

# Consumer Protection And Protectionism In Pakistan: Regulatory Framework, Issues And Solutions

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## ABSTRACT

There is a dire need to help such consumers who have been victims of crook sellers, manufacturers and dealers through faulty goods and substandard services. Every educated and stable society gives protections to their consumers who are backbone of any economy. Even Islam has discussed the importance of fair dealing, fulfillment of contractual obligations in true letter and spirit, avoidance of misrepresentation while selling and ethical dealings while entering into business transactions. The concept of consumer protection covers a wide range of protections including but not limited to products liability, privacy rights, unfair business practices, fraud, misrepresentation and other consumer/business interactions. In 1985 the United Nations issued guidelines in this regard to acknowledge the importance of the issue. Pakistani consumers have long been neglected either deliberately or inadvertently by the Government and manufacturers, as the laws have not been implemented in full spirit. There have been fraudulent advertisements, misleading information and hazardous products and faulty services for them, with no redressal at all. The times are changing now and due to globalization consumers are much knowledgeable and informed. It is high time to implement the consumer protection laws as a dormant law in the books which is never applied is like a bullet-less gun.

**Key Words:** Caveat emptor, Consumer, Consumer protection, Consumer rights

## INTRODUCTION

‘Consumer is a person who acquires product/goods or services for direct use or ownership rather than for sale or use in production and manufacturing. Consumer laws are designed to ensure fair competition and the free flow of truthful information in

the market place. These laws are a form of government regulation which protects the interests of consumers’. ‘Consumer protection covers a wide range of topics including but not necessarily limited to product liability, privacy rights, unfair business practices, fraud, misrepresentation

and other consumer/business interactions'. The World Consumer Day is celebrated on 15<sup>th</sup> of March, yet a very few know what are their rights as consumers, where to file complaint in case of faulty and substandard services, in case of defective goods what course of action should be adopted, what is product liability? These along-with many other are some questions which need answers and their information must be available to each and every consumer. There has been urgency to help out such consumers who were cheated by the manufacturers with their bad items, bad deals, bad services and above all bad behavior. In the wake of this a legislation that could pose remedy to the suffering buyers i.e. consumers was much needed. Where the law makers focused attention on the protection of the consumers, it never meant, that the manufacturers were to be punished. Actually the idea was to do justice to both, and the time to attend to the bickering of the consumers had come. This article covers different laws relating to consumer protection in Pakistan, issues and regulatory frameworks in this regard and how things have moved towards consumer protection. There has been a mention of Islamic aspects of consumer protection as well as, some recommendations and solutions have been provided at the end to strengthen these mechanisms.

### **CONSUMER RIGHTS:**

Adam Smith (1776) in his book, *The Wealth of Nations*, states, "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 a consumer". In the past

there was a presumption in every sale that buyer relies on his own judgment and skill, once sale is complete, seller's liabilities come to an end and in case of defects sole responsibility lies on the buyer, hence maxim, "caveat emptor" originated however, with some exceptions. However, the sellers used to defeat the purchasers by indulging them into complications and technicalities. As time passed, it became evident that law should never support only one party in a sale contract and a movement for protection of consumer rights started with aim to not only protect the consumer rights, but also to educate them about their responsibilities<sup>1</sup> and building a more fair and equitable society. Later on, societies accepted and recognized the rights of consumers and started enacting laws for their protection.

One can say that these consumer rights are associated with usage of different services and goods; it does not matter whether they are enjoyed as paid or unpaid; yet they are now treated as one of the fundamental human rights including but not limited to the rights of safety, needs, information as to ingredients and source of origin, choice, representation and getting redress as well as, education and healthy environment. It is a dilemma that Pakistani consumers, due to lack of proper legal and institutional framework in this regard, have suffered a lot due to artificial storage, poor quality of goods and services, arbitrary price rise, misleading advertisements and unchecked sale of hazardous goods<sup>2</sup>.

<sup>1</sup> Consumer International articulated five basic responsibilities of all consumers including; (i) critical awareness, (ii) action, (iii) social concern, (iv) environmental awareness and (v) solidarity. For details see,

[http://www.thenetwork.org.pk/consumer\\_rights\\_debates.aspx](http://www.thenetwork.org.pk/consumer_rights_debates.aspx).

<sup>2</sup> Policy Commitments of Political Parties, Consumer Protection available at [www.crcp.org.pk](http://www.crcp.org.pk)

Consumers<sup>3</sup> use either products<sup>4</sup> or services. Products<sup>5</sup> include; goods<sup>6</sup>, eatables, medicines, vehicles of all types, electronic appliances, building material, textile and clothing, things of daily usage etc, while services<sup>7</sup> include; health care<sup>8</sup>, education, legal profession, engineering, banking, media, telecommunication, internet, hotels etc.

Some factors which give rise to a need for consumer protection are monopoly problem, lack of choice for consumers in markets, under-representation of consumer interests and consumer grievance problems. Consumers need protection in the market place against the unfair practices, defective goods and services and they need formulation of proper policies and surety of reliable structure from the government. Iris Benohr

(2013) has discussed the relationship of consumer rights with fundamental rights, while explaining the progressive convergence of fundamental rights and consumer protection in European Union's legal system<sup>9</sup>.

## BRIEF HISTORY OF CONSUMER RIGHTS

In Roman and Greek eras, 'measures for measures' was key principle in markets through which consumers had some rights as far as, weights and measures were concerned. The 19<sup>th</sup> century saw, let the buyer beware concept, protecting the sellers. When it comes to the concept of competitive market, the theory behind it was to keep prices low and quality high but the monopolies ruined this concept by limiting the supplies and

<sup>3</sup> See Section 2 (c) (PCPA) 'Consumer' means a person or entity who; (i) buys or obtains on lease any product for a consideration and includes any user of such product but does not include a person who obtains any product for resale or for any commercial purpose [this commercial purpose does not include use by a consumer of products bought and used by him only for the purpose of his livelihood as a self employed person], (ii) hires any services for a consideration and includes any beneficiary of such services.

