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CONSUMER PROTECTION OF PERSONS WITH DISABILITIES AMIDST THE COVID-19

Abstract

The Persons with Disabilities (PWD) sector was one of the most overlooked and affected sectors during the COVID-19 pandemic. As consumers, PWDs have suffered difficult challenges in the access of essential goods and services, including healthcare, and these challenges have been unduly aggravated because of the crisis. The article exposes and examines the negative impact of the crisis on the consumer rights and behavior of PWDs with a special focus on the novel barriers brought about by the pandemic on their right to access. The current pre-pandemic legislation is not adequate to protect PWDs from these novel barriers as there are patent gaps and outdated provisions that need to be addressed. The article uses the doctrinal, analytical, and comparative approach in presenting these gaps and uses the same methods to recommend plausible legislative solutions that would mandate inclusive accessible information and communication technology practices in all online commercial transactions, free access to technological hardware and software, and priority in online commerce for PWDs. These proposed legislative solutions hopefully will mitigate these novel barriers to access with the aim of strengthening consumer protection for PWDs not just during the crisis but more so thereafter.

Congress acknowledged that society's accumulated myths and fears about disability and disease are as handicapping as are the physical limitations that flow from actual impairment.

SC Associate Justice William J. Brennan

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The COVID-19 Pandemic

In late 2019, a mysterious disease was reported to have been spreading in the city of Wuhan, China. The disease caused symptoms that were very similar to the Severe Acute Respiratory Syndrome (SARS), also a disease that terrorized the country several years before. The symptoms included fever, dry cough, and shortness of breath. The disease was caused by the SARS-CoV2, a type of coronavirus and since the disease was detected in 2019, it was called Coronavirus Disease 2019 or COVID-19.

By January 2020, the spread of the virus in China prompted the Chinese government to declare a strict lockdown in some of its cities, most notable in Wuhan, a city of over 11 million people. By January 31, 2020, the World Health Organization (WHO) declared the viral outbreak as a “public health emergency of international concern,” and urged the global community to implement measures that will help mitigate and contain the spread of the virus (Ghebreyesus, 2020). The WHO however did not discourage strict restrictions in international travel and even mandated member States to provide sufficient justification if they will require travel restrictions as a domestic policy (Ghebreyesus, 2020).

By March 2020, since international travel was not strictly restricted, the number of cases outside China increased by more than ten times. The virus has then spread to more than 100 countries. On March 11, 2020, the WHO then declared the outbreak as a pandemic (Ghebreyesus, 2020). As of June 2022, the COVID-19 pandemic has affected most countries in all continents, with a staggering 536,590,224 confirmed cases and 6,316,655 confirmed deaths (WHO, 2022).

The Philippines’ first cases of infection and local transmission in early 2020 was directly traced from a travel history from Wuhan, China. At present, the Philippines has recorded 3,696,264 confirmed cases with 60,467 confirmed deaths (WHO, 2022). The belated international travel restrictions was believed to have contributed to the fast spread of the virus especially in the capital region.

As a primary mitigating measure, the Philippine government placed parts of the Philippines under a community quarantine, with the entire Luzon and National Capital Region (NCR) in an enhanced community quarantine (ECQ). Under ECQ, travel was restricted except for the procurement of essential goods and/or for medical emergencies. Mass transportation was suspended and most businesses were closed or forced to undergo minimal operations. Only private businesses and government services that relate to the delivery of basic and essential services were allowed to operate, however under very strict guidelines.

One of the strict rules that were implemented is social distancing, which required persons to have a certain physical space from and between each other. People were strictly required to wear personal protective equipment like face masks and face shields. Local governments implemented curfews to restrict the movement of people. Police checkpoints were installed all over the ECQ areas to ensure compliance with the quarantine guidelines.

The pandemic has brought about a global healthcare crisis of unprecedented levels. Worse, it has unduly highlighted the weakness of the public health system in the Philippines, which was so overwhelmed with mass shortages of hospital beds, mechanical ventilators, and even protective equipment (Naguit, 2020).

In March 2021, the Philippines started its mass vaccination program. As of June 2022, 70% of its population or 70,031,044 have been recorded to have been fully vaccinated with the mandated two doses (DOH, 2022).

