

**FORTY FIRST REPORT
COMMITTEE ON PETITIONS
(SEVENTEENTH LOK SABHA)**

MINISTRY OF HEALTH AND FAMILY WELFARE

(Presented to Lok Sabha on 13.12.2022)



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COMPOSITION OF THE COMMITTEE ON PETITIONS

Shri Harish Dwivedi - *Chairperson*

MEMBERS

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3. Shri Hanuman Beniwal
4. Prof. Sanjay Sadashivrao Mandlik
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14. *Vacant*
15. *Vacant*

SECRETARIAT

1. Shri T.G. Chandrasekhar - Additional Secretary
2. Shri Raju Srivastava - Director
3. Shri Harish Kumar Sethi - Under Secretary

**FORTY-FIRST REPORT OF THE COMMITTEE ON PETITIONS
(SEVENTEENTH LOK SABHA)**

INTRODUCTION

I, the Chairperson, Committee on Petitions, having been authorised by the Committee to present on their behalf, this Forty-First Report (Seventeenth Lok Sabha) of the Committee to the House on the representation of S/Shri Rajnikant P. Patel & Sudhir Sable and Shri Sanjay Bechan regarding proposed amendments to Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] Act, 2003 (COTPA) and other matter connected therewith or incidental thereto.

2. The Committee considered and adopted the draft Forty-First Report at their sitting held on 12 December, 2022.
3. The observations/recommendations of the Committee on the above matters have been included in the Report.

NEW DELHI;

12, December, 2022

21 Agrahayana, 1944 (Saka)

**HARISH DWIVEDI,
Chairperson,
Committee on Petitions.**

REPORT

REPRESENTATION OF S/SHRI RAJNIKANT P. PATEL & SUDHIR SABLE AND SHRI SANJAY BECHAN REGARDING PROPOSED AMENDMENTS TO THE CIGARETTES AND OTHER TOBACCO PRODUCTS [PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE & COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION] ACT, 2003 (COTPA) AND OTHER MATTER CONNECTED THEREWITH OR INCIDENTAL THERETO.

On 20 January 2021, S/Shri Rajnikant P. Patel & Sudhir Sable of All India Bidi Industry Federation submitted a representation regarding proposed amendments to Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] Act, 2003 (COTPA) (Annexure – I). In addition to this, on 23 March 2021, Shri Sanjay Bechan of Smokeless Tobacco Federation (India) also submitted a representation on the same subject (Annexure – II).

2. The representationist, in their representations, had submitted before the Committee, the following aspects connected with the proposed amendments to the Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] Act, 2003:-

S/Shri Rajnikant P. Patel & Sudhir Sable

We are an Organization representing Bidi Manufacturers and Bidi Manufacturers' Association across the country. We have more than 200 members. Bidi Industry is a cottage industry and provides employment to over 85 lacs bidi workers most of them are in rural area that too women.

The Industry is not getting any support/incentive from the Government. Bidi Manufacturing factories do not contribute to any pollution nor it requires power and machinery. The Federation aims to protect the interest of all stakeholders of the Bidi Industry. The Ministry of Health and Family Welfare proposes to amend COTPA Act 2003. The said Ministry has put the said Bill on the website for comments/views. The last date is 31 January, 2021. We have gone through the contents of the proposed amendment. The proposed changes, in brief, along with its impact is as under:-

Section	Proposed amendment, in brief	Impact on Bidi Industry
5	Bidi Manufacturers will not be able to advertise their product on the bidi bundle. All	This will affect sales of bidis. Smokers will not be able to

	the bidi bundles will not bear brand name. Shopkeepers will not be able to put signboard outside/inside the shop, they are not allowed to display bidi bundles.	identify his brand and will not know whether the shopkeeper sells bidis or not.
	Trade discounts, trade scheme, etc., not permitted. Stock clearance sale in one or other form prohibited.	Sale of bidis will be affected.
6	Shopkeepers cannot sell bidis to person below the age of 21 years instead of 18 years at present.	This will likely to reduce sales of bidis between 15-20 percent.
7(2)	Bidis must be sold in full pack. Bidis cannot be sold loose.	If implemented, this provision is likely to affect sales of bidis drastically, since many smokers buy loose bidis due to affordability issue.
7(5)	Government will prescribe minimum bidis in a pack. It may provide for standard pack of 25 bidis. If so, then all existing small packing(s) will have to be discontinued.	This will badly affect sales.
10A(3)	Requirement of registration, License, permission introduced for Manufacturers, Traders and Retailers.	This is unnecessary and cumbersome for the retailers.
20(2)	For selling bidis without specified health warning. Fine for 1 st conviction increased from up to Rs. 1000/- to Rs. 50,000/- Fine for subsequent conviction increased from up to Rs. 3000/- to Rs. 1,00,000/-.	The fines are very steep and will make retailers bankrupt.
21(1)	Fine for smoking in public places. Fine has been increased from up to Rs. 200/- to Rs. 2000/-	This is steep increase in fine which bidi smokers can't afford. Effectively, smoking at home is only permitted.
24	This is for selling bidis to minors and selling bidis from shops near to Educational Institutes.- Punishment of imprisonment up to 7 years	This is very dangerous provision. If implemented strictly, almost 70-80 percent shops selling bidis will have to be closed down,

	and fine up to Rs. 1,00,000/- provided. Earlier, the fine was only up to Rs. 200/-	especially, in cities. This will drastically impact the sales of bidis.
27.	Violation of Section 5,6,7 & 10A shall be cognizable.	Police can arrest the offender. Bail can be granted by Magistrate only. Earlier, police officer was allowed to grant bail.
28.	Offence regarding sale of bidis to persons below the age of 21 years and sale of bidis near Educational Institutions are now made non-compoundable.	Retailers will be ruined.
30A	The Act to have overriding effect. Relief granted to bidi manufacturers under Packaged Commodity Rules from disclosing MRP and month of manufacture will go.	Difficult to implement. MRP & month of manufacture in practice.

The representationists have, therefore, requested to impress upon the Ministry of Health and Family Welfare to withdraw the proposed amendments in the interest of livelihood of 4.57 crore people dependent on tobacco industry.

Shri Sanjay Bechan

We are an Association of Chewing Tobacco Manufacturers having members across the country. The Association was established to promote and protect the trade, commerce and industries in the country connected with tobacco and allied products. On the issue of saving livelihood of crores of Tobacco Farmers & Farm Labourers, workers employed in Tobacco Industry, Retailers employed in Tobacco Business, Farmers of Kevda and Mentha who are totally dependent on Tobacco Industry, a Petition was filed with the Committee on Petitions.

The Committee, after recording the evidence of various stakeholders and Ministries *vide* its Order dated 28 February 2019 had called for action taken report from various Ministries on the issue of livelihood. To our utter shock, when all these issues are still pending, the Ministry of Health and Family Welfare has proposed certain amendments in COTP Act *vide* COTPA (Amendment) Bill, 2020, which have the impact of banning Swadeshi Chewing Tobacco Products, thus taking away the livelihood of crores of tobacco farmers, *paan patta* farmers, flower farmers, farm labourers, other workers and labour engaged in manufacturing of chewing tobacco, *paan walas*, etc., who are totally dependent on Swadeshi Chewing Tobacco

Industry, leaving them and their families to starve, thus, forcing the poor farmers to end their existence. It is informed that till date, there is no instance of any tobacco farmer ending his life because of agricultural distress.

We, thus, solicit the kind indulgence of Committee on Petitions in the matter under reference, with the request to save the livelihood of crores of people associated with swadeshi industry by withdrawing the proposed amendments.

3. The Committee on Petitions took up the representations of S/Shri Rajnikant P. Patel, Sudhir Sable and Sanjay Bechan for examination under Direction 95 of the Directions by the Speaker, Lok Sabha. Accordingly, the representations were referred to the Ministry of Health & Family Welfare (Tobacco Control Division) for furnishing their comments on the issues raised therein *vide* Office Memorandum dated 26 March, 2021. Subsequently, List of Points were also forwarded to the Ministry on various aspects raised in the representations.

4. Keeping in view the intricacies involved in the matter which have wide implications and ramifications on the livelihood of crores of people involved in the tobacco-related occupation *vis-à-vis* the harmful impact of cigarettes and other tobacco products and an urgent need to regulate the use of these products in a strictest possible manner, the aforementioned representations have, therefore, been examined, as under:-

- (i) Replies to the List of Points furnished by the Ministry of Health & Family Welfare (Tobacco Control Division).
- (ii) Deposition of the representatives of the Ministry of Health & Family Welfare before the Committee on Petitions.
- (iii) Comparative study of Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] Act, 2003 (COTPA) *vis-à-vis* Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] [Amendment] Bill, 2020 placed in the public domain by the Ministry *vide* F. No. P.16011/04/2020-TC (Part) dated 1 January, 2021.
- (iv) Policy of the Government on pre-legislative consultation

5. The aforementioned aspects have, accordingly, been discussed in the succeeding paragraphs:-

I. Replies to the List of Points furnished by the Ministry of Health & Family Welfare

(A) Ministry of Health & Family Welfare Office Memorandum No. H-11013/01/2021-TC dated 18 June, 2021

Clarification sought by Committee on Petitions

Chewing tobacco is essentially 'Tobacco' with some food additives. Further, both 'Tobacco' and 'Food' have been categorized as different product categories as is evident from the fact that there are two distinct Acts which govern both these items, i.e., the Food Safety & Standards Act, 2006 and the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003. When Regulation 2.3.4 says that 'Tobacco' and 'Nicotine' shall not be added as an ingredient in any food product, it can never mean that food product refers to tobacco, else it shall tantamount to mean that 'tobacco cannot be added to tobacco', which becomes a meaningless argument. In view of this, it is not a fact that the Regulation *ibid* is a declaration in itself that 'Tobacco' and 'Food' are two distinct products and the intent of the said legislation, by all means, is to avoid usage of tobacco or nicotine as an ingredient in any food product, which are duly standardized under the FSS Act so as to avoid any unintended consumption by non-tobacco consumers.

Reply given by Ministry of Health & Family Welfare

The objective of COTPA, 2003, as enshrined in its preamble is to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarette and other tobacco products, with an aim to discourage the use or consumption of tobacco, while the objective of the Food Safety and

Standards Act, 2006 is to ensure safe and wholesome food for the people.

Clarification sought by Committee on Petitions

Is it not a fact that COTPA, 2003 is a special Act which deals with 'Tobacco Products' in all its forms and under Section 2 of the said Act, the Union Government had intended of having taken control of the tobacco industry. Therefore, no other Act including the FSSA can legislate on Tobacco, either directly or indirectly? Therefore, 2.3.4 is a Regulation and, therefore, cannot supersede the Central Act under delegated Legislation.

Reply given by Ministry of Health & Family Welfare

The mention of Chewing Tobacco, Gutkha, etc., in the Schedule of COTPA, 2003 will not preclude the said products from applicability of provisions of other Laws, Rules and Regulations, for example to a food item having tobacco and nicotine as ingredients. The schedule of COTPA, 2003 merely gives a list of products that can be termed as 'tobacco products'. Mention of a product in the Schedule of COTPA does not preclude action on these products in public interest and from the point of view of public safety, under other laws, rules and regulations for the time being in force.

It is pertinent to mention that in the matter of Laxmikant Vs UOI & Ors. 1997(4) SCC 739, the Hon'ble Supreme Court of India upheld the notification prohibiting the use of tobacco in tooth-pastes/toothpowders under Section 33(EED) of the Drugs and Cosmetics Act, 1940, with the observations that imposition of total ban is in public interest. The schedule of COTPA, 2003 also mentions "tooth powder containing tobacco" as a tobacco product, it does not mean that the said mention in the Schedule of COTPA, 2003 removes the applicability of the provisions of the other laws, in this case the Drugs and Cosmetics Act, 1940.

The FSS Act, 2006, is a legislation which standardizes and regulates all articles of food, without any exclusion, whereas COTPA, 2003, relates to prohibition of advertisement and regulation of trade and commerce and production, supply and distribution of, cigarette and

other tobacco products and has a limited scope. The objective of both the Acts are different and may go parallel to each other. If necessary, both laws may be applicable.

Clarification sought by Committee on Petitions

With a view to achieving the objectives of National Health Policy, is it not necessary for the Ministry of Health & Family Welfare to ban all products that contain 'nicotine', irrespective of the fact that it is chewed or smoked or placed under the definition of 'food' or not? How the exclusion of 'smoking' will help achieving the target envisaged by the National Health Policy?

Reply given by Ministry of Health & Family Welfare

Smoking tobacco products are not covered under the definition of food under the Food Safety Act. However, suitable provisions are included in the COTPA, 2003 under which these products are regulated. Application of COTPA, 2003 has had a meaningful impact on prevalence of smoking tobacco use as is brought out by the findings under the GATS-2, wherein a significant decline in use of smoking tobacco products has been achieved.

The National Health Policy, 2017 envisages the targets for relative reduction in Prevalence of current tobacco use as 15% by 2020 and 30% by 2025. The overall objective of the policy is to reduce the consumption of tobacco products, whether it is Smoking or Smokeless Tobacco through the adoption of balanced and systematic Policy measures and to achieve the target envisaged in the National Health Policy, 2017.

As per the second round of Global Adult Tobacco Survey [GATS-2016-17], 28.6% [26.7 crore] of adults in India, aged 15 and above currently use tobacco in some form. Further, the prevalence of any form of tobacco use has decreased significantly by 6 percentage points from 34.6 percent [2009-10] to 28.6 percent [2016-17]. The relative decrease in the prevalence of tobacco use is 17.3%. There has been considerable decrease in the prevalence of smoking tobacco use. Prevalence of smoking has decreased by 3.3 Percentage points from 14.0% [2009-10] to 10.7 % (2016-17). COTPA, 2003 discourages

tobacco use and prohibits smoking in public places; restriction on advertising & promotion and sponsorship of tobacco products; ban on sale to and by minors and sale of tobacco products around 100 yards of Educational Institutions and mandates for statutory health warnings on all tobacco product packs. The National Health Policy, 2017 comprehensively articulates the tobacco control objectives. The National Health Policy was formulated after wide consultations with all the stakeholders, especially, the State Governments. This Ministry is increasingly working to achieve the said objectives envisaged in the National Health Policy 2017.

Clarification sought by Committee on Petitions

Is it not a fact that 'smokeless' tobacco, by any stretch of imagination, cannot be considered as food. It is, in fact, not recommended for consumption by any Authority. Rather COTPA, a Special Act, regulating Tobacco products, in all its forms, like sale, production, distribution, etc., in fact impose restriction on its consumption to person below the age of 18 years. Further, the Packaging Label under the COTPA prescribes printing of 'Pictorial Warning' depicting the ill-effects of tobacco and also mandate giving Quit Tobacco helpline number on tobacco packs. In such a scenario, whether such products could, in any circumstances, be equated to food or considered as food, merely because it goes into the mouth?

Reply given by Ministry of Health & Family Welfare

Both smoking and smokeless tobacco products are covered under the ambit of COTPA, 2003. That the smokeless tobacco such as chewing tobacco, gutkha, pan masala and supari are articles of food as held by the Supreme Court of India in the case of Godawat Pan Masala Vs UOI (2004) 7 SCC 68 and the Madras High Court in the State of Tamil Nadu Vs. R. Krishnamurthy (1980) 1 SCC 167.

Clarification sought by Committee on Petitions

"Nicotine Delivery Device – A nicotine delivery device is any device that delivers a dose of nicotine either with or without combustion. This includes all forms of smoke and smokeless

tobacco as well as mechanical devices such as electronic cigarettes and medical devices such as nicotine replacement therapy.”

“Tobacco Products – According to the Food and Drug Administration (FDA), the term ‘tobacco product’ means any product made or derived from tobacco that is intended for human consumption, including any component, part or accessory of a tobacco product (except for raw materials other than tobacco used in manufacturing a component, part or accessory of a tobacco product).”

In view of the above stipulations, whether the Ministry of Health & Family Welfare also acknowledge that smokeless tobacco delivers nicotine in doses similar to those received in cigarette smoking but does not expose the user to the toxic combustion gases and particles that are responsible for most tobacco-induced diseases.

Reply given by Ministry of Health & Family Welfare

Tobacco products in India are dealt with as defined under the COTPA, 2003. It is submitted that both forms of tobacco use, smoking and smokeless, are harmful. A comparison between the degree of harms is not possible as the evidence available regarding the same is limited. It is, however, also submitted that, tobacco use in either form, is one of the biggest risk factor for most of the non-communicable diseases such as diabetes, hypertension and cancer, etc.

Clarification sought by Committee on Petitions

Whether the Ministry of Health & Family Welfare are aware of the fact that as per GATS Report, in addition to 10 crore of Indians who smoke tobacco, there is impact of second-hand smoke on non-smokers vulnerable class, which is almost four times the active smokers, thus, taking the effective number to almost 50 crore. Notwithstanding this, a perception is created as to the prevalence of smokeless tobacco as compared to smoking tobacco that smokeless tobacco consumption is more, hence bulk of the tobacco legislation targets smokeless tobacco?

Reply given by Ministry of Health & Family Welfare

This Ministry considers tobacco in any form and quantity is harmful and does not emphasize on regulation of any particular form of tobacco products. As per GATS-2 [2016-17], the prevalence of smokeless tobacco use is 21.4 %, while the current tobacco smokers are 10.7%. The GATS-1 [2009-10] also revealed that the prevalence of smokeless tobacco use was 25.9%, while the current tobacco smokers were 14.0%, indicating that there is reduction in prevalence of tobacco use for both forms of tobacco use.

The COTPA, 2003 has additional provisions for smoking tobacco products such as prohibition of smoking in public place to prevent harm due to second hand smoke.

