

*Review Paper*

Efficacy of Anti-Smoking Laws in India and Judicial Approach: A Critical Study

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Abstract

This paper comprehensively analyses the laws encompassing the different aspects of tobacco consumption control with particular reference to the Indian scenario. The information on prevalent tobacco habits in India, environmental hazards due to tobacco use, passive smoking and its impact, and legislation to control tobacco in India. 'Tobacco is a leading preventable cause of death, killing nearly six million people worldwide each year. Additionally, tobacco cultivation and consumption have a detrimental effect on the environment as forests are cleared at a monumental scale for tobacco cultivation. Additionally, cigarette butts are not just a nuisance, they are toxic waste. They contain chemicals that contaminate our waterways and ground soil and harm our wildlife. Discarded lit cigarettes can cause fires, which can damage homes and land. It is also very costly to clean up cigarette waste, a problem that continues to grow every year. India is the second largest consumer of tobacco globally, also it ranks 2nd in overall tobacco production with a production output of 761,000 metric tons annually. The tobacco problem in India is peculiar, with the consumption of a variety of smokeless and smoking forms creating a huge demand for tobacco. This paper will look at the legislations in place that aim to reduce tobacco consumption and tobacco-related environmental problems. The efficacy of such legislations and the reasons for their failure will be studied.

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INTRODUCTION

The debate between an individual's choice to smoke versus Right of people to a healthy and smoke-free environment has been widely contested and discussed. 'There are more than 267 million tobacco users in India, according to the India Global Adult Tobacco Survey (GATS) 2016–2017. The 2009 India Global Youth Tobacco Survey (GYTS) found that 13.3% of Indian adults are exposed to secondhand smoke while using public transit, 7.4% are exposed in eateries, and 30.2% are exposed in indoor jobs. Additionally, 11% of children between the ages of 13 and 15 are exposed to secondhand smoke at home, and 21% are exposed in enclosed public areas.'

These stats paint a clear picture that consumption of tobacco is widely prevalent in the country, and is to a large extent, it is a socially accepted phenomenon. On the other hand, Indian courts and legislations have taken a firm stand to curb the incidence of smoking as a practice. The world's first anti-smoking in public directives were given by the Kerala High Court in 1999, where it declared public smoking to be in contravention of Environmental laws as well as the Indian Penal Code.

ENVIRONMENTAL IMPACTS OF CIGARETTE BUTTS AND OTHER TOBACCO BY-PRODUCTS

Tobacco use not only endangers human health but also the health of the environment. When e-cigarettes and cigarette trash are not properly disposed of, they end up in the environment, poisoning the land, water, and air with dangerous substances, nicotine residue, and heavy metals. An estimated 766,571 metric tonnes of cigarette butts are released into the environment annually.

Cigarette filters made of cellulose acetate are thought to be the most littered type of plastic in the world. Nearly 4.5 trillion butts pollute the environment worldwide, and India generates nearly 26,454 tonnes of garbage from this type of litter each year. Cigarette butts are second out of the top three items gathered during beach clean-ups worldwide, despite being one of the trash sources that is often overlooked, according to Oceans Conservancy, an international advocacy group. Filters are described in several studies as forming collected masses of possibly dangerous trash that could pollute groundwater near landfills without leachate and physically harm land and sea life when consumed.

According to a recent study conducted by the Indian Institute of Toxicology, cigarette butts exposed to ambient conditions only degraded 37.8% after two years, indicating that pollution may persist for a long time after disposal. Additionally, the study recommended “recycling of cellulose acetate after recovery from the cigarette butts” as one of the short-term fixes for the issue until more information is produced. The Central Pollution Control Board has been instructed by the National Green Tribunal (NGT), which is “concerned” about the way cigarette and bidi butts are disposed of in India, to create guidelines for cigarette butt disposal within three months to save the environment. Cigarette litter, which falls under the post-consumer waste category, is easily categorised as a public nuisance, particularly for those who lack the resources to clear it. Ignorance has served as a handy mask, but the polluter must pay for the cleanup and disposal of such pollution. The rising costs of cleaning up litter in the world's largest cities have prompted action against this type of pollution.

