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The WHO Framework Convention on Tobacco Control: The First Global Public Health Treaty

RAGHUVVEER YADAV¹

ABSTRACT

Being a United Nations Organization, the World Health Organization (WHO) has a constitutional mandate to initiate the development and facilitate the adoption of international treaties, such as a framework convention. It has always been the case that WHO promoted and encouraged countries to make national laws and regulations to control tobacco, but it was never before that it used its constitutional mandate for the same. It was the first time when the WHO used its constitutional mandate to facilitate the creation of an international framework convention with the sole and primary purpose to focus on this global health issue. The WHO Framework convention on Tobacco Control (FCTC) was the first ever International public health treaty and its only focus was the Tobacco Control. However, analysing the laws of India that were formulated soon after this treaty results into the realization that the laws made by Indian Legislature do go beyond the obligations set out in the WHO Framework convention on Tobacco Control (FCTC) adopted by the World Health Assembly. The WHO FCTC provides clearly prescribed conditions in key areas like on prohibition of smoking in public areas, ban on advertising of tobacco products, labelling and packaging and sale to minors. This paper highlights the value of the WHO FCTC and discusses its key provisions to control the usage of tobacco and enlightens about the obligations on the part of member states of WHO. Further, the paper analyses the importance and impact of this treaty.

Keywords: WHO FCTC, Tobacco Control, MPOWER, Global Public Health Treaty.

I. INTRODUCTION

The first ever International public health treaty set out by World health organisation is the WHO Framework Convention on Tobacco Control (WHO FCTC). It is an evidence-based treaty that reaffirms the right of people to the maximum standard of health. The WHO FCTC was developed by states in response to the globalization of the tobacco epidemic. It aims to address a few of the root of that outbreak, such as complex factors with cross-border impacts, like trade liberalization and direct international investment, tobacco advertising, marketing

¹ Author is a student at Manipal University, Jaipur, India

and sponsorship beyond domestic boundaries, and illegal trade in tobacco products.²

There was a huge need that all the states come together under an international community back then and tackle this global issue of tobacco and the World Health Organisation worked as a catalyst in the form of International Community for countries to come together and under the auspices of World Health Organization, negotiate and begin a collective war against the impending public health risk. The work on the WHO Framework Convention on Tobacco Control (WHO FCTC) started in 1996, when it was called by the 52nd World Health Assembly. It took 4 more assembly for this first treaty to be endorsed and finally on 56th World Health Assembly in 2003 endorsed this treaty and it came into force 90 days after the 40th ratification on February 27, 2005. The treaty plans a structure to reduce both the supply of and the demand of tobacco in the world. The WHO FCTC establishes that international law has a vital role in preventing disease and promoting health.³

II. OBJECT AND PURPOSE OF TREATY

A framework convention is an international legal instrument that implements progressive development of international law by establishing an overall method of governance for a particular matter. This treaty establishes a few general requirements for the member countries i.e. the countries who are member of WHO, regarding the steps and protection they need to take in furtherance of tackling the problem of tobacco. The basic provisions are provided in the treaty to initiate a global fight against the problem.

However, there are general requirements, the treaty does not provided specific rules and regulations to be enacted by the counties through their domestic legislation. The treaty simply provides the nature of legal, administrative, regulatory and other measures that need to be taken in accordance with the national law.

This treaty makes an obligation for the state parties to implement these general provisions into their existing laws, by modifying them or in absence, by developing and legislating new national laws which would reflect the commitments they have undertaken with respect to the Convention.

At the global perspective, particular commitments and institutional structures for implementing them could be embraced and developed through particular protocols that cover

²Overview of WHO FCTC: WHO FCTC

Available at http://www.who.int/fctc/WHO_FCTC_summary_January2015_EN.pdf Last assessed June 19, 2018.

³ Arora, M., Reddy, K. S., Stigler, M. H. & Perry, C. L. 2008. Associations between tobacco marketing and use among urban youth in India. *Am J Health Behav*, 32, 283-94.

a number of the major areas identified from the Convention. Therefore, the follow-up procedure involves activities both in the domestic and global perspectives.⁴

The object and purpose of the convention, as stated in Article 3 is “*to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke.*” The preamble of the treaty clearly marks its concern over the economic, social and environmental consequences of tobacco, where the parties express their serious concern “about the increase in the worldwide consumption and production of cigarettes and other tobacco products, particularly in developing countries, as well as about the burden this places on families, on the poor, and on national health systems.”⁵

It then notes the scientific Proof for the Injury caused by tobacco, the danger posed by advertisements and marketing, and illegal trade, And the requirement for concerted action to handle these issues. Other paragraphs of the preamble the function of civil society, and also the human rights which the Convention intends to support.

