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The WHO Framework Convention on Tobacco Control (FCTC) and its Implications for India

The World Health Assembly of the World Health Organization (WHO) adopted the Framework Convention on Tobacco Control (FCTC) at its 56th Session in May 2003. The Convention will come into force after 40 countries have ratified it (Article 36). India ratified the convention on 5 February 2004. It was the eighth and the largest country to ratify till October 2004.

In India, a comprehensive legislation has been enacted, namely The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter referred to as the Indian Act) for reducing the exposure of people to tobacco smoke, prohibition of advertisements, prohibition of sale to minors and regulating the contents of tobacco products.

This section describes the legal nature of the FCTC, the process of its adoption, its key provisions and compares the measures recommended by the FCTC with the provisions contained in the Indian Act. It is proposed to identify the obligations of a State Party under the FCTC and examine the provisions of the Indian Act, other relevant Indian laws and regulations for tobacco control to assess whether they are adequate for the purpose of implementing the treaty obligations of India under the FCTC and, if not, what further steps are necessary.

What is a framework convention?

A framework convention is an international legal instrument that contemplates progressive development of international law by establishing a general system of governance for a specific issue. It lays down general requirements for countries (Member States of WHO), with respect to the measures they need to take in the area covered by the convention. It does not spell out the specific rules to be enacted or implemented through national law but indicates the nature of legal, administrative, regulatory and other measures that need to be taken in accordance with the national law. It is expected that the Parties to the Convention would modify existing laws or develop new national laws which would reflect the commitments they have undertaken with respect to the Convention. At the international level, more specific commitments and institutional arrangements for implementing them would be developed and adopted through specific protocols which cover some of the key areas identified by the Convention. Thus, the follow-up process involves actions both at the national and international levels (Fig. 6.1).

What is the FCTC?

As a UN organization, the WHO has a constitutional mandate to initiate the development and

FCTC	
Framework for national action	Framework for international cooperation
<ul style="list-style-type: none"> • Comprehensive ban on advertising • Protection against second-hand smoke • Prohibition of youth access • Prominent health warnings • Testing and regulation of contents • Increase in tobacco taxes • Cessation programmes • Alternative crops • Surveillance 	<ul style="list-style-type: none"> • Ban on cross-border advertising • Prevention of illicit trade • Scientific and legal cooperation • Technical assistance • Financial support for FCTC implementation (bilateral and multilateral channels) • Monitoring
Requires partnerships within countries	Requires partnerships among countries

Fig. 6.1 Framework for national action and international cooperation

facilitate the adoption of international treaties, such as a framework convention. The WHO has been encouraging the adoption of national laws and regulations for tobacco control for a long time but this was the first time it used its constitutional mandate to facilitate the creation of an international framework convention specifically focusing on the global public health issue of tobacco control. The FCTC is the first ever international public health treaty of any kind.

The FCTC has designed the fundamental matrix of measures essential for tobacco control, while protocols would be negotiated later on specific issues such as cross-border advertising, promotion and sponsorship of tobacco products; tobacco-product regulation; illicit trade in tobacco; and liability. Such an approach was adopted by the International Negotiating Body (INB) which debated, developed and approved the final text of the FCTC. The INB was of the view that a specific issue is often best addressed in a protocol either because of its technical complexity, which requires that it should be dealt with separately by a negotiating group of specialists, or because an issue is controversial and requires considerably more discussion than the rest of the text. The WHO, which acted as the secretariat of the INB, pointed out that the negotiation of a framework convention does not indicate the completion of a process, but marks the commencement of an agreed international action which would further develop pathways for implementation. These will include the formulation of one or more protocols.

The FCTC, thus, does not clearly lay down a law which shall be universally applicable, but sets out guidelines for various national and international measures that would encourage smokers to quit and restrain non-smokers from taking to the habit. It promotes smoke-free environment policies, banning of advertisements, increase in taxes, reduced youth access to tobacco products as well as education and media campaigns to increase awareness about the health hazards of tobacco consumption and the health benefits of tobacco cessation. It

envisages international cooperation, including promotion and transfer of technical, scientific and legal expertise, and technology, for assisting in the development of a strong legislative foundation and technical programmes for protection from exposure to tobacco smoke and other tobacco products. Each Party to the FCTC is expected to implement these provisions, in accordance with its capacity and constraints.

The text of the FCTC does not impose on the Parties any significant obligations that are prescriptive in nature. Given the divergence of interests of the Parties negotiating the convention, it was difficult to secure universal consent, which was necessary to establish binding rules. The FCTC has some provisions which are mandatory ('Parties shall...') and other provisions which are recommendatory ('Parties should...'). Many of the provisions have qualifying phrases, such as 'where appropriate', 'in accordance with its [a Party's] capacity/capability', 'as far as possible' and 'in accordance with its [a Party's] national law'. These phrases provide the Parties with a large degree of operational flexibility in implementing the measures recommended by the FCTC. The FCTC, however, explicitly encourages countries to implement measures that are stronger than the minimum standards required by the treaty.

