



CONSUMERcorner



LAW week



# Consumer Protection Law Bangladesh perspective

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THE concept of protecting consumer rights is not a new one. Since the dawn of human civilization, the ordinary members of every society have been consciously trying to protect their rights as consumers, though its scope might have only been limited to prevent unusual price hikes of essential items of the daily life. With the advent of the 20th century, the issue of consumer rights protection gained importance in various developed countries of the world. The Western countries played a pioneer role in creating the awareness and in enacting various kinds of consumer protection laws. Moreover, since 1962, on March 15 every year, the world has been observing the World Consumer Rights Day.

The rights of consumers got the formal international recognition when in 1985 the United Nations (UN) promulgated the basic guidelines regarding consumer rights protection. The UN guidelines essentially postulate that all citizens, regardless of their incomes or social standing, have basic rights as consumers. By the end of the 20th century, the issue of consumer rights protection became almost a movement all over the world.

It is unfortunate to note that even after so many years of progress in worldwide consumer rights movement, the rights of consumers in Bangladesh depicts a disappointing picture to the world. The social position of the consumers in Bangladesh is very much vulnerable here. Bangladeshi consumers are deprived of their rights at every sphere of life. Bangladesh does not still have any specific umbrella organisation or institution exclusively designated to comprehensively safeguard and promote consumer rights within the country. Moreover, the current legal protection to the consumers in Bangladesh is inadequate and outdated. The country is yet to enact a comprehensive Consumer Protection Act.



Kingdom established the office of Director-General of Fair Trading; Sweden set up the Consumer Agency KOV and Consumer Ombudsman KO; India established National Consumer Protection Council, various State Consumer Protection Councils, National Consumer Disputes Redressal Commission with State Commissions and District Forums; Pakistan set up the Islamabad Consumer Protection Council; Sri Lanka and Nepal set up the office of the Commissioner of Internal Trade and the Consumer Protection Council respectively.

## Aspects of consumer protection

There are three aspects of consumer rights protection, which every country must consider.

First, the aspect of 'voluntary protection' which means that consumers themselves would voluntarily set up associations and/or organisations to safeguard their own rights and interests. These associations/organisations generally work as pressure groups on the government for consumer rights issues. There are many such voluntary organisations in India, Pakistan, Sri Lanka and other countries of the world. In Bangladesh, the Consumers' Association of Bangladesh (CAB) was established in 1978.

Second, the aspect of 'institutional protection'. By establishing national institutions to safeguard and promote consumer rights of citizens this aspect of consumers' protection can be ensured. For example, in 1914 the Federal Trade Commission, in 1927 the Food and Drug Administration and in 1970 the National High Traffic Administration were set up in the USA; the United

Kingdom established the office of Director-General of Fair Trading; Sweden set up the Consumer Agency KOV and Consumer Ombudsman KO; India established National Consumer Protection Council, various State Consumer Protection Councils, National Consumer Disputes Redressal Commission with State Commissions and District Forums; Pakistan set up the Islamabad Consumer Protection Council; Sri Lanka and Nepal set up the office of the Commissioner of Internal Trade and the Consumer Protection Council respectively.

In Bangladesh Standard and Testing Institute has been active in protecting consumers of Bangladesh in a limited capacity by way of doing laboratory research and testing of commodities to find out whether the same comply with the expected standard. However, currently the country does not have any specific organisation or institution exclusively designated to comprehensively safeguard and promote consumer rights.

Third, the aspect of 'statutory protection', which can be guaranteed by enacting relevant laws for protecting the rights and interests of

the consumers. Many countries of the world, including those in Asia, have already enacted comprehensive laws in this regard. For example, the Consumer Protection Fundamental Act 1968 in Japan, Consumer Protection Act 1979 in both Thailand and Sri Lanka, Consumer Protection Act 1986 in India, Consumer Act of the Philippines 1990 in the Philippines, Islamabad Consumers Protection Act 1995 in Pakistan, Consumer Protection Act 1998 in Nepal, The Law on Consumer Protection 1999 in Indonesia and Consumer Protection Act 1999 in Malaysia were enacted. However, Bangladesh is yet to enact such a comprehensive Consumers Protection Act.

