

**Repeal of Obsolete and Redundant
Legislation**

Report No. 126

REPEAL OF OBSOLETE AND REDUNDANT LEGISLATION

(i) The West Pakistan Prohibition of Smoking in Cinema Houses Ordinance, 1960

The West Pakistan Prohibition of Smoking in Cinema Houses Ordinance, 1960 was promulgated on 6th February, 1960. The object of enactment was to prohibit the smoking in Cinema Houses in the province of West Pakistan. It was extended to the whole of the Province of West Pakistan, except the Federal Capital and the Special Areas. After disintegration of One Unit, the Ordinance has been adopted by the provinces and presently it is applicable as under:-

- (i) The Balochistan Prohibition of Smoking in Cinema Houses Ordinance 1960.
- (ii) The NWFP Prohibition of Smoking in Cinema Houses Ordinance 1960.
- (iii) The Punjab Prohibition of Smoking in Cinema Houses Ordinance 1960.
- (iv) The Sindh Prohibition of Smoking in Cinema Houses Ordinance 1960.

Section 3 of the Ordinance prescribes penalty for smoking in Cinema Houses; whereas, section 4 empowers any police officer not below the rank of Sub-inspector to arrest and release the offender on bail for appearing before the Magistrate. Section 5 relates to responsibility of Management of the cinema houses to post and exhibit notices for prohibition of smoking. For convenience the relevant provisions are reproduced herein below: -

3. Penalty for smoking in Cinema Houses.—Whoever smokes, during any performance, demonstration or exhibition, in any participant of a cinema house reserved for the audience or the spectators, shall be punished with fine which may extend to one hundred rupees.

Explanation—For the purpose of this section, a performance, demonstration or exhibition shall be deemed to commence when the audience or the spectators have entered the cinema house to witness the performance, demonstration or exhibition therein and to continue until they have left the house after the final closing of the performance, demonstration or exhibition.

4. Power to arrest without warrant.—Any police officer not below the rank of Sub-inspector may arrest without warrant any person who in his presence commits an offence punishable under section 3, but shall release him on his personal bond for attendance before a Magistrate on a specified date.

5. Management to post notices or exhibit slides.—

(1) The management shall bring to the notice of the audience or the spectators by posting notices prominently or by exhibiting slides, that any person smoking during a performance, demonstration or exhibition, in any participant of a cinema house reserved for the audience or spectators, shall be liable to arrest without warrant and to fine.

(2) Whoever contravenes the provisions of subsection (1) shall be punished with fine which may extend to one hundred rupees.

As per section 6, the District Magistrate or any officer authorized by him is empowered to exempt any cinema house or any performance, demonstration or exhibition from the application of this Ordinance.

It is pertinent to mention here that on June, 30th 2003, the President of Pakistan in exercises of powers conferred under the Provisional Constitution Order No.1 of 1999, read with the Provisional Constitution (Amendment) Order No. 9 of 1999 promulgated the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002. The object of this enactment is to prohibit the smoking and other tobacco use in places of public work or in public service vehicles to protect environment and health

of the non-smokers. Clause (c) of section 2 defines place of public work or use as under:-

- (c) **“place of public work or use”** means any place declared as such under section 3 and includes auditoriums, building, health institutions, amusement centres, restaurants, public offices, court building, **cinema halls**, conference or seminar halls, eating houses, hotel lounges, other waiting lounges libraries, bus stations or stands, sports stadiums, educational institutions, libraries and the like which are visited by general public but does not include any open place;

The Ordinance does not only prohibit advertisement of cigarettes and tobacco products but also restricts sale of cigarettes and other smoking substances in the vicinity of educational institutions and to the minors. As per section 10, the owners or managers of public places are under obligation to display and exhibit boards regarding declaration of No Smoking Zones and publicity of Smoking as an offence in and outside the premises. The relevant provisions are reproduced herein below for convenience:-

5. Prohibition of smoking and other tobacco use.—No person shall smoke or use tobacco in any form in any place of public work or use. The Federal Government may however issue guidelines for permitting designated smoking areas in premises or places where adequate arrangements are made to protect the health of non-smokers.

10. Display and exhibition of board.—The owner or manager or in charge of the affairs of every place of public work or use shall display and exhibit a board at each conspicuous place in and outside the premises visited or used by general public prominently stating that the place is a **“No Smoking Zone”** and that **“Smoking is an Offence”**.

