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POLICY BRIEF

The Need for Repeal of the Tobacco Board Act 1975 for Effective Tobacco Control

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Incentivizing tobacco farming through subsidies and promoting the tobacco industry, under the Tobacco Board Act, 1975 is completely against the interests of public health, the health of tobacco farmers and the environment.

SUMMARY OF RECOMMENDATIONS

For effective tobacco control law and policy to work in India it is crucial that tobacco subsidies are ended and the Tobacco Board Act 1975 is repealed. Towards this end, the following policy recommendations are made:

a) The Tobacco Board Act 1975 ("TBA") should be repealed as per provisions of Section 30 of the Act. The TBA can no longer continue, with its aims and objectives of promotion of tobacco when The Cigarettes and Other Tobacco Products (Prohibition of Advertisements and regulation of Trade and Commerce, Production, Supply, Distribution) Act 2003 ("COTPA") has been subsequently enacted for regulation and control of tobacco.

b) Together with the repeal of the TBA, all tobacco related subsidies, and financial incentives to tobacco farming, whether given by the Board or other agencies must come to an end. This would be in conformity with the directions of the Karnataka High Court in rethinking policy on tobacco subsidies.

c) The central government must wind up the Tobacco Board and all of the Board's initiatives such as the auction platforms and other measures.

d) Schemes must be introduced to provide incentives and cash support to tobacco farmers to help them get out of tobacco cultivation as has been done in other jurisdictions like the US and Australia. This could be done over a long- term period such as 5 or 10 years during which buyout schemes could be introduced to help farmers exit tobacco cultivation. The tobacco industry must be required to pay for some of the buyouts, as has been done in other jurisdictions because the industry is one of the main causes for the public health impacts of tobacco.

e) The Ministry of Health and Family Welfare, which works on tobacco control and the Ministries of Commerce and Industry and Agriculture have conflicting mandates. These Ministries must jointly agree on ending tobacco subsidies and evolving schemes to support tobacco farmers move away from tobacco farming, in line with the principles recognized under the WHO Policy Options and Recommendations on Economically Sustainable Alternatives to Tobacco Growing.

About

900,000

tobacco-attributable deaths occur in India every year.[5]

ONE

Current law and policies on tobacco

Tobacco is a major cause of preventable death worldwide.[1] An estimated 100 million deaths in the 20th century were due to tobacco use, with a further billion deaths predicted in the 21st century.[2] Tobacco leads to more than 5 million deaths a year globally.[3]

In India, more than one-third of adults, almost half of the men and one in five women are regular tobacco users and tobacco is the "the single most identified risk factor for cancer", causing 30-40% of cancer deaths in the country.[4] About 900,000 tobacco-attributable deaths occur in India every year.[5] Smoking is responsible for 1 in 5 deaths in men and 1 in 20 deaths in women between the ages of 30 to 69.[6] Chewing tobacco causes oral cancer and life threatening diseases, leading to India having one of the highest number of oral cancer cases in the world (1/3rd of the world's cancer affected people) with around 80,000 new cases of oral cancer registered per year.[7]

Not only is tobacco the leading cause of cancer for consumers, tobacco farmers are also exposed to health problems due to nicotine absorption. A study revealed that "the toxicity to the cardiovascular system and carcinogenicity of chronic dermal nicotine exposure are likely to exist as non-smoking tobacco harvesters show similar cotinine and nicotine levels as active smokers in the general population."[8] Further, exposure to pesticides leads to a host of skin disorders and other clinical diseases.[9]

The tobacco industry is also one of the country's major pollutants, requiring 8 kgs of fuel wood to cure one kg of tobacco, and nearly 70 million tons of paper to make cigarettes. All this from wood that is sourced from our forests, causing global deforestation of 2-4%, which is has a considerable carbon footprint.[10] Tobacco depletes nutrients from the soil faster than other crops,[11] reducing the fertility of soil. Excessive use of pesticides and fertilizers needed for tobacco causes soil pollution and groundwater contamination and reduces the fertility of the soil.[12]

■

ONE / 1

The Cigarettes and Other Tobacco Products (Prohibition of Advertisements and regulation of Trade and Commerce, Production, Supply, Distribution) Act 2003 ("COTPA")

This disturbing reality reflects an urgent need to reduce tobacco consumption to protect and improve public health in the country. To combat and bring down tobacco consumption, the COTPA was enacted in India in 2003. The Act aims to regulate trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products. The COTPA looks to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco. [13]

Section 5 of COTPA prohibits all direct and indirect advertisements that suggest or promote the use or consumption of cigarettes or any other tobacco products. Section (3) also prohibits any tobacco promotion and states that no person shall promote or agree to promote the use or consumption of cigarettes or any other tobacco product or any trademark or brand name of cigarettes or any other tobacco product in exchange for a sponsorship, gift, prize or scholarship given or agreed to be given by another person.

