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**Scrutinization and Analysis Belvedere on Cigarette and Similar Substance in
Vend and Market**

Shantanu Sharma

ABSTRACT

According to section 2(d) of consumer protection act. Consumer means any person who buys any goods for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised, or under any system of deferred payment, when such use is made with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose.

Smoking initiated in India since 2000 BC at that time cannabis was smoked as it is mentioned in the Atharva veda and it has been practiced for the last 4000 years. Although tobacco was introduced in India for the first time in 17th century.

According to World Health Organisation's report 12% smoking population of the world reside in India. Since 2nd October, 2008 smoking in public places is prohibited in India. In India annually around 900,000 people die cause of smoking. The no. of men smoking tobacco in India has increased to 108 million an increment of about 36%, Between 1998 and 2015.

Cigarette Industry is basically a duopoly market in India which is controlled by the following companies :-

- 1. Indian Tobacco Company (ITC)*
- 2. Godfrey Philips India Ltd*

out of which most of the market is controlled by Indian Tobacco Company with retail volume share of 79%¹

In the research work the researcher will emphasise on the factors which influence the vast population of India to consume cigarette inspite of the harmful effect it has and despite of the government imposing such high tax rates which leads to increment in the price of cigarettes in India and what does these companies do to manipulate these consumers into purchasing these goods as there is high level of manipulation in these industries, as the cigarette companies are able to suppress the health concerns from the mindset of cigarette consumers with the stress releasing and pleasure components.

¹ Cigarettes in India, Euromonitor (June 22, 2020, 10:04 AM), <http://www.euromonitor.com/cigarettes-in-india/report>.

Cigarette manufacturers have heightened consumer demand and lowered consumer risk perceptions. Because consumers are aware that smoking may bear significant health risks, the tobacco industry's success in manipulating risk perceptions constitutes especially strong evidence of the power of market manipulation.

INTRODUCTION

As mentioned in the Atharva veda the initiation of smoking in India dates back to the 2000 bc when people use to smoke cannabis although cigarettes were introduced in India much later in 17th century by the Portuguese. People have been smoking from those days but the consumption of cigarette has considerably increased in last few decades, and there has been a sudden hike in the industry of cigarette manufacturing.

Now, as the consumption of cigarette increases it comes along with lot of problems for the society and for the people who are not smoking as it is a cause of air pollution as well, according to scientists passive smoking is much more harmful than smoking. In 2014, world wide about 5.8 trillion cigarettes were smoked which tells us the amount of pollution cigarette causes. In case ***Murli S Deora vs Union Of India***² it was stated by the supreme court of India that Right to Life Guaranteed under the Article 21 of the Indian Constitution in itself contains Right to breathe fresh air as well. Hence, if a person is a non smoker then it is violative of his fundamental right to Inhale the smoke and get affected by it, Supreme Court further ordered that Smoking should be prohibited in Public places and issued directions to the Central Government and state government to ensure the prohibiting of smoking in public places namely :-

1. Auditoriums
2. hospital buildings
3. health Institutions
4. Educational Institutions
5. Libraries

² Murli S Deora Vs UOI, 8 SCC 765 (2001).

6. Court buildings
7. Public office
8. Public conveyances, Including Railway.

The issue which has been raised in the research paper is the need of proper regulations and laws pertaining to Cigarette Promotions. There is an urgent need of change in the Government tax Policies for cigarette and further the Research paper also suggests the inclusion of certain provisions in the government regulations in order to decrease the consumption rate of cigarettes in India.

MARKET POLICIES FOR MANIPULATING CONSUMERS

There are marketing policies for selling every Product, But selling a product which gives nothing but rather only harms the body and is the cause of around 900,000 deaths in the country every year Marketing such a product is in itself a task to do. now let us see how these cigarette manufacturers market these cigarettes and what are the marketing policies of the these companies which actually manipulates the consumers and inspite of the harmful effects consumers goes for purchasing such products.

