Legislation and Health Promotion in India

Jugal Kishore
MBBS, MD (Community Medicine), PGCert. H&FWM, PGDEE, MSc. MNAMS, Fellow of
IPHA, IAPSM, IMAAMS

Professor at Department of Community Medicine
Maulana Azad Medical College, New Delhi 110002
Email: drjugalkishore@gmail.com

ABSTRACT
Health promotion is the process of enabling people to increase control over, and to
improve, their health. Empowerment of people though education, vaccination and
behavior change should be brought by people themselves with the help of professional
help, but in many situations role of state and legislations is essential to protect the
population, e.g. tobacco and alcohol sale near schools. India is one of the largest
democracies in the world promoting health of her population by multi-dimensional but
comprehensive strategy. In its framework there may be little scope but in its
implementation extensive efforts are required.

Keywords: Indian Legislation, Health Promotion, Challenges

Definition of Health Promotion
Health promotion has been viewed as process or outcome of health related activities or
goal in itself. According to Kickbusch (1994) health promotion is “a process for
initiating, managing, and implementing change… a process of personal, organizational,
and policy development”. If we look at the definition of health of WHO, which is “a state
of physical, mental and social well-being, which can lead a socially and economically
productive life”. We can say that health promotion is a strategy and an activity, which
can lead to that life which is characterized by improvement of life expectancy, reduction
in years of life lost, improvement in quality of life, etc. Although this goal, or process or
activity initiates at individual level but extend beyond and completed at state level or
international level. At the state level, the program, policy formulation and legislation are
important activities. However, at the international level conventions and treaties are
organized.

We can look into more definitions to justify the role of legislation in health promotion.
For example, according to Lalonde (1974) health promotion is a strategy aimed at
informing, influencing and assisting both individuals and organizations so that they will
accept more responsibility and be more active in matters affecting mental and physical
health. Nutbeam (1985)\(^3\) stated that it is a process of *enabling* people to increase control over the determinants of health and thereby improve their health. As we are aware of determinants of health are not confined to biological or chemical environment but also social, political, cultural, occupational, and philosophical environments. Recent epidemiological research has clearly documented powerful determinants of health influencing even definition of public health. Because these factors have gone beyond individual genetic and behavioral characteristics, and are often most strongly associated with socioeconomic conditions, equity and access issues, national wealth, social support and structural or systematic factors (Evans 1994, Martin 1989, Rose 1992, Syme 1991, Terris 1994, Wilkinson 1986, Kishore 2007).\(^4\)\(^-\)\(^9\) This new public health has given new dimension of health promotion, which includes:

1. Strengthening health;
2. Redistributing power and control over individual and collective health issues;
3. Reducing the negative impact of a broad range of health determinants associated with social, political and economic environments;
4. Shifting the allocation of resources upstream, towards preventing problems before they occur;
5. Giving attention to the domains of health beyond the physical, including the mental, social and possibly spiritual dimensions;
6. Taking an ecological approach; and
7. Recognizing community development and involvement as legitimate and effective strategies.

Taking these dimensions of health promotion, health promotion now involves a diverse set of actions, focused on the individual or environment, which through increasing control ultimately leads to improved health or well being. Health promotion approach can be applied in a number of domains, including prevention, treatment, rehabilitation and even long-term care. One can always argue that not everything in these domains constitutes health promotion. In particular, health promotion and disease protection are not synonymous, but complementary. Rather at all stages of natural history of disease the level of prevention can include health promotion i.e., empowerment of people. According to Ottawa Charter for Health Promotion, health promotion has been defined as “the process of enabling people to increase control over, and to improve, their health” (1986)\(^1\)\(^1\), which is actually taken from the glossary developed by Netbean (1985).\(^3\) This definition has the merit of making explicit a concern with individuals and communities, what is being controlled and a possible causal mechanism. Nevertheless, there are determinants of health that individuals and communities cannot control, but some of whose negative influences health promotion efforts can help mitigate (such as community kitchens for low income families, mid-day meals program, anti-smoking campaigns). Through various intervention health programs worldwide, it is clearly established that
“empowerment” of people is a fundamental concept of health promotion. That is, health promotion is actually about ensuring that individuals and communities are able to assume the power to which they are entitled. This is more democratic and desirable action rather than using coercive power of the state for the same goal. However, these are not mutually exclusive rather complementary to each other. A coercive power of state is required for promotion and protection public health (e.g. mandatory helmet use during driving motor cycle or scooter) in most of the cases.