These measures taken by the government have considerably reduced the number of active cases that prompted it to ease the strict community quarantines. However, notwithstanding the reduced transmission rates brought about by the mass vaccinations, the COVID-19 pandemic is not yet over, with the Philippines still recording 5,609 cases from June 7 to 20, 2022 with an average of 455 cases per day (CSSE at JHU, 2022).

Impact on Consumer Behavior

The COVID19 pandemic and the measures that have been taken by the government supposedly to mitigate its spread have caused major disruptions in the lives of most people. These were not just limited to social, economic, and environmental but even included physical, mental, and psychological disruptions.

For one, the pandemic has changed people's behavior as consumers.

First, consumer priorities have changed. As a reaction to the pandemic, people started to focus on the basic needs for survival more than the usual wants. Consumer products like food, medicine, and health protection have become the most purchased consumer goods. Since the start of government lockdowns, it was not uncommon to see grocery and convenience stores, supermarkets, drugstores and even ordinary mom-and-pop stores run out of the essentials. Though there was no shortage of supply *per se*, the sheer increase in demand and the operational challenges in delivery of goods brought about by the travel restrictions created a tough stress-test on the supply chain.

Second, the means to obtain goods and services have likewise changed. Since people were mostly restricted to their homes and most of the businesses were undergoing substantial disruptions in their operations, people thought of alternative ways to acquire essential goods and services. People started to heavily depend on the internet as a means to address the challenge. Online purchases and delivery through third-party services became a common business model. Delivery companies such as Grab and Lalamove were even declared as businesses that provide essential services thereby earning certain legal exemptions on government restrictions.

Sellers began to adapt to the changing landscape. As an example, one of the most affected of all industries –

the food sector - either created their own or utilized third party web-based or mobile applications to help them move their goods.

Social media also played a very active and vital role in addressing the communication challenges and logistical gaps brought about by the crisis. Aside from being used as a platform to promote and sell goods and services, social media became one of the most common and reliable means through which information on consumer rights and protection were disseminated to the consuming public. One of the most notable examples of this is when the Department of Health (DOH) instituted a price freeze on essential and emergency medicines. The information released by the DOH on platforms such as Facebook and Twitter instantaneously reached a wide audience. This was likewise true when the Department of Trade and Industry issued a similar memorandum on the price freeze of basic and essential goods.

The Covid19 pandemic has made a significant impact that will likely have a permanent effect on consumer behavior. As people began to react and adapt to the effects of the pandemic, they began to develop habits that eventually did not just shape their consumer behavior, but more so affected the way they live and work. Experts believe that this will not be just a mere trend, but will carry on even after the pandemic is over (Accenture, 2020).

Impact on Persons with Disabilities

As the country is reeling from the impact of the pandemic in their daily lives, one of the most vulnerable and affected sectors are Persons with Disabilities.

According to the UN Convention on the Rights of Persons with Disabilities, persons with disabilities or PWDs *“include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.”*

In the Philippines, Republic Act No. 7277 or the Magna Carta for Disabled Persons defines a PWD as *“those suffering from restriction or different abilities, as a result of a mental, physical or sensory impairment, to perform an activity in the manner or within the range considered normal for a human being.”*

Under the same law, *impairment* has been defined as *“any loss, diminution or aberration of psychological, physiological, or anatomical structure or function”* and disability as *1) a physical or mental impairment that substantially limits one or more psychological, physiological or anatomical function of an individual or activities of such individual; 2) a record of such an impairment; or 3) being regarded as having such an impairment.”* A person is likewise said to be handicapped when one has a *“disadvantage, resulting from an impairment or a disability, that limits or prevents the function or activity, that is considered normal given the age and sex of the individual”* (R.A. 7277).

PWDs have suffered challenges mostly caused by attitudinal, physical, environmental, and even institutional barriers. According to the United Nations Commission on Human Rights, one of the major barriers that has affected PWDs relate to their right of access. As PWDs have pre-existing medical conditions that make them a high-risk population in contracting the virus, the isolation caused by government measures such as lockdowns or community quarantines have greatly affected their means to access essential goods, health services, and even information – all critical for their survival (OHC UNCHR, 2020).

