

The Practice of Consumer Protection in the Pakistani Legal System

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Abstract

Buyer's worth is a concept which has the power to make or break a brand. The device of tort has over the years proven to be of immense value to this concept. Consumers can choose to sue in tort or claim damages based on what they perceive should have been the product or service, which they paid for. Tort as a construct of law is absent from the legal practice in Pakistan. Given the lack of employment of this device, it will be seen how, if at all, it aids the construct of Consumer Protection in Pakistan. The assessment will be qualitative so as to evaluate and see the quality of any such protection, if it exists within Pakistan.

Introduction

Traynor J stated, ‘a manufacturer incurs an absolute liability when an article that he has placed on the market, knowing that it is to be used without inspection, proves to have a defect that causes injury to human beings.’¹ This statement extracted from the judgment of an English case reflects the importance of producers to observe extra care where consumers are involved. Consumers have certain rights which are internationally recognized which are; right to be compensated i.e. redress, right to be heard, satisfaction of basic needs, safety, element of choice, information provided to the consumers, consumer education, representation, a healthy environment. The significance of consumer protection can be considered by the fact that product liability falls under the ambit of strict liability which caters to reduce the flow of defective products to the market and increases overall economic efficiency. Interestingly, Stapleton calls this ‘moral enterprise liability’ the idea behind it being that if in seeking profit, an enterprise causes certain type of loss, ‘it should be legally obliged to pay compensation to the victim.’²

A. The case for Pakistan

In Pakistan applying Stapleton’s moral enterprise liability, the case is a similar one. As producers gain profit by selling their products so if a certain type of loss is incurred by the consumer, then he has a right to be compensated. In a 2005 case,³ despite the fact that a plot could not be regarded as a product, although the judge though could not hand over an alternative plot, he considered directions which could be given to level the plot and to make it construction worthy. Thus, compensation to be made by leveling the plot and making it construction worthy, being a right of consumer, was guaranteed by the court. This reflects that consumer

¹ *Escola v Coca-Cola Bottling Co of Fresno* (1994) 150 P 2d 436.

² Jane Stapleton, *Products Liability* (Cambridge University Press 1994) ch 8.

³ *Malik Khalid Mahmood v Defence Housing Authority Phase I*, Rawalpindi (Case no. 27) PLJ 2013 Tr, C (Consumer Court) PCPA 2005.

protection does exist in Pakistan, in light of the element of compensation being provided.

The most essential right of consumers is their safety and satisfaction of basic needs. It should be noted that it is the paramount responsibility of the State to secure interests of the individuals such as to satisfy their basic needs including water, food, clothing etc. But where the matter is of safety, the manufacturer of the product has the core responsibility to ensure that the product is of satisfactory quality and safe for the consumption of consumers.

In the famous case of *Donoghue v Stevenson*⁴, the product was found to be unsatisfactory as there was a decomposed snail inside the beverage purchased and consumed by the applicant. Contrasting a Pakistani case⁵, where a worm was found inside a beverage, the product can be said to interfere with the safety of the consumer. In this case however, since no damage was caused, compensation was not provided.

B. The Consumer and the Manufacturer

Given that consumer protection is closely linked with the safety of consumers, it needs to be determined who to regard as a manufacturer, as this entity will bear the responsibility to ensure safety of its customers. In addition to this, it needs to be determined who fulfills the definition of a consumer, as it is this entity for whom security needs to be provided.

Punjab Consumer Protection Act 2005 s. 2(h) includes 'person or entity' who is in 'business of manufacturing a product for purpose of trade or commerce', or involved in labeling of product, or as seller who exercises control over 'design', 'construction or quality of product' or who 'assembles' a product or is a seller of a product of foreign manufacturer and 'administers' or 'assumes' warranty obligations of product. This also includes those who modify product for sale or distribution. In a case⁶, the

⁴ *Donoghue v Stevenson* (1932) AC 562.

⁵ *Coca-Cola Beverages Pakistan Limited v Ashiq Ali* (2014) PLD 2014 Lahore 196.

⁶ *Sui Northern Gas Pipelines Ltd v Ch. Muhammad Zahid* (2015) PLD 31.

Gas Supply Company was not considered a ‘manufacturer’ of a product as defined in s 2(h) & 4 of the Punjab Consumer Protection Act (2005) as it was only involved in the supply of the gas.

