

CONSUMER LAWS IN PAKISTAN

PART – I

By

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Absence of an entry on ‘consumer’ in the indices of law books in Pakistan is not only indicative of the absence of consumer concerns in the juridical debate and statutes of Pakistan but also very depressing and disturbing from the standpoint of a consumer. The legal scene does not appear promising for the consumers given that consumer related laws are largely absent and where they exist at all, no effective implementation and enforcement mechanisms are available. The consumers are being exploited for they are largely unaware of their rights as well as ignorant about the possible legal remedies available. The situation is rather worse for the marginalized given the marked absence of an organized consumer movement in Pakistan.

To equip the consumer movement in Pakistan with pertinent legislation and statutes for consumer protection in all consumer concerns ranging from food and health to monetary transaction and establishment of redress mechanisms is one of the main objective of Consumer Rights Commission of Pakistan (CRCP). However it is also engaged in lobbying, research and training. Keeping with its objectives CRCP has been engaged with Punjab government for comprehensive legislation on consumer protection and related issues. Recently it has also proposed a model law for consumer protection in the country and engaged in lobbying for it. In addition, it is also in the process of compiling and reviewing the existing consumer-related laws. “Consumer Laws in Pakistan” (Part I) is the first of a series on consumer protection laws. In this collection various consumer related laws ranging from comprehensive legislation on consumer protection to regulatory frames have been explored. An effort has been made to bring out the salient features of consumer related laws along with a brief commentary. The comments at the end of each law may be read in conjunction with the introduction of the book as they may appear cursory or repetitive for the readers going through the entire book.

CRCP strongly feels that organized consumers and lawyers can play a very effective and leading role in the furtherance of consumer cause in Pakistan. An attempt, therefore, has been made to provide them with a ready reference on laws dealing with consumer protection to pursue the cause and get a fair deal both in the market and provision of state services. It is hoped that the whole discourse on consumer protection, which lacks a legal perspective, will gain impetus from this publication. We also hope that both consumers and practising lawyers would find it convenient, comprehensive and precise

CRCP is thankful to Liberal Forum Pakistan and Friedrich-Naumann-Stiftung for their support and encouragement for the publication of this book.

Salman Humayun
Consumer Rights Commission of Pakistan (CRCP)

PREFACE

INTRODUCTION 1

CONSUMER PROTECTION LEGISLATION

ISLAMABAD CONSUMER PROTECTION ACT, 1995 8

NWFP CONSUMER PROTECTION ACT, 1997 16

STATE / ADMINISTRATIVE REGULATION

WAFAQI MOHTASIB (OMBUDSMAN) ORDER, 1983 26

REGULATORY FRAMEWORKS

NATIONAL ELECTRIC POWER REGULATORY AUTHORITY 33

PAKISTAN TELECOMMUNICATION AUTHORITY 37

NATURAL GAS REGULATORY AUTHORITY 40

STANDARDS AND QUALITY

PAKISTAN STANDARDS AND
QUALITY CONTROL AUTHORITY ACT, 1996 46

DRUG LAWS

DRUGS ACT, 1940 52

DRUGS ACT, 1976 56

PAKISTAN PENAL CODE, 1860 62

CONTENTS

FOOD LAWS

WEST PAKISTAN PURE FOOD ORDINANCE, 1960	65
CANTONMENTS PURE FOOD ACT, 1966	71
PAKISTAN HOTELS AND RESTAURANTS ACT, 1976	75
PAKISTAN PENAL CODE, 1860	80
CONSUMER RIGHTS COMMISSION OF PAKISTAN	82

INTRODUCTION

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. For example, in most cases there exists no procedure whereby the consumer may be able to lodge a complaint or have the consumers' point of view represented adequately or at all during tariff or price determinations. Sometimes legislation does not take into consideration the evidential and financial burdens that render proceeding through the court improbable or prohibitive for the ordinary consumer. The consumer is therefore left vulnerable, in a disadvantaged position as against the supplier, who has greater access to information and resources. This compilation seeks to highlight the consumer aspects of legislation and the manner in which consumer rights are treated therein, and to comment from the consumer point of view.

In the earlier legislation there is no evidence of any express consumer welfare thinking. For example, statutes that deal with pricing issues are, arguably, concerned with consumer-related issues. But there is no provision for consumer participation. This is largely due to the fact that at the time the legislation was enacted there was very little consumer awareness. Consequently, the matter of pricing is dealt with from the standpoint of the government (representing the consumer) and the retailer or manufacturer. The consumer as an independent and interested party is simply excluded from participating in the pricing process. An example of such legislation is the Price Control and Prevention of Profiteering and Hoarding Act, 1977 (the "PCPPHA"), wherein the Federal

Government, acting through a Controller-General of Prices and Supplies, may by order 'provide for regulating the prices, production, movement, transport, supply, distribution, disposal and sale of the essential commodity and for the price to be charged or paid for it at any stage of the transaction therein'. There is no statutory provision to involve the consumer in the matter of prices and supplies.

The government representing the consumer suffers from a conflict of interest. For example, seeking to generate tax revenues from sales and supplies, the need to accommodate the organized influence and pressure from the suppliers, especially the powerful multinationals, and at the same time representing the consumer. In other words, the government has its own point of view that may conflict with what is in the best interests of the consumer. From the consumer movement's point of view supplies, and pricing are consumer related matters and the legislative scheme should now set forth a clear consumer welfare agenda, wherein active participation by consumers is not only permitted but also facilitated.

A recent example of such a conflict was the Cement Case¹ that came before the Monopoly Control Authority² (the "MCA"). In this case, the MCA found evidence of oligopolistic behaviour and price fixing, and consequently ordered a reduction in the price of cement. Whilst the manufacturers were confronted with the possibility of the loss of profits, a cash-starved government was faced with a loss of revenue, and the helpless consumers were liable to suffer the eventual burden of such super-profits and high prices. Instead of supporting the MCA and allowing the matter to go to the courts, the Government and the Cement manufacturers

¹ MCA judgement in the matter of D.G. Khan Cement & 15 Others, F.No.2 (274(ENQ(CAO-R&I)96-98, 20th February, 1999.

² Monopolies and Restrictive Trade Practices (Control and Prevention) Ordinance 1970.

came to a settlement. Arguably, it was the consumer that lost out. Again, there is no provision to hear the consumer point of view on the matter. Furthermore, under the PCPPHA, cement is listed as an essential commodity as item 53 in the Schedule thereto.

The Cement Case highlighted the additional problem of the inadequacy of coercive powers in case of failure to comply with its orders. The MCA could only make recommendations³ to the relevant Government authority for action to prevent the continuance of a particular situation. The inadequacy of punitive provisions was cited in the judgement thus:

[Since] the Authority is restricted to make.....within the powers as vested under section 12(1) of said Ordinance, the Authority is compelled to point out that it is the *moral obligation* of cement manufacturers to deposit the amount in excess of the rates prevailing before the formation of the cartel in the Bait-al-Mal. This observation, though *not legally binding, is morally forceful* and is, therefore, *recommendatory*.⁴

The penalties that are often available under legislation tend to be inadequate in providing effective enforcement of the law. Penalties and compensations have to be at a level and degree so that there is a realistic deterrence. At present, the punitive measures in other legislation tend to be only a little better than the moral obligation that the MCA could impose upon the suppliers and manufacturers.

Even in recent legislation that created industry regulators such as National Electric Power Regulatory Authority⁵ (the “NEPRA”)

³ Section 10(e)

⁴ The italics are mine and intended to highlight the resort to moral obligation and recommendations for its force and effect. Para. 4 6, p. 31.

⁵ Regulation of Generation, Transmission and Distribution of Electric Power Act 1997 (XL of 1997)

and Pakistan Telecommunication Authority⁶ (the “PTA”), there is no evidence of a clear and consistent consumer welfare policy. In the case of NEPRA, the emphasis is largely upon tariffs and pricing, whereas in the case of PTA there is no mention of pricing but it does refer to the ‘interests of users’, presumably that it will include price of telecommunication services. Again, whereas NEPRA legislation has a clear definition of a ‘consumer’, in the case of PTA the statutory language refers to a ‘user’, which may include a consumer. In either case, there is no express power for Authorities to award ordinary consumers financial compensation or damages for any loss or harm suffered, which, from the consumer point of view, renders the consumer provisions weak.

Furthermore, the government itself is currently a major service provider, whether it is providing highways or policing, education or the health service, the provision of drinking water or irrigation, or the administration of justice. As such the government has its own point of view and interests that do not necessarily coincide with the consumer interests.

Another example of such a conflict of interest is the recent regulation and privatisation process. Regulators are entrusted to monitor the sector, whether it is telecommunication, electricity, gas, insurance or any other industry. It is the responsibility of the regulators to make their determinations based on, *inter alia*, the long-term development of the sector, pricing, and the quality of service etc. Whereas, for example, entities such as Pakistan Telecommunication Corporation Limited still insist that they are government entities, operating in areas that no commercial organisation would cater for and at the same time generating revenues for the state. This poses a conflict of what is in the public interest in the circumstances. And at times when the state is cash starved, the revenue generation argument can have its own

⁶ Pakistan Telecommunication (Re-Organization) Act 1996 (XVII of 1996)

compulsion, which only a morally and politically courageous government can overcome. Government, therefore, cannot be the best arbitrator in the case of such competing interests of consumers and service-providers and wherein the state is an interested party in itself.

