

**CONSUMER PROTECTION LAWS IN  
PAKISTAN**

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**SUBMITTED TO:**

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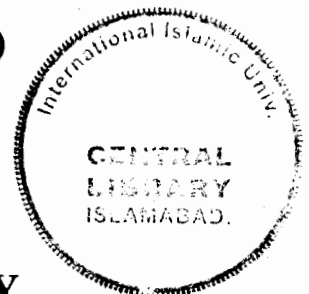
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# **CONSUMER PROTECTION LAWS IN PAKISTAN**

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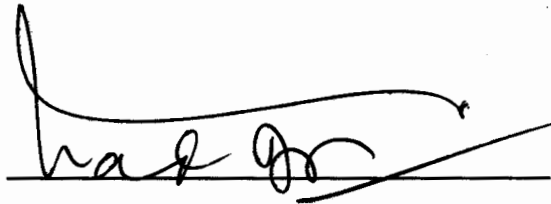
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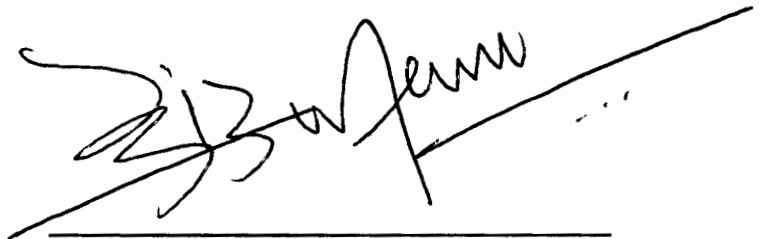
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# **DEDICATIONS**

**For**

**My Parents**

***Mr. & Mrs. Abdul Waheed***

***"My Lord! bestow on them Thy Mercy Even As They cherished me***

***In childhood."***

***(Al-Isra':24)***

## ACRONYMS

AFCO	Australian Federation of Consumers Organizations
BCPA	Balochistan Consumers Protection Act
CI	Consumer International
COPRA	Consumer Protection Act 1986, (INDIA)
CPC	Consumer Protection Council
CRCP	Consumer Rights Commission of Pakistan
DCO	District Coordination Officer
DRA	Drug Regulation Authority
DTI	Department of Trade & Industry
EIA	Environmental Impact Assessment
ICPA	Islamabad Consumer Protection Act
IEE	Initial Environmental Examination
IOCU	International Organization of Consumer Union
LACORS	The Local Authorities Coordinators of Regulatory Services
MCA	Monopoly Control Authority
NCS	National Conservation Strategy
NEPRA,	National Electric Power Regulatory Authority
NWFP CPA	North-West Frontier Province Consumers Protection Act
OFT	Office of Fair Trading in UK
OGRA	Oil and Gas Regulatory Authority
PCPA	The Punjab Consumer Protection Act
PEPA	The Pakistan Environmental Protection Act
PSQCA	Pakistan Standards and Quality Control Authority

**PTA**            **Pakistan Telecommunication Authority**

**SCPO**        **The Consumer Protection Ordinance, 2004**  
**(Sindh Ordinance No.III of 2004)**

**WTO**        **World Trade Organization**

**WHO**        **World health Organization.**

## ABSTRACT

This dissertation is basically focused on the current consumer issues vis-à-vis the existing legal Mechanisms available in Pakistan. A country like Pakistan where consumers are not only absent from the indices of law books but also the deterioration of governance and state - citizens relationship has posed the consumers to serious threat of political disintegration, lack of public participation in decision making and capacity to extract maximum benefits from the government. This manuscript is an attempt to take a broader view of key consumer issues with the magnifier of current privatization and deregulation of major institutions of Pakistan. There are ever greater challenges for the consumers in the current scenario of market liberalization and privatization of public utilities. This situation is worsening by the lack of awareness about consumer rights, absence of concrete national consumer legislation and policy and the strong judicial setup to enforce the piecemeal legislation.

The first half of this work is situation analysis of consumers in Pakistan and a detailed study of major legislation on consumer issues. In all through this portion consumers are taken distinctively from the customers in market. in my view consumers rights in Pakistan must protect the consumers as citizens not only customers, further more state should take the responsibility of consumers as citizens, as the market infrastructure and regulatory bodies are not strong enough to protect the consumers. This approach leads to provide base line for the second half of the dissertation which gives the recommendation for National consumer policy in Pakistan. An overview of existing legislation in various countries and in comparison of consumer legislation in developing countries like India it is strongly recommended that consumer policy in Pakistan should be based on right based approach- rights that are incorporated in UN guidelines.



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# CHAPTER 1

## INTRODUCTION

Never before in history have countries around the world opened their jurisdictions to international trade and investment as today. Formal border measures such as tariffs, quotas, capital controls and other trade barriers have been reduced dramatically.

In addition, each country is itself a market in this new world order which is why new market laws and consumer protection are a growing concern for today's legal system. This emerging market order has given strength to people as "consumers" rather than only citizens of any particular country. Globally, now consumers have acquired great political significance, because they can influence the world's political and economical order as a part of its development. Their very inclusion in policymaking, legislation debates and decision-making forums, signifies their recognition as a political force.

This growing concern of consumer protection vis-à-vis globalization has started debate on international level. Several authors<sup>1</sup> have claimed that globalization and liberalization has forced the states to deregulate which has resulted in increased mobility in factors of production and has generated more options for firms to exploit the decreasing governmental interventions. This has had a negative impact on the standards of consumer protection and will be discussed further later on under the context of experiences of developing nations in adopting trade liberalization policies.

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<sup>1</sup> See Thomas Bernuer and Erika Meins "*consumer protection in a global market*" Available at [www.ib.ethz.ch/docs/working\\_papers/wp\\_2002\\_01.pdf](http://www.ib.ethz.ch/docs/working_papers/wp_2002_01.pdf) (Last visited 12 January 2006)

On the other hand, an analysis of consumer protection policies display an opposite phenomenon of increase in the stringency of consumer protection, as noted by David Vogel<sup>2</sup>,

*“Wealthy jurisdiction can promote greater regulatory stringency across the board by driving the environmental and consumer legislation of their trading partners up”.*

The trading partners of rich jurisdictions simply markets simply force their counterparts from the poorer markets to upgrade their protection standards or to bear the risk of loss to access to important export markets. They also give the argument in the favor of deregulation as being in the interest of industry as it reduces production cost, increases productivity and competitive forces in market, and equips producers with decisive bargaining advantage as they can threaten the regulators and political constituencies to transfer their capital to other countries. Some of the protectionists<sup>3</sup> negate the assumption that producers dominance increases in the process of deregulation as they neglect the conditions under consumer protection policies. They support their argument by stating that consumer movements can drive the whole industry in their own interests.

In the open economies, new trends of liberalization and deregulation policies adopted by many developing countries have their own practical experiences in respect of effects of globalization on their economy. The forces of globalization in most of the developing and under developed countries are oppressive to consumer rights, but on the other hand, it has brought the consumer at the forefront as an important part of development. The effects of globalization are reducing state's role as

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<sup>2</sup> ibid

<sup>3</sup> ibid



guarantor of basic goods and utilities and losing control over the market forces in the era of trade liberalization. The nation-state treats people as citizens and is dependent on people for their strength and growth, but gradually it loses its power to control the market for the interest of the citizen. Enterprises have gradually grown into much bigger entities than the state itself and the new globalized market takes “citizens” as “consumers”.

In the post cold war era, free market economy has been set as a goal for the developing countries under the rules of IMF and World Bank. These countries, mostly under the crisis of corrupt governance, heavy debts and conditioned with lenders (IMF and World Bank), conflicts increasing population with growing poverty, opened their market for foreign investment. The reforms in the investment policy backed by privatization and liberalization resulted in more poverty. It is not income poverty but people were actually deprived from choices and opportunity in their life. More poverty means more consumers without access to basic goods and services, unfair competition, and development of monopolies and cartels leading to high prices.

In this, scenario consumers need protection more than ever before. *“They need to “exercise their citizenship”, not only to reclaim it but also to reassert it to be protected as consumers<sup>4</sup>”*

Need for consumer protection is not a new phenomenon associated just with the twentieth century. Consumers have been protected through legislation and voluntary arrangements, in different domains of consumer protection. The statutes that are considered today as consumer protection statutes began much earlier. The modern

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<sup>4</sup> Ali Qadir, *The state of consumers in Pakistan*, A Foundation report, The Network publication (2001).

statutes developed through ages according to the needs and requirements of the society. Some countries promulgated these laws much earlier than others.

## **1.1 HISTORICAL DEVELOPMENT OF CONSUMER**

### **PROTECTION:**

The background of consumer protection development in many countries is similar. Earlier, the mechanisms for consumer protection law were closely associated with local units of government. Like in 13<sup>th</sup> century England, the King used to be in the parliament, while in the local government, justices of peace as the official dignitaries of the county were responsible for maintenance of bridges, highways, paving, lighting and cleansing of streets. In seventeenth century, manorial courts known as 'courts leet' had a persistent role in safeguarding the trading standards and suppression of local nuisances, and in supervision of all other functions that we would associate with consumer protection and public health. Court of leet appointed an officer styled an 'aleconner', more like a modern weight and measure inspector, to examine pricing, weight and quality of bread, ale and beer for sale. Same system was also prevalent until sixteenth century in England (1664) to control coal price and weight<sup>5</sup>.

The concept of consumer protection throughout the 18<sup>th</sup> century involved protection from excessive prices levied on primary commodities and protection from short measures<sup>6</sup>. The statutes of these times, encompassing different jurisdiction, were related to certain price related items such as bread, beer, meat and fuel. These laws

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<sup>5</sup> Brian W Harvey and Deborah L Parry "*The Law of Consumer Protection and Fair Trading*", fifth ed, London, Dublin & Edinburgh: Butterworth 1996,1-4.

<sup>6</sup> *ibid*

were not as such covering all aspects of consumer protection but were designed to keep the states regulatory role over some areas while neglecting important aspects of consumer protection. The motivation behind these laws was to protect the honest traders from unfair competitors. For instance, laws related to enforce uniformity in weight and measures as, *the Assize of bread and ale of 1226* laid down a scheme to control the amount of bread and ale<sup>7</sup>. Similarly, the weight of bread was controlled by *Bread Act 1836* which required bread to be unadulterated and sold by weight. The reference to the uniformity in weight can be traced back to the *Magna Carta* in 1225<sup>8</sup>. In fact, the history of consumer protection control of dishonest traders goes back to the BC era. Ancient Mesopotamia, China and India all used to enforce laws related to short weighing, adulteration and harmful products. Food and Drug laws were also legislated but all these laws were regulatory in nature and not as such responsive to deferent aspects of consumers' rights.

In the 19<sup>th</sup> century, consumer protection was placed under the supervision of special organizations which were specific to consumers' rights. Like establishment of *Office of Fair Trading* in UK, *Federal Consumer Agency* in Alaska in 1930 and the *Consumers Union 1936* in America. These lead to the formation of Consumers Association in UK 1956, Consumer Federation of America (1960) and many others in different countries. By the end of 1960, five main organizations had been formed in the developed part of the world,

- Consumentenbond, Netherlands
- Consumers Association, UK
- Union Belge des Consummates, Belgium

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<sup>7</sup> V Balakrishna Eradi "Consumer protection jurisprudence" India: Lexis nexis and Butterworth publishers, 1999.

<sup>8</sup> ibid

- Union Federate de la Consommation, France
- Australian Consumer's Association

The consumer legislation in this era was modified to include many other features, for instance, extensive and exaggerated advertising, which exploits various methods governing consumer's choices and shaping the consumption patterns, unsafe products, and unilateral contract terms set by seller, which consumers can't influence.

## **1.2 CONSUMER PROTECTION IN PAKISTAN:**

Consumer protection in Pakistan, like in all other developing countries, started much earlier. Pakistan inherited consumer legislation from the pre-independence period, especially laws developed in the era of Ala ua-Din Khalji [1296AD-1316AD] (during Delhi Sultanate period). He introduced the consumer laws related to strict price-control measures and established separate shopping centers in Delhi for many food items. Sultan appointed market controllers and secret agents to submit independent report on price violation. The shopping centers were also under the control of commerce ministry that is why every merchant was registered with ministry of commerce. Later British regimes (1765-1947) introduced many laws but the main purpose of these laws was to promote British interest, rather than the welfare of the civilians. The Pakistan penal code 1860, the Dangerous Drugs Act 1930 and the Sale of Goods Act 1930 were the enactments of that time to control trade and the law & order situation and less focused on consumer protection usually provided to citizens.

The independent Pakistan is still striving for a strong consumer policy and specific consumer legislation. Half of our history is under the martial law, which suppressed such consumer movements, particularly the Zia regime. After 1988, a host of economic, social and political crises had beset the country leaving no room for

development of consumer initiatives. Complete absence of consumer policy is a result of general legislative trend in Pakistan whereby the bulk of legislation has been enacted without a comprehensive policy. Traditionally there are existing piece meal legislation and other mechanisms, protecting the consumers in Pakistan which will be discussed in detail in the second chapter, however, at this stage these laws are as such not covering the core issues of consumer protection. No specific consumer protection law is available in Pakistan at this time to cover major aspects of consumer rights, as compared to other developing countries like India, Sri Lanka, Bangladesh, and Nepal in South Asia. All of them have developed separate consumer legislation according to their needs and requirements.

In Pakistan, first official step was taken in 1995 towards comprehensive consumer legislation, but on the provincial rather than national level. Islamabad Consumer Protection Act (CPA) 1995 promulgated by Federal government is effective in many respect but as its scope is restricted to Islamabad territory while each province is supposed to have its own legislation regarding consumer protection. Islamabad CPA was followed by North West Frontier province (NWFP) CPA in 1997, which was more or less a replica of Islamabad CPA.

However, these enactments are not sufficient for certain reasons. These Acts equally define 'consumer' in an exclusive and restricted manner, so much so that the main purpose of providing protection to the consumer interests are left far behind. For instance, 'public services' are excluded from the scope of these laws. Moreover, the mechanism for necessary judicial processes included in them is dealt quite inefficiently, which results in lengthy and expensive redress and inadequate penalties.

In fact, both these Acts do not carry the potential to provide an efficient and inexpensive judicial process for complaint redress.

In the Islamabad Consumer Protection Act, Court of Sessions has been empowered to hear consumer cases, but given the heavy load of work in the court, quick disposal of consumer cases is inconceivable. Both the Acts include provisions for setting up of Consumer Protection Councils, but these have not been set up and therefore, their existence in books is meaningless for consumers. The relevant authorities have failed to formulate the rules of business. Therefore, these laws appear to be another addition to the statute books without having any practical value and extending any meaningful help to address consumer-related problems.

The consumers confront manipulative market forces because of their exclusion and partial adjustment in the previously mentioned laws. Due to the absence of a comprehensive legal arrangement; they cannot find any appropriate forum to get their specific problems addressed.

Realizing the lacunae found in the Islamabad Consumer Protection Act 1995 and NWFP Consumer Protection Act 1997, the Model Consumer Protection Act, 2000 drafted by CRCP is now pending with the Pakistan Law Commission and the Ministry of Law for follow-up and enactment.

Along with these provincial level enactments there exists other legislation as well, such as State regulation of various state run utilities, regulatory frame works and beside this there are food & drug laws and standard and quality measures in Pakistan. This includes Pakistan Telecommunication Authority (PTA), Oil and Gas Regulatory Authority (OGRA), National Electric Power Regulatory Authority (NEPRA) and many others. The scope and flaws in these enactments will be discussed in the following chapters.

### **1.3 THE STATUS OF CONSUMERS IN PAKISTAN:**

The most striking thing about Pakistan in the current scenario of globalization is lack of widespread recognition of citizens as consumers. This is very true at the public policy level, in any government agenda, in general behavior of society, even among consumers, who themselves are not aware of their rights if violated despite the fact that Pakistan is signatory to the UN Guidelines for consumer protection<sup>9</sup>, which stresses to establish protective measures. Government and public sector have not yet formulated a national level legislation. Beside this a proactive consumer policy which can stream line other policies and legislation effecting consumers interest is a need of the hour but state role in this regard is missing. While private and civil sector in Pakistan is considered more responsive towards consumer movements and their efforts including guidelines for ethical corporate behavior, compliance with social and environmental standards is worth noting. Nevertheless, it is important to note here that this response (particularly in private sector) is purely demand driven and consumer's awareness as important prerequisite for consumer protection. Gradually private sector becomes slow to protect the consumers from their own violation because there is general lack of awareness in consumers about their rights. This gradual move is highlighted in the current trend of privatization of public utilities and services in Pakistan

#### **1.3.1 Privatization and Deregulation in Pakistan: It's Impact on Consumer-Citizens:**

Privatization and deregulation in Pakistan is a result of an internal economic pressure with in the country and worldwide economic growth achieved by re-alignment of their economic orientation in accordance with privatization. Privatization

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<sup>9</sup> see at the end of this dissertation, Annexure I

now is a global phenomenon not only confined to developing states, but it also has accepted by developing or less developed countries all over the world.

### **1.3.2 What is Privatization?**

It is an essential component of market liberalization policies, which promotes “government led by market”. A market system is a better arrangement for satisfaction of basic need in contrast to state/government run organizations. The Public sector owing to its institutional problems leads to organizations that are corruption ridden and the resulting inefficient economies because of heavy public sector involvement fail to satisfy basic human needs. That is why the production and provision of basic goods and utilities traditionally under the state control should be handed over to public sector or free market mechanisms. This involves various measures involving privatization, deregulation and de-monopolization. Privatization includes restructuring public institutions for good governance and opening the market for international investors. In this way, not only new business opportunities are created for the citizens, but it also brings change in delivery, efficiency, quality and performance particularly in public utility services.

### **1.3.3 Privatization in Pakistan:**

In Pakistan where most of public utility services were under the control of government owned institutions, the citizen-consumers were faced with various problems. These included a number of problems ranging from over-staffed and overburden institutions with lack of efficiency, quality, quantity, and standard in service provision to total absence of transparency, accountability and meaningful public participation. In this perspective, successive governments in Pakistan adopted



the philosophy of market liberalization and privatization of the state owned entities. In this context, the thing that concerns the citizen-consumer is provision of basic utilities like electricity, telephone, gas, petroleum, water, sewage disposal, education, healthcare, etc.

The brief history of privatization in Pakistan, if seen from the consumer's perspective will be quite helpful to analyze its effect on consumer issues<sup>10</sup>.

In the decade of sixties, privatization in Pakistan took a great swing and played a critical role in development of the public sector. Nearly all the economic activities were open to private sector with subsidies and tax exemptions given by the government. Later there was a great set back in Bhutto regime in seventies, as all private institutions were taken over by government but again in eighties, private investment were increased under restrictive measures taken by government to control the economic activities of private sector. In this period, the main considerations of privatization were to gain high returns from private sector, which public sector failed to achieve and to make the management of the enterprises efficient by bringing in competent managers and skilled work force through their divestment<sup>11</sup>.

Expanded privatization commission was set up in 1991 to undertake the public sector particularly providing public utility services like oil and gas, telecommunications, power generation and distribution, transport and communication. This commission worked until the 1999 military take-over. In short, one way or another, nearly all governments in the past with few exceptions made consensus and pursued privatization of public sectors to generate revenue and improve their efficiency. The present government has also introduced a new privatization law and instituted an independent ministry of privatization. Before this, there was no such

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<sup>10</sup> A. Salman Humayun and Tanveer Anjum, *Privatization of Public Utilities: A Consumer Perspective*, published by Consumer Rights Commission of Pakistan(2000)

<sup>11</sup> *ibid*

privatization law in Pakistan as all past steps have taken without it. What is noteworthy in the law is that government has to spend the 90% of the revenue generated from the privatization for debt retirement but these revenues have been utilized elsewhere. During past 12 years, privatization in telecommunication, electricity and oil sector did not take pace, but the recent attempts of privatization policies took over these sectors in their ambit<sup>12</sup>.

In Pakistan, the consumers are the missing stake-holders in the whole discourse on privatization and the provision of public utilities. The consumers have always been concerned about the provision of basic utilities from the public sector, and after its privatization, their problems have not addressed. Their problems have changed its nature and in certain cases, the problems have increased compared to the difficulties they were facing before with the public sector. Some of the primary concerns are:

As mentioned

*a) Regulation of private institution:*

A primary concern of consumers in Pakistan for example PTCL (Pakistan Telecommunications Corporation Limited) has complete monopoly over basic telecommunication services, and has been privatized under the present regime. Regulation of such a private institution is very much linked to consumer protection because there is a strong likelihood that the owners may exploit the consumers or users of these services. Privatization has made them more vulnerable to the capricious effects of private concerns.

The regulatory bodies like PTA, NEPRA, and OGRA are not independent of government and therefore not strong enough to work efficiently, thus unable to control price fluctuation or unwarranted increase in

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<sup>12</sup> ibid

tariff (allowing price increases without public participation like in 2001 PTA allowed PTCL to increase in line rent and call tariff), or other consumer-unfriendly policies.

**b) *Inefficient performance of private institution***

Privatization in telecommunication and electricity services in Pakistan is not adequately sensitive to consumers need and concerns. That is why consumers of PTCL and the recently privatized KESC (Karachi Electric Supply Corporation) are suffering from wide range of problem including in-efficient delivery services, lack of quality maintenance and limited access. PTCL consumers have being complaining of long waiting lines for telephone connections, excessive billing, dead telephones for longer periods and other problems such as lack of telephone facility in most neglected areas. Similarly in the case of the KESC, since it was transferred to new management after its privatization, its performance is worsening day by day including black outs in Karachi city , financial loss to 40 billion traders and rendering thousands of people jobless.

**c) *Public participation in decision-making and delivery of public services***

throughout the process, public discourse over privatization was absent. This is why transparency and accountability in the privatized institution is lacking, which certainly allowed corrupt practices to restart at these institutions.

Awareness and adequate information about all high-level decision-making that effects the provision of basic utilities is a right of every citizen-consumer of Pakistan. The reason behind the decision to privatize all state owned entities is to give more choices to public and to increase competition in

the market, but the prerequisite is that the consumers in Pakistan must be fully informed.

In the current scenario where regulatory authorities are not responsive in protecting consumers from the arbitrary decisions of private owned entities, consumers in Pakistan are facing the effects of uncompetitive markets and having limited choices on their hand. In this context government intervention as a protector and provider has a part to play, either in the form of legislation, policy building or evolving an institutional framework to regulate the privatized sector.

The provision of comprehensive consumer legislation is usually not high in the policy agenda of the governments in developing countries. Where the market is not perfect and the availability of information is asymmetrical, the citizen consumers are at the mercy of producers. However, globalization has not able to solve the consumer issues in developing countries by providing more opportunities in investment and developing more choices for consumers. Globalization in general and liberalization of economies in particular have on the other hand become a threat to the domestic regulation. Deregulation and privatization has been blindly adopted in developing countries like Pakistan. Fruits of privatization need certain climatic condition to grow such as consumers that are well informed to make optimal decisions, so that privatized firms cannot go against the interests of consumers. This is not the case in Pakistan, so two policy approaches can be used to deal with this problem as suggested by *David K. Round and Zeljka sporer*, the first approach is, that by using trade and competition policies, the market can be made more responsive to consumers needs, and the second approach is to pass consumers protection laws to regulate the behavior of sellers.

The first approach suggests that globalization can be a tool to bring an external competitive pressure to bear on domestic businesses and regulatory institutions, leading to consumer protection by market itself. It can protect consumers with market forces more efficiently than piecemeal government interventions. This kind of protection cannot work in isolation as it needs other political, educational and social reforms to reach the highest goal of consumer welfare. This bottom up approach (where grass-root activism either forces a change in behavior by firms which government cannot ignore) needs consumer education, information and a technological, democratic and socially progressive environment as a prerequisite which is open to international trade. This approach needs years to achieve its benefits if it is applied in Pakistan, and if adopted without fulfilling its prerequisite, will result in the consequences of current privatization and deregulations in Pakistan.

There can be an alternative mechanism in the form of a national consumer protection law that covers the substantial issues of consumers in every sector, and to develop a pro-active consumer policy, which guides the government and the other private institutions to build substantial structures for the protection of consumer interests. This “top down” approach is best suited in Pakistan, where governments act paternalistically, taking actions because consumers cannot protect themselves. The “top-down” consumer development must have some limitations though as prescribed by *David K. Round and Zeljka sporer*,

- 1) It requires broad based cooperation through out the government hierarchy to attain a coordinated, flexible and adaptable system of consumer protection.
- 2) One ministry and one regulatory authority if given the sole authority over whole mechanisms, result is lack of flexibility and difficulty in controlling

enforcement, without the help of the parties whose localities are with the manufacturers.

Institutions in Pakistan are privatized can be bound by comprehensive consumer legislation in Pakistan because the regulatory institutions are dependent on government and inefficient in their working. Firms have to spend money in complying with regulatory authorities and the enforcement bureaucracy costs money to operate and makes mistakes that are obvious in the examples of NAPRA, PAPRA etc in Pakistan. The problems borne from this should be resolved through an independent judiciary.

Finally, the consumer movement in Pakistan is looking forward to adopting a policy to promote consumer education and lobbying consumers to give full awareness of their rights.

## CHAPTER 2

### CONSUMER PROTECTION: SOME BASIC CONCEPTS

*Consumers, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private decision.*

*President John F. Kennedy, March 1962*

*Consumers are the lifeblood of retail and satisfied consumers are the key to success for retailers.*

#### 2.1 CONSUMER:

Human beings are consumers by default as consumption is basic to human survival and endurance. They have certain innate rights as consumers called “consumer’s rights”, a concept very close to human rights<sup>1</sup>.

The word consumer defined in Oxford Advanced learner’s dictionary (1995) as “a person who buys goods or uses services.”

The Merriam-Webster (1996) and Encyclopedia Britannica, 2006<sup>2</sup> defines a “consumer” as one who utilizes economic goods.”

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<sup>1</sup> From the comparison of UN (1985) “*Guidelines for consumer protection*” and the UDHR (1948), both documents establish the basic rights for Human beings like Article 25 of UDHR “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services” same as the consumer rights established in the UN (1985) “*Guidelines for consumer protection*” also established right to have adequate food, clothing, shelter, health care etc.

<sup>2</sup> Encyclopedia Britannica 2006 Ultimate Reference Suite DVD 27 November. 2006.

From the standpoint of market economy, the word “consumer” has acquired a very peculiar and limited meaning as “customers”. Although “customers” and “consumers” are two distinct terms but the word “consumer” and “market” are so interwoven to each other that it seems like consumers are infinitesimally different to “customers”. This definition gives very limited scope to the concept of consumer protection enclosing only the customer in its ambit, leaving the marginalized and poor consumers unprotected who are ignorant of the product they are surrounded by. There is a need to broaden the definition of consumer; however, there is no universal legal definition of consumer.

## **2.1 WHY “CONSUMER” IS INTERPRETED IN ITS BROADER SENSE:**

Consumer campaigns in the developing countries have changed this perception and awarded an extensive scope to the word “consumer”. Consumers are now understood in its broad sense rather than stringent only to “customers”. This liberal interpretation is important for the poor who find no place in market to stand as “customer”,<sup>3</sup> Hence, those who are non-paying, marginalized and have not been customer, whether they may or may not be the customer still consume to survive and are within the scope of the term “consumers”. This definition is in accordance with socio-political and economical needs of consumer-citizens in the developing countries, as this extended concept of consumer gives protection not just to the customers but to the marginalized consumers. Mohini Sethi and Premavathy Seethraman<sup>4</sup>, while presenting a broader view discuss consumer in different categories as, 1) Sole consumers, including the salaried class with limited resources available for consumer

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<sup>3</sup> See Ali Qadir “*The state of consumers in Pakistan*” A Foundation report, The Network publication (2001),11

<sup>4</sup> See “*Beyond consumption*” The Network Publication.



goods and services. This class also includes the ignorant and illiterate consumers who are unable to receive even essential items for their survival. 2) Rural consumers are those who are completely unaware of the happenings around them, they consume what they produce and are unable to afford the basic necessities of life. These categories can broaden the scope of consumer protection laws drafted in developing and under developed countries.

No universal legal definition of consumer is available on text yet, however most of the writers do recommend the definition by *Rachagan*<sup>5</sup> as a proposed definition for model law of consumer protection in Asia. This definition gives a broad aspect on one hand by including all who uses goods and services, while on the other hand it implicitly keeps out all business concerns. This again de-links the consumers from customers. This proposed definition itself is debated and the opposite view (Sethi & Seetharaman) to it argues that "*All business firms are consumer as much as they are producers*"<sup>6</sup>. It means that the word "consumer" includes all corporations and consumer protection is extended to all business entities. This is where the extended meaning of consumer is curtailed, and limited only to corporations and other business entities that acquire or use a product or service as the end user (provided in Brazilian consumer protection code).

In summation, the view which is generally upheld is that buying itself doesn't suffice to qualify as consumers. We are consumers whether we stand as customers or not in market. The consequences of the above view have broadened the scope of consumer movements and provide a base line for the orientation of consumer laws in

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<sup>5</sup> See Rachagan Sothi. "*Model law for Consumer Protection in Asia-Reflection on its Scope and content*" University of Malaya's Faculty of Law: Malaysia, (1997-a).

<sup>6</sup> Sethi Mohini and Seetharaman Premavathy, "*Consumerism: A growing Concept*" (Phoenix Publishing House: New Delhi) (1994)

developing countries. The other consequence of de-linking the consumer from customer, by excluding business concerns is that consumer laws should focus more on the people who are more in need of consumer protection.

**Box 1 Rachagan's definition of consumers**

***“Consumer” means a person who;***  
***acquires or uses goods or services of a kind ordinarily acquired for personal***  
***domestic, or household use of consumption: and***  
***does not acquire the goods or services, or hold himself or herself out as acquiring***  
***the goods or services, primarily for the purpose of:***  
***re-supplying them in trade,***  
***consuming them in the course of a process of production or manufacture, or***  
***in the case of goods, repairing or treating in trade other goods or fixtures on land;***

***“Acquire” in relation to:***  
***goods, includes obtain by way of gift, purchase, exchange, and taken on lease, hire-***  
***purchase;***  
***services, includes accept;***  
***interests in land, includes obtain by way of gift, purchase, exchange, tenancy or***  
***license.***

This broader concept of consumer protection has established consumption as a social process where one individual's consumption effects the others consumption pattern like a consumer produces waste through his consumption of diesel, this affects

the air consumption of pedestrians. These effects can be better solved under this definition. The adoption of above view develops a relation ship between state and consumer by improving the status of consumers from customer to consumer-citizen. Customers having relation ship with seller can only assert rights against seller (producer), but state has to provide protection directly to consumer-citizen as provider and guarantor of basic utilities. This consequently provides three dimensional approaches to consumer movement as consumer-consumer, consumer- producer and consumer-state relationship. A consumer movement has to work in three dimensions through the filter of consumer interest.

## **2.2 CONSUMER NEEDS PROTECTION OF THEIR INTERESTS:**

Consumer constitutes the demand side of the economic theory<sup>7</sup>. Without this demand there will be no supply, so consumer have immense power through their buying and numbers, and have detrimental impact on the supply side. With the recognition that consumption is a social process wherein consumer's interest provides a basis to promote consumer concerns, we do stand in to analyze what is the consumer's interest that has to be protected?

**Consumer interest:**

the reason that its unquestionable utility in analysis contributes not only in drafting but implementation of consumer laws.

*Interest in survival:*

All consumers are by default human beings so they have as a basic objective, survival. They want to secure their access to food, clothing, shelter and essential health aid. This broad based interest is protected originally by the state as provider and protector of basic needs. There are various mechanisms to protect these unalienable rights, usually secured in constitution and other government agenda as a top priority.

*Interest in opportunity to obtain goods and utilities:*

In addition to above mentioned interest consumers want to secure their survival by easy access to basic goods and utilities. The state is responsible for providing easy access to basic utilities and other goods and services. Normally, greater ease in access to goods and services equates with greater social security for the consumer-citizens.