Public Health Promotion and Law
Human being is always striving for individual autonomy and wants to enjoy the life by using as much as resources available and wants to control over them, which is not possible without scarifying the freedom or resources meant for others also. Unfortunately, his/her greed and desires never end even after understanding of the suffering of others due to his/her behavior. Such situation always creates imbalance and inequality among people who have the resources and those who have not. In a civilized society, state’s power plays a significant role to balance the individual autonomy and community protection.

We can say that the core of public health depends on law and science and it is also true that without the coercive power of the state, public health and modern society would be impossible. Law has to prohibit individuals who create the situation for others suffering. Applications of prohibitory power on individual autonomy would be unwelcome in democratic world. For this reason, public health must maintain the balance between individual autonomy and community protection. In majority of the countries, the state’s police powers deal with general issues of public health and safety, not the punishment of criminals. Health officers, fire officers, municipal commissioners, and judges exercise public health police powers. The public health actions are not intended to punish, but to improve and to monitor the health status in the community. Downie et al has identified seven different types of activities (Glass & Schmidt 1987) that can involve health promotion activities, which includes:

1. Preventive services (e.g., immunization, screening for cancer, etc).
2. Preventive health education (e.g., efforts to influence life-style and to increase the use of preventive services).
3. Preventive health protection (e.g., the fluoridation of water, iodization of salt, etc).
4. Health education for preventive health protection (e.g., lobbying for seat-beat legislation and shifting of polluting industries from residential areas).
5. Positive health education (e.g., encouraging people for productive use of their leisure time and helping people developing health-related life skills).
6. Positive health protection (e.g., implementation of workplace anti-smoking policies and anti-sexual harassment policies).

7. Health education for positive health protection (e.g., obtaining support for positive health promotion activities –anti-smoking legislation, etc).

Many activities are labeled under health promotion such as mass media campaigns to increase awareness of the dangers of smoking and drinking alcohol driving, school-based comprehensive health education programs, safe blood legislation, etc. The current approach to intervention is to develop multilevel (national, regional, community) action and multi-dimensional approaches to ensure sustainability. In other words, health promotion initiatives are increasingly complex and so for public health legislation.

**Indian Constitution and Health Promotion**

India has a long history where the state had played a great role in restoring the health and safety. Asoka the Great, a Buddhist king is well known for his edicts describing the state responsibility for providing safe water, shelter, trees implantation at the road side, care for sick human beings and animals, suitable place for moral and spiritual education to the people without any discrimination and kind treatment for slaves and servants (Kishore & Ray 2001). After that period India has passed through many centuries under the rules of various ideology, countries, and personalities. The Indian people have experienced many favorable and unfavorable factors during this period. Before the establishment of causal association of some of the unfavorable factors such as inequity, discrimination, gender bias, socioeconomic and cultural factors with health and disease of individual, family and community, the framers of modern Indian constitution had already made sufficient provisions for the protection, promotion and growth of every individual, worker and group and vulnerable population in relation to nutrition and health. Some of examples are given below:

**Right to Equality**

*Article 15:* Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth for carrying out any activity or in participation. State shall make efforts to remove such discriminations.

*Article 17:* Abolition of untouchability: practice of untouchability has been made offence and shall be punished.

