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The Development of Consumer Protection Law in Bangladesh: A Critical Comparative Study

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ABSTRACT

Consumer protection is a very important issue all over the world. Specially in third world countries it is more important where the life and liberty of the people are often intruded. It deserves mention that even 35 years after the independence of Bangladesh, the country is yet to have a comprehensive consumer protection law. Though it is true that many of the political governments promised in their manifesto to have a consumer protection law but after empowerment they seldom take care of it. In many countries of the South Asian region consumer protection is a very important movement and they mostly have codified laws regarding consumer protection. In this article the authors have tried to focus on the development of the consumer protection law and have indicated the present violation of consumer rights in Bangladesh, followed by some recommendations.

Keywords: Consumer, Consumer Rights, Consumer Protection, Commodity, Consumer Association of Bangladesh (CAB).

INTRODUCTION

The gradual maturity of human civilization into the 21st century has culminated into the guarantee of rights ensures the rights and duties of human being. Among all rights 'the right to life' is the most important which is said to include all other rights today. To live a life a human being needs to take food and have job or business in life. In this circle of life everywhere we are either a buyer or a seller. Both seller and buyers have some rights and especially the buyer who is called as consumer has sensitive rights to be protected from cheating, and to get the best goods within his economic capacity. All over the world it's a famous right. At the same time it gets violated in a brutal way at home and abroad. The picture of

violation of consumer rights in Bangladesh is drastic. In this article authors have tried to show how glaringly violations of consumer rights are going on to analyze the present laws regarding the consumer protection. A South Asian comparative view has been incorporated anyway.

CONSUMER PROTECTION DEFINED

Generally, an individual who buys products or services for personal use and not for manufacture or resale is a consumer. A consumer is not directly involved in a trade, but receives goods and services for process from a person who is occupied in the business (Amjad & Emrana, 2007). According to section 2 (19) of the Protection of Consumer Rights Ordinance, 2008 consumer means a person

a) who without the intention of resale or trade –
   i) buys anything by paying value or promise to pay.
   ii) buys anything by partial payment or by promising of partial payment.
   iii) buys anything for long term or in installment.

b) The person who uses the things mentioned in clause (a) with the permission of buyer

c) the person who buys any goods and uses it commercial by self employment for earning of livelihood.

d) Who –
   i) fares or receives any service by paying the value or by promising to pay the value
   ii) fares or receives any service by partial payment or by promising of partial payment.
   iii) fares or receives any service for long term or in installment.

e) The person who enjoys the service by taking the consent of service enjoyer mentioned in clause (d).

According to section 2 (1) (d) of the Consumer Protection Act, 1986 of India, a consumer means – "one who pays money for goods or services. In other words, a consumer is a specific person who pays money either for purchase of some goods or some service of other person, individual or corporate body". The definition under section 2(1) (d) (i) does not include a person who obtains such goods for resale or for any commercial purposes. But "Commercial purpose" under sub-clause (i) above does not include the use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment.

In *Mrs. S. Anusuya Vs. M/s Methodaz Systems (P) Ltd.*, (1991) it was observed by the court that -

> Parliament intended to restrict the benefits of the Act ordinary consumers purchasing goods either for their own consumption or even for the use in small ventures which they have embarked upon in order to earn their living as distinct from a larger scale manufacturing or private activity carried on for profit in order that exclusive clauses should apply. It is, however, necessary that there should be a close nexus between the transaction of the purchase of goods and the large scale activities carried on for earning deposits. (Sen & Mitra, 2006).

The Necessity of Comprehensive Consumer Protection Laws in Bangladesh and the International Background:

There are three aspects of consumer rights protection, which every country must consider. Firstly, the aspect of 'voluntary protection' which means that consumers themselves would voluntarily set up associations and/or organizations to safeguard their own rights and interests. These associations/organizations generally work as pressure groups on the government on consumer rights issues. There are many such voluntary organizations in India, Pakistan, Sri Lanka and other countries of the world.

Secondly, the aspect of 'statutory protection'. This kind of protection can be guaranteed by enacting relevant laws to protect the rights and interests of consumers. Many countries of the world, including those in Asia have already enacted comprehensive laws in this regard, such as, *the Consumer Protection Fundamental Act 1968* in Japan, *the Consumer Protection Act 1979* in Thailand, the *Consumer Act of Philippines 1990* in Philippines, *the Law on Consumer Protection 1999* in Indonesia and the *Consumer Protection Act 1999* in Malaysia were enacted. Bangladesh is yet to enact a Consumers Protection Act.

Thirdly, the aspect of 'institutional protection'. By establishing national institutions to safeguard and promote consumer rights of their citizens this aspect of consumers' protection can be insured. 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. 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 Bangladesh does not have any specific organization or institution exclusively designated to comprehensively safeguard and promote consumer rights.

