

AN APPRAISAL OF THE LEGAL AND INSTITUTIONAL FRAMEWORK FOR CONSUMER PROTECTION IN CLASSICAL ISLAMIC JURISPRUDENCE

Muhammad Sambo Umar*

Ahmad Abubakar**

Abstract

This paper provides a comprehensive appraisal of the legal and institutional framework for consumer protection as developed within classical Islamic jurisprudence. Grounded in the ethical and legal teachings of the Qur'ān and Sunnah, Islamic law embedded consumer protection within its broader objectives (Maqāsid al-Sharī'ah), including the preservation of wealth, prevention of harm, and promotion of public welfare. Through a detailed examination of doctrinal foundations—such as the prohibitions of fraud (tadlīs), excessive uncertainty (gharar), and unjust enrichment—the paper demonstrated how Islamic jurists constructed a sophisticated legal infrastructure under Fiqh al-Mu'āmalāt to regulate market behaviour and uphold fairness in trade. The paper also explored the institutional role of the ḥisbah and its official, the muḥtasib, as a pivotal enforcement mechanism in the Islamic market system. Drawing on historical case studies, particularly the administration of Caliph 'Umar ibn al-Khaṭṭāb, the paper illustrated how classical Islamic governance actively monitored market ethics, correct injustices, and protect consumer rights through a fusion of legal, moral, and administrative measures. In addition, the paper examined contemporary manifestations of the ḥisbah in countries such as Saudi Arabia, Malaysia, and Nigeria, and noted both parallels and divergences from the classical model. It found that while modern institutions often retained the moral oversight functions of the ḥisbah, their capacity to enforce consumer protection remained limited—particularly in jurisdictions such as Northern Nigeria, where ḥisbah agencies focused primarily on public morality rather than market regulation. Ultimately, the paper concluded that classical Islamic consumer protection principles could be meaningfully reintegrated into modern regulatory frameworks. It argued that the classical Islamic legal tradition offered not only a robust ethical foundation but also practical legal tools that were adaptable to contemporary consumer challenges—especially in light of globalization, digital commerce, and increasingly complex economic systems. This synthesis of tradition and modernity held significant potential for enhancing consumer protection in Muslim-majority societies.

Keywords: Consumer Protection, Classical Islamic Jurisprudence, Excessive Uncertainty (gharar).

1. Introduction

Consumer protection is a fundamental aspect of any legal system that aspires to promote justice, equity, and public welfare. It ensures fairness, transparency, and accountability in commercial transactions, thereby safeguarding individuals from exploitation and economic harm. While contemporary legal systems typically achieve these objectives through statutory regulations and

* PhD., Senior Lecturer, Gombe State University, Gombe. Email: muhammadsamboumar@gmail.com

** Researcher, Shehu Wada SAN and Co (Legal Practitioners). Email:ahmedbuba19@gmail.com

administrative enforcement, Islamic law provides a distinctive framework rooted in the divine sources of the Sharī'ah. In classical Islamic jurisprudence (fiqh), the protection of consumers is not merely a regulatory concern but a moral and legal obligation grounded in the ethical teachings of the Qur'ān and Sunnah. These sources emphasize honesty in trade, the prohibition of fraud, prevention of harm (darar), and the promotion of public interest (maṣlaḥah). Classical jurists expanded upon these foundational principles to develop a comprehensive legal doctrine under Fiqh al-Mu'āmalāt (jurisprudence of transactions), which addresses key aspects of commercial fairness, contractual integrity, and market regulation. At the heart of Islamic consumer protection is the principle of justice (ʿadl), which underpins the entire structure of Islamic commercial ethics. The Qur'an explicitly condemns fraudulent commercial behaviour:

Woe to those that deal in fraud. Those who, when they have to receive by measure from men, exact full measure, but when they have to give by measure or weight to men, give less than due.¹

This foundational verse not only condemns exploitation but also establishes the moral basis for commercial fairness. Prophet Muhammad (peace be upon him) also reinforced this ethical imperative when he said: *"He who cheats us is not one of us."*² One of the key institutions historically responsible for upholding these principles is the Hisbah. The Hisbah was established to supervise markets, ensure the honesty of traders, and prevent fraudulent practices. Al-Māwardī (d. 450 AH), in his authoritative work *Al-Aḥkām al-Sulṭāniyyah*, outlined the role of the Muḥtasib as someone responsible for commanding good and forbidding evil in the marketplace, including verifying the quality of goods and preventing dishonest dealings.³ So, the role of the Muhtasib, the official in charge of the Hisbah, was to monitor commercial activities, regulate weights and measures, and enforce ethical standards in trade. This institution played a crucial role in maintaining market integrity and protecting consumers from exploitation.

The concept of Hisbah is grounded in the Qur'anic injunction to "enjoin what is right and forbid what is wrong."⁴ This directive underscores the communal responsibility to uphold moral and ethical standards in all aspects of life, including commerce. The Prophet Muhammad (peace be

¹ Qur'an 83:1–3

² Muslim ibn al-Ḥajjāj. *Ṣaḥīḥ Muslim*, Hadith No. 102, available on Shamela

³ Al-Māwardī, A.H. (2006). *Al-Aḥkām al-Sulṭāniyyah wa al-Wilāyāt al-Dīniyyah*. Beirut: Dār al-Kutub al-ʿIlmiyyah. (Original work written ca. 11th century CE). 337

⁴ Qur'an 3:104

upon him) also emphasized the importance of honesty in trade, stating, "The truthful and trustworthy merchant is with the Prophets, the truthful, and the martyrs."⁵ The tradition of Hisbah finds further elaboration in the writings of Ibn Taymiyyah (d. 728 AH), who argued that market regulation is a necessary function of the state to protect the rights of consumers and prevent monopolistic and deceptive behavior. In his treatise *Al-Ḥisbah fī al-Islām*, Ibn Taymiyyah emphasized that unrestricted economic activity without regulation leads to injustice and harm.⁶ These classical insights illustrate how Islamic law not only permits but mandates institutional mechanisms to safeguard consumers' rights.

