

Consumer Protection in Islamic Law (Shariah): An Overview

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Introduction:

Islamic law is a communication from Allah, The Exalted, related to the acts of the subjects through a demand or option, or through a declaration.¹ Islamic *Shariah* is derived from the revelation of Allah which makes it distinct from other legal systems of the world. There are four sources of Islamic law the Qur'an,² the *Sunnah* of the Holy Prophet Muhammad, (pbuh), *Ijma* (Consensus), *Qiyas* (analogy). There are four major schools of law in Sunni Muslim legal thought i.e. Maliki, Hanafi, Shafi and Hanbali. The scope of Islamic law is very wide. It covers almost all areas of human interest such as contracts, torts, criminology, international law, administrative law, gifts, wills, pre-emption, trust etc. Consumer protection and business ethics are amongst the more important aspects of human being's dealings with each other. In Islam, the rights and obligations of an individual towards others are stressed heavily. Where violations occur, the prerogative to forgive or otherwise is vested in the affected individual. Allah's forgiveness or otherwise in such cases is dependent on the will of the individual sinned against; if he does not forgive, Allah will punish the defaulter. Therefore, it is imperative for the individuals to deal with fairness in trade and commerce as well.³

The Arabic equivalent for the term "consumer protection" is "*himayat-al-mustahlik*". *Mustahlik* is the agent noun (*Ism al-fail*) from the word *Istihlak* (consumption). The word (*Istihlak*) is derived from '*halaka*' that means destroyed i.e. conversion of something from from beneficial to non-beneficial form.⁴ Beneficial means it is used for the purpose it is made. The modern Muslim scholars have defined *Istihlak* (consumption) that it is spending of money and losing of something its original shape or conversion of something from one form to another like cotton to dress or uniform etc.⁵ In Islamic law, the term "*himayat al-mustahlik* i.e. consumer protection" specifically does not appear in these exact terms in the classical books of *fiqh*. Also, the *Fuqaha* did not mention this term in their writings. However, this is not a strange rule in Islamic law as it has provided detailed rules for consumer protection in various chapters of *Fiqh* such as liability (*Daman*), contracts, deception (*Tadles*), uncertainty (*Gharar*), hoarding, law of options, and ombudsman (*Hisba*) explaining consumer's safety from adulteration, deception and concealment of defect etc. There is no specific

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chapter in the classical *Fiqh* literature about the protection of consumers. The reason, probably, is that when the general principles of Islamic law are practically implemented the purpose of consumer protection will be automatically served and no need will remain for specific code for the protection of the consumers.⁶ The Holy *Qur'an* and *Sunnah* embody some very basic and important principles with regard to protection of consumers in commercial transactions. The sources of consumer protection in Islamic law are those of Islamic law itself i.e. *Qur'an*, *Sunnah*, *Ijma'*, *Qiyas*, etc. thus, the Islamic guidelines for consumer protection should be derived from the above mentioned sources. However, an Islamic state may develop or adopt some new regulation on the basis of public interest (*Maslaha Mursala*) provided it is not repugnant to Islamic *Shariah*. The *Fuqaha* after taking guidance from the principles provided by the *Qur'an* and the *Sunnah* developed a comprehensive system of contracts and transactions. Rights of the consumers are discussed under different headings in different chapters of *Fiqh* literature. The Islamic law of contracts and commercial transactions has become a well-developed discipline now due to the contributions of Muslim jurists.

The Philosophy of Islamic Law and Consumer Protection:

Muslim scholars have explained that all the rules of *Shariah* revolve around *Maqasid al-Shariah* also known as high purposes of Islamic law as well as objectives of *Shariah*. The basic objective of Law-Giver is the welfare of mankind. *Maqasid* and *Masalih* are interchangeable terms. Imam Ghazali writes about *Maslaha*: "As for *maslaha*, it is essentially an expression for the acquisition of *manfa'a* (benefit) or the repulsion of *madarra* (injury, harm), but that is not what we mean by it, because acquisition of *manfa'ah* and the repulsion of *madarra* represent human goals, that is, the welfare of humans through the attainment of these goals. What we mean by *maslahah*, however, is the preservation of the ends of the *Shar*".⁷

The Muslim Ummah has unanimously accepted that *Shariah* is promulgated for the protection and preservation of five basic objectives. These fundamental rights are recognized by *Shariah* scholars in respect of individuals from an inductive survey of the sources of Islamic law. These are: preservation and protection of faith, life, progeny, intellect, and wealth.⁸ These are actually the High Purposes of *Shariah*. There are many principles, rules and legal maxims of Islamic law that revolve around the protection and preservation of these fundamentals. These objectives can be achieved by opening the ways to the means that ensure the advancement of these objectives on one hand and blocking all those means that lead to negate them. If we look into these *Maqasid* in the context of consumer protection,

all the five objectives highly ensure the protection and promotion of consumers' interests. Such as the objective of faith (*Hifz al-Deen*) means to have belief in Allah i.e. One God, Angels, Prophets and the Day of Judgment. It is completed when one performs all the required worships i.e. prayers, fasting in the holy month of Ramadan, Pilgrimage to Mecca and paying of *Zakat* etc. Faith also requires a believer to speak the truth, do good deeds to others and never commit anything wrong that may harm anyone. When a person follows the said scheme in order to complete his faith and fulfill his ritual obligations, he would never enter in an unlawful business nor produce harmful products that may harm the consumers. He would always follow the approved business conduct and abstain from unfair trade practices.⁹ Similarly, the objective of life (*Hifz al-Nafs*), the primary concern of, which is to protect and preserve human life is highly ensuring protection of the consumers. The original rule for consumption of goods and services in Islamic law is permissibility unless prohibited by it. However, anything that may harm the consumers should be banned. It is, therefore, not allowed to endanger human life by producing harmful or defective products or rendering faulty services. In this regard it is pertinent to quote Imam Ghazali: The objective of the wise men is to meet Allah (S.W.T.) in the hereafter and there is no way to that except seeking knowledge and act accordingly. The punctuality of these deeds is impossible without having a healthy body nurtured with good diet according to the needs of the body.¹⁰ Human life and sound health is sacred in Islam and severe punishments i.e. *Qisas*, *diyat* and are prescribed for taking someone's life. Thus, any harm to human life or health is strictly condemned in Islam.

Another objective of *Shariah* is the protection and preservation of intellect (*Hifz al-Aql*). All the commandments of God are addressed to a sane person and an insane person is not held liable for not following these commandments. A sane person can easily differentiate between beneficial and non-beneficial things. Intellect is promoted through education and critical awareness enables people to take sound decisions to spend their wealth. It helps consumers to examine the quality of products and services as well as securing and safeguarding their interests in commercial transactions. Sound judgments and rational decisions can only be made when a person is sane. Therefore, *Shariah* has prohibited the consumption of alcohol as it affects the human mind. Islamic law has gone to the extent that insanity is considered a cause for the invalidity of a contract e.g. when a minor buys something that is harmful to him, the contract is not binding in the eyes of Islamic law.

Another objective of *Shariah* is the protection and preservation of posterity (*Hifz al-Nasl*).¹¹ This objective is achieved through the

maintenance of healthy family and the institution of marriage while penalties are provided for those who would corrupt it and destroy its values.¹² Healthy family is possible when they are provided clean, healthy and hygienic food for consumption. For a healthy beginning, a child should complete his basic period of taking his/her mother's milk. This objective also promotes the protection of consumers.¹³

Last but not the least is the objective of *Shariah* to protect and preserve wealth of the people (*Hifz al-Mal*). It occupies a significant place in Islamic law. It regards the property of a person as sacred and inviolable as his life and honor. In this regard, *Shariah* has legalized all the lawful and approved ways of producing wealth. On the other hand, all the unlawful and illegitimate ways of earnings are discouraged such as theft, usurpation, embezzlement, bribery, usury, *Gharar*, fraud, *Ghabn* etc.¹⁴

Thus, taking someone's money without giving him his due right is strictly condemned in *Shariah*.

