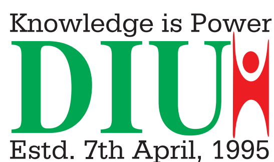
TOBACCO CONTROL LAWS OF BANGLADESH: ANALYSIS OF GAPS AND PROPOSED REFORMS

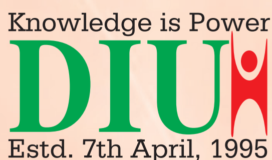


Dhaka International University
Banani, Dhaka

International Collaborating Partner
Campaign for Tobacco Free Kids (CTFK)

December 2021

TOBACCO CONTROL LAWS OF BANGLADESH: ANALYSIS OF GAPS AND PROPOSED REFORMS



Dhaka International University
Banani, Dhaka

International Collaborating Partner
Campaign for Tobacco Free Kids (CTFK)

December 2021

Tobacco Control Laws of Bangladesh: Analysis of Gaps and Proposed Reforms

The materials presented and the opinions expressed in this publication are those of the researchers and do not necessary reflect those of DIU.

© Dhaka International University

All Rights reserved.
No part of this book shall be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying, recording, or by any information storage and retrieval system, without written permission from the publisher

First Edition
December 2021

Published by:
Dhaka International University
House - 4, Road -01, Block-F
Banani Dhaka-1213
Email: inf@diu-bd.net, info@diu.net.bd
Website: www.diu.ac

Printed by:
Dot Ad
31 Purana Paltan, Dhaka-1000
Ph: 47110545, Cell: 01711023355
E-mail: dotadbd@gmail.com

RESEARCH ADVISORS

Barrister Shameem Haider Patwary MP
Chairman, Board of Trustees
Dhaka International University
President, Tobacco Control and Research Cell

Dr. Md. Shariful Alam
Country Lead, Bangladesh
Road Safety Program
Global Health Advocacy Incubator

RESEARCHERS

Md. Mostafizur Rahman LL.M
Former Chiarman
Bangladesh Chemical Industries Corporation

Mohammad Azharul Islam LL.M
Associate Professor and Head
Department of Law
Manarat International University

PROJECT COORDINATOR

Md. Bazlur Rahman
Associate Professor
Department of Business Administration
Dhaka International University

TECHNICAL ASSISTANCE

Farhana Zaman
Program Manager, Tobacco Control & Research Cell
Dhaka International University

Ashiqul Islam Khan
Researcher
Dhaka International University

Md. Mohiuddin
Program Officer, Tobacco Control & Research Cell
Dhaka International University

Member of Parliament
Chairman, Standing Committee on
Ministry of Science & Technology

Message

Greetings to all on the Birth Centenary of Father of the Nation Bangabandhu Sheikh Mujibur Rahman and the Golden Jubilee of our Independence. Bangabandhu had the opportunity to run the country for only three and a half years in the newly independent country. Bangabandhu adopted far-reaching plans for the overall development of Bangladesh. He left a solid foundation for all developments of Bangladesh. Sheikh Hasina, the worthy daughter of the father of the nation, has been working with all the risks of life in the same vein of Bangabandhu for the implementation of Bangabandhu's Sonar Bangla. I am proud that I got the opportunity to work with Sheikh Hasina, the worthy daughter of Bangabandhu, as her Cabinet Member. And that time, I took initiatives for Tobacco Products Control.

It is really commendable that Dhaka International University has conducted a research on "Tobacco Control Laws of Bangladesh: Analysis of Gaps and Proposed Reforms". Tobacco control is a priority program of the government to protect public health. It was reflected in the commitment made by our honourable Prime Minister Sheikh Hasina in her speech in January 2016 in the South Asian Speakers' Summit in Dhaka that Bangladesh would be made tobacco free by 2040. The Government of Bangladesh has been working hard to materialize that commitment.

Tobacco menace still remains a serious threat to public health globally and it has already been declared as epidemic by the WHO. Cigarettes contain four thousand types of toxic chemicals, which are deadly to health. Nicotine is very important of them. Nicotine is responsible for cigarette addiction. The reason why a smoker can't quit smoking easily even if he wants to is because of his psycho-physical dependence on nicotine.

A time bound National Tobacco Control Program (NTCP) is being prepared with feedbacks from stakeholders. I hope it will be approved soon. To streamline tobacco control law implementation activities, task forces have been constituted up to grassroots level (up to Upazilla level). To undertake extensive tobacco control program and support public health, 1% Health Development Surcharge on tobacco tax has been introduced. Health Development Surcharge Utilization Policy has already been approved by the government for effective utilization of the fund. Our government's efforts towards tobacco control are consistent despite considerable challenges due to extra burden on Covid 19 pandemic management.

This analysis is a timely one and I congratulate Dhaka International University and the researchers for their strenuous efforts for completing the analysis and making the findings available to all. I believe, the findings will be helpful not only to the policy makers but also to the academicians, lawyers, students as well as to the tobacco control advocates. I am confident, the findings of the report on "Tobacco Control Laws of Bangladesh: Analysis of Gaps and Proposed Reforms" will provide insights for our policy makers in taking decisions on the amendment of the tobacco control law of Bangladesh.

Joy Bangla, Joy Bangabandhu
May Bangladesh Live Forever

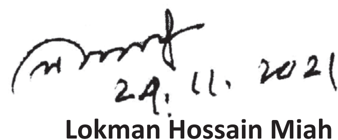
(Prof. Dr. A F M Ruhal Haque) MP
Former Health Minister, Bangladesh

Senior Secretary
Health Services Division
Ministry of Health and Family Welfare
Government of the People's
Republic of Bangladesh

Message

Tobacco has always been a matter of concern in eyes of the Government of Bangladesh. Our honorable Prime Minister, being the very first Head of any government in the entire world, has come out with her commitment and vision to make a 'tobacco free Bangladesh by 2040' realizing the effects tobacco products put on human body. The Smoking and Usage of Tobacco Products (Control) Act, 2005 has been amended to pursue our dream of making a tobacco free society, for making a healthier environment for our future generation. Several time oriented initiatives have been taken as well in this regard from task force development even at the grass roots level to introduction of 1% Health Development Surcharge on tobacco products. The initiatives to form a National Tobacco Control Cell (NTCC) and National Tobacco Control Program (NTCP) depict the commitment of government and ministry to make a better environment with zero tobacco use in Bangladesh.

I congratulate Dhaka International University for making such a time oriented step to analyze the existing laws with the goal of betterment. I feel the constructive analysis and suggestions made in this paper titled **"Tobacco Control Laws of Bangladesh: Analysis of Gaps and Proposed Reforms"** will pave the pathways towards the modification of the existing laws while playing the guide in terms of policy formulation in near future.



Lokman Hossain Miah

Knowledge is Power
DIU
Estd. 7th April, 1995

Vice Chancellor (In-Charge)
Dhaka International University

Message

Tobacco consumption, a harmful practice, is spreading its grip on our entire social structure. On the one hand, just as our promising young society is falling prey to it, on the other hand, older people are somehow unable to give up the habit of tobacco consumption be it on a traditional process or a modernized one. This is affecting the health sector as well as the economy of the country. Tobacco companies promote themselves as huge revenue providers but they also cost the country much more than they provide especially in the health sector, adding to the deaths of millions of people every year. Bangladesh, as a signatory to WHO FCTC, has enacted the Smoking and Usage of Tobacco Products (Control) Act, 2005 as amended in 2013. Over the years it has become imperative to revisit the aforesaid Act and to incorporate necessary changes.

Dhaka International University, since its inception, being aware of responsibility towards society, has involved itself with several forms of social activities and research works. The faculty, students, and members of the university family have always been vocal in the anti-tobacco movement. Following this, Dhaka International University has conducted a study titled "Tobacco Control Laws of Bangladesh: Analysis of Gaps and Proposed Reforms". This research has analyzed the provisions of the existing tobacco control laws and suggested necessary amendments to make the current law more complaint with WHO FCTC.

I sincerely thank Campaign for Tobacco-Free Kids (CTFK) for being an international collaborating partner in this initiative of Dhaka International University. I hope that this research will meet the aspirations of academicians, policy makers, tobacco control advocates and researchers.

Prof. Dr. Ganesh Chandra Saha

Additional Secretary (World Health)
Health Service Division
Ministry of Health and Family Welfare

Message

It is my pleasure to know that Dhaka International University has conducted a research titled "Tobacco Control Laws of Bangladesh: Analysis of Gaps and Proposed Reforms". I have been informed that through this research, DIU has analyzed the existing tobacco control laws of Bangladesh and compared that with the World Health Organization Framework Convention on Tobacco Control (WHO FCTC) and global best practices. I wish that findings of this research may expand the pathway for updating the current tobacco control law. We are in a developing process to draft an amendment of the existing tobacco control law.

We all know that our honorable Prime Minister has declared to make our country tobacco-free by 2040 in her speech at the South Asian Speakers' Summit in 2016. To achieve this vision, the Honorable Prime Minister has given three specific directions that included making our tobacco control laws fully compliant with WHO FCTC. I think, this is a great inspiration for all of us. The Honorable Prime Minister's declaration has given us direction to take necessary steps to make Bangladesh tobacco-free by 2040.

That is why, the Health Services Division of the Ministry of Health and Family Welfare is working for further amendment of the existing tobacco control law, in order to make it fully compliant with WHO FCTC. The Ministry has also developed a 5-year National Tobacco Control Program which is underway for approval. A roadmap has already been drafted to achieve the Honorable Prime Minister Sheikh Hasina's commitment of making Bangladesh tobacco-free by 2040.

I appreciate the commendable task accomplished by Dhaka International University. I thank everyone involved in this research.

Kazi Zebunnessa Begum

Message

Bangladesh is one of the first countries in the world where the Prime Minster has made a commitment to make it a tobacco free nation by 2040. Under the leadership of the Health Ministry, relevant ministries are working together to achieve the Prime Minister's goal. National and international non-government organizations are also supporting relevant ministries on different tobacco control issues.

Bangladesh is one of the first signatories of the WHO FCTC that went on to enact a national tobacco control law titled "The Smoking and Usage of Tobacco Products (Control) Act, 2005" which was subsequently amended in 2013. Recently, Ministry of Health has taken the initiative for further amendment of the tobacco control law to make it fully compliant with WHO FCTC and global best practice.

I applaud the Department of Law, Dhaka International University for undertaking this research project titled, 'Tobacco Control Laws of Bangladesh: Analysis of Gaps and Proposed Reforms'. I expect that the research will be very helpful for the Ministry of Health to build a strong case for amending the tobacco control law. Moreover, the research will provide necessary local and global evidence for strengthening the current tobacco control law to bring it into compliance with the WHO FCTC, by making all enclosed public places 100% smoke-free, eliminating all types of advertisement of tobacco products, prohibit the sale of single cigarettes or bidis and ban the import and sale of e-cigarettes and other novel tobacco and nicotine products.

CTFK is proud to be a part of the research as an International collaborating partner. I would like to take the opportunity to acknowledge CTFK ILC and Research team in Washington DC, USA and country team in Bangladesh for their contribution. Finally, I would like to thank the research team from Dhaka International University for completing this critical research during the COVID 19 pandemic.

Vandana Shah
Regional Director, South Asia Programs
Campaign for Tobacco- Free Kids

Knowledge is Power
DIU
Estd. 7th April, 1995

Chairman
Board of Trustees
President, Tobacco Control and Research Cell
Dhaka International University

Acknowledgements

"Tobacco Control Laws of Bangladesh: Analysis of Gaps And Proposed Reforms" a research study, conducted by Dhaka International University, has analyzed the existing tobacco control laws of Bangladesh and suggested necessary changes to make to make them more compliant with WHO FCTC and global best practices.

I feel delighted to acknowledge the contributions of the research team of Dhaka International University as well as the research teams of Campaign for Tobacco Free Kids (CTFK), Washington D.C. USA and CTFK Bangladesh team for the successful completion of the study and articulation of the findings and recommendations in a structured manner. I would like to thank CTFK for partnering with Dhaka International University as international collaborating partner and providing technical support.

I express my gratitude to the honorable members of Steering Committee, Tobacco Control and Research Cell and the Department of Law, DIU for their valuable and meaningful guidance and constructive feedback.

S. H. Patwary

Barrister Shameem Haider Patwary MP

TOBACCO CONTROL LAWS OF BANGLADESH:
ANALYSIS OF GAPS AND PROPOSED REFORMS

Acronyms

AD	Appellate Division
BATB	British American Tobacco Bangladesh
CSR	Corporate Social Responsibility
CTFK	Campaign for Tobacco-Free Kids
DIU	Dhaka International University
DSA	Designated Smoking Area
UK	United Kingdom
ENDS	Electronic Nicotine Delivery System
EU	European Union
FDA	Food and Drug Administration
FCTC	Framework Convention on Tobacco Control
GATS	Global Adult Tobacco Survey
GDP	Gross Domestic Product
GHW	Graphic Health Warning
GTCR	Global Tobacco Control Report
GYTS	Global Youth Tobacco Survey
HCD	High Court Division
HTP	Heated Tobacco Products
MP	Member of Parliament
NIPSOM	National Institute of Preventive and Social Medicine
NTCC	National Tobacco Control Cell
NGO	Non-Government Organization
NCD	Non communicable Disease
SDG	Sustainable Development Goals
SHS	Secondhand Smoke
SLT	Smokeless Tobacco
SUTPCA	The Smoking and Usage of Tobacco Products (Control) Act
TAPS	Tobacco Advertising, Promotion, and Sponsorship
WHO	World Health Organization

TABLE OF CONTENTS

SECTION	TITLE	PAGE
	Executive Summary	01
	Key Recommendations	04
	Introduction	05
PART I	**Tobacco Burdens and Tobacco Control in Bangladesh**	07
1	The Burden of Tobacco in Bangladesh	07
2	History and development of tobacco control laws in Bangladesh	13
3	Relevant provisions of the Constitution	14
PART II	**International Scenario & Global Best Practice on Tobacco Control Legislation**	16
4	Introduction	16
5	The WHO FCTC Articles and their Implementing Guidelines	17
6	Global Examples of Best Practices	22
PART III	**Analysis of Bangladesh's Tobacco Control Laws, Recommendations and Rationale**	30
7	Definitions	30
8	Smoke-Free Environments	34
9	Advertising, Promotion and Sponsorship	38
10	Packaging and Labelling	42
11	Regulation of Content and Emissions	46
12	Sales Restrictions	48
13	Restrictions on trade and commerce in production, supply and distribution	50
14	Ban new tobacco and nicotine products (e-cigarettes, Heated Tobacco Products, and oral pouches)	52
PART IV	**Parliamentary Approach to Tobacco Control**	56
PART V	**Judicial Approach to Tobacco Control**	62
ANNEXURE	**Steering Committee**	68

Executive Summary

Tobacco use is the most serious worldwide public health challenge. Medical science clearly recognizes tobacco as the single most significant cause of mortality and morbidity across the globe. It has assumed the dimension of an epidemic resulting in enormous disability, disease and death. In addition to disease burden, tobacco use results in severe social, economic and environmental burdens. Tobacco and related industries have been employing sustained tactics to attract new generations of tobacco users.

The Honourable Prime Minister of Bangladesh, Sheikh Hasina while speaking in the South Asian speakers' summit in Dhaka in 2016 declared, inter alia, "My government will take all possible measures for effective implementation of existing tobacco control laws and in turn we will make our laws fully compliant with FCTC in line with our national priorities to achieve SDGs".

The latest national survey (GATS 2017) showed that **35.3% (37.8 million) of adults over 15 years in Bangladesh currently use tobacco.** Tobacco is the direct cause of over **126,000 deaths every year** in Bangladesh (13.5% of ALL deaths from any cause, Health cost study 2018). According to **Tobacco Atlas 2020, total death was recorded as 161,253.**

There are currently about 1.5 million adults suffering from tobacco-attributable illness in Bangladesh, and more than 61,000 children (below age 15) are suffering from diseases caused by exposure to secondhand smoking.

The death and disease caused by tobacco has an economic impact as well. Smoking-attributable Health Expenditure (direct healthcare costs attributable to tobacco) in Bangladesh is estimated to be **BDT 83.9 billion annually,** 76% of which was paid by tobacco users' households and 24% was financed through the public health sector budget, representing nearly 9% of total government health expenditure in the fiscal year 2018-19.

Bangladesh has been conscious of the harmful effects of tobacco use and the efforts of the tobacco industries to attract new, young users. Bangladesh was one of the founding signatory Parties of the WHO Framework Convention on Tobacco Control (WHO FCTC), the first coordinated global effort to reduce tobacco use. Bangladesh signing the treaty on 16 June 2003 and ratifying it on 14 June 2004. The WHO FCTC then entered into force on February 27, 2005. The treaty requires Parties to implement evidence-based measures to reduce tobacco use and exposure to tobacco smoke. When effectively implemented, the WHO FCTC is a fundamental tool to reduce the devastating global consequences of tobacco products on health, lives, economies and environments. With 182 Parties as of May 2020, the WHO FCTC is one of the most widely adopted treaties in the United Nations system.

Bangladesh followed this by adopting The Smoking and Usage of Tobacco Products (Control) Act 2005, (SUTPCA 2005) which was further updated in 2013.

The Act, together with its implementing Rules, bans smoking in some public places, the sale of tobacco products to minors, and most direct and indirect advertising of tobacco and tobacco use. The Act also specifies the mandatory display of pictorial health warning on tobacco packs.

Though the Act is intended as a comprehensive law on tobacco control, it was adopted over 16 years ago. The 2013 update was still some 8 years ago. Global practice has developed and moved on since then and Bangladesh's law is in urgent need of updating. With the passage of time and a greater understanding of the full range of measures necessary to combat the tobacco epidemic, lacunas in the Act have become apparent and proved to be a major challenge in its effective implementation.

These gaps in the current law are highlighted by the WHO Report on the Global Tobacco Epidemic (GTCR) 2021, which provides the status of countries' implementation of key tobacco control measures. Bangladesh has adopted best practices in Monitoring and Health Warnings on packs. In all other policy areas, Bangladesh falls into the "Moderate" or "Low" category, of adoption and implementation with no forward progress since 2013.

Bangladesh continues to allow Designated Smoking Areas (DSAs) in many public places, restaurants with more than one room, work places and public transport. The WHO FCTC and all the research evidence is clear that DSAs, ventilation systems, air exchanges, and filtration devices – are not protective, and cannot eliminate all second-hand smoke. In addition, the compliance and enforcement of smoke-free laws in Bangladesh is reported to be poor. It is imperative for Bangladesh to remove all provisions for DSAs in its law and takes steps to effectively enforce smoke-free rules in all public places.

Even though Bangladesh is compliant with the WHO FCTC obligations for mandating 50% pictorial health warnings, this now falls far behind in terms of global best practice where countries are requiring greater than 75% health warnings along with plain packaging for tobacco products. Pictorial health warnings size in Nepal (at 90%), India and Thailand (at 85%), and Sri Lanka (at 80%).

Advertising continues to take place in Bangladesh by way of point-of-sale displays, sales on the internet, brand sharing and brand stretching, some sponsorship of events, and corporate responsibility programs.

The sale of single sticks of cigarettes and bidis is an important factor that allows and encourages young people to start smoking. Banning this practice, as at least 75 other countries already have, is critical to reducing smoking initiation by youth.

In addition, to improving the existing provision in the 2005 Act (as amended), Bangladesh now needs to face up to the threats to public health from new tobacco and nicotine products, such as electronic cigarettes, heated tobacco products (HTP) and oral nicotine pouches, which are becoming increasingly popular around the globe and are the tobacco industry's latest way to addict the next generation of young people to nicotine. The tobacco industry is seeking to create a new image for itself by claiming these products are 'reduced risk' and can assist in fighting the harms of the tobacco epidemic. In reality, these new products are just the latest way for the industry to generate profits through addiction and to distract government's attention away from effectively protecting public health.

The WHO Report on the Global Tobacco Epidemic 2021, notes -

> *"As cigarette sales have fallen, tobacco companies have been aggressively marketing new products – like e-cigarettes and heated-tobacco products – and lobby governments to limit their regulation. Their goal is simple: to hook another generation on nicotine."*

It is vital that Bangladesh addresses the looming threat to public health from new tobacco and nicotine products by banning the products, before the industry is able to establish strong markets in Bangladesh.