The provision of compensation or damages for the harm suffered by consumers is consistently omitted or denied. For some reasons, the state and legislators have shied away from providing compensation and damages as statutory remedies. In the absence of statutory provision for such monetary remedies, it is necessary to proceed under the civil jurisdiction, contract and/or tort principles of law. Notwithstanding that the Constitution of the Islamic Republic of Pakistan 1973, article 212(1)(b), provides for the establishment of special tribunals for tort cases, it remains a neglected and under-developed area of law in Pakistan.

Principles of tort law, however, present their own problems and limitations. The complainant-cum-consumer must prove, on the balance of probabilities, that the service provider was somehow negligent. Lord Atkin, in the 'milestone' case, *Donoghue v Stephenson* [1932] AC 562 elaborated the tort principle, thus:

A manufacturer of products, which he sells in such a form as to show that he intends them to reach the ultimate consumer in the form in which they left him with no reasonable possibility of intermediate examination, and with the knowledge that the absence of reasonable care in the preparation or putting up of the products will result in an injury to the consumer's life or property, owes a duty to the consumer to take that reasonable care.⁷

The consumer is thus placed at the disadvantage that he or she may not have access to such information, which is in the possession of

⁷ Also see *Hedley Bryne & Co. Ltd. v Heller & Partners Ltd.*[1964] AC 465.

the supplier, and supplier would not of course be willing to cooperate in the circumstances, so as to establish negligence on the part of the supplier/vendor.

Under contract law, the consumer may encounter other problems, *inter alia*, the privity of contract rule⁸. The consumer will probably not have any contractual relationship between himself and the negligent manufacturer, instead, the consumer will have to sue the retailer and the retailer brings in the manufacturer. This results in a somewhat lengthy legal process. Furthermore, the supplier has the financial strength to resist legal action and the ordinary consumer may find it difficult to initiate legal process due to the prohibitive costs in the circumstances. The consumer thus suffers an inherent disadvantage vis-à-vis the manufacturer, retailer or supplier.

It is a dismal fact that the few good law books which have an index do not contain an entry under the category of 'consumer', which is indicative of the absence of the consumer point of view from mainstream legal thinking, writing and law-making. As the consumer movement organises and asserts itself there will then be an increased awareness and an effective incorporation of the consumer point of view. For the moment, however imperfect the present legislation, it is reassuring that a start has been made with consumer legislation and the incorporation of the consumer as an important stakeholder. An example is NEPRA, wherein the consumer is recognized as an affected party and therefore having a legitimate interest in the process of fixing the electricity tariff. Specific consumer legislation has also been enacted at the Federal and provincial levels. For instance, in the territory of the Federal capital, the Islamabad Consumer Protection Act 1995 is applicable, whereas in the NWFP, it is NWFP Consumer Protection Act

⁸ English tort cases such as *Ross v Caunters* [1980] ChD 297 and *Junior Books Ltd. V The Veitchi Co. Ltd.*[1983] 1 AC 520 constituted an attack on the doctrine of the privity of contract.

1997⁹. Though these consumer specific legislation have their own demerits in terms of restrictive definitions, under representation of non official members, tight time limits, slow and expensive judicial process etc.

No doubt, these are issues, and many more others, which the consumer movement in Pakistan will eventually pick up and seek to secure a nation-wide consensus on. With the present publication the intention is to provide a simplified introduction to legislation that has an immediate and significant bearing on consumer rights in Pakistan.

Mohammed Sarwar Khan

⁹ The provinces of Sindh and the Punjab are also considering suitable consumer protection legislation.

WAFAQI MOHTASIB (OMBUDSMAN) ORDER, 1983¹

Legislation:

Establishment of the Office of Wafaqi Mohtasib (Ombudsman) Order, 1983².

Nature of the Act:

The Order provides for the appointment of the Wafaqi Mohtasib (Ombudsman) to diagnose, investigate, redress and rectify any injustice done to a person through mal-administration.

Jurisdiction:

Whole of Pakistan.

In accordance with section 2(1), jurisdiction is limited to dealing with an 'Agency', which means any ministry, division, department, commission or office of the Federal Government or a statutory corporation or other institutions established or controlled by the Federal Government. However, it does not include the Supreme Court, the Supreme Judicial Council, the Federal Shariat Court or a High Court.

¹ *The Punjab Office of the Ombudsman Act, 1997 (X of 1997)* operates *mutatis mutandis* in the province of the Punjab. Hence, the definition of 'Agency' in section 2(1) is restricted to Provincial departments, ministries, commissions *et al.*

² Dated 24th January, 1983.

Offences:

Pursuant to section 2(2), 'Mal-administration' includes:

- 1) a decision, process, recommendation, act of omission or commission which;
 - a) is contrary to law, rules or regulations or is a departure from established practice or procedure, unless it is *bona fide* and for valid reasons;
 - b) is perverse, arbitrary or unreasonable, unjust, biased, oppressive, or discriminatory; or
 - c) is based on irrelevant grounds; or
 - d) involves the exercise of powers, or the failure or refusal to do so, for corrupt or improper motives, such as, bribery, jobbery, favouritism, nepotism and administrative excesses; and
 - e) neglect, inattention, delay, incompetence, inefficiency and ineptitude, in the administration or discharge of duties and responsibilities;

Complaints:

Pursuant to section 9 the Mohtasib may receive complaints in the following manner:

1. on a complaint of an aggrieved person
2. a reference by the President
3. a reference by the Federal Council
4. a reference by the National Assembly

5. a motion of the Supreme Court
6. a motion of the High Court
7. or on his own motion- *suo moto*.

Pursuant to section 25, the Mohtasib may require any complainant or other connected party to submit an affidavit attested or notarized by any competent authority within a prescribed time.

The Mohtasib may undertake any investigation into any allegation of mal-administration on the part of any Agency or any of its officers or employees.

These complaints, however, should not relate to foreign affairs, defence/armed forces and *sub judice* cases.

- 1) The Mohtasib does not accept complaints by or on behalf of a public servant concerning any personal grievance relating to his service in the Agency in which he is, or has been, working.
- 2) The Mohtasib can arrange for studies/ research to find out the causes of corrupt practices and injustice and may recommend appropriate measures for their eradication.

Complaint Procedure:

Pursuant to section 10:

- A written complaint must be made on solemn affirmation or oath by the aggrieved person or, in case of his death, by his legal representative.
- The complaint can be lodged to the Mohtasib/ Mohtasib

office either in person or through any other means of communication.

- 1) Anonymous or pseudonymous complaints will not be accepted.
- 2) A complaint should be made within three months from the day the complainant first noticed the incidence of injustice or mal-administration. The Mohtasib, however, can accept cases even after three months if he thinks it appropriate under the circumstances.

Reference by the Mohtasib:

Where the Mohtasib finds any person guilty of any 'allegations', the Mohtasib may refer the matter to the concerned authority for disciplinary and/or corrective action.

The concerned authority shall take necessary action within 30 days of the receipt of the reference. If the Mohtasib does not receive any response within the said 30 days, the Mohtasib may bring the matter before the President for such action as he may deem fit.

Recommendations for Implementation:

Under section 11(1), after conducting investigation, if the Mohtasib is of the opinion that the matter considered amounts to mal-administration, he shall communicate his findings to the Agency concerned:

- a) to consider the matter further;
- b) to modify or cancel the decision, process, recommendation, act or omission;

- c) to explain more fully the act or decision in question;
 - d) to take disciplinary action against any public servant of any agency under the relevant laws applicable to him;
 - e) to dispose of the matter or case within a specified time;
 - f) to take action of his findings and recommendations to improve the working and efficiency of the Agency within a specified time; or
 - g) to take any other step specified by the Mohtasib.
- 1) The Agency shall, within such time as may be specified by the Mohtasib, inform him about the action taken on his recommendations or the reasons for not complying with the same.
 - 2) If it appears to the Mohtasib that an injustice has been caused to the person aggrieved in consequence of mal-administration and that the injustice has not been or will not be remedied, he may lay a special report on the case before the President.

Defiance of Recommendations:

According to section 12 if there is a “defiance of recommendations” by any public servant in any Agency with regard to the implementation of a recommendation given by the Mohtasib, the Mohtasib may refer the matter to the President who may, in his discretion, direct the Agency to implement the recommendation and inform the Mohtasib accordingly.

- 1) In each instance of “defiance”, a report by the Mohtasib shall become a part of the personal file or character roll of the public servant primarily responsible for the “defiance”.

Informal Dispute Resolution:

The Mohtasib may informally conciliate, amicably resolve, stipulate, settle or ameliorate any grievance without written memorandum, docketing complaint or issuing any official notice.

Bar of Jurisdiction:

No Court or other authority shall have jurisdiction,

- 1) to question the validity of any action taken, or intended to be taken, or order made, or anything done or purporting to have been taken, made or done under this Order;
- 2) to grant an injunction or stay or to make any interim order in relation to any proceedings before, or anything done or intended to be done or purporting to have been done by, or under the orders or at the instance of the Mohtasib.

