

TOBACCO SUBSIDIES OR PUBLIC HEALTH?

CONSULTATION REPORT
23RD MAY, 2016



CENTRE FOR
LAW & POLICY
RESEARCH



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List of Participants

Name of Participant	Organisation
Dr. Upendra Bhojani	Institute for Public Health, Bangalore
Pragati Hebbar	Institute for Public Health, Bangalore
Dr. Nayantara Nayak	Centre for Multi Disciplinary Development Research, Dharwad
Chander S.J.	SOCHARA
Mr. Vasanthkumar Mysoremath	Anti-Tobacco Forum, Karnataka and Cancer Patients Aid Association
Mr. Ravindra Hombal	
Jayna Kothari	Centre for Law & Policy Research
Bhumika Modh	CLPR
Apoorva Sharma	CLPR
Namit Bafna	CLPR
Rashi Rathi	CLPR
Interns (___) who were interning at CLPR and __interns from SOCHARA also attended and participated in the consultation.	

Background & Objectives

The Indian Government, by signing and ratifying the World Health Organisation (WHO) Framework Convention on Tobacco Control (FCTC), has taken up the responsibility to phase out tobacco usage in the country. This is further bolstered by the passage of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and regulation of trade and commerce, production, Supply, Distribution) Act, 2003 (COTPA), which has the express aim of reducing the consumption of tobacco.

However, the Government's policy on the subject has not been consistent. The Tobacco Board Act (passed in 1975) is still in force. This Act specifically states that it provides for the growth of the tobacco industry under the control of the union government. The authority created under this Act, the Tobacco Board, continues to function and spend vast amounts of money for the promotion and production of tobacco and also for providing subsidies and incentives to tobacco farmers for growing tobacco. This inconsistency culminated in the Karnataka High Court passing an Order in *Cancer Patients Aid Association v. Government of Karnataka and Ors*¹ requiring the government to consider a comprehensive policy and the continuation of subsidies granted to tobacco growers. However, nearly a year has elapsed since the Order was passed and there has been no attempt on the part of the government to formulate such a policy. To fill this gap, Centre for Law and Policy Research (CLPR) has formulated a draft policy brief entitled 'Policy Brief on Ending Subsidies for Tobacco Farming and for Supporting Alternative Livelihoods' to address the problem of tobacco subsidies.

On 23rd May 2016, CLPR held a Karnataka level consultation on the above policy brief in order to get inputs from various stakeholders interested in the removal of tobacco subsidies. These stakeholders included representatives from civil society and public health NGOs, academia and community organisers.

The main objective of this Consultation was to discuss, critique and examine the draft policy brief formulated by CLPR on tobacco subsidies and the law. Specific Objectives of this Consultation were to identify the various means by which the government provides subsidies to tobacco growers, To consider the role of the Tobacco Board in providing tobacco subsidies, To consider the repurposing of the Tobacco Board in consonance with COTPA, To identify various methods which may be employed to gradually phase out tobacco subsidies without causing economic harm or loss to tobacco farmers.

¹ Order dated 1-6-2015 in PIL No. WP 40979/2015

Agenda

10:00 – 10:15 a.m	Registration and Tea
10.15 to 10.30 am	Welcome and Introduction of Participants
10:30 AM – 12:30 AM	<p>Tobacco Subsidies in India - The Battle between Public Health and the Tobacco Industry</p> <p>(i) Incentives given by the Tobacco Farming by the Government: Subsidies, Price Support, Loans and Other Assistance – Bhumika Modh, CLPR</p> <p>(ii) Role of the State Agricultural Departments and other agencies, Role of the Tobacco Board and the Health Department - Dr. Upendra Bhojani, Institute for Public Health</p> <p>(iii) The Legal Case for Phasing Out Subsidies and Incentives for Tobacco Farming – Jayna Kothari, CLPR</p>
12.30 – 1:30 p.m	Lunch
1:30 – 3:30 p.m	<p>Phasing out Tobacco Subsidies and Supporting Alternative Livelihoods</p> <p>(i) Alternative Livelihoods for Tobacco Farmers: Dr. Nayantara Nayak</p> <p>(ii) Perspectives of Tobacco Farmers and Growers and the Role of Farmer Associations and NGOs in Alternative Livelihoods and phasing out subsidies – M. Vasanthkumar</p> <p>(iii) Phasing Out Tobacco Support in Other Jurisdictions – European Union, United States, Australia, Bangladesh: Namit Bafna, CLPR</p>
3:30 – 4:30 p.m	Conclusion and summarising inputs for the Policy Brief