III. HISTORY OF THE WHO FCTC PROCESS

The World Health Organization Framework Convention on Tobacco Control (WHO FCTC) is the first public health treaty and its process of making, though not easy, marked a new landmark chapter in the public health history in the making. This treaty, being the first Public health treaty negotiated and drafted under the auspices of WHO, the WHO FCTC has given a completely new legal dimension to international health cooperative.

Till 1990s, the issue of tobacco has marked its presence in the international level and it became the public health problem of epic proportions that has caused the premature death of large number of people. The increasing number of smoking and other kinds of tobacco use was increasing globally and in 1998 it turned out that around 3.5 million human lives were lost and it was expected that there will be around 10 million yearly deaths till 2030, if the issue is not controlled. Out of there 10 million death, around 70% deaths are estimated to be

⁴ Reddy KS, Gupta PC. Report on Tobacco Control in India. Ministry of Health and Family Welfare, New Delhi, Government of India, 2004

⁵ U.S. Dept. Health & Human Services, Reducing Tobacco Use: A Report of the Surgeon General 194 (2000); see also WHO Framework Convention on Tobacco Control, adopted 21 May 2003, art. 3, available at <http://www.who.int/tobacco/fctc/text/final/en/> [hereinafter FCTC] (restricting advertising, promotion and sponsorship); see also WHO, Fatal Deception: The Tobacco Industry’s “New” Global Standards for Tobacco Marketing (2001), available at http://www.who.int/tobacco/media/en/fatal_deception.pdf (for a discussion of the tobacco industry’s interest in pursuing “voluntary advertising regulations”).

in the developing countries.⁶

It was **Ruth Roemer** and **Allyn Taylor's** idea that WHO's constitutional authority can be used to develop an international convention/treaty for the furtherance of public health globally and WHO FCTC came into picture in 1993 by the same two persons as they thought of tobacco control to be the field. Ruth Roemer proposed several options to WHO and recommended the convention-protocol approach conceptualized by them prior. WHO was hesitant at the initial stage and resisted this idea but with time, the approach gained wide acceptance.

It was on 1996, when finally the World Health Assembly voted to proceed with the development of this treaty. It took 4 more assembly for this first treaty to be endorsed and finally on 56th World Health Assembly in 2003 endorsed this treaty and it came into force 90 days after the 40th ratification on February 27, 2005.⁷ The treaty plans a structure to reduce both the supply of and the demand of tobacco in the world. The WHO FCTC establishes that international law has a vital role in preventing disease and promoting health.⁸

The WHO framework convention on tobacco control (WHO FCTC) is an international public health treaty drafted and negotiated to remove the issue of tobacco from the world and to reduce the number of deaths being caused by tobacco. However, it was adopted in 2003, India became the eighth country to ratify this treaty and become a part of this global fight against the tobacco on 5th February 2004. The approach embraced by this public health treaty World Health Organisation Framework Convention on Tobacco Control is evidence based which has proved to be effective towards reducing the tobacco consumption and in turn the deaths by the tobacco consumption. There are general requirements provided in the treaty and it does not provided specific rules and regulations to be enacted by the countries through their domestic legislation. The treaty simply provides the nature of legal, administrative, regulatory and other measures that need to be taken in accordance with the national law. Its main aim is to provide the basic framework of laws and measures which would encourage smokers and other tobacco users to quit it and discourage non-smoker and non-users for taking this habit and initiating with the consumption of tobacco.

⁶ Resolution WHA52.18, Towards a WHO framework convention on tobacco control, *In The Fifty-second World Health Assembly*, 22- 27 May, 1999, Volume I, *Resolutions and Decisions*, Geneva, World Health Organisation, 1999 (WHA52/1999/REC/1). Available at http://www.who.int/tobacco/framework/wha_eb/wha52_18/en/ Last assessed : June 19, 2018

⁷ *Am J Public Health*. 2005;95: 936–938. doi:10.2105/AJPH. 2003.025908

⁸ Arora, M., Reddy, K. S., Stigler, M. H. & Perry, C. L. 2008. Associations between tobacco marketing and use among urban youth in India. *Am J Health Behav*, 32, 283-94.