So enactment of a comprehensive law to protect the rights of consumers of Bangladesh has become a priority. It is unfortunate that when other neighboring developing countries (like India, Pakistan, Nepal, Sri Lanka, Thailand, Indonesia, Malaysia and many others) have already enacted comprehensive consumer protection legislation in their respective countries, consumers in Bangladesh are being deprived of even their basic rights. More unfortunate is to note that matters relating to consumer protection have neither been a priority in the governmental agenda nor an issue of serious concern in the political manifesto of any of the political parties of the country so far (Afroze, 2007).

In the backdrop of rapid development and globalization of our economy it is essential that Bangladesh should have a pragmatic consumer policy to ensure consumer rights and to protect them from unfair business practices. There is a popular saying that in market economy 'consumers are the king'; but in the context of Bangladesh we hardly can say the same. Unscrupulous traders and manufacturers usually exploit customers by charging higher artificial price, lucrative advertising, packing the poor quality products with attractive covers, etc. In an economy where quality fails to play the key role, adulteration and fake products dominate the market, it is not only the consumers who suffer, so do the honest traders and manufacturers. In recent days the existence of excess melamine in powder milk has just added some salt in the alarming injurious situation in Bangladesh regarding consumer protection rights. It has been reported that 'a government handout named the milk powder brands — Sweet Baby, Yashli 1 and Yashli 2 sourced from China, Nido Fortified Instant and Anlene from New Zealand, Diploma and Red Cow from Australia and Dano from Denmark — to have been contaminated by melamine and these mentioned milks have been ordered by the High Court Division of the Supreme Court of Bangladesh not to be sold and marketed for customers.

In the absence of appropriate and adequate protective laws and standards and effective implementation of existing laws consumers in our country are helplessly being cheated and exploited by some dishonest businessman and vested interest groups. The innocent, simple and illiterate consumers are revolving in a vicious circle of food and commodity adulteration, cheating in weighing and measures, hoarding and artificial price-hike. In the service sectors, the consumers are deprived of their legitimate services even after paying increased costs. The physicians are not sincere in their duties and responsibilities and do not adhere to minimum ethics in their professional practices. Incidence of death due to wrong treatment or intakes of adulterated and counterfeit drugs are often published in the newspapers. Surprisingly the drug administration is silent. The transport sectors are more dangerous and horrifying. No one can be assured of safe-return home. In the absence of good road transport system and due to lack of effective implementation of existing traffic laws, road accidents have been increasing at an alarming rate causing heavy tolls of lives and damage to property. Defective bus, minibus, auto-rickshaw and rickshaws are plying on the road with excessive passengers' often causing accidents resulting in death and damage to lives of innocent passengers. In case of water way every year we see the overloaded launches capsizing and killing hundreds of people. In the name of open market economy foods and commodities are being imported without coupling with laws and ethics.

There is also the question of cultural settings that may influence trade practices. In England it is a commonplace to hear of about "citizen rights," "value for money" etc. which have heavily influenced administrative reforms done there. Similarly consumers' rights also have been clearly established and effective actions can be brought against violations of those rights. In Indian Sub continent, especially India, Pakistan and Nepal has wonderfully done some good laws with effective practices which are confirming the consumer rights and in the next pages the literature regarding the consumer rights of this region will be discussed. Unfortunately Bangladesh is lagging behind in these kinds of reforms that touch the lives of the common man. If any manufacturer of a life saving drug has been hauled to the court for causing serious injuries or even death to a patient by a drug produced with inadequate quantity of basic ingredients or using ingredients after their expiry date we do not have any easy and effective redress in Bangladesh. The procedure for getting remedy regarding these matters are very lengthy and time consuming. Having been an inward looking protected economy for many decades, it has been traditionally a suppliers' market, the position of the consumers having always been marginalized. True, prices have started dropping after opening up of the economy and widening of consumers' choices. But there is no guarantee of quality. The

culture of merchandise transactions has been "goods once sold cannot be to taken back." It seems obvious that the starting point of any reform has to be the drawing of consumer to the center of protection and to protect his right to fair price, correct quantity and required quality for establishing the norms of fair trade and adopting measures to prevent restrictive anti-competitive trade practices.

It may be argued that consumers suffering an injury due to unfair trade practices may seek redress under existing civil and criminal laws. Suppose, consumers can seek redress under the Penal Code, 1860 which can lead punishments to the defaulter sellers with imprisonment and fine. Simultaneously, under the civil laws like the Civil Procedure Code, 1908 and the Specific Relief Act, 1877 one can seek for the injunction and compensation against the producer or seller of any product. But usually it becomes extremely difficult to prove that the producer or the seller has broken a contract for which he may be brought to book. For example, many ordinary misrepresentations or vague advertisements regarding the high quality of merchandise do not necessarily constitute an actionable breach of a contractual term to be punished for say, cheating. For that violation of more specific terms like weights, measurements or ingredients have to be established. But unless there are laws to specify what type of advertisements can be published or what specific information must be supplied for the goods or what are the limitations of services, punishable breaches of contract cannot be proved and the consumer may continue to suffer (Mumtaz).