CIGARETTE BUTTS AND FOREST FIRES

During the current fire season, carelessly discarded cigarette butts have turned valuable forest areas in the State to ashes. Ninety percent of the nation's forest fires are caused by human activity, according to a review of government-provided forest fire statistics. Picnickers, tourists, campers, and others toss errant smokes. form a large number of these fires. 60 hectares of Forest fires was attributed to cigarettes and beedis in the year 2010. Forest fires are also caused by people who enter forests to graze animals and obtain forest products. According to the data, 27 hectares were lost this season as a result of tribal people gathering honey and other forest products. The Forest Department has detected other instances of forest fires, including lightning-caused natural fires, electric line discharges, reckless fire handling, and planned fires. It is estimated that over 95% of forest fires are caused by human activity.

‘According to a more recent revelation from the Telangana Forest Department, cigarette butts were the cause of 4,187 residential and office fires in 2020, resulting in significant financial damages. However, from January 1 to April 14 of this year, the Telangana Forest Department received an astounding 19,470 fire notifications. The state fire department has responded by launching an awareness campaign on electrical safety and careless smoking, which will include lectures and demonstrations throughout the state during Fire Safety Week, which runs from April 14 to 20. On March 3 of this year, a massive fire broke out in the Amrabad Tiger Reserve in the Nagarkurnool district. Another mysterious fire broke out on March 7 and quickly spread to a nearby Chenchu tribe settlement while forest and fire officials were attempting to contain it. Two of the four individuals who suffered severe injuries passed away on March 14 and 18. According to officials, between March 3 and March 10, over 350 mysterious fires occurred in Amrabad Tiger Reserve, causing extensive forest damage. The Telangana Forest Department received 19,470 fire alerts between January 1 and April 14 of this year, and the fires burned 22,160 hectares of woodlands.’

TOBACCO CULTIVATION: ITS EFFECT ON FOREST AND ENVIRONMENT

‘Commercial tobacco is grown on a large scale. In 2012, it produced over 7.5 million metric tonnes of tobacco leaf on 4.3 million hectares of agricultural land in 124 countries. Global tobacco companies have lowered production costs in recent decades by shifting the manufacturing of tobacco leaves from high-income countries to low-income ones, where almost 90% of tobacco planting currently takes place. India, Brazil, and China are the three largest producers of tobacco leaves; China produces 3.2 million metric tonnes of tobacco leaves a year.’ Some of the detrimental consequences of tobacco growing and curing on the environment are examined in this chapter.

A worrisome picture of environmental devastation brought on by tobacco growing is also presented in the recent Rajya Sabha report of the Parliamentary Standing Committee on Science & Technology, Environment & Forests. In 1991, the World Bank declared that it would no longer invest in, lend money for, or provide loans for tobacco production, processing, or marketing due to the negative effects of tobacco on the environment, forests, and general public health. Tobacco requires the clearing of fertile soil, much like any other plantation crop.

Because wood is a profitable cash crop, farmers are encouraged to clear more of it in order to boost their profits. This suggests that because the risks are too high to turn a profit, farmers may choose not to grow subsistence crops.

According to the Central Tobacco Research Institute (CTRI), 2,00,000 hectares are used for the production of flue-cured Virginia (FCV) tobacco. Generally speaking, half a hectare of tobacco crop needs one hectare of forest wood to cure. For tobacco curing, 4,00,000 hectares of forest-nearly the size of New Delhi-are being lost annually at current rate. Large quantities of fuel wood are needed to cure tobacco leaves, although other commercial income crops do not require this.

Deforestation results from using wood to meet fuel demands, while the loss of soil organic matter and long-term soil degradation result from using straw and agricultural leftovers. In order to sustain the tobacco crop, high soil fertility levels are required, which encourages land removal and further deforestation. Because it takes up six times as much potassium from the soil as most crops, the plant itself is quite demanding. Every year, enormous volumes of firewood are needed to cure tobacco. About 3000 lakh kg of FCV tobacco are produced, according to CTRI. Eight kilogrammes of wood are needed for every kilogramme of tobacco to cure, according to a very conservative estimate. An estimated 24,000 million kg of wood are burned annually to cure tobacco. Additionally, the rolling and packing of cigarettes requires four miles of paper every hour from a cigarette production equipment.

Accordingly, it is projected that for every 300 cigarettes, one tree is cut. Brazil, the world's top exporter and third-largest producer of tobacco, requires 60 million trees annually to meet its needs. When tobacco is cured, carbon dioxide is released into the atmosphere, polluting the air. An estimated 6750 tonnes of carbon dioxide were released in 2010 by India, which produced 10,000 million cigarettes (limited lifecycle, no past emission, and mitigation ability is included).

