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Shari'a Concept of Khyar Ru'yat and Khyar -e- Aaib and the Law of Pakistan: An Analytical Study

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Abstract:

A different situation is faced in trade. In modern times, many modern forms of commerce have come into being, such as online ordering. Moreover, companies have their age and each company has its policies. The most common problem faced by the common man in these situations is returning or exchanging the purchased product due to dislike of the product and due to a defect. This article discusses this topic and tries to bring out the point of view of Sharia and what the law of Pakistan says about it.

Keywords: Khyar, Khyar Ru'yat, Khyar -e- Aaib, Product, Trade, Shari'a.

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1. The jurisprudential concept of Khyar Ru'yat and Khyar -e- Aaib:

Human life is mostly dependent on give and take because a single man is unable to meet all his needs of life alone. Support of others and mutual exchange of things over his needs is an important necessity. As religion is a complete code of life, which guides us not only in religious matters but also in worldly matters. The comprehensiveness of our religion can be estimated by its ability to provide excellent solutions through the application of fundamental legal principles and adapting them to tackle new issues and challenges. It encompasses providing spiritual and economic guidance to all people until the Day of Judgment. Islamic Shari'ah wants to keep matters away from all myths and evils as much as possible. This is the reason why it emphasizes the principle of "خيار" (Khyar), encouraging contemplation to avoid conflicts and to fulfill human

needs. Embracing the principle of "خيار" is the best solution to avoid disputes and problems. The Islamic Shari'ah has given instructions regarding the مبيع (the thing to be bought) during the trade, for example, if one did not see something being bought, then when the item is presented before them, the buyer has the right to either keep it or terminate the transaction by saying, "I do not like it." This right is known as "**Khyar Ru'yat**" in Islamic jurisprudence.

And similarly, if the buyer finds that the item has a defect after purchase, it can be returned, it is called a "**Khyar -e- Aaib**" (خيار عيب). In common parlance, this is called "return" or "exchange". These two issues have been discussed in this article.

2. Meaning of Khyar:

The term for giving one party the option (to either continue or terminate the contract) in a contract is called "Khyar" (خيار).

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That is, after the sale and purchase, each of the parties has the right to continue or cancel the contract. Concerning its legitimacy, this hadith of Sahih Bukhari is presented:

Hazrat Ibn Umar (R) narrates that the Noble Messenger (R) said: "Among buyers and sellers, as long as they do not separate, each of them has the option to keep the transaction open or to terminate it, and they may say to each other, "fix the condition of the option" and the other should say that "I agree".¹

3. Logics and benefits of Khayaar:

The fundamental reason for the legitimacy of "Khyar" (option) is to minimize the potential harm and losses for the contracting parties because humans are impulsive by nature. Many transactions are hastily concluded without proper understanding, which can lead to unforeseen consequences and fears of potential losses. However, one of the virtues and excellences of Islam is that it allows individuals some time to safeguard themselves from harm by contemplating and thinking through their contracts.

By granting this option, Islam protects individuals from unnecessary losses and provides them with an opportunity to make informed decisions. This way, the fear of potential harm is mitigated, and individuals can ensure that their contracts are free from potential damages.

Briefly, its logic is given below:

¹ Bukhari, Muhammad ibn Ismail (d. 256 H), Al-Jami' Al-Sahih, Damascus, Dar Ibn Kathir, 1993, Hadith: 2003

1- Keeping contractors safe from loss and damage.

2- Avoid fraud in contracts.

3- To keep the contractors as far as possible away from fights and disputes.

4- Carrying out the affairs clearly and transparently.

5- The consent of the parties in the sale must be complete and complete.

4. Modern Meaning of Khyar:

The literal meaning of "Khyar" is indeed the same as what has been mentioned before, However, in the context of an entrepreneurial economic system, the concept and perception of "Khyar" in Islamic economics are entirely different from the conventional capitalist economic system.

According to modern economists, it means:

²⁸ **"A contract that gives the option holder the right to buy or sell specified financial papers or designated commodities at a predetermined price for a specific period is known as 'Khyar'."**

According to the modern meaning, a regular fee is charged for granting the choice, and in the modern economic system, it is considered as a fixed asset that can be sold to others.