ONE / 2

The Framework Convention on Tobacco Control

India has also signed and ratified the Framework Convention on Tobacco Control ("FCTC"), an evidence based treaty on tobacco control under the aegis of the World Health Organisation. The FCTC was signed and ratified by India in 2003 around the same time that the COTPA was enacted. The FCTC was introduced in the wake of "recognizing that the spread of the tobacco epidemic is a global problem with serious consequences for public health."[14] Some of the important provisions under the FCTC are the following:

a) Article 5.3: Restricted interactions with the Tobacco Industry and No Preferential Treatment: Article 5.3 of the FCTC requires state parties *"to protect public health policies on tobacco control from the commercial and other vested interests of the tobacco industry, in accordance with national law."* Compliance with this Article can mostly be assessed based on two recommendations in the Article 5.3 Implementing Guidelines.[15] These Guidelines require limiting interactions between the government and the tobacco industry to those that are strictly necessary and ensuring transparency in the interactions that do occur. The Guidelines also require that States Parties do not give preferential treatment to the tobacco industry.

b) Article 17: Article 17 of the FCTC requires Parties to promote, as appropriate, economically viable alternatives for tobacco workers, growers, and possibly individual sellers.

c) Article 18: recognizes that Parties agree to have due regard to the protection of the environment and to health with respect to tobacco cultivation and manufacture.

ONE / 3

The Tobacco Board Act, 1975

Almost three decades before the COTPA was enacted and the FCTC was signed, the Indian government had enacted the Tobacco Board Act in 1975 ("TBA") to promote the tobacco industry. This was a legislation that was enacted when the health effects of tobacco use were largely unknown and when tobacco was looked at merely as a profitable cash crop.

Since 1975, the lethal effects of tobacco consumption have been brought to light through scientific research and numerous studies that have highlighted the need to reduce tobacco production. Despite this, the TBA has remained on the statute books and has not been repealed. The TBA is not a very well-known legislation, but it continues to operate robustly in the face of the COTPA and FCTC.

The salient features of the TBA are as follows:

a) The Tobacco Board: The TBA establishes the Tobacco Board, which mainly functions towards the development of tobacco production in the country. The main function of the Board under Section 8 of the TBA is the *promotion of the development of the tobacco industry by all such measures* as it deems fit, under the control of the Central Government. Such measures include, among other things, the establishment of an auction platform, recommending minimum prices to be fixed for the purpose of export and regulates the domestic and export market in "the interest of the growers, manufacturers, dealers of the nation."[16] The Board maintains and improves tobacco markets by devising marketing strategies, being an auctioneer and facilitating sale of tobacco.[17] It also purchases tobacco from them "when the same is considered necessary or expedient."[18] The Board sponsors and encourages "scientific, technological and economic research for the promotion of the tobacco industry."[19] Therefore the duties of the Board under the Act are unambiguously catered towards improving and promoting the tobacco market and industry.

b) Members of the Board: The Tobacco Board consists of representatives from Parliament and departments of the Central and State Governments, mainly the top tobacco producing states and representatives from amongst tobacco growers, manufacturers and exporters.[20] Therefore, the Board's membership mainly reflects the commercial interests of the tobacco industry. The Tobacco Board Rules, 1976 also allow the Board to associate itself with anybody interested in the promotion of the tobacco industry, on the basis of representations made.[21]

c) Suspension of the TBA: Interestingly, under Section 30 of the TBA there is an in-built provision that the TBA may be suspended if the central government is satisfied that circumstances have arisen rendering it necessary or expedient so to do in the public interest. In such an event, the central government may suspend the operation of all or any of the provisions of the TBA.

