



SMOKING: CONCERNS, SOLUTIONS & LEGAL IMPLICATIONS

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Abstract

Smoking is one of the most important health concerns in India. There are a number of bad impacts on people as well as on society. It is obtained from the leaves of tobacco plants (scientifically, *Nicotiana Tabacum*). The consumption of cigarettes and like substances that contains nicotine, which is an addictive drug is increased in past decades. A number of States ban of its consumption and manufacturing. In spite of its warning over the packet, people use to consume it because of its addiction. The legislation in India passed several acts to control its consumption, manufacturing and its promotion. The research article will be dealing with the different legislation passed in India related to cigarettes and like substances. India holds the 2nd position in the world after China in consumption of tobacco. The role of Judiciary plays a vital role in controlling its consumption, manufacturing, commercialisation, and advertising by passing several judgments related to it. The research article focuses on the judicial interpretation and its decision. Apart from all these bad impacts, there are certain good impact too which is discussed in the paper. The research article also deals with the different forms and kinds of tobacco and its consumers. The methodology adopted while

writing this research paper is doctrinal or non-empirical.

Keywords: Smoking, impact, tobacco, consumption, drugs, cigarettes, nicotine.

Introduction

Smoking is a practice of consumption of cigarettes and like substances which are made of tobacco. It is obtained from the leaves of tobacco plants (scientifically, *Nicotiana Tabacum*, a member of the *Nicotiana Genus* and closely related to the poisonous nightshade plants which are mainly found in the American region). Tobacco contains nicotine and it is highly addictive drug. It is primarily practiced as a mental painkiller or a recreational activity, but continues use of it becomes a habit and a prolonged habit soon becomes an addiction. People mainly smoke when they want to isolate from the chaotic and frustrating environment, they live in. Smoking upto a limit is sometimes healthy for the mind and the body. However, when we smoke tobacco in cigarettes, cigars or pipes, we absorb toxic and cancer-causing chemicals that affect our health. Thus, the excess consumption of it creates serious problems and could often lead to death. In India, there are 120 million smokers approximately, making it the largest consumer of tobacco in the world after China. Every one in four adults, that's nearly 25%, consume tobacco in some form in urban areas and every two in five adults, i.e. 38% are tobacco consumers in rural areas. A report of the World Health Organization (WHO) highlights that Indians account for almost



12% of the world's total smokers.¹ It's a matter of worry that more than 1 million people die every year due to tobacco related illnesses.

Historical aspect of Tobacco

Tobacco has its origin since 6000 B.C. when the Native American tribes started cultivating tobacco plants for medicinal and religious purposes. However, tobacco was mainly 'discovered' when those tribal people greeted the great explorer Christopher Columbus when he set his foot on land of the newly discovered continent of North America in 1492. He was gifted dried up tobacco leaves by the tribals before realising what was its 'best' use and introducing it to the rest of the world.

During the 15th century, the Portuguese sailors planted tobacco in most of their trading outposts for personal use and later in Brazil for commercial purposes. By mid-century they started growing tobacco commercially in Brazil – it was soon a sought-after commodity and traded across the ports in Europe and the Americas.² By the end of the 16th century, tobacco plantation and use of tobacco mainly in smoking were both introduced to virtually every single country in Europe.³

By the end of 18th century, tobacco products gained popularity in the United States. It was during the Revolutionary War; tobacco was used as collateral for getting loans from France.

In 1847, Philip Morris, a cigarette producing company, was established in the UK. It was the first to sell hand-rolled Turkish cigarettes. This practice was soon picked up by J.E. Liggett and Brother, an American company established in St. Louis in 1849. After the foundation of the R.J. Reynolds Tobacco Company was in 1875 cigarettes became more popular than the chewing tobacco.

However, cigarettes truly became popular after James Bonsack invented the cigarette-making machine in 1881. He went into business James 'Buck' Duke and the American Tobacco Company was born. The ATC survives today as a part of British American Tobacco, a global company with reported revenues of 13, 104 billion in 2015.⁴ The First and the Second World Wars too contributed to the immense popularity of cigarettes. Tobacco companies sent millions of packs of cigarettes to soldiers on the front lines, creating hundreds of thousands of faithful and addicted consumers and expanding their business.⁵

In India, the practice of smoking is traced back to the Atharveda, which is one of the

¹ Dr Sunita Dube, World Cancer Day 2021: Understanding the theme, history, causes and symptoms of the chronic disease, Times Now Digital (Mar 04, 2022, 05:15 PM), <https://www.timesnownews.com/health/article/world-cancer-day-2021-understanding-the-theme-history-causes-and-symptoms-of-the-chronic-disease/715527>

² History Of Tobacco, Tobacco Free Life, (Mar 04, 2022, 07:15 PM), <https://tobaccofreelife.org/tobacco/tobacco-history/>

³ History Of Tobacco, Tobacco Free Life, (Mar 04, 2022, 08:15 PM), <https://tobaccofreelife.org/tobacco/tobacco-history/>

⁴ History Of Tobacco, Tobacco Free Life, (Mar 05 2022, 06:15 PM), <https://tobaccofreelife.org/tobacco/tobacco-history/>

⁵ History Of Tobacco, Tobacco Free Life, (Mar 05, 2022, 08:15 PM), <https://tobaccofreelife.org/tobacco/tobacco-history/>



most ancient Vedic Scriptures of Hinduism. The Hindu Scripture Atharveda mentions about cannabis smoking in India in 2000 B.C. It mentions that fire offerings were made during that time for medicinal reasons.

