

BALANCING PUBLIC HEALTH AND PERSONAL FREEDOM: A CONSTITUTIONAL PERSPECTIVE ON SMOKING IN PAKISTAN

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Abstract

It is a study on a balance between public health protection and personal freedom in the constitution, in-specific in Pakistan's case of smoking ban. The study examines the exercise of the police powers of the State under the Constitution of the Islamic Republic of Pakistan, 1973, in limiting the individual freedom in the interests of the public; and explains the policies of the State for controlling tobacco and tobacco use, especially on the aspect of anti-smoking legislation. The study examines whether they are lawful restrictions on Fundamental Rights including Article 9, the right to life and liberty guaranteed, and freedom of personal autonomy which is implied in constitutional jurisprudence. It also critically reviews Pakistan's responsibilities as a member of international health agreements, particularly the WHO Framework Convention on Tobacco Control (FCTC), and its effects on national laws. The personal freedom is a constitutional value protected but not unlimited and can be limited in the interest of public welfare, the article states.

INTRODUCTION

Smoking is considered one of the most significant public health problems all over the world, which leads to various severe health issues and burden on the healthcare systems (Bhatta & Glantz, 2023; Levy et al., 2008). Although knowledge about the harmful health effects of tobacco have been spreading in Pakistan, it is still a popular habit among children and adults (Maqsood et al., 2024). Smoking cigarettes and other tobacco products causes diseases like cardiovascular disorders, lung cancer, and respiratory diseases among others which in turn contributes to the spreading of these diseases making it one of the major causes (Zafar et al., 2024). As a result the State has enacted

several tobacco control laws and regulations that focus on tobacco use abatement and public health. Such limitations, however, do bring their own largely constitutional issues (Abdullah et al., 2024).

In Pakistan the rights to life, dignity, privacy and freedom of movement and occupation enshrined in the Constitution of the Islamic Republic of Pakistan are fundamental rights. The Constitution, on the other hand, gives the power to protect the welfare of the public and maintain public health to the State as well (Moorpani et al., 2024). This is a fine balance between rights and interests of the community and rights and interests of the individual, in the constitution.

Thus, smoking does not just become a medical or social problem; but also a constitutional one that deals with the extent of State power and individual freedom (Reitsma et al., 2023; Tauras, 2024).

This research article looks at the constitutional approach regarding smoking in Pakistan and identifies if the restrictions imposed by the government with regard to smoking are constitutional (Irshad et al., 2024). It also delves into the public health goals versus rights of the individual with an assessment of the laws/issues in courts and international commitments regarding tobacco control in Pakistan (Hameed & Malik, 2024).

Research Justification

This research is timely and relevant to the problem of smoking the disease which brings a great challenge to the Constitution and public policy of Pakistan. Smoking is acknowledged as a danger to the wellbeing of human beings; however, the control of tobacco use is legally fraught with questions as to the balancing of public interest with private liberties. While the State has the constitutional responsibility of guaranteeing the health of its citizens and a suitable environment for them, the people also have their rights of personal freedom, autonomy and privacy.

This tension also signals a subtle constitutional discussion, which needs to be carefully analyzed. Studies on the effect of smoking on health and social benefits have been conducted in most of the other countries of the world including Pakistan, however, the constitutional aspect of tobacco control has received limited scholarly attention. Due to the lack of analysis, it is not clear whether any restriction imposed by the government regarding smoking is constitutional or not and how such restrictions may affect the constitutionally guaranteed personal rights. The aim of this research is thus to address that gap in academia and will engage in a critical assessment of the relationship between public health goals and constitutional rights.

It has been noted that youths consuming tobacco in increasing quantities and the increasing burden on the healthcare system of Pakistan further emphasizes the relevance of effective policies to

curb tobacco consumption. Overall, this study aims to advance the field of law, and to give a balanced perspective on the issues which ought to be addressed to ensure the protection of public health while not unnecessarily abridging Fundamental Rights. The present study, based on the study of the constitutional principles, legal frameworks and judicial approaches, is expected to assist the field of law and provide balanced perspective on the issues which ought not to be ignored in order to safeguard the public health without limiting the fundamental rights of citizens without any reason.

