Chapter 8:
Blinkered view: Government Approach to Tobacco is Injurious to Health

Jhumki Dutta [i] and Dheeraj [ii]

In India, 28.6 per cent of people older than 15 and about 15 per cent of children in the 13-15 age-group consumed some form of tobacco in 2018.[iii] According to the Tobacco Atlas, in 2016, almost 13 per cent of deaths in the country were from tobacco-related causes. Such alarming statistics only showcase the harm that tobacco consumption has caused in India. In a recent move to fight this malaise, the Union Cabinet approved an ordinance to ban manufacturing and sale of e-cigarettes after taking up a proposal from the Health Ministry, Government of India, to make production, manufacturing, import, export, transport, sale, distribution or advertisements of e-cigarettes a cognizable offence. The government ban is based on the premise that while "e-cigarettes got promoted initially as a way in which people can get out of the habit of smoking cigarettes... a weaning process from using cigarettes", it was now being used by the younger population thus posing a health risk.[iv]

The government, through this brilliant move, demonstrates its stand on restricting tobacco sale and usage, citing health risks. However, its other policies, legislations and actions fall short of showing a similar resolve towards manufacturing and sale of cigarettes and other traditional tobacco products.

Mixed signals marked by blinkered understanding of tobacco control

In 2004, India became the eighth country to ratify the Framework Convention on Tobacco Control (FCTC). Since ratification, it has actively participated in all of the Conferences of the Parties (COPs), and even hosted one in 2016, with the aim of negotiating specific protocols for FCTC implementation. However, the progress in actually implementing FCTC policies in India has been slow. One would expect the policy makers to be aware of the Convention they have ratified and its obligations, but the current Indian tobacco legislations do not inspire confidence. Rather than curbing the activities of the industry, through its policies, the government is providing various avenues to the tobacco companies to diversify and re-brand. One of the major weaknesses of the tobacco-related policies currently in place is that they have not been able to move beyond the rhetoric of restriction on promotion and consumption of tobacco. The other policies of the government, including Corporate Social Responsibility, Public Investment, Corruption and Transparency are not aligned with tobacco control, thereby enabling the tobacco industry to influence the government and public through other means. This alignment is necessary to ensure de-normalisation of the tobacco industry and its activities.

Irresponsible investment: In 2011, a Right to Information application filed by a civil society organisation (Voice of Tobacco Victims) revealed huge investments by the Indian Government in the tobacco industry. This led to public interest litigation (PIL) filed in 2017 against the investment. According to the PIL, the Union government owned a 32 per cent stake in ITC through five state-run insurance companies,[v] [vi] and the Unit Trust of India. Life Insurance Corporation of India (LIC), one of the insurance companies, India's largest government-owned insurance company, was reportedly also investing in other tobacco companies including Vazir Sultan Tobacco (VST) and DS Group. The investment contravenes the international convention and undermines tobacco control efforts of the government, which reportedly cost Rs 10,000 crore each year. The irony of this is, while the Indian government spent Rs 10,000 crore in 2009 on tobacco control measures, its own Insurance company invested Rs 3,500 crore in companies manufacturing cigarettes. In news articles covering the RTI application, prominent doctors from Tata Memorial Hospital, who had filed the 2017 PIL mentioned above, have been quoted as stating "With the government spending so much to tackle tobacco usage over the past few years, one would expect a phasing out of the LIC shares from ITC. However, the number of shares have only drastically increased in the past two years (sic)".By doing this, "they are contradicting their own policies".[vii] The LIC's reply to this was two-pronged – one, it stated that the laws, including the Insurance Regulatory Development Authority (IRDA) and LIC Act did not restrict tobacco investment and, secondly, ITC was not a tobacco company, but a diversified business with good governance record. It stressed that the ITC stock was chosen due to the company's good governance, track record, and the liquidity of the stock and its performance. The LIC Act and the IRDA, which govern LIC, explicitly state that the primary aim of the insurance company should be to maximize the returns and interests of the policyholders. It does not provide any guidelines with regard to investments in tobacco companies. Through this reply, LIC not only washed its hands of the irresponsible investment, it also certified ITC, a company whose gross turnover of cigarettes was 45.80 per cent and gross revenue from sale of cigarettes and tobacco was approximately 49.61 per cent in 2018-19, as a non-tobacco company engaged in 'responsible' business[viii]. Even as health advocates filed a PIL seeking disinvestment, LIC applied for increase of its exposure to ITC. According to a 2017 report, LIC holds 16.29 per cent stake in ITC[ix], which is more that the limit prescribed by IRDA, which allows insurance firms to hold up to 15 per cent stake in one company. Acting upon the PIL, the IRDA issued an advisory to LIC to reduce its stake in companies, including ITC, where it owns more than 15 per cent shares and submit a roadmap for the same. This move, however, had little to do with tobacco control. Rather, it was to initiate compliance with regulatory norms.