Subsidies and Incentives provided by the Tobacco Board

The Tobacco Board gives out huge subsidies to tobacco growers all over the country. The expenditure of the Tobacco Board towards subsidies has only been increasing. In the year 2012-13 its Annual Report indicates an increased expenditure of Rs. 372.55 lakhs as subsidies to tobacco growers, a growth of 27.41%.[22]

Subsidies: The Board provides various forms of subsidies under different schemes. The Crop Insurance Scheme for Virginia Tobacco provides 50% subsidies on the insurance annual premium.[23] Under the Extension and Developmental Scheme, the Board supplies inputs such as fertilizers, pesticides, seed trays etc., at subsidized rates. In 2012-13, the Board spent Rs. 454 lakhs under this scheme.[24] The Board also provided subsidies on agricultural supplies such as pheromone traps, organic fertilizers, seeds, seed trays, tarpaulins, sheds etc., amounting to at least Rs. 196 lakhs.[25]

Loans: The Board provides loans to tobacco growers. In 2012-13, The Board organized crop/input/barn repair loans of Rs. 552.86 crores to tobacco growers in AP and Karnataka through commercial banks at lower rates of interest[26] and negotiated with Banks to provide Input Loans amounting to Rs. 154 crores to growers in AP and Karnataka.[27]

Welfare Schemes: The Board provides financial assistance to meet the educational, social and health needs of tobacco growers and their families and loans for barn repairs. It has contributed Rs. 17,536 crores towards a Welfare Fund.[28]

Compensation: The Board also offers compensation to drought affected growers and growers under losses. In 2012-13, the Board granted compensation of Rs. 6,43,21,440/- for partially affected crop alone,[29] and disbursed Rs. 22,46,06,138/- as compensation to growers under loss.[30]

Auction Assistance: In 2012-13, the Board spent Rs. 9 crores for construction of an additional platform to promote auctions of tobacco.[31]

Association and Indirect Advertisement of Tobacco: The Board associates freely with the tobacco industry in encouraging and promoting tobacco production and supply. Under the “Field Friends Activity” the Board accompanies members from the Central Tobacco Research Institute (“CTRI”) and field executives from tobacco companies to visit tobacco growers.[32]

Research sponsored by Industry: The Board also provides financial assistance to institutions such as the CTRI to analyze crop samples and increase productivity.[33]

Other incentives: In addition to the subsides and incentives provided by the Tobacco Board, there are many other forms of incentives still being given to tobacco farmers by various state governments. Some of these include agricultural loan waivers by the governments and also by many rural banks. The central government also supports tobacco farmers in different ways and has recently finalized a Price Stabilization Fund (PSF) to help tobacco growers during crises in which the Government of India would contribute 50 % of the funds to the PSF, State Government 25% and another 25% by the grower of which some portion could be contributed by the Tobacco Board.[34]

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REFERENCES

[1] Ministry of Health and Family Welfare, Government of India, 'Global Adult Tobacco Survey (GATS) India 2009-10' (2010) 1; CDC - Fact Sheet - Fast Facts - Smoking and Tobacco Use , 'Smoking & Tobacco Use' < http://www.cdc.gov/tobacco/data_statistics/fact_sheets/fast_facts/ > accessed 15 December 2016 ; Health and Social Care Information Centre, 'Statistics on Smoking, England', 2016 (2016) 17 (http://content.digital.nhs.uk/catalogue/PUB20781/stat-smok-eng-2016-rep.pdf) accessed 15 December 2016

[2] World Health Organization, 'WHO Report on the Global Tobacco Epidemic, 2008: The MPower Package' (2008) < http://www.who.int/tobacco/mpower/mpower_report_full_2008.pdf > accessed 15 December 2016. Peto R. and Lopez A.D., 'Future worldwide health effects of current smoking patterns' (In: Koop CE, Pearson CE, Schwarz MR, eds, 'Critical issues in global health', Jossey-Bass 2001) 154–161.

[3] Ministry of Health and Family Welfare (n 1) 1; Akansha Singh and Laishram Ladusingh, 'Prevalence and Determinants of Tobacco Use in India: Evidence from Recent Global Adult Tobacco Survey Data' (2014) PLoS ONE, 9(12): e114073 < https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4256395/ > accessed 15 December 2016.

[4] National Commission on Macroeconomics and Health, Government of India, (NCMH Background Papers – Burden of Diseases in India,, 2005) Cancer: Current Scenario, Intervention Strategies and Projections for 2015 219 (http://www.who.int/macrohealth/action/NCMH_Burden%20of%20disease_(29%20Sep%202005).pdf) accessed 15 December 2016.

[5] Ministry of Health and Family Welfare, Government of India, 'Global Adult Tobacco Survey (GATS) India 2009-10' (2010).

[6] Prabhat Jha and others, 'A Nationally Representative Case-Control Study of Smoking and Death in India'(2008) The New England Journal of Medicine 1137.

