

Report on law relating to prohibition of Smoking in Public Places and Prohibition Of Access to Smoking and Tobacco Products by Juvenile.

The Government of Bangladesh referred the matter relating to making a draft law on prohibition of smoking in Public Places by a Memo bearing No dated 21-9-2000. The text of reference runs as follows:

MYcRvZ šx evsj vṭ` k mi Kvi
AvBb, wePvi l msm` wel qK gš Yvj q
tj wRmṭj wUf WvdwUs DBs

bs 475 AvBb-cYqb 10/2000
Zwi Lt 21/09/2000 Bs

wel qt agcvb wbqšY AvBb cYqb cṭṭ½|

GKwU hṭMvcṭhvMx agcvb wbqšb AvBb cYqṭb ci vḡkṃmn
Lmov ^Zix Kṭi mi Kvi ṭK mṭṭhwmZv Ki vi Rb` gvbbxq AvBb,
wePvi l msm` wel qK gšx gṭnv` ṭqi Abṭi va mṭṭj Z
`ē`vLwvqZ ṭbvṭUi GKwU Abṭj wC AvBb Kwḡkṭbi m` q e`e`v
MṭṭYi Rb` GZ` mṭṭM ṭcṭ Y Ki v nBj |

(mvj gv webṭZ
Kw` i)
Dc -mṭPe
(WvdwUs)

Bnv meRb `xKZ th, agcvb `vṭ`i Rb` ṭwZKi | hṭ Zṭ
agcvṭbi Kvi ṭY Aagcvqx e`w³ Mbl kwii xKfṭe ṭwZMṭ` nb|
hvbevb, nvmcvZvj , wkṭv-cṭZōvbm n Rbm vavi ṭYi e`envhṃ
feb l `vṭb ṭKvb i Kg wewa wṭl a QvovB agcvb Pṭj | GṭZ
cwi ṭek `yl Z nq Ges G Ae`v `Rb`vṭ`i Rb` nwbKi |
cṭ`exi cṭq DbZ l Dbṭbkxj ṭṭk hṭ Zṭ agcvb wṭl x Ki v
nṭqṭQ| Avgvṭ`i ṭṭkl Rbm vavi ṭYi e`envhṃ `vṭb agcvb
wṭl x Ki v Rb`vṭ`i GKvš cṭqRb|

eZḡvṭb Avgvṭ`i ṭṭk agcvb cṭZṭi va wel qK wbæewYZ
`ylU AvBb (cZvKv-ōKō) i ṭqṭQ, h_vt-

- (১) Juvenile Smoking Act, 1919 (Ben. Act II of 1919);
- (২) Prohibition of Smoking in Show Houses Act, 1952 (E.B. Act XIII of 1952).

Dcwi D³ `ylU AvBb Øvi v h_vṭ ṭg 16 ermṭi i Kg eqṭmi
wKṭkvi ṭ`i wṭKU wewo, wṭMvṭi U, BZ`w` wewṭ Ki v Ges ṭcṭṭ vMṭ
ev wṭṭbgvṭj agcvb wṭl x Ki v nṭqṭQ| cṭṭṭ³ AvBbwUi

cġqvM XvKv Qvov Abġ AvġQ wKbv Avgvġ`i Rvbv tbB| tm hvġnvK, Dġġi v³ `yU AvBb agcvġbi wei c cġve nġZ cwi etk l Rb` vġ_ġ mnvqK tKvb fġgKv i vLġZ cvi ġQ etj gġb nq bv| GgZve`vq, D³ `yU AvBb evwZj Kġi Rbmvari ġYi e`envh^o `vbm n weġkl weġkl `vb, feb, hvbevb, BZ`w`ġZ agcvb wbw l x Kivi Rb` hġMvcġhvMx bġZ b AvBb cġYqb mgġqi `vex| Dġj L`, `yU AvBġbi cġkvb `v` gšYvj ġqi Dġi b` Ges cġ vweZ AvBb cġYqġbi Dġ` vM tbqvi `wqZġ D³ gšYvj ġqi |

