



Understanding and Analysis of Consumer Protection Laws in Pakistan

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ABSTRACT

All over the world Consumers, being unaware and uneducated to their rights, are considered the vulnerable part of business transactions. In Pakistan some efforts are made to protect them by enacting direct and some otherwise relevant legislation. "Islamabad Consumer Protection Act, 1995", "Khyber Pakhtunkhwa Consumers Protection Act, 1997", "Khyber Pakhtunkhwa Consumers Protection (Amendment) Act, 2005" and "Punjab Consumer Protection Act 2005" are laws specifically focusing consumer interests. This article attempts to analyze and compare the three legislations for better understanding and explaining the concept of consumer protection to educate the ordinary consumer.

KEY WORDS: Consumer, law, contract, Pakistan, rights, legislation, remedy, protection, Supreme Court

INTRODUCTION:

Consumer protection laws, in general, are meant to endorse fair competition, passing of candid information, availability of quality goods and services, and endow rules for prompt and due justice. Consumers, in Pakistan, are the feeblest faction of people. Lack of awareness of consumer rights, gap between the available consumer laws and the lack of determination to implement those laws play important role in their vulnerability. The aim of this article is to educate the basic consumer about his rights and available courses of redress with the help of consumer protection laws in Pakistan and decided cases.

1. Definition of Consumer:

An important question that arises here is that who is a consumer? Simply it can be defined as "every human being who consumes anything for survival is a consumer" [1]. However, in a specific sense it has been defined by different sources. [2], defines a consumer in "Black's law Dictionary" as "A person who buys goods or services for personal, family, or household use, without intention of resale; a natural person who uses products for personal rather than business purposes."

Khyber Pakhtunkhwa adopted almost same definition as "Islamabad Consumer Protection Act, 1995".

According to section 2(c) of the "Khyber Pakhtunkhwa Consumers Protection Act, 1997":

"(c) Consumer means any person who:-

(i) buys goods for a consideration which has been paid or to promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any user of such goods but does not include a person who obtains such goods for re-sale or for any commercial purpose; or

(ii) Hires any goods or services for a consideration which has been paid or promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any beneficiary of such services."

Punjab defined it in section 2(c) of the "Punjab Consumer Protection Act 2005" as:

"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; or

(ii) hires any services for a consideration and includes any beneficiary of such services;"

"**Explanation:** For the purpose of sub-clause (i) 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."

The careful analysis of the definitions would deem a consumer as a person or an organization that hires or buy goods or services for their personal needs. This may be quite a wide-ranging definition. However, its sphere and amplitude depends upon how the expressions person, goods, services and personal needs is defined. For example, a vehicle purchased by a business firm for the travelling of its staff would be a purchase made by an organization for

personal needs. As in above definitions, consumer protection laws, in almost all jurisdictions of the world, gave a very narrower meaning to the term consumer.

Use of the services provided by private or public sector organization, according to David Oughton, also comes in the ambit of the term [3]. He has made the following three essentials for identifying consumer:

(1) The consumer must be an individual; (2) The supplier must act in a business capacity; and (3) The goods or services supplied must be intended for private, not business use [4]. Summing up it can be validly said that any person, natural or legal, who hire or acquire goods or services for his personal use is consumer.

The Consumer Protection Rationale:

Understanding consumer, the next question that needs attention is that why a consumer needs protection and from whom? Consumers are a key pillar of present economic structure. They have gained universal acknowledgment. Different laws are enacted for consumer protection. Consumer satisfaction is the main characteristic of urbanized markets. It restrains very kind of twisting information, vending of substandard goods and full disclosure regarding quality and extent of services [5]. Perhaps the most important reason for protecting consumers is that of lack of information [6]. Wide information gap between consumer and sellers hinder consumer's ability to make informed decision. The beginning of accumulative utilization has resulted in consumers facing an information gap when they enter transactions involving the purchase of products or the provision of services [7]. This necessitated introducing preventive measures where consumer rights were concerned.