From the above discussed data and statistics we can conclude that smoking of cigarettes not only harms the person consuming it, but the complete process from cultivation to disposal of tobacco products have a grave impact on the lands, forests and water bodies of our country. In the following the portion we'll discuss the legislations in place in India to counter this menace of smoking and tobacco use.

TOBACCO USE AND LAW OF THE LAND

The Cigarettes Act, 'India's first national anti-tobacco law, was passed in 1975. It was mainly restricted to the statutory warning that "Cigarette Smoking is Injurious to Health," which had to be shown on cigarette packs and advertisements. However, it did not apply to non-cigarettes and was ineffective. The Motor Vehicles Act of 1988 outlawed smoking in public vehicles, while the Prevention and Control of Pollution Act of 1981 regarded smoking as an air pollutant. The Indian government used the Prevention of Food Adulteration Act 1955 to issue a health warning in 1990, indicating that chewing tobacco was harmful. In accordance with the Drugs and Cosmetics Act of 1940, the Central Government outlawed the sale of tooth paste and tooth powder that contained tobacco in 1992. The countrywide transmission of alcohol and tobacco commercials was outlawed by the Cable Television Networks Amendment Act of 2000. In addition to cigars, beedis, cheroots, pipe tobacco, hookah, chewing tobacco, pan masala, and gutka, the Cigarettes and Other Tobacco Products Act (COTPA) 2003, which superseded the Cigarettes Act of 1975, legalised tobacco in a variety of ways.'

'The COTPA, which went into effect in 2003, forbade the sale of tobacco products to minors, smoking in public areas, direct and indirect advertising of tobacco products, and

smoking within 100 yards of educational institutions. It also required that all tobacco products undergo testing for nicotine and tar content and that a pictorial warning be displayed. This comprehensive law established tobacco control regulations, and state governments banned pan masala and gutka between 2001 and 2003. The WHO Framework Convention on Tobacco Control (FCTC) was ratified by India. In addition to being a signatory to the treaty, the Indian government has been leading the charge in implementing a daring and aggressive tobacco control policy and was elected as the WHO South East Asia Region (SEAR) coordinator. Following the signing of the FCTC, there has been a notable paradigm change in tobacco control. The Ministry of Health and Family Welfare, Government of India, launched the National Tobacco Control Programme (NTCP) in 2008, covering 42 districts across 21 states and union territories. The program's activities included training and capacity building, information, education, and communication (IEC) activities, tobacco control laws, reporting surveys, and surveillance in order to implement the tobacco control laws and fulfil the commitments made under the WHO-FCTC (National Health Portal). Schoolchildren now receive more comprehensive tobacco-related education. In India, health is a state topic that creates its own standard operating procedures based on its unique social, economic, political, and cultural circumstances. Although state laws are being employed more and more to regulate tobacco use, they are not consistent and do not employ several tactics to reduce demand. Every state receives financing from the government under NTCP. State-level governments in India have implemented various tobacco control laws. For example, (1) the Delhi government was the first to implement the Delhi Prohibition of Smoking and Non-Smokers Health Protection Act, which forbade smoking in public places, and (2) Rajasthan imposes the highest tax on tobacco products. The focus of India's tobacco prevention and control policies has been on raising awareness and changing behaviour. In India, establishing an enforcement infrastructure is a much-needed government intervention that seems to be crucial to the success of tobacco control. Involving representatives from local self-government organisations can help to strengthen this since they have the potential to be powerful and their participation in tobacco control will benefit from an unexplored link between the public and mainstream officials.'

'CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT', 2003

According to Section 4 of the Act, smoking is prohibited in all public areas. Additionally, it mandated the installation of a designated smoking area or space in airports, restaurants with more than thirty seats, and hotels with thirty rooms or more. States such as Gujarat, Maharashtra, and Rajasthan went one step further and outlawed the construction and operation of hookah lounges anywhere food or beverages of any type were offered for sale.

In accordance with Section 21 of the Act, smoking in public places is punishable by a fine of Rupees 200/-and is a compoundable crime that will be prosecuted by courts using their summary jurisdiction.

Two things, however, made this Act unique: first, the legislators had not defined the term “public place,” and second, there was no method to enforce the section. These two basic issues caused the legislature to go off course, despite its best efforts to go in the correct direction. The need for clear legislation that prohibited smoking in public places led to the passage of the Prohibition of Smoking in Public Places Rules, 2008. Let's now examine the terms of each of these rules in more detail.

