

Legislation & Reaction from the Street

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This paper analyzes the impact of ban on smoking in public places imposed by Government of India on street vendors who sell cigarettes for their livelihood. Semi-structured interviews formed the research instrument and the five vendors interviewed were geographically spread across the town of Anand and the city of Ahmedabad. Results indicate that those retailers who are at the margin face a decline in their sales, coupled with an increased vulnerability to the rent seeking behavior of law enforcing agencies. Criminal activities as an alternative source of livelihood is suggested by vendors in case their source of livelihood is threatened, leading to the conclusion that there are trade-offs in common good associated with legislations.

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Introduction

Legislation becomes evident in its enactment (Gopal, 2006). Rules may exist on paper but come alive only in their interpretation and their enforcement. This is particularly so because no legislative frame can anticipate all possible contingencies that can arise in the implementation (Chandiramani, 2002). Therefore, there always exists room for interpretation and opportunistic behavior. On many occasions, legislation has to take upon itself the mantle of leading the society towards progressive change. In that sense, legislation is anticipating progressive values that must become an essential part of the society. There may be pockets of intense resistance to such demonstrative leadership emerging from the context of legislation (Lindblom, 1952). Interest groups and coalitions whose ways of living appear to be endangered by legislation may particularly articulate a shrill voice against its import (Nord, 1978). Therefore, the challenge of legislation is not in framing it but in

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ensuring implementation which adheres to the original mandate that led to deliberations around the necessity of having a particular law. Legislation is thus, an entity which exists in the meanings which people attach to it. Law exists more in the minds of people and their willingness to accept it rather than in books of statute. Such a notion of law has radical implications, as witnessed by history including the mass uprisings that were a part of the freedom movement.

Context

This study is located in the context of the evolution and implementation of legislation, which, as studied by Chatterjee (2008), affects ordinary citizens of the nation state of India. Many times, the scheme of legislation occurs within the realm of the elite and the ordinary citizens feel disempowered in the evolution and implementation of legislation. According to Harriss (2007), "civil society organizations that seek to make politics more accountable to the consumer citizen, are invariably middle class dominated, and while working to bridge the democratic gap between the ruling class and the governed, do not really involve themselves in to the primary concerns of the urban poor". This study was rooted in the context of Chennai, but it is understood that it is a true representation of any metropolitan city of India. The process of not consulting citizens who will be affected by the course of legislation creates a void in the deliberative milieu which leads to the realization of an active spirit of genuine democratic citizenship (Harris, 2001).

Literature Review

The context of public health has been an important element of legislative discourse. Accordingly, legislation was enacted by the Government of India, which banned smoking of cigarettes in public places. The said law has come into effect since October 2, 2008. Benefits of such a law are reflected in numerous empirical works, primarily in the domain of medicine. A study conducted in the USA and Australia, and reported in the year 1999 indicate that ban on smoking at workplaces has positively impacted the overall consumption of cigarettes by the workforce (Chapman, Borland, Scollo, Brownson, Dominello & Woodward, 1999). The same article concludes that if workplaces are universally smoke-free, the number of cigarettes forgone annually would definitely increase, though within different ranges, for different countries. Another study found that during the tenure for which there was a law banning smoking in public and work places, the number of patients admitted to hospitals for cigarette smoke-related ailments declined by 25% (Sargent, Shepard & Glantz, 2004). Hence, the authors conclude that laws to enforce smoke-free workplaces and public places are associated with an effect on morbidity from heart diseases. Haw and Gruer (2007) conclude, based on their cross sectional survey, that implementation of Scotland's smoke-free legislation has been accompanied, within one year, by a large reduction in exposure to second-hand smoke, which has been greatest in non-smokers living in non-smoking households. Non-smokers living in smoking

households continue to have high levels of exposure to secondhand smoke.

However, there are various tensions which inform the evolution of policy and law involving issues of public health (Lindblom, 1952). These tensions usually emerge in the context of debates surrounding the privilege of individual rights over social rights (Gudavarthy, 2008). For instance, in the context of smoking, every individual who is bestowed with moral and intellectual faculties to act on her own accord as an independent entity in society has the right to make her own decisions regarding whether she wishes to smoke cigarettes or not. The decision to smoke cigarettes is therefore not a simple question of consumption but touches the very paradigm of individual freedom in some sense. Tension emerges when the exercise of freedom by resorting to smoke is claimed to affect the health of others. An argument is advanced that by curtailing the rights of some individuals, the greater good of society can be achieved (Wegner & Yuan, 2004). Such an argument attempts to construct freedom of an individual as a composite of utilitarianism where the greater common good is to be privileged over absolute individual rights. It is this philosophy of utilitarianism that informs the banning of smoking cigarettes in public places in India as part of a legislative initiative.

