complaint and Remedies for Telecoms Consumers in Nigeria op.cit.52*

²⁹ *The Holy Bible*, (Authorized King James Version) The Book of Amos chapter 8 verse 4-6, Deuteronomy chapter 25, verse 13-16

³⁰*The Holy Quran* 4:29 and 83:1-3 and *Hadith* laid down the basic structure of Consumer Protection (The Gracious Quran Arabic – English Parallel Ed, Seventh Print. Ahmed Zaki Hammed, PhD)

not from us (Muslims). Sellers have the responsibilities to disclose defect or shortcoming in the merchandize, enabling the customer to make an informed decision and should not twist the facts to misguide or confuse the buyer.³¹

Collateral to this, is the argument of certain authors, including Badaiki³² and Igweike who posits, that pre-colonial African societies including Nigeria, do not have a notion of what consumer protection is and that consumer rights protection was an importation and imposition from the more superior legal system of the administering foreign colonial countries.³³ This argument was³⁴strongly opposed and repudiated as a historical fallacy. The protagonists argued that in traditional agrarian society (referring to Nigeria prior to colonization), there was no surplus production and consequently the consumer was hardly in need of protection and that with the indigenous people's freedom from the dictates of profit motivation, the idea of consumer protection was obviously otiose and alien. While another writer concedes³⁵ that in primitive societies, consumer protection did not operate as a systematic concept in the manner known today. The latter part of this proposition while conceded³⁶ it is however objectionable to state that consumer protection was unnecessary and in fact non-existent, in the then traditional African societies. In the first place, the human instinct for purity could not have accommodated defective goods and services. Secondly, even in traditional agrarian societies where exchanges were via barter (and hence not motivated by profit alone), the available data suggests that the exchanges did not involve defective goods or services but goods of the highest standards.³⁷

The existence of large kingdoms and empires within pre-colonial Africa with trade links across the Sahara in respect of goods judged to be of the highest standards suggest that the then states had an interest in quality goods and services given that the economy invariably depended on viable and less fraudulent trading systems. The motivation may well be to safeguard honest trading but since it is generally assumed that the consumer and honest business have an interest in fair trading, it can therefore not be correctly asserted that consumer protection was otiose and alien in the African traditional settings.

While the above is well stated, one need to add that, even in classical economics,³⁸ profit being an end in trading and exchange of goods (by batter) is not measured in monetary terms alone as weight, opportunity cost and other measure of values are in interplay to make the exchange

³¹Ahmed.T, 'Consumer protection in Islam' Accessed < <https://www.arabnews.com/node/582506>> on 22/3/2021.

³² Badaiki A.D 'Towards an International Legal Regime of consumer Protection for Developing Countries; Nigeria as a case study' 1993, *Justice vol. 6 No 4*, 43. See also A.D Badaiki, *Consumer Protection and standard form contracts in Nigeria*. (Christdom Publishers, Lagos) 16.

³³ Igweike, K.I 'Consumer Protection in a Depressed Economy: The Nigerian Experience' in L.A Ayua and D.A Guobadia (ed.) *Political Reform and Economic Recovery in Nigeria* (NIALS, Lagos) 2001 at 349.

³⁴Kanyip,B.B 'Historical analysis of Consumer Protection Laws in Nigeria' (*NIALS Lagos*) 1997, at 81.

³⁵Badaiki A.D 'Towards an International Legal Regime of consumer Protection for Developing Countries; Nigeria as a case study' 1993, *Justice vol. 6 No 4*, 43. See also A.D Badaiki, *Consumer Protection and standard form contracts in Nigeria*. (Christdom Publishers, Lagos) 16.

³⁶ ibid

³⁷ Kanyip,B.B 'Historical analysis of Consumer Protection Laws in Nigeria' (*NIALS Lagos*) 1997, at 81.

³⁸This is the view of this Author.

fair, or unfair or make a party comes out of the exchange better than the other. It is rather objectionable to regard other traditional communities either in Europe, America or Asia as capable of understanding the value of consumer protection, even before the advent of money, whereas the African society is condemned to eternal ignorance, until the arrival of the Europeans in “shining amours” to introduce civilization.