*Interest in market practices:*

The fundamental consumer interest is in fair market practices, such as provision of goods and services according to their need and requirement on fair prices, complete information about products, safeguards against dangerous products and all those practices which effect the consumer choices for example excessive advertising etc.

*Other alternative and advanced interests:*

There are other policies including trade, health and environmental policies which affect the consumer. It is in the interest of consumers that these policies should be oriented to consumer welfare.

Consumer should be protected from intentional and inadvertent harmful state and market forces. State is considered to be the basic service provider and protector of fundamental rights. This notion of interest forces the idea of defending these interests where they are violated when the state is not fulfilling basic needs. The market might produce hazardous products requiring consumer movements to protect these interests.

### **2.3 CONSUMERISM:**

Consumerism is a wide and an expansive concept that initially speaks of “Consumers” and later on comes up describing their actions and participation in the world of market and production, their importance in the business world and most importantly the responsibilities which they have to fulfill while buying and using different products from the market.

Describing the duties of the consumers, Consumer International highlights five basic responsibilities which the consumers have to carry out:

- To be vigilant and inquisitive about the prices and quality of the products of daily consumption.
- To be sensitive towards the poor consumers and showing serious concern towards the society so that their consumption patterns do not adversely affect others.
- To consume the goods while keeping in mind the environmental consequences and taking it as a social responsibility of every consumer.
- To come and join their hands together and rise as a strong entity which can fight for its rights and interests and be protective towards their benefits.
- To ensure that they are given justice and fair deals.

Besides these responsibilities, the consumers should also be watchful enough to protect themselves from those factors that leave a negative influence on their interests. The consumers should know where the producers (companies) are trying to dodge them with their tricks and temptations towards their products. This can only be possible when the consumers are cautious in judging the products and services which can be harmful for their health, environment, culture, and economy.

Generally speaking, the companies are very clever in attracting the consumers towards those products that are introduced by them in the market. They try to make the consumers believe that their products are the best ones in the market. In order to win the consumers trust they use all the possible ways, for example, attractive advertisements are the most effective tool these days. As a result, the consumers, besides buying these products, also pay the advertisement cost money which the companies add in the final price of their product. This unfair practice can only be stopped if the consumers object and raise their voices against the companies.

#### **2.4 STRATEGIES AND MECHANISMS TO PROTECT CONSUMERS:**

The Consumer rights can be secured if the Government shows serious concern towards making of a well documented consumer policy which is not only comprehensive but also well regulated. While processing the formulation of consumer policy, the government should consult other representative groups and organizations of consumers. Furthermore, once a good policy document is made, it should be taken as a guide line for the judicial actions to be taken in this regard. In addition to it, the consumer policy should be flexible enough to invite new changes coming up due to the developments in this field. Such a policy should also require the involvement and co-

ordination of all government agencies. Consumer policy should actively empower and support consumer organizations.

For a good consumer policy, the interest of the poor should be given paramount consideration. In this respect, article 25 of UN Declaration of Human rights says: "*Everyone has the right to a standard of living adequate for the health and well-being of himself and his family: including food, clothing, housing and medical care and necessary social services*". A consumer policy should fulfill the requirements of this article in letter and spirit.

**National Legislation on Consumer Protection:** According to *Rachagan*<sup>8</sup> consumer law is "legal manifestation of the desire to protect the consumer interest".

The interests (legal rights) of the citizens are protected when there are laws made for them. Talking specifically of consumer rights, there is a need for precise but well formulated consumer laws which will convert consumer interests into protected legal benefits. For this, a statutory structure of the consumer law which is nation-wide in its application should be made.

*Rachagan*<sup>9</sup> has proposed five headings for a Model Consumer Protection Law:

1. Legal definition of the consumer?
2. The scope of the Model law
3. The administrative structure for consumer protection
4. Remedies and sanctions
5. Facilitating redress

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<sup>8</sup> See *Rachagan Sothi*. "*The Asian experience with consumer protection law and redress mechanism*". A paper was presented at 6<sup>th</sup> international conference on the issue of consumer protection in Malaysia organized by University of Malaya. (1997).

<sup>9</sup> See *Rachagan Sothi*. "*Model law for Consumer Protection in Asia-Reflection on its Scope and content*" (University of Malaya's Faculty of Law: Malaysia). (1997-a).

**The scope of the Model Law:** The following main issues should be included in the consumer protection law;

1. Misleading and deceptive conduct
2. False representations, and unfair practices
3. Prices, price indications and receipts
4. Consumer information
5. Safety of goods and services
6. Guarantees in respect of supply of goods
7. Guarantees in respect of supply of services
8. Unfair contracts
9. Product and services liability

## **2.5 THE ADMINISTRATIVE STRUCTURE FOR CONSUMER PROTECTION:**

### **National Consumer Council:**

According to Rachagan's Model Consumer Law, the Consumer Protection department should be given a systemized statutory structure consisting of government representatives, business people and the consumer class, all participating to make it run. Various functions and the powers of this office should be well defined. Most importantly the DG should be given powers to perform activities in this field.

It is suggested that the members of the National Consumer Council should not be less than twelve and not more than eighteen members and while appointing these members the Council should make sure that:



- One- third of its members represents consumers and is nominated by consumer organizations.
- One-third of its members are from government agencies directly involved in the enforcement of important consumer protection measures.
- One-third of its members represents producers and suppliers of goods and services and is nominated by trade and industry groups.

In order to see the NCC functioning effectively in the sphere of consumer protection, it should be made sure that the NCC keeps itself well informed of the decisions made as a result of the hearings and data from the government agencies and the private sector. It should also give recommendations to the organizations and Ministers. Furthermore, it should produce its annual reports of these recommendations<sup>10</sup>.

#### **Provincial Consumer Council:**

While there is a National Consumer Council working efficiently at the national level, there should be made Consumer councils at the provincial level. By making such councils, the consumers will find it easier to make complaints.

Specialized agencies should be introduced by consumer protection law. There are many agencies in different countries which are working actively in this field. A brief introduction to these agencies is given below:

**The UK Office of Fair Trading:** This is a government agency which was established under the Fair Trading Act 1973. It bears the responsibility of administering various laws related to consumer protection such as the *Fair Trading*

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<sup>10</sup> All above is extracted from The Network for consumer Protection, [Beyond Consumption], The Network Publication.

*Act 1973, the Consumer Credit Act 1974, the Restrictive Trade practices Act 1976, and the Pyramid Selling Schemes Regulations 1973.*

The DG of Fair Trading performs various functions such as, to monitor commercial activities relating to the supply to consumers of goods and services, to regulate monopolies, mergers and restrictive trade practices, to publish information and advice for consumers and supervise consumer credit activity generally.

**The Sweden National Board for Consumer Policies:** The Sweden National Board for Consumer Policies is an authoritative body working for the protection of the consumers as a strong community in the market. The routine task of the council is to handle the consumer affairs. The Director General of the Board also works as Consumer Ombudsman.

**The Hong Kong Consumer Council:** The Hong Kong Consumer Council was established in 1974. The Council actively participates in promoting and advancing the interests of consumers of goods and services. Education, information, comparative product testing, research and surveys, literary work on consumer legislation, are some of the important functions performed by this council.

## CHAPTER 3

### CONSUMER ISSUES IN PAKISTAN

#### STATUS OF CONSUMER IN PAKISTAN:

Historically, Consumers are always been a neglected class in the national scene of Pakistan. There is widespread lack of recognition of consumers as indispensable actors or constituency of governance. This attitude is consistent amongst the policy makers and legislature in the discourse of development in Pakistan and even the society and consumers themselves are ignorant of their rights.

The overview of three sectors: private sector, public sector and civil sector, can easily scrutinize the consumer situation in Pakistan.

#### 3.1 CONSUMER SCENE IN PUBLIC SECTOR:

Government is considered to be the guarantor and provider of basic rights of citizens. A consumer interest as discussed earlier includes easy access to basic goods and services and state role is important in this regard. States-consumer relationship demands to treat the consumers as citizens and establish mechanisms to protect consumers<sup>11</sup>. Unfortunately consumer protection has not been a highest place in government agenda in Pakistan. Other social indicators and lack of a comprehensive and overarching consumer policy is evidence of this fact.

##### 3.1.1 Consumer Policy:

At the state level there is no consumer policy to safeguard the consumer interest and to stream line the other legislation effecting consumer's rights. This

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<sup>11</sup> See The Network for consumer protection. "Policy Vision". Islamabad: The network publication, 2005 here in after it is "policy vision, The Network Publication.

integrates the consumer's perspective in the working of many governmental and non governmental efforts in promoting public welfare. The root cause to this deficiency is the political will of successive unstable governments in history. This state behavior is inherited by the post-colonial system of governance in operation in the country, which has a non-participatory methodology of policy making and has prevented involvement by consumers or their elected deputies in the decision-making process.<sup>12</sup> This results in the general trend in our country where laws are made first and then policies are formulated around, and statutes of consumer protection are no exception to this. These statutes not linked with each other and in some ways they are overlapped<sup>13</sup> or connected<sup>14</sup> in multiple ways.

### **3.1. 2 Legislation:**

Consumer policy and legislation in any country is considered to be the government's commitment towards protection of consumer interests<sup>15</sup>. Majority of the countries have evolved consumer protection laws even without an explicit consumer policy<sup>16</sup>, whereas in Pakistan the most disturbing fact is the lack of a national consumer protection law. There are bits and pieces of legislation which deal with certain aspects of the issue but there isn't a comprehensive body of law dealing with consumer issues on a national level. Pakistan has both special and general legislation in the area of consumer protection. The general legislation includes those which are

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<sup>12</sup> See, The Network for Consumer Protection. [Beyond Consumption]. Unpublished Raw Data.

<sup>13</sup> See the Annexure for list of all related laws in Pakistan regarding the consumer protection that directly or indirectly protects the consumer rights. Also see the 3<sup>rd</sup> chapter for the discussion and critical analysis of some of the important laws in Pakistan that indirectly or generally protecting the consumers in Pakistan, as it concludes that many laws in Pakistan are overlapping and some times contradicting to each other.

<sup>14</sup> The Network for Consumer Protection. "Policy Vision". The Network Publication: 1995.

<sup>15</sup> Ali Qadir, *The state of consumers in Pakistan*, The Network publication.

<sup>16</sup> Many countries like Malta has not formulate consumer policy, [www.mcmp.gov](http://www.mcmp.gov)

applicable for whole Pakistan where as the specific laws those Acts or Ordinances which are adopted by different provinces.

a) ***General laws on consumer protection:***

The earlier legislation in Pakistan treating the consumers is deficient in express consumer welfare thinking. For example, Pakistan has two kinds of anti-trust or price-fixing legislation<sup>17</sup>, one which is directly related with anti-trust or price fixing matters like “Price Control and Prevention of Profiteering and Hoarding Act, 1997(PCPPHA), while the other indirectly deals with price fixing and specifically with restrictive trade practices like, Monopolies and Restrictive Trade Practices Ordinance 1970. These statutes are concerned with consumer related issues but there is no express provision for consumer participation in it. Consequently consumers as an independent and interested party are excluded in price fixing process and the matter dealt with from a governmental perspective. The decisions under these Acts are mostly under the pressure of powerful multinational suppliers.<sup>18</sup> Food and Drugs laws<sup>19</sup> are comprehensive in nature but they do not cover the issues like false and misleading description of goods and services by imposing criminal sanctions on wrong doers. The other two statutes such as Contract Act 1872 and the Sale of Goods Act are important in this regard but they require the consumer to be vigilant by themselves as “caveat emptor” cant work in this globalize world. These laws are promulgated in order to regulate the commercial practices and consumer protection as such has never been a central theme of these laws.<sup>20</sup>

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<sup>17</sup> Sikander Aqeel Ansari and Abrar Hafeez, *Consumer Laws in Pakistan*, Consumer Rights Commission of Pakistan (2000), Volume II( see introduction to volume I).

<sup>18</sup> *ibid*

<sup>19</sup> Drug Act, 1976 and West Pakistan Pure Food Ordinance, 1960

<sup>20</sup> The Network for Consumer Protection [Needs and element of consumer protection law] Manuscript submitted for publication.

**b) *Special laws on consumer protection in Pakistan:***

Nearly all countries in the south Asian region have promulgated national consumer protection laws as it shows the importance given by the government to the rights of consumers. Pakistan still lags behind in this discourse to secure the consumers interest under the umbrella of a national consumer protection. Although statutory measures for consumer protection had existed in Pakistan long before 1995, there was no formal consumer protection law. In 1995 federal government enacted Consumer Protection Act for Islamabad territory<sup>21</sup>. It was followed by the NWFP Consumer Protection Act, 1997, Baluchistan Consumer protection Act, 2001 and Punjab Consumer protection Act, 2005. However, the lack of political will and administrative lacuna has shown that these laws were never implemented or activated. Consumer courts and consumer council could not be established as provided under these laws. Government have not given attention to consumer legislation and policy and its evident even today as there is no general agreement on the scope or mechanics of such a law being on the government's agenda.<sup>22</sup>

**3.1.3 Consumer Issues in Public Sector:**

State role in this western democratic thought is based on the social contract with the citizens. It means when state enforces laws and regulation and the citizen shows their obedience but it is the responsibility of the state to give protection and give account of their actions to subjects. The distinction between customers and consumers as established earlier draws every citizen in to the mantle of consumers, weather they

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<sup>21</sup> A list of general legislation on consumer protection (as listed in chapter three in the dissertation) but there was no specific consumer protection law as the first provisionally enacted consumer protection in Pakistan was Islamabad consumer protection Act, 2005.

<sup>22</sup> See. The Network for Consumer Protection.[Beyond consumption].Unpublished raw data.

stand in the market place as customer or not. Consumer-citizen can assert their rights not only against the market but also against the government.

*a. General Issues*

**I. Governance in Pakistan**

Pakistan has also adopted this theory; wherein the government is the major provider and distributor of public utilities. However the shrinking role of the state because of trade liberalization and privatization in the country, there is noteworthy gradual shift in the national status of citizens, as growing power of the private entities has changed the concept of “citizens” into consumers of their goods and services. Now the traditional setup to protect the citizen is diminishing and there is emerging need of market to provide consumer protection<sup>23</sup>. Even though there are these emerging market forces, the government of Pakistan still has the responsibility to promote consumer protection as a fundamental rights enumerated in constitution.

We are consumer of many services and goods provided by the state like in health, education, environment, postal and drinking water sector. These issues are important to all the citizens and therefore state machinery in the form of executive, judicial and legislative has to be examined from the consumer perspective. The government of Pakistan has to address these issues by giving representation of consumer interest in legislature, a proper redress mechanism in administration including the accountability of administrator himself and access to equitable justice and proper arbitration of disputes through judiciary<sup>24</sup>.

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<sup>23</sup> Ali Qadir, *The state of consumers in Pakistan*, The Network publication: 2001.

<sup>24</sup> *ibid*

## II. Corruption

Corruption is another issue in public sector which is an important consumer concern<sup>25</sup>. It seeps in the roots of every government institution and whether it is in the form of misuse of power, delay in the protection of rights, siphoning off public fund, they all have a negative effect on consumer rights.

## III. Lack of Consumer participation and transparency

Lack of Consumer participation and transparency<sup>26</sup> in the decision making process and policies of government in those matters that have direct bearing on consumer and this is a major factor in the inefficiency of the public sector. The consumers should be allowed, rather promoted, to engage in informed debate over censorious issues, and public participation must be ensured by the government. Particularly when the government acts as a regulator of the institutions providing basic goods and services, then public participation is to be organized through public hearing by regulatory bodies for tariff and price determination<sup>27</sup>. Governments in Pakistan have been using their powerful structure to promote various interests but its accountability towards the citizen is always limited. This is the reason the mechanisms which government has provided to protect consumers are non-transparent and ineffective.

## IV. Revenue collection and its disposal:

Revenue collection and its disposal are one of the important functions of the state government. <sup>28</sup>The disposal of revenue is very much a concern of the consumers

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<sup>25</sup> ibid

<sup>26</sup> ibid

<sup>27</sup> A. Salman Humayun and Tanveer Anjum, *Privatization of Public Utilities: A Consumer Perspective*, published by Consumer Rights Commission of Pakistan(2000), 22

<sup>28</sup> Ali Qadir, *The state of consumers in Pakistan*, The Network publication: 2001.



because it has an enormous impact on the consumption patterns of the citizen-consumer, by “*determining how much food the rural consumers will be able to sell, how much teachers will be paid in the remote villagers and how many essential drugs will be made available to low income groups in the country*”<sup>29</sup>”.

Tax and revenue policies of government bear effects on the citizen, and in Pakistan it is been a policy and practice to generate more revenue by charging additional taxes to the citizens and it creates an extra burden on them. These revenues are being used to pay off the loans taken by the government and some times it is also generated by reducing the wages, devaluation of money and through reduction in subsidies. All this affects the consumer because it is the consumer who has to endure the expenses. Transparency in collection as well as disposal of funds is a key issue in tax default. If the assessment of how much fund is available for provision of basic necessities of life to citizen-consumer is done improperly, there will be more defaults and higher taxation in the tax policy. The other consequence is that marginalized citizen-consumer will be deprived of basic goods on reasonable prices. Further on, when the state itself will sustain losses due to not collecting revenue for useful purposes it will become dependent on the foreign agencies for loans and this has an indirect effect on the consumer because the debts will have to be paid off through levying high taxes on the consumer-citizens.

In order to ensure transparency there is a need of public participation in policy making process but it is seen here in Pakistan that when ever the decision and policies are being made, the consumer perspective is not incorporated through direct involvement of consumers.

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<sup>29</sup> ibid

## V. Provision of primary and essential goods and services:

One of the primary responsibilities of the state under the constitution<sup>30</sup> is to provide the basic goods and services. From adequate food and shelter to communication and transportations, citizen-consumer is concerned with the easy and affordable accessibility of basic items necessary for life<sup>31</sup>.

In most developing countries, including Pakistan, the discourse of consumer rights inevitably acquires broader parameters in view of the fact that a wide range of basic services are provided by the public sector, and more importantly, a sizable percentage of population lives below the poverty line and, therefore, cannot stand in the market as 'customers'. In Pakistan, market forces and private institutions are not self sufficient and have proved to be inefficient (as in the current scenario of privatization) in providing continuous and affordable services and goods, particularly in the telecom and power sector. This enhances the role of government as a provider and, in some cases, regulator to ensure the access to basic utilities. Citizen-Consumer rights expand to wide range of areas includes clean water, proper education, health, sanitation, clean environment, public utilities (i.e. electricity, gas and telecommunications, etc.), home appliances, pure food and drugs. We will briefly discuss the state of consumers in this extending range of basic utilities and services provided in public sector.

### *b. Special Issues*

**I. Consumer Issues in Education Sector:** The Government has to facilitate the citizen-consumers in getting education as a primary responsibility. This right is also acknowledged in the Constitution of Pakistan in Article 37 (b) and (c): "*The state*

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<sup>30</sup> Relevant articles of constitution of Islamic Republic of Pakistan, 1973.

<sup>31</sup> Ali Qadir, *The state of consumers in Pakistan*, The Network publication, (2001).

*shall remove illiteracy and provide free and compulsory education within minimum possible period; make technical and professional education generally available and higher education equally accessible to all on the basis of merit ...*” but the status of citizen-consumers are abysmally different to what is a constitutional right. The dismal situation in the education sector is generally ascribed to government’s educational policies which lack in the capability to steer this sector according to national requirements. The more specific problems as described in Consumer Rights Commission of Pakistan report 2001<sup>32</sup> include prejudiced distribution of education among income groups and regions, gender inequality, high dropout rate, lack of basic and physical structural foundations of educational institutions, shortage of adequately qualified or capable staff, non-uniform and obsolete syllabi, lack of public-private partnership, lack of funds and abysmal teaching standards. Apart from all these factors, mismanagement and embezzlement of public funds has made this sector a totally handicapped figure completely dependant on foreign aid.<sup>33</sup>

The government participation in this regard is the promulgation of Compulsory Primary Education Ordinance 2001, an encouraging step in the right direction. The government is running an Education Sector Reforms Action Plan, which is built on the 1998-2010 Education Policy. The current government has earmarked Rs 1.574 billion<sup>34</sup> to the education sector under the education reform plan 2001-2003.

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<sup>32</sup>See under *The state of consumer protection 2001*, Consumer Right Commission of Pakistan (2001),pg12

<sup>33</sup>“Pakistan received about 2.73 billion dollars from the world bank over the last four years.....Around half of the bank's lending is to be channeled to provinces which bear most the responsibility for delivering public services such as irrigation, education, health, water supply and sanitation.” "<http://www.w3.org/1999/xhtml>”<HEAD><TITLE>OneWorld South Asia Home / Global Partnerships / Global Partnership News - World Bank plans 6.5 billion dollar lending to Pakistan</TITLE> (last visited 1st january 2007)

<sup>34</sup>

This plan was aimed at to introduce universal primary education, higher education, literacy in formal and non-formal schools, technical and skill training schemes, public-private partnerships, research, teachers' training programs and improvement of science and technical laboratories. Beside this the government has set out the target of capacity building, planning, budgeting, quality surveillance and restructuring of education system up to higher secondary level.

The government has set desirable targets of achieving maximum rate of literacy. It has set a target of achieving 60 percent literacy rate by the year 2004 and 100 percent during the next five years. To this end, the government has set a target of achieving maximum enrollment in schools and colleges. It is estimated that net primary, middle, secondary, and higher education enrollment by 2003-04 would be 75, 55, 40 and 5 percent respectively. In practice though, national spending on education in public sector in Pakistan is among the lowest in South Asia.

*Pakistan spends only 2.3 per cent of its Gross National Income (GNI) on education as compared to 3.6 per cent in South Asia and 3.4 per cent in low-income countries, according to the Little green data book 2006 Launched by the World Bank.<sup>35</sup> . Current federal spending on education is of 2.7 per cent of GDP as compared to UNESCO-prescribed four per cent. Before the share of education in national budget was Rs. 73.745 billion in 2001-02, which amounted to only 2 percent of GDP. It shows that National spending on education has rarely exceeded 2.50 percent of Gross Domestic Product (GDP). Political parties and civil societies say the massive defense spending at four percent of the GDP the reason why education sector gets a poor share of the total outlay<sup>36</sup>.*

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<sup>35</sup> 2006 <http://www.w3.org/1999/xhtml>"><HEAD><TITLE>OneWorld South Asia Home / News / News:Today's Headlines - Pakistan's spending on education lowest: World Bank</TITLE>(last visited 10<sup>th</sup> July)

<sup>36</sup> see *The state of consumer protection 2001*, Consumer Right Commission of Pakistan (2001)

## **Situation of dropouts**

Pakistan has become a nation of dropouts, with a massive 45 per cent of students quitting school mid-way according to the Education Minister Gen (Retd) Javed Ashraf Qazi<sup>37</sup>. The country also has a low literacy rate of less than 50 per cent, Qazi, also a former ISI chief, said at a national conference on the state of education.

*We have failed to provide basic facilities at school level, one of the prime reasons for the increasing dropout rate," he said, adding in Punjab alone, over 20,000 schools need basic amenities like water, classrooms and sanitation facilities. The lack of schools and poor infrastructure of the existing ones has also deprived 40 per cent of the children in the school-going age of basic primary education. Ill-equipped and underpaid teachers also contributed to the low literacy rate, Qazi said. The country paid its tutors less than what it did to a domestic servant. There were also no facilities to impart on-the-job skills to the teachers. Qazi charged the successive governments for the non- uniformity in the sector, be it in curriculum or in examination system. "At the end of the day, only two per cent of the school- goers join universities. We have to invest in the education sector," he told reporters.*

## **II. Consumer Issues in Health sector:**

Health sector remains a low priority for agenda setting bodies in Pakistan. The Constitution of Pakistan, in Article 38(a) and (d), provides that "the state shall secure the well being of the people, irrespective of sex, caste, creed and race...medical relief, for all such citizens, irrespective of sex, caste, creed or race, as are permanently or temporarily unable to earn their livelihood on account of infirmity, sickness or unemployment."

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<sup>37</sup> *ibid.*

Despite the emphasis by the Constitution on provision of quality and safe health services to all citizens, today, Pakistan ranks only second to Afghanistan, which has the lowest health indicators in South Asia although remarkable success has been achieved in certain areas. Some of these are depicted in the table below:

**Table 1 Improvements and depreciation in health sector**

<b>Improvements in some of the health indicators:</b>	<b>Depreciation in few of the health indicators</b>
Elimination of polio and awareness about AIDS etc. <sup>38</sup>	On Human development Index (HDI) Pakistan's ranking has moved from 138 in the previous report to 144 out of 175 in 2003.
On the expenditure side the total expenditure on health sector has increased from 0.70% of GDP in 2000-01 to .78% of GDP in 2002-2003.	Poor availability of healthcare facilities and its access has been problem in Pakistan. The number of doctors, specialists, and paramedical staff is insufficient to meet the national demand. <sup>39</sup>
Life expectancy has increased from 59 years in 1990 to 64 for males and 66 for females in 2004	There is a marked difference of health facilities and its access in urban and rural areas of Pakistan.
Infant and maternal mortality rates have dropped, as have illiteracy rates	Non-availability of Life-saving drugs or other medicines remains another serious concern. Life-saving drugs are usually stored or sold at high rates.
<i>Improvements in immunization coverage of children and women from 53% in 2001/02 to 77% in 2004/05. Proportion of</i>	<i>Beside unequaled access of health facilities, whatever medical services are available to consumers (both in rural and urban areas), are of scantier in quality. This applies to the quality of</i>

<sup>38</sup> see *The state of consumer protection 2001*, Consumer Right Commission of Pakistan (2001)

<sup>39</sup> *ibid*,

(all above data in Table is taken from *The state of consumer protection 2001*, Consumer Right Commission of Pakistan (2001) and

[www.worldbank.org.pk/wbsite/external/countries/southasiaext/pakistan.](http://www.worldbank.org.pk/wbsite/external/countries/southasiaext/pakistan.) )

<p><i>pregnant women attending antenatal care increased from 34% in 2001/02 to 50% in 2004/05 and decreasing gender differentials.<sup>40</sup></i></p>	<p><i>hospitals, medicines, laboratories and other non-medical services like water, food and clean environment in the health centers and public hospitals.</i></p>
	<ul style="list-style-type: none"> <li>➤ <i>A number of diseases like tuberculosis, kidney failure, hepatitis, mental disorders, diabetes, heart diseases and iodine-deficiency disorders are on the rise in all provinces.</i></li> <li>➤ <i>According to a report of Asian Development Bank, communicable infectious diseases, reproductive health problems, and nutritional deficiencies are estimated to account for 60 percent of the total diseases in Pakistan.</i></li> </ul>
	<ul style="list-style-type: none"> <li>➤ <i>Misappropriations in health funds and services have direct bearing on consumers. Embezzlements in drugs and equipment result in reduced access of people to public hospitals, as fewer medicines and equipment would be available for patients.</i></li> <li>➤ <i>Drug inspectors, Doctors and other staff connive with each other to misappropriate medicines and equipment.</i></li> </ul>
	<ul style="list-style-type: none"> <li>➤ <i>Another common practice in public hospitals is that doctors connive with proprietors of medical stores. If a medicine or syrup is not selling, the proprietors gratify the doctor to prescribe that very medicine or syrup to as many patients as possible and the doctor will do that. This is usually done to sell syrups that can be prescribed to many patients, even with no symptoms of the disease for which the syrup is supposed to be used, due to their fewer side effects.</i></li> </ul>

<sup>40</sup> see [www.worldbank.org.pk/wbsite/external/countries/southasiaext/pakistan](http://www.worldbank.org.pk/wbsite/external/countries/southasiaext/pakistan) (last visited 17 Feb 2006)

### III. Consumer Issues in Water sector:

Major problems with regard to drinking water include lack of accessibility, absence of legislative structure and water standards and an irrational tariff system has ranked the country among the other countries with very low access to safe drinking water<sup>41</sup>.

Existence of these basic consumer rights is acknowledged under the national legislation<sup>42</sup> and different International covenants<sup>43</sup>.

These rights are: the right to basic goods and services, which guarantee survival, and include adequate food, clothing, shelter, healthcare, education and sanitation; the right to be protected against products, production processes and services, which are hazardous to health and life; the right to be given the facts needed to make an informed choice or decision in the market; the right to choose products and services at competitive prices; the right advocate for consumers' interests with a view to their receiving full and sympathetic consideration in the formulation and execution of economic and other policies; the right to a fair settlement of just claims, including the right to receive compensation; the right to acquire knowledge; and the right to a physical environment, which enhances the quality of life. These rights presuppose some responsibilities on the part of consumers as well, including the responsibility of having a critical awareness, expressing solidarity with organized consumers, being socially responsible for their consumption patterns, preserving the environment and asserting themselves for getting a fair deal. In most developing countries, including Pakistan, the discourse over consumer rights inevitably acquires

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<sup>41</sup> *The state of consumer protection 2001*, Consumer Right Commission of Pakistan (2001),

<sup>42</sup> The constitution of Pakistan 1973 secures the rights of water consumers as a citizen .

<sup>43</sup> There exists National Water Policy in Pakistan although there are fundamental flaws in it which does not envisage prudent mechanism of water conservation. The existing legislation on water largely deals with the distribution of water. World Health Organization (WHO) standards are also guidelines for easy access of clean water to every individual in any state.



broader parameters in view of the fact that a wide range of basic services are provided by the public sector, and more importantly, a sizable percentage of population lives below the poverty line and, therefore, cannot stand in the market as 'customers'. Consumer movement in the developing countries, therefore, cannot merely restrict itself to the rights of 'customers', while excluding vast populations of absolute poor and marginalized sections of the society. Therefore, in addition to the market-related concerns, other issues such as access to basic goods and services, equity, and protection of marginalized have to be made into an integral part of the consumer rights movement in the peculiar socio-economic context of developing countries.

In Pakistan, almost all governments since independence have remained indifferent to the consumer concerns, largely because of the non-existence of independent consumer rights initiatives and poor understanding of the causes, implications and consequences of malpractices of business sector and civic agencies vis-à-vis the rights of the consumers. Public policies even now continue to be insensitive to consumer concerns and show a tendency of excluding consumer protection while aiming at promoting business and attracting foreign investment. Measures taken for consumer protection are generally *ad hoc* in nature, narrow in scope, and primarily motivated by short-term political considerations. The same tendency explains the governments' preoccupation with price-control measures, particularly in the month of Ramadan, while showing no genuine commitment for equitable access, safety and quality aspects of goods and services. No policy for consumer protection, taking a comprehensive view of the relevant problems, has ever been formulated and implemented in Pakistan. Even when the consumer needs and concerns related to specific sectors are addressed at the policy levels, nothing changes

on the ground in view of implementation mechanisms, which are essentially slow, inefficient, and even regressive.

### **3.2 CONSUMERS IN THE PRIVATE SECTOR:**

It is a global experience that private sector is very quick in response to consumer concern because private entities have to meet consumer demands to find place in the market. They have developed the atmosphere of ethical behavior and set targets to mark up their goods according to changing needs of consumer. It is observed that the effort of this sector is oriented to high profits and socio-environmental benefits; some times it is just a "*cosmetic green wash*" to their products. There is a need of strong consumer movement that is aware of their rights and can assert pressure on the demand side of the consumption, so that the supply side has to meet their requirements. This is what is lacking, and in consequences private sector is very slow to consumer concerns. There is an emerging need to protect consumer interests in light of the following issues which has been universally highlighted.

#### **(a) Quality and standard of goods and services.**

In Pakistan there is generally a trend that quality of goods are not checked despite the fact that there are certain laws (as it provides the procedure to check the quality of food items<sup>44</sup>) to control the standards of goods. Although laws are available, the loophole of having no real redress mechanism means there is little available for practical recourse to complaint processing. This is due to the combination of factors involving weak regulatory system, general lack of awareness and proactive consumer movements, and strong lobbying in private producers circle

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<sup>44</sup> The detail of food legislation is mentioned in the 4<sup>th</sup> chapter see page number

with in the power structure. The private sector is more powerful then ordinary consumers in getting their high return by selling inefficient, spurious and low quality goods and services<sup>45</sup>. People are constantly consuming these goods even some of them are not aware of the fact that they are not getting the true worth of what they are paying, but are helpless to find recourse. Many small as well as large private entities covering a wide range of goods and services produce cheaper but low quality goods ranging from food items to construction services<sup>46</sup>.