Literature Review

There are a number of constitutional, medical and legal articles available that have addressed the controversy between protection of public health interests and the right to freedom, in relation to the smoking controversy (Levy et al., 2008; Tauras, 2024). Many legal, medical, and constitutional articles have dealt with the controversy between the protection of public health interests and individual freedom in the context of the smoking controversy (Reitsma et al., 2023). Most of the prevalent literature has concentrated on the detrimental impacts of using tobacco on people's health and the role of the government in tobacco control, aiming to benefit the society and benefit the taxpayer (Abdullah et al., 2024).

Smoking has been a constant issue for medical researchers, all of them earmarking it as a primary cause of preventable illness such as cancer, chronic respiratory disorders and cardiovascular diseases (Bhatta & Glantz, 2023). The findings of these studies justify implementing stringent tobacco control measures to decrease the death rates and health costs. The research findings argue that it's essential to have strict tobacco control measures to reduce death rate and healthcare costs (Moorpani et al., 2024).

The issues of smoking have been addressed by legal scholars from the constitutional rights and State obligations point of view. Many others writers assert that the right to life encompasses the right to be healthy and to enjoy an environment free of smoking, thereby that the government should put limitations on smoking in the public

sphere (Zafar et al., 2024). Under international law, through different treaties signed by countries, including a tobacco control treaty of the WHO (the Framework Convention on Tobacco Control), countries are called to action to develop effective tobacco control policies, including taxation. Pakistan has ratified these international conventions and there are legislations in the country in place to reduce and protect those who do not use tobacco from being exposed to tobacco smoke “passive smoking” (Irshad et al., 2024).

Others, meanwhile, condemn excessive government tampering – that opines that smokers should fulfill their desires and wants. According to liberal constitutionalism theory, the right to choose one's lifestyle by the adult means that he or she has the right to choose a lifestyle even though it might be detrimental to his or her well-being. Liberal constitutionalism theory dictates that the adult is guaranteed the right to choose his/her lifestyle even if harmful lifestyle is to his detriment (Hameed & Malik, 2024).

This makes it clear that only when such behaviour is causing serious hurt is the State entitled to intervene and regulate the policies' behaviour. Hence, discussion rages about how far it is constitutionally possible for the Government to be able to dictate private life. There are scant discussions regarding change from a constitutional viewpoint in Pakistan to date. There has been a focus on protection of public health rather than weighing in on balancing freedoms and powers of the constitution (Maqsood et al., 2024).

Historical Context of Balancing Public health and Personal Freedom Regarding Smoking in Pakistan

The measures taken against smoking in Pakistan have been made step by step per cent with rising awareness of dangerous effects of tobacco in the international arena (Irshad et al., 2024). In the first few decades after India had gained independence, smoking was not only popular among people but in those days, there was so little awareness or concern of the government about its harmful effects on health (Hameed & Malik, 2024). There was no effort to conceal food advertising for tobacco and tobacco use in public

setting was not a major concern. Due to this, however, as medical research around the world increasingly began to confirm the harmful effects that smoking had on lung cancer and heart disorders, governments all over the world began introducing stricter measures on smoking and tobacco (Abdullah et al., 2024).

There were major developments in the law in Pakistan in the late 20th and early 21st centuries. Therefore, the government had formulated policies in order to curb the use of tobacco, such as with warning labels about tobacco use, and by banning smoking in public places and advertisements (Moorpani et al., 2024). Promulgation of the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002, to protect the public from passive smoking and regulation of smoking in the public domain was a significant step. Pakistan was also signed up as a signatory to the Framework Convention on Tobacco Control of the World Health Organization that solidify Pakistan's cooperation with international standards and direction for tobacco control (Zafar et al., 2024).

This brought about an ongoing constitutional dispute around an ever-narrowing scope which included balancing between the State's obligation to safeguard the health and safety of its people and the freedom and autonomy of the individual. This led to an on-going constitutional issue on balancing the public health obligation of the State and the individual freedom and autonomy of its citizens (Maqsood et al., 2024).

