

Consumer Rights Protection in Bangladesh: Chronological Analysis of Legal Provisions

MD. Tariq Monawer

LL.B (Honors) (pursuing), Department of Law, University of Chittagong

Abstract

Even though the idea of "Consumer Rights Protection" has been present in laws dating back to the dawn of civilization, it is still relatively new in Bangladeshi law. Consumers can be defined in many ways, but "Consumer Rights" always refers to the collection of rights that guarantee consumers secure service and safe goods. We can categorize the legal framework for defending consumer rights into three periods: British rule, the Pakistani regime, and independent Bangladesh. It was revolutionary in 2009 to recognize consumer rights and enact legislation to safeguard them. While preserving those rights, the current laws are complicated because of the problems in execution and lack of judicial activism. Although the government has set rules for e-commerce, there is little proof of their effective implementation. By effectively enforcing consumer laws, the government can ensure both the departments' financial stability and the protection of consumer rights. Bangladesh's current laws include several provisions for the protection of consumer rights, and the government has lately become aware of the difficulties in finding effective remedies.

1. Introduction

The notion of 'Consumer Rights Protection' is comparatively new in Bangladesh's legal arena, even though this legal concept can be found in the oldest of legislations of the civilization. Hampering the rights of consumers was criminalized in the former legislations of the state, and it was an offense against the state then. Later it was considered a consumer right, and the current legislations provide remedies to the consumer too. Bangladesh also has mentionable legal frameworks for consumer rights protection and its redress. However, the effectiveness of the remedial procedure for the mass people remains a question. In this write-up, I have tried to give an overview of the laws chronologically. I have also tried to do some comparative exploration of these legislative approaches at the end.

2. Primary Idea of Consumer, Consumer Rights & Legislative Framework

A consumer usually refers to the end user of a product or service.¹ There can be a lot of definitions of consumer, but the notion of 'Consumer Rights' always refers to the bundle of rights which ensure secured services and safe products to a consumer. It also ensures security and safety in a consumer's life after taking a service or consuming a product. To protect consumer rights, the approach of modern international and national communities is commendable as they are taking legislative framework for ensuring those rights nationally and globally by signing and attending conventions and enacting legislation. Bangladesh also signed ICESCR and *de facto* agreed to maximize its available recourses to achieve the right to food.² The idea of consumer rights is not new, and a sign of it can be found in some historic legislation like 'The Twelve Tables'³ and 'The Hammurabi Code.' However, it took a long time to be accepted around the globe. Bangladesh also enacted some laws which ensure consumer rights on a certain level. But not until a codified law was enacted solely to protect consumer rights in 2009 could it be said that the parliamentarians and policy-makers took the initiative via legislative framework to protect and ensure those consumer rights. We can divide the legislative approach to protect consumer rights into three parts according to time,

- I. The legislative approach of the British regime,
- II. The legislative approach of the Pakistan regime,
- III. The legislative approach of independent Bangladesh.

3. Legislative Approach in the Time of British Rule

The Penal Code 1860 protects consumers from fraud related to weights and measures by declaring the use of fraudulent instruments, false weight, and making or selling of false weight instruments as an offence.⁴ It also declares any act of food or drink adulteration, sale of noxious food, adulteration of drugs, sale of adulterated drugs, selling any drug as a different drug or preparation, and fouling water of public reservoir as offence.⁵ However, the penal code only provides fines and/or imprisonment as punishment but no remedy for the victims of these offences.

The Railway Act of 1890 protects consumers from endangering their life and safety by railway servants or fellow passengers, giving false accounts of goods, smoking without permission of

¹ Ahamuzzaman, Consumer Protection Law (3rd Edition), Law Book Company, p.10

² Ibid,p.16

³ The earliest attempt of the Romans to codify the laws of the land.

⁴ The Penal Code, 1860; ss.264-267

⁵ Ibid, ss.272-277

fellow passengers, and endangerment of their animal and property by the punishment of fine or/and imprisonment.⁶ However, the provisions are backdated and not sufficient in this modern era.

The Sale of Goods Act 1930 is an important law for consumers as it provides many rights and remedies. The good part of this Act is the contracts of sale of goods do not have to be in writing to be protected by this Act.⁷ This Act gives consumers certain remedies if the seller breaches the right given under the Act.⁸ It is difficult to generalize all the rights this Act gave as they progressed and were defined by many case laws between times.⁹ It also ensures the rights of the seller and the quality of the goods.¹⁰ Even though the Act looks complete while ensuring remedies, the application of this Act remains in the professional and business arena. The mass people rarely get the remedy, and petty businessmen barely follow the rules and regulations portrayed by this Act.