gvbbxq AvBb, wePvi l msm` wel qK gšx G e`vcvġi LġB DwØMġ agcvb wbqšY Kiv j ġġ` GKwU hġMvcġhvMx AvBġbi Lmov cġYqġbi Rb` AvBb KwgkġK Abġi va Kivi wbwgġ wZwb ġgšwLKfvġe wbġ` ġ w`ġqġQb| Abġgww`Z nġj, gvbbxq gšxi Awfcġq AvBb KwgkġK Rvbvġbv thġZ cvġi | gvbbxq gšxi m`q Abġgv`b mvġcġġ, AvBb Kwgkġbi gvbbxq tPqi g`vbġK Avġj vP` wel ġq GKwU AvBġbi Lmow tġY Kivi Rb` Abġi va Kiv nġe| AvBb Kwgkb nġZ Lmov cvl qv tMġj ZrwfwġġZ cġPwj Z wbgg Abġhvqx AvBb cġYqġbi Dġ` vM tbqvi Rb` `v` gšYvj qġK ci vgk^ot` qv nġZ cvġi |

(mvj gv webġZ Kw`i)
Dc -mwPe (Wġd wUs)

(gnv^ošv` Avej evkvi fġT v)
AwZwi ³ mwPe (Wġd wUs)

After having the reference the Law Commission collected and studied laws relating to prohibition of smoking in public places from Bangladesh (The Juvenile Smoking Act 1919, the East Bengal Prohibition of Smoking in Show Houses Act, 1952), India , Maharashtra (The Maharashtra Prohibition of Smoking in Public Places and Prohibition of Access to Tobacco Products by Minors Act, 2000), Sri Lanka (The National Authority on Tobacco and Alcohol Act of 1999), Singapore Smoking (Prohibition in Certain Places) Act, 1992 , Malaysia (Control of Tobacco Product Regulations), 1993 and Control of Tobacco Product (Amendment) Regulations (1997) and New Zealand (Smoke Free Environments Act,1990 and Smoke Free Environments Amendment Act,1997).

Bangladesh Perspective:

From the study of the Juvenile Smoking Act, 1919 it transpires that the object of this law was to make provision for the prevention of smoking by young persons and section 3 of the Act is the key section which has made the provision of prohibition against the sale of tobacco. etc to young persons below the age of sixteen years . The Act has been made applicable to Dhaka in the first instance and the Government has been empowered from time to time to extend this Act to any

other town or places in Bangladesh by notification in the Official Gazette. The Law Ministry reference itself revealed that Government is not aware whether the Act has been extended to any town or place other than Dhaka. The Act has made it punishable to a fine not exceeding ten rupees for selling of tobacco to young persons under the age of sixteen years and in the case of second offence to a fine not exceeding twenty rupees and in the case of a subsequent offence to a fine not exceeding fifty rupees.

The East Bengal Prohibition of Smoking in Show Houses Act, 1952 has prohibited smoking during demonstration or exhibition. in any part of Show house reserved for the audience or the spectators. Contravention of the provision of this Act has been made punishable with fine which for a first offence may extend to twenty five rupees and for a second or subsequent offence to hundred rupees. This law has empowered any police officer not below the rank of Sub-Inspector to arrest any person committing in his presence an offence under section 3 without warrant.

Maharashtra (India) Perspective:

It reveals from the study of the Maharashtra law to prohibit the sale of tobacco products below the age of 18 years and to protect the non-smokers against the inconvenience and discomfort of passive smoking and to contribute to the development of a non-smoking environment and also to prohibit .smoking in public vehicles and further to restrict or prohibit smoking in places of public work .Distribution, sale or storage for sale any tobacco product within any place of public work or use have been prohibited and contravention of this provision has been made a cognizable and bailable offence . All offences under this Act shall be tried summarily.