Clarification sought by Committee on Petitions

Is it not a fact that with the excessive legislation banning Chewing Tobacco products, the consumers would shift to smoking cigarettes? This 'shift' would not be confined to around 20 crore chewers of tobacco, but it will also create around 80 crore second-hand smokers. Therefore, the number of active smokers and passive smokers will multiply progressively, so does the fatality rate because of smoking, which might increase to an unprecedented level?

Reply given by Ministry of Health & Family Welfare

The Ministry of Health & Family Welfare has taken a consistent stand before the Courts by way of affidavits/written submissions in several cases stating that this Ministry considers tobacco in any form and quantity is harmful and does not emphasize on any particular form of tobacco products. However, as per existing statutes/rules, the provisions under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 at present only empower the Government to regulate the smoking tobacco products including a ban on their sale to or by minors and within the radius of 100 yards of educational institutions.

Clarification sought by Committee on Petitions

In spite of the above facts and in utter disregard to GATS 1& 2 and preamble to COTPA 2003, which talks about legislation and effective measures for protecting citizens with special attention to risk groups, such as pregnant women and children from involuntary exposure to tobacco smoke, no concrete measures are being taken by the Government and no provisions have been proposed for the safety and benefit of the vulnerable class?

Reply given by Ministry of Health & Family Welfare

Public Health being a State subject, the responsibility of implementation of the various provisions of COTPA, 2003, primarily lies with the State/UT Governments. The provisions for ban on smoking in public place, ban on advertising, ban on sale to minors and sale within 100 yards of educational institutions are all targeted to also protect the citizens from involuntary exposure to tobacco use, especially for vulnerable groups such as children and pregnant women.

As per Section 77 of The Juvenile Justice (Care and Protection of Children) Act, 2015, that makes giving or causing to be given, to any child any tobacco products punishable with rigorous imprisonment for a term which may extend to seven years and shall also be liable to a fine which may extend up to one lakh rupees. The specified health warning on tobacco product packs is mandated under the COTPA, 2003, which enables the Ministry to specify the health warning to be displayed on tobacco product packs. The objective of the larger specified health warnings (currently 85% of principal display areas) is to create better visibility and noticeability, especially amongst tobacco users, about the harmful effects of tobacco use. The pictorial warnings have graphic images, the text message and the national tobacco quitline number (1800-112-356).

The Government has also developed and deployed a mobile-based strategy called m-Cessation (011-22901701) to encourage and support those who are desirous of quitting. In this strategy, those desirous of quitting give a missed call to a toll free number.

Clarification sought by Committee on Petitions

Whether the Ministry shares the same views that COTPA is a special Act to deal with all tobacco products and specifically covers smokeless tobacco in its Schedule. It is, in fact, the same Schedule which covers smoking tobacco. Therefore, there is no difference contemplated between 'smokeless tobacco' and 'smoking tobacco' Under COTPA?

Reply given by Ministry of Health & Family Welfare

Yes. It is confirmed that both smoking and smokeless tobacco products are considered as tobacco products under the COTPA, 2003. Suitable provisions have been incorporated in the Act for regulation of both these two forms of tobacco products.

Clarification sought by Committee on Petitions

After the enactment of FSS Act, whether COTPA has been subsumed or proposed to be subsumed?

Reply given by Ministry of Health & Family Welfare

The COTPA has not been subsumed in the FSS Act.

Clarification sought by Committee on Petitions

Whether it is an established fact that FSS Act is an Act to legislate on Food Products, whereas, COTPA is a Special Act to deal and legislate on Tobacco Products? The averments made by the Ministry of Health & Family Welfare, in their action taken replies, contradict the Preambles of FSS Act and the COTPA. The Schedule of COTPA shows that it covers 'smokeless tobacco' in the same manner as the smoking tobacco', if so, on what basis, the Ministry of Health & Family Welfare had differentiated between the two?

The very fact that pictorial Warning has been imposed on both the products, i.e., 'smokeless' as well as 'smoking' tobacco under COTPA and all the restriction and regulations under COTPA

applies to both 'smokeless' as well as 'smoking' tobacco belies the comments of the Ministry of Health & Family Welfare.

Reply given by Ministry of Health & Family Welfare

The objective of COTPA, 2003, as enshrined in its preamble is to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarette and other tobacco products, with an aim to discourage the use or consumption of tobacco, while the objective of the Food Safety and Standards Act, 2006 is to ensure safe and wholesome food for the people. The primary concern and purpose of FSS Act, 2006, is that of promotion of public health and protection of the right to life of the citizens of this country and that the purpose behind Food Safety Regulations 2.3.4 is to ensure the safety/health of the citizens of this country by prohibiting any articles of food which are injurious to the health of general public. It is a universal fact that tobacco and nicotine are injurious to health, and therefore, addition of tobacco and nicotine in article of food, has been prohibited under the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011 dated 1st August 2011.

The mention of Chewing Tobacco, Gutkha etc., in the schedule of COTPA, 2003 will not preclude the said products from applicability of provisions of other Laws, Rules and Regulations, for example to a food item having tobacco and nicotine as ingredients. The schedule of COTPA, 2003 merely gives a list of products that can be termed as 'tobacco products'. Mention of a product in the Schedule of COTPA does not preclude action on these products in public interest and from the point of view of public safety, under other laws, rules and regulations for the time being in force. It is pertinent to mention that in the matter of Laxmikant Vs UOI & Ors. 1997(4) SCC 739, the Hon'ble Supreme Court of India upheld the notification prohibiting the use of tobacco in toothpastes/ tooth-powders under Section 33(EED) of the Drugs and Cosmetics Act, 1940, with the observations that imposition of total ban is in public interest. The schedule of COTPA, 2003 also mentions "tooth powder containing tobacco" as a tobacco product, it does not mean that the said mention in the schedule of COTPA, 2003 removes the applicability of the provisions of the other laws, in this case the Drugs and Cosmetics Act, 1940.

The FSS Act, 2006, is a legislation which standardizes and regulates all articles of food, without any exclusion, whereas COTPA, 2003, relates to prohibition of advertisement and regulation of trade and commerce and production, supply and distribution of, cigarette and other tobacco products and has a limited scope. The objective of both the Acts are different and may go parallel to each other. If necessary, both laws may be applicable.

The Ministry of Health & Family Welfare has taken a consistent stand before the Courts by way of affidavits/written submissions in several cases stating that this Ministry considers tobacco use in any form and quantity is harmful and does not emphasize on the degree of regulation for any particular form of tobacco products.

- (B) Ministry of Health & Family Welfare Office Memorandum No. H-11013/01/2021-TC dated 26 July, 2021**

Clarification sought by Committee on Petitions

Is it true that a similar draft Bill for amendments in COTPA 2003, like the draft Bill of 2020, was also brought in the year 2015 and that suggestions of the public were sought on Bill of 2015 too (Annexure-III)? Can the Committee be apprised if the Bill of 2015 could have prevented the consumption of cigarette etc., more effectively than the draft Bill of 2020?

Reply given by Ministry of Health & Family Welfare

Yes, it is true that a draft Amendment Bill was hosted in public domain for pre-legislative consultations in the year 2015, whereby suggestions of the public were invited on the same.

It is submitted that both the drafts put in public domain for pre-legislative consultations, have been prepared after extensive consultations with domain and legal experts.

It is the endeavor of the Ministry to finally prepare an effective amendment Bill after taking into account the various suggestions received and also the target for 30% relative reduction in prevalence of

Tobacco use by the year 2024-25 (from the levels in 2009-10) as set out under the National Health Policy 2017.

It is submitted that the draft Bill of 2015 is now revised in the form of the revised draft Bill of 2020. Due consideration has also been given to the provisions contained in the draft Bill of 2015, while preparing the draft Bill of 2020.

It is also submitted that the draft Bill of 2020 is still only at the stage of pre-legislative consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. Therefore, a reasonable comparison between the two draft Bills is not possible at this stage.

The Ministry has received a large number of representations, comments and suggestions on the draft Bill, which are under examination. The effort of the Ministry would be to incorporate suitable provisions in the Amendment Bill to strengthen the efforts of the Government for effective regulation of all forms of Tobacco products. The Ministry will also give due consideration to the recommendations of the Hon'ble Committee in this regard.

Tobacco use (in any form) is one of the biggest risk factors for progression of non-communicable diseases such as diabetes, hypertension and cancers, etc., is amply supported by scientific evidence. It is reiterated that the Ministry considers tobacco use in any form as harmful and is committed to take all necessary, suitable and appropriate measures for effective control of all forms of Tobacco products.

It is also reiterated that there is no ban on "Tobacco" either under the COTPA 2003 or under the Food Safety Act, 2006. However, Tobacco or nicotine cannot be mixed in any food product as per the provisions of the FSS Regulations 2011.

- (C) **Ministry of Health & Family Welfare Office Memorandum No. H-11013/01/2021-TC dated 17 December, 2021**

Clarification sought by Committee on Petitions

It has been submitted before the Committee that "...there is no ban on 'Tobacco' either under the COTPA 2003 or under the Food Safety Act, 2006. However, 'Tobacco' or 'Nicotine' cannot be mixed in any food product as per the provisions of the FSS Regulations, 2011."

Does it imply that manufacture, distribution and sale of 'Tobacco' has neither been proscribed in the country nor there is any intention on the part of the Ministry to impose a ban on 'Chewing Tobacco', but to regulate it under the provisions contained in the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003 [COTPA] as is being done in the case of 'Smoking Tobacco'?

Reply given by Ministry of Health & Family Welfare

Yes Sir, under the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003 [COTPA], there is no ban on manufacture, distribution and sale of tobacco products, both smoking and smokeless. All forms of tobacco are covered under COTPA, 2003 and are regulated by its provisions. Further, as per Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011, Regulation 2.3.4 provides that tobacco and nicotine shall not be used as ingredients in any food products.

Clarification sought by Committee on Petitions

Whether it is a fact that all forms of tobacco, whether chewing or smoking, emit nicotine for which there is an intermittent demand for imposing ban on these products. However, the matrix of 'harm' changes to 'mode of consumption' whenever, any proposal for imposition of ban on these items gains momentum? Please comment.

Whether the Ministry also endorse that cigarettes, tobacco, gutkha, etc., are actually 'nicotine delivery devices' and the main product which causes harm/damage to the human body is the 'nicotine' which is emitted by these 'nicotine delivery devices'?

Reply given by Ministry of Health & Family Welfare

Based on the scientific evidence, the Department considers all tobacco products as harmful to human health. It is submitted that the smoking tobacco products are being regulated within the scope of the provisions of COTPA, 2003, enacted by the Parliament. The provisions provide only for regulation. There is no discrimination while regulating under COTPA, 2003, based on the nature of the product.

Clarification sought by Committee on Petitions

Whether the Ministry has undertaken any empirical study to know the extent and hazardous impact of 'passive smoking as well as third-hand smoking' in the country? If so, what measures have been initiated by the Ministry, other than regulating the usage of cigarettes under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020, to ensure that the passive smokers/third-hand smokers do not face any health risk even when these group/class of people are never inclined to consume cigarettes, etc?

Reply given by Ministry of Health & Family Welfare

No Sir, Department has not undertaken any such study. However, Third-hand smoke contains some of the same toxic chemicals as first and Second-hand smoke, including tobacco-specific nitrosamines, polycyclic aromatic hydrocarbons, heavy metals, nicotelline, and ultrafine particles with a median diameter $<0.10 \mu\text{m}$. There is overwhelming evidence that exposure to this mixture of toxic chemicals and ultrafine particulate matter is harmful to human health.

Recognizing the adverse health impact of Second Hand Smoke (SHS) among non-smokers, Government of India has adopted multiple preventive measures to protect the health of non-smokers that includes provision of ban of smoking in public places under COTPA, 2003 and Rules made thereunder to protect non-smokers from harm due to second hand smoking and third hand smoking; National Tobacco Control Programme, launched in 2007-08; awareness campaigns at

national/State level; implementation of Guidelines for Tobacco Free Educational Institutions that necessitates enforcement of provisions of COTPA, 2003 and mandatory display of signage(s). Public Health is a State subject and with that primary responsibility, States have been undertaking necessary measures to implement COTPA, 2003 and National Tobacco Control Programme.

Clarification sought by Committee on Petitions

What could be the added safeguards that could be incorporated in the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020 to effectively protect/insulate the health risk of passive smokers/third-hand smokers and various other vulnerable classes in the country?

Reply given by Ministry of Health & Family Welfare

The recommendation of the 210th Report of Committee of Subordinate Legislation of Rajya Sabha, 2013 to do away with 'Designated Smoking Areas' has been incorporated in the draft Bill, 2020. The Department looks forward to any other suggestion from the Hon'ble Committee.

Clarification sought by Committee on Petitions

Whether it is also a fact that with the notifying of 'No-Smoking Zone' and imposition of penalties on the violators, the smoking tobacco users consume cigarettes, etc., more often, at their residences, thereby, posing an added health risk to their family members, including infants, women and old-aged parents? Whether this dichotomy has ever been contemplated by the Ministry? Please comment as to how to cope up with this aspect?

Reply given by Ministry of Health & Family Welfare

COTPA, 2003 and Rules made thereunder prohibits smoking in public places to protect non-smokers from involuntary exposure and harm due to smoking by smokers. Also creating awareness regarding ill effects of tobacco use through IEC/awareness activities is one of the vital components of the National Tobacco Control Programme (NTCP).

Clarification sought by Committee on Petitions

Under the extant Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, in the packaging of smoking tobacco, why there is no warning for the second and third-hand smokers? Whether the Ministry intends to incorporate this while finalizing the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020?

Reply given by Ministry of Health & Family Welfare

Specified Health warning on all tobacco product packs is the mandatory provision of COTPA, 2003. Such pack warnings are finalized after due consultative process by the Expert Committee on Development of Health Warnings.

Clarification sought by Committee on Petitions

Following amendment in Section 11 in the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 has been proposed in the COTPA (Amendment) Bill, 2020:-

"For the purposes of testing and regulating the contents and emissions in cigarettes and any other tobacco products, the Central Government shall by Notification in the Official Gazette grant recognition to such Testing

Laboratory or Laboratories as the Government may deem necessary."

In the absence of any codified parameters of 'contents' and 'emissions' in cigarettes and any other tobacco products, how can there be any regulation vis-à-vis Testing Laboratories recognized by the Government by way of issuing Notification in the Official Gazette?

Reply given by Ministry of Health & Family Welfare

As advised by the Hon'ble Committee during the sitting of the Committee on Petitions held on 24th June, 2021, the Department while considering the suggestions and representations received on the draft COTPA Amendment Bill, 2020, will also consider suitable incorporation of provisions proposed in the COTPA Amendment Bill, 2015. Any suggestion by the Hon'ble Committee, will be duly taken into consideration while finalization of the COTPA Amendment Bill, 2020. It is informed National Tobacco Testing Laboratories have been accepted as Member of the World Health Organization's Tobacco Laboratory Network (TobLabNet). TobLabNet is a global network of tobacco testing and research laboratories that provide expert advice for overall scientific and technical guidance on issues of tobacco product testing relevant to public health.

Clarification sought by Committee on Petitions

Assuming that the Government intends to 'omit' smokeless tobacco products (Chewing Tobacco or Gutkha) from the relevant Schedule, whether it would be a legally tenable proposition to then, enforce superintendence of such products by way of Regulations, etc., which are regarded as process of 'Subordinate Legislation' vis-à-vis any Act and Rules made there under? If not, whether the Ministry intends to re-examine Section 30?

Reply given by Ministry of Health & Family Welfare

It is submitted that the draft Bill of 2020 is still only at the stage of public consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. The Ministry has received a large

number of representations, comments and suggestions on the draft Bill, which are under examination and will give due consideration to the representations, comments and suggestions received from various stakeholders, while finalization of the COTPA Amendment Bill, 2020.

Clarification sought by Committee on Petitions

A comparative analysis of the wordings used in Section 30 contained in the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and the COTPA (Amendment) Bill, 2020 is as under:-

COTPA, 2003	COTPA (Amendment), 2020
The Central Government, after giving Notification in the Official Gazette, not less than three months' notice of its intention so to do, may by like notification, add any other tobacco product in respect of which it is of opinion that advertisements are to be prohibited and its production, supply and distribution is required to be regulated under this Act, and thereupon the Schedule shall in its application to such products be deemed to be amended accordingly.	The Central Government, after giving Notification in the Official Gazette, not less than three months' notice of its intention so to do, may by like notification, add to, or omit from, the Schedule any tobacco products and thereupon, the Schedule shall be deemed to have been amended accordingly.

Whether the Ministry now concede Section 30 of the Principal Act, i.e., COTPA, 2003 was confined to 'adding' any other tobacco product which was connected with 'prohibition of advertisement', whereas, in the proposed amendment, i.e., COTPA (Amendment) Bill, 2020, the power to 'omit' has been usurped, which is not connected with prohibition of advertisement and have wider connotations which may give rise to litigations? If so, what were the reasons for proposing such amendment which is not in sync with the stated objective of the Act ibid?

Reply given by Ministry of Health & Family Welfare

The draft Bill of 2020 is still only at the stage of public consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. The Ministry has received a large number of representations, comments and suggestions on the draft Bill, which are under examination and will give due consideration to the representations,

comments and suggestions received from various stakeholders, while finalization of the COTPA Amendment, Bill, 2020.

Clarification sought by Committee on Petitions

Following amendments in the form of insertion of a new Section after Section 30A in the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 has been proposed in the COTPA (Amendment) Bill, 2020:-

"30B. The provision of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force prohibiting trade and commerce, production, supply and distribution of cigarettes and any other tobacco products."

Since the above proviso appears to be vague, whether the Ministry intends to add the following:-

"...In case of any conflict, the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution), Act would prevail."

