

Law vision (Pakistan)

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Protection of Breast-feeding and Child Nutrition Ordinance, 2002

NO. XCIII OF 2002

26th October, 2002**AN ORDINANCE** To provide for protection
of breast-feeding and nutrition for infants and young children

The following Ordinance promulgated by the President is hereby published for general information:-

WHEREAS it is expedient to ensure safe and adequate nutrition for infants and young children by promoting and protecting breast-feeding, and by regulating the marketing and promotion of designated products including breast milk substitutes, and of feeding bottles, valves for feeding bottles, nipple shields, teats and pacifier and to provide for matters connected therewith or ancillary thereto;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. 1 of 1999, read with the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:-

CHAPTER I INTRODUCTORY

1. Short title, extent and commencement.-(1) This Ordinance may be called the Protection of Breast-feeding and Child Nutrition Ordinance, 2002.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definitions.- In this Ordinance, unless there is anything repugnant in the subject or context,

(a) "infant" means a child up to the age of twelve months;

(b) "young child" means a child from the age of twelve months up to the age of two years;

(c) "advertise" or "advertising" means to make any representation by any means whatsoever for the purpose of promoting sale or use of a designated product;

(d) "Board" means the National Infant Feeding Board constituted under section 3;

(e) "container" means any form of packaging of a designated product for sale as a retail unit;

(f) "designated product" means-

i. Any milk manufactured, marketed and promoted for the use of an infant or otherwise represented as a partial or total replacement for mother's milk, whether or not it is suitable for such replacement;

ii. Any products manufactured, marketed, promoted or otherwise represented as a

complement to mother's milk to meet the growing nutritional needs of an infant:

iii. Any feeding bottle, teat, valve for feeding bottle, pacifier or nipple shield; and

iv. Such other product as the Federal Government may, by notification in the official Gazette, declare to be a designated product for the purposes of this Ordinance;

(g) "complementary food" means any food suitable as an addition to breast milk or to a breast milk substitute when either becomes insufficient to satisfy the nutritional requirements of an infant, also commonly called "weaning food" or "breast milk and young child supplement";

(h) "infant-formula" means an animal or vegetable based milk product manufactured in accordance with the standards recommended by the Codex Alimentarius Commission and the Codex Code of Hygienic Practice for Foods for Infants and Children to approximate the normal nutritional requirements of an infant up to the age of six months;

(i) "feeding bottle" means any bottle or receptacle marketed for the purpose of feeding an infant or a young child;

(j) "nipple shield" means an appliance with a teat for a baby to suck from the breast;

(k) "pacifier" means an artificial teat for babies to suck, also called "dummy";

(l) "follow-up formula" means an animal or vegetable based milk product marketed for infants older than six months or young child and formulated industrially in accordance, with the standards of the Codex Alimentarius Commission and the Codex Code of Hygienic Practice for Foods for Infants and Children;

(m) "distributor" means any person engaged in the business of marketing, whether wholesale or retail, and includes a person providing product public relations and information services;

(n) "health care facility" means a Government, non-Government, semi-Government or private institution or organization, or private medical practitioner engaged, directly or indirectly, in the provision of health care to infants, young children, pregnant women or mothers, and includes a day-care center, nursery and any other child-care institution;

(o) "health professional" means a medical practitioner, nurse, nutritionist or such other persons as the Federal Government may, by notification in the official Gazette, specify;

(p) "health worker" means any person providing services to infants, young children, pregnant women or mothers as a medical practitioner, and includes a health professional, homeopath practitioner, hakim, nurse, midwife, traditional birth attendant, pharmacist, dispensing chemist, nutritionist, hospital administrator or employee, whether professional or not, whether paid or not, and any other person providing such services as the Federal Government may, by notification in the official Gazette, specify;

(q) "Inspector" means any person designated as Inspector under section 12;

(r) "label" means any tag, mark, pictorial or other descriptive matter which is written, printed, stencilled, marked, embossed, attached or otherwise appearing on a container;

(s) "manufacturer" means a person, corporation or other entity engaged or involved in the business of producing, processing, compounding, formulating, filling, packing, repacking, altering, ornamenting, finishing and labeling a designated product, whether directly, through an agent, or through a person controlled by or under an agreement;

(t) "market" means any method of introducing or selling a designated product, and includes, but not limited to, promotion, distribution, advertising, distribution of samples, product public relations and product information services;

