

What Ails the Knight sans Arms: Status of Consumer Protection in Pakistan

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Abstract:

Consumers are important for both the government and corporate entities. They are responsible for creating or depressing demand in the economy. The British were the first to introduce a semblance of consumer laws in the pre-partition united India. After the emergence of Pakistan in 1947, several consumer protection laws were promulgated and different institutions established to provide redress and relief to consumers. Two consumer protection non-governmental organizations are also working, mainly in the urban areas. However, a strong and organized consumer movement could not take root in the country. This paper traces the development of consumer protection rights in Pakistan. It also analyses the efficacy and effectiveness of recently introduced consumer laws at the federal and provincial levels that aim to provide protection from unfair trade practices.

Keywords: Consumer Protection, Consumer Rights, Consumer Law, Consumer organisations; Pakistan.

1. Introduction

TheNetwork (2010) defines a consumer as a person who acquires goods and services for personal consumption or production of other goods and services. Though, according to GOP (2010: 238), Pakistan is a country of 173.5 million people with the share of working population reaching 59 percent in 2006, no effort has been made to document the policies protecting the rights of consumers. Though central to economic activity, consumers are vulnerable due to exploitation by producers/suppliers, misleading and asymmetrical information, ignorance about their rights and non-availability of redress mechanisms. Their status in Pakistan is generally quite pathetic. Saunders and Harris (1990) find that consumer powerlessness is endemic in many areas of state provision. Even the presence of competitive markets does not eliminate information lags as well as search and transport costs needed to make discreet choices (Khan and Mansoor, 1996). In the Pakistani scenario, a low literacy rate of 57 percent (GOP, 2010) puts the naive and ignorant consumers at the mercy of producers and retailers.

This is becoming increasingly so, since with privatization, 167 public enterprises (PC, 2010), including some monopolies, have been transferred to the private sector. While the public sector may have fixed prices with some politically-induced welfare preferences in mind, the private sector is driven exclusively with a profit motive. Privatization or rise of the private sector has also put an already ignorant consumer at an even greater disadvantage. UNCTAD (2001, p. 1) also recognizes the presence of imbalances in economic terms, educational levels and bargaining power of consumers; and finds that consumers have certain rights with respect to access to non-hazardous products, as well as the "right to promote just, equitable and sustainable economic and social development and environmental protection". Therefore, it advocates a strong case for government intervention to protect the rights of consumers. It provides detailed guidelines for their guidance and protection.

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According to UNCTAD (2001, p. 3): “Governments should develop or maintain a strong consumer protection policy ... [E]ach Government should set its own priorities for the protection of consumers in accordance with the economic, social and environmental circumstances of the country and the needs of its population, bearing in mind the costs and benefits of proposed measures.” This means that the onus for consumer protection falls on the state. It is for the governments to implement or promote the implementation of suitable measures, including legal systems, safety laws, domestic, global or voluntary standards, and the keeping of safety records to make sure that the products are safe for either planned or normally anticipated use. This paper recounts historical and current developments in consumer protection in Pakistan, an area which has previously remained neglected. After introduction, the second section presents a history of consumer protection in Pakistan and traces its roots to the times of British India. The third section, divided into many sub-sections, elaborates and analyses the development of consumer protection laws and their enforcement mechanisms in the country. The final section concludes discussion.

2. Consumer Rights during the British Raj

Measures for the protection of citizens against the malpractices of suppliers, traders and manufacturers are quite old in the Indian sub-continent. Even before the creation of Pakistan, there were laws in one form or the other to protect citizens. However, most of them were general in nature and did not treat citizens as consumers. They were later adopted by the Government of Pakistan after independence in 1947 and some are still in vogue. Some important laws in force at the time of British India are discussed below. The Fatal Accidents Act, 1855 made an owner liable to pay compensation if his servant or driver caused injury or death due to his wrongful act. Similarly, public and corporate bodies also came under the jurisdiction of this Act. It, however, did not prescribe any hard and fast rules for establishing the amount of compensation. It was left to the discretion of superior Courts to determine the quantum of compensation based on the life expectancy of a deceased and his income.

The Indian Penal Code, 1860 contained general provisions for the protection of Indian citizens from any act which caused mental and physical disturbance. The Act provided different types of penalties for those who violated the Code. Though the Act did not include any specific provisions for safeguarding the interests of a consumer or awarding him compensation in case he is wronged, various clauses could indirectly help him in protecting his rights. The Indian Contract Act, 1872 made any person who indulged in fraud or misrepresentation liable to compensate for it. The sellers and buyers transacted on the basis of this Act. In case of a breach by the seller, the buyer was entitled to compensation for any loss caused to him by the breach of contract. Once again, this Act only provided indirect help to the cause of consumer protection.

