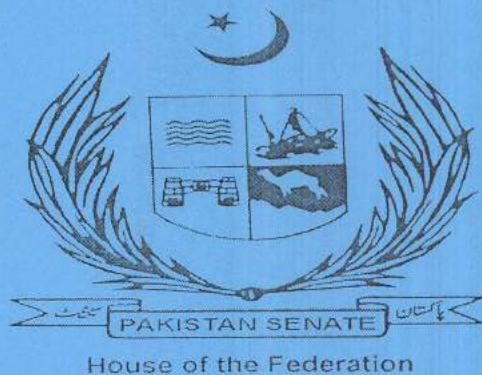


SENATE OF PAKISTAN



FOURTEENTH PARLIAMENTARY YEAR 2016-2017

REPORT NO. 06 of 2016

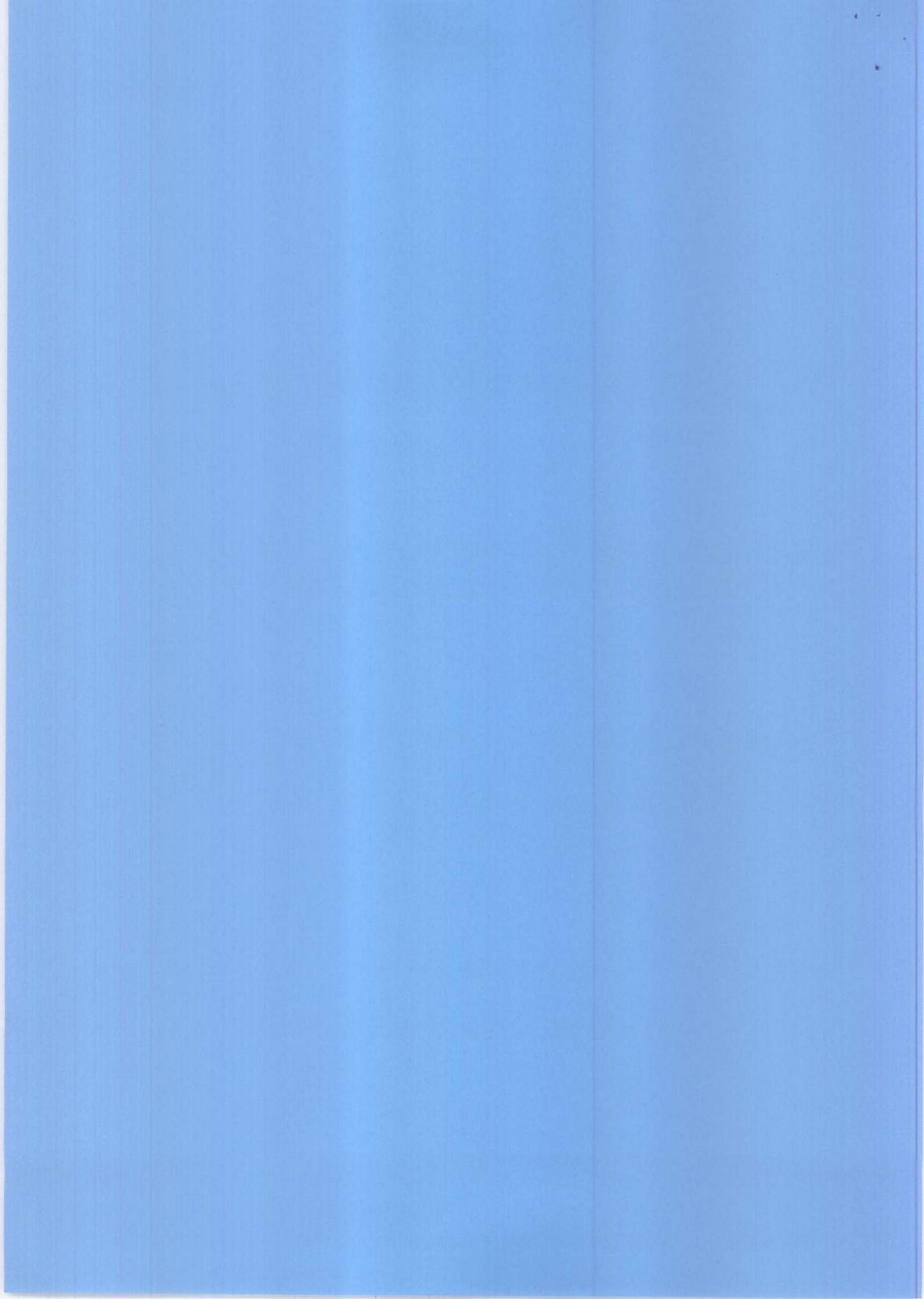
REPORT OF THE SENATE STANDING COMMITTEE ON NATIONAL
HEALTH SERVICES, REGULATIONS AND COORDINATION

ON

"THE PROHIBITION OF SMOKING AND PROTECTION OF NON-SMOKERS
HEALTH (AMENDMENT) BILL, 2016" INTRODUCED BY SENATOR
MUSHAHID HUSSAIN SYED IN THE SENATE, DURING ITS SITTING HELD
ON 18TH JULY, 2016, "

PRESENTED BY

SENATOR SAJJAD HUSSAIN TURI



SENATE SECRETARIAT

REPORT OF THE SENATE STANDING COMMITTEE ON NATIONAL HEALTH SERVICES, REGULATIONS AND COORDINATION ON 'THE PROHIBITION OF SMOKING AND PROTECTION OF NON-SMOKERS HEALTH (AMENDMENT) BILL, 2016.

