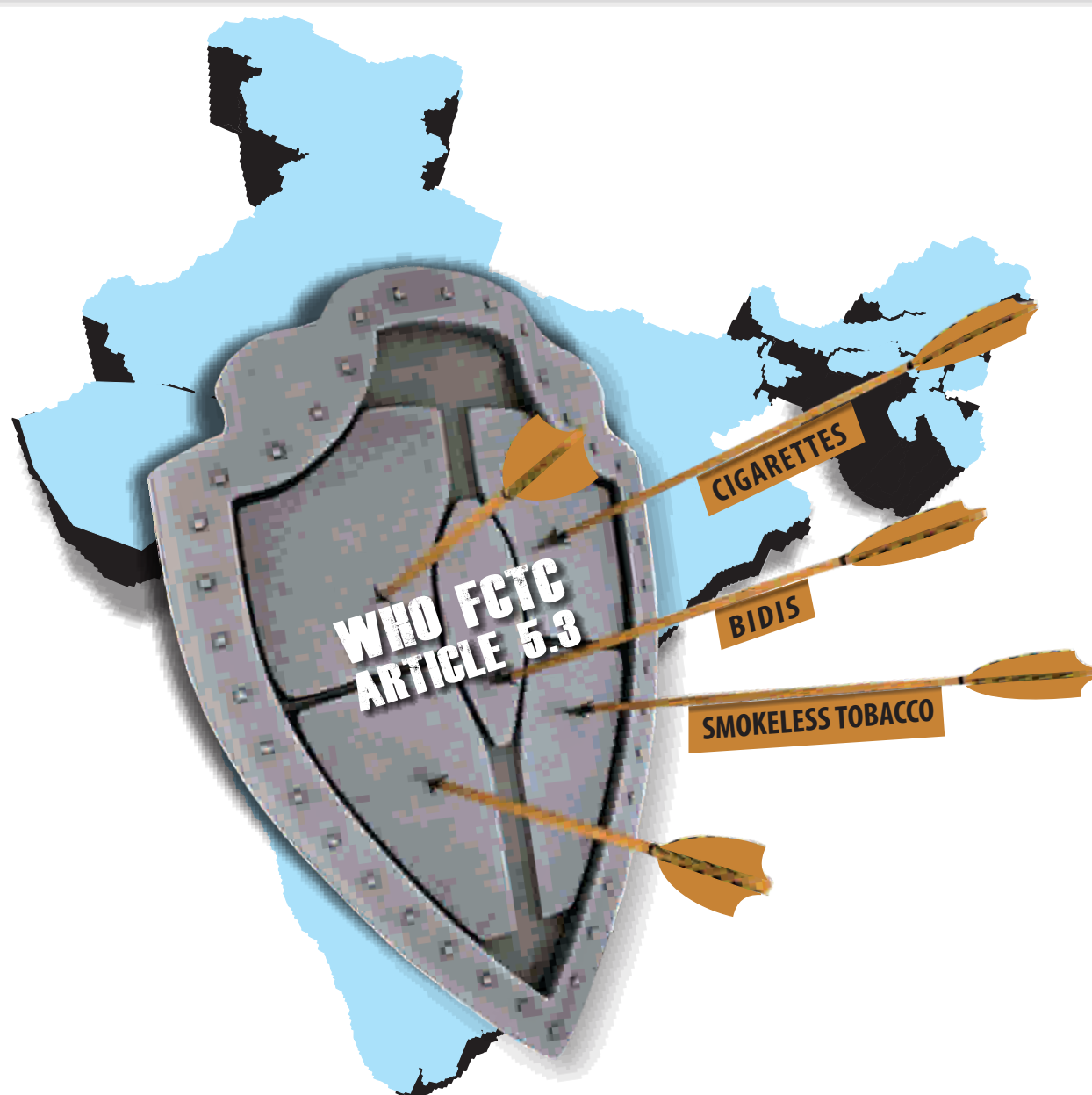


INDIA TOBACCO INDUSTRY INTERFERENCE INDEX

INDIA REPORT ON IMPLEMENTATION OF
WORLD HEALTH ORGANIZATION FRAMEWORK CONVENTION ON
TOBACCO CONTROL ARTICLE 5.3



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This report has been developed by HRIDAY New Delhi, in collaboration with the review committee consisting of four leading Civil Society Organisations (CSOs) in India: Healis Sekhsaria Institute for Public Health, Mumbai; International Union Against Tuberculosis and Lung Disease – India; Institute of Public Health, Bengaluru, and Mary Anne Charity Trust, Chennai.

We also acknowledge Mary Assunta from Global Centre for Good Governance in Tobacco Control (GGTC) and Stopping Tobacco Organizations and Products (STOP) for her technical advice in preparation of this Index.

