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Chapter 2

CRITICALLY LOOKING INTO THE CONSUMER'S RIGHTS PROTECTION ACT, 2009

Dr. Rumana Islam*

1. Introduction

The free market economy in this age of consumerism postulates that, the “consumers are the king”, but in reality they are the silent victims of manipulated market forces in a country. In developed economies the consumers are protected to some extent. However, in an economy like Bangladesh where quality fails to play the key role, it is the consumers who suffers the most. Long-drawn absence of a proper consumer protection law in this country has triggered the sufferings more. The issue of consumer protection in Bangladesh has been widely discussed in the recent past and accordingly the Consumer's Rights Protection Act (CRPA), 2009 was enacted. Though the government and different other stakeholders acknowledges that the issue is of vital importance, but like many other developing countries the interests of the consumers in this country are largely ignored. This paper will provide a brief overview of the legal regime of consumer protection in Bangladesh with particular emphasis on the CRPA, 2009. The aim of this paper is to critically examining the CRPA, 2009 and to find out to what extend the law is sufficient to protect the interests of the consumers in Bangladesh both in terms of relevant provisions as well as in terms of implementing mechanism. The paper will conclude with some specific recommendations as ways to move forward in order to create a better legal regime for the consumers in Bangladesh.

2. Who is a consumer?

Different scholars and organizations have provided definition of a consumer. From these different definition what can be concluded that, in general understanding of the term ‘consumer’ it relates to a person who buys goods or services for personal reasons or for the use of his family or household use. This also comes with a limitation that the person must not have any intention to resale that product when he is buying it. Therefore consumer indicates a person who purchases goods mainly for private use and these goods are sold in the course of the merchant's professional activities. Today not only natural persons are the consumers but legal persons can also be consumers when they are buying products or goods for their own use, for example companies purchasing products for the use of their employees.

In this regard it is pertinent to cite former US President John F. Kennedy who suggested four basic consumer rights in 1962¹, these were (i) the right to safety; (ii) the right to be informed; (iii) the right to choose; and (iv) the right to be heard. Later, the worldwide consumer movement led by the Consumer International, a global federation of consumer organization in 1980s added four more rights with these, which are (v) the right to satisfaction of basic needs; (vi) the right to redress (vii) the right to education (viii) the right to healthy environment.² Today these

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¹ See <http://www.consumerssa.com/consumer-rights/>

² See <http://www.consumersinternational.org/who-we-are/consumer-rights>

eight consumer rights are considered as basis for worldwide consumer rights movement.

However if we look into a legal definition of a consumer under Bangladeshi law, section 2(19) of the CRPA, 2009 defines 'consumer' in the following words

“Consumer” means any person, –

- (a) who, without resale or commercial purpose –
 - (i) buys any goods for a consideration which has been paid or promised to be paid;
 - (ii) buys any goods for a consideration which has been partly paid and partly promised; or
 - (iii) buys any goods for a consideration under any system of deferred payment or installment basis;
- (b) who uses any goods bought under clause (a) with the consent of the buyer;
- (c) who buys any goods and uses it commercially for the purpose of earning his livelihood by means of self-employment;
- (d) who, –
 - (i) hires or in any other means avails of any service for a consideration which has been paid or promised to be paid; or
 - (ii) hires or in any other means avails of any service for a consideration which has been partly paid and partly promised; or
 - (iii) hires or in any other means avails of any service for a consideration under any system of deferred payment or installment basis; or
- (e) who enjoys any service under clause (d), with the consent of the person who hires or avails it;”

Therefore we see that the legal definition of a consumer provided under the Act is very elaborative and if summarized it refers to a person who purchases or hires a product or service for his own private use or for the use of someone with his consent without any commercial purpose. Although the definition appears to be very wide to include different dimensions of a consumer, still it lacks in some respects. This definition is not clear enough to include the account holders of banks to be considered as consumer of the bank. Due to this lack of definition in the consumer protection Act itself and also the deficiency in our Negotiable Instruments Act, 1881 the consumers of the banks (i.e. the account holders) do not enjoy the same level of protection like the consumers in other areas.

