

2013



Courts' Judgements



**Assuring Enforcement
of
Tobacco Control Laws**

Litigation:

Assuring Enforcement of Tobacco Control Laws

During the mid of 2010, many restaurants and cafes in Pakistan started to offer their customers, especially youth and children, 'shisha' misleading them with the claim that this product is 'tobacco free' and in fact harmless 'flavored smoke'. They also promoted this product as a pivot for social gatherings and essential sharing for family bonding in the outdoors. This act was a direct violation of the 'Prohibition of Smoking and Protection of Non-smoker's Health Ordinance 2002' which clearly states that use of tobacco in any form in public places is prohibited and restaurants and cafes (that are defined as public places in the law) will be penalized accordingly.

When the government authorities, under the tobacco control law, took actions against such cafes in violation in Rawalpindi by cracking and shutting them down, the owners



went into the court challenging the actions taken by the authorities.

Realizing the opportunity for effective enforcement of tobacco control laws, SAMAR intervened the court hearing by becoming a party to the case and provided evidences that Shisha, in fact, is a form of smoking and is covered by tobacco control laws and that the actions taken against the cafes were lawful and just. As a result, the case was withdrawn in favor of government authorities. This was enough encouragement for SAMAR to take one step forward and approach the Lahore High Court with a similar petition to enforce tobacco control laws on shisha not just in one particular city but Punjab province as a whole. In the

following months, many shisha café owners tried to curtail the case by SAMAR either by becoming a party or filing a separate case to challenge the law and its actions against shisha. But every case met with similar fate.

On July 11, 2012, the Lahore High Court accepted the SAMAR's petition and directed the government authorities to strictly enforce the tobacco control laws on shisha in the Punjab province under the monitoring of Home Secretary, Punjab Province. As a result to this decision, the restaurants and cafes in Punjab Province, being public places, cannot serve 'shisha' to their customers.

Following is the brief litigation history of such cases that were taken up during the years 2011 -2012 in Lahore High Court.



Writ Petition No. 6110-2011

**Titled: Daniyal Arif and another
Vs. Province of Punjab and four others
(SAMAR was party in this case through C.M No's 1157 & 1158
of 2011)**

Decided: 11-04-2011

- The Writ Petition was filed by cafe owners; Daniyal Arif, owner of Sheikho's Café, M M Alam Road, Lahore and Muhammad Arif Saleem, Manager of Café Life, Ahmad Block, Garden Town, Lahore.
- Café owners challenged Government enforcement measures of tobacco control law in Lahore. The Petitioners were stopped from serving “Shisha” by the enforcing authorities and had confiscated shisha from the shisha cafes. Petitioners alleged that serving of shisha is legal and not regulated by any law, and the attempts of enforcing authorities are against the law and is type of blackmailing and harassing the café owners.
- SAMAR filed application attaching all relevant laws, according to which smoking is banned in any form including sheehsa in public places.
- The Capital City Police Officer of Lahore also conceded SAMAR stance in the court and stated action against shisha café is in accordance with law.
- **Court Decision:** The Petition was dismissed and Capital City Police Officer assured the Honourable Court that Lahore Police will act in the matter of the Petitioners strictly in accordance with the relevant law and in no other way.

Writ Petition No. 14489-2011

**Titled: Cafes Association Faisalabad
Vs Province of Punjab and four others
(SAMAR/CTC-Pak was not party in this case)**

Decided on: 24-06-2011

- The Writ Petition was filed by cafes Association Faisalabad.
- Cafés Association challenged Government's enforcement of tobacco control law in Faisalabad and alleged that there is no ban and / or prohibition of Shisha smoking in cafes, therefore, the act of Enforcement Authorities is illegal and unlawful as well as against the fundamental rights of café owners. The Petitioner sought that act of enforcement authority to stop Shisha cafes from serving Shisha be declared illegal, unconstitutional and unlawful
- **Court Decision:** The Petition was dismissed and The Court relied upon the order of Writ Petition No. 6110-2011 dated. 11-04-2011. The court directed the Respondent No. 2 (DCO Faisalabad) to act strictly in accordance with law.

Writ Petition No. 15813-2012

**Titled: Cafes Association through its Director Naseer Malik
Vs Province of Punjab and others
(SAMAR was not party in this case)**

Filed on: 13-06-2012

Decided on: 25-06-2012

- This Writ Petition was filed by Mr. Naseer Malik Direct Cafes Association, Lahore.
- Cafés Association challenged Government enforcement measures of tobacco control law in Lahore where the Petitioner were stopped from serving "Shisha" by the enforcing authorities by confiscating Shisha and other

kitchen hold things from the shisha cafes. Petitioners alleged that serving of shisha is legal and not regulated by any law, and the attempts of enforcing authorities are against the law and is type of blackmailing and harassing the café owners.

