



2015

AMENDMENTS PROPOSED IN CONSUMER PROTECTION ACT 1997 – A FOLLOW UP

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Summary

A two day's training course was arranged by the Khyber Pakhtunkhwa Judicial Academy at the request of the Peshawar High Court on 8th & 9th of September 2015 for Consumer Courts Judges. The background of the Course was that some ten newly promoted District & Sessions Judges of the province were appointed as Consumer Courts throughout the province in order to provide *fora* for consumers' redressals at doorsteps. Prior to these appointments seven such Courts were already functioning at **the** seven Divisional Headquarters of the province. The law in force in the province is the Khyber Pakhtunkhwa Consumers Protection Act, 1997. This law has undergone two major amendments first in 2005 & then in 2015. The Course as designed was highly interactive which provided an opportunity to discuss the contours of the law and a consensus was reached that the law is full of drafting and legislative mistakes which need to be addressed. Mr Zia-Ud-Din Khattak, the learned DG took great interest in the proceedings of the Course as he had a big experience of dealing with cases under the law as District & Sessions Judge Peshawar. A passage from his Foreword to the Report compiled at the end of the Course is reproduced below which gives the idea that why these proposed amendments in the law.

“Admittedly there are shortcomings in the Consumer Protection Act, 1997 such as:

- a. There is no provision for withdrawal of complaint;*
- b. No procedure for return of complaint if the court lacks jurisdiction;*
- c. No procedure of dismissal upon absence of parties;*
- d. No procedure for interlocutory or restraining orders provided;*
- e. No procedure for contempt matters;*
- f. No procedure for execution of order passed by the consumer court;*
- g. Limited scope of C.P.C only to the extent of powers contemplated under section*
- h. No procedure provided for inflicting penalties under section 16 of the Consumer Protection Act, 1997.*
- i. It is unknown whether complaint by legal heirs of a deceased consumer is maintainable or otherwise?*

Using this special training as a platform, all the shortcomings would be brought into the notice of the provincial government for making suitable amendment in the Consumer Protection Act, 1997 so as to make it fully functional.”

As a follow up to that commitment of the Director General the Research & Publication Wing prepared a self contained document for submission to the Provincial Government for making amendments in the law. During the course of preparation of the document the Senior Director Research & Publications had extensive meetings with the DG whose valuable inputs facilitated this Wing to come up with this document. This booklet contains all the documents relevant to the proposal as sent to the Provincial Government.

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Letter to the Secretary, Government of Khyber Pakhtunkhwa, Industries and Commerce Department. Peshawar.

Sir,

I am directed to refer to two days Special Training Course for Consumer Courts Judges of KP dated 8th & 9th of September 2015. Some anomalies were noted by resource persons and the participants of the workshop in the subject law. The same are forwarded in tabulated form annexed herewith along with suggestions to incorporate relevant amendments in the law on priority basis. The annotated table of existing & proposed provisions along with new proposed draft shape of the Act is also annexed for facilitation. Some general suggestions for amendments in the Act are also annexed.

Encl:-

- Legislative & Drafting Flaws (Annexure A)
- Existing Provisions & Proposed Amendments in Annotated Form (Annexure B)
- General Suggestions for Amendments (Annexure C)
- New Proposed Draft Shape of the Act (Annexure D)
- List of Participants of workshop (Annexure E)

Senior Director R &P

KP Judicial Academy Peshawar.

