

سورة التوبة



For My
Parents, Teachers, Children and Wife





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Approval Sheet

**Consumer Protection in online E-Commerce Transactions: The case of Pakistan
(An Analytical Study)**

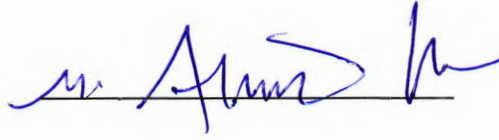
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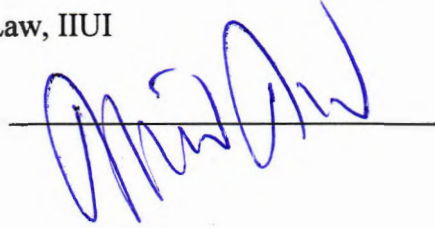
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Declaration

I, **Furrukh Riaz**, hereby declare that this dissertation is original and has never been presented in any other institution. I, moreover, declare that any secondary information used in this dissertation has been duly acknowledged.

Furrukh Riaz

Abstract

The purpose of present research is to high light the position of E-consumer protection laws regarding the problems of online consumers keeping in view the available legislation in Pakistan on said topic. A country like Pakistan where E-consumer protection is new concept in terms of non familiar of consumers about their rights. A process of doing business through computer networks is called Electronic Commerce. A person sitting anywhere in the world, in his house or office, in front of a computer can access all the facilities of the Internet for online transactions. This study is to address those issues, by which, the people are being faced in online transactions in the market, especially in the e-consumer end. This research will be helpful in understanding the concepts of Consumer Protection in online E-commerce Transactions in Pakistan.

First chapter is introduction of consumer and E-consumer. The basic concepts such as E-commerce and its types, consumer protection and E-consumer protection, Identity protection, consumer satisfaction are explained. The importance of the E-consumer is also highlighted in the end of this chapter.

Second chapter is literature review regarding topic is explained. This will explains how different scholars and writers discussed consumer protection in the framework of E-commerce.

Third chapter consumer protection is discussed under the title of Consumer Protection: An overview. The concepts such as consumer and its classification such as conventional and E-consumer protection. Different modes and features of E-consumers are explained. Consumer protection and economics impacts of E-commerce are discussed. Classification of consumer protection such as Identity protection and cross boarder e-commerce is highlighted in this chapter.

Fourth chapter is legal framework provided in E-consumer protection is explained. Consumer protection in European law are analyzed from the prospective of consumer contract fulfilled on the internet. Consumer Rights Directive and Rights of E-consumer are highlighted.

Fifth chapter is different national and regional entities involved in e-commerce laws are discussed under the topic of E-consumer protection laws: An International scenario. The chapter talks about the jurisdiction involved in e-commerce laws such as UNICTRAL, European Union, Council of Europe, APEC ,United States ,Canada, Australia, OECD and ICC.

Sixth chapter is E-consumer protections in Islamic law is explained. The concept of consumer protection is discusses under Islamic law. Rights and responsibilities of the consumers and E-commerce Transactions are explained. Shariah provides legal system which has rules to govern consumer issues.

Seventh chapter is consumer protections in online E-commerce Transactions in Pakistan is explained. Conventional consumer protection laws and E- consumer laws are discussed. Approaches and trends related to E-commerce in Pakistan is highlighted especially main approaches to E-commerce legislation in Pakistan.

Finally, the findings have been drawn and some recommendations are given to improve the online consumer.

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First of all, I am grateful to The Almighty ALLAH for establishing me to complete this work. There are a number of people without this thesis might not have been writing, and to whom I am greatly indebted.

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Furrukh Riaz

List of Abbreviations

APEC	Asia-Pacific Cooperation
B2B	Business -to-Business
B2C	Business-to-consumer
B2G	Business-to-Government
C2C	Consumer-to-consumer
COE	Council of Europe
CRD	Consumer Rights Directive
DPA	Data Protection Act
ECA	Electronic Crimes Act
E-Commerce	Electronic Commerce
ETO	Electronic Transactions Ordinance
EU	European Union
ICC	International Chamber of Commerce
ICT	Information communication Technology
IT	Information Technology
ITC	Information Technology & Communication
ITU	International Telecommunication Union
OECD	Organization for Economic Co-operation and Development
UNCITRAL	United Nations Commission on International Trade Law

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Chapter: 1

Introduction, significance and scope of the research

1.1 Introduction to the Research Topic

E-commerce as it is commonly known is the use of technology to conduct financial transactions online. Over the last years, e-commerce has significantly developed. This relatively new purchasing method offers numerous advantages as compared to traditional trade, in particular making shopping easier; due to the lack of physical and temporal boundaries of the Internet, online purchases can be made wherever a connection is available and outside of the usual and restrictive opening hours.¹ Accordingly, domestic sales and international trade have been increasingly conducted over the Internet for the last decade, “making online shopping more and more popular to such a point that nowadays, e-consumption has become an integral part of the daily life of many consumers.”²

The world of commerce has shifted dramatically in the last few decades. Before the introduction of the internet, transactions were carried out manually in close proximity. Though, the internet has brought faster and more efficient way of doing business. In present era, products and services are being offered to individuals in locations which they would hitherto have been unable to. In this century, any individual or organization can buy goods from any country of the world from a business located in any part of the world, to be delivered to a person in any part of the world. It is a sketch of the immense benefits which online businesses has taken in the commercial atmosphere.

¹ Tang Soop-Tzi Tang Comparative Study of European Law and Swiss Law

²WANG, preface; LOOS/HELBERGER/GUIBAULT/MAK, 730.

(a) The Meaning of E-commerce

Electronic commerce, has been defined as “sharing business information, maintaining business relationships and conducting business transactions by means of telecommunications networks.”³ A simpler definition has been proffered, which is “the buying and selling of products, services, and information via computer networks including the internet.”⁴

Paul Todd⁵ will be used in this study, which is as “any transaction involving goods or services where digital electronic communication performs an essential function.”⁶

The steady growth of electronic commerce in everyday business cannot be overemphasized. In fact electronic commerce is fast becoming the preferred method for concluding day to day business transactions, especially in the retail trade. This is largely due to the immense benefits which the platform affords, chief of which is its convenience. The internet provides online businesses with many potential benefits, such as reducing the size of staff, providing secure means for conducting long distance transactions, increasing efficiency in contacting consumers, and improving overall cost-effectiveness.⁷

The growth of the e-commerce has brought with it consequent legal and economic issues and peculiarities. So, it has brought “with it some negative side effects/ disadvantages; chief of these disadvantages is the potential vulnerability of the consumer.”⁸

In online transactions the consumer is at risk if a transaction goes wrong. This is because in some online transactions, “the consumer may not know, or have any access to the seller beyond his e-

³V.Zwass, “Structure and macro-level impacts of electronic commerce: from technological infrastructure to electronic marketplaces”²⁹.

⁴<www.whatis.com/ecommerce> accessed 18 July 2014

⁵Paul Todd, “E-Commerce Law”, Cavendish, 2005.

⁶Ibid.

⁷WatcharaNeitivanich, “Mechanisms for the Protection of Online Consumers: A Comparative Analysis of the U. S. E-Sign Act and Thai E-Transactions Act,” *Annual Survey of International & Comparative Law* 10 (2004) 83-91.

⁸ Ibid.

commerce medium, and there's the potential for the seller to either wrongly advertise the product, or for the whole transaction to be an outright scam."⁹

The negotiation process in "e-commerce transactions highlights the need for consumer protection at the highest level."¹⁰

Generally, the consumer's position at the conclusion of the contract needs to be strengthened and brought at par with the position of the seller: the consumer agrees to a no modifiable fixed contractual proposal by the supplier and very often, he has no possibility to obtain the adequate information about the goods or services for which the contract was concluded, that would normally be necessary to create his full intention to enter into the contract.¹¹

Therefore, the law has come to the rescue of the perennial unlucky consumer;

in many developed countries, laws have been put in place to protect the vulnerable consumer, and to ensure that the consumer is always adequately protected at each stage of the transaction. Developing countries are positioning themselves to be more involved in the flow of e-commerce; however, most of these countries are yet to put in place the adequate regulatory framework with which to ensure the smooth running of the system, adequate protection of businesses and consumers, and to prescribe for crimes and punishment for cybercrimes in relation to e-commerce.¹²

This is due to absence of necessary and adequate regulation, and underdevelopment in the ICT sector; therefore it is "imperative that the protection afforded to the consumer by the legal system is adequate. Adequate consumer protection would serve to cushion the possible

⁹ Salvatore Mancuso, "Consumer Protection in E-commerce Transactions: a First Comparison between European Law and Islamic Law," *Journal of International Commercial Law and Technology* 2 (2007) 93-108.

¹⁰ Ibid.

¹¹ Ibid.

¹² Ibid.

negative effects of e-commerce, and in fact could serve as a spur to the growth of e-commerce.”¹³

There are a few considerable legislations in Pakistan’s legal system, regarding e-Consumer Laws but still no legislation in field. However, through this research try to highlight issue which need legislation for e-consumer right protection.

(b) E-commerce and its types

E-commerce can be defined as “any transaction completed over a computer-mediated network that involves the transfer of ownership or rights to use goods or services.”¹⁴ It covers almost all forms of existing online transactions. Depending on the actors involved in the transaction process, “different types of e-commerce activities may be distinguished: transactions between businesses (business-to-business or B2B), those between suppliers and consumers (business-to-consumer or B2C), those between consumers (consumer-to-consumer or C2C) and those between businesses and government (business-to-government or B2G).”¹⁵

(c) Consumer Protection

“Governments should develop or maintain a strong consumer protection policy, taking into account the guidelines... and relevant international agreements. In so doing, each Government should set its own priorities for the protection of consumers in accordance with the economic,

¹³ Ibid.

¹⁴ FRAUMENI/MANSER/MESENBOURG, Government Statistics: E-Commerce and the Electronic Economy, paper presented to the Federal Economic Statistics Advisory Committee (US), 15.06.2000.

¹⁵ Ibid.

(d) What is E Consumer Protection

Consumer protection online may take various forms, “the main risks involving the online shopper are financial, product performance, psychological and time/convenience loss.”²³ However, it seems “that all barriers to purchasing online mostly revolve around safety issues. According to several worldwide studies, the online threats include: virus attack, spam, click streams, pop-ups identity theft, computer system invasion, card fraud, loss of private information, scams, online transaction insecurity, customer data abuse, and others.”²⁴

However, for clarification of our discussion we can divided into two categories; identity protection, and consumer satisfaction.

(i) Identity Protection

Identity protection deals with the “safety, security, and sanctity of the information which is shared by the e-consumer in the course of online transaction. Before any transaction can be consummated, in most cases the consumer may need to provide certain personal information in order to process the transaction.”²⁵

He will provide his “name, address, phone number, email address, credit/debit card details etc. All these requests are legitimate in order to process the transaction; however, the issue is the abuse of such information.”²⁶ It may be abused primarily in three ways;

- i. The information provided may be used for purposes not contemplated by the consumer e.g. direct marketing, profiling, data mining etc.;

²³ Forsythe, Sandra M., Shi Bo, “Consumer patronage and risk perceptions in Internet shopping, “*Journal of Business Research* 56 (2003): 867-875.

²⁴ Ibid.

²⁵ Ibid.

²⁶ Ibid.

- ii. Most important is the safe keeping of the information. “Information may be collected for legitimate purposes, but negligently handled by the person in possession of the information may cause harm to the consumer.”²⁷
- iii. The most detrimental use is that it may be used for fraudulent purposes, the information may be fraudulently accessed “so as to either illegally remove money from the consumer’s account, or to use for some other nefarious purpose. In fact, studies have shown that these reasons are some of the primary reasons behind consumer’s distrust of e-commerce as a business model.”²⁸

(ii) Consumer satisfaction

It refers to the level of satisfaction of a consumer after an online transaction has been concluded, it deals with issues like: “Is the consumer happy with the quality of the goods delivered?”, “Does the product delivered match up to what was advertised?”, “Does the consumer have the option to decide to return the goods or ask that they be replaced?” These are the fundamental issues in consumer satisfaction. Therefore, the e-commerce law has been developed to address these important issues.

The success of e-commerce in any society depends on its efficiency as a business platform. “Following from the above, one can see that the existence of a set of laws which cater for online consumer protection is imperative for the success of any meaningful e-commerce structure.”²⁹

²⁷ Ibid.

²⁸ <http://www.trustedshops.com/news/data-protection-online-shop-trust/> (accessed July 24, 2014).

²⁹ Ibid.

1.2 Significance of the Research Problem

The significance of this study is to address those issues, by which, the people are being faced in online transactions in the market, especially in the e-consumer end. This research will be helpful in understanding the concepts of Consumer Protection in online E-commerce Transactions. There is a need of making legislation regarding Consumer Protection in online E-commerce Transactions this can only be curbed through proper legislation in the legal system, otherwise, it has adverse effects on the economy, and restricts the benefits of e-consumers. The Pakistani legislation has failed to protect the interest of the e-consumer therefore some aspects are left un-attended regarding consumers to take steps by implementing its effective measurements, and if there are some loops and lacunae in the system, then there is need for such legislation for handling those situations.

1.3 Statement of Research Problem

Consumer Protection in online E-commerce Transactions is necessary for understanding the competition with the global market; however there are certain lacunas which ruin the market values through monopoly. It is difficult to trace out the market standards for doing business in competition with the other traders unless there are some admitted market values. There are some issues, which are usually made in another country, but the economy can be affected by those international issues, which can only be detected if the legal system of the country provides clarity in their legislation otherwise, it cannot be detectable.

1.4 Framing of Legal issues

- Are the rights of online consumers different from traditional consumers?
- What is the position of law in terms of protecting consumers?

- To what extent the e-consumer are protected?
- Which country's legislation and procedure is applicable in case of dispute?
- How can legal documents be served on the business where business is located in other continents and how can judgments be enforced?
- How consumer privacy is protected?
- What is the remedy if the goods are not up to the standard and how grievance of the consumer can be redressed under given law?

1.5 Research Methodology

The methodology of this research will be based on multiple approaches of legal scholarship, including a comparative law approach, an interdisciplinary approach, case laws and many other disciplines. Moreover major portion of this research will be based on library research that references will be in the form of books, Statutes, Articles, Reports and decided cases of superior courts. While reading other jurisdictions' legislation and cases main principles will be derived and then applied to Pakistani legal system where there will be any lacuna or ambiguity in present legislation than recommendation will be given to amend the law accordingly.