5. Shari'a rules for buying and selling advanced options:

The aforementioned text clarifies that there is no correlation between the conventional economic system of Khyar and the concept of Khyar in Islamic Shariah. In the context

of Shariah, options are not subject to any predetermined fee or the right to sell them to someone else. Additionally, the mentioned options are not considered a form of ownership in Islamic law.

Furthermore, these options are not tradable financial rights that can be exchanged for benefits. Therefore, their buying and selling would be considered prohibited (haram) in Islamic finance.

Furthermore, it should be noted that there are other unethical practices associated with it, such as speculation, gambling, and deceit. Islamic Shariah prohibits all such practices. Therefore, it becomes evident that the modern meaning of Khyar is not by Islamic principles and is against Shariah.

Terminological / Technical definition of Khyar:

The term used in buying and selling when one purchases something without seeing it and, after inspecting it if the buyer is not pleased with it, they have the option to either cancel the transaction or proceed with it, this right to cancel or continue the contract is called "Khyar -e- Ru'yat" (Option of Sight).

So Allama Shami has explained in his book "Rad al-Muhtar" with these words:

”وَالرَّدُّ بِخِيَارِ الرُّؤْيَةِ فَسَخَّ قَبْلَ
الْقَبْضِ وَبَعْدَهُ، لَا يَحْتَاجُ إِلَى قَضَاءٍ
وَلَا رِضَا الْبَائِعِ وَيَنْفَسِخُ بِقَوْلِهِ رَدَّدْتُ
إِلَّا أَنَّهُ لَا يَصِحُّ الرَّدُّ إِلَّا بِعِلْمِ الْبَائِعِ”²

² Ibn Abidin, Muhammad Amin (d. 1252 AH), Radd al-Muhtar, Beirut: Dar al-Fikr, 1966, Vol. 4, p. 592.

The issue of repudiation of the purchased item through "Khayr Ru'yat" is that whether the buyer has taken possession of the item or not, the transaction can be annulled through the option of sight. There is no need for a formal legal process or the seller's consent. The buyer simply needs to express their intention to return the item, saying, "I reject this item," and the sale will be terminated.

According to the Hanafi school of thought, it is permissible to buy something without inspecting it. After this type of sale, the buyer has the option to either keep the contract (maintain the purchase) or annul it (cancel the transaction), so Allama Al-Marginani has written that:

”ومن اشترى شيئا لم يره فالبيع جائز”³

"And whoever buys something without seeing it, is permissible".

"Although there is disagreement among other scholars regarding the permissibility of buying something without seeing it, the Hanafi school's opinion is considered preponderant".

6. The origin of the difference in the view of Khyar:

The main reason and source of disagreement regarding "Khyar Ru'yat" (Option of Sight) is whether the sale of an absent or unseen object is permissible or not. It seems that the proof for the permissibility of this option is contingent upon the permissibility of selling an absent item. Since the Shafi'i school of thought considers sight (inspection) as a condition for the validity of a sale, they do not

³ Al-Marginani, Ali bin Abi Bakr (d. 593 AH), Al-Hidayah, Beirut: Dar Ahya al-Turath al-Arabi, Book of Sales, Chapter of khyaar al-Ru'yah, Vol. 3, p. 34.

consider the sale of an absent item as valid. Therefore, it becomes apparent that according to their perspective, there is no need for the Khyar. On the other hand, according to the Maliki school of thought, the sale of an absent item is valid when the characteristics of the sale have been described. In this case, Khyar would be exercised when the sale does not match the described characteristics.

The Hanafi school of thought believes unequivocally that it is sufficient for a sale to be valid if the essence of the item is known, whether through indication, mentioning the name, specifying the location, or defining its boundaries, so that there remains no extreme ignorance about the object being sold.

The permissibility and justification of selling an absent item and the option of Khyar are based on the narration of Hazrat Abu Huraira. The authentication (Fakhri) of this narration has been done by Imam Dar Qutni.

