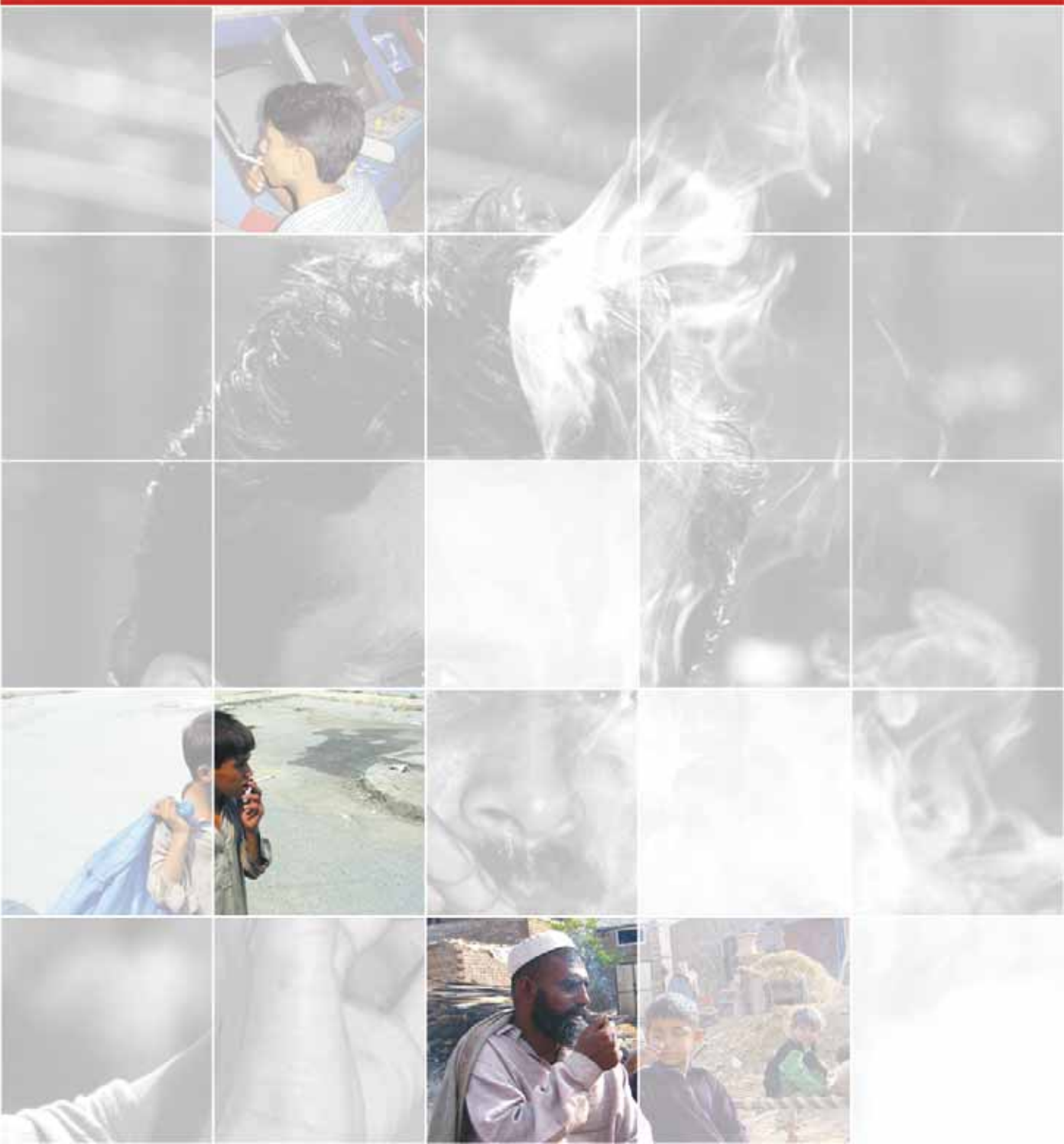
From Word to Action

Implementation of Tobacco Control Laws in Pakistan



From Word to Action

Implementation of Tobacco Control Laws in Pakistan

THENETWORK PUBLICATIONS

Title: **From Word to Action**
Implementation of Tobacco Control Laws in Pakistan

Author: Zaigham Khan

First Published: November 2006

ISBN: 969-8807-29-2

Cover design and layout by: Usman Tariq

Published by: Tobacco Free Initiative-Pakistan
TheNetwork for Consumer Protection
40-A, Ramzan Plaza, G-9 Markaz, Islamabad.
Pakistan

Email: tfi-pak@thenetwork.org.pk
Website: www.thenetwork.org.pk

Price: PKR 50

Contents

The Killer on the Loose

Almost 1.3 billion people currently smoke worldwide, the majority of whom live in developing countries. Tobacco kills one in two long-term users—4.9 million such deaths occurring each year. In fact, tobacco is the second major cause of death in the world. This huge death toll is rising rapidly, especially in low and middle-income countries, where most of the world's 1.2 billion tobacco users live. Developing countries already account for half of all deaths attributable to tobacco. The proportion will rise to 7 out of 10 by 2025 because smoking prevalence has been increasing in many low and middle-income countries even as it is falling in richer countries, especially among men. If current smoking patterns continue, it will cause some 10 million deaths each year by 2020. Half the people who smoke today–that is about 650 million people- will eventually be killed by tobacco.

If current smoking patterns continue, it will cause some 10 million deaths each year by 2020. Half the people who smoke today–that is about 650 million people–will eventually be killed by tobacco.

Tobacco also accounts for a large portion of the disease burden in developing countries, and is currently the fourth most common risk factor for disease worldwide. Tobacco is the cause of at least 85 percent cases of lung cancer, cancer of mouth, throat, kidney, bladder and stroke, besides chronic bronchitis and emphysema. Passive smoking is dangerous for unborn babies, children and adults.