Pursuing their own interests, the consumer's lack of knowledge, experience and bargaining power would make it more likely that they will be tricked by deceptive practices and will less likely be able to guard their benefits. In most cases, the trader has more understanding of the intricacy and characteristics of the product sold than the consumer. Sometimes, even a well-informed consumer can face difficulties in choosing goods or services. For example: purchased drug is effective or injurious or unhealthy radiation emitted from a microwave oven, x-ray machine or mobile phone. With regard to services, for example, appraisal of the provisions of different insurance policies or travel details in a holiday contract.

Responsibility for consumer protection descends upon the government of each country [7]. In countries like Pakistan traders and service providers, public or private, enjoy unrestrained powers and the consumer is always at their sheer clemency. In Pakistan a low literacy rate puts the inexperienced and uninformed consumers at the pity of service providers, retailers and producers. Those attending to complaints, most of the times, treats the consumer in a most unreasonable and spiteful manner e.g. WAPDA, Sui Gas or even a small transport company. Ignorant to their rights, they have to tolerate the disrespect because they are afraid that they may not be deprived of whatever little facility they are able to get [8].

Advertising is considered most influential source for inducing consumer. Advertisements, instead of informing the consumer, often tend to misinform. The advertisements do not provide information on an objective basis. The advertisers influence the consumer and tell what they intend the consumer to listen and different realities which may be important to a careful shopping choice are frequently overlooked [9]. Advertising are designed to encourage unnecessary purchases and affect the informed decision of the consumer and create artificial needs, for example, deceptive and misleading advertising about height increase or weight loss.

To conclude, it may be argued that the reason why the law seeks to protect consumers is that consumers may enter into transactions with a business without the necessary information required to make an informed, rational purchasing decision [10].

Consumer rights:

The consumer's rights are the essential element of human rights. Before the 1900, consumers had diminutive protection in world. Consumerism started in United States in the beginning of 1900. Two Acts "Food & Drug Act (1906)" and "Meat Inspection Act (1906)" were enacted, followed by establishment of "Federal Trade Commission for Protection of Consumer Interests" in 1914 [1]. The Consumer International was founded in 1960 [11]. President John F. Kennedy, On March 15, 1962 put forth the "Consumer Bill of Rights" to assist consumers be aware of their rights and obligations [10]. In 1985, the United Nation General Assembly adopted the following eight fundamental consumer rights for stronger consumer protection policies worldwide for protection of consumers against dishonesty, fraud and abuse [12];

1. The right to safety
2. The right to choose
3. The right to be informed
4. The right to be heard
5. The right to redress or remedy
6. The right to service
7. The right to environmental health
8. The right to consumer education

a) The Right to Safety:

It's a consumer's basic right to feel protected from harmful goods and services available in market. Especially if those goods or services are used appropriately for desired purpose [13]. Consumers should be protected from the flow and sale of hazardous products and services.

b) The Right to Choose:

Competition is the main factor to avoid monopolizes market. Consumers should have a choice of worth goods and services. They need to be sure that intended goods and services are available at competitive cost [14]. It indicates that consumers must have the option to go for the products or services that they want to get.

c) The Right to be Informed:

Consumers must have access to sufficient information about products to make an informed decision. Dependable sources should be available to aware them about different goods or services [15].

d) The Right to be Heard:

Governments have the obligation to protect consumer rights by giving it reasonable consideration in strategy making. State is also responsible to ensure justice without delay upon any claim. In simple words, it is a consumer right to protest when there are issues or apprehension (Wilson, 2008). It is a Consumer right that he be heard when he raise his voice and to anticipate positive remedy.

e) The Right to Redress or Remedy:

It's a settled legal maxim "*ubi jus ibi remedium*" mean there is no wrong without remedy. Simply mean that whenever a right is infringed there shall be a remedy for that. The UN guide lines for consumer protection recognized the right to redress by raising voice for his dissatisfaction.

f) The Right to Service:

By "right to service" it is meant that the consumer should have access to all the necessary goods and services which are essential for life[16]. Its consumer's basic right to expect convenience, respectful treatment, a proper response to his needs, and good quality in a product and also expect a humble behavior in market or other organization.

g) The Right to Environmental Health:

Living in a healthy environment is an essential consumer right and to subsist and work in an atmosphere where the comfort of present and future generations is not compromised. Consumers must be safeguarded from the impacts of unhealthy environment that may be the result of daily marketplace operations[5].

h) The Right to Consumer Education:

Consumer has the right to be educated about his rights available under national and international laws. Consumer awareness ensures the enjoyment and protection of rights. Consumer education is vital for making informed decision. It develops and enhances the knowledge and skills that are required to make an informed decision.