However, the history mentions that the cultivation of tobacco plant in India was introduced by Portuguese in 1605. Initially it was grown in Kaira and Mehsana districts of Gujarat and later spread to other areas of the country. The Calcutta Botanical gardens in Howrah was also established in 1787 with the motive to boost the Indian tobacco. Imperial Agricultural Research Institute, established in 1903, carried out botanical and genetic studies of tobacco. After 1930, India found a place on the world tobacco map. During 1943-44, the excise duty on tobacco was introduced and since then tobacco remained as the important source of excise revenue.⁶

Types of Tobacco Products

Smoking tobacco puts the consumer at an increased health risk. Including a highly addictive chemical called Nicotine, smokers also inhale 4,800 to 7,000 other dangerous chemicals depending on the type of the product. Those chemicals are present in over 600 different ingredients that are used to manufacture cigarettes and other tobacco products. The most commonly used ingredients are:

- Benzene
- Cadmium
- Arsenic
- Methanol
- Formaldehyde
- Hexamine

- Lead, and so on

These ingredients are combined to make a wide range of tobacco products. The most popular ones are:

a) Cigarettes

A cigarette is a roll of tobacco leaves. It's the most widespread tobacco product dominant in most developed countries. Enlighting a cigarette creates a chemical reaction which rearranges chemicals inside the cigarette, creating toxic gasses that provide the pleasure. They come in wide varieties of intensities (like 'light', 'mild', or 'ultra') and flavours (like menthol, peppermint, etc.) according to the choice of the consumer.

b) Cigars and Pipes

The tobacco is filled in cup-like containers on the far end of a pipe having a small opening for smoking on the near end. Though the Cigars and Pipes tobacco are not as addictive or as harmful as cigarettes, they carry their own health risks. In a study it is claimed that people who smoke cigar daily are up to 4 times more likely to suffer from lung cancer.

c) Hookahs

Hookahs consist of tobacco heated by charcoal. They are equally dangerous to our health as cigarettes. An average hookah session lasts 1 hour. During that time, a smoker inhales 90,000 ml of smoke as opposed to 500-600 ml a smoker smoking a cigarette inhales⁷. This often puts smokers at risk of inhaling much larger quantities of harmful carbon monoxide, heavy metals and nicotine.

⁶ Origin of the crop , CTRI(Central Tobacco Research Institute Rajamundry, Andhra Pradesh), (Mar 05, 2022 ,09:15 PM), https://ctri.icar.gov.in/for_origin.php

⁷ Types Of Tobacco Products, Tobacco Free Life , (Mar 05, 2022 ,07:15 PM) <https://tobaccofreelife.org/tobacco/tobacco-products/>



d) Bidis and Clove Cigarettes

Bidis are originated and used in India, particularly in the rural areas. They are hand-rolled and the tobacco is covered in a tendu or a tambourine leaf found in the Asian region. They can be flavoured or unflavoured. While Clove cigarettes (also referred to as Kreteks) hail from Indonesia. They usually contain 60% tobacco and 40% cloves. They are banned in the United States because of the blanket ban on flavoured cigarettes.⁸

e) E-Cigarettes

An electronic cigarette is a electronic devices that is battery-operated and emits a vaporized solution containing nicotine which will be inhaled. It provides the sensation of inhaling tobacco smoke, without the smoke. This device has various names, including e-cigarettes, e-hookahs, vaporizer cigarettes, vapes, and vape pens. E cigarettes comes in a different shapes and designs like USB drives and others look like pens, for example. This is one of the fastest growing tobacco products nowadays.

Why we smoke? And how it affects us?

The world we live in is an ocean of good things as well as bad things. Our life itself is full of uncountable number of ups and downs. Whenever our life is going through good times, we are happy and satisfied. We do all the things which are on our priority list and ofcourse, productive for us. But unlikely, whenever we face tough situations, the situations which are too hard to get out from,

then our life seems a mess; and we find ways to cut off from that unfortunate moment. We try to do certain things, which may or may not be healthy for us in order to fulfil our objective.

Smoking is one of such things. It is a habit which provides instant relaxation of mind. As soon as we put the cigarette on our thirsty lips and light it out, the white gusty smoke enters into our mouth and the nostrils, making our mind feel light and the heart calm. And then we are lost in a completely different world of pleasure and seclusion. This ignites a desire to reexperience the same feeling repeatedly and soon smoking becomes an inexorable habit.