Annexure A

Legislative & Drafting Flaws

S.No	Suggested Amendments	Reasons
1	In Section 2(a) the following may be inserted [“Complaint” for the purpose of section 14, the complaint means civil claim and for the purpose of section 16 the complaint means criminal complaint.]	The proceedings under the Act are partially civil and partially criminal. But the use of the word ‘Complaint’ gives impression as if the whole proceedings are criminal
2	The term “Complaint” may be substituted with the term “Complainant” in Section 2(b).	This subsection defines “Complainant” and not “Complaint”
3	The words “voluntary” used in Section 2(b) (ii) may be replaced with the words “recognized”	Section 13 of the Act does not use the word “voluntary” but the word “recognized”
4	The present Section 3 (b) (iii) may be substituted with following;- “the Director or any officer of the Directorate authorized by him in this behalf.”	Section 13 (1) (d) allows the complaint to be made by the Director or any officer of the Directorate authorized by him in this behalf and not by those mentioned in Section 3 (b) (iii).
5	In Section 11B (1) after the words ‘consumer’ the words “or recognized consumer association” is to be inserted.	Section 2 (b) (ii) read with Section 13 (1)(c) allows the complaint to be made by a recognized consumer association
6	The letter ‘b’ in Section 14(2)(b) may be substituted with letter “a”	This letter refers to subsection “a” and not “b”
7	In Section 15 a new sub section (3) may be added as follows “(3) An order passed by the Court under sub-section (1) shall be executed as if the order is an order of the Civil Court and any recovery of price or compensation under clauses (b) and (e) of sub-section (1) can also be made as arrears of land revenue.”	Under section 14 of the Act the court is to settle the dispute on the basis of the evidence produced by the parties and for the purpose the Court is given powers Under Civil Procedure Code with respect to certain procedural steps. The scheme of Sections 14& 15 thus is the settlement of a Civil Dispute and not a criminal offence. The additional strength to this scheme is

		that no charge is framed nor criminal procedure is applicable to the proceedings under these two sections. After the proceedings conducted under section 14 the court is to issue an order in terms of section 15 for doing any of the acts mentioned in Section 15(1)(a to e). But no mechanism is given for execution of the orders passed under Section 15 (1) (a to e). For example the return of price or payment of compensation under Section 15(1) (c & e) is not provided to be recoverable as arrears of Land Revenue like the one provided in Section 11B(1) when the fine is imposed by the Director.
8	The words “ rigorous ” as used in Section 16(1) should be deleted.	Even in most heinous offences two types of imprisonment simple and rigorous are allowed. The consumer law is not pure criminal either.
9	In Section 16(1) after the word ‘ under ’ the words “ sections 4 to 7C of ” shall be inserted	There is no mention of sections under which rights have been protected. For the purpose of criminal prosecution penal law should be clear both for clarity as well framing of charge.
10	The words “ which shall not be less than seven days ” as used in Section 16(1) may be deleted and instead the words “ with imprisonment which may extend to two years ” may be inserted.	Such minimum threshold is set only for heinous offences involving moral turpitude. No maximum limit for imprisonment is provided.

11	<p>After sub section 5 of Section 16 another sub section 6 may be added as follows;-</p> <p>“(6) Except as otherwise expressly provided by this Act, the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) shall, <i>mutatis mutandis</i>, apply to the proceedings under this section.”</p>	<p>The penalties for offences cannot be awarded without proceedings under the Criminal Procedure including framing of charge.</p>
12	<p>In Section 17(1) the words “original” be inserted after the words ‘aggrieved by an’</p>	<p>The purpose of appeal in section 17(1) is only to give remedy against original order passed by the Court and not appealable order passed by the Court in appeal against the order of Director passed under 11A (1). If second appeal is provided against order of Director then it would militate against the whole scheme of Criminal Law that a second appeal is provided against an order of semi judicial authority awarding fine only. No second appeal is provided in Criminal law in heinous offences</p>

13	<p>In sub section (2) of Section 17 after the words ‘of the order and’ the following may be inserted “if the appeal is against an order passed under section 15 then the provisions of Code of Civil Procedure, 1908 (Act V of 1908), in respect of appeal to the High Court shall, <i>mutatis mutandis</i>, apply and if the appeal is against an order under Section 16 then”.</p>	<p>The proceedings under Section 14 & 15 are civil and appeals being continuation of original proceedings be also dealt with under the civil procedure. Similarly proceedings under Section 16 are criminal and hence appeal being continuation of proceedings be dealt with under criminal procedure.</p>
14	<p>After Section 21 a new section 21A may be added as follows.</p> <p>“21 A. Inherent powers of Court.--- Nothing in this Act shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process or Court”</p>	<p>The reason is that there are no detailed provisions in the Act for interim orders necessary for the discharge of the purpose of the Act.</p>