<sup>4</sup> Note that plot is not a product, so defendant cannot be asked to handover an alternative plot. See, *Malik Khalid Mahmood versus DHA Phase -I*, Rawalpindi, 2012.

<sup>5</sup> See Section 2 (j) (PCPA) 'Product' has the same meaning as assigned to the word goods in the Sale of Goods Act 1930, and includes products which have been subsequently incorporated into another product or an immovable, but does not include animals or plants or natural fruits and other raw products, in their natural state, that are derived from animals or plants.

<sup>6</sup> See Section 2 (7) Sale of Goods Act 1930, 'Goods' means every kind of movable property other than actionable claim and money; and includes electricity, water, gas, stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before or under the contract of sale.

<sup>7</sup> See Section 2 (k) (PCPA) 'Services' includes the provision of any kind of facilities or advice or assistance such as provision of medical, legal or engineering services but does not include; (i) the rendering of any service under a contract of personal service, (ii) the rendering of non-professional services like astrology or palmistry, or (iii) a service, the essence of which is to deliver judgment by court of law or arbitrator.

<sup>8</sup> The Supreme Court of India in *Indian Medical Association versus V.P. Shantha & Other* [1995 (3) CPR 412; AIR 1996 SC 550; 1995 (3) CPJI: 1995 (6) SCC 651: JT 1995 (8)] held that medical profession comes under Consumer Protection Act (CPA) and all medical and dental practitioners, private hospitals etc are liable for their services under CPA except, primary health centres, birth control measures, anti-malaria drive and other such activities. SC further held that the doctor-patient relationship is not master-servant relationship; in fact it is a contract for personal services and as such, cannot be excluded from CPA. For details see <http://www.medindia.net/doctors/cpa/case-1.asp>.

<sup>9</sup> Iris Benohr (2013). *The Evolution of Consumer Protection and Human Rights*. Available at <https://academic.oup.com/book/26863/chapter-abstract/195896543?redirectedFrom=fulltext>.

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fixing high prices. Hence, the need for consumer protection became high priority. The Code of Hammurabi by King Hammurabi of Babylon (1795-50 BC) dealt with matters of fairness, correct measures and safe goods at market place<sup>10</sup> (John TD Wood, 2017). Whereas, it is believed that consumer protection is a creation of the near past, which came in response to very harsh and manufacturer/seller friendly rules like, 'laissez-faire'<sup>11</sup> and 'caveat emptor'<sup>12</sup>. Ayob, H (n.d.) is of the view that in England the movement for consumer protection started in nineteenth century which due to rise in capitalism spread to USA and in Europe it came much later whereas in Denmark in 1947 the consumer associations started working in this regard. Theories of contractual obligations saw their downfall during nineteenth century due to the inherent justice or fairness of an exchange<sup>13</sup>. Actually the consumer protection has been around since

long. Following is a glimpse<sup>14</sup> of consumer protection in different eras:

In Moses period the Bible prevented consumption of unclean and dead animals. Weighing system (started around 8000 BC and up-till 3000 BC) was fully regulated. Whereas, determination of accurate weights and measures relating to food items is found in Assyrian writings. While in Athens, the inspection of beer and wines to ensure their purity was a common practice and labeling of food items was required by Egyptians. Romans established state food control system under the supervision of state for the protection of consumers. During Middle Ages many European states enacted laws regarding quality and safety of sausages<sup>15</sup>, eggs, beer, wine, bread and cheeses, even some of them are still in force. In England, in 1340, the post of Clerk of the Market was introduced to ensure that false weights and measures were destroyed properly. Further,

<sup>10</sup> Wood, J. T. (2017). Consumer protection: A case of successful regulation. In P. DRAHOS (Ed.), *Regulatory Theory: Foundations and applications* (pp. 633–652). ANU Press. <http://www.jstor.org/stable/j.ctt1q1crtm.49> last visited on 03-09-2022 at 14:10 PST.

<sup>11</sup> In economics, it means allowing industry to be free from state intervention, esp. restrictions in the form of tariffs and governmental monopolies. The phrase is French and literally means 'let do', though it broadly implies 'let it be' or 'leave it alone'. The origin of the term is uncertain, but folklore suggests that it is derived from the answer Jean-Baptiste Colbert, Controller General of Finance under King Louis XIV of France, received when he asked industrialists, what the government could do to help business: "Leave us alone". The doctrine of laissez-faire is usually associated with the economists known as, Physiocrats, who flourished in France from about 1756 to 1778 [See <http://www.britannica.com/EBchecked/topic/328028/Laissez-faire> visited on April 9, 2010 at 18.19 pm]

<sup>12</sup> Let the buyer beware.

<sup>13</sup> M.J. Horwitz, "The Historical Foundations of Modern Contract Laws", 87/5 Harvard Law Review, (1974) 917-956

<sup>14</sup> For details see J.R. Iturriagagoitia, "Introduction to EU Consumer Protection", available at [www.competition.am/uploads/resources/INTRODUCTION\\_TO\\_EU\\_CONSUMER\\_PROTECTION.pdf](http://www.competition.am/uploads/resources/INTRODUCTION_TO_EU_CONSUMER_PROTECTION.pdf)

<sup>15</sup> In the recent past, historian Hubert Erzmman, 75, found the ancient recipe, inscribed with pen and ink in a heavy tome of parchment, while doing research in an archive in the Eastern town of Weimer, the oldest known recipe for German sausage, a list of ingredients for Thuringian Bratwurst nearly 600 years old, according to it, Thuringian sausage makers had to use only the purest, unspoiled meat and were threatened with a fine of 24 pfennings (a day's wages) if they did not comply with it. The discovery shows that there was already consumer protection in Middle Ages. See,

[http://www.democraticunderground.com/discuss/duboard.php?az=view\\_all&address=389-2188818](http://www.democraticunderground.com/discuss/duboard.php?az=view_all&address=389-2188818)

hallmarking system on gold, silver and platinum is as important now as it was in 1845 when the Scottish Parliament passed law to regulate this form of consumer protection. In 1790, the Metric System was introduced in France for proper and centralized weight and measures.