Tobacco is responsible for causing a global pandemic of death and disease, with 1 in every 10 deaths recorded worldwide. In 2017, more than eight million deaths were attributable to tobacco use. More than seven million of those deaths were caused by direct tobacco use, while more than one million were caused by exposure to second-hand smoke⁹. Though smoking feels good for a moment, but it has very serious implications. It highly damages the lungs and almost every other organ of our body and could also lead to death. Smoking tobacco introduces not only nicotine but also more than 5,000 chemicals, including numerous carcinogens (cancer-causing chemicals), into your lungs, blood and organs¹⁰. The damage caused by smoking shortens our lifespan significantly.

⁸ Types Of Tobacco Products, Tobacco Free Life, (Mar 05, 2022, 08:15 PM)

<https://tobaccofreelife.org/tobacco/tobacco-products/>

⁹ The Health Effects of Active Smoking, Tobacco In Australia, Facts & Issues A Comprehensive online Resource, (Mar 06, 2022 ,06:15 PM),

<https://www.tobaccoinustralia.org.au/chapter-3-health-effects/3-0-background>

¹⁰ Smoking, Cleveland Clinic, (Mar 06, 2022, 07:15 PM),

<https://my.clevelandclinic.org/health/articles/17488-smoking>



Personal Harm

An individual smoking cigarettes or consuming tobacco on a regular basis is exposed to the following health issues:

1. Lung damage

Lungs are one of the first organs getting affected due to smoking. The lungs are badly affected when a person smokes tobacco because during smoking he/she not only breathes in nicotine but also a lot of chemicals which are hazardous for the human health.

Cigarettes are responsible for a substantial increase in the risk of developing lung cancer. This risk is 25 times greater for men and 25.7 times greater for women. The Centre for Disease Control and Prevention reports that around 9 out of every 10 lung cancer deaths occur due to cigarette smoking¹¹.

Cigarettes also develop medical conditions like emphysema and chronic bronchitis, and can also trigger or aggravate an asthma attack.

2. Other forms of Cancer

Apart from lung cancer, smoking tobacco also contributes to several other forms of cancer. A report by the American Cancer Society states that cigarette smoking causes 20–30 percent of pancreatic cancers. Passive smokers are also three times as likely to develop bladder cancer than non-smokers. The risk of contracting stomach cancer (particularly near the oesophagus) also gets doubled due to smoking. Other forms of cancers due to smoking cigarettes include:

- Throat Cancer
- Mouth Cancer
- Liver Cancer
- Kidney Cancer
- Cervical Cancer
- Colon Cancer, etc.

3. Heart disease

Our heart is closely associated to our lungs as they filter the blood and the heart helps to pump it to the cells through our blood vessels and vice versa. This close association of heart and the lungs puts the heart, the blood vessels and the blood cells at the risk of several diseases in case the lungs are filtering smokes released out from the cigarettes, which contain harmful chemicals.

Cigarettes also contain tar along with chemicals which increase the risk of atherosclerosis (i.e. plague in the blood vessels). This could lead to blockages in the blood flow. These ailments could also lead to cardiac arrests and heart attacks.

4. Reduces Immunity

Immune system is our body guard against all kinds of diseases and ailments; and thus it is very necessary for it to be strong and healthy. People who are regular smokers often have weak immune system which makes them more prone to harmful diseases. They also suffer from several other infections and bodily inflammations.

5. Other Major Complications

Regular smokers are found to have poor oral hygiene with gum diseases like swollen and

¹¹ Medically reviewed by Elaine K. Luo, M.D. — Written by Danielle Dresden, How Does Smoking Effect Body ? , Medical News Today, (Mar



tender gums, loose, yellowish and sensitive teeth which bleed at regular intervals.

Similarly, eyes are also not prone to problems due to cigarette smoking as they are at the risk of cataracts, dryness, glaucoma and degeneration.

Smoking also seriously affects and individuals skin and hair making them premature early aged, wrinkled and putting the person at a risk of skin cancer and hair loss.

b. Impact on family

Consumption of tobacco products by a single member of a family not just harms the person itself, but is also highly dangerous for the other members. A family, especially in India, consists of members from various age groups. Some of them are children and some are senior citizens. And both of them require a healthy environment to live a good life. Whenever a member of the family smokes, particularly in the home, the poisonous smoke harms the lungs of the children as well as the senior members.

Not particularly to mention, if there's any pregnant lady in the home, then it will not just give damage to her, but also to the baby inside her womb. Smoking, either actively or passively, puts pregnant mothers at a risk of miscarriages, stillbirths, birth defects and low birth weights. Several cases are also found to have a condition known as Ectopic Pregnancy in which the embryo gets implanted outside the uterus putting a threat to the life of the baby.

Smoking by the father or the mother often results passing to the children and soon they become chain smokers. It is often seen that many males fail to procreate because they

have developed certain reproductive issues due to the consumption of tobacco.