1.6 The Objectives of the Research

The study of the research will demonstrate the lacunas, which are existed in the legal system particularly consumer laws in Pakistan. The purpose of the consumer law is to proscribe the monopoly whether in the form of protecting rights of consumer and to create the atmosphere of competition in which the consumer's rights must be protected, and for the betterment of the economy. The Consumer laws provides the different forms of the rights for the consumers protection, a lot of efforts have been made, but there are some important lacunas in the said laws,

which must be addressed on the basis of rationality like there is no provision regarding e-Consumer protection. There are some flaws in it like consumer is not assured of having the complete protection, if he wants to provide the information to the consumer protection authorities, he will not be immunized, until the scrutinizing of the material, which has been provided, and it rests on the commission whether the material is relevant or not. This sort of uncertainty prevents the consumers whether the information is relevant or not, this will definitely increase the reporting of leniency cases rapidly, otherwise, it will be facing the difficulties in busting up the consumer protection.

Chapter: 2

Literature Review

The book **“A Policy Framework for Consumer Protection in Electronic Commerce”** is written by **Joe Hockey**³⁰ explains the framework sets out in the Government's policy for consumer protection in e-commerce. In this book few principles have been provided such as: “functional equivalence and technology neutrality, the need to balance the interests of consumers and business, the dual responsibilities of industry and Government and the importance of international co-operation.”³¹ It also discuss the framework which identifies a number of key issues which are to be addressed to ensure that there is a safe and efficient online environment, which are Information; Payment; Redress; Jurisdiction; and Privacy. Lastly, it summaries specific initiatives which the Government will be undertaking to achieve these objectives in the areas of: Self-regulation; International Co-operation; Education; Legal Framework; and, Enforcement Co-operation.

The book **“European Consumer Protection: Theory and Practice”** is written by **James Devenney, Mel Kenny**³² which analyses the theory and practice of “European consumer protection in the context of consolidation initiatives seen, inter alia, in the revision of the Consumer Acquis, the Draft Common Frame of Reference and the proposal for an EU Consumer Rights Directive.”³³ This also discuss the appointment of “an Expert Group on a Common Frame

³⁰Joe Hockey, *“A Policy Framework for Consumer Protection in Electronic Commerce,”* Australia, Treasury Strategic Policy Unit, 1999.

³¹ Ibid.

³² James Devenney and Mel Kenny, eds. *European consumer protection: theory and practice.* (Cambridge: Cambridge University Press, 2012).

³³ Ibid.

of Reference” and the Commission's 2010 Green Paper on progress towards a European Contract Law.

The contributions to this volume point to the arrival of a contested moment in EU consumer protection, questioning the arrival of the 'empowered' consumer and uncovering the fault lines between consumer protection and other goals. What emerges is a model of poly-contextual EU consumer protection law, a model that challenges the assumptions in both the 2010 Green Paper and the revised proposed Consumer Rights Directive.³⁴

The book “**Cases on worldwide E-commerce: Theory in Action**” is written by **Mashes S. Raisinghani**³⁵ which explains primary mission of Cases on Worldwide E-Commerce: Theory in Action is to “provide detailed case studies of opportunities and challenges in worldwide e-commerce as the Internet economy and globalization trends erase the traditional IT and geographical boundaries. Cases included in this publication are valuable to practitioners and academicians in the e-commerce/information systems field as learning and teaching resources.”³⁶

“**Online Consumer Protection: Theories of Human Relativism**”³⁷ is written by Kuanchin Chen, Adam Fadlalla which explains that “technology is a double-edged sword that not only brings convenience, but also allows for easier way to collect, explore, and exchange information on or off line. Consumer concerns grow as security breaches and privacy invasions are uncovered ever more frequently, creating the necessity for online consumer protection.”³⁸

Theories of Human Relativism presents

³⁴ Ibid.

³⁵ Mashes S Raisinghani , “*Cases on worldwide E-commerce: Theory in Action,*” Idea Group.

³⁶ Ibid.s

³⁷ Kuanchin Chen, Adam Fadlalla “*Online Consumer Protection: Theories of Human Relativism*” by IGI Global Snippet, 2009.

³⁸ Ibid.

the academic community with a broad range of international findings in online consumer protection, encapsulating years of expert online privacy research in one comprehensive resource. Designed to offer understanding in the nature of online threats, consumer concerns, and techniques for online privacy protection, this book provides essential and current information for researchers, educators, managers, and practitioners who are affected by the security issues related to consumer interaction with technology.³⁹

“The Impact of Public Policy on Consumer Credit”⁴⁰ written by Thomas A. Durkin, Michael E. Staten Springer wherein it is asserted that both the 21st century and the new millennium opened and the old eras passed into history, “individuals and organizations throughout the world advanced their listings of the most significant people and events in their respective specialties. Possibly more important, the tum of the clock and calendar also offered these same observers a good reason to glance into the crystal ball.”⁴¹ Presumably, the past is of greatest interest to most people “when it permits better understanding of the present and maybe even limited insight into the outlook.”⁴²

The paper **“Electronic Commerce, Law and Consumer Protection: Reference to Iranian Law** is written by **Parviz Bagheri and Kamal Halili Hassan**⁴³ which examines the relationship of law, e-commerce and consumer protection using Iran as a case study. “The paper begins with an exploration of a conceptual framework of e-commerce law and consumer protection. Iran also

³⁹ Ibid.

⁴⁰ Thomas A. Durkin, Michael E. Staten *“The Impact of Public Policy on Consumer Credit”* written by Springer Science & Business Media, 2002.

⁴¹ Ibid.

⁴² Ibid.

⁴³ Parviz Bagheri and Kamal Halili Hassan, *“Electronic Commerce, Law and Consumer Protection: Reference to Iranian Law”*, Malaysia,

practice e-commerce transactions, however, the law seems to be inadequate in protecting consumers.”⁴⁴

The paper “**A Comparative Study on Consumer right to Privacy in E-Commerce**” is written by **MeirongGuo**⁴⁵ describes in well versed way that the number of electronic commerce transactions has grown extraordinarily with widespread Internet usage.

The right to privacy is particularly important in e-commerce. Recently, the privacy protection for consumer transactions has become more and more important in e-commerce. This paper aims to develop the study on the legislation of e-commerce consumer rights protection. It is a comparative study on relevant regulations of the right to privacy in European Union, the United States, and Japan. The most representative policy might be the Data Protection Directive in the EU, which not only regulates the principle for e-commerce consumer right to privacy protection, but also lays out specific criteria to be abided.⁴⁶

The current status and existing problems in China are also “analyzed and some suggestions are made to improve the legal system of right to privacy. The paper identifies directions for the future development of the privacy protection from a legal perspective.”⁴⁷

“**Guidelines for consumer protection in the context of electronic commerce**”⁴⁸ published by Organization for Economic Co-operation and Development OECD, 2000. These guidelines are designed to help ensure that consumers are no less protected when shopping online. “By setting out the core characteristics of effective consumer protection for online business-to-consumer transactions, the Guidelines are intended to help eliminate some of the uncertainties that both

⁴⁴Ibid.

⁴⁵MeirongGuo, “A comparative Study on Consumer Right to Privacy in E-Commerce”, Japan, Tokyo Institute of Technology.

⁴⁶ Ibid.

⁴⁷ Ibid.

⁴⁸Organisation for Economic Co-operation and Development OECD, 2000 - Business & Economics “*Guidelines for consumer protection in the context of electronic commerce.*”

consumers and businesses encounter when buying and selling on line.”⁴⁹ The Guidelines reflect existing legal protections available to consumers in more traditional forms of commerce.

Their aim is to encourage:

- a. fair business, advertising and marketing practices;
- b. clear information about an online business's identity, the goods or services it offers and the terms and conditions of any transaction;
- c. a transparent process for the confirmation of transactions;
- d. secure payment mechanisms;
- e. fair, timely and affordable dispute resolution and redress;
- f. privacy protection; and
- g. consumer and business education.⁵⁰

“CONSUMER PROTECTION IN PAKISTAN: SOME CONCERNS”⁵¹ is written by Asad Jamal describes Law & Justice System reforms have been high on the plan of international political as well as development, donor & leading agencies for the past two decades or so.

As a consequence there has been a great deal of debate revolving round the legal reform process, and several new laws previously unheard of in most of the developing countries have been introduced. In addition to international pressures, reforms have also been high on the agenda of civil society organizations. A survey of the history of consumer protection law reveals that it has gained currency more due to the efforts of the civil society organizations working for consumer rights and the spread of market economy along with the growth of globalization.⁵²

⁴⁹ Ibid.

⁵⁰ Ibid.

⁵¹ Jamal Asad, Consumer Protection in Pakistan: Some Concerns www.supremecourt.gov.pk/ijc/Articles/18/3.pdf (accessed: December 15, 2015).

⁵² Ibid.

The introduction of UN Guidelines for Consumer Protection has been ascribed “to the efforts of international voluntary consumer protection associations and organizations. The very fact that the UN has laid down guidelines for its member countries shows the importance attached to consumer protection internationally.”⁵³

“Legal Environment of E-commerce in Pakistan”⁵⁴ is written by TaymourAly Khan which explains that e-commerce has completed the transition from an ideal vision to a veritable economic reality. Expectedly, the fast growth of e-commerce has “encouraged a corresponding rise in proposals for its regulation. While there is a broad consensus that electronic commerce should not be restricted by over-regulation, there is also a general agreement that traditional paper-based legislation does not provide answers to questions raised in an electronic environment.”⁵⁵

“Consumer Protection in E-commerce Transactions: a First Comparison between European Law and Islamic Law”⁵⁶ is written by Salvatore Mancuso describes that the Internet, has become “a major instrument for business activities through the exchange of tangible and intangible assets and services. Therefore we are witnessing a progressive placement side by side of a virtual market and the traditional market.”⁵⁷

⁵³ Ibid.

⁵⁴ Legal Environment of E-commerce in Pakistan www.supremecourt.gov.pk/ijc/articles/10/3.pdf (accessed December 14, 2015).

⁵⁵ Ibid.

⁵⁶ Salvatore Mancuso, "Consumer protection in e-commerce transactions: A First Comparison between European Law and Islamic Law" *Journal of International Commercial Law and Technology*. 2 (2007): 1-8.

⁵⁷ Ibid.

“Why E-Commerce Remains Unsuccessful in Pakistan?”⁵⁸ is written by Shamaila Hasan Khan and Mr. Zeeshan Arshad which they describes that this research was undertaken to uncover issues that affect success of E-Commerce in Pakistan.

More focus was on socio-cultural aspect of the issues and influences but alongside technological and political issues were also discussed. This issue was addressed by selecting six traditional E-Commerce Models which were discussed in interviews conducted with ten people who have been involved in the implementation of E-Commerce in Pakistan. The interviews were open-ended, starting with a general discussion on the E-Commerce environment of Pakistan and then six models were discussed one by one. The respondents gave their perspective on the pros and cons of each model and also the reasons why Ecommerce has not gained as much popularity as it has in the rest of the world.⁵⁹

The research was exploratory in nature with the aim of collecting information of the perspectives of the seller side of market. Due to time limitation, respondents were from Karachi only and were selected though convenience.

⁵⁸ <http://jisr.szabist.edu.pk/JISR-MSSE/Publication/2010/8/2/1007MSSE03.pdf> (accessed May 12, 2016).

⁵⁹ *ibid.*

Chapter: 3

Consumer Protection: An Overview

3.1 Introduction

Electronic commerce is one of the results of outstanding evolution being made in ICT.⁶⁰ However, despite the rapid developments in ICT, “the success of ecommerce development depends upon several factors.”⁶¹ Fast growth in ICT is transforming our society and its institutions; among them is the e-commerce. The world of commerce has changed dramatically in the last many decades, due to rapid revolution of IT. Before the arrival of the internet and e-commerce, transactions were carried out manually. However, the internet has brought a faster and more efficient way of doing business. Now products and services are available to individuals and corporations in their locations. Now, anyone can buy goods in Pakistan from a business located in any country or part of the world, to be delivered to a person in Pakistan or any other country. E-commerce has brought immense advantages for the online business community.

Law is meant to be used for consumer protection, and same has been used to protect consumers for very long. Which they have drawn on a variety of legal forms, in laws to achieve their objectives. In Pakistan numerous laws have been promulgated to protect the consumer but laws pertaining to online consumer protection are not available even they fail to address the conventional consumers.

⁶⁰ Maher Aljaber, ‘The Impact of Privacy Regulations on the Development of Electronic Commerce: Jordan and the UK Comparative Study’ (Phd Thesis, De Montfort University, 2012).

⁶¹ United Nations Conference on Trade and Development: E-commerce and Development Report (United Nations Publication, New York and Geneva, UNCTAD/SDTE/ECB/2003/1).

It is the dire need of present era to “remove legal obstacles and uncertainties and to harmonize existing legislation in Pakistan in order to ensure the free movement of information society services.”⁶² Further, it also establishes the consumer protection provision considering the specific nature of the online transactions.

3.2 Who is Consumer

Consumer means “any natural person who intends to enter into a contract or who contracts with a trader for purposes that are outside the scope of her trade, business, craft or profession.”⁶³ The notion of ‘trader’ is used as the counterpart of the consumer in a contract, and means “any natural or legal person who intends to enter into a contract or who contracts with a consumer for a purpose that can be regarded as part of her trade, business, craft or profession.”⁶⁴ Describing something as “a consumer protection statute implies that there is someone who can be identified clearly as a consumer.”⁶⁵ Although the private buyer of goods is “perhaps our paradigmatic consumer, she has been joined by a wealth of other economic actors who can lay claim to forming part of that diverse group.”⁶⁶ Resultantly, there is the basic difficulty of identifying our subject matter. The first point to note is that “there is no universally agreed definition of the term consumer, although a number of statutes, both criminal and civil, attempt to define it for their own purposes.”⁶⁷

Before understanding the actual situation, it is necessary to understand who is called the consumer. Therefore, its definition has a lot of significance to understand it. Black’s law

⁶² Ibid.

⁶³ Definition inspired by Art. 2 para. 2 CRD

⁶⁴ Ibid.

⁶⁵ http://assets.cambridge.org/97805215/90808/excerpt/9780521590808_excerpt.pdf (accessed: January 2016).

⁶⁶ Ibid.

⁶⁷ Peter Cartwright. *Consumer Protection and the Criminal Law* (Cambridge: Cambridge University Press, 2004), 2.

dictionary define it “A person who buys goods or services for personal, family, or household use, with no intention of resale; a natural person who uses products for personal rather than business purpose.”⁶⁸ And if word ‘online’ is added in this definition then he becomes online consumer.

