

CONSUMER PROTECTION IN ISLAMIC LAW: AN ANALYTICAL STUDY



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**(A dissertation submitted in partial fulfillment of the requirements for the award of
LLM/MS in Islamic Commercial Law)**

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**IN THE NAME
OF
ALLAH
THE MOST BENEIFICENT
THE MOST MERCIFUL**

(Acceptance by the Viva Voce Committee)

Title of Thesis:

**CONSUMER PROTECTION IN ISLAMIC LAW: AN ANALYTICAL
STUDY**

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CONSUMER PROTECTION IN ISLAMIC LAW (AN ANALYTICAL STUDY)

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DEDICATION

This dissertation is dedicated to:

My Parents

Mr. & Mrs. Said Nawab Khan

Who always supported me and always stood by me in good and bad times and made me what I am today and all the credit goes to them. Their prayers have been with me throughout my life.

"My Lord! Bestow on them Thy Mercy Even as they cherished me in childhood. "(Al-Isra: 24)

My Wife

For her support and co-operation

My Little Daughter Dua'

For making Life a Pleasure

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ABSTRACT

CONCUMER PROTECTION IN ISLAMIC LAW: AN ANALYTICAL STUDY

By
Muhammad Akbar Khan

Chairperson: Prof. Dr. Muhammad Zia'ul-Haq

This dissertation is basically to high light the position of Islamic law about the issues of consumers keeping in view the available legislation on the topic in Pakistan. A country like Pakistan where laws should be made in accordance with the injunctions of *Quran & Sunnah* such type of research is greatly required that kindle the path of *Islamization* of laws.

This manuscript is an attempt to take a broader view of key consumer issues from the perspective of *Shariah*. There are ever greater challenges for the Muslim consumers in the current scenario of materialism and lack of business ethics. This situation is worsening by lack of awareness about consumer rights, absence of concrete national legislation and policy and the strong judicial setup to enforce the piecemeal legislation. It is hoped that this research will open new dimensions of knowledge in the field of Islamic commercial law.

In chapter one an introduction of consumer protection is briefly discussed in order to understand significance of the topic. The basic concepts such as consumption, consumer, consumer interest, consumer law and consumer protection etc, are explained. The importance of the consumer interests is highlighted and the tools for its protection are discussed. The concept of a model consumer law is also elaborated in this chapter. The status of consumer protection in Pakistan is discussed in a bit detail at the end of the chapter.

In chapter two the concept of consumer protection in Islam is explained. The definitions of consumer, consumption, consumerism etc are given from the perspective of Islam. Islamic guidelines for rational consumption are also discussed here and the Holy Prophet is declared

as a role model for Muslim consumers. The chapter explains that how Muslim consumers should form their attitude towards consumption of goods and services. They should keep before them the teachings of Islam. By their positive attitude the consumers will be rewarded in this world and Hereafter. The chapter discuss that Islamic law is a complete legal system and it has rules and principles to govern the matters related to consumers.

In chapter three the Islamic concept of a just market system is explained. The chapter explains in detail the trade practices that have been encouraged by *Shariah*. But the main highlight is how Islamic law treats unfair trade practices such as *Riba*, Bribe, adulteration, fraud, cheating etc. and many verses and traditions are quoted in this respect. In fact Islam has given measurements to establish consumer friendly environment in the markets and to stop trade practices that affect consumers or violate any of their basic rights. The things that harm the consumers in any aspect are strictly condemned by *Shariah* while on the other hand it encourages the practices that ensure the protection of all necessary consumer interests.

In chapter four consumer protections provided in the Islamic law of Contract and commercial transaction is explained. Unfair contracts in *Shariah* are analyzed from the perspective of consumer protection. The principle of *Caveat emptor* is compared with *khiyarat* and it is advocated that the principle of *khiyarat* are more effective to protect consumers in contracts. The protection available to the consumers in the contract of sale and that of lease are mainly highlighted.

In Chapter five the means to protect consumers and tools for implementation of Islamic principles are explained. The chapter talks about the role of state and individuals concerning the protection of consumers. The institution of *Hisba* has great significance in this regard. Therefore special reference to *Hisba* is made in this Chapter.

Finally, the thesis has been concluded with the most important results that I have found with mentioning some recommendation concerning the subject of this research paper.

INTRODUCTION AND IMPORTANCE OF THE STUDY

The rights of consumers are an integral part of human rights agenda. In the 20th century many steps were taken by the International community to protect rights of the Consumers and eight basic consumer rights were recognized by United Nations. The main UN objective was to "assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers". These guidelines provide a framework to safeguard the consumers against deception, fraud and exploitation.¹ Today almost all the developed countries have promulgated laws related to the protection of consumers. Consumer law is "legal manifestation of the desire to protect the consumer interest". The interests (legal rights) of the citizens are protected when there are laws made for them. Talking specifically of consumer rights, there is a need for precise but well formulated consumer laws which will convert consumer interests into protected legal benefits. Precise legislation, utilization of every forum for redressal of complaints by citizens and clear mandate of various agencies involved will make the consumer protection system effective and efficient for the benefit of ordinary citizens.

The developing countries now following the developed countries in this regard and they have started consumer legislation. Consumer protection is an institutional mechanism, based on enactment of legislation followed by establishment of grievance redressal system. In developed world this sequence is preceded by efforts to raise awareness about its benefits. But the politics of business in developing countries results in dominant position of the sellers being more organized and having resources and information at their command. The consumers on the other hand are ill organized, lack resources and relevant information, which results in absence of resistance by civil society against onslaught of sub-standard products and services.²

The implementation of consumer protection legislations will lead to its evolution, which will ultimately result in its effective implementation. In this evolutionary process a lot of grey

¹See United Nations Organization Guidelines for consumer protection, 1985.

² See M J Leder, Consumer Law , 2nd Ed. P.6

areas may emerge like role of regulatory bodies, *mohtasib*, departmental redressal mechanism and price control system vis-à-vis consumer protection system.

Islam, as a matter of principle, prohibits all activities which may cause harm either to the traders or consumers. Whether the consumers are Muslims or non-Muslims they face similar problems. But Islam has an important significance over other systems of Consumer protection as there are a number of things prohibited by *Shariah* such as wine, pigs etc. Therefore Muslims are in great need to be aware about the products they use in their daily life whether they meet the religious requirements or not?

This research is basically to prove that Islam is a potential factor in shaping good consumer decisions.

2. STATEMENT OF THE RESEARCH PROBLEM

1. "What is Consumer Protection?"
2. "Why do we need consumer protection?"
3. "What are the basis of Consumer Protection in *Qur'an* and *Sunnah*?"
4. "What are the opinions of Muslim jurists regarding consumer protection?"
5. "How Common Law deals with consumer protection?"
6. What are the material differences between Islamic law & positive law regarding Consumer Protection?
7. "How an environment can be created whereby the interests of consumers are best protected under Islamic Law?"

3. HYPOTHESIS OF THE RESEARCH

"Islam as a Code of life gives a comprehensive framework for conducting business and protecting the consumers' rights. "

4. OBJECTIVES OF THE RESEARCH

The research is aimed to

- 1) Explore the concept and importance of Consumer Protection
- 2) Identify its legitimacy in *Qur'an & Sunnah*
- 3) Identify and analyze the opinions of Muslim jurists regarding consumer protection
- 4) Find out provisions of international convention regarding Consumer protection
- 5) Compare rulings of Islamic law and modern law regarding Consumer protection
- 6) To find out the relationship between Objectives of *Shariah* and Consumer Protection will be explained as *Shariah* orders for the Protection of Life and Property; Consumer's health and property should not be wasted.
- 7) Identify that how an environment can be created whereby the interests of consumers are best protected under Islamic Law.

5. LITERATURE REVIEW

There is not a single *Shariah* principle that does not guarantee the protection of human interest, and the Islamic law of contract and commercial transactions is no exception. In this research, prime consideration and efforts have to be made to highlight those aspects that are untouched by other researchers. It has been endeavored to describe the complete law of Consumer Protection in perspective of Islam with its amplification from the views of Jurists and existing Law. Focus has been made to bring out the benefits and effects of Consumer Protection on society. Unfortunately the issue is neglected in Islamic Countries, particularly in Pakistan, and the work done in this regard is not sufficient. I find it not covering the basic aspects of this topic, like the applicable law and court competency. Secondly most of them are in Arabic and very little is carried on in English language, and the fact is that a good number of people involved in such like transactions are ignorant of Arabic language. In order to serve better in this way I selected this topic for my research.

6. METHODOLOGY

1. It will be a descriptive and applied research.
2. Rules of library research have to be adhering too.
3. Principles of *ūsul-i-Fiq* have to be utilized in this research especially during the derivation of opinions of the Jurists.
4. Rules of Jurisprudence have to be applied for the collection of legal laws.
5. For the explanation of legal terms, dictionaries have to be consulted.
6. Methods of Islamic research have to be adhered for prime consideration to differentiating the authentic primary and secondary sources.

CHAPTER NO.1

INTRODUCTION TO CONSUMER PROTECTION

1. CONSUMER PROTECTION: BASIC CONCEPTS

Consumers, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private decision.¹ Consumers are the lifeblood of retail and satisfied consumers are the key to success for retailers. Human beings are consumers by default as consumption is basic to human survival and endurance. They have certain innate rights as consumers called “consumer’s rights” a concept very close to human rights.²

Before embarking on the topic of Consumer protection, we must understand the meaning of basic ideas relevant to our topic such as consumption, Consumer, Consumer Protection, Consumerism, consumer interest and consumer law etc.

1.1. CONSUMPTION:

The word consumption means the using up of goods and services. In modern economic writings it means, specially, “final” consumption as distinguished from the using of goods to produce other goods in industry. Final consumption must also be distinguished from the purchase by industry of fixed assets such as buildings and machinery, which is known as capital formation or investment. On the other hand, consumption expenditure by private person is understood to include durable goods, such as furniture or vehicles, as well as works of art that may even increase in value with the passage of time. Strictly, the acquisition of such goods should be considered asset formation rather than consumption

¹ President John F Kennedy, March 1962

² From the comparison of UN (1985) ‘guidelines for consumer protection’ and the UDHR (1948), both documents establish the basic rights for Human beings like Article 25 of UDHR “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services” same as the consumer rights established in the UN (1985) “guidelines for consumer protection” also established right to have adequate food, clothing, shelter, health care etc.

and should be classified with the acquisition of other assets such as houses, schools, roads, and hospitals.³

1.2. CONSUMER (Mustahlik)

The word consumer is derived from consumption and consumer is the one who consumes. Individuals who purchases, uses, maintain, and dispose of products and services. Users of the final product. A member of that broad class of people who are affected by pricing policies, financing practices, quality of goods and services, credit⁴ reporting, debt collection, and other trade practices for which state and federal consumer Protection laws are enacted.

Consumers are to be distinguished from manufacturers (who produce goods⁵), and wholesalers and retailers (who sell goods). A buyer (other than for purpose of resale) of any consumer product⁶, any person to whom any such product is transferred during the duration of an implied or written warranty (or service contract) applicable to the product, and any other person who is entitled by the terms of such a warranty (or service contract) or under applicable State law to enforce against the warrantor (or service contractor) the obligation of the warranty (or service contract).⁷

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

³ See, Consumption, Economic, *The New Encyclopedia Britannica*, vol 5, Edition 15.

⁴ Consumer credit means Short term loans to individuals for purchase of consumer goods and services.

⁵ Consumer goods are those goods which are used or brought for use primarily for personal, family or household purposes. Such goods are not intended for resale or further use in the production of other products. Contrasted with capital goods.

⁶ Any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes including any such property intended to be attached to or installed in any real property without regard to whether it is so attached or installed. *Black's Law Dictionary* 6th Ed.

⁷ See *Black's Law Dictionary* 6th Ed.

relation to: Goods, includes obtain by the way of gift, purchase, exchange, and taken on lease, hire- purchase: Services, includes accept; Interests in land, includes obtain by the way of gift, purchaser, exchange, tendency, or license.⁸

This broader concept of consumer protection has established consumption as a social process where one individual's consumption affects the others consumption pattern like a consumer products waste through his consumption of diesel; this affects the air consumption of pedestrians. These defects can be better solved under this definition.

The adoption of above view develops a relationship between state and consumer by improving the status of consumers from customer-citizen.

Customer having relationship with seller can only assert rights against seller (producer), but state has to provide protection directly to consumer-citizen as provider and guarantor of the basic utilities. This consequently provides three dimensional approaches to consumer movement as consumer-consumer, consumer-producer and consumer-state relationship. A consumer movement has to work in three dimensions through the filter of consumer interest.

The Islamabad Consumer protection Act, 1995 defines "Consumer" in the following way. It contains, in its interpretation clause, that "Consumer" means any person who;

- i. Buys goods for a consideration which has been paid or partly paid and partly promised to be paid or under any system of deferred payment or hire purchase and includes any user of such goods but does not include a person who obtains such goods for re-sale or for any commercial purpose; or
- ii. Hires any goods or services for a consideration which has been paid or promised or partly paid and partly promised or under any system of deferred payment and includes any beneficiary of such services.⁹

⁸ See Rachagan sothi. "The Asian experience with consumer protection law and redress mechanism", the paper was presented at 6th international conference on the issue of consumer protection in Malaysia organized by University of Malaysia.1997

⁹See Islamabad Consumer protection Act, 1995 Sec.2(c)

Consumers are now understood in its broad sense rather than stringent only to customers. This liberal interpretation is important for the poor who find no place in market to stand as "customers". Hence those are non-paying, marginalized and have not been customers, whether they may or may not be the customer still consume to survive and are within the scope of the "consumers".

This definition is in accordance with socio-political and economical needs of consumer-citizen in the developing countries, as this extended concept of consumer gives protection not just to consumers but to the marginalized consumers. Mohini Sethi and premavethy Seethraman, while presenting a broader view discuss consumer in different categories as;

- i. Sole consumers including the salaried class with limited resources available for consumer goods and services. This class also includes the ignorant and illiterate consumers who are unable to receive even essential item for their survival.
- ii. Rural consumers are those who are completely unaware of the happening around them, they consume what they produce and are unable to afford the basic necessities of life.

These categories can broaden the scope of consumer protection laws drafted in developing and under developing countries.¹⁰

However, no universal legal definition of consumer is available on text yet, however most of the writers do recommend the definition by Rachagan as a proposed definition of the term. This definition gives a broad aspect on one hand by including all who uses goods and services, while on the other hand it implicitly keeps out all business concerns. This again de-links the consumers from customers. This proposed definition itself is debated and the appositive view (Sethi & Seethraman) to it argues that "All business firms are consumer as much as they are producers".

¹⁰ Ibid.

It means that the word “consumer” includes all corporations and consumer protection is extended to all business entities. This is where the extended meaning of Consumer is curtailed, and limited only to corporations and other business entities that acquire or use a product or service as the end user (provided in Brazilian consumer protection code).

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

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

1.3. CONSUMER PROTECTION:

Consumer needs protection of their interests. Consumer constitutes demand side of the economic theory.¹¹ Without this demand there will be no supply, so consumer have immense power through their buying and numbers, and have detrimental impact on the supply side. With the recognition that consumption is a social process wherein consumer's interest provides a basis to promote consumer concerns, we do stand in to analyze what is the consumer's interest that has to be protected.¹²

Consumer interest:

The term Consumer interest is a subjective concept, hence every institution, state authority and individual claiming to have any concern with consumer interests, has given their own meaning to it. Consumer interest has to be adequately defined for the reason that its unquestionable utility in analysis contributes not only in drafting but implementation of consumer laws.

¹¹ See Ali Qadir, *The state of consumers in Pakistan*, The Network publication,

¹² See Ammra Waheed, *Consumer protection laws in Pakistan* (unpublished LLM Thesis)IIUI, p.21

i. Interest in survival

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

ii. Interest in opportunity to obtain goods and utilities

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

iii. Interest in market practices

The fundamental consumer interest is in fair market practices, such as provision of goods and services according to their need and requirement on fair prices, complete information about products, safeguards against dangerous products at all those practices which effect the consumer choices for example excessive advertising etc.¹³

iv. Other alternative and advanced interests:

There are other policies including trade, health and environmental policies which affect the consumer. It is in the interest of consumers that these policies should be oriented to consumer welfare. Consumer should be protected from intentional and inadvertent harmful state and market forces. State is considered to be the basic service provider and protector of fundamental rights. This notion of interest forces the idea of defending these interests where they are violated when the state is not fulfilling basic needs. The market might produce hazardous products requiring consumer movements to protect these interests.

¹³ Ibid.

The consumer rights can be secured if the Government shows serious concern towards making of a well documented consumer policy which is not only comprehensive but also well regulated. While processing the formulation of consumer policy, the government should consult other representative groups and organizations of consumers.

Furthermore, once a good policy document is made, it should be taken as a guide line for the judicial actions to be taken in this regard. In addition to it, the consumer policy should be flexible enough to invite new changes coming up due to the developments in this field. Such a policy should also require the involvement and co-ordination of all government agencies. Consumer policy should actively empower and support consumer organizations.

For a good consumer policy, the interest of the poor should be given paramount consideration. In this respect, article 25 of UN Declaration of Human rights says; "Everyone has the right to a standard of living adequate for the health and well-being of himself and his family; including food, clothing, and housing and medical care and necessary social services".¹⁴ A consumer policy should fulfill the requirements of this article in letter and spirit.

1.4. CONSUMERISM:

Consumerism is a wide and an expansive concept that initially speaks of 'consumers' and later on comes up describing their actions and participation in the world of market and production, their importance in the business world and most importantly the responsibilities which they have to fulfill while buying and using different products from the market.¹⁵ Describing the duties of the consumers, consumer international highlights five basic responsibilities which the consumers have to carry out:

- 1) To be vigilant and inquisitive about the price and quality of the products of daily consumption.

¹⁴ See Article 25 of *UN Declaration of Human rights*

¹⁵ See Ammra Waheed, *Consumer protection laws in Pakistan* (unpublished LLM Thesis)IIUI, p.23

- 2) To be sensitive towards the poor consumers and showing serious concern towards the society so that their consumption patterns do not adversely affect others.
- 3) To consume the goods while keeping in mind the environmental consequences and taking it as a social responsibility of every consumer.
- 4) To come and join there together and rise as a strong entity which can fight for its rights and interests and be protective their benefits.
- 5) To ensures that they are given justice and fair deals.

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

Generally speaking, the companies are very clever in attracting the consumers towards those products that are introduced by them in the market. In order to win the consumers believe trust they use all the possible ways, for example, attractive advertisements are the most effective tool these days. As a result, the consumers, besides buying these products, also pay the advertisement cost money which the companies add in the final price of their product. This unfair practice can only be stopped if the consumers object and raise their voices against the companies.¹⁶

1.5. CONSUMER PROTECTION LAW/LEGISLATION:

Today almost all the developed countries have promulgated laws related to the protection of consumers. The developing countries now following the developed countries in this regard and they have started consumer legislation. A state or federal government is required to formulate a statute designed to protect consumers against unfair trade and

¹⁶ Ibid.

credit practices involving consumer goods, as well as to protect consumers against faulty and dangerous goods.¹⁷

According to Rachagan consumer law is “legal manifestation of the desire to protect the consumer interest”¹⁸. The interests (legal rights) of the citizens are protected when there are laws made for them. Talking specifically of consumer rights, there is a need for precise but well formulated consumer laws which will convert consumer interests into protected legal benefits.

For this, a statutory structure of the consumer law which is nation-wide in its application should be made. Rachagan has proposed five headings for a Model consumer Protection Law;

1. Legal definition of the consumer
2. the scope of the Model code
3. The administrative structure for consumer protection
4. remedies and sanctions
5. facilitating redress

Rachagan further describes the scope of the Model law and he opines that the following main issues should be included in the consumer protection law;

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

¹⁷ See *Black's Law Dictionary* Seventh Ed 1999.

¹⁸ See Rachagan sothi. “*the Asian experience with consumer protection law and redress mechanism*”)A paper presented at 6th international conference on the issue of consumer protection in Malaysia organized by University of Malaysia.1997

9. Product and services liability¹⁹

In fact, Consumer policy and legislation in any country is considered to be the government's commitment towards protection of consumer interests.²⁰ The movement towards consumer protection law is owed mainly due to two factors. Firstly growth of Multinationals in the developed countries with pre-decided standard contracts necessitating protection to consumer. Secondly the United Nations guidelines on consumer protection passed in 1985.²¹ The initial work was done primarily by the Economic and Social council. Special emphasis was placed on problems in the developing countries.²²

2. HISTORICAL DEVELOPMENT OF CONSUMER PROTECTION

The history of consumer protection control of dishonest traders goes back to the Before Christ era, Ancient Mesopotamia, China and India all used to enforce laws related to short weighting, adulteration and harmful products. Food and drug laws were also legislated but all these laws were regulatory in nature and not as such responsive to different aspects of consumer's rights.

The background of consumer protection development in many countries is similar. Earlier, the mechanisms for consumer protection law were closely associated with local units of government, justices of peace as the official dignities of the county were responsible for maintenance of bridges, highways, paving, lighting and cleansing of streets. In seventeenth century, manorial courts known as 'courts leet' had a persistent role in safeguarding the trading standards and suppression of local nuisance, and in persistent role in safeguarding the trading standards and suppression of local nuisance, and in supervision of all other functions that we would associate with consumer

¹⁹ See Rachagan Sothi.. " *Model law for consumer protection in Asia-Reflection on its scope and content*" University of Malaysia's faculty of Law; Malaysia1997

²⁰ See, The Network for Consumer Protection. (*Beyond Consumption*).Unpublished Data.

²¹ See General Assembly Resolution 39/248

²² As clearly specified in *its objectives resolution 39/248*

protection and public health. Court of leet appointed an officer styled an 'aleconner', more like a modern weight and measure inspector, to examine pricing, weight and quality of bread, ale and beer for sale. Same system was also prevalent until sixteenth century in England (1664) to control coal price and weight.²³

The concept of consumer protection throughout the 18th century involved protection from excessive prices levied on primary commodities and protection from short measures. The statutes of these times, encompassing different jurisdictions, were related to certain price related items such as bread, beer, meat and fuel. These laws were not as such covering all aspects of consumer protection but were designed to keep the states regulatory role over some areas while neglecting important aspects of consumer protection. The motivation behind these laws was to protect the honest traders from unfair competitors. For instance, laws related to enforce uniformity in weight and measures as, the assize of bread and ale of 1226 laid down a scheme to control the amount of bread and ale. Similarly, the weight of bread was controlled by Bread Act 1836 which required bread²⁴ to be unadulterated and sold by weight. The reference to the uniformity in weight can be traced back to Magna Carta in 1225.²⁵

In the 20th century, consumer protection was placed under the supervision of special organizations which were specific to consumers 'rights like establishment of Office of Fair Trading in UK, federal consumer Agency in Alaska in 1930 and the consumers union 1936 in America. These lead to the formation of Consumers association in UK 1956, Consumer federation of America (1960) and many others in different countries. By the end of 1960, five main organizations had been formed in the developed part of the world,

- 1) Consumentenbond, Netherlands
- 2) Consumers Association, UK
- 3) Union Beldge des Consummatus, Belgium

²³ See Brian W Harvey and Deborah L Parry" *The Law of Consumer Protection and Fair Trading*", Fifth ed, London, Dublin & Edinburgh; Butterworth 1996,1-4

²⁴ Adulteration of bread is strictly prohibited (*Haram*) in Islam, See Chapter 3 of the thesis.

²⁵ Ibid

- 4) Union Federate de la Consommation, France
- 5) Australian Consumer Association²⁶

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

The introduction of the doctrine of **Caveat emptor** has also propelled the emergence of other independent and social bodies around the world which are concerned with the protection of the consumer's rights and interests against defective products. In Malaysia, the Consumer Association of Penang (CAP) is a good example.²⁷

In the United Kingdom, consumer law has moved away from the **caveat emptor** model, with laws passed that have enhanced consumer rights and allow greater leeway to return goods that do not meet legal standards of acceptance. Many companies operating in the UK, as well as most consumers based economies will allow customers to return goods within a specified period for a full refund, even if there is no problem with the product. Therefore, to understand the nature of consumer law in UK, we must analyze the common law principal of **caveat emptor**.

Caveat emptor is Latin for "Let the buyer beware".²⁸ Generally **caveat emptor** is the property law doctrine that controls the sale of real property after the date of closing, but now it is applied almost in sale of all types of properties, goods and products. The general principles which govern the doctrine of **caveat emptor** could be highlighted as follows:

- a) The seller is under an obligation to allow the buyer to inspect the goods so as to ensure that they are free from any defect before the conclusion of the sale and purchase contract;
- b) The seller is under no obligation to disclose to the buyer any existing defect in his goods and, hence, the seller has a right to remain silent;

²⁶ See Ammra Waheed, *Consumer protection laws in Pakistan* (unpublished LLM Thesis)IIUI, p.25

²⁷ See Billah, *Caveat Emptor Vs Khiyar al-ayb*

²⁸ See "Caveat emptor - Definition from the Merriam-Webster Online Dictionary" (HTML). Merriam-Webster, Incorporated. Retrieved on 30-03-2008

- c) The buyer has no right to return the goods or seek damages for any defect found in the goods after the conclusion of said sale and purchase agreement. This is because, as far as the doctrine of caveat emptor is concerned, the buyer has been given full right and liberty to inspect the goods before the agreement is concluded and any defect found after the conclusion of the said agreement due to careless inspection on behalf of the buyer will not bind the seller in any manner; and
- d) The seller is also under no duty to inform the buyer of his mistake in his inspection of the quality of the goods to be sold.

Thus, the doctrine of caveat emptor plays a vital role in protecting buyers and consumers against defective products. It may be summed up as follows:

- a) Prior to the sale and purchase agreement, the buyer has the right to inspect the goods in order to ensure that it is free from any unknown defect.
- b) In a sale and purchase agreement, if the seller purposely conceals any defect in the goods from the buyer, the buyer may, upon realizing the defect after the conclusion of the contract, rescind the contract and the seller may be found guilty of misrepresentation.
- c) If the seller is requested by the buyer to disclose any defect of the goods to be sold prior to the conclusion of the sale and purchase agreement, the seller must do so. If he fails to give such disclosure, or deliberately gives any misinformation on the quality or quantity of the goods, the buyer may rescind the agreement upon realizing the defect of the goods after the conclusion of the contract.
- d) When the buyer has a fiduciary relationship with the seller, the seller (regardless of any request from the buyer to disclose any defect of the goods) is obligated to disclose any defects. Should he fail to do so, the buyer has the right to return the goods and rescind the contract even if the goods were found to be defective after the conclusion of the contract.

Since the doctrine caveat emptor first gained its footing centuries ago, there have also been various laws and regulations enacted for the protection of consumers' legal rights and interests, including the buyer's right to inspect the goods so as to ensure that they fulfill certain expectations and are not defective. The United

Kingdom has the unfair contract Terms Act of 1977 (at s 4, 5, 6, and 12), and the Consumer Protection Act of 1961 and 1974, the Fair Trading Act of 1973. In Malaysia s 17 and 18 of The Contract Act of 1950 protect the consumers (buyer) from being cheated by the seller by way of fraud or misrepresentation. The Sale of Goods Ordinance of 1957 (at s.15, 16, 17, and 41) also provides protection of the consumer in the following ways:²⁹

- i. If there is an agreement for the goods to be sold by description, or by a particular purpose of the buyer on the goods known to the seller or the goods agreed by sample, in all circumstances the goods should correspond accordingly;
- ii. If there is a delivery of goods to the buyer which the buyer has not examined yet, the buyer has the right to examine them before a legal acceptance.³⁰

3. United Nations Organization Guidelines for Consumer Protection

In the 20th century many steps were taken by the International community to protect rights of the Consumers and eight basic consumer rights were recognized by United Nations. The main UN objective was to “assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers”. Further guidelines were set out where countries would be able to provide protection to consumers from hazards to their health and safety; to facilitate consumers to make informed choices, provision of adequate infrastructure to develop, implement and monitor consumer protection policies; enterprises are to follow not only indigenous laws but also international standards for consumer protection; that such provision should be consistent with international trade obligations.³¹

²⁹ See Billah, *Caveat Emptor Vs Khiyar al-ayb*

³⁰ Ibid.

³¹ See Zilli Atif, Prof. *Consumer Protection Law in Pakistan* Article published in Pakistan Law Journal, hereinafter referred to as PLJ, July 2008.

The member countries were further guided to ensure that goods produced were safe for either intended or foreseeable use³². Law should be passed that ensures the manufacturers to recall the product if hazards are discovered subsequently, or to replace, modify or substitute it. Following eight consumer rights are based on UN Guidelines for Consumers International charter of consumer rights. Consumers International is an umbrella body of more than 250 consumer organization from 115 countries.

- 1) Right to Basic Needs: It means the right to basic goods and services which guarantee survival. It includes adequate food, clothing, shelter, health care, education and sanitation.
- 2) Right to Safety: It means protection against products, production processes and services which are hazardous to health or life.
- 3) Right to be Informed: It means access to adequate information needed to make informed choice or decision. Consumers must also be protected from misleading or inaccurate publicity material.
- 4) Right to Choose: It means access to a variety of products and services of competitive prices, in case of monopolies, to have an assurance of satisfactory quality and services at a fair price.
- 5) Right to be heard: It means full and sympathetic consideration of consumers concerns in the formulation and execution of all policies that effect consumers directly or indirectly.
- 6) Right to Redress: It means the right to a fair settlement of just claims. It includes the right to receive compensation for misrepresentation of shoddy goods or unsatisfactory services and the availability of acceptable forms of legal aid or redress for small claims where necessary.
- 7) Right to Consumer Education: It means right to acquire knowledge and skills to be an informed consumer throughout life.
- 8) Right to Healthy Environment that enhance quality of life. It includes protection against environmental degradation over which the individual has no control. It

³² This would involve instructing consumer as to the proper use of goods and be informed of the risks involved in intended or foreseeable use.

acknowledges the need to protect and improve the environment for present and future generations.³³

Consumer responsibilities;

The following consumer responsibilities are also based on UN Guidelines for Consumers Protection 1985.

- 1) Critical Awareness be concerned and inquisitive about price and quality of goods and services and be updated about changes from time to time.
- 2) Action- assert by action to ensure fair deal. As long as consumers remain passive, they will continue to be exploited.
- 3) Social Concern- considers impacts of consumption patterns and lifestyle on other citizens, especially the poor, disadvantaged or powerless consumers.
- 4) Environmental Awareness- responsibility to realize the environmental costs and consequences of consumption patterns and lifestyle and act accordingly. It includes of individual and collective social responsibility to conserve natural resources for present and future generations.
- 5) Solidarity- responsibility to come together and be organized in order to enhance the strength and influence required to promote and protect consumers' interest.³⁴

4. CONSUMER PROTECTION IN PAKISTAN

4.1 A Brief History of Legal system of Pakistan:

Ever since South Asian subcontinent was conquered by Sultan Mahmud of Ghazni in 10th century A.D. and until the time British declared sovereignty over the South Asian subcontinent in 1857, the areas of the South Asian subcontinent that now comprise Pakistan were governed by Islamic system of laws. However, during the British rule in 1857-1947, the English laws comprising of legislation mirroring laws passed by English Parliament replaced all Islamic laws except for the Muslim family law, as the laws of the

³³ See <http://www.thenetwork.org.pk> last visited on 16-04-2008

³⁴ Ibid.

South Asian subcontinent. Further, English common law system of courts was also introduced.

The English laws, including English common law system have been retained by the Pakistanis as the Pakistani law even after the establishment of Pakistan. However, during the last sixty two (62) years of Pakistan's history, these laws have been Islamized within the structure of old English laws. As such, the Pakistani legal system is a hybrid of English common law and the Islamic law and therefore may be more appropriately referred to as the Anglo-Islamic law.³⁵

4.2 Brief Overview of 1973 Constitution

Ever since passage of Objectives Resolution in 1949, which provided official status to *Quran and Sunnah*, Pakistan has gone through lot of constitutional debate over three constitutions until it adopted its fourth constitution in 1973.

1973 Constitution prescribes a federation of four (4) provinces (Balochistan, NWFP, Punjab and Sindh) and certain federally administered areas (i.e. tribal areas, northern areas and Islamabad capital area) with a bicameral parliamentary system of Government with Prime Minister as the Chief Executive and President as the Head of State. The 1973 constitution also provides for three branches of Government: legislature (parliament, comprising of a National Assembly and Senate-most of the representatives of National Assembly members are elected from various geographical constituencies through one person one vote adult franchise and senators are either elected by the provincial legislators or are technocrats), executive (Prime Minister-a person elected from amongst National Assembly members, his/her cabinet and the Government bureaucracy) and judiciary (Supreme Court of Pakistan and subordinate courts). 1973 Constitution guarantees separation of powers between the three branches of the Government. However, despite this guarantee, as of today this separation has not been completed between the executive and the judiciary in respect of the magistrate powers of district administration officials, which date back to the British period.³⁶

³⁵ See Dr Sohaib Qadar, *Pakistan's Upstream Petroleum Laws and Related Legislation*, 2000, p23

³⁶ Ibid.