**(b) Excessive advertisement and other unethical ways.**

The earlier principle of “**Caveat Emptor**” or “**let the buyer be aware**” which was prevalent in 19<sup>th</sup> century can’t be justified in the today’s mass production economy where there is little contact between the seller and buyer, and sellers make exaggerated claims and advertisements which they do not intend to fulfill. This leaves the consumer in a very difficult position with the very few avenues for redress. Excessive and unethical advertisement without any check is bombarded on the consumer through various sources of media. This leads to production of unsafe and hazardous goods, without placing any responsibility on the sellers.

**(c) Other environmental and social issues.**

There are other social and environmental issues which are totally neglected in private sector. As far as public sector is concerned, they might be held responsible to the citizens but private sector is only answerable to their own internal surveillance. This becomes an additional duty on the government to act as regulator but even the regulation can’t solve the problems which result in to corporate and criminal crimes.

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<sup>45</sup> Ali Qadir, *The state of consumers in Pakistan*, The Network publication, (2001).

<sup>46</sup> *ibid*

Issues such as dumping of toxic waste and materials in open fields and plots have not only raised environmental problems like pollution in air, water and soil from many local industries but have also taken many innocent lives (see box).

The failure of regulators to check quality and the technology used in a product results in very harsh experiences, for example, Green revolution introduced in The subcontinent by private sector has replaced a large amount of labor force and has encouraged large holdings on one hand, while on the other hand it effects the environment including pollution of the water by pesticides and loss of fertility because of high yielding variety seeds and chemical fertilizers<sup>47</sup>.

Many Private entities particularly multinational companies have significant role in changing consumption pattern of the country, thus bringing more social disparity in the current situation. These companies promote their products in such a way that they become a necessity to anyone who can afford it and a loss to anyone who cannot. The widespread projections of luxury goods that are outside the price range of the poorer sections of society helps widen the gulf between the rich and poor.<sup>48</sup>

**(d) Effect of privatization in Pakistan-a consumer perspective:**

Consumer protection in developing countries is usually adopted in the context of development<sup>49</sup>, concerned with human rights and equitable distribution of benefits.

The consumer laws and policies have to be understood in a broader perspective.

Similarly, other policies' effecting the human rights and economic benefits are to be seen in a consumer's perspective so that it may be in lined with consumer laws.

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<sup>47</sup> ibid

<sup>48</sup> ibid

<sup>49</sup> Dr.S.Sothi Rachagan, *Consumer policy and law in the Consumer and Development Interest*. This paper was read in United Conference on Trade and Development (2-4 July) communicated from Consumers International Asia Pacific Office.

Box 2 16 March 2006, Authorities failed to remove toxic waste despite death of nine- year-old<sup>50</sup>.

16 March 2006, Authorities failed to remove toxic waste despite death of nine- year-old. Garib Sons (private) ltd dumped waste at plot F-620 and F\_621 (Karachi) of their chipboard company including toxic phenols, magnesium hydroxide, which caused death of one child and gangrenous legs to other.

The privatization and deregulation policies of government in Pakistan which have caused the restructuring of the institutions for economic benefits, has raised many issues which are concerned with consumers, including the consumers share in this economical gain after privatization. Privatization is a customary practice of the third world where the policies are dictated and regulated by the World Bank and IMF. Pakistan unfortunately is one of those countries suffered due to unregulated privatization<sup>51</sup>. There have been two waves of privatization in Pakistan, the first one from 1992 to 1994<sup>52</sup> and the second from July 2001 till now<sup>53</sup>, but the consumers have been the forgotten stakeholder in the whole process.

From the consumer-citizen perspective, the problem related to process of privatization can be analyzed particularly in the context of privatization of public utility services and generally its indirect effects on the consumers.

#### **Efficiency of private enterprises:**

Basic goods and utilities are the major concern in a country like Pakistan where 40% of the population of the country is living below the poverty line, a situation

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<sup>50</sup> Herald June 2006

<sup>51</sup> This view in relation with the privatization is taken from *Privatization of KESC Tragedy* by KESC Labour Union and Action Committee. See <http://www.urckarachi.org/privatization> (10th July 2006).

<sup>52</sup> Dr. Akhtar Hassan Khan, *Is Privatization In Pakistan Purposeful*, see [www.pide.org.pk/pdf/psde%2018AGM/Is%20Privitization%20in%20Pskitan%20Purposeful.pdf](http://www.pide.org.pk/pdf/psde%2018AGM/Is%20Privitization%20in%20Pskitan%20Purposeful.pdf) (10th July).

<sup>53</sup> Current privatization of PTCL and KESC in Pakistan started in 2001.

which is very alarming for the policy makers. In Pakistan most of the public utilities are under the control of government and a majority of the citizen-consumers are confronted with number of problems in public sector ranging from accessibility and quality, to quantity, standard, and performance of essential services. . It is often correctly claimed that due to political interference and over-staffing, the efficiency of the public sector units is reduced, and privatization is pursued with the belief that private sector units are more efficient in improving this situation than public sector units. This is not true across the board as it can be seen in a comparison<sup>54</sup> made between public and private firms producing similar goods. The study concluded that changing the ownership of an industry from public to private is neither a necessity nor a condition for more efficient operation of specific industrial enterprises. This comparison, after the analysis of post privatization, is made in the ADB (Asian Development Bank) Report October 1998<sup>55</sup> on “Impact and Analysis of Privatization in Pakistan”, and is summarized in the following table;

**Table 2: Is privatization purposeful?**

	Better	Same	Worse	Total
PMEs	9	13	16	38
Misc.	3	10	1	14
Ghee Mills	2	12	5	19
Rice Mills	2	-	6	8
Banks	2	2	-	4
Total	18	37	28	83
Percentage	22	44	34	100%

Source: “IS PRIVATIZATION IN PAKISTAN PURPOSEFUL?” By Dr. Akhtar Hasan Khan

\* Public Manufacturing Enterprises<sup>56</sup>.

<sup>54</sup> Dr. Akhtar Hasan Khan “*Is Privatization in Pakistan Purposeful?*” see [www.pide.org.pk/pdf/psde%2018AGM/Is%20Privitization%20in%20Pskitan%20Purposeful.pdf](http://www.pide.org.pk/pdf/psde%2018AGM/Is%20Privitization%20in%20Pskitan%20Purposeful.pdf) (10th July).

<sup>55</sup> *ibid*

<sup>56</sup> *ibid*

The above table clearly states that only 22% of the privatized units were performing better than they were in the pre-privatization period, whereas 34% were worse than before.

**i. Access and availability of basic goods and services:**

Liberalization and privatization of economies are a threat to the developing countries, and particularly in Pakistan where large parts of the population consist of marginalized, disadvantaged and poor consumers already confronted with the problems of non-availability of access and equity in public utilities. Not only are their problems not addressed but they are in many ways aggravated through the process of privatization.

Public utility services particularly the telecommunication and power sectors have gone through privatization in Pakistan, and despite being major revenue generators, their services and performance has been declined since<sup>57</sup>. The major grievances of consumers about the telecommunication sector are the low quality of services, long waiting lines for telephone connections because there is increasing demand for telephone connections and low tele-density in spite of nearly 100% digitalization in this sector. The customers who have the facility of telephone are facing the problems of poor quality including the non-functioning of public telephones, delayed shifting of telephone from one place to another and delays in publication and distribution of telephone directories to consumers<sup>58</sup>. It is the duty of PTCL to publish directories, and there was a need of 2.86 million directories in 1999,<sup>59</sup> that has definitely increased by now. In Pakistan, the majority of the population resides

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<sup>57</sup> The sale of PTCL to a state-owned monopoly named Etisalat, on the terms and conditions not known to the general public. This is still a profitable entity why it is sold in distress it is to be scrutinized see the same argument taken in A. Salman Humayun and Tanveer Anjum, *Privatization of Public Utilities: A Consumer Perspective*, published by Consumer Rights Commission of Pakistan (2000), page 52

<sup>58</sup> *ibid* page 51-59, 69-76

<sup>59</sup> *ibid* page 53

in rural areas but there is concentration of telecommunication services is in urban areas despite the fact that telecommunication services are regarded as basic services and this principle has been adopted universally. PTCL must consider remote, rural and less populated areas to provide universal basic telecom services including local calls, access to telephone directory and life line services. Access to internet and high-speed digital communications and satellite based telecoms are not in the reach of every Pakistani citizen, only .25 million people had excess to internet in 2000<sup>60</sup>.

*Privatization of power sector*, historically not at the top of the privatization agenda, got momentum under the current regime with the sale of KESC to private sector. It has failed though to produce the proclaimed benefits of privatization including improved quality and efficiency in services. The consumers of KESC are facing load shedding, frequent power breakdown, unreliable services resulting in voltage fluctuation and damage to valuable electric appliances. The temperature in Karachi went up to 48 degrees recently while the performance of KESC dropped down to its lowest ebb.<sup>61</sup> Long spells of power breakdowns in many areas forced people to spend sleepless nights and they took to the streets attacking complaint cells of KESC. The new management of KESC after privatization is held responsible for power shortage and is unable to meet the future demand of electricity in Karachi which is increasing at a rate of 10% annually<sup>62</sup>.

**ii. Regulation of private sector:**

The privatization of public monopolies has changed only the ownership but has given birth to private monopolies in the market system, and to regulate these partial or complete privatized entities is a major concern for the consumers. PTCL is operating as monopoly as far as basic telephone facilities are concerned and although other mobile services are operating, the PTCL is the only land line facility provider.

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<sup>60</sup> *ibid*, pg 54

<sup>61</sup> Dawn July 3, 2006

<sup>62</sup> *ibid*



Privatization process of the PTCL has highlighted the need for a regularized body and PTA (Pakistan Telecommunication Authority) was established under Pakistan Telecommunication (Re-organisation Act) 1996.

The aim of the regularized body is not only monitoring and regulating the privatized institutions but also to ensure there is competition in the market and to act as a watchdog for protection of consumers<sup>63</sup>. The whole process of privatization and deregulation of institutions is only meaningful if regulating bodies establishes balance between the interests of service/goods provider, service/goods distributor and consumers.

The government in Pakistan is regulating the private sector through many institutions like NEPRA (National Electric Power regulatory Authority, PTA (Pakistan Telecommunication Authority), OGRA (Oil and Gas Regulatory Authority), MCA (monopoly control authority) and others. The private institutions like multinational entities are growing at an alarming rate, paying high taxes to the government and thus asserting pressure and influence from the supply side, which, when considering that the government is representing consumers, suffers from a conflict of interests<sup>64</sup>. This was established in the recent cartel found in cement industry by MCA (see the text box 3).

**Box 3: MCA (Monopoly Control Authority) a toothless tiger.**

**MCA (monopoly control authority) found oligopolistic behavior and price fixing in cement industry and ordered to reduce the prices, but instead of supporting MCA, government went for settlement with cement manufacturers, and it is the customers that lost out.**

<sup>63</sup> A. Salman Humayun and Tanveer Anjum, *Privatization of Public Utilities: A Consumer Perspective*, published by Consumer Rights Commission of Pakistan(2000), page

<sup>64</sup> "The government representing the consumer suffers from a conflict of interest. For example, seeking to generate tax revenues from sales and supplies, the need to accommodate the organized influence and pressure from the suppliers, especially the powerful multinationals, and at the same time representing the consumer. In other words, the government has its own point of view that may conflict with what is in the best interests of the consumer. From the consumer movement's point of view supplies, and pricing are consumer related matters and the legislative scheme should now set forth a clear consumer welfare agenda, wherein active participation by consumers is not only permitted but also facilitated. A recent example of such a conflict was the Cement Case" See Mohammad Sarwar Khan Abrar Hafeez Consumer laws in Pakistan , Part 1 Consumer Rights Commission of Pakistan, Islamabad (1999),pg 2

A classic example of how regulatory bodies are vulnerable to influences not just from the private entities but also from the government. The legislations that have created industry regulators such National Electric Power Regulatory Authority (NEPRA) and PTA have few safeguards relating to consumers. For example, the Pakistan Telecommunication (Re-organization) Act 1996 refers to “interests of users” which are to be given protection under section 4(c).<sup>65</sup> Every license under this Act (sec 21(4) (1)) is granted in the consumers interest.

In case of NEPRA, Regulation of Generation, Transmission and Distribution of Electric Power Act (1997) stresses to regulate the tariff or prices by the power distribution companies. Under this act, the authority has been charged to serve the interests of the consumers<sup>66</sup> and protect against the oligopolistic and monopolistic price increase <sup>67</sup>detrimental to consumers. These Acts also envisages certain mechanisms for complaint redress; however they don't empower these regulatory entities to award damages and compensation to consumers.<sup>68</sup> This shortcoming demonstrates that bodies are unable to produce a sustained consumer welfare policy and it is considered a major shortcoming in these laws from a consumer's perspective. Even a body like NEPRA is unable to control the private power generating companies, from whom the government buys electricity on high rates. The government of Pakistan bought electricity on record high tariff in 90's from IPP'S. Similarly, the KESC had to enter into agreement with IPPs to purchase electricity

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<sup>65</sup> Pakistan telecommunication (re-organization act) 1996

<sup>66</sup> Dr. Akhtar Hasan Khan “*Is Privatization in Pakistan Purposeful?*” Available at [www.pide.org.pk/pdf/psde%2018AGM/Is%20Privitization%20in%20Pskitan%20Purposeful.pdf](http://www.pide.org.pk/pdf/psde%2018AGM/Is%20Privitization%20in%20Pskitan%20Purposeful.pdf) (10th July).

<sup>67</sup> Current privatization of PTCL and KESC in Pakistan started in 2001

<sup>68</sup> Amber Mahmood “NEPRA the powerless” [www.jang.com.pk/thenews/apr2004-daily/22-04-2004/oped/newspost.htm](http://www.jang.com.pk/thenews/apr2004-daily/22-04-2004/oped/newspost.htm) (last visited 5<sup>th</sup> January)

from Private Generating Units like Tapal, Gul Ahmed, Pasmic, and Nuclear Power Plant on high rates.<sup>69</sup> During the recent crisis of electric supply shortages in Karachi, WAPDA blamed the Ministry of water and power, and National Electric Power regulatory Authority (NEPRA) for the electricity crises and there is concern that if immediate steps are not taken they will be forced to buy electricity from the IIP's on high rates<sup>70</sup>. Meaningful public participation and hearings in the proceeding relevant to consumer concerns is not encouraged and even if it is allowed not enough time is given(see box 3) for the exchange of views so that consumers point of view makes a difference to the arbitrary decision of these bodies.

**ii. Excessive billing and price fluctuation:**

One of the main reasons for privatization was to enhance competition. Consequently, it was hoped that quality would increase and prices would go down. Both in power and telecom sectors though, privatization has made no difference, in fact, one could say that that privatization of these sectors has given birth to new kinds of problems and has in many ways aggravate the issues related to price and quality. Frequent upward tariff revisions and arbitrarily price fluctuation in electricity, oil & gas, and telecom sectors is a major concern for the consumers, for example just in the year 2000 the tariff of the telephone service charges raised a number of times in spite of the fact that this sector is earning enormous profit<sup>71</sup>. Tariffs for telephone charges never remain stable in Pakistan even though the government has fixed the price cap for it. A Similar situation is with the VSAT's and cable TV operators. The license fees for them usually to increase arbitrarily and PTA is very slow to take actions against it.

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<sup>69</sup> KESC Labour Union and Action Committee "privatization of K.E.S.C – Tragedy Jan 2005, [www.urckarachi.org/Privatization%20of%20KESC.doc](http://www.urckarachi.org/Privatization%20of%20KESC.doc) ,(last visited 5th January 2007)

<sup>70</sup> Dawn, July 4, 2006

<sup>71</sup> A. Salman Humayun and Tanveer Anjum, *Privatization of Public Utilities: A Consumer Perspective*, published by Consumer Rights Commission of Pakistan(2000), page 51-59, 69-76

Consumers in the power sector are also complaining of excessive billing and there are chances that the prices for oil, gas and electricity will go up in the near future. There are multiple reasons for it and many critics suggest that there was no need to privatize this sector, like the privatization of Kot Adu Power Station, an already big power unit which was running efficiently. Its units were either gas turbine or combined cycles which can use either oil or gas. Gas is much cheaper as compared to oil for producing electricity and Kot Adu was mostly on gas, thus bearing a low cost. The second Peoples Party Government in the nineties decided to sell 26% stake in it at a price of US\$215 million and later on, 10% shares were again sold for US\$76 million and the government realized only US\$291 million from the sale of 36% share<sup>72</sup>. WAPDA's cost of generation at Kot Adu with gas feed stock was not more than 2.5 US cent per KWH, but the government decided that after privatization of KAPCO it would sell the electricity at higher rates (4.9 US cent per KWH). Furthermore, the setting up of new independent private power plants like "HUBCO" etc have ruined the WAPDA's tariff system since it entered into binding purchase agreements with many of these private companies to meet growing demand. The cost was borne by the consumers all over the country because WAPDA had to pay double compared to old prices to buy electricity and this resulted in a sharp increase in electricity charges, between 1989-96 charges arose from Rs.989 to Rs.2.738<sup>73</sup>. On the other hand, HUBCO, under command of Multinationals is running in full swing and earning a lot

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<sup>72</sup> "There was no need to privatize an already existing big power unit which was running efficiently. Its units were either gas turbine or combined cycles which can use either oil or gas. Gas is far cheaper than oil for generating electricity and Kot Adu was mostly running on gas. However, the government decided to sell 26% stake in it at a price of US\$215 million. Subsequently 10% shares were to sold for US\$76 million and the government realized only US\$291 million from the sale of 36% share".

See Dr. Akhtar Hasan Khan "*Is Privatization in Pakistan Purposeful?*"  
[www.pide.org.pk/pdf/psde%2018AGM/Is%20Privitization%20in%20Pskitan%20Purposeful.pdf](http://www.pide.org.pk/pdf/psde%2018AGM/Is%20Privitization%20in%20Pskitan%20Purposeful.pdf) ( Last visited 10th July).

<sup>73</sup> A. Salman Humayun and Tanveer Anjum, *Privatization of Public Utilities: A Consumer Perspective*, published by Consumer Rights Commission of Pakistan(2000),

of money from electricity. The profit has been sent out of the country as the dividend which is paid to the shareholders doesn't belong to this country. The electricity problems are one example of how multinational have been able to operate without proper supervision, and to the ultimate detriment of consumers in Pakistan. The alarming situation for us is that the electricity tariff in Pakistan is highest in Asia and it has made this industry uncompetitive in world market.

This doesn't end here as the KESC and Sui Southern Gas Company (SSGCL) filed petitions before National Electric Power regulatory Authority (NEPRA) for further increase in prices in 2002, to which NEPRA agreed and there was a further increase in the burden on the consumers<sup>74</sup>. Recently gas consumers of private entities like Sui Southern Gas Company (SSGCL) and Sui Northern Gas Pipelines (SNGPL) have reported that these companies used to send inflated and incorrect bills that amounted to thousands of rupees and it is very difficult to distinguish between a commercial or domestic bill<sup>75</sup>.

### **iii. Transparency and Accountability:**

Transparency, accountability and public participation in the decision making process are the key principles for the good governance. Their importance for the nation becomes critical when the decisions are affecting the delivery of basic goods and services. Citizens as consumers of goods and services have right to be informed but the current scenario in Pakistan, the sale of PTCL and Pakistan Steel are controversial issues. The sale of PTCL has been made to a state-owned monopoly named Etisalat, on the terms and condition not known to general public. This was a profitable entity which was sold in haste and ostensibly undervalued. The reasons for this are not known to the public.

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<sup>74</sup> The details related to petitions are available on [www.crcp.org.pk](http://www.crcp.org.pk), last visited July 2007

<sup>75</sup> Dawn, May 2006.

## CHAPTER 4

### CONSUMER PROTECTION LAWS IN PAKISTAN-AN OVERVIEW

The consumer movement in Pakistan is still in its nascent stage and developing an environment with extensive consumer protection has yet to be established. Absence of consumers' access in the indices of law books is evident to this fact that protection of consumers interest are lacking in the statutes of Pakistan and in juridical debates<sup>1</sup>. The review of existing legislation affecting the consumers varies from complete exclusion to partial accommodation of consumers' in the legislative scheme<sup>2</sup>. The other very disturbing fact from the consumer's standpoint is that there is general lacks of inclusive Consumer Protection Laws while those that do exist, are not fully implemented because of poor enforcement mechanisms in Pakistan.

Presently in Pakistan, consumers seek protection by invoking different piecemeal legislation and statutes in various consumer concerns ranging from food and health to monetary transaction and establishment of redress mechanism. There are Traditional or general laws to cover consumer concern on one hand while on the other hand, there are specific laws like, provisionally enacted consumer statutes. Irrespective of all the above Pakistan has to go through a long way to protect consumers who are helpless to inherent inequalities in the system. None of these statutes give a comprehensive legal cover. Besides this, faulty protection mechanism, overburdened

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<sup>1</sup> Sikander Aqeel Ansari and Abrar Hafeez, *Consumer Laws in Pakistan*, Consumer Rights Commission of Pakistan (2000), Volume I

<sup>2</sup> The review of existing legislation on consumer protection in Pakistan here in this chapter is set on the pattern given in the book compiled by the Consumer Right Commission of Pakistan as above mentioned.

and poor infrastructure of judiciary, lack of enforcement, and lack of political will have left the consumers vulnerable to the market forces.

There is a growing need in this fast changing global scenario to have an effective and sustainable approach to consumer protection by following many other developing countries who have introduced national consumer protection laws. To support this argument we have to take an overview of both traditional and newly enacted laws from the perspective of consumer rights and to analyze the flaws or loopholes in it.

#### **4.1 GENERAL (TRADITIONAL) CONSUMER PROTECTION LAWS IN PAKISTAN:-**

Traditionally consumer protection laws in Pakistan focuses on excessive prices levied on primary commodities and protection from short measures. These statutes are regulatory in nature and directed toward fair trading and enhancing competitive forces in market. In reality though, the suppliers have acquired an unbridled freedom to fix the quantity, quality and time of supplies of goods and services at their own will. Consumers in Pakistan are suffering as consequences of these market practices. In such situations they can seek redress from the list of legislation related with consumer concern.

##### **List of traditional laws related to consumer protection:**

This list includes both federal and provisional enacted legislation.

##### ***The Constitution of Islamic Republic of Pakistan, 1973***

- ***The Contract Act, 1872***
- ***The Sale of Goods Act, 1930***

- *The Specific Relief Act, 1877*
- *The Fatal Accidents Act, 1855*
- *Drugs Act, 1976*
- *The Pakistan Environmental Protection Act, 1997*
- *The sale of goods Act, 1930.*
- *The contract Act, 1872:*
- *The specific relief Act, 1877:*
- *The Punjab Consumer Protection Act (PCPA) 2005*
- *North-West Frontier Province Consumers Protection Act, (NWFP CPA) 1997*
- *Baluchistan Consumers Protection Act (BCPA), 2003*
- *The Consumer Protection Ordinance, 2004*
- *Model Consumer Protection Act, 2000*

#### **4.1.1 The Constitution of Islamic Republic Pakistan, 1973:**

Constitution of Islamic republic of Pakistan as a supreme legislation protects the rights of citizens to have basic utilities like food, shelter and clothes. All citizens are consumers of these utilities and state is accountable for the protection of the rights of the consumers. The constitution of Pakistan empowers the state to have control over industry or services under Article 18 of the constitution

*“Subject to qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business”*



***Provided that nothing in this Article shall prevent:-***

- a) *The regulation of any trade or profession by a licensing system; or*
- b) *The regulation of trade, commerce or industry in the interest of free competition therein; or*
- c) *The carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, to the exclusion, complete or partial, of other persons.”*

The argument against article 18, in the perspective of the consumer (given in the reference book<sup>3</sup> prepared by CRCP) is that it is drafted in favor of state as regulatory authority. In fact it doesn't provide any remedy if government owned corporate body or any private entity fails to provide basic goods and utilities. This provision can't cover the situation where in the facade of globalization and privatization consumer bear continuous threat from the multinational suppliers.

This is also against the public policy mentioned under the Article 38(a) “The State shall:

Secure the well being of the people, irrespective of sex, caste or race by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenant”.

The constitution itself bars any action against any state or validity of law as under Article 30(2) which is not only contrary to the public policy (38(a)) but also

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<sup>3</sup> ibid

against the basics of citizen-consumers protection. Grievances against the public entity and any law passed injurious to consumers cannot be contested before court of law.

#### **4.1.2 Wafaqi Mohtasib (Ombudsman) Order, 1983:**

This order is promulgated to establish the office of Wafaqi Mohtasib (Ombudsman) in order to diagnose, investigate, redress and rectify any injustice done to a person through maladministration. Their jurisdiction is limited to any agency of federal government or any statutory corporation or other institutions established by Federal government.

##### ***Provisions Relevant to Protection of Consumer -citizens: (a brief summary)***

This particular Act protects the citizen-consumer against the offences related to maladministration in the functionaries of government institutions. Maladministration is defined in section 2(2) of Wafaqi Mohtasib order, 1983<sup>4</sup>.

##### ***Complaint Redress Procedure under this Order:***

Complaint against “Maladministration” can be made by an aggrieved person to Wafaqi Mohtasib or its office mentioned under sec 9 of this order. Pursuant to section 10 of this order a written complaint must be made with in 3 months from the day when the complainant first noticed the incidence of maladministration or any

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<sup>4</sup> Section 2(2), “Maladministration” includes: 1) a decision, process, recommendation, act of omission or commission which;

- a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is bona fide and for valid reasons;
- b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or
- c) is based on irrelevant grounds; or
- d) involves the exercise of powers, or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favoritism, nepotism and administrative excesses; and
- e) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities;

injustice (if it comes within the ambit of definition of mal administration under sec2 (2) of this order). This 3 months limitation can be relaxed by the Mohtasib if he thinks it appropriate under the circumstances. Anonymous or pseudonymous complaints will not be accepted. The Mohtasib upon a person guilty of any allegation

- Shall refer the matter to concerned authority for disciplinary or/and corrective action
- Shall communicate any findings found after investigation to Agency concerned to explain/modify/cancel the decision, process, recommendation, act or omission or to consider the matter further or dispose off in specified time. Mohtasib can communicate to concerned agency to take disciplinary action against any public servant of any agency under the relevant laws if seems appropriate to him.

Mohtasib may resolve the grievances by using colloquial methods without any written memorandum, docketing complaints or using any official notice. He can make informal conciliations and can amicably solve, stipulate, and ameliorate and settle the grievance or problems related with administration. Mohtasib may award compensation in pursuant to section 22 to aggrieved party for any loss or damage suffered by him on account of any maladministration.

***Defiance of Recommendations:***

In case of any defiance of recommendation by any public servant/Agency in respect of implementation of recommendation given by Mohtasib, he may refer the matter to the President who may direct the agency/public servant to implement the recommendation. This power in the hands of president is discretionary in nature.

### ***Consumer Perspective in the Relevant Provision of this Order***

The office of "Ombudsman" or "Wafaqi Muhtasib" is based in the Federal Capital and although its jurisdiction was limited to the Federal Government institutions, it did provide a means of redress. It is a measure of the half-heartedness of our rulers. Although the step was taken by General Zia-ul-Haq during a period when he enjoyed absolute powers, the institution was not replicated in the provinces, until much later, and still does not exist in all of them.

The power of Mohtasib under this order is very limited in quick implementation of its recommendations to any agency, public servant or functionaries of government. In case of defiance of his recommendation he can present a report before the President but cannot initiate contempt proceedings against them. The informal complaint redress procedure is usually seen to be more lenient with agencies rather than consumer-citizen. Even if there is proof of any maladministration and damages are to be paid to the aggrieved person, the compensation for this purpose is not compulsory under this order and it is not given if it is in the case of mental or physical inconvenience to the public.

#### **4.1.3 Regulation, Transmission and Distribution of Electric Power Act:**

According to Regulation of Generation, Transmission and Distribution under Electric Power Act, 1997, NEPRA (National Electric Power Regulatory Authority) is responsible for providing licenses and setting its terms and conditions to electric power generation, transmission and distribution services providers and regulating the provision of electric power in Pakistan. The authority is also to maintain standards of services and tariff rates.

***Consumer Protection within Regulation, Transmission and Distribution of Electric Power Act:***

This Act gives the protection to consumers of electricity as according to section 7(6), the Authority shall protect the interest of consumers against monopolistic and oligopolistic prices {31(2)(a)}. Consumer participation (as under section 31(3)(b) is to be facilitated by the Authority while determining the tariff for consumers. Also, interested persons are to be given an opportunity to participate meaningfully in the tariff approval process.

***Complaint Redress Procedure under this Act:***

For the most part, Section 39(1) and 46(2) provides complaint redress procedure for the consumers against any licensee and service providers. Any concerned party can file a written complaint with the authority and it has to make rules of procedure to resolve disputes between consumers and licensees. If there is any complaint concerning quality and prices of the services provided by licensees or any contravention against the terms and conditions of the license or the provisions of this Act, then the Authority can issue show-cause notices and terminate the license issued to concerned service providers. The Authority may also impose a fine up to Rupees three hundred thousand for each days violation in case of each day and the violation penalty can be extended

***Consumer Affairs Division:***

NEPRA has established a consumer affairs division to address complaint lodged by the consumers against utility companies. To this date, various consumer complaint hearings have already been held, for example the Attock Cement Vs KESC

case, PTCL Vs MEPCO, CNG Association Vs IESCO and Pak PWD housing society Vs IESCO<sup>5</sup>. A determination has been made by the Authority in all these complaints. NEPRA is also supporting Provincial Governments in prescribing rules for the redress of complaints through Provincial Offices of Inspection established under section 38 of the NEPRA Act. For this purpose, a draft procedure has already been circulated to the provincial Governments. Provincial Governments of Balochistan, NWFP and Sindh have notified the public of their procedures. According to the official website of NEPRA, during this year NEPRA received 238 complaints which were disposed off<sup>6</sup>.

**Consumer Perspective in the Relevant Provision of this Act:**

The Act defines “consumers” (section 2(iv)) only as persons who are purchaser or receivers of electric power supply. However its sphere can be extended to include the *commonplace consumer* as a complainant according to section 39(1) which allows any interested person to bring his complaints before the competent authority. The authority lacks the power though to award compensation and this is a major flaw in the Act from the consumer protection perspective.

National Electric Power Regulatory Authority (NEPRA) is provided with ample powers under their parent statutes. Since the setting up of this Authority, it has been placing advertisements in the press welcoming public annotations in respect of licensing and tariff settings of distribution companies. This gave us (the ordinary consumers) a sigh of relief that indeed there is an entity which would hear the voice of common consumer with respect to this important issue of securing electricity.

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<sup>5</sup> for details of petition see [www.nepre.org](http://www.nepre.org), last visited 2007-07-11

<sup>6</sup> <http://www.pakistan.gov.pk> (last visited 1<sup>st</sup> January, 2007)

In 2003, the Authority unveiled a landmark set of laws i.e., the Consumer Eligibility Criteria Regulations, 2003 which it was required to do under a provision of its parent statute. The Authority through these eligibility criteria laid down principles for non-discriminatory provision of electric power services by a distribution company within its territory<sup>7</sup>.

NEPRA is a very strong authority vested with extensive powers to impose penalties for infringements by the service providers of electric power. The authority must stand up to the role assigned to it by the legislature as it remains as the only ray of hope for the consumers of electricity.

