

Smoking, Public Health and Indian Law



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Abstract

Tobacco is the foremost cause of preventable death in the world today, and India, which is the second largest country in the world, with a billion plus population. The total number of premature deaths caused by tobacco during the twentieth century has been estimated at about 100 million and, if current trends of tobacco use continue during the twenty-first century, the death toll is projected to go up to one billion. The World Health Organization (WHO), which provides these estimates, also predicts that India will have the fastest rate of rise in deaths attributable to tobacco in the first two decades of the twenty-first century. Many of these deaths will occur in the productive years of adult life, as a consequence of an addiction acquired in youth. According to estimates made by the WHO, currently about 5 million people die prematurely every year in the world due to the use of tobacco, mostly cigarette smoking. These deaths are currently divided somewhat evenly between developed and developing countries. More important is the fact that this epidemic of disease and death caused by tobacco is increasing very rapidly. By 2030, it is estimated that the number of premature deaths attributable to tobacco would double to 10 million deaths every year, with about 7 million of the deaths taking place in developing countries.

Among people alive today in the world, about 500 million would die prematurely due to tobacco use; most of these are children and young adults of today.¹ India's tobacco problem is more complex than probably that of any other country in the world, with a large consequential burden of tobacco related disease and death.² The prevalence of tobacco use among men has been reported to be high (generally exceeding 50%) from almost all parts of India (more in rural than in urban areas). Women from most parts of India report smokeless tobacco use and the prevalence varies between 15% and 60%.³ Among 13-15-year old school-going children, the current use of any tobacco product varies from 3.3% in Goa to 62.8% in Nagaland.⁴ In the late 1980s, the number of tobacco-attributable deaths in India was estimated as 630,000 per year.⁵ On conservative estimates, the tobacco-

attributable deaths currently range between 800,000 and 900,000 per year. The cost of the tobacco attributable burden of just three groups of diseases- Cancer, heart disease and lung disease-was estimated as Rs 277.611 billion (US\$ 6.5 billion) in 1999.⁶ This increased to Rs 308.33 billion (US\$ 7.2 billion) in the year 2002-2003. The most widely prevalent and most studied form of tobacco use globally is cigarette smoking. Cigarettes kill one in two smokers prematurely, half of these deaths occurring during middle age (35.69 years).⁷ Assessed in any manner, tobacco use is one of the most alarming health problems facing the world today. Tobacco is a marketed malady and its use is an engineered addiction. The multinational tobacco industry operating at the global level promotes and profits from the deadly tobacco trade. Such a global threat needs a global thrust to counter it. The WHO used its

mandate of proposing international treaties on public health for the first time in its history, by initiating the Framework Convention on Tobacco Control (FCTC). After several years of negotiations in which over a hundred countries participated, the Convention was adopted by the World Health Assembly in May 2003. India was one among the first few countries to sign and ratify the FCTC. India was also among the first countries to enact a strong national law for tobacco control in April 2003.

Effect of Smoking on Public Health

Smoking is a process whereby a certain substance is burnt and the resultant smoke is subsequently tasted or inhaled. Although substances like cannabis, opium, methamphetamine, cyclidine (PCP) and heroin can also conceivably fall within the purview of smoking when considered in that sense, it is tobacco which is by far the most popular form of smoking and which is practiced throughout the of the world. With relation to smoking, there are essentially three categories of people who are placed at substantial risk by the practice of smoking: firstly, the smokers themselves; secondly, non smokers in the vicinity of such smokers who are also termed as passive smokers; and finally those involved in the tobacco industry who may be in the danger of causing significant harm to themselves by way of the substances subcutaneously ingested into their bloodstream. For the sake of clarity however, we need to identify the predominant and accepted strands of thought with regard to the relation between smoking and public health. With reference to smokers, the incomplete combustion produced by burning plant material produces carbon monoxide which impairs the ability of blood vessels to carry oxygen when inhaled into lungs. This in turn is manifested by way of hazards such as lung cancer, heart attacks, strokes, impotence, and other cerebrovascular and chronic obstructive pulmonary diseases such as asthma, bronchitis and emphysema.