## Current status of legal protection to consumers in Bangladesh

It has already been mentioned that the current system of legal protection to the consumers in Bangladesh is inadequate and outdated. Further whatever little laws are available, they are not strictly enforced for the protection of the rights of the general consumers. The consumers in

Bangladesh are thus deprived of their rights at every sphere of their lives.

The Constitution of Bangladesh, under its 'fundamental principles of state policy' part, recognises the rights of consumers to a limited extent. The provisions of consumer protection can be found at Articles 15 and 18 of the Constitution. However, these provisions are mainly focussed on the vital issues of 'health' and 'food' than on other consumer rights. Moreover, the said provisions are mentioned under the 'fundamental principles of state policy' part and not under the 'fundamental rights' part of the Constitution. Hence, they remain mostly non-enforceable in the courts of law.

Apart from the said Constitutional provisions, Bangladesh also has a few specific consumer protection legislations. However, Rahman argues that such specific legislations are 'scanty', 'scattered' over a whole range of enactments and are 'only indirectly related to the protection of consumer interests' [Mizanur Rahman, 'Consumer Protection in Bangladesh: Law and Practice' (1994) 17(3) Journal of Consumer Policy 349]. Some of such specific legislations include the Control of Essential Commodities Act 1957, the Pure Food Ordinance 1956, the Price and Distribution of Essential Commodities Ordinance 1970, the Bangladesh Drugs Control Ordinance 1982, the Breast-Milk Substitute (Regulation of Marketing) Ordinance 1984, the Tobacco Goods Marketing (Control) Act 1988, the Pure Food (Amendment) Act 2005 etc.

Further, there are certain legislations, part of which has got direct bearings on consumer protection. For example, sections 264-267, 272-276, 478-483 of the Bangladesh Penal Code 1860, the Poison Act 1919, the Dangerous Drug Act 1930, the Trade Mark Act 1940, the Animals Slaughter (Restriction) and Meat Act 1957, the Special Powers Act 1974, the Standards of Weights and Measures Ordinance 1982, the Bangladesh Standards and Testing

Institute Ordinance 1985, the Narcotics (Control) Act 1990, and the Safe Blood Transfusion Act 2002, etc.

Ahmed and Rahman comments that the current regime of legislative protection to the consumers in Bangladesh is 'so outdated that little or no protection is provided to the consumers' [Borhan Ahmed and Khalilur Rahman, 'Consumer Rights: Bangladesh Perspective' CAB publication]. They further criticize the current legal regime for consumer protection on the following grounds:

- The current laws are faulty and do not meet the present needs;
- Under the existing legal regime, the aggrieved consumers themselves cannot go to the court to sue against the violators. It is only the designated government officials empowered under these laws, who can initiate and sue against the violators.
- The provisions of penalty or punishment under the current laws are so negligible that nobody cares to abide by such laws; and
- Finally, the laws are not effectively enforced.

Afroz too claims that, under the current legal regime, the general consumers in Bangladesh cannot take proper legal action against the fraudulent and unfair trade practices of the unscrupulous businessmen and traders [Tureen Afroz, 'Protecting the Rights of the Consumers in Bangladesh' (17 March 2002) The Daily Star]. She further states that the current statutory protections to the consumers in Bangladesh are not comprehensive and thus, fail to meet the contemporary requirements of the consumers.

The second part of the article will be published in the next issue.

The author is an Assistant Professor at BRAC University School of Law and Executive Director of LawDev. This article is based upon her keynote paper presented at the 'Workshop on Bangladesh Consumers Right Protection Law' jointly organized by EU, BQSP, UNIDO, CAB, BST and the Ministry of Industries.

## LAW analysis

### President's constitutional powers: Case of India

SINHA M A SAYEED

Article 52 of the Constitution of India reads: There shall be a President of India. Article 53(1) states: The executive power of the Union shall be vested in the President and shall be exercised by him either directly or through officers subordinate to him in accordance with this constitution.

