

CONSUMER PROTECTION IN ISLAM: AN OVERVIEW

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Abstract

Consumer protection has been addressed in the past, 1400 years ago during the period of the Prophet Muhammad peace be upon him. Corresponding with the Islamic teaching, Islam has preached for the protection of consumers in various aspects of human life including the protection of consumers from malpractices of traders and others. By adopting the Islamic approach, this paper aims to provide an overview to the concept of consumer protection from the Islamic perspective. The approaches include *ijtihad* based on *Maslahah* which takes into account the *Maqasid al-Shari'ah* and *Qawaid Fiqhiyah*. The article further explains the concept through these approaches. As such the study extends the understanding of consumer protection in Islam to enhance protection to the consumers.

Keywords: Consumer protection in Islam, consumer rights, consumer protection

Introduction

The concept of consumer protection usually refers to the protection of consumers' rights through laws and policies designed to protect them against unfair trade and credit practices. (Collins Legal Dictionary, 2017) Historically, the movement for the protection of consumer rights in England began in the 19th century which later spread to the United States in response to the rise in Capitalism and monopoly in the sale of goods and providing of services. (Corradi, 2016) The development of consumer protection in Europe came later whereby the birth of consumer associations began in Denmark in 1947, and United Kingdom later in 1955. (Corradi, 2016) The vision of these organizations were to be the centres where people can obtain information about choices on safe and sustainable goods and services and in which individual and collective consumer rights were secured and respected ("Consumer Rights," n.d.). In Islam, one of the first rights that received attention was the protection of consumer right Qur'anic verses which attest to this. Hence. In Islam, the rights of consumers needs to be examined form several aspects, which include, firstly, the *aqad*; any activity related to trading and transaction, secondly, the moral and ethical aspects and thirdly, the spiritual aspects of these transactions. (Drs. Muhammad, M. Ag. Alimin, Lc., 2004).

Therefore, with the Al-Qur'an and Sunnah of the Holy Prophet s.a.w as guides, consumer protection in Islam, is not only limited to tradings and transactions between consumers and suppliers but it covers all aspects including the rights between consumers and Allah (spiritual) and the rights of consumer and traders (the ethical).

This article provides an overview of the concept of consumer protection in Islam. This is done by providing the legal basis for the protection of consumers in the Holy

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Qur'an and Sunnah which is done in the first part of this article. This will lead to the second part of the article, which reveals the different approaches that may be considered by Muslim jurists when determining the value of a consumer related transaction. This includes *ijtihad* done by taking the approach that considers the *maslahah* or the effect on public interest. Another approach that could be taken is by examining the *Maqasid Al-Shari'ah* approach whereby acts are evaluated by considering the essential values that the *Shari'ah* seeks to protect. The final approach is when jurists look into the legal maxims that aid in interpreting and applying the *hukm* to new situations.

From here, the article explores how these approaches could be applied to modern day consumer related concerns. The article then submits that the protection of consumers in Islam is based primarily on the need to be just and concerned over the rights of both parties. Each parties in a transaction need to be vigilant of the rights of the opposite party. This concept is embedded in the responsibility to care for the relationship between humans (*hablu min an-nas*) which is considered as a manifestation of each person's belief in Allah and the existence of the Hereafter where each person will be held accountable for their acts.

Consumer Protection in the Sources of the Shari'ah

Islam is undeniably an '*alamiyah* (universal) religion. It is revealed by Allah through His messengers to all human beings, regardless of their religion, race or gender. The Shari'ah comes with Islam and it is revealed by Allah as a guide for all humans to ensure that they are able to fulfil their duties on this earth to Allah and to each other. Each person is accountable for all the acts done in this world and each will be accountable and receive the consequences of their deeds in the Hereafter. (I.Do, 2002). As such, it is obvious that in order to care for the rights of Allah (*hablu min Allah*), each person must also take into consideration how their acts affect the lives of other individuals (*hablu min an-nas*). (Verse 112: ayat 'Ali Imran) It is not enough for a Muslim to only care for their direct relationship with Allah s.w.t through the performance of specific acts of worship such as saying the Shahadah, praying five times a day, paying zakat (alms), fasting during the month of Ramadhan and going for Hajj. Every person also needs to care for their relationship with each other, and this includes one of the most important relationships, i.e. when there exists a commercial transaction between two or more persons. Aside from that, Islam emphasises the need to protect not only individual welfare but also the welfare of the society at large. (Sayyid Qutb, trans., 2000)

Therefore, in Islam, the right of a person to create wealth is balanced with the need to consider how this transaction affects the welfare of the other party. This includes the protection of consumer rights, which is extended to both Muslims and non-Muslims. Although the Muslim jurists have not mentioned the term "consumer protection" specifically in the past, in actual fact the concept is embedded within one of the *Maqasid al-Shari'ah* or the Essential Values that the Shari'ah seeks to protect and preserve, i.e. Hifz al-Deen which means the protection of religion and Hifz al-Mal which means protection of property. (Kamali, 2008)