Annexure B

Existing Provisions & Proposed Amendments in Annotated Form

S.No	EXISTING PROVISIONS	PROPOSED PROVISIONS
1	Not existing	2(a) “Complaint” for the purpose of section 14, the complaint means civil claim and for the purpose of section 16 the complaint means criminal complaint.
2	2 (b) " Complaint " means:-	2 (b) " Complainant " means
3	2 (b) (ii) a “ voluntary ” consumer's association subject to such restrictions as may be prescribed; and	2 (b) (ii) a “ recognized ” consumer's association subject to such restrictions as may be prescribed; and
4	3 (b) (iii) “ Government, concerned Council, concerned a Local Government] and any person or agency authorized by the aforesaid on their behalf to lodge complaint before the Court.”	3 (b) (iii) the Director or any officer of the Directorate authorized by him in this behalf.
5	11B. (1) The Director may, on his own motion or by reference from a consumer against any individual or entity under section 5, 6 and 7A, 7B and 7C of this Act shall, after conducting an inquiry under section 11C, is satisfied that violation has been committed, may fine the violator with an amount, which may extend to fifty thousand rupees but not less than five thousand rupees and which may be recovered as arrears of land revenue.	11B. (1) The Director may, on his own motion or by reference from a consumer or recognized consumer association against any individual or entity under section 5, 6 and 7A, 7B and 7C of this Act shall, after conducting an inquiry under section 11C, is satisfied that violation has been committed, may fine the violator with an amount, which may extend to fifty thousand rupees but not less than five thousand rupees and which may be recovered as arrears of land revenue.
6	14(2) (b) on receipt of the defence of the opposite party, if any, under clause (b), proceed to settle the dispute on the basis of evidence produced by both the parties:	14(2)(b) on receipt of the defence of the opposite party, if any, under clause (a), proceed to settle the dispute on the basis of evidence produced by both the parties:

7	Not existing	15 (3) An order passed by the Court under sub-section (1) shall be executed as if the order is an order of the Civil Court and any recovery of price or compensation under clauses (b) and (e) of sub-section (1) can also be made as arrears of land revenue.
8	16 (1) Where any right of consumer required to be protected under this Act, is in any way infringed, or is likely to be infringed, the person responsible for such infringement shall be punished with rigorous imprisonment which shall not be less than seven days or with fine which shall be extended to fifty hundred thousand rupees but not less than ten thousand rupees or with both and shall also be liable to provide such compensation or relief to the consumer as may be determined by the Court.	16 (1) Where any right of consumer required to be protected under section 4 to 7C of this Act, is in any way infringed, or is likely to be infringed, the person responsible for such infringement shall be punished with “[----]” imprisonment which may extend to two years or with fine which shall be extended to fifty hundred thousand rupees but not less than ten thousand rupees or with both and shall also be liable to provide such compensation or relief to the consumer as may be determined by the Court.
8	Not existing.	16 (6) Except as otherwise expressly provided by this Act, the Code of Criminal Procedure, 1898 (Act V of 1898) shall, mutatis mutandis, apply to the proceedings under this section.

9	17 (2) Any person aggrieved by an order made by the Court may prefer an appeal against such order to the High Court within period of thirty days from the date of the order, and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), in respect of appeal to the High Court shall, <i>mutatis mutandis</i> , apply.	17 (2).Any person aggrieved by an original order made by the Court may prefer an appeal against such order to the High Court within period of thirty days from the date of the order, and if the appeal is against an order passed under section 15 then the provisions of Code of Civil Procedure, 1908 (Act V of 1908),in respect of appeal to the High Court shall, <i>mutatis mutandis</i>, apply and if the appeal is against an order under Section 16 then the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), in respect of appeal to the High Court shall, <i>mutatis mutandis</i> , apply.
10	Not existing	21 A. Inherent powers of Court.--- Nothing in this Act shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process or Court.

