

Anti-Smoking Measures Implemented by Educational Institutions and the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002

Syed Imad-ud-Din Asad

Abstract

Various legislative measures have been taken in Pakistan to restrict smoking. The law prohibits smoking in public places, which include educational institutions, and provides the procedure and the punishments regarding its violations. Educational institutions, instead of observing the law, have devised their own anti-smoking measures. Consequently, educational institutions themselves determine guilt and impose and collect fines whenever students smoke on their premises. Thus, by implementing their own disciplinary processes and by themselves awarding punishments, educational institutions are acting contrary to what the law has ordained. In order to demonstrate the same, websites and other publically available documents of various educational institutions were consulted to obtain information regarding their anti-smoking policies and rules. The information confirmed that educational institutions are not acting in conformity with the law. It is recommended that awareness-raising campaigns must be launched for educational institutions and students in order for the law to take its course and achieve its objective.

Keywords: Prohibition of smoking, Legislative measure, Student, Fine, Educational institution.

doi: 10.5455/JPMA.2922.

Introduction

Medical research claims that the use of tobacco causes various diseases from cancer to asthma.¹ Tobacco causes more deaths than tuberculosis (TB), human immunodeficiency virus / acquired immunodeficiency syndrome (HIV/AIDS), and malaria collectively. Despite the harmfulness of tobacco, there is no ban on its cultivation, processing and use.² As rightly noted by the World Health Organisation (WHO), "Tobacco is the only legal drug that kills many of its users when used exactly

as intended by the manufacturers."²

Smoking is the act of inhaling the smoke of burning tobacco. Globally, it is one of the main public health challenges and one of the significant factors causing preventable deaths.³ Tobacco smoke comprises more than 7000 chemicals. Of these, hundreds are toxic and around 70 may cause cancer. These include, among others, formaldehyde, benzene, polonium 210, vinyl chloride, chromium, arsenic, lead, cadmium, carbon monoxide, hydrogen cyanide, ammonia, butane and toluene.⁴ While smoking is declining in high-income countries, it is on the rise in the rest of the world.⁵ According to an estimate, smoking kills around 6 million people every year.⁶

In Pakistan, smoking is the most common of the various ways in which tobacco can be used.⁵ According to an estimate, smoking, annually, is responsible for around 100,000 deaths in Pakistan.⁷ According to another estimate, 40% males and 9% females are smokers, and these numbers are rising.⁸ Most of the studies conducted on smoking trends in Pakistan have reported that the smokers in Pakistan generally begin to smoke in their adolescence. Thus, adolescents represent the most vulnerable group among the population.⁸ Studies also report that factors responsible for inducing smoking include peer pressure, media, stress, anxiety and easy availability of smoking products.¹ Particularly, among adolescents, peer pressure and proximity to smokers have been reported as the most significant factors leading to smoking.¹

Anti-smoking laws in Pakistan

Keeping in view the harmful effects of smoking, the government took its first major legislative measure by promulgating the Cigarettes (Printing of Warning) Ordinance of 1979. The Ordinance provides for, among other things, prominent printing, both in English and Urdu, of a health warning on each pack of tobacco.⁹ Statutory Regulatory Order or SRO of 2017 provides for the printing of pictorial warning on the cigarette packs.¹⁰

AZAM & RAI, Lahore, Pakistan.

Correspondence: Syed Imad-ud-Din Asad. e-mail: syed_asad@post.harvard.edu

The government took its second major legislative measure by promulgating the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance of 2002. The Ordinance prohibits smoking and other uses of tobacco in places of public work or use and in public service vehicles. The provisions of the Ordinance are in addition to the legal provisions prescribed in other laws. Also, the government is empowered to make rules for carrying out the purposes of the Ordinance.¹¹ Places of public work or use include educational institutions. Consequently, the Ordinance applies to schools, colleges and universities. A student who smokes within the premises of an educational institution, other than an area designated for smoking in accordance with the Ordinance, commits an offence under the Ordinance. Such a student is punishable with fine, whose amount may not exceed Rs1,000. If the same student repeats the offence, the student is punishable with fine may be worth Rs100,000 or more.¹¹ Of course, only the court, specified in the Ordinance, can determine the student's guilt and impose the appropriate fine, which goes to the State Treasury.