This report is intended as a comprehensive analysis of SUTPCA 2005, identifying the gaps in that law and proposing reforms which are in consonance with best practices adopted by other countries and the guidelines specified under the global public health treaty on tobacco control, World Health Organization Framework Convention on Tobacco Control (WHO FCTC). The recommendations in Part III of this report would ensure Bangladesh will have best practice in 'Smoke-free' and 'Advertising bans' and will come into line with global best practice in respect of packaging and health warnings, along with sales restrictions and the regulation of contents and emissions. Where a recommendation would impact the WHO analysis for the GTCR, this is highlighted in Part III.

The effort to fulfil the obligations under the FCTC is aligned with the State`s primary duty of improving and protecting public health under the Constitution of Bangladesh.

This report is a product of the untiring efforts of Barrister Shameem Haider Patwary MP, Dr. Md. Shariful Alam, Md. Mostafizur Rahman, Mohammad Azharul Islam, and valuable contributions from the CTFK Dhaka team and research team of the CTFK, Washington DC, USA. This report is compiled with the purpose of raising awareness among policy-makers, experts, civil societies and the public at large about the need for a comprehensive legislation on tobacco control. It is also intended to be used as reference for students, researchers, academicians and other stakeholders to conduct further studies.

KEY RECOMMENDATIONS FOR AMENDMENTS TO

The Smoking and Tobacco Products Usage (Control) Act, 2005, as amended by The Smoking and Using of Tobacco Products (Control) (Amendment) Act, 2013

And

The Smoking and Tobacco Products Usage (Control) Rule, 2015

- Prohibit designated smoking areas and smoking in all public places, work places, and public transport [Section 8.1]
- Prohibit the display of tobacco products in stores, kiosks and other points of sale [section 9.1]
- Prohibit all tobacco company sponsorship including corporate social responsibility activities [section 9.2]
- Increase the size of health warnings to greater than 85% in line with global best practices [section 10.1]
- Prohibit the sale of single sticks, unpackaged or loose tobacco or smaller packs [section 13.1]
- Allow for stricter regulation of tobacco packaging including plain packaging [section 10.4]
- Prohibit the sale and import of e-cigarette, heated tobacco products, nicotine pouches and other novel tobacco and nicotine products [section 14]
- Regulate contents and emissions including a ban on all flavored tobacco [section 11]
- Prohibit brand sharing of tobacco brands [section 9.3]
- Increase the age of sale from 18 to 21 [section 12.1]
- Prohibit the display of emission yield figures [section 10.3]
- Remove cigarette from the list of essential commodities under the Control of Essential Commodities Act, 1956.

Introduction

Background

The Smoking and Usage of Tobacco Products (control) Act, 2005 was amended in 2013 to make it more compliant with WHO FCTC. Since then, about 8 years have passed. The last Global Adult Tobacco Survey (GATS) 2017 report reveals that the prevalence of tobacco use in all forms among people (age 15 years and above) is still 35.3% (37.8 million). Though it has reduced from 2009 (43.3)[1]. There are currently about 1.5 million adults suffering from tobacco-attributable illness in Bangladesh, and more than 61,000 children (below age 15) are suffering from diseases caused by exposure to secondhand smoking. Deaths attributable to tobacco use are 161 thousand[2] while expenses for diseases and disabilities due to tobacco use was BDT 30,560 crore in 2018[3]. All public places are not 100% smoke-free in Bangladesh and ban on product display at points of sale is not specifically mentioned in the law. There is ambiguity in the provisions of the law relating to tobacco advertising, promotion and sponsorship. Meanwhile, emerging tobacco products like e-cigarettes have sprung up as a new threat to public health which were not incorporated in the above-mentioned tobacco control law of Bangladesh in 2013 while amending the same. These gaps in the current tobacco control law are highlighted by the WHO Report on the Global Tobacco Epidemic (GTCR) 2021[4], which provides the status of countries' implementation of key tobacco control measures. Bangladesh has adopted best practices in monitoring and health warnings on packs. In all other policy areas, Bangladesh falls into the "moderate" or "low" category of adoption and implementation with no forward progress since 2013. Global practice has developed and moved on since then and Bangladesh's law is in urgent need of updating. With the passage of time and a greater understanding of the full range of measures necessary to combat the tobacco epidemic, lacunas in the Act have become apparent and proved to be a major challenge in its effective implementation.

It is worth mentioning in this context that Honourable Prime Minister of Bangladesh Sheikh Hasina while speaking in the South Asian Speakers' Summit in Dhaka in 2016 declared, *inter alia*, "My government will take all possible measures for effective implementation of existing tobacco control laws and in turn we will make our laws fully compliant with FCTC in line with our national priorities to achieve SDGs"[5].

---

[1] Bangladesh Global Adult Tobacco Survey (GATS) 2017. Centers for Disease Control and Prevention (CDC); 2018. Available from www.cdc.gov/tobacco/global/gtss/gtssdata/index.html.

[2] Tobacco Atlas, 2020. Available from Tobacco Atlas - Tobacco Atlas

[3] Faruque GM et al. The economic cost of tobacco use in Bangladesh: A health cost approach. Bangladesh Cancer Society. 2019 February 23.

[4] WHO report on the global tobacco epidemic 2021: addressing new and emerging products. Geneva: World Health Organization; 2021. Licence: CC BY-NC-SA 3.0 IGO. https://www.who.int/teams/health-promotion/tobacco-control/global-tobacco-report-2021

[5] Prime Minister's speech in the South Asian Speakers' summit held on 30-31 January 2016.

In this backdrop, the government has initiated the process to further amend the Smoking and Usage of Tobacco Products (Control) Act, 2005 (amended in 2013) which is timely and commendable initiative and reflects the government's commitment to protect public health from tobacco menace.

In such a time, the study on "Tobacco Control Laws of Bangladesh: Analysis of Gaps and Proposed Reforms" has been undertaken by DIU with the intention of supporting the government's initiative to amend the current tobacco control law with evidence in line with WHO FCTC and global best practices.

Methodology

The study relied on secondary sources like, tobacco control laws of Bangladesh, WHO FCTC and its Guidelines, tobacco control laws of other countries, judicial decisions, parliamentary practices, expert consultation and content analysis. The study also examined the provisions of Bangladesh's tobacco control law in relation to global best practices. A committee consisting of academicians, tobacco control advocates, lawyers and civil society members was formed by Dhaka International University to review the study report. Initial draft was reviewed by the committee and the researchers considered the feedbacks/comments and came up with the second draft. That was reviewed and further feedbacks/comments were provided to the researchers. Finally, they presented the final draft and the committee unanimously agreed to accept the report for publishing. The research was done between September 2020 to November 2021.

Scope and Limitations

Considering the short span of time and resource constraint, DIU opted for the analysis of gaps of the tobacco control laws of Bangladesh on the important areas in terms of WHO FCTC provisions since Bangladesh, as a signatory country of this international legal instrument, has incurred obligation to comply with its provisions. This study has specifically touched upon the areas of smoke-free environment, tobacco advertisement, promotion and sponsorship, size of Graphic health warning, single stick/loose sale and emerging tobacco products.

It is agreed that there are scopes for numerous studies of this law in other perspectives as well. It is expected that more studies will be carried out in future by interested researchers and institutions to shed light on the gaps and lapse of the law in different perspectives. No uniform style of referencing has been followed.

PART I

Tobacco Burdens and Tobacco Control in Bangladesh

1. The Burden of Tobacco in Bangladesh

1.1. Introduction

Whether in rural or urban areas, people can be found throughout Bangladesh using different forms of tobacco (cigarettes, bidis, Zarda, gul) on the streets, in restaurants or on street side tea stalls. The feature of tobacco use in Bangladesh is that it is visible in varied degrees across the country irrespective of gender or residence (urban and rural).

1.2. Prevalence of tobacco use

Types of tobacco and its use in Bangladesh

In most countries, cigarettes are the most prevalent form of smoking tobacco, but in Bangladesh tobacco use is multifarious. The common types of tobacco use are broadly divided into 1) smoking tobacco and 2) smokeless tobacco (SLT). The former includes manufactured cigarettes, bidis, hand-rolled cigarettes, pipes, cigars and water-pipes or hukkah, while the latter constitutes a variety of products including betel quid with zarda, zarda only, zarda with supari (Erica nut), betel quid with sada pata (dried leaf of tobacco), pan masala with tobacco, sada pata chewing, gul, khoinee and other SLT products but khoinee is rarely used.

There have not been many studies on prevalence of tobacco use in Bangladesh. The Global Adult Tobacco Survey (GATS) 2017 is a representative survey on the subject hence this report has been heavily relied upon to share data in this study. According to GATS 2017 Report, in Bangladesh

- **35.3% (37.8 million) of adults (age 15 years and above) currently use tobacco** (46.0% men and 25.2% women).
- 18.0% (19.2 million) of adults (36.2% men and 0.8% women) currently smoke tobacco
- Among them 14.0% (15 million) of adults (28.7% of men and 0.2% of women) smoke cigarettes, the most commonly smoked tobacco product in Bangladesh
- 5.0% (5.3 million) currently smoke bidi (9.7% men and 0.6%women).
- 20.6% (22.0 million, adults, (16.2% men and 24.8% of women) use smokeless tobacco.

- Among them 18.7% (20.0 million) of adults (14.3% men and 23.0% women) currently use betel quid with tobacco (most used SLT) while 3.6% (3.9% million) adults (3.1% men and 4.1% women) currently use gul.[1]

From the figure -1 below, it is evident that tobacco use is much higher among men (46.0%) than women (25.2%) and it is higher in rural areas (37.1%) than urban areas (29.9%). Smoking prevalence is similar in rural and urban areas while use of SLT is higher in rural areas (22.5%) than urban areas (14.9). Smoking prevalence is much higher among man (36.2%) than woman (0.8%); contrastingly use of SLT is higher among woman (24.2%) than man (16.2%).

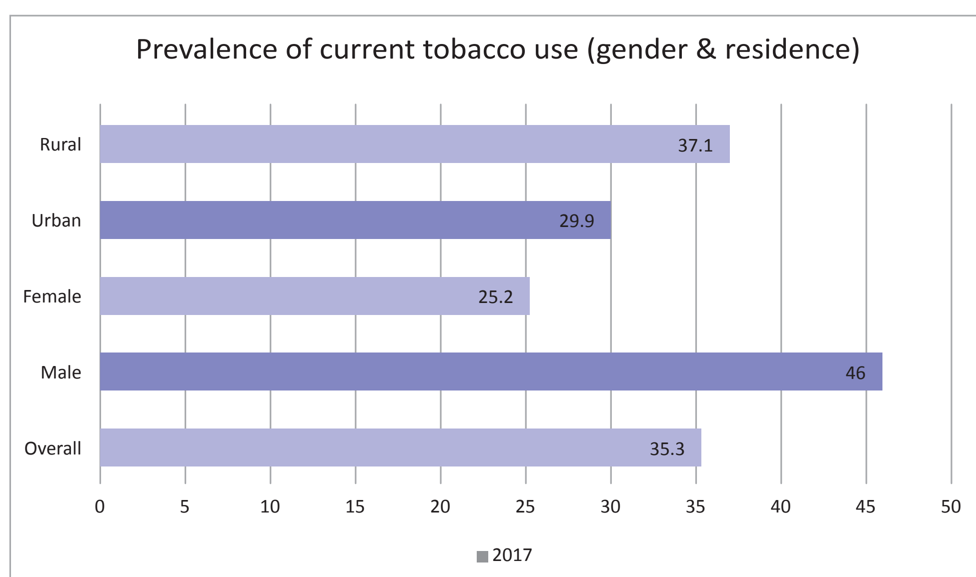


Figure 1: Prevalence of Current Tobacco Use (gender & residence), GATS 2017

The Global Youth Tobacco Survey (GYTS) in 2013 revealed that overall, **6.9% youth (students aged 13-15 years) used any forms of tobacco products** (9.2% of boys and 2.8% of girls). Smoking prevalence was found overall 2.9% (4.0% of boys and 1.1% of girls). 2.1% students, (3.4% of boys and 0.0% of girls) smoked cigarettes. While overall 4.5% students (5.9% of boys and 2.0% of girls) used smokeless tobacco.[6]

According to Non communicable Disease (NCD) Risk Factor Survey 2018 conducted by NIPSOM of Bangladesh, overall 43.7% of adults (age 18 to 69 years) currently consumed tobacco in any form. Among them 59.6% were man and 28.3% woman.[7]

---

6 Bangladesh Global Youth Tobacco Survey (GYTS) 2013. Centers for Disease Control and Prevention (CDC); 2015. Available from www.cdc.gov/tobacco/global/gtss/gtssdata/index.html.

7 Bangladesh NCD risk factor survey 2018, NIPSOM. Available from steps-2018-results_factsheet_english.pdf (nipsom.gov.bd)

In NCD Risk Factor Survey 2010 it was overall 51.0% consumed tobacco in any form of tobacco, among them 70.0 % were man and 34.4% were woman. Of them 26.2 % were current smokers (54.8% man and 1.3% were woman). While 31.7% were overall SLT users (29.4% were men and 33.6% were woman).[8]

1.3. Exposure to Secondhand Smoke (SHS)

People in Bangladesh are victims of exposure to SHS also. In different studies it is evident that SHS is a serious public health concern.

According to GYTS 2013, in Bangladesh overall **59.0% of young people are (61.3% boys and 54.8% girls) currently exposed to tobacco smoke inside any public place.**

According to GATS 2017 Report, 43.9% (38.4 m) non-smoker adults (age15 years and above) currently exposed to SHS at different public places, restaurants, indoor workplaces and public transports.

1.4. Electronic Cigarette

Electronic nicotine delivery devices (ENDS) popularly known as electronic cigarettes are gradually making inroads in Bangladesh. Though GATS 2017 found that current users of electronic cigarettes were overall 0.2%, and men 0.5% while women 0.0%.

Although the number of users of electronic cigarettes is low now, these devices are readily available. The teenagers and youth are the main victims. So, it is important to take control measure before further penetration in the society.

1.5. Implementation status of the tobacco control laws

Compared to other crimes, smoking is considered frivolous and police forces are not inclined to enforce the relevant provisions of the Metropolitan Police Acts/Ordinances to punish smokers in certain places. The same applies to other authorities also. The Smoking and Tobacco Products Usage (Control) Act 2005[9], as amended in 2013, proved to be more effective for tobacco control since it was the first legislation enacted exclusively for tobacco control and provided provisions complying largely with the FCTC Articles. After enactment of this law tobacco control activities gained momentum in collaboration with civil society organizations and NGOs. The awareness campaign, introduction of task forces at the field level for implementation of the law, operation of mobile courts and other administrative measures appear to be effective as is evident

[8] Non-Communicable Disease Risk Factor Survey Bangladesh 2010. Available from 2010_STEPS_Report_ Bangladesh.pdf (who.int)

[9] Available at http://bdlaws.minlaw.gov.bd/act-927.html

from different studies that tobacco consumption is in declining trend since introduction of the said Act in 2005.

1.6. Data on death and disease caused by tobacco use in Bangladesh

A health cost study 2018[10] found that the people (age group 30 and above) of Bangladesh were exposed to tobacco related diseases as shown in Figure 2 below.

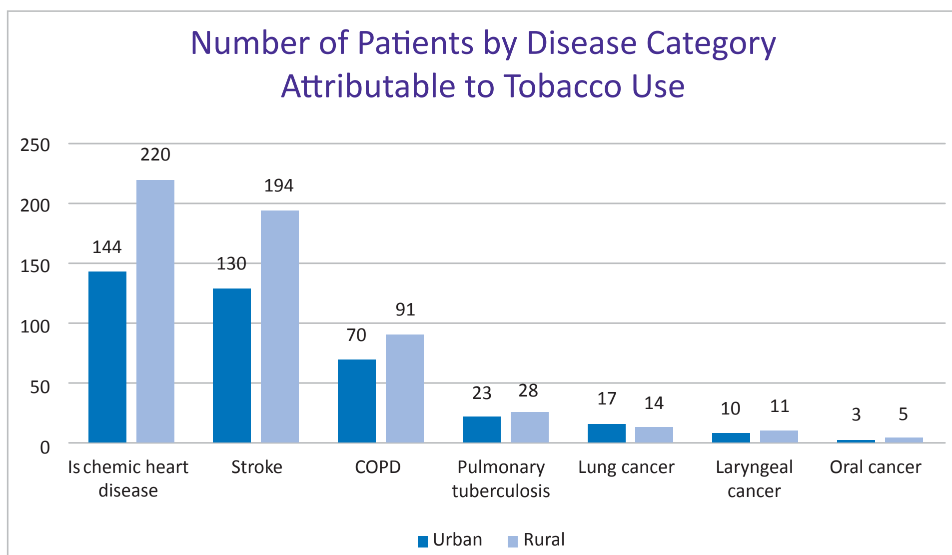


Figure 2: Number of Patients by Disease Attributable to Tobacco Use.

The report further reveals that 7 million people (aged 30 years and above) are suffering from tobacco-related diseases. Out of the 7 million, 1.5 million (22%) were attributable to tobacco use, while more than 435,000 children (below age 15) are falling prey to tobacco-related diseases. Notably, more than 61,000 (14%) of them are attributable to exposure to secondhand smoke at home.

1.7. Deaths Due to Use of Tobacco

The use of tobacco poses serious risk of deaths and illnesses. A study from the WHO regional office for South-East Asia titled-Impact of tobacco related illnesses in Bangladesh, 2007[11], estimated that there were as many as 57,000 tobacco-related deaths in 2004 and the health cost study 2018 found the number more than double (nearly 126,000) which were 13.5% of all cause of deaths. According to Tobacco Atlas 2020, total death was recorded as 161,253.[2]

[10] https://www.cancer.org/content/dam/cancer-org/research/economic-and-healthy-policy/bangladesh-health-cost-full-report-2020.pdf

[11] https://apps.who.int/iris/bitstream/handle/10665/205319/B0575.pdf?sequence=1&isAllowed=y

1.8. Data on the Socio-economic Burdens of Tobacco Use in Bangladesh

Total Health cost attributable to tobacco use and exposure to second-hand smoke was estimated to be approximately 305.7 billion BDT according to the Health Cost Study 2018 (The Economic Cost of Tobacco Use in Bangladesh: A Health Cost Approach 2020)[12] equivalent to 1.4% of the Gross Domestic Product (GDP) of Bangladesh. In the table-1 below the increasing trend of cost attributable to tobacco use has been shown. Comparing with 2004 figure, it is found that total cost of tobacco related illness (both indirect and direct) has been more than double.

Table 1: Trend of tobacco-attributable cost estimates for Bangladesh between 2004 and 2018 (in billion BDT in 2018 prices)

Components of the costs of tobacco-attributable illnesses	Tobacco Use		Secondhand smoke exposure		Total Tobacco Attributable Cost	
Period	2004	2018	2004	2018	2004	2018
Direct cost	54.9	82.0		1.9		83.9
Private health expenditure	37.3	62.0		1.5		63.5
Public health expenditure	17.6	20.0		0.4		20.4
Indirect cost	65.4	182.4		39.3		221.7
Cost of morbidity	32.3	132.9		0.0		132.9
Cost of mortality	33.0	49.4		39.3		88.7
Total direct and indirect cost	**120.3**	**264.4**	**15.5**	**41.3**	**135.8**	**305.7**

Figure- 3 below shows that the cost of health care for tobacco related illness has increased 125% from 2004 to 2018. The report of 2018 also revealed that after adjustment of inflation, total economic cost of deaths and disabilities due to tobacco related diseases was found to be also more than double. Therefore, the burden on the economy of the tobacco users and the society is heavy and requires urgent action to reduce tobacco use.

[12] https://www.researchgate.net/publication/342445467_The_Economic_Cost_of_Tobacco_Use_in_Bangladesh_A_Health_Cost_Approach. Page 38.

