

Consumer Rights in Comparison with other Countries UK, Australia, India

F.D.C. Wijesinghe

President Federation of Consumer Association of Sri Lanka (FOCAS)

Consumer Rights and Consumer Protection in Sri Lanka - granted that the consumer has rights - how can they be enforced? By embodying them in legislation or by a general understanding in the community, that all concerned should concede these rights to the consumer? In my view both legislation and acceptance by the community of consumer rights are necessary. Saman Kelegama and Yohesan Casiechetty in their excellent paper Law & Society Trust Occasional Paper Services, Paper No. 2. "Consumer Protection and Fair Trading in Sri Lanka" (1983) state in page 3 "the concept of consumer sovereignty requires that a consumer should be adequately protected against both enforced and misleading marketing techniques and abuse of market power by monopolies". Since the Fair Trading Commission and the Department of Internal Trade are to be replaced by a new organization the Consumer Protection Authority, it is implied that the rights of the consumer would be embodied in the new Act. However, when this bill was discussed in Parliament on Monday June 18, 2001, several speakers from the opposition pointed out that many amendments had to be made to make the bill workable. It is not proposed to discuss these amendments here since, at the time of writing, it has been referred to a Standing Committee of Parliament. The authority to be set up contains the following provisions to give the rights of the consumer legal backing. According to section 9-(i) The Authority may for the protection of the consumer, (a) issue general directions to manufacturers or traders in respect of labelling, price marking,

packeting, sale or manufacture of any goods and (b) it can issue special directions to any class of manufacturers or traders specifying: (c) the times during which and the place at which such goods may be sold and (ii) any other conditions as to the manufacturing, importing, marketing, storing and stocking of any goods

It is evident that if this Act is implemented it will not be possible for consumers to be fleeced by traders. For example, according to section 21 (1) where any goods are being sold or services are being provided at an excessive price and any member of the public or any association of persons or any organization requests the Council (set up under the Act) to investigate into the matter, such association or organization as the case may be, may require the Director General to refer the matter to the Council for investigation and report.

Again in Section 28, "No trader shall in the course of a trade or business engage in any type of conduct that is misleading or deceptive or is likely to mislead or deceive the consumer or any other trader.

Public Sector Efficiency Studies

The Act has taken something of importance from the former Monopolies and Nevgers Commission in the UK relating to efficiency studies, which are not being carried out by anyone at present in Sri Lanka.

According to section 31, "At the request of the Minister, the Authority shall carry out a public sector or private sector efficiency study and submit a report to the Minister. It will be the duty of the

Minister to place such report before Parliament. One might ask how this affects the consumer, but it is the consumer who benefits from public sector activities eg. Telecommunication, Electricity, Water and it is the consumer who is the loser if these organizations fail to deliver the goods. It is not proposed to discuss here whether the Consumer Protection Authority and the Consumer Protection Council set up under this Act have the right machinery for looking after consumer interests.

The new legislation repeals the following enactments; (a) the Consumer Protection Act No. 1 of 1979, (b) the Fair Trading Commission Act No. 1 of 1987 and (c) the Control of Prices Act No. 20 of 1950. The question is whether persons who are genuinely interested in looking after the interest of the consumers are appointed to the Boards of the Consumer Protection Authority and the Consumer Protection Council. In Britain if you are interested in serving on a Board you have to look at the appropriate columns of the Times to see whether you are qualified to perform the functions of the Board Member in question. But here, the membership of a Board is often looked upon like a JP-ship to magnify the size of one's ego.

Also in Britain boards are functional boards and not merely policy-making boards.

One may set forth the legal framework for the protection of consumer rights. But it is also important that the acceptance by the community of these rights is ensured.

Rights of Patients – In the realm of health it is unfortunate that there is no organization to look after the rights of patients as consumers. The Health Policy Task Force which reported three years ago wanted the Ministry of Health to set up machinery to safeguard the rights of patients as consumers, but nothing has been done so far to make this a reality. Since there is no organization to look after patient's interest it is left to newspaper editors to look after their interests, eg. The Daily Mirror editorial of July 7, 2001 entitled "Cut medicine and Milk Prices" states, "As a campaign to bring down the cost of medicine gathers momentum, the decision announced in Geneva last week, shows that patients especially in poor third world countries are being plundered by huge multinational drug companies, and doctors have turned the vocation of healing into a sick business. The new campaign seeking justice for patients was launched in Sri Lanka and world wide after a landmark case in South Africa where an enlightened government acting in the spirit of Nelson Mandela fought and won the right to give a new drug for HIV/Aids victims at a price which was astounding - 90% reduction from the rates charged by the drug companies."