‘PROHIBITION OF SMOKING IN PUBLIC PLACES RULES’, 2008

Rule 3 specifically prohibits smoking in public places. It outlines the following responsibilities for managers, supervisors, owners, proprietors, and everyone else in charge of running a public space.

1. ‘Ensure that nobody is allowed to smoke in public places.’
2. ‘They should place a board with the sign “No smoking area-smoking here is an offence” at every entrance, different floors, stairways, lifts etc.’
3. ‘They should not provide any equipment like ashtrays, lighters etc that may facilitate smoking in public places.’
4. ‘A Notice/Sign should be in place that specifies whom to approach and file a complaint with if anyone is found smoking in public places.’

In addition to imposing a duty on the aforementioned stakeholders to forbid smoking in public areas, this rule also makes them equally accountable to smokers for any infractions they fail to address.

A designated smoking area or space must be established or created in hotels with 30 rooms or more, restaurants with more than 30 seats, and airports, according to Rule 4. It establishes the following rules for the construction of smoking areas:

1. ‘It should not be established at any of the designated entry or exit points.’
2. ‘It should be marked with a sign “Smoking area”.’
3. ‘No other services shall be provided in the smoking area.’
4. ‘Smoke emerging from such rooms should be ventilated outside and should not enter into the non-smoking areas.’

Although they also failed to identify public spaces, these regulations are a good place to start when it comes to implementing the smoking ban in public areas. The success of the regulations will primarily depend on how well the many parties who have been given authority fulfil their duties to ensure that the rules are obeyed. There have been several laws designed to reduce the threat of smoking, but none in our nation specifically target the environmental effects of tobacco use; instead, they concentrate on protecting the health of both smokers and non-smokers. Despite indicating a

constructive approach by the legislature, these laws have not been successfully implemented, and the citizens have not fully benefited from them.

THE JUDICIAL INTERPRETATION AND GUIDELINES FOR SMOKING

Murli S. Deora v. UOI Persons not indulging in smoking cannot be compelled to bear with the passive smoke emitted by smokers and risk their health. Thus, the right of healthy environment under article 21 overrides the right to smoke of smokers, this paved the way of anti-smoking in public laws.

Nebu John Varghese v. PK Babu The provisions of the COTSPA must be followed strictly in public spaces and infringement shall not be tolerated. The rights of non-smokers to a clean and healthy air are absolute and there shall be no exceptions to this, especially by government servants and employees.

Karnataka Beedi Industry association v UOI Supreme court enhanced the pictorial warnings on the cigarettes packaging to 85% with the aim as to discourage the consumers of cigarette and it was given priority over the manufacturers right to trade freely.

CONCLUSION AND SUGGESTIONS

Since smoking is a personal decision made by each individual, it should only be permitted in private settings. Nobody ought to suffer as a result of another person's personal decisions and lifestyle. Consequently, any action that infringes against the rights of another individual ought to be forbidden in the public domain. According to Article 21 of the Constitution, everyone has the fundamental right to a safe and healthy environment. Because of this right as well as nonsmokers' right to defend themselves against the negative consequences of passive smoking, it is the duty of the legislation and the courts to safeguard nonsmokers from damage. They are entitled to clean, fresh air, and no one can deny them that, hence it is imperative that smoking be completely prohibited in public areas.

There have been multiple legislations aimed at curbing this menace of smoking, but our country lacks any legislation that is strictly aimed at the environmental aspect of tobacco consumption. These legislations focus primarily on preserving the public health on smokers and non-smokers. Although these legislations point at a positive approach of the legislature, they have not been effectively implemented and the citizens have not availed the complete benefit of them. The NGT has also suggested the legislature to make a law tackling disposal of cigarette butts. The court stated that “While tobacco is undoubtedly harmful and the concerned authorities are seized of the remedial action, the tribunal is mainly concerned with the manner of disposal of cigarette and beedi butts.”

SUGGESTIONS

- Creating laws tackling proper disposal of cigarette butts and tobacco products.
- Laws against smoking in Forest Areas, specifically dry forests, which are more prone to forest fires

- Creating rules for monitoring of land use under tobacco plantation and directives to reduce emission from tobacco curing.
- Creating awareness campaigns for making the youth realize the harmful effects of smoking for them as well as the environment.

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