Traces of consumer protection in the Indo-Pak subcontinent can be found in the Manu Smriti (traditions laid out by Manu) around 800-200 BC, which is a semi-religious Hindu text recording the traditions narrated by Brahma to Manu, where it was a duty to disclose quality and quantity of items sold; sale of a commodity mixed with another commodity (such as gold) was prohibited and penalties were prescribed along-with guidelines on how often weights and measures have to be calibrated<sup>16</sup>. In Arthashastra (300 BC) by Kautilya (aka Chanakya) lot of material is found on prevention of wrong doings to consumers by sellers. In Medieval India (1000 AD to 1750 AD), Allaudin Khilji (1296-1316 AD) made unprecedented improvements in weights and measures and standards were made for violation of which, penalties were prescribed.

Sher Shah (1540-1545 AD) published guidelines for produce, grocery,

confectionaries and pharmaceuticals. During Akbar's reign (1556-1605 AD) the right of consumer to be informed was established even consumers' right to return substandard goods was recognized. Islam (632 AD-onwards) emphasizes on transparency in contracts, avoidance of frauds and importance of fair trade and measuring the exact quantity<sup>17</sup> and also fairness in service contracts<sup>18</sup>. The jurists are of the opinion that the tortuous liabilities under Islamic laws are founded on jinayah which are redress-able by an award of adequate damages to the aggrieved person<sup>19</sup>. Under Islam the suppliers and manufacturers are liable to contracting as well as other parties affected by their supplied and manufactured goods. The service providers are liable for their negligent acts as well as to all, intentional or unintentional, damages.

### **ISLAMIC PERSPECTIVE ON CONSUMER PROTECTION:**

Islam has elaborated different aspects of trade and consumer protections have been also discussed at length, as almost 1450 years ago Islam prohibited mal-practices, when it came to selling goods to customers. The unique feature of Islamic business transactions also includes ethical and moral

<sup>16</sup> For details see, [www.knol.google.com](http://www.knol.google.com)

<sup>17</sup> See Holy Quran 5:1, 83:1 to 3, 17:35

<sup>18</sup> Under Islam services can be categorized under several types. Each type is governed by specific rules. The first type is known as Iltisna, which means the giving of order to a workman to make a definite thing with the agreement to pay a definite wage or price of that thing when made. The second type of services is known as the contract of hire (Ijerah), which is a hire of a workman to do job. It is a sale of usufruct and also includes a contract for rendering services such as mechanics. There are two types of service providers under contract of hire. The first type is private hire (Ajer Khes) and other is common hire (Ajer Mushtarek). The third type is job wages

(Janalah). [See for details, Elistina Abu Bakar & Prof. Dr. Naemah Amin, "Consumer Protection Under Islamic Law In The Service Industry" available at [www.agc.gov.my](http://www.agc.gov.my)] The responsibility of ajer Khes is like a custodian. When the property is destroyed in his hands without his working on it or without wrongdoing, there is no compensation. On the other hand, the jurists unanimously agree that Ajer Mushtarek will be responsible to any damages caused due to his fault either on purpose or negligence. (ibid)

<sup>19</sup> Saqlain Masoodi, "Civil Liability in English and Islamic Laws: A Comparative View". Islamic & Comparative Law Review, Vol XII no 1 (1992) 37

principles, alongside legal ones, which not only include rights and duties of consumers but also traders. Islamic rules, as enshrined in holy Quran and Sunnah, emphasize on duties while dealing with the other party, the duty to be fair, to be vigilant and to be careful about ethical and religious obligations, in this regard. Maqasid-e-Sharia (essential values of Sharia) talk of welfare of not only one man, but also the whole society and this is where protection to property comes, which further prohibits mal-practices when it comes to selling property to someone<sup>20</sup> (Ahmed, 2014). Islam further makes it incumbent upon all to care for rights of others (Al-Nisa: 29); whereas, Islam also prohibits mal-practices, misrepresentation and fraudulent products (Al-Mutaffifin:1-3); also in Hadith narrated in Abu Daud, Islamic return policy has been narrated i.e. “Whosoever accepts back what he had sold to a Muslim, Allah will forgive his faults”. Ayob, H. (n.d.) is of the view that Maslaha-e-Mursala can be used to resolve the issues pertaining to consumer protections in an Islamic state, as this principle is there to promote public good and usually it is used in case of conflict between private and public interests, and here vendor’s private interests and in conflict with consumers’ public interests. It is further stated that legal maxims (Qawaid-e-Fiqhiyah) have also elaborated few consumer rights like matters are determined as per intention and certainty is not dispelled by doubt in case of consumers<sup>21</sup>. Hence, Islam takes of fairness, equity, truth and accuracy of measurement when selling and further prohibits fraud, misrepresentation and wrong practices too. These all directly or

indirectly relate to consumer rights and protections. The Islamic state is fully empowered to formulate any law or regulation in this regard for the welfare of general public.

Caliph Umer RA started universal social insurance scheme under government department. Since inception of Muslim state emphasis had been upon proper weight and measures even Hazrat Ali AS used to visit markets of Kufa to ensure that merchants did not cheat anyone. Ummayyads deputed police officers to check proper implementation of weights and measures<sup>22</sup>. Islamic scholars emphasize on protection of few fundamental rights which include wealth too and Islamic state is duty bound to protect these rights and make policies and laws in this regard to ensure economic well being of whole community and protection of wealth and acquisition of proprietary rights. This also includes a duty of Islamic state to break monopolies, hoarding as well as, mal practices during buying and selling to ensure equilibrium in the market (M. Akbar Khan, 2011).

