

WHO Framework Convention on Tobacco Control (WHO FCTC): Evidence on implementation of Article 5.3 in India

Summary: This brief explains the severity of tobacco industry interference (TII) and reflects on the implementation of Article 5.3 of the WHO FCTC. India has made rapid strides in implementing sub-national administrative measures to ensure implementation of the guiding principles of Article 5.3. Although these measures protect public officials of the health department, there are concerns about the engagement and capacity of other departments and regulatory committees to implement these measures. This brief makes recommendations to curb TII in the interest of public health.

India is the second largest consumer and producer of tobacco products, after China,¹ where tobacco use is one of the leading risk factors for several diseases, premature deaths, and disability with approximately 13.5 lakh (1.35 million) people dying each year from tobacco-attributable diseases.² The age group of 15 to 24 years is regarded as most vulnerable to tobacco usage in India.³



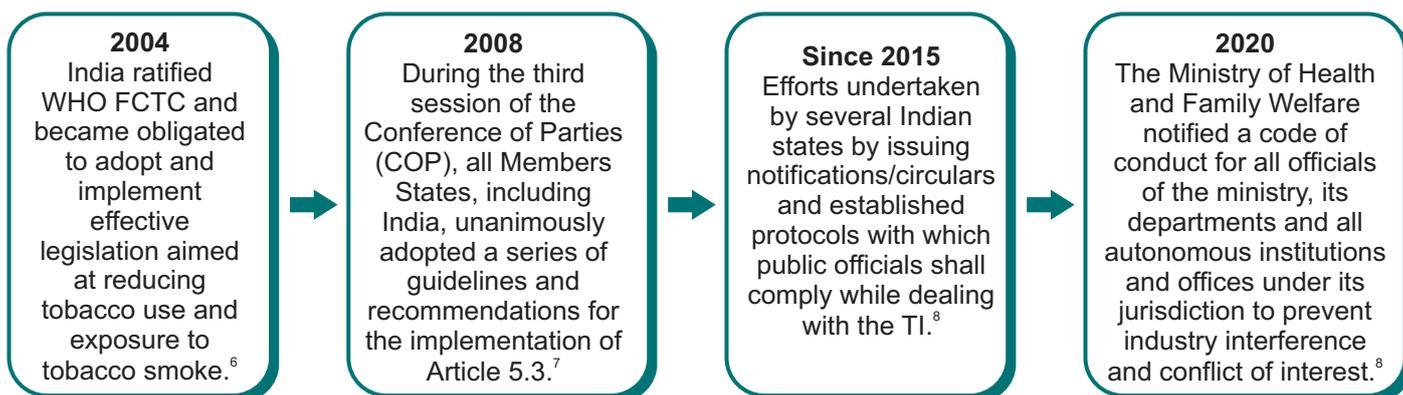
Reference: GATS 2016–2017 and GYTS 2019–2020

TII is a threat to public health^{4,5} as the industry remains determined to attract new tobacco users. The tobacco industry (TI) may interfere in implementation of tobacco control policies through their financial power and lobbying. It exaggerates its role in the economy in terms of employment generation, and contribution to taxes.⁵

Article 5.3 of the WHO FCTC

The WHO FCTC, the first global public health treaty, has been ratified by 182 countries including India. Article 5.3 of the FCTC states: *“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”*.⁵

Implementation of Article 5.3 in India



To enable the implementation of Article 5.3, four official guidelines and eight recommendations have been developed. These have been accepted by all Parties to the FCTC, including India.⁵

Guidelines

1 There is a fundamental and irreconcilable conflict between the TI's interests and public health policy interests.

2 Parties, when dealing with the tobacco industry or those working to further its interests, should be accountable and transparent.

3 Parties should be required to require the tobacco industries and those working to further its interests to operate and act in a manner that is accountable and transparent.

4 Because their products are lethal, the tobacco industry should not be granted incentives to establish or run their businesses.

Recommendations

1 Raise awareness about the addictive and harmful nature of tobacco products and about TII with Parties' tobacco control policies.

2 Establish measures to limit interactions with the TI and ensure the transparency of those interactions that occur.

3 Reject partnerships and non-binding or non-enforceable agreements with the TI.

4 Avoid conflicts of interest for government officials and employees.

5 Require that information provided by the TI be transparent and accurate.

6 Denormalize and to the extent possible, regulate activities described as "socially responsible" by the TI, including but not limited to activities described as "corporate social responsibility" (CSR).