Indeed, many indigenous African societies, such as the Igbos, Hausa and The Yorubas, have in their languages evidence of rudimentary element of consumer protection which abhors cheating and fraud at the marketplace by the seller against the consumer.³⁹ This notion of honesty and integrity in marketplace can be gleaned from their oral tradition of idioms, proverbs and adages spoken by the Yoruba People of Southwest Nigeria.

Yoruba language, an indigenous language spoken in present day Southwestern Nigeria, Togo and Benin Republic, have some examples of such principle in their proverbs and idioms, a couple of which is reproduced (with translation) hereunder.

i. *Eniti o ta'ja erupe, yogba owo okuta* (anyone selling bad wares will receive his recompense or bad reward).

ii. *Apon ekokere, kogbon bi a womara, a womara, ko gbonbi a ran ni leko, a ran ni leko, kogbon bi aje a wogba.* Meaning that the vendor seeks to cheat by reducing the accepted weight of a ware -wrap of food- to a smaller weight or size may not be as wise as the customer who sizes up the ware, by weighing it in his hands and choosing not to buy. Even that customer who choose not to buy after discovering the fraud is also not as wise as another customer who from a distance size up the ware and notice the fraud and instead of opening a bargain says loudly that 'I wasn't send to buy the ware', but he is also not as wise as the customer who on noticing all these declares '*ajeawogba*', thus condemning the vendor to the harsh judgment of the Yoruba god who induces honest sales and patronage. These types of proverbs and idioms are still used till date in the traditional settings and are proofs that there were at least some elements of abhorrence of cheating/fraud against the consumer in African indigenous culture.

Related to this conceptualization is the question whether Consumer rights constitute and can be enforced as human right. Some writers have indeed argued that while most national constitutions, including the European charter, did not elevate consumer rights to the status of human rights, however rules on consumer protection are provided for in a number of constitutions of European and other countries, although sadly, Nigeria, as shown in the introduction to this article, is excluded from that list. Research ⁴⁰also shows that even when such rules are in these constitutions, it generally appears, as mere declaration or directives or as species of social rights.

³⁹ Kanyip, B.B 'Historical analysis of Consumer Protection Laws in Nigeria' (*NIALS Lagos*) 1997, at 81.

⁴⁰ Monika Jagielska and Mariusz Jagielska titled "Are Consumer Right, human right", *Journal of consumer right vol 29 2012*. Accessed online <www.researchgate.com last on 17th March 2021, See also Ukwueze F.O: "Litigating Consumer rights as Human rights under the Fundamental Rights (Enforcement procedure Rules 2009)" in H.HMensah, H.P. Fagalookpara (eds) *Colossus of Legislative Governance: Judicial Papers in Honour of Rt. Hon. Eugene Odo* (Enugu Rocana Ltd 2012) 52-57.

4. Scope of Consumer Rights:

Some writers including Badaiki, considered that a consumer⁴¹ as a person, natural or corporate to whom goods, services or credit facilities are supplied or likely to be supplied otherwise in the course of business and for ultimate use in the course of business carried out by the supplier. Although this definition includes non-natural person as a consumer, it however covers users who are not in a contractual relationship with the seller or supplier or manufacturer, a scenario that covers the *Donoghue vs. Stevenson*⁴² principle.

The attempt inclusion of a non-natural person as a consumer was also endorsed by Akahbue⁴³ when he defined a consumer as a 'final user (natural or legal entity) of all goods and services produced in an economy by factors of production at the end of the chain of production and it is immaterial whether or not the consumer is a contractual consumer.

