

State Policy & Legal System for Consumer Protection in Sri Lanka

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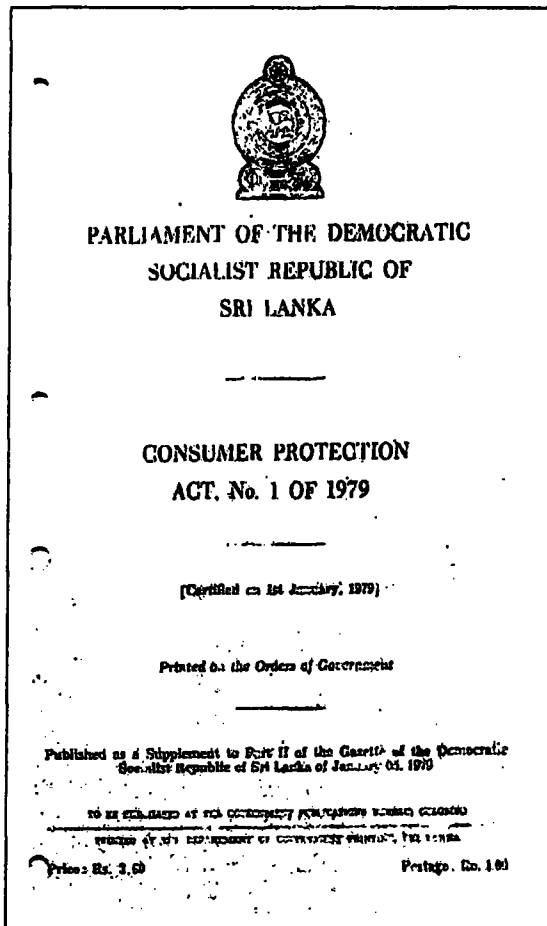
The last two decades have seen enormous changes within the economic pattern and challenges, which consumers face in this country. It is undeniable that these changes owe its genesis to the introduction of open market economy and the subsequent globalization of economic affairs unprecedented in the history of the world. The government has launched some promising reforms to cope with this situation. Government is taking every step possible through structural adjustment programmes to keep the inflation at lowest possible limits. Attempts are made to eliminate fiscal imbalances. Market liberalisation, opening of foreign trade and abolition of price control mechanism resulted in a better supply of services and commodities. However, it is the view of the legislators and the consumers that the time has come to review and renew the measures adopted to protect the consumer and the trade and industry in the context of these far-reaching changes. We are also in the center of a debate taking place within the consumer movement and the trade and industry about the extent to which the open market economy and the globalisation benefit all stakeholders. It will be interesting to have an overview of the government policy and campaign, development support and the diversity of the work and the extent to which key consumer issues and trade issues in regard to liberalisation of trade have been addressed.

Consumer protection in Sri Lanka has its route in consumer law principle of caveat emptor (let the buyer beware) and the sanctity of the contract continued to outweigh concept of consumer protection. The consumer demands that government establish policies to head off sellers' abusive trade practices. This in a shift, the common law and various statutory laws safeguarding consumers began to be consolidated and strengthened in the late nineties.

Trade is conducted in a relatively free market environment with minor state

intervention in regulation of trade. The government considers further intervention essential in preventing harmful effects arising from anti-competitive practices such as collusive price fixing, dumping, predatory pricing and monopolies as a result of mergers. The government also intends to ensure consumer and producer welfare by minimising harmful effects of drastic price fluctuation.

The political, social and economic experience of the last decade have profoundly incorporated transformed the image of the state and its functions with regard to its consumers. Every endeavour is made to check poverty rates and inequalities in the distribution of income and access to opportunity along with the challenge of meeting high rate of economic growth as a necessary condition for alleviation of poverty. On the other hand world market forces, globalisation, scientific and modern technological progress, emergence of issues such as environment, quality of life, consumer safety etc. shed light on our achievements and the complexity of the needs and concerns that must be incorporated in developing of innovative force that can adjust the role of the state to fit the expectations of the consumer. The following thrust areas are receiving priority of the government in this exercise:



- I. Designing of policies and programmes on development and social justice,
- II. Stabilise peace and generate consensus necessary to confront and resolve the country's serious problems and status in the world with particular attention to monitor operation and protection of values that the market alone can neither guarantee nor enforce,
- III. Guaranteeing and promoting common good which implies promoting equal opportunities, social justice and quality of life,
- IV. Regulation of market dynamics and their impact on the economy, job quality, environmental protection, consumer protection and standards and quality for goods and services,
- V. To act as an entity that is about to answer for and respond to the concerns from consumer participation and innovation which aims to strengthen democracy.