Welcome Address

Jayna Kothari,
Executive Director,
Centre for Law and Policy research

Ms. Jayna Kothari began the meeting by welcoming all the invitees to the Karnataka level consultation on the issue of tobacco subsidies. The Indian government is under an obligation to reduce the production and consumption of tobacco under the FCTC and the inaction of the government in fulfilling these obligations.

She laid emphasis on Article 5.3 of FCTC which states that “in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law”. However, the Tobacco Board Act, 1975 has created a government institution for providing subsidies to tobacco growers in conjunction with the various tobacco corporations active in India. On the other hand, the Government had passed The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and regulation of trade and commerce, production, Supply, Distribution) Act, 2003 (COTPA) with the objective 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”

These inconsistencies have arisen due to the lack of a policy for the removal of tobacco subsidies, which are in contravention of The FCTC. This policy vacuum had had been highlighted before the Karnataka High Court.² The Court has passed an Order requiring the relevant government authorities to meet and formulate a consistent tobacco subsidy policy.

Jayna then called upon the invitees to suggest the way forward for anti-tobacco advocacy and the means by which government subsidy for tobacco can be removed without harming the livelihood of the farmers and agricultural labourers involved.

² Order dated 1-6-2015 of the Karnataka High Court in Cancer Patients Aid Association v. Government of Karnataka and Ors. PIL No. WP 40979/2015

Pre-lunch Session

Government support for the Tobacco Industry



Ms. Bhumika Modh, Associate, Centre for Law and Policy Research

Ms. Bhumika Modh noted that India is the world's third largest producer of flue cured Virginia (FCV) tobacco having produced around 300 million Kg tobacco in 2014-15. The cost on public health for tobacco related diseases in 2011 was Rs. 1,04,500 crores which is a much larger loss compared to the economic returns generated by the tobacco industry. The boom in growth of the tobacco industry is a result of support by the Tobacco Board through subsidies, schemes and preferential treatment given to the tobacco industry by governmental agencies. There are many means of support afforded to farmers, growers and members of the tobacco industry. The Tobacco Board offers supply of inputs, services to FCV tobacco farmers, crop development activities and welfare schemes, which include large subsidies to farmers for farming techniques and equipment. The state governments contribute

to the growth of the tobacco industry by offering tax cuts, like VAT reduction by Rajasthan state government, and relaxation of production ceilings for tobacco. The Central Government has proposed for a specialised insurance scheme as a plan scheme with 50% subsidy on annual premium with 25% by individual states. The public sector banks, cooperative banks and rural banks also provide for nearly 40% of their agricultural loans outlay to the tobacco farmers to boost their productivity. Bhumika, in her presentation provided data on the amount of subsidies and loans provided as available.

Discussion:

During the discussion it was pointed out by some of the participants that subsidies for tobacco farmers are both direct and indirect. It was pointed out that tobacco growing licenses are often freely traded between farmers and may be sold for as much as Rs. 5 lakh each. In addition, any tobacco illegally grown is purchased by the Tobacco Board after imposing an extremely nominal fine. One of the participants Nr. Nayak brought to the attention of the participants that the State government in Andhra Pradesh in one of the government prisons had begun growing tobacco on its premises in order to get the inmates to do agriculture. This is the most direct way in which the government has participated in the actual growing of tobacco.

It was pointed out that since 2014 the government had ceased to issue any further licenses for the growing of tobacco. However, no attempts have been made to reduce the number of licenses, nor has there been any means to control the rampant license trading.

Finally it was noted that various government owned insurance companies such as LIC had purchased vast amounts of shares in tobacco companies such as ITC and were thus indirectly contributing to the growth and supporting the tobacco industry.

Role of the State Agricultural Departments, the Tobacco Board and other agencies



Dr. Upendra Bhojani, Faculty, Institute for Public Health

Dr. Upendra Bhojani began his presentation with a note of caution regarding the reporting of employment created from the production of tobacco. He pointed out that the industry has grossly inflated the number of those employed by tobacco. According to the tobacco industry, 46 million people are employed in the production of tobacco. However, comparable data from the NSSO suggested that the actual figure was between 4 and 5 million.

