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## Banning of Cigarettes: Conflict between Personal laws and Public laws

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*The current scenario of cigarette consumption in India is very much traumatizing. Right from teenagers of 14 years of age to elderly people in the last days of their life, a major segment of the age group can be seen smoking on a habitual basis. Despite the pictorial warnings on the cigarette packs, people seem to be ignoring the health hazards of cigarette consumption. So, in this scenario where people are least concerned about their health and the health of the society they live in, where can the government play a role in controlling or eradicating? This article will be discussing the public and personal law aspects of cigarette consumption with an overview of the difficulties faced by the government to balance the two.*

**Keywords:** *personal law, public law, health hazards, teenage, right to health.*

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### INTRODUCTION

*“Be brighter, put down the lighter”*

There is a saying in English that people use regularly in their life – “Go up in smoke”. It has two meanings – catch fire and burn totally & spoiling a plan. However, when it comes to smoking cigarettes, this idiom takes a literal turn. Smoking cigarettes ruin the life of an

individual. It affects him so much that he has a speeding ticket to heaven. This is because cigarettes are made up of harmful products like tobacco. It is responsible for causing fatal diseases like lung cancer, atherosclerosis, mouth cancer, stomach cancer, etc. It can also cause other problems like a weakened immune system, vision problems, premature aging, pregnancy complications, etc. Smoking cigarettes not only affect the smoker immensely but also devastates the life of loved ones especially when they are financially dependent on the smoker. Smoking Cigarettes causes the death of lakhs of people every year and is linked to more than 50% of deaths in India. Despite these health warnings, the trend of smoking is continuing unabashedly. As per a survey, nearly 35% of the population has the habit of smoking cigarettes. 48% of the male population are chain smokers while 20% are female smokers. No of smokers in both these categories has increased because of its cool portrayal in cinema. Apart from health, smoking cigarettes has a negative impact on the environment as well. Tobacco is known to reduce fertility in the soil. Cultivation of tobacco leads to deforestation and its usage in factories generates huge amounts of toxic gases which harms the life of animals and plants. Cigarette butts add fuel to the existing problem of garbage. Most smokers throw it in the water bodies which causes water pollution and affects marine life. In response to these alarming effects, many cases have been filed by NGOs and other organizations to put a ban on cigarette smoking. This resulted in a ban on public smoking and various other restrictions on the tobacco industries with a view to stopping it gradually. Despite these restrictions, the tobacco industry is flourishing because of some defects in the law.

### **WHAT IS A CIGARETTE?**

A cigarette is a tube generally made of paper, bamboo, or metal in some cases which is filled with narcotic substances like marijuana and tobacco in most common cases. The cigarette is generally manufactured as a tool by medical practitioners to administer drugs in a small amount to the patient. The emergence of tobacco as a holy ingredient and later its propagation as a product of daily usage can be traced back to the 9<sup>th</sup> century by the Mayan Civilization in

present-day Mexico. The popularity of cigarettes can be credited to South America for a gradual spread to Europe through France in 1830 where it got the name “*cigarette*”.

### **WHEN DID CIGARETTES REACH INDIAN SOIL?**

In 1605, the Portuguese introduced tobacco cultivation to India. Tobacco was first planted in Gujarat's Kaira and Mehsana districts, before spreading to other parts of the country. With the foundation of the Calcutta Botanical Gardens in Howrah in 1787, an attempt to develop Indian tobacco began. Due to its exceptional quality, Dr. B.P. Paul working as a Royal Botanist at IARI (Indian Agricultural Research Institute) came up with the variety NP-70 in 1940 which was later grown popularly in the areas of Northern Bihar till the decade 1960. In Pusa and Ghazipur, Virginia tobacco cultivation and trials began (UP). In the year 1920, commercial production of Virginia tobacco in black soils began in India. The first successful flu cure occurred in Guntur, (A.P.) Andhra Pradesh, in 1928.

