

Consumer Laws In Pakistan

**A Ready Reference for Consumers
& Practicing Lawyers**

VOLUME II

**Sikander Aqeel Ansari
And
Abrar Hafeez**

**CRCP
Consumer Rights Commission
Of Pakistan**

In collaboration with
LIBERAL FORUM PAKISTAN

CONSUMERS LAWS IN PAKISTAN

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& Practicing Lawyers

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BY
Sikander Aqeel Ansari
And
Abrar Hafeez

Published by

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PREFACE
TO
VOLUME I

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 consumers 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 practicing 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
Islamabad
December 1999

PREFACE
TO
VOLUME II

It is great pleasure for the Consumer Rights Commission of Pakistan (CRCP) to introduce the second volume of Consumer Laws in Pakistan. In this collection, various consumer related laws dealing with environment, contract, sale of goods, specific relief, fatal accidents and motor vehicles have been analysed from consumer perspective. In this volume, the organization and format of the laws reviewed is slightly different from the Volume I. Volume II presents comments under each section of the laws. Moreover, various sections of the laws have been organized along thematic lines and not according to their serial number.

With reference to the series of exploring various laws from consumer perspective, it is very encouraging to note that students of law, legal practitioners and the consumers in general have been very receptive to the Volume I.

CRCP believes that the lack of enforceable rights of citizens as consumers is one of the major factors contributing to various crises in Pakistan, ranging from governance to corporate activities. CRCP particularly focuses on legal intervention due to the fact that legally enforceable rights can largely contribute towards the sustainability of civil initiatives and facilitate the emergence of an organized consumer movement in Pakistan.

Salman Humayun
Islamabad.
December 2000.

**INTRODUCTION
TO
VOLUME I**

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 consume 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 misdealt with from the standpoint of the government (representing the consumer) and the retailer or manufacture. 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, 1997(PCPPHA”); wherein the Federal Government, acting through a Controller–General of the 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, 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 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 consume 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

¹ MCA judgment 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.

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 consumer 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 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 judgment 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.

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.34.

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”) and Pakistan Telecommunication Authority⁶ (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 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.

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

⁶ Pakistan Telecommunication (Re-Organization) Act 1996)

Another example of such a conflict of interest is the recent regulation and privatization 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 organization 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 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 duty to the consumer to take that reasonable care⁷.

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 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 of 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 organizes and asserts itself there will then be

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

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 and attach on the doctrine of the privity of contract.

an increased awareness and an effective incorporation of the consumer point of view. For the movement, 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 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 intentions to provide a simplified introduction to legislation that has an immediate and significant bearing on consumer rights in Pakistan.

Mohammad Sarwar Khan

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

**INTRODUCTION
TO
VOLUME II**

“Each do we supply, both these and those, from the bounty of thy lord. And the bounty of thy lord can never be walled up.”(17:20)

Suppliers may not be able to wall up the bounty of the Lord but they have always aspired and to great extent successfully, monopolized supplies, whether of goods or services, for their own interest and advantage. In Pakistan it is the consumers, who have been suffering due to legally controlled but practically unbridled freedom of suppliers to fix the quantity, quality and time of supplies at their own will. Not only this, suppliers have also been enjoying the liberty to bring the supply of the required goods and services to a complete halt according to their whims and caprice. This has been true, in particular, in respect of the goods and supplies monopolized by the state authorities. The Constitution of Islamic Republic of Pakistan 1973 empowers the state to exercise control over any trade business, industry or service. Article 18 of the constitution says,

“Subject to such qualifications, if any, as may be prescribed by law, every citizen shall have the right to enter upon any lawful profession or occupation, and to conduct any lawful trade or business:

Provided that nothing in this article shall prevent: -

- (a) the regulation of any trade or profession by a licensing system; or
- (b) the regulation of trade , commerce or industry in the interest of free competition therein; or
- (c) the carrying on, by the Federal Government or a Provincial Government, or by a corporation controlled by any such Government, of any trade, business, industry or service, to the exclusion, complete or partial, or other persons.”

Although, there might be some justifiable arguments in favour of state control over certain trades and services, etc. but what about the obligations of the state with regard to such trades and services? The Article is silent about this question. Despite some openness on the part of the Government in this area, consumers continue to face a situation with no light at the end of tunnel. What remedy is available to them if they are denied a telephone, gas or electricity connection or supply thereof is either disrupted or halted? Which door should they knock at if the licensing authorities of the state neither refuse nor grant them the required license and keep on protracting the matter? Is any remedy available to the consumers in case the concerned state controlled corporations and authorities stop exploring oil and gas, levy exorbitant charges, and fail to build and maintain national highways and levy unreasonable toll taxes? The relevant statutes do contain some provision imposing certain liabilities upon such authorities but they provide either little or no remedy to the consumers particularly, the marginalized and poor. This situation is entirely contradictory to the Principle of Policy contained in Article 38 (a) of the Constitution:

‘The State Shall: -

- (a) secure the well-being of the people, irrespective of sex, caste, creed or race by raising their standard of living, by preventing the concentration of wealth and means of production and distribution in the hands of a few to the detriment of general interest and by ensuring equitable adjustment of rights between employers and employees, and landlords and tenants.”

Unfortunately, as provided by Article 30 (2) of the Constitution, the validity of and action or of a law cannot be called in question on the ground that it is not in accordance with the Principles of Policy, and no action lies against the state, any organ or authority of the State or any person on such ground.

Apart from the absence of effective laws protecting the rights or consumers, lack of awareness among the consumers coupled with lack of action for protection of their rights is probably one of the main reasons behind their problems. Consumer Rights Commission of Pakistan (CRCP) has taken a practical step to promote the rights and interests of consumers and facilitate the emergence of an organized consumer movement in Pakistan. Creation of awareness among different categories of consumers about their role, rights and responsibilities is one of its aims and objectives. Nothing would change unless consumers fulfil their own responsibilities and struggle for their rights.

“And that man hath only that for which, he maketh effort.” (53:39)

This volume is an attempt to achieve a part of the objective of creating awareness and prompting consumers to take a legal action, where necessary. The fundamental idea is to acquaint the consumers with the relevant laws, which are applicable to various

goods and services. However, emphasis has been laid upon those parts of these laws, which grant them a right to seek remedy. This volume is certainly not exhaustive, nor was it intended to be so. It is aimed at helping the consumers find out reference to the relevant provisions of law with contents thereof in simple words, which might in some way help them seek remedy before a court of law or other regulatory authorities. CRCP considered it necessary to compile a simple worded, yet comprehensive, series of books from the perspective of the consumers because no such attempt has been made previously. Detailed commentary and difficult legal terms have deliberately been avoided, as consumer may find himself rather lost in such terms. In the words of Shakespeare in king John II,

‘Zounds! I was never so bethump’d wit h words.’”

Sikander Aqeel Ansari
Abrar Hafeez

**THE PAKISTAN ENVIRONMENTAL
PROTECTION ACT, 1997**

Legislation:

The Pakistan Environmental Protection Act, 1997.

Extent:

It extends to the whole of Pakistan.

Nature:

The act provides for protection, conservation, rehabilitation and improvement of Environment for prevention and control of pollution and promotion of sustainable development.

Definitions:

Section 2 (i):

Adverse environmental effect:

means impairment of, or damage to the environment and

Includes: -

- a) impairment of, or damage to, human health and safety or to biodiversity or property;
- b) pollution; and

- c) any adverse environmental effect as may be specified in the regulations.

Section 2 (ii):

Agricultural waste:

means waste from farm and agricultural activities including poultry, cattle farming, animal husbandry, residues from the use of fertilizers, pesticides and other farm chemicals.

Section (iii):

Air Pollutants:

means any substance that causes pollution of air and includes soot, smoke, dust particles, odour, light, electromagnetic radiation, heat, fumes, combustion exhaust, exhaust gases, noxious gases, hazardous substances.

Section (iv):

Biodiversity or Biological Diversity:

means the variability among living organisms from all sources, including, *inter alia*, terrestrial, marine and other aquatic ecosystems and ecological complexes of which they are part; this includes diversity within species, between species and of ecosystems.