Laws, even when they proclaim to advance the cause of virtue, are seldom innocent (RoyChowdhury, 2004). Even though they may have at their heart a sound argument, they are also part of

the systems which marginalize and disadvantage voices. In the framing of laws, with the intent to preserve public good and a sense of virtue, stakeholders who may have been marginal to activities that are being outlawed may suffer the most (Gaetz & O'Grady, 2002). Their voices seldom become a part of the discourse of law and debates surrounding its implementation. The executive also uses its force selectively to marginalize the social actors further and make them dependent on an exploitative structure for their existence. We examine here the experiences of vendors on the street to the legislation of banning cigarette smoking in public places. Street vendors are marginal actors on the social plane and often have had little voice with respect to the issues of urban governance and preserving their livelihood within urban spaces (Bhowmik, 2003; Bhowmik, 2005). Policies have been framed that adversely affect street vendors. Though smoking cigarettes in public is an autonomous choice that a consumer exercises, implications have been advanced to place restrictions on street vendors and other points of sales (Woollery, Asma and Sharp, 2000). This provides authorities of local bodies and the police another instrument with which to harass marginal actors such as street vendors.

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Method

We spoke to street vendors to understand their experiences of the legislation to ban smoking from public places. In order to understand the different nuances of the issue, we undertook a sampling plan that would encompass different kinds of street vendors and their possible reactions to the law. The basis of stratification was dual: one, which was based on geography and two, based on whether the point of sales is 'established'. Whether a store was established or not was decided by the legitimacy of the retail outlet in the eyes of municipal authorities (i.e., registered or not) and the duration for which the outlet is in existence (the greater the duration, the more is the propensity of the outlet's existence being given due cognizance by the society). Even if street vendors are thought to be marginalized, there could exist different degrees to which that marginalization is carried out. It was therefore, decided to include at least one street vendor who did not have a license for vending goods of utility to consumers. It was decided to include another street vendor who was located within sufficient proximity to an educational institute as the phenomenon of smoking has implications of sensitivity for the arena of educational institutes. Another vendor included had all the requisite licenses to sell consumable items such as cigarettes, chips, toffee and mints, ice cream and other milk products. We also included one vendor who is part of the efforts of a cooperative movement to market its products. However, as of today, the cooperative movement no longer fully supports

the initiatives of vendors and has its own branded stores spread across the state of Gujarat. Another element of diversity that we strongly considered was the time for which each vendor had been situated at a particular location where he/she was carrying out his/her activities.

Through such a sampling plan, we hope to get a sense of similarities and differences in terms of experiences and responses to the ban of smoking based on contextual realities. It was thought that it would help us to explore the meaning of response to legislation better if we could get across to a variety of vendors. These vendors are not only different in terms of the infrastructure that they are able to command, but also different in terms of the vulnerability with respect to facing authorities of the local bodies and police. While almost all of them are prone to this in one way or the other, some of them are more vulnerable than the others (Bhowmik, 2002). In spite of a system of extortions that may prevail, everyday experience of being personally dependent on law enforcement agents is debilitating in different ways (Date, 2006). For some, it induces greater instability to their livelihoods than for others (Kalhan, 2007). Against some, the police are able to act in crude and brutal ways while they take a more subtle approach in dealing with others. Street vendors also get integrated into local myths and folklore and enjoy varying degrees of support from the community. All these factors may have implications for the response that is articulated to a legislation that has almost arrived in a top-down fashion that has chosen to ignore some

voices while privileging that of others (Sundaram, 2008). The meanings of the responses to such legislation may thus be contextually rooted (Anjaria, 2006). Presented here are some of the expressions of these meanings that emerged from the unstructured conversational interviews that had been carried out with five vendors. Presentation of such illustrative texts has been identified as an effective method of understanding individual motivation (Thomas & Davies, 2005). Such living social texts, in spirit, confirm to the social constructionist-influenced methodology (Alvesson & Deetz, 2000). Identity and personal information of these vendors have been masked to maintain their anonymity.

Vendors' Experiences

Vendor 1 The setup is owned by a person for the last 15 years and he himself mans the outlet. For the retailer, cigarette sales is just a part of his total business, as there are other items falling under the broad range of preserved foods, consumables, and day-to-day utilities that add to his daily business. The shop faces one of the main roads of Anand town, and is housed in a complex as a registered point of sale.

