

# Tobacco Industry Interference Index: Implementation of the World Health Organization's Framework Convention on Tobacco Control Article 5.3 in India

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## Abstract

In India, there has been no attempt to measure the implementation of World Health Organization's Framework Convention on Tobacco Control Article 5.3, which provides guidelines to address tobacco industry interference (TII). This study draws on a desk review conducted to assess the frequency and severity of TIIs and the government's response, reported between January and December 2017. This study highlights that the government of India does not allow tobacco industry to participate in policy development. However, the industry interferes by collaborating with the government's allied organizations. The tobacco industry has diversified as food industry in India, and directly or indirectly supports various government programs, by investing through their corporate social responsibility schemes. In addition, there are limited legislative measures to allow transparency in adoption of Article 5.3 guidelines across the country. Hence, the findings of this study underscore an exigent need to adopt and implement Article 5.3 at the national level in India.

## Keywords

WHO FCTC, Article 5.3, tobacco industry interference, tobacco control, India

## What We Already Know

Tobacco industry interference (TII) is a major road block for implementing tobacco control policies. In order to counteract TIIs, the World Health Organization's Framework Convention on Tobacco Control recommends enforcing Article 5.3 guidelines to Member States for "protection of public health policies from the commercial and other vested interests of the tobacco industry." However, studies have shown that the implementation of Article 5.3 is still suboptimal, especially in low- and middle-income countries. Evidence also highlights that there is a fundamental and irreconcilable conflict between the tobacco industry's interest and public health policies in India.

## What This Article Adds

This study underscores an exigent need to introduce Article 5.3 at the national level to avoid TIIs in India. It also highlights the need to sensitize government, civil societies, and development sector partners on the conflict of interest related to partnership with tobacco industry.

## Introduction

In order to address the preventable epidemic of tobacco use, the World Health Organization (WHO) introduced the first global public health treaty—the Framework Convention on Tobacco Control (FCTC) during the World Health Assembly in 2003. The FCTC, which is now adopted by 181 countries across the globe, provides evidence-based guidelines to the Member States for initiating and accelerating tobacco control efforts.<sup>1</sup> In order to counteract tobacco industry interference

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(TII) and for effective implementation of various tobacco control policies, Article 5.3 of the FCTC specifies “protection of public health policies from the commercial and other vested interests of the tobacco industry.”<sup>1</sup> During the third session of the Conference of Parties (COP) in 2008, all the Member States unanimously adopted Article 5.3 guidelines.

The purpose of Article 5.3 is to restrict, or where applicable, maintain transparent interaction between the government and the tobacco industry.<sup>2</sup> Despite 11 years of adoption of Article 5.3, its effective implementation is still suboptimal, especially in low- and middle-income countries.<sup>3-5</sup> In an extensive analysis of Article 5.3 implementation among 155 FCTC Parties, using Party reports and other documentary data, it was found that only 16% of Article 5.3 guideline recommendations had been implemented across the globe.<sup>6</sup> Weak regulatory environments, interference in policy processes, and close relationships or even formal partnerships between governments and industry actors present challenges to effective implementation of Article 5.3.<sup>7</sup>

In India, evidence highlights that there is a fundamental and irreconcilable conflict between the tobacco industry’s interest and public health policies.<sup>8</sup> The tobacco industry has been a major roadblock, subverting the implementation of tobacco control policies in the country. For example, the tobacco industry lobbied to dilute and delay the decision on implementation of 85% pictorial health warnings (PHWs) in India.<sup>9</sup> In addition, the tobacco industry protested against the seventh COP (COP 7) held in Delhi in 2016. During COP 7, industry front groups protested against their exclusion from COP and labeled it as “undemocratic.”<sup>10</sup>

Prior to becoming one of the earliest signatories to WHO FCTC, the government of India enacted the Cigarettes and Other Tobacco Products Act (COTPA) in 2003, which aims to implement effective tobacco control laws in the country. In addition, a few states in India issued Article 5.3 notifications in their jurisdictions since 2016.<sup>10</sup> These notifications consist of a set of guidelines to facilitate implementation of Article 5.3. However, there has been no attempt so far to evaluate the implementation of Article 5.3 in the country. This study was conducted with an aim to assess the frequency and severity of TIIs, in order to evaluate the implementation of Article 5.3 in India.

## Methodology

To assess the implementation of Article 5.3 in India, a review of the literature was undertaken. This was done to complete the first India Tobacco Industry Interference Index (India TII Index). The methodology of this study was based on the Southeast Asia Tobacco Control Alliance Tobacco Industry Inference Index (SEATCA TII Index).<sup>11</sup> To conduct this study, frequency (number) and severity (intensity) of TIIs and the government’s response to TIIs were reviewed. The search was restricted to collate data for the year 2017 (January 2017 to December 2017) as the intent was to develop Asia TII Index 2018, where the results

across 14 countries in Asia undertaking this review were compared.