"من اشترى شياء لم يره فهو بالخيار اذا راه"⁴

The limit of "Khayar Ru'yat" in inspection:

The principle regarding the limit of "Khayar Ru'yat" (Option of Sight) is that any sight (inspection) that provides knowledge of the intended object will be sufficient for the option of sight. Since not all parts of the sold item are visible, only looking at the intended part is enough, and the rest can be assumed based on the connection with the visible part. The jurists have stated that if a person can see

⁴ Dar Qutni, Ali bin Umar (d. 385 H), Sunan ad-Dar Qutni, Beirut: Mu'assasat al-Risalah, 1424 AH, Hadith: 2805.

the apparent portion of a grain or grain heap or the outer part of folded clothes, then they cannot exercise the option of sight. However, if there is something intended in the folded part, such as a design or pattern on the inner part of the clothes, then the option of sight can be exercised. Since the intended object and its characteristics change with time, in any type of sale, the intended object will vary based on prevailing customs and practices. The purpose of sight is to gather information and knowledge about the item, which can be obtained not only through direct visual observation but also through other senses such as smell, touch, and taste, depending on the type of item being sold. This information and knowledge are considered the essence of sight.

Sahib Hidayah writes about it:

"يسقط خياره بجسه المبيع إذا كان
يُعرف بالجس و يشمه إذا كان
يعرف بالشم وَيُزوقه إذا كان يعرف
بالزوق) كما في البصير"⁵

If knowledge of the sold item can be acquired through touching, then the option of touch will apply. Similarly, if it can be acquired through smelling, then the option of smelling will apply, and if it can be acquired through tasting, then the option of tasting will apply. If the option of touch is exercised, the option of sight will become void, just as it is the ruling for a blind person.

7. The duration of "Khayar Ru'yat":

Regarding the duration of "Khayar Ru'yat" (Option of Sight), although there is some

⁵Al-Marghinani, Ali bin Abi Bakr, (d. 593 AH), Al-Hidayah, Dar al-Kutub al-Ilmiyyah, Beirut, Vol. 3, p. 35

difference of opinion, the prevailing view is that the buyer retains the option until a reason is found that renders the "Khayar Ru'yat" void. As long as such a reason is not found, the buyer will have the option of "Khayar Ru'yat." This ruling is supported by the fatwas of Alamgiri, Sahib-e-Bahr al-Ra'iq, Allama Haskefi, and Allama Shami.

8. The ruling of "Khayar Ru'yat":

The option of sight establishes ownership, but ownership is not obligatory. In other words, each party in the contract will acquire ownership of their respective rights (i.e., the seller will own the sold item, and the buyer will own the price). However, this contract is not obligatory. In conclusion, if someone buys something without seeing it, the sale will be valid, but this contract is not obligatory.

As Allama Alauddin has written in his book:

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"وأما حكمه فهو التخيير بين الفسخ
والإجازة إذا رأى المبيع ولا يمنع
ثبوت الملك في البديلين ولكن يمنع
اللزوم"⁶

9. The permissibility of "Khayaar-e-Aib":

12 Legitimacy of Khyar Aib is proved by the Book of Allah and the Sunnah of the Prophet. In the Holy Qur'an it is said:

Argument 1:

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⁶ Ala al-Din, Muhammad bin Ahmad (d. 539 AH) "Tuhfat al-Fuqaha," Beirut: Dar al-Kutub al-Ilmiyyah, 1994, Vol. 2, p. 82.

"يَأْيَهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ
بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ"⁷

"O you who believe, do not consume one another's wealth unjustly, but only in lawful business by mutual consent. And do not kill the soul which Allah has forbidden, except by right. This has He instructed you that you may use reason."

From this verse, it is evident that trade should be conducted with mutual consent, and exploitation and unfair practices are not permissible.

10. Second Argument:

The evidence for the permissibility of khyaar 'Aib (choosing to rescind a purchase) is a secondary Hadith found in the book "Sunan Abi Dawud" by Imam Abu Dawud. In this Hadith, Hazrat Aisha (may Allah be pleased with her) narrates the ruling of khyaar 'Aib.

