

CONSUMER PROTECTION AND THE ISLAMIC LAW OF CONTRACT

Muhammad Akbar Khan¹

Abstract:

This article explores the protection provided to the consumers in the Islamic Law of Contracts and Business Transactions. In the main part of this article, the general principles of Islamic Law of Contract are presented with special reference to the protection of consumers. The paper adds that Islamic Law of contracts and commercial transactions has some features that are not found in any other legal system such as the concept of Halal and Haram. Islamic Law of Contract has also provided a number of options in the contracts and the purpose is to give chance to a consumer who suffered some loss in transaction to revoke contract within stipulated time. They have been designed to maintain balance in transactions and to protect a weaker party from being harmed. Some of these options are discussed in the papers which have great impact on the protection of consumers in commercial transactions. The paper points out the need for Comprehensive Code of Consumer Protection for Muslim countries and Muslim minorities in the non-Muslim countries that is based purely on the principles of Islamic Law of Contract.

Key words:

Consumer, Protection, *Shariah*, Contract, Consumer Law

1. Introduction to the topic:

CONSUMERS, by definition, include us all. They are the largest economic group in the economy, affecting and affected by almost every public and private decision.² Consumers are the lifeblood of retail and satisfied consumers are the key to success for retailers. Human beings are consumers by default as consumption is basic to human survival and endurance. They have certain innate rights as consumers called “consumer’s rights” a concept very close to human rights.³ The set of rules dealing with the protection of consumer’s rights can be called Consumer Protection Law. Consumer Law is an offshoot of contract law and it is enough for the significance of this area of law that we are all consumers. The history of consumer protection law goes back to the Before Christ era, Ancient Mesopotamia, China and India all used to enforce laws related to short weighting, adulteration and harmful products. Food and drug laws were also legislated but all these laws were regulatory in nature and not as such responsive to different aspects of consumer’s rights. Today, almost all the developed countries have promulgated laws related to the protection of consumers. The developing countries, now, following the developed countries in this

¹ Muhammad Akbar Khan is a Lecturer in Law at the Faculty of *Shariah* & Law, International Islamic University, Islamabad.

² President John F Kennedy, March 1962.

³ From the comparison of United Nations Guidelines (1985) for consumer protection and the UDHR (1948), both documents establish the basic rights for Human beings like Article 25 of UDHR “Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services” same as the consumer rights established in the UN (1985) “guidelines for consumer protection” “also established right to have adequate food, clothing, shelter, health care etc.

regard, have started consumer legislation. In fact, consumer policy and legislation in any country is considered to be the government's commitment towards protection of consumer's interests.

In the 20th century, many steps were taken by the international community to protect rights of the consumers and eight basic consumer rights were recognized by the United Nations. The main UN objective was to "assist countries in curbing abusive business practices by all enterprises at the national and international levels which adversely affect consumers". Further guidelines were set out where countries would be able to provide protection to consumers from hazards to their health and safety. To facilitate consumers to make informed choices, provision of adequate infrastructure to develop, implement and monitor consumer protection policies; enterprises are to follow not only indigenous laws but also international standards for consumer protection.⁴ The member countries were further guided to ensure that goods produced were safe for either intended or foreseeable use⁵.

Law should be passed that ensures the manufacturers to recall the product if hazards are discovered subsequently, or to replace, modify or substitute it. Following eight consumer rights are based on UN Guidelines for Consumers International Charter of Consumer Rights. Consumers International is an umbrella body of more than 250 consumer organization from 115 countries. Right to Basic Needs, Safety, Right to be Informed, Right to Choose, Right to be heard, Right to Redress, Right to Healthy Environment that enhance quality of life, and Right to Consumer Education.

The present article establishes the concept of Consumer Protection, with its theoretical underpinnings, and explains the principles of policy for Consumer Safety under Islamic Law.

2. Islamic Law of Contract and Consumer Protection

The objectives of Islamic Law are to protect and preserve rights of human beings to religion, life, family, intellect and wealth. Like other fundamental rights Islam heavily stresses on the protection of Consumers' rights. In order to protect consumers from fraud, misrepresentation, negligence, unfair contracts, exorbitant profiteering, and other malpractices in trade, Islam has given its own comprehensive law of contracts and commercial transactions that ensures protection of all legally recognized interests of the consumers. An individual is free to pursue his economic activities provided he respects the code of conduct prescribed for the profession, which broadly means choosing things lawful and shunning matters unlawful. The dictates of the Holy *Qur'an* and the teachings of the Prophet (may Allah be pleased with him) serve to set a scale in everybody's mind to distinguish between the lawful and the unlawful means of earning, and to prohibit or disapprove of all things that are either morally wrong or socially unacceptable. Everyone shall have the right to legitimate gains without monopolization, deceit or harm to oneself or to others. Usury (*Riba*) is absolutely prohibited.⁶ This means that each individual in an Islamic society enjoys complete freedom in the earning of his livelihood. He can start, manage and organize any kind of business enterprise within the limits set by the *Islamic Shari'ah*. In other words, Islam gives complete freedom to economic enterprise. However, freedom does not and must not operate without a sense of responsibility. Islam, as a matter of principle, prohibits all activities which may cause harm either to the traders or the consumers in the market. It encourages the prevalence of free market where

⁴ Zilli Atif, Prof. *Consumer Protection Law in Pakistan* Article published in PLJ, July 2008./<http://www.crcp.org.pk/un-guide.htm>

⁵ This would involve instructing consumer as to the proper use of goods and be informed of the risks involved in intended or foreseeable use.

⁶ Article 14 of the *Cairo Declaration on Human Rights in Islam*, Islamabad Law Review, vol. I Nos.1&2 Spring & Summer 2003

everyone earns his sustenance without government intervention. However, it puts certain restraints in order to eliminate the incidence of injustice and check malpractices and unlawful operations. In all other respects, market in Islam is free from any state intervention. However, if the people fail to take guidance from the Holy *Qur'an* in matters relating to business transactions, an Islamic state will strive to organize the market transactions on sound Islamic principles.