(u) "person" means any individual, partnership, association, unincorporated organization, company, co-operative, corporation, trustee, agent or any group of persons;

(v) "prescribed" means prescribed by rules;

(w) "promote" or "promotion" means any method of introducing a person to, or familiarizing a person with, a designated product or inducing a person to buy or use a designated product, and includes, but not limited to, advertising, offer of samples or gifts, distribution of literature, public relations and information services related to a designated product, but does not include any prescription issued by a medical practitioner based on health grounds;

(x) "Provincial Committee" means a Provincial Infant Feeding Committee constituted under section 3;

(y) "rules" means rules made under this Ordinance; and

(z) "sample" means any quantity of a designated product provided free of cost.

CHAPTER II ADMINISTRATION

3. National Infant Feeding Board and Provincial Infant Feeding Committees.- (1) The Federal Government shall, by notification in the official Gazette, constitute a National Infant Feeding Board.

(2) The Board shall consist of a Chairperson, a Secretary and not more than such number of members as the Federal Government may prescribe:

Provided that not less than half of the total number of members of the Board shall comprise of such persons who are professional qualified with respect to infant and young child nutrition and at least one member of the Board shall be selected from the industry involved in the manufacturing and marketing of designated products. Secretary of the Provincial Health Department or his nominee shall be ex - officio member of the board

(3) A Provincial Government shall, by notification in the official Provincial Gazette, constitute a Provincial Infant Feeding Committee for a Province.

(4) Subject to sub-section (5), a Provincial Infant Feeding Committee shall consist of a Chairperson and not more than such number of members as the Provincial Government may prescribe:

Provided that not less than half of the total number of members of a Provincial Committee shall comprise of such persons who are professional qualified with respect to infant and young child nutrition, and at least one member shall be selected from industry involved in the manufacturing and marketing of designated products.

(5) The Federal Government shall nominate the members of the Board and a Provincial Government shall nominate the members of a Committee, who shall hold office for a term as may be prescribed by the respective Governments.

4. Powers and functions of the Board and Provincial Committees.- The following shall be the powers and functions of the Board in the case of the Federal Government and a Provincial Committee in the case of a Provincial Government, namely:-

(a) To receive reports of violations of provisions of this Ordinance or the rules;

(b) To recommend investigation of cases against manufactures, distributors or health workers found to be violating the provisions of this Ordinance or the rules;

(c) to plan for and co-ordinate the dissemination of informational and educational materials on the topic of infant feeding and recommend continuing education courses for health workers on topics related to this Ordinance;

(d) to advise the Federal Government, and the Provincial Governments on national policies for the promotion and protection of breast-feeding, and matters relating to designated products especially infant and young child nutrition, particularly through national or provincial education campaigns, and to organize health education on the same for health workers and general public; and

(e) to propose guidelines to the Federal Government or to a Provincial Government, as the case may be, in respect of matters specified in clause (d).

5. Meeting of the Board and Provincial Committees.- (1) The Secretary of the Board or, as the case may be, a Provincial Committee, shall call meetings of the Board or a Provincial

Committee, as the case may be, at the direction of the Chairperson, and maintain minutes of such meetings.

6. Implementation and monitoring.- The Federal Government may give such directions to a Provincial Government as may appear to it to be necessary for carrying into effect in a Province any of the provisions of this Ordinance or of the rules, or any order or direction made thereunder, or for achievement of uniformity in respect of any matter related thereto in different parts of Pakistan.

CHAPTER III PROHIBITIONS

7. Prohibited practices.- (1) No person shall, in any form whatsoever, promote any designated products except as provided for under this Ordinance.

(2) No person shall in any manner assert that any designated product is a substitute for mother's milk, or that it is equivalent to or comparable with or superior to mother's milk.

(3) No manufacture or distributor shall offer, or make gift or contributions of any kind, or pay to any extent for any reason whatsoever, or give any kind of benefit, to a health worker or his family, or any personnel employed, directly or indirectly, in a health care facility, or any member of the Board or a Provincial Committee, as the case may be, or the employees thereof.

(4) No manufacturer or distributor shall donate any designated product and equipment or services related to a designated product free of charge or at low cost to a health care facility, or offer or give any benefit to a professional association of medical practitioners for this purpose.

