

6.1

Legislation and Enforcement

Legislation lies at the very heart of any effective tobacco control programme. It serves to institutionalize the programme by providing it with a legal foundation. It also helps to integrate the diverse components of a multifaceted programme. In a situation where governments, officials and, consequently, policy priorities change over time, legislation ensures continuity and retains a steady focus on sustained and concerted efforts, as opposed to sporadic interventions by the Ministry of Health or other government agencies.

Beyond the specific legal provisions, legislation achieves two other broad social objectives. First, it is a means of raising awareness and a means of social mobilization. For example, the mere presence of provisions such as a ban on smoking in public places or sale to minors educates the public about the harm caused by tobacco. The enactment and implementation of legislation helps to raise public awareness and builds popular consensus for pro-public health measures. Second, legislation is seen, more fundamentally, as the most solemn expression and formal articulation of societal values; ‘they recognize, reinforce and make more permanent the society’s important norms.’¹

Thus the role of legislation is to

- put minimum public health measures in place;
- establish and define mechanisms for protection of rights; and
- promote social awareness as a vehicle of social change.

Legislation for tobacco control started evolving

in India in the mid-1970s. This was in response to increasing scientific evidence of tobacco being a major cause of mortality and morbidity in the world, growing awareness of the adverse health effects of tobacco consumption in India and rising demands for tobacco control elsewhere in the world.

Laws related to tobacco: Conflicting signals in the 1970s

In 1975, the Government of India enacted the Cigarettes (Regulation of Production, Supply and Distribution) Act (The Cigarettes Act, 1975)² that made it mandatory to display a statutory health warning on all packages and advertisements of cigarettes. This Act was passed to provide certain restrictions related to the trade and commerce in, and production, supply and distribution of, cigarettes. The statement of objectives and reasons, in the Act, clearly stated, *inter alia*:

‘Smoking of cigarettes is a harmful habit, and in the course of time, can lead to grave health hazards. Researches carried out in various parts of the world have confirmed that there is a relationship between smoking of cigarettes and lung cancer. Chronic bronchitis, certain diseases of the heart and the arteries, cancer of the bladder, prostate, mouth, pharynx and oesophagus, peptic ulcer, etc. are also reported to be among the ill effects of cigarette smoking.’

The Act required the manufacturers or persons trading in cigarettes to display a statutory warning that ‘Cigarette smoking is injurious to health’ on all cartons and packages of cigarettes. A similar warning was also required to be displayed in advertisements of cigarettes. The purpose of this warning was mainly to inform citizens of the harmful effects of smoking so that the demand for cigarettes would be reduced.

Section 3 of the Act specifically laid down restrictions relating to trade and commerce in tobacco. This section made it obligatory for a person who engages in the trade of production,

distribution and supply of cigarettes, to ensure that every package so produced, supplied or distributed by him should bear the specified warning. Section 4 described the manner in which the warning should be presented, namely, the style and type of lettering which has to be legible, prominent and bold, so that it is clearly visible to the buyer. Similarly, Sections 6 and 7 prescribed, respectively, the language in which the warning shall be expressed and the size of the letters. In addition, there were other sections in the Act that addressed the power of entry and search (Section 8), confiscation of packages (Section 10) and liability to pay penalty in the event of not abiding by the provisions of the Act (Section 12).

The Cigarettes Act, 1975, however, failed to accomplish much because it was not comprehensive in its coverage and was feeble in its provisions. The warning specified under the Act was far too mild to be an effective deterrent. Moreover the Act did not include in its purview non-cigarette tobacco products such as *beedis*, *cheroots*, *gutka* and cigars. This Act was repealed with the passage of the new Act in 2003.

In 1975, the Government of India, under the aegis of the Ministry of Commerce, constituted the Tobacco Board to research, market and develop the tobacco crop and trade. This was done through the enactment of the Tobacco Board Act, which is in force till date. The Tobacco Board develops better varieties of seeds, runs seed banks and liaises with financial institutions to secure loans for farmers. It sets up and monitors trade in tobacco leaf at the selling platforms and ensures that tobacco farmers get fair prices. It also recommends support prices of tobacco crops to prop up the produce of farmers.

The rationale presented by the government for enacting this legislation was as follows: India is the third largest producer of tobacco in the world with an average annual production of 350 million kg, and sixth among the tobacco exporting countries with an average annual

export of about 55 million kg. Virginia tobacco is the most important variety grown in the country and India is the second largest exporter of this variety in the world. To effectively regulate the tobacco industry, particularly the Virginia tobacco industry, it was proposed that the development of the tobacco industry should be under the control of the Central Government and it was further proposed that for the said purpose a board called the Tobacco Board should be established and that the board would be vested with adequate powers to deal with this industry.

Thus in the 'public interest', thinking it expedient to keep this industry under the control of the Central Government, this Act was passed. The Act aimed at planning the production of tobacco, particularly Virginia tobacco, to suit the specified needs of the market by ensuring the requisite standards of quality and to minimize the fluctuations in production and prices. The Act further aimed at facilitating research, marketing, warehousing, publicity and promotion abroad, and extension of market intelligence in competing countries. Thus, the Act focused on establishing a single authority which could deal with various aspects of this industry in an integrated and efficient manner.