In contemporary times, the principles underlying the Hisbah continue to influence consumer protection mechanisms in various Muslim-majority countries. For instance, the Kano State Hisbah Board in Nigeria functions to enforce Shari'ah-compliant practices, including monitoring market activities to prevent unethical conduct.⁷ Similarly, the Hisbah institution in other regions has been instrumental in promoting ethical business practices and safeguarding consumer rights.⁸ This paper seeks to appraise the legal and institutional framework for consumer protection in classical Islamic jurisprudence by examining its doctrinal foundations, practical enforcement mechanisms, and enduring relevance. It investigates how Islamic law historically addressed consumer-related harms, how institutions like the *ḥisbah* functioned to implement these norms, and what insights contemporary legal systems can draw from this classical model. In doing so, the paper aims to contribute to a broader understanding of Islamic legal thought as not only spiritually grounded but also materially responsive to the demands of economic justice and public welfare.

2.1 Conceptual Clarification of Terms

2.1.1 The Concept of Consumer

In Law, consumer is generally defined as an individual or entity who purchases or uses goods and services for personal use, rather than for resale or commercial purposes. According to Black's Law

⁵ Sunan al-Tirmidhi, Hadith 1209

⁶ Ibn Taymiyyah, A. (1994). *Al-Ḥisbah fī al-Islām* (ed. Muḥammad Ḥamīd al-Fiqī). Cairo: Maktabat al-Kulliyāt al-Azhariyyah, 12- 14

⁷ Hizqil, H. M. (2016). Fath-Based Institutions and Human Development in Nigeria: The Kano State Hisbah Board in Focus. *International Journal of West Asian Studies*, 8(1). Retrieved from [https://ejournal.ukm.my/ijwas/article/view/18443/0UKM e-Journal+1Wikipedia+1](https://ejournal.ukm.my/ijwas/article/view/18443/0UKM%20e-Journal%20Wikipedia%201)

⁸ Jaafar, A. J., Ibrahim, M. T., Ismail, H., & Mohmud, M. S. (2021). Hisbah Institution and Its Role in Environmental Conservation in Islamic Civilization. *Jurnal Islam dan Masyarakat Kontemporari*, 22(1). Retrieved from [https://journal.unisza.edu.my/jimk/index.php/jimk /article/view/526journal.unisza.edu.my](https://journal.unisza.edu.my/jimk/index.php/jimk/article/view/526journal.unisza.edu.my)

Dictionary, a *consumer* is "one who purchases goods or services for personal, family, or household use, and not for resale or for use in a business."⁹ This definition implies that a consumer is someone who engages in a transaction to meet their personal needs, not for profit-making purposes. However, FCCPA of 2018 provides a more specific definition. It provides that;

"consumer" means any person—

(a) who purchases or offers to purchase goods other than for the purpose of resale, but does not include a person who purchases any goods for the purpose of using them in the production and manufacture of any other goods or articles for sale; or

(b) to whom a service is rendered.¹⁰

What seems to have surfaced from this definition is that, the Act recognizes both individuals and businesses that purchase goods and services for personal or domestic use as consumers. The Act includes not only natural persons but also legal entities that may engage in consumer transactions, especially in relation to their operations in the Nigerian market. So, the consumer has the following categories;

- a) **Individuals:** The typical consumer is an individual who purchases goods and services for personal or household use. These consumers are the primary focus of most consumer protection laws, as they are more vulnerable to exploitation due to lack of market power or information.¹¹
- b) **Businesses:** Although businesses generally purchase goods and services for commercial purposes, they can also be classified as consumers when purchasing for their own use (e.g., office supplies or equipment).¹² In some jurisdictions, businesses are granted certain protections under consumer laws when dealing with larger entities or when the purchasing conditions are particularly inequitable.¹³
- c) **Digital Consumers:** With the rise of e-commerce and digital services, digital consumers have emerged as a distinct category.¹⁴ Digital consumers engage in transactions over the

⁹ Garner, B. A. (Ed.). (2019). *Black's law dictionary* (11th ed.). Thomson Reuters, p. 352

¹⁰ s.167, FCCPA of 2018

¹¹ Howells, G. G., & Weatherill, S. (2005). *Consumer protection law*. Aldershot: Ashgate, p.54

¹² Cartwright, P. (2001). *Consumer protection and the criminal law: Law, theory and policy in the UK*. Cambridge University Press.

