

ANOTHER WORLD IS POSSIBLE
BY
MIAN ZAFAR IQBAL KALANAURI
ATTORNEY AT LAW.
MEMBER PUNJAB BAR COUNCIL
FORMER PRESIDENT LAHORE BAR ASSOCIATION
ZAFAR KALANAURI & ASSOCIATES
128 A UPPER MALL SCHEME, LAHORE.

Honourable delegates, ladies and gentle man,

It is indeed an honour and a matter of profound pleasure for me to participate in seminar like the present one which provides a welcome opportunity to interact with professionals to discuss issues and problems of mutual concern and learn from each others experience. The Network for Consumer Protection should be felicitated on this timely and pioneering initiative in organizing a National Seminar on Consumer Rights, Protection and Promotion which would among other focus on the status of Consumer Laws and Consumer Rights. It is my sincere hope that this seminar would act as catalyst in inducing not only an integrated National policy for the protection of consumer rights but also underwriting an equally important commitment to the implementation of such a policy.

Countries, rich and poor, developed and developing, agricultural and industrial are becoming increasingly mindful of the need to safeguard the rights of consumers through National Planning and Management. Even a casual reading of our newspapers would high-light the increasing threat to our health. As a reformist, I have welcomed the increasing attention given to consumer rights. A few years ago, the communication media was virtually silent and, perhaps, was blissfully ignorant of the subject of consumer rights. Today, the newspapers are replete with stories drawing national attention to consumer protection rights.

The expression of public concern is also welcome because unless there is public awareness on a particular issue, it is difficult to require and monitor remedial actions by the Government in that matter. Experience in other countries has shown that a high level public awareness of the matter is a significant factor in ensuring an effective national commitment towards consumer protection rights.

How to ensure that the Rights of Consumers are Protected in Theory and Practice of Law.

The average Pakistani consumer faces grave risks of injury to health and safety caused by the widespread use of counterfeit and substandard products in Pakistan. Medicines, Foods, and Beverages that are sold under brand names are actually counterfeit goods, frequently contain impure or adulterated ingredients, and manufactured under conditions that lack the hygiene standards followed by the authentic manufacturers. The owners of these brand names are placed in a dilemma because if they warn the public about counterfeit products being sold under their name, the consumers may switch from their brand to another to avoid the risk of buying counterfeit goods.

Apart from products that may be classified as “dangerous” if sold as a counterfeit of a well-known brand, a whole range of shoddy products are discarded by the Pakistani consumer when their defects are discovered. Of serious concern are defects in a range of technology related products. In the information age, more consumers will buy information technology products such as Computers, Printers, Scanners, Zip-Drives, and other innovations being produced to meet the demands of the information economy. These items entail a substantial investment for the average middle class consumer in Pakistan. Problems with these products have been a source of disputes even in countries such as Singapore. It is unrealistic to expect a consumer of information technology products to seek judicial redress if the product is defective. At the same time, such a consumer should be encouraged to invest in productivity enhancing information technology products. Although the UN General Assembly promulgated a set of principles of consumer protection as far back as 1985, nineteen years later, the law and the institutions necessary to provide an adequate framework of consumer protection are lacking in Pakistan.

Yet, a basic consumer protection regime in Pakistan would yield multiple benefits other than protecting the consumer who is at present the powerless victim of unscrupulous vendors. **First**, if consumers have meaningful recourse against counterfeit products, they align their interests with the owners of the intellectual property, to reduce the incidence of counterfeit products. Accordingly, synergies can be created where the owners of these products, usually multinational corporations, could be induced to support consumer

initiatives such as publicity campaigns, and operating consumer awareness councils. **Second**, potential manufacturers who are deterred from entering the market because they have to compete with under-priced counterfeit goods can enter the market and compete in terms of price with brand name counterpart products. **Finally** consumer initiatives will force manufactures to upgrade the quality of their products, as shoddy goods will no longer be acceptable. While the focus here is on goods, **faulty services** could also be a source of consumer complaints and can be beneficially included in a reformist agenda. The poor quality of services including over-billing by utility and other services organizations is a source of frustration and anger to sections of the population, and these can be remedied by responsive consumer institutions.