This is evident in the prohibitions of malpractices from traders in relation to consumer rights in Quran and al-Hadith (Ahmad, 2014). At the core of these prohibitions is the recognition and respect that must be given to the rights of others when dealing with property. The Shari'ah has put into place the need to deal with each other in just and truthful ways. This is because by caring for the rights of others, a Muslim in actual fact perfects his religion and this ensures that his relationship with Allah is also sustained healthily. An example of this can be seen in the following verses of the Holy Qur'an and Hadith:

1. In unfairness, Quran emphatically condemns all unfair activities, in the Quran Allah says:

"O you who believe! Eat not up your property among yourselves in vanities: but let there be amongst you traffic and trade by mutual good will"
(Surah An-Nisa': 29)

In relating this to the present day problems that plague consumers, it is evident that in a contractual relationship between a supplier of goods and the customer, the terms and conditions in the contract should be clear and be able to determine the rights and liabilities of the parties. Hence, a clear unfairness occurs when there exists a standard contract with exemption clauses which have the effect of limiting or exempting a party or his company from certain liabilities. Since the contract is prepared by the supplier or his agents, there is a tendency to include the terms which are more favourable to them. On the other hand, the effect of such terms may be unfair to the consumers who have no power to alter, modify or even to negotiate the terms. This is clearly prohibited in Islam. In fact, consumer rights are given priority when contracts that have exemption clauses are not recognised and are held to be void under the Shari'ah as it compromises the knowledge and intention of both parties during the 'aqad. This is especially so on the consumer who might not be aware of the consequences of agreeing to the exemption clause.

2. In regard to mischief from traders, the Qur'an also criticises all kinds of mischief by traders including misrepresentation, adulteration and fraudulent products as Allah says:

"Woe to those who give less [than due], who, when they take a measure from people, take in full, but if they give by measure or by weight to them, they cause loss"
(Surah Al-Mutaffifin :1-3)

For example, in promoting certain products and services, the vendor or his agents intentionally misrepresent services they are marketing in order to make more sales and gain more personal income. This will make consumers dissatisfied with the products and services. These types of transactions will also

be considered as void transactions. In such a circumstance, the traders are expected to compensate the consumers and mitigate any losses suffered by them.

3. On the issue of refunds, Islam allows consumer to return the goods even though the items are in good condition. In fact each consumer is given three days return policy called a khiyar which would enable consumers to return any product to the vendor, even when there is nothing wrong with the product. This can be seen in the Hadith of the Prophet Muhammad s.a.w who said:

“Whoever accepts back what he had sold to a Muslim, Allah will forgive his faults”
(Narrated by Abu Dawood)

Based on this hadith, the Shari’ah permits the return of the goods and for the return of the purchase price from the vendor, so long as it is done within the khiyar period, i.e. three days. Nevertheless, in terms of services rendered, this concept would only be applied in cases where there is evidence that the services rendered by the service provider was not up to the required standard as promised.

4. In terms of the price rise issues, the Prophet Muhammad s.a.w said:

“Allah is the One Who fixes prices, who withholds, gives lavishly and provides. And I hope that when I meet Allah, none will have any claim on me for injustice regarding blood or property.” (Narrated by Al-Bukhari)

Based on this Hadith, it shows that prices should be determined with justice and not only based on the demand and supply method where prices will rise if the demand is great. This prohibition can be referred to from a story of Saidina Umar r.a. When he was the Caliph, a new trader comes to the marketplace and started selling below the market price at a time when the demand for goods were low, causing all other traders to suffer loss. Saidina Umar ordered him to increase the price or leave the market. This shows that Islam permits interference from the government to avoid injustice or manipulation of the market.

5. Loans and debts are norms of trade which Islam fully supports. However loans should never become a tool for exploitation of debtors and that is why any form of interest is prohibited. Interest based debts can cause poverty and this happened to many desperate people in modern times. This is largely due to the creation of fiat money in general which creates debts that is fraught by interest (Kameel, 2000) The effect of having to pay back these unjust debts has affected not only consumers but also many countries that have made loans through the World Bank. The inclusion of interest causes failure to make repayments within

time which further increases the interest rates which eventually lead to a vicious cycle of inability to pay due the debt at all. This significantly affects the individual consumer in the beginning but eventually affects the socioeconomic development of a country. This is why interest based debts are prohibited in Islam and declared as haram.