Therefore, from the perspective of international law, it can be said that the FCTC is predominantly a standard-setting document which identifies various measures that can help Member States in adopting a comprehensive tobacco control strategy but it has a few provisions which impose a binding obligation on the Parties. Such obligations, in specific areas, may need to be better defined in the protocols. It may be possible to do so with greater ease than in the case of the FCTC, since the protocols would be negotiated by the Conference of Parties (COP) which comprises Member States that have ratified the convention and are, therefore, likely to have a greater convergence of views. Other countries, which are less committed to the objectives of global tobacco control, are unlikely

to ratify the convention and, thus, would not be participants in the process of developing the protocols.

How was the FCTC negotiated?

The processes of negotiation of the FCTC started in 1999 with a series of preparatory meetings, including two intergovernmental working group meetings, to identify the key elements of a comprehensive tobacco control strategy which would need to be incorporated in the FCTC. The first working group meeting was held on 25 October 1999 at Geneva. The first meeting of the INB comprising all Member States of WHO was convened at Geneva during 16–20 October 2000. The INB met six times during 2000–2003 to negotiate several drafts of the text of the convention. In the inter-session intervals between the INB meetings, regional consultations were held at the level of each WHO Region. This facilitated the development of a regional consensus and the adoption of common positions at subsequent INB meetings. The INB adopted the final text, by consensus, on 1 March 2003, at Geneva. This was later forwarded to the 56th World Health Assembly for its consideration and adoption.

India's role in the FCTC negotiations

From the FCTC negotiations India emerged as a country whose principled positions in support of public health were widely acclaimed by the international community. Throughout the negotiations, India advocated strong provisions in the FCTC, which would favour effective tobacco control. India was unanimously elected as the coordinator of the group of countries affiliated to the WHO South-East Asia Regional Office (SEARO). Four regional consultations of the SEARO group of countries were held during the inter-session periods between the 2nd and 6th rounds of the INB meetings. India chaired these consultations (held successively at Jakarta, Thimphu, Jaipur and Yangon) and catalysed consensus development and consolidated strong

and unified regional positions on the draft text of the FCTC. In the later stages of negotiations at the INB level, India contributed to the coordinated action by a larger coalition of developing countries from the South-East Asia Region, Eastern Mediterranean Region, African Region, the Caribbean countries and the Pacific Island nations.

India was requested by this alliance of developing countries to act as the principal negotiator, on their behalf, on the advertising issue. India was also requested by the G-77 and China group of developing countries to be a part of the principal negotiating team on issues related to financial resources. The Indian delegation also made crucial contributions to the elaboration of the section on illicit trade in tobacco products. India's leadership was clearly evident, and widely appreciated, on these and other issues of vital interest to the developing countries (Box 6.6).

India's effective leadership in the negotiations and strong advocacy of pro-public health positions was acclaimed and 'awarded' by various civil society groups. The Framework Convention Alliance of global non-governmental organizations (NGOs) supporting a strong FCTC repeatedly conferred its Orchid award on India (4 awards) and the South-East Asia Region (4 awards), the highest number of awards received by an individual country or a Region. The WHO too recognized India's pivotal role by presenting the WHO Director General's award to a key negotiator from the Indian delegation—Professor K. Srinath Reddy—for outstanding contributions to global tobacco control at the World Health Assembly in May 2003.

The strong stance taken by India, in favour of measures contributing to effective tobacco control, came as a surprise to many governments and NGOs who had assumed that India, as a large tobacco-growing country, would have several reservations against tobacco control. India's strong position was created and consolidated by several domestic developments that occurred in the past decade. Anti-tobacco

Box 6.6 Civil society's views on India's role in developing the FCTC

'I am writing to you on behalf of the over 180 non-governmental organizations from around the world which make up the Framework Convention Alliance. Members of the Alliance have been closely following the progress of the negotiation of the Framework Convention on Tobacco Control and have been pleased by the final draft which was agreed to at the final round of negotiations in February/March this year.

I would like to acknowledge our deep appreciation for the leadership shown by the Indian delegation during the drafting of the treaty, and for their determination to see that the world's first public health treaty include strong evidence based provisions. The final treaty is a genuine triumph for the public health community and for the many developing countries which fought for strong language.