The Tobacco Board Act, 1975, contains regulatory sections such as Section 10 that deals with the registration of growers of Virginia tobacco, whereby the grant or refusal of the certificate of registration would depend upon the demand for Virginia tobacco in India and abroad. Sections 10a, 11, 11a, 11b and 12 deal with other kinds of registration, namely, registration of growers of Virginia tobacco seedlings for commercial purposes, registration of curers of Virginia tobacco, registration of processors and manufacturers of Virginia tobacco, etc., licences to be obtained for grading work and construction of barns, registration of exporters, packers, auctioneers and dealers, respectively. Section 13 of the Act specifies that no registered grower or curer of tobacco shall sell Virginia tobacco elsewhere, other than at the auction platform registered with the Board.

Section 13B of the Act casts a duty on the buyers of the Virginia tobacco to refrain from unfair practices specified therein.

There was, therefore, a contradictory public policy in operation. On the one hand, there was an attempt to discourage smoking. On the other, tobacco itself was seen as a major source of public revenue. The Tobacco Board Act of 1975, however, had an unintended future benefit. The Act brought tobacco under a single jurisdiction (the Central Government). This fact was later utilized by the Parliamentary Standing Committee on Human Resource Development, to expand the provisions of the Tobacco Control Bill of 2003 to encompass all tobacco products, whether under Central or State jurisdiction. The argument that the Centre could extend its control of tobacco in ‘public interest’ was made in 1975 to favour tobacco production but was turned around in 2003 to enact measures intended to reduce tobacco consumption. By doing so, public interest was now truly served!

Pressure for stronger action and comprehensive legislation

During the 1980s and 1990s, the public and environment policy moved towards stronger tobacco control measures due to a confluence of several factors. There was better quantification of the health risks posed by tobacco as well as an increasing list of diseases linked to its use. International organizations, such as WHO, recommended stronger action for tobacco control at the national level. Many developed countries progressively adopted stricter regulatory measures for tobacco control in response to both the enhanced scientific knowledge and energetic civil society activism. Even in India, civil society groups and the media began to play a stronger role in increasing public awareness of tobacco-related health issues. Tobacco control began to feature in civil litigations and the courts started ruling in favour of tobacco control measures. Demands for tobacco control were also made with increasing frequency in the Indian Parliament, and law-

makers started responding to the information about the dangers that tobacco posed to India. All of these combined to mount pressure on the Central and State Governments to impose further restrictions on tobacco trade and to bring forth a comprehensive legislation for tobacco control.

The issue of tobacco use and its ill-effects received greater international attention during this period than in the past. The World Health Assembly of WHO, in its annual resolutions of 1986 and 1990, urged Member States to (i) ensure effective protection to non-smokers from involuntary exposure to tobacco smoke, (ii) protect children and young people from being addicted to the use of tobacco, (iii) consider legislation and other effective measures for protecting their citizens, with special attention to risk groups such as pregnant women and children, from involuntary exposure to tobacco smoke, (iv) discourage the use of tobacco and impose progressive restrictions on tobacco products, and (v) take concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco.³

The role played by civil society is described in greater detail in Section 6.4. While individual organizations engaged in the advocacy of tobacco control with increasing vigour and visibility, their collective role was particularly effective in shaping the recommendations of the regional and national consultations on ‘Tobacco or Health’, which were jointly convened by the Government of India (Ministry of Health) and WHO in 1991. Two preliminary regional consultations were held at Bangalore and Kolkata. A national consultation was then organized at New Delhi. Each of these brought together multiple stakeholder groups (policy-makers, health professionals, economists, lawyers and judges, health and development NGOs, educators, tobacco farmers, trade unions and the tobacco industry). While the tobacco industry and its allies stubbornly denied any link between tobacco and disease, and warned of dire economic consequences that would result

Box 6.1 Recommendations of the National Conference on Tobacco or Health (July 1991)

- A National Tobacco Control Commission (NTCC) should be established to coordinate all tobacco-related activities. The NTCC should be established as a parliamentary committee and present its annual report to Parliament.
 - Tobacco should be brought into the concurrent list to enable the Government of India and the State Governments to enact appropriate legislation.
 - A comprehensive tobacco act should be brought to encompass all legislations in relation to tobacco promotion, sale, consumption, labelling, warnings, etc.
 - A separate legislation should be targeted at compulsory compensatory reforestation to make up for the loss of forests and flue-curing of tobacco. A separate tax could be levied and the money obtained could be utilized for reforestation.
 - The NTCC should set up laboratories for testing the nicotine and tar content of *beedis* and cigarettes, provide incentives to farmers to change to an alternative crop, rehabilitate those persons who will lose employment due to control of tobacco and give income tax exemption to money donated for anti-tobacco campaigns.
 - A committee should be formed to go into the details of the economics of tobacco.
 - Health education strategies should be carefully formulated. The messages should be such that they can reach the illiterate as well. A committee should be set up to formulate the health education strategy.
 - The major emphasis of education should be on children and adolescents who are potential future addicts of tobacco, to prevent their becoming addicts.
 - Health education should be part of the curriculum for schoolchildren as well as for the teachers' training course (BED). A specific programme of health education that includes a component on tobacco should be developed for both groups.
 - As all medical colleges adopt a rural area for field training of medical students and interns, health education, including that about tobacco, should be an essential component of community medicine.
 - Youth groups such as the National Service Scheme (NSS), Nehru Yuvak Kendra (NYK) and Scouts should be utilized for community education regarding the dangers of tobacco use.
 - October 11 should be declared as the 'National No-Tobacco Day'.
 - Incentives should be provided to non-users of tobacco for employment in the armed forces and police.
 - Non-users of tobacco should pay a lower insurance premium compared to tobacco users.
 - Incentives should be provided to farmers to change to alternative crops.
 - The Board of Film Certification, the motion picture censor board, should restrict/remove scenes showing the use of tobacco.
 - Financial holdings of the government in the tobacco industry should be withdrawn.
 - Priority research areas regarding tobacco should receive the attention of research funding agencies to ensure work in the following areas: (i) health education; (ii) tobacco agriculture; (iii) tobacco economics; (iv) public policy; (v) health hazards; (vi) behavioural aspects of starting tobacco use; (vii) methods for promoting quitting of tobacco through methods such as yoga, group activities, etc.
- 'This Conference recognizes tobacco as a major health hazard and concludes that an integrated educational, legislative and agro-economic strategy with an operational framework and political, administrative, financial and research support, is needed to protect our people from the tobacco menace and move in the direction of a tobacco-free society.'

