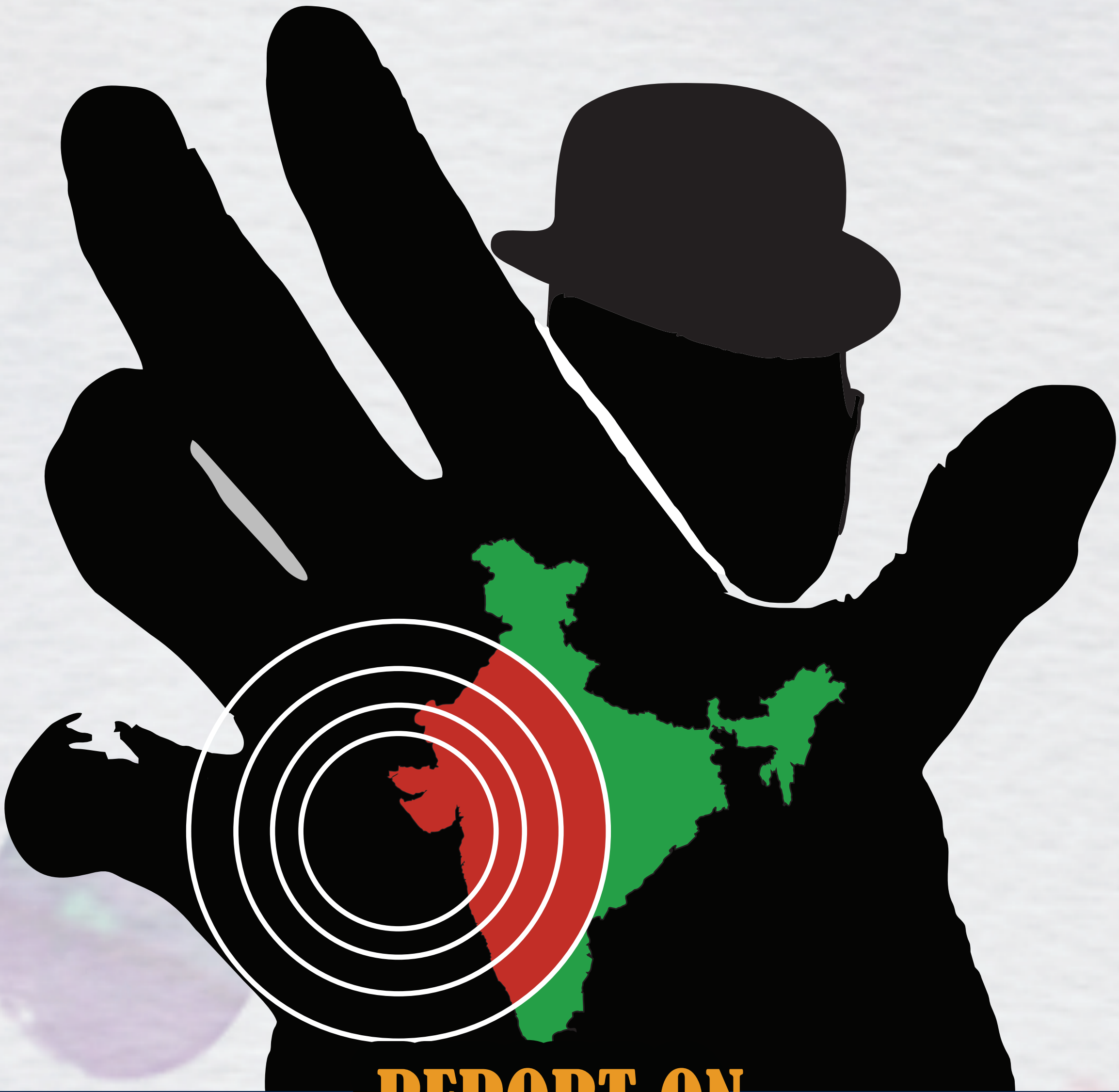

REPORT ON TOBACCO INDUSTRY INTERFERENCE IN INDIA – CASE STUDIES

Dr Sonu Goel Dr Sitanshu Sekhar Kar

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Disclaimer:

The views and opinions expressed in this report are those of the authors and do not necessarily reflect the official policy or position of any organisation.

Ethics approval and consent to participate

The study was approved by the Institutional Ethics Committees of Jawaharlal Institute of Postgraduate Medical Education and Research (IEC ref. no.- JIP/ IEC/2017/0477 and Post Graduate Institute of Medical Education and Research, Chandigarh (IEC ref. No. PGI/IEC/2017/565). The duly signed consent forms were taken from the respondents via email before conducting the interviews, with an option to withdraw from the study at any point in time. The study was conducted and reported according to the Consolidated Criteria for Reporting Qualitative Research (COREQ).

Report on
Tobacco Industry Interference in India
– Case Studies

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TABLE OF CONTENTS

FOREWORD

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Date 19)05)2022

Tobacco addiction is one of the most devastating global epidemics that have led to serious consequences, especially in vulnerable populations. It kills over 8 million people per year across the globe, and one million from India. It is number one risk factor for most cancers, notably oral and lung cancers. Tobacco use is also the commonest risk factor to the major NCDs - cardiovascular disease, cancer, chronic respiratory disease - and other diseases including tuberculosis and neurological disorders. The total economic costs attributable to tobacco use from all diseases and deaths in India in the year 2017-2018 for persons 35 years or older is around INR 1773.4 billion (US $27.5 billion), of which 22% is direct and 78% is indirect cost. If the current trends continue, tobacco use may cause as many as 1 billion deaths in the twenty-first century, unless urgent and effective action is taken.

Cigarette and smokeless tobacco companies spend billions of dollars every year to market their products. Besides they are actively engaged in surrogate advertisement and promotion of tobacco along with normalizing tobacco in society use to incite youth to consume it. They were involved in opposing tobacco control efforts by adopting nefarious practices even in COVID19 pandemic times.

I am happy to see that PGIMER Chandigarh and JIPMER Puducherry in collaboration and partnership with WHO Country Office, India and The Union, South East undertook a study to define tobacco industry and its front groups in India along with documenting various tobacco industry interferences (TII) and efforts of diverse stakeholders in mitigating them through case studies. These case studies, which are being published by e-Resource Centre for Tobacco Control (e-RCTC) established at PGIMER, Chandigarh, will pave the way for effective implementation of WHO Framework Convention on Tobacco Control (WHO FCTC) in the country.

I heartedly wish them in this endeavour.

(Prof Vivek Lal)

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EXECUTIVE SUMMARY

The Framework Convention on Tobacco Control (FCTC), negotiated under the auspices of WHO is one of the most quickly ratified treaties in United Nations history that seeks "to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke" by enacting a set of universal standards stating the dangers of tobacco and limiting its use in all forms worldwide". The WHO FCTC is designed to strengthen national and international coordination to combat the tobacco epidemic.

The Article 5.3 of WHO FCTC inter alia recommends '…in setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law…'. in order to implement the Article 5.3 a number of countries have formulated policies. In 2020, the Government of India came out with a Code of Conduct for health ministry official's interaction with the industry. Several states /jurisdictions have also framed their own Code of Conduct for civil servants. Despite this, tobacco industry has adopted nefarious strategies to undermine government efforts.

Against this background, PGIMER Chandigarh and JIPMER Puducherry in collaboration and partnership with WHO Country Office, India and The Union, South East Asia (SEA) undertook a scoping study with the broad objective to define tobacco industry and its front groups and thereafter, document evidence of tobacco industry interference in India through case studies. For this project, a series of interactions were done with diverse stakeholders (policy makers- current and retired, implementors and program managers, academia, civil society advocates) through-out the country over a period of one year which led us to work on 8 case studies on diverse policy issues related to tobacco control in the country. Thereafter, these case studies were meticulously crafted and reviewed over next 6 months in 3 regional workshops. The first phase of the project i.e. defining the tobacco industry has been published in leading medical journal (BMC Public Health) https://bmcpublichealth. biomedcentral.com/articles/10.1186/s12889-021-11773-x

For the second phase, we envisage to publish the current report on **'Tobacco Industry Interference in India- Case Studies'** which includes case studies of specific instances of interferences by the tobacco industry and its front groups in India in last decades which has influenced tobacco control policies and its implementation at national level. The document also contain recommendations for reducing this interference.

The broad themes covered in the case studies are:

- Tobacco Advertising, Promotion and Sponsorship (TAPS),
- Regulation of Smokeless tobacco products,
- COTPA amendment,
- Livelihood of workers involved in Tobacco industry
- Tobacco Pack Warning
- New technology, agents and interventions (e-cigarettes, vape etc.)
- Tobacco taxation and policy

This documentation will be a resource for generating awareness and facilitate cross learning among the varied stakeholders to check the tobacco industry interference in the country. Through this report, we have laid a strong foundation of collaboration and partnership for advancing tobacco control in India and have initiated a process of building capacity on 'Tobacco Industry Interference', which is also gaining relevance at the policy level.

PREAMBLE

Tobacco use is the biggest cause of preventable deaths globally killing more than 8 million people every year. Tobacco use is responsible for more than 1.3 million deaths annually in India as well. However, nearly 267 million Indian adults (15 years and above) use tobacco in some form in the country while 8.5% youth (age 13-15 years) also use tobacco with highest use in Arunachal Pradesh and Mizoram with 58% and lowest in Himachal Pradesh at 1.1%. Tobacco use is the biggest risk factor for all non-communicable diseases and is responsible for 14% deaths due to NCDs in the country. Unfortunately, the product that is responsible for highest number of deaths in the country (tobacco use kills more people than HIV AIDS, Tuberculosis, Malaria all combined) continues to be sold as a legally available and aggressively marketed consumer product adults and minors alike.

The most disheartening part of the quandary is the availability and accessibility of all kinds of tobacco products to minors in a country where sale of tobacco products is prohibited under the Cigarettes and Other Tobacco Products Act, 2003 (COTPA). Even the act of 'giving' or 'causing to be given' a tobacco product to a minor is punishable with a fine of up to rupees one lakh or imprisonment of up to seven years under the Juvenile Justice Act 2015. COTPA further prevents smoking in public places, prohibits sale of tobacco products within 100 yards of any educational institution, prohibits all forms of direct and indirect advertisements of tobacco products and mandates statutory pictorial health warnings covering 85% of the front and back of all tobacco products. The law also mandates statutory warning boards at all public places against smoking, all educational institutions against sale within 100 yards and all point of tobacco sales against sale to minors.

Besides the legal provisions and due notification of enforcement officials under both the laws to prevent access of tobacco to minors, the Ministry of Health and Family Welfare, Government of India also implement a flagship National Tobacco Control Programme in more than 700 districts across 36 states and union territories in the country. The Programme not only calls for awareness about the harmful effects of tobacco use but also provides support for cessation and envision making all public places, offices and educational institutions tobacco free.

While the governments at the state and the Centre is trying to reduce the burden on tobacco use through various evidence based tobacco control efforts, it falls short of effective enforcement of the key provisions under the law including compliance of the laws by the tobacco industry. Tobacco industry continue to violate and circumvent tobacco control efforts by the government and other stakeholders. Several studies point to the direct and indirect advertising by the tobacco companies targeting youth, especially young girls, women and other vulnerable group of the population. Prior to the coming into force of COTPA, even the national cricket team was sponsored by the biggest cigarette manufacturer of the country promoting its leading cigarette brand 'WILLS'. Almost all tobacco products, smoking and smokeless, were advertised by celebrities including film actors, on the silver screens (in films, television) and radio as well.

Given the colossal death and disability caused by tobacco products, its manufacturers, producers, suppliers, distributors and sellers should be treated differently from any other entity engaged in other legal consumer products. Especially where evidence suggests that the tobacco industry aggressively violates the tobacco control laws including targeting minors in their direct and indirect advertising tactics while not fully complying with the statutory requirements of warning boards and product packaging and labelling requirements.

Global evidence suggests that the tobacco industry is a formidable opponent of public health and development, which is determined to recruit new tobacco users at the cost of public health. The tobacco industry, therefore, is identified as the biggest impediment in implementation of tobacco control efforts globally and Article 5.3 of the WHO FCTC clearly recommends that all public health policies relating to tobacco control should be protected from the commercial and vested interest of the tobacco industry. While India ratified the WHO FCTC in 2004 and has been a leader in the development and implementation of the Treaty supporting stronger tobacco control measures, it is yet to adopt a national policy to prevent its tobacco control law and policies from the tobacco industry interference. With efforts from civil society organisations and state governments committed to advancing public health gains, state and district level policies to prevent tobacco industry interference have been adopted and implemented in 14 states and more than 20 districts in the country.

Hearing a petition against participation of the Tobacco Board of India in a tobacco industry sponsored conference to be held in India, the Karnataka High Court not only directed the Board to withdraw its sponsorship and participation but also directed the Ministry of Health and Family Welfare, Government of India to adopt a Code of Conduct as envisaged under the Article 5.3 and its guidelines applicable to whole of the government. Ten years later, the direction, however, was only partly complied with the MoHFW adopting a Code of Conduct that was applicable only to the MoHFW and all its departments, organisations, institutions, consultants, agencies, contractors etc.

In view of the directions from the Karnataka High Court and keeping with the WHO FCTC Article 5.3 mandates to effectively prevent tobacco industry interference across government the MoHFW circulated a Code of Conduct to all departments, but could not succeed in getting unanimous support from all. To address the issue on a wider scale, MoHFW also proposed amendment to section 2 of COTPA in 2015 to include specific provision against tobacco industry interference, however, the proposed amendments never got to see the Parliament and were withdrawn by the Ministry in 2017.

The tobacco industry is known for its interference and influencing policy makers to stymie effective tobacco control policies and has been responsible for the delay, dilution and derailing of several effective and evidence based measures in the country. Evidence suggest that tobacco industry in India was responsible for derailing an early effort for a comprehensive tobacco control legislation in the 1990s and likely influenced dilution of the provisions under COTPA that leaves scope for creation of designated smoking areas and direct advertising at point of sale in India. On the one hand the industry circumvents tobacco control laws and policies, aggressively targets vulnerable population including minors to sell its lethal, toxic and highly addictive product while on the other it portrays and reinvents itself as being "socially responsible" and therefore eligible for a seat at policymaking positions, which it uses to deter, delay, dilute or derail tobacco control measures. Not even the global Pandemic COVID-19 could prevent them from this aggressive marketing of the deadly product and simultaneously playing socially responsible corporates by donating for COVID-19 treatment and care. All this in the face of a Madras High Court order that directed action against CSR by tobacco companies which resulted in a clear directive from the Ministry of Corporate Affairs that mandates all corporations to not violated COTPA while undertaking their CSR activities. It may be noted that Article 13 of the WHO FCTC considers use of tobacco company's corporate identity and their CSR efforts as advertising and thus violation of Section 5 of COTPA.

Eliminating tobacco industry interference from not only all the public health policies relating to tobacco control but all public health policies and all public polices at large is potentially the single most effective measure that governments can adopt to accelerate tobacco use reduction and protect the tobacco control activities and therefore saving millions of lives from death and disease caused by tobacco addiction. Adopting and implementing the WHO Article 5.3 policy guidelines is the first step towards eliminating such interference and influence. As described in the guidelines to the Article 5.3, such policy should not be implemented in isolation but on a comprehensive scale that is applicable to all entities in the government who are responsible for the formulation, implementation, administration or enforcement of those policies. Further the policy must be followed by all officials, representatives, and employees at all level in all branches and apply not only against the tobacco industry but front groups, individuals and organisations working to further their interests.

The guidelines also mandate that there is no interaction, no partnerships, no conflict of interest with a tobacco industry. It allows, transparent and necessary interaction only recommends denormalisation of corporate social responsibility activities by the tobacco industry and mandates no preferential treatment to be extended to the industry. It also recommends governments to adopt and implement other effective measures beyond those recommended to prevent any kind of tobacco industry interference.

This report provides an insight to the various instance of tobacco industry interference in India and how governments, civil society organisation and courts mitigated such interference. While the tobacco industry interference continues, the efforts taken by several states to prevent and denormalise the same is a silver lining in regulating the tobacco industry behaviour. However, there is an urgent need for adopting and implementing a national policy in line with the mandates of Article 5.3 and its guidelines. A concerted effort from the MoHFW and a whole of government support for the same is a need of the hour.

Tobacco Industry Interference in the regulation of Smokeless Tobacco Products (SLT) in India

India is the second largest consumer of tobacco after China and is currently home to more than 199 million SLT users. (66% of world SLT users live in India).[1] SLT products in India grew with the introduction of newer products and their marketing rode on the back of a burgeoning print media, radio and television. This led to myriad forms and varieties of SLT products in the country over the years. But, till date, there is no estimate of the available varieties of SLT in India. These SLT products evolved locally and found national markets when plastic packaging became affordable to the local producers. [2]

'Smokeless tobacco' includes a large variety of commercially or non-commercially available products and mixtures that contain tobacco as the principal constituent and are used either orally (through the mouth) or nasally (through the nose) without combustion. Oral use of smokeless tobacco is widely prevalent in India and different methods of its consumption include chewing, sucking and applying tobacco preparations to the teeth and gums. The three forms of smokeless tobacco that are commonly used orally include:

a) Tobacco alone (with aroma and flavorings) – e.g Creamy or dry snuff, Gudakhu, Gul, Mishri and Red tooth powder

b) Tobacco with other components (lime, sodium bicarbonate, ash) – e.g., Khaini, Zarda, Maras and Naswar

c) Betel quid with tobacco (includes areca nut, slaked lime, catechu and tobacco with spices) – e.g., Betel quid, Gutkha and Mawa.[3]

The national advertisements for SLT products like Pan Masala and Zarda (a scented, toasted chewing tobacco) began in the 1970s. Celebrity endorsements, growth of television, introduction of the low-priced, single-portion pouch SLTs fuelled the rise of Gutka and Pan Masala mixed with tobacco from being a local product (primarily Uttar Pradesh) to a national one.[4] This led to a rapid upsurge in SLT use in the country. In order to curb this rise, the government initiated regulatory measures on SLT products in the 90`s. [4] In reaction, the tobacco industry began employing a spectrum of tactics to prevent, dilute or delay the implementation of such restrictive laws.