Section (vi)

Discharge:

means spilling, leaking, pumping, depositing, seeping, releasing, flowing out, pouring, emitting or dumping.

Section 2 (vii):

Ecosystem:

means a dynamic complex of plant, animal and micro organism communities and their non-living environment interacting as a functional unit.

Section 2 (viii):

Effluent:

means any material in solid, liquid or gaseous form or combination thereof being discharged from industrial activity or any other source and includes a slurry, suspension or vapour.

Section 2 (ix):

Emission Standards:

means the permissible standards established by the federal agency or a provincial agency for emission of air pollutants and noise and for discharge of effluents and waste.

Section 2 (x):

Environment:

means: -

- a) air and water and land;
- b) all layers of the atmosphere;

- c) all organic and inorganic matter and living organisms;
- d) the ecosystem and ecological relationships;
- e) buildings, structures, roads, facilities and works;
- f) all social and economic conditions affecting community life; and
- g) the inter-relationships between any of the factors in sub-clauses (a) to (f).

Section 2 (xi):

Environmental impact assessment:

means an environmental study comprising collection of data, prediction of qualitative and quantitative impacts, comparison off alternatives, evaluation of preventive, mitigatory and compensatory measures, formulation of environmental management and training plans and monitoring arrangements, and framing of recommendations and such other components as may be prescribed.

Section 2 (xviii):

Hazardous substance:

means: -

- a) a substance or mixture of substance, other than a pesticide as defined in the Agricultural Pesticides Ordinance, 1971 (11 of 1971), which, by reason of its chemical activity or toxic, explosive, flammable, corrosive, radioactive or other characteristics causes, or is likely to cause, directly

or in combination with other matters, an adverse environmental effect; and

- b) Any substance, which may be prescribed as a hazardous substance.

Section 2 (xxi):

Hospital waste:

Includes waste medical supplies and materials of all kinds, and waste blood, tissue, organs and other parts of the human and animal bodies, from hospitals, clinics and laboratories.

Section 2 (xxii):

Industrial activity:

means any operation or process for the manufacturing, making, formulating, synthesizing, altering, repairing, ornamenting, finishing, packing or otherwise treating any article or substance with a view to its use, sale, transport, delivery or disposal, or for mining, oil and gas exploration and development, or for pumping water or sewage, or for generating, transforming or transmitting power or for any other industrial or commercial purposes.

Section 2(iii):

Industrial waste:

means waste resulting from an industrial activity.

Section 2 (xxviii):

Municipal waste:

includes sewage, refuse, garbage, waste from abattoirs, sludge and human excreta and like.

Section 2(xxx):

Noise:

means the intensity, duration and character of sounds from all sources, and includes vibration.

Section 2 (xxxi):

Nuclear waste:

means waste from any nuclear reactor or nuclear plant or other nuclear energy systems, whether or not such waste is radioactive.

Section 2 (xxxiii):

Pollution:

means the contamination of air, land or water by the discharge or emission of effluents or wastes or air pollutants or noise or other matter, which either directly or indirectly or in combination with other discharges or substances alters unfavorably the chemical, physical, biological, radiational, thermal or radiological or aesthetic properties of the air, land or water or which may, or is likely to make the air, land or water unclean, noxious of impure or injurious, disagreeable or detrimental to the health, safety, welfare or property of persons or harmful to biodiversity.

Section 2(xiv):

Waste:

means any substance or object which has been, is being or is intended to be, discarded or disposed of, and includes liquid waste, solid waste, waste gases, suspended waste, industrial waste, agricultural waste, nuclear waste, municipal waste, hospital waste, used polyethylene bags and residues from the incineration of all types of waste.

Pakistan Environmental Protection Council:

Section 3:

The Act provides for establishing a Council to be known as the Pakistan Environmental Protection Council consisting of the Prime Minister or any other person nominated by him as its Chairperson, Minister In charge of Environment as its Vice Chairperson, Chief Ministeres of the Provinces, Ministers Incharge of the subject of environment in the Provinces and other persons not exceeding thirty-five subject to limitations prescribed by section 3 as members, and the secretary of the Ministry or Division dealing with the subject of Environment as Member/Secretary of the Council. The members of the Council, other than ex-officio members, shall hold office for a term of three years.

Functions of the council:

Section 4:

The Council is responsible for coordinating and supervising enforcement of the provisions of the Act, approving comprehensive national environmental policies

and ensure their implementation, approving National Environmental Quality standards, providing guidelines for protection of species, habitats and biodiversity and conservation of renewable and non-renewable resources, coordinating integration of the principles and concerns of sustainable development plans and policies and considering the National Environmental Report and give appropriate directions thereon. The council has the powers to either itself or on the request of any person or organization, direct the Federal Agency or any Government Agency to prepare and implement projects for protection, conservation, rehabilitation and improvement of environment, prevention and control of pollution and sustainable development of resources or to undertake research in any specified aspect of environment. The functions assigned to the Council make it a supreme body under the Act.

Pakistan Environmental Protection Agency:

Section 5:

The Act provides for establishing the Pakistan Environmental Protection Agency to exercise the powers and perform the functions assigned to it under the Act and the rules and regulation made under the Act. The agency is to be headed by a Director General, who shall exercise its powers and perform its functions.

Section 27:

Federal and Provincial Agencies are bound by the directions issued to them by the Federal Government. The Federal Government is required to establish Advisory

Committees for various sectors to assist the Agency in discharge of its functions.

Section 6:

The Act enumerates in detail the functions assigned to the Agency. These functions indicate that the Federal Agency is required to act as the principal implementing agency of the provisions of the Act, and rules and regulations framed there under and national environmental policies.

Section 7:

The Act equips the Agency with sufficient powers to carry out its functions pursuant to the Act sub-clause (h) of this section provides for establishing a National Environmental Coordination Committee comprising the Director General as its chairman the Director Generals of the provincial Environmental Protection Agencies and such other persons as the Federal Government may appoint as its members, to exercise such powers and perform such functions as may be delegated or assigned to it by the Federal Government for carrying out the purposes of the Act and ensuring inter-provincial coordination in environmental policies. The Pakistan Environmental Protection Agency established a National Environmental Coordination Committee pursuant to the said provision¹⁰.

¹⁰ Through a notification No. S.R.O. 95 (1) 99 dated 24 December, 1998.

Provincial Environmental protection agencies:

Section 8:

The Act provides that the every Provincial Government shall establish an Environmental Protection Agency, to exercise such powers and perform such functions as may be delegated to it by the Provincial Government under sub-section 26.

Power to delegate:

Section 26 (2):

The Federal Government has been authorized to delegate any of its or of the Federal Agency's powers and functions to any Provincial Government, Government Agency local Council or local authority

Section 26(2):

This section authorizes the Provincial Government to delegate any of its or of the Provincial Agency's powers or functions to any Government Agency of such Provincial Government or any local council or local authority in the Province. Provincial Agencies are bound by the directions given to them by the provincial Government. Pursuant to these provisions of the Act, the Federal Government delegated to the Provincial Government of the Punjab, Sindh, NWFP and Balochistan, most of the powers and functions of the Pakistan Environmental protection Agency¹¹.

¹¹ As specified in four different notifications (NO. S.R.O.1251 (1_/98, No S.R.O.1252 (1)/98, No S.R.O. 1254(1)/98, No.S.R.O.1251 (1)/98) dated

Prohibitions:

Section 11:

Imposes certain in respect of emission and discharge of any effluent or waste or air pollutants, or noise in an amount, which is in excess of the National Environmental Quality Standards¹². According to section 34(2) of the Act, repeal of that Ordinance does not affect the validity of notifications issued thereunder unless anything contained in the notification is inconsistent with the provisions of the Act.

Section 12:

Prohibits commencement of construction or operation without filing with the Federal Agency an initial environmental examination or an environmental impact assessment and obtaining approval from the Federal Agency.