6. In terms of repayment of loans, the Qur'an calls for giving enough time to the debtor to repay his loan in case of difficulty. Allah says:

"If there is one in misery, then (the creditor should allow) deferment till (his) ease, and that you forgot it as alms is much better for you, if you really know."
(Surah Al-Baqarah: 280)

Islam also describes good practices in making loan in another verse;

"O you believe, when you transact a debt payable at a specified time, put it in writing, and let a scribe write it between you with fairness."
(Surah Al-Baqarah:282)

Aside from all these evidences from the Quran and Hadith, Allah directly prohibits all kind of malpractices in transactions and emphasizes the protection of consumer rights. Therefore, based on these Shari'ah sources, it is clear that there are three approaches which relate to consumer protection in Islam. These approaches include the need to protect public interest (masalih al-mursalah), which in essence relates closely to the protection and preservation of the *Maqasid al-Shari'ah*. This then leads to the methods or Qawa'id in Islamic law (Qawa'id al Fiqhiyyah) when dealing with consumer related issues. This article proceeds with a discussion on how the concept of masalih al-mursalah plays its role in protecting consumers which will be followed with its connection to the protection and preservation of one of the *Maqasid al-Shari'ah* which is hifz al-mal. From there, the discussion is continued with an explanation of the methods in Islamic law which seeks to protect the rights of consumers.

***Masalih Al-Mursalah*—Protection of Public Interests**

Literally *maslahah* is the singular of masalih, which means "benefit" or "interest" (Kamali, 2008). According to Islamic jurisprudence, *maslahah* refers to a consideration of all benefits and preventing all troubles that are related to a certain act (Zaidan, 2009).

According to al-Ghazali, it means:

"Considerations which secure a benefit or prevent harm but which are, simultaneously, harmonious with the objectives (maqasid) of the Shariah".
(Kamali, 2008)

It applies to protection of rights either the rights of Allah or humankind. The rights of humankind embrace both societal and individual rights. Public interest or majority rights becomes priority in Islam because the public interest is able to preserve the objectives of law.

As an illustration of the principle of *maslahah* related to consumer protection, we may refer to the basic of consumer rights as mentioned before. For example, an issue in Malaysia, a new regulation was introduced by The Regulatory *Umrah* Council in prohibiting the *umrah* operators who sell *umrah* packages below than minimum price of RM 4,900 (Mustafa, 2014). Such regulation is to protect public from fraud *umrah* packages. This matter promotes the *maslahah*, because if there is no such regulation it will cause problems to the consumers and the *umrah* operators.

Regardless of the issue, *maslahah* can be taken as an approach to solve consumer's problems and as a guideline in making decisions especially when it involves a conflict between public and personal interests. Hence, the interest of the vendor which is a private interest, would have to respect the interest of the consumers as they are the public who will be severely affected by the acts of the vendors. This approach of protecting the *maslahah* or of the people fulfills the main purpose of the Shari'ah (*Maqasid al-Shari'ah*) which is further discussed in the next part of the article.

The *Maqasid Al-Shariah* and Consumer Protection

The underlying purpose of the Shari'ah or the *Maqasid al-Shariah*, is to benefit all humankind, concerning their affairs, both in this world and hereafter (Laldin, 2007). It was explained as the "wisdom behinds rulings" (Auda, 2008) which mean any Shari'ah ruling has its own benefit for all mankind and also it was compiled by Islamic scholars based on the concept of *maslahah* considering all the benefits and averting any *mashaqah*; preventing any evil. Generally, the aim of the Shari'ah is to secure the benefit of people and protect them from evil and harm. As Allah mentioned in Quran, He says:

"And We sent thee not, but as a mercy for all creatures".

(Surah Al-Anbiya' :107)

This verse explains that Allah sent the holy Prophet with the Shari'ah to safeguard people's interest and preventing them from harm in this world and the hereafter. So based on the context of the verse, it clearly leads to basic human rights and to the consumer protection in general. Al-Quran and al-Hadith as the main of Shari'ah source laid down the basic structure of the consumer protection that is valid today as they were during the golden age of Prophet Muhammad (pbuh) and the guided *Caliphs*.

Nevertheless, the Muslim legal philosophers have highlighted the following basic freedoms or rights in respect of each individual (Khan, 2011); they are:

1. Protection of religion or al- Din.

All Muslims have obligations to protect their religion at personal level and at group level. Accordingly, Allah has mentioned in Quran, the commandments to Muslims in defending their faith in Quran;

“Fight in the way of Allah those who fight you but do not transgress. Indeed, Allah does not like transgressors”.
(Surah Al-Baqarah, 190)

So, for Muslim consumers, religion becomes more important than anything else in their life and the protection of their belief must be included in their rights of basic necessities. Hence, when providing products and services to Muslim consumers, vendors are expected to ensure that their products and services are Halal and caters to the religious needs of Muslims and does not endanger their faith in any way.

