

LAW interview

Bangladesh needs a consumer rights policy

Dr. Sothi Rachagan, Regional Director of Consumers International, Asia-Pacific, discussed consumer issues in an interview given to Mr. Anisur Rahman of Law Desk, The Daily Star.



Law desk: Right to life is guaranteed by the UDHR and the constitution of almost all the countries include right to safe food, right to health etc. why it is necessary to introduce consumer rights as distinct right?

Dr. Sothi: The 'right to life' is a concept that has been subject to various interpretations. Narrowly defined it refers to just the prescription of physical life. More elaborate conceptions have taken in many other shades of meaning. Especially when it is also taken to mean right to livelihood it also includes labour rights and equal treatment for women in employment, etc. Progressive judicial findings have relied on the concept to provide for liberties that are otherwise ill-defined in national constitutions. Consumer rights are a set of defined rights that are a subset of the right to life. This is equally true of labour rights, environmental rights etc. as well.

The special significance of consumer rights today is its focus on the "free market system". New liberal conceptions of the market have forced governments to play a smaller role. Privatisation, liberalisation and the new trading order imposed by the WTO have meant increased disparities and further disempowerment of the poor. Consumer power needs to be organised to counter the power of producers. Consumerism is the mobilisation of the demand side to act as a countervailing force to supply side dominance.

Law desk: How consumer rights are protected in the developing countries?

Dr. Sothi: Consumer rights in the developed world focus on the right to information, choice, redress and representation. A simple expression for this focus is that developed world consumerism emphasises "value for money". For the developing world consumer groups, the focus is on access. It is not only a focus on those who consume, but more importantly on those unable to consume. This has led developing world consumer groups to focus on issues of power sharing, corruption, transparency and accountability. There is a need to focus on system failures and the inequitable global and national structures that impoverish people and deny them access to basic goods and services. We characterise this in the term "value for people."

Developed world consumer groups are in the main providers of comparative information. They conduct tests of products and assess services to assist consumers with choice. Increasingly, developed world consumer groups are providing comparative information and purchase advice over the Internet. The presence of a large middle class ensures a market for such information. With the revenue derived from such endeavors their groups are able to support their advocacy and campaign work.

Law desk: What measures should be taken to protect consumers' rights in Bangladesh?

Dr. Sothi: First component is a national consumer policy. Such a policy will serve to determine the goals of consumer protection, the means of achieving these goals and the package of measures that need to be implemented. A second component is to provide to the legal rights of consumers. This calls for a consumer Protection Act and reforms to other related statutes: food laws, health laws, laws regulating utilities, health, education transport, etc. It calls for a review of all laws governing the provision of goods and services. Needless to say, laws are quite useless unless there is compliance and for there is a need to focus on a whole host of measures enforcement, co-regulation and self-regulation. A third component is ensuring that there is an effective redress mechanism. The courts have proven to be inadequate for dealing with routine consumer disputes. Courts are far too expensive, formal and slow. Conciliation, mediation, and special consumer courts have proven to be far more effective. A fourth component is consumer education. Consumer education is designed to enable consumers to act knowledgeably and responsibly in the market place. This has to be part of the formal education system either as a special subject or as part of other subjects such as living skills, economics, home economics etc.

Law desk: What is the effect of the Trade Related Intellectual Property Rights Agreement of WTO in Bangladesh?

Dr. Sothi: Regulating intellectual property calls for a balance of two sets of rights- the private rights of the inventor and those to whom these rights have been assigned against the social rights of society to access inventions and innovations that result from them. The UN Declaration of Human Rights in Article 27 recognised both these rights and gave precedence to the social rights. What TRIPS has done is to vastly exaggerate the private rights at the expense of the social rights. It has provided for a monopoly over information.

Intellectual property rights have traditionally been strengthened as economics become more developed. This has been invariably the experience in all developed countries, the US and EU countries included. What TRIPS did was to enforce one high standard of intellectual property protection in all countries.

TRIPS also introduced protection for more areas of discovery and invention than existed before-computer, programmes, layout designs, industrial designs, microorganisms, non-biological and microbiological processes plan/s and plant varieties etc. TRIPS does not however protect traditional knowledge that is the empirical knowledge of the long time inhabitants of specific locations (countries).