Section 13:

Prohibits import of hazardous waste into Pakistan and its territorial waters, exclusive economic zone and historic waters.

27 October, 1998 respectively subject to the conditions and limitations specified therein.

¹² These standards were established through notification number S.R.O 742 (1)/93 dated 24 August, 1993.

Section 14:

Prohibits generation, collection, consignment, transportation, treatment, disposal of, handling and import of any hazardous substance except under a license issued by the Federal Agency or in accordance with a law or international treaty, protocol etc. which Pakistan is a party

Section 15:

Prohibits operation of motor vehicles emitting air pollutants or noise in excess of the prescribed standards.

Section 16:

Authorizes the Federal Agency and Provincial Agencies to issue notice to a person responsible for emission or discharge of pollutants, waste, etc. in violation of provisions of this act or rules and regulations made under the Act. The said Agencies are empowered to direct such person to take such measures and within such period that the Agencies may consider necessary.

Complaints before Environmental Tribunals:

Sections 21 (2) & 21 (3)(b):

- a) An aggrieved person may file complaint against any person for contravention of sections 11,12,13,14 or section 16 or any order issued thereunder, before an Environmental Tribunal.
- b) In case of contravention of sections 14 or 15 or any rule or regulation or conditions of any license, any order or direction issued by the council or by the

Federal Agency or Provincial Agency, before making a complaint, and aggrieved person will have to give a notice not less than thirty days to the Federal Agency concerned of the Environmental Tribunal.

Complaints before the Environmental magistrate:

Sections 24 (1) &24 (3)(b):

An aggrieved person may file a complaint before an Environmental Magistrate for contravention of sections 14 and 15 or any rule or regulation or conditions of any license, any order or direction issue by the council or by the Federal Agency.

Penalties:

Section 17:

Provides for punishment for violation of the provisions of the Act, rules and regulations.

- i) Contravention of sections, 11,12,13 or16 or any order issued thereunder is punishable with fine, which may extend to Rs. one million and in case of a continuing contravention, with an additional fine, which may extend to one hundred thousand rupees for every day during which may extend to one hundred thousand rupees for every day during which the contravention continues.
- ii) Contravention of section 14 or 15 is punishable with fine, which may extend to one hundred thousand rupees and in case of continuing contravention with an additional fine, which may extend to one thousand

rupees for every day during which such contravention continues.

- iii) In case a person is convicted for the second time under section 17, he may be awarded additional punishment of imprisonment for a term, which may extend up to two years, closure of his factory and its confiscation, restoration of environment at his own cost and payment of compensation to any person for any loss, etc. suffered by him due to contravention of the Act.
- iv) Officers of corporate bodies, Government Agencies, local authorities or local councils guilty of contravention of the Act due to their negligence are also punishable under sections 18 and 19.

Compensation:

Sub-Section 17 (5) (f):

Where a person convicted under sub-section (1) or sub-section (2); and had been previously convicted for any contravention under this Act, the Environmental Tribunal or, as the case may be, Environmental Magistrate may, in addition to the punishment awarded such sum be paid to any person as compensation for any loss, bodily injury, damage to his health or property suffered by such contravention.

Environmental Tribunals:

Section 20:

Provides for establishment of Environmental Tribunals. Each Tribunal is required to consist of a Chairperson and

two members. The Federal Government has established two Environmental Tribunal and Karachi¹³

Jurisdiction and Powers of Environmental Tribunals:

Section 21:

Exclusively empowers the Tribunal to try contravention punishable under sub-section 17 (contravention or sections 11, 12, 13 or 16). However, an Environmental Tribunal cannot take cognizance of any offence punishable under sub-section 2 of section 17 (contravention of sections 14 or 15) except on a complaint in writing by the Federal Agency or local council and by an aggrieved person, who has given notice of not less than thirty days to the Federal Agency or the Provincial Agency concerned with the alleged contravention and of his intention to make a complaint to the Tribunal.

The Tribunals have been vested with the same powers as are vested in the Court of Session under the Code of Criminal Procedure, 1998.

Appeals:

Section 22:

Appeals against the orders of the Federal/Provincial Agencies can be filed before an Environmental Tribunal within thirty days.

Section 23:

Appeal against orders passed by Environment Tribunal can be filed before the High Court within thirty days. The

¹³ Through notification number S.O. 22(1)/97-A-III dated 02 June 1999.

Federal Government has established two Environmental Tribunals at Lahore and Karachi¹⁴.

Environment Magistrates:

Section 24:

Provides that contravention punishable under sub-section (2) of section 17 shall exclusively be triable by a judicial Magistrate of the first class as Environment Magistrate especially employed in this behalf by the High Court. He is competent to impose any punishment specified in sub-section (2) and (4) of section 17. He can take cognizance of an offence triable under sub-section 1 of section 17 on a complaint filed by the Federal Agency, Provincial Agency, Government Agency, local council or any aggrieved person. Lahore High Court, Lahore has empowered all the senior civil judges-cum-judicial Magistrates in the Province of Punjab to try offences as Environmental Magistrates¹⁵. The High Court of Sindh, Karachi has empowered the 1st Judicial Magistrates of each District posted at the Headquarter in Sindh to try contravention punishment under sub-section (2) of section 17 of the Act¹⁶.

Appeals:

Section 25:

A person convicted by an Environmental Magistrate has a right to file an appeal within thirty days before the Court of Session, whose decision thereon shall be final.

Lahore High Court, Lahore has empowered all the Senior civil judges-cum-judicial Magistrates in the province of

¹⁴ Through notification number S.R.O22 (1) 97-A-III dated 02 June, 1999.

¹⁵ Through notification number No. 293-JOB (5)/ V.I.E. 28 dated 15 July 1998.

Punjab to try offences as Environmental Magistrate¹⁶. The High Court of Sindh, Karachi has empowered the 1st judicial Magistrate of each district posted at the Headquarter in Sindh to try contravention punishable under sub-section (2) of section 17 of Act¹⁷.

Comments:

The Act defines various terms, provides for establishment of various agencies including Environmental Tribunals, appointment of Environmental Magistrates and describes their powers and functions, makes provisions for fixation of qualitative and quantitative standards for violation of prohibitive provisions of the Act. The Act provides a right to an aggrieved person to seek remedy including compensation, against those guilty of violating the provisions of the Act Environmental Tribunals have been established and Environmental Magistrates appointed in the provinces of the Punjab and Sindh, but similar actions are still awaited in the N.W.F.P and Balochistan. Rules and regulations required to be framed under the Act are also awaited. The Act provides for two parallel judicial systems to deal with offences under the Act. Environmental tribunals would exercise original as appellate jurisdiction (against the orders passed by the Federal/Provincial Agencies). Orders passed by Environmental Tribunals are appealable before the High Court. On the other hand, Environmental Magistrates would also act as trial court and orders passed by them are appealable before the Court of Session, whose decisions would be final. The rationale behind establishing two parallel judicial systems is incomprehensible. Federal and Provincial Agencies have been assigned enormous functions and vested with vast powers but the matter of

¹⁶ Through notification No.G.A.Z/Env. Magistrate dated 15 may 1999.

¹⁷ Through notification No.293-JOB (5)/V.I.E.28 dated 15 july,1998.

appointments of those who would act on behalf of the Agencies has been left wide open. A provision in the Act imposing the principle merit in appointments would have removed all concerns of consumers and environmentalists in this regard. The Act does not provide any remedy against the Agencies and its officers in case of their failure to discharge their obligation due to their own negligence. The Act is silent about the sources of funding and audit of the Federal Agency. Provincial Sustainable Development Fund are likely to be flooded with funds from foreign governments and international agencies, but the Act does not bind the Provincial Sustainable Development Fund Board, which will be responsible for management of the fund, to maintain relevant books of account. The Act does not prescribe any procedure for audit to the Fund.

THE CONTRACT ACT, 1872

Legislation:

The Contract Act, 1872

Extent:

The Act extends to the whole of Pakistan.