There are 8 basic rights of the consumers. These basic rights are internationally recognized and have been approved by the United Nations. These are: the right to satisfaction of basic needs; the right to safety; the right to be informed; the right to choose; the right to be heard; the right to redress; the right to consumer education; and finally the right to a healthy environment.

However, with more and more awareness regarding consumer rights, there has been increasing demand to include many specific rights as consumer rights in addition to the above mentioned basic rights of the consumers. A few of them include consumer rights in the banking and information technology sector, consumer rights to demand answerability from the large corporations or consumer right to poverty alleviation. In this era of globalization, there is also now demand for framing "Corporate Code of Conduct" for the large corporate organizations (Afroz, 2002). So we can understand from the above discussion that internationally the rights regarding consumer protection are developing day by day but in fact, consumerism is still a new concept in Bangladesh and the very term Consumer Rights are not known even to the great majority of those who are literate.

CONSUMER PROTECTION LAWS IN SOME SOUTH ASIAN COUNTRIES

Among the South Asian countries India was pioneer to enact a comprehensive consumer protection law which was followed by Pakistan, Nepal and some other countries of this region. In the following few paragraphs an effort has been done to show the present consumer protection literature in the aforesaid three countries of South Asian because these three are most remarkable among all.

INDIA

In India, consumer protection law was enacted in 1986 with subsequent modification in 1992. Under this law consumer courts were established all over the country to try cases instituted by consumers for the violation of their rights involved in the purchase and use of commodities and services. Instances are there that physicians had to compensate the patients for medical negligence and wrong treatment, traders and businessmen had to redress the grievances of their consumers by replacing or refunding money to the buyers for defective goods and commodities.

The Consumer Protection Act 1986 provides for the regulation of trade practices, the creation of national and state level Consumer Protection Councils, consumer disputes redress forums at the national, state and district levels for class actions and for recognized consumer associations to act on behalf of consumers. The Act provides a detailed list of unfair trade practices. Though the list is not exhaustive, it is indicative of the types of trade practices held to be unfair. The Consumer Protection Councils undertake studies of consumer policy and law and advise the government. The provisions for consumer redress, i.e. the redress forums and the opportunity of class actions by any consumer associations on behalf of consumers are significant and unique.

NEPAL

The Consumer Protection Act, 1998 of Nepal came into force on 13th April 1999. It establishes the Consumer Protection Council. Amongst the functions, duties and powers of the Council include advising the government on matters relating to the protection of the rights and interests of consumers, prices, quality and purity of consumer goods and services, disseminating information, conducting studies, and advising the government on policies relating to the protection of the rights and interests of consumers. The Act also regulates the powers given to

Inspection Officers to inspect, investigate or search any place where there are reasonable grounds to believe that consumer goods or services which are not safe, efficacious or not of the prescribed standard are being produced, sold or supplied.

PAKISTAN

The Islamabad Consumers Protection Act 1995 took immediate effect upon its enactment and extends only to the Islamabad Capital Territory. The Act provides for the promotion and protection of the interests of consumers. The Act establishes the Islamabad Consumers Protection Council. The functions of the Council are to determine, promote and protect the rights of consumers and formulate polices for the fair and honest trade practices by manufacturers, producers and suppliers of goods and services. Section 5 of this Act describes about consumer rights as- the right of protection against marketing of goods which are hazardous to life and property; the right to information about the quality, quantity, potency, purity, standard and price of goods and services; the right of access to a variety of goods at competitive prices; the right for redressal against unfair trade practices or unscrupulous exploitation of consumers; and the right of consumers' education. Section 2 (f) of the Act defines thirteen types of conduct, which would be considered as unfair trade practices. Section 8 provides for the manner in which consumer complaints will be dealt with by the Islamabad Court of Sessions. Prior to the enactment of the Islamabad Consumers Protection Act 1995, the Sale of Goods Act 1930 has been in force in Pakistan since 1st July 1930.

Describing the legal practices of the laws regarding the consumer rights in the aforesaid four countries including Bangladesh, the practice of enjoying rights of the consumers are best in India where Bangladesh is happening to be in the worst situation. Social infrastructure, social security, rapid growth of middle and lower middle class families, political instability and deep rooted corruption are the some of the main causes which is making the differences in the practices.