Smoking threatens the future health of children. Globally, nearly 25 percent of all students smoke and lit their first cigarette before the age of 10. The situation is exacerbated by the fact that almost half of all the children worldwide live with smokers and regularly subjected to second-hand smoke in the home environment.[1]

The economic costs of tobacco use are equally devastating. In addition to the high public health costs of treating tobacco-caused diseases, tobacco kills people at the height of their productivity, depriving families of breadwinners and nations of a healthy workforce. Tobacco users are also less productive while they are alive due to increased sickness. A 1994 report estimated that the use of tobacco resulted in an annual global net loss of US$ 200 thousand million, a third of this loss being in developing countries.

Tobacco consumption contributes to poverty through loss of income, loss of productivity, disease and death. In poor people, the opportunity costs of tobacco use can be very high. In a number of developing countries, household expenditure surveys show that low income households spend 5-15 percent of their dispensable income on tobacco. Many poor households spend more on tobacco than on healthcare or education. In Bangladesh, for example, households with an income of less than $24 a month smoke twice as much as those on much higher incomes.[2]

Pakistan is a large country with a rapidly increasing population and a high GDP growth rate, which makes it an extremely lucrative market to multinational tobacco companies. Pakistan's tobacco market is dominated by two international giants, which between them hold 78% of the cigarette market. Pakistan Tobacco Company (PTC) holds 38% of the market, while Lakson Tobacco Company (LTC) has a market share of slightly more than 40%. PTC is a subsidiary of British American Tobacco (BAT), which holds 67% of its shares, while LTC is a subsidiary of Philip Morris Industries (PMI), which has a 30% share in the company.[3]

Through aggressive and unethical marketing, these companies have been able to turn Pakistan into an example of what tobacco can do to a society complacent about its dangers. In one of its surveys, the Pakistan Medical Research Council noted that 54 percent of men and 20 percent of women use some form of tobacco on regular basis in Pakistan. The Pakistan Pediatrics Association has estimated that around 1,000–1,200 school going children between the ages of 6-16 years take up smoking every day.

Many countries have managed to change behaviour, reduce the prevalence of tobacco use, and ease the burden of tobacco-related diseases and death.

The demand for tobacco and cigarettes is on the rise. The projected requirements for the tobacco crop of Flue-Cured Virginia, Dark Air-Cured, White Patta (Rustica) and Burley for the year 2005 have increased by 18.98 percent, 107.12 percent, 120.48 percent and 10.31 percent respectively, compared to the production and purchase by tobacco companies in last year.[4]

The profits of tobacco companies are also increasing at a staggering rate. The Lakson Tobacco company, for example, was able to declare profit after tax at Rs1.4 billion in 2005, up by 61 per cent against Rs0.85 billion in 2004, leaving behind a sum of Rs1.28 billion for profit available for appropriation, which was Rs0.9 billion during 2003.[5] These profits are reaped, quite obviously, at the cost of life, health and well being of millions of people, who become victims of the tobacco epidemic.

The course and pattern of this epidemic can be changed. The policies that are effective in encouraging tobacco users to quit and dissuading young people from starting are well known and proven. Many countries have managed to change behaviour, reduce the prevalence of tobacco use, and ease the burden of tobacco-related disease and death. Efforts of public health practitioners, researchers, activists, policy makers, politicians, and the press have achieved sound tobacco control policies even in the face of enormous opposition from those who profit from these deadly products. FCTC is an instrument that can help in a great way to achieve these objectives. There is a need to implement it in letter and spirit, make strong laws in its light and implement them wholeheartedly.

Countries around the world are grappling with difficult public health challenges and policy decisions. Disease and death caused by tobacco use, once a problem mainly in high-income countries, have become a large and

increasing part of the burden of disease in developing countries. Reducing the devastating health damage caused by tobacco use is especially difficult because of nicotine's powerful addictive properties, low prices for tobacco products, well-established social norms, and constant inducements to smoke, fuelled by billions of dollars worth of tobacco industry advertising and promotion.

In order to curb the tobacco epidemic, WHO launched a special initiative, the first ever global health treaty entitled "Framework Convention on Tobacco Control" (FCTC). The development of the FCTC followed many decades of debate about how best to tackle an increasingly global public health problem. This process included World Health Assembly resolutions addressing various components of tobacco control; the completion of major epidemiological and economic reviews on the extent of the problem and its future course; and considerations on how best to approach it from a policy perspective.[6] The FCTC is a global treaty negotiated by 191 member states of the World Health Organization and after six rounds of intense negotiations lasting for more than three years it was adopted unanimously at the 54th World Health Assembly (WHA) in May 2003 in Geneva.

FCTC develops a global response to a global killer and acts as a catalyst for strengthening national tobacco control legislation programme.

The FCTC provides a basis for comprehensive national and complementary international actions to control tobacco use and exposure to tobacco smoke. The FCTC aims to address diverse issues linked to tobacco control. It will help member countries in decreasing tobacco consumption. It also develops a global response to a global killer and acts as a catalyst for strengthening national tobacco control legislation programme.

Parties to the WHO FCTC are bound to translate its general provisions into national laws and regulations. These countries, for example, will have three years from the day it enters into force for that country to implement measures to ensure that tobacco packaging has strong health warnings, or five years to establish comprehensive tobacco advertising, promotion and sponsorship bans, among others.

Many countries have already put these measures in place. The difference for global tobacco control is that countries Party to the Convention will be able to implement these and other measures, especially those with cross-border implications, in a coordinated and standardized way. This will leave fewer loopholes for the tobacco industry, which finds ways to circumvent national laws.