PROCESS

Objective of this report: To systematically assess the implementation of Article 5.3 of WHO FCTC with respect to severity and frequency of tobacco industry interference in India.

Methodology: A preliminary desk review was conducted for the year 2017 and 2018, using a pre-defined broad search strategy to achieve the objective of this study. Southeast Asia Tobacco Control Alliance's (SEATCA) Tobacco Industry Interference (TII) Index and scoring guidelines were utilised to develop this Civil Society Organisation (CSO) report on monitoring the implementation of Article 5.3 of FCTC in India. For more details on the tool, please refer to:

<https://tobaccocontrol.bmj.com/content/25/3/313>

Key sources of data: Newspapers dailies, Government websites, Tobacco industry websites and other sources.

RECOMMENDED CITATION

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ABBREVIATIONS

CASCADE - Committee Against Smuggling and Counterfeiting Activities Destroying the Economy

COP - Conference of Parties

COTPA - Cigarette and Other Tobacco Product (Prohibition on Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act

CSR - Corporate Social Responsibility

CTRI - Central Tobacco Research Institute

FAIFA - Federation of All India Farmer Associations

FCTC - Framework Convention on Tobacco Control

GATS - Global Adult Tobacco Survey

Gol - Government of India

GST - Goods and Services Tax

ITB - Indian Tobacco Board

MLA - Member of Legislative Assembly

MoFPI - Ministry of Food Processing Industries

MoHFW - Ministry of Health and Family Welfare

MoU - Memorandum of Understanding

MP - Member of Parliament

NCDs - Non-Communicable Diseases

NGO - Non Governmental Organisation

NTCP - National Tobacco Control Programme

PHC - Primary Health Centre

PHWs - Pictorial Health Warnings

PIL - Public Interest Litigation

RBI - Reserve Bank of India

SDGs - Sustainable Development Goals

TII - Tobacco Industry Interference

SEATCA - Southeast Asia Tobacco Control Alliance

UN - United Nations

WHO - World Health Organization

INDIA TOBACCO INDUSTRY INTERFERENCE INDEX 2019

INTRODUCTION

As per Article 5.3 of World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC), countries' public health policies with respect to tobacco control must be protected from the commercial and other vested interests of the tobacco industry, in accordance with the national law.

India ratified the WHO FCTC in 2004 and is obligated to adopt and implement effective legislation aimed at reducing tobacco use and tobacco smoke exposure. The FCTC also recognizes that "there is a fundamental and irreconcilable conflict between the tobacco industry's interests and public health policy interests". Being a Party to the WHO FCTC, the Government of India (GoI) is required to implement recommendation 4.9 (i.e. Parties should not nominate any person employed by the tobacco industry or any entity working to further its interests to serve on delegations to meetings of the Conference of Parties (COP), its subsidiary bodies or any other bodies established pursuant to decisions of the COP) and recommendation 8.3 (i.e. Parties should ensure that representatives of state-owned tobacco industry do not form part of delegations to any meetings of the COP, its subsidiary bodies or any other bodies established in pursuant to decisions of the COP of the Article 5.3 Guidelines).¹

While India currently does not have any specific laws for the implementation of Article 5.3, some civil society groups have submitted guidelines (draft code of conduct) aligned with Article 5.3 to the MoHFW, GoI, for further action.² This draft is currently being reviewed by various government departments and has not yet been adopted. One of the areas of broad contention which exists within GoI policies is the conflicting nature of the MoHFW's tobacco control law and the mandate of the Indian Tobacco Board (ITB), under the Ministry of Commerce and Industry which promotes tobacco growth. While this draft is under review at the GoI level, eleven states have already issued Article 5.3 notification at the sub-national level. These states include: Tamil Nadu, Bihar, Punjab, Mizoram, Himachal Pradesh, Jammu & Kashmir, Maharashtra, Jharkhand, and Karnataka. In addition, union territory of Chandigarh and eight districts in West Bengal have also issued article 5.3 notifications.³

METHODOLOGY

This report draws on a comprehensive review conducted to assess the government's response to the frequency and severity of incidents of Tobacco Industry Interferences (TII) reported in India for the time period from January 2017 to December 2018 using Southeast Asia Tobacco Control Alliance's (SEATCA) Tobacco Industry Interference (TII) Index and scoring guidelines. The SEATCA TII Index was developed by the SEATCA group to have a definite tool to assess the implementation of Article 5.3 in various countries. Based on the eight main recommendations and 34 sub-recommendations of Article 5.3 guidelines of WHO FCTC, the SEATCA TII Index consists of seven key themes with 20 indicators, which were utilised for conducting this study.