I, Senator Sajjad Hussain Turi, Chairman Standing Committee on National Health Services, Regulations and Coordination have the honor to present on behalf of the Committee, this report on "The Prohibition of Smoking and Protection of Non-Smokers Health (Amendment) Bill, 2016" introduced by Senator Mushahid Hussain Syed in the House during its sitting held on 18th July, 2016 and referred to the Standing Committee for consideration and report.

2. The composition of the Committee is as under:-

1.	Senator Sajjad Hussain Turi	Chairman
2.	Senator Naseema Ehsan	Member
3.	Senator Mian Muhammad Ateeq Shaikh	Member
4.	Senator Dr. Ashok Kumar	Member
5.	Senator Hamza	Member
6.	Senator Ayesha Raza Farooq	Member
7.	Senator Kalsoom Perveen	Member
8.	Senator Ghous Muhammad Khan Niazi	Member
9.	Senator Kamran Michael	Member
10.	Senator Khalida Parveen	Member
11.	Senator Hilal-ur-Rehman	Member
12.	Senator Nauman Wazir Khattak	Member
13.	Mrs. Saira Afzal Tarar, Minister of State for National Health Services, Regulations and Coordination.	Ex-officio Member

3. The Committee took up the bill during its meetings held on 3rd and 30th August, 2016. The Committee, during its meeting held on 30th August, 2016 decided to form a Sub-Committee consisting of the following members to look into the Bill thoroughly in consultation with all the stakeholders:

1.	Senator Nauman Wazir Khattak	Convener
2.	Senator Mian Muhammad Ateeq Shaikh	Member
3.	Senator Dr. Ashok Kumar	Member

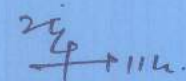
4. The Sub-Committee held its meetings on 22nd September, 3rd and 26th October, 2016 and invited all the stakeholders to give their opinion on the Bill. The Sub-Committee finalized its report and presented the same before the Standing Committee during its meeting held on 7th December, 2016.

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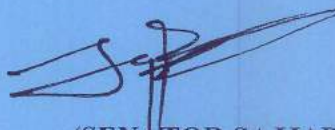
5. The Committee noted that at para 10 of the report, the Sub-Committee has observed that they did not get any input from the Ministry of National Health Services, Regulations and Coordination on the Bill. The Additional Secretary of the Ministry informed the Committee that they had to fulfil the requirements of rule 28 of the Rules of Business, 1973 under which they are required to obtain the opinion of Finance, Revenue and Law and Justice Divisions on the Bill and to get approval of the Prime Minister for supporting or opposing the Bill in the light of those opinions. He stated that the Law and Justice Division has opined that after the 18th Amendment, the Federal Government cannot legislate on the issue for the whole country as the subject has been devolved to the Provinces. Accordingly they have moved a summary to the Prime Minister to oppose the Bill in the light of the opinion of the Law and Justice Division which is pending for his approval. The Joint Secretary, Law and Justice Division informed the Committee that "The Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002" (Ordinance LXXIV of 2002) was promulgated under the Social Welfare entry of the Concurrent List and the subjects in the List have been devolved to the Provinces under the 18th Amendment in the Constitution. On a query from the Committee, he informed that under Clause 6 of Article 270 AA of the Constitution of the Islamic Republic of Pakistan, 1973, the laws made by the Federal Government on the subjects included in the Concurrent List will continue to operate until amended or repealed by the Competent Authority which in this case is the respective Provincial Governments.

6. The Committee, however, did not agree with the views of the representatives of both the Ministries and unanimously decided to adopt the report and present / lay the same before the House for a final decision in this regard.

7. The Report of the Sub-Committee is placed at Annexure-'A' whereas copies of the Bill as introduced and as amended are placed at Annexure-'B' and 'C' respectively.



(RAFIULLAH)
Secretary Committee



(SENATOR SAJJAD HUSSAIN TURI)
Chairman Committee

Islamabad, the
8th December, 2016.

SENATE SECRETARIATREPORT OF THE SUB-COMMITTEE OF THE STANDING COMMITTEE ON NATIONAL HEALTH SERVICES, REGULATIONS AND COORDINATION ON 'THE PROHIBITION OF SMOKING AND PROTECTION OF NON-SMOKERS HEALTH (AMENDMENT) BILL, 2016 INTRODUCED BY SENATOR MUSHAHID HUSSAIN SYED IN THE SENATE DURING ITS SITTING HELD ON 18TH JULY, 2016.