Also, the erring student may be ejected from the educational institution by an authorised officer, as defined in the Ordinance, or a police officer not below the rank of sub-inspector.¹¹

An 'authorised officer' is a person who has been authorised by the government to act under the Ordinance.¹¹ SRO of 2003 has authorised heads of educational institutions to act as authorised officers regarding their educational institutions in respect of Sections 5, 9, 10, 12 and 13 of the Ordinance.¹² These include the rector or the vice-chancellor. SRO of 2003 and SRO of 2011 have authorised police officers of the rank of assistant sub-inspectors and above in respect of Sections 5 to 12 of the Ordinance.¹³

As far as court proceedings are concerned, when a student crosses the legal barrier, a court can take cognizance of the offence only on a complaint, in writing, either by an authorised officer or by a police officer. A First-Class Magistrate is the competent court under the Ordinance.¹¹ The magistrate has the power to try the offence summarily in accordance with the Code of Criminal Procedure of 1898 and pass any sentence authorised by the Ordinance.¹⁴

Article 4 of the country's Constitution grants every citizen

the right to be treated in accordance with the law.¹⁵ It declares that a person can neither be forced to perform an act nor forced to refrain from performing an act, unless it is so required by the law. Article 5 of the Constitution declares that obedience to the Constitution and the law is the obligation of every citizen.¹⁵ Article 10A of the Constitution declares that every person shall be entitled to a fair trial and due process for the determination of his civil rights and obligations, or if there is a criminal charge against one.¹⁵

Anti-smoking measures implemented by Pakistani educational institutions

Unfortunately, educational institutions do not observe the provisions of the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance of 2002. Instead, they have set up their own disciplinary processes and procedures in order to discourage smoking on their premises. Of course, educational institutions have the authority to maintain discipline in their premises, but this authority is subject to the law, not above the law.

Where the law exists regarding an issue, i.e., the law clearly defines the offence, lays down the procedure, specifies the penalty, and provides other relevant details, it must be followed. For instance, B, who is a thief, enters C's house at midnight by climbing over the boundary wall, with the intention to steal a valuable object. C apprehends B. According to the Pakistan Penal Code of 1860, B has committed the offence of house-breaking by night with the intention of committing theft. The Code prescribes both imprisonment and fine as punishment for it.¹⁶ C can either call the police, hand over B to the police, and let the law take its course; or C can forgive B and take no action against B. C can neither detain B in a room, as imprisonment, nor force B to pay any amount of money, as fine. By himself detaining B in a room, as imprisonment, or by himself collecting money from B, as fine, C will take the law in his own hands.

Here is an example regarding the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance of 2002. D, who is the rector of a university, finds E, who is a student at D's university, smoking in the premises of the university. The area where E is smoking is not an area designated for smoking in accordance with the Ordinance. Thus, E is committing an offence under the Ordinance, which prescribes fine as punishment for it. Now, D has the following options: (i) make a written

complaint, in accordance with the Ordinance, against E; (ii) eject E, in accordance with the Ordinance, from the premises; or (iii) talk to E and try to convince E to either give up smoking altogether or refrain from smoking in areas that have not been designated for smoking. If D decides to punish E by instructing E to pay Rs.1000, as fine, to the university, it would amount to assuming the authority which the Ordinance has reserved exclusively for a First-Class Magistrate.

As mentioned above, educational institutions do not act in accordance with the Ordinance and they themselves impose and collect fines whenever students are found smoking on their premises in areas not designated for smoking. It must be noted that a fine imposed by a First-Class Magistrate, in accordance with the Ordinance¹¹, goes to the State Treasury; whereas, a fine imposed by an educational institution, in contravention of the Ordinance, goes to its bank account. It is not being alleged that educational institutions are deliberately making profits under the pretext of curbing smoking. Most probably, educational institutions are not aware of how the Ordinance functions and what their responsibilities are under the Ordinance. In other words, educational institutions are just unaware of the law. However, this does not absolve educational institutions of responsibility. It is an established principle that ignorance of law is no excuse.