To complete the TII Index of 20 indicators under 7 key themes of SEATCA TII Index for India, a comprehensive review of literature was undertaken using a pre-defined broad search strategy with key words including "tobacco industry", "Article 5.3 FCTC" and "Government agencies". Other Publicly available evidence in the Indian newspaper dailies (restricted to Hindi and English language only), Government websites and tobacco industry websites were also reviewed for data collection. Two reviewers separately searched for evidence and discussed them before scoring. As per the SEATCA TII Index scoring guidelines, each incident was scored based on the government response to the severity and frequency of the incident. Each incident was scored independently and then these scores were averaged. The base score of "3" was given for any incident of interference. This number was then adjusted based on the severity of the interference and the government response. 1 point (+1) was added for any aggravating circumstance that supported industry interference and 1 point (-1) was subtracted for any mitigating circumstances that reduced industry interference. Please refer to Annexure 1 for further details on scoring.

To avoid subjectivity, regular communication was maintained with SEATCA team to ensure that each indicator was well understood by the reviewers and the scoring was done with accuracy. The scores and incidences were also reviewed and verified by the members of review committee comprising of representatives from leading civil societies working on tobacco control in India.

FINDINGS

INDICATORS 0 1 2 3 4 5

I. Level of Industry Participation in Policy-Development

1. The government accepts, supports or endorses any offer for assistance by or in collaboration with the tobacco industry in setting or implementing public health policies in relation to tobacco control



While the GoI does not directly accept or support any offer of assistance, the tobacco industry through varied allied organisations impedes the development and implementation of public health policies in India.

According to the website portal of Tobacco Institute of India, "various government agencies in India, such as Indian Tobacco Board (ITB), under the Ministry of Commerce and Industry, and Central Tobacco Research Institute (CTRI) under the Ministry of Agriculture, are inseparable from the tobacco growers and trade due to interlinked objectives and organisational mandate".⁴ Though the tobacco industry does not directly influence the enactment of laws and implementation of policies, but shares bond with these groups which are part of various Ministries in GoI. In fact, the Ministry of Commerce and Industry endorses and supports capitalising on tobacco crop growth to make profits.^{5,6}

(Score: 3 base score – 2 Ministry of Commerce and Industry = 1)

In 2017, GoI launched a new taxation system in the country, where it was proposed to impose 5% Goods and Services Tax (GST) on raw tobacco and 28% GST on other forms of tobacco including cigarettes, smokeless tobacco products and bidi, with an additional compensation cess and state GST. GST is an indirect tax (or consumption tax) levied in India on the supply of goods and services. The tax replaced existing multiple cascading taxes levied by the central and state governments.

However, according to media reports,^{7,8} tobacco front groups and tobacco industry representatives allegedly appealed to the Ministry of Finance, GoI to obliterate such proposals and continue to exempt bidi and raw tobacco leaves from any form of taxation. This issue was also discussed during the 15th round of GST Council meeting, held on June 3rd 2017 at New Delhi, where national and state representatives in the GST council meeting suggested reconsidering the implications of imposing taxation on previously unlevied tobacco products, such as bidi wraps (tendu leaves) and tobacco leaves.⁹ Members in the other GST Council meetings also questioned considering high taxes on tobacco products, especially bidi. Pleas from tobacco lobbying bodies were also taken into consideration.¹⁰ Though the tobacco industry tried to lobby implementation of taxes on tobacco leaves and bidi products, the government went ahead and implemented laws to impose 28% GST on these previously unlevied tobacco products, however, the decision was postponed to impose additional Cess on Bidi in 2017.¹¹

(Score: 3 Base score + 1 additional cess on bidi exempted = 4)

Additionally according to media reports, Department of Industrial Policy and Promotion (DIPP) under the Ministry of Commerce and Industry, Gol invited various stakeholders and representatives from the tobacco industry to confer 'Foreign Direct Investment (FDI)' in the tobacco sector.¹² India banned foreign investment in cigarette manufacturing in 2010 but tobacco companies can invest through technology collaboration and licensing agreements or by forming a trading company.¹³ In April 2018, DIPP with other stakeholders discussed the possibility of having a complete ban on FDI in the country in the tobacco sector. Reportedly, the proposal was aimed to discourage foreign investment in the tobacco sector which can aid in decreasing tobacco consumption in India consistent with its commitments to the WHO FCTC. However, no decision has been taken on this by the government.^{14,15}

(Score: 3 – 1 mitigating circumstances [no decision has been taken up by the government] = 2)

INDICATORS 0 1 2 3 4 5

2. The government accepts, supports or endorses policies or legislation drafted by or in collaboration with the tobacco industry.



No such data was found in the public domain or any report or media coverage.

3. The government allows/invites the tobacco industry to sit in government interagency/ multi-sectoral committee/ advisory group body that sets public health policy.