In India, the tobacco industry faced its first regulation in the form of a legislative measure. The Drugs and Cosmetics Act of 1940 [5,6] banned the manufactur of tobacco-contained toothpaste/toothpowder such as Gudakhu, Gul and red tooth powder in 1992. Subsequently, when the tobacco industry opposed the ban in the High Court of Rajasthan and in Supreme Court, the court upheld the ban in the year 1994 and 1997. [7]

Until the year 2000, tobacco control measures and the consequent industry interferences were sporadic. The SLT control measures were mainly policy restrictions such as imposing statutory warnings on products, [8] recommending a ban on chewing tobacco by a special expert committee, [5] prohibition of advertisements (direct and indirect) and sale of tobacco products at educational institutions [9] [10] etc. Alongside, the Cigarettes and Other Tobacco Products Act (COTPA) was introduced in Parliament in the year 2001 and was enacted in the year 2003. [11,20]

The tobacco industry intensified its interference when concerted tobacco control efforts of the government, civil society and media support increased at the national level. The industry interference included litigation, false scientific propaganda and front action groups to prevent, dilute and delay tobacco control measures in the country. [12] For instance, during the years 2000-2003, several states in India banned the manufacture, sale, storage and distribution of Gutka and Pan Masala under section 7(iv) of the Prevention of Food Adulteration (PFA) Act. [13] The Tobacco Industry challenged this ban before various High Courts and subsequently in appeal before the Hon'ble Supreme court (SC) of India in the year 2002-2004.

In the ruling, the SC conveyed that the power of branding an article of food or an article used as ingredient of food on the ground that it is injurious to health belongs appropriately to the central government and in accordance with the rules made under Section 23 of the Act. The state food authority has no power to provide the manufacturer with the rights for production, sale, storage, distribution of any article used as food. Such a power can only arise as a result of a wider policy decision and immunity from Parliament regarding registration or at least by exercise of powers by the central government by framing rules under Section 23 of the Act. [13] Following this, an attempt by the Central Government to ban gutkha and pan masala (with tobacco and nicotine) by framing rules under Section 23 of the PFA Act was challenged by TI in several states in India.

The SLT Companies were making an incorrect declaration regarding the content of Pan Masala. The Rajnigandha Pan Masala samples when tested in the year 2005 contained traces of magnesium carbonate, a prohibited ingredient. [14] Similarly, the test report of the Central Tobacco Research Institute (CTRI), annexed with the Health Report submitted by National Institute of Health and Family Welfare (NIHFW) in the SC indicated that Rajnigandha and other leading brands of pan masala had traces of nicotine, which was more than the nicotine content found in chewing tobacco products.

Prior to 2006, the SLT Companies in order to manufacture, distribute and deal in SLT products such as zarda, chewing tobacco and other allied products, used to get license under the PFA Act & Rules as a food product by paying a license fee every year, which was discontinued with the advent of the FSS Act, 2006, as the definition of unsafe food made it difficult for the SLT industry to get license under the newly enacted FSSA. During that time, the Global Adult Tobacco Survey (2009-10) results revealed the proliferation of SLT use in the country. In response, the Ministry of Health and Family Welfare (MoHFW) convened a national consultation on SLT products in the year 2011 to deliberate on regulatory and policy measures to contain SLT use. The expert group recommended a countrywide ban on SLT products under FSS regulation and labelling of all chewable forms of tobacco as food products. [15] The notification of regulation in 2011 mandating, 'tobacco and nicotine should not be used as an ingredient in any food product' favoured the SC to prohibit manufacture and sale of Gutka which was Pan masala (standardized food product) mixed with tobacco which led to the current nationwide ban on SLT products. Post ban on SLTs, companies created an association overnight called the Smokeless Tobacco Federation (India). It aggressively pursued Chief Ministers of states, Finance Ministers and bureaucrats and presented their interpretation of the Food and Tobacco Control Act. These representations were to include gutkha and Pan Masala under COTPA 2003 and not under Food, Safety and Standards (Prohibition and restrictions on sales) Regulations, 2011; [12,16] The industry propagated this narrative as gutkha is a prohibited product under FSS regulation, whereas bringing the product under the ambit of COTPA would ensure that the product of only regulated and not prohibited. Subsequently, the industry launched a nation-wide paid media campaign accusing the ban as discriminatory and unjust. To counter the campaign, the Public Health Foundation of India (PHFI) and Voluntary Health Association of India (VHAI) launched a joint press conference with the participation of MoHFW, World Health Organization (WHO), and other civil societies. They publicized the justification and scientific evidence behind the ban and revealed the industry tactics to prevent its implementation. [16]

Following the ban on SLT products, the tobacco industry staged several front group-led demonstrations in the country. The industry strived to mislead the policy makers asserting that the tobacco products are not as injurious as proclaimed by the scientific community, portrayed the loss of livelihood to tobacco farmers and a revenue loss to the nation. [17]

Post ban, the Gutka industry initiated a flurry of litigation to deter and delay states from uniformly enforcing a ban on Gutka. Gutka manufacturers seized the moment and registered Pan Masala with the same trademark as the Gutka brand, and gave a separate pouch of pure tobacco (colloquially called Chhotu) with the Pan Masala. This ingenious method ensured that Gutka companies were able to bring back their product to their consumers and the ban had a partial impact. [18]

The COTPA enacted in 2003 prohibited direct and indirect tobacco advertising in all mediums. [11] However, the tobacco industry successfully circumvented the very purpose of this legislation by advertising brands of Pan Masala which was sold along with Chottu in all media, which is still an uncertain area, not covered under any enforcement laws. [19] Several litigations filed in courts across India against these tactics of the industry are awaiting judgement. [20]

While the SLT industry would approach the court seeking relief against government regulation; at the same time, they would often disregard/circumvent the court`s specific orders. The SLT industry, however, under the threat of a ban, sought refuge under COTPA and constantly maintained a stand that their manufacture is not a food product, but a tobacco product and therefore should be covered under COTPA, in as much as even mentioning on the pack we come under COTPA. [12]

The tobacco industry continued to inflict legislative challenges on almost every tobacco control measure proposed/enacted. In the year 2007, in response to a Public Interest Litigation (PIL), the HC of Rajasthan ordered the SLT manufacturers to pay 'pollution fine' for the environmental damage caused by littering of Gutka, tobacco and Pan Masala plastic packs. The industry appealed to the apex court on the order where the ruling was upheld. [21] In the case, the SC directed the Ministry of Environment and Forests (MoEF) to frame the Plastic Management and Disposal Rule to ban the sale of Gutka and Pan Masala in plastic pouches, which was then enacted in the year 2011. [22]. In a contempt Petition(No. 237/2011 in SLP No. 16308/2007, 11/05/2011) against Dharampal Satyapal Limited which is engaged in manufacturing pan masala, gutkha,(Rajnigandha, Tulsi) etc., were found guilty of violating the Court's Order Dated 07.12.2010, that inter-alia directed manufacturers of Gutkha, Tobacco Pan Masala to not use plastic material in any form in any package for packing their products Similarly, when Uttar Pradesh raised taxes (VAT) in 2012, the STFI tried to convince the state with reduced revenues and illicit trade. [23] Subsequently the UP government reduced the tax on Pan Masala and Gutka. [24] The tobacco industry's interference made several states including the largest Gutka producer, Uttar Pradesh drag its feet which made it one of the last states to ban Gutka production under FSS Act.

The trade of SLT products in India also witnessed illegal connections or activities. In a reply to a Rajya Shabha question in 2005, the Minister of Home affairs disclosed that two major tobacco barons of India met a gangster for settling financial disputes. This points towards the role of illegal mafia in the SLT trade in the country. [25]

Recently, in 2018, the Health Minister of Tamil Nadu was summoned by the Central Bureau of Investigation (CBI) in connection with a Gutka scam in the state. It was alleged that the politicians, bureaucrats and government officials of the state had been bribed to allow the sale of gutka in the state. [26] Subsequently, in a court case, the Madras High Court, directed the CBI to investigate all aspects of the offence of illegal manufacture, import, supply, distribution and sale of gutkha and other forms of chewable tobacco. [27]

The State Government of Bihar in order to ensure that food or food additives are not used in any form that can impart, intensify, modify, increase dependence and enhance the flavour of chewing tobacco, issued an order dated 25.10.2018. This order directs the concerned officer to ensure that there is no manufacture, sale, storage and transport of chewing tobacco mixed with food or food additive in strict compliance with clause 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011.

The history of SLT control activities in India has faced a multitude of tobacco industry tactics resulting in the delay in enactment of a nation-wide ban on SLT products. The spirited involvement of civil societies, government agencies and the judiciary in upholding the interest of public health are significant contributors to the milestone. To forge the way ahead, enforcement agencies should learn from the past while studying the actions of tobacco industry continuously to pre-emptively block any attempts to weaken the enforcement of SLT in the country.

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Tobacco Industry Interference in the regulation of Tobacco Advertising Promotion and Sponsorship (TAPS) in India

In India, a little more than one fourth of the population (28.6%) uses tobacco in some form or the other. [1] In order to sustain its business, the tobacco industry makes persistent efforts to retain customers and add new ones. Tobacco Advertising Promotion and Sponsorship (TAPS) is a mechanism employed by the tobacco industry for this purpose. There is substantial evidence globally that shows a positive correlation between exposure to TAPS and initiation or continued use of tobacco. [2] The government and the civil society, after realizing the influence of TAPS on the tobacco epidemic, began implementing restrictive laws on TAPS in the country. [3] The tobacco industry, in turn, has vehemently opposed all such restrictive laws with intent to delay, derail or undermine its enforcement.

The tobacco industry spends billions of rupees to boost its consumer base each year. They study potential consumers meticulously in order to devise new marketing strategies. In support of investing in TAPS, one of the industry documents reveals a significant rise in tobacco use with an increase in marketing activities. [4] Scientific evidence also suggests that by implementing a comprehensive ban on TAPS, the prevalence of tobacco use in the country could be reduced substantially. Lower exposure to tobacco marketing has been shown to protect people from cues to initiate or continue the use of tobacco. [5] These consequences of restricting TAPS in India have raised opposition from the tobacco industry through interference with tobacco-related policy development, enactment and enforcement. Although, the industry's efforts to undermine TAPS restrictive efforts were unsuccessful in most cases, they were able to delay, dilute and derail the policy development and enforcement at the national and sub-national levels using legislative protraction effectively. [6]

The effort and desire to attract the young and gullible to the world of tobacco has always been the objective of the manufacturers. "Catch them young" is the motto and the use of tobacco products is projected as synonymous with adulthood, modernity, affluence, social class norm, elegance, etc. Ban and prohibition on direct advertisements of tobacco products has prompted manufacturers and traders to adopt indirect methods or surrogate advertisements to achieve the same result. The fear of falling sales, adverse articles and medical and media reports have prompted the tobacco industry to portray tobacco use as glamorous and socially acceptable, by showing pictures and use by stars and reputed actors, as a stress buster, a habit nurtured by intellectuals, a fashion accessory etc. The list is virtually endless." [6]

The battle against TAPS by civil societies dates back to the 1970s. The Cigarettes Act passed in

1975 imposed restrictions on the production, supply and distribution of cigarettes in the country. The act mandates the display of textual health warnings on all print advertisements of cigarette brands. [7] Subsequently, a Delhi based organization named VOICE filed a Public Interest Litigation against the television program 'Made for each other'. [8] The program was telecast with the intent to promote smoking among the younger generation and mandated that at least one individual in the couple needs to be a smoker. The petitioner lost the litigation in the Supreme Court as it was the period when there were no restrictions laid for TAPS in the country. [9]

During the 1990s, the tobacco industry began to sponsor sports and cultural activities as part of its marketing strategy. Popular tobacco brands like Wills, Gold Flake, Four Square and Classic sponsored the Indian cricket team, tennis, boat racing and golf. [9] After the ITC sponsorship to the Indian Cricket team in the 1996 World cup, the VHAI filed a petition in the Delhi High court seeking a ban. The VHAI campaigned against the sponsorship with policy makers, press releases and the Board of Control for Cricket (BCCI) in India. The persistent pressure levied on the ITC in this regard led them to withdraw the sponsorship in 2001. [9] A study conducted after the Wills-sponsored world cup, showed that about 13.7% of students aged between 13 and 17 developed a desired to smoke. Similar results were found after the Wills sponsorship of the India-New Zealand cricket series in 1995. [10] The tobacco Institute of India has sought support from the associations of other countries to develop a voluntary Code of Conduct for industries in India. [11]

In the cultural category, the tobacco industry sponsored musical events, film fare awards and cultural programs in various colleges. [12] The sponsorship for such events was banned during the early 2000s after PILs from civil society [13] and the implementation of Cigarettes and Other Tobacco Products Act (COTPA), 2003. [13]

In response to these events, the civil society and government officials convened a meeting in the early 1990s to look into various regulatory measures to contain TAPS. At the end of the consultation, the experts placed several policy, legislative and regulatory recommendations before the government of India for the effective implementation of a comprehensive tobacco control law in the country. Subsequent to this, in order to urge the Prime Minister of India to impose a comprehensive ban on advertising in the country, an NGO named HRIDAY collected 25,000 signatures from school students of Delhi as part of a signature advocacy campaign. [9]

In 1994, the Indian government had proposed to ban tobacco advertisements. In response, the tobacco board of India passed a resolution seeking thorough examination of the proposed legislation by an expert committee and to keep the legislation in abeyance until the recommendations of the expert committee. [14]

During the time, the Master Settlement Agreement (MSA) in the United States of America (USA) found that all tobacco companies are liable to pay for the health damage they have caused, including the companies that imported tobacco into the US.

These include Indian SLT manufacturers like Kisanlal Bastiram Sarda, Dhanraj International, bidi manufacturers and cigarette manufacturers. [15] For example, the Indian Tobacco Company (ITC) sold tobacco products to the US in the 1980s and 1990s through the marketing agency called King Maker. Although these Indian companies were found guilty and forced to pay for the health damages in the USA, the companies claimed in India that their products do not cause cancer. [16]

When the tobacco control bill was proposed to be tabled in Parliament in 2001, over 35 Members of the Parliament wrote to the Prime Minister (PM) requesting non-endorsement of the proposal. They claimed that the proposed bill seeks a total ban on tobacco advertising, which was not in place in any other tobacco growing country. And, therefore, persuaded the PM to withdraw support from the enactment of the bill. [14]

The interference of the tobacco industry in the government's TAPS control efforts began surfacing in the country in the beginning of the year 2000. The COTPA bill that imposed a comprehensive ban on TAPS was introduced in the parliament in 2001 and was enacted in the year 2003. [17,18] Following the rise of policy environment restricting TAPS, the tobacco industry rose against these governmental measures by filing numerous lawsuits in various courts alleging violation of their fundamental rights to speech and expression and freedom to practice trade in the country. The concerted efforts from civil society and government helped in implementation of TAPS control measures during the initial years of 2000 and in facing the judicial litigations filed by the tobacco industry post enactment of those laws. [6]

At the time when the COPTA bill was introduced in the Parliament to restrict advertisements for tobacco in the country, the industry sought an exemption on product advertising at Points of Sale. The hidden motive behind the industry's move was to switch their product advertising to POS after the expected COTPA would be enacted in 2003. The industry employed this tactic by increasing its budget on marketing at the POS advertisements. [18,19] The same has been recorded in several studies conducted in India. [18,19]

Tobacco industry documents reveal that it lobbied with major Bollywood personalities to meet with the then I&B minister Jaipal Reddy to stop or dilute stringent regulations which were to come into force which prevented depiction of smoking in Indian cinema and television. The Minister requested that the "the industry [must] agrees to self-regulate, a formal ban becomes redundant", overriding efforts of the health minister Anbumani Ramadoss' proposal on depiction of smoking and tobacco use. The ban that was slated to come into effect from October 2, 2005 now appears uncertain. The information and broadcasting minister asked for the creation of a steering committee comprising representatives of the industry, government and civil society to support the certification process of the Censor Board, thereby avoiding the need for "any policing". However, the Court decided to support the spirit of the law and upheld any political executive interference and film and television industry in India had to comply with the highest standards to warn viewers on the harms of tobacco use [20] The tobacco industry also used other front groups like consumers and traders to oppose this ban challenging it on the ground that it violated the rights to freedom of speech and expression, and personal liberty and trade. [21]

In the year 2005, a Public Interest Litigation (PIL) was filed by a tobacco control activist against Godfrey Phillip's 'Red and White Bravery Awards' accusing violation of section 5 (3) of the tobacco control law 'COTPA'. These awards included the name of the company's cigarette product in its title so as to promote its product in the disguise of recognizing courageous people in the country. Post this litigation measure, the company was forced to remove the contentious brand name in the award's title and the court ordered the government to implement the law in letter and spirit. [22]

When restrictions on tobacco advertising were introduced in the country in 2005, the tobacco industry filed a lawsuit against the government in particular against the provisions regulating points of sale advertisements and indirect advertisements. Hearing the case, the High Court of Bombay stayed the implementation of this provision in the year 2005. The point-of-sale regulation was not implemented until the year 2013. In response to this delay, a civil society organization had challenged this order in the year 2012 in the Supreme Court of India. The Hon'ble Supreme court vacated the Bombay HC stay order and directed the government towards rigorous implementation of the provisions. The Hon'ble SC further highlighted the complicity of the legal counsel representing the government and stated: “Prima facie, it gives an impression that the counsel engaged by the Union of India had some other idea and, therefore, he refrained from representing the cause not only of its client but the people of India. We are sure that the Government of India will take remedial measure and ensure that only those advocates are engaged by it who are serious and sincere in representing the cause of public before the Courts”. [23]

WHO conducted a study before and after the enactment of TAPS to assess the display of tobacco use in films in the country. The study results showed a significant rise in the display of tobacco use, including brand display in the Indian films post enactment of TAPS. This result suggests a clear circumvention of the enacted law which prohibited advertising of tobacco in other media. When this loophole was brought to the notice of Ministry of Health and Family Welfare (MoHFW), amendments were included in TAPS which banned display of tobacco use/ products in films and televisions. [24]

Sponsoring political parties and events is another strategy adopted by the TI. The Tobacco Industry's annual report documents between the years 2000 and 2012 revealed funding to major political parties in the country. [25,26,27]

In 2009 in a Public Interest Litigation, the Hon`ble Gujarat High Court directed the State of Gujarat, Gujarat State Road Transport Corporation Ltd. and the Ahmedabad Municipal Transport Service run by Ahmedabad Municipal Corporation to remove in public interest the advertisements of gutkha and/or pan masala, tobacco displayed on public conveyances i.e. buses belonging to the Gujarat State Road Transport Corporation and the Ahmedabad Municipal Transport Service. [28]