Theoretical Context of Balancing Public health and Personal Freedom Regarding Smoking in Pakistan

The public welfare theories and theories of individual autonomy and constitutional governance are strongly related to the constitutional debate on smoking in Pakistan. There are theoretical discussions regarding this mainly on the grounds of the conflict between the State duty to safeguard public health and individual freedom of choice. In theory, the essence of the constitutionalism is that the existence of fundamental rights may be restricted where in the public interest they might otherwise

de-favor other legitimate interests: public welfare; public morality and public health. The same concept is reflected in the law and policy of government when it criminalizes smoking in public places.

The concept of the harm principle was put forth by the philosopher John Stuart Mill and is important in the discussion. On this basis, and only on it, is it justifiable to restrict the freedom of an individual when he causes harm to another? Passive smoking and public exposure to tobacco smoke are an important reason to support State action in this way in the context of smoking, as it can be detrimental to the health of non-smokers without their awareness or permission. That's why other people are advocating for a ban on smoking in public, in the name of the good of society.

In contrast, liberal theories emphasize the freedom that adults have to decide how to live their own and individual lives and bodies. They believe there is too much state control, and it is unconstitutional restraints on freedom. In theoretical discussion in order to balance the collective public interest and individual rights as per principles of constitutional laws in Pakistan.

Laws Regarding Smoking in Pakistan

The Government of Pakistan has passed a number of legislations and regulations to curb the menace of smoking and ensure its eradication to safeguard the health of the people and respect human rights. The latter is governed by the primary legislation, the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance of year 2002. Smoking bans apply to public places, educational and health care facilities, public transport and other indoor locations. The goal of this bill is to decrease people's exposure to second hand smoke and to protect non-smokers' health.

Other than the ban on smoking in public areas, the Government has enacted laws about the advertising, promotion and sales of tobacco products. Health warnings must be placed on tobacco products and underage people are not allowed to buy tobacco products from tobacco companies. These measures convey Pakistan's commitment to international public health standards laid down in the World Health

Organization Framework Convention on Tobacco Control (WHO-FCTC) to which Pakistan is a signatory.

However, constitutionally, there are numerous questions to consider about making the proper provisions that place a just balance between public welfare and personal liberty. The right to life and security of person is guaranteed by Article 9 in the Constitution of Pakistan, which has been read expansively to afford protection to the public health. Simultaneous to this one or more people could be saying that smoking is a matter of personal liberty and personal choice. But, constitutional freedoms are not unlimited, and therefore cannot be exercised if it harms society or threatens the rights of others.

Therefore the anti-smoking act in Pakistan does not seek to deny anyone the right to smoke and only regulates the smoking in public areas, not an outright ban on smoking.

Challenges for Balancing Public health and Personal Freedom Regarding Smoking in Pakistan

Eugen Weidmann's dilemma, a social and constitutional paradox between the duty to protect public health from tobacco use and the personal liberty to do so is still alive in Pakistan. Government has enacted laws to regulate tobacco use and to protect the health, safety and rights of non-tobacco users. There are numerous challenges for realizing these laws, however. One of the primary challenges is that of individual autonomy versus state responsibility. One of the most often stated claims of smokers is that smoking is private and that excessive government interference is infringing on the liberty and privacy of the individual. Equipped with the duty to advance the general wellbeing of the public and to provide a safe neighborhood for all residents to call home, however, the state has a constitutional requirement to do so.

A lack of tobacco control laws is another challenge. Smoking in public areas is banned in Pakistan in law but it is frequent in restaurants, markets, buses and at work. These regulations are not effectively implemented due to limited monitoring, public awareness and evaluations,

and deficiencies of penalties. Other factors including corruption and administrative weakens the enforcement, further reducing the chances of achieving the desired public health outcomes.