Dr. Bhojani then pointed out that India was one of the lead negotiators for the FCTC and had been instrumental in its passage. He pointed out that all of this was due to the initiative taken by the Ministry of Health. Their role was also apparent from the passage of COTPA despite heavy opposition from the tobacco industry. However, in recent times, the Health Ministry had taken a back seat on the issue. It had not been able to persuade the Ministry of Commerce and the Ministry of Agriculture to cut back on tobacco production due to the vast profits brought in from the export of tobacco. He noted therefore that advocacy

must be directed towards the Health Ministry first in order for the obligations under the FCTC to be carried out. This is not to say that the Health Ministry is the only authority which can act in this regard. Dr. Bhojani identified the following Ministries which all have a significant role to play:

1. The Ministry of Commerce: the Ministry of Commerce must exercise its control over the Tobacco Board and cut back on the production of tobacco. In addition, it must stop providing incentives to exporters for tobacco and tobacco goods. He noted that an exporter is also entitled to sell his goods in domestic markets so the export of tobacco is not just a problem for the international markets.
2. The Ministry of Agriculture: The Ministry of Agriculture must shut down the Central Tobacco Research Institute (CTRI), a centrally funded institution whose sole objective is to increase tobacco yield. Similarly, the Ministry must take steps to provide for support for alternate crops and phase out subsidies granted to tobacco farmers.
3. The Ministry of Labour: The conditions of bidi rollers and tendu leaf pluckers is well known to be deplorable. In addition, bidi rollers have been removed from the ambit of the Factories Act, 1948, which has resulted in large scale exploitation of the workers. The Ministry must act to prevent this.
4. Ministry of Environment and Forests: The collection of tendu leaves in forest land is a fire risk due to the storing of vast amounts of dry leaves. In addition, limits must be enacted for the collection of tendu leaves due to their contribution to deforestation.

Discussion:

In the discussion session, it was brought up that policies regarding control of tobacco subsidies and production cannot be merely domestic. There is a need for international action against subsidies as countries reliant on the income from the production and export of tobacco would be disproportionately impacted. It was therefore suggested that a study be conducted regarding the impact of free trade agreements on tobacco and whether any free trade agreements contain provisions specifically related to tobacco.

In addition, questions were also raised regarding the creation of CTRI. It was noted that CTRI had been created under the authority of the Indian Council of Agricultural Research (ICAR), which is under the Ministry of Agriculture. ICAR is a registered society and therefore neither ICAR nor CTRI have been created by an act of Parliament. The scope

of action of CTRI is therefore purely within the purview of the executive, specifically the Ministry of Agriculture.

It was noted that the Ministry of Health must play a greater role and come up with a code of conduct on tobacco, which must apply across all Ministries with the overall aim to reduce tobacco production and consumption. However, it was emphasised that advocacy must not limit itself to the Health Ministry but must instead apply also to the other ministries referred to by Dr. Bhojani. Suggestions were made for raising the issue with the National Institute for Transforming India Aayog (NITI Aayog) with the present ruling government.

The Legal Case for Phasing Out Subsidies and Incentives for Tobacco Farming



Jayna Kothari, Executive Director, Centre for Law and Policy Research

Ms. Jayna Kothari began by explaining the legal problems associated with the coexistence of the Tobacco Board Act, 1975 and COTPA and Article 5.3 of the FCTC. The Tobacco Board Act is completely incompatible with both COTPA and the FCTC. This is primarily because the Tobacco Board Act had been passed in 1975, when the only aim of the government had been to nationalise the production of FCV tobacco in order to boost exports. The Act predates all legislation both international and domestic, which pertains to the control of tobacco for health reasons.

As a result, the Tobacco Board is obsolete. It is important to note that the Tobacco Board Act even predicts such a scenario. The Act contains provisions for the dissolution and suspension of the Act itself. Further, the Act also states that all of its provisions are in addition to and not in derogation of any other Act in force. All of this implies that the Tobacco Board must either be dissolved or repurposed.