Representatives from the tobacco industry in India are members of the Board of Trade under Ministry of Commerce and Industry, members of the National Food Processing Development Council, Ministry of Food Processing Industries (MoFPI), under the Gol.⁶ Though the industry representatives are not directly involved in setting public health policies their interactions with the above-mentioned authorities may indirectly influence this process. Media reported¹⁶ several occasions where the tobacco industry sent repeated representations to not only the Union Ministry of Health and Family Welfare but also other ministries, and parliamentary committees, asking to withdraw the large mandatory PHWs.

(Score: 3 base score – 2 Ministry of Commerce and Industry = 1)

An autonomous body directly working under the MoHFW, works in partnership with a leading tobacco company in India for varied projects.¹⁷ From a public health perspective, as an apex national regulatory authority, role of such an autonomous body is critical in strengthening India's response to various health policies, particularly related to Non-Communicable Diseases (NCDs) that arise majorly from risk factors such as, unhealthy foods, sugar-sweetened beverages, tobacco and alcohol use and lack of physical activity. Gutkha (a type of smokeless tobacco) ban in India is also implemented through this autonomous body under the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011.¹⁸ However, minutes of meetings reported that a representative from a big tobacco company in India, has consistently attended gatherings with other advisory board members to suggest recommendations for planning, implementation and progressing on various programmes and projects under this autonomous body.¹⁹

(Score: 3 base score + 1 tobacco industry involvement in meetings of an autonomous body, which works under MoHFW = 4)

INDICATORS 

4. The government nominates or allows representatives from the tobacco industry (including State-owned) in the delegation to the COP or other subsidiary bodies or accepts their sponsorship for delegates. (i.e. COP 4 & 5, INB 4 5, WG)



India hosted the Seventh session of the Conference of the Parties (COP7) in November 2016. The COP7 meeting in India began with 500 members from the tobacco industry and allied organizations protesting outside the conference venue, demanding their participation in COP7 as important stakeholders.²⁰ Being a WHO member state, the GoI did implement recommendation 4.9 (i.e Parties should not nominate any person employed by the tobacco industry or any entity working to further its interests to serve on delegations to meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties) and 8.3 (i.e Parties should ensure that representatives of State-owned tobacco industry does not form part of delegations to any meetings of the Conference of the Parties, its subsidiary bodies or any other bodies established pursuant to decisions of the Conference of the Parties) of the Article 5.3 Guidelines and no tobacco industry representatives have been included in the government delegation to the FCTC COP and its related meetings.²¹

No such reports were found that government nominated or allowed the participation of tobacco industry in COP8 held in 2018 at Geneva.

(Score: 1 [standardised score in SEATCA Index] the government does not allow industry representatives)

II. So-called CSR Activities

5. A. The government agencies or its officials endorse, support, form partnerships with or participate in so-called CSR activities organized by the tobacco industry.



On June 15th 2017, a media report indicated that few states in India, including Himachal Pradesh, Punjab and Maharashtra may disassociate themselves from any sponsorships, donations or CSR initiatives offered by the tobacco industries.²² All these are among those eleven states in India, which have issued WHO FCTC Article 5.3 notifications.

The Company's (Amendment) Act 2017 in India, mandates companies to spend 2% of its profit in last three years on CSR activities.²³ Consequently, some of the tobacco companies use this law to spread their manipulative motives and to build public-private partnerships.²⁴

Nevertheless, two major Indian tobacco companies with market shares of 78% and 8%,²⁵ engage in CSR activities revolving around education, health, welfare programmes for women and sanitation. CSR activities report of a leading tobacco company in India shows that it provided infrastructure support to 162 primary government schools, entered into public-private partnership with several state governments, NGOs for health and sanitation schemes and watershed projects in the Fiscal Year 2017-18 and 2018-19.²⁶

(Score: 3 base score + 1 multiple agencies involved = 4)

According to this leading tobacco company's annual reports (2017-18 and 2018-19),²⁷ for supporting primary education, the company works in collaboration with a Mumbai-based NGO, working towards promoting education and child development programmes, endorsed by various international health and development agencies. Moreover, according to a media report,²⁸ a CSR programme launched by this leading tobacco company to spread awareness about waste segregation in school children, is supported by the Ministry of Urban Development and Greater Hyderabad Municipal Corporation.

(Score: 3 base score + 1 continuing engagement is anticipated with the health and non-health agencies = 4).