The Holy *Qur'an* and *Sunnah* embody some very basic and important principles with regard to protection of consumers in commercial transactions. The basic purpose is preservation and protection of property and material wealth of the people. The, *Fuqaha*, after taking guidance from the principles provided by the *Qur'an* and *Sunnah*, developed a comprehensive system of contracts and transactions. Rights of the consumers are discussed under different headings in different chapters of *Fiqh* literature. The Islamic law of contracts and commercial transactions has become a well-developed discipline now due to the contributions of Muslim jurists. A specific discipline of *Fiqh* is developed that is called *Fiqh al-Sooq* i.e. the area of Islamic jurisprudence in which the legal principles about business in markets are discussed.

As we know that Contract law in any system ensures the parties to private agreements that any promises they make will be enforceable through the machinery of the legal system.⁷ Islamic law of contract is formed in such a way that protects rights of both i.e. the seller and the buyer. Islamic law of contracts is based upon the following types of commercial transactions i.e. Contract of Sale, Contract of *Ijarah* (Leasing), Contract of *Musharakah*, and Contract of *Mudaraba*, Contract of *Kafalah* (surety ship), Contract of *Hawalah* (assignment of debt) and Contract of *Rahn* (Pledge) etc. All these contracts have great concern with consumers as to get some goods or services is the ultimate motive behind these contracts. The consumer cannot fulfill their needs and requirements without entering one of these contracts. The term Bay is usually translated as sale; however, it has a much wider meaning in Islamic law. This term covers all commutative contracts...etc. The term *Bay`* covers all commutative contracts, that is, contracts in which there is an exchange of two counter-values. Hire (*Ijara*) is often referred by jurists as the sale of benefits arising from property rented or service rendered.⁸ Muslim jurists have defined the contract of sale (*Bay`*) in the following manner:

- It is an exchange of a useful and desirable thing for similar thing by mutual consent in a specific manner.⁹
- It is the exchange of useful and desirable thing for a similar thing by mutual consent for the alienation of property.
- It can also be defined as “exchange of property for property with mutual consent.”¹⁰

The contract of sale is validated by the arguments from *Qur'an*, *Sunnah* and *Ijma*. The following verses of the Holy *Qur'an* are significant in this regard: “*And Allah has permitted sale*”.¹¹ It further says: “*O you, who believe, devour not your property among yourselves by unlawful means except that it be trading by your mutual consent.*”¹² The traditions of the Holy Prophet (may Allah be pleased with him) also recognized the contract of sale.

⁷ Nyazee, Imran Ahsan, *Outlines of Islamic Jurisprudence*, ALSI, 1998, p.105

⁸ Ibid. p.141

⁹ Kasani, *Badai al-Sana'i*, Sharikat al-Matbua` t al-Islamiyah, Cairo, vol.5, p.133

¹⁰ Tahir Mansuri, *Islamic Law of Contracts and Business Transactions*, International Islamic University, Islamabad, 2007, p.189

¹¹ Qur'an 2:278

¹² Qur'an 4:29

3. General Principles of Islamic Law of Contract and Consumer Protection

Islamic law regards the property of a person as sacred and inviolable as his life and honor. The *Qur'an* forbids the unlawful devouring of property by a believer. This includes prohibition against theft, usurpation, embezzlement, bribery, and all other unlawful and impermissible means of acquiring wealth. The Holy *Qur'an* also prohibits usurious transactions, which bring undue and unjustified enrichment to one party at the cost of the other party. Contracts involving *gharar* transactions have also been strictly prohibited in *Qur'an* and traditions of the Holy Prophet (may Allah be pleased with him). *Gharar* transactions comprise those transactions where either parties or either of the parties to the contract becomes a victim of excessive ignorance with regard to the existence, acquisition, genus, quality, and other necessary attributes of the subject-matter. Such ignorance and uncertainty may lead to dispute and litigation among the parties. It also includes uncertainty and lack of knowledge about the material terms of the contract. It is, thus, the requirement of a valid transaction that the object of the obligation be specifically determined so as to avoid exorbitant *gharar*. It is quite clear that all those transactions prohibited by *Shariah* insure protection of consumer's interests. All those things that affect the consumers either directly or indirectly have been prohibited by *Shariah*.

Islam has advocated a free market system. It disapproves all business practices which involve firstly, explicit or implicit harm and injustice to the contracting parties or to the public at large; secondly, which restrict the freedom of trade, or stand in violation of the *Qur'anic* injunctions and the approved business conduct. The legality of trade implies that a Muslim is free to make any kind of approved transaction. Islamic codes of ethics provide general guidelines for both daily life as well as conducting business. In order to create a consumer friendly environment in the markets, Islam demands a certain type of behaviour from the economic agents – the consumers and the producers. The behaviour prescribed for the economic units of the society are so devised as to lead to a happy state of affairs, which is the ultimate goal of Islam. An Islamic market is characterized by certain norms that take care of the interests of both the buyer and the seller. There are a number of rules of ethical discipline in Islamic commercial transactions without which business contract would be regarded as lacking perfection in the light of the code of good manners, decency and ethical excellence. Some of these tenets are as follows:

3.1. Keeness to Earn Legitimate (*Halal*) Earnings

Islam places great emphasis on the code of lawful and unlawful in business transactions. *Halal* earning is an honest earning. Islam orders every Muslim to earn only in *Halal* ways. Things legitimate and illegitimate are clearly defined in Islam and, in between them, are doubtful things, which should be avoided. A true Muslim businessman should be wary of the doubtful things in order to keep himself clear in regard to his faith and his honour because one who falls into doubtful matters is sure to fall into that which is unlawful (*Haram*). A tradition of the Prophet (may Allah be pleased with him) states: A time will come upon the people when one will not care as to how he gets his money whether legally or illegally.¹³ The following verses of the Holy *Qur'an* and teachings of the Prophet Muhammad (may Allah be pleased with him) are significant in this regard: “*Ye People! Eat of what is on earth; lawful and good*”.¹⁴ It further says: “*Eat good things Allah has provided for you*”.¹⁵

¹³ Bukhari, No: 1941

¹⁴ Qur'an 2:168

¹⁵ Qur'an 7:160

The Prophet (may Allah be pleased with him) endorsed the importance of legitimate ways of earning in the following words: *Asked 'what form of gain is the best? The Prophet (may Allah be pleased with him) said, 'A man's work with his hands, and every legitimate sale.'*¹⁶ Allah listens to the prayers of those who earn and eat *Halal*. There are many ways to earn *Halal* earnings some of these are: business of *Halal* things, farming, job, inheritance, gifts and presents, etc. Many *Qur'anic* verses disapprove the wrongful taking of the property. The following verses of the Holy *Qur'an* are significant in this regard: *"Do not devour one another's property wrongfully, nor throw it before the judges in order to devour a portion of other's property sinfully and knowingly."*¹⁷ It further says; *"Do not devour another's property wrongfully – unless it be by trade based on mutual consent."*¹⁸ These verses prohibit the believers in no uncertain terms to devour the property of others by illegal means. There are many ways of *Haram* earnings, some of these are: bribery, robbery, gambling, usury, cheating, theft, business of *Haram* things, shoplifting, etc.