We live in a time when significant sectors tend to confuse the need for economic freedom, which allows all the potential of private initiative with unlimited deregulation of economic activity. This could only be justified if all markets were sufficiently, if not perfectly competitive, or at least approaching that situation. In other words if everyone involved had sufficient alternatives and necessary information to make the best decision.

Reality however, differs considerably from the models of perfect competition analysed in basic texts frequently used as a basis for the elaboration of political and corporate plans. More advanced economic theory, which analyses the effects of a variety of asymmetries barriers and distortions found in the markets does not lend itself, so easily as a basis for consumer discussion.

The idea that the market and private initiative constitute essential factors for dynamic economic performance has already been strengthened in our country which has some experience of liberalisation and deregulation as well as controversies concerning the

role of the market and the state. However, in our real experience-past and present we are increasingly seeing the need to consolidate and improve the markets, thereby improving the institutional, regulatory and investigative framework to guarantee more effectively the rights of an important part of the market economy the consumers, workers, small investors, small and medium size businesses in total the overwhelming major of its citizens' participation in the market and economic decisions is not only important for social justice, but also for an efficient economy.

We are committed to continuing to open our economy to international competition. As international competition advances, we believe that our economy and the consumers benefit. But as we overcome the initial stages and advance towards new horizons, new challenges arise. We must not allow our markets to be invaded by defective or unsafe products. To prevent this, we must establish appropriate standards and efficient methods of control.

In 1776 Adam Smith remarked, "Consumption is the sole end and purpose of all production, and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer". This observation is still as relevant even after 225 years but I feel that many of us in administration and business need to be reminded more frequently of the importance of consumer in the economic system. Protecting the rights of the consumer in a way that is both genuine and well balanced is not only an ethical and legal imperative but also one of efficient economic managements.

Although it is true that the primary objective of consumption is the satisfaction of vital or basic needs that ensure the maintenance and development of life, it also has secondary objectives that relate to obtaining a better quality of life and consequently to actions that are associated with personal, intellectual, educational, cultural and recreational growth. Seen from this perspective that we are consumer and we are all leads us to look at the phenomenon from a po-

sition that goes beyond simple legal regulations to delve into a value analysis in which the overall dignity of the human being is at stake. When we refer to the protection of the consumer there is no doubt that, we are speaking of human rights.

The protection of the consumer therefore is related to generating a citizen's conscience both individual and collective in which the social being seeks the formation of a fair and just society that satisfies all the community needs at individual, family, group and social level.

Human dignity, which is the basis of modern civilization and incorporated in the United Nations Charter, has been enhanced by the Consumer Protection Guidelines of the General Assembly in 1985 to which we are also committed. Objectives of those guidelines in a simplified form are as follows:

- I. To help countries achieve and maintain suitable protection of their inhabitants as consumers,
- II. To facilitate types of production and distribution that respond to consumer needs and desires,
- III. To encourage those in-charge of the production and distribution of goods and services to adopt strict ethical rules of conduct,
- IV. To help countries stop abusive commercial practices at national and international level that harm consumers,
- V. To facilitate the creation of independent consumer defense groups,
- VI. To encourage international cooperation in the area of consumer protection,
- VII. To promote the establishment of market conditions that give consumers a greater selection at lower prices,

Sri Lanka, which is now committed to the market economy, requires the mechanism of operation to be fair and transparent. This will be possible to the extent that civil society the consumers has the ability to put ethical limits on the market. The inevitable

question that arises here is " **how powerful and knowledgeable the consumer is in this regard?** "