Annexure C

General Suggestions for Amendments

1. How can a Director sitting at Provincial Metropolis shall be able to hear the issues of consumers pertaining to all districts when in order to facilitate the consumers Courts have been established at doorsteps. This is not convenient arrangement for public at large and how the cases of whole province shall be heard by one person, the Director. It is proposed that some delegation of powers may be considered at district level.
2. The Act is also not clear that when a matter is taken cognizance of both by Director and Court then which forum is to hear it.
3. The Act is also not clear as to whether the decision of Director shall be a conviction for the purpose of double jeopardy or shall be *resjudicata* for civil claim as the Act is not clear whether the decision of Director is Conviction or a Civil Decision. If conviction then how it can be without following elements of Fair Trial.
4. The Act is also not clear as to when fine is imposed by Director whether Court shall still decide the civil claim in terms of section 14 & 15 or Criminal complaint in terms of Section 16.

Annexure D

New Proposed Draft Shape of the Act

THE ^{*}[KHYBER PAKHTUNKHWA] CONSUMERS PROTECTION ACT, 1997

([†][KHYBER PAKHTUNKHWA] ACT NO. VI OF 1997)

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^{*}Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

[†]Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

[‡]Inserted vide Khyber Pakhtunkhwa Act No. XVII of 2015

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§ Inserted vide Khyber Pakhtunkhwa Act No. XVII of 2015

** Inserted vide Khyber Pakhtunkhwa Act No. XVII of 2015

†† Substituted vide Khyber Pakhtunkhwa Act No. XVII of 2015

‡‡ Inserted vide Khyber Pakhtunkhwa Act No. II of 2005

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^{†††} Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

^{†††} Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

**THE §§§[KHYBER PAKHTUNKHWA]
CONSUMERS PROTECTION ACT, 1997**

(**[KHYBER PAKHTUNKHWA] ACT NO. VI OF 1997)**

[First published after having received the assent of the Governor of the ††††[Khyber Pakhtunkhwa] in the Gazette of ††††[Khyber Pakhtunkhwa](Extraordinary), dated the 27th November, 1997.]

**AN
ACT**

to provide for promotion and protection of the interest of consumers.

Preamble.---WHEREAS it is expedient to provide for healthy growth of fair Preamble, commercial practices, the promotion and protection of legitimate interests of consumers and speedy redressal of their complaints and matters arising out of or connected therewith:

It is hereby enacted as follows:

PART—I
PRELTMINARY

1. Short title, extent, commencement and application.---(1) This Act may be called the §§§§[Khyber Pakhtunkhwa] Consumers Protection Act, 1997.

(2) It shall extend to whole of the *****[Province of the Khyber Pakhtunkhwa].

(1) It shall come into force at once.

§§§ Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011
**** Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011
†††† Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011
†††† Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011
§§§§ Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011
***** Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

(4) Save as otherwise expressly exempted by Government through a notification^{†††††} [in the official gazette], this^{†††††} [Act] shall apply to all goods and services.

2. Definition.---In this Act, unless there is anything repugnant in the subject or context,-

(a) ^{§§§§§}“Complaint” For the purpose of section 14, the complaint means civil claim and for

(b) "Complainant" means:-

(i) a consumer;

(ii) a **recocognized** consumer's association subject to such restrictions as may be prescribed; and

(iii) **the Director or any officer of the Directorate authorized by him in this behalf.**

(c) "Consumer" means any person ^{*****} [or entity] who:-

(i) buys goods for a consideration which has been paid or to promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any user of such goods but docs not include a person who obtains such goods for re-sale or for any commercial purpose; or

(ii) hires any goods or services for a consideration which has been paid or promised or partly paid and partly promised to be paid or under any system of deferred payment including hire purchase and leasing and includes any beneficiary of such services.-

(d) "Council" means a Consumer Protection Council, established under Scction-8;

^{†††††††} [(dd) “Court” means Consumer Courts established under section 11A]

^{†††††} Added vide Khyber Pakhtunkhwa Act No. II of 2005

^{††††††} Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

^{§§§§§} Deleted vide Khyber Pakhtunkhwa Act No. II of 2005

^{*****} Added vide Khyber Pakhtunkhwa Act No. XVII of 2015

^{†††††††} Inserted vide Khyber Pakhtunkhwa Act No. II of 2005

(e) "Defect" means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which, in relation to the goods, is required to be maintained by or under any law for the time being in force;

