

Name of Topic: Role of Judiciary in the Consumer Protection  
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Presented by: Saeed Akhtar Ansari, Director,  
Directorate of Provincial Consumer Protection Council, Punjab,  
Lahore.

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### **ROLE OF JUDICIARY IN THE CONSUMER PROTECTION**

Consumerism began in USA in early 1900s with the introduction of two Acts namely Food & Drug Act (1906) and Meat Inspection Act (1906). In 1914, Federal Trade Commission for Protection of Consumer interests was established. After this USA, UK and other countries passed many consumer related laws. The World Federation of Consumer Groups was founded in 1960, namely Consumer International <sup>[1]</sup>. In 1962, President of USA John F. Kennedy moved the Bill on the protection of consumer interests before the Congress, comprising right to safety, right to be informed, right to choose and right to be heard <sup>[2]</sup>. In 1970s, Gerald R. Ford US President added Consumer Education to the Consumer Protection Bill. In 1984, Consumer International formally adopted all these rights. Consequently, in 1985, UNO approved resolution No. 39/248 recognizing following eight basic rights of consumers:

- Right of Protection
- Right of Representation
- Right of Compensation
- Right of Information
- Right of Healthy Environment
- Right to Choose
- Right to Basic Necessities
- Right of Education <sup>[3]</sup>

Consumer rights have to be adopted in its true spirit as the people intend to use standard products and quality services in their daily living. Pakistan being a member of UNO adopted the said resolution. In present era, Pakistan's scholars/ legislators took up the matter on priority basis to curb the culprit elements which are present in trade / commerce / service

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<sup>1</sup><http://www.consumersinternational.org>

<sup>2</sup> Kennedy, Johan F (15<sup>th</sup> March, 1962) "Johan Kennedy Special Message to the Congress on Protection the Consumer Interest

<sup>3</sup><http://www.un.org/documents/ga/res/39/a39r298.htm>

provider. These disruptive elements also cause threat to health and safety of citizens. All of us have a fundamental responsibility to protect public from intrinsic exploitation.

A debate on consumer rights legislation in National Assembly and the Senate was initiated in 1994. As a consequence of this debate firstly, The Islamabad Consumer Protection Act was promulgated in 1995<sup>[4]</sup>. The jurisdiction as an Authority is vested in the Court of Sessions, Islamabad. The Authority shall receive complaints of the Consumers and those made on behalf of the Council for investigation and determination thereof. It shall be tried summarily by Special Magistrate appointed Under Section 14-A of the Code of Criminal Procedure, 1898. Appeal lies against the order of Special Magistrate before the Authority within 15 days.

Government of Khyber Pakhtunkhwa (K.P.K) and Balochistan has passed the Consumers Protection Act in 1997 & 2003<sup>[5], [6]</sup>, respectively, but fail to establish mechanism for consumer protection. It is further added that in 2004, Governor of Sindh promulgated The Sindh Consumer Protection Ordinance<sup>[7]</sup>. The same lapsed due to the lack of interest shown by the then Government and the situation is still the same.

The Government of the Punjab has enacted the Punjab Consumer Protection Act (PCPA), 2005<sup>[8]</sup> and also implemented the same in its true letter and spirit. This goal is being achieved by establishing District Consumer Courts and District Consumer Protection Councils, under the administration of Directorate of Provincial Consumer Protection Council, Punjab, across the province.

The purpose behind PCPA, 2005 is to **safeguard** the rights and interests of the consumers against substandard products, faulty services, misleading representation and bait advertisement. It is a **complaint-driven** system providing Judicial, Quasi-Judicial and Alternate Dispute Resolution (ADR)..... (Pre-trial Settlement) mechanism. The PCPA covers **all products and services excluding**

- products in its natural state,
- rendering of any service under a contract of personal service,
- palmistry / astrology,
- a service, the essence of which is to deliver judgment by a court of law or arbitrator

PCPA has provided two parallel forums, Consumer Courts and Authority i.e. District Coordination Officer (DCO) as defined in the Act, to provide safeguard against defective

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<sup>4</sup> [www.bu.edu/bucflp/files/2012/01/Islamabad-Consumer-Protection-Act.pdf](http://www.bu.edu/bucflp/files/2012/01/Islamabad-Consumer-Protection-Act.pdf)