"عَنْ عَائِشَةَ رَضِيَ أَنْ رَجَلًا، ابْتِاعَ
عُلَامًا فَأَقْلَمَ عُنْدَهُ مَا شَاءَ اللَّهُ أَنْ يَقِيمَ
، ثُمَّ وَجَدَ بِهِ عَيْبًا فَخَاصَمَهُ إِلَى النَّبِيِّ
صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَرَدَّهُ عَلَيْهِ فَقَالَ
الرَّجُلُ يَا رَسُولَ اللَّهِ، قَدْ اسْتَعْلَنَ
عَلَامِي فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ
عَلَيْهِ وَسَلَّمَ الْخَرَجَ بِالضَّانِ"⁸

Narrated by Hazrat Aisha (□): A person purchased a slave, and as long as the slave remained acceptable to Allah, he stayed with the buyer. Later, the buyer found some fault in the slave and took the matter to the Messenger of Allah (ﷺ). The Messenger of Allah (ﷺ) returned the slave to the seller. The seller said, "O Messenger of Allah, the buyer has benefited from my slave and gained profits." The Messenger

⁷ Al Nisa 4: 29

⁸ Abu Dawud, Suleman bin Ashas (d. 275 AH) Sunn e Abi Dawud, Beirut: Dar Ar Risalah Al Ilmiya, 2009, Hadith: 3510

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of Allah (ﷺ) said, "The profits are only with the guarantee. The one who acts as a guarantor shall receive those profits as well as bear any losses.

Third Argument:

It is narrated by Hazrat Abu Huraira (رضي الله عنه).

”أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ
مَرَّ عَلَى صُبْرَةٍ طَعَامٍ فَأَدْخَلَ يَدَهُ
فِيهَا، فَنَالَتْ أَصَابِعُهُ بَيْتًا فَقَالَ: مَا
هَذَا يَا صَاحِبَ الطَّعَامِ؟ قَالَ أَصَابَتْهُ
السَّمَاءُ يَا رَسُولَ اللَّهِ، قَالَ: أَفَلَا
جَعَلْتَهُ فَوْقَ الطَّعَامِ كَمَا يَرَاهُ النَّاسُ
مَنْ غَشَّنَ فَلَيْسَ مِنِّي“¹⁶

The Prophet Muhammad (ﷺ) passed by a heap of grain, and as he put his hand into it, he felt dampness in his fingers. He asked, "O owner of the grain, what is this?" The owner replied, "O Messenger of Allah, it got wet in the rain." The Prophet ﷺ then said, "Why didn't you put it on top so that people could see it? Whoever deceives has nothing to do with me."

Conditions for Khyar:

Following are the conditions for proof of Khyar.

First condition:

Khyar Ru'yat is proved in those things that can be determined by specific identification, such as measurements, weights, and numerical items. Gold and silver, whether they are in the form of coins or not, fall into this category. So, in these cases, the goodness of a Khyar is valid, whether they were specified in a particular form or not.

¹⁶ Muslim bin Hujjaj al-Qushayri (261 H): Sahih Muslim, Beirut: Dar Ihya al-Turath al-Islami, Book of Faith, Hadith number: 102.

However, certain items cannot be determined by specific identification, like exchanging dirhams and dinars or exchanging different currencies. These items do not fall into the category of things that can be specifically identified. Therefore, there is no validation of the Khyar in these cases.

Second condition:

For the validity of the goodness of a dream (vision), another condition is that the items for which the goodness is claimed should not be obligatory upon the seller to fulfill according to Islamic law. In other words, if the fulfillment of those items is an obligatory duty upon the seller, the goodness of a Khyar will not be established. For example, in the case of a "Bai' Salam" (a type of Islamic contract), the seller is obligated to deliver the goods, so the goodness of Khyar will not be applicable in this situation.

Third condition:

The goodness of a Khyar is established in all transactions that can be annulled by revocation, such as trade deals, agreements, divisions, etc. For transactions that cannot be annulled by revocation, like divorce and dowry, the goodness of Khyar will not be applicable.

11. Khyar al-'Aib:

The "Khyar al-'Aib" (khyar due to defect) refers to a provision in Islamic contract law that allows the buyer to return or claim a reduction in the price of a purchased item if a defect is discovered that diminishes its value or usability. Whether the defect leads to significant or minor

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⁴ loss, the buyer has the right to return the goods or request a partial refund from the seller.