In 2010, the organization 'Institute for Public Health' filed a lawsuit against the Tobacco Board for sponsoring an international tobacco promotion event, alleging the violation of COTPA (Section 2 & 5) and FCTC (Article 5.3). Hearing the case, the Court prohibited the Tobacco board from sponsoring the event and also ordered it to refrain from sponsoring such events in future. In the case, the court directed the Government of India to consider the proposal of a Code of Conduct for public officials aligned to Article 5.3 of WHO FCTC. [29] Several other law suits have been filed in various courts to prevent sponsorship of tobacco industry events by government bodies. [30]

In another lawsuit in the year 2012, the Kerala Voluntary Health Association sued the union government alleging negligence in enforcing COTPA as evidenced by the facilitation of smoking in films by the tobacco industry. The Court observed that the provisions of COTPA had been violated and therefore directed the government to impose measures for compliance with COTPA. [31]

In 2015, the Institute of Public Health filed a petition before the Delhi High Court against the participation of the Government Officials including the finance minister in the 12th Annual Asia-Pacific Tax Forum co-organized by the International Tax and Investment Centre (“ITIC”). It is known that ITIC's sponsors include tobacco companies and its Board of Directors includes representatives from Philip Morris International, British American Tobacco, Imperial Tobacco and JTI Group (formerly Japanese Tobacco). Though the Hon`ble Court held that the petitioner has not been able to invoke any ground in law where under the Government Officials can be restrained from participating in the event, the Finance Minister refrained from the event. [32]

A Tamil Nadu based tobacco control advocate, Cyril Alexander filed the Writ Petition No. 9955 of 2014 before the Madras High Court, for exclusion of tobacco industry from the purview of Corporate Social Responsibility (CSR) Scheme mandated under Section 135 of the Companies Act, 2013 as it was in contravention of Article 13 of the WHO FCTC and Section 5(3) of COTPA. [33]

In 2017, a few instances of the tobacco industry distributing free cigarette sticks to youths were documented. The industry also paid tobacco kiosk vendors to put up advertisement boards of the cigarette brand. The industry's internal documents had revealed the industry's intentions to lure the youth of the country towards smoking. [34]

Godfrey Phillips supported flood affected vendors in Srinagar in 2014. Its Corporate Social Responsibility report states: Once the water level started receding, wholesale dealers of Company products and officials of the Jammu and Kashmir HELP Foundation were consulted to help understand the extent of loss suffered by their respective teams. The total entities included 208 wholesale dealers out of which 147 were in Central Srinagar. [35]

In India, the government and the civil society played a significant role in bringing about legislative measures to counter the tobacco industry's advertising, promotion and sponsorship activities. Almost all the legislative measures taken by the Government and supported by tobacco control activists were eventually successful in upholding the lawsuits in the interest of public health. However, the tobacco industry's interference was witnessed in almost every regulatory measure imposed on TAPS with the intent to undermine them. The tobacco industry tactics constantly explore and evolve; exploiting legal loopholes and new technologies. Therefore, at this juncture, it is crucial for the tobacco control community to monitor the industry so as to expose and prevent the industry's interference in tobacco control activities strongly and proactively.

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Tobacco Industry Interference in COTPA Amendment in India

Although Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) met the preliminary need for advancing tobacco control, enforcement agencies began to report deficiencies in the legislation. The Parliamentary Committee Reports and High Court judgements also began to mention that certain provisions of COTPA were inadequate, open to vague interpretation and therefore, needed to be clarified. A similar recommendation was made by the COSL which stated that COTPA needs to align itself to FCTC and global best practice. [1]

In 2015, while answering Parliamentary questions, the health minister agreed that COTPA needed to be amended and needed to conform to FCTC guidelines and made more tenable for enforcement. The existing tobacco control legislation (COTPA, 2003) is not fully compliant with WHO FCTC. [2] A Committee was constituted in July, 2014 to review and suggest amendments to the COTPA, 2003. [3] The Committee has made a number of recommendations with regard to, inter alia, prohibition of smoking in public places, advertisements at point of sale, minimum legal age for sale of tobacco products, loose sale of tobacco products, depiction of tar and nicotine contents and the penal provisions.

The draft amendment bill along with the Notes on clauses were placed in the public domain by uploading on the Ministry of Health and Family Welfare (MoHF&W) website on 13-01-2015, as part of pre-legislative consultations, with a view to eliciting comments/views from the stakeholders including the general public, up to February 15, 2015. [4] The salient features of the draft Bill are as follows: [5]

- Declaration as to expediency of control by the Union and protection of public health policies for tobacco control.
- Prohibition of "smoking" and "spitting of tobacco products" in public places.
- Prohibition on direct and indirect advertisement and promotion of cigarettes or any other tobacco products.
- Prohibition on sale of cigarettes and other tobacco products to persons below the age of 21 years and in an area within a radius of 100 meters of any educational institution.
- Prohibition on sale of cigarettes and other tobacco products - loose or in single stick.
- Prohibition on employment of any person under the age of 18 years in cultivation, processing, sale of tobacco or tobacco products.
- Disclosure of the information regarding the "constituents and emissions" on each cigarette or other tobacco product by the producer, supplier, distributor or seller on every package.

- Substitution of words “nicotine and tar” with the “constituents and emissions”.
- Constitution of the Special Courts for trial of offences under the proposed Act.
- Punishment for failure to give “specified warning” and “constituents and emissions” on the package and the label on the cigarette or any other tobacco product.
- Enhancement of punishment for smoking and tobacco use in public place from Rs 200 to Rs.1000.
- Enhancement of punishment for advertisement and promotion of cigarettes and other tobacco products from Rs.1000 to Rs.10000.
- Constitution of National Tobacco Control Organisation to implement and monitor the provisions and functions related to tobacco control.
- Offences punishable under the proposed Act shall be “Bailable” and offences punishable under Section 5, 6 and 7 of the proposed Act shall be “Cognizable”.
- The provisions of the proposed Act shall have an overriding effect over all other tobacco related laws.

According to a media report the MoH &FW received more than '45,000 e-mails (including several protest e-mails from employees of India's largest cigarette maker) and more than 100,000 letters delivered by mail' and 'the sheer volume had left officials stumped' and 'some health officials suspect the letter-writing campaign was orchestrated by the tobacco industry to hold up the process.[6] “It appears to be an organised campaign as a lot of letters were photocopied and sent in same-coloured envelopes from one town or village,” said a health ministry official, who sought anonymity, as he was not authorised to speak to the media. A company spokesperson said ITC did not ask employees to send letters. Sameer Shaikh, a sales executive with ITC, said he and his wife wrote in, fearing loss of livelihood. [6]

The tobacco industry adopted several tactics to delay and detract the proposed amendment bill by influencing legislators and front groups. Assuming the negative impact of the COTPA amendment bill 2015 on the bidi industry in the state of Karnataka, the bidi workers from the state staged a dharna in front of the Deputy Commissioner's office, Mangalore urging the Union Government to withdraw the bill. [7] Citing the loss of livelihood of 1.5 lakh bidi workers in the Udupi district of Karnataka; the Centre of Indian Trade Union (CITU) Udupi protested against the COTPA amendment bill 2015 and urged the government to provide BPL cards, housing loans, educational scholarship for children and other welfare schemes to the bidi workers.[8] In the inter-ministerial consultation meeting, several Union ministers and legislators from the tobacco- growing states of Andhra Pradesh and Karnataka expressed their disagreement to the Health Minister and opposed the drastic move to ban loose cigarettes without sorting an alternative livelihood for farmers who depend on tobacco and areca nut cultivation.[9] Mr Venkaiah Naidu, Member of Parliament from Andhra Pradesh, conveyed the concerns of farmers to Health Minister Mr JP Nadda and also informed him that the ban on loose cigarette will force smokers to switch to cheaper alternatives like bidi and chewing tobacco rather than decrease tobacco consumption. [10] Majority of cigarette products in India are sold as loose cigarettes especially to students and others who can't afford to buy packs. A vendor in Mumbai reported that Rs 900 of total Rs 1000 earned is by selling loose cigarettes. As reported by tobacco vendors, the ITC has an alternate plan to cushion the effect of ban on loose cigarette by launching packs with fewer sticks and the same has been conveyed to them to allay their fears. [11]

Draft COTPA Amendment Bill was withdrawn on 13th December 2017 [12] and would be re-introduced after incorporating a provision on illicit trade and emerging threats such as ENDS. [13]

Despite being comprehensive, the COTPA 2003 has a few loopholes that made the implementation challenging and resulted in opposition from TI for every tobacco control effort. The proposed COTPA amendment 2015 was more tenable. In an attempt to dilute and detract it, the TI tactics used front group manipulation like demonstration, strike and rally.

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Use of Livelihood argument for derailing the Tobacco Control Policy initiatives

India is the second largest producer of tobacco after China. Although tobacco is cultivated in less than 0.3% of arable land, the tobacco industry (TI) directly or indirectly employs 3.5% of India's population (or 45.7 million people). [1] The TI's contribution to the Indian economy amounts to Rs 30,000 crores, apart from the foreign exchange of around Rs 6000 crores. [2] As a plant, tobacco is not native to India and its use is more recent than commonly perceived. The tobacco plant was discovered in America in 1492 by Christopher Columbus and Portuguese traders introduced tobacco to India in 1600. Like any other exotic product, tobacco soon became a valuable commodity in barter and trade. Its widespread cultivation began by the mid-1700s in Bihar, Bengal, the Deccan and Andhra, Maharashtra and Gujarat in the late 1880s. Incidentally, the first cigarette factory (Peninsular Tobacco Company started in 1906 in Munger) and the first mass- producing bidi unit emerged with their products around the same time.

The Statistics figures on employment in tobacco and allied sector are still contentious. (Table 1)

Table 1: Employment in tobacco and allied sectors

Body	Employment statistics
Tobacco Institute of India (2017)	45.7 Million
Central Tobacco Research Institute, Rajahmundry (2017)	45.7 Million
Directorate of Tobacco Development (2006)	34.6 Million

For several decades, the tobacco industry has perpetuated a myth ("tobacco use is traditional") that policy maker and government official find acceptable, to date. Livelihood and employment remain central to the tobacco industry and its front group to diffuse, detract and derail tobacco control policy making or implementation efforts. The TI for the first time tried interfering with tobacco control legislation in the early 1990s based on the livelihood issues of tobacco farmers. [3]

Bidi

In 2005-06, the bidi industry is estimated to have employed 4.16 million people (majority being women and children from rural and tribal background) in manufacturing, spread over 17 major states in India. [4] Tendu plucking provides part- time employment to nearly 7.5 million women and bidi rolling to 4.4 million women and children, respectively. [5] The bidi industry in India contributes only 0.65% of the gross added value (GAV) to the entire manufacturing industry and its contribution to the national economy is insignificant. Over the years, the bidi industry has witnessed a progressive increase in profit while the wages of the registered bidi workers have been on the decline. The annual wage earned by a registered bidi worker is only 17% of the annual wages earned by workers in other manufacturing sectors. [6]

Employment and livelihood are the main ploy used by the tobacco industry against any kind of tobacco control effort. Bidi found greater acceptability after the cancer scare printed on cigarette packs in the late 1960s and early 1970s.A myth has been perpetuated that bidi is safer than cigarettes. [7] However, recent literature attributes a higher tar and nicotine content and a higher mortality rate to bidi rather than cigarettes. [8,9] Repeated infection of tuberculosis occurs more among bidi smokers than those who do not smoke.

The lifecycle of bidis begins with the plucking of the wrapper leaf called tendu (Diospyros melanoxylon), a stunted bushy tree which grows in the forests of central India. The Tribal population from the most underdeveloped districts is conscripted every year to pluck tendu leaves under dangerous conditions for three to eight weeks. The Tendu sector is perhaps the bane of India's underdevelopment and ensures that forests and forest dwellers are deprived of their wealth and potential. Bidi rolling is a dangerous task and is restricted to homes of the poorest households. Women make up 90 - 95% of the bidi labour force (according to the All India Bidi, Cigar and Tobacco Workers Federation). The total number of women and children employed is contentious and the figures from bidi associations, International Labour Organization (ILO) and Government do not add up. In addition, an ILO report states that 15-25% of children are employed by the industry.[10] The 4.16 million workforce estimated by Nandi et al. based on the National Sample Survey Round 2 data was much less than the 10 million workforce claimed by the Bidi trade union. A loose structure managed by intermediaries and moneylenders controls the trade. Although wages are fixed by the respective state Department of Labour, they vary widely. The Government of India too acknowledges these missing pieces and one report concluded that bidi rolling is among the least remunerative options of employment. The report states "in rural areas the lowest average daily wage was received by workers in the tobacco industry (mainly women). About 92 percent of them received wages below the national minimum wage norm (Rs 66 / day)". [11] The Central Government offered subsidies as bidi rolling was presented as an idyllic and traditional means of supplementing rural incomes. Among the subsidies offered to bidi barons is tax exemption on hand-rolled bidis (exemption for manufacturers of < 2 million bidis per year). [8] In reply to a parliament question, the GOI replied that bidi smoking is no less hazardous than cigarette smoking, but it enjoys less central excise tax than cigarettes. Also, the central excise duty chargeable to handmade bidis (Rs. 16 per 1000 bidis) is less as compared to machine-made bidis (Rs. 28 per 1000 bidis).

A legislator from Uttar Pradesh, who was also a patron for “Bidi” and “Patta Udhyog Samiti”, threatened to go on strike along with 60 lakh bidi workers if the proposed health warning is not taken back. He also opposed the equal taxing structure for bidi and cigarettes. [12] With an intention to reverse the MoH & FW order to have compulsory printing of cancer of mouth on every pack sold, the Bidi baron halted production that put the livelihood of millions of bidi workers at risk. [13] In Karnataka, the bidi workers opposed the ban on tobacco products and demanded that an alternative livelihood arrangement must be put in place before the ban.

[14] Bidi workers from Karnataka staged protests against the printing of the "skull and bone" on its products and the hike in tax. [15]

India hosted the Seventh Session of the Conference of the Parties (COP) to World Health Organization Framework Convention on Tobacco Control (FCTC) in 2016. The tobacco institute of India and farmers lobbied to be a part of the delegation. [16] Denied of attending the COP by the GoI; in order to dilute its impact, TI employed negative tactics by tobacco front groups across India through ad campaigns. The Bharatiya Mazdoor Sangh in its resistance to the anticipated ban on bidi said that the tribal people may turn to Naxalism in the wake of loss of livelihood. [17] The bidi industry was enjoying tax concession and loose statutory regulations till the Ministry of Health proposed to abolish the tax exemption. [18,19] The bidi industry and several bidi worker unions started protesting against tobacco control laws through march and rally. The bidi workers in Tamil Nadu staged a protest against 28% GST on the Bidi. [20]

The Tendu and bidi lobby were major players behind political funding due to the easy availability of money. More recently, ahead of the elections, the Chhattisgarh government changed the rules to accept low bids from traders in the sale of tendu leaves despite the loss of Rs 4.6 billion. This was similar to what happened in the past two elections. More than 1.3 million tribal families suffer the losses. Where do billions of rupees from tendu-leaf trade disappear during the elections? [21] In Madhya Pradesh, tendu-leaf traders backed by a legislator lobbied to get the forest for tendu leaf plucking. The tendu leaf plucker is given a meagre amount (RS 8.50 per bag). However, the bag will be sold for the huge amount of Rs 926.68 per bag. [22] Incidentally, tendu patta is the single largest means of revenue generation for the Ministry of forest and environment, yet there is no data for volume of leaf collected. [23] The bidi industry set false propaganda over live issues to dilute and detract any tobacco control measures. For example, though the bidi industry claims livelihood and welfare of tendu leaf pluckers, the reality is starkly different. More recently in 2018, though several gram sabhas were organized for tendu leaf trade in Gadchiroli district of Maharastra, the contractors / middle men conspired to pushed the process till mid-April when the new tendu plucking season begins. The tendu leaf price was thus settled at a much lower figure. Similar corruption has been reported in the preceding years. [24]

Co-operatives related to tendu leaf plucking backed by politicians have been used as a political platform. Politicians, tendu leaf contractors and the forest bureaucracy control state level co-operatives related to tendu leaf (brainchild of a politician) from central India, originally under the forest department. These co-operative societies have been used to launch political careers and the sustenance of society was based on appeasing the tendu leaf pluckers with various developmental schemes like increase in wage and bonuses, abolishment of royalty, group insurance and scholarships for children of pluckers. [25]

Recently, the Ministry of Labour & Employment, GoI initiated a pilot project in 2017, for providing Skill Development Training to Bidi Workers to help them shift to alternative vocations that are equally remunerative. The programme caters to 5 States, viz. Sambalpur-Bhubaneshwar Region; Rajnandgaon-Raipur Region; Pargana – Kolkata Region; Kasargod – Kannur Region; and Nizamabad – Hyderabad region. As of 2018, 384 bidi workers have been trained in alternative livelihoods like tailoring, solar maintenance and retail sales in Karnataka. [26]

Tobacco farming

Flue Cured Virginia (FCV) tobacco is grown in four Indian states, non FCV bidi tobacco is grown in four Indian states where as non FCV chewing tobacco is grown in all the thirteen tobacco growing states in India. [27] About 6 million farmers and 20 million farm workers are engaged in tobacco plant growing in about less than 0.3% of arable land in India. [28] Two types of tobacco plants are grown in India; one, Flue Cured Virginia (FCV) – regulated and two, non-FCV – unregulated products like bidi, hookah, and smokeless tobacco products. There is no statutory body like the Tobacco Board (which promotes FCV tobacco) to promote the research and development of non FCV tobacco.

The Ministry of Commerce stated that the Government of India has not notified the Minimum Support Price (MSP) for FCV Tobacco since 2008-09. The average price realized by farmers taking all grades of tobacco together was much higher than the cost of cultivation and hence the need to fix MSP for tobacco was not felt. In addition, with the exception of Andhra Pradesh, marketing Crop-Season 2014-15 prices have been by and large much higher and hence no MSP has been declared. Moreover, due to the concerted effort of the Government, tobacco farmers are getting remunerative prices for the Karnataka crop season 2015-16.

The decision of exclusion of all non FCV forms of tobacco by the tobacco board mandate was a political one. The reason for this was to maintain the monopoly of tobacco growers and their exclusion from the tobacco board was the first step to create a front group to counter any tobacco control effort.