Reply given by Ministry of Health & Family Welfare

The draft Bill of 2020 is still only at the stage of public consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. The Ministry has received a large number of representations, comments and suggestions on the draft Bill, which are under examination and will give due consideration to the representations, comments and suggestions received from various stakeholders, while finalization of the COTPA Amendment, Bill, 2020.

Clarification sought by Committee on Petitions

Following amendments in the form of substitution for Section 11 of the Principal Act, i.e., in the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade

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and Commerce, Production, Supply and Distribution) Act, 2003 has been proposed in the COTPA (Amendment) Bill, 2020:-

"For the purposes of testing and regulating the contents and emissions in cigarettes and any other tobacco products, the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory or laboratories as the Government may deem necessary."

In the absence of parameters on 'contents' and 'emissions' in cigarettes and other tobacco products, how they could enforce regulation? How the Testing Laboratory or Laboratories, recognized by the Government, would going to test and regulate the contents and emissions in cigarettes and any other tobacco products?

Whether the Ministry would now retain Section 11 of the Principal Act as it is considered to be well defined and devoid of any ambiguity?

Reply given by Ministry of Health & Family Welfare

The draft Bill of 2020 is still only at the stage of public consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. The Ministry has received a large number of representations, comments and suggestions on the draft Bill, which are under examination and will give due consideration to the representations, comments and suggestions received from various stakeholders, while finalization of the COTPA Amendment, Bill, 2020. Aspect of the enforcement of applicability will be duly considered the time of the finalization of the COTPA Amendment Bill, 2020.

Clarification sought by Committee on Petitions

The representationist has alleged that the Amendment Bill, 2020 has been diluted in favour of cigarettes and made more stringent in the case of smokeless tobacco. Against this backdrop, please furnish a comparative analysis of Amendment Bill, 2015 vis-a-vis Amendment Bill, 2020 to the said extent.

Reply given by Ministry of Health & Family Welfare

Based on scientific evidence, Department considers all tobacco products as harmful to human health. It is submitted that the smoking tobacco products are being regulated within the scope of the provisions of COTPA, 2003, enacted by the Parliament. The provisions provide only for regulation. There is no discrimination while regulating under COTPA, 2003, based on the nature of the product and these principles will be followed while amending COTPA, 2003 in the larger interest of public health. It is submitted that the draft Bill of 2020 is still at the stage of public consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. The Ministry has received a large number of representations, comments and suggestions on the draft Bill, which are under examination and will give due consideration to the representations, comments and suggestions received from various stakeholders, while finalization of the COTPA Amendment, Bill, 2020. It is also submitted that the draft Bill of 2020 is still at the stage of public consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. Therefore, a reasonable comparison between the two draft Bills is not possible, at this stage.

Clarification sought by Committee on Petitions

Whether the Ministry also acknowledge the fact that proscribing any commodity has not worked on a long term basis and if anything these 'proscription' had created, is the underground mafia and once, any illegal trade starts, no regulation, no law is followed and that's when, the accountability diminishes along with the Government's revenue and the deaths due to unregulated supply of these proscribed items increases. If so, what long term policy formulation for regulation of trade & commerce, production, supply & distribution of cigarettes and other tobacco products, in a strictest possible manner, has been conceived by the Ministry?

Reply given by Ministry of Health & Family Welfare

It is submitted that tobacco use in either form, is one of the biggest risk factor for most of the non communicable diseases such as diabetes, hypertension and cancer, etc. In addition to the death and diseases, it causes, impacts the economic development of the country. COTPA, 2003 was enacted by the Parliament with the objective, as enshrined in its preamble is to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarette and other tobacco products, with an aim to discourage the use or consumption of tobacco.

As per WHO study titled "Economic Costs of Diseases and Deaths Attributable to Tobacco Use in India, 2017-18", it has been estimated that the economic burden of diseases and deaths attributable to tobacco use alone in 2017-18 in India was as high as Rs. 1.77 lakh crores, amounting to 1% of GDP. The estimated economic costs for the year 2017-2018 is 21.5% higher, in real terms, compared to 2011.

It is also submitted that the National Health Policy, 2017 envisages the targets for relative reduction in prevalence of current tobacco use as 30% by 2025. Strengthening of tobacco control measures is also well articulated in the Sustainable Development Goals (SDGs). Further, as per the second round of Global Adult Tobacco Survey [GATS-2016-17], 28.6% [26.7 crore] adults in India, aged 15 and above currently use tobacco in some form. Further, the prevalence of any form of tobacco use has decreased significantly by 6 percentage points from 34.6 percent [2009-10] to 28.6 percent [2016-17]. The relative decrease in the prevalence of tobacco use is 17.3%. Hence, with the overall objective of the policy to reduce the consumption of tobacco products, whether it is Smoking or Smokeless Tobacco through the adoption of balanced and systematic policy measures and to achieve the target envisaged in the National Health Policy, 2017, the Department is preparing the necessary amendments to COTPA, 2003. It is agreed and submitted by Secretary, Department of Health & Family Welfare during the sitting of the Committee on Petitions on 24th June, 2021 that banning of tobacco products lead to increase in illicit trade in tobacco products. Hence, it is submitted that India is leading the Presidency of Meeting of Parties under the Protocol of WHO Framework Convention for Tobacco Control (WHO FCTC) and

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necessary steps are being taken to develop the track and trace mechanism for cigarettes by 2023 and other tobacco products by 2028.

II. Deposition of the representatives of the Ministry of Health & Family Welfare during the sitting of the Committee on 24 June, 2021

- (i) India is amongst 181 ratifying countries under the Framework Convention on Tobacco Control (FCTC), which is an International Framework for tobacco control, and has the responsibility to regulate the consumption of tobacco at public places and to ensure public health.
- (ii) Pursuant to placing of COTPA Amendment Bill, 2020 in the public domain on 1 January, 2021, the Ministry of Health & Family Welfare received around 89,000 objections through electronic mode, viz., e-mails, etc., besides, more than 2 lakh representations, letters, etc., in physical form by bringing out various grievances and suggestions on the subject. The Ministry of Health & Family Welfare are, presently, considering all the inputs received from various stakeholders and after considering all these inputs and also suggestions given by the Committee on Petitions, Lok Sabha, the said Bill would be finalized and introduced in the Parliament. After finalizing the draft Bill, the Ministry would also inform the Committee on Petitions and seek appropriate guidance/suggestions from the Committee prior to bringing the said Bill before the Parliament.
- (iii) Although, strict regulation on tobacco products could also be an option, the most important aspect which is connected with the livelihood and employment of farmers, traders, etc., who are neither socially prosperous nor financially opulent, would also be taken into account while finalizing the COTPA Amendment Bill. The objective of the Bill is to achieve reduction in the supply and demand of tobacco products as it is an undeniable fact that their consumption is harmful to human health irrespective of their 'forms' and 'mode of consumption'.

III. Comparative study of Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] Act, 2003 (COTPA) vis-à-vis Cigarettes and Other Tobacco Products [Prohibition of Advertisement

and Regulation of Trade & Commerce, Production, Supply and Distribution] [Amendment] Bill, 2020 placed in the public domain by the Ministry vide F. No. P.16011/04/2020-TC (Part) dated 1 January, 2021.

(A) The Cigarettes And Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

A Bill [No. XXIX of 2001] to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith or incidental thereto was introduced in Rajya Sabha in the year 2001. The Upper House (Rajya Sabha) passed the said Bill on 9 April, 2003 and subsequently, Lok Sabha passed the Bill on 30 April, 2003. Finally, after receiving the assent of the Hon'ble President of India on 18 May, 2003, it was published in the Gazette of India, Extraordinary, Part-II Section I on 19 May, 2003 [Annexure-IV]. With the Act *ibid* coming into force, 'The Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975 (49 of 1975) was repealed by the Government. With a view to ensuring brevity in the examination of various aspects raised by the representationists by the Committee on Petitions, Lok Sabha, the objects & reasons, Memorandum regarding Delegated Legislation, relevant provisions, etc., as contained in the relevant Bill/Act have been reproduced, as under:-

Objects and Reasons

Tobacco is universally regarded as one of the major public health hazards and is responsible directly or indirectly for an estimated eight lakh deaths annually in the country. It has also been found that treatment of tobacco related diseases and the loss of productivity caused therein cost the country almost Rs. 13,500 crores annually, which more than offsets all the benefits accruing in the form of revenue and employment generated by tobacco industry. The need for a comprehensive legislation to prohibit advertising and regulation of production, supply and distribution of cigarettes and tobacco products was recommended by the Parliamentary Committee on Subordinate Legislation (Tenth Lok Sabha) and a number of points suggested by

the Committee on Subordinate Legislation have been incorporated in the Bill.

The proposed Bill seeks to put total ban on advertising of cigarettes and other tobacco products and to prohibit sponsorship of sports and cultural events either directly or indirectly as well as sale of tobacco products to minors. It also proposes to make rules for the purpose of prescribing the contents of the specified warnings, the language in which they are to be displayed, as well as displaying the quantities of nicotine and tar contents of these products. For the effective implementation of the proposed legislation, provisions have been proposed for compounding minor offences and making punishments for offences by companies more stringent. The objective of the proposed enactment is to reduce the exposure of people to tobacco smoke (passive smoking) and to prevent the sale of tobacco products to minors and to protect them from becoming victims of misleading advertisements. This will result in a healthier life style and the protection of the right of life enshrined in the Constitution. The proposed legislation further seeks to implement Article 47 of the Constitution which, *inter alia*, requires the State to endeavor to improve public health of the people.

Memorandum regarding Delegated Legislation

Clause 31 of the Bill seeks to empower the Central Government to make rules for the purposes of carrying out the provisions of the Bill, *inter alia*, to specify the form and manner in which warning shall be given in respect of cigarettes, to specify the maximum permissible nicotine and tar contents in cigarettes and to provide for the manner in which the powers of entry, search and seizure by an officer not below the rank of Sub-Inspector of Police shall be carried out.

Clause 32 of the Bill empowers the State Government to make rules to provide for similar matters in respect of tobacco products other than cigarettes.

The matters in respect of which rules may be made are matters of procedure or detail. The delegation of legislative power is, thus, of a normal character.

Preamble

An Act to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith or incidental thereto.

Whereas, the Resolution passed by the 39th World Health Assembly (WHO), in its Fourteenth Plenary meeting held on the 15th May, 1986, urged the member States of WHO which have not yet done so to implement the measures to ensure that effective protection is provided to non-smokers from involuntary exposure to tobacco smoke and to protect children and young people from being addicted to the use of tobacco;

And whereas, the 43rd World Health Assembly in its Fourteenth Plenary meeting held on the 17th May, 1990, reiterated the concerns expressed in the Resolution passed in the 39th World Health Assembly and urged Member States to consider in their tobacco control strategies plans for legislation and other effective measures for protecting their citizens with special attention to risk groups such as pregnant women and children from involuntary exposure to tobacco smoke, discourage the use of tobacco and impose progressive restrictions and take concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco;

And whereas, it is considered expedient to enact a comprehensive law on tobacco in the public interest and to protect the public health;

And whereas, it is expedient to prohibit the consumption of cigarettes and other tobacco products which are injurious to health with a view to achieving improvement of public health in general as enjoined by article 47 of the Constitution; and whereas, it is expedient to prohibit the advertisement of, and to provide for regulation of trade and commerce, production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith or incidental thereto.

Relevant Provisions

3. Definitions

In this Act, unless the context otherwise requires -

(p) "tobacco products" means the products specified in the Schedule

7. Restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products.

(1) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him bears thereon, or on its label 1 [such specified warning including a pictorial warning as may be prescribed.]

(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.

(3) No person shall import cigarettes or any other tobacco products for distribution or supply for a valuable consideration or for sale in India unless every package of cigarettes or any other tobacco products so imported by him bears thereon, or on its label, the specified warning.

(4) The specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration.

(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products

unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum permissible limits thereof:

Provided that the nicotine and tar contents shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act.

10. Size of letters and figures

No specified warning or indication of nicotine and tar contents in cigarettes and any other tobacco products shall be deemed to be in accordance with the provisions of this Act if the height of each letter or figure, or both used on such warning and indication is less than the height as may be prescribed by rules made under this Act.

11. Testing laboratory for nicotine and tar contents

For purposes of testing the nicotine and tar contents in cigarettes and any other tobacco products the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory as that Government may deem necessary.

15. Power to give option to pay costs in lieu of confiscation.

(1) Whenever any confiscation of any package of cigarettes or any other tobacco products is authorized by this Act, the court adjudging it may, subject to such conditions as may be specified in the order adjudging the confiscation, give to the owner thereof an option to pay, in lieu of confiscation, costs which shall be equal to the value of the goods confiscated.

(2) On payment of the costs ordered by the court, the seized packages shall be returned to the person from whom they

were seized on condition that such person shall, before making any distribution, sale or supply of such packages of cigarettes or other tobacco products, get the specified warning and indication of nicotine and tar contents incorporated on each such package.

20. Punishment for failure to give specified warning and nicotine and tar contents.

(1) Any person who produces or manufactures cigarettes or tobacco products, which do not contain, either on the package or on their label, the specified warning and the nicotine and tar contents, shall in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

(2) Any person who sells or distributes cigarettes or tobacco products which do not contain either on the package or on their label, the specified warning and the nicotine and tar contents shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to three thousand rupees.

30. Power to add any tobacco products in the Schedule.

The Central Government, after giving notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any other tobacco product in respect of which it is of opinion that advertisements are to be prohibited and its production, supply and distribution is required to be regulated under this Act, and thereupon the Schedule

shall in its application to such products be deemed to be amended accordingly.

31. Power of Central Government to make rules

(1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) specify the form and manner in which warning shall be given in respect of cigarettes or Other tobacco products under clause (o) of section 3;

(b) specify the maximum permissible nicotine and tar contents in cigarettes or other tobacco products under the proviso to sub-section (5) of section 7;

(c) specify the manner in which the specified warning shall be inscribed on each package of cigarettes or other tobacco products or its label under sub-section (2) of section 8;

(d) specify the height of the letter or figure or both to be used in specified warning or to indicate the nicotine and tar contents in cigarettes or other tobacco products under section 10;

(e) provide for the manner in which entry into and search of any premises is to be conducted and the manner in which the seizure of any package of cigarettes or other tobacco products shall be made and the manner in which seizure list shall be prepared and delivered to the person from whose custody any package of cigarettes or other tobacco products has been seized;

(f) provide for any other matter which is required to be, or may be, prescribed.

- (3) Every rule made under this Act and every notification made under section 30 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

The Schedule [Section 3(p)]

1. Cigarettes
2. Cigars
3. Cheroots
4. Beedis
5. Cigarette tobacco, pipe tobacco and hookah tobacco
6. Chewing tobacco
7. Snuff
8. Pan Masala or any chewing material having tobacco as one of its ingredients (by whatever name called).
9. Gutkha
10. Tooth powder containing tobacco.

(B) Amendments carried out by the Ministry of Health & Family Welfare in the Act/Rules.

Details	Acts/ Rules/ Regulations	Date of Notification
S. O. 238(E)	For Section-1, 2, 3, 4, 5, 6(a), 12(1)(b), 12(2), 13(1)(b), 13(2), 14, 16, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30 & 31	25.02.2004

S. O. 1955(E)	For Section – 7(1) (2) (3) (4), 8, 9, 10 & 20	16.11.2007
S. O. 1865(E)	For Section-12(1)(a), 13(1)(a), 15(1)(a), 17(1)(a), 18(1)(a), 32(1)(a) & 33(1)(a)	30.07.2009
G. S. R. 687(E)	For Section – 6(b)	18.09.2009
G. S. R. 137(E)	Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004 [Principal Rules on Section-4, 5 & 6]	25.02.2004
G. S. R. 417(E)	Prohibition of Smoking in Public Places Rules, 2008 New Principal Rules	30.05.2008
G. S. R. 680(E)	Prohibition of Smoking in Public Places (Amendment) Rules, 2009	15.09.2009
G. S. R. 500(E)	Prohibition of Smoking in Public Places (Amendment) Rules, 2017	23.05.2017
G. S. R. 345(E)	Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution)(Amendment) Rules, 2005	31.05.2005
G. S. R. 496(E)	Corrigendum	22.07.2005
G. S. R. 616(E)	Corrigendum	29.09.2005
G. S. R. 698(E)	Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution)(Second Amendment) Rules, 2005	30.11.2005
G. S. R. 754(E)	Corrigendum	30.11.2005
G. S. R. 124(E)	Corrigendum	28.02.2006
G.S.R. 190(E)	Corrigendum	30.03.2006
G.S.R. 259(E)	Corrigendum	28.04.2006
G.S.R.449(E)	Corrigendum	31.07.2006
G.S.R. 599(E)	Corrigendum	28.09.2006
G.S.R.646(E)	Notification on Constitution of Steering Committee to take action regarding violations of Section-5	17.10.2006
G.S.R.656(E)	Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution)(Amendment) Rules, 2006	20.10.2006
G.S.R.786(E)	Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution)(Second Amendment) Rules, 2011	27.10.2011
G.S.R.708(E)	Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Amendment Rules, 2012.	21.09.2012

G.S.R.619(E)	Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Amendment Rules, 2011	11.08.2011
G.S.R. 561(E)	Prohibition on Sale of Cigarettes and Other Tobacco Products around Educational Institutions Rules, 2004	01.09.2004
G.S.R.40(E)	Cigarettes and Other Tobacco Products (Display of board by Educational Institutions) Rules, 2009	19.01.2010
G.S.R.402(E)	Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2006	05.07.2006
G.S.R.42(E)	Corrigendum	24.01.2007
G.S.R.408(E)	Corrigendum	31.05.2007
G.S.R.633(E)	Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2007	29.09.2007
G.S.R.641(E)	Corrigendum	01.10. 2007
G.S.R.746(E)	Notification	30.11. 2007
G.S.R.781(E)	Notification	19.12.2007
G.S.R.182(E)	Cigarettes and Other Tobacco Products (Packaging and Labelling) Rules, 2008	15.03.2008
S. O. 2130(E)	Notification	27.08.2008
G.S.R.693(E)	Cigarettes and Other Tobacco Products [Packaging and Labelling (Amendment) Rules], 2008	29.09.2008
S.O.2814(E)	Corrigendum	28.11.2008
S. O.2815(E)	Notification	28.11.2008
G.S.R.305(E)	Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2009	03.05.2009
S. O.1866(E)	Notification	30.07.2009
S. O.23(E)	Notification on Amendment to G.S.R.1866(E)	06.01.2010
G.S.R.176(E)	Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2010	05.03.2010
G.S.R.179(E)	Notification on Partial Modification of G.S.R.176(E)	09.03.2010
G.S.R.411(E)	Notification amending date of effect of (Packaging and Labelling) Amendment Rules, 2010 as 1 st December, 2010	17.05.2010
G.S.R.985(E)	Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2010	20.12.2010
G.S.R.417(E)	Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2011	27.05.2011
G.S.R.570(E)	Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2011.	26.07.2011

G.S.R.724(E)	Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2012	27.09.2012
G.S.R.727(E)	Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2014	15.10.2014
G.S.R.228(E)	Corrigendum	26.03.2015
G.S.R.739(E)	Superseding G.S.R.228(E) and giving date of effects of Amendment Rules, 2014 as 1 st April, 2016	24.09.2015
G.S.R.292(E)	Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2017	24.03.2017
G.S.R.1016(E)	Cigarettes and Other Tobacco Products (Packaging and Labelling) Second Amendment Rules, 2017	16.08.2017
G.S.R.283(E)	Cigarettes and Other Tobacco Products (Packaging and Labelling) Amendment Rules, 2018	26.03.2018
G.S.R.331(E)	Cigarettes and Other Tobacco Products (Packaging and Labelling) Second Amendment Rules, 2018	03.04.2018

(C) The Cigarettes And Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020.