Situation further deteriorates for the family when smoking leads to death of a member. It often leaves the other members of family helpless, hopeless and in the midst of a financial crisis, as all the money goes into the treatment of that member.

c. Some 'benefits' of Smoking Tobacco

In this world, everything has its pros and cons; and so do smoking and tobacco use. Though this practice is full of cons, it also has certain pros as advocated by the regular smokers and people who like and promote smoking cigarette and consumption of other tobacco products. Some of them are:

1. Mental Health Benefits

Smoking cigarettes gives mental pleasure and relaxation to the smokers as they feel very light which makes it easy for them to get cut off from all kinds of stress and tension. Regular smokers also develop a kind of evenness and friendliness with other smokers which helps them to feel more, connect better and socialize well with each other. It also provides them a favourable environment to share their emotions and feelings with each other. Smoking has also found to reduce hypertension during pregnancy in which the pregnant mothers open develop high blood pressure fluid retention and abnormal function of the kidneys. Evidences suggest that it is smoking helps in improving short term memory accuracy and it also helps to reduce the response time and it has also contributed to improvement of attention accuracy and working memory of a person.

2. Physical health benefits

On one hand it is found that smoking is injurious to a person's health, but on the other



hand it has been found that the active smokers are at low risk of developing certain diseases like Endometrial Cancer i.e the cancer of the endometrium (the membrane lining of the uterus) in various women who have reached menopause. The nicotine found in cigarettes helps to improve semantic processing and influences the health of old people in a positive way making them less prone to Parkinson's Disease. Cases of Thyroid Cancer are also have been less found in smokers than in non-smokers. A few research analysing the effects of nicotine and smoking on human beings have also found that the cognitive performance of an individual gets improved after smoking.

3. Economic Benefits

As mentioned above in this article that tobacco is one of the major commercial crop for many countries including India. So, consumption of cigarettes and other tobacco products contributes a lot to the economy of a nation and it also helps to improve the livelihood and financial situation of the farmers and labourers engaged in tobacco cultivation.

After going through the health hazards and personal injuries caused by smoking tobacco, it's bad influence on the family of an individual and also the so called 'benefits' of tobacco consumption & cultivation, it is easy to understand that smoking cigarettes and use of tobacco products is highly harmful for us and for our our loved ones also. So, it's better for us to soon realise to take the right action before it's too late. The wisest decision which will save one's self as well as their family

members from the hazards of tobacco is the decision to quit smoking.

5. Legal Implications & Measures

a. International Efforts

The raising concerns about harmful effects of smoking tobacco has led to many countries and international organisations taking serious efforts in passing regulations and spreading awareness among the people respectively.

The World Health Organisation

In 2003, the Member States of the World Health Organisation unanimously adopted the WHO Framework Convention on Tobacco Control (WHO FCTC). It currently has 182 members which together account for more than 90% of the world's population¹².

The WHO FCTC is a milestone in the promotion of public health. It ensures people be provided the highest standard of health, provides legal dimensions for international health cooperation and sets high standards for compliance. This is one of the targets of Sustainable Development Goals (SDG).

The Protocol to Eliminate Illicit Trade in Tobacco Products, the first Protocol to the Convention, was adopted in November 2012 which advocates for implementation of measures relating to tobacco supply, imports, exports and manufacture of tobacco products. It also seeks for imposing sanctions and awarding punishment to the violators¹³.

The Member States of the WHO together held that May 31st will be recognized as

¹² Tobacco, World Health Organization, (Mar 08, 2022, 07:15 PM), <https://www.who.int/news-room/fact-sheets/detail/tobacco>

¹³ Tobacco, World Health Organization, (Mar 08, 2022, 08:15 PM), <https://www.who.int/news-room/fact-sheets/detail/tobacco>



World No Tobacco Day in 1987 to draw attention of the whole world to the tobacco epidemic and the preventable deaths and diseases it causes.

North America

In the United States the Food and Drug Administration in 1996 attempted to regulate tobacco and its marketing-without banning it-in such a way that would reduce smokers' risks of developing a nicotine addiction and increase their likelihood of quitting¹⁴.

Between 1982 and 1992 Canada raised the real price of tobacco products by 150 percent. This price increase coincided with a reduction in total cigarette consumption of roughly 40 percent and a reduction in teenage smoking of 60 percent.

Latin America

In 2020, Mexico issued a landmark presidential decree, prohibiting the import of e-cigarettes and heated tobacco products, sending a clear message that public health must be prioritised over the tobacco industry's commercial interests¹⁵.

In 2019, the Government of Brazil filed a landmark lawsuit against British American Tobacco and Philip Morris International, seeking to recover five years of smoking-related illness costs paid by the public health system. Brazil is now a global leader for tobacco control and has seen a significant drop in adult smoking rates¹⁶.

Europe

In February 2020, the Armenian Parliament voted in favour of a comprehensive tobacco control law. Among its most important measures, the law enacts a ban on indoor smoking in all public places (cafes and restaurants), workplaces, and public transport; it places a total ban on tobacco product advertisements, sponsorship and promotion; and mandates plain packaging.

Turkey, Tobacco Control Law, ensuring the advent of new plain packaging requirements. the regulation mandates that manufacturers adhere to specific criteria—cigarette packs must be devoid of logos, graphics and other branding that appeals to vulnerable groups, like young people.