3.2.Trade through Mutual Consent

Mutual consent between the parties is a necessary condition for the validity of a business transaction. It, therefore, follows that a sale under coercion is not acceptable in Islam. A sale transaction is to be regarded as legal only if it is made through the mutual consent of the parties concerned. Taking advantage of someone's plight and charging high price is also a form of pecuniary exploitation and as such forbidden in Islam. The Holy *Qur'an* says: *"O you who believe! Eat not up your property among yourselves in vanities: but let there be amongst you trade by mutual goodwill: nor kill [or destroy] yourselves: for verily Allah has been to you Most Merciful."*¹⁹ Thus two key elements of general theory of contract are endorsed emphatically in these verses: mutual consent and gainful exchange. One can also find importance of mutual consent for legality of a business deal. The Prophet (may Allah be pleased with him) is reported to have said: *"A sale is a sale only if it is made through mutual consent"*.²⁰

3.3.Truthfulness in Business Transactions

Honesty and truthfulness are extremely important qualities. Islam promises Allah's blessings to those engaged in honest trade. There is no room for cheating, fraud and exploitation of any kind. Muslim businessmen have been directed by Islam to: *Speak the truth when you talk, keep a promise when you make it, when you are trusted with something fulfill your trust and restrain your hands from injustice.*²¹ In return, they have been guaranteed Paradise.²² Muslims have been directed to love Allah more than trade and obey Allah even if they have to sacrifice everything else. Islam encourages truthfulness in business transactions and raises the status of a truthful merchant so much so that he will be at par with the holy warriors and martyrs, in the Hereafter. The Prophet (may Allah be pleased with him) is reported to have said: The truthful merchant is [rewarded by being ranked] on the Day of Resurrection with prophets, veracious souls, martyrs and pious people.²³ The Prophet (may Allah be pleased with him) has also exhorted the believers to strictly adhere to truthfulness in business transactions. He says: The seller and the buyer have the right to keep or return the goods as long as they have not parted or till they part; and if both the parties spoke the truth and described the

¹⁶ Ahmad, *Musnad*, No: 1576

¹⁷ Qur'an: 2:188

¹⁸ Qur'an: 4:29

¹⁹ Qur'an,4:29

²⁰ Ibn Majah, No: 2176

²¹ Mishkat al Masabih, No:4870

²² Ibid., No: 4870

²³ Timidhi, No: 1130

defects and qualities [of the goods], then they would be blessed in their transaction, and if they told lies or hid something, then the blessings of their transaction would be lost.²⁴ The tradition implies that Allah blesses business dealings if both the buyer and the seller are true to each other. Telling lies and hiding facts will result in the loss of divine blessing. The Holy Prophet (may Allah be pleased with him) said: *‘Traders are wicked people’. The Companions asked: ‘O Messenger, has Allah not permitted business?’ The Messenger replied: ‘Of course He has declared trading lawful. But they (i.e. the traders) will swear by Allah and do evil; they will not speak but tell lies’.*²⁵

3.4.Trustworthiness in Business Transactions

Trustworthiness is one of the most important principles of ethical discipline in commercial transactions. Trust is a moral virtue and duty incumbent on a Muslim in the performance of his affairs. It demands sincerity in work and purity of intention from every believer. A true Muslim trader will not, therefore, barter his *Akhirah* (hereafter) for worldly gains. He will avoid fraud, deception, and other dubious means in selling his merchandise. The sense of mutual trust demands that the pros and cons of commodity be revealed to the buyer so that he purchases the commodity in full satisfaction. Says the Holy *Qur’an*. *“O you believers! Do not betray Allah and the Messenger, nor knowingly, betray your trusts.”*²⁶

3.5.Generosity and Leniency in Business Transactions

One should be lenient and generous in bargaining. Therefore, whoever demands his debt back from the debtor should do so in a decent manner. The Prophet (may Allah be pleased with him) invokes Allah’s mercy thus: *May Allah’s mercy be on him who is lenient in his buying, selling, and in demanding back his money [or debts].*²⁷ The Prophet’s exhortation to Muslims means that a creditor should be easy and generous in demanding back his money. The debtor, in turn, should also give back the debt to the creditor on time with due thanks and politeness. The Prophet (may Allah be pleased with him) was the best of all people in repaying the debts.

Abu Rafi` reports that the Prophet (may Allah be pleased with him) took a young camel on loan. When camels came to him in charity, he asked *Abu Rafi`* to give the creditor a young she camel. *Abu Rafi`* pointed out that there was no young camel except for a four-year old camel of a very good quality. The Prophet (may Allah be pleased with him) said: *‘Give him the best one, for the best amongst you is he who repays the rights of others handsomely’.*²⁸

3.6.Honouring and fulfilling Business Obligations

Islam attaches great importance to the fulfilment of contract and promises. Islamic teachings require a Muslim trader to keep up his trusts, promises and contracts. The basic principles of truth, honesty, integrity and trust are involved in all business dealings. The Holy *Qur’an* emphasizes the moral obligation to fulfil one’s contracts and undertakings. A verse states thus: *“O you who believe! Fulfil [your] obligations.”*²⁹ A tradition of the Prophet (may Allah be pleased with him) states thus: *The Muslims are bound by their stipulations.*³⁰ Another tradition condemns promise-breaking as the hallmark or trait of a hypocrite: If he makes a promise, he breaks it, and if he makes a compact, he acts

²⁴ Bukhari, No: 1937

²⁵ Ahmad, *Musnad*, No: 14982

²⁶ Qur’an: 8:27

²⁷ Bukhari, No: 1934

²⁸ Muslim, No: 3002

²⁹ Qur’an: 5:1

³⁰ Abu Da’ud, No: 3120

treacherously.³¹ In order to safeguard the interest of both the buyer and the seller it is desirable, according to the Islamic teachings, to clearly define all the necessary details concerning the business deal. Each business contract should clearly specify the quality, the quantity and the price of the commodity in question. Thus, in a business contract the offer and acceptance should be made between the parties concerned on a commodity which is with the buyer and, which he is able to deliver. Any commodity which is non-existent or not deliverable is not allowed to be transacted. A contract must be explicit with regard to the rights and obligations of the parties concerned so that it does not lead to disputes and disagreements between them.