¹³ See Australian Competition and Consumer Commission. (2020). *Business rights under the Australian Consumer Law*. Retrieved from <https://www.accc.gov.au> accessed on 11th April, 2025

¹⁴ OECD. (2016). *Protecting consumers in peer platform markets: Exploring the issues*. OECD Digital Economy Papers, No. 253. Retrieved from <https://doi.org/10.1787/5jlwvz39m1zw-en> accessed on 11th April, 2025

internet, purchasing products and services from online platforms. This category raises unique challenges for consumer protection, including issues related to online fraud, data privacy, and digital product quality.¹⁵

2.1.2 The Concept of Consumer Protection

Consumer protection refers to the set of laws, regulations, and actions designed to safeguard the rights and interests of consumers, particularly in their dealings with businesses. The primary goal of consumer protection is to prevent businesses from engaging in practices that could harm consumers or exploit their lack of knowledge or bargaining power. According to Black's Law Dictionary, consumer protection is

a body of laws and regulations that ensure the rights of consumers in relation to the goods and services they purchase are protected.¹⁶

The scope of consumer protection extends beyond mere legal provisions to encompass economic and social aspects, reflecting the broad range of consumer rights that need to be defended. It includes areas such as product safety, truthful advertising, contract fairness, and the prevention of fraud. Consumer protection laws regulate the behavior of businesses, ensuring that they provide accurate information, deliver goods and services that meet quality standards, and offer remedies for defective or substandard products.

There are various perspectives through which the consumer protection can be looked at. The first is legal perspective. This aspect addresses the protection of consumer rights through legislation.¹⁷ It includes laws governing product liability, warranties, deceptive marketing, and unfair trade practices. For example, the Nigerian Federal Competition and Consumer Protection Act (FCCPA) of 2018 serves as the primary legal framework for consumer protection in Nigeria, establishing provisions for the regulation of businesses and the protection of consumers from unfair practices.¹⁸ Additionally, consumer also have economic perspective. This seeks to ensure that consumers can

¹⁵ UNCTAD. (2017). *Consumer protection in the digital age: Changes and challenges*. United Nations Conference on Trade and Development. Retrieved from <https://unctad.org> accessed on 11th April, 2025

¹⁶ Garner, B. A. (Ed.). (2019). *Black's law dictionary* (11th ed.). Thomson Reuters, 352

¹⁷ Ayoade, A. (2019). *Consumer protection under Nigerian law: An appraisal of the FCCPA 2018*. *Journal of African Law*, 63(2), 255–272

¹⁸ *Ibid*, p. 256

make informed purchasing decisions, with access to goods and services at fair prices.¹⁹ This aspect involves maintaining fair competition and ensuring that businesses cannot manipulate or monopolize markets to the detriment of consumers.²⁰ The last category is social perspective. Socially, consumer protection aims to promote consumer welfare by improving awareness and access to safe and affordable products.²¹ It helps address issues such as inequality and discrimination in the marketplace, ensuring that all segments of society have equal opportunities to enjoy the benefits of the marketplace.²²

2. The Basis of Consumer Protection in Islamic Law

Islamic law provides a comprehensive framework for consumer protection, grounded in both legal injunctions and moral obligations. The foundation of this framework lies in the Qur'an, the Sunnah (Prophetic traditions), and the juristic elaborations developed within the various schools of Islamic jurisprudence.

2.1 Qur'anic Foundations

The Qur'an serves as the primary source of Islamic law and moral guidance, providing an ethical and legal framework that deeply informs the concept of consumer protection. Among its key objectives (*maqāṣid al-sharī'ah*) is the protection of wealth and prevention of harm, which undergirds its repeated emphasis on honesty, justice, fairness in trade, and the prohibition of exploitation in economic dealings. These principles form the core of Islamic consumer protection. One of the most direct denunciations of commercial fraud appears in Surah al-Muṭaffifīn:²³

Woe to those who give less [than due], who when they take a measure from people, take in full. But when they measure or weigh for them, they give less.

These verses highlight the Qur'an's condemnation of asymmetrical and dishonest trade practices, especially in weights and measures. The repetition of “woe” (*wayl*) emphasizes the severity of this moral breach and suggests both spiritual and social consequences. Classical commentators such as al-Ṭabarī and al-Qurṭubī interpreted this verse as an unequivocal prohibition of all forms of

¹⁹ Armstrong, M., & Sappington, D. E. M. (2007). *Recent developments in the theory of regulation*. In M. Armstrong & R. Porter (Eds.), *Handbook of Industrial Organization* (Vol. 3, pp. 1557–1700). Elsevier, p.34

²⁰ Stiglitz, J. E. (2000). *Economics of the public sector* (3rd ed.). New York: W. W. Norton & Company, p.45

²¹ Ramsay, I. (2012). *Consumer Law and Policy: Text and Materials on Regulating Consumer Markets* (3rd ed.). Oxford: Hart Publishing, p.54

²² Ogunyemi, K. (2021). *Social justice and consumer protection in Nigeria: A rights-based approach*. *African Journal of Legal Studies*, 14(1), 79–95, p.81

²³ 83:1–3

economic deceit, asserting that the practice is not only unjust but leads to societal corruption and divine retribution.²⁴

Another important verse that illustrates the ethical core of Islamic commerce is Qur'an 11:85, which records the admonition of the Prophet Shu'ayb to his people:

Give full measure and weight in justice, and do not defraud
people of their due, and do not spread corruption on the earth.