Therefore, all the High Purposes of Islamic law highly ensure the protection and promotion of consumer protection. To take care of all these High purposes of Islamic law is the primary concern of Islamic law of consumer protection.

Rights and Responsibilities of The Consumers Under Islamic Law:

Keeping in view, the above objectives of *Shariah*, it is very easy to derive basic rights of the consumers under Islamic law. It has been discussed earlier that every individual has right to faith, healthy and sound life; protection of intellect; a sound family system; and protection of property. These are their rights in the sense that no one should violate these rights. On the other hand these are the responsibilities of the consumers to ensure protection of these rights and do not let others to violate their basic rights. In *Shariah* a consumer is expected to behave rationally while consuming his wealth satisfying his needs.¹⁵ This has been termed *rushd* in Islamic *fiqh*.¹⁶

Shariah commanded Muslim consumers to consume only good, useful and pure products and services. They are asked to avoid wasteful and unnecessary things.¹⁷ This gives great freedom of choice to different people according to their social and specific requirements in consuming products and services unless they are contrary to *Shariah*.¹⁸ It has put restriction that consumption should be from *halal* means on *halal* products and services.¹⁹ The believers should avoid the consumption of *haram* products.²⁰ The general principle regarding things is permissibility unless that is prohibited by *Shariah*. Therefore, Muslim jurists did not explain lawful consumption in much detail as it has been profoundly defined by *Shariah* while they have explained in detail the unlawful consumption such as wine, pork, dead

animal and blood etc.²¹ Thus, consumption will be valid only if it is made in a lawful way and in lawful objects.

Hazrat Umer (R.A.) said:

“And I see this *mal* will not benefit unless, it is taken by the right and given in the right prevents you from *batil*. ”²²

Spending on one's self, wife, children and family as well as on needy people such as widows, orphans and the poor is highly encouraged by *Shariah*.²³

The famous proverb “*charity begins at home*” explains very well the significance of the above principle of Islam. *Shariah* has asked people to follow a middle path between materialism and asceticism. It forbids excessive expenditure on gratification of personal desires and condemns abstention from the enjoyment of pure things.²⁴ It has ordered people to look after their wealth and spend it wisely on satisfaction of their wants. Islamic law goes to the extent that it can even impose interdiction (*hajr*) against those who are spendthrift or wasting their wealth. *Hajr* literally means, ‘imposing restriction’ i.e. when a person's actions are stopped to have their legal effects.²⁵ The concept has been derived from the *Qur`anic* instruction of restricting the minor orphans to have an access to their own resources until they obtain maturity. Hence, it denotes the meaning of imposing restrictions on someone to indulge in consumption of wealth or in any business activity. The legality of *Hajr* is based on the verses of the Holy Qur'an and traditions of the Holy Prophet (SAW).²⁶ In this context, it is reported from the Holy Prophet (SAW) is that Muadh Ibn Jabal (R.A.) was a generous man and always gave his possessions away. He used to be always in debt. Even his debts increased his actual assets. He came to the Holy Prophet (SAW) and requested him to ask his creditors to withdraw their claims on the debts. They, however, refused. The Prophet (SAW) imposed *Hajr* and sold Muadh's property to pay the debts, to the extent that he had nothing left.²⁷ Consumption of wealth is not restricted to necessities of life but includes comforts and even lawful luxuries (*tahsiniyat*) of life. King Solomon was a prophet and at the same time enjoyed all the comforts and luxuries of life that one can think of in this world. One of the companions of the Holy Prophet (SAW), Caliph Othman (R.A.), was one of the richest men of Arabia and was given the epithet of “richest” by the Holy Prophet (SAW). Thus, the possession of wealth and enjoyment of comforts and even some of the luxuries of life is not considered contrary to piety provided the consumer is neither wasteful nor misery in his expenditure.²⁸

The perfect model for a Muslim consumer is the personality of the Holy Prophet (SAW). Holy Prophet enjoyed the simple pleasure of life without indulging into luxuries life. He used to like simple food, simple dress and simple ride. He asked his followers to follow his virtue. He said:

“Successful is the man who has acted on the principles of Islam and lived on simple necessities of life”.²⁹

Holy Prophet (SAW) is a perfect example of living a balanced and moderate life. He has condemned both extravagance and miserliness and asked people to be moderate in their expenditure. Extravagance means spending wealth on unlawful things, such as gambling, drinking wine etc., even if the amount involved is insignificant; excessive expenditure on lawful things, whether within or beyond one's means and expenditure for good and charitable purposes merely for show. Qur'an condemns this sort of expenditure.³⁰

Islamic law has condemned wasting of wealth in extravagant manner such as gambling and drinking, ostentations dress (mostly silken wears by men), paintings and portraits, rearing of dogs, and precious metal utensils. Leading such a luxurious life that violates norms of *Shariah* is strictly prohibited. Thus, the concept of luxuries would be defined from time to time. The luxurious life is discouraged in Islam both by educating people and by public action if necessary. For example, the state may discourage or even ban the production and import of such articles, which by a social consensus lead to a life of luxury. In still another case, the state may apply the classical instrument of *Hajr* to forestall a luxurious behaviour. Islam has also condemned miserliness which applies where one does not spend wealth on one's self and his family according to one's means; and when one does not spend anything on good and charitable purposes.³¹

Muslims have been directed to be humble in their conduct towards life. They must not lead a life of extravagance, and must exhibit good-will in any transactions among themselves. They are also required to adopt a moderate attitude in the acquisition and utilization of resources.³² Both the extremes of consumer behaviour, *'Israf* (extravagance) and *bukhl* (niggardliness) have been condemned both in the Qur'an as well as by the Prophet (SAW).³³

Islamic Market System and Consumer Protection:

Shariah has strictly prohibited all unfair trade practices that may cause harm either to the businesses or consumers. The ideals of Islamic *Shariah* are the establishment of free and fair market where government intervention is less. For the smooth running of economy *Shariah* has banned malpractices and unlawful business activities. *Shariah* disapproves all business activities which involve firstly explicit or implicit harm and injustice to the contracting parties or to the public at large; secondly, which restrict the freedom of trade, or stand in violation of the *Qur'anic* injunctions and the approved business conduct. Islamic state may use force to organise transactions on sound Islamic principles. Other things remaining the same price are determined by free operation of market forces. The Holy Prophet (SAW) discouraged any interference in the process of price determination

by the state or individuals. Besides refusing to take any direct action, he prohibited those business practices which could lead to market imperfections. Consequently, stockholding, speculation, oligarchic collusions, adulteration concealment of vital information about the product quality and selling by false vows (which could be compared to misleading advertisements of the present day) were prohibited by the Holy Prophet (SAW). Thus, the market policy in an Islamic economy is to nullify the influence of economic power on price mechanism. Simultaneously, he discounted exploitation of the ignorant by the informed. In the contemporary society these instructions could be made a basis for a voluntary code of conduct for the business community.³⁴

Islamic *Shariah* has encouraged all lawful transactions and disapproved the unlawful transactions. *Shariah* requires a specific type of attitude from the economic agents-the consumers and the producer. In order to ensure socio-economic justice in the society, Islamic *Shariah* has mentioned a number of guidelines. Islamic law has given great importance to legitimate (*halal*) earnings, trade through mutual consent, truthfulness, trustworthiness, generosity and leniency, honouring and fulfilling business obligations, fair treatment of workers, and transparency in dealings etc.

