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LAW news



Consumers at risk: An enquiry into the CRPA 2009

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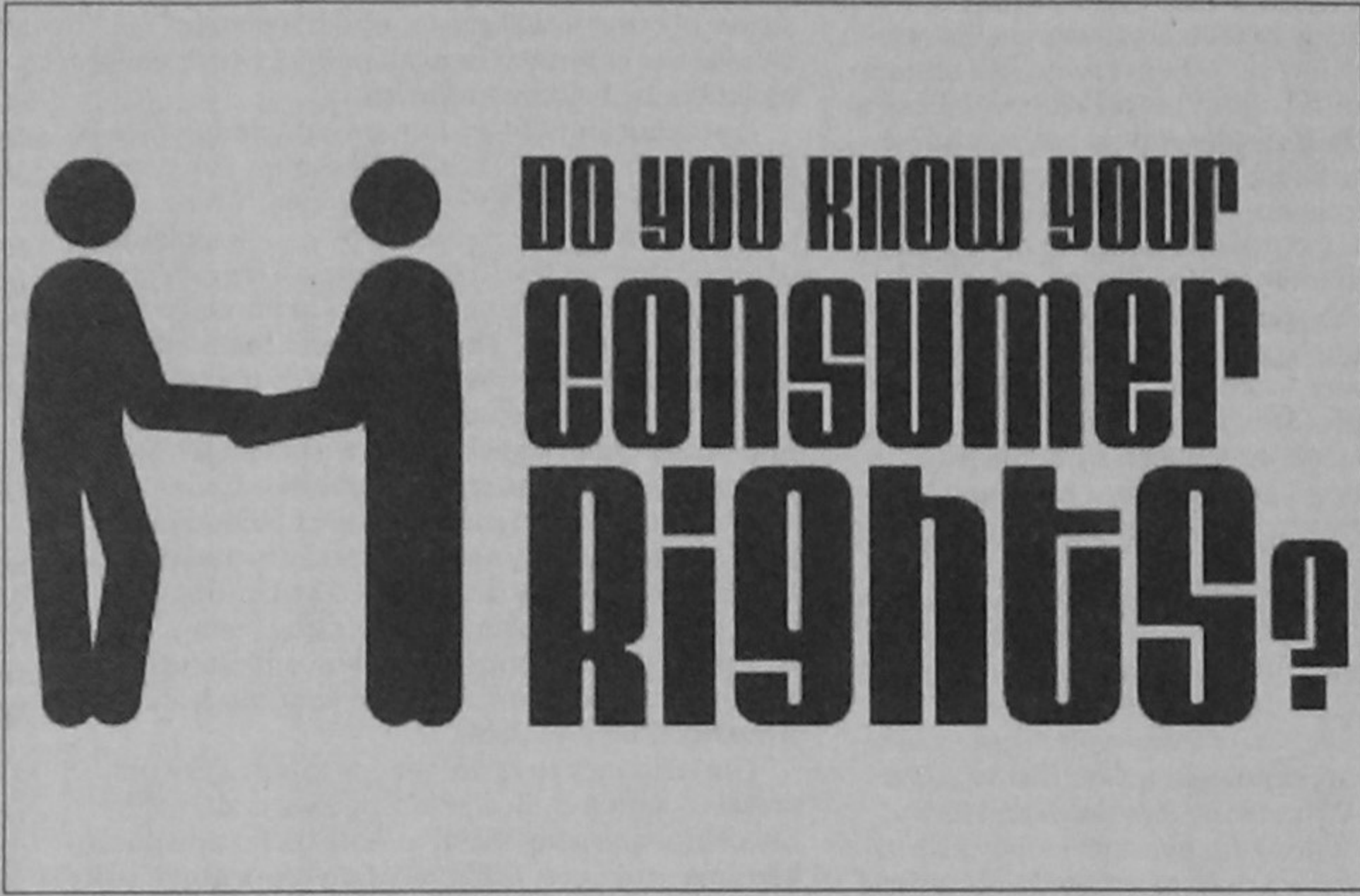
ARPEETA SHAMS MIZAN

ONE common misconception and forgetfulness is that the consumers are only of products. But the service sector demands here an individual position. Amongst many services such as electricity, water, gas, telecommunication, cable services, cyber net etc., the only service which has received, to some extent, recognition in the CRPA 2009 is the health service sector. As to all other services which are more or less utilized by the people, (keeping in mind that not all people have easy access to the facilities) the Act is silent.