**Right for Freedom**

*Article 21:* No person shall be deprived of his life or personal liberty except according to procedure established by law.
**Right against Exploitation**

*Article 23:* Prohibition of traffic of human beings and forced labor  
*Article 24:* Prohibition of employment of children (below 14 years) in factories, etc.

**Cultural and educational Rights:** rights for practices and promoting their culture and no individual shall be prevented to develop their skills and knowledge irrespective of their religion, caste, culture, regions, etc. It is the responsibility of state to ensure that adequate infrastructure is available to exercise their educational rights.

**Directive Principles of State Policy**

*Article 38:* State to secure a social order for the promotion of welfare of the people: The state shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life.  
*Article 39:* securing equal pay for equal work to man and woman; and securing the health and strength of workers, men and women, and the tender age of children.  
*Article 42:* Provision for just and humane conditions of work and maternity relief.  
*Article 43:* living wages, etc. for workers: state shall secure a decent standard of life and full enjoyment of leisure and social and cultural opportunities.  
*Article 45:* Provision for free and compulsory education for children  
*Article 46:* Promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections.  
*Article 47:* Duty of the state to raise the level of nutrition and the standard of living and to improve public health.  
*Article 48 A:* Protection and improvement of environment and safeguard of forest and wild life.  
*Article 51:* Promotion of International Peace and Security.

Various duties are enumerated in Union List, State List and Concurrent list related with promotion of public health includes port quarantine, war and peace, regulation of labor and safety in mines and oilfield, control of cultivation of opium, sanitation, hospital and dispensaries, preservation and protection of stock and prevention of animal diseases, adulteration of foodstuff and other goods, protection of wild animals and birds, social security, social insurance, population control and family planning. Indian constitution has extensively elaborated the rights of people in various articles but fundamental duties are enumerated in just one Article 51A.

**Health Related Legislations in India**

Under the Constitutional provisions, the government of India owes her population social security, health services, safety, environmental protection, equal opportunity, and justice.
The methods adopted by the government to deliver these services are framing policies, execution of legislation and implementation of programs. Running a program is the most desirable action. However, it is also essential to make some services mandatory and should be under the rules and regulations. The government and the people are required to carry out their duties to achieve the Constitutional objectives. For this, the Constitution also provides powers to frame the legislation. The provision of an Act is further explained in detail in rules and regulations. These laws must be specific and written so that the potential violators can be identified. An individual can not be punished for a new type of behavior until a law has been passed against the behavior. Unfortunately, these legislations are not implemented as designed, due to some reasons and public health remains vulnerable to social, psychological and physical situations.

To achieve these fundamental goals of the country various legislations and policies are enacted. Important legislations in this direction are grouped in following categories for better understanding but these categories are arbitrary:

A. To Improve and Maintain High Standards in the Medical Education and Services: Professionals of medical and associated disciplines are considered as the vital component of health care delivery system in any society. Quality of their training determines the quality of services they are going to provide, particularly in the field of health promotion and protection. Following legislations are focused on the quality of education and training of health personnel includes The Indian Medical Council Act, 1956 and Regulations 2002; the Indian Nursing Council Act, 1947; the Dentists Act, 1948; the Pharmacy Act, 1948; The Rehabilitation Council of India Act, 1992; the Indian Medicine Central Council Act, 1970, and the Homeopathy Central Council Act, 1973 and The Clinical Establishment Act 2010. Beside these legislations there are other legislations, which demand the safety and quality of medical services such as the Consumer Protection Act (CPA), 1986 and Indian Penal Court (IPC) sections. Under these acts duties and responsibilities and medical negligence of health personnel is described, however, less emphasis on health promotion has been given.