<sup>5</sup> [www.ahmedandqazi.com/actsandregulations/ConsumerProtection/northFrontierProvinceConsumersProtectionAct1997.pdf](http://www.ahmedandqazi.com/actsandregulations/ConsumerProtection/northFrontierProvinceConsumersProtectionAct1997.pdf)

<sup>6</sup> [www.pabalochistan.gov.pk/index.php/acts/details/ex/G/130](http://www.pabalochistan.gov.pk/index.php/acts/details/ex/G/130)

<sup>7</sup> [Sja.gos.pk/Library/Sindhordinancesindex.htm](http://Sja.gos.pk/Library/Sindhordinancesindex.htm)

<sup>8</sup> The Punjab Consumer Protection Act, 2005

products and faulty services to Consumer of Punjab. It is pertinent to mention here that Consumer Courts may try all the offences committed in contravention of the Act, while Authority (DCO) has a specific power as narrated in the Act.

Government of Punjab has established eleven District Consumer Courts at divisional headquarters alongwith Sialkot & Gujrat districts, which cover whole of the province. These courts are headed by Presiding Officers who are **District & Session Judge** / Addl. District & Session Judge to be appointed by the Government **in consultation with the Lahore High Court**<sup>[9]</sup>. Presently all the Presiding Officers are District & Session Judges.

The Consumer Courts can assume jurisdiction

- Where cause of action wholly or in part arises.
- Residence of defendant(s) or carries on business<sup>[10]</sup>.

The performance of the Consumer Courts<sup>[11]</sup> since March, 2007 to February, 2013, can be gauged as:

<b>Name of DCC</b>	<b><u>Total Cases</u> <u>filed</u></b>	<b><u>Disposed</u> <u>off</u></b>	<b><u>%age of</u> <u>Disposed off</u></b>	<b><u>Pending</u></b>
Gujranwala	1580	1477	93.00	103
Lahore	3596	2833	79.00	763
Sahiwal	1085	925	85.00	160
D.G Khan	4025	3401	84.00	624
Sargodha	5552	541	98.00	11
Gujrat	615	559	91.00	56
Sialkot	785	771	98.00	14
Multan	1549	1373	89.00	176
Bahawalpur	2942	2602	88.00	340
Faisalabad	2863	2638	92.00	225
Rawalpindi	510	479	94.00	31
<b>TOTAL</b>	<b>20102</b>	<b>17599</b>	<b>88.00</b>	<b>2503</b>

As Consumer Protection Act, 2005 was promulgated with the aim of provision of standardized products and skillful services to the general public. On provision of defective product and faulty services people are filling their claims in Consumer Courts. 20102 claims has been filed, out of which 14599 claims are against faulty services like Public utilities, Medical Services, Banking / Money / Insurance Services, General Utilities / trades / business

<sup>9</sup>Section 26 of The Punjab Consumer Protection Act, 2005

<sup>10</sup> Section 27 of The Punjab Consumer Protection Act, 2005

<sup>11</sup> Monthly Data received from District Consumer Courts

etc. whereas 5503 claims are against defective products like Electronics, House Hold items, Auto Mobiles, Agriculture, Food / Water / Beverages etc. Detailed classification of cases;

Faulty Services		Defective Products	
Public utilities	6002	Electronics	1992
Medical service	647	House hold items	1314
Banking/money/insurance services	721	Auto mobiles/parts	633
General utility/trade/business	4764	Food/water/beverages	707
Electronics	160	Agriculture	302
Agriculture	52	Construction material	323
Lucky draw/lottery	24	Medical products	65
Restoration of complaint	419	Stationary	18
Miscellaneous (Banquet Hall, Visa Consultancy, Goods forwarding, Cinema, Stock Broker etc.	2531	Miscellaneous (Date of manufacturing & expiry, Warranty etc.	149
<b>Total</b>	<b>14599</b>	<b>Total</b>	<b>5503</b>

**Pre-trial settlement** <sup>[12]</sup> is a beauty of this Act. Parties can resolve their dispute on firm written offer by the defendant before court proceedings. This settlement proceeding is helpful in minimizing undue litigation. In consequence of these proceedings, people are getting relief.

