
Consumer Protection of Bangladesh in the Experience of India: A Proposed Legal Framework

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Abstract

An ideal consumer protection legal framework aims to ensure greater transparency and awareness about the goods and services, ensures promotion of competition in the market and aims to prevent fraud and unfair practices. The Consumer Rights Protection Act, 2009 of Bangladesh is a good starting point for the consumers' rights protection in the country, but not good enough. This paper will enable the Consumer Protection Law of Bangladesh to gain benefit from the India's long experience in the field of consumer protection, in order to provide a clear view of the current situation of consumer protection there. It is worth mentioning here that this study is not a pure comparative study between the jurisdiction of Bangladesh and other jurisdictions globally. This study will examine the Indian framework on specific issues of consumer protection. Undoubtedly, enforcement of the consumer protection law cannot be made on the sole basis of provisions of the law but rather must be based on analysis of the strengths and weaknesses of the Consumer Protection Law of Bangladesh in operation at its various levels. It is desired that the proposed legal framework of consumer protection will be regarded as a modest attempt to contribute toward strengthening the enforcement of consumer protection law in Bangladesh.

Keywords: *Consumer protection, legal framework, law, Bangladesh, India*

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Introduction

According to Norman Silber¹

“The deficiencies of particular laws, however, indicate only that good consumer protection rules are difficult to devise; harder to enact; and even harder to implement”.

In order to advance better protection for consumers and draw their attention and confidence in the market of Bangladesh, solutions gave to cure the shortcomings of consumer protection guidelines must turn around two matters. Firstly, the key factor in the whole method is consumers’ confidence and trust that the market and guidelines or regulations will secure their lawful rights. All arrangements given by the administration of government and concerned specialists should concentrate on the best way to fabricate and build trust and faith between the two parties so as to urge individuals and business to take an interest in a reasonable and equivalent market. The spread of new advances that empower consumers to shop on the web and be exposed to different deceiving notices has set up another new zone that the administration needs to cover and support with proper enactment. Edwards contended that consumers, in the case of shopping from a physical merchant or an online element, must appreciate and get a similar dimension of opportunity and protection.² Secondly, all efforts to make a legal framework for making a sheltered, trusted and composed single market that could secure consumer rights as opposed to having a market that contains conflicting laws. In the last circumstance, if the legislature has instituted new measures, for instance, they can slam into existing guidelines or regulations and lead to deficient security for consumers and a powerlessness to authorize sanctions for resistance. In this manner, endeavors by the legislature and concerned specialists to institute new guidelines or regulations would be pointless in managing consumer protection issues if the new guidelines crashed into regulations.

Hence, in order to have a far reaching model for consumer protection system in

1 JANE K. WINN, CONSUMER PROTECTION IN THE AGE OF INFORMATION ECONOMY 15 (2d ed. 2006).

2 LILIAN EDWARDS, CONSUMER PRIVACY, ON-LINE BUSINESS AND THE INTERNET: LOOKING FOR PRIVACY IN ALL THE WRONG PLACE 237-239 (3d ed. 2003).

Bangladesh, the model must incorporate and focus on certain components- authorizing enactment, adequate execution by authorities' bodies, raising consumer awareness and establishing separate court etc. In the event that these territories are secured and worked inside a degree of consistency, consumer protection would be progressively completed and powerful and the market of Bangladesh would more secure and consumers' confidence will be inspired.

Objectives of the Study

The objectives of this study is providing the ways and means to protect consumer, both at the individual and national level, to identify and analyze the reasons that why consumers are depriving to get protection. The study is an attempt to strengthen the consumer legislation framework of Bangladesh in the experiences of Indian legislation. In view of this, the study tries-

- To examine whether the current consumer protection framework of Bangladesh can serve as a possible solution and explore the inadequacy of consumer protection framework in Bangladesh;
- To identify Indian experience with this field, so as to give a reasonable perspective on current circumstance of consumer protection there;
- To find out the ways and means to protect consumers, both at the individual and collective level.

Methodology

This study will follow the combination of primary and secondary research methods based on a combination of qualitative and theoretical research analyses in the context of Bangladesh. As the study concerns about the analysis of laws and rules, so, this study will not approach the empirical methods of data analysis. So, this research will adopt the method of evaluation, dissemination sharing, interviewing and consultation in which the thematic and juridical analysis of laws, interview with informants, resource personnel, case-law review will be given due emphasis.

Limitations of the Study

- The limitation of this study is that the regime of consumer protection in Bangladesh
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and India is based mainly on statutory legislation. The aspect of consumer protection is dealt with indirectly by much legislation. But, in this short span of discussion, it is not possible to offer discussion on all these laws.

- It may be noted that there are many inadequacies in the consumer protection framework of Bangladesh but the study will discuss important issues which are undeniable to protect the consumers. Due to limitations, the scope of this study has kept limited to the Consumer Protection Act of Bangladesh and India with a few laws and issues only.