According to Ansari and Hafeez (2000), a consumer was not entitled to any claim under this Act unless he was a party to the relevant contract. However, despite its handicaps, this was a step forward in determining a contractual relationship between the two transacting parties. The Specific Relief Act, 1877 defined the law relating to certain kinds of specific reliefs obtainable in civil courts. These included taking possession of certain property and delivering it to a claimant; ordering a party to do the very act, which he is under an obligation to do; preventing a party from doing, which he is under an obligation not to do; determining and declaring the rights of parties otherwise than by an award of compensation; or appointing a receiver. This Act regulated the domain of the civil courts from where citizens could obtain relief. The Sale of Goods Act, 1930 was the first Act in the Indian sub-continent that directly gave the consumer/buyer some protection from sellers.

According to this Act, a seller is obligated to deliver the good and a buyer or consumer is obligated to receive and pay for it. The Act regulated issues *inter alia* dealing with the delivery of goods, receipt of goods after scrutiny and examination, and the rejection of goods on unsatisfactory quality or non-conformity with the required standard. The Act also stipulated that a buyer could sue a seller for breach of warranty, if the latter wrongfully neglected or refused to deliver the goods. The Drugs and Cosmetics Act, 1940 protected consumers from malpractices in the drugs industry. It prescribed standards for the manufacture and distribution of drugs as well as their imports. It instituted the office of inspector who was made responsible for ensuring compliance with its different provisions and specified penalties for contravening them. This Act can be called a turning point in the history of consumer protection in the Indian sub-continent.

3. Consumer Rights in Pakistan

After the creation of Pakistan, different Acts in vogue during the time of British India were adopted in the country. However, succeeding governments in Pakistan were too busy in handling some basic issues such as preparing a constitution for the young country and settling the newly arrived migrants from India, that they had little time for the consumers. Later, military governments took over the reins of powers and consumers lost all voice through the absence of democratically elected legislatures. The result was that consumers and their rights were both neglected and there was total absence of consumer welfare thinking. Even where some laws were enacted, such as Price Control and Prevention of Profiteering and Hoarding Act, 1997, they were either not properly implemented or did not include the consumer as an independent and interested party (Ansari and Hafeez, 2000). This historical legacy of ignoring the consumers has led to a situation where they have been completely excluded or only partially accommodated in the legislative scheme. There are no adequate procedures for consumers to obtain redress. The state and legislators have failed to provide compensation and damages as statutory remedies (Ansari and Hafeez, 2000).

Therefore, the consumers are always in a disadvantageous position as compared with manufacturers or suppliers (Khan and Hafeez, 1999). This pathetic situation has arisen in spite of the fact that Article 18(b) of the 1973 Constitution mandates that it is the duty of the state to regulate trade, commerce or industry in the interest of free competition. However, prior to the establishment of Competition Commission in 2007, Monopoly Control Authority (MCA), that aimed to check monopolistic behaviour and regulate unreasonably restrictive trade practices, had no legal authority to penalise the culprits. This is evident from the case of cement manufacturers in February, 1999 when, after finding satisfactory evidence that there was collusion and cartelisation in the cement industry to raise prices, it could only advise them to fulfil their "moral obligation" and deposit the excess amount charged from consumers (cited in Ansari and Hafeez, 2000). Similarly, though article 212(1) (b) of the constitution provides for the establishment of special tribunals to adjudicate tort cases, it continues to remain a neglected area in Pakistan.

The following sections present an overview of different consumer protection laws in the country.

3.1. Food Sector Legislation

Pakistan does not have a well-integrated legal framework to protect the consumer of food products. However, there are certain laws regarding food quality and standards. Though these were passed many years before, they can be very effective if properly enforced. The Pure Food Ordinance, 1960 binds all importers, manufacturers and resellers to comply with its provisions regarding the manufacturing, processing/preparation, packaging, labelling, consignment, delivery and standard of quality of food items. There are separate stipulations for products such as margarine, banaspati² and fat. This Act also set rules for the appointment of analysts and inspectors to enforce the Ordinance within their jurisdiction. Various penalties and procedures have also been specified in the law. The Pakistan Hotels and Restaurants Act was enacted in 1976. Its purpose is to provide procedures for regulating the standards of service and facilities in hotels and restaurants. It prohibits the sale of food and beverages which are injurious to health or which are contaminated due to lack of cleanliness in the hotel.