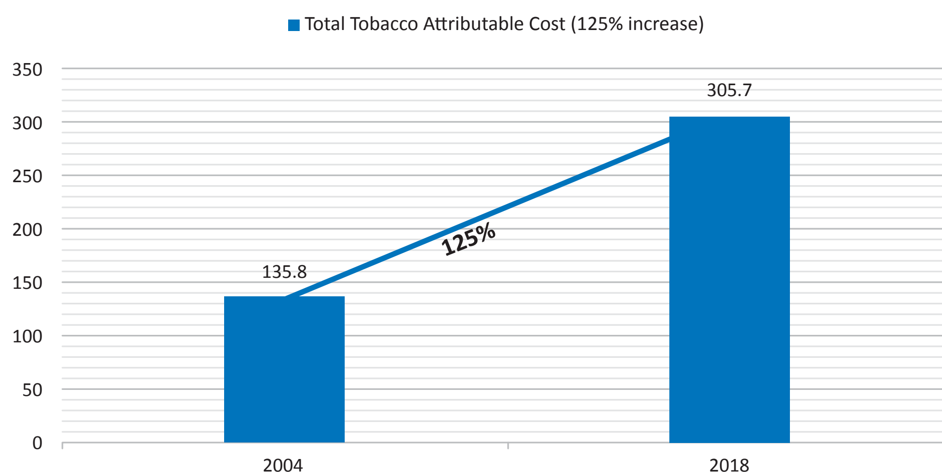


Figure 3: Trend of Increase of Tobacco Attributable Cost

1.9. The myth of Contribution of tobacco industries to the national economy demystified

According to health cost study 2018, the figure of revenue income from tobacco tax in the 2016-2017 fiscal year was 228.1 billion Taka while the cost of tobacco-induced illness, deaths and disabilities as a burden on Bangladesh's economy was 305 billion Taka (USD 3.6 billion).[13] Therefore, the tobacco industries' contribution to the economy cannot be defended positively as the cost and burden of illness, death, and disabilities due to tobacco use are much higher than the revenue income of the government of Bangladesh from tobacco industries. Therefore, the claim of the tobacco industries that they are contributing to the national economy is a myth.

1.10. Conclusion

Studies have shown that prevalence of tobacco use has declined significantly in Bangladesh but still high in South East Asia Region. It is highly alarming that though the tobacco use has been on the declining trend but the deaths are recorded as double over the 14 years (2004-2018) period due to tobacco use in addition to tobacco related Non-communicable diseases (NCD). The number of children and adults are suffering due to exposure to SHS is also alarmingly high. Therefore, it is earnestly necessary for Bangladesh to go for comprehensive approach for rigorous tobacco control as well as to fulfill the Prime Minister's commitment for making Bangladesh tobacco-free by 2040.

---

[13] Available at-https://www.researchgate.net/publication/342445467_The_Economic_Cost_of_Tobacco_Use_in_Bangladesh_A_Health_Cost_Approach. Page 39.

2. History and Development of Tobacco Control Laws of Bangladesh

2.1. Introduction

Tobacco control provisions in legislation started with smoking control provisions in the Railways Act of 1890 (in the then British India) where a passenger, if continued to smoke after a warning, would be subject to a fine of Taka 20 and the railway employee could remove the passenger from the train compartment, which still exists in the Act (section 110 of Railways Act 1890). Although smoking control provisions were included in several legislations in different times[14], a comprehensive tobacco control law was enacted in 2005 - The Smoking and Usage of Tobacco Products (Control) Act 2005. This followed Bangladesh signing (2003) and ratifying (2004) the WHO FCTC.

The Smoking and Usage of Tobacco Products (Control) Rules were framed in 2006 for implementation of the Act. In 2013, the Act was amended to make it more compliant with FCTC. After the amendment of the Act in 2013, the Rules of 2006 were replaced with the Smoking and Usage of Tobacco Products (Control) Rules 2015 to make it updated according to the provisions of the amendments.

After introduction of the Smoking and Usage of Tobacco Products (Control) Act 2005, the tobacco control issue gained momentum in Bangladesh which is why it is evident in the GATS Report 2017 that tobacco use is in decreasing trend since the GATS Report of 2009 (43.3% in 2009 and 35.3% in 2017. The relative decline is 18.5%).

2.2. Some inconsistent provisions relating to tobacco control in different laws

There are inconsistencies in different laws relating to tobacco control, including the penalty and the status of cigarettes. For example, the penalty for smoking in public places and public transports in the Smoking and Usage of Tobacco Products (Control) Act, 2005 is up to Taka 300, which is Taka 20 in the Railways Act, up to Taka 100 in Metropolitan Police Ordinances and up to Taka 300 in the Metropolitan Police Acts.

Cigarette is still listed as an essential commodity under the Control of Essential Commodities Act 1956.

[14] After the Railways Act 1890, the next tobacco control legislation was the Juvenile Smoking Act 1919, which prohibited juveniles, persons under the age of 16 (repealed in 2005), from smoking. In 1952, a law was enacted that banned smoking in show houses called The East Bengal Prohibition of Smoking in Show Houses Act 1952 (repealed in 2005). In 1988, the Tobacco Products Marketing (control) Act 1988 (Act 45 of 1988 amended in 1990 by ordinance 16 of 1990 and repealed in 2005) was enacted to control marketing of tobacco products. This legislation also required tobacco industries to include a warning label on smoking tobacco products stating that "Smoking injurious to health."

2.3. Conclusion

The Smoking and Usage of Tobacco Products (control) Act 2005 got updated in 2013 to make it more compliant with FCTC provisions. However, there remains room for significant improvement as Bangladesh is still not fully compliant with its obligations under the WHO FCTC. At the same time the inconsistencies mentioned above need to be removed and uniform penal provision should be made for the same offence.

3. Relevant Provisions of the Constitution

3.1. Introduction

Some provisions provide a mandate for the government to protect and improve public health and the environment. Tobacco use is mainly responsible for NCDs, resulting in colossal cost on medical care borne by the public and the government. The constitutional provisions are an obligation upon the government to take appropriate measures to protect citizens from deaths and diseases.

3.2. Medical Care: A Basic Necessity

There are provisions in the Constitution of Bangladesh[15] that recognize medical care as a basic necessity. In providing medical care, the state has to endeavor to prevent citizens' diseases by taking appropriate measures. Control of tobacco use is thus a task for the government since tobacco use is a significant cause of NCDs. In part II of the Constitution of the People's Republic of Bangladesh under the heading "Fundamental Principles of State Policy" it has been mentioned as follows:

Provision of Basic Necessities

Article 15. It shall be a fundamental responsibility of the State to attain, through planned economic growth, a constant increase of productive forces and a steady improvement in the material and cultural standard of living of the people, with a view to securing to its citizens –

(a) the provision of the basic necessities of life, including food, clothing, shelter, education and medical care;

3.3. Improvement of Health- A Primary Duty of the State

The constitution also provides directives to the state regarding public health improvement as one of its primary duties. Hence, the control of the use of an injurious product like tobacco is a government's constitutional obligation.

[15] http://bdlaws.minlaw.gov.bd/act-367.html

3.4. Public Health and Morality

Article 18. (1) The State shall regard the raising of the level of nutrition and the Improvement of public health as among its primary duties, and in particular shall adopt effective measures to prevent the consumption, except for medical purposes or for such other purposes as may be prescribed by law, of alcoholic and other intoxicating drinks and of drugs which are injurious to health.

3.5. Protection and Improvement of Environment

The constitution has provided provisions for the protection and improvement of the environment and biodiversity. This is related to tobacco control since tobacco production and processing produce greenhouse gases and endangers the environment. Therefore, the government must contain environmental pollution created from tobacco production and processing.

3.6. Protection and Improvement of Environment and Biodiversity

Article 18A. The State shall endeavour to protect and improve the environment and to preserve and safeguard the natural resources, bio-diversity, wetlands, forests and wild life for the present and future citizens.

3.7. Conclusion

The constitution requires the country to undertake appropriate tobacco control measures to protect its people from tobacco harms, including illness, deaths, disability and medical care cost.

PART II

International Scenario & Best Practices on Tobacco Control Legislations

4. Introduction

The World Health Organization Framework Convention on Tobacco Control (WHO FCTC) is the first coordinated global effort to reduce tobacco use. The WHO FCTC entered into force on February 27, 2005 and requires Parties to implement evidence-based measures to reduce tobacco use and exposure to tobacco smoke. When effectively implemented, the WHO FCTC is a fundamental tool to reduce the devastating global consequences of tobacco products on health, lives, economies and environments. With 182 Parties as of May 2020, the WHO FCTC is one of the most widely adopted treaties in the United Nations system.

Bangladesh was one of the founding Parties to the treaty, signing it on 16 Jun 2003 and ratifying it on 14 June 2004.

The WHO FCTC contains a broad framework of obligations and rights and requires Parties to implement effective tobacco control measures covering a range of topics. Parties are encouraged to implement measures beyond those required by the WHO FCTC (Art. 2.1). To date, Parties to the FCTC have adopted implementing Guidelines for several Treaty Articles listed below and adopted the Protocol on Illicit Trade in Tobacco Products to increase international cooperation to fight tobacco smuggling and better control the legal tobacco trade.

Adopted by consensus, the Guidelines to the FCTC were developed to assist Parties to meet their FCTC legal obligations. The Guidelines contain principles, definitions, and key legislative elements the Parties have agreed are necessary to provide effective implementation of the treaty. To perform their treaty obligations in good faith, as required by Article 26 of the Vienna Convention on the Law of Treaties, Parties must take the FCTC Guidelines into account when determining the content and scope of their FCTC obligations.

Bangladesh has made significant progress in implementing the treaty; however, this progress has been uneven across different policy areas. This section's purpose is to provide a summary and overview of the relevant Articles of the WHO FCTC to help ensure that country laws are compliant with the treaty and its Guidelines for Implementation and reflect global best practice.

5. The WHO FCTC Articles and their Implementing Guidelines

5.1. Protection of Tobacco Control Policies (WHO FCTC Article. 5.3)

Recognizing the need to be alert to the tobacco industry's efforts to undermine and subvert tobacco control efforts, Article 5.3 requires Parties to implement effective measures to protect tobacco control policies from the commercial and other vested interests of the tobacco industry.[16] While this article does not impose specific obligations on Parties, the guidelines for implementing Article 5.3 provide comprehensive recommendations for achieving effective protection against tobacco industry interference. The recommendations include:

- Raising awareness in all government institutions and among the public about tobacco product harms, tobacco industry strategies and tactics to interfere with tobacco control policies, and the need to protect tobacco control policies from the tobacco industry's vested interests.
- Limiting interactions with the tobacco industry to only those necessary for effective tobacco product regulation or the tobacco industry and ensuring transparency in such interactions.
- Prohibiting partnerships with the tobacco industry, especially assistance from the tobacco industry with drafting or implementing tobacco policies or legal measures or accepting policies or measures drafted by the industry.
- Mandating codes of conduct, policies and procedures, standards of behaviour, and disclosure requirements to prevent and control financial, work-related, and political conflicts of interest.
- Requiring businesses in the tobacco industry to provide information on their operations and activities to ensure transparency.
- Prohibiting and de-normalizing "socially responsible" corporate activities and contributions (also covered by the ban under Article 13 on tobacco sponsorship).
- Where constitutionally and legally permissible, prohibiting contributions from the tobacco industry to political parties, campaigns, or candidates.
- Prohibiting preferential treatment, including incentives, privileges, or benefits to establish or run a tobacco business, including state investments in or preferential tax incentives to the industry.

[16] *WHO Framework Convention on Tobacco Control, Preamble.* World Health Organisation. Available at: https://www.who.int/tobacco/framework/WHO_FCTC_english.pdf

- In the case of the state-owned tobacco industry, ensuring the separation of responsibility for policy development and implementation from the responsibility for overseeing and managing the industry.
- The above recommendations apply to:
  - ❒ All government institutions and bodies in all government branches at the national and sub-national levels that are involved in setting or implementing tobacco control policies and all entities and individuals working on behalf of those institutions and bodies.
  - ❒ All of government, regardless of whether any particular institution or body has responsibility for tobacco control, with respect to the obligations to refuse any offer of a contribution of any kind and any partnership with the industry, as well as a requirement to divest from any interest in the tobacco industry.
  - ❒ Government dealings and interactions with entities and individuals working to further the interests of the tobacco industry.

The Tobacco Industry (TI) Interference Index 2020[17]

TI Index 2020 Report noted that there was significant tobacco interference, including tax credits for tobacco companies in Bangladesh. Bangladesh was ranked as one of the countries with the highest amounts of tobacco interference with particular concern raised about problems of conflicts of interest in which ban.

> The law or policy in Bangladesh to prevent tobacco industry interference, or rules to prevent tobacco industry political contributions or gifts, in accordance with Article 5.3 of the WHO FCTC, and the Bangladeshi Government still holds shares in tobacco companies and has representatives on their boards. Several government officials are members of the BATB tobacco related corporate social responsibility (CSR) Committee and actively participate in these CSR programs.[18]
>
> According to the "Tobacco Industry Interference Index 2020" report, Bangladesh ranked 27th out of 34 countries analyzed.

5.2. Protection from Exposure to Tobacco Smoke (WHO FCTC Article 8)

In negotiating the treaty, WHO FCTC Parties recognized the unequivocal scientific

[17] Tobacco Industry Interference Index Report 2020. Pg. 12. https://exposetobacco.org/wp-content/uploads/GlobalTIIIndex2020_Report.pdf

[18] PROGGA 2018. "Bangladesh Tobacco Industry Interference Index" (Report on Implementation of FCTC article 5.3) paper presented at the 12th Asia Pacific Conference on Tobacco or Health, Bali, Indonesia, 13-15 September 2018 1

evidence establishing that tobacco consumption and exposure to tobacco smoke causes death, disease, and disability.[19] As a result, the Parties adopted Article 8, requiring the implementation of effective measures providing for protection from exposure in indoor workplaces, public transport, indoor public places, and "appropriate" other public places. The Article 8 guidelines for implementation interpret that the Articles **require Parties to implement a complete ban on smoking in all indoor public places and workplaces, on all means of public transport, and in quasi-outdoor and outdoor public settings.**

Under the Article 8 Guidelines, Parties agree that **approaches other than *100% smoke-free environments,* including ventilation and air filtration technology and the use of designated smoking areas, do not provide effective protection and, thus, conflict with the mandate of Article 8.**

The Article 8 Guidelines urge Parties to also create 100% smoke-free environments in outdoor or quasi-outdoor public spaces where a hazard exists due to tobacco smoke exposure. This could include places such as sports arenas, playgrounds, the outdoor areas of restaurants and hotels, the grounds of hospital or educational facilities and other places where the public are likely to congregate.

5.3. Regulation of Contents of Tobacco Products (WHO FCTC Article 9)

Article 9 requires Parties to implement effective measures for regulating, testing, and measuring tobacco products' contents and emissions. The partial guidelines for implementing Article 9 defer recommendations for regulating product addictiveness and toxicity pending the availability of further evidence and country experience. In the meantime, the guidelines **recommend prohibiting or restricting ingredients that make tobacco products more attractive,** precisely those ingredients that:

- are used to increase palatability, such as flavourings.
- have colouring properties.
- create the impression of a health benefit, such as energy or vitality.

5.4. Packaging and Labelling (WHO FCTC Article 11)

Article 11 of the treaty requires Parties, within three years after entry into force of the FCTC for that Party, to adopt and implement effective measures to: 1) prohibit misleading tobacco packaging and labeling; 2) ensure that tobacco product packages carry large, clear, rotating health warnings and messages that cover 50% or more, but not

[19] *Guidelines for Implementation of Article 8 of the WHO Framework Convention on Tobacco Control.* Available at: https://www.who.int/fctc/guidelines/adopted/article_8/en/

less than 30%, of principal display areas and that are in the Parties' principal language(s); and 3) ensure that that packages contain prescribed information on the tobacco products' constituents and emissions.

The Article 11 Guidelines draw upon lessons learned from Parties' experiences and seek to counter known tobacco industry tactics for circumventing tobacco packaging and labeling regulation. Under the terms of the treaty and the Article 11 Guidelines, Parties should:

- Prohibit packaging and labeling that promotes a tobacco product by means that are false, misleading, deceptive, or likely to create an erroneous impression about its characteristics, health effects, hazards, or emissions, including through the use of the terms (e.g., "low tar," "light," and any similar language) and any other figurative signs, colors, or other packaging or labeling design.
- Require that unit (e.g., individual packages) and outside packaging (e.g., cartons) of all tobacco products carry rotating pictorial and text health warnings or messages that are as large as possible and displayed on the top of each principal display area.
- Require that unit and outside packaging carry descriptive information on constituents and emissions (as determined by the appropriate government entity), without any yield figures.
- Consider adopting plain or standardized packaging measures, which may increase the noticeability and effectiveness of health warnings and messages and prevent the tobacco industry from continuing to use packaging and labeling to mislead consumers and promote its products.

5.5. Advertising, Promotion, and Sponsorship (WHO FCTC Article 13)

Article 13 requires Parties to implement effective measures for a **comprehensive ban of all tobacco advertising, promotion, and sponsorship** (TAPS) in accordance with their national constitutional principles comprehensively ban all tobacco advertising, promotion and sponsorship (APS) **within five years of the treaty's entry into force for that Party.**

The guidelines for implementing Article 13 make it clear that a "comprehensive ban" applies to all TAPS without exception, recognizing that **mere restrictions or a ban on only some forms of TAPS have a limited effect since tobacco companies will shift their vast resources to promotional forms that are still allowed**.[20] As a result, a complete ban on all direct and indirect domestic and cross-border TAPS is necessary for regulation to be effective.

[20] World Health Organisation. *WHO Framework Convention on Tobacco Control Guidelines for implementation*: Article 13. Available at: https://www.who.int/fctc/treaty_instruments/adopted/guidel_2011/en/

The Appendix to the guidelines provides an indicative, non-exhaustive list of the broad range of forms of TAPS that fall within the scope of a comprehensive ban. This includes the display of tobacco products at points of sale and all sponsorship activities by the tobacco industry such as corporate social responsibility programs.

The guidelines are clear that the display of tobacco products at points of sale in itself constitutes advertising and promotion. Display of products is a key means of promoting tobacco products and tobacco use, including y stimulating impulse purchases of tobacco products and giving the impression that tobacco use is socially acceptable.

It is increasingly common for tobacco companies to seek to portray themselves as good corporate citizens by making contributions to deserving causes. These contributions constitute a form of advertising and promotion and allow the tobacco companies to increase their influence in government and society.

5.6. Regulation of Sales (WHO FCTC Article 16)

Article 16 requires Parties to adopt and implement effective measures to prohibit the sales of tobacco products to minors. Best practice is now to set the age limit at 21 years instead of 18 years.

In addition, the measures may include:

- Requiring sellers to prevent consumers from directly accessing tobacco products.
- Prohibiting the manufacture and sale of sweets, snacks, toys, or other objects that appeal to minors in the form of tobacco products.
- Ensuring tobacco vending machines are not accessible to minors and do not promote the sale of tobacco products to minors.
- Prohibiting the free distribution of tobacco products (also covered under the under Article 13 TAPS ban).
- Prohibiting the sale of single cigarettes or cigarettes in small packets.
- Requiring signage inside retail establishments stating that sales to persons below the legal age for sale are prohibited and requiring verification of age when in doubt.

Guidelines for implementing Article 16 have not been developed.

6. Global Examples of Best Practice

This section highlights legal provisions found in different countries' laws that exemplify comprehensive measures or are particularly strong in one policy area. It is important to note that some of the measures highlighted in this section do not represent best practices but contain a particularly strong provision worth highlighting, and we noted where improvements could be made.