II Consumer Rights in Britain

Consumer Rights in Britain are protected by the Director General of Fair Trading John Bridgeman, Director General of Fair Trading in part one of his report for 1999 entitled "Championing the Consumer" said "My job is to protect consumers and to champion their interests. This is the fundamental intention of Parliament which underlies some 20 pieces of legislation accumulated over nearly 30 years and setting out my formal duties. He goes on to say that the task of protecting consumers is greater than many realise and was put into sharp relief in 1999 when his office commissioned pioneering research which for the first time put a convincing cash figure on the cost to the U.K. of defective consumer goods and services. Building on an earlier report "Consumer detriment under conditions of imperfect

competition" published in August 1997 which helped to identify the nature of consumer detriment it found that damage to the economy resulting from defective goods and services is causing Britain 8.3 billion pounds a year. It is a disturbing feature but one which still greater under estimates the true extent of the problem. It relates only to the detriment in the prices of goods and services, which are visible to consumers – it is more or less the tip of the iceberg.

Vulnerable Consumers

In Britain as in Sri Lanka special attention has to be given to the more vulnerable groups in our society. The old, the very young, the infirm and the under educated. The report "Vulnerable consumers and Financial Services" published in February 1999, identifies the vulnerable as those who had particular difficulty in obtaining or assimilating information they needed. And those who as a result of low income suffered disproportionate loss. In the latter group are included those who suffer exclusion from the essential services of modern life.

Old people constitute a vulnerable group of growing size and significance. The British government has made clear that people will have to do more to help themselves by making provision for their needs in the years after retirement. But the markets for private pensions and for long term care are not easy for private individuals to negotiate.

The Department of Health issued a white paper "Fit for the future"? The White Paper consists mainly of the recommendation made in the Fair Trading Departments report "Older people in Consumer Care Homes". When these proposals are implemented it will go a long way to make life more comfortable for old people. In September 1999 in partnership with an organization called Rencap the Director General of Fair Trading launched the project to increase accessibility of information on basic consumer rights for 1.2 million people with learning difficulties. The Department of Internal Trade and its successor the Consumer Protection Authority in Sri Lanka should launch a project of this nature.

If you follow the inter-net you will be surprised to learn that many fraudulent or misleading practices still obtain. Those holding out bogus promises of get rich quick investments have been nabbed by the Fair Trading Department in the UK.

In Britain and in Sri Lanka there is the need to formulate modern consumer legislation. In the UK the Government recently has taken steps to amend part of the Fair Trading Act to make it easier to protect consumers from these activities and unfair transactions. Also in Britain wide publicity is given to steps being taken by the government to help the consumer. It is unfortunate that the same cannot be said about the consumer in Sri Lanka.

Consumer Affairs Division

In the UK the office of Fair Trading has set up a Consumer Affairs Division which is responsible for the Director General's Consumer Policy and consumer protection duty including (a) monitoring consumer markets and offering advice (b) research, (c) encouraging codes of practice and promoting consumer information, (d) consumer credit policy (e) other regulatory duties under the Fair Trading, Consumer Credit and Estate Agent's Act. Also the control of misleading advertising regulations and general liaison with Trading Standards Departments. Finally The Director General's powers under the Unfair Terms in Consumer Contract regulation of 1999 and international liaison including work on the implementation of the European community legislation and on e-commerce.

The Consumer Affairs Division monitors markets for goods and services in order to analyse trade and identify practical problems for investigation. It is responsible for the office of Fair Trading's advice to the government on consumer policy issues. The Office of Fair Trading carries out investigations on its own initiative as well as responding to requests from Ministers.

Information

In Britain the office of Fair Trading has put out a number of publications for consumers. During 1999 the Office of Fair Trading built up successful collaboration ventures with charitable organizations which have an expert knowledge of problems relating to vulnerable consumers.