A study by the Institute of Rural Management, Anand (IRMA) found several irregularities in tobacco crop trade like the monopoly of traders (40-50 in numbers) in fixing the purchasing rate and creating a delay in payments which can be as long as 3 months to 3 years. The Expert Group constituted in 1979 under the Ministry of Commerce (also known as SP Mukherjee Committee) [29] to address the grievances of farmers made the following key recommendations:

1) fixing and announcing a support price for bidi and other tobacco leaf producers, in line with the recommendations of the National Commission on Agriculture
2) set up a cooperative of bidi tobacco farmers and support market intervention by a nodal government agency, with financial assistance from the National Cooperative Development Corporation
3) tobacco leaf purchase voucher system to be launched in line with that introduced by the Tobacco Board in 1976
4) supervision of all trade malpractices in the

sale of bidi tobacco by the Department of Weights and Measures

5) set up a dedicated agricultural bank for bidi tobacco farmers, wean the farmers away from middlemen and finance from commercial banks.

The Cabinet at the behest of the Ministry of Commerce scuttled the Ministry of Agriculture's move for a separate tobacco board for non-FCV tobacco in the early 1980s.A cooperative venture called the National Co-operative Tobacco Growers Federation Limited (TOBACOFED) was launched to appease the farmers in Anand on April 12, 1983. For four years, this system was able to get farmers better rates, but then powerful intermediaries, the vested interest of cigarette industry and their associations dismantled the cooperative. The Federation still exists on paper but does little to serve growers or marketing of bidis. Since the inception of TOBACOFED until 2015-16, the National Cooperative Development Corporation (NCDC) had released 30 lakh rupees to TOBACOFED). [30] The Tobacco board has been providing subsidies and incentives in various forms which include 50% subsidy on the annual premium of the crop insurance scheme, organizing loans to tobacco growers from bank at lower rates, financial assistance to drought affected growers, several welfare schemes for tobacco growers and the construction of additional platforms for promoting tobacco auction. [31]

The Tobacco Board of India in 2009, came up with a Pilot Proposal on "Rehabilitation package for FCV tobacco growers for shifting to alternative crops", for phasing out tobacco cultivation, rehabilitating about 50% of the tobacco growers over a period of 10 years and reducing the number of barns to 50,000 by the year 2020. The proposal also recommended a financial package of Rs 5 lakh to each tobacco barn license holder. [32] However, the proposal was never implemented.

In line with the WHO-FCTC, the Department of Agriculture, Cooperation & Farmers Welfare had extended the scheme of the Crop Diversification Programme (CDP) under the Rashtriya Krishi Vikas Yojna (RKVY) with effect from 2015-16, for replacing tobacco farming and to encourage tobacco farmers to shift to alternate crops/cropping system in ten major tobacco growing states viz. Andhra Pradesh, Bihar, Gujarat, Karnataka, Maharashtra, Odisha, Tamil Nadu, Telangana, Uttar Pradesh and West Bengal. The expenditure of tobacco diversification is to be shared between the Central and State Governments. [32,33]

In line with the WHO-FCTC guidelines on alternate livelihood, a pilot project of MoH & FW conducted by the Central Tobacco Research Institute (CTRI), Rajamundry (2008-2011) set out to demonstrate some potential alternative crops like chillies, cotton, maize and sugarcane. [34] Studies conducted in Karnataka, Gujarat and Andhra Pradesh also recorded the similar profitability of alternate crops as compared with tobacco, however, it required sustainable assistance for tobacco farmers showing willingness to shift to an alternate crop. [34] In an attempt to dilute the idea of crop diversification by CTRI, a TI representative suggested the continuation of growing tobacco till an economically viable alternative crop with sustainable livelihood is made available to tobacco growers. [34] In 2016, the Parliament Standing Committee on Science and Technology, Environment and Forests, Rajya Sabha, in its 285th report, on "Effects of Tobacco Curing on Environment & Forest" emphasized that the financial benefit is negligible compared to the cost incurred as a result of health problems due to tobacco use. The committee strongly recommended this incentivization of tobacco cultivation slowly but definitely and the provision of an incentive to shift to an alternate cash crop. [35] Most of the tobacco farmers showed unwillingness to switch to an alternate crop with less net return. According to the tobacco growers association from Andhra Pradesh, none of the alternative crops suggested by CTRI were economically viable. In the Prakasham district of Andhra Pradesh, nearly 22 lakh quintals of Bengal gram could not fetch a buyer at a good price. The low price of Bengal gram forced many farmers to revert to tobacco growing. [36] The red chilli too does not provide a sustainable economic alternative. Increased acreage in Chillli production has witnessed a drop in price in the states of Telengana, Andhra Pradesh and Madhya Pradesh. For example, in 2017 the spot prices of chillis in Tenlengana and Andhra Pradesh dipped by over 50% (from Rs 10000a quintal in the preceding year to Rs 5000-Rs6000 a quintal in the current year). [37]

Amidst the tobacco control movement, TI is strengthening the front groups like tobacco farmers for safeguarding and expanding its business. TI monopolizes the tobacco farmers to grow the tobacco variety of its choice and sell in its market yard at a price fixed by it. In one such instance, TI monopoly forced the government yardsticks for buying tobacco to shut down. [38] The Government of Maharashtra had implemented 10% luxury tax on tobacco products in the 1990s despite the opposition from tobacco industry whose argument was based on employment hardships to tobacco workers. Non-cooperation by traders, leading to a substantial decrease in anticipated revenue collection from luxury tax, forced the withdrawal of the tax within a short span of implementation. [39] The then legislators especially from AP and Karnataka in 1994 requested the Prime Minister of India to review the tobacco control laws. The legislators joined by the tobacco development council, tobacco farmers association and trade associations argued that millions of tobacco growers, small hawkers and farm labourers would lose their livelihood and be pushed to poverty as result of the lack of an economic safety net. [40] The Prime Minster of India (1995) asked the ministries of health and labour to reconsider the ban on smoking and advertisement till rehabilitative measures are sought for tobacco farmers and other tobacco workers. [41]

In order to promote the farming of tobacco, the Tobacco Institute of India has instituted Tobacco Farmers Awards every year, since 1999. A panel comprising representatives from the Tobacco Board, Tobacco Institute of India, CTRI and a leading cigarette manufacturing company selects the award winners. [42] In 2018, 17 tobacco farmers who adopted modern technology and best practices, received the awards at the Eighteenth TII award function. [43] However, there is no award/incentive for farmers to move out of tobacco growing. Tobacco trade unions have opposed the ban on tobacco citing loss of the livelihood of millions of tobacco workers. They also argued for the lack of rehabilitation of workers prone to loss of livelihood, while framing such a ban. [44]

Tobacco industry efforts have been directed towards destabilizing tobacco control effort. FAIFA was established in 2015 a year before COP7 was held in India, however, its office bearers were known to challenge Government policies in their individual capacity. FAIFA applied to the WHOFCTC Convention Secretariat at Geneva for the status of observer to COP7, which was rejected, as it did not sign the declaration stipulating that it has no conflict of interest. FAIFA further declared that it worked towards furthering the interest of the tobacco industry. Subsequently, FAIFA approached the Delhi High Court for relief, however, after being declined interim relief by the court, it started an extensive outdoor media campaign against COP7 and against TC policies in general. FAIFA protested against the increase in pictorial health warning size, citing loss of livelihood for millions of farmers and at the same time increased consumption of illegal tobacco products which are not bound by packaging directives. [45] FAIFA labelled the COP7 of WHO-FCTC in New Delhi to be non-transparent and undemocratic as it ignored the voice of millions of farmers. The farmers also demonstrated outside the WHO office and urged the government not to accept the proposals of the COP keeping the interest of the farmers in mind. [46]

More recently, The Federation of All India Farmers Association (FAIFA) appealed to the government to protect their livelihood citing loss of nearly 3300 crore Indian rupees due to excessive taxation since 2014 and requested the rollback of 5% GST on raw tobacco and exempt raw tobacco like any other crop. [47] Tobacco front groups have opposed tobacco taxation. TII argued that the tobacco taxation study was not based on current scientific knowledge and the tobacco control policy was heavily influenced by the pro-tobacco control group. The indiscriminate taxation on tobacco decreased the demand for legal cigarettes and thereby, tobacco growth. Several farmers from Karnataka and Andhra Pradesh committed suicide as a consequence of economic hardship. [48]

The Tobacco industry makes efforts to garner recognition and public support. The ITC has been awarded the World Business Award in 2004 (instituted by the UNDP and International Chamber of Commerce) for its efforts to empower tobacco farmers through "e-Choupal" for sustainable livelihood. [49] The e-Choupal network by the tobacco industry has improved the household economy of rural people, farmers and tribals dependent on tobacco as a means of livelihood. [50]

Areca nut

Areca nut is grown in Karnataka and Kerala primarily and provides employment to 10 Million people including tobacco vendors who dispense betelnut. [51] Areca nut is chewed as such or in combination with tobacco, lime, processed, packaged with other additives and is commonly called Gutkha. In September 1999, the Government of Maharashtra (along with

Kerala and Goa) attempted to ban gutka and pan masala. The Central Arecanut and Cocoa Marketing Co-operative Ltd. (CAMPCO) suggested that the (Union) government instead impose a ban on the allegedly harmful ingredients in the product in gutkha (that is tobacco). [52] CAMPCO, led by two Members of Parliament from Karnataka was able to defer any policy which regulated arecanut in the MoH &FW. Following the ban on smokeless tobacco (SLT) products like Gutkha and Khaini in (2002), the traders from Vijayawada (a city in the state of Andhra Pradesh) stopped procuring new SLT products. Expressing concern over the ban on Gutkha, the president of the Central Arecanut and Marketing Producer's Cooperative of India questioned the rationale behind the ban and suggested that the government should instead ban cigarette and bidi. [53] Several legislators from Karnataka opposed the ban on Gutkha citing the misery of arecanut farmers who were already burdened by loans. The anticipated ban on areca nut forced many growers to have a serious thought about alternative crops. The Indian Council of Food and Agriculture (ICFA) awarded CAMPCO with the Union Government's Agro Food Start Up award 2018, alleviating the fear of ban among areca not farmers. [54] The current challenge in regulating SLT is the illicit trade and import of arecanut.

Tobacco whole sellers and retailers

TI has forward linkages like tobacco whole sellers, retailers, vendors, panwallahs, and small shop owners (most of whom lack alternative income options). An estimated 7.2 million people are engaged in tobacco trade and retail. [55] These forward linkages resort to demonstration and written representations to the parliamentary committee against any tobacco control move which has any bearing on their livelihood. For example, the representatives of tobacco sellers expressed concern over clauses related to punishment (Clause 20 and 22) of the COTPA Bill 2001. The CoSL recommended the review of the above-mentioned clauses in view of harassment of retailers, petty traders and hawkers and increased scope of corruption. [56] The Pan Shop Owner Association objected to the COTPA amendment rule (2014) to increase the size of health warnings, citing loss of livelihood for millions of panwallahs and disruption of the law-and-order situation. They also suggested the provision of alternate means of earning if the proposed rule is to be implemented. [57]

The Greater Guwahati Pan Shop Business Association and All Guwahati Traders Associated protested the ban on gutkha, zarda and other smokeless tobacco products in Assam. They claimed that many businessmen will be hit hard and become jobless after the ban. [58] Cigarette shops and pan shops went on strike over the ban on gutkha and other smokeless tobacco products in Mumbai. [59,60]

In an attempt to prevent the exposure of children to tobacco products, the MoH &FW banned the sale of non-tobacco products in shops licensed for tobacco selling. Khili Pan Dokani Mahasangha (a union of tobacco micro-retailers and betel nut vendors) protested against the ban and warned of micro-retailers resorting to illegal activities due to loss of livelihood. [61] In Rajasthan too, tobacco sellers protested against the government order which said shops licensed for tobacco products can't sell non- tobacco products. [62]

Conclusion

The health argument overwhelms the economic and livelihood one. The tobacco industry and more recently, the survey results of the government (like GATS) show that poor and uneducated people are more likely to use tobacco and less likely to quit. Scarce household income is diverted from education and food to buy tobacco, pushing the next generation into poverty. [63] Children from poor households where adult(s) consume tobacco are more likely to take up tobacco use, often earlier than others in the community. [64] As a direct consequence, the burden of disease is unacceptably high among the poorest of the poor. Scarce public health resources are diverted towards an avoidable health catastrophe. Hospitalisation costs are borne by the poor and this deepens and widens poverty over time. An unprecedented public health effort is required from all sides to eventually eliminate tobacco cultivation and protect the livelihood of producers who are also the sufferers.

The majority of the nearly 46 million tobacco farmers, farm labourers, bidi rollers, tendu leaf pluckers, micro-retailers and tobacco vendors belong to low socio-economic status and lack other sources of income. The overhyped livelihood issue remains the central argument of the Tobacco Industry to delay, dilute and derail any kind of tobacco control effort made by the Government of India.

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Pack warning-I (1975-2011)

Warning tobacco users of its harm with graphic and textual warnings is the most cost-effective strategy in tobacco control (MPOWER, 2008). The WHO Framework Convention on Tobacco Control (WHO FCTC) Article 11 sets out strong, clear and legally obligatory standards for health warning labels on tobacco packaging [1]. The Tobacco Industry has been consistently insisting that packaging and labelling, trademarks and design legislations give them the right and the ownership of what appears on a pack. Most countries have recognised the importance of pack warnings in recent times, with Canada introducing graphic health warnings in 2001 and since then 118 countries have adopted graphic and textual warnings on tobacco packings [2].

The idea of introducing textual health warnings in India emerged in 1969, when George Fernandes, a prominent trade union leader and member of India's Parliament proposed a bill called the Smoking Hazards Advertising Bill 1969. The three leading Indian cigarette manufacturers opposed the Bill, by generating evidence that tobacco is not bad for health and there were no studies from India to prove this fact. An internal tobacco industry document reveals that 'the bill "died" with the fresh general elections of 1971' [3]. Between 1970 and 1974, cigarette manufacturers and their association (chiefly Cigarette Manufacturers Association of India; CMAI) made every effort to keep the Bill out of any debate. Some states began to take note of this and additionally began to draft legislation on the advertising of tobacco products. The state government of Jammu and Kashmir introduced a state bill with a stern health warning on all advertisements, but the industry made sure it became a "deal bill".

The CMAI considered the problem of pack warnings as an 'industry-wide threat' for the first time and started surveillance on Government's thinking and actions through a special sub-committee that was located in New Delhi. The Tobacco Industry (TI) perceived that steps taken by the Government towards the problem were likely to increase. These steps were attributed mainly to the growth of TV and increase in number of TV broadcast centres [4]. Another internal industry document reveals the fact that the warning clause on the pack has been a comparatively easy concession to offer in the west, however, it may turn out to be disastrous in terms of sales in a country like India, where illiteracy is quite high. Further, the TI apprehended that a rule-based smoker may switch to a "safer" alternative in the form of bidis (hand-rolled cigarillos) or other forms of smokeless tobacco, thus further impacting cigarette sales [5].

Subsequently, a sub-committee constituted by the Parliament of India in 1975 decided that it was too premature to enforce a ban on advertising but acceded to having a statutory health warning in English on cigarette packets.

The enactment of the Cigarettes Act in 1975 by the Government of India made the first textual pack warnings 'cigarette smoking is injurious to health' mandatory. The Act couldn't achieve desired results as it lacked comprehensiveness in both its scope and coverage. George Fernandes, a champion for the poor, readily agreed to exclude bidis from the Act [6]. This led to resentment in the TI and hence to calm it down, the Government not only knocked off all the quantification on pack size and contents for cigarettes along with 23 other products, it also established a 'Tobacco Development Board' to promote tobacco cultivation and trade in 1976 [7].

Subsequently, in February 1995, the Parliamentary COSL (Committee on Subordinate Legislation) under the Tenth Lok Sabha scrutinised the ordinance framed under the Cigarettes Act, 1975, primarily in response to concerns raised by the parliamentarians and growing number of litigations in states. One communication of the tobacco industry reads, "Tobacco Institute of India is doing a public relations job against the anti-smoking lobby. I am enclosing the booklets three numbers which are sent to bureaucrats, industrialists, ministers, Members of Parliament and relevant decision makers. The books by themselves as self-explanatory [8]." The COSL during its series of discussions were well aware of the fact that the Ministry of Health & Family Welfare (MoH &FW) intended to unearth an encyclopaedic legislation on the "Prohibition of Advertising and Regulation of Production, Supply and Distribution of Tobacco Products". Subsequently, The COSL submitted its XXII Report to the Lok Sabha on December 22, 1995 [9]. It advocated improvement pertaining to the language used in the warnings, including a graphical image and adding the warning to bidis and smokeless tobacco packs. However, this report was never accepted officially by the government on the grounds that it was not signed by all the committee members as some of them were representing the tobacco industry directly or indirectly and had certain vested interests. However, the COSL instigated some key recommendations which were analysed by another Coordination Committee having representations from different government offices, educational institutes and medical colleges. But clearly the representation from the tobacco industry – farmers, processors, bidi-rollers associations, cigarette companies and industry associations had an overwhelmingly large representation.

In 1996, the TI proposed a voluntary code to the Ministry of Commerce that included Health Warning labels and mild marketing restrictions that was proposed again by the TII in 1999 [10, 11]. In another development against tobacco, the Rajasthan High Court and later Supreme Court of India upheld the complete ban on use of tobacco in tooth paste (Laxmikant vs. Union of India; case 739 of 1997), that was initially imposed by the Union govt in 1992 under Section 33EE of the Act [12, 13].

In 1999, the then president of the Congress Party of India assured the tobacco growers of Andhra

Pradesh and expressed her support for them. The judgement on the Murli Deora case of 1999 in the SC stated that "Smoking of cigarettes is a proven risk factor for grave health hazards", thus directed and prohibited smoking in public places and issued directions to the Union of India, State Governments as well as the Union Territories to take effective steps to ensure prohibition of smoking in public places [14]. A report by the Indian Council for Medical Research (ICMR) on health costing (year 2000), presented the immense health burden of tobacco use in India which was also vetted by the tobacco industry [15-17]. The tobacco industry and the head of Tobacco Institute of India made sustained efforts to discredit the report and prevent its wider circulation by MoHF &W [18, 19]. In March 2000, the committee re-convened and collated comments from all stakeholders. The majority of the Ministries agreed with the recommendations, except the Ministry of Labour that suggested that such legislation would have untoward effects on livelihood - a standard argument that is still being pushed by the tobacco industry, India as well as globally and has enough purchase within governments. Subsequently, all these responses were filed on the draft note by the Cabinet which was then approved in a Cabinet meeting held on the February 6, 2001 [20]. In the garb of consulting NGOs, the TI representatives like India Bidi Cigar and Tobacco Workers Federation, Godavari district tobacco growers association and the Tobacco Institute of India were consulted. TII was made a member of the "Working Group on Consumer Health & Safety Concerning Tobacco & Tobacco Products". Within the Parliament also, only a small group of parliamentarians were pushing hard to make this Bill into an Act, whereas the tobacco industries were trying harder to prevent this from becoming a reality.