Review of Available Laws:

Being member of United Nation Organization, Pakistan also adopted its resolution on consumer protection. But, regrettably, all consumer rights endorsed by the UN are not effectively recognized by the consumer protection laws in Pakistan. Inability to realize the importance the consumer protection laws and lack of determination in its implementation has capitulated an ineffective structure [2]. These circumstances gave an unwarranted advantage to the goods and services providers and placed them in a very dominant position as against the consumers [3]. Consumers, on the other hand, are uninformed of their rights due to absence of resources and appropriate information. Relevant resources and appropriate information will help in resisting the onslaught of substandard products and services against the civil society(USAID, January 2013).

Consumer protection, in Pakistan, comes under the ambit of provincial legislation. In National Assembly and the Senate a debate focusing consumer rights legislation was initiated in 1994 [1]. As a result, The "Islamabad Consumer Protection Act" was enacted in 1995. Khyber Pakhtunkha, Balochistan and Punjab, subsequently, have enacted consumer protection laws for their respective jurisdictions. In subsequent paragraphs, an endeavor to review Islamabad Capital Territory, Khyber Pakhtunkha and Punjab laws on consumer protection has been made to investigate their compatibility with the ideology, formulated by the Consumer International for making legislation regarding consumer protection.

Analysis of the existing laws reveals that these consumer protection legislations are comparatively different. For example, the Islamabad Capital Territory and Khyber Pakhtunkha consumer protection law discourage "unfair trade practices "but the Punjab consumer protection law permit claims in respect of "deficiencies" and "defects" in services or goods(USAID, January 2013). The Punjab consumer protection law allows suits against legal and health services while Islamabad Capital Territory consumer protection law on other hand remains silent. However, Khyber Pakhtunkha consumer protection law and Punjab consumer protection law place clear and exact responsibility on manufacturers left unaddressed under Islamabad Capital Territory Consumer Protection Act [6].

Some of the key features of the three Consumer Protection Acts are as follow:

a) Energy Sector

Section 2(n) of the Khyber Pakhtoonkha Consumer Protection Act, included the supply of mechanical, electrical and other types of energy in the definition of servicesⁱ. While Punjab consumer protection law did not provided separate provisions for energy supplies and covered it under "product" as goods under the "Sale of Goods Act"(USAID, January 2013). Islamabad Capital Territory consumer law is silent on the energy issue. But energy related cases have been entertained by the consumer court.

b) Prohibited Activities

In Khyber Pakhtoonkha false advertisements, non-issuance of receipts, non-mentioning of prices, standards, sizes, weight, and contact details over their products are prohibited activities. In Punjab, according to section 12 and 17ⁱⁱ of "Punjab Consumer Protection Act 2005" no one is excluded from responsibility happening from faulty goods and from liability of flawed and defective services even it is waived in contract.

In Islamabad Capital Territory Unfair trade practices and false advertisements are prohibited

c) In Aid of Other Laws

Section 3 of both The Khyber Pakhtoonkha and Punjab Consumer Protection Acts establishes that, "*The provisions of this Act shall be in addition to and not in derogation or supersession of any other law for the time being in force.*" Mean all other laws, federal or provincial, that indirectly protect consumer rights shall also be applicable. These Acts does not derogate their authority. Islamabad Capital Territory consumer law is silent on the issue.

d) Administration

"Punjab Consumer Protection Act 2005" established various District Consumer Protection Councils under the supervision of Directorate of Provincial Consumer Protection Council (Ansari, 2013). Khyber Pakhtoonkha established Consumer Protection Council at district level to perform functions with the support of Municipal Committee and police for the endorsing, protecting and promoting consumer rightsⁱⁱⁱ. In Islamabad Capital Territory a twelve member body^{iv} receives complaints and investigates it for submission in the Consumer Court.

e) Consumer Courts :

In Khyber Pakhtoonkha section 11- A, was inserted via "Khyber Pakhtoonkha Consumers Protection (Amendment) Act, 2005" to establish consumer courts. Under this section Court of District and Session Judge is empowered with regard to consumer litigation. Ten districts consumer councils and courts has been notified by Khyber Pakhtunkha but so far only in six districts they are functional (USAID, January 2013).

