

A

Bill

further to amend the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002

WHEREAS it is expedient further to amend the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002 (LXXIV of 2002), for the purposes hereinafter appearing;

It is hereby enacted as follows:—

1. Short title and commencement.—(1) This Act may be called the Prohibition of Smoking and Protection of Non-Smokers Health (Amendment) Act, 2019.

(2) It shall come into force at once.

2. Substitution of section 17, Ordinance LXXIV of 2002.— In the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002 (LXXIV of 2002), for section 17, the following shall be substituted, namely:—

“17. Power to make rules.— (1) Subject to sub-sections (2) and (3), the Minister-in-charge may, by notification in the official Gazette, within six months, make rules to carry out the purposes of this Ordinance.

(2) Except the rules made prior to commencement of the Prohibition of Smoking and Protection of Non-Smokers Health (Amendment) Act, 2019,—

- (a) the draft of the rules proposed to be made under sub-section (1) shall be published for the information of persons likely to be affected thereby;
- (b) the publication of the draft rules shall be made in print and electronic media including websites in such manner as may be prescribed;
- (c) a notice specifying a date, on or after which the draft rules will be taken into consideration, shall be published with the draft;
- (d) objections or suggestions, if any, which may be received from any person with respect to the draft rules before the date so specified, shall be considered and decided before finalizing the rules; and
- (e) finally approved, in the prescribed manner, rules shall be published in the official Gazette.

(3) Rules, made after the prorogation of the last session, including rules previously published, shall be laid before the National Assembly and the Senate as soon as may be after the commencement of next session, respectively, and thereby shall stand referred to the Standing Committees concerned with the subject matter of the rules for examination, recommendations and report to the National Assembly and the Senate to the effect whether the rules,—

- (a) have duly been published for considering the objections or suggestions, if any, and timely been made;
- (b) have been made within the scope of the enactment;
- (c) are explicit and covered all the enacted matters;
- (d) relate to any taxation;
- (e) bar the jurisdiction of any Court;
- (f) give retrospective effect to any provision thereof;
- (g) impose any punishment; and
- (h) made provision for exercise of any unusual power.”.

STATEMENT OF OBJECTS AND REASONS

Subject to the Constitution, primarily *Majlis-e-Shoora* (Parliament) has exclusive power to make laws with respect to any matter in the Federal Legislative List. Frequently enactments empower the Government, or specified bodies or office-holders to make rules to carry out the purposes thereof popularly known as delegated, secondary, or subordinate legislation.

Rules of both the National Assembly and the Senate provide that delegated legislation may be examined by the Committees concerned. But practically no effective parliamentary oversight has been made. Further, in the prevalent legal system it is also a departure from the principle of separation of powers that laws should be made by the elected representatives of the people in Parliament and not by the executive Government. In parliamentary democracies, the principle has been largely preserved through an effective system of parliamentary control of executive law-making, by making provision that copies of all subordinate legislations be laid before each House of the Parliament within prescribed sitting days thereof otherwise they cease to have effect.

Although under the Constitution, the Cabinet is collectively responsible to the Senate and the National Assembly, yet, under the Rules of Business, 1973, the Minister-in-Charge is responsible for policy concerning his Division and the business of the Division is ordinarily disposed of by, or under his authority, as he assumes primary responsibility for the disposal of business pertaining to his portfolio. Therefore it is necessary that all rules, including previously published, made after the prorogation of the last session shall be laid before both Houses as soon as may be after the commencement of a session and thereby shall stand referred to the Standing Committee concerned with the subject matter of the rules.

The proposed amendment would achieve objective of valuable participation of the people in rules making process, meaningful exercise of authority by the Minister-in-Charge to assume primary responsibility for the disposal of business pertaining to his portfolio including rule making and efficient and effective parliamentary oversight relating to delegated legislation.

Sd/-

SYED FAKHAR IMAM

Member-in-charge