

Pictorial health warnings on tobacco products in India: Sociopolitical and legal developments

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HEALTH WARNINGS IN INDIA: HISTORY AND CHALLENGES

As a result of the US Surgeon General's Report in 1964, health warning labels on cigarette packages were first introduced in the USA in 1965 to inform consumers about the health risks associated with tobacco use. The health warning 'Caution: Cigarette smoking may be hazardous to your health' was required to be placed on every cigarette pack. Ten years later in 1975, the Government of India passed legislation with the intent to provide for similar restrictions in relation to trade and commerce in, and production, supply and distribution of, cigarettes. This legislation introduced the first 'text only' health warning, 'cigarette smoking is injurious to health', for all cigarettes and cigarette advertisements in India.¹

This, however, was not very effective in terms of informing tobacco users in India about the adverse health effects of tobacco use, since the warnings were mandated only on cigarettes, while the majority of tobacco users in India do not use cigarettes. All other non-cigarette tobacco products, including *bidi*, *cheroot*, cigar, *gutkha* and chewing tobacco, were still being sold sans the specified warnings. Other challenges contributing to the effectiveness of these warnings were: varied and high usage of tobacco products across diverse social, linguistic, economic and demographic groups of the country, coupled with an illiteracy rate of above 30%.

Nevertheless, with enhanced scientific knowledge and vigorous civil society activism against tobacco use globally, public awareness of tobacco-related health issues gained momentum in India. This led to a number of activities, proposals and developments. The major activities around various tobacco control issues included:

- 1 In the 1980s, civil society groups (Goa Cancer Society, Health Or Tobacco [HOT], Action Against Tobacco: Indian Organizations Network [ACTION], National Organization for Tobacco Eradication [NOTE] and others) and the media advocated for stronger tobacco control policies.
- 2 In 1995, reviewing the Cigarettes Act of 1975, the Parliamentary Committee on Subordinate Legislation of the 10th Lok Sabha, in its 22nd report, suggested strongly worded statutory rotating warnings made effective through the use of symbols and pictorial depiction. It also recommended that such warnings should be large, on all products and printed in regional languages as well.
- 3 In 2001, the Parliamentary Standing Committee on Human Resource Development, considering the new tobacco control legislation bill, recommended mandatory pictorial depiction of warnings, such as skull and crossbones, on packages of cigarettes and other tobacco products.

- 4 During 1996–2002, the governments of Delhi, Goa, West Bengal, Assam, Tamil Nadu and other states enacted state legislations prohibiting smoking in public places, while the High Court of Kerala in 1999 and the Supreme Court of India in 2001 reiterated the need for smoke-free public places.
- 5 In 2001, the National Human Rights Commission of India (NHRC) advocated tobacco control as an essential measure to protect human rights.
- 6 During 2001–2003, state governments imposed a ban on the production and sale of *gutkha* and *pan masala*.
- 7 The Advocacy Forum for Tobacco Control (AFTC), a national alliance of non-governmental organizations (NGOs) formed in 2001, advocated for a comprehensive tobacco control law in India.

These developments provided the thrust and a favourable environment for the introduction of robust tobacco control legislation in India. Simultaneously, the first global public health treaty on tobacco control was being framed. Finally, in 2003, India adopted a comprehensive tobacco control law, while global efforts culminated in the adoption of WHO's Framework Convention on Tobacco Control (FCTC).

AN EFFECTIVE PUBLIC HEALTH POLICY

As in other developing countries, India too suffers stage 2 of the tobacco epidemic, hosting nearly 17% of the world's smokers,² with the number constantly on the rise. Article 11 of the FCTC recognized pictorial health warnings on tobacco products as one of the proven strategies to inform consumers of the harmful effects of tobacco on health. Countries that adopted pictorial warnings recorded a reduction in tobacco use through greater exposure to the warning labels³ and enhanced knowledge of health.⁴

Article 11 stipulated a time period of 3 years for parties to ensure the introduction of health warnings on tobacco products in their countries and issued guidelines⁵ on developing effective, evidence-based and appropriate health warnings.

IMPLEMENTATION OF TOBACCO CONTROL LEGISLATION

India enacted the Cigarette and Other Tobacco Products (Prohibition on Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) as a public health legislation that had already assimilated the key objects of the FCTC in discouraging and prohibiting the consumption of tobacco products. Section 7 of the Act makes it mandatory to display pictorial warnings on all tobacco products and the legislation prohibits the sale and import of tobacco products without the specified warnings.