The Office of Fair Trading also looked at new methods of reaching customers and put out a new publication a "Shopper's Guide" to offices in the North and East region to which copies were handed over free. In 1998 the Director of Fair Trading launched an alliance of consumer education and trade organizations called National Consumer Education Partnership (NCEP)

Research

Research is most important. Research in mortgage redemption fees was commissioned by the Director General of Fair Trading from University teachers from the London School of Economics and Reading University. The Commission commissioned this study with a view to establishing the extent of consumer problems within the UK economy. More than 2,000 persons throughout the UK were questioned with regard to the problems they encountered when buying unsatisfactory goods or services. But no research is done in Sri Lanka by the Department of Internal Trades. It is hoped that such research will be done when the new Consumer Protection Authority is established.

II Consumer Rights in India

For this section on India I have to thank Ms Reenat Sandhan First Secretary Indian High Commission in Colombo.

The Department of Consumer Affairs under the Ministry of Consumer Affairs and Public Distribution is responsible for the formulation of policies for Consumer Co-operatives, Monitoring Prices, availability of essential commodities consumer movements in the country and Controlling of statutory bodies like the Bureau of Indian Standards, and Weights and Measures. The Department deals with the following which of vital in-

terest to the consumer. (1) Internal Trade, (2). Inter-state Trade (3) Control of Futures Trading and Forward Contracts (4) The Essential Commodities Act, 1955 (5) Prevention of Black Marketing and Maintenance of supply of essential commodities. (6) Regulation of Packaged Commodities and Training in Legal Metrology. (7) Standards of weights and measures (8) Consumer Co-operatives (9) All matters pertaining to the Consumer Protection Act - 1986 (No. 68 of 1986)

About the Programme

The Government has accorded a very high priority to the consumer protection programme. The Department of Consumer Affairs and Public Distribution in the Central Government has been designated as the nodal department to deal with the subject of consumer protection. Since 1986 the Department has taken a number of measures to promote a strong and broad based consumer movement in the country. Some of such measures include (a) the enactment and enforcement of the Consumer Protection Act of 1986, (b) the amendment of legislation such as the prevention of food adulteration Act of 1954 (c) to enable consumers to file complaints in the Courts, (d) institution of National Awards for consumer's organisations youth and women (e) grant of financial assistance to consumer organizations, (f) preparation of audio visual material (g) publishing a quarterly magazine *Upphokta Jagaran* (h) Publishing of printed material and its free distribution.

The various measures taken by the government have aroused a lot of expectations among consumers. In the last few years a major thrust has been given to the consumer protection programme and a number of additional steps have been taken to protect the interests of consumers. The Enactment of the Consumer Protection Act 1986 was one of the most important steps taken. The present position of the implementation of this Act is as follows: (i) all the provisions of the Act came into force with effect from 1.7.1987, (ii) the state level consumer protection councils are functioning in all states. The Central Government constituted the first Central Consumer Protection Council on 1.6.1987. This Council since then has been re-constituted with effect from

6.3.1997 for a period of three years. So far 19 meetings of the Council have been held. The main object of the Council is to protect and promote the rights of consumers such as the right to safety, the right to information, the right to choose, the right to be heard, and the right see and the right to consumer education. (iii) The National Commission started functioning with effect from 27.12.1988. The present President is the Hon. Justice Sri S C Sen (iv) Initially the progress in the establishment of state commissions and District Forums was slow. However after the constant persuasion of the Central Government and a writ petition filed by a consumer organization "Common Cause" in the Supreme Court the position has improved, 31 state commissions and 541 district forums are functioning in the country now. In addition a State Commission and two District Forums are functioning under the Jammu and Kashmir Consumer Protection Act (v) Earlier State Governments requested the Ministry to provide financial assistance to strengthen the Consumer Courts and the Ministry took up the matter with the Planning Commission. The Planning Commission has agreed to provide one time assistance to the State Government over and above their annual Plan Budget. The State Government has been asked to submit their proposals to the Planning Commission.

National Convention on Consumer Protection

The National Convention on Consumer Protection was organised in 1993 and it was inaugurated by the Minister for Civil Supplies, Consumer Affairs and Public Distribution. Four topics were discussed at the Convention, (i) Taking the consumer movement to the rural areas, (ii) the need for training and education and creation of awareness among the consumers (iii) structural/organizational changes required in the consumer redressal machinery to make it more effective (iv) Liberalisation and consumer protection

To discuss the problems of the three tiered machinery set up under the Consumer Protection Act 1986, the National Consumer's Disputes

Redressal Commission, with the help of the Ministry, organised a all India Conference of the Presidents members of the State Commissions on 24.1.1984.