The Standing Committee on National Health Services, Regulations and Coordination in its meeting held on 30th August, 2016, while considering the Prohibition of Smoking and Protection of Non-Smokers Health (Amendment) Bill, 2016 introduced by Senator Mushahid Hussain Syed in the Senate during its sitting held on 18th July, 2016 and referred to the Committee for consideration and report, constituted a Sub-Committee comprising of the following:

- | | | |
|----|------------------------------------|----------|
| 1. | Senator Nauman Wazir Khattak | Convener |
| 2. | Senator Mian Muhammad Ateeq Shaikh | Member |
| 3. | Senator Dr. Ashok Kumar | Member |

The Sub Committee was assigned the Terms of Reference as under:

“To consider the Prohibition of Smoking and Protection of Non-Smokers Health (Amendment) Bill, 2016 introduced by Senator Mushahid Hussain Syed in the Senate during its sitting held on 18th July, 2016.”

2. The Sub-Committee took up the Bill for consideration in its meetings held on 22nd September, 3rd and 26th October, 2016 under the Convenership of Senator Nauman Wazir Khattak and attended by Senator Mian Muhammad Ateeq Shaikh and Senator Dr. Ashok Kumar. Besides the Mover, the Ministry of National Health Services, Regulations and Coordination, the Sub-Committee also invited all stakeholders including the FBR, the Pakistan Tobacco Board, the representative of Tobacco growers, the representatives of Tobacco Industry and Civil Society to give their opinion on the Bill.
3. Senator Mushahid Hussain Syed, mover of the Bill, informed the Sub-Committee that the primary responsibility of the public representatives is to protect and promote the public interests and he introduced the Bill with this spirit. He stated that scientific studies have shown that up to 50% smokers die of smoking related diseases and smoking decreases the life span by up to 10 years. Secondly, he stated that Pakistan has ratified the Framework Convention on Tobacco Control (FCTC) which calls for prohibition of Corporate Social Responsibility activities by the tobacco industry. Thirdly, he argued that we should not think of tobacco industry's contribution to the economy while ignoring enormous cost it exacts on public health. He stated that Pakistan has approximately 65% population of below 30 years age which is vulnerable and the Bill aims to protect that segment from taking up smoking.
4. The representative of the Civil Society was of the opinion that the law is required to fulfill the demands of FCTC which calls for complete ban on advertisements of cigarettes at sale points and on CSR

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activities by the Tobacco Industry. He was of the view that advertisement at sale points attract the children and therefore, should be banned. He argued that the CSR activities are used for promotion of business by the tobacco industry.

5. The representative of the Pakistan Tobacco Company (PTC) informed the Sub-Committee that tobacco industry is the most regulated sector in the country. He stated that while their industry strictly observe all the laws/rules framed by the Government for Tobacco Industry in the country, there is a parallel illegal tobacco industry in the country which does not adhere to these laws and rules. He stated that the legal industry has 61% share in tobacco business and contributes 98 % share of the total revenue generated by the tobacco industry whereas the illegal industry has a market share of 39 % but contribute only 2 % to the revenue. About saving minors from taking up smoking, he stated that it is the responsibility of retailers not to sell cigarettes to children below the age of 18 as provided in the existing laws. About the CSR activities by the tobacco industry he stated that all such activities are carried out without any advertisement. He was of the opinion that there are comprehensive laws on tobacco control and tobacco advertisements in the country. So there is no need for new legislation. The more important thing is to strictly implement the existing laws and plug the loopholes, if any, in the implementation process. He opined that if anything is required regarding advertisements of tobacco, it can be done under delegated legislation through amendments in the rules made under the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002 (Ordinance LXXIV of 2002).

6. The vice President of Chamber of Agriculture, KPK, informed the Committee that about 85000 people are involved in the cultivation of tobacco in the province of Khyber Pakhtunkhwa. Any ban on tobacco will render all these people jobless. He was of the view that the Prohibition of Smoking and Protection of Non Smokers Ordinance, 2002 is a comprehensive law which covers all aspects of the issue and steps should be taken to implement it in letter and spirit instead of enacting a new law.

7. The Chairman, Pakistan Tobacco Board (PTB) informed the Sub-Committee that they receive the demands for tobacco from the tobacco industry at the start of the year and announce it for the growers etc. He informed that the amount of tobacco produced in a year, if converted into cigarettes, accounts for only 60% of the total cigarettes manufactured during the year while the remaining goes unaccounted for. This is actually purchased by the market dealers from open market for the illegal manufacturers. These dealers are not registered with PTB and therefore, the data of tobacco which they purchase for the illegal manufacturers is not reconciled with the data of Pakistan Tobacco Board. He told that there is no regulatory mechanism for the illegal sector. Their quality of production is questionable as there are no measures of quality control. He

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informed that tobacco used for manufacturing of cigarettes is processed in Green Leaf Threshing (GLT) units. He suggested that if an effective monitoring system of these GLT units is put in place, it will completely wipe out illegal manufacturing of cigarettes.

8. The Sub-Committee showed annoyance on non-implementation of relevant laws, unchecked manufacturing by illegal & non-regulated industries and sale of smuggled cigarettes in the country. The Sub-Committee observed that about 40 % cigarettes being sold in the country are smuggled or manufacture by illegal/non-regulated industry. The representatives of the Ministry of National Health Services, Regulations and Coordination informed that the Provincial Governments and FBR are responsible for controlling the same. The representatives of FBR informed that Pakistan has a porous border with Afghanistan from where bulk of the smuggled cigarettes are coming into the country and it is difficult to completely control the same in view of manpower shortage. About the unregulated industries, they informed that these are mainly situated in difficult areas like AJK, FATA etc. They informed that they are considering a Track and Trace System with technical assistance from the World Bank which will help in controlling the unregulated industry. About the sale of smuggled cigarettes on retail shops, they informed that they do not have presence everywhere to check the same. Further, most of the retailers are small shopkeepers which are not registered and it is difficult to check them.