Vendor 1 claims that his sale of cigarette is not at all impacted by the legislation, when he says, "there isn't any effect whatsoever on my business volumes or the revenues that I take home... the frequency and nature of sales also remains unaltered". The purchase frequency of customers, including the amount bought per purchase trip, has not

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been affected either. He attributes this to the fact that cigarette smoking is addictive and such laws are tooth-less when it comes to changing consumption pattern of the public at large. The vendor also feels that enforcement of this law has been grossly inadequate till now. He has not seen even a single person being fined, either by the police or by the municipal authorities, for flouting the norms. He has even noticed that the law being mocked at, at the railway stations, which are less geographically spread out compared to other public places. Policemen themselves ridicule this legislation by smoking in front of his shop. This vendor is of the opinion that the only way to stop consumption of cigarettes is by banning the manufacturing of cigarettes in the very first place. However, he also realizes that the Government would not be keen on doing so as these companies not only add to the official treasury kitty, but also entertains the rent seeking behavior of our politicians. Before ending, the retailer asserts that such legislations will not affect any retailer of his size at all. However, if any enactment leads to loss of business for retailers like him, then the only option that they can exercise for livelihood is robbery and dacoity, despite these being tagged as 'crime' by the society at large.

It is interesting to note that Vendor 1 has been located in his area of operation

for more than 15 years. He is thus, a well established face in the area. Also, as his outlet is a registered point of sale, he is not subjected to any additional harassment by authorities on account of any marginal changes in law or issues of accountability which do not directly accrue to him. He is also not dependent on the sale of cigarettes alone. All this makes him a less vulnerable actor in the context of the unraveling of the legislation. Though he has no voice in influencing the course of legislation, he is not adversely affected in terms of sales, ostracism or harassment by officials. It leads us to suggest that actors who have a stable presence in a social setting will not be immediately affected by changes in legislation, unless there is a massive mobilization of state machinery to initiate a focused attempt in addressing some issues. As also suggested by Sundaram (2008), such mobilization will affect established stable actors only when their basis of stability itself is outlawed. This does not appear to be the case in the context of the legislation banning smoking in public place. Though stability appears to have been accepted as a part of existence, the prospect of sliding down the social ladder still exists. In the event of such a turn, a queer defense mechanism is proffered. It is suggested that if the sale of cigarettes drops, then the vendor may be forced to resort to activities such as robbery. Thus, a question is raised before

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society of choosing between two evils: that of cigarette sales or the emergence of a robber. And in this way, it is thought that society may persist with existing market arrangements with respect to sale of cigarettes instead of tinkering with them to create situations where an evil such as robbery emerges which are quite clearly beyond the control of the forces of the market.

Vendor 2: The setup is owned by a person for almost 20 years now and he himself mans the outlet. However, he has also kept a helper who is of the age slightly less than 20 years. For the retailer, cigarette sales accounts for around 50-60% of his total business, and the rest is accounted for by other food consumables like pan masala, ice-creams, chips, and toffees. The shop is located at a distance of around 200 meters from a nationally prominent residential management institute based in the outskirts of Anand, and is a registered point of sale. Originally, this shop was established as part of enhancing the presence of products of one of the key co-operative movements. However, over time, the apex marketing unit of the cooperative decided to open up self-owned outlets leading to the shops losing their relevance; this is because customers started purchasing all their products from the outlets which are owned directly by the cooperative. With the passage of time, the retailers also started losing interest in stocking products of the cooperative, and hence, their stock of such products reduced to the bare minimum of the most sought-after items.

Just like vendor 1, vendor 2 also claims that the impact on the sales of cigarettes from his outlet due to this legislation has been nil. Also, till date, he has not been harassed by the police or the municipal authorities asking for bribes, as a consequence of a large number of customers smoking in front of his shop. This is in spite of the fact that his shop is frequently visited by men in uniform because just adjacent to this shop, there is an establishment which houses uniformed guards (Rapid Action Force, Border Security Force, Armed Constables on special duties, etc). Vendor 2 also feels that the spirit of such legislations is good and should be enforced adequately. However, he feels sad that neither the police nor the educated masses feel like respecting such rules, and flout them with confidence. The vendor has seen sporadic enforcements, though. The purchase frequency of customers, including the amount bought per purchase trip, has not been affected, again just like vendor 1. This vendor also fully realizes that cigarette smoking is addictive and such laws are not sufficiently equipped when it comes to changing consumption pattern of the public at large. There are two other concerns that this retailer voiced during the course of this interview. One, he has noticed that cigarette consumption is on a rise amongst the youth and this phenomenon disturbs him. Two, smoking in public place leads to hardship on the part of non-smokers. Accordingly, if this law is implemented well, then the innocent people who do not smoke, but are victims of cigarette smoke, will be relieved. On the flip side, if this legislation is implemented well, then the non-smoking fam-

ily members of smokers will be subject to more smoke at residence.

