

# **Tobacco Control Legislation In India**

Ankit kumar katiyar

Research scholar- Business Management( IBM-CSJM, University, Kanpur)

Email- [ankitgim88@gmail.com](mailto:ankitgim88@gmail.com)

Mob- 7860295231,8299537881

## **ABSTRACT**

Tobacco consumption is a huge public health issue in India and its impact is especially devastating among the poor. Effective tobacco control should be a top priority, both as a health issue and as a method to reduce poverty. Tobacco use is deeply ingrained as a cultural practice and there are a myriad of tobacco types. We reviewed multiple determinants of tobacco consumption including socioeconomic status, marriage, population growth, marketing strategies, and price. We also considered the tobacco burden including economic and social costs and adverse health impacts especially those resulting from oral cancer. We then addressed the history of tobacco control legislation in India and challenges in implementation. Tobacco consumption in India is continuing to increase despite tobacco control policy. Needed are more visible and aggressive anti-tobacco campaigns including increased public awareness of tobacco harms and active engagement of worksites and health professionals in promoting tobacco cessation.

## **Keywords**

Tobacco, poverty, disease, legislation Tobacco

## **INTRODUCTION**

The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) is the principal comprehensive law governing tobacco control in India. The Act was passed before India became a Party to the WHO Framework Convention on Tobacco Control. In 2004, the Ministry of Health and Family Welfare exercised the powers granted to it in Section 31 of COTPA by promulgating a first set of rules, which, with respect to smoke free and tobacco advertising issues, have been stayed by court order or

superseded. With respect to general enforcement of COTPA, G.S.R. 1866(E) lists certain officers who are authorized to carry out the entry, search, and seizure provisions of the Act.

Following the passage of COTPA in 2003, various rules implementing COTPA address smoke free policies or provide useful definitions. These include G.S.R. 561(E) (defining the term “educational institutions”); G.S.R. 417(E) (superseding the 2004 Rules and establishing new rules covering designated smoking areas, and enforcement obligations, authorities and penalties, among other items); G.S.R. 680(E) (authorizing certain persons to collect fines for violations of smoke free rules); and G.S.R. 500(E) (amending the 2008 rules established by G.S.R. 417(E)). The Railways Act, 1989 also regulates smoking on trains.

With regard to tobacco advertising, promotion and sponsorship, G.S.R. 345(E) amends the 2004 Rules by substituting new provisions on point of sale advertising and adding a definition of indirect advertising. G.S.R. 619(E) provides additional point of sale rules, and G.S.R. 786(E) establishes rules for television and film and print and outdoor media. G.S.R. 708(E) updates the rules for television and film. Additionally, the Cable Television Networks (Regulation) Act, 1995 (CTNA) and its 2009 implementing rules prohibit direct advertising of tobacco products on Indian cable networks, but permit the indirect advertising of such products under certain circumstances. A subsequent Ministry of Information and Broadcasting Directive, however, appears to prohibit indirect advertising of tobacco products until guidelines called for by the CTNA Rules are issued. Finally, Guidelines issued pursuant to Section 5B(2) of the Cinematograph Act of 1952, require the Central Board of Film Certification to ensure that certain types of smoking scenes do not appear in movies.

Packaging and labeling provisions are included in several implementing rules enacted following COTPA’s passage in 2003. G.S.R. 182(E) (Packaging and Labeling Rules of 2008) contains certain definitions and establishes the components (i.e., content, size, rotation, etc.) of the health warnings, but various provisions in subsequent rules replace certain language in the 2008 regulations. For example, G.S.R. 693(E) requires that health warnings be printed, pasted or affixed on external packaging such as cartons. G.S.R. 305(E) updates the definition of “package” and the location of the health warnings, deleting the requirement that the warnings be located on both sides of tobacco product packaging. G.S.R. 985(E) changes the rotation period of the health warnings from one year to two years and re-establishes the warnings published in G.S.R.

182(E). (G.S.R. 985(E) caused the diseased lungs and scorpion health warnings to continue in effect instead of new health warnings which were supposed to come into force in December 2010.) The government implemented new rounds of warnings on December 1, 2011 (via G.S.R. 417(E)) and on April 1, 2013 (via G.S.R. 724(E)). On October 15, 2014, the government introduced new larger warnings via G.S.R. 727(E) that, among other things, increased the warning size from 40 percent of one side of tobacco product packaging to 85 percent of both sides of tobacco packaging and amended the rotation scheme prescribed in G.S.R. 985(E). Although the rules announced by G.S.R. 727(E) were to have gone into effect on April 1, 2015, G.S.R. 739(E) establishes April 1, 2016 as the implementation date of the 85-percent health warnings. G.S.R. 331(E) establishes the subsequent round of health warnings, which are required to appear on product packaging beginning September 1, 2018. Provisions prohibiting misleading descriptors and obscuring the health warnings on the package remain in G.S.R. 182(E) unaltered.