3.3 Classification of Consumer

Consumer is on different kinds, without proper understanding the classification. It can never be justified the online consumer. Normally, it is on two type, which are briefly discussed below.

a. Conventional Consumer

b. E-Consumer

These two categories are discussed below briefly.

a. Conventional Consumer

Conventional consumer are those consumer those who buy goods or services by adopting conventional methods and they do not use any electronic device or computer or information technology for this purpose. In conventional transaction there is less fraud and it’s very useful for developing countries rather than e-commerce.

b. E-consumer

E-consumer is those who use the internet or computer devices for the purchase of goods or services. Nowadays every product and service is being offered via ecommerce. It is more risky as compare to conventional transactions, because in many cases, the seller is beyond the territorial jurisdiction of the purchaser’s country.

⁶⁸ Black’s Law Dictionary, s.v. “Consumer”.

3.4 Modes of E-commerce

E-commerce is a methodology of modern business which addresses the current need of business organizations, and customers to reduce cost and improve the quality of goods and services while increasing the speed of delivery. It refers to paperless exchange of business information using following ways.

- i- Electronic Data Exchange (EDI)
- ii- Electronic Mail (E-mail)
- iii- Electronic Bulletin Boards
- iv- Electronic Fund Transfer (EFT)
- v- Other Network-based technologies

It is defined as “E-commerce is the buying and selling of goods and services, or the transmitting of funds or data, over an electronic network, primarily the Internet.”⁶⁹ These business transactions occur either “business-to-business, business-to-consumer, consumer-to-consumer or consumer-to-business. The terms e-commerce and e-business are often used interchangeably. The term e-tail is also sometimes used in reference to transactional processes around online retail.”⁷⁰

E-commerce is conducted using “a variety of applications, such as email, fax, online catalogs and shopping carts, Electronic Data Interchange (EDI), File Transfer Protocol, and Web services”.⁷¹

⁶⁹<http://searchcio.techtarget.com/definition/e-commerce> (accessed: May 23, 2015).

⁷⁰ Ibid.

⁷¹ Ibid.

Some other common applications related to e-commerce are: Document automation in supply chain and logistics; Domestic and international payment systems, Enterprise content management; Group buying; Print on demand; Automated online assistant; Newsgroups; Online shopping and order tracking; Online banking and office suites; Shopping cart software; Teleconferencing; Electronic tickets; Social networking, and Instant messaging.⁷²

Mostly this happened in is business-to-business, with some companies “attempting to use email and fax for unsolicited ads to consumers and other business prospects, as well as to send out e-newsletters to subscribers.”⁷³

There are many benefits of e-commerce which include its “around-the-clock availability, the speed of access, a wider selection of goods and services, accessibility, and international reach. Its perceived downsides include sometimes-limited customer service, not being able to see or touch a product prior to purchase, and the necessitated wait time for product shipping.”⁷⁴

In developing countries, security is compromise due to many reasons “to ensure the security, privacy and effectiveness of e-commerce, businesses should authenticate business transactions, control access to resources such as webpages for registered or selected users, encrypt communications and implement security technologies such as the Secure Sockets Layer.”⁷⁵

E-commerce has allowed firms to “establish a market presence, or to enhance an existing market position, by providing a cheaper and more efficient distribution chain for their products or services.”⁷⁶ In e-commerce retailer has physical stores, as well as an online store where the

⁷² Ibid.

⁷³ Ibid.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ <http://www.investopedia.com/terms/e/ecommerce.asp> (accessed: May 16, 2015).

customer can buy everything from small goods to expensive goods. There are many advantages and disadvantages of ecommerce; advantage convenience, and selection while disadvantages are *limited customer service, no instant gratification, and no ability to touch and see a product.*

The steady growth of e-commerce in everyday business cannot be overemphasized. In fact, e-commerce is fast becoming the preferred method for concluding day to day business transactions. This is largely due to the immense benefits “which the platform affords, chief of is its convenience. The internet provides online businesses with many potential benefits, such as reducing the size of staff, providing secure means for conducting long distance transactions, increasing efficiency in contacting consumers, and improving overall cost-effectiveness.”⁷⁷

Developing countries are far away from online consumer protection. Pakistan is among one of the developing countries which does not have such legislation, which deals with online transactions, though it has a very brief legislation related to banking transaction, but that is not sufficient to tackle all emerging situation. However, this does not cover many aspects of the online transactions. Pakistan is far away to provide regulatory framework which ensure the smooth running of the system, adequate protection of online business and consumers, and to prescribe punishments for electronic crimes related to e-commerce.

⁷⁷WatcharaNeitvianich, “Mechanisms for the Protection of Online Consumers: A Comparative Analysis of the U.S.E-Sign Act and Thai E-Transactions Act,” *Annual Survey of International & Comparative Law* 10 (2004).

3.5 Features of E-Commerce

It provides different features, which are as under:-

- a. **Non-Cash Payment:** E-Commerce enables use of “credit cards, debit cards, smart cards, electronic fund transfer via bank's website and other modes of electronics payment.”⁷⁸
- b. **24x7 Service availability:** E-commerce automates business of “enterprises and services provided by them to customers are available anytime, anywhere. Here 24x7 refers to 24 hours of each seven days of a week”.⁷⁹
- c. **Advertising / Marketing:** E-commerce increases the reach of “advertising of products and services of businesses. It helps in better marketing management of products /services.”⁸⁰
- d. **Improved Sales:** Using E-Commerce, orders for the products can be “generated anytime, anywhere without any human intervention. By this way, dependencies to buy a product reduce at large and sales increases.”⁸¹
- e. **Support:** E-Commerce provides various ways “to provide pre sales and post sales assistance to provide better services to customers.”⁸²
- f. **Inventory Management:** Using E-Commerce, “inventory management of products becomes automated. Reports get generated instantly when required. Product inventory management becomes very efficient and easy to maintain.”⁸³
- g. **Communication improvement:** E-Commerce provides ways for “faster, efficient, reliable communication with customers and partners.”⁸⁴

⁷⁸http://www.tutorialspoint.com/e_commerce/e_commerce_quick_guide.htm (accessed: May 12, 2015).

⁷⁹ Ibid.

⁸⁰ Ibid.

⁸¹ Ibid.

⁸² Ibid.

⁸³ Ibid.

3.6 Consumer protection

Conventional consumer are those consumer which they use conventional methods instead of computer on online devices. However, the online frauds' base is conventional crimes.

First time in 1970s, the notion of consumer protection challenged the doctrine of freedom of contract.

This new concept questioned whether it was fair to allow a business to decide freely on the terms and conditions of a contract when dealing with consumers who are not technical experts and have neither the bargaining power nor the knowledge to negotiate fairly the terms of the contract. Under these circumstances the notion of freedom is truly applicable to one of the parties. At this point, the doctrine of freedom of contract stopped being absolute and began to be seen as a doctrine with some limitations. In order to balance the inequality of contractual power between businesses and consumers, the legislature decided to intervene by enacting laws to protect consumers when entering in contractual relations with businesses.⁸⁵

To attain suitable consumer protection, the law of contract must balance two of its functions.

The first one is the 'facilitative function' that states that parties must have the freedom to do what they want to do, which is the idea underlying the doctrine of freedom of contract. The second one is the 'protective function', which aims to prevent abuse from the stronger party over the weaker party when negotiating the terms and conditions of consumer contracts.⁸⁶

For developing countries the online business transactions is the weak business transaction due to non-existence of online consumer protection. The idea that "weak businesses must have legal protection when dealing with stronger parties is based on the same legal principle supporting consumer protection, i.e. the imbalance of power may allow abuses from the stronger party."⁸⁷

⁸⁴ Ibid.

⁸⁵ Pablo Cortes. *Online Dispute Resolution for Consumers in the European Union* (New York: Routledge, 2011), 11.

⁸⁶ Ibid.

⁸⁷ Ibid.

All over the world this is being discussed that whether weak businesses or businesses that has a double capacity should receive the same level of protection as consumers or not? There are many answers for this, though it is lengthy discussion. Without bothering anything, it is the demand of present era to provide protection to online consumer and provide remedy for they lose.

Nevertheless, removing professionals from consumer protection regulation should not exclude them from legal protection because small businesses are often in similar circumstances to those experienced by consumers. Businesses can still be protected by general rules of contract law, such as those related to the valid formation of contracts, which are applied to both businesses and consumers.⁸⁸

3.7 E-consumer protection

States are under legal and moral obligation to protect their citizen from any kind of harm or fraud. Though, the states are aware of conventional crimes and frauds, so they have adopted many measures to overcome those issues but developing countries-like Pakistan- are far away to provide their citizen from online frauds.

There are many risk involved in online transactions, such as financial, product performance, psychological and time/convenience loss. Mostly, “the virus attack, spam, click streams, pop-ups identity theft, computer system invasion, card fraud, loss of private information, scams, online transaction insecurity and customer data abuse.”⁸⁹ There is much other risk involved in online transactions, which are trying to destroy the online business industry and gain profit and earn money. Due to non-existence of proper legislation and regulatory frame work, the innocent consumer are suffering billions of dollar loss annually.

⁸⁸ Ibid.

⁸⁹ Ibid.

Its complexity increase with the advancement of information technology, because it is very difficult to trace and preserve the evidence collected for the investigation purposes. Moreover, the criminals, sometimes, are beyond the territorial jurisdiction.

3.8 Economic Impacts of E-Commerce

The literature on ICT shows as an enabler of economic growth is massive, ranging from the aggregates to more disaggregated studies on selected groups.

A review of available literature on online transactions shows productivity in digital transactions and positive impact, possibly increasing over time, but there are many issues which are not addressed, while leaving the ordinary consumer to face difficulties. Though, it is growing trend of shopping but there are many hurdles as well.

All over the world, the international community is using ICT for the benefit of consumer, and they are benefiting from it, where as some people are using it for illegal purpose and destroying the legitimate business.

E-commerce due to ICT is leaving a huge impact on International trade. By using “websites for marketing and e-sales channels, firms may be able to sell to markets otherwise not reachable due to, distance or political systems,”⁹⁰ and by “reducing the barriers to trade, the Internet facilities international e-commerce, with most of the short term gains expected to arise in developed countries but with a shift to developing countries in the long run.”⁹¹ E-commerce reduce the cost and increase the trust, “comparisons between trade online and offline have found that the effect

⁹⁰*Information Economy Report 2015 Unlocking the Potential of E-commerce for Developing Countries.*(Switzerland: United Nations, 2015), 6.

⁹¹ Ibid.

of distance is considerably smaller in the case of e-commerce thanks to lower information costs and greater trust.”⁹²

E-commerce is more beneficial than conventional commerce as experiences shows that “selling goods or services online found that the most important effects of e-commerce to be reduced transaction time and faster business processes, lower transaction costs and ability to reach new customers.”⁹³ Further it improve the sales, reduce costs.

3.9 Classification of Consumer Protection

To understand the threats to consumer protection, it is divided into two categories; identity protection and consumer protection, which are discussed below

1. Identity Protection

Online shopping and transaction varieties of deals and convenience. Consumers do not bother their privacy and share all personal information, though they are relevant for shopping and online transactions but due to lack of data privacy or security measures, people use this information to cheat innocent consumers.

It may be abused primarily in there types;

- a- The information provided may be used for purposes not contemplated by the consumer when it was provided e.g. direct marking, profiling, data mining etc.
- b- Also of paramount importance is the safe keeping of the information provided. Information may be collected for legitimate purposes, but negligently handled by the

⁹² Ibid.

⁹³ Ibid.

person in possession of the information. A common fear among consumer is the level of security which their data will be afforded.

- c- The third and most detrimental use which the consumer's details can be put to is that it may be used for fraudulent purposes, the information may be fraudulently accessed so as to either illegally remove money from the consumer's account, or to use for some other nefarious purpose. In fact, studies have shown that these reasons are some of the primary reasons behind consumer's distrust of e-commerce as a business model.⁹⁴

It is further divided in few categories, which are data protection and fraudulent transactions.

These are discussed briefly;

i- Data Protection

In any e-commerce transaction case, it is necessary for the consumer to provide "some information in order to process the transaction. He might be asked to fill out electronic forms detailing things like- name, address, age, credit card no, sex, phone number etc."⁹⁵ The concern

is handling of such information is secure way when it is provided by the consumers to the seller.

"Data protection laws seek to ensure that when such information is provided by the consumer, it is only used for the purposes of that transaction and not any other purpose."⁹⁶

ii- Fraudulent Transactions

The threat of fraud is unescapable throughout on all transactions, both offline and online. Fraud can be committed on individuals in a numerous ways, but with respect to online transactions they

⁹⁴<http://www.trustedshops.com/news/data-protection-online-shop-trust> (accessed: July 20th, 2015).

⁹⁵ Ibid.

⁹⁶ Ibid.

are mostly committed when the culprit gets control of an unsuspecting individual's bank card details. Once those details are obtained, the criminal may make unauthorized transactions.

3.10 E-Consumer Protection

It refers to the level of satisfaction of a consumer after an online contract has been concluded, it deals with issues like;

- Is the consumer happy with the quality of the goods delivered?
- Does the product delivered match up to what was advertised?
- Does the customer have the option to decide to return the goods or ask that they are replaced?

These are the central issues in consumer satisfaction. The law of e-commerce therefore has been developed to address these important issues.

3.11 Cross Boarder e-commerce

E-commerce has crossed borders and there is not restriction to buy goods or services from other country while using the internet. Though the internet has reduced barriers to international trade and transaction but there are few evil as well, which have not been discussed in most of the developing countries' to tackle the emerging issues in international trade or shopping. These includes "unreliable and lengthy transit times, complex and ambiguous return processes, customs delays, lack of transparency on delivery and pricing, and limited ability to alter delivery times

and locations.”⁹⁷ Moreover, in developed countries, the international dimension of e-commerce is still relatively modest.⁹⁸

There are many barriers to international e-commerce which includes “lack of information about relevant laws, regulations and methods; burdensome customs procedures, high customs duties on returns, and corruption at the border; differences in national consumer and sales laws; requirements for specific payments solutions and difference in tax regulations; weak protection of intellectual property rights; limitation in the right to store and transfer information and data; requirements to have a local presence in order to register top-level domains, internet censorship and the need to use specific encryption technologies and barriers including high roaming charges, problems in obtaining insurance and state subsidies.”⁹⁹

Besides above mentioned barriers, there are many problems and tests for e-commerce, while the adoption of laws “may not be a prerequisite for e-commerce to commerce, they are essential for its sustainable growth. A supportive legal environment is crucial to create trust online and to secure electronic interactions between enterprises, citizens and public authorities.”¹⁰⁰ However, there is no legal landscape which discusses the relevant frameworks. Some countries have “enacted e-commerce regulations while other has amended existing legislation or developed principles or guidelines as minimum requirement.”¹⁰¹ Though, these developments have brought some relief for online consumer, but still there are many countries’ which as far away from these developments.

⁹⁷*Information Economy Report 2015 Unlocking the Potential of E-commerce for Developing Countries.*(Switzerland: United Nations, 2015), 15.