The owner or manager is required to undertake scientific tests of water, food and other articles of human use to ensure they conform with health and hygiene standards. The authorized officer can at any time inspect the quality of foodstuff and other appliances. It mandates a hotel to get license and registration before operation. The law is limited because it does not provide procedures for lodging a complaint in case of injury to a consumer nor does it state compensation due to him. Though Pakistan Standards and Quality Control Authority (PSQCA) Act, 1996 cannot be characterized exclusively as a food law, it provides for standardization and quality control services which are related to the health and safety of food. This Act provides for necessary measures for the testing of products and services for their quality, specifications and characteristics. It also regulates the quality labelling standards which shall state ingredients, performance, specification, usage, methods and other relevant quality control matters. It also prohibits the manufacture, sale and storage of any article including food items which do not conform with the laid down quality standards.

² A type of cooking oil.

3.2. Health Sector Legislation in Pakistan

The Pharmacy Act, 1967 stipulates the establishment of Pharmacy Councils to regulate the practices of pharmacy and to protect consumer rights. This Act specifies procedures and examinations to qualify a person as a pharmacist. It mandates the Pharmacy Council as a regulatory body to hold exams, approve the course of study and practical training, prescribe the conditions and requirements of admission, and to lay down and maintain teaching standards. The Drugs Act, 1976 is another major Act that regulates the import, export, manufacturing, storage, distribution and sale of drugs. This Act prohibits the sale, manufacture, import and export of any fake drug, counterfeit, misbranded, adulterated, substandard, drug after its expiry date, or drug which is not registered or is in conflict with the conditions of registration. It stipulates the constitution of Provincial Quality Control Boards with the authority to inspect a location where drug are being manufactured or sold, and to recommend to the suitable authority the cancellation or suspension of the licence to manufacture or sell drugs or to seal the premises if engaged in activities in contravention of this Act.

It analyses the reports of provincial Inspectors, and Government Analysts responsible for testing drugs sent to them by the Inspectors. It also regulates the advertisements of drugs. This Act protects the consumer by levying various penalties .e.g. imprisonment and fine on manufacturers, importers or distributors of drugs. This Act also requires the formation of drug courts where a complaint about any drug manufacturer, seller, importer and exporter can be filed. The Drugs (Labelling and Packaging) Rule, 1986 specifies that drugs must have information about the weight, volume or dose. The name of manufacturer, license number, registration number, date of expiry, Urdu version of the drug name, distinctive batch number, date of manufacture and maximum retail price must be mentioned on the label of the container. Drug label must mention about its usage i.e. whether for internal or external use or a sample for a physician. In case, the drug is meant for government institution or veterinary use, the label must contain information about it. Non-sterilized surgical instruments must have information printed on them stating about their status.

3.3. Transport

All the four provinces have enacted Motor Vehicles Ordinance, 1965. The Act provides for the licensing of drivers , registration of motor vehicles, control of traffic and specifies penalties and compensations for the aggrieved in case of offence. However, the ordinance has failed to serve the consumers because of long cumbersome procedures that have no time limit as well as inadequate compensations.

3.4. Dawn of a Modern Era for Consumers

3.4.1. Islamabad Consumers Protection Act, 1995

A modern era for consumer protection emerged in the country when the federal government promulgated Islamabad Consumers Protection Act, 1995 in the federal capital. It deals with unjust trade practices and provides instruments to handle consumer complaints. This Act emphasized the formulation of Consumer Protection Council to safeguard the rights of consumers. The Council is mandated to protect them from hazardous goods, ensure their right of information about product quality, quantity, potency, purity, standard and price, their right of choice, redress, education and right of availability of essential goods and services. Complaints can be filed with the authority in case of unfair trade practices or false advertisements. If the business entity is found guilty, it can face imprisonment, fine or asked to pay compensation.