9. The Sub-Committee observed that the intent of the legislators while introducing any tobacco control measures is to reduce the smoking prevalence. In order to achieve this purpose, the Government over the years has increased the rates of taxes on cigarettes. But where the legal tobacco industry complies with the measures being taken by the Government, the illegal industry which do not pay taxes, sell the tobacco products even below the value of applicable taxes. The result is that the price difference between illegal and legal cigarettes continues to widen. Consequently, consumers switch to these underpriced cigarettes readily available in the market. Minors, who have lesser disposable income available to them, find such cigarettes affordable and hence opt for taking up smoking.

10. The Sub-Committee noted that the Ministry failed to give its suggestions on the bill despite repeated directions by the Sub-Committee but every time they stated that before giving their opinion on supporting or opposing the Bill, they have to fulfill the requirements of rule 28 of the Rules of Business, 1973 under which they have to obtain the opinion of Finance, Revenue and Law & Justice Divisions on the Bill and get approval from the Prime Minister. The Sub-Committee regretted the fact that the Ministry continuously failed to finalize the process required under the said rule since July, 2016, the time when the Bill was introduced in the House and referred to the Committee.

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11. The Sub-Committee directed the Ministry, FBR and PTB to take effective steps for implementation of the directions given by the Sub-Committee and present a report thereof to the Standing Committee on National Health Services, Regulations and Coordination within three months.

12. After detailed discussion on the Bill and receipt of suggestions from the stakeholders, the Sub-Committee made the following recommendations for amendments in the Bill:

Preamble of the Bill:- The Sub-Committee observed that the object of the bill should be to protect the health of non-smokers and to regulate smoking or use of tobacco products in public places or vehicles which is missing in the Preamble of the Bill. Similarly, the object in preamble "to stop using tobacco products" is like to place an outright ban on tobacco. The Committee therefore, decided to make the following amendments in Preamble of the Bill:

(1) In the first paragraph of the Preamble of the Bill, for the words **"improving public health"** the word **"protecting the health of non-smokers"** may be substituted.

(2) In paragraph 2 of the Preamble, for the words **"encouraging people to give up smoking, and to stop using tobacco products"**, the words **"prohibit smoking or use of tobacco products in places of public work or in public service vehicles"** may be substituted.

Clause 2 of the Bill:- The Sub-Committee proposed the following amendments in clause 2 of the Bill:-

- 1) The Sub-Committee observed that prohibition of tobacco "advertisement" has explicitly been defined under the existing Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002 (Ordinance LXXIV of 2002) and the rules made thereunder. Further, ban on interior display will deprive the retailers dealing in tobacco products of their right to carry out a legitimate business. Moreover, the inclusion of "visibility of tobacco products at points of sale" in advertising will hamper the consumer's right to freedom of choice. The Committee therefore, recommended that **sub-clause (i) of Clause 2 of the Bill may be omitted.**
- 2). That in the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002 (Ordinance LXXIV of 2002), in existing paragraph (g), for the words **"smoking of tobacco"** occurring in first line, the words **"inhaling smoke produced by burning tobacco"** may be substituted.
- 3) That sub-clauses (ii) and (iii) of Clause 2 of the Bill may be renumbered as sub-clauses (i) and (ii) respectively.
- 4) Given the fact that the "Guidelines for Tobacco and Tobacco Products Advertisements" issued by the Government on 25th October, 2003 already provides that "sponsorship of any type of events whereby tobacco is promoted will not be permitted".

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Therefore, the Sub-Committee recommended that **paragraph (h) of sub-clause (iii) of Clause 2 of the Bill may be omitted.**

- 5) Definition of "Tobacco Industry", as proposed vide paragraph (i) of sub-clause (iii) of Clause 2 of the Bill is too wide and is against the definition prescribed by the World Health Organization. Therefore, the Sub-Committee recommended that **paragraph (i) of sub-clause (iii) of Clause 2 of the Bill may be omitted.**
- 6) The Sub-Committee also recommended that paragraph (j) of sub-clause (iii) of clause 2 of the Bill may be renumbered as (h) and may be substituted by the following, namely:-

"(h) "Tobacco Products" means products made entirely or partly of leaf tobacco as raw material, manufactured to be used for smoking, chewing or snuffing".