6.1. Protection from Exposure to Tobacco Smoke (WHO FCTC Article 8)

According to the WHO 2021 Report on the Global Tobacco Epidemic[21]:

> *Comprehensive smoke-free legislation is in place for over 1.6 billion people in 62 countries (covering 22% of the world's population). There is remarkably little difference among income groups, with around one in three countries in each income group having a comprehensive ban in place. Two in three countries continue to leave their populations vulnerable to the dangers of second-hand smoke through weak or absent smoke-free laws, with 41 high-income, 68 middle-income and 24 low-income countries poorly or completely unprotected. Among them, 24 countries (with 372 million people) have no bans at all – 21 of them low- and middle-income countries. The other 109 countries have partial bans that fall short of a complete ban on smoking in public places and workplaces.*

The WHO 2021 Report on the Global Tobacco Epidemic categorizes Bangladesh's smoke-free policy as minimal. Bangladesh falls within the category of countries that fall short of a complete ban largely because specified places allow designated smoking areas. **To reach GTCR's best practice level, which currently consists of 62 countries, Bangladesh must completely ban smoking in all indoor public places, including disallowing all DSAs.**

Global Best Practice Examples:

Gambia

The Tobacco Control Act prohibits smoking in "any part of any public place, workplace or public transport" as listed in the First Schedule of the Act.[22] The First Schedule contains an "indicative, non-exhaustive list of public places".

---

[21] WHO report on the global tobacco epidemic 2021: addressing new and emerging products. Geneva: World Health Organization; 2021. Licence: CC BY-NC-SA 3.0 IGO. https://www.who.int/teams/health-promotion/tobacco-control/global-tobacco-report-2021

[22] *Tobacco Control Act, 2016 Sec. 10(1), First Schedule. Available at: https://www.tobaccocontrollaws.org/files/live/Gambia/Gambia%20-%20TCA%202016%20-%20national.pdf.*

Honduras

Decree No. 92-2010, Special Tobacco Control Law (LECT) ban the consumption of tobacco-derived products (including smoked and smokeless tobacco products and e-cigarettes) in all workplaces, public places, and all public transportation (including terminals).[23] There are two limited exceptions to the ban. The law permits the consumption of tobacco-derived products in cigar factories and spaces where tobaccoo tasting takes place, although minors are not allowed to enter these places.

6.2. Regulation of Contents and Emissions of Tobacco Products (WHO FCTC Article 9)

At least 39 countries ban or restrict the use of sugars and sweeteners in tobacco products. Countries that ban their use include Canada, Sri Lanka, Uganda, and Senegal. All EU countries prohibit the use of sugars unless it is essential for the manufacture and it does not result in a characterizing flavor or increase the addictiveness or toxicity of the product. At least 36 countries ban all flavors in cigarettes. This includes the UK, all EU countries, Canada, Brazil, Ethiopia and Sri Lanka. Some of those countries ban all flavors for all tobacco products. Other countries ban some, but not all flavors. At least 30 countries ban the use of ingredients that facilitate nicotine uptake, including all EU countries.

The FCTC Guidelines on the regulation of emissions is currently blank to indicate that guidance will be proposed at a later stage. Despite this at least 59 countries have set maximum levels for cigarette emissions for nicotine and tar, and in some cases, carbon monoxide. These limits are set to restrict the toxicity, health impacts and addictiveness of what is in any event a deadly product.

Although these limits vary, the majority of those countries set the maximum limits as 10mg tar; 1mg nicotine; and 10mg carbon monoxide, per cigarette.

Many countries, including all EU countries, Australia and Canada require statements on the harms of emissions on the side panels of cigarette packages, and prohibit the display of any emission yields.

Global Best Practice Legislation Examples for Contents and Emissions

Finland

Finland's law regulates specified contents of cigarettes, including banning all characterizing flavors; coloring agents; sugars and sweeteners; ingredients that

[23] *Decree No.92-2010: Special Tobacco Control Law.* National Congress of Honduras. 9th June, 2010. Available at: https://www.tobaccocontrollaws.org/files/live/Honduras/Honduras%20-%20Decree%20No.%2092-2010.pdf.

facilitate nicotine uptake, create the impression of health benefits, or are associated with energy and vitality. The law requires that manufacturers and importers disclose to government authorities' information on the contents and emissions of their products.

6.3. Packaging and Labelling (WHO FCTC Article 11)

The WHO FCTC implementing guidelines recommend that Parties adopt pictorial health warnings of 50% or more of the principal areas of tobacco packaging. Bangladesh requires 50% health warnings.

However, the guidelines also note that parties should consider warnings that cover more than 50% and global best practice is for ever larger warnings covering at least 65% of the principal display areas. To keep up with global best practice Bangladesh should increase the size of the health warnings required on tobacco packaging.

The WHO 2021 Report on the Global Tobacco Epidemic [24]

Strong graphic pack warnings are in place for almost 3.9 billion people in 91 countries – over half of the global population (52%). More people are protected by this WHO FCTC measure than any other, with 47% of countries implementing graphic pack warning requirements at the highest level: 65% of the principal areas or more. 118 countries or jurisdictions now require picture health warnings on cigarette packages.

Global Best Practice is now to have Rotating Graphic Health Warnings Covering 75% or more of the 2 principal surfaces of the pack. There are 19 countries that following this best practice.

Table 2: Global Best Prctice on Graphic Health Warning Size

Rank	GHW size	Country	FRONT	BACK
1st	92.5%	Timor-Leste	85%	100%
2nd	90%	Nepal	90%	90%
2nd	90%	Vanuatu	90%	90%
2nd	90%	Maldives	90%	90%
5th	87.5%	New Zealand	75%	100%
6th	85%	Hong Kong	85%	85%
6th	85%	India	85%	85%
6th	85%	Thailand	85%	85%
9h	82.5%	Australia	75%	90%
10th	80%	Chad	80%	80%
10th	80%	Sri Lanka	90%	80%
10th	80%	Uruguay	90%	80%

[24] See GTCR 2021 Annex 6.1- Public places with smoke-free legislation, available at https://www.who.int/teams/health-promotion/tobacco-control/global-tobacco-report-2021

Bangladesh is now falling well behind global best practice. With health warnings at 50%, Bangladesh complies with its obligations under the WHO FCTC but there are **75 countries which mandate larger health warnings than Bangladesh**

Global Best Practice Legislation Examples of Packaging and Labelling

New Zealand

Health warnings must take up 75% of the front surface and 100% of the back surface. Plain packaging is mandated for all tobacco products. Plain packaging is mandated for all tobacco products. Packaging must be a standard color, size, and shape and may only contain specified information in a standard font and color text.

India

India provides comprehensive Article 11 packaging and labelling measures. [25] [26] [27] [28] [29] The health warning's textual and pictorial components together cover 85% of the tobacco product package's front and back panels, with 25% dedicated to text and 60% dedicated to the picture. The law has strong provisions prohibiting misleading packaging and labelling. The law provides that "no tobacco product package or label shall contain any information that is false, misleading, or deceptive, or that is likely or intended to create an erroneous impression about the characteristics, health effects, health or other hazards of the tobacco product or its emissions. This prohibition includes but is not limited to the use of words or descriptors, whether or not part of the brand name, such as 'light,' 'ultra-light,' 'mild,' 'ultra-mild,' 'low tar,' 'slim,' 'safer,' or similar words or descriptors; any graphics associated with such words or descriptors; and any product package design characteristics, associated with, likely or intended to be associated with, such descriptors."

[25] Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003. Sections 7-11. The Parliament of India, Ministry of Law and Justice. 19th May, 2020. Available at: https://www.tobaccocontrollaws.org/files/live/India/India%20-%20COTPA.pdf

[26] *Ministry of Health and Family Welfare Notification G.S.R. 182 (E), (G).* Ministry of Health and Family Welfare. 15th March, 2008. Available at: https://www.tobaccocontrollaws.org/files/live/India/India%20-%20G.S.R.%20182%28E%29.pdf

[27] *Ministry of Health and Family Welfare Notification G.S.R. 182 (E), (G).* Ministry of Health and Family Welfare. 15th March, 2008. Available at: https://www.tobaccocontrollaws.org/files/live/India/India%20-%20G.S.R.%20693%28E%29.pdf

[28] *Ministry of Health and Family Welfare Notification G.S.R. 727(E).* Ministry of Health and Family Welfare. 15th October, 2014. Available at: https://www.tobaccocontrollaws.org/files/live/India/India%20-%20G.S.R.%20727%28E%29.pdf

[29] *Ministry of Health and Family Welfare Notification G.S.R. 331(E).* Ministry of Health and Family Welfare. 3rd April, 2018.Available at: https://www.tobaccocontrollaws.org/files/live/India/India%20-%20G.S.R.%20331%28E%29.pdf

6.4. Advertising, Promotion and Sponsorship (WHO FCTC Article 13)

The WHO 2021 Report on the Global Tobacco Epidemic

According to the WHO, banning TAPS remains an under-adopted measure, with only 57 countries (covering 21% of the world's population) covered by a fully comprehensive ban. At the same time, there are 44 countries that have not adopted any TAPS bans to date. Interestingly, more low-income countries have adopted a TAPS ban than any other FCTC measure, with 14 low-income countries having comprehensive TAPS bans in place. By contrast, under 20% of high-income countries have achieved this best practice level.

Included in a comprehensive ban on TAPS is a prohibition on the display of any tobacco advertising or tobacco products at points of sale. Most countries with an advertising ban, include specific provisions that prohibit advertising at the point of sale as well. At least 80 countries ban this practice.[30]

More and more countries are recognizing the role that displays of tobacco products in stores and kiosks play in promoting tobacco as a normal product, encouraging impulse purchases and increasing initiation by young people. There are at least 28 countries that have enacted laws to fully prohibit point of sale displays and many more (38) that place strict restrictions on it.[31]

By way of comparison, **the WHO 2021 Report on the Global Tobacco Epidemic categorizes Bangladesh's tobacco advertising policy as moderate.** [1] The report notes that in Bangladesh the law does not prohibit tobacco products using non-tobacco brand names, product display is allowed, as are some forms of sponsorship and corporate social responsibility by the tobacco industry.

All forms of advertising must be banned for Bangladesh to join the 48 other countries that the WHO categorize as having comprehensive bans on tobacco advertising.

Global Best Practice Legislation Examples for Advertising, Promotion and Sponsorship

Djibouti

The law provides a comprehensive ban on all types of advertising, promotion, and sponsorship for all tobacco products, which aligns with Article 13.[32]

[30] Policy search on the www.tobaccocontrollaws.org database (accessed 2 October 2020).

[31] Policy search on the www.tobaccocontrollaws.org database (accessed 2 October 2020).

[32] *Law n°175/AN/07/5ème Concerning Organisation for the Protection of Health against Tobacco Consumption. Articles 25-28.* The National Assembly of the Republic of Djibouti. 22nd April, 2007. Available at: https://www.tobaccocontrollaws.org/files/live/Djibouti/Djibouti%20%20Law%20No.%20175_AN_07%20.pdf

The Gambia

The Tobacco Control Act prohibits all forms of advertising, promotion, and sponsorship. Additionally, the law prohibits the display or visibility of a tobacco product at the point of sale. Products must be stored under an opaque front counter or in an opaque cabinet above or behind the front counter.[33]

Uruguay

Uruguay's advertising laws prohibit all forms of tobacco advertising, promotion, and sponsorship.[34] [35] [36] [37]

6.5. Sales to and by Minors (FCTC Article 16)

6.5.1. Age of Sale

Despite three out of four countries having banned sales to minors under the age of 18 years – and another 10 countries having set an even higher age limit for tobacco purchases – an estimated 24 million children aged 13–15 around the world smoke, and 13 million use smokeless tobacco.

There are a minimum of 7 countries that require the minimum sales age for tobacco products to be 21, including Ethiopia, Honduras, Mongolia, Philippines, Singapore, Sri Lanka, and Uganda.[38]

---

[33] Tobacco Control Act, 2016. Section 12(1-6) . The President and National Assembly of the Gambia. 30th December, 2016. Available at: https://www.tobaccocontrollaws.org/files/live/Gambia/Gambia%20-%20TCA%202016%20-%20national.pdf

[34] *Law No. 18,256: Smoking Control Regulations. Article 7.* The Senate and House of Representatives of the Republic of Uruguay. 29th February, 2008. Available at: https://www.tobaccocontrollaws.org/files/live/Uruguay/Uruguay%20-%20Law%20No.%2018.256.pdf

[35] *Decree No. 284/008 on Regulations under Law No. 18.256.* President of the Republic of the Republic of Uruguay. 2008.

[36] *Law No. 19.244. Articles 7 and 8.* The Senate and House of Representatives of the Republic of Uruguay. 8th July, 2014. Available at: https://www.tobaccocontrollaws.org/files/live/Uruguay/Uruguay%20-%20Decree%20No.%20284_008.pdf

[37] *Law No. 19.244.* The Senate and House of Representatives of the Republic of Uruguay. 8th July, 2014. Available at: https://www.tobaccocontrollaws.org/files/live/Uruguay/Uruguay%20-%20Law%20No.%2019.244.pdf

[38] Tobacco Control Law. Find by Policy. Search date: 2/7/2021. https://www.tobaccocontrollaws.org/legislation/finder#_sales_restrictions

Global Best Practice Legislation Examples on Age of Sale:

Ethiopia

Food and Medicine Administration Proclamation No. 1112/2019 sets a minimum age for buying tobacco products at 21 years and prohibits the sale of tobacco products within 100 meters of schools.[39]

Uganda

The Tobacco Control Act established the minimum sales age to purchase all other tobacco products as 21. Uganda has also banned internet sales and vending machine sales of all tobacco products. The Tobacco Control Act, Section 17(2), provides that "a person shall not import, manufacture, distribute, sell or offer for sale a sweet, snack, toy, or any other object in the form of tobacco or a tobacco product including an object which resembles, mimics or imitates a tobacco product which may appeal to a minor."

6.5.2. Prohibition on Single Sticks and Small Packs

At least 86 countries prohibit the sale of single cigarettes sticks.

At least 62 countries set a minimum number of cigarette sticks per individual package. The minimum varies but the most common requirement is a minimum of 20 sticks per pack (including Australia, Brazil, Canada, Chile, the UK, Singapore, Hong Kong, Thailand and Uganda).

In at least 10 countries, where smokeless tobacco use is a problem for young people, the law sets a minimum weight of smokeless tobacco product for each individual packet. The minimum weight set varies from 10 grams (in Ecuador, Kenya and Togo) to 30 grams (in Nigeria, Ghana and Maldives).

---

[39] *Food and Medicine Administration Proclamation No. 1112/2019.* Article 49(1-2). Food and Medicine Administration of Ethiopia. 28th February, 2019. Available at: https://www.tobaccocontrollaws.org/files/live/Ethiopia/Ethiopia%20-%202019%20Proclamation%20-%20national.pdf

[40] *Tobacco Control Act,* 2015. Sections 2, 16(4)(a), 17(1-3). Parliament of Uganda. 18th November, 2015. Available at: https://www.tobaccocontrollaws.org/files/live/Uganda/Uganda%20-%20TCA%20-%20national.pdf

Global Best Practice Legislation Examples on Single Sticks:

Maldives

Regulation 2019/R158 on the Packaging and Labelling of Tobacco Products the sale of smokeless tobacco in unit packages weighing less than 30 grams.[41]

Thailand

The Tobacco Products Control Act prohibits the manufacture and import of cigarettes "in packs or other containers of less than 20 cigarettes each". The law also prohibits the division of the contents of a pack of cigarettes for separate sale.[42]

Uganda

The Tobacco Control Act 2015 prohibits the sale of "a tobacco product unless the packet is intact." Therefore, the sale of single cigarettes is prohibited. The law requires a unit package of cigarettes to contain 20 sticks. The law requires a unit package of any tobacco product other than cigarettes to weigh 20 grams.[43]

---

[41] *Regulation on Packaging and Labelling* Tobacco Products. Sections 5(d) Health Protection Agency of the Maldives. 27th February, 2019. Available at: https://www.tobaccocontrollaws.org/files/live/Maldives/Maldives%20-%20Reg%202019_R158%20%28P%26L%20Regs%29.pdf

[42] *Tobacco Products Control Act, 2017,* Art. 39, 5 April 2017. Available at: https://www.tobaccocontrollaws.org/files/live/Thailand/Thailand%20-%20TC%20Act%202017.pdf

[43] T*obacco Control Regulations, 2019 (S.I. 2019 No. 66), Sec. 3(3), September 6, 2019. Available at:* https://www.tobaccocontrollaws.org/files/live/Uganda/Uganda%20-%20TCA%20-%20national.pdf

PART III

Analysis of Bangladesh’s tobacco control laws, Recommendations and Rationale

This part of the report provides a detailed analysis of Bangladesh’s laws, principally the Smoking and Usage of Tobacco Products (Control) Act, 2005 (as amended by the Smoking and Tobacco Products Usage (Control) (Amendment) Act, 2013), referred to herein as **SUTPCA 2005,** and makes recommendations for amendments and additions that will ensure full compliance with the WHO FCTC and global best practice.

7. Definitions

7.1. *‘Advertising’* and *‘Sponsorship’*

7.1.1. Identifying the Issue:

This section of the report should be read in conjunction with section 9 (advertising, promotion and sponsorship) below.

The law defines ‘advertisement of tobacco products’ in Section 5 of SUTPCA 2005 which states:

> *“Advertisement of tobacco products” means performing any kind of commercial activities with the aim of promoting a tobacco product or tobacco use either directly or indirectly.”*

The definition covers much of the scope of the FCTC-required definition for “tobacco advertising and promotion”; however, the Bangladesh definition only covers commercial activities with *the aim of promoting* tobacco products or tobacco use; while the FCTC definition also includes commercial actions that have the *effect or likely effect* of promoting tobacco products or tobacco use. In order to cover the full range of tobacco advertising and promotion, the law should incorporate the broader definition as provided for in the WHO FCTC Art. 1(c).

In addition, SUTPCA 2005 contains no definition of ‘tobacco sponsorship’. Section 5(1)(c) provides that:

> No person shall … *“give or cause to be given any donation, prize, stipend or sponsorship of any program for the purpose of advertisement or promoting the usage of tobacco products”*

The FCTC definition of ‘tobacco sponsorship covers not just ‘programs’ but also events, activities, or individuals. The definition, as with advertising, also covers actions that have the *effect or likely effect* of promoting tobacco products or tobacco use.

Section 5(3) also goes on to state:

> *“(3) No person shall use or cause to be used the name, sign, trademark, or symbol of any producer of tobacco or tobacco product, or entice any other person to use these if they participate in any social development work under the Corporate Social Responsibility programs or bear its expenses;”*

This provision implicitly permits Corporate Social Responsibility programs.

7.1.2. Recommendation

Amend the definitions to align with the definition in the WHO FCTC article 1(c) by inserting the words ‘effect or likely effect’:

> *“Advertisement of tobacco products” means performing any kind of commercial activities with the aim,* **effect or likely effect,** *of promoting a tobacco product or tobacco use either directly or indirectly.”*

And include a broad definition of tobacco sponsorship

> *‘tobacco sponsorship’ means any form of contribution to any event, activity, or individual with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly.*

7.1.3. Rationale

Without a comprehensive framework that ensures any commercial activity that has the aim or effect or likely effect of promoting tobacco products or tobacco use, directly or indirectly, the legislation and regulations are required to specifically identify prohibited activity. The tobacco industry has shown an unwavering ability to find new ways to promote its deadly products and exploit any loophole in a countries’ advertising restrictions. **Advertising continues to take place in Bangladesh by way of:**

- **point-of-sale displays,**
- **sales on the internet,**
- **brand sharing and brand stretching,**
- **some sponsorship of events, and**
- **corporate responsibility programs.**

Removing any ambiguity and uncertainty from the definition promotes effective enforcement to take place and discourages legal challenges to the law.

7.2. 'Public Place'

7.2.1. Identifying the Issue

This section of the report should be read in conjunction with section 8 (smoke-free environments) below.

The WHO FCTC Implementing Guidelines for Article 8 state that 'public place' should be defined as broadly as possible (which should mean avoiding the use of a closed or exhaustive list of places) and should cover all places accessible to the general public or places for collective use regardless of ownership or right to access.

Section 2(f) SUTPCA 2005 defines 'public place' as an:

> *"educational institution, government office, semi-government office, autonomous office and private office, library, lift, indoor workplace, hospital and clinic building, court building, airport building, sea port building, river-port building, rail station building, bus terminal building, cinema hall, exhibition center, theatre hall, shopping center/building, restaurant surrounded with four walls, public toilet, children's park, queue of people waiting to enter into a fair or to board on a public transport, a place to be used by people combinedly or a place declared by government or local government bodies, by general or special order , to be a public place";*

This definition is an extensive list of places (where smoking is restricted under section 4). However it is an exhaustive list which means that any place that is accessible to the general public that is not included on the list is not covered by the restrictions on smoking in under SUTPCA 2005 section 4.