A predefined broad search strategy, using keywords including “tobacco company,” “tobacco industry,” “Article 5.3 FCTC,” and “Government agencies” with synonyms, was employed for this study. The search was conducted to gather and review the incidence of TIIs and the government’s response. The incidence of TII was defined as an act or action by the tobacco industry to submerge the tobacco control laws with regard to public health policies in India. These incidences were searched in several Indian newspaper dailies available online and websites (including Indian government websites and major Indian tobacco industry websites). Other gray literature was also searched on WHO’s website and Campaign for Tobacco-Free Kids. The search was restricted to include incidence in Hindi and English. The incidences in Hindi were translated by the authors into English. Two reviewers independently searched for evidence and discussed them before scoring. Evidence of TIIs collated through these incidences were reviewed against 7 key themes: (1) Level of Industry Participation, (2) Corporate Social Responsibility (CSR) Activities, (3) Benefits to the Tobacco Industry, (4) Forms of Unnecessary Interactions, (5) Transparency, (6) Conflict of Interest, and (7) Preventive Measures. These 7 themes contained a total of 20 indicators (Table 1), which were scored for each incidence of TII.

As per the SEATCA TII Index scoring guidelines, each incidence of TII was scored based on its frequency, severity, and the government’s response. A base score of “3” was given for any incidence of interference. This number was then adjusted based on the severity of the interference and the government’s response. One point (+1) was added for aggravating circumstances, that is, for the actions that were undertaken to promote or support tobacco industry; and 1 point (–1) was subtracted for any mitigating circumstance, that is, for the actions that were undertaken to reduce or lessen the effect of TII (see Supplemental file 1, available online). Therefore, a higher score indicated poor implementation of Article 5.3 measures, and a lower score denoted better implementation of Article 5.3. Each incident could attain a maximum score of 5 and a minimum score of 0. The severity and frequency of each incidence of TII under the 7 themes was scored and averaged.

In order to maintain the scientific integrity of this study, the authors followed the guidelines provided by SEATCA. Regular communication was maintained with the SEATCA to score each indicator accurately. Scoring was reviewed and verified by 4 technical experts, who are civil society representatives and tobacco control experts working on Conflict of Interest and Article 5.3 issues in India.

## Results

Approximately 180 articles (which included newspaper briefs, industry reports, minutes of meetings, etc) were found