Clause 3 of the Bill:- The Sub-Committee observed that clause 3 of the Bill and the Schedule 1 attached with it have been drafted in a vague manner. The terms like "indirect advertising" and "Acts that... are likely to have promotional effect" are very vague and may lead to undesirable implications. Moreover, a number of issues raised in this clause are already covered in the existing laws. The clause also asks for ban on contribution of any kind to any event, activity or individual. The factual position is that the Tobacco Industry is carrying out activities under the Corporate Social Responsibility in the areas of Tobacco growers which are mostly very backward and underdeveloped. The companies carry out these activities without advertising of their companies or products. Thus this provision will deprive the poor people of those areas from the benefits of the social welfare activities being carried out by the industry. Sub-clause 4 of Clause 3 of the Bill asks for establishment of a monitoring committee with powers to amend the Schedule-I by giving one month notice is not only vague but also a duplication as there is already a Committee on Tobacco Advertisement Guidelines which is in place for the very reasons specified in the proposed draft Bill. Moreover, Sub-Clause 4 of the said clause gives too much legislative powers to the Monitoring Committee which is not desirable. The Sub-Committee, however, agreed with the purpose of the clause to the extent that minors should be saved from taking up smoking and it should be made unaffordable for them. The Committee also noted that the illegal tobacco industry, which do not pay taxes to the Government, sell their products at cheap rates which enables and encourages the minors to take up smoking out of their meager pocket money. Therefore, there is a need to control and regulate this illegal industry. **Keeping this in view, the Sub-Committee recommended that clause 3 of the Bill may be omitted, to achieve the aforesaid objectives. To make smoking unaffordable for minors and to prohibit consumption of underpriced, duty evaded/illegal cigarettes selling below the applicable taxes, the Sub-Committee also recommended that in the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002 (Ordinance LXXIV of 2002), after Clause 9 the following new clauses 9 A, 9 B, 9C and 9 D may be inserted, namely:**

“9A. Prohibition of Selling of Tobacco Products to Minors.- (1) No person shall sell tobacco products,-

- (a) through a vending machine that does not have age verification mechanism installed; and
 - (b) on internet sites that do not have age verification mechanism.
- (2) No person shall sell any toys or sweets resembling tobacco products.

9B. Prohibition of Giving Incentives for Promotion of Tobacco Products.- No person shall sell tobacco products to consumers,-

- (a) through cash incentives;
- (b) through loyalty schemes conferring benefit to consumers;
- (c) through discount schemes; and
- (d) through gifts.

9C. Prohibition of illegal/Non-Duty paid Tobacco Products.- (1) No person shall sell or offer for sale any tobacco product, whether manufactured locally or imported, on which tax stamp has not been affixed in terms of sub-section (2).

- (2) The Federal Government shall, by notification in the official Gazette, prescribe the form, style and manner in which tax stamps issued pursuant to the Supply and Distribution of Stamps Rule, 1954 shall be affixed on tobacco products.

9D. Prohibition to sell unregistered tobacco and tobacco products.- No manufacturer shall use any tobacco for the purposes of manufacturing tobacco products which has not been reconciled with Pakistan Tobacco Board, before and after the same has been treated in the Green Leaf Threshing Unit.”

Clause 4 of the Bill:-

- (i) That in clause 4 sub-clause (i) (b) and sub-clause (ii) (c) of the Bill for the word “and” occurring in the second last line of both the paragraphs the word “or ” be substituted and before the full stop and closing commas in both paragraphs the words “or with both” be added.
- (ii) That paragraph (d) of clause 4 may be omitted.

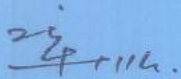
SCHEDULE-I of the Bill :- The Committee discussed the Schedule-I of the Bill and recommended that it may be deleted on the following grounds:-

- I. **Entries No. (i) & (ii)** “Communication through audio, visual...” and “Brand marking....”. The Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002 (Ordinance LXXIV of 2002) and SRO 1086 (I)/2013 issued on 31st December, 2013 constitutes even more comprehensive definitions that limits and restricts the tobacco industry in terms of Tobacco Advertising Promotion and Sponsorship. Therefore, the Sub-Committee recommended that the same may be omitted.

