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**Report on**

**WEBINAR ON “SENSITIZATION OF JUDICIAL OFFICERS  
ON EFFECTIVE IMPLEMENTATION OF COTPA, 2003”**

**Held on:** 30<sup>th</sup> January, 2021

**Organised by:** Rajasthan State Judicial Academy, Jodhpur

**In Association with:**

Shikshit Rojgar Kendra Prabandhak Samiti (SRKPS), Jhunjhunu  
(Rajasthan)

**Resource Person(s):**

- Dr. Amit Yadav, Sr. Technical Advisor, International Union against Tuberculosis and Lung Disease (“The Union”)
- Mr. Narendra Singh, State Consultant, State Tobacco Control Cell, Rajasthan
- Mr. Ranjit Singh, Advocate, Supreme Court of India
- Dr. Pranay Lal, Sr. Technical Advisor, The Union
- Mr. Shubham Shandilya, Research Scholar, RSJA

**Report prepared by:** Shubham Shandilya (Research Scholar)

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- Objective of Rajasthan State Judicial Academy is to educate and sensitize its officers and other stake holders about the latest laws and procedure to achieve the constitutional mandate of securing the “Rule of Law”.
- With the restrictions on physical gathering due to the spread of novel coronavirus, the innovations in technology have come to aid us in our ever going quest for knowledge. Through the use of softwares and advancement of computer technology, it is possible to continue imparting knowledge through webinars.
- Making full use of the advances in the field of technology and keeping up with its constitutional mandate in mind, The Rajasthan State Judicial Academy on **30<sup>th</sup> January, 2021** organized a **Webinar on “Sensitization of Judicial Officers on Effective Implementation of COTPA, 2003”** at **4.30 pm**, which was presided over by **Dr. Amit Yadav**, Sr. Technical Advisor, International Union against Tuberculosis and Lung Disease (“The Union”); **Mr. Narendra Singh**, State Consultant, State Tobacco Control Cell, Rajasthan; **Mr. Ranjit Singh**, Advocate, Supreme Court of India; **Dr. Pranay Lal**, Sr. Technical Advisor, The Union and **Mr. Shubham Shandilya**, Research Scholar, RSJA.
- The webinar was conducted under the aegis and guidance of **Hon’ble Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy)**, under whose able leadership the series of webinars for providing in-service training to the Judicial Officers of the State of Rajasthan was envisaged and implemented. His Lordship also graced the webinar with his presence.
- The webinar saw a participation of 76 Judicial Officers (Civil Judge and Judicial Magistrate) from the Batch of 2017 across the various Judgeships of the State of Rajasthan.
- **Ms. Reshma Khan [Deputy Director (Admin.), Rajasthan State Judicial Academy]** welcomed **Hon’ble Mr. Justice Sandeep Mehta** (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy); **Dr. Amit Yadav**, Sr. Technical Advisor, International Union against Tuberculosis and Lung Disease (“The Union”); **Mr. Narendra Singh**, State Consultant, State Tobacco Control Cell, Rajasthan; **Mr. Ranjit Singh**, Advocate, Supreme Court of India; **Dr. Pranay Lal**, Sr. Technical Advisor, The Union and all the participants on the webinar.
- The webinar subsequently began with the deliberations by the Resource Persons.

### **Brief Overview of COTPA, 2003**

Mr. Shubham Shandilya, Research Scholar, RSJA

- The Resource Person stated that there are various laws and legislations for tobacco control in India; The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 is one of them.
- In order to deal with the enormity of the health hazards caused by tobacco in India, progressively stricter regulation of tobacco products have been introduced, starting with the **Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975**, which included provisions that made it mandatory to display a statutory warning “Cigarette smoking is injurious to health” on all packages of cigarettes and in all advertisements.
- Tobacco control measures find ample support in the constitutional provisions, such as, fundamental right to life or health (Article 21), responsibility of the Government to direct its policy towards securing, tender age of children and giving them opportunities to develop in a healthy manner (Article 39 (e) & (f)) and duty of the Government to improve public health (Article 47).
- The Hon’ble Supreme Court and various High Courts of the country have seen to it that COTPA is indeed implemented in its letter as well as in its spirit. It has been through the efforts of the judiciary that various laws concerning tobacco control have come into force or have been upheld. The impact that the Indian Judiciary has had on various facets of COTPA includes:
  - ❖ Ban on public smoking