The Ministry of Health & Family Welfare (Tobacco Control Division) vide F. No. P. 16011/04/2020-TC (Part) dated 1 January, 2021 has placed the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020 in the public domain (Annexure V). The said Bill has been placed in public domain as part of pre-legislative consultations, with a view to eliciting the comments/views of public.

With a view to undertaking a comparative analysis of the provisions contained in various Sections of the Act *ibid* vis-à-vis the Amendment Bill, 2020, the corresponding Sections, proposed to be amended/new Section(s) proposed to be inserted has been reproduced, as under:-

Amendment of Preamble

In the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (*hereinafter referred to as the principal Act*) -

In the Preamble, after the words ".....take concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco" the words, "And Whereas, India is a signatory to the World Health Organization Framework Convention on Tobacco Control [WHO FCTC) adopted in Geneva, Switzerland on 21st day of May, 2003 which came into force on the 27th day of February, 2005" shall be inserted as a separate para.

Amendment of Section 7

In section 7 of the principal Act -

- (i) in sub-section(2), following proviso shall be inserted, namely:-

"Provided that the trade and commerce in cigarette or any other tobacco product shall be in sealed, intact and original packaging."

- (ii) for sub-section (4), the following sub-section shall be substituted, namely:-

"(4) The specified warning shall appear on the principal display area of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply."

- (iii) for sub-section (5), the following sub-section shall be substituted, namely:-

"(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him is having minimum quantity as may be prescribed."

Amendment of Section 10

In section 10, of the principal Act, the words "or indication of nicotine and tar contents", shall be omitted.

Insertion of new Section 10(A)

After Section 10 of the principal Act, the following section shall be inserted, namely:-

- "10A. (1) No person shall directly or indirectly, produce, supply or distribute, import, sell, offer for sale or permit sale of illicit cigarette or any other tobacco product.
- (2) The manner in which illicit cigarette or any other tobacco product shall be identified, tracked or traced, be such as may be specified in the rules made under this Act.

Explanation - For the purpose of this section, the expression, "illicit" means any practice or conduct prohibited by law and which relates to production, supply, distribution, import and sale, including any practice or conduct intended to facilitate such activity.

- (3) No person shall directly or indirectly, produce, supply or distribute, import, sell, offer for sale or permit sale of cigarette or any other tobacco product without license, registration or permission required by any law for the time being in force, of the Central Government or a State Government."

Amendment of Section 11

For section 11, of the principal Act, the following section shall be substituted, namely:-

11. For the purposes of testing and regulating the contents and emissions in cigarettes and any other tobacco products, the Central Government shall by notification in the Official Gazette grant recognition to such testing

laboratory or laboratories as the Government may deem necessary.”

Amendment of Section 15

In section 15 of the principal Act –

- (i) In sub-section 2,
the words “and indication of nicotine and tar contents”, shall be omitted.
- (ii) After sub-section 2, the following proviso shall be inserted, namely -

“Provided that this section shall not apply to seized packages of illicit cigarette or any other tobacco product.”

Amendment of Section 20

For section 20 of the principal Act, the following section shall be substituted, namely:-

- 20 (1) Any person who produces or manufactures cigarettes or any other tobacco products; in contravention of section 7 shall in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees.
- (2) Any person who sells or distributes cigarettes or any other tobacco products, in contravention of section 7 shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may

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extend to two years and with fine which may extend to one lakh rupees.

Insertion of new Section 20A

After section 20 of the principal Act, the following section shall be inserted, namely:-

- 20A. (1) Any person who produces or manufactures or supplies or imports illicit cigarettes or any other tobacco products shall in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees.
- (2) Any person who distributes, sell, offer for sale or permit sale of illicit cigarettes or any other tobacco products shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to one lakh rupees.

Amendment of Section 30

For section 30 of the principal Act, the following section shall be substituted, namely:-

30. The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add to, or, omit from, the Schedule any tobacco products and

thereupon the Schedule shall be deemed to have been amended accordingly.”

Insertion of new Section 30A

After section 30 of the principal Act, the following section shall be inserted, namely:-

30A. Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

Insertion of new Section 30B

After the new section 30A, the following section shall be inserted, namely:-

30B. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force prohibiting trade and commerce, production, supply and distribution of cigarettes and any other tobacco products.

Amendment of Section 31

In section 31 of the principal Act, in sub-section (2) –

- (i) for clause (b), the following clause shall be substituted, namely:-
 - (b) specify the manner in which the illicit cigarette or any other tobacco product shall be identified, tracked or traced, under subsection (2) of section 10A.
- (ii) In clause (d), the words “or to indicate the nicotine and tar contents”, shall be omitted.

(D) Policy of the Government on pre-legislative consultation

The Secretary, Ministry of Law & Justice, Legislative Department vide D.O. Letter No. 11/(35)/2013-L.I dated 5 February, 2014 (Annexure-VI) had averred, as under:-

"In the modern context, pre-legislative consultative policy as a process supports may of the legitimate and growing expectations for transparent and better informed Government. The process tends to resolve contentious and complex policies and the areas where Government is seeking a policy to build consensus.

The effectiveness and importance of pre-legislative scrutiny was under consideration of the Government for quite some time. Briefly, the pre-legislative scrutiny takes place before the final drafting of a Bill has been decided and it is introduced in Parliament. As per past practice, only a limited number of Bill were published in draft form and scrutinized this way.

While following this process, the Government sets out clearly the policy problem that is to be addressed through the provision of supportive evidence and analysis, the options that it has considered and the reasons for the choices the Government have made in bringing forward a legislation. The process also involves the study of social and financial costs, benefits and the key challenges that required to be settled before undertaking the legislation. Looking into all these aspects facilitate formation of perfect policy objectives which a Bill intends to achieve and improve the efficacy of any Act in its implementation.

Taking into consideration the recommendations of the National Advisory Council, the National Commission to Review the Working of the Constitution and the practice followed in other countries, the Committee of Secretaries has formulated a policy on pre-legislative consultation which should invariably be followed by every Ministry/ Department of the Central Government before any legislative proposal is submitted to the Cabinet for its consideration and approval. This policy should also guide and govern the handling of subordinate legislations. The details of such legislative process are given in the

Appendix to facilitate systematic compliance and adherence with the policy so laid down. It is requested that the policy document be given wide publicity in your Ministry/Department for strict adherence."

The Secretary, Ministry of Law & Justice, Legislative Department, has also spelt out the details of legislative process, as per Annexure to the aforementioned D.O. Letter, for facilitating systematic compliance and adherence with the said policy of the Government on pre-legislative consultation. The salient points on the aspects are, as under:-

- (i) The Department/ Ministry shall publish/place in public domain the draft legislation or at least the information that may *inter alia* include brief justification for such legislation, essential elements of the proposed legislation, its broad financial implications, and an estimated assessment of the impact of such legislation on environment, fundamental rights, lives and livelihoods of the concerned/ affected people, etc. Such details may be kept in the public domain for a minimum period of thirty days for being proactively shared with the public in such manner as may be prescribed by the Department/Ministry concerned.
- (ii) Where such legislation affect specific group of people, it may be documented through print or electronic media or in such other manner, as may be considered necessary to give wider publicity to reach the affected people.
- (iii) Every draft legislation or rules, placed in public domain through pre-legislative process should be accompanied by an explanatory note explaining key legal provisions in a simple language.

OBSERVATIONS/RECOMMENDATIONS

Consultation process vis-à-vis COTPA (Amendment) Bill, 2020

6. The Committee note that the draft Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020 was placed in the public domain on the website of the Ministry of Health & Family Welfare [ntcp.nhp.gov.in and mohfw.gov.in] on 1 January, 2021 as a part of pre-legislative consultative process. Pursuant to this, 89,000 objections through electronic mode besides, more than two lakh representations, letters, etc., in physical form by bringing out various grievances and suggestions, have been received in the Ministry.

7. While examining the representations of S/Shri Rajnikant P. Patel & Sudhir Sable as well as that of Shri Sanjay Bechan, it was also came to the notice of the Committee that a similar exercise for Amendment to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act of 2003 (COTPA) was taken up by the Ministry in the year 2015 and on that occasion also, suggestions of public were invited as a part of pre-legislative consultation process. However since no tangible progress was made by the Ministry in regard to Amendment Bill of 2015 and after a lapse of around 6 years, another draft proposal for amendment has been placed in the public domain, the Committee could easily draw an inference that the Amendment Bill of 2015 was subsequently withdrawn by the Ministry of Health & Family Welfare.

8. The Committee also acknowledge the endeavour of the Ministry to prepare an effective Amendment Bill after taking into account the various suggestions received

and also achieving the target of 30 per cent relative reduction in the prevalence of tobacco use by the year 2024-25 (from the levels of 2009-10) as set out under the National Health Policy of the year 2017. In this sequence, the Committee also wish to remind the Ministry about the inalienable 'objects and reasons' set out by them while formulating a composite and comprehensive piece of legislation in the form of 'The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 with a view to prohibiting the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith as well as implementing Article 47 of the Constitution which *inter alia* requires the State to endeavour to improve public health of the people.

9. Since the proposed Amendment Bill was in the stage of pre-legislative consultations and in the midst of this, the Committee on Petitions received the aforementioned representations, they got an opportunity to ponder on the nuances involved in the entire exercise, beginning with the objective of bringing COTPA in the year 2003, exercise undertaken by the Ministry for carrying out amendments in the year 2015 and the current attempt in the form of COTPA (Amendment) Bill, 2020. It is against this backdrop that the Committee formulated detailed List(s) of Points connected with the subject for easy discernment of contradictions, if any, in a sequential manner, and forwarded the same to the Ministry. However, pursuant to the detailed List(s) of Points, the Ministry preferred to evade and did not reveal the institutional intent of bringing the proposed Bill for amending the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

10. In this chronology, the Committee on Petitions urged the Ministry to give their considered view on *inter alia* amending the following Sections of the Bill, which were of determining nature so that the Committee would be able to appreciate the reasons for altering these Sections contained in COTPA, 2003:-

Sl. No.	Sections contained in COTPA (Amendment) Bill	Brief details
1.	Amendment to Section 3	Definition of 'Advertisement' and 'Production'.
2.	Amendment to Section 7	Deletion of proviso relating to 'nicotine and tar contents'.
3.	Amendment to Section 10	Deletion of words "or indication of nicotine and tar contents'.
4.	Amendment to Section 11	Deletion of 'testing and regulating the contents and emissions in cigarettes and any other tobacco products'.
5.	Amendment to Section 15	Deletion of words 'and indication of nicotine and tar contents'.
6.	Amendment to Section 30	Re-wording of words 'add any other tobacco product' as 'add to, or, omit from'.
7.	Amendment to Section 31	Deletion of sub-section(2) for specifying the maximum permissible nicotine and tar contents in cigarettes or other tobacco products. Deletion of words of sub-section (d), i.e., or to indicate the nicotine and tar contents'.

11. The Committee were, however, shocked that for most of the aspects contained in the List(s) of Points, the Ministry gave a terse reply, as under:-

"The draft Bill of 2020 is still only at the stage of public consultations, and that, the provisions of the draft Amendment Bill have not yet been finalized. The Ministry has received a large number of representations, comments and suggestions on the draft Bill, which are under examination and will give due consideration to the representations, comments and suggestions received from various stakeholders, while finalization of the COTPA Amendment, Bill, 2020. Aspect of the enforcement of applicability will be duly considered at the time of the finalization of the COTPA Amendment, Bill, 2020."

12. The Committee do not subscribe to such distractionary ways of officers of the Tobacco Control Division of the Ministry of Health & Family Welfare in dealing with a Parliamentary Committee in view of the fact that all the Parliamentary Committees, in general, and the Committee on Petitions, Lok Sabha, in particular, are taking up various aspects which are invariably connected with the wider public interests. Whenever, institutional clarifications are sought on some important aspects connected with the subject matter under examination of the Committee, it is the bounden duty of the Ministry/Department concerned of the Government of India, to furnish a sustainable and legally tenable reply, thereby, enabling the Parliamentary Committee to form their opinion on the relevant issue(s). The Committee, therefore, recommend the Ministry to appropriately sensitize their officers to ensure that the queries raised by any Parliamentary Committee are resolved by them in an unambiguous and time-bound manner and also explaining key legal provisions connected with the subject in a simple language. The Committee would like to be apprised of the action taken by the Ministry of Health & Family Welfare in this regard at the earliest.

Non-adherence to the policy on pre-legislative consultation

13. The Committee note that the Government of India had formulated a detailed policy on pre-legislative consultation. In this regard, the Secretary, Ministry of Law & Justice, Legislative Department had also issued revised policy on 5 January, 2014 which is applicable in the process of principal as well as subordinate legislation. As a matter of fact, all the Ministries/ Department of the Central Government have also been directed to invariably follow the policy on pre-legislative consultation.

14. The Committee also note that the details of such legislative process *inter alia* makes it mandatory for all the Ministries/Department of the Central Government to publish/place in public domain the draft legislation, wherein, brief justification for such legislation, essential elements of the proposed legislation, and estimated assessment of the impact of such legislation on the lives and livelihoods of the concerned/affected people have to be incorporated.

15. Juxtaposition of the said policy formulation of the Government of India on pre-legislative consultation with the current exercise of the Ministry of Health & Family Welfare relating to placing the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) [Amendment] Bill, 2020 in the public domain with a view to eliciting the comments/views of public, the Committee are unhappy to find that none of the process has been followed by the Ministry of Health & Family Welfare. The Committee are constrained to express that either the higher officials of the Tobacco Control Division were not aware of any such policy guidelines issued by the Government of India or they had intentionally ignored such an important policy

guideline of the Government of India for reasons incomprehensible to the Committee. The Committee are of considered opinion that, on both these counts, the Tobacco Control Division of the Ministry of Health & Family Welfare should have exercised restraint and at the same time exhibited congruence for attaining the legitimate and growing expectation of the people for transparent and better informed Government.

16. Though the Committee would discuss all the aspects contained in the Amendment Bill, 2020 in the succeeding paragraphs, the Committee also recommend that whenever any substantive issue - having legal connotations - as it is in the present case of carrying out amendments in the Act is taken up for effecting amendment(s)/modification(s), while putting up the draft proposal in the public domain as a part of pre-legislative consultations, a new column, containing the reasons for addition/deletion/substitution in the existing Sections of the Act should also be included. The said suggestion should also be taken into consideration by the Ministry of Health & Family Welfare with reference to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020. It is, thus, expected that urgent action for the above-stated suggestion for procedural improvement, which would enable the public to understand the subject-matter in a better way, should also be initiated by the Ministry, under intimation to the Committee on Petitions.

Key issues relating to the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020

17. Apart from representations received from S/Shri Rajnikant P. Patel & Sudhir Sable as well as Shri Sanjay Bechan, the Committee on Petitions, Lok Sabha also not

only held detailed discussions with the representatives of the Ministry of Health & Family Welfare but also relied upon various documents/papers, etc., available in public domain. Out of these discussions/deliberations, the following key issues, having bearing on the provisions of the Bill, have emerged out:-

- (i) Definition – Amendment in Section 3(k).
- (ii) Prohibition of smoking in a public place – Deletion of Section 4.
- (iii) Prohibition of advertisement of cigarettes and other tobacco products – Substitution of Section 5(1) and deletion of 5(2)(a) & (b).
- (iv) Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area – Substitution of Section 6(a) & (b).
- (v) Restriction on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products – Insertion of proviso in Section 7(2) and substitution of Section 7(4) & (5).
- (vi) Size of letters and figures – Deletion of words in Section 10 and insertion of new Section as 10(A).
- (vii) Testing laboratory for nicotine and tar contents – Substitution of Section 11.
- (viii) Power to give option to pay costs in lieu of confiscation – Deletion of words in Section 15(2).
- (ix) Power to add any tobacco products in the Schedule – Substitution of Section 30 and insertion of new Section as 30(A) & (B).
- (x) Power of Central Government to make rules – Substitution of Section 31(2)(b) and deletion of Section 31(2)(d).