In connection with this we are delighted to hear that India is currently tabling the progressive Cigarettes and Other Tobacco Bill, 2001 in the national Parliament. The Bill, as we understand, would be the first move on the part of a Member State of the World Health Assembly (WHA) since the FCTC negotiations ended last month, in raising national laws to be competent with international standards. With the passage of the Bill, India would be in the forefront of the world's nations in carrying out the spirit of FCTC.

The proposals in your Bill banning direct and indirect tobacco advertising, smoking in public places and introducing pictorial health warnings on tobacco packs is supported by scientific evidence and international best practice. This would go a long way in reducing tobacco consumption and in curbing the tobacco epidemic that currently kills a million Indians every year.'

—Belinda Hughes

Coordinator, Framework Convention Alliance

(in a letter sent to the Health Minister of India, after the conclusion of the FCTC negotiations)

'India was at the forefront of those calling for an international treaty to effectively control the death and disease caused by tobacco. Dr Srinath Reddy proposed such a treaty in 1997 in a presentation at the Oslo Consultation on International Health and at the Montreal Conference on Preventive Cardiology. During the negotiations, the Indian delegation steadfastly called for strong treaty provisions that favored public health. The Indian delegation represented a combined grouping of developing countries (SEARO, AFRO, EMRO, Caribbean and Pacific Nations) as the prime negotiator on the contentious issue related to Advertising, Promotion and Sponsorship and succeeded in securing one of the strongest advertising ban provisions possible. The Indian delegation helped ensure that the FCTC is one of the proudest accomplishments in public health.'

—Judith P. Wilkenfeld

Director (International Programs), Campaign for Tobacco-Free Kids, USA

'India played a pivotal role in the FCTC negotiations. As the world's largest democracy, as well as one of the largest producers of tobacco, its positions carried significant weight, particularly with those developing countries that had previously been sitting on the fence. Its strong, principled positions, as well as its historical leadership role in the G-77, convinced many other countries that the treaty was worth supporting. India also presented a formidable obstacle to those developed countries, like the United States, which sought to weaken the treaty. Too big and powerful to ignore, India was a force to be reckoned with, from the first day of the negotiations until the final gavel fell.'

—Ross Hammond

Independent Consultant on Tobacco Control, USA

'The Indian delegation played a consistently key role during the many years of the FCTC negotiations, showing both leadership and a deep concern for public health in India and also globally. This support was particularly important in demonstrating that tobacco control is not the prerogative of western countries, but that the voice of developing countries can and should be heard.'

— Judith Mackay

Global Expert on Tobacco Control and Special Advisor to Director General of WHO

advocacy by civil society groups, especially the youth, enhanced the awareness of the devastating health effects of tobacco among policy-makers, the media and the public. Parliamentary opinion crystallized in favour of strong tobacco legislation, overcoming earlier doubts on the economic consequences of tobacco control. Judicial pronouncements, in recent years, directed Central and State

Governments to ban smoking in public places. Several State Governments imposed a ban on the sale of oral tobacco products. The widening support for tobacco control led to a Tobacco Control Bill being introduced in Indian Parliament, even as the FCTC negotiations got under way at Geneva. The International Consultation on Tobacco Control in Developing Countries, convened by the WHO as a curtain

raiser to the FCTC negotiations, was organized at New Delhi in January 2000. This was inaugurated by the Prime Minister of India, who affirmed India's commitment to a comprehensive strategy for tobacco control, in the presence of the Director General of WHO. The strong provisions of the Tobacco Control Bill, approved by the Indian Cabinet for introduction in Parliament, greatly enabled the Indian delegation to adhere to firm advocacy of a strong FCTC. These two parallel processes culminated close together, with the passage of the Indian Act by Indian Parliament in April 2003 and the adoption of the FCTC by the World Health Assembly in May 2003.

How will the FCTC be implemented?

After its adoption by the World Health Assembly in May 2003, the FCTC was opened up for signature and ratification by Member States of WHO. By the end of June 2004, 168 countries had signed the FCTC and 23 countries had ratified it after obtaining the approval of their respective national parliaments/cabinets. The Convention would come into force at the global level, when 40 countries have ratified it. Other countries who have signed by June 2004 can ratify even thereafter. Countries who have signed but do not ratify at all are under an obligation not to undermine the implementation of the treaty in any way. Countries who have not signed by June 2004 may still become parties to the Convention through accession. All countries who become parties to the Convention, through ratification or accession, constitute the COP. The FCTC requires that the first meeting of the COP would be convened within one year of the 'entry into force' of the Convention, i.e. within one year of the fortieth country ratifying the FCTC. The COP and its secretariat would be responsible for further implementation of the FCTC and for monitoring the national-level actions being taken by Member States that are Parties to the Convention. The COP would select and designate the Permanent Secretariat. Meanwhile, WHO is functioning as the Interim Secretariat of the FCTC.