MENTHOL

Yes, the addition of Menthol is frequently used phenomenon or the policy of the manufacturers to attract new individuals to start smoking. Studies shows that the youth in India or in any other country are attracted towards the flavoured cigarettes and most of the youth of the world today initiates smoking just because of the flavours which have been introduced by the cigarette manufacturing companies, another presumption which is drawn by the people, though is not proved by scientists nor it is proved in any study is that flavoured cigarettes are comparatively less harmful for the consumption then the non - flavoured cigarettes. Menthol also soothes the dry throat feeling that is experienced by most of the smokers and this feeling leads consumers to hold their breathe after inhaling the smoke for long and expose themselves to harmful chemicals for longer period of time which ultimately affects them.

According to the National Survey data showed in 2006, about 43.8% of the current smokers who are aged between 12 - 18 are consuming these menthol cigarettes, for the age group of 18 - 24 the percentage is 35.6 and for the age above 35 years the percentage is 30.6%. In the scientific study it has been observed that the consumers of menthol cigarettes have significantly more nicotine addiction than the consumers of non menthols cigarettes³.

Cigarettes is often presented as the initiation of a adolescent in the adulthood and the youth in the want of becoming adult initiates smoking in order to present themselves as matured individuals, basically it is the eagerness in the adolescent age youths to increase in terms of maturity to grow old early and it is these youth's, eagerness of which these manufacturing companies takes advantage of and sales there product as a symbol of adulthood. Not only this, cigarette is also used as the sense of self expression, self confidence, Cigarette manufacturing companies symbolises their product as the masculinity for boys and femininity for Girls. So far, these market executives of the cigarette manufacturing industries are successful in symbolising their product in the above mentioned expressions. These are the factors which affects the psychology of the consumers and inspite of the harmful effects to health of the consumer they go for it and this is the way in which the manufacturing companies have frown this big, that in an year there was a sale of 5.8 trillion cigarettes and about 12 % of the world's population is currently consuming cigarette.

GOVERNMENT LEGISLATIONS REGARDING PROHIBITION OF CIGARETTES

1. Cigarettes (regulation of production and supply distribution) act, 1975, This was the first legislation in India towards the prohibition of tobacco products. This act mandated the tobacco manufacturing companies to display statutory health warnings on the pack of the Cigarette.

³ [The Truth about Menthol Cigarettes](https://www.coquitline.org/tobacco_and_your_health/addiction/menthol.aspx), Coquitline (May 28, 2020, 11:06 AM), https://www.coquitline.org/tobacco_and_your_health/addiction/menthol.aspx.

2. In 1990, the Central Government issued an Executive Order prohibiting smoking in select enclosed public places where large numbers of people could be expected to be present over long periods of time. These places included educational institutions, conference halls, planes, trains, and buses, and each location was required to display bill boards indicating that smoking was strictly prohibited. No ashtrays were allowed in these places and the sale of cigarettes was banned here⁴
3. In December 1991, the Central Government amended the Cinematograph Act, 1952, to ban scenes that endorse or promote the consumption of tobacco in any form.
4. In 1992, the Central Government amended the Drugs and Cosmetics Act, 1940, and thereby banned the manufacture and use of toothpastes and tooth powders containing tobacco.
5. The government of Delhi was the first to impose ban on smoking in public places with the Delhi Prohibition of Smoking and Nonsmokers Health Protection Act, 1996. This in addition to prohibiting the sale of cigarettes to minors and prohibiting sale within 100 m from a school building. As per this act the first time offenders are fined with Rs 100 on the spot.
6. The Goa Prohibition of Smoking and Spitting Bill Act, 1997, is a unique act as the act bans the chewing of tobacco, smoking and even bans spitting in public, spitting means "voluntary ejection of saliva from the mouth after chewing or without chewing and ejection of mucus from the nose after inhaling snuff or without inhaling." The description of the act is as "A bill to provide for prohibiting smoking and spitting in places of public work or use and in public service vehicles in the State of Goa and to make provision for other matters connected therewith."
7. The amendments to the Cable Television Networks (Regulation) Act, 1994, banned any indirect and direct ads related to the use of any kind of tobacco on television and penalties in terms of fines or imprisonment were also introduced
8. The Tamil Nadu Prohibition of Smoking and Spitting Act, 2003, The provisions of the act are stated as: "Every person in charge of a place of public work or use, shall display and exhibit a board at a conspicuous place in or outside the place prominently stating that the place is a 'No Smoking and No Spitting place' and that 'Smoking or Spitting is an Offence' which shall be both