**Table I.** India TII Index: Scoring of Key Themes With indicators.

Indicator	Key Themes With Indicators	Score	Maximum Score Possible
<b>I</b>	<b>Level of Industry Participation</b>	<b>6</b>	<b>20</b>
1	The government accepts, supports, or endorses any offer for assistance by or in collaboration with the tobacco industry in setting or implementing public health policies in relation to tobacco control.	3	5
2	The government accepts, supports, or endorses policies or legislation drafted by or in collaboration with the tobacco industry.	0	5
3	The government allows/invites the tobacco industry to sit in government interagency/multisectoral committee/advisory group body that sets public health policy.	3	5
4	The government nominates or allows representatives from the tobacco industry (including State-owned) in the delegation to the COP or other subsidiary bodies or accepts their sponsorship for delegates.	0	5
<b>II</b>	<b>So-called CSR activities</b>	<b>4</b>	<b>5</b>
5	A. The government agencies or its officials endorse, support, form partnerships with or participate in so-called CSR activities organized by the tobacco industry. B. The government (its agencies and officials) receives contributions (monetary or otherwise) from the tobacco industry (including so-called CSR contributions).	4 <sup>a</sup>	5 <sup>a</sup>
<b>III</b>	<b>Benefits to the Tobacco Industry</b>	<b>5</b>	<b>10</b>
6	The government accommodates requests from the tobacco industry for a longer time frame for implementation or postponement of tobacco control law (eg, 180 days is common for PHW, Tax increase can be implemented within 1 month).	0	5
7	The government gives privileges, incentives, exemptions, or benefits to the tobacco industry.	5	5
<b>IV</b>	<b>Forms of Unnecessary Interactions</b>	<b>12</b>	<b>15</b>
8	Top level government officials meet with/foster relations with the tobacco companies such as attending social functions and other events sponsored or organized by the tobacco companies or those furthering its interests.	3	5
9	The government accepts assistance/offers of assistance from the tobacco industry on enforcement such as conducting raids on tobacco smuggling or enforcing smoke-free policies or no sales to minors (including monetary contribution for these activities).	5	5
10	The government accepts, supports, endorses, or enters into partnerships or agreements with the tobacco industry.	4	5
<b>V</b>	<b>Transparency</b>	<b>10</b>	<b>10</b>
11	The government does not publicly disclose meetings/interactions with the tobacco industry in cases where such interactions are strictly necessary for regulation.	5	5
12	The government requires rules for the disclosure or registration of tobacco industry entities, affiliated organizations, and individuals acting on their behalf including lobbyists.	5	5
<b>VI</b>	<b>Conflict of Interest</b>	<b>14</b>	<b>15</b>
13	The government does not prohibit contributions from the tobacco industry or any entity working to further its interests to political parties, candidates, or campaigns or to require full disclosure of such contributions.	5	5
14	Retired senior government officials form part of the tobacco industry (former Prime Minister, Minister, Attorney General)	4	5
15	Current government officials and relatives hold positions in the tobacco business including consultancy positions.	5	5
<b>VII</b>	<b>Preventive Measures</b>	<b>21</b>	<b>25</b>
16	The government has put in place a procedure for disclosing the records of the interaction (such as agenda, attendees, minutes, and outcome) with the tobacco industry and its representatives.	4	5
17	The government has formulated, adopted, or implemented a code of conduct for public officials, prescribing the standards with which they should comply in their dealings with the tobacco industry.	4	5
18	The government requires the tobacco industry to periodically submit information on tobacco production, manufacture, market share, marketing expenditures, revenues, and any other activity, including lobbying, philanthropy, political contributions, and all other activities.	5	5
19	The government has a program/system/plan to consistently raise awareness within its departments on policies relating to FCTC Article 5.3 guidelines.	3	5
20	The government has put in place a policy to disallow the acceptance of all forms of contributions/gifts from the tobacco industry (monetary or otherwise) including offers of assistance, policy drafts, or study visit invitations given or offered to the government, its agencies, officials and their relatives.	5	5
<b>Total score</b>		<b>72</b>	<b>100</b>

Abbreviations: TII, tobacco industry interference; COP, Conference of Parties; CSR, corporate social responsibility; PHW, pictorial health warning; FCTC, Framework Convention on Tobacco Control.

<sup>a</sup>Average score of 5A and 5B.

as a result of the search. Of these 180 articles, 45 articles were relevant, which were then analyzed to assess the frequency and severity of TIIs in India. The findings of the first India TII Index study conducted for the year 2017 are presented under 7 key themes, as elucidated earlier. In total, the India TII Index was scored at 72 out of a maximum score possible (100). This is illustrated in Table 1.

Results are presented under each of the 7 themes.

### *Level of Industry Participation in Policy Development*

The first theme of the India TII Index, “Industry Participation in Policy Development,” obtained a total score of 6 out of the maximum possible score of 20 (Table 1).

While the government of India does not allow the tobacco industry to participate in policy development, the tobacco industry, through varied allied organizations, impedes the development and implementation of public health policies related to tobacco control. On one hand, the Ministry of Health and Family Welfare (MoHFW) has a mandate to strengthen tobacco control policies, and the Ministry of Commerce and Industry has an objective to promote tobacco crop.<sup>12</sup> One of the tobacco industry front group highlights that “various government agencies in India, such as Indian Tobacco Board, under the Ministry of Commerce and Industry, and Central Tobacco Research Institute under the Ministry of Agriculture and Farmers Welfare, are inseparable from the tobacco growers and trade due to interlinked objectives and organizational mandate” (incident a).<sup>13</sup> Consequently, as per the scoring guidelines, an average score of 1 was given to this incident (incident a) (3 base score – 2 Ministry of Commerce and Industry = 1).

In another incident (incident b), the tobacco industry tried to lobby against the implementation of taxes on tobacco leaves and bidi products during the introduction of Goods and Services Tax (GST),<sup>14</sup> but the Government went ahead and imposed 28% GST on all tobacco products. However, the decision to impose additional cess (a form of tax that is levied on certain goods and services including tobacco under Section 8 of the GST Act, 2017) on bidi was postponed in 2017.<sup>15</sup> Therefore, as per scoring guidelines, a score of 4 was given for this incident (3 base score + 1 pleas from lobbying tobacco industry bodies accepted = 4).

Based on these incidents (incident a and incident b), an average score of 3 (1 [score of incident a] + 4 [score of incident b] = 2.5), of the maximum possible score of 5, was given to Indicator 1. Similar scoring guidelines were followed for the next indicators, which were then averaged to derive a final score for the entire theme.