CSR as panacea: Meanwhile, CSR laws are enabling the industry to present itself as a responsible business by contributing to government welfare programmes. Traditionally, companies have leveraged CSR as a medium to whitewash their flagging reputations and create a narrative of responsible business conduct.[x] When the government revised its CSR clause as a part of the Companies Act 2013, it specified that companies either having a net worth of Rs 500 crore or a turnover of Rs 1,000 crore or net profit of Rs 5 crore, need to spend at least two per cent of their average net profit for the immediately preceding three financial years on corporate social responsibility activities. In doing so, the clause, however, did not specify non-promotion of companies and their brands while engaging in CSR activities. This led to several apprehensions in the tobacco control circle about this provision with regard to entities engaged in tobacco business, including those manufacturing cigarettes and gutkha among others. Evidences during the time suggested that tobacco companies have incidentally been among the largest spenders on promotional activities. As they cannot directly promote any tobacco product on most platforms, they have to depend on indirect advertising, including through CSR. Tobacco major ITC promotes its brand through CSR activities, which it often delineates from its core business activities. As a recommendation to prevent industry interference in government policies, FCTC recommends 'Denormalizing and, to the extent possible, regulate activities described as 'socially responsible' by the tobacco industry, including but not limited to activities described as 'corporate social responsibility". The recommendation is based on the presumption that the 'socially responsible' activities of the tobacco industry are a strategy to distance its image from the lethal nature of the product it produces and sells and interfere, where possible, with the setting and implementation of public health policies by creating a good public image.

Caught in a tricky situation, the government set up an inter-ministerial panel to look into CSR programmes of tobacco firms to ensure that such activities do not look like promoting the use of such products. This led to the 2016 notification of the Ministry of Corporate Affairs, which specified tobacco companies can engage in CSR, as long their activities do not contravene the Cigarette and Other Tobacco Product Act (COPTA). The legislative mandate, however, has done little to restrict the companies who have been contributing heavily to government programmes to earn 'public goodwill' from promoting themselves.

Analysis of the CSR activities of the tobacco companies demonstrate that the companies have invested very generously in government programmes, including the Swaachh Ghar Mission, Swaccha Bharat Kosh and the Prime Minister's National Relief Fund. VST or the Vazir Sultan Tobacco has stated that in the year 2018-2019, it has spent almost 90 per cent of its CSR allocation (Rs 415 Lakhs out of the Total Rs 463 Lakhs) in promoting government programmes. The government itself accepts such funds and even publicises it on its own website. For example, www.pmindia.gov.in has a photograph of ITC Chairman Late YC Deveshwar with Prime Minister Narendra Modi, donating generously to the Prime Minister's National Relief Fund, for the flood-affected people of Jammu and Kashmir[xi]. Far from denormalising CSR activities by tobacco companies, the Government is rather acknowledging and recognising these activities of the industry.