4.3 Overview of Laws Concerning Protection of the Rights of Consumers in Pakistan

Consumer protection in Pakistan, like in all other developing countries, started much earlier. Pakistan inherited consumer legislation from the pre-independence period, especially laws developed in the era of Ala ul Din Khalji (1296AD-1316AD) during Delhi Sultanate period. He introduced the consumer laws related to strict price-control measures and established separate shopping centers in Delhi for many food items. Sultan appointed market controllers and secret agents to submit independent report on price violation. The shopping centers were also under the control of commerce ministry that is why every merchant was registered with also under the control of commerce ministry that is why every merchant was registered with ministry of commerce.³⁷ Later British regimes (1765-1947) introduced many laws but the main purpose of these laws was to promote British interest, rather than the welfare of the civilians.

There are two types of legislation available in Pakistan for the protection of consumer. Firstly there are some general provisions which indirectly safeguards rights of the consumers such as Pakistan Penal code, Contract Act, Sale of goods Act, Dangerous Drugs Act etc. secondly the legislation which are made particularly for the protection of consumers such as Islamabad Consumer Protection Act, NWFP Consumer Protection Act etc. These Acts directly protects rights of the consumers for smooth running of trade in the market.

The Pakistan penal code 1860, the Dangerous Drugs Act 1930 and the Sale of Goods Act 1930 were the enactments of that time to control trade and the law & order situation and less focused on consumer protection usually provided to citizens.

The independent Pakistan is still striving for a strong consumer policy and specific consumer legislation. Half of our history is under the martial law, which suppressed consumer movements.

³⁷ See Ammra Waheed, *Consumer protection laws in Pakistan* (unpublished LLM Thesis)IIUI, p.6

The earlier legislation in Pakistan treating the consumers is deficient in express consumer welfare thinking. For example, Pakistan has two kinds of anti-trust or price-fixing legislation³⁸, one which is directly related with anti-trust or price fixing matters like “Price Control and Prevention of Profiteering and Hoarding Act, 1997(PCPPHA), while the other indirectly deals with price fixing and specifically with restrictive trade practices like, Monopolies and Restrictive Trade Practices Ordinance 1970. These statutes are concerned with consumer related issues but there is no express provision for consumer participation in it. Consequently consumers as an independent and interested party excluded in price fixing process and the matter dealt with from a governmental perspective. The decisions under these Acts are mostly under the pressure of powerful multinational suppliers.³⁹ Food and Drugs laws⁴⁰ are comprehensive in nature but they do not cover the issues like false and misleading description of goods and services by imposing criminal sanctions on wrong doers.

The other two statutes such as Contract Act 1872 and the Sale of Goods Act are important in this regard but they require the consumer to be vigilant by themselves as “Caveat Emptor” can’t work in this globalize world. These laws are promulgated in order to regulate the commercial practices and consumer protection as such has never been a central theme of these laws.⁴¹

In Pakistan, first official step was taken in 1995 towards comprehensive consumer legislation, but on the provincial rather than national level. Islamabad Consumer Protection⁴² Act 1995 promulgated by Federal Government is effective in many respect but as its scope is restricted to Islamabad territory while each province is supposed to have its own legislation regarding consumer protection. Islamabad Consumer Protection

³⁸ See Sikandar Aqeel Ansari and Abrar Hafeez, *Consumer Laws in Pakistan*, Consumer Rights Commission of Pakistan (2000), Volume II(See Introduction to Volume I).

³⁹ Ibid.

⁴⁰ See Drug Act, 1976 and West Pakistan Pure Food Ordinance, 1960

⁴¹ The Network for Consumer Protection (Needs and element of consumer protection law) Manuscript submitted for Publication.

⁴² Ibid.

Act was followed by North West Frontier province (NWFP) Consumer Protection Act in 1997, which was more or less a replica of Islamabad Consumer Protection Act.⁴³

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

In the Islamabad consumer protection Act, court of Sessions⁴⁴ has been empowered to hear consumer cases but given the heavy load of work in the court, quick disposal of consumer cases is inconceivable.

The Punjab Consumer Protection Act, 2005 spans over 39 sections and can be seen to be segmented into nine portions and the Act has added a new much needed dimension to the legal framework. However, the following problems remain;

- 1) There is a problem of defining the exact perimeters of the word "consumer". The Act already transgresses and overlaps with other fields of law and it is important to determine the confines of this Act. Is a tenant a consumer? Or a hospital patient in a free medical facility? Or a student whose education is government subsidized? Is a pedestrian who inhales the polluted air a consumer? This problem is further complicated because the Act seeks to cover both products and services.
- 2) Whether the jurisdiction of the court Civil or Criminal? The term used are "Claimant" and "defendant"; the procedure to be borrowed from civil procedure code. Yet there are penal clauses and sections borrowed from P.P.C. and Cr. P. C. has been incorporated. This would leave room for misuse of power by the court.
- 3) Another problem is relating to the lack of awareness about the Act. Due to a general dearth of developed Tort Law, the liability principle is not well recognized in the

⁴³ <http://www.crcp.org.pk/un-guide.htm> Last visited 05-04-2008.

⁴⁴ See Islamabad Consumer Protection Act, 1995

society. Therefore people lack consumer consciousness. An awareness campaign is therefore necessary to recap the fruits of the Act in letters and spirits.⁴⁵

In fact there is great need of a national Consumer Protection law in the country .The purpose of the law shall be to inform the consumers about their rights; determine, promote, protect and formulate policies in this respect.

In a country like Pakistan where even the basic rights of citizenship are frequently contested before the courts, consumer protection is rather a more problematic and neglected category. As the present review of legislation reveals, the treatment of the consumer in Pakistan varies from complete exclusion to only partial accommodation in the legislative scheme.⁴⁶

Pakistan is an Islamic State but the area of consumer protection has unfortunately remained neglected. As a solution to this problem, Pakistan has two options; either to follow the established norms of consumer protection as practiced in other countries or else, Pakistan can implement a system by adopting principles of Islamic ideology. The economic policies presently being pursued by the Government of Pakistan are based on Islamisation, liberalization, deregulation and privatization. Subsequent expansion of private sector relies on the efficient working of markets. It is imperative therefore to provide a regulatory framework addressing the consumer-related issues arising from likely market failures. This has led to the need for enacting appropriate legislation to safeguard the interests of consumers.⁴⁷

This dissertation is basically to high light the position of Islamic law about the protection of consumers keeping in view the available legislation on the topic in Pakistan. A country like Pakistan where laws should be made in accordance with the injunctions of *Quran & Sunnah* such type of research is greatly required that kindle the path of Islamization of

⁴⁵ See Zilli Atif, Prof. *Consumer Protection Law in Pakistan Article* published in PLJ, July 2008

⁴⁶ See Mohammad Sarwar Khan, Abrar Hafeez, *Consumer Laws in Pakistan ,Part – I*, p.1

⁴⁷ See Kishwar Khan and Sarwat Aftab, *Consumer Protection in Islam: The Case of Pakistan*, Article published in Australian economic papers, December 2000.

laws .This manuscript is an attempt to take a broader view of key consumer issues from the perspective of *Shariah*. There are ever greater challenges for the Muslim consumers in the current scenario of materialism and lack of business ethics. This situation is worsening by lack of awareness about consumer rights, absence of concrete national legislation and policy and the strong judicial setup to enforce the piecemeal legislation. It is hoped that this research will open new dimensions of knowledge in the field of Islamic commercial law.

CHAPTER NO. 2

ISLAMIC CONCEPT OF CONSUMER PROTECTION

In the previous chapter, we have discussed Consumer protection generally and now in this and onward chapters we will discuss the subject from an Islamic perspective. Islam protects consumers from different aspect i.e. firstly it protects him against his own irrational consumption by giving universal guidelines for rational consumption, then it protects him in the market place against unfair trade practices etc and lastly it gives sufficient protection to the consumers in the formation of the contracts and transactions. Islamic state is also made duty bound to protect rights of the consumers. Now in this chapter we will discuss the universal guidelines of Islam that protect consumers against their own irrational consumptions.

1. ISLAMIC LAW (*SHARIAH*) AND CONSUMER PROTECTION

Before embarking on the topic from an Islamic perspective, we should know the relationship between Islamic law and consumer protection. Islamic law is revealed by Allah (S.W.T) to guide human beings in their religious and worldly affairs to make them capable of achieving success in this world and hereafter. The Muslim jurists define Islamic law as it is a communication from Allah, The Exalted, related to the acts of the subjects through a demand or option, or through a declaration.⁴⁸ This is what makes Islamic law (*Shariah*) different from other legal systems of the world as the basics of Islamic law are extracted from the revelation of Allah i.e. *Qur'an* and *Sunnah*. The basic objectives of the Islamic law are to protect and preserve religion, human life, progeny, intellect and wealth of the people.⁴⁹

As we know, there are four sources of the Islamic law: the *Qur'an* (the Holy Book), the *Sunnah* and *Hadith* (record of the sayings, deeds or tacit approval of the Holy Prophet Muhammad, PBUH), *Ijma* (consensus either of the community or the religious intellects),

⁴⁸ See Nyazee, Imran Ahsan khan, *Outlines of Islamic Jurisprudence*, p.32

⁴⁹ See Shatibi, *al-Muwafaqat*, vol.2, pp.4-5

Qiyas and *Ijtihad*.⁵⁰ The eternal and original source of Islamic law is the Holy Qur'an which are the very messages that Allah put in the mouth of the Prophet PBUH for the guidance of humankind. These messages are universal, eternal and essential. *Sunnah* refers to the exemplary conduct of the Prophet PBUH. The Prophet PBUH has been declared to be interpreter of the *Qur'anic* text. The Qur'an for instance mentions *Zakat* but does not lay down its details; the Prophet PBUH explained it to his followers in a practical form. *Ijma* i.e., the consensus either of the community or of the religious scholars is a principle of new legal content that emerges as a result of exercising reason and logic in the face of a rapidly expanding society. Therefore an act is to be approved by one of the above sources to be declared legal. Islamic law covers almost all areas of human interest such as contracts, torts, criminology, international law, administrative law, gifts, wills, pre-emption, trust etc. 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 to forgive or otherwise is vested in the affected individual. Allah's forgiveness or otherwise in such cases is dependent on the will of the individual sinned against; if he does not forgive, Allah will punish the defaulter. Therefore, it is imperative for the individuals to deal with fairness in trade and commerce as well. Islamic law provided guidelines for the protection of Consumers 1500 years ago which are based on divine principles set by Allah. Moreover, Allah promised the believers rewards both in this world and the Hereafter for complying with Islamic principles. Islamic law included a set of rules to protect consumer from himself first, then the product and dealer and producer. It contains rules and regulations for governing transactions with traders in the market. It has laid down principle to make the transactions in the market free of fraud, gambling, ignorance, adulteration, *Gharar*, *riba* and all forms of eating up people's vanities.⁵¹

⁵⁰ *Ijtihad* means putting forth every effort in order to determine with a degree of probability a question of the Shariah.

⁵¹ See Kishwar Khan and Sarwat Aftab, *Consumer Protection in Islam: The Case of Pakistan*, Article published in Australian economic papers, December 2000.

Muslim jurists had explained rulings of *Shariah* related to the protection of consumers in different chapters but they did not use the term consumer protection in its contemporary meaning. The term consumer protection is equivalent to the Arabic term *Himayat-al-Mustahlik*. *Mustahlik* is the agent noun (*Ism al-fail*) from the word *Istihlak*. The word (*Istihlak*) is used by earlier jurists for the meaning of wasting i.e. converting something from beneficial form to a non-beneficial form. Beneficial means it is used for the purpose for which it is made.⁵² *Fiqh* encyclopedia of Kuwait has used the term that it is conversion of something from a beneficial form, for which it was actually made, to a non-beneficial form.⁵³ Consumption (*Istihlak*) is some time of the goods that are consumable like vegetables, fuel, etc and some other time it is of those things that are not consumable like immovable property e.g. Land, houses etc so here consumption means usufruct and benefit of something and not the corpus of that thing.

Istihlak is actually consuming something, finishing it or extracting its benefits, for getting benefit out of it. It is said that the water is consumed when it is drunk and the goods are said to be consumed when their benefit is used⁵⁴. The modern Muslim scholars have defined *Istihlak* (consumption) that it 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.⁵⁵ Although Muslim jurists had mentioned general principles and rules for the protection of consumers in detail under the chapters of *Daman*, contracts, *Tadles*, *Gharar*, hoarding, law of options, *Hisba* and *Fiqh ul Suq* explaining consumer's safety from adulteration, deception, concealment of defect etc. but there is no specific chapter in the classical *Fiqh* Literature about the protection of consumers. The reason, probably, is that when the general principles of Islamic law are practically implemented the purpose of Consumer protection will be automatically served and no need will remain for specific code for the protection of the consumers. However, in this study we are trying to present general principles of Islamic law that protects rights of the consumers.

⁵² See kasani, *Badai ul Sanaigh*, v.7, p.149, khairia publishers Cairo.

⁵³ Ministry of Religious and awqaf affairs publication of Kuwait

⁵⁴ See Manzor, Ahmad, *Tarshed al-Istihlak al-fardi fi al-Iqtisad al-Islami*, LLM thesis submitted to the Faculty of Shariah and Law, Azar University, Egypt, P.67

⁵⁵ See Dr.Fkhri Abi yusaf , *Al uasas ul Amma li Akhdam il muamalath* p.122 pub.1977

2. OBJECTIVES OF ISLAMIC LAW (*SHARIAH*) AND CONSUMER PROTECTION

Islam is a complete code of life. There is no discrimination between worldly life and hereafter. Therefore it contains rules relating to every field of life. Islam presents the solution for every human problem. Muslim jurists and legal philosophers mentioned that all the rules and principles of Islamic law revolve round the objectives of *Shariah* (*Maqasid al-Shariah*). The whole legal system of Islam is based on the protection of the *Maqasid* (objectives) of *Shariah*. The primary objective of the law giver is the *Maslaha* of the people. The obligations in *Shariah* concern the protection of the *Maqasid* of the people. Thus *Maqasid* and *Masalih* become interchangeable terms in reference to obligation in *Shatibi*'s discussion of *Maslaha*. By *Maslaha* it is meant that which concerns the subsistence of human life, the completion of man's livelihood, and the acquisition of what his emotional and intellectual qualities require of him, in an absolute sense.⁵⁶

The Muslim legal philosophers have emphasized the following fundamental freedoms or rights in respect of every individual. These are: Preservation and Protection of religion, human life, and progeny, human honor or dignity (*ird*), Intellect, and wealth⁵⁷.

According to *Shatibi*, these five protections are *daruriyyah* for the establishment of welfare in this world as well as in the world hereafter. The protection of the above mentioned elements can be made possible through two types of essential elements. They classify these objectives as under:

- a. Necessities required for bringing into and maintaining the very existence of the above mentioned elements, that is: *din*, *nafs*, *nasi*, *mal*, *'aql*, etcetera.
- b. Necessities required for protecting these elements from their destruction. The worships ('*ibadah*) for example, aim at maintaining the very existence of faith.

Iman (attestations in words and intention), *salah*, *zakah*, fasting and *hajj* are the elements that are required for the maintenance of the very existence of faith (*din*). All such provisions of *Shari'ah* are said to have the aims that can be labeled as *daruriyyah*.

⁵⁶ See Muhammad Khalid Masud, *Islamic Legal Philosophy*, p.225

⁵⁷ See *Shatibi*, *Al-Muwafaqat*, vol.2, pp.4-5

Similarly, the permission to benefit from drinkables, clothing, housing, etcetera, is meant to maintain life and hence fulfill the objective of necessities. Such matters and dealings that are required to maintain and protect the existence of property, reason and posterity also promote necessities from the point of view of bringing these into existence.

On the other hand, such dealings or legal provisions (*jinayat*), which are required to stop destruction of the above mentioned elements will also be said to aim at *daruriyyah* from the point of view of the objectives of *Shari'ah*.⁵⁸

Like other fundamental rights Islam also protects rights of the consumers as it is totally in accordance with the injunctions of Qur'an and *Sunnah*. Every single rule of Islamic law of contract and business ethics ensures protection of consumers' interests. The Islamic concept of consumer protection is based on the securing of benefits for the consumers and repelling evils from them. There are many rules, principles and legal maxims of Islamic law that advocate securing of consumers' interests. Both from positive and negative aspects rights of the consumers are protected. To secure the health and wealth of the consumers is the main objective of Islamic consumer law.

Here we shall try to elaborate the concept of Consumer protection in the light of five objectives of *Shariah* in order to understand the exact position of consumer protection movement in Islamic law.

2.1. The objective of *Din* (Religion) and Consumer Protection

Definition of *Din*:

The *maslaha* of *Din* has two branches i.e. Beliefs and worships. Belief means to have faith on something such as Allah (S.W.T.), Angels, Prophets and the Day of Judgment. Worship such as Prayer, fasting, *Hajj*, Paying of *Zakat* etc. When a man follows the above scheme of worship it results purification of one's soul and he thinks several times before doing any act. He keeps the pleasure of Allah (S.W.T.) before him. When a man reaches this level of purification he will never produce *Haram* products such as wine nor will he use it himself. He will never commit fraud in commercial transaction because he

⁵⁸ Ibid.

fears the Allah (S.W.T.). In short when a law is in accordance with the faith of the masses it will be more effective. Thus the objective of *Din* has great effect on the protection of consumer rights.

2.2. The objective of life and Consumer Protection

It is one of the basic objectives of *Shariah* to protect life of the people. Therefore a man is allowed to eat *Halal* food and drink *Halal* drinks to survive. The punishment in Islamic law for taking some one's life is murder (*Qisas*) in Islamic law. *Nafs* also includes honour of someone. Thus, any harm to health or life of someone is strictly condemned in Islam. The consumer life should not be endangered by producing defective goods or rendering faulty services.

2.3. Protection of Reason (*Aql*) and Consumer Protection

The person who is a sane can differentiate easily between beneficial and harmful things. Critical awareness is extremely needed to examine the quality of goods and services. But this is possible only when the consumers have rational thinking. Therefore *Shariah* has prohibited all that which affect human mind such as wine. Insanity is a cause for the invalidity of a contract in Islamic commercial law particularly in cases where a child buys something that is harmful to him; such contract is not legal in the eyes of Islamic Law.

2.4. Protection of Posterity (*Nasl*)

Islam aims to promote a healthy and strong generation who serve the cause of Allah (S.W.T.) and perform their obligations. Therefore in my opinion this purpose of *Shariah* also encourages protection of consumers. They should have pure food and water for drinking and also a healthy environment in which case the family life will be more facilitated.

2.5. Protection of Property and Consumer Protection

Protection of property being one of the fundamental interests of man and a basic objective of the *Shari'ah* occupies a vital and significant place in Islamic legal philosophy. Islam regards the property of a person as sacred and inviolable as his life and honor. The Qur'an forbids the unlawful devouring of property by a believer. This includes prohibition against theft, usurpation, embezzlement, bribery and all other

unlawful and impermissible means of acquiring wealth. The Qur'an also prohibits usurious transactions, which bring undue and unjustified enrichment to one party at the cost of the other party. Contracts involving *gharar* and *aleatory* transactions have also been strictly prohibited in the *Qur'an* and *Sunnah*. Aleatory or *gharar* transaction are those in which a party can become victim of excessive ignorance with regard to the existence, acquisition, genus, quality and other necessary attributes of the subject-matter. Such ignorance and uncertainty may lead to dispute and litigation among the parties. It also includes uncertainty and lack of knowledge about the material terms of the contract. It is, thus, the requirement of a valid transaction that the object of the obligation be specifically determined so as to avoid exorbitant *gharar*.⁵⁹

Thus, all the objectives of *Shariah* strongly encourage the protection of consumers' rights to make a safe, healthy and friendly environment for the consumers. Now we shall discuss the universal guidelines of Islam regarding rational consumption in a bit detail.

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3. ISLAMIC CONCEPT OF CONSUMPTION (*ISTIHLAK*):

In general, a consumer is any person who buys goods/services which have been paid for, under any system of payment including hire purchase and leasing, etc. In Islamic Economics, a consumer behaves in a normative way because Islam prescribes what its followers should do or abstain from doing. In Islam, the pious and desirable actions are described as *Salihat* and impious actions are termed as *Sayyi'at*. The term closely related to ethics is *khuluq*. The consumer in an Islamic society also has to make a choice regarding spending on worldly needs as well as in the way of Allah (Way of Allah refers to charity and spending on the poor).⁶⁰ Islamic Economics studies the economic problems of people imbued with the value of Islam, whereas, economics in general is the study of human behavior with scarce resources and unlimited wants. In economics, the problem of choice is greatly dependent on the whims of individuals and resources are distributed so as to secure maximum satisfaction of wants. But in Islamic Economics, individuals are

⁵⁹ See Dr. Muhammad Tahir Mansoori, *Islamic law of Contracts and Business Transaction*, Preface of the book.

⁶⁰ Qur'an: 2:262; 2:274; 9:60.

not in a position to distribute and consume resources the way they like, rather they have to follow a code of conduct provided by the Holy *Qur'an* and *Sunnah* (the normative behaviour of the Holy Prophet Muhammad PBUH as evidenced by his utterances, and his tacit approvals). Islamic teachings encourage only those legitimate activities which are in complete harmony with the social good.

In Islam, the entire circle of economic activity covers not only the social individual but also individuals with a religious bent of mind. For instance, in economics, the individual's welfare is regarded as an increasing function of the commodities/services consumed. In this case, activities concerning the manufacture, sale, and use of alcoholic drinks, may be a good economic activity; but these are prohibited in Islam. Hence, the individual has to take into account the injunctions of Islam in pursuing activities, rather than simple utility or profitability rankings. In one sense Islamic Economics is more restricted and in the other sense it is more comprehensive than general economics. It is restricted because it is concerned only with those people who follow the moral teachings as reflected in the *Qur'an* and *Sunnah*. It is comprehensive because Islamic Economics takes cognizance of non-economic factors like political, social, ethical and moral both in this world and Hereafter.⁶¹

Before we discuss the Islamic concept of consumption in detail, we must know about the Islamic concept of production of wealth which is an important stage in the consumption of wealth.

3.1. Production of Wealth

Islam encourages all types of lawful commercial and business activities such as agriculture, manufacture, business, trade, and all the works and labor within the limits of *Shariah* that produce any goods or services for the benefit of community is considered as worship. Allah puts *Baraka* in such type of creative worldly affair that gives benefit to the humanity and facilitate their lives, and construct their lands, and it is when the intention, and all this will be possible if the intention of the industrialist is noble and he

⁶¹ Ibid.

should always keep in mind that one day he is going to face the day of judgment, and will be questioned about his wealth from where he earned and where consumed and whether he served for the cause of Islam or not. All these objectives can be achieved through wealth that is earned after a lot of struggle and labor, which should also be permissible so it will help the society to develop and grow.

Muslims have, therefore, to acquire better skills in order to increase production and also develop an attitude to undertake ventures promising more productivity. More production means more earning which certainly breaks and the society as a whole gains through further improved efficiency.

Islam has emphasized on more and more production so human needs be fulfilled but it gives a comprehensive code for consumption. Islamic commercial law stress a lot on the fulfillment of human needs along with achieving a great spiritual satisfaction therefore it gives a balance system for earning and consumption of goods and services to stabilize the worldly life and life here after. The relationship between Allah and mankind are never disconnected in the position of man being wealthy or poor. This is the distinction of Islamic economic system from others that Muslims present a great model to the world to their principles of rational consumption that contributes in the happiness of human being. Therefore we can conclude that the theory of consumption in Islam is to protect the interest of human beings and guarantees their happiness in this world and here after whenever they stick to the principle of *Shariah*. Although the level of consumption is kept at a minimum, there are hardly any restrictions in the production of resources. Instead a number of injunctions of the *Shariah* induce Muslims to strive hard for the production of resources.⁶²

"He knows that there will be some among you sick, others traveling through the land, seeking Allah's Bounty....."⁶³

⁶² See Muhammad Akram khan, *Economic teachings of Prophet Muhammad*, p.76
⁶³ Qur'an 73: 20

The Prophet (s.A.w.s) endorsed the importance of legitimate ways of earning in the following words: Asked 'what form of gain is the best? [The Prophet] said, 'A man's work with his hands, and every legitimate sale'.⁶⁴

The earning should not be for self alone but more than the requirements of producer with a sole objective to serve the humanity in need. The efforts should, therefore, be maximum with all exertion so that surplus over the personal requirements can be utilized for betterment of other deserving Muslim. Commercial activity, when it is conducted in accordance with the injunctions of Islam, is considered as worship by *Shariah*. Muslims ask from Allah a better worldly life and Hereafter also. Commercial activity is a tool to get the facilities and blessing of Allah (S.W.T) in worldly life. Islam encourages productive efforts of human beings. As a trustee, the universe is at the disposal of man. Every Muslim is duty bound to explore and exploit whatever is in the earth, by exerting all energies. Islam discourages social parasites. It condemns mendicant with a bowl of begging. Rather enjoins upon the following to earn by all honest means.

3.2. Consumption from an Islamic Perspective

Consumption is a very important stage in the production of wealth and the people who do the act of consumption are in fact consumers. The significance of consumption is not hidden to anyone. It is the last and most important stage in the production of wealth. In fact, consumption is the end of all production. Wealth is produced only to be consumed. Consumption, therefore, plays a very significant part in the economic life of individuals as well as nations. As such it is absolutely necessary that one should be very careful in the consumption of wealth. There may be abundance of wealth in a country, which may have an equitable and just system of exchange and distribution, but if wealth is not spent wisely or is wasted on unnecessary and luxurious things, the very purpose of wealth, its equitable exchange and distribution, will be defeated. It is, therefore, essential that the flow of consumption should be guided into right and proper channels in order that wealth be utilized in the best possible way.⁶⁵ The Muslims are given complete freedom in the

⁶⁴ See Ahmad Ibn Hanbal, *Musnad*, tradition no.1576

⁶⁵ See Afzal-ur-Rehman, M.A., *Economic Doctrines of Islam*, vol. II, p.8

field of consumption to enjoy whatever is pure and agreeable to them with the exception of a few things which are harmful to social as well as individual welfare.

Qur'an says: "*O you who believe! Spend out of (the bounties) We have provided for you*"⁶⁶

Qur'an also says: "*Make not your hand tied (like a niggard's) to your neck, nor stretch it forth to its utmost reach, so that thou become blameworthy and destitude.*"⁶⁷

The few things which are forbidden to eat in a Muslim community are mentioned in the following verses of the Holy Quran:

"*He has forbidden you only what dies , of itself, and blood , and the flesh of swine , and that over which any other(name) than (that of) Allah (S.W.T.) has been invoked*".⁶⁸

"*Say, I find not in that which is revealed to me ought forbidden for an eater to eat thereof, except that it be what dies of itself, or blood poured forth , or flesh of swine – for what surely is unclean – or what is a transgression , other than (the name of) Allah (S.W.T.) having been invoked on it*".⁶⁹

Four things mentioned above are totally forbidden to the Muslims That which dies of itself and that which is torn by beasts , it was forbidden by the law of Moses also ; so was blood ; and the flesh of swine . The Jews held the swine in great detestation, and the mention of the animal in the Gospel shows that Jesus held it in equal abhorrence, which indicates that he too regarded the animal as impure (for eating). While the reference in the verse "that over which any other name than that of Allah (S.W.T.) has been invoked" is to the animals over the killing of which any other (name) than that of Allah (S.W.T.) has been invoked. In this case the invocation of any name other than that of Allah

⁶⁶ Qur'an, 2:254

⁶⁷ Qur'an, 17:29

⁶⁸ Qur'an, 2:173

⁶⁹ Qur'an, 6:146

(S.W.T.) has been invoked. In this case the invocation of any name other than that of Allah (S.W.T.) makes the animal slaughtered unlawful and, not suitable for eating. In addition to the afore-said four things, gambling and intoxicants are also prohibited by the Holy Quran:

"O you who believe, intoxicates and games of chance and (sacrificing to) stones set up and (dividing by) arrows are only an uncleanness, the devil's work; so shun it that you may succeed".⁷⁰

This verse totally prohibits all toxicants including wine and all forms of gambling. It is reported that when this verse was revealed a proclamation was announced in the streets of *Medina* that wine was prohibited, and in response to this every jar of wine in a Muslim house was emptied, so that wine flowed in the streets. Never in the history of the world was such a deep-rooted evil as drinking so suddenly yet so completely eradicated.

Thus, Islam has allowed the consumption of all lawful goods and services and disallowed that of unlawful things.

3.3. Features of Consumption in Islam

The Holy *Qur'an* and *Sunnah* are the two basic sources of Islamic law. The *Qur'an* lays down the standard and the manner of consumption. The *Qur'an* does not approve of under-consumption just as it disapproves of over-consumption. All the same these are relative terms which change with income level. As a result the *Qur'an* does not specify the heads of expenditure which can be treated to be either avoidable or compulsory. It does recommend that the standard of living of a consumer should be the true reflection of his economic conditions.⁷¹

⁷⁰ *Qur'an*, 5:90

⁷¹ See Kishwar Khan and Sarwat Aftab, *Consumer Protection in Islam: The Case of Pakistan*, Article published in Australian economic papers, December 2000.

*Eat and drink: but waste not be excess. For Allah loveth not the wasters.*⁷²

In Islam a consumer is expected to behave rationally while satisfying his needs, the balancing principle in Qur'an is:

*Those who, when they spend, are not extravagant and not niggardly but hold a just (balance) between those (extremes).*⁷³

The *Qur'an* instructs Muslim consumers to probe and verify any given statement or information before making a decision or taking any action. It advises them to investigate about the commodity before purchasing it. This must be done even if there be no other reason, in order to ascertain whether the commodity is permissible (*halal*) or not permissible (*haram*).⁷⁴ Therefore, false advertisement of a product is also condemned by *Shariah*.

Following are some of the features of Consumption of wealth in Islam:

- 1) Islam encourages the use of good and useful things and discourages wasteful and unnecessary expenditure. It enjoins the Muslims to eat and use only good and pure things in the following words:

*"O ye Messengers, enjoy (all) things good and pure".*⁷⁵

*"O you who believe, eat of the good and pure things that We have provided with."*⁷⁶

*"This day (all) good and pure things are made lawful for you".*⁷⁷

⁷² Qur'an , 7:31.

⁷³ Qur'an , 25:67.

⁷⁴ The Holy Qur'an provides a definite concept of *Halal* and *Haram*. For *Halal* see verses 5:1, 5:5, 16:114, 22:28, 22:30. For *Haram* see verses 2:219, 5:3, 6:145, 16:115.