Islamic state is also duty bound to make available consumer goods on low cost and without fraud and ensure essential supplies like Hazrat Umer RA did in the times of famine that hit Madina. M. Akbar Khan (2011) is of the view that in order to ensure economic justice and protect consumer rights, Islamic state is authorized to interfere into trade matters like Ibne-Taymiyyah holds that if public is in need of goods and some

<sup>20</sup> Ahmad, T. (2014). Consumer Protection in Islam. Arab News-Saudi Arabia News, Middle East News, Opinion, Economy and more. See, <http://www.arabnews.com/node/582506>

<sup>21</sup> Ayob, H (n.d). *Consumer Protection in Islam: An Overview. Malaysian Journal of Consumer and Family Economics.*

<sup>22</sup> M Akbar Khan (n.d.). The Role of Islamic State in Consumer Protection. Available at <https://www.bzu.edu.pk/PJIR/eng3AkbarKhan.pdf>. Last visited on 8-01-2023 at 11:35 PST.

members have hoarded that commodity, state has all the rights to interfere and force them to sell surplus stock at stipulated price. Hence, the maxim, “A private injury is tolerated in order to ward off a public injury”. Even state can control pricing in the interest of general public and punish the wrongdoers. However, state’s role and interference must be limited in the matters of trade and commerce. It should not use its power to make monopolistic gains, indirect taxes, custom barriers, restrictive tariffs, exchange control and to give protection to specific class of producers in the name of industrialization.

It is further to be noted that in an Islamic state there is an institution/ system to ensure righteousness of people in their daily conducts i.e. to provide check and balance. As per Abu Yusuf, this Hisbah with respect to commerce and industry pertains to on the spot checking of weights, measures, quality and other aspects of goods sold and behavior of dealers while selling the commodities<sup>23</sup>. In this regard, office of Mohtasib is present to investigate matters pertaining to morality of general public. The Mohtasib has been assigned many duties by Islamic scholars including protection of customers and checking business mal-practices. Hence, it can be safely vouched that Islamic state is authorized to establish consumer friendly market environment and policies to ensure proper regulation of trade and protection of consumer rights. As per Sh. Muhammad Towhidul Karim (2014) following are the basic principles of consumer protection in Islam<sup>24</sup>:-

(a) There are standard weight and measures in business transactions within markets; (b) Islam commands good and forbids evil in commercial activities, as there are ethical norms in this regard within an Islamic state; (c) there are values of trustworthiness and trustfulness in business transactions; (d) profit without labor is forbidden by Islamic principles; (e) there is complete prohibition of interest (riba) within Islamic economic system; (f) sales involving gambling and uncertainty are also prohibited; (g) in order to protect consumers from unjustified prices and to avoid price hike, there is no room for hoarding within Islamic business rules; (h) to protect consumers from later problems, there is no scope of sale and purchase of stolen property; (i) there is no scope of domination of certain sellers, manufacturers and buyers to manipulate pricing; (j) Islamic scholars have explained the doctrine of Khiyar-al-Aib to protect customers and consumers from defected goods and services, where an option is given to consumer either to continue with the contract or rescind it; (k) Islamic law does not fully accept the doctrine of caveat emptor, as it places responsibility upon the buyer, whereas, Islamic rules impose responsibility of fairness and honest declaration of information pertaining to transaction in hand upon both the parties. Holy Prophet (PBUH) said,

“A Muslim is the brother of a Muslim. It is not permissible for a Muslim to sell a commodity that contains some defect in it except that he describes that (defect) to him (the buyer)<sup>25</sup>.”

<sup>23</sup> Mushtaq Ahmad (1995). Business Ethics in Islam. IIIT

<sup>24</sup> Sh. Muhammad Towhidul Karim (2014). Protection of Rights of Consumers in Business Transaction: A Comparative Approach with

Special Reference to Islamic Law. IIUC Studies. ISSN 1813-7733. Vol. 10-11 December 2014, pp-183-200.

<sup>25</sup> Bukhari, Book 3, Volume 43, Hadith No. 622

### FROM CAVEAT EMPTOR TO CAVEAT VENDITOR:

Common Law adopted the rule of caveat emptor as a result of judicial reluctance to intervene in disputes involving contractual obligations. In US this rule was firstly recognized by CJ John Marshall<sup>26</sup>. In the West, particularly in US, the mind set in favour of sellers started changing, which is evident from the judicial dicta of 19<sup>th</sup> century. *MacPherson Versus Buick Motor Co*<sup>27</sup> is widely regarded as the origin of caveat venditor<sup>28</sup> as it pertains to modern tort law, where Judge Benjamin N Cardozo of NY Court of Appeal, extended an automobile manufacturer's liability for a defective product beyond the immediate purchaser<sup>29</sup>.

Recently in *Facebook, Inc v. Duguid* (2021) the SC of United States narrow downed the definition and scope of automatic dialing system<sup>30</sup>. In English Sale of Goods Act 1893, the seller's duties to disclose were at the minimum and in sale of specific goods; there was no right of buyer to reject them on any ground<sup>31</sup>. Rule of caveat emptor was first time hit by scalding hot water case<sup>32</sup>, which placed responsibility upon seller for his skill and judgment. However, it must be remembered that in 1892, the Court of Appeal had held in a case that where people

had given good consideration for buying a faulty product, the manufacturer is liable<sup>33</sup>. In the famous snail in the bottle case<sup>34</sup>, the House of Lords decided that manufacturer was liable for consumer's illness. Even history shows, the principle "caveat emptor" was softened during the Roman republic with the introduction of seller's liability in cases of hidden defaults. As awareness increased, courts started taking bold decisions in favour of consumers and purchasers, which was a reflection of public opinion. This ultimately shifted the approach from seller [rights] specific laws to laws in favour of consumers.

### V CONSUMER PROTECTION- AT INTERNATIONAL LEVEL

At international level, there have been many treaties, conventions and guidelines regarding consumer protection. The European states and American continent already have very strict consumer protection policies, whereas, in third world countries the consumer abuse is a common and daily phenomenon. Keeping in view the importance of 'consumer rights' and need for their protection at all levels, the United Nations issued guidelines for consumer protection in 1985<sup>35</sup>, which were expanded in 1999, with the chief objective to achieve adequate consumer protection; curb wrong business practices; promote sustainable

<sup>26</sup> See *Laidlaw versus Organ* 15 US 178 (1817)

<sup>27</sup> 217 NY 382, 111 N.E 1050 (1916)

<sup>28</sup> Let the seller beware

<sup>29</sup> For details see, <http://www.answers.com/topic/macpherson-v-buick-motor-co-1>.