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.,

¹⁰¹ Ibid.

Moreover, online consumer face problems of “understanding of the terms and conditions of the electronic contracts as the majority of the online sellers provide information about the goods and services on sale just in one language and only few sellers have bilingual or multilingual information available to the consumers.”¹⁰² Furthermore, the “information about the goods and services which are being sold through the internet is often vague, definitions are not clear; the wording is very formal, confusing and complicated for the ordinary consumer to understand”.¹⁰³

Legislation on IT issues is not an easy job, there is a great need and importance for the legislature to understand the technical aspects of IT, whereas “governments of developing countries face various challenges when seeking to adopt and enforce e-commerce legislation.”¹⁰⁴

Because in developing countries the “laws are often adopted too later by governments attempting to keep up with dynamic and unpredictable technological advancements. By the time the laws are passed there are often obsolete, and the activities that they seek to regulate may have changed.”¹⁰⁵

Online consumers have the same rights and protection as offline consumers, but now a days online transactions are more bothered than offline consumers. There is a dire need to enforce online consumer protection laws and sign treaties with international community to bring harmony in existing legal system of Pakistan and to keep pace with International best practices. Furthermore, the consumers are unaware or have little knowledge of international transactions; therefore the advice and information should be provided for the use of cross-border opportunities.

¹⁰² Galina Skorochod. *Consumer Protection in the European Union* (Hungary: Central European University, 2007), 38.

¹⁰³ Ibid.

¹⁰⁴ *Information Economy Report 2015 Unlocking the Potential of E-commerce for Developing Countries*. (Switzerland: United Nations, 2015), 64.

¹⁰⁵ Ibid.

Chapter: 4

Legal Framework for E-Consumer Protection

4.1 Introduction

This chapter presents an overview of legal framework for E-consumer protection. This chapter Explains need to protect consumer under European law. It has also elaborated main convention Related to consumer contracts fulfilled on the internet. This chapter has also analyzed the Consumer Rights Directive and rights of E- consumer. The most important thing discussed in this chapter is legal framework of E-consumer Protection.

4.2 Need to protect online Consumer

Corporation always try to protect their clients identity, because it creates and establish confidence upon the corporations. Due to this the business of corporation touches the sky.

Nowadays business is transforming from manual methods to online transactions. Many international organizations are operating worldwide, which are earning billions of dollar annually. Where IT has brought blessing for the common man, similarly it has brought many problems for the ordinary man as well.

There exists thousands of fake website which cheat and play with innocent people. Where they lose their hard earning, even the developed countries are the main target of this industry. World's famous business

Consumer protection seeks to address “imbalances between businesses and consumers in all forms of commerce. Given the nature of the Internet, where important information on the seller can easily be concealed, this imbalance is accentuated in the case of e-commerce.”¹⁰⁶

Consumers are more vulnerable online to deceptive and fraudulent activities. Consumer protection laws can also help businesses engaged in e-commerce to clarify the requirements of doing business online within a particular jurisdiction. Therefore, consumer laws, policies and regulations may both outline consumers’ rights and business practices that are to be expected online, limit fraudulent and misleading commercial conduct and help business develop self-regulatory regimes.¹⁰⁷

Notwithstanding the importance of consumer confidence for e-commerce, “the global mapping of consumer protection legislation indicates that many developing and transition economies still lack relevant laws.”¹⁰⁸ Only few countries have adopted e-consumer protection laws. Even those countries who have adopted the e-consumer protection laws have not fully addressed many issues.

It is important to ensure that “online shoppers are protected for both domestic and cross-border purchases.”¹⁰⁹ Differences in the way countries adopt relevant provisions can hamper cross-border transactions. These differences may be related to the rights and obligations of consumers and businesses, to what is to be considered acceptable terms and conditions, to disclosure obligations and effective international redress mechanisms.”¹¹⁰

¹⁰⁶ United Nations Conference on Trade and Development, *Cyberlaws and regulations for enhancing e-commerce: Case studies and lessons learned*. Geneva, 25–27 March 2015.

¹⁰⁷ *Ibid.*

¹⁰⁸ *Ibid.*

¹⁰⁹ *Ibid.*

¹¹⁰ *Ibid.*

4.3 E-Consumer Protection in European Law

In recent years, consumer protection has come “more and more into the focus of European legislation.”¹¹¹ In 2004, a thorough review of the EU Consumer Acquis has been “undertaken in order to simplify consumer legislation and to create the conditions for a more efficient internal market for consumers.”¹¹² One of the keys “to achieve the objective of a functioning internal market was to enhance consumers’ confidence, in particular in e-commerce, by providing them a harmonized legal framework and stronger rights in that area.”¹¹³

In the European context, electronic contracts are generally part of a broader category of contracts, known as distance contracts. The notion of ‘distance contracts’ usually covers all cases where a contract is concluded with the exclusive means of distance communication, such as telephone, mail order, fax or Internet.¹¹⁴ Put another way, it covers all agreements concluded without the simultaneous physical presence of the contracting parties.¹¹⁵ Distance contracts are commonly subject to some specific rules requiring, among other things, that consumers receive all relevant information during the contracting process and allowing them to withdraw from the contract within a certain period.¹¹⁶

¹¹¹Ibid.

¹¹²Proposal for a Directive of the European Parliament and of the Council on Consumer Rights, Explanatory Memorandum, COM(2008) 614 final, Brussels.

¹¹³ Ibid.

¹¹⁴Recital 20 CRD.

¹¹⁵ Ibid.

¹¹⁶ Consumer Confidence in E-Commerce: lessons learned from the e-confidence initiative, SEC(2004) 1390, Brussels.

4.4 Outline of the main convention related to Consumer Contracts fulfilled on the Internet

In regards to e-consumer protection in contract law, numerous European directives have importance, including the Directive 2011/83/EU on consumer rights,¹¹⁷ the Directive 2000/31/EC on electronic commerce,¹¹⁸ the Directive 93/13/EC on unfair contract terms,¹¹⁹ the Directive 99/44/EC on sale of consumer goods and guarantees,¹²⁰ the Directive 2005/29/EC on unfair business-to-consumer commercial practices in the internal market¹²¹ and the Directive 2006/123/EC on services.¹²² Along with these directives, European projects for uniform law such as the Draft Common Frame of Reference (DCFR) and the Common European Sales Law (CESL)¹²³ suggest direction to recognize the European approach to consumer contract law.

4.5 The Consumer Rights Directive

The CRD was adopted on the 25th of October 2011.¹²⁴ “This directive had to be transposed by Member States in their national laws by the 13th of December 2013, whereas the transposition rules had to be applied from the 13th of June 2014 for contracts concluded after that date.”¹²⁵ Originally, the proposal of the CRD intended “to merge four existing EU consumer directives into one set of rules: the Directive 97/7/EC on distance contracts”,¹²⁶ the Directive 85/577/EC on

¹¹⁷Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights.

¹¹⁸Directive 2000/31/EC of the EP & C of 8 June 2000 on certain legal aspects of information society services.

¹¹⁹ Directive 93/13/EC of the Council of 5 April 1993 on unfair terms in consumer contracts, OJ 1993 L 95/29.

¹²⁰Directive 1999/44/EC of the EP & C of 25 May 1999 on certain aspects of the sale of consumer goods and associated guarantees, OJ 1999 L 171/12.

¹²¹ Directive 2005/29/EC of the EP & C of 11 May 2005 concerning unfair business-to consumer commercial practices in the internal market.

¹²²Directive 2006/123/EC of the EP & C of 12 December 2006 on services in the internal market, OJ 2006 L 376/36.

¹²³DCFR, Full Edition (VON BAR/CLIVE).

¹²⁴OJ 2011 L 304/83.

¹²⁵ Art. 28 CRD; TONNER, p. 395, No. 9.2.

¹²⁶ Directive 97/7/EC of the EP & C of 20 May 1997 on the protection of consumers in respect of distance contracts, OJ 1997 L 144/19.

doorstep selling⁸⁰, the Directive 99/44EC on sale of consumer goods and guarantees and the Directive 93/13/EC on unfair contract terms.¹²⁷

According to the original intention of the EU Commission, the CRD should have become the cornerstone of a second generation of consumer contract law directives, whose main characteristic was to step from minimum standard harmonization of the first generation (1980s and 1990s) to full harmonization. However, due to abundant criticism by Member States and legal scholars, the proposal has been seriously limited.¹²⁸

Therefore, the CRD as it was finally adopted and which is now “applicable focuses essentially on distance and off-premises contracts with a targeted full harmonization approach, replacing only the first two aforementioned directives and leaving the others, including the minimum standard principle, as they are.”¹²⁹

4.6 The Purpose and the Scope of the Consumer Rights Directive

The purpose of the CRD is “to contribute to a better functioning of the B2C internal market of the European Union, by enhancing consumer confidence in the internal market and reducing business reluctance to cross-border trade, especially for online transactions.”¹³⁰

To achieve this objective, the CRD updated and modernized existing consumer rights, by adapting them to technological changes, and strengthened provisions in some key problem areas. In particular, it created a single set of core rules applicable to distance contracts and off-premises contracts, thus providing a common legal framework within the European Union.¹³¹

¹²⁷ Council Directive 85/577/EEC of 20 December 1985 to protect the consumer in respect of contracts negotiated away from business premises, OJ 1985 L 372/31.

¹²⁸ Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee, EU Consumer Policy Strategy 2007-2013, COM(2007) 99 final, Brussels.

¹²⁹ Except for slight adaptations to the CR; Proposal for a Directive of the European Parliament and of the Council on Consumer Rights, Explanatory Memorandum, COM(2008) 614 final, Brussels.

¹³⁰ Proposal for a Directive of the EP & C on Consumer Rights, Explanatory Memorandum, COM(2008).

¹³¹ Press release of the European Commission, MEMO/11/450.

4.7 Rights of E-consumer

The right of withdrawal is “quite a new concept in private law; even if the first proposals addressing such a right emerged in the 19th century in Germany”,¹³² it was laid down only “in the late 1960s in some European national legislation, namely in Germany and the Netherlands.”¹³³ In recent years, it has emerged as “a prominent feature of European contract law, more specifically as a legal instrument protecting consumers.”¹³⁴

The right of withdrawal may be defined “as the right, exercisable within a limited period, to terminate the legal relationship arising from a contract, without having to give any reason for so doing and without incurring any liability for non-performance.”¹³⁵

The right of withdrawal is mainly applicable in the field of consumer law, as a protection for consumers from being bound in situations where they are in a structurally disadvantageous position at the time of the conclusion of the contract. It is designed to give the consumer additional time for reflection in specific situations of contract formation where she is deemed to deserve special protection, for example in doorstep or distance contracts.¹³⁶

The counterpart to the contract, typically the trader, is usually not given such a right.¹³⁷

As it permits the consumer to “unilaterally go back on her decision to conclude a contract, the right of withdrawal is a far-reaching instrument that protects one party from another by restricting the binding nature of the contract.”¹³⁸ Therefore, it appears to be at odds with the principle of *pactasuntservanda* (“agreement must be kept”), which is commonly regarded as one

¹³²TERRY, 122.

¹³³ LOOS (2009), 239.

¹³⁴ BEN-SHAHAR/POSNER, 3.

¹³⁵ DCFR, Full Edition (VON BAR/CLIVE), p. 82; The DCFR (Draft Common Frame of Reference) is an academic text.

¹³⁶ DCFR, Full Edition (VON BAR/CLIVE), 345.

¹³⁷ LOOS (2009), 239.

¹³⁸ LOOS (2009), 241.

of the pillars of contract law.¹³⁹ Since the purpose of the right of withdrawal is “to protect the entitled party, i.e. the consumer, the law usually forbids the parties to amend to her detriment the provisions concerning the right to withdraw.”¹⁴⁰

The trader has to inform the consumer “about the existence of her right of withdrawal and how it can be exercised. A failure to provide adequate information is sanctioned, for instance by an extension of the withdrawal period or a liability exemption for the consumer.”¹⁴¹

One of the core characteristics of the right of withdrawal is that no reason needs to be given in order to exercise it effectively.¹⁴² Hence, the consumer is given “the right to change her mind or to be disappointed without having to justify. The absence of reason requirement is the pledge of a right easy to exercise and impossible to challenge.”¹⁴³ Since the additional period of reflection granted to the consumer “leads to uncertainty for the trader as to whether the contractual relationship will continue to exist and whether restitution will be required, the right of withdrawal is exercisable only within a limited period.”¹⁴⁴

4.8 Advantages of e-commerce

With the advancement of technology, it is easy for the consumer to buy products and hire services from the other people as well as from other countries without wasting or spending a lot of time in search of products or services. It also brings comfortable for the organizational as well.

Its advantages can be classified into two categories, namely,

¹³⁹ Ibid

¹⁴⁰ DCFR, Full Edition (VON BAR/CLIVE), Art. II.-5:101(2) and 345 contra Art. 4 CRD.

¹⁴¹ 3 Art.10 para.1 CRD and Art.14 para.2 CRD.

¹⁴² DCFR, Full Edition (VON BAR/CLIVE), 350.

¹⁴³ MARCHAND (2012), 161

¹⁴⁴ Ibid., 160.

- (a) Advantages to organization, and
- (b) Advantages to customers/consumers.

(a) Advantages to organization

By using E-Commerce, individuals and organizations are expanding their business to national and international markets with minimum capital investment. In this way they can easily locate more customers, best suppliers and suitable business partners in other parts of the globe. Furthermore, it also helps individuals and organizations to “reduce the cost to create process, distribute, retrieve and manage the paper based information by digitizing the information.”¹⁴⁵ It also maximizes the benefits for the individuals and organizations.

(b) Advantages to Customers

E-commerce is the blessing for the present era human being. It has brought many facilities. This provides 24x7 support to the customers, where customer can do transactions of different products and services provided by any individual or a company anytime, anywhere from any corner of the world. Further, he can put his comments regarding a product or service and also can see others comments on products and services. These comments can help the customers to make a final decision regarding a product or service.

Instead of waiting to see the relevant detail of a product the customer can see the information within few seconds. This also provides multiple choices for the customer at same time, which helps the customer the select a product from among the different products. In this way, he can buy what he wants to buy. Moreover, e-commerce increases competition among the competitors

¹⁴⁵ Ibid.

and organizations and as result competitors and organizations provides substantial discounts to their customers.