⁷⁵ Qur'an, 23: 51

⁷⁶ Qur'an, 2:172

⁷⁷ Qur'an, 5: 5

*"So eat of what Allah (S.W.T.) has given you, lawful and good things".*⁷⁸

*"They ask thee as to what is allowed them. Say: The good things are allowed to you."*⁷⁹

In the above-quoted verses of the Holy Quran the word used for good things is (*Tayyeb*) which means anything one finds pleasing, sweet, good, and agreeable in sight, smell and eating. Thus in one word, the Holy Quran has laid down the general principles which govern consumption of wealth in a Muslim society. The Muslims are clearly advised to spend their wealth on things (of direct or indirect consumption) which they find agreeable or pleasing to them. It has not laid down any strict rules and regulations as to what is pleasing and agreeable but has, after prohibiting a few impure and unlawful things, left it to each society to determine its own standard of purity with regard to things of consumption, especially food. This allows great freedom of choice in eatable things to different peoples in different parts of the world according to their social and traditional requirements and temperamental differences.⁸⁰

- 2) Another feature of consumption in Islam is that the consumption should be made from the income earned through *Halal* means. It is not permissible for a Muslim to spend money, which is earned through *Haram* means. *Halal* (legitimate) earning is made obligatory on every Muslim. Thus, consumption will be valid only if it is made from the lawfully earned wealth. The following verses of the Holy Qur'an are very significant in this respect:

"O you who believe! Spend of the good things which you have (legally) earned, and of that which We have produced from the earth for you, and do not aim at that which is bad to spend from it, (though) you would not accept it save if you close your eyes and tolerate

⁷⁸ Qur'an, 16: 114

⁷⁹ Qur'an, 5:4

⁸⁰ See Afzal-ur-Rehman, M.A., *Economic Doctrines of Islam*, vol. II, p.8

therein. And know that Allah is rich (Free of all needs), and Worthy of all praise. ⁸¹

"Then when the (Jumu'ah) Salat (prayer) is ended, you may disperse through the land, and seek the Bounty of Allah (by working, etc.), and remember Allah much: that you may be successful. ⁸²

"And wish not for the things in which Allah has made some of you to excel others. For men there is reward for what they have earned, (and likewise) for women there is reward for what they have earned, and ask Allah of His Bounty. Surely, Allah is Ever All-knower of everything. ⁸³

"There is no sin on you if you seek the Bounty of your Lord (during pilgrimage by trading). Then when you have 'Arafat, remember Allah (by glorifying His praises, i.e. prayers and invocations) at the Mash'ar-il-Haram. ⁸⁴

"And We have made the day for (earning) livelihood. ⁸⁵

"And surely, We gave you authority on the earth appointed for you therein provisions (for your life). Little thanks do you give. ⁸⁶

Umer (R.A.A) preferred the status of Halal earning over the status of jihad as he used to refer to the following verse of the Holy Qur'an;

"He knows that that there will be some among you sick, others traveling through the land, seeking of Allah's Bounty, yet others fighting in Allah's cause. ⁸⁷

⁸¹ Qur'an 2: 267

⁸² Qur'an 62: 10

⁸³ Qur'an 4: 32,

⁸⁴ Qur'an 2: 198

⁸⁵ Qur'an 78: 11

⁸⁶ Qur'an 7: 10

⁸⁷ Qur'an 73: 20

In this verse earning *Halal* money is mentioned before Jihad. 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*.⁸⁸

- 3) The Muslims are given complete freedom in the field of consumption to enjoy whatever is pure and agreeable to them with the exception of a few things which are harmful to social as well as individual welfare. The few things which are forbidden to eat in a Muslim community are mentioned in the following verses of the Holy Qur'an:

"He has forbidden you only what dies , of itself, and blood , and the flesh of swine , and that over which any other(name) than (that of) Allah (S.W.T.) has been invoked" .⁸⁹

" Say, I find not in that which is revealed to me ought forbidden for an eater to eat thereof, except that it be what dies of itself, or blood poured forth , or flesh of swine – for what surely is unclean – or what is a transgression , other than (the name of) Allah (S.W.T.) having been invoked on it".⁹⁰

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⁸⁸See Abu yusaf, *Al-kharaj*, p. 127

⁸⁹Qur'an, 2:173

⁹⁰Qur'an, 6:146

makes the animal slaughtered unlawful and, not suitable for eating. In addition to the afore-said four things, gambling and intoxicants are also prohibited by the Holy Quran:

*“O you who believe, intoxicates and games of chance and (sacrificing to) stones set up and (dividing by) arrows are only an uncleanness, the devil’s work; so shun it that you may succeed”.*⁹¹

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- 4) In Islam a proper distinction is made between lawful and unlawful consumption. As we know that the general rule 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*. On the other hand unlawful consumption is explained in much detail and its moral and legal effects are mentioned in Islamic literature. Lawful consumption is that which is made by a person in his own property, uniform and food etc keeping in view his interest and society’s interest, while unlawful consumption is when the person is not authorized to consume like consumption of others property, dress, food or water etc without the owner’s permission.⁹² Or one consumes something which is prohibited by *Shariah* such as wine, poison, flesh of swine, dead animal, blood etc. In economics it means the consumption of goods and services and consumption is completed after having these goods like food, or usufruct of something like house, furniture etc and a

⁹¹ Qur'an, 5:90

⁹² See Dr Usama Muhammad Al abd ,*Nazriat il istihlak* , PH.D.thesis presented to the Faculty of Sharia & law Azar university

rational consumer is one who makes his consumption in his permanent income not in functional income.⁹³

- 5) Another feature of consumption in Islam is that in some cases it has been made obligatory. Just as it is an act of piety and virtue to spend on the widows, orphans and the poor, similarly, it is considered virtuous to spend on yourself, your children, parents and relatives. To say prayers or to go for pilgrimage to Mecca is as good and virtuous an act as to go to office or to do business or anything else to earn your livelihood by hard and honest labor. The following verse of the Holy Qur'an is very significant in this respect:

"They ask thee as to what they should spend. Say: whatever wealth you spend, it is for the parents and the near of kin and the orphans and the needy and the wayfarer. And whatever good you do, Allah (S.W.T.) surely is a knower of it".⁹⁴

The words "whatever good you do , Allah (S.W.T.) surely is a knower of it" clearly indicate that whatever you spend for the good of the poor and the helpless , regardless of their relation to you , is an act of virtue in the eyes of Allah (S.W.T.) for which you shall be amply rewarded. Thus Islam enjoins expenditure of wealth first on one's own self, then one's wife and children, relatives etc. And all this expenditure is considered as an act of worship or prayer. The famous proverb "charity begins at home" explains very well the significance of the above principle of Islam.

- 6) Consumption is not confined to necessities of life or necessities of efficiency but includes comforts and even lawful luxuries of life. The Holy Quran very generously allows us benefits from comforts, conveniences and many of the luxuries of life as will be explained later. It not only permits the enjoyment of higher pleasure of life

⁹³ See Fried man *M.A theory of consumption function*, Princeton University Press,1956,p.21

⁹⁴ Qur'an, 2:215

but it also offers a position of honor in its system to those who enjoy the comforts and luxuries of life provided they keep within the allowed limits. King Solomon was a prophet and at the same time enjoyed all the comforts and luxuries of life that one can think of in this world. One of the companions of the Holy Prophet, Caliph Othman, was one of the richest men of Arabia and was given the epithet of "richest" by the Holy Prophet. Thus the possession of wealth and enjoyment of comforts and even some of the luxuries of life is not considered contrary to piety provided the consumer is neither wasteful nor misery in his expenditure.⁹⁵

- 7) In view of importance of wealth, Islam lays great stress on its proper care and use. It advises people to look after their property very carefully and spent it wisely and judiciously on the satisfaction of their lawful wants. And in order to check wastage of wealth, it enjoins the Muslims not to hand over their property (or wealth) to unwise or immature persons.

"And make not over your property, which Allah (S.W.T.) has made a (means of) support for you, to the weak of understanding, and maintain them out of it".⁹⁶

Reference to the property of orphans in the words, your property "is very significant. It indicates that in fact , all property is meant for the use of the community and should under no circumstances be wasted or handed over to such persons , who are weak of understanding , whether minors or grown –ups, and are likely to miss-use it. The Holy Qur'an shows us the best way of spending our wealth.

- 8) The Holy Qur'an, has indicated a middle course for the Muslims between asceticism and materialism. The best and the most successful way of life advocated by Holy Qur'an is to enjoy moderately the pleasures of life. In other words, abstinence from the worldly enjoyment is as great an act of ungratefulness as over-indulgence in the

⁹⁵ See Afzal-ur-Rehman, M.A., *Economic Doctrines of Islam*, vol. II, p.16

⁹⁶ Qur'an, 4:5

worldly pleasure of life. Islam allows a great deal of individual liberty to the people in the field of consumption. The individuals are given full liberty of expenditure on goods and pure things provided that do not endanger the security and welfare of the state. The following verses of the Holy Qur'an are significant in this regard;

"He (the Prophet) makes lawful to them the good things and prohibits for them impure things".⁹⁷

"O men, eat the lawful and good things from what is in the earth, and follow not the footsteps of the devil. Surely he is an open enemy to you".⁹⁸

"Eat of that which Allah (S.W.T.) has given you and follow not the footsteps of the devil".⁹⁹

"Eat and drink of the provisions of Allah (S.W.T.) and act not corruptly making mischief in the land".¹⁰⁰

Here the Qur'an has allowed the use of pure and agreeable things and forbidden the use of impure and harmful things. Having due regard for individuals tastes and habits , complete freedom is given in the enjoyment of the former; while consumption of the later which is considered detrimental to the general good of the society , and hence , a national waste , is disallowed . In order to safeguard and protect the welfare of society individual's excesses even in the consumption of pure and agreeable things which are likely to damage social welfare, are sometimes disallowed. There is a reference here to the corruption of society by over-indulgence in luxuries of life. As the devil is supposed to have broken the code of action ordained by Allah (S.W.T.), man is here advised not to commit

⁹⁷ Qur'an, 7:157

⁹⁸ Qur'an, 2; 168

⁹⁹ Qur'an, 6:142

¹⁰⁰ Qur'an, 2:60

excesses in the field of consumption and thereby follow in the footsteps of the devil.

9) Islam has adopted the middle path between the two extreme ways of life, i.e. materialism and asceticism. On one hand, it forbids excessive expenditure on the gratification of the personal desires; while, on the other, it condemns abstention from the enjoyment of good and pure things of life. People who abstain from the worldly pleasures are told to change their attitude towards life, in the following words:

*“O you, who believe, forbid not the good things which Allah (S.W.T.) has made lawful for you and exceed not the limits”.*¹⁰¹

3.4. Moderation in Consumption:

One of the most important characteristics of Islamic theory of consumption is moderation in consumption. In Islamic economics, due importance is attached to the injunctions of the *Shariah* which regulate consumer behavior. The *Qur'an* describes it by the term '*Iqtisad*', which literally means 'moderation' but in the overall context of the *Shariah* it is a cluster of values. A Muslim is required to adopt a moderate attitude in the acquisition and utilization of resources. The two extremes of consumer behavior, *Israf* (extravagance) and *bukhl* (niggardliness) have been condemned both in the *Qur'an* as well as by the Prophet (S.A.W.). The Prophet himself offered an example of an ideal consumer. He led a simple and rough life. His companions adopted his model and in this way simplicity and low consumption became value of Islamic society.¹⁰²

¹⁰¹ *Qur'an*, 5:90

¹⁰² See Muhammad Akram Khan, *Economic teaching of Prophet Muhammad*, pp.75-76

Now we shall analyze the concepts of Israf and Bukhl in the light of Islamic teachings;

3.4.1. Extravagance: It applies to the following cases;

- a) Spending wealth on unlawful things , such as gambling , drinking wine etc., even if the amount involved is insignificant
- b) excessive expenditure on lawful things , whether within or beyond one's means
- c) Expenditure for good and charitable purposes merely for show. The Holy Qur'an condemns this sort of expenditure in the following words:

*"And squander not (your wealth) wastefully. Surely the squanderer is the devil's brethren. And the devil is ever ungrateful to His Lord."*¹⁰³

*"Eat and drink, but waste not by excess, for Allah (S.W.T.) loveth not the prodigals."*¹⁰⁴

*The Holy Prophet once remarked that one thing at which Allah (S.W.T.) was most displeased with you was extravagance (unnecessary) wastage of wealth.*¹⁰⁵

The Holy Prophet also said: *"Eat, and spend as sadaqa (in Charity)"*.

Those who waste their wealth are called the devil brethren. They are ungrateful to Allah (S.W.T.) for not spending what He has given them out of His grace in a proper and lawful manner. There is no merit if we merely spent out of bravado or for idle show. How many families are ruined by extravagant expenses on wedding, funerals etc. Besides, this extravagant expenditure stimulates growth of idle, unproductive and luxurious industries in the community. Thus unnecessary and wasteful expenditure is again and again condemned by the Holy Quran. Wastage of wealth which can be utilized for more productive purposes by the community is a very grave sin in the eyes of Allah (S.W.T.).

¹⁰³ Qur'an: 17:26-27

¹⁰⁴ Qur'an: 7: 31

¹⁰⁵ See *Malik, Muatta*, op. cit, p. 780.

Therefore, Muslims have been directed to be humble in their conduct towards life: Muslims must not lead a life of extravagance, and must exhibit good-will in any transactions among themselves.

3.4.2. Miserliness: It is regarded a sin in Islam and the persons who abstain from spending on the satisfaction of their legitimate wants are considered criminals in Islam. Miserliness applies in the following cases:

- a) Where one does not spend wealth on one's self and his family according to one's means; and
- b) When one does not spend anything on good and charitable purposes.

The act of ungratefulness of these people is visualized in the following verses of the Holy Qur'an:

“And let not those who are niggardly in spending that which Allah (S.W.T.) has granted them out of His grace , think that it is good for them . Nay, it is evil for them.”¹⁰⁶

“ Surely Allah (S.W.T.) loves not such—who are niggardly and bid people to be niggardly and hid that which Allah (S.W.T.) has given them out of His grace.”¹⁰⁷

“ The mutual rivalry for piling up (wealth of this world) diverts you (from realizing the good in its spending) , until you come to the grave.”¹⁰⁸

“ Woe to every slanderer, defamer, who amasses wealth and counts; thinking that his wealth would make him last forever.”¹⁰⁹

¹⁰⁶ Qur'an: 3:180

¹⁰⁷ Qur'an: 4: 36-37

¹⁰⁸ Qur'an: 102:1

¹⁰⁹ Qur'an: 104:1-3

People who abstain from the worldly pleasures are told to change their attitude towards life, in the following words: "O you, who believe, forbid not the good things which Allah (S.W.T.) has made lawful for you and exceed not the limits".¹¹⁰

Thus the Holy Quran condemns in very strong words all those who pile up wealth unnecessarily and do not spend it for their own good and the good of the community. By calling wealth "Grace of Allah (S.W.T.)" people are reminded that the real usefulness of wealth is in fact spending and not hoarding. People who hoard their wealth are ungrateful for not using it for the purpose for which it was created. Besides, by withholding it from the community they are also depriving other people from its usefulness. Thus it is a misuse of the gift of Allah (S.W.T.) which was meant to be used for good of the people. The above verses of the Holy Qur'an also refer to the second crime which these people are committing by the withholding their wealth from the community. They think this act of miserliness is good for them and the Holy Qur'an says that it is not good and useful for them; but is actually evil and harmful to them. By not spending their wealth, they are in fact denying the community of its great usefulness in the process of production. In other words they are wasting public wealth which could be better utilized for the production of further wealth.

This balanced approach to the problem of consumption is so important that even the Holy Prophet is cautioned not to abstain from the good and lawful things of life:

"O Prophet, why not thou forbid (thyself) that which Allah (S.W.T.) has made lawful for you. Seekest thou to please thy wives?" The Holy Prophet is told in this verse not to abstain from anything which is lawful for him merely to please his wives. According to Umm-ul- Mu'minin Aishah, the Holy Prophet (peace and blessing of Allah be on him) used to take honey at Zainab 's house and Hafsah and I agreed to tell the Prophet that he smelled as if he had taken " Maghafir" , which being done , the Holy Prophet accepting their words, solemnly promised that he would take honey no more.

¹¹⁰ Qur'an: 5:90

In other narration *Ayshah* says that: The Messenger of Allah swore not to go to his wives, so he prohibited himself from having conjugal relation with them. So as regard the Oath, he was commanded to expiate it, and as regard the prohibition, it was said to him, "O Prophet why dost thou forbid thyself that which Allah has made lawful to thee".

According to both these reports the Holy Prophet had decided to abstain from one of the lawful pleasures of this world but was commanded by Allah (S.W.T.) not to prohibit anything which was lawful and pure. Thus by directing the Holy Prophet to remain within limits in the enjoyment of the worldly pleasures , the Holy Qur'an has shown the most balanced approach in the field of consumption i.e. , one should be moderate in the consumption of wealth ; neither to abstain from nor to be indulgent in the worldly pleasures like spiritualists and materialists respectively.

Islam has advocated a middle path between the two extreme ways of life, i.e., materialism and asceticism. On one hand, it forbids excessive expenditure on the gratification of the personal desires; while, on the other, it condemns abstention from the enjoyment of good and pure things of life. A Muslim is required to adopt a moderate attitude in the acquisition and utilization of resources. The two extremes of consumer behavior, *'Israf* (extravagance) and *bukhl* (niggardliness) have been condemned both in the Qur'an as well as by the Prophet (S.A.W).¹¹¹

3.5. Holy Prophet (S.A.W.) as a Role Model for Muslim Consumers:

The role model for the Muslim consumers is the Holy Prophet Muhammad (s.a.w). The Prophet (s.a.w) himself offered an example of an ideal consumer. He led a simple and rough life. His companions adopted his model and in this way simplicity and low consumption became value of Islamic society.¹¹²

In fact, all the Messengers including the Holy Prophet liked simple and moderate living. He enjoyed the simple pleasures of life without indulging into luxuries or superfluities of

¹¹¹ See Muhammad Akram khan, *Economic teaching of Prophet Muhammad*, pp.75-76

¹¹² Ibid.

life. He ate simple food, wore simple dress lived in simple ordinary house and had a camel or a horse to ride on. He lived a simple life and advised the Muslims to lead a simple life. There are many traditions which throw light on what kind of life the Holy Prophet lived and preached to the people. Some of these are given below.

The Holy Prophet said: “*Successful is the man who has acted on the principles of Islam and lived on simple necessities of life*”.¹¹³

The Holy Prophet said: “*A thing which is scarce but sufficient (to meet the necessities of life) is better than that which is abundant (but makes man forget himself) and leads him astray (from the right path of moderation)*”¹¹⁴.

The Holy Prophet is reported to have said: “*The rocky land of Mecca could be turned in to gold for me if I had wished, but I said, O Lord! I wish I had enough to fill my stomach one day and remain hungry and be thankful to you when my stomach was full*”¹¹⁵.

The Holy Prophet often prayed: “*O Lord! Bestow livelihood on my family according to their needs*”¹¹⁶.

To sum up, simple living and moderation in the enjoyment of material benefits of life is the sterling principle advocated by Islam in the consumption of wealth.

As it is discussed earlier, Islam condemns both miserliness and extravagance and advises people to be moderate in their expenditure. The Holy Prophet dissuaded people from a life of luxury and forbade the consumption of all those things which may lead to such a lifestyle. Significant example of luxury in those days were squandering of wealth on gambling and drinking, ostentatious dress (mostly silken wears by men), paintings and portraits, rearing of dogs, and precious metal utensils.

¹¹³ See *Mishkat, al-Masabih*, urdu ed. v. 2, tradition no. 4934

¹¹⁴ Ibid. trad. no. 4962

¹¹⁵ Ibid. trad. no. 4935

¹¹⁶ See *Bukhari, Sahih*, tradition no. 1376

In these days, with the advancement of technology, certain other forms of luxury have come into being. Keeping in view the overall spirit of the *Shariah*, its value system and the distribution of wealth in the society, the level of luxury would be defined from time to time. But this would remain the basic set of instructions issued by the Prophet as inviolable. The life of luxury is discouraged in Islam both by educating people and by public action if necessary. For example, the state may discourage or even ban the production and import of such articles, which by a social consensus lead to a life of luxury. In still another case, the state may apply the classical instrument of *Hijr* to forestall a luxurious behavior. *Hijr* literally means, 'forbidden' but the concept has been derived from the *Qur'anic* instruction of forbidding the minor orphans to have an access to their own resources until they obtain majority.

The above description suggests that Islam visualizes a low-cost, low-consumption economy. Minimum resources are expended on consumer needs, since the lifestyle encourages simplicity and moderation. This links up with the overall world view of Islam, which treats the life in this world a transitory phase in the march towards *Akhira*. A Muslim's outlook rates possessions of this world at a low scale.¹¹⁷

As we can easily understand from the above discussion that Islamic law is a complete legal system and it has rules and principles to govern the matters related to consumers. Islam gives guidelines to the consumers for rational consumption. It suggests that the Muslim consumers should form a rational attitude towards consumption of goods and services. They should keep before them the concepts of *Halal* and *Haram* and the universal teachings of Islam and obey the Holy Prophet (S.A.W.). By their positive attitude the consumers will be rewarded in this world and Hereafter. Thus, Islam protects consumers firstly against their own irrational consumption of wealth.

¹¹⁷ See Muhammad Akram khan, *Economic teaching of Prophet Muhammad*, pp.75-76

CHAPTER NO. 3

CONSUMER PROTECTION IN ISLAMIC MARKET SYSTEM

Islam, as a matter of principle, prohibits all activities which may cause harm either to the traders or the consumers in the market. In this chapter the universal guidelines of Islam that protect consumers in the market are discussed.

1. TOWARDS A JUST MARKET SYSTEM

“Everyone shall have the Right to legitimate gains without monopolization, deceit or harm to one self or to others. Usury (*Riba*) is absolutely prohibited.”¹¹⁸ This means that each individual in an Islamic society enjoys complete freedom in the earning of his livelihood. He can start, manage and organize any kind of business enterprise within the limits set by the Islamic *Shari'ah*. In other words Islam gives complete freedom to economic enterprise. However, freedom does not and must not operate without a sense of responsibility. An individual is free to pursue his economic activities provided he respects the code of conduct prescribed for the profession, which broadly means choosing things lawful and shunning matters unlawful. The dictates of the Holy *Qur'an* and the teachings of the Prophet (S.A.W.) serve to set a scale in everybody's mind to distinguish between the lawful and the unlawful means of earning, and to prohibit or disapprove of all things that are either morally wrong or socially unacceptable.

Islam, as a matter of principle, prohibits all activities which may cause harm either to the traders or the consumers in the market. It encourages the prevalence of free market where everyone earns his sustenance without government intervention. However, it puts certain restraints in order to eliminate the incidence of injustice and check malpractices and unlawful operations. In all other respects market in Islam is free from any state intervention. However, if the people fail to take guidance from the Holy *Qur'an* in matters

¹¹⁸ See Article 14 of *Cairo Declaration on Human Rights in Islam*, Islamabad Law Review, vol. I Nos.1&2 Spring & Summer 2003

relating to business transactions, an Islamic state will strive to organize the market transactions on sound Islamic principles.

The Holly *Qu'ran* and *Sunnah* embody some very basic and important principles with regard to protection of consumers in commercial transactions. The basic purpose is preservation and protection of property and material wealth of the people. The, *Fuqaha*, after taking guidance from the principles provided by the *Qu'ran* and the *Sunnah* developed a comprehensive system of contracts and transactions. Rights of the consumers are discussed under different headings in different chapters of *Fiqh* literature. The Islamic law of Contracts and Commercial transactions has become a well-developed discipline now due to their contributions and *ijtihadats*. A specific discipline of *Fiqh al-sooq* is developed. *Fiqh al-Sooq* is the area of Islamic jurisprudence in which the legal principles about business in markets are discussed.

Islam has advocated a free market system. It disapproves all business practices which involve firstly, explicit or implicit harm and injustice to the contracting parties or to the public at large; secondly, which restrict the freedom of trade, or stand in violation of the *Qur'anic* injunctions and the approved business conduct.

In the Islamic economy, other things remaining the same price are determined by free operation of market forces. The Holy Prophet (may peace be upon him) discouraged any interference in the process of price determination by the state or individuals. Besides refusing to take any direct action, he prohibited those business practices which could lead to market imperfections. Consequently, stockholding, speculation, oligarchic collusions, concealment of vital information about the product and selling by false vows (which could be compared to misleading advertisements of the present day) were prohibited by the Holy Prophet (may peace be upon him). Thus the Holy Prophet (may peace be upon him) nullified the influence of economic power on price mechanism. Simultaneously, he discounted exploitation of the ignorant by the informed. In the contemporary society these instructions could be made a basis for a voluntary code of conduct for the business community. Besides legal injunctions there are a number of moral principles. The

business community has been instructed to be honest, truthful and magnanimous in mutual dealings. Instead of damaging each other, they should evolve a social system of mutual help and cooperation. Besides a completely free market, the Holy Prophet provided a framework for a reliable and smooth operation of commercial dealings. The society required rules for contracts, rights and duties of partners, debts and their collection, rights and obligations of buyers and sellers and legality or otherwise of various forms of business dealings. Without such a framework, the society could not maintain a free and open market mechanism. The laissez-faire of capitalism also required a normative role for the state to lay down a basic framework. We have enlisted a set of traditions which explains salient features of the Islamic commercial framework. The apparent similarity of free market in Islam and capitalism may be misleading. The Islamic framework ensures free flow of supply and demand by regulating individual behavior in an ethic-o-legal framework. The behavior of the business community has been tied to the principles of justice, fairness, equitability, cooperation, mutual help, and magnanimity. It is in contrast to capitalism where utilitarian criterion of pleasure and pain operates at the core of the market mechanism. Islam allows free operation of demand and supply forces by regulating probable sources of interference and educating the business community in a code of conduct. This code provides viability to the legal framework.¹¹⁹

The legality of trade implies that a Muslim is free to make any kind of approved transaction. Islamic codes of ethics provide general guidelines for both daily life as well as conducting business.

Now we shall discuss the trade practices in the markets and their position in the eyes of Islamic law. All trade practices can be classified into two i.e. encouraged and discouraged, (approved or disapproved) in following these are discussed from the perspective of consumer protection.

¹¹⁹ See Muhammad Akram khan, *Economic teaching of Prophet Muhammad*, pp.75-76

2. ENCOURAGED TRADE PRACTICES

Islam demands a certain type of behaviour from the economic agents – the consumers and the producers. The behaviour prescribed for the economic units of the society are so devised as to lead to a happy state of affairs, which is the ultimate goal of Islam. An Islamic market is characterized by certain norms that take care of the interests of both the buyer and the seller. There are a number of rules of ethical discipline in Islamic commercial transactions without which business contract would be regarded as lacking perfection in the light of the code of good manners, decency and ethical excellence. Some of these tenets are as follows:

2.1. Keenness to Earn Legitimate (*Halal*) Earnings

Islam places great emphasis on the code of lawful and unlawful in business transactions. *Halal* earning is an honest earning. Islam orders every Muslim to earn only in *Halal* ways.

Things legitimate and illegitimate are clearly defined in Islam and, in between them, are doubtful things, which should be avoided. A true Muslim businessman should be wary of the doubtful things in order to keep himself clear in regard to his faith and his honour because one who falls into doubtful matters is sure to fall into that which is unlawful (*Haram*). A tradition of the Prophet (sws) states: A time will come upon the people when one will not care as to how he gets his money whether legally or illegally.¹²⁰

From the above it is clear that a Muslim trader must be determined to earn only through legitimate means. He should not only avoid illegitimate means in earning his provisions and livelihood but also distance himself from matters dubious and doubtful. The Prophet (sws) is also reported to have said: Leave what makes you doubt for things that do not make you doubt.¹²¹

The following verses of the Holy Qur'an and teachings of the Prophet Muhammad (P.B.U.H) are significant in this regard;

¹²⁰ See *Bukhari*, tradition no. 1941

¹²¹ See *Tirmidhi*, tradition no. 2442

"Ye People! Eat of what is on earth; lawful and good".¹²²

"Eat good things Allah has provided for you".¹²³

Ali (Allah be pleased with him) said: *"I heard the Messenger of Allah (may peace be upon him) saying: '(on the day of Resurrection) when there will be no shade except that of the throne of Allah, the person who undertakes a journey to earn his livelihood and then returns with it towards his dependents, will be under the shade of Allah's Throne'."*¹²⁴

The Prophet (sws) endorsed the importance of legitimate ways of earning in the following words: Asked 'what form of gain is the best? [The Prophet] said, 'A man's work with his hands, and every legitimate sale'.¹²⁵

Allah listens to the prayers of those who earn and eat Halal. There are many ways to earn Halal earnings some of these are: Business of Halal things, Farming, Job, Inheritance, Gifts and presents, etc.

Many *Qur'anic* verses disapprove the wrongful taking of the property. The following verses of the Holy *Qur'an* are significant in this regard:

*"Do not devour one another's property wrongfully, nor throw it before the judges in order to devour a portion of other's property sinfully and knowingly."*¹²⁶

*"Do not devour another's property wrongfully – unless it be by trade based on mutual consent."*¹²⁷

¹²² Qur'an 2:168

¹²³ Qur'an 7:160

¹²⁴ See Muhammad Akram khan, *Economic teachings of the Prophet Muhammad (P.B.U.H)*, p.36

¹²⁵ See Ahmad Ibn Hanbal, *Musnad*, tradition no. 1576

¹²⁶ Qur'an: 2:188

¹²⁷ Qur'an: 4:29

The above verses prohibit the believers in no uncertain terms to devour the property of others by illegal means. There are many ways of Haram earnings, some of these are: Bribery, Robbery, Gambling, Usury, Cheating, Theft, Business of Haram things, shoplifting, etc.

2.2.Trade through Mutual Consent

Mutual consent between the parties is a necessary condition for the validity of a business transaction. It, therefore, follows that a sale under coercion is not acceptable in Islam. A sale transaction is to be regarded as legal only if it is made through the mutual consent of the parties concerned. Taking advantage of someone's plight and charging high price is also a form of pecuniary exploitation and as such forbidden in Islam. The Holy *Qur'an* says:

*"O you who believe! Eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual goodwill: nor kill [or destroy] yourselves: for verily Allah has been to you Most Merciful."*¹²⁸

Thus two key elements of general theory of contract are endorsed emphatically in these verses: mutual consent and gainful exchange. One can also find importance of mutual consent for legality of a business deal.

The Prophet (sws) is reported to have said: *A sale is a sale only if it is made through mutual consent.*¹²⁹

2.3.Truthfulness in Business Transactions

Honesty and truthfulness are extremely important qualities. Islam promises Allah's blessings to those engaged in honest trade. There is no room for cheating, fraud and exploitation of any kind. Muslim businessmen have been directed by Islam to:

¹²⁸ Qur'an,4:29

¹²⁹ See *Ibn Majah, Sunan*, tradition no. 2176

Speak the truth when you talk, keep a promise when you make it, when you are trusted with something fulfill your trust [. . .] and restrain your hands from injustice. In return they have been guaranteed Paradise.¹³⁰ Muslims have been directed to love Allah more than trade and obey Allah even if they have to sacrifice everything else.

Islam encourages truthfulness in business transactions and raises the status of a truthful merchant so much so that he will be at par with the holy warriors and martyrs, in the Hereafter. The Prophet (sws) is reported to have said: The truthful merchant [is rewarded by being ranked] on the Day of Resurrection with prophets, veracious souls, martyrs and pious people.¹³¹ The Prophet (sws) has also exhorted the believers to strictly adhere to truthfulness in business transactions. He says: The seller and the buyer have the right to keep or return the goods as long as they have not parted or till they part; and if both the parties spoke the truth and described the defects and qualities [of the goods], then they would be blessed in their transaction, and if they told lies or hid something, then the blessings of their transaction would be lost.¹³² The tradition implies that Allah blesses business dealings if both the buyer and the seller are true to each other. Telling lies and hiding facts will result in the loss of divine blessing. A tradition reads. The Holy Prophet said: *'Traders are wicked people'*. The Companions asked: *'O Messenger, has Allah not permitted business?'* The Messenger replied: *'Of course He has declared trading lawful. But they (i.e. the traders) will swear by Allah and do evil; they will not speak but tell lies'*.¹³³

2.4. Trustworthiness in Business Transactions

Trustworthiness is one of the most important principles of ethical discipline in commercial transactions. Trust is a moral virtue and duty incumbent on a Muslim in the performance of his affairs. It demands sincerity in work and purity of intention from every believer. A true Muslim trader will not, therefore, barter his *Akhirah* (hereafter) for worldly gains. He will avoid fraud, deception, and other dubious means in selling his

¹³⁰ See *Mishkat al Masabih*, tradition no. 4870

¹³¹ See *Tirmidhi, Sunan*, tradition no. 1130

¹³² See *Bukhari, Sahih*, tradition no. 1937

¹³³ See *Ahmad, Musnad*, tradition no. 14982

merchandise. The sense of mutual trust demands that the pros and cons of commodity be revealed to the buyer so that he purchases the commodity in full satisfaction. Says the Holy *Qur'an*:

*"O you believers! Do not betray Allah and the Messenger, nor knowingly, betray your trusts."*¹³⁴

2.5. Generosity and Leniency in Business Transactions

One should be lenient and generous in bargaining. Therefore, whoever demands his debt back from the debtor should do so in a decent manner. The Prophet (sws) invokes Allah's mercy thus: May Allah's mercy be on him who is lenient in his buying, selling, and in demanding back his money [or debts].¹³⁵ The Prophet's exhortation to Muslims means that a creditor should be easy and generous in demanding back his money. The debtor, in turn, should also give back the debt to the creditor on time with due thanks and politeness. The Prophet (sws) was the best of all people in repaying the debts.

Abu Rafi' reports that the Prophet (sws) took a young camel on loan. When camels came to him in charity, he asked *Abu Rafi'* to give the creditor a young she camel. *Abu Rafi'* pointed out that there was no young camel except for a four-year old camel of a very good quality. The Prophet (sws) said: 'Give him the best one, for the best amongst you is he who repays the rights of others handsomely'.¹³⁶

Leniency in dealings is stressed. 'May Allah bless the person who behaves leniently while buying, while selling and while collecting his dues'.

2.6. Honouring and fulfilling Business Obligations

Islam attaches great importance to the fulfilment of contract and promises. Islamic teachings require a Muslim trader to keep up his trusts, promises and contracts. The basic principles of truth, honesty, integrity and trust are involved in all business dealings. The

¹³⁴ *Qur'an*: 8:27

¹³⁵ See *Bukhari, Sahih*, tradition no. 1934

¹³⁶ See *Muslim, Sahih*, tradition no. 3002

Holy *Qur'an* emphasizes the moral obligation to fulfil one's contracts and undertakings. A verse states thus: "*O you who believe! Fulfil [your] obligations.*"¹³⁷

A tradition of the Prophet (sws) states thus: *The Muslims are bound by their stipulations.*¹³⁸

Another tradition condemns promise-breaking as the hallmark or trait of a hypocrite: If he makes a promise, he breaks it, and if he makes a compact, he acts treacherously.¹³⁹ In order to safeguard the interest of both the buyer and the seller it is desirable, according to the Islamic teachings, to clearly define all the necessary details concerning the business deal. Each business contract should clearly specify the quality, the quantity and the price of the commodity in question. Thus, in a business contract the offer and acceptance should be made between the parties concerned on a commodity which is with the buyer and, which he is able to deliver. Any commodity which is non-existent or not deliverable is not allowed to be transacted. A contract must be explicit with regard to the rights and obligations of the parties concerned so that it does not lead to disputes and disagreements between them.