<sup>30</sup> *Facebook, Inc. versus Duguid*, 592 US 2021. Where unsolicited text messages from Facebook were challenged by Mr. Noah Duguid, who never consented to the texts.

<sup>31</sup> See Section 11 (1) (c) which stated, "Where a contract of sale is not severable, and the buyer has accepted the goods, or part thereof, or where the

contract is for specific goods, the property in which has passed to the buyer, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty, and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

<sup>32</sup> See *Priest versus Last* 2KB 148 (1903)

<sup>33</sup> See *Carlill versus Carbolic Smoke Ball Co.* [1892] EWCA Civ.1

<sup>34</sup> See *Donoghue versus Stevenson* [1932] AC 562

<sup>35</sup> Via Resolution A/RES/39/248 of April 1985, General Assembly

consumption and provide an opportunity for the consumers to have broader price and quality choices in a competitive market place and have fair deal while purchasing the goods they are interested in.

There have been measures which are being proposed by these guidelines for the protection of consumers from hazards to their health and safety, to protect consumers' economic interests, consumer access to adequate information, consumer education and development of adequate infrastructure to implement and monitor policies pertaining to consumer protection. It also recognized the potential positive role of higher education institutions and public and private enterprises while doing research for the development of consumer protection policies. The guidelines apply both to home-produced/domestic goods and services, and imports and generally deal with following aspects:-

- (a) Development of consumer education and information programs.
- (b) Formulation and elaboration of standards for quality and safety of products and services at priority basis.
- (c) Governments must ensure international cooperation at all times, through improvement of conditions, laws and strengthening information links etc.
- (d) Governments must give priority to some specific areas, while drafting policies, these areas include; food, water, health and pharmaceuticals.
- (e) Governments must promote sustainable consumption, meaning thereby, they must ensure to meet needs of current

as well as, future generations through socially, economically and environmentally sustainable ways, as far as goods and services are concerned.

- (f) Governments should consider and ensure the efficient distribution of goods and services to consumers.
- (g) Governments should establish legal or administrative measures to enable consumers to obtain redress through formal or informal, expeditious, fair, inexpensive and accessible procedures.
- (h) To ensure physical safety, promotion and protection of consumers' economic interests by the governments through implementation of effective policies.

As a signatory to these guidelines Pakistan is under an obligation to formulate laws and policies accordingly.

### **CONSUMER PROTECTION- PAKISTAN**

In Pakistan, the needs of consumers have been neglected since long and history of consumer protection legislation is marked by slowness and patchy and half hearted implementation. However, last two decades witnessed some legal steps towards consumer protection, firstly in 1995 Islamabad Consumer Protection Act came, and then in 1997 same sort of law was enacted by NWFP (now KPK), yet no practical effort was made for their implementation. Then a campaign was launched by Consumer Rights Commission of Pakistan [CRCP] through drafting a Model Act in 2001 comprising of the best practices from different states. It had a positive impact and new millennium

witnessed consumer protection laws by Baluchistan (2003) and Punjab (2005) and further amendments by NWFP/KPK were made in its existing law, along-with new ordinance by government of the Sindh (2004) which lapsed and in 2007 again re-promulgated and resulted into an Act in 2014. Following are major regulations regarding consumer protection in Pakistan:-

- (1) Islamabad Consumer Protection Act 1995
- (2) Islamabad Capital Territory (Consumer Protection) Rules 2011
- (3) The Khyber Pakhtunkhwa Consumer Protection Act 1997
- (4) The Balochistan Consumers Protection Act 2003
- (5) Balochistan Consumer Protection Rules 2007
- (6) Punjab Consumer Protection Act 2005
- (7) Punjab Consumer Protection Rules 2009
- (8) Sindh Consumer Protection Act 2014

### **ISLAMABAD CONSUMER PROTECTION ACT 1995 & RULES 2011**

This Act extends to whole of Islamabad. It is comprised of 12 sections and has provided definitions of consumer, council and authority, services and unfair trade practices as well as, who can be a complainant. The Federal government has to establish a consumers protection council for Islamabad, having at least 12 members ranging from prominent social workers, member of parliament, chief commissioner, chairman CDA and representatives from finance division, health department etc. to name a few. The Council has to promote and protect rights of consumers and objects and functions

of Council are elaborated under section 5 of the Act. The Act also deals with the establishment of Authority and prohibits false advertisements too. There is a complete procedure for the disposal of complaints, which can be disposed of summarily. The appeal against order of the Authority lies to High Court. There are also 12 rules which have been framed under the Act which have elaborated the procedure of the Council, established the Islamabad Consumer Association and have also discussed the powers, functions and procedure to be followed by the Association. The rules further prohibit bait advertisement. The Association is also empowered to dismiss or return complaints if found frivolous and/or vexatious.

### **THE KHYBER PAKHTUNKHWA CONSUMER PROTECTION ACT 1997**

The Act comprises 23 sections, divided into four parts. It is applicable throughout the province of KPK. The Act has also defined complainant, consumer, council, court, defect in goods, deficiency in services, directorate, goods, laboratory, manufacturer, services, unfair trade practices etc. There are details of obligations of manufacturers. The Act makes it mandatory to exhibit prices at business places, issue receipts and disclose the components etc of goods. The false advertisement is also prohibited along with prohibition of unfair trade practices. The Consumer Protection Council has been empowered and consumer courts have been established in each district, which have to be presided over by a district and session judge. There is a detailed procedure for initiation of complaints, inquiry and inspection, and manner as well as disposal of complaints. A person aggrieved from the order of director can prefer appeal to the court and in case of

order of the court; appeal will lie to High Court within 30 days.

### **THE BALOCHISTAN CONSUMERS PROTECTION ACT 2003 & RULES 2007**

There are 25 sections of the Act and 11 rules of 2007. The Act cannot supersede other laws. The manufacturers are obliged to exhibit prices at some conspicuous place, issue receipts and they are prohibited from false advertisement. The Consumer Protection Council is also established with clear cut mandate to protect and promote the consumer rights. The consumer courts are also established having jurisdiction to adjudicate and give penalties including imprisonments and /or fines. Appeal against order of the court lies to High Court within 30 days of the order. All agencies are bound to aid the court in this regard. The Act bars the search of premises of manufacturers, retailers or distributors without court order. The Rules provide few definitions and details about constitution, power and functions of provincial consumer protection council. There are details regarding forms of complaints, methods of taking samples, fee for the tests and certificate of analysis. The Rules also treat all the complaints, orders, reports etc to be public documents unless court orders otherwise.

