

AMENDMENT IN EXPLOSIVE SUBSTANCES ACT 1908.

The Explosive Substances Act 1908 was enacted to provide punishment for attempting or causing explosion to endanger life or property. Besides, it also prohibits manufacturing and possessing explosive substance for any other purpose other than a lawful. The Act not only provides adequate punishment for contraventions but also exceptionally shifts onus of burden on the possessor to justify the possession or control of such substance.

Section 2 defines the explosive substances whereas; section 3 provides punishment for causing explosion likely to endanger life or property. Section 4 and 5 provides punishment for attempt to cause explosion and making or keeping explosives with intent to endanger life/property or under suspicious circumstances. Section 6 provides punishment for abettor.

Section 7 lays embargo that no Court can take cognizance of an offence under the Act unless the Provincial Government has given consent for trial. For convenience, the said section is reproduced herein below which reads as under:

7. Restriction on trial of offence.—No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the Provincial Government.

Perusal of above provision reveals that the prosecution sanction for holding trial under Explosive Substances Act is mandatory and condition precedent for prosecution of an accused under the Act. In absence of the requisite sanction/permission, no court could take cognizance of the case and where trial has proceeded without such sanctions the entire proceedings would be without Jurisdiction and shall stand vitiated.

Generally the court having jurisdiction may try any offence without seeking prior sanction from any authority but by imposing the restriction of prosecution sanction the legislature intends to provide opportunity to the sanctioning authority to go through the facts and circumstances of the case so that innocent person could be protected from prosecution. Section 7 of the Explosive Substance Act vests power in the Provincial Government to direct by whom and in what manner the prosecution is to be conducted. However, in according or

withholding such sanction, the Government has to act in its executive capacity.

It is pertinent to mention here that with the passage of time the subject provision has become a clog and act as impediment in the expeditious disposal of cases. It has been experienced that the Prosecution took months or even years, to get sanction from the appropriate authority and resultantly the accused person has to remain in judicial custody without trial. Recently, the daily "Dawn" highlighted a case in which despite lapse of five years prosecution could not succeed to get sanction from the provincial Government and consequently the District and Sessions Judge, Karachi (West) has to issue orders for trial at his own.

Precisely stated facts of the case as gleaned from the news item are that on July 21, 2002, one Hafiz Qasim was arrested from Jackson police limits for possessing illegal weapons. During interrogations, the accused disclosed that he had concealed some explosive substance in a vacant plot in Gulshan-i-Sikandar, Keamari. The police dug up the plot and recovered 625 grams of explosive substance and accordingly a case FIR No. 11/02 under section 4/5 of the Explosive Act read with section 7 of Anti-terrorism Act was got registered against him.

After investigation, the case remained pending in court for want of mandatory prosecution sanction from the Provincial Home Department. However, after lapse of five years, the case is being proceeded on the directions of District and Sessions Judge, Karachi (though not competent to issue such orders under section 7 of the Explosive Substance Act). The Staff Reporter after quoting the case has stressed upon the need to amend section 7 to authorize the Sessions Judges to accord such permission.

It is suffice to add here that there are number of reported cases where accused persons allegedly involved in such cases had to remain in judicial custody for months or even for years without trial for want of prosecution sanction. Expeditious and fair trial is a right of every accused and the inability of prosecution to get sanction should not be accommodated otherwise it would amounts punishment of under trial prisoner without trial.

Section 7 tells that the permission of the provincial government is mandatory in all the cases registered under the Explosive Act and non-compliance would render the proceeding/trail void so

courts have to keep the case pending until such time when the permission is granted. Besides, delaying trials, this condition not only burdens the jails but also add miseries of detainees and their kin. A relief can be given by prescribing a time limit for prosecution to get such sanction and in case of failure, the court may be let at liberty to proceed with the trial and in such circumstances, it would be presumed that the competent authority has accorded sanction as required under section 7.

In view of the above, it is proposed that a proviso to section 7 may be added that if the required sanction is neither received nor refused within sixty days after registration of the case by the provincial Government it shall be presumed that such sanction have been duly accorded. Accordingly, the matter is placed before the Law and Justice Commission of Pakistan for deliberation.

LEGISLATIVE PROPOSAL

Existing	Proposed
7. Restriction on trial of offence.—No Court shall proceed to the trial of any person for an offence against this Act except with the consent of the Provincial Government.	<p>No change</p> <p>“Provided that if the sanction is neither received nor refused within sixty days of the registration of case by the Government, such sanction shall be deemed to have been duly accorded.</p>

Commission’s Deliberations on 05 December, 2009

The Commission considered the issue regarding restriction on trial of criminal offence under section 7 of Explosive Substantive Act 1908 until obtaining of consent of the Provincial Government. The Commission approved the proposed proviso that if the sanction is neither received nor refused within 60 days of registration of case by the Government, such sanction shall be deemed to have been duly accorded and the concerned criminal court is competent to try the accused.