TRIPS is also different from other WTO Agreements. It calls for National legislation to protect private rights and confers on the owners of these rights enforcement rights within member states of the WTO.

The price of essential commodities such as pharmaceutical drugs, computer software and books have all remained expensive, and worse, have increased substantially.

It has also meant a massive outflow of foreign exchange to the United States and EU member countries. In 1999 the US gained US 37 billion dollars from intellectual property exports while paying out US 14 billion dollars to other countries, for a net surplus of more than US\$23 billion.

The US copyright industries (including movies, TV, home video, music, publishing and computer software) brings in more revenues than aircraft or agriculture. US copyright industries have a surplus balance of trade with every single country in the world. This is remarkable given that the US had a US\$400 billion trade deficit in the year 2000.

The US gain is the magnitude of loss to other countries.

The developing world, including Bangladesh, is denied medicine, education and other bare necessities of life. The traditional knowledge of the developing world is being misappropriated.

Law desk: How Bangladesh can get rid of this agreement?

Dr. Sothi: Bangladesh can do so by building alliances with other developing countries and the NGOs which have taken up this campaign. Bangladesh also needs to be transparent about the coercive unilateralism of the US and EU and the inequitable bilateral agreements it has been forced to enter into. Both the US and EU have been imposing TRIPS plus conditions on developing countries, that is even higher standards of IP protection than required by TRIPS. There have to be revealed so that pressure can be brought on the US and EU by civil society.

An important area of focus is to have a proper understanding of TRIPS, its implications and the options it permits. Bangladesh can adopt laws permitting compulsory licensing and parallel imports. It can put in place laws to protect traditional knowledge and farmers rights.

Law desk: What may be the role of consumer organisations?

Dr. Sothi: Consumer organisations can inform and mobilise popular export for the campaign against TRIPS. They can conduct independent research into the negative impacts of TRIPS and inform both government policy and NGO action in relations to TRIPS.

In particular they can campaign for laws and systems that protect farmers rights and Traditional knowledge Consumers International has an active programme aimed at making the WTO serve the interest of consumers and the developing world. National consumer organisations can take an active part in this. Consumer organisations must become agents of change on behalf of the weak.

Law desk: What may be the role of media?

Dr. Sothi: The media has a very critical role in this effort to address the shortcomings of TRIPS. It can inform government and the public of the issues and campaign for the reforms. It can call on governments to be transparent and accountable. Unless the media plays its role there can be no success. This was very incident in the campaign against the multinationals when they attempted court action against the South African government for its policy on Aids drugs which provides for compulsory licensing and parallel imports. The media also helped to force the US government to cease its action against Brazil for its measures to provide its people cheaper Aids drugs. The press can and must play a leading role in the campaign against TRIPS.

Law desk: Thank you.

Dr. Sothi: Thank you.

