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WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

GLOBALISATION AND HEALTH LAWS:
IN THE LIGHT OF RISING SMOKING
AT PUBLIC PLACES

AUTHORED BY - MS. MADHVI CHOPRA

Abstract:

The Globalisation has many implications for health, presenting both risks and opportunities. The Challenge is to maximize the benefits and minimize the harm of globalisation, keeping the questions of human rights and equality firmly in view. On the one hand states are forced to co-operate to solve their problems; this applies to health, peace, the environment and knowledge. On the other hand there is a trend towards subsidiary or the principle of devolving power of decision-making to the lowest possible levels. Many areas of public policy that were considered to be national now spill across borders and are global in reach and impact. Foreign policy makers must therefore broaden their horizons when devising policies aimed at national interests.

Various laws have been made by Indian Government to protect the right to health of people. This right includes improvement of all aspect of environment; working conditions and industrial hygiene; prevention and control of occupational, epidemic and other diseases. Some of them are as follows:- The Medical Termination of Pregnancy Act, The Pharmacy Act 1948, The Factory Act 1948, The Maternity Benefit Act, 1965, The Pre-natal Diagnostic Techniques Act. , The Prevention of Food Adulteration Act, 1954, The Consumer Protection Act, 1986, The Environment Protection Act, 1986, The Water Pollution (Prevention and Control) Act, 1972, The Air Pollution (Prevention and Control) Act, 1974, The Transplantation of Human Organs Act., The Mental Health Act, 1987, The Drug and Cosmetics Act, 1940, The Narcotic Drugs and Psychotropic Substances Act., The Insecticides Act.

Government of India is now debating whether to increase the dimensions of the frightening picture on cigarette packets. Limiting our attention to enlarging them and thereby their potential to scare may not be enough. Experience and the latest figures tell us that despite horrific images a great deal of tobacco still goes up in smoke. The real fight against tobacco lies elsewhere. According to the most

recent edition of the Tobacco Atlas, smoking rates for men in India have shown a marginal decline, while the number of women smokers has registered as increase. When it comes to mapping the incidence of cancers of the mouth, head and neck.

The Globalisation: an Overview

The term "globalisation" is used to describe a variety of economic, cultural, social, and political changes that have shaped the world over the past 50-odd years, from the much celebrated revolution in information technology to the diminishing of national and geo-political boundaries in an ever-expanding, transnational movement of goods, services, and capital. The increasing homogenisation of consumer tastes, the consolidation and expansion of corporate power, sharp increases in wealth and poverty, the "McDonaldisation" of food and culture, and the growing ubiquity of liberal democratic ideas are all, in one way or another, attributed to globalisation.

Globalisation is the increasing interconnectedness of our world. This interconnectedness have been happening since the beginning of time but has rapidly accelerated since the 1950s. Many scholars define globalisation as the shrinking of 'time' and 'space'. In other words, connecting with people takes less time than ever before and moving from one space to another (e.g. around the world) is faster than ever before. The aim of globalisation is to increase the connection between the world, to increase its efficiency and productivity and ultimately make a better world for everyone.

➤ **Dimensions of Globalisation:**

There are four dimensions of Globalisation: (a) National state system, (b) World capitalist economy, (c) World military order and, (d) International division of labor. All the four interact with each other –and influence the globalisation process. The free global market economy gave new life to health services.¹

On the whole this system has worked well. Unfortunately, large scale blemishing has threatened to undermine this system. Globalisation has its own merits for developing nation's i.e.

- Free flow of trade and commerce.

¹ Benatar SR, Gill S, Bakker I, *Global health and the global economic crisis*, Am J Public Health, 2011 Apr;101(4):646-53. doi: 10.2105/AJPH.2009.188458. Epub 2011 Feb 17. PMID: 21330597; PMCID: PMC3052329.

- Easy and cheap availability of medicine, healthy business competition.
- The most rational and efficient allocation of resources can take place without government interference.
- Rapid economic growth.
- Free flow of goods and capital across national borders.
- Single integrated market leads to growth, efficiency and healthy competition in health sectors.
- Development and transfer of new technology.
- Provide better health services.