3. Legal Regime of Consumer Protection Law in Bangladesh

Consumer protection in broader sense includes the laws and regulations and their implementation mechanisms to ensure fair interaction between the consumer and the manufacturers and the service providers. Though the CRPA, 2009 is the main piece of legal document to ensure the protection of consumer's rights in Bangladesh, there are a good number of other legislations to deal with the issue. Basically before the enactment of the CRPA, 2009 these laws albeit in a scattered matter, provided the legal protection mechanism of consumer rights in Bangladesh.

The Constitution of Bangladesh in its Articles 15 and 18 ensured the rights of consumers, without using or refereeing to the term itself within the domain of citizens'

rights in general. Article 15 provides that, the right to have safe food is the fundamental principle of state policy for ensuring a standing livelihood. Article 18 provides that, the state policy should aim to public health and nutrition and prevent misuse of intoxication of drinks and drugs. However it is to be noted that, these two articles form the part of fundamental principles of state policy and hence not judicially enforceable by the courts of law like the fundamental rights. Though there are more liberal views rendered by our supreme judiciary while dealing with the public interest litigations which opines that some fundamental principles of state policies can also be judicially enforced with regard to interpretation of “aggrieved person”, but there is not clear indication on these two articles by our supreme judiciary. Therefore though these two articles supportive of consumer protection in Bangladesh remains largely judicially not enforceable.

Before the CRPA, 2009 came into existence there were about forty different pieces of legislations which dealt with different dimensions of consumer protection in Bangladesh. Major legislations among these are the Penal Code, 1860; the Price and Distribution of Essential Commodity Ordinance, 1970; The Tobacco Goods Marketing (Control) Act, 1988; The Dangerous Drugs Act, 1930; the Trade Marks Act, 1940; the Food Grain Supply Ordinance, 1956; Fish and fish Products Rules, 1997; Control of Essential Commodities Act, 1956; Breast-milk Substitution (Regulation and Marketing) Ordinance, 1984; Standards of Weight and Measures Ordinance, 1982; Pure Food Ordinance, 1959; the Sale of Goods Act, 1930; the Accreditation Board Act, 2006; Bangladesh Standard Testing Institute Ordinance, 1985; the Water Supply and Sewerage Authority Act, 1996; Drug Control Ordinance, 1982; the Inland Shipping Ordinance, 1976; the right to Information Act, 2009; the Iodine Deficiency Disorders Prevention Act, 1989; the Cannons of Professional Conduct and Etiquette, 1969; the Medical and Dental Council Act, 1980; the Motor Vehicle Ordinance, 1983; the Mobile Courts Act, 2009; Bangladesh Energy Regulatory Commission (BERC) Act, 2006; Special Powers Act, 1974. Though the CRPA, 2009 is in force, but there is little sign of its enforcement till date. In this connection it is significant to mention that, Bangladesh’s first Competition Act has been enacted in 2012, which has made a way for Competition Commission equivalent which is equivalent to a civil court is yet to be formed.

4. Critically looking Into the CRPA, 2009

There no doubt that the enactment of the CRPA, 2009 is a milestone achievement for the consumer rights movement in Bangladesh initiated by Consumers Association of Bangladesh (CAB³), nevertheless if looked into it critically it is quite clear that, the Act suffers from certain drawbacks.

4.1 The Act is predominantly administrative in nature

The most significant drawback of the Act is that it is mostly a piece of legislation which deals with administrative matters. The Act contains 82 sections out of which 78 (except from sections 1-4) deals with the composition of the National Consumers Rights Protection Council and the National Consumers Rights Protection Directorate.