LAW opinion

More organisations needed to voice consumers' rights

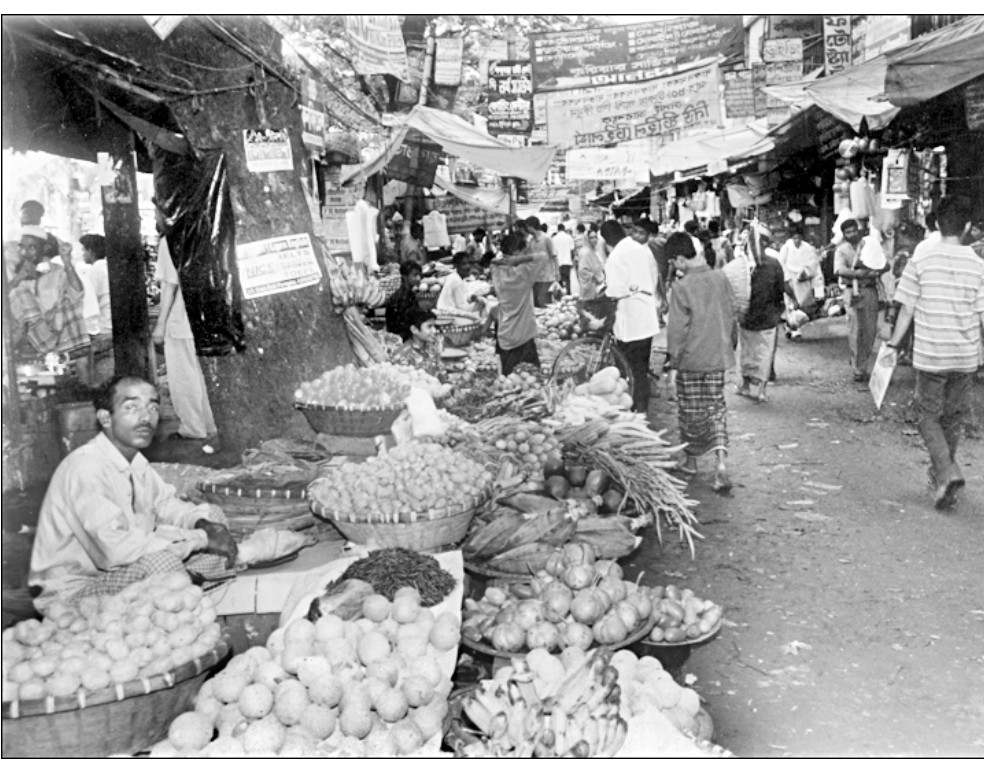
DR. MIZANUR RAHMAN

ALL of the redress mechanisms, private action in the courts and various forms of informal dispute resolution suffer from one fundamental weakness: Their outcomes depend significantly on the relative competence and power of the parties to the dispute. These mechanisms isolate the individual's complain which often will seem small and hardly worth pursuing and ignore the larger collective injury to consumers in the aggregate. By fragmenting consumer interests these dispute resolution mechanisms thus attack only the "tip of the iceberg" and the bulk of consumer injury remains undisturbed below the surface. To truly empower the consumers the focus should shift to encouraging collective activity that will increase the competence of those representing consumer interests and correct the imbalance of power.

Class actions and consumer organisations can further these goals. While the proposed consumer law does not permit class actions per se it does envision role for collective action through consumer associations. By consolidating their interests and financial resources consumers can amplify their voice and enforce the laws more effectively designed for their protection.

Consumer organisations and their activities

Consumer organisations can be privately run or government assisted. In the past twenty years well-organised non-governmental consumer



groups have litigated issues of great significance in North America. Organisations with greater government support represent consumers throughout much of Europe. In the United Kingdom, the National Consumer Council acts as a consumer advocate combining lobbying and research efforts to protect consumer rights. In the Netherlands private consumer organisations are compensated by the government when they are consulted on policy issues and in Germany the Association of Consumers receives substantial government funding for its participation in legislative affairs.

Another collective benefit provided by consumer organisations in the testing of products to evaluate their safety and quality. The most successful of these programmes are the Consumers Union in the United States, the Consumers Association in the United Kingdom and Shifting Warentest in Germany. These organisations publish magazines that give consumers comparative evaluations of products and provide information about legal developments affecting consumers. In addition these national umbrella organisations provide fund and co-ordinate the activities of regional and local consumer groups. They also hold conferences that help consumer advocates identify issues and set legislative priorities.

Scenario in Bangladesh

Consumer organisations in Bangladesh may find it difficult to guard the collective interests of consumers. Consumers have differing interests, priorities, economic circumstances and views of morality. They consume

different goods and services at different times from a variety of sellers and providers. In all democratic nations this makes it difficult for a broad-based consumer organisation to build a consensus and offset the influence of business interests whose concerns and resources are more concentrated. This may delay the development of influential grass roots organisations with the ability to represent consumers effectively on a broad spectrum of issues.

More problematic however is the lack of money. Consumer organisations everywhere find it difficult to raise money in large part due to a "free rider" problem. When a consumer organisation successfully obtains a policy change (through negotiation, litigation or lobbying efforts) the change benefits many consumers even those who are not part of the organisation and did not contribute to the effort. This psychology makes it difficult for consumer groups to attract dues-paying members. As a result completely private consumer organisation have flourished in only a few nations. They have typically done so by offering individual benefits to their members such as subscription to magazines that contain product testing date and other evaluative information about consumer goods and services. Profits from the magazines go in part to collective lobbying and litigation efforts.