2. Protection of human life and progeny.

Life is essential and valuable to everyone. It covers many things and to protect it is equally important and obligatory to every Muslim and non-Muslim. Regardless of that, Quran has emphasized it in Surah al-Isra’;

“And do not kill the soul which Allah has forbidden, except by right. And whoever is killed unjustly - We have given his heir authority, but let him not exceed limits in [the matter of] taking life. Indeed, he has been supported [by the law]”.
(Surah Al-Isra’:33)

In consumer protection context, it refers to the rights of safety and right to get healthy environment from any products and service that might be harmful to consumer.

3. Protection of human honour or dignity.

This protection refers to the protection of individual’s rights and not accusing other’s misbehaviour. In this context, it refers to the rights of consumer to choose, to be heard and to get redress which is significant in protecting human honour and respect.

“And We have certainly honoured the children of Adam and carried them on the land and sea and provided for them of the good things and preferred them over much of what We have created, with [definite] preference”.
(Surah Al-Isra’:70)

In relation to this verse, human honour is such a gift from Allah and it can differentiate men from animal and Allah has created all things beneficial for humankind. Therefore, everyone has their rights including the honour of consumers and traders in any activities such as in business, travelling and

others.

4. Protection of intellect.

The mind is a gift from Allah and it will give benefit for all of us by utilizing it in right way. The Islamic approach to education is very clear; in numerous Hadiths Prophet Muhammad (pbuh) outlined the importance of learning and its central role in the faith,

“The search of knowledge is an obligation laid on every Muslim”.

[Narrated by Ibn Majah and Bayhaqi]

Also the pursuit of knowledge is linked to reward in the hereafter:

“If anyone pursues a path in search of knowledge Allah will thereby make easy for him a path to paradise”. [Narrated by Muslim]

By gaining knowledge, they are able to have the ability in appreciating and understanding the world around them. Several verses in the Qur’an allude to the role of knowledge played in this field. As Allah says in Quran:

“...Say: Are those who are knowledgeable equal to those who are not knowledgeable?” (Surah Az-Zumar:9)

This is the right regarding education. The rights to be informed and to get knowledge about products or services, to have skills in choosing goods or services, as well as to be aware of their rights and responsibilities.

5. Protection of wealth or property.

Property or wealth is one of the necessities of human being. Everyone likes to have security for their own belongings whether in form of money or other goods. Islam has ordered that no one should transgress and acquire the property of others without legitimate reasons and proper contract. The Quran emphasizes this point, as Allah says:

“And do not kill the soul which Allah has forbidden, except by right. And whoever is killed unjustly - We have given his heir authority, but let him not exceed limits in [the matter of] taking life. Indeed, he has been supported [by the law]” (Surah Al-Baqarah:188)

It covers all basic of consumers rights which objectively to prevent the rights of consumers from any malpractices from traders or suppliers either in goods or services. The next part of the article delves into the methods used by Muslim jurists to determine the rule of certain acts through the use of legal maxims (Qawa'id fiqhiyah).

Qawaid Fiqhiyah (Legal Maxims) in Determining Rules That Protect Consumers

Qawaid Fiqhiyah which means legal maxims, is the general rule of *fiqh* and it is a basic guideline for Muslim jurists to determine certain new issues. It can be applied in various cases that come under the common rulings (Laldin, 2008). Basically, *Qawaid Fiqhiyah* is from the understanding of the Qur'an and other sources and it has a great role in formatting Islamic Law. Therefore, below are some relevant legal maxims related to the protection of consumer rights. Among them are:

1. Matters are determined according to intention.

Every person is judged according to his intentions and it can be seen through their action. In relating this to the consumer context, when a trader is found guilty cheating or causing mischief to consumers, he or she can be punished according to his or the malpractices and malicious intentions. For example; gaining faster profit through cheating and misbehaving in their business against consumers. So every trader can be punished or compounded based on their faults or wrong doings. However, in order to ensure this, the role of the government is needed in order to codify such laws and allow these culprits to be taken care of legally.

2. Certainty is not dispelled by doubt.

A doubt cannot be removed if the matter has strong evidence. In this context, the legal maxim brings up the rights of consumer that should be protected by resorting to evidence tendered by both parties. When the trader is found guilty or wrong and it is proven by strong evidence, then the right of the consumer should be preserved.

3. Custom is arbitrary.

In this context, if any dispute arises between a consumer and a trader in a particular transaction, the normal practice in that transaction should be the intermediary to resolve the dispute.

Conclusion

Islam provides clear guidelines and principles on consumer protection and it emphasizes on the ethical and spiritual aspects in protecting consumer rights. Nevertheless, the principles and guidelines have to be based on an effective and well-organized system in order to make it sustainable and operational. Therefore, the effort to develop Islamic consumer protection has to involve scholars from different background of studies including Islamic scholars to ensure that protection of consumers can be balanced and preserved. It is therefore time for the government to take an initiative in giving due recognition to the rights of consumers as envisioned by the Shari'ah.

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