Because the definition in SUTPCA 2005 is a list of places and does not contain a broad the definition of "public places", the law does not cover any place that is not specified on the list. In particular it only covers 'restaurants surrounded by with four walls.' Therefore, restaurants with an open front or open air restaurants will not be incorporated under the definition.

Examples of places that are not covered by the definition include:

- Restaurants that are not covered by 4 walls (for instance that may have an open front),

- Other places or facilities where food or drink are served,
- Hotel bars and hotel guest rooms,
- Uncovered sports stadiums or other areas of uncovered collective congregation for entertainment,
- Prisons or other detention facilities.

The definition of "public places" does include the broad *phrase "any other public area to be collectively used by the general public"*. However, this phase is reportedly not enforced and is insufficiently clear. A strict reading of this phrase would lead to the interpretation that it included both indoor and outdoor areas where that are accessible to the public and where more than one person congregates. This would make the phrase exceptionally broad. Because of the lack of specificity as to what this phrase means, and the indication that it is not used for enforcement purposes it is recommended that it is amended.

7.2.2. Recommendation

Ideally, the definition should accord with the principles set out in the WHO FCTC Implementing Guidelines for Article 8, and provide for a broad definition of public place. It should be made clear that the list of places set out in the definition are indicative by including a phrase such as "including but not limited to …". For this purpose, the phrase "any other public area to be collectively used by the general public" could be amended to "any covered or enclosed place accessible to the general public or a place for collective use, regardless of ownership or right to access".

Irrespective of whether a broad definition is incorporated, it is important that the definition of "public place" is amended so that all restaurants and other places where food or drink are served, including outdoor areas of restaurants, irrespective of the number of walls; all areas of hotels including the bar areas and hotel guest rooms; and places of collective congregation such as sports stadiums and other places for entertainment, are included as public places.

(Section 7 of the Act should also be repealed so that designated smoking areas are prohibited – see Section 8 of this report below).

7.2.3. Rationale

The recommendations above would bring the law further into alignment with FCTC Art. 8 and the FCTC Art. 8 Guidelines, remove the limitations on which restaurants are public places and remove any uncertainty about hotels and hotel rooms.

8. Smoke Free Environment

8.1. Removal of Designated Smoking Areas (DSA)

8.1.1. Identifying the Issue

This section of the report should be read in conjunction with section 7.2 above in relation to the definition of 'public places'.

Article 8 of the WHO FCTC states that each *party "Shall adopt and implement … effective legislation … providing for protection from exposure to tobacco smoke in indoor workplaces, indoor public transport, indoor public places, and as appropriate, other public places".* This is an absolute obligation under the treaty. The Implementing Guidelines for Article 8 are clear that *"Effective measures to provide protection from exposure to tobacco smoke, as envisioned by Article 8 of the WHO FCTC, require the total elimination of smoking and tobacco smoke in a particular space or environment to create a 100% smoke free environment"* and that *"the use of designated smoking areas … have repeatedly been shown to be ineffective".*

Section 7 of SUTPCA 2005 provides for designated smoking areas (DSAs):

> *"The owner, caretaker or controller or manager of public places and any owner, caretaker, controller or manager of the public vehicles may mark off or specify the place for smoking."*

Rule 4 of the Smoking and Usage of Tobacco Products (Control) Rules, 2015 (S.R.O. No. 58) provides a list of public places where DSAs cannot be located:

> *(1) No place shall be marked or identified as a smoking zone in the following public places and public areas, such as: -*
>
> *(a) Educational institution;*
> *(b) Inside a library;*
> *(c) Hospital and clinic building;*
> *(d) Inside a cinema hall;*
> *(e) Inside an exhibition hall;*
> *(f) Inside of a theatre hall;*
> *(g) A one-room covered restaurant surrounded by walls in all four sides;*
> *(h) Children park;*
> *(i) Covered places for sports and exercise; and*
> *(j) A one cabin public transport.*

(2) If the public place is a building, as far as possible, an open space of the building may be marked or designated as a smoking area.

(3) If the public transport such as a train, steamer, launch, ferry etc. has more than one room, a place can be designated for smoking, but: (a) The place should be at the end or backside or in an open space of the said public transport; (b) The place cannot be designated in the main room for passengers.

Rule 4(1) excludes DSAs from the list of specified places. However, this means that DSAs are permitted in any public place that is not on that list. This includes all offices (government and private) and other places of work, court buildings, public transport buildings such as airports and rail station buildings, and shopping centers or buildings. It also includes any restaurant that has more than one room and public transport that has more than one room. In all these places smoking is just restricted. These places are therefore not smoke-free.

Rule 4(2) provides that if a public place is a building then the smoking area should be an 'open area', "as far as possible". Because of the inclusion of the term 'as far as possible' the rule is not strict and therefore has little or no legal effect. It does not prevent DSAs from being located inside buildings.

Rule 6 of the Smoking and Usage of Tobacco Products (Control) Rules, 2015 (S.R.O. No. 58) provides specifications that 'designating a smoking area in a public place or public transport' must comply with the following conditions, namely:

(a) Smoke-free area shall be kept separated from a smoking area;

(b) Ensure that the smoke from the smoking area cannot enter the smoke-free area;

(c) Arrange fire-extinguisher and appropriate container with sand water to through away the remaining parts of a bidi or cigarette;

(d) If a smoking area is marked or designated in a public place or public transport, it shall be ensured that a non-smoker does not have to cross that particular marked or designated area.

(e) To ensure display of warning notice in Bangla and English containing the writing "Designated Smoking Area" and "Smoking Causes Death".

These provisions, even if properly enforced, do little to protect nonsmokers or eliminate all second-hand Smoke.

Sanctions and Enforcement

In addition to the issues noted above, compliance the WHO GTCR 2021 graded compliance with the smoke-free laws in Bangladesh as just 6 out of 10 indicating a poor level of compliance and therefore the need for more monitoring and enforcement, and

greater sanctions on the owner, caretaker, controlling person or manager of public places.

The WHO FCTC Implementing Guidelines for Article 8 state that *"penalties should be sufficiently large to deter violations"* and that *"larger penalties are required to deter business violators than to deter individual smokers"* and *"penalties should increase for repeated violations"*.

SUTPCA 2005 Section 7A(2) provides for a fine of **just five hundred taka** for contravention of the law by a the owner, caretaker, controlling person or manager of a public place, with no incremental increases for repetitive violations.

The Smoking and Usage of Tobacco Products (Control) Rules, 2015 (S.R.O. No. 58) Rule (3) lists 8 sets of 'authorized officers' for enforcement purposes. However, there is no duty to monitor or inspect and the Rules do not make it clear which type of authorized officer is responsible for particular situations or public places. This lack of clarity and failure to specify duties of monitoring compliance and prosecuting violators, is likely to also be a reason for weak enforcement of the law.

8.1.2. Recommendation

Amend SUTPCA 2005 and Smoking and Usage of Tobacco Products (Control) Rule, 2015 (S.R.O. No. 58) to entirely remove any provisions that make any reference to permitted smoking areas. This requires the omission of sections 4(2) and 7 of SUTPCA 2005.

Amend SUTPCA 2005 to increase the sanctions that can be imposed on the owner, caretaker, controlling person or manager of a public place that fails to undertake their duties in respect of ensuring the place is smoke free.

Amend the Smoking and Usage of Tobacco Products (Control) Rule, 2015 (S.R.O. No. 58) to provide for clearer responsibilities on specific authorized officers and provide for duties to monitor and bring prosecutions.

8.1.3. Rationale

Under the WHO GTCR 2021, **Bangladesh's laws are assessed as providing a low level of protection** from second hand smoke, largely as a result of the provision allowing DSAs. To reach the WHO GTCR's best practice level, which currently consists of 67 countries, Bangladesh must completely ban smoking in all indoor public places and repeal any provision that allows DSAs. [44]

It is widely recognized through decades of research that allowing DSAs does not

[44] WHO report on the global tobacco epidemic 2021 pages 65 and 144, and Annex 6.1 Smoke Free Legislation. Available at: https://www.who.int/teams/health-promotion/tobacco-control/global-tobacco-report-2021

provide proper smoke-free areas for other members of the public or workers in the same building. Smoke particles inevitably enter common areas irrespective of the ventilation or restrictions on access.

Designated smoking areas (DSAs), even when equipped with ventilation systems, do not protect people from secondhand smoke because smoke inevitably leaks into non-smoking areas. Ventilation systems do not remove secondhand smoke and workers still need to enter the area/room to provide services. Studies from various countries that have or had a partial smoke-free law that allows for DSAs have found that the public's exposure to secondhand smoke remains high. [45, 46, 47, 48]

Principle 1 of the WHO FCTC Guidelines for Implementation of Article 8 state:

> *"Approaches other than 100% smoke free environments, including ventilation, air filtration and the use of designated smoking areas (whether with separate ventilation systems or not), have repeatedly been shown to be ineffective and there is conclusive evidence, scientific and otherwise, that engineering approaches do not protect against exposure to tobacco smoke"*

Comprehensive smoke-free laws that include workplaces, restaurants, and hotels are estimated to reduce the risk of heart attack by 85%, improve the respiratory health of workers, and may also reduce the risk of stroke. ,

At least 67 countries have fully comprehensive bans on smoking in indoor public places, classed as best practice by the WHO GTCR, and at least 42 of those countries also ban smoking in airports. Brazil, Canada, and Moldova are notable examples of countries with these policies.[49, 50]

---

[45] ITC Project and Tobacco Control Office, China CDC. ITC China Project Report. Findings from the Wave 1 to 5 Surveys (2006-2015). University of Waterloo, Waterloo, Ontario, Canada, and Tobacco Control Office, Chinese Center for Disease Control and Prevention, Beijing, China, 2017.

[46] López MJ, Nebot M, Schiaffino A, et al. Two-year impact of the Spanish smoking law on exposure to secondhand smoke: evidence of the failure of the 'Spanish model'. Tobacco Control 2012;21:407-411.

[47] Fernández E, Fu M, Pascual JA, et al. Impact of the Spanish smoking law on exposure to second-hand smoke and respiratory health in hospitality workers: a cohort study. PLoS One. 2009;4(1):e4244

[48] Erazo M, Iglesias V, Droppelmann A, et al. Secondhand tobacco smoke in bars and restaurants in Santiago, Chile: evaluation of partial smoking ban legislation in public places. Tobacco Control 2010;19(6):469-74.

[49] U.S. Department of Health and Human Services. The Health Consequences of Smoking—50 Years of Progress: A Report of the Surgeon General. Centers for Disease Control and Prevention 2014.

[50] Centers for Disease Control and Prevention. Smoke free Policies Improve Health Factsheet. 2016.

9. Advertising, Promotion and Sponsorship

9.1. Displays of Tobacco at Points of Sale

9.1.1. Identifying the Issue

Section 5 of the SUTPCA 2005 states that No person shall

display tobacco products advertisements at the points of sale, in any way.

Explanation - To fulfill the objective of subsection (1), "advertisement of tobacco products" means performing any kind of commercial activities with the aim of promoting the use of tobacco or tobacco products either directly or indirectly.

There is a distinction between tobacco advertisements, such as posters or use of LCD screens, positioned at points of sale, and the visible, often attractive, display of tobacco products in stores and kiosks. Tobacco control experts agree that displaying tobacco products and their packaging acts as an additional form of advertisement. Section 5 of SUTPCA 2005 does not provide prohibition on the display of all tobacco products at the point of sale. A ban on displaying tobacco products in stores and kiosks has not been enforced in Bangladesh.

The WHO Global Report on the Tobacco Epidemic 2021 indicates that Bangladesh does not ban point of sale displays of tobacco. [51]

9.1.2. Recommendation

Amend Section 5 of SUTPCA 2005 to include a provision that

No person shall cause or permit the display of any tobacco product, or the packaging of a tobacco products, at the entrance or inside of a warehouse, store shop, kiosk or other vending location where tobacco products are offered for distribution or sale.

The owner or person in control of a warehouse, store, shop, kiosk or any other vending location where tobacco products are offered for distribution or sale, —

(a) shall ensure that cigarettes and other tobacco products are kept in a closed container or dispenser that is not accessible to any member of the public;

(b) may display a sign in black writing on a white background that states tobacco products are available for sale, provided that the size, nature and location of the sign are as prescribed by Rules;

[51] WHO Report on the Global Tobacco Epidemic 2021, Annex 6.12
https://www.who.int/publications-detail-redirect/WHO-HEP-HPR-TFI-2021.6.12

(c) may provide a list of tobacco products available for sale, in a manner as prescribed by Rules."

Explanation. – For the purpose of this section, "display of any tobacco product" means, when any tobacco product or the packaging of a tobacco product is visible to any member of the public in general but excludes when an individual tobacco product is visible during the course of a transaction for the sale of that product.

9.1.3. Rationale

The WHO GTCR 2021, records that in Bangladesh point of sale product display are allowed. These forms of advertising must be banned for Bangladesh to join the 48 other countries that have comprehensive bans on tobacco advertising.[52]

The Implementing Guidelines for WHO FCTC Article 13 state that a ban on tobacco advertising is effective only if it has a broad scope and that if only certain forms of direct tobacco advertising are prohibited, the tobacco industry inevitably shifts its expenditure to other advertising strategies using creative indirect ways to promote tobacco products and tobacco use especially among young people. Therefore, the effect of a partial ban is limited.

The Implementing Guidelines make it clear that display of tobacco products at points of sale constitutes a key means of advertising and promotion including by stimulating impulse purchases, give the impression that tobacco use is socially acceptable and make it harder for tobacco users to quit. Young people are particularly vulnerable to the promotional effects of product display.

Studies have consistently found significant associations between exposure to point of sale promotions and product displays with smoking initiation, susceptibility to smoking, or intentions to smoke among youth. [53, 54, 55, 56, 57,]

---

[52] WHO Report on the Global Tobacco Epidemic 2021, Annexes 6.10, 6.11, and 6.12 on bans on direct and indirect advertising, available at: https://www.who.int/teams/health-promotion/tobacco-control/global-tobacco-report-2021

[53] Henriksen L, Flora J, Feighery E, Fortmann S. Effects on youth of exposure to retail tobacco advertising. Journal of Applied Social Psychology. 2002;32(9):19.

[54] Mackintosh AM, Moodie C, Hastings G. The association between point-of-sale displays and youth smoking susceptibility. Nicotine & tobacco research : official journal of the Society for Research on Nicotine and Tobacco. 2012;14(5):616-20.

[55] Scheffels J, Lavik R. Out of sight, out of mind? Removal of point-of-sale tobacco displays in Norway. Tob Control. 2012. Epub 2012/06/09. doi: 10.1136/ tobaccocontrol-2011-050341.

[56] Slater SJ, Chaloupka FJ, Wakefield M, Johnston LD, O'Malley PM. The impact of retail cigarette marketing practices on youth smoking uptake. Archives of Pediatric and Adolescent Medicine. 2007;161(5):440-5. Epub 2007/05/09. doi: 161/5/440 [pii]10.1001/archpedi.161.5.440.

[57] McNeill A, Lewis S, Quinn C, Mulcahy M, Clancy L, Hastings G, et al. Evaluation of the removal of point-of-sale tobacco displays in Ireland. Tob Control. 2011;20(2):137-43. Epub 2010/11/23. doi: 10.1136/tc.2010.038141.

Tobacco product displays act as a potent marketing tool, which normalize smoking and allow the tobacco industry to communicate with non-smokers, ex-smokers and established smokers.[58]

An Australian study found that nearly 40% of individuals trying to quit smoking experience urges to smoke when they see cigarette advertisements. More than 60% impulsively buy cigarettes as a result, and 20% avoid stores where they normally buy cigarettes to avoid the temptation.[59]

A study performed by the Environmental Council Bangladesh about tobacco retailers found that 38% of cigarette displays were provided by the tobacco industry.[60] Their study also found that 75% of retailers reported being visited by representatives from the tobacco industry and that 60% of surveyed retailers had some sort of advertising posted.[61]

Johns Hopkins University performed a subsequent study about product display enforcement in Bangladesh.[62] The study found that "almost all tobacco retailers displayed tobacco products in some way. Tobacco products were often displayed in the cashier zone and were frequently displayed at the eye level of children." [63]

9.2. Corporate Social Responsibility Programs of Tobacco Industries

9.2.1. Identifying the Issue

The law prohibits all donations, awards, scholarships, or other sponsorship for the purpose of advertising tobacco products or tobacco use. Because advertising is defined broadly for the purposes of this law, all financial contributions that promote tobacco products or tobacco usage, directly or indirectly, are prohibited. Despite the broad prohibition, the law appears to simultaneously allow "corporate social responsibility" (CSR) donations by the tobacco industry, so long as the donation does not promote tobacco products or tobacco use.

[58] Brown A, Boudreau C, Moodie C, Fong GT, Li GY, McNeill A, et al. Support for removal of point-of-purchase tobacco advertising and displays: findings from the International Tobacco Control (ITC) Canada survey. Tob Control. 2012;21(6):555-9.

[59] Wakefield M, Germain D, Henriksen L. The effect of retail cigarette pack displays on impulse purchase. Addiction. 2008 February;103(2):322-8.

[60] Bhuiyan, Huhammad E. H., Ovi, Frahana H, Alam, Mahbub, Farheen, Isaba. Documentation on Tobacco Advertising, Promotion, and Sponsorship in Bangladesh. Environment Council Bangladesh, 2014.

[61] Bhuiyan, Huhammad E. H., Ovi, Frahana H, Alam, Mahbub, Farheen, Isaba. Documentation on Tobacco Advertising, Promotion, and Sponsorship in Bangladesh. Environment Council Bangladesh, 2014.

[62] Caitlin Weiger, BS Ashley Grant, MPH Joanna Cohen, PhD. Product Display, Advertising, and Promotion around Secondary Schools. Johns Hopkins: Bloomberg School of Public Health. November 2016. https://www.globaltobaccocontrol.org/sites/default/files/BANGLADESH_tech_report_2016.pdf

[63] Caitlin Weiger, BS Ashley Grant, MPH Joanna Cohen, PhD. Product Display, Advertising, and Promotion around Secondary Schools. Johns Hopkins: Bloomberg School of Public Health. November 2016. https://www.globaltobaccocontrol.org/sites/default/files/BANGLADESH_tech_report_2016.pdf

Section 5 of SUTPCA 2005 states that

> *(1) No person shall– (c)give or cause to be given any donation, prize, stipend or sponsorship of any program for the purpose of advertisement or promoting the usage of tobacco products;*
>
> and
>
> *(3) No person shall use or cause to be used the name, sign, trademark, or symbol of any producer of tobacco or tobacco product, or entice any other person to use these if they participate in any social development work under the Corporate Social Responsibility programs or bear its expenses;*

Despite the broad prohibition, the law fails to address sponsorship by, or donations from, the tobacco industry that do not have the *purpose* of advertising or promoting the usage of tobacco products, even where the sponsorship may have the *effect* of promoting tobacco. In addition, clause (3) appears to specifically permit "corporate social responsibility" (CSR) donations by the tobacco industry, so long as tobacco related name, sign, trademark or symbol are not used. These provisions therefore allow the tobacco industry to use its considerable financial resources to gain allies and front groups to support and represent its positions.

9.2.2. Recommendation

Amend Section 5 of the SUTPCA 2005 to include a provision that no:

> *No person shall provide, receive, initiate or be a party to the provision of financial or other support to artistic, sporting, educational, political, social, environmental or other events, activities, individuals or groups, including corporate social responsibility activities, by or from a company whose principal business is the manufacture, import or distribution of cigarettes or any other tobacco products.*

This proposed provision is in accordance with the text in the FCTC Article 13 guidelines intended to prevent CSR, and should be used in combination with the proposed text for the definition of tobacco sponsorship set out in paragraph 10.1.2 above.