Nature:

This Act contains a number of restrictive principles in a codified form, which create mutual rights and obligations between the contracting parties. The parties to contract can agree on whatever terms they like in respect of the subject matter of their contract provided that they do not violate mandatory provisions of law.

Proposal (or Offer) and Acceptance:

Sections 2 (a):

When one person signifies to another his willingness to do or to abstain from doing any thing, with a view to obtaining the assent of the other to such act or abstinence, he is said to make a proposal. In simpler words, a proposal is an offer to be bound by a promise and shows the intention of the proposer to be bound by an obligation if the offeree (the other party) fulfils or promises certain conditions.

Section 7:

In order convert a proposal into a promise, the acceptance must: -

1. be absolute and unqualified;
2. be expressed in some usual and reasonable manner unless the proposal prescribes the manner in which it is to be accepted, and the acceptance is not made in such manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not other wise; but if he fails to do so he accepts the acceptance [section 7].

Section 8:

Performance of the conditions of a proposal, or the acceptance of any consideration for a reciprocal promise, which may be offered with a proposal, is an acceptance of the proposal.

Section 5:

A proposal may be revoked at any time before the communication of its acceptance is complete as against the proposer, but not afterwards. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Promise:

Section 2 (b):

When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted becomes a promise. This signifies that mere an offer is not binding on the other party. A proposal becomes a promise only upon communication of its acceptance. Communication of acceptance to the proposer is also essential to constitute a promise. Silence of an offeree does not constitute a promise.

Promises, Express and Implied:

Section 9:

In so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied.

Reciprocal promises:

Section 2 (f):

Promises which form the consideration or part of the consideration or part of the consideration for each other are called reciprocal promise.

Promisor & promisee

Section 2 (c)

The person making the proposal is called the “promisor”, and the person accepting the proposal is called the “promisee”. –

Consideration:

Section 2(d):

When at the desire of the promisor the promisee or any other person who has done or abstained from doing, or does, or abstains from doing, or promises to do or to abstain from doing something, such act or abstinence or promise is called a consideration for the promise. An act, abstinence or promise on the part of promisee or some other person at the desire of promisor, are essentials of consideration. Consideration should be good and valuable. The term 'consideration' does not mean payment of money only.

The consideration or object of an agreement is lawful, unless it is forbidden by law, or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent; or involves or implies injury to the person or property of an other; or the court regards it as immoral, or opposed to public policy. In each of these cases, the consideration or object of an agreement of which the object or the consideration is unlawful is void.

Agreement:

Section 2 (e):

Every promise and every set of promises, forming the consideration for each other, is an agreement. Every promise is not necessarily an agreement. Only such promise becomes an agreement, which has a consideration. Agreement can either be 'executed' or 'executory'. In an executed agreement one party has already performed his part of the agreement while the

other party has to perform his part. In an executory agreement both the parties have to perform their mutual promises.

Consent:

Section 13:

Two or more persons are said to consent when they agree upon the same things in the same sense.

Free Consent:

Section 14:

Consent is said to be free when it is not caused by coercion, or undue influence, or fraud, or misrepresentation, or mistake subject to the provisions of sections 20, 21 and 22, as defined in the Act.

Contract:

Section 2 (h):

An agreement enforceable by law is a contract. Consequently, every contract is an agreement but every agreement is not necessarily a contract.

Section 10:

All the agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby (in the Contract Act) expressly declared to be void.

Section 11:

Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject. The term 'person' used in this section includes juristic persons like government, company or a statutory body, etc. A person of unsound mind and minor are not competent to enter into a contract and contract made by them is void.

Voidable contract:

Section 2(i):

An agreement, which is enforceable by law at the option of one or more of the parties thereto, but not at the option of the other or others, is voidable contract. A contract is binding on the parties unless set aside on the ground that the transaction was vitiated by fraud, undue influence, misrepresentation or coercion or any other circumstances, which would entitle a party to a contract to avoid it.

Section 19:

When consent to an agreement is caused by coercion, fraud, or misrepresentation, the agreement is a contract voidable at the option of the party, whose consent was so caused. A party to a contract, whose consent was caused by fraud or misrepresentation, may if he thinks fit, insist that the contract shall be performed, and that he shall be put in the position in which he would have been if representations made had been true. In case of a voidable contract, the aggrieved party must exercise his option to avoid the contract within a reasonable time.

Unreasonable delay on his part to rescind the contract disentitles him from obtaining any relief.

Section 19 (a):

When consent to an agreement is caused by undue influence, the agreement is contract voidable at the option of the party, whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit thereunder, upon such terms and conditions as the court may seem just.

Section 21:

A contract is not voidable because it was caused by a mistake as to any law in force in Pakistan; but a mistake as to a law not in force in Pakistan has the same effect as a mistake of fact.

Section 22:

A contract is not voidable merely because it was caused by one of the parties to it being under a mistake as a matter of fact.

Void agreement:

Section 2 (g):

An agreement not enforceable by law is said to be void.

Section 2 (j):

A contract which ceases to be enforceable by law becomes void.

Section 20:

Where both the parties to an agreement, are under a mistake as to a matter of fact essential to the agreement, the agreement is void. An erroneous opinion as to the value of the thing, which forms the subject matter of the agreement, is not to be deemed a mistake as to a matter of fact. A void agreement need not be performed.

The following Sections deal and define agreements, which are void: -

Section 23:

Every agreement of which the object or consideration is unlawful is void.

Section 24:

If any part of a single consideration for one or more objects, or any one or any part of any one several consideration for a single object, is unlawful, the agreement is void.

Section 25:

An agreement made without consideration is void unless it is in writing and registered, or is a promise to compensate for something done, or is a promise to pay a debt barred by limitation law. An agreement made without consideration is void unless:

- 1) it is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural

love and affection between parties standing in a near relation to each other; or unless.

- 2) it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do, or unless.
- 3) it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorised in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits.

In any of these cases, such an agreement is a contract.

Section 26:

Every agreement in restraint of marriage of any person, other than minor, is void.

Section 27:

Every agreement by which any one is restrained from exercising a lawful profession, trade or business of any kind, it is to that extent void. However, this is subject to an exception that one who sells the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within specified local limits, so long as the buyer, or any person deriving title to the goodwill from him, carries on a like business therein; provided that such limits appear to the Court reasonable.

Section 28:

Every agreement, by which any party thereto is restricted absolutely from enforcing his right under or in respect of any contract, by the usual proceeding in the ordinary tribunals, or which limits the time within which he may thus enforce his rights, is void to that extent. However, this does not apply to a contract by which parties agree to refer their disputes to arbitration.

Section 29:

Agreements by the meaning of which is not certain, or capable of being made certain, are void.

Section 30:

Agreements by law of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to any person to abide the result of any game or other uncertain event on which any wager is made.

Section 30(a):

All agreement knowingly made to further or assist the entering into, effecting or carrying out, or to secure or guarantee the performance, of any agreement void under section 30, are void.

Section 30 (b):

No suit or other proceedings lie for recovery of any sum of money, commission, fee or reward paid or payable in respect of any agreement void under section 30 (a).

Section 32:

Contingent contracts to do or not to do any thing if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

Section 65:

When an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore it, or to make compensation for it to the person from whom he received it.

Performance:

Section 37:

The parties to a contract must either perform, or offer to perform, their respective promises, unless such performance is dispensed with or excused under the provisions of this Act, or of any other law, promises bind the representatives of the promisor in case of the death of such promisors before performance, unless a contrary intention appears from the contract.

Section 38:

Where a promisor has made an offer of performance to the promisee, and the offer has not been accepted, the promisor is not responsible for non-performance, nor does he thereby lose his rights under the contract. Every such offer must fulfill the following conditions: -

- 1) It must be unconditional;

- 2) It must be made at proper time and place, and under such circumstances that the person to whom it is made may have a reasonable opportunity of ascertaining that the person by whom it is made is able and willing there and then to do the whole of what is bound by his promise to do;
- 3) If the offer is an offer to deliver any thing to the promisee, the promisee must have a reasonable opportunity of seeing that the thing offered is the thing, which the promisor is bound by his promise to deliver.