India gained a foothold on the global tobacco map after 1930. In 1936, IARI created a *Cigarette Tobacco Research Station* at Guntur. The excise levy on tobacco was first imposed in 1943-44, and tobacco has remained a major source of excise revenue ever since. In 1945, the Indian government established the Indian Central Tobacco Committee (ICTC) after understanding the importance of tobacco in the national economy. The Central Tobacco Research Institute was founded in the year 1947 under the auspices of the *Indian Council of Tobacco Control (ICTC), Madras*. In 1965, the *Indian Council of Agricultural Research (ICAR)* took over the CTRI's functions. CTRI, Rajahmundry, conducts and monitors the research on various varieties and aspects of tobacco farming in India through its six regional research stations in Veda sandur, Guntur, Jeelugumilli, Hunsur, Kandukur, and Dinahata.<sup>1</sup>

### **WHEN THE ILL EFFECTS OF SMOKING WERE DISCOVERED?**

An interrelation between the rising number of lung cancer patients and the sharp rise in the sale of cigarettes was noticed by scientists in the early 1900s. Dr. Franz Muller at Cologne

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<sup>1</sup> 'Origin of the Crop' (ICAR-CTRI)

<[https://ctri.icar.gov.in/for\\_origin.php#:~:text=Tobacco%20cultivation%20in%20India%20was,gardens%20in%20Howrah%20in%201787](https://ctri.icar.gov.in/for_origin.php#:~:text=Tobacco%20cultivation%20in%20India%20was,gardens%20in%20Howrah%20in%201787)> accessed 12 June 2022

Hospital was the one who compared 86 lung cancer cases with a similar sort of cancer-free controls<sup>2</sup>.

The identification of cancer-inducing compounds in cigarette smoke provided the fourth line of evidence. In the 1930s, polycyclic natured aromatic hydrocarbons were discovered to be cancer-causing elements of coal tar, and the issue arose: could comparable substances be found in the smoke of cigarettes? Angel Roffo of Argentina was the foremost to recognise polycyclic aromatic hydrocarbons in cigarette smoke based on their different spectrographic signatures, and he was, for a time, the most genuine and dependable voice in this field. Even consultants working for the industry took Roffo's work seriously. John B Fishel a professor at *Ohio State University* confirmed the presence of '*cancer-causing benzopyrene in tobacco tars*' in a 1947 internal report to the Lorillard corporation, producers of *Old Gold cigarettes*, cited as an authority. Tobacco industry laboratories carried out their own research: In 1952, researchers at Brown & Williamson discovered benzopyrene in smoke, and the end of the decade saw cigarette producers identifying several dozen carcinogens in cigarette smoke. Carcinogens were detected in "practically every class of chemicals in cigarette smoke," according to Philip Morris in 1961.

## WHAT ARE SOME SERIOUS MEDICAL ASPECTS IN WHICH CIGARETTES AFFECT THE INDIVIDUAL AND COMMUNITY?

**Impact on individual health** - Smoking impacts the health of a person in a variety of ways, wreaking havoc on practically every organ in the body. Here are some other ways that smoking tobacco might harm a person's health<sup>3</sup>:

- Increased cases of tooth loss and gum disease
- Premature aging of the skin
- Lowered immune system function

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<sup>2</sup> Robert N Proctor, 'The history of the discovery of the cigarette-lung cancer link: evidentiary traditions, corporate denial, global toll' (2012) 21(2) *BMJ Journals* <<https://tobaccocontrol.bmj.com/content/21/2/87>> accessed 12 June 2022

<sup>3</sup> 'Health Risks of Smoking Tobacco' (*American Cancer Society*) <<https://www.cancer.org/healthy/stay-away-from-tobacco/health-risks-of-tobacco/health-risks-of-smoking-tobacco.html&gt>> accessed 12 June 2022

- Lesser bone density resulting in easy fracture of bones
- High risk of type two diabetes
- Decrease in sense of taste and smell
- Bad breath results in stained teeth
- Increased risk of rheumatoid arthritis
- Higher risk for cataracts
- Increased risk of blindness due to macular degeneration
- Unusually long time taken for the wounds to heal

**Effect on community/Second-hand smoking** - Second-hand smoke is a combined mixture of smoke from a cigarette's burning end and the smoke breathed out by smokers. More than 7,000 compounds are found in second-hand smoking. Hundreds of them are poisonous, and roughly 70 of them can cause cancer. Since the 1964 Surgeon General's Report, 2.5 million non-smokers have died as a result of second-hand smoke inhalation.