3.7. Transparency in dealings

Islam also encourages transparency in dealings. Qur'an has stressed that all agreements and contracts should be as transparent and clear as possible. The following verse explains in detail: "*O ye who believe, when ye deal with each other in transactions involving future obligations in a fixed period of time, reduce them to writing...*"³²

3.8. Prohibition of Dealing in (*Haram*) Goods/Services

Muslims are not allowed to engage in businesses that are not in conformity with the injunctions of Islam. It is forbidden for a Muslim to acquire or transfer anything that the *Sharia`h* has declared to be *Haram*, nor engage in trading it.³³ Dealing in unlawful goods such as carrion (dead meat), pigs and idols is strongly prohibited in Islam. Dead meat would mean the flesh of any bird or animal dead from natural causes, without being properly slaughtered in an Islamic way. A Muslim, therefore, will not eat the flesh of such an animal or bird. Flesh of an electrocuted animal, or of an animal killed by the blow of a blunt weapon, and of the strangled one is also proscribed in Islam. Also proscribed is the flesh of the animal that has been killed or slaughtered in ways other than Islamic. It is, therefore, not permissible for a Muslim to trade in dead meat. Likewise, trading in pork or intoxicants and sale of idols and statues is not permitted in Islam. Similarly adultery, obscenity and immorality are expressly prohibited by the *Qur`an*. Therefore any business hinges upon them is expressly forbidden. Following verses of the Holy *Qur`an* are significant in this regard: "*Forbidden to you [for food] are: dead meat, the blood, the flesh of swine and that on which name of other than Allah has been mentioned.*"³⁴ It further says; "*O you who believe! Intoxicants and gambling [dedication of] stones and [divination by] arrows are an abomination of Satan's handiwork: so avoid it in order that you may prosper.*"³⁵ It also says: "*Say: Not equal are things that are bad and things that are good even though the abundance of the bad may dazzle thee; so fear God, O ye that understand, that ye may prosper.*"³⁶

The Prophet (may Allah be pleased with him) is also reported to have said; *Allah and His Messenger made illegal the trade of alcoholic liquors, dead animals, pigs and idols.*³⁷ The Prophet (may Allah be pleased with him) also said; *If Allah makes something unlawful, he makes its price also unlawful.*³⁸

³¹ Bukhari, No: 32

³² Qur'an 2:282.

³³ Ahmad, Mushtaq, *Business Ethics in Islam*, International Institute of Islamic Thought, Islamabad, 1995; p.119

³⁴ Qur'an, 5:1

³⁵ Qur'an 5:90

³⁶ Qur'an, 5:103, cf. 2:272-76; 3:130; 4:160; 30:39; 17:36

³⁷ Bukhari, No: 2082

³⁸ Ahmad, *Musnad*, No: 2546

Thus, anything earned by *Haram* goods or service is prohibited in *Shariah* such as prostitution, bribery, painting and photography, selling *Haram* food, selling adulterated foods and goods etc. are strictly prohibited in *Shariah* and no protection is provided to the consumers of these things.

3.9. Prohibition of Usury (*Riba*)

Foremost among the unacceptable business practices strongly condemned in Islam is *riba*. *Riba* (Usury), by definition, is the extra sum the moneylender charges from the borrower for deferred payment. Islam has forbidden all forms of *riba* since it involves both oppression and exploitation. Islam strictly forbids this form of tyrannical dealings and condemns it in severe terms. The Holy *Qur'an* says: “Allah has permitted trading and forbidden *riba* (usury)”.³⁹ *Qur'an* also states: “Devour not *riba* doubled and re-doubled”.⁴⁰ It further states: “O you who believe! fear Allah and give up what remains of your demand for usury if you are indeed believers. If you do it not, take notice of war from Allah and his Apostle: but if you turn back you shall have your capital sums; deal not unjustly and you shall not be dealt with unjustly”.⁴¹ The sin of dealing with *riba* affects all the parties involved in a *riba* Transaction: “Allah’s Messenger (peace be upon him) cursed the acceptor of interest and its payer, and one who records it, and the two witnesses; and he said, “They are all equal.”⁴² The *Sunnah* is equally emphatic in denouncing *riba*. The Prophet (may Allah be pleased with him) is reported to have said: *May Allah send down His curse on the one who devours *riba* and the one who pays it and on the two witnesses and on the person writing it.*⁴³ These and many other verses of the *Qur'an* and traditions of the Prophet (may Allah be pleased with him) clearly demonstrate that all those business transactions which involve interest in one form or other are unlawful in the sight of Islam. According to the *Qur'anic* teachings there is a clear distinction between genuine business profits and interest; while the former is recommended and desirable, the latter is hated and undesirable.

3.10. Sale of *Al-Gharar* (Uncertainty, Risks, Speculation)

In Islamic terminology, this refers to the sale of a commodity or good which is not present at hand; or the sale of an article or good, the consequences or outcome of which is not yet known; or a sale involving risks or hazards where one does not know whether at all the commodity will later come into existence. Such a sale is strictly prohibited in Islam because the quality, whether good or bad, is not known to the buyer at the time of the deal and there is every possibility that the contract may give rise to disputes and disagreements between the concerned parties. The Prophet (may Allah be pleased with him) , therefore, prohibited the sale of what is still in the loins of the male; or sale of whatever is in the womb of a she-camel; or sale of birds in the air; or the sale of fish in the water, and any transaction which involves *Gharar* i.e. anything that involves deception. He also forbade the sale of fruits before they look healthy and also the sale of crops until the grain hardens. Nevertheless, such advance sales would be acceptable if the element of *Gharar* does not exist and the quality and the quantity of the goods are pretty well known and predictable. The contracts that contain uncertainty are strictly prohibited in *Shariah* in high interests of the consumers. All such type of contracts is declared invalid because it contains the element of uncertainty which harms the consumers.