[7] Indian Council of Medical Research, 'National Cancer Registry Programme Report 2009-2011', (2011)

[8] Natalie M. Schmitt and others, 'Health Risks In Tobacco Farm Workers—A Review Of The Literature' [2007] 15 Journal of Public Health.

[9] Dilshad Ahmed Khan and others, 'Risk Assessment Of Pesticide Exposure On Health Of Pakistani Tobacco Farmers' [2010] 20 Journal of Exposure Science and Environmental Epidemiology.

[10] Nayantara S. Nayak, Tobacco curing and fuel efficiency in Karnataka, South Asia Network for development and Environmental Economics, Working paper No: 77-13, 5 [January 2013]

[11] Conference of the Parties to the WHO Framework Convention on Tobacco Control, 'Study group on economically sustainable alternatives to tobacco growing (in relation to Articles 17 and 18 of the Convention)', (2008) FCTC/COP/3/11 4 September 2008 available at http://apps.who.int/gb/fctc/PDF/cop3/FCTC_COP3_11-en.pdf accessed 15 December 2016

[12] Natacha Lecours and others, 'Environmental Health Impacts Of Tobacco Farming: A Review Of The Literature: Table 1' [2012] 21 Tobacco Control

[13] The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003, Preamble

[14] WHO FCTC, Preamble.

[15] Guidelines for Implementation of Article 5.3 of the WHO Framework Convention on Tobacco Control on the protection of public health policies with respect to tobacco control from commercial and other vested interests of the tobacco industry, available at: http://www.who.int/fctc/guidelines/article_5_3.pdf Accessed 15 December 2016

[16] Tobacco Board Act, s 8(2)(e).

[17] Tobacco Board Act, ss 8(2)(c), 8(2)(cc).

[18] Tobacco Board Act, s 8(2)(g).

[19] Tobacco Board Act, s 8(2)(i).

[20] The Tobacco Board Act 1975, s 4(4)

[21] Rule 10, Tobacco Board Rules, 1976

[22] Tobacco Board India, 'Annual Report 2012-2013' p 199 < http://tobaccoboard.com/admin/publicationsfiles/AR_2012_2013_Eng.pdf > Accessed 15 December 2016.

[23] ibid

[24] ibid

[25] ibid

[26] Tobacco Board India [n 22] 25.

[27] ibid 34.

[28] ibid 40.

[29] Tobacco Board India [n 21] 21.

[30] Tobacco Board Newsletter, December 2015, 17 < http://tobaccoboard.com/admin/publicationsfiles/NL_Dec_2015.pdf > as accessed 15 December 2016

[31] Tobacco Board India [n 21] 59.

[32] Expenditure on "Field Friends Activity" in 2012-13: Rs. 6.80 lakhs; ibid 29.

[33] Tobacco Board India [n 21] 29. The 2012-13 Annual report records a payment of Payment of Rs. 15.8 lakhs to analyze pesticides and chemical analysis of crop samples.

[34] The Hindu, 'Scheme Soon To Help Tobacco Growers During Crises: Minister' (2012) <http://www.thehindu.com/news/national/karnataka/scheme-soon-to-help-tobacco-growers-during-crises-minister/article4102756.ece> accessed 15 December 2016.

India was the world's

third largest

producer of tobacco in 2014-15.[35]

TWO

A legal basis for repeal of the Tobacco Board Act 1975 and ending tobacco subsidies

Tobacco control legislation such as the COTPA and the FCTC strive to prioritize the public health goal of reducing the demand, supply and consumption of tobacco in the country. However, the continued existence of legislation such as the TBA operates against the right to health of the citizens of this country.

There is a direct contradiction between the governmental commitment to protect public health under the Indian constitution and its continued support to the tobacco industry through the TBA. Through its Ministries of Agriculture, Commerce, Industrial Development and the Tobacco Board, the government continues to promote tobacco growth in the country, making India the world's third largest producer of tobacco in 2014-15.[35] This section therefore outlines the legal basis for the repeal of the TBA and ending all tobacco subsides.

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TWO / 1

A Constitutional basis for phasing out subsidies: Violation of Fundamental Rights and Directive Principles under the Constitution:

The TBA, which promotes the tobacco industry and provides subsidies and other form of incentives is in direct violation of provisions of the Constitution threatening the Fundamental right to life under Article 21 and the Directive Principles of State Policy under Articles 39, 47, 48A and 51.