Compensation:

Pursuant to section 14(4), where the Mohtasib finds the complaint to be false, frivolous or vexatious, he may award reasonable compensation to the Agency, public servant or other functionary against whom the complaint was made. The amount of such compensation shall be recoverable from the complainant as arrears of land revenue.

Pursuant to section 22, the Mohtasib may, after considering the explanation of concerned public servant, functionary or Agency, award reasonable costs or compensation to an

aggrieved party for any loss or damage suffered by him on account of any mal-administration. The awarded costs or compensation shall be recoverable as arrears of land revenues from the concerned public servant, functionary or Agency.

Representation to President:

Pursuant to section 32, any person aggrieved by a decision or order of the Mohtasib may, within thirty days of the decision or order, make a representation to the President, who may pass such order thereon as he may deem it.

Comments:

The Order provides very limited original powers to the Mohtasib to ensure quick implementation of his recommendations. It is recommended that the Mohtasib should be given original powers to punish mal-administration, initiate contempt proceedings against the public servants, functionaries or agencies charged for “defiance” of the “recommendations of the Mohtasib”.

There is also a possible conflict in the role of the Mohtasib between undertaking an alternative dispute resolution (“ADR”) mechanism, which may be seen as being lenient with the accused Agency, rather than adjudicating on the complaint. It is suggested that a further ADR mechanism should be removed from the powers of the Mohtasib to eliminate such ambivalence.

The awarding of damages and compensation require to be made compulsory for the Mohtasib for loss and/or damage, including mental and physical inconvenience caused to them through mal-administration.

NATIONAL ELECTRIC POWER REGULATORY AUTHORITY

Legislation:

Regulation of Generation, Transmission and Distribution of
Electric Power Act, 1997

Jurisdiction:

Pakistan

Functions of the Authority:

The Authority is responsible for providing licenses to electric power generation, transmission and distribution service providers, regulating the provision of electric power in Pakistan, setting the terms and conditions of the licenses, maintaining standards of service, setting tariff, and if appropriate re-newing the license.

Section 7(6):

In performing its functions the Authority shall protect the interests of *consumers*.

Section 31(2)(a):

Whilst determining the tariff the Authority shall protect *consumers* against monopolistic and oligopolistic prices.

Section 31(3)(b):

Whilst determining the tariff the Authority shall provide an opportunity for *customers* and interested persons to

participate meaningfully in the tariff approval process.

Section 39(1):

Any interested person may file a written complaint with the Authority against a licensee.

Section 46(2)(f):

The Authority may make rules for the procedure to resolve disputes between *consumers* and licensees.

Complaints:

Pursuant to section 39(1) consumers must address complaints about electric power services or service providers to the Authority directly.

It would, of course, be proper to first make a written complaint directly to the service provider by registered delivery or courier. If the consumer is still not satisfied with the response, a copy of the written complaint can be attached with the complaint to the Authority as evidence that the service provider is aware of the complaint and of their response thereto.

The complaint must specify the loss suffered in detail and the remedy sought, including financial compensation or damages, the determination of which must be explained.

Enforcement:

Pursuant to section 39(1), where a licensee contravenes any provision of the Act, rules or the terms and conditions of the license, the Authority can issue a show cause notice to the licensee.

If the licensee fails to comply with the terms and conditions of the license, the Authority may:

- (a) suspend or revoke the license (section 28).

Furthermore, the Authority may:

- (i) Permit the licensee to continue operating under specified terms and conditions, or
- (i) Contract with another person to take over the operation of facilities, or
- (ii) Appoint Administrator, and/or
- (iii) Impose a fine up to Rupees three hundred thousand for each violation for each day. In the case of a continued contravention the Authority may impose a higher penalty (section 29).

Comments:

Section 2(iv) provides a specific definition of a consumer as a person who purchases or receives electric power for consumption. Under section 39(1) 'any interested person' may submit a complaint, in our view, this would include an ordinary consumer.

Since there is no express mention about the power to award compensation or damages to consumers, it is not clear from the Act that the Authority can award compensation to a consumer or an end user in respect of a complaint.

It is submitted that if compensation or damages are not within the power of the Authority this would be a major lacunae in consumer protection provisions of the Act.

In our view the Authority has the power under section 7(6) or may impose it as a term or condition in the license under section 24(4)(1) to award damages/compensation to the consumer/complainant.

PAKISTAN TELECOMMUNICATION AUTHORITY

Legislation:

Pakistan Telecommunication (Re-Organization) Act, 1996

Jurisdiction:

Pakistan

Functions of the Authority:

The Authority is responsible for providing licenses to telecommunication service providers and regulating the telecommunication sector in Pakistan, setting the terms and conditions of the licenses, maintaining standards of service, and if appropriate re-newing the license.

Section 4(c):

To promote and protect the interests of *users* of telecommunication services in Pakistan.

Section 4(f):

To investigate and adjudicate on complaints and other claims made against licensees.

Section 21(4)(l):

Every license granted under this Act may, *inter alia*, contain obligations for the protection of *consumers'* interest.

Responsibilities of the Authority:

Section: 6(f):

The Authority shall ensure the interests of *users* of telecommunication services in Pakistan.

Complaints:

Pursuant to section 4(f) consumers must address complaints about telecommunication services or service providers to the Authority directly.

It would, of course, be proper to first make a written complaint directly to the service provider by registered delivery or courier. If the consumer is still not satisfied with the response, a copy of the written complaint can be attached with the complaint to the Authority as evidence that the service provider is aware of the complaint and of their response thereto.

The complaint must specify the loss suffered in detail and the remedy sought, including financial compensation or damages, the determination of which must be explained.

Enforcement:

Pursuant to section 23, where a licensee contravenes any provision of the Act, rules or the terms and conditions of the license, the Authority can issue a show cause notice to the licensee. The licensee is required to respond within 30 days.

If the licensee fails to:

- (a) respond to the notice, or

- (b) satisfy the Authority about the contravention, or
- (c) remedy the contravention within the time stipulated by the Authority,

the Authority may:

- (i) fine the licensee/service provider up to Rupees three hundred and fifty million, or
- (ii) suspend or terminate the license, impose additional conditions or appoint an Administrator to manage the affairs of the licensee.

Comments:

Unlike the NEPRA Act, 1997 there is no definition of who constitutes a ‘user’ under the PTA, although there is mention of ‘consumers interest’. In our view to exclude the ordinary consumer from the definition of ‘user’ defeats the intention to protect the ordinary consumer’s interest.

Since there is no express mention about the power to award compensation or damages to consumers, it is not clear from the Act that the Authority can award compensation to a consumer or an end user in respect of a complaint.

It is submitted that if compensation or damages are not within the power of the Authority this would be a major lacunae in consumer protection provisions of the Act.

In our view the Authority has the power under section 23(2)(b) or may impose it as a term or condition in the license under section 24(4)(l) to award damages/compensation to the consumer/complainant.

NATURAL GAS REGULATORY AUTHORITY¹

Legislation:

Natural Gas Regulatory Authority Ordinance, 2000

Jurisdiction:

Whole of Pakistan

Nature of Authority:

The Authority is responsible for fostering competition, improving efficiency of the availability, transportation and distribution of natural gas by providing licenses to the natural gas providers, regulating their activities, setting the terms and conditions of the licenses, maintaining standards of service, and if appropriate renewing/cancelling licenses.

Functions of the Authority:

Section 4(2)(d)

To promote effective competition in the undertaking of regulated activities.

Section 4(2)(h):

To protect the interests of consumers in accordance with the provisions of this Ordinance and rules.

¹ A Petroleum Regulatory Authority is also under consideration by the Government of Pakistan.

Section 4(2)(i):

To provide protection to retail consumers against anti-competition of the licensees.

Section 4(2)(j)

To resolve complaints and other claims against licensees for contravention of the provisions of this Ordinance or the rules.

Section 4(2)(k)

To resolve disputes between licensees and between licensees and consumers.

Section 18(2)

When determining tariff the Authority shall take into consideration the consumer protection provisions against monopolistic pricing.

Section 19(4)

No licensee shall charge any consumer for the supply of natural gas any sale price or minimum charge other than the sale price or minimum charge notified by the Federal Government.

Section 19(9)

The licensee shall be entitled to charge each retail consumer the applicable minimum charges notified by the Federal Government notwithstanding that no gas has been taken by such retail consumer during the period for which such minimum charges are levied.

Section 20(c):

The licensee shall not exercise undue discrimination against or show undue preference towards any consumers or class of consumers.

Section 21(4)(I):

Every license granted under this Act may, *inter alia*, contain obligations for the protection of *consumers'* interest.

Pursuant to section 2(iv) consumer includes a 'retail consumer', which is defined in section 2(xxi) as any person who receives gas for consumption (and not for delivery or re-sale), including any person who owns or occupies any premises connected to a supply of natural gas.

Offences:

Section 29:

1. Any person who undertakes any regulated activity in contravention of this Ordinance.
2. If any person, without lawful excuse, willfully or recklessly undertakes any regulated activity which causes physical damage to the person or property of another.
3. If any person does any act with the intention of interfering, without authorization, with any licensed regulated activity, and thereby causes damage to any facility, plant, equipment or material employed for such regulated activity.