Even this health sector has not been effectively addressed. In case of financial or physical damage due to negligent/faulty service and fake as well as expired medicines, the individual possesses no capacity to complain to the competent authority. Only the council can notify the DG of the Health Directorate, and nothing more is said.

Pricing of commodities is intricately related with many aspects of consumer rights. In most of the countries in Europe and America, the consumers actively participate in the process of pricing the products and services through consumer forums and representatives. Thus the whole process is democratic, reflecting the public opinion and public sentiment. The recent and much cherished CRPA 2009 has given no direction as to how the price is to be fixed, though it was expected that the matter would be addressed as the Act clearly states that over-rating of price is clear violation of consumer rights. Thus the manufacturers have the final say.

Sectoral approach in the service field is a vital point. All the services used by the consumers are no doubt much needed; nevertheless, not all services are of equal importance and necessity. While medical service is indispensable for the people, beauty saloon or dry cleaning services may be put in secondary position in point of importance. The price, insurance etc. are to be set in accordance to the market demand. While most of the countries in the West have divided their service



sector into various sections, the categorization has not been done in Bangladesh.

One point worth mentioning is that, an injured consumer deserves immediate remedy. Lengthy disposal of consumer cases makes the injured consumer fall into despair. It spoils the freshness of the case, and ultimately frustrates the purpose of consumer protection legislation. To ensure timely redress, there is no alternative to a separate forum or specialized court to address the consumer cases only. The CRPA 2009 provides for the court of 1st class magistrate or the CMM to operate as the consumer court. The number of courts and judges in the country are at present far less than necessary. Thousands of civil and criminal cases are back-logged in the courts, taking unimaginably long time to be disposed of. In such a situation, it is nothing but utmost irrational and foolish to burden the already overburdened courts and judges with rather new cases.

The CRPA 2009 does not stipulate two-tier liability. It provides that if a seller sells any defective product with *bona fide* intention, he

is not to be liable under the CRPA 2009. Now proving *mala fide* intention is in itself a hard task. As early as in 1932, in the famous case of *Donoghue v. Stevenson* it was decided that "The seller must have a duty of care to the End Consumer". This has been overlooked in the CRPA 2009. It is to address such cases that the notion of strict liability came into application, so that intention need not be proved. But in stead of protecting the consumers, the CRPA 2009 seems to operate as a shield to the sellers and manufacturers.

The CRPA 2009 ultimately leaves the consumer rights at the mercy of the bureaucrats. The whole process is being maintained by the consumer rights protection law and the Health Directorate. Needless to say, all the in charges of these offices are bureaucrats supported and nurtured by the government. The Act clearly states that the DG has the authority only to inform the Health Directorate. Thus the freedom of the council has been curbed quite a big extent.

The health sector of the Republic is mainly standing on multinational companies and joint ventures. The DG himself has no discre-

tion as to which complaints should be brought into consideration. It is quite simple to assume that these multinational companies have high level liaison with the top level bureaucrats. Thus they have high opportunities to influence the Health Directorate in taking its decisions. This existing culture is sure to impede the natural flow of the complaints being duly addressed. At the same time, there are now huge possibilities of corruption.

As a general concept, litigation should be the last resort to seek justice. In all well built-up legal systems, consumer problems are mitigated by ADR (Alternative Dispute Resolution). The suits are filed when all alternative prospects have failed. But no such provision has been professed by the CRPA 2009. Quite interestingly, the suggestion was in the draft legislation prepared during the caretaker government, but failed to find its way to the final legislation.