2.7. Fair Treatment of Workers

Islam puts certain conditions and restrictions to obviate the chances of bitterness between the employer and employees. Islam encourages and promotes the spirit of love and brotherhood between them. According to the Islamic teachings it is the religious and moral responsibility of the employer to take care of the overall welfare and betterment of his employees. Fair wages, good working conditions, suitable work and excellent brotherly treatment should be provided to the workers. The last Prophet of Allah (sws) has explained this principle in the following words:

¹³⁷ *Qur'an*: 5:1

¹³⁸ See *Abu Da'ud, Sunan*, tradition no. 3120

¹³⁹ See *Bukhari, Sahih*, tradition no. 32

*"Those are your brothers [workers under you] who are around you, Allah has placed them under you. So, if anyone of you has someone under him, he should feed him out of what he himself eats, clothe him like what he himself puts on, and let him not put so much burden on him that he is not able to bear, [and if that be the case], then lend your help to him."*¹⁴⁰

The Prophet (sws) also said: *"I will be foe to three persons on the Last Day: one of them being the one who, when he employs a person that has accomplished his duty, does not give him his due."*¹⁴¹ The Prophet (sws) is also reported to have said: *The wages of the labourers must be paid to him before the sweat dries upon his body.*¹⁴²

2.8. Transparency in dealings

Islam also encourages transparency in dealings. Qur'an has stressed that all agreements and contracts should be as transparent and clear as possible. The following verse explains in detail:

O ye who believe, when ye deal with each other in transactions involving future obligations in a fixed period of time, reduce them to writing. Let a scribe write down faithfully as between the parties: let not the scribe refuse to write as Allah (S.W.T.) has taught him, so let him write. Let him who incurs the liability dictate, but let him fear His Lord

Allah (S.W.T.), and not diminish aught of what he owes. If the party liable is mentally deficient or weak, or is unable himself to dictate, let his guardian dictate faithfully. And get two witnesses, out of your own men . . . The witness should not refuse when they are called on (for evidence). Disdain not to reduce to writing (your contract) for a future period, whether it be small or big: it is just in the sight of Allah (S.W.T.), more suitable as evidence, and more convenient to prevent double dealing among yourselves. But if it be a transaction which ye carry out on the spot among yourselves, there is no blame on you if

¹⁴⁰ See *Bukhari, Sahih*, tradition no. 2359

¹⁴¹ See *Bukhari, Sahih*, tradition no. 2109

¹⁴² See *Ibn Majah, Sunan*, tradition no. 2434

*ye reduce it not to writing. But take witnesses whenever ye make a commercial contract; and let neither scribe nor witness suffer harm. If ye do (such harm) it would be wickedness of you: so fear Allah (S.W.T.), for it is Allah (S.W.T.) that teaches you. And Allah (S.W.T.) is well acquainted with all things. If ye are on a journey and cannot find a scribe, a pledge with possession (may serve the purpose). And if one of you deposits a thing on trust with another let the trustee (faithfully) discharge his trust, and let him fear his Lord. Conceal not evidence; for whoever conceals it, his heart is tainted with sin. And Allah (S.W.T.) knoweth all that ye do.*¹⁴³

3. DISCOURAGED TRADE PRACTICES

Consumers should expect to receive goods that are in working conditions and priced fairly. They should also be notified of any deficiencies. Islam has discouraged a number of trade practices when dealing with consumers or buyers. These are basically various forms of unethical business practices a Muslim businessman must avoid in his business dealings. The behavior of the business community has been tied to the principles of justice, fairness, equitability, cooperation, mutual help, and magnanimity. Some of these prohibited and undesirable business practices are as follows:

3.3.1. Dealing in Prohibited (*Haram*)¹⁴⁴ Goods/Services

Muslims are not allowed to engage in businesses that are not in conformity with the injunctions of Islam. It is forbidden for a Muslim to acquire or transfer anything that the Sharia'h has declared to be haram nor engaged in trading it.¹⁴⁵ Dealing in unlawful goods such as carrion (dead meat), pigs and idols is strongly prohibited in Islam. Dead meat would mean the flesh of any bird or animal dead from natural causes, without being

¹⁴³ Qur'an 2:282.

¹⁴⁴ The original position regarding the things in Islam is permissibility unless it is prohibited by Shariah (*Al-asl fil ashya al-Ibahat*) such as the following are declared haram in Shariah: Pork (Pig), beasts, and some other animals whose meat is not permitted, anything that contains part of the Haram animal is also Haram. Example: Lard, Jello Gelatin, Animal Shortening, etc. are Haram, Blood of any animal or bird, Meat of dead animals or birds, Meat of animals or birds that has been sacrificed in the name of other than Allah, Alcohol and (intoxicating) drugs. The person who consume it will be punished *Hadd Shurb*. Haram foods are strictly prohibited by Allah and if a Muslim eats them he will be sinful. The sale and purchase and mixing of these things in other lawful foods are also strictly prohibited, and those who commit its violation will be strictly punished under *Ta'zir*.

¹⁴⁵ See Mushtaq Ahmad, *Business Ethics in Islam*, p.119

properly slaughtered in an Islamic way. A Muslim, therefore, will not eat the flesh of such an animal or bird. Flesh of an electrocuted animal, or of an animal killed by the blow of a blunt weapon, and of the strangled one is also proscribed in Islam. Also proscribed is the flesh of the animal that has been killed or slaughtered in ways other than Islamic. It is, therefore, not permissible for a Muslim to trade in dead meat. Likewise, trading in pork or intoxicants and sale of idols and statues is not permitted in Islam. Adultery, obscenity and immorality are expressly prohibited by the Qur'an therefore any business hinges upon them is expressly forbidden. Following verses of the Holy *Qur'an* are significant in this regard:

*"Forbidden to you [for food] are: dead meat, the blood, the flesh of swine and that on which name of other than Allah has been mentioned."*¹⁴⁶

*"O you who believe! Intoxicants and gambling [dedication of] stones and [divination by] arrows are an abomination of Satan's handiwork: so avoid it in order that you may prosper."*¹⁴⁷

*"Say: Not equal are things that are bad and things that are good even though the abundance of the bad may dazzle thee; so fear Allah (S.W.T.), O ye that understand, that ye may prosper."*¹⁴⁸

The Prophet (sws) is also reported to have said; *Allah and His Messenger made illegal the trade of alcoholic liquors, dead animals, pigs and idols.*¹⁴⁹

The Prophet (sws) also said; *If Allah makes something unlawful, he makes its price also unlawful.*¹⁵⁰

¹⁴⁶ Qur'an, 5:1

¹⁴⁷ Qur'an 5:90

¹⁴⁸ Qur'an, 5:103,cf. 2:272-76; 3:130; 4:160; 30:39; 17:36.

¹⁴⁹ See *Bukhari*, tradition no.2082

¹⁵⁰ See *Ahmad*, tradition no. 2546

Thus, anything earned by *Haram* goods or service is prohibited in Shariah such as prostitution, bribery, painting and photography, selling *Haram* food, selling adulterated foods and goods etc. are strictly prohibited in Shariah.

3.3.2. Riba (Usury)

Riba is strictly prohibited in Islam. It is a principle that is based on the text of the Qur'an. The principle may be stated thus: all commercial transactions are permitted, except those bearing Riba. The words of the Qur'an are:

*"Those who devour usury will not stand except as stands one whom The Evil One by his touch has driven to madness. That is because they say: "Trade is like usury," but Allah has permitted trade and forbidden usury.*¹⁵¹

The sin of dealing with riba affects all the parties involved in a Riba Transaction: *"Allah's Messenger (peace be upon him) cursed the acceptor of interest and its payer, and one who records it, and the two witnesses; and he said, "They are all equal."*¹⁵²

Foremost among the unacceptable business practices strongly condemned in Islam is *Riba*. *Riba* (interest), by definition, is the extra sum the moneylender charges from the borrower for deferred payment. Islam has forbidden all forms of *Riba* since it involves both oppression and exploitation. Islam strictly forbids this form of tyrannical dealings and condemns it in severe terms. The Holy *Qur'an* says:

*"Allah has permitted trading and forbidden Riba (usury)"*¹⁵³

*"Devour not Riba doubled and re-doubled"*¹⁵⁴

It further states: *"O you who believe! fear Allah and give up what remains of your demand for usury if you are indeed believers. If you do it not, take notice of war from*

¹⁵¹ Qur'an 2:275

¹⁵² See Muslim, *Sahih*, tradition no. 3881.

¹⁵³ Qur'an ,2:275

¹⁵⁴ Qur'an , 3:130

Allah and his Apostle: but if you turn back you shall have your capital sums; deal not unjustly and you shall not be dealt with unjustly".¹⁵⁵

The *Sunnah* is equally emphatic in denouncing *Riba*. The Prophet (sws) is reported to have said: *May Allah send down His curse on the one who devours Riba and the one who pays it and on the two witnesses and on the person writing it.*¹⁵⁶

These and many other verses of the *Qur'an* and traditions of the Prophet (sws) clearly demonstrate that all those business transactions which involve interest in one form or other are unlawful in the sight of Islam. According to the *Qur'anic* teachings there is a clear distinction between genuine business profits and interest; while the former is recommended and desirable, the latter is hated and undesirable.

3.3.3. Sale of *Al-Gharar* (Uncertainty, Risks, Speculation)

In Islamic terminology, this refers to the sale of a commodity or good which is not present at hand; or the sale of an article or good, the consequences or outcome of which is not yet known; or a sale involving risks or hazards where one does not know whether at all the commodity will later come into existence. Such a sale is strictly prohibited in Islam because the quality, whether good or bad, is not known to the buyer at the time of the deal and there is every possibility that the contract may give rise to disputes and disagreements between the concerned parties. The Prophet (sws), therefore, prohibited the sale of what is still in the loins of the male; or sale of whatever is in the womb of a she-camel; or sale of birds in the air; or the sale of fish in the water, and any transaction which involves *Gharar*. (i.e. anything that involves deception). He also forbade the sale of fruits before they look healthy and also the sale of crops until the grain hardens. Nevertheless, such advance sales would be acceptable if the element of *Gharar* does not exist and the quality and the quantity of the goods are pretty well known and predictable.

3.3.4. Qimar (Gambling) and Maysir (Games of chance)

¹⁵⁵Qur'an, 2:278

¹⁵⁶See Ahmad Ibn Hanabal, *Musnad*, tradition no. 624

Qimar includes every form of gain or money the acquisition of which depends purely on luck and chance. As opposed to others eligible, one may acquire income as a result of lottery or lucky draws. It also includes any receipt of money, benefit or usufruct that is at the cost of the other party or parties having equal entitlement to that money or benefit.¹⁵⁷

Maysir literally means getting something too easily or getting a profit without working for it. the form most familiar to the Arabs was gambling by casting lots by means of arrows on the principle of lottery. The arrows were marked and served the same purpose as a modern lottery ticket. Dicing and wagering are rightly held to be within the definition of gambling and Maysir.¹⁵⁸ The Holy Qur'an has expressly prohibited this practice. It says:

*"O you who believe: Intoxication and gambling, dedication of stones, and divination by arrows are an abomination of Satan's handiwork. Eschew such abomination, that you may prosper. "*¹⁵⁹

3.3.5. Arbitrarily Fixing the Prices

Islam grants absolute freedom to traders provided they adhere to the code of lawfulness. It does not, therefore, encourage the practice of price-fixing and leaves the traders to earn the profits from each other within the lawful limits. As a matter of principle public authorities are not allowed to fix the prices of commodities by force. This is because rise and fall in the prices are linked to various factors other than the greediness of the traders and fixing the prices may endanger both public and private interests. It is reported that once the prices shot up during the period of the Prophet (sws). The people said:

"O Messenger of Allah! Prices have shot up, so fix them for us. Thereupon the Messenger of Allah said: 'Allah is the One Who fixes prices, withholds, gives lavishly,

¹⁵⁷ See Mahmood Ahmad Ghazi, "Mudaraba Financing: an Appraisal", Paper presented in the conference on Islamic Corporate Finance: Shariah based Solutions, Nov.21-22, 1998 at Karachi.

¹⁵⁸ See Tahir Mansuri, *Islamic Law of Contracts and Business Transactions*, pp.7-8

¹⁵⁹ Qur'an 5:90

and provides, and I hope that when I meet Allah, none of you will have any claim on me for an injustice regarding blood or property.”¹⁶⁰

However, the role of public authorities comes into play if it becomes absolutely essential to do so, especially in order to prevent exploitation and other unjust practices in the market. Thus, if a trader adopts unfair means, charges unjust prices and indulges in undercutting with a view to doing harm to the smaller traders, public authorities have the right to intervene in the market. They can and should take steps to fix or control the prices so as to eliminate injustice from the market and allow the trader to earn reasonable profit and the buyer to pay a just and equitable price.

3.3.6. Measures Causing Price-Hike

Islam discourages any measure that result in a price-hike. The following transactions are prohibited due to this reason:

- a) **Prohibition of Maks:** The term Maks is used for sales-tax. The Prophet (peace be upon him) had reportedly said: “*He who levies maks shall not enter paradise.*”¹⁶¹ Since the imposition of sales-tax (or, for that matter, of octroi and excise duties) results in raising the prices unjustly, therefore, Islam does not approve of it. The Caliph ‘Umar ibn ‘Abd al-Aziz had abolished maks, interpreting it as bakhs (diminution in what is due to others) which is expressly prohibited by the Qur'an.
- b) **Prohibition of Najash:** It is the evil practice of offering a higher price just to induce others to raise their offers, with no intention of buying of commodity. Besides being a form of fraud (which itself is forbidden) the practice of Al-Najash raises the prices for the needy consumers. The Prophet (peace be upon him) has forbidden this practice saying, *wa la tanajashu* (do not commit al-najsh).
- c) **Prohibition of Bay ‘Ba’d ‘Ala Bay ‘ Ba ‘d:** It may be described as the practice of jumping in with a higher or lower offer while the two parties are still in the

¹⁶⁰ See Imam Ibn Taymia, *Public Duties in Islam* , p.56

¹⁶¹ See S.M. Yusuf, *Economic Justice in Islam* , p.47

process of making a deal, or are about to conclude it. *The Prophet prohibited this practice* since it may result in an unnecessary price-hike.

- d) **Prohibition of Talaqqi al Rukban:** This signifies the practice of meeting the villagers at the outskirts of the town in order to purchase their merchandise before they reach the market place. The Prophet (peace be upon him) forbade it. Obviously, the prohibition is aimed at curbing artificial price-hike. The Prophet (peace be upon him) ordered that the supplies be brought down to the market place so that the suppliers and the consumers might benefit from the natural level of prices.
- e) **Prohibition of Bay al Hadir li Bad:** In this case the clever town broker assumes the role of a middleman between the unsophisticated villagers and the consumers of the town. He sells the merchandise brought by these villagers to the local consumers and in the process makes huge profits for himself while raising the prices for the general consumers.¹⁶² The Prophet (peace be upon him) forbade this practice.¹⁶³ Imam Ibn Taymia says that there is harm for the consumers in this practice.

3.3.7. Hoarding (*Ihtikar*)

The Arabic word for hoarding is *Ihtikar*. Hoarding is prohibited in Islam. As *Shaikh al Qaradawi* points out, the market system is free in Islam, and is allowed to respond to supply and demand. Islam does not tolerate interference in the market system by hoarding or other forms of price manipulation. According to *Maududi*, the Prophet's prohibition of hoarding food grains, besides serving other purposes, was aimed also at eliminating the evil of black-marketing which usually follows hoarding. The Prophet (peace be on him) wanted to establish a free market so that a reasonable and just price could emerge as a result of open competition.¹⁶⁴

¹⁶² See Mushtaq Ahmad, *Business Ethics in Islam*, p.124

¹⁶³ Ibn Taymiyyah, Ahmad ibn 'Abd al-Halim. *Al-Ubudiyyah fi al-Islam*, p.17

¹⁶⁴ See Maududi, Sayyid Abu al-ala. *Mu 'ashiyat-I Islam*, op. cit., p.144

Hoarding is condemned of both cash and kind. Hoarding of gold, silver and other cash is called Iktinaz, while hoarding of food grains and other supplies called Ihtikar. Both of them are repugnant to the injunctions of Shariah. Hoarding foodstuffs means withholding them in expectation of rise in their prices. Sometimes, a handful of traders operating in the market buy the entire quantity of an item, rice for example, and store it up with the object of selling it later at the time of scarcity to draw maximum profit out of it and to dictate the prices. The consumers are left with no choice but to purchase the article concerned from the one who hoards, as he is the only one in the market who holds it. Sometimes, a trader hobnobs with the suppliers who will only sell their merchandise to him. As a result, he holds the entire stock of the essential items that other traders do not possess. He is, therefore, in a position to dictate his terms in the market and sell them at an exorbitantly high price to the needy people.

This is an unjust practice and a clear case of exploitation and deservedly condemned by Islam. The Prophet (sws) is reported to have condemned the hoarders when he said: *No one hoards but the traitors (i.e. the sinners).*¹⁶⁵

He (sws) also said: *The importer [of an essential commodity] into the town will be fed [by Allah], and the hoarder will have [Allah's] curse upon him.*¹⁶⁶

He (peace be upon him) also said: *"He who hoards is a sinner."*¹⁶⁷

During his Caliphate, 'Umar ibn al-Khattab had issued a stern warning against hoarding of any marketable commodities. Nobody was allowed to spend his wealth on purchasing food grains with the intention of hoarding.¹⁶⁸

In cases where businessmen are engaging in hoarding and other forms of price manipulation, Islam allows price control in order to meet the needs of society and to

¹⁶⁵ See *Abu Da'ud*, tradition no. 2990

¹⁶⁶ See *Ibn Majah*, tradition no. 2144

¹⁶⁷ See *Sahih Muslim*, tradition no. 3910

¹⁶⁸ See Mushtaq Ahmad, *Business Ethics in Islam*, p.121

provide protection against greed. However, if a commodity is being sold without any hoarding, and its price rises because of natural shortages or scarcity or an increase in demand, then this circumstance is due to Allah. Businessmen cannot then be compelled to sell at a fix price.¹⁶⁹

3.3.8. Exploitation of one's Ignorance of Market Conditions

One of the most common unethical practices in modern business is to exploit one's ignorance of market conditions. Sometimes it may happen that a buyer arrives in a town with objects of prime and general necessity for selling them in the market. A local trader may persuade the new-comer to transfer all of the goods to him so that he will sell them on his behalf in the market. He obtains the commodities on a price that is lower than market price and then sells them at a high or exorbitant price. Islam condemns this act of intermediary intervention which involves exploitation of one's ignorance of market conditions. The practice was prevalent in pre-Islamic society. The Prophet (s.w.s) has prohibited this practice through a number of instructions. A tradition reads: A town dweller should not sell the goods of a desert dweller.¹⁷⁰

3.3.9. *Al-Najsh* (Trickery)

The term *Al-Najsh* means an action in which a person offers a high price for something, without intending to buy it, but just to cheat or defraud another person who really means to buy it. The person practising it may collaborate with the seller to offer high prices in front of the buyers merely as a means to cheat them. This type of fraudulent transaction is totally prohibited in Islam. The Prophet (s.w.s) is reported to have said: "*Do not harbour envy against one another; do not outbid one another [with a view to raising the price]; do not bear aversion against one another; do not bear enmity against one another; one of you should not enter into a transaction when the other has already entered into it; and be fellow brothers and true servants of Allah.*"¹⁷¹

¹⁶⁹ See Rafik Essa Beekun, *Islamic Business Ethics*, p.44. IIIT

¹⁷⁰ See *Bukhari*, tradition no. 2006

¹⁷¹ See *Muslim*, tradition no. 4650

As is clear from the above, Islam also forbids the practice of sale over sale and purchase over purchase. This means that it forbids someone to offer a higher price for a commodity after the deal has been accomplished between the parties. Obviously he is offering a higher price in order to spoil the agreement reached between the parties. As a result of this offer the buyer may feel tempted to cancel his contract to sell it at a higher price. It may give rise to disputes and disagreements between brothers. Hence it is strictly prohibited in Islam.

3.3.10. Cheating and Fraud in Business Transactions

The traders and businessmen generally have a tendency to motivate the consumers by adopting fraudulent business practices. Islam strongly condemns all such practices in business transactions (*Al-Ghashsh*). Businessmen should avoid duplicity and fraud. They should treat others in the same righteous and fair manner that they themselves would like to be treated. The Messenger of Allah has commanded the believers not to indulge in cheating and fraudulent practices in business transactions. Sale of dead animal, dubious and vague transactions, manipulating the prices, selling the items belonging to a desert dweller by a townsman *Al-Najsh* (trickery), false eulogy and concealment of defects are all examples of cheating and fraud i.e. *Al-Gashsh*. The Prophet (sws) has strongly condemned all such practices in a number of traditions and the believer to abstain from them. The Prophet (sws) is reported to have said: "*The seller and the buyer have the right to keep the goods or return them as long as they have not parted. He also said that if both the parties have spoken the truth and described the defects as well as the merits thereof (the goods), they would be blessed in their deal. If they have told lies or concealed something, then blessings of their transaction would be lost*".¹⁷²

Fraud and deception of any kind are condemned by the Qur'an. Muslims are enjoined to make their transactions absolutely free from ambiguity. They are required to be clean, clear, honest and just in their dealings. The purpose is to protect the contracting parties from mutual injustice and resulting disputes.

¹⁷² See *Bukhari*, tradition no. 1937

3.3.11. Swearing

The traders often take recourse to swearing to emphasize that their items are of good quality. They claim qualities in the merchandise, which don't exist. They try to persuade the buyers to purchase their commodity by invoking Allah's name. Swearing in business for such purposes is forbidden in Islam, be it false or true. False swearing is an act of sin punishable by hellfire. Swearing by Almighty Allah is too great a thing to be used as a means to sell a commodity. The desirable thing in business transaction is that both the buyer and the seller remain straightforward and truthful in their dealings, so that no one will feel the need to swear by Allah in order to create conviction in the mind of the other party. The Prophet (sws) is reported to have said: Swearing [by the seller] may persuade the customer to purchase the goods but the deal will be deprived of Allah's blessing.¹⁷³

3.3.12. Giving Short Measures

Another form of deceit is to manipulate weights and measures. It refers to the act of taking full measures from others and giving them short measures in your turn. Giving short measures was a common malaise plaguing the pre-Islamic days. The community of the Prophet *Shu'ayb* (sws) was known for practising it with impunity. Consequently, they were destroyed for their persistence in deceit and disbelief in Allah and His Messenger. Allah the Almighty has repeatedly commanded exactitude in weights and measures. One of the verses says: *"And give full measure when you measure, and weigh with a just balance. That is good and better in the end."*¹⁷⁴

The importance of accuracy in terms of weights and measures has been stressed by the Qur'an many times. The believers are commanded to weigh and measure in full without the slightest diminution or else to face dire consequences. According to the Qur'an, the mission of all the prophets was to keep the balance straight and to uphold justice. Give full measure when ye measure, and weigh with a balance that is the most fitting

¹⁷³ See *Bukhari*, tradition no.1945

¹⁷⁴ Qur'an 17:35

and the most advantageous in the final determination.¹⁷⁵

To the Madyan people (We sent) Shu'ayb, one of their own brethren: he said: "*O my people worship Allah: Ye have no other Allah (S.W.T.) but Him. And give not short measure or weight: I see you in prosperity, but I fear for you the Penalty of a Day that will compass (you) all round*".¹⁷⁶

The Madyan people were ultimately destroyed by Allah for using improper weights and measures. Another instance is: Woe to those that deal in fraud. Those who, when they have to receive by measure from men, exact full measure. But when they have to give by measure or weight to men, give less than due.¹⁷⁷

Buyers should expect to receive goods that are in working condition and priced fairly. They should also be notified of any deficiency. While dealing with suppliers, Islamic business ethics suggests that one should negotiate a fair price and not take advantage of one's power.

3.3.13. Dealing in Stolen Goods

Almighty Allah has declared thievery unlawful and warned of severe punishment such as cutting the hand of the thief from the wrist joint if the necessary legal conditions for the award of punishment are met. Even if the thief escapes worldly punishment and gets away with stolen goods, it is not permissible for a Muslim to knowingly purchase or sell these items. The stolen items are neither to be bought nor sold by those who know the reality. The Prophet (sws) made the person knowingly buying a stolen commodity a partner to the crime. He said: *The one, who knowingly purchases a stolen good, is a partner to the act of sin and the shame.*¹⁷⁸

¹⁷⁵ Qur'an 17:35.

¹⁷⁶ Qur'an 11:84. Other related verses are 26:181, 182 and 55:9.

¹⁷⁷ Qur'an 83:1-3.

¹⁷⁸ See Alā' Uddin Ali al-Muttaqī ibn Hisān-Uddin al-Hindī, *Kanz Al-'Ammal*, tradition no.9258

3.3.14. Adulteration

Islam prohibits any kind of fraudulent transaction whether during a purchase or a sale. The Muslim businessmen must be honest all times.¹⁷⁹ The following hadith exemplifies how the Islamic moral code views deceptive business practices:

The Messenger of Allah (peace be upon him) happened to pass by a heap of eatables (corn). He thrust his hand in that (heap) and his fingers were moistened. He said to the owner of the heap of eatables (corn), “*What is this?*” “*Messenger of Allah, these have been drenched by rainfall.*” He (the Prophet) remarked, “*why did you not place this (the drenched part of the heap) over other eatables so that the people could see it? He who deceives is not of me (is not my follower).*”¹⁸⁰

A comparable case is the action of the Umer ibn Khattab who on seeing that a man had diluted his milk with water punished him by spilling it away. One group of the jurists who uphold this principle have given this ruling, for it is reported of the Prophet, on him be peace, that he prescribed the watering down of milk for sale –though not for drinking purposes – because if the milk is diluted the buyer does not know the relative quantities of milk and water, and for this reason `Umer destroyed it.¹⁸¹

Dealing with adulterated bread is also not allowed in Islam and even some of the scholars opined that such bread must be destroyed. The difference of opinion mentioned above is attracted also in the case of adulterated bread, therefore those whose opinion favors the destruction of adulterated clothing include Ibn al Qattan , who held that badly woven wraps are to be put to the fire . But Ibn Attab gives the opinion that they are to be given in alms, saying that they should be cut up into pieces and given to the poor, if those responsible have been approached and have not desisted. He gives a similar opinion

¹⁷⁹ See Rafik Essa Beekun, *Islamic Business Ethics*, p.45.

¹⁸⁰ See *Muslim, Sahih*, tradition no.183

regarding the giving of the adulterated bread to the poor, but Ibn al Qattan contradict him, saying it is not permissible to deal thus with a Muslim's property without his authorization. The judge Abul Asbagh says : *"This is a confusion in his response and a contradiction in his words, for his response in the matter of the wraps required their being put to the fire , which is more severe than the giving away of his bread to the poor. Ibn Aittab has a firmer grasp of his principle and is more consistent in his words."*

If a person in authority does not see fit to punish the adulterant by requiring him to give alms or by destroying the goods, then care must be taken to prevent injury accruing to the public from that adulteration, either by removing that adulteration or by the sale of the adulterated object to someone who is aware of its condition and will not pass it on to others.

3.3.15. Fraud and Fraudulent Transactions

Fraud is strictly prohibited by Shariah conducting any sort of business. According to the Holy Prophet; *"He who defrauds does not belong to us."*¹⁸² The term Ghish is used which in trade means concealing the defects of and adulteration in merchandise.¹⁸³ In this connection, the following types of fraud are also condemned by Islam:

a) Tafsif (Engaging in Fraud)

Tafsif literally means stinting, scrimping and niggardliness. A *mutafsif* is he who diminishes from the due share of others for whom he measures while paying to them or receiving from them. Chapter 83 of the Qur'an is entitled as "*al-Mutaffifun*" (the defrauders). Those who give short weight and short measure to others and receive from them in full are condemned and promised a severe punishment. "Woe to those that deal in fraud, those who, when they have to receive by measure, exact full measure, but when they have to give by measure or weight to men, give less than due. Do they not think that they will be called to account on a Mighty Day."¹⁸⁴ Some scholars have extended the

¹⁸² See M. Yusuf Musa, *Al-Islam wa al-Hayah: Dirasat wa Tawjihat*, p.106.

¹⁸³ See Amad Mushtaq, *Business Ethics in Islam* p.113.

¹⁸⁴ Qur'an 83:1-5.

meaning of Tafif to include the worker who receives his wages in full but does not perform his duties honestly and efficiently.¹⁸⁵

b) **Dishonesty**

Dishonesty is one of the worst forms of fraud. A dishonest person is always prone to defraud others whenever and wherever possible. The Qur'an has expressly forbidden it. "*O ye who believe! Betray not the trust of Allah (S.W.T.) and the Apostle, nor misappropriate knowingly things entrusted to you.*"¹⁸⁶ The condemnation and prohibition of dishonesty, fraud, and betrayal of trust occur in more than nineteen verses of the Quran.

c) **Falsehood and Breach of Pacts/Promises**

The Qur'an strongly condemned falsehood. It says: "*Woe to the falsehood-monger, those who (flounder) heedless in a flood of confusion.*"¹⁸⁷

Mis-statement about merchandise not only harms the consumers but the producer and the trader as well. Dependability of the product and reliability of its trader play a key role in the establishment and enhancement of any business concern. The Prophet warned: "*The transacting parties have the option (to nullify the transaction) as long as they remain together. If they were truthful and had given exact description, their transaction will be blessed; if they did not disclose the facts and lied, their transaction will be stripped of all blessing.*"

3.3.16. Infliction of Harm

Islam discourages all such transactions that may inflict harm. Others' interest should be regarded in the business. Therefore, a Muslim businessman is required to be very careful lest he should harm someone else or even himself through his heedless conduct in business. Among the harmful practices expressly stated and condemned by the *Qu'ran*

¹⁸⁵ See Mufti shafi, *Islam ka Nizam-i-Taqsim-I Dawlat*, p.42.

¹⁸⁶ Qur'an 8:27.

¹⁸⁷ Qur'an, 51:10-11; 6:140.

are extravagance and waste. In this regard, following instruction of the Holy Qu'ran are significant:

- a) Selling out of Allah's commandments for petty worldly gains.
- b) Selling out of one's soul for rejection of Allah's commandments.
- c) Selling out of one's self for magic and disbelief (i.e. engaging in such activity).
- d) Following in the footsteps of and obedience of Satan.
- e) Selling out of one's oaths and promises for petty gains.
- f) According preference of the present world over against Allah and Hereafter.

Qu'ran also says: *"But take witness whenever ye make a commercial contract; and let neither scribe nor witness suffers harm. If ye do (such harm) it would be wickedness in you..."*¹⁸⁸

3.3.17. Protectionism

Akin to Tas'ir and equally condemned is the practice of Protectionism. It consists in taxing the general consumers directly or indirectly by the state. In other words, it is a process through which the state forces the general public to pay higher prices for local products by providing protection to a private enterprise from facing open international competition.

Protectionism is disapproved, writes Abu Yusuf, because it provides affluence to the favoured ones at the expense of the general public. Moreover, it is the root cause of inflation and leads to such evils as smuggling, black-marketing, adulteration and profiteering.¹⁸⁹

Ibn al-Qayyim regards protectionism as the worst form of injustice and predation. He declares it harmful to both the protector and the protected on the ground that they restrict the freedom of trade granted by Allah.¹⁹⁰

¹⁸⁸ Qur'an 2:282

¹⁸⁹ See S.M. Yusuf, *Economic Justice in Islam* p.43-44

¹⁹⁰ Ibid. p.69

3.3.18. It is prohibited to sell what you don't have

Unlike today where we see short selling or forward selling, where people sell what they don't yet own Islam makes it a requirement for traders to own currencies, instruments and commodities before selling them. It is narrated from Hakeem bin Hazam (ra) who said: "*I said: O Messenger of Allah, there comes to me a man asking me to sell what I do not have to sell then I buy it from the market. He said: Do not sell what you do not have*"¹⁹¹

3.3.19. Hima and Monopoly

Islam prohibits both Hima and monopoly. The former exists in undue by the state of a person's (or groups) rights over the rest of the society. The latter, also known as corner-marketing, stands for the acquisition of similar privileges by using methods other than force. Since both these practices put restrictions on free trade and constrain people to pay unjust and exorbitant prices, they stand directly opposed to the Islamic norms of completed freedom and justice in trade. Islam wants the prices to be fair and just. Hence, adoption of any methods that create an artificial rise in the prices is strictly forbidden.¹⁹²

In the above discussion, we have seen that how Islam protects consumers in the market place and regards the property of a person as a sacred and inviolable as his life. Therefore Islam has declared all such practices of trade and commerce that harm the consumers. Islam forbids the unlawful devouring of property by a believer. This includes prohibition against theft, usurpation, embezzlement, bribery, and all other unlawful and impermissible means of acquiring wealth. Islam also prohibits usurious transactions, which bring undue and unjustified enrichment to one party at the cost of the other party.