These are discussed in the succeeding paragraphs.

A. Definition – Amendment in Section 3(k)

A comparative analysis of the Section 3(k) of the COTPA, 2003 and the proposed substitution *vide* COTPA (Amendment) Bill, 2020 relating to 'Definition' is, as under:-

Section 3(k) of COTPA, 2003	Substitution proposed in COTPA (Amendment) Bill, 2020
<p>'Production' with its grammatical variations and cognate expressions, includes the making of cigarettes, cigars, cheroots, <i>Beedis</i>, cigarette tobacco, pipe tobacco, <i>hookah</i> tobacco, chewing tobacco, <i>pan Masala</i> or any chewing material having tobacco as one of its ingredients (by whatever name called) or snuff and shall include –</p> <p>(i) packing, labelling or re-labelling, of containers;</p> <p>(ii) re-packing from bulk packages to retail packages; and</p> <p>(iii) the adoption of any other method to render the tobacco product marketable.</p>	<p>'Production' with its grammatical variations and cognate expressions, includes the making of tobacco products and shall include –</p> <p>(i) Packing, labelling or re-labelling, of containers;</p> <p>(ii) Re-packing from bulk packages to retail packages; and</p> <p>(iii) The adoption of any other method to render the tobacco product marketable.</p>

The Committee note that in the proposed Amendment Bill, 2020, no change has been proposed in sub-sections (i) to (iii) of Section 3(k) of COTPA, 2003. However, the description of 'tobacco products', viz., cigarettes, cigars, cheroots, *Beedis*, cigarette tobacco, pipe tobacco, *hookah* tobacco, chewing tobacco, *pan Masala* or any chewing material having tobacco as one of its ingredients have been substituted by 'Tobacco Products'.

Since the proposed amendment would give rise to ambiguity while describing the 'Tobacco Products', it may result in multiple litigations with the stakeholders. Moreover, it has been an established principle of legislative process that the law should invariably contain even the minute details and also self-contained so that it may not lead to different interpretations by different people. In view of this, the Committee

disapprove the proposed amendment to the definition of 'production' as contained in Section 3(k) of the COTPA, 2003 and recommend that status quo should be maintained.

B. Prohibition of smoking in a public place – Deletion of Section 4

Section 4 of the COTPA, 2003 relating to 'Prohibition of smoking in a public place' reads, as under:-

No person shall smoke in any public place:

Provided that in a hotel having thirty rooms or a restaurant having seating capacity of thirty persons or more and in the airports, a separate provision for smoking area or space may be made.

The Committee note that the Ministry, in their submissions, has acknowledged the dangers of second and third hand smoking and its impact on the health of vulnerable sections of the Society, viz., women and children. It is in this context that the Committee feel that the relevant section in COTPA, 2003 should not be deleted and rather made broad-based by including railway platforms, bus stations, sports stadiums, Shopping Mall, besides the Airports. The Committee, therefore, recommend that Section 4 of COTPA, 2003 should not be deleted/omitted.

C. Prohibition of advertisement of cigarettes and other tobacco products – Substitution of Section 5(1) and deletion of 5(2)(a) & (b)

A comparative analysis of the Section 5(1) & (2) of the COTPA, 2003 and the proposed substitution *vide* COTPA (Amendment) Bill, 2020 relating to 'Prohibition of advertisement of cigarettes and other tobacco products' is, as under:-

Section 5(1) & (2)(a) & (b) of COTPA, 2003	Substitution and deletion proposed in COTPA (Amendment) Bill, 2020
5(1). No person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes or any other tobacco products shall advertise and no person	5(1) No person shall directly or indirectly advertise cigarettes or any other tobacco products through any medium and no person shall take part in any advertisement that directly or indirectly

<p>having control over a medium shall cause to be advertised cigarettes or any other tobacco products through that medium and no person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products.</p> <p>(2) No person, for any direct or indirect pecuniary benefit, shall –</p> <ul style="list-style-type: none"> a) display, cause to display, or permit or authorize to display any advertisement of cigarettes or any other tobacco product; or b) sell or cause to sell, or permit or authorize to sell a film or video tape containing advertisement of cigarettes or any other tobacco product; or c) distribute, cause to distribute, or permit or authorize to distribute to the public any leaflet, hand-bill or document which is or which contains an advertisement of cigarettes or any other tobacco product; or d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product. 	<p>promote the use or consumption of cigarettes or any other tobacco products.</p>
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The Committee note that in the proposed Amendment Bill, 2020, re-wording of Section 5(1) will have same meaning and intent and, therefore, the aforementioned substitution could be retained. However, deletion/omission of Section 5(2)(a) & (b) might propel a person to display, cause to display, or permit or authorize to display any

advertisement of cigarettes or any other tobacco product or sell or cause to sell, or permit or authorize to sell a film or video tape containing advertisement of cigarettes or any other tobacco product, which would be in conflict with the preamble and the aims and objectives for which COPTA was enacted in the year 2003. The Committee, therefore, disapprove the proposed deletion/omission of Section 5(2)(a) & (b) of the COTPA, 2003 and recommend that status quo should be maintained.

D. Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area – Substitution of Section 6(a) & (b)

A comparative analysis of the Section 6(a) & (b) of the COTPA, 2003 and the proposed substitution *vide* COTPA (Amendment) Bill, 2020 relating to 'Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area' is, as under:-

Section 6(a) & (b) of COTPA, 2003	Substitution proposed in COTPA (Amendment) Bill, 2020
<p>No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product -</p> <p>a) to any person who is under eighteen years of age, and</p> <p>b) in an area within a radius of one hundred yards of any educational institution.</p>	<p>No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product -</p> <p>a) to any person who is under twenty-one years of age, and</p> <p>b) in an area within a radius of one hundred meters of any educational institution.</p>

The Committee note that the proposed substitution of Section 6 (a) & (b) in the Amendment Bill, 2020 is in tune with the National Health Policy of 2017 which envisages the targets for relative reduction in prevalence of current tobacco use as 15 per cent by 2020 and 30 per cent by 2025. Besides, restricting the sale, offer for sale, or permit sale of, cigarette or any other tobacco product to a person below the age of 21 years and within a radius of one hundred meters of any educational institution is a welcome step in the direction of discouraging the consumption of cigarettes or any other tobacco products. The Committee, therefore,

recommend that Section 6(a) & (b) of COTPA, 2003 could be substituted in the manner proposed by the Ministry in the Amendment Bill, 2020.

E. Restriction on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products – Insertion of proviso in Section 7(2) and substitution of Section 7(4) & (5)

A comparative analysis of the Section 7(2), (4) & (5) of the COTPA, 2003 and the proposed substitution *vide* COTPA (Amendment) Bill, 2020 relating to 'Restriction on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products' relating to insertion of proviso in Section 7(2) and substitution of Section 7(4) & (5) is, as under:-

Section 7(2), (4) & (5) of COTPA, 2003	Insertion/substitution proposed in COTPA (Amendment) Bill, 2020
7(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.	7(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.
	Provided that the trade and commerce in cigarette or any other tobacco product shall be in sealed, intact and original packing.
7(4) The specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration.	7(4) The specified warning shall appear on the principal display area of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply.
7(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum	7(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him is having minimum quantity as may be prescribed.

<p>permissible limits thereof:</p> <p>Provided that the nicotine and tar contents shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act.</p>	
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The Committee note that the impact of the proposed insertion of proviso in Section 7(2) in the Amendment Bill which relates to carrying out trade or commerce in cigarettes or any other tobacco products in sealed, intact and original packing would be comparatively more on *Beedis* since this product is produced by unorganised and small scale/cottage/ household, would be at a disadvantageous position. Moreover, ensuring the compliance of this proviso by the Authorities concerned would be a herculean task without any positive outcome. In this context, the Committee are of the considered view that in the process of law making, realistic and easily implementable propositions should be given prominence in place of regressive and theoretical formulations. The Committee, therefore, recommend that status quo should be maintained in regard to Section 7(2) of COTPA, 2003 and no changes be made *vide* the Amendment Bill, 2020.

The Committee also note that substitution of Section 7(4) & (5) in the Amendment Bill, 2020 is not confined to its re-wording in the Amendment Bill, 2020 but it has connotations in the form of deleting the 'nicotine and tar contents on cigarettes' along with doing away the austere proviso of prescribing the maximum permissible quantity of 'nicotine and tar contents'. In this context, the Committee are of considered view that in case, Section 7 of the COTPA, 2003 is amended in the present form, it would drastically liquidate the regulation of usage of tobacco products, especially, the cigarettes. The Committee, therefore, disapprove re-wording and substitution of Section 7(2),(4) & (5) in the Amendment Bill, 2020 and recommend that status quo should be maintained.

F. Size of letters and figures – Deletion of words in Section 10 and insertion of new Section as 10(A)

A comparative analysis of the Section 10 of the COTPA, 2003 and the proposed insertion of a new Section 10A *vide* COTPA (Amendment) Bill, 2020 relating to 'Size of letters and figures' is, as under:-

Section 10 of COTPA, 2003	Deletion/Insertion proposed in COTPA (Amendment) Bill, 2020
<p>No specified warning or indication of nicotine and tar contents in cigarettes and any other tobacco products shall be deemed to be in accordance with the provisions of this Act if the height of each letter or figure, or both the used on such warning and indication is less than the height as may be prescribed by rules made under this Act.</p>	<p>No specified warning in cigarettes and any other tobacco products shall be deemed to be in accordance with the provisions of this Act if the height of each letter or figure, or both the used on such warning and indication is less than the height as may be prescribed by rules made under this Act.</p> <p><u>Insertion of a new Section 10A</u></p> <p>10A. (1) No person shall directly or indirectly, produce, supply or distribute, import, sell, offer for sale or permit sale of illicit cigarette or any other tobacco product.</p> <p>(2) The manner in which illicit cigarette or any other tobacco product shall be identified, tracked or traced, be such as may be specified in the rules made under this Act.</p> <p>Explanation. – For the purpose of this section, the expression, "illicit" means any practice or conduct prohibited by law and which relates to production, supply, distribution, import and sale, including any practice or conduct intended to facilitate such activity.</p> <p>(3) No person shall directly or indirectly, produce, supply or distribute, import, sell, offer for sale or permit sale of cigarette or any other tobacco product without license, registration or permission required by any law for the time being in force, of the Central Government or a State Government."</p>

The Committee are constrained to note that re-wording of Section 10 of COTPA, 2003 is aimed at deleting the words 'nicotine and tar contents' which would further liquidate the overall framework of the existing COTPA, 2003. In this connection, the Committee would like to reiterate that the 'Memorandum regarding Delegated Legislation' attached to COTPA Bill, which was introduced in Rajya Sabha [Bill No. XXIX of 2001], there was a specific mention of '..specifying the form and manner in which warning shall be given in respect of cigarettes, to specify the maximum permissible nicotine and tar contents in cigarettes..'

Now that more than 18 years have elapsed since the formulation of an Act in the form of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act to primarily deal with 'Cigarettes and other Tobacco Products' and also the averments made by the Ministry to the effect that as per the second round of Global Adult Tobacco Survey [GATS-2016-17], 28.6 per cent [26.7 crore] adults in the country, aged 15 and above currently use tobacco in some form and the prevalence of any form of tobacco use has decreased significantly by 6 percentage points from 34.6 per cent [2009-10] to 28.6 per cent [2016-17], the Committee are of firm opinion that any amendment to the COTPA should contain more stringent provisions so that the target for relative reduction in the prevalence of tobacco use, as envisaged in the National Health Policy of 2017, be brought down to 30 per cent by 2025. The Committee, therefore, disapprove the deletion/omission of words 'indication of nicotine and tar contents', as contained in Section 10, in the proposed Amendment Bill.

On the aspect of insertion of a new Section as 10A in the Amendment Bill, the Committee has meticulously considered the objective of said insertion. Though, the proposed insertion has not shaken the basic framework of the COTPA, 2003, the Committee would like to point out that the subject of Section 10 relates to 'Size of Letters and Figures' and the proposed insertion of a new Section primarily deals with illicit cigarette or any other tobacco products. As such, the said insertion, if effected, would be out of context and might lead to misinterpretation by various stakeholders. The Committee, therefore, recommend that the said insertion could find place in the Amendment Bill, under a distinct 'Heading'.

G. Testing Laboratory for nicotine and tar contents – Substitution of Section 11

A comparative analysis of the Section 11 of the COTPA, 2003 and the proposed substitution *vide* COTPA (Amendment) Bill, 2020 relating to 'Testing Laboratory for nicotine and tar contents' is, as under:-

Section 11 of COTPA, 2003	Substitution in COTPA (Amendment) Bill, 2020
For purposes of testing nicotine and tar contents in cigarettes and any other tobacco products the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory as that Government may deem necessary.	For the purposes of testing and regulating the contents and emissions in cigarettes and any other tobacco products, the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory or laboratories as the Government may deem necessary.

The Committee note that the proposed substitution of Section 11 of COTPA, 2003 also relates to deleting the aspect of 'nicotine and tar contents in cigarettes' and substituting it with 'contents and emissions in cigarettes'. In this regard, the Committee wish to point out that Section 11 is one of the determining factors for protecting the passive smokers, including women and children. It is also an acknowledged fact that the testing laboratories could measure 'emission' of cigarettes only when they are able to unambiguously establish the 'nicotine and tar contents'. In the opinion of the Committee, any hasty deletion of 'tar and nicotine contents' and substituting it by 'contents and emissions' would transform the said Amendment Bill and opaque document - fraught with inconsistencies. The Committee, therefore, disapprove the substitution of Section 11 in the Amendment Bill, 2020 and recommend that status quo should be maintained.

(H) Power to give option to pay costs in lieu of confiscation – Deletion of words in Section 15(2)

A comparative analysis of the Section 15(2) of the COTPA, 2003 and the proposed deletion of words *vide* COTPA (Amendment) Bill, 2020 relating to 'Power to give option to pay costs in lieu of confiscation' is, as under:-

Section 15(2) of COTPA, 2003	Deletion in COTPA (Amendment) Bill,
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	2020
On payment of the costs ordered by the court, the seized packages shall be returned to the person from whom they were seized on condition that such person shall, before making any distribution, sale or supply of such packages of cigarettes or other tobacco products, get the specified warning and indication of nicotine and tar contents incorporated on each such package.	On payment of the costs ordered by the court, the seized packages shall be returned to the person from whom they were seized on condition that such person shall, before making any distribution, sale or supply of such packages of cigarettes or other tobacco products, get the specified warning and incorporated on each such package.

The Committee note that the words 'nicotine and tar contents' are again proposed to be deleted/omitted in the Amendment Bill. The Committee have systematically analysed all the provisions of COTPA, 2003 vis-a-vis the proposals contained in the Amendment Bill and find that the entire exercise of said amendment seems to have been centred towards deleting the 'tar and nicotine contents', wherever this phrase appears in any of the Sections. The requirement of retaining 'nicotine and tar contents', as analysed in the foregoing paragraphs, therefore, also holds good in the context of Section 11. The Committee, thus, recommend that any re-wording of the relevant Section by way of deleting 'nicotine and tar contents' in the Amendment Bill should not be carried out and status quo should be maintained.

(I) Power to add any tobacco products in the Schedule – Substitution of Section 30 and insertion of new Section as 30(A)& (B)

A comparative analysis of substitution of Section 30 of the COTPA, 2003 and the proposed insertion of a new Section *vide* COTPA (Amendment) Bill, 2020 relating to 'Power to add any tobacco products in the Schedule' is, as under:-

Section 30 of COTPA, 2003	Substitution and insertion in COTPA (Amendment) Bill, 2020
The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any other tobacco product in respect of which it is of opinion that advertisements are to be prohibited and its production, supply and distribution is required to be regulated	The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add to, or, omit from, the Schedule any tobacco products and thereupon the Schedule shall be deemed to have been amended accordingly.

<p>under this Act, and thereupon the Schedule shall in its application to such products be deemed to be amended accordingly.</p>	<p><u>Insertion of a new Section 30A</u> Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.</p> <p><u>Insertion of a new Section 30B</u> The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force prohibiting trade and commerce, production, supply and distribution of cigarettes and any other tobacco products.</p>
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The Committee find that Section 30 of COTPA, 2003 relates to power of the Central Government to add any tobacco products in the Schedule, whereas, in the Amendment Bill, it has been proposed by the Ministry to omit any tobacco product from the Schedule. The Committee also note that pursuant to Section 2(p) of the COTPA, 2003, a Schedule has been appended, which includes tobacco products, viz., Cigarettes, Cigars, Cheroots, Beedis, Cigarette Tobacco, Pipe Tobacco and Hookah Tobacco, Chewing Tobacco, Snuff, Pan Masala, Gutkha and Tooth Powder containing Tobacco.

In this context, the moot question that the Committee is required to address is whether there should be provisions in the law for giving powers to the executive to delete/omit any tobacco product from the Schedule by way of subordinate legislation. The two principal factors of COTPA, 2003 are adding any other tobacco product and *vice versa*. Since deletion of a specific tobacco product from the Schedule falls within the domain of Legislature, which is invariably preceded by threadbare discussions, the Committee are not able to comprehend as to why our Executive Authorities, in the 21st century, persist with such an anomalous practice. Moreover, it is a common logic that in case, the Ministry 'omits' any tobacco product from the Schedule, anybody could draw an inference that after such deletion, a specific 'tobacco product' would now be an item of 'food', which could even be consumed by

women and children. The Committee, thus, disapprove the relevant amendment to Section 30 of COTPA, 2003 as it gives wide discretion to the Executive Authorities. Accordingly, the proposed substitution of Section 30 should not be effected in the Amendment Bill.