Georgia develop the Tobacco Control Group at the NCDC, the main public health entity working to strengthen tobacco control (2015)

A Smoke-free Poland Partnership was formed with technical assistance provided by The Union, bringing together over 20 public institutions and NGOs to strengthen smoke-free regulations in Poland.

Africa

the Government of Chad adopted a 2019 draft decree to prevent tobacco industry interference in policy-making, in line with Article 5.3 of the World Health Organization's Framework Convention on Tobacco Control¹⁷.

¹⁴ The goals and strategies of public policy on smoking, Britannica, (Mar 09, 2022, 07:15 PM), <https://www.britannica.com/topic/smoking-tobacco/The-goals-and-strategies-of-public-policy-on-smoking>

¹⁵ Tobacco Control in Latin America, The Union, (Mar 09, 2022, 07:15 PM), <https://theunion.org/ourwork/latin-america/tobacco-control-in-latin-america>

¹⁶ Tobacco Control in Latin America, The Union, (Mar 09, 2022, 07:15 PM), <https://theunion.org/ourwork/latin-america/tobacco-control-in-latin-america>

¹⁷ Tobacco Control in Africa, The Union, (Mar 09, 2022, 07:15 PM), <https://theunion.org/ourwork/africa/tobacco-control-in-africa>



Ugandan Ministry of Health's tobacco control efforts since 2012, helping to develop a national strategic plan for tobacco control and stricter tobacco control regulations. In 2015, The Ugandan Parliament passed a ground-breaking law aligning the country with the world's strongest tobacco control policies and positioning it as a regional leader. The law secured some of the toughest restrictions on the distribution, sale and use of tobacco products in the region.

In South Africa, The National Council against Smoking worked with the National Department of Health in developing and discussing with key stakeholders the reform of the Tobacco Products Control policy, which includes 100 percent smoke free indoor public places, plain packaging among other best buy Tobacco Control policies¹⁸.

Asia

China became a party to the WHO Framework Convention on Tobacco Control (FCTC) in 2006. China does not have one comprehensive tobacco control law, but several national laws and regulations that legislate tobacco¹⁹ including for:

- Prohibit smoking in at least 29 indoor public places
- Prohibit all film, television, radio, in newspapers and magazines advertising.
- Increased the tax on tobacco as a percent of retail price to over 60%.

The Ministry of Finance, Indonesia, in 2020 released a decree containing a provision to

increase taxes on tobacco, simplify tobacco taxation structure and amend tobacco excise policies.

Vietnam, where smoke-free enforcement is a key focus of the work of the Vietnam Tobacco Control Fund (VNTCF) and The Union, considerable progress has been made in improving enforcement at the subnational level, including within the public transport system in Ho Chi Min City through The Union's grantee Centre for Health Consultation and Community Development²⁰.

Singapore had smoke free legislation since 1970 but recently fortified it to control tobacco use.

India's neighbour Bhutan is the first country which imposed a total ban on the sale and use of tobacco products.

b. Tobacco control efforts in India

The key role played by the Indian government in formulating tobacco control policies in the country has been acknowledged by the international community. Tobacco consumption being injurious and lethal to health, many legislations and control measures have been enacted. Following is the evolution of the government policies for tobacco control in India²¹.

¹⁸ Tobacco Control in Africa, The Union, (Mar 09, 2022 ,07:15 PM), <https://theunion.org/our-work/latin-america/tobacco-control-in-africa>

¹⁹ Tobacco Control in Asia, The Union, (Mar 09, 2022 ,07:15 PM), <https://theunion.org/our-work/latin-america/tobacco-control-in-asia-pacific>

²⁰ Tobacco Control in Asia Pacific, The Union, (Mar 09, 2022 ,07:15 PM), <https://theunion.org/our-work/latin-america/tobacco-control-in-asia-pacific>

²¹ Ashutosh Singh, Policies for tobacco control in India, iPleaders, (Mar 09, 2022, 08:15 PM), <https://blog.iplayers.in/policies-tobacco-control-india/>



Drugs and Cosmetics (Amendment) Act, 1940

The Drugs and Cosmetics Act (1940) was enacted in British India to regulate the import, manufacture and distribution of drugs and cosmetic products in the Indian territory. This act was one of the first legislations against tobacco on the Indian soil. The purpose of this act was to ensure the safety and quality of all the varieties of drugs and cosmetics sold in India. In 1992, this Act was amended and the use of toothpaste and powders that contained tobacco has been abolished.

Cinematograph (Amendment) Act, 1952

The Cinematograph Act of 1952 was passed by the Indian Parliament in order to specify rules for certification of films for public consumption (i.e. to be viewed in cinema halls, etc.). The Central Board of Film Certification (CBFC) was established under this act for the same. Later on, this Act was amended to ban scenes in which actors tend to encourage, endorse, justify, promote or glamorise smoking or tobacco use in any manner.