3.4.2. North West Frontier Province Consumer Protection Act, 1997

Islamabad Consumer Protection Act, 1995 became a model for the provinces to follow. NWFP (now renamed Khyber Pakhtunkhwa) legislature passed The North West Frontier Province Consumer Protection Act, 1997. This Act aims to protect the rights of consumers by controlling unfair trade practices like false representation of goods and services, prohibiting the sale of substandard goods, giving misleading information, false guarantee and warranty or misleading public regarding the price of a product. This act obligates a manufacturer to publish maximum retail price on the container of every product, the nature, standard and other specifications of the product like weight, size or volume and dates of manufacturing and expiry. Receipt shall be issued to purchaser which states the date of sale, specifications of goods sold, the quantity, name and address of the seller. The act also provides for the formulation of Consumer Protection Council on lines similar to Islamabad Consumers Protection Act. The Act also specifies a mechanism for the redress of consumer complaints.

3.4.3. Punjab Consumer Protection Act, 2005

The Punjab Assembly passed an Act called "The Punjab Consumer Protection Act, 2005" to provide protection and promote the rights and interest of consumers. This Act puts the liability of defective products on manufacturers and makes him liable to a consumer for damages caused by the provision of services. Different clauses of the Act are similar to the one already promulgated by the NWFP Assembly. Though these consumer specific legislations have their own demerits in terms of restrictive definitions, under-representation of non-official members, tight time limits, slow and expensive judicial process etc. (Ansari and Hafeez, 2000), they have given two firm feet to the consumers to stand on.

3.5. Rise of the Regulatory State

Like the states in developed countries, Pakistan has also traversed on the road to "Regulatory State" (for a discussion on regulatory state, please see Loughlin and Scott, 1997; Majone, 1994; Moran, 2001; Wright, 2009). The rising tide of neo-liberalism and prospect of privatizing utilities forced the policy makers to set up regulatory agencies to pre-empt the existence of private monopolies. These agencies not only regulate monopolies by adjudicating between the public-public, public-private and private-private buyers and sellers, but also aim to protect the interests of consumers. However, their establishment fails to provide evidence of a clear and consistent consumer welfare policy. Still, it is a step forward, since under their respective laws, a consumer has been recognized as an affected party with a legitimate interest in the process of fixing tariffs (Ansari and Hafeez, 2000).

The following paragraphs provide an overview of measures taken by the state for protecting the interests of consumers with the help of regulatory agencies.

3.5.1. Environmental Protection

The Pakistan Environmental Protection Act, 1997 provides for the protection, conservation, rehabilitation and improvement of the Environment, for the prevention and control of pollution and the promotion of sustainable development. The Act provides for establishing Pakistan Environmental Protection Council responsible for approving national environmental policies, and National Environmental Quality standards providing guidelines for protecting the environment and coordinating integration of the principles and concerns of sustainable development plans and policies. The Act further provides for the establishment of Pakistan Environmental Protection Agency to act as the principal implementing arm of the Council. The Agency is assisted by its counterparts at the provincial levels. The Act provides for the constitution of Environmental Tribunals and appointment of Environmental Magistrates, allowing an aggrieved person to file complaints before them. There are penalties specified in the Act for those violating the rules and regulations contained in the Act and compensation for the aggrieved party. The Act stipulates two parallel judicial systems. The Environmental Tribunal is an appellate authority for the federal and provincial agencies, and orders passed by the Tribunals are appealable before the High Court. The Environmental magistrates can also try the offenders and their decisions can be challenged in the court of the Session Judge, whose decision is final.

3.5.2. Energy Sector

National Electric and Power Regulatory Authority (NEPRA) has been established under Regulation of Generation, Transmission and Distribution of Electric Power Act, 1997 that defines the terms and conditions of the license, sets standards of maintenance and rates of tariff as well as protects consumers against monopolistic and oligopolistic competition. This is done by providing opportunities to consumers to participate in the tariff setting process and resolving disputes between consumers and service providers. The Act lists detailed procedure for lodging a complaint and getting redress if no action is taken by the service provider. The license of a service provider can be revoked in extreme cases. The Act was reinforced with the help of different standards and rules which were prepared by NEPRA and approved by the government (NEPRA, 2003; 2004; 2005; 2006). Oil and Gas Regulatory Authority (OGRA) was established under Oil and Gas Regulatory Authority Ordinance, 2002. It is responsible for fostering competition, increasing private investment and ownership in the midstream and downstream petroleum industry as well as resolving complaints and disputes between consumers and service providers (OGRA, 2007). For this purpose, Complaints Resolution Procedure, 2003 lists a detailed complaint handling and compensation awarding procedures with specific timelines. OGRA legally binds every licensee to form a complaint resolution system which must be approved by the authority.