The field of advertisement plays a vital role in shaping the demands and mind set up of the consumers in today's capitalist system. Often the advertisements are exaggerated and highly misleading in order to allure the consumers to buy products which do not possess the publicized qualities. Many attractive advertisements of below-level products are prepared focusing on our country as the targeted market by the west, even India (The Horlics promo of taller, Stronger, Sharper is a competent illustration, which after being telecast in the UK, was sued for not having the said nutrition value, ultimately Nestle apologized). The CRPA 2009 has no direction as to what should be done to address possible injuries resulting from misleading promos.

All these lacunas are preventing the CRPA 2009 from playing the role of a catalyst in upholding consumer rights in Bangladesh. It is expected that the Government will with least possible delay bring necessary amendments and transform the Act into a more pro-consumer right and consumer friendly legislation.

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Improving disability rights

REPRESENTATIVES of dozens of countries have gathered at United Nations Headquarters in New York for the start of a three-day meeting to map out practical ways to strengthen the rights of the world's estimated 650 million persons with disabilities.

The Conference of States Parties to the UN Convention on the Rights of Persons with Disabilities will focus on improving rights through national laws and other measures at the country level.

The Convention, which entered into force in May last year, asserts the rights to education, health, work, adequate living conditions, freedom of movement, freedom from exploitation and equal recognition before the law for persons with disabilities. So far 142 countries have signed the treaty and 66 have ratified it.

The pact's Optional Protocol allows individuals to petition an international expert body with grievances, and this has been signed by 88 nations and ratified by 44.

By signing, and then ratifying the treaty, States commit themselves to enact laws and other measures to improve disability rights, as well as abolish discriminatory legislation, customs and



practices. Participants in this week's meeting will take part in round-table discussions and informal discussions, and are also expected to devise the basis for a road map for further actions to implement the Convention.

Deputy Secretary-General Asha-Rose Migiro told the conference that the Convention provides a solid basis for advancing the human rights of people with disabilities and for enabling their full participation and inclusion in society.

Ms. Migiro said it was encouraging that so many countries had already adopted new laws and policies to comply with the Convention or modified existing laws and policies. This is essential to ensuring the effective implementation of the treaty, she added.

Source: UN News Centre.

LAW interview

Combating trafficking in children

Around one million children are trafficked worldwide today, and there is growing concern that the global economic crisis may further increase child vulnerability to trafficking. The ILO has been leading the fight against child trafficking, and is now taking the struggle to those best placed to help stop it through a new training package. ILO On-line talked to Hans van de Glind, Senior specialist and focal point for child trafficking of the ILO International Programme on the Elimination of Child Labour.



ILO On-line: How many children are victims of trafficking today and what impact do you expect from the global economic crisis?

Hans van de Glind: In the absence of reliable new data on child trafficking, our most recent estimate in a 2005 Global Report was that 980,000 to 1,250,000 children - both boys and girls - are in forced labour as a result of trafficking. The economic crisis is

affecting different countries in different ways, but generally increased unemployment, poverty and vulnerability can lead to children dropping out of school and working prematurely. This may put children at risk of being trafficked into various forms of labour exploitation; in particular those that migrate away from their families (to cities) in search of work.

ILO On-line: How is child trafficking

and labour exploitation linked?

Hans van de Glind: ILO Convention No. 182 (1999) on the Worst Forms of Child Labour (WFCL) classifies child trafficking among "forms of slavery or practices similar to slavery" that are to be eliminated as a matter of urgency. Most trafficked children end up in child domestic labour, commercial sexual exploitation, agricultural work, drug couriering, organized begging, child soldiering and exploitative or slavery-like practices in the informal economy.

ILO On-line: How do child trafficking and migration relate and differ?