This verse addresses three fundamental obligations of economic justice: (1) honesty in trade, (2) respect for the rights of others, and (3) avoidance of *fasād* (corruption), which is understood to include monopolistic practices, price manipulation, and other market abuses. In *Tafsīr al-Kashshāf*, *al-Zamakhsharī* underscores that “corruption on the earth” extends beyond environmental damage to encompass any form of economic injustice that undermines public welfare.²⁵

Further expanding the Qur'anic basis for consumer protection, Surah al-Baqarah warns:

Do not consume one another's wealth unjustly, nor use it [in
bribery] to gain the verdict of judges, that you may knowingly
consume a portion of the wealth of others wrongfully.²⁶

This verse condemns unlawful appropriation of property, including through judicial corruption and manipulation of legal systems—an issue still relevant in modern commercial disputes. Commentators such as Ibn Kathīr explain that this verse not only prohibits theft and fraud, but also extends to any form of unjust enrichment, including false advertising, misinformation, and concealment of product defects (*ghubn*).²⁷

Likewise, Qur'an 4:29 proclaims:

²⁴ See Muḥammad ibn Jarīr al-Ṭabarī, *Tafsīr al-Ṭabarī: Jāmi' al-Bayān 'an Ta'wīl Āy al-Qur'ān*, vol 30 (Aḥmad Muḥammad Shākir ed, Dār al-Ma'ārif 2000) 83–85; Muḥammad ibn Aḥmad al-Qurṭubī, *al-Jāmi' li-Aḥkām al-Qur'ān*, vol 19 (Dār al-Kutub al-'Ilmiyyah 2006) 250–253.

²⁵ Maḥmūd ibn 'Umar al-Zamakhsharī, *al-Kashshāf 'an Ḥaqā'iq al-Tanzīl wa-'Uyūn al-Aqāwīl fī Wujūh al-Ta'wīl*, vol 2 (Dār al-Kitāb al-'Arabī 2009) 456

²⁶ Q2:188

²⁷ Ismā'īl ibn 'Umar Ibn Kathīr, *Tafsīr al-Qur'ān al-'Azīm*, vol 1 (Dār Ṭayyibah 1999) 517.

O you who believe! Do not consume one another's wealth unjustly, but only [in lawful] business by mutual consent.

This verse lays down the foundational principle of contractual consent and fairness in exchange, prerequisites for valid commercial transactions in Islamic law. Jurists from all major schools²⁸ have interpreted this as establishing both the legality of commercial activity and the moral condition that it be based on transparency, mutual benefit, and absence of coercion or deception (*gharar* and *tadlīs*). In sum, these Qur'anic verses collectively articulate a comprehensive ethical vision of economic life that safeguards the rights of consumers by promoting:

- a. Equity in exchange (al-‘adl fī al-mu‘āmalah),
- b. Transparency in trade (al-ṣidq wa al-bayān),
- c. Prohibition of harm (*lā ḍarar wa lā ḍirār*),
- d. And institutional integrity against corruption and fraud.

Thus, the Qur'an does not merely recommend ethical behavior in commerce; it establishes enforceable norms that form the basis for consumer protection within the broader legal and moral architecture of the Sharī‘ah.

2.2 Prophetic Traditions (Sunnah)

The Sunnah of the Prophet Muhammad (peace be upon him) plays a critical role in shaping Islamic jurisprudence, particularly in the domain of commercial ethics and consumer protection. The Prophetic traditions (*ahādīth*) do not merely complement the Qur'an's ethical injunctions but provide practical illustrations of how those principles should be applied in everyday market transactions. Through his sayings and actions, the Prophet (PBUH) established foundational norms for fair dealing, transparency, and accountability in commerce—virtues that are indispensable to a robust consumer protection regime.

One of the most widely cited traditions concerning commercial honesty is the ḥadīth narrated by Abū Hurayrah:

The Prophet passed by a heap of food and put his hand in it. His fingers felt wetness. He said, ‘What is this, O seller of the food?’ He said, ‘Rain fell upon it, O Messenger of Allah.’ He said, ‘Why did you not put it on top of the food so that people could see it? Whoever cheats us is not one of us.’²⁹

²⁸ Mālikī, Ḥanafī, Shāfi‘ī, Ḥanbalī

²⁹ Muslim ibn al-Ḥajjāj. *Ṣaḥīḥ Muslim*. Kitāb al-Īmān, Ḥadīth No. 102. Beirut: Dār Iḥyā’ al-Turāth al-‘Arabī.

This ḥadīth, classified as *ṣaḥīḥ* (authentic) and reported in major canonical collections, encapsulates the Islamic prohibition against fraudulent concealment (*tadlīs*). The Prophet's disapproval was not limited to the act of hiding defects, but extended to its moral and communal implications. His statement, “*Whoever cheats us is not one of us*”, denotes a severe ethical breach—one that effectively removes the wrongdoer from the moral community of believers (*ummah*). As Imām al-Nawawī explains, this expression is not a declaration of unbelief, but rather a denunciation of un-Islamic behavior incompatible with the character of a true Muslim.³⁰ The ḥadīth also highlights the obligation of disclosure and transparency, particularly when defects or relevant information might influence a buyer's decision. Islamic commercial law, across all four Sunni schools, regards *ghish* (cheating or deceit) as a form of ḥarām (prohibited) behavior that can invalidate or entitle rescission of a contract.³¹

Another key Prophetic tradition reported by ‘Abd Allāh ibn ‘Umar states:

The two parties to a sale have the option (to cancel it) until they separate. If they were truthful and clear, their transaction will be blessed. But if they lied or concealed [a defect], the blessing of their transaction will be wiped away.³²