DEVELOPMENT OF THE CONSUMER PROTECTION LAW MOVEMENT IN BANGLADESH

The consumers protection movement was first initiated in Bangladesh by a notable organization namely "The Consumers' Association of Bangladesh (CAB)". It is a very remarkable organization that played a role in the historical development

of consumer protection law movement in Bangladesh. CAB is a non-government and non-profit organization, established in 1978 at the initiative of a civil society group in Dhaka. It is imbued with the idea of consumerism, a movement that already took shape in Europe and USA. Since its inception, CAB has been trying to spread the essence of consumerism among poor and low-middle class consumers. It is engaged in activities for the promotion and protection of rights and interests of consumers. The major objectives of CAB are to:

1. make consumers aware of their rights and responsibilities;
2. promote consumer education, aiming at raising awareness of consumers against exploitation, and providing them with technical knowledge and support for real protection;
3. focus on consumers' problems and develop a spirit of mutual co-operation and understanding among different groups, associations, institutions, NGOs and government agencies functioning in the interests of the welfare of the people;
4. exchange information and knowledge of various actions about consumer protection with national and international organizations;
5. organize and set-up consumer associations and groups at the districts and *thana* levels; and
6. undertake research studies on consumer issues and problems.

CAB regularly monitors the market prices of essential commodities and services to show the actual price situation in the market and to keep prices within the purchasing power of general consumers. It runs a market monitoring cell, which regularly conducts market surveys and supplies relevant information to consumers through national dailies. CAB launched a 'Dirty Dozen Campaign' against 12 most harmful pesticides. Earlier, there were no guidelines on the marketing of pesticides and it is because of the pressure created by CAB that the government had to formulate guidelines on the marketing of pesticides and publish them through a gazette notification. CAB also carried out studies on household insecticides and labeling of pesticides on packets.

The organization was very vocal and active in creating demand for formulating a National Drug Policy (NDP) and played an active role in the process of enactment of the NDP in 1982. Since then, CAB has been regularly monitoring the implementation of NDP and organizing promotional activities, especially relating to issues of inadequacy and poor services in the delivery of public health care. CAB started an anti-tobacco campaign in 1981. CAB is active in lobbying with the

government for banning smoking in selected public places. CAB is also monitoring the implementation of the Breast Milk Substitute Ordinance enacted in 1984. CAB carries out campaigns in support of Breastfeeding.

CAB now concentrates its activities in the districts of Dhaka, Chittagong, Sylhet, Mymenshing, Gazipur, Bogra, Khulna, and Barisal and it is planning to expand the activities in other districts of the country, too.

CAB created considerable awareness among the people about harmful and unnecessary drugs long before the enactment of the National Drug Policy, which after being formulated, was popularized by CAB through a vigorous campaign.

PRESENT SITUATION OF THE CONSUMER PROTECTION LAW IN BANGLADESH

There are some conventional laws in existence in the country, but these laws are so outdated that little or no protection is provided to the consumers. These laws are also inadequate and do not meet the present needs. The most prominent amongst these laws are :

1. The Control of Essential Commodities Act, 1956 which gives power to the government to control the production, distribution, preservation, use and business etc. of certain essential commodities for which a license/ permit is a must.

2. With regard to maintaining the quality of food such as flour, oil, ghee, etc. the Department of Public Health has been entrusted with the duty of inspection and examination of the quality of foodstuff under the Pure Food Ordinance 1959. This Ordinance also prohibits persons with infectious diseases such as tuberculosis, from involvement in manufacturing/preparation of such food items. It was followed by the Bangladesh Pure Food Rules, 1967.

3. The Price and Distribution of Essential Commodities Ordinance, 1970 was enacted to ensure the right price so that the importers, producers and the businessmen may not be able to earn unjust profits. Following that Ordinance the Bangladesh Essential Commodity Act, 1978 was enacted for the same purpose.

4. The Bangladesh Drugs Control Ordinance, 1982 which empowered Government to establish control over manufacture, import, distribution and sale of drugs. This enactment makes provisions for constituting a Drugs Control Committee, which is known as Drug Administration. Without its permission no drug can be manufactured for sale or be imported or distributed. In case of manufacturing of drugs, the firms are advised to follow the recommendations of the World Health Organization.

5. The Breast Milk Substitute (Regulation of Marketing) Ordinance, 1984 states that nobody is allowed to promote the use of any breast milk substitute or give any impression that breast milk substitute is better than breast-feeding. That will amount to an offence. The Ordinance has also made it mandatory to inscribe that "there is no substitute to breast-feeding" on the package of the substitute.

6. The Bangladesh Standard and Testing Institute Ordinance was passed in 1984. Among rules and ordinances BSTI ordinance 1984 has been amended will be implemented soon.