Cigarettes (Regulation of Production, Supply, and Distribution) Act, 1975

In 1975, the Indira Gandhi-led government passed a legislation called The Cigarettes (Regulations of Production, Supply and Distribution) Act, 1975, which included many provisions (including health warnings) to control the use of cigarettes by the Indian public.

The main provisions of the Act are as follows:

- According to the Act, it became necessary to display mandatory statutory health warnings

on all tobacco products, including those of the chewable variety like gutkha and pan masala to inform that they are injurious to health. The warning text, written in English - and in small letters, said "STATUTORY WARNING: CIGARETTE SMOKING IS INJURIOUS TO HEALTH" and for chewable tobacco, it read, "TOBACCO IS INJURIOUS TO HEALTH". Having written in both English and Hindi languages, this warning label applies to cigarettes as well as their advertisements throughout the country.

- Imposition of restrictions on commercial and trading procedures concerning the supply, production, and distribution of cigarettes and other tobacco products.
- Awarding penalties for the seizure of tobacco whenever the provisions are breached.
- The act empowered the Central Government to intervene in developing, monitoring and marketing of the tobacco industry as and when required.

However, this act was found to have major limitations and it also had not mentioned anything about non-cigarette tobacco products like cigars, gutkhas, bidis, cheroots, etc. Nonetheless, this act appeared to be in support and preferred the tobacco trade as it was a major source of revenue for the government.

Cabinet Secretariat's Memorandum 1990

In 1990, the Cabinet Secretariat took a highly appreciative step by issuing a memorandum to ban smoking tobacco in domestic flights, health care centres, educational institutions, trains and buses. However, due to lack of detailed instructions of its enforcement, this memorandum was not effective at all.



Committee on subordinate legislation, November 1995

People who don't smoke are also exposed to various diseases due to someone smoking in their surroundings. Such people are known as Passive Smokers. The World Health Organization accessed data related to such people and highlighted the risks of second hand smoking (i.e. Passive Smoking) and also the need to warn people about the same. According to the Global Adult Tobacco Survey, India Report (2016-17), 30.2% Indians are exposed to passive smoking at workplaces. Even smoking by any of the family members puts the whole family at risk. A report by WHO tells that 40% of Indians are exposed to passive smoking at home.

The Indian Ministry of Health took a big step towards this issue by forming a Committee in November 1995. This committee made certain recommendations to the MoH to pass a legislation for the protection the non-smokers from second-hand smoking or passive smoking. It urged for implementation of stronger laws for electronic media while also spreading awareness regarding the health risks of smoking. It also acted as a guide for the development of the existing tobacco control laws in India.

The Cable Television Networks (Amendment) Act, 2000

This Act came to further amend the Cable Television Networks (Regulation) Act, 1995. It includes certain provisions which provide protection to the consumers. The act also abolished the use of tobacco products in any advertisement on any cable television, state-owned publications and electronic media.

²² Ashutosh Singh, Policies for tobacco control in India, iPleaders, (Mar 09, 2022, 08:15 PM),

The Tobacco Products Bill, 2001

This bill was presented in the Parliament in 2001 recommending that the Central Government should control the tobacco industry, and that parliament should legislate on other tobacco products but not cigarettes²². The recommendations made by this bill paved a way for the government to enact the COTPA in 2003.

The Cigarettes and other tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce Production, Supply and Distribution) Act, 2003

The Cigarette and Other Tobacco Products (Prohibition of Advertising and Regulation of trade and commerce, production, supply and distribution) Act, 2003 (COTPA) was enacted with the objective to protect the public health by prohibiting smoking and tobacco use in public places and also banning the advertisement of tobacco products on public media. The first provisions of COTPA were enforced on May 1, 2004.

COTPA is comprehensive act, covering provisions including restrictions on smoking in public places; advertising, promotion and sponsorship; packaging and labelling; sales to minors; and enforcement of regulations and penalties for the defaulters. This act doesn't apply to tobacco products which are to be exported for business purposes.

This act repealed and replaced the earlier prevalent Cigarettes (Regulation of Production, Supply, and Distribution) Act, 1975.

<https://blog.iplayers.in/policies-tobacco-control-india/>



Currently, this is the most prevalent law for tobacco control in India. The main provisions of this Act are:

- **Sec.4** (Prohibition of smoking in public places): This section provides that smoking should not be allowed in the Public Places. A “Public Place” is defined by the act as any place to which the public have access, whether as of right or not, including places like auditorium, all work places, offices, Hospitals, Hotels, Restaurants, educational institutions, Stadiums, etc.
- **Sec.5** (Ban on Tobacco Advertisement): This section provides for a total ban on advertisement on all types of cigarettes and tobacco products by any person engaged in their production, supply or distribution.
- **Sec.6** (Not for Minors & around Educational Institutions): It provides for not selling of cigarette or any other tobacco product to any person who is a minor (that is under 18 years of age) and it also bans the selling of tobacco within area of 100 yards around any educational institution.
- **Sec.7 to Sec.10** of the act mention for labels and specified warnings on every packet of cigarettes or other tobacco products before they are produced, supplied or distributed, including clear instructions for the style and language of the labels. It is also made mandatory to test for the tar and nicotine content of any tobacco product.
- **Sec.14 to Sec. 19** includes rules and procedures related to in cases where any of the provisions of this act is violated, mentioning how to punish the offenders and the procedures related to confiscation of products found.
- **Sec.20** imposes, for any person who violates any of the above-mentioned provisions, the punishment of imprisonment which may

extend to 2 years, or with fine which may extend to Rs.5000, or with both.