Significance of the Study

This study is a rewarding exercise in bringing out the loopholes in the existing legal regime pertaining to consumer protection in Bangladesh. The utility of this research is vital from the point of view of evolving more practical provisions and principles and creating a legal regime, which is equitable, respectful of the dignity of the individual and mindful that the consumer right should be the focus of the varied dimensions of International and National law. This study will contribute significantly to the researcher goals as a legal researcher.

Differences between Bangladesh and Indian approaches

In the legal framework for Consumer Protection of Bangladesh and India in business exchanges among consumers and organizations, the accompanying contracts between the two frameworks were obvious.

Firstly, in terms of Bangladesh and Indian approaches, India has been managing consumer security as a legitimate concern since 1986, bringing about long understanding of handling certain dangers confronting consumers in the market. Conversely, the enactment of Bangladesh considered extremely new in this field. The hole between the two wards is clear, particularly thinking about that the term ‘consumer’ was not referenced or tended to in the lawful arrangement of Bangladesh until 2009. The lawful structure of consumer protection in India is comprised of provisions and laws created explicitly to address consumer issues, for example misleading advertising, unfair practices, unfair terms, distance selling etc.³ However, in Bangladesh- separated from the consumer protection

3 Tapos Das Bandhu, *A Study on Ground Situation of Right to Food in Bangladesh*, BANGLADESH LAW COMMISSION (June.11, 5.43 PM), <http://www.lc.gov.bd/Publication/A%20Study%20on%20Ground%20Situation%20of%20%20Right%20to%20Food%20in%20Bangladesh.pdf>

law, which needs numerous basic provisions on issues identified with unfair terms, unfair practices, misleading advertising, distance selling etc- all that is accessible are general provisions dissipated over the Civil Code, the Penal Code, the Constitution, and some other laws, which might be applied to consumers' issues but not planned explicitly to them.

Secondly, the Indian structure took care of issues that may cause dangers for consumers by passing a majority of laws tending to each issue independently with a lot of rules remembered for every law.⁴ In addition, the Indian system has bolstered these enactments with consistency between concerned specialists and consumer associations and wide scope of ADR instruments. Alternately, the main law concerning consumer protection in Bangladesh came as a whole set of rules to protect consumers; however, it did not address all issues that may happen as referenced in the passage above. Absolutely, this uncertainty promotes the legitimate actuality that without particular law or provisions to deal with and organize consumers' issues extensively there will be lacking security for consumers' privileges or rights against unfair practices committed by traders.

In the researcher's viewpoint, distinguish the powerless purposes of current consumer protection law in Bangladesh and receiving a lawful structure that would think about cutting edge law, to be contained in one thorough bit of law and executed in Bangladesh. By embracing such propelled enactments on consumer protection would limit the hole in enactments between Bangladesh and India in the field of consumer protection and would upgrade consumer trust in the market and traders of Bangladesh. Furthermore, it will help make a beginning stage for a unified set of rules globally and urging neighboring countries to be in like manner, which will prompt a kind of observing framework over national and worldwide market.

Action require the Facing of Potential Risks

To consider the points, there is a genuine requirement for a move to be made to confront dangers that could happen and may put consumer rights in risk. However, risks, for example, faulty items that cause damage or demise of a consumer, misleading advertisement, jurisdiction protection, unfair terms and pertinent law will be talked about below.

1 Personal Safety

4 SAYEED RAAS MASWOD, A HANDBOOK ON LAWS OF INTELLECTUAL PROPERTY 111 (2d ed. 2012).

In terms of personal safety, the consumer protection law of UK has emphasized the importance to provide a set of rules which can tackle any infringements that may hazardous to consumers' life and health by criminalizing by infringing acts. When infringing acts occur, the liability of a person or body⁵ increases and consumers suffer damages, which is defined in part 1, section 5 of the Consumer Protection Act, 1987 as a "death or personal injury or any loss of or damage to any property (including land)". Section 2 (6) (v) and 2 (6) (vi) of the Consumer Protection Act, 2019 of India provided that goods which will be harmful for life and safety when used are being offered for sale to the public or services which are hazardous or likely to be hazardous for life and safety of the public when used, are being offered by the service provider which such person could have known with due diligence to be injurious to life and safety then a person have right to safe him or her under the Act. The Act provided that 'right to safety'⁶ means "the consumer has the right to protect against the marketing of goods and services which are hazardous to life and property. Due to the defective design, poor workmanship, negligence, defective ingredients, etc. the goods or services may cause serious injury to the consumers' property or to his or her own body or to have good quality and defect-free goods or services". In case of the Consumer Rights Protection Act, 2009 of Bangladesh provided that commission of any act which is dangerous to the life or safety of the consumer and that is prohibited under any Act or Rule.⁷The Act mentioned about the anti-consumer right practice with the provision but it has not clear that the personal safety right will arise or not with the provision.