➤ **Implications of Globalisation:**

The Globalisation has many implications for health, presenting both risks and opportunities. The challenge is to maximize the benefits and minimize the harm of globalisation, keeping the questions of human rights and equity firmly in view. On the one hand states are forced to co-operate to solve their problems: this applies to health, peace, the environment and knowledge. On the other hand there is a trend towards subsidiary or the principle of developing power of decision- making to the lowest possible levels. Many areas of public policy that were considered to be national now spill across borders and are global their horizons when devising policies aimed at national interest.

Has the globalisation in any manner stood in the way of making health laws? If so, does it require any change? How current legal efforts for dealing with new and existing global challenge? Is globalisation limiting the governments' resources and policy options to confront health problems? Will globalisation ruin the governments' ability to prevent and control diseases? What are medicines? How is globalisation changing the relationship between property and health laws issues? Should we worry about democracy and governance in a globalized world? How appropriate current legal efforts are for dealing with new and existing global challenges?

Answer these questions, it is necessary to understand the dimension of globalisation. According to the Commission on Macroeconomics and Health (CMH)- There are at least three general notions of globalisation.

- First, globalisation refers to the multiplication and intensification of economic, political,

social, and cultural linkages among people, organizations and countries at the world level.

- A second dimension is the tendency towards universal application of economics, institutional, legal, political and cultural practices. The increase in the number and coverage of environmental treaties, and even the controversial possibility of cultural homogenization in the entertainment, food, and health habit.

- A third meaning of globalisation is the emergence of significant spillovers to the rest of the world coming from the behaviour of individual and societies. Examples include environmental issues such as cross-border pollution and global warming, financial crises and contagion, the global spread of HIV/AIDS and other diseases, and international crime.

These three notions are termed, in this paper, as “interactions”, “homogenization”, and “spillovers”. They combine in different degrees the main ideas that merge into the common notion of globalisation as deeper world integration, but it is useful to distinguish.

➤ **New Era in World Politics:**

Although there is much debate in academic and policy circles about the meaning of globalisation, the principal arguments supporting the idea that globalisation comprises a new epoch in world politics include the following:

- rapid economic transformation in which states are no longer closed units and cannot control their economies;
- electronic communications have fundamentally revolutionized our perceptions of the social groups we live and work in;
- a global shared culture is emerging;
- the world is becoming more homogeneous with differences between peoples diminishing;
- time and space seem to be collapsing with, for example, the speed of modern communications and the media;
- a global polity is emerging, which is characterized by transnational social and political movements;
- a cosmopolitan culture is developing—people are starting to “think globally and act locally”;

- a risk culture is emerging with the realization that many problems are global, and that states cannot deal with these problems on their own.²

➤ **Types of Globalisation:**

Following are the important types of globalisation,

- 1) **Political Globalisation-** Political Globalisation refers to the ripple effect and continuity of political relationships between countries. To facilitate increasing political globalisation many international organisations are designed such UN, NATO, WTO etc. which takes collective efforts to curb common problems worldwide.
- 2) **Economic Globalisation-** Economic globalisation unites several liberal, conservative and hybrid economies into one colossal interconnected marketplace. These markets are somewhat interdependent than independent and continuously influencing each other.
- 3) **Cultural Globalisation-** Cultural Globalisation refers to spread and mixing of cultures around the world. Arjun Appadurai talks about the possible effect of 'homogenization' of culture, where dominant nations like the United States spread their cultures through television and movies, which leads to the dilution and loss of local and indigenous cultures and the rise of a global culture³.

Cultural globalisation includes two concepts mainly, i.e. cultural adaptation, cultural diffusion.

- a) **Cultural Adaptation-** Cultural adaptation is the process of changing mind set or behaviours when moving into a new cultural state so you are capable of living within that culture.
- b) **Cultural Diffusion -** Cultural diffusion or cultural blending refers to the merging of different aspects of different cultures or the spread of one culture's norms to a different culture. This phenomenon typically occurs when any of three things happen:
 - i. One culture emigrates to another culture's land.

² Baylis, J., & Smith, S. (1997), *The globalization of world politics: An introduction to international relations*, New York: Oxford University Press.