4.9 Consumer Issues:

In offline environment, “where consumers enter a store, inspect potential purchases and judge for themselves the trustworthiness of a seller, the online world does not provide the same opportunity to use a buyer's instinct. Rather, many consumers are forced to proceed on faith, knowing precious little about the seller to whom they are entrusting their credit card data.”¹⁴⁶

4.10 Legal framework of e-consumer transactions

For the protection of the consumer it is necessary to provide a legal frame work for the seller as well as for the buyer. If legal cover is missing, then it will create many hurdles for the potential sellers and buyers. There is eminence need to provide legal cover to the below mentioned things, because with every country (in Pakistan every province) has different legislation regarding these issues. Therefore, they can create many troubles for the business industry.

4.11 Sale of illegal articles

Sometimes ago sale of illegal items was tough job; which the Internet made it easy to “find illegal articles on just a click, i.e. narcotics drugs, weapons and other article’s information is posted on websites, from where people get information and buy illegal products.”¹⁴⁷

It is practically “impossible to control or prevent a criminal from setting up a website to transact in illegal articles”¹⁴⁸ due to “several online payment gateways that can transfer money around the

¹⁴⁶<http://www.itu.int/ITU-T/special-projects/ip-policy/final/Attach04.doc> (accessed: February 27, 2016).

¹⁴⁷MahboobUsman, “Cyber Crimes: A case study of legislation in Pakistan in the light of other Jurisdiction” (LLM Diss., International Islamic University, Islamabad, 2015), 22.

world at the click of a button.”¹⁴⁹ Besides, it has created a “marketplace for the sale of unapproved drugs, prescription drugs dispensed without a valid prescription, or products marketed with fraudulent health claims”¹⁵⁰ which pose a “serious potential threat to the health and safety of patients.”¹⁵¹ All these things are ignored in the Pakistani legislation. Therefore, keeping in view the requirements of the present era, we have to provide safeguards to the business community as well as to the valuable customers.

4.12 Online frauds

Many countries around the world are “facing serious threats due to increasing trend of cybercrimes and Pakistan is no exception.”¹⁵² Among them is the online fraud, which is affecting the online consumer a lot and creating many troubles for them. There is huge demand from the society to investigate the online frauds in this regard which will help to understand the complication of the same. “Pakistan being new in this race is facing an intensified threat due to lack of awareness. People are facing problems including leakage of personal information to fraud of online shopping every day and therefore, understanding this particular subject is very important for Pakistan.”¹⁵³

4.13 Digital Privacy

With the advancement of IT, the privacy of general people is being affected. Digital stealing is about “robbing of people’ ideas, inventions, and creative expression everything from trade

¹⁴⁸ Aaushi Shah and Ravi Srinidhi, *A to Z of Cyber Crime* (Pune: Asian School of Cyber Laws, 2012), 193.

¹⁴⁹ Prashant Mali, *A Text Book of Cybercrime and Penalties* (Indiana: Repressed Publishing LLC, 2006), 19.

¹⁵⁰ Ibid.

¹⁵¹ Shah, *A to Z of Cyber Crime*, 193.

¹⁵² Usman, “Cyber Crimes” 35.

¹⁵³ Ibid.

secrets and proprietary products and parts to movies, music and software.”¹⁵⁴ This is the “illegal copying of digital goods (including trademarks), software (including source code), digital documents, digital audio and video for any reason other than to back up without explicit permission from and compensation to the copyright holder.”¹⁵⁵ As privacy is granted a fundamental right in the Constitution of the Pakistan, 1973, same should be provided for the digital privacy¹⁵⁶ for the protection of businessman and consumer.

4.14 Online gambling

Different websites are available in the internet world, which offer online gambling services. In some countries “it is permissible while in other countries it is prohibited.”¹⁵⁷ “The issues arises when a person residing in a country, where gambling is illegal and gambles on such website.”¹⁵⁸ As someone residing in Pakistan gambles on any online gambling website. Then what will be the punishment “for the gambler in case of his involvement in gambling or loss of his money in gambling?”¹⁵⁹ This is a serious issues which need to be addressed in Pakistani law.

4.15 Data protection/ identity protection in e-commerce

In the international electronic economy, personal data has become the fuel for online commercial activities. Every moment, extent of information is communicated, stored and collected online, “enabled by improvements in computing and communication power. In this environment, security of information is of growing concern to Governments, enterprises and consumers alike.

¹⁵⁴Shah, *A to Z of Cyber Crime*, 37.

¹⁵⁵Petter Gottschalk. *Policing Cyber Crime* (Hershey: Petter Gottschalk & Ventus Publishing ApS, 2010), 25.

¹⁵⁶Usman, “Cyber Crimes” 113.

¹⁵⁷ In Pakistan, *Public Gambling Act 1867* prohibits the gambling but this is not keeping pace with the advancement of Information Technology era. Therefore, it is necessary to make law on this subject as well to protect the online consumer.

¹⁵⁸Usman, “Cyber Crimes” 20.

¹⁵⁹ Ibid.

The surge in cloud services provided across jurisdictions, and the growing number of data breaches accentuate the need for adequate policy responses.”¹⁶⁰ The most common types of data exposed are names, e-mails and user names passwords.

Companies also need to adopt different mechanisms and policies “to keep information secure, put in place technical safeguards, and develop response plans for data security incidents, as well as to avoid fraudulent, deceptive and unfair practices.”¹⁶¹ Keeping in view the emerging stage of privacy and data protection laws in the world, few e-commerce companies have proactively adopted international best practices and security standards to protect their data. “Where privacy and consumer protection is difficult to guarantee due to the nature of the content model, service providers may need to take extra measures to educate buyers and sellers on how to recognize and protect themselves from fraud.”¹⁶²

4.16 Role of the internet intermediaries

Computer and related devices are the tool for the online business transactions, without using these tools we cannot do any business. Therefore, they play an important role for these transactions. If these tools are regulated by law, then the consumer will be safe and the chances of fraud will be less and if there is no such mechanism then the chances will increase.

Recently some internet intermediaries have progressed from invisible facilitators “to market players that interact directly with consumers in various functions and roles. Not only do they

¹⁶⁰ United Nations Conference on Trade and Development, *Cyberlaws and regulations for enhancing e-commerce: Case studies and lessons learned*. Geneva, 25–27 March 2015.

¹⁶¹ *Ibid.*

¹⁶² United Nations Conference on Trade and Development, *Cyberlaws and regulations for enhancing e-commerce: Case studies and lessons learned*. Geneva, 25–27 March 2015.

facilitate e-commerce transactions, but also increasingly influence or in many cases determine on access and choice to online services and goods.”¹⁶³

Online market places and auction platforms connect consumers and traders, payment intermediaries facilitate online payment and some fulfill the function of consumer redress. Internet Service Providers (ISP) enables Internet connection and determine on service quality and access to online services. Internet intermediaries also provide tools for users to navigate retrieve and publish information online.¹⁶⁴

In addition to this, mobile providers facilitate access “to both telecommunication services and mobile commerce. The evolving roles of intermediaries and blurring lines of responsibilities between a supplier and a facilitator put pressure on a traditional model of consumer protection where roles and obligations of a supplier, a facilitator and a consumer are clear.”¹⁶⁵

This is the need of present era to know that what roles and responsibilities internet intermediates are playing in consumer protection.

What are key consumer concerns when it comes to network providers (Internet Services Providers/mobiles), search engines, payment intermediaries and online market platforms? Why payment intermediaries are best placed to facilitate consumer redress? Why robust dispute resolution and redress mechanism is required to address issues of service termination in mobile telephony and broadband?¹⁶⁶

These thing must be addressed in Pakistani legislation to protect the online consumer, because they have a lot of concern for online transactions.

¹⁶³<http://search.oecd.org/internet/ieconomy/45509756.pdf> (accessed: May 27, 2016).

¹⁶⁴ Ibid.

¹⁶⁵ Ibid.

¹⁶⁶ Ibid.

Internet intermediaries provide the Internet's basic infrastructure and platforms "by enabling communication and transactions between third parties. They can be commercial or non-commercial in nature, and include Internet service providers (ISPs), hosting providers, search engines, e-commerce intermediaries, payment intermediaries and participative networked platforms."¹⁶⁷

Their main functions are:

- i. to provide infrastructure;
- ii. to collect, organize and evaluate dispersed information;
- iii. to facilitate social communication and information exchange;
- iv. to aggregate supply and demand;
- v. to facilitate market processes;
- vi. to provide trust; and
- vii. to take account of the needs of both buyers/users and sellers/advertisers. Related public policy issues concern notably their roles, legal responsibilities and liability for the actions of users of their platforms.¹⁶⁸

The role of payment intermediaries is to provide consumers "with protection from online payment fraud and with dispute resolution and redress mechanisms for online purchases. Both policy makers and payment intermediaries have strong incentives to develop a robust online marketplace."¹⁶⁹ Issues include consumer liability limitations "that may vary with e-commerce payment mechanisms and jurisdictions, and ways to encourage further development of fraud prevention and dispute resolution."¹⁷⁰

¹⁶⁷ Ibid.

¹⁶⁸ <http://search.oecd.org/internet/ieconomy/45509756.pdf> (accessed: May 27, 2016).

¹⁶⁹ <http://www.oecd.org/sti/ieconomy/48775761.pdf> (accessed: January 21, 2015).

¹⁷⁰ Ibid.

4.17 Formation of the contract on the internet and payment system

We are familiar with old-fashioned commercial transactions which do not pose any major threat because there are easy for lay man as well as for educated person, they are also aware of law and rules governs these transactions. However, the advancement of information technology has brought a revelation in the business industry, inter alia, is the e-commerce. Though, it is very helpful and less expensive but this does not protect the online consumer due to various reasons.

The special nature of the online contracts/transactions have made most of the common law rules inapplicable to such contracts, which were applicable to commercial contracts. For example, “websites are designed in such a way as to constitute an invitation to make an offer and not situations of real offers by the web owners. However, in sales over the internet, both the display and the actual sale are often fused.”¹⁷¹

Hence, the seller or website owner “must design the web page in such a way that it must clearly indicate that the information contained on the web in respect of a particular product or service is meant to elicit an offer and is not in itself an offer.”¹⁷² It is, therefore, important for the owner of a website to make a mistake “on the side of caution in creating a web invitation, and one method of doing this is to state that he will not be bound by any communication from a third party except if the owner accepts such communication and informs the third party accordingly.”¹⁷³

The analogy has always been to relate “a website to a shop in such a way that the product information on the website constitutes an invitation to make an offer.”¹⁷⁴ A justification for “not holding shops as making offers is to ensure that if the shop's stock is depleted, a willing

¹⁷¹ TI Akomolede, “Contemporary Legal Issues in Electronic Commerce in Nigeria,” *P.E.R* 11 (2008):

¹⁷² *Ibid.*

¹⁷³ *Ibid.*,

¹⁷⁴ *Ibid.*

consumer cannot sue the shop owner for damages.”¹⁷⁵ It is further argued “that a website is not offering physical goods for sale, and as such it is difficult to accept that supplies can be exhausted, because digital products supplied on the internet are infinite in supply.”¹⁷⁶

To avoid the unnecessary litigation, it is, therefore, necessary for the web owner that he should clearly indicate “if the display or advertisement of his goods on the web amounts to a direct offer to whoever comes in contact with the site, or an invitation to make an offer.”¹⁷⁷ This attitude of the web owner would save a lot of time and expense otherwise that would have been wasted on false or frivolous or unnecessary litigation, which can occur due to wrong information.

The e-consumer/online consumer makes offers electronically. Mostly an E-mail is used to place an order for the delivery of goods or for hiring of services. An e-mail message is “sent to a services provider who in turn delivers it to the box of the receiver.” Email can be misaddressed or delayed by any server on the way, and may not even be collected or read until sometime after their delivery. It may, therefore, be very difficult to know “when an e-mail was actually read, to determine when an offer was made or acceptance communicated.”¹⁷⁸ To avoid this situation, thus, the best practice legally is “to make any offer by e-mail subject to a date on which the offer will lapse.”¹⁷⁹ While placing an order for goods or services, an appropriate time must be specified, to avoid the confusion and tension. If no intention is shown as to the appropriate time of the offer. Then, it will create the problems, hence the courts would simply imply that the offer lapses after a reasonable time. What is reasonable time, it the matter of fact, depending on the situation of the case. It very from case to case.

¹⁷⁵ Ibid.

¹⁷⁶ Ibid.

¹⁷⁷ Ibid.

¹⁷⁸ Ibid

¹⁷⁹ Ibid.

4.18 Evidential Issues

The evidence is the integral part of any proceeding to prove the claim, establish the right or prosecute the accused.¹⁸⁰ The emergence of e-commerce and its growing popularity have “provoked fundamental evidential issues especially in relation to the proof of transactions conducted through the internet.”¹⁸¹ The uniqueness of these issues and the confusion that has also greeted their interpretation by the courts have shown the failure of the existing Pakistani law of evidence “to cope with the admissibility of the avalanche of electronically-generated evidence that is the hallmark of electronic commercial transactions.”¹⁸²

Cyber evidence is not easy “to collect, preserve and present in the competent court, due to its complexity.”¹⁸³ Therefore, it is necessary to provide proper legislation on this issues to cope with the new era of IT.

4.19 Conclusions

Internet and IT is a blessing, but it is also a heaven for criminals. It has created troubles for government to protect the secrets of the governments and provide protection to ordinary citizen. Keep in view the latest development in IT, it is strongly recommend to legislate on e-commerce transaction to protect the interest of everybody.

¹⁸⁰Usman, “Cyber Crimes” 60.

¹⁸¹ TI Akomolede, “Contemporary Legal Issues in Electronic Commerce in Nigeria,” 169..

¹⁸² Ibid.

¹⁸³Usman, “Cyber Crimes” 60.

Chapter: 5

E-Consumer Protection Laws: An International Scenario

5.1 Introduction

The previous chapter has given overview of e consumer protection in E commerce transactions. It has been analysed in detail that consumer protection in e-commerce transactions. There are many international, regional and national entities are involved in e-commerce to understand their position on law, it is necessary to go through their works, which are carried by those institutions.

5.1.1 UNCITRAL:

The United Nations Commission on International Trade Law (UNCITRAL) was established “by the United Nations General Assembly to promote the progressive harmonization and unification of international trade law.”¹⁸⁴ The Commission is composed of thirty-six member states “elected by the General Assembly, are chosen to represent the world's various geographic regions and its principle economic and legal systems. Members are elected for terms of six years, with the terms of half the members expiring every three years.”¹⁸⁵ All States and interested international organizations are “invited to attend as observers and participate in sessions of the Commission and of its working groups.”¹⁸⁶ UNCITRAL focuses on “law reform and creating model commercial laws that are both accessible and predictable.”¹⁸⁷ It has established different working

¹⁸⁴United Nations General Assembly Resolution 2205 (XXI) of 17 December 1966.

¹⁸⁵<https://www.itu.int/.../Attach04.d>. (accessed: January 29: 2016).

¹⁸⁶ Ibid.