Further on October 27, 1988 Bangladesh has joined anti-smoking campaign. The aim of such campaign is to reduce the use of tobacco. Sellers and manufacturers are instructed to give warning on the tobacco packet as "smoking is injurious to health". Without this caution they are not allowed to display or advertise any tobacco product. This campaign was followed by promulgation of the Tobacco Control Act, 2005 which was an epoch making era in the history of tobacco control programme in the country too. The passing of the Act created a wave of enthusiasm all over the country. The nation was proud of being one of the few in that direction.

Apart from these Ordinances there are some additional legislative provisions giving protection to consumer interests. For example: Section 272 of the Penal Code, 1860 prohibits any food or drink to be adulterated. Section 274 also imposes restriction on adulteration of any drug or medical preparation. Section 482 provides restrictions on any false trademark or any false property trademark. Section 267 provides restrictions on false statement to sell or disposes any instrument for weighting.

The Special Powers Act, 1974 provides for more severe penalties for advertisement, black-marketing, smuggling and adulteration of or sale of adulterated foods, drinks, drugs or cosmetics.

The Dangerous Drugs Act 1930 empowered government to put restrictions on cultivation of cocoa-plant, manufacture and possession of opium, cultivation of poppy etc.

The Trade Marks Ordinance 2009 provides that all manufactured commodity should have a trademark, which will distinguish it from other commodity of the same nature and the consumers will get the liberty to choose their own brand. The object of this act is to give protection to the original trademark against unauthorized use of his trade mark by his competitor(s).

The Standards of Weights and Measures Ordinance, 1982 provides that the establishment of standards of weights and measures shall be based on metric system and units of measurement and would be known in the country as System International (SI) units.

All these Ordinances and Acts have been enacted with good intention to protect the 'helpless' consumers of Bangladesh. Except these laws the supreme law of our land i.e. the Constitution of the Peoples Republic of Bangladesh also provides protection to our consumers which are referred in Articles 15 and 18. Article 15 deals with the provision of basic necessities like food, clothing, shelter, education, medical care, right to work, right to work at reasonable wages, quantity and quality of work, social security etc. Article 18 deals with public health and morality, like preventing the consumption of alcoholic and other intoxicating drinks and of drugs, which are injurious to health.

With the relentless effort of CAB since 1992, a draft Consumer Protection Act was formulated in 1998 by the Ministry of Commerce in consultation with CAB and other relevant ministries, departments and agencies of the government. In February 2000, the Ministry of Commerce sent the draft Act (with necessary amendment suggestions) to the Bangladesh Law Commission to do necessary research on it. On 29th October 2000, the Law Commission suggested various changes to the draft act so prepared. Based on all these reforms, a bill was later introduced in the Parliament for due enactment.

The Awami League Cabinet of 1996-2001 approved the relevant bill in principle but it was again sent to the Secretarial Committee meeting for further scrutiny. The following BNP government enlisted it in its priorities of 100 days and approved the bill in 2004. However, in 2006, a revised draft of the Consumer Protection Act was framed and the reality is that no such consumer protection legislation has been enacted before the non-party Caretaker Government came into power.

The (draft) Consumer Protection Act 2000 was very much similar to that of India and Sri Lanka. Some claim that it borrows heavily from the consumer protection law of Nepal too. The essential features of the draft law had been:

(a) It provided definition of certain relevant terms, such as, consumer, complainant, complaint, consumer dispute, defect, deficiency, goods, service, manufacturer, trader, restrictive trade, unfair trade practice etc.

(b) It proposed the establishment of a National Consumer Council (NCC) and sets down its composition, objectives, functions and responsibilities.

(c) It suggested the establishment of Consumer Disputes Settlement Agencies such as one National Consumer Tribunal (NCT) for the whole Bangladesh and at least one District Consumer Tribunal (DCT) for each district. The draft law provides details of the composition, power, jurisdiction, details of trial proceedings, and the appeal mechanism for both the National and District Consumer Tribunals.

(d) The most outstanding part of the draft Act was that a consumer complaint, may be filed not only by the concerned consumer(s) or the government but also by any recognized consumers' association. For that matter, it is not necessary that the concerned consumer(s) be a member(s) of such consumer association.

There are two very important issues, which were absent in the draft Consumer Protection Act 2000. They are-

(a) There was no power given to either DCT or the NCT to issue 'interim orders' regarding the sale or withdrawal of hazardous goods from the market. The total complaint procedure would take months or years to settle the issue, but in the meantime the consumers might suffer irreparable loss unless such interim order is passed by the Consumer Courts in appropriate cases.

(b) There was no provision of constituting and maintaining a 'Consumer Protection Fund' for protecting and promoting consumer rights in Bangladesh. By an amendment in 1980, provisions for such fund were incorporated into the Sri Lankan Consumer Protection Act 1979. In Sri Lanka, the sources of such 'Consumer Protection Fund' generally come from the fines procured by the consumer courts for offences under the Act, profits from sale of goods forfeited under the Act, grants and donations, and finally from the budget sanctioned by the parliament for protection of consumer rights.