#### **EFFORTS MADE TO BAN CIGARETTES**

India has 182 million smokers (16.6 percent) of the world's 1.1 billion smokers. In 2004, 8,00,000 – 9,00,000 Indians died per year from health problems linked to tobacco consumption, or around twenty-five hundred per day, out of a population of 1065 million. The Cigarettes (Regulation of Production, Supply, and Distribution) Act, 1975<sup>4</sup>, mandated the printing of statutory warnings about health on boxes and packs of cigarettes in India. The Act imposed particular regulations on tobacco production, supply, and distribution trade, and commercialization methods. In the event that the Act's terms were broken, the penalty included the confiscation of cigarettes. The Act, however, had significant limits because it didn't cover tobacco products other than cigarettes like beedis, gutka, cheroots, and cigars. The type of font, style, and wording as well as the way in which the warning was presented, were all painstakingly documented. The Act, enacted by the Government of India under the Ministry of Commerce, gave the Union Government the authority to interfere and intervene in

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<sup>4</sup> Cigarettes (Regulation of Production, Supply, and Distribution) Act, 1975

the development, monitoring, and marketing of the tobacco industry. However, since tobacco was a key to the outflow of public money, the Act promoted and favoured tobacco cultivation and trading. The Central Cabinet stated in 1993 that it intended the introduction of comprehensive legislation that would encompass every tobacco product restrictions as well as activities related to their use and trade.

The provisions of the Cigarettes Act of 1975 were investigated by a parliamentary committee. As a result, in December 1995, the Parliamentary Committee on Subordinate Legislation of the 10th Lok Sabha issued the 22nd Report, which included a set of proposals for improving the control of tobacco. The proposition of statutory health warnings by the committee on cigarette packaging utilizes forceful language and is supplemented with pictorial images to increase their effectiveness. Snuff, Gutka, Cigar, beedis, and any other tobacco products, whether made in India or imported, were to be included in the warnings. Furthermore, the warnings had to be posted in any establishment that sold tobacco in any manner. The Committee suggested that all forms of sponsorships, advertising, smoking in public areas and public transportation networks, and the sale of tobacco to people under the age of 18 be prohibited. The government was urged to impose harsh punishments for anybody who disobeyed the rules. The importance of conducting research into developing other crops, as well as providing resources for retraining tobacco industry workers for employment in various other sectors, was emphasized by creating other optional employment opportunities.

Representatives of the Union Ministries of Labour, Information & Broadcasting, Agriculture and Commerce, the Indian Council of Medical Research, and the National Council of Educational Research and Training formed a Coordination Committee in 1995. Except for the Ministry of Labour, all of the representatives endorsed the idea that the economic implications of cigarette regulation could be adequately controlled.

Following this, the Union Ministry of Health established a Committee of experts for investigating the economics of the use of tobacco in 1995. The Committee looked at the state of the economy and the effects of tobacco consumption and commerce. It released its results in February 2002, concluding that tobacco use had several long- and short-term repercussions

and that the economic burden of disorders linked to the usage of tobacco definitely surpassed the indirect macroeconomic advantages of tobacco use and commerce. Tobacco was identified as a depreciating item. When factors like the use of tertiary-level of expensive medical facilities with even imported equipment for the treatment of tobacco-related diseases, losses due to fire hazards, the environmental damage caused due to deforestation, and disposal of tobacco-related waste are weighed against factors like employment, tax revenue, foreign exchange and consumer expenditure due to tobacco use, the losses are enormous. Meanwhile, the Union Ministry of Health and Family Welfare submitted the Tobacco Control Bill before the Rajya Sabha in 2001, embracing the recommendations of the 1995 Parliamentary Committee on Subordinate Legislation (Bill No. 29-F of 2001). "*A Bill to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply, and distribution of, cigarettes and other tobacco products and for matters connected therewith or incidental thereto.*"

The Committee determined that Parliament had the authority to act on tobacco-related products excluding cigarettes and the applicability of the Bill across India. Pictorial health warnings were made necessary and mandated tar and nicotine levels, as well as their highest permissible limits, to be posted on all tobacco product cartons and packages. Tobacco sales shall be prohibited within 500 yards of educational establishments. The proposal of the committee demanded dedicated smoking spaces be established in airports, restaurants, and hotels, as well as consistent fines for non-compliant tobacco product producers, dealers, and sellers across the country. Tobacco products would also be prohibited within a range of 100 yards and not 500 yards of educational buildings, according to the Central Cabinet. It was proposed that the bill will progress as the following act- "*This Act may be called the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply, and Distribution) Act, 2003.*" On May 18, 2003, the Draft Bill evolved to become an Act of Parliament.