Sri Lankan Perspective:

It appears from the Srilankan law with regard to prohibition of Smoking that the law has prohibited promotion , selling, offering for sale any tobacco product or alcohol within the radius of one hundred metres of any premises frequented mainly by children or young adults. The law prohibits vending machines and sell service methods of dispensing tobacco and alcohol products, manufacture or sell of tobacco products which are smokeless, sell of tobacco products without health warning and the tar and nicotine contents in each cigarette, alcohol and tobacco advertisement, free distribution of tobacco and

alcohol products, any kind of sponsorships. Contravention of the provision of the Act has been made punishable and triable by the Magistrate summarily.

New Zealand Perspective:

New Zealand enacted Smoke-Free Environments Act 1990 (hereinafter referred to be the Act) whereby attempts were made to save the non smokers from the detrimental effects on their health by smoking by others. The provision of this Act sought to regulate the marketing, advertising and promotion of tobacco products either directly or through sponsoring of other products, services or events. The Act is divided into 3 parts. Part I relates to Smoke-Free Indoor Environments part II deals with Tobacco Producers Control and part III relates to Health Sponsorship Council. The Act has prohibited selling of any tobacco products to persons who is younger than 18 years. The Act has made provision to prepare a written policy on smoking by the employers and the contravention of this provision has been made an offence and offender has been made liable to pay a fine. This Act has made provisions relating to prohibition of smoking on air craft, and restricted smoking in passenger or service vehicles, on ships and trains, in passenger lounges and waiting rooms in restaurants and in casinos. The Act subject to certain exceptions prohibits publication, arrangement for any other person to publish any tobacco product advertisement in New Zealand. Prosecution for an offences against any provision of the part I of the Act only be commenced on the information of a person appointed under the Act.

Malaysian Perspective:

Malaysia provided for Control of Tobacco Product Regulations 1993 under Food Act 1993. This Regulation Prohibited advertisement of tobacco products, giving free sample of tobacco products and sponsorship of tobacco product. This regulation provided for printing or marking in prominent position on every container of cigarette and prohibited sale of tobacco product to person under 18 years, placing of vending machine in amusement centers, theaters, hospitals and clinics, public lifts, air conditioned eating house, public passenger carrying vehicles and in any specified building. Violation of the provisions of the Regulation has been made penal.

Singapore Perspective:

Singapore has made provision of prohibition of Smoking in certain places. The Act has provided a provision which empowers the Minister to prohibit

smoking in specified places and vehicles .Any person who smokes in any specified place or specified vehicles in contravention of any notification made by the Minister shall be guilty of an offence and shall be liable to fine not exceeding \$ 1000. The law casts duty upon a manager of every specified place to display notices stating therein that smoking is prohibited by law. The law has empowered the Commissioner to compound any offence under the Act or any regulations made thereunder. The Minister is empowered to make regulations to prescribe the offences which may be compounded.

Report:

The long title of the proposed Act may be: “The Prohibition of Smoking in Public Places and Prohibition of Access to Tobacco Product and Smoking by Juvenile Act, 2001.....”

In modern legislative trend, unlike previously, long preambles are generally avoided. We propose the pre-amble of the proposed Act as follows:

An Act to prohibit smoking in public places and access to Smoking and tobacco product by Juvenile in Bangladesh. Whereas it is expedient to consolidate and amend the law relating to prohibition of smoking in public places and access to smoking and tobacco product by juvenile.

The next provisions of the proposed Act may begin with the short title, extent and commencement which may be as follows:

“1. Short title, extent and commencement:-

(1) This Act may be called the Prohibition of Smoking in Public Places and Prohibition of Access to Smoking and Tobacco Products by Juvenile Act, 2001.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint .

2. The next provision may relate to applicability of the proposed Act.

‘2. Application:- This Act shall apply in prohibiting smoking in public places, of sale and distribution or storage for sale of any tobacco product within any public place, of advertisement of tobacco products and prohibiting access to smoking by Juvenile.