Meeting of the Central Consumer Protection Council. The xvth meeting of the Central Consumer Protection Council was held in January 1994. At this meeting resolutions were passed to set up working groups (i) introducing the concept of Citizen charter in India (ii) To consider a code of conduct for consumer organizations and (iii) to implement the report the working group on the perspective plan. Two matters, which are now being given priority by the government, are the Consumer Courts and State Consumer Protection Councils.

Grievances

To ensure prompt attention to consumer grievances the Ministry has designated an officer of the rank of Deputy Secretary as Director of Consumer Grievances; similar action has been taken by a number of states.

Survey in the field of consumer protection - The Ministry has conducted its survey in consultation with the Association of the Consumer Protection Associations, New Delhi to assess the impact of the consumer protection programme and the functioning of district forums in Five States. Pre budget discussions are held by the Ministry. The Finance Minister holds the pre-budget discussion with the representatives of Consumer Organization every year. This is an extremely important measure and should be followed by the Minister of Finance before he presents his budget in Sri Lanka.

IV Consumer Rights in Australia

Consumer rights in Australia are embodied in the Trade Practices Act 1993 and the various Reports of the Australian Competition and Consumer Commission. Much credit must be given to Professor Alan Fels who has been Chairman of the ACCC for over a decade.

A consumer who can be either an individual or a business, is someone

who acquires:

- (a) goods or services of a type normally bought for personal or household use, whatever they cost; or
- (b) any other type of goods or services costing \$ 40,000 or less, or
- (c) a commercial road vehicle or trailer of any cost that is used mainly to transport goods on public roads, provided that the goods are not acquired solely for re-selling, for using up or transforming to produce other goods commercially, or in repairing or treating other goods.

The Australian Government recognizes that the protection of Consumers and Competition Policy go hand in hand.

Product Safety

One aspect of consumer rights to which the ACCC has given priority is product safety. In a recent address the Chairman Professor Allan Fels explores the Commission's role in enforcing the product safety provisions of the Trade Practices Act. He points out that in Australia an estimated 650,000 injuries occur annually that are associated with design problems or malfunctions in consumer products. Many are avoidable and making safer products is one prevention strategy. Too often companies become active in product safety when their customers are injured. With competition increasing, companies will be required to be more consumer conscious if they are to survive commercially.

The consumer has a right to obtaining safe products from manufacturers and traders.

Manufacturers can assist retailers by presenting their goods in a way that clearly conveys their intended and safe use. It is important that the retailer not be in a position to 'talk up' the capabilities of a product by telling the customer that it can perform in ways that the manufacturers never intended.

Before 1995 product safety enforcement was undertaken by the Federal Bureau of Consumer Affairs. Since gaining the function in 1995 the Commission's actions and reputation as an active enforcement agency has led to significant increases in awareness and

compliance with the Trade Practices Act.

National Competition Policy and Consumer Rights

In 1991 the Council of Australian Governments (COAG) established an independent Committee of Inquiry to consider and advise COAG on the need for a national competition policy. The Committee was chaired by Professor Fred Hilmer.

Following on the Hilmer Report a National Competition Council was set up in April 1997. The NCC is the COAG advisory body on the implementation of National Competition Policy. In conjunction with private rights of action, enforcing Australia's competition laws (and hence consumer rights) is one of the principal functions of the Commission. The Commission has also a relevant adjudicative function. Recognizing that in some instances anti-competitive practices do deliver off-setting public benefits which can outweigh the anti-competitive detriments, Australian legislation also empowers the Commission to authorise some forms of anti-competitive conduct for the misuse of market power.

Regulation and Consumer Rights

Consumer Rights should be provided at the least cost. This is done very efficiently by the Australian Competition and Consumer Commission. The Commission regulates Electricity Pricing, Telecommunications, Pipelines, Airport Investment and Professional Markets.

In Sri Lanka we have a separate body for each of these public utilities. For example we have the Telecommunications Regulatory Commission at Elvitigala Mawatha. The Commission has impressive buildings, fairly substantive staff and all the appurtenances of such a new body. When you read the ACCC Journal you see how efficiently all these regulatory duties are combined in the ACCC. Unfortunately the consumer is the loser with the detailed apparatus of regulation in Sri Lanka.