(f) "Deficiency" means a deficiency or shortcoming in the standard of performance, quality and nature of a service which has been undertaken by a person providing the service to a consumer in pursuance of a contract or otherwise or is required to be maintained by or under any law while providing a particular service;

+++++[fa) "Directorate" means the Directorate of Industries and Commerce, Khyber Pakhtunkhwa;

(fb) "Director" means the Director of Industries and Commerce, Khyber Pakhtunkhwa;

(fc) "entity" means an organization that has a legal identity apart from its members;]

(g) "Goods" means goods as defined in the Sale of Goods Act, 1930 (III of 1930);

(h) "Government" means the Government of §§§§§§[Khyber Pakhtunkhwa];

(i) "Laboratory" means a laboratory or organization recognized by Government including the Federal Government and includes any such laboratory or organization established by or under any law for the time being in force, which is maintained, financed or aided by Government including Federal Government for carrying out analysis or test of any goods with a view to determining whether such goods suffer from any defect;

(J) "Manufacturer" includes a person who:-

(i) makes or manufactures any goods or parts thereof; or

(ii) does not make or manufacture any goods but assembles parts thereof made or manufactured by others and claims the end product to be goods manufactured by himself; or

+++++Inserted vide Khyber Pakhtunkhwa Act No. XVII of 2015
§§§§§Substituted vide Khyber Pakhtunkhwa Act No. IV of 2011

(iii) puts or causes to be put his own mark on any goods made or manufactured by any other manufacturer and claims such goods to be goods made or manufactured by himself;

Explanation.---A branch office of a manufacturer shall not be deemed to be different manufacturer even though an assembly operation, *****[formulation,] distribution and sale

(k) ††††††††[Deleted]

(l) "Prescribed" means prescribed by rules made under this Ad;

(m) "Section" means a section of this Act;

(n) "Services" includes services of any description which are made available to potential users and includes the provision of facilities in connection with banking, financing, insurance, transport, manufacturing, processing, accountancy, supply of electrical, mechanical or any other form of energy ††††††††[including gas and petrol, water, telephone],

catering, security, or purveying news or other information and similar other services, but does not include the rendering of any service free of charge or under the contract of personal services; and

(o) "Unfair trade practice" means a trade practice which a person for the purpose of sale, use or supply of any goods or provision of any service or for their promotion, adopts one or more of the following practices, causes loss or injury through hoarding, black-marketing, adulteration, selling of expired drugs, food items and commodities unfit for human consumption, or charging for the goods and services in excess of the price fixed by an §§§§§§§§[Court] authorized to do so under any law for the time being in force or in furtherance any statement, whether orally or in writing or by chalking on walls or through sign-boards or neon-signs or by distributing pamphlets or by publication in any manner, including electronic media, by-

***** Added Substituted vide Khyber Pakhtunkhwa Act No. II of 2005
†††††††† Deleted Substituted vide Khyber Pakhtunkhwa Act No. II of 2005
†††††††† Inserted vide Khyber Pakhtunkhwa Act No. II of 2005
§§§§§§§§ Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

- (i) falsely representing that the goods or, as the case may be, services are of a particular standard, quality, quantity, grade, composition, model, style or mode;
- (ii) falsely representing any rebuilt, second-hand, renovated, reconditioned or old goods as new goods;
- (iii) falsely representing that the goods or, as the case may be, services have sponsorship or approval of the competent agency or authority or possesses specified characteristics, performance, accessories, use or benefits which such goods or services do not have;
- (iv) falsely representing that the goods or services offered fulfill the prescribed standard fixed by local or international authorities;
- (v) giving misleading representation of the need for, or the usefulness of any goods or services;
- (vi) falsely giving to the public any warranty or guarantee of the performance, specification, required ingredients, efficacy or length of life of a product or any goods that is not based on an adequate or proper tests thereof;
- (vii) falsely offering for sale or on lease any premises, house, apartment shop or building with specified facilities or with the promise to deliver possession thereof within a specified period or without any escalation in price or by falsely representing that such premises, house, apartment shop or building is being sold, built or constructed in accordance with the approved plans, specification and approval of the concerned authorities;
- (viii) misleading the public concerning the price at which a product or products or goods or services have been or are ordinarily sold or provided;
- (ix) giving false or misleading facts regarding facilities available in the private educational institutions or falsely representing that such institutions have proper approval of the concerned authorities or affiliated with foreign organizations;