¹⁹¹ See Ahmad Ibn Hanbal, *Sunan, Kitab ul buyu*.

¹⁹² Ibid. p.23, 40-41

CHAPTER NO.4

CONSUMER PROTECTION IN ISLAMIC LAW OF CONTRACT

Overview of Islamic Law of Contract:

Islam is a complete code of life for all the ages and guidance for human beings in all walks of life. The objectives of Islamic Law are to protect and preserve rights of human beings to religion, life, family, intellect and wealth. Like other fundamental rights Islam heavily stress on the protection of Consumers' rights. In order to protect consumers from fraud, misrepresentation, negligence, unfair contracts, exorbitant profiteering, and other malpractices in trade, Islam has given its own comprehensive law of contracts and commercial transactions that ensures protection of all legally recognized interests of the consumers. As we know that Contract law in any system ensures the parties to private agreements that any promises they make will be enforceable through the machinery of the legal system.¹⁹³ Islamic law of contract is formed in such a way that protects rights of both i.e. the seller and the buyer.

Islamic law of contracts is based upon the following types of Commercial transactions i.e. Contract of Sale, Contract of Ijarah (Leasing), Contract of *Musharakah*, and Contract of *Mudaraba*, Contract of *Kafalah* (Surety ship), Contract of *Hawalah* (assignment of debt) and Contract of *Rahn* (Pledge) etc. All these contracts have great concern with consumers as to get some goods or services is the ultimate motive behind these contracts. The consumer cannot fulfill their needs and requirements without entering these contracts. There are many features of Islamic law concerning protection of consumers such as giving options to the buyer even after conclusion of the contract. It is pertinent to mention here that the common law principle of *caveat emptor* which allows the buyer the right of inspection of the goods before the sale, Islamic law does not approve that, as a general rule, the seller is under no obligation to disclose the defect of the goods before the agreement. This is because Islamic law determines that, for the purpose of upholding

¹⁹³ See Nyazee, Imran Ahsan, *Outlines of Islamic Jurisprudence* p.105 published by ALSI 1998

justice in a commercial transaction, the seller is under an absolute duty to disclose whatever defects the goods might have before the conclusion of the sale and purchase agreement in all circumstances and at all times, regardless of whether the parties to the agreement have any fiduciary relationship or whether such disclosure of the defects is requested by the seller. In fact, there is an implied warranty in Islamic law that the thing sold should be free from defect.¹⁹⁴

In this chapter the protection provided to consumers by Islamic law of contracts and commercial transaction will be covered.

The Contract of Sale (*Bay'*) and Consumer Protection

1. Definition of Sale

The term Bay is usually translated as sale; however, it has a much wider meaning in Islamic law. This term covers all commutative contracts...etc. The term *Bay'* covers all commutative contracts, that is, contracts in which there is an exchange of two counter-values. Hire (*Ijara*) is often referred by jurists as the sale of benefits arising from property rented or service rendered.¹⁹⁵ Muslim jurists have defined the contract of sale (*Bay'*) in the following manner:

- It is an exchange of a useful and desirable thing for similar thing by mutual consent in a specific manner.¹⁹⁶
- It is the exchange of useful and desirable thing for a similar thing by mutual consent for the alienation of property.
- It can also be defined as "exchange of property for property with mutual consent."¹⁹⁷

¹⁹⁴ Billah, *Caveat Emptor Vs Khiyar al-ayb*

¹⁹⁵ Nyazee, Imran Ahsan Khan, *Outlines of Islamic Jurisprudence*, p.141

¹⁹⁶ See Kasani, *Badai al-Sanai'*, vol.5, p.133

¹⁹⁷ See Dr. Tahir Mansuri, *Islamic law of Contract and Business Transaction*, p.189

2. Legitimacy of Sale (*Bay'*)

The contract of sale is validated by the arguments from Qur'an, Sunnah and Ijma. The following verses of the Holy Qur'an are significant in this regard.

*"And Allah has permitted sale"*¹⁹⁸

*"O you, who believe, devour not your property among yourselves by unlawful means except that it be trading by your mutual consent."*¹⁹⁹

The traditions of the Holy Prophet also recognized the contract of sale, some of these given below:

Abu Sa'id khudri reported: "The Messenger of Allah (may peace be upon him) said: 'The contract of sale becomes (lawful) with the consent (of both the parties)'."

Islam has not only legitimized the contract of sale but mentioned its tenets in sale and commercial transactions. It teaches Muslims to Earn Legitimate (*Halal*) Earnings, Truthfulness in Business Transactions, to Trade through Mutual Consent, Generosity and Leniency in Business Transactions, Honouring and fulfilling Business Obligations, Fair Treatment of Workers, Trustworthiness in Business Transactions, Fair profit is allowed in Islam as it has been discussed in quite detail in the early chapters.

3. Elements of Sale

The majority of the Muslim Jurists hold that the essential elements of a contract are four: (a) *Sighah* the form i.e. (offer and acceptance); (b) the seller; (c) the buyer and (d) the subject matter (*ma'qud 'alayh*).²⁰⁰ Hanafi jurists hold that there is only one element of a contract; namely, the *Sighah* (form). This, however, implies the existence of other elements. From the practical point of view, there is not much difference between the

¹⁹⁸ Qur'an 2:278

¹⁹⁹ Qur'an 4:29

²⁰⁰ See Zuhayli, *al-Fiqh al-Islami wa adillahtuhu*, vol.5, p. 3309

opinion of the Hanafis and that of the majority. It is pertinent to note that some modern Muslim jurists have dealt with the object of contract or the motivating cause of contract as an independent element of contract. They did not consider it a part of the subject-matter. As such the elements of a contract are four instead of three.²⁰¹

Guidelines have been mentioned regarding the elements of the contract i.e. Sighah, Contracting parties and the subject-matter in order to protect rights of the parties and bringing the contract in accordance with the injunctions of Qur'an and Sunnah.

3.1. Sighah (offer and acceptance)

Sighah is the instrument or the means by which a contract is made. It consists of Ijab (offer) and qabul (acceptance). *Ijab* is the statement in an agreement that issues forth from one of the parties to the contract, and *Qabul* is the statement that is made by the second party in response to the *Ijab*. If one of the parties says: "I have sold this car to you for \$ 10, 000," and the other party says, "I accept," then, what has been said by the seller is *Ijab* (offer) and the acceptance of the buyer is *qabul* (acceptance). If the buyer had said, "Sell me this car for 10, 000," and the seller had said, "accepted," the statement of the buyer would have been *Ijab* and that of the seller *qabul*. This is the opinion of the Hanafi school. The majority of the schools, on the other hand, maintain that *Ijab* is the statement of the owner of property, while *qabul* is always the statement of the buyer.²⁰²

Offer and acceptance are based on consent or rida. As rida or assent is an internal matter and subjective intent is exceedingly difficult to determine and prove, Islamic law follows what is called the objective theory of contracts. The Lawgiver has determined that the *sighah*, composed of offer and acceptance, is to be taken as evidence of the subjective intent.²⁰³

²⁰¹ Ibid. vol.4, p.94.

²⁰² See Nyazee, Imran Ahsan khan, *Outlines of Islamic Jurisprudence*, p.107

²⁰³ Ibid, p.106

3.2. Contracting Party (Seller and Buyer)

Any law of contract explains the capacity of contractual parties to a contract²⁰⁴ and so the Shariah. A basic requirement of Shariah is that the subject of law (mukallaf), should be capable to understand the legal obligation. If he does not understand the command of law Giver, he will not be able to comply with it. Thus the first requirement of legal capacity is the ability to understand the communication that creates obligation. Besides understanding, it is also essential that the subject (mukallaf) performs the act by his free will and choice. If an act is performed under coercion, it will not produce legal effects that are assigned to a valid act. Understanding of communication which is a basis of legal capacity is linked in Islamic law with adulthood. Thus, when a person attains puberty and adulthood, he is presumed to have developed ability to understand and perform the act required by the Shariah. A minor or insane, are therefore, not under legal obligation (taklif) because they are devoid of intellect and reason required for understanding the legal obligation. An intoxicated person during the state of intoxication is also unable to understand the legal obligation, so his contracts and transactions are considered void according to Hanbli.²⁰⁵ The Islamic law divides the persons in terms of their capacity into three kinds:

- i. A person who lacks understanding and discretion completely such as child during infancy or an insane person of any age. Since neither possesses faculty of intellect, therefore no legal capacity can be assigned to them and consequently no legal consequences acquired from their words and attributes.
- ii. A person who possess certain amount of intellect and discretion though he has not reached full mental development. Such person according to *Hanafi* jurists is a discerning minor (*Sabi mumayyiz*) and is assigned a deficient legal capacity. He is therefore allowed to undertake beneficial transaction; He, however, cannot make harmful transaction that put his wealth at risk. Similar to him an idiot (*ma`tuh*),

²⁰⁴ As in section 11 of the *Contract Act*, 1872 the competency of the contracting parties is discussed.

²⁰⁵ See Dr. Tahir Mansuri, *Shariah Maxims on Financial Matters*, p. 209-210.

who is neither insane, nor totally lacking in intellect. He acts sometimes like sane and some other times sensible people. He like discerning minor is also assigned deficient legal capacity.

- iii. A person who has attained physical puberty with intellectual maturity. Such person is assigned complete legal capacity. He is entitled to make transactions. He is subjected to punishment if he commits some crime.²⁰⁶

3.3. Subject-Matter of the Contract

The subject matter is an essential element of a contract and it includes commodity, performance, consideration and object of the contract. Islamic law does not hold consideration as an independent element of contract. The reason is that the contractual obligation of one party according is consideration for the contractual obligation of another party. In a contract of sale for instance, the commodity is the consideration for the purchaser and the price is the consideration for the seller.²⁰⁷ Islamic law has laid down the following conditions for the subject-matter:

1. The subject matter must have legal value (mal).
2. It must be in existence at the time of the contract.
3. It should be potentially capable of delivery at the time of the contract.

3.3.1. The subject matter must have legal value (mal)

Islamic law has its own concept of property and ownership, which is discussed profoundly by modern Muslim jurists and it, is considered a parameter to check the legality of something in the view of Islamic law. The classical definition of mal in *Hanafi* School is that "Mal is that which is desired by the people and stored for use at a time of need."²⁰⁸ The modern jurist Mustafa Zarqa has applied mal to everything that has legal and material value among the people. This definition covers both abstract and unreal rights. The minimum value of mal is considered to be one *fals* by some that is one copper

²⁰⁶ Ibid, p. 211-212

²⁰⁷ See Dr. Tahir Mansuri, *Islamic law of Contract and Business Transaction*, p.35

²⁰⁸ See Ibn 'Abidin, *Radd al-Mukhtar* vol.4, p.3

coin.²⁰⁹ Anything that is explicitly prohibited by Qur'an and Sunnah, such things are not considered *mal* (property) in Shariah. The contract in which the subject-matter is something that is not considered mal by *Shariah* the Consumers should not become party in such a contract. Thus it is forbidden for the Muslim consumers to acquire or transfer through contract anything that the Shariah has declared haram like wine, swine flesh, bristles of swine, Najis things, (that are considered filthy under the law and have no legal value), like Carrion, blood; Mutanajjas things (that have been affected by filth), like something dirty falling into the milk; Bone of dead animals and their hair and skin; Pork (Pig), beasts, and some other animals whose meat is not permitted. Anything that contains part of the Haram animal is also Haram. Example: Lard, Jello Gelatin, Animal Shortening, etc. are Haram, Blood of any animal or bird, Meat of dead animals or birds, Meat of animals or birds that has been sacrificed in the name of other than Allah, Alcohol and (intoxicating) drugs. Sale of human blood today for the purpose of transfusion and donation and the sale of human eye can be covered by the principle of necessity. Since adultery, obscenity and immorality are prohibited by the Shariah; any contract or transactions that entails these evils or promotes them in any way is also forbidden. Musical instruments are also included in the things proscribed by Islamic law, provided the contracting parties are Muslims. Contract for wine, swine and musical instruments are, however, allowed for non-Muslim consumers of an Islamic state. From this it is established that the subject matter of a contract must be such in which transactions are legally permissible.²¹⁰

Haram foods are strictly prohibited by Allah and if a Muslim eats them he commits a sin. The sale and purchase and mixing of these things in other lawful foods are also strictly prohibited, and those who commit its violation will be strictly punished under *Ta'zir* Law. The legality of the subject-matter also requires that the commodity should be owned by someone. There should be no encumbrance or right attached to the subject-matter such as the sale of mortgaged property to which the rights of the creditor/mortgagee are linked.

²⁰⁹See Nyazee, Imran Ahsan khan, *Outlines of Islamic Jurisprudence*, p.143

²¹⁰ See Dr. Tahir Mansuri, *Islamic law of Contract and Business Transaction*, p.35-6

3.3.2. It must be in existence at the time of the contract

The contract is considered void, when the subject-matter is non-existent at the time of the contract of sale. The subject matter must be in actual existence and not in the fancy of the party for instance, the seller says to the buyer: "I sell you this diamond for so much," and the diamond turns out to be glass. As regards non-existent object, Muslim jurists, in general, hold the view that their sale is invalid. They base this opinion on the following tradition of the Holy Prophet (s.a.w.): "Sell not that which you do not have".²¹¹ The contract of *Salam* and *Istisna* are two exceptions from the general rule.

3.3.3. It should be potentially capable of delivery at the time of the contract

The ability or capacity to deliver the subject matter of the contract at the time of conclusion of a contract is an essential condition to make a valid contract. If such a capacity is lacking, the contract is void and this position is not altered by the fact that the seller was able to deliver the goods after the time of contract.²¹² Inability to deliver may be actual and real or it may legal inability that is, declared so by the Shariah. The jurists explain actual inability through examples such as the sale of fish in water or birds in the air. Legal inability is illustrated by the sale of a beam in one's house, which is not demolished but in use. The Hanafis, however, maintain that in case of actual inability the contract is void (*Batil*), but in the case of legal inability the contract is irregular (*fasid*). Thus, if the seller were to demolish the house and deliver the beam to the buyer the latter would be forced to perform the contract as the cause of inability stands removed.²¹³

3.3.4. Known to the parties:

It should be something known to the parties.

3.3.5. It should be something clean:

²¹¹ Abu Dawud, *Sunan*, tradition no. 3503

²¹² See Dr. Tahir Mansuri, *Islamic law of Contract and Business Transaction*, p.41

²¹³ Nyazee, Imran Ahsan Khan, *Outlines of Islamic Jurisprudence*, p.143

It should be something that is clean (*tahir*) and is not filthy or affected by filth. This condition is laid down by the majority of the jurists and not by the *Hanafis*. It can be easily merged with the first condition.²¹⁴

4. Conditions of the Contracts of Sale

- a) The buyer and seller should be legally competent to conclude a contract;
- b) The sale should be with the consent of the parties. A sale without consent and volition is void;²¹⁵
- c) The goods should be anything in which transaction is permissible in *Shariah*;
- d) The goods must be either in actual existence or capable of being acquired and delivered to a buyer in the future;
- e) The transactions must not involve an element of uncertainty and risk (forbidden by *Shariah*) with regard to the existence and acquisition of the subject matter such as the sale of fish in water; sale of fetus in the womb; and sale of milk in the udder of an animal etc.
- f) Goods should be owned by the seller or if he is an agent by his principal. If one sells something before acquiring ownership, such sale is invalid.
- g) The goods should be in the possession of the owner. It is necessary condition for the contract of sale, so that he is able to deliver it to the consumer.
- h) The goods of sale should be ascertained. It can be realized through inspection, examination of the object, or description if it is not available at the time of contract.
- i) Consideration may be deferred to a fixed future period but it cannot be suspended on an event the time of the occurrence of which is uncertain such as until it shall rain, the consideration will not be paid.
- j) The sale contract should be absolute and not contingent upon a future event.
- k) The sale must be instant. The sale contract must come into effect immediately on the conclusion of the contract.²¹⁶

²¹⁴ Nyazee, Imran Ahsan Khan, *Outlines of Islamic Jurisprudence*, p.142

²¹⁵ The Holy Prophet also said: "The sale is valid only by mutual consent."

²¹⁶ See Dr. Tahir Mansuri, *Islamic law of Contract and Business Transaction*, p.192-4

5. Effects of The Contract of Sale

The phrase “the hukm of the contract” means the effects or *athar* that a contract has in terms of the rights and obligations created²¹⁷. The effects of the contract of sale are; (a) the transfer of title in the goods sold from the seller to the buyer; (b) and transfer of the title in the price from buyer to the seller.²¹⁸ This is in the case when the contract of sale is *Lazim* and there is no option (*khiyar*) in it.²¹⁹

6. Types of Sale Contracts

The basic types of *Bay(sale)*; According to *Al-kasani*, “Sale with respect to the counter-values is divided into four types, the sale of an ascertained commodity (*'ayn*) for an ascertained commodity (*'ayn*), which is the sale of goods for goods and is called barter; the sale of an ascertained commodity (*'ayn*) with a (*dayn*), and this is the sale of absolute goods for absolute prices (currencies), which are dirhams and dinars, or their sale for copper coins or with a described measured commodity as a liability (debt) or a described weighed commodity or described identical counted items; the sale of a *dayn* with an ascertained commodity (*'ayn*), which is salam; and the sale of a *dayn* with a *dayn*, which is the sale of an absolute price for an absolute price, and is called *sarf*.²²⁰ According to this there are four basic types of sale:

- *'ayn (goods) for 'ayn (goods)- barter*
- *'ayn (goods) for 'dayn (currency)- regular sale*
- *'dayn (delayed payment in goods) for 'ayn (goods)- advanced payment in goods*
- *'dayn (currency) for dayn (currency)- currency exchange and money loans²²¹*

As we know that regular-sale has more concerned with the consumer, therefore our major focus will be on the regular sale along with its different types.

²¹⁷ See Nyazee, Imran Ahsan khan, *Outlines of Islamic Jurisprudence*, p.120

²¹⁸ See Wahba, Dr. Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu* v.5, p. 3367

²¹⁹ See Kasani, *Al-Badai* v.5, p.233

²²⁰ See Al-kasani, *Badai 'al-San I*, vol.5,134

²²¹ See Nyazee, Imran Ahsan khan, *Outlines of Islamic Jurisprudence*, p.142

We shall elaborate the concept of consumer protection under the corpus of Regular-sale. Hire is also considered as a sale by the jurists and of more concern to the consumers. Hire (*Ijara*) is often referred by jurists as the sale of benefits arising from property rented or service rendered. We will consider the regular sale and types resulting from it. Our major focus will be on the regular sale along with its different types, as it has concerned to the consumers.

In the above mentioned types by al-Kasani, the sale of goods for cash is the important one and it has further the following types:

1) The spot sale (*musawamah*)

In this type of sale the seller and buyer enter into an agreement for selling and buying of goods. The goods are delivered at once and the price is also paid. If the delivery of the counter-value is delayed, the sale becomes vitiated (*fasid*)²²².

2) Sale with stated profit (*murabahah*)

This is sale at a stated profit in addition to the cost price. It is being referred to as a sale with a mark-up. This is called *Bay` al-murabahah*.

3) Sale at cost price (*tawliyah*)

In this type of sale the goods are sold at the same price at which these were bought by the seller. This is called *Bay` al-tawliyah*.

4) Sale at less than cost price (*wadi`ah*)

In this type of sale the goods are sold at less than cost price. It may be useful for the seller who is getting rid of his goods due to some reason. This type of sale is called *Wadi`ah*.

7. Invalid Contracts of Sale

Islam regards the property of a person as sacred and inviolable as his life and honor. The Holy *Qur'an* forbids the unlawful devouring of property by a believer. This includes prohibition against theft, usurpation, embezzlement, bribery, and all other unlawful and impermissible means of acquiring wealth. The Holy *Qur'an* also prohibits usurious

²²² See Nyazee, Imran Ahsan khan, *Outlines of Islamic Jurisprudence*, p.150

transactions, which bring undue and unjustified enrichment to one party at the cost of the other party. Contracts involving *gharar* transactions have also been strictly prohibited in *Qur'an* and traditions of the Holy Prophet. Gharar transactions comprise those transactions where either parties or either of the parties to the contract becomes a victim of excessive ignorance with regard to the existence, acquisition, genus, quality, and other necessary attributes of the subject-matter. Such ignorance and uncertainty may lead to dispute and litigation among the parties. It also includes uncertainty and lack of knowledge about the material terms of the contract. It is, thus, the requirement of a valid transaction that the object of the obligation be specifically determined so as to avoid exorbitant gharar. It is quite clear that all those transactions prohibited by Shariah insure protection of consumer's interests. In the following some invalid contracts and transactions and its implication on consumer protection is discussed.

7.1.*Riba* (Usury)

Riba is one of the extrinsic causes of invalidity of contracts. The prohibition of *Riba* is a general principle that governs the entire law of contract. *Riba* literally means increase, addition, and augmentation. Technically, *riba* is an increase without any corresponding consideration which has been stipulated in favour of one of the two parties, in a contract of exchange.²²³ It is a general principle that all transactions are permitted except those bearing *riba*. There are two types of *Riba*: *riba al-fadl* and *riba al-nasi'ah*. *Riba al-nasiyah* means the benefit or excess that arises from the delay of a commodity or a counter-value. *Riba al-fadl*, on the other hand, is an excess that is measured in terms of weight, measure, or counting. In other words, it is what we call interest.²²⁴

7.2.*Bay` al- hasat*

Bay` al- hasat is also known as *ilqa al hajar*. It is effected when the vendor says, "Of these pieces of cloth or these sheep I sell you the one upon which falls this pebble thrown

²²³ See Muhammad A'la Thanwi, *Kashaf Istilahat al-Funun*, Beirut: Sharikat al-khayyat le al-kutub, vol.3, p.592/ See Dr. Tahir Mansuri , *Islamic law of Contract and Business Transaction*, p.121

²²⁴ See Nyazee,Imran Ahsan khan, *Outlines of Islamic Jurisprudence*, p.155

the air," and the purchaser says, "Yes". The transaction is valid on the basis of the existence of an offer and acceptance; similarly the sale of a piece of land is valid to the distance of a stone's throw; or by saying , " I want to buy as many goods as there are stones which I am grasping in my palms." Or a sale may become irrevocable by throwing a stone; or by stipulating, "I sell you such and such an object, and you will have a right of option until I have thrown this stone. Holly Prophet (S.A.W) had forbidden a transaction determined by throwing stones²²⁵, which involves uncertainty. This type of sale is prohibited because the consumers are not allowed to proper or adequate inspection in order to know the goods thoroughly.

7.3. *Bay` al-Mulamasah*

A "touch" sale is an expression which implies:

- a) The sale , i.e. of a piece of cloth already folded , that is bought by merely touching it, and renouncing in advance the right of option accorded by law after seeing it.
- b) A sale by merely touching an article without any formal offer and acceptance and without mutual consent.
- c) A sale concluded by saying, "Where you have touched this cloth I have sold it to you."²²⁶ According to Imam Malik²²⁷ and Imam Shafi²²⁸, it is reported that the prophet (S.A.W) had forbidden *bay` al-mulamasah*, because the consumer is not given a chance to examine the good.

²²⁵ See Abu Hanifa, *Jami` Masanid al-Imam Azam*. 2, p.16.

²²⁶ See Ibn Manzur , *Lisan al-Arab*, ,V.4.p.210

²²⁷ See Malik Ibn Anas, *al-Muwatta*(The version of Yahya ibn Yahya al-Laythi), p.556

²²⁸ See Al Muzani, *Kitab al-Mukhtasar*, in *al-Shafi` s kitab al umm*.v.8.p.186.

7.4. *Bay`al-Muwasafa*: (Sale by Description)

It is the sale of goods which has not been possessed or a sale of goods by describing them without any inspection, the delivery being made later, after the vendor had bought them. According to *Sa`id ibn al-Musayyab*, the sale by description is a secret agreement made when a man describes to the purchaser goods, which not with him, by deferment of an obligation.²²⁹ It is prohibited because the transactions would have to be made before the goods were possessed by the vendor.

7.5. *Bay`al-Sirar*

This type of sale is effected when one says, “I will put forth my hand and you should put forth your hand, and if I produce my signet-ring before you, it is a sale for such a price; and if you produce your signet-ring before me, for such a price.” If they produce them both together, or do not both produce them, they do the same again.²³⁰ This sale is prohibited by Islamic Law because the parties might suffer loss, remorse or regret, from such a sale.

7.6. *Bay`al-Muzabahah*

It is a contract of exchange of harvested dry dates by their calculated and definite measure for fresh dates or other fruit of the same species on the tree.²³¹ It was reported that the Prophet had forbidden *Bay`al-Muzabahah* where goods (i.e. fruits), whose weight ,size and number are not known, are sold in bulk for a definite weight , measure or

²²⁹ See Al-San`ani Abu Bakr `Abd al-Razzaq ibn Hammam,al-Mussaanaaf,v.8.,p.42.

²³⁰ See E.W.Lane, *Arabic-English Lexicon*.1,p.1337.

²³¹ See Malik Ibn Anas, al-Muwatta(The version of Yahya ibn Yahya al-Laythi), p.521-522

number of some other goods, i.e. green dates for a definite measure of ripe dates. The same applies to the selling of raisins by measure for grapes.²³² This type of sale is prohibited because it is buying of something that's number, weight and measure is not known.

7.7. *Bay`al-Mukhadarah*

Bay`al-Mukhadarah is selling fruit before it had started to ripen. The Holly Prophet is reported to have forbidden *Bay`al-Mukhadarah* for both buyer and seller.²³³ The Holly Prophet is reported to have stated further; "*Have you not seen if Allah (S.W.T.) prevents any fruit (from coming out) for what exchange shall one of you take the property of his brother.*"²³⁴ The Prophet also said; "*Do not purchase fruits till their quality is evident.*" *He replied, "When they have grown fully (or completely), and become good (to be eaten).*"²³⁵

7.8. *Bay`al-Sinin or Bay`al-Mu`awamah*

It is effected by saying, "I sell this commodity (fruit or harvest before the crop has grown on palm trees or others) for a year or more and when the year has ended the term of contract will be terminated between us and I shall give the price and you will give me back my commodity." Holly Prophet has prohibited *Bay`al-Sinin* because of the existence of a hazardous element in it.

²³² See Al-Shafi, *Kitab al-umm*.p.63.

²³³ See Malik Ibn Anas, *al-Muwatta*(The version of Muhammad ibn al-Hassan al-Shaybani,), p.268.

²³⁴ See Malik Ibn Anas, *al-Muwatta*(The version of Yahya ibn Yahya al-Laythi), p.517.

²³⁵ See Al-San`ani Abu Bakr 'Abd al-Razzaq ibn Hammam, *al-Mussaanaaf*, v.8,.p.68.

7.9. *Bay`al-Haml*

It is the sale of an embryo or the sale of youngling to be brought forth later from the fetus of an animal, that is, what a female animal bears in the womb. The Prophet is reported to have forbidden selling any fetus of any animal until it was delivered.²³⁶ This type of transaction is not allowed because the commodity is not known. It is prohibited due to uncertainty .It is prohibited because the seller make use of the price and it is not known whether or not those goods are found to be as the buyer saw them or not.²³⁷

7.10. *Bay`al Hayawan bi'l-lahm*

It is narrated that the Prophet (S.A.W) had prohibited bartering live animals for meat.²³⁸ It is also considered as a kind of gambling or a game of hazard (*al-qimar*).²³⁹ It is reported by Abdullah Ibn Abbass that in the time of Abu'Bakar al-Siddiq, the first Caliph, a camel was slaughtered after which a man came with a young she-goat and said “Give me a part f the (camel’s) meat in exchange for this young she-goat.” Abu-Bakar said “It is not right (for you) to do that”.

7.11. *Bay`al-suf`ala'l'zahr*, (sale of wool on the back of animal)

There is no explicit tradition from the Prophet on the prohibition of such sale except what was reported by Ikramah and Sulayman ibn Yasir from Abd Allah ibn Abbas who had

²³⁶ See Ibid.,v.8,.p.76

²³⁷ See Malik Ibn Anas, *al-Muwatta*(The version of Yahya ibn Yahya al-Laythi), p.546-7

²³⁸ See Malik Ibn Anas, *al-Muwatta*(The version of Muhammad ibn al-Hassan al-Shaybani,), p.276.

²³⁹ See Al-Zurqani,*sharh al-Zurqani`ala Muwatta al-Imam Malik* v.3,p.303.

prohibited the transaction of wool on the back of a sheep. This type of transaction is invalid as there is an element of uncertainty involved in it.²⁴⁰

7.12. *Bay`al-Laban fi Duru`al-Anam* (Sale of milk in the udder of animal)

It is a transaction of sale of milk in the udder of animals. It is reported that the Holy Prophet had prohibited sale of milk in the udder of animals except when the milk was measured²⁴¹ after milking, because then the transaction would not contain any element of uncertainty. In case, if the specified number of days, especially for milking the young animals were known, for instance the milk from a hired anima(laban al-zi'r), then such a sale was permitted.²⁴²

7.13. *Asab`al-fahl*

It is to sell the service of a male animal which was required to cover female animal. This type of contract is prohibited because of its uncertainty, whether the vendor is considered to be able to deliver the goods or not.²⁴³ Qatada disallowed the practice for the vendor but allowed it for the buyer (consumer). Ata ibn Abi Rabah and Qatada elaborated that such a sale was permitted when there was no other person who was willing to give his animal.²⁴⁴

It is also known as *Dirab al-Fahl* and *Dirab al-Jamal*.

7.14. *Bay`al-Samak fi'l-Ma'*(Sale of Fish in Water)

²⁴⁰ See Al-San`ani Abu Bakr 'Abd al-Razzaq ibn Hammam, *al-Mussaanaaf* v.8., p.75, 109-110.

²⁴¹ Ibid., v.8., p.76

²⁴² See Ibn Qudama, *al-Mughni*, v.4, p.231.

²⁴³ See Al-Muzani, *kitab al-Mukhtasar*, in *al-Shafi'i's kitab al umm*, v.8, p.185-186

²⁴⁴ See Ibn hazm, *Kitab al-Muhalla*, v.8, p.192-193.

It is the sale of fish in the water. The companions of the Holly Prophet forbade the sale of fish in water because the element of uncertainty or gharar is involved in it.²⁴⁵ According to *Al-Shaybani*, the transaction is permitted; First if the fish is in a shallow container (wi'a) or well, so that it can be caught without difficulty, then the purchaser has the right of option when he sees it. Secondly the fish should belong to the vendor and he should be able to catch it whenever he wishes.²⁴⁶ According to *Imam Sarkhasi*, the sale of fish in water is not dissimilar to the sale of a bird in the air and so on. This type of sale is gharar, because the commodity concerned is not possessed by the vendor physically.²⁴⁷

7.15. *Darbat' al-Gha'is*

It is effected by saying; "I shall dive into the sea, if I have anything (pearl or precious stone) it will be yours at such and such a price."²⁴⁸ The vendor and the purchaser agree on this condition. This type of transaction is reported to have been banned by The Prophet.

7.16. *Bay'al-Maghanim hatta Tuqsam*

It is the sale of undivided booty. The Prophet is reported to have prohibited the sale of undivided booty. The reason for its prohibition is that anyone who is entitled to booty did not yet know the amount of his share.²⁴⁹ However, according to al-Shaybani, the public authorities are allowed to sell booty division except in a case where an individual having a share in the booty wanted to sell his own share²⁵⁰, before being divided.

²⁴⁵ See Abu Yusuf, *Kitab al-Khiraj* p.50.

²⁴⁶ See Al-Shaybani, *Kitab al-Asl* (*Kitab al-Buyu' wa 'salam*), v.1, p.93-94.

²⁴⁷ See Al-Sarakhasi, *Al-Mabsut*, v.8, p.12

²⁴⁸ See Ibn Manzur, *Lisan al-Arab*, v.7, p.62

²⁴⁹ See Al-San`ani Abu Bakr 'Abd al-Razzaq ibn Hammam, *al-Mussaanaaf* v.8, p.49-50 and 76.

²⁵⁰ See Al-Shaybani, *Sharh al-Siyar al-Kabir*, v.4, p.122.

7.17. *Bay`al-Sadaqat hatta Tuqbad*

It is reported that the sale or purchase of gifts before they have been accepted are prohibited by The Prophet.²⁵¹

7.18. *Bay`al-Urbun*

Imam Malik defined Bay`al-Urbun, saying “when a man buys an article of goods or rents an animal and then says to the person from whom he bought the goods or leased the animal, “I will give you a dinar or a dirham or whatever, on the condition that if I actually take the goods or ride what I have rented from you, then what I have given you already goes towards payment of the goods or hire of the animal. If I do not purchase the goods or hire the animal, then what I have given you is yours without liability on your part. This contract is considered as the origin of al-rahn. The Prophet (S.A.W) is reported to have prohibited transactions in which non-returnable or non-refundable deposits were paid²⁵² as explained above by Malik. According to Imam Shafi , in this sale the problem is that the time between the contract and delivery or possession was not known.²⁵³

7.19. *Bay`tan fi Bay`ah or Safqtain fi Safaqah. (Two Sales in one sale)*

The Prophet is reported to have forbidden two sales in one sale. Imam Malik said that if a man bought goods from another man for either ten dinars in cash or fifteen dinars on credit, one of the two prices was imposed on the buyer. This is not permissible because if he postponed paying the ten, it would be fifteen on credit, and if he paid the ten, he would

²⁵¹ See Al-San`ani Abu Bakr `Abd al-Razzaq ibn Hammam, *al-Mussaanaaf* v.8., p.76.