Further it needs to be considered who can fit within the ambit of a consumer having right to safety that we are looking at the current stage. Section 2(c) Punjab Consumer Protection Act 2005⁷ defines ‘consumer’ as one who ‘buys or obtains on lease any product for consideration and includes any user of such product but does not include a person who obtains any product for resale’ or ‘commercial purpose’ or ‘hires any services for a consideration and includes any beneficiary of such services’ which was reflected in a case⁸, where it was stated that in order to be a consumer under PCPA 2005 a person must hire ‘services’ for a certain consideration from a service provider.

C. Problems with Consumer Protection in Pakistan

However, moving to the rights dealing with information being provided to the consumers and consumer education, it should be noted that in Pakistan ignorance of Consumer laws is major factor contributing towards the ineffectiveness of laws of tort. Various leading organizations advocating for these laws include Consumer Rights Commission of Pakistan,⁹ The Network for Consumer Protection in Pakistan and Helpline Trust. The Human Rights Group has said that lack of effective laws result in ‘artificial shortage of essential commodities, arbitrary price hikes, poor quality of products and service, sale, hazardous products and misleading advertisements. In the United Kingdom surveys are of significance and have proven that more than 9% out of 10% consumers agree that they are confident and savvy customers (92%) and carefully weigh up the features and price to make an informed decision (93%).

⁷ Hereafter ‘PCPA 2005’.

⁸ *Muhammad Ameer Qazi v Muhammad Asif Ali* (2015) PLD 235.

⁹ Hereafter ‘CRCP’.

Most consumers know they have a right to return a product bought by phone, post or internet 4 days after it is delivered (70%).¹⁰ Thus, effective consumer protection mirrors consumer activism. Unfortunately, in Pakistan no such statistics can be found reflecting the awareness of the consumers. There are no campaigns or advertisements being carried out to educate the consumers. Due to this the consumers at large scale are not educated and are not aware of their rights, nor do they demand quality or check for it themselves. This has serious drawbacks in Pakistan such as unhygienic products being sold as consumers accept whatever is sold to them which undermines the effectiveness of the consumer protection system. Recently, in Pakistan the issue of unhygienic meat was a popular problem. About 77,000 kg of meat was seized in the 3 months from different areas of the country. Dog and Donkey meat and meat of sick and dead animals was being sold, portraying it to be healthy beef or mutton.¹¹ Not only was this a health concern, but also raised issues of morality as Islam, the popular religion in Pakistan, has strict injunctions for the consumption of meat. Thus, if consumers had not been deprived of their right of being educated, such issues wouldn't have come forth.

The consumers possess the right of choice and representation being made to them. This includes that the consumer should be able to select from a range of products and services, offered at competitive prices with an assurance of satisfactory quality. It should be noted that consumer is provided with the right to choose to select from a range of products when one goes to purchase but the issue that arises is of representation and satisfactory quality. This can be considered by bringing to light the previously discussed case of the DHA Authority¹², where the plot was not of satisfactory quality reflecting that faulty services were provided though plot couldn't be regarded as a product but the representation made of the services provided didn't match the standard of services that were given. On the

¹⁰ Martin Loughlin and Cal Viney, *The Coalition and The Constitution* (Seldon, Anthony and Finn, Mike, (eds.), Cambridge University Press 2015), 59.

¹¹ 'Meat matters: Feasting on dogs and donkeys' *The Express Tribune* (Faisalabad, 17 July 2011) <<https://tribune.com.pk/story/211439/meat-matters-feasting-on-dogs-and-donkeys/>> accessed 12 February 2018; Khalid Hasnain, 'Beware of the meat you eat' *Dawn* (Lahore, 18 March 2015) <<https://www.dawn.com/news/1170277>> accessed 12 February 2018.

¹² *Malik Khalid Mahmood (n 3)*.

contrary, in the other case¹³ the bottle contained a worm and this rendered the quality of the product sold to be unsatisfactory, and had any damage been caused, the applicant's claim would have succeeded. Since causation of damage is an essential element for a claim of product liability to succeed, cases like this one, where there was no damage caused result in unsuccessful claims.

D. The requirement of a 'product'

Another extremely important right of the consumer includes the right to be heard, which translates to the right to bring a claim in a court of law. Thus, to bring a claim the consumer has to satisfy first, that the object upon which the claim is based is regarded as a 'product'. PCPA 2005 s. 2(j) states that "product" has the same meaning as assigned to the word "goods" in the Sale of Goods Act, 1930, and includes products which have been subsequently incorporated into another product or an immovable object but does not include animals or plants or natural fruits and other raw products, in their natural state, that are derived from animals or plants. It is important to note that goods have been defined in Sale of Goods Act 1930 S.2 (7) as every kind of movable property other than actionable claims and money which includes [electricity, water, gas] stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

Thus, it was interestingly noticed in the DHA plot case¹⁴ that a plot cannot be regarded as a product so the judge couldn't direct the defendants to hand over an alternative plot but directions were assigned to defendants to make it viable for construction. This was based on the fact that DHA had provided faulty service in issuing a piece of land which could not be used for construction.