However, the Act excluded Cigarettes specifically which made it somewhat useless to control the prominent use of cigarettes in India. The Union Ministry of Health had issued a notification requiring cigarette manufacturers to include a statutory warning to be printed

against smoking on both sides of a cigarette pack, covering at least 85 percent of the packaging. Beginning April 1, 2015, each and every cigarette box included the statutory warning on both sides, as well as a pictorial representation of throat cancer and a statement in Hindi, English, or any other Indian language. On Wednesday, Health Minister Harsh Vardhan remarked, "*I have directed that 60% of the space be allocated to an image and 25% to the legend.*"

Existing legislation was updated by the central government to impose stricter limitations on cigarette usage. The Prevention of Food Adulteration Act of 1955, for example, classified chewable zarda, a tobacco product as a food item. [19] "Tobacco, whether an article of food-in order to be 'food' for the purposes of the Statute, an article need not be suited for human consumption, since tobacco is used for human consumption, it will be food keeping this criterion in mind," according to the act. Changes were made to guarantee that these items came with an obligatory health warning. The act made it crystal clear that "*Every package of chewing tobacco shall bear the following label, namely, 'Chewing of tobacco is injurious to health.'*"

- Social Aspects And Attitude Unknowingly Countering The Govt. Policies For Limiting Tobacco Sale

The policy of imprinting pictorial warnings on cigarette packets has partial functionality as the problem of the single sale of tobacco has emerged. The majority of the new addition of customers in the section of cigarette consumers are teenagers who try these from their limited pocket expenditure and the lower-income section of consumers prefer purchasing a single piece of cigarette for a bare minimum expenditure of one-time consumption. This can be seen as an excuse by them for their unawareness of the consequences.

### **WHY WE CAN'T BAN CIGARETTES COMPLETELY?**

Though cigarettes are seen as an addictive poison that needs to be eradicated in order to maintain social decorum, the hands of the government are tied because of some legal provisions.

- Article 19 (1) (g) – Article 19 of the Indian Constitution is one of the prestigious six fundamental rights which is applicable to all citizens of the nation. It has many sub-clauses. One of the sub-clauses refers to the profession. Article 19 (1) (g) reads, “All citizens shall have the right to practice any profession, or to carry on any occupation, trade or business<sup>5</sup>”. It means that any individual has the right to follow and choose any profession, business, or occupation. He/she can even start any business and also shut down his/her own businesses. Manufacturing and selling cigarettes are also legal and valid. It does suffer from certain restrictions yet it can’t be banned. This is because the government can only impose certain restrictions on it. The government can’t impose total restrictions on it because no government/parliament power has the right to exclude any right from the realm of fundamental rights. Moreover, if a company complies with several health-related requirements, then it is protected from closing its business. This was followed in the Brazilian case. The case name is *ACODE-Associação dos Consumidores Explorados no DF v Souza Cruz S/A*. In this, an organisation filed a petition to close down the business of a cigarette company claiming that the company had violated rules regarding promotion. The court found that there were no such breaches and recognised the right to work of the company if they comply with rules and regulations.
- Loopholes in *Cigarettes and Other Tobacco Products Act, 2003*<sup>6</sup> (COTPA) – It is the main law of the country which regulates the manufacturing and selling of cigarettes. It was enacted in 2003 was commenced in 2004. It contains many sections which restrict the manufacturing, selling, and advertising of cigarettes in India. It imposes restrictions on selling cigarettes in certain areas. However, nothing in the act mentions about re-selling of cigarettes. This makes selling cigarettes on electronic platforms like internal technically legal. It is a loophole that needs to be addressed. There are other loopholes as well. For example, COTPA bans the promotion of such products as per section 5 of the act. However, the word ‘promoting’ is a grey area because it is not defined properly.

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<sup>5</sup> Constitution of India, 1950, art.19(1) (g)

<sup>6</sup> Cigarettes and Other Tobacco Products Act (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution), 2003

In this way, companies keep on advertising their products even while following compliances. Another major defect is making an exception for smoking in restaurants or hotels which has a capacity for 30 or more people<sup>7</sup>. So, this act also doesn't have a provision for imposing a total ban on cigarettes.

A report titled "*Tobacco Control Law in India – Origins and Proposed Reforms*" revealed the glaring gaps in COTPA 2003. The report noted the allowance by hotels, pubs, and bars to smoke in public places by making special sections and provisions.

*"Tobacco Advertisements and products are prominently displayed in stores and kiosks despite a ban on advertising. The existing penalties under COTPA 2003 are not sufficient and the sale of single-stick cigarettes and other loose tobacco products is the norm in India. Emission yields which are mentioned on cigarette packets often give a misleading impression are some of the gaps in the existing tobacco control legislation COTPA 2003, which makes it ineffective for regulating tobacco consumption and exposure to secondhand smoke in India,"* revealed the report.