In the opinion of the researcher, the provision of personal safety is not understandable in the Act. So, the legislature of Bangladesh must act with an iron hand in response to any excess infringements by merchants with strict penalties that will enhance consumers' confidence in regard to the effectiveness of the law of consumer protection. Therefore, the government must adopt its responsibilities by amending the existing regulations that govern consumer protection to include some provisions that criminalize any acts that endanger consumer health and safety; otherwise, the risk of the sever effect of these goods and product on consumers' health will not achieve sufficient redress.

2 Strict Product Liability

5 See part 1 section 2 of the Consumer Protection Act, 1987 (UK) (a) the producer of the product; (b) any person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product; (c) any person who has imported the product into a member State from a place outside the member States in order, in the course of any business of his, to supply it to another.

6 The Consumer Protection Act, 2019, §2(9)(i).

7 The Consumer Rights Protection Act, 2009, §2(20)(l).

Product liability is strict in that fault on the part of the defendant. The claimant has only to prove supply or production of the product by the defendant, a defect, actionable damage, and causation. In the Consumer Protection Act, 2019 of India, section 2(34) provides that if consumers are injured by any good/service for manufacturing defect or poor service which is provided by a manufacturer or service provider then they have to pay the amount of compensation to the consumers. The Act provides that (a) product liability can be claimed against manufacturer; service provider; or seller, (b) according to the conditions of the Act, compensation can be obtained. For example, a pressure cooker has been exploded for manufacturing defect and consumers have been injured then the manufacturer will be liable to compensate for the injury. Earlier, the consumer got cooker's cost as compensation. The consumer asked for compensation through a civil court but which usually takes long time to dissolve it, and not consumer forum. In this provision, the most significant impact is on e-commerce platforms as it also includes service providers under its jurisdiction. "Product liability is now extended to service providers and sellers along with manufacturers.⁸ This means e-commerce sites cannot escape as aggregators anymore", says Mukesh Jain & Associates. Chapter VI (section 82-87) of the Act also elaborately discuss about (i) a product liability action may be brought by a complainant for compensation against a product manufacturer or a product service provider or a product seller for any caused to him on account of a defective product, (ii) liability of product manufacturer, service provider and product sellers.

In Bangladesh, product liability is a serious concern. But, the Consumer Rights Protection Act, 2009 has not mentioned about it specifically. Even, it has not mention about the liability of product manufacturer, service provider and product sellers. Only section 23, 24 and 25 of the Act discuss that if a complainant complaint about it then the Director General of Consumer Rights Protection Directorate or any person authorized by him or any 1st Class gazette officer authorized by Government may investigate, enquire into the matter and attach the defect products. He also authorized to issue warrant, punish the offenders and close shops etc involved in any illegal activities in violation of this Act. However, the legislature of Bangladesh should add some provisions regarding product liability in the Consumer Act to follow the Act of India. Because, the Act elaborately mention the process of compensation claimed against manufacturer; service provider; or seller and liability of product manufacturer, service provider and product sellers.

3 Unfair Terms

⁸ S. Singh, *Here's how Consumers will benefit under the new Consumer Protection Act*, THE DAILY ECONOMIC TIMES, July 15, 2019, at 6.

In a day, a consumer makes various contracts for the supply of goods or services but most of these contracts' terms are more favorable to traders and it unfair to the consumers. A standard contract form is designed by the traders which are the common contract where involved unfair terms. Unfair terms especially as exception clauses can likewise be found or imprinted in the receipts, invoices and different deals reports. These terms may work incredibly brutally against consumers in light of the fact that their privileges might be constrained or limited or denied altogether.⁹ In India, there has provision about unfair contract terms in the Consumer Protection Act, 2019. Section 2(46) of the Act provides contracts that cause significant change in consumer rights and six contract terms are as unfair, which includes (i) requiring inordinate security stores; (ii) forcing an unbalanced punishment for a breach in contract; (iii) declining to acknowledge early reimbursement of debts; (iv) ending the contract without reasonable reason; (v) moving a contract to a third party to the impairment of the consumer without his assent; or (vi) forcing outlandish charge or obligations which put the consumer at a disadvantage, where as in Bangladesh, the Consumer Rights Protection Act, 2009 did not provide the issue of unfair terms in consumer contracts, which has brought about consumers suffering from bond contracts and having their rights infringed. For example, the categories of the following terms¹⁰ can be used as a model in the current regulations of Bangladesh:

- (a) Terms giving one party control over the contract terms or the performance of the contract;
- (b) Terms which govern the duration of contract;
- (c) Terms which prevent the parties from having equal rights; and
- (d) Clauses of exclusion, limitation and penalty.