4. Any person who attempts to commit or abets the commission of any offence under this Ordinance.

Punishments:

Section 29:

Section 29(1) - Imprisonment up to two years, and/or Fine.

Section 29(2) - Imprisonment up to three years, and/or Fine.

Section 29(3) - Imprisonment up to two years, and/or Fine.

Section 29(4) - Punishable with the same punishment as is provided for the offence.

License Enforcement Event

Section 21(2):

If the Authority, pursuant to the rules and the license, is of the opinion that:

- a) licensee has contravened any of the terms or conditions of the license.

Enforcement of Licenses:

Section 21(1):

In case of any violation of license requirements, the Authority shall have the power to in accordance with the rules and the license held by the licensee:

- a) levy fines or penalties on the licensee in such amount as the rules or its license shall provide;

- b) suspend the license or all or any of the regulated activities to which the license relates for such period as the Authority shall determine;
- c) take control of the management and conduct of all or any of the regulated activities to which that license related;
- d) revoke that license in its entirety;
- e) in the case of a license in respect of more than one regulated activity, revoke that license in respect of that activity; and
- f) take such other action as may be authorised by the rules or the license held.

Comments:

The Ordinance does not provide for a compulsory involvement of consumers in tariff and technical standards' determination process. Pursuant to section 18 the Authority makes the necessary tariff determination, which is then notified by the Government of Pakistan. The same procedure applies to retail consumers under section 19.

Notwithstanding section 20(c) (cited above), the ordinary retail consumer is placed under a disadvantage by section 20(d), wherein, 'the licensee shall not interrupt its service to its consumers except retail consumers unless it is 'expressly' agreed to the contrary between the licensee and the retail consumer. This appears to be an unrealistic provision, since the retail consumer has no opportunity to directly influence tariff determinations. It is much more likely that the retail consumer will have to agree gas supply on a standard contract and is therefore unable to vary or

negotiate the terms and conditions. There is, therefore, discrimination between the retail and other consumers in terms of the provision of non-interrupted supply.

According to section 27 technical standards are to be set following consultation with ‘interested persons’. There is, however, no definition of interested persons. It is, therefore, arguable that where technical standards affect retail consumers, then retail consumers are an interested person.

It also does not provide for compensation or damages to retail consumers in case of any damage, loss or inconvenience caused to them through the unwarranted conduct on the part of licensees.

Furthermore, the Ordinance leaves the complaint procedures unexplained.

PAKISTAN STANDARDS AND QUALITY CONTROL AUTHORITY ACT, 1996

Legislation:

Pakistan Standards and Quality Control Authority Act,
1996

Jurisdiction:

Whole of Pakistan

Nature of the Act:

To maintain and control quality and standards by granting licenses and certificates for the use of standard quality, conformity and/or safety marks in respect of particular article, product or process.

Enforcement:

The Act provides for the establishment of the Pakistan Standards and Quality Control Authority (under section 3 hereunder). Pursuant to section 15, the said Authority shall appoint Inspectors to enforce the Act.

Functions of the Authority:

Section 8:

- (i) Designing, measuring and testing instruments and test procedures;

- (ii) Inspection and testing of products and services for their quality, specification and characteristics, during use and for import and export purposes;
- (iii) To review matters which may be necessary for quality improvement of products or processes;
- (iv) Providing for the quality labeling standards which specify ingredients, performance, specification, usage, methods and other relevant quality control matters;
- (v) Grading the products when requested by manufacturers, or whenever necessary for the purpose of quality improvement;
- (vi) Setting up the mode of inspection and the manner in which samples may be obtained;
- (vii) Examination of manufacturing plants for the designated products or processes for approval of marks of the Authority;
- (viii) To stop manufacturing, storage and sale of such products which do not conform to the Pakistan or any other country's standards recognized by the Authority;
- (ix) Inspection and taking of samples of any material or product for examination as to whether any article or process in relation to which any of Authority mark has been used conform to the Pakistan standard or a standard of any other country recognized by the Authority or whether any of the Authority mark has been improperly used in relation to any article or process with or without license or certificate;

- (x) Granting, renewal, suspension, cancellation or withdrawal of a license or certificate for the use of any of the Authority marks;
- (xi) Framing and publishing, amending, revising or withdrawal of the Pakistan standards in relation to any article, product, process;
- (xii) Determination of Pakistan standards for the measurement of length, weight, volume, energy and materials;
- (xiii) Collection, circulation of statistics and other information relating to standardization, quality control, metrology, applied research;
- (xiv) Establishment, maintenance of libraries, museum, laboratories and accreditation of other laboratories for the purpose of furthering the practices of standardization, metrology and quality control;
- (xv) Communication with public and Government agencies on national and international levels, on matters connected with standardization and other activities of the Authority through circulars, books, public media or through seminars, symposia, workshops and printing and publishing such circulars and books;
- (xvi) Registration of inspection agencies;
- (xvii) Constitution of committees for carrying out the schemes and programmes of the Authority.

Offences:

Section 10:

No person shall use, in relation to any article, product or process or in the title of any patent or in any trade marks or design the Authority marks except under a license or certificate issued under this Act.

Section 11:

No person shall, without the previous permission of the Authority and subject to such conditions as may be prescribed, use:

- a) Any name which may resemble the name of the Authority or contain the expressions “Pakistan standard” or “Pakistan standard specification” or any abbreviation of such expression; or
- b) Any mark or trade mark in relation to any article or process containing the expressions “Pakistan standard” or “Pakistan standard specification” or any abbreviation of such expressions.

Section 14:

- 1) The Federal Government may, in consultation with the Authority and by notification in the official Gazette, prohibit, with effect from such date as may be specified in the notification, the manufacture, storage and sale of any article specified therein which does not conform to the Pakistan standard.
- 2) The Federal Government may, by notification in the official Gazette, require any article which conforms

to a particular Pakistan standard to be marked with such distinctive mark as may be specified in the notification.

Penalties

Section 20:

In the case of breach of Sections 10, 11 or 14 shall be punishable with:

Imprisonment up to 1 year, and/or

Fine not less than 30 thousand rupees, and/or

Forfeiture of any property with respect to which the contravention took place.

Section 22:

Whosoever contravenes any of the provisions of this Act or any rule made or notification issued thereunder shall, if no other penalty is elsewhere provided under this Act shall be punishable with:

Imprisonment up to 1 year, and/or

Fine not less than 50 thousand rupees.

Comments:

The Act provides for the representation of Federal Chamber of Commerce and Industry in the Board but excludes the most important stakeholder—the consumer. Similarly, the Advisory Council provides for only one consumer representative as compared to five from the chambers of commerce and industry. It is recommended that the

representation of consumers should be at least equal to the chambers of commerce.

The Act does not provide any complaint procedure for the consumers. If there is any complaint the consumer would therefore have to refer the matter to the Authority, which may at its discretion investigate the complaint.

The Act also makes no provisions for damages or compensations to the consumer who may have suffered loss, damage or inconvenience as a result of violations of the Act, rules or notifications issued hereunder.

The purview of the Act is limited to articles (defined by section 2(c)), processes (section 2(m)) and products (section 2(n)) but specifically excludes agricultural produce that is covered under the Agricultural Produce (Grading and Marking) Act, 1937. Furthermore, under section 25, the Federal Government has a wide power to exempt any article or class from the operation of the Act without being required to provide any justification for such an exemption. It is submitted that such a power is too wide and liable to arbitrary results.

WEST PAKISTAN PURE FOOD ORDINANCE, 1960

Legislation:

West Pakistan Pure Food Ordinance, 1960

Jurisdiction:

NWFP, Punjab, Sind, Baluchistan, Chitral, Dir, Kalam, Swat, Malakand Protected Areas and Tribal Area of Quetta Division.

Nature of the Ordinance:

The Ordinance consolidates and amends the law in relation to the preparation and the sale of foods.

Offences:

Section 3:

False Warranty.

Section 4:

Mixing and Selling Mixed Food.

Section 5:

Sale, Preparation, Manufacture, Import or Export of Unwholesome food intended for human consumption.

Section 6:

Sale or Manufacture for Sale of Food that is Adulterated or

Misbranded Foods or not of the Nature, Substance or Quality Demanded.

Section 7:

Pre-packed Foods that do not comply with Rules.

Section 8:

Sale of Foods that do not comply with Rules.

Section 9:

Unmarked or Unlabelled Sale of Banaspati, Margerine and Charbi.

Section 10:

Sale of Banaspati, Margerine and Charbi in Loose Unpacked Form.

Section 11:

Unlicensed Manufacture, Storage and Sale of Goods.

Section 13:

Food Poisoning (also Rule 33, West Pakistan Pure Food Rules 1965).

Responsibilities of the Local Authority:

Section: 15:

The Local Authority is responsible for enforcing the Ordinance within its jurisdiction and ensuring that food and drink sold in its area is in a pure and genuine state.

