

RIGHT TO HEALTH AND ANTI-SMOKING LAWS IN INDIA

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The right to health is basically a human right. The right to health includes mainly access to adequate food and housing, healthy working conditions, appropriate medical facilities and a clean environment. A clean and fresh environment is one of the essential requirements for a person's life. If a person living in a polluted environment, he cannot attain good health. Smoking tobacco is also an obstacle in getting clean and fresh environment. Tobacco is universally regarded as one of the major public health hazards and is affecting directly or indirectly to human life. Use of tobacco causes a wide range of major diseases which impact nearly every organ of the body. The Government has taken various preventive measures to curb down the consumption of tobacco in India. Unfortunately the consumption of tobacco products continues to increase due to lack of proper implementation of these preventive measures. It can be assumed that the Anti Tobacco Laws become inadequate to create strong impact upon tobacco consumption in India. There is a dire need to take stricter steps to reduce the use of tobacco products for maintaining public health. The procedural mechanism to reduce the consumption of tobacco products is out of order and has no effect to implement Anti Tobacco Laws. Violation of Anti Tobacco Laws is a routine phenomenon for youngsters and teenagers. Anti Tobacco Laws are less effective in rural areas of India also. So the tobacco consumption in India is in an alarming stage due to increasing number of people, particularly the young generation, is heavily prone to the habit of smoking.

INTRODUCTION

The right to health means that everyone has the right to the highest attainable standard of physical and mental health, which includes access to adequate food, decent housing, healthy working conditions, appropriate medical facilities and a clean environment. Everyone has a right to health care they need, and to living conditions that enable us to be healthy, such as adequate food, housing, and a clean and healthy environment. In the preamble of WHO's Constitution the word 'Health' is widely defined. According to World Health Organization Health is not merely the absence of disease but it also includes a state of complete physical, mental and social wellbeing.

For attaining right to health a clean and fresh environment is the basic need for a person. If a person living in a polluted environment, he cannot attain good health. Smoking tobacco is also an obstacle in getting clean and fresh environment. Tobacco is universally regarded as one of the major public health hazards and is

affecting directly or indirectly to human life. It creates harmful and hazardous effect to human body and causes lung cancer & heart and various other diseases to not only the smokers but also to those who are living in a smoky environment. Nonsmokers involuntarily inhale the smoke of nearby smokers. Inhalation of side stream smoke by a nonsmoker is definitely more harmful. This is because side stream smoke contains three times more nicotine and tar. Thus the danger of passive smoking is real, broader and parallels those of direct smoke. Approximately more than one million people in India die from tobacco related diseases. The Government has taken various steps to prohibit smoking but people are not ready to follow the rules even when it is beneficial for their own health. Indian Government has been very conscious of the harmful effects of tobacco use, disease burden and related social and economic costs of health care. After detailed deliberations the Government of India enacted "**The Cigarette and Other Tobacco Products (Prohibition of Advertising and Regulation of trade and commerce, production, supply and distribution) Act, 2003**" with a view to protect public health by prohibiting smoking in public places, banning advertisements of the tobacco products, prescribing strong health warning including pictorial depiction on tobacco products. In Various cities of India many campaigns have been launched to make their environment smoke-free in the last decade. Chandigarh became the first smoke-free city in India. The central government is also introduced a Bill to amend the existing Anti tobacco law to provide for a stricter enforcement mechanism and more severe fines. An expert panel set up by the Ministry of Health has recommended the imposition of a fine of 20,000 rupees for smoking in public. A committee headed by Adoor Gopalakrishnan has recommended the banning of loose cigarettes and increasing the minimum age for tobacco consumption from 18 to 25 and making public smoking a cognizable offence.

The Court also has shown very strict view in its judgments to prohibit consumption of tobacco. The Supreme Court of India in case of **Murli S. Deora vs. Union of India**^[1] acknowledged the harms caused by active and passive smoking and held that non-smokers should not be forced to inhale second-hand smoke in public. Court after realizing the gravity of situation directs and prohibits smoking in public places and issue directions to the central government and state governments to take effective steps to ensure prohibiting smoking in public places. In another case of **K. Ramakrishnan vs. state of Kerala**^[2] a question regarding the public health issue from the danger of passive smoking was raised and in which prayers are made to declare that smoking of tobacco in any form, in public places is illegal, unconstitutional and violative of Article 21 of constitution. The High Court of Kerala declared smoking in public places a punishable offense

in Kerala and concluded that smoking in public violated the right to life guaranteed under Article 21 of the Constitution of India. The court also urged the Government of India to fulfill its obligations under pre-FCTC WHO resolutions.