⁴ Jagdish K., Tobacco Control Policies in India : Implementation and challenges, Indian Journal On Public Health (June 20, 2020, 2:10PM), <http://www.ijph.in/article.asp?issn=0019-557X;year=2011;volume=55;issue=3;spage=220;epage=227;aulast=Kaur>.

in Tamil and English and the version in English shall be in the second place below the Tamil Version.”

9. Cigarettes and other tobacco products (prohibition of advertisement and regulation of trade and commerce, production, supply and distribution) Act, 2003 it is abbreviated as COTPA, it received assent from the president on 18th may 2003 and came into force on 1st may 2004. This act extends to whole of India and is applicable on cigarettes, and any other product which contains tobacco⁵.
10. On World No Tobacco Day 2005, the Ministry of Health made that the depiction of any form of tobacco in films and tv serials will be banned not only this, the announcement further stated that any movie which is already made before that date along with foreign movies will incorporate health warnings in the scenes in which there is depiction of tobacco . The ban was planned to be implemented from 1st august 2005 but however due the opposition from media, the ban was implemented on 2nd October, 2005⁶.
11. Prohibition of Smoking in Public Places, 2008, this act made the pictorial warning on the tobacco products mandatory⁷.
12. From 2nd October, 2012 Government has initiated the screening of two anti - tobacco advertisements which had title as “Sponge” and “Mukesh” these ads were replaced by another ads titled “child” and “Dhuan” from the 2nd October 2013, and were to be displayed in movie theatres and television. This is mandatory for the theatres to display a disclaimer stating “ Smoking is Injurious to health” whenever there is a smoking scene in the movie.

⁵ Environmental Laws of India (June 15, 2020, 03:12 PM), <http://www.environmentallawsofindia.com/the-cigarettes-and-other-tobacco-products.html>.

⁶ Tobacco contained legislations in India : Past and Present, Indian J Cancer (June 23, 2020, 03:30 PM), <http://www.indiancancer.com/article.asp?issn=0019-509X;year=2010;volume=47;issue=5;spage=75;epage=80;aulast=Mehrotra>

⁷ Guidance Sheets for Implementation of the ‘Smoke free Rules’ Under Tobacco Control Laws, Rajswasthya (May 29, 2020, 04:00 PM), <http://www.rajswasthya.nic.in/57%20Dt.%2012.12.08.pdf>.

FLAW IN GOVERNMENT'S TAX POLICIES

"Raising taxes is one of our strongest weapons to fight out tobacco"

- Arun Thapa (Acting WHO Representative to India)

There are heaps of flaws in Indian government's tax policies regulation on cigarettes and it can be observed that inspite of the sudden rise in the tax rate in the last few years there is no significant drop in the consumption of the cigarettes or it can be said that the amount of tax raised by the government is not that sufficient and it doesn't affect much in the price of the cigarette that it will prevent a consumer to consume the cigarette.

Whereas in USA there has been a hike in tobacco taxes by 320 % between the year 1996 and 2013 and this hike has reduced the per capita annual consumption of cigarettes from 1820 to 893 and this cut the number of adults who smoke by about a third.