In contrast, as noted above, the legislature of Bangladesh has not addressed the issue of unfair terms either in the law of consumer protection or other laws available in Bangladesh, and these circumstances are the need for a comprehensive set of rules is increasing which influences consumer decisions. This ambiguous situation can be abused by companies or traders in commercial transactions who can easily include terms that limit consumers' rights by including terms that exclude their legal liability. However, to better ensure the safety of consumers of Bangladesh in connection to services liability, the Act should be revised to include provisions on unfair conduct or unfair contract terms.

9 Naemah Amin, *Protecting Consumers Against Unfair Contract Terms in Malaysia*, 1 MLJ, 38 (2013).

10 GERAINT G, HOWELLS (1995), CONSUMER CONTRACT LEGISLATION: UNDERSTANDING THE NEW LAW, 46-48 (1995).

4 Misleading Advertising

False and misleading advertisements are unethical and are regarded as a social and commercial illness that needs to be prevented. These advertisements abuse basic consumer rights, for example, as right to informed choice, safety and protection against unfair and anti-competitive trade practices. It also violates the constitutional mandate of free and fair competitive market and other constitutionally protected socio-economic rights.¹¹ The legal framework of India to protect consumers from false and misleading advertisements is set down in number of enactments. The Consumer Protection Act in section 2 (28) states that “misleading advertisement” in connection with any product or service, means an advertisement, which (i) falsely design such product or service; or (ii) gives a bogus guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or (iii) passes an express or implied representation which, whenever made by the manufacturer or seller or service provider thereof, would comprise an unfair trade practice; or (iv) intentionally conceals important information. Other legislations have also tried to define the limits of permissible commercial advertisement and regulate false and misleading advertisement in bits and pieces.¹² The CCPA may impose a penalty of up to Rs. one million on a manufacturer or an endorser, for a false or misleading advertisement. The CCPA may also sentence them to imprisonment for up to 2 years for the same. If there should be a subsequent offence, the fine may extend to Rs. five million and imprisonment of up to 5 years. The CCPA can likewise prohibit the endorser of a misleading advertisement from supporting that specific product or service for a period up to 1 year. For each subsequent offence, the period of prohibition may extend to 3 years.

On the contrary, there are no sufficient provisions under current consumer protection law of Bangladesh to protect the vulnerable consumers from the deceptive traps laid by sellers using the handy tool of advertisement. Only the Food Safety (Labeling) Regulations of 2017 bars food manufacturers or marketers from putting false, confusing or misleading information or claim in the label of the products. In its sub-section 7 of section 4 states that no statement of experts, doctors or suggestions of any other people or organizations shall not be published or declared about the food products in any form of advertisements.

However, it will be effective to include misleading advertisement in the Act of Bangladesh such as Indian provisions because the Indian Act has provided a complete

11 Hamdard Dawakhana v. Union of India, AIR 1960 SC 554 (India) & Tata Press Limited v. Mahanagar Telephone-Nigam. AIR 1995 SC 2438 (India).

12 ANIRBAN CHAKRABORTY, LAW OF CONSUMER PROTECTION ADVOCACY AND PRACTICE 264 (3d ed. 2014).

picture of misleading advertisement such as, falsely describes of product or service, gives a false guarantee, conveys an express or implied representation, important information is conceals deliberately is misleading advertisement. So, the legislature of Bangladesh should amend the Act by including these provisions of misleading advertisement.

5 Jurisdictional Protection

Under the Consumer Protection Act, 2019 of India the District Forum, the State Commission and the National Commission have been established with respective jurisdictional limits. The jurisdictional limits have been prescribed in section 34, 47 and 58 of the Act. There are three types of jurisdiction under the Act – Pecuniary, Territorial and Subject-matter. If there is a lack any jurisdiction of it, the consumer court will not take the complaint.¹³ Moreover, the Supreme Court held that if a complaint has been dismissed for default in one forum, and restoration order has not been granted, can be allowed on a fresh complaint filed second time with same facts and cause of action in another forum for the interest of justice.¹⁴ The Supreme Court has further held that the issue relating to jurisdiction has to be decided by the forums first. The court has held that the issue regarding jurisdiction cannot be adjudicated in the appeal or revisional stage and any such dispute of jurisdiction needs to be decided by the forum of first option.¹⁵

In case of Bangladesh, for being regarded as a cognizable offence, the proof of *Mens Rea* on the part of the seller is not required; it is sufficient that the violation conforms to condition of anti-consumer activity on the very prima facie of it. Apparently, it seems from this that the court has jurisdiction of taking cognizance as well as trial over all the offences as mentioned in section 37-56 of the Consumer Rights Protection. Still, the fact remains that the court cannot take cognizance of all offences mentioned therein. The jurisdiction of the consumer court for trying cases under sections 41, 51 of this Act is barred section 71 of this Act. ‘Unless constituted under section 25C of the Special Power Act, 1974, co court of magistrate or tribunal of criminal jurisdiction, shall take cognizance of an offence of adulteration of medicine, mixing of adulterated ingredients with medicine’.¹⁶ So, it may be presumed that the provision relating to cognizance taking power of court collides with each other. However, the Act provides that the provision of the Code of Civil Procedure 1908 shall be followed by in dispensing justice in civil nature. Under section 15 of the