Moreover, the same tobacco company, under its CSR activities also explicitly states that it efficiently works to promote Agriculture, Solid waste management, women empowerment, Health and Sanitation programmes and overall development in alignment with varied government schemes at national and state levels in India. Though, such tobacco companies often do not get direct support from the Gol to promote such schemes but they work in partnership with various renowned NGOs.^{29,30}

(Score: 3 base score + 1 involvement of multiple agencies = 4)

Another big tobacco company's (market share of 8%) CSR report (2016-2017) reveals that it has equipped Primary Health Centers (PHCs) and contributed to infrastructural improvements in health centers (Anganwadis) and primary schools apart from setting up health camps and after-school programmes for children. The company's CSR initiatives also work in HIV/AIDS prevention work.³¹ These activities were also reported under company's CSR report (2017-2018).³²

(Score: 3 base score + 1 involvement in health and education departments = 4)

B. The government (its agencies and officials) receives contributions (monetary or otherwise) from the tobacco industry (including so-called CSR contributions).

According to a press report,³³ a leading tobacco company in India signed a Memorandum of Understanding (MoU) to invest 10,000 crore Rs. with the Ministry of Food Processing Industries, Gol. The report specifies that "the tobacco company was the Platinum Sponsor for World Food India 2017." Therefore, it can be evidently ascertained that certain ministries of the Gol accept proposals/investments from these tobacco industries as food industry to implement their programmes.

(Score: 3 base score + 1 MoU signed + 1 MoFPI= 5)

In addition, in 2018, this leading tobacco company (as a FMCG company) in India donated Rs. 7 crore for the relief and rehabilitation of one of the flood-hit states of India, which was received by the Chief Minister and other officials of the state.³⁴

(Score: 3 base score + 1 contributions received from the tobacco industry by chief minister of a state in India = 4)

INDICATORS 

III. Benefits to the Tobacco Industry

6. The government accommodates requests from the tobacco industry for a longer time frame for implementation or postponement of tobacco control law. (e.g. 180 days is common for PHW, Tax increase can be implemented within 1 month)



In 2015, MoHFW announced implementation of 85% PHWs on both the sides of tobacco products.³⁵ However, soon after the news was spread, big tobacco companies and allied organisations started lobbying against the implementation of larger PHWs and filed about 27 cases against the federal rule across various jurisdictions in states. The tobacco industry challenged the text as unsubstantiated, claimed that the images of the warnings were untruthful and the warnings as unconstitutional. Consequently, in many states of India, the implementation of larger PHWs was delayed and not effectively implemented.³⁶ The apex court had then transferred all these petitions to the Karnataka High Court³⁷ which struck down the stringent 85% PHW Amendment Rules, 2014 in December 2017, which was a major win for the tobacco industry. The Supreme Court, however, stayed the order passed by the HC of Karnataka in January 2018.³⁸ However, the government stuck to its decision of implementing 85% PHWs on tobacco products which is commendable.

(Score: Not Applicable)

Government's decision to impose higher taxes on tobacco under the new GST regime was also being challenged by the industry through farmers-The Federation of All India Farmer Associations (FAIFA).³⁹ FAIFA is a NGO representing farmers across states various states in India.⁴⁰ However, the decision of government remained unaffected.

(Score: Not applicable)

7. The government gives privileges, incentives, exemptions or benefits to the tobacco industry



Prior to the introduction of GST in India from July 1st 2017, the taxes on bidi were substantially lower than taxes on cigarettes. Even after the introduction of GST in India, differential tax rates continue to exist. Both cigarettes and bidis are taxed at 28% (GST), however, unlike cigarettes, no cess is levied over and above GST for bidis.⁴¹ Global Adult Tobacco Survey-2 (GATS-2) 2016-2017, shows that the prevalence of current bidi smoking is almost double the prevalence of cigarette smoking in the country.⁴² Tax exemption for bidi manufacturers widened under the GST regime in 2017 for the units that produced less than two million sticks to units with less than Rs. 2 million annual turnover. In 2018-19, tax exemption has been raised for manufacturers having less than Rs. 4 million annual turnover. Moreover, tax exemption is also available for small registered manufacturing companies with less than 20 workers. All these exemptions result in a considerable proportion of bidis produced in India, without paying any tax, which eventually increase the economic burden of the tobacco-related diseases in the country.

(Score: 3 base score + 1 tax exemption = 4)

In addition to this, the ITB, under the Ministry of Commerce and Industry, provides incentives to tobacco growers and exporters.⁴³ ITB provides incentives under welfare scheme "Tobacco Board's Grower's Welfare Fund" to tobacco growers and their family members. The welfare scheme is aimed to provide financial assistance (loan/grants) to tobacco growers and their families, to support their educational, social and health needs.⁴⁴

(Score: 3 base score + 1 incentive specific to tobacco growers and exporters + 1 indefinite period = 5)

IV. Forms of Unnecessary Interaction

8. Top level government officials (such as President/ Prime Minister or Minister) meet with/foster relations with the tobacco companies such as attending social functions and other events sponsored or organized by the tobacco companies or those furthering its interests.