In addition, sub-section 5(3) should be amended to remove any reference to CSR, so that it reads:

> *(3) No person shall use or cause to be used the name, sign, trademark, or symbol of any producer of tobacco or tobacco product, or entice any other person to use these.*

9.2.3. Rationale

The WHO GTCR 2021, records that in Bangladesh product display are allowed, as are some forms of sponsorship and corporate social responsibility by the tobacco industry. These forms of advertising must be banned for Bangladesh to join the 57 other countries that have comprehensive bans on tobacco advertising.[64]

The Guidelines to FCTC Article 13 recognize that it is increasingly common for tobacco companies to seek to portray themselves as good corporate citizens but that any contribution from a tobacco company to any other entity for socially responsible causes amounts to promotion and sponsorship that should be prohibited.

10. Packaging and Labelling

10.1. Increase the Size of Health Warnings to at Least 90% or more of the Principal Display Areas.

10.1.1. Identifying the Issue

Section 10(1) of the SUTPCA 2005 states that

> *Health warnings shall be printed on top of both sides of the packet, cover, carton or box of tobacco products, covering at least* ***50% of the total area of each main display area*** *or if the packets do not have two main sides in that case covering at least 50% of the main display area, with colored pictures and accompanying text, as prescribed by Rules, about the harms caused by the use of tobacco products and these shall be printed in Bangla.*

10.1.2. Recommendation

The SUTPCA 2005 is amended to require that health warnings cover at least 90% or more of the total area of each main display area.

The law should also include a power for the size of health warnings to be increased by rules.

10.1.3. Rationale

The Guidelines for Implementation of Article 11 of the WHO FCTC recommend that Parties consider using health warnings and messages that cover more than 50% of the

[64] WHO Report on the Global Tobacco Epidemic 2021, page 81 and Annexes 6.10, 6.11, and 6.12 on bans on direct and indirect advertising, available at:
https://www.who.int/teams/health-promotion/tobacco-control/global-tobacco-report-2021

principal display areas and aim to cover as much of the principal display areas as possible.

Bangladesh is now falling well behind global best practice. With health warnings at 50%, Bangladesh complies with its obligations under the WHO FCTC but there are **75 countries which mandate larger health warnings than Bangladesh.** This includes its neighbors Nepal (at 90%), India and Thailand (at 85%), and Sri Lanka (at 80%).

10.2. Placement of Warnings Where they may be Damaged when Opening the Pack

10.2.1. Identifying the Issue

Rule 9(f) of the Smoking and Usage of Tobacco Products (Control) Rules, 2015 (S.R.O. No. 58) requires that health warnings be displayed in such a way

"as not to be covered up by affixing stamp or band roll or for any other reason".

Although the law prohibits concealment of health warnings, it does not prohibit damage to the warnings when, for example, the pack is opened.

10.2.2. Recommendation

The law should specifically prohibit the placement of warnings where they may be damaged when opening the pack.

10.2.3. Rationale

The FCTC Art. 11 Guidelines recommend that warnings be placed so that even when tobacco packs are opened the health warning is still intact.

10.3. Display of Tar and Nicotine Content on Tobacco Packaging

10.3.1. Identifying the Issue

There is no requirement for qualitative constituents and emissions disclosures on the tobacco product packet or package, and there is no prohibition for the quantitative display for emission yields on the tobacco product packet or package.

The WHO FCTC Implementing Guidelines for Article 11 recommend that Parties should require relevant qualitative (descriptive) statements printed or displayed on each package about the emissions of the tobacco product. Examples of such statements include "smoke from these cigarettes contains benzene, a known cancer-causing substance" or "smoking exposes you to more than 60 cancer-causing chemicals" or "smoke from these cigarettes contains benzene, a known cancer-causing substance."

The law should prohibit the quantitative display of emissions yields. According to the

Implementing Guidelines for Article 11 of the WHO FCTC, the display of figures for emission yields (such as tar, nicotine, and carbon monoxide) should be prohibited because such yield numbers are misleading because they give the misleading impression that a cigarette with lower emission yields are less harmful when there is no evidence to show this.

10.3.2. Recommendation

The law should include

> *In addition to the health warnings required or prescribed under this section, every package of cigarettes or any other tobacco product shall bear descriptive-only information on contents and emissions as may be prescribed. Only the prescribed information on contents and emissions shall be displayed. The display on a packaging of cigarettes or any other tobacco product, of quantitative information or figures for emission yields is prohibited.*

10.3.3. Rationale

A 2012 study assessing perceived risks, usefulness, and understandability of quantitative emissions information on cigarette packets from the EU, Canada, and Australia found that participants were significantly more likely to believe that packets with lower emission numbers have lower tar delivery and lower health risks than packets with higher numbers, indicating that quantitative emission values are associated with false beliefs regarding lower tar delivery and health risks. [65]

Findings from a 2011 study showed that descriptive emissions information is significantly more useful in communicating health risks of smoking than numerical information. Consumers were more likely to draw false conclusions about a cigarette brand's level of risk when comparing numerical emissions and constituents' information between brands.[66]

10.4. Plain Packaging

10.4.1. Identifying the Issue

Many countries are moving beyond large graphic health warnings and are completely removing all the advertising features on tobacco packaging by introducing plain or

---

[65] Gallopel-Morvan, K., Moodie, C., Hammond, D., Eker, F., Beguinot, E., & Martinet, Y. (2011). Consumer understanding of cigarette emission labelling. European journal of public health, 21(3), 373–375. https://doi.org/10.1093/eurpub/ckq087

[66] Hammond D, White CM. Improper disclosure: tobacco packaging and emission labelling regulations. Public Health. 2012 Jul;126(7):613-9. doi: 10.1016/j.puhe.2012.03.012. Epub 2012 May 19. PMID: 22609086

standardized packaging. This policy is recommended in the Implementation Guidelines to both Articles 11 and 13 of the WHO FCTC because packaging is recognized as a means of advertising and can attract new users.

Even where full standardized packaging is not introduced, it is useful for the government to be able to regulate the type, size, shape and nature of tobacco packaging to ensure that graphic health warnings are properly displayed and are not distorted.

Currently, the law does not regulate, and does not grant any authority to regulate, the size, shape, type or nature of the packaging of cigarettes or other tobacco products.

10.4.2. Recommendation

Amend the tobacco control laws by inserting an additional clause that provides the authority to prescribe requirements for any element or feature of the packaging of cigarettes or other tobacco products and the appearance of cigarettes and other tobacco products, including in respect of trademarks.

> *“**FURTHER PACKAGING REQUIREMENTS**. (1) Requirements for any feature or element of the packaging of tobacco products may be prescribed by rules, including but not limited to, requirements as to:-*
>
> > *(a) the size, shape, color, texture and type of opening of the packaging,*
> >
> > *(b) the text or other markings that may be restricted, required or permitted on the packaging,*
> >
> > *(c) the materials used to make the packaging, and*
> >
> > *(d) any linings, inserts or additional material in the packaging.*
>
> *(2) Requirements as to any feature or element of the appearance and size of individual tobacco products may be prescribed by rules.”*

10.4.3. Rationale

There are now 19 countries[67] that have adopted plain packaging laws as recommended by the implementation guidelines for Article 11 and 13 of the WHO FCTC.

Plain packaging helps to change smoking attitudes and behaviors and reduce the overall demand for tobacco. It is likely to have a greater impact on younger people. Research evidence and post-implementation evidence from countries that have introduced plain packaging shows that the policy:

[67] Australia, France, United Kingdom, New Zealand, Norway, Ireland, Thailand, Uruguay, Saudi Arabia, Slovenia, Turkey, Israel, Canada, Singapore, Belgium, Hungary, Denmark, Guernsey and Netherlands. Full details are available here: https://www.tobaccofreekids.org/assets/global/pdfs/en/standardized_packaging_developments_en.pdf

- Increases the noticeability and effectiveness of health warnings on the packaging of tobacco products,
- Reduces the ability of the packaging of tobacco products to mislead consumers about the harmful effects of smoking or using tobacco products.

There have been five international systematic evidence reviews that considered all the peer reviewed research studies from around the globe on the impact of plain packaging on smoking behaviors and attitudes.[68] All concluded that the policy would be effective at contributing to its objectives.

11. Regulation of Content and Emissions

11.1.1. Identifying the Issue

The law does not regulate, nor does it grant any authority to regulate, the contents or ingredients of cigarettes.

The implementation Guidelines for Article 9 and 10 of the WHO FCTC state that regulating ingredients aimed at reducing tobacco product attractiveness can contribute to reducing the prevalence of tobacco use and dependence among new and continuing users.

The harsh and irritating character of tobacco smoke provides a significant barrier to experimentation and initial use. Some tobacco products contain added sugars and sweeteners. Other tobacco products contain flavors such as menthol, vanilla, cinnamon, clove, ginger or mint. Other ingredients are used that have coloring properties or to create the impression that products have health benefits, or are associated with energy or vitality such as vitamins or caffeine.

The Guidelines recommend that Parties regulate by prohibiting or restricting ingredients that may be used to increase palatability in tobacco products, in particular flavors, that color the emissions or that are associated with health, energy or vitality.

11.1.2. Recommendation

Amend the law and provide for the following:

- No person shall manufacture, import or sell a cigarette or other tobacco product that -

[68] i. Cancer Council Victoria (Australia 2011) http://www.cancervic.org.au/plainfacts/plainfacts-evidence
ii. The Stirling Review (United Kingdom 2012 and updated 2013) http://phrc.lshtm.ac.uk/project_2011-2016_006.html
iii. The Chanter Review (United Kingdom 2014)
http://www.kcl.ac.uk/health/10035-TSO-2901853-Chantler-Review-ACCESSIBLE.PDF
iv. The Hammond Review (Ireland 2014) http://health.gov.ie/blog/publications/standardised-packaging-d-hammond/
v. The Cochrane Review (international 2017)http://onlinelibrary.wiley.com/doi/10.1002/14651858.CD011244.pub2/abstract

- ❐ has a characterizing flavor, other than the flavor of tobacco;
- ❐ contains any additive with properties associated or likely to be associated with energy or vitality, a health benefit, or reduced health risk, such as but not limited to, amino acids, caffeine, taurine and other stimulants, vitamins, and minerals, or is represented or suggested as containing any such additives or having such properties;
- ❐ contains any additive or mixture with coloring properties for emissions;
- ❐ contains any additive or ingredient that enhances the uptake, inhalation or absorption of nicotine.

- Requirements may be prescribed for the comprehensive regulation of the contents and emissions of cigarettes and other tobacco products, including the quality standard of any ingredient and the testing and methods for testing conformity of contents and emissions.
- Manufacturers and importers of cigarettes and other tobacco products shall submit information on product contents and emissions as prescribed.

11.1.3. Rationale

Data from a 2015 US study found that 80.8% of 12-17 year age who had ever used a tobacco product initiated tobacco use with a flavored product.[69] Tobacco industry internal documents show a long history of developing and marketing flavored tobacco products as "starter" products to attract youth.[70]

Flavors improve the taste and reduce the harshness of tobacco products, making experimentation and addiction more likely.[71] Menthol cools and numbs the throat, reducing the harshness of cigarette smoke, thereby making menthol cigarettes more appealing to youth initiating tobacco use. [72, 73, 74] Menthol cigarettes increase the number of children who experiment with cigarettes and the number of children who become regular smokers, increasing overall youth smoking.[75] Flavors can create the false

---

[69] Ambrose, BK, et al., "Flavored Tobacco Product Use Among US Youth Aged 12-17 Years, 2013-2014," Journal of the American Medical Association, published online October 26, 2015

[70] See e.g., Marketing Innovations, "Youth Cigarette - New Concepts," Memo to Brown & Williamson, September 1972, Bates No. 170042014; R.J. Reynolds Tobacco Company, "Conference report #23," June 5, 1974, Bates No. 500254578-4580; R.J. Reynolds Inter-office Memorandum, May 9, 1974, Bates No. 511244297-4298.

[71] HHS, Preventing Tobacco Use Among Youth and Young Adults, A Report of the Surgeon General, 2012.

[72] FDA, Preliminary Scientific Evaluation of the Possible Public Health Effects of Menthol versus Nonmenthol Cigarettes, 2013.

[73] Scientific Committee on Emerging and Newly Identified Health Risks (SCENIHR), Addictiveness and Attractiveness of Tobacco Additives, 2010

[74] World Health Organization (WHO) Study Group on Tobacco Product Regulation. WHO Technical Report Series 967, 2012.

[75] TPSAC, Menthol Cigarettes and Public Health: Review of the Scientific Evidence and Recommendations, July 21, 2011.

impression that a tobacco product is less harmful than it really is.[76] Candy-like flavoring additives such as licorice, chocolate, cocoa, and vanilla improve the taste of tobacco products and reduce their harshness. When burned in a cigarette, licorice and chocolate produce carcinogenic compounds such as formaldehyde, benzo(a)pyrene, and benzene.[77]

When sugar additives are burned in cigarettes, formaldehyde and acetaldehyde are produced. Acetaldehyde is a potential carcinogen and is believed to interact with nicotine to enhance its addictive effects by making receptors in the brain more receptive to nicotine. [78, 79]

As of September 2021, at least 37 countries ban all flavors in cigarettes. Other countries ban some but not all flavors.[80]

12. Sales Restrictions

12.1. Age of Sale

12.1.1. Identifying the Issue

Section 6A SUTPCA 2005 provides that no person shall sell, offer for sale or permit the sale of cigarettes or any other tobacco product to a person below the age of 18 years.

> *PROHIBITION OF SELLING TOBACCO PRODUCTS TO A MINOR, ETC:- (1)*
>
> *(1) No person shall sell tobacco or tobacco products to any person under the age of eighteen, or engage or cause to engage any such person in the marketing or distribution of tobacco or tobacco products.*

12.1.2. Recommendation

Amend SUTPCA 2005 to increase the permitted age of sale for cigarettes and other tobacco products from 18 to 21 years.

[76] Huang, L.-L., et al., "Impact of Non-menthol Flavours in Tobacco Products on Perceptions and Use Among Youth, Young Adults and Adults: A Systematic Review," Tobacco Control, 26(6):709-719, 2017

[77] German Cancer Research Center. Additives in Tobacco Products: Contribution of Carob Bean Extract, Cellulose Fibre, Guar Gum, Liquorice, Menthol, Prune Juice Concentrate and Vanillin to Attractiveness, Addictiveness and Toxicity of Tobacco Smoking. Heidelberg, Germany: German Cancer Research Center. 2012.

[78] Talhout R, Opperhuizen A, van Amsterdam JGC. Sugars as tobacco ingredient: effects on mainstream smoke composition. Food and Chemical Toxicology. 2006; 44(11):1789-1798.

[79] Rabinoff M, Caskey N, Rissling A, Park C. Pharmacological and Chemical Effects of Cigarette Additives. American Journal of Public Health. 2007 November; 97(11):1981-91

[80] Policy search on www.tobaccocontrollaws.org database (search conducted on September 17, 2021)

12.1.3. Rationale

Countries are increasingly recognizing that almost all people who become long term tobacco users commence tobacco use while they are adolescents or young adults. There are at least 87 countries that set a minimum age of 18 for purchasing tobacco. However, 14 countries have now increased that minimum age, most to 21 years.[81] These include Ethiopia, Guam, Honduras, Japan, Kuwait, Mongolia, Palau, Philippines, Samoa, Singapore, Sri Lanka, Thailand, USA, and Uganda.

The vast majority of tobacco users began before the age of 21. Raising the tobacco sales age to 21 has the potential to reduce tobacco use initiation and progression to regular smoking. Of 3245 [survey] respondents, 70.5% support raising the age to buy tobacco to 21.[82]

Local tobacco-21 policies yield a substantive reduction in smoking among 18- to 20-year-olds living in metropolitan/micropolitan areas. This finding provides empirical support for efforts to raise the tobacco purchasing age to 21 as a means to reduce young adult smoking.[83]

Tobacco-21 laws appear to reduce smoking among 18–20-year-olds who have ever tried cigarettes. Exposure to tobacco-21 laws yielded a 39% reduction in the odds of both recent smoking among 18–20-year-olds who had ever tried cigarettes.[84]

Research studies

Needham, Massachusetts

Results suggest that raising the minimum sales age to 21 for tobacco contributes to a greater decline in youth smoking relative to communities that did not pass this ordinance. These findings support local community-level action to raise the tobacco sales age to 21.[85]

California

Very high awareness about the law was achieved among tobacco retailers and

---

[81] Policy search on www.tobaccocontrollaws.org legislation database with criteria ‘sales restrictions’ and ‘minimum sales age of 21 years or less’.

[82] Winickoff JP, McMillen R, Tanski S, et al. Public support for raising the age of sale for tobacco to 21 in the United States. Tobacco Control. 2016, 25:284-288.

[83] Friedman AS Phd, Rachel J Wu, BA. Do Local Tobacco-21 Laws Reduce Smoking Among 18 to 20 Year-Olds? Nicotine & Tobacco Research. 2020, 22(7): 1195–1201.

[84] Friedman, A. S., Buckell, J., and Sindelar, J. L. Tobacco-21 laws and young adult smoking: quasi-experimental evidence. Addiction. 2020, 114: 1816– 1823.

[85] Kessel Schneider S, Buka SL, Dash K, et al. Community reductions in youth smoking after raising the minimum tobacco sales age to 21. Tobacco Control. 2016, 25:355-359.

young adults. Survey findings suggest that the high awareness and support for the law may have contributed to reducing illegal tobacco sales to youth under 18 and achieving widespread retailer compliance with T21. As evidenced by retailer compliance in New York City, vigilance and reinforcement are needed to sustain and improve compliance with tobacco sales to those under 21years of age.[86]

13. Restrictions on trade and commerce in production, supply and distribution

13.1. Prohibit sales of single sticks and loose smokeless tobacco

13.1.1. Identifying the Issue

The sales of single sticks of cigarettes and bidis, as well as individual servings of paan masala, provide easy and cheap access to tobacco. In rural communities, loose tobacco is sold from large sacks or bags on market stalls which again provide cheap and easy access to tobacco. These practices mean that consumers purchasing single sticks or individual portions of tobacco without packaging are not regularly exposed to the warning labels the law requires on tobacco packaging.

In addition, in countries where the sale of single sticks is prohibited, the tobacco industry introduces small packets of cigarettes and other tobacco products that provide cheaper access and greater availability of tobacco. This increases youth access and the use of tobacco by communities on lower income. At least 60 countries[87] provide a legal minimum content for packs of cigarettes (usually 20 cigarettes) and other tobacco products.

13.1.2. Recommendation

Amend the law to insert a provision that states

PROHIBITION OF SELLING CIGARETTES, BIDIS AND SMOKELESS TOBACCO ETC, AS SINGLE STICKS OR IN LOOSE FORM in unpackaged condition: - *No person shall sell, offer for sale, or permit the sale of a tobacco product unless-*

(a) it is contained in its sealed, intact, original packaging, and

(b) it is in a package that contains a quantity or weight of tobacco product prescribed by Rules.

[86] Zhang X, Vuong TD, Andersen-Rodgers E, et al. Evaluation of California's 'Tobacco 21' law. Tobacco Control. 2018, 27:656-662.

[87] Policy search on www.tobaccocontrollaws.org legislation database with criteria 'sales restrictions', 'retail package size restrictions', 'minimum number of cigarette sticks' and 'minimum weight of smokeless tobacco'.

This would prohibit the sale of any tobacco product outside its original packaging, and would allow the government to notify rules as to the minimum content for each individual packet of specified tobacco products.

13.1.3. Rationale

WHO FCTC Article 16 provides that

> *Each Party shall endeavor to prohibit the sale of cigarettes individually or in small packets which increase the affordability of such products to minors.*

There are at least 86 countries that prohibit the sale of single sticks. Of those 86 countries, 58 countries require that cigarettes are sold in packs of at least 20; and 12 countries require that cigarettes are sold in packs of between 10 and 19.

At least 62 countries set a minimum number of cigarette sticks per individual package. The minimum varies but the most common requirement is a minimum of 20 sticks per pack. In at least 10 countries, where smokeless tobacco use is a problem for young people, the law sets a minimum weight of smokeless tobacco product for each individual packet. The minimum weight set varies from 10 grams (in Equador, Kenya and Togo) to 30 grams (in Nigeria, Ghana and Maldives).