#### **4.1.4 Pakistan Telecommunication (Re-Organization) Act, 1996**

This legislation formulates the procedure for functioning of Pakistan Telecommunication Authority (PTA). According to these rules, this authority is responsible to provide license to Telecommunication service provider, regulating the Telecommunication sector in Pakistan, setting the terms and conditions of the licenses, maintaining standards of services, and if appropriate renewing the license.

#### ***Consumer Protection in Pakistan Telecommunication (Re organization) Act, 1996***

This legislation provide some sort of protections to consumers, although it states that “users”(sec 4(c)) of Telecommunication sector to be given protection, but the word “consumers interest “is used in the act so that Authority has to secure the interests of consumers under section 21(4)(1)

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<sup>7</sup> Amber Mahmood. “*Neptra the powerless*”. Available at [www.jang.com.pk/thenews/apr2004-daily/22-04-2004/oped/newspost.htm](http://www.jang.com.pk/thenews/apr2004-daily/22-04-2004/oped/newspost.htm) (last visited 11th January 2007)

*“Every license granted under this Act may, inter alia, contain obligations for the protection of consumer’s interest”*

***Complaints redress procedure in this Act:***

In order to protect consumers of Telecommunication sector, the PTA has to investigate and adjudicate on complaints and other claims made against licensees.

Pursuant to section 4(f), consumers can send their complaints with all specification of loss suffered and damages claimed with in it, directly to the Authority while on the other hand as pursuant to section 23, if the licensee or service provider breaks the rules and terms of license or provisions of this Act, authority can issue a show cause notice to the licensee that has to be answered with in 30 days. Further more, the authority under this Act can levy fine, appoint an administrator and suspend or terminate the licenses.

**4.1.5 Oil and Gas Regulatory Authority Ordinance, 2002:**

Oil and Gas Regulatory Authority (OGRA) has been set up under the Oil and Gas Regulatory Authority Ordinance dated 28th March 2002 to *create a working environment where the interests of all stakeholders namely the Consumer, Investor & the Government is protected through Independent & Fair Regulatory practices*<sup>8</sup>.

***Provisions relevant to consumer protection***

The “consumer” under the Ordinance means retail consumer for natural gas, retail consumer for oil or wholesale consumer that is it encompasses persons who purchases or receives oil and gas for consumption and not for resale.

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<sup>8</sup> See [www.ogra.com](http://www.ogra.com) last visited 2007-08-18.



Mentioned under section 6 of the Ordinance the Authority is exclusively responsible for granting licenses for the carrying out of regulated activities and regulating such activities like

- Specify performance and service standards for licensed companies,
- Resolve complaints and other claims against licensees for contravention of the provisions of this Ordinance, rules or regulations;
- Promote and ensure the observance of efficient practices, where applicable, in the transmission, distribution, processing, refining, marketing storage of petroleum and transportation of petroleum by pipelines;
- Any decision relating to open access, common carrier and common operator adequately compensates the owner of the relevant facility, pipelines or installation;
- Resolve disputes between licensees, between licensees and any other person regarding a regulated activity.
- Protect the interests of all stakeholders including the consumers and the licensees in accordance with the provisions of this Ordinance.

#### **4.1.6 Pakistan Standards and Quality Control Authority Act, 1996:**

This Act establishes Pakistan Standard and Quality Control Authority under section 3 of this Act.

*“Pakistan standards and quality control authority works for the benefits of consumer protection”*

This Authority is to maintain and control quality and standards of particular article, product or process by granting licenses and certificates for the use of standard quality, conformity and/or safety marks of it. Pursuant to **Section 8** of this ordinance,

the Authority has to examine, inspect and test the products and services for their quality, specification and characteristic and for this purpose it can appoint an inspector subject to **Section 15** of this ordinance. To supply safe products and services, the authority has to provide quality labeling standards for the products and can also be involved in the grading of different products if requested by the manufactures or whenever it is necessary for the quality improvements. The Authority gives the approval for quality marks (of the authority) after examining the manufacturing plants for the designated products or processes.

#### **Complaints addressed under this ordinance:**

This ordinance provides the procedure to be used in case of sale of low quality products and services by manufacturers. Subject to **Section 8** of this Ordinance, authority can stop manufacturing, storage and sale of such products which do not conform to the Pakistan or any other country's standards recognized by the Authority. Furthermore the local authority on any complaints of low quality and standards can suspend, cancel or withdraw the licenses issued to the concerned manufacturer. Authority can also punish the person involved in using the title name or trade mark of the authority( as mentioned in **section 10,11& 14** ) and this punishment may include imprisonment up to 1 year with or without a fine of 30 thousand rupees(mentioned in **section 20**).

### **GENERAL FOOD LAWS IN PAKISTAN:**

#### **4.1.7 West Pakistan Pure Food Ordinance, 1960:**

This ordinance regulates the preparation methods of foods and its sale, in Pakistan (excluding northern areas and Azad Kashmir); it includes Manufacturing and Selling of

- Mixed food (section 4)
- Unwholesome food (section 5)
- Adulterated or misbranded foods or food that is not of the nature, substance or quality demanded. (section 6)
- Unmarked, unlabelled and unlicensed manufactured (for purpose of selling or storage) foods (section 9&11)
- Sale of foods including pre-packed items does not comply with the rules.

**Complaint Redress Procedure:**

This ordinance establishes a local authority pursuant to *section 15* which has to enforce this ordinance in order to ensure the supply of pure food and clean drink in the material sold in the local area. Food inspectors are appointed by the authority under *section 16* who is a recipient of the written complaints from consumer regarding the quality of food and drink sold in the local market. To answer a complaint against an infringement before the authority, the complainant has to provide sample of the food against which the complaint is brought. This sample is sent to public analyst for analysis and all costs related to analysis must be payable by the complainant. In case of non-enforcement of this ordinance by the authority, the Deputy Commissioner may appoint a public servant to enforce this ordinance. On contravention of this ordinance there are prescribed penalties for the various offences particularly mentioned in *section 3-13* of the ordinance ranging from one year to 7 years imprisonment with or without a fine but the range of the imprisonment varies in different provinces through amendments.

#### **4.1.8 Cantonments Pure Food Act, 1966:**

This Act prohibits the preparation, manufacturing and sale of sub-standard foods in the cantonment areas of Pakistan. This Act is somewhat of a replica of the West Pakistan Pure Food Ordinance, 1960 however some of the differences are like in the case of local Authority as under this Act the local authority is the local Cantonment Board and the absence of provision relevant to appoint of local Deputy commissioner mentioned in *section 35* of the West Pakistan Pure Food Ordinance, 1960.

#### **4.1.9 Pakistan Hotels and Restaurant Act, 1976**

This Act regulates and controls the rates, quality and standard of services provided by all hotels and restaurants in Pakistan. Under this law in pursuant to section 3 federal governments will appoint a Controller, and also such number of assistant and deputy controller as it may think appropriate by notification in the Official Gazette to enforce this ordinance.

#### **Consumer protection provided under this Act**

*Section 22 and 23* of this Act provides the protection to consumers against the offences related to consumption and quality of food sold in hotels and restaurants and also against the unlicensed and unregistered hotels and restaurants in Pakistan. *Section 22(1)* secure the quality of food by considering it an offence if there is sale of food or Beverages hotels and restaurants, that are contaminated and prepared un-hygienically or served in utensils not hygienic or clean. *Section 22(1) (5) (6)* of the Act considered it offence if unregistered and unlicensed restaurants fails to register with in prescribed time and also if don't comply with the direction of controller or using star rating

without license. This law also controls the excess of rates than the fair rates by the hotels and restaurants as it is offence under *section 22(4)* and *15* of this Act.

#### **Complaint Redress procedure:**

There is not as such any provision which addresses the complaints from consumers against quality and prices of food served in hotels and restaurants in Pakistan however it seems like the complaints can be addressed in writing to the controller<sup>9</sup>. To enforce this Act controller can penalize the person for any contravention of the rules or involved in any of the offences mentioned above. Penalties for the offences under this Act is mention in section 22, that includes fine, ranging from 1,000Rs to 5,000Rs and if it is a continuous offence then the fine can be charged per day as additional penalty. There can also be a penalty to refund of excess of the money charged to consumers or cancellation of registration of hotels and restaurants

#### **4.1.10 Pakistan Penal Code, 1860:**

This code expounds the criminal penal code extended through out in Pakistan. Few of the section are extracted in order to take into account the provisions related to adulteration and debasement of food and drink whether for the purpose of selling in the market or open for the general public like water reservoir. Relevant sections are,

#### **Sec: 272. *Adulteration of food or drink intended for sale***

*“Whoever adulterates any article food or drink, so as to make such article noxious as food or drink, intending to sell such article a food or drink, or knowing it to*

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<sup>9</sup> ibid

*be likely that the same will be sold as food shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or both. ”*

**Sec: 273. Sale of noxious food or drink**

*“Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or in a state unfit for food or drink, shall be punished with imprisonment of either description for a term which may be extend to six months, or with fine which may extend to one thousand rupees, or with both”.*

**Sec: 277. Fouling water of public spring or reservoir**

Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

**Complaint Redress procedure**

Complaints against the offences in PPC referred above can be made in the form of FIR in the local police station according to code of criminal procedure. It means consumer can initiate direct legal action, but it is required to obtain a laboratory report as evidence of an offence<sup>10</sup>.

**Comments on Food laws from consumer perspective**

On the face of unbridled privatization and liberalization of the economy, population boom and national issues of security and safety of food items, food trade in

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<sup>10</sup> ibid

Pakistan is under a serious threat. There is a need to review the food regulatory system in Pakistan. The national regulatory frame work in Pakistan has to go-between the global trends of privatization and liberalization and its national impacts, as well as between consumers and producers as consumers are more vulnerable to its effects. The government has the key responsibility to safeguard the consumers' right via regulation and enforcement of food laws. Pakistan doesn't have definite set of federal food laws but federal government controls the imports of food items and provisional government regulates these items<sup>11</sup>.

There exist a large number of food laws in Pakistan. However, most of them deal with control of production, distribution and supply of food, in addition to dealing with profiteering and hoarding. There are four laws that distinctively deal with food security as the focal point of these three laws is directly on food safety, while the fourth one namely Pakistan Standards and Quality Control Authority Act, is obliquely relevant to food safety<sup>12</sup>.

The laws in question have become archaic despite of the extensive cases of adulteration of food items there is lack of complaints regarding to it as the piecemeal approach taken up in core food laws failed to redress consumers' grievances. There is no match between globally recognized consumer rights and existing food laws in Pakistan. A critical assessment of these laws in the light of key consumer rights highlights the imperfection and on the other side it clearly establishes a pressing need of regulatory reforms in this area.

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<sup>11</sup> The comments made on the food regulations in Pakistan are taken from The Network for Consumer Protection. *Food Regulation in Pakistan-A Consumer Rights Perspective*. Islamabad: The Network Publication, May 2005.

<sup>12</sup> *ibid*

**a. *Food laws: lack of uniformity***

The entire legislation of West Pakistan Pure Food Ordinance, 1960 has general lack of uniformity between different provinces. This creates an additional problem of variance in the penalties given in different provinces and confusion to which constitutes the local authority<sup>13</sup>.

**b. *Food laws incapable to overcome market distortion***

The existing food laws in Pakistan are absolutely deficient to overcome the problems of market distortions. The fact of increasing poverty and decrease in social support to protect consumer from vulnerable effects of excessive corporatization of a range of services which were earlier available free of cost, frequent shortages of food items causing price fluctuation and absence of effective food control system to address the consumer concern has increased burden on poor consumers. Pure food laws don't give much concern to the price and availability but more concentrates quality concerns.

**c. *Food laws vis-à-vis right based approach:***

The UN Guidelines for the consumer protection 1985 has adopted six basic rights for the consumers.

- Right to Satisfaction of Basic Needs.
- The Right to Safety.
- The Right to Be Informed.

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<sup>13</sup>Mazhar Siraj "*Food Safety Legislation in Pakistan: Identifying Entry Points for Public Intervention*". Available at [www.crcp.org.pk/doc\\_files/Food%20Safety%20Legislation%20in%20Pakistan.doc](http://www.crcp.org.pk/doc_files/Food%20Safety%20Legislation%20in%20Pakistan.doc) –



- The Right to Choose.
- The Right to Be Heard
- The Right to Redress.

Despite the fact that Pakistan is also a signatory, consumer related laws in Pakistan lacks the right based approach in its drafting and food laws are not an exception to it. Overview of the existing food legislation in the context of UN guidelines highlights the flaws in it as to see, *Whether Right to Satisfaction of Basic Needs is protected* under these laws or not. The problem related to accessibility of food items is aggravating in our country and food laws offers no counteractive measures to trounce this situation.

*Right to have safety of products:* The standard of safety, against the hazardous products process or services provided in pure food laws are not according to the present day needs especially when these food items are being exported to other countries moreover the standard fixed in these laws is contradictory with the PCQCA. These laws can't work in isolation but it needs an overall policy framework.

*Right to be informed:* Consumer laws protect the consumer against misleading information regarding to any product whether included in the labeling, packing or advertising. The situation is not very much hopeful if we scrutinize our food laws in the light of this right. Provisions relevant to unlabelled food is covered under section 9&11 of West Pakistan Pure Food Ordinance, 1960, but it doesn't cover all food items available in the domestic market. There is no statutory requirement available regarding to the labeling on imported food items; even the custom laws follow US Food and

Drug Administration regulations as guidelines for the nutritional requirement<sup>14</sup>. Pakistan follows codex rules for packaging, there are no packaging requirements in food laws according to environmental concern. The consumers have right to be informed. This right is closely linked with the *Right to Choose* as only informed consumer can make better choice. Price of the commodities does affect the choice of the consumers but it is left to the market mechanisms. Nonexistence of strong regulatory institution with complete absence of price control provisions in our pure food laws, the marginal consumers have no choice but to take unsatisfactory quality at monopolized price. There is no difference between the GM FOOD<sup>15</sup> and non-GM FOOD in our domestic market so that consumer can make choice between them. There is a large regulatory vacuum in our country to make any restriction on the import of GM food.

*Right to Be Heard:* This includes the right of representation of consumers before the policy making bodies, but food regulation in Pakistan doesn't provide any platform for consumers upon which this right can be asserted. The recent amendments in food laws regarding adulteration in food and drink has not yet involved consumers as a concerned party. It is urged by the civil society that the government should start a counseling process for perfection before moving the bill to the National Assembly and

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<sup>14</sup> ibid

<sup>15</sup> "A *genetically modified food* is a food product developed from a different genetically modified organism (GMO) such as a crop plant, animal or microorganisms, such as yeast. Genetically modified foods produced by genetic engineering have been available since the 1990s. The principal ingredients of GM foods derived from plants are soybean, maize, canola, cocoa beans, and cottonseed oil. Genetically modified food is a world wide phenomena and it is considered to be unsafe and unfit for consumption. A 2003 survey by the Pew Research Center found that a majority of people in all countries surveyed felt that GM foods were "bad". The lowest scores were in the US and Canada, where 55% and 63% (respectively) were against it, while the highest were in Germany and France with 81% and 89% disapproving. The survey also showed a strong tendency for women to be more opposed to GM foods than men". Available at <http://www.w3.org/1999/xhtml>"<HEAD><TITLE>International trade of genetically modified foods - Wikipedia, the free encyclopedia, (last visited 7 December 2006).

also guarantee that the law must be consumer-friendly at the decisive stage<sup>16</sup>. The representation of consumers is essential to create effective consumer policy, alongside appropriate legislation and empowerment of individuals through consumer education and information is the need of an hour.

### *The Right to Redress*

- It is evident from the overview of the existing food laws that the regulatory system doesn't award compensation and damages with an exception of PAKISTAN HOTELS AND RESTURANT ACT, 1976 that requires complainant to claim any financial compensation.
- The redress mechanism available in WEST PAKISTAN PURE FOOD ORDINANCE, 1960 as well as in the CANTONMENTS PURE FOOD ACT, 1966 entails that any person who holds a complaint for the grievances against goods and services can request the food Inspector in writing (with all details) to take the specified sample from the specified shop at the costs of the consumer. Where as on the other hand food inspector is not bound under the law to entertain all the complaints, that finally results to the option of his discretion either to take action or not.
- There is no express provision regarding controller appointed under PAKISTAN HOTELS AND RESTURANT ACT, 1976 as it is not given whether consumer has power to lodge a complaint before controller or it is up to his own discretion to determine whether he/she will entertain the complaint or not.
- The only resort in the hands of the consumer is to go for civil litigation under Pakistan Penal Code 1860, that is lengthy and expensive and many a times

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<sup>16</sup> See <http://www.thenetwork.org.pk/pressrelease09-02.htm>. (last visited 12 Oct 2006)

becomes impossible for a marginal consumer who are ignorant and poverty stricken.

This lacuna in the existing food laws made its implementation more difficult. Since these laws altogether fail to address the consumer concerns and can't provide safety measures to the food available in market, there is need to overview them in the consumer perspective. Moreover the Regulatory authorities and standard and safety maintaining institutions gathered the public records but don't make it public. This totally negates the right of consumer to be informed about the hazardous products in the market. See table

The Network was of the view that the punishment, proposed to be 25 years of imprisonment and Rupee one million in fine, was highly disorientate with and discriminatory to existing laws on adulteration. Similarly, the creation of another tier of exclusive courts would produce results no different results from other special courts like drug courts, Small Claim Courts and civil courts. These courts have failed to make a qualitative change and the proposed special courts to try cases of adulteration would add to the fiasco.

## **DRUG LAWS IN PAKISTAN IN CONSUMER PERSPECTIVE:**

### **4.1.11 Drug Act, 1976:**

This legislation is focused on the regulation of import, export, manufacture, sale and also fixing maximum prices commercial dispersal of drugs with in Pakistan.

### ***Consumer protection with in the Act***

Pursuant to *section 12* of this Act, consumers can seek redress against the sale, manufacture, distribution, storing or exhibiting the drugs which are, substandard, misbranded, adulterated, spurious, counterfeit, expired, un-registered and in contravention of the rules made under this Act. According to section 23(b) &(c) drugs which are unlicensed or manufactured in contravention to license (under which it is allowed to manufacture), is an offence. Section 23(g) prohibits the drugs sold in public places like parks, public streets and transport. Consumers of the drugs can seek remedy against the drugs that are sold without warranty in the prescribed form bearing the name and correct batch number (section 23(i) & (j)).

#### **Box 4 Local administration survey of food in the southern Punjab**

*Last month local administration in the southern Punjab town of Molten conducted a survey of food and beverages outlets in the city and found all samples collected to be substandard and not fit for human consumption. "We collected 125 samples from local hotels, bottlers of beverages and manufacturers of ice cream and found all of them unfit in most cases due to their preparation in unhygienic conditions," said an official of the Punjab Health Department.<sup>17</sup>*

#### **Complaint Redress procedure under this Act**

Offence being cognizable under this act could be investigated into by the Provincial Police and therefore by the Federal Investigation Agency also. Pursuant to section 30, prosecution in respect of offence could not, however, be instituted except

<sup>17</sup> Local administration survey of food in the southern Punjab, dated: June 2006

by the Drugs Inspector<sup>18</sup> (Federal or provisional inspector). There is not as such involvement of consumers to give a written complaint to drug inspector or initiate a case. Drug Court may award a sentence of imprisonment for a term ranging from three years to ten years and fine which may extend to one lac rupees as penalty against the prohibition mentioned in chapter II of this Act.

### **Provisions related with adulteration of drugs in Pakistan Penal Code, 1860:**

Section 274,275,276 of PPC, 1860 deals with the adulteration and medical preparation of drugs that lessen its efficacy, affects or making it harmful for the health whoever consumes. Whoever, even not involved in adulteration of drugs but if sells or offers them to sell with knowledge that it is adulterated is also punishable under this Act. Consumers may directly initiate legal action under this code by registering FIR in local police station with a report as an evidence of adulteration of drugs from federal or provisional laboratory(as a requirement under drugs Act, section14-16). The criminal court can award a sentence of imprisonment with regards to offences relevant to section 274,275,276 of PPC, 1860, for a term not exceeding six months and/or fine up to 1,000.

### **Box 5: Epa's Findings and Right of Information**

Earlier the EPA found unsafe lead levels in available brands of wall paint. But again it did not inform consumers about the "hazardous" brands. "We just can't go public with our findings since it would create distrust in the industry ... we have told the manufacturers to bring the lead content to permissible limits," said one official of the Pak EPA<sup>19</sup>.

<sup>18</sup> P L D 1976 Lah. 813

<sup>19</sup>Muddassir Rizvi, "Consumers Left to the Mercy of the Market", 15 July 1999 Available at <http://www.w3.org/TR/xhtml1/DTD/strict.dtd>

### **Comments on drugs regulation in the consumer perspective:**

The Drug Act 1976 is primary legislation in the health sector supported by numerous institutions like Ministry of Population Welfare, Drug Licensing Board, Drug Registration Board, the Quality Assurance Board and various committees and programs, all under one umbrella institution of Ministry of Health<sup>20</sup>. This Act regulates from licensing of manufacturing units to fixation of prices of drugs even then it contain legal as well as implementation loopholes in it. That makes it ineffective in many ways like, not a single provision is related to manufacture of non allopathic medicines.

Moreover there is no participation of consumers to give a written complaint to drug inspector or initiate a legal action independently as only drug inspector can initiate the legal process, where as local government has currently employed 8 inspectors to monitor 320 pharmaceutical companies<sup>21</sup>. Punishment is prescribed for sale, distribution, stocking and exhibition of specious, misbranded, forged, adulterated, poor quality, non-registered, precarious or expired drugs but no legal provision is given to award compensation and damages.

Apart from the legal ambiguity in the Act implementation is another problem. Licensing of manufacturing is often relaxed and assessment of manufacturing unit is weak despite of the fact that there is support of numerous organizations like Drug Registration board is established. But the performance can be estimated from the per

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<sup>20</sup> Ali Qadir, *The state of consumers in Pakistan*, A Foundation report, The Network publication (2001), page 38

<sup>21</sup> *ibid*, page 43

day registration of drugs that is 8.5 drugs/each day in Pakistan as compared to 1 drug/2 years in US<sup>22</sup>.

The sale of the dangerous, fake and counterfeit medicines are not controlled, many internationally banned drugs like Celecoxib is available in Pakistan (in at least six brands produced by local companies) and Viagra also being sold with varying prices at medical and general stores without prescription.<sup>23</sup> Same as 'Novalgin' of Aventis and products in combination with Metamizole and Hyoscine which were even banned in Pakistan are readily available in the market.

In short the key factors behind the uncontrolled sale are legal meagerness, strong marketing and advertisements by mega-billion drug corporations and slow process of removing these drugs from market even it is banned<sup>24</sup>. Further on the supporting factor to this scenario is liberalization policy, that have made pharmaceutical companies more powerful to influence the Ministry of Health, result is the supply of unregistered and hazardous drugs with unbridled price hikes in domestic market<sup>25</sup>. Manufacturing of drugs are also not under the practical policy as local

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<sup>22</sup> ibid

<sup>23</sup> Network press release "Research findings coming out in December 2004 at the National Cancer Institute USA showed that patients taking 400 mg. of Celebrex twice daily had a 3.4 times greater risk of heart attacks and stroke compared to those who did not take the medicine..... Vioxx (rofecoxib) was banned around the world on 30<sup>th</sup> Sept. 2005 after damning evidence became public implicating it to deaths and crippling heart disease in hundreds of thousands of users around the world. The drug is still available freely in Pakistan along with its many Pakistani competitor brands"

<sup>24</sup> "Mefloquine is internationally available as an individual preparation, marketed by Roche Pharmaceuticals as 'Larium' and is widely used to treat and prevent malaria. In Pakistan it is marketed in combination preparation with sulfadoxime and pyremethamine by Roche Pharmaceuticals in name of 'Fansimef', and is indicated for cases of multidrug or chloroquine resistant malaria. The World Health Organisation puts the incidence of serious neuropsychiatric side effects from the drug at 5 in 100,000. A study published in the British Medical Journal (31st August 1996, 313:13) found that about 0.7% (1 in 140) patients taking mefloquine can expect to have a neuropsychiatric adverse event. The information leaflet of Fansimef provided by the manufacturer in Pakistan does not narrate any such warnings in its description. The Network has taken the case with Ministry of Health and has demanded change in labeling according to FDA recommendations". Available at <http://www.thenetwork.org.pk/pharma.htm>, (last visited 18 August 2006 ) 2003

<sup>25</sup> Shafqat Munir "Costs of Medicines Soaring due to inbuilt faults in Price Mechanisms" Dawn 9 March.



government produces 60 billion drugs out of which 70% are useless<sup>26</sup>, where as availability of essential and life saving drugs are either not possible or very rare<sup>27</sup>. The plan to set up a Drug Regularity Authority besides enforcing the Drug Act of 1976 still seems in the pipeline even after one year. This idea was presented by the Ministry of Health in 2005 to ensure the general public of easy access to quality, safe and effective medicinal products.

#### **4.1.12 The Pakistan Environmental Protection Act, 1997:**

The PEPA' 1997 has two main functions, it regulate activities like protection, conservation, improvement and rehabilitation of Environment and promotion of sustainable development by preventing or controlling pollution. While on the other hand it create institution as It provides the framework for implementation of NCS<sup>28</sup> (National Conservation Strategy). Protection and conservation of species, conservation of renewable resources, and establishment of Environmental Tribunals<sup>29</sup> and

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<sup>26</sup> Oct 2007, dawn, this situation can easily be assessed by the efforts done by civil sector. "In November 2001, The Network did an extensive (national) market survey for availability of Essential Drugs in nine different cities and towns including Rawalpindi, Islamabad, Wah Cantt, Chakwal, Lahore, Karachi, Nowshera, Sargodha and Kahuta. The survey revealed that 47 out of 478 Essential Drugs are not available in market. The Network urges the Ministry of Health to look into the matter of shortage of Essential Drugs. A recent market scan conducted by The Network for Consumer Protection shows that 26 essential medicines are persistently missing from the drug market. These include medicines for the treatment of chronic and life threatening conditions such as blood pressure, heart disease, immune disorders, epilepsy, parkinsonism, thyroid disorders, asthma and different forms of antibiotics". Available at <http://www.thenetwork.org.pk/pharma.htm>, (last visited on 18 August 2006)

<sup>28</sup> "In 1992, this political commitment augmented the environmental process in the country. Same year, Pakistan Prepared National Conservation Strategy (NCS provides a broad framework for addressing environmental concerns in the country." see under "Brief on Pakistan Environmental Protection Act, 1997"

Available at [www.environment.gov.pk/act-rules/Brief-PEPA-Act1997.pdf](http://www.environment.gov.pk/act-rules/Brief-PEPA-Act1997.pdf) (last visited 11 January 2006 )

<sup>29</sup> section 2 (xiii) of PEPA, 1997 "Environmental Tribunal" means the Environmental Tribunal constituted under section 20.

appointment of Environmental Magistrates<sup>30</sup>, Environmental Council, Environmental Agency, Initial Environmental Examination (IEE), and Environmental Impact Assessment (EIA).

The provision of this act protects all consumers whether one is customer or not because pollution affects all human beings and animals. Environment as a universal commodity is to be protected and consumers can seek redress against pollution from the provision from PEPA, 1997 briefly given below,

***Offences related to environment:***

The definition of Environment under this Act (*section 2*) includes air, land (all organic and inorganic matter and living organism.), water, all layers of the atmosphere, the ecosystem and all kind of building, structure, roads, facilities and works. *Section 2* of this Act provides a list of things which can have adverse effects on the environment and are prohibited under *section 11, 12,13,14* and *section 15* as mentioned below,

In pursuant to *Section 11* the discharge or emission of any effluent or waste or air pollutant or noise in any amount, concentration or level which is in excess of the National Environmental Quality Standards<sup>31</sup> is prohibited.

*Section 12* prohibits the commencement of any project in relation with construction or operation without filing with the Federal Agency an initial environment or, where the project is likely to cause an adverse environmental effect,

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<sup>30</sup> Section 2(xii) of PEPA, 1997" *Environmental Magistrate*" means the Magistrate of the First Class appointed under section 24.

<sup>31</sup>Section 2(xxix) of the PEPA,1997" *National Environmental Quality Standards*" means standards established by the Federal Agency under clause (e) of sub-section (1) of section 6 and approved by the Council under clause (c) of sub-section (1) of section 4"

an environmental impact assessment, and has obtained from the Federal Agency approval in this respect.

Import of Hazardous Waste under *Section 13* is prohibited as this section requires that no person may import hazardous substances of which chemical activity is explosive, flammable radioactive, toxic, corrosive, cause directly or in combination with other matters, an adverse environmental effect.

*Section 14* is about handling of hazardous substances, according to this section, no person shall generate, dispose of collect, transport, store, consign, treat, handle or import any hazardous substance except under a license issued by the Federal Agency and in accordance with the provisions of any other law for the time being in force, or of any international treaty, convention, protocol, code, standard, agreement or other instrument to which Pakistan is a signatory.

*Section 15* prohibits the operation of motor vehicles releasing air pollutants creating noise pollution in excess to which is prescribed as standard.

***Complaints redress procedure under this Act:***

In case of any person responsible for emission or release of waste or any kind of pollutants or in contravention of the Act, the federal agency or provisional agency as pursuant to *section 16* can order to

- Stop, minimize and control of offending action.(*sec 16(2)(a)*)
- Repairing, installation or alteration of equipment on permanent or temporary basis.( *sec 16(2)(b)*)
- Removal or alternative dispose off the pollutant.( *sec 16(2)(c)*)
- Restoration of environment as prior to pollution or as close to such condition as may be reasonable in the circumstances, to the satisfaction of the Federal Agency or Provincial Agency. ( *sec 16(2)(d)*)

- The federal agency may take action for non compliance with an order or recover costs of taking action. ( *sec 16(1)*)

***Complaints before environmental tribunals:***

Pursuant to *Section 21(2) & 21(3) (b)*, complaints can be made against anybody who contravenes or fails to comply with the provisions of *section 11, 12, 13, or section 16* or any order issued that can be penalized under *section 17*. An Environmental Tribunal shall not take cognizance of any offence which is in contravention of *section 14 and 15* or triable under *subsection 2 of section 21*, unless on a complaint in writing is made by the Federal Agency or any Government Agency or local council or if not is by any aggrieved person he has to give notice of not less than thirty days to the Federal Agency or the Provincial Agency concerned of the alleged contravention and of his intention to make a complaint to the Environmental Tribunal. In exercise of its criminal jurisdiction, according to *section 21(4)* the Environmental Tribunal have the same powers as are vested in the Court of Session under the Code of Criminal Procedure, 1898 (Act V of 1898).

***Environmental Tribunal as an appellate court:***

While exercising the appellate jurisdiction under *section 22* the Environmental Tribunal have the same powers and shall follow the same procedure as an appellate court in the Code of Civil Procedure, 1908 (Act V of 1908) in case if any person is aggrieved against any order passed by the federal/provisional Agencies (as under *section 22*).

***Complaints before environmental magistrate:***

Pursuant to *section 24 subsection 2*, all contraventions punishable under *sub-section (2) of section 17* are exclusively triable by a judicial Magistrate of the first class as Environmental Magistrate especially empowered in this behalf by the High Court, while *sub-section (2) of section 17* provides penalty for contravention or failure to comply with the provisions of *section 14 or 15* or any rule or regulation or conditions of any license, any order or direction issued by the Council or by the Federal Agency or Provincial Agency

An environmental Magistrate is competent to impose these punishment specified in *sub-section (2) of section 17* and also order the offender to pay additional fine commensurate with the amount of the monetary benefits if accrued to the offender, if *contravenes the provisions of section 11, 12, 13, or section*

*16 or any order issued there under<sup>32</sup>* according to *sub-section (4) of section 17*. He can take cognizance of an offence triable under *sub-section 1 of section 17* on a written complaint by any aggrieved person, Federal, Provincial or any Government Agency, and local council.

***Appeals from environmental magistrates:***

*Section 25* of this Act empowers the person to file an appeal that is aggrieved of the decision by an Environmental magistrate, with in thirty days before the Court of Session whose decision shall be final.

