

INDOOR AIR POLLUTION AND INCIDENCE OF TOBACCO SMOKING IN THE UNION TERRITORIES OF JAMMU & KASHMIR IN INDIA

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ABSTRACT

The territory of Jammu and Kashmir (J&K) in India consumes tobacco and becoming the 'smoke capital' of north India due to the massive generation of indoor pollution. There is a high incidence of obstructive pulmonary disease and mouth cancer despite WHO Framework Convention on Tobacco Control (WHO FCTC), 2012 in force. The Government has restricted the smoke and smokeless tobacco items to prevent cardiovascular diseases under the *Cigarettes and Other Tobacco Products Act (COTPA), 2003, National Tobacco Control Program (NTCP), 2008, Cigarettes and Other Tobacco Products Rules (COTPR), 2009, Prohibition of Electronic Cigarettes (Production, Import, Export, Sale, Distribution, Storage and Advertisement) Ordinance, 2019*. The J&K State enacted the *J&K State Prohibition of Smoking Cinema and Theatre Halls Act, 2009*, and adopted the *National Tobacco Control Program (NTCP), 2016*. However, even though laws are in place, these steps' effectiveness always remains a matter of grave concern. The paper examines the efficacy of Article 5.3 of WHO-FCTC, 2012 in Indian public health laws and policies and Jammu and Kashmir.

KEY WORDS : Tobacco consumption, Indoor Air Pollution, WHO Framework, Public Health Laws, Jammu, and Kashmir.

INTRODUCTION

The consumption of tobacco as smoke contributes significantly to indoor air pollution and passive smoking. The smokeless use of tobacco is a significant public health concern globally and nationally. The hazard associated with smoking causes chronic obstructive pulmonary disease (COPD), including emphysema and chronic bronchitis (WHO, 2008). India is the second leading country 28.6% of its populace consumes tobacco. The prevention and control of smoking proceeded with the international and national laws and policies in the spectrum of public health (Jindal *et al.*, 2006). WHO Framework Convention on Tobacco Control (WHO-FCTC), 2012 under Article 5.3 enjoins the executive, legislative and judicial branches of Government for compliance and implementation (Thakur, 2007). India passed the *Cigarettes Regulation*

of Production, Supply and Distribution Act, 1975; Cigarettes and Other Tobacco Products Act (COTPA), 2003 and Prohibition of Electronic Cigarettes (Production, Import, Export, Sale, Distribution, Storage and Advertisement) Ordinance, 2019 to fulfill the mandate of WHO-FCTC, 2012. Through Ramakrishnan and Deora cases, the judiciary extensively safeguarded the health of smokers and non-smokers in the context of indoor and outdoor air pollution (Nomani, 2004). The J&K State passed the *Prohibition of Smoking Cinema and Theatre Halls Act, 2009*, and adopted the *National Tobacco Control Program (NTCP), 2016*, at the divisional and district levels besides enforcement of COTPA, 2003 (Nomani *et al.*, 2019a). The paper examines the legal policies for preventing and controlling tobacco in preventing indoor air pollution in Jammu and Kashmir's territory.

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MATERIALS AND METHODS

The materials and methods applied for the study include the *WHO Framework Convention on Tobacco Control (WHO-FCTC)*, 2012, which the achievement of the Convention's goals and objectives in terms of Article 5.3 public health policies from the commercial and other vested interests of the tobacco industry (WHO, 2012). The norms and standards of WHO-FCTC, 2012 legally establishes international and national mechanism (Nomani *et al.*, 2020a). It also pervades India and Jammu's indoor and outdoor air pollution control enactments (Taylor *et al.*, 2000). The regulatory obligations for tobacco control are examined under the health law and human rights imperative law (Nomani *et al.*, 2020b). It often creates daunting challenges for Tobacco control in India in sustained enforcement of the legal framework (Jandoo *et al.*, 2008). The national framework replicated under the center-state national framework requires a novel understanding of tobacco control's context-specific needs in the state (Nomani *et al.*, 2020c). The present study partakes the tobacco control laws and policies in Jammu and Kashmir's districts' empirical framework.