- **Sec.21 to Sec.24** provides for separate punishments for violation of several above-mentioned provisions.
- **Sec.26** mentions provision for offences by companies or persons related to companies and their liabilities and punishments accordingly.
- **Sec.29** (Protection of action taken in good faith): It protects the Central and State Governments and their officers from being held liable for anything they do in good faith under this act.
- **Sec.30 to Sec.31** empowers the Central Government to make rules for implementation of the provisions of this act and its publication in the Official Gazette.
- **Sec.32** specifies that no provisions of this act will be implemented on cigarette and other tobacco products which are for export (due to business and other purposes).

The law was enacted but the main challenge was to implement it as the tobacco companies came together against most of the rules of this act in the court of law. However, after many legal battles, this act finally came into effect on Mahatma Gandhi’s birthday in 2008.

In 2020, a COTPA (Cigarettes and Other Tobacco Products Act) Amendment Bill was presented in the Parliament. Though still pending, the bill seeks to disallow retail sale of loose sticks of cigarettes, prohibit sale of tobacco products to people below 21 years, put controls on its advertising and promotion, among others. However, these proposed amendments regarding cigarettes and other tobacco products are more likely to increase illicit trade as found out in a country-wide survey conducted by Consumer Online



Foundation (COF), a not-for-profit organisation.

National Tobacco Control Programme

In order to strengthen the implementation of provisions of COTPA and also to go hand-in-hand with the policies of the WHO FCTC, the Government of India started the National Tobacco control program in 2007-2008. Till last recorded, this program has been implemented in 42 districts of 21 States. The main components of the NTCP were:

At the National level, campaigns for public awareness were held, tobacco products were tested to check their health risks as a part of the health care delivery mechanism under the National Rural Health Mission Framework. Attempts were made to find the best alternatives for farmers engaged in tobacco plant production. Regular assessment, monitoring and surveillance were carried out on the tobacco industry.

At the State level, Tobacco Control Cells (TCCs) were established with potential workforce for ensuring the successful enactment and monitoring of all the anti-tobacco laws.

At the District level, health workers, NGOs and school teachers were trained to monitor public health. Facilities were established for cessation of tobacco wherein found. School students were also made aware about the harmful effects of tobacco through various programs.

Unfortunately, many states and districts could not implement this scheme successfully due to lack of competent

manpower required under this scheme or other mechanisms to carry out monitoring under this act.

c. Landmark judgments relating to tobacco control in India

i. Naya Bans Sarv Vyapar Association v. Union of India

In this case, an association of tobacco wholesalers challenged provisions of the Cigarettes and Other Tobacco Products Act 2003 (COPTA) which expressly prohibited the sale of tobacco products within a 100-yard limit of an educational institution. The wholesaler wanted exclusion of their trade from their law because the law reduced their retail sales which caused them financial losses. The Delhi High Court stressed on public health and rejected the petition and held that tobacco products which are wholesale or retail established near an education institution attract students²³. So, therefore, both types of sellers should be restricted equally. The court also imposed a fine of Rs.20,000 which was to be paid by each petitioner to the central and state governments.

ii. Plume Vapour Private Ltd. v. Union of India, A.S.T 40 of 2019, High Court of Kolkata (2019).

A private company Plume Vapor challenged the government's ordinance banning the sale of e-cigarettes and advocated for a stay on the ban's implementation. The government asserted that such a stay at the interim stage before affidavits and hearing would be inappropriate. Hence, the Kolkata High Court refused to stay the ban and said that it is requirement for sellers to prepare a list of

²³ Ashutosh Singh, Policies for tobacco control in India, iPleaders, (Mar 09, 2022, 08:15 PM),

<https://blog.ipleaders.in/policies-tobacco-control-india/>



their existing stock and submit such stock to authorities for disposal.

iii. Murli S. Deora Vs UOI (AIR 2002 SC 40)²⁴

A Public Interest Litigation was filed in the Supreme Court of India, seeking orders for ban of smoking in public places. The court by interpreting Art. 21 of the Constitution, considered that the adverse effect of smoking on smokers as well as non-smokers, acknowledged the harm which is caused by active as well as the passive smoking and thus held that non-smokers should not be forced under any circumstances to inhale second-hand smoke in public. And consequently, directed the Central, all State Governments and Union Territories to immediately issue orders banning smoking in public places like hospitals, health institutions, public offices, public transports including railways, court buildings, educational institutions, libraries, auditoriums, etc²⁵.

iv. Godfrey Phillips India Limited vs. Union of India [India] [August 31, 2018]