No incidences were found in the public domain where the government accepts, supports, or endorses policies or legislation drafted by or in collaboration with the tobacco industry. Thus, a score of 0 (good implementation of Article 5.3) was given to the corresponding Indicator 2.

Nevertheless, the media reported several occasions where the tobacco industry sent repeated representations to the MoHFW and other ministries, and parliamentary committees, asking to withdraw the large mandatory PHWs.<sup>16</sup> It was found that the tobacco industry has diversified as a food industry and regularly attend meetings of an autonomous body working under the MoHFW, as a food industry representative.<sup>17</sup> Ensuing the above-mentioned incidents of TII and government response, Indicator 3 obtained an average score of 3. On the positive side, it was also evident that the Government of India does not allow the tobacco industry representatives to attend COP to the WHO FCTC, obtaining a score of 0 for Indicator 4.

### *Tobacco Industry–Related CSR Activities*

Based on scores on severity and frequency of incidence for Indicators 5A and 5B, this theme obtained a total score of 4 out of a maximum possible score of 5.

Article 5.3 guidelines recommends Member States to regulate CSR activities by the tobacco industry, to counteract the industry’s vested interests. However, in India, in accordance with the Companies (Amendment) Act 2017, it is mandatory for companies to invest 2% of their profits into CSR activities.<sup>18</sup> Consequently, big tobacco companies in India invest in primary education, sanitation schemes, and health promotion programs by funding various nongovernmental organizations.<sup>19,20</sup> The tobacco industry also promotes agriculture, solid waste management, women empowerment, health and sanitation programs, and overall development, in alignment with varied government schemes at national and state levels.<sup>20</sup> It was also evident that the tobacco companies have diversified into food products, and now, the food industry gets easy access to governments’ programs and partnerships.<sup>21</sup>

### *Benefits to the Tobacco Industry*

The third theme of the India TII Index attained a total score of 5 out of a maximum score of 10.

As per Article 5.3 guidelines, the government should not provide benefits to the tobacco industry in any way. While the tobacco industry tried to derail the implementation of 85% PHWs on tobacco packs by making appeals in the Indian courts, the government of India remained firm with its decision to implement large 85% PHWs.<sup>22</sup> A score of 0 was given to Indicator 6.

Conversely, benefits have been provided to the bidi industry in the forms of exemption from additional cess (tax). For example, the tax exemption for bidi manufacturers effectively widened under the GST regime from the units that produced less than 2 million sticks to units with less than INR 2 million annual turnovers.<sup>23</sup> Tax exemption is also available for small registered manufacturing companies with less than 20 workers.<sup>23</sup> Benefits and subsidies have also been given to



tobacco growers and exporters.<sup>24</sup> Thus, Indicator 7 obtained the highest (maximum) possible score of 5.

### *Unnecessary Interactions With the Tobacco Industry*

This theme obtained a total score of 12 out a maximum score possible of 15.

In India, the Indian Tobacco Board works with a motive to support tobacco growers (Flue-cured Virginia tobacco growers) and industry.<sup>25</sup> Indian Tobacco Board also sponsors, assists, coordinates, and encourages research and activities for the promotion of tobacco.<sup>25</sup> Moreover, Central Tobacco Research Institute conducts research to enhance the productivity and manufacturing of tobacco.<sup>26</sup> In addition, according to a media report,<sup>27</sup> a state Agriculture Minister in India, Members of Parliaments (MPs), Members of Legislative Assembly (MLAs) along with Tobacco Institute of India and Indian Tobacco Board were not only present at an award function organized by the tobacco industry but also encouraged tobacco growers to interact with state and central governments and advocate for decreasing tobacco taxes and increasing tobacco production. Thus, based on the above-mentioned incidents, an average score of 3 was given to the Indicator 8.

It was found that the industry bodies along with the government are carrying extensive research and activities to address the issues regarding illicit trade and tobacco smuggling in India.<sup>28</sup> A high score of 5 was given to the corresponding Indicator 9.

Five insurance companies, along with a government-owned company, have a 32% stake in a leading tobacco company in India.<sup>29</sup> Investment by such government-owned and recognized organizations and companies directly conflicts with the government's tobacco control agenda in India, based on which Indicator 10 obtained a score of 4.

### *Transparency Measures*

No media reports or government reports were found on government websites that require disclosure of meetings with the tobacco industry under Article 5.3, which led to score of 5 for Indicator 11. In addition, Indicator 12 also attained a maximum score of 5 as there are no rules at the national level in India, which require the disclosure of interactions between the government officials and the industry representatives. Hence, the theme of "transparency measures" obtained the highest maximum score of 10.