As consumers, PWDs have suffered enormous challenges brought about by these barriers. Worse, these were exponentially heightened by and during the pandemic. Attitudinal barriers such as discrimination have made it difficult for PWDs to procure a good livelihood and earn decent income (OHC UNCHR, 2020). This has therefore greatly affected their purchasing power. Though the national and local government have tried to alleviate the people’s essential needs through the supposed distribution of cash aid and essential goods, it was not enough to sustain the daily needs of the ordinary people, more so those who are suffering with disabilities.

Further, the lack of resources was simply not just the issue. National and local legislation did not give priority to PWDs more than it should as the government was more focused in distributing relief to the widest reaches of the general public. Even so, the government itself suffered enormous operational and logistical challenges in translating into action the supposed benefits brought about by emergency legislations.

Due to physical and environmental barriers, many PWDs were not able to receive government help. As a consolation, though not mandatory, it was the private sector that mostly provided their much-needed aid.

Current Legislative Protection and its Gaps

In the Philippines, PWDs enjoy substantial legislative protection and benefits. No less than the 1987 Constitution provides that *“there shall be priority for the needs of the underprivileged sick, elderly, disabled, women, and children”* and highlighted the importance of this by even creating a special agency *“for disabled persons for rehabilitation, self-development and self-reliance, and their integration into the mainstream of society.”*

Over the years, several laws, regulations and administrative rules have been enacted for the protection of PWDs. Most of these laws have focused on addressing attitudinal barriers that relate to discrimination and physical barriers that relate to access of goods and services. Some of these laws even provided benefits, such as tax exemptions or reductions, health coverage and the like.

The organic law for PWDs is Republic Act 7277 or the Magna Carta for Disabled Persons. The law was enacted in 1992 and has undergone several amendments. In 2006, Republic Act 9442 introduced major amendments that gave certain tax discounts and benefits for PWDs. It also introduced certain provisions that addressed attitudinal barriers such as those which prohibited verbal and non-verbal ridicule and vilification, and even provided for certain benefits for those caring for PWDs. This law was further amended through Republic Act 10754 which further expanded the benefits and privileges of PWDs.

Most of these laws addressed physical barriers and accessibility issues, ensuring that PWDs are afforded unhampered physical access to basic goods and services and that their disability should not be used against them as a criteria for such access. However, while these laws have provided for suitable provisions to address these barriers, the novel challenges brought about by the COVID-19 pandemic have greatly altered the consumer behavior of PWDs.

Indeed, one of the major physical challenges brought about by the COVID19 pandemic is accessibility to goods, services, and information. This is where PWDs suffer the most. Although our current laws are sufficient enough to ensure the protection of PWDs on the issue of physical access to goods and services, unfortunately these laws lack specific and peculiar provisions to address the issue of online and/or cyber access. This is despite the fact that the pandemic has greatly normalized the use of online platforms as a major tool for consumer purchase.

PWDs therefore have yet to experience true and full consumer protection since the current provisions of law are rendered irrelevant and tactically useless in light of these drastic changes in the consumer landscape.

Recommendations

In order to address the novel attitudinal, physical, and logistical barriers brought about by the pandemic, new legislation mandating the following should be passed:

Inclusive practices in online transactions

Establishments that use online platforms to sell their goods and services should be directed to create solutions or formats to reduce or eliminate the physical challenges of PWDs. For example, accessibility tools (i.e., sound, visual sign language, etc.) may be used to describe products and the parameters or conditions of the transaction. Such tools should ensure that PWDs should have equal access to goods and services.

In fact, accessibility tools for online access is not a new concept. The government itself has directed its agencies to ensure that its websites conform to certain standards that will ensure unhampered access for PWDs. In a 2010 Joint Circular, the National Council on Disability Affairs and the National Computer Center have created *Accessible Website Guidelines* that provided certain technical rules in the creation of government websites to guarantee that they can be easily accessed by “*all types of citizens with disabilities: the blind, visually impaired, the deaf, the mobility impaired.*”

These technical rules make it easy for the PWD user to comprehend information on the website by reducing audio and visual barriers. Such examples are the use of descriptive texts for audio and video clips, voice texts for crucial information such as phone numbers or addresses, descriptive hyperlinks that address the PWD user’s accessibility problems, and the like. (National Council on Disability Affairs and the National Computer Center, 2010).