³ See e.g. <http://www.consumerbd.org/>

Different state organs in Bangladesh which can take action for offences committed under this Act includes the Consumer Rights Protection Department, the National Consumer Protection Council formed under the Act, different mobile courts, the Drug Control Court, the Food Special Court, the ordinary Criminal Courts, the ordinary Civil Courts, the Marine Courts and Claims Tribunal etc. The Act also enjoins different ministries of the Government against the production of products or services which that are likely to threaten imminent danger to life and environment. The Act also directs that the manufacturers of products and services needs to be followed by different inspection agents by respective ministries to ensure the quality and safety of the products and services. Under Chapter II of the Act, it also prescribes for a specialized institution namely National Consumers' Right Protection Council to be in charge of fraud repression and inspections of imported and exported goods.

The establishment of National Consumers Rights Protection Council is surely a good initiative but the Act can barely be termed as a citizens guidelines for consumer protection laws, as it does not define their rights and it does not also elaborate how the citizens can empower themselves to ensure their rights as a consumer in this country.

4.2 The Act fails to take a Rights Based Approach

The Act lacks a rights based bottom-up approach which is the core feature of consumer protection legislations in other parts of the world particularly in developed countries, where consumer protection is given immense importance by the State. The Act does define who is a 'consumer' though with certain limitations, but does not define what their rights are. Rather it goes on to describe a list of 'anti-consumer rights practices'. Therefore the applicability of the Act is narrowed down only to the offences listed in Section 2(20) of the Act. Section 2(20) provides a list of anti-consumer practices, which are punishable to ensure rights guaranteed to the consumers under the Act. Section 2(20) of the Act :

“Anti-consumer right practice” means, –

- (a) to sell or offer to sell any goods, medicine or service at a higher price than the fixed price under any Act or rules;
- (b) to sell or offer to sell adulterated goods or medicine knowingly;
- (c) to sell or offer to sell any goods containing any ingredient which is extremely injurious to human health and the mixing of which with any food item is prohibited under any Act or rules;
- (d) to deceive consumers by untrue or false advertisement for the purpose of selling any goods or service;
- (e) not to sell or deliver properly any goods or services promised to sell or deliver in consideration of money;
- (f) to sell or deliver less quantity of goods than the weight offered to the consumers while delivering or selling any goods;
- (g) to show more than the actual weight by the weight stone or any other weight measuring instrument used for measuring weight in selling or delivering goods in a commercial enterprise;
- (h) to sell or deliver less quantity of goods than the promised amount while delivering or selling any goods;

- (i) to show more than the actual length by the length measuring gauge or anything else used for measuring length in selling or delivering goods in a commercial enterprise;
- (j) to make or manufacture any fake goods or medicine;
- (k) to sell or offer to sell goods or medicine the date of which has expired; or
- (l) to do an act which may endanger life or security of the consumer and which is prohibited by any Act or rules;”

From reading of section 2(20) of the CRPA, 2009 it appears that, the Act mainly deals with the obligations of the economic operators and products safety, rather than the consumer rights we care about.

4.3 The Act fails to recognize Strict Product Liability Principle

Another major drawback of the Act is that, it does not provide any provision for strict liability for breaches of consumers’ rights. The doctrine of strictly liability is now established standard in international law so far it relates to consumer protection. The Act does not provide this standard international precept. Therefore the consumers in Bangladesh are far behind in protection their rights if compared with any developed countries. The consumers in this country still suffer from the application of the maxim ‘buyers be aware’ which only rewards fraudulent and deceptive business. But with the growth of trade and globalization this rule no longer is substantive and is discarded by the developed countries. In absence of strict liability, the offenders can easily escape their liability by shifting the burden through contractual means with the consumers. This particularly significant for a country like Bangladesh where the law of tort is still to attain appropriate legal recognition for the protection of consumers in comparison to its Western counterparts. The consumers of services in Bangladesh are left more vulnerable since the Act does not provide any direction as to unfair conduct or unfair contract terms.