Article 74(1) says: There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice; provided that the President may require the Council of Ministers to reconsider such advice, either generally or otherwise, and the President shall act in accordance with the advice tendered after such reconsideration.

Therefore, it is clear that Constitution of India, on the question of the exercise of the powers of the President of the Republic, made Article 53(1) subject to Article 74(1)

President of India we find, to speak the truth, the repetition of similar fashion in the Constitution of Bangladesh that has made its Article 48(2) - The President shall, as Head of State, take precedence over all other persons in the state, and shall exercise the powers and perform the duties conferred and imposed on him by this Constitution and by any other law - subservient to Article 48(3).

In the exercise of all his functions, save only that of appointing the Prime Minister pursuant to Clause (3) of Article 56 and the Chief Justice pursuant to Clause (1) of Article 95, the President shall act in accordance with the advice of the Prime Minister.

Despite similarities, prima facie differences between them appear as follows:

President of India is constitutionally empowered to determine the age of a judge of the High Court without consultation with the Prime Minister, which his Bangladesh counterpart does not have.

President of India has further been empowered by the



which means former shall be read with the latter. But Article 217(3) contains: If any question arises as to the age of a judge of a High Court, the question shall be decided by the President after consultation with the Chief Justice of India and the decision of the President shall be final.

Therefore, it is also made clear by the Constitution that while determining the age of a judge of the High Court President is to act on the advice of the Chief Justice of India, and not the Prime Minister.

This is more interesting to note that in Shamsingh Singh v State of Punjab, the Supreme Court of India has laid down three circumstances under which the President need not accept the advice of the Prime Minister, viz: (i) Dismissal of Government; (ii) Choice of Prime Minister; and (iii) Dissolution of Lok Sabha. (AIR 1974 SC 2192).

While dealing with the constitutional powers of the

Supreme Court of India to act under three circumstances without consultation with the Prime Minister but the Supreme Court of Bangladesh has not yet emboldened our President with any of such powers.

President of India enjoys certain powers because of federal/quasi-federal structure of the government, which the President of Bangladesh does not have on account of its being unitary structure of the government.

But, curiously enough, in case of appointing the Chief Justice of Bangladesh President under Article 48(3) does not need to act on the advice of the Prime Minister that his counterpart in India does not or the constitution of India has not stated anything specifically as ours.

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## LAW event

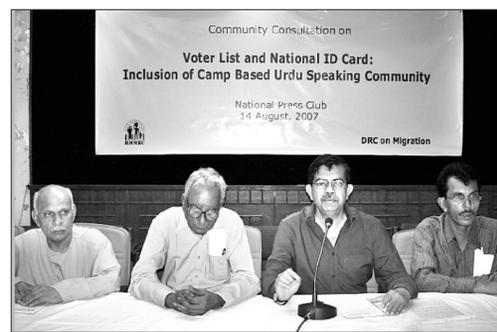
### Bihari groups demand voting right as citizens

Speakers at a community consultation demanded voting rights and national identity cards for the camp based Urdu speaking community in Bangladesh. They observed that the 160,000 Urdu speaking people languishing in 116 settlements in different parts of the country are citizens of Bangladesh and should enjoy all basic rights including that of voting.

The consultation on Voter List and National ID Card: Inclusion of Camp Based Urdu-speaking Community was held at the National Press Club in the city on Tuesday. The programme was organised by the Refugee and Migratory Movements Research Unit (RMMRU) of Dhaka University under the aegis of the Development Research Centre on Migration, Globalisation and Poverty. It was moderated by Dr. C. R. Abrar, Professor at the Dept. of International Relations, University of Dhaka and Coordinator, RMMRU and was attended by representatives of nine camp based Bihar organisations including those from Mymensingh, Syedpur, Khulna and Chittagong.

In his introductory statement, Dr. Abrar observed that a growing number of the younger generation of the camp dwelling Biharis now consider themselves to be Bangladeshis and their eligibility under the laws of citizenship of Bangladesh has been further cemented by pronouncements of the higher judiciary in their favour.