### **PUNJAB CONSUMER PROTECTION ACT 2005 & RULES 2009**

The Act comprises 39 sections which are distributed in nine parts, dealing with

definitions, liabilities arising from defective products, types of defects, duty to disclosure, liability for faulty services, obligations of manufacturers, unfair practices, establishment of authority, consumer protection council, process to file claim and its settlement, working of consumer courts and its orders and penalties. The Act is quite comprehensive when it comes to the above mentioned aspects and provides for protection and promotion of rights and interests of consumers<sup>36</sup>. Thirteen definitions of different terms like consumer, authority, manufacturer, product, service etc are provided in section 2 of the Act. It is important to note that the Act specifically declares that its provisions should be read in addition to other laws enforced in Pakistan, and not in derogation of those laws<sup>37</sup>. The manufacturer is held liable for damages due to defects in product, which may be due to its composition, construction, design, non-mentioning of adequate warning and non-adherence to express warranty<sup>38</sup>. However, if consumer has not suffered any damage, the manufacturer is liable to pay back consideration taken<sup>39</sup> as also held in Coca Cola case (2014) that where due to non-usage of product, no damage was caused, no damages can be granted<sup>40</sup>. There have also been liabilities for faulty services<sup>41</sup>. The trader is bound to display price at his business place<sup>42</sup> and issue receipt with date, description, quantity, name and address of seller to be shown<sup>43</sup>. The Act also makes it incumbent upon seller to disclose return and

<sup>36</sup> Preamble of the Act.

<sup>37</sup> Section 3 of PCPA 2005

<sup>38</sup> Section 4 of PCPA 2005

<sup>39</sup> Section 5 of PCPA 2005

<sup>40</sup> *Coca Cola Beverages Pakistan Limited versus Ashiq Ali*, PLD 2014 Lah 196

<sup>41</sup> Section 13 of PCPA 2005

<sup>42</sup> Section 18 of PCPA 2005

<sup>43</sup> Section 19 of PCPA 2005

refund policy before sale is completed<sup>44</sup>. There is specific prohibition regarding false, deceptive and/or misleading representation<sup>45</sup> alongwith prohibition of bait advertisement<sup>46</sup>.

A complaint can be filed for violation of different provisions before DCO concerned, who may file a claim before consumer court<sup>47</sup> and any person aggrieved by the order of DCO may file appeal within 30 days before the Punjab Government which can modify or set aside DCO's order, with or without any condition attached<sup>48</sup>. A consumer protection council under section 24 is also set up by the Government with powers and functions as assigned to it. Damages can be claimed by filing a claim in the consumer court<sup>49</sup>, which are separately established, presided over by a District or Additional District Judge appointed by the Government after consulting the Lahore High Court<sup>50</sup>. It is to be noted that consumer court is not a court of general jurisdiction and duty of care is needed to examine the allegations raised in the complaint/s to determine its jurisdiction<sup>51</sup>. A written notice is must to be given to the manufacturer/ seller/ service provider before going to the consumer court and action can be filed within 30 days of cause of action<sup>52</sup>.

Where notice of claim has not been duly served by the consumer, claim cannot be

gotten<sup>53</sup>. It is pertinent to mention here that in order to determine the place of cause of action, the place of transaction and allied matters play a vital role<sup>54</sup>. The Act also talks of pre-trial settlement<sup>55</sup>. Sections 30 and 31 of PCPA 2005, deal with process to be adopted in consumer court and orders of consumer courts. Where consumer satisfies the court as to the non-filing of complaint within specified period, due to sufficient cause, the court can relax the limitation period<sup>56</sup>. The penalties range from punishment upto 2 years and fine upto RS. 100,000/- or both in addition to any damages and /or compensation determined by the court<sup>57</sup>. Further, failure to comply with court's order may lead to one month to three years imprisonment or fine from Rs 5000 till 20000 or both<sup>58</sup>. Appeal lies to High Court within 30 days<sup>59</sup>. The claimant can relinquish his claim to any extent as per his wishes and such act will not affect his remaining claim<sup>60</sup>.

The court also has power to impose fine upto Rs. 10,000/- on false and frivolous complaint alongwith appropriate compensation to the defendant<sup>61</sup>. The Act further declares that all agencies (governmental) need to act in aid of consumer courts<sup>62</sup>. The orders given in good faith by the consumer court or government

<sup>44</sup> Section 20 of PCPA 2005

<sup>45</sup> Section 21 of PCPA 2005

<sup>46</sup> Section 22 of PCPA 2005

<sup>47</sup> Section 23 of PCPA 2005

<sup>48</sup> Section 23-A of PCPA 2005

<sup>49</sup> Section 25 of PCPA 2005

<sup>50</sup> Section 26 of PCPA 2005

<sup>51</sup> *SE MEPCO & others versus Judge District Consumer Court & another*, PLD 2019 Lah 165

<sup>52</sup> Section 28 of PCPA 2005

<sup>53</sup> *GM, Gulberg Office, TCS & another versus Syed Nadeem ud Din*, PLD 2020 Lah 757

<sup>54</sup> *Shifa College of Medicine versus Malik Tahir Mahmood*, PLD 2014 Lah 561

<sup>55</sup> Section 29 of PCPA 2005

<sup>56</sup> *M. Adnan versus District & Session Judge & others*, 2015 CLC 1021

<sup>57</sup> Section 32 of PCPA 2005

<sup>58</sup> Section 32 (1) of PCPA 2005

<sup>59</sup> Section 33 of PCPA 2005

<sup>60</sup> *M/S BH Distributor versus M/S Leopard Courier Services*, January 2013.