B. Protection of Human Rights and Dignity:
   a) The Human Rights Act: It is already known that society is divided on the basis of religion, caste, race, color, political party, etc., which is responsible to inequality in health. There are many instances when people’s health is suffered due to violation of human rights and restoring such rights ensure better health. The Act defines (Sec 2) ‘human rights’ as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. This is an Act to provide the constitution of a National Human Rights Commission, State Human
Rights Commission in states and Human Rights Courts for better protection of Human Rights.

b) **The Scheduled Castes and The Scheduled Tribes (Prevention of Atrocities) Act 1989:** Incidences of physical and mental torture of Scheduled Castes (SCs) & Scheduled Tribes (STs) are common in Indian society that lead to high morbidity and mortality. This Act is enacted to prevent the commission of offenses of atrocities against the members of the Scheduled Caste and the Scheduled Tribes, to provide for Special Courts for the trial of such offences and for the relief and rehabilitation of the victims.

C. **To Prevent Public Health Problems:** These legislations are focused more on protection of people from diseases such as Epidemic Diseases Act, 1897. This Act specifies handling of diseased or infected death body during epidemics so that diseases do not spread further to non-infected persons. Components of health education and information regarding preventive measures are also included.

   *The Mental Health Act 1987:* This Act has emphasized the need of human treatment of mentally ill patients. At the same time awareness of people regarding causative factors and other facts of mental disorders are also advocated.

D. **To Prevent the use of tobacco and other substance use:**

   a) **The Cigarette and Other Tobacco (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003:** Tobacco is universally regarded as one of the major public health hazards and is responsible directly and indirectly for high morbidity and mortality. The need for a comprehensive legislation to prohibit advertising and regulation of production, supply and distribution of cigarettes and tobacco products was recommended by the Parliamentary Committee of Subordinate Legislation (10th Lok Sabha). In conformation of this the Parliament of India notified and enforced on 18th May 2003 the Act on Smoking. Smoking is prohibited in public place and no advertisement of smoking in any form is allowed.

   b) **The Narcotic Drugs and Psychotropic Substances Act, 1985:** A significant number of young people in their prime of their lives fall prey to drugs and endanger their lives. Drug traffic is also associated with many crimes including sexual offences, theft, etc. that is why legal regulation is sought to curb the menace of drug abuse. This Act deals with narcotic drugs, psychotropic substances and property derived from, or used in, illicit traffic in narcotic drugs and psychotropic substances, and to
implement the provisions of the International Conventions on Narcotic Drugs and Psychotropic Substances.

c) The Drugs and Cosmetics Act, 1940: Drugs and cosmetics are manufactured for human consumption and any substandard of these products may lead to serious consequences. Beside therapeutic use of drugs many products are used as nutrients. Their safety and quality is paramount important for health promotion of the people.

E. Promotion of health through safe nutrition: The Prevention of Food Adulteration Act, 1954: Food is an essential requirement of humans and animals, adulterated food consumption can cause death also. To maintain vitality and good status of health, availability of safe and good quality food is required. Enrichment of flour, bread, or other cereals with vitamins or minerals, iodization of salt, fortification with vitamin of vanaspati oil, addition of vitamin “C” in certain foods can be done under the provision made in this Act.

F. To Achieve Maternal Health and to Empower the Women:

a) The Maternity Benefit Act, 1961: This Act is to protect and empower women as workers. To prevent unfair employment practices and exploitation of women in the labor market, and to safeguard the health and well-being of the mother and child it is essential to provide maternity protection to working women. The Act applies to whole of India. It applies to all establishment - factories, mines, manufacturing units and shops, etc., where a minimum of ten or more workers are working.

b) Family Court Act 1984: provides for establishment of family courts by the state governments to promote reconciliation and secure speedy settlements of disputes relating to marriage and family affairs. Family disputes and violence are associated with physical and mental illnesses and need to handle at the family level. This legislation has been enacted to empower the state government/Union territory administrations that may establish Family Courts.