Lahore high court, Lahore has empowered all the senior civil judges-cum-judicial magistrates to act as Environmental magistrate in the whole Punjab, while high court

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<sup>32</sup> Section 17(1), PEPA, 1976

of Sindh has empowered the Ist judicial Magistrate of every district posted at the Headquarter in Sindh to try offences punishable under subsection-2 of *section 17*<sup>33</sup>.

**Compensation and penalties:**

The compensation and penalties available in this Act in case of any contravention of the rules of this Act, it can be well established in the tabular form given below,

**Table 3: The compensation and penalties available in PEPA<sup>34</sup>.**

Level 1 (Section 17(2))	Environmental Magistrate	<ul style="list-style-type: none"> <li>· Section 14: handling of hazardous substances.</li> <li>Section 15: motor vehicle pollution.</li> <li>Non compliance with order of PEPC or EPA</li> </ul>	<ul style="list-style-type: none"> <li>· Up to Rs. 100,000.</li> <li>Additional daily fine of up to Rs 1,000 for every day the contravention continues</li> </ul>
Level 2 (Section 17(1))	Environmental Tribunal (Section 21)	<ul style="list-style-type: none"> <li>· Section 11: pollution in excess of NEQS.</li> <li>Section 12: IEE &amp; EIA.</li> <li>Section 13: Import of hazardous waste.</li> <li>Section 16: non compliance with and Environmental Protection Order</li> </ul>	<ul style="list-style-type: none"> <li>· Up to one million rupees.</li> <li>Additional daily fine of up to Rs 100,000 for every day the contravention continues.</li> <li>Additional fine commensurate with the amount of monetary values gained by the offender</li> </ul>
Level 3 (Section 17(5))	Environmental Magistrate/ Environmental Tribunal (by reference to the relevant level 1 of Level 2 offences)	<ul style="list-style-type: none"> <li>· Subsequent conviction under PEPA</li> </ul>	<ul style="list-style-type: none"> <li>In addition to specific penalties relating to the offence:</li> <li>Copy of order of conviction to the relevant chamber of commerce and industry.</li> <li>Imprisonment of up to 2 years</li> <li>Closure of factory.</li> <li>Confiscation of factory, equipment, materials, documents, or pother objects involved in the offence.</li> <li>Restoration.</li> <li>Compensation to any person for loss or injury to person</li> </ul>

<sup>33</sup> see Sikander A Ansari and Abrar Hafeez, *Consumer Laws in Pakistan*, Consumer Rights Commission of Pakistan (2000), Volume II, 13.

<sup>34</sup> Downloaded from <http://www.ictp.com.pk/pepa.htm> (©Copyrights 2003© PTA-NZ).

*Comments on Pakistan Environmental Protection Act, 1997 in Consumer Perspective*

Environmental Act is extensive in nature but it supposes two parallel judicial systems, environmental magistrates and environmental tribunal that is itself incomprehensible and confusing. The plain reading of Act gives the impression that it is not enacted with the view of protecting consumers, as not for a single time the word consumer is being mentioned. Implementation of this Act is weak as not a single case is registered and brought before this two parallel system. Agencies are very slow to remove/dispose of any hazardous waste process that is evident to this fact. Information regarding to hazardous and unsafe thing in environment collected by these agencies are never made public that becomes worthless research for the ordinary consumer who is the ultimate user. For example Recently, the Pakistan Environmental Protection Agency (Pak-EPA) tested several brands of mineral and bottled water available in the market and found most of them sub-standard with deceptive and misleading labels. However, the agency did not name the brands, saying that was not part of its mandate. Earlier the EPA found unsafe lead levels in available brands of wall paint. But EPA did not inform consumers about the "hazardous" brands, the reason is to avoid distrust in the industry<sup>35</sup>.

**4.1.13 The Contract Act, 1872:**

This act extends to the whole of Pakistan and contains a number of systematic arranged restrictive principles that establishes the mutual rights and duties between contracting parties. Although Contract Act 1872 does accept the will of parties on

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<sup>35</sup> "We just can't go public with our findings since it would create distrust in the industry ... we have told the manufacturers to bring the lead content to permissible limits," said one official of the Pak-EPA.

what ever terms they are to be agreed upon, but these terms are subject to certain compulsory provisions in it. Contract Act also set up rights and obligation in case if contract between the parties is silent in its terms and conditions.

***Provisions related to consumers right:***

The consumer-customer can exert their rights against buyer when a contract goes void or void able or a breach of it occurs. Various mandatory provisions relevant to contract of guarantee, indemnity, pledge and bailment provides protection to consumer-customer to which every contract must be adhered to.

**Contracts those are enforceable under law:**

**Section 2(h):** All agreements are not contracts, but only those agreements that are enforceable under law are contracts.

What constitutes in an agreement that makes the contract enforceable/un-enforceable under law is mentioned in Sections briefly summarized below

**Section 10:** according to this section, all agreements are contract if it is made with the free consent of the parties, who are competent to enter in a contract (as mentioned in section 11 that a person is competent to contract who is of sound mind and age of majority). Further more it requires that consideration must be law full.

As mentioned in **Section 2(i)**, an agreement can be a contract and enforceable under law if it is made at the option of the parties. A contract made at the option of others under fraud, undue influence, misrepresentation or coercion is non-binding in nature and void able at the option of parties. In pursuant to **Section 19** parties can choose its option without reasonable delay and can set aside the contract absolutely under **Section 19(a)**.



This organization has persuaded various consumer groups and organization to work together and this is because of spirit of enhancing coordination and mutual help between various consumer associations CI formally became IOCU in 1960.

**b. Consumer protection and UN:**

Although UN declaration of Human Rights adopted in 1948 clearly mentions the rights of consumer however no concrete steps were taken. Later on primarily because of lobbying of IOCU the United Nations prepared and approved the guidelines for consumer protection that is to be followed all over the world<sup>1</sup>.

## **5.2 CONSUMER PROTECTION LAW: A GLOBAL**

### **EXPERIENCE:**

**a. Consumer Protection in Australia:**

In Australia Federal Bureau of governments consumer policy is main responsible for enforcing Trade protection Act 1974 with the aim to enhance the welfare of Australians through the promotion of competition and fair trading and provision of consumer protection. Consumer awareness in the real sense has started with the Industries Preservation Act 1906 but it later on amended and this leads to promulgation of Trade protection Act 1974<sup>2</sup>. This Act was actually modeled on American consumer protection mechanism that is why Australia combines the anti-competitive law and consumer protection. The Australian Competition & Consumer Commission Authority is a statutory body to enforce the Act.

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<sup>1</sup> see Annexure 1 at the end of the dissertation for UN Guidelines for the Consumer Protection.

<sup>2</sup> V Balakrishna Eradi "*Consumer protection jurisprudence*" India:Lexis nexis and Butterworth publishers,1999.14,15

There are many amendments to this Act till 1980 that has enlarged the scope of consumer protection law. Besides, the Australian Consumer Council generates consumer opinion and make advises to the Minister of consumer Affairs on strategy and policy building. The back bone of the consumer protection movement in Australia is the Australian Federation of Consumers Organizations (AFCO) that has strengthened and organized consumers, so that they can present consumers' interest in every decision making body. This is considered to be one of the largest consumer association in the world founded in 1959.<sup>3</sup>

**b. Consumer Protection in UK:**

There are many statutes governing this Area starting from the enactment of Consumer protection Act 1987, i.e. Fair Trading Act 1973 and The Competition Act 1980.

***Institutions in UK consumer protection law:***

The main institution that monitors the consumer issues is the Department of Trade & Industry (DTI), but it works with other bodies like various independent consumer organizations and the central government with its wings like local authorities, other government agencies and regulatory bodies.<sup>4</sup>

1. Central Government: (DTI) also works with the government to suggest the consumer policy and controls the restrictive trade practices.
2. Local authorities: In UK, local authorities ( mostly like trading standard Officers) play very primary role in enforcing consumer protection legislation depend on appropriate national and European policies in order to achieve

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<sup>3</sup> The Network for Consumer Protection [Beyond consumption]. Unpublished raw data.

<sup>4</sup> *ibid*

coordination and consistency of enforcement. Like The Local Authorities Coordinators of Regulatory Services (LACORS) is responsible for improving the quality of trading standards *by promoting coordination, consistency and good regulation and provides the core of the LGA/LGIB's policy advice in this area.*<sup>5</sup> It has three departments including department of consumer protection as one of them.

3. Government Agencies: It includes office like Office of Fair Trading (OFT). It looks after the issues like fair trading and competition issues. Another such important department is Securities and Investment Board that has regulatory power over financial services industry.
4. Consumer Associations: many nationwide consumer Associations like Citizen Advice Bureau, and National Federation of Consumer Groups have strong influence in many of the complaints filed before competent authority, besides it has close links with the DTI and OFT.

*National Consumer Council: it is purely funded by Government and represents the consumer's voice before policy makers.*

*Small Claims Courts* are established to give prompt remedy to the consumer in case of grievances against consumer protection law.

All these institution work together usually local authorities and consumer organizations presents any proposals before OFT and can also assert pressure for

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<sup>5</sup> Taken exact words from <http://www.lgib.gov.UK/index.html> (Last visited 10 october 2006)

taking necessary steps or the consumers can directly approach to the DTI. Currently a proposal for safety of products and consumers on internet transaction is presented.<sup>6</sup>

**c. Consumer Protection in USA:**

United State has seen the consumer awareness nearly at the end of 19 century.<sup>7</sup> In 1890, the United State enacted the first anti-trust legislation namely like Sherman Anti-trust Act, later on Federal Trade Commission Act and the Clyton Act were the two major legislation passed in 1994. Federal Trade Commission Act provides the authority of trade commission to control competitive practices. later on it is amended by the Wheeler-Lea-Act 1938 and deceptive business methods were included under the control of commission. Beside this there are other legislation that governs the area of consumer protection<sup>8</sup>.

There are many government agencies which have substantially incorporated the consumers interest in their policy<sup>9</sup>, beside there are many civic moments and consumer association.<sup>10</sup>

**d. Consumer protection in INDIA:**

India has formulated National consumer law in 1986 that is The Consumer Protection Act 1986. It provides for the regulation of trade practices, the creation of national and state level Consumer Protection Councils, consumer disputes redress

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<sup>6</sup> "The proposals in the White Paper include: a hallmark for consumers to identify at a glance those companies that have signed up to a code of practice which guarantees high standards of customer service, including proper redress when things go wrong, and which have received the Office of Fair Trading's (OFT's) Seal of Approval. This will help customers confused by the number codes that currently exist, many of which are little more than marketing devices; a digital hallmark for Internet traders who abide by codes guaranteeing security of payment and privacy of information to enable customers to shop on the net with confidence; the publication of international price comparisons. Early in 2000 the DTI will publish the results of a survey of some 100 products in the UK, France, Germany and the US" See "*Consumer Policy and Strategy -- The Government White Paper*" available at <http://web.lexisnexis.com/professional/document> (last visited Nov 2006)

<sup>7</sup> V Balakrishna Eradi "*Consumer protection jurisprudence*" India:Lexis nexis and Butterworth publishers,1999.

<sup>9</sup> The Network for Consumer Protection [Beyond consumption].Unpublished raw data.

<sup>10</sup> ibid

forums at the National, State and District level, class actions and for recognized consumer associations to act on behalf of consumers. The Act provides a detailed though not an exhaustive list of unfair trade practices but it indicates various types of trade practices held to be unfair. The Consumer Protection Councils carry out studies of consumer policy and law and advice the government. The provisions for consumer redress i.e. the redress forums, class actions and consumer associations bringing a claim on behalf of consumers are significant and unique Consumer Education and Research Society (CERS) is also working on various consumer issues.

**e. Consumer protection in Malaysia:**

Malaysia has enacted National consumer law in 1999 that is "Consumer Protection Act 1999". Under this Act National Advisory of Consumer protection council is formulated that proposed the consumer policy and in the year 2002, Malaysian government had adopted it as National consumer policy for Malaysia. Since then it is a source of guidelines to government and other institutions for consumer welfare, consumer education and sustainable development, that is why now more than 56 laws in Malaysia has consumer dimension. Federation of Malaysian

Consumer Association (FOMCA) is an another non-profit organization that work on various consumer issues. Beside this the most impressive consumer organization in Malaysia and in developing countries is the Consumer Association of Penang (CAP) established in 1969. Cap is organised in many sections like research, education, community complaints, legal and rural sections ect. Accordingly it works in various fields like community section works with farmers or workers and helps them in their livelihood. Same as it helps to promote consumer education and provides easy

redress forum by receiving complaints ranging from poor quality products and services, food adulteration and related to tenancy problems.

### **5.3 COMPARASION OF EXISTING CONSUMER LAWS WITH NATIONAL CONSUMER PROTECTION IN INDIA:**

Consumer protection Act (COPRA) 1986, largely modeled on Australian Consumer protection Act, a comprehensive and progressive piece of legislation<sup>11</sup>. COPRA is wider in its scope as it extends to "whole territory of India"<sup>12</sup>. It applies to all goods and services and the central government has power to issue notification if any goods and services are to be exempted from the ambit of this law<sup>13</sup>. It means consumer can file complaint in respect of defective goods supplied or deficient services rendered even if the opposite party is private, public sector or government undertaking like railways, telephones, Electricity Board etc. there can also be complaints against local authorities, semi government bodies<sup>14</sup> and statutory Authorities.

Where as in Pakistan there are various consumer protection laws limited only to the provincial jurisdiction, as national consumer protection law is not legislated yet. It is clear from the language of the enacted laws in Pakistan that public sector which is a major service provider is excluded from the operation of these laws<sup>15</sup>.

#### **Purpose of the Law:**

The purpose of the COPRA, 1986 is integrated in the preamble as it is,

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<sup>11</sup> *ibid*, p.41

<sup>12</sup> The Consumer Protection Act, 1986 (for elaboration it is Indian Consumer Protection Law), section 1

<sup>13</sup> Dilip K. Sheth *Treaties on Consumer Protection Law* (Law & Procedure). Millennium ed. India: Snow White, 2001.

<sup>14</sup> *Lucknow Development Authority v MK Gupta*, (1994) 1 CPR 387 (SC)

<sup>15</sup> Sikander Aqeel Ansari and Abrar Hafeez, *Consumer Laws in Pakistan*, Consumer Rights Commission of Pakistan (2000), Volume I

To provide for better protection of the interests of consumers and for the said purpose, to make provision for the establishment and for the said purpose, to make provision for the establishment of consumer councils and other authorities and for the matters connected there with<sup>16</sup>.

The Punjab Consumer Protection Act (PCPA) 2005 and Islamabad Consumer Protection Act (ICPA), 1995 have incorporated more or less the same preamble as given in COPRPA, 1986. However, Balochistan Consumers Protection Act (BCPA), 2003, North-West Frontier Province Consumers Protection Act, (NWFP CPA) 1997 has included other consumer's interests as growth of fair commercial practices, speedy redress of consumers' complaints<sup>17</sup>.

#### **Definition of Consumer:**

The definition of consumer cited in COPRA, 1986 is described in simple word as a person who consumes goods or avails of services. The term "consumer in the Act is specifically defined in clause [d] of section 2{1}. It covers a person who buys any goods, or hires or avails of services for consideration. It also includes any user of goods other than buyer or beneficiary of services other than hirer.

Consumer in this Act is described as consumer of goods and consumer of services<sup>18</sup>. The Act itself defines who can be consumer of goods and services, for consumer of goods as well services he must satisfy certain criteria i.e. the foremost thing for person claiming to be consumer must show that he has paid the consideration for goods and services. In relation to goods, it excludes persons who obtain goods for

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<sup>16</sup> Preamble of *The Consumer Protection Act, 1986* (Indian Consumer Protection Act).

<sup>17</sup> See Preamble of *Balochistan Consumers Protection Act (BCPA), 2003*, and *North-West Frontier Province Consumers Protection Act, (NWFP CPA) 1997*.

<sup>18</sup> V Balakrishna Eradi "*Consumer protection jurisprudence*" India:Lexis nexis and Butterworth publishers,1999.

resale or any commercial purpose. On the other hand the definition of consumer of services for commercial purpose remains a consumer under this Act. Where as all existing provisional enactments in Pakistan reveal that the legal definition of “consumer” has been borrowed from COPRA, 1986, without contextualizing it to local realities and needs of our particular socio-legal system<sup>19</sup>. A suggestion is given under *Model consumer protection Act 2000*<sup>20</sup> that all taxes and fee, excise duty and custom duty paid by the citizen do constituted in consideration. These are neither mentioned nor excluded expressly from the ambit of law in both regime, however case laws under COPRA, 1986 in *Commissioner. Hindu Religious Endowmenys. Madras v Sri Laxmindra Thirha Swaniar case*<sup>21</sup>, has clearly excluded the Tax to be considered as payment of any particular or special service.

#### **Defective product and services:**

Section 2(1) (f) of the COPRA, 1986 defines “defect” that is any fault, imperfection or shortcoming in the Quality, quantity, potency, purity of standard which is required to be maintained by or under any law for the time being in force or as is claimed by the trader in any manner what so ever in relation to any goods. This is an exhaustive definition as this Act recognizes only those defects identified in this definitions. Additionally it is subject to the definition of goods as well i.e. if an article doesn't fall in to the definition of goods, no defect can be complained with respect to

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<sup>19</sup>*Model consumer protection Act 2000*, foot notes under sec2(b)

<sup>20</sup> *ibid*<sup>10</sup>

<sup>21</sup> Dilip K. Sheth. *Treaties on Consumer Protection Law* (Law & Procedure). Millennium ed. ,India: Snow White,2001.



it<sup>22</sup>.however, its scope is wide enough to cover all kinds of fraud, or deficiency in the quality, purity, quantity, potency or standard of goods<sup>23</sup>.

Complaints against deficient services can be made under COPRA, 1986 and if the service is found deficient as per criteria mentioned under section 2(1)(g) of the said Act, usually compensation is awarded but a person rendering the services can be exempted if services are beyond the control of person performing (for detail criteria see annexure 6).

The consumer laws in Pakistan also provide the criteria of defective products and services in nearly all laws except in ICPA, 1995 where it is not specifically mentioned however, selling of commodities unfit for human consumption can be converted in the context of unfair trade practices (see annexure 2). In NWFP CPA 1997 and in SCPO, 2004 the definition of defect is more identical to what is given in COPRA, 1986. PCPA 2003 gives a very general and inclusive definition (section 5, 6 of the said Act) of defect in goods and services that provides a forum where wide range of complaints can be made against defect and deficiencies in goods and services.

Same as liability against defective products is also levied on manufacturer of a product under PCPA, 2003 where as, other enactments are silent about it. He shall be liable to a consumer for damages proximately caused by a defect in the product, where such damage was feasible, like wise provider of services shall be liable to a consumer for damages proximately caused by the provision of such services (see section 18 in annexure 2).

#### **Liability in case of product safety:**

In the consumer protection regime in Pakistan provision relevant to product safety is mentioned in PCPA, 2003 however, the rest of the enactments are silent about

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<sup>22</sup> V Balakrishna Eradi "Consumer protection jurisprudence" India: Lexis nexis and Butterworth publishers, 1999.

<sup>23</sup> Dr. v. k. Agarwal. "Consumer Protection in India", Deep & Deep Publications New Delhi, 1989

it. Section 7 of the said Act provides that where defect in the product caused its use to be dangerous, the manufacturer shall be liable for the damage caused thereby, unless the ordinary user of the product knew, or if it can plausibly anticipated that defect exists in the product. While, in Indian consumer protection law COPRA, 1986 it mentions the word "hazardous goods" but does not define it properly. Any person can make complaints against the hazardous product if he is not informed about. The rationale behind this provision is to ensure the physical safety of the consumers<sup>24</sup>. Consumer should be instructed in appropriate use of product and all other foreseeable risk must be conveyed to the consumers.

#### **Implementation Tools:**

Consumer Protection Act, 1986, has provided implementation tools so that enforcement of Law could be possible. The dispute disposal procedure provides certain mediums for adjudication of consumer complaints as the review of the Section 9 shows that the Act has provided three-tier quasi-judicial machinery<sup>25</sup> at the district level, state, and national level i.e. District forum, state commission and National commission respectively. The division of these forums is divided according to the pecuniary jurisdiction depending upon the value of goods and services. This provides a less expensive recourse for the consumers. If it is compared with the different forums prescribed in provincial enactments in Pakistan it is clear that there is no consistency of competent authority to adjudicate the consumer complaints in various provincial jurisdictions as there is no single consumer policy behind all these laws.

#### **Formation of consumer council:**

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<sup>24</sup> V Balakrishna Eradi "*Consumer protection jurisprudence*" India:Lexis nexis and Butterworth publishers,1999.

<sup>25</sup> Dilip K. Sheth "*Treaties on Consumer Protection Law (Law & Procedure)*". Millennium ed, India: Snow White,2001, 574.

Consumer legislation in both regimes provides for the setting up of consumer protection councils. COPRA, 1986 establishes consumer protection council in all states and at the centre, namely the state Consumer Protection Councils (CPC) and the Central Consumer Protection Council. Whereas all existing consumer protection laws in Pakistan provide a constitution of consumer council at district level. However, none of the enacted consumer statutes except SCPO, 2004-2005 in Pakistan specifies any timeframe for the formation of CPC after its promulgation.

The composition, objectives, functions and the powers of competent Authority with in COPRA, 1986 are fully developed as compared to the existing statutes of consumer protection in Pakistan. Role of the consumer council under COPRA, 1986 is more extensive as it has wide base and multi-sectional representation on. It can be expected to create mass consumer awareness and development of a widespread consumer movement in the country. It is projected to play a significant role in framing economic policies of the Central Government and can assert influence to the extent to pertain to various aspects of consumer protection. Further on the, this council is under the supervision of Minister-in-charge of consumer Affairs in the central government (Chairman of the council) this makes the role of the consumer effective in decision making. In Pakistan not a single consumer council is established, not even a specific ministry is allocated yet. The scope of the District consumer council established under the provincial consumer statutes is very restrictive.

The Indian consumer law can be a good source for developing national consumer law in Pakistan as there is much to share commentary, case law and experience that can suits our socio-legal requirements.

## **CHAPTER 6**

### **RECOMMENDATIONS FOR CONSUMER POLICY**

#### **IN PAKISTAN AND CONCLUSION**

The exclusive study on consumer laws in Pakistan in the earlier chapters reveals that the whole country is under the enclave of piecemeal consumer legislation. Beside traditional laws every province has enacted consumer statutes with a significant exception of Sindh where parliamentary debates are at advanced stage to finalize provincial consumer protection law. In almost all present consumer protection statutes there are some inherent deficiencies as the relevant rules of procedure and Consumer protection councils have yet to be established at provisional level that is why these laws continue to remain inactive.

Disappointingly the existing consumer protection laws are also restrictive in their scope and there is no consistency and uniformity between them. Inspired by global experience of consumer legislation and modeled on different consumer regimes (existed in the countries all around the world) these statutes are not in equilibrium with each other. Different legislation treat consumer differently because of variance in the definitions of consumer, redress machinery and designated remedies provided in law.

One thing is very apparent at this stage that the *raison d'être* of inconsistencies with in the bulk of consumer related statutes is because all are made in complete isolation and without any support of the policy framework. There is no policy device to harmonize these laws to have uniform legislation without contradiction and ambiguities particularly when a question of extrajudicial matters will rise in provincial consumer courts and different remedies are available in different statutes.

In the absence of an integrated and overarching consumer protection legislation and policy coupled with defective redress mechanisms in Pakistan there is growing corrosion of governance and relationship between the state and its citizens. The vast majority of people are excluded practically from participating in or deriving maximum advantage from the government and left at the clemency of market forces to decide their fate in the name of privatization and liberalization. Over the last one and half decade, market has emerged as a very powerful actor due to progressive movement towards free market economy, privatization, and corporation in Pakistan and citizen-consumers are facing ever greater challenges posed by globalization. This is a stage to realize the responsibility of the state towards citizen-consumers to protect their interests, giving pace to the burgeoning movement of consumer protection through a broader vision of a consumer protection strategy leading to laws and systems that are adequate, effective and demand driven.

In this scenario, three possible solutions can be suggested for consumer safeguard in Pakistan,

- A national consumer law, that has discussed in earlier chapter 2
- A national consumer policy,
- A strong administrative setup.

## **CONSUMER POLICY FOR PAKISTAN:**

### **6.1 NEED OF COMPREHENSIVE CONSUMER POLICY IN PAKISTAN:**

UN guidelines for consumer protection represent the global agenda for governments to use for the amplification and strengthening of consumer protection

Today the trade liberalization and globalization with new trends of deregulation and open economy policies has lead Pakistan in to free market economy, where the producers are already more organized then the consumers. This economic model has some inherent deficiencies that restrict the state role and left every thing on the market forces. This model proved a total failure and left a lesson to our policy makers that they should keep all the safeguards that mitigate the threats of market failures and unfair competition. In this scenario the states role as guarantor of consumer protection are enhanced and consumer policy can be used as a tool to keep check on the market activities. This redefines the role of government as regulator to ensure access, affordability and quality<sup>3</sup>.

## **6.2 FORMULATION OF CONSUMER POLICY IN PAKISTAN:**

How to formulate a consumer policy in Pakistan requires a deep study in various aspects of consumer policy recognized in theory, its scope and in practice the international experience of policy formulation is to be reviewed. It can assist to prepare recommendations for consumer policy in Pakistan.

### **6.2.1 Consumer policy-in the perspective of consumers as market players as well as citizens:**

Policy is a line of argument, Stratagem of action plan and formulation of guidelines which is a privilege of controlling regime. It is usually articulated in official records or can be in the form of informal declarations. Hence the more important thing is policy objectives, key strategy and political will to implement it rather then its formal expression.

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<sup>3</sup> ibid

Every consumer policy evolves from one or more visions, a strategy this leads to the building of consumer program and action plan. The vision or basic idea around which the whole model revolves shows the dimension of consumer policy. The basic or focal point in the consumer policy is the definition of consumer, the term “consumer” is taken in different context and terminologies, as there is *struggle for ownership of the term between these different terminologies and spheres of activity and influence*. Consumer are taken or defined in to two broader aspects *citizens* as well as *customers*.

If they are customer, market players or consuming actor then the interests of consumer-customer can affect the market. Same as market forces and associated factors do affect the interest of consumer-customer. The market opportunities changes for consumers depending upon,

- Whether the focus of the economy is on the demand side or the supply side of the market;
- National law and on legally binding agreements at bilateral and multilateral levels, and on the equality of implementation of these laws;
- Shifts in purchasing power with in the market due to unequal direct or indirect state subsidies for producers or specific technological pathways;
- The symmetry or asymmetry of different market players’ access to information; and
- The extent of their organizational structuring and power to defend their interest<sup>4</sup>

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<sup>4</sup> The Network for Consumer Protection. “*Policy Vision*”. The Network Publication: 1995.

Consumers as citizens and sovereigns of democracy have their collective and individual interests that are affected not only by the production of goods and services but also by their consumption pattern. The citizen-consumer and this influence can be in many ways,

- By their votes for the specific parliamentary representatives they give orientation to the development of legal frameworks governing the market and their own role as consumers with in the market;
- Through their direct and personal purchasing decisions, they influence market and living conditions, including the protection of human rights and the environment;
- They organize themselves in civil society in order to deal with and promote consumer-related social affairs; and
- Also, consumers of public goods and services, such clean environment, efficient and accessible justice, systems of governance and so on<sup>5</sup>.

The term consumer taken in two contexts needs to be integrated by focusing on their interrelationships. Each of the spheres is essential for the policy making and *must be dealt with in their own right at the highest level of quality possible if we are to acknowledge consumers' functions as market players and as citizen-consumers*<sup>6</sup>.

### **6.2.2 Consumer Policy - Its Various Dimensions:**

On the basis of above discussion, the consumer policy can be taken in two sets of overlapping dimensions<sup>7</sup>.

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<sup>5</sup> ibid

<sup>6</sup> ibid

<sup>7</sup> ibid



### **6.2.3 Consumer policy in its narrow sense or direct consumer policy:**

The scope of this policy is narrow but gives protection to the direct concerns of the consumer. This approach interprets the term “consumer” and “consumer’s interest” contractedly as more emphasis is given to consumer-related legal, safety, and economic issues including those of health and nutrition with in consumer protection. Research, information and association among consumers is encouraged to compensate the structural weaknesses on consumer sides so that the balance between the market layers.

### **6.2.4 Consumer policy in its broader sense or indirect consumer policy:**

This approach interprets the “consumer interests” in a very broader sense and protects the rights of consumer in other policy area as well, such as environmental, trade/investment policies, the protection and promotion of public goods and universal commons.

### **6.2.5 Market related consumer policy:**

The policy is modeled to protect consumers from market forces by providing the competitive base of the market and transparency, equal and easy availability at affordable prices in provision of goods and services.

### **6.2.6 The form of Consumer policy in the public sector:**

The main objective of this policy is to monitor the natural and state protected monopolies providing goods and services in the market and protects the consumer from its adverse effects on the consumer. This policy is described in its three characters as,

➤ Policy with complementary character:

It works in the area of market information, individual loss prevention, and individual welfare and competition policies.

➤ Policy with market-compensatory character:

It works in mandatory consumer law, promotion of effective consumer organization to compensate for direct and indirect state subsidization of providers, and state-provided prevention and welfare in reorganization of the government's responsibility to protect citizen's life's and health, and for protecting the environment.

➤ Policy with increasing participatory character:

It protects the rights of the citizens to take part in the political forms and their rights regarding information, participation, and access to the courts are respected<sup>8</sup>.

All above discussion depicts various shades of a consumer policy that is at there in theory as well as implemented in many countries, so any initiatives in policy formulation in Pakistan must try to be all inclusive by fully integrating the aforementioned various aspects of consumer policy.

### **6.3 POSSIBLE SOURCES FOR POLICY FORMULATION:**

#### **UN Guidelines:**

UN Guidelines for consumer protection, an international agenda for governments to use for the strengthening consumer protection policy and legislation can be a sound source for the possible policy document in Pakistan. Pakistan is signatory to these guidelines and it can frame a policy inclusive of all internationally recognized eight consumer rights.

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<sup>8</sup> Ibid

### **Constitution of Pakistan 1973:**

Consumer policy in Pakistan must cover all the basic aspects of consumer protection. It needs to ensure that basic human rights are protected and citizens' rights are promoted. Constitution of Pakistan 1973 protects the basic rights of citizens of Pakistan in terms of "Fundamental Rights" and the "Directive Principles of State Policy". These provisions can be taken as source for consumer protection as it spells out numerous scattered provisions on citizen-consumer protection.

### **International Experience:**

Global experience of adopting various approaches towards consumer protection particularly the policy they have developed for the citizens can be taken as a source for the formulation of consumer policy in Pakistan. However, the distinction between consumer concerns in developing countries and developed countries are there. This is the reason that Consumer policy formulation in Pakistan can be adhere more to the developing countries.

## **6.4 ANALYSES OF KEY ISSUES IN PAKISTAN WHILE FORMULATION OF NATIONAL CONSUMER POLICY:**

Unlike many developing countries, Pakistan still lags behind the formulation of consumer policy. There are multiple reason to this fact major and most important of them is described as under,

### **6.4.1 Constitutional Constraints:**

In Pakistan, unlike many other countries consumer protection is usually considered under the domain of provisional government *i.e.* only provisional

assemblies are competent to enact consumer law/policy and the federal government per se has no power to legislate<sup>9</sup>. The upshot is that there is no possibility to legislate the national consumer policy by the central government.

This issue can be solved as enactment of national consumer protection law on the Federal level is possible. In view of the fact that nearly all consumer laws that directly or indirectly protect the interests of the consumers are federally legislated laws (this can be best explained from the table given in the annexure 5<sup>10</sup>), federal and concurrent Legislative lists provide ample space to accommodate consumer protection as a subject where legislation can be done at Federal level.