7 Do not give preferential treatment to the TI.

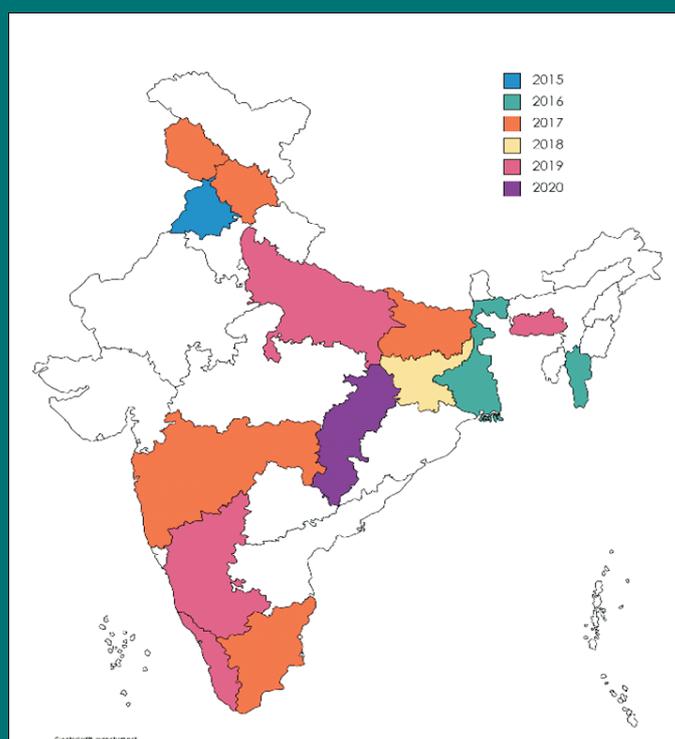
8 Treat State-owned TI in the same way as any other TI.

States and districts have issued notifications/circulars and established protocols to implement Article 5.3 guidelines with regard to TII and the engagement of the industry with government policy and programmes. Until May 2022, 12 states (Punjab, Mizoram, Bihar, Himachal Pradesh, Tamil Nadu, Maharashtra, Jharkhand, Karnataka, Kerala, Uttar Pradesh, Meghalaya and Chhattisgarh), 1 Union Territory (Jammu and Kashmir) and 2 districts (Howrah and Darjeeling from West Bengal) have issued notifications/circulars requiring the disclosure of records of interactions of public officials with the TI.⁸

At the national level, while most FCTC measures have been included in the Cigarettes and Other Tobacco Products Act (COTPA) 2003, Article 5.3 is not yet included in COTPA. In 2020, the Ministry of Health and Family Welfare issued a code of conduct for its officials to prevent industry interference and conflict of interest,^{8,9} which is the most significant achievement towards the implementation of Article 5.3.

A study undertaken by HRIDAY in 2020 under Tobacco Control Capacity Programme (TCCP) found that 14 states (11 state level: Punjab, Mizoram, Himachal Pradesh, Maharashtra, Bihar, Tamil Nadu, Jharkhand, Karnataka, Kerala, Uttar Pradesh and Meghalaya; 1 Union Territory level: Jammu & Kashmir; 2 district level: Darjeeling and Howrah from West Bengal) issued notifications and circulars to implement the recommendations of Article 5.3 between 2015 and 2019.⁹

Article 5.3 recommendations adopted across Indian states and districts



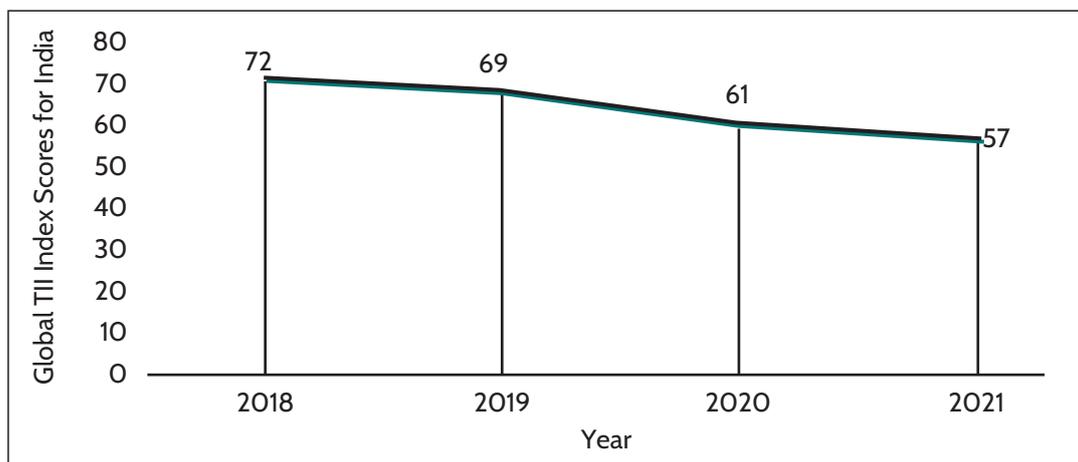
*District level Notification at West Bengal