³⁹ *Qur'an*, 2:275

⁴⁰ *Qur'an*, 3:130

⁴¹ *Qur'an*, 2:278

⁴² Muslim, No: 3881.

⁴³ Ahmad, *Musnad*, No: 624

3.11. Gambling (*Qimar*) and Games of chance (*Maysir*)

Qimar includes every form of gain or money the acquisition of which depends purely on luck and chance. As opposed to others eligible, one may acquire income as a result of lottery or lucky draws. It also includes any receipt of money, benefit or usufruct that is at the cost of the other party or parties having equal entitlement to that money or benefit.⁴⁴ *Maysir* literally means getting something too easily or getting a profit without working for it. The form most familiar to the Arabs was gambling by casting lots by means of arrows on the principle of lottery. The arrows were marked and served the same purpose as a modern lottery ticket. Dicing and wagering are rightly held to be within the definition of gambling and *Maysir*.⁴⁵ The Holy *Qur`an* has expressly prohibited this practice. It says: "O you who believe! Intoxication and gambling, dedication of stones, and divination by arrows are an abomination of Satan's handiwork. Eschew such abomination, that you may prosper."⁴⁶

3.12. Arbitrarily Fixing the Prices

Islam grants absolute freedom to traders provided they adhere to the code of lawfulness. It does not, therefore, encourage the practice of price-fixing and leaves the traders to earn the profits from each other within the lawful limits. As a matter of principle, public authorities are not allowed to fix the prices of commodities by force. This is because rise and fall in the prices are linked to various factors other than the greediness of the traders and fixing the prices may endanger both public and private interests. It is reported that once the prices shot up during the period of the Prophet (may Allah be pleased with him). The people said: "O Messenger of Allah! Prices have shot up, so fix them for us. Thereupon the Messenger of Allah said: 'Allah is the One Who fixes prices, withholds, gives lavishly, and provides, and I hope that when I meet Allah, none of you will have any claim on me for an injustice regarding blood or property.'⁴⁷

However, the role of public authorities comes into play if it becomes absolutely essential to do so, especially in order to prevent exploitation and other unjust practices in the market. Thus, if a trader adopts unfair means, charges unjust prices and indulges in undercutting with a view to doing harm to the smaller traders, public authorities have the right to intervene in the market. They can and should take steps to fix or control the prices so as to eliminate injustice from the market and allow the trader to earn reasonable profit and the buyer to pay a just and equitable price.

3.13. Hoarding (*Ihtikar*)

The Arabic word for hoarding is *Ihtikar*. Hoarding is prohibited in Islam. As *Shaikh al Qaradawi* points out, the market system is free in Islam, and is allowed to respond to supply and demand. Islam does not tolerate interference in the market system by hoarding or other forms of price manipulation. According to *Maududi*, the Prophet's prohibition of hoarding food grains, besides serving other purposes, was aimed also at eliminating the evil of black-marketing which usually follows hoarding. The Prophet (may Allah be pleased with him) wanted to establish a free market so that a reasonable and just price could emerge as a result of open competition.⁴⁸

⁴⁴ Mahmood Ahmad Ghazi, "Mudaraba Financing: an Appraisal", Paper presented in the conference on Islamic Corporate Finance: Shariah based Solutions, Nov.21-22, 1998 at Karachi.

⁴⁵ Tahir Mansuri, *Islamic Law of Contracts and Business Transactions*, pp.7-8

⁴⁶ Qur`an 5:90

⁴⁷ Timidhi, No: 1235

⁴⁸ Maududi, Sayyid Abu al-ala, *Mu`ashiyat-i-Islam*, Islamic Publications, Lahore, 1969, p.144

Hoarding is condemned of both cash and kind. Hoarding of gold, silver and other cash is called *Iktinaz*, while hoarding of food grains and other supplies called *Ibtikar*. Both of them are repugnant to the injunctions of *Sbariah*. Hoarding foodstuffs means withholding them in expectation of rise in their prices. Sometimes, a handful of traders operating in the market buy the entire quantity of an item, rice for example, and store it up with the object of selling it later at the time of scarcity to draw maximum profit out of it and to dictate the prices. The consumers are left with no choice but to purchase the article concerned from the one who hoards, as he is the only one in the market who holds it. Sometimes, a trader hobnobs with the suppliers who will only sell their merchandise to him. As a result, he holds the entire stock of the essential items that other traders do not possess. He is, therefore, in a position to dictate his terms in the market and sell them at an exorbitantly high price to the needy people. This is an unjust practice and a clear case of exploitation and deservedly condemned by Islam. The Prophet (may Allah be pleased with him) is reported to have condemned the hoarders when he said: *No one hoards but the traitors (i.e. the sinners).*⁴⁹ He (may Allah be pleased with him) also said: *The importer [of an essential commodity] into the town will be fed [by Allah], and the hoarder will have [Allah's] curse upon him.*⁵⁰ He (may Allah be pleased with him) also said: *“He who hoards is a sinner.”*⁵¹

During his Caliphate, ‘Umar ibn al-Khattab had issued a stern warning against hoarding of any marketable commodities. Nobody was allowed to spend his wealth on purchasing food grains with the intention of hoarding.⁵² In cases where businessmen are engaging in hoarding and other forms of price manipulation, Islam allows price control in order to meet the needs of society and to provide protection against greed. However, if a commodity is being sold without any hoarding, and its price rises because of natural shortages or scarcity or an increase in demand, then this circumstance is due to Allah. Businessmen cannot then be compelled to sell at a fixed price.⁵³

3.14. Exploitation of one’s Ignorance of Market Conditions

One of the most common unethical practices in modern business is to exploit one’s ignorance of market conditions. Sometimes it may happen that a buyer arrives in a town with objects of prime and general necessity for selling them in the market. A local trader may persuade the new-comer to transfer all of the goods to him so that he will sell them on his behalf in the market. He obtains the commodities on a price that is lower than market price and then sells them at a high or exorbitant price. Islam condemns this act of intermediary intervention which involves exploitation of one’s ignorance of market conditions. The practice was prevalent in pre-Islamic society. The Prophet (may Allah be pleased with him) has prohibited this practice through a number of instructions. A tradition reads: *A town dweller should not sell the goods of a desert dweller.*⁵⁴