Bangladesh lawmakers should consider funding consumer organisations to some extent at least in the first few years of their existence. Because the efforts of consumer groups can benefit the public at large. It is appropriate to allocate general tax revenue to such organisations. For the same reason professional and trade associations require the payment of dues when collective efforts benefit all members yet individual constituents are naturally willing to let someone else pay for the service. There is some evidence that in other countries modest subsidies to consumer associations have yielded high payoffs.

To some extent government funding runs the risk of compromising the independence of the organisation. As government departments find their regulatory policies called into question and as influential state run enterprises begin to confront consumer organisations on a regular basis government officials who can influence funding decisions may begin directly or indirectly pressuring the organisations to temper their activities or shift priorities. Protecting against this conflict of interest may require a legislative framework designed to insulate consumer organisations from party politics in matters of priority policy personnel and budget.

Consumer organisations and gov't. institutions

Our consumers would also benefit from government institutions whose principal responsibility is representing consumer interests. In the Nordic countries this role is played by the consumer ombudsman. In the United Kingdom, the Director General of Fair Trading represents consumer views within the Department of Trade and Industry. The objective in each country is to change a government official with both investigating and resolving problems that affect a large number of consumers and representing consumer interests generally at a policy making level. Basic functions include seeking voluntary compliance with consumer laws through negotiated settlements and bringing legal actions against offending firms when negotiations fail. The role might even be expanded in Bangladesh to serve as a clearinghouse for communication with consumers (A "Media ombudsman") that disseminates information of consumer problems and publicises the decisions of small claims courts or other dispute resolution forums. This would extend the benefits of private actions beyond the interest of individual claimants.

Concluding remarks

All the local level municipal governments may ultimately serve the primary role of both assisting individual consumers who have been injured by a merchant and promoting the collective interests of consumers. The law in very general terms directs local governments to establish organisations that will consider consumer complaints, engage in consumer contracts for compliance with the law. The experience of each locality will dictate the form of oversight. If local governments have the resources and inclination to create strong consumer protection institutions the decision to delegate this power in lieu of creating another large central bureaucracy could be one of the better choices.

Dr. Mizanur Rahman is Professor of Law Department, Dhaka University.

FACT file

How much 'Rights' do consumers have?

KHALILUR RAHMAN SAJAL

IN the absence of adequate and appropriate laws millions of illiterate people of our country are being exploited by a section of dishonest, unscrupulous and profit monger businessmen. The innocent consumers are revolving in a vicious circle of adulterated goods, cheating in price with false weights and measures and price hike.

With the advent of the 20th century, the issue of consumer rights and consumer's protection started getting importance in different countries of the world. The rights of consumers got the international recognition when the United Nations adopted the basic guidelines for consumers' protection. By the end of the 20th century, the issue of consumer rights protection turned into a movement all over the world. And in Bangladesh, with the untiring efforts of the consumer organisations and other pressure groups consumer movement gained a momentum. As a result consumers of different categories started becoming conscious about their rights and responsibilities as consumers.

Present condition in Bangladesh

There are eight basic rights of the consumers, which is internationally recognised and have been approved by the United Nations. These are right to satisfaction of basic needs, right to safety, right to be informed, right to choose, right to be heard, right to redress, right to consumer education and right to healthy environment.

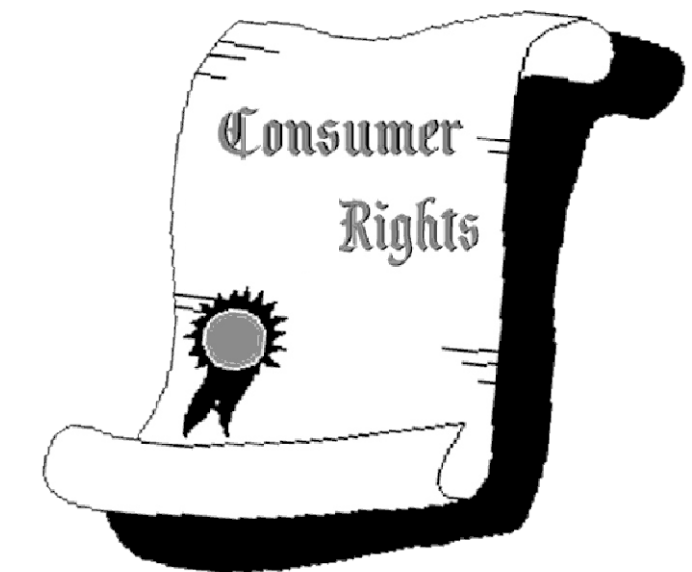
The helplessness of the consumers in Bangladesh and how they are being exploited can easily be understood, if their condition is judged in the light of the above mentioned rights. In Bangladesh for consumer's protection three essential elements, i.e. enactment of consumer legislation, consumer empowerment and information with consumer representation in the national as well as international decision making process are needed.