Article 21 of the Indian Constitution guarantees the right to life and mandates that no person shall be deprived of his or her life and personal liberty except according to the procedure established by law. The Supreme Court has expressly recognized the right to health as an integral part of the right to life under Article 21.[36] In the context of tobacco, High Courts have come down heavily against the inaction of the state government in preventing tobacco related health hazards and in the context of smoking in public, courts have held that *"the continued omission and inaction on the part of the respondents to comply with the constitutional mandate to protect life and to recognize the inviolable dignity of man and their refusal to countenance the baneful consequences of smoking in public at large has resulted in extreme hardship and injury to citizens and amounts to a negation of constitutional guarantee of decent living as provided under Article 21 of the constitution of India"*.[37] Not only do subsidies increase tobacco consumption, the incentivizing the tobacco production endangers lives of the farmers involved in the cultivation of tobacco and also violates their right to life and health under Article 21.

Article 47 of the constitution lays down a responsibility on the State to improve public health and mandates that, *"The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption except for medicinal purposes of intoxicating drinks and of drugs which are injurious to health"*. Thus, in the interest of improving public health, the State has to ensure that the TBA, which promotes the tobacco industry and provides subsidies, is repealed.

Article 48A places a constitutional duty on the State to "promote, protect and improve the man-made environment and natural environment."[38] By reading this provision with Art. 21, the Supreme Court has elevated environmental protection to a fundamental right and part of the right to life.[39] In allowing incentives towards tobacco production, the state is ignoring the environmental costs of tobacco production. The continued provision of subsidies and supporting environmentally destructive activities of the tobacco goes against the spirit of Article 48A which is the constitutional obligation towards protection and improvement of the environment.

Finally, the constitution lays down a duty upon the State under Article 51 to fulfill its international duties by promoting peace and security and honouring its international obligations to foster respect for international law. This would obligate the government to comply with its international obligations under the FCTC, which mandates that the government should not provide any preferential treatment to the tobacco industry such as subsidies and hence requires the repeal of the TBA.

TWO / 2

Violation of the FCTC

An examination of implementation of the FCTC and its Guidelines in India clearly reflects a violation of the FCTC. The members of the Tobacco Board include elected members of the Parliament, those appointed by the Central Government as well as members who are growers of tobacco, dealers, exporters and packers of tobacco and tobacco products.[40] Thus the TBA is in clear violation of the principle of limiting interactions between the government and the tobacco industry. Further, the tobacco industry is bestowed with a slew of direct and indirect monetary incentives and subsidies and these amount to preferential treatment, which is also in complete disregard to India's obligations under Article 5.3 of the FCTC.

Tobacco subsidies act as an encouragement for farmers to continue or increase efforts in tobacco cultivation. Instead of educating the farmers about appropriate crop-alternatives, the government is boosting tobacco production. Tobacco subsidies and incentives are paradoxical to the obligations under Article 17 of the FCTC. Tobacco production also degrades the environment, causing soil infertility; ground water and soil contamination due to excessive use of pesticides; air pollution and deforestation from tobacco curing activities etc. Its detrimental effects extend to tobacco farmers as well. It was found that tobacco use is high among tobacco growers. The action of the Tobacco Board in continuing to grant subsidies and incentives to tobacco farming amounts to direct promotion of tobacco, rather than protecting farmers it contravenes the government's obligations under Article 18 of the FCTC.

TWO / 3

COTPA: Later Law would prevail

On the one hand, under the COTPA, the government aims to reduce tobacco use in the interest of public health and on the other hand, the Tobacco Board under the Ministry of Commerce and Industry, still continues to promote the development of the tobacco industry.

Both these legislations cannot co-exist together as they are in direct contradiction and the COTPA being the later legislation and also specific for tobacco control will prevail over the TBA. In case of a conflict between two laws, the later legislation would prevail over the earlier legislation according to the legal principle, *'leges posteriors priores contraias abrogant'.* This is commonly understood as the concept of 'implied repeal'. An implied repeal of an earlier law can be inferred where there is an enactment of a latter law which has the power to override the earlier and is totally inconsistent with the earlier law i.e. both laws cannot stand together.[41]

Section 31 of the TBA already contains a saving clause which states that *"The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."*[42] This implies that the TBA cannot override the provisions of any other law in force. Therefore COTPA being the later legislation, would prevail. The prevailing of the COTPA over the TBA and its promoting and sponsorship activities has already been upheld by the Karnataka High Court.[43] This would indicate that the TBA cannot be allowed to remain on the statute books after the enactment of the COTPA and in public interest as per Section 30, should be repealed.