RESULTS

The use of tobacco use in India is a significant public health matter having a pernicious impact on the human body. There are 6,000,000 people killed every year owing to tobacco-related diseases worldwide. The consumption of tobacco historically perpetuated and household practices in India. That is why India is second in the tobacco-producing and consuming

nation in the world. The Union Territory of Jammu and Kashmir ranks among the four Indian States with massive tobacco and chronic obstructive pulmonary diseases (Panda *et al.*, 2012).

Indian Tobacco Laws and Policies: India has been conscious of tobacco consumption's public health outcomes and menace. It adopted a slew of legislative reform under the international legal framework and judicial incorporation of precedents (Nomani *et al.*, 2020d). The first enactment dealing manifested under the *Cigarettes Regulation of Production, Supply and Distribution Act*, 1975, with the statutory warning 'cigarette smoking is harmful to your health.' The legal condemnation addressed the cigarette packs and excluded non-cigarettes commercialization (Figure 1). After that, the problem was addressed peripherally under the *Air (Prevention and Control of Pollution) Act*, 1981 and the *Motor Vehicles Amendment Act*, 1988 (Corrao *et al.*, 2000).

The regulation of non-cigarettes tobacco was addressed under the *Drugs and Cosmetics Act*, 1940 and *Prevention of Food Adulteration Act*, 1955 in abey form (Kaur *et al.*, 2011). The advertisement and commercialization of tobacco were restricted under the *Cable Television Networks Amendment Act*, 2000 (GOI, 1994). The legal strategy was clamped by the Indian Ministry of Health and Family Welfare (MoHFW), under (NTCP) the *National Tobacco Control Program (NTCP)*, 2008. The NTCP, 2008 is in furtherance to fulfill WHO-FCTC, 2012 obligations across the nation, States, and Union Territories (GOI, 2008). The policy perspective reflected under the J&K State passed *Prohibition of Smoking Cinema and Theatre Halls Act*, 2009 and adopted the *National*

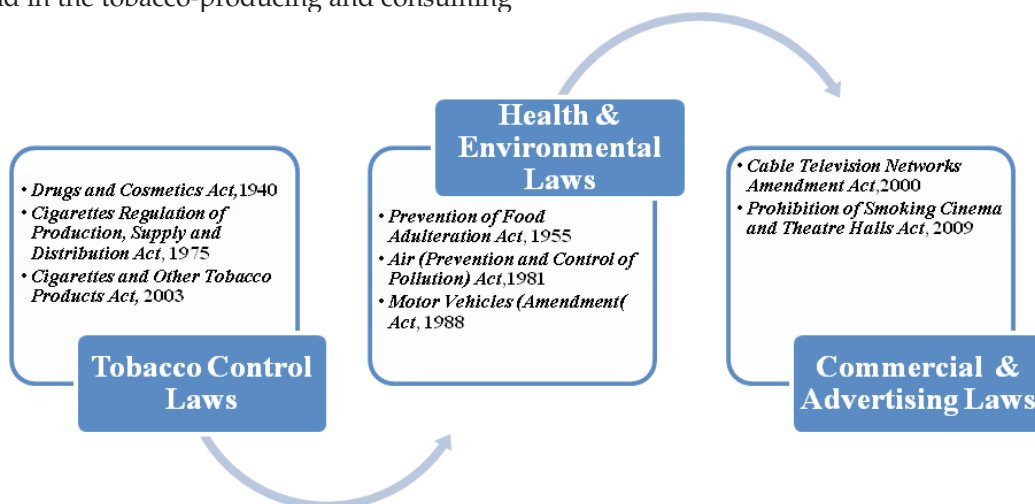


Fig. 1. Tobacco Laws In India At A Glance

Tobacco Control Program (NTCP), 2016, at the divisional and district levels.