On the other hand, passive smoking is even more dangerous and harmful as such an individual inhales more harmful toxins than the actual

smoker himself. This is because side stream smoke⁸ contains three times more nicotine, three times more tar and about fifty times more ammonia than the smoke inhaled by the Smoker. The dangers of passive smoking are therefore extremely real and parallel those of direct smoke.⁹ Furthermore, hazards are even faced by those engaged in the plucking and curing of tobacco leaves. The same has been highlighted by researchers at the Ahmadabad-based National Institute of Occupational Health which by way of its research findings has clarified that hands of the workers get affected by the chemicals in tobacco and when nicotine is absorbed into the body through the skin, the health of such workers is placed at considerable risk. Symptoms include head-ache, nausea and vomiting.¹⁰

What is infinitely more disturbing is the fact that most of the components inhaled by way of smoking such as nicotine, are inherently addictive in nature and once somebody is addicted to them, it becomes fiendishly difficult to relinquish such a habit. At the same time, researches have also shown that most of such substances are also carcinogens. In fact, there are over 19 known carcinogens in cigarettes.¹¹ Therefore, the harmful connection between public health and smoking is being taken as an *ipso facto* assumption in context of the present paper. As such, the practice of smoking and its causal linkages with public health have long transcended mere researcharial dimensions; they are now an integral and familiar part of contemporary life.

Arguments for and against ban on Smoking

There are numerous arguments raised both in support as well as in opposition to a ban on smoking. The argument most commonly advanced with reference to an imposition of a ban on smoking is that the same would tantamount to being nothing more than a blatant case of interference on the part of the government in the personal lifestyle or property rights of individuals.¹² However, the very same argument can be viably countered by emphasising the fact that when the personal lifestyle or the

property rights of individuals end up infringing concomitant rights of other individuals, the government has a duty, and, a prerogative to step in, and that is precisely what is being done in the present case.¹³

Secondly, those in opposition to a ban on smoking, or for that matter other tobacco-related products, also cite the significant economic dimensions involved. Not only does it make a significant contribution to the state exchequer by way of taxes but also that a large number of tobacco farmers would be hit if consumption were to be curbed.¹⁴ However, these arguments could be countered by noting that in any case the cost of healthcare met by the state exchequer is far higher than the revenues generated by tobacco. Furthermore, as regards the loss of livelihood amongst tobacco farmers, the health of the tobacco cultivators themselves are placed at substantial risk by way of such cultivation and additionally, the illnesses or deaths caused by the usage of tobacco can only possibly result in the perpetuation of the vicious cycle of poverty.¹⁵

Thirdly, opponents of any ban or prohibition on smoking also stress that smoking is akin to the philosophical concept of a 'victimless crime'. The concept of a victimless crime essentially put forwards that a crime in which the victim is the self, there is no offence or misdemeanor committed. Hence, smokers who smoke of their own free volition cannot be held accountable for the hazards resultant there from. However, what such advocates very conveniently manage to sidestep is the fact that passive smokers cannot possibly be brought within the notion of such a 'victimless crime' and being subjected to hazards for which there was not even the slightest modicum of consent in the first place, they have got every right to agitate for a ban on smoking in public places.¹⁶

Finally, there is also a strand of thought which put forward that a ban of smoking shall amount to nothing more than removing the 'scene of crime' away from the public sphere and into the private sphere. Be that as it may, the same logic cannot possibly be used to justify

not imposing a ban on smoking as regardless of the efficacy of the means proposed there is no escaping the fact that a ban on smoking in public places shall result in the reduction of the health hazards posed by the same.

Indian Legal Position with relation to ban on Smoking

In 1975, the Government of India enacted the *Cigarettes (Regulation of Production, Supply and Distribution) Act (The Cigarettes Act, 1975)*¹⁷ that made it mandatory to display a statutory health warning on all packages and advertisements of cigarettes. This Act was passed to provide certain restrictions related to the trade and commerce in, and production, supply and distribution of, cigarettes. The statement of objectives and reasons, in the Act, clearly stated, inter alia:

"Smoking of cigarettes is a harmful habit, and in the course of time, can lead to grave health hazards. Researches carried out in various parts of the world have confirmed that there is a relationship between smoking of cigarettes and lung cancer. Chronic bronchitis, certain diseases of the heart and the arteries, cancer of the bladder, prostrate, mouth, pharynx and oesophagus, peptic ulcer, etc. are also reported to be among the ill effects of cigarette smoking."