- (x) falsely representing for provision of services by professionals and experts, including medical practitioners, engineers, architects, advocates, teacher ***** [, spiritual healers] and
- (xi) giving false or misleading facts disparaging the goods, services or trade of another person, firm, company or business concern;
- (xii) advertising for the sale or supply, at a bargain price, or goods or services which are not intended to be offered for sale or supply at such price;
- (xiii) offering of gifts, prizes or other items with the intention of not providing them as offered or creating the impression that something is being given or offered free of charge when it is fully or partly covered by the amount charged in the transaction; and
- (xiv) falsely gives description of commodities and services offered through mail order.

3. Act not to supersede other law.---The provisions of this Act shall be in addition to and not in derogation or supersession of any other law for the time being in force.

4. Obligation of manufacturers.---(1) Every manufacturer shall publish or mark on every packet or container the maximum retail price, the nature, standard or type and other specifications of the goods therein, the weight, size or volume and date of manufacture and expiry where appropriate, as the case may be, having regard to the commercial practice in relation to those goods, the name and address of the manufacturer or in the case of a packer or importer, the trader thereof:

Provided that if any goods are not sold in packed form or in container, it shall be sufficient for the purposes of this subsection if the required information is exhibited conspicuously in the shop where the sale is being made:

Provided further that if the price or catalogue or vendor instructions for the consumer is issued in relation to any goods, it shall be sufficient for the purposes of this sub-section if the required information is published or marked on such catalogue or vendor instructions.

Added vide Khyber Pakhtunkhwa Act No. II of 2005

(2) Any trader who sells any goods not marked with information required under sub-section (1), shall incur the liabilities of the disregard of sub-section (1), unless he proves that the manufacturer of the goods or some other person identified by him is responsible for the offence and the onus of proof shall lie on such trader.

5. Prices to be exhibited at business place.---In the absence of a price catalogue meant for the consumers, every trader shall exhibit conspicuously in his shop or display center a notice specifying the retail or wholesale price, as the case may be, of all goods available for sale in that shop or display center.

6. Receipt to be issued to purchaser.--- Every trader who sells any goods shall, on demand by purchaser, whether he is a consumer or otherwise, issue to the purchaser a receipt setting out,-

- (a) the date of sale;
- (b) the specifications and other identifying particulars of the goods sold;
- (c) the quantity and price of the goods;
- (d) the nature of sale, that is to say, whether wholesale or retail; and
- (e) the name and address of the seller:

Provided that if a trader uses an electronic machine for preparation of receipt in respect of the sale made, such receipt shall be taken as sufficient compliance with the requirements of this section.

7. Prohibition of false advertisement, etc.---(1) Notwithstanding anything contained in any other law for the time being in force, no company, firm or person shall advertise in any manner not authorized by law for the sale or hiring of goods or services or any property, movable or immovable, or solicit deposits for repayment at higher rates of profit or interest and thereby causes loss to any consumer, whether financial or otherwise.

(2) Notwithstanding any punishment provided for making misrepresentation, false or misleading advertisement in any other law for the time being in force, the company, firm

or a person or undertaking making such advertisement shall be liable to pay such compensation as the ††††††††[Court]may direct for causing loss to the person affected by such

††††††††**7A. Duty of disclosure.**---(1) Where the nature of goods or products details are such that the disclosure of its components, parts, quality, ingredients, or date of manufacturing and expiry is material to the decision of the consumer to enter into a contract of sale, the manufacturer shall disclose the same.

(2) Where the nature of service is such that disclosure of capabilities or qualification of the services provider or quality of the products that service provider intends to use, is material to the decision of the consumer to enter into contract, the services provider shall disclose the same.