The emphasis on 'usage' rather than on 'a buyers' has been welcomed by most writers as it removed the restriction that flows from limiting the definition to buyers of goods and services alone. This expansion was also supported⁴⁴ with a jurisprudential approach, adopting the expansive definition of Ralph Nadar,⁴⁵ the father of American consumer right movement, who equates a consumer to a citizen' and therefore seek to elevates consumer right to constitutional right. The "reversal" of the gains achieved by the definition as contained in the now repealed CPC Act,⁴⁶ when compared with the current definition provision of the FCCPA⁴⁷ is quite apt⁴⁸ with general preference for the definition of the word "consumer" as contained in section 32 of the now repealed CPC Act.⁴⁹

After reviewing several limitations of each suggested element, while relating it to the definition of the CPC Act, learned author concluded that⁵⁰ 'for purposes of this work therefore, it is suggested that the consumer be understood in the broad sense as encompassing individual users of goods and services in general. Corporate entities are excluded on the assumption that their disadvantage in the power relations between consumers and producers is less pronounced (and indeed can be remedied by themselves) than in the case of individuals or private users'.

⁴¹A.D Badaiki *"Effect of privatisation and commercialisation policy on consumer protection*, NIALS Lagos, 2013 P 155 see also the same writer: *Consumer Protection and Standard Form of Contract in Nigeria*. Chrisdom Publishers, Lagos 1999.

⁴² (1932) A.C 562

⁴³Akhabue D.A: *consumer protection law right complaints and remedies for Telecom consumers in Nigeria* p. 35. (Amfitop Book Company) 2019. The definition adopted by Akhabue is similar to the definition in the United States Uniform Commercial Code (UCC) section 1. 301 (12).

⁴⁴B.B Kanyip, *Consumer Protection in Nigeria: Law Theory and Policy*. (Rekon Books Limited)11-24. See also Wale Ajai. "Caveat Venditor: Consumer Protection Decree no. 66 of 1992 arrives in the Nigeria Market Place" *Nigeria current law review* on his review on the CPC Act on the definition of a consumer.

⁴⁵ His role is well recorded and even though he was considered extreme in some of his views on consumer protection he became the lighting rod of the American Automobile industry, and his views are well recorded in his book; *unsafe at any speed: the designed in damages of American automobile* (1965).

⁴⁶Consumer Protection Council Act, 1992 Cap C.25 LFN 2004 (Repealed)

⁴⁷Federal Competition and Consumer Protection Act, 2018

⁴⁸Badaiki, Monye, Kanyip, Ajai

⁴⁹ CPC Act Cap LFN 2004 (*now repeated*)

⁵⁰B.B Kanyip, *opcit* at page 26 see also the definition suggested by I. Ramsay, *Consumer Protection: Test and Materials* (weidenfeld and Nicolson; London) 1989.

Having considered the above contributions from legislations, international guidelines and learned writers, this Author particularly identifies with the above definition and adopted same for this paper. Of particular and sad concern in the context of who is a consumer in Nigeria, is what this researcher regarded as a retrogressive reversal that has now been reintroduced by section 167 of the FCCPA which has re-introduced, the restriction of a contractual consumer into the definition of who a consumer is under the Act, this definition⁵¹ is in conflict with the more acceptable definition of the now repealed CPC Act. In defence of this new definition of the FCCPA, It may be argued that the definition section started with the word “includes”⁵² and so under the canon of legal interpretation, what follows may be inexhaustive⁵³, but to have clearly omitted the word ‘users’ or any word of a similar meaning that clearly indicates that a non-contracted consumer is covered in the definition is clearly retrogressive and will clearly exclude thousands of “consumers” who did not primarily buy or purchase the goods or services.

It will be cold comfort, for instance to argue that, liability to user of a good or services is preserved under this subsection of section 136 (3) of FCCPA which provides for ‘An undertaking that supplied the defective goods or services is liable whether or not the user or consumer brought the goods or service from or entered into any contractual agreement with the undertaking’. This argument is defective in the sense that a user who is not a ‘consumer’ within the definition of s.167 is excluded from enjoying all other rights belonging to the consumer and to enjoy the preserved right of strict liability against a supplier, the user must first prove that the goods brought is defective.