The social position of the consumers in Bangladesh is very much vulnerable. The consumers are deprived of rights at every sphere of their daily life. The country has got a few outdated laws, which are neither adequate nor strictly enforced. Moreover the statutory

protections are not comprehensive and thus fail to meet the demands of the consumers. As a result, the general consumers of Bangladesh can not take proper legal action against the fraudulent and unfair trade practices of the unscrupulous businessmen and traders. Similarly, the issue of consumer empowerment is equally ignored both at the level of government as well as that of the private sector. Also, the consumers of Bangladesh due to lack of proper education often are deprived of receiving the correct information regarding the products and services. In addition there is a total absence of consumer representation in the process of decision making.

Status of Consumer Protection Act

Against the backdrop of the massive violation of consumer's rights a draft Consumer Protection Act was formulated in 1998 by the Ministry of Commerce in consultation with consumer organisations and other relevant ministries, departments and agencies of the Government. During 1999, CAB arranged a series of seminars and workshops where people from



different sections of the society actively participated to suggest necessary changes in the draft Act. In February 2000, the Ministry of Commerce sent the draft Act (with necessary amendments / suggestions) to the Law Commission to do necessary research on it. On the 29th October 2002 the Law

Commission published a report on the draft act. Finally the draft act got the preliminary approval of the cabinet but was again sent to the secretariat committee for further scrutiny. Recently on 12 - 13 February 2003 a two-day workshop organised by the Ministry of Commerce

on Consumer Rights and Consumers Protection was held to review the draft law. The purposes of the draft Act presented in the workshop are to protect the interests of the consumers, to set standards in business; and to establish necessary institutions for satisfying the above-mentioned purposes and for the settlement of consumer disputes.

National consumer council

The draft law will enable the government to constitute a National Consumer Council with the Commerce Minister as its chairman. The Council's aim will be to stop marketing of the goods and services dangerous to life and property, to make the consumers aware about the quality, quantity, effectiveness, purity and standard of the goods and services, and to take the initiative to ensure, as far as possible, their availability at a competitive price. The aims also include establishment of tribunals for protecting the consumer's interest, preserving the consumer's right to resist deception or dishonest trading. The office of the Council will be in Dhaka. The Chairman will be empowered to

call meetings of the Council at any time and anyplace he likes.

District Consumer Tribunal

Under the draft law, the government will set up tribunals at the district and national levels to settle consumer disputes. There will be one or more tribunals at the national level. At the lower level, every district may have one or more tribunals, or one tribunal can work for more than one district. The District Consumer Tribunal (DCT) will include a district judge. It will accept complaints regarding a commodity or service involving not more than Tk. 25 lakh as its price and compensation (if claimed). The DCT will be considered a civil court and its proceeding will be conducted as per sections 193 and 228 of Penal Code 1860.

National Consumer Tribunal

The National Consumer Tribunal (NCT) will comprise of three judges. A Supreme Court judge will be the chairman of the tribunal. One of the two remaining members will be a person having qualifications required for a judge of the

Supreme Court and the other will be one who is experienced and have adequate knowledge in economics, law, business, accountancy, industry and government or administrative affairs.

The NCT will accept complaints involving more than Tk. 25 lakh as the price of a commodity or service, or compensation claimed for it. The tribunal will also consider appeals against the orders of the DCTs. Anybody aggrieved at the final order of the NCT will be able to go to the Appellate Division of the Supreme Court within 30 days of the declaration of the order.

Concluding remarks

The innocent and helpless consumers of Bangladesh need comprehensive consumer protection legislation. Therefore, the government of Bangladesh must enact a comprehensive Consumer Protection Act as soon as possible and further strictly ensure the effective implementation of such legislation.

Khalilur Rahman Sajal is Treasurer, Consumers Association of Bangladesh (CAB).