(5) No person other than a health worker who is not engaged by a manufacturer or distributor shall instruct any user on the need and proper preparation and use of any designated product:

Provided that a manufacturer or distributor may instruct any user on the need and proper preparation and use of any designated product in accordance with the provisions of section 8.

(6) No distributor or manufacturer shall in furtherance of or for the purposes of its business have contact, directly or indirectly, with general public within a health care facility.

(7) No manufacturer, distributor or any person engaged by them shall produce or distribute any educational or informational material relating to infant and young child feeding:

Provided that any educational or informational material relating to a designated product may be provided by a manufacturer or distributor to a health professional subject to the prescribed conditions, and that the same shall be restricted to scientific and factual matters, and shall not imply or create a belief that bottle-feeding is equivalent or superior to breast-feeding.

8. Prohibitions and guidance relating to labels of designated products.- (1) No designated product shall be marketed or sold in Pakistan unless its label is in accordance with the provisions of this Ordinance and the rules, and approved in the manner as may be prescribed by the Federal Government:

Provided that for any designated product already being sold in Pakistan, a manufacturer or distributor shall provide for the label of such product within one hundred and eighty days of its approval in the manner as may be prescribed.

(2) Label of a designated product shall be designed so as not to discourage breastfeeding and shall provide the necessary information in Urdu about the appropriate use of such product and the age before which a designated product should not be used.

(3) Every container shall have a clear, conspicuous and easily understood message printed on it, or on a label that cannot become separated from it, which shall be written in Urdu, and if so desired by the manufacturers, in English as well.

- (4) The label shall-
- (a) not contain anything that may discourage breast-feeding;
 - (b) contain a conspicuous notice in bold characters in the prescribed height stating the following, namely:-

**"MOTHER'S MILK IS BEST FOR YOUR BABY AND HELPS IN
PREVENTING DIARRHOEA AND OTHER ILLNESSES";**

- (c) instead of or in addition to the notice specified in clause (b), contain any other message as may be prescribed with respect to any designated product;
- (d) neither uses expression such as "maternalized" or "humanized" or equivalent nor contains any comparison with mother's milk.
- (e) not show photographs, drawings or graphics, except that graphics may be used to illustrate the correct method of preparation;
- (f) contain the name and address of manufacturer and of wholesale distributor if a designated product is an imported item; and
- (g) except for bottles, teats, pacifiers and nipple shields, contain appropriate instructions in Urdu for the correct preparation in words and easily understood graphics, and indicate the ingredients, composition and analysis of a designated product, required storage conditions, batch number and expiry date, and contain any warning as may be prescribed for the implementation of this Ordinance in characters of the prescribed height in Urdu or regional languages.

CHAPTER IV INFORMATIONAL AND EDUCATIONAL MATERIALS

9. Informational and educational materials.- (1) Any person who produces or distributes any informational and educational materials referred in this section shall submit copies thereof to the Board as may be prescribed.

(2) Informational and educational materials, whether written, audio or visual, which refer to infant feeding shall contain only correct information and shall not use any pictures, graphics or text that encourage bottle-feeding or discourage breast-feeding.

(3) The Federal Government shall, in consultation with the Board, arrange for and approve the dissemination of objective and consistent informational and educational materials on infant and young child feeding, excluding medical literature and may, by notification in the official Gazette, publish such instructions, guidelines or policies as it seems necessary or appropriate, for the purposes of producing and distributing informational and educational materials.

10. Health workers and health care facilities._ (1) Health workers shall encourage, support and protect breast-feeding. They shall be expected to know the provisions of this Ordinance, in particular, any instructions, guidelines or policies published under section 9, and to implement the same whenever possible.

(2) Health workers shall not accept or give samples of any designated product to any person, particularly pregnant women, mothers of infants and young children, or members of their families.

(3) Health workers and their Associations shall not promote in any way whatsoever, any designated product.

(4) Health workers falling within the jurisdiction of the Federal Government shall make in writing a report to the Board, and in all other cases to a concerned Provincial Committee, any offer of a gift or other financial benefit made by a manufacturer or distributor or any other contravention of the provisions of this Ordinance or the rules, noticed by them.

(5) There shall be kept posted in every health care facility in Urdu and English, and in such

other language as may be deemed appropriate by the health care facility, such abstracts of this Ordinance as may be prescribed by the Federal Government, or a Provincial Government, as the case may be, for this purpose.