Complaints:

Pursuant to section 19 consumers have a specific right to address written complaints about the quality of foods and drink sold to a Food Inspector (appointed by the Local Authority under section 16). The complaint must request the Inspector to purchase a particular sample of food from a particular person against whom and which the complaint is being lodged. The sample will then be submitted to the Public Analyst for analysis of the sample.

The complaint must specify the loss suffered in detail and the remedy sought, including financial compensation or damages, the determination of which must be explained.

Costs:

The cost of the sample purchased shall be payable by the complainant. In the event that the sample is found by the Public Analyst to be in contravention of any provision of the Ordinance, the costs shall be refunded to the consumer/complainant.

In the event that the Local Authority is not enforcing the Ordinance or a Food Inspector has not been appointed the written complaint can be forwarded to the local Deputy Commissioner. Under section 35 if the Deputy Commissioner has reason to believe that the Ordinance is not being enforced, the Deputy Commissioner may appoint a public servant to enforce the provisions of the Ordinance.

There is some uncertainty about what constitutes a Local Authority under the Ordinance. According to section 2(15) a Local Authority means:

- (i) Municipal Committee or Corporation (constituted under the Municipal Administration Ordinance 1960).
- (ii) Local Council (constituted under the Basic Democracies Order 1959) other than a Union Council or Committee.
- (iii) Town Committee (constituted under the Electoral College Act, 1964).
- (iv) Any authority declared by Provincial Government Notification on the Official Gazette to be a Local Authority for the purpose of this Ordinance.

Pursuant to a NWFP amendment (under NWFP Adaptation of Laws Order 1975) a Local Authority means a Local Council (constituted under the NWFP Local Government Ordinance 1972).

Enforcement:

Pursuant to section 23, any contravention of sections 3 to 13 will be subject to the following penalties:

First Offence:

Imprisonment up to one year

Fine ranging from Rs. 100 to Rs. 2000

Second Offence:

Imprisonment not less than three months and up to two years.

Fine ranging from Rs. 500 to Rs. 10,000

Repeated or Large Scale or Serious Offences:

Imprisonment not less than

Contravention of sections 12, 18 or 21, or any Rules will be punishable with:

Imprisonment up to one year, and Fine

Sindh Amendment (pursuant to Sindh Amendment Act, 1973):

Offence under sections 12 or 21:

Imprisonment up to three years, and/or

Fine

Offences under sections 7 to 11 and 18:

Imprisonment up to five years but not less than six months, and/or

Fine ranging from Rs. 500.

Offences under sections 3 to 6 and 13:

Imprisonment up to seven years but not less than one year, and

Fine not less than Rs. 1000.

NWFP Amendment

Pursuant to section 23, any contravention of sections 3 to 13 will be subject to the following penalties:

First Offence:

Imprisonment up to three years.

Fine ranging from Rs. 1000 to Rs. 5000

Second Offence:

Imprisonment not less than three years and up to five years.

Fine ranging from Rs. 5000 to Rs. 10, 000

Repeated or Large Scale or Serious Offences:

Imprisonment not less than

Fine substitute 10 000 in place of 5000.

Comments:

This entire legislation suffers from the lack of uniformity between the provinces. For example, it is not clear what constitutes a Local Authority in a particular locality. This needs to be clarified. Furthermore, the penalties vary depending upon the particular province in which the offence is committed. In our view it is unacceptable that the consumer as a citizen of Pakistan is treated differently depending upon mere locality of the offence.

Since there is no express mention about the power to award compensation or damages to consumers, it is not clear from the Ordinance that a consumer can be awarded compensation in respect of a complaint and damage suffered.

It is submitted that if compensation or damages are not within the ambit of the Ordinance this is a major lacunae in consumer protection provisions of the legislative scheme.

CANTONMENTS PURE FOOD ACT, 1966

Legislation:

Cantonments Pure Food Act, 1966

Jurisdiction:

The cantonments in Pakistan.

Nature of the Act:

The Act prohibits the preparation and the sale of sub-standard foods in the cantonment areas of Pakistan.

Offences:

Section 3:

False Warranty.

Section 4:

Mixing and Selling Mixed Food.

Section 5:

Sale, Preparation, Manufacture, Import or Export of Unwholesome Food Intended for Human Consumption.

Section 6:

Sale or Manufacture for Sale of Food that is Adulterated or Misbranded Foods or not of the Nature, Substance or Quality Demanded.

Section 7:

Pre-packed Foods that do not comply with Rules.

Section 8:

Sale of Foods that do not comply with Rules.

Section 9:

Unmarked or Unlabelled Sale of Banaspati, Margarine and Charbi.

Section 10:

Sale of Banaspati, Margarine and Charbi in Loose Unpacked Form.

Section 11:

Unlicensed Manufacture, Storage and Sale of Goods.

Section 13:

Food Poisoning (also Rule 33, Cantonment Pure Food Rules 1967).

Responsibilities of the Local Authority:

Section: 14:

The Local Authority is responsible for enforcing the Ordinance within its jurisdiction and ensuring that food and drink sold in its area is in a pure and genuine state. Pursuant to section 2(14) the local authority under the Act is the local Cantonment Board (constituted under the Cantonments Act, 1924).

Complaints:

Pursuant to section 19 consumers have a specific right to address written complaints about the quality of foods and drink sold to a Food Inspector (appointed by the Local Authority/Cantonment Board under section 15). The complaint must request the Inspector to purchase a particular sample of food from a particular person against whom and which the complaint is being lodged. The sample will then be submitted to the Public Analyst for analysis of the sample.

The complaint must specify the loss suffered in detail and the remedy sought, including financial compensation or damages, the determination of which must be explained.

Costs:

The cost of the sample purchased shall be payable by the complainant. In the event that the sample is found by the Public Analyst to be in contravention of any provision of the Act, the costs shall be refunded to the consumer/complainant.

Enforcement:

Pursuant to section 23, any contravention of sections 3 to 13 will be subject to the following penalties:

First Offence:

Imprisonment up to six months, and

Fine ranging from Rs. 100 to Rs. 2000, and

Whipping

Second Offence:

Imprisonment not less than three months and up to two years, and

Fine ranging from Rs. 500 to Rs. 10, 000, and

Whipping

Repeated or Large Scale or Serious Offences:

Imprisonment not less than three years up to five years, and

Fine ranging from Rs. 5,000 to Rs. one lac, and

Whipping

Contravention of sections 12, 18, 21 or 28, or any Rules will be punishable with:

Imprisonment up to one year, and

Fine

Comments:

Since there is no express mention about the power to award compensation or damages to consumers, it is not clear from the Act that a consumer can be awarded compensation in respect of a complaint and damage suffered.

It is submitted that if compensation or damages are not within the ambit of the Act this is a major lacunae in consumer protection provisions of the legislative scheme.

PAKISTAN HOTELS AND RESTAURANTS ACT, 1976

Legislation:

Pakistan Hotels and Restaurants Act, 1976

Jurisdiction:

All hotels and restaurants in Pakistan.

Nature of the Act:

The Act seeks to control and regulate the rates and standard of service(s) provided by hotels and restaurants in Pakistan.

Offences:

Section 22(1):

Failure to Apply for Registration within the Prescribed Time (in accordance with section 5).

Section 22(2):

The Sale of Food or Beverages that are Contaminated, Not Prepared Hygienically or Served in Utensils that are not Hygienic or Clean.

Section 22(3):

Failure to Comply with Any Order or Direction of the Controller.

Sections 22(4) and 15:

Charging in Excess of a Fair Rate.

Section 22(5):

An Unregistered Restaurant Failing to Comply with Directives (pursuant to section 19(iv)).

Section 22(6):

An Unlicensed Hotel or Restaurant Using the Star Signs/Ratings.

Section 22(7):

Failure to Comply with Section 21 (provision of medical facilities).

Responsibilities of the Controller:

Section 3:

The Federal Government will by notification in the Official Gazette appoint a Controller, and such number of Deputy and Assistant Controllers as the Government may think appropriate, to enforce the provisions of this Act.

Complaints:

There is no specific consumer right under the Act, entitling the consumer to lodge a complaint against a hotel or restaurant. However, in our view, a complaint should be addressed in writing to the Controller.

The complaint must specify the loss suffered in detail and the remedy sought, including financial compensation or

damages, the determination of which must be explained.

Enforcement / Penalties:

Section 22(1) Offence:

Fine not exceeding Rs. 5,000

Continuing offence, an additional penalty of Rs. 1,000 per day.

Section 22(2) Offence:

Fine not exceeding Rs. 1,000.

Section 22(3) Offence:

Fine not exceeding Rs.1, 000.

Section 22(4) Offence:

Refund of the amount charged in excess of the Fair Rate (fixed under section 10).

First Offence:

Fine not exceeding Rs. 1,000.

Subsequent Offence:

Fine not exceeding Rs. 2,000.

Section 22(5) Offence:

Suspension of operation of the restaurant.

Fine not exceeding Rs. 5,000.

Section 22(6) Offence:

First Offence:

Fine not exceeding Rs. 1,000.

Subsequent Offence:

Fine not exceeding Rs. 2,000 per day.

Section 22(7) Offence:

Fine not exceeding Rs. 2,000.

Forfeiture of License, and

Cancellation of Registration.