- **Court Decision:** The Petition was dismissed and court directed the Petitioner to approach the DCO Lahore to provide an undertaking assuring the enforcement of the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance 2002 to revival of business operation other than the prohibited activities strictly in accordance with law.

Writ Petition No. 15814-2012

**Titled: Shahzad Baig
Vs Province of Punjab and others
(SAMAR was not party in this case)
Filed on: 13-06-2012**

Decided on: 25-06-2012

- This Writ Petition was filed by Shahzad Baig owner of Jammin Java Café, Johar Town, Lahore where he challenged Government's enforcement measures of tobacco control law in Lahore. Petitioner were stopped from serving "Shisha" by the enforcing authorities and on non compliance of enforcement authorities, the café was sealed. Petitioners alleged that serving of shisha is in open area such as roof top is not illegal and sought permission from court to allow for serving Shisha in open areas such as roof top, outdoors, patio, terrace, etc.
- **Court Decision:** The Petition was dismissed and court directed the Petitioner to approach the DCO Lahore to provide an undertaking assuring the enforcement of the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance 2002 to revival of business operation other than the prohibited activities strictly in accordance with law.

Writ Petition No. 25011-2011

**Titled: Society for Alternative Media and Research (SAMAR)
Vs Government of Punjab and others
Filed on: 4-11-2011**

Decided on: 11-07-2012

- This Writ Petition was filed by SAMAR where direction for strict enforcement and compliance of provisions of 'Prohibition of Smoking and Protection of Non-Smokers Health Ordinance 2002' was sought. Also, sought was the direction to enforcement authority to initiate immediate crackdowns against the restaurants and cafés which provide shisha (water pipe smoking) as well as registration of criminal cases against the offender under the provision of said Ordinance.
- The enforcement authorities conceded SAMAR's stance and filed reports which shows criminal cases were registered against the cafes which provides shisha to their customers.
- A Café owner appeared in person along with 'Restaurant and café Association of Punjab' and strongly contested the Petition by stating ban on shisha is against their fundamental right of business.
- **Court Decision:** SAMAR Petition was accepted and Court directed the enforcement authorities to strictly enforce the Ordinance which should be monitored by Home Secretary, Punjab Province.
- In compliance of order of this Petition, Home Department issued a Notification dated. 23-08-2012 for enforcement of Ordinance to IGP Punjab, all Division Commissioners in Punjab, All Regional Police Offices in Punjab, Capital City Police Officer, Lahore.

Writ Petition No. 12537-2012

**Titled: Usman Javiad Siddique
Vs Model Town Society and others**

Decided on: 11-07-2012

(This Petition was attached with SAMAR's Writ Petition No. 25011-2011)

- This Writ Petition was filed by café owner of “Mud Stone” café at Bank Square Market, Model Town, Lahore.
- Model Town Society Lahore in connection with enforcement measures of tobacco control laws placed warning banners for shisha cafes in Model Town Society to stop serving shisha in their cafes. Petitioner didn't stop serving shisha in his café so Model Town Society disconnected the utility connection of cafes.
- Petitioner alleged in this Petition that shisha was neither narcotics contraband nor was prohibited through legislation so Model Town Society and Government Authorities be directed to restore Café's utility connections and be restrained from interfering in the lawful business.
- The Court fixed this Petition with enforcement of Tobacco Law Writ Petition No. 25011/2011 and ordered if the Petition provide undertaking before Deputy Registrar of this court that he shall not offer the facility of “shisha “ to smokers within its cafes/business premises, the utility connections of the café for ordinary business be resorted.
- **Court Decision:** The court dismissed this Petition and accepted SAMAR's Petition in single order enforcement authorities to strictly enforce the tobacco control Ordinance which shall be monitored by Home Department.

Writ Petition No. 23510-2012

**Titled: M/s Olive Grill Restaurant
Vs Province of Punjab and others
(SAMAR was party in this case through C.M No. 3707 of 2012)
Decided on: 10-12-2012**

- This Writ Petition was filed by Muhammad Naseer Malik owner Of Olive Grill Restaurant, M M Alam Road, Lahore.
- Café owner challenged the notification issued by Home Department in compliance of order of Lahore High Court in Writ Petition No. 25011-2011 decided on 11-07-2012. He alleged that smoking in open space was not injurious and open places of restaurant were not subject to the statutory sanction so he could provide Shisha or tobacco products in the open places of his restaurant. He further alleged that sealing of the Petitioner's café was interference in the lawful trade and an act of harassment. Such act was to be declared illegal.
- In response, SAMAR filed application and attached all the relevant laws according to which smoking is banned in any form including sheehsa in public places including open spaces of restaurant because restaurant is also a public place as whole.
- **Court Decision:** The Court Dismissed the Petition and ordered that smoking is ban any form including Shisha in any public place mentioned in the Ordinance and also declared that open spaces of restaurants are part of the restaurant, therefore, no one smoke in restaurant or in any public place collectively. The Court also declared Shisha cafes illegal.