Protection and preservation of '*Mal*' is one of the five objectives of *Shariah*. To ensure this goal Islamic law has legalized and promoted all the legal ways of earning while it has discouraged the unethical and unlawful means of earning wealth. Islamic *Shariah* has shown great keenness to earn (*Halal*) legitimate. It has determined the code of lawful and unlawful and ordered Muslims to earn *Halal*. The ways that lead to pure earnings such as farming, labouring, inheritance, gifts and presents etc. are highly encouraged. On the other hand it has strictly prohibited *haram* earnings and all the ways that lead to impure earnings such as bribery, robbery, gambling, usury, cheating, theft, business of *haram* things, shoplifting, etc. have been highly discouraged.³⁵ It has also attached great importance to the consent (*Taradhi*) between the parties in a commercial transaction. The transaction is considered legally valid only if it is made through the mutual consent of the parties. Thus, a seller cannot charge extra amount for any product or service without the consent of the consumers. The basic principles of contract theory in Islamic law are mutual consent and gainful exchange.³⁶ Another virtue that Islamic law demands from the traders is honesty and truthfulness in business dealings. It has zero tolerance for cheating, fraud and exploitation of others in the course of any business.³⁷ Similarly trustworthiness is required by *Shariah* from the traders. A true Muslim trader will avoid fraud, deception, and other dubious means in selling his merchandise. The sense of mutual trust demands that the pros and cons of

commodity be revealed to the buyer so that he purchases the commodity in full satisfaction.³⁸ Islamic *Shariah* has also put great stress on the fulfilment of contracts and promises. It requires from a Muslim trader to be honest, truthful and keep his integrity and fulfil all his promises and contracts.³⁹ The tradition of the Holy Prophet states:

“The Muslims are bound by their stipulations”.⁴⁰

Another tradition condemns promise-breaking as the hallmark or trait of a hypocrite: *If he makes a promise, he breaks it, and if he makes a compact, he acts treacherously.*⁴¹ In order to avoid any dispute and safeguard rights of both the seller and consumer all the attributes of the transaction such as quality, quantity, the price of the commodity and the time and mode of delivery and payment etc. should be clarified among the parties. *Shariah* encourages transparency in all business dealings. The Holy Qur'an in loan transactions (*Ayat al-Dain*) has stressed that all agreements and contracts should be as transparent and clear as possible.⁴² *Shariah* has considered it as the religious and moral responsibility of the employer to take care of the overall welfare and betterment of his employees. In this regard workers should be provided with fair wages, good working conditions, suitable work and excellent brotherly treatment.⁴³ All these tenets of Islamic law play a vital role in protection of consumer rights by establishing a healthy business environment.

On the other hand, Islamic *Shariah* has discouraged various business practices due to their unfair and unethical nature. The behavior of a Muslim business person has been tied to the principles of justice, fairness, permissibility, equitability, cooperation and mutual help. Islamic Law has strictly prohibited dealing in *Haram*⁴⁴ goods and services. Therefore, it is prohibited in Islamic law to deal in *Haram* products and services.⁴⁵ Acquiring or transferring anything that *Sharia'h* has declared *Haram* or trading in that is unlawful. Dealing in unlawful goods such as carrion (dead meat), pigs and idols is strongly prohibited in Islam. Thus dealing in *Haram* products and services such as prostitution, bribery, selling *Haram* food, selling adulterated foods etc. are strictly condemned by *Shariah* and their income is also unlawful. The manufacturer producing such things and the supplier of such products are strictly liable under the penal laws of Islam. *Tazir* or *Syasa* can be invoked in such matters in order to protect public interest i.e. *Maslaha Mursalah*.

Islamic *Shariah* has also condemned dealings based on *Riba* (Usury).⁴⁶ *Riba* (Usury), by definition, is the extra sum the moneylender charges from the borrower for deferred payment. *Riba* is defined as “An increase that has no corresponding consideration in an exchange of property for property.”⁴⁷

Islam has forbidden all forms of *Riba* since it involves both oppression and exploitation. Islam strictly forbids this form of tyrannical dealings and condemns it in severe terms. In the context of consumer protection *Riba* largely affects the consumers' interests by causing inflation and opening ways to exploitation. There is an explicit distinction between genuine business profits and usury; while the former is recommended and desirable, the later is discouraged. Another thing that *Shariah* has discouraged is *Gharar*.⁴⁸ It applies to an occurrence about which the parties are unaware whether such an event will take place or not; a thing that is not within the knowledge of the parties; a thing about which is not known whether it exists or not; a thing whose acquisition is in doubt; and a thing whose quantum is unknown. Muslim jurists have given various examples of transactions based on *Gharar* such as sale of fish in water, birds in the air, a foetus in the womb, and fruit of trees at the beginning of season when their quality cannot be established. Thus, Islamic law has strictly prohibited uncertainty (*Gharar*) because the quality, whether good or bad, is not known to the buyer at the time of the deal and there is every possibility that the contract may give rise to disputes and disagreements between the concerned parties. In other words such transactions may harm the consumers' interest that's why these are rejected by *Shariah*. It has also prohibited *Qimar*⁴⁹ (Gambling) and *Maysir*⁵⁰ (Games of Chance). Qur'an has expressly prohibited such practices. Islamic law has also prohibited hoarding (*Ihtikar*).⁵¹ Prohibition of hoarding not only helps in eliminating the evil of black marketing but also ensures the establishment of a free market so that a reasonable and just price could emerge as result of open competition.⁵² *Iktinaz* (hoarding of gold, silver and cash) and *Ihtikar* (hoarding of food grains and other supplies) both are declared against Islamic *Shariah*. Traders hoard foodstuffs in expectation of rise in their prices. Consumer are largely affected by this practice as they are left with no choice but to purchase the article concerned from the one who hoards, as he is the only one in the market who holds it. Sometimes, a trader hobnobs with the suppliers who will only sell their merchandise to him. As a result, he holds the entire stock of the essential items that other traders do not possess. He is, therefore, in a position to dictate his terms in the market and sell them at an exorbitantly high price to the needy people. This is an unjust practice and a clear case of exploitation and deservedly condemned by Islam. 'Umar ibn al-Khattab, during his Caliphate, had issued a stern warning against hoarding of any marketable commodities. Nobody was allowed to spend his wealth on purchasing food grains with the intention of hoarding.⁵³ If a commodity is being sold without any hoarding, and its price rises because of natural shortages or scarcity or an increase in demand, then this circumstance is due to Allah.

Businessmen cannot then be compelled to sell at a fix price. In cases where businessmen are engaging in hoarding and other forms of price manipulation, Islam allows price control in order to meet the needs of society and to provide protection to the consumers against greed.⁵⁴ However, *Shariah* has not encouraged the practice of price-fixing and leaves the traders to earn the profits from each other within the lawful limits.⁵⁵ As a matter of principle public authorities are not allowed to fix the prices of commodities by force. This is because rise and fall in the prices are linked to various factors other than the greediness of the traders and fixing the prices may endanger both public and private interests.

But the authorities can intervene if a trader adopts unfair means, charges unjust prices and indulges in undercutting with a view to doing harm to the consumers. In such cases they should take steps to fix or control the prices so as to eliminate injustice from the market and allow the trader to earn reasonable profit and the buyer to pay a just and equitable price. Therefore, Islamic *Shariah* has also discouraged all those measures that may cause price-hike. In this regard it has prohibited *Maks*⁵⁶, *Najash*,⁵⁷ *Talaqqi al Rukban*⁵⁸, and *Bay al Hadir li Bad*⁵⁹ etc. The Prophet (pbuh) forbade this practice. Imam Ibn Taymia says that there is harm for the consumers in this practice.⁶⁰

Islamic law has prohibited exploiting one's ignorance of market conditions. The local trader is not allowed to persuade the new-comer to transfer all of the goods to him so that he will sell them on his behalf in the market. He obtains the commodities on a price that is lower than market price and then sells them at a high or exorbitant price. The Prophet (pbuh) has prohibited this practice through a number of instructions. A tradition reads: A town dweller should not sell the goods of a desert dweller.⁶¹ If a consumer is such exploited, he may claim back the extra amount he paid if it is a case of exorbitant profiteering (*Ghabn-Fahish*).⁶² In this context protectionism is equally condemned by Islamic law.⁶³ According to Imam Abu Yusuf, it is prohibited because it provides affluence to the favoured ones at the expense of the general public. Moreover, it is the root cause of inflation and leads to such evils as smuggling, black-marketing, adulteration and profiteering.⁶⁴ *Shariah* has prohibited all such transactions that may cause harm to the consumers. A Muslim businessman is required to be very careful lest he should harm someone else or even himself through his heedless conduct in business.⁶⁵ All business practices based on fraud and cheating (*Al-Ghash*) are strongly condemned by Islamic *Shariah*.⁶⁶ Islam prohibits any kind of fraudulent transaction whether during a purchase or a sale. The Muslim businessmen must be honest all times.⁶⁷