Vendor 2 is again an established social actor in his setting. The legitimacy of being associated with a prominent cooperative and of being located near a nationally known institute adds to the stability of his existence. Moreover, he is patronized by the armed forces who have their camps nearby. As a consequence, he faces little threat of any harassment from officials. Given the nature of his stable existence, he is able to articulate moral concerns about the ill effects of smoking which have been also documented in literature. Also, since his outlet sells many other things, he is unlikely to be greatly affected by movement away from the consumption of cigarettes. Being established in the community for a longer time and enjoying moral legitimacy within it, unlike vendor 1, he does not propose for himself options such as that of robbery. In fact, his sympathy lies with young people who succumb to the habit of smoking.

Vendor 3: The setup is owned by a person for the last 2 years and he himself mans the outlet. For the retailer, cigarette sale is the key contributor to his total business, and the only other items available in his shop are pan masala and mint. The shop is located at a distance of around 50 meters from a decent residential management institute based in the outskirts of Anand, and is temporary point of sale, also known as 'galla' in layman parlance.

Vendor 3 is facing a dip in his sales from cigarettes. He attributes this to two

factors- one, enactment of the legislation banning cigarette smoking in public places and two, the global slowdown of the economy. At this juncture, it is important to note that though the sale is affected, the purchase pattern of customers have not been affected *per se*. This means that the customers who are visiting the store continue to purchase in the same quantity every time they contact the outlet. The vendor feels that he is not the only one who is affected, as his fellow retailers at other parts of the town are also facing a decrease in their sales. The municipal authorities and the police have been frequently bothering this retailer. The former claims that the vicinity of the shop of this retailer amounts to public space and it is due to the presence of this outlet which is leading people to smoke in public. The retailer is expected to pay some money to these enforcing instruments, which is directly pocketed by the latter, and this rent is not passed on to the government kitty. The retailer concurs, without exception, to the payments demanded, as he fears severe consequences otherwise. Additionally, the retailer feels that such legislations only benefit the enforcing agencies and no one else. Representatives of such agencies earn rents from both the sellers as well as the people flouting the norms. Even if the government wants to enforce such laws, it is not practically possible due to the geographical vastness of our country.

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We find that as the vulnerability in society increases, the situation of being immediately affected by new legislations also increases, and this is in sync with the findings of Bhowmik (2003). It is possible for forces of the state to intimidate those residing at the margins, threaten their livelihoods and harass them in numerous ways. The fact that these voices do not enjoy a legitimate standing in society ensures that their livelihoods also have an uncertain legal status. As a consequence, they may be forced to migrate from one place to another and may never become stable social actors in a given community setting. Vendor 3 has also been located in the current community setting only for a period of 2 years and has been unable to establish himself as a face whose disappearance would mean a sense of loss for the community. As a result of not becoming a full member of the community, he is unable to expand to other mainstream areas of peddling trade. He is restricted to trade in aspects like cigarettes, which in the olden days, only had a moral problem associated with them. But today, such trade also has legal hassles associated with it as the authorities may hold the illegal vendor responsible for smoking in public places and given his illegal status, may be able to extract rents from him.

Vendor 4: The setup is owned by a person for almost 15 years now and he himself mans the outlet with the help of his younger brother. Additionally, he has also kept a helper who seems to be in his teens. This younger brother is considered an expert in making pans. For the retailer, cigarette sales accounts for around half

of his total business, and the rest is accounted for by other food consumables like pan, pan masala, ice-creams, chips, and toffees. There is a tea shop nearby, and people generally purchase cigarettes from here, and then take tea from the tea stall. The shop faces one of the main roads of new Ahmedabad city, and incidentally, this is also the road along which official residences of the apex law interpretation body of the state is located. This shop is a registered point of sale.

