Tobacco kills nearly 6 million people globally every year including 600,000 non-smokers through exposure to secondhand tobacco smoke.\(^1\) In India, tobacco kills around one million persons every year,\(^2\) through its use in many forms of smoking and smokeless products: cigarettes, bidis, hookah, chuttas and cigars for smoking; leaf tobacco, zarda, khaini and gutka, for chewing; others, like gul and mishri for applying to gums and teeth; and a tobacco product even for gargling, known as tuibur. The use of tobacco in any form, since it contains nicotine, is highly addictive.

Smoking is the most important cause of lung cancer to the extent that over 80% of lung cancers are caused by smoking.\(^3\) Smoking causes many other diseases, including cancers, heart disease -- globally, about 11% of cardiovascular deaths are caused by smoking;\(^4\) stroke, chronic bronchitis, peptic ulcer and several other fatal diseases. Smokers are more vulnerable to tuberculosis infection compared to non-smokers with similar exposure to the causative bacteria.\(^5\)

Smokeless tobacco causes oral cancer (90% of cases in India are caused by tobacco use); there is accumulating evidence that smokeless tobacco may increase the risk of cardiovascular disease.\(^6\) Pregnant women who use smokeless tobacco increase their risk of giving birth to underweight babies and having a stillbirth.\(^7\)

Faced with a growing pandemic of tobacco use that is being fuelled by a very rich and powerful transnational industry, emerging as a leading cause of premature adult death even in developing countries, the World Health Organization proposed and developed the first international treaty for public health, the Framework Convention on Tobacco Control. This is by far one of the most successful international treaties, having been ratified by 174 members so far. India was one of the first few countries to sign and ratify this treaty.

India enacted a comprehensive tobacco control law, the Cigarettes and Other Tobacco Products Act, 2003 (COTPA, 2003), which acted as part fulfilment of the country’s treaty obligations. Brought to the Parliament by the Ministry of Health and Family Welfare, the Act came into force in May, 2004 and is applicable to all tobacco products in the whole of India. The law covers six main areas: prohibition of smoking in public places, no advertising, no sale to or by minors, health warnings and product testing.

All the notified sections of the COTPA have been implemented in the entire country. Implementation however, is a state subject and enforcement has not been strict or uniform across the country. Part of it is due to specific weaknesses in COTPA provisions, many of them because of lobbying and litigation by the industry, and part, due to laxity in enforcement. In this article, the weak points are highlighted and suggestions are given for advancing tobacco control in the country.
The Legal Provisions and Weak Points in Implementation

Prohibition of smoking in public places

The list of public places where smoking is prohibited under Section 4 of COTPA is quite exhaustive and includes all enclosed spaces, restaurants, cinemas, shopping malls, clubs, work places and even semi-open spaces like stadiums, railway stations, and bus stops. Implementation requires posting a no smoking sign and a board with the name of the authority to be approached in cases of violation. Airports, hotels with at least 30 rooms and restaurants with 30 or more seats have an exemption of designating a smoking room that is sealed off from the rest of the establishment with negative air pressure and no service of any kind inside.

Civil society intervention has helped to initiate smokefree public places campaigns and get reasonable compliance. Examples are Chandigarh, Chennai, Mumbai, Coimbatore, Vilupuram, Sikkim, Shimla, Kottayam, Budgam and Bhubaneswar.

A major impediment to smokefree public places is the rapid spread of hookah parlours in urban areas all over the country which not only provide hookahs for smoking in hundreds of flavours but also serve food and drinks in the same area. These parlours are largely patronized by the youth. In a judgment on a Public Interest Litigation (PIL), in May 2011, the Bombay High Court directed the municipal corporation to include the COTPA requirements in the conditions for issue of restaurant licenses and directed other Municipal Corporations and Councils of Maharashtra to do the same.

Advertising, promotion and sponsorship

Direct and indirect advertising of any tobacco product is prohibited under Section 5 of COTPA in all forms of audio, visual, outdoor and print media. The ban on direct advertising is well implemented in all media except in outdoor media. This is due to an exception granted at the point of sale. Although the law permits two boards of 90 x 60 cm at one place specifying only the types of products sold, it is largely flouted. This is helped by a stay order from Bombay High Court on an industry-inspired challenge. This situation gives a widespread impression that outdoor advertising of tobacco products is a norm.

Although indirect advertising has been banned under the law, it not been defined. As a result, indirect advertising has been rampant as brand extension in almost all media. There are many examples - huge billboards advertising shampoos and soaps, clothing stores, awards and competitions all bearing a tobacco brand or company name.