13 ANIL CHANDRO ACHARGO, KRETA SUROKKA AIN 19 (2d ed. 2015).

14 CHAKRABORTY, *supra* note 5, at 139.

15 K. Sagar, M.D., Kiran Chit Fund Musheerabad v. A. Bal Reddy, (2008) 7 SCC 166 (India).

16 Anti-consumer activity under section 2(20) of the Consumer Rights Protection Act, 2009.

Code, the court of first instance shall be the court of lowest grade having the pecuniary jurisdiction. But, this Act has breached this principle by earmarking the Joint District Judge as the component court. Actually, a good number of complaints with respect to small valued goods could have been resolved by courts having lower pecuniary jurisdiction. But, this provision has curbed the potential of other courts of law for dispensing this justice. In this respect, it may mention that the potential of small cause courts under the Small Causes Courts Act 1877 which has been curbed by bringing all the offences under the Joint District Judge. Actually, this provision functions as indirect defiance to the establish system of justice. From the researcher's point of view, the legislature of Bangladesh in its law of consumer protection should establish consumer court as Indian system with the specific jurisdiction.

6 Defective Goods and Products

The legislature of Bangladesh has mentioned that all or any type of the remedies can be provided by the Civil Court, as – (a) making order to the opposite party to change the defect products with proper products and (b) making order to return cash to the plaintiff by accepting the defect product in return. The legislature in this Act did not mention the definition or types of defect. In terms of the defect, in Indian law has prescribed a specific definition of defect. Section 2(10) of the Act provide that defect means any fault, imperfection or inadequacy in the quality, quantity, potency or standard which is required to be kept up by or under any law for the time being in force or under any contract, express or implied or as is claimed by the trader in any manner whatsoever in connection to any goods.

From the researcher's point of view, the legislation of Bangladesh should include provisions of the definition of defective goods and products by distinguishing between types of defect that it has serious effect on the life and safety of consumers or not.

7 Criminal Sanctions

An effective remedy has been provided under section 72 of the Consumer Protection Act, 2019 of India for enforcement of orders passed by redressal agencies. It confers *quasi* criminal sanction by way of punishment with imprisonment or imposition of monetary penalty.¹⁷ Regarding criminal sanctions, section 72 (1) of the Consumer Protection Act, 2019 provides that where a trader or a individual against an objection is submitted or the

17 H. K. SHARAY, TEXT BOOK ON CONSUMER PROTECTION LAW 124 (1st ed. 2010).

complaint fails or omits to comply with any order made by the District Commission or the State Commission or the National Commission, all things considered, such trader or individual or complainant shall be detainment with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than twenty five thousand rupees, but which may extend to one lakh rupees or with both. As per the section 72 (2) of the Consumer Protection Act, 2019, the District Commission or the State Commission or the National Commission shall have the power of a Judicial Magistrate (first class) for trial of offences under this Act. Non-compliance of any interlocutory order issued under section 38 (8) also is punishable under section 72 of the Act. Proceedings under section 72 of this Act cannot be initiated against a third party who was not a party to the main proceedings before the District Commission and the Act applies to failure or omission on the part of 'company' to comply with the order passed. In addition, section 89 of the Act provides for imprisonment for false and misleading advertisements. This is a significant departure from the 1986 Act. Section 89 in effect reclassifies a civil offence as a criminal one. The inclusion of criminal liability provisions within the Act could exacerbate an existing practice of relying on criminal laws to enforce consumer protection laws.

Therefore, in the current consumer law of Bangladesh contained inadequate criminal sanctions. This Act does not provide about the joint or vicarious liability, abatement where the complainant is against the company or any of its staff or agent. It does not elucidate the destiny of criminal proceeding under this Act where there is proceeding under other law for a similar reason. It additionally does not clarify the extent of limit of penal remedies where these measures under different laws surpass the limit of the Consumer Rights Protection Act, 2009.

In the researcher viewpoint, current consumer protection law is not enough for criminal penalties to protect consumers from rogue traders. This law should be amended by the legislature through increasing the amount of fine and imprisonment.