Therefore, Allama Kasani writes in "Badi' Al-Sana'i" that every defect that is perceived as causing loss to the buyers, whether the loss is significant or minor, gives the customer the right to return the purchased item and claim a refund. will Likewise, Allama Ibn Al-Hammam(□) says:

" وسواء كان ينقص العين، أو لا
ينقصها ولا ينقص منافعها، بل
مجرد النظر إليها كالظفر الأسود
الصحيح القوي على العمل...."¹⁰

Similarly, Sahib Sharh al-Kabeer al-Maliki states that returning the purchased item due to a defect causes either a minor or a significant loss to the seller. The legitimacy of "Khiyar al-'Aib" is established through the Book of Allah and the Sunnah of the Prophet.

In the Holy Qur'an it is said:

Argument 1:

²⁹ "يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ
تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ"¹¹

O believers, do not consume each other's wealth unjustly unless it is through trade conducted with mutual consent.

From this verse, it is known that trade should be balanced and the defect is contrary to balancing.

And there is a hadith of Sunan Ibn Majah:

¹⁰ Ibn Humaam, Kamaal al-Deen Muhammad ibn Abdul Wahid (d. 861 AH) Fath al-Qadeer, Beirut: Dar al-Fikr, 1970, Vol. 6, p. 357

¹¹ Al Nisa 4: 29

"عن عقبة بن عامر قال: سمعت
رسول الله ﷺ يقول: " المسلم أخو
المسلم، ولا يحل لمسلم باع من
أخيه بيعا فيه عيب إلا بينه له"¹²

Hazrat Uqba bin Aamir□ says that he heard the Messenger of Allah □ saying that a Muslim is the brother of a Muslim, and it is not permissible for a Muslim to sell a defective item to his brother unless he shows the defect in front of him.

Conditions of Khyar al-'Aib:

⁴ A defect will be valid when the following conditions are met.

1: If the defect is before the seller's handover, if it is after the handover, then the defect will not be proved.

2: After taking possession of the goods, the defect becomes apparent to the buyer as well.

3: If the buyer was unaware of the defect at the time of taking possession and entering into the contract, and later becomes aware of it, the defect will not be proved.

4: If the seller did not mention any defects at the time of sale and also added conditions stating that they would not be responsible for any defects, then in this situation as well, the buyer will not have the right to claim the "Khiyar al-'Aib". It is further explained below:

1. The defect is preexisting (old):

If the defect is preexisting, meaning it existed at the time of the seller's

¹² Ibn Majah, Muhammad bin Yazid (d. 273 AH) Sunan Ibn Majah, Beirut: Dar al-Fikr, Book of Trading, Chapter on Selling Defective Items, Hadith: 2246

ownership, and it becomes apparent before the contract is concluded, then the buyer will have the right to claim the "Khiyar" due to the defect. Otherwise, if the defect is discovered before the possession of the goods is transferred to the buyer, the entire responsibility lies with the seller. Thus, the seller will be responsible for any defects or issues that arise in such a situation.

2: Aib is valid:

The second condition for the buyer to have the right to return a defective item is that the defect must be the cause of significant loss in the purchased item. On this matter, all the respected jurists agree. However, there is a difference of opinion among them regarding whether the buyer has the right to return the item if the loss is minor or significant.

Sahib Nahayat al-Muthaaj al-Shafi'i writes that it is valid to return the goods due to any defect that affects the price or value of the goods and the purpose is valid.

3: At the time of the contract, the buyer was not aware of the defect:

One of the conditions for the return of a defective item is that the buyer does not know about it at the time of the contract, because buying the item despite knowing it is a proof of consent to the defect. So Allama's Sani writes in "Badi' Al-Sana'i":

(ومنها) جهل المشتري بوجود العيب عند العقد والقبض، فإن كان عالما به عند أحدهما، فلا خيار له؛ لأن الإقدام على الشراء مع العلم بالعيب رضا به دلالة وكذا إذا لم يعلم عند العقد، ثم علم بعده قبل القبض؛ لأن تمام الصفقة متعلق

بالقبض فكان العلم عند القبض كالعلم عند العقد¹³

4: The condition of acquittal from all faults has not been imposed:

Bara'at means that the seller's statement that the buyer will not demand a return due to any defect in the contract of sale, then this condition of the seller will not give the buyer an option due to the defect.