It is worth mentioning here that according to the Section 30(5) of the Act, it is **mandatory** for the Consumer Court to decide the claim within the **stipulated time period** i.e. **six (06) months** on the basis of evidence produced by both parties. Whereas, the Presiding Officers of these Consumer Courts never adhere to this provision of the Act, instead, they keep on prolonging cases on one pretext or other. Despite the presence of six months mandatory provision, picture shows that there are a lot of cases which are pending beyond the limit <sup>[13]</sup>. This attitude and behavior of the Presiding Officers also discourage the consumer from filing of claims before Consumer Courts.

Name of District Consumer Court	Total Pendency	Pendency		
		Over Six Month	Over One Year	Over Two Year
Gujranwala	103	3	3	0
Lahore	763	150	222	109
Sahiwal	160	9	3	0
D.G Khan	624	7	0	0
Sargodha	11	1	1	0
Gujrat	56	14	6	1
Sialkot	14	1	0	0
Multan	176	6	1	0
Bahawalpur	340	98	59	19
Faisalabad	225	58	82	42
Rawalpindi	31	0	0	0
<b>Total</b>	<b>2503</b>	<b>347</b>	<b>377</b>	<b>171</b>

<sup>12</sup> Section 29 of The Punjab Consumer Protection Act, 2005

<sup>13</sup> Monthly Data received from District Consumer Courts

Section 31 deals with the powers of the Consumer Court to direct the respondent(s), to remove defects from their products which were faulty in nature and return back to the claimant after correcting the fault. They can also pass orders for replacement of product as well as return of price.

Consumer Protection Act is a concept derived from Tort law. The main theme of the Tort law is payment of damages to the claimant. So, Consumer Courts have vested power to award unlimited damages for creation of deterrent effect. These Consumer Courts are awarding very meager amount of compensation to complainant against demanded in the claim. They are not considering the actual worth of the damage and never gauge the other associated variables. It is clearly shown in claim filed before District Consumer Gujranwala titled “Sheraz Hassan V/s. M/s. Haier Electronics Company”. In which mother in law of complainant received a fatal electric shock while using defective refrigerator and lost her life. But the Consumer Court awarded **0.5 million** as damages along-with **Rs.100, 000/-** fine<sup>[14]</sup>.

The Courts can order for recalling the defective products from trade or commerce on complaint. They are also empowered to confiscate or destroy the defective product.

The Consumer Court has powers Under Section 32 of the Act, where a manufacturer fails to perform or in any way infringes the liabilities provided in the Act, he shall be punished with imprisonment which may extend to two years or with fine which may extend to hundred thousand rupees or with both in addition to damages or compensation as may be determined by the court. But the courts have never exercised the powers of imprisonment against the culprits. People, who have become disable due to negligence of defective products and faulty services are being given mere compensation / damages instead of imprisonment to the culprit, as mentioned in the claim titled Muhammad Ramzan V/s. Asad Surgical Hospital etc., filed in Consumer Court, Faisalabad in which learned Presiding Officer accepted the claim of Rs.5, 49,400/- alongwith fine of Rs.100, 000/- but no imprisonment was awarded<sup>[15]</sup>.

According to section 32(2) of the Act, defendant / claimant who fails or omits to comply with any order made by the Consumer Court, shall be punishable with **imprisonment** for a term **not less than one month** which may **extend to three years**, or with **fine not less than five thousand rupees** which may **extend to twenty thousand rupees** or with **both**.

Consumer Court has also power to dismiss the frivolous and vexatious claim **with fine of Rs.10, 000/-** to stop tendency of this practice of harassing the manufactures / service providers.