Finally, the COTPA was passed in May 2003 but had several obvious flaws, in the form of exemptions to TI. For instance, the stipulations of the law were weakened by sequential amendments. It was almost 10 months after India's commitment to the WHO Framework Convention on Tobacco Control (WHO FCTC, and nearly two years after enacting COTPA, but India had not implemented the graphic health warnings. This prompted an advocate and activist, Ruma Kaushik to register a petition (CWP No.1223/2004;10th/12/2004) in opposition to the Union government in the Shimla High Court initially seeking amendment to the provisions of the 1975 Cigarettes Act and subsequently to notify the specified warning language to be used in the warning and the size of letters and figures in the rules immediately under COTPA. There were other time-taking legal proceedings by industry representatives that kept the issue in abeyance. However, the tobacco industry lead by the bidi industry, was protesting vigorously and opposed these graphical warnings, leading to a dissonance even within different government agencies.Just after the date for enforcement of COTPA (May 1, 2004) was announced on 27/02/2004 , the Tobacco Growers Welfare Association requested Smt. Sonia Gandhi, leader of a national party at that time, not to implement

COTPA, further reporting to the MoHF &W that madam has favored the same by writing a letter to the [then] Prime Minister, Sri AB Vajpayee [21]. On June 7, 2006, the High Court of Shimla directed the central government to obligate rules with a proto-type of specified warnings pertaining to tobacco products in accordance with COTPA and FCTC guidelines latest by June 28, 2006.

Under the direction of the high court, the Central Government on 05.07.2006 notified the COTPA amendment rules, 2006 that bought out a new set of field tested Graphical Health Warning for general public appraisal to be used on cigarette, bidi and smokeless tobacco packages [22]. These health warnings were to depict a skull and crossbones image as urged by the Parliamentary Standing Committee on Human Resource Development and cover at least 50% of the display area of packages and be rotated every 12 months beginning February 2007 (MoH & FW had first proposed the skull and crossbones in the late 1980s, but that time it was not adopted due to strong industry opposition and heavy lobbying against these warnings) [23, 24]. In January 2007, the MoH & FW delayed implementation until 1 June 2007 and in February it requested that the Prime Minister should create a task force to further study the feasibility of larger warnings [25].

Subsequently, the Central Government received various representations from the tobacco industry including the beedi industry bringing to the attention of the Central Government the practical difficulties in implementing the Rules within the specified time and requested for more time to implement the Rules. But this time, this opposition inspired the then Prime Minister to establish a Group of Ministers on 17/05/2007 (GoM) to be headed by the Union Finance Minister Pranab Mukherjee to harmonize this burning issue and formulate an ideal way to enforce the notification. However, the tobacco lobby was successful in influencing the GoM. The GoM included ministers who had vested interests in tobacco and bidi industries, Praful Patel - the bidi king of Vidarbha was also amongst them. Senior ministers in the UPA have dismissed the criteria of the Framework Convention on Tobacco Control (FCTC) by linking themselves with tobacco companies directly or indirectly.

The GOM Constitution mandated that it:

a. Explore ways of creating awareness regarding the adverse impact of smoking tobacco in a manner that the interests of labor engaged in the professions are protected.

b. Suggest alternative models of communication that are more subtle and can achieve the objective of health awareness without creating panic among those engaged in the Beedi Industry.

c. Suggest avenues for diversification of employment of people engaged in beedi industry in case the demand tapers.

On May 23, 2007, the GoM held its first meeting and decided to defer the implementation of the Rules. The GoM again met on July 11, 2007 and recommended that the MoH &FW may consider an appropriate modification in the Act to make the mandatory depiction of skull and crossbones optional, with the pretence that "it was repulsive as the skull and bones warning is typically a sign of poison, and the government should not equate tobacco products with poison [26]." This also touched the religious sentiments of certain segments of Indian society [27, 28]. GoM between 2007-2009 met six times. The GoM in its meeting on 26.02.2008 took the following decisions:

1. Pictorial warnings will be introduced in two phases. In the first phase, two pictograms, prepared by DAVP namely (1) Scorpion and (2) X-ray films be depicted on all tobacco packs, after suitable adaptation by MoH & FW. In the second phase, after a review of the campaign after the first year the pictorial suggested by MoH & FW (indicating a man suffering from heart attack) will be used.
2. Pictorial warnings may occupy 40% of the principal display area.
3. A strong mass media/educational campaign will be launched by MoH & FW immediately in consultation with the ministry of I & B.
4. Rules for this may be accordingly notified providing three months time to the industry for implementation of the provision.

On March 15, 2008, the Central Government issued a Notification G.S.R. 182(E) in supersession of the earlier Packaging and Labelling Rules of 2006, incorporating the final recommendation of the GoM. The new notification did not specify an implementation date but the notification stated that it will come into force on such date as the Central Government may appoint. Subsequently, in August 2018 the date of enforcement was notified as November 30, 2018, but was delayed till May 2009 [29]. But in November 2008, Health for Millions; a non-governmental organization, registered a PIL alleging that the latest set of health warnings was too soft and the enforcement of COTPA had been diluted to elevate the tobacco industries and pleaded that the government should implement more effective health warnings [30]. On May 3, 2009, the Packaging and Labelling Rules of 2008 were further amended by reducing the display of health warning on only one side of the pack. On May 6, 2009, the apex Court of India decreed that the latest set of health warnings must be implemented on May 31, 2009. Subsequently, health warnings were eventually enforced on tobacco packs that depicted a chest X-ray and with an image of diseased lungs for cigarette and bidi packs and a scorpion for smokeless tobacco packs.

Acknowledging the vociferation from different non-governmental organizations, on March 5, 2010, the MoH & FW declared a new set of health warnings that portrayed oral cancer to be displayed on cigarettes and smokeless tobacco packs from June 1, 2010. The MoH & FW however, later delayed implementation until December 1, 2010 in response to the cigarette industry's continuing claims that they would be unable to implement the PWLs in time. The largest cigarette manufacturer held the Government of India to ransom by stopping production for one day in protest. Pressurized by TI tactics, the Government on December 20, subsequent to the decision taken in an emergency meeting of GOM and pursuant to the decision of the Cabinet; the old health warning which was due for rotation in May 2010 was reintroduced by amending the rotation period from 12 months to 24 months and the new set of GHWL warnings that included Australian images of the mouth with cancer was rejected. The Cabinet also decided that the industry must get 3-4 images to choose from. The concerted efforts of the tobacco control civil society to advocate the Indian Government continued [31], and on September 27, 2012, the MoH &FW amended the graphical warnings rules to include four additional pictorial warning labels to be used for cigarettes and bidis, together with four additional pictorial warning labels for smokeless packages [32]. The cigarette and bidi package graphical warnings included three images of diseased lungs and one of oral cancer. Smokeless tobacco warnings showed four images of oral cancer. However, even after the new health warnings rules were announced, the tobacco companies argued that the new labels should only be required on the date of manufacture, not the date of sale. The MoH & FW agreed to this stipulation even though the packs do not typically carry the date of manufacture and as a result, the health warnings only began to slowly appear several months after they were technically required.

To summarize, despite the obvious fact that cigarette smoking is taking a toll on the health of the citizens of India, the process of implementation of pictorial warnings has observed a sequence of delays and dilutions through sustained lobbying by the tobacco industry supplemented by incessant persuasion of the policy makers in direct and indirect ways. The withdrawal of the order multiple times betrays a strange dichotomy on the government's stance on consumption of tobacco. On one side it is banning smoking in public places and even in movies and on the other it is letting TI dictate terms on carrying pictorial warning that are a norm in several countries. Interestingly, it was a Group of Ministers headed by Mukherjee that had cleared the use of harsher pictorial warnings on cigarette packets in February 2010. What changed between then and December 2010 for the government to do a complete about-turn remains a mystery!

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Pack Warnings -II (2012 - 2018)

In 2010, a status report of global pack warnings by the Canadian Cancer Society placed India's PHW at an embarrassing Hundredth position [1]. In response, the Ministry of Health and Family Welfare (MoH &FW) notified a new set of warnings on May 27 2011, which were to be enforced from the first week of December, 2011. Following the John Terry controversy over the apprised Pictorial Health Warnings (PHW); where the blurred head-and-upper-body image of the famous football captain of England was shown above the words “Smoking Kills” without his consent, a revised set of warnings was publicized on September 27, 2012 [2]. This was deemed to be implemented from April 1, 2013. An equity research firm in 2013 disclosed that pictorial health warnings and plain packaging exhibit no danger to India's cigarette companies since it is principally a single stick market [3]. Single stick sale of cigarette nullifies four major tobacco control tactics including protecting minors, pictorial health warnings, quitting support and effective taxation.

In February 2014, MoH &FW created an Expert Committee to analyse best practices in PHWs prevalent worldwide and suggested field-tested warnings for notification. Based on the Committee's suggestions, packaging and labelling rules were amended and a new set of Rules were notified on October 15, 2014. As per this, 85% pictorial health warnings on both sides of the pack were to be implemented from April 1, 2015 [4]. It was mandated that “the specified health warning shall cover at least eighty-five per cent (85%) of the principal display area of the package of which sixty per cent (60%) shall cover pictorial health warning and twenty-five per cent (25%) shall cover textual health warning” [5]. The Indian Prime Minister's support of this initiative was highlighted by the Indian media [6]. Following this, there was an outcry from the tobacco industry. Big Tobacco and its supporters started canvassing against the larger Health Warnings and more than 30 cases were registered in various state courts against the enforcement of the new rule, stating that they were unsubstantiated and “unconstitutional" The contention in the Tobacco Institute Of India (TII) Petition No. 4470/2015 and other petitions was that 85% warning was contrary to the COTPA, Trademarks Act and Article 14, 19(1)(a), 19(1)(g) and 21 of the Constitution and in addition, it may adversely affect the Tobacco Industry (TI), leading to loss of livelihood for traders, labourers, farmers and manufacturers and result in Illicit Trade [7]. During the same time, the driving force behind the larger PHW, Dr. Harsh Vardhan was transferred to the Ministry of Science and Technology and Earth Sciences. Coincidentally, this led to a 2.5 per cent jump in the shares of the cigarette manufacturer ITC and traders said the removal of Dr. Harsh Vardhan from the Health Ministry was viewed as a positive development in the tobacco industry [8]. Previously, it had been alluded that previous health ministers (Mr. Shatrughan Sinha, Dr CP Thakur) were also removed from their position for boosting tobacco control efforts [9].

Following the high representations from tobacco industry, front groups and other members of Parliament, the Committee on Subordinate Legislation (Lok Sabha) started reviewing the notification of 85% warning rules [10]. Interestingly, one of the members of the Committee on Subordinate Legislation (CoSL), Mr. Shyama Charan Gupta (member of Lok Sabha from Allahabad, chairman and managing director of Shyam group that manufactures bidis under the brand names of Shyam and Pintu), made a representation to the government, by forcefully opposing the pack warnings and instead of staying away from the proceedings of the committee, attempted to influence the panel to take a biased decision in favour of the tobacco industry. Para 5-6 of the interim report of March 2015 is the testimony of Shyama Charan Gupta and all India Bidi association to defer the warnings according to which "Bidis are a natural product and are very small as compared to cigarettes. As such, Bidis should not be compared with cigarettes as far as rules are concerned [11]." This may be seen as a direct conflict of interest. In the various representations received by the Committee, serious apprehensions were expressed about the adverse impact of amendment rules on the livelihood of millions of workers / farmers engaged in the bidi trade. A need was stated for an in-depth study on the socio-economic effect to address the concern of farmers that covered aspects like finding alternative cash crops and viable means of livelihood. As a consequence of the interim report of 2015, the implementation of larger PHWs was deferred indefinitely [12]. In its interim report tabled in Parliament in March 2015, the CoSL "strongly urged" the government to keep the notification in "abeyance" until it had examined various aspects of the Rules in greater detail. As the per the interim report of the CoSL (Sixteenth Lok Sabha; 2014-2015) the Government of India was not able to provide alternative employment to Bidi workers and tobacco farmers in any manner till that time whatsoever and therefore "there cannot be any drastic amendment to the rules [13]."

The government agreed, and the move for which India was being internationally applauded was postponed indefinitely. Health Minister J P Nadda assured everybody at multiple fora that he was a firm believer in taking everyone along, and that the government would like to wait for the COSL to make a considered decision before going ahead with the 85%, picture-dominated warnings on tobacco packets. The existing rules were enacted on the recommendation of the Group of Ministers (GOM) after holding extensive discussions with the Industry and affected persons and taking into consideration the loss of livelihood to Bidi Workers and Tobacco Farmers. As the matter dragged on, a group of activists approached the Rajasthan High Court (HC) and filed a Public interest Litigation (WP: 8680/2015; June 2015 "Rahul Joshi vs Union of India") [14]. The High Court on July 3, 2015 stayed the Central Government's March 26, 2015 notification as there was no legal basis and asked the Centre and the state government to immediately implement the 2014

Rules. But the Government did not act as per the directions issued by the HC, a contempt petition (CCC.No.800/2015) was filed on July 21, 2015 before the HC against the Union of India for non-compliance of the interim orders. Further, this contempt petition was then connected with the WP:8680/2015 [15].

Following this, the Tobacco Farmers Federation sent a representation to MoH &FW on September 16, 2015 to depute "highest law officers" to represent the Government before the Rajasthan HC and oppose this PIL (received via RTI, courtesy health for millions). At the same time i.e., Sept. 24 2015, the Government re-notified the date of enforcement of new PHW from 1 April, 2016, giving the industry six months' time to prepare for the same. India's largest cigarette manufacturer, ITC made its position amply clear in its report to the shareholders. Saying that "Ambiguities surrounding the implementation of the new PHW led to severe supply chain disruptions during the quarter including intermittent stoppage of manufacture at the Company's units". Besides, cigarette stocks manufactured prior to April 1, 2016 bearing the old health warnings were seized at some locations by regulatory authorities – most of which were subsequently released following an order of the Honourable Bombay High Court, clarification from the Union Health Ministry and representations made by the Company. The Industry through the Karnataka Bidi association challenged the notification in Dharwad bench of the Karnataka high court and other HCs. Karnataka HC (December 4, 2015) stays the Enforcement of 85% PHW rules by an ex-parte order [16, 17].

On March 15, 2016 the CoSL tabled its final report in the Budget Session of Parliament, adopting 50% warnings instead of 85%. The Industry favoured this report and subsequently filed litigation that government should follow the recommendation of this report. On the intervention of the civil society with support from the Government, the Honourable Supreme Court while hearing a bunch of petitions filed by the industry against the PHW, directed the transfer of all cases pending before different HCs to the HC of Karnataka on May 4, 2016, which were to be heard and disposed-off within six weeks. The SC also added to the order that any stay order granted by any HC would not be given effect, till they finally dispose of their existing court cases. The fact that all the cases were transferred to the Karnataka HC by the SC on the reasoning that most of the cases were filed there, was questioned by the Civil Society lawyers who termed it as forum shopping by TI, since these cases were filed by the Cigarette, Beedi and Chewing TI having registered offices/companies/factories in other States. There was also an objection raised to the bench as one of the family members of the judge hearing the matter was directly linked to the firm of one of the TI main lawyers and this was a seen as a direct conflict of interest. In March 2017 despite the matter pending before the court, MoH &FW on a representation from TII amended the PHW Rules by removing the time limit fixed for clearing stocks having old health warnings.

The Court found merit in the contention of TI that 85% warning was issued without any concrete material and without considering its impact on other stakeholders and ruled that India should go back to the 40% warnings by striking down the stringent 85% PHW Amendment Rules, 2014 on December 15 2017, which was seen as a major win for the tobacco industry [18]. However, the Supreme Court on 8 January, 2018 stayed the order of the Karnataka High Court, thereby paving the way for continued implementation of the 85% GHW [18, 19]. Subsequently two new images were notified by the MOH&FW on April 3, 2018 [20]. The MOH&FW approved two pre-tested images with a Quitline No. that would appear on all tobacco products manufactured from September 1, 2018. The notification stated that the first set of images would be valid for one year and the second set of images would be notified later. As a consequence of the above developments, the companies progressively continued printing of 85% warning on tobacco product packages. At the Eighth Conference of the Parties to the WHO Framework Convention on Tobacco Control, 1-6 October 2018, Geneva, the Canadian Cancer Society ranked India's PHW on tobacco products fifth largest globally with a more than a 100-rank rise [21]. Global experts at COP-8 complimented India on making tremendous progress towards creating public awareness on the health hazards of tobacco abuse [22].

To conclude, the 85% PHW implementation was possible through the concerted efforts of powerful litigation, sustained pressure by tobacco control advocates, supportive MOH&FW, media and an impartial judiciary. But the industry has still not given up and sustainability of the 85% PHW stays as a challenge. Every attempt should be made to work towards implementation of plain packaging of tobacco products similar to that of certain other countries, but the tussle is still in its initial phases. It is bound to take the anti-tobacco drive to a whole new level.

Chronological sequence of events.

- 2011: Rajya Sabha COSL Report (recommendation for 90% GHW)
- 2014 Feb: Constitution of Expert Committee on PW by MOHFW
- 2014 July: MOHFW–shared achievements / progress made in 100 days of new Government (what was included in this?)
- 2014 Sept: Report of expert committee recommending at least 80% PW, Finally, MOHFW decided on 85% PW based on the recommendation of ??.
- 2014 Oct: Notification of 85% PW to come in to effect from 1st April 2015.
- Nov-Dec 2014: Representation from tobacco industry, parliamentarians, (court cases; over 50 cases filed in various courts across different states)
- Jan 2015: COSL took cognizance of the new PW rules, to examine its legality and impact.