3.15. Cheating and Fraud in Business Transactions

The traders and businessmen generally have a tendency to motivate the consumers by adopting fraudulent business practices. Islam strongly condemns all such practices in business transactions (*Al-Ghashsh*). Businessmen should avoid duplicity and fraud. They should treat others in the same

⁴⁹ Abu Da’ud, No. 2990

⁵⁰ Ibn Majah, No: 2144

⁵¹ Muslim No: 3910

⁵² Mushtaq Ahmad, *Business Ethics in Islam*, International Institute of Islamic Thought, Islamabad, 1995, p.121

⁵³ Issa, Beekun Rafik, *Islamic Business Ethics*, Human Development Series No. 2, The International Institute of Islamic Thought, 1997, p.44

⁵⁴ Bukhari, No: 2006

righteous and fair manner that they themselves would like to be treated. The Prophet (may Allah be pleased with him) is reported to have said: *“The seller and the buyer have the right to keep the goods or return them as long as they have not parted. He also said that if both the parties have spoken the truth and described the defects as well as the merits thereof (the goods), they would be blessed in their deal. If they have told lies or concealed something, then blessings of their transaction would be lost”*.⁵⁵

3.16. Swearing

The traders often take recourse to swearing to emphasize that their items are of good quality. They claim qualities in the merchandise, which don't exist. They try to persuade the buyers to purchase their commodity by invoking Allah's name. Swearing in business for such purposes is forbidden in Islam, be it false or true. False swearing is an act of sin punishable by hellfire. Swearing by Almighty Allah is too great a thing to be used as a means to sell a commodity. The desirable thing in business transaction is that both the buyer and the seller remain straightforward and truthful in their dealings, so that no one will feel the need to swear by Allah in order to create conviction in the mind of the other party. The Prophet (may Allah be pleased with him) is reported to have said: Swearing [by the seller] may persuade the customer to purchase the goods but the deal will be deprived of Allah's blessing.⁵⁶

3.17. Giving Short Measures

To manipulate weights and measures another form of deceit. It refers to the act of taking full measures from others and giving them short measures in your turn. Giving short measures was a common malaise plaguing the pre-Islamic days. The community of the Prophet *Shu'ayb* (may Allah be pleased with him) was known for practising it with impunity. Consequently, they were destroyed for their persistence in deceit and disbelief in Allah and His Messenger. Allah the Almighty has repeatedly commanded exactitude in weights and measures. One of the verses says: *“And give full measure when you measure, and weigh with a just balance. That is good and better in the end.”*⁵⁷ The importance of accuracy in terms of weights and measures has been stressed by the Qur'an many times. The believers are commanded to weigh and measure in full without the slightest diminution or else to face dire consequences. According to the Qur'an, the mission of all the prophets was to keep the balance straight and to uphold justice. Buyers should expect to receive goods that are in working condition and priced fairly. They should also be notified of any deficiency. While dealing with suppliers, Islamic business ethics suggests that one should negotiate a fair price and not take advantage of one's power.

3.18. Dealing in Stolen Goods

Almighty Allah has declared thievery unlawful and warned of severe punishment such as cutting the hand of the thief from the wrist joint if the necessary legal conditions for the award of punishment are met. Even if the thief escapes worldly punishment and gets away with stolen goods, it is not permissible for a Muslim to knowingly purchase or sell these items. The stolen items are neither to be bought nor sold by those who know the reality. The Prophet (may Allah be pleased with him) made the person knowingly buying a stolen commodity a partner to the crime. He said: *The one, who knowingly purchases a stolen good, is a partner to the act of sin and the shame.*⁵⁸

⁵⁵ Bukhari, No: 1937

⁵⁶ Bukhari, No: 1945

⁵⁷ Qur'an 17:35

⁵⁸ Kanz Al-'Ammal, No: 9258

3.19. Adulteration

Islam prohibits any kind of adulteration in the subject-matter of sale. The Muslim businessmen must be honest all times. The following traditions exemplify how the Islamic moral code views this deceptive business practice: The Messenger of Allah (may Allah be pleased with him) happened to pass by a heap of eatables (corn). He thrust his hand in that (heap) and his fingers were moistened. He said to the owner of the heap of eatables (corn), “*What is this?*” “*Messenger of Allah, these have been drenched by rainfall.*” He (may Allah be pleased with him) remarked, “*why did you not place this (the drenched part of the heap) over other eatables so that the people could see it? He who deceives is not of me (is not my follower).*”⁵⁹ A comparable case is the action of the *Umer ibn Khattab* who on seeing that a man had diluted his milk with water punished him by spilling it away. One group of the jurists who uphold this principle have given this ruling, for it is reported of the Prophet, on him be peace, that he prescribed the watering down of milk for sale – though not for drinking purposes – because if the milk is diluted the buyer does not know the relative quantities of milk and water, and for this reason *Umer* destroyed it.⁶⁰

3.20. Fraud and Fraudulent Transactions

Fraud in conducting any sort of business is strictly prohibited by *Shariah*. According to the Holy Prophet (may Allah be pleased with him) ; “*He who defrauds does not belong to us.*”⁶¹ The term *Ghish* is used which in trade means concealing the defects of and adulteration in merchandise.⁶² In this connection, the following types of fraud are also condemned by Islam:

1. Engaging in Fraud

Tafif literally means stinting, scrimping and niggardliness. A *mutafif* is he who diminishes from the due share of others for whom he measures while paying to them or receiving from them. Chapter 83 of the *Qur`an* is entitled as “*al-Mutafiffun*” (the defrauders). Those who give short weight and short measure to others and receive from them in full are condemned and promised a severe punishment. “*Woe to those that deal in fraud, those who, when they have to receive by measure, exact full measure, but when they have to give by measure or weight to men, give less than due. Do they not think that they will be called to account on a Mighty Day.*”⁶³ Some scholars have extended the meaning of *Tafif* to include the worker who receives his wages in full but does not perform his duties honestly and efficiently.⁶⁴

2. Dishonesty

Dishonesty is one of the worst forms of fraud. A dishonest person is always prone to defraud others whenever and wherever possible. The Holy *Qur`an* has expressly forbidden it in the following words: “*O ye who believe! Betray not the trust of God and the Apostle, nor misappropriate knowingly things entrusted to you.*”⁶⁵ The condemnation and prohibition of dishonesty, fraud, and betrayal of trust occur in more than nineteen verses of the *Qur`an*.⁶⁶