Section 11 of the Ordinance provides punishments for contravention of aforesaid provisions which read as under:-

11. Penalties.—Any persons, who contravenes the provisions of—

- (a) Section 5, 6 or 10 shall be punishable with fine which may extend to one thousand rupees and in case of second or subsequent offence, shall be punishable with a fine which shall not be less than one thousand rupees, and may extend to one hundred thousand rupees; and
- (b) Section 7, 8 or 9 shall be punishable with fine which may extend to five thousand rupees and in case of second or subsequent offence, shall be punishable with imprisonment which may extend to three months, or with a fine which shall not be less than one hundred thousand rupees, or with both.

It is note-worthy to mention here that besides authorizing all police officers of the rank of Sub-Inspector and above, the Federal Government in exercise of powers conferred under Section 4(1) has also authorized the managers of restaurants, entertainment houses including **cinemas**, theaters, studios of TV, Radio, etc in respect of their own establishment regarding sections 5, 10, 12 and 13.

Comparative study of above Ordinances reveals that the West Pakistan Prohibition of Smoking in Cinema Houses Ordinance, 1960 was promulgated just to prohibit smoking in a specific areas i.e. Cinema Houses; whereas, the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002 prohibits smoking and other tobacco use in places of public work (including cinema houses) and even in public service vehicles. Moreover, the recent enactment also provides punishments for publicity of smoking substances and its sale in the vicinity of educational institutions and to minors. After having gone through the provisions of Ordinance, 2002, it could be concluded that it has wider scope of application and includes all places which are being visited by the general public.

In view of the above, it is submitted that the West Pakistan Prohibition of Smoking in Cinema Houses Ordinance, 1960 has lost its importance and most of its provisions are included in the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002 which is a new, exhaustive and consolidated law on the subject. Therefore, retention of West Pakistan Prohibition of Smoking in Cinema Houses Ordinance, 1960 on statute book is of no avail. Thus it is proposed that the Law and Justice Commission of Pakistan may recommend that the West Pakistan Prohibition of Smoking in Cinema Houses Ordinance, 1960 be repealed.

Commission's deliberations on 19th May, 2012

The Commission considered the proposal and deliberated that the West Pakistan Prohibition of Smoking in Cinema Houses Ordinance, 1960 has lost its importance/effectiveness after promulgation of the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002. The most of the provisions of West Pakistan Prohibition of Smoking in Cinema Houses Ordinance, 1959 are covered in the Ordinance, 2002 which is new exhaustive and consolidated law on the subject. After deliberations, the Commission approved the proposal.

Draft Bill amendment of the law is hereby enclosed.

A

Bill

to repeal the West Pakistan Prohibition of Smoking in Cinema House Ordinance, 1960 (Ordinance No. IV of 1960)

WHEREAS, it is expedient to repeal the West Pakistan Prohibition of Smoking in Cinema Houses Ordinance, 1960.

It is hereby enacted as follows:-

1. Short title and Commencement.— (1) This Act may be called the West Pakistan Prohibition of Smoking in Cinema Houses Ordinance, (Repeal) Act, 2012.

(2) It shall come into force at once.

2. Repeal of West Pakistan Prohibition of Smoking in Cinema Houses Ordinance, 1960.— The West Pakistan Prohibition of Smoking in Cinema Houses Ordinance, 1960 (Ordinance No. IV of 1960) is hereby repealed.

(ii) The West Pakistan Juvenile Smoking Ordinance, 1959

The West Pakistan Juvenile Smoking Ordinance, 1959 was promulgated to prevent the smoking of tobacco by the juvenile and to consolidate the existing laws on the subject. It was extended to the whole of the then Province of West Pakistan, except the Special Areas. Section 3 of the Ordinance prescribes penalty for selling of tobacco to juveniles; whereas, section 4 empowers a class of persons including police officers to seize tobacco smoked by the juvenile in public place. For convenience, the relevant provisions are reproduced herein below:-

3. Penalty for selling tobacco to juvenile.—(1) Whoever sells or gives or attempts to sell or gives tobacco to a juvenile, whether for his own use or not, shall be punished in the case of a first offence with fine which may extend to twenty rupees and in the case of a second offence with a fine which may extend to fifty rupees and in a case of a third or subsequent offence with fine which may extend to one hundred rupees.

