TOBACCO USAGE AND NIGERIAN LAWS ***YUSUF O. ALLI ESO: SAN

INTRODUCTION:

The usage of tobacco as generically known and called was as early as the existence of man. Man is egregious by nature and in the search for materials that can be used to enhance his social life he stumbled on tobacco as a means of some sort of social expression.

The uses to which Kolanut, and other serious drugs like heroin, cocaine and other such substances are put is a product of this search by man for some social expression.

No wonder then that in many cases, many people got introduced to cigarette smoking through peers and friends. To some smokers they cannot even offer intelligible reasons for the smoking habit.

Once man came to form society it became necessary for the society to regulate some of the acts of the members of the Society. It is in view of this societal development that made the usage of tobacco to come under the aegies of the law.

It is widely believed that the aboriginal peoples of the Americas that is, the Indians were the first set of people to cultivate and use tobacco and it was from them that the Portuguese and Spaniards in their world wide travels in the 16th Century spread the cultivation and usage of tobacco!.

LAWS ON TOBACCO USAGE

The first attempt to regulate the trade in Tobacco in Nigeria was in section 6 of the ***Nigeria (Revenue Allocation) Order-in-Council*** of 1951.

In 1954, vide ***Nigeria (Constitution) Order-in-Council*** some variations in the ***1951 Order-in-council, were made.***

With a view to give effect to these provisions ***the Tobacco (Licences and Returns) Ordinance*** Chapter 198 Laws of the Federation 1958 was enacted

This Ordinance has 14 sections but essentially designed to make provisions for licensing of importation of tobacco and payment of duties on such importation.

Section 2 is the definition section, section 3 prohibits the importation of tobacco that is dutiable except the importer has a licence. Those that imported for personal consumption are exempted. Section 4 provides for issuance of importers licence by the prescribed authority. A person's duty to furnish information to the prescribed authority is provided for in section 5, while section 6 provides for revocation of the importers licences in certain circumstances. Section 7 like section 5 provides for supply of information. Keeping of accounts by an importer are provided for in section 8, while penalties for failure to keep books of accounts are dealt with in section 9. Penalty for supplying false information was provided for in section 10, while section 11 prohibits the disclosure of certain information by some employees that are to carry into effect the provisions of the Ordinance. The method of recovery of all penalties are provided for in section 13, while section 14 makes the operation of the Ordinance to be applicable to Lagos and southern Cameron's.

From the foregoing, one can safely say that under the Ordinance it only makes inferential provisions for tobacco usage by placing restriction on the importation of same, without licence. This is a form of control on tobacco and its usage.

The first serious attempt to legislate on the control of tobacco was made in ***Tobacco Smoking (control)*** Decree ***No 20 of 1990***. The importance of this Decree lies in the fact that it is the only extant law on the consumption and advertisement of tobacco in Nigeria today.

This unique position of the law makes it imperative to dwell a bit on its provisions.

Section 1 of the Decree prohibits persons to "engage in or continue to engage in tobacco smoking in the places specified in schedule 1 to this decree"

The Public places where smoking was outlawed according to the first schedule of the Decree are:

> "(a) Cinema, Theatre or stadium.
> (b) Offices;
> (c) Public transportation;
> (d) Lifts;
> (e) Medical Establishment;
> (f) Schools; and
> (g) Nursery Institutions".

Section 2 prohibits the advertisement of tobacco products to the general public through

> "(a) Newspapers;
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> (b) Magazines;
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> (c) Radio;
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> (d) Television
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> (e) Cinema;
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> (1) Bill Boards; and
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> (g) Handbills"

except the advertisement contains a warning that "tobacco smoking is dangerous to health". Subsection (2) of the said section also goes on to provide as follows:

> "any other body corporate shall sponsor or promote any of their products at any sports event sponsored or promoted by them"

To further bring out the intendment of the lawmakers section 3 of the Decree Provides inter alia.

> "3 (1) Except as provided by this Decree, no package containing tobacco products meant for smoking shall be sold in Nigeria, unless the following rotating warning are inscribed on the package, that is
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> (a)"The Federal Ministry of Health warns that tobacco smoking is dangerous to health"; and
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> (b) "Smokers are liable to die young".
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> (2) Pursuant to subsection (1) of this section, it shall be unlawful for any person to sell any tobacco product in Nigeria unless the amount of the tar and nicotine contents of each unit of the product is stated on the package".

Sections 4 and 5 provide penalties for smokers, sellers and advertisers that do not obey the provisions of sections 1,2 and 3 of the Decree. Due to their importance the sections are quoted in extenso hereinafter as follows:-

> "4Any person who engages or continues to engage in tobacco smoking, otherwise than in compliance with the provisions of this Decree shall be guilty of an offence under this Decree and shall be liable on conviction to a fine of not less than N200 and not exceeding N1,000 or to imprisonment to a term of not less than one month and not exceeding two years or to both such fine and imprisonment.