On the aspect of insertion of a new Section(s) as 30A & 30B in the Amendment Bill, the Committee find that the language and contents of the both the proposed new Sections are contradictory. On the one hand, Section 30A emphasises that 'the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained therewith contained in any other law', whereas, on the other hand, Section 30B makes a conflicting clarification that 'the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law...prohibiting trade and commerce, production, supply and distribution of cigarettes and any other products.

In this context, the Committee are able to easily make a guess on the intent of inserting a new Section as 30B which is, perhaps, an attempt to legalize the provisions contained in Regulation 2.3.4 of Food Safety and Standards (Prohibition and Restriction on Sales) Regulations, 2011, which is presently under active examination by the Committee on Petitions, Lok Sabha. Since the Committee have their own reservations on the aspect of 'excessive delegation by the Executive Authorities' and also the fact that FSS Act/Regulations should be confined to the aspects connected with 'Food' and 'Cigarettes and other Tobacco Products' ought to be dealt with only under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003, the Committee recommend that the a new Section 30A could be inserted by adding the following words:-

"In case of any conflict vis-a-vis any other law in regard to 'cigarettes and other tobacco products, the provisions contained in the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act would prevail."

As regards the proposal for insertion of a new Section 30B, the Committee recommend that this should not form part of the Amendment Bill, 2020.

(J) Power of Central Government to make rules – Substitution of Section 31(2) (b) and deletion of words/phrase in Section 31(2)(d)

A comparative analysis of substitution of Section 31(2)(b) of the COTPA, 2003 and the proposed deletion of words/phrase in Section 31(2)(d) *vide* COTPA (Amendment) Bill, 2020 relating to 'Power of Central Government to make rules' is, as under:-

Section 31(2) of COTPA, 2003	Substitution and deletion of words/phrase in COTPA (Amendment) Bill, 2020
31(2) (b) specify the maximum permissible nicotine and tar contents in cigarettes or other tobacco products under the proviso to sub-section (5) of section 7.	31(2) (b) specify the manner in which the illicit cigarette or any other tobacco product shall be identified, tracked or traced, under sub-section (2) of section 10A.
(d) specify the height of the letter or figure or both to be used in specified warning or to indicate the nicotine and tar contents in cigarettes or other tobacco products under section 10.	(d) specify the height of the letter or figure or both to be used in specified warning in cigarettes or other tobacco products under section 10.

The Committee note that the proposal to amend Section 31(2) (b) & (d) in the Amendment Bill, 2020 is primarily to delete the words/phrase 'nicotine and tar contents' in cigarettes or other tobacco products. Since the relevant Section in COTPA, 2003 relates to 'Power of Central Government to make rules' and the Committee on Petitions, after due diligence and exhaustive study of the subject under examination, have already impressed upon the Ministry to retain the words/phrase, i.e., 'nicotine and tar contents' in the Amendment Bill, 2020, the Committee recommend that status quo should be maintained.

COTPA (Amendment) Bill, 2020 – An Overview

18. The Committee note that the proposed Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) [Amendment] Bill, 2020, purportedly, seeks to effectively address the harmful effects of cigarettes and other tobacco products in the country

by making substantive changes in the COTPA, 2003, for which it has been hosted in the public domain for pre-legislative consultations, whereby, suggestions of the public were invited on the same. In the midst of this, pursuant to the receipt of representations, the Committee got an opportunity to participate in the said pre-legislative process.

19. The Committee are happy to note that during the deliberations with the representatives of the Ministry of Health & Family Welfare, especially, with the senior officers, looking after the affairs of Tobacco Control Division, the Secretary, Ministry of Health & Family Welfare was candid to convey that not only the comments and suggestions received from the public on the draft Bill would be given due consideration, but also the guidance and suggestions given by the Committee on Petitions, on this issue, would be appropriately looked into. Encouraged by this, the Committee on Petitions *vide* their communication dated 17 March, 2021 urged the Ministry of Health & Family Welfare to finalize the proposed Amendment Bill i.e., the pre-legislative consultation only after they are able look into all the aspects/intricacies connected with the regulation of cigarettes and other tobacco products.

20. It was against this backdrop that the Committee not only invited the representationist to depose before them but also held a series of discussions with the representatives of the Ministry of Health & Family Welfare. This elaborate exercise has set the stage for examining almost all the 'Sections' of Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 which are now proposed to be amended/omitted/substituted by way of proposed Cigarettes and Other

Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) [Amendment] Bill.

21. The Committee on Petitions, while undertaking the onerous exercise of threadbare examination of the Amendment Bill, relied upon the perceptions, perspectives, priorities and problems of the affected persons/stakeholders along with the deficiencies, if any in the effective implementation of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 *vis-a-vis* weighing the necessity of bringing an amended version of the Act.

22. The Committee were, therefore, able to identify ten 'key issues' which were incorporated in the Amendment Bill and after meticulously examining each of them in terms of legal provisions, jurisprudence and its implementation at the ground level, suitable observations/recommendations along with cogent reasoning have been given in the preceding paragraphs. However, during the course of examination, the Committee have noticed that the Amendment Bill, 2020 is fraught with various deficiencies and inconsistencies *vis-a-vis* the existing provisions contained in various Sections of COTPA, 2003. The Committee are apprehensive that in case, the Ministry proceeds further by way of concluding their pre-legislative consultations and get into the second stage of finalizing the Amendment Bill, it would not be termed as a 'good piece of legislation' by the majority of stakeholders and public at large. At that stage, even the Ministry of Law and Justice, Department of Legal Affairs might raise similar aspects which have currently been noticed by the Committee and appropriately dealt with in the preceding paragraphs.

23. The Committee, therefore, recommend that the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce,

Production, Supply and Distribution) [Amendment] Bill, 2020 should be withdrawn and thereafter re-examined with a new perspective by invariably following the spirit of 'harmony' and 'balance' in place of 'confrontation' and 'suspicion'. After completion of this exercise, the draft Bill should be re-circulated for eliciting the comments/views of public. While undertaking such re-examination, the Ministry of Health & Family Welfare should also take into account the observations/recommendations made by the Committee in this Report so that formulation of a new Amendment Bill should not be unnecessarily challenged by the stakeholders/public before the Court of Law for being 'opaque' and 'asymmetrical'. The Committee would like to be apprised of the action taken by the Ministry at the right earnest.

NEW DELHI;

HARISH DWIVEDI,
Chairperson,
Committee on Petitions.

12 December, 2022

21 Agrahayana, 1944 (Saka)

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ALL INDIA BIDI INDUSTRY FEDERATION

ANNEXURE I

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20 January 2021

MOST URGENT

To,
Shri Om Birla,
Speaker of Lok Sabha,
Government of India,
New Delhi.

**Sub : Proposed amendments to Cigarettes and Other Tobacco Products
(Prohibition of Advertisement and Regulation of Trade and Commerce,
Production, Supply and Distribution) Act (COTPA) , 2003**

Hon'ble Speaker,

Sir, We are organisation representing Bidi Manufacturers and Bidi Manufacturers' Association across the country. We have more than 200 members. Bidi Industry is a cottage industry and provides employment to over 85 lacs bidi workers most of them are in rural area that too women.

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The Industry is not getting any support/incentive from Government. Bidi manufacturing factories do not contribute to any pollution nor it requires power and machinery. The Federation aims to protect the interest of all stakeholders of the Bidi Industry.

Sir, Ministry of Health and Family Welfare, Government of India, proposes to amend COTPA 2003. The said Ministry has put the said Bill on website for comments/views. The last date is 31st January, 2021.

Sir, We have gone through the contents of the proposed amendment. The proposed changes in brief along with its impact is given below.

Section	Proposed Amendments in brief	Impact on Bidi Industry
5	Bidi Manufacturers will not be able to advertise their product on the bidi bundle. All bidi bundles will not bear brand name. Shopkeepers will not be able to put sign board outside/inside the shop, they are not allowed to display bidi bundles.	This will affect sales of bidis. Smokers won't be able to identify his brand and will not know whether the shopkeeper sells bidis or not.
5	Trade discounts, trade scheme, etc not permitted. Stock clearance sale in one or other form prohibited.	Sales of bidis will be affected.
6	Shop keepers can't sell bidis to person below the age of 21 years instead of 18 years at present	This is likely to reduce sales of bidis between 15-20%.
7(2)	Bidis must be sold in full pack. Bidis can't be sold loose.	If implemented, this provision is likely to affect sales of bidis drastically, since many smokers buy loose bidis due to affordability issue
7(5)	Government will prescribe minimum bidis in a pack. It may provide for standard pack of 25 bidis. If so, then all existing small packings will have to be discontinued.	This will badly affect sales.
10A(3)	Requirement of registration, License, permission introduced for manufacturers, traders and retailers.	This is unnecessary and cumbersome for retailers
20(2)	For selling bidis without specified health warning.	These fines are very steep and will make retailers

	Fine for 1 st conviction increased from upto Rs.1,000/- to Rs.50,000/- Fine for subsequent conviction increased from upto Rs.3,000/- to Rs.1,00,000/-.	bankrupt.
21(1)	Fine for smoking in public places. Fine has been increased from upto Rs.200/- to Rs.2,000/-	This is steep increase in fine which bidi smokers can't afford. Effectively smoking at home is only permitted
24	This is for selling bidis to minors and selling bidis from shops near to educational institutes. Punishment of imprisonment upto 7 years and fine upto Rs.1,00,000/- provided. Earlier there was only fine upto Rs.200/-.	This is very dangerous provision. If implemented strictly almost 70-80% shops selling bidis will have to be closed down, esp. in cities. This will impact drastically sales of bidis.
27	Violation of Sec.5,6,7 & 10A shall be cognizable.	Police can arrest the offender. Bail can be granted by Magistrate only. Earlier police officer was allowed to grant bail.
28	Offence regarding sales of bidis to persons below the age of 21 and sale of bidis near educational institutions are now made non compoundable.	Retailers will be ruined.
30A	The Act to have overriding effect. Relief granted to bidi manufacturers under Packaged Commodity Rules from disclosing MRP and month of manufacturer will go.	Difficult to implement, MRP & Month of manufacture in practice

Sir, most of the proposed amendments are directly going to affect sales of bidis drastically. This in turn will affect production of bidis drastically.

As a result livelihood of

- i. Over 2.60 crores tobacco farmers and farm workers.
- ii. Over 85 lacs bidi workers.
- iii. Over 40 lacs tribals engaged in plucking tendu leaves and
- iv. Over 72 lacs traders, retailers/ panwalas is going to be affected.

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Sir, proposed increase in fines for offences which are of minor nature are draconian which will only open flood gate of corruption across the country.

Sir, we humbly request you to impress upon the Ministry of Health & Family Welfare, Government of India and request them to withdraw the proposed amendments in the interest of livelihood of 4.57 crore people dependent on tobacco industry.

Thanking you,

Yours faithfully,
For All INDIA BIDI INDUSTRY FEDERATION,

Rajivkant P. Patel

R.P. PATEL
PRESIDENT

Dated: 23rd March, 2021

AMENDMENT - I

To,

Dr. Virendra Kumra,
Hon'ble Chairman,
Committee of Petition - Lok Sabha,
Parliament of India,
New Delhi - 110001

IN RE : SIXTY EIGHTH REPORT OF COMMITTEE OF PETITIONS (SIXTEENTH LOKSABHA) DATED 28TH FEBRUARY, 2019, PRESENTED TO THE LOK SABHA SPEAKER ON 09.03.2019.

SUBJECT : AMENDMENTS PROPOSED IN CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003 VIDE COTPA AMENDMENT BILL, 2020 & ITS IMPACT OF BANNING SWADESHI CHEWING TOBACCO PRODUCTS

Hon'ble Sir,

We are an Association of Chewing Tobacco manufacturers having members across India. The Association has been established to promote and protect the trade, commerce and industries in India connected with tobacco and allied products.

On the issue to save livelihood of crores of Tobacco Farmers & Farm Labourers, workers employed in Tobacco Industry, Retailers Employed in Tobacco Retail Business, Farmers of Kveda and Mentha, who are totally dependent on Tobacco Industry, a petition was filed with this Hon'ble Committee of Petition.

The Committee after recording the evidence of various stakeholders & ministries vide its order dated 28th February, 2019 had called for the action taken report from various Ministries on the issue of livelihood.

To our utter shock, when all these issues are still pending, the Ministry of Health and Family Welfare has proposed certain amendments in COTPA Act, vide COTPA Amendment Bill, 2020, which have the impact of banning Swadeshi Chewing Tobacco products, thus taking away the livelihood of crores and crores of tobacco farmers, paan patta farmers, flower farmers, farm labour, other workers and labour engaged in manufacturing of Chewing Tobacco, paan walas etc are totally dependent on Swadeshi Chewing Tobacco industry, leaving them and their families to starve, thus forcing the poor farmers to end their existence. It is informed that till date, there is no instance of any tobacco farmer ending his life because of agricultural distress.

We are enclosing herewith a brief note along with the focus points on the proposed COTPA Amendments Bill 2020, alongwith copy of the proposed amendment bill of 2020 and also of amendment bill of 2015 (which was proposed, but withdrawn as opposed), giving in detail as to why it has led us to believe that these amendments will have the impact of banning Swadeshi Chewing Tobacco products.

We thus solicit the kind indulgence of this Hon'ble Committee in the matter under reference, with the request to save the livelihood of crores and crores of people associated with this swadeshi industry by withdrawing the proposed amendments.

We will also appreciate if a personal audience is granted to us to explain the issue under reference.

Warm Regards.

For SMOKELESS TOBACCO FEDERATION (INDIA)

Sanjay Bechan

(SANJAY BECHAN)
Executive Director

Enclosed as above.

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**REPRESENTATION ON COTPA AMENDMENTS PROPOSED VIDE CIGARETTES AND
OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND
REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND
DISTRIBUTION) AMENDMENT BILL, 2020**

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BULLET POINTS

ON PROPOSED COTPA AMENDMENTS WHICH HAVE THE IMPACT OF BANNING SWADESHI CHEWING TOBACCO

1. Section 7(2) says that the sale of Tobacco Products shall be in sealed, intact and original packing. Paan walas use Chewing Tobacco after opening the pack, putting it in Paan to make Zarda Paan. This will ban this Zarda Paan and will virtually close the Paan shops, thus putting an end to the centuries old tradition and culture of Zarda Paan and depriving the lakhs of poor paanwalas of their livelihood.
2. Section 11 is proposing regulation of contents of tobacco products, which seems quite deceiving and manipulative as they can ban scents, flavours etc in Chewing Tobacco and without it there cannot be any Chewing Tobacco as it will be just Raw Tobacco. Please note, earlier also in the year 2015 they had proposed that no flavours can be added to tobacco products, thus virtually banning Chewing Tobacco. Under opposition from farmers and retailers losing their livelihood, the Government considered the same and withdrew. Now again, efforts are being made to bring the said regulations under the grab of regulating the contents.
3. Section 30 proposes power to "OMIT" any tobacco product from COTPA. Such a power is to be exclusively vested and retained by Parliament only and cannot be delegated to anybody, as this will give unfettered power to remove any Tobacco Products from the purview of COTPA and ban it under any other law or Act. Any attempt to omit any tobacco product from the schedule of COTPA is highly unwanted, illogical and against COTPA itself, which has taken under its control tobacco in all its fields as a Special Act.
4. Section 30B says that the provisions of COTPA shall be in addition to and not in derogation of the provisions of any other law for the time being in force prohibiting trade and commerce, production, supply and distribution of cigarettes and other tobacco products. COTPA is a special Act to deal with Tobacco Products and no other Act or law have power to legislate on tobacco products. This will be nothing, but a tool in the hands of various State Governments and/or various other laws and Act to ban Chewing Tobacco against the spirit of COTPA.
5. Section 7(5) propose to prescribe minimum quantity to be packed in Tobacco Pack. The Chewing Tobacco products like Zarda, Khaini etc are consumed by poor low-income group people like workers, labourer etc, who can only afford the low-price pack. Increase in pack size will increase the price of the pack, pushing them to buy spurious cheap tobacco products, giving a boost to the spurious and illicit tobacco products.
6. Section 10(3) have proposed requirement of license for selling tobacco products. Paanwalas or small Retailers are illiterate people, having small kiosks. The proposed requirement of license for selling tobacco products will bring Inspector Raj and tantamounts to closure of Paan Kiosks.

The proposed amendments would only instigate ban of Swadeshi Chewing Tobacco (smokeless tobacco), which will led to rise of Tobacco Mafia who will take control on this product. Also, the revenue lost by the exchequer would be their net gain in addition to the profit generated by them by illegal sale, thus making them surplus with cash for their terrorist and other nefarious activities.

Ban on Chewing Tobacco (smokeless tobacco) will also force the consumers to shift to smoking form of tobacco like cigarettes etc for their nicotine craving, thus pushing the consumers to a form of tobacco consumption, which is more fatal and harmful, with 4 times the secondhand smokers to every active smokers and the number of fatality will increase multifold to a level, which we cannot even think of.

The Association for the last one decade is pressing hard to fix standards of various tobacco products, but no efforts have been done by the Government for the same, thus allowing supply of sub-standard products to the consumers. Interestingly, all these standards of all kind of tobacco products are already in place, having been fixed by Bureau of Indian Standards (BIS) with years of research. What is needed is just to adopt and enforce these standards in COTPA.