The ITB, an arm of Ministry of Commerce and Industry, GoI works with a mission "to strive for the overall development of tobacco growers and the Indian Tobacco Industry". The ITB also sponsors, assists, coordinates and encourages research and activities for the promotion of the tobacco industry. The CTRI, funded by the GoI, conducts research to enhance productivity and manufacturing of tobacco.⁴⁵

(Score: 3 - 2 Ministry of Commerce and Industry = 1)

Chairman & Non-Executive Director of a leading tobacco company in India was conferred the prestigious Banga Bibhushan award, the highest civilian honour in 2017 and the Padma Bhushan award (in 2011).⁴⁶

(Score: 3 base score + 1 tobacco industry representative awarded with prestigious awards = 4)

According to a media report released on January 21st 2017, an award function was organised by the Tobacco Institute of India where Agriculture Minister, MPs, MLAs, and members of Tobacco Institute of India and ITB were not only present but reportedly felicitated 17 "best tobacco farmers" of three states in India.⁴⁷ During the award function, Minister for Agriculture also encouraged the farmers to submit their representation to the Ministers of State and Central Government on various tobacco-related issues for them, for example illegal sale of tobacco products and decreasing price and taxes on cigarettes.⁴⁸ The Tobacco Institute of India organised this event even in 2018, where Government officials were present.⁴⁹

(Score: 5 direct involvement of MLAs in the events organised by the tobacco industry)

INDICATORS 

9. The government accepts assistance/offers of assistance from the tobacco industry on enforcement such as conducting raids on tobacco smuggling or enforcing smoke free policies or no sales to minors. (including monetary contribution for these activities)



A report (2015) highlighted the rise in illicit trade in tobacco in India.⁵⁰

Industry bodies are carrying out extensive research and activities to address issues regarding illicit trade and tobacco smuggling in India.⁵¹ A study entitled "Illicit Markets a Threat to our National Interests" conducted by an industry body has exaggerated issues regarding illicit trade in India.⁵² Moreover, this industry body even formed a CASCADE (Committee Against Smuggling and Counterfeiting Activities Destroying the Economy) to counter the menace of illicit trade and smuggling. This CASCADE is currently headed by the senior vice president of corporate affairs of a leading tobacco company. As per a media report (2017), the government joined hands with this CASCADE to fight against the menace of illicit trade in India.⁵³

(Score: 5)

10. The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry.



The industry also influences companies including government-owned companies to invest by building a positive image of itself. Five insurance companies, along with a government owned company have 32% stake in a leading tobacco company in India.⁵⁴ Investment by such government owned and recognized organisations/companies directly conflicts with government's tobacco control agenda.⁵⁵

(Score: 3 base score + 1 involvement of multiple government companies = 4)

According to media reports, dated June 9th 2017, the government sold its stake in a leading tobacco company but reinvested through government owned insurance corporation, which shows shifting of investment/stakes from one government organization to another instead of complete disinvestment.⁵⁶ Insurance companies can hold up to 15% of shares in tobacco companies in India, however, a government's life insurance company holds up to 16.27% stakes in leading tobacco company of India.^{57,58} Also, six of top 10 shareholders in India's top tobacco company, are Insurance companies owned by the state or the Union Government of India.⁵⁹ Such activities contradict the intent of Article 5.3 in India.

(Score: 3 base score + 1 continuing engagement with tobacco industry = 4)

A press report, dated April 13th 2017, also revealed that a Public Interest Litigation (PIL) was filed in the Bombay High Court, which challenged investment of government-owned insurance companies in the tobacco industry. The petitioners claimed that such an act by state-owned life insurance companies violates Article 21 of the Constitution of India, which guarantees the right to life. Article 47 is also violated as it directs states to take steps to prohibit the use of intoxicants and to improve health. The petition mentions that there is an "inherent, undeniable and irreconcilable contradiction between the nature and objective of life insurance companies and the tobacco industry."⁶⁰ Nevertheless, ITB also fosters relations with tobacco industry while propagating growth of tobacco in the country.

Reportedly in 2018, a state municipal corporation signed an MoU with a leading tobacco company to undertake dry waste management in that state for three years.⁶¹

(Score: 3 + 1 MoU with a state municipal corporation = 4)

Additionally, as per media reports, a leading tobacco company in India propagated its partnership with a policy think tank of the GoI. The leading tobacco company collaborated with this government body on various programmes and projects.^{62,63} The prime objective of these partnerships according to these reports were to foster productivity of major crops in identified districts.

(Score: 3 base score + 1 policy think tank of GoI + 1 continued partnership for fostering major crops = 5)

V. Transparency

11 The government does not publicly disclose meetings/ interactions with the tobacco industry in cases where such interactions are strictly necessary for regulation.