- Feb 2015: 1st meeting of COSL with MOHFW
- March 18th, 2015: interim reports of COSL, recommending keeping in abeyance the implementation of PW (reference to TI representations)
- March 26th, 2015: MOHFW issues notification to defer the date of implementation.
- March –April 2015: tobacco gate (NDTV or TimesNow?), media stories highlighting conflict of interest of COSL members (Shyam Charan Gupta)
- TI interference in delaying the implementation of PW, (COURT CASE) (Contradictory statements from the members)
- April –Dec 2015: COSL meetings with different stakeholders.
- July 3rd 2015: Rajasthan HC directs enforcement of 85% warning and staying the deferment notification as it was contrary to Law.
- July 20th 2015: Representatives of TI become party in the PI.
- July 28th 2015: Rajasthan HC issues contempt against MOHFW for non-compliance of orders dated July 3rd, 2015.
- August 2015: MOHFW files affidavit supporting implementation of 85% PW, however seeks time.
- September 2015: ITC forwards opinion from retired CJI (Khare), regarding non-binding nature of the Rajasthan HC order.
- September 2015: MOHFW notifies 1st April 2016 as the date of enforcement of 85% PW.
- October 2015- April 2016: court cases challenging 85% warning filed before various HCs/Benches and the SC of India.
- January 2016: HFM appeals against HC orders
- Feb 2016: Karnataka HC vacates the stay.
- Feb 2016: MOHFW issues public notice for implementation of PW from 1st April 2016.
- March 15th 2016: COSL final report recommending reducing 85% warning to 50% both sides for cigarettes/Bidi and 1 side for SLT.
- March 2016: Karnataka HC refuses to grant interim relief to TI in an appeal against vacation of stay order.
- April 2016: Karnataka HC (Dharwaad bench) in petition file by TI (ITC, GPI, Godawat etc.) grants stay of operation of PW rules qua di the petitioners. (ITC letter)
- April 2016: TI appeal against the Karnataka HC before SC of India.
- 1st April 2016: MOHFW issues letter to states and ministries for enforcement of PW.
- April 2016: Seizure/sealing of cigarettes with old pack warnings (Rajasthan/ Mumbai/ Mizoram)

- April 2016: ITC/GPI got order from Nagpur HC against the seizure.
- April 2016: ITC issues statements that they are stopping the production of cigarettes.
- April 2016: GTC starts printing new PW.
- May 2016: SC vacates all stay orders, directs enforcement of PW, and transfers all cases pending before various HCs to Karnataka HC for Hearing.
- July 2016: hearing commences in Karnataka HC by bench comprising of Justice BS Patil, whose daughter was working with TI lawyers firm. CJI refuses to change the bench.
- Feb 2017: Representation from TII for amendment of rules mandating exhausting of stocks with old pack warning within 2 months.
- March 2017: MOHFW notifies amendment to PW rules by removing clause giving time period for removing the old stocks (which was being defended in court)
- April 1st 2017: new images of PW comes into effect.
- April –December 2017: TI agitation and representations against PW.
- 15th December 2017: Karnataka HC quashes 85% PW rules and directs implementation of 2008 rules that prescribes printing of 40% PW on one side of the pack. The orders were passed on the last working day before the SC went for vacation (the court of appeal).
- 22nd December 2017: appeal filed by Civil society/cancer victims. SC directs status quo and also directs the HC to upload the orders on its website.
- 8th January 2018: SC stays HC order; directs enforcement of 85% PW
- March 2018: MOHFW on the recommendation of the expert committee notifies new images of PW having the quit-line number to come into effect from 1st September 2018.
- June 2018: TI files petition before Karnataka HC seeking stay of new PW rules.
- June 2018: TI files application before SC for stay of new PW Rules
- August 14th, 2018: SC makes the stay order absolute and grants rule.
- August 31st 2018: HC refuses to stay the Operation of the new PW.
- September 1st 2018: new PW comes into force

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The Changing face of the Tobacco Industry – New Technology, Agents and Interventions

The Tobacco industry continues to market new products, technology and strategies to sustain nicotine addiction among the existing users and lure the youth towards the habit. Besides promoting harmful products like electronic nicotine delivery systems (ENDS) including e-Cigarettes, Heat-Not-Burn devices (HNB), Electronic non-nicotine delivery systems (ENNDS), e-Sheesha, e-Nicotine Flavoured Hookah and the like, the TI has been actively involved in product extension, proxy advertisement and unauthorised Corporate Social Responsibility. In addition, TI wears a "good guy" mask by projecting an impression of environmental conservation, climate change custodians and supporters of Sustainable Development Goals [1].

Electronic nicotine delivery systems ENDS

ENDS act as a proxy gateway for the youth to initiate tobacco consumption. They are marketed as "A healthy substitute to cigarettes" and are promoted as an alternative to control or even stop smoking. However, the current evidence is insufficient to recommend ENDS for tobacco cessation in adults and some people end up using these devices along with the contemporary form of smoked tobacco products, due to the addictive nature of nicotine. It is also erroneously argued by the TI that e-cigarettes are as safe as other nicotine replacement products such as patches. Also, there have been many misconceptions about their potential benefits which are not true. Currently, these products are either banned or not authorised by various state level authorities in India. Pursuant to the direction of the Hon`ble Punjab & Haryana High Court (order dated 05.11.2012, Burning Brain Society Vs. Union of India & Ors. (C.W.P No.14597 of 2007), to constitute a permanent task force for monitoring the abuse of nicotine in chemical form, Punjab became the first state to declare ENDS as illegal in 2013 [Vide Circular dated 5.9.13] under the Drugs and Cosmetics Act which allows nicotine (2mg and 4 mg) only as gums and lozenges to be manufactured and sold. Following it, a consignment of e-cigarettes that was imported from China by M/s Joybuddy Fun Products Pvt. Ltd. was seized by the custom authorities in Kolkata, following which they approached the Drug Authority of India for No Objection Certificate which was denied. Thereafter, they filed a petition (WP No. 26950 (W) of 2014) where they complained of arbitrary treatment by the Customs authorities in stopping the import, citing that there was no law supporting the prohibition of import of e-cigarettes or the sale or distribution thereof in the country. The petitioners referred to a packet of "Eon evape" which appears to be marketed by ITC Limited and, according to the petitioners, this product is available openly at retail outlets [2]. Based on the plea, the court disposed the petition in favour of Joy Buddy since there is no such provision under the law which is cited for restraining or prohibiting the import of e-cigarettes into this country and in view of the practice followed elsewhere, as accepted by the customs authorities. Following it, various State Governments like that of Karnataka [Vide Circular dated June 15, 2016]; Mizoram [Vide Circular dated June 8, 2016]; Kerala [Vide Order dated 1st August, 2016]; Jammu & Kashmir [vide Circular dated July 24, 2017]; Uttar Pradesh [Vide Order dated November 14, 2017]; Bihar [Vide Order dated November 28, 2017] have prohibited the manufacture, distribution, import and sale of ENDS under the Drugs and Cosmetic Act, 1940 as unapproved drugs [3].

The Ministry of Health and Family Welfare, Government of India, conducted a National Consultation/Conference on July 4, 2014 and recommended that since the available scientific evidence indicates that Electronic Nicotine Delivery Systems are hazardous for active and passive users, therefore constructive efforts should be made to curb its manufacture and sale. Pursuant to the said recommendations, sub-groups were constituted to consider the issue of banning and regulating ENDS in India. The sub-groups submitted their report in August 2017 and recommended imposing a complete ban on the manufacture, import and sale etc., of Electronic Nicotine Delivery Systems. Subsequently in a Parliament Question, the Minister of Health and Family Welfare (2018) was questioned regarding future plans for regulating ENDS and that whether the Government has conducted any scientific study on the effect of e-cigarettes on health. In response, Smt. Anupriya Patel (Minister of State, Ministry of Health and Family Welfare, Government of India) cited the WHO report where there is sufficient evidence to implicate ENDS in harming children and adolescents, pregnant women, and women of reproductive age.

The tobacco industry has been consistently using different promotional strategies to propagate alternate harmful products which are more socially acceptable than smoking and can be easily manipulated through PR campaigns [4]. The proliferation of 'vaping conventions' for e-cigarette users is one such concern that is bothering the anti-tobacco groups of India. Unlike tobacco industry conventions intended for business-to-business promotion of products, vaping conventions are for e-cigarette users, intended to provide a venue to 'see all the top vendors in the industry and party with all your friends with an overall purpose to lure the youth towards the new products line' [5]. In early 2017, the organisers of the VAPE EXPO got approval for conducting the event in 2017 from the Ministry of External Affairs. But on 2.9.2017, the Ministry of Health and Family Welfare denied the permission without announcing any reasons [6].

After the Delhi government denied permission to hold the trade show in the capital and the Greater Noida authorities also withdrew permission, the matter came up for hearing on September 7, 2017 in the Delhi High Court where the court asked the Indian Government to provide the legal basis for the issuance of the rejection letter. Further, the DM of Noida directed the government not to have any meeting with representatives of VAPEEXPO. Subsequently, the court directed the Government to call these representatives for a meeting. However, subsequent to the meeting with the representatives of VAPEEXPO, the Ministry of Health, Government of India, gave detailed reasoning which was aligned with the recommendation of the expert committee for regulations/ban of ENDS for denying the approval for conducting such an event.

In another development, Seema Sehgal, a housewife filed a PIL (w.p(c) 10624/2017) in the Delhi HC seeking to regulate e-cigarettes. Through an order dated 21/08/2018, the Delhi High Court directed Secretary, Health and Family Welfare, GOI to file an affidavit indicating the time span for enforcing regulatory measures on ENDS failing which coercive action will be taken against the Department [7]. In the meanwhile, the Association of Vapers India (AVI) has opposed the State government's proposal to ban e-cigarettes and called for a legislation to regulate the domain of alternatives to smoking including e-cigarettes [8]. Eventually, MOH & FW issued an advisory on August 28, 2018 to the states that “any Electronic Nicotine Delivery Systems (ENDS) including e-Cigarettes, Heat-Not-Burn devices, Vape, e-Sheesha, e-Nicotine Flavoured Hookah and the like that enable nicotine delivery are not sold (including online sale), manufactured, distributed, traded, imported and advertised in their jurisdiction, except for the purpose and in the manner and to the extent, as may be approved under the Drugs and Cosmetics Act, 1940 and Rules made thereunder [9].”

Subsequently, a 48-year-old a habitual smoker; Piyush Alhuwalia, who had switched over to e-cigarettes due to health problems caused by paper rolled cigarettes contested the Centre's advisory on the plea that it was a violation of his fundamental right as it deprived him from exercising his discretion to use such products. The petition also highlighted a study conducted by the Executive Agency of the Department of Health and Social Care, Public Health, England which indicates that e-cigarettes are 95% safer than smoking traditional cigarettes. This was another instance that depicted the indirect role of TI in criticising the existing policies of the government. In response to the petition, Delhi HC delivered an order on ENDS in November 2018 that MOH advisory is not binding to the states and it would be open to the respective states and union territories to take an informed decision in this regard. In a similar case, another chronic tobacco user, Kerry Edwards filed a separate petition in the high court in year 2018 citing the reason that such delivery mechanism (ENDS) helped him in controlling the addiction of cigarettes and the central government's advisory has violated his legal right. He supported his petition by providing references of research and analysis which suggest that ENDS are an effective means of curbing addiction of tobacco cigarettes and can be successfully used in smoking de-addiction programmes.

Conclusion:

Traditional hookah, or smoked tobacco products have been replaced by newer products and technology, owing to introduction of flavoured hookah tobacco (i.e., Maessel), reduced risk misperception, popular lounge or café culture, growing social appeal, the rise of internet and social media and the lack of regulation [10, 11]. Tobacco industries have been successful in making their users believe that hookah smoking is less harmful than cigarette smoking [12]. The unrest against nicotine abuse in non-contemporary forms (Hookah/ Sheesha/ Water-Pipe) was first unveiled in 2007 when a "Public Interest Litigation (PIL)" was filed by the NGO Burning Brain Society in the High Court of Punjab and Haryana (CWP:14597/2007) against the mushrooming of Hookah/ Sheesha outlets. It took nearly five years and the HC ruled that chemical nicotine is a poisonous substance; finally putting a permanent end to the menace of Nicotine, Hookah and Sheesha outlets in the region and on November 5, 2012, the court ordered the closure of all such outlets besides the creation of a task force to check the violation of law in future [13, 14]. After this, the states have registered criminal cases against various outlets and people trading in Hookah/ Sheesh and the ingredient used in Hookah.

Another campaign was initiated by Shubha Raul in 2008, the then Mumbai's mayor, against hookah lounges. She even staged a dharna and filed a petition to ban hookah parlours [14]. Vincent Nazareth of Crusade Against Tobacco in 2011 filed a petition (PIL number: 111 of 2010). The Bombay High Court acted on the petition and asked the Bombay Municipal Corporation (BMC) to reset the rules which then ordered that no licence will be provided for hookah bars [15]. Many other states followed the decision, causing the hookah lounge business to shut down [16].

The Punjab Government declared "nicotine" as a poison under the Poisons Act, 1919, thereby regulating its possession and sale. In a recent development, the Punjab State Government, following the initiative of Gujarat and Maharashtra, approved an amendment to the COTPA 2003 in March 2018, for the prevention and control of diseases caused by the use of tobacco products and imposed a permanent ban on Hookah bars in the state [17]. MOH & FW has also issued an advisory against sale of e-Sheesha and e-Nicotine Flavoured Hookah to the states on August 28, 2018.

In summary, it is evident that the Tobacco Industry is planning alternate ways and tactics for product extension to increase its consumer base. Main targets tend to be the youth, females and those who wish to stop using tobacco. Some of these tactics have not been revealed yet. Therefore, it is important that the government should develop regulatory policies that aim to curb the growth of such products and tactics while they are in the nascent stages of their development and hence halt their proliferation in the population.

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Tobacco Industry Interference in tobacco taxation and policy

According to the World Bank and the WHO, tobacco control and within it an efficient, inflation index-linked taxation of tobacco products ranks among the most efficient health interventions. A sound tax regime impacts the retail price of tobacco products and makes tobacco less affordable for the vulnerable populations especially the poor, youth and women. Effective tobacco taxation can meet the twin goals of revenue and public health. Evidence from developed and developing countries has shown that a well-crafted tax regime can meet both these and has been able to reduce the prevalence of tobacco use [1].

However, in India, this has not been the case. The Government remains politically compromised and arbitrary which results in tobacco taxes becoming regressive. The underlying reasons are several but the primary among these is the wide variety of local tobacco products manufactured and sold through unregulated settings that are highly affordable even for the poorest of the poor. Even the most taxed tobacco product (cigarettes) is sub-optimal [2].

Taxation of tobacco products

The first meetings of the Government of India on taxation (1911 [3], 1936, 1949 and 1956 [4]) had senior officials and shareholders of the Imperial Tobacco Company as its members. Before the coming of Goods and Services Tax (GST) regime in July 2017, duties on cigarettes were open to revision every year under the Finance Acts (presented during the Union Budget), SLT products were levied on 'deemed production', revised periodically through notifications [5] and bidis were by and large kept low and rarely changed. The rate of duty on bidis was kept lower on the premise that the consumption is mainly among the rural poor and its affordability has to be considered [6]. Political compulsions, unregulated local production and consumption and historical laxity in the centralised taxation of tobacco products has helped many in escaping the tax net. This has impacted the price elasticity of tobacco products [7].

A Short History of Cigarette Taxation

Between 1958 and 1991, the excise revenue collected from cigarettes was divided between the Centre and the States in a ratio determined by the Central Government. Some states began to levy sales, octroi and luxury tax, often leading to disputes between tobacco companies, state and the central government. Most often, the Union and state government recovered nothing from tobacco companies. Since 1962, over 18,000 cases have been presented in various high courts of states regarding excise, sales and luxury tax disputes [7].

In 1983, the Government of India rationalised and modified the excise duty structure for cigarettes based on the length and presence or absence of filter rods [8]. Between 1984 and 1988, the Cigarette Manufacturers Association of India lobbied hard to add another slab for cigarettes and in 1989, the Union Budget introduced another slab (micros at the lowest end) to entice bidi smokers to switch to cigarettes. The 1994 Union Budget announced a sharp reduction in the excise duty on micro cigarettes (reducing it from Rs. 120 per 1,000 to Rs. 60 per 1,000) which enabled micro-cigarette manufacturing companies with a windfall of profit [9]. Between 1994 and 2003, small tax increases in Union Budget were gradually passed on to consumers by cigarette companies, which garnered more profits for them [10]. Between 2011 and 2016, the successive increase in excise raked in higher-than-expected profit for two largest cigarette manufacturers [11,12]. Ineffective tax increases have actually helped companies increase profits.

Cigarette companies have been upfront about their strategy on protecting their profits while escaping excise taxation and deceiving regulators and customers. Between 2000 and 2012, the annual reports of ITC claimed that a very high level of ad valorem excise duty eroded 72 to 75% of the value. According to an India tobacco industry insider [13], the following are key tactics commonly used by the industry:

1. Raise current duty paid inventory levels before the Budget and sell after the Union Budget at new higher prices
2. Reduce protective packaging on middle segment brands during non-rainy months [14]
3. Use lower grade leaf tobacco for short periods
4. Improve filling power of tobacco leaf
5. Cut the length of cigarettes (by about 2 mm) or slightly reduce the circumference to save on tobacco
6. Reduce advertisement and promotion activities but intensify sale to minors and incentivise sale through middlemen and distributors efforts for single stick sale at point of sale
7. Increase nicotine level in cigarettes which keeps smokers addicted [15]. It is also widely known that cigarette companies spike nicotine levels before and after tax increase (proposed during the budget period) and increase porosity and chemical composition in the filter and filter paper to increase nicotine delivery [16]. This will give smokers their usual high despite reducing the number of sticks. When prices stabilise, smokers resume their average stick consumption.

Political patronage, favours and corruption have helped the tobacco sector and individual companies. India's largest cigarette maker, ITC was embroiled in possibly the worst money laundering and corruption scandal in India's corporate history [17]. Between 1992 and 1994, ITC had exported $42.5 million (Rs 149 crore) of products to a US-based shareholder. The US-based company quoted variable prices while ITC under-invoiced the imports, exaggerated exports [18] and laundered foreign exchange under the

Foreign Exchange Regulation Act [19,20]. ITC and its parent company BAT were wrestling for control of the company and were aware of the malpractices [21]. Meanwhile, the Members of Parliament were being lobbied and 40 MPs advocated that Unit Trust of India infused public funds and give BAT control of the company [22]. The Government of India on its part dropped the case when it realised that its stringent action was being perceived unfavourably. In October 1998, Government of India raised its stake in the company invested through public insurance companies and pension funds but prevented BAT from wresting management control or increasing its stake. In April 2000, The Government of India introduced a less strict policy on foreign direct investment and licensing (which excluded tobacco to reduce and prevent foreign investments) and supported an environment for backward integration (including agriculture) [23] which favoured ITC, and tobacco sector at-large.