3. The next provision may define the various terms used in the proposed Act. These terms are as follows:

3. Definitions: In this Act, unless there is anything repugnant in the subject or context,-

- (a) “Authorized officer” means a person authorized under section 5.
- (b) “Cigarette” include cut tobacco rolled up in paper, tobacco leaf, or either mentioned in such form as to be capable of immediate use for smoking.
- (c) “Government” means the Government of Bangladesh;
- (d) “Juvenile” means person under eighteen years of age;
- (e) “Other Place” means places which are declared by the Government as prohibited places for smoking.
- (f) “Public place” means and includes show house, and auditoriums, hospitals, health institutions, religious, educational, training and research institutions, Government offices, Court buildings, libraries, shopping centres and shops, air-conditioned malls, restaurants, air-conditioned air-ports, aircraft passenger service vehicles, aircrafts, ships and trains, passenger lounges and waiting rooms, public lift, public parks, gardens, railway stations, passengers or goods carrying vehicles, Ferryghats, Steamers, launches and terminals thereof.
- (g) “Smoking” means inhaling and expelling the smoke of tobacco in any form whether in the form of cigarettes, cigar, beedies or otherwise with the aid of a pipe, wrapper, or any other instrument.

- (h) “Tobacco product” means any product containing tobacco whether smoked or consumed orally or otherwise and includes bidi, cigarette, cheroot, cigar, chutta-hookkah, tobacco, chewing tobacco, gutkha, pan masala, zarda, khaini kiwam etc.

“4. Act not in derogation of any other law. The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.”

We accordingly propose the above provisions in the proposed Act. This provision may be as follows:

4. Act not in derogation of any other law: The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

5. We propose next to deal with giving the power to the Government to authorize officers to act under this Act.

“5. Power of Government to authorize officers to act under this Act

(i) The Government may, by notification in the official gazette authorize one or more persons who shall be competent to act under this Act.

(ii) Every person authorized under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Penal Code 1860

6. We propose next to make provisions of prohibition of smoking at public places, of sale and distribution or storage for sale of any tobacco product within any public place, post of notice and advertisement of tobacco product.

6. Prohibition of smoking in public places-

No person shall smoke in public place as defined under section 3 (f) of this Act.

7. Prohibition of sale and distribution or storage for sale of any tobacco product within any public place-

(1) No person shall himself or by any person on his behalf, sell or distribute or store for sale any cigarette or tobacco product within a public place as defined under section 3 (f) of this Act.

(2) Nothing in sub section (1) of this section shall apply to any restaurant, shops and auditoriums.

8. Post of notice etc.-

- (i) The owner or persons in charge of affairs of every public place shall post and exhibit at least four boards of adequate sizes and numbers or notices written both in English and in Bengali at a conspicuous place within the no smoking area prominently stating “No smoking Zone” and “Smoking is Offence in this Zone”
- (ii) The owner of every retail outlet which deals in any tobacco product or products containing any tobacco substance shall exhibit and display at least four notices at a conspicuous place within the retail outlet stating: “Law Prohibits The Sale Of Any Tobacco Product To Anyone Under the Age of Eighteen.” and the Bengali translation thereof be also made and displayed.

9. Prohibition of advertisement of Cigarette and tobacco product-

- (i) Notwithstanding anything contained in any other law for the time being in force, no person shall display, advertise at or within any public place or on television and cable television, film, video recording, which may promote sale or usage of any tobacco product.
- (ii) Nothing in sub-section (i) of this section shall apply to any contract of advertising of tobacco product existing between tobacco company and advertising authority before commencement of this Act and this non application shall continue till the expiry of the said contract.

7. We next propose to make provision relating to prohibition of sale of tobacco product to the Juvenile in order to prevent smoking by them. Accordingly the next provision may be as follows:

10. Prohibition of sale of tobacco to Juvenile—

- (i) No person shall knowingly sell any tobacco product to anyone who is below the age of eighteen years.
- (ii) No person shall install unmanned tobacco product vending machines in any place.