These interests are also challenging to balance due to economic conditions. The tobacco industry provides jobs and generates government revenues from tax. Any effective tobacco control policy must be robust enough to meet any negative pushback (and not only from the tobacco industry or from manufacturers who would be devastated economically) coming from tobacco firms and tobacco industry workers, not to mention policymakers. This makes it even more difficult for governments to implement key public health policies for more effective tobacco control strce.

Other barriers include cultural/social attitude towards smoking. The acceptance of smoking is high in some communities (particularly men), which makes smoking prevention campaigns ineffective. Furthermore, the information on the dangers of tobacco use for citizens is not widely known because of low literacy rates and lack of health education.

However, the idea of balance between public health and personal freedom is not only about constitutional and legal issues but also on the importance of effective implementation, public awareness and education about it to foster and protect individual freedom and the health of the community.

Opportunities for Balancing Public health and Personal Freedom Regarding Smoking in Pakistan

While the problems with tobacco control exist, there is hope for Pakistan in ways to achieve effective balance between public health goals with safeguarding of personal freedom. There is one opportunity to be considered, strengthening the constitutional interpretations in regard to the rights of health and dignity. The constitution of Pakistan ensures the right to a healthy and smoke-free environment within the ambit of the right to life and security of person as guaranteed under Article 9. With the public interest as a guide, but with due consideration to individual freedom, the state can formulate policies that strike a balance

between the public health interest and personal rights.

Enhancing public awareness and education is also an important opportunity. Strict legislation is not the only way to promote voluntary behaviour change by using education to raise awareness of the harmful nature of smoking and second-hand smoke. Education (schools, universities, health institutes, media outlets) can have a significant impact on increasing awareness about the social burden of smoking and the consequences of tobacco-related disease. Educated citizens are more likely to accept laws and ordinances of public health significance as well as adopt responsible personal decisions.

There are also policy innovations which can work for tobacco control, in addition to new technologies. The government can carry out digital awareness campaigns, stricter warnings and warning systems to assist in ensuring adherence to smoking rules. Charging transportation costs more for smoking products can help cut down on smoking; generate revenue for health care services and anti-smoking services. Meanwhile, special areas for smokers can allow people to do what they want to do, while ensuring that those who do not want to be exposed to smoke-free.

The opportunity for cooperation of the international community is also good. Since Pakistan has signed the Framework Convention on Tobacco Control (WHO-FCTC), the country can learn and implement best practices from around the world and benefit from the expertise of others involved in tobacco control and public health policy. Safeguards of individual rights, public education, economic policy and effective legislation, can all be put in place together to recommend a balanced constitutional approach to Pakistan. Such measures can maintain public health and reasonably and fairly regulate personal freedoms in a democratic society.

Discussion

There is a case of a conflict of rights to health and freedom in Pakistan which is smoking. The government has a legal and moral duty to protect the people from the harmful effects of tobacco use and exposure to secondhand smoke. The goal of

tobacco advertising and public places and health policies restrictions is social good and to reduce health risks. These measures are based on constitutional protection such as right to life and protection of human dignity which is stated in article 9 of the constitution of Pakistan.

However, smoking can also be considered as the individual's choice and the individual's decision. Others argue that the government's invasion of privacy and freedom of their lives is a violation of their freedom and right to privacy. This will pose a constitutional dilemma of rights of the individual versus collective interests of society. However, as with all constitutional freedoms there are exceptions: When a person's actions are interfering with another person, and/or there is a public welfare reason, then the free exercise of that liberty is constrained.

The discussion shows the moderation and reasonableness on the part of the regulation that only good balance can be maintained through, and not prohibition of smoking. To reduce tobacco use, while respecting individual rights, it is necessary for law enforcement to be stronger, education and awareness programmes to be more extensive. The country of Pakistan needs to go ahead with solid policy formulation as far as keeping public health is concerned while not abridging the constitutional rights and personal autonomy without need.

Conclusion

The public health and personal freedom on smoking issue in Pakistan is certainly a vital constitutional and social issue. To limit negative impacts of tobacco use, and to prevent exposure to secondhand smoke, the government has enacted a number of laws and regulations. These measures are considered the state's constitutional obligations related to the protection of public health and the well being of society. Also, there are some freedoms and personal autonomy rights that should be respected in a democratic system along with individuals having rights. Along with individuals having rights would be freedoms and personal autonomy rights that should be respected in a democratic system.