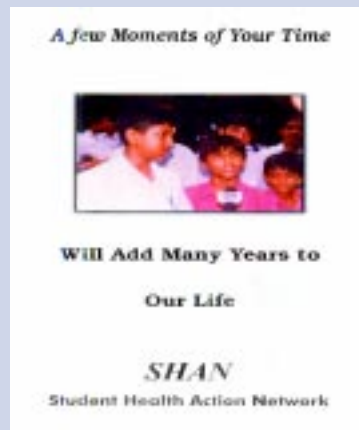
from any attempt at tobacco control, the other groups put together a strong case for the early initiation and effective implementation of a comprehensive tobacco control strategy (Box 6.1) The government accepted the recommendations on tobacco control and commenced work on developing a new legislation.

In the early 1990s, when the attempts by the government to develop a comprehensive legislation for tobacco control faced fierce opposition from the tobacco industry and the

proposal was deferred through the appointment of a committee to evaluate the economic impact of tobacco control, civil society groups mounted strong advocacy campaigns to demand speedy enactment of new laws for tobacco control. Youth groups, in particular, were vocal in seeking intervention by senior policy-makers and parliamentarians to protecting the health of present and future generations (Box 6.2).

Judicial verdicts issued during this period also directed the government to initiate stronger

Box 6.2 School students appeal to Prime Minister and parliamentarians for tobacco control



This appeal, signed by over 25,000 school students of Delhi, was submitted by the representatives of the Student Health Action Network to the Prime Minister of India on 12 September 1998. They urged the Prime Minister to initiate measures to usher in a tobacco-free society and to start that process by imposing a comprehensive ban on all forms of tobacco advertising. They also suggested that ‘world leaders who have signed global conventions to ban chemical and biological weapons must also launch a global effort to eliminate the modern world’s biggest killer’. The appeal was later circulated, as a pamphlet (above) to members of Indian Parliament.

Website: www.hriday-shan.org

measures for tobacco control. While the nature and results of litigation in tobacco control are detailed in Section 6.3 of this report, the most important judgments were pronounced regarding public smoking. Initially, the High Court of Kerala and later the Supreme Court of India called for effective bans on smoking in public places and affirmed the rights of non-smokers to breathe air free from tobacco smoke. They directed the government to institute regulatory measures to confer such protection to non-smokers.

Regulatory actions taken by the Central Government

- To protect the non-smoking public from the hazards of second-hand smoking, the Central Government issued a directive on 7 May 1990, through the Cabinet Secretariat, prohibiting tobacco smoking in a few selected places where a large number of persons were expected to be present for prolonged periods. These places were hospitals, dispensaries and

other health care establishments, educational institutions, conference rooms, domestic air flights, air-conditioned chair cars and air-conditioned sleeper coaches in trains, suburban trains and air-conditioned buses. Further, it was directed that no ashtrays be placed in such non-smoking areas and that all cigarette shops be removed from the compound of such buildings. Necessary billboards, clearly indicating that smoking was strictly prohibited, were required to be displayed at such places.⁴

- Direct tobacco-related advertisements were prohibited on Doordarshan (national television channel) and All India Radio, which are state-controlled agencies.
- State governments were advised by the Central Government to discourage the sale of tobacco products around educational institutions.
- Recognizing the health hazards of the habit of chewing tobacco, which was becoming increasingly prevalent in the country, the Central Government made it mandatory to display a statutory warning on chewing tobacco products stating that ‘chewing of

Box 6.3 From Parliamentary proceedings: Smoking in films

(Lok Sabha, Unstarred Question No. 4065, 10 April 2003)

The Central Board of Film Certification (CBFC) certifies films in terms of the provisions of the Cinematograph Act, 1952,⁷ and the guidelines issued thereunder. The objectives of certification, as laid down in the guidelines, are as follows:

- (i) The medium of film remains responsible and sensitive to the values and standards of society;
- (ii) Artistic expression and creative freedom are not unduly curbed;
- (iii) Certification is responsive to social change;
- (iv) The medium of film provides clean and healthy entertainment; and
- (v) As far as possible, the film is of aesthetic value and cinematically of a good standard.

The film certification guidelines already, *inter alia*, ask CBFC to ensure that scenes tending to encourage, justify or glamorize consumption of tobacco or smoking are not shown. CBFC has intimated that the above guidelines are adhered to in certifying films.