Section 23:

In the case of company failing to comply with the provisions of this Act, every director, secretary, other officer or agent of the company shall be liable. Unless it is established that the contravention took place without his/her knowledge, or that he/she exercised due diligence to prevent the contravention.

Comments:

There is no express power or right that entitles the consumer to lodge a complaint with the Controller and the Controller to investigate such complaint. Presumably therefore any complaint that is made with the Controller is subject to the discretion and judgement of the Controller to determine whether he/she will entertain the complaint, and/or proceed with the same. This is a major lacunae from the consumer point of view.

There is also no express mention about the power to award compensation or damages to consumers, it is not clear from the Act that a consumer can be awarded compensation in respect of a complaint and damage suffered.

It is submitted that if compensation or damages are not within the ambit of the Act this is a major lacunae in consumer protection provisions of the legislative scheme.

PAKISTAN PENAL CODE, 1860

Legislation:

Pakistan Penal Code, 1860

Jurisdiction:

Pakistan

Nature of the Code:

The Code set forth the criminal penal code. The sections considered herein deal with the adulteration of food or drink.

Offences:

Section 272:

Whoever adulterates any article of food or drink, making it harmful, intending to sell the same as food or drink.

Section 273:

Whoever knowing any article of food or drink to be harmful, offers the same for sale.

Complaints:

It is submitted that the consumer may directly initiate legal action under the Code by registering a First Information Report (FIR) in the local Police Station/Thana. It will however be necessary to obtain a report from a recognized laboratory as evidence of an offence.

Enforcement:

Section 272:

Imprisonment up to six months, and/or

Fine up to Rs. 1,000.

Section 273:

Imprisonment up to six months, and/or

Fine up to Rs. 1,000.

Comments:

Since there is no express mention about the power to award compensation or damages to consumers, it is not clear from the Code that a consumer can be awarded compensation in respect of a complaint and damage suffered.

It is submitted that if compensation or damages are not within the ambit of the Code this is a major lacunae in consumer protection provisions of the legislative scheme.

DRUGS ACT, 1940

Legislation:

Drugs Act, 1940

Jurisdiction:

Pakistan

Nature of the Act:

The Act regulates the import, export, manufacture, distribution and sale of drugs.

Offences:

Section 18(a):

The manufacture for sale, to sell, or stock or exhibit for sale, or distribute:

- (i) Any sub-standard drug (section 16(1)).
- (ii) Any misbranded drug (section 17).
- (iii) Any patent or proprietary medicine, unless the true formula or ingredients are displayed in the prescribed manner and that it is intelligible to an ordinary medical practitioner.
- (iv) Any drug which makes the claims to cure or mitigate a disease.

- (v) Any drug in contravention of this Act or rules made hereunder.

Section 18(b):

To sell, or stock for sale, distribute any drug that has been imported or manufactured in breach of any provision of this Act.

Section 18(c):

To manufacture, stock or exhibit for sale, or distribute any drug in breach of license.

Section 35:

The advertisement, public offer or sale of patent or proprietary medicines or pharmaceutical specialities not recognized by pharmacopoeias shall be prohibited unless approved for public consumption by the Director, Central Drugs Laboratory.

Section 36:

No person shall sell in a public street, park, transport offer for sale or free of charge any medicine.

Complaints:

Pursuant to section 26 consumers –‘any person’- have a specific right to submit for analysis to a Government Analyst any drug/s purchased and to obtain a signed and certified report any such analysis.

Pursuant to section 32, prosecution can only be instituted by an Inspector (and not a consumer). In our view a consumer may submit a written complaint to the Inspector,

who can then proceed with the matter under section 22(1)(j), wherein the Inspector has such powers as may be necessary to enforce the Act and rules.

The complaint must specify the loss suffered in detail and the remedy sought, including financial compensation or damages, the determination of which must be explained.

Costs:

The cost of the sample purchased shall be payable by the complainant under section 26.

Enforcement:

Section 27:

For the manufacture for sale, stocks or exhibits for sale, or distributes any drug in breach of this Chapter of the Act or rules.

Imprisonment up to three years, and/or

Fine (Fine not stated in the Act).

Section 28:

False Warranty or Misuse of Warranty.

Imprisonment up to one year, and/or

Fine up to Rs. 500.

Section 30:

Subsequent offence under section 27-Imprisonment up to five years, and/or Fine.

Subsequent offence under section 28 – Imprisonment up to two years, and/or Fine.

Section 37:

Offences under sections 35 and 36-Imprisonment up to two years, and/or Fine.

Comments:

Since there is no express mention about the power to award compensation or damages to consumers, it is not clear from the Act that a consumer can be awarded compensation in respect of a complaint and damage suffered.

It is submitted that if compensation or damages are not within the ambit of the Act this is a major lacunae in consumer protection provisions of the legislative scheme.

Furthermore, the consumer has no right to directly initiate legal action under the Act, it is the Inspector that enjoys the right to initiate legal process. This again is a major lacunae in the consumer provisions of the Act.

DRUGS ACT, 1976

Legislation:

Drugs Act, 1976

Jurisdiction:

Pakistan

Nature of the Act:

The Act regulates the import, export, manufacture, distribution and sale of drugs, including fixing maximum prices for drugs (section 12).

Offences:

Section 23(a):

The manufacture for sale, to sell, or stock or exhibit for sale, or distribute:

- (i) Any spurious drug.
- (ii) Any counterfeit drug.
- (iii) Any misbranded drug.
- (iv) Any adulterated drug.
- (v) Any sub-standard drug.
- (vi) Any drug after date of expiry.

- (vii) Any drug not registered or in accordance with the conditions of registration.
- (viii) Any drug which makes the claims to cure or mitigate a disease.
- (ix) Any drug that is dangerous if taken in accordance with the recommended dosage and/or duration
- (x) Any drug in contravention of this Act or rules made hereunder.

Section 23(b):

To manufacture for sale any drug, except under and in accordance with conditions of the license.

Section 23(c):

To sell any drug, except under and in accordance with conditions of the license.

Section 23(g):

No person shall sell or offer for sale in a public street, park, transport any drug.

Section 23(h):

To import, manufacture for sale, or seal any substances/s, which is not a drug, in a manner that it intended or likely to cause the public to believe it to be a drug.

Section 23(i):

To sell any drug without having a warranty in the prescribed form bearing the name and batch number of any

drug issued by:

- (i) Pakistani manufactured drug – the manufacturer holding a valid license and permission to manufacture that drug or by his authorised agent.
- (ii) Imported drug- the manufacturer or importer.

Section 23(j):

To apply an incorrect batch number to a drug.

Section 34:

In the case of a company or institution, every director, partner and/or employee shall be guilty unless it is proven that the offence was committed without his knowledge or consent.

Complaints:

Pursuant to section 30, prosecution can only be instituted by a Federal or Provincial Inspector (and not a consumer). In our view a consumer may submit a written complaint to the Inspector, who can then proceed with the matter under section 18(j), wherein the Inspector has such powers as may be necessary to enforce the Act and rules.

The complaint must specify the loss suffered in detail and the remedy sought, including financial compensation or damages, the determination of which must be explained.

Enforcement:

Section 27(1):

- (a) For the export, import, manufacture for sale, any spurious drug or a drug that has not been registered.
- (b) The manufacture for sale of unlicensed drugs.
- (c) Import of drugs without license.

Imprisonment ranging from three years up to ten years, and

Fine up to one lac rupees.

Section 27(2):

- (a) Import, manufacture for sale or sell any counterfeit drugs, or
- (b) To provide a false warranty that the drug does not contravene section 23, or
- (c) Applies or permits to be applied to any drug sold, stocked or exhibited for sale a warranty given in respect of another drug, or
- (d) Import, manufacture for sale or sell any drug under a name other than the registered name,
- (e) Export, import, manufacture for sale or sell any drug with a substance so as to reduce its quality or strength.

Imprisonment up to seven years, and

Fine up to Rs. one lac.

Section 27(3):

Whoever obstructs an Inspector in the exercise of power conferred on him under this Act.

Imprisonment up to one year, and/or

Fine up to Rs. 10, 000.

Section 27(4):

Whoever contravenes any provision of this Act or rule.

Imprisonment up to five years, and/or

Fine up to Rs. 50, 000.

Section 28:

Subsequent Offences:

(1) An offence under section 27(1)

Imprisonment for life, or

Imprisonment not less than five years and a fine up to Rs. two lacs.

(2) An offence under section 27(4)

Imprisonment up to seven years, and/or

Fine up to Rs. one lac.

Section 29:

Forfeiture :

- (1) Contravention of any provision of this Act or rule, the stock of the drug if punishable under section 27(1), equipment used for its manufacture or sale, including packaging, the conveyance used for its transportation be forfeited.
- (2) Any drug that contravenes the provisions of this Act may be forfeited.

Comments:

Since there is no express mention about the power to award compensation or damages to consumers, it is not clear from the Act that a consumer can be awarded compensation in respect of a complaint and damage suffered.

It is submitted that if compensation or damages are not within the ambit of the Act this is a major lacunae in consumer protection provisions of the legislative scheme.