The Karnataka High Court, in another recent order of 2015, also directed the government to reconsider the policy for phasing out tobacco subsidies.[44] On June 1, 2015, the Karnataka High Court in a public interest petition passed an order directing the State and Central Governments to take steps to (a) reduce the local demand and supply of tobacco products, (b) consider a policy for the rehabilitation of tobacco growers and related tobacco workers and (c) consider whether or not to continue direct and indirect incentives and subsidies for tobacco production. This order provides a timely opportunity for the Government to develop a timeline for phasing out tobacco subsidies and bolster efforts to support the rehabilitation of tobacco farmers.

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REFERENCES

[35] India produces around 9% of the world's Tobacco, this has been estimated to be about 300 million kilograms of flue cured Virginia tobacco in 2014-15. Indian Council of Agricultural Research, 'Tobacco in Indian Economy' < http://www.ctri.org.in/for_tobaccoEconomy.php > accessed 15 December 2016.

[36] *Consumer Education & Research Centre v. Union of India,* (1995) 3 SCC 42 (24,30 and 31); *Kirloskar Brothers Ltd. V. Employees' State Insurance Corporation,* (1996) 2 SCC 682 (para 8): AIR 1996 SC 3261; *N.D Jayal v. U.O.I* (2004) 9 SCC 362, 393 (para 54): AIR 2004 SC 3054; *Confederation of Ex-Servicemen Associations v U.O.I.,*(2006) 8 SCC 399, 430 (para 66).

[37] *K. Ramakrishnan and others v. State of Kerala* (AIR 1999 Ker 385)

[38] *Godavarman Thirumalpad T.N. v. Union of India* (2002) 10 SCC 606

[39] *T.N. Godavarman v. Union of India* AIR 2003 SC 724; *Karnataka Industrial Areas v. Sri. C Kenchappa & Ors* 2006(6) SCC 371

[40] Section 4(4) of the Tobacco Board Act, 1975

[41] *Om Prakash Shukla v Akhilesh Kumar Shukla and others,* AIR 1986 SC 1043; *Som Lal v. Vijay Lakshmi and Ors.* 2008 (11) SCC 413; *M/S Fibre Boards v. CIT Bangalore* 2015 (10) SCC 333

[42] Tobacco Board Act, s 31.

[43] *The Institute of Public Health v. The State Government of Karnataka* (W.P. No 27692/2010). This was a PIL filed against the promotion, sponsorship and participation of the Tobacco Board of the Global Tobacco Networking Forum 2010, which was an international tobacco industry event. The Hon'ble Karnataka High Court observed that the participation and financial contribution of the Tobacco Board in the conference was an indirect promotion of tobacco and hence ordered the Tobacco Board to withdraw its sponsorship and participation in the conference.

[44] *Cancer Patients Aid Association v. State of Karnataka and others,* W.P No: 55697/2014

Today,

Australia

is recognized as a global leader in tobacco control, and provides great lessons and learning.[58]

THREE

Examples of Phasing out of Tobacco Subsidies in other Jurisdictions

Many countries and regions have been progressing towards phasing out tobacco subsidies in a systematic manner.

UNITED STATES OF AMERICA

In the United States, there existed the Federal Tobacco Program, which gave government the power to regulate production and in turn guaranteed a high domestic tobacco price. For years, the program was widely criticized due to the growing knowledge of smoking-related health risks. Efforts to terminate the program began in 1997 and it was finally terminated in 2004. Its termination emerged as an agreement when attorney generals were suing cigarette manufacturers in order to reclaim smoking-related healthcare costs and this set a precedent for future public policy to address regulation in the context of improving public health. In its place, the Fair and Equitable Tobacco Reform Act of 2004 ("FETRA") was enacted, which included The Tobacco Transition Payment Program.[45] The FETRA provided for payments to be made to eligible tobacco quota holders for the termination of tobacco marketing quotas and related price support, as full and fair compensation for any losses related to such termination. Compensation to quota holders and producers were delivered annually over a period of 10 years. FETRA resulted in a substantial drop in the number tobacco farmers and the decrease in smoking-related healthcare costs. In 2005, according to U.S Agricultural Census Data, there was a 50% decrease in the number of tobacco farmers.[46] The compensation mechanism was effective at providing relief to small farmers and allowed them to retire. Others used the cash gained to invest in other farms or technology and move away from tobacco entirely. Ten years after its implementation, the number of tobacco farms dropped drastically from 56,879 in 2002 to 4,268 in 2015.