These rules may likewise serve as a mandated technical template for private establishments that offer essential goods and services through online platforms.

House Bill 3489

House Bill 3489 dated August 6, 2019 of the 18th Congress of the Philippines entitled “*Accessibility for all Persons with Disabilities Act*” is an example of a legislative proposal that ensures inclusive practices of PWDs in information and communications technology (ICT).

The bill aims to introduce Accessible ICT Practices that are defined as “*measures that remove access barriers that restrict business and social interactions between persons with disabilities and non-disabled individuals.*” These practices may “*also refer to practices that remove age-related barriers to participation in society and reduce language and literacy-relate barriers in society.*”

According to this bill, examples of “*accessible ICT practice*” may constitute “*descriptive text for images, Braille, large print, human-reader, and augmentative and alternative formats.*” For online pages or websites, accessible ICT practices include “*internationally accepted practices, such as voluntary ISO accessibility practices in information technology and the Web Content Accessibility Guidelines version 2.0 of the World Wide Web Consortium.*” The bill also acknowledges the Accessible Website Design guidelines contained in the 2010 Joint Circular.

Compared to the 2010 Joint Circular, House Bill 3489 has a broader scope. Though the bill heavily focused on reducing, if not eliminating, PWD barriers on ICT, it also included measures that would help reduce PWD barriers to transportation and the physical environment. For instance, under this bill, all public and private establishments are mandated to adopt the accessible ICT practices in all its physical facilities with the aim that these facilities will easily service or cater to PWDs.

Mandating all consumer establishments to adopt these accessible ICT practices will greatly reduce the discriminatory and physical barriers of PWDs on the access of essential goods and services.

Government Certifications

Another proposal is for establishments to be mandated to use mobile or internet applications that have been certified as PWD friendly. PWD friendly means that these applications or platforms conform to or use the legislated accessible ICT practices.

The government through its corresponding agencies can provide the guidelines and thereby certify these applications and platforms before they can be used for online transactions. Without such government certifications, establishments should not be allowed to engage in online commerce and may be penalized if they do otherwise.

Ensure access to technological hardware and software devices

One of the main challenges of PWDs during and post-pandemic would be livelihood. Many PWDs are financially challenged, without having enough resources for having the basic tools for online access. The government must have an institutional system in place to help financially challenged PWDs to have proper access to both hardware and software devices that will serve as a means for online commerce.

House Bill 3489 is a start. It mandates all government institutions and even private establishments that provide services to the public to make sure that PWDs are afforded free access to computers, telecommunications, and information technology devices with incorporated accessible ICT practices. Further, these devices should be designed to ensure ease of access of information for PWDs.

If this mandate can be sustained and have a broader application to include for instance establishments employing PWDs, this will help greatly reduce discriminatory and logistical barriers. This will then result not just into a simple ease of access for PWDs but to a slew of economic benefits as well such as livelihood and income. This domino effect will then help boost their overall purchasing and consuming power.

Priority for PWDs in online commerce

Just like how the government gave PWDs tax discounts/exemptions and other benefits such as priority lanes in physical establishments, it can likewise mandate the same policies for online transactions. Online priority lanes may be given to PWDs, with establishments being directed to first serve them especially on the sale of essential goods and services. Priority may also be given to PWDs for the shipping or delivery of these goods with the guarantee that they will be properly and timely received, making these establishments legally accountable if they do not by reason of their disability.

Parting Note

To conclude, given the new normal and the lifestyle changes brought about by the COVID19 pandemic, the direction of PWD legislation should be that of inclusivity and accessibility in information and communications technology. This technology has been the driving force of consumer commerce during the pandemic and it is expected to be the same thereafter. Indeed, new consumer legislation must therefore prioritize ease of access in online commerce, institutionalizing and mandating the use of technology to ensure that PWDs are protected and given a level playing field most especially in the post-pandemic world.

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