The Cigarette Act, 1975 required the manufacturers or persons trading in cigarettes to display a statutory warning that 'Cigarette smoking is injurious to health' on all cartons and packages of cigarettes. A similar warning was also required to be displayed in advertisements of cigarettes. The purpose of this warning was mainly to inform citizens of the harmful effects of smoking so that the demand for cigarettes would be reduced. Section 3 of the Act specifically laid down restrictions relating to trade and commerce in tobacco. This section made it obligatory for a person who engages in the trade of production, distribution and supply of cigarettes, to ensure that every package so produced, supplied or distributed by him should bear the specified warning. Section 4 described the manner in which the warning should be presented, namely,

the style and type of lettering which has to be legible, prominent and bold, so that it is clearly visible to the buyer. Similarly, Sections 6 and 7 prescribed, respectively, the language in which the warning shall be expressed and the size of the letters. In addition, there were other sections in the Act that addressed the power of entry and search (Section 8), confiscation of packages (Section 10) and liability to pay penalty in the event of not abiding by the provisions of the Act (Section 12). The Cigarettes Act, 1975, however, failed to accomplish much because it was not comprehensive in its coverage and was feeble in its provisions. The warning specified under the Act was far too mild to be an effective deterrent. Moreover the Act did not include in its purview non-cigarette tobacco products such as beedis, cheroots, gutka and cigars. This Act was repealed with the passage of the new Act in 2003. *The Cigarettes and Other Tobacco Products (Prohibition of Advertisement, Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003* is the primary legislative framework within which the Government of India seeks to address the issues related to the commercial aspects of tobacco products. This

legislation brings the entire range of tobacco products under the jurisdiction of the Central Government for the purpose of this Act. It is enforceable across all states and union territories, and for all tobacco products, including cigarettes, cigars, cheroots, beedis, cigarette, tobacco, pipe tobacco, hookah tobacco, chewing tobacco, gutka, tobacco tooth powder, paan masala or any chewing material having tobacco as one of the ingredients (by whatever name it may be called). In pursuance of Section 31 of the aforesaid Act, the Prohibition of Smoking in Public Places Rules, have been brought into effect from October 2, 2008, so as to curb smoking in public. These Rules mandate that it is the duty of the owner, proprietor, or for that matter, any person in-charge of a public place to ensure that there is no incidence of public smoking in their premises. It has also been provided under these very Rules that it is the responsibility of such individuals to prominently display the names of the persons with whom complaints can be lodged as regards those seen violating the ban. Further, a board displaying the 'No Smoking' sign also has to be displayed at the entrance to those premises as specified under Schedule II of the Rules.

Key Provisions and Penalties of the Cigarettes and other Tobacco Products Act, 2003

Provisions	Penalties
Prohibition on direct and indirect advertisements of tobacco products, with the exception of advertising at the points of sale and on tobacco packs. The rules under the law restrict point-of-sale advertising in terms of size, inclusion of a mandatory warning and disallowing the use of any pictures or messages other than the name and picture of the product itself. Ban on gifts, prizes, scholarships or sponsorship of sports or other cultural events using the trademark or brand names of tobacco products	Advertisement is to be forfeited and disposed of. The first conviction is punishable with imprisonment of up to 2 years or a fine of up to Rs 1000, or both. Subsequent convictions are punishable with imprisonment of up to 5 years and a fine of up to Rs 5000.
Prohibition of smoking in public places	Offences would be made compoundable with a fine of up to Rs 200.
Prohibition on the sale of tobacco products to persons below the age of 18 years. Prohibition on the sale of tobacco within a radius of 100 yards of educational institutions	Offences would be compoundable with summary trials and a fine of up to Rs 200.