- ❖ Protection of minors
  - ❖ Ban on advertising, promotion and sponsorship
  - ❖ Pictorial health warnings
  - ❖ Ban on smokeless tobacco in toothpaste
  - ❖ Ban on sale of smokeless tobacco in plastic sachets
  - ❖ Regulation of contents of tobacco products
  - Rajasthan is the first state which has constituted a State Tobacco Control Cell, under the Directorate of Medical & Health, for tobacco control.
  - The Hon'ble Rajasthan High Court applied 'polluter pays' principle on a gutka manufacturer responsible for creating plastic waste and imposed exemplary damages while restraining the manufacturers of gutka and pan masala from selling their products in plastic sachets in **Indian Asthma Care Society v. State of Rajasthan and Others, CWP No. 1966/2003**.
  - Specific to Smokeless Tobacco (SLT) use, the Hon'ble Rajasthan High Court (Jaipur Bench) in **Kastoori Udyog and Others v. The Union of India and Others, Civil Writ Petition No. 3354 of 1993** upheld the Central Government's Notification that prohibited the use of tobacco in toothpastes/tooth powders under the Drugs and Cosmetics Act, 1940. On appeal, this was also upheld by the Hon'ble Supreme Court in **Laxmikant v. The Union of India and Others, 1997(4) SCC 739**.
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### **Burden of tobacco epidemic and its health and human cost: FCTC and Mpower**

Dr. Amit Yadav, Sr. Technical Advisor, The Union

- The Resource Person stated that the WHO Framework Convention on Tobacco Control (WHO FCTC) is the first global health treaty under the auspices of the World Health Organization. The treaty was unanimously adopted by 192 nations at the World Health Assembly (WHA) on 21<sup>st</sup> May 2003.
  - India was the 8<sup>th</sup> Country that ratified the FCTC and is now a party to the Convention and therefore, has to implement all the provisions of this international treaty.
  - The Resource Person stated that the FCTC calls for an effective, appropriate and comprehensive response against the global tobacco epidemic. One of the obligations under the FCTC is to protect public health policies from commercial and other vested interests of the tobacco industry.
  - The core demand reduction provisions and the relevant articles under FCTC concerning the same were also discussed with the participants. The Resource Person explained the guidelines adopted for effective implementation of FCTC to the participants.
  - The discussion then moved on to MPOWER Strategies. The WHO FCTC and its guidelines provide the foundation for countries to implement and manage tobacco control. To help make this a reality, WHO introduced the MPOWER measures which correspond to one or more articles of the Framework Convention, to assist in reducing the demand for tobacco products at country-level. The six components of MPOWER are:
    - **M**onitor tobacco use and prevention policies
    - **P**rotect people from tobacco smoke
    - **O**ffer help to quit tobacco use
    - **W**arn about the dangers of tobacco
    - **E**nforce bans on tobacco advertising, promotion and sponsorship
    - **R**aise taxes on tobacco
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## National Tobacco Control Programme: Status in Rajasthan and support needed from Judiciary

Mr. Narendra Singh, State Consultant, State Tobacco Control Cell, Rajasthan

- As the implementation of various provisions under COTPA lies mainly with the State Governments, effective enforcement of tobacco control law remains a big challenge. To strengthen implementation of the tobacco control provisions under the COTPA and the policies of tobacco control mandated under the WHO FCTC, the Government of India piloted the National Tobacco Control Programme (NTCP).
- The Resource Person explained the State Government's commitment through the Jangoshna Patra and Budget Announcements. **Nirogi Rajasthan Abhiyaan**, introduced in the last state budget, was also explained to the participants.
- The key components of the National Tobacco Control Programme were also explained to the participants, which includes:
  - ❖ Awareness building about ill effects of tobacco products
  - ❖ Implementation of key provisions of COTPA, 2003
  - ❖ Tobacco cessation
- The major activities including the various training programmes, school awareness programmes etc. carried out by the State Tobacco Control Cell were also explained to the participants.

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### Role of judiciary in advancing tobacco control in India