The Prophet (SAW) has strongly condemned all such practices in a number of traditions and asked the believers to abstain from them.⁶⁸ Holy Prophet (SAW) has said:

“He who defrauds does not belong to us.”⁶⁹

In this context dishonesty is also strongly condemned by Qur'an in the following words:

“O ye who believe! Betray not the trust of God and the Apostle, nor misappropriate knowingly things entrusted to you.”⁷⁰

The condemnation and prohibition of dishonesty, fraud, and betrayal of trust occur in more than nineteen verses of the Quran. Falsehood and breach of promise or contract with any valid reason is disapproved by *Shariah*.⁷¹ It is also prohibited for the traders to take recourse to swearing to emphasise that their items are of good quality and having such and such attributes. Some businessmen persuade the consumers to purchase their product. The Prophet (SAW) is reported to have said: Swearing [by the seller] may persuade the customer to purchase the goods but the deal will be deprived of Allah's blessing.⁷² One of the major frauds is giving short measures. Islamic law has strongly condemned giving of short measures while the believers are commanded to weigh and measure in full.⁷³ Qur'an narrates the story of the community of the Prophet *Shu'ayb* (SAW) was known for practising it with impunity. Consequently, they were destroyed for their persistence in deceit and disbelief in Allah and His Messenger. Allah the Almighty has repeatedly commanded exactitude in weights and measures.⁷⁴ The *Madyan* people were ultimately destroyed by Allah for using improper weights and measures. Those who give short weight and short measure to others and receive from them in full are condemned and promised a severe punishment. Such people are called “*al-Mutafiffun*”.⁷⁵ According to some scholars the meaning of *Tatfif* extends to include the worker who receives his wages in full but does not perform his duties honestly and efficiently.⁷⁶ Similarly, Islamic law has discouraged the practice of adulteration in any form. In a famous *hadith*, it is narrated:

“The Messenger of Allah (SAW) happened to pass by a heap of eatables (corn). He thrust his hand in that (heap) and his fingers were moistened. He said to the owner of the heap of eatables (corn), “What is this?” “Messenger of Allah, these have been drenched by rainfall.” He (the Prophet) remarked, “why did you not place this (the drenched part of the heap) over other eatables so that the people could see it? He who deceives is not of me (is not my follower).”⁷⁷

In order to avoid uncertainty particularly on the part of consumers, Islamic law has made it compulsory to own the subject matter e.g. currencies, instruments and commodities before selling them and prohibited the sale of what is not owned by the seller.⁷⁸ As we know that Islamic law has

prohibited theft and prescribed severe punishment of cutting hand for it. It has also declared it a violation of the right of Allah. According to Islamic law, the stolen items are neither to be bought nor sold by those who know the reality. The Prophet (pbuh) made the person knowingly buying a stolen commodity a partner to the crime. He said: "The one, who knowingly purchases a stolen good, is a partner to the act of sin and the shame".⁷⁹

Enforcement of Islamic Law on Consumer Protection:

Islamic State and Consumer Protection

The basic purpose of Islamic law is to ensure social justice that can be achieved by promoting the right and forbidding the wrong.⁸⁰ In this regard, Imam Ibn Taimiyya (d. AH 728/AD 1328) pointed out: "to govern the affairs of men is one of the most important requirements of the religion that is Islam, nay, without it religion cannot endure. The duty of commanding well and forbidding the evil cannot be completely discharged without power and authority."⁸¹ Without the coercive power of the Islamic state, it is not possible to realize the ideals of Islamic socio-political and economic justice. It is the duty of the Islamic state to implement Islamic law; establish the Islamic system of education; and defend Islamic civilization against domestic perversions and foreign aggression. Islam's promises as the guide for man's happiness in this world and the Hereafter would not be true. The Islamic state is, therefore, 'an effort to realize the spirituality in human organization.'⁸² It was applied during the administration of the first four successors of the Prophet Muhammad, appropriately called the rightly guided Caliphs. For example, Caliph Umer (AH 13-23/AD 634-644) inaugurated a universal social insurance scheme and a special department was created to take regular population census.⁸³ Muslim leaders from the very beginning used to take great care of the merchants and dealers and regulate proper weights and measures. In this regard, Hazrat Ali (R.A.) was most prominent as he used to inspect the markets of al-Kufah- with a whip in hand, to check that proper weights and measures were used and no one is doing unfair trade practices. During the era of Umayyads police officers were made in charge of the supervision of weights and measures.⁸⁴

Islamic state was also bound to dispense justice free of cost; hence, there was no stamp duty or court fee on those who sought to redress the injustice done to them through the process of adjudication.⁸⁵ It has to be added here that the Islamic state is subject to the same rules as the individuals. Thus, it must not do anything, which is repugnant to the spirit of Islam, including. It should also bring the barren land under cultivation and invest the idle state funds in trade. Umer Ibn al Khattab (R.A.) has done a great job in this context.⁸⁶

Everything that helps promoting the objectives of *Shariah* is desirable. Hence, Islamic state is bound to adopt policies that realize the protection of these rights. In this context an Islamic state has to ensure the establishment, protection and propagation of faith (*Hifz al-Din*) in accordance with the first purpose. Similarly, the Islamic state is bound to ensure protection and preservation of life (*Hifz al-Nafs*) and take adequate steps to prevent practices that may harm life and health of the people.

Islamic state has to provide an adequate environment of safety and welfare to the citizens by promulgating and enforcing policies and laws to ensure supply of necessities of life. Islamic state should also create a healthy environment for a good family system in accordance with the third objective (*Hafz al-Nasal*). It must also establish conditions for the growth of healthy minds by prohibiting all those means that affect its function and ensuring the ways that promote (*Hifz al-Aql*) such as education etc. Moreover, the Islamic state is bound to ensure the economic well being of the Muslim community as a whole. In this context, the wealth of the Muslim community is to be safeguarded and developed to achieve the high purposes of *Shariah*. This should be done in accordance with the fifth objective (*Hifz al-Mal*). These responsibilities of the Islamic state should be discharged in the listed order of priority, as required by the structure of high purposes of Islamic law.⁸⁷

In order to establish socio-economic justice in the society, the Islamic state should also protect the individual's right to equal opportunity of work by providing employment to every able bodied and willing person; establish and enforce the system of *Zakat* as it was prevailing during the period of the Prophet (SAW) and the *Rashidun* Caliphs;⁸⁸ establish a fair system of governance that enjoin good and prohibit evils; establish a proper check and balance system for the works of its officials;⁸⁹ establish an elaborate and effective system of *Hisba*; take serious actions against those who insist on retaining the system based on *Riba* in order to establish the economic justice in the society;⁹⁰ stop hoardings, break monopolies, corner markets, and all other unfair trade practices; ensure the supply of large quantity of goods with cheap prices in the market during a crisis like famine as was the position during the era of Caliphs. Umer Ibn al Khattab who arranged for the supplies to be imported from Egypt during the period of famine in Medina⁹¹ and there was a serious shortage of food; and also to ensure essential supplies.⁹² Islamic state should make good business relationship with other nations to import products and skilled labour etc in order to fulfil necessities of the consumers. It may also be noted that people are in need of the industry of certain individuals: e.g. the public need farming, weaving and building, for people cannot go without food to eat,

clothes to wear, and dwellings to live in. If these professions are suspended most of the people will not survive.⁹³ Unless sufficient clothing is imported—as it used to be imported in to the *Hijaz* in the days of Messenger of God, on him be peace, when clothing was imported from *al-Yaman*, Egypt and Syria—unless the citizens import sufficient for their needs they will require someone to weave their clothes for them. They will require food whether it to be imported from outside or obtained from local agriculture, which is more usual. Likewise, their need for houses to live in will create demand for builders. Therefore several scholars have held that these industries are a collective obligation, since the public welfare is incomplete when they are not practiced, in the same way as the Holy War is a collective obligation unless it becomes a personal duty, binding on individuals, as when the enemy threatens a town or the ruler (*Imam*) summon someone to enlist.⁹⁴