Right to health under Indian Constitution- In Indian Constitution Right to health is not included directly in as a fundamental right. The majority of population in India is excluded from any statutory recognition of right to health. The Constitution maker imposed this duty on state to ensure social and economic justice. Part four of Indian constitution which is Directive Principle of State Policy imposed duty on States. If we only see those provisions then we find that some provisions of them has directly or indirectly related with public health. The term 'public health' has a distinct collective dimension and has an inter-relationship with aspects such as the provision of a clean living environment, protections against hazardous working conditions, education about disease prevention. The Constitution of India not provides right to health as a fundamental right. The Constitution directs the state to take measures to improve the condition of health care of the people. It provides a framework for the achievement of the objectives laid down in the preamble.

The provisions within Indian constitution itself exist to give people of India right to health. Article 41, 42 and 47 of the directive principles provide the basis to evolve right to health. Article 41 provides that the state shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement. Article 42 empowers the state to make provisions for securing just and humane conditions of work and maternity relief. The Directive Principle of State Policy under the Article 47 considers right to health the primary duty of the state to improve public health, securing of justice, human condition of works, extension of sickness, old age, disablement and maternity benefits and also contemplated. Further, State's duty includes prohibition of consumption of intoxicating drinking and drugs are injurious to health. Article 47 makes improvement of public health a primary duty of State. Under Article 47, the State shall regard the raising of the level of nutrition and standard of living of its people and improvement of public health as among its primary duties.

Right to health as a Fundamental right- The right to health is not declared as a fundamental right in Indian constitution but the Court has showed a different view in regard to the right to health. The provisions regarding right to health is given in part four of Indian Constitution. Directive Principles are not enforceable by the Court; so guarantee of its implementation has remained illusory.

However, in a series of cases dealing with the substantive content of the right to life, the court has found that the right to live with human dignity includes right to good health. In **Consumer Education and Research Center vs. UOI**[3], the Court explicitly held that the right to health was an integral factor of a meaningful right to life. The court held that the right to health and medical care is a component of fundamental right to life guaranteed under Article 21 of constitution of India. In Case of **Municipal council, Ratlam vs. Virdhichand**[4] Justice Krishna Iyer observed that the state will realize that Article 47 makes it a paramount principle of governance that steps are taken for the improvement of public health as amongst its primary duties. The Supreme Court, while examining the issue of the constitutional right to health care under Articles 21, 41 and 47 of the Constitution of India in **State of Punjab vs. Ram Lubhaya Bagga**[5], observed that under Article 47 it is for the state to secure health to its citizens as its primary duty.

Steps taken by the Government to prohibit smoking – India has been very conscious of the harmful effects of tobacco use. Over the years various administrative measures were taken to prohibit tobacco smoking in public places and regulate the sale of tobacco products and their advertisement. The Central Government and some State Government have enacted a number of laws, issued various guidelines and also passed orders, rules to prohibit smoking especially in public places. The law had been passed against smoking which includes regulations on the advertising, sale, supply and consumption of tobacco products. The efforts of Governments are as follows:-

- 1975. The Cigarette (Regulation of production, supply and distribution) Act, 1975.
- 1976. An executive order passed in 1990 by Central Government to prohibit smoking in some public places where a large number of people could be present.
- The Railway Act, 1989 prohibits smoking in trains.
- 1. An amendment to The drugs and cosmetics Act, 1940 to ban manufacture and use of tobacco products in toothpastes and tooth powders.
- 2. The Cigarette and other tobacco products (Prohibition of advertisement and regulation of trade and commerce, production, supply and distribution) Act, 2003. (COTPA)
- 3. Ratification of WHO FCTC (Framework convention on tobacco control) on 5 February, 2004.
- Prohibition of smoking in public places rules, 2008
- The National tobacco control programme was piloted during the 11th five year plan.

The Government of India has been very conscious to reduce the consumption of tobacco. After detailed deliberations the Government of India enacted “**The Cigarette and Other Tobacco Products (Prohibition of Advertising and Regulation of trade and commerce, production, supply and distribution) Act, 2003**”. This Act is also known as COTPA. The main object of this Act is to protect public health by prohibiting smoking in public places, banning advertisements of the tobacco products to prohibit its promotion, prescribing strong health warning including pictorial depiction on tobacco products. Some related provisions of COTPA, 2003 are as follows:-

1. Section 4 of COTPA seeks to curb this menace of smoking tobacco in public places.
2. Section 5 explicitly prohibits advertisements, promotion and sponsorship of cigarettes and other tobacco products, with the exception of on-pack advertising and point of sale advertising which have also been significantly restricted.
- Section 6(B) of COTPA prohibits sale of tobacco products within a radius of 100 yards of educational institutions. Heads of educational institutions are empowered to clamp down on the sale of tobacco products within its limits.
1. Section 7 explicitly prohibits the production or commercialization of tobacco products without displaying a pictorial warning on the package containing a tobacco product in the prescribed manner. The health warnings must necessarily occupy 40% of the principal display area on the front panel of the packet and must frequently be rotated in accordance with the directions of the Central Government.