This ḥadīth introduces the legal doctrine of *khiyār al-majlīs*—the “option of the session”—which grants both the buyer and seller the right to annul a contract before physically parting ways. However, its ethical focus lies in the *barakah* (divine blessing) of a transaction that is conducted in truthfulness and clarity. The Prophet connects commercial integrity with spiritual prosperity, while simultaneously warning that dishonesty nullifies not just legal rights but divine reward. As noted by Ibn Ḥajar al-‘Asqalānī, the ḥadīth serves as a legal foundation for contract rescission due to fraud (*ghabn fāḥish*) and a moral imperative that governs business behavior beyond mere legality.³³ These Prophetic teachings illustrate that consumer protection in Islam transcends regulatory or institutional concerns. It is rooted in the spiritual accountability of the seller and the ethical responsibility to ensure that buyers are treated with fairness, honesty, and respect. In effect, market conduct becomes an arena for moral action, where each transaction is an opportunity for obedience to God and service to the community. In contemporary terms, these traditions could be seen as the ethical scaffolding of consumer rights—establishing duties to disclose, prohibitions

³⁰ Al-Nawawī, Yaḥyā ibn Sharaf. *Sharḥ Ṣaḥīḥ Muslim*. Beirut: Dār al-Ma‘rifah, vol. 1, p. 123

³¹ Al-Kāsānī, ‘Alā’ al-Dīn. *Badā’i’ al-Ṣanā’i’ fī Tartīb al-Sharā’i’*. Beirut: Dār al-Kutub al-‘Ilmiyyah, vol. 5, p. 143

³² Al-Bukhārī, Muḥammad ibn Ismā‘īl. *Ṣaḥīḥ al-Bukhārī*. Kitāb al-Buyū’, Cairo: Dār Ṭawq al-Najāḥ, Ḥadīth No. 2079

³³ Ibn Ḥajar al-‘Asqalānī. *Fath al-Bārī bi-Sharḥ Ṣaḥīḥ al-Bukhārī*. Beirut: Dār al-Ma‘rifah, vol. 4, p. 354

against deception, and consequences for unethical behavior, whether in marketplaces of old or in modern digital economies.

2.3 Juristic Doctrines Relevant to Consumer Protection

Islamic jurists (*fuqahā'*) meticulously developed a body of commercial jurisprudence known as *Fiqh al-Mu'āmalāt*, encompassing the rules and ethics governing contracts, trade, and market practices. This area of law reflects Islam's commitment to economic justice and the preservation of public welfare, particularly in regulating market behavior and safeguarding consumer rights. Several foundational doctrines within this field serve as mechanisms of consumer protection, balancing the freedom of contract with the moral obligation to prevent harm (*ḍarar*) and ensure fairness (*ʿadl*).

2.4.1 Khiyār (Right to Rescind)

One of the most consumer-protective mechanisms in Islamic contract law is the doctrine of *khiyār*, which grants parties—particularly buyers—the right to rescind a contract under certain circumstances. The various forms of *khiyār* include:

- a) **Khiyār al-Sharṭ** (Conditional Option): A stipulation agreed upon by both parties that allows rescission within a specified period. This gives the buyer time to inspect or test the product.
- b) **Khiyār al-ʿAyb** (Option Due to Defect): If a hidden defect is discovered after the sale, the buyer retains the right to return the item or request compensation.
- c) **Khiyār al-Ru'yah** (Option Upon Viewing): If a contract was concluded without the buyer having seen the product, he may rescind the sale upon inspection if dissatisfied.

These options are meant to prevent deception, coercion, or post-contractual regret based on incomplete knowledge or hidden faults. According to Ibn Qudāmah (d. 620 AH), the rationale for these options lies in the achievement of justice and prevention of harm, essential objectives of *Sharīʿah*:

The purpose of *khiyār* is to prevent harm and ensure satisfaction in transactions.³⁴

³⁴ al-Mughnī, vol. 4, p. 124

The jurists of the Ḥanbalī, Mālikī, and Shāfi‘ī schools all recognized these khiyār rights as essential safeguards to market fairness.

2.4.2 Prohibition of Gharar (Excessive Uncertainty)

Gharar refers to undue uncertainty or ambiguity in the terms, subject matter, or outcome of a transaction. This principle is closely aligned with consumer protection, as it prohibits contracts where one party is unfairly disadvantaged due to lack of clarity or hidden risks. The Prophet Muhammad (peace be upon him) explicitly prohibited gharar: *"Do not sell what is not with you."*³⁵ According to al-Nawawī, gharar includes speculative sales (*bay‘ al-maḥqūl*), unknown commodities (*majhūl*), and future uncertainties, such as selling a fish in the water or a bird in the air.³⁶ By banning such transactions, Islamic law ensures that consumers are not drawn into exploitative contracts where they bear unquantifiable risks. This principle has contemporary relevance in consumer finance, e-commerce, and insurance contracts where hidden terms or future uncertainties can disadvantage buyers.

2.4.3 Prohibition of Tadrīs (Misrepresentation and Concealment)

Tadrīs refers to deception through the concealment of defects or the presentation of goods in a misleading manner. This includes practices such as painting old goods to look new, hiding damages, inflating product value, or falsely advertising features the product does not possess. The prohibition of tadrīs is grounded in the prophetic tradition: *"He who deceives us is not one of us."*³⁷ Fuqahā’ from all schools agree that mutual consent (*ridā*) in sales must be based on full disclosure, and that deceit negates the validity or moral standing of the contract. As al-Sarakhsī states in his *al-Mabsūṭ*:

Any sale where one party conceals a fault that impacts value is invalid unless the buyer is informed and consents.³⁸

Thus, modern parallels include laws against false advertising and defective product concealment, both of which the Islamic tradition has long addressed under tadrīs.