Islamic State is duty bound to cultivate barren lands of the state and to invest the state funds in trade and commerce.⁹⁵ It will make consumer goods easily available at low cost, and their demand will be fulfilled. The Islamic state is required to dispense justice free of cost.⁹⁶

In order to ensure socio-economic justice in the society and preserve and protect consumers' interests, the Islamic state is fully authorised to interfere or even have recourse to use force.⁹⁷ In this context, Imam Ibn Taymiyyah hold that if the public is in need of commodity and some members among the public are in possession of surplus stock of the same, the ruler can force these individuals to sell their surplus stock for an equivalent price (*qimat al mithl*) and they will not be permitted to exploit the situation by charging inflated prices.⁹⁸

Hence, Islamic state has the power to restrict the economic freedom of traders, provided that the right of interference with the individual's personal property will be limited to the extent required by the general welfare of the community, in order to protect the society from harm.⁹⁹

An Islamic state, in case of necessity, has the power to impose taxes in addition to *zakat* provided that such taxation is permissible within limits especially for the discharge of the state obligations. Hence, if the state is in need of financial support for carrying out essential projects, it can ask the general masses to contribute and render funds for the purpose. This help would be designated as taxes, if realized by force; and as donations or loans, if given voluntarily.¹⁰⁰ Moreover, if rich people refuse to fulfil needs of the poor, the Islamic state must interfere and extract from the wealth of such persons whatever is necessary to fulfil the need of that poor. In case these needs of the poor are not realized it would not only be a violation of Allah's injunction on the part of the state but also deprivation of the poor of their rights granted to them by *Shariah*. The criteria to be considered eligible for

such help is that if a person does not have enough to meet his basic necessities is enough to qualify him as needy; and the state must secure his right.¹⁰¹

The state is authorised to control the price list of the commodities when it ensures just and fair dealing between the people. Hence, it is clear that a fixation of price may amount to a wrong, especially when it results in harm to public at large and force the sellers without justification to sell at a price not affordable to them, then it becomes unlawful. However, if it promotes just dealing among people and prevents them from doing injustice in taking more than a fair consideration, then it is not merely permissible but indeed compulsory.¹⁰² In order to realize the protection of social and collective interests of the community these powers are vested in the state.¹⁰³

Moreover, if a group who purchases or sells a specific type of product conspires to depreciate what they purchase and so purchase for less than the fair price while increasing what they sell above the customary price, and to malign what they purchase, and then the device of having an accomplice bid up the price (*najash*). They in this way purchase from the suppliers at less than fair price but sell in the market on enhanced rates to the buyers.¹⁰⁴ This is what results in artificial price hike. The Islamic state can inflict punishment on those who violate the rules and commit wrongs.

However, this interference by an Islamic state in business matters is not absolute but limited to the establishment of justice. The state must interfere only in situation when the socio-economic norms of the *Shari'ah* are being violated. An Islamic state is bound to enforce the rules of *Shari'ah* through the system of judiciary (*Qada*) and execution of the court's verdict (*Ijra'*). Under the rules of *Shariah* an Islamic State is not authorised to use its power to make monopolistic gains or to tax the general masses indirectly for replenishing the exchequer thereby.¹⁰⁵ It must not resort to custom barriers, restrictive tariffs or exchange control.¹⁰⁶ It must not impose taxes directly or indirectly on the potential consumers in order to protect the interests of producers in the name of any scheme such as industrialization.¹⁰⁷ There must not be any "income" tax as such. Besides curbing the initiative it assumes illegitimacy of the income of the rich. The state should levy, if need be, a proportional tax on the pattern of *zakat* on the accumulated wealth of the capable taxpayers. Hence, an Islamic state is highly required to play a vital role in order to ensure the socio-economic justice for consumers within the ambit of *Shari'ah*.¹⁰⁸

The Institution of Hisbah and Consumer Protection:

The institution of *hisbah* is a system that "ensures the righteousness of the individuals in their conducts. It is to command individuals to act in good

manner and prohibit sins”.¹⁰⁹ There is a lot of evidence, both textual and historical, for the institution of *hisbah*.¹¹⁰

It was in compliance with such *Qur'anic* injunctions that the Prophet (SAW) as well as Caliphs instituted *hisbah* and appointed reliable persons as market inspectors. *Al-Muhtasib* is responsible for carrying out the job of enjoining good and forbidding evil, which, generally speaking is beyond the purview of official duties assigned to the judges and governors.¹¹¹ It is the duty of the *Muhtasib*, in order to protect interest of the consumers and public at large, to take notice of other market imperfections such as: The practice of intercepting of goods before they reach the market. This is proscribed by the Prophet (SAW) because of the risk to the seller, as he might not know the regular price his goods may be purchased for the less than their value. For this reason the Prophet (SAW) established his right of option on reaching the market. The doctrine of Malik, Ahmad and others accords the right of option in the case of deception to the *mustarsil*, i.e. the easy-going customer who does not bargain, or to those who are ignorant of the regular price. The new comer being ignorant of the regular price in the market. For this very reason the Prophet (SAW) forbade the townsman to sell for the nomad, and said: “Leave people alone and God will see that they provide for one another.”¹¹²

The institution of *Hisba* is fully authorized to take cognizance in any type of commercial activity when it violates basic rights of the consumers and public at large. The institution of *Hisba* is responsible for the regulation of business and economic life of the people according to the injunctions of Islam. In order to stop violation of the basic rights of the consumers and ensure quality of the products, the institution of *Hisba* is authorized to prevent hoarding, control official mint and adopt preventive mechanism to close the way of all types of malpractices in trade. However, the powers of the *Muhtasib* are not absolute but limited with the establishment of socio-economic justice. He is not authorised to prescribe unjust prices. To force the merchants without any justification to sell their merchandise for a price to which they do not agree or to stop them from doing what Allah has made permissible. If the prices have risen because of either a scarcity of commodity or an increase in the number of buyers. Then the *Muhtasib* is not allowed to force the traders to sell the commodity for a prescribed price. He can force them to sell it for an equivalent price only in case they sell a needed commodity for more than the known market value. Moreover, it is incumbent upon the *Muhtasib* to keep an eye on the conduct and honesty of those merchants who deal with lady customers. If he sees any indecency in their conduct he may warn them or stop them from dealing with women. Furthermore the *Muhtasib* must ensure that the slaves, if there be any, are

given their rights and they are treated justly by their masters and are not burdened with a task beyond their capacity.¹¹³

Conclusions:

The research paper has viewed Islamic law as a potential solution of modern day key problems of consumers and underpins that how Islamic law contains provisions for the protection of consumers since its inception. Islamic law covers all areas of life, from religion, hygiene and dietary laws, to dress code, family and social life, and from finance and politics to the unity of religion with the state. Consumer Protection is not an exception. The entire legal philosophy of Islamic law, as it has been analyzed, advocates the protection and promotion of consumer rights which is further reflected in various rules of Islamic law. The paper has highlighted that there are various aspects of consumer protection under Islamic law such as the foremost is the protection of consumer against his own irrational attitude, secondly by establishing a fair and just market system that ensures the protection of all legitimate interests of the consumers in which all the fair means of earning are encouraged while the illegitimate ways of earnings are discouraged; thirdly, by educating the businessmen not to eat up wealth in vanity and strictly follow the Islamic business ethics; fourthly, the very nature and requirements for the formation of contracts under Islamic law and by recognizing the implied warranties in favour of the consumers such as *Khiyar ul 'Ayb* (option of defect) etc.; fifthly by providing a proper enforcement mechanism to the Islamic state in the shape of giving jurisdiction to the institution of *Hisbah* etc. The work of Muslim jurists over consumer protection in market mechanism span over a period of 14 centuries. Islamic law has always played an important role in providing justice to the general body of consumers. Its scope in providing prompt relief to the common man (without procedural delays) cannot be underestimated. Islamic law of consumer protection is flexible and capable to meet the needs of a changing society.