IV. NEED OF WORLD HEALTH ORGANISATION FRAMEWORK CONVENTION ON TOBACCO CONTROL

Tobacco use is a global epidemic and a huge problem, not just for an individual but for the whole world as its consumption has health, social, economic and environmental consequences, the bad one. It challenges the sustainable development and becomes a barrier that impacts the health, increases poverty, the global hunger. It impacts on the education, economic growth, gender equality, the environment, finance and governance in a country and completely stops its development.⁹

This treaty, World Health Organisation Framework Convention on Tobacco Control was drafted and negotiated to fight the problem of globalization of this tobacco problem/issue/epidemic. The spread of the tobacco epidemic is facilitated through a variety of complex factors with cross-border effects, including trade liberalization and direct foreign investment. Global marketing, transnational tobacco advertisement, promotion and sponsorship, and the international movement of contraband and counterfeit cigarettes are a few more factors that contributed heavily in the increasing demand and use of tobacco products. These acts of cross-border effects need to be eradicated which was only possible through a Global Public Health treaty in which all the countries put an effort together for removing this issue.

While signing the World Health Organisation Framework Convention on Tobacco Control, the member states have ensured that they will strive in good faith to ratify, accept, or approve it, and show political commitment not to undermine the objectives set out in it i.e. they completely accepted and acknowledged the problem and took oath to work based on this treaty for removal of such problem.

V. ROLE OF WHO FCTC

The World Health Organisation Framework Convention on Tobacco Control Framework¹⁰ do provide a strong, concerted response to the international tobacco problem which has taken the shape of an epidemic and its enormous health, social, environmental and economic costs. The member states are obliged to implement comprehensive, effective tobacco control measures. There are 181 parties to this treaty and hence around 90% of the world population is covered under the impact of World Health Organisation Framework Convention on Tobacco Control.

⁹ World No Tobacco Day 2017. Tobacco threatens us all: protect health, reduce poverty and promote development. Geneva: World Health Organization;2017 (WHO/NMH/PND/17.2).

¹⁰ WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2003.

There has been combined measures taken to implement policies to reduce both the demand and supply of the tobacco and tobacco related products. It include many key provision like a requirement that Parties act to protect public health policies from interference by commercial and other vested interests of the tobacco industry. The full chain of tobacco production and distribution, from farm to factory to point of sale is covered under the WHO FCTC which clearly helps in the demand and supply of the tobacco related products.¹¹

The implementation database which is maintained by the Convention Secretariat and the Global health reports provides the data to understand the achievements of this treaty and further points out the area where more progress is needed and yet to be made. The member countries of the World Health Organisation Framework Convention on Tobacco Control have committed themselves to protecting the health of their populations by joining the fight against the tobacco issue.

In 2008, a policy package **MPOWER** was introduced which was made to fulfil the promises of WHO FCTC and in furtherance of turning the consensus of such a large number of countries into a global reality. This policy was built on the measures of the WHO FCTC that have been proven to reduce smoking prevalence. It has a set of six cost– effective and high-impact measures that help countries reduce demand for tobacco. These measures include:

- **Monitoring** tobacco use and prevention policies;
- **Protecting** people from tobacco smoke;
- **Offering** help to quit tobacco use;
- **Warning** about the dangers of tobacco;
- **Enforcing** bans on tobacco advertising, promotion and sponsorship;
- **Raising** taxes on tobacco.

FCTC	
Framework for national action	Framework for international cooperation

¹¹ World No Tobacco Day 2018: Tobacco breaks hearts – choose health, not tobacco. Geneva: World Health Organization; 2018 (WHO/NMH/PND/18.4).