<p>14 states</p> <p>Raising the awareness on addictive and harmful nature of tobacco products and about TII with parties' tobacco control policies</p>	<p>9/14 states</p> <p>Code of conduct to avoid conflicts of interest for government officials</p>
<p>12/14 states</p> <p>Limiting interactions of officials with the TI</p>	<p>4/14 states</p> <p>Regulate “socially responsible” industry activities</p>
<p>11/14 states</p> <p>Rejecting partnerships and non-binding or non-enforceable agreements with the TI</p>	<p>9/14 states</p> <p>Empowered committee to protect tobacco control policies from any kind of TII</p>

TII Index

The level of implementation of Article 5.3 in India was assessed by national tobacco control experts for four consecutive years from 2018 to 2021. The Southeast Asia Tobacco Control Alliance's (SEATCA) TII Index was used for assessment. A lower score on the Index denotes lower TII and a high score indicates poor implementation of Article 5.3.⁴

India's score improved from 72 in 2018 to 57 in 2021. Its rank in Asia and globally too improved over the period, reflecting better implementation of Article 5.3 in the country.^{6,10-12}



Global TII Index for India

CSR activities: The score for CSR activities of the TI, was consistently high during 2018–2021.^{6,10-12} The TI took the COVID-19 pandemic as an opportunity to build its positive image by donating INR 279.91 crore (US\$36.7 million) to various government funds such as the Prime Minister's Citizen Assistance and Relief in Emergency Situations Fund.¹³ To combat the spread of COVID-19, the industry partnered various stakeholders at the sub-national level to conduct webinars on health and wellness, engaging reputed medical doctors and healthcare professionals.¹⁴ These events underscore the need for medical associations to adopt Article 5.3 guidelines and sensitize medical professionals on industry tactics.

Benefits to TI: The score for benefits to the TI remained constant for the four years.^{6,10-12} The industry continued to benefit from government subsidies, such as exemption from additional cess for bidis and tax exemption for small, registered manufacturing enterprises with fewer than 20 employees.¹⁵ According to India TII Index 2020, many government programmes, including the Export Promotion of Capital Goods, the Service Export from India Scheme, and the Merchandise Export from India Scheme, benefited the TI.⁶

Representation of TI in government bodies: The overall score for level of industry participation in policy development increased slightly during the four years, which is against the spirit of Article 5.3.^{6,10-12} There were instances of involvement of representatives of TI in the Board of Trade (Ministry of Commerce and Industry), the National Food Processing Development Council (Ministry of Food Processing Industry), and the Food Safety and Standards Authority of India (Ministry of Health and Family Welfare) in 2019 and 2020.¹⁶ Tobacco industry's expansion into food and other fast moving consumer goods (FMCG) products, enables them to partner or sit on government policy discussions as they project themselves to be non-tobacco companies.

RECOMMENDATIONS

- ◆ Prioritize capacity building of officials from all departments (health and non-health), regularly sensitize the medical fraternity on industry tactics and urge medical associations to adopt the guidelines under Article 5.3.
- ◆ Emphasize the adoption of the code of conduct by other ministries and departments, as well as by political parties.
- ◆ Set up a TII monitoring cell at the national level with academicians and representatives of civil society organizations (CSOs) and other stakeholders to monitor progress on the implementation of Article 5.3 at the national and sub-national levels. Develop mechanisms for reporting violations of Article 5.3.
- ◆ Include a section on addressing TII in the COTPA Amendment Bill, 2020.
- ◆ Develop a multi-sectoral policy framework to prevent CSR activities by the TI and financial contributions by the industry to public agencies and political parties.
- ◆ Remove TI representation from national and sub-national expert committees and governing bodies formed by the government, even if they present themselves as non-tobacco industry.
- ◆ Develop a policy framework on Article 5.3 of the WHO FCTC at the national level to have uniformity across states.

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