Brief History of bidi taxation in India

Bidi use or its manufacturing is not traditional and rose concomitantly with cigarettes around 1910. It gained centre stage during the swadeshi movement, when there was call to boycott British made goods [24]. Until 1975 the bidi sector was ill regulated and it was organised when the Tobacco Board (for FCV tobacco trade) was set up to favour cigarette companies and leaf export. Bidi sector is governed through weak labour laws and since they exist in poor and remote districts where bidis are rolled, their enforcement is compromised.

Although bidis are most consumed smoked product, they are subject to negligible tax. There are no figures of Government of India on how many bidis are produced, but it ranges from 550 billion to 1.2 trillion produced annual [25]. Bidi manufacturers who produce fewer than two million pieces annually do not have to pay excise tax [26, 27]. Bidis produced without the aid of machines are assessed five rupees per thousand pieces. For bidis manufactured by machine the tax is 15.5 rupees per thousand.

Before the onset of the GST regime in July 2017, a Beedi Workers' Welfare Fund Act (1976) provided for the levy and collection of taxes by way of cess, a duty on manufactured bidis that is dedicated to financing welfare measures for bidi workers. The Fund cess established precedence for ear-marked taxation in India but is now subsumed under GST. There was widespread corruption in the administration of the Beedi Cess Fund [28]. However, no action has been taken by the Ministries of Labour or Finance to identify the reasons for incurring more expenditure than receipt [29]. The Government of India has been unable to reconcile the fact that taxes and cess have declined and revenues from tendu patta, bidi production and consumption figures [30] has grown or remained steady [31]. Bidi manufacturers have exploited loopholes and declared fewer bidis sold through them. Since bidi production is highly fragmented, excise officers cannot maintain physical control [32] or control of the supply chain [33].

The challenge of regulating smokeless tobacco products

A maze of dense rules and sub-rules govern the smokeless and pan masala industry [34]. Each manufacturer has several small units registered under different names and each and produces multiple brands and variants. The brand names also cover a variety of products which include mouth fresheners, condiments, pan masalas, diverse forms of processed tobacco and betelnut products which confound tax administration. To illustrate, a 2017 report of the Comptroller Auditor General of India found that a small local gutka producer from Nashik, Maharashtra its production exceeded by 576% and the company evaded taxes in excess of Rs.300 crore (excluding penalties, fines and levies). On an average every SLT factory that was surveyed found an "abnormal excess production over the 'deemed production', to the extent of 325 per cent, of installed capacity of machines is indicative of failure on part of the divisional officer to realistically fix 'deemed production', leading to loss of revenue [35]. SLT remains a hugely unregulated sector and has attracted investments from criminal elements. To illustrate their brazen behaviour, gutka (a product which banned in 2014 under the Food Act) is still available in India. Sadly, gutka is still listed in the tariff code of the Excise Manual (March 2012) and GST Manual (July 2017). Until March 2018, states continued to collect tax under these heads.

Smokeless tobacco companies also contribute to political parties. For example, between 2000 to 2012 the leading smokeless tobacco producer (DS Group) has donated to trade unions (eg: CITU) and political parties at local and national level.

Tobacco industry interference at state level

Between 2012- 2017, tobacco control advocates reached out to State Finance Ministers and policymakers and showed the feasibility of raising tobacco taxes. However, every successful effort of raising tax was met with strong lobbying industry fronts groups for lower excise and VAT (Punjab, Rajasthan, Bihar, UP, Gujarat, Mizoram). A case was admitted in the Rajasthan High Court about the reversing of the hike on VAT of cigarette in 2015-16 from 65% to 45% which made cigarettes cheaper. The Court directed the state government to submit a reply giving the reason as to why VAT was reduced which was against its policy to reduce the use and consumption of cigarettes and its reversal would increase its use and therefore health hazard. In its judgement the Court order that the State had vested interests and the Chief Minister had favoured a leading cigarette manufacturer [36]. Just how arbitrary tobacco taxation is can be seen from a more recent case from West Bengal. In April 2013, the state introduced an additional a 10 percentage point hike on value-added tax (VAT) on tobacco products to pay for a financial fraud in West Bengal [37]. This was rebuked by the Finance Minister (who incidentally as a lawyer also has represented a leading cigarette company) at the GST discussion in Parliament [38].

Illicit trade as an argument against raising taxes

Tobacco industry directly, and through front groups (industry associations like FICCI, ASSOCHAM and CII, or the Tobacco Institute of India) have positioned illicit trade as a central argument to thwart taxation or jeopardise pack warnings. If not met, they threaten the government that there would be higher unemployment, lower tax revenues and increased illicit trade if taxes are raised [39].

Since 1990, ITC has been raising the issue of illicit trade. Initially the challenge for cigarette manufacturers was to prevent counterfeiting [41]. An industry sponsored report (2015) highlighted the rise in illicit trade in tobacco in India just before the debate on GST began [42]. Industry bodies in particular FICCI hired a major consulting company, KPMG to carry out extensive research and activities to address issues regarding illicit trade and tobacco smuggling in India [43] and released a report FICCI titled "Illicit Markets a Threat to our National Interests" [44]. The report alleged that illicit cigarettes fuelled terror in the region [45] and made tenuous arguments backed with little local relevance. In 2016, FICCI constituted a committee (called Committee Against Smuggling and Counterfeiting Activities Destroying the Economy, CASCADE) which was headed by the senior executive of ITC. At the launch of the report, FICCI felicitated the enforcement officers for their outstanding achievement in the preventing counterfeiting and smuggling. Another major actor in influence economists and policymakers is a global forum called International Tax and Investment Centre (ITIC) which until 2017 received funds from major tobacco companies [45]. Tobacco Institute of India [46] and its members ITC [47] and GPI frequently quote ITIC reports. In 2016 the WHO and the deliberation during FCTC urged all Parties to the FCTC to disengage with ITIC [48]. In November 2017, tobacco control advocates compelled The World Bank and certain Government of India officials to pull out of the ITIC annual conference in New Delhi [49].

Lobbying to avoid 'sin tax' under GST (2017-present)

In 2017, Government of India launched a new taxation system in the country, where it was proposed to impose 5% Goods and Service Tax (GST) on raw tobacco and 28% GST on other forms of tobacco including cigarettes, smokeless tobacco products and bidi with additional Compensation Cess and State GST. However, GST imposed taxes on previously unlevied bidi, bidi wraps (tendu leaves) and other tobacco products like raw tobacco. For decades the bidi industry had received the additional cess (tax) exemption, apart from benefits and subsidies given to tobacco grower [50]. However, under GST bidis are taxed at 28% but were exempted from additional cess taxes after hearing pleas from bidi front groups at the Goods and Service Tax (GST) Council Meetings [51]. The passage of tobacco taxes under GST was a tough battle between public health advocates and tobacco industry. Several Members of Parliament (MPs), a state agriculture minister and State Legislative

Assemblies (or MLAs) along with Tobacco Institute of India and Tobacco Board of India were present at an award function (2017) organized by the tobacco industry but also encouraged tobacco growers to interact with State and Central government and raise voice for decreasing tobacco taxes and increasing tobacco production [52, 53] and lobbyists continued to press for subsidies and incentives for bidi and raw tobacco leaves from any form of taxation [54-56]. Despite the tobacco industry efforts all products were brought under the highest tax bracket (28%), however, the decision was postponed to impose additional cess on bidi in 2017 [57] but another front group allegedly comprising farmers (Federation of All India Farmers Associations, FAIFA) challenged government's position on tobacco, but the decision remained unaffected [58].

Despite being put in the highest tax bracket of sin tax has not diminished tobacco industry revenues [59]. Cigarette, smokeless and bidi have become more affordable after GST [60] and cigarette companies in particular have reported a profitable outlook with marginal tax increase [61-62].

Conclusion

Taxing tobacco remains one of the most contentious and challenged area in tobacco control. Tax remains out of the remit of India's tobacco control legislation and is negotiated behind closed doors by tobacco industry, politicians and lobbyists. This makes it difficult for tobacco control advocates to press for transparency on tobacco taxation. The tobacco industry is also not a single entity and it leverages this to raise confounding issues before the Government. Government's inability to tax bidi remains the best political bet for the tobacco sector, and cigarette manufacturers use this to demand for more lenient taxation. Taxation remains a political decision rather than a rational economic policy with public health benefits.

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2. Despite sporadic increase in taxes, cigarettes in India became 15% more affordable between 2008 and 2014, largely because tax increases haven't been enough to overcome the growth in purchasing power across the country, see: WHO Report On The Global Tobacco Epidemic, 2015 - Raising taxes on tobacco, available at: http://apps.who.int/iris/bitstream/handle/10665/178574/ 9789240694606_eng.pdf?sequence=1
3. Howard Cox, The Global Cigarette: Origins and Evolution of British American Tobacco, 1880-1945, Oxford University Press, 2000, 401 pages.
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Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010, Central Board of Excise and Customs.

5. Comptroller and Auditor General of India, Levy and collection of Central Excise duty on Tobacco products of Report No.35 of 2017.

6. Pawan K. Aggarwal Income and Price Elasticities of Central and State Taxes, The Group on Resource Mobilisation for the Seventh Five Year Plan of Public Finance, National Institute Of Public Finance And Policy, New Delhi, November 1984.

7. With the exception of a few states, most received half of the total excise estimated to have been collected from the state. This was based on an agreement between the Centre and all states in 1956; whereby excise duty on cigarettes gradually replaced local taxes. Over the years, this ratio has progressively increased in favour of the States. In some states, the share had grown faster than others, and also considerably more than overall excise collection that anticipated to have been collected. In addition to receiving a share of the excise, state government also levied local taxes on tobacco products such as cigarettes. If the taxes were seen as oppressive, tobacco industry have taken the state finance department to court citing that the provisions of the 1956 agreement were being violated. The states argued that they are only restricted from levying sales tax on cigarettes by the agreement and are free to impose other state and local taxes. As a result, several tobacco companies continued to sell their products while the court cases dragged on for several years.

8. India's leading cigarette manufacturer (ITC) features in at least 400 tax dispute cases. Less than 5% of these have been favourably ruled in favour of the enforcement agency or the government. https://indiankanoon.org/search/?formInput=excise%20%20%20title%3A%20ITC%20%20doctypes%3A%20tribunals%2Cothers%2Cjudgments&pagenum=9

9. Ad valorem duties were replaced by specific duties based on cigarette length. The objective was to simply rationalise the excise system. Another important goal for the Government was to reduce the number of litigations the Excise Department were facing from frequent disputes arising from calculating collections due from ad valorem duties. The Finance Ministry created five excise slabs based on length and type of cigarettes, with rates increasing from small, non-filter cigarettes as the lowest segment to king-size filter cigarettes as high end

10. Annual Report of ITC, 1995, and National Institute of Public Finance and Policy, Union Budget 1994, https://www.nipfp.org.in/media/pdf/books/BK_39/Reform%20Of%20Domestic%20Trade%20Taxes%20In%20India%20Issues%20 And%20Options.pdf and https://www.nipfp.org.in/media/pdf/books/BK_39/ Chapters/Appendix-1.pdf

11. Annual reports of ITC, Godfrey Philips and VST.

12. ITC reported with a 4.1% increase in net sales of cigarettes through what it calls "a calibrated strategy of price hikes", ITC Limited report and accounts 2017, https://www.itcportal.com/about-itc/shareholder-value/annual-reports/itc-annual-report-2017/pdf/ITC-Report-and-Accounts-2017.pdf

13. "The domestic cigarette industry continues to reel under the pressure of increased indirect taxes," and "despite decline in volumes there was a 4.2% growth in revenue in 2014-15, Godfrey Philips' Annual report for 2016 available at https://www.godfreyphillips.com/financials#1535477416912-03487af2-c641

14. Satish Mehta, Marketing to Win: Designs and Campaigns to Achieve Market Dominance, Pearson Education

15. ITC Limited. ITC: R&D Digest. British American Tobacco Records. https://www.industry documentslibrary.ucsf.edu/ tobacco/docs/plhh0200

16. see for example nicotine levels in India cigarettes in comparison to global brands at Anon, Cigarette Information Report www.industrydocumentslibrary.ucsf.edu/tobacco/docs/lgcn0067 ; Philip Morris Records, October 17, 1977; Tobacco Merchants Association of The United States Directory of Cigarette Brands 1964 -1988, August 31 1989 available at www.industry documentslibrary.ucsf.edu/ tobacco/docs/spxj0191 ; British-American Tobacco Company Limited, Tar & Nicotine Delivery Survey (INFACT) June 08, 1994 [17] https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/rjkv0192

18. Project Barracuda Materials. Brown & Williamson Record, https://www.industry documentslibrary.ucsf.edu/ tobacco/docs/gxwg0191; September 10, 1993

19. Before and during the regime of the Foreign Exchange Regulatory Act, Government of India mandated that foreign firms generate employment, reduce imports and increase exports, and invest in core industries (Cigarettes as per the 1956 DIPP policy was a strategic sector). Some multinationals like Coca Cola and IBM were forced to leave India due to investor unfriendly policies, while BAT continued to invest in ITC and started to growing and processing tobacco leaves in the country, thus generating large-scale employment in the farm sector. In the late 1960s ITC embarked on this strategy of 'phased Indianization' after it had realized that the Government was unlikely to grant majority foreign ownership to a subsidiary in an industry (tobacco) that remained closely tied to agriculture, required little new technology or capital investments, and had miniscule prospects for exports" (see: Dennis Encarnation, Dislodging Multinationals: India's Strategy in Comparative Perspective (Ithaca, N.Y., 1989), ch. 2.)

20. Navneet Sharma, ITC in the doldrums following raids, corruption charges, India Today, November 30, 1996 https://www.indiatoday.in/magazine/economy/story/19961130-itc-in-the-doldrums-following-raids-corruption-charges-834114-1996-11-30

21. Paromita Shastri, Estranged Bedfellows Estranged Bedfellows, 13 November 1996 Outlook https://www.outlookindia.com/ magazine/story/estranged-bedfellows/202504

22. Before and during the regime of the Foreign Exchange Regulatory Act, Government of India mandated that foreign firms generate employment, reduce imports and increase exports, and invest in core industries (Cigarettes as per the 1956 DIPP policy was a strategic sector). Some multinationals like Coca Cola and IBM were forced to leave India due to investor unfriendly policies, while BAT continued to invest in ITC and started to growing and processing tobacco leaves in the country, thus generating large-scale employment in the farm sector. In the late 1960s ITC embarked on this strategy of 'phased Indianization' after it had realized that the Government was unlikely to grant majority foreign ownership to a subsidiary in an industry (tobacco) that remained closely tied to agriculture, required little new technology or capital investments, and had miniscule prospects for exports" (Dennis Encarnation, Dislodging Multinationals: India's Strategy in Comparative Perspective (Ithaca, N.Y., 1989), ch. 2.) . Over the next two decades ITC began to control tobacco farmers through future purchase, there by fixing tobacco leaf price. ITC formed a leaf trading and export arms, the Indian Leaf Tobacco Development (ILTD) and became one of the main movers on a policy which favour its tobacco trade (Champaka Basu, op cit.). To allay any fears of protests from tobacco farmers, ITC mooted the idea of a regulatory body. In 1976 the Tobacco Board Act was formed with the intent to protect the farmer and indirectly protect ITC from any restrictions posed by future policy. In 1990, ITC began to export agricultural commodities; in 2000, it commenced its famous e-Choupal initiative. To further secure its goodwill with Government and public, ITC invested heavily in corporate social responsibility initiatives including health initiatives (see: Prithwiraj Choudhury and Tarun Khanna, Charting Dynamic Trajectories: Multinational Enterprises in India, Business History

Review 88 (Spring 2014): 1–38.) (eg: condom distribution to support HIV/AIDS programme starting in 1968, see: The BAT Historical Background www.industry documentslibrary.ucsf.edu/ tobacco/docs/gzxx0194 , 19 July 1989).

23. ITC also wanted to ward off other potential threats from foreign players. Leveraging the DIPP, ITC ensured that any other international player could not enter the domestic markets. RJ Reynolds partnership with Modi Industries and Hindtron in 1994 was scuttled by CMAI. In 1999, RJR made another bid through a family that was major shareholder in ITC (The Chitalias) but because they were declared bankruptcy in the US and fallen out with ITC this deal could not be approved by Ministry of Commerce. ITC also lobbied with DIPP and Ministry of Commerce to prevent JTI from setting up a plant near Bengaluru (Surajeet Das Gupta, Japan Tobacco's Indian JV goes up in smoke, Business Standard New Delhi, January 21, 2013, www.business-standard.com/article/companies/japan-tobacco-s-indian-jv-goes-up-in-smoke-111111000031_1.html).

24. BAT Internal documents, Briefing Note on The ITC Situation in India, https://www.industry documentslibrary.ucsf.edu/ tobacco/docs/npml0210 , 1996 December.

25. MPs batting for UTI may help BAT up stake in ITC, Economic Times, New Delhi, 18 January 1998.

26. The FERA violation case also exposed the several abortive ventures of ITC in the past including cement (https://www.indiatoday.in/magazine/economy/story/19821130-itc-determined-to-diversify-into-cement-industry-likely-to-buy-india-cements-shares-772441-2013-07-31), marine products, restaurant business in New York, real estate among others. In February 2004, in a surprising volte face the Government's Enforcement Directorate "clarified that the said export transactions were well covered by the general and/or special permission of RBI and/or Central Government, and that there was no contravention" of provisions of FERA (Indian Express, ITC has the last laugh, wins legal battle against Chitalias, Friday,July10,1998; http://expressindia.indianexpress.com/fe/ daily/19980710/ 19055014.html). One motivation was that FERA was repealed in 1999 and a less stringent Foreign Exchange Management Act (FEMA) had replaced it, loosening restrictions on foreign exchange and investment in India. India also was trying attracting foreign investments while retaining domestic control and investment of large companies (Jyoti Trehan, Crime and Money Laundering: The Indian Perspective, Oxford University Press, 2004; 253 pages.). To protect ITC in these times, the Government of India raised its stake in the company invested through public insurance companies and pension funds and diluted BAT's stake ITC Board Meeting 20 December 1996, www.industry documentslibrary.ucsf.edu/ tobacco/docs/qfdc0207, December 23, 1996). As a result of the Government investments, ITC's deepened its investments in agriculture and companies that provided inputs (cotton, paper and pulp, packaging etc..) for making cigarettes. This has further helped ITC reduce input costs to make cigarettes (and other products like clothing and stationary) which helped in garner more profits after the Goods and Services Tax regime came into force in July 2017 (Prabhudas Lilladher Pvt. Ltd, ITC Update: ITC Steady quarter, GST delays recovery to 2H18 July 27, 2017).