Jayna then brought up the Order of the Karnataka High Court³. She noted that the Order used very guarded language and refused to set a timeline for the government officials to meet and compose a policy. No attempt has since been made on the part of the government to come up with such a policy despite the fact that it has been a year since the Order was passed.

Discussion:

It was suggested during the discussion that the mandate of the Tobacco Board should be fundamentally altered and the Board be made the Agriculture Diversification Board with a focus on providing alternative livelihoods to tobacco farmers. This suggestion has the approval of the WHO.

It was further noted that the government has a vital role to play in ensuring alternate livelihoods for tobacco farmers. This includes everything from training to farmers, provision of seeds and the procedure to provide disincentives for the growing of tobacco. It was also noted that the tobacco industry had been spreading propaganda that tobacco growers have never committed suicide. In fact, 28 tobacco farmers in Karnataka alone had committed suicide in light of their debts from the crops.

³ PIL No. WP 40979/2015 dated 1-6-2015

Post-lunch Session

Alternative Livelihoods for Tobacco Farmers



Dr. Nayantara Nayak, Professor & In Charge Director, Centre for Multi Disciplinary Development Research

Dr. Nayantara Nayak spoke on the issues related to providing alternate livelihoods for farmers. She pointed out that growing tobacco was a relatively safe occupation as the risks were much lower than that of comparable alternative crops. Tobacco also offered a large profit margin for tobacco growers and was therefore always seen as the better choice amongst farmers.

However, she emphasised that the main reason that tobacco remained such an attractive option was because of the direct and indirect subsidies provided by the government. These include:

1. Each kilogram of FCV tobacco requires 8 kilograms of wood to cure it. The Karnataka government effectively subsidises the tobacco trade because of its afforestation efforts.
2. The various subsidies from the Tobacco Board.
3. Implicit encouragement from various ministries including the Ministry of Commerce

It is necessary that the alternate crops to be grown must provide farmers with an equal or higher income compared to tobacco. There is therefore only a limited subset of crops, which can be grown which meets this requirement. In addition, governmental support for alternative crop growing is a must. She further noted that special attention must be given to relatively backwards states such as Bihar and West Bengal, which may not be able to provide the financial support necessary for farmers to move away from tobacco. This emphasises that the push for alternative crops must come from a central rather than a state source.

She suggested that an effective method to phase out tobacco growing is the introduction of 'crop holiday' schemes, which have been previously enforced to reduce the unchecked produce of tobacco. Under these schemes, farmers are told not to grow tobacco for one year and are instead provided alternate crops to grow. As per certain reports, farmers' incomes increased by 20% during such holidays.

Discussion:

During the discussion, it was suggested that agricultural labourers working in growing tobacco have their minimum wages increased in order to discourage large tobacco farmers from growing tobacco on their landholdings and simultaneously provide a better standard of living for the agricultural labourers involved. This is especially because curing tobacco is an extremely labour intensive occupation. However, there were questions as to the legality of such a selective increase in minimum wage. Another suggestion was to make tobacco workers subject to the Factories Act, 1948 and thereby grant the labourers all the resultant benefits granted to factory workers.

Finally, the need to curtail the role of the industry through backdoor loans was also discussed. A strict and uniform policy would be necessary to curtail such activities.

Perspectives of Tobacco Farmers and Growers and the Role of Farmer Associations and NGOs in Alternative Livelihoods and phasing out subsidies



Mr. Vasanthkumar Mysoremath, Convenor, Anti-Tobacco Forum

Mr. Vasanthkumar Mysoremath discussed the issue of tobacco subsidies from the perspective of the farmers. He stated that there was the beginning of a farmer's movement against the growth of tobacco as farmers had realised the harmful effect that their produce had. Farmers would therefore be happy to grow alternative crops given similar or greater remuneration.

He then highlighted the fact that activists have been extremely successful in convincing farmers to switch away from growing tobacco by providing training to the farmers to grow alternate crops. With governmental support, such initiatives could become widespread. However, there is a need to address the vast conflict of interest that the government has with respect to tobacco. One important facet of this is the fact that centrally owned insurance companies such as LIC, Oriental insurance and others own more than 30% of the shares of the tobacco company ITC. This degree of investment has been hugely

advantageous to tobacco companies. There is an immediate need for disinvestment in order to remove the conflict of interest this creates. Further there is a need to strictly implement Article 5.3 of the FCTC. It has been apparent that the political establishment has been heavily involved in subsidising the growing of tobacco. The most obvious example of this being that 40% of the agricultural loans from state controlled banks were granted to tobacco farmers.