The WHO envisions FCTC as a crucial vehicle to control tobacco use globally, while strengthening the efforts of individual governments to protect their population from the adverse effects of tobacco. However, while the FCTC provides the guidelines for action against tobacco, ensuring that these guidelines are brought to fruition can only happen at

the national level. Thus, the success of the FCTC will depend almost entirely on countries' abilities to implement and enforce the Framework's provisions. This requires long-term political commitment to a dynamic process for developing and sustaining a country's capacity to respond effectively to the tobacco epidemic. Unless this happens, the FCTC will be incapable of helping countries to achieve the desired reductions in tobacco use and years of healthy life lost due to tobacco.

From Word to Action
Implementation of Tobacco Control Laws

Tobacco is a uniquely dangerous product that should not be treated as a normal consumer good. It is the only legal and widely used substance which is extremely addictive and causes the death of one-third to one-half of all regular users.[7] Governments all over the world are introducing strong policies backed by legislation to control the tobacco epidemic and save children, adolescents and youth from becoming tobacco addicts.

Legislation is at the heart of effective tobacco control. It institutionalizes and makes binding a country's commitment for tobacco control, creates focus for tobacco control activity and regulates private and public conduct in ways in which informal or voluntary measures cannot.[8]

Any comprehensive tobacco control program requires the drafting and adoption of legislation and the introduction of regulations. A society's laws are the most solemn and formal articulation of its values; they recognize, reinforce and give permanence to a society's norms. When a government imposes a comprehensive ban on smoking in all public places, for example, it not only protects the public in general, but also declares the will of the society for a smoke free environment.[9]

Importantly, legislation in many countries establishes a national focal point for activities related to tobacco control and mobilizes public resources and institutions in support of the program. It may be due to political and other reasons, some countries prefer enactment of separate legislative instruments covering various aspects of tobacco control. Other countries may prefer to adopt laws in the form of binding rules, resolutions, regulations or orders pursuant to an existing legal authority vested in an agency as is the case with the National Agency of Sanitary Surveillance (ANVISA) in Brazil[1]. It may also be that some countries choose to adopt policy instruments without legal force.[10]

The enactment of legislation has its challenges and these include the lack of awareness of the tobacco problem among the public and policy makers, the lack of human, technical and other capacity, infrastructure and resources and continuing opposition of the tobacco industry and its affiliates and allies. It is important to counter this opposition, and success

Governments all over the world are introducing strong policies backed by legislation to control the tobacco epidemic and save children, adolescents and youth from becoming tobacco addicts.

[1]The Resolutions and Rules passed by ANVISA are legally binding rules, having the force and quality of law and with sanctions attached for their violation. Article 7 of Law 9.782 endows ANVISA with a broad legislative authority to pass health legislation including that of tobacco control.

requires a strong and continual political commitment throughout the life of the legislation. Furthermore, the success of a legislation will depend on its effective implementation, enforcement and compliance mechanisms, supported by financial and technical resources, political support and educational and awareness raising strategies.

The laws and policies require strong enforcement regime to be effective. Effective enforcement of tobacco control policies enhances their efficacy both by deterring violators and by sending a strong message to the public that the state and the political leadership believe that the policies are important.

In the absence of a strong enforcement mechanism, anti-tobacco legislation may represent a mere symbolic statement about the country's desire to control smoking that is dependent on people's good will for success. Legislation, therefore, must be coupled with strong attention to implementation and enforcement. This can be even greater challenge than getting the legislation through with its teeth intact. Often, legislation is only a first step, and regulation or further actions are required before provisions can be implemented and take effect.[11]

Legislation is only a first step and regulation or further actions are required before provisions can be implemented and take effect.

The three primary areas addressed by state policies that require enforcement strategies are restrictions on minors' access to tobacco, restrictions on smoking (clean indoor air) and restrictions on advertising and promotion.

Minors' Access. Numerous published studies have shown that the combination of enforcing laws that restrict tobacco sales to minors and educating merchants can reduce illegal sales of tobacco to minors.[12] Access laws should be actively enforced at the federal, provincial and local levels through unannounced compliance checks in which minors attempt to purchase tobacco products. For the adequate enforcement of tobacco control laws and regulations, universal licensure of tobacco outlet sources is also necessary.

It has been found that a graduated system of civil penalties on the retailer, including temporary revocation of the tobacco license is an effective enforcement strategy. Fees from licensing of tobacco vendors can be used to fund enforcement activities and to develop and maintain active, large-scale programs.[13] Annual countrywide inspection surveys that accurately measure the effectiveness of their enforcement efforts, and report annually to the Secretary of Health, may be useful.

However, young people may turn to social sources (e.g., older friends and family members) of tobacco products as commercial sources are reduced. Therefore, it is critical that minors' access restrictions be combined with a comprehensive tobacco control program that reduces the availability of social sources and limits the appeal of tobacco products.[14]

Clean Indoor Air. The health of nonsmokers is protected by the enforcement of public and private policies that reduce or eliminate exposure to environmental tobacco smoke (ETS). Studies have shown that enforcement of work-site smoking bans protect nonsmokers and decrease the number of cigarettes that employees smoke during the workday.[15] Enforcement of clean indoor air laws is generally passive. Complaints by the public are investigated by law enforcement authorities who base enforcement on a graduated series of civil warnings and penalties. Before smoking restrictions are implemented, educating the public, employers, and employees about the health effects of ETS and the need for these restrictions can build support for the restrictions and increased compliance.

At least for the clean indoor air measures, these changed social norms pave the way for a smooth implementation process and minimize the need to embark on a vigorous enforcement effort, thus leaving these laws to be primarily self-enforcing.