The word “brought” in this sub-paragraph further rendered illusory the preservation of this consumer right to a ‘user’ as he has the additional burden of proving first that a super-consumer has a contract and first bought the defective goods or services otherwise it means that goods or services rendered as trade promotions or defective corporate gifts are excluded. The writer therefore will therefore recommend that the definition of a consumer should include ‘users’ in addition to the purchasers of goods and services as well as exclude the need for an underlining contract with a super-consumer before the ‘lesser consumer’ meaning the user, could have his consumer rights protected against the producers/ suppliers of goods and services.

5. Theoretical Basis for Consumer Protection

Society and government justifiably considered the consumer as the weaker party in the relationship between the producers and consumer and Government by its paternalistic nature therefore considered that the consumer deserves some measures of protection from the overarching resources available to the producer. This is particularly so, as the average

⁵¹ S. 167 FCCPA

⁵² The Black’s Law Dictionary defines the word ‘includes’ to contain as part of something. The participle including typically indicates a partial list.

⁵³ Interpretation Act Cap 123, LFN 2004.

consumer is often and (especially in sub-Sahara Africa inclusive of Nigeria), poor, sometime uneducated and generally lacked the resources to individually challenge the producer headlong.

The vulnerability of the consumer and the concept of inequality of bargaining power between the parties forms the philosophical basis for the protection⁵⁴ of the consumer. It is therefore clear that the consumer is often susceptible to the exploitation of the producer because of lack of knowledge (even for a largely educated consumer population, technical knowledge of a product is lacking), disparity in bargaining power and lastly lack of resources which is also reflected in the difficulty faced by consumer in accessing and obtaining redress.

The disparity⁵⁵ that existed between the two parties accounts for certain basic assumptions regarding consumer protection. These include the assumption that the producer with its high technical knowledge and resource can manipulate prices and demand for its product. Another basic assumption flowing from the first one is that the consumer therefore is deprived of the full ability to make prudent shopping decisions, and both assumptions justified the third assumption that society and government consequently has moral and ethical basis for intervention to protect the consumer. These three assumptions summarize the philosophical basis for consumer protection.

6. History of Consumer Rights Advocacy

While⁵⁶ tracing the history of consumer protection, it was recorded that the earliest incarnation was around 50BC with the implementation of the *lex Julia de annona*⁵⁷ statute which was passed by the Roman Government and was enforced to provide commercial operations with legal protection and also to protect consumer protection to Roman citizens.⁵⁸ These are very rudimentary and are generally focus more on fair trade rather than consumer protection. There are other attempts in the records books about the law been used to protect the consumer, there was in 1266 the first series of English criminal law imposing penalties for corrupt foods and drinks⁵⁹ the statute did not provide for the civil liability of the marketer. Until the 18th century the consumers had to verify themselves the quality of goods they purchased and only in the presence of gross negligence will the seller be held liable.

The struggle against capitalism and food fraud started the first phrase of consumerism,⁶⁰ since food remains one of the main essentials for living existence. Neil Mckendrick⁶¹ recorded that there was a consumer revolution in eighteen century England. More men and woman that ever before, in human history enjoyed the experienced of acquiring materials possessions. Objects, which for centuries had been the privileged possessions of the rich, came to be within the reach

⁵⁴I. Ramsay. *Consumer Protection: Text and Materials* (Weidenfeld and Nicolson; London) 1989.

⁵⁵B.B Kanyip, *Consumer Protection in Nigeria; Theory and Policy*. Rekon Books Ltd, Abuja,2005, p.29,

⁵⁶Ibid

⁵⁷The Lex Julia De Annona was a Roman law enacted during the reign of Augustus (27BC – 14AD) to regulate the supply of grains (*annona*) in Rome.

⁵⁸Ibid

⁵⁹Prosser. W.L "The Assault Upon the Citadel (Strict Liability to the Consumers) (1960) 69 *Yale L J* 1099 at 1103.

⁶⁰Ibid

⁶¹Niel Mckendrick., John Brewer. and John. H. Plumb.: *The Birth of a Consumer Society: The Commercialization of the 18th century England* (1892).

of a larger part of society than ever before and for the first time to be within the legitimate aspiration of almost all. What therefore defined this century was “access” to these goods and so the consumer rights and society at large was wrapped around this access to varieties of consumer goods.