8. In order to make the law effective and to secure quick implementation thereof, it is necessary to make certain penal provisions for contravention of this Act. We, accordingly, propose these provisions as follows:

11. Penalties in contravention to the provisions of this Act-

If any person contravenes the provisions of :-

- (i) Section 6,7 and 8 of this Act shall be punishable with fine which may extend to five hundred taka and in case of second or subsequent contravention he shall be punishable with a minimum fine of one thousand taka but which may extend to two thousand taka.
- (ii) Section 9 and 10 shall be punishable with fine which may extend to one thousand taka and in case of second or subsequent contravention shall be punishable with imprisonment which may extend to one month, or with a minimum fine of one thousand and five hundred taka, but which may extend to two thousand taka, or both.

9. We next propose to make provision relating to prosecution of offences.

12. Prosecution of offences-

No Magistrate shall take cognizance of an offence under this Act, except on a complaint in writing of an authorized officer or on report in writing of a police officer not below the rank of Sub-Inspector.

10. In the next place we propose to make provision for certain offences to be cognizable and bailable.

13. Offences under section 7 of this Act to be cognizable and bailable -

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 offences under section 7 of this Act shall be cognizable and bailable.

11. We are of the opinion that there should be provision for the offences under the Act to be tried summarily. So the provision in this respect may run follows:

14. Offences under the Act to be tried summarily-

All offences under this Act shall be tried summarily in the manner provided for summary trial under the Code of Criminal Procedure, 1898.

12. We think that there should be provision relating to composition of offences committed under this Act and the power of making composition of offences may rest with the government or any person authorized by it by general or special order in this behalf. This provision may run as follow:

15. Composition of offences-

The Government or any person authorized to act under section 5 of this Act by general or special order in this behalf, may either before or institution of the proceedings compromise any offences committed under this Act.

13. In addition to the above provisions, certain miscellaneous provision relating to delegation of power and rule making power are required to be made. We propose these miscellaneous provisions as follows:-

16. Delegation of power-

The Government may be notification in the official gazette, direct that any power exercisable by it under this Act may also be exercised by such public officer as may be mentioned therein, subject to such condition, if any, as may be specified therein.

17. Rule Making Power of The Government.-

The Government may make rules not inconsistent with this Act to provide for all matters which are necessary or expedient for the purpose of carrying out the provisions of this Act.

The Prohibition of Smoking in Public Places and Prohibition of Access to Smoking and Tobacco Products by Juvenile Act, 2001.

An Act to prohibit smoking in public places and prohibition of access to smoking and tobacco products by Juvenile in Bangladesh. Whereas it is expedient to consolidate and amend the law relating to prohibition of smoking in public places and by juvenile.

It is hereby enacted as follows;

1. Short title, extent and Commencement:

(i) This Act may be called the Prohibition of Smoking in Public Places and Prohibition of Access to Smoking and Tobacco Products by Juvenile Act, 2001.

(ii) It extends to the whole of Bangladesh.

(iii) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint .

2. Application: This Act shall apply in prohibiting smoking in public places, of sale and distribution or storage for sale of any tobacco product within any public place, of advertisement of tobacco products and prohibiting access to smoking by Juvenile.

3. Definitions: In this Act, unless there is anything repugnant in the subject or context,-

(a) “Authorized officer” means a person authorized under sec 5.

(b) “Cigarette” include cut tobacco rolled up in paper, tobacco leaf, or either mentioned in such form as to be capable of immediate use for smoking.

(c) “Government” means the Government of Bangladesh;

(d) “Juvenile” means person under eighteen years of age;

(e) “Other Place” means places which are declared by the Government as prohibited places for smoking.

(f) “Public place” means and includes show house, and auditoriums, hospitals, health institutions, religious, educational, training and

research institutions, Government offices, Court buildings, libraries, shopping centres and shops, air-conditioned malls restaurants, air-conditioned air-ports, aircraft passenger service vehicles, aircrafts, ships and trains, passenger lounges and waiting rooms, public lift, public parks, gardens, railway stations, passengers or goods carrying vehicles, Ferryghats, Steamers, launches and terminals thereof.