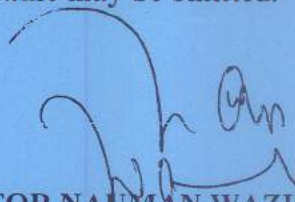
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- II. Entry No. (iii):- “Display of tobacco at sale points” The Sub-Committee observed that this does not come within the meaning of advertisement. It may also hamper consumer’s right of choice. It will also adversely affect the business of small retailers and encourage the business of illicit cigarettes. **Therefore, the Sub-Committee recommended that it may be omitted.**
- III. Entry No. (iv) & (v) :- “Tobacco product vending machines” and “internet sales of tobacco product”. The Sub-Committee observed that these are mode of sale rather than the mode of advertisement. **Therefore, the Sub-Committee recommended to include the same in the proposed new clause 9 A.**
- IV. Entry No. (vi) :- “Brand stretching and brand sharing”. The Sub-Committee noted that it is vague. **Therefore, the Sub-Committee decided to omit the same.**
- V. Entry No. (vii) :- “Product Placement...” The Sub-Committee observed that the same has already been covered under similar provision, section (iv) of SRO 882(I)/2007. **Therefore, the Sub-Committee recommended that it may be omitted.**
- VI. Entries No. (viii), (ix), (x) & (xiii) :- “Provision of gifts...”, “Supply of free samples ...”, “Incentive Promotions or loyalty scheme...” and “ promotion of discounted product”. The Sub-Committee noted that these provisions are already covered under SRO 53 (KE)/2009 date 1st July, 2009 issued under section 7 of the existing Ordinance LXXIV of 2002. **Therefore, the Sub-Committee recommended that the same may be omitted.**
- VII. Entry No. (xi) :- The Sub-Committee observed that this entry is too vague. **Therefore, it may be omitted.**
- VIII. Entry No. (xii) :- “Direct targeting of individuals...” The Sub-Committee felt that it is against the Constitutional Right of the Tobacco Industry to conduct consumer surveys and research with consent by the sample consisting of adults and smokers, compliant with local laws. **Therefore, the Sub-Committee decided to omit the entry.**
- IX. Entry No. (xiv) :- The Committee recommended to include this entry in the new clause 9A (2).
- X. Entry No. (xv) :- “Payments or other contributions to retailers...”. The Sub-Committee observed that payments and other contribution to retailers are essential part of business. It is the prerogative of every business including the Tobacco to work with its trade partners and reward them for meeting business targets as long as these contributions are legally procured and are not of illegal nature. **Therefore, the Sub-Committee recommended that the same may be omitted.**
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- XI. Entry No. (xvi) :- “Packaging and product design feature....”. The Sub-Committee noted that this section is vague and not clear. Packaging and product feature is the right of every industry and it cannot be restricted. **Therefore, the Sub-Committee recommended to omit the same.**
- XII. Entry No. (xvii) :- “Payment or other consideration in exchange...”. The Sub-Committee observed that it is part of the contract of manufacturer and retailer in every business including the Tobacco Industry. **Therefore, the Sub-Committee recommended that the same may be omitted.**
- XIII. Entry No. (xviii) :- “Sale, supply, placement...”. The Sub-Committee observed that there are different provisions in the existing law and rules made thereunder which deal with this provision. **Therefore, the Sub-Committee recommended that it may be omitted.**
- XIV. Entry No. (xix) :- “Provision of financial other support to events...”. The Sub-Committee noted that the existing laws already prohibits sponsorships for promotion of tobacco products. Moreover, the laws bind the tobacco industry to contribute to the social welfare of society which involves no branding of any sort. This provision will put a complete ban on any sort of contribution by the tobacco industry towards welfare of the deprived people. **Therefore, the Sub-Committee recommended that it may be omitted.**
- XV. Entry No. (xx) :- “Provision of financial or other support....”. The Sub-Committee noted that this provision is very vague and not clear. Financial support for tobacco promotion is already prohibited under the existing laws. **Therefore, the Sub-Committee decided to omit the same.**
- XVI. Entry No. (xxi) :- “Point of sale advertising...”. The Sub-Committee noted that the products that resemble cigarettes like E-cigarettes and E-Sheesha cannot be classified as tobacco products as it contain no tobacco. The inclusion of this section does not sit within the very premise of this law. **Therefore, the Sub-Committee recommended that the same may be omitted.**



(RAFIULLAH)
Secretary Committee



(SENATOR NAUMAN WAZIR KHATTAK)
Convener of the Sub-Committee

Islamabad, the
17th November, 2016.

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 (Ordinance LXXIV of 2002), for the purpose of improving public health;

AND WHEREAS it is expedient to discourage people from taking up smoking or using tobacco products, encouraging people to give up smoking, and to stop using tobacco products, encouraging people who have given up smoking, or who have stopped using tobacco products and not to take up tobacco use again, reducing people's exposure to smoke from tobacco products;

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, 2016.

(2) It shall come into force at once.

2. Amendment of section 2, Ordinance LXXIV of 2002.- In the Prohibition of Smoking and Protection of Non-smokers Health Ordinance, 2002 (Ordinance LXXIV of 2002), hereinafter referred to as the said Ordinance, in section 2,-

(i) for paragraph (a) the following shall be substituted, namely:-

"(a) "Advertising and promotion" means and includes any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;

Explanation I: Interior and exterior display and visibility of tobacco products at points of sale constitutes advertising and promotion.

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Explanation II: Cross-border advertising, promotion and sponsorship origination from and entering in the territory of Pakistan shall be considered as "Tobacco advertising and promotion."

- (ii) in paragraph (f), the word "and" occurring at the end, shall be omitted; and
- (iii) in paragraph (g), for the full stop, occurring at the end, a semi-colon and the word "; and", shall be substituted and thereafter, the following new paragraphs (h), (i) and (j), shall be added, namely:-

"(h) "Sponsorship" means and includes any form of contribution to any event, activity or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;

Explanation: Tobacco sponsorship covers any form of contribution, financial or otherwise, regardless of how or whether that contribution is acknowledged or publicized.

- (i) "Tobacco Industry" includes tobacco product manufacturers, wholesale distributors and importers of tobacco products, retailers, public relation and marketing firms and the agents or representatives of such to an extent of engaging in authorized tobacco advertising and promotion; and
- (j) "Tobacco Product" products entirely or partly made of leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing or any other means of consumption. E-cigarettes, E-shisha and other similar products shall be included in this definition."

3. Amendment of section 7, Ordinance LXXIV of 2002.- In the said Ordinance, for section 7, the following shall be substituted, namely:-

"7. Prohibition of tobacco advertising, promotion and tobacco sponsorship.- (1) Tobacco advertising, promotion and sponsorship shall be prohibited and tobacco industry or any other person shall not advertise, promotes and sponsor tobacco and tobacco products on any media or in any place and any vehicle.