Judicial Intervention & Outcomes: Besides the legislative initiatives, judicial intervention filled the significant gaps in implementing the country's tobacco control laws. In *Laxmikant v. Union of India*, the Court upheld an earlier decision prohibiting using any amount of tobacco in toothpaste or tooth-powders (Laxmikant, 1997). The pernicious tendency leads to extreme hardship and injury to the citizens and negates decent living and a pollution-free atmosphere under article 21 of India's Constitution, 1950 (Nomani, 2000a). In *K. Ramakrishnan v. State of Kerala* (Ramakrishnan, 1999), the Kerala High Court invoked the land's constitutional and criminal law to prevent public smoking. According to the Court, 'the continued omission and inaction on the part of the Government to comply with the constitutional mandate to protect life subsumes the baneful consequences of public smoking (Figure-2). Moreover, tobacco smoking in public places falls within the mischief of the "public nuisance" under Section 268 of the *Indian Penal Code*, 1860 and the *Air (Prevention and Air (Prevention and Control of Pollution) Act*, 1981 (Nomani *et al.*, 2020e).

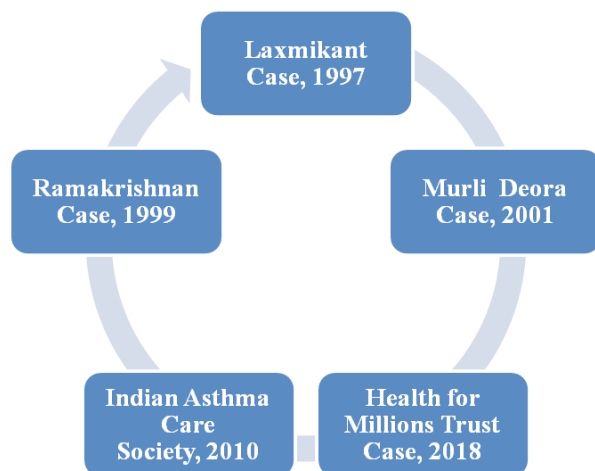


Fig. 2. Leading Decisions on Tobacco Laws In India

In a subsequent decision, the Supreme Court located the impact of public smoking on the passive smokers' right to life and dignity. In *Murli S. Deora v. Union of India* (Deora, 2001), the Court held that smoking in public spaces deprives the right to life of the non-smoker under Article 21 of the Indian Constitution, including the dangers of lung or heart cancer. The judgment protected the passive smokers, non-smoker from the harmful impact of tobacco and indoor and outdoor air pollution (Nomani, 2000b).

Efforts in the direction of tobacco control have been made by the apex court as well. The judgments delivered by the Court have had a significant influence on the governmental policies. In *Ankur Gutkha v. Indian Asthma Care Society*, the Supreme Court upheld the ban on non-smoking tobacco products (Gutkha, 2007). It prohibited the sale and gutkha manufacturing in various States and sought compliance reports (Nomani *et al.*, 2019b). The State Governments have not banned such sales and must file affidavits stating why they have not implemented a ban. Later on, in *Health for Millions Trust v. Union of India*, the Court directed that all tobacco products should display the mandatory pictorial health warning in the country (Trust, 2018) and rigorously implement the *Cigarettes and Other Tobacco Products Rules (COTPR)*, 2008.

Tobacco Control in Jammu and Kashmir: The *National Tobacco Control Program (NTCP)* started at the national level in 2008, but it became operational in the Union Territory of J&K in 2016. To ensure the successful enforcement of the *Cigarettes and Other Tobacco Products Act*, 2003 through the challan system (DHSK, 2020). As per the data available, 966 persons have been counseled, 79 challans have been issued under NTCP (Figure 3). The violators imparted training programs under the NTCP in various districts of the J&K (NTCP, 2019).