³⁵ Ṣaḥīḥ Muslim, Ḥadīth No. 1513; *Kitāb al-Buyū‘*

³⁶ al-Nawawī, *Sharḥ Ṣaḥīḥ Muslim*, vol. 10, p. 156

³⁷ Ṣaḥīḥ Muslim, Ḥadīth No. 102

³⁸ Al-Sarakhsī, Muḥammad ibn Aḥmad. *al-Mabsūṭ*. Beirut: Dār al-Ma‘rifah, vol. 12, p. 47

2.4.4 Principle of *Maslahah* (Public Welfare)

The doctrine of *maslahah*—public interest or welfare—has been extensively employed by Islamic jurists to permit regulatory interventions in the marketplace aimed at protecting consumers and preventing social harm. Al-Shāṭibī (d. 790 AH) systematically developed this principle in his magnum opus *al-Muwāfaqāt*, asserting that laws or actions promoting public interest are consistent with the higher objectives (*maqāṣid*) of Sharī‘ah:

Maslahah is the foundation of rulings where there is no specific text, and its objective is to bring benefit and remove harm.³⁹

On this basis, Islamic authorities historically imposed market regulations such as price controls (*tas‘īr*), quality inspections, licensing of tradesmen, and bans on unsafe or adulterated goods. These interventions, often implemented by the *muḥtasib* (market inspector), were justified by *maslahah* to prevent consumer exploitation and ensure ethical trade. In the modern context, *maslahah* underpins Islamic support for food safety regulations, consumer labeling laws, and public interest litigation in commercial contexts. Thus, the doctrines of *khiyār*, *gharar*, *tadlīs*, and *maslahah* demonstrate the rich and sophisticated mechanisms developed by Islamic law to ensure transparency, fairness, and accountability in commercial transactions. Far from being merely theoretical, these principles have historically been institutionalized through judicial and administrative systems, including the *ḥisbah*, and remain relevant today in shaping consumer protection policies in Muslim-majority societies and Islamic finance institutions.

3. The Institution of *Hisbah* and Its Role

The concept of *Hisbah* represents one of the most structured institutional frameworks in Islamic governance dedicated to the protection of public interest (*maslahah*), including consumer rights. *Hisbah* can be defined as the system of oversight through which the Islamic state ensures moral conduct and economic justice by monitoring market practices and preventing violations of Islamic legal norms. Rooted in the Qur’anic command to “*enjoin what is right and forbid what is wrong*”⁴⁰ *Hisbah* evolved as a practical expression of public accountability in the economic sphere.

³⁹ *al-Muwāfaqāt*, Op. cit., vol. 2, p. 384

⁴⁰ Qur’an 3:104

3.1 Definition and Juristic Basis

The term *Hisbah* is derived from the root ḥ-s-b, connoting calculation, accountability, and supervision. Technically, it refers to “commanding good and forbidding evil in public life through official oversight.”⁴¹ Classical jurists identified *Hisbah* as a duty of the Islamic ruler or the appointed official, the *Muhtasib*, whose role was to inspect markets, ensure compliance with Islamic norms, and protect consumers from exploitation. Al-Ghazālī described the *Hisbah* system as an expression of collective moral responsibility (*fard kifāyah*) to ensure the smooth functioning of society, stating:

The *Muhtasib* is charged with observing what escapes the judges and what eludes the governors. He prevents harm before it occurs.”⁴²

3.2 Duties of the Muhtasib

According to al-Māwardī in *Al-Aḥkām al-Sulṭāniyyah*, the *Muhtasib*'s responsibilities include:

- a) Monitoring weights and measures.
- b) Ensuring accurate pricing and fair transactions.
- c) Investigating fraudulent or deceptive business practices.
- d) Preventing the sale of defective or harmful products.
- e) Ensuring public cleanliness and regulation of manufacturing processes.⁴³

These roles directly correspond to modern consumer protection authorities, such as regulatory bodies that supervise food quality, pricing, and product safety. The *Hisbah* system was therefore not merely a moral endeavor but a quasi-legal institution tasked with market regulation.

3.3 Ibn Taymiyyah’s Contribution to the Concept of Hisbah

Ibn Taymiyyah expanded on the economic dimensions of *Hisbah* in his treatise *Al-Ḥisbah fī al-Islām*, emphasizing that the state has a duty to regulate prices and prevent monopoly when necessary for the public good. He argued:

It is not permissible for the state to allow traders to oppress the people by increasing prices unjustly or by monopolizing

⁴¹ al-Māwardī, 2006, p. 337

⁴² al-Ghazālī, *Iḥyā’ ‘Ulūm al-Dīn*, vol. 2, p. 332

⁴³ al-Māwardī, 2006, pp. 338–340

goods... Hisbah is instituted to prevent injustice and to command justice in the market.”⁴⁴

He stressed that the freedom of the market is not absolute in Islam but must be balanced by justice and public welfare (‘*adl* and *maslahah*). Thus, Hisbah operates as a dynamic tool for ensuring that economic activity remains within ethical bounds.