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(2). The prohibition mentioned in sub-section (1) shall include the following acts, namely:-

- (a) All advertising and promotion, as well as sponsorship, without exemption;
- (b) Direct and indirect advertising, promotion and sponsorship;
- (c) Acts that aim at promotion and act that have or are likely to have a promotional effect;
- (d) Promotion of tobacco products and the use of tobacco;
- (e) Commercial communications and commercial recommendations and actions;
- (f) Contribution of any kind to any event, activity or individual;
- (g) Advertising and promotion of tobacco brand names and all corporate promotion; and
- (h) Traditional media (print, television and radio) and all media platforms, including Internet, mobile telephones and other new technologies as well as films, video games and other information technology based applications.

(3) A non-exhaustive and illustrative list of forms of tobacco advertising, promotion and sponsorship within the meaning of this Section is provided in Schedule-I.

(4) Within ninety days of commencement of this amendment, the Government shall constitute enforcement and monitoring Committee which shall have the powers to revise the Schedule-I any time after giving one month advanced notice. Such Revision shall only be effective after the publication in the Official Gazette.

(5) The enforcement and monitoring Committee constituted under sub-section (4) shall be comprised of ten members from Government, academia, consumer protection organizations and public health professionals. All members of the Committee shall submit a conflict of interest statement in the first meeting of the Committee and any person with a conflicting interest shall not be allowed to become member of the Committee.

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4. **Amendment of section 11, Ordinance LXXIV of 2002.-** In the said Ordinance, in section 11,-

(i) for paragraph (b), the following shall be substituted, namely:-

"(b) Section 8 or 9 shall be punishable with fine which shall not be less than one hundred thousand rupees and in case of second or subsequent offence of the same kind, shall be punishable with simple imprisonment which may extend to six months, and with a fine which shall not be less than five hundred thousand rupees."

(ii) after paragraph (b), amended as aforesaid, the following new paragraphs (c) and (d) shall be added, namely:-

"(c) Any person who contravenes the provisions of Section 7 shall be punishable with fine which shall not be less than one hundred thousand rupees and in case of second or subsequent offence of the same kind, shall be punishable with imprisonment which may extend to six months, and with a fine which shall not be less than five hundred thousand rupees.

"(d) A second or subsequent contravention of this section by the tobacco industry shall be punishable with imprisonment which may extend to one year, and with a fine which shall not be less than one million rupees."

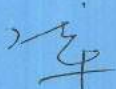
SCHEDULE I

See section 7 (3)

- i. Communication through audio, visual or audiovisual, print material including newspapers, magazines, pamphlets, leaflets, flyers, letters, billboards, posters, signs, television and radio (including terrestrial and satellite), films, DVDs, videos and CDs, games (computer games, video games or online games), other digital communication platforms (including the Internet and mobile phones) and theatre or other live performance;
- ii. Brand-marking, including in entertainment venues and retail outlets and on vehicles and equipment (e.g. by use of brand colours or schemes of colors, logos or trademarks);

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- iii. Display of tobacco products at points of sale;
- iv. Tobacco product vending machines;
- v. Internet sales of tobacco products;
- vi. Brand stretching and brand sharing (product diversification);
- vii. Product placement (i.e. the inclusion of, or reference to, a tobacco product, service or trademark in the context of communication (see above), in return for payment or other consideration);
- viii. Provision of gifts or discounted products with the purchase of tobacco products (e.g. key rings, T-shirts, baseball hats, cigarette lighters);
- ix. Supply of free samples of tobacco products, including in conjunction with marketing surveys and taste testing;
- x. Incentive promotions or loyalty schemes, e.g. redeemable coupons provided with purchase of tobacco products;
- xi. Competitions, associated with tobacco products or brand names, whether requiring the purchase of a tobacco product or not;
- xii. Direct targeting of individuals with promotional (including informational) material, such as direct mail, telemarketing, "consumer surveys" or "research";
- xiii. Promotion of discounted products;
- xiv. Sale or supply of toys or sweets that resemble tobacco products;
- xv. Payments or other contributions to retailers to encourage or induce them to sell products, including retailer incentive programmes (e.g. rewards to retailers for achieving certain sales volumes);
- xvi. Packaging and product design features;



- xvii. Payment or other consideration in exchange for the exclusive sale or prominent display of a particular product or particular manufacturer's product in a retail outlet, at a venue or at an event;
- xviii. Sale, supply, placement and display of products at educational establishments or at hospitality, sporting, entertainment, music, dance and social venues or events;
- xix. Provision of financial or other support to events, activities, individuals or groups (Such as sporting or arts events, individual sportspeople or teams, individual artists or artistic groups, welfare organizations, politicians, political candidates or political parties), whether or not in exchange for publicity, including corporate social responsibility activities;
- xx. Provision of financial or other support by the tobacco industry to venue operators (Such as pubs, clubs or other recreational venues) in exchange for building or renovating premises to promote tobacco products or the use or provision of awnings and sunshades; and
- xxi. Point of sale advertising and promotion of products that resemble cigarettes or other tobacco products such as E-cigarette and E-shisha etc.