Restricting Advertisement

A convincing body of evidence demonstrates that tobacco advertising plays an important role in encouraging non-smokers to begin smoking. Advertising is a particularly important factor among young people.[16]

The policy options that have been proposed for the control of tobacco advertising include limitations on the content of advertisements, restrictions on the placement of advertising, restrictions on the time that cigarette advertising can be placed on broadcast media, total advertising bans in one or more media, counter-advertising and the taxation of advertising.

Only comprehensive ban on tobacco advertising and promotion can result in considerable reduction of tobacco consumption at national level.

However, it has been found that only comprehensive bans on tobacco advertising and promotion can result in considerable reduction of tobacco consumption on a national level. It has been found that where a complete ban on advertising is coupled with an intensive public information campaign on smoking, a reduction in tobacco consumption of 6% can be achieved.[17] Counter advertising, which is the use of media to promote public health, also reduces cigarette consumption. The taxation of advertising also reduces total advertising with the additional advantage of raising revenue that could be used to fund counter-advertising.

Effective tobacco control and prevention requires a diverse array of research, policy and programmatic components developed and coordinated to work together. A review of past experience suggests that the following factors are essential to a strong anti–tobacco regime:

- adequate funding
- secure, stable long-term support

- the ability to coordinate multiple strategies at the state and community levels
- independence from direct and indirect tobacco industry's political influence
- involvement of a wide range of public health stakeholders
- programs and policies based on proven public health strategies, without conditions or constraints
- support for advocacy
- avoidance of pre-emption

Though not up to the expectation of the public health community, Pakistan can boast achievement in making these laws and preparing implementation mechanisms.

The policymakers should develop administrative approaches that embody these principles. For this purpose, they must think innovatively, and be mindful of both the successes and pitfalls of the past, to ensure a tobacco control strategy that will effectively promote public health.

This paper analyzes Pakistan's laws that relate to tobacco control, their implementation mechanisms and actions that have been carried out to implement them. Though not up to the expectation of the public health community, Pakistan can boast achievement in making these laws and preparing implementation mechanisms. As this paper shows, beyond the law and the official gazettes, there is a dismal picture on ground.

Not enough has been done to inform common citizens and the relevant people about presence of these laws and their implications and no effective public education campaigns have been carried out to translate these laws into social norms. Not a single person has been put in the dock for breaching what is perhaps Pakistan's most violated piece of legislation. This paper presents some concrete suggestions that can, hopefully, change the situation for achieving the goal of a smoke free society by implementing tobacco control laws effectively.

Implementing the Law

Implementation Mechanisms around the World

With the development and entry into force of the WHO Framework Convention on Tobacco Control (WHO FCTC) and the realization by WHO Member States of the pivotal role of legislation, many countries are now at various stages of enacting their legislation for tobacco control. Since there are many countries, that have developed solid scientific evidence-based legislation for tobacco control, countries can draw upon such experiences and best practices and adapt these/them to meet their own varying national systems and needs. Following case studies can serve as a mirror to Pakistan's efforts at implementation.[18]

Brazil

Constitutional Context:

Federal, state and municipal governments share legislative authority over tobacco control. However, it is at the federal level that Brazil's comprehensive legislation has been implemented

Federal Tobacco Control Laws:

A 1999 law created the National Agency of Sanitary Surveillance (ANVISA), which has competence to regulate tobacco. ANVISA has law-making powers.

- Law 10.167/2000, prohibits advertising of tobacco among many other things as well;
- Resolution RDC 46 of 2003 establishes maximum levels of tar, nicotine etc and bans misleading descriptors light, mild etc;
- Resolution RDC 346 of 2003: Requires annual registration and listing with detailed information to be included e.g. packaging, incomes etc;
- Resolution RDC 335 of 2004: Requires graphic warnings and health messages.

Enforcement Structure and Operations:

The Ministry of Health has responsibility for the administration of the Federal tobacco control legislation. The National tobacco control program housed at the National Cancer Institute (INCA) also has enforcement responsibility. Furthermore, state and municipal authorities have responsibility for the enforcement of the over 70 (state) and 331 (municipal)

There are many countries who have developed solid scientific evidence–based legislation for tobacco control.

laws as well as the federal legislation. The Federal Police, the Judiciary and Federal Revenue Service are also involved in enforcement of tobacco control laws in collaboration and cooperation with ANVISA, the Ministry of Health.

Compliance Promotion:

Approach used in Brazil included, awareness raising among the public, regulated community and governmental agencies, training and educational materials, development of database and work of NGOs.

Enforcement Tools:

The following are some of the enforcement tools used in Brazil for tobacco control:

- Inspectors are being trained by municipal authorities to enforce local smoke-free laws.
- Penalties: Law Number 6437 of 1977 empowers ANVISA to impose fines on offenders of federal legislation.
- Litigation is a potential tool of enforcement.
- Self-reporting by the regulated community is often used. For example, under Resolution RDC No 346 of 2003, in order to begin marketing a new brand of tobacco product, manufacturers/importers/exporters are required to file appropriate applications for the listing of each brand of the product with ANVISA. These applications must include, interalia copies of the product's packaging; the company's income statements from the previous year; various statements describing the product's composition, emissions, product characteristics; descriptions of compounds present in the main- and side streams, as well as overall compounds present in the tobacco. In order to renew the listing, the company is also required to annually repeat the process for the first listing.

Ministry, police, judiciary, revenue service and municipal authorities are involved in enforcement of tobacco control laws in Brazil.

Canada

Constitutional Context:

In Canada, federal, provincial and municipal governments share legislative and regulatory authority over tobacco control, and each passes its own legislation and enforces it.

Tobacco Control laws:

The Tobacco Act, 1997 (as amended), provides for product standards, industry reporting, prohibits youth access to tobacco products, provides for health warnings and messages including graphic picture warnings and

bans misleading descriptors, among others.