4.4 The Act fails in devising an effective grievance redress mechanism

Again under the CRPA, 2009 no complaint can be entertained by the court without endorsement of the Director General of the Consumer Protection Department. Therefore the practical implication is that only competent government officers are entitled to institute a case against violations of any provisions of the Act. The Indian Act, provides a very effective redressal mechanism in this respect. If the aggrieved consumer takes the path of traditional legal system then he or she is again trapped with the inherent problems of existing legal system namely, lengthy trial, and difficulty to access the system, costs and enormous backlogs. Considering these practical sufferings this is highly unlikely in this country that the consumer will prefer to go to a court of law for offences against consumer rights which is still to get appropriate attention and awareness from the consumers themselves. Considering the hassle and costs associated with going to courts, the consumers would rather prefer to compromise or accept the violation of their rights for small claims like inconsistent price, deceptive packaging and branding; shortage in weights and measures or false information about goods and services.

In this discussion it is pertinent to refer the Indian Consumer Protection Act, 1986 which provides a quasi-judicial dispute resolution system for resolution of consumers' complaints. Under the Indian Act, three tier quasi-judicial machinery at National, State and District levels has been established. ⁴ The Indian Act also provides for consumer disputes redressal agencies under Chapter III of the Act. The redress mechanism is one of the very important rights which includes the consumers' rights to receive compensation for misrepresentation of goods, unsatisfactory services and redress for small claims whenever necessary. The redress mechanism is one of the benchmark in protection of consumer rights. Under the CRPA, 2009, it does not allow the Council or the Directorate to receive complaints from the consumers. Seen from this perspective the CRPA, 2009 is not a right based one, rather it can be criticized as making another bureaucratic mechanism which is largely ineffective and leaves ample room for corruption. This is very uncommon feature of consumer protection laws in other parts of the globe, as most of the legislations on consumer protection allows receipt of complaints directly from the consumers. The Act provides only for redress in the usual civil and criminal courts in Bangladesh.

4.5 Inadequate supervision mechanism

Another drawback of the CRPA, 2009 is that it imposes a supervisory role upon the Directorate. It directs that the Directorate will supervise the anti-consumer rights practices listed in the Act, however the Act does not provide any provision how this is going to be conducted. No power is vested upon the Directorate to direct specific agencies of the State to take action as it is necessary. The office of the Directorate also lacks appropriate institutional capacity to build a force to supervise the markets and act as the watch-dog for consumer protection rights in Bangladesh. As a result the Directorate of National Consumer Rights Protection in Bangladesh is yet to show any visible achievement for protecting the interests of the consumers in this country.

5. Need for a Reform

The enactment of the CRPA, 2009 is certainly a great achievement for the consumer rights movement in Bangladesh. However as described above the Act clearly suffers from certain drawbacks as discussed above. The Act so far has failed to have any effective impact in protecting and promoting the consumers rights in Bangladesh. The loopholes in the Act mentioned above is a hindrance for the consumers in Bangladesh to enjoy the full benefits of the aim of the legislation, i.e. protection of their rights as a consumer. Therefore as the law stands, it certainly needs a reform in order to make the law a meaningful one. There is a need to redefine the term 'consumer' with an aim to include all sorts of consumers. There is a need to have specific provisions on consumers' rights; easy, effective, accessible and cheap redress machinery at district and national level. The power of the Council and Directorate needs to increase in order to use of State machinery and other agencies to enforce orders, directives and judgments against violations of consumer rights. The Act also needs to be reformed with an aim to promote the consumers' rights in this country.

⁴ See Sections 4-8A of the Indian Consumer Protection Act, 1986 available at http://ncdrc.nic.in/bare_acts/Consumer%20Protection%20Act-1986.html

6. Conclusion

An ideal consumer protection legal framework aims to ensure greater transparency and awareness about the goods and services, ensures promotion of competition in the market and aims to prevent fraud and unfair practices. Viewing from this regard so far the legal framework of consumer protection law has failed to achieve that goal. The sloth initiative on part of the Government to take necessary measures for the protection of consumers interests also shows the lack of interest in the State machinery in this important area. The CRPA, 2009 is a good starting point for the consumers' rights protection in this country, but not good enough. This Act needs to go through some reform as suggested above and the state machinery in this respect needs to go some extra miles to attain the desired aim of the legislation.