Research studies on the impact of the sale of single sticks and small packs:

Sri Lanka

Single stick sales facilitate smoking among non-affluent youth and beginning smoking. Retailers are more likely to sell single cigarettes to minors than to adults, thus probably initiation of smoking. The government not only accepted the desirability of banning sale of single stick cigarettes in order to promote reduction of tobacco use but took practicable steps to implement the proposal.[88]

United States

Single cigarettes, which are sold without warning labels and often evade taxes, can serve as a gateway for youth smoking. The FDA conducted over 335 661 inspections between 2010 and September 30, 2014, and allocated over $115 million toward state inspections contracts. Substantial, unexplained variation exists in violations of single cigarette sales among states. These data suggest the possibility of differences in implementation of FDA inspections and the need for stronger quality monitoring processes across states implementing

[88] Peiris, S. D. Ban of single stick cigarettes. Tobacco Induced Diseases. 2018,16(1): 123.

FDA inspections.[89]

India

Sale of single cigarettes is an important factor for early experimentation, initiation and persistence of tobacco use and a vital factor in the smoking epidemic in India as it is globally. Single cigarette also promotes the sale of illicit cigarettes and neutralises the effect of pack warnings and effective taxation, making tobacco more accessible and affordable to minors. This is the first study to our knowledge which estimates the size of the single stick market in India..[90]

Africa

Stringent measures are necessary to provide lasting solutions to the problem of selling single sticks of cigarettes in Africa. Governments are called upon to: Ensure that the sale of single sticks or small packs of tobacco products is prohibited by passing and enforcing appropriate legislation; Ensure a comprehensive ban on all forms of tobacco advertising, promotion and sponsorship and this should include any advertising or promotional materials related to single sticks; Consider licensing of retail vendors of tobacco product.[91]

14. Ban new Tobacco and Nicotine Products (E-cigarettes, Heated Tobacco Products, and Oral Pouches)

14.1.1. Identifying the issue

New tobacco and nicotine products, such as electronic cigarettes, heated tobacco products (HTP) and oral nicotine pouches, are becoming increasingly popular around the globe and are the tobacco industry's latest way to addict the next generation of young people to nicotine. The tobacco industry is seeking to create a new image for itself by claiming these products are 'reduced risk' and can assist in fighting against the harms of the tobacco epidemic. In reality, these new products are just the latest way for the industry to generate profits through addiction and to distract government's attention away from effectively protecting public health.

[89] Baker HM, Lee JGL, Ranney LM, Goldstein AO. Single cigarette sales: state differences in FDA advertising and labeling violations, 2014, United States. Nicotine & Tobacco Research. 2016, 221-226.

[90] Lal P, Kumar R, Ray S, et al. The Single Cigarette Economy in India--a Back of the Envelope Survey to Estimate its Magnitude. Asian Pac J Cancer Prev. 2015, 16(13):5579-5582.

[91] ATCA. Sale of Single Cigarettes in Africa: Survey report from 10 capital cities. 2018.

14.1.2. Recommendation

Amend SUTPCA 2005 to insert a set of provisions that bans the manufacture, import, distribution and sale of all forms of electronic cigarettes, heated tobacco products and oral nicotine pouches.

The tobacco industry is continuing to innovate and regularly introduces new products that may fall outside these existing product categories. Therefore, the provisions should also provide the government the power to designate other tobacco and nicotine products as being subject to the same ban.

14.1.3. Rationale

The WHO Report on the Global Tobacco Epidemic 2021, is titled "Addressing new and emerging products".[92] That report notes -

> *"As cigarette sales have fallen, tobacco companies have been aggressively marketing new products – like e-cigarettes and heated-tobacco products – and lobby governments to limit their regulation. Their goal is simple: to hook another generation on nicotine."*

The industry has so far focused its marketing and sales tactics in high income countries. This has led to what has been described as a youth 'epidemic' of e-cigarette use in the U.S.A. which over 27% of high school pupils currently using e-cigarettes in 2019.[93] There is real concern that this epidemic will be spread to low and middle income countries by the industry's tactics.

Because these are new products, many of the long-term health effects of e-cigarette, HTPs and products are still unknown, but there is growing evidence to demonstrate that their harms and potential harms. When children use ENDS, or even try them, they are more than twice as likely to use conventional cigarettes. The tobacco industry gains new customers.

The use of nicotine in any form by youth, including e-cigarettes, is unsafe, causes addiction and can cause harmful changes to the developing adolescent brain.[94] Many

---

[92] WHO report on the global tobacco epidemic 2021: addressing new and emerging products. Geneva: World Health Organization; 2021. Licence: CC BY-NC-SA 3.0 IGO.
https://www.who.int/teams/health-promotion/tobacco-control/global-tobacco-report-2021

[93] FDA News Release, September 11, 2019, Trump Administration Combating Epidemic of Youth E-Cigarette Use with Plan to Clear Market of Unauthorized, Non-Tobacco-Flavored E-Cigarette Products. Available at: www.fda.gov/news-events/press-announcements/trump-administration-combating-epidemic-youth-e-cigarette-use-plan-clear-market-unauthorized-non

[94] U.S. Department of Health and Human Services. E-Cigarette Use Among Youth and Young Adults: A Report of the Surgeon General—Executive Summary. Atlanta, GA: U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Chronic Disease Prevention and Health Promotion, Office on Smoking and Health, 2016.

countries have experienced patterns of high e-cigarette use by young people including in the U.S. and some European countries. In the U.S. one in four high school students is now an e-cigarette user. There is substantial evidence that youth and young adults who initiate e-cigarette use are at greater risk of ever using conventional cigarettes.[95] Marketing and sales practices target young people. Youth use of e-cigarettes is impacted by several factors, including flavorings, nicotine delivery, industry marketing, and the nature and extent of government regulation. E-cigarette industry marketing follows the tobacco industry's playbook, including the use of social media, to reach young people. Recent market trends show an increase in sales of e-cigarettes that deliver high levels of nicotine more efficiently and with less irritation, making it easier for young people to initiate use and develop addiction. The industry targets youth with sweet and fruit flavored products. Research shows adolescents consider flavor as the most important factor when trying e-cigarettes and are more likely to initiate e-cigarette use with flavored products.

At least 32 countries have already banned electronic cigarettes and 79 have adopted bans on their use in public areas, advertising and sponsorship, and graphic health warnings.[96]

Heated tobacco products (HTPs), are the tobacco industry's newest way to keep people addicted to tobacco and attract new users, including young people. Tobacco companies have sought to market HTPs as "reduced risk" because the companies claim using the products does not involve burning or combustion, and they claim to market these products only to existing smokers. However, the industry has a long history of making false claims about the health risks of its products, most notably in the marketing of "light" and "mild" cigarettes that were no safer than other cigarettes. In addition, HTPs have been marketed around the world in ways that appeal to young people.

By claiming that HTPs do not involve combustion or emit smoke, the companies are attempting to mislead consumers and policymakers about the harms of using the product. Despite the tobacco companies' "reduced risk" claims, HTPs have been shown to produce toxic emissions. Furthermore, as agreed by the Parties to the WHO Framework Convention on Tobacco Control, all tobacco product use is dangerous. Therefore, HTPs should be banned or strongly regulated to minimize their use and exposure to their emissions. Governments must resist tobacco industry lobbying to regulate HTPs less strictly than other tobacco products.

[95] National Academies of Sciences, Engineering, and Medicine. 2018. Public health consequences of e-cigarettes. Washington, DC: The National Academies Press. Available at: http://nationalacademies.org/hmd/Reports/2018/public-health-consequences-of-e-cigarettes.aspx

[96] WHO Report on the Global Tobacco Epidemic 2021: addressing new and emerging products. Page 99. Available at: https://www.who.int/teams/health-promotion/tobacco-control/global-tobacco-report-2021

At least 17 countries have banned HTPs and at least 8 countries have adopted new laws to specifically regulate them.

The industry will tailor its tactics to each country. In Pakistan, British American Tobacco (BAT) has been aggressively marketing its newest product, VELO, an oral nicotine pouch that users insert between the lip and the gum. BAT is using TikTok and Instagram influencers as part of a $1.5billion campaign to market the product to attract young people and non-smokers.[97]

It is vital that Bangladesh addresses the looming threat to public health from new tobacco and nicotine products by banning the products, before the industry is able to establish strong markets in Bangladesh.

[97] The Guardian, Tobacco giant bets £1bn on influencers to boost 'more lung-friendly' sales. Available at: https://www.theguardian.com/business/2021/feb/20/tobacco-giant-bets-1bn-on-social-media-influencers-to-boost-lung-friendlier-sales

PART IV

Parliamentary Approach To Tobacco Control

15. Introduction

The Parliament of Bangladesh discharges the splendid function of crafting necessary changes in the legislative arena of Bangladesh through dynamic legislation. However, it is not possible for the parliament to scrutinize all the legislative and other functions due to the technicalities, intricacies and expediency. Therefore, a good number of aforesaid activities require to be accomplished by different parliamentary committees.

The parliament of Bangladesh has already enacted the Smoking and Usage of Tobacco Products (Control) Act, 2005 as amended in 2013. However, this part will critically assess the report of Standing Committee on Ministry of Health and Family Welfare of 8th Parliament, question and answer sessions of parliament as well as the endeavors of individual members of parliament as accomplished in the 10th and 11th Parliament to explicate the approach of the legislative body of the government in the arena of tobacco control since the reports of standing committees, viewpoints of Prime Minister, other ministers and members of parliament expressed during different parliamentary sessions will encourage the law and policy makers to bring out desirable changes through the amendment of current tobacco control law.

15.1. Reports and Recommendations of Parliamentary Committees

The reports of parliamentary standing committees are of crucial significance since a standing committee on each ministry may, subject to the constitution and any other law, -a) examine draft Bills and other legislative proposals; b) review the enforcement of laws and propose measures for such enforcement; and c) examine any other matter referred to them by Parliament under Article 76 of the Constitution.[98] This section will exclusively focus on that portion of the report of standing committee on Ministry of Health and Family Welfare of 8th Parliament, 8th Session which are related with the tobacco control law and matters incidental thereto.

15.2. Report of Standing Committee on Ministry of Health and Family Welfare

The report, *inter alia*, has embraced the following issues pertaining to tobacco control in Bangladesh.

[98] Rule 246 of the Rules of Procedure of Parliament of The People's Republic of Bangladesh

15.3. Effective Measures for the Implementation of Tobacco Control Law and Mass Awareness Program

On 24th August, 2005, this Committee submitted that despite the enactment of the Smoking and the Usage of Tobacco Products (Control) Act, 2005 effective measures were not taken to implement the provisions of the statute. The Standing Committee urged all the law enforcing agencies to be more vigilant. It also urged the Ministry of Health and Family Welfare to create awareness among the masses of the country through mass awareness program on radio, television, newspapers etc. as well as to distribute posters, leaflets.[99]

On 29th September, 2005, it held its 24th meeting and reported that the Department of Health was directed to devise necessary steps to prevent smoking in public places with the prime objective of ensuring apposite compliance of the provisions of the Smoking and Usage of Tobacco Products (Control) Act, 2005. It also enumerated that the Department of Health had taken steps namely collecting information, data from the neighboring country to conduct publicity, broadcasting on radio, television and other news media as well as to prepare leaflet, booklet etc. It also reported that different types of activities were under process.[100] This Committee also reported that the Ministry of Health and Family Welfare had taken necessary steps to ensure the proper implementation of the Smoking and Usage of Tobacco Products (Control) Act, 2005.

15.4. Request for the Submission of the Smoking and Usage of Tobacco Products (Control) Rules and Its Implementation

On 13th December, 2005, the Committee awfully noted that the dramas played on television displayed the scene of smoking. To stop such activity, it requested the Ministry of Health and Family Welfare to submit the draft of the Smoking and Usage of Tobacco Products (Control) Rules, 2006.[101]

The Standing Committee requested the Ministry of Health and Family welfare to submit the draft of the Smoking and Usage of Tobacco Products (Control) Rules, 2006 to ensure the effective implementation of the Smoking and Usage of Tobacco Products (Control) Act, 2005. Afterwards, it was found that the direction of the Committee was fulfilled accordingly.[102]

On 31st May, 2006 in its 33rd meeting the Standing Committee posed a question to the secretary of the Ministry of Health and Family Welfare regarding the non-adoption of the Smoking and Usage of Tobacco Products (Control) Rules, 2006. In reply, secretary

---

[99] Report of Standing Committee on Ministry of Health and Family Welfare, 23rd Meeting, p. 144 and 228.

[100] Ibid, 24th Meeting, p. 146.

[101] Ibid, 27th Meeting, p. 160.

[102] Ibid, 33rd Meeting, p. 187.

informed the committee that the rules were adopted and published in the Gazette and it would take effect within a very short span of time. The Chair of the Committee emphatically asserted that mere adoption of the rules would not be sufficient and thus he requested all the concerned authorities to implement the law and rules appositely.[103]

Thus, the aforementioned discussion has amply proved that the standing committee on ministry of health and family welfare has reiterated its strong voice for the effective enforcement of the tobacco control law on the one hand and the adoption of rules to supplement the existing tobacco control statute on the other hand.

15.5. Question and Answer Sessions of Parliament Telating to Tobacco Control

Parliamentary questions, a widely recognized practice to enforce ministerial responsibility, enable Member of Parliament to exert pressure on minister to secure a particular outcome, publicize a grievance as well as to demonstrate the work of different departments of government under the public scrutiny. The following instances will depict the role of Member of Parliament of the House of the Nations, Parliament of Bangladesh, to sensitize the issue of tobacco control in Bangladesh. For the sake of clarity, we will discuss it under two different headings:

a) Prime Minister's Question Time and
b) Minister's Question Time

15.6. Prime Minister's Question Time

Adoption of the Smoking and Usage of Tobacco Products (Control) Rules, 2015

On 10th January 2018, the Prime Minister was asked which sorts of planning and their respective implementation had already been taken by her government in the health sector of Bangladesh. While enumerating the different measures and programs she specially referred the adoption of the Smoking and Usage of Tobacco Products (Control) Rules, 2015 (S.R.O. No. 58).[104]

Minister's Question Time

Adoption of the Smoking and Usage of Tobacco Products (Control) Rules, 2015

While the Health Minister was asked regarding the steps which were taken to develop health sector of Bangladesh more viable he, *inter alia,* focused on the adoption of the Smoking and Usage of Tobacco Products (Control) Rules, 2015 (S.R.O. No. 58).[105]

[103] Ibid, p. 164.

[104] 10th Parliament, Session 13rd- 23rd, 07/12/2016 - 24/10/2018, p. 224.

[105] 11th Parliament, 1st Session, 2019, p. 34.

15.7. Graphic Health Warning

On 12 July, 2018, Barrister Shameem Haider Patwary MP, asked the Health Minister whether the government had any plan to increase the size of GHW on the packets and cartons of tobacco products from 50% to 80%. In reply, the Health Minister stated that though different countries had already increased the size of GHW including Bangladesh's neighboring countries, Bangladesh's GHW size still remained at 50%. However, under the Smoking and Usage of Tobacco Products (Control) Rules, 2015, the Government may add new pictures or warning messages, if necessary, at best, in every 2 (two) years with the revision of the pictures and warning messages. Moreover, the government has already devised necessary steps to circulate the matter of printing GHW on the packets of tobacco products.[106]

15.8. Electronic Cigarettes

On 12 November, 2019, Barrister Shameem Haider Patwari MP, questioned the Commerce Minister whether the government had any plan to ban the importation of e-cigarette before it assumed the form of epidemic. In reply he stated that before the incorporation of provision regarding importation of e-cigarette in new Import Policy Order, appropriate steps, after consultation with concerned stakeholders including the Ministry of Health and Family Welfare about its adverse effect, would be taken to ensure public health.

In the 5th Session of the 11th Parliament held on 14 January, 2020 Barrister Shameem Haider Patwary MP, focusing on the very issue of including e-cigarette in the list of approved import commodities, requested the Finance Minister to take appropriate steps to ban its import immediately. In reply to his notice, Finance Minister informed the House that the importation of Electronic Nicotine Delivery System (ENDS) is already subjected to 212.20% tax. Moreover, it is the jurisdiction of the Ministry of Commerce, not the Ministry of Finance to exclude any commodity from the list of approved import commodities and thus banning its manufacturing, importation, buying and selling falls within the jurisdiction of the former one.[107]

On 8th March, 2021, 153 members of parliament under the banner of Bangladesh Parliamentary Forum for Health and Wellbeing have signed a letter to Prime Minister demanding a ban on the import, production, sale, marketing and use of e-cigarettes in Bangladesh.[108]

---

[106] Written Question no. 486 and its answer. Asked on 12 July, 2018, House of the Nations, Bangladesh.

[107] Brief Written Statement containing answers by the Honourable Ministers to the notices read for 2 minutes by the Honourable Members of Parliament in accordance with Rule 71 A of the Rules of Procedure, 5th Session, 11th Parliament, January, 2020, Notice No. 67, p. 36.

[108] *The Daily Sun,* '153 MP's urge PM to ban e-cigarette', available at https://www.daily-sun.com/post/540073/153-MP%E2%80%99s-urge-PM-to-ban-ecigarette- last accessed on 30 March 2021.

15.9. Private Members' Resolution Regarding Tax on Tobacco

On 12 September, 2019 Saber Hossain Chowdhury MP, terming the contemporary tax structure of Bangladesh "very complex, old and ineffective" and enumerating that only six countries have such system, proposed to impose specific tax[109] in place of *ad valorem tax* [110] on tobacco products in his private member's resolution titled **"The opinion of parliament is that a specific tax instead of existing ad-valorem system should be imposed on all types of tobacco products".** In reply, Finance Minister informed that no scope existed in Bangladesh to impose specific tax on tobacco products in accordance with the law currently. However, he stated that "...specific taxation for tobacco is now being assessed. Such a system can be introduced in future". Despite the request of the Finance Minister, Saber Hossain Chowdhury MP declined to withdraw the resolution and the Speaker placed it for voice voting and majority MPs cast 'no vote' against the withdrawal of the resolution. The Speaker drew attention of the MPs for the second-time voting and majority MPs gave 'yes vote' in favor of the withdrawal of the resolution. However, a good number of members of Parliament raised their voice against this incident.[111] This incident was, in fact, a severe setback in the historical landscape of the tobacco control regime of Bangladesh.

---

[109] The very term 'specific tax' connotes a fixed amount for each unit of a good or service sold.

[110] The Latin phrase 'ad valorem' denotes according to value. Ad valorem tax is levied based on the assessed value of an item being taxed.

[111] After the withdrawal of the resolution, Speaker started proceeding to another business but Saber Hossain sought permission to speak. He vehemently claimed that the issue got settled through the first time voting. He asserted: "There's no instance of second-time voting in parliament for disposal of any resolution. I'm definitely got disappointed as the Finance Minister didn't accept a public-interest issue. Rather, he took a stance so that tobacco companies can make more money depriving the government of revenue". Questioning the second time voting he lamented: "...the Speaker put it to vote again. I don't think there is any precedence of an issue being put to vote twice... such a precedent of changing results by showing hands again should not be kept. We don't want parliament to set any such example that will trigger discussions in the future". Referring the issue of confusion Saber Hossain urged the Speaker to proceed for division voting since such voting will not cause the fall of the government. Moreover, he also requested the Speaker to keep the decision on the issue pending and scrutinize the proceedings of parliament regarding the disposal of the resolution. Another member of Parliament Rashed Khan Menon submitted that private member's motion was passed in parliament earlier regarding the issue of the trial of war crimes. Requesting for the postponement of the motion he mentioned: "The question raised about the procedure has set a bad example. Clarifying the issue Speaker of the Parliament Dr. Shirin Sharmin Chaudhury stated: "What has happened is this- the minister requested to withdraw the motion and it was put to vote following the rules. I got a bit confused as the MPs' opinion was not clear to me. So I put it to vote again. It was not my decision." She also pointed out that the results would have been same if the MPs actually favoured Saber's motion. Moreover she elucidated: "There's also instances of second time voting in parliament in the past. There's no reason and scope for me to show partiality. I hope there'll be no more confusion over the matter after my clarification". The Daily Star, 'Tobacco Tax: Resolution withdrawn after second vote', available at

https://www.thedailystar.net/backpage/news/tobacco-tax-resolution-withdrawn-after-second-vote-1799383last accessed on 30 March 2021.