The Carriage by Air Act 1934 protects consumer rights by holding the carrier liable for the death or wounding of passengers for any damage or loss of goods or injury to the registered luggage.¹¹ The legal representatives of the deceased are entitled to file a suit for damages. The limitation is that the suit needs to be filled within two years of the arrival or from when the carriage stopped. However, service liability is not ensured in Bangladesh properly.

The Trade Marks Act of 1940 prohibits the registration of identical or similar trade mark which is likely to deceive or cause confusion.¹² This Act also gives the High Court Division and the Registrar power to cancel or vary registration on certain grounds.¹³ It further provides a penalty for falsely representing a trademark as registered.¹⁴ This Act was enacted to suppress unfair practices regarding trademarks which may tend to deceive or cause confusion to the consumers. If we visit any store, we will surely find some identical trademarks which usually intend to deceive the consumer, and the worst part is that the shopkeepers keep these kinds of products for their profit. Those circumstances show how the authorities are not concerned regarding trademark deception.

⁶ The Railway Act, 1890; ss.101,102,106,110,128&129.

⁷ Sale of Goods Law, available at: < https://Wiki.clicklaw.bc.ca/index.php?title=Sale_of_Goods_Law > (Last accessed on February 23, 2021).

⁸ Ibid

⁹ Ibid

¹⁰ The Sale of Goods Act, 1930; ss.16,18,22&25.

¹¹ The Carriage by Air Act, 1934; r.17

¹² The Trade Marks Act, 1940; s.10

¹³ Ibid, s.46

¹⁴ Ibid, s.68

4. Legislative Approach in the Time of Pakistan Regime

The Protection and Conservation of Fish Act of 1950 prohibited the sale of fish, including catching, carrying, transporting, exposing, or possessing for a special period below the prescribed size.¹⁵ One can be punished with imprisonment, fine, or both for wrongdoings. But the malpractice is still going on due to the lack of regulatory bodies and public awareness.

The Essential Articles (price control and anti-hoarding) Act 1953 prohibits purchase and sale at a price exceeding the maximum price.¹⁶ This Act also prohibits the withholding of sales unless authorized by the government.¹⁷ The hoarding practice among Bangladeshi businessmen is common. We often go through crises of particular necessary foods or goods in Bangladesh and later find that businessmen withheld it to raise the price. Recently, the issue was so alarming that the government started taking serious action against those businessmen.

The Control of Essential Commodities Act 1956 authorizes the government to control the production, supply, and distribution of essential commodities to secure their equitable distribution and availability at a fair price.¹⁸ By this Act, the government possesses the right to produce, distribute, preserve, use, trade, etc., the essential commodities from time to time. In case of any contravention of this Act or rule made under this Act, one will be punishable by imprisonment, fine, or both.

The Cantonments Pure Food Act, 1966 protects the consumers from false warranty, mixing, coloring, staining, or powdering of food, manufacture, and sale of adulterated food, importing food that is injurious to health, manufacture, and sale of food not of good and proper substance, nature or quality, poisoning food, etc.¹⁹ The penalties under this Act are imprisonment, fine, or both. This was the only eye-catching legislation that seemed concerned about the root-level buyers or consumers. The Act applies to the cantonments in Bangladesh.

5. Legislative Approach in the Time of Independent Bangladesh

The Constitution of Bangladesh has provisions regarding public health, nutrition, necessities of life, including food, the right to life, enforcement of these rights, and remedies for the infringement of these rights.²⁰ The right to life includes the right to unadulterated food²¹, and any disturbance of basic environmental elements, including water, would be hazardous within the meaning of the

¹⁵ The Protection and Conservation of Fish Act, 1950; s.4

¹⁶ The Essential Articles (price control and anti-hoarding) Act, 1953; s.4

¹⁷ *Ibid*, s.8

¹⁸ The Control of Essential Commodities Act, 1956; s.3

¹⁹ The Cantonments Pure Food Act, 1966; ss.3-13

²⁰ The Constitution of Bangladesh, arts.15,16,18,32,44&102

²¹ *Human Rights and Peace v. Bangladesh*, 2010 BLD 125

right to life²². When anyone or any authority violates these rights, the deprived person can file a writ petition to the High Court Division under Article 102 of The Constitution.