³ Arjun Appadurai, *Modernity at Large: Cultural Dimensions of Globalisation*, Vol 1., U of Minnesota Press, 1996

- ii. Two or more cultures interact with one another through trade.
- iii. Two or more cultures regularly interact with one another due to other factors such as geographical proximity or travel.

Adverse impact of Globalisation:

Hierarchical diffusion is a type of cultural diffusion that occurs when influential structures in society encourage the adoption of certain new cultures or cultural aspects. Some of hierarchical diffusion's characteristics include:

- i. It spreads across social classes from top to bottom.
- ii. It extends from influential places to less influential areas.

Hierarchical diffusion results in cultural homogeneity within a culture. It also provides an inlet for adopting new cultural ideas in different cultures. However, some cultural aspects adopted by influential figures may be questionable, detrimental, or subvert existing cultural values.

For example- Smoking, in the early stages, smoking emerges first among high status groups, who are most open to innovations and have the resources to adopt them. During the middle stages of the process, smoking diffuses to the rest of the population.

➤ Pattern of Smoking Diffusion:

Due to the widespread flow of people, information and ideas, lifestyles also spread throughout the world, It is already widely acknowledged and demonstrated that several modern behavioural factors such as an unhealthy diet, physical inactivity, smoking, alcohol misuse and the use of illicit drugs are having a profound impact on human health. Individuals respond to the range of healthy as well as unhealthy lifestyle options and choices available in a community, which are in turn determined by global trend, economic development and social interactions.

First, a large literature on diffusion of innovations recognizes the tendency for high status persons to most quickly adopt new ideas and behaviours. The diffusion of the use of manufactured cigarettes, both a technological and cultural innovation follows such a status-based pattern. High status groups begin smoking earlier than the general public. Smoking spreads first within high status networks, but

later patterns of imitation lead to diffusion of the practice and normative change across classes and down the status hierarchy⁴.

Smoking: Adverse impact of Globalisation:

Talk to those associated with the cigarette industry and they will tell you that sales are up significantly in developing world: India, China and Russia are major markets. As incomes rise in India, men are switching from smoking bidis to cigarettes to mark their entry to a more affluent lifestyle. Similarly, young women are being lured to believe that smoking a cigarette signal their acceptance on equal terms at the work place. Smoking is rising among women because cigarettes are being marketed as signs of success. According to the most recent edition of the Tobacco Atlas, smoking rates for men in India have shown a marginal decline, while the number of women smokers has registered as increase. When it comes to mapping the incidence of cancers of the mouth, head and neck. Cigarette brands like Sobranie are laughing all the way to the bank as they offer young women with disposable income a style statement: Cigarettes in a variety of colours to match their outfits. This illustrates the point that smoking and tobacco use have less to do with logic but more to do with how we seek to define our roles and how we think society will perceive us. If one studies countries such as the US and Canada, where smoking rates have fallen perceptibly in last few decades, there is no disputing the fact that people have been pressured to give up smoking by using a number of methods. Grisly looking cigarette packs are less effective than audio visual aids that change the smoker's image from that of a romantic and admired figure to that of a loser and villain. The targeted audience, in such instances, includes three-year-olds who are read nursery tales in which the friendly dragon has given way to one who smokes and pollutes the atmosphere, threatening to choke the life out of anyone it meets. This change in role and image is reinforced outside the classroom is everyday life through legislation prohibiting smoking in public places as well as health-conscious individuals who ask smokers quite unabashedly not to smoke in their presence. No one feels awkward or guilty about doing this anymore as not only do they have the backing of the law and medical knowledge but, more importantly, widespread social sanction. Those who look silly instead are the smokers as they skulk about puffing on their sticks in a detestable haze of smoke. They have been banished physically to the outdoors and metaphorically to the side-lines of social discourse and the public imagination. The

⁴ Pampel FC, *Diffusion, cohort change, and social patterns of smoking*, Soc Sci Res. 2005 Mar;34(1):117-139. doi: 10.1016/j.ssresearch.2003.12.003. PMID: 22485056; PMCID: PMC3319442.