The most glaring and blatant use of brand stretching is advertising of pan masala on all media – electronic, print, and outdoor. This has resulted in immense increase in gutka sales especially to youth. It is very clear that all this is indirect advertising, for example, a study showed that the cost of advertising tobacco-free pan masala would have exceeded profits from its sale, while profits from the sale of a similar product containing tobacco were vastly higher. Even the assumption that pan masala products contain no tobacco is not correct as some brands contain nicotine.

The law also prohibits sponsorship of sporting and cultural events by tobacco manufacturers. No prizes, gifts or payment
can be given for promoting tobacco products. Still, sponsorships of festivals, sports, musical events, fashion shows and award ceremonies by tobacco companies continue. There have been some successes also. In 2011, the Smokefree Mumbai campaign managed to prevent the Ganesh Utsav of over 12,000 mandals from being sponsored by manufacturers of pan masala and gutka.

Smoking in films and showing cigarette packs is another form of indirect advertising. Although a ban on such practices has been notified, it has not yet been implemented.16

No sale to or by minors
Sale of tobacco products by or to persons under the age of 18 years (minors) is prohibited under Section 6a of COPTA. The seller must display a board declaring that “sale of tobacco products to minors is prohibited and is a punishable offence” along with a photo of an oral cancer patient. This was notified in September, 2011 but is yet to be implemented.

In the Global Youth Tobacco Survey of 2006, carried out nationally in India, 72% of students who bought smoking products in a store were not refused purchase because of their age.17 This showed a lack of implementation of COPTA, Section 6a, prohibiting sale to minors.

No sale within 100 yards of educational institutions
Sale within 100 yards of educational institutions is prohibited under Section 6b of COPTA in order to restrict access of youth to tobacco products. A display board is required to be put up outside the each institution declaring, “Sale of tobacco products in an area within a radius of 100 yards of the educational institution is strictly prohibited and is a punishable offence”.

Although there have been several attempts to enforce this rule, the implementation, at best, is tardy. A survey in five states reported tobacco sold near schools in all five.20

Health warnings on packaging
Specified health warning labels, both text and pictorial, are required on all tobacco product packages under Sections 7, 8, 9 of COPTA. The text warnings must be prominent and legible and persons responsible are manufacturers, distributors and vendors.

The tobacco industry has been successful in delaying and diluting the pictorial warnings at every stage. From the first notification of pictorial warnings issued in July 2006, requiring the strong warning of the skull and cross bones displayed on 50 per cent of space on both sides of the package, the first implementation got delayed to 31 May, 2009, with a totally ineffective picture of an X-ray of lungs or diseased lungs for smoking products and a scorpion for smokeless products, on 40% of the space on only one side. The date of implementation of the warnings was changed from the date of sale to date of manufacture (that is not written on any pack). In December, 2010 when a new, more potent image of mouth cancer was notified, it got scrapped.22

The current pictorial warning which is rather ineffective for smoking products but reasonable for smokeless tobacco products as it shows oral cancer, came
into force on 1st December, 2011 which is now presumed as specifying the date of manufacture of the tobacco product. The implementation of even these diluted warnings with delays have been feasible because of the PILs filed by civil society organizations and consequent court judgements in their favour.22

Steps Needed for Advancing Tobacco Control

A uniform shortcoming is an inadequate dissemination of the law and its provisions to the general public and specifically to those responsible for enforcement and implementation. For example, all workplaces and their managers need to be informed that smoking is not allowed. Educational institutions need to be empowered to enforce that no tobacco is sold within 100 yards.

Within the near future, it is important that loopholes in the law be closed and certain provisions added. The two most important loopholes to remove are perhaps withdrawal of 1) the provision of smoking room in restaurants, hotel and airports; and, 2) the exemption of the point of sale from the ban on advertisements. In terms of upgrading the law, Australia has already shown the way and plain packaging of all tobacco products should be made mandatory. Also a display of tobacco products at the point of sale and at any other place need to be deemed as advertisements and banned under Section 5.

The laws that promote the tobacco industry need to be amended. Specifically the Tobacco Board Act 1975 should be amended to make the Tobacco Board of India responsible for replacing tobacco cultivation with alternate crops, rather than promoting tobacco.

A regulatory mechanism at the national level with representation from the legal, medical and scientific communities has already been envisioned and that could help a great deal in the implementation and strengthening of tobacco control in India.23

References


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