c) The Dowry Prohibition Act, 1961: Dowry has been associated with social, mental and physical illnesses. Dowry is also a causative factor for a particularly type of mortality. To prevent this social evil, which has health implication, the dowry prohibition Act was enacted in 1961. In this Act, “dowry” means any property or valuable security given or agreed to be given either directly or indirectly by one party to the other party to the marriage; or by the parents of either party to a marriage or by any other person; at or before or any time after the marriage but does not include dower or mahr in the case of persons to whom the Muslim Personal Law (Shariat) applies (sec 2). Punitive actions suggested by the law are
expected to curb this problem however in practice dowry system is more strengthened in recent times.

d) **The Immoral Traffic (Prevention) Act, 1956:** Act to provide in pursuance of the International Convention signed at New York on the 9th day of May 1950 for prevention of immoral traffic. Prostitution is a social evil and indicating towards poverty and disparity in distribution of resources. No women would like to indulge in prostitution until circumstances forces her to do so. It is indirect indicator of problem of drug, lower status of women, alcoholism, and weak social fabric leading to female feticide (Kishore 2012).\(^{15}\) Recently emergence of HIV and AIDS has once again forced the society to reconsider the need to change the concept of sexuality. High prevalence of sexual transmission of diseases among commercial sex workers and deaths due to HIV and AIDS in them need legal action beside health action from the government.

**G. To Protect and Safeguard the Children and Young**

a) **The Prenatal Diagnostic Techniques (Regulation and Prevention of misuse) Act, 1994:** This Act was enacted for the prohibition of sex selection, before or after conception, and for regulation of per-natal diagnostic techniques for the purposes of detecting genetic abnormalities or metabolic disorders or chromosomal abnormalities or certain congenital malformations or sex-linked disorders and for the prevention of their misuse for sex determination leading to female feticide.\(^{15}\)

b) **The Infant Milk Substitutes, Feeding Bottlers & Infant Foods (Regulation of Production, Supply & Distribution) Act, 1992:** An Act to provide for the regulation of production, supply and distribution of infant milk substitutes, feeding bottles and infant foods with a view to the protection and promotion of breast feeding and ensuring proper use of Infant Foods.

c) **The Juvenile Justice Act, 1986:** This Act is in consonance with India’s human rights obligations under the United Nations’ Convention of the Rights of the Child which is held in November 1989. Several provisions of the Constitution including clause (3) of article 15, Clauses (e) and (f) of article 39, articles 45, and 47 also impose on the state a primary responsibility of ensuring that all the needs of children are met and that their basic human rights are fully protected. The convention emphasizes social reintegration of child victims, to the extent possible, without restoring to judicial proceedings. The government of India has rectified the convention, has found it expedient to re-enact the existing law relating to juveniles bearing in mind the standards prescribed in the Convention on
the Rights of the Child, the United Nations Standard Minimum Rules for the Administration of Juvenile Justice, 1985 (The Beijing Rules), the United Nations Rules for the protection of Juveniles Deprived for their liberty (1990), and all the other relevant international instruments. To achieve this objective the Act was enacted.

d) **The Child Labor (Prohibition & Regulation) Act, 1986:** Child suffers from poor mental, physical, and social development when he or she engaged in work. Child may start adopting the habits, which are associated with adults like smoking and going to the commercial sex workers. Poor and unsafe working conditions adversely affect these children more than adult. Constant physical efforts may cause repeated injuries to the tender muscles and may lead to permanent disability. The Child Labor (Prohibition and Regulation) Act is to prohibit the engagement of children in certain employments and to regulate the conditions of work of children in certain other employments. It extends to the whole of India.

e) **The Child Marriage Restraint Act, 1929:** This act is expedient to restrain the solemnization of child marriages. The child marriage is a social evil as perceived by civilized society. However, such marriages are still common in Rajasthan and Madhya Pradesh and usually get approval from political, religious and social systems. It must be understood that legal prohibition is not sufficient to prevent such evils to happen till the society realize its bad impact on the human development.