The sale of cigarettes has not been affected much after the legislation coming into force. There appears to be no increase in harassment from municipal and police authorities. Consumer purchases, in terms of the quantity purchased, do not appear to have declined significantly. The vendor also appeared to be concerned about the damage to health caused by consumption of cigarette and pan masala. He feels that pan masala is more detrimental to health compared to cigarettes and hence, Government should enact laws for reduction of consumption of pan masala first. The owner is proud to enjoy the patronage of some prominent personalities of the city, who frequent the shop for pan consumption.

Even though vendor 4 is located within reach of the legal community in the city, he does not appear to be affected by the legislation banning smoking in public places. He is a stable social actor in his community setting to the extent that even those consuming cigarettes have formed patterned stable habits such as buying cigarettes from him and then,

moving a little further to buy tea from another vendor. There are other consumables that he offers. He is able to articulate a moral case for prohibiting the consumption of pan masala. A possible interpretation of such an articulation is that almost all consumables may affect health in one way or the other and therefore, the particular targeting of cigarettes might be avoided. In fact, there might exist other substances which are more harmful to health than cigarettes. He also does not appear to be contemplating about any desperate option in the face of possible decline in sales.

Vendor 5: The setup is owned by a person for the last 3 years or so and he himself mans the outlet. The outlet is basically a cycle on the carrier of which all the inventory is stocked by the retailer. For the retailer, cigarette sale is the key contributor of his total business, and the only other item available in his shop is pan masala. The shop is located across the main road facing the gate of an elite residential management institute based in Ahmedabad, and is temporary point of sale, also known as 'galla' in layman parlance. His experiences are similar to that of vendor 3.

Discussion

The legislation to ban smoking in public places was designed with an intention to ensure that passive smoking of public-at-large is reduced, not to mention that such legislation would indirectly impede the smoking habit of active smokers. However, policy level changes need to consider the ripple effects that such a

policy decision can have on other seemingly-disconnected stakeholders. This work brings to fore, the deeper impact that a legislation can have on a particular segment of differently privileged stakeholders, viz., the vendors who sell cigarettes. The diversity in the choice of the five vendors is not incidental but deliberate, though there is no claim that this be representative of the vendor population. The interview settings were seen more as social events rather than a mere exercise for fact finding (Thomas & Davies, 2005).

The imposition of coercive norms without sufficient deliberation can lead to adverse social consequences.

What the data demonstrates is that the process of the living of legislation is a collective exercise, and the imposition of coercive norms without sufficient deliberation can lead to adverse social consequences. It is necessary to incorporate the views of those who are affected by the legislation before taking a decision. If this is not done, the sense of public cause of the legislation gets diluted. In this instance, legislation which serves the need of public health causes problems for the livelihood of marginal actors on the street. Unless these conflicts are reconciled, there will be no collective will to implement the tenets of the legislation. There could be other adverse consequences such as the rise of crime on the street, as those whose livelihood is denied are left with no other alternative.

It is important that legislation is seen as a social exercise than as a technical event, with bureaucratic implementation and a centralized top down approach. The technical view of legislation distances people from the lived existence of the state, and creates alienations and resentments. Government becomes a text that is distinct from the people, rather than a site where plural views can contend with each other. This creates antagonistic relationships which are difficult to address through other legislative measures, as these can only create an alternative scheme of resentments. It is therefore necessary that processes of public debate are created and the voices of marginal actors are heard before crafting legislation.

Conclusion

It is not only important to consider the text of legislation but understand the different possibilities that emerge in its implementation from the perspective of different stakeholders. This study attempted to examine the perspectives of street vendors in order to see how they might be impacted by the legislation which bans smoking in public places. The emerging meanings of enforcement of law suggest that the vulnerable are affected to a greater degree by the enactment and implementation of laws. On the other hand, actors who come to be seen as legitimate constituents of society and community do not face problems to the same extent. In situations where dilemmas existed between individual freedom and notions of greater common good, the status of the people residing on the margins tends

to deteriorate further and it becomes difficult for them to extricate themselves from the adversarial positions that social actors including law enforcing agents take. In some situations, people who are slightly better off but still can anticipate difficult times ahead are able to articulate to society that their marginalization may lead them to take adversarial stances which may include acts of violent crime and robbery. Through this, they are able to provide more illustrative view of what the greater common good might actually mean to society. Alternatively, actors who have largely stable positions in their communities may even express anguish at the lack of effective implementation of laws. Legislation thus has a nuance existence in society traversing different actors enjoying diverse conditions of legitimacy in ways which are entirely rooted in their contexts.

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