This kind of hike is what India desires but apart from the hike in taxes. There is another flaw in India's tax policy regulation relating to tobacco. In India, the tax rate on cigarettes depends upon the filter quality and the length of the cigarette. This is the biggest flaw in the government's tax policy and the cigarette manufacturing companies take advantage of it. In March 2015, due to high rise of taxes on cigarettes there was a decline in the consumption of Indian Tobacco Company (ITC) cigarettes and in response to the hike of price and a drop in sale, ITC utilised India's 6 - tier tax policy by reducing the length of the their Bristol cigarette by 5mm. This reduction in size allowed Bristols to fit in the lowest tax rate column and the rates of the cigarettes were again the same and the sale of the cigarettes again took a hike which led ITC again on the map. This was an example of how Cigarette manufacturing companies utilise the Indian Government tax policy to gain profit⁸.

⁸ Charu B., [How India's tax system helps heavily taxed cigarettes flourish](http://www.business-standard.com/article/specials/how-india-s-tax-system-helps-heavily-taxed-cigarettes-flourish-115090300158_1.html), Business Standard (May 29, 2020, 06:16 PM), http://www.business-standard.com/article/specials/how-india-s-tax-system-helps-heavily-taxed-cigarettes-flourish-115090300158_1.html.

Hence, above mentioned two points are the main loopholes in the government tax policy which does not affect the consumption of the cigarette, The another assumption which can be made out of government formulating loose regulations pertaining to tax ramifications, is that government gets most of its revenues from cigarette manufacturing sector only and they don't want this sector to suffer any lose, or else government revenue generating industry will shut down still the govt. should hike the tax rates on such high scale that it will actually affect the consumption of cigarette and that it becomes too expensive for a middle class men to afford it and the government should improve their tax policy about, levying taxes on the basis of length and filter quality of the cigarettes as the manufacturing companies exploit such policies as depicted in the examples above.

PROMOTION OF CIGARETTES

BEFORE THE ABOVE MENTIONED LEGISLATIONS WERE PASSED :-

Before the bans were imposed on the promotion of cigarettes there were various ways in which cigarettes were promoted through the means of ads in newspapers and TV Commercials as it is mentioned above Menthol and mint were added in the cigarettes back then just to attract people and during those days every TV commercial use to depict specially a girl smoking a cigarette to attract women to smoke which portrays liberal, self confident and independent women and they use to promote cigarette by mentioning the presence of menthol and mint as an ingredient of the cigarette in the commercials and the ads use to state that the menthol made cigarettes are healthy for an individuals body and menthol cigarettes protects an individual from rough, dry feeling in the throat which one suffers after smoking a non menthol cigarette and the menthol cigarettes reveal a cool sensation in an individuals throat.

During those days Smoking was a norm in USA for both male and females but at the same time there was anxiety in the people about the health risks involved in smoking and to remove these anxiety the cigarette manufacturing companies were introducing doctors in the tv commercials asking them about their favourite brand and asking them whether there are any risks related to smoking to assure the people that smoking was safe and is not harmful for the human body.

At that time Camel was among the famous brands of USA and It use to claim that majority of doctors in USA consumes Camel Cigarette. “The Doctor’s choice is America’s choice” was the slogan famous during those days by the cigarette manufacturing companies⁹.

AFTER THE ABOVE MENTIONED LEGISLATIONS WERE PASSED :- Post the Promotion of cigarettes were banned by the Government and courts, the only way left for these cigarette manufacturing companies to promote their cigarettes was through POS (point of sale display) which means to advertise only on the packs of cigarette, apart from the advertising there was also the visual disclaimer warning about the harmful effects of smoking.

Now, packs are the only and very important place for the cigarette manufacturing companies to promote their cigarettes hence the company use every possible means to make their pack attractive with the help of Royal Logos, Brand Names, Colours, etc

At present Australian Government has banned the promotion of cigarette through the POS also and “on Packs”. Hence, the only thing left on the pack is the warning which focuses the full attention of the consumer about the harmful effects of cigarette and it increases the effectivenesses of the graphic warnings.