strutting hero who rides about with a cigarette dangling from his lip now looks both ludicrous and out of place. So successful has the war of perceptions been that a recent study undertaken in the US revealed that smokers diagnosed with lung cancer get little sympathy from family members or even from their caretakers. This is the lesson that we need to learn in India. Government of India is now debating whether to increase the dimensions of the frightening picture on cigarette packets. Limiting our attention to enlarging them and thereby their potential to scare may not be enough. Experience and the latest figures tell us that despite horrific images a great deal of tobacco still goes up in smoke. The real fight against tobacco lies elsewhere. It is all very well to make warning labels larger and pictures more graphic on cigarette and tobacco packers, but this is unlikely to lead a meaningful change in behaviour on its own. Ghastly pictures of the damage caused by tobacco have been shown over the years to a variety of age groups with little visible impact on the ground. What is needed instead is a subtle and imaginative campaign that seeks to engage with individuals and change social perceptions of tobacco users and nonusers from childhood onwards. This should be reinforced at all levels of society and in all settings with enforceable legislation. For the teenager the tobacco user should no longer be 'cool'-the convivial man or liberated woman who everyone wants to befriend. The preferred role model should instead be the non-user whose unstained teeth, clean breath, unbound energy, and superior performance act like a magnet for his or her peers. When it comes down to it, most of us want to play the role of the good guy or gal and avoid social opprobrium. Let us build on this need for approval and adopt strategies that will isolate the tobacco user and make him look both foolish and on the wrong side. Not a person to be hated but rather a pitiable creature who needs our support and encouragement to shake off an unfortunate addiction. It is far from clear if relying on gory images alone will accomplish this task. The viewer is more likely to switch off mentally. Instead, the effort should be to get tobacco users to reflect on how their choice of habit is negatively affecting their own self-image and how they are turning off other people with their second-hand smoke. The game changes when you see yourself as the bad guy in the eyes of other people, even if they don't express it in words.

Health and Smoking:

Due to globalisation, the restructuring of the health sector is needed. It has led to the college of health care. The main criticism of globalisation is that gap between rich and poor is increasing. Globalisation creates problem for governance of global health, including the need to construct international regimes

capable of responding to global threats to public health. Tobacco use is distinguished from many other health problems by the presence of an aggressive transnational tobacco industry whose goals are fundamentally incompatible with public health (WHO 2013). The rate of people dying from diseases associated with smoking is equivalent to 10,000 per day, more than the sum of deaths from guns, drugs, suicide, AIDS and car accidents. Additionally, there are definite health risks from passive smoking and smoking during pregnancy adversely affects foetal development. In June 2002, the International Agency for Research on Cancer concluded that involuntary smoking, that is exposure to second-hand or 'environmental' tobacco smoke, was toxic to humans.⁵ Numerous studies have concluded that exposure to second-hand smoking (SHS) or passive smoking is harmful to non-smokers. Given the devastating effects of tobacco on the cardiovascular, respiratory and other systems of the human body, combined with the dependence which is caused by nicotine, smoking is probably the more harmful factor for human health. Despite this, it is smoking tobacco is still common worldwide.

➤ **Globalisation and the Tobacco Industry:**

An increasingly globalised tobacco industry is acutely aware of the characteristics of globalisation. The huge tobacco multinationals are attempting to manipulate globalisation trends in their favour. In an increasingly globalised marketplace “mega mergers and acquisitions have dramatically changed the face of the worldwide cigarette industry”.⁶ Cigarette companies are looking for greater production volumes: “the more you produce the more profitable you are.” The tobacco industry's strategies are intimately linked with the idea of international brands. The industry recognises that in many areas “from advertising to quality standards, it is easier to control one brand than many different ones”.⁶ The industry looks towards the creation of new “global brands” and a “global smoker” as one way of overcoming markets which have resisted the tobacco industries onslaught. Globalisation has its limits. In India, for instance, earlier around 80 per cent of the population uses traditional tobacco products such as bidis or chewing tobacco and now this population attracted to global trends. Global brands are one way to accelerated this process and now the young generation don't want to smoke bidis or chew pan masala.