Tobacco Act (Amendment) 1998, bans tobacco advertisement, promotion and sponsorship. A number of provincial laws governing 63% of Canada's population address smoking in public places among others.

Enforcement Structure and Operations:

Health Canada is the enforcement agency for the Federal tobacco control legislation. The Agency maintains a pool of inspectors. Regional, municipal and territorial authorities are responsible for the enforcement of the respective laws, by assigning tasks to specific enforcement officers, other authorized officers

The Attorney General of Canada and Department of Justice has responsibility for all federal litigation including those regarding tobacco control. Any decision to prosecute as well as to recover damages on recommendation from enforcement officials rests with the Attorney-General.

Compliance Promotion:

Enforcement and other authorities have undertaken awareness raising activities among the public, regulated community and governmental agencies. They have also conducted training and developed educational materials, tobacco control information database and facilitated the work of NGOs and research institutions in tobacco control.

Enforcement Tools:

Commonly used enforcement tools in Canada include, inspections, penalties, litigations and reporting obligations.

In Canada, federal, provincial and municipal governments share legislative and regulatory authority over tobacco control and each passes its own legislation and enforces it.

South Africa

Constitutional Context:

National government and provincial governments share competence in enforcement of the tobacco control legislation. However, overall enforcement framework is laid down at the national level.

Tobacco Control laws:

The main legislation is the Tobacco Products Control Amendment Act 1999 (No 12), that amends the 1993 Tobacco Products Control Act. It provides for: prohibition of smoking in enclosed public places, strong package warnings and health messages, prohibition of free distribution and

gifts of tobacco products, prohibition of sale of tobacco to a person under the age of 16, regulation of vending machines and regulation of the contents of tobacco products. The Act empowers the Minister to promulgate as is necessary on matters relating to the Act. Regulations 974,975,976 and 977 and promulgated by the Minister of Health, elaborate on the specific requirements as provided for under the Tobacco Products Amendment Act, 1999.

Enforcement Structure and Operations:

The provincial or city health departments have also been involved in enforcement activities in South Africa.

The Department of Health enforces a ban on smoking in public places, can grant or deny extensions of time for compliance and can make orders for compliance. In South Africa, the provincial or city health departments have also been involved in enforcement activities. For example, in May 2005, Cape Town inspected 862 premises to ensure compliance; 88% of those surveyed had complied with the legal requirements and those that did not were fined. The government legal office and the national and provincial police also contribute to the enforcement regime of the legislation.

Compliance Promotion:

The Department of Health raises awareness among the public, mobilizes owners of restaurants and other public places regarding enforcement, provides training to enforcement personnel and related government departments and produces materials and other information tools.

Enforcement Tools:

Enforcement tools used in the South African legislation include the use of inspections, fines, compliance reporting by the regulated community. The work of NGOs has also supported enforcement. An example is the maintenance of a hotline for public reporting of violations.

The Law of the Land

Tobacco Control Law and its Implementation in Pakistan

In the recent times, Pakistan has so far enacted two laws to control smoking in the country namely "The Cigarette (Printing of Warning) Ordinance 1979" and "Prohibition of Smoking in Enclosed Places and Protection of Non-Smokers' Health Ordinance 2002".

The Cigarette (Printing of Warning) Ordinance 1979

This law makes it mandatory for tobacco companies to print health warning in Urdu and English on every packet of tobacco and all types of advertisement on any media.

The law prohibits manufacturers or sellers from possessing or offering for sale packets of cigarettes on which such warning is not printed.

The law applies on individuals as well as corporate bodies. The offences under the law can be tried by a Magistrate of the First Class. An offence under the law is punishable for a term which may extend to two years, or with fine which may extend to ten thousand rupees.

The court can take cognizance under this law on a complaint made in writing by a Police Officer not below the rank of an Assistant Sub-Inspector or an Excise Officer not below the rank of Sub-Inspector or any officer authorized on this behalf by the Federal Government.

Health warnings that should cover at least 30% of the cigarette pack are mandatory according to the national laws in Pakistan.

The Cigarette (Printing of Warning Rules) 2003

The law has been operationalized through "The Cigarette (Printing of Warning Rules)", which repeal rules of the same name enforced in 1982. The rules make it mandatory for the tobacco companies to print on the flap (top) on front side of the Cigarette pack in Urdu and on the back in English a warning that should cover at least 30% of the pack on each side in a box. They also provide some technical specifications of the warning like font etc. All other tobacco or tobacco products must devote at least 20% of the space and/ or time for the Health warning in Urdu in conspicuous and legible way. Warning in English is optional.

Comments

Almost all packets of cigarette without proper warning are smuggled. In fact, absence of such a warning is a proof of such cigarettes being smuggled. The laws that apply on other smuggled and duty evaded goods also apply on such cigarettes. Government should move customs and other law

enforcement agencies dealing with the smuggled goods to act against storing, supply and sale of such cigarettes.

The space of warning must be increased to at least 50% space on cigarette packs.

The tobacco industry has expressed relatively little opposition to health warnings on cigarette packs, as long as they are small, general, and on the side of the pack. This is also true in countries where the majority of smokers buy cigarettes individually or have low literacy rates. In some cases, the industry has voluntarily agreed to add health warnings, probably due to legal concerns about future lawsuits.

The type of warning labels that really helps tobacco control are large, bold, graphic and with specific warnings, e.g. smoking can cause sexual impotence. There is a growing trend all over the world to dedicate as large space as possible to warning tobacco smokers.

There is a need to increase the space of warning and adding graphic warnings. Such graphic warnings can be prepared by the Health Ministry in consultation with the civil society organizations. These changes require an amendment in the notification.