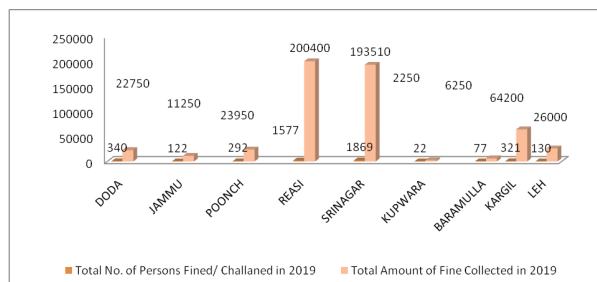


Fig. 3. Violation of Tobacco Laws In Jammu & Kashmir During 2019

Source: <http://crimebranchjkpolice.nic.in/docs/cotpa2019.pdf>

The Government of J&K has also banned loose cigarettes, loose beedis, and loose tobacco (J&K-HME, 2019). A complete ban on e-cigarettes has also been placed in the Union Territory (Economic Times, 2017). Despite all these measures and comprehensive legislation in place, consumption of Tobacco in UT of J&K has primarily remained unaffected, which has posed increased health risks for the populace (Nomani *et al.*, 2020f). Apart from

this, there are only two tobacco cessation centers functional in the Union Territory. The data also depicts that none of the tobacco users from district Bandipora and Pulwama counseled as of June 2019 (NTCP, 2019).

DISCUSSION

It is well established that tobacco causes chronic obstructive pulmonary disease (COPD), including emphysema and chronic bronchitis. It also leads to coronary artery disease, stroke, lung diseases, and diabetes. Tobacco smoking also raises the risk of tuberculosis, eye diseases, and immune system problems, such as rheumatoid joint inflammation.

Incidence & Prevalence Of Tobacco Induced Diseases: The Indian Council of Medical Research documented in the Health of the Nation's States Report about 3039 disability-adjusted life years (IHNSP, 2017). The loss of disability-adjusted life years lost to tobacco use in Jammu and Kashmir is highest amongst all the states in India (Moini *et al.*, 2020). The Health of Nation's States Report also figured out the national average of 2081 DALYs (Figure 4).

The prevalence rate for COPD in UT of J&K is 16-18% which is higher than the national average of 5-7%. The consumption import and sale has increased manifold in the Union Territory of J&K. These products are not structured according to federal tobacco laws and policies (GK, 2021). The ineffective implementation of the *National Tobacco Control Programme* launched in 2106 is evident because there are District Tobacco Control Cells only in two districts of Budgam and Jammu of the Union Territory of J&K and Ladakh (Nomani *et al.*, 2020g).

Impact of Judicial Policies on Indoor Air Pollution:

The Supreme Court verdict's beneficial impact in *Murli S. Deora Case* led to the *Cigarettes and Other Tobacco Products Act, 2003* and the consequent banning of smoking in public places throughout the country. This judgment repudiated the *Cigarettes Act, 1975*, and expedited public health and tobacco control measures in India. The *Cigarettes and Other Tobacco Products Act, 2003* declared tobacco product advertisement, smoking in public places, selling tobacco to minors, and smoking within 100 yards of educational institutions as an illegal activity. The Central Government has assumed the entire range of tobacco products and testing all tobacco items for their tar and nicotine content under its jurisdiction. The Central Government notified the *Cigarettes and Other Tobacco Products Rules, 2004*, amended in 2006, 2008, and 2009. Following Section 3(1) of the *Cigarettes and Other Tobacco Products Act, 2003*, the Ministry of Health and Family Welfare notified the *Prohibition of Smoking in Public Places Rules, 2008*. According to the Rule, the 'public place' means any place to which the public has access but does not include any open space. Smoking is prohibited in open areas visited by the public - like auditoriums, stadiums, railway stations, and bus stops. The notified rules mandated pictorial notices on tobacco product packages. The Central Government passed the *Prohibition of Electronic Cigarettes (Production, Import, Export, Sale, Distribution, Storage and Advertisement) Ordinance, 2019* to deal with the production, manufacture, import, export, sale, distribution, and advertisement of electronic nicotine delivery system.