⁵ IARC Monographs on the Evaluation of Carcinogenic Risks to Human, *Tobacco Smoke and Involuntary Smoking*, Vol.83, Lyon France,2004

⁶ Crescenti MG, *The new tobacco world*, Tobacco Journal International, 3, 51(1998)

In other words, industry strategists are encouraging the homogenisation of the global tobacco industry and the creation of a new global shared culture enshrined in the concept of a global smoker. The global consolidation of the tobacco industry, a downside of the globalisation process, is an obvious vehicle for promoting the idea of global smokers and their global brands.

➤ **Necessity for Global health laws:**

Global health law has been defined as a “field that encompasses the legal norms, processes, and institutions needed to create the conditions for people throughout the world to attain the highest possible level of physical and mental health” Globalisation has increased the need for new, formalized frameworks for international cooperation, including international law, to address emerging global health threats. For example, the dynamics of globalisation have created fertile global breeding conditions for the cross-border spread of emerging threats to health, such as weapons of mass destruction, including bioterrorism; emerging and reemerging infectious diseases; and the vectors of non-communicable diseases including tobacco, alcohol, and obesity.⁷

In 1946, the United Nations Economic and Social Council convened an international conference to consider creating a single international U.N. health organization. By 1948 the WHO was created and its constitution ratified; the first World Health Assembly convened in June 1948.⁸ The WHO’s establishment marked a new era of international health diplomacy characterized by norms and standards. “Health for All” was the hope, and a right to health was a guiding ideal. Despite their moral appeal, however, these efforts were mostly rhetorical, in some cases concealing underlying motives of self- and national interest and a lack of political will at the global and domestic levels. The WHO’s vision of “Health for All” remains unfulfilled after sixty years. During this period, appeals to human rights and the right to health in particular have dominated international health discourse, but the human rights movement and the right to health especially have been viewed with considerable scepticism and doubt. Concerns abound over compliance with international human rights law and the effectiveness of human rights instruments in influencing state behaviour and non-state actors.⁹ No

⁷ Taylor AL, *Global Health Law: International Law and Public Health Policy*, International Encyclopedia of Public Health, 2017:268–81. doi: 10.1016/B978-0-12-803678-5.00238-1. Epub 2016 Oct 24. PMID: PMC7150305.

⁸ World Health Organization, (2007), *Working for health: an introduction to the World Health Organization*, Updated edition, World Health Organization, <https://apps.who.int/iris/handle/10665/44330>.

⁹ Hathaway, O. A. (2002), *Do Human Rights Treaties Make a Difference?*, The Yale Law Journal, 111(8), 1935–2042. <https://doi.org/10.2307/797642>.

normative theory has emerged during this time.

➤ **Foregrounds of Global Health Law:**

Our definition of global health law captures five salient features¹⁰, namely its: *mission*—ensuring the conditions for the public's health (meeting 'basic survival needs'); *key participants*—states, international organizations, private and charitable organizations and civil society; *sources*—public international law; *structure*—innovative mechanisms for global health governance; and *moral foundations*—the values of social justice, which call for fair distribution of health benefits to the world's most impoverished and least healthy populations.

➤ **Mission:**

The *mission* of global health law is to ensure the conditions necessary for the highest possible level of physical and mental health worldwide. To make a difference to the world's population, the international community should focus on what we call 'basic survival needs'. Basic survival needs focus attention on the major determinants of health, including functioning health systems, sanitation, clean water, uncontaminated food, safe products and services and access to essential vaccines and pharmaceuticals. Our definition posits that legal norms, processes and institutions can help create the conditions in which people can be healthy.

➤ **key participants:**

The *key participants* in a system of global health governance include the public and private sectors, together with civil society. National governments undoubtedly have, and will continue to have, primary authority and responsibility for the health of their people. However, as described above, multiple non-state actors increasingly affect the public's health nationally and internationally. Charitable organizations such as the Gates Foundation and Clinton Global Initiative, and public–private partnerships, such as the Global Fund and the International Finance Facility for Immunisation, provide resources for research, prevention and treatment. Nongovernmental organizations, such as Doctors Without Borders and Oxfam provide services on the ground. And civil society organizations, such as those working on AIDS, mental health or disability rights provide support and campaign for

¹⁰ Lawrence O. Gostin, Allyn L. Taylor, *Global Health Law: A Definition and Grand Challenges*, Public Health Ethics, Volume 1, Issue 1, April 2008, Pages 53–63, <https://doi.org/10.1093/phe/phn005>.

health reforms.