The websites and prospectuses of various Pakistani educational institutions were consulted to obtain information about their anti-smoking policies and rules in order to demonstrate the above-mentioned point. below:

For instance, Abbottabad International Medical Institute, Abbottabad, has prohibited smoking in its premises. A student who violates the prohibition may be punished with fine. However, the amount of fine that may be imposed is not mentioned on the website.¹⁷ University of Engineering and Technology, Taxila, has prohibited smoking in classrooms, laboratories, workshops, library, examination halls, convocation hall, during studio work, and during academic functions. According to the Undergraduate Prospectus 2016, a student who violates the prohibition may be punished with a fine of up to Rs.20,000.¹⁸

Bahria University, Islamabad, has strictly prohibited smoking on the premises. According to the Student

Handbook, a student who violates the prohibition for the first time may be punished with a fine of Rs.5,000 along with a warning letter. A student who violates the prohibition for the second time may be punished with a fine of Rs.10,000 along with a warning letter.¹⁹

COMSATS Institute of Information Technology, Islamabad, has prohibited smoking on the premises. According to the website, a student who violates the prohibition for the first time may be punished with a fine of Rs.1,000. A student who violates the prohibition for the second time may be punished with a fine of Rs.5,000 and suspension for the whole semester.²⁰

At the Riphah International University, Islamabad, a student who violates the prohibition may be punished with fine. However, the amount of fine that may be imposed is not mentioned in the Student Handbook.²¹

University of Lahore, Lahore, has listed smoking as a minor case of misconduct. According to the Prospectus 2015-16, a student who violates the prohibition may be punished with a fine of Rs.5,000 or more.²²

At the National College of Business Administration and Economics, Lahore, according to the website, a student who violates the prohibition for the first time is only issued a warning. A student who violates the prohibition for the second time may be punished with a fine of Rs.500. A student who violates the prohibition for the third time may be punished with a fine of Rs.1,000.²³

University of Central Punjab, Lahore, has prohibited smoking on the premises. However, the action that may be taken against a student who violates the prohibition is not mentioned on the website.²⁴

The same is the case with the Lahore Leads University, Lahore.²⁵

University of Sargodha, Sargodha, has prohibited smoking in classrooms, laboratories, workshops, library and examination halls. A student who violates the prohibition may be punished with fine. However, the amount of fine is not mentioned on the website.²⁶

The Institute of Business Administration (IBA), Karachi, has allowed smoking in designated areas only. A student who violates the prohibition may be punished with fine. However, the amount of fine is not mentioned in the Student Handbook 2016-17.²⁷

The Aga Khan University, Karachi, has allowed smoking in certain areas on its premises. A student who violates

the prohibition is considered guilty of disciplinary offence and may be punished with fine. However, the amount of fine is not mentioned in the Student Code of Conduct and Disciplinary Procedures.²⁸

The University of Balochistan, Quetta, has prohibited smoking in classrooms, laboratories, workshops, library and examination halls. A student who violates the prohibition may be punished with fine. However, the amount of fine is not mentioned in the Prospectus 2015-16.²⁹

Hamdard University, Karachi, has prohibited smoking on the premises, but Prospectus 2017-18 does not provide any further details.³⁰

The University of Peshawar, Peshawar, has prohibited smoking in classrooms, corridors, laboratories, workshops, libraries, examination and convocation halls, and within all public buildings and places. However, the Conduct and Discipline Regulations do not provide any further details.³¹

As can be seen in the data, there are educational institutions that completely prohibit smoking in their premises; that prohibit smoking only in certain areas on the premises; that do not mention the actions that may be taken against the students violating the prohibition; that mention that students violating the prohibition of smoking may be punished with fine, but do not mention the amount or the extent of fine; and institutions that mention that students violating the prohibition of smoking may be punished with fine, and have also mentioned the amount or the extent of fine.

The constant factor in the cases cited above is the fact that educational institutions neither mention the Ordinance nor the fact that the law prohibits smoking in areas not designated for smoking.