- Non-binding nature of advisories of the government – Many times, the health ministry of the central government or the state government issues many advisories aiming to reduce the manufacturing and consumption of specific cigarettes. These advisories are passed for public welfare. However, these advisors are not binding on any individual. These non – binding nature has been followed in *Piyush Alhluwalia v Union of India*<sup>8</sup>. In this case, the health ministry of the government issued an advisory to all the states which banned the manufacturing and selling of certain cigarettes like e-Sheesha, Head-Not-Burn Devices, etc. The court ruled that such advisories are only meant to advise the states and it is upon their discretion as such advisories are not binding.
- Article 21 - Article 21 is also a fundamental right granted by the Indian Constitution to all the citizens of the nation. It read, "*Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law*<sup>9</sup>." It is

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<sup>7</sup> Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, s 2(e)

<sup>8</sup> *Piyush Alhluwalia v Union of India* (2018) W.P.(C) No. 12163/2018

<sup>9</sup> Constitution of India, 1950, art.21

related to the personal life of any individual. This right is also not absolute but it can't be deprived as well. It is the right of smokers to continue smoking in non-restrictive areas. Also, they have the right to consume other types of cigarettes like e-cigarettes. In many cases whenever any sort of rule or advisory is issued by the government relating to the consumption of cigarettes, habitual consumers usually challenge such advisories on grounds of Article 21. Also worldwide a 'right to smoke' is recognised. For example, there is a landmark case in New Zealand that pertains to the right to smoke. This case is *Taylor v Attorney General & Ors*<sup>10</sup>. In this case, a prisoner challenged the anti-smoking regulation in jail by claiming the right to smoke in his cell. The court found that these regulations don't grant such rights but such right to smoke do exist and later on reversed the ban on smoking in prisons.

- Article 14 – Article 14 is also a fundamental right. It states, “*The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth*”<sup>11</sup>. This law applies to equality between the same businesses as well. So if the government bans one form of cigarettes, it can be challenged easily. One example of this is the ban on e-cigarettes. The government of India issued a ban on manufacturing, selling, advertising, etc. e-cigarettes in September 2019. In response to such bans, many petitions came up which challenged them on grounds of Articles 14, 19, and 21. The courts have put an interim stay on it and their decision is awaited. However, it is mostly possible that such a ban would be reversed. This principle of equality is also followed in other countries. In *Jaunait Consulting v México*, the Supreme Court of Mexico (Supreme Court of Justice of the Nations) held that banning the selling of e-cigarettes and allowing other types of cigarettes is unconstitutional and reversed the ban.

In short, the government is not in the position or has legal powers to impose a total ban on the manufacture, sale, or promotion of any form of cigarette.

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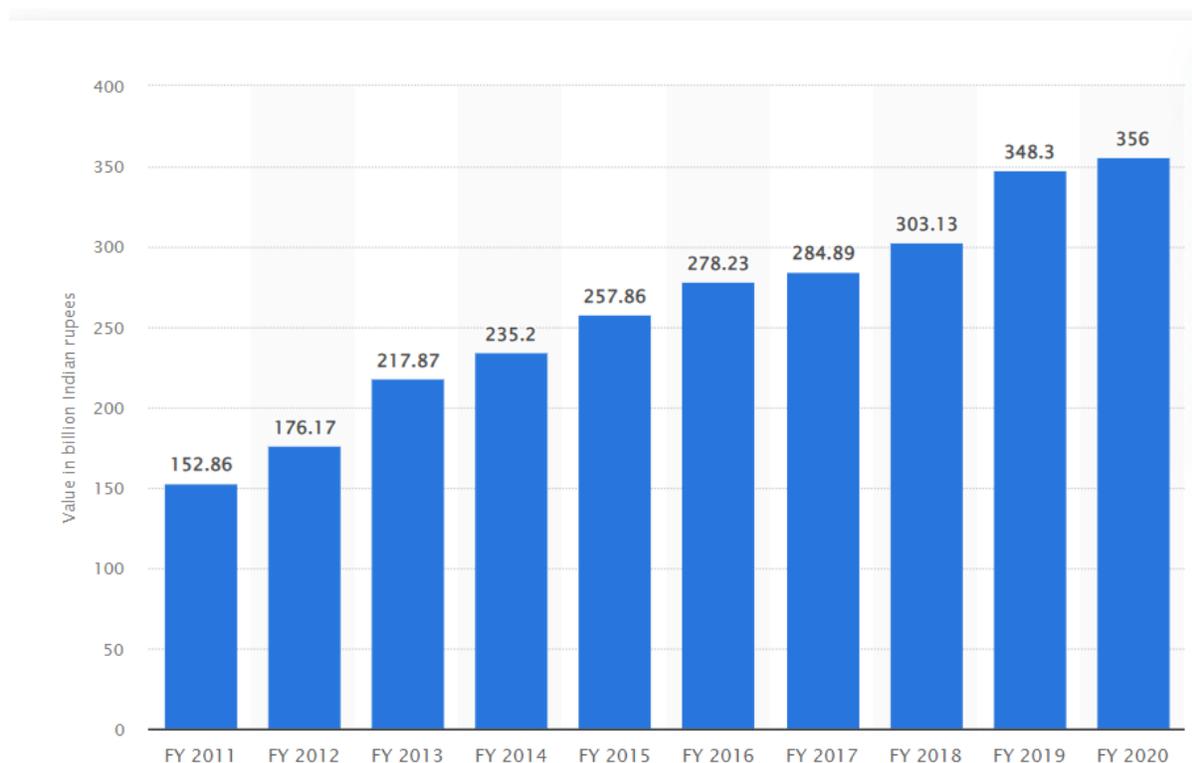
<sup>10</sup> *Taylor v Attorney General & Ors* [2013] NZHC 1659