By consumer society, of the 18th century, Mckendrick⁶² meant a world defined not so by “choice”, which is the watch word of our consumer society today, but “access.” It was not more choice that is the phenomenon to emphasize in 18th century England, but the fact that there was simply more stuff, for more people, for more time; in fact the later 18th century saw such a convulsion of getting and spending, as evidence of new prosperity and that such explosion of new production and marketing techniques, meant that, a greater proportion of the population, more than at any time in any previous society in human history, was able to enjoy the pleasures of buying consumer goods. Other early English enactments on consumer protection includes, Magna carta, 1215, the Assize of bread and ale Act, 1836, the Adulteration of food and drugs Act, 1872, the Sale of goods Act 1893 and the Weight and measure (metric system) Act 1897.⁶³ Other part of Europe also shares part of the history of consumer protection; the French⁶⁴ the Germans⁶⁵ and Italians, all at one time or the other has legislations focus at protecting the consumer⁶⁶

6.1 The European Union

Originally the policy of consumer protection was not included among the objectives and aims of the European Economic Community. The⁶⁷ treaty establishing the community did not include the article on consumer protection. Consumer protection was mentioned in the articles on economic competition and common agricultural policy. However, the treaty did not prevent the adoption of secondary legal rules (regulations and directions) however during preparation of the single European Act, the secondary legal rules relating to the protection of the consumer’s interest were adopted.⁶⁸ The treaty of the European Union⁶⁹ was therefore the first legal document of the EU primary law that regulated consumer protection as one of the policies of the EU. Article 169⁷⁰ of the treaty on the functioning of the EU (TFEU) single policy of the

⁶²Ibid

⁶³F. Monye, *Law of Consumer Protection* opcit. Also, B.W Harvey, *The Law of Consumer Protection and Fair Trading* (London: Butterworths; 1978). Monye quoting from Lowe and Woodroffe, *Consumer Law and Practice 4thed* (London sweet and Maxwell 1995), further recorded other English legislations which built on the earlier ones to include the Hire Purchase Act, 1965, The Misrepresentation Act, 1967; The Medicines Act 1968, The Trade Description Act, 1968, Unsolicited Goods and Services Act, 1971, The Fair Trading Act 1973, Supplied of Goods (Implied Terms) Act 1973, The Consumer Credit Act, 1974, The Unfair Contract Terms Act, 1977, the Sale of Goods Act, 1979, The Supplies of Goods and Services Act, 1982, The Food Act, 1984, The Weights and Measures Act 1985, The Consumer Arbitration Agreement Act 1988 and the Sale and Supply of goods act 1994.

⁶⁴ In France there were 37 laws and ministerial decree before 1970, a total which grow to 94 in 1978.

⁶⁵ In Germany there were just 25 new laws relating to consumer protection from 1945-1970 but there was a further 338 adopted by 1978.

⁶⁶ Hilton M: *The Death of a Consumer Society*. Opcit.

⁶⁷ The Maastricht Treaty

⁶⁸Lazikova J: *The Consumer Policy in the EU, EU Agrarian Law* 2016, accessed online<www.academia.com> on 31/10/2020.

⁶⁹Ibid

⁷⁰Ibid

consumers Protection ⁷¹was established by the regulation of European Union (1993) this new policy should ensure wealth protection, safety economic interest and providing information to consumers. The Article 129(a) of the Treaty establishing the Europeans community provides that:

1. The community shall contribute to the attainment of a high consumer protection through:
 - a. Measures adopted pursuant to Article 100a in the context of the completion of the internal markets.
 - b. Specific actions which support and supplement the policy pursued by member states to protect the health, safety and the economic interests of consumers and to provide adequate information to consumers.

6.2 The United States

Although the idea of consumer protection is not new to the United State,⁷² beginning the 18th century - in that, there have been laws regarding uniform weights and measure since the 1800s, however interest in consumer rights legislation only began to flourish in terms with society's technological and economical advancements and breakthrough. For example, the mass commercialization of products during the industrial revolution spawned laws in the late 1890's and early 1900s regarding food purity. And the rise in consumer credit as well as product safety awareness spurred much consumer protection legislation during the 1960s and 1970s.