<sup>61</sup> Section 35 of PCPA 2005

<sup>62</sup> Section 36 of PCPA 2005

have been protected by the Act<sup>63</sup>. The Act is supplemented by the Punjab Consumer Protection Rules 2009, which comprises 26 rules.

### **SINDH CONSUMER PROTECTION ACT 2014**

The Act is divided into 9 parts comprising 40 sections. The Act does not derogate any other law already in operation. There are detailed provisions on the liabilities arising from the defective products and faulty services. The Act discusses at length the obligations of the manufacturer to exhibit prices, issue receipts and return and refund policy. The unfair practices including false and deceptive representation as well as, prohibition on bait advertisement has been imposed. The powers and functions of Authority as well as, Consumer Protection Council have also been explained at length. The Act also establishes consumer courts and provides a complete mechanism for the disposal of complaints alongwith penalties and appeals to High Court.

### **ROLE OF INSTITUTIONS AND DIFFERENT FORUMS**

In Pakistan there are many executive forums alongwith judicial ones including magistrates to implement and enforce the consumer protection policies and laws. These executive authorities are responsible for checking hoarding of goods, price hikes and ensure quality checks and stop unfair trade practices. These include food inspectors<sup>64</sup>, drug inspectors<sup>65</sup> and quality inspectors<sup>66</sup> empowered under different laws and regulations. As far as judicial forums are

concerned, these are either pure judicial or quasi judicial ones. The courts are pure judicial forums and there are specialized consumer courts and then Apex courts to provide relief in case of faulty goods and services. One must remember that consumer protection acts cannot be invoked where a consumer makes a wrong choice of purchasing a product or service, which he may not like later and which is otherwise not defective, having no inherent mechanical defect and is properly designed<sup>67</sup>.

Whereas, there are quasi judicial forums like ombudsman offices at both federal and provincial levels and different regulatory authorities and councils established as independent statutory bodies. The Competition Commission of Pakistan and other regulatory authorities are also there to regulate different aspects of businesses and trade. These need to play their role in order to formulate, implement and apply the consumer protections in true letter and spirit. Their role has not been upto the mark in the past and due to which the burden on courts has been increased. There is dire need to have stringent competition laws which tend to protect the consumer rights and promote healthy competition among the goods and service providers. These competition laws provide legal framework for healthy business environment, healthy competition, improvement of market economy, development of healthy competition and curb the anti-consumer and pro monopoly policies from the manufacturers, retailers and sellers especially as we have seen in the recent past regarding car prices, such artificial price hike must be curbed.

<sup>63</sup> Section 37 of PCPA 2005

<sup>64</sup> Empowered under Pure Food Ordinance 1960

<sup>65</sup> Empowered under Drug Act 1976

<sup>66</sup> Empowered under Pakistan Standards and Quality Control Authority Act 1996

<sup>67</sup> *M. Azam versus NBP*, (PLD 2013 Lah 73)

The Competition Commission of Pakistan has to make policies to protect the consumers from anti-competitive behavior like cartels, deceptive marketing strategies, abuse of dominant position and keep an eye on mergers and acquisitions<sup>68</sup>. It is important to note that if Competition Commission is working properly then there are lower prices for consumers, improvement in quality of goods and services, better and accurate information for consumers, more choices for consumers and improvement in technology for consumers. On the other hand the judiciary has to play a vital role for the protection of consumer rights and keep the manufacturers and retailers in their limits. The complaint mechanism, disposal and redressal of grievances mechanism must be easy, affordable, accessible and timely for general public, as it is the only way to provide justice and implement the consumer protection laws in letter and spirit. It is the need of the time to have 'Consumer Benches' in High Courts like there are 'Green Benches' for environmental issues. When it comes to appropriate forum for redressal for maladministration and mal-practices by the health service provider, the Health Care Commission is the only competent forum and not the consumer court<sup>69</sup>.

## **ISSUES AND RECOMMENDATIONS:**

With the modern era of awareness and information, the states have been obliged to take consumer rights seriously, both individually as well as, collectively. Still

there is a lot to do, the right of consumer to be treated with respect and courtesy, right to timely service, right to complete, accurate and reliable information and feedback, right to receive services from knowledgeable, competent and co-operative staff, right to communicate dissatisfaction about service, staff, procedures and requirements, right to safety, right to information, right to choose, seeking damages for emotional distress<sup>70</sup>, hearing right, seeking redressal and right to consumer education are some of the obligations which are among the first and foremost duties of states as well as, manufacturers, vendors and service providers. We still observe majority of these are not available to all. Following are some recommendations in this regard:-

A rigorous capacity building program must be started without further delay. Although consumer protection laws are available, yet no elaborative rules and procedures are enacted. This should be mended as early as possible. As world is becoming borderless, so the Government must take effective steps to develop close links with other states in order to get information about banned, substandard and restricted goods especially medicines and food items. At national level, there is no Consumer Protection Policy, which must be adopted at priority basis, as it is needed to provide guidelines and coordination among different governmental departments. Availability of reliable after sales services must be made compulsory for all the manufacturers before granting them license to operate in the market. Consumer

<sup>68</sup> Farooqi, NA (2013). *Consumer Protection in Pakistan from Anti-Competitive Practices- A Way Forward*. Kings College London <https://ssrn.com/abstract=2714206>

<sup>69</sup> *Dr. Riaz Qadeer Khan versus Presiding Officer, District Consumer Court, Sargodha & others*, PLD 2019 Lah 429

<sup>70</sup> See *Whitaker versus M.T. Automotive*, 855 NE 2d 825 (Sup. Ct. Ohio 2006), where Ohio High Court held that under the State's Consumer Sales Practices Act, a jury could award damages for emotional distress to a consumer.

education, where appropriate, should be included in basic curriculum and for this purpose government must train educators, media personals and NGOs to enable them to participate effectively. Like a course on consumer laws has been added as an optional course in different universities /colleges imparting legal education. Consumers must be so educated and vigilant that they must be ready to resist to undue price escalation.