Hans van de Glind: Child trafficking is a combination or series of events that may take place in the child's home community, at transit points and at final destinations. Those who contribute to it with the intent to exploit recruiters, intermediaries, document providers, transporters, corrupt officials, service providers and unscrupulous employers are traffickers, even when they take part only in a small fragment of the whole process. In places where the social safety nets are weak and services do not reach the socially excluded, the weakest families are increasingly likely to send their children for work to the cities. Most of these children migrate for work, but if they are not well prepared and informed before their migration, they put themselves at risk of being lured into exploitation. What starts as migration may thus become trafficking. While it is certainly legitimate for children of working age to want to migrate, we should work towards preventing trafficking from happening in the migration process.

ILO On-line: What measures can be taken to prevent child trafficking?

Hans van de Glind: The key to fighting trafficking is to stop it from being profitable through strict law enforcement, confiscation of profits of traf-

fickers and increased protection (and reduced vulnerability) of children. Understanding risk and vulnerability factors and putting in place ways of recognizing these in children and their families and then working to reduce or eliminate their vulnerability is another important way to protect children from trafficking. It is crucial that countries recognize the negative impact of the economic crisis on the weakest members of society and that the crisis may unravel many years of progress in implementing the Global Action Plan target of eliminating the worst forms of child labour, including child trafficking, by 2016. Countries need to improve protection policies and mitigate the effects of the economic crisis on labour markets and education systems. This can be done, for example, by reducing the cost of schooling through free uniforms, textbooks and school meals, and by easing credit constraints of poor households. Countries should re-prioritize their expenditure patterns to benefit the poor and vulnerable.

ILO On-line: What is the ILO doing to fight child trafficking?

Hans van de Glind: Through IPEC the ILO works with governments, workers and employers' organizations and NGOs to fight child trafficking in the context of the realities in countries and regions. We provide policy advice, training and technical and financial assistance. In collaboration with hundreds of partner organizations, we recently launched a resource kit on "Combating trafficking in children for labour exploitation for policy makers and practitioners". We have now added a training package to this kit.

This is the abridged version of the interview.

Source: International Programme on the Elimination of Child Labour (IPEC).

HUMAN RIGHTS watch

Children and armed conflict

THE widespread and systematic rape of girls in war zones is increasingly a characteristic of conflict in many parts of the world, a senior United Nations official warned in an extensive report on children and armed conflict.

"Such violations are often perpetrated in a rule of law vacuum as a result of conflict, and there often exists a prevailing culture of impunity for such crimes," said Radhika Coomaraswamy, the Secretary-General's Special Representative for Children and Armed Conflict.

"Precise information, critical for combating impunity and for programmatic response, is

"Although cases of sexual violence against boys are sometimes reported, insufficient attention is paid to this particular dimension, and such violations remain largely undocumented," she said.

The Special Representative underscored the importance of protecting schools and providing education in times of emergency and conflict, noting a growing tactical trend of targeting students, teachers and educational buildings.

"In some situations, the fear of being attacked on their way to school or at school deprives girls of their basic right to learn and shape their future," said Ms. Coomaraswamy. "In other places, schools are used as recruiting grounds



difficult to obtain or verify," Ms. Coomaraswamy wrote in her latest report to the General Assembly on the issue.

She said that the fear of reprisals and cultural taboos surrounding such crimes are among the obstacles to collecting information about the incidents and understanding the magnitude and scope of sexual violence against children, as well as bringing the perpetrators to justice.

Ms. Coomaraswamy spotlighted research indicating that boys are also vulnerable to sexual violence, especially during military operations in civilian areas or during military conscription or abduction into paramilitary forces, as well as in refugee and internally displaced settings, and in detention.

and entire classes have been abducted to be used as child combatants."

She said that under international humanitarian law, attacks on schools are regarded as grave human rights violations and going after those responsible is key to ensuring that schools remain safe havens.

"Education is also a central tool for conflict prevention and post-conflict recovery," stressed Ms. Coomaraswamy. "Addressing education in peace agreements and in their implementation is a fundamental step towards reinforcing security, gender equality and economic development."

This is the abridged version of the Report of the Special Representative of the Secretary-General for Children and Armed Conflict.