The passage of the pure food and drug legislation in 1906 came in response to efforts led by crusaders who were concerned about the unsanitary conditions and high prices. One of such concerned men was Upton Sinclair, author of the Novel, 'The Jungle'. The book depicted the harsh and filthy environment inside the Chicago stock yards, an exposure which led to federal investigation and subsequent Meat Inspection legislation.

In 1938 congress added to the 1906 legislation by enacting the Food, Drugs and Cosmetic Act which required manufactures to prove the safety of new drugs before being allowed to put them for sale. The Food and Drug Administration (FDA) of the Department of Health and Human Services is responsible for administering the pure food legislation. These Acts were created to ensure the foods, drugs, vaccines, devices and cosmetics are safe, properly labeled and good for human use. Over the years, the Act has been strengthened with additional amendment including the 1962 amendment which requires that manufacturer prove effectiveness as well as safety, of drugs before they are marketed to consumers.

By any measure however the greatest propeller of consumer rights and the protection is the articulations as contained in the famous speech of President John F. Kennedy ⁷³on the 15th

⁷¹Ibid

⁷²Consumer Protection: History. Accessed at <www.law.jrank.org>on 1st Nov 2020 online. See also Corrad, A, 'International Law and Consumer Protection- History of Consumer Protection'. Accessed online on 1st Nov, 2020 at <www.ngulawglobal.org>

⁷³President Kennedy speech at <http://www.presidency.ucsb/ws/index.php?pid=9108>

March 1962⁷⁴ in his special message to the congress of the United States of America on protecting consumer interest. President Kennedy then addressed government intervention by way of legislation and administration for the consumer to be able to enjoy his rights. These principles form the foundations for the consumer rights movements and were later expanded to include privacy rights and rights to sustainable developments.

President Lyndon Johnson advanced further consumer right in the U.S in 1964 by creating the post of Special Assistant for Consumer Affairs, and in 1967 formed the Consumer Federation of America, which served as the National Organization of Consumer, Corporative and Labour groups. Then at the fore front of the consumer rights movement in the United State since the 1960's has been Ralph Nader, a (Lawyer and Consumer Advocate, Nader's 1965 muckraking book⁷⁵ "Unsafe at any speed" exposed the questionable misdeeds and bad manufacturing and designs practices in the automobile industry. The book and the consciousness raised in the aftermath led to the passage of the National Traffic and Motor Vehicle Safety Act of 1966. Nader's activism involves organizing networks of young people, using knowledge and science to conduct research and testing of consumer products to ensure safety and fit for purpose and then publishing the result in consumer reports.⁷⁶

6.3 Nigeria

In Nigeria, almost like the rest of Sub-Saharan Africa, consumer protection was not high on the agenda of the Colonial masters and the development of the institutions necessary for the protection of consumer rights were largely ignored and were variously subsumed under old and archaic principles of common law (such as Caveat Emptor, Privity of Contract and Sanctity of Contract) and a few Statutes of General Application⁷⁷ (including the Sale of Goods Act, 1893⁷⁸) while the countries of Europe were rapidly developing their laws and encouraging Consumer Associations to flourish.

A positive basis for growth⁷⁹ of Consumer Associations in Nigeria, it was suggested was inspiration from Ralph Nader⁸⁰ although this researcher finds scanty connection between growth of Consumer Associations in Nigeria with the consumer activism in America, rather it is the view of this researcher that activism in this area, appeared to be fueled and formed part of the general political activism prior to independent of the Nigeria state from its colonial master the UK. It was therefore not surprising that the earliest activities relating to consumer

⁷⁴ In recognition of the epochal nature of the speech, every 15th March of each year, is now set aside and marked as the World Consumer Right Protection day.

⁷⁵ Ralph Nader, *Unsafe at any Speed; The Designed- in danger of the American Automobile* (Grossman Publishers, 1965).