He regretted that in practice, however, very little has changed and effective citizenship rights have never been realised. Dr. Abrar noted that if the members of the community are not included in the national identity card scheme, they will miss out from whatever



little livelihood opportunities that exist for them now.

Ahmed Ilias, Executive Director, Al-Falah Bangladesh, an NGO working for the social and economic rehabilitation of the Urdu speaking people in Bangladesh stated that the National Election Commission should take note of the High Court's judgement and take necessary steps to enroll camp dwellers as voters.

Md. Ashrafur Huq Babu of Shamsul Haque Foundation said that if any Urdu speaking person does not want to stay in Bangladesh, that person has every right to go any other country of his/her choice but it would not affect the right of other members of that community to get enrolled in the voter list as citizens.

Mohammad Hasan of Association of Young Generation of Urdu-Speaking Community stated that the non-inclusion in the national identity card scheme will have serious humanitarian repercussions for the community.

Shahid Ali Bablu and Sadaqat Khan of Stranded Pakistani Youth Rehabilitation Movement lauded the effort of the current caretaker

government in ensuring the voting right of the indigenous people, residents of enclaves and members of diaspora groups. They urged that the government should consider according voting rights to the camp based Bihar community in the same spirit.

Mohammad Moshtaque of Bihar Welfare Mission drew attention to the fact that ICRC form that Biharis had filled up in the early 1970s did not accord right to repatriation to Pakistan and that the final acceptance of option rested with respective governments.

Among others, Ejaz Ahmed Siddiqui of Bangladesh Mohajir Welfare and Development Centre, M. Firoz Khan of Anjuman-e-Ittehad, Mymensingh, S. M. Salim of Al-Hera, Khulna, M. Z. Azam, of Bangladesh Non-local Welfare and Development Organisation, Chittagong and Mohammad Khaled of AYGUSC spoke on the occasion.

-LawDesk.

### National Security Council under process: Iftekhar

The process of establishing a National Security Council is underway but the timeframe of its formation is yet to be decided, Foreign Affairs Adviser Iftekhar Ahmed Chowdhury said. "So far, I know that there were discussions over it and now the process is going on. But I cannot tell you exactly when it will be established," he told the journalists after the launching ceremony of "Promoting good governance: key reform challenges facing Bangladesh". The foreign adviser spoke as the chief guest at the function organised by Bangladesh Enterprise Institute (BEI) in association with United Nations Development Programme (UNDP) at the BEI auditorium in the capital. Iftekhar Ahmed Chowdhury said it would require a national consensus to establish the National Security Council. The government will figure out the national consensus through the ongoing debates on the formation of the Council, he said responding to a query on the mechanism of having national consensus over the issue. -The Daily Star, August 13.

### Govt may ban private coaching by teachers

The government is considering imposing a ban on private coaching or tutoring by school and college teachers. The decision is aimed at fostering a sound teaching atmosphere in educational institutions and access of equally affordable education for all students. "We hope that the decision, banning private coaching and tutoring by teachers, will be taken by this week. It will be applicable for both government and non-government teachers," Education Secretary M Mamtazul Islam told The Daily Star. Following the directive of Chief Adviser Fakhruddin Ahmed, top officials of different education authorities including Ministry of Education, Directorate of Secondary and Higher Education (DSHE) and secondary and higher secondary education boards held several meetings during the last week and discussed the issue. Chief Adviser Fakhruddin directed education ministry to take effective measures for stopping private coaching and tutoring by the teachers as the practice distracts them from performing their duties effectively at their jobs and thus affects their quality of teaching. -The Daily Star, August 13.