**G. To Protect Workers and to Provide Social Security:** There are number of legislation, which are enforced in India to protect and provide social security to workers and their families includes: the Minimum Wages Act, 1948; The Dangerous Machine (Regulation) Act, 1983; The Plantation Labor Act, 1951; The Factories Act, 1948; The Mines Act, 1952; The Employees State Insurance (ESI) Act, 1948; The Workmen’s Compensation Act, 1923; The Bonded Labor System (Abolition) Act; The Trade Union Act, 1926; The Dock Workers (Safety, Health and Welfare) Act, 1986; The Mines Labor Welfare Fund Act, 1972; The Bidi Workers Welfare Fund Act, 1972; The Cigar Workers (Conditions of Employment) Act, 1966; and The Contract Labor (regulation & Abolition) Act, 1970. The purpose of these legislations is not only to protect the worker from hazards so that they should not get occupational injuries and diseases but also to promote their health through improving nutrition and skills.

*Legislation related to female workers: Currently, the proportion of economically active women is greater than that at anytime in human history. A majority was employed in nontraditional “female-intensive” jobs (e.g., clerical, secretarial*
nursing, teaching, etc.). These jobs are also associated with health hazard but they earn only lesser than male counterpart’s earnings. Lack of organization and assertion of women’s right at workplaces make them vulnerable to physical, mental and sexual exploitation. The Factories Act, 1948 prohibit the employment of women in hazardous occupations and provides maternity leave for 12 weeks. Separate toilets and washing facilities for male and female workers. Provision of crèches where fifty or more women are employed is also given. Similarly ESI (General) Regulation, 1950, Plantation Act, Mines Act, Equal Remuneration Act, the Bidi and Cigar Workers (Conditions of employment) Act, 1966 and the Control Labor (regulation and Abortion) Act provide protection to women and child.

H. Environmental Legislation: Pollution refers to any undesirable change in the physical, chemical or biological characteristics of our environment, i.e. air, water, and soil that may or will adversely affect humans or other species and life support systems of our biosphere directly or indirectly. Usually we try to forget the social and psychological environment when we talk of environmental pollution. Diet, alcohol use, risk behavior, crime, and many other similar factors could be considered as environmental. For the basic understanding the major causes of pollution as Fossil Fuel consumption, Motor transport, Modern agriculture and Industries. Protection of environment is directly protecting people’s health. The government has enacted number of legislations in this direction from time to time such as the Destructive Insect & Pest Act, 1914; Wild Life (Protection) Act, 1942; The Atomic Energy Act, 1962; The Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981; The Environment (Protection) Act, 1986; The Motor Vehicles Act, 1988.

I. To Promote Voluntary Work: Government of India has made provisions for voluntary groups to work in social, educational, environmental, and health domains with the ultimate aim of promoting and protecting human beings, etc. For example, The Societies Registration Act, 1860 and The Red Cross Society (Allocation of Property) Act, 1936 are well known legislation.

Challenges
In the area of public health, India is lacking of a comprehensive National Public Health Act in which preparedness for epidemics and disasters, surveillance of communicable and non-communicable diseases, environmental sanitation including safe water supply, waste disposal, and preventive and curative health care services should be appropriately handled. Number of legislations provides tremendous power to public health functionaries that need to be realized. Public Health officials such as inspectors and health officers working with various designations have several primary enforcement tools.
such as giving permits, licenses, and registrations; issuing administrative orders; imposing civil penalties; and injunctions. But such tools are mostly affected by corruption.

All public health legislations use these tools for enforcement and wherever these tools are lacking the legislations are ineffective. However, there are many other factors of failure of legislations such as lack of awareness, lack of infrastructure, etc. Our social activists with the help of mass media have very important role to play in realization of basic fundamental rights provided in the Indian constitution by legal education and working with masses.

These legislations provide wide framework to improve the health of the people and whosoever try to endanger the life and health of the people may be punished. Unfortunately, there is one or other reasons for not implementing these health legislations in real sense and public health remain vulnerable to social, psychological and physical risk factors.

References