Any person can file a complaint against a licensee or a dealer in breach of ordinance rules and regulations, for non-conformity with service standards or billing, connection or disconnection of service, metering, unjustifiable delay in service provision, safety practice, quality and quantity of natural gas, LPG or CNG supplied. If the complaint is proven correct, the cost shall be paid by the licensee or the dealer. The complainant or licensee, if not satisfied with the decision of the designated officer, can appeal against the decision within thirty days.

3.5.3. Telecommunications Sector Legislation in Pakistan

Pakistan Telecommunication Authority (PTA) was established as a regulatory authority under "Pakistan Telecommunication (Re-Organization) Act, 1996" to regulate the telecommunications sector in Pakistan. It is responsible for the issuance and renewal of licenses to service providers, maintaining a check for rendering satisfactory services, and promoting the interest of consumers by investigating and adjudicating complaints against service providers. The Act lists detailed procedures for getting redress by a consumer and has provisions for penalising a service provider in case he fails to redress a complaint. The Act also provides for developing a comprehensive Code of Ethics for the operators.

Telecommunications Consumer Protection Regulations, 2009 sets standards and benchmarks for the operators in the interest of consumers. They must develop a computerised complaint handling mechanism and should maintain round the clock call centres to help the consumers. All operators shall ensure the confidentiality of consumer information and no such information is to be made available to the third party. "Protection from Health Related Effects of Radio Base Station Antenna Regulations, 2008" have also been formulated to protect public from the harmful rays of cellular service antennas.

3.5.4. Competition Commission of Pakistan

The Competition Commission of Pakistan (CCP), established under the Competition Ordinance, 2007, deals with the issues of competition and consumer protection. The Ordinance sets out the principles and norms of sound competitive behaviour as well as the manner of their enforcement in the country. The CCP is mandated to redress deceptive marketing practices and enhance the link between the Commission and the consumer. The Commission is also engaged in advocacy through various means including seminars, roundtables, media appearances, active sessions of the Competition Consultative Group and bilateral meetings with sector regulators in order to create awareness on competition issues. The Commission has been aggressively and proactively pursuing its agenda. It has conducted raids on the premises of different organizations and associations suspected of alleged use of dominant position; it has published reports of enquiry and studies on different sectors of the economy; it has taken bold decisions to eliminate cartelisation in the cement and sugar industries; and it has formulated voluntary standards and codes for the industry. However, these are early days for the Commission, and it will take quite some time before a culture of competition will take root in the country.

3.6. The Failing Consumer Movement

3.6.1. The Network for Consumer Protection

The Network for Consumer Protection, a not-for-profit, public interest and independent non-government organization has been working since 1992. It works for the protection of consumer rights as given in the United Nations Guidelines for consumer protection, 1985 and charter of Consumers International. For this purpose, the Network educates consumers about their rights; provides them research-based information on products and services; as well as updates them about government policies and performance in consumer protection.

3.6.2. Consumer Rights Commission of Pakistan (CRCP)

CRCP was established in 1998 to act an independent, non-profit, and non-governmental organization to approach the issue of consumer protection in a holistic manner. Its vision and strategies have significant cross linkages with both market practices and issues of governance. It intercedes on behalf of the consumers to protect their rights through research and publications as well as advocacy, training and group mobilization. Furthermore, the Commission emphasises transparency, freedom of information and citizens' participation and voice during service delivery through its advocacy and awareness-raising campaigns. It also analyses existing laws with the aim of making policy input for their improvement. It reviews market processes and corporate practices from a consumer perspective. It acts as a market watchdog and focuses on aspects such as accessibility, affordability, quality and standards, market ethics, monopolies and unfair trade practices to make sure that market becomes responsive to consumer interests.

Despite their presence, these consumer advocacy organisations have failed to create an impact. First of all, they only exist in large cities though most of the population lives in small towns and villages. And even where they operate, their presence has not been felt.

4. Conclusion

According to Khan and Hafeez (1999), absence of an entry on “consumer” in the indices of law books in Pakistan indicates lack of consumer concern in the legal debate and statutes of Pakistan. Despite significant developments and an increasingly aware consumer base, the state has generally shied away from providing compensation and damages to consumers as statutory remedies. Due to this factor, consumers have recourse to lengthy and circuitous procedures under civil jurisdiction, contract or tort principles of law, which they normally avoid. The same is true of proactive consumer protection councils, which have not found a place on the agenda of civil society. In the case of extant laws, their proper enforcement and implementation in letter and spirit needs to be ensured. It is high time that the consumers assert themselves and have their say in the quality of products or services they pay for.

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