Prohibition of Smoking in Enclosed Places and Protection of Non-Smokers' Health Ordinance 2002

This is most recent and most important law, which has been influenced by the worldwide trend of anti-tobacco legislation, the FCTC process and advocacy efforts by civil society organizations and public health activists.

Clean Indoor Air Laws

Ban on Smoking in Public Places (Section 5)

This section empowers the federal government to declare, through a notification, any public work or use as non-smoking. The federal government, however, can issue guidelines for permitting designated smoking area in premises or places where adequate arrangements have been made to protect the health of non-smokers.

Following places have been defined as places of public work or use designated as no-smoking and no-tobacco places: "Hospitals, dispensaries and other health care establishments, educational institutions, offices, conference rooms, all domestic flights, restaurants, buses, wagons, trains, indoor stadiums, gymnasiums, waiting rooms at bus stations and addas" (SRO 653 (1)/2003, issued on June 30, 2003)

Ban on Smoking in Public Transport (Section 6)

The section bans smoking and using tobacco in "any public service vehicle".

Implementation Mechanism

In the case of section 5 (ban on smoking in public places), a large number of people have been authorised as competent to act under the ordinance. They include all members of the parliament, district, Tehsil and Union Council Nazims and Deputy Nazims and councillors, all officers in BPS 20 and above, all police officers of the rank of Sub-Inspector and above, heads of educational institutions in respect of school, managers of airport lounges, waiting rooms at railway stations and bus stops, all crew members aboard an airplane, heads of hospitals, managers of restaurants, entertainment houses including cinemas, theatres, studios of TV, radio etc.

In the case of section 6 (ban on smoking in public transport), apart from most of the above mentioned people, drivers and conductors have also been authorised as competent . (SRO 654 (1)/2003)

All these "authorised" persons can do is to submit a written report to the

Implementation mechanism for tobacco control laws could not be derived three years after the promulgation of two vital ordinances in Pakistan.

court of a magistrate of the first class complaining about a person's violation of the law. (Section 13 and Section 14 (b)) The magistrate has the power to try the offence summarily in accordance with the procedure laid down for summary trial (Section 14 C). He can impose a fine of one thousand rupees to a first time offender and more than a hundred thousand rupees in the case of second or subsequent offence. (Section 11 Subsection 1)

Prosecution History

Not a single person has been prosecuted in the past three years under these laws. Islamabad Traffic Police, however, in a rare gesture, have recently booked a driver of a public transport vehicle for smoking offence.

Action Required

Not a single person has been prosecuted in the past three years under tobacco control laws due to complex reporting criterion.

Competence to complain in writing to a court of a magistrate is hardly an authority, as it is the right of all the citizens to complain breach of a law and does not bestow any privilege on the aforementioned people.

The procedure of applying to the magistrate in writing is extremely cumbersome. It would be better if the list is cut short and the competent people are empowered to fine the offenders on the pattern of a traffic violation, issuing a ticket. The offender, however, can be given the right to appeal to the court of a magistrate if he or she feels aggrieved.

Clean indoor air laws are for the most part self-enforcing in the sense that people are generally made aware of the law through a variety of educational programs and media campaigns. If an individual smoker or establishment refuses to comply with the law, then an administrative penalty should be imposed on the offending party. Once strong social norms are formed against exposing individuals to passive smoke, the need is obviated for actively enforcing clean indoor air laws. However, it takes some examples of prosecution to set those social norms and make people feel that what they are doing is an offence.

Laws on Protecting Minors

Prohibition of Sale of Cigarettes to Minors (Section 8)

No person can sell cigarettes, or any other such smoking substance to any who is below the age of eighteen years.

Ban on Selling Cigarettes near Educational Institutions (Section 9)

According to the law, no one is allowed to store sell, or distribute cigarettes within an area of 50 metres from a school, college or educational institution.

Implementation Mechanism

Both of the offences have been made cognizable and bailable. (Section 14 a) that can be tried in the court of a magistrate of the first class (Section 14 b) after he receives a written complaint from a police officer of the rank of Sub-Inspector or above. (Section 14) The magistrate can impose a fine of one thousand rupees to a first time offender and can punish the offender with three month's imprisonment, or/ and fine of one hundred thousand rupees in the case of second or subsequent offence. (Section 11 ii).

Prosecution History

Though violation of this law is rampant and children buy, sell and smoke cigarettes, not a single person has been tried under the law so far.

Action Required

An amendment should be made in the law to empower the heads of educational institutions and government officials to complain directly to the court of a magistrate.

Amendment should be made in the law to empower heads of educational institutions and government officials of BPS–17 and above to complain directly to the court of a magistrate.

To be effective, access laws must be enforced at the level of the district and down to the level of the police station, using unannounced compliance checks through which minors attempt to purchase tobacco products. The Police at every police stations should be made aware of the presence of this law. Improving compliance with tobacco sales laws among tobacco retailers can reduce the availability of tobacco to young people.

The sale of cigarettes to minors can not be fully controlled until vending of cigarettes is licensed and such licenses could be suspended or revoked in case of violation of the law. This can prove a critical ingredient to an effective enforcement programme. License fees can be used to finance regular compliance checks, thus making the enforcement effort economically self-sufficient. This, in turn, will ensure its long-run survival.

Laws on Regulating Advertisement

Regulation of the Advertisement (Section 7)

The law intends to regulate advertisement and promotion of the tobacco products and states that "All advertisements will follow guidelines prescribed by a committee which the federal government will form through a notification."

An important step in implementation of the Section 7 of the law was taken on June 30, 2003, when a committee was notified to prepare guidelines for tobacco advertisement.