## **LEGISLATION OF TOBACCO ADVERTISING, PROMOTION AND SPONSORSHIP**

### **Advertisement through TV and Radio-**

It is unclear whether the definition of “advertisement” encompasses all forms of tobacco advertising and promotion. The law does provide a blanket prohibition on the display of any advertisement of cigarettes or other tobacco products. Further, the law prohibits persons “having control over a medium” to advertise tobacco through such a medium. These provisions appear to ban advertising of tobacco products on radio. We interpret the law largely to meet a ban on tobacco product advertising and promotion in domestic TV and radio and other forms of domestic broadcast media (e.g., satellite, cable). It is unclear, however, how COTPA and CTNA legislation which may permit indirect advertising are read together. To ensure alignment with FCTC Art. 13 and the FCTC Art. 13 Guidelines, the drafters should utilize the FCTC definition of “tobacco advertising and promotion” and make clear that COTPA explicitly regulates the advertising and promotion of tobacco products.

As tobacco advertising and promotion appears to be banned in domestic newspapers and magazines, the law and implementing rules align with FCTC Art. 13 and the FCTC Art. 13 Guidelines.

### **Internet communication-**

As tobacco advertising and promotion appears to be banned in internet communications, the law and implementing rules align with FCTC Art. 13 and the FCTC Art. 13 Guidelines.

**Internet tobacco product sale –**

The law does not explicitly prohibit internet sales. While it is possible to interpret COTPA Sec. 5(1) broadly as encompassing such sales, there is no explicit reference to electronic sales - only physical points of sale. Accordingly, we conclude that the drafters did not intend to prohibit internet sales.

To align with FCTC Art. 13 and the FCTC Art. 13 Guidelines, the drafters should utilize the FCTC definition of “tobacco advertising and promotion” and make clear that internet tobacco product sales are banned.

**Telephone and cellular phone-**

The law does prohibit persons “having control over a medium” to advertise tobacco through such a medium. Although the law does not address explicitly tobacco advertising and promotion via telephone and cellular phone, we interpret the above provisions as encompassing such advertising.

**Brand marking on physical targeting-**

The law prohibits any person from “tak[ing] part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products.” “Indirect advertisement” is further defined in the rules. Although the law does not address explicitly tobacco advertising and promotion via distinctive words, designs, images, logos, etc. in entertainment venues, among other places, we interpret the above provisions as encompassing such advertising.

**TOBACCO PACKAGING AND LABELING****Health warning and massaging-**

The textual and pictorial components of the health warning together cover 85% of the front and back panels of the tobacco product package, with 25% dedicated to text and 60% dedicated to the picture.

There is one photo for the first 12 month rotation period, and another photo for the second 12 month rotation period. The resolution and intensity of color also are prescribed by the rules.

The text of the warning is required in white font color on a red background, and the quit line information is required in white font color on a black background. Above the text, a pictorial depiction of the ill effects of tobacco use on health is mandated by the rules.

The health warning must be located on the top edge of the package. The width of the warning cannot be less than 3.5 centimeters, and the height cannot be less than 4 centimeters.

These provisions meet FCTC Art. 11 and align with the FCTC Art. 11 Guidelines with respect to warning size, location, and rotation.

### **Warnings/Messages Content-**

Package is defined in the law as both including “a wrapper, box, carton, tin or other container” and “any type of pack in which cigarette and other tobacco product is packaged for consumer sale but shall not include wholesale, semi wholesale or poor packages if such packages are not intended for consumer use.” The law and the rules require that packages carry health warnings. As packages must carry health warnings, the law meets FCTC Art. 11. Content of the warning and messages should be health protective, attractive and should be meaningful.

### **Penalties**

The following government bodies have the power of entry, search and seizure: Police, State Food and Drug Agency, Department of Revenue, Health Transport of the State; Labor Department, Commissioner of Industries / Small Scale Industries, Department of Food and Drugs; Department of Home Affairs. It is unclear which entities will levy fines and impose imprisonment.

#### **For manufacturer-**

(1) Penalties include: (a) in the case of a first conviction, imprisonment for a term up to two years or a fine up to 5,000 rupees or both; (b) in case of a second or subsequent conviction, imprisonment up to five years and a fine up to 10,000 rupees.

(2) Additionally, the government may seize tobacco products which contravene the provisions of COTPA.

(3) The 5,000 rupee penalty for a first conviction is only approximately \$108 dollars (as of September 14, 2010).

#### **For wholesaler-**

(1) Penalties include: (a) in the case of a first conviction, imprisonment for a term up to one year or a fine up to 1,000 rupees or both; (b) in case of a second or subsequent conviction,

imprisonment up to two years and a fine up to 3,000 rupees; (c) seizure of tobacco products; and/or (d) confiscation and disposal of tobacco products.

(2) Additionally, the government may seize tobacco products which contravene the provisions of COTPA.

(3) The 1,000 rupee penalty for a first conviction is only approximately \$21 dollars (as of September 14, 2010).