➤ **Source:**

The major *source* of global health law is public international law designed to protect world health. Because state sovereignty is very important in the international system, the subjects and the sources of international law have been traditionally narrowly defined. Public international law is primarily focused on the interactions of sovereign states and can broadly be characterized as the rules that govern the conduct and relations of states, including their fundamental rights, obligations and commitments. While states remain the primary subjects of international law, international organizations and, through the development of international human rights law, individuals, are now considered subjects of international law as well. In the future, international law may evolve to address multinational corporations and other non-state entities as direct subjects. Importantly, under existing international law, multinational corporations have, at times, been held accountable for gross violations of human rights, and some international instruments speak directly to corporations. Furthermore, international law and politics differ fundamentally from domestic law and politics. Although there is a wide and complex array of international legal sources, most international law today, including global health law, can be found in bilateral, regional or multilateral treaties. This treaty-based system bears little similarity to domestic statutes and regulations.

➤ **Global health governance:**

Global health law seeks innovative mechanisms for *global health governance*. Governance strategies include formal and informal mechanisms to promote health-producing behaviours and discourage harmful behaviours. Governance goes well beyond setting and enforcing hard legal norms for states to obey. Instead, governance involves creating incentives for a wide array of actors; setting priorities for the most cost-effective interventions; coordinating increasingly fragmented activities; mobilizing international aid and technical assistance; and stimulating research for new vaccines, pharmaceuticals and technologies. Scholars emphasize global health governance, rather than the prohibitory or regulatory products of 'government' because it allows easy movement across public/private boundaries of the state, markets, civil society and private life. Rather than a model of top-down social control, governance theory harnesses the creativity and channels the actions, ideas and resources of multiple actors that affect health.

Elsewhere, one of us has proposed a Framework Convention on Global Health (FCGH) as a model of innovative global health governance. The framework convention–protocol approach has considerable flexibility, allowing parties to decide the level of specificity that is politically feasible now, saving more complex or contentious issues to be built in later protocols. An FCGH would represent a historical shift in global health, with a broadly imagined global health governance regime. The initial framework would establish the key modalities, with a strategy for subsequent protocols on each of the most important governance parameters. An FCGH would incorporate a bottom-up strategy substantively focused on (i) building capacity, so that all countries have enduring and effective health systems, and (ii) setting priorities, so that international assistance is directed to meeting basic survival needs.

➤ ***Moral foundation:***

The *moral foundation* of global health law is justice. Consistent with the value of social justice, our definition of global health law suggests that the conditions for healthy populations should be distributed fairly across social, racial, gender, economic and geographic boundaries in all countries and regions. Justice does not require rigidly equal allocation of resources, but some fair measure of health protection for every human being. Social justice includes, but is not limited to, reduction in socioeconomic disparities within and among countries. Social justice's demand for fair distribution is grounded in an equal concern for all human beings. Allowing the world's poor and less powerful to suffer needlessly and die prematurely harms the whole community by eroding public trust and undermining social cohesion. It signals to those affected and to everyone else that the basic human needs of some matter less than those of others. Social justice thus calls for policies that promote human dignity for all members of the international community equitably.

Conclusion:

When the best science is backed by funding and legal instruments to assure safety and effectiveness, humanity can counter nature's greatest threats. But why did the world fail so abysmally to prevent the covid outbreak or control it before it produced so much suffering and death? The answer is a lack of preparedness across all levels of government, weak and underfunded national and global health institutions. The next global health tragedy can be averted; but to do we need to modify Global Health Law and take major steps accordingly. There are lot of health concerns need attention globally, the

control of tobacco use offers an excellent modern example of global health laws contributing to the creation of world citizens in an age of globalization. Harmonious interaction between globalisation and health may help revitalize the health areas and offer new avenues for developing countries as well as advance human well being in Globalised world. Understanding the history and the current state of global health law is essential for any global citizen. It can add perspective on the evolving health issues today occurring beyond national borders. As the world continues to become more aware of international health organizations' efforts, it can better defend the human right to health.