⁵⁹ Muslim, No. 183

⁶⁰ Imam Ibn Taymia, *Public Duties in Islam*, Leicester, the Islamic Foundation, U.K., 1982, p.65

⁶¹ M.Yusuf Musa, *Al-Islam nu al-Hayab: Dirasat nu Tanjihat*. Maktabah Wahbah, Cairo, 1961, p.106

⁶² Ahmad Mushtaq, *Business Ethics in Islam*, p.113

⁶³ Qur`an 83:1-5

⁶⁴ Mufti shafi, *Islam ka Nizam-i-Taqsir-i Daulat*, Maktabah Dar al-Ulum, Karachi, 1968, p.42

⁶⁵ Qur`an 8:27

⁶⁶ Mishkat-al-Masabih, No.55

3. Falsehood and Breach of Pacts/Promises

The Holy *Qur'an* strongly condemned falsehood. It says: "*Woe to the falsehood-monger, those who (flounder) heedless in a flood of confusion.*"⁶⁷ Mis-statement about merchandise not only harms the consumers but the producer and the trader as well. Dependability of the product and reliability of its trader play a key role in the establishment and enhancement of any business concern. The Prophet (may Allah be pleased with him) warned: "*The transacting parties have the option (to nullify the transaction) as long as they remain together. If they were truthful and had given exact description, their transaction will be blessed; if they did not disclose the facts and lied, their transaction will be stripped of all blessing.*"

3.21. Infliction of Harm

Islam discourages all such transactions that may inflict harm. Others' interest should be regarded in the business. Therefore, a Muslim businessman is required to be very careful lest he should harm someone else or even himself through his heedless conduct in business. Among the harmful practices expressly stated and condemned by the *Qu'ran* are extravagance and waste. In this regard, following instruction of the Holy *Qu'ran* are significant: "*But take witness whenever ye make a commercial contract; and let neither scribe nor witness suffers harm. If ye do (such harm) it would be wickedness in you...*"⁶⁸

3.22. Protectionism

Protectionism is a process through which the state forces the general public to pay higher prices for local products by providing protection to a private enterprise from facing open international competition. Protectionism is disapproved, writes Abu Yusuf, because it provides affluence to the favoured ones at the expense of the general public. Moreover, it is the root cause of inflation and leads to such evils as smuggling, black-marketing, adulteration and profiteering.⁶⁹ *Ibn al-Qayyim* regards protectionism as the worst form of injustice and predation. He declares it harmful to both the protector and the protected on the ground that they restrict the freedom of trade granted by Allah.⁷⁰

3.23. Measures Causing Price-Hike:

Islam discourages any measure that result in a price-hike. The following transactions are prohibited due to this reason:

- a) **Prohibition of *Maks*:** The term *Maks* is used for sales-tax. The Prophet (may Allah be pleased with him) had reportedly said: "*He who levies maks shall not enter paradise.*"⁷¹ Since the imposition of sales-tax (or excise duties) results in raising the prices unjustly, therefore, Islam does not approve of it. The Caliph *Umar ibn 'Abd al-Aziz* had abolished *maks*, interpreting it as *bakhs* (diminution in what is due to others) which is expressly prohibited by the *Qur'an*.
- b) **Prohibition of *Najash*:** It is the evil practice of offering a higher price just to induce others to raise their offers, with no intention of buying of commodity. Besides being a form of fraud (which itself is forbidden) the practice of *Al-Najash* raises the prices for the needy consumers.

⁶⁷ Qur'an, 51:10-11; 6:140

⁶⁸ Qur'an 2:282

⁶⁹ Yusuf S.M., *Economic Justice in Islam*, Sh. Muhammad Ashraf, Lahore, 1971, p.43-44

⁷⁰ Ibid. p.69

⁷¹ Ibid. p.47

The Prophet (may Allah be pleased with him) is reported to have said: “Do not harbour envy against one another; do not outbid one another [with a view to raising the price]; do not bear aversion against one another; do not bear enmity against one another; one of you should not enter into a transaction when the other has already entered into it; and be fellow brothers and true servants of Allah.”⁷²

- c) **Prohibition of *Bay ‘Ba’d ‘Ala Bay ‘Ba ‘d***: It may be described as the practice of jumping in with a higher or lower offer while the two parties are still in the process of making a deal, or are about to conclude it. The Prophet prohibited this practice since it may result an unnecessary price-hike.
- d) **Prohibition of *Talaqqi al Rukban***: This signifies the practice of meeting the villagers at the outskirts of the town in order to purchase their merchandise before they reach the market place. The Prophet (may Allah be pleased with him) forbade it. Obviously, the prohibition is aimed at curbing artificial price-hike. The Prophet (may Allah be pleased with him) ordered that the supplies be brought down to the market place so that the suppliers and the consumers might benefit from the natural level of prices.
- e) **Prohibition of *Bay al Hadir li Bad***: In this case, the clever town broker assumes the role of a middleman between the unsophisticated villagers and the consumers of the town. He sells the merchandise brought by these villagers to the local consumers and in the process makes huge profits for himself while raising the prices for the general consumers.⁷³ The Prophet (may Allah be pleased with him) forbade this practice.⁷⁴ *Imam Ibn Taymia* says that there is harm for the consumers in this practice.

4. Consumer Protection and Islamic Law of Options

Islamic law of contracts has laid down some principles that are not found in any other legal system. To insure protection of interests of the consumers it has described certain options in transactions. These remedies are available for the consumers only after completion of the contracts. These options are such as the Option of the Session (*Khiyar al-Majlis*), Option of Defect (*Khiyar al-ayb*), Option to Ascertain the Subject-Matter (*Khiyar al-Ta`yin*), Option of Inspection (*Khiyar al-Ru`yah*), The Option to Revoke the Contract (*Khiyar al-Sharh*), *Khiyar al-Ghalat*, *Khiyar al-Tadlis*. These options are provided in those contracts, which accept revocation like sale, hire, *muzara`ah* (crop sharing). These options are not available in those contracts, which do not accept revocation such as divorce, manumission etc.