Islamic law has prescribed physical as well as moral sanctions for harming the consumer interests along with fines as punishment for the violation of consumer rights. In Islamic law a wrongdoer is punished not only in this world but also in the hereafter for the violation of moral duties. Therefore, it is more effective to protect consumer rights in Muslims jurisdictions provided the laws are in accordance with their faith. However, with religious sanction alone the consumer rights cannot be protected and it will always require some concrete legislation and policy to safeguard the consumers' interests in modern time. The principles established by Islamic *Shariah* regarding consumer protection can fit well in the contemporary age.

References

- ¹ Al-Taftazani (d. 793 A.H.), *Sharh al-talwih ala atwdih*, Maktaba Sabih Bimistr, (n.d.), vol.1, p.20.
- ² The eternal and original sources of Islamic law are the Holy Qur'an that Allah communicated through the Prophet (pbuh) for the guidance of mankind. These messages are universal, eternal and essential. *Sunnah* refers to the exemplary conduct of the Prophet (pbuh). The Prophet (pbuh) has been declared to be interpreter of the Qur'anic text. The Qur'an for instance mentions *Zakat* but does not lay down its details; the Prophet (pbuh) explained it to his followers in a practical form. *Ijma* i.e., the consensus either of the community or of the religious scholars is a principle of new legal content that emerges as a result of exercising reason and logic in the face of a rapidly expanding society.
- ³ Kishwar Khan and Sarwat Aftab, *Consumer Protection in Islam: The Case of Pakistan*, Article published in Australian economic papers, December 2000, pp.486.
- ⁴ Ibn Manzur, *Lisan al-arab*, Dar Sadir, Beirut, p.504.
- ⁵ Consumption (*Istihlak*) is some time of the goods that are consumable like vegetables, fuel, etc and some other time it is of those things that are not consumable like immovable property e.g. Land, houses etc., so here consumption means usufruct and benefit of something and not the corpus of that thing. *Istihlak* is generally consuming something, finishing it or extracting its benefits, for getting benefit out of it. It is said that the water is consumed when it is drunk and the goods are said to be consumed when their benefit is used.
- ⁶ Kishwar Khan and Sarwat Aftab, *Consumer Protection in Islam: The Case of Pakistan*, Article published in Australian economic papers, December 2000., pp.486.
- ⁷ Al-Ghazali (d.505 A.H.), *Al-mustasfa*, Dar al-kutub al-elimiyah, 1993, vol.1, p.174.
- ⁸ Al-Shatibi, Ibrahim bin Musa, *Almuawwafaqath*, Dar Ibn Affan, 1st Ed., (1417 A.H.) vol.1, p.31.
- ⁹ Khalifa, Babakar al-Hasan, *Himayat al-Mustahlik fi al-Shariah*, paper presented in the International conference on "Consumer Protection in Shariah & Law" conducted by the Faculty of Shariah & Law of United Arab Emirates University, 6-7, December, 1998.
- ¹⁰ Al-Ghazali (d.505 A.H.), *Ihya ulum al-din*, Dar al-marifat, Beirut, vol.2, p.2.
- ¹¹ Al-Shatibi, *al-muafaqat*, vol.2, p.19.
- ¹² Nyazee, *Outlines of Islamic Jurisprudence*, p.154.
- ¹³ Khalifa, Babakar al-Hasan, *Himayat al-Mustahlik fi al-Shariah*, paper presented in the International conference on "Consumer Protection in Shariah & Law" conducted by the Faculty of Shariah & Law of United Arab Emirates University, 6-7, December, 1998.
- ¹⁴ See Qur'an 4:29.
- ¹⁵ Qur'an says: "Those who, when they spend, are not extravagant and not niggardly, but hold a just (balance) between those (extremes) (25:67)".

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- ¹⁶ Ibn Rushd (d.595 A.H.), *Bidayat al-mujtahid w nihayat al-muqtasid*, Dar al-hadith, Cairo, 2004, vol.4, p.64; Al-kasani, *badai al sanai*, vol.7, p.170; Ibn Qudama, *Al-mughni*, vol.4, p.350.
- ¹⁷ Qur'an 23: 1-5; 2:172; 5: 5; 16: 114; 5:4; 2:254; 17:29; 2:173; 6:146.
- ¹⁸ Afzal-ur-Rehman, *Economic Doctrines of Islam*, vol. II, p.8.
- ¹⁹ Qur'an has provided a clear concept of permissible (*Halal*) and impermissible (*Haram*). For details see: Qur'an: 5:1, 5:5, 16:114, 22:28, 22:30; 2:219, 5:3, 6:145, 16:115, 5:90.
- ²⁰ Qur'an 2: 267; 62: 10; 4: 32; 2: 198; 78: 11; 7: 10; 73: 20; 2:173; 6:146; 5:90.
- ²¹ Usama Muhammad Al abd, *Nazriat il istihlak*, (thesis submitted for the award of PhD degree to the Al-Azar University), p.21
- ²² Abu Yusuf (d.182 A.H.), *Al-Kharaj*, Al-Maktaba al-Azhariyah li-al-turath, p.130
- ²³ Qur'an says: "They ask thee what they should spend (In charity). Say: Whatever ye spend that is good, is for parents and kindred and orphans and those in want and for wayfarers. And whatever ye do that is good,--(Allah) knoweth it well. (2:215)"
- ²⁴ Qur'an says: "O ye who believe! Intoxicants and gambling, (dedication of) stones, and (divination by) arrows, are an abomination,- of Satan's handwork: eschew such (abomination), that ye may prosper (5:90)" Other related verses are: 7:157; 2: 168; 6:142; 2:60
- ²⁵ Al-Kasani, *badai al-sanai*, vol.7, p.169
- ²⁶ See Qur'an 4:5; 4:6; 2:282.
- ²⁷ Dar Qutni, *Sunan*, Dar al-Mahasin, vol.4, p.231
- ²⁸ Afzal-ur-Rehman, M.A., *Economic Doctrines of Islam*, vol. II, p.16
- ²⁹ Hakim, *Mustadrak*, (*Sahih ala shart Muslim*), tradition no. 98, vol.1, p.90.
- ³⁰ See Qur'an: 17:26-27; 7: 31.
- ³¹ See Qur'an: 3:180; 4: 36-37; 102:1-2; 104:1-3; 5 :90.
- ³² Khan, Muhammad Akram, *Economic teaching of Prophet Muhammad* (pbuh), pp.75-76.
- ³³ See Qur'an: 3:180; 4: 36-37; 102:1; 104:1-3; 5 :90
- ³⁴ Khan, Muhammad Akram, *Economic Doctrines of Islam*, pp.125-126
- ³⁵ See Qur'an 2:168;7:160;188); 4:29.
- ³⁶ See Qur'an,4:29. The Prophet (pbuh) is reported to have said: *A sale is a sale only if it is made through mutual consent* (Ibn Majah, *Sunan*, *Bab Bai al-Khiyar*, tradition no: 2176).
- ³⁷ There are many verses of the Holy Qur'an and traditions of Holy Prophet (pbuh) such as: The Prophet (pbuh) is reported to have said: The truthful merchant [is rewarded by being ranked] on the Day of Resurrection with prophets, veracious souls, martyrs and pious people. (Tirmidhi, *Sunan*, *Bab Ma Ja' fi al-Tijara*, tradition no: 1130). The Prophet (pbuh) has also exhorted the believers to strictly adhere to truthfulness in business transactions. He says: The seller and the buyer have the right to keep or return the goods as long as they have not parted or till they part; and if both the parties spoke the truth and described the defects and qualities [of the goods], then they would be blessed in their transaction, and if they told lies or hid something, then the blessings of their transaction would be lost (Bukhari, *Sahih*, *Bab Iza Bayyana al-Biyya'an*, tradition no: 1937). The tradition implies that Allah blesses business dealings

if both the buyer and the seller are true to each other. Telling lies and hiding facts will result in the loss of divine blessing. A tradition reads. The Holy Prophet said: *'Traders are wicked people'. The Companions asked: 'O Messenger, has Allah not permitted business?' The Messenger replied: 'Of course He has declared trading lawful. But they (i.e. the traders) will swear by Allah and do evil; they will not speak but tell lies'* (Ahmad Ibn Hanbal, *Musnad*, tradition no: 15569, vol.3, p.248).