<sup>11</sup> Constitution of India, 1950, art.14

## POSSIBLE MODELS FOR THE GOVERNMENT TO IMPLEMENT A BAN

- Revenue from the tobacco and cigarette industry to the government

In the fiscal year 2020, India's tobacco tax collection was estimated to be over 356 billion Indian rupees, higher than in prior fiscal years. The sale of legal cigarettes on the organised market generates the majority of tobacco tax revenue.



Life Insurance Corporation, a state-owned corporation, owned a 28 percent share in ITC. Following the national government's proposed tax hike on cigarettes in the fiscal year 2020, the stock price of India's largest tobacco manufacturer, ITC, plummeted. The government also profited from tobacco-related charges for driving while intoxicated. For example, in 2018, the Delhi traffic police prosecuted approximately 4,000 instances. Thus, it can be inferred that a sudden ban on tobacco and related product can incur a great loss to the government as well thus step by step implementation.

BHUTAN- Tobacco control success can be linked to high-level ecclesiastical support and direct monastic efforts against tobacco through the religion and health program to a considerable extent. Monks are held in high regard in Bhutan and are considered essential members of the community. They are deeply involved in people's lives and offer advice and direction on issues such as birth and death, prayer, and celebration. As a result, their participation in tobacco control is viewed as crucial. His Holiness the Je Khenpo, Bhutan's head of the ecclesiastical body, has made numerous public declarations about the harmful consequences of tobacco and has sponsored the booklet "Buddhist thoughts on tobacco."

NEW ZEALAND- From 2027 the age of smoking authorized population will be increased every year starting from the age of 18 years. Though both the countries are very much distinct from each other in the areas of religion, culture, and economic standards both have tried and adopted a policy suitable for themselves. The policy of Bhutan is based on a religious basis while the policy of New Zealand is based on a systematic increase in an age group and focusing on specific people to eradicate habitual smoking both models can prove to work when applied on a persistent basis. The Indian government cannot fully adopt any one of these models because of the varied diversity in religion, culture, and economic standards of the population. But surely can embrace a positive attitude in creating and implementing policies to fully ban the sale of tobacco and cigarette-related products.

## CONCLUSION

From the above analysis, it can be concluded that India needs more strong and more effective laws to combat the rising cigarette consumption issue. This can be done by addressing the loopholes in COTPA and following any of the models used by other countries (suitable to India's situation) to address this issue. Also in the future, alternatives for employees of the cigarette industry need to be made so that it doesn't add to the existing problem of unemployment. Gradually, India needs to impose a complete ban on cigarettes so that the issues related to healthcare, environment, family dependency, etc. can be tackled in a much more efficient way. This will be in line with many countries that are on track to imposing a complete ban despite employment and revenue concerns. Besides that, just making laws won't

suffice. Implementation of such laws is equally important in order to achieve the desired outcome. At last community health should take preference over personal pleasures.