The Islamic law of Options highly protects rights of the consumers in contracts and commercial transaction. The purpose of option is to give chance to a consumer who suffered some loss in transaction to revoke contract within stipulated time. They have been designed to maintain balance in transactions and to protect a weaker party from being harmed. Some of these options are discussed below which have great impact on the protection of consumers in commercial transactions.

⁷² Muslim, No: 4650

⁷³ Mushtaq Ahmad, *Business Ethics in Islam*, p.124

⁷⁴ Ibn Taymiyyah, *Al-Ubudiyyah fi al-Islam*, al-Matba`ah al-Salafiyyah, Cairo, 1967, p.17

In fact, Islamic law of options plays a vital role in the protection of consumers in commercial transactions. The option of defect (*khayar al-ayb*) is considered the most important one in this regard. It is a right given to a purchaser in a sale to cancel the contract if he discovers that the object acquired has in it some defect diminishing its value.⁷⁵ It is a well recognized legal method under Islamic commercial dealings which protects society from the problems arising from purchasing defective products. It is an implied warranty imposed by the law itself and the parties do not have to stipulate it. It is thus a necessary condition of the contract. The goods are liable to be rejected if undeclared defects are discovered. Islamic law protects consumers both before and after conclusion of the sale and purchase agreement by giving them the right of inspection and the right of option. The Islamic doctrine of *khayar al-ayb* allows the buyer the right of inspection of the goods (to ensure its quality, etc.) and also the right of option (whether to continue with the contract or otherwise) both before and after the contract of sale and purchase is concluded. The *Mejjala* terms such option as *khayar al-ayb*, or “option for defects.” The option of defect (*khayar al-ayb*) is based on the following verse: “O ye who believe! Eat not each other’s property by wrongful means...”⁷⁶

There is not a single *Shariah* principle that does not guarantee the protection of human life, and the present Islamic doctrine of *Khayar al-ayb* is no exception. This doctrine not only safeguards the purchaser from the implications of the sale of defective products before the agreement is being concluded, but it also guarantees similar protection after the conclusion of the sale and purchase agreement. The purchaser or buyer then has the right, under this Islamic doctrine, to exercise his right of option (of either continuing with the contract of sale or not) upon the discovery takes place before or after the conclusion of the said agreement.

Under the practical application of this doctrine, we find that the rights and interests of the buyer, with respect to the sale of defective products, are really preserved and protected. This protection against such sale of defective good is further enhanced by the fact that, in Islam, it is implicit that any goods sold should be free of any defect unknown to the buyer. The vital role played by this doctrine in the protection of society from the effects of the sale of defective products is summed up as follows:

- a) The purchaser or buyer has the implied right to inspect the goods prior to an agreement and confirm whether the goods to be purchased are free from unknown defects;
- b) After the delivery of the goods by the seller, if the consumer (purchaser) discovers any defect in the goods which existed while it was in the hands of the seller, the consumer has the right of option to reject the item purchased or to take it at the agreed price;
- c) If the seller put an exemption clause of no responsibility for any defect in the goods while the defects were known to him or concealed by him purposely, the exemption clause in the situation has no effect and, thus, the consumer is not bound by the exemption clause and has the right of option to reject the goods or to take them.

⁷⁵ Abdullah Alwi Haji Hassan, *Sales and Contracts in Early Islamic Commercial Law*, Islamic Research Institute, Islamabad, 1994, p.41

⁷⁶ Qur`an; 4:29

Besides, the option of defect, there are many other options provided by the Islamic Law of Contracts to the parties to secure their rights in commercial transactions. *Khayar al-Majlis* that is the option of the session is also given by Islamic Law. It is the period during which contracting parties devote themselves to the business in hand and is terminated by any event, such as physical departure from place of business, which indicates that negotiations are concluded or suspended. The right of the option of session (sitting), called *Khayar al-majlis*, is the inalienable right to repudiate unilaterally a contract concluded by both parties, so long as they have not yet separated. Another option that is provided to the consumers in Islamic Law of Contract is that of inspection (*khayar al-riyah*). It is the basic rule that the subject matter should be known to the parties at the time of contract. The option of inspection is given to the customer buys anything not present at the time of the contract. Knowledge of the subject-matter is an essential condition for the conclusion of the contract. The option of inspection gives opportunity to the customer to examine the subject-matter at the time of the contract or by description in a manner, which removes all kinds of *Jahala* (want of knowledge). This is known as the option of examination or *khayar al ru yia*.

5. Conclusion

Islamic Law has greatly emphasized on the protection of consumer's interests. It takes care of the consumer in the market, trade practices, and contracts. Moreover, it safeguards consumers from his own irrational consumption that harms him and the society. Islamic legal principles regarding contract, market mechanism and trade practices encourage consumer friendly environment and insure protection of consumers against mal-practices in trade such as hoarding, adulteration, usury, misrepresentation, exorbitant profiteering, dealing in prohibited goods and services, gambling and games of chance, arbitrarily fixing prices of the commodities, cheating and fraud, trickery etc., which greatly harm consumers' interest. False representation, swearing to sell a product and exaggeration in description of the goods and services are strictly prohibited by *Shariah*.

The general principles of Islamic Law of Contract provide the principles of policy for a good Consumer legislation. In Islamic law of contract a large number of transactions are declared unfair only because they harm the consumers. Islamic law of contract gives the buyer rights of option to rescind the contract and save themselves against defects in the products and faulty services. They can exercise this right after conclusion of the contract, if the reason exists. The Islamic doctrine of *Khayar al-ayb* gives an implied right to the consumer to carry out an inspection on the fitness and quality of the goods to be bought. It reserves the right of inspection of the goods to the buyer both before and after the conclusion of any sale and purchase agreement and as such, the right of option either to continue the contract or rescind it is also reserved to the buyer both before and after the agreement of sale and purchase. The Islamic doctrine of *khayar al-ayb*, however, does allow the buyer to seek compensation only (without any right of option) if the buyer who has created a defect of the good after the agreement, later realizes that there was another defect which had occurred while the goods were in the hands of the seller.

The state is under an obligation to establish a consumer friendly environment in the markets and to regulate trade in the best interests of the society. At the end, it is recommended that consumer protection in an Islamic sense requires an effort both by the government as well as the individuals. Government should work towards strengthening the consumer related

institutions. Individuals, on the other hand should follow the guidelines provided by the *Qur`an* and the *Sunnah*.