CHAPTER V

REGISTRATION OF DESIGNATED PRODUCTS AND QUALITY ASSURANCE

11. Quality assurance.- (1) No designated product shall be manufactured, sold or otherwise distributed in Pakistan unless it is formulated industrially in accordance with the standards recommended by the Codex Alimentarius Commission and the Codex Code of Hygienic Practice for Foods for Infants and Children, and in addition, shall meet such applicable standards specified in this Ordinance and the rules.

(2) The Board or a Provincial Committee, as the case may be, may require an inspector or any other person invested with powers under this ordinance to test any designated product sold in Pakistan in order to determine whether it is fit for human consumption.

(3) A designated product that does not meet the standards for use in the country of manufacture shall not be sold in Pakistan.

(4) A designated product that has reached the expiry date shall not be marketed, sold or distributed.

(5) A designated product shall be sold only in the original container in order to prevent quality deterioration, adulteration or contamination thereof.

12. Investigation and inspection.- (1) The Federal Government may designate any number of persons professionally qualified with respect to infant and young child nutrition as Inspector to conduct inspection and investigation and prosecution for the purposes of this Ordinance, and to monitor compliance with the provisions of this Ordinance.

(2) After an inspection for purpose of this Ordinance, an Inspector shall refer the case, and if so required, provide one portion of the sample of a designated product, or the whole of a designated product if it is such that it cannot be divided, to the Board, or a Provincial Committee, as the case may be.

13. Investigation and filing of a case.- (1) Upon completion of an investigation and receipt of a complete report, and after giving the concerned party an opportunity of being heard, the Board or a Provincial Committee, as the case may be, shall recommend to the Federal Government whether or not to institute prosecution under this Ordinance.

(2) No court shall take cognizance of any offence punishable under this Ordinance except on a report in writing by an officer authorized by the Federal Government, or any other person as the Federal Government may, by notification in the official Gazette, authorize in this behalf.

(3) An offence punishable under this Ordinance shall be non-cognizable.

14. Appeal.- (1) Any person sentenced by a Court under this Ordinance may prefer an appeal to the High Court within thirty days of the judgement.

(2) The provisions of sections 5 and 12 of the Limitation Act, 1908 (IX of 1908), shall be applicable to an appeal preferred under sub-section (1).

15. Public enforcement.- (1) Any person whomsoever may make an application in writing to the Board or a Provincial Committee concerning contravention of any of the provisions of this Ordinance or the rules.

(2) In the event an investigation reveals an offense, the Board or a Provincial Committee, as the case may be, shall follow the procedure specified in section 13 for recommending prosecution.

CHAPTER VI PENALTIES AND PROCEDURES

16. Revocation or suspension of license, etc.- (1) Where any person, except a medical practitioner, has been found to have contravened any of the provisions of this Ordinance or the rules, the concerned authority upon written recommendation of the Board, or a Provincial Committee, as the case may be, and after giving such person an opportunity of being heard, may recommend to the Federal Government to suspend or cancel, his license for the practice of his profession or occupation or for the pursuit of his business.

(2) In the case of a contravention involving a medical practitioner registered under the Medical and Dental Council Ordinance, 1962 (XXXII of 1962), the matter shall be referred to the Pakistan Medical and Dental Council for further action.

17. Penalties.- (1) Any manufacturer or distributor who contravenes the provisions of sub-sections (1) to (7) of section 7, sub-section (1) of section 8, sub-sections (1) (3), (4) or (5) of section 11, shall be punishable with imprisonment for a term which may extend to two years, or with fine which shall not be less than fifty thousand rupees or more than five hundred thousand rupees, or both.

(2) Any person, who contravenes any other provision of this Ordinance, or the rules, shall be punishable with a fine, which may extend to five hundred thousand rupees.

18. Responsibility of an individual for the act of a company, corporation, partnership, or an institution.- where the offence is found to have been committed by a company, corporation, partnership or an institution, as a result of an institutional or operational instructions issued by it or implemented by it, the company, corporation, partnership or the institution may be found guilty in addition to the individuals directly responsible for the commission of such offence.

19. Power to make rules.- (1) The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) A provincial Government may, by notification in the official Provincial Gazette, make rules for the administration of a Provincial Committee in a province.

20. Power to delegate- the Federal Government may delegate any of the functions and its powers under this Ordinance to a Provincial Government.

21. Overriding effect: the provisions of this Ordinance shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

Case Law

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