An offer to one of several joint promisees has the same legal consequences as an offer to all of them.

Person by whom promise is to be performed:

Section 40:

If it appears from the nature of the case that it was the intention of the parties to any contract that any promise contained in it should be performed by the promisor himself such promise must be performed by the promisor. In other case, the promisor or his representatives may employ a competent person to perform it. It is usually implied that contracts requiring personal services of a promisor due to his personal qualification, skill or learning have to be performed by the promisor himself unless it is otherwise provided in the contract.

Section 41:

When a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor.

Section 42:

When two or more persons have made a joint promise, then unless a contrary intention appears by the contract all such persons during their joint lives, and after the death of any of them, his representative jointly with survivor or survivors and after the death of the last survivor, the representatives of all jointly, must fulfill the promise.

Section 43:

According to section 43, in absence of express agreement to the contrary, the promisee may compel any one more of joint promisors to perform the whole of the promise. Each of two or more joint promisor to contribute equally with himself to the performance of the promise, unless a contrary intention appears from the contract. In case of default by one of the joint promisors, the remaining promisors must bear the loss arising from such default in equal shares.

Section: 62

If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed.

Section 63:

Every promisee may dispense with or remit, wholly or in part, the performance of the promise made to him or may extend the time for such performance, or may accept instead of it any satisfaction which he thinks fit.

Section 64:

Where a party rescinds a voidable contract in exercise of

his option, the other party need not perform his promise. The party, which has received benefit from the other party, rescinds a voidable contract, it has to restore benefit to the other party.

Time and Place of Performance:

Section 46:

Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time. The question 'what is reasonable time' is, in each particular case, a question of fact.

Section 47:

Where a day is fixed for performance and time has not been specified and the promise has to be performed without application, it may be performed at any time during the usual hours of business on such day and at the place at which the promise ought to be performed.

Section 49:

Where no place is fixed for performance it is the duty of the promisor to apply to the promisee to appoint a reasonable place for the performance and to perform it at such place.

Section 50:

The performance of any promise may be made in any manner, or at any time, which the promisee prescribes or sanctions. Where a party fails to perform his part at the specified time the contract becomes voidable at the option

of the promisee, if the intention of the parties was that time should be of the essence of the contract. Where time is not of the essence of the contract it does not become voidable but the promisee is entitled to compensation for any loss occasioned to him by such failure.

Section 55:

If the promisee accepts performance at any time other than that agreed the promisee cannot claim compensation for any loss unless he gives a notice of his intention to do so to the promisor at the time of acceptance. The ordinary presumption is that except in commercial contracts, time is not of the essence of the contract but this presumption be rebutted by showing the intention of the parties.

Performance of Reciprocal Promises:

Section 51:

When a contract consists of reciprocal promises to be simultaneously performed, no promisor need perform his promise unless the promisee is ready and willing to perform his reciprocal promise.

Section 52:

Where the order in which reciprocal promises are to be performed is expressly fixed by the contract, they shall be performed in that order, and, where the order is not expressly fixed by the contract, they shall be performed in that order which the nature of the transaction requires.

Section 53:

Where one party prevents the other from performing his

promise the contract becomes voidable at the option of the party so prevented and he is entitled to compensation from the other party for any loss which he may sustain due to non-performance of the contract.

Section 54:

Where a contract is such that one party has to do something before the other party can perform his part of the contract, and the first party does not do his part, he cannot claim performance of reciprocal promises and the other party is not liable for non-performance of its part and may claim damages.

Refusal to Perform:

Section 39:

When a party to a contract has refused to perform, or disabled himself from performing his promise in its entirety, the promise may put an end to the contract, unless he has signified, by words or conduct, his acquiescence in its continuance. Refusal of a party to perform a contract is usually termed as 'repudiation'. The party aggrieved by such repudiation may accept it within a reasonable time. Failure to exercise his right to rescind the contract within a reasonable time may disentitle him to any relief.

Consequences of Breach of Contract:

Section 73:

Where a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or

damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it. Such compensation is not to be given for any remote and indirect loss or damage sustained by reason of the breach.

When an obligation resembling those created by contract has been incurred and has not been discharged, any person injured by the failure to discharge it is entitled to receive the same compensation from the party in default, as if such person had contracted to discharge it and had broken his contract.

This section does not create any cause of action unless and until the damage is actually suffered and proved by evidence. Where a party does not suffer any loss or damage because of a breach of contract, he cannot claim any damages under this section.

Section 74:

When contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach is entitled, whether or not actual damages or loss is proved to have been caused thereby, to receive from the party who has broken the contract reasonable compensation not exceeding the amount so named or, as the case may be, the penalty stipulated for.

Contract of indemnity:

Section 124:

A contract by which one party promises to save the other from loss caused to him by conduct of the promisor himself, or by the conduct of any other person, is called a ‘contract of indemnity’.

Section 125:

An indemnity holder can recover all costs and damages incurred by him in respect of any matter covered by the contract of indemnity.

Contract of Guarantee:

Section 126:

A ‘contract of Guarantee’ is a contract to perform the promise, or discharge the liability, of a third person in case of his default. The person who given the guarantee is called the ‘surety’, the persons in respect of whose default the guarantee is given is called the ‘principal debtor’ and the person to whom the guarantee is given is called the ‘creditor’.

A guarantee may be either oral or written.

The main concept of suretyship is promise to indemnify if some other does not fulfil his promise. A person sought to be made liable as a surety undertakes to discharge the liability of a third party in case of his default. A contract of guarantee involves three parties, the creditor, the surety and the principal debtor. Liability of surety can be limited by a special contract.

Section 129 & 130:

A guarantee, which extends to a series of transactions, is called a “continuing guarantee” which can be revoked at any time by the surety as to future transaction, by notice to the creditor.

Section 131:

Death of the surety operates, in the absence of any contract to the contrary, as revocation of a continuing guarantee, so far as regards future transactions.

Section 133,134& 135:

A surety stands discharged in case of material alteration in the contract between the principal debtor and the creditor without the surety’s consent, or where the principal debtor is released of his liability by the creditor or where the creditor, given time to or promises not to sue the principal debtor without the surety’s consent.

Section 142 & 143:

A guarantee obtained by misrepresentation or concealment of a material circumstance is invalid.

Bailment:

Section 148:

A “bailment” is the delivery of goods by the person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering. The person delivering the goods is

called the ‘bailor’. The person to whom they are delivered is called the ‘bailee’. From a consumer’s point of view, this section is also applicable to bailment for carriage, i.e. to a ship owner or a railway company etc. and a consignor has a right to recover the amount of loss suffered by him due to negligence of the bailee. Similarly, the said principles also apply to goods bailed for hire.

Section 150:

The bailor is responsible to disclose faults in the goods bailed and in case he does not do so he is liable for damages arising to the bailee directly from such faults.

Section 151 & 152:

A bailee is bound to take due care of the goods bailed to him and in absence of any special contract he is not responsible for any loss etc, to goods, if he has taken care as a man of ordinary prudence.

Section 160 & 161:

A bailee is liable to redeliver to the bailor at proper time the bailed goods after the purpose for which bailment was made has been accomplished and in case of default he is liable for any loss to the goods.

Pledge:

Section 172:

The bailment of goods as security for payment of a debt or performance of promise is called ‘pledge’. The bailor is in this case called the ‘pawner’. The bailee is called

the ‘pawnee’. A pledge is the delivery of goods by the pledger to the pledgee by way of security upon a contract that they shall when the promise is performed, be returned or otherwise disposed of according to the directions of the pledger. A pledgee has a right of possession but has not right of ownership or enjoyment.

Section 176:

In case of default by the pawner, the pawnee may retain the pledged goods as a collateral security or sell the pledged goods on giving the pawner reasonable notice of the sale. If the proceeds of the sale are less than the amount due, the pawner is liable to pay the balance and if the proceeds are greater than the amount so due, the pawnee shall pay over the surplus to the pawner.