(Answered by the Minister of State in the Ministry of Information and Broadcasting)

Table 6.1 State-level laws for tobacco control

Place	Name of the law and year of enactment	Features
Delhi	The Delhi Prohibition of Smoking and Non-Smokers' Health Protection Act, 1996	Prohibition of: smoking in places of public work or use and in public service vehicles; advertisement of cigarettes, etc.; sale of cigarettes, etc. to minors; storage, sale and distribution of cigarettes, etc. in the vicinity (100 yards) of educational institutions Display and exhibition of a board saying 'No smoking zone' or 'Smoking is an offence'. Provision of penalties including ejection of violators of this Act, from the place of public work or use.
Assam	The Assam Prohibition of Smoking and Non-smokers' Health Protection Bill, 1999	Same as Delhi
Meghalaya	The Meghalaya Prohibition of Smoking and Non-Smokers' Health Protection Act, 1998	Same as Delhi
Sikkim	The Sikkim Prohibition of Smoking and Non-Smokers' Health Protection Bill, 1997	Same as Delhi
Jammu and Kashmir	The Jammu and Kashmir Prohibition of Smoking and Non-smokers' Health Protection in Public Service Vehicles Bill, 1997	Prohibition of: smoking in public service vehicles; advertisement of cigarettes, etc. Provision of penalties and ejection of violators from public service vehicle
West Bengal	The West Bengal Prohibition of Smoking and Spitting and Protection of Health of Non-smokers and Minors Bill, 2001	Prohibition of: smoking and spitting in places of public work or use and in public service vehicles; advertisement on smoking and chewing; sale of cigarettes, etc. to minors; storage, sale and distribution of cigarettes, etc. within an area of 100 metres around places of worship or educational institutions Provision of penalties and power to arrest without warrant
Goa	The Goa Prohibition of Smoking and Spitting Act, 1997	Same as West Bengal, excepting inclusion of the power to eject violators (instead of power to arrest without warrant)
Himachal Pradesh	The Himachal Pradesh Prohibition of Smoking and Non-smokers Health Protection Bill, 1997	Same as Delhi

tobacco is injurious to health'. Since chewed tobacco is treated as a food item under the Prevention of Food Adulteration Act of 1955, the provisions of that Act were utilized, in 1990, to prescribe this health warning.⁵ In 1992, the Central Government banned the manufacture and sale of toothpastes and toothpowders containing tobacco under the Drugs and Cosmetics Act of 1940.⁶

- In December 1991, the Central Government directed the Board of Film Certification, under the Cinematograph Act of 1952, to ensure that scenes tending to encourage, justify or glamorize the consumption of tobacco or smoking are not shown (Box 6.3).⁷
- In September 2000, the Central Government prohibited, on cable television, advertisements which promoted directly or indirectly the production, sale or consumption of cigarettes and other tobacco products. This was done by amending the advertisement codes as provided in the Cable Television Networks (Regulation) Act of 1994. Offenders were liable to imprisonment, for a term which may extend to 2 years or a fine which may extend up to Rs 1000 or both, for the first offence. For every subsequent offence, imprisonment may extend up to 5 years and the fine may extend up to Rs 5000.⁸
- The Ministry of Railways took the important step of banning the sale of cigarettes and *beedis* on railway platforms and in passenger trains from 5 June 1999 (Box 6.4).⁹
- Again, on 4 July 2001, keeping in view the interests of maintaining cleanliness on railway premises and protecting public health, the railway authorities banned the sale of *gutka* on railway station premises, concourses and reservation centres, and in trains.¹⁰

Legislative and regulatory actions taken by State Governments

Even as the Central Government was contemplating fresh legislation for comprehensive tobacco control, some State Governments moved

Box 6.4 From Parliamentary proceedings: Smoking on railway platforms

(Lok Sabha, Unstarred Question No.3097, 13 December 2003)

Efforts are being made to ensure enforcement of ban on smoking on railway platforms and in trains in compliance with order of the Supreme Court of India.

The Ministry of Railways has issued orders prohibiting sale of *beedis*/cigarettes etc. with effect from 5th June, 1999, by the catering vending units at all railway premises, stations and in running trains on Indian Railways. In addition to *beedis*/cigarettes, sale of all tobacco products including *Gutkhas*, etc. containing tobacco has also been banned for sale on railway platforms with effect from 4.7.2001.

(Answered by the Minister of State in the Ministry of Parliamentary Affairs and the Ministry of Railways)

ahead with State laws addressing specific components of that strategy. These laws are profiled in Table 6.1.

Several states used the provisions of the Prevention of Food Adulteration Act to impose a ban on smokeless tobacco.

Tamil Nadu

According to the notification issued by the Director of Public Health and Preventive Medicine and State Food (Health) Authority, ‘...no person shall himself or by any person on his behalf, manufacture for sale or store, sell or distribute chewing tobacco, *paan masala* or *gutka* containing tobacco in any form or any other ingredients injurious to health, under whatever name or description it is sold in the State of Tamil Nadu, in the interest of public health, for a period of five years with effect on and from 19th November 2001’.

Andhra Pradesh

A notification, dated 23 July 2001, ‘...prohibits, in the interest of public health, the sale of all brands of *paan masala* (containing tobacco) and chewing tobacco/*zarda*/*khaini* under any brand

name, in the entire State of Andhra Pradesh with immediate effect’.

Maharashtra

The order states that the authorities ‘...in the interest of public health, prohibit for a period of five years with effect from the 1st August 2002, the sale of *Gutka* and *paan Masala* containing tobacco or not containing tobacco, by whatever name called, in the State of Maharashtra; and accordingly direct that no person shall himself or any person on his behalf, shall manufacture for sale, or store, sell or distribute *Gutka* or *paan Masala* containing tobacco or not containing tobacco, by whatever name called, for a period of five years with effect from the 1st August 2002’.