There can be another possibility as under Article 144 of the constitution if two or more provincial assemblies pass resolutions to the effect that parliament may, by law, regulate any matter not enumerated in either List in the fourth schedule, it shall be lawful for Parliament to pass an Act for regulating the matter accordingly, This option can also be explored thought in given circumstances it is challenging. Further on Federal Government can also draft consumer protection law it will be then a facsimile copy in each province in the same as Local Government Ordinance 2002 was provided to provinces for the replication as provincial laws/ordinance.

In the backdrop, when the provincially enacted laws have inconsistencies in it a consumer policy approach in this context is a safe way to harmonize consumer

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<sup>9</sup> "It is generally considered that pursuant to Article 142 and Fourth Schedule of the constitution of Islamic Republic of Pakistan consumer protection has to be a provincial subject matter. The constitution clearly distributes the legislative powers between the federation and provinces supported by the two lists i-e. Fourth Schedule, which demarcate the domain of legislation by drawing a Federal Legislative List and concurrent List. Consumer protection is not specifically mentioned in either two of these lists hence according to Article 142 all residuary powers to legislate lie with provinces". See The Network for Consumer Protection." *Why National Consumer Protection Law in Pakistan*". Islamabad: The network publication, 2005,

<sup>10</sup> Annexure at the end

protection laws in Pakistan<sup>11</sup> and to remove the procedural problem, deficiencies and anomaly there is need to identify the responsible factor for its failure.

It is usually argued that provincial government is more competent to legislate in accordance to its own socio-political requirements but it is subject to an environment where provinces are cognizant of their duties in reference to social legislation and *the spirit of federalism has been fully evolved in the form of subsidiarity*<sup>12</sup>. On the contrary current scenario in Pakistan shows that leaving this important issue on the absolute whims of provincial government is not a success. Provincial laws are restrictive in its scope having limited jurisdiction it can't place any international trade restrictions and the result is the imbalances and exploitation at market place. Trade liberalization policies, the bombardment of goods and services cross the boarder has manifold the consumer related problems and demands a rational and uniform approach to consumer protection. The rules of international trade law have direct effect on the individual persons, business and corporations, if breach of any rights afforded by international law ordinarily will assist only those individuals or corporations whose national government takes up their cause<sup>13</sup>. The role of consumer policy is paramount to harmonize provincial laws as the approach taken up in the consumer policy is based on broader national objectives.

#### **6.4.2 Policy integration at the provincial level:**

In Pakistan there are many policy initiatives like Trade policy, health policy, food policy etc, directly or indirectly effecting consumers. These policies needs to be scrutinized before initiating the process of policy making as how far they are

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<sup>11</sup> <http://www.nation.com.pk/daily/feb-2006/1/nationalnews6.php>

<sup>12</sup> The Network for Consumer Protection. "*Policy Vision*". The Network Publication:1995.

<sup>13</sup> "Consumer protection, the Nation-state, Globalization, and Democracy" by John Goldring , school of law ,University of Wollongong, Australia

protecting the consumers by passing these policies through the net of recognized eight rights to test either each policy protects these rights or not. The result is total failure, refer to annexure3. This supports the statement that there should be a separate integrated national consumer policy it would be futile if it is made in complete isolation without any linkage with other policy. Although the other policies should also mirror consumer perspectives with in its scope but to *bring these policies in to conformity with the standards laid down by the UN would be one huge and cumbersome effort but comprehensive consumer policy can fill the required gape*<sup>14</sup>.

#### **6.4.3 When there is competition policy why there should be consumer protection/policy?**

The main objective of competition policy and law is to preserve and promote competition as a means of ensuring the efficient allocation of resources in an economy. This leads to increased competitiveness and substantial growth, development and a more equitable distribution of income<sup>15</sup>. It helps to control the market-dominating behavior as monopolies and cartel this results in lowest prices and adequate supplies for consumers and best possible choice of quality. This policy lowers barricades to the entry of new firms into an industry to create an enabling environment for entrepreneurial development, an essential precondition for a vibrant economy.

Where as consumer policy seeks to ensure that the benefits of competition in the form of innovation and efficiencies should be passed on to the consumer not only retain by the producers through misleading and deceptive conduct. It provides safety net in the market where vigorous competition might tempt some businesses to cut

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<sup>14</sup> The Network for Consumer Protection. "Policy Vision". The Network Publication:1995.

<sup>15</sup> Khemani, R. Shyam and M.A. Dutz., "The Instruments of Competition Policy and Their Relevance for Economic Development", PSD Occasional Paper No. 26 (Washington, World Bank). 1996

corners to gain an unfair competitive advantage. It enforces the necessary legislation to assist the competitive process (In India the business lobby has worked hard against the enactment of a new, modern competition law).

Although there is variety of similarity between these two policies but consumer policy is more reactive than competition policy that is proactive i.e. it attempts to protect consumers in market place where consumer policy has reactive agenda against misleading or deceptive behavior of producers/suppliers. The competition law in Pakistan as discussed in earlier chapters doesn't provide adequate protection to consumer that is further curtailed by the presidential Ordinance 2002 and there is no similarity with consumer laws any more<sup>16</sup>.

Beside this difference consumer policy can assist to competition policy in many ways and an active consumer association makes a significant difference to the effectiveness of competition law as empowered consumers and representative organizations can bring any kind of anti-competitive practices in market to the attention of the competition authority. *They will also act as a countervailing power to businesses to ensure successful implementation of competition law.*<sup>17</sup>

## **6.5 RECOMMENDATION FOR CONSUMER POLICY IN PAKISTAN:**

- Consumer policy should be modeled on the design that fulfills all procedural and structural requirements so that it would be free from technical flaws related to implementation.
- The parts of policy i.e. vision, strategies and instruments must be consistent to each other in one system

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<sup>16</sup> The Network for Consumer Protection. "Policy Vision". The Network Publication:1995,18

<sup>17</sup> Pradeep S. Mehta "Competition Policy In Developing Countries: An Asia-Pacific Perspective" available at [www.unescap.org/pdd/publications/bulletin2002/ch7.pdf](http://www.unescap.org/pdd/publications/bulletin2002/ch7.pdf)(last visited 12 January)

- The policy must be made without ambiguity, with future focused approach having perspective to face every day political pressure. This policy document must be modeled to provide long term and sound guidance for the government to legislate laws according to it.
- The consumer policy strategy must be made with short term objectives *linked with bundles of measures, and implemented by means of a short and medium-term consumer policy program*<sup>18</sup>.
- Every program or action plan settled under policy should be subject to time. Continuous monitoring of objectives and the allocated fund on it is to be identified and correction is to be made in case of any failure of the program
- A holistic approach should be taken while making of consumer policy, inclusive of all rights of consumers to be protected.
- There is need of coordination among the agencies and government bodies i.e. related ministries dealing with the affairs of the consumer, as a coordination body.
- Marginalized consumers or those who cant stand as buyers in the market must have priority in consumer policy. This policy must incorporate the term consumer as citizen- consumer including public services in its ambit
- Harmonization of laws and policies should be the ultimate issue in policy under the consumers' interest.
- All agencies must have consumer impact assessment as a mandatory rule under the policy
- Empowerment of consumers as in the form of consumer organization and association and consumer research should be promoted.
- This policy must secure the institutional arrangement <sup>19</sup>

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<sup>18</sup> The Network for Consumer Protection. "Policy Vision". The Network Publication:1995, 21.



## ANNEXURES

### Annexure A: UN Guidelines for Consumer Protections

**Guidelines for Consumer Protections, UN Department of International Economic and Social Affairs, A/RES/39/248 (1986)<sup>20</sup>.**

### PREFACE

The General Assembly adopted guidelines for consumer protection by consensus on 9 April 1985 (General Assembly resolution 39/248). The guidelines provide a framework for Governments, particularly those of developing countries, to use in elaborating consumer protection policies and legislation. They are also intended to encourage international co-operation in this field.

The origins of the guidelines can be traced to the late 1970s, when the Economic and Social Council recognized that consumer protection had an important bearing on economic and social development. In 1977, the Council asked the Secretary-General to prepare a survey of national institutions and legislation in the area of consumer protection. In 1979, the Council requested a comprehensive report containing proposals for measures on consumer protection for consideration by Government. In 1981, the Council, aware of the need for an international policy framework within which further efforts for consumer protection could be pursued, requested the Secretary-General to continue consultations with the aim of developing a set of general guidelines for consumer protection, taking particularly into account the needs of the developing countries.

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<sup>19</sup> all above is also extracted from V Balakrishna Eradi "*Consumer protection jurisprudence*" India: Lexis nexis and Butterworth publishers, 1999. 29,32,53

<sup>20</sup> Downloaded from <http://www1.umn.edu/humanrts/links/consumerprotection.html>. (Last visited 12 January 2006)

Accordingly, the Secretary-General carried out consultations with Governments and international organizations and submitted draft guidelines for consumer protection to the Economic and Social Council in 1983. During the next two years there were extensive discussions and negotiations among Governments on the scope and content of the guidelines, culminating in their adoption in 1985.

## **I. OBJECTIVES**

1. Taking into account the interests and needs of consumers in all countries, particularly those in developing countries; recognizing that consumers often face imbalances in economic terms, educational levels, and bargaining power; and bearing in mind that consumers should have the right of access to non-hazardous products, as well as the importance of promoting just, equitable and sustainable economic and social development, these guidelines for consumer protection have the following objectives:

- a. To assist countries in achieving or maintaining adequate protection for their population as consumers;
- b. To facilitate production and distribution patterns responsive to the needs and desires of consumers;
- c. To encourage high levels of ethical conduct for those engaged in the production and distribution of goods and services to consumers;
- d. To assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers;
- e. To facilitate the developing of independent consumer groups;
- f. To further international co-operation in the field of consumer protection;

- g. To encourage the development of market conditions which provide consumers with greater choice at lower prices.

## **II. GENERAL PRINCIPLES**

2. Governments should develop, strengthen or maintain a strong consumer protection policy, taking into account the guidelines set out below. In so doing, each Government must set its own priorities for the protection of consumers in accordance with the economic and social circumstances of the country, and the needs of its population, and bearing in mind the costs and benefits of proposed measures.

3. The legitimate needs which the guidelines are intended to meet are the following:

- a. The protection of consumers from hazards to their health and safety;
- b. The promotion and protection of the economic interests of consumers;
- c. Access of consumers to adequate information to enable them to make informed choices according to individual wishes and needs;
- d. Consumer Education;
- e. Availability of effective consumer redress;
- f. Freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them.

4. Governments should provide or maintain adequate infrastructure to develop, implement and monitor consumer protection policies. Special care should be taken to ensure that measures for consumer protection are implemented for the benefit of all sectors of the population, particularly the rural population.

5. All enterprises should obey the relevant laws and regulations of the countries in which they do business. They should also conform to the appropriate provisions of international standards for consumer protection to which the competent authorities of the country in question have agreed. (Hereinafter references to international standards in the guidelines should be viewed in the context of this paragraph.)
6. The potential positive role of universities and public and private enterprises in research should be considered when developing consumer protection policies.

### **III. GUIDELINES**

7. The following guidelines should apply both to home-produced goods and services and to imports.
8. In applying any procedures or regulations for consumer protection, due regard should be given to ensuring that they do not become barriers to international trade and that they are consistent with international trade obligations.

#### **A. Physical Safety**

9. Government should adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, national or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use.
10. Appropriate policies should ensure that goods produced by manufactures are safe for either intended or normally foreseeable use. Those responsible for bringing goods to the market, in particular suppliers, exporters, importers,

retailers and the like (hereinafter referred to as "distributors"), should ensure that while in their care these goods are not rendered through improper handling or storage and that while in their care they do not become hazardous through improper handling or storage. Consumers should be instructed in the proper use of goods and should be informed of the risks involved in intended or normally foreseeable use. Vital safety information should be conveyed to consumers by internationally understandable symbols wherever possible.

11. Appropriate policies should ensure that if manufactures or distributors become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and, as appropriate, the public without delay. Government should also consider ways of ensuring that consumers are properly informed of such hazards.
12. Government should, where appropriate, adopt policies under which, if a product is found to be seriously defective and/or to constitute a substantial and severe hazard even when properly used, manufacturers and/or distributors should recall it and replace or modify it, or substitute another product for it; if it is not possible to do this within a reasonable period of time, the consumer should be adequately compensated.

**B. Promotion and protection of consumers' economic interests**

13. Government policies should seek to enable consumers to obtain optimum benefit from their economic resources. They also seek to achieve the goals of satisfactory production and performance standards, adequate distribution

methods, fair business which could adversely affect the economic interests of consumers and the exercise of choice in the market-place.

14. Government should intensify their efforts to prevent practices which are damaging to the economic interests of consumers through ensuring that manufacturers, distributors and others involved in the provision of goods and services adhere to established laws and mandatory standards. Consumer organizations should be encouraged to monitor adverse practices, such as the adulteration of foods, false or misleading claims in marketing and service frauds.
15. Government should develop, strengthen or maintain, as the case may be, measures relating to the control of restrictive and other abusive business practices which may be harmful to consumers, including means for the enforcement of such measures. In this condition, Governments should be guided by their commitment to the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices adopted by the General Assembly in resolution 35/63 of 5 December 1980.
16. Government should adopt or maintain policies that make clear the responsibility of the producer and to ensure that goods meet reasonable demands of durability, utility and reliability, and are suited to the purpose for which they are intended, and that seller should see that these requirements are met. Similar policies should apply to the provision of services.

17. Governments should encourage fair and effective competition in order to provide consumers with the greater range of choice among products and services at the lowest cost.
18. Governments should, where appropriate, see to it that manufacturers and/or retailers ensure adequate availability of reliable after-sales service and spare parts.
19. Consumers should be protected from such contractual abuses as one-side standard contracts, exclusion of essential rights in contracts, and unconscionable conditions of credit by sellers.
20. Promotional marking and sales practices should be guided by the principle of fair treatment of consumers and should meet legal requirements. This requires the provision of the information necessary to enable consumers to take informed and independent decisions, as well as measures to ensure that the information provided is accurate.
21. Government should encourage all concerned to participate in the free flow of accurate information on all aspects of consumer products.
22. Governments should, within their own national context, encourage the formulation and implementation by business, in co-operation with consumer organization, of codes of marketing and other business practices to ensure adequate consumer protection. Voluntary agreements may also be established jointly by business, consumer organizations and other interested parties. These codes should receive adequate publicity.

23. Governments should regularly review legislation pertaining to weights and measures and assess the adequacy of the machinery for its enforcement.

**C. Standards for the safety and quality of consumer goods and services**

24. Governments should, as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other, at the national and international levels for the safety and quality of goods and services and give them appropriate publicity. National standards and regulations for product safety and quality should be reviewed from time to time, in order to ensure that they conform, where possible, to generally accepted international standards.

25. Where a standard lower than the generally accepted international standard is being applied because of local economic conditions, every effort should be made to raise that standard as soon as possible.

26. Governments should encourage and ensure the availability of facilities to test and certify the safety, quality and performance of essential consumer goods and services.

**D. Distribution facilities for essential consumer goods and services**

27. Governments should, where appropriate, consider:
- a. Adopting or maintaining policies to ensure the efficient distribution of goods and services to consumers; where appropriate, specific policies should be considered to ensure the distribution of essential goods and services where this distribution is endangered, as could be the case particularly in rural areas.



Such policies could include assistance for the creation of adequate storage and retail facilities in rural centres, incentives for consumer self-help and better control of the conditions under which essential goods and services are provided in rural areas;

- b. Encouraging the establishment of consumer co-operatives and related trading activities, as well as information about them, especially in rural areas.

**E. Measures enabling consumers to obtain redress**

28. Government should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, inexpensive and accessible. Such procedure should take particular account of the needs of low-income consumers.

29. Government should encourage all enterprise to resolve consumer disputes in a fair, expeditious and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.

30. Information on available redress and other dispute-resolving procedures should be made available to consumers.

**F. Education and information programmes**

31. Governments should develop or encourage the development of general consumer education and information and information programmes, bearing in mind the cultural traditions of the people concerned. The aim of such

programmes should be to enable people to act as discriminating consumers, capable of making an informed choice of goods and services, and conscious of their rights and responsibilities. In developing such programmes, special attention should be given to the needs of disadvantaged consumers, in both rural and urban areas, including low-income consumers and those with low or non-existent literacy levels.

32. Consumer education should, where appropriate, become an integral part of the basic curriculum of the educational system, preferably as a component of existing subjects.
33. Consumer education and information programmes should cover such important aspects of consumer protection as the following:
  - a. Health, nutrition, prevention of food-borne diseases and food adulteration;
  - b. Product hazards;
  - c. Product labelling;
  - d. Relevant legislation, how to obtain redress, and agencies and organizations for consumer protection;
  - e. Information on weights and measures, prices, quality, credit conditions and availability of basic necessities; and
  - f. As appropriate, pollution and environment.
34. Governments should encourage consumer organizations and other interested groups, including the media, to undertake education and information programmes, particularly for the benefit of low-income consumer groups in rural and urban areas.

35. Business should, where appropriate, undertake or participate in factual and relevant consumer education and information programmes.
36. Bearing in mind the need to reach rural consumers and illiterate consumers, Governments should, as appropriate, develop or encourage the development of consumer information programmes in the mass media.
37. Governments should organize or encourage training programmes for educators, mass media professionals and consumer advisers, to enable them to participate in carrying out consumer information and education programmes.

**G. Measures relating to specific areas:**

38. In advancing consumer interests, particularly in developing countries, Governments should, where appropriate, give priority to areas of essential concern for the health of the consumer, such as food, water and pharmaceuticals. Policies should be adopted or maintained for product quality control, adequate and information, as well as education and research programmes in these areas. Government guidelines in regard to specific areas should be developed in the context of the provisions of this document.
39. *Food.* When formulating national policies and plans with regard to food, Governments should take into account the need of all consumers for food security and should support and, as far as possible, adopt standards from the Food and Agriculture Organization of the United Nations and the World Health Organization Codex Alimentarius or, in their absence, other generally accepted international food standards. Governments should maintain, develop or improve food safety measures, including, *inter alia*, safety criteria, food

standards and dietary requirements and effective monitoring, inspection and evaluation mechanisms.

40. *Water.* Governments should, within the goals and targets set for the International Drinking Water Supply and Sanitation Decade, formulate, maintain or strengthen national policies to improve the supply, distribution and quality of water for drinking. Due regard should be paid to the choice of appropriate levels of service, quality and technology, the need for education programmes and the importance of community participation.
41. *Pharmaceuticals.* Governments should develop or maintain adequate standards, provisions and appropriate regulatory systems for ensuring the quality and appropriate use of pharmaceuticals through integrated national drug policies which could address, *inter alia* procurement, distribution, production, licensing arrangements, registration systems and the availability of reliable information on pharmaceuticals. In so doing, Government should take special account of the work and recommendations of the World Health Organization on pharmaceuticals. For relevant products, the use of that organization's Certification Scheme on the Quality of Pharmaceutical Products Moving in International Commerce and other aged. Measures should also be taken, as appropriate, to promote the use of international non-proprietary names (INNs) for drugs, drawing on the work done by the World Health Organization.
42. In addition to the priority areas indicated above, Governments should adopt appropriate measures in other areas, such as pesticides and chemicals, in regard, where relevant, to their use, production and storage, taking into

account such relevant health and environmental information s Governments may require producers to provide and include in the labelling of products.

#### **IV. International Co-operation:**

43. Governments should, especially in a regional or subregional context:
  - a. Develop, review, maintain or strengthen, as appropriate, mechanisms for the exchange of information on national policies and measures in the field of consumer protection;
  - b. Co-operate or encourage co-operation in the implementation of consumer protection policies to achieve greater results within existing resources. Examples of such co-operation could be collaboration in the setting up or joint use of testing facilities, common testing procedures, exchange of consumer information and education programmes, joint training programmes and joint elaboration of regulations;
  - c. Co-operate to improve the conditions under which essential goods are offered to consumers, giving due regard to both price and quality. Such co-operation could include joint procurement of essential goods, exchange of information on different procurement possibilities and agreements on regional product specifications.
  
44. Governments should develop or strengthen information links regarding products which have been banned, withdrawn or severely restricted in order to enable other importing countries to protect themselves adequately against the harmful effects of such products.

45. Governments should work to ensure that the quality of products, and information relating to such products, does not vary from country to country in a way that would have detrimental effects on consumers.
46. Governments should work ensure that policies and measures for consumer protection are implemented with due regard to their not becoming barriers to international trade, and that they are consistent with international trade obligations.

CONSUMER PROTECTION LEGISLATION IN PAKISTAN

A COMPARATIVE MATRIX

I. Definitions

ISSUES				
<b>Definition of Consumer</b>	Any person who buys or obtains on lease or hires any services for a consideration. Does not include a person who obtains such goods for re-sale or any commercial purpose: s.2 Cc) The definition excludes purchaser of goods bought and used exclusively for the purpose of earning livelihood, by means of self-employment.	Any person who buys or hires goods and services, irrespective of any consideration paid or promised: s.2 (d) However, excludes purchaser of goods bought and used exclusively for the purpose of earning livelihood, by means of self-employment.	Any person who buys, or hires goods and services for a consideration paid or promised. Includes hire purchaser, lessee and any beneficiary of such goods or services: s.2 (c). However, the definition excludes purchaser of goods bought and used exclusively for the purpose of earning live by means of self-employment.	-Ditto- s.2 (c)
<b>Defect in product or service</b>	Defect in a product includes: s.5: Defect in construction or composition s.6: Defect in design s.7: Defect because of inadequate warning s.5: Defect because of non conformity to express warranty of the manufacturer	Any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard mandated by law : s.2 (g), or undertaken by a person providing the service to a consumer: s.2 (h).	-Ditto- s.2 (e) & (f)	Not mentioned specifically. However, selling of commodities unfit for human consumption covered in the context of unfair trade practices.
<b>Damage</b>	All damage caused by the product, including damage to the product itself and economic loss arising from any defect in the product: s.2 (d)	Not mentioned	Not mentioned	Not mentioned
<b>Manufacturer or Producer</b>	Any person (i) who carries out any process on the product (ii) affixes his label on the product (iii) as seller exercises control over design,	Any person (i) who represents himself to the public as the manufacturer of goods (ii) affixes his brand name or trademark on the	A person who manufactures any goods or part thereof; or assembles parts manufactured by others and represents himself to the public as the manufacturer; or puts his brand	Not mentioned

	construction or quality of the product (iv) assembles a product (v) assumes warranty obligation as seller of a product of a foreign manufacturer	product (iii) imports or distributes goods manufactured outside Pakistan: s.2 (I)	name or trademark on the product: s.2 ( Does not mention an importer of goods who does not affix his brand name or trademark on the product.	
<b>Product</b>	Any goods, and includes a product comprised in another product: s.2 (.1)	Not defined	Not defined	Not defined
<b>Goods</b>	Goods as defined in the Sales of Goods Act (SOG) 1930: s.2 (j)	-Ditto- s.2 (g)	-Ditto- s.2 (g)	Not defined
<b>Services</b>	Provision of any kind of facilities, advice or assistance, other than non-professional services like palmistry, a contract of personal service or a service the essence of which is to deliver a legal judgment: s.2 (k)	Services of any description made available to consumers by way of trade or commerce, including supply of information. Excludes services consumed free of charge or under a contract of employment: s.2 (p)	Services of any description made available to consumers by way of trade or commerce, including supply of information. Excludes services consumed free of charge or under a contract of employment:s.2 (n)	Not defined
<b>Standard of provision of services</b>	Unless the standard of service is regulated by a special law, it shall be the standard, which, at the time of the provision of the services, a consumer could reasonably expect to obtain: s.14	Not mentioned	Not mentioned	Not mentioned
<b>Misleading Representation</b>	Sec 21 provides a general dictum that no person shall engage in misleading or deceptive conduct in relation to goods or services. Misleading representation is mentioned under Unfair Practices (Part V) and covers situations such as misrepresentation as to trade description, the existence, exclusion or effect of any condition, guarantee, right or remedy, or to the	Sec 2 (u) gives a broad definition of misleading representation, covering statements made, by commission or omission, orally or in writing, through sign boards, neon-signs, publication of any manner or by electronic media. The acts and omissions listed in Sec 2 (u) are wider in their scope and extent than the limited	Sec 2 (o) defines representation as it is defined in SCPO 2004-05. Misrepresentation is mentioned under unfair trade practices and the situations covered are broadly similar to those laid down in SCPO 2004-05. However, misrepresentation as to title or right to sell not mentioned.	-Ditto-



	place of origin of the goods. However, the Act does not define misleading representation, nor does it cover misleading representation as to title.	application of misleading representation in PCPA 2003.		
<b>Misleading representation in relation to land</b>	Not mentioned	Not mentioned	Falsely offering for sale or on lease any premises with specified premises and without any escalation in price (sec 2 (o) (vii)).	-Ditto- (sec 2 (f) (vii))
<b>Misleading price indication</b>	Not mentioned	Falsely representing or misrepresenting the price of any goods or services: s. 2 (u) (x) Bait advertising mentioned	-Ditto- Sec 2 (o) (viii)	-Ditto- Sec 2 (f) (vii)
<b>Bait advertising</b>	No person shall advertise for supply at a specified price goods or services which he does not intend to offer for supply, or does not have reasonable grounds for believing that he can supply: Sec 22, (Part V: Unfair Practices)	Bait advertising mentioned under unfair trade practices (sec 2 (u) (iv)(v) & (vi))	Sec 2 (o) (xii): No person shall offer at bargain price, goods or services, which he does not intend to offer at such price.	-Ditto- (xii) (Sec 2 (f))
<b>Gifts, prizes, free offers</b>	Not mentioned	Falsely representing that a consumer will receive goods "free" or without charge: Sec 2 (u) (xvfl)	Offering Free goods and services with the intention of not providing them as offered or offering them as free when they are covered by the price: s.2 (0) (xhi)	- Ditto – Sec 2 (f) (xiii)

## 2. Liabilities

ISSUES	PROVISIONS	ISSUES	PROVISIONS	ISSUES	PROVISIONS
<b>Liability for defective products or services</b>	<p>The manufacturer of a product shall be liable to a consumer for damages proximately caused by a defect in the product, where such damage was foreseeable: s.4</p> <p>A provider of services shall be liable to a consumer for damages proximately caused by the provision of such services: s.13</p> <p>Sec 14 lays down that the standard of services, where any existing law does not regulate such standards, is one that a consumer could reasonably expect to obtain at that time in Pakistan.</p>	Liability for consequential damage not explicitly mentioned. However, Sec 4 provides that a provider of defective products or services shall be liable to pay compensation to the complainant as the Consumer Court may direct.	Not mentioned	Not mentioned	Not mentioned
<b>Non-development Defence</b>	<p>If in the light of available scientific knowledge, the manufacturer did not know, or could not have reasonably been expected to know the defect in the design of the product, he shall not be liable for the damage caused by the defect: s.9</p>	Not mentioned	Not mentioned	Not mentioned	Not mentioned
<b>Product Safety</b>	<p>Product safety is mentioned in the context of liability for a defective product. Sec 7 provides that where a defect in the product renders its use dangerous, the manufacturer shall be liable for damage caused thereby, unless the ordinary user of the product knew, or was reasonably expected to know that such a defect exists in the product.</p>	Not mentioned	Not mentioned	Not mentioned	Not mentioned
<b>Duty of disclosure</b>	<p>Sec 16 provides that where the nature of the product is such that the disclosure of its component parts, ingredients or quality is material to the decision of the consumer, the</p>	<p>Sec 8 (1) imposes a duty on the manufacturer of consumer goods to publish or mark, in the case of packaged goods, the maximum retail price, the standard &amp; type of ingredients used</p>	-Ditto- Sec 4 (1) & (2)	Not Mentioned	Not Mentioned

	<p>manufacturer or supplier shall be under a duty to disclose the same.</p> <p>Sec 20 provides that return and refund policy shall be disclosed to the buyer clearly before the transaction is completed.</p>	<p>and where appropriate, date of manufacture and expiry. In the case of unpackaged goods, the information must be displayed conspicuously at the place of sale.</p> <p>Subsection 2 extends liability to supplier/retailer where he fails to identify the manufacturer.</p>		
<b>Prices to be exhibited</b>	<p>In the absence of a price-catalogue, the manufacturer or trader of goods shall be under a duty to display prominently a notice in his shop or display centre, specifying the wholesale or retail prices, as the case may be, of all goods available for sale: s.1B.</p>	<p>Section 9 mandates</p> <ul style="list-style-type: none"> <li>• conspicuous exhibition of a notice in shops, specifying retail or wholesale prices, as the case may be, of all goods available for sale</li> <li>• the availability of a price catalogue.</li> </ul>	-Ditto- s.5	Not mentioned
<b>Issue of receipt</b>	<p>Every person, who in the course of business sells any consumer goods shall on demand issue a receipt: s.19</p>	-ditto- s.10	-ditto- s.06	Not mentioned
<b>Exemption clause</b>	<p>Liability cannot be excluded by any contract term or notice: s.17.</p>	Not mentioned	Not mentioned	Not mentioned
<b>Restriction on grant of damages</b>	<p>Where the consumer has not suffered any damages loss of utility, the manufacturer shall not be liable, except for a return of consideration or part thereof: s.10. Sec 15 extends this restriction to services.</p>	Not mentioned	Not mentioned	Not mentioned
<b>Implied terms &amp; warranties</b>	Not mentioned	<p>Implied terms &amp; warranties contained in s.11-s.17 of the Sales of Goods Act 1930 shall apply mutatis mutandis to all transactions covered by the Act: s.5.</p>	Not mentioned	Not mentioned
<b>After sales service &amp; repair</b>	Not mentioned	<p>Sec 7 provides an implied guarantee as to the provision of after sales service and repair except where the vendor notifies the consumer the contrary.</p>	Not mentioned	Not mentioned
<b>Unfair trade practices</b>	<p>Misleading representation: s21 Bait advertisement: s.22</p>	<p>Sec 2 (t) (Hi) the use of physical force or coercion in</p>	Not mentioned	Not mentioned

		<p>connection with the supply of goods to or payment of goods by a consumer.</p> <p>(iv) falsifying genuine trademark</p> <p>(v) inducing consumer to sign any document which imposes certain liabilities not required by law.</p>		
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### 3. Consumer Protection Council (CPC), Courts and Tribunals