The 2006 draft Act was more elaborate than the 2000 draft in many aspects of consumer protection. Also, the 2006 draft deleted the provisions of specialized consumer protection tribunals, which could be efficiently used in dealing with the consumer protection matters alone.

Recently approved the Protection of Consumer Rights Ordinance, 2008 by the Care taker Government makes some new provisions to the 2000 and 2006 drafts. Some of such new changes are:

a) It stipulates provisions of imprisonment and financial penalty in cases of consumer rights violation. Maximum punishment is given for causing any damage to life of any consumer is 3 years punishment and 2 lacks taka fine or with both (sec-52). For repetition of any offence mentioned in this Ordinance will be double of the first time offence (sec-55). The Court can even seize the articles by which any offence is committed mentioned in the Ordinance in addition of punishment and fine (sec 56).

b) All the offence mentioned in this Ordinance shall be triable in the court of Metropolitan Magistrate or Magistrate of first class(sec 57) and all the offences are bailable, compoundable and cognizable(sec-58). The time limit for filing any case under this Ordinance will be 90 days. Any appeal shall lie from the verdict of Magistrate Court to Session Judge Court within 60 days (sec 64).

c) According to the Ordinance, the government will set up a consumer rights protection Council in Dhaka (sec 5). It also proposes formation of a 21-members council headed by the commerce minister. The commerce secretary, director general of the National Security Intelligence, director general of the Bangladesh Standards and Testing Institution, joint secretaries of the agriculture ministry industries ministry, home ministry, and law ministry, president of the Consumer Association of Bangladesh, representatives from civil society, representatives of business community and the chairman of the National Women Agency would be among the members. Consumers Association of Bangladesh and officials of the ministries concerned to advise the government from time to time. The council will oversee market prices of essential commodities and monitor application of the law through legal channels of the government. The council will also launch market research, if required, in line with the proposed law (sec 8).

Other than this council there will be a National Consumer Rights Protection Directorate which will implement the law, the director general of which will be member secretary of the council (sec 18) and Government will set up a 10-member consumer rights protection committees under the council to monitor consumer in districts to be headed by deputy commissioners in districts (sec 10). There will be similar committees in upazilas and unions (sec 13) to check against unfair practice related to consumer goods. It says there will be consumer rights protection committees.

(d) The 2008 Ordinance incorporates the system of summary trial through mobile courts (sec 65). While the mobile court shall conduct its activities it can take expert opinion regarding any matter (sec 66). This is aimed at providing speedy relief to the consumers. No such provision was incorporated in the 2000 draft.

(e) The 2008 Ordinance defines specific offences against consumerism and provides punishments for such offences. An offender not only does have criminal liability but also is made subject to civil and administrative liabilities. In other words, the consumers, now, can receive civil and administrative remedies for consumer offences committed. Any consumer can file a civil suit in the Joint District Judges Court to get damages. If the loss can be compensated in terms of money then the amount of damages may be 5 times more than the

actual loss (sec 69). The appeal shall lie from the verdict of the District to the High Court Division within 90 days.

(f) The striking point of the Ordinance is no complaint can be made directly to the 1st class Magistrates Courts or to the Metropolitan Magistrate Court against any person who is involved in doing anything against the consumer right. It should be done through Managing Director of National Consumer Rights Protection Directorate or any officer who is empowered by Managing Director or by District Magistrate or by any Executive Magistrate who has been empowered by him (sec 69).

(g) No provision of 'constituting and maintaining' a permanent Consumer Protection Fund was created.

However, the political government of Awami league has done something good to see the Consumer Protection Right the light as a law finally. In 5 April, 2009 the Consumer Protection Right, 2009 has passed by the Parliament. This Act is mostly similar with the previously mentioned Protection of Consumer Rights Ordinance, 2008. Some of the few changes are as follows:

The member of the Consumer Rights Protection council has been increased to 24 and their tenure of the member ship is 2 years and 6 months.

1. According to section 21 of this Act, the Director General has been given many powers. And according to section 20 of the Act he can take any offence in his cognizance by e-mail, fax, or any other way.
2. Punishments for different crimes have been described in the sections of 37 to 56.
3. All the offences in this Act have been said as bailable, cognizable and compoundable.
4. According to section 60 of this Act, no one can complain to the Director General if the date of cause is more than 30 days. However, it means the consumers cannot file a complain in the court directly. It is a great problem.
5. In section 66, it has been said that though the violation of consumer protection right can be tried in the criminal way but it will not be a problem if someone wants to go to the civil court for his compensation.