The ruling in the case of "Khiyar al-'Aib":

If the "Khiyar al-'Aib" (option due to defect) is exercised during the contract, the contract will not be considered binding, as the condition of a valid sale contract is that the sold item must be sound and free from defects. When the sold item is not in a sound and intact condition, the contract itself becomes void.

Allama Kasaani writes.

"(وأما) صفته، فهي أنه ملك غير لازم؛ لأن السلامة شرط في العقد دلالتة، فيما لم يسلم المبيع لا يلزم البيع"¹⁴

Aib Dependency and Role of Custom:

According to the majority of jurists, after being informed about the defect in the purchased item, the buyer is not immediately obligated to return the goods. Similarly, for the validity of "Khiyar al-'Aib", it is necessary that the purchased item has a defect that is considered a defect in the customary practices of the trade. Only the defects that are recognized

¹³ Kasani, Abu Bakr bin Mas'ud (d. 587 AH) 'Badai' al-Sana'i fi Tartib al-Shara'i, Beirut, Maktabah, Dar al-Kutub, Vol. 5, p. 247

¹⁴ Kasani, 'Badai' al-Sana'i, Vol. 5, p. 274

as defects by the merchants will be counted, and if the merchants do not consider a certain issue as a defect, it will not be considered a defect, and the "Khiyar al-'Aib" will not be established. The consensus among the respected jurists is that the decision made by the merchants' community will be considered valid.

What has been described in detail so far was the view of Shariah regarding Khyar Ru'yat and Khiyar al-'Aib. Legislatures of Pakistan have enacted legislation dealing with the subject as applied under the Consumer Court. The details of what has been defined in this Act under the name of "THE PUNJAB CONSUMER PROTECTION ACT 2005 (Pb. Act II of 2005)" are given below:

LIABILITY ARISING FROM DEFECTIVE PRODUCTS:15

1. Liability for defective products:

1.1 The manufacturer of a product shall be liable to a consumer for damages proximately caused by a characteristic of the product that renders the product defective when such damage arose from a reasonably anticipated use of the product by a consumer.

1.2 A product shall be defective only if

- a) It is defective in construction as provided in section 5;
- b) It is defective in design as provided in section 6;
- c) It is defective because an adequate warning has not been given as provided in section 7; and

¹⁵ <http://punjablaws.gov.pk/laws/477.html>, 20/7/2023

d) It is defective because it does not conform to an express warranty of the manufacturer as provided in section 8;

- i. Defective in construction or composition: -A product shall be defective in construction or composition if, at the time the product was manufactured, a material deviation was made from the manufacturers' specifications, whether known to the consumer or not...
- ii. Defective in design: - (1) A product shall be defective in design if, at the time the product left its manufacturer's control-

(a) There existed an alternative design for the product that was capable of preventing damage to a consumer; and

(b) The likelihood and gravity of damage outweighed the burden on the manufacturer of adopting such an alternative design and any adverse effect of such an alternative design on the utility of the product.

1.3 When the manufacturer has used reasonable care to provide adequate warning to the users or handlers of the product, it shall be considered in evaluating the likelihood of damage arising from the design of a product.

- a) Defective because of inadequate warning:-(1) A product shall be defective if an adequate warning about the product that it possessed a characteristic that could cause damage, has not been provided at the time the product left its manufacturer's control or the manufacturer has failed to use

reasonable care to provide an adequate warning of such characteristic and its danger to users and handlers of the product:

Provided that a manufacturer shall not be required to provide an adequate warning about his product when-

b. The ordinary user or handler of the product could know, with the ordinary knowledge common to the community, that the product has dangerous characteristics which could cause damage; or

c. The user or handler of the product already knows or should be reasonably expected to know that the product has characteristics that were dangerous and could cause damage.