27. P Lal, Bidi–A short history, Current Science 96 (10), 1335-1337, May 2009.

28. PG Lal and NC Wilson, The perverse economics of the Bidi and Tendu trade; Economic and Political Weekly, 77-80 Vol. 10 (2), 2012.

29. The rationale for the 2 million (20 lakh) hand-rolled bidi to be exempt from excise was derived from the National Cooperatives Guideline of 1974 which prescribe subsidies and exemptions for different home-based and rural manufacturing units. Under this Guideline, domiciliary manufacturers were encouraged to form small self-help groups and cooperatives which could sell their products to a middleman or a buyer. The middleman would aggregate the semi-processed and unpackaged products and sell this forward to a manufacturer who would market these under their brand. The excise was to be paid by the manufacturer of

the bidi brand. The assumption was that ten women would work for an average 300 days and produce around 700 bidis a day. This roughly came to about the two million bidi stick limit. The cooperative could choose to market their products and would be exempt from any taxation. Machine-made bidi was a segment created to overcome a possible trade barrier imposed by the US and Japan. In the 1970s, India began exporting bidis to the US, Japan and Germany as a safer alternative to cancer-causing cigarettes. In 1994, the US Department of Justice and Department of Labour analysed chid labour and forced labour that was deployed in import of commodities which included bidis (see: U.S. Department of Labor. (1994). By the sweat & toil of children: The use of child labor in American imports. Washington, DC and https://www.dol.gov/agencies/ilab/reports/child-labor/list-of-goods). The State Trading Corporation and major bidi exporters (like Shiv and Sinnar Bidi Co.) lobbied with Ministry of Commerce to include machine-made bidi in the excise notification. Although there are no machine-made bidis, yet this was included to continue bidi trade into the US. Hence a new segment of machine-made bidis was added which enabled bidi manufacturers to export and seek exemption from the government.

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35. Sunley E. The Tax Treatment of Bidis in India. Paris: International Union Against Tuberculosis and Lung Disease (The Union); 2008

36. Uday Kumar Varma, M.M. Rehman; Tobacco, tendu leaf, and beedi workers in India : problems and prospects, V.V. Giri National Labour Institute and Shipra Publishers, 2005 , xix, 370 p. ; 22 cm. As per Rule 5 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 and Rule 5 of Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010, the 'Quantity deemed to be produced' – means the quantity of notified goods, having retail sale prices as specified in the Rules. Rule 7 of Pan Masala Packing Machines (Capacity Determination and Collection of Duty) Rules, 2008 and Rule 7 of Chewing Tobacco and Unmanufactured Tobacco Packing Machines (Capacity Determination and Collection of Duty) Rules, 2010 specify that the duty payable for a particular month shall be calculated by application of the appropriate rate of duty specified in the Notification No. 42/2008-CE, dated 1 July 2008 and Notification No. 16/2010-CE, dated 27 February 2010 respectively.

37. The report stated that "Even after abnormal excess production of pouches over and above the 'deemed production', the Department failed to take cognizance of the same in reviewing and re-fixing the deemed capacity. The higher authorities also failed to ensure effective check". Comptroller Auditor General of India, Indirect Taxes-Central Excise Report No. 42 of 2017 ; https://cag.gov.in/sites/default/files/audit_report_ files/Chapter_3_Levy_and_collection_ of_Central_Excise_duty_on_Tobacco_ products_of_Report_No.35_of_2017_-_Performance_Audit_on_Communications_and_IT_Sector_Union_Government.pdf

38. Rahul Joshi vs State of Rajasthan (Writ Petition 8680 of 2015). In this case a plea was taken about value added tax on the sale of cigarette being reduced in the state of Rajasthan in 2015-16 from 65% to 45% thereby making the cigarettes cheaper increasing its sale which has the direct effect on the health of the people of the state of Rajasthan. The court directed the state government to submit reply giving the reason as to why VAT was reduced on cigarettes in the state of Rajasthan from 65% to 45 % against its own policy to reduce the use and consumption of cigarettes in the state of Rajasthan which is a health hazard and ultimate year results into spending much more amount on the health care of the consequence of smoking.

39. Mint, Saradha crisis: Mamata hikes VAT on tobacco for relief fund, https://www.livemint.com/Politics/N1oCIfU6cZeBEeItoMO99J/West-Bengal-to-institute-Rs500-crore-relief-fund-for-the-dup.html (Apr 24, 2013). In West Bengal also, a surcharge was imposed on cigarette and the revenue generated by this tax would be utilized for paying to the victims of Sharada Scam. People were asked to pay for the victims. Now whatever may be the reason but West Bengal will not be able to increase revenue through such taxes. (Finance Minister Arun Jaitley, http://164.100.47.194/loksabha/Members/result16.aspx?dbsl=8372)

40. ITC Limited, Illicit trade, fakes burn cigarette firms' revenue (https://www.itcportal.com/media-centre/press-reports-content.aspx?id=1463&type=C&news=Illicit-trade-fakes-burn-cigarette-firms-revenue), Apr 17, 2013; and Illegal cigarette trade causes huge loss (https://www.itcportal.com/media-centre/press-reports-content.aspx?id=1467&type=C&news=illegal-cigarette-trade-causes-huge-loss).

41. ITC squints, sees grey, Economic Times, 30 June 1999, as viewed in British-American Tobacco: Media Coverage Folder - July 1999, https://www.industrydocumentslibrary.ucsf.edu/tobacco/docs/fjvh0206

42. https://timesofindia.indiatimes.com/business/india-business/illicit-trade-on-rise-in-india-says-ficci-kpmg-report/articleshow/61102844.cms

43. Illicit trade on rise in India, says FICCI-KPMG report. The Times of India October 16, 2017. Available from: https://timesofindia.indiatimes.com/business/india-business/illicit-trade-on-rise-in-india-says-ficci-kpmg-report/articleshow/61102844.cms

44. Federation of Indian Chambers of Commerce and Industry. Illicit Markets – A Threat to Our National Interests 2015. Available from: http://ficci.in/study-page.asp?spid=20572&sectorid=5

45. Business Standard, India continues to see rise in illicit tobacco trade: FICCI-KPMG report, 16 October 2017

46. According to The Guardian “ITIC has published extensively in favour of the tobacco industry's false positions on excise taxation, investment and illicit trade in tobacco products…ITIC have used their international conferences.. to lobby government officials against tobacco taxation.” J. Doward, Former UK tax chief under fire for joining smoking lobbyists, The Guardian, 16 May 2015, https://www.theguardian.com/ business/2015/ may/16/uk-tax-chief-smoking-health-dave-hartnett-tobacco-hmrc

47. Tobacco Institute of India, www.tiionline.org/wp-content/uploads/Threat-of-Growing-Illegal-Cigarette-Trade-in-India- July-2015.pdf and www.itcportal.com/media-centre/press-reports-content.aspx?id=1467&type=C&news=illegal-cigarette-trade-causes-huge-loss

48. "It may sound like a foundation or think-tank, but it's part-funded by major tobacco companies, has company representatives on its board and work to promote the industry's interests" quote of Dr Vera Luiza da Costa e Silva, head of the Convention Secretariat, sends her remarks to the High Level Conference: Combating tobacco industry tactics: state of play and a way forward, European Parliament, Brussels, 2 March 2016 available www.who.int/fctc/mediacentre/news/2016/remarks-head-fctc-high-level-conference-brussels/en/

49. https://timesofindia.indiatimes.com/india/World-Bank-exits-event-funded-by-tobacco-companies/articleshow/ 47127313.cms

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51. GST is an indirect tax (or consumption tax) levied in India on the supply of goods and services. GST replaced the earlier multiple cascading taxes levied by the central and state governments. Prior to the introduction of Goods and Service Tax (GST) in India from July 1st 2017, the taxes on bidi were substantially lower than taxes on cigarettes. Smokeless tobacco products remained in a variety of segments and there was no clarity on taxation until a revised order in September 2017 on SLT and pan masala. 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. Tax exemption for bidi manufacturers has effectively widened under the GST regime from the units that produced less than two million sticks to units with less than Rs. 2 million annual turnover. Moreover, additional tax exemption is available for small registered manufacturing companies with less than 20 workers. Ministry of Finance, Government of India. Goods and Services Tax Council Meetings: Minutes. Available from: http://www.gstcouncil.gov.in/meetings [Accessed on December 12, 2018

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59. Protect tobacco farmers' interest in GST laws: FAIFA. The Economic Times. Available from: https://economictimes.indiatimes.com/news/economy/policy/protect-tobacco-farmers-interest-in-gst-laws-faifa/articleshow/57730189.cms

60. A investment and tax portal summarises it thus: Impact on the tobacco industry is going to be largely neutral since the cess declared by the Indian government was less than the expected rate by the tobacco industry. There will be an increase in the expense of smokers due to the rise in the price of a cigarette in the initial period. Although, it is expected that the tobacco industry, irrespective of the tax rate, would have a

neutral effect due to the implementation of GST. Available at https://cleartax.in/s/impact-of-gst-rate-on-the-tobacco-industry

61. Rijo M John et al Estimated impact of the GST on tobacco products in India September 2018, Tobacco Control

62. Moneycontrol, Macquarie sees 34% upside in ITC after calamity cess, stock gains over 1%, Jan 07, 2019; https://www.moneycontrol.com/news/business/markets/macquarie-sees-34-upside-in-itc-after-calamity-cess-stock-gains-over-1-3360321.html

Conclusions and Recommendations

The practice of the tobacco industry in blocking or delaying measures to protect health is a problem across the globe, including India and neighbouring countries. This interference has been a road-block for decades now, and has hindered efforts made by tobacco control advocates towards protecting the citizens from growing tobacco pandemic. There is substantial scientific evidence from different countries to prove this obstructionist behaviour and has been condemned by the judicial system of India time and again, whenever frivolous cases have been highlighted by tobacco companies and their front groups. Despite all efforts by protectionists of public health, the tobacco industry has been able to restrain the control efforts, which has led to escalation of such interference in the current decade. For instance, despite a national ban imposed on electronic cigarettes by the Parliament of India in 2019, the tobacco industry filed a litigation to delay the implementation of the legislation. These interference necessitates urgent action for halting the march of tobacco company against public health measures.

The existing tobacco control legislation of India and its upcoming amendment along with sub-regional initiatives are easy targets for industry interference. The much needed strengthening of India's tobacco control efforts necessitates intolerant attitude towards these nefarious interferences. Parties to the World Health Organization Framework Convention on Tobacco Control (FCTC) have an obligation to address this problem. As per the Article 5.3 of the WHO FCTC , it is obligated that "In setting and implementing their public health policies with respect to tobacco control, Parties shall act to protect these policies from commercial and other vested interests of the tobacco industry in accordance with national law." . Despite this, discernible actions taken in this regard are trivial compared to the tactics used by the tobacco industry to bye-pass these measures. However, with a steady pace, the progress now appears to be on the horizon, with 15 states adopting the policies pertaining to the Article 5.3. The Government of India acknowledges the need to address the unique behaviour of the tobacco industry and is gradually taking strong measures to adopt an Article 5.3 policy.

There has been minimal documentation of tobacco industry interferences along with their countering by diverse stakeholders for protecting public health. The current report presents eight case studies on diverse areas of tobacco industry interference in India over the past few decades. The case studies sequentially documents the efforts made by the industry to delay, derail or weaken the tobacco control policies and these have taken many forms but not limited to:

- exaggerating the economic importance of the industry
- manipulating public opinion to gain the appearance of respectability
- fabricating support through front groups
- discrediting proven science
- intimidating governments with litigation or the threat of litigation.
- manoeuvring to hijack the political and legislative process.

The first case study discussed the interference in the regulation of Smokeless tobacco (SLT) products in India, that is currently home to around two-third of the world SLT users. SLT products were introduced in newer forms by TI which was backed by the exhaustive market campaigning through print media, radio and television, duly endorsed by Bollywood celebrities. While the cigarettes and other high end tobacco products kept on stealing the shows, SLT products evolved locally and found national markets when plastic packaging became affordable to the local producers. The history of SLT control activities in India had faced a multitude of tobacco industry tactics which resulted in the delay in enactment of a nation-wide ban on SLT products. It has also led to dilution of the existing prohibition under the FSS Act.

Discussing the role of media, the second case report highlights the interference by the industry in the regulation of Tobacco Advertising Promotion and Sponsorship (TAPS) in India. Over the period of time, the tobacco industry has made serious efforts to sustain its business by retaining existing customers and adding new ones at the same time. TAPS is an established mechanism employed by the industry for initiation and continued use of tobacco. When opposed by the government, the industry has vehemently opposed all such restrictive laws with intent to delay, derail or undermine their enforcement. The tobacco industry's interference was witnessed in almost every regulatory measure imposed on TAPS with the intent to undermine them. The tobacco industry tactics constantly explore and evolve; exploiting legal loopholes and new technologies.

Case study 4 studied the TI tactics arguing livelihood of tobacco growers. The livelihood issue remains the central argument of the Tobacco Industry as majority of tobacco farmers, farm labourers, bidi rollers, tendu leaf pluckers, micro-retailers and tobacco vendors belong to low socio-economic status and lack other sources of income. Though these poor and under-served population is also among the most common user of tobacco and vulnerable to tobacco related diseases, but TI promotes tobacco cultivation in the garb of protection of livelihood of producers who are also the sufferers.

Consumption of tobacco can be decreased by providing better awareness among the general public. Warning tobacco users of its harm with graphic and textual warnings is the most cost-effective strategy in tobacco control (MPOWER, 2008). The WHO Framework Convention on Tobacco Control (WHO FCTC) Article 11 sets out strong, clear and legally obligatory standards for health warning labels on tobacco packaging. However, tobacco industries left no stone unturned to prevent the implementation of pack-warnings as highlighted through case study 5 and 6. The process of implementation of pictorial warnings has observed a sequence of delays and dilutions through sustained lobbying by the tobacco industry and its front group and allies. However, the 85% PHW implementation was possible through the concerted efforts of litigation, sustained pressure by tobacco control advocates, supportive MOH&FW, media and an impartial judiciary.

With the increasing awareness about the harmful effects of smoking and chewing tobacco, tobacco industry could sense the betrayal by their users in near future. Foreseeing that, the industry started changing its face by using new Technology, Agents and Interventions as elaborated in the case study 7. The new products comes in various forms like electronic nicotine delivery systems (ENDS) including e-Cigarettes, Heat-Not-Burn devices (HNB), Electronic non-nicotine delivery systems (ENNDS), e-Sheesha, e-Nicotine Flavoured Hookah and the like. The TI has been actively involved in product extension, proxy advertisement and unauthorised Corporate Social Responsibility. In addition, TI wears a "good guy" mask by projecting an impression of environmental conservation, climate change custodians and supporters of Sustainable Development Goals.

Finally, the last case study (Case study 8) discusses the tobacco industry interference on tobacco taxation. It is well known to the industry, that a sound tax regime impacts the retail price of tobacco products and makes tobacco less affordable for the vulnerable populations especially the poor, youth and women. Effective tobacco taxation can meet the twin goals of revenue and public health. TI has made all efforts to convince the government (using false evidence) that imposing higher taxes will lead to illegal import of tobacco products by neighbouring countries, thus leading to loss of revenue to the government. This made it difficult for tobacco control advocates to press for higher taxation on tobacco products. Government's inability to tax bidi remains the best political bet for the tobacco sector, and cigarette manufacturers use this to demand for more lenient taxation.

There are several recommendations emanating from the current report. These eight case studies in the report reiterates the need to strengthen the implementation of the Article 5.3 of FCTC for advancing tobacco control in India. This will not only improve health in this country, but will also bestow India as a leader in the field of tobacco control, and contribute for a stronger global tobacco treaty. By according high priority to Article 5.3 and developing strategies to tackle industry interference, India will guide other Parties especially the neighbouring countries in taking appropriate actions against unscrupulous TI. The quickest route to high level implementation of Article 5.3 is to follow the Guidelines approved by the COP and to adopt the administrative actions identified by the FCTC Secretariat. These can be adopted and adapted by each level of government.

The following are recommended as priority actions for the Ministry of Health & Family Welfare, Government of India:

1. The Government of India needs to move quickly to develop a comprehensive strategy for Article 5.3 implementation, through 'whole of the government' approach. It means that Article 5.3 of FCTC should be binding to all the departments (and not only health department). The strategy should include developing policies, legal instruments and accountability methods for compliance.

2. The Government of India will need to put in place a mechanism to assist and coordinate at all levels of government in implementing Article 5.3. .

3. The government may review and adopt best practices implemented around the world pertaining to Article 5.3 of FCTC that have helped in halting the rise of tobacco epidemic. Some of these include ban on TAPS, ENDS, loose tobacco products, strict enforcement of legislations, and many more.

4. Civil society organizations, medical associations and other groups that are in a position to accelerate implementation of tobacco control efforts and initiatives should be invited and empowered to assist governments to deal with tobacco industry interference.

5. Code of Conduct of Article 5.3 FCTC should be applicable for all Government and non-government departments.

6. Sensitization workshops for researchers should be planned so that they are well versed with TII tactics and shall not undertake research to further their interests.

7. Sensitization of governments and wider civil society organisations beyond health is needed to identify TI so that they can refuse collaborations with them.

8. GOI should provide legal assistance for protection of organisations working against TI.

9. The Code of Conduct should be made more effective e.g. notified as a government regulation with prescribed

penalties/action for violations may be as per services rules or other existing provision on service rules/Code of Conduct.

10. Regular monitoring and documentation of TI should be undertaken through setting up regional observatories.

11. Every CSR by TI needs to be reviewed, as it provides scope for the industry to appear as a responsible entity. The Government may consider revisiting the CSR Rules under the Ministry of Corporate Affairs so that CSR by Tobacco Industry should comply to the Article 13 guidelines under WHO Framework Convention on Tobacco Control.

12. Lastly, we cannot ignore the importance of research in this regard, to generate more robust evidence that can further our fight against the tobacco industry's interference. The government should promote research groups who can undertake research on TII which can help us to negate the false claims raised by the tobacco industry.

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