The committee is chaired by Director General Health and includes eight other members. These members include one representative of the tobacco industry, one representative of the consumer association, two representatives representing public and private media, one representative of cardiac association, Health Education Advisor, Ministry of Health, Health Education Consultant, Ministry of Health, and representatives of UNICEF and WHO.

The committee on Tobacco Advertisement has been entrusted the task to:

a) Prepare, plan and implement guidelines for the advertisements of tobacco and tobacco products.

b) Monitor the implementation of guidelines; and

c) Evaluate effectiveness and in the light of the data so far collected to improve upon the guidelines from time to time.

Written complaint from a police officer of the rank of Sub-Inspector or above is mandatory for filing a case in court which has been proved impracticable.

Guidelines for Tobacco Advertisement

The committee on tobacco Advertisement Guidelines came into effect on October 27, 2003. The committee has prepared elaborate guidelines for all sorts of tobacco advertisement. These guidelines include:

- Advertisement on radio and television will be allowed between 12.00 midnight to 6 AM only.
- No tobacco advertising will be presented in theatres, cinemas in which persons under 18 are allowed.
- No incidental advertisement of tobacco such as smoking on TV programs/dramas, showing banners, billboards, and other paraphernalia that advertise tobacco products during sports and in sports coverage will be allowed.
- Health warning is required on tobacco advertisement on all channels/electronic media. The size and time of the health warning must not be less than 1/5 th of the total advertisement or time. It must be conspicuous and easily readable/ audible.
- Tobacco products can not be presented as prizes or gifts for the television and radio channels.

Implementation Mechanism

The offence under this section is cognizable and bail-able (Section 14 a) that can be tried in the court of a magistrate of the first class (Section14 b) after he receives a written complaint from a police officer of the rank of

Sub-Inspector or above.(Section 14) The magistrate can impose a fine of up to five thousand rupees to a first time offender and can punish the offender with three month's imprisonment, or/ and fine of more than one hundred thousand rupees in the case of second or subsequent offence. (Section 11 ii).

Prosecution History

Not a single prosecution has been carried out under this law so far.

Action Required

Tobacco representative have been included in the Tobacco Implementation Committee. Tobacco industry representatives should be prohibited from program participation, administration, and oversight. In addition to the obvious conflict of interest between the tobacco industry and efforts to reduce tobacco use, the industry has a history of interfering in tobacco control efforts in ways that waste taxpayers' money, and are detrimental to public health goals.

The court can be moved by a police officer alone. A police officer is not the most suitable person to monitor advertisements in the country. Changes in the law are required to enable citizens and civil society organizations to move the court directly. Monitoring mechanisms need to be improved and penalties must be made harsher for the tobacco industry if it breaches the law.

Monitoring mechanisms need to be improved and penalties must be made harsher for the tobacco industry if it breaches the law.

Over all, the civil society and public health advocates are not satisfied with this section of the law because it only tried to regulate advertisement, which does not seem to have an effect on tobacco consumption in the country. An amendment in the law is required to ban tobacco advertisement completely.

National Action Plan on Non-Communicable Diseases

A tripartite public-private partnership has been formed involving Ministry of Health, Government of Pakistan, World Health Organization and Heartfile, an NGO, in order to formulate and implement the National Action Plan for Prevention and Control of Non-Communicable Diseases and Health Promotion in Pakistan. The alliance has prepared a National Action Plan, which was released on May 12, 2004 in Islamabad. Action Plan focuses on disease prevention, risk factor control and health promotion. Tobacco control is a focus area of the plan which outlines following action agenda to tackle the tobacco epidemic.

- Integrate surveillance of tobacco use with a population-based NCD surveillance system.
- Monitor trends in tobacco use and its determinants.
- Feature tobacco prominently as part of the comprehensive NCD

behavioural change communication strategy; provide wide-ranging information relevant to all aspects of tobacco prevention and control and smoking cessation.

- Institute means to reduce dependence on revenues generated from tobacco and seek alternative means of revenue generation.
- Aim for gradual phasing out of all types of advertising and complete ban on advertising.
- Develop and enforce legislation to subject tobacco to stringent regulations governing pharmaceutical products.
- Allocate resources for policy and operational research around tobacco.
- Build capacity of health systems in support of tobacco control. Integrate public health programme monitoring and evaluation with NCD surveillance.
- Build a coalition or network of organizations at the national, provincial and local levels facilitated by federal and provincial health services to add momentum and legitimacy to tobacco control as part of a comprehensive effort for the prevention of NCDs.
- Integrate guidance on tobacco cessation into health services as part of a comprehensive and sustainable, scientifically valid, culturally appropriate and resource-sensitive CME programme for all categories of healthcare providers.
- Adopt measures to discourage tobacco cultivation and assist with crop diversification.
- Ensure availability and access to Nicotine Replacement Therapy.
- Implement effective legislation on smuggling contraband and counterfeiting.
- Priority Action Areas: Priorities within other Action Areas will be determined subsequently

No focal person has been appointed and Ministry of health has not created any infra-structure to monitor implementation of anti-tobacco laws.

Compliance Promotion

The promulgation of this ordinance gives the Ministry of health the mandate to ensure its enforcement, wherever applicable. In fact, this role is limited to compliance promotion activities. The Ministry has since taken a number of steps to ensure its enforcement. The implementation committee, set up with broad-based representation has made a number of recommendations which have led to several steps. These include issuance of

official orders and dissemination of Ordinance to all institutes within the federal, provincial and private sector domains; information and transport related institutions inclusive of Pakistan International Airlines (PIA) and the Pakistan Railways and local governments. In addition, several conferences and seminars have been conducted with broad based representation to create awareness among the professional society and to orient the media to this concept.[19]

However, no focal person has been appointed and the ministry has not created any infrastructure to monitor implementation and carry out public education activities. Public education activities taken so far remain without a focus and without a proper strategy. No effort has been made to prepare an inter-ministerial committee either.