An Effective Grievance Redress Mechanism

Within the framework of the Consumer Protection Act, 2019 of India, quasi-judicial machinery is sought to be set up at the District, State and National levels to provide speedy and simple redressal of consumer disputes.¹⁸ The principles of natural

18 DALPAT SINGH MEHTA, HANDBOOK FOR CONSUMERS RIGHTS, PROBLEMS AND REMEDIES 100 (1st ed. 2002).

justice will be observed by these bodies. They have been empowered to give relief and order of compensation to the consumers.¹⁹ The Act also established a consumer disputes redress agency at the district, state and national levels parallel to but separate from the hierarchy of the courts that already existed. The composition of these agencies are the District Commission, the State Commission and the National Commission, the evidentiary and procedural rules that govern them and the remedies that they can provide ensure the efficacy of these agencies.²⁰ On the contrast, it is not permitted that the Council or the Directorate will receive complaints from consumers under the Consumer Rights Protection Act, 2009. Rumana Islam argued that the Act is not right based one; rather it can be criticized as making another bureaucratic mechanism which is largely ineffective and leaves ample room for corruption. This is very uncommon feature of consumer protection laws in other parts of the globe, as most of the legislation on consumer protection allows receipt of complaints directly from the consumers.²¹

However, there are some cases of consumer in Bangladesh which are related constitutional cases such as, *Sayed Borhan Kabir vs. Secretary, Minister of Health and Family Welfare* (1993), Unreported Writ Petition No. 701/1993 known as *Paracetamol case*; *Mohiuddin Farooque vs. Secretary Ministry of Health and Family Welfare* (1994), Unreported Writ Petition No. 1783/1994 known as *Doctors Strike case*; *Mohiuddin Farooque vs. Secretary, Ministry of Commerce* (1996) 48 DLR (1996) 438 for imposing ban radioactive milk. These cases provided an insight regarding the protection of consumers. But, unfortunately, it could not add a good number of cases in the basket of consumer protection as in India.

From the researcher's viewpoint, in the legislation of Bangladesh should provide provisions same as Indian Act about an effective grievance redress mechanism and that can be established at the District, Division and National level to protect the rights of the consumers.

The Need to Review Legislation for an Effective Consumer Rights Protection Mechanism in Bangladesh

An analysis of the legal framework of Bangladesh reveals that the framework in the

19 RUMANA ISLAM, *CRITICALLY LOOKING INTO THE CONSUMER'S RIGHTS PROTECTION ACT 2009* 19 (3d ed. 2017).

20 MURALI PRASAD PANTA, *BUNISESS, CONSUMER AND THE GOVERNMENT: AN ECONOMIC AND LEGAL PERSPECTIVES* 97 (1st ed. 2001).

21 *Id.*

favor of traders over consumers. In this perspective some steps may be taken by legislature in addition to the proper application of existing laws.

A special force might be established to monitor the market cost of different goods and furthermore the services providing by different organizations in different sectors, for example, hospitals, transports etc. As well, a special court or tribunal may be constituted for protection of consumer rights and the number of Mobile Courts can be increased to punish the offenders on the spot through summary trial²². However, the officials who are entrusted with the responsibilities to promote and protect consumer rights shall have accountability and even may be punished for negligent acts or omissions and these provisions should be include in the legislation.²³ Because, all public servants are bound by the constitution to serve people which should be evaluated from time to time for the greater interests of consumers in the public sectors. The social awareness and inserting consumer law in the text book is essential to protect consumer rights. So as to make awareness among the general public everywhere, it is important to hold regular conferences, seminars, workshops, meeting etc and to publish advertisements in the print and electronic media. Furthermore, the service consumers are mostly affected due to lack of legal compliance in the hospital, transport, legal, telecommunication, energy and other services. So, strict legal compliance must be maintained for effective consumer rights protection in the service sectors.²⁴

Moreover, the Consumer Rights Protection Act, 2009 should have provisions to deal with drug, legal, medical, financial, free service, after sale service and e-commerce related problems that caused sufferings to a service consumer.²⁵ As well as, the DG should response quickly and Act to solve problems keeping in mind the interest of the consumers and the power of the Government to issue notifications to exempt any locality or service from the application of the Act, 2009 should be abolished or amended. It should be include in the legislation that the collection of samples should be made following a separate and due process and the payment of laboratory test fees should be borne by the Government not by complainant and as per the Act, a complainant may get 25% of the fine amount which should be increased.²⁶

22 M.A. Hasan, *The Problem of governance in the government health sector*, THE DAILY BANGLADESH PROTIDIN, Nov 9, 2018, at 6.

23 Shofiqul Islam Loskor, *A Big Challenge to protect Consumer Rights*, THE DAILY BONIK BARTA, Mar 15, 2019, at 7.

24 M.S FARRUQUE RAHMAN, S.A.A. FERDOUSY, *Consumer Protection movement in Bangladesh Studies*, 2013, Vol. 26, p.IBI-144

25 SHAFIQUL ISLAM, *THE CONSUMER RIGHTS PROTECTION ACT 271* (2d ed. 2016).

26 Emran Hossain, *Consumer Protection in the Context of Existing Laws in Bangladesh*, 5 JETIR . 4, (2018).

Online business or e-commerce is booming day by day. The legislature must have included provision about strict monitoring and quick action bodies to ensure rights of the consumers as well as must prevent web-sites presenting themselves as government websites then misleading consumers into paying fees for services that are actually available free of costs or charges.²⁷