A cost-benefit analysis of FETRA revealed that that the buyout has contributed to a decrease in smoking-related healthcare costs with the consumer cost of the tobacco buyout of $2.3 billion in 10 years being far lower when compared to the annual economic loss of $193 billion incurred as a result of smoking.[47]

AUSTRALIA

Tobacco was heavily subsidized at the state and federal level throughout the 20th century.[48] This was facilitated through the Australian Tobacco Marketing Advisory Committee (ATMAC), very much like the Tobacco Board in India, which authorized governmental regulation of supply and guaranteed a fixed price for tobacco,[49] which made tobacco the highest subsidized and supported agricultural activity.[50] From the 1990s however, subsidies started to be phased out.[51] In order to phase out subsidies, the ATMAC along with its associated schemes were slated to wind down by 1995.[52] Two additional schemes were introduced: the voluntary quota retirement scheme – which incentivized farmers to leave the industry voluntarily and the rural adjustment scheme – to help farmers overcome short term financial difficulties.[53] The Federal Government announced a $40.9 million Tobacco Growers Adjustment Assistance Package to buy out all the licenses and help tobacco growers to move to non-tobacco alternatives.[54] In addition, $10.8 million was pledged by various tobacco manufacturers in order to facilitate the restructuring of the industry.[55]

The quota retirement scheme in states like Victoria, was seen as a successful "circuit-breaker"[56], as it provided existing tobacco farmers with certainty for their survival. It also resulted in a decrease in the number of tobacco growers from 600 in 1994 to 366 in 1995.[57]

In 2006, in Victoria and Southern Queensland, the federal government initiated an industry buyout that was funded by the industry. After the final transactions were completed in 2009, commercial tobacco farming has ended in Australia. Today, Australia is recognized as a global leader in tobacco control, and provides great lessons and learning.[58]

BANGLADESH

As a developing nation, Bangladesh has been successful in ending subsidies for tobacco production due to the active involvement of Bangladeshi judiciary, legislation and executive.

In 1999, the Supreme Court of Bangladesh passed orders directing the government to phase out subsidies to tobacco farmers, to rehabilitate tobacco workers to other beneficial jobs and restrict issuance of licenses for tobacco production.[59]

Following this judgment, in 2010, the Ministry of Agriculture took strict measures to withdraw subsidies, especially those on fertilizers.[60] The Bank of Bangladesh also ordered all scheduled commercial banks to refrain from granting any loans for tobacco farming.[61] The government launched the Smoking and Tobacco Products Usage (Control) Act in 2005.[62] Within it, Article 12 sought to provide loans to tobacco growers to enable them to grow alternative crops. Bangladesh has also been actively encouraging alternative crop farming instead of tobacco.

REFERENCES

[45] H.R. 4033 (108th): Fair and Equitable Tobacco Reform Act of 2004-<https://www.govtrack.us/congress/bills/108/hr4033/text>

[46] Bomey N, 'Thousands Of Farmers Stopped Growing Tobacco After Deregulation Payouts' USA Today (2015) <http://www.usatoday.com/story/money/2015/09/02/thousands-farmers-stopped-growing-tobacco-after-deregulation-payouts/32115163/> accessed 15 December 2016

[47] Ekpu V and Brown A, 'The Economic Impact Of Smoking And Of Reducing Smoking Prevalence: Review Of Evidence' (2015) Tobacco Use Insights

[48] I Tyrell, 'Deadly Enemies: Tobacco and its Opponents in Australia' (1999) University of New South Wales Press

[49] R Walker, 'Under Fire: A History of Tobacco Smoking in Australia. Melbourne' (Melbourne University Press 1984)

[50] P Cairney and others, 'Global Tobacco Control: Power, Policy, Governance and Transfer' (Palgrave Macmillan 2011) 146

[51] Industries Assistance Commission. 1987. The Tobacco Growing and Manufacturing Industries. Report No. 405. Canberra: Australian Government Publishing Service.

[52] Industry Commission. Annual Report 1989-1990. Canberra: Australian Government Publishing Service, 1991.