It is note worthy that Article 9 of the Constitution, guarantee that no person shall be deprived of life or liberty, save in accordance with law. The word **“life”** is very significant and it covers all facts of human existence. The word “life” has not been defined in the Constitution but it does not mean nor it can be restricted only to **vegetative or animal life** or mere existence from conception to death. Life includes all such amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally. The word “life” in Constitution has not been used in a limited manner. A wide meaning should be given to enable a man not only to sustain life but also to enjoy it. An extensive and wide meaning toward “life” which includes all such rights which are necessary and essential for leading a free, proper, comfortable and clean life. A person is entitled to enjoy his personal rights, freedoms as contemplated by the constitutions, the personal rights and their enjoyment are nothing but part of life. Any action taken which may create hazards of life will be encroaching upon the personal rights of citizens to enjoy life according to law. This expended concept of right to life echoes Indian Judicial decisions which are to some extent seen as based on American concepts. Elaborating on this issue the Supreme Court of Pakistan in **Shehla Zia case, reported as PLD 1994 S.C 693**, held that a wide meaning should be attached to the quality of life, so that an individual should not only sustain but enjoy life, too. It was held at page 714.

Thus, apart from the wide meaning by the US Courts, the Indian Supreme Court seems to give a wider meaning which including the

quality of life, adequate nutrition, clothing and shelter and cannot be restricted merely to physical existence. The word “life” in the constitution has not been used in a limited manner. A wide meaning should be given to enable a man not only to sustain life but to enjoy it. The fundamental right to preserve and protect the dignity of man under Article 14 is unparalleled and could be found only in few constitutions of the world. The constitution guarantees dignity of man and also right to “life” under Article 9 and if both are read together the question would arise whether a person can be said to have dignity of man if his right to life is below bare necessity like without proper food, clothing, shelter, education, health care, clean atmosphere and unpolluted environment.

Under the common law a person whose right of easement, property or health is adversely affected by any act of omission or commission of a third person in the neighborhood or at far off place, he is entitled to seek an injunction and also claim damages, but the constitutional rights are higher than the legal rights conferred by law, be it municipal laws or common laws. Where a large number of people may suffer or likely to be effected the Article 184 of the Constitution can be invoked by some conscientious citizens aware of their rights and the possibility of damage on behalf of a large number of citizens throughout the country by making representation with respect to public interest litigation and human rights.

Of Course Pakistan has already an enormous amount of **consumer protection law**, in various forms, but this is not co-ordinate in any way and is spread across the legal system in very messy way, preventing lawyers and scholars alike from obtaining a full picture of the current situation. In this context, I would mention in particular the path breaking developments in Indian consumer protection law, which Pakistan is yet to replicate, because no body can tell me that there is no need for the development of a strong consumer protection law in Pakistan.

The main barriers to effective legal protection for the consumers are

- **Absence of policy, weak legislation and regulation**
- **Lack of political support/ will**
- **Insufficient human resources**
- **Lack of financing**
- **Absence of transparent procedures**
- **Corruption**

- **Flawed information flow**
- **Poor attention to cultural constraints**
- **Weak or no-existent consumer and professional associations**
- **Absence of priorities**

The recommendation is that Pakistan adopt a consumer protection system that would be composed of the following three elements:

- (a) a package of basic consumer protection laws.**
- (b) the establishment of a consumer complaints tribunal that would be empowered to mediate and finally arbitrate on consumer disputes; and**
- (c) the establishment of a consumer councils composed of a wider range of members such as women and representatives of disadvantaged groups.**

Need for the Law of Consumer Protection.

In the short term, the basic package of consumer laws recommended is the UK Unfair Contract Terms Act, the Supply of 'Goods and Services Act, and the Misrepresentation Act. The broad import of these acts is to prevent a vendor excluding statutorily implied warranties in the sale of Goods Act, invalidating exemption clauses that relate to death or injury, and require reasonableness in other types of exemption clauses in consumer sales. The Misrepresentation Act deals with pre-contractual misrepresentation and can be applied where there have been misleading advertisements in the media.