The Special Powers Act 1974 penalizes hoarding, dealing in the black market, adulterating food, and selling adulterated foods, drinks, drugs, or cosmetics by the punishment of death, imprisonment, or fine.²³ This Act faces lots of criticism from Human Rights activists, media, and political parties. So, applying this Act is becoming harder every day as some provisions are criticized for violating Human Rights.

The Standards of Weights and Measures Ordinance, 1982 prohibits the manufacture, import, use, demand, and sale of weights and measures other than standard weights and measure, stamped, and licensed.²⁴ Any contravention of these provisions may be punished with fine, imprisonment, or both. The practice of using standard weights and measures is impressive nowadays in regular markets and businesses.

The Drug (Control) Ordinance, 1982 prohibits the manufacture of certain medicines, the prescription of unregistered medicine, illegal advertisements, and claims.²⁵ It also has provision for the government's fixation of the price of drugs and pharmaceuticals raw materials.²⁶ However, selling drugs at higher prices remains the regular practice in private hospitals and pharmacies. The people buy it in time of emergency, and the seller takes the full tool of the situation by selling drugs at a higher price as common people don't bargain in these times even though they may know the actual price.

The Breast Milk Substitutes (Regulation of Marketing) Ordinance, 1984 prohibits the advertisement, promotion of breast-milk substitutions and any design creating the belief or impression that breast-milk substitution is equivalent or superior to breast-milk feeding.²⁷ This Act made the registration of breast-milk substitutions mandatory.²⁸ Any contravention is punishable by imprisonment, fine, or both.

The Bangladesh Standards and Testing Institution Ordinance, 1985 prohibits improper use of Standard Mark, export of certain articles which do not bear the standard mark, and sale of certain articles which do not conform to the standard established by BSTI.²⁹ This Act protects certain consumer rights by bringing some offences within the ambit of the law. Penalties for contravention of certain provisions of this Act are imprisonment, fine, or both. Still, there are lots of products in

²² MC Mehta v. Kamal Nath, AIR 2000 SC 1997

²³ The Special Powers Act, 1974; ss.25&25C

²⁴ The Standards of Weights and Measures Ordinance, 1982; ss.24-31

²⁵ The Drug (Control) Ordinance, 1982; ss.8,14&14A

²⁶ Ibid, s.11

²⁷ The Breast Milk Substitutes (Regulation of Marketing) Ordinance, 1984; ss.3&4

²⁸ Ibid, s.4A

²⁹ The Bangladesh Standards and Testing Institution Ordinance, 1985; ss.19,23&24

the market that are not certified by BSTI. The authority does not take cognizance until and unless anyone got harmed by the consumption of these products.

The Smoking and Use of Tobacco Goods (Control) Act 2005 prohibits any kind of advertisement of tobacco and smoking in public places.³⁰ It also made it mandatory to print the negative effect of smoking on the packet of tobacco products.³¹ Smoking in public places doesn't seem to be reduced by this Act. We can see people smoking everywhere, including hotels, public transport, and parks which cause passive smoking and endangers the life of people who don't smoke. Also, tobacco advertisement is visible in shops as posters or leaflets.

The Iodine Deficiency Disease Prevention Act 1989 has provision for a better supply of iodized salt in the market in the market. This Act forbids importing and manufacturing salt other than iodized salt and selling iodized salt at a higher price than mentioned in the packet.³² It also made it mandatory to show up iodized marks on the salt packet.

The Mobile Courts Act 2009 protects consumer rights by empowering executive magistrates to take into cognizance and try offences under several laws with consumer implications.³³ Under this Ordinance, punishment is fine, which shall be paid immediately; otherwise punished by imprisonment for up to 2 years. This Act provides speedy recovery but lacks equal representation of the law, which is in contravention to equal protection of the law and may hinder the rule of law in the long run. However, only a fine by executive magistrates doesn't seem to be enough for a corrupt businessmen as their profit from these malicious acts covers the fine, and to penalize them by imprisonment, judicial activism is necessary, but the case doesn't go to the judiciary, so the penalty remains nominal.