(3) Notwithstanding anything contained in sub-sections (1) and (2), the Court or the Director may, by general or special order, require such disclosure in any case.

7B. Defective construction, composition or design.---A good or product shall be defective in construction, composition or design if, at the time of manufacturing, a material or design deviation was made by the manufacturer on specification whether known to the consumer or not.

7C. Prohibition.---The manufacturer, trader and goods or services provider shall not indulge in any unfair trade practices.]

PART-II

8. The Council.---(1) As soon as may be, after the commencement of this Act, Government may, by notification in the Official Gazette, establish a Consumers Protection Council ††††††††[††††††††[at Provincial level] to devise policies for protecting the consumer

(2) The Council shall consist of a Chairman and such other ††††††††[official and

†††††††† Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

†††††††† Inserted vide Khyber Pakhtunkhwa Act No. XVII of 2015

†††††††† Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

†††††††† Substituted vide Khyber Pakhtunkhwa Act No. XVII of 2015

†††††††† Added vide Khyber Pakhtunkhwa Act No. II of 2005

non-official] members as Government may, by notification in the Official Gazette, specify.

(3) The existence of vacancy in, or defect in the constitution of the Council shall not invalidate any act or proceedings of the Council.

(4) The Council shall observe such procedure for conducting its business as may be presented.

9. Meeting of the Council.---(1) The Council shall meet as and when necessary and at such time and place as the Chairman may determine; provided that not more than a period of two months shall intervene between the two meetings of the Council.

(2) In the absence of the Chairman, the Council shall elect one of its members to act as Chairman.

(3) The quorum of the meeting of the Council shall be two third of the total members.

+++++[**10. Functions of the Council.**---The Council shall-

(a) be responsible for formulation of policies for the promotion and protection of the rights of the consumers, fair and honest trade practices by the manufacturers, producers and suppliers of goods and services in relation to interest of consumers and their effective implementation; and

(b) coordinate between Government and manufacturer's producers, suppliers and consumers.]

11. Delegation of Powers. --- (1) Government may, by notification in the official gazette, direct that all or any of the powers and functions conferred on the council shall, subject to such limitations, restrictions or conditions, as it may from time to time impose, be exercised and performed by such member or members of the council or by such officer or officers of Government as may be specified.

+++++Substituted vide Khyber Pakhtunkhwa Act No. XVII of 2015

(2) Government may appoint such officers as it may deem necessary to assist the council in the performance of its duties and functions.

§§§§§§§§§§ [11A. **Establishment of Consumer Courts.**---Government may, by notification in the official Gazette, establish a Consumer Court in each District of the Province to be presided by a District and Session Judge.]

[PART-II-A
DISPOSAL OF COMPLAINTS
BY THE DIRECTOR

11B. Manner in which complaint shall be made.---(1) The Director may, on his own motion or by reference from a consumer or recognized consumer association against any individual or entity under section 5, 6 and 7A, 7B and 7C of this Act shall, after conducting an inquiry under section 11C, is satisfied that violation has been committed, may fine the violator with an amount, which may extend to fifty thousand rupees but not less than five thousand rupees and which may be recovered as arrears of land revenue.

(2) The Director may file a complaint before the court, for declaring a product or a service as faulty or defective under the provisions of this Act without proof of any damage actually suffered by a consumer but likely to be suffered keeping in view the general standard of that service or product.

11C. Inquiry and inspection.---(1) The Director, on receipt of a complaint or on his own motion or on the direction of the Court, may hold an inquiry as to defects in products or services, which contravene any of the provisions of this Act; provided that no prior notice shall be required to be given to a manufacturer or trader or service provider for holding an inquiry.

(2) While making an inquiry under this Act, the Director may,-

(i) inspect at reasonable time with or without police assistance, any place where the activities or transaction of trade and commerce or services are carried out;

§§§§§§§§§§ Inserted vide Khyber Pakhtunkhwa Act No. II of 2005

Inserted vide Khyber Pakhtunkhwa Act No. XVII of 2015

- (ii) have the power to take sample of goods, products, services and to check the defect, standard and purity through laboratory test or other means, as may be prescribed;
- (iii) require any manufacturer, trader or service provider or his employee or agent to produce before him for inspection, all product, items and record of documents;
- (iv) seize and detain any goods or products sold or delivered or caused to be sold or delivered alongwith record relating thereto in respect of which an offence under this Act has been committed or likely to be committed; and
- (v) seal any premises where an offence under this Act has been committed or is likely to be committed.