No reports of meetings between the government and tobacco industry found in the public domain or any media reports.

12. The government requires rules for the disclosure or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf including lobbyists



Ministry of Corporate Affairs, Gov regulates the corporate affairs in India through Companies Act 2013, other allied acts, bills and rules. The Companies Act 2013 regulates incorporation of a company, responsibilities of a company, directors, and dissolution of a company. Registrars of Companies (ROC) is a department under Ministry of Corporate Affairs which is appointed under Section 609 of the Companies Act. The ROC mandates the Indian enterprises in industrial and service sector to register with the state registrars and thus, regulate registration of all the companies in India. However, despite this law the unorganised (unregistered) bidi industry prevails in the country.⁶⁴

(Score: 3 base score + 1 unregistered bidi industry = 4)

VI. Conflict of Interest

13. The government does not prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates, or campaigns or to require full disclosure of such contributions.



In 2017, the Ministry of Finance, Gol proposed 'electoral bonds' to promote transparency in funds received by the political parties in India.⁶⁵ On 2nd January 2018, the centre notified the scheme for the 'electoral bonds', which were introduced by amendments made through the Finance Act 2017 to the Reserve Bank of India Act 1934, Representation of Peoples Act 1951, Income Tax Act 1961 and Companies Act.⁶⁶ Under this scheme, the donors can buy electoral bonds from the Reserve Bank of India, and the contribution for which can be received by the recipient political party in their respective account. Despite the introduction of this law, there is no prohibition to take funds from the tobacco industry in accordance with Article 5.3 in India.

(Score: 5 base score – 1 electoral bonds introduced to maintain transparency = 4)

14. Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General)



Chairman of a leading tobacco company served as a Director on Central Board of the Reserve Bank of India (RBI), Gol and as a Member of the National Foundation for Corporate Governance (NFCG).⁶⁷ According to tobacco company's website portal their chairman served as a board member or committee member of various national and state governing bodies in India. In fact, the company's profile shows that most of the Board of Directors were linked or currently associated with varied departments, ministries and governing bodies under Gol.

(Score: 3 base score + 1 Chairman of the tobacco company = 4)

Other Director on Board of this leading tobacco company, served in executive committee of Ministry of Commerce and Industries bodies.⁶⁸

(Score: 3 + 1 other employees = 4)

15. Current government officials and relatives hold positions in the tobacco business including consultancy positions.



According to the website portal of a leading tobacco company in India, several officials from government organizations are their (company's) board members holding positions like Chairman and Managing Director.⁶⁹

(Score: 3 base score + 1 high level officials = 4)

VI. Preventive Measures

16. The government has put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes and outcome) with the tobacco industry and its representatives.



India currently does not have any specific laws for the implementation of Article 5.3. Nevertheless, eleven state governments have made rapid strides in issuing WHO FCTC Article 5.3 notifications at state-level. In these guidelines, seven, out of these eleven states explained meeting procedures to limit interaction/transparency of interaction with Tobacco industry.

(Score: 3 base score + 1 no national law = 4)

17. The government has formulated, adopted or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry.



India currently does not have any specific laws for the implementation of Article 5.3. However, the Prevention and Management of Conflict of Interest Bill, 2011 which was introduced in the year 2012 clearly mentions in its statement of objectives and reasons that it is the duty of the state to protect the health of its citizens and also discusses the significance of implementing Article 5.3. Under this Prevention and Management of Conflict of Interest Bill, 2011 it is stated that - "International and multilateral agencies and bodies have also accepted and recognized the need to protect public decision making from private conflicts of interest". For example, Article 5.3 of the FCTC spells out clearly the duty of the state: when Parties are setting and implementing public health policies related to tobacco control, they shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law." Similarly, the various agencies and bodies constituted under the aegis of the United Nations, including the World Health Organization and other agencies, have framed guidelines to prevent conflicts of interest.⁷⁰ Eleven state Governments have made rapid strides in enforcing Article 5.3 of FCTC. All eleven states have issued Article 5.3 notifications. Six out of eleven states mentioned avoiding conflicts of interest by all government officials.

(Score: 3 base score + 1 no national law = 4)

18. The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues and any other activity, including lobbying, philanthropy, political contributions and all other activities.



No specific law in context to WHO FCTC Article 5.3 in India which requires the tobacco industry to periodically submit the information to the Gol.

19. The government has a program / system/ plan to consistently raise awareness within its departments on policies relating to FCTC Article 5.3 Guidelines.