Goa

The order states that the authorities ‘...in the interest of public health, prohibit with effect from the 26th January 2003, the sale of *Gutka* and *paan masala*, containing tobacco or not containing tobacco, by whatever name called, in the State of Goa; and accordingly direct that no person shall himself or any person on his behalf, shall manufacture for sale, or store, sell or distribute *Gutka* or *paan masala*, containing tobacco or not containing tobacco, by whatever name called, until further orders’.

Bihar

In a notification dated 31 March 2003, the State Government ‘...directs that no person shall himself or by any person on his behalf, shall manufacture for sale or store, sell or distribute *Gutka* or *paan Masala* containing tobacco or not containing tobacco, or by whatever name called, for a period of five years with effect from April 1, 2003’.

The tobacco industry segment, which manufactures and markets smokeless tobacco products in India, challenged some of these orders in the courts of law (see Section 6.3).

Genesis of the Indian Tobacco Control Legislation of 2003

The tobacco control legislation entitled, ‘The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003’ is a result of more than a decade of consultation and has undergone many changes to assume its final form. In September 1993 the Central Cabinet approved, in principle, the need for such an Act. It was decided at that time to enact a comprehensive legislation covering all tobacco products including cigarettes. However, this faced the barrier of different tobacco products being under the separate legislative purview of the Central and State Governments, in the federal structure of India’s governance. Since cigarettes are in the Concurrent List and other tobacco products are in the State List, resolutions from at least two States Legislatures were required to make a law covering other tobacco products. The States of Goa, West Bengal, Uttar Pradesh and Punjab passed resolutions in their legislatures authorizing Parliament to come out with a comprehensive legislation.

In February 1995, the Parliamentary Committee on Subordinate Legislation of the Tenth Lok Sabha proposed to examine the rules and regulations framed under the Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975. In the 22nd Report of the Committee on Subordinate Legislation, which was presented to the House on 22 December 1995, a series of substantive suggestions were made for measures to achieve better results in the field of tobacco control. These suggestions are summarized below:¹¹

1. Statutory warnings should contain strong words such as ‘smoking kills’ or ‘smoking causes lung cancer’. The warning should be rotated periodically on cigarette packets.
2. Health warnings should be made effective by using symbols and pictorial depictions.

Such pictures should be depicted as a supplement to the strongly worded rotating health warnings.

3. Health warnings should be extended to cover *beedis*, cigars, *cheroots*, all tobacco products such as *paan masala*, toothpaste, toothpowder, *gutka*, cut tobacco, chewing tobacco, snuff tobacco, etc.
4. Health warnings should also be printed in regional languages in addition to the existing practice of these being only in English.
5. The size of the health warnings should be as large as the brand name of the tobacco products and the warning should be prominently displayed on both sides of the package.
6. Printing the tar and nicotine levels on the packets and cartons of all tobacco products, and fixing the maximum permissible limits on the use of these toxic substances in cigarettes/*beedis* and other harmful tobacco products should be made compulsory.
7. Single cigarettes should also contain the health warning either in written form or as a symbol such as skull and crossbones or any other suitable depiction.
8. Health warnings should be displayed prominently at every shop where cigarettes, *beedis* or other tobacco products are sold. These warnings should be in the respective regional languages and their display should be made compulsory under the law.
9. Health warnings must indicate the message that the 'use of tobacco smoking is habit forming'.
10. Cigarettes and other tobacco products imported to India must meet the statutory requirements of the country regarding health warnings.
11. There should be a total ban on all forms of advertisement which promote the use of tobacco.
12. The government should make stringent penal provisions to effectively deal with violation of the provisions of the law.
13. There should be a total ban on the sponsoring of major sports/cultural events by cigarette and other tobacco product companies.
14. There should be a complete ban on smoking in the public transport system, domestic air flights and government vehicles.
15. People should be informed that not only smokers but second-hand smokers are also affected by cigarette smoking.
16. Anti-tobacco education should be made compulsory in schools and colleges. Teachers should not smoke within the school premises so that students are not encouraged to smoke or emulate smokers.
17. Sale of cigarettes to persons below 18 years of age should not be permitted.
18. Scenes in films, plays and advertisements on television glamorizing smoking should not be shown. The government should allocate adequate resources and personnel to carry out anti-smoking education.
19. Initiatives may be taken by the Ministry of Agriculture to persuade farmers to switch over to alternative crops and raise the level of awareness of the health hazards involved in the use of tobacco through proper education.
20. The Indian Council of Agricultural Research should concentrate on research for developing new technology, high-yielding varieties, fertilizers, etc. for alternative crops.
21. Adequate research should be done to use tobacco leaves as an alternative source of protein. There is no objection to the production of tobacco for export purposes but the Tobacco Board should not promote the use of tobacco consumption internally.
22. The government should conduct a study about the resources required for rehabilitating tobacco workers and the areas of alternative employment in which they could be absorbed.

To consider the recommendations made by the Committee on Subordinate Legislation, a coordination committee was formed by the

Central Government in 1995, which included representatives from the Central Ministries of Commerce, Agriculture, Labour, and Information and Broadcasting, the Indian Council of Medical Research, and the National Council of Educational Research and Training. While most of the ministries agreed with the recommendations of the Committee on Subordinate Legislation, the Ministry of Labour was of the opinion that the adverse impact of such legislation on the livelihood of the labour force involved in tobacco production, processing and marketing could not be ignored.