¹⁸⁷ Ibid.

groups to perform the substantive preparatory work on different topics; among them is the electronic commerce.

UNCITRAL adopted a Model Law on Electronic Commerce (MLEC) in 1996 to improve the use of paperless communication. Further, it “purports to enable and facilitate commerce conducted using electronic means by providing national legislators with a set of internationally acceptable rules aimed at removing legal obstacles and increasing legal predictability for electronic commerce.”¹⁸⁸ In 2001, UNCITRAL adopted “the Model Law on Electronic Signatures (MLES) which aims “to enable and facilitate the use of electronic signatures by establishing criteria of technical reliability for the equivalence between electronic and hand-written signatures.”¹⁸⁹ Therefore, the MLES may assist States in “establishing a modern, harmonized and fair legislative framework to address effectively the legal treatment of electronic signatures and give certainty to their status.”¹⁹⁰ Article 7 of the UNCITRAL MLEC with regard to the fulfilment of “the signature function in an electronic environment by following a technology-neutral approach, which avoids favoring the use of any specific technology or process.”¹⁹¹ It means in practice, legislation based on MLEC may recognize both digital signatures based on cryptography and electronic signatures using other technologies to help the institutions to use latest developments of IT to improve their functions.

¹⁸⁸http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/1996Model.html (accessed: January 29, 2016).

¹⁸⁹http://www.uncitral.org/uncitral/en/uncitral_texts/electronic_commerce/2001Model_signatures.html (accessed: January 29, 2016).

¹⁹⁰ Ibid.

¹⁹¹ Ibid.

5.1.2 European Union (EU):

EU is also working to protect their people from IT related frauds and build their confidence upon the e-commerce, because people are shifting to online shopping. Essential directives are given below to highlight the importance of e-commerce in EU.

On 24th October 1995, the European Parliament and of the Council (EP & C) issued a directive¹⁹² on "the protection of individuals with regard to the processing of personal data and on the free movement of such data."¹⁹³ On 11th March the EP & C issued another directive¹⁹⁴ on "the legal protection of databases."¹⁹⁵ On 20th May 1997 the EP & C issued another directive¹⁹⁶ on "the protection of consumers in respect of distance contracts."¹⁹⁷ On 8th June 2000 the EP & C issued another directive¹⁹⁸ "on certain legal aspects of information society services, in particular electronic commerce, in the Internal Market."¹⁹⁹ It is commonly known as "Directive on electronic commerce," and on 22nd May 2001 the EP & C issued the directive²⁰⁰ "on the harmonization of certain aspects of copyright and related rights in the information society."²⁰¹ These are the few directives issued by the EP & C on various times to highlight the importance of IT era and to protect the online industry.

¹⁹² Directive 95/46/EC of the EP & C of 24 October 1995.

¹⁹³ Ibid.

¹⁹⁴ Directive 96/9/EC of the EP & C of 11 March 1996.

¹⁹⁵ Ibid.

¹⁹⁶ Directive 97/7/EC of the EP & C of 20 May 1997.

¹⁹⁷ Ibid.

¹⁹⁸ Directive 2000/31/EC of the EP & C of 8 June 2000.

¹⁹⁹ Ibid.

²⁰⁰ Directive 2001/29/EC of the EP & C of 22 May 2001

²⁰¹ Ibid.

5.1.3 Council of Europe (CoE):

The **Council of Europe (CoE)**, is a regional inter-governmental organization whose stated goal is “to promote human rights, democracy, and the rule of law in its member states.”²⁰² The organization is separate from the 28-nation European Union, though sometimes confused with it, in part because they share the European flag. Unlike EU, the CoE cannot make binding laws.

The CoE is best known for having successfully completed “negotiations on a global cybercrime treaty in 2001, which is known as Convention of Cybercrime.”²⁰³

The Convention is the first international treaty on crimes committed via the Internet and other computer networks, dealing particularly with infringements of copyright, computer-related fraud, child pornography and violations of network security. It also contains a series of powers and procedures such as the search of computer networks and interception.²⁰⁴

Its main objective, set out in the preamble, is “to pursue a common criminal policy aimed at the protection of society against cybercrime, especially by adopting appropriate legislation and fostering international co-operation.”²⁰⁵ In 2003, an additional protocol was added to this convention.²⁰⁶

5.1.4. APEC:

The Asia-Pacific Economic Cooperation (APEC) was established in 1989 for growing interdependence of Asia-Pacific economies. Besides, it also promotes free trade throughout the Asia-pacific region.

²⁰²https://en.wikipedia.org/wiki/Council_of_Europe (accessed: January 30, 2016).

²⁰³ It is also known as Budapest Convention.

²⁰⁴<http://www.coe.int/en/web/conventions/full-list/-/conventions/treaty/185> (accessed: January 30, 2016).

²⁰⁵ Ibid.

²⁰⁶ This protocol is known as “Additional Protocol to the Convention on Cybercrime, concerning the criminalisation of acts of a racist and xenophobic nature committed through computer systems.”

APEC's goal is to achieve "free and open trade and investment in the Asia-Pacific for developed member economies and for developing ones."²⁰⁷ In 1995 in Osaka, APEC leaders established "the three pillars of APEC activities: trade and investment liberalization, business facilitation and economic and technical cooperation."²⁰⁸ In 2000, APEC established "an electronic Individual Action Plan (e-IAP) system, providing IAPs online and commits to the Action Plan for the New Economy, which, amongst other objectives, aims to triple Internet access throughout APEC region."²⁰⁹

APEC's E-Commerce Steering Group is presently working on a various issues, including: "a Digital Divide Blueprint for Action to address issues of the digital divide and reliable, affordable access to the information infrastructure;"²¹⁰ paperless trading;²¹¹ "a review of the 2000 APEC Action Plan to Support the Use of Electronic Commerce by SMEs";²¹² "development of APEC voluntary online consumer protection principles";²¹³ "development of policy regarding the creation of an environment conducive to e-learning"; and "reviewing and updating the 1998 APEC Blueprint for Action on Electronic Commerce."²¹⁴

5.1.5 United States:

United States is also playing an important role to curb the IT related crimes, in addition to this, the US has also provided few land mark work on e-commerce. In other words we can say that since the inception of the internet, US is a leader in developing e-commerce law policy. There

²⁰⁷<http://www.apec.org/about-us/about-apec/history.aspx> (accessed: February 12, 2016).

²⁰⁸ Ibid.

²⁰⁹ Ibid.

²¹⁰ Harish Chander, *Cyber Laws and It Protection* (New Delhi: PHI Learning Pvt. Ltd., 2012), 128.

²¹¹ Ibid.

²¹² Ibid., 129.

²¹³ Ibid.

²¹⁴ Ibid.

are many departments which are dealing with this issue. The Federal Trade Commission, which play “the role of privacy and consumer protection enforcer”;²¹⁵ the Federal Communications Commission “regulates communications infrastructure.”²¹⁶ Furthermore, the American Bar Association has also “developed policy documents on jurisdiction, privacy and e-commerce law.” Besides, the National Conference of Commissioners on Uniform State Law, has drafted the “Uniform Electronic Transactions Act, the United States version of the UNCITRAL Model Law on Electronic Commerce.”²¹⁷

Consumer wants more protection to keep them safe from the aftershock of advancement in IT to ensure protection of privacy and time. Therefore, the US has enacted few laws which protect the online consumer; among them is the Anti-Counterfeiting Consumer Act 1996 and Ryan Haight Online Pharmacy Consumer Protection Act 2008.

5.1.6. Canada:

As in US there are many entities which regulates the e-commerce in US. Same is true in the case of Canada, there are many agencies and entities which are regulating e-commerce in Canada. Agencies and entities which play a significant role e-commerce law and policy which includes; privacy, electronic commerce, electronic signatures, copyright, consumer protection and jurisdiction issues are discussed in Canadian legislation. Competition Bureau; Industry Canada; Canadian Heritage; Canadian Internet Registration Authority; Canadian Copyright Board; and Canadian Radio-television and Telecommunications Commission are relevant to cybercrimes.

²¹⁵<https://www.ftc.gov/.../150414icpen.pdf>(accessed: February 1, 2016).

²¹⁶<https://www.fcc.gov/general/what-we-do>(accessed: February 1, 2016).

²¹⁷www.unidroit.org/%2Fenglish/%2Fpublications/%2Freview/%2Farticles/%2F2000-4-(accessed: February 1, 2016).

5.1.7. Australia:

Although Australia has enacted many laws related to e-commerce, privacy and online gambling, “it is perhaps best known for its online content regulation.”²¹⁸ The Australia Broadcasting Authority has been granted the power “to order offensive content removed from Australian-based websites and to request that Australian Internet service providers take steps to make such foreign-based content inaccessible to Australian users.”²¹⁹ Despite dire predictions about the likely effect of such legislation, “few sites have been removed from the web and the number of complaints has been relatively limited.”²²⁰ The Australian Government is working “to make it easier and more reliable to use electronic communications in business and personal transactions.”²²¹ This includes government’s commitment to provide online services wherever possible. The Australian *Electronic Transactions Act 1999* ensures that “a transaction under a Commonwealth law will not be invalid simply because it was conducted through electronic communication.”²²²

In May 2000, the Australian Government released the “Australian E-commerce Best Practice Model” for the people to help them to understand the IT era and problems faced by the common people.

5.1.8. OECD:

The Organization for Economic Co-operation and Development (OECD), was established in 1961. OECD facilitates the creation of “international instruments, decisions and recommendations in areas where multilateral agreements may create progress for individual

²¹⁸http://www.apf.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Library/Publications_Archive/Australiainternet (accessed: February 3, 2016).

²¹⁹<https://www.itu.int/.../Attach04.d>(accessed: February 3, 2016).

²²⁰ Ibid.

²²¹<https://www.ag.gov.au/RightsAndProtections/ECommerce/Pages/default.aspx> (accessed: February 4, 2016).

²²² Ibid.

countries in a globalized economy.”²²³ So, it also helps the countries to formulate the policies related to e-commerce.

E-commerce has become an area of focus for OECD because of its transporter nature and its potential for all countries in the areas of economic growth, trade and improved social conditions. It has developed policy in areas ranging from telecommunication infrastructure and services to taxation, consumer protection, network security, privacy and data protection, as well as emerging markets and developing economies.²²⁴

Following its "OECD Action Plan for Electronic Commerce",²²⁵ endorsed by its members in 1998, its work programmed focus is “to build trust for users and consumers; establish ground rules for the digital marketplace; enhance the information infrastructure for e-commerce; and maximize the benefits of e-commerce.” Some of the activities of OECD currently under way in the area of e-commerce includes: “implementing aspects of the OECD Guidelines for Consumer Protection in the Context of Electronic Commerce;”²²⁶ promoting the use of “privacy-enhancing technologies and user education and awareness about online privacy issues;”²²⁷ “studying the effects of e-commerce on cross-border trade in financial services, on contract law and on electronic delivery of insurance products;”²²⁸ and “disseminating its work on e-commerce to member and non-member countries through other international organizations.”²²⁹

²²³<http://www.itu.int/ITU-T/special-projects/ip-policy/final/Attach04.doc> (accessed: February 27, 2016).

²²⁴Ibid.

²²⁵http://www.oecd-ilibrary.org/science-and-technology/a-global-action-plan-for-electronic-commerce_236544834564 (accessed: February 4, 2016).

²²⁶ Ibid.

²²⁷ Ibid.

²²⁸ Ibid.

²²⁹ Ibid.

5.1.9. ICC:

The International Chamber of Commerce (ICC) was established in 1919, is a “world business organization that speaks on behalf of enterprises from all sectors in every part of the world. ICC promotes an open international trade and investment system and the market economy.”²³⁰

In “ICC e Terms 2004” the ICC has provided significant and adequate guidelines for the member states.²³¹

ICC is involved in e-commerce law issues on several fronts. Given its leading role in dispute resolution, ICC has shown a keen interest in developing dispute resolution for both B2C and B2B e-commerce. It has adapted for e-commerce its leading international trade rules, such as the Inco terms and the Uniform Rules for Documentary Credits (UCP 500).²³²

ICC is also involved in jurisdictional negotiations, privacy and electronic contracting, which is the back bone of current scenario of e-commerce. By adopting these laws and directives, we can protect the online consumers.

5.2 Jurisdiction in online commerce

To punish the wrong doers, jurisdiction plays an important role to determine the authority of the court or forum. Digital law has been designed, keeping in view that the Internet is borderless. “Many observers argue that without borders, the Internet is impervious to the real-space laws that mirror traditional geographic boundaries.”²³³

²³⁰ Ibid.

²³¹ <http://www.iccwbo.org/products-and-services/trade-facilitation/tools-for-e-business/> (accessed: February 12, 2016).

²³² http://www.oecd-ilibrary.org/science-and-technology/a-global-action-plan-for-electronic-commerce_236544834564 (accessed: February 4, 2016).

²³³ <http://www.itu.int/ITU-T/special-projects/ip-policy/final/Attach04.doc> (accessed: February 27, 2016).

Courts have to determine the jurisdiction, in any matter before taking cognizance of any case. Therefore, courts generally “accepted the vision of a borderless Internet as evidenced by their reluctance to even consider the possibility that geographic distinctions might be possible online.”²³⁴

In United States in 1997 in *ALA v. Pataki* case challenging a New York state law which sought to regulate obscene content found online, the court argued that “the Internet is wholly insensitive to geographic distinctions. In almost every case, users of the Internet neither know nor care about the physical location of the Internet resources they access.”²³⁵

Although in national jurisdiction, we don’t have any issue in applying the law to the offender, however, we have issue when applying to the cross-border offender. “Applicable law and choice of forum are distinct concepts that must both be addressed when addressing Internet jurisdiction concerns,”²³⁶ otherwise it will create many troubles for the courts as well as for the counsels. Applicable law refers to “which country's law will be applied to a particular dispute. While some contracts will specify which law governs should a dispute arise, where such a clause has not been included, it is left to the courts to determine which law should be applied.”²³⁷

For adopting a proper solution, we need to take help from International law, which can help the countries to get rid of this issue. There are few principles which are envisaged in the international law. Therefore, it is necessary to understand these basic principles first, and then apply the appropriate the most suitable principle for the UN member states to adopt the same.

²³⁴ Ibid.

²³⁵ Lorrie Faith Cranor, *Communications Policy and Information Technology: Promises, Problems, Prospects*(MIT Press, 2002), 85.

²³⁶ <http://www.itu.int/ITU-T/special-projects/ip-policy/final/Attach04.doc> (accessed: February 28, 2016).

²³⁷ Ibid.