We were living with shortages in the matter of articles contributing to our existence and comfort in pre-independent and post-independent Sri Lanka, and the helpless consumer looked upto the government for protection and save them from wayward behaviour and exploitation by the unscrupulous trade and industry. In 1939, the Colonial Secretary who administrated the country introduced Price Control along with Foods Control Regulations for this matter. Even after independence in 1948 price control and food control laws were permanently incorporated in our statutes in 1950 with subsequent amendments from time to time to make more effective protection for the consumer. A Food and Drugs Act was introduced to regulate the health aspects of food and pharmaceutical drugs while the Weights and Measures Regulations were in operation since last century. The Sale of Goods Ordinance introduced in the last century codifies the rights of the seller and buyer. Besides these penal and civil enactments, the successive governments since 1948 have taken a number of positive steps to help the consumer. With all these legislative and administrative measures, the situation was dismal with a frustrating feeling that nothing improved the lot of the consumer.

In this background, the country faced the open market economy in 1977. All forms of restrictions and controls were gradually removed thus allowing the inflow of a market where commodities were available in abundance. However this situation led the consumer to demand legal norms that protect there economic interests since there was unequal conditions of the market, defective good and services, the absence of conditions guaranteeing the production, the uneven flow of information and the lack of adequate institutional resources with which to resolve conflicts and be partners in the decision making process.

The introduction of the consumer protection Act No. 01 of 1979 was considered a remedy for this situation and it made a revolution, any change in the administration of consumer protection affairs, although it was not a foolproof solution to all consumer problems. It is however, a first step in the formation of a consumer policy necessarily and primarily focused on the need to legislate with a goal of guaranteeing a level of protection of basic rights while ensuring the transparency in the market, equitable selling conditions, indemnity for defective products, mis-leading advertising etc.

In 1987, the government also introduced the Fair Trading Commission Act with a view to formulate a national price policy, and deal with monopolies, mergers, and anticompetitive and restrictive business practices. The administration of the Consumer Protection Act was entrusted to the Department of Internal Trade while the administration of the Fair Trading Commission Act is vested in the Fair Trading Commission. The Measurement Units Standards and Services Department administers the Weights and Measures affairs of the country while the Food Act and the Cosmetic Devices and Drugs Act is administered by the Health Department. The Sri Lanka Standards Institutions formulate standards and specifications for the country and implementation of any mandatory standards is entrusted to the Department of Internal Trade. Environmental protection is undertaken by the central Environmental Authority Act. It will thus be seen that a consolidated effort of all these institutions is needed for the proper protection of the consumer.

It will be interesting to note that offenders who breach the provisions of the above statutes are being prosecuted in law courts and appropriate punishments prescribe in law are meted out to them. But the expectation of the consumer is to get redress for their problems faced in the market place and this redress should be speedier, easily accessible, inexpensive and fair. The conflict resolution machinery is not adequately provided in the above statutes and there-

fore the government considered the strengthening of the legal institutions to cover all areas in the complexity of the present legal system. Therefore, action is being taken to replace the Consumer Protection Act and the Fair Trading Commission Act by the introduction of Consumer Protection Authority Bill, which is already before the parliament.

At present the fundamental area of consumer participation in the decision making process is of a merely testimonial nature although they are very common in daily life. Social and consumer organisations should consolidate their efforts on drawing attention to well defined key issues.

Consumer rights can be protected in this atmosphere only if there is sufficient awareness. Therefore, the highest priority should be given for consumer education as we often say that " **knowledge is power**". It is the driving force the power behind development. The proper empowerment of the consumer should therefore begin with creating sufficient awareness or knowledge for him to exercise his rights in the liberalised economy.

With sufficient knowledge consumer should give up his traditional helplessness and rally-round the consumer organisations to protect rights. The media can play a major role in this exercise. The consumer organisations, media and other interested groups should work towards achieving this goal.

The Consumer Protection Authority Bill addresses many issues referred to above and when implemented will definitely strengthen the hands of the authorities in conflict resolution, conflict management and problems solving which become increasingly important to the consumer.

In conclusion, I wish to quote what James Herbert said of consumer awareness. " **The buyer needs a hundred eyes, the seller not one**".