Government of Punjab covers whole of the province with total of eleven District Consumer Courts. Nine consumer courts are established at divisional headquarters and two at district level in Gujrat and Sialkot [1]. District and Session Judges are given the jurisdiction to exercise powers in respect to consumer matters. A quasi-judicial system with District Coordination Office was also established. Alternate dispute resolution in shape of pre-trial settlement mechanism is available^v. In Islamabad Capital Territory the Court of Sessions has the jurisdiction to try the disputes^{vi}.

f) Jurisdiction and Limitation:

For jurisdiction guidance is been taken from Code of Civil Procedure^{vii}. Both the Khyber Pakhtoonkha and Punjab confer the jurisdiction on the District and Session Courts in whose jurisdiction the defendant live or carry business or where the cause of action wholly or partly arises^{viii}. No express provision regarding jurisdiction is adopted in Islamabad Capital Territory Consumer protection Act 19965.

In Khyber Pakhtoonkha ordinary limitation for filing claim is ten days. Limitation starts from the delivery of goods and services or date of sale. Court, upon its satisfaction, may extend the time for filing claim but not more than one year (USAID, January 2013). Limitation in case of guarantee or warranty may be extended up to sixty days^{ix}. In Punjab, if a complaint is filed in Consumer Council, fifteen days notice is not necessary as in case of filing suit in Consumer Court. Claim must be brought forward inside thirty days time limit after the cause of action takes place^x. The competent court can allow filing of claim, upon sufficient cause, beyond thirty days but not more than sixty days^{xi}.

Islamabad Capital Territory is silent with respect to time to file a claim.

g) After Complaint Procedure:

In "Punjab Consumer Protection Act 2005" section 30 explains the procedure of complaint handling. When a claim is received by Consumer Court, it shall serve a copy of the claim on the opposite party requiring him to submit his reply within fifteen days. Such period can be extended but not more than fifteen days. Where the claim is against defective products, the dispute may be decided by inviting expert evidence as regard to the recognized trade standards. The Consumer Court may, where proper analysis or test of products is necessary for determination of defects in goods, upon claimant expenses, send a sealed sample to a laboratory along with directions to submit its

result within a period of thirty days. The Court can extend this period but not more than fifteen days. "The Consumer Court shall decide the claim within six months after the service of summons on the respondent"^{xii}.

Section 14 of "Khyber Pakhtoonkha Consumer Protection Act, 1997" deals with the procedure when the complaint is received by the Consumer Court. The respondent is required to submit his response within thirty days after receiving copy of claim. The court can relax time for submitting written statement but not more than fifteen days. The Authority or the Court, for investigation of defects in goods, upon claimant expenses, shall send a sealed sample to a laboratory along with directions to submit its result within a period of thirty days. Contrary to Punjab, "Khyber Pakhtoonkha Consumer Protection Act, 1997" provides provision of complaint against laboratory report and the whole process shall be completed in two months.

"Islamabad Consumer Protection Act 1997" is silent on the time limit for deciding consumer complaint. Time provided for filing written statement is only seven days^{xiii}.

h) Redress

If it is proved that the complaint against goods or services is genuine and the petitioner has actually suffer loss the Authority or Court, in Khyber Pakhtoonkha, can order the defendant;

"(a) to remove defect from the goods in question;

(b) to replace the goods with new goods of similar description which shall be free from any defect;

(c) to return to the complainant the price or, as the case may be, the charges paid by the complainant;

(d) to do such other things as may be directed for adequate and proper compliance with the requirements of section 4, section 5 or section 6;

(e) to pay such amount as may be awarded by it as compensation to the consumer for any loss or negligence of the opposite party^{xiv}."