### *Conflict of Interest*

Based on the incidences of TII and government response for Indicators 13 to 15, this theme obtained a total score of 14 out of a maximum possible score of 15.

It was found that there is no national law related to Article 5.3 in the country that restricts the officials or other organizational bodies from taking contributions from the tobacco industry in any form. In fact, various members of the tobacco industry hold positions or serve as members of various national and state governing bodies in India,<sup>30</sup> which is inconsistent with the principle of conflict of interest of Article 5.3 guidelines.

### *Preventive Measures*

In the given timeline, 10 states, at state level or district level, in India had issued Article 5.3 notifications in their jurisdiction.<sup>10</sup> National-level guidelines for effective adoption and implementation of Article 5.3 do not exist. Following the incidents for Indicators 16 to 20, this theme attained a score of 21 of the maximum possible score of 25.

### **Discussion**

The findings of this study highlighted that the tobacco industry in India collaborates with various public and private organizations, which indicates its direct or indirect engagement with the government and its programs. Similar tobacco industry tactics have been documented in the global literature, illustrating industry's influence on public health policies through its allied organizations.<sup>31</sup> In addition, the findings of this study have shown the diversification of tobacco industry into food and other industries. As members of the food industry, tobacco companies partner with government in implementing national health programs and services.<sup>32</sup> Consequently, the findings of this study reveal the involvement and penetration of the tobacco industry in various public and private sectors, which derails the effective implementation of Article 5.3 in India.

This study also highlighted that CSR activities are an entry point for the tobacco industry to build public-private partnerships with various health and nonhealth sectors in India. Existing global literature also supports such instances and point toward the misleading nature of CSR activities by the tobacco industry.<sup>33</sup> Some Asian countries like Thailand and Sri Lanka have completely banned CSR activities to counteract conflict of interest.<sup>34</sup> However, India still requires to denormalize tobacco industry participation in CSR activities to curb conflict of interest within various health and nonhealth sectors.

Additionally, the findings of this study emphasized that while 10 states in India have issued Article 5.3 notifications, no rules have been adopted at the national level that restrict or limit interactions between government officials and the tobacco industry. The study highlighted that there is a lack of law in the country that prevents officials and other organizational bodies (from health or nonhealth departments) from taking contributions or partnering with the tobacco industry. This further aggravates the issue of conflict of interest.

The findings of this study were included in the Asia TII Index 2018 developed by SEATCA.<sup>34</sup> The Asia TII Index highlighted the implementation of Article 5.3 in 14 countries (Brunei, Cambodia, Indonesia, Lao People's Democratic Republic, Malaysia, Myanmar, Philippines, Thailand, Vietnam, Bangladesh, India, Japan, Republic of Korea, and Sri Lanka). Of the 14 countries included in the Asia TII Index, India's score was 72 and was ranked fourth from bottom, when all countries were organized on scores ranging from 21 (Brunei) to 85 (Japan).<sup>34</sup> As per the Asia TII Index 2018, this score highlights the need for curbing TIIs in India to reach a lower score (better implementation of Article 5.3). Countries like Thailand (score 42), Philippines (score 45), and Sri Lanka (score 51) showed better implementation of Article 5.3 in the Asia TII Index as compared with India.

While the SEATCA TII Index has been standardized and is in use for many years providing clear guidelines on how to assign and adjust scores, there could be small degree of subjectivity. The results relied on publicly available information, and assessor's interpretation of frequency and severity of TIIs was a concern while undertaking this study. We kept the later to a minimum through periodic exchanges among researchers (including developers of SEATCA TII Index tool), and reviews by technical experts were involved to assign scores. Nonetheless, using this index creates a benchmark that can document and track progress on Article 5.3 implementation in India. This has important implications for monitoring TIIs, and thereby informing multistakeholder action to strengthen tobacco control in India.

## Conclusion

This study underscores an exigent need to introduce Article 5.3 at the national level to avoid TIIs in India. It also highlights the need to sensitize government and nongovernmental organizations and development sector partners and civil society on the conflict of interest related to partnership with tobacco industry. It is encouraging that some states in India have issued Article 5.3 notifications; however, there is a need for comprehensive guidelines at the national level, which would be implemented and enforced across all departments, in all the states/union territories across India.

## Authors' Note

Shalini Bassi is also affiliated with HRIDAY, New Delhi, India.

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## Ethical Approval

Since this study involved a desk review, the authors assert that all procedures contributing to this study comply with the ethical standards of the relevant institutional committees.

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## Supplemental Material

Supplemental material for this article is available online.

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