15.10. Amendment of Tobacco Control Law of Bangladesh

On 23rd March, 152 members of parliament under the banner of Bangladesh Parliamentary Forum for Health and Wellbeing have urged the government to amend the existing tobacco control law of Bangladesh to achieve Sustainable Development Goals (SDGs) of the country.[112]

The aforementioned discussion has revealed that report of parliamentary committee, parliamentary question and answer session and the private members effort in the tobacco control regime, to a greater extent is praiseworthy. However, the appalling incident of second time voting in case of Saber Hossain Chowdhury's resolution pertaining to tax on tobacco has orchestrated a tragic chapter in the history of tobacco control of Bangladesh. Therefore, political good will, coordination among the policy makers as well as consistent efforts of the government will hopefully facilitate to bring out desirable changes in the arena of tobacco control of Bangladesh.

[112] *The Daily Sun*, 'MP's urge to amend tobacco control law to achieve SDGs', available at https://www.daily-sun.com/post/543014/MPs-urge-to-amend-tobacco-control-law-to-achieve-SDGs last accessed on 30 March 2021.

PART V

JUDICIAL APPROACH TO TOBACCO CONTROL

16. Introduction

Scrupulously dissecting the diverse arguments of tobacco industries vis-à-vis underscoring the significance of the best standard practices as elucidated in WHO FCTC and its implementing guidelines the apex court of Bangladesh and the courts of other countries have endeavored to develop efficacious jurisprudence through a good number of prisms. Of them, the courts have focused on the following crucial issues namely protection of public health, preference of public health over right to business, obligation of state parties under WHO FCTC, proscription on the unbridled freedom of individual to smoke and so on. The following discussion will broadly be divided into two headings namely judicial decisions of Supreme Court of Bangladesh and the different foreign courts illustrative of best standard practices in the topography of tobacco control.

16.1. Judicial Decisions of Supreme Court of Bangladesh

The Supreme Court of Bangladesh as the apex court has heralded its praiseworthy journey in the benign arena of tobacco control since 2000 through the pronouncement of judgment in the Voyage of Discovery Case i.e. even before the adoption of WHO FCTC. More importantly, the court is continuing this crucial role in different cases throughout the years spanning in variegated areas of tobacco control namely advertising, promotion and sponsorship, graphical health warning, illicit trading of tobacco and cigarette, health development surcharge, tax etc. For the sake of convenience, this study will focus on several significant areas as spelt out below.

16.2. Advertising, Promotion and Sponsorship

The High Court Division (HCD)[113] provided six crucial directions[114], including holding that "advertisement in any form of Cigarette, Beedi, tobacco related products must not be continued in any manner in Newspapers, Magazine, Signboards, or in any media like Television/Radio beyond the period of the existing contract/agreement with the manufacturers or their agents". The Appellate Division (AD) of the Supreme Court of Bangladesh, dismissing the civil appeals, also upheld the judgment of the HCD[115] with four more directives[116] and held that "the HCD was perfectly justified in issuing directives to protect health and longevity of people…and when the right to life of the people is at stake, the legislature is under an obligation to enact law to remedy the situation and to protect the rights thereby in accordance with the directives of the judiciary".[117] In this regard the AD emphatically made references to the signing and ratification of WHO FCTC and the enactment of the Smoking and Usage of Tobacco Products (Control) Act, 2005 as amended in 2013 as well as rules made thereunder.

---

[113] Prof. Nurul Islam and others Vs. Government of the People's Republic of Bangladesh & ors.52 DLR (2000) 413.

[114] The learned judges, after scrupulously considering the severe adverse effects of smoking and tobacco consumption, constitutional provisions as well as their relevant interpretation as reflected in the judgments of different countries namely India, Pakistan including Bangladesh, made the rules Nisi issued earlier absolute with six directions to the government. The Government is directed (a) to devise measures phase by phase to stop production of tobacco leaves, providing subsidy to the farmers, if possible and necessary to produce alternative agricultural products and for rehabilitation of the tobacco workers, if possible with alternative befitting jobs, (b) to restrict issuance of licence for the establishment of tobacco industry or bidi factory and direct such types of companies to switch over to some other industry to prevent the production of cigarettes, bidi and other tobacco related products within a reasonable time specified thereby, (c) to proscribe importation of cigarette or tobacco related products within a reasonable time and meanwhile to impose heavy tax for the import and to print the statutory warning clearly in bold words in Bengali, (d) no advertisement or telecast regarding tobacco products or commercials by the Government, the concerned Ministry or the Broadcasting television authority, Newspaper or bill board authority or any other advertising agencies are permitted after the expiry of the existing contract between them and the manufactures or their agents, (e) no promotional ventures like "Voyage of Discovery" can be undertaken or encouraged by the Government or any other concerned authority, (f) to direct the appropriate authorities to make arrangements for the proscription of smoking in public and public places by taking resort to effective compliance of the existing provisions of sections 278, 133, 188 of the Penal Code, 1860. The HCD emphatically pointed out that the concerned authorities are under a strict obligation to monitor that "any other authority, private or public, do not flout this direction in any manner both under the provision of the Constitution and the law of the land".

[115] Government of the People's Republic of Bangladesh and Ors. Vs. Prof. Nurul Islam & Ors. (2016) 36 BLD, Appellate Division, 174; 68 DLR (AD)(2016) 378; 14 ADC (2017) 693.

[116] After critically reviewing the contemporary situation extant in Bangladesh regarding the rampant violation of the aforesaid Act and Rules and improper implementation of them especially the prohibition of smoking in public places and selling of tobacco products to minors and keeping of facilities relating to smoking namely ashtrays, matches, lighters in public places, the AD provided the following four more directives in addition to the directives given by the HCD. a) directing the law enforcing agencies to implement the provisions of the section 4 of the Smoking and Tobacco Products Usage (Control) Act, 2005, b) directing them to ensure that none can sell tobacco product to a minor as per section 6(1)(a)and (2) of the aforesaid Act, c) directing the owner, proprietor of a public place to ensure non-smoking in that place and proscribing them to keep smoking facilities there e.g. ashtrays, matches, lighters etc. d) directing the Ministry of Education, the Ministry of Primary and Mass Education and the National Curriculum Textbook Board (NCTB) to incorporate a chapter in the curriculum of schools and intermediate colleges regarding the injurious effect of smoking with a special reference to the latest laws.

[117] The AD, after citing the illustration of signing and ratification of the WHO Framework Convention on Tobacco Control by Bangladesh on 16th June, 2003 and 10th May, 2004 respectively and subsequent enactment of the Smoking and Tobacco Products Usage (Control) Act, 2005 as amended by the Smoking and Tobacco Products Usage (Control) (Amendment) Act, 2013 and adoption of the Smoking and Tobacco Products Usage (Control) Rules, 2006, elucidated that directive D, E and F of the impugned judgment were implemented in full and directive C was partially implemented. The AD has further observed that since there is nothing on record to show that the Government has devised any measures to implement the directives A and B of the impugned judgment, the concerned authorities are directed to start implementation.

16.3. Graphic Health Warning (GHW)

A Division bench of the HCD declared that the Public Notice violated the law as published and circulated by the National Tobacco Control Cell (NTCC)[118], permitting to print GHW on the lower halves of the packets and cartons of tobacco products covering 50% of the surface area as an interim measure until the subsequent order.[119] Though the Government preferred the appeal against the decision, the AD dismissed the appeal on 06.12.2020 and upheld the judgment of the HCD and thereby confirming the obligation of the concerned tobacco industries and companies to print Graphical Health Warning (GHW) on the upper halves of the packets and cartons of tobacco products covering 50% of the surface area.[120] In another instance, the HCD issued a Rule to stop illicit trading of tobacco and cigarettes to ensure the printing of GHW and required statements on the products imported, manufactured, distributed and or transported.[121]

16.4. Judicial Decisions of Different Courts of Foreign Jurisdictions

This paper has consciously explicated the court decisions of different countries through the lenses of states obligations under the WHO FCTC, protection of public health, overriding significance of public health objectives over the right to trade and property rights, tobacco companies' intellectual property right, consumer's right to access information, restraint on economic liberty to protect economic and social rights. Moreover, this research has emphasized on the following key areas to appreciate the

---

[118] The NTCC issued the public notice on 16.03.2016 directing to print Graphical Health Warning (GHW) on the upper halves of the packets and cartons of tobacco products covering 50% of the surface area but also allowed to print GHW on the lower halves as an interim measure until the subsequent order.

[119] The Government filed a civil petition for leave to appeal against UBINIG (Leave to Appeal No. 3173 of 2017), ASH Bangladesh filed one civil petition for leave to appeal against Government (Leave to Appeal No. 2584 of 2017) and another civil petition for leave to appeal against UBINIG (Leave to Appeal No. 3140 of 2017). The Appellate Division of the Supreme Court on 06.12.2020 held that it found no merit in the first and second petitions and thus dismissed those and in case of third petition no one appeared on behalf of the ASH Bangladesh and the petition was dismissed for default.

[120] Government of the People's Republic of Bangladesh Vs. UBINIG and others, Writ Petition No. 3173/2017.

[121] Madokdrobbo O NeshaBirodhi Council (MANOBIK) Vs. Bangladesh and Others, Writ Petition No. 2827 of 2018. The HCD directed the respondents to ensure that (a) tobacco and cigarettes manufactured, marketed and/or sold in Bangladesh contain government prescribed Graphical Health Warnings and contain statement being "Approved for sale in Bangladesh only" (in Bangla) (b) tobacco and/or cigarettes not containing GHW and not containing the statement "Approved for sale in Bangladesh only" are not permitted to be dealt with and/or sold in Bangladesh (c) tobacco and cigarettes sold in local market below the government prescribed price and/or which does not contain government prescribed GHW and/or statement being "Approved for sale in Bangladesh only" are seized and destroyed in accordance with law (d) counterfeit products are not imported, manufactured, distributed, marketed and/or sold (e)tobacco manufacturing companies and proprietorship concerns pay the applicable duties and taxes as precondition for manufacturing, distribution, marketing and/or sale of tobacco cigarettes, (f) cigarettes not containing the original band roll and/or tax stamps are not permitted to be transported, stored and/or sold (g) companies and/or proprietorship concerns which deal with illicit tobacco and cigarettes or smuggled tobacco products are "sealed" and their machines used for production of the same is destroyed/seized after following due process of law (h) tobacco and/or cigarettes with used and/or fake band roll and/or tax stamps are destroyed on spot following due process of law.

points of interpretation, underlying philosophies behind the judgments as well as to demonstrate and thereby encourage the policy makers of Bangladesh to amend its existing tobacco control law in the light of best standard practices.

16.5. Smoke Free Environment

The Supreme Court of Netherlands held that the exception for small cafés in its domestic law banning smoking in public places violated the WHO FCTC and thus was illegal.[122] The Constitutional Court of Peru confirmed the constitutionality and legality of the law that completely prohibits smoking in certain public places, including outdoor areas of educational facilities.[123] The Administrative Chamber of the Supreme Court of Justice of Panama upheld a decree requiring smoke-free environments based on the constitutional right to health and the objectives of the WHO FCTC.[124] The Supreme Court of Justice of Brazil ruled that the smoking points of tobacco company Souza Cruz in the International Airport of Rio de Janerio-Galeao violated the law and therefore, must be closed.[125] The Supreme Court of Sri Lanka upheld the law's validity prohibiting smoking in enclosed public places since exposure to tobacco smoke is injurious to public health.[126]

16.6. Prohibition of Display of Tobacco Products at the Point of Sale

Referring to the WHO FCTC Article 13 Guidelines, the Supreme Court of Panama upheld a decree banning point of sale displays since it found no violation of tobacco companies' intellectual property rights, or the consumer's rights to access information.[127] The same Court upheld the constitutionality of a point of sale display ban and elucidated that even freedom of expression could be restricted if required to protect public health.[128] The Oslo District Court upheld the ban imposed under the law of Norway on the display of tobacco products at retail establishments as it is inevitably necessary to denormalize tobacco use and that no alternative, less intrusive measure could produce a similar result.[129]

[122] Dutch Association of CAN vs. Netherlands (2014).

[123] 5000 Citizens Vs. Article 3 of Law No. 28705 (2011).

[124] British American Tobacco Vs. Government of Panama (2010).

[125] Agencia National de Vigilancia Sanitaria (ANVISA) Vs. Souza Cruz S/A (2007).

[126] Ceylon Tobacco Company Ltd., et al Vs. Hon. Nimal Siripala de Silv, et al. (2006).

[127] British American Tobacco Panama Vs. Panama (2016).

[128] British American Tobacco Panama Vs. Executive Decree No. 611 (2014).

[129] Philip Morris Norway Vs. Health and Care Services of Norway (2012).

16.7. Prohibition of Tobacco Industry Corporate Social Responsibility (CSR)

The Constitutional Court of Uganda, dismissing the petition of a tobacco company, upheld the constitutionality of several key provisions of the Tobacco Control Act, 2015 and include *inter alia,* ban of all sorts of tobacco advertising, promotion, sponsorship, including product displays at points of sale.[130]

The Supreme Court of Argentina upheld the supremacy of the right to health and right to life over the commercial speech assuming the forms of tobacco advertisement, promotion and sponsorship.[131] Notably, even though Argentina has not ratified the FCTC, the Court uses it as an international standard for tobacco control policies.

16.8. Prohibition of the Sales of Single Stick Cigarettes and Bidis, and Loose Smokeless Tobacco

A Civil Chamber of the Superior Court of Peru held that the law prohibiting the sale of tobacco packs containing fewer than 10 cigarettes did not violate the freedom of enterprise and industry and were compatible with the proportionality principle. Significantly, the Court observed that the FCTC is a human rights treaty that ratifies the idea that economic freedoms should be limited in order to protect other rights, such as economic and social rights.[132]

16.9. Prohibition of the Sale of Electronic Cigarettes and Heated Tobacco Products (HTPs)

The Advertising Standards Authority (ASA) of the UK ruled that public social media accounts like @govype run by the BAT are not analogous to a website. Thus, neither factual nor promotional content for e-cigarettes is permitted.[133] The Supreme Court of Australia held that the e-cigarettes, which contained only "e-juice" and no nicotine, resembled a tobacco product as they are used for inhaling vapour, which is exhaled in a manner similar to smoke from a cigarette. Therefore, the operator of a website selling electronic cigarettes (e-cigarettes) was convicted of violating the *Tobacco Products Control Act 2006* (WA).[134]

---

[130] BAT Uganda Ltd. Vs. Attorney General & Center for Health, Human Rights and Development (2019). The Constitutional Court upheld the constitutionality of other provisions namely, provisions regarding 65% or larger pictorial health warnings, smoking ban in all indoor public places, workplaces, all means of public transport, prohibition of sale of tobacco products in specified places, prohibition of import, manufacture, distribution and sale of electronic nicotine delivery systems, and shisha, smokeless and flavoured tobacco, ban on the sale of tobacco products through vending machines and through remote means of sale (e.g. mail, internet); and implementation of WHO FCTC Article 5.3.

[131] Nobleza Piccardo Vs. Povinca de Santa Fe [Argentina] (2015).

[132] British American Tobacco of Peru S.A.C. Vs. Congress of the Republic (2015).

[133] ASA Ruling on British American Tobacco UK Ltd. (2019).

[134] Hawkins Vs. Van Heerden [Australia] (2014).

16.10. Stricter Packaging Requirements including Larger Health Warnings and Plain Packaging

The Conseil d'Etat (the highest administrative jurisdiction in France) dismissing the six challenges brought by the tobacco companies, held that to the extent there is any infringement of property rights, the infringement is justified due to the public health objective.[135] The High Court of Justice of United Kingdom held that plain packaging restrictions were justified, did not contravene the property rights of the companies and were supported by the WHO FCTC.[136] Underscoring the significance of protecting public health, the Supreme Court of Sri Lanka ruled that the bill requiring pictorial health warnings to cover 80% of each tobacco pack do not violate the constitution.[137] The Supreme Administrative Court of Thailand held that the requirement of 85% health warnings on cigarette packaging is not beyond the intended scope of the tobacco control law and permitted implementation of the health warnings. At the same time, the case was ongoing though the tobacco company's challenge was ultimately withdrawn.[138] The Supreme Court of Uruguay ruled that the law requiring health warnings to cover 80% of the principal display areas of tobacco packages was constitutional and noted that it was based on the WHO FCTC.[139]

The aforesaid discussion has evidently clarified that contemporary trend of various countries in tobacco control regime has been fortified due to the stringent efficacious legislation and progressive statutory interpretation of the judiciary of those countries. Not surprisingly enough, the apex court of Bangladesh has demonstrated substantial progress in terms of upholding the right to life, protection of public health and obligation of Bangladesh under the WHO FCTC. However, the abovementioned analysis has portrayed that Bangladesh is in dire need of bringing an amendment to the Smoking and Usage of Tobacco Products (Control) Act, 2005, the Smoking and Usage of Tobacco Products (Control) Rules, 2015 and other laws ancillary thereto in the area of smoke free environment, prohibition of display of tobacco products at the point of sale, prohibition of tobacco industry corporate social responsibility, prohibition of the sales of single stick cigarettes, bidis and loose smokeless tobacco, prohibition of the sale of electronic cigarettes and heated tobacco products and stricter packaging requirements including larger health warning and plain packaging. Last but not the least, the statutes and court decisions of different countries as outlined above will work as beacon to facilitate the policy makers of Bangladesh to incorporate necessary changes in the identified key areas of the tobacco control law of this country.

---

[135] Japan Tobacco International and Others Vs. Ministry of Health (Plain Packaging Laws) (2016).

[136] BAT Vs. UK Department of Health (2016).

[137] In the matter of Article 122(1)(b) of the Constitution (2015).

[138] JT International (Thailand) Vs. Minister of Public Health (2014).

[139] Abal Hermanos, S.A. Vs. Uruguay (2010).

ANNEXURE

Steering Committee

SL	Name	Designation
1	Barrister Shameem Haider Patwary MP Chairman, Board of Trustees Dhaka International University President, Tobacco Control and Research Cell	Chairman
2	Prof. Dr. Ganesh Chandra Saha Vice Chancellor (In-Charge) Dhaka International University	Member
3	Prof. Dr. A.W.M Abdul Huq Dean Faculty of Law, Dhaka International University	Member
4	Md. Raisul Islam Sourav Assistant Professor and Chairman Department of Law, Dhaka International University	Member
5	Md. Mostafizur Rahman Former Chairman Bangladesh Chemical Industries Corporation (BCIC)	Member
6	Dr. Md. Shariful Alam Country Lead- Bangladesh, Road Safety Program Global Health Advocacy Incubator	Member
7	Muhammad Ruhul Quddus Country Lead- Bangladesh Cardiovascular Health & Drowning Prevention Programs Global Health Advocacy Incubator	Member
8	Sharf Uddin Ahmed Choudhury National Heart Foundation Hospital & Research Institute	Member
9	Advocate Syed Mahbubul Alam Technical Advisor, The UNION	Member
10	A.B.M Zubair Executive Director, PROGGA	Member
11	Nasir Uddin Sheikh Country Manager-Bangladesh, Vital Strategies	Member
12	Md. Mukhlesur Rahman Assistant Director, Dhaka Ahsania Mission	Member
13	Syeda Anonna Rahman Program Manager Work For Better Bangladesh (WBB) Trust	Member
14	Advocate Masum Billah Executive Director, SIAM	Member
15	Mohammad Azharul Islam Associate Professor and Head Department of Law, Manarat International University	Member
16	Md. Ataur Rahman Senior Policy Advisor *Campaign for Tobacco-Free Kids*	Member
17	Mobarak Hossain Lecturer Department of Law, Dhaka International University	Member
18	Md. Bazlur Rahman Associate Professor Department of Business Administration, Dhaka International University	Member Secretary