3.4 Case Example: Hisbah under Caliph ‘Umar ibn al-Khaṭṭāb

The institution of *ḥisbah* reached a notable level of development and enforcement under the caliphate of ‘Umar ibn al-Khaṭṭāb (r.a.), the second Rightly Guided Caliph. His governance is often cited as a paragon of administrative justice and accountability, particularly in market regulation and consumer protection. As a leader deeply concerned with the welfare of his subjects, ‘Umar established a network of market inspectors (*muḥtasibūn*) whose primary responsibility was to ensure ethical practices in commercial transactions, prevent fraud, and protect consumers from exploitative behaviour. One widely referenced incident involves a milk seller who attempted to dilute her milk with water to increase profit. When ‘Umar was made aware of the act, he visited the woman and rebuked her directly, stating:

How can you deceive the Muslims? Will you cheat them and not fear Allah?⁴⁵

This anecdote is not only illustrative of his personal commitment to market integrity but also demonstrates the operative role of the *ḥisbah* in monitoring and correcting unethical behavior at the grassroots level. Another example is Caliph ‘Umar’s intervention in price manipulation (*al-ghabn al-fāḥish*). When some merchants hoarded goods in anticipation of higher prices, he warned them against engaging in monopolistic practices (*iḥtikār*), which could harm consumers by artificially inflating the cost of essential commodities. He is reported to have said: Let not the traders raise prices among the Muslims, for I will surely intervene to protect the people.⁴⁶

Umar also implemented standards for weights and measures, understanding that subtle manipulation in this area could lead to systemic injustice. He established designated officials responsible for verifying the accuracy of scales and measuring instruments used in the market, and

⁴⁴ Ibn Taymiyyah, 1994, pp. 28–30

⁴⁵ Ibn Sa‘d, M. (1990). *Al-Ṭabaqāt al-Kubrā* (Vol. 3). Beirut: Dār Ṣādir, p. 272

⁴⁶ al-Māwardī, *al-Aḥkām al-Sulṭāniyyah*, p. 244

would punish offenders publicly to deter further malpractice. This aligns with the Qur’anic injunction:

Give full measure and weight with justice; do not
diminish the goods of others...⁴⁷

Furthermore, ‘Umar held even prominent individuals accountable. A famous report states that he once penalized his own son for accepting favors in a trade transaction that would have given him undue advantage. This uncompromising stance on justice reflects a deeply embedded ethical standard in early Islamic governance. Through such measures, Caliph ‘Umar institutionalized a practical and enforceable consumer protection framework that functioned on both moral and legal levels. His administration exemplifies how Islamic governance can harmonize legal doctrine with real-world enforcement to uphold consumer rights, prevent exploitation, and maintain economic fairness.

4.2 Contemporary Institutional Equivalents of Ḥisbah

Although the classical office of the *muḥtasib*—the official charged with market oversight and public morality under Islamic law—has largely disappeared from contemporary governance structures, several modern Muslim-majority countries have established institutional mechanisms that reflect its functional objectives. These institutions, though adapted to national legal systems and modern regulatory frameworks, maintain the core goals of protecting consumers, preventing fraud, and upholding Islamic ethical norms in economic and social life.

Saudi Arabia: The Committee for the Promotion of Virtue and the Prevention of Vice

In Saudi Arabia, the most direct institutional descendant of the classical *ḥisbah* system is the *Hay’at al-Amr bi-l-Ma’rūf wa-l-Nahy ‘an al-Munkar* (Committee for the Promotion of Virtue and the Prevention of Vice).⁴⁸ Historically empowered to monitor public behavior and commercial transactions, the committee operated as a moral police force charged with enforcing Islamic norms, including market integrity, modesty, and religious observance. Though its authority has been curtailed significantly in recent years—particularly under reforms initiated by Crown Prince Mohammed bin Salman—the committee still retains a symbolic and moral role in promoting ethical behaviour, consistent with the Qur’anic directive:

⁴⁷ Qur’an 11:85

⁴⁸ Muhammad ibn al-‘Uthaymīn, *al-‘Amr bi-l-Ma’rūf wa-l-Nahy ‘an al-Munkar* (Dār al-Thurayyā 2004) 77

Let there arise out of you a group of people inviting to all that is good (*ma'rūf*), enjoining what is right and forbidding what is wrong (*munkar*)...⁴⁹

Scholars have noted that this body, despite its controversial methods, represents a modern attempt to institutionalize Islamic public ethics, including elements of consumer protection and market oversight.⁵⁰

Malaysia: Regulatory Harmonization with Shariah Principles

In Malaysia, the legal framework for consumer protection is rooted primarily in civil law, especially the Consumer Protection Act 1999, which addresses unfair trade practices, product liability, and consumer redress. However, in sectors such as Islamic finance, a distinctly Islamic institutional arrangement exists: Shariah Advisory Councils at both national and institutional levels. These councils are tasked with ensuring that financial products and services comply with the ethical and legal norms of Shariah, including transparency (*kashf*), avoidance of interest (*riba*), and prohibition of deceptive practices (*tadlīs*).⁵¹ This dual system—secular regulatory authority alongside Islamic legal advisory—illustrates a harmonized approach in which classical fiqh principles are adapted to modern administrative structures. As observed by Mohammad Hashim Kamali,⁵² these Shariah bodies function as “ethical watchdogs,” preserving consumer trust in the integrity of Islamic financial institutions.