Section 177:

In case of default by a pawner in payment of debt at the stipulated time, he has a right to redeem the pledged goods at any time before actual sale of such goods by the pawnee on payment of additional expenses which have arisen from his default.

Section 180:

Either a bailor or a bailee may bring a suit against a third person who deprives the bailee of use or possession of the goods bailed or does them any injury.

Agent and Principal:

Section 182:

An “agent” is a person employed to do any act for another or to represent another in dealings with third persons. The person for whom such act is done, or who is so representative, is called “principal” The concept of agency is founded on a contract by which one of the parties confides to the other the management of some business to be transacted in his name or on his account and by which the other agrees to the business and render an account of it. A general agent has authority to act for his principal in all matters or in all matters concerning a particular trade or business or of a particular nature. A special agent has only authority to do some particular act or represent his principal in some particular transaction. A person becomes an agent only when the principal confers on him the authority to act for him. Every act of an agent in the course of his employment on behalf of the principal and within the apparent scope of his authority, binds the principal rules the agent in fact not authorised to do that act and the person dealing with him has notice of the same. A servant, manager, managing director of a company, broker authorised to effect a contract, a commission agent, a post office and partner of a firm, are agents when acting on behalf or their representative principles.

Section 185:

No consideration is necessary to create an agency.

Section 186:

The authority of an agent may be expressed or implied. An authority is said to be express when it is given by words spoken and written.

Section 187:

An authority is said to be implied when it is to be inferred from the circumstances of the case, and things spoken or written, or the ordinary course of dealing, may be accounted for circumstances of the case.

Section 196:

A principal may ratify the acts done on his behalf by another person without authority.

Section 199:

A person ratifying any unauthorised act done on his behalf ratifies the whole of the transaction of which such act formed a part.

Section 202 & 203:

The principal may revoke the authority given to his agent at any time before the authority has been exercised so as to bind the principal except where the agent has himself an interest in the property, which forms the subject-matter of the agency unless there is an express contract.

Section 204:

Revocation by the principal cannot have the effect of invalidating acts and obligations already done by the agent in exercise of his authority.

Section 208:

Termination of authority of an agent does not take effect before it becomes known to the agent or to third person as the case may be.

Sections 211 & 212:

He is also bound to conduct the business according to the principal's directions and in absence of any directions, according to the prevailing custom at the place of business. He is also bound to conduct the business with reasonable diligence.

Section 213:

He is also bound to render proper accounts to his principal on demand.

Section 215:

The principal may repudiate the transaction where any material fact has been dishonestly concealed from him by the agent have been disadvantageous to him.

Section 217& 218:

An agent is bound to pay to his principal all sums received on his account subject to deduction of all money due to him in respect of advances made or expenses properly incurred by him in conducting the principal's business and also such remuneration as may be payable to him for acting as agent.

Section 220:

An agent who is guilty of misconduct in the business of the agency is not entitled to any remuneration in respect of the part of the business, which he has misconducted.

Section 226:

Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person.

Section 227:

An act of an agent in excess of his authority does not bind the principal but his unauthorised act may make the agent personally liable. A person dealing with an agent, whose authority he knows to be limited, deals at his own risk and however, a principal is liable to the extent of the benefit received by him in an unauthorised transaction. He is also liable for negligence of his agent.

Section 235:

A person untruly representing himself to be authorised agent of another, and thereby inducing a third person to deal with him such agent, is liable, if his alleged employer does not ratify his acts, to make compensation to the other in respect of any loss or damage which he has incurred by so dealing.

Section 236:

A person with a contract has been entered into in the character of agent is not entitled to require the performance of it if he was in reality acting, not as agent, but on his own account.

Section 237:

If a person allows another to act on his behalf with other parties and makes them believe that the other person is acting on his behalf, he will be bound by the transactions entered into by that person.

Section 238:

Misrepresentations made or frauds committed by agents in matters, which do not fall within their authority, do not affect their principals but the agents become personally liable for such acts.

Comments:

A consumer would not find himself entitled to claim any relief under this Act unless he is a party of the relevant contract, giving rise to his claim. In absence of *privity of contract*, he would have to seek remedy against suppliers or manufactures in the form of damages under the law of torts for any wrong committed by them.

THE SALE OF GOODS ACT, 1930

Legislation:

The Sale of Goods Act, 1930.

Extent:

It extends to the whole of Pakistan.

Nature:

The Act deals with the rights and obligations of buyers and sellers of goods the relevant provisions of the Contract Act, 1872 apply to contracts for sale of goods except where they are inconsistent with the express provisions of this Act.

Scope:

Section 4:

Defines and draws a distinction between a contract of sale and agreement to sell. The contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in the goods to the buyer for a price. Where under a contract sale the property in goods is transferred from the seller to the buyer, the contract is called a sale but where the transfer of the property in goods is to take a place at a future time or subject to some conditions thereafter to be fulfilled, the contract is called an agreement for sale. The contract of sale may be termed as an 'executed contract' and an agreement to sell may be termed as an 'executory contract'. A contract of sale may be made in writing or by word of mouth or may be implied from the conduct of the parties.

Ascertainment of price:

Section 8:

- 1) The prices in a contract of sale may be fixed in a manner thereby agreed or may be determined by the course of dealing between the parties.
- 2) Where the price is not determined in accordance with the foregoing provisions, the buyer shall pay the seller a reasonable price. What is a reasonable price is a question of fact dependent on the circumstances of each particular case.

Time of payment:

Section 11:

Unless a different intention appears from the terms of the contract, stipulations as to time of payment are not deemed to be the essence of a contract of sale. Whether any other stipulation as to time is of the essence of the contract does not depend on the terms of the contract. In view of this provision, failure of the buyer to pay on the appointed day does not, as a rule, entitle the seller to treat the contract as repudiated though he may be entitled to withhold delivery until the price is paid and to re-sell the goods if the buyer does not pay within a reasonable time.

Condition and warranty:

Section 12:

Condition:

A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated. Unless a different intention is shown, a contract of sale contains an implied condition on the part of the seller that he has a right to sell the goods and that, in the case of agreement to sell the goods at the time when the property is to pass. Where there is a contract for sale of goods by description, there is an implied condition that the goods shall correspond with the description. The parties may exclude or vary the conditions implied by law, by an express agreement.

Warranty:

A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated. Unless a different intention is shown, a contract of sale contains an implied warranty that the buyer shall have and enjoy quiet possession of the goods and that the goods shall be free from any charge or encumbrance in favour of third party not declared or known to the buyer before or at the time when the contract is made. In case of breach of warranty by a seller, the buyer may either set up against the seller the breach of warranty in diminution or extinction of the price or sue him for damages under section 59.

Duties of Seller and Buyer:

Section 31:

It is the duty of the seller to deliver the goods and of the buyer to accept and pay for them, in accordance with the terms of the contract of sale. Delivery of goods and payment of price are concurrent conditions. A contract of sale is an example of a contract consisting of reciprocal promises to be performed simultaneously.

Acceptance:

Section 42:

The buyer is deemed to have accepted the goods when he intimates to the seller, that he has accepted them or when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or when, after the lapse of reasonable time, he retains the goods without intimating to the seller that he has rejected them. According to section 43, where a buyer properly rejects the goods, he is not bound to send them back to the seller unless he has agreed otherwise in the contract. However, where the buyer has no right to reject the goods and he does not take delivery of the goods, he is liable to the seller for an loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods.

Suits for Breach of Contract:

Suits by Seller:

Section 55:

Where the property in the goods has passed to the buyer under a contract of sale and the buyer wrongfully neglects or refuses to pay the price, the seller may sue him for the price of the goods. Where the price is payable on a day certain irrespective of delivery and buyer wrongfully neglects or refuses to pay such price, the seller may sue him not passed and the goods have not been appropriated to the contract.

Section 56:

Where the buyer wrongfully neglects refuse to accept and pay for the goods, the seller may sue him for damages for non-acceptance.

Suits by Buyer:

Section 57:

Where the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. Another remedy available to the parties in case of breach of contract is to sue for specific performance of contract subject to the provisions of the Specific Relief Act, 1877.