The constitutional concern is that the right to freedom of the individual is not absolute and can be justly and reasonably abated when it endangers the health or safety of others. So, the important point to note is that the smoking policy in Pakistan is only to strike a balance between individual freedom and collective welfare, it does not outlaw smoking. For the balance to be reached, effective enforcement of laws, as well as public awareness campaigns and educational initiatives are vital. The bottom line is that a balanced constitutional approach will help to safeguard public health while, at the same time, honoring the constitution's fundamental rights and freedoms of citizens.

Recommendations

The Constitutional issues relating to smoking and tobacco control should be taken care of comprehensively and balance warden set for in Pakistan. To enhance the enforcement of existing tobacco laws, especially the Prohibition of Smoking and Protection of Non-Smokers Health Ordinance, 2002, should be strengthened by the government. Effective penalties should be in place and monitoring systems strict to inhibit smoking in public areas and enforce the law.

Second, knowledge should be intensified and educational campaigns extended throughout schools, universities, healthcare institutions and media outlets. Citizens need to understand the detrimental impacts of smoking and second-hand tobacco smoke, and then be able to make an informed decision. campaigns which raise awareness need to not just highlight the health dangers of tobacco use though likewise the economic and social repercussions.

Third, the government should raise the price of cigarettes so customers would not smoke as much particularly young people. The money from tobacco taxes should be spent on health care, rehabilitation, and anti-smoking measures. At the same time, the decision could be made to have specific smoking areas to provide for personal choice without compromising the rights of non-smokers to not be exposed to harmful smoke. Lastly, there is need to further collaborate with the international bodies like the World Health

Organisation (WHO) to introduce suitable policies and best practices in regulating tobacco in Pakistan. Such measures can contribute towards a constitutional balance between public health protection and constitutional freedoms.

Research Limitations

A number of restrictions are involved in this research which could impact the extent or detail of the analysis. First, as it is the case with other studies, this study is based on secondary materials such as constitution, legal materials, journal articles, and policy reports—rather than empirical research in the field. Therefore, findings of this research may not necessarily represent the real-life experiences and views of smokers, health workers and policy makers in Pakistan.

Secondly, availability and accessibility of current data on smoking prevalence, public attitude and effectiveness of the tobacco control law in Pakistan could be limited in scope thus limiting the accuracy of some results. The research also primarily examines the constitutional and legal aspects of smoking, and thus in-depth medical, psychological and economic analysis of the various aspects of smoking is not performed.

Additionally, as many people in Pakistan practice different habits based on social, cultural and regional norms, these variations could have some impact on the regulation of smoking throughout the country, that may not have been properly addressed in this study. However, further study using empirical surveys, interviews and comparative international analysis could help to understand the issue further.

Research Implications

The implications of this study can influence the policy regarding smoking and safeguard of public health in Pakistan from legal, social or policy perspective. The paper also shows the need for a balance between individual freedoms and state's accountability to protect public welfare from a constitutional point of view. The results can help lawmakers, policymakers and legal experts grapple with the question of what constitutional rights should be reasonably limited to deal with public

health issues without unduly infringing on individual liberty.

The study also suggests that more policies and regulations on tobacco, effective law enforcement and public awareness campaigns are needed. This would enable the government institutions and public health officials to come up with a more balanced and evidence-based approach to make Pakistan tobacco free. In addition, the study poses challenges to the figure and ground relationship of constitutional law and human rights, and public health policy can be discussed academically by this study. Furthermore, the research can be used as source information on future studies of Smoking Control Laws, Comparative Constitutional Studies and the impact of Tobacco Control Laws on society in developing countries. Finally, it aids in informed policy and increases the public's awareness of tobacco issues of the constitution.