See Qur'an: 8:27.

See Qur'an: 5:1.

Abu Da'ud, *Sunan, Bab fil- Sulh*, tradition no: 3120.

Bukhari, *Sahih, Bab Alamat al Munafiq*, tradition no: 32.

See Qur'an: 2:282.

There are number of traditions of the Holy Prophet in this context such as: "Those are your brothers [workers under you] who are around you, Allah has placed them under you. So, if anyone of you has someone under him, he should feed him out of what he himself eats, clothe him like what he himself puts on, and let him not put so much burden on him that he is not able to bear, [and if that be the case], then lend your help to him." (Bukhari, *Sahih, Bab al-Muasi min amr al-Jahiliat*, tradition no: 29). The Prophet (pbuh) also said: "I will be foe to three persons on the Last Day: one of them being the one who, when he employs a person that has accomplished his duty, does not give him his due. (Bukhari, *Sahih, Kitab al-Ijara, Bab Ism Man Mana' Ajr al-Ajiri*, tradition no: 2109). The Prophet (pbuh) is also reported to have said: The wages of the labourers must be paid to him before the sweat dries upon his body (Ibn Majah, *Sunan, Bab ajr il ujara*, tradition no: 2434).

Muslims are not allowed to engage in businesses that are not in conformity with the injunctions of Islam.

The basic rule in Islamic law is permissibility unless it is prohibited by *Shariah*. There are number of things that are explicitly prohibited by *Shariah* such as Pork (Pig), beasts, and some other animals whose meat is not permitted, anything that contains part of the Haram animal e.g. Lard, Jello and Gelatin etc. Animal Shortening, is also *Haram*. Blood of any animal or bird, Meat of dead animals or birds, Meat of animals or birds that has been sacrificed in the name of other than Allah, Alcohol and (intoxicating) drugs are also prohibited. The person who consumes it will be punished *Hadd Shurb*. *Haram* foods are strictly prohibited by Allah and if a Muslim eats them he will be sinful. The sale and purchase and mixing of these things in other lawful foods are also strictly prohibited, and those who violate this rule can be punished under *Tazir*.

See Qur'an 2:275; 3:130.

Ibn Abidin, *Rad al-Muhtar*, vol.5. p.21; Al-Sarakhsi, *Al-mabsut*, vol.8, p.5.

Ibn Qudama, *Al-Mughni*, vol.4, p.151. *Gharar* means risk, uncertainty and speculation. There are many evidences on the illegality of such transactions such as Abu Hurairah (R.A.) narrated that the Holy Prophet (pbuh) forbade sale by pebbles and the *gharar* sale i.e. indeterminate and speculative transactions. It is narrated by Anas ibn Malik that Gods Messengers forbade the sale of fruits till they were ripe Allah Messenger further said: *"If Allah spoiled the fruits what right would one party have to take the money of his*

brother.” Ali (R.A.) reported that the messenger of Allah forbade forced purchases from a needy person and *gharar* purchase and the purchase of fruit before it reached maturity. The Prophet (pbuh), therefore, prohibited the sale of what is still in the loins of the male; or sale of whatever is in the womb of a she-camel; or sale of birds in the air; or the sale of fish in the water, and any transaction which involves *Gharar* (i.e. anything that involves deception). He also forbade the sale of fruits before they look healthy and also the sale of crops until the grain hardens. Nevertheless, such advance sales would be acceptable if the element of *Gharar* does not exist and the quality and the quantity of the goods are pretty well known and predictable.

⁴⁹ *Qimar* includes every form of gain or money the acquisition of which depends purely on luck and chance. As opposed to others eligible, one may acquire income as a result of lottery or lucky draws. It also includes any receipt of money, benefit or usufruct that is at the cost of the other party or parties having equal entitlement to that money or benefit (Mahmood Ahmad Ghazi, “*Mudaraba Financing: an Appraisal*”, paper presented in the conference on Islamic Corporate Finance: *Shariah* based Solutions, Nov.21-22, 1998 at Karachi).

⁵⁰ *Maysir* literally means getting something too easily or getting a profit without working for it. The form most familiar to the Arabs was gambling by casting lots by means of arrows on the principle of lottery. The arrows were marked and served the same purpose as a modern lottery ticket. Dicing and wagering are rightly held to be within the definition of gambling and *Maysir* (Muhammad Tahir Mansuri, *Islamic Law of Contracts and Business Transactions*, pp.7-8).

⁵¹ There are many evidences on illegality of this practice such as: The Prophet (pbuh) is reported to have condemned the hoarders when he said: *No one hoards but the traitors (i.e. the sinners).* (Abu Da’ud, Bab fi Nahi al-Hukrat, tradition no. 2990) He (pbuh) also said: *The importer [of an essential commodity] into the town will be fed [by Allah], and the hoarder will have [Allah’s] curse upon him* (Ibn Majah, Bab al Hukrat wal Jalb, tradition no: 2144). He (pbuh) also said: “*He who hoards is a sinner.*”(Muslim, Bab Tahrim al-Ihtikar fil aqwath, tradition no: 3910).

⁵² Maududi, Sayyid Abu al-ala. *Mu ‘ashiyat-I Islam*, p.144.

⁵³ Ahmad, Mushtaq, *Business Ethics in Islam*, p.121.

⁵⁴ Beekun, Rafik Essa, *Islamic Business Ethics*, p.44.

⁵⁵ It is reported that once the prices shot up during the period of the Prophet (pbuh). The people said: “*O Messenger of Allah! Prices have shot up, so fix them for us. Thereupon the Messenger of Allah said: ‘Allah is the One Who fixes prices, withholds, gives lavishly, and provides, and I hope that when I meet Allah, none of you will have any claim on me for an injustice regarding blood or property’*” (Tirmidhi, Sunan, tradition no: 1235).

⁵⁶ The term *Maks* is used for sales-tax. The Prophet (pbuh) had reportedly said: “*He who levies maks shall not enter paradise.*”³⁶ (Al-royani (d.307 A.H.), Musnad, Muassisah Qurtuba, cairo, tradition no.197, vol.1, p.164). Since the imposition of sales-tax (or excise duties) results in raising the prices unjustly, therefore, Islam does not approve of it. The Caliph ‘Umar ibn ‘Abd al-Aziz

had abolished *maks*, interpreting it as *bakhs* (diminution in what is due to others) which is expressly prohibited by the Qur'an.

57 *Najash* is the practice of offering a higher price just to induce others to raise their offers, with no intention of buying of commodity. Besides being a form of fraud (which itself is forbidden) the practice of *Al-Najash* raises the prices for the needy consumers. The Prophet (pbuh) is reported to have said: "*Do not harbour envy against one another; do not outbid one another [with a view to raising the price]; do not bear aversion against one another; do not bear enmity against one another; one of you should not enter into a transaction when the other has already entered into it; and be fellow brothers and true servants of Allah*" (Muslim, Sahih, Bab Tahrim Zulm al-Muslim wa Hazlihi wa Ihtiqarihi wa Damihi, tradition no: 4650).

58 This is the practice of meeting the villagers at the outskirts of the town in order to purchase their merchandise before they reach the market place. The Prophet (pbuh) forbade it. Obviously, the prohibition is aimed at curbing artificial price-hike.

59 This is the practice in which the clever town broker assumes the role of a middleman between the unsophisticated villagers and the consumers of the town. He sells the merchandise brought by these villagers to the local consumers and in the process makes huge profits for himself while raising the prices for the general consumers (Ahmad, *Mushtaq, 'Business Ethics in Islam'*, p.124).