Objectives and key provisions of the FCTC

The objective of the Convention and its protocols is 'to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels in order to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke.'

To achieve the objective of the Convention and to implement its provisions, certain guiding principles are elaborated which emphasize the need for: informing people of the health hazards of tobacco; strong political commitment on tobacco control; international cooperation; multisectoral tobacco policies; liability as a tobacco control strategy; technical and financial assistance for economies adversely affected by tobacco control programmes; and the participation of civil society in tobacco control efforts (Article 4).

Among the general obligations, which are applicable to all countries of the COP that will implement the FCTC, is an obligation to develop, and periodically update and review, comprehensive multisectoral national tobacco control strategies, plans and programmes in accordance with the Convention (Article 5.1). To fulfil this obligation, the Parties are obliged to establish or reinforce and finance a national coordinating mechanism or focal points for tobacco control. The Parties are also required to adopt and implement measures and cooperate with other Parties to develop policies for preventing and reducing tobacco consumption, nicotine addiction and exposure to tobacco smoke (Article 5.2).

Other general obligations for State Parties include protection of public health policies related to tobacco control from commercial and other vested interests of the tobacco industry,

cooperation between themselves and with competent international and regional inter-governmental organizations to achieve the objectives of the Convention and raising of financial resources for effective implementation of the Convention through bilateral and multilateral funding mechanisms.

To achieve the objectives of the FCTC, several demand reduction measures and some supply reduction measures have been recommended along with mechanisms for establishing and enhancing international cooperation. The demand reduction measures include both price and tax measures as well as several non-price measures. In recognition of the evidence that price and tax measures are an effective and important means of reducing tobacco consumption by various segments of the population, in particular young persons, the FCTC advocates that Parties implement tax and price policies aimed at reducing tobacco consumption. It also recommends prohibition or restriction of tax and duty-free sale or importation of tobacco products (Article 6).

The non-price measures include protection from exposure to tobacco smoke in public places (Article 8), ban or restriction of tobacco advertising, promotion and sponsorship (Article 13), programmes to promote tobacco cessation (Article 14), regulation of packaging and labelling of tobacco products to provide effective health warnings and prohibit misleading messages (Article 11), regulation of the contents of tobacco products (Article 9), regulation of tobacco product disclosures (Article 10) and programmes for education, communication, training and public awareness (Article 12).

The supply reduction measures recommended by the FCTC are elimination of all forms of illicit trade in tobacco products (Article 15), sales to and by minors (Article 16) and provision of support for economically viable alternative activities for tobacco workers and growers (Article 17). The key features of the main articles of the FCTC are listed in Table 6.3. The full text of the FCTC is available on the websites www.fctc.org and www.who.int.

Table 6.3 What does the FCTC recommend?

Taxation and duty-free sales

Tax policies should aim to help tobacco control.

- Tax and price policies to promote tobacco control recommended for national-level action

Duty-free sales are discouraged.

- Countries may prohibit/restrict duty-free sales and importation

Second-hand smoke (Article 8)

Non-smokers must be protected from exposure to tobacco smoke. Such protection must extend to

- Indoor workplaces
- Public transport
- Indoor public places
- Other public places, as appropriate

Product regulation and ingredient disclosure (Articles 9 and 10)

Tobacco products are to be regulated.

- The COP shall propose guidelines for testing and measuring the contents and emissions of tobacco products and for further regulation of these contents and emission
- Countries shall adopt and implement measures for such testing, measuring and regulation

Ingredients are to be disclosed

- Manufacturers and importers shall disclose, to governmental authorities, information on contents and emission
- Measures for public disclosure of information about toxic constituents and emissions

Packaging and labelling (Article 11)

Large health warning labels are required.

- Rotating warnings
- Large, clear, visible and legible
- Should be 50% or more of the principal display areas (shall not be less than 30%)
- May be in the form of or include pictures/pictograms

Deceptive labels must be prohibited.

- False/misleading term, descriptor, trademark or any other sign shall be prohibited (e.g. 'mild', 'low tar', 'light')

Table 6.3 (cont.) What does the FCTC recommend?**Education, communication, training and public awareness (Article 12)**

Each party shall promote and strengthen public awareness of tobacco control issues.

- Broad access to effective and comprehensive educational and public awareness programmes on
 - Health risks of tobacco consumption
 - Risks of exposure to tobacco smoke
 - Risk of addiction
 - Benefits of tobacco cessation
- Public access to a range of information on the tobacco industry
- Training or sensitization and awareness programmes to various stakeholder groups
- Public awareness and access to information on the health, economic and environmental consequences of tobacco production and consumption

Advertising, promotion and sponsorship (Article 13)

A comprehensive ban is required.