Provisions	Penalties
<p>Legible and conspicuous display of health warnings including pictorial warnings (skull and crossbones and others as may be prescribed) on not less than one of the largest panels of the tobacco package with the text of the warning appearing in the same language(s) as the language(s) used on it.</p> <p>Indication of the tar and nicotine contents of the tobacco products on the package along with the maximum permissible limits as prescribed by the rules under this Act</p>	<p>Imprisonment of up to 2 years or a fine of up to Rs 5000, or both, for first conviction of a producer or manufacturer; subsequent convictions attract imprisonment of up to 5 years and with a fine of up to Rs 10,000; imprisonment of up to 1 year or a fine of up to Rs 1000, or both, for the first conviction of a seller or distributor; imprisonment of up to 2 years and a fine of up to Rs 3000 for subsequent convictions.</p>

In India, there also have been a few cases which have served to highlight the various dimensions of the legal position with relation to a ban on smoking. The question as to whether a court can direct a legislature to enact a law banning tobacco smoking was answered in the case of *K. Ramakrishnan v State of Kerala*.¹⁸ It was held that it is entirely for the executive branch to decide whether or not to introduce any particular legislation. The Court cannot usurp the function assigned to the executive and the legislature cannot assume a supervisory role over such law-making activities. At the same time however it also must be remembered that the court acting as the sentinel on the *que vive* can interfere and grant relief by way of the issuance of a writ of mandamus to the Government and officials to enforce existing laws which suffice to safeguard the interests of the public. It was further held that smoking violates Sections 268 and 278 of the Indian Penal Code, 1860¹⁹ and furthermore, smoking can also be regarded as being in violation of Article 21 of the Constitution of India. Additionally under common law, a person whose right to property, easement or health is adversely affected by the act or omission of a third person is entitled to seek an injunction and also claim damages. In this context, a related concept of ETS, namely Environmental Tobacco Smoke, becomes important as the same standard helps ascertain the levels of noxious fumes present in the environment which are capable of causing harm to individuals situated in the same. Furthermore, smoking can also be regarded as

coming under the definition of air pollution as under the Air Act.²⁰

Another extremely important decision with reference to tobacco smoking is *Murli S. Deora v Union of India*,²¹ in which the Supreme Court proceeded to opine *inter alia*, that passive smoking is in violation of Article 21 of the Constitution and that keeping in mind the fact that statutory provisions were being made for prohibiting smoking in public places, and that a Bill had already been introduced in the Parliament which was pending consideration before a Select Committee, smoking ought to be prohibited in public places like auditoriums, hospitals, schools, colleges, libraries, courts, public offices and means of public conveyance. In this regard, the Court referred to the Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975 which in its Statement of Objects and Reasons had identified smoking as a harmful habit which could lead to grave health hazards and the then Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill, 2001 which vouch safed the fact that tobacco was universally recognized as one of the major public health hazards.

Conclusion

The Cigarettes and Other Tobacco Products (Prohibition of Advertisement, Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and the consequent ban on smoking at public places is a provision for

ensuring that the harmful effects of smoking, in the public sphere at least, are brought to a stop. Despite the fact that such a restriction might impinge upon the freedoms as guaranteed to any individual, such a step would be undoubtedly justified when eyed in terms of public interest and societal benefit. As would seem apparent, the implementation of such rules and regulations are of manifest importance insofar as the efficacies of such legislations are concerned.²² To curb the tobacco epidemic, the proper enforcement of the provisions of the Act needs to be strengthened. As the second largest producer and consumer of tobacco in the world, there is greater need to examine the case for a comprehensive tobacco control program. Apart from the anti-smoking legislations, policies related to taxation, illicit trading, advertising, promotion and sponsorship of tobacco products, content regulation, packaging and labeling needs to be looked into seriously backed up by strong political commitment.

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8. Sidestream smoke is different from another related concept of mainstream smoke in the sense that whilst mainstream smoke is inhaled by the smoker himself sidestream smoke is on the other hand inhaled by the people in his vicinity.
9. K. Ramakrishnan v. State of Kerala, AIR 1999 Ker 385.
10. National Institute of Occupational Health, Prevention of Green Tobacco Sickness Among Tobacco Harvesters available at <http://www.nioh.org/nioharchivepropretobbo1.htm>
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