Hence, the Indian government should not allow the cigarette manufacturing companies to promote even “on the packs” of the cigarette promotions, as according to a study conducted in Delhi regarding the plain packaging of the cigarette packs, about 80% of participants believe in the fact that plain packaging of the cigarette packets will reduce the attractiveness and appeal of the packets. About 60% believed that it will not attract the non smoking youth, and 80% believed that this small change will motivate the smokers to quit smoking¹⁰.

INFLUENCE OF MULTIMEDIA AND MOVIES IN PROMOTING CIGARETTES :- Now as we know the government has banned the promotion of cigarettes on

⁹ Martha N., Allan M., The Doctor’s Choice is America’s choice, NCBI (May 29, 2020, 09:00 PM), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1470496/>.

¹⁰ Monica A., Gaurang P., Prohibiting Tobacco advertising, promotions & sponsorships : Tobacco control best buy, NCBI (June 11, 2020, 11:27 PM), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3734674/>.

tv commercials or newspapers, magazines etc. and govt has also passed legislation to promote the anti - smoking ads before the start of a movie in a theatre as well as in the interval similarly government has also passed a legislation for showing warning disclaimer whenever there is a smoking scene in the movie but inspite of all these legislations still whenever there is a smoking scene in the movie and audience is witnessing it, it is in a way promoting the cigarette, as the public connects with the movie in India specially if in an intense scene of a movie the lead actor is smoking, it inspires the fans and people sitting in the audience to feel that sense and hence although there are pop ups depicting warnings, it still does not affect the audience who is emotionally connected with the moment in the movie.

There are incidence in India where Hollywood's director refused to release his movie in the Indian Cinema halls because of the disclaimers displayed. "Woody Allen refused to release his film Blue Jasmine in India because he didn't wanted any pop - ups or any kind of disclaimer stating the harmful effects of cigarettes during the time of the movie or in any smoking scene because he felt that it shifts the focus of the audiences from the scenes and the concept of his movie was based on something in which the intent of audiences towards the smoking scene cannot be negative.

In august 2014, an expert committee was constituted which was headed by a Malayalam Film Director, Script Writer and producer Adoor Gopalakrishnan and the committee recommended that these disclaimers about the warnings during the smoking as well as during the consumption of alcohol should be removed as it shifts the focus of the audience from the subject of the movie and the committee also stated that when there are no disclaimers for the fight scenes, Rape scenes then why are there disclaimers for Smoking and Drinking scenes only.

"REEL EFFECT FOR REAL"

In India movies have been linked to youth smoking, of the top grossing films from 1990 to 2002 in India 76% of the movies have shown tobacco use and the movies had scenes depicting the actors and actresses smoking, Among the 110 movies produced from 2004 to 2005 89% of the movies had scenes depicting tobacco use and among those scenes 76% were male lead actors. This shows how movies

affect the mind set of the audiences and when the audience connects with the movie, in order to sense the emotion of the actor or as a symbol of manliness the youth starts to smoke¹¹.

It is suggested by World Health Organisation that movies containing tobacco use should be given adult rating so that at least the minor youth of the nation do not get influenced by the smoking scenes.

CONCLUSION

The research has highlighted certain points and certain reasoning of why the consumption of cigarettes in India has not been affected inspite of the hike in tax rates, there are certain drawbacks and certain issues which needs to be reconsidered and are been highlighted in the research. The research suggests that either the government don't want people to stop smoking as cigarette industry is a revenue generating industry and they don't want the industry to stop generating revenues or the government like US Government imposes heavy tax so that the consumer is not able to afford cigarette and the consumption of cigarette drops, the second point which needs to be considered is the tax policy regulating the tobacco industry in the country and the government should bring changes like they should not impose tax as per the size and quality of the filter of the cigarette. The Third and the most important change which the government should bring about is the ban on “ON PACK” promotion of cigarettes.

¹¹ Savita S., Tobacco industry relying on movies for brand promotion, India Today (May 30, 2020, 10:01 AM), <http://indiatoday.intoday.in/story/tobacco-industry-relies-on-movies-for-brand-promotion/1/153397.html>.