There is no defined program or training at the national level in India for Article 5.3 of FCTC. However, training workshops organised under the National Tobacco Control Programme (NTCP) for various stakeholders, including health professionals, nodal officers, district officials, NGOs and enforcement officers includes sessions on Article 5.3.⁷¹ (Score: 3)

No other evidence was found where other ministries seek assistance from Ministry of Health and Family Welfare, GoI to counteract tobacco industry interferences and for following Article 5.3 Guidelines.

20. The government has put in place a policy to disallow the acceptance of all forms of contributions/ gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives.



The government has no specific policy to disallow the acceptance of contributions/ gifts from the tobacco industry in accordance with the Article 5.3. Some of the notifications issued by the state governments restrict accepting scholarships, rewards or gifts given by cigarette and tobacco-producing companies/sponsorship companies/organizations.

TOTAL

69

CONCLUSIONS

With a total score of 69, the results of this India TII Index 2019 highlights some progress in the implementation of WHO FCTC Article 5.3 when compared to India TII Index 2018. It is encouraging that some states in India have issued Article 5.3 notifications, however there is a need for comprehensive guidelines at the national level which would be implemented and enforced across all departments, in all the states/ union territories across India.

RECOMMENDATIONS:

This Index is an attempt by the CSOs working on tobacco control in India to systematically assess the implementation of WHO FCTC Article 5.3 with respect to severity and frequency of tobacco industry interferences and government response to it in India. Based on the findings of this report, following are some recommendations which can help strengthen the implementation of Article 5.3 of FCTC in the country:

1. Raise awareness and adequate sensitisation: The India TII Index highlighted that various organisations collaborate with the tobacco industry. Consequently, directly or indirectly the tobacco industry gets involved in public health policy making or programming. Thus, it becomes important for the government to raise awareness about the deadly health and economic consequences of tobacco use and caution them on the tobacco industry's tactics and interference in the public health policymaking process.

In addition, this report has shown that the tobacco industry has diversified into food and other industry and legitimates its interactions with the government and other credible stakeholders of being a non-tobacco corporation. There is thus an urgent need to sensitise various departments in government, the United Nations (UN) bodies and NGOs that deal with both health and non-health issues. Also, any interactions between NGOs and the tobacco industry should be monitored regularly. NGOs too, should stay away from any interaction with the industry itself or pro-industry groups even if the agenda of the meeting is a non-health issue.

2. De-normalise and regulate activities described as “socially responsible” by the tobacco industry, including CSR: The report highlighted that industry's CSR activities have a hidden agenda of promoting and marketing their products and promoting a positive image and perception. In India, tobacco industry initiated CSR must be treated as an activity that industry undertakes to maintain its credibility with the public and the government and these need to be de-normalised for effective implementation of WHO FCTC Article 5.3.

3. Dis-incentivise tobacco industry: It is well established that the only sector that benefits from tobacco growing, rolling, manufacture and use is the tobacco industry itself. The benefits do not reach the poor workers involved in rolling or growing tobacco. This all the benefits given to the tobacco industry should be phased out. Thus, all the tobacco products should be uniformly and highly taxed to achieve public health benefit and to protect the poor and children from the tobacco menace.

4. Establish measures to limit interactions with the tobacco industry: The report highlighted that there is a lack of national guidelines in India to limit interactions of Government officials and departments with the tobacco industry. This underscores a need for a law to limit interactions of government bodies and NGOs with the tobacco industry. Interactions with pro-industry groups or industry front groups should also be avoided at all times.

5. Ensure the transparency: As mentioned-above, there is a need to limit any interaction with the tobacco industry in India. However, if at all for some reason interactions are necessary, a code of conduct for officials should be in place and the interactions should be transparent and should be declared publicly.

6. Avoid conflicts of interest: The report ascertained that there is no law in the country to restrict authorities and organisations from taking contributions from the tobacco industry. Also, the tobacco industry is partnering on prestigious government programmes by supporting NGOs or programmes directly. This clearly is a conflict of interest when India is a signatory to WHO FCTC and also MoHFW, Gol is steering efforts to curb the tobacco menace through National Tobacco Control Programme (NTCP). Thus, all such partnerships and collaborations should be disallowed under the Conflict of Interest.

7. Prevention through Whole-of-government approach: As the report deliberated that eleven states in India have issued Article 5.3 notifications in the country at the sub-national level, however a whole-of-government approach is required for preventing public health from vested interests of the tobacco industry. The implementation of Article 5.3 of FCTC at a national level should be propagated by the MoHFW. Other departments in the government too should realise the significance of Article 5.3 for which a process needs to be established to address any violations of WHO FCTC Article 5.3 at national and sub-national level. This reiterates the need for adopting national guidelines for Article 5.3 of FCTC in the country. Also, states that have already issued Article 5.3 notifications, need to set up a monitoring mechanism to address any violations of these notifications within their jurisdiction.

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