Teething Tobacco Control Measures

Continuation of such support inhibits the overall success of tobacco control. In fact, today, few people know ITC as a tobacco company. Instead, it is perceived as an ethical company engaging in luxurious hotels, FMCG and stationery products and pioneering social responsibility activities that aim to reach out to the last mile. Such whitewashing of the image of tobacco companies is facilitated by the lack of alignment between the various policies, which enable companies to conceal their harmful products behind the veil of misleading narratives.

While tobacco consumption has reduced in India, for more tangible results, support to the industry by government and its agencies should be curtailed and the false narratives about them need to be busted. Evidences on tobacco control measures in various other countries suggest that choking of such support is crucial to give teeth to the Indian government's attempts to restrict and limit tobacco companies' growth. While some countries have introduced legislations that sanitise all ministries and agencies from the influence of tobacco companies, in other countries measures have been adopted to sanitise the ministry/department of health from interference by the tobacco industry. Most of these countries, including UK, Uganda, Australia, Uruguay, Norway and New Zealand, are set to meet global and national commitments to cut tobacco use in people above the age of 15 by 30 per cent by 2025.[xii]

The above two instances demonstrate that in the fight against tobacco, the balance of scale tends to be favouring the tobacco industry through financial support and recognition. While the activities of the government are well within the legal gamut of India's legislative provisions, it raises serious questions about the intention of the Government to regulate tobacco and tobacco industry. Data demonstrates that in India, while about one million people are killed by tobacco-related disease, more than half a million children in the age groups of 10-14 years and 80 million people above the age of 15 continue to use tobacco in one or the other form. This complacency and laxity on the part of the government in the face of the tobacco epidemic insulates the tobacco industry in India and ensures that the tobacco death toll grows every year.

In this light, it is imperative that we ensure the overall success of tobacco control laws, by strengthening the framework of our policies and legislations, insulate government machinery against tobacco industry influence, step up efforts to protect tobacco control from commercial and other vested interests and invest adequate resources for establishing systems for monitoring the level of implementation of tobacco control laws in India.

i. Partners in Change

ii. Praxis - Institute for Participatory Practices

iii. World Health Organization https://apps.who.int/iris/bitstream/handle/10665/272672/wntd_2018_india_fs.pdf;jsessionid=26B3DFD64D1CB60A92BEC86C3E263B48?sequence=1

iv. https://edition.cnn.com/2019/09/18/health/india-e-cigarette-ban-intl/index.html

v. https://thewire.in/business/lic-itc-tobacco-investment-pil

vi. Five insurance companies (LIC, New India Assurance Co. Ltd, General Insurance Corp. of India, Oriental Insurance Co. Ltd and National Insurance Co. Ltd), along with the Specified Undertaking of the Unit Trust of India (SUUTI) hold 32% stake in ITC.

vii. Aravind, I. (2017) Should government stop investing in tobacco companies via its insurance firms?, The Economic Times. Available at: //economictimes.indiatimes.com/articleshow/58437330.cms?from=mdr&utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst

viii. https://www.itcportal.com/about-itc/shareholder-value/annual-reports/itc-annual-report-2019/pdf/ITC-Report-and-Accounts-2019.pdf

ix. https://timesofindia.indiatimes.com/business/india-business/lic-must-pare-itc-lt-stakes-to-below-15-by-dec-2018-irdai/articleshow/59959788.cms

x. Thomas, Tom, Kurian, Shireen; Reclaiming CSR: Putting Core Business First; Status of Corporate Responsibility in India 2017; Praxis 2017 http://www.corporatewatch.in/images/Corporate_Responsibility_in_India_2017_webversion.pdf

xi. https://www.pmindia.gov.in/en/news_updates/sashastra-seema-bal-srm-university-and-itc-make-donations-for-pmnrf/

xii. https://www.telegraph.co.uk/global-health/climate-and-people/smoking-declines-around-world-countries-set-miss-targets-report/