²⁵² See Malik Ibn Anas, *al-Muwatta* (*The version of Yahya ibn Yahya al-Laythi*), p.510.

²⁵³ See Al-Shafi, *kitab al-umm*, v.3, p.78-79.

buy with it what was worth fifteen dinars on credit.²⁵⁴ But some scholars like Ta'us and Sa'id ibn al-Mussayab saw no harm in it provided each sale was agreed on separately. According to Ma'mar ibn Rashid such a sale is valid if the goods had been consumed.²⁵⁵ In short if the uncertainty regarding the price and time for payment is removed, the transaction will be valid.

7.20. *Bay'wa Sharīt* (Sale with a condition)

The stipulation of a condition in a sale which give extra advantage to the vendor or to the purchaser is not permissible in Shariah. Holly Prophet (S.A.W.) had said; "Whoever imposes a condition (in business transaction or others) which is not in Allah's book (law), that condition is invalid."²⁵⁶ Any sale which included a condition, such a condition, or sale is invalid because the ownership should transfer to the buyer absolutely.

7.21. *Bay'al-Thunya* (Sale with an exception)

It is a transaction with an exception (of other goods of the same kind), until the purchaser know the (quality and quantity) of goods. In pre-Islamic times, the seller of the camel used to exclude the head and legs or extremities of a camel, after it was slaughtered whenever he sold it for a certain price. Such type of transaction is prohibited by Shariah because of the lack of knowledge of the goods. If the exempted goods are unknown, then the transaction is unlawful and invalid, since it involves uncertainty or *gharar*.²⁵⁷

²⁵⁴ See Malik Ibn Anas, *al-Muwatta*(The version of Yahya ibn Yahya al-Laythi), p.553.

²⁵⁵ See Al-San'ani Abu Bakr 'Abd al-Razzaq ibn Hammam, *al-Mussaanaaf* v.8., p.136-37.

²⁵⁶ See Malik Ibn Anas, *al-Muwatta*(The version of Yahya ibn Yahya al-Laythi), p.668-69.

²⁵⁷ See Al-Sayyid Sabiq, *Fiqh al-Sunnah*, v.3.p.77-78.

7.22. Bay`al-Kali Bil Kali

This sale, according to Malik, is when someone enters into the transaction which is forbidden in terms of delay for delay. It involves selling a debt against one man for a debt against another man.²⁵⁸ In other words it is exchange of credit for credit (Al-nasiah bil-nasiah). The Prophet is reported to have prohibited such a sale.²⁵⁹ The impermissibility of delay in the exchange of commodities which are subject to the rules concerning usury finds its logical complement in the general prohibition of *bay`al-kali bil-kali*.²⁶⁰

7.23. Bay`wa salf (Selling and Lending)

According to Imam Malik, Bay`wa salf is a contract in which one man says to another, "I shall take your goods for such and such if you lend me such and such." If they agree to a contract in this manner, it is not permitted²⁶¹. If the one who stipulates the loan abandons his stipulation, and then the sale is permitted. The Prophet has prohibited selling and lending.²⁶²

All the above transactions involve uncertainty therefore they are prohibited by *Shariah*, in order to protect rights of the consumers.

8. Options in the Contract of Sale

Islamic law of contracts has laid down some principles that are not found in any other legal system. To insure protection of interests of the consumers it has described certain options in transactions. These options are provided in those contracts, which accept revocation like sale, hire, *muzara'ah* (crop sharing). These options are not available in

²⁵⁸ See Malik Ibn Anas, *al-Muwatta* (The version of Yahya ibn Yahya al-Laythi), v.8,p.89-90.

²⁵⁹ See Al-San`ani, *al-Mussaanaaf*, v.8.,p.90.

²⁶⁰ See J.Schacht, *An Introduction to Islamic Law*.p.146.

²⁶¹ See Malik Ibn Anas, *al-Muwatta* (The version of Yahya ibn Yahya al-Laythi), v.8,p.548-49.

²⁶² See Al-San`ani, *al-Mussaanaaf*, v.8.,p.39and41.

those contracts, which do not accept revocation such as divorce, manumission etc. The entire philosophy of the consumer protection in Islam law of contracts revolves round the topic of options (*khiyarat*). The purpose of option is to give chance to a consumer who suffered some loss in transaction to revoke contract within stipulated time. They have been designed to maintain balance in transactions and to protect a weaker party from being harmed. Some of these options are discussed below which has great impact on the protection of consumers in commercial transactions. In fact, Islamic law of options plays a vital role in the protection of consumers in commercial transactions. The option of defect (*khiyar al-ayb*) is considered the most important one in this regard.

8.1.KHIYAR AL-AYB (OPTION OF DEFECT)

8.1.1. Introduction:

Khiyar al-ayb is a right given to a purchaser in a sale to cancel the contract if he discovers that the object acquired has in it some defect diminishing its value. It is a well recognized legal method under Islamic commercial dealings which protects society from the problems arising from purchasing defective products. It is an implied warranty imposed by the law itself and the parties do not have to stipulate it. It is thus a necessary condition of the contract. The goods are liable to be rejected if undeclared defects are discovered. Islamic law protects consumers both before and after conclusion of the sale and purchase agreement by giving them the right of inspection and the right of option. The Islamic doctrine of *khiyar al ayb* allows the buyer the right of inspection of the goods (to ensure its quality, etc.) and also the right of option (whether to continue with the contract or otherwise) both before and after the contract of sale and purchase is concluded. The *Mejjala* terms such option as *khiyar al-ayb*, or “option for defects.”²⁶³

8.1.2. Evidence of the Option of Defect

The option of defect (*khiyar al-ayb*) is based on the following verses and traditions;

²⁶³ See Billah; *Caveat Emptor vs Khiyar al-ayb*

"O ye who believe! Eat not each other's property by wrongful means..."

"He who defrauds another is not from amongst us"

"It is not permitted to the seller to sell thing which are defective unless he points it out to him" Uqba b.Amir said: *"it is illegal for one (seller) to sell a thing if one (seller) knows that it has a defect unless one (seller) informs the buyer of that defect.*

The Prophet himself had warned against selling goods whose defects were not disclosed: If anyone sells a defective article without drawing attention to it he will remain under Allah (S.W.T.)'s anger, or the angels will continue to curse him. The Holly Prophet remarked on the importance of truthfulness and honesty in transaction: If both parties spoke the truth and described the defects and quantities (of the goods), then they will be blessed in their transaction, and if they told lies or concealed anything, then the blessing on their transaction will be blotted out.

The *Mejella* also clarifies this point: *An ancient defect is a fault which existed in the thing sold when it was in the hands of the seller.*

The above quoted evidences indicate that khiyar al-ayb is a well recognized legal method under Islamic commercial dealings which protects consumers from purchasing defective products. This means that the option operates in favor of one buying or hiring property. The option is valid in case of goods, which need to be specified like a house, land or any room, which has its own individuality. The buyer or purchaser, upon discovering through his inspection any defect on the goods, has the right to return the defective goods to the seller and rescind the contract both before and after its conclusion, in all circumstances. The principle seems to be more practical in ensuring the establishment of justice and fairness in commercial transaction.

8.1.3. Conditions for exercising Option of Defect

In practice, there are certain conditions to be met before the party exercise the option for defect (khiyar al ayb). These conditions are as follows:²⁶⁴

- a) The existence of the defects on the goods should be before or at the delivery of the goods. It is thus immaterial whether the defects in the goods exist before or after the sale-purchase agreement so long as the defects existed before the delivery of the goods or when the goods were in hands of the seller. The *Majella* reads: "A defect coming recently to existence after the sale and before the delivery while the thing is in the hands of the seller...is a good ground for rescission"
- b) The purchaser/buyer should not have been aware of the defects at the time of the agreement;
- c) There should not be any stipulation by the seller for waiving the liability of the seller for the defects;
- d) The defects must have existed and been proven at the time when the purchaser wishes to exercise the option(either to accept the goods or reject them);
- e) There should not be any agreement by the buyer in taking all the responsibilities for the defects of the goods, thus, exempting the seller from any liability arising from those defects.

There are also certain circumstances whereby the buyer loses his right of option even though the goods are discovered to be defective:

- a. If the seller gives a prior notice to the buyer about the defects of the goods;
- b. If the seller stipulates an exemption clause to the buyer, prior to an agreement, exempting him (the seller) from any liability arising from the defects of the Allah (S.W.T.)s sod. On the contrary, if the seller, on knowing the defect and/or concealing it, purposely stipulates such clause, it will not exempt him from the liability of that defect; hence, the buyer will not have his right of option renounced. Imam Malik referred to this when he said: *He who sells (with an*

²⁶⁴ See Billah; *Caveat Emptor vs Khiyar al-ayb*

exemption clause from the defects of the goods) will not be responsible for any defect unless he knew about that defect and concealed it, and if he did know of the defect of the goods and purposely concealed it, the earlier exemption clause shall have no effect and he (the seller) shall still be responsible for that defect.

- c. If the buyer stipulates prior to an agreement that he is solely responsible for any defects of the goods bought;
- d. If the buyer accept the defective goods upon knowing it
- e. If the buyer exercises ownership over the goods even after knowing the defect on them, such as eating up any portion of the goods(if in the form of eatable goods),keeping the goods in possession for an unreasonable period of time, inhabiting, repairing, or demolishing any part of the goods, or disposing it;
- f. If the defect happened in the possession of the buyer. Generally speaking, in accordance with the doctrine of khiyar al ayb, the buyer, upon discovery of the defect in the goods, may exercise the option of either continuing with the contract and accepting the defective goods as is or rescinding the contract and returning the defective goods to the seller, without having any right to seek compensation for it.

However, there are certain exceptions to the above situations are as follows:

- a. In a case whereby the defect happened while the goods were in the possession of the buyer and he afterwards while learn that there was another defect that existed while the goods were in the possession of the seller;
- b. In a situation whereby the good sold is cloth or something of similar nature, and the buyer discovers a defect only after the cloth has been cut;
- c. In a case whereby the good sold is flour or some other thing of similar nature, and the buyer discovers the defect after taking it into his possession. ²⁶⁵

²⁶⁵ Ibid.

8.1.4. Effects of the Option of Defect

The contract with the option of defect is revocable. The consumer of an object with defect has the choice to confirm the sale or to cancel it. This is the majority opinion. The *Maliki* jurists distinguish between the minor (*yasir*) defect and major (*fahish*). Defect and propose that if the defect is minor, the buyer may confirm the sale while being returned part of the price paid in proportion to the extent of the defect. In case the defect is major, he has the choice either to cancel it or confirm it without compensatory restitution. The *Hanbali* jurists hold that the buyer of an object with defect whether minor or major, may confirm the sale while being paid the difference between the price of the article in perfect condition and its price with defect.

8.1.5. Factors Terminating the Option

The following factors terminate the option of defect:

- 1) Acceptance of object with defect by the buyer
- 2) Destruction of the object in the hands of buyer.

The death of buyer does not terminate the option. The right in such case is inherited by the heirs.

8.2. *KHIYAR AL-SHARTH (THE OPTION TO REVOKE THE CONTRACT)*

8.2.1. Introduction

Khiyar al Shart is that option through which one party or both of them stipulate for themselves or for someone else the right to revoke the contract within a determined period²⁶⁶. For instance, the consumer says to the seller "I purchased this thing from you but I have the right to return it within three days". As soon as the period is over the revoke derived through this option, lapses. The result of this option is that contract which is binding (*lazim*) initially becomes non-binding (*ghair-lazim*) with the stipulation of this option.

²⁶⁶ See Zuhayli, *al fiqh al islami wa adillatuhu*, vol .5, p.3535

8.2.2. Evidence of Khiyar al-Sharth

It is reported that the Holy Prophet (s.a.w) granted this option to *Hibban ibn Munqiz* who complained that he was defrauded each time he made a purchase. He was directed to the Holy Prophet (s.a.w.s) whenever he made a purchase 'No cheating and I reserved option for three days'²⁶⁷, The purpose of option is to give chance to a person who suffered some loss in transaction to revoke contract within stipulated time. The option is stipulated normally at the time of the contract. According to *Imam Shafi* and *Imam Ahmad* it should be stipulated at the time of contract. Other jurists allow it even after the contract has been concluded, as long as the parties are in the same session of contract.

8.2.3. For whom the option can be stipulated

The option can be stipulated by one of the parties for himself or for third party. The third party then becomes the agent (*Wakil*) of the party for purpose of exercising the option but it does not prevent the party from exercising the option himself.

8.2.4. Maximum period of *Khiyar al shart*

There is agreement amongst the jurists that *Khiyar al shart* can be stipulated for a period of three days or less. This agreement is based on the tradition quoted above. The jurists disagree as regards any period over three days. *Imam Abu Yusuf* and *Muhammad* and the *Hanbalis* are of the opinion to lay down a period of more than three days without any restriction of the maximum period. *Imam Abu Hanifah* and *Shafi* do not allow it for more than three days. The reason is that *Qiyas* i.e general rule prohibits the stipulation of *Khiyar* altogether which is then permitted as an exception from the tradition. According to the *Malikis* the period of *Khiyar* varies from case to case. Thus it may be one day when a piece of clothes been purchased and may be one or two months when a house has been purchased. This opinion can be adopted these days in cases of stipulated warranty.

²⁶⁷ See Shawkani, *Nayl al awtar* vol.5, p.182

8.2.5. Effect of Contract with *Khiyar al shart*

According to Imam Abu Hanifa the effects do not come into operation during the period of the option. The contract remains suspended (*mawquf*) before the period of option is expired. Thus right in the property is not transferred to one in whose favor the option has been stipulated.²⁶⁸

The option may be exercised expressly or impliedly. Revocation does not require the *hukm* of the court to become effective. Rectification may also be expressed or implied.²⁶⁹

8.2.6. Termination of the option

The option ceases to be applicable in the following cases.

- Death of one in whose favor the option was operating; This is the opinion of some jurists that the option is terminated by the death of one in whose favor the option was made because the exercise of it is a personal right and cannot pass to the heirs while according to the *Malikis* and *Shafi* is it is right which can be inherited and the heirs can exercise the option within the stipulated periods.
- Termination of the period; The contract becomes binding and irrevocable on termination of the period
- The option is terminated in case when the subject-matter is destroyed.

8.3. *KHIYAR AL-TA'YIN (OPTION TO ASCERTAIN THE SUBJECT MATTER)*

8.3.1. Introduction

Another option given to the customer by Islamic law of Contract is that the buyer can choose, designate or determine within a pre-stated time one object out of two or more which are offered to him. It is called *Khiyar al-Ta'yin*. This right can be exercised by the customer in a situation when he is offered to buy an unascertained thing out of a number of ascertained things with a right to ascertain the exact thing later. For example one buying a car out of three vehicles offered for fixed price, gets opportunity through this

²⁶⁸ See Zuhayli, *al figh al islami wa adillatuhu*, vol .5, p.3549

²⁶⁹ See Dr. Tahir Mansuri, *Islamic law of Contract and Business Transaction*, p.168

option to have cars examined by a specialist and chooses any one of them. The reserving of the right to ascertain the bought item later is known as the *Khiyar al tayin* or the option of determination. This option can be only exercised by the buyer and it makes a binding contract non-binding in favor of the customer.²⁷⁰

8.3.2. Effects of the option

Only the *Hanafis* and *Malikis* allow this option because one may be in need of consulting others or for pondering over the purchase and at the same time he does not wish to lose the bargain also. It may also happen that he is the agent of someone and wants to refer the matter to his principle.²⁷¹

The option is allowed as an exception through 'istihsan' (juristic preference) against *qiyas* (general rule) and its operation is very narrow being permitted mainly in the contract of sale. Again it is permitted to the buyer only as the necessity on which it is based cannot be established for the seller according to the majority of the *Hanafis*.

8.3.3. Duration of *Khiyar al-tay'in*

Those who maintain that *Khiyar al ta yin* is a condition, which operates within *Khiyar al shart* or is a kind of *Khiyar al shart* grant the same period as stipulated for the *Khiyar al shart*. Thus the maximum period is three days according to *Imam Abu Hanifah* and unlimited according to *Imam Abu Yusuf* and *Muhammad*. Another opinion within the *Hanafi* School is that *Khiyar al ta-yin* is independent of *Khiya al shart* and thus has no fixed period.²⁷²

8.3.4. Conditions of *Khiyar al tayin*

In practice, there are certain conditions to be met before the party exercise the option for determination (*khiyar al Tayin*). These conditions are as follows:

- a) The seller has expressly agreed to allow the buyer the right of option.

²⁷⁰ Ibid.

²⁷¹ See Kasani, *Badai al-Sanai*, vol.5, p.168

²⁷² Ibid. v.ol.5, p.158

- b) The number of unascertained items should not exceed three i.e those out of which one has to be ascertained. The reason is that necessity does not do beyond three.
- c) There should be a difference in value between the three items and the price of each must be known.
- d) The period of the option should be determined within the confines of the *Khiyar al shart* (majority opinion).²⁷³

8.3.5. Effects of *Khiyar al tayin*

The effect of *Khiyar al-Tay'in* is that a contract is binding for the seller but not for the customer. The customer can revoke the the contract in all three items as the *khiyar al-Tayin* is considered as a type of *Khiyar al-Sharth*. According to the Hanafi jurists the contract becomes binding for both the parties when the period of the option is over. But the Maliki jurists say that on termination of the period of the option, the sale is void in all items. According to this opinion the customer should conclude the contract within the period of the option otherwise it will be automatically terminated.

8.3.6. Factors Terminating the Options

The following factors terminate the option of determination:

- a) Exercise of the option whether express or implied.
- b) Destruction of one of the items
 - i. In possession of the buyer: The goods destroyed become ascertained and the buyer is liable for the price.
 - ii. In possession of the seller; Buyer has a choice to accept what remains or to call off the contract.
- c) Death of one who possessed the option. The contract becomes binding for the heirs and right of revocation lapses. The heir must ascertain one item.²⁷⁴

²⁷³ See Zuhayli, *al-fiqh al islami wa adillatuhu* ,vol .5, p.3549

²⁷⁴ See Dr. Tahir Mansuri , *Islamic law of Contract and Business Transaction*, p.170

8.4. KHIYAR AL-RU'YAH (OPTION OF INSPECTION)

8.4.1. Introduction

It is the basic rule that the subject matter should be known to the parties at the time of contract. The option of inspection is given to the customer buys anything not present at the time of the contract. Knowledge of the subject-matter is an essential condition for the conclusion of the contract. The option of inspection gives opportunity to the customer to examine the subject-matter at the time of the contract or by description in a manner, which removes all kinds of *jahala* (want of knowledge). This is known as the option of examination or *khiyar al ru yia*.

8.4.2. Conditions related to the option

The following conditions to be met before the party exercise the option of inspection (*khiyar al-ruya*);

- a) The buyer must not have seen the goods, which are the subject matter of contract.
- b) The contract must be in property, which is specified and not in that which is sold by description. Things specified are like houses, Land, horses etc. which possess their own individuality.

8.4.3. Effects of the option of examination

The option made the contract non-binding. The seller cannot revoke such a contract, which is binding for him even if he has not seen his own property. The property possesses to the buyer and the contract is non-binding.

8.4.4. Facts terminating the option

The option ends with the examination of subject matter. There is no fixed period for the option, However once the goods have been examined the option is terminated. The option lapses if the subject matter is destroyed. The contract becomes irrevocable upon destruction of the subject matter. The death of the buyer makes the contract binding for

the heirs of the buyer. If the buyer examines the property and disposes it off, the contract becomes irrevocable.²⁷⁵

8.5. KHIYAR AL-FASKH

Both the buyer and the seller have the option to confirm, cancel or rescind a transaction. A contract may be revoked for various reasons. *Khiyar al-Faskh* is the right of a party to revoke the contract due to some reason.

8.6. KHIYAR AL-MAJLIS (OPTION OF THE SESSION)

8.6.1. Introduction

Al-majlis (a session) is the period during which contracting parties devote themselves to the business in hand and is terminated by any event, such as physical departure from place of business, which indicates that negotiations are concluded or suspended.²⁷⁶ The right of the option of session (sitting), called *Khiyar al-majlis*, is the inalienable right to repudiate unilaterally a contract concluded by both parties, so long as they have not yet separated.²⁷⁷

8.6.2. Evidence of the Option

The basis for giving the right of option of the session in a contract was reported to have been made by the Prophet who had said; "Both parties in a business transaction have the right of the option as long as they have not separated, except if it is an optional sale." The prophet is also reported to have said: The sale (is contracted) with mutual consent (*taradi*) and the right of option (*al-takhyir*) is after the conclusion of a contract (*safaqah*). And he is reported to have said to the people of *al-Bqi*: The parties in a contract of business transactions should not separate except after mutual agreement (has been made).²⁷⁸ However, according to *Malik*, there is neither specified time limit nor any

²⁷⁵ Ibid. p.173

²⁷⁶ See N.J. Coulson, *A history of Islamic law*, pp. 237-238

²⁷⁷ See J.Schachat, *An introduction to Islamic law*, p.145

²⁷⁸ See Sanani, *Al-musannaf*. vol. 8, p.50-51

specific matter which is applied in this case, in *Madinah*.²⁷⁹ The right of option does not exist in the following two cases; in the first case, when the parties declare their approval of the contract. If only one does so then he loses his right of option, but the other party retains his right until such time as he makes a similar declaration.²⁸⁰ In the second case, when the parties separate without any express reservation. The right of option remains, however, as long as the separation has not taken place; even though the parties remain together for a long time.

8.6.3. Object of the Option

The prime purpose of the doctrine of *Khiyar al majlis* is that the parties are sure exactly when the session is over. This doctrine is not applicable to the case of contract inter absentees. It is suggested that, in such a case, the only proper method for the parties is to have a time for reflection and assessment by their agreeing upon a specified period of option to rescind or to revoke the contract.²⁸¹

8.7. *KHIYAR AL-GHALAT*

This type of option was only introduced by the successors. This natural doctrine of a contractual system is based on the *caveat emptor* principle.²⁸² This principle means that the buyer must ascertain the good quality of goods he buys. In this case, Shurayh gave the right of option in sale for mistake. In this *Khiyar*, Ma'mar ibn Rashid was of the option that the purchaser must produce evidence, before his claim can be accepted. But al-Shabi rejected any claim for mistake, because he held that sale is a deception (*Khud'ah*).²⁸³

²⁷⁹ See Imam Malik, *Al-Muwatta*, p.559

²⁸⁰ See Ibn Hazm *AL-muhalla* v. 3 p. 372.

²⁸¹ See N.J.Coulson, *commercial law in the gulf states-The Islamic legal tradition*.p.62-63

²⁸² *Ibid.* p.69

²⁸³ See Sanani , *al musannaf*.vol. 3,p.311

8.8. KHIYAR AL-TADLIS OR KHIYAR TAGHRIR

8.8.1. Introduction

The option to rescind the contract, if the option of the defect and sight cannot be put into effect, is the option of fraud. This option exists in cases where the disappointed party can establish that his agreement contract was gained by the deceit or willful misrepresentation of the other party.²⁸⁴ It can be revoked for fraud which causes loss of property. It is forbidden to deceive in business transaction. For instance, it is prohibited to sell an animal that has not been milked for few days in order to increase the amount of milk at the moment of sale. Such fraud gives the purchaser the right of cancellation, provided he makes use of it without delay. According to *al-Shaf'i* the right of the purchaser in these circumstances, can still be exercised three days after the discovery.²⁸⁵ If the purchaser has already consumed the milk from the animal, he should return it to the vendor together with a 'Sa (Sa plural *suwa* is a measure for grain) of the value four *mudds* (modius), according to the custom of *Medina*" or it would be approximately five pints. The official capacity of the mudd of *Medina* (and it was called *mudd al- nabi*) would be approximately five gills.²⁸⁶

8.8.2. Evidence

The following evidences are enough to indicate the legality of *Khiyar al-Tadlis*:

The Prophet is reported to have said: *Whoever buys a sheep un-milked (for a long time), has the right of option for three days.*²⁸⁷

Abu Hurayrah is reported to have said: Whoever purchased any un-milked sheep has the right of option for three days. If he returns it (to the owner) he must do so along with one

²⁸⁴ See N.J.Coulson, *Commercial law in the gulf states-The Islamic legal tradition* p. 69

²⁸⁵ See AL-Muzani,*kitab al-mukhtasar*,in *al-Shafai'l kitab al-umm* v.3.p.173

²⁸⁶ See Alfred, *The Encyclopedia of Islam* v.4, p.1)

²⁸⁷ See AL-Shybani , *kitab al asl* ,*kitb al buyu-wa salam*.

s'a of dried dates. He also said: "*Whoever buys an un-milked sheep has to return it along with one s'a of dried dates*".²⁸⁸

He also said: *Whoever buys an un-milked sheep and returns it has to return it along with one s'a of dried dates*. In this case, he did not limit the time of option. Surely it is a deception or cheating (*al-khilabah*), and for a Muslim it is not permissible to cheat.²⁸⁹

Moreover, Abd Allah ibn 'Umar', Abd Allah ibn Mas'ud, AbU Hurayah and Anas ibn Malik all held the opinion that the purchaser had the right of option to return or to keep the un-milked animals in the case where he did not know that the vendor had kept them purposely un-milked at the time of the transaction, but realized it later. *Abd Allah ibn Umer* was reported to have bought a camel and passed by some people. He told them what price he had bought it for. They advised him to go back and request the camel's owner to bring the price down, assuring him that the seller would lower the price.

Abd Allah ibn Umer refused saying that he had agreed on the price and was satisfied with it.²⁹⁰

The above accounts show that the companions warned the vendors against cheating in any transaction of animals, especially by keeping them un-milked for a long time in order to have greater benefit from the transaction. In this matter the companions allowed the purchaser the option of keeping or returning the animals as the Prophet has instructed.

There does not appear any comment by the successors on the option for fraud (*khiyar-al-tadlis* or *al-taghrir*), except on the case of *talaqqi al-jalab* or *talaqqi al-rukban*. In this case *Muhaamid ibn Sirin* gave the right of option to revoke the contract, to the traders on arrival at the market, when they realized and knew the prices of goods the situation of the market.

There does not seem to be any Tradition from the Prophet on the subject of haggling after conclusion of a contract. Only the companions set some precedents on this particular

²⁸⁸ See Sanani , *Al-musannaf* .vol. 8 p. 197

²⁸⁹ Ibid. p.98

²⁹⁰ See Ibni qudama, *al mughni* v.4 .p.150

topic. It was reported that 'Umer ibn al-khattab disliked haggling for the purpose of lowering a price after a contract had been completed.²⁹¹

9. It's Impact on the Protection of Consumers

There is not a single *Shariah* principle that does not guarantee the protection of human interest, and the concept of *Khiyarat* (Options) in Islamic law of contract and commercial transactions is no exception. *Khiyarat* not only safeguard the purchaser (consumer) from the implications of the sale of defective products before the agreement is being concluded, but it also guarantees similar protection after the conclusion of the sale and purchase agreement. The purchaser or buyer then has the right, under this Islamic doctrine, to exercise his right of option (of either continuing with the contract of sale or not) upon the discovery takes place before or after the conclusion of the said agreement.

Under the practical application of *khiyarat*, we find that the rights and interests of the buyer, with respect to the sale of defective products, are really preserved and protected. This protection against such sale of defective good is further enhanced by the fact that, in Islam, it is implicit that any goods sold should be free of any defect unknown to the buyer.

The vital role played by the doctrine in the protection of society from the effects of the sale of defective products is summed up as follows:

- a) The purchaser or buyer has the implied right to inspect the goods prior to an agreement and confirm whether the goods to be purchased are free from unknown defects;
- b) After the delivery of the goods by the seller, if the consumer (purchaser) discovers any defect in the goods which existed while it was in the hands of the seller, the consumer has the right of option to reject the item purchased or to take it at the agreed price.
- c) If the seller put an exemption clause of no responsibility for any defect in the goods while the defects were known to him or concealed by him purposely, the exemption

²⁹¹ See Sanani, *A-musannaf*, vol. 8, page 60, 61

clause in the situation has no effect and, thus, the consumer is not bound by the exemption clause and has the right of option to reject the goods or to take them.

Defective products and *Khiyar al-ayb*

It is an implied term that any goods sold should be free from defects unknown to the buyer. Relying on this provision the buyer has a legal right to protect himself from the receiving a defective product *Khiyar al-ayb* plays a vital rule in protecting the buyer from being deceived by defective products in the following manners:

- a) The purchaser has a right to inspect the foods (to be purchased) prior to in agreement to confirm whether the goods are free from any defects.
- b) It is a legal duty of the seller or manufacturer to notify the buyer of the goods before the conclusion of the sale and purchase agreement *Uqba bin Amir* said in one tradition. It is illegal for one (seller) to sell a thing one (seller) knows has a defect unless one (seller) inform the buyer of that defect.
- c) If the buyer discovers after the conclusion of the agreement the defects of the goods in proves that the defect occurred the hand of the seller (or manufacturer) the buyer has the right of option either to reject the defective goods or to take it for the agreed price.
- d) if the seller (or manufacturer) stipulates to the buyer an exemption clause prior to an agreement exempting him from any liability for defects of the goods to be sold while knowing about the defects in concealing them purposely, that exemption clause will not exempt the seller from liability. *Imam Malik* clarified this point: "Who sells with an exemption clause exempting him (the seller) from liability, of any defect of the goods will not be responsible for that defect unless he knew about it and concealed it. If the seller knew and concealed the defect, such an exemption clause will not exempt him from the liability of such defective products."
- e) For the sake of further protection of the buyers rights and interests against the problems of the sale defective goods and products, it is also the duty of the sellers to tell the truth and not to conceal whatever defect the goods might have .The Prophet said: "*If they (the seller or the buyer) tell a lie and conceal anything (in the transaction) the blessing on their transaction will be blotted out.*"

The Contract of Lease (*Ijara*) and Consumer Protection

2.1. Definition

The word *Ijarah* literally means the sale of benefits or services. Technically, it means the acquisition of benefits or services with a counter-value as compensation.²⁹² *Ijarah* includes letting things movable and immovable for hire and rendering services such as custody of property and professional services.²⁹³

In Islamic jurisprudence we found that each school has defined *Ijarah* differently for example the *Hanafi* jurists are of the opinion that *Ijara* is contract on usufruits for a known consideration.²⁹⁴ The *Shafi'i*'es say that it is a contract on a known and permissible benefit in exchange of a known return.²⁹⁵ In *Maliki* School; *Ijara* is an alienation of lawful usufruits for affixed charge for a fixed period. Ibn Rushd a renowned *Maliki* jurist says; *Ijara* resembles a sale contract whereby price and use are exchanged.²⁹⁶ According to *Hanbali* School; *Ijarah* is contract for the lawful and defined use of a lawful and determined corporeal object for a specific period of time. It is also defined as providing a defined work for a fixed price.²⁹⁷

According to a contemporary Muslim jurist Maolana Taqi Usmani; the word *Ijara* is used for two different situations. In the first place, it means to employ the services of a person on wages given to him as consideration for his hired services. The employer is called *mustajir* while the employee is called *ajir*. The second type of *Ijara* relates to the usufruits of asset and properties, and not to services of human beings. *Ijara* in this sense means to transfer the usufruct of a particular property to another person in exchange for a rent claimed from him. In this case, the term *ijara* is analogous to the English term leasing. Here the lessor is called *mujir*; the lessee is called *mustajir* and the rent payable

²⁹² See Wahba, Zuhaili, *Al-Fiqh al-Islami wa adillah* vol. 5, p.3802

²⁹³ See Dr. Tahir, Mansur, Islamic law of contracts and business transactions, p.229

²⁹⁴ See Kasani, *Badai al-Sanai*. Vol.4, p.174

²⁹⁵ See Shirbini, *Mughni al-Muhtaj*, vol. 2, p. 332

²⁹⁶ See Ibn Rushd, *Bidayat al-Mujtahid*, vol.2, p.219-220

²⁹⁷ See Bahuti, *al-Rawd al-Murbi*, p. 214 quoted by Tahir Mansuri

to the lessor is called *ujrah*.²⁹⁸ Thus, *Ijara* is a well recognized contract in Islamic law, for which detail rules are contemplated in *Fiqh* literature.