After enacting COTPA to make the country smoke free, India became a member of the WHO Framework convention on tobacco control on February 5, 2004. The Government of India ratified the WHO Framework convention on tobacco control, which incorporates key strategies for reduction in demand and supply of tobacco. Some demand reduction strategies include price and tax measures and non price measures. Non price measures include statutory warnings, comprehensive ban on advertisements, promotion and sponsorship, tobacco product regulation etc. the supply reduction strategies include combating illicit trade, providing alternative livelihood to tobacco farmers and workers and regulating sale or purchase by minors. India has been in the forefront of negotiations under various working groups of the WHO FCTC and also played a leadership role in bringing region specific issues e.g. smokeless tobacco to the global attention. India has actively contributed to drafting of guidelines as a member of the Inter Government negotiating body to curb the illicit trade of tobacco products.

The desire to prohibit the use of tobacco finds expression in the prohibition of smoking in public places

rules, 2008 which came into force on 2nd October, 2008. As per the new guidelines, smoking tobacco is prohibited in auditoriums, health institutes, educational institutes, cinemas, modes of public transport such as buses, trains, taxis, planes, airports, bus stations, railway stations, hotels and restaurants and in all kinds of offices, libraries, shopping malls, canteens, refreshment rooms, post offices, parks, courts, pubs, bars and coffee houses.

The Government on 13th January 2015, put out some recommendations made in “The Cigarette and other tobacco products (Prohibition of advertisement and regulation of trade and commerce, production, supply and distribution) Amendment Bill, 2015”. These recommendations are as follows:-

1. Ban on sale of loose cigarette.
2. Increasing the minimum age for buying tobacco products to 21 years from existing 18.
3. Raising the fine amount on smoking in public places to Rs 1000 from Rs 200.
4. Designated smoking zones in hostels and restaurants should be done away with because having those defeats the very purpose of protecting nonsmokers.
5. To make violation of the proposed law much more stringent by increasing the maximum fine to Rs 1 lakh from the existing Rs 10000.
6. Special Session Courts for trial of tobacco related offences.

Judicial approach on control of Tobacco consumption- Judicial activism has played a major role in providing impetus to the tobacco control legislation both by directing the Government to take much needed steps for tobacco control and by creating a climate of public support for such legislation. In its judgments the court always discouraged the use of tobacco in any form. The Supreme Court banned smoking in public places and issued direction to union of India in the case of **Murli Deora V. Union of India, 2002**. In this case the Apex court decided that smoking at public places indirectly depriving of life of a nonsmoker. He is afflicted by various diseases including lung cancer or of hurt. There is no reason to compel nonsmokers to be helpless victims of air pollution. Considering the adverse effect of smoking in public places, it would be in the interest of the citizen to prohibit the smoking in public places. Court after realizing the gravity of situation directs and prohibits smoking in public places and issue directions to the central government and state governments. To take effective steps to ensure prohibiting smoking in public places as auditorium, hospitals buildings, health institutions, educational institutions, libraries, court building, public offices, public conveyance including railways. The Supreme Court recognized the harmful effects of smoking in public and also the effect on passive smokers, and in the absence of statutory provisions at that time, prohibited smoking in public places. The petitioner argued that smoking in public

sacrifices non-smokers' health and lives without due process under Article 21 of the Constitution of India. The Court acknowledged the harms caused by active and passive smoking and held that non-smokers should not be forced to inhale second-hand smoke in public. The court prohibited smoking in eight types of public places and urged the State and Federal governments to take necessary and effective measures to implement the order.