- Restriction regime is permitted only for countries with constitutional barriers
- Minimum package of measures prescribed
- Direct and indirect advertising and promotion covered
- Cross-border advertising subject to ban and penalty
- Protocol on cross-border advertising recommended

Tobacco dependence and cessation (Article 14)

Parties shall take effective measures to promote cessation of tobacco use and adequate treatment for tobacco dependence.

- Design and implement effective tobacco cessation programmes in such locations as educational institutions, health care facilities, workplaces and sporting environments
- Include diagnosis and treatment of tobacco dependence and counselling services on cessation of tobacco use in national health and education programmes, plans and strategies
- Establish tobacco cessation programmes in health care facilities and rehabilitation centres
- Facilitate accessibility and affordability for treatment of tobacco dependence including pharmaceutical products

Smuggling (Article 15)

Action is required to eliminate tobacco smuggling.

- Origin and final destination must be indicated on the packaging
- Develop a practical tracking/tracing regime
- Confiscate products and proceeds of illicit trade
- Cooperate with one another in anti-smuggling, law enforcement and litigation efforts

Sales to and by minors (Article 16)

- Parties shall prohibit the sale of tobacco products to persons under the age set by national law, or eighteen years of age
- Parties shall prohibit or promote the prohibition of the distribution of free tobacco products
- Curbs on or prohibition of tobacco vending machines
- Prohibition of sale by minors, as per national law

Financing (Article 26)

Parties have committed themselves to promote funding for global tobacco control

- Mobilize financial assistance from all available sources for developing countries and economies in transition
- Encourage regional and international intergovernmental organizations to contribute
- Strengthen existing mechanisms for bilateral and multilateral contributions
- COP will consider proposals for a global fund

Support for economically viable alternatives (Article 17)

Parties shall promote, as appropriate, economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers.

Liability (Article 19)

Legal action is encouraged as a tobacco control strategy.

National coordinating mechanism (Article 5)

Each Party shall establish or reinforce and finance a national coordinating mechanism or focal point for tobacco control.

Participation of non-governmental organizations (Articles 12, 20)

Parties shall promote awareness and participation of non-governmental organizations, not affiliated with the tobacco industry, in developing and implementing intersectoral programmes and strategies for tobacco control (Article 12) and cooperate with non-governmental agencies in regional and global tobacco surveillance and exchange of information (Article 20).

Treaty Oversight (Article 23)

A COP will oversee the implementation of the Treaty.

Secretariat (Article 24)

COP will designate a Permanent Secretariat. WHO will act as the Interim Secretariat.

Settlement of Disputes (Article 27)

Parties shall settle disputes through negotiation, mediation or conciliation failing which arbitration will be resorted to as prescribed by the COP.

Financial resources for implementing the FCTC

Recognizing the important role that financial resources will play in achieving the objectives of this Convention, each Party is obliged to provide finances for national activities intended to achieve the objectives of the convention in accordance with its national plans, priorities and programmes (Articles 26 and 5.6).

The Parties have agreed to promote the utilization of existing regional, sub-regional or other multilateral channels to provide funding for multisectoral tobacco control programmes and to encourage relevant regional and international intergovernmental organizations, and financial and development institutions to provide financial assistance to developing country Parties.

The FCTC has no mandated provision for a voluntary global fund. However, the COP at its first session will review the existing and potential sources based on a study conducted by the Secretariat and other relevant information and consider their adequacy. The results of this review shall be taken into account by the COP in determining the necessity to enhance existing mechanisms or to establish a voluntary global fund or other appropriate financial mechanisms to meet the need for financial resources for developing country Parties and Parties with economies in transition.

Reporting and exchange of information

The reporting system ensures supervision, by a designated body, of compliance by the Parties of the prescribed obligations under a treaty. The FCTC has given this mandate to the COP (Article 21). The State Parties are required to submit their initial report to the COP within 2 years of the entry into force of the Convention for that Party. The report has to provide information on the measures a State has taken to implement its obligations under the Convention and the

difficulties it faces in such implementation.

The Convention also requires Parties to provide information on various specified measures, such as rates of taxation for tobacco products and trends in their consumption; measures taken for introducing a comprehensive ban on advertising; expenditures by the tobacco industry on advertising, sponsorship and promotion (if not prohibited); data on cross-border trade in tobacco products, information on the health effects of the consumption of tobacco products and exposure to tobacco smoke, as well as information on legislation and regulations in force and relevant jurisprudence.

Box 6.7 How can India deal with cross-border advertising of tobacco products?