The rules to enforce Section 7 were notified in July 2006, when a public-spirited citizen demanded its implementation through a public interest litigation (PIL) filed in 2004 before the High Court of Himachal Pradesh in Shimla. This triggered the Government of India into action and it formulated rules related to this section. This was followed by numerous sociopolitical blockades, along

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with the industry piling up multiple litigations in various high courts across the country, challenging the constitutionality and implementation of the rules. Only after 3 years of battle, both within and outside the court rooms, was an order from the Supreme Court of India passed, ensuring the enforcement of this provision from 31 May 2009.

THE ROLE OF STAKEHOLDERS IN INFLUENCING IMPLEMENTATION

A SWOT analysis

Research and advocacy by multiple stakeholders from diverse sectors led to the development, designing, notification, delay, deferment, dilution and implementation of the pictorial health warnings. As the COTPA envisioned replacing the text-alone health warnings of the 1975 Act, the Ministry of Health and Family Welfare engaged HRIDAY (Health Related Information Dissemination Amongst Youth), an NGO based in Delhi, to develop evidence-based pictorial warnings for India. HRIDAY field-tested a number of pictorial warnings and recommended the most effective ones to the ministry. Of these, the ministry notified 4 strong pictorial warnings (Fig. 1), along with the one depicting the skull and crossbones. The warnings were notified in July 2006 and were to come into force from 1 February 2007.

However, the tobacco industry, in particular the *bidi* industry, was up in arms against these pictorial warnings, leading to a cacophony within various government departments. This led to the constitution of a Group of Ministers (GoM, an empowered group of ministers constituted by the Prime Minister to deal with certain crucial matter[s] facing the Government of India and to suggest appropriate measures to deal with the same) to reconcile the whole issue and suggest the best way to implement the notification. The industry was able to influence the GoM and get the skull and crossbones removed through an amendment of the COTPA (Fig. 2), on the pretext that it was repulsive and affected the religious sentiments of certain sections of society in India.⁶

However, civil society continued to counter these baseless arguments by producing scientific evidence and undertaking strategic media advocacy. A survey conducted across 4 metropolises of India in early 2008 revealed that 99% of the respondents supported larger, more effective pictorial warnings on all tobacco products.⁷ Table I provides a SWOT analysis of where India stands currently on the issue of pictorial health warnings on tobacco product packages.

The dilution did not stop at that; the GoM met again and revised the pictorial health warnings, and selected 3 mild and non-communicative images for notification (Fig. 3).⁸ Furthermore, it reduced the coverage area of the warnings from 50% of the principal display area on both sides of the pack to 40% of the principal display area on only the front panel of the pack. Also the wholesale, semi-wholesale and *poora* packages (wholesale packages of *bidi*) of tobacco products were exempted from depicting the health warnings.⁹

THE WAY FORWARD

Though the Indian tobacco control law remains a benchmark and the epicentre of tobacco control efforts in the country, the changing political scenario and aggrandisement of the industry have pressurized the government to backtrack on and slow down the implementation of its provisions. Loss of employment of *bidi* workers has been a hackneyed argument used by the industry to influence political decision-making to its advantage. Alternative options of livelihood for the *bidi* workers and tobacco growers



FIG 1. Pictorial warnings as notified in 2006



FIG 2. Pictorial warnings notified after the amendment of the Cigarette and Other Tobacco Products Act (COTPA), 2003 in 2007



FIG 3. Pictorial health warnings introduced in India from 31 May 2009

TABLE I. SWOT analysis of current legislation on pictorial warnings in India

Strengths	Weaknesses
Besides being a mandate of the law (Section 7 of the COTPA), there was strong civil society pressure for the implementation of pictorial warnings.	<ol style="list-style-type: none"> 1. Provision of law diluted by amendment. 2. Pictorial warnings are not depicted in the local languages as initially required; the final set of rules diluted this provision which was important for Indian consumers. 3. Multiple and time-taking litigations keep the issue in abeyance. 4. Lack of clear guidelines for implementing the packaging and labelling rules marred its implementation.
Opportunities	Threats
The health warnings are rotational in nature and strong and effective warnings for the next round could be advocated by civil society.	<ol style="list-style-type: none"> 1. Abridged and weak implementation of the provisions and lack of a review, monitoring and reporting mechanism to oversee enforcement reduces the significance of this important public health measure. 2. Violations by the tobacco industry are rampant and this may lead to further dilution of the pictorial warnings while stalling their rotation.

need to be urgently worked out by the government to once and for all counter the gimmicks of the tobacco industry.

In the long run, along with measures to reduce the demand for

tobacco, the government will need to take steps in the area of supply, such as reducing tobacco cropping and making provisions for economically viable alternatives for those engaged in growing and manufacturing tobacco.