<ul style="list-style-type: none"> • Comprehensive ban on advertising • Protection against secondhand smoke • Prohibition of youth access. • Prominent health warnings. • Testing and regulation of contents. • Increase in tobacco taxes. • Cessation programmes • Alternative crops. • Surveillance. 	<ul style="list-style-type: none"> • Ban on cross-border advertising • Prevention of illicit trade • Scientific and legal cooperation • Technical assistance • Financial support for Framework Convention on Tobacco Control implementation (bilateral and multilateral channels) • Monitoring
Requires partnerships within countries	Requires partnerships among countries

Table1.1 Framework for national action and international cooperation

VI. KEY PROVISIONS OF WHO FCTC

Even the WHO FCTC, consequently, doesn't obviously lay down a regulation that shall be global, but puts out principles for various domestic and global measures that could encourage smokers to stop and control non-smokers from occurring into the addiction. It boosts smoke-free environment policies, including exposing of ads, raise in taxes, reduced youth access to tobacco products in addition to media and education campaigns to improve awareness concerning the health dangers of cigarette consumption as well as the health benefits of cigarette smoking. It envisages global collaboration, such as transfer and promotion of technical, legal and scientific expertise, and engineering, for helping in the growth of a solid legislative base and specialized programmes such as protection against exposure to tobacco smoke and other tobacco products. Every county who is a party to the WHO FCTC is predicted to implement those provisions, in agreement with its own capability and limitations.¹²

No any significant obligation that is perspective in nature are imposed via the text of WHO FCTC. Given that the divergence of interests of the Parties negotiating the convention, it was challenging to procure universal consent, which had been essential to set up binding rules.

The WHO FCTC has some mandatory positions (.Parties shall....) and other provisions which are recommendation (.Parties should....). Many of the provisions have qualifying phrases,

¹² *Supranote 4*

such as ‘where appropriate’, ‘in accordance with its [a Party’s] capacity/ capability’, ‘as far as possible’ and ‘in accordance with its [a Party’s] national law’. These phrases provide the Parties with a large degree of operational flexibility in implementing the measures recommended by the WHO FCTC. The WHO FCTC, however, explicitly encourages countries to implement measures that are stronger than the minimum standards required by the treaty.¹³ A brief description of key provisions is illustrated here¹⁴-

Taxation and duty-free sales

- Tax policies should aim to help tobacco control.
- Tax and price policies to promote tobacco control recommended for national-level action
- Duty-free sales are discouraged.
- Countries may prohibit/restrict duty-free sales and importation

Second-hand smoke (Article 8)

Non-smokers must be protected from exposure to tobacco smoke. Such protection must extend to

- Indoor workplaces
- Public transport
- Indoor public places
- Other public places, as appropriate

Product regulation and ingredient disclosure (Articles 9 and 10)

Tobacco products are to be regulated.

- The COP shall propose guidelines for testing and measuring the contents and emissions of tobacco products and for further regulation of these contents and emission
- Countries shall adopt and implement measures for such testing, measuring and regulation
- Ingredients are to be disclosed

¹³ *Id.*

¹⁴ WHO Framework Convention on Tobacco Control. Geneva: World Health Organization; 2003.

- Manufacturers and importers shall disclose, to governmental authorities, information on contents and emission
- Measures for public disclosure of information about toxic constituents and emissions

Packaging and labeling (Article 11)

Large health warning labels are required.

- Rotating warnings
- Large, clear, visible and legible
- Should be 85% of the principal display areas
- May be in the form of or include pictures/pictograms
- Deceptive labels must be prohibited.
- False/misleading term, descriptor, trademark or any other sign shall be prohibited (e.g. 'mild', 'low tar', 'light')

Education, communication, training and public awareness (Article 12)

Each party shall promote and strengthen public awareness of tobacco control issues.

- Broad access to effective and comprehensive educational and public awareness programmes on
- Health risks of tobacco consumption
- Risks of exposure to tobacco smoke
- Risk of addiction
- Benefits of tobacco cessation
- Public access to a range of information on the tobacco industry
- Training or sensitization and awareness programmes to various stakeholder groups
- Public awareness and access to information on the health, economic and environmental consequences of tobacco production and consumption

Advertising, promotion and sponsorship (Article 13)

A comprehensive ban is required.

- Restriction regime is permitted only for countries with constitutional barriers
- Minimum package of measures prescribed

- Direct and indirect advertising and promotion covered
- Cross-border advertising subject to ban and penalty
- Protocol on cross-border advertising recommended

Tobacco dependence and cessation (Article 14)

Parties shall take effective measures to promote cessation of tobacco use and adequate treatment for tobacco dependence.

- Design and implement effective tobacco cessation programmes in such locations as educational institutions, health care facilities, workplaces and sporting environments
- Include diagnosis and treatment of tobacco dependence and counseling services on cessation of tobacco use in national health and education programmes, plans and strategies
- Establish tobacco cessation programmes in health care facilities and rehabilitation centres
- Facilitate accessibility and affordability for treatment of tobacco dependence including pharmaceutical products

Smuggling (Article 15)

Action is required to eliminate tobacco smuggling.