STATEMENT OF OBJECTS AND REASONS

To regulate and Prohibit Tobacco Advertising, Promotion and Sponsorship as provided by Article 38 of the Constitution of Islamic Republic of Pakistan that the state shall provide promotion of social well being and medical relief, therefore, it is important to discourage people from taking up smoking, or using tobacco products, encouraging people to give up smoking and to stop using tobacco products, encouraging people who have given up smoking or who have stopped using tobacco products and not to take up tobacco use again, reducing people's exposure to smoke from tobacco products and to give effect to certain obligations that Pakistan has as a party under Article 5.3 and Article 13 of the WHO Framework Convention on Tobacco Control.

SENATOR MUSHAHID HUSSAIN SYED
Member-in-Charge



**A
Bill**

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

WHEREAS it is expedient to amend the Prohibition of Smoking and Protection of Non-smokers Health Ordinance, 2002 (Ordinance No. LXXIV of 2002), for the purpose of **protecting the health of non-smokers;**

And whereas it is expedient to discourage people from taking up smoking or using tobacco products, **prohibit smoking or use of tobacco products in places of public work or in public service vehicles,** encouraging people who have given up smoking, or who have stopped using tobacco products and not to take up tobacco use again, reducing people's exposure to smoke from tobacco products.

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, 2016.

(2) It shall come into force at once.

2. Amendment of section 2, Ordinance LXXIV of 2002.- The Prohibition of Smoking and Protection of Non-smokers Health Ordinance 2002, (Ordinance No. LXXIV of 2002), hereinafter referred the said Ordinance, in section 2,-

- (i) in paragraph (f), the word "and" occurring at the end, shall be omitted; and
- (ii) in paragraph (g), for the words "**smoking of tobacco**" occurring in the first line, the words "**inhaling smoke produced by burning tobacco**" shall be substituted, for the full stop, occurring at the end, a semi-colon and the word "**; and**", shall be substituted and after paragraph (g), amended as aforesaid, the following new paragraph (h) shall be inserted, namely:-

"(h) "Tobacco Products" means products made entirely or partly of leaf tobacco as raw material, manufactured to be used for smoking, chewing or snuffing;"

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3. **Insertion of new sections 9A, 9B, 9C and 9D, Ordinance LXXIV of 2002.-** In the said Ordinance, after the existing section 9, the following new sections 9A, 9B, 9C and 9D shall be inserted, namely: ---

“9A. Prohibition of Selling of Tobacco Products to Minors.- (1) No person shall sell tobacco products,-

- (a) through a vending machine that does not have age verification mechanism installed; and
- (b) on internet sites that do not have age verification mechanism.

(2) No person shall sell any toys or sweets resembling tobacco products.

9B. Prohibition of Giving Incentives for Promotion of Tobacco Products.-

No person shall sell tobacco products to consumers,-

- (a) through cash incentives;
- (b) through loyalty schemes conferring benefits to consumers;
- (c) through discount schemes; and
- (d) through gifts.

9C. Prohibition of illegal/Non-Duty paid Tobacco Products.- (1) No person shall sell or offer for sale any tobacco product, whether manufactured locally or imported, on which tax stamp has not been affixed in terms of sub-section (2).

(2) The Federal Government shall, by notification in the official Gazette, prescribe the form, style and manner in which tax stamps issued pursuant to the Supply and Distribution of Stamps Rule, 1954 shall be affixed on tobacco products.

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9D. Prohibition to sell unregistered tobacco and tobacco products.- No manufacturer shall use any tobacco for the purposes of manufacturing tobacco products which has not been reconciled with Pakistan Tobacco Board, before and after the same has been treated in the Green Leaf Threshing Unit."

4. Amendment of section 11, Ordinance LXXIV of 2002.- In the said Ordinance, in section 11,-

(i) for paragraph (b), the following shall be substituted, namely:-

"(b) Section 8 or 9 shall be punishable with fine which shall not be less than one hundred thousand rupees and in case of second or subsequent offence of the same kind, shall be punishable with simple imprisonment which may extend to six months ~~or~~ with a fine which shall not be less than five hundred thousand ~~or with both.~~"

(ii) after paragraph (b), amended as aforesaid, the following new paragraph (c) shall be added, namely:-

"(c) Any person who contravenes the provisions of Section 7 shall be punishable with fine which shall not be less than one hundred thousand rupees and in case of second or subsequent offence of the same kind, shall be punishable with imprisonment which may extend to six months ~~or~~ with a fine which shall not be less than five hundred thousand ~~or with both.~~"

STATEMENT OF OBJECTS AND REASONS

To regulate and Prohibit Tobacco Advertising, Promotion and Sponsorship as provided by Article 38 of the Constitution of Islamic Republic of Pakistan that the state shall provide promotion of social well being and medical relief, therefore, it is important to discourage people from taking up smoking, or using tobacco products, encouraging people to give up smoking and to stop using tobacco products, encouraging people who have given up smoking or who have stopped using tobacco products and not to take up tobacco use again, reducing people's exposure to smoke from tobacco products and to give effect to certain obligations that Pakistan has as a party under Article 5.3 and Article 13 of the WHO Framework Convention on Tobacco Control.

SENATOR MUSHAHID HUSSAIN SYED
Member-in-Charge