In 1995, an Expert Committee on the Economics of Tobacco Use was constituted by the Central Ministry of Health. The terms of reference of the Committee were, on the one hand, to make a comparative study of tax revenue, foreign exchange, employment and consumer expenditure and, on the other, of expensive tertiary-level medical facilities involving even imported equipment for the treatment of tobacco-related diseases, losses due to fire hazards, ecological damage due to deforestation and disposal of tobacco-related waste. The Committee also consisted of representatives of tobacco farmers' associations, trade unions, and tobacco workers and employees' federations. After the Committee commenced its work, the tobacco industry utilized its political influence to have the Committee reconstituted, increasing the quantum of representation for the tobacco industry and its allies. Though there was no clear consensus on the issues, due to dissent by the tobacco industry, the main conclusions arrived at by the Committee in February 2001 were as follows:¹²

1. Tobacco is clearly a demerit good and the public health effects of tobacco use constitute the single most important aspect of the economics of tobacco use,
2. The 'indirect macro-economic, secondary benefits' of tobacco use are easily outweighed by the costs of the three major diseases associated with tobacco,
3. The prevalence rate of tobacco use is greater among the poor than the affluent, and

4. The use of tobacco leads to a number of adverse short- and long-term consequences.

On the basis of the suggestions made by the Parliamentary Committee on Subordinate Legislation, the Union Ministry of Health and Family Welfare introduced the Tobacco Control Bill in the Rajya Sabha (Upper House of Indian Parliament) on 7 March 2001, after obtaining the approval of the Central Cabinet on 6 February 2001.¹³ On 12 April 2001, the Bill was referred to the Parliamentary Standing Committee on Human Resource Development. The Committee held eight sittings in all, to consider and finalize its report on the Bill. Since the Bill had wider ramifications and was not solely concerned with the Health Ministry, the Committee decided to invite memoranda from individuals/organizations/institutions, etc. interested in the subject matter of the Bill. For this purpose, an advertisement was issued in almost all the leading newspapers of the country and wide publicity was given through Doordarshan and All India Radio. The Committee received 55 memoranda and representatives of a number of associations, trade unions, NGOs and former Members of Parliament appeared before the Committee. Several ministries and government departments, besides the Department of Health, were also invited to present their views.

In its report, submitted on 5 December 2001, the Committee noted that 'when Parliament is competent to legislate on cigarettes, it should be equally competent to legislate on matters relating to other tobacco products, both being health hazards'. It pointed out that the proposed legislation seemed to be discriminatory in nature because of its restricted applicability with regard to other tobacco products when compared with cigarettes. It referred to Section 2 of the Tobacco Board Act of 1975, which reads 'It is hereby declared that it is expedient in the public interest that the Union should take under its control the tobacco industry' and to the Supreme Court judgment in the case of ITC and Others versus State of Karnataka and others 1985 (Supp) SCC

476, wherein the Supreme Court has ruled that the entire tobacco industry stands under the control of the Union (Central Government), as a consequence of the Tobacco Board Act of 1975.

The Parliamentary Standing Committee recommended that the Bill should apply to the whole of India, both for cigarettes as well as other tobacco products, by reframing the Preamble and inserting a declaration to the effect that the Union Government may take under its control the tobacco industry. Other recommendations of the committee included:¹⁴

- Banning the sale of cigarettes and other tobacco products within a radius of 500 yards of educational institutions;
- Mandatory pictorial depiction of warnings such as skull and crossbones on packages of cigarettes and other tobacco products;
- Mandatory printing of nicotine and tar contents as well as maximum permissible limits on packets and cartons of all tobacco products;
- Railway waiting rooms to be included under the definition of public place;
- There should not be any provision for arrest without a proper warrant;
- Provision of smoking areas in hotels, restaurants, airports, etc.; and
- Harmonization of excessive penalties and different penalties for producers or manufacturers and sellers of cigarettes and other tobacco products.

The National Human Rights Commission of India (NHRC) also stepped in to advocate tobacco control as an essential measure to promote human rights. In April 2001, the NHRC convened a South-East Asia Regional Consultation on ‘Public Health and Human Rights’ at New Delhi, in collaboration with the Ministry of Health and Family Welfare, Government of India and WHO. The consultation discussed at length the issue of unregulated tobacco promotion and use affecting the right to health, right to clean air, rights of children, right to information and education, right to redressal and right to tobacco control programmes/

facilities for citizens. The NHRC made the following recommendations:¹⁵

1. A comprehensive national tobacco control policy should be evolved at the highest level in consultation with all the stakeholders in public health;
2. A multisectoral national-level nodal agency should be established for tobacco control with strong representation from the legal, medical and scientific communities;
3. The right of the people to access correct information related to the effects of tobacco consumption must be promoted through programmes of information, education and communication;
4. Assistance must be provided for smoking cessation within the health care services; and
5. Various incentives provided to the tobacco industry must be discontinued.

Around the same time, the Supreme Court of India, while considering a public interest litigation, passed orders prohibiting smoking in public places throughout the country. The relevant extracts of the judgment delivered on 2 November 2001 are as follows:¹⁶

‘Fundamental right guaranteed under Article 21 of the Constitution of India, *inter alia*, provides that none shall be deprived of his life without due process of law. Then why a non-smoker should be afflicted by various diseases including lung cancer or of heart, only because he is required to go to public places? Is it not indirectly depriving of his life without any process of law? The answer is obviously ‘yes’. Undisputedly smoking is injurious to health and may affect the health of smokers but there is no reason that health of passive smokers should also be injuriously affected. In any case, there is no reason to compel non-smokers to be helpless victims of air pollution.’