ITC and Godfrey Phillips India filed petitions in the Karnataka High Court challenging new provisions for depicting 85% health warnings on the packets of cigarettes and other tobacco products. The tobacco companies claimed that the Government was not empowered to amend the Rules (April 3rd) as their legality (establishing 85% pack warnings) was currently pending in the Supreme Court. The Government maintained that the legality of the April 3rd pack warnings was also challenged in the Supreme Court, where the

court refused to stay implementation. Following this, the Karnataka High Court refused to stay the April 3rd warnings, noting that using these new images would not constitute hardship to the tobacco companies as already 85% pack warnings were placed on packs.

v. Dharampal Satyapal Ltd & Others vs. State of Assam and Others

In this case, the petitioner M/s. Dharampal Satyapal Limited, was engaged in the business of manufacturing and sale of Pan masala (without tobacco), Gutka, chewing tobacco including Zafrani Zarda, etc. The petitioner, through writ petitions, have challenged the constitutional validity of the Assam Health Act, 2013 and asked for it to be struck down and termed void. Their argument was that COTPA covers all tobacco products including smoking and smokeless tobacco, and so the Assam legislature doesn't have the legislative competence to enact the Assam Health Act as Parliament has already enacted a more all-inclusive Act known as COTPA²⁶. Therefore, the court held that a complete ban imposed by the Assam Health Act on the entire non-smoking tobacco industry is arbitrary, discriminatory and whimsical. The judgement, in this case, was that the constitutionality of the Assam Health Act, 2013 could not be proved hence it is declared void.

How to quit smoking?

A habit (particularly the bad one) when gets developed, engulfs us into it and leaves us in a situation where we see no any other option

²⁴ Murli S. Deora Vs UOI, (AIR 2002 SC 40) (INDIA).

²⁵ Souradeep Rakshit, Ban On Smoking In Public Places, Indian Institute Of Legal Studies, (Mar 10, 2022 ,07:15 PM), <https://www.iilsindia.com/blogs/ban-on-smoking-in-public-places-sc-verdict/>

²⁶ Ashutosh Singh, Policies for tobacco control in India (Dec 27, 2020), iPleaders, (Mar 09, 2022 ,08:15 PM), <https://blog.iplayers.in/policies-tobacco-control-india/>



that to keep practicing it until we are at the rock bottom of our lives. However, to quote here the Adidas tagline “Impossible is nothing!” and so do quitting smoking. We must realise this that if we can get into a problem through ourselves, then we can also come out of it through our own efforts. But only if we really want it and work for it.

So, if you really want to quit smoking, here are some measures that may help you:

1. Identify the triggers

- What are the situations that push us towards smoking? What are the places where if we go, force us to think about smoking cigarettes or using any tobacco product? Who are those people or friends or colleagues who compel us to take one more sip of the cigarette rather than stopping us to proceed further? If we are really concerned about our health, then we need to identify such situations, places and persons and try to avoid them as much as possible.

2. Spend time with family

-The family is the most loved circle of a person and even an ordinary man can do extraordinary things for the safety and security of his family. It is the power house of a person and thus it has the potential to help its member to get out of the smoking addiction. Thus, a person willing to quit smoking need to spend time with his or her family.

3. Meditation & Yoga

- When Buddha said “Mind is everything. What you think, you become”, he wanted us to understand that whatever we want to do or not do (here, smoking) depends on our mind. So practicing meditation and yoga daily helps to keep our mind and body healthy and within our control.

4. Consult a therapist (or a friend)

- Sometimes, it's difficult for us to quit smoking on our own. In such a situation, we should consult someone who understands us and helps us to get solutions for our problems in the best way possible. It could be our best friend, or otherwise, a therapist.

5. Take medicines

- Consuming anti-smoking medicines could also be a way to quit smoking. Though regular or excess consumption of medicines is also dangerous, one could get faster results if he/she use them only after consulting a doctor.

We have only one life to live, for ourselves and for our family. Our time is also very limited. So, wistfulness lies in using this time in doing productive things and developing good habits that contribute to the welfare of ourselves, our family and our society. This will not only make us a happy and healthy person, but will also give us respect in the society.

Conclusion

In today's world more than 1/4 of youth consume tobacco. Smoking these days have become a fashion. As said that youth are the future of the families and country but at present view it seem darker. Addiction to smoking and consuming is dooming the society. It's only impact they individual but also to the health economy of country and family integrity. The prevalence of tobacco consumption is decreasing but not all satisfactory. It has become very important to create awareness among the youth and make them realize the bad effects of the tobacco. Various countries have adopted the tobacco polies framed by the WHO but it didn't have much effect on the youth. Smoking just not affect the smokers but all its health hazardous



to non-smokers. In order to prevent smoking and consumption of tobacco the role Judiciary become very important in controlling its consumption, manufacturing, commercialization, and advertising by passing several judgments related to it. At the same the strict laws should be made by the higher authorities and should be strictly implemented. Policies of tobacco control need to be replicated by context, country, region, and gender can be recommended. Tobacco consumption and smoking control should be a social, public health, and quality-of-life concern rather than a business and trade issue