Indoor & Outdoor Air Pollution in Smoking Zones:

The *Prohibition of Smoking in Public Places Rules, 2008*

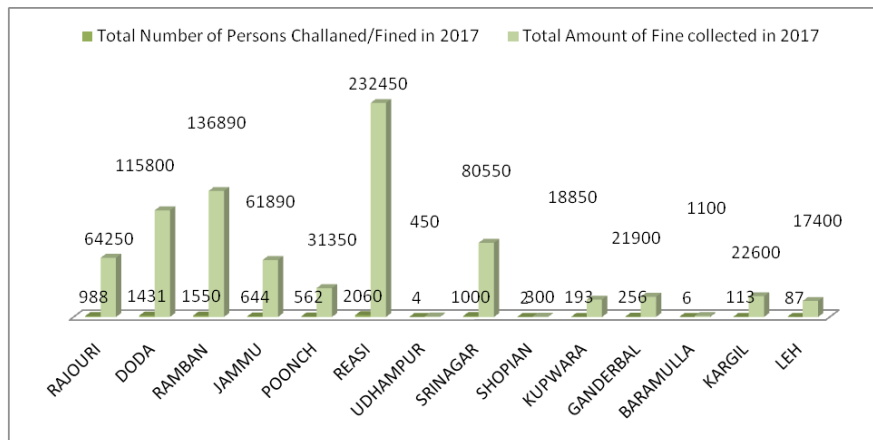


Fig. 4. Violation of Tobacco Laws in Jammu and Kashmir During 2017

Source: <http://crimebranchjkpolice.nic.in/docs/cotpa2017.pdf>

prohibits indoor and outdoor air pollution. That is why smoking is not permitted in auditoriums, stadiums, railway stations, and bus stops but excludes parking spaces, roads, open market places, parks, and private homes (Figure 5). It allows smoking in hotels with 30 rooms or more, restaurants or pubs with seating capacity for 30 or more persons, and at airports.

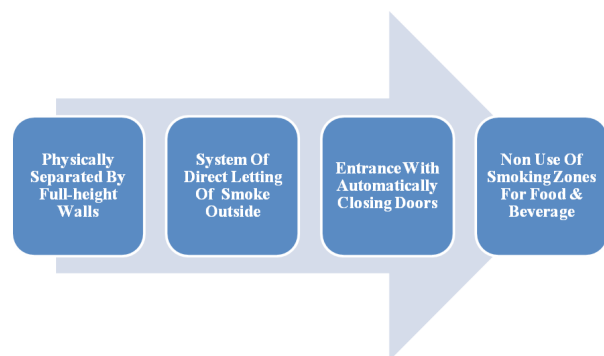


Fig. 5. Indoor and Outdoor Air Pollution Norm in Smoking Zones

The rules oblige the owner, proprietor, manager, supervisor, or in-charge of a public place's affairs to notify and display the persons' names. If the owner, proprietor, manager, supervisor, or the authorized officer of a general site fails to act on the report of such violation, the same then shall be liable to pay an acceptable equivalent to the number of individual offences. In addition to these safeguards, the Ministry of Health and Family Welfare started a Toll-Free Helpline No. 1800-110-456 to register complaints about smoking law violations in 2009. The police, State food and drug administration officers, district health society, representatives of panchayat raj institutions, chief medical officers at district-level, and civil surgeons levy a fine of Rs 200 and challan for the violation of the *Cigarettes and Other Tobacco Products Act, 2003* and *Prohibition of Smoking in Public Places Rules, 2008*.

CONCLUSION

India needs a robust legislative framework of tobacco control laws in the spectrum of the public health domain. The slew of reform suggested under Article 5.3 of the WHO FCTC calls for the new generation of tobacco rules and guidelines. It should also put forth practical steps for the consumer as well producers in smoke and non-smoke tobacco. The state has to stand compliant with the modern normative framework, and India rightly amended

and passed numerous legislation rules and notifications. The national policy should adequately reflect the state practices of the UT of Jammu and Kashmir. It should go beyond the legal limits of the *Prohibition of Smoking Cinema and Theatre Halls Act, 2009* and adopted the National Tobacco Control Program (NTCP), 2016. being stripped of the special constitutional status of Article 370, and the Government should now effectively enforce all national laws and policies. The J&K Government implemented a complete prohibition on the selling of loose cigarettes, loose bidis, and loose tobacco in the state under Section 7 of the *Cigarettes & Other Tobacco Products Act, 2003* in May 2016. there is ample scope of education and awareness about the health risks associated with tobacco consumption.

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