"Punjab Consumer Protection Act 2005" in addition to the above mention remedies, added the following awards in section 31;

"(f) to award damages where appropriate;

(g) to award actual costs including lawyers' fees incurred on the legal proceedings;

(h) to recall the product from trade or commerce;

(i) to confiscate or destroy the defective product;

(j) to remedy the defect in such period as may be deemed fit; or

(k) to cease to provide the defective or faulty service until it achieves the required standard."

"Islamabad Consumer Protection Act 1995" is silent on remedies but allows penalties and fine.

i) Fines and Penalties

In Khyber Pakhtoonkha, punishment for false advertisement is imprisonment up to two years or fine up to twenty five thousand rupees or both^{xv}. As against any right protected under section 10 of the Act imprisonment up to two years or fine not exceeding fifty thousand or both^{xvi}. "Frivolous or vexatious" complaint shall be dismissed with fine not exceeding ten thousand rupees^{xvii}.

"Punjab Consumer Protection Act, 2005" has two types of penalties under section 30. When a consumer's claim is proved against defendant, he shall punish with fine which may extend to one hundred thousand rupees or imprisonment not exceeding two years or both. If a complainant or defendant fails to comply with the orders of the court shall be punish "with imprisonment for a term not less than one month which may extend to three years, or with fine not less than five thousand rupees which may extend to twenty thousand rupees or with both."^{xviii}

This idea of contempt of court is neither touched by Khyber Pakhtoonkha nor Islamabad Capital Territory consumer law.

Punishment for violation of consumer right protected under section 9 of the "Islamabad Consumer Protection Act 1995" is imprisonment up to two years or fine which may extend to forty thousand or both. Punishment for false advertisement is imprisonment which may extend to two years or fine not exceeding thirty thousand rupees or both.

j) Appeal

In Islamabad Capital Territory, appeal from the verdict of the Authority shall lie to the High Court. It shall be in accordance with the provisions of appeals in the "Code of Criminal Procedure, 1898"^{xix}.

In Khyber Pakhtoonkha the person aggrieved from the orders of the Court or authority can file appeal to the High Court within thirty days^{xx}. The provisions of appeals in the "Code of Criminal Procedure, 1898" shall mutatis mutandis apply.

According section 33 of the "Punjab Consumer Protection Act, 2005", any person aggrieved against the final orders of the Consumer Court can file appeal in the "Lahore High Court" within thirty days of the orders.

Other Related Consumer Protection Laws:

a) Health Laws:

- "Pharmacy Act, 1967"

- “The Drugs Act, 1976”
 - “The Drugs (Labeling and Packaging) Rule 1986”
- b) Food laws:
- “The Pure Food Ordinance 1960”
 - “Pakistan Hotels and Restaurant Act 1976”
 - “Pakistan Standards and Quality Control Authority Act, 1996”
 - “The Cantonment Pure Food Act 1966”
- c) “Pakistan Penal Code,1906”
- d) “Contract Act, 1872”
- e) “The Sale of Goods Act”

Responsibilities of a Consumer:

Talking about rights and leaving responsibilities will leave the topic incomplete. Rights come with responsibilities. If one person does not fulfill his responsibilities he cannot blame other for his negligence. The consumers too have some responsibilities to take care of. They must acquaint themselves with the quality and safety of the “goods and services” before buying. They have the responsibility to get all the necessary and updated information and details available about a “product or service”. They must be clear about their needs and wants. They must speak out to inform producer and governments about their needs and wants.

The consumers have the responsibility to avoid the measure which contributes to pollution and damage environment. They should complain in an honest manner about their frustration with a “product or service”. They should be fair and ethical and avoid engaging in deceitful practices.