**For retailer-**

(1) Penalties include: (a) in the case of a first conviction, imprisonment for a term up to one year or a fine up to 1,000 rupees or both; (b) in case of a second or subsequent conviction, imprisonment up to two years and a fine up to 3,000 rupees; (c) seizure of tobacco products; and/or (d) confiscation and disposal of tobacco products.

(2) Additionally, the government may seize tobacco products which contravene the provisions of COTPA.

(3) The 1,000 rupee penalty for a first conviction is only approximately \$21 dollars (as of September 14, 2010).

The law should impose a range of penalties sufficiently large to deter violations, graded and commensurate with the nature and seriousness of the violation and the legal duty of the violator, that outweigh the potential economic benefits to be derived from violating the law.

**CIGARETTES CONTENTS AND DISCLOSURES**

The law does not regulate, nor grant any authority to regulate, contents and ingredients. Therefore, the use of sugars and sweeteners, menthol, mint and spearmint in cigarettes is allowed. To align with FCTC Art. 9 and the FCTC Arts. 9 & 10 Partial Guidelines, the law should prohibit or restrict the use of ingredients used to increase palatability such as menthol, mint, or spearmint in cigarettes.

**SALES RESTRICTIONS**

The law does not specifically prohibit the sale of single cigarette sticks; therefore, the law is interpreted as permitting the sale of single cigarette sticks. However, several state governments have banned the sale of loose cigarettes as a violation of pack warning laws. Therefore, the regulatory status code "Some Restrictions" is given.

Sales of tobacco products by vending machine is explicitly prohibited in G.S.R. 619(E), which amends Rule 5 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004 (G.S.R. 137(E)). National law does not prohibit or restrict the sale of smokeless tobacco products. However, the Food Safety and Standards (FSS) Regulations prohibit tobacco and nicotine from being used in any food products. Subsequent to a Supreme Court order, all state governments have banned the manufacture and sale of gutka and pan masala (with tobacco and nicotine) under FSS Regulations, Sec. 2.3.4. Further, at least 12 states/union territories have banned, in addition to gutka, other forms of smokeless tobacco - e.g., zarda, khaini, and kharra - under FSS Regulations, Sec. 2.3.4 and FSS Act 2006, Sec. 30(2)(a), which empowers the Commissioner of Food Safety to prohibit in the interest of public health, the manufacture, storage, distribution, or sale of any article of food. In addition, two state governments have imposed a comprehensive ban on smokeless tobacco through their Public Health Acts. Based on this, the regulatory status code "Some Restrictions" is given.

The law aligns with FCTC Art. 13, the FCTC Art. 13 Guidelines, and FCTC Art. 16 in this respect.

## **Conclusion**

COTPA prohibits the sale of cigarettes or any other tobacco product within a radius of 100 yards of any educational institution. An "educational institution," as defined by Ministry of Health Notification G.S.R. 40(E), includes schools, colleges, and institutions of higher learning. To align with FCTC Art. 16, the law should prohibit the sale of small packets of cigarettes which increase the affordability to minors. There is no national-level requirement that retail traders must obtain a license in order to sell tobacco products. However, some states do require retail licenses. Under COTPA, a violation of the prohibition on vending machine sales is subject to a fine of up to 200 rupees. All agencies that are authorized to enforce this provision are listed in Annexure II of G.S.R. 619(E).

Violations of state laws prohibiting the sale of single cigarettes are punished as a health warning violation. Penalties for retailers who sell single cigarettes include: (a) in the case of a first conviction, imprisonment for a term up to one year or a fine up to 1,000 rupees or both; (b) in case of a second or subsequent conviction, imprisonment for a term up to two years and a fine up to 3,000 rupees; (c) seizure of tobacco products; and/or (d) confiscation and disposal of tobacco products. Additionally, the government may seize tobacco products that contravene the provisions of COTPA. The 1,000 rupee penalty for a first conviction is approximately \$15.50 USD (as of May 4, 2017).

## **BIBLIOGRAPHY**

Bhan N, Karan A, Srivatava S, Selvaraj S, Subramanian SV, Millet C. Have socioeconomic inequalities in tobacco use in India increased over time? trends from the National Sample Surveys (2000-2012). Nicotin Tobacco Res. 2016;18:1711–1718.

Arora MM, Yadav A. Pictorial health warnings on tobacco products in India: sociopolitical and legal developments. Nat Med J India. 2010;23:222–224.

Mukherjee K. MDGs to SDGs: lessons for UHC for India. Global J Med Pub Health. 2016;5:1–3.

International Tobacco Control Policy evaluation Project. Available from: <http://www.itcproject.org/> [Last accessed on 2011 Nov 17]

Murthy P, Saddichha S. Tobacco cessation services in India: Recent developments and the need for expansion. Indian J Cancer 2010;47:69-74.

<https://www.tobaccocontrolaws.org/legislation/country/india/atp-penalties>

<https://www.tobaccocontrolaws.org/legislation/country/india/aps-regulated-forms>

<https://betobaccofree.hhs.gov/#a1>

<https://www.tobaccofreekids.org/problem/toll-us>