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<sup>14</sup> Order of Consumer Court, Gujranwala in the case No.39/09 titled “Sheraz Hassan V/s. M/s.Haier Electronics Company” dated:-01.04.2010

<sup>15</sup>Order of Consumer Court, Faisalabad in the case No.536/09 titled “Muhammad Ramzan V/s. Asad Surgical Hospital etc” dated:-22.09.2010

The Authority (DCO), on receipt of a complaint or a reference from the Consumer Protection Council or on its own motion after conducting an enquiry, being the custodian of rights & interests of general public, after serving **fifteen days notice** to defective product(s) manufacturers or faulty service provider(s) may file complaint before the Consumer Courts without proof of any damages actually suffered by consumer but likely to be suffered due to said contravention for claiming any kind of damages accrued due to their usage. Authority (DCO) may also file claim for declaring a product defective on following grounds:-

- Defective in construction or composition
- Defective in design
- Adequate warning has not been given
- Does not conform to express warranty

PCPA,2005 has provided two parallel forums as mentioned above, Authority(DCO) can also fine upto Rs.50,000/-, if any person violate the provisions of Section 11 i.e. Duty of disclosure of Product's component parts, ingredients, quality, or date of manufacture and expiry, Section 16 deals with the duty of disclosure of service provider, Section 18 deals with the exhibition of prices at business place while Section 19 covers the mandatory issuance of receipt comprising Date of sale, Description of goods sold, the quantity & price of goods and name & address of the seller.

Enactment is always for the welfare of masses. Its main object is to facilitate people to get their rights. Consumer related enactment is divided into two segments i.e. federal and provincial legislation and the people are confused how to get their rights in easy way. The consumer related legislation available in Pakistan is as under:

#### **FEDERAL CONSUMER RELATED LAWS:**

1. Price Control and Prevention of Profiteering and Hoarding Act, 1977
2. Pakistan Standards and Quality Control Authority Act, 1996
3. The Cantonments Pure Food Act, 1966
4. Pakistan Penal Code, 1860
5. The Pakistan Hotels and Restaurants Act, 1976

#### **PROVINCIAL CONSUMER RELATED LAWS:**

1. The Punjab Weights and Measures (International System) Enforcement Act, 1975
2. Punjab Essential Articles (Control) Ordinance, 1973
3. The Punjab Food Authority Act, 2011

Cognizance of offenses under above narrated laws (Federal / Provincial) falls within the jurisdiction of Courts of Magistrates / Controller <sup>[16]</sup>. This has no deterrent effect on the

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<sup>16</sup>.Extract drawn from Minors Acts.

unlawful activities of consumer rival segments of the society. In view of this it deems appropriate that cognizance of offences under these laws, should be given to the Consumer Courts for effective and centralized redress of consumer related issues. Amendments in consumer related laws should be made on priority basis for dispensing of justice under one umbrella.

For this purpose an amendment may be introduced in the aforementioned laws  
**Cognizance of offences by Consumer Courts,**

**“Offences punishable under this Act / Ordinance shall be tried by Consumer Courts.”**

## **ISSUES**

Some issues were identified while conducting discussion with different stake holder during the workshop, which hamper the working of Consumer Courts in the best interest of consumers. The top of the list is lack of Government interest in consumer mechanism. Government can play a pivotal role by expanding the system throughout the country, consumer education should be included in curriculum / syllabus.

As for as, government of Punjab is concerned, there is lack of resources, so only eleven Courts exist in Punjab, to protect the people from the defective product and faulty services. Consumer satisfaction can only be achieved by the expansion of existing system throughout the province up to tehsil level.

As District & Session Judges and Additional District & Session Judges are executing their duties as Presiding Officer of Consumer Courts. They are not committed to the cause of consumer protection. They intend to dispose cases under legal intricacies instead of safe guarding the interest of the consumer. There is a general tendency among the Presiding Officers to facilitate lawyers in their delaying tactics. There is also a general feeling amongst the judicial officers that they are performing a job inferior to their status. As all of them are District and Session Judges and they all the time aspires to hold the reigns of judiciary of a district. So, their attitude towards consumer protection is discouraging.

In this context, they are adopting long procedure as laid down in Civil Procedure Code and Criminal Procedure Code. They frame issues as civil nature suits and record undue evidences. They are not giving proper time to dispose off cases within **six (06) months** as mandatory in the Act. They are neglecting the Maxim “Justice delayed is Justice denied” as well as Judicial Policy. Doing so, the judges also kill the spirit of the Punjab Consumer Protection Act, 2005. And consumers show their reluctance for filing of claims due to attitude of judges. Undue adjournments are being given to the respondents / lawyers which causes the shake of consumer’s confidence.