Mr. Ranjit Singh, Advocate, Supreme Court of India

- The Resource Person explained the various instances of judicial overview to ensure tobacco control in India. The development of Tobacco Control laws in India have largely been through PILs. The Indian Courts have been very active in ensuring that the society remains "tobacco free".
- The Indian Judiciary's role in supporting regulation of tobacco use and trade is noteworthy. Since the 1990's there have been several instances of judicial interventions, starting from an appeal against a notification by the Government of India imposing total prohibition on the use of tobacco in the preparation of tooth-powder and tooth-paste, under the Drugs and Cosmetics Act, 1940. The Hon'ble Supreme Court of India held, the imposition of a total ban of tobacco in such products was in the public interest. [**Laxmikant v. Union of India and Others (1997) 4 SCC 739**]
- Judicial pronouncements have played an important role in deciding the tide of tobacco control in the Southeast Asia Region. As a tool for social and policy change, litigation has been effectively used in the region to attain the public health objectives of tobacco control.
- The Hon'ble Supreme Court subsequently, in a public interest litigation preferred against inaction of the Government in regulating the use of tobacco, directed the Union of India, State Governments as well as the Union Territories to take effective steps to ensure smoking is prohibited in public place, since smoking in public place is violation of a non-smokers fundamental right to life guaranteed under Article 21 of the Constitution of India. [ **Murli S. Deora v. Union of India and Ors, (2001) 8 SCC 765**]
- In 2013, the Hon'ble Supreme Court in an appeal preferred against the orders of Bombay High Court staying the operation of COTPA Rules on advertisement and promotion of tobacco products, observed: [**Health for Million v. Union of India & Ors. (Civil Appeal No. 5912-5913/2013)**]

*"The consumption of tobacco and tobacco products has huge adverse impact on the health of the public at large and, particularly, the poor and weaker sections of the society which are the largest consumers of such products and that unrestricted advertisement of these produces will attract younger generation and innocent minds, who are not aware of grave and adverse consequences of consuming such products. We have no doubt that the Central Government and*

*the State Governments across the country are alive to the serious and grave consequences of advertising tobacco and various products manufactured by using tobacco. They know that the consumption of these products will result in rapid increase in the number of cancer patients and huge proportion of the Budget earmarked for health of the common man will have to be used for treating the patients of cancer.”*

- Further, the Hon’ble Delhi High Court dismissed petitions of wholesalers seeking exemption from application of Section 6(b) of COTPA, 2003 and ordered costs against the petitioners in **Naya Bans Sarv Vyapar Association v. Union of India and Ors, W.P. (C) No. 7292/2011 and W.P.(C) No. 4392/2012.**
- The courts in India have issued several directions against advertisements, promotion and sponsorships by the tobacco industry. The Gujarat State Road Transport Corporation and Ahmedabad Municipal Transport Services were directed by the Hon’ble Gujarat High Court to remove the advertisements of gutka and/or pan masala displayed on the public transport vehicles. [**Amarsinh Z Choudhari v. Union of India, Special Civil Application (SCA) /4848/2009/2**].
- The session concluded after discussing the various challenges in tobacco control, some of them include:
  - i. Sale of loose cigarettes (Single sticks), which makes it very affordable for consumption.
  - ii. Cigarette packages are found in contravention of the specifications by the legislation.
  - iii. Illicit trade in black market of tobacco products.

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### **Vendor Licensing- History and Experiences from States in India**

Dr. Pranay Lal, Sr. Technical Advisor, The Union

- The Resource Person explained the licensing procedure of tobacco and stated that the procedure for procuring tobacco licenses should be at par with alcohol licenses, so as to curb the production and consumption of tobacco products.
  - The current status of vendor licensing and the essential conditions of a vendor license for manufacturing, marketing, storage, packaging, processing of any tobacco products in various states of India was also explained to the participants.
  - The Resource Person also enlightened the participants on the concept of Tobacco Free Generation (TFG), which basically provides a bold path forward that can cut tobacco use rates dramatically and provide the children and youth a lifetime of protection from tobacco-related diseases, and eventually phase out the use of tobacco. TFG advocates a policy or legislation that precludes sale and supply of tobacco to individuals born after a certain year.
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- The webinar concluded with a vote of thanks by **Mr. Rajan Choudhary, Chief Functionary, Shikshit Rojgar Kendra Prabandhak Samiti (SRKPS)** thanking Hon’ble **Mr. Justice Sandeep Mehta (Judge, Rajasthan High Court and Chairman, Rajasthan State Judicial Academy)** for His Lordship’s guidance in conducting the webinar. **Chief Functionary (SRKPS)** further extended his most sincere gratitude to **Mrs. Nandini Vyas (Director, RSJA); Dr. Amit Yadav, Sr. Technical Advisor, The Union; Mr. Narendra Singh, State Consultant, State Tobacco Control Cell, Rajasthan; Mr. Ranjit Singh, Advocate, Supreme Court of India; Dr. Pranay Lal, Sr. Technical Advisor, The Union and Mr. Shubham Shandilya, Research Scholar, RSJA** for imparting their valuable knowledge with regards to **Effective Implementation of COTPA, 2003.**
  - The webinar concluded after expressing the most sincere gratitude to all the participants for making the webinar an interactive and fruitful discussion.
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