Formation of CPC	No timeframe specified	30 days after promulgation	As soon as may be	-Ditto-
<b>Composition</b>	Adequate representation of consumers and Trade associations	Member Provincial Assembly, Secretaries Agriculture, Livestock & Fisheries & Labour and Representatives of City Govt, Trader Associations, Women Groups and Consumer Association	As the govt. may specify	Chairman from among social workers, Chief Commissioner, CDA Chairman, representatives from Consumer groups, Ministries of Health, Finance Food & Agriculture, shopkeepers, vendors, manufacturers and MPs
<b>Objects and Functions</b>	<ul style="list-style-type: none"> <li>Gather information as may be necessary for removal of dangerous products and faulty services from the market.</li> <li>Other functions as may be assigned by govt.</li> </ul>	<ul style="list-style-type: none"> <li>Create awareness</li> <li>Make recommendations to govt.</li> <li>Annual reports on the progress made on consumer protection</li> <li>Recommendations for reform in consumer courts.</li> <li>Exchange of information between manufacturers and consumers</li> <li>Create Consumer Welfare Fund</li> </ul>	<ul style="list-style-type: none"> <li>Provincial &amp; policy formulation</li> <li>Coordination between govt., producers, suppliers and consumers</li> </ul>	<ul style="list-style-type: none"> <li>Protection against marketing of hazardous goods</li> <li>Coordination between govt., manufacturers and consumers</li> </ul>
<b>Competent Authority</b>	District Coordination Officer of the district concerned. Claims of damages	Consumer Courts	District Magistrate of the District concerned	Court of Sessions Islamabad

	shall be filed before Consumer Court.			
<b>Powers</b>	<p>a. Removal of defects from the product or service, replacement with defect-free product or service, award of compensation, damages, actual costs including lawyers fee: s.31</p> <p>b. In case of a defective product or service, or a violation of manufacturer's obligations under Part TV of the Act, the Authority may file a claim before the Consumer Court.</p> <p>c. Hold inquiry as to defective products or services: s.23</p>	Replacement of defect from goods or services Award of damages up to the pecuniary limit, including compensatory losses: s.16.	The Authority in case of defective goods or services shall order the removal of defects or the replacement of goods and/or shall award compensation for loss suffered by the complainant due to negligence of the provider: s.1S.	The Authority may, where it deems appropriate order for payment of compensation to the consumer to the extent the consumer has suffered any damage or loss through any unfair trade practices: s.9 (3). Whosoever advertises in a manner not authorized by law shall be liable to pay compensation of the loss suffered thereby: s.7 (2).
<b>Fines/ Penalties</b>	<p>Up to Rs 50,000/- upon violation of s.11, 16, 18 or 19, recoverable as land arrears s.23; 2 year in prison, or a fine of 100,000/- or both, in addition to damages, upon violation of s. 4-8, 11, 13, 14, 16, 18, 22.</p> <p>1 month-3 years in prison, or a fine up to 20,000/- or both upon failure to comply with an order made by the Consumer Court: s.32.</p> <p>Confiscation or destruction of defective goods</p>	Not mentioned	<p>2 years in prison, or a fine of 50,000/- or both (s.16) upon violation of consumer rights protected under s.16 (1) 2 years in prison, or a fine of 30,000/- or both upon advertisement in violation of s.7: s.16 (2)</p> <p>Confiscation or destruction of any goods where it is deemed important for consumer protection: s.16 (4)</p>	<p>2 years in prison, or a fine of 40,000/- or both upon violation of consumer rights protected under s.5: s. 9 (1)</p> <p>2 years in prison, or a fine of 30,000/- or both upon advertisement in violation of s.7: s. (2)</p> <p>Confiscation or destruction of any goods where it is deemed - important for consumer protection: s.9 (4)</p>
<b>Procedure</b>	<p>Written notice to manufacturer.</p> <p>Cause of action arises upon failure of</p>	<ul style="list-style-type: none"> <li>• No timeframe for decisions</li> <li>• No curb on adjournment without</li> </ul>	<ul style="list-style-type: none"> <li>• No timeframe for decisions</li> <li>• No curb on adjournment</li> </ul>	Not clearly defined

	<p>manufacturer to respond within 15 days. A timeframe of 5 months for decisions: s.28 Appeal with HK within 30 days.</p>	<p>recording appropriate reason</p> <ul style="list-style-type: none"> <li>• Appeal to HC within 30 days</li> <li>• No court fee</li> </ul>	<p>without recording appropriate reason</p> <ul style="list-style-type: none"> <li>• Appeal with SC within 30 days</li> <li>• Court fee not mentioned</li> </ul>	
<b>Settlement at pre-trial stage</b>	<p>Sec 29 leaves open the possibility of a pre-trial settlement enforceable by the Court. However, the Court's approval shall be required in matters involving the daini of a minor, a legally incapacitated person or a matter involving collective rights.</p>	Not mentioned	Not mentioned	Not mentioned
<b>Fine on frivolous complainants</b>	<p>Up to Rs 10,000/-: s.35</p>	<p>Up to Rs. 5000/-: s.17</p>	<p>Up to P.s 5000/- plus compensation for respondent: s.19</p>	Not mentioned
<b>Strict Liability</b>	Not mentioned	Not mentioned	Not mentioned	Not mentioned
<b>Immunity of Council</b>	Not mentioned	Provided in S.22	Provided in S.21	Provided in S.11
<b>The Act does not apply to</b>		<ul style="list-style-type: none"> <li>• Securities</li> <li>• Immovable Property</li> <li>• Service provided by professionals regulated by any prevailing law.</li> <li>• Healthcare services</li> <li>• Telecommunication services, electricity, gas</li> </ul>		



## ANNEXURE- D

**LIST OF FEDERAL AND PROVISIONAL CONSUMER LAWS IN  
PAKISTAN**

S. No.	Laws	Federal Laws	Provincial Laws	Federal Legislative List	Concurrent List
1.	The Contract Act, 1872	✓			✓
2.	The Sale of Goods Act, 1930	✓	x		✓
3.	The Specific Relief Act, 1877	✓	x		✓
4.	The Fatal Accidents Act, 1855	✓	x		✓
5.	Drugs Act, 1976	✓	x		✓
6.	West Pakistan Pure Food Ordinance, 1960	✓	x		✓
7.	Pakistan Hotels and Restaurants Act, 1976	✓	x		✓
8.	Price Control and Prevention of Profiteering and Hoarding Act, 1977	✓	x		✓
9.	Monopolies and restrictive Trade Practices (Control and Prevention Ordinance), 1970	✓	x	✓	✓
10.	Pakistan Environmental Protection Act, 1997	✓	x		✓
11.	Indecent Advertisement Prohibition Act, 1963	✓	x		✓
12.	Prevention of Smoking in Enclosed Places, 2002	✓	x		✓
13.	Protection of Breastfeeding and	✓	x		✓
14.	Regulation of Generation, Transmission and Distribution of	✓	x		✓



	Electric Power Act, 1997				
15.	Pakistan Telecommunication (Reorganization) Act, 1996	✓	x	✓	
16.	Oil and Gas Regulatory Authority Act, 2002	✓	x	✓	
17.	Pakistan Electronic Media Regulatory Authority, 2002	✓	x	✓	
18.	Pakistan Standards and Quality Control Authority Act, 1996	✓	x	✓	
19.	Banking Sector (Laws and Regulations)	✓	x	✓	
20.	The Regulation of Securities and Exchange Commission of Pakistan	✓	x	✓	
21.	Regulation of Non Banking Financial Institutions and Insurance Companies	✓	x	✓	
22.	Pakistan Penal Code	✓	x		✓
23.	Small Claims and Minor Offences Courts Ordinance, 2002	✓	x		✓
24.	Procedural Laws (Civil and Criminal)	✓	x		✓

**TABULAR FORM OF ALL CONSUMER RELATED LAWS  
EITHER ENACTED AS FEDERAL OR PROVINCIAL LAWS.**

<b>S/ No</b>	<b>Country</b>	<b>Year</b>	<b>Federal/ Union Legislation</b>	<b>Provincial/ State Legislation</b>
1	Japan	1968	✓	x
2	USA		x	✓
3	Australia		x	✓
4	Sri Lanka	1979	✓	x
5	Thailand	1979	✓	x
6	Korea	1980 (revised in 1986)	✓	x
7	India	1986	✓	x
8	Mongolia	1991	✓	x
9	Philippines	1991	✓	x
10	Mauritius	1991	✓	x
11	China	1993	✓	x
12	Taiwan	1994	✓	x
13	Malaysia	1999	✓	x

## ANNEXURE-F

# THE CONSUMER PROTECTION ACT 1986<sup>1</sup>

## (Indian Consumer Protection Law)

### CHAPTER I: PRELIMINARY

#### 1. Short title, extent, commencement and applications

- (1) This Act may be called the Consumer Protection Act, 1986.
- (2) It extends to the whole of India except the State of Jammu and Kashmir.
- (3) It shall come into force on such date as the Central Government may, by notification, appoint and different dates may be appointed for different States and for different provisions of this Act.
- (4) Save as otherwise expressly provided by the Central Government by notifications, this Act shall apply to all goods and services.

#### 2. Definitions

- (1) In this Act, unless the context otherwise requires,-
  - 1 (a) "**appropriate laboratory**" means a laboratory or organization-
    - (i) recognized by the Central Government;
    - (ii) recognized by a State Government, subject to such guidelines as may be prescribed by the Central Government in this behalf; or
    - (iii) any such laboratory or organisation established by or under any law for the time-being in force, which is maintained, financed or aided by the Central Government or a State Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;

#### 2 [(aa) "**branch office**" means-

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<sup>1</sup> downloaded from <http://www.helpline.law.com/bareact/index.php?dsp=con-protection> (Last visited 12 January 2006)

- (i) any establishment described as a branch by the opposite party, or
- (ii) any establishment carrying on either the same or substantially the same activity as that carried on by the head office of the establishment;

(b) "**complainant**" means-

- (i) a consumer; or
- (ii) any voluntary consumer association registered under the Companies Act, 1956 (1 of 1956), or under any other law for the time being in force; or
- (iii) the Central Government or any State Government,
- 2[(iv) one or more consumers, where there are numerous consumers having the same interest;]

who or which makes a complaint;

(c) "**complaint**" means any allegation in writing made by a complainant that-

- 1[(i) an unfair trade practice or a restrictive trade practice has been adopted by any trader;]
- (ii) [the goods bought by him or agreed to be bought by him] suffer from one or more defect;
- (iii) [the services hired or availed of or agreed to be hired or availed of by him] suffer from deficiency in any respect;
- (iv) a trader has charged for the goods mentioned in the complaint a price in excess of the price fixed by or under any law for the time being in force or displayed on the goods or any package containing such goods;

2[(v) goods which will be hazardous to life and safety when used, are being offered for sale to the public in contravention of the provisions of any law for the time being in force requiring traders to display information in regard to the contents, manner and effect of use of such goods.

with a view to obtaining any relief provided by or under this Act;

(d) "consumer" means any person who-

(i) buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or

(ii) hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who 1[hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payments, when such services are availed of with the approval of the first-mentioned person;

2 Explanation : For the purposes of sub-clause (i), "commercial purpose" does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment;]

- (e) "**consumer dispute**" means a dispute where the person against whom a complaint has been made, denies or disputes the allegations contained in the complaint;
- (f) "**defect**" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or 2[under any contract, express or] implied, or as is claimed by the trader in any manner whatsoever in relation to any goods;
- (g) "**deficiency**" means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service;
- (h) "**District Forum**" means a Consumer Disputes Redress Forum established under clause (a) of section 9;
- (i) "**goods**" means goods as defined in the Sale of Goods Act, 1930 (3 of 1930);
- (j) "**manufacturer**" means a person who-
- (i) makes or manufactures any goods or parts thereof; or
- (ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others and claims the end product to be goods manufactured by himself; or
- (iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself.

**Explanation :** Where a manufacturer despatches any goods or part thereof to any branch office maintained by him, such branch office shall not be deemed to be the manufacturer even though the parts so despatched to it are assembled at such branch office and are sold or distributed from such branch office.

2[(jj) "**member**" includes the President and a member of the National Commission or a State Commission or a District Forum, as the case may be;]

(k) "**National Commission**" means the National Consumer Disputes Redress Commission established under clause (c) of section 9;

(l) "**notification**" means a notification published in the Official Gazette;

(m) "**person**" includes-

(i) a firm whether registered or not;

(ii) a Hindu undivided family;

(iii) a co-operative society;

(iv) every other association of persons whether registered under the Societies Registration Act, 1860 (22 of 1860) or not;

(n) "**prescribed**" means prescribed by rules made by the State Government, or as the case may be, by the Central Government under this Act;

2[(nn) "**restrictive trade practice**" means any trade practice which requires a consumer to buy, hire or avail of any goods or, as the case may be, services as a condition precedent for buying, hiring or availing of other goods or services;]

(o) "**service**" means service of any description which is made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging

or both, 6[housing construction], entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;

(p) "**State Commission**" means a Consumer Disputes Redress Commission established in a State under clause (b) of section 9;

(q) "**trader**" in relation to any goods means a person who sells or distributes any goods for sale and includes the manufacturer thereof, and where such goods are sold or distributed in package form, includes the packer thereof;

2[(r) "**unfair trade practice**" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely,-

(1) the practice of making any statement, whether orally or in writing or by visible representation which,-

(i) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;

(ii) falsely represents that the services are of a particular standard, quality or grade;

(iii) falsely represents any re-built, second-hand, renovated, reconditioned or old goods as new goods;

(iv) represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which such goods or services do not have;

(v) represents that the seller or the supplier has a sponsorship or approval or affiliation which such seller or supplier does not have;



(vi) makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;

(vii) gives to the public any warranty or guarantee of the performance, efficacy or length of life of a product or of any goods that is not based on an adequate or proper test thereof:

PROVIDED that where a defence is raised to the effect that such warranty or guarantee is based on adequate or proper test, the burden of proof of such defence shall lie on the person raising such defence;

(viii) makes to the public a representation in a form that purports to be-

(i) a warranty or guarantee of a product or of any goods or services; or

(ii) a promise to replace, maintain or repair an article or any part thereof or to repeat or continue a service until it has achieved a specified result,

if such purported warranty or guarantee or promise is materially misleading or if there is no reasonable prospect that such warranty, guarantee or promise will be carried out;

(ix) materially misleads the public concerning the price at which a product or like products or goods or services, have been or are, ordinarily sold or provided, and, for this purpose, a representation as to price shall be deemed to refer to the price at which the product or goods or services has or have been sold by sellers or provided by suppliers generally in the relevant market unless it is clearly the price at which the product has been sold or services have been provided by the person by whom or on whose behalf the representation is made;

(x) gives false or misleading facts disparaging the goods, services or trade of another person.

(a) the offering of gifts, prizes or other items with the intention of not providing them as offered or creating impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction as a whole;

(b) the conduct of any contest, lottery, games of chance or skill, for the purpose of promoting, directly or indirectly, the sale, use or supply of any product or any business interest;

(4) permits the sale or supply of goods intended to be used, or are of a kind likely to be used, by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by competent authority relating to performance, composition, contents, design, constructions, finishing or packaging as are necessary to prevent or reduce the risk of injury to the person using the goods;

(5) permits the hoarding or destruction of goods, or refuses to sell the goods or to make them available for sale or to provide any service, if such-hoarding or destruction or refusal raises or tends to raise or is intended to raise, the cost of those or other similar goods or services.

(2) Any reference in this Act to any other Act or provision thereof which is not in force in any area to which this Act applies shall be construed to have a reference to the corresponding Act or provision thereof in force in such area.

3. Act not in derogation of any other law. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force.

## **Provisions relevant to performance**

General rule of the contract enumerated as section 27 is that only parties to contract are responsible for the performance but it is subject to any law, provisions of this Act and terms of the contract that binds the representative of the promisor died. Representative of the deceased promisor in pursuant to section 40 can't perform the contract that involves the personal skills/qualification/services.

### **4.1.14 The Sale of Goods Act, 1930:**

This Act deals with the rights and obligation of buyers and sellers of goods. It protects the buyer from payment of unreasonable amount and repudiation of contract by seller in case of non fixation of price and time of delivery as an essence of contract respectively (section 8&11). It is the duty of the seller to deliver the goods and buyer to pay on time. This Act also imposes bar on the buyer that he can't reject the goods when once he accepts it, where as the acceptance of good are described in *section 42* of the said Act Further on under section 43, buyer has to make good to the loss if there is any loss to the seller on rejection or refusal to take delivery by the buyer or in other case seller may sue him under section 56 of the Act. Same as section 55 provides that seller may sue the buyer if property has been delivered to the buyer but if he neglects/refuses the payment to the seller, suits can also be brought against buyer under this Act non-delivery of goods to the buyer.

Consumer can initiate the case under this Act only if he is buyer or seller other wise he has to seek redress under Law of Torts. Issues like product liability, labeling on products and remedy against defective goods are not mentioned under these laws.

#### **4.1.15 The Specific Relief Act, 1877:**

This Act gives certain kinds of relief, which can be enforceable in civil court by any aggrieved person. These reliefs include compensation, specific performance, injunction, taking possession of property, Rescission of contract, Ratification of instruments, cancellation of instruments, declaring the rights of parties, Appointment of the Receivers and Enforcement of the public duties. Most of these relief's are enumerated in section 5 of this Act as,

**Section 5. Specific Relief how given:** "Specific relief is given.

- a) *by taking possession of certain property and delivering it to a claimant;*
- b) *by ordering a party to do the very act which he is under an obligation to do;*
- c) *by preventing a party doing that which he is under an obligation not to do*
- d) *by determining and declaring the rights of parties otherwise than by an award of compensation; or*
- e) *by appointing a receiver"*

#### ***Protection to Consumer-customer under this Act:***

Consumer-customer can access to the court in following matters and relevant relief's to it,

#### **➤ Recovery of possession: Section 8-11**

Any person who is dispossessed from movable or immovable property can access to civil court under these sections.

#### **➤ Specific performance of contract: Section 12-30**

Specific performance "consists in the contracting party's exact fulfillment of the obligation which he has assumed in his doing or omitting the very act which he

has undertaken to do or omit to do". The mere existence of contract is itself not sufficient to ask for specific performance but there must have been conduct on part of the plaintiff such as unnecessary delay, acquiescence or some breach of duty which may disentitle him to the relief of specific performance which he seeks; again there may have some other grounds, having regard to which a court may in its discretion decline to give the specific performance;

- When compensation in money is an adequate remedy or which court in its discretion thinks is complete and satisfactory, specific performance will not be granted.(sec 12)
- When there exist no standard for ascertaining the actual damage caused by the non-performance of a contract.(sec 12)

These are the presumption laid down in this Act that has to be presumed by the court of law that what is adequate relief.

***Specific performance which can't be specifically enforced: (sec 21)***

This act also enumerates certain contracts which can't be specifically enforced mentioned in section 21. The contracts having regard to which court presumes that money is adequate relief, terms of contract are very vague, involves self service , contains numerous details or performance of which involves a continuous duty extending over longer period than three years are those which cant be specifically enforced. Again it is also specified that the remedy of Specific performance to plaintiff bears any hardship and unfair advantage over defendant or if it is believed to the court that consent of the person against whom it is granted was obtained by

concealment of facts, misrepresentation, mistake of fact or through unfair practices, then this remedy will not be granted by court of law.

- **Rectification of contracts: (Section 31-34)**

Another remedy available under this Act is the rectification of instruments/ contracts. When any instrument doesn't show the real intention of the parties because of mutual mistake or fraud, then on filing suit by any party the court can ratify the instrument.

- **Rescission of contracts and related matters: ( Section 35-36)**

There is equitable remedy available when contract is void able or unlawful in nature.

- **Cancellation of instruments: Section 39-41**

When there is clear apprehension that the contract is void, void able or when it seems to the court that it is against the parties' conscience that holds it then contract can be cancelled.

- **Declaratory decrees in respect of legal character and any right as to any property and their effects: (Section 42-43)**

Any person legally entitled of a legal character or any right as to the property, may institute a suit for declaration of such character and right.

- **Appointment of receivers: (Section 44)**

This remedy is protective or preventive in nature for realization or preservation of property in a proper custody.

➤ **Grant of injunctions: (Section 52-57)**

Pursuant to section 53 of this act preventive relief is granted by an injunction enjoining the other party to refrain from doing which he is under an obligation not to do. This is a discretionary remedy which can be a temporary or mandatory.

**Comments on the Sale of Goods Act, 1930, The Specific Relief Act, 1877 and the Contract Act 1872 in consumer perspective:**

The Contract Act 1872 and Sale of Goods Act 1930 provide product safety and warranties but applies when there is seller and buyer relationship only. Same as specific relief Act protects consumers in civil court when there is no other measure to recourse. These laws are actually based on the old common law principle of privities to the contract (only parties to the contract can sue and can be sued for the breach of contract) and *caveat emptor* (let the buyer be aware) this approach was justified in early 19<sup>th</sup> century when goods were fewer in number but not practicable for the age of mass production techniques where requirement of consumer protection is much enhanced.

**4.2 SPECIFIC LEGISLATION ON CONSUMER PROTECTION  
IN PAKISTAN:**

**4.2.1 Islamabad Consumer Protection Act (Icpa), 1995:**

**Nature of Act:**

This Act is to provide protection and promotion of the interest of the consumers in capital territory of Islamabad.

**Consumer's definition:**

“buys goods for a consideration which has paid or partly promised to be paid or under any system of deferred payment or hire purchase and includes any user of such goods but does not include a person who obtains such goods for resale 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 or under any system of deferred payment and includes any beneficiary of such services.

**Authority:**

In pursuant to section 2(a) “Authority” means the court of sessions, Islamabad, and complaints has to make to this authority only.

**Consumer protection council:**

Subject to *section 3* of this Act government has to establish consumer's protection council. The object of this council is to determine and protect the consumers from marketing of hazardous things and unfair trade practices of unscrupulous exploitation of consumers. Besides it act as a platform to promote consumer rights by protecting the right of information about the quality, quantity, purity and standard of goods and services and right of easy availability of goods at competitive prices. Council under this Act is responsible for the formation of policies for consumer welfare and to promote consumer education.



### **When complaints can be made under this Act:**

In pursuant to *section 2(b)* Complaints can be made by any consumer, consumer association, federal government, Chief Commissioner, Islamabad Capital Territory, Capital Development Authority, or any person or agency authorized by the consumer or consumer association can file complaint before the Authority. The authority is bound to redress the offence of “unfair trade practices” mentioned in *section 2(f)* as it means

“a trade practice which, for the purpose of sale, use or supply of any goods or for any -----mail order”

False advertisement is prohibited under *section 7* as, if any company, firm or person advertise not authorized by law or causes any harm to consumer, whether financial or otherwise than authority may direct to pay compensation to overcome the loss accrued.

**Redress procedure:** A complainant or council can make direct complaints against unfair trade practices to the Authority about, and authority, after examining that there is any infringement of consumer rights, has to send 7 days notice to respondent for his reply. On hearing both parties or in case of refusal the authority has to pass such order which the circumstances may require.

**Penalties:** The penalty against the false advertisement is imprisonment which can be extended to 2 years or fine (30,000), and if it is through print media and chalking then fine is extended to 40,000 rupees. Authority may award compensation as according to the loss suffered by the consumer from any unfair trade practices.

## **4.2.2 THE PUNJAB CONSUMER PROTECTION ACT (PCPA) 2005**

### **Nature of Act:**

The nature of this Act, according to the preamble is to provide protection and advancement of the consumers' rights as well as interests and for this purpose a prompt redress is to be made against consumer complaints. It extends to the whole of Pakistan.

### **Consumer's definition:**

#### **Section 2(c) "consumer means a person or entity who-**

- ii) buys or obtains on lease any product for a consideration and includes any user of such product for a consideration and include a person who obtains any product for resale or for any commercial purpose; or
- iii) hires any services for a consideration and includes any beneficiary of such services;

### **Establishment of Consumer Council and Consumer Court under this Act:**

In pursuant to *section 24*, the government has to set up consumer councils at District level that has to report at provisional consumer council. The function of the council would be to gather information/data to remove unreasonably dangerous products and faulty/defective services from trade or commerce .consumer council has to ensure the consumer's participation in it.

Section 25&26 of this Act establishes the consumer court in each district and district judge is to be appointed by the government in consultation with the Lahore High court.

**When complaints can be made under this Act:**

This act imposes certain liabilities over manufacturer/trader/provider as

1. Liability of defective products (product liability)
2. liability of faulty services
3. unfair practices including false, deceptive or misleading representation of products are offences under this act
4. Bait advertisements are prohibited

Section 4 of PCPA 2006, consumer can make the manufacturer responsible for the defective products when such defects arose from a reasonably anticipated use of a product by consumer. The defects if arises in construction, composition, design or because of an inadequate warning and when product doesn't confirm with the express warranty of the manufacturer then consumer can bring their complaints before consumer court. While section 13 of PCPA 2006, puts an implication on service providers of a liability against consumers to pay damages against the provision of substandard services. The standard of promise of services according to section 14 of this Act is regulated by any special, provisional, federal law or in the absence of any provision in above law; the standard shall be that, when at the time of the provision of the service, a consumer could reasonably expect to obtain at that time in Pakistan.

Unfair trade practices prohibited under this Act are mentioned in section 21 of the Punjab Consumer Protection Act 1995.

## **The general duties on manufacturer/providers**

The liability against the faulty services and defective products can't be excluded or limited by any terms of the contract or by any notice. (Sec 12, 17)

When the nature of the service/product is as such that disclosure of different facts or components, quality, date or expiry of product is material to the decision of the consumer to enter in the contract of sale or for provision of services respectively, the manufacturer/provider is duty bound to disclose the same. This includes exhibiting prices and issuing proper receipt to the seller.

## **Redress procedure (section 28, 29, 30&31)**

In case of contravention of this Act any consumer who suffered damage or authority in other case, can send a written notice to manufacturer or provider about defective service/product or about the behavior of the manufacturer or provider. In case of failure to reply with in 15 days of the notice send, consumer and the said authority can bring their claim before consumer court. On receipt of the complaint about product/service a copy of the claim is to be sent to defendant and if defendant denies or disputes over allegation then court will proceed on evidence brought by both parties. When the complaint is about the product, then court can send the sample for analysis to any expert or laboratory with a view to find if such products suffer from any defect or not. On such findings if court is satisfied about the allegation made in the claim are true, it may order to remove the defects, replace the products with the new one according to description or pay the price back to the consumer. Court may award compensation or damages where appropriate and can confiscate or cease to provide defective and faulty products and services.

### **Penalties: (section 32)**

Where a manufacturer fails to perform or in case of contravention to the liabilities on manufacturer provided in section 4 to 8, 11, 13,14,16,18 to 22, he shall be punished with imprisonment which may be extended to 2 years. There may be fine with imprisonment that can be extended to 1000 rupees, and in addition to it there may also be damages/compensation with it.

### **4.2.3 North-West Frontier Province Consumers Protection Act, (Nwfp Cpa) 1997:**

#### **Nature of the act**

This Act extends to whole North-West Frontier Province; it is to provide healthy growth of fair commercial practices and to promote consumers legitimate interest and speedy redress of their complaints and other related issues.

Authority under this act means district magistrate of the district concerned

The Definition of consumer, unfair practices and false advertisement and provisions related to establishment of the consumer council is similar to the procedure mentioned in the Islamabad Consumer Protection Act, 1995. The consumer redress process in this act is replica of what is given in “The Punjab Consumer Protection Act, 2000”, with some modification by including power of district magistrate to hear the complaints. Compensation and penalties are also given under this statute.

### **4.2.4 Balochistan Consumers Protection Act (Bcpa), 2003**

#### **Nature of Act:**

This Act extends to the whole of Baloshistan, where as according to the preamble of this Act, it is to provide healthy growth of fair commercial practices and

to promote consumers legitimate interest and speedy redress of their complaints and other related issues.

**Authority:**

The Authority under this Act means the District Coordination Officer of the District concerned.

Definition of consumer in this Act is replica of what is given in the Punjab consumer protection Act, 2000. Consumers are protected against unfair practices and false advertisement under section 2(o) and section 8 respectively which is similar as provided in ICPA 1995 and BCPA, 2003. This Act also envisages the establishment of consumer council and consumer court for the disposal of consumer complaints.

**4.2.5 The Consumer Protection Ordinance, 2004 (Sindh Ordinance No.Iii of 2004):**

**Nature of Act:**

This Act will extend to whole province of Sindh; it is promulgated for promotion of consumer interests.

**Establishment of consumer court and consumer council**

Section 15&11 envisages the establishment of consumer court and provisional consumer council respectively.

The objects and functions of the council are to work for the welfare of consumers by making recommendations to the government for consumer protection, create awareness with in consumer and public at large about the products hazardous to

life and access to consumer goods and services and protection from any unfair, illegal or dangerous practices prevalent in the market.

The consumer court will hear the complaints regarding unfair practices (section 2(t)) including use of physical force or undue harassment or coercion in connection with the supply of goods or payment of goods to consumer, application of false trade mark on goods, inducing a consumer to sign any transaction which waives the rights of consumer unless known to consumer or which imposes certain liabilities not required by law.

**When complaints can be made under this Act:**

This Act implies in several manners some stringent responsibilities on manufacturers, thus shifting the burden of reasonable care from consumers to trader, seller or manufacturers. The rule of caveat emptor or "*let the buyer be aware*" will be no more applicable where manufacturers are accountable to take reasonable care and due diligence in manufacturing or selling the product. Besides, there are certain trade practices adopted by sellers/manufacturers/traders that are also banned and there are prescribed penalties against those who are involved in it. Like,

1. *General duties on manufacturer:* (section 6) Every manufacturer/supplier or business must comply with the market standards and ensures that manufacturing process are safe, all instruction to use goods safely are properly displayed and each packet of product must be marked with retail price, nature, type, size, weight, date of manufacture and expiry. There is implied guarantee on manufacturers/supplier to ensure the facilities for the repair of the goods and the supply of spare parts unless it is notified to the consumer about its non-availability at or before the time the goods are supplied (section 7). In

pursuant to section 9 Price receipt and price catalogue must be available to the consumer unless price catalogue is conspicuously displaced on shops.

2. *unfair practices* are penalized under section 5 of this ordinance, it includes

- Advertisement of goods/services without any intention to sell it or a different thing from the goods/services advertised or there are grounds not to believe that it can be supplied.
- Inducement of consumer to buy on contingent condition or on the terms which waives his right to get benefit.
- Use of force or undue harassment with the supply/possible supply of goods/services.
- Falsifying trade mark or inducing a fallacious document related to transaction.

2. *False or Misleading Representation* by any person in connection with trade/commerce is liable to pay compensation (sec 5) to the complainant as consumer courts may direct. In pursuant to section 2(u) it includes all those statements

- That makes any trade description which is false in association with supply of goods/services,
- Shows intention to sell but reasons to believe that it was never intended to sell
- Intend to sell materially different goods against which payment/consideration is paid.

The rest of the provisions relevant to unfair practices and misleading representation are same as mentioned in the early consumer protection laws.



### **Tabular analysis of consumer protection:**

We have various consumer protection legislation functioning in various provisional jurisdictions, the differences and similarities can be well analyzed if important features and remedies available in each statute can be compared in a tabular form,

### **Critical analysis of consumer legislation:**

The Islamabad Consumer Protection Act, 1995 was a first concrete step toward consumer legislation in Pakistan. It was followed by other legislation at provincial level like North-West Frontier Province Consumer Protection Act 1997, Punjab Consumer Protection Act, 2005, "Balochistan Consumers Protection Act (BCPA), 2003 where as "The Consumer Protection Ordinance, 2004" (Sindh Ordinance No. III of 2004) lapsed because it could not enact in to law by the Provisional Assembly. The enactment of specific laws demonstrates the intermittent efforts from the government to protect consumer rights, yet these provincial statutes have been proved to be non-operative and restricted in its scope. The comparison of all the above statutes highlights the key inherent inadequacies in current mechanism for consumer protection that can be listed down as,

- An extremely restricted approach is adopted in these statutes as the definition of "consumer" given in various statutes is narrow in its scope excluding public services from its operation. It is now well thought-out to broaden the scope of consumer definition including goods and services provided by the state because consumer citizen pay sales tax on it. The inclusion of Taxes, duties

and fees<sup>36</sup> usually paid to the government and public good and services provided by the government is vital yet ambiguous feature of consumer protection laws. The specific legislation on consumer laws reveals that the consumer definition is borrowed from the Indian Consumer Protection Act, 1986, without contextualizing it to address the true realities faced by consumers in Pakistan. This term needs to be redefined by keeping in view the market structures and the quantum of services provided in Pakistan<sup>37</sup>. Consumer definition should consider the consumers as consumer-citizen, a broader category than that of customer including all goods and services provided by state and other private institution.

- The easy, expedient and less expensive judicial process in any statute makes it efficient in providing speedy justice to the subjects. An overview of consumer protection statutes depicts its scarcity in providing broad range of remedies especially in terms of damages and compensation. The judicial process provided in each statute is expensive and very slow for disposal of consumer complaints. In ICPO, 1995 and in NWFP, CPA, 1997 the Court of Session is empowered to dispose of the complaints which are already overburdened. However, PCPA, 2005 and BCPO, 2003 suggests that consumer courts and consumer councils are to be established at the district level but not a single consumer council and consumer court are established or designated under any law till today. These statutes don't adequately provide the applicable procedural law in the courts; no time frame is mentioned for disposal of

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<sup>36</sup> See Sikander. A. Ansari and Abrar Hafeez, *Consumer Laws in Pakistan*, Vol. II, Islamabad: Consumer Rights Commission of Pakistan, 2000, 8-16.