The provisions related to the ban and penalties for cross-border advertising were included in Article 13 of the FCTC, principally due to India's initiative. The sovereign right of countries that have imposed a comprehensive ban on tobacco advertising, promotion and sponsorship to ban cross-border activities of a similar nature is clearly recognized. Such countries can also impose penalties for cross-border violations of such a ban, provided the penalties are on par with those prescribed for domestic violations. The onus thereby shifts from countries having to use sophisticated technologies to block cross-border advertising to tobacco manufacturers and their agents who have to ensure that the cross-border ban is not violated. However, imposing monetary penalties or prison sentences on foreign violators may be a difficult and long-drawn process under international law. India can overcome that obstacle by prescribing the penalty of suspension of marketing licence of an advertised tobacco product, under the domestic law. This could be in the form of suspension of the licence for a period of six months for the first violation and a year for each of the subsequent violations. Once this penalty is applicable to domestic violators, it would also become applicable to a cross-border violator who is marketing tobacco products in India. This would act as a deterrent to a foreign tobacco manufacturer, who would then have to take care not to place advertisements in channels which enter India. The Indian Act needs to be amended to incorporate such a provision, to erect a strong barrier against the entry of cross-border advertising, promotion and sponsorship into the Indian territory.

What more does India need to do to implement the FCTC?

Under the Constitution of India, the authority to enter into treaties and international agreements and to subsequently ensure their implementation vests with the Central (Union) Government (Article 248 read with entry 14 of Schedule VII). Under international law there is a general duty for a Party to ensure that its municipal law is in conformity with its treaty obligations but there is no express requirement to incorporate a treaty into a separate law if provisions of the treaty can be implemented by existing legislative or other measures.

The Indian Government has been pursuing a proactive and bold strategy for tobacco control. The Indian Act, whose enactment preceded the adoption of the FCTC by the World Health Assembly, goes beyond the obligations set out in the FCTC in many respects. It provides clearly prescribed requirements in key areas such as on prohibition of smoking in public places, ban

on advertising of tobacco products, packaging and labelling and sale to minors.

The following measures, however, are required to be undertaken by India to fully implement the obligations under the FCTC: prohibition on use of false descriptors; rotation of messages; sale by minors; setting up a national coordinating point for tobacco control to monitor the actions taken to implement the treaty in India; allocation of funds for tobacco control; initiatives to provide training or sensitization and awareness programmes on tobacco control to health workers, community workers, social workers, media professionals, educators, decision-makers, administrators and other concerned persons; develop and implement intersectoral programmes and strategies for tobacco control programmes aimed at promoting the cessation of tobacco use, and providing information on tobacco industry disclosures.

Table 6.4 provides a comparison of the FCTC with the Indian Act and indicates where additional legal or administrative measures need to be taken, to ensure full compliance with the FCTC.

Table 6.4 Main provisions of the FCTC compared with The Cigarettes and Other Tobacco Products Act, 2003

Issue	Provision in the FCTC	Provision in the Indian Act
Taxes	It formally recognizes that the tax and price measures are an important way of reducing tobacco consumption and therefore recommends that Parties should adopt or maintain appropriate measures which may include implementation of tax and price policies on tobacco products so as to contribute to the reduction of tobacco consumption.	This is not a legislative measure and hence not a part of the Indian Act. The recommendation in the FCTC would be useful for advocacy with the Ministry of Finance to progressively increase taxes on tobacco products.
Duty-free sales	It prohibits or restricts, as appropriate, sale or importation of tax and duty-free tobacco products.	This is not a legislative measure but would require administrative action by the Ministry of Finance.
Second-hand smoking	It requires that each Party, as per national law, shall adopt and implement measures to provide for protection from exposure to tobacco smoke in public places.	This aspect is effectively covered in the Indian Act and public places are defined very comprehensively in the provisions of the Act and clarified in the relevant rules which have been subsequently notified.
Content regulation	It states that the COP shall propose guidelines for testing and measuring contents and emissions of tobacco products and the signatories will adopt and implement the same with the approval of competent national authorities.	Provision for testing and measuring the nicotine and tar content of tobacco products (where applicable) have been included.
Regulation of tobacco product disclosures	It imposes a dual obligation on each State Party, first by requiring it to seek information from the manufacturers and importers of tobacco products, about the contents and emissions of such products, and second to disclose relevant information to the public.	Section 7(5) of the Indian Act requires that information regarding the nicotine and tar contents in each cigarette or other tobacco product along with maximum permissible limits have to be indicated on every package of cigarettes or any other tobacco product. This obligation extends to the producers,

Table 6.4 (cont.) Main provisions of the FCTC compared with The Cigarettes and Other Tobacco Products Act, 2003