Furthermore, the consumer has no right to directly initiate legal action under the Act, it is the Inspector that enjoys the right to initiate legal process. This again is a major lacunae in the consumer provisions of the Act.

PAKISTAN PENAL CODE, 1860

Legislation:

Pakistan Penal Code, 1860

Jurisdiction:

Pakistan

Nature of the Code:

The Code set forth the criminal penal code. The sections considered herein deal with the adulteration of drugs.

Offences:

Section 274:

Whoever adulterates any drug or medical preparation so as to lessen its efficacy or affect its operation, or making it harmful.

Section 275:

Whoever knowing a drug or medical preparation to be adulterated sells the same, or offers it for sale, or issues it from a dispensary as unadulterated.

Section 276:

Whoever knowing a drug or medical preparation to be a different drug sells the same, or offers it for sale, or issues it from a dispensary as the original drug.

Complaints:

It is submitted that the consumer may directly initiate legal action under the Code by registering a First Information Report (FIR) in the local Police Station/Thana. It will however be necessary to obtain a report from the Federal or Provincial Drugs Laboratory (sections 14 to 16, Drugs Act, 1976) duly certified by the Government Analyst.

Enforcement:

Section 274:

Imprisonment up to six months, and/or

Fine up to Rs. 1,000.

Section 275:

Imprisonment up to six months, and/or

Fine up to Rs. 1,000.

Section 276:

Imprisonment up to six months, and/or

Fine up to Rs. 1,000.

Comments:

Since there is no express mention about the power to award compensation or damages to consumers, it is not clear from the Code that a consumer can be awarded compensation in respect of a complaint and damage suffered.

It is submitted that if compensation or damages are not

within the ambit of the Code this is a major lacunae in consumer protection provisions of the legislative scheme.

ISLAMABAD CONSUMER PROTECTION ACT, 1995

Legislation:

Islamabad Consumer Protection Act, 1995.

Nature of the Act:

The Act provides for the promotion and protection of consumer interests, and the establishment of consumer councils.

Jurisdiction:

Islamabad Capital Territory.

The Act only relates to 'consumers', which is defined in section 2(c), as any person who buys goods or hires any goods or services for a consideration howsoever and specifically excludes the purchase of goods for re-sale or commercial purposes. It also includes any beneficiary of the services. 'Services' are defined in section 2(e).

Consumers Protection Council:

Pursuant to section 5, it is responsibility of the Council to determine, promote and protect the rights of consumers, the formulation and implementation of policies thereto, and co-ordination between the Council, manufacturers, producers, suppliers and consumers, inter alia, in the following matters:

- i) protection against marketing of goods which are hazardous to life and property;

- ii) the provision of information about the quality, quantity, potency, purity, standard and price of goods and services;
- iii) access to a variety of goods at competitive prices;
- iv) redress against unfair trade practices of unscrupulous exploitation of consumers;
- v) consumer education; and
- vi) easy availability of essential services.

Offences:

1. Unfair Trade Practice, Section 2(f):

Unfair trade practice which, for the purpose of sale, use or supply of any goods or for provision of any service or for their promotion, includes one or more of the practices that:

- a) cause loss or injury through hoarding, black-marketing, adulteration, selling of expired drugs, food items and commodities unfit for human consumption;
- b) charge for the goods and service in excess of the prices fixed by an authority to do so under any law for the time being in force;
- c) make any statement, whether orally or in writing, or by chalking on walls or through sign boards or neon-signs or by distributing pamphlets or by publication in any manner, including through electronic media, by :

- i) false representation about standard, quality, quantity, grade, composition, style or mode of a particular goods or service;
- ii) false representation of any rebuilt, second-hand, renovated, reconditioned or old goods as new goods;
- iii) false representation that the goods or services have a sponsorship or approval of a competent agency or authority or possess specified characteristics, performance, accessories or benefits which such goods or services do not have;
- iv) representation about the goods or, as the case may be, services with regard to performance, characteristics, accessories, uses or benefits which such goods or services do not have;
- v) false representation that the goods or services offered fulfil the prescribed standard fixed by local or international authorities;
- vi) giving misleading representation of the need for, or the usefulness of any goods or services;
- vii) falsely giving to the public any warranty or guarantee of the performance, specification, required ingredients, efficacy or length of life of a product or any goods that is not based on an adequate or proper tests thereof;
- viii) falsely offering for sale or on lease any premise, house, shop or building with specified facilities or with the promise to

deliver possession thereof within a specified period or without any escalation in price or by falsely representing that such premise, house, shop or building is being sold, built or constructed in accordance with the approval of plans, specification and approval of the concerned authorities;

- ix) misleading the public concerning the price at which a product or products or goods or services have been or are ordinarily sold or provided;
- x) giving false or misleading facts regarding facilities available in the private educational institutions or falsely representing that such institutions have proper approval of the concerned authorities or organizations;
- xi) falsely representing for provision of services by professionals and experts, including by doctors, engineers, advocates, mechanics, teachers, *hakeems* and spiritual healer;
- xii) giving false or misleading facts disparaging the goods, services or trade of another person, firm, company or business concern;
- xiii) advertising for the sale or supply at a bargain price of goods or services which are not intended to be offered for sale or supply at such price;
- xiv) offering of gifts, prizes or other items with the intention of not providing them as offered or

creating the impression that some thing is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction; and

- xv) falsely gives description of commodities and services offered through mail order.

2. False Advertising, Section 7(1):

Causing loss to a consumer, financially or otherwise, by making advertisements which are not authorized by law for the sale or hiring of goods or services or any property, movable or immovable, or to solicit deposits for repayment at higher rates of profits or interest.

Complainants:

‘Complainant’ – Section 2(b), may be:

- (i) a consumer,
- (ii) consumer association, or
- (iii) the Federal Government, Chief Commissioner, Capital Development Authority or any person or agency authorized by them.

Procedure Section 8

The consumer must submit the complaint with the Court of Session, Islamabad.

The Council in the case of unfair trade practice must also submit the complaint to the Court of Sessions, Islamabad.

Upon receipt of a complaint (as aforementioned) the Court

may issue notice of complaint to be served on the respondent, requiring a reply thereto within seven (7) days.

Following consideration of the complaint and reply, and an opportunity to hear the said parties, or even if no reply is received, the Court after such enquiry as it deems fit and proper, may pass such order as circumstances may require.

Enforcement:

Infringement of any consumer protected right under section 5:

Imprisonment which may stand to two years, and/or Fine which may extend to forty thousand rupees, or both.

Infringement of any consumer protected right under section 7:

Imprisonment which may stand to two years, and/or Fine which may extend to thirty thousand rupees, or both.

Compensation:

The Court can order for payment of compensation to the consumer to the extent the consumer has suffered any damage or loss through any unfair trade practice.

Confiscation of Property:

The Court may order for confiscation of any goods or material or direct for their destruction to ensure protection of the rights of consumers.

Appeals :

An appeal from the Court of Session shall be made to the

High Court Code of the Criminal Procedure 1898 shall apply *mutatis mutandis*.

Comments:

The Act provides a narrow definition of a consumer. Although it is not clear from the language of the Act, it would appear that the public sector, which is a major service- provider in Pakistan is intended to be excluded from the operation of this Act. It is recommended that the definition of a consumer should be expanded to include goods and services that are provided by the state or public sector. Such goods and services are paid for in the form of direct and indirect taxation. In our view taxes, duties, fees, etc., constitute consideration.

Again consumers appear to be subject to a slow and expensive judicial process for the disposal of consumer complaints. Courts of session are already over-burdened with current work and thus may not be able to quickly dispose of consumer cases. In our view, the court procedure should be simplified, whereby the consumer is not inhibited from approaching the court without legal representation. Otherwise, it simply become too costly and complex to pursue a consumer complaint through the court process.

Furthermore, the burden for evidence needs to be shifted onto the supplier by an explicit inclusion of the principle of *caveat vendor*.

Notwithstanding the three representatives of consumer associations, one from the business community, a lady social worker, and the chairman of the Council, who will be a prominent social worker permanently residing in

Islamabad, the Council is weighted in favour of government members. There is therefore, an overall balance that renders the Council somewhat bureaucratic. The balance needs to be a least equal, so that there is an equal representation of government officials and private individuals appointed to the Council, with a casting vote given to the chairperson.

Under Section 2(b) the Council is not defined as possible complainant, whereas in our opinion the Council should be able to proceed as a complainant (as is the case under NWFP Consumer Protection Act 1997).

NORTH WEST FRONTIER PROVINCE CONSUMER PROTECTION ACT, 1997

Legislation:

North West Frontier Province Consumer Protection Act, 1997.

Nature of the Act:

To provide for fair commercial practices, promotion and protection of consumer interests and speedy redress of consumer complaints.

Jurisdiction:

Whole of North West Frontier Province.

The Act only relates to 'consumers', which is defined in section 2(c), as any person who buys goods or hires any goods or services for a consideration howsoever and specifically excludes the purchase of goods for re-sale or commercial purposes. It also includes any beneficiary of the services. 'Goods' and 'Services' are defined in section 2(g) and (n) respectively.