¹³ Escola (n 1).

¹⁴ Malik Mahmood (n 3).

E. Reforms to improve the existing situation

Further, after considering the rights of the consumers in light of Pakistan it should be considered that what can be done to improve the existing situation. It is the responsibility of the government and also consumer protectors to recognize and stop unfair, delusive and abusive sales along with marketing practices. The rules governing sales of products and services attached to it should be understandable and up to date. The companies should not be able to target vulnerable consumers due to the fact that they are powerful and regulations to check their arbitrary tendencies to be regular and strict in order to protect consumers. It should be noted that the Government of Punjab has instructed Punjab Health Authority to keep regular checks on the products being consumed due to which the issue of unhygienic meat being consumed was brought to attention.¹⁵

However, awareness amongst the consumers needs to be achieved which is possible through the tool of media which has a duty to educate citizens so that they are not left at the 'mercy of mindless mongers'¹⁶ Hence, the scenario of consumers can also be improved by making consumers part of the International Community which will enlighten them with the progress achieved by consumers in other countries and will also provide them with directions to refer their own cases to.

F. Provincial disparity on Consumer Protection

Another issue that needs to be addressed in light of the question of a weak system of Consumer Protection laws is whether the disparity in Consumer Protection Laws effects them or not. Presently, all four provinces have their own consumer protection laws, the Islamabad Consumer Protection Act of 1995, the NWFP Consumer Protection Act of 1997, the

¹⁵ *ibid* (n 11).

¹⁶ Farakh Shahzad, 'Consumer protection; 'Customer is always right' (*Pakistan Today*, 8 January 2012) <<https://www.pakistantoday.com.pk/2012/01/08/consumer-protection-%E2%80%98customer-is-always-right%E2%80%99/>> accessed 11 February 2018.

Balochistan Protection Act of 2003, Punjab Consumer Protection Act 2005 and the Sindh Consumer Protection Ordinance of 2007. However, a distinction needs to be made here. The Islamabad Consumer Protection Act 1995 under its section 6 empowers session courts to entertain complaints and the High Court can exercise its appellate jurisdiction under section 10 to the same end. On the contrary, in NWFP section 14 of the Act empowers the magistrate to entertain complaints dealing with consumer protection issues. Section 17 invests the sessions court with the appellate jurisdiction against the orders of the authority or the magistrate as the case maybe.

In Balochistan, section 12 of the Consumer Protection Act of 2003 demands a consumer court to be presided over by judge or a judicial magistrate, while as far as section 18 is concerned appeal may lie with the session court or the high court. The PCPA 2005 led to the establishment of consumer courts where a district judge was to be appointed and Lahore High Court has the appellate jurisdiction.

Moving towards the jurisdiction of Sindh, under section 17 of Sindh Consumer Protection Ordinance 2007, the establishment of consumer tribunals need to be presided over by an executive district officer (revenue) or person qualified to be appointed so the orders of the consumer tribunals are appealable to the district coordination officer under Section 24 of the Act.

Since the system for consumer protection varies provincially, the powers and functions of these systems vary across provinces. This gives rise to nothing but frequent violations of consumer rights in Pakistan, which cannot be alleviated by using cross provincial precedent. Issues that arise can never try to achieve harmony amongst the laws as each statute is confined to its own jurisdiction. In a case¹⁷ it was held that Islamabad consumer protection Act 1995 was applicable to matters where cause of action had arisen within territorial limits of Islamabad. Further, under section 26(1) of the PCPA 2005, the government was empowered to establish one or more consumer courts and determine areas of jurisdiction of such courts. District consumer Court Bahawalpur had jurisdiction on matters arising within territorial limits of Bahawalpur, Bahawalnagar and Rahim Yar Khan districts only.

¹⁷ *Shifa College of Medicine v Malik Tahir Mahmood* (2014) PLD 561.

Conclusion

Consumer protection is a device which can work to the benefit to a multitude of entities. Moreover, its origins are vested within fundamental rights which Pakistani courts have held to be of constitutional standing. But Pakistan has done nothing to further enhance or enforce this device. Developed countries like the United Kingdom attach significant importance to consumers and their protection but in Pakistan sadly, even the Federal Legislative List of the Fourth Schedule of the Constitution makes no mention of this important subject. This erodes the significance, function and viability of the important tool of consumer protection within Pakistan, leaving the consumers, devoid of its protection.

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