FINDINGS

In Bangladesh there have been in existence a number of state owned natural monopolies in the utilities sectors like electricity, natural gas, water supply in municipal areas, telecommunications, railway, ports and so on and somehow the

consumers seemed to have got accustomed to the unredeemed inadequacies of their management and often at high cost. However, malpractices and distortions of different sorts have always been present like those precipitated by the actions of both perfect and imperfect oligopolies, informal cartels, hoarding and black marketing of commodities, controlled imports and distribution by traders smuggling etc. creating artificial scarcity to jack up prices.

Consumer products and services of the state owned enterprises (SOEs), particularly the utilities have always remained at because there has never been any impartial regulatory authority to check the commissions and missions by the SOEs. Government performing the regulatory functions invariably tended to side with the enterprises owned by it.

Beside this problem the consumers in Bangladesh are facing various problems like –

Lack of awareness: Mass people of Bangladesh are unaware of their rights as a consumer. They do not know if the sellers cheat them, what they should do or where they should go. The reason behind is that consumers right is still a comparatively new concept to the people of Bangladesh.

Illiteracy: Most of the people in Bangladesh do not know about the existence of their rights as consumer. One of the main reasons for this is the lack of basic education. They cannot think up to the level that they can have such rights which would give them protection against adulteration of food, medicine etc. and the right to get proper service for which they are paying.

Economic condition: We cannot avoid thinking of the economic condition which does not provide the atmosphere fit for consumers who are careful and demand quality.

Compromising attitude: Sometimes we do compromise with the quality of goods bought because of our financial limitation. If we are incapable of paying the accurate price for the goods we buy, we cannot expect a high standard of quality for the same.

These are the small fractions of problems affecting the consumers. In spite of this, there are other problems too. For example, in Bangladesh there is no separate court for consumers' rights. Also the consumers lack proper authority to go to the court to bring action against those who violate consumer rights. Therefore, the consumers need to rely upon the government officials concerned to bring any

effective action against the alleged parties. Those alleged parties are also taking advantage of this vague situation. The corrupt businessmen tend to establish a good relationship with corrupt government officials who might help them to cheat and exploit the innocent consumers. Moreover, the BSTI (Bangladesh Standards and Testing Institute) is beset with lots of problems, for example, it does not have modern equipment and facilities for testing of many products. Also, the general consumers often question the efficiency and integrity of the officials in the BSTI. In the name of open market economy foods and commodities are being imported freely. There is no surety that these imported products have undergone any safety and standards tests by any appropriate authority in the testing laboratories. Consumers Association of Bangladesh (CAB) conducted a survey on packaged biscuits of 66 brands (both imported & locally produced) made of 33 companies in July 2003. The survey revealed that 76% did not have BSTI certification marks and proper labeling, 86% had no expiry date on the label, in 83% cases weight was not mentioned and in 83% cases the sellers are taking more price.

CAB conducted another survey in August- September 2002 on 51 brands of Jams and Jelly of 31 companies and it was found that 52% of Jams and Jelly did not have BSTI certification marks, 13.72% did not mention ingredients, 23.52% did not mention date of production and date of expiry and in 54.90% cases retail price was not mentioned on the label. Besides all these the services of BTTB, DESA, WASA, Bangladesh Biman, BRTC, BTV and Bangladesh Betar hardly meet consumers expectation. Rights are being abused in day to day life (Quazi, 2003).

The most interesting features of the laws that exist to protect consumer rights in our country are that aggrieved consumers cannot sue the violators themselves. It is only the designated government officials empowered under these laws, who can initiate legal proceedings and sue the violators. Provision of penalty or punishment is so negligible that nobody cares to abide by the rules under these laws and as such there is no effective implementation of the laws. As a result the consumers in Bangladesh are completely dependant upon the mercy of the business houses, the professionals and the vested interest groups.

RECOMMENDATIONS

To deal with the above mentioned problems to amend our laws and to formulate an ideal framework for consumer rights protection, one needs to address three very essential elements of such protection:

(a) enactment of specific consumer legislation and regulations, the drafts were already prepared and an Ordinance was passed by the Non-Party Caretaker

Government where various good laws of our neighboring countries were incorporated. Now we want to see the good wish of the elected political government regarding this matter. They should not be reluctant to give proper services by the organizations which they own so that other private owned organizations become inspired and follow their path. The government can play vital role in a developing country like Bangladesh to ensure the rights of consumers.

(b) consumer empowerment via imparting required education and information; and

(c) consumer representation in the national as well as international decision making processes.

Since the establishment of CAB in 1978 it has been working actively but beside this association other NGOs who are working to protect such as human rights or child rights can come forward to protect the consumer's right of Bangladesh as because each and every people of our country is a consumer of something. It is not less important then to protect human rights. So they can also include activities to protect consumer's right in their working agenda.