[53] Rural Adjustment Scheme, Page 21- http://www.aph.gov.au/binaries/library/pubs/bp/1993/93bp14.pdf

[54] Tobacco Growers Adjustment Assistance Package, Veteran's Entitlement Income-https://www.legislation.gov.au/Details/F2007L00547/Explanatory%20Statement/Text accessed 15 December 2016

[55] Australian Tobacco Marketing Advisory Committee. Australian Tobacco Marketing Advisory Committee Final Report. Year ended 31 December 1995 regarding the operation of the Tobacco Marketing Act 1965. Canberra: Canberra Times Fine Print, 1996

[56] Industry Commission. The Tobacco Growing and Manufacturing Industries. Industry Commission Inquiry Report No. 39. Canberra: Australian Government Publishing Service, 1994. Available from: http://www.pc.gov.au/ic/inquiry/39tobacc accessed 15 December 2016

[57] Australian Tobacco Marketing Advisory Committee. Australian Tobacco Marketing Advisory Committee Final Report. Regarding the operation of the Tobacco Marketing Act 1965. Canberra: Canberra Times Fine Print, 1996.

[58] Eric A Feldman and Ronald Bayer, Unfiltered (1st edn, Harvard University Press 2004).

[59] *Nurul Islam v Government of Bangladesh*, (2000) 52 DLR (HCD) 413

[60] Farida Akhter, 'Tobacco cultivation and its impact on food production in Bangladesh' (2011), 13 < http://www.fairtradetobacco.org/wp-content/uploads/2011/07/Farida-Akhter_Tobacco-to-Food-Production.pdf > accessed 15 December 2016.

[61] The Bank of Bangladesh, 'Refrain from loans for Tobacco farming' (Circular, 18 April 2010) < https://www.bb.org.bd/mediaroom/circulars/acd/apr182010acd10.pdf> accessed 15 December 2016

[62] Smoking and Using of Tobacco Products (Control) Act, 2005<http://www.tobaccocontrollaws.org/files/live/Bangladesh/Bangladesh%20-%20Tobacco%20Control%20Act.pdf> Accessed 15 December 2016

The Ministry of Health and Family Welfare, which works on tobacco control and the Ministries of Commerce and Industry and Agriculture have conflicting mandates.

FOUR

Recommendations

Incentivizing tobacco farming through subsidies and promoting the tobacco industry under the TBA is completely against the interests of public health, the health of tobacco farmers and the environment. For effective tobacco control law and policy to work in India it is crucial that tobacco subsidies are ended and the Tobacco Board Act 1975 is repealed.

The issue of subsidies and support programs for tobacco farming has long been a sensitive topic. Efforts to stop these programs are fiercely countered by the tobacco industry with the argument that such measures would end up destroying the livelihoods of tobacco farmers. However, such arguments overlook the dangers of tobacco and the significant health hazards that tobacco cultivation poses to tobacco farmers as well as the growing body of evidence that suggests that many farmers are willing to move away from tobacco farming if given viable alternatives.

Towards this end, the following policy recommendations are made:

a) The Tobacco Board Act 1975 should be repealed as per provisions of Section 30 of the Act. The TBA can no longer continue, with its aims and objectives of promotion of tobacco when the COTPA has been subsequently enacted for regulation and control of tobacco.

b) Together with the repeal of the TBA, all tobacco related subsidies, and financial incentives to tobacco farming, whether given by the Board or other agencies must come to an end. This would be in conformity with the directions of the Karnataka High Court in rethinking policy on tobacco subsidies.

c) The central government must wind up the Tobacco Board and all of the Board's initiatives such as the auction platforms and other measures.

d) Schemes must be introduced to provide incentives and cash support to tobacco farmers to help them get out

of tobacco cultivation as has been done in other jurisdictions like the US and Australia. This could be done over a long- term period such as 5 or 10 years during which buyout schemes could be introduced to help farmers exit tobacco cultivation. The tobacco industry must be required to pay for some of the buyouts, as has been done in other jurisdictions because the industry is one of the main causes for the public health impacts of tobacco.

e) The Ministry of Health and Family Welfare, which works on tobacco control and the Ministries of Commerce and Industry and Agriculture have conflicting mandates. These Ministries must jointly agree on ending tobacco subsidies and evolving schemes to support tobacco farmers move away from tobacco farming, in line with the principles recognized under the WHO Policy Options and Recommendations on Economically Sustainable Alternatives to Tobacco Growing.

ENDING TOBACCO SUBSIDIES

POLICY BRIEF

CLPR extensively engages with public health policy advocacy and strategic litigation on tobacco control. Aligned with constitutional provisions embodying the right to health, CLPR has developed policy initiatives for effective implementation of tobacco control legislation in India. CLPR also works on law and policy initiatives in the fields of constitutional law including the right to education, gender, disability rights and public health.

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