1. (1)Any person who advertises, sells offers for sale any tobacco product otherwise than in compliance with the provisions of this Decree shall be guilty of an offence under this Decree and shall be liable, on conviction, to a fine of not less than N5,000.

(2) Where an offence under this Decree is committed by a body corporate or firm or other association of individuals-

(a) every director, manager, secretary or other similar officer of the body corporate;

(b) every partner or officer of the firm;

(c) every person concerned in the management of the affairs of the association; or

(d) every person who was purporting to act in any such capacity as aforesaid, shall be guilty of an offence and shall be liable on conviction to a fine not exceeding N5,000 or to imprisonment for a term not exceeding three years or to both such fine and imprisonment as if he had himself committed the offence, unless he proves that the act or omission constituting the offence took place without his knowledge, consent or connivance".

Section 6(1) excludes any suit or other legal proceedings "against any person or officer authorised by the Minister for anything done or intended to be done in pursuance of "the Decree.

Subsection 2 of the section puts the Fundamental Right Provisions of Chapter IV of the 1979 Constitution into abeyance for purposes of the Decree.

Section 7 is the definition section wherein the word "tobacco" was defined to include "manufactured and unmanufactured tobacco of every description which is processed and used for smoking (in pipes, cigars and cigarettes)".

Section 8 empowers the President of Nigeria to nominate a date in the Gazette when the Decree was to come into force.

It is our submission that from the provisions of the Decree Nigeria appears to have joined many other nations of the world like the United States, Canada, Great Britain, India, South Africa and others where the consumption of tobacco has been controlled one way or the other.

THE POLITICS OF TOBACCO USAGE

Before we discuss the politics of the usage of tobacco, it might be necessary to refer to some pieces of information that may help us to understand the politics involved in this issue.

The World Health Organisation is now in the vanguard of those agitating for serious reduction in tobacco usage and for more stringent governmental policies on the advertisement, sale and consumption of tobacco all over the world.

The concern of the world body stemmed from its findings that the consumption of tobacco is capable of causing about 25 different diseases. It is also noteworthy to call attention to the fact that in the United States of America and Canada, the courts have now started to take a hard look at misrepresentations in the smoking habits of the applicants for life insurance on the entitlement of their beneficiaries to claim benefits.

In short, the well publicised health hazards of tobacco usage has been the main and the most important factor that has influenced the politics of tobacco usage not only in Nigeria but in other countries of the world.

In the arena of the politics of the matter, there are contending and powerful forces at play, each trying to out do the other on the issue.

On the one side of the battle are the antagonists of tobacco usage made up mainly of health workers and some religious people.

The argument of this people which is not without considerable force is that whatever revenue that accrues to the state from tobacco is far less beneficial than the health hazard of the practice.

On the other side of the scale are those who point out that the people whose livehood depend on tobacco are contributing to the economy. The farmers that grow it, the extension workers that assist the farmers, the tobacco companies that employ thousands of workers and those who work in factories where machinery for these factories are manufactured.

It is also contended that the national revenue is assisted by the various taxes devirable from tobacco related activities. Some even argue that to place restriction on the right of the individual as to what he consumes is an infringement of his fundamental right to the dignity of his person and freedom to choose what he thinks is best for him.

The debate is an unending one and the great lobby by the groups is tremendous.

This fact is well exemplified by the recent happenings in Britain where the opposition accused the government of Prime Minister Tony Bliar of soft pedalling on strict advertisement on cigarettes due to alleged massive campaign funds donated to the Labour Party during the last general elections in Britain in 1996, by tobacco related interest groups.

RECOMMENDATIONS

We strongly suggest the following as desirable steps to be taken by the government and individuals to at least curb the scourge of tobacco usage.

1. Government should impose higher taxes on tobacco products to discourage their uses.
2. Advertisement of tobaco products should be banned in more public places other than the ones already identified in the Decree.
3. Government sponsored anti-smoking campaigns should be encouraged.
4. The adverse effects of tobacco usage should be taught in our secondary schools and tertiary institutions.
5. Parents should be at the vanguard of those that will discourage their children and wards from the use of tobacco.
6. Persons who are engaged in the health sector should set personal examples by avoiding smoking at least in the presence of ordinary folks whom they come across in the cause of their duties.

CONCLUSION

We have shown that the politics of tobacco usage is the determinant factor that determines the legislative reaction to the issue. Where the politics of the time favours tobacco usage, the law follows suit and vice versa. One thing that is clear however is that the negative health implications of tobacco usage far outweighs any other benefit derivable therefrom. I need not bother the readers with the health related problems engendered by tobacco usage.

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