Writ Petition No. 17767-2012

**Titled: Sikandar Khan and 2 others
Vs Province of Punjab and four others
(SAMAR is party in this case through C.M No. 3317 of 2012
vide order dated. 15-10-2012)**

- This Writ Petition was filed by cafe owners (three persons).
- Café owners challenged Government enforcement measures of tobacco control law in Lahore. The Petitioners were stopped from serving “Shisha” by the enforcing authorities. They sought revival of Notification SRO. 965 (I)/2008 of federal Government which provides designated smoking areas.
- In response, SAMAR filed application and attached all the relevant laws according to which smoking is banned in any form including Shisha in public places.
- **Court Decision:** The SAMAR has been made party in this case vide order dated. 15-10-2012. The case is still pending in the Court.

“Smoking a Shisha/hookah is smoking tobacco”

A shisha/hookah is a water pipe used to smoke tobacco through cooled water. The tobacco is heated in the bowl at the top of the hookah and the smoke is filtered through the water in the base of the hookah.

Shisha tobacco is a very moist and sticky tobacco that has been soaked in honey or molasses. There are a variety of shisha flavors including apple, plum, coconut, mango, mint, and strawberry.

Myths and the Truths

MYTH #1: Shisha smoke is filtered through water so it filters out any harmful ingredients.

TRUTH #1: Smoking tobacco through water does not filter out cancer-causing chemicals and damages the lungs and heart as much as cigarette smoke.

MYTH #2: Inhaling Shisha smoke does not burn the lungs, so it is not unhealthy.

TRUTH #2: The Shisha smoke does not burn the lungs when inhaled because it is cooled through the water in the base of the Shisha. Even though the smoke is cooled, it still contains carcinogens and it is still unhealthy.

MYTH #3: Smoking Shisha are healthier than smoking cigarettes.

TRUTH #3: Shisha smoke is just as dangerous as cigarette smoke, containing carcinogens.

MYTH #4: Smoking a Shisha is not as addictive as smoking a cigarette because there is no nicotine.

TRUTH #4: Just like regular tobacco, shisha contains nicotine. In fact, in a 60-minute Shisha session, smokers are exposed to 100 to 200 times the volume of smoke inhaled from a single cigarette.

MYTH #5: Herbal shisha is healthier than regular shisha.

TRUTH #5: Just like smoking herbal or “natural” cigarettes, herbal shisha exposes the smoker to tar and carcinogens.

Quick Facts

Compared to a single cigarette, shisha smoke is known to contain:

- Higher levels of arsenic, lead and nickel
- 36 times more tar
- 15 times more carbon monoxide

Smoking a shisha requires taking longer and harder drags, increasing levels of inhaled nicotine and carcinogens in the lungs.

The longer the shisha session, the more nicotine and toxins one takes in.

A 45 to 60 minute shisha session exposes the smoker to approximately the same amount of tar and nicotine as one pack of cigarettes.

Sharing mouthpieces without washing them can increase the risk of spreading colds, flu, and infections—even oral herpes.

Health risks of smoking shisha include cancer, heart disease, lung damage, and dental disease.

(Source: <http://www.tobaccofreeu.org/pdf/Hookah.pdf>)

Coalition for Tobacco Control - Pakistan (CTC-Pak), a project of Society for Alternative Media and Research, is the first civil society coalition in Pakistan which is working towards identifying and promoting tobacco control issues in collaboration with Campaign for Tobacco Free Kids, US. CTC-Pak has been advocating for stronger measures for tobacco control by the translation and adaptation of FCTC provisions into national tobacco control laws as well as acting as a liaison between the policy makers and civil society organizations. CTC-Pak is a recognized 'Technical Resource' for Tobacco Control Cell, Government of Pakistan, and is partners in its campaign for enforcement of tobacco control laws in Pakistan.

Currently, CTC-Pak, through a project granted by the International Legal Consortium, Campaign for Tobacco Free Kids under Bloomberg Global Initiative for Tobacco Reduction Program, is advocating for application of existing tobacco control laws on smoking, including 'Shisha' through Public Interest Litigation, and smoke-less; both at Federal and Provincial levels. CTC-Pak, through its more than 160 coalition members in all four provinces, is also assisting the Government of Pakistan and the Provincial Governments in identifying and raising awareness on tobacco control and related issues.

CTC-Pak has a dedicated 'Resource Center' on tobacco control in Pakistan where information on various issues related tobacco control is available; both in soft and hard forms, free of cost.

S.A.M.A.R.



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