The Consumer Rights Protection Act 2009 is a mentionable introduction to consumer rights law in Bangladesh. It protects consumer rights on several levels and provides adequate remedies to the victim. For the first time, it defines the notions of consumers and acts against consumer rights.³⁴ This Act has provisions for a genuine network of legal advice services, readily accessible and competent in consumer affairs.³⁵ It also protects against risks of physical injury to persons, property, and useless products.³⁶ It further protects improper marketing measures and inadequate information.³⁷ But this Act ignores consumer rights in e-commerce sectors and does not provide any mechanism for monitoring standard of services. The total incapacity of DG to take any action in the case of private health services is a concerning factor in this Act.³⁸ Limitation relating to the

³⁰ The Smoking and Use of Tobacco Goods (Control) Act, 2005; ss.4,5

³¹ *Ibid*, s.10

³² The Iodine Deficiency Disease Prevention Act, 1989; ss.4&6

³³ The Mobile Courts Act, 2009; ss.5&6

³⁴ The Consumer Rights Protection Act, 2009; s.2

³⁵ *Ibid*, ss.5,8,10&13

³⁶ *Ibid*, ss.42,43,52&53

³⁷ *Ibid*, ss.37,38,40,44&46-49

³⁸ *Ibid*, ss.72&73

process of consumer complaints within 30 days and betrayal of consumer rights, if the proceeding is not taken within 90 days is another concern in this Act.³⁹

The Food Safety Act 2013 has provisions for establishing a 'Safe Food Authority' to ensure the right to safe food.⁴⁰ This Act also has provisions for establishing a 'Pure Food Court'.⁴¹ This Act further prohibits the use of the poisonous product in food, the production of low-category food, producing food in a way that is injurious to health, sale of date-over products, sale of rotten milk or meat, negligently making food in hotel-restaurant which may hamper the health of the consumer, making food by any person who is affected by the transmittable disease, production of duplicate food and false advertisement.⁴² However, there is no effective mass awareness regarding these provisions. The mass people don't know about Pure Food Court. The production of duplicate food is a regular practice in big cities which below the standard and has the utmost chance of hampering people's health.

By then, the Ministry of Commerce had published the E-Commerce Guideline 2021 and modified the Digital Market Places' Operational Procedure. Digital marketplaces must also disclose comprehensive information on sellers or merchants, i.e., people who use the internet to offer products or services.⁴³ It provides in-depth explanations on how to show information about products and services in the marketplace, basic regulations, how to offer the sale of goods or services in the marketplace, how to deliver products, how to change prices for advance payments, and more. According to regulations, things offered to customers online must include a detailed description so that consumers may get a true impression of what they are purchasing. Moreover, marketplaces should show the terms and conditions pertaining to the acquisition of the goods, such as return policies, future price change policies, delivery method and time, or product modification policies.⁴⁴ The policy also mandates that market authorities respond appropriately to customer complaints about goods and services and select a compliance officer who can work with other organizations, such as the Department of Consumer Protection, to ensure compliance.⁴⁵ Moreover, the guidelines stipulated that perishable commodities should be supplied as quickly as possible and forbade the sale of out-of-date or contaminated products.⁴⁶ The recommendations state that the customer must be warned if the seller's website uses special software or cookies.⁴⁷

³⁹ Ibid, ss.60&61

⁴⁰ The Food Safety Act, 2013; s.5-14

⁴¹ Ibid, s.64

⁴² Ibid, ss.23-42

⁴³ Digital Commerce Operational Guideline 2021, s. 3.1.2

⁴⁴ Ibid, ss. 3.5.1,2,3

⁴⁵ Ibid, s. 3.4.1

⁴⁶ Ibid, s. 3.3.8

⁴⁷ Ibid, s. 3.1.6

6. Comparative Exploration of Legislative Approach

Under British rule, the recognized offences related to consumer rights were not remedial to the victim but punishable by the state. Those malicious commissions or omission was regarded as offence because it was wrong to the state, not because it was wrong to the victim. However, some laws provided remedy to the person aggrieved, but the implication and awareness were not enough to be a regular practice. Furthermore, the remedial procedure was complicated enough, so it cannot be said that the mass people benefitted from these laws.

In the Pakistan regime, the Acts, which seem to protect consumer rights at a certain level, was enacted to regulate market production and stop the hoarding practice of corrupt businessman. Moreover, the stakeholders did not follow the state's laws then, nor did the respective authority purposefully regulate them. The government was more concerned about the political acts committed by the people of then East Pakistan. The enacted laws contain some important provisions regarding the fish market, but the culture of practicing those rules wasn't there. The legislation, which actually protected consumer rights, was enforceable only in cantonment areas.