Educational institutions must put the Ordinance into practice and the students must be informed of the Ordinance. The relevant government departments must launch awareness campaigns for both educational institutions and students so that smoking can be discouraged and restricted in accordance with the law.

Most importantly, educational institutions must be required to formulate their anti-smoking policies or rules in accordance with the Ordinance, to publish their anti-smoking policies or rules on their websites, and to publish the Ordinance along with their anti-smoking policies or rules on their websites.

Conclusion

The above-stated facts show that educational institutions, both in the public and private sectors, are not enforcing the relevant Ordinance. Instead, they are enforcing their own rules, which is contrary to the law. Students who are fined for smoking by educational institutions find it easier to just pay the fines and get on with their affairs. If the students, in accordance with the Ordinance, have to undergo trials and pay fines, it will act as a real deterrence as legal proceedings are always more cumbersome. Also, students are generally not aware of the law and their legal rights. Consequently, students, either due to convenience or lack of awareness, never challenge the fines imposed and collected by educational institutions, which is in violation of the Ordinance. As such, there is no case law on the issue.

Disclaimer: None.

Conflict of Interest: None.

Source of Funding: None.

References

1. Nizami S, Sobani ZA, Raza E, Baloch N, Khan JA. Causes of smoking in Pakistan: An analysis of social factors. *J Pak Med Assoc* 2011; 61: 198-201.
2. World Health Organization. WHO Global Report: Morality Attribute to Tobacco. Geneva (SW); 2012. [Online] [Cited 2018 Feb 07]. Available from: URL: http://apps.who.int/iris/bitstream/10665/44815/1/9789241564434_eng.pdf.
3. Shah N, Siddiqui S. An overview of smoking practices in Pakistan. *Pak J Med Sci* 2015; 31: 467-70.
4. A Report of the Surgeon General: How tobacco Smoke Causes Diseases: what it means to you. [Online] [Cited 2018 Feb 07]. Available from: URL: https://www.cdc.gov/tobacco/data_statistics/sgr/2010/consumer_booklet/pdfs/consumer.pdf.
5. Khan JA, Sohail AM, Maan MA. Tobacco control laws in Pakistan and their implementation: A pilot study in Karachi. *J Pak Med Assoc* 2016; 66: 875-9.
6. Drope J, Schluger NW. The Tobacco Atlas. [Online] [Cited 2018 Oct 05]. Available from: URL: https://tobaccoatlas.org/wp-content/uploads/2018/03/TobaccoAtlas_6thEdition_LoRes_Rev_0318.pdf.
7. Smoking 100,000 people annually in Pakistan. *Daily Times*. Islamabad. [Online]. 2016 Jun 01 [Cited 2018 Feb 07]. Available from: URL: <https://dailytimes.com.pk/78750/smoking-kills-100000-people-annually-in-pakistan/>.
8. Ilyas F. Pakistan among top four countries with rising tobacco use. *Dawn*. Karachi. [Online]. 2015 May 27 [Cited 2018 Feb 07]. Available from: URL: <https://www.dawn.com/news/1184351>.
9. Cigarettes (Printing of Warning) Ordinance 1979. [Online] [Cited 2018 Feb 07]. Available from: URL: <https://www.tobaccocontrol-laws.org/files/live/Pakistan/Pakistan%20-%201979%20Ordinance%20-%20national.pdf>.
10. SRO 128(KE) /2017. [Online] [Cited 2018 Feb 07]. Available from: URL: https://www.tobaccocontrol-laws.org/files/live/Pakistan/Pakistan%20-%20SRO%20128%28KE%29_2017%20-%20national.pdf.