The EU has adopted several regulations that “are relevant to the Internet jurisdiction issue. The primary source of law is the 1980 Rome Convention,²³⁸ which distinguishes between business and consumer contracts.”²³⁹ This Convention presupposes that “most business transactions will include a governing law clause such that the parties may determine for themselves whose law will apply. Where the parties have neglected to include a governing law clause, the Convention provides that the law of the country most closely associated with the contract will apply.”²⁴⁰

Online consumers are probably to rely on local law under the Rome Convention in EU countries. Thus, it provides that “where there is no governing law clause and the seller advertised its goods or services to the consumer, the law will be that where the consumer is resident.”²⁴¹ Furthermore, even if “there is a governing law clause, the Convention provides that such a clause will not exclude mandatory rules such as consumer protection regulations.”²⁴²

Furthermore, the 1968 Brussels Convention on Jurisdiction²⁴³ along with the 1998 Lugarno Convention²⁴⁴ provides that which court may assert jurisdiction.

These conventions (the Brussels and Lugarno Conventions) provide consumers with similar protections since they are entitled to sue in either their resident jurisdiction or in that of the seller. In the case of business transactions, the Conventions stipulate that the parties may decide themselves by way of a contractual provision. If they fail to do so, a business may be sued in the State in which it is domiciled.²⁴⁵

²³⁸80/934/ECC Convention on the law applicable to contractual obligations (Rome Convention).

²³⁹<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=URISERV%3A133109> (accessed: December 15, 2015).

²⁴⁰<https://www.itu.int/.../Attach04.d>(accessed: February 3, 2016).

²⁴¹Article 5 of the Convention on the Law Applicable to Contractual Obligations (80/934/EEC).

²⁴² Ibid.

²⁴³<http://curia.europa.eu/common/recdoc/convention/en/c-textes/brux-idx.htm> (accessed: January 15, 2016).

²⁴⁴ curia.europa.eu/common/recdoc/convention/en/c-textes/lug-idx.htm (accessed: January 15, 2016).

²⁴⁵<http://www.itu.int/ITU-T/special-projects/ip-policy/final/Attach04.doc> (accessed: February 27, 2016).

Chapter: 6

Consumer Protection in Online E Commerce Transactions from the Perspective of Islamic Law & Jurisprudence

Introduction

In this chapter an overview of consumer protection in Islamic perspective, especially focus on E-consumer will be discussed. Further, rights and responsibilities of the traditional and online consumer will be elaborated, besides other related matters will also be discussed.

6.1 The Concept of Consumer protection in Islamic Law

Shariah is a communication of Allah Almighty, related to the “acts of the subjects through a demand or option, or through a declaration.”²⁴⁶ Islamic law is derived from the revelation of Allah which “makes it distinct from other legal systems of the world. There are four sources of Islamic law the Qur’an, the Sunnah of the Holy prophet Muhammad, (s.a.w.s), Ijma, Qiyas and Ijtihad.”²⁴⁷ The range of Shariah is very broad. “It covers almost all areas of human interest such as contracts, torts, criminology, international law, administrative law, gifts, wills, pre-emption, trust etc.,”²⁴⁸ and the consumers.

Consumer protection and business ethics are amongst the more important aspects of human being’s dealings with each other. In Islam, the rights and obligations of an individual towards others are stressed heavily. Where violations occur, the prerogative of forgive or otherwise is vested in the affected individual. Allah’ forgiveness or otherwise in such cases is dependent on the will of the individual sinned against; if he does not

²⁴⁶ Imran Ahsan Khan Nayzee, *Outlines of Islamic Jurisprudence* (Lahore: Federal Law House, 2008), 32.

²⁴⁷ Ibid.

²⁴⁸ Muhammad Akbar Khan, “Consumer Protection in Shariah and Law: A Comparative Study of Product Liability in Islamic and English Laws,” (PhD Diss. International Islamic University, Islamabad, 2015), 53.

forgive, Allah will punish the defaulter. Therefore, it is imperative for the individuals to deal with fairness in trade and commerce as well.²⁴⁹

The Arabic equivalent for the term “Consumer Protection” is “*himayat-al-mustahlik*.” Mustahlik is the agent noun (*Ism al-fail*) from the word *Istihlak* (consumption).

The word (*Istihlak*) is used by earlier jurists for the meaning of wasting i.e. converting something from beneficial form to non-beneficial form. Beneficial means it is used for the purpose it is made. Fiqh encyclopedia of Kuwait has used the term that it is conversion of something from being beneficial, for which it was actually made, to a non-beneficial form.²⁵⁰

The modern Muslim scholars have defined *Istihlak*(consumption) that is “spending of money and losing of something its original shape or conversion of something from one form to another like cotton to dress or uniform etc.”²⁵¹

6.2 Rights and responsibilities of the consumers under Islamic law²⁵²

In Islamic Law a consumer is “expected to behave rationally while satisfying his needs.”²⁵³ Shariah commanded Muslim consumers to consume only good, useful and pure products and services.

They are asked to avoid wasteful and unnecessary things.²⁵⁴ This gives great freedom of choice to different people according to their social and traditional requirements in consuming products and services unless they are contrary to Shariah.²⁵⁵ It has put

²⁴⁹ Kishwarkhan and SarwatAftab, Consumer Protection in Islam: The Case of Pakistan, *Australian Economic Papers* (2000): 486.

²⁵⁰ Ibid.

²⁵¹ Khan, “Consumer Protection in Shariah and Law: A Comparative Study of Product Liability in Islamic and English Laws.” 54.

²⁵² Ibid., 60.

²⁵³ Quran, 25:67.

²⁵⁴ Quran 23:5; 2:172; 5:5; 16:114; 5:4; 2:254; 17:29; 2:173; 6:146.

²⁵⁵ Afzal-ur-Rehman, *Economic Doctrines of Islam*, vol. II, 8.

restriction that consumption should be from halal means on halal products and services.²⁵⁶

The believers should avoid the consumption of haram products.²⁵⁷ The general principle regarding things is “permissibility unless that is prohibited by Shariah. Therefore, Muslim Jurists did not explain lawful consumption in much detail as they are profoundly defined by Shariah while they have explained in detail the unlawful consumption such as wine, pork, dead animal and blood etc.”²⁵⁸

Thus, consumption will be valid only “if it is made from the lawfully earned wealth. Umer said that I see this mal will not benefit unless, it is taken by the right and given in the right prevents you from *batil*.”²⁵⁹ Spending on one’s self, wife, children, and family as well as on needy people such as widow, orphans and the poor are highly encouraged by Shariah.²⁶⁰ The famous proverb “charity begins at home explains very well the significance of the above principle of Islam.”²⁶¹ Islamic Law has asked people to follow a middle path between materialism and asceticism.²⁶² It forbids “excessive expenditure on gratification of personal desires and condemns abstention from the enjoyment of pure things.”²⁶³ It has ordered people to “look after their wealth and spent it wisely on satisfaction of their wants. Islamic law goes to the extent that it can even impose interdiction (*hajar*) against those who are spendthrift or wasting their wealth.”²⁶⁴

²⁵⁶ Qur’an has provided a clear concept of permissible (*Halal*) and impermissible (*Haram*); Qur’an:5:1,5:5,16:114,22:28,22:30;2:219,5:3,6:145,16:115,5:90.

²⁵⁷ Qur’an 2:267;62:10;4:32;2:198;78:11;7:10;73:20;2:173;6:145,16:115,5:90.

²⁵⁸ Usama Muhammad Al abd, *Nazriat ilistihlak*, (PhD destt. Al-Azar University), 21.

²⁵⁹ Abu yusaf, *Al-kharaj*, 127.

²⁶⁰ Qur’an,2:215.

²⁶¹ Khan, “Consumer Protection in Shariah and Law: A Comparative Study of Product Liability in Islamic and English Laws,” 61.

²⁶² Ibid.

²⁶³ Qur’an,5:90; 7:157;2:168;6:142;2:60.

²⁶⁴ Qur’an ,4:5

6.3 Consumer Protection in E-commerce Transactions:

According to different scholar Islamic law deals with a significant complication of its commercial law “that is extremely different to the Western approach to the same branch of law.”

²⁶⁵ This is generally level of source of law is different from each other. “The Prophet was a merchant engaged in commercial practices, and he specifically permitted some of them and forbid others.”²⁶⁶ It is valid for all the times, some directions are held in the Qur’an and consequently have the status of Divine Command; whilst “others are set forth in the Sunnah, or true reports about the acts and word of the Prophet. Therefore a great number of principles of Islamic commercial law are sacred prescriptions for which a very narrow range of interpretation is allowed.”²⁶⁷ Search of Knowledge is recommended under the Islamic law. “We have a number of examples of such prescription in many Suras of the Qur’an. This is also very clear from some of the Sayings of the Prophet Muhammad (pubh).²⁶⁸ Once He said: “He who seeks knowledge in any way, God would lead him to heaven, and angels would put their wings for him”²⁶⁹; in another he also stated: “He who seeks knowledge would be rewarded twice if he accomplished its objectives, and would be rewarded once if he did not succeed.”²⁷⁰ The gaining and proper usage of knowledge is important under Islamic law which is derived from verses of the Qur’an and Sunnah of the Holy Prophet Muhammad (Pbuh).

²⁶⁵ Mancuso Salvatore “Consumer Protection in E-Commerce Transactions: a First comparison between European Law and Islamic Law,” *Journal of International Commercial Law and Technology* 2 (2007): 1-13.

²⁶⁶ Ibid.

²⁶⁷ The PCA/Peace Palace Papers, “Strengthening Relations with Arab and Islamic Countries Through International Law: E-Commerce, the WTO Dispute Settlement Mechanism and Foreign Investment”, Kluwer, 2002.

²⁶⁸ Surat Al Alaq 96:1-5 “Read” is the first word of the Prophet’s Revelation to direct Muslims to the acquisition of knowledge”; in SuratFater 35:28 it is stated: “Among his servants, who have knowledge for God is exalted ...”; but other examples can also be quoted.

²⁶⁹ Collection of Sunan Abu Dawud, n. 3157.

²⁷⁰ Collection of Sunan Al-Darimi, n. 339.

Therefore there is nothing in principle in the Shari'ah that "forbids the acquisition of the advanced knowledge coming from the use of the new technologies and to use it for the benefit and the prosperity of the people."²⁷¹ Shari'ah makes no difference "among the different kind of technologies, thus admitting all of them, including the ones necessary for the e-commerce transactions; then electronic communication technologies do not violate Shari'ah precepts."²⁷²

²⁷¹Salvatore "Consumer Protection in E-Commerce Transactions, 4.

²⁷² The PCA/Peace Palace Papers, "Strengthening Relations with Arab and Islamic Countries Through International Law: E-Commerce, the WTO Dispute Settlement Mechanism and Foreign Investment."

Chapter: 7

Consumer Protection in Online E-Commerce Transactions in Pakistan

Introduction

In preceding chapter it has been discussed and pointed out the Islamic principles regarding E-consumers. This chapter analyses the origin of E-consumer protection laws in Pakistan. The chapter has discussed traditional and E-consumer laws such as Electronic Transactions Ordinance, Electronic Crimes Act (ECA) and Data Protection Act (DPA). Moreover, the chapter has also assessed the trends in Pakistan towards E-commerce and main approaches regarding legislation of the E-commerce.

7.1 The Origin of E- Consumer Protection laws in Pakistan

Electronic commerce, also known as online consumer shopping,²⁷³ has become one of the fastest growing forms of commercial transacting worldwide.²⁷⁴ Na Ling and Ping Zhang argue that “online shopping has become the third most popular internet activity, following e-mail usage and web browsing.”²⁷⁵ Convenience, competitive prices, efficiency and saving on time and travel costs are some of the reasons why online shopping is growing and becoming institutionalized.²⁷⁶ Further, online shopping can be done at any time of the day and anywhere, as opposed to offline

²⁷³Na Li and Ping Zhang, “Consumer Online Shopping Attitudes and Behavior: An Assessment of Research” (2002) Eighth Americas Conference on Information Systems at 508.

²⁷⁴ Ibid. Li and Ping argue further that online shopping has become one of the most essential characteristics of the internet or World Wide Web era.

²⁷⁵ Ibid.

²⁷⁶Erin Ann O’Hara ‘Choice of Law for Internet Transactions: The Uneasy Case for Online Consumer Protection’ (2005) University of Pennsylvania Law Review 153 at 1883. In this study, O’Hara argues that millions of consumers regularly buy goods online and that this has become a billion dollar industry. The reason for the growth every year is attributed to efficiency benefits regarding online purchases and that vendors are able to save large amounts of money which are normally associated with maintaining a fully-fledged shop and employment of personnel. For these reasons, internet transactions will continue to be a huge success

shopping which requires the consumer to physically visit the shop in question. It can then be declared without a doubt that “internet and electronic commerce have emerged as the emblems of a worldwide virtual economy.”²⁷⁷

The electronic commerce (e-commerce) phenomenon started in other countries during the 1990s²⁷⁸ and according to International Telecommunication Union (ITU), since mid-1990s availability of Internet access facility in Pakistan. In 1995 nationwide local call network was started through PTCL.

7.2 Consumer Protection Laws in Pakistan:-

Presently there are four consumer protection laws in force in Pakistan, namely:

1. The Punjab Consumer Protection Act, 2005.
2. The Baluchistan Consumer Protection Act, 2003.
3. The NWFP Consumer Protection Act, 1997.
4. The Islamabad Consumer Protection Act, 1995.

7.3 E-Consumer Laws in Pakistan:

Federal Government and Provincial Governments of Pakistan should develop or maintain a strong consumer protection policy, taking into account the guideline and relevant international agreements. “In so doing, each Government should set its own priorities for the protection of consumers in accordance with the economic, social & environmental circumstances of the

²⁷⁷Madeleine de Cock Buning, Ewoud Hondius, Corien Prins and Marc de Vries, “Consumer Protection.EU. An Analysis of European Consumer Legislation in the Information Society” *Journal of Consumer Policy* 24 (2001): 281-294.

²⁷⁸Ibid.

country and the needs of its population, bearing in mind the costs & its benefits proposed measures.”²⁷⁹

7.4 Electronic Transactions Ordinance (ETO)²⁸⁰

Electronic Transactions Ordinance is the regulatory regime in lieu of covering date collection and communication dealing which was incepted in 2002. The electronic signatures and safeguarding the important public documents is its main subject by considering the model law on e-commerce (UNCITRAL²⁸¹) and e-signatures. The owner’s privacy pertinent to the hardware including “spam and virus” is safeguarded like “Denial of Services (DoS)”. Actually, it was established by keeping the issues pertinent to the commerce, whereas, it wants the legal provision regarding creating any commercial interest to comprehend the legal functioning atmosphere. Moreover, there is no provision regarding the sale, purchase of the real estate, negotiable instrument, and electronic transaction dispute resolution. Thus, it is dire need of the time to enable the ordinance in a position to find out the solutions for the problems facing by the people²⁸²²⁸³

7.5 Electronic Crimes Act (ECA)²⁸⁴

The Electronic Crimes Act is the only law which deals with offences occurred in the electronic realm, and also has the jurisdiction over issues pertinent to the extraterritorial aspect in international law which was incepted in 2004. After the promulgation of this act, sections 36 and

²⁷⁹ “The United Nations Guidelines for Consumer Protection”, Resolution No.39/248, dated: 09.04.1986 as expanded in 1999.