The concept of class action is already introduced as Public Interest Litigation in Bangladesh. In fact, a PIL is generally instituted for the enforcement of the constitutional and legal rights of the poor and excluded groups as well as ensuring accountability of concerned government and public authorities towards issues of public importance. Persistent efforts by NGOs and social action groups through PIL has, in many occasions, prompted the High Court Division to issue directives and orders that in turn addressed the socio-economic concerns of the poor and the marginalized groups. This opportunity should be used by both the consumers and other associations who are working in this field to bring a claim on behalf of consumers.

A consumer should get the right to be informed by the producer about the quality, quantity, potency, purity, standard and prices of goods he buys. All these information are supposed to be mentioned in the packet of any the goods which will save the consumer from unfair trade practices like false and misleading descriptions about the nature and quality of the goods, exaggerated statements about their power or potency (Singh, 2000). But these provisions are not strictly followed always.

The consumers should also be aware and be vocal. When they purchase any goods and find any problem in purchased goods they usually don't want to raise any question. They want to avoid the hassles which they have to bear for complaining against the problem because there is no such institution or body where they can file any application to get easy remedy. We strongly recommend that an

institution should be established by our government to particularly deal with the grievances of the consumers besides filing any suit in the court like Consumer Ombudsman which is prevailing in Sweden. This institution can compel businessmen to redress the grievances of the consumers by replacing or refunding money to the buyers for defective goods and commodities.

Except this institution there should be a number of inspection officers who will time to time inspect or visit various market places and the organizations which are providing services to inquire the quality maintained by them. Mobile court system was initiated headed by Magistrates in the Metropolitan cities to investigate whether the various sorts of businessmen are maintaining the minimum standards provided in various laws. It was a good step to protect consumer rights. But this Mobile Courts have become ineffective. These courts should work through out the whole year on different issues. It is appreciated that the newly enacted Ordinance on the Protection of Consumer Rights, 2008 has specific provisions regarding the Mobile Courts and it is expected that from now onwards the Mobile Courts will start its regular function to give redress to the grievances of the consumers and protect their rights within a very short time.

CONCLUSION

The change of state philosophy in last few centuries has made the consumer protection law most important in business world. Unless the consumers are satisfied, no business can run smoothly. But the present Bangladesh situation is really awful, as the foregoing discussion reveals. This situation should no longer be allowed to continue. Consumer protection groups and members of the civil society ought to join hands and raise their voices to make a demand for the immediate implementation of this proposed law.

REFERENCES

Afroz, T., (2002, March 17). *Protecting the Rights of the Consumers in Bangladesh. The Daily Star*, Bangladesh.

Afroz ,T., (2004, January 31). *Enacting Consumer Protection Act for Bangladesh : A Never Ending Saga? The Daily Star.*

Amjad, E., (2007, March 3). *Protecting consumer rights: How helpful will be the enactment of a new law?* Law and Our Rights. *The Daily Star*, Bangladesh.

Bangia, R. K. (2003). *The Law of Torts, Faridabad*, Haryana Allahabad law Agency, Law Publisher.

Consumers Association of Bangladesh Retrieved from http://banglapedia.search.com.bd/HT/C_0339.htm.

Economic Policy Paper on Consumer Protection Laws. Retrieved from http://dhakachamber.com/cipe/EPP-Consumer%20Protection.htm.

Faruque, Q., *Consumer Rights : Where do we stand ?* Retrieved from http://www.thedailystar.net/law/200309/01/index.htm.

Mumtaz, H. K. *Competition Policy and Law: Bangladesh's Perspective; Bangladesh Enterprise Institute.* Retrieved from http://siteresources.worldbank.org/INTCOMPLEGALDB/Resources/ComPolandLawBangladesh.pdf.

Sen, A. K., & Mitra, J. K. (2006). *Commercial Law and Industrial Law.* Kolkata: The World Press.

Singh, A. (2000). *Principles of Mercantile Law.* Luchnow: Eastern Book Company.

The Bangladesh Essential Commodity Act, (1978).

The Bangladesh Drug Control Ordinance, (1982).

The Bangladesh Pure Food Rules, (1967).

The Bangladesh Standard and Testing Institute Ordinance, (1984).

The Breast Milk Substitute (Regulation of Marketing) Ordinance, (1984).

The Constitution of the Peoples Republic of Bangladesh, (2006). Government of the Peoples Republic of Bangladesh, Ministry of Law, Justice and Parliament.

The Consumer Protection Act, (1986), India.

The Consumer Protection Act, (1998), Nepal.

The Control of Essential Commodity Act, (1956).

The Dangerous Drugs Act, (1930).

The Islamabad Consumers Protection Act, (1995).

The Price and Distribution of Essential Commodity Ordinance, (1970).

The Protection of Consumer Right Ordinance, (2008).

The Special Power Act, (1974).

The Standards of Weights and Measures Ordinance, (1982).

The Trade Mark Act, (1940).