2. A manufacturer of a product who, after the product has left his control, acquires knowledge about the dangerous characteristics of the product that could cause damage, or who would have acquired such knowledge had he acted as a reasonably prudent manufacturer, shall be liable for damage caused by his subsequent failure to use reasonable care to provide an adequate warning of such characteristic and its danger to users and handlers of the product.

a. Defective because of non-conformity to express warranty: -A product shall be defective when it does not conform to an express warranty made at any time by the manufacturer about the product if the express warranty has induced the claimant to use the product and the claimant's damage was

proximately caused because the express warranty was untrue.

b) Proof of manufacturer's knowledge Notwithstanding anything contained in section 6, a manufacturer of a product shall not be liable for damage proximately caused by a characteristic of the product's design if the manufacturer proves that at the time the product left his control-

c) He did not know and, in the light of the then existing and reasonably available scientific and technological knowledge, could not have known the design characteristic that caused the damage or the danger of such characteristic; or

d) He did not know and, in the light of the then-existing and reasonably available scientific and technological knowledge, could not have known of the alternative design identified by the consumer under section 6 (1); or

e) The alternative design identified by the consumer under section 6 (1) was not feasible in the light of the then-existing and reasonably available scientific and technological knowledge or then existing economic practicality.

3. Notwithstanding anything contained in section 7(1) or 7(2), a manufacturer of a product shall not be liable for damage if the manufacturer proves that, at the time the product left his control, he did not know and, in the light of the then existing and reasonably available scientific and technological knowledge, could not have known of the characteristic that caused the

damage or the danger of such characteristic.

- a) Restriction on grant of damages:-
Where the consumer has not suffered any damage from the product except the loss of utility, the manufacturer shall not be liable for any damages except a return of the consideration or a part thereof and the costs.
- b) Duty of disclosure:-(1) Where the nature of the product is such that the disclosure of its parts, ingredients, quality, or date of manufacture and expiry is material to the decision of the consumer to enter into a contract for sale, the manufacturer shall disclose the same.

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4. Notwithstanding anything contained in sub-section (1), the Government may, by general or special order, require such disclosure in any particular case.

- a) Prohibition on exclusions from liability:-The liability of a person by this part to a consumer who has suffered damage shall not be limited or excluded by the terms of any contract or by any notice.
- b) Liability for faulty or defective services; A provider of services shall be liable to a consumer for damages proximately caused by the provision of services that have caused damage.
- c) Standard of provision of services; Where the standard of services is regulated by a special law, provincial or federal, the standard of services shall be deemed to be the standard laid down by such special law.

5. Where the standard of a service has not been provided for in any law or by the professional or trade body concerned, the standard shall be that which at the time of the provision of the service, a consumer could reasonably expect to obtain at that time in Pakistan.

- a) Restriction on grant of damages; Where the consumer has not suffered any damages from the service provision except lack of benefit, the service provider shall not be liable for any damages except a return of the consideration or a part thereof and the costs.
- b) Duty of disclosure; (1) Where the nature of the service is such that the disclosure of the capabilities or qualifications of the provider of the service or the quality of the products that he intends to use for the provision of the service is material to the decision of the consumer to enter into a contract for the provision of services, the provider of services shall disclose the same.

6. Notwithstanding anything contained in subsection (1), the Government may, by general or special order, require such disclosure in any case.

- a) Prohibition on exclusions from liability; The liability of a person by this part to a person who has suffered damage shall not be limited or excluded by the terms of any contract or by any notice.
- b) Prices to be exhibited at the business place; Unless a price catalog is available for issue to the customer, the manufacturer or trader shall display prominently in

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his shop are display-center a notice specifying the retail are wholesale price, as the case may be, of every goods available for sale in that shop are display center.

- c) Receipt to be issued to the purchaser; Every manufacturer or order who sells any goods shall issue to the purchaser a receipt showing.
- d) The date of sale,
- e) Description of goods sold,
- f) The quantity and price of the goods,
- g) The name and address of the seller,
- h) Return and refund policy; Return and refund policy of a seller shall be disclosed to the buyer clearly before the transaction is completed using a sign at the point of purchase.

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