60 Ibn Taymiyyah, *Al-Ubudiyyah fi al-Islam*, p.17.

61 Bukhari, *Sahih, Bab hal yabi hazir lilbadi bidoni ajr*, tradition no: 2013.

62 *Mawahib al-jalil fi Sharh Mukhtasar Khalil*, vol.4, p.468. Ghabn-Fahish means selling of the subject matter for more price than it's worth.

63 It consists in taxing the general consumers directly or indirectly by the state.

64 S.M. Yusuf, *Economic Justice in Islam*, pp.43-44.

65 See Qur'an: 2:282.

66 The term *Ghish* is used which in trade means concealing the defects of and adulteration in merchandise. (Amad Mushtaq, *Business Ethics in Islam* p.113).

67 Beekun, Rafik Essa, *Islamic Business Ethics*, p.45.

68 The Prophet (pbuh) is reported to have said: "*The seller and the buyer have the right to keep the goods or return them as long as they have not parted. He also said that if both the parties have spoken the truth and described the defects as well as the merits thereof (the goods), they would be blessed in their deal. If they have told lies or concealed something, then blessings of their transaction would be lost*" (Bukhari, Sahih, bab Iza Byyna al Bayyani wa lam yaktuma wa nasaha, tradition no: 1937).

69 Muslim Ibn al-Hajjaj, *Sahih*, Dar Ihya al-turath al-arabi, Beirut, vol.1, p.99; Al-tirmidhi, Sunan, tradition no. 1315, vol.3, p.598.

70 See Qur'an 8:27.

71 See Qur'an, 51:10-11; 6:140.

72 Bukhari, Sahih, Bab Yamhaqullaho al-Riba wa Yurbi al-Sadaqath, tradition no: 1945.

73 See Qur'an 17:35.

74 See Qur'an 11:84.

75 See Qur'an 83:1-5.

- 76 Mufti shafi, *Islam ka Nizam-i-Taqsim-e Dawlat*, p.42.
- 77 Muslim Ibn al-Hajjaj, *Sahih*, Dar Ihya al-turath al-arabi, Beirut, vol.1, p.99.
- 78 This is prohibited in *Shariah*. It is narrated from Hakeem bin Hazam (ra) who said: "I said: O Messenger of Allah, there comes to me a man asking me to sell what I do not have to sell then I buy if from the market. He said: Do not sell what you do not have" (Abu Dawood, *Al-sunan*, Al-maktaba al-asariya, Beirut, vol.3, p.283).
- 79 Hakim, *Mustadrak*, vol.2., p.41, tradition no: 2253.
- 80 Qur'an, 3:103; 9:71,112; 22:41; 31:17.
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- 87 Nyazee, *Outlines of Islamic Jurisprudence*, pp. 232-33.
- 88 Shihab, Rafi`Allah, *Islami Riyasat ka Malyati Nizam*, Karachi, Qamar Kitab Ghar, 1971, pp. 78-80, See also Ahmad, Mushtaq, *Business Ethics in Islam*, International Institute of Islamic Thought, Islamabad, 1995, p.131.
- 89 Tirmidi, *Bab Naha anil-ihthikar*, Maktaba Rahmania, Urdu Bazar, Lahore, Vol.1, p.371.
- 90 For a detailed discussion on *Riba*; see Nyazee's *The Concept of Riba and Islamic Banking*, Niazi Publishing house, Islamabad.
- 91 Not only *Madinah* but the whole *Hijaz* was affected by it. This happened in the period of famine known as *Am al-Ramadah*, in 18 A.H. The rains completely failed. The people in the hope came to *Madinah*. The Caliph ordered governors of Iraq, Syria and Egypt to send continuous supplies. When the rains returned the people were sent back. For this crisis taxes were remitted. With all the gigantic efforts nearly two third of the population died. For detail see Ibn Sa'd, *Tabaqat al-Kabir*, 1957, Beirut, Vol.III, pp. 310-320-Ed.
- 92 Al-Baihaqi (d.458 A.H.), *Al-Sunan al-Kubra*, Dar al-Kutub al-Elmiyah, Beirut, Lebanon, 2003 Vol.6, p.577; Bukhari (d.256 A.H.), *Al-adab al-Mufrad bi al-ta'liqath*, Maktabat al-Maarif Li al-nashr wa al-tauzee' Riyadh, 1998, vol.1, p.289.
- 93 Al-Ghazali, *Ihya ulum al-din*, vol.2, p.83.
- 94 Ibn Taymiyyah, Ahmad ibn 'Abd al-Halim, '*Public Duties in Islam*', translated by M. Holland, Leicester, the Islamic Foundation. U.K, 1982, pp.37-38.
- 95 To bring the barren lands under the cultivation was never a responsibility of the Islamic state. However, it is agreed that anyone who developed a barren

land into a cultivated one, he could become its owner for a period he maintains it properly, of course with the permission of the state/ruler. See Abu Yusuf, *Kitab al-kharaj*, Ur. Tr., Karachi, n.d., ch. *Ahya Mawat*, pp. 136-144. A typical example is the allocation of the land known as *Farangi Mahal* to the *Sihalwi* family in Lucknow in the reign of Awrangzeib. See Rahman Ali, *Tadhkirah Umara' Hind*, Urdu, 2003, p. 337-Ed.

- ⁹⁶ The FSC (Federal *Shariat* Court) of Pakistan has also declared court fees repugnant to the injunctions of *Shariah*.
- ⁹⁷ Al-Mubarak, '*Nizam al-Islam al-Iqtisadi: Mabadi wa Quwaid Amma*', Dar al-Fikr, Beirut, 1972, p.106.
- ⁹⁸ Ibn Taymiyyah, Ahmad ibn 'Abd al-Halim, *Al-Hisba fi al-Islam*, [*Public Duties in Islam*] translated by M. Holland, Leicester, the Islamic Foundation. U.K, 1982, p.50.
- ⁹⁹ Al-Ghazali, Muhammad, *Al-Islam wal-Awda`al-Iqtisadi*, Dar al Kitab al-Arabi, Cairo, 1952, p.137.
- ¹⁰⁰ Maududi, Sayyid Abul A'la, *Ma'ashiyat-e Islam [Economic System of Islam]*, Lahore: Islamic Publications, 1969, p.371.
- ¹⁰¹ Ahmad, Mushtaq, *Business Ethics in Islam*, p.134.
- ¹⁰² Abu Lail, Mahmud Ahmad, "*The Status of Price Fixation in Islamic Shariah*", paper presented in the International Conference on the topic of "Consumer Protection in Shariah and Law" conducted by the Faculty of *Shariah* & Law of United Arab Emirates University, 6-7, December, 1998.
- ¹⁰³ Ibn Taymiyyah, Ahmad ibn 'Abd al-Halim, *Public Duties in Islam*, translated by M. Holland, Leicester, the Islamic Foundation. U.K, 1982, pp.35-37.
- ¹⁰⁴ Qur'an, 7: 85; 11:84.
- ¹⁰⁵ S.M. Yusuf, *Economic justice in Islam*, Sh. Muhammad Ashraf Publisher, Lahore, 1971, p.96.
- ¹⁰⁶ Ibid. pp.68-101.
- ¹⁰⁷ Ibid. pp.9-10.
- ¹⁰⁸ Ahmad, Mushtaq, *Business Ethics in Islam*, International Institute of Islamic Thought, Islamabad, 1995, p.136.
- ¹⁰⁹ Al-Mawardi (d.450), *Al-ahkam al-sultaniya*, Dar al-hadith, Cairo, vol.1, p.349.
- ¹¹⁰ See Qur'an, 3:104; 110:114; 9:71, 112; 31:17; 3:110.
- ¹¹¹ Al-mawardi (d.450 A.H.), *Al-ahkam al-sultaniya*, Dar al-hadith, Cairo, vol.1, p.349.
- ¹¹² Muslim, *Sahih*, *Kitab al Biyu*, *Baabul Tahreem bai al Hafi Lilbari*, tradition no. 1522.
- ¹¹³ Ahmad, Mushtaq, *Business Ethics in Islam*, International Institute of Islamic Thought, Islamabad, 1995, pp.138-139.