(3) The Director may delegate any of his powers to the subordinate officers of the Directorate with specified area of jurisdiction

PART-III

Disposal of Complaints †††††††††† [by Courts]

12. Jurisdiction of the †††††††††† [Court].--- §§§§§§§§§§ [Subject to the provisions of this Act,

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- (a) the opposite party or each of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides or carries on business or personally works for gain; or
- (b) any of the opposite parties, where there are more than one, at the time of the institution of the complaint, actually and voluntarily resides, or carries on business, or personally works for gain provided that in such case either the permission of the ***** [Court] is given, or
- (c) the cause of action wholly or in part arises.

†††††††††† Added vide Khyber Pakhtunkhwa Act No. XVII of 2015
 †††††††††† Substituted vide Khyber Pakhtunkhwa Act No. II of 2005
 §§§§§§§§§§ Substituted vide Khyber Pakhtunkhwa Act No. II of 2005
 ***** Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

(e) on receipt of the report from the laboratory, the [Court] shall forward a copy

(f) if any of the parties disputes the correctness of the findings of the laboratory, or methods of analysis or test adopted by the laboratory, the [Court] shall require the

(g) the [Court] shall give a reasonable opportunity to both the parties of being

-15.

(2) The [Court] shall, if the complaint received relates to goods in procedure specified in sub-section (1) cannot be followed, or if the complaint relates to any service,-

(a) refer a copy of such complaint to the opposite party directing him to give his version of the case within a period of thirty days or such extended period not exceeding fifteen days as may be granted by the [Court]; and

(b) on receipt of the defence of the opposite party, if any, under clause (a), proceed to settle the dispute on the basis of evidence produced by both the parties:

Provided that if the opposite party does not deny or dispute the allegations made in the complaint or fails to present his case within the specified period, the dispute shall be settled on the basis of the evidence brought by the [complainant].

(3) For the purpose of this section, the [Court] shall have the same

Substituted vide Khyber Pakhtunkhwa Act No. II of 2005
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Substituted vide Khyber Pakhtunkhwa Act No. II of 2005

PART-IV

MISCELLANEOUS

21. Immunity.---No suit, prosecution or other legal proceedings shall lie against the Council or any member thereof or any functionary under this Act or acting under the direction of the Council or Government for anything which is in good faith done or intended to be done under this Act.

21 A. Inherent powers of Court.--- “Nothing in this Act shall be deemed to limit or otherwise affect the inherent powers of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process or Court”

22. Power to make rules.---Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

23. Power to remove difficulties.---If any difficulty arises in giving effect to any of the provisions of this Act, Government may, make such orders not inconsistent with the provisions of this Act, as may appear to it to be necessary or expedient for removing the difficulty.

Annexure E

List of Participants of workshop

S.No	Name Of Judicial Officers	Place Of Posting As Judge Consumer Court.
1.	Mr.khalil Khan khalil	Bannu
2.	Mr.Shoaib khan	D.I.Khan
3.	Mr.Nasim Akbar	Kohat
4.	Mr.Anwar Hussain	Mardan
5.	Mr.Khawaja Wajihuddin	Peshawar
6.	Mr.Muhammad Asif Khan	Abbottabad
7.	Mr.Muhammad Adil khan	Swat
8.	Ms.Rozina Rehman	charsadda
9.	Mr.Asad Hameed khan	Nowshera
10.	Syed Anees Badshah Bukhari	Mansehra
11.	Mr.Aamer Nazir Bhatti	Haripur
12.	Mr.Muhammad Naseem	Karak
13.	Syed Aqeel Shah	Lakki Marwat
14.	Mr.Tahir Mehmood	Swabi
15.	Mr.Sajjad Ahmed	Tank
16.	Mr.Aftab Afridi	Chitral