²⁸⁰ <http://www.privacyinternational.org/countries/pakistan/e-transactions-2002.pdf> (accessed: January 23, 2015).

²⁸¹ United Nations Commission on International Trade Law.

²⁸² Sarfraz, ”E-Governance: A case for Good Governance in Pakistan,” University Institute Of Europe Studies; Lirnesuia, January 19, 2007

²⁸³ Jamil, Zahid U. 2004. E-Commerce Law in Pakistan. Jamil&Jamil Advocates. See:

http://www.jamilandjamil.com/publications/pub_reports/IBP%20Paper%20151004.pdf.

²⁸⁴ <http://www.tremu.gov.pk/tremu1/workinggroups/pdf/ProposedE-Crimsssss>

37 of ETO²⁸⁵ are formally omitted. It is far-reaching in nature, handling cyber-terrorism, coordination responsibility, E-fraud whether financial or else, E-forgery etc. Though, the defamation is well defined under section 499 Pakistan Penal Code but the application of this section is not quite cleared whether it is applicable in the electronic sphere like online discussions forums including blogs. Thus, the act is a milestone in the world of e governance which safeguards the rights of the all stakeholders.²⁸⁶

7.6 Data Protection Act (DPA)²⁸⁷

Date protection Act is the only law in which the sensitive date of the people is protected that was incepted in 2005. The act regulates the e-governance, safeguards the benefits of government and people as well. It describes the date which is protected under the law if found violated then penal action can be taken against the wrong doers. It provides the arbitration and dispute resolution relating to the scope of the case. The burden of proof can easily be laid upon owner of the date sufficiently protecting the system. Thus, the effective governance can only be possible if the date relating to the electronic system is protected for that the act is a milestone in the e-world²⁸⁸.

7.7 Internet Banking/E-Commerce²⁸⁹

One of the wide-ranging systems for transferring funds through internet is regulated by (PSEFTA²⁹⁰) which was incepted in 2005 by the State Bank of Pakistan. The fraudulent transfer pertinent to the electronic money is regulated by this act which provides governance procedures according to regulations presented by the State Bank of Pakistan. The ETO is deemed to be

²⁸⁵Electronic Transactions Ordinance.

²⁸⁶Sarfraz, "E-Governance: A case for Good Governance in Pakistan," University Institute Of Europe Studies; Lirnesuia, January 19,2007.

²⁸⁷ http://www.pseb.org.pk/UserFiles/document/Data_ProtectionAct_Draft_2ndWorkshop.pdf

²⁸⁸Sarfraz, "E-Governance: A case for Good Governance in Pakistan,

²⁸⁹http://www.sbp.org.pk/lsd/PS_EFT_Act_2005.pdf

²⁹⁰Payment Systems and Electronic Funds Transfer Act

exemplary enactment regarding providing in detail definitions of transactions by this act which also regulates all the transactions pertinent to the electronic money. The Information Technology policy after its promulgation, introduced the ATM as functional for the first time. City Bank introduced first Electronic Payment Gateway as Internet Merchant's Account which got the Global Finance 2006 Award for "World's Best Internet Banks in Asia"²⁹¹²⁹². E-banking was promoted by the Central bank in 2002 which provides One-Link mechanism for reducing costs pertinent to the transactions for the banks²⁹³.

7.8 Telecom Consumer Protection Regulations

One of the ways of protecting the consumers from unfair practices is the Telecom Consumer Protection in which consumers welfare is taken into consideration for having good governance. It is essential to have e-laws in which rights of all the stakeholders are preserved and should not be infringed at any cost. Tax e-filing system is introduced for having good governance in accordance with the norms settled by International Organizations²⁹⁴.

7.9 Trends in Pakistan towards E-Commerce:-²⁹⁵

In the business world developing trend is an information technology in E-commerce.

The corporate and the business world, aptly supported by the IT industry, already stands transferred, which by recent estimate will exceed \$400 billion this year. As we start warming up to global e-commerce in Pakistan, we must understand that almost 78 per cent of the e-commerce activity takes place in the USA, obviously driven by the use of internet in that country. As the January 2000, over 110 million people have internet

²⁹¹<http://www.citigroup.com/citigroup/press/2006/060905f.htm> (accessed: February 12, 2016).

²⁹²Sarfraz, E-Governance: A case for Good Governance in Pakistan.

²⁹³: <http://www.bwtp.org/arc/arc/documents/PoliciesRegulationfore-Bank.pdf> (accessed: February 12, 2016).

²⁹⁴Sarfraz, "E-Governance: A case for Good Governance in Pakistan.

²⁹⁵Karim, future of E-commerce in Pakistan:

http://www.beonlinesolutions.com/future_of_ecommerce_in_Pakistan.asp (accessed: May 26, 2016)

access there compared to 279 million the world over the amount of internet users are speeding up day by day all over the world and same is the trend with Pakistan. In 1995, the number of internet users in the world was almost 16 million but in 2010 it fly high to almost 1600 million. This shows that the internet usage is increasing with the passing minute and this will grow more rapidly.²⁹⁶

In 1995, almost .01% of Pakistan population use internet but in 2010 this rate goes high and now it's almost 15.1% of the total population. "The people in Pakistan are slowly getting aware of the fact that business on the internet is less costly and are more beneficial. Nevertheless, Pakistan can make good use of this opportunity with proper planning and execution."²⁹⁷

7.10 Pakistani Government steps towards E-commerce:-

Government of Pakistan is being performed some activities which are as under.

1. Foreign Investment

Foreign investors are allowed to invest up to 100% in software companies, and "foreign interest in Pakistan's technology sector has been increasing. Local entrepreneurs have set up around 100 call centers in recent years in Pakistan; one of the first was a call-centre that Align Technologies (US) set up in 2000."²⁹⁸

2. Consumer Protection

The President passed the Electronic Transactions Ordinance and later on, same was extended to the coverage of laws concerned with physical contracts or documents to their electronic form

²⁹⁶http://beonlinesolutions.com/future_of_ecommerce_in_Pakistan.asp (accessed: May 23, 2015).

²⁹⁷ Ibid.

²⁹⁸[http://www.ciitlahore.edu.pk/pl/abrc/Proceedings/All%20papers/Entrepreneur%20Opportunities%20for%20Mobile%20Phone%20Industry,%20\(faiz%20shaikh\).pdf](http://www.ciitlahore.edu.pk/pl/abrc/Proceedings/All%20papers/Entrepreneur%20Opportunities%20for%20Mobile%20Phone%20Industry,%20(faiz%20shaikh).pdf) (accessed: October 18, 2015).

3. Basis of Tax

No rules have been established on how to tax e-commerce or determine "electronic residence" in Pakistan.

4. E-Commerce as a course

After the government realizes "the importance of e-Commerce, they asked all the universities to make e-Commerce the part of their syllabus."²⁹⁹

Barriers to Face in E-Commerce

In Pakistan, e-commerce is "still in its infancy and faces many barriers to grow."³⁰⁰ The remarkable barriers are:

- a. Misapprehension of e-Commerce in Pakistan
- b. Mistrust³⁰¹
- c. Low Literacy speed
- d. Technology access is late
- e. Government Policies
- f. Unavailability of proper infrastructure³⁰²
- g. Limited user of internet hardly one per cent of the entire population have access to the internet³⁰³
- h. The issue of security of transactions on the internet³⁰⁴
- i. High bandwidth rates³⁰⁵
- j. The rigid and monopoly role of the PTCL³⁰⁶

²⁹⁹<http://ezinearticles.com/?Future-of-E-Commerce-in-Pakistan&id=1974082> (accessed: October 18, 2015).

³⁰⁰ Ibid

³⁰¹ Ibid

³⁰² Ibid

³⁰³ Ibid

³⁰⁴ Ibid

³⁰⁵ Ibid

However, the Government has recently put a crack “on the barriers when it approved the merchant ID accounts to facilitate online transactions. But there is still a long way to go and requires government to continue to grease the wheels of e-commerce to speed up the process.”³⁰⁷

7.11 Main Approaches to E-commerce Legislation in Pakistan³⁰⁸

For the most part, e-commerce regulations “in the various countries have been offered in a piecemeal fashion, with national governments attempting to fit cyberspace within the four corners of their familiar domestic jurisprudence.”

In most cases they have taken a ‘functional equivalent’ approach to rule-making, analyzing the role currently played by a particular legal rule in the non-digital commercial world, identifying how the same function could be achieved in electronic transactions, and extending the existing rule by analogy to cyberspace. Legislatures and regulatory agencies around the world have taken divergent approaches in their effort to take advantage of the emerging technologies.³⁰⁹

A review of legislative and regulatory efforts reveals three basic approaches:

- a. Minimalist approach
- b. Prescriptive approach
- c. Two-tier approach.³¹⁰

³⁰⁶ Ibid

³⁰⁷ Ibid.

³⁰⁸ Aly khan tamioor .

³⁰⁹ Ibid.

³¹⁰ Ibid.

a. Minimalist Approach:

This approach aims to facilitate “use of electronic signatures generally, rather than advocate a specific protocol or technology. Traditional common law countries, such as, Canada, US, UK, Australia, and New Zealand, have tended toward the minimalist approach.”³¹¹

b. Prescriptive Approach: This approach often stems from a desire “to establish a legal framework for the operation of PKIs as well as a reflection of form and handwriting requirements that apply in the offline world.”³¹²

Legislation and regulations enacted under the prescriptive approach adopts asymmetric cryptography as the approved means of creating a digital signature; imposes certain operational and financial requirements on certificate authorities (CAs); prescribes duties of key holders; and defines circumstances under which reliance on an electronic signature is justified. This prescriptive approach allows legislatures and regulatory agencies to play a direct role in setting standards for and influencing the direction of new technologies. Civil law countries have tended to opt for the prescriptive approach viz., Germany, Italy and Argentina.³¹³

c. Two-tier Approach

Some jurisdictions began to realize that “the first two approaches are not necessarily mutually exclusive, and so adopted a “two-tier” approach representing a synthesis of the first two approaches.”³¹⁴

This consolidated approach generally takes the form of enacting laws that prescribe standards for operation of PKIs, and concomitantly take a broad view of what constitutes

³¹¹ Ibid.

³¹² Ibid.

³¹³ Ibid.

³¹⁴ Ibid.

a valid electronic signature for legal purposes. The “electronic signatures” are generally given minimum legal effect, while the “secure electronic signatures” are entitled to an additional presumption of integrity, a presumption that the signature is that of the person with whom it is associated, and a presumption that the user affixed the signature with the intent of signing or approving the document. This two-tier approach has found increasing support, most notably in the European Union and Singapore. Pakistan has also followed “two-tier” approach in legislating the Electronic Transactions Ordinance in 2002.³¹⁵

³¹⁵ Ibid.

Chapter: 8

Conclusion and Recommendations

8.1 Conclusion

Buying and selling online raise legal challenges that have to be addressed by both Government and the industry itself. The present legislation is not keeping pace with the advancement in the field of Information Technology and Communication. Available legislation is centuries old and is unable to criminalize many acts, hence there is a gap between crimes and legislation. Without fulfilling these gaps, it is very difficult to punish any criminal. Therefore, there is an immense need to bring Pakistani laws into lines with leading international legal instruments to favor cross-border ecommerce. Furthermore, Government of Pakistan need to adopt laws in legal areas where they do not have any legislation. In doing so, Pakistan should coordinate with International organization which are working on e-commerce, cloud computing and e-government to adopt common key principles which will facilitate the delivery of all these services. Furthermore, Pakistan need to ensure the enforcement of laws both domestically and across borders.

Many international organizations as well as regional organizations have provided protection in online E-commerce Transactions. Moreover, many developed has also legislated on emerging protect the E-consumers. Pakistan is far away from these enactments, if these best practices are adopted and applied in Pakistani legal system, then we will be able to control this situation. Otherwise, Pakistani e-consumers will be suffered; moreover the Pakistani client will not be able to get justice from anywhere due to non-availability of such legislation.

Consumer plays an important role for development of any country, in this way the GDP is increased and country progress. Whereas the consumer is not protected and he is subject to attack from different channels and he is not satisfied, then the market will also destroy. In present era, the market is shifting from old methods to the online market. Therefore, it is need of the present scenario to provide proper safeguards to the consumer to build his trust on existing system and improve the development of the country.

To support the efforts of Pakistani legislature in combating the cybercrimes, “assistance from the regional integration communities and development partners in general should be sought to ensure compatibility of laws to foster cross-border e-commerce. Long-term capacity-building programmers should also be addressed to ensure law enforcement and ultimately the use of e-commerce.”³¹⁶ Online ordered goods are not delivered as per request of the consumer, therefore, it is mandatory to provide the proper legislation to protect the online consumer and online industry.

8.2 Recommendations:

1. Code of Criminal Procedural 1898 should be amended and it must be brought with the requirements of present era.
2. Law of evidence is not keeping pace with the advancement of technology. Therefore, new provision should be incorporated and existing laws should be amended to prosecute the criminal in proper way.

³¹⁶http://unctad.org/meetings/en/SessionalDocuments/ciiem5d2_en.pdf (accessed: May 23, 2015).

3. Summary trial should be introduced for online consumer's to provide them inexpensive and speedy justice.
4. Jurisdiction should be extended all over the Pakistan and for International issues, bilateral agreements must be signed. Further, International treaties, conventions should also be signed and rectified.
5. Government should notice the illegal deceptive practices to protect the innocent the online consumer.
6. Online consumer protection legislation should be introduced to protect the innocent online consumer and provide safety to online business industry.
7. ADR system should be introduced as a speedy system for redress of grievances of online consumers.
8. It must be ensured that the Regulators (quasi-Judicial Tribunals) must introduce a E-consumer complaint handling mechanisms which are accessible, reasonable, Independent, fair-minded, answerable, timely and effective. Such mechanisms should not Impose unreasoning fee, stays or loads on e-consumers.
9. Formation of Special Benches, like the Company Judges/Benches at the level of Hon 'able High Courts for addressing particular issues such as e-consumer laws.
10. Through various initiatives awareness should be promoted by all stakeholders and Clear information on e-consumer protection, rights and responsibilities should be easily open by e-consumers.

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