Auction Sale

Section 64:

In the case of a sale by auction:-

- 1) where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale;
- 2) the sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner; and, until such announcement is made, any bidder may retract his bid;
- 3) a right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, but not otherwise, the seller or any one person on his behalf may, subject to the provisions hereinafter continued, bid at the auction;
- 4) where the sale is not notified to be subject to a right to bid on behalf of the seller, it shall to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person; and any sale contravening this rule may be treated as fraudulent by the buyer;
- 5) the sale may be notified to be subject to a reserved or upset price;
- 6) if the seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer.

Duty and Tax:

Section 64-A:

Provides that in the event of any duty of custom or excise or tax on any goods being imposed, increased, decreased or remitted after the making of any contract for sale of such goods without stipulation as to the payment of duty or tax where duty or tax was not chargeable at the time of the making of the contract or for the sale of such goods duty paid or tax paid where duty or tax was chargeable at that time, a seller would be entitled to recover from a purchaser the amount of customs or excise duty or tax paid by him in respect of such a contract or the increased amount in respect of the above items, whereas a buyer entitled to claim the refund of the full amount of duty of customs or excise or tax from the seller in case of abolition of the same after the making of the contract or to claim the refund of the difference amount in case the rate is decreased.

Comments:

A consumer will not be able to seek remedy under this Act unless he is either a buyer or seller. In absence of this relationship, he may seek under the law of torts for any negligent act committed by the other party.

THE SPECIFIC RELIEF ACT, 1877

Legislation:

The specific Relief Act, 1877 (I of 1877)

Extent:

It extends to all the provinces of Pakistan.

Nature:

It defines the law relating to certain kinds of specific relief's obtainable in civil courts. These reliefs are enumerated in section 5 of the Act. It does not deal with remaining remedies, which are connected with compensatory relief except incidentally and to the limited extent to which it is either supplementary or alternative to specific relief.

Reliefs:

The act deals with the following matters:

Section 8 to 11:

Recovery of possession of immoveable and moveable property.

Section 12 to 30:

Specific performance of contracts and related matters.

Section 31 to 34:

Rectification of instruments, principles thereof and specific enforcement thereof.

Section 35 to 38:

Rescission of contracts and related matters.

Sections 39 to 41:

Cancellation of instruments.

Sections 42 to 43:

Declaratory decrees in respect of legal character and any right as to any property and their effect.

Section 44:

Appointment of Receivers.

Section 52 to 57:

Grant of preventive reliefs by temporary or permanent injunctions.

Section 5:

Specific relief is given: -

- a) by a taking possession of certain property and delivering it to claimant;
- b) by ordering a party to do the very act, which he is under an obligation to do;

- c) by preventing a party from doing that, which he is under an obligation not to do;
- d) by determining and declaring the rights of parties otherwise than by an award of compensation; or
- e) by appointing a receiver.

Section 9:

This section provides relief to a person who is unlawfully dispossessed of immovable property without his consent. In case a person is able to establish that he was in possession of certain immovable property and that he was unlawfully dispossessed by another, he can seek relief within six months of dispossession under this section from a Civil Court for restoration of possession of his property. The question of title is not determined in a suit under this section.

Section 11:

Any person having the possession or control of particular article of moveable property, of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession, in any of the following cases:

- a) when the thing claimed is held by the defendant as the agent or trustee of the claimant;
- b) when compensation in money would not afford the claimant adequate relief for the loss of the thing claimed;

- c) when it would be extremely difficult to ascertain the actual damages caused by its loss;
- d) when the person of the thing claimed has been wrongfully transferred from the claimant.

Section 12:

Except as otherwise provided in this Chapter, the specific performance of any contract may in the discretion of the Court be enforced: -

- a) when the act agreed to be done is in the performance, wholly or partly, of a trust;
- b) when there exists no standard for ascertaining the actual damages caused by the non-performance of the act agreed to be done;
- c) when the act agreed to be done is such that pecuniary compensation for its non-performance would not afford adequate relief, or
- d) when it is probable that pecuniary compensation cannot be got for the non-performance of the act agreed to be done.

Contracts not specifically enforceable.

Section 21:

The following contracts cannot be specifically enforced:-

- a) contract for the non-performance of which compensation in money is an adequate relief;

- b) contract which runs into such minute or numerous details, or which is so dependent on the personal qualifications or volition of the parties, or otherwise from its nature is such, that the Court cannot enforce specific performance of its material terms;
- c) contract the terms of which the Court cannot find with reasonable certainty;
- d) contract which is in its nature revocable;
- e) contract made by trustees either in excess of their powers, or in breach of their trust;
- f) contract made by or on behalf of corporation or public company created for special purposes, or by the promoters of such company, which is in excess of its powers;
- g) contract the performance of which involves the performance of a continuous duty extending over a longer period than three years from its date;
- h) contract of which a material part of the subject matter, supposed by both parties to exist has, before it has been made, ceased to exist.

And, save as provided by the Arbitration Act, 1940, no contract to refer present or future differences to arbitration shall be specifically enforced, but if any person who has made such a contract other than an arbitration agreement to which the provisions of the said Act apply and has refused to perform it sues in respect of any subject, which he has contracted to refer, the existences of such contract shall bar the suit.

Declaratory Decree:

Section 42:

Subject to exceptions contained therein, any person entitled to any legal character, or to any rights as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or rights, the Court may in its discretion make therein a declaration that he is so entitled, and, the plaintiff need not in such suit ask for any further relief.

Injunctions:

Temporary injunctions:

Section 53:

Temporary injunctions are such as to continue until a specified time, or until the future order of the Court. They may be granted at any period of a suit, and are regulated by the Code of Civil Procedure (CPC). According to the relevant provisions of CPC (Order XXXIX) , a person seeking temporary injunction has to establish that : -

- a) he has a *prima facie* case in his favour;
- b) he would suffer an irreparable loss if injunction is not granted;
- c) the balance of convenience lies in his favour.

Perpetual Injunctions:

Section 53:

A perpetual injunction can only be granted by the decree made at the hearing and upon the merits of the suit; the defendant is thereby perpetually enjoined from the assertion of a right, or from the commission of an act, which would be contrary to the rights of the plaintiff.

Section 54:

Subject to the provisions contained therein, when the defendant invades or threatens to invade the plaintiff's right to, or enjoyment of, property, the Court may grant a perpetual injunction in the following cases:

- a) where the defendant is trustee of the property for the plaintiff;
- b) where there exists no standard for ascertaining the actual damages caused, or likely to be caused, by the invasion;
- c) where the invasion is such that pecuniary compensation would not afford adequate relief;
- d) where it is probable that pecuniary compensation cannot be got for the invasion;
- e) where the injunction is necessary to prevent a multiplicity of judicial proceedings.

Mandatory Injunction:

Section 55:

When, to prevent the breach of an obligation, it is necessary to compel the performance of certain acts, which the Court is capable of enforcing, the Court may, in its discretion, grant an injunction to prevent the breach complained of, and also to compel performance of the requisite acts. Mandatory injunction is an order compelling the other party to restore things to the conditions in which they were when the plaintiff's complaint was made.

Injunction when refused:

Section 56:

An injunction cannot be granted:-

- a) to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought such restraint is necessary to prevent a multiplicity of proceedings;
- b) to stay proceedings in a Court not subordinate to that from which the injunction is sought;
- c) to restrain persons from applying to any legislative body;
- d) to interfere with the public duties of any department of the Central Government, or any Provincial Government; or with the sovereign acts of Foreign Government;
- e) to stay proceeding in any criminal matter;

- f) to prevent the breach of a contract the performance of which would not be specifically enforced;
- g) to prevent on the ground of nuisance, an act of which it is not reasonably clear that it will be a nuisance;
- h) to prevent a continuing breach in which the applicant has acquiesced;
- i) when equally efficacious relief can certainly be obtained by any other usual mode of proceeding except in case of breach of trust;
- j) when the conduct of the applicant or his agents has been such as to disentitle him to the assistance of the Court;
- k) where the applicant has no personal interest in the matter.