‘Learned Attorney General of India submits and all the counsels appearing for the other parties agree that considering the adverse effects of smoking in public places, it would be in the interest of the citizens to prohibit smoking in

public places till the statutory provision is made and implemented by the legislative enactment. The persons not indulging in smoking cannot be compelled to or subjected to passive smoking on account of acts of the smokers.’

‘Realizing the gravity of the situation and considering the adverse effect of smoking on smokers and passive smokers, we direct and prohibit smoking in public places and issue directions to the Union of India, State Governments as well as the Union Territories to take effective steps to ensure prohibiting smoking in public places namely:

- i. Auditoria
- ii. Hospital Buildings
- iii. Health Institutions
- iv. Educational Institutions
- v. Libraries
- vi. Court Buildings
- vii. Public Offices, and
- viii. Public Conveyances including Railways.’

The judgment of the Supreme Court of India added impetus to the efforts being made by the Health Ministry to expedite the passage of the Tobacco Control Bill through Parliament of India. The recommendations of the Parliamentary Standing Committee were considered by the Union Cabinet on 19 February 2003. The Cabinet approved all the recommendations, with modification that the proposed ban on the sale of tobacco products may be within a radius of 100 yards (not 500 yards) of educational institutions. Accordingly, the proposed amendments to the Tobacco Control Bill, which was pending in the Rajya Sabha, were taken up for consideration on 9 April, 2003 and were passed on the same day. Subsequently, the Lok Sabha (the lower house of Indian Parliament) also passed the Bill and it became an Act of Parliament after receiving the assent of the President on 18 May 2003.

Cigarettes and Other Tobacco Products Act, 2003¹⁷

The above law, intended to protect and improve public health, encompasses a wide array of

evidence-based strategies to reduce tobacco consumption. Some of the key provisions of the legislation, along with penalties to violators, are listed in Table 6.2.

This legislation brings the entire range of tobacco products under the jurisdiction of the Central Government for the purpose of this Act. It is enforceable across all states and union territories, and for all tobacco products, including cigarettes, cigars, *cheroots*, *beedis*, cigarette tobacco, pipe tobacco, *hookah* tobacco, chewing tobacco, *gutka*, tobacco toothpowder, *paan masala* or any chewing material having tobacco as one of the ingredients (by whatever name it may be called).

Measures for implementation

Strategies for implementing of the various provisions under the law are as follows:

Smoking regulations

Individual smokers are restrained from smoking in places where the law does not permit it. The rules under the Act further require owners, managers of public places, hotels and restaurants to display prohibitory signs. In the case of hotels and restaurants, the owner or manager is further responsible for ensuring the segregation of smoking and non-smoking areas with corresponding indicators displayed, in a manner that the public does not have to enter the smoking area to reach the non-smoking area.

Ban on tobacco advertising

Persons engaged in the production, supply and distribution of tobacco products along with those having control over the media and those likely to take part in advertisements are responsible for ensuring that the ban is upheld.

Ban on sales to minors

No person is allowed to sell tobacco products to minors or within a radius of 100 yards of educational institutions.

Table 6.2 Key provisions and penalties of the Cigarettes and Other Tobacco Products Act, 2003

Provisions	Penalties
Prohibition on direct and indirect advertisements of tobacco products, with the exception of advertising at the points of sale and on tobacco packs. The rules under the law restrict point-of-sale advertising in terms of size, inclusion of a mandatory warning and disallowing the use of any pictures or messages other than the name and picture of the product itself	Advertisement is to be forfeited and disposed of. The first conviction is punishable with imprisonment of up to 2 years or a fine of up to Rs 1000, or both. Subsequent convictions are punishable with imprisonment of up to 5 years and a fine of up to Rs 5000.
Ban on gifts, prizes, scholarships or sponsorship of sports or other cultural events using the trademark or brand names of tobacco products	
Prohibition of smoking in public places (<i>see</i> Box 6.5)	Offences would be made compoundable with a fine of up to Rs 200.
Prohibition on the sale of tobacco products to persons below the age of 18 years	Offences would be compoundable with summary trials and a fine of up to Rs 200.
Prohibition on the sale of tobacco within a radius of 100 yards of educational institutions	
Legible and conspicuous display of health warnings including pictorial warnings (skull and crossbones and others as may be prescribed) on not less than one of the largest panels of the tobacco package with the text of the warning appearing in the same language(s) as the language(s) used on it.	Imprisonment of up to 2 years or a fine of up to Rs 5000, or both, for first conviction of a producer or manufacturer; subsequent convictions attract imprisonment of up to 5 years and with a fine of up to Rs 10,000; imprisonment of up to 1 year or a fine of up to Rs 1000, or both, for the first conviction of a seller or distributor; imprisonment of up to 2 years and a fine of up to Rs 3000 for subsequent convictions.
Indication of the tar and nicotine contents of the tobacco products on the package along with the maximum permissible limits as prescribed by the rules under this Act	

Warning labels

The producer, supplier, distributor and seller are responsible for ensuring that the tobacco packages they trade carry the specified warnings.

Enforcement authority

Inspectors of Food and Drug Administration, police officers not below the rank of sub-Inspectors and any other officers authorized by the Central and State Governments are the designated enforcement authorities under the law.