As consumer mechanism concept is a relatively new idea introduced in Pakistan. Capacity building of the Presiding Officers of Consumer Court may be arranged where the consumer mechanism is running successfully like India which can be viewed as under<sup>[17]</sup>:

Sr. No.	Name of Agency	Cases filed since 1986	Cases disposed of since 1986	Cases Pending	% of total Disposal
1	National Commission	80014	69253	10761	86.55%
2	State Commissions	600097	504834	95263	84.13%
3	District Forums	3242324	2994256	248068	92.35%
<b>TOTAL</b>		<b>3922435</b>	<b>3568343</b>	<b>354092</b>	<b>90.97%</b>

(Update on 06.03.2013)

Comparison between Punjab Consumer Protection Act, 2005 and other countries Consumer laws is as under<sup>[18]</sup>:

THE PUNJAB CONSUMER PROTECTION ACT,2005	INDIAN CONSUMER PROTECTION ACT,1986	CHINA CONSUMER PROTECTION ACT,1994	SRILANKA CONSUMER PROTECTION ACT,1979
Provincial legislation	Central legislation	Central legislation	Central legislation
The Consumer/Authority shall file claim within 30-days after arising of cause of action	The Consumer shall file case within two (2) years after arising of cause of action	A dispute of the rights and interests of the consumer can be resolved as under; 1.Through mediation with operator; 2.Request the consumer association for mediation; 3.Make complaint to the relevant administrative department; 4.Apply to the arbitration organ for arbitration according to the arbitration agreement with the operator; and 5.Bring a suit to the People's Court.	--
District Consumer Court headed by District & Session	District Forum headed by a person who qualify to be a	People's Court	

<sup>17</sup> [www.ncdrc.nic.in](http://www.ncdrc.nic.in)

<sup>18</sup> Extract drawn from Indian Consumer Protection Act,1986, Extract drawn from China Consumer Protection Act,1994 and Extract drawn from Srilanka Consumer Protection Act,1979

Judge/Addl. District & Session Judge <b>(No limit)</b>	District Judge <b>(Claim does not exceed 2 Million)</b>		
Appeal before the High Court	Appeal before State Commission	Next higher organ	--
--	<b>State Commission headed by Judge High Court (Claim over 2 million but less than 10 million State Commission has original jurisdiction)</b>	--	--
--	Appeal before National Commission	--	--
--	National Commission headed by Judge Supreme Court. (Claim over 10 million National Commission has original jurisdiction)	--	--
--	Appeal to Supreme Court of India	--	--
Provincial Consumer Protection Council	Central Consumer Protection Council	--	--
--	State Consumer Protection Council	--	--
District Consumer Protection Council	District Consumer Protection Council	--	--
Authority <b>( impose a Fine up-to Rs.50,000/-)</b>	--	--	a) Commissioner of Internal Trade b) Deputy Commissioner c) Assistant Commissioner
--	--	--	A complaint shall be made to the Commissioner in writing within seven days of such sale
--	--	--	Against the forfeiture order of the Commissioner /Minister, trader can give notice to Commissioner /

			Minister that he intends to institute action in the appropriate court.
Appeal before Secretary to the Government of the Punjab, Industries, Commerce and Investment Department	--	--	--

Role of Superior Judiciary is a question mark. They are delivering such judgments which bar the jurisdiction of Consumer Court as prescribed in section 27 of the Act. It was reported in 2012 CLD 1428<sup>[19]</sup>, the Honourable Mr. Justice Mehmood Maqbool Bajwa held in the appeal titled M/S Sui Northern Gas Pipeline Limited V/S Abdul Hameed that “since the Consumer Court is not a court of general jurisdiction, therefore, it was its duty to examine the allegations contained in the complaint in order to determine its jurisdiction”. Overburdened Honourable superior courts may not have time to hear appeal within the adequate time. So, it is proposed that special bench for consumer affairs may be constituted.

## RECOMMENDATIONS

- Expansion of consumer mechanism should be extended throughout the country.
- Amendments in consumer related laws should be made on priority basis for dispensing of justice under one umbrella i.e. Consumer Court.
- Special Bench for consumer’s affairs should be constituted in superior judiciary for speedy disposal of appeals.
- A separate Ministry / Division at Federal level should be established for uniformity of consumer issues, as established in our neighbor country India.

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<sup>19</sup>.2012 CLD 1428

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