2.2. Legitimacy of *Ijarah*

The legality of *Ijara* is established by the Qur'an, the Sunnah and Ijma; the following verses of the Holy Quran and traditions of the Holy Prophet (s.a.w) are significant in this regard;

"Allah says: "And if they suckle your (offspring) give them their recompense."²⁹⁹

"Said one of the (damsels): "O my father: engage him on wages. 'Truly the best of men for thee to employ is the man who is strong and trusty.'³⁰⁰

"Said the Holy Prophet; "Give wages of the person hired before his sweat dries up".³⁰¹

"If someone hires a person, let him inform him about the wages he is to receive.³⁰²

Hadrat rafi reported that in the age of the Holy Prophet the owners of the land used to let their lands on rent.³⁰³ Imam *Sarakhs* stating the lawfulness of this contract writes: "The contract and dealings practiced before Islam are valid practices for us also in the absence of any text disapproving them. The Holy Prophet was sent as Prophet and he saw the people practicing *Ijarah* and he did not disapprove that practice.³⁰⁴

The contract is *lazim* (binding) on both parties; however, it is terminable on the basis of a valid excuse. This is the view of the *Hanafis*, while the majority maintains that it is not a terminable contract and can be rescinded like all other binding contracts. The services or benefits being sold do not exist at the time of contract. They are generated after the contract has been concluded. This is against the general principle of Islamic law that

²⁹⁸ See Taqi usmani, *An Introduction to Islamic Finance* p. 156-157;

²⁹⁹ Qur'an 65:6

³⁰⁰ Qur'an, 28:26

³⁰¹ See Sanani, *Subul al-salam*, vol.3. p.81

³⁰² See Shawkani, *Nail al-Awtar*, vol. 5. p. 292

³⁰³ See Bukhari, *Sahih, kitab kara al-ard bil dhahab wa al-fidhah*.

³⁰⁴ See Al-Sarkhasi, *Al-Mabsut*, vol. 15, p.74.

prohibits the sale of things not in existence. This contract is for a fixed period and sometimes there is no limitation at all on the time. It is for this reason that the *Hanafi* jurists state that the contract is concluded for a series of fixed periods being renewed automatically for each period.³⁰⁵

2.3. Element of Hire (*Ijarah*)

The only element of hire according to the *Hanafis* is offer and acceptance and this is possible with the use of words like hire, renting, letting out, wages and so on.

2.4. The conditions of *Ijara*

The conditions of this contract are as follows:

1. Consent of the Parties. This condition is common with other contracts.
2. The subject-matter or consideration of the contract should be known and should not involve uncertainty that may lead to later dispute. Thus, the wages, the type of work and the period for which the contract is being made should not be uncertain.
3. The subject matter of the contract should be something that can be delivered. Thus, the renting out of a lost camel is not permitted.
4. The subject matter of the contract should be lawful. Thus, the hiring of premises for manufacturing wine is not permitted.
5. The performance of services hired should not be obligatory on the person anyway. Thus, a person cannot be hired for praying or performing hajj and so on.
6. The rent should not be paid in the same genus or species. Thus, a house cannot be rented in exchange for another house. The rent should be worked out in terms of money or other marketable value. In reality this condition is directed against transactions involving *Riba*. Thus, money cannot be rented in terms of money as this leads to loan transactions bearing interest.

2.5. Kinds of *Ijara*

There are two main kinds of *Ijarah*, namely *Ijarat al-Ashya*, and *Ijarat al-Ashkhas*;

³⁰⁵ See Nyazee, Imran Ahsan, *Outlines of Islamic Jurisprudence*, p. 159

1. *Ijarat al-ashya*; refers to hiring of things such as houses, shops, lands, animals and beasts etc. this is also known as *Ijarat al-ayn*. The Fuqaha has mentioned detailed rules about Ijarat al-ashya, some of these are given below;³⁰⁶
 - i. The lessee right is established in the usufruct of the leased property other than its ownership.
 - ii. All the liabilities emerging from the use of the property shall be borne by the lessee
 - iii. The subject-matter of *Ijarah*, namely, the usufruct should be known and identified. There should not be any uncertainty and vagueness about the usufructs, which may lead to discord and dispute among the parties. The lessor should specifically mention the subject-matter.
 - iv. The leasing period should be fixed, whether it is long or short. It is the view point of the majority of the *Fuqaha*.
 - v. The subject matter should be actually delivered to the lessee.
 - vi. The articles to be hired should be physically fit for hire.
 - vii. In case the subject matter is land, the use of land should be specified whether it is for cultivation or construction of building.³⁰⁷
 - viii. The lessee cannot use the leased asset for any purpose other than the purpose specified in the lease agreement. If no such purpose specified in the lease agreement. If no such purpose is specified in the agreement, the lessee can use it

³⁰⁶ See Dr. Tahir Mansuri, *Islamic law of contracts and business transactions*, p.234

³⁰⁷ Ibid.

for whatever purpose it is used in the normal course. However, if he wishes to use it for an abnormal purpose, he cannot do so unless the lessor allows him in express terms.

- ix. The lessee is liable to compensate the lessor for every harm to the leased asset caused by any misuse or negligence on the part of the lessee.
- x. Rent to be paid should be a lawful thing and known.
- xi. The property hired is a trust in the hands of the lessee. Thus, if it is destroyed without any negligence on the part of the lessee, he will not be responsible for that loss or damage.
- xii. The lessee is required to exercise maximum care of property and use it properly. An improper and unusual use of the property will change his status from trustee to usurper, and in case any destruction takes place, he will be liable for compensation.
- xiii. *Ijara* is a binding and irrevocable contract. Thus, it cannot be revoked unilaterally.
- xiv. Unlike the sale the contract of *Ijarah* can be enforced from some specified future date. Thus, it cannot be revoked unilaterally.
- xv. Rent of hired property becomes due:
 - a) On the attainment of usufruct of the hired property or goods; and
 - b) Ability of the lessee to use the usufruct of hired goods.

2. *Ijarat al-ashkhas* refers to hiring of services, such as to hire a painter to paint a house. This kind is also known as *Ijarat al-dhimmah*.³⁰⁸ In addition to this, a distinction is made between an employee (*ajir khass*) and the independent contractor (*ajir mushtarak*). The former works for a single employer while the latter works for wages on a job basis. Rules of liability have been framed for the latter in case of negligence.³⁰⁹ The following rules have been mentioned by Fuqaha for Ijarat al-ashkhas;

- 1) In the contract of hiring services, the work required to be performed should be specifically fixed such as the carriage of goods, or building house etc.
- 2) Performance or work should not be prohibited in the *Shariah*. Thus, it is not permitted to hire a magician to teach magic, or a singer for the purpose of singing. Similarly, it is not permissible to hire the services of a person to kill another person or torture him, because they are acts of sin and disobedience, hence prohibited in *Shariah*.
- 3) The services required to be rendered should not be a mandatory duty. It is, therefore, not allowed for a person to hire a person to pray, to perform hajj, to lead prayer, to teach the *Qur'an* because they are mandatory duties, so the worker is not entitled to wages if he is hired for any of them.
- 4) *Ajir Mushtarak*(independent contractor) such as tailor or shoemaker will be held accountable for the loss of goods in his goods regardless of whether they are destroyed by his fault or without his fault. This ruling has been given by the *Fuqaha* on the grounds of public interest so that trustees and tradesmen exercise greater care in safeguarding people's properties.³¹⁰

³⁰⁸ Ibid., p.232

³⁰⁹ See Nyazee, Imran Ahsan, *Outlines of Islamic Jurisprudence*, p.160

³¹⁰ See Kasani, *Badai al-Sanai*, vol. 4, p.210,

This shows that how much Islamic law of contracts and commercial transactions takes care of the general group of consumers irrespective of their paying capacity.

2.6. Discharge of the Contract of *Ijarah*

The contract of *Ijarah* comes to an end in the following situations;

1. Discharge by Performance: The contract comes to an end when both parties have fulfilled their duties by performance of the acts they have promised.³¹¹ The contract of lease is also finished when both the parties fulfill their obligations.
2. Death of a party: The Hanafi jurists are of the opinion that the contract of *Ijarah* is terminated when one of the contracting parties passes away and this right cannot be inherited. The majority of the jurists are of the view that the death of a party does not terminate the contract of lease because it is a binding contract like that of sale.
3. Rescission (Iqala): It is a negotiated rescission of the contract by the parties in which they are returned to their original positions before the contract. This is one of the modes for discharge of lease.
4. The contract of *Ijarah* is also discharged when the subject matter of the contract is destroyed.³¹²

2.7. It's Impact on consumer protection

1. Islam has protected interest of the consumers by legitimizing the contract of lease as the general body of consumers needs to acquire goods and services and if the contract of lease is not legalized people will be troubled (mashakka). The reason is Hajja of the people for the validity of *Ijara*.
2. As we have mentioned that there are two types of *Ijara*, *Ijara al ashya* (hire of goods) and *Ijara al ashkhas* (hire of services), in both these kinds consumers are protected in all aspects and they are provided with all possible protections.

³¹¹ See Nyazee, Imran Ahsan, *Outlines of Islamic Jurisprudence*, p.129

³¹² See Wahba, Zuhaili, *Al-Fiqh al-Islami wa adillah* vol. 5, p.3862

3. In Ijarat al ashya the lessee is given option if he finds some defect in the leased property and therefore can rescind the contract of lease. It is called the option of defect. But the lessee is bound to use the leased property according to the terms of contract.
4. In the contract of Ijarat al ashkhas (personal services), the mujir is held liable for negligence on his part. Moreover in case of ajir mushtarak, he will be held accountable for the loss of goods in his possession regardless of whether they are destroyed by his fault or without his fault. This ruling has been given by the Fuqaha on the grounds of public interest so that trustees and tradesmen exercise greater care in safeguarding people's properties.
5. The independent contractors are held liable for their harm to consumer irrespective of the fault whether it exist or not on their part.

CHAPTER NO. 5

IMPLEMENTATION OF ISLAMIC PRINCIPLES

5.1. ISLAMIC STATE AND CONSUMER PROTECTION

The aim of Islam is social justice 'by establishing what is right and forbidding what is wrong'.³¹³ But whose wills the end must will the means. As *Ibn Taimiyya* (d. AH 728/AD 1328) pointed out: 'To govern the affairs of men is one of the most important requirements of the Religion that is Islam, nay, without it religion cannot endure. The duty of commanding good and forbidding the evil cannot be completely discharged without power and authority.'³¹⁴ Without the Islamic state, it is not possible to realize the ideals of Islamic socio-political and economic justice; implement Islamic law; establish the Islamic system of education; and defend Islamic civilization against domestic perversions and foreign aggression. Islam's promises as the guide for man's happiness in this world and the Hereafter would not be true. The Islamic state is, therefore, 'an effort to realize the spiritual in human organization'.³¹⁵

5.1.1. Principles of the Islamic State

The basic principles enumerated here are based on explicit shariah texts: the subsidiary principles are derivative, belonging to the fiqh realm of Islamic law. The basic principles must be part of every Islamic constitution. The Islamic state is united under the leadership of one ruler known as khalifa or Amir al-Muminin in compliance with the clear injunctions of the Qur'an and the Sunnah. The summary is limited to the basic principles most relevant to our purpose.

³¹³ Qur'an, 3:103, 109, 113; 9:71,112; 22:41; 31:17.

³¹⁴ See E.I.J. Rosenthal, *Political Thought in Medieval Islam* (Cambridge:Cambridge Univ.Press, 1958), p.53; cf. Ibn Khalun, *Muqaddimah*, 1:322-27. See also S.Waqar Ahmad Husaini, *Islamic Environmental Systems Engineering*,p.92.

³¹⁵ See S.Waqar Ahmad Husaini, *Islamic Environmental Systems Engineering*,p.92.

5.1.2. Sovereignty

- Absolute, real, or legal sovereignty belongs to Allah (S.W.T.). It is reposed in the will of Allah (S.W.T.) as understood from the Shariah. The Shariah, politically, is the ideal constitution of the Islamic state.
- The Muslim community- represented by the consensus of the people (Ijma 'al-Ummah)-accepts the position of Allah (S.W.T.)'s vicegerent (khilafa) on earth. In this derivative sense it enjoys the attributes of sovereignty and self determination. The vicegerency of Muslim community entrusts them the responsibility to identify the Shariah from its sources and implement it empirically.
- The Shariah, as the repository of actual sovereignty and the ideal constitution, is inviolable. The Islamic substantive law (fiqh)-comprising the legislation, administrative rules and judicial interpretations should not contravene the Shariah constitution and statutory codes.³¹⁶

5.1.3. Shura and Ijma

- Decision-making in all communal affairs shall be mutual consultation and consensus.
- The leadership and government of the state must be established on the basis of consent of the people through election. A government or authority (sultan) established by any non-sharia means has no legitimacy and cannot demand loyalty from the people. Thus the non-elective means of assuming power such as a coup d'etat (imarat al-istila' 'government by seizure'), and hereditary kingship (mulk) are illegal.
- There shall be a 'consultative assembly' (majlis al-shura) representing the community through free and fair elections. The elected head of state (imam, caliph, president), legislators or assemblymen (ahl al shura), and the public decision-makers (ahl al hall wa al-aqd, literally ' the people who unravel

³¹⁶ See A.A.Maudoodi, *History of Muslim Philosophy*, 1:194

(problems) and conclude' shall have requisite Islamic qualifications in terms of knowledge, competence, trustworthiness, and social and personal ethics.³¹⁷

5.1.4. A model Islamic state: the Rightly Guided Caliphate (AH 11-41/AD 632-661)

In his own Prophetic City the Messenger of Allah (S.W.T.), on him be peace, used to discharge all the functions of authority, while over more distant places he used to appoint governors such as Atab Ibn Usayed (Makka), Utman Ibn Al As(Al-Ta if), Khalid Ibn Sa id Ibn Al As (Qura Arina), and Ali Mu adh and Abo Musa , whom he dispatched to Al-Yaman.

Similarly he used to appoint commanders over the troops and so send out collectors of the zakah properties. The latter used to take from those owing the tax and pay out to the entitled beneficiaries named by Allah (S.W.T.) in the Quran. Then the collector would return to Medina with nothing but his whip: he would bring nothing to the prophet, on him be peace, if he could find a recipient for it.

The above principles of Islamic government were applied during the administration of the first four successors of the Prophet Muhammad, appropriately called the Rightly guided Caliphs. For example, Caliph Umar (AH 13-23/AD 634-644) inaugurated a universal social insurance scheme on the basis of a regular population census taken by a specially created government department.³¹⁸

Dr.Husaini remarks:

From the very beginning of the Muslim state, great care was taken to see that marchents and dealers used proper weights and measures. Of all the Pious Khalifahs 'Ali was most particular about it. He used to go around the market of al -Kufah, whip in hand, to see that bproper weights and measures were used and no one cheated anyone else. Under the Umayyads police officers were incharge of the supervision of weights and measures.³¹⁹

³¹⁷ Ibid.

³¹⁸ See Sayyed Qutb, *Social Justice in Islam*, pp.175-97, 87-99

³¹⁹ See S.Abdul Qadir Hussaini, *Arab Administration* (Lahore: Sh.Muhammad Ashraf,1966),p.101.

Another duty of the Islamic state is to dispense justice free of cost. Hence it is not supposed to impose any stamp duty or court fee on those who seek to redress the injustice done to them through the courts. It may be added that the Islamic state is subject to the same code of law and morality as the public at large. Therefore it should not do anything which is not compatible with the spirit of Islam, including its economic guidelines. It should not leave the state –lands uncultivated or the state funds to lay idle e.i. without being invested in trade and commerce .Umer ibn al Khattab was very particular about these matters.³²⁰

5.1.5. Duties of Islamic State to Protect Consumers

The responsibility of rational consumption firstly comes on the government as it has all the economic tools, and commercial and financial matters are run by it, so it should always keep maintain the collective interest of the society because it has the authority to maintain and we are ordered by the Holy Prophet (S.A.W) that when someone travels he should make Ammir “*when three person travel they should make one of them as a leader*”,³²¹

Imam Abn Tamya has explained the *Hadith* and said that “whenever it is obligatory for a little community to make a leader so in regard to a huge community its obligation is very much clear. Therefore the supervision of the state is extremely important for the establishment of justice and equality in the society and Qur'an has mentioned this meaning.

The Muslim legal philosophers have emphasized the following fundamental freedoms or rights in respect of every individual. These are: Preservation and Protection of religion, human life, and progeny, human honor or dignity (*ird*), Intellect, and wealth³²².

³²⁰ See Mushtaq Ahmad, *Business Ethics in Islam*, p.133

³²¹ See Abi-Dawod, *Sunan , Kitabul jihad* tradition no. 80

³²² See Shatibi, *Al-Muwafaqat*, vol.2, pp.4-5

Thus, everything which help realize these objectives is necessity (daruriah). It has been made an obligatory duty of the Islamic state to protect all these rights or freedoms. The following duties can be seen:

- Every Muslim community must establish Din in accordance with the first purpose of the *Shariah*.
- It must ensure the safety and welfare of all human beings under its governance. This is done by providing all means of sustenance and shelter in accordance with the second purpose of *Shariah*.
- The state must establish conditions for a sound family system in accordance with the dictates of the *Shariah* and requirements of the third objective.
- It is the duty of the state to provide conditions for the growth of healthy minds. The only way this can be done is by providing freedom of expression and a sound and universal education. This is how the forth objective will be attained.
- Finally, the state must also ensure the economic well being of the community as a whole. In addition to this, the wealth of the community is to be used to implement the first four goals.

All these duties must be accomplished in the listed order of priority, as required by the structure of the *Maqasid*.³²³ Here, we shall mention some of the duties, particularly those relevant to our topic, of the Islamic state relating to protection of the right of acquisition and ownership of wealth and property.

- a) An individual's right against his society is to provide him with the opportunity to work. Therefore, the foremost duty of the ruler is to provide employment to every able-bodied and willing person.

³²³ See Nyazee, Imran Ahsan khan, *Outlines of Islamic Jurisprudence*, 232-33.

- b) The foremost duties of the Islamic state is to establish and enforce the system of zakat as it was during the period of the prophet (peace be on him) and the Rashidun Caliphs.³²⁴
- c) The *Qu'ran* has enjoined the duty of *ai-amr bi al-ma ruf wa al-nahy 'an al-munkar* (enjoining of good and prohibition of evil). This duty is to be carried out by the state officials as well as by the competent persons from the general public.
- d) The Prophet, on him be peace, used to supervise and investigate the dealings of his governors and other officials. Therefore, it is the duty of the Islamic state to supervise and investigate the dealings of the government officials.
- e) The imperatives in the Qur'an and the practice of the Prophet, on him be peace, made it abundantly clear that an Islamic state is duty bound to establish an elaborate and effective system of *hisbah*. Appointment of *muhtasib* in every city is regarded as an imperative for the Caliph.
- f) The duty of such *muhtasib* would be: "to check the scale and prices and to see that business is carried on in an orderly and upright manner. The history of Islam bears witness to the fact that utmost importance has always been attached to the institution of *hisba*.
- g) One of the most important duties of the state is to wage an extensive war against those who insist on retaining the institution of *riba*.³²⁵ This is to ensure the economic justice in the society.

³²⁴ See Jassas, *Ahkam ul Quran*, v.3, p.190 On the basis of Qur'anic injunctions contain in verse 22:41, See also Mushtaq Ahmad, *Business Ethics in Islam*, p.131

³²⁵ This is what the Qur'an and the Sunnah of the Prophet on him peace, demand of any Imam (leader) of the Islamic society. Sayyid Qutb insist that the Imam must fight against such people even if they proclaim to be Muslims , just as Abu Baker had fought against the withholders of zakat (man i u al zakat)despite their declaration of Shahadah and their establishment of salat.

- h) Also the state is responsible for breaking monopolies, hoardings, corner markets, and all other malpractices in the conduct of the business. In the hours of need the state itself must take initiative and arrange for the supply of abundant and cheap goods on the market. Umer ibn al Khattab had arranged for the supplies to be bought from Egypt during the period when famine had hit Medina and there was an acute shortage of food grains.³²⁶
- i) Another duty of the Islamic state is to dispense justice free of cost. Hence it is not supposed to impose any stamp duty or court fee on those who seek to redress the injustice done to them through the courts it may be added that the Islamic state is subject to the same code of law and morality as the public at large.³²⁷
- j) To fulfill needs of the consumers, it is the duty of the Islamic State to cultivate barren lands of the state and to invest the state funds in trade and commerce.³²⁸ It will make consumer goods easily available on low cost, and their demand will be fulfilled.
- k) It is duty of the Islamic state to ensure essential supplies. "It may also be that people are in need of the industry of certain individuals: e.g. the public need forming, wearing and building, for people cannot go without food to eat, clothes to wear, and dwellings to live in. Unless sufficient clothing is imported-as it used to be imported in to the Hijaz in the days of Messenger of Allah (S.W.T.), on him be peace, when clothing was imported from al-Yaman, Egypt and Syria- unless the citizens import sufficient for their needs they will require someone to weave their clothes for them. They will require food whether it to be imported from outside or obtained from local agriculture, which is more usual .Likewise, their need for houses to live in will create demand for builders. Therefore several scholars have held that these industries are a collective obligation , since the public welfare is incomplete when they are not practiced, in the same way as the Holy War is a collective obligation

³²⁶ See Ahmad, Mushtaq, *Business Ethics in Islam*, p.133

³²⁷ Federal Shariat Court of Pakistan has also declared court fees against the injunctions of *Shariah*.

³²⁸ See Imam Ibn Taymia , *Public Duties in Islam*

unless it becomes a personal duty, binding on individuals , as when the enemy threatens a town or the ruler(*Imam*) summon someone to enlist.³²⁹

This much for the duties of an Islamic state, our next concern is to explore the justification and limits of state interference in the protection of consumers.

5.1.6. JUSTIFICATION OF STATE INTERFERENCE AND PROTECTION OF CONSUMERS

To establish or restore economic justice, the Islamic state is fully authorized to interfere or use force.³³⁰ The interference of the state is justified in trade related matters in the following circumstances:

- 1) Sheikh-al-Islam Imam Ibn Taymiyyah hold that if the public is in need of commodity and some members among the public are in possession of surplus stock of the same, the ruler can force these individuals to sell their surplus stock for an equivalent price (*qimat al mithl*) and they will not be permitted to exploit the situation by charging inflated prices.³³¹ Imam Ibn Taymia says; "Now, if people refuse to sell what they are under an obligation to sell, in this case they are ordered to perform and punished for non-compliance. Likewise when someone is under obligation to sell at the fair price and refuses to sell except for a higher sum, in such cases he is ordered to perform and punished for non-compliance. Of this there is no doubt."³³² According to Muhammad al Ghazali the state has the right to restrict the economic freedom of a man in order to protect the society from harm. Provided that the right of interference with the individual 's personal property will be limited to

³²⁹See Imam Ibn Taymia , *Public Duties in Islam*,pp.37-38

³³⁰Al-Mubarak,Muhammad, *Nizam al-Iqtisadi al-Islami:Mabadi wa Quwaid Amma*, p.106. Al Mubarak mentions on the Qur'anic verses: 57: 25 / We sent aforetime Our apostles with clear Signs and sent down with them the Book and the Balance (of Right and Wrong), that men may stand forth in justice; and We sent down Iron, in which is (material for) might war, as well as many benefits for mankind, that God may test who is that will help, unseen, Him and His apostles: for God is Full of Strength, Exalted in Might (and able to enforce His Will)

³³¹ See Ahmad, Mushtaq, *Business Ethics in Islam*, p.134

³³² See Imam Ibn Taymia , *Public Duties in Islam*,p.50

the extent required by the general welfare of the society.³³³ The Muslim jurists have formulated the following Shariah Maxim;” A private injury is tolerated in order to ward off a public injury”.³³⁴

- 2) In the case of necessity the Islamic state has the power to impose taxes in addition to zakat. Imam Abu Yusuf maintains that taxation by the state is permissible within limits especially for the discharge of the state obligations. Maolana Mawdudi says, if the state is in need of funds for carrying out other essential projects, it can ask the public to contribute and render financial help for the purpose. This help would be designated as donations or loans, if given voluntarily; as taxes, if realized by force.³³⁵
- 3) According to Abd al Qadir 'Awdah, if a wealthy person refuse to fulfill the need of the poor , the state is obligated to interfere and extract from the wealth of such a person whatever is essential to fulfill the need of that poor. Failure to do so would not only be a violation of Allah's injunction on the part of the state, but also deprive the poor of their due right granted to them by Allah. Any person does not have enough to meet his needs is enough to qualify him as needy; and the state must interfere to get them their right.³³⁶
- 4) The state can control the price when it involves just dealing between people. It is relevant to quote here Anas (R.A.), who related: The market price rose in the time of the Messenger of Allah (S.W.T.), on him be peace, and they said to him: "Messenger of Allah (S.W.T.), if only you would fix the prices!" But he replied: "Allah (S.W.T.) is the taker, the Disposer, the Scourers and the Controller of prices. I very much hope that when I meet Allah (S.W.T.) no one claims against me for an injury I have caused him in blood or property". It is apparent that a given price may be an impermissible wrong, particularly if it involves injury to people and

³³³ See Al-Ghazali,Muhammad, *Al-Islam wal-Awda`al-Iqtisadi*,p.137.

³³⁴ See Dr.Muhammad Tahir Mansuri, *Shariah Maxims on Financial Matters*, Art.25, p.225

³³⁵ See Maudoodi, *Mu`ashiat-e-Islam*,p.371

³³⁶ See Ahmad, Mushtaq, *Business Ethics in Islam*, p.134

forcing them without justification to sell at a price not agreeable to them, then it is illegal. But if it involves just dealing between people., as when they are compelled to do their duty by exchanging for a fair price, and preventing them from doing what is unlawful for them in taking more than a fair consideration, then it is not merely permissible but indeed obligatory. In order to protect social and collective interest of the society these rights are given to the state.³³⁷

- As for the second case, an example would be where the owners of merchandise refused to sell except for more than the reasonable value at a time when people were in urgent need. In these circumstances it is their duty to sell for fair value. Price control has no meaning other than compulsion to sell at a fair price. They must be obliged to perform what Allah (S.W.T.) demands of them. Not one of the scholars is in doubt on this issue, for if other are restrained from dealing in that commodity follows that were the monopolists licensed to set their own prices the public would be injured on two sides: the seller wishing to sell those goods to them on the one hand, and those purchasing from them on the other.
- A more serious matter than this is where certain people have a monopoly of particular commodities, such that foodstuffs or the other goods are sold only to them and then retailed by them, any would be competitor being restrained either harshly , by imposition or by some gentler means less open to abuse. In this situation prices must be controlled so that the monopolists sell only for fair value and buy people's goods only for fair value.
- Although compulsion to sell is not permitted without justification but there are several occasions where this justification exists i.e. the sale of property to satisfy a due debt, or to provide due maintenance. Only with such justification may someone be obliged to sell only for the fair price. Examples are;

³³⁷ Imam Ibn Taymia , *Public Duties in Islam*,p.35-37

- Where someone is in urgent need of another's food or for instance, his plants and buildings; in such cases the landowner is entitled to acquire them for fair value and no more.
- Likewise the case of extension (siraya) in manumission, as the Prophet, upon him be peace, said: "If someone frees his share in a slave and has enough to cover the whole cost of the slave, then an equitable value will be assessed on him -neither to low nor yet excessive - and he will give his co-owners their quotas, their completing the slave's freedom. Otherwise he will manumit what he can."
- Likewise again the case of one who must buy something for the performance of religious duties, such as equipment for the Pilgrimage, or a slave to manumit, or water for ritual purification. Here he must pay for the fair value and is not entitled to insist on buying at the price of his choice. Likewise yet again, the case of one who requires food or clothing for those he is obliged to maintain. If he finds food or clothes suitable according to custom and offered at a fair price he has no right to seek something inferior in order to get it at the price of his choice. Similar cases are numerous.
- Moreover when a group who buy or sell a certain type of commodity conspire to depreciate what they buy and so buy for less than the customary fair price while promoting what they sell above the customary price , and to malign what they buy ,this is a graver injustice than intercepting goods, than the townsman's selling for the nomad, and than the device of having an accomplice bid up the price(najash) .They will have conspired to wrong people so that they would have to sell their goods (for less) and to buy for more than fair price, people being in need of buying and selling those goods. What the general public needs to buy and sell must be sold only at the fair price when the need of buying and selling it is universal.³³⁸

5) The Islamic state is authorized by *shariah* to inflict punishment for omission of duties and commission of alligators. The ordaining of what is fitting and the

³³⁸ Ibid.

proscription of the improper is completed only by mean of the legal penalties. In order to protect objectives of shariah Islamic law has described the various types of punishments. In order to understand the gravity of offences and penalties related to the issues of consumers, we need to have a general look on offences and penalties. The offences for which specified penalties are provided are called Hudud. Those in which Qisas or reparation is provided are called Jinayat. Punishments that are at the discretion of the judge when the offence is related to a private injury are called ta'zir. Offences that are mainly directed against the system and society or where the pure right of the state is affected are called siyasah penalties. Some offences that are corrected by acts of personal penance are called kaffarat(expiation).³³⁹ Thus, it is clear that Islamic law allows the Islamic state to ordain punishments for the protection of community interest under the concepts of Taz'ir and Siyasah. Here we shall highlight some of the characteristics of Tazir. Taz'ir punishments vary in both quantity and quality according to the seriousness of the offence. Tazir punishment is of different types such as;

- It may take the form of rebuke and verbal castigation,
- or imprisonment ,
- or expatriation,
- Or beating.

As for the maximum severity of ta'zir, there are three doctrines in Islamic jurisprudence:

- Ten lashes; Imam Ahmad.
- Just short of the corresponding hadd, i.e. either thirty nine or seventy nine lashes; this is the view of many Hanfis ,Shafi'is and Hanbalis;
- The limit is not so determined; this is the doctrine of the Maliks, some Shafis and Ahmad according to one of the two reports attributed to him.³⁴⁰

³³⁹See Nyazee,Imran Ahsan khan, *Outlines of Islamic Jurisprudence*, p. 243

³⁴⁰ See Imam Ibn Taymia , *Public Duties in Islam*,p.60-66

5.1.7. Punishments in order to protect interests of the consumers:

As we have mentioned earlier that Islamic state can use force to maintain public good and to establish socio-economic justice. Every individual of the Muslim society is consumer; therefore, Islam stressed a lot on the protection of Consumer's interests. To protect these interests, Islamic state may inflict punishments for omission of duties and commission of alligators, as done by The Holly Prophet and Caliphs, which are evident from the Following reports:

- a. A comparable case is the action of the Umer ibn Khattab who on seeing that a man had diluted his milk with water punished him by spilling it away. One group of the jurists who uphold this principle have given this ruling, for it is reported of the Prophet, on him be peace, that he prescribed the watering down of milk for sale – though not for drinking purposes – because if the milk is diluted the buyer does not know the relative quantities of milk and water , and for this reason ' Umer destroyed it.
- b. A close parallel is the opinion of one group of the jurists who uphold this principle concerning the permissibility of destroying fraudulent work in the crafts: they maintain that badly woven cloth, for instance, may be ripped apart and burned. It was for this reason that when Umer ibn Khattab saw al Zubair 's son wearing a garment of silk be punished him by tearing it apart and when al Zubair said ,“Would you terrify the boy” ?reported, “Do not dress him in silk!” then again , 'Abdullah ibn Umer burned his yellow dyed garment at the bidding of the Prophet , on him be peace.,³⁴¹
- c. It is in this way that the part of the body is destroyed which was cause of the offence: thus the hands of the thief are imputed and the foot and the hand of the brigand.
- d. The destruction of that wherein the impropriety subsists prevents any recurrence of that impropriety. However, such destruction is not absolutely obligatory; if the

³⁴¹Ibid. p.65

substance is not pernicious it may be permitted to subsist, either for Allah (S.W.T.) 's sake or to be given in alms. In accordance with this principle, one group of the scholars give the opinion that the fraudulently misrepresented food bread, cooked stuffs, and grilled meat (e.g. bread or other food that is underdone, food that is mixed with bad but displayed to the costumer as being of good quality, etc.) may be given in alms to the poor for this is tantamount to its destruction. While 'Umar destroyed the milk that had been watered down for sale, there is better reason to give it in alms since this has the effect of punishing the adulterant and cautioning him against repeating his offence, while at the same time for the poor to have the enjoyment of it is more beneficial than its destruction. 'Umar destroyed it because the people had no need of gifts, for in his time the poor in medina were either very few or even non-existent.