**THE FATAL ACCIDENTS ACT, 1855
(ACT NO. XIII OF 1855)**

Legislation:

The Fatal Accidents Act, 1855

Extent:

It extends to the whole of Pakistan.

Nature:

The Act provides for compensation to families for loss occasioned by death of a person caused by actionable wrong. A person who, by his wrongful act, neglect or default may have caused the death of another person has been made answerable in damages for the injury so caused by him

Complaints:

Section 1:

Whenever the death of a person shall be caused by wrongful act, neglect or default, and the neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action and recover damages in respect thereof, the party who would have been liable if death had not ensued shall be liable to an action of suit for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstance as amount in law to felony or other crime.

Every such action or suit shall be for the benefit of the wife, husband, parent and child, if any, of the person whose death shall have been caused, and shall be brought by and in the name of the executor, administrator or representative of the person deceased;

Compensation:

Section 3:

The plaintiff in any such action or suit shall give a full particular of the person or persons for whom, or on whose behalf, such action or suit shall be brought, and of the nature of the claim in respect of which damages shall be sought to be recovered.

In every such action the Court may give such damages as it may think proportioned to the loss resulting from such death to the parties respectively, for whom and for whose benefit such action shall be brought; and the amount so recovered, after deduction all costs and expenses, including the costs not recovered from the defendant, shall be divided amongst the before mentioned parties, or any of them in such shares as the Court by its judgment or decree shall direct.

Comments:

A master is liable for wrongful act of his servant. Therefore, an owner of a vehicle cannot escape liability on the ground that he is not liable to pay damages for a wrongful act committed by his servant/driver. All cases where death is a direct cause of negligence, wrongful act or default of a medical practitioner during performance of his/her duty fall within the scope of the Act. Similarly, the Act covers deaths caused by negligence of other

persons including public and corporate bodies like WAPDA, Municipal and local authorities and factories, etc. and covers the cases of death caused by electrocution, burns and other fatal accidents caused by negligence of any person. The Act does not prescribe any hard and fast rules for determining the amount of compensation. Rulings of superior Courts provide guidance in this matter. Expectancy of life of a deceased and his income is usually kept in view while determining quantum of compensation.

**THE [PUNJAB] [SINDH] [N.W.F.P]
[BALUCJHISTAN]
MOTOR VEHICLES ORDINANCE, 1965**

Legislation:

The [Punjab] [Sindh] [N.W.F.P] Baluchistan] Motor Vehicles Ordinance, 1965

Extent:

The Act extends to the whole of the Provinces of Punjab, Sindh N.W.F.P and Baluchistan except for the Tribal Areas.

Nature:

The Act governs the matters of licensing of drives of motor vehicles. registration of motor vehicles, control of traffic and provides for penalties for offences relation thereto.

Provisions Relevant to Consumers:

Section 2 (5) & 2 (37):

Contract Carriage” and “Stage Carriage”.

Contract Carriage is to hire a vehicle as a whole in the name of hiring party while stage carriages are required to make specified number trips of services on the route or routes specified in the permits and issuance of tickets to individual passengers for the fare paid. Timings are also to be specified for departure of “Stage Carriage”. “Contract Carriage” is not permitted to pick up

individual passengers. Such facility is not available in case of ‘Contract Carriage’. ‘Contract Carriage’ is engaged as a whole, by the party or group of persons under a contract at or for a fixed or agreed rate for a journey from one point to another without stopping to pick up or set down the passengers.

Conditions for Grant of Permit:

Section 53:

A Road Transport Authority is empowered under to any or all conditions mentioned therein, which *inter alia*, include the following:

Sub-section 1(i):

That the contract carriage or contract carriage shall be used only in a specified area or on a specified route or routes.

Sub-section 1 (iv):

That in of motor cabs, specified fares shall be charged and a table of fares displayed on the vehicle.

Sub-section 1(v):

That specified rates of hiring not exceeding specified maximum shall be charged.

Section 53(2):

Provides that there shall be inserted in every contract carriage permit other than such permit in respect of a motor cab, a condition that in case of death of or injury to a passenger in the vehicle to which the permit relates

arising out of the use of the vehicle, there shall be paid by the permit holder as compensation:

- a) in case of death of a passenger, a sum of rupees eight thousand to the legal representatives of the deceased passenger; and
- b) in case of an injury to a passenger; the amount specified in the Thirteenth Schedule, to the injured passenger.

A similar provision is contained in section 50 in respect of a stage carriage.

Compensation:

In respect of a stage carrier, the Thirteenth Schedule provides for payment of compensation amounting to Rs. 16,000/- in case of death and different amounts varying from Rs.1000/-to Rs. 10,000/- for various injuries described therein.

Compensation for the Death or Injury to a passenger:

Section 67:

In case of death of, injury to a passenger in a stage carriage or a contract carriage, other than a contract carriage constructed adapted or used to carry not more

than Six passengers including the driver, arising out of the use of such carriage, there shall be paid, if a permit has been granted in respect of the carriage, by the holder of the permit, and, if no permit has been so granted, by the owner of the carriage, as compensation the amount specified in the Thirteenth Schedule: -

- a) in the case of death of a passenger, to the legal representatives of the deceased passenger, and
- b) in the case of an injury to a passenger, to the injured passenger.

Section 67(2):

The compensation payable under sub-section (I) shall be in addition to any sum which the person entitled to receive compensation may receive or be eligible to receive under a policy of insurance under the provisions of Section 95 of the Motor Vehicles Act, 1939.

The above provision does not prevent an aggrieved party from seeking remedy available under the Fatal Accidents Act, 1855 or any other law on account of death of a person after receiving compensation under section 67 may be made by an aggrieved person to the Claims Tribunal established under section 67 A of the Motor Vehicles ordinance, 1965.

Compensation/Claims Tribunal:

Section 67-A:

An application for compensation under section 67 may be made by an aggrieved person to the Claims Tribunal established under section 67 A of the Motor Vehicles Ordinance, 1965.

Complaints:

Section 67-B:

An application for compensation under section 67 may be made: -

- a) by the person who has sustained the injury; or
- b) Where death has resulted, by the legal representatives of the deceased passenger; or
- c) by an agent duly authorised by the person injured or the legal representatives of the deceased passenger, as the case may be.

Every such application has to be made to the Claims Tribunal having jurisdiction over the area in which the accident resulting in the death or injury, as the case may be, of the passenger within ninety days of the accident. However, the Claims Tribunal may entertain an application after the expiry of the said ninety days, if it is satisfied that the applicant was prevented by sufficient cause from making the application in time. An application for award of compensation under section 67 is to be addressed to the Claims Tribunal of the area and it should contain the following particulars: -

- i) name, parentage and address of the person dead or injured;
- ii) date, time and place of occurrence;
- v) registration number of the vehicle;
- vi) details of the injuries in case of injured persons;
- vii) name of the witness if any;
- viii) amount of compensation claimed;
- ix) capacity of the persons making the application;
- x) any other information connected with the occurrence and compensation.

Comments:

The amount of compensation prescribed by the Thirteenth Schedule to the Act is apparently quite insufficient. There is a need to receive/ increase the amounts mentioned therein from time to time in order to make the compensation adequate and reasonable. In most of the cases, it is a cumbersome procedure, which prevents an aggrieved person from approaching the relevant authority to seek relief. Simplification of procedure and fixation of a reasonable time limit for decisions of claims because of delays involved in seeking relief and unmanageable procedures.

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 information of consumer groups and organizations all socio-economic levels of society.
- To create awareness among different categories of consumers, specially the marginalized groups about their roles, rights and responsibilities.
- To undertake advocacy and lobbying activities for the enactment and implementation of improved legislation on consume protection.
- To interence on behalf of consumers, while seeking active support and participation of existing consumer groups. where a regulatory

or redress framework is available.

- 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 parties including misleading product information and supply of substandard good and services.

For information, suggestions, complaints, membership and Donations:

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