The effective enforcement of the Ordinance also requires active support of the professional community and scientific forums; endorsement of professional societies must be actively sought and their potential harnessed in this initiative. Public support and commitment needs to be generated in order to support its enforcement within an environment full of variety. A smoking cessation programme, combined with a clearly publicised anti-smoking policy and health education campaigns that discourage tobacco use in its worksites, is needed.

Effective enforcement of law requires active support of professional community and scientific forums; endorsement of civil society and public servants must be actively sought and their potential harnessed in this initiative.

At most of these places enforcement is light. Since restaurants have been asked to set aside corners for smokers, smoking is still rampant in restaurants and poses threat to the health of non-smokers, including children. Looking at the worldwide trends, there is a need to amend the law to make public places completely non-smoking.

As both the literature and our results suggest, legislation and implementation are intertwined. In particular, effective enforcement is linked to legislation that provides specific enforcement mechanisms, such as license removal. To the extent that a given public health measure is likely to be self-enforcing, these issues will be less critical.

The Way Ahead

Pakistan is facing a serious public health crisis due to an explosion of tobacco epidemic. This is bound to have ramifications for human development of the country and the national economy as well. Unfortunately, the policy makers and politicians seems oblivious to scale and intensity of the problem. It appears that what Pakistan really lacks in the area of tobacco control is the political will. Short term economic gains to the national exchequer from tobacco taxation and influence of powerful tobacco companies may be the main hurdles in formulation of effective laws and a regime of implementation.

There is the need to seriously develop practical mechanism for the implementation of tobacco control laws.

Most importantly, the absence of resources and lack of capacity and commitment are also perceived as barriers. There is, therefore, the need to periodically assess the quality and degree of implementation of tobacco control measures as stipulated in the Ordinance.[20]

The provincial government and district governments have not yet started taking any strong interest in the tobacco control laws.

Resource constraint is the second barrier to more effective implementation and enforcement. The lack of adequate resources for implementation efforts has resulted in delays in enforcing the law and confusion on the parts of businesses and other affected parties. On the enforcement side, inadequate resources have meant that relevant departments and local communities have undertaken no systematic and/or proactive initiatives to enforce tobacco control laws, but rather have relied on "systems" that are almost exclusively complaint-driven.

Third, all of the coalitions discuss the importance of community education but tend to do so in vague, general terms, rather than presenting a coherent educational program with defined objectives.

References

[1] Dr Javed A Khan, Professor and Consultant Chest Physician at the AKUH, quoted in news item "Smoking increases risk of heart disease in under-five children", The News, Setptember 27, 2004

[2] The Millennium Development Goals and Tobacco Control: An Opportunity for Global Partnership, World Health Organization

[3] http://www.telmedpak.com/ngos.asp?a=tobacco5

[4] Tobacco crop demand increases, Daily Times, January 9, 2005

[5] Lakson Tobacco declares Rs 10.5 per share dividend, The News, September 08, 2004

[6] World Health Assembly. Resolutions related to tobacco control. Available from: URL: http://www5.who.int/tobacco/page.cfm?tld=3.

[7] Resolution of the 10th World Conference on Tobacco or Health, Beijing, China, 24-28 August 1997

[8] http://www.who.int/tobacco/research/legislation/en/

[9] http://www.who.int/tobacco/research/legislation/en/

[10] http://www.who.int/tobacco/research/legislation/importance/en/index.html

[11] Tobacco Control Policy Page 8

[12] See for example, Foster J, Wolfson M. Youth access to tobacco: policies and politics. *Annu Rev Public Health* 1998;19:203-35.

[13] Foster J, Wolfson M. Youth access to tobacco: policies and politics. *Annu Rev Public Health* 1998;19:203-35.

[14] Chaloupka R, Pacula RL. Limiting youth access to tobacco: the early impact of the Synar amendment on youth smoking.
Working paper, Department of Economics, University of Illinois at Chicago, 1998.

[15] Brownson RC, Eriksen MP, Davis RM, et al. Environmental tobacco smoke: health effects and policies to reduce exposure.
Annu Rev Public Health 1997;18:163-85.

[16] Laugesen M, Meads C. (1991) Tobacco restrictions , price income and tobacco consumption in OECD countries, 1960-1986. British Journal of Addiction, 86, 1343-1354

[17] Laugesen M, Meads C. (1991) Tobacco restrictions , price income and tobacco consumption in OECD countries, 1960-1986. British Journal of Addiction, 86, 1343-1354

[18] http://www.who.int/tobacco/research/legislation/case_studies.htm

[19] National Action Plan for Prevention and Control of Non-Communicable Diseases and Health Promotion in Pakistan. Islamabad, Pakistan: tripartite collaboration of the Ministry of Health, Government of Pakistan; WHO, Pakistan office, and Heartfile; 2004.

[20] The Future of Tobacco Control in Pakistan, TheNetwork Publication, 2005

About TheNetwork

The Network for Consumer Protection was formed in 1992 with a focus on public health, later expanding its attention to consumer protection. Since then, the organization has become an effective advocacy group, working at the grassroots, national and international levels. TheNetwork activities include public policy advocacy, community mobilization, research and publication.

TheNetwork's programme seeks to assist citizens-consumers to influence public policies in order to meet their livelihood needs and to develop informed opinion on relevant policies. TheNetwork enjoys a track record of compiling and disseminating information for citizens and mobilizing action around key issues.

TheNetwork
for Consumer Protection

40-A Ramzan Plaza, G-9 Markaz, Islamabad, Pakistan.
Tel: +92-51-2261085. Fax: +92-51-2262495
Email: tfi-pak@thenetwork.org.pk Website: thenetwork.org.pk