A related recommendation is to enact a strict product liability law. This law would replace the existing fault based regime with strict liability where death or injury is caused by the use of a product in the normal course of operation. In this regard, China is a relevant example in comparative international experience. In China, a massive amount of consumer goods are produced in state owned factories;

Still, it has adopted a consumer protection law that stipulates strict liability for defective products. Several precedents of strict product liability legislation, such as Part VA of the Australian Trade Practices Law, can usefully be adapted to suit the needs of the Pakistan consumer.

The Indian law developed, through the Consumer Protection Act, 1986 was not effective immediately and the provisions of this Act required an extra push from public interest litigation petitions to be implemented in all Indian States, since 1993, at least, the three tier-system established by the Consumer Protection Act of 1986 has been fully up and running. Several Special Law Reports in the field confirm that this area of law has

developed in India since 1990 in a new consolidated form. Where earlier fragmentation impeded judicial control and strict supervision of lawlessness, the “umbrella legislation” in the field of consumer protection has yielded most promising results.

I venture to predict that, in Pakistan too, this kind of legal development will happen soon. At first site it looks as though commercial interests will be against the creation of a strong Consumer Protection Law but in the long run, as the Indian experience clearly shows and we see form else where in the world, Consumer Protection can actually be good for business, as well as being conducive to justice.

To Develop Consumer Dispute Settlement Mechanisms

With an inexpensive and efficient method of consumer redress, consumer protection law will languish unenforced. The Indian experience may be relevant in this regard. The Indian consumer law provides for a cheap and efficient method of redressing consumer grievances. The existing Islamabad law on consumer protection is flawed in that it envisages judicial redress. Given the delays, lawyers’ fee and other expenses, and effort, coupled with an uncertain outcome that are the features of litigation, I stress the need to segregate the adjudication of consumer disputes to consumer protection tribunals located in chambers of commerce or other accessible institution.

The Small Claims Tribunal of Singapore (“SCT”) furnishes a useful example of a responsive consumer dispute resolution mechanism. The most important feature about the SCT is that no lawyers are allowed to represent clients unless the lawyer is a bona-fide in-house lawyer. Indeed, the hallmark of such dispute resolution mechanism should be the accessibility of the consumer to the remedies available without the need for legal representation. In adapting this model, Pakistan may wish shut out lawyers’ altogether in order to encourage consumers to present their cases in a congenial atmosphere. **Second**, the SCT can hear complaints where the value of the transaction in question was S\$10,000. This high ceiling allows disputes from shoddy construction and repair services to defective computer complaints to be brought within the jurisdiction of the SCT. **Third**, the turnaround time of the SCT is quick. Within ten (10) working days of the complaint, the parties are summoned for mediation. If the mediation is unsuccessful, then there is a hearing within ten (10) working days of the unsuccessful mediation. **Finally**,

trained mediators attempt to mediate the dispute between the consumer and the vendor and there is a high degree of success.

Further, by removing consumer litigation from the main courts through the creation of a separate legal structure with its own appeal mechanisms, Indian Consumer protection Law has achieved several positive moves in one stroke. The main courts have been relieved of masses of litigation and the new dispute redressal mechanisms, have at least in some areas, worked small wonders. Pakistan Law is already familiar with Specialist Tribunals, and it would be possible to introduce Specialists Consumer Courts in Pakistan, if there was a Will. It should strike us that **Justice Cornelius**, several decades ago, envisaged precisely such mechanisms of self-cleaning, which would free the courts from certain types of litigation and could become an effective way to provide real relief.

Establishment of Consumer Advocacy Councils

The impact of the 1986 Consumer Protection Act in India, as a model specimen of Umbrella legislation, was precisely that it pulled together under one heading all the various efforts in the wide field of consumer protection and thus gave the law extra force. Significantly, this was coupled with studious application of public interest techniques, notably energetic input from leading Indian consumer protection organizations like CERC, the Consumer Education and Research Center in Ahmadabad.

Consumer advocacy councils should be established along the lines of the Consumer Council of Hong Kong. The Ministry of Law should review the Hong Kong Consumer Council Ordinance (Chapter 216) and amend and adapt it to suit the requirements of Paksitan.