⁷⁶ Nader R.: West's Encyclopedia of American Law Encyclopedia.com. accessed 31st oct 2020.

⁷⁷ s.32 (1) of the international Act Cap 123 LFN provide that subject to the provisions of this section and except in so far as other provision is made by any Federal Law, the common law of England and the doctrines of equity, together with the statutes of general application that were in force in England on the 1st day of January, 1900, shall in so far as they relate to any matter within the legislative competence of the Federal legislature, be in force in Nigeria" See also s.12 of the High Court Laws of Lagos State, Cap 83 Laws of the Lagos State 2003.

⁷⁸ Sale of Goods Act, 1893

⁷⁹ BB Kanyip; *Historical analysis of Consumer Protection Law in Nigeria* (NIALS: Lagos) 1997. Also see same author in *Consumer Protection in Nigeria, Law Theory and policy* at 320.

⁸⁰ Ralph Nader was the American Consumer Advocate and Author of Nader R: *Unsafe at any speed; the designed -in -Dangers of the American Automobile.* opcit.

association or activism were championed by Pro-Independence Nationalist Newspapers and some of the organizations were in fact formed by Print Journalists who use their visibilities and writings to propagate consumer activism.⁸¹

Mention must however be made of an association called 'Consumer Protection Organization of Nigeria (CPON)' founded in post-colonial 1970, as a non-governmental organization with no political affiliation formed with the object of protecting consumer right through consumer education, enlightenment and research. The Association then regularly publishes a quarterly called "The Consumer". A number of other non-governmental consumer groups⁸² were also floated by public spirited Nigerians but often were either sector based, ad-hoc and were often inhibited from growth by lack of membership, unavailability of sponsors or finance and sometime by the promoters unfortunate perceived intention to use the Association as a climbing ladder to political prominence. Then came the advent of consumer rights-specific legislations in Nigeria particularly the now repealed, Consumer Protection Council Act⁸³ and the relatively new Federal Competition and Consumer Protection Act.⁸⁴ These two legislations, in their provisions encourage the formation of consumer right organizations and in fact included them in the membership of its organs. Thus, it appears a new lease of life has been breathed into the formation of consumer organizations although the common trend lately somehow appears to be limited to individual activism and sector base consumer rights organization.

7. Recommendations and Conclusion

The paper identifies and justifies the basis for classifying consumer protection under public law as mainly to protect consumer rights through legislative and regulatory interventions. The paper examines the historical and philosophical justification for consumer rights and protection, applying briefly, a comparative analysis of Nigeria with the position of the United States and the European Union. The paper traces the role and presence of some forms of consumer rights and advocacy as both indigenous to African society. The paper recommends the necessity for a clear articulation of the theoretical foundation and conceptual framework critical for consumer protection within the current legal framework. The paper considered as restrictive the current definition of a consumer under FCCPA and recommends an amendment to effect robust expansion and coverage both as to scope and the definition of a consumer under current Nigerian legislation.

⁸¹BB Kanyip, *Consumer Protection Act Law Theory and Policy in Nigeria, Law, Theory and Policy* at p 320-322 In respect of Nigeria consumer rights Associations (NICRA) this Association was over seen by the Consumer Times Editor of the Daily Times Newspaper, with membership from the general public and mostly dependent on using the Newspaper column to propagate the consumer right advocacy. Although there were in existence other similar groups copying this model of using Newspaper or electronic media outlets as the main tool of their advocacy, over the years, it is safe to say however, this approach has rendered ineffective the Association and affected their independence.

⁸² These groups include Nigeria consumer rights Associations (NICRA), Consumer Protection Association of Nigeria (CPAN), Consumer Affairs Movement of Nigeria (CAMON).

⁸³ Cap C25. LFN 2014. The defunct Council under this Act had as part of its functions under s.2 (h) of the Act, the duty to encourage the formation of voluntary consumer groups and associations for consumer wellbeing.

⁸⁴ Federal Competition and Consumer Protection Act 2019 s.151