Issue	Provision in the FCTC	Provision in the Indian Act
		<p>suppliers and the distributors. However, there is no obligation under the Act requiring manufacturers and importers to disclose information about the contents and emissions of tobacco products to the government and similarly there is no obligation on the government for public disclosure of this information. Therefore, appropriate provisions to provide for the same are required to be introduced in the Act/Rules. This is essential since the government requires information to be obtained on the several constituents of tobacco products and their emissions, besides tar and nicotine.</p>
Packaging and labelling	<p>It requires that effective measures shall be taken, within three years after entry into force of the Convention, to ensure that tobacco product packages do not give misleading descriptors such as 'low tar', 'ultra-light', 'mild', etc. which create the false impression that a particular tobacco product is less harmful than others. The packaging should also contain information on constituents and emissions of the tobacco product.</p>	<p>There is no provision in the Indian Act which specifically prohibits the use of misleading terms. Such prohibition may be introduced while defining the rules related to the packaging and labelling will contain detailed regulations for warnings and disclosure of constituents on tobacco product packs. The measures in this regard would be required to be taken either through an amendment in the Act or by a specific provision under the rules.</p> <p>The Indian Act, however, requires that information regarding the nicotine and tar contents in each cigarette or other tobacco product along with maximum permissible limits have to be indicated on every package of cigarettes or any other tobacco product. This obligation extends to the producers, suppliers and distributors. The size of the letters or figures regarding the indication of nicotine and tar contents would be prescribed by the rules.</p>
Health warnings	<p>It recommends that at least 30%, but preferably 50% or more, of the principal display area of the packages of tobacco carry rotating health warnings that are large, clear, visible, legible and may be pictorial.</p>	<p>It suggests prominent warnings, including pictorial warnings on not less than one of the largest panels of the package. The health warnings should include a pictorial depiction of skull and crossbones and any other such warnings may be prescribed. The exact sizes of the health warnings will be detailed in the rules which are to be notified.</p>
Education, communication, training and public awareness	<p>It requires that Parties promote and strengthen public awareness of tobacco control issues using all available communication tools as appropriate. These measures include broad access to comprehensive public awareness campaigns on the adverse health, economic and environmental consequences of tobacco use and participation of public, private agencies and NGOs in the development of inter-sectoral strategies for tobacco control.</p>	<p>Since these are not legislative measures, they are not included in the Indian Act. These require administrative actions led by the Ministry of Health but also involving other relevant ministries to mobilize multiple stakeholders, engage the civil society and utilize public-private partnerships.</p>
Advertising, promotion and sponsorship of tobacco products	<p>It requires Parties to implement a comprehensive ban, within five years of the Convention entering into force. It also contains provisions for countries that cannot implement a comprehensive ban, due to constitutional barriers, to restrict tobacco advertising, promotion and sponsorship within the limits of their laws.</p> <p>Parties which have imposed a ban on advertising have the sovereign right to ban cross-border tobacco advertising, promotion and sponsorship as well as to impose equal penalties as applicable to domestic violations of the ban on advertising,</p>	<p>The Indian Act imposes a total ban on direct and indirect advertising of cigarettes and other tobacco products, and also prohibits sponsorship of sports and cultural events. The obligation not to advertise extends to producers, suppliers and distributors; to persons who control the media; and to models who take part in advertisements which promote the use and consumption of cigarettes or any other tobacco product. Point-of-sale advertising is, however, permitted. This too would need to be</p>

Table 6.4 (cont.) Main provisions of the FCTC compared with The Cigarettes and Other Tobacco Products Act, 2003