(g) “Smoking” means inhaling and expelling the smoke of tobacco in any form whether in the form of cigarettes, cigar, beedies or otherwise with the aid of a pipe, wrapper, or any other instrument.

(h) “Tobacco product” means any product containing tobacco whether smoked or consumed orally or otherwise and includes bidi, cigarette, cheroot, cigar, chutta-hookkah, tobacco, chewing tobacco, gutkha, pan masala, zarda, khaini kiwam etc.

4. Act not in derogation of any other law: The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force.

5. Power of Government to authorize officers to act under this Act:

(i) The Government may, by notification in the official gazette authorize one or more persons who shall be competent to act under this Act.

(ii) Every person authorized under sub-section (I) shall be deemed to be a public servant within the meaning of section 21 of the Penal Code 1860

6. Prohibition of smoking in public places.-

No person shall smoke in any place as defined under section 3 (f) of this Act.

7. Prohibition of sale and distribution or storage for sale of any tobacco product within any public place: No person shall himself or by any person on his behalf, sell or distribute or store for sale any tobacco product within a public place as defined under section 3(f) of this Act, other than restaurants, shops, show houses and auditoriums

8. Post of notice etc.-

- (i) The owner or persons in charge of affairs of every public place shall post and exhibit at least four boards of adequate sizes and numbers or notices written both in English and in Bengali at a conspicuous place within the no smoking area prominently stating “No smoking Zone” and “Smoking is Offence in this Zone.”
- (ii) The owner of every retail outlet which deals in any tobacco product or products containing any tobacco substance shall exhibit and display a notice at a conspicuous place within the retail outlet stating: “Law Prohibits The Sale Of Any Tobacco Product To Anyone Under the Age of Eighteen.” and the Bengali translation thereof be also made and displayed.

9. Prohibition of advertisement of tobacco products.-

- (i) Notwithstanding anything contained in any other law for the time being in force, no person shall advertise at or within any public place or on television and cable television, film, video recording, which may promote sale or usage of any tobacco product.
- (ii) Nothing in sub-section (i) of this section shall apply to any contract of advertising of tobacco product existing between tobacco company and advertising authority before commencement of this Act and this non application shall continue till the expiry of the said contract.

10. Prohibition of sale of tobacco to Juvenile. -

No person shall sell or give to a person apparently under the age of eighteen years any tobacco product.

11. Penalties in contravention to the provisions of this Act.- If any person contravenes the provisions of :-

- (i) Sections 6,7 and 8 of this Act shall be punishable with fine which may extend to one hundred taka and in case of second or subsequent contravention he shall be punishable with a minimum fine of two hundred taka but which may extend to five hundred taka.
- (ii) Sections 9 and 10 shall be punishable with fine which may extend to one thousand taka and in case of second or subsequent contravention shall be punishable with imprisonment which may extend to one month, or with a minimum fine one thousand and five hundred taka, but which may extend to two thousand taka, or both.

11. Prosecution of offences.-

No Magistrate shall take cognizance of an offence under this Act, except on a complaint in writing of an authorized officer or on report in writing of a police officer not below the rank of Sub-Inspector.

12. Offences under section 8 of this Act to be cognizable and bailable.-

Notwithstanding anything contained in the Code of Criminal Procedure, 1898 offences under section 8 of this Act shall be cognizable and bailable.

13. Offences under the Act to be tried summarily.-

All offences under this Act shall be tried summarily in the manner provided for summary trial under the Code of Criminal Procedure, 1898.

14. Delegation of power.-

The Government may by notification in the official gazette, direct that any power exercisable by it under this Act may also be exercised by such public officer as may be mentioned therein, subject to such condition, if any, as may be specified therein.

15. Composition of offences.-

The Government or any person authorized to act under section 5 of this Act by general or special order in this behalf, may either before or institution of the proceedings compromise any offences committed under this Act.

16. Rule Making Power of The Government :

The Government may make rules not inconsistent with this Act to provide for all matters which are necessary or expedient for the purpose of carrying out the provisions of this Act.

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