- Origin and final destination must be indicated on the packaging
- Develop a practical tracking/tracing regime
- Confiscate products and proceeds of illicit trade
- Cooperate with one another in anti-smuggling, law enforcement and litigation efforts

Sales to and by minors (Article 16)

- Parties shall prohibit the sale of tobacco products to persons under the age set by national law, or eighteen years of age
- Parties shall prohibit or promote the prohibition of the distribution of free tobacco products
- Curbs on or prohibition of tobacco vending machines
- Prohibition of sale by minors, as per national law

Financing (Article 26)

Parties have committed themselves to promote funding for global tobacco control

- Mobilize financial assistance from all available sources for developing countries and economies in transition
- Encourage regional and international intergovernmental organizations to contribute
- Strengthen existing mechanisms for bilateral and multilateral contributions
- COP will consider proposals for a global fund

Support for economically viable alternatives (Article 17)

Parties shall promote, as appropriate, economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers.

Liability (Article 19)

Legal action is encouraged as a tobacco control strategy.

National coordinating mechanism (Article 5)

Each Party shall establish or reinforce and finance a national coordinating mechanism or focal point for tobacco control.

Participation of non-governmental organizations (Articles 12, 20)

Parties shall promote awareness and participation of non-governmental organizations, not affiliated with the tobacco industry, in developing and implementing intersectoral programmes and strategies for tobacco control (Article 12) and cooperate with nongovernmental agencies in regional and global tobacco surveillance and exchange of information (Article 20).

Treaty Oversight (Article 23)

A COP will oversee the implementation of the Treaty.

Secretariat (Article 24)

COP will designate a Permanent Secretariat. WHO will act as the Interim Secretariat.

Settlement of Disputes (Article 27)

Parties shall settle disputes through negotiation, mediation or conciliation failing which arbitration will be resorted to as prescribed by the COP.

There are far more Steps available and Present to Restrain The use and distribution of

tobacco and associated products. The Eliminate Illicit Trade in Tobacco Products to the World Health Organisation Framework Convention on Tobacco Control in Critical Policy instrument to decrease tobacco use and its health and financial consequences. Other steps, like encouraging workable alternatives to tobacco production, and limiting access to kids and youth to tobacco products, are Effective, particularly within a comprehensive approach to decrease tobacco use.

There are general requirements provided in the treaty and it does not provided specific rules and regulations to be enacted by the counties through their domestic legislation. The treaty simply provides the nature of legal, administrative, regulatory and other measures that need to be taken in accordance with the national law. Its main aim is to provide the basic framework of laws and measures which would encourage smokers and other tobacco users to quit it and discourage non-smoker and non-users for taking this habbit and initiating with the consumption of tobacco.¹⁵

In the words of WHO's Director General, Dr Jong-wook LEE: *"The WHO FCTC negotiations have already unleashed a process that has resulted in visible differences at country level. The success of the WHO FCTC as a tool for public health will depend on the energy and political commitment that we devote to implementing it in countries in the coming years. A successful result will be global public health gains for all."* For this to materialize, the drive and commitment, which was so evident during the negotiations, will need to spread to national and local levels so that the WHO FCTC becomes a concrete reality where it counts most, in countries.¹⁶

VII. CONCLUSION

There was a huge need that all the states come together under an international community back then and tackle this global issue of tobacco and the World Health Organisation worked as a catalyst in the form of International Community for countries to come together and under the auspices of World Health Organization, negotiate and begin a collective war against the impending public health risk. A few steps that should be taken by all the nations around the world are:

- Fully implement the World Health Organisation Framework Convention on Tobacco Control.

¹⁵ *Supranote 4*

¹⁶<http://apps.who.int/iris/bitstream/handle/10665/42811/9241591013.pdf;jsessionid=F4BD66AE9908429DC6538D77E2897102?sequence=1>

- Encourage countries that are not Parties to look to the World Health Organisation Framework Convention on Tobacco Control as the foundational instrument in global tobacco control.
- Implement the MPOWER measures at the highest level in line with the World Health Organisation Framework Convention on Tobacco Control, as these are most impactful and cost-effective in reducing tobacco use.