The High Court of Kerala also issued a path-breaking judgment by banning smoking in public places in the state of Kerala. In **Ramakrishnan v. State of Kerala, 1999** the petition is highlighting the public health issue of the danger of passive smoking and in which prayers are made to declare that smoking of tobacco in any form, whether in the form of cigarette, cigar, beedies or otherwise in public places is illegal, unconstitutional and violative of Article 21 of constitution. In this petition the plaintiff demanded to declare smoking as a criminal public nuisance under the Indian Penal Code. The High Court of Kerala urged the Government of India to fulfill its obligations under pre-FCTC WHO resolutions. While the court declined to order the government to enact conforming legislation, it declared smoking in public a punishable offense in Kerala and concluded that smoking in public violated the right to life guaranteed under Article 21 of the Constitution of India. In another case of **Love Care Foundation v. Union of India, 2013** the problem regarding attractive packaging is raised. A non-governmental organization seeking to reduce smoking among Indian youths petitioned the Indian government to adopt plain packaging of tobacco products. The organization argued that attractive packaging is a form of advertisement and sought a rule prohibiting the use of logos, colors, or brand names on tobacco product packaging. After reviewing evidence supporting the impact of a tobacco plain packaging law in Australia and a study of plain packaging in Brazil, the court concluded that plain packaging and health warnings reduce the ability of attractive packaging to mislead consumers about the harms of smoking. The court urged the Indian Government to consider the feasibility of implementing the plain packaging of cigarettes and other tobacco products as early as possible. In case of **Ruma Kaushik v. Union of India, 2006** A public interest lawsuit was filed against the Government of India seeking the issuance of pictorial health warnings on tobacco products, as required by India's omnibus tobacco control law. The court ordered the government to either submit the prototypes of specific warnings or to appear before the court indicating why it should not initiate contempt of court proceedings against the government based on the lengthy delay in developing the warning labels. Subsequent to the decision, the government issued a notification providing for health warnings. In **Naya Bans Sarv Vyapar Association v. Union of India, 2012** this judgment of the Delhi High Court, an association of

tobacco wholesalers challenged certain provisions of the Cigarettes and Other Tobacco Products Act 2003 (COTPA) which banned the selling of tobacco products within a 100 yard radius of any educational institution. The wholesalers sought an exclusion of their wholesale trade from the law because their business would not be a danger to young people buying tobacco. While highlighting the public health need for COTPA, the court dismissed the petition, holding that the sale of tobacco products, whether in wholesale or in retail, near the educational institution has the potential of attracting the students so both type of tobacco sellers should be equally restricted. In another case of **Anurag Kashyap v. Union of India, 2014** The makers of an Indian film challenged the rules issued under the Cigarettes and Other Tobacco Products Act (COTPA) requiring a static anti-tobacco health warning at the bottom of the screen during the time that tobacco products are displayed in the film. The filmmakers argued that the health warning would unnecessarily disturb the viewers' attention and destroy the enjoyment of the movie. The court denied the filmmakers' request, noting that granting a stay of the advertising rules would interfere with the government's implementation of the rules.

Implementation of Government's action- Indian Government has been very conscious of the harmful effects of tobacco use. The primary plan of the Government for tobacco control is to impart comprehensive information to the population about the ill effects of tobacco use. Public education is an integral part of the efforts to both prevent initiation of tobacco use and encourage tobacco cessation. Efforts made by the Government for educating the community have shown a positive impact on reduction of tobacco use. But the efforts of the Government for tobacco control should only be regarded as steps which make the beginning of a national effort to deal effectively with an active menacing threat to health and development. The ministry of health and family welfare initiated a helpline number to register a complaint in case of smoking law violations. People can dial the number and register their complaints. Under COTPA there is a provision of forming separate smoking zones in Hotels, restaurants, pubs and airports. Under the provisions of the Act police constables in some conditions, state food and drug officers, district health society, CMO etc has the power to take action in case of violation. If the provisions of the Acts and the guidelines of the Governments will properly be implemented then it will be much easier to prohibit smoking.

Conclusion and Suggestions – Tobacco use is a serious public health challenge in several regions of India. To curb down the ratio of tobacco use the Government has enacted various legislations and policies. But proper

implementation of these Anti tobacco Laws has yet to be done. Times of India reported that from October 2nd 2008, when the rule to prohibit the smoking has been come into force there in UP, no complaint has been recorded in relation to prohibit the use of tobacco. So it can be assumed that the Anti Tobacco Laws become inadequate to create any impact upon tobacco consumption in India especially in UP. To implement these laws properly we need to know the merits and demerits of the enactments, actions and policies and the procedural mechanism followed to restrict the use of tobacco products. The menace of tobacco can be countered and diminished in many ways, if there is a political will and collective societal commitment to strengthen tobacco control in India. Some suggestions are as follows:-

- To ensure effective enforcement of existing Laws.
- To provide a clear definition of the word 'public place' in COTPA.
- Effective enforcement of a comprehensive ban on the advertisement and promotion of tobacco products.
- Strict ban on the sale of tobacco products to and by minor.
- Rigorous enforcement of prohibition on smoking in public places.
- The Government offices at district and tehsil level to fulfill the guidelines issued by the Government.
- It is also essential to know the registration process of a complaint and the procedure followed after registration of a complaint.
- To reduce the consumption of tobacco it is necessary to focus on rural areas by increasing public awareness about the harmful effects of tobacco and about the penal provisions of the legislation.

[1]. 2002 SC 40

[2]. AIR 1999 Ker 385

[3]. 1995 SCC (3) 42

[4]. 1980 Cri LJ 1075.

[5]. 1998 (4) SCC