Future Research Directions

The future research about smoking control in Pakistan should be more detailed, extensive and should address the public health/personal freedom relationship. Empirical research, using surveys, interviews and public opinion analysis, could be helpful to better understand attitudes towards smoking laws and constitutional bans. Research can also explore how well current tobacco control policies are working to decrease smoking and how well they are working as protection for non-smokers' health.

Comparative study of other countries would help in identifying some of the success-factors of legal and public health measures which can be implemented in Pakistan. The impact of tobacco control on government revenue, employment and the tobacco industry can also be studied by economists, along with the economic costs of tobacco control. Second, research that looks at the prevalence of youth smoking, the use of e-cigarettes and/or digital tobacco advertising are of significance due to the dynamic nature of tobacco use.

More interdisciplinary research, that considers constitutional law, public health, sociology and economics, may provide a more comprehensive point of view on the issues surrounding smoking.

The research would help in the formulation of policies that would strike a balance between protecting public welfare and individual rights.

REFERENCES

- Abdullah, S. M., Ansaari, S., Boeckmann, M., Khan, A., & Siddiqi, K. (2024). The extent of illicit cigarette sales in five rural districts of Pakistan: A cross-sectional study. *Nicotine & Tobacco Research*, 27(1), 143-147. <https://doi.org/10.1093/ntr/ntae155>
- Bhatta, D. N., & Glantz, S. A. (2023). Association of e-cigarette use with respiratory disease among adults. *American Journal of Preventive Medicine*, 64(3), 412-420. <https://doi.org/10.1016/j.amepre.2019.07.028>
- Hameed, A., & Malik, D. (2024). Clinical study protocol on electronic cigarettes and nicotine pouches for smoking cessation in Pakistan: A randomized controlled trial. *Trials*, 25(1), Article 9. <https://doi.org/10.1186/s13063-023-07876-y>
- Irshad, H. A., Jehanzeb, H., Raja, S., Saleem, U., Shaikh, W. A., Shahzad, A., Amirali, A., Iqbal, N., & Khan, J. A. (2024). Heated tobacco products—Well known or well understood? A national cross-sectional study on knowledge, attitudes and usage in Pakistan. *BMC Public Health*, 24, Article 1328. <https://doi.org/10.1186/s12889-024-18825-y>
- Levy, D. T., Benjakul, S., Ross, H., & Ritthiphakdee, B. (2008). The role of tobacco control policies in reducing smoking and deaths in a middle income nation: Results from the Thailand SimSmoke simulation model. *Tobacco Control*, 17(1), 53-59. <https://doi.org/10.1136/tc.2007.022319>
- Maqsood, A., Shahidan, W. N. S., Mirza, D., Ahmed, N., & Heboyan, A. (2024). Social acceptability and health concerns of smoking and vaping among university students: A cross-sectional study. *Tobacco Use Insights*, 17. <https://doi.org/10.1177/1179173X241300992>
- Moorpani, K., Shaikh, S., & Tariq, H. (2024). Compliance with smoke-free legislation and smoking behaviour: An observational field study in Karachi, Pakistan. *Journal of the Pakistan Medical Association*, 74(2), 305-309. <https://doi.org/10.47391/JPMA.9215>
- Reitsma, M. B., Flor, L. S., Mullany, E. C., Gupta, V., Hay, S. I., & Gakidou, E. (2023). Spatial, temporal, and demographic patterns in smoking tobacco use. *The Lancet*, 397, Article 10292, 2337-2360. [https://doi.org/10.1016/S0140-6736\(21\)01169-7](https://doi.org/10.1016/S0140-6736(21)01169-7)
- Tauras, J. A. (2024). Tobacco control in low-income and middle-income countries: Findings from WHO FCTC investment cases. *Tobacco Control*, 33(1), s1. <https://doi.org/10.1136/tc-2024-058717>
- Zafar, M., Naz, S., Batool, R., Vancy, A. A., Khan, J. A., & Iqbal, R. (2024). Level of compliance to smoke-free laws by restaurants in Karachi: An observational study. *Tobacco Control*, 35(2), 194-199. <https://doi.org/10.1136/tc-2024-058940>