Supervision Mechanism

There is no compelling checking framework to control price hike of essential commodities and furthermore on the kitchen markets. Sometimes, Government fixes costs of basic commodities without any effective observing system to ensure that value fixed and also to control quality of goods or products.²⁸ Under section 21 (2), the supervisory role upon the Directorate imposed by the Consumer Rights Protection Act, 2009. Section 21(1) of the Act provides that the Directorate will supervise the anti-consumer rights practices which are listed under the Act but does not give any direction by any provision that how the supervision will be conducted by him. Even, no power has been vested upon the Directorate to take necessary action. The office of the Directorate also lacks appropriate institutional capacity to build a force to supervise the markets and act as the watch-dog for consumer protection rights in Bangladesh. As a result, there has no visible achievement for protection of consumer rights has been shown by the Directorate.²⁹

Alternative Dispute Resolution and Ombudsman

To lessen the postponements in the implementation procedure of the court, the redressal forum may refer a consumer case for alternative dispute resolution such as mediation offers expedient methods to settle disputes. According to Delhi Government, “Mediation is voluntary process in which an unbiased and impartial go between attempts to unite the disputant parties to arrive at a mutually agreeable solution. The parties to the dispute have a chance to vent their grievances and feelings and from there on work out the answers for meet their interests”. The consumer affairs department was thinking about a meaningful development in the Consumer Protection Act, 1986 to advance mediation and arbitration and it has been affected after enacting the new Consumer Protection Act, 2019.

27 SHAHRIAR AKTER, FATIMA KAYESER JOHRA & HABIB-UZ-ZAMAN KHAN, AN INTEGRATED PROTECTION FRAMEWORK TO PRESERVE CONSUMER RIGHTS AND RESPONSIBILITIES IN 65 (2d ed. 2013).

28 DR AHAMUDUZZAMAN, CONSUMER PROTECTION LAW (BANGLADESH & INTERNATIONAL PERSPECTIVE) 204 (3d ed. 2018).

29 ISLAM, *supra* note 11.

The forms could include enabling Panchayats, Gram Sabhas or similar organizations to mediate and arbitrate between parties. The thought is to guarantee an oppressed consumer moves court simply after he or she has depleted all other choices.³⁰ However, the legislature of Bangladesh should add some provisions regarding the ADR and ombudsman mechanism to protect the interest of the consumers.

Government's Role and Legal Protection

A perfect consumer protection framework intends to ensure more transparency and awareness, ensures promotion of competition of market and intends to prevent fraud and unfair practices but the legal framework of consumer protection law of Bangladesh has failed to achieve that objective. The sloth activity on some portion of the Government to take important measures for the protection of the consumers interests. Additionally, shows the lack of interest in the State machinery in this important area. The Consumer Rights Protection Act, 2009 is a good starting, however not good enough. The government of Bangladesh should take part through enacting laws and regulations to monitor and control the market for consumer protection.

There are various institutions working for the protection of consumer rights around the globe. Bangladesh is not exception to this. In Bangladesh, there are Courts, Tribunals, Consumer Rights Protection Council, Consumer Rights Protection Departments, various District and Local Committees working for the protection of consumer rights.³¹ However, in practice, many of those institutions are not functional rather involved in malpractices and corruptions. There is less involvement of NGO's or awareness committees to protect consumer rights in Bangladesh. There should have more Testing and Standard Organization to ensure consumer rights and quality of products including food items in addition to BSTI or Drug Council.³² There is no Institution in Bangladesh to provide halal certificate as such the Government should modernize the law to promote and protect consumer rights through institutional mechanisms.

The main question of ensuring consumer rights depends on test and research. It is the duty of Government to ensure quality and standard of food, food stuffs and products and also be conduct research on those ensures its health benefits and hazardousness. Regarding

30 Sanjeeb Mukherjee, *Consumer Protection Act to be amended to ease mediation*, *Business Standard* , ONLINE NEWS PORTAL (Nov. 28, 2018, 10:26 AM), https://www.business-standard.com/article/economy-policy/consumer-protection-act-to-be-amended-to-ease-mediation-114073000042_1.html

31 AHAMUDUZZAMAN, *supra* note 20, at 268.

32 SHAFIQU L ISLAM, VOKTA ODIKAR SONGROKKON AIN 243 (2d ed. 2016).

service many research may be conducted to know the reasons of accident, ensuring quality in service, safety and security in service and also to ensure consumer satisfaction.³³ Government should develop the test and research modules to those perspectives keeping in mind the interest of consumer rights.