Consumer Advocacy council need not take a stance that is adversarial to vendors and manufacturers. Indeed, representatives of these sectors could participate in these councils so long as they do not take over the workings of the council and set the agenda. Women and consumers of utility and government services should be included.

The reform proposal should entail the use of the media to educate consumer of the rights that are available to them by law. Given the absence of either a consumer protection culture or a legal framework in respect thereof, it is essential that be a degree of consumer education without which the reform measures are unlikely to be effective.

Recognition of appropriate Laboratory for carrying out analysis or test of any goods

In order to determine the defect in any goods for which a defect has been alleged by any of the complainant, an appropriate laboratory or organization recognized by Central Government which is established under any law for the time being in force, which is maintained, financed and aided by the Central Government or a Provincial Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect is very much essential. To our good luck we already have Laboratories like P.C.S.I.R which can make an analysis or test, which ever may be necessary, with a view to finding out whether such goods suffer from any defect alleged in the complaint or from any other defect on receipt of reference from any forum to which the complaint has been made.

Proposed Draft for the Consumer Protection Act.

The theme that I have tried to submit today is that the need to focus on consumer protection rights in our National Policy is a critical one. It is one that we should respond to with wisdom and vision. If we have to make Pakistan a safe and healthy country for our children and grad-children we have to act today. In case we do not do so, it will certainly be said of us tomorrow that we failed in our duty and violated the scared trust of our future generations. If the perceived national interest in consumer protection law is both timely and welcome, what need we do about it? Should the Government legislate in this area?

The consumer scenario in Pakistan is not very promising for the consumers, since they are provided with low quality, unsafe, and hazardous goods and services. There exist many laws, both federal and provincial, which separately deal with different sectors of economic activity and consumer transactions. In addition to the above laws, two consumer acts were passed in Pakistan in 1990s. These included the Islamabad Consumer Protection Act, 1995; and the NWFP Consumer Protection Act, 1997. Their scope is restrictive and penalties given are inadequate. The procedures given for the redress are expensive and lengthy. Therefore these laws and legislations appear to be unable to address consumer related problems and achieve their envisaged goals. This necessitates a comprehensive legal and institutional framework to ensure speedy, inexpensive and adequate consumer protection. Such a framework is essential to restrict unfair trade practices and protect the rights of the consumer. It will also help in restructuring economic activity on fair, sustainable and more competitive footings.

In mid 1999 government of Punjab had shown some interest to legislate on consumer protection. However, the proposed draft was duplication of North-West Frontier Province Consumer Protection Act, 1997. In October 2003 the Punjab government decided to engage my self and another lawyer to propose Punjab Consumer Protection Bill. As a result in order to improve the bill from the consumers' perspective a number of consultative meetings, both formal and informal, with the consumer activists, lawyers, civil society organizations and concerned government officials were held by us. In the light of these consultations, we proposed a new Punjab Consumer Protection Bill, which

is being debated and discussed in a series of meetings of the Committee formed by the Punjab Government. This will help in further refining the proposed Bill.

While drafting the Consumer Protection Act for Punjab. It was decided to take a proactive approach and initiative instead of situational reactions to what government proposal off and on; therefore, the law, which has been proposed by us, addresses the multi-dimensionality of consumer protection regime in Pakistan.

The proposed law also attempts to supplement the efforts for decentralization by providing adjudication of consumer grievance and making consumer councils strong and capable of addressing problems at local level. People's participation and empowerment has been the major undercurrent of this document. Attempts have been made to bring in mechanisms, which ensure people's participation in policymaking, monitoring and adjudication processes. The proposed law becomes rather more significant for not only earning a fair deal to the consumers but also triggering a process of decentralization and good governance in Pakistan. It is hoped that the whole discourse on consumer protection, which lacks a legal perspective, will now gain impetus by passing of this bill by the Punjab Assembly.

I am sorry for the voluminous size of my paper. I think it was **Bernard Shah** who wrote

a friend and apologized for the length of his letter **"I am writing this long letter to you"**

he confessed **"because I do not have time to write a short one"** because of the lack of

availability of time I have written this long article. I am sorry for that.

Thanks for your patience.