BRIEF NOTE ON COTPA AMENDMENTS PROPOSED VIDE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) AMENDMENT BILL, 2020

We are an Association of Chewing Tobacco manufacturers having members across India. The Ministry of Health and Family Welfare has proposed certain amendments in the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) vide COTPA Amendment Bill, 2020, which were placed on public domain, inviting comments from public on mail, on or before 31st January, 2021 by 5 PM.

The Association has already mailed its comments to the said amendments. However, we will like to highlight that some of the proposed amendments shall have the effect of banning the Chewing Tobacco products.

Some of such proposed amendments, with the impact these will have, are given hereunder :

1. **PROVISO TO SECTION 7(2) : PROPOSES THAT THE SALE OF TOBACCO PRODUCT SHALL BE IN SEALED, INTACT AND ORIGINAL PACKAGING.**

Paan walas open the pack to use Chewing Tobacco by putting it in Paan to make Zarda Paan. This will bar this Zarda Paan and will virtually close the Paan shops, thus putting an end to the centuries old tradition & culture of Paan, depriving lakhs of poor paanwalas of their livelihood.

2. **SECTION 7(5) : NO PERSON SHALL, DIRECTLY OR INDIRECTLY, PRODUCE, SUPPLY OR DISTRIBUTE CIGARETTES OR ANY OTHER TOBACCO PRODUCTS UNLESS EVERY PACKAGE OF CIGARETTES OR ANY OTHER TOBACCO PRODUCTS PRODUCED, SUPPLIED OR DISTRIBUTED BY HIM IS HAVING MINIMUM QUANTITY AS MAY BE PRESCRIBED.**

Chewing Tobacco products like Zarda, Khaini etc are consumed by poor low-income group people like workers, labourer etc, who can only afford the low-price pack. Increase in pack size will increase the price of the pack, thus pushing them to buy spurious cheap tobacco products, giving a boost to the spurious and illicit tobacco products.

3. **SECTION 11 : FOR PURPOSE OF TESTING AND REGULATING THE CONTENTS AND EMISSION IN CIGARETTES AND ANY OTHER TOBACCO PRODUCTS THE CENTRAL GOVERNMENT SHALL BY NOTIFICATION IN THE OFFICIAL GAZETTE GRANT RECOGNITION TO SUCH TESTING LABORATORY AS THAT GOVERNMENT MAY DEEM NECESSARY.**

The Health Ministry, vide Section 11 is proposing regulation of contents of tobacco products, which seems quite deceiving and manipulative as they can ban scents/flavours etc and without it there cannot be any Chewing Tobacco as it will be just Raw Tobacco. Earlier also in the year 2015 MOHFW had proposed that no flavours can be added to tobacco products, thus virtually banning Chewing Tobacco. Amidst opposition, the Government had to withdraw the same. Now again, efforts are being made to bring the said regulations under the grab of regulating the contents.

4. **SECTION 10(3) : NO PERSON SHALL DIRECTLY OR INDIRECTLY, PRODUCE, SUPPLY OR DISTRIBUTE, IMPORT, SELL, OFFER TO SELL OR PERMIT SALE OF CIGARETTE OR ANY OTHER TOBACCO PRODUCT WITHOUT LICENSE, REGISTRATION OR PERMISSION REQUIRED BY ANY LAW FOR THE TIME BEING IN FORCE, OF THE CENTRAL GOVERNMENT OR A STATE GOVERNMENT.**

Paanwalas or small Retailers are illiterate people, having small kiosks. The proposed requirement of license or registration for selling tobacco products will bring Inspector Raj and tantamounts to closure of Paan Kiosks. Moreover, from their Paan Kiosks, they also sell other confectionery and grocery items as well, like candies, soft-drinks, biscuits, namkeens etc,

whereas post licensing, they won't be allowed to sell inspite of the fact that there is no such restrictions worldwide on sale of confectionery and grocery items by tobacco shops.

5. SECTION 30 - POWER TO ADD ANY TOBACCO PRODUCTS IN THE SCHEDULE : THE CENTRAL GOVERNMENT, AFTER GIVING BY NOTIFICATION IN THE OFFICIAL GAZETTE, NOT LESS THAN THREE MONTHS' NOTICE OF ITS INTENTION SO TO DO, MAY, BY LIKE NOTIFICATION, ADD TO OR OMIT FROM THE SCHEDULE ANY OTHER TOBACCO PRODUCTS AND THEREUPON THE SCHEDULE SHALL BE DEEMED TO BE AMENDED ACCORDINGLY.

Power to "OMIT" any tobacco product from COTPA has to be vested and retained by Parliament only and cannot be delegated to anybody, as this will give unfettered power to remove any Tobacco Products from the purview of COTPA and ban it under any other law or Act. Further, any attempt to omit tobacco product from COTPA is highly unwanted, illogical and against COTPA itself, which has taken under its control tobacco in all its fields as a special Act.

6. SECTION 30B : "THE PROVISIONS OF THIS ACT SHALL BE IN ADDITION TO AND NOT IN DEROGATION OF THE PROVISIONS OF ANY OTHER LAW FOR THE TIME BEING IN FORCE PROHIBITING TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION OF CIGARETTES AND OTHER TOBACCO PRODUCTS."

COTPA is a special Act to deal with Tobacco Products, wherein the Central Government has taken in its control all Tobacco Products in all its field, may be production, supply, distribution, advertisement. It leaves no scope for any other law to legislate on Tobacco products. It will become a tool in the hands of various State Governments and/or various other laws and Act to ban Chewing Tobacco against the preamble and spirit of COTPA.

7. SECTION 5 : EXPLANATION (C)

"INDIRECTLY ADVERTISE" INCLUDES BUT IS NOT LIMITED TO THE FOLLOWINGS :

- (i) THE USE OF A NAME OR BRAND OF TOBACCO PRODUCTS FOR MARKETING, PROMOTING OR ADVERTISING OTHER GOODS, SERVICES AND EVENTS;
- (ii) THE USE OF A MARK OR TRADE MARK OF TOBACCO PRODUCTS FOR MARKETING, PROMOTING OR ADVERTISING OTHER GOODS, SERVICES AND EVENTS;

We understand that the intent of the Government is to target surrogate advertisement, although the surrogate advertisements are very much prevalent in many other products like liquor etc. But here, the wordings used inadvertently debar legitimate businesses advertising their non-tobacco wares also. So, the provisions of indirect advertising need to be modified so that it does not debar or create an hinderance in advertisement of a legitimate non-tobacco product of a company also having a tobacco product.

8. THE EXPLANATION TO SECTION 10(A)2

EXPLANATION - FOR THE PURPOSE OF THIS SECTION, "ILLICIT" MEANS ANY PRACTICE OR CONDUCT PROHIBITED BY LAW AND WHICH RELATES TO PRODUCTION, SUPPLY, DISTRIBUTION, IMPORT AND SALE, INCLUDING ANY PRACTICE OR CONDUCT INTENDED TO FACILITATE SUCH ACTIVITY.

The meaning given to "illicit" i.e. any practice or conduct prohibited by law is so wide that it almost borders on the illogical. The aim, and as it should indeed be so, would appear to be to monitor and control illegal production and supply of Tobacco Products – whether through domestic or foreign sources. In the present format, even minor infractions of any law in force, like violation of Environment Protection Law, violation of any Labour Law etc would automatically result in the product becoming an illicit product, with draconian results.

WHAT THESE PROPOSED AMENDMENTS WILL LEAD TO :

1. The proposed amendments would only instigate ban of the Swadeshi Chewing Tobacco (smokeless tobacco). Ban on Chewing Tobacco will lead to rise of the Tobacco mafia who will be more than happy to take control on this product and get directly benefited by the ban. Also, the revenue lost by the exchequer will be their net gain in addition to the profit generated by them by illegal sale, thus making them surplus with cash for their terrorist and other nefarious activities.
2. The ban of the Chewing Tobacco products means putting an end to Swadeshi Industry, which is a centuries old heritage of culture and customs of India, thereby giving a boom to the Multinational Companies. So, in case of ban on Chewing Tobacco Products, the consumers will shift to smoking form of tobacco like cigarettes etc for their nicotine craving, thus pushing the consumers to a much more fatal form of tobacco consumption, which has both active and passive impact.

Perception is always created as to prevalence of smokeless tobacco as compared to smoking tobacco that smokeless tobacco consumption is more, hence bulk of the tobacco legislation targets smokeless tobacco, although, admittedly, as per GATS report, in addition to 10 crores of Indian who smoke tobacco, there is impact of secondhand smoke on non-smokers vulnerable class, which is almost 4 times the active smokers thus taking the effective number to almost 50 crores. As compared to the this, the users of smokeless tobacco are just 20 crores and this does not have any impact on others. So, targeting smokeless tobacco on false prevalence is factually malicious & wrong.

With the ban on Chewing Tobacco products, the consumers will shift to smoking cigarettes. This shift is not just of 20 odd crores chewers to smoking, but it will also create 80 crores secondhand smokers too. So, the number of active smokers and passive smokers will multiply multifold, so does the fatality rate because of smoking, which will increase to a level which we cannot even think of, whose ratio is currently around 9 lacs as compared to few thousands attributable to smokeless. Admittedly, as per GATS 2, there is reduction of 30% in consumption of smokeless tobacco. As against this, the consumption of smoking has seen an increase, which substantiate the fact that the smokeless consumer does not quit, but switched to smoking.

Inspite of the above facts, smokeless tobacco is always at the receiving end, whereas no steps are being taken and no provisions have been proposed for the safety and benefit of the vulnerable class in utter disregard to the GATS 1 & 2 and Preamble to COTPA 2003, which talks about legislation and effective measures for protecting citizens with special attention to risk groups such as pregnant women and children from involuntary exposure to tobacco smoke.

Is the Government pushing and promoting Cigarette by banning Chewing Tobacco products ?

Here, we would also like to point out that earlier also during the year 2015, some amendments were proposed by the Ministry of Health & Family Welfare, which were having the effect of banning Chewing Tobacco products and were opposed by manufactures, farmers, paan walas, consumers etc, losing their livelihood. The Ministry considered the same and withdrew the same. Now again, similar amendments, which have the effect of banning Chewing Tobacco have been proposed, giving it different colour.

With the ban on Chewing Tobacco Products, crores and crores of people associated with it in the form of Tobacco Farmers, Paan Patta Farmers, Flowers Farmers, Farm Labours, Paan Walas and small retailers, workers involved in manufacturing and all other ancillary activities will go jobless and lose their livelihood and they and their families will be forced to starve.

We thus request you to withdraw these proposed amendments and, not to take away the Livelihood of crores and crores of people.

LOOKING FORWARD TO SAVING LIVELIHOOD OF ALL OF US.



Dated: 29th January, 2021

Shri Pradip Kumar Pal,
Under Secretary to the Government of India,
Ministry of Health and Family Welfare,
(Tobacco Control Division),
Nirman Bhawan,
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**Subject : Comments on the proposed Cigarettes and other Tobacco Products
(Prohibition of Advertisement and Regulation of Trade and Commerce,
Production, Supply and Distribution) Amendment Bill, 2020**

Sir,

1. We are an Association of Chewing Tobacco manufacturers having members across India. The Association has been established to promote and protect the trade, commerce and industries in India connected with tobacco and allied products.
2. We appreciate the initiative of the Ministry of Health and Family Welfare for proposing the amendments in the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter referred to as "COTPA") to make the Act more effective and take complete control on the Tobacco Industry, be it production, distribution, supply, trade, commerce etc.
3. This representation is being addressed to seek your kind indulgence on some of the proposed amendments which the chewing tobacco industry feels are self-contradictory and do not reflect the true intent of the Government in its letter and spirit.
4. Although, as already requested in our Video Conference meeting of 31st December, 2020, the notes on the proposed amendments have not been shared so as to enable us to understand the true spirit behind the said proposed amendments, but still, we are taking the liberty of addressing our preliminary comments on the amendments basis our understanding, that in our view, requires your kind reconsideration and review.

Sanjay Behera

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5. **AMENDMENT IN PREAMBLE :**

The proposed amendment seeks to amend the preamble of COTPA to include "AND WHEREAS, India is a signatory to the World Health Organization Framework Convention on Tobacco Control [WHO FCTC] adopted in Geneva, Switzerland on 21st day of May, 2003 which came into force on the 27th day of February, 2005".

We strongly recommend that to make the amendment in preamble purposeful and effective, the definition clause of FCTC be adopted in toto. For the kind reference of the ministry, we are reproducing the same as under:

(a) "illicit trade" means any practice or conduct prohibited by law and which relates to production, shipment, receipt, possession, distribution, sale or purchase including any practice or conduct intended to facilitate such activity;

(b) "regional economic integration organization" means an organization that is composed of several sovereign states, and to which its Member States have transferred competence over a range of matters, including the authority to make decisions binding on its Member States in respect of those matters;

(c) "tobacco advertising and promotion" means any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;

(d) "tobacco control" means a range of supply, demand and harm reduction strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke;

(e) "tobacco industry" means tobacco manufacturers, wholesale distributors and importers of tobacco products;

(f) "tobacco products" means products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing;

(g) "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;

6. **SECTION 5 : EXPLANATION INSERTED THEREIN : EXPLANATION (C)**

The Explanation (c) to Section 5 is reproduced as under :

"Indirectly advertise" includes but is not limited to the followings :

- (I) the use of a name or brand of tobacco products for marketing, promoting or advertising other goods, services and events;
- (II) the use of a mark or trade mark of tobacco products for marketing, promoting or advertising other goods, services and events;
- (III) the marketing of tobacco products with the aid of a brand name or

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trade mark which is known as, or in use as, a name or brand for other goods and services;

- (iv) the use of particular colours and layout and/or presentation which are associated with particular tobacco products; and*
- (v) the use of tobacco products and smoking situation when advertising other goods and services;*

- i. The definition of "indirect advertising", which has been inserted in terms of Explanation (c) is too wide, almost bordering on being vague, and is so all encompassing that it tends to treat totally different circumstances with the same yardstick.
- ii. India is a diverse Country with the MSME sector enjoying a particularly important space in the economic arena. Of the many pros and cons of this sector, the dilution of intellectual property rights is one of the major issues that we are all aware of. The extent and scope of Explanation (c) makes it impossible for a legitimate non – tobacco business to carry forth its business activities also.
- iii. We understand that the intent of the Government is to target surrogate advertisement, but the present wording of the amendment goes much beyond that intent and, in fact, debars legitimate businesses advertising their non-tobacco wares also. So, the Association request that the provisions of indirect advertising be so modified that it does not debar or create an hinderance in advertisement of a legitimate non-tobacco product of a company also having a tobacco product, thus creating an unintended bar on non-tobacco products.
- iv. As an illustration, the brand of a defunct or abandoned or separated Tobacco Product seems to survive the product and travels on even when the product itself is neither being sold nor being consumed. In our humble submission, the Government may like to review the same.

7. SECTIONS 11 : REGULATION OF "NICOTINE AND TAR" CONTENT

In Sections 11, the phrase nicotine and tar content has been proposed to be deleted, as given hereunder :

Section 11. For purpose of testing and regulating the contents and emission in cigarettes and any other tobacco products the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory as that Government may deem necessary.

- i. In our humble submission, the power to regulate the contents and emission of tobacco products are ambiguous and arbitrary in nature, as no standards have been prescribed of the tobacco products for contents and emission under COTPA. This will lead to wide spread manipulative findings by the testing laboratory. When an exercise is being undertaken to amend the COTPA, then the aim should be to make it a meaningful, stronger and more comprehensive Act. To this end, the shortcomings or gaps in the existing Act

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- should be corrected to make COTPA a more effective legislation on Tobacco Products.
- ii. The regulation of Tobacco Products and the fixing of standards of the Tobacco products has been a long standing Industry demand. We believe the establishing standards, based on science and research rather than perception, would give more teeth to COTPA 2003, to be a stronger and more stringent Act. Further, it will begin the process of sanitizing the tobacco Industry and eliminating unwanted and unethical business. This strong regulatory control by the Government will also allow a choice to consumers to have quality products without compromising on the constituents.
 - iii. By fixing the standards for Tobacco Products, the Government can curb the substandard and Illicit product available in the market. In the absence of standards, the Government is leaving space for the manufacturers to supply sub-standard products to the consumers. **Interestingly, all these standards of all kind of tobacco products are already in place, having been fixed by Bureau of Indian Standards (BIS) with years of research.** What is needed is just to adopt and enforce these standards in COTPA.
 - iv. If the intent of the Government is to expand the regulation, by including ingredients other than "nicotine and tar", then expanding that scope without diluting the primary role of nicotine and tar would be a more desirable approach. Thus, any other ingredients in addition to nicotine and tar would be a more progressive and comprehensive approach.

8. Section 10A : Illicit Trade

i. The Explanation [Section 10(A)2]

The said Explanation is reproduced here –

Explanation - For the purpose of this section, "illicit" means any practice or conduct prohibited by law and which relates to production, supply, distribution, import and sale, including any practice or conduct intended to facilitate such activity.

- a. At the outset, we would like to place on record our support, unqualified, to the Governments initiative to curb illicit trade in Tobacco Products. The nexus between illicit trade in Tobacco Products and financing of arms and naxal activities is well known and quite elaborately recorded in Reports of Parliamentary Committees also.
- b. Having said that, the expanse of the Explanation in the proposed Section 10A is quite disturbing. Not only does it make a practice or conduct in violation of COTPA an illicit trade, but expands the scope to include "by law". This explanation is so wide that it almost borders on the illogical.