Consumers Protection Council:

Pursuant to section 10, it is responsibility of the Council to determine, promote and protect the rights of consumers, the formulation and implementation of policies thereto, and co-ordination between the Council, manufacturers, producers, suppliers and consumers, inter alia, in the following matters:

- i) protection against marketing of goods which are hazardous to life and property;
- ii) the provision of information about the quality, quantity, potency, purity, standard and price of goods and services;
- iii) access to a variety of goods at competitive prices;
- iv) redress against unfair trade practices of unscrupulous exploitation of consumers;
- v) consumer education; and
- vi) easy availability of essential services.

Offences:

1. Unfair Trade Practice, Section 2(f):

Unfair trade practice which, for the purpose of sale, use or supply of any goods or for provision of any service or for their promotion, includes one or more of the practices that:

- a) cause loss or injury through hoarding, black-marketing, adulteration, selling of expired drugs, food items and commodities unfit for human consumption;
- b) charge for the goods and service in excess of the prices fixed by an authority to do so under any law for the time being in force;
- c) make any statement, whether orally or in writing, or by chalking on walls or through sign boards or neon-signs or by distributing pamphlets or by

publication in any manner, including through electronic media, by :

- i) false representation about standard, quality, quantity, grade, composition, style or mode of a particular goods or service;
- ii) false representation of any rebuilt, second-hand, renovated, reconditioned or old goods as new goods;
- iii) false representation that the goods or services have a sponsorship or approval of a competent agency or authority or possess specified characteristics, performance, accessories or benefits which such goods or services do not have;
- iv) representation about the goods or, as the case may be, services with regard to performance, characteristics, accessories, uses or benefits which such goods or services do not have;
- v) false representation that the goods or services offered fulfil the prescribed standard fixed by local or international authorities;
- vi) giving misleading representation of the need for, or the usefulness of any goods or services;
- vii) falsely giving to the public any warranty or guarantee of the performance, specification, required ingredients, efficacy or length of life of a product or any goods that is not based on an adequate or proper tests thereof;

- viii) falsely offering for sale or on lease any premise, house, shop or building with specified facilities or with the promise to deliver possession thereof within a specified period or without any escalation in price or by falsely representing that such premise, house, shop or building is being sold, built or constructed in accordance with the approval of plans, specification and approval of the concerned authorities;
- ix) misleading the public concerning the price at which a product or products or goods or services have been or are ordinarily sold or provided;
- x) giving false or misleading facts regarding facilities available in the private educational institutions or falsely representing that such institutions have proper approval of the concerned authorities or organizations;
- xi) falsely representing for provision of services by professionals and experts, including by doctors, engineers, advocates, mechanics, teachers, *hakeems* and spiritual healer;
- xii) giving false or misleading facts disparaging the goods, services or trade of another person, firm, company or business concern;
- xiii) advertising for the sale or supply at a bargain price of goods or services which are not intended to be offered for sale or supply at such price;

- xiv) offering of gifts, prizes or other items with the intention of not providing them as offered or creating the impression that some thing is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction; and
- xv) falsely gives description of commodities and services offered through mail order.

2. False Advertising, Section 7:

Causing loss to a consumer, financially or otherwise, by making advertisements which are not authorized by law for the sale or hiring of goods or services or any property, movable or immovable, or to solicit deposits for repayment at higher rates of profits or interest.

Complainants:

‘Complainant’ – Section 2(b), may be:

- (i) a consumer,
- (ii) a recognized consumer association, or
- (iii) the Government, concerned Council, civic development authority or local body or a person authorized by the aforesaid bodies.

Procedure:

Jurisdiction – Section 12:

Any complainant can file a complaint with the District Magistrate, within the limit whose jurisdiction:

- a) the opposite party or parties reside, carries on business or works for gain, or
- b) where the District Magistrate permits, or
- c) the opposite parties actually acquiesce to the jurisdiction, and
- d) cause of action wholly or party arises.

Complainants – Section 13:

Complaint may be filed by persons defined as complainants under section 2(b) within ten (10) days of the sale, delivery or rendering of service. The district Magistrate may allow an extension of up to sixty (60) days from the expiry of the warranty or guarantee period to file a complaint, if satisfied that there was sufficient cause for the delay. If a guarantee period is not specified by the supplier, it shall be one year from the date of purchase.

Procedure – Section 14:

Upon receipt of a complaint (as aforementioned) the District Magistrate may dispose of the matter himself / herself or transfer the matter to a subordinate magistrate.

A copy of the complaint to be served on the respondent, requiring a reply thereto within thirty (30) days or such extended period not exceeding fifteen (15) days.

If the complainant fails to respond or challenges the allegations the District Magistrate shall proceed to ‘settle’ the dispute.

Defects:

Where a defect (as defined by section 2-e) is alleged, a sealed sample of the good may be sent to a laboratory (as specified under section 2 (I)) for test or analysis for a report within thirty (30) days or any such period prescribed by the District Magistrate.

Fees for Tests / Analysis:

Before directing any tests or analysis the District Magistrate shall require the deposit of such sums as may be specified for payment to the laboratory. In the event the complainant succeeds, the fees shall be recovered from the respondent.

Report of Test / Analysis:

A copy of report shall be provided to the respondent.

Response:

The District Magistrate shall receive, if any, objections to the report.

Hearing:

Following consideration of the complaint and reply, and an opportunity to hear the said parties, the District Magistrate, may pass such order as circumstances may require in accordance with section 15.

Section 15:

The district Magistrate may order any of the following:

- a) to remove the defect.

- b) to replace the goods with goods of similar description.
- c) to return to the complainant the price paid alongwith other charges.
- d) to do such other things for compliance to meet the manufacturer's obligation under sections 4, 5 and/or 6 of the Act.
- e) payment of compensation.

Enforcement:

Infringement of any consumer protected right under section 10:

Imprisonment which may extend to two years, and/or Fine which may extend to fifty thousand rupees, and compensation/relief.

Infringement of any consumer protected under section 7:

Imprisonment which may extend to two years, and/or Fine which may extend to twenty-five thousand rupees.

Compensation:

The Court can order for payment of compensation to the consumer to the extent the consumer has suffered any damage or loss through any unfair trade practice.

Confiscation of Property:

The Court may order for confiscation of any goods or material or direct for their destruction to ensure protection of the rights of consumers.

Defective Products:

Removal of defects from the goods or replacement of the defective goods.

Appeals:

An appeal may be submitted before the Court of Session within thirty days from the date of the order by the District Magistrate and the provisions of the Code of Criminal Procedure 1898 shall apply *mutatis mutandis*.

Comments:

The Act provides a narrow definition of a consumer. Although it is not clear from the language of the Act, it would appear that the public sector, which is a major service-provider in Pakistan is intended to be excluded from the operation of this Act. It is recommended that the definition of a consumer should be expanded to include goods and services that are provided by the state or public sector. Such goods and services are paid for in the form of direct and indirect taxation. In our view taxes, duties, fees, etc., constitute consideration.

Again consumers appears to be subject to a slow and expensive judicial process for the disposal of consumer complaints. Courts of sessions are already over-burdened with current work and thus may not be able to quickly dispose of consumer cases. In our view, the court procedure should be simplified, whereby the consumer is not inhibited from approaching the court without legal representation. Otherwise, it simply become too costly and complex to pursue a consumer complaint through the court process.

The present Act appears to be an elaboration of the Islamabad Consumer Protection Act 1995, with addition that the process is quasi-judicial, beginning with the District Magistrate rather than in the Courts. Whereas under the Islamabad Act the matter is dealt with by the Court of Session, in the NWFP the appeal lies with the Court of Session. Arguably, this represents a lesser degree of commitment to consumer rights under the NWFP legislation.

Time limits stipulated under section 13 serve to complicate the legal process, whereby the ordinary consumer is placed under needless hardship. Moreover, the initial time limit of within ten days of sale, delivery or rendering of service is unrealistic and harsh. It effectively operates in favour of the supplier.

Furthermore, the burden of costs against the consumer for the testing or analysing alleged defective goods would again serve to deter the ordinary consumer from seeking a remedy under the law.

CONSUMER RIGHTS COMMISSION OF PAKISTAN

Consumer Rights Commission of Pakistan (CRCP), established in 1998, is an independent, non-profit, non-political and non-governmental organization, which is not supported by any industry or commercial sector. CRCP is the first comprehensive consumer rights protection body in Pakistan approaching the issue in holistic terms.

Mission Statement

To articulate and promote the interests and rights of consumers at all socio-economic levels, and facilitate the emergence of an organized consumer movement in Pakistan.

Aims and Objectives

- To encourage and support the formation of consumer groups and organizations at all socio-economic levels of society.
- To create awareness among different categories of consumers, especially the marginalized groups about their roles, rights and responsibilities.
- To undertake advocacy and lobbying activities for the enactment and implementation of improved legislation on consumer protection.
- To intervene on behalf of consumers, while seeking active support and participation of existing consumer groups, where a regulatory or redress framework is available.

- To encourage greater coordination among civil society initiatives and individual efforts for consumer protection.
- To improve understanding of existing and emerging issues concerning the consumer protection at the grass roots and policy-making levels.
- To take appropriate measures to check unfair trade practices including misleading product information, and supply of substandard goods and services.