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Article in *Indian Journal of Applied Research* · February 2015

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Banning Chewable Tobacco (Gutka/Khaini) products in India under FSSA 2006; Policy and Practice- A way forward!

KEYWORDS

Chewable Tobacco, Gutka Ban, FSSA 2006, Penalty.

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ABSTRACT Background and challenges to implementation:

Gutka, Khaini etc are chewable (smokeless) tobacco products made of crushed betel nuts laced with tobacco/ Nicotine. The number of users of smokeless tobacco products (Gutka, Khaini) in India is more than double the number of smokers. 32.9% of men and 18.4% of women use smokeless tobacco products. Gutka and other smokeless tobacco which are consumed orally are highly addictive and toxic products owing to the amount of nicotine and tobacco content in them. India has the highest prevalence of oral cancer globally, with 75, 000 to 80, 000 new cases of oral cancers in a year.

The Government of Himachal Pradesh banned smokeless tobacco on July 12, 2012 under newly enacted Food Safety and Standards Act-2006 (FSSA- 2006).The ban on smokeless tobacco was imposed without consideration of the corresponding penalties under FSSA-2006 for the violation. It became difficult to penalize the violators under a particular section of the act. The challenge was to innovate the ways to punish the guilty in a sufficiently deterrent way. The problem was solved by a combination of sections of the FSSA-2006 and penalties imposed probably for the first time in India under food act FSSA 2006 by a designated officer of the level of a medical doctor. Under section (1) of 69 of FSSA 2006, designated officer food safety is empowered to compound offences and levy penalty up to one lakh (\$ 2000) in relation to offences committed by petty manufacturers of food items. The Government of Himachal Pradesh issued this notification vide no. Health-A-B(15)25/2012 dated 16 April, 2013.

Intervention or response:

A thorough understanding of the various penal provisions of the FSSA-2006 w.r.t. banning of the smokeless tobacco was done and combination of sections were underlined so as to not to dilute the final judgement. Section 57, 58, 55, 49, 72 were imposed, in pursuance of power conferred under this act. So, to punish the guilty a plethora of sections of the FSSA-2006 were innovatively interlinked and judgments delivered for the first time.

We were able to successfully launch court proceedings against four such accused and fine them a maximum of one Lakh each (\$ 2000).

Background:

The smokeless tobacco has emerged as the most prevalent kind of tobacco product being used by 26% of population in India i.e. 163.7 Million users. India has the highest prevalence of oral cancer globally. In India, the age standardized incidence rate of oral cancer is 12.6 per 100 000 population. The Government of Himachal Pradesh, India banned smokeless tobacco like Gutka, Khaini etc. on July 12, 2012 under newly enacted Food Safety and Standards Act-2006 (FSSA-2006). Section 2.3.4 of the FSSA-2006 was used as a reason for ban that prohibits any eatable to contain tobacco and nicotine. The notification says that food product not to contain any substance which may be injurious to health. Tobacco and Nicotine shall not be used as ingredients in any food products. Gutka, Khaini etc are chewable (smokeless) tobacco products made of crushed betel nuts laced with tobacco/ Nicotine. In India more than 30 states have banned smokeless tobacco like Gutka etc under the FSSA-2006 Act but strangely there are no corresponding penalty provisions in the FSSA act. Therefore, it became difficult to penalize the violators under a particular section of the act. The court cases used to drag in the higher courts and police were

reluctant to impound such banned items as they would rot in their stores and no early solution was there to such a situation. The challenge was to innovate the ways to punish the guilty in a sufficiently deterrent way and in a speedy manner. The problem was solved by a combination of sections of the FSSA-2006 and penalties were imposed probably for the first time in India under Food Act FSSA 2006 by a Designated Officer of the level of a medical doctor.

Challenges to implementation:

The police one day caught a person having more than six sacks (Approx.200 Kg) of Gutka, Khaini etc. in the city. The author being corporation health officer and Designated Officer under FSSA-2006 was called on the spot and in his presence the impounded consignment was sealed with all formalities of seizure. First incident happened on January 22, 2013. Police wanted that a way should be found to adjudicate the cases speedily so that the impounded material does not rot and spread foul smell all through the police station. The author also wanted to punish the guilty in a most deterrent way and speedily. The author meticulously studied all the provisions of the FSSA-2006 Act to find the way out. On February 8, 2013 the author wrote a letter to the Director Health Safety and Regula-

tion cum Joint Commissioner Food safety to Government of Himachal Pradesh, India to compound offences under section 69 of the act. As a consequence of this letter on April 16, 2013 the Designated Officers (Medical officers at District/ Municipality level) were delegated the powers to compound offences of petty manufactures and shopkeepers up to one Lakh (Rs.100,000/ \$ 2000). Under section (1) of 69 of FSSA 2006, Designated Officer food safety is now empowered to compound offences and levy penalty up to one lakh in relation to such offences committed by petty manufacturers.