Mr. Vasanth Kumar concluded by saying that the way forward was to bring about a phased reduction of subsidies and incentives given with the end goal of removing all governmental assistance to tobacco farmers whether direct or indirect.

Discussion:

During the discussion, a concern was raised that the attempt to remove governmental subsidies for tobacco farmers may be co-opted by the tobacco industry and turned into a movement for the deregulation of tobacco growing. There is therefore a necessity to ensure that the advocacy for removal of subsidy is accompanied by governmental action in reducing tobacco production in the state rather than just focusing on subsidies given to growers.

Phasing Out Tobacco Support in Other Jurisdictions – European Union, United States, Australia, Bangladesh



Namit Bafna, Research Associate, Centre for Law and Policy Research

Mr. Namit Bafna spoke on the phasing out of tobacco subsidies in the European Union, United States of America, Australia, and Bangladesh. For the European Union, he discussed various schemes through which tobacco producers were given support by the government. It started with how the EEC established the Common Market Organization for Tobacco to fix the demand-supply mismatch of tobacco in the market. After which, the discussion moved to Common Agriculture Policy Reforms of 1992, 1998 and 2004 through which the subsidies and other incentives were phased out.

He then considered the case of the United States of America, where the Agriculture Adjustment act, 1938, No-Net-cost Tobacco Program Act, 1982 and the 2004 American job Creation Act through which the Fair and Equitable Tobacco Reforms Act, 2004 were passed to phase out the subsidies granted to tobacco growers.

In Australia, the discussions begin with the Local Leaf Content Scheme that provided indirect support to the tobacco producers through the domestic content requirement and minimum support price. Finally, he discussed the Tobacco Growers Adjustment Assistance Package in 1994.

The last case study was of Bangladesh. He explained the directions issued by the Supreme Court of Bangladesh to phase out tobacco subsidies along with further developments ranging from Bank of Bangladesh's circular prohibiting commercial banks from granting loans to tobacco farmers and Smoking and Tobacco Products Usage Act, 2013.

Conclusions and Recommendations

The south level consultation on tobacco subsidies received input from various stakeholders committed to the removal of tobacco subsidies.

The consultation noted the following areas of concern:

1. The government has failed to formulate a policy to phase out subsidies for growers of tobacco despite the order of the Karnataka High Court.
2. Under the current system, the government subsidises tobacco growers to the tune of crores of rupees annually.
 - a. That the government provides these subsidies either directly through such agencies as the Tobacco Board or indirectly through crop insurance schemes.
 - b. That the government also provides *de facto* subsidies to the tobacco industry through the purchase of shares by government controlled companies such as LIC and Unit Trust of India.
3. The subsidy provided by the government to tobacco growers should be considered with respect to the increased healthcare cost imposed by the various diseases caused as a result of tobacco.
4. That any policy for the phasing out of subsidies for tobacco growers must be considered from the perspective of the farmers involved. Care must be taken to provide for alternate crops and livelihoods which give the same or greater remuneration for tobacco.

On the basis of the above conclusions, the following recommendations were put forward:

1. That the future for tobacco advocacy should be consultative rather than adversarial. It must consider all avenues to put forward the need for the removal of subsidies. This includes lobbying all the relevant affected ministries such as the Ministry of Environment and Forests, the Ministry of Commerce, the Labour Ministry and others.
2. This advocacy should also embrace unconventional methods such as submitting the policy brief to government agencies such as NITI Aayog.
3. It would be necessary to file contempt proceedings for the government's noncompliance with the Karnataka High Court Order in order to further pressure the government to take action on the removal of tobacco subsidies.
4. The removal of tobacco subsidies should be in a phased manner and cause minimum possible inconvenience to the farmers.
5. The farmer's pecuniary interests should never be compromised.
6. The government must disinvest its shares in all tobacco companies due to the clear conflict of interest that this involves. The shareholdings are in direct violation of Article 5.3 of the FCTC.



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