### Laid-off, labourers try their hands at crime

At the dead end of night two workers of Crescent Jute Mills Ltd (CJML) went out of home to "earn" something for their family starving for the last couple of days. Tiptoeing to nearby railway tracks, they started to remove small iron plates. But a neighbour saw and identified them when they ran off in sheer shame. Next morning the shabby labourers met the neighbour begging him not to tell anybody their story. But he could not hold himself back telling the story to the reporter only to make it clear that under circumstances a labourer may turn into a petty criminal. He fears some may become professional criminals if the situation does not improve. This is not the picture of only two labourers. Though their crime seems light in its type, it is taking place at several places in the area almost every night. In the morning the light crimes become talk of the jobless people at tea stalls where many others happen to find a way of income. There are thousands others like the two CJML workers retrenched from the four state-owned jute mills including recently closed Peoples Jute Mills Ltd (PJML) who had been remained unpaid for seven months. -Prothom Alo, August 14.

### EC hopes govt will lift or relax ban on politics

The Election Commission (EC) hopes the ban on indoor politics will be withdrawn or relaxed this month allowing it to hold dialogue on electoral reforms with political parties from next month according to its roadmap. The EC is already preparing for talks with the parties to implement the roadmap it announced on July 15. A source close to the EC said, "The Election Commission believes the government will create a scope for holding talks with the parties either by lifting the ban on indoor politics or relaxing it." "There are seventeen days to September. Wait and see," Chief Election Commissioner (CEC) ATM Shamsul Huda said as reporters drew his attention to Awami League acting president's remark that his party would not take part in any dialogue with the EC until the ban on indoor politics is lifted. Huda recently said the EC finalised the polls plans in consultation with the chief adviser. The election commissioner explained some provisions of the electoral rolls ordinance 2007. -The Daily Star, August 14.

### No room for confusion over polls by Dec 2008

Chief Adviser (CA) Fakhruddin Ahmed said there is no room for confusion over holding the parliamentary elections by December 2008. He said the caretaker government has been carrying out relentless efforts since assuming office seven months ago to arrange a free, fair and acceptable general election. He hoped that the Election Commission (EC) would be able to accomplish the task by preparing the voter list according to its roadmap for holding the election in time. Inaugurating the voter listing work with photos and national ID cards, CA urged the citizens to go to registration centers to become voters and cast their votes to make the country's democratic future stronger. Terming the beginning of the voter list preparation work a milestone in the forward march of the country's democratic process, he said a flawless voter list is a prerequisite to holding a fair, neutral and acceptable election. He said the important role being played by army and armed forces in voter listing will be written in golden letters in the nation's history of democracy. -Unb, Dhaka, August 15.

### Voter list, NID scheme to cost Tk 580cr

The Election Commission (EC) has readied a Tk 580 crore project for preparing the electoral roll with photographs along with national identity (NID) cards. The project, launched this year and to be completed in 2010, still needs the approval of the Executive Committee of National Economic Council (ECNEC) - the highest government body that examines, appraises and gives final approval to all development projects and programmes of the country, sources in the EC Secretariat said. Besides, the EC Secretariat is making preparations to sign agreements with different donor agencies for financial assistance in the project titled "Preparation of Electoral Rolls with Photographs and Facilitating the Issuance of National Identity Card", added the sources. "We are hopeful to complete the process of signing agreements with the donors this month," said Aminul Islam Bhuiyan, secretary to the Economic Relations Division (ERD) that initiated the move to collect foreign funds for the project, while talking to The Daily Star. -The Daily Star, August 15.

### SC rejects govt plea for stay on Hasina's bail

The Supreme Court rejected government prayers for staying the High Court's (HC) August 7 interim orders granting bail to Awami League chief Sheikh Hasina in an extortion case filed by businessman Noor Ali, and staying operation of the Anti-Corruption Commission's (ACC) order to Hasina for submitting her wealth statement. The six-member full bench of Appellate Division of the SC headed by Chief Justice Mohammad Ruhul Amin turned down government pleas for stay in the two cases and directed it to file by today regular appeals against the HC orders. The SC also fixed hearing on those. The SC extended its stay order on Hasina's bail in this case. Meanwhile, the SC also rejected a government prayer for staying the HC's bail order for detained businessman Abdul Awal Mintoo. Like in Hasina's case, the SC directed the government to file a regular appeal with it in this regard today and also fixed for hearing on it. -The Daily Star, August 15.

### Corresponding with the Law Desk

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