Though Article 5.3 of the FCTC requires parties to protect tobacco control policies from commercial and other vested interests of the tobacco industry, the industry has been able to systematically influence tobacco control policies in India by building public relations, using lobbying tactics, creating legal hurdles, ignoring evidence and manipulating public opinion through the media. These tactics are invariably laced with euphemisms and industry code terms designed to portray their pro-tobacco efforts in a good public light.¹⁰ The industry continues to contest every rule framed by the Ministry of Health to implement the pictorial warnings and challenge them up to the apex court of India. It contended breach of its right to trade and business, challenged the constitutionality of the COTPA and contested every rule framed, calling in question the authority of the ministry to frame the rules.

Though the legislation for regulating tobacco products is based on improving public health, it is in conflict with interests at other levels, viz. trade and commerce, agriculture, industry, labour and employment, which undermine and impede tobacco control in India. It is necessary that a holistic approach to tobacco control is adopted and its *raison d'être* is clear across the government and civil society alike. The medical community is an important stakeholder and can play a major role as an authentic advocate in explaining this *raison d'être*, with the support of scientific and medical evidence, in particular to policy-makers and other major stakeholders in tobacco control. Since tobacco use remains a constant medical and public health challenge, specific research and advocacy by the medical community would have a positive influence on the tobacco control policy and help enable the country achieve a reduction in the tobacco epidemic.

The framework for effective implementation of pictorial warnings, hence, would depend on the level of consensus among various stakeholders and the level of social, economic, legal and political commitment to uphold the health of Indians above other commercial interests. The provision in the law that pictorial warnings are to be rotated every 12 months kindles a hope that stronger and effective pictorial messages could be adopted by consensus among various stakeholders in the next round. To achieve this goal, every given opportunity for creative communication and advocacy in support of pictorial warnings needs to be utilized so that the gaps identified are addressed in time.

EPILOGUE

Government coerced to backtrack from its public health responsibility

Since 31 May 2009 all tobacco products in India are required by law to display pictorial health warnings (Fig. 3). In keeping with the mandate of the law, rotation of warnings within 12 months, the Ministry of Health, on 5 March 2010 notified a new set of warnings of 'mouth cancer' (Fig. 4), field tested for effectively communicating the hazards of tobacco use, to replace the earlier warnings from 1 June 2010. However, the tobacco industry with support from key members of the government (as revealed through a Right to Information application) was able to delay its implementation till 1 December 2010.

The delay coupled with anticipated interference by the tobacco industry put public health organizations, concerned with tobacco control, into action for taking urgent advocacy efforts to

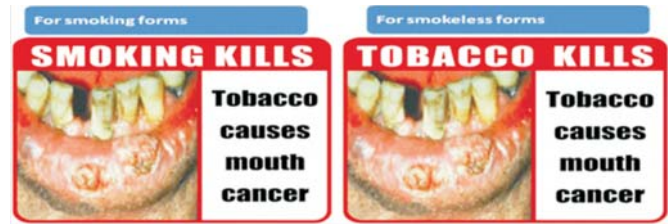


Fig 4. Field-tested warnings notified for rotation in March 2010

seek implementation of the 'mouth cancer' warnings from 1 December 2010 without any delay. An exhibition of the pictorial health warnings from across the world was organized by HRIDAY and the Public Health Foundation of India (PHFI) at Pragati Maidan, New Delhi during the India International Trade Fair, 2010 to garner public support for implementation of these warnings. As a result, more than 13 000 signatures and over 12 500 opinion polls, supporting implementation of the notified pictorial warnings of 'mouth cancer', were submitted to the Prime Minister, Health Minister and shared with all concerned policy-makers in the country and disseminated widely through the media. The opinion poll results highlighted that 80% of respondents reported that the notified 'mouth cancer' warning was most effective compared with other existing warnings (Fig. 3).

The tobacco industry panicked because of the wide public and media support for implementation of 'mouth cancer' warnings and decided to coerce the government by announcing a closure of production in their factories and published the loss of revenue incurred per day to the exchequer. The government succumbed to the industry tactics and amended the 2008 notification on 20 December 2010 and revised rotation of warnings to every 2 years instead of 12 months. The tobacco industry will now continue to display the mild warnings till 30 May 2011 (the new due date for rotation) with no clarity on the fate of the field-tested warnings.

Yet again the tobacco industry has derailed a major public health initiative for tobacco control, this time with a rather open threat to the exchequer, thus forcing the government to undermine public health.

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