11. Prohibition of Smoking and Protection of Non-Smokers Health Ordinance 2002. [Online] [Cited 2018 Feb 07]. Available from: URL: https://www.tobaccocontrolaws.org/files/live/Pakistan/Pakistan%20-%20SRO%20882%281%29_2007%20-%20national.pdf
12. SRO 654(I)/2003. [Online] [Cited 2018 Feb 07]. Available from: URL: https://www.tobaccocontrolaws.org/files/live/Pakistan/Pakistan%20-%20SRO%20654%281%29_2003%20-%20national.pdf
13. SRO 277(I)/2011. [Online] [Cited 2018 Feb 07]. Available from: URL: https://www.tobaccocontrolaws.org/files/live/Pakistan/Pakistan%20-%20SRO%20277%281%29_2011%20-%20national.pdf
14. Code of Criminal Procedure 1989. [Online] [Cited 2018 Feb 07]. Available from: URL: <http://www.lawsofpakistan.com/wp-content/uploads/2012/03/Cr-P-C.pdf>
15. Constitution of the Islamic Republic of Pakistan 1973. [Online] [Cited 2018 Feb 07]. Available from: URL: <http://www.pakistani.org/pakistan/constitution/andhttp://www.lawsofpakistan.com/wp-content/uploads/2013/04/constitution-of-pakistan.pdf>
16. Pakistan Penal Code 1860. [Online] [Cited 2018 Feb 07]. Available from: URL: <http://www.lawsofpakistan.com/wp-content/uploads/2012/03/Pakistan-Penal-Code.pdf>
17. Abbottabad International Medical Institute: Code of Conduct. [Online] [Cited 2018 Feb 07]. Available from: URL: www.aimi.edu.pk/code-of-conduct.html
18. University of Engineering and Technology: Undergraduate Prospectus 2017. [Online] [Cited 2018 Feb 07]. Available from: URL: <http://admissions.uettaxila.edu.pk/Downloads/Prospectus2017.pdf>
19. Bahria University: Student Handbook. [Online] [Cited 2018 Feb 07]. Available from: URL: www.bahria.edu.pk/docs/handbook/StudentHandBookSpring2018.pdf
20. COMSATS Institute of Information and Technology: Proctorial Board & Disciplinary committee. [Online] [Cited 2018 Feb 07]. Available from: URL: www3.comsats.edu.pk/ee/CodeOfConduct.aspx
21. Riphah International University: Student Handbook. [Online] [Cited 2018 Feb 07]. Available from: URL: <https://www.riphah.edu.pk/sites/default/files/Student%20Services/Student%20Handbook%20Final%2025-3-15.pdf>
22. University of Lahore: Prospectus 2016-2016. [Online] [Cited 2018 Feb 07]. Available from: URL: http://uol.edu.pk/downloads/prospectus/prospectus_2015-16.pdf
23. National College of Business Administration and Economics: Rules and Regulations. [Online] [Cited 2018 Feb 07]. Available from: URL: http://www.ncbae.edu.pk/campus_life/rules_and_regulations
24. University of Central Punjab: Academic Rules and Regulations. [Online] [Cited 2018 Feb 07]. Available from: URL: https://www.ucp.edu.pk/current_rules_regulations
25. Lahore Leads University: General Instructions. [Online] [Cited 2018 Feb 07]. Available from: URL: <http://studentaffairs.leads.edu.pk/CodeGeneralInstructions.aspx>
26. University of Sargodha: Discipline, Welfare Regulations & Code of Honour. [Online] [Cited 2018 Feb 07]. Available from: URL: <https://uos.edu.pk/admission/codeOfHouner>
27. Institute of Business Administration: Student Handbook 2016-2017. [Online] [Cited 2018 Feb 07]. Available from: URL: <https://iba.edu.pk/News/student-hand-book2016-17.pdf>
28. Agha Khan University: Student Code of Conduct and Disciplinary Procedures. [Online] [Cited 2018 Feb 07]. Available from: URL: www.aku.edu/admissions/Documents/policy-code-of-conduct-009.pdf
29. University of Balochistan: Prospectus 2015-2016. [Online] [Cited 2018 Feb 07]. Available from: URL: <http://www.uob.edu.pk/prospectus/Prospectus-BS-2016.pdf>
30. Hamdard University: Prospectus 2017-2018. [Online] [Cited 2018 Oct 06]. Available from: URL: <http://www.hamdard.edu.pk/downloads-2/>
31. Peshawar: Conduct and Discipline Regulations. [Online] [Cited 2018 Oct 06]. Available from: URL: <http://www.uop.edu.pk/provost/?q=Conduct-and-Discipline-Regulations&r=Prohibited-Acts>