Intervention or response:

In the absence of a direct provision to penalise offences like storing Gutka/Khaini under FSSA-2006, it was a difficult task to implement the ban in actual practice. A thorough understanding of various penal provisions of the FSSA-2006 with respect to banning of the smokeless tobacco was done by the author and combination of sections were underlined so as not to dilute the final judgement. Section 57, 58, 55, 49, 72 were imposed. While section 57 deals with penalty for possessing an adulterant (Nicotine), section 55 deals with failure to comply with the directions of the food safety officer (to ban Gutka etc), section 58 advocates for penalty for which no specific penalty is provided in this chapter and section 49 advocated the penalty to be imposed to be such as to keep in mind the amount of gain or unfair advantage made as a result of the contravention. The Designated Officer, who has been empowered under section 69 to impose penalty up to one lakh, has to keep in mind the section 49 while adjudicating the cases. Section 72 protects the adjudicating officer from any litigation and says that civil court not to have jurisdiction in case of action taken by adjudicating officer in pursuance of power conferred by or under this act. So, to punish the guilty, a plethora of sections of the FSSA-2006 were innovatively interlinked and judgments delivered probably for the first time in the country by a medical officer.

Another problem faced by the author was to destroy the seized consignment. Many suggestions were received like burning the Gutka or incinerating it in the kiln or deep burial. Finally, the deep burial (Fig 1) of all the seized items was done under the guidance of a team from the Municipal Corporation consisting of Environmental Engineer and sanitary inspectors in the presence of the culprits. A 10 feet deep pit was dug with Heavy Earth Moving Machinery (JCB) and deep burial of Gutka Powder was done after cutting each pouch of Gutka and then water was sprinkled on each layer of Gutka powder before each layer was covered with the soil dug out from the site. Water was sprinkled on Gutka powder as water destroys it instantly and renders it useless for human consumption.

The Gutka Lobby became active and news items were planted against the designated Officer that he is not at all competent to impose such penalties and a court of law only could impose such penalties rather more strict penalties like imprisonment. Thereafter a meeting was held with the then State Commissioner Food safety cum Principal Secretary Health and it was agreed upon that designated officer can put penalties under section 57 keeping in view section 49 of FSSA-2006 i.e. where the

value of the seized consignment is less than Rs.1,00,000. For a consignment where the value of seized consignment is more than Rs. 1,00,000 the matter may be referred to the higher court with recommendations of sections that advocate higher penalty (upto 10 lakh/ \$ 20000) than a designated officer can impose like high fine or imprisonment.

Results and lessons learnt: The Court proceedings were launched in the court of Designated Officer by the Food Safety Officer against four different accused, who were hoarding more than 1000 kg of Gutka/Khaini. Each one of them was fined Rs. 1,00,000/\$ 2000.

Conclusions:

The offenders of the law who used to drag the cases in the court for long period were given quick justice and matter was solved in a month's time. Also, through media a deterrent message was conveyed to such hoarders of smokeless tobacco.

The Impact:

In Shimla municipal area at least six shops have stopped the business of tobacco and changed their items to toys and other usables for the tourists. An effort has been made to frame the guidelines to prosecute offenders under FSSA-2006 with the help of The International Union against Tuberculosis and Lung Diseases so that other officers with similar powers can punish the guilty with ease and without fear.

The way forward:

The medical officers cum Designated Officers in the country need to be delegated the powers under Section 69 of the FSSA-2006. The way forward is intensive hands-on trainings to Designated Officers for punishing the guilty in most deterrent but sympathetic way by educating the offenders on the ill effects of Gutka on the health of the population. A training manual to this effect would also help to launch the prosecutions in a foolproof way. May be, the government needs to amend the FSSA 2006 Act to directly incorporate provisions for punishment to those hoarding/selling Gutka/ Khaini or any other smokeless tobacco in India.

Fig 1: Gutka Pouches being destroyed by deep burial at municipal dumping site at Shimla, India, 2013



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