Consumer rights, an integral part of human rights and right to life, are neglected due to illiteracy, poverty, globalization of domestic products and health unconsciousness on the part of the consumer whereas government and its various institutions have completely failed to perform appropriately due to unethical practice in business and no effective monitoring system, absurd procedural hindrances for filing suits and insufficient laws on many sectors for effective application of the laws.³⁴ The qualitative difference between subjective and objective consumer laws is the degree of absence or presence of ‘supervision’, impartiality, fair, ethical and strict laws on the matter.³⁵ As the consumer rights are involved among a group of persons, every stakeholder must be accountable for their acts or omission that violates rights of a consumer. So, government should involve to third parties in the total process of service or product delivery is so essential connected that their role must be examined for a proper implementation of consumer rights. The tribunal of India has been successful in light of the fact that they work outside of the customary court system and it has also other precedents for separate tribunal in rural and regional area. These tribunals are less strict administrative procedures that are more flexible and accessible³⁶. The Government of India trying to make increasingly proficient consumers less reliant on lawful help by consumer education. The Central Consumer Protection Council at the national level and also some State and District level councils has been established by the Government of India to represent collective consumer interests and advocate on their behalf under Chapter II (Section 3-9) of the Consumer Protection Act, 2019.

Therefore, it is recommended that the Government of Bangladesh ought to set up or keep up lawful and regulatory measures to empower consumer, and relevant associations to get change through formal or causal procedures that are quick, reasonable, economical and open. Bangladesh government should make move to create awareness among consumers by consumer education programme.

33 JAHANGIR ALAM, THREE ASPECT OF CONSUMER RIGHTS 66 (3d ed. 2017).

34 AHAMUDUZZAMAN, *supra* note 20, at 268.

35 *Id.* at 266.

36 MIZANUR RAHMAN, CONSUMER PROTECTION IN BANGLADESH: PRESENT STATUS AND SOME THOUGHTS FOR THE FUTURE 33 (1st ed. 2009).

Consumer Education

To protect consumers from rough traders, consumer education is an important element. It can assist consumers in better understanding their economy, influence their expectations concerning the strengths and weaknesses of market economics and promote greater knowledge of the laws. 'Consumer Education' makes a balance between the producers and customers. It encourages the individuals to analyze and make a value-based decision on behalf of them and their community. If the consumer education is provided properly then it is really benefited by all in the society. It provides benefits to students, society, traders.³⁷ Consumer education addresses consumer decision making economics, personal finance, rights and responsibility.

The Government of India has accepted, established and enshrined six consumer rights under section 2(9) of the Consumer Protection Act, 2019, such as four fundamental rights are - i. right to safety, ii. right to be informed, iii. right to choose, iv. right to be heard and two extra rights are- v. right to redressal and vi. right to awareness through education. Under the Consumer Protection Act, 2019, the consumer has been given the right to awareness by section 2 (9) (vi). The Central Council has been accused of the duty to render guidance on advancement and protection of the rights of consumer under section 5 of the Act.

It is very important in countries like Bangladesh where vast majority of consumers are illiterate. Indeed, even the most easily accessible dispute resolution system cannot succeed except if consumers know about their rights and know how to seek them. In perspective on this, the main areas of education will be that by protecting the consumer a seller does not lose anything; rather he secures his profit by protecting the consumer.³⁸

Furthermore, in the researcher's point of view, the legislature should take step to incorporate the consumer education in the Consumer Act. The concerned specialties and consumer associations can utilize media to instruct consumers to protect them from rough traders.

Conclusion

The study has analyzed different parts of proposed measures to be recognized or

37 RAMESHWARI PANDYA, SPECTRUM OF LIFELONG EDUCATION 148 (1st ed. 2011).

38 ZAHANGIR ALAM KHAN, CONSUMER JUSTICE IN BANGLADESH: A CRITICAL STUDY OF LAWS & RULES 176 (1st ed. 2016).

joined into the legitimate system for consumer protection in Bangladesh. The suggestions have been inferred from the exchanges all through the parts of this examination in regards to the amplex of lawful protection provided for consumers in Bangladesh. Consequently, the fundamental part of this part was to make an imminent model for Bangladesh to improve the utilization of consumer protection and increase consumers' trust in the markets by amending or to build up new legal regulations or provisions.

The current consumer protection legislation of Bangladesh has ignored a few issues that ought to identify with the use of strong consumer protection, and such ignorance has weakened consumers' rights. The current law of consumer protection was presented for the most part with check unjustified value climbs; therefore, a suggestion was introduced to incorporate into the law of consumer protection with a few legal provisions to fulfill issues as of now outer legal protection, for example, unfair terms, unfair trading practice, personal safety, ADR and sufficient penalties. In addition, increasing the lawful function of the Consumer Association is one of the fundamental suggestions of this research to improve the law of consumer protection in Bangladesh. The association will develop consumers' knowledge about the present law and increase the consumer awareness about their rights. In regard to settling disputes, it was recommended to establish consumer protection court under the consumer law of Bangladesh.

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