After independence, the parliament of Bangladesh enacted lots of legislation that protects consumer rights on several levels and provides adequate remedies. The Constitution framers have inserted provisions ensuring nutrition, public health, and life. Those articles acted as a pole star while protecting consumer rights in Bangladesh. The establishment of BSTI, Mobile Court, and Pure Food Court is recognizable among all the initiatives taken by the government from time to time. The BSTI is always actively examining the standard of product. However, the government's regulatory bodies don't seem to be that concerned about all the unregistered companies continuously producing below-standard food without BSTI examination. Legislation on consumer rights was passed in 2007 at the initiative of the Non-party Care-taker Government.⁴⁸ Recognizing Consumer Rights and enacting legislation to protect them in 2009 was revolutionary. However, present laws have some complexities as they lack proper execution and judicial activism while protecting those rights. The Mobile Courts provide speedy recovery but failed to protect consumer rights as much as expected. The Pure Food Court lacked publicity and awareness; even some lawyers, let alone mass people, didn't know about this court. As we've previously shown, although the government has established rules for e-commerce, there is little evidence of their appropriate application. Because of the general lack of information and our propensity to ignore our rights, any government legislation is implemented slowly and almost ever.

⁴⁸ Ahamuduzzaman, Rahman, Md Lutfor, and Nahida, Nazmus, Zannat, 'A Contextual Analysis of the Consumer Rights Protection Laws with Practical Approach: Bangladesh Perspectives' (2009) 3 (2) ASA University Review, p.187-205.

7. Recommendation & Conclusion

1. Establish distinct forums for resolving complaints under the Consumer Rights & Protection Act in each district with appropriate financial and territorial jurisdiction. Decentralization of authority to protect consumer rights is prescribed in the Act by providing direction to establish the district, upazila even union committee.⁴⁹

2. The maximum fine that might be levied under the Act against an accused person is two lacs.⁵⁰ The Act's monetary penalties are woefully insufficient. It is difficult to permanently stop an offender's detrimental behavior toward customers if the punishment is not severe enough to cause them considerable difficulty. As a result, the complaint should receive a larger fine and restitution. There is no recommendation that a fine be levied, raised randomly, or treated unfairly against the accused party. Instead, it was suggested that fines be raised on a realistic time scale and put at the system's disposal to punish offenders per the seriousness of the offense.

3. The definition of a consumer has to be expanded to include those who receive services meant for business purposes because the law's existing definition only covers how a product is used in its final state.⁵¹ Yet, it leaves the criminal with significant legal gaps that the reseller cannot seek remedy under this enactment. Even if a person may be purchasing a product to resell it or for business purposes, this does not ensure that violation of the consumer rights will not be committed, to make matters worse, there may be no legal grounds for that individual to seek redress.

4. Due to social and economic conditions or a lack of assertiveness, customers in Bangladesh aren't aware of their rights. No matter how many changes are made in the Act, complete consumer rights protection will always remain a pipe dream if consumers are unaware of their rights and do not speak out to defend them. In this case, increasing awareness should be the main objective. Raising social awareness among all individuals is just as crucial as working on a strong legal framework.⁵²

The government's responsibility is to protect consumer rights, and by doing so, it can ensure the country's growth. For instance, the BSTI (Bangladesh Standard Testing Institute) achieved revenue collection of 419.57 lakh taka in the fiscal year 2005-2006; however, once the Act of Consumer Protection went into effect, revenue collection climbed to 848.43 lacs eight months after the law went into effect.⁵³ This revenue rise was made possible by new licenses and mobile court

⁴⁹ The Consumers Right Protection Act, 2009; ss. 11,13

⁵⁰ Ibid, s. 53

⁵¹ Ibid, s. 2(19)

⁵² Md Rizwanul Islam, 'For greater protection of consumers', *The Daily Star* (Dhaka), 20 December, 2016 (Online), available at: <<http://www.thedailystar.net/law-our-rights/law-analysis/greater-protection-consumers-1332733>> (Last accessed on February 25, 2023).

⁵³ Ahamuduzzaman (n 49)

proceedings. Government can guarantee both the economic security of the departments and the protection of consumer rights by properly enforcing consumer legislation.

From time immemorial, consumer rights were always there within the legal framework, whether recognized or not. While any activities of consumer exploitation were considered a crime for a long time, it took time to be recognized as a right of people. Current legislations in Bangladesh have several provisions relating to the protection of consumer rights, and the government recently have noticed the complexities regarding remedies. Consumer Rights are not divisible from the right to life and good health. Recent initiatives from the government show us an optimistic vision of consumer rights. Hopefully, we will be able to protect consumer rights in every sphere of life in the near future.