Issue	Provision in the FCTC	Provision in the Indian Act
	promotion and sponsorship. Parties are also required to consider the elaboration of the protocol for international collaborative action for a comprehensive ban on cross-border advertising promotion and sponsorship.	banned or markedly restricted to make the Indian Act fully compatible with the FCTC. The Indian Act does not have any specific provision on cross-border advertising (Box 6.7) but cross-border advertising can be regulated under the Act as it puts an obligation on the persons controlling the media not to advertise cigarettes or other tobacco products. Therefore, the media would be responsible for transmitting any transnational advertising in or out of the country. This would of course be subject to the technical means and competence available with the media.
Surrogate advertising	This aspect is covered under the definition of 'tobacco advertising and promotion'.	The ban on advertising also extends to indirect advertising.
Tobacco cessation	It requires the promotion of effective measures for cessation of tobacco use and adequate treatment for tobacco dependence.	This is not a legislative measure. It requires administrative action by the Ministry of Health and allied agencies to expand and strengthen existing tobacco cessation programmes.
Illicit trade	It recognizes that elimination of all forms of illicit trade in tobacco products including smuggling; illicit manufacturing and counterfeiting are essential components of tobacco control. Therefore, each Party shall implement measures to ensure that all packages of tobacco products are marked to assist in determination of the origin of the product and monitored to control the movement of these products.	This is not part of the Act, which deals mainly with demand reduction measures. The measures to curb illicit trade are included in the Customs Act 1962, which would need review and amendment, as appropriate, to incorporate the specific recommendations of the FCTC.
Sale to and by minors	It requires implementation of measures at the appropriate government level to prohibit sales of tobacco products to minors. These measures, <i>inter alia</i> , include: placement of prominent indicators at the point of sale about the prohibition of sale to minors and prohibition of sale of cigarettes individually or in small packets, which increase the affordability of the same to minors. It also includes prohibition of sales of tobacco products by minors.	Prohibition of sale to minors is covered in the Indian Act. The detailed measures are to be included in the rules. To limit accessibility of tobacco to minors, the Act also bans the sale of tobacco products within 100 yards of educational institutions. The Act, however, does not have any provision which prohibits the sale of cigarettes or other tobacco products by minors or in department stores where consumers have direct access to store-shelves and vending machines. The sale of cigarettes, etc. individually and in small packets is also not prohibited. These provisions need to be incorporated into the Indian Act.
Support for economically viable alternative activities	It states that Parties shall, in cooperation with each other and competent international organizations, promote economically viable alternatives for tobacco workers, growers and, as the case may be, individual sellers.	These actions are not covered in the Indian Act since they are not legislative measures. Administrative measures need to be taken by the government, especially at the level of the Ministry of Agriculture and the Ministry of Labour.
Financial resources	Parties are required to provide financial support to national tobacco control programmes. They are also required to promote the utilization of bilateral, regional, subregional and other multilateral channels to provide funding for the development and strengthening of multisectoral comprehensive tobacco control programmes of developing country Parties.	This is not part of the Act. The Ministry of Health would need to identify the means by which adequate financial support can be mobilized from both national and international sources for supporting the effective implementation of a comprehensive national tobacco control programme.

Table 6.4 (cont.) Main provisions of the FCTC compared with The Cigarettes and Other Tobacco Products Act, 2003

Issue	Provision in the FCTC	Provision in the Indian Act
	The COP in its first session shall review existing and potential sources and mechanisms of assistance to developing country Parties in implementing the convention based on a study conducted by the WHO. The results of this study shall be taken into consideration in determining the necessity to enhance existing mechanisms or to establish a voluntary global fund or other appropriate financial mechanism to channel additional financial resources to developing country Parties in meeting the objectives of the Convention.	India was the initial proponent and later a strong advocate of the creation of a global fund mechanism for assisting developing countries in the implementation of comprehensive tobacco control programmes incorporating both demand-side and supply-side actions. It would need to continue this role as a member of the COP.
Liability	Parties to the Convention are encouraged to consider taking legislative action to deal with civil and criminal liability, including compensation by the tobacco industry where appropriate.	This is not part of the Indian Act. There is a need to evolve national policies on issues related to liability and compensation.

6.2 THE WHO FCTC AND ITS IMPLICATIONS FOR INDIA

KEY MESSAGES

- The World Health Assembly adopted the Framework Convention on Tobacco Control (FCTC) at its 56th Session in May 2003. India was the eighth country to ratify the convention on 5 February 2004.
- The FCTC does not clearly lay down a law which shall be universally applicable, but sets out guidelines for various national and international measures that would encourage smokers to quit and restrain non-smokers from taking to the habit.
- India advocated strong provisions in the FCTC and was unanimously elected as the coordinator of the countries belonging to the WHO South-East Asian Region. India's effective leadership in the negotiations and strong advocacy of pro-public health positions was acclaimed and 'awarded' by civil society groups.
- The widening support for tobacco control led to a Tobacco Control Bill being introduced in Indian Parliament, even as the FCTC negotiations got under way at Geneva. The strong provisions of the Tobacco Control Bill, approved by the Indian Cabinet for introduction in Parliament, enabled the Indian delegation to adhere to firm advocacy of a strong FCTC.
- After its adoption by the World Health Assembly in May 2003, the FCTC was opened up for signature and ratification by Member States of WHO. By the end of June 2004, 168 countries had signed the FCTC and 23 countries had ratified it after obtaining the approval of their respective national Parliaments/Cabinets. The FCTC would come into force when 40 countries have ratified it. All countries who become parties to the Convention, through ratification or accession, constitute the Conference of Parties (COP).
- Several demand reduction measures and some supply reduction measures have been recommended along with mechanisms for establishing and enhancing international cooperation. The reporting system of the FCTC ensures supervision, by a designated body (COP), of compliance by the Parties of the prescribed obligations under a treaty.
- The Indian Government has been pursuing a proactive and bold strategy for tobacco control. Although the Indian Act goes beyond the obligations set out in the FCTC in many respects, there is a need for some additional measures to be taken, to ensure full conformity with the FCTC.