(2) If a person convicted under the last preceding subsection holds a dealer's license under the West Pakistan Tobacco Vend Act, 1958, his conviction under this section shall be notified by the Magistrate to the District Excise and Taxation Officer concerned so as to enable him to cancel the convict's license.

4. Seizure of tobacco smoked by a juvenile in a public place.— If any juvenile be found smoking tobacco in any public place, it shall be lawful for any teacher or proctor of a recognized school or affiliated college or any other person authorized by Government in this behalf to seize such tobacco and destroy it.

As per section 5, the Government of West Pakistan may frame rules for carrying out the purposes of this ordinance.

It is pertinent to mention here that on June, 30th 2003, the President of Pakistan in excises of powers conferred under the Provisional Constitution Order No.1 of 1999, read with the

Provisional Constitution (Amendment) Order No. 9 of 1999 promulgated the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002. The object of this enactment is to prohibit the smoking and other tobacco use in places of public work or in public service vehicles to protect environment and health of the non-smokers.

The Ordinance does not only prohibit smoking at public places, public service vehicles and advertisement of cigarettes/tobacco products but also restricts sale of cigarettes and other smoking substances in the vicinity of educational institutions and to the minors. The relevant provisions are reproduced herein below for convenience:-

8. Prohibition of sale of cigarettes, etc, to minors.— No person shall sell cigarettes or any other smoking substance to any person who is below the age of eighteen years.

9. Prohibition of storage, sale and distribution of cigarettes, etc., in the immediate vicinity of educational institution.— No person shall himself or by any person on his behalf, store, sell or distribute cigarettes or any other smoking substance or any other tobacco products within 50 (fifty) meters from any college, school or educational institution.

Section 11 of the Ordinance provides punishments for contravention of aforesaid provisions which read as under:-

11. Penalties.—Any persons, who contravenes the provisions of—

- (a) Section 5, 6 or 10 shall be punishable with fine which may extend to one thousand rupees and in case of second or subsequent offence, shall be punishable with a fine which shall not be less than one thousand rupees, and may extend to one hundred thousand rupees; and
- (c) Section 7, 8 or 9 shall be punishable with fine which may extend to five thousand rupees and

in case of second or subsequent offence, shall be punishable with imprisonment which may extend to three months, or with a fine which shall not be less than one hundred thousand rupees, or with both.

Comparative study of above Ordinances reveals that the West Pakistan Juvenile Smoking Ordinance, 1959 was promulgated just to prohibit selling of tobacco to Juveniles. On the other hand, the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002 prohibits smoking and other tobacco use in public places and also provides punishments for sale of tobacco products in the vicinity of educational institutions and to a person below the age of 18 years. After having gone through the provisions of Ordinance 2002, it could be concluded that the recent legislation has wider scope of application and includes more effective measure to prevent smoking of tobacco by a juvenile.

In view of the above, it is submitted that the West Pakistan Juvenile Smoking Ordinance, 1959 has lost its importance and its provisions are covered in the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002 that is a new, exhaustive and consolidated law on the subject. Therefore, retention of West Pakistan Juvenile Smoking Ordinance 1959 on statute book is of no avail. Thus, it is proposed that the Law and Justice Commission of Pakistan may recommend that the West Pakistan Juvenile Smoking Ordinance, 1959 be repealed.

Commission's deliberations on 19th May, 2012

The Commission deliberated that as presently the cases related to smoking are dealt in accordance with the provisions of the Prohibition of Smoking and protection of Non-Smokers Health Ordinance, 2002 which is fairly modern and more comprehensive in its scope, therefore, the West Pakistan Juvenile Smoking Ordinance, 1959 may be repealed.

Draft Bill for amendment of the law is hereby enclosed.

A

Bill

to repeal the West Pakistan Juvenile Smoking Ordinance, 1959.

WHEREAS, it is expedient to repeal the West Pakistan Juvenile Smoking Ordinance, 1959 (Ordinance No.XII of 1959).

It is hereby enacted as follows:-

1. Short title and Commencement.— (1) This Act may be called the West Pakistan Juvenile Smoking Ordinance(Repeal) Act, 2012.

(2) It shall come into force at once.

2. Repeal of the West Pakistan Juvenile Smoking Ordinance, 1959.— The West Pakistan Juvenile Smoking Ordinance, 1959 (Ordinance No. XII of 1959) is hereby repealed.