Conclusion:

Analyzing consumer laws in Pakistan reveals that consumer protection not very hopeful. A lot of developments are needed to make the situation better. Laws are not reviewed with the time to remove implementation difficulties and ease the useful handling of complaints. For effective enforcement of consumer protection laws nexus between provincial and district consumer protection councils must be established. Consumer education is the other important factor that is neglected in Pakistan. In Pakistan the consumer is in very pathetic situation. They have no idea about the right available to them under national and international law. Consumer education programs must be introduced to aware the ordinary consumers of their rights. In this regard consumer protection organizations must be established to work and research for the consumer protection. Every year fifteen March is celebrated as “World Consumer Rights Day” but consumer in Pakistan still need to know that what this day is about!

Endnotes:

ⁱSection 2(n) of the “Khyber Pakhtoonkha Consumer Protection Act”: “Services includes services of any description which are made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, manufacturing, processing, accountancy, supply of electrical, mechanical or any other form of energy, boarding or lodging, entertainment, medicine, education, construction work, amusement, catering, security, or purveying news or other information and similar other services, but does not include the rendering of any service free of charge or under the contract of personal services”

ⁱⁱ“Prohibition on exclusions from liability:-The liability of a person by virtue of this Part to a person who has suffered damage shall not be limited or excluded by the terms of any contract or by any notice.”

ⁱⁱⁱ Section 8 and 10 of the “Khyber Pakhtoonkha Consumer Protection Act 1997”

^{iv} Section 3(2) of “Islamabad Consumer Protection Act 1995”

“The Council shall consist of the following:- (i)The Chairman, to be appointed by the Federal Government from amongst prominent social workers permanently residing at Islamabad; Member (ii) Members of Parliament representing Islamabad Capital Territory; Member (iii) Chief Commissioner, Islamabad Capital Territory, Islamabad; Member (iv) Chairman, Capital Development Authority; Member (v) three representatives of the Consumers Associations in Islamabad; Member (vi) a representative of the Ministry of interior who shall not be below the rank of Joint Secretary; Member (vii) a representative of the shopkeepers, vendors or manufacturers as recommended by the Chamber of Commerce and industries, Islamabad; Member (viii) a representative of the Finance Division who shall not be below the rank of Joint Secretary; Member (ix) a representative of the Ministry of Health who shall not be below the rank of Joint Secretary; Member (x) a representative of the Ministry of Food, Agriculture and livestock who shall not be below the rank of Joint Secretary; Member (xi) a representative of the Ministry of industries and Production who shall not be below the rank of Joint Secretary; Member (xii) a lady social worker permanently residing at Islamabad to be appointed by Federal Government. Member”

^vSection 29 of “Punjab Consumer Protection Act 2005”.

^{vi} In “Islamabad Consumer Protection Act 1995” the jurisdiction is given to “Authority” and the “Authority” is defined in section 2 (1) as: “*Authority means the Court of Session Islamabad*”.

^{vii}Section 20 of “The Code of Civil Procedure 1908”.

^{viii} Section 29 of “Punjab Consumer Protection Act 2005” & Section 12 of the “Khyber Pakhtoonkha Consumer Protection Act 1997”

^{ix} Section 13(2nd proviso) The “Khyber Pakhtoonkha Consumer Protection Act 1997”

^xSection 28 (4) of “Punjab Consumer Protection Act 2005”

^{xi}Section 28 (proviso 1 and 2) of “Punjab Consumer Protection Act 2005”

^{xii}Section 30 (5) of “Punjab Consumer Protection Act 2005”

^{xiii}Section 8 of “Islamabad Consumer Protection Act 1995”

^{xiv}Section 15(1) of “Khyber Pakhtoonkha Consumer Protection Act 1997”

^{xv}Section 16(2) of “Khyber Pakhtoonkha Consumer Protection Act 1997”

^{xvi}Section 16(1) of “Khyber Pakhtoonkha Consumer Protection Act 1997”

^{xvii}The fine of five thousand was replaced with ten thousand in “Khyber Pakhtoonkha Consumers Protection (Amendment) Act, 2005”

^{xviii}Section 32 (2) of “Punjab Consumer Protection Act 2005”

^{xix}Section 10 of “Islamabad Consumer Protection Act 1995”

^{xx}Section 17 of “Khyber Pakhtoonkha Consumer Protection Act 1997”

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