<sup>37</sup> See under the explanatory footnotes to sec 2(b) in A.Salman Humayun, Mohammad. S. Khan and Mukhtar A.Ali "*Model Consumer Protection Act, 2000*" , Islamabad: Consumer Rights Commission of Pakistan 2000,18

complaints to ensure the speedy trial. Intricacies of inter provisional jurisdiction among various consumer legislation are not addressed properly.

- Not only these laws do fail to give an efficient and inexpensive judicial course for the disposal of consumer complaints, these are proved to be a futile effort of government to create a deterrent impact on manufacturers, multinational businesses and providers of goods and services. The consequence is that millions of consumers suffer because they get for their money impure water and food, drugs that have hazardous side-effects and substandard and defective products and appliances. Likewise in many countries, government in Pakistan can play a key role in consumer protection, not only in terms of enacting and implementing consumer laws against unfair and misleading practices but also in developing and enforcing quality and safety standards, product testing and consumer education.
- Role of consumer council should be paramount in the view of civil society and social activists.<sup>38</sup> The consumer legislation neither defined the functions of the Consumer Protection Council (CPC) clearly nor did it give full particulars of its composition. Like PCPA, 2005 gives ample power to District Coordination Officer (DCO) such as imposition of fine, filling of claims before consumer courts for defective products or a faulty service and to hold inquiry on the complaint initiated from (CPC). There is need to broaden the scope of the CPC and make it more powerful as it was the only body in the whole scheme of consumer protection to have representation from consumers. Where as on

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<sup>38</sup> Now a consumers' rights council (CRC) is being set up in Sindh to monitor the production, import, supply and demand of all essential items in the province and to keep the people informed about these goods on day-to-day basis. See DAWN 22 February, 2006 Also available at [www.dawn.com/2006/02/22/letted.htm](http://www.dawn.com/2006/02/22/letted.htm)

the other hand DCO can never be an arbitrator when he stands for a body that is also a service provider and can be a party in case of complaints against local body offices.

- This critical analysis concludes that Pakistan has yet to go long in respect of consumer protection as the piecemeal legislation can't give a comprehensive legal cover with lack of political will to implement these laws are serious consumer concern. Besides, the poor infrastructure of judiciary and grindingly slow litigation shows a dismal picture of whole mechanism of consumer protection in Pakistan.

#### **National Consumer Legislation: A Possible Solution:**

Consumer protection in Pakistan is primarily taken as a Provisional subject; only provisional government can legislate and federal government per se has no power on this subject. It is generally considered that according to Article 142 and fourth schedule of the constitution, consumer legislation is not mentioned in the federal and concurrent list so it ultimately falls in to provisional/residuary list. Relying on this analogy provisional government has enacted the provisional consumer legislation.

Apparently there seems no complexity regarding legislative powers of provincial government to enact the consumer protection laws but as the piecemeal alternatives and remedies available in Pakistan have been proved a complete failure to redress the consumer concern. Particularly with the wake of trade liberalization and deregulation policies with in the country that the consumers became more vulnerable to the imperfect market mechanism where supplier is far off then buyers, there arises a question of comprehensive national consumer legislation to protect all consumer-citizen in a much harmonized way. This is to give more predictability in the consumer

legislation as a uniform and predictable consumer law is advantageous for the citizen and consumers across the country without any discrimination<sup>39</sup>. Further the deregulation policies has curtailed the governance pattern in the country that resulted more problems in the privatized sectors as mentioned in the earlier chapters, and the state role to protect the interest of consumer via legislation is enhanced. A grievance against the malfunctioning of these institution and multinational companies requires a strong and uniform legislation to which consumer from all provinces can seek redress. The lack of implementation of provincial laws is a very serious concern for the consumers and national consumer law can be suggested as solution to this problem. Like, the different legislation prescribed authority for adjudication of complaints that are juxtaposed with each other and some times it makes difficult to implement these laws as ICPA, 2005 and NWFP gives adjudication power to session court and court of magistrate respectively as a court of first instance<sup>40</sup>. These courts are already overburdened and possibly can take years to dispose off the complaints. This is why that it is very rare for the consumer in Pakistan to take their complaints to the courts. Same as other provincial consumer laws such as PCPA and BCPA prescribe separate courts and consumer council as adjudication forum which also create ambiguity especially in the case of inter provisional adjudication for example; the jurisdiction of courts is not prescribed as which court will have jurisdiction when it is the case that defendant inhabits in one province while cause of action takes place in another province. However establishment of separate consumer courts in 11 different districts in Pakistan is considered a step forward towards the protection of consumer rights<sup>41</sup>.

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<sup>39</sup> The Network for Consumer Protection." *Why National Consumer Protection Law in Pakistan*". Islamabad: The network publication, 2005, 8-9.

<sup>40</sup> *ibid*

<sup>41</sup> "The Punjab government has set up consumer protection courts in 11 districts of the province with a cost of Rs 53.15 million and a requisition have been sent to the Lahore High Court (LHC) for

Lack of Consumer awareness about their rights in Pakistan is another hurdle to implement provisional consumer laws though institution of such machinery to address this issue is formulated under these statute like, PCPA and BCPA provides that consumer council are to be constituted at district level. The main functions of these councils are to address the consumer issues in broader terms like formulation of consumer policy, consumer awareness and dissemination of consumer education, but the argument seems more logical that Separate policies couldn't bring a uniform change through out the country. This can be supported by the fact that, nearly all developing countries there is a single consumer policy and in addition various bodies and institutions at national level are being set up to ensure the consumer protection with the consumer related laws. This seems more practical rather to have consumer council at district level encompassing limited jurisdiction.

Now the question is weather national consumer protection law can be enacted by the federal government or not as it is not specifically mentioned in the federal list. The constitution of Pakistan can include the consumer legislation with in the federal list through an amendment as the strong rationale behind it is that nearly all consumer laws that directly or indirectly protect the interests of the consumers are federally legislated laws, this can be best explained from the table given in the annexure 5<sup>42</sup>

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appointment of presiding officers in them, Basharat Raja, provincial minister for Law, Local Government and Public Prosecution, said after presiding over a meeting on Sunday. The minister said that after necessary legislation in the Punjab Assembly for the protection of consumers' rights, work on the establishment of these courts had been started, adding that these courts were expected to start working in a few weeks. He said these courts had been established in Lahore, Gujranwala, Gujrat, Sialkot, Rawalpindi, Sahiwal, Multan, Sargodha, Faisalabad, Dera Ghazi Khan and Bahawalpur districts". "11 districts get consumer courts." Daily times 18 December 2006. Also available at <http://www.dailytimes.com.pk>

<sup>42</sup> The Network for Consumer Protection." *Why National Consumer Protection Law in Pakistan*". Islamabad: The network publication, 2005,7

However many jurists are of the view that it will be difficult to effect a constitutional amendment to put consumer protection on the Federal List. They view it is provisional autonomy to legislate the consumer laws, as part of devolution plan and decentralization of power, but many developing countries which have privatized their institution and some of them too share the same socio-political situation like Pakistan have also legislated national consumer protection law like India has enacted a national consumer protection law in 1986, Sir Lanka in 1979, Korea in 1980 and Malaysia in 1999<sup>43</sup>.

With strong rationale and logical reasons to promulgate a uniform consumer law, an attempt is made to propose a model consumer protection law for Pakistan by a non-governmental organization Consumer Right Commission of Pakistan (CRCP). This model sets a foundation line that a uniform and homogeneous law can be legislated by all provinces and federal government.

#### **4.2.6 Model Consumer Protection Act, 2000:**

This draft law relatively gives a realistic definition that suits the local realities of our country as compared to existing or proposed consumer legislation in Pakistan mentioned earlier. The borrowed consumer definition from Indian consumer protection Act in existing laws is without contextualizing the demands of local market and quantum of services provided by the state<sup>44</sup>. Indian consumer law includes customers only in its realm, as consideration paid or promised to pay is a fundamental idea in defining consumer; this approach is also depicted in the existing and proposed consumer laws in Pakistan, as underlined in the table below.

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<sup>43</sup> ibid

<sup>44</sup> f See under the explanatory footnotes to sec 2(b) in A.Salman Humayun, Mohammad. S. Khan and Mukhtar A.Ali“*Model Consumer Protection Act, 2000*” , Islamabad: Consumer Rights Commission of Pakistan 2000,18

Whereas this model has adopted an extensive consumer definition including marginalized citizens of Pakistan who can't stand in the market place as customer. Subject to section 2(b) of the said draft law, any person who "consumes any goods or services, irrespective of any consideration paid or promised to pay" is consumer including customer as well all those who are using services and goods free of cost provided by the state, like health, air, health ect.

The detailed description of composition of consumer council with meaning full participation of consumer provided in the Act, as it includes 10 members with 1 chairperson in the council 3 of them are non officials<sup>45</sup>. Their appointment is based on non political or personal consideration as they are appointed by their respective organization.<sup>46</sup>

This Act stipulates that consumer courts are to be established with the authority to prescribe damages and composition. However, criminal penalties are avoided under this law on the basis that criminal liabilities are not frequently prescribed (in case of consumer complaints) as compared to civil penalties all over the world.

In concluding all model consumer protection Act, 2000 can help the legislators to introduce an extensive, adequate and uniform consumer Act, which could address all the issues concerning consumers. Besides, consumer protection legislation in Asian countries and global experience of consumer laws with administrative setup can be helpful for establish a strong consumer protection mechanism in Pakistan that can be explained in detail in the next chapter.

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<sup>45</sup> See section 11 and 12 in A.Salman Humayun, Mohammad. S. Khan and Mukhtar A.Ali "*Model Consumer Protection Act, 2000*", Islamabad: Consumer Rights Commission of Pakistan 2000,

<sup>46</sup> See section 13 in See under the explanatory footnotes to sec 2(b) in A.Salman Humayun, Mohammad. S. Khan and Mukhtar A.Ali "*Model Consumer Protection Act, 2000*", Islamabad: Consumer Rights Commission of Pakistan 2000,



**Table 4: Comparison of Consumer Definition in Existing Statues of Consumer Protection in Pakistan**

<p><b>THE PUNJAB CONSUMER PROTECTION ACT (PCPA) 2005</b></p>	<p>Section 2(c) “consumer means a person or entity who- 1)<u>buys or obtains on lease any product for a consideration and includes any user of such product for a consideration and include</u> a person who obtains any product for resale or for any commercial purpose; or 2)hires any services for a consideration and includes any beneficiary of such services</p>
<p><b>ISLAMABAD CONSUMER PROTECTION ACT (ICPA), 1995:</b></p>	<p>consumer mean who “<u>buys goods for a consideration which has paid or partly promised to be paid</u> or under any system of deferred payment or hire purchase and includes any user of such goods but does not include a person who obtains such goods for resale 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 or under any system of deferred payment and includes any beneficiary of such services.</p>
<p><b>BALUCHISTAN CONSUMERS PROTECTION ACT (BCPA), 2003</b></p>	<p>Replica of PCPA,2005</p>
<p><b>NORT-WEST FRONTIER PROVINCE CONSUMERS PROTECTION ACT, (NWFP CPA) 1997</b></p>	<p>Replica of ICPA,2005</p>
<p><b>THE CONSUMER PROTECTION ORDINANCE, 2004 (Sindh Ordinance No.III of 2004</b></p>	<p>Replica of ICPA,2005</p>
<p><b>MODEL CONSUMER PROTECTION ACT, 2000</b></p>	<p>“Consumer” means a person who: i) Consumes any goods or services, <u>irrespective of any consideration paid or promised</u>, but does not include a person who obtains such goods for resale or for any commercial purpose. ‘commercial purpose’ does not include use by a consumer of goods bought and used by him exclusively for the purpose of earning his livelihood, by means of self-employment; and ii) Includes any beneficiary or the end user of such goods or services.</p>

## **CHAPTER 5**

# **CONSUMER PROTECTION LAW: A GLOBAL EXPERIENCE AND CASE STUDY OF PAKISTAN**

Today consumer protection has become a subject of public concern all over the world. A number of countries have laws to regulate deceptive and unfair trade practices to provide adequate consumer protection. This chapter will cover the succinct snapshot of some of the countries like UK, USA, Australia, and India with reference to consumer protection and will highlight the important features and developments in consumer protection in these countries.

### **5.1 INTERNATIONAL CONSUMER MOVEMENT:**

#### **a. Consumers International:**

The consumer movement around the world started since ages, but formally as an organizing group representing the consumers all around the world started with the establishment of consumer International (CI). Consumer international today is recognized as International Organization of Consumer Union (IOCU). It represents the consumer organization all over the world. Initial CI was established in 1936 whose main concern was to inform consumers about the products and services through independent and comparative testing in USA and it was one of its kind in the world. Later many consumer movement had been formed.

## **CHAPTER II: CONSUMER PROTECTION COUNCILS**

### **4. The Central Consumer Protection Council**

- (1) The Central Government may, by notification, establish with effect from such date as it may specify in such notification, a council to be known as the Central Consumer Protection Council (hereinafter referred to as the Central Council).
- (2) The Central Council shall consist of the following members, namely,-
  - (a) the Minister in charge of 1[consumer affairs] in the Central Government, who shall be its Chairman, and
  - (b) such number of other official or non-official members representing such interests as may be prescribed.

### **5. Procedure for meetings of the Central Council**

- (1) The Central Council shall meet as and when necessary, but 1[at least one meeting] of the council shall be held every year.
- (2) The Central Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed.

### **6. Objects of the Central Council**

The objects of the Central Council shall be to promote and protect the rights of the consumers such as-

- (a) the right to be protected against the marketing of goods 2[and services] which are hazardous to life and property;

- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods [or services, as the case may be], so as to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to a variety of goods and services at competitive prices;
- (d) the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;
- (e) the right to seek redress against unfair trade practices [or restrictive trade practices] or unscrupulous exploitation of consumers; and
- (f) the right to consumer education.

#### **7. The State Consumer Protection Councils**

- (1) The State Government may, by notification, establish with effect from such date as it may specify in such notification, a council to be known as the Consumer Protection Council (hereinafter referred to as the State Council).
- (2) The State Council shall consist of the following members, namely,-
  - (a) the Minister in-charge of consumer affairs in the State Government who shall be its Chairman;
  - (b) such number of other official or non-official members representing such interests as may be prescribed by the State Government.
- (3) The State Council shall meet as and when necessary but not less than two meetings shall be held every year.

(4) The State Council shall meet at such time and place as the Chairman may think fit and shall observe such procedure in regard to the transaction of its business as may be prescribed by the State Government.

**8. Objects of the State Council:**

The objects of every State Council shall be to promote and protect within the State the rights of the consumers laid down in clauses (a) to (f) of section 6.

## **CHAPTER III: CONSUMER DISPUTES REDRESS AGENCIES**

### **9. Establishment of Consumer Disputes Redress Agencies**

There shall be established for the purposes of this Act, the following agencies, namely,-

(a) a Consumer Disputes Redress Forum to be known as the "District Forum" established by the State Government 3[\* \* \*] in each district of the State by notification:

2. PROVIDED that the State Government may, if it deems fit, establish more than one District Forum in a district;

(b) A Consumer Disputes Redress Commission to be known as the "State Commission" established by the State Government 3[\* \* \*] in the State by notification; and

(c) A National Consumer Disputes Redress Commission established by the Central Government by notification.

### **10. Composition of the District Forum**

(1) Each District Forum shall consist of-

(a) a person who is, or has been, or is qualified to be a District Judge, who shall be its President;

(b) two other members, who shall be persons of ability, integrity and standing, and have adequate knowledge or experience of, or have shown capacity in

dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman.

2[(1A) Every appointment under sub-section (1) shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely,-

(i) the President of the State Commission-Chairman,

(ii) Secretary, Law Department of the State-Member,

(iii) Secretary in-charge of the Department dealing with consumer affairs in the State-Member.

(2) Every member of the District Forum shall hold office for a term of five years or up to the age of 65 years, whichever is earlier, and shall not be eligible for re-appointment:

PROVIDED that a member may resign his office in writing under his hand addressed to the State Government and on such resignation being accepted, his office shall become vacant and may be filled by the appointment of a person possessing any of the qualifications mentioned in sub-section (1) in relation to the category of the member who has resigned.

(3) The salary or honorarium and other allowances payable to, and the other terms and conditions of service of the members of the District Forum shall be such as may be prescribed by the State Government.

**11. Jurisdiction of the District Forum:**

(1) Subject to the other provisions of this Act, the District Forum shall have jurisdiction to entertain complaints where the value of the goods or services and the compensation, if any, claimed 1[does not exceed rupees five lakhs].

(2) A complaint shall be instituted in a District Forum within the local limits of whose jurisdiction-

(a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or 1[carries on business, or has a branch office or] personally works for gain; or

(b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or 1[carries on business or has a branch office, or personally works for gain:

PROVIDED that in such case either the permission of the District Forum is given, or the opposite parties who do not reside, or 1[carry on business or have a branch office, or personally work for gain, as the case may be, acquiesce in such institution; or

(c) the cause of action, wholly or in part, arises.

1[12. Manner in which complaint shall be made. A complaint in relation to any goods sold or delivered or agreed to be sold or delivered or any service provided or agreed to be provided, may be filed with a District Forum, by-

(a) the consumer to whom such goods are sold or delivered or agreed to be sold or delivered or such service provided or agreed to be provided;



(b) any recognised consumers association whether the consumer to whom the goods sold or delivered or service provided or agreed to be provided is a member of such association or not; or

(c) one or more consumers, where there are numerous consumers having the same interest, with the permission of the District Forum, on behalf of, or for the benefit of, all consumers so interested; or

(d) the Central or the State Government.

### **13. Procedure on receipt of complaint**

(1) The District Forum shall, on receipt of a complaint, if it relates to any goods-

(a) refer a copy of the complaint to the opposite party mentioned in the complaint directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

(b) where the opposite party on receipt of a complaint referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute in the manner specified in clauses (c) to (g);

(c) where the complaint alleges a defect in the goods which cannot be determined without proper analysis or test of the goods, the District Forum shall obtain a sample of the goods from the complainant, seal it and authenticate it in the manner prescribed and refer the sample so sealed to the appropriate laboratory along with a direction that such laboratory make an analysis with a view to finding out whether such goods suffer

from any defect alleged in the complaint or suffer from any other defect and to report its findings thereon to the District Forum within a period of forty-five days of the receipt of the reference or within such extended period as may be granted by the District Forum;

(d) before any sample of the goods is referred to any appropriate laboratory under clause (c), the District Forum may require the complainant to deposit to the credit of the Forum such fees as may be specified, for payment to the appropriate laboratory for carrying out the necessary analysis or test in relation to the goods in question;

(e) the District Forum shall remit the amount deposited to its credit under clause (d) to the appropriate laboratory to enable it to carry out the analysis or test mentioned in clause (c) and on receipt of the report from the appropriate laboratory, the District Forum shall forward a copy of the report along with such remarks as the District Forum may feel appropriate to the opposite party;

(f) if any of the parties disputes the correctness of the findings of the appropriate laboratory, or disputes the correctness of the methods of analysis or test adopted by the appropriate laboratory, the District Forum shall require the opposite party or the complainant to submit in writing his objections in regard to the report made by the appropriate laboratory;

(g) the District Forum shall thereafter give a reasonable opportunity to the complainant as well as the opposite party of being heard as to the correctness or otherwise of the report made by the appropriate laboratory and also as to the objection made in relation thereto under clause (f) and issue an appropriate order under section 14.

(2) The District Forum shall, if the complaint received by it under section 12 relates to goods in respect of which the procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any services,-

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the District Forum;

(b) where the opposite party, on receipt of a copy of the complaint, referred to him under clause (a) denies or disputes the allegations contained in the complaint, or omits or fails to take any action to represent his case within the time given by the District Forum, the District Forum shall proceed to settle the consumer dispute,-

(i) on the basis of evidence brought to its notice by the complainant and the opposite party, where the opposite party denies or disputes the allegation contained in the complaint, or

(ii) on the basis of evidence brought to its notice by the complainant where the opposite party omits or fails to take any action to represent his case within the time given by the Forum.

(3) No proceedings complying with the procedure laid down in sub-sections (1) and (2) shall be called in question in any court on the ground that the principles of natural justice have not been complied with.

(4) For the purposes of this section, the District Forum shall have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while

(i) the summoning and enforcing attendance of any defendant or witness and examining the witness on oath;

(ii) the discovery and production of any document or other material object producible as evidence;

(iii) the reception of evidence on affidavits;

(iv) the requisitioning of the report of the concerned analysis or test from the appropriate laboratory or from any other relevant source;

(v) issuing of any commission for the examination of any witness; and

(vi) any other matter which may be prescribed.

(5) Every proceeding before the District Forum shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860), and the District Forum shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).

2[(6) Where the complainant is a consumer referred to in sub-clause (iv) of clause (b) of sub-section (1) of section 2, the provisions of Rule 8 of Order I of Schedule I to the Code of Civil Procedure, 1908 (5 of 1908) shall apply subject to the modification that every reference therein to a suit or decree shall be construed as a reference to a complaint or the order of the District Forum thereon.]

#### **14. Finding of the District Forum**

(1) If, after the proceeding conducted under section 13, the District Forum is satisfied that the goods complained against suffer from any of the defects specified in the

complaint or that any of the allegations contained in the complaint about the services are proved, it shall issue an order to the opposite party directing him to 1[do] one or more of the following things, namely,-

(a) to remove the defect pointed out by the appropriate laboratory 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 pay such amount as may be awarded by it as compensation to the consumer for any loss or injury suffered by the consumer due to the negligence of the opposite party.

2[(e) to remove the defects or deficiencies in the services in question;

(f) to discontinue the unfair trade practice or the restrictive trade practice or not to repeat them;

(g) not to offer the hazardous goods for sale;

(h) to withdraw the hazardous goods from being offered for sale;

(i) to provide for adequate costs to parties.]

4[(2) Every proceeding referred to in sub-section (1) shall be conducted by the President of the District Forum and at least one member thereof sitting together:

PROVIDED that where the member, for any reason, is unable to conduct the proceeding till it is completed, the President and the other member shall conduct such proceeding de novo:

(2A) Every order made by the District Forum under sub-section (1) shall be signed by its President and the member or members who conducted the proceedings:

PROVIDED that where the proceeding is conducted by the President and one member and they differ on any point or points, they shall state the point or points on which they differ and refer the same to the other member for hearing on such point or points and the opinion of the majority shall be the order of the District Forum.

(3) Subject to the foregoing provisions, the procedure relating to the conduct of the members of the District Forum, its sittings and other matters shall be such as may be prescribed by the State Government.

## **15. Appeal**

Any person aggrieved by an order made by the District Forum may prefer an appeal against such order to the State Commission within a period of thirty days from the date of the order, in such form and manner as may be prescribed:

PROVIDED that the State Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not finding it within that period.

## **16. Composition of the State Commission**

(1) Each State Commission shall consist of-

(a) a person who is or has been a Judge of a High Court, appointed by the State Government, who shall be its President:

2[PROVIDED that no appointment under this clause shall be made except after consultation with the Chief Justice of the High Court.

(b) two other members, who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman:

2[PROVIDED that every appointment under this clause shall be made by the State Government on the recommendation of a selection committee consisting of the following, namely,-

(i) President of the State Commission-Chairman,

(ii) Secretary of the Law Department of the State-Member

(iii) Secretary in-charge of the department dealing with consumer affairs in the State-Member.]

(2) The salary or honorarium and other allowances payable to, and, the other terms and conditions of service 3[\* \* \*] of the members of the State Commission shall be such as may be prescribed by the State Government.

2[(3) Every member of the State Commission shall hold office for a term of five years or up to the age of sixty-seven years, whichever is earlier and shall not be eligible for re-appointment.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.

### **17. Jurisdiction of the State Commission**

Subject to the other provisions of this Act, the State Commission shall have jurisdiction-

(a) to entertain-

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees 1 [five lakhs but does not exceed rupees twenty lakhs;] and

(ii) appeals against the orders of any District Forum within the State; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any District Forum within the State where it appears to the State Commission that such District Forum has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested or has acted in exercise on its jurisdiction illegally or with material irregularity.

### **18. Procedure applicable to State Commission**

1 [The provisions of sections 12, 13 and 14 and the rules made thereunder] for the disposal of complaint by the Districts Forum shall, with such modification as may be necessary, be applicable to the disposal of disputes by the State Commission:



5[18A. Vacancy in the office of the President. When the office of the President of the District Forum or of the State Commission, as the case may be, is vacant or when any such President is, by reason of absence or otherwise, unable to perform the duties of his office, the duties of the office shall be performed by such person, who is qualified to be appointed as President of the District Forum or, as the case may be, of the State Commission, as the State Government may appoint for the purpose.]

### **19. Appeals**

Any person aggrieved by an order made by the State Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 17 may prefer an appeal against such order to the National Commission within a period of thirty days from the date of the order in such form and manner as may be prescribed:

PROVIDED that the National Commission may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

### **20. Composition of the National Commission**

(1) The National Commission shall consist of-

(a) a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government, who shall be its President:

2[PROVIDED that no appointment under this clause shall be made except after consultation with the Chief Justice of India;]

(b) four other members who shall be persons of ability, integrity and standing and have adequate knowledge or experience of, or have shown capacity in dealing with, problems relating to economics, law, commerce, accountancy, industry, public affairs or administration, one of whom shall be a woman:

2[PROVIDED that every appointment under this clause shall be made by the Central Government on the recommendation of a selection committee consisting of the following, namely,-

(a) a person who is a Judge of the Supreme Court, to be nominated by the Chief Justice of India-Chairman,

(b) the Secretary in the Department of Legal Affairs in the Government of India-Member.]

(2) The salary or honorarium and other allowances payable to and the other terms and conditions of service 3[\* \* \*] of the members of the National Commission shall be such as may be prescribed by the Central Government.

2[(3) Every member of the National Commission shall hold office for a term of five years or up to the age of seventy years, whichever is earlier and shall not be eligible for re-appointment.

(4) Notwithstanding anything contained in sub-section (3), a person appointed as a President or as a member before the commencement of the Consumer Protection (Amendment) Act, 1993, shall continue to hold such office as President or member, as the case may be, till the completion of his term.]

## **21. Jurisdiction of the National Commission**

Subject to the other provisions of this Act, the National Commission shall have jurisdiction-

(a) to entertain-

(i) complaints where the value of the goods or services and compensation, if any, claimed exceeds rupees 1[twenty lakhs]; and

(ii) appeals against the orders of any State Commission; and

(b) to call for the records and pass appropriate orders in any consumer dispute which is pending before or has been decided by any State Commission where it appears to the National Commission that such State Commission has exercised a jurisdiction not vested in it by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of its jurisdiction illegally or with material irregularity.

## **22. Power of and procedure applicable to the National Commission**

The National Commission shall, in the disposal of any complaints or of any proceedings before it, have

(a) the powers of a civil court as specified in sub-sections (4), (5) and (6) of section 13;

(b) the power to issue an order to the opposite party directing him to do any one or more of the things referred to in clauses (a) to (i) of sub-section (1) of section 14,

and follow such procedure as may be prescribed by the Central Government.

### **23. Appeal**

Any person, aggrieved by an order made by the National Commission in exercise of its powers conferred by sub-clause (i) of clause (a) of section 21, may prefer an appeal against such order to the Supreme Court within a period of thirty days from the date of the order:

PROVIDED that the Supreme Court may entertain an appeal after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing it within that period.

### **24. Finality of order**

Every order of a District Forum, State Commission or the National Commission shall, if no appeal has been preferred against such order under the provisions of this Act, be final.

### **2[24A. Limitation period**

(1) The District Forum, the State Commission or the National Commission shall not admit a complaint unless it is filed within two years from the date on which the cause of action has arisen.

(2) Notwithstanding anything contained in sub-section (1), a complaint may be entertained after the period specified in sub-section (1), if the complainant satisfies the District Forum, the State Commission or the National Commission, as the case may be, that he had sufficient cause for not filing the complaint within such period:

PROVIDED that no such complaint shall be entertained unless the National Commission, the State Commission or the District Forum, as the case may be, records its reasons for condoning such delay.

#### **24B. Administrative control**

(1) The National Commission shall have administrative control over all the State Commissions in the following matters, namely,-

- (i) calling for periodical returns regarding the institution, disposal, pendency of cases;
- (ii) issuance of instructions regarding adoption of uniform procedure in the hearing of matters, prior service of copies of documents produced by one party to the opposite parties, furnishing of English translation of judgments written in any language, speedy grant of copies of documents;
- (iii) generally overseeing the functioning of the State Commissions or the District Fora to ensure that the objects and purposes of the Act are best served without in any way interfering with their quasi-judicial freedom.

(2) The State Commission shall have administrative controls over all the District Fora within its jurisdiction in all matters referred to in sub-section (1).]

#### **25. Enforcement of orders by the Forum, the State Commission or the National Commission**

Every order made by the District Forum, the State Commission or the National Commission, may be enforced by the District Forum, the State Commission or the National Commission as the case may be, in the same manner as if it were a decree or order made by a court in a suit pending therein and it shall be lawful for the District

Forum, the State Commission or the National Commission to send, in the event of its inability to execute it, such order to the court within the local limits of whose jurisdiction-

(a) in the case of an order against a company, the registered office of the company is situated, or

(b) in the case of an order against any other person, the place where the person concerned voluntarily resides or carries on business or personally works for gain, is situated, and thereupon, the court to which the order is so sent, shall execute the order as if it were a decree or order sent to it for execution.

## **26. Dismissal of frivolous or vexatious complaints**

Where a complaint instituted before the District Forum, the State Commission or, as the case may be, the National Commission, is found to be frivolous or vexatious, it shall, for reasons to be recorded in writing, dismiss the complaint and make an order that the complainant shall pay to the opposite party such cost, not exceeding ten thousand rupees, as may be specified in the order.

## **27. Penalties**

Where a trader or a person against whom a complaint is made 2[or the complainant] fails or omits to comply with any order made by the District Forum, the State Commission or the National Commission, as the case may be, such trader or person 2[or complainant] shall be punishable with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not

be less than two thousand rupees but which may extend to ten thousand rupees, or with both:

PROVIDED that the District Forum, the State Commission or the National Commission, as the case may be, may, if it is satisfied that the circumstances of any case so require, impose a sentence of imprisonment or fine, or both, for a term lesser than minimum term and the amount lesser than the minimum amount, specified in this section.

## CHAPTER IV: MISCELLANEOUS

### 28. Protection of action taken in good faith

No suit, prosecution or other legal proceedings shall lie against the members of the District Forum, the State Commissions or the National Commission or any officer or person acting under the direction of the District Forum, the State Commission or the National Commission for executing any order made by it or in respect of anything which is in good faith done or intended to be done by such member, officer or person under this Act or under any rule or order made thereunder.

### 29. Power to remove difficulties

(1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order in the Official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty: Provided that no such order shall be made after the expiry of a period of two years from the commencement of this Act.

(2) Every order made under this section shall, as soon as may be after it is made, be laid before each House of Parliament.

5[29A. Vacancies or defects in appointment not to invalidate orders  
No act or proceeding of the Districts Forum, the State Commission or the National Commission shall be invalid by reason only of the existence of any vacancy amongst its members or any defect in the constitution thereof.]



### **30. Power to make rules**

(1) The Central Government may, by notification, make rules for carrying out the provisions contained in 2[clause (a) of sub-section (1) of section 2], clause (b) of sub-section (2) of section 4, sub-section (2) of section 5, clause (vi) of sub-section (4) of section 13, section 19, sub-section (2) of section 20 and section 22 of this Act.

(2) The State Government may, by notification, make rules for carrying out the provisions contained in 2[clause (b) of sub-section (2) and sub-section (4) of section 7], sub-section (3) of section 10, clause (c) of sub-section (1) of section 13, sub-section (3) of section 14, section 15 and sub-section (2) of section 16.

### **31. Laying of rules**

(1) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

(2) Every rule made by a State Government under this Act shall be laid as soon as may be after it is made, before the State Legislature.

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