Framing of rules under the Act

The enactment of the new tobacco control legislation of 2003 had to be followed by the framing and notification of rules related to the implementation of the key provisions of the Act. This task has been undertaken by the Ministry of Health, Government of India. The first set of rules has been notified on 25 February 2004

and came into effect from 1 May 2004. The following provisions have been notified:

- Prohibition of smoking in a public place (Box 6.5)
- Prohibition of advertisement of cigarettes and other tobacco products, and
- Prohibition of sale to minors.

The rules relating to each are as follows:

Prohibition of smoking in a public place

1. The owner or manager or person in-charge of the affairs of a public place shall cause to be displayed prominently a board, of a minimum size of 60 centimetres by 30 centimetres in the Indian language(s) as applicable, at least one at the entrance of the public place and one at conspicuous place(s) inside, containing the warning 'No smoking area—Smoking here is an offence'.

Box 6.5 What is a public place under the Indian law?

The Act of 2003 defines 'public place' as any place to which the public have access, whether as a right or not, and includes auditoria, hospital buildings, railway waiting rooms, amusement centres, restaurants, public offices, court buildings, educational institutions, libraries, public conveyances and the like which are visited by the general public but does not include any open space.

Since the phrase 'but does not include any open space' may create ambiguity with respect to some places of public gathering, the rules notified on 25 February 2004, provide a clarification with respect to the definition. This states that 'open space', as mentioned in Section 3(1) of the Act, shall not include any place visited by the public such as an open auditorium, stadium, railway station, bus stop and such other places. Thereby, such places are clearly brought into the ambit of public places where smoking of tobacco products is prohibited.

2. The owner or manager or person in-charge of the affairs of a hotel having thirty rooms or a restaurant having a seating capacity of thirty persons or more and the manager of the airport shall ensure that
 - (i) the smoking and non-smoking areas are physically segregated;
 - (ii) the smoking area shall be located in such manner that the public is not required to pass through it to reach the non-smoking area; and
 - (iii) each area shall contain boards indicating thereon 'Smoking area/Non-smoking area'.

Prohibition of advertisement of cigarettes and other tobacco products

1. The size of the board used for advertisement for cigarettes and any other tobacco products displayed at the entrance or inside a warehouse or a shop where cigarettes and any other such tobacco products are offered for distribution or sale shall not exceed 90 centimetres by 60 centimetres and number of such boards shall not exceed two.
2. Each such board shall contain in the Indian language(s) as applicable, one of the following

warnings occupying 25% of top area of the board:

- (i) Tobacco causes cancer, or
 - (ii) Tobacco kills.
3. The board referred to in sub-rule 2 shall contain only the brand name or picture of the tobacco product and no other promotional message and picture.

Prohibition of sale to minors

1. The owner or manager or person in-charge of the affairs of a place where cigarettes and other tobacco products are sold shall display a board of minimum size of 60 centimetres by 30 centimetres at conspicuous place(s) containing the warning 'Sale of tobacco products to a person under the age of 18 years is a punishable offence' in the Indian language(s) as applicable.
2. The onus of proof that the buyer of the tobacco product is not a minor lies with the seller of the tobacco products. The seller, in case of doubt, may request the tobacco purchaser to provide appropriate evidence of having reached 18 years of age.

The rules pertaining to other provisions (such as packaging and labelling and disclosure of tar and nicotine contents of tobacco products/emissions) are under preparation and are expected to be notified by the end of 2004.

Effective implementation of the law calls for an informed community, empowered to assert the entitlements under the law, supplemented with a clear and simple mechanism for reporting violations. For instance, in the case of advertising on the fencing walls of private property, the individual property owner needs to be educated of its implications under the new law, so as to reduce the incidence of violations.

Some of the matters covered by the law require technical expertise, such as deciding the permissible levels of tar and nicotine to be displayed on tobacco packs. There are other provisions such as smoking regulations that

require extensive enforcement staff. Issues arising from indirect advertising would call for judgment by competent authorities to uphold the spirit of the law. Tobacco control raises several other issues that would require a competent national regulatory authority to oversee tobacco control policies in the

country. This body would be able to exercise jurisdiction over a wide range of issues beginning with establishing mechanisms for reporting violations under the law, setting up standards for product regulations and recommending future requirements for tobacco control in India.

6.1 LEGISLATION AND ENFORCEMENT

KEY MESSAGES

- The Government of India in 1975 enacted the Cigarettes (Regulation of Production, Supply and Distribution) Act, which made it mandatory to display a statutory health warning on all packages and advertisements of cigarettes.
- During the 1980s and 1990s, the Central and State Governments imposed further restrictions on tobacco trade and efforts were initiated to bring forth a comprehensive legislation for tobacco control.
- Although the government accepted the recommendations of the regional and national consultations on ‘Tobacco or Health’ (1991), the proposal was deferred to evaluate the economic impact of tobacco control.
- In the 22nd Report of the Committee on Subordinate Legislation, a series of substantive suggestions were made for measures to achieve better results in the field of tobacco control. On this basis, the Union Ministry of Health and Family Welfare introduced the Tobacco Control Bill in the Rajya Sabha on 7 March 2001.
- The High Court of Kerala and Supreme Court of India called for effective bans on smoking in public places and affirmed the rights of non-smokers to breathe air free from tobacco smoke.
- Indian Parliament passed the ‘Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill, 2003 in April 2003. This Bill became an Act on 18 May 2003. Rules were formulated and enforced from 1 May 2004.
- Effective implementation of the law calls for an informed community, empowered to assert the entitlements under the law, supplemented with a clear and simple mechanism for reporting and penalizing violations.