Government must keep information on general and seasonal supply and demand of goods. Government must promote research on consumer behaviour. Government must regularly review legislations regarding weights and measures<sup>71</sup> and assess the adequacy of machinery for its enforcement. In banking sector the issues regarding interest rate variation, unsolicited financing, poor information disclosure practices, weakness in regulatory framework and increasing inflationary impact must be resolved as soon as possible. Independent consumer groups must be established as soon as possible. Information on available remedies and other dispute resolving procedures must be made available to consumers. It is important for the regulators to have requisite expertise, technical expertise, clear goals and plan of action as well as, human resource to formulate and implement the consumer friendly policies and strategies. It is necessary to ensure independence, transparency and accountability at every stage of consumer protection and administration.

It is the responsibility of the Government, in order to protect consumers' economic interests to put a check on such practices. It

should be made compulsory for the manufacturers to print a note titled, "Attention Consumer" at every product, briefly stating liability of the manufacturer and rights of consumer in case of defected and substandard product. Majority of people are ignorant about these laws, so an awareness program must be started in schools and colleges, also at markets, hospitals, plazas, hotels etc, it must be made compulsory to display warning or informative hoardings about what to do and where to contact in case of faulty, substandard services or products. Misleading and misguiding ads especially by the telecommunication companies must be banned with heavy fines and accurate information must be disseminated through ads. TV channels must be required not to air such ads. Pakistani state must take effective and immediate steps to end the monopoly of manufacturers [esp. car manufacturers], so that consumers can have choice and get better quality and services at competitive rates. Policies regarding licensing, production, registration, procurement, distribution and availability of pharmaceuticals, pesticides and chemicals must be formulated under the light of recommendations by World Health Organization (WHO). Strict national policy must be made regarding food stuffs especially drinking water to improve its supply, distribution and quality.

The complaint handling mechanism must be easily accessible, affordable, fair and efficient through stringent checks and balances from the higher judiciary upon the administrative authorities and councils and quasi-judicial forums. The disposal of grievance must be time bound at every forum

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<sup>71</sup> See Chapter XIII, Pakistan Penal Code, 1860, offences relating to weights and measures (Ss 264-267)

to avoid unnecessary delays and provide speedy remedies to the consumers. The exact parameters of word ‘consumer’ must be defined, as the Acts seek to cover both products and services<sup>72</sup>. The guidelines and standards must be clearly laid down and there should be speedy redressal of grievances of consumers via special legislation and/ or rules. The number of consumer courts must be increased for easy justice to the injured parties. The one-sided standard contracts must be declared null and void and such manufacturers or service providers must be punished without any discrimination. There is also a need to break the monopoly of few manufacturers esp. when it comes to cars and telecommunication, so that the consumers can have more options and better standards as far as safety and comfort is concerned. There is also a need to train the stakeholder esp. inspectors, council members, authority personnel and judges, to handle digitalized technology and issue creeping out of such goods and services. There is lack of technical facilities and skilled staff, which is required in cases to gather evidence about manufacturing defects, so, this aspect must be addressed immediately.

There must be exchange of information, recommendations, views and dialogue between government, manufacturers, consumers and suppliers on regular basis. These laws are not fully operational throughout Pakistan as institutional reforms [Consumer Protection Councils and Courts] are not established elsewhere except to some districts in major cities. It is recommended that same be established throughout the country. With the increase in digital goods and services especially in post-COVID era, there is need to reform the laws and bring

them at par with the international standards to cope the requirements of digital age. There has been a good step by Government of the Punjab regarding online complaint mechanism in Consumer Courts. For this purpose one can download consumer court services app from Google play store and register his account after verification through name, address, CNIC and mobile number are to be added alongwith name, address and mobile number of shop from where faulty goods or services have been purchased or experienced. Complete details of one’s case alongwith copy of legal notice sent, receipt of purchase and copy of CNIC are to be attached. The person can select district and such complaint is to be forwarded to the concerned court and after scrutiny by the concerned personnel, it will be fixed for hearing or returned back with observation of deficiency etc. The same digital services can be extended in whole of Pakistan to provide speedy remedy as well as, saving the time and energies of consumers.

#### **CONCLUSION:**

For the past few decades there has been a rise in global awareness with respect to consumer protection and consumer rights and Pakistan is not alien to the concept. In early days, the whole business of sale-purchase was in the hands of the rich and principles like, ‘buyer beware’ and ‘laissez-faire’ favoured the manufacturers. At-last the legislation surfaced to strike a balance between the producers and the consumers. Section 16 of Sale of Goods Act, 1930, is the living example to this development of balance of obligations. This section provides, except in cases where defect is so obvious that it is not difficult for the buyer to know about it, there is an obligation upon seller to tell the buyer

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<sup>72</sup> See Prof. Zill-i-Atif, “*Consumer Protection Law in Pakistan*”, PLJ 2008, Mag 380-385

of all the defects in goods before contract of sale. Conversely, where goods are sold through sample or description or sample as well as description or under patent/trade name or where buyer tells the seller the specific purpose for which he needs them, law imposes no liability on the buyer and seller comes under an obligation to provide such goods which correspond with the sample/description/purpose, otherwise buyer can reject the goods or sue for damages as well as price.

The law also imposes an implied condition as to merchantable quality of goods sold upon the seller (See Section 16 (2) of Sale of Goods Act 1930). Need of the time is to effectively implement and enforce the laws relating to consumer protection, as a dormant law in the books which is never applied is like a bulletless gun. So, the Governmental authorities and concerned departments must take immediate measures to ensure that in future no consumer is deceived through bait advertisements, defective and faulty services and products, one sided standard contracts and the like mal practices by the sellers, manufacturers, distributors, importers and service providers. In short, buyers must be free to buy what they can and from where they like, they must know what they are eating, they must have option to change their mind at any stage, if the thing does not work, it must be sent back and effective redressal of cross border disputes must be ensured in the larger interest of all consumers. The chains of stores have been indulged into malpractice of issuing duplicate receipts to customers in Pakistan especially the bakeries, in order to evade taxes and show lesser sales; there has been an online complaint mechanism in this regard, yet to no avail. This type of fraudulent practice must be curbed with iron hands and high penalties as well as, in some cases outlets must be closed. There is dire need to

create awareness among masses in this regard because, “The first step towards change is awareness...”.