Nigeria: Revival of Hisbah in Northern States

In Northern Nigeria, particularly in states that have adopted aspects of Shariah criminal and civil law, there has been a revival of *Hisbah* institutions as part of broader Islamic governance initiatives. States such as Kano, Zamfara, and Sokoto have formally established *Hisbah* Boards tasked with monitoring public morality, market fairness, and commercial ethics.⁵³ These institutions draw inspiration from classical Islamic governance but operate within the framework of Nigeria’s federal legal system, which sometimes results in legal ambiguities and jurisdictional disputes.⁵⁴ In Kano State, for instance, the *Hisbah* Board has intervened in market practices by inspecting weights and measures, preventing price gouging, and resolving disputes between buyers

⁴⁹ Qur’ān 3:104

⁵⁰ Ibid, 77

⁵¹ Mohammad Hashim Kamali, *Shariah Law: An Introduction* (Oneworld Publications 2008) 145

⁵² Ibid, 145

⁵³ Ibrahim Barkindo, *The Role of the Institution of Hisbah in the Sharia Implementing States in Northern Nigeria* (LLM thesis, Ahmadu Bello University Zaria 2007) 110

⁵⁴ Ibid, 110

and sellers. However, critics argue that the scope of their powers is not always clearly defined, raising concerns about overreach and the need for procedural safeguards.

Comparative Observations

Despite their varied structures and mandates, these contemporary institutions embody the spirit of classical *ḥisbah*—the pursuit of justice, ethical conduct, and protection of the vulnerable. While the classical *muḥtasib* was often a jurist appointed by the caliph, today's equivalents range from quasi-judicial regulatory bodies to Shariah advisory institutions integrated within secular states. As such, the enduring relevance of *ḥisbah* reflects the adaptability of Islamic jurisprudence in promoting consumer protection within both traditional and modern frameworks.

Conclusion and Recommendations

This paper examined the legal and institutional framework for consumer protection in classical Islamic jurisprudence, demonstrating that Islamic law offers a comprehensive and ethically grounded approach to regulating market behavior and safeguarding consumer interests. Rooted in the Qur'ān and Sunnah, the Islamic framework integrates both individual accountability and state responsibility in ensuring transparency, fairness, and justice in commercial transactions.

The analysis revealed that classical jurists developed robust legal doctrines under *Fiqh al-Mu'āmalāt*, such as the prohibition of *tadlīs* (fraud), *gharar* (excessive uncertainty), and unjust enrichment, along with mechanisms like *khiyār al-'ayb* to protect buyers. Furthermore, the institution of *ḥisbah*, and the role of the *muḥtasib*, played a pivotal role in enforcing ethical standards in marketplaces, thereby institutionalizing consumer protection as a public obligation. The paper also explored contemporary institutional equivalents of *ḥisbah* in Muslim societies. It found that while countries such as Saudi Arabia and Malaysia have retained elements of Islamic oversight in public and financial life, others, such as Nigeria, particularly in the northern Sharia-implementing states, have restricted *Hisbah*'s role primarily to the enforcement of public morality. This represents a major departure from the classical Islamic model, where market regulation and consumer protection were central to the duties of the *muḥtasib*.

The findings indicate a need to revisit and revitalize classical Islamic legal principles and institutions, adapting them to the demands of contemporary consumer environments. Islamic consumer protection is not merely a moral discourse; it is a legal and institutional imperative that

remains relevant in addressing challenges arising from globalization, digital markets, and regulatory gaps in many Muslim-majority societies. Against this, this paper make the following recommendations;

1. **Reform and Realignment of Modern Hisbah Institutions:** Hisbah bodies, particularly in contexts such as Northern Nigeria, should undergo institutional reform to align more closely with the classical model. Their mandates should be expanded beyond moral policing to include oversight of commercial practices, enforcement of fair-trading standards, and protection against consumer exploitation.
2. **Integration of Fiqh al-Mu‘āmalāt into Contemporary Legal Frameworks:** Legislators in Muslim-majority countries should integrate the principles of *Fiqh al-Mu‘āmalāt* into statutory consumer protection laws. This includes incorporating concepts such as *khiyār al-‘ayb*, *gharar*, and *tadlīs* into modern codes governing contracts, trade, and e-commerce.
3. **Revival of the Ethical Role of the State in Market Regulation:** The role of the state as an enforcer of justice in economic life should be reasserted, following the model of Caliph ‘Umar ibn al-Khaṭṭāb and other early Muslim leaders. Governments should establish or empower institutions to monitor weights and measures, inspect product quality, and prevent unethical market behavior.
4. **Establishment of Islamic Consumer Protection Bodies:** Independent or semi-autonomous Islamic consumer protection bodies should be established to advocate for Shariah-compliant goods and services, especially in sectors such as halal products, Islamic finance, and public health. These bodies could serve as watchdogs and educational platforms for both consumers and businesses.
5. **Capacity Building and Public Awareness:** Efforts should be made to educate both consumers and merchants about their rights and responsibilities under Islamic law. This includes incorporating consumer education into religious institutions, public campaigns, and formal education systems to promote ethical consumption and responsible trade.
6. **Interdisciplinary Collaboration for Policy Development:** Policymakers, Islamic legal scholars, economists, and civil society actors should collaborate in developing context-specific consumer protection policies that are both effective and faithful to Islamic legal principles.