- e. For this reason one group of scholars permit its being given in alms and deplore its destruction. It is reported in al-Mudawwana on the authority of Malik ibn Anas that 'Umer ibn al-Khattab used to throw adultered milk away on the ground as a reprimand for its owner. But Malik deplored this (in Ibnal-Qasim's account) and considered it proper that he should give it in alms.³⁴² Ashhab attributes to Malik the banning of all financial punishments and says: "No offence can render a person's property violate, even if he takes a life." But the former view is more widely ascribed to him. He deemed it preferable to give away adulterated milk in alms, as this has the effect of punishing the adulterant through the loss he sustains while at the same time benefiting the poor to whom it is given- so the milk is not to be poured away.
- f. Malik was asked whether he regarded saffron and musk in the same light, and he replied that where there is adulteration in anything comparable it is to be treated like milk.
- g. Ibn al Qasim says that this applies to a small quantity of the thing, but he does not hold with it where there are large amounts at stake: here the owner himself should

³⁴² The scholars have two views as to whether a trifling amount should be given in alms.

be punished, since he would be subject to enormous material loss i.e. if he had to give away great quantities in alms. But some of the sheikhs say it is all one in Malik's doctrine whether the amount involve is small or great, since Malik equated saffron, milk and musk, little or much. Ibn al Qasim disagrees, holding that only slight amount is to be given in alms. This only applies to the actual adulterant, for if someone happens to have one of these commodities in an adulterated condition but is not himself responsible, having bought it or got it as a gift or by way of inheritance, then no one disputes that in such cases there is no compulsion to give it away in alms.³⁴³

5.1.8. LIMITS OF STATE -INTERFERENCE

Islamic Law advocates freedom and discourages unnecessary restrictions, particularly in matters of trade and commerce. Therefore, the state's role in this connection must be limited to the establishment of justice. If the public observes the prescribed norms of the Shari'ah in their dealings, there need not be any restriction on them. The state should and must interfere only when the dictates of the Shari'ah are violated. It is the duty of an Islamic state to enforce the Shari'ah (law) through the system of *Qada* (judiciary) and *Ijra* (execution of the court's verdict)

The state should not cross the following limits:

- (a) It is immoral on the part of the state to use its power and privilege to make monopolistic gains or to tax the common people indirectly for replenishing the exchequer thereby.³⁴⁴
- (b) There is no room in Islam for custom barriers, restrictive tariffs or exchange control. The Islamic state therefore must not resort to them³⁴⁵.

³⁴³ See Imam Ibn Taymia , *Public Duties in Islam*,p.66-67

³⁴⁴ See S.M. Yusuf , *Economic justice in Islam*, p.96

³⁴⁵ Ibid. p.68-101

- (c) It is illegitimate and unlawful for the state to tax directly or indirectly the general body of the customers and to give “protection” to the interests of a class of producers in the name of industrialization.³⁴⁶
- (d) Since it is the duty to the state of dispense justice free of charge , therefore there must not be any court fee, revenue stamps or fees of any kind for the transaction of any official business.
- (e) There must not be any “income” tax as such. Besides curbing the initiative it assumes illegitimacy of the income of the rich. The state should levy, if need be , a propotional tax on the pattern of zakat on the accumulated wealth of the capable tax-payers.
- (f) The state should not resort to indirect taxation. If the state has to tax , then , it should do so directly so that the taxes represent a conscious contribution of the people to the cause of public interest.
- (g) That there is no justification for imposing death duty .Islamic law of inheritance take care of the wealth left by the deceased.³⁴⁷

Thus the state has a definite and vital role to play in respect of implementing the injunctions of the Shari`ah.³⁴⁸ Now let us see what hisbah has to offer in this regard.

5.2. THE ROLE OF HISBAH IN CONSUMER PROTECTION

5.2.1. DEFINITION OF HISBAH (Al-Hisba):

Literally:

The word *hisba* has been derived from the root *h.s.b.* and means “arithmetical problem”; “sum”; or “reward”. The verb *hasaba yahsabu* means “to compute”; “to measure”. The verbal form *ihtasaba* means “to take into consideration”}; “to anticipate a reward in the Hereafter by adding a pious deed to ones account with Allah (S.W.T.)”.³⁴⁹

³⁴⁶ Ibid. p.9-10

³⁴⁷ Ibid. p.67

³⁴⁸ See Ahmad, Mushtaq, *Business Ethics in Islam*, p.136

³⁴⁹ See Cowan, M.,*A dictionary of Modern written Arabic* , Beirut: Librairie du Liban,1974.

Technically:

The noun *hisba* connotes the state institution to promote what is proper and forbid what is improper. According to Abd al Hadi the institution of *hisbah* is a system that “ensures the righteousness of the individuals in their conducts” In other words, it is an institution of checks and balances. Abu Yusuf describes the function of hisbah in regard to commerce and industry as follows: On the spot checking of weights and measures , qualities of the commodities offered for sale , honesty in dealings and the observance of modesty and courtesy in salesmanship and in general behavior of the people. The importance of the institution of the hisbah is evident from the fact that Muslims scholars have written about thirty books on this very subject. Only twelve of these books are published while seventeen are still in manuscript form.”³⁵⁰

5.2.2. EVIDENCE FOR THE INSTITUTION OF HISBA

There are more than one evidence, both textual and historical, for the institution of hisbah. The Qu’ran itself has provided, in principle, for such an institution by entrusting to the Muslim community as a whole the duty of enjoining the good and forbidding the evil.³⁵¹ This duty is to be carried both by the state officials known as “al-Muhtasib” and by other competent persons from the general public.³⁵² The distinction of the Muslims as the best “Ummah” is tied up precisely with the condition that they enjoin good and forbid evil.” Ye are the best of peoples, raised for mankind, enjoining what is right, forbidding what is wrong, and believing in Allah (S.W.T.).³⁵³ Ibn Tamayyah too, regarded hisbah as one of the religious offices similar to that of the Qadi(judge). Al-Muhtasib, writes ibn Tamiyyah, is responsible for carrying out the job of enjoining good and forbidding evil which, generally speaking is beyond the purview of official duties assigned to the judges and governors.³⁵⁴

³⁵⁰ See Mushtaq Ahmad, *Business Ethics*, p.136

³⁵¹ Qur'an, 3:104, 110,114; 9:71, 112; 31:17.

³⁵² See Abd al Hadi, Hamdi Amin. *Al-fikrah al-Idariyyah al-Islamiyyah wa al-Muqaranah*. Cairo: dar al Fikr al-Arabi, 1969.

³⁵³ Qur'an, 3:110.

³⁵⁴ See Ahmad, Mushtaq, *Business Ethics in Islam*, p.137

5.2.3. APPOINTMENT AND DUTIES OF MUHTASIB

Islamic law has described special procedure and qualification for the appointment of a Muhtasib. The Muhtasib is to be a free Muslim male with a high degree of integrity, insight, reverence and social status. He is supposed to be a scholar of the *Sharia* (most often competent for *Ijtihad*) with a high degree of in-depth knowledge in the social customs and mores. Of qualities of a *Muhtasib Ilm* (knowledge), *Rifq* (kindness) and *sabr* (patience) are considered to be of prime importance. *Hisba* is an important institution. It can investigate matters which affect the morality of the public. The institution of *Hisba* must be:

- Legally established;
- Functionally autonomous;
- External to administration;
- Operationally independent of both the Legislature and the executive;
- Non-Partisan;
- Client-oriented but not anti-administration;
- Freely accessible and visible.³⁵⁵

In a nut shell, *Hisba* is an independent and impartial institution. It performs quasi-judicial functions but does not form part of the judiciary. As we know that the institution of *hisbah* embraces all aspects of life, whether worldly or religious. It covers individual moral, social values and commercial dealings. A *muhtasib* is supposed to supervise the whole economic enterprise.³⁵⁶ Islamic Law has assigned many duties to *Muhtasib*, following are some of these duties:

- 1) to command the fulfillment of trusts (*ada al amanat*)

³⁵⁵ See Dr. Liaquat Ali Khan Niazi, *The Institution of Muhtasib(Ombudsman)*, p.32.

³⁵⁶ See Ahmad, Mushtaq, *Business Ethics in Islam*, p.138

- 2) To prohibit all evils and misdemeanor, particularly lying and dishonesty. His job is to make sure that there is no dishonesty with regard to weights and measures, manufactured goods, credit transactions and trade in general.³⁵⁷
- 3) He must keep a check on the practice of hoarding. It is his duty to stop hoarding especially of such commodities that people is usually in need of. Since the practice of hoarding is condemned by the Prophet (on him be peace), writes Abd al Hadi, the hoarder will be forced by the muhtasib to sell stock for an equivalent price (qimat al mithl).
- 4) A muhtasib is also required to prevent the instances of fraud in all sorts of transactions by laying down specific and detailed rules for different traders.
- 5) It is the duty of a muhtasib to check all evils (al munkarat) which include all such practices and tendencies as are condemned and prohibited by Allah and His Messenger.
- 6) The muhtasib must keep an eye on all trades, and he must make sure that those who work in a trade are well qualified for the job and know the rules of the Shari`ah regarding their respective trades. 'Umer ibn al- Khattab is reported to have declared : "No one trades in our markets unless he is well-versed in religion."
- 7) Also the muhtasib to ensure that all the needs of people are taken care of. If the people are in need of the skills and services of the certain group, the muhtasib can force this group to make their services and skills available for an equivalent compensation (bi awad al mithl). While he must not allow them to charge more than the just wages, he must also see that people do pay their due without diminution.

³⁵⁷ Ibid.

- 8) It must be noted, however, that the muhtasib is not authorized to prescribe unjust prices. To force the merchants without any justification to sell their merchandise for a price to which they do not agree, or to stop them from doing what Allah has made permissible, is haram for the muhtasib. If the prices have risen because of either a scarcity of commodity or an increase in the number of buyers. Then the muhtasib is not allowed to force the traders to sell the commodity for a prescribed price. He can force them to sell it for an equivalent price only in case they sell a needed commodity for more than the known market value (al -qimat al ma' rufah).
- 9) Moreover, it is incumbent upon the muhtasib to keep an eye on the conduct and honesty of those merchants who deal with lady customers. If he sees any indecency in their conduct he may warn them or to stop them from dealing with women. Furthermore the muhtasib must ensure that the slaves, if there be any, are given their rights and they are treated justly by their masters and are not burdened with a task beyond their capacity.³⁵⁸
- 10) It is the duty of the Muhtasib to check business frauds and adopt policy for its eradication. In the two Sahihs we read the authority of Hakim ibn Hizam that the Messenger of Allah (S.W.T.), on him be peace, said: "The two parties to a sale have the option to rescind so long as they have not parted company. If both are truthful and honest they will be blessed in their sale. But if they are secretive and lie then the blessing of their sale will be destroyed." In the Sahih of Muslim we learn from Abu Hurayra that the Messenger of Allah (S.W.T.), on him be peace came upon a stack of food. He inserted his hand and his fingers reached something moist. "What is this, food-Merchant?" said he "It has been affected by the weather, Messenger of Allah (S.W.T.)." "Then why not put it on top of the stack so that people can see it? He who defrauds us is not of us." Thus, the Prophet, on him be peace, made it known that the fraudulent is excluded from the meaning of the expression" People of religion and faith, just as he said" The thief cannot thieve and be a believer. The wine drinker

³⁵⁸ See Ahmad, Mushtaq, *Business Ethics in Islam*, p.138-139

cannot drink wine and be a believer." He thereby denied him that true faith which entitles to the attainment of reward and salvation from punishment, even though he has the essence of Faith which distinguishes him from the infidel and rescues him from the fire. Fraud enters to the sale with the concealment of defect and the misrepresentation of goods, as when the exterior of the article is better than the inside, like the case which the Prophet, on him be peace, encountered and disapproved. It may also occurs in industries, e.g. among those concerned with the preparation of food such as bread, cooked stuff, lentils, grilled meat, etc., or among those who follow some other craft. All must be restrained from fraud, deceit and unlawful concealment.³⁵⁹

11) It is the duty of the Muhtasib, in order to protect interest of the consumers and public at large, to take notice of other market imperfections such as :The practice of intercepting of goods before they reach the market. This was proscribed by the Prophet, on him be peace, because of the risk to the seller: since he does not know the regular price (si"r) his goods may be purchased for the less than their value. For this reason the Prophet, on him bee peace, established his right of option on reaching the market. The doctrine of Malik, Ahmad and others accords the right of option in the case of deception to the mustarsil,i.e. the easy- going customer who does not bargain, or to those who are ignorant of the regular price. This is a disreputable commercial practice, mention in the hadith: "To cheat the easy going customer constitute illicit gain (riba)." It is in the same category as the interpretation of goods. The new comer being ignorant of the regular price. For this very reason the Prophet, on him be peace, forbade the townsman to sell for the nomad, and said: Leave people alone and Allah (S.W.T.) will see that they provide for one another."³⁶⁰

Now we shall discuss the role of Muhtasib regarding consumer protection in a bit detail. The institution of Hisba is given the authority to interfere in all types of trade in order to protect interests of the community.

³⁵⁹ See Ibid. Imam Ibn Taymia , *Public Duties in Islam*,p.29-30

³⁶⁰ Ibid. p.31-32

5.2.4. THE ROLE OF MUHTASIB IN MARKET MECHANISM

In Islamic legal system a very significant role is assigned to the institution of Hisba. Consumers whether in an Islamic State or otherwise face problems that need to be taken care of by the institution of Hisba and the individuals themselves. It is the duty of the Muhtasib to find out reasonable solutions for problems related to consumers. The institution of Hisba is to protect all interests of the consumers on behalf of the Islamic state. The traders are also required to take care of the interests of the consumers.

The famous Muslim scholar Ibn al -ukhuwwa says: "Traders must not set out seats or benches beyond the line of pillars supporting the roof of the suq so as to obstruct the way for passers-by. The prolongation of party-walls (? porches) and side buildings and the planting of trees are forbidden, the ways (through the suq) being common property through which the public has the right to pass. So also the tethering of animals is forbidden except as required for alighting and mounting. Sweeping refuse into the passage-way, scattering melon-skins and sprinkling water which may cause slipperiness there are all forbidden. Water-spouts may not be allowed to project from walls so as to cause defilement of the clothes of passers-by and obstruct the streets. Rain-water and mud must be swept away from the streets and it is the duty of the Muhtasib to appoint persons to have care of such matters. He must also prevent the carriage through the suqs of loads of wood, bales of straw, water-skins, baskets of dung, etc., reeds or thorn-bushes which may do damage to the clothes of the public and which must go by wider streets if these are available. If not, then as public necessities they must be permitted to pass. Heavy loads must be removed from the backs of the pack- animals standing in courtyards, in order to prevent cruelty and is the Muhtasib's duty to order this to be done. He must see to it, further, that the occupants of suqs maintain them in cleanliness.³⁶¹

The institution of Hisba can or must interfere in different trades in order to ensure the protection of consumer interests. Following are some of the examples:

³⁶¹ See Ibn al-Ukhawa, *The Ma'lim Al-qurba Fi Ahkam al-hisba*, English Translation by Levy, op.cit.,p.26

5.2.4.1. Just Weights and Measures

The institution of Hisba has to maintain just weights and measure in the markets. It has been envisaged in the Holy Qur'an: Allah (S.W.T.), exalted is He, said: " Woe to the niggardly who exact full measure from other people, but give short measure and weight themselves."³⁶²

In the story of Shuayb He said: "Give full measure and be not one of those who measure short. Weigh with the true balance and do not deprive people of their due.

"*Do not go about causing mischief* ".³⁶³

*The Exalted one said: "Allah (S.W.T.) does not love a sinful traitor"*³⁶⁴

*and "Allah (S.W.T.) does not guide the wiles of the deceitful."*³⁶⁵

The Muhtasib must order possessors of scales to keep them free of oil and dirt. Scales must be brought to rest before being used for weighing and the pans must not be touched by the thumb with fraudulent intent. Scales must not be suspended from the hand. A trick used in weighing gold is to blow into the pan containing it or to fasten a fine strand of hair to one side. Another trick is known as al-Mu'adudi. It consists in having a balance with a steel beam but with a "tongue" of soft iron (which can be inclined). The Muhtasib must not forgive fraud in the use of measures and weights.³⁶⁶ It is the duty of the Muhtasib to see that the traders and shopkeepers do not indulge in short measuring.

5.2.4.2. Fodder Merchants and Millers

They may not hoard grain nor mix bad wheat with good or old with new. Millers must cleanse the grain of earth before they grind it. The sieves must be renewed periodically.

³⁶² Qur'an,83:1

³⁶³ Qur'an ,26:182

³⁶⁴ Qur'an , 4:107

³⁶⁵ Qur'an,12:52

³⁶⁶ See Ibn al-Ukhuwwa, op.cit.,p.27

The Muhtasib must examine the flour to prevent admixture with flour of chick-peas, etc., and must prevent milling on the worn particles of the mill-stone, which cause harm to men. Animals, employed for grinding, must be permitted to rest each day and night and none must be employed to grind more than a wayba (at a time).

The Muhtasib must inspect scales and weights used for the flour and those used for money, also the measure and jars. Receptacles for flour must be sound, or else it is lost upon the roads to the detriment of the purchaser. The Muhtasib must assign the quantities to be delivered by the millers to the bakers' shops each day. They must be compelled also to mill flour for consumption by people in their homes since most people avoid eating bread from the suq.³⁶⁷

5.2.4.3. Bakers and Bread Makers

The roofs of bake-houses must be high and have wide vents for smoke³⁶⁸. The Muhtasib must order that ovens shall be kept swept kneading-troughs washed and covered with straw mats. For kneading men may not use their feet, knees or elbows. To do so imply a lack of respect for food, also drops of sweat may fall into it. Smocks with tight sleeves must be worn at the task and the face should be veiled. During the day-time a man with a fly-whisk should drive away the flies. The Muhtasib must pay heed to the substances used for the adulteration of bread. No dough shall be baked until it has risen; unleavened bread lies heavy in the scales and on the stomach. Bread should not be deficient in salt and should have seeds of a good kind (e.g. cumin) sprinkled over it. It should not be withdrawn from the oven until it is well baked, but it must not be burnt. The Muhtasib will allot to each shop a daily quantity which it must supply. He must visit bake-houses at the end of the day and permit no-one to sleep in places on which dough is laid. He must see that chimneys are kept in repair and oven-floors cleaned. A boy must be employed by the baker to identify the trays of dough belonging to the different owners. Fish must be baked separately from bread.³⁶⁹

³⁶⁷ Ibid. ,p.29

³⁶⁸ It is a proof that Islamic law strongly believes in Environmental protection which is considered as a basic right of consumers today.

³⁶⁹ See Liaquat Niazi, *The institution of Muhtasib*, p.105.

5.2.4.4. Cook- Shops

The *muhtasib* must control them by weighing carcasses before they are placed in the oven and after the removal; if the cooking has been completed there will be a diminution of a third.³⁷⁰

5.2.4.5. Butchers

No animal which is edible is lawful for food without (ritual) slaughtering. Fish and locusts are exempt. It is preferable that the slaughter should be a Muslim of full age and understanding who shall utter the name of Allah (S.W.T.) over the animal.

Slaughter by minors, blind or intoxicated persons is disapproved for the reason that they may err in making the sacrificial cut. Any instrument which has a sharp cutting edge, even a reed or sharpened stone, is lawful for the sacrifice. Camel should be slaughtered standing, oxen and sheep lying down. When selling is over the muhtasib must compel the butcher to sprinkle his chopping-block with salt and cover it with palm matting on which is a jar weighted with stones, in order to prevent doges from licking it and to keep away vermin. It is to the public welfare that butchers shall not combine together, in order that they shall not agree on one price. The muhtasib may test if flesh belongs to an animal which died of itself.³⁷¹

5.2.4.6. Making of Drugs

The Muhtasib may allow only those persons to sell drugs who have knowledge and experience. Drugs should be bought from the druggist and then compound. The muhtasib must give heed to the various ways in which drugs are adulterated. The muhtasib must check the scales and weights. They must not mix inferior goods with better; each kind must be sold separately at its own rate. Many dilute vinegar with water. This can be tested by inserting a piece of sulphur. Suger-cane juice is diluted with water, olivwe and sesame -oil with saffron seed -oil. Test with warm bread or by inserting a wick and

³⁷⁰ Ibid. p.106

³⁷¹ Ibid. p.106.

burning or by adding lemon -juice and tasting or by dropping some of the adulterated oil in to pure oil. Their goods must be protected by earthenware vessels so that no flies or vermin may enter and no dust or dirt be dropped on them. The muhtasib must command the traders to use only clean clothes for whipping their vessels and they must provide themselves with whisks to keep away flies during the day. Their cloths must be clean and also their hands and vessels. Their scales and measures also must be kept clean. Particular observation must be kept of those shops which are apart from the suqs.³⁷²

5.2.4.7. Milk Sellers

Their vessels must be covered and their places of trade whitewashed and paved and the roof must be new, for flies like places where there is milk. For the mouth of the milk jars is likewise a stopper of clean palm-fibre is necessary. Vats and other containers must be cleaned out daily with new palm-fibre and clean water so that the (milk) shall not too soon deteriorate in hot weather. The milk must be rich and unskimmed; otherwise its taste and fatness are gone. The sale of milk-diluted with water is utterly forbidden. The test for it is to throw in a spring of marsh-lentil.

5.2.4.8. Illegal Contracts

They must know the laws of better otherwise they may be guilty of exacting riba. A practice forbidden is that of collusion the offering of a high price by a person not intending to purchase but only to mislead others. Another is "sale against a brother's sale" i.e. Offering goods for a less price to a person who has already made a purchase from another with the option of confirming or annulling the contract . It is forbidden for a townsman to sell for a man from outside. The case would arise when a man (from outside) with goods to sell of which people have need- the sale of which help while failure to do so will land him in straits – is approached by a broker who offers to secure a better price for his goods. (people must be allowed to provision themselves from each other without intermediary). It is unlawful to offer a garment for sale on condition that the purchaser will sell his own or to offer an article partly for cash and partly for credit.

³⁷² Ibid.

Another forbidden practice is to offer goods for payment at an unspecified time, e.g. to sell a price of stuff to be paid for "when the Mecca pilgrims come". Another is to buy an article and sell it again to another before receiving it. Barter by "mutual touch"- to the other and each touch the other's property--- is forbidden. Similarly forbidden is barter by "throwing at another". This consists in saying "I barter this stuff of mine for yours and when I throw it to you, you must complete the barter". Another is to say "I sell you anything on which this pebble falls." The merchant must disclose all faults in his goods, whether obvious or hidden. To do otherwise is to act cruelly and fraudulently. The Prophet on him be peace once passed by a trader who was selling corn which roused his curiosity. Putting his hand in he found it wet and asked the reason. The man said that rain had fallen suddenly on it. "Why then", asked the Prophet, "did you not put that at the top of the grain?" jarir (a convert to Islam) always pointed out to customers the flaws in his goods. When told that he would never sell anything if he continued the practice he says: "*We promised the Prophet to deal honestly with every Muslim.*"

There must be truth in discussing terms of purchase and the money involved. A forbidden practice is for a man to purchase goods for a definite sum payable at a specified deferred term, then to bargain for a sum which will show him a profit if paid in cash immediately. This is not permissible because the (deferred) term is allowed for by a portion of the price. Another is for a man to purchase goods for a specified sum and then, if he should find a flaw in them, to return to the seller with a demand for a discount, bargaining about the original price when the question of a discount had not arisen.³⁷³

5.2.4.9. Criers (Brokers)

The *muhtasib* must assure himself in his own court that no *dallal* shall be given unless he is a man of honor, for he has care of the people's goods. He may not of his own accord make any increase in price nor be a partner of the draper (for whom he sells) nor receive the money for goods sold except by leave of the owner. Some lend money to silk-workers, weaver or traders on condition that no sales will be made except through themselves. This is forbidden. Some buy goods on their own behalf and then approach others in order to sell. Some cry their own wares and call false increase in price, making

³⁷³ Ibid.

people think that the higher price is being offered by traders for the goods and that these are not his own. This is fraudulent. It is forbidden to have a collusive agreement with a draper whereby when a merchant comes with goods the draper points out the crier as an honest broker to whom the goods are entrusted and who receive an agreed sum from the draper. If the crier knows of any fault in the goods he must inform the purchaser of it. The *Muhtasib* must see that the crier receives his commission only from the seller and must not cause the price to be abated in collusion with the buyer.

5.2.4.10. Weavers

The stuff must be well woven, compact in texture and of the full length agreed upon, the thread to be of good quality and freed of black crust by means of rough black stone. No four must be sprinkled over the cloth in the weaving for the purpose of hiding roughness. When weaving a new piece of stuff the thread must not be dyed unless it is first bleached, but no black thread should be bleached for it turns yellow and does not hold any [color], to the loss of the purchaser. Some weave the surface of the cloth out of good and uniform thread and the rest of a different kind. This is fraudulent.

5.2.4.11. Tailors and Repairers

Tailors must be ordered to cut out properly and shape the neck well, to make the ornamental border wide, the sleeves of equal length and the skirt even. Raised seams are better than tacking. The needle is to be fine and the thread contained in the eye short – along one frays and weakens. A valuable piece of stuff must be measured before it is cut out. Valuable stuff like silk or brocade must be accepted by weight only, what is left after the garment is made up to be returned to the owner. Some will impregnate a piece of silk or the like with water and salt in order to increase its weight to correspond to what they received. The *Muhtasib* must forbid their causing delay to people in making up their stuffs, making their return repeatedly or holding back their goods. No greater delay than a week is allowed than for withholding goods from their owner unless an arrangement has been made for a longer delay.³⁷⁴

³⁷⁴ Ibid. p.109-110

5.2.4.1. Astrologers and letter writer:

The art of astrology has been prohibited by Holly Quran:

"Forbidden also is the division (of meat) by raffling with arrows; that is impiety: "³⁷⁵

The prophet said: *"He who goes to a diviner and believes his word misbelieves that which had been revealed through Muhammad."*

If the *Muhtasib* finds anyone indulging in these practices he must expel him and punish him.³⁷⁶

5.2.4.2. Phlebotomists and Cuppers

No one shall undertake phlebotomy (*fasad lana k lia wared ma nishtar lagana, fasad lana*) except if it is well known that he is learned and reliable in the anatomy of organs veins, muscles and arteries and acquainted with their disposition, that the lancet may not strike any vein, muscle or artery not intended and so lead to injury of the member and destruction of the part bled. Those intending to learn phlebotomy must practice on beetroot leaves, or rather the veins in such leaves. The *Muhtasib* must exact a promise and a bond from them that in ten specified cases they will not bleed except after consultation with physician; namely when the patient is under 14 years old, sencile, suffering from extreme leanness, desiccation or emaciation, pallid with anemia, suffering from chronic disease or an excessively cold temperament or great pain. Cupping is of great benefit and is less dangerous than phlebotomy. The operator must have a light touch, must make his scarification and quickly apply the cup. The test of the lightness of his touch will be whether he causes the patient any pain. The best time for cupping is the 2nd or 3rd hour of the day. Cupping benefits heaviness at the brows, itching in the eyes, and evil odour in the mouth; but it also produces forgetfulness.

³⁷⁵ Qur'an : 5:4

³⁷⁶ Ibn Al Ukhawa, op.cit.,pp. 67-68.

The phlebotomist should carry with him instruments for circumcision (consisting of razor and scissors), for it is a duty incumbent both on men and women. To this the generality of men of learning agree. *Abu Hanifa* called it a recommended practice, but not a compulsory duty. For the male it consists in abscission of the prepuce hiding the glens penis, for the female in cutting the skin over the vagina and above the urethra. It is a practice compulsory upon men and women, who must carry it out on themselves and on their children. If it is neglected, the Imam must enforce its being carried out. If the operation is badly performed, the patient may get compensation from the defaulters.³⁷⁷

5.2.4.3. Ship-Men:

They shall be compelled not to overload their vessels inordinately for fear of sinking and they shall not set out during a gale. If they carry women they must set a partition between them and the men.³⁷⁸

5.2.4.4. Rice Merchants

Rice-Merchants practice great trickery. They must not mix salt with their rice and claim it is all good. They must not turn the heads of the sacks containing the rice so that the sifted rice is on the surface whilst there is powdered rice below.

In a nutshell, the institution of *Hisba* is fully authorized to take cognizance in any type of commercial activity when it violates basic rights of the consumers and public at large. The institution of *Hisba* is responsible for the regulation of business and economic life of the people according to the injunctions of Islam. In order to stop violation of the basic rights of the consumers and ensure quality of the products, the institution of *Hisba* is authorized to prevent hoarding, control official mint and adopt preventive mechanism to close the way of all types of malpractices in trade.

³⁷⁷ Ibid, pp.110-111

³⁷⁸ Ibn al-Ukhuwwa, op.cit.,p.87

In a business transaction, as in any other sphere of life, the principle of an individual's responsibility is very important. Everyone is personally held responsible for any undertaking or transaction made by him. This *Qur'anic* principle acts as a dependable deterrent against any irresponsible behavior since everyone is answerable both in this world and in the Hereafter.

5.3. THE ROLE OF ISLAMIC UMMAH IN CONSUMER PROTECTION

The role of individuals and that of Islamic *Ummah* as a whole cannot be denied in the successful implementation of Islamic law of Consumer protection. Therefore Islamic law has assigned the duty of ordaining right and repelling evil to every member of the Muslim society. It has mentioned guidelines for both i.e. individuals and the state to realize the concept of rational consumption and protection of consumer's interests.

It is the duty of the Islamic welfare state to arrange supervision of commercial transactions to prevent violations of basic consumer rights, as it is the duty of each and every individual living in an Islamic state. Islam has settled standards about every field of life, whether it is individual or collective, materialistic or spiritual, and all these commandments were revealed to the heart of the Holly prophet (s.a.w.). The following teachings of the Holly Qur'an are significant in this regard;

*O people of the Book! There hath come to you our Messenger, revealing to you much that ye used to hide in the Book, and passing over much (that is now unnecessary). There hath come to you from Allah a (new) light and a perspicuous Book*³⁷⁹

*Wherewith Allah guideth all who seek His good pleasure to ways of peace and safety, and leadeth them out of darkness, by His will, unto the light,- guideth them to a path that is straight.*³⁸⁰

³⁷⁹ Qur'an; 5: 15

³⁸⁰ Qur'an; 5: 16

"Verily, this is My way, leading straight: follow it: follow not (other) paths: they will scatter you about from His (great) path: thus doth He command you. that ye may be righteous.³⁸¹

Thus every Muslim is bound to obey the teachings of *Qur'an and Sunnah* and struggle for their practical implementation in all spheres of life. In fact, the individuals obedience to the injunctions of *Qur'an & Sunnah* regarding commercial activities is firstly secure his happiness and of the whole society as it is the foundation for the whole Muslim community especially today when all the people have become materialistic the return to the online revelation of *Qur'an and Sunnah* has become unavoidable which will bring humanity from the darkness of ignorance to the light of knowledge.

³⁸¹ *Qur'an*; 6:153

CONCLUSIONS AND RECOMMENDATIONS

Following are some of the most important results that I have found with mentioning some recommendation concerning the subject of the thesis.

1. The conclusion of the research is that Islam has greatly emphasized on the protection of consumer's interests. It takes care of the consumer in the market, trade practices, and contracts and moreover it safeguards consumers from his own irrational consumption that harms him and the society. In fact, if the principles of Islamic law regarding business and commercial transaction are implemented practically, the purpose of consumer protection will be automatically served, and no any specific code will be needed for this purpose. All the elements prescribed by Rachagan for a model consumer law are found in Islamic law of contracts and business transactions, and a good and effective statute can be easily drafted for protection of consumers based on Islamic principles.
2. Islamic principles regarding market mechanism and trade practices encourage consumer friendly environment and insure protection of consumers against mal-practices in trade such as hoarding, adulteration, usury, misrepresentation, exorbitant profiteering, dealing in prohibited goods and services, gambling and games of chance, arbitrarily fixing prices of the commodities, cheating and fraud, trickery etc, which greatly harm consumers' interest. False representation, swearing to sell a product, and exaggeration in description of the goods and services are strictly prohibited by *Shariah*, therefore the advertisement agencies should follow the universal principles of truthfulness and trustworthiness. As we know that this is a very important aspect of consumer protection today, therefore a separate research work needed to be conducted on it. The media should follow the principles of *Shariah*
3. In Islamic law of contract a large number of transactions are declared unfair only because they harm the consumers. These contracts are considered null and void in the

eyes of Shariah. Islamic law of contract gives the buyer rights of option to rescind the contract and save themselves against defects in the products and faulty services. They can exercise this right after conclusion of the contract, if the reason exists.

4. The Islamic doctrine of *Khiyar al-ayb* gives an implied right to the consumer to carry out an inspection on the fitness and quality of the goods to be bought. It reserves the right of inspection of the goods to the buyer both before and after the conclusion of any sale and purchase agreement and as such, the right of option either to continue the contract or rescind it is also reserved to the buyer both before and after the agreement of sale and purchase. The Islamic doctrine of *khiyar al-ayb*, however, does allow the buyer to seek compensation only (without any right of option) if the buyer who has created a defect of the good after the agreement, later realizes that there was another defect which had occurred while the goods were in the hands of the seller.
5. The state is under an obligation to establish a consumer friendly environment in the markets and to regulate trade in the best interests of the society. The state is fully authorized to interfere in the matters of business to run it smoothly and according to the principles of social justice. The state has the authority to declare an act affecting public at large as an offence, and provide punishments appropriate to that, particularly in matters where no specific provision is contemplated in Shariah. The duty of regulating trade in the markets properly and in accordance with the principles of *Shariah* is assigned to the institution of *Hisba*. Therefore, the institution of *Hisba* is to be revived for the purpose to insure protection of consumers and implement public policy of consumer protection. Islam also encourages that the consumer disputes should be settled in short span of time, therefore *Hisba* is authorized to solve the matters as quickly as possible.

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