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**SMOKELESS TOBACCO
FEDERATION (INDIA)**

- c. As an illustration, a violation of the Environment Protection Act in the manufacturing premises of a Tobacco Product would mean that the product itself is "illicit". Surely, this is not the intent of the Government?
- d. The aim, and as it should indeed be so, would appear to be to monitor and control illegal production and supply of Tobacco Products – whether through domestic or foreign sources. In the present format, even minor infractions of any law in force would automatically result in the product becoming an illicit product, which draconian results, which could never be the intent of the Government.
- e. Another aspect would be, if the manufacturing premises is violating some law – such as, the Environment Protection Act – then, that infraction is punishable under that particular Act. However, in the present format, that infraction becomes punishable under the COTPA also – which surely can't be the intent. The COTPA would not have a horizontal jurisdictional play where its provisions are used to punish contraventions under different laws.

ii. **Sub-Section (3)**

This Sub-section says as under :

No person shall directly or indirectly, produce, supply or distribute, import, sell, offer to sell or permit sale of cigarette or any other tobacco product without license, registration or permission required by any law for the time being in force, of the Central Government or a State Government.

- a. This Sub-Section is a very confusing provision. Besides seeming out of place in this Section itself, this provision seems to have a bearing on the trade and commerce in and the production, supply and distribution of Tobacco Products. Further, while Section 7 specifically permits trade and commerce in Tobacco Products, while placing some restrictions, this Sub-Section (3) in Section 10A seems to place a prohibition which runs completely contrary to the grain of Section 7.
- b. As you are well aware, Section 2 of COTPA categorically declares that the Union has taken over the Tobacco Industry and specifically, the listed Tobacco Products. Once that declaration is made, COTPA becomes the comprehensive code book for the entire Tobacco Industry. It does not lie with the Union to legislate under any other Act with respect to Tobacco Products, given that COTPA is a special legislation meant for this purpose only.
- c. The question of any State legislating on this issue does not arise at all once the Union has made a declaration and taken under its control the Tobacco Industry.

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d. In this background, this Sub-Section (3) would appear to be out of place in this Section and, in our humble submission, should be deleted in toto.

9. Sections 30A & 30B

i. The proposed amendment of inserting Sections 30A & 30B are given hereunder:

30A. *"Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force".*

30B. *"The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force prohibiting trade and commerce, production, supply and distribution of cigarettes and other tobacco products."*

ii. The Intent of inserting the proposed Section 30A seems to be to ensure that there is no ambiguity or conflict between COTPA and other laws and tobacco control provisions under COTPA get the primacy that they were always intended to have.

iii. Section 30B appears to be in two parts – the first stating that the provisions are in addition to and not in derogation of the provisions of any other Act; and the second where it directly impinges on the trade and commerce in and the production, supply and distribution of Tobacco Products.

iv. In so far as the first leg is concerned, it is completely regular and this kind of a provision, we are advised, is found in many other legislations.

v. However, the second leg of the provision is very confusing. We are unable to comprehend that when Section 2 of COTPA categorically declares that the Union has taken over the Tobacco Industry and specifically, the listed Tobacco Products, how can any other Act exist or be legal if it concerns itself with the trade and commerce in and the production, supply and distribution of Tobacco Products?

vi. Section 2 of the COTPA leaves no scope for any Central Act or States to legislate on tobacco products. COTPA is a comprehensive act which regulates trade, commerce, production, supply and distribution of the Tobacco Products. Even COTPA does not ban any tobacco products, but is only regulatory in nature. In such a scenario, no other law will have any role to play so far as Tobacco Products are concerned.

vii. COTPA itself does not seek to, either as stated goal in the preamble or in any of its provisions, prohibit trade in Tobacco Products. In above facts and circumstances, the question of any other law, whether Central or State, having provisions for prohibiting trade and commerce, production, supply

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- and distribution of Tobacco Products does not arise at all as envisaged under Section 30B.
- viii. The proposed insertion of Section 30B contemplating a law other than COTPA and that too one which seeks to prohibit trade and commerce, production, supply and distribution of Tobacco Products, covered under schedule of COTPA, is in contradiction to COTPA and is bound to create confusion and can be a cause for unwarranted litigation.
 - ix. In fact, the proposed amendment is not aligned with the aim and intent of COTPA. There are various other Acts and implementation agencies which are deliberately picking and choosing Tobacco Products and are, without any authority or sanction, banning their sale, manufacture etc. It has never been the intention of the legislation to ban or prohibit Tobacco Products and neither does the purpose of COTPA states so. The proposed amendment is, therefore, against the letter and spirit of COTPA.
 - x. Further, the proposed Section 30B runs contrary to the law declared by the Supreme Court of India. In the judgment of Narinder S. Chadha & Ors. Vs. Municipal Corporation of Greater Mumbai & Ors., the Hon'ble Supreme Court, *inter-alia*, held that the State Government is denuded of any power to legislate in the field occupied by COTPA. Thus, if Section 30B is inserted, it will give unbridled powers to State Government, other executives and authorities to encroach upon powers of the Union Government and legislate on the field occupied by COTPA.
 - xi. Further, the Hon'ble Supreme Court in Godawat Pan Masala v. Union of India (2004) 7 SCC 68 has also clearly held that trade in Tobacco Products is not *res extra commercium*, i.e. outside the scope of commerce, and is specifically permitted under COTPA, 2003 subject only to reasonable restrictions imposed there under. The Hon'ble Court further observed that even the Parliament has no intent to ban the use of tobacco.
 - xii. It is not to be forgotten that the choice or decision to use tobacco products and their kinds completely rests on the consumers – i.e., the people of this country – and it is not for the Government of the day to choose or decide the same. It cannot lie with the Government to suggest or say as to what kind of tobacco products be consumed or used by the consumers. The implementation of the proposed amendment would only amount to electing again. The Government by the proposed amendment will give exorbitant powers to other agencies who are eyeing on tobacco ban. Once these powers are utilized by the said agencies, tobacco ban will be unstoppable, thereby giving the intent of COTPA a go by. Further, the unintentional ban on the product "Chewing Tobacco" will be highly discriminatory and arbitrary in nature. Tobacco being a legal product in India, banning one form of tobacco i.e. the Chewing Tobacco and leaving other form to sell i.e. the cigarettes, beedi etc will be highly unjust and unconstitutional.
 - xiii. In addition to above, such a ban on Chewing Tobacco will lead to rise of the Tobacco mafia who will be more than happy to take control on this product and get directly benefited by the ban. The proposed amendments would only instigate unintended ban of the product and increase in smuggling of

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tobacco products. Also the revenue lost by the exchequer will be their net gain in addition to the profit generated by them by illegal sale, thus making them surplus with cash for their terrorist and other nefarious activities.

- xiv. Further, such an unintended ban will have a far reaching impact on farmers, who are dependent on tobacco crop. We are sure that no Government can destroy the lives and livelihood of almost 4,00,00,000 people involved in the production and processing of a tobacco crop.
- xv. In view of the above, it is requested that insertion in the form Section 30B may kindly be deleted.

10. COMMENTS ON PROPOSED INSERTION IN SECTION 30

- i. It appears that the committee while recommending the amendments in COTPA has inadvertently recommended insertion of phrase "or omit from" in Section, which is reproduced hereunder :

Section 30 - Power to add any tobacco products in the Schedule :

The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add to or omit from the Schedule any other tobacco products and thereupon the Schedule shall be deemed to be amended accordingly.

- ii. We are at a loss as to what good this proposed amendment will do. A perusal of the above proposed insertion shows that it will in fact hamper the Tobacco Control legislation in India. COTPA has been enacted with the intend to control all tobacco products. Once, a tobacco product is legal and has not been banned by Central Government, it is imperative to have control over the same in terms of its trade and commerce, production, supply and distribution. This can only be achieved by adding the said tobacco product in the Schedule of COTPA.
- iii. Once the Tobacco Product has been added to the Schedule, it will well be under the control of the Central Government, especially with the proposed amendment of illicit trade of tobacco products. Under these circumstances, the omission of a tobacco product from the schedule is highly illogical and will rather weaken the Tobacco Control program in India, as it will be out of COTPA.
- iv. Further, in view of the definition of Tobacco Products given under FCTC, which is reproduced hereunder :

Tobacco Products means products entirely or partly made of the leaf tobacco as raw material which are manufactured to be used for smoking, sucking, chewing or snuffing.

A perusal of the above definition leaves no room to omit any smoking or smokeless form of tobacco to be omitted out of COTPA and it seems that the intention is to omit any unnecessary product being scheduled thereunder, like Tooth Powder.

Sanjay Barcha

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- v. So, we sincerely request your Goodself to kindly review the proposed amendment in Section 30 and the same be discarded.

11. SECTION 7(5) : MINIMUM QUANTITY : PRESCRIPTION OF

Section 7(5) is reproduced as under :

No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him is having minimum quantity as may be prescribed.

- i. Sub-Section (5) of Section 7 seeks to introduce a regulation regarding the minimum quantity in which Tobacco Products may be sold. However, the beginning of the Sub-Section states a complete prohibition in the production, supply and distribution of Tobacco Products unless it meets the, yet to be, prescribed minimum quantity.
- ii. From the present working, this Sub-Section (5) lends itself to an alternate, and probably absurd, interpretation of a complete prohibition in the production, supply and distribution of Tobacco Products until a minimum quantity is prescribed by the Government. The Government needs to appreciate that majorly, the consumers of the tobacco products are citizens of the country, who are poor or below the poverty line, in the form of labour / daily wagers. Prescribing a minimum quantity of the pack will tend to make the tobacco product unaffordable to the said consumers, and this will give an opportunity to the spurious and illicit tobacco products a boost, which will flourish to satisfy the nicotine craving of the poor consumers and thus replacing the legitimate industry by an illicit one, which is against the spirit and intent of COTPA.
- iii. We understand that the aim of the Government under COTPA is to curb illicit trade of tobacco products, but the proposed provision is in contradiction of the same, as given herein above, so the proposed insertion of prescribing minimum quantity be dropped from the COTPA amendments.

12. SECTION 6 : AMENDMENT HAS BEEN PROPOSED TO INCREASE THE AGE OF CONSUMPTION OF TOBACCO PRODUCTS FROM 18 YEARS TO 21 YEARS.

This provision will greatly hamper the sale of tobacco products as it will take away choice of consumers between 18 to 21 years to opt for tobacco products. At the age of 18 years, a person gets the right to vote and elect the Government, the same person is mature enough to have a choice, whether to consume tobacco products or not.

Further, under proposed Section 24, the punishment prescribed is imprisonment upto seven (7) years for the contravention of the above, putting it at par with the punishments prescribed to criminals for crimes under Indian Penal Code.

Sanjay Bhecha



13. PROVISIO TO SECTION 7(2) : PROPOSES THAT THE SALE OF TOBACCO PRODUCT SHALL BE IN SEALED, INTACT AND ORIGINAL PACKAGING.

This is contrary to the business module of paanwalas. Bulk of Paanwalas sells tobacco products, not in sealed packets but by selling loose in the form of loose cigarette or using chewing tobacco in paan. The proposed proviso will bar the consumption of tobacco products, thus banning the centuries old tradition and culture of Paan and depriving the lakhs of poor paanwalas of their livelihood.

14. SECTION 7(5) : PROPOSES PRESCRIBING MINIMUM QUANTITY TO BE PACKED IN TOBACCO PACK.

Bulk of the consumers of tobacco products are poor and low-income group people, who can only afford the low-price pack. By prescribing minimum pack size, the price of the pack would go beyond the means of these poor consumers, thus pushing them to buy spurious cheap tobacco products. This will also greatly hamper the sale of poor paanwalas.

15. SECTION 10A(3) : IT PROPOSES THE REQUIREMENT OF LICENCE FOR SELLING TOBACCO PRODUCTS.

As of now, there is no requirement of any licence or registration prescribed under the COTPA for selling of Tobacco Products. Paanwalas or small Retailers are in the form of a small kiosks from where they earn their livelihood. Many of the Paanwalas are not even having the permanent kiosks or shops and earn their livelihood by selling paan from the nooks and corners of the streets. The proposed requirement of licence or registration for selling tobacco products will tantamounts to closure of Paan Kiosks or it will leave the poor paan shop owners and retailers to the whims of the enforcement agencies, who will view this as a money making opportunity.

16. We will also like to refer to the observations of Committee of Petition dated 28.02.2019, presented in Lok Sabha on 09.03.2019, wherein under the heading "Efficacy of imposing 'Ban' on any Commodity/Product", the committee in Para 4.19 has observed as under :

In this connection, the Committee are of considerate view that the past experience of imposing 'ban' on any commodity/product in our country has failed to produce the intended objectives and on the other hand, it has not only affected the revenue generation of the Government, which could have otherwise utilized for the betterment of masses through various Social Security Schemes/Welfare Programmes, but also paved way for black-marketing of the specific commodity/product, production of spurious and sub-standard commodity, mushrooming of unregulated 'Mafia' and other corrupt practices by the industry concerned with the active/passive involvement of various Enforcement Agencies.

Sanjay Bera





17. We will also like to place reliance on the report dated 15.03.2016 of Committee on Subordinate Legislation, wherein, while looking into the Issue of Increase in size of Pictorial Warning on Tobacco Products, the committee after recording the comments of various stakeholders and ministries, of the Impact it may have on tobacco farmers, observed as under (at Page 75 of the report) :

(VI) **Need for Alternative Cash Crops to replace Tobacco**

The Committee have carefully considered the views and suggestions of the representatives of the Government as well as non-governmental organizations on the question of switching over to alternative crops in place of tobacco. The Committee look at this problem in its totality. The serious health hazards caused to the millions by the use of tobacco and the insiders damage being done to the whole generation of youth cannot be ignored. At the same time the Committee is fully conscious of the need to protect the economic interest of farmers and the livelihood of millions workers partially or fully engaged in the industry. All the representatives who appeared before the Committee were of the view that the farmers should be persuaded for smooth transition to alternative crops. The Committee, therefore, feel that the Government is responsible for promotion of appropriate economically viable alternative for tobacco growers and workers, whose livelihoods are affected as a consequence of stringent regulation. The Committee, however, note with concern that according to the representatives of the Ministry of Agriculture (Department of Agriculture and Cooperation) who appeared before the Committee on 12 August, 2015, there is no centralized scheme of the Government which is tobacco specific but it is only for the State Governments to encourage the farmers to switch over to other cash crops. According to them, no other crop is as remunerative as tobacco and as far as combination of crops is concerned, for such system, proper irrigation facilities are required which are difficult to be implemented. Even in respect of other tobacco producing countries, the information available with the Ministry of Agriculture clearly indicates that so far no country has cut down the size of their tobacco production. Even amongst the 180 FCTC signatory countries, including Brazil, China and USA, which are amongst the largest tobacco producers, there is no evidence to show that they have tried to cut down their tobacco cultivation.

The Committee, therefore, feel that this issue alongwith its entire ramifications needs to be addressed by the Government in accordance with the objectives sought to be achieved.

18. Further, a decision such as banning chewing tobacco products can be supported only at the cost of not just several lakh acres of land being rendered uncultivable in the near future but also annihilation of crores of families depended for their minimum sustenance on farming. To fully comprehend the scope and scale of the disaster awaiting this ill-founded proposed policy decision, we would like to point out some facts.

19. It is quite obvious that no Government can destroy the lives and livelihood of crores of people involved in the production and processing of a particular crop. In the given

Sanjay Bala

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scenario we do not think it is possible for the Government to simply abandon such a large population to its own fate which is going to be caused by a Government policy. In our view, a full rehabilitation policy is a must before any decision proposing a complete stoppage of tobacco production is even proposed.

20. Banning Chewing Tobacco products will push the consumers to more fatal form of tobacco in the form of smoking as admittedly the quit ratio is hardly 5-6%, whereas the FCTC contemplates the issue of harm reduction under the head tobacco control policy as reproduced hereunder :

(d) "tobacco control" means a range of supply, demand and harm reduction strategies that aim to improve the health of a population by eliminating or reducing their consumption of tobacco products and exposure to tobacco smoke;

In case of such a shift, it will have adverse effect on the vulnerable classes in the form of children, females & pregnant ladies (passive smokers), in addition to the consumers itself (active smokers).

21. In view of the above, it is, thus, requested that while giving sufficient opportunity to the undersigned to participate in the consultations, all materials on the basis of which the said amendments have been proposed may kindly be provided in order to make the participation process effective.

22. We further request you to kindly provide us the notes on the proposed amendments so that we understand the logic and spirit behind the proposed amendments and file our detailed comments, for effective consultation process on the same.

23. We look forward to your cooperation in this regard and hope that you will consider our representation positively. Should it be required the Applicant Association is ready and willing to have face to face interaction with your good self in order to appropriately further explain the issues involved.

Thanking You

SMOKELESS TOBACCO FEDERATION (INDIA)

through

Sanjay Bechan
(SANJAY BECHAN)

EXECUTIVE DIRECTOR

Mobile No. : +91 97113 61630

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AMENDMENT BILL PROPOSED IN
2015, BUT WITHDRAWN

ANNEXURE-II

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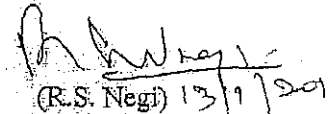
F. No. Z- 21020/03/2014 -PH-I [FTS-111238]

Government of India
Ministry of Health & Family Welfare
(Tobacco Control Division)

Subject: Placing the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill 2015 in public domain

The Department of Health and Family Welfare proposes to introduce the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill 2015 to amend the provisions of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003. The said amendment bill along with the Notes on clauses is placed in public domain, as part of pre-legislative consultations, with a view to elicit the comments/views of the stakeholders including the general public.

The comments/views may be forwarded to Under Secretary (Tobacco Control), Department of Health and Family Welfare, Room No- 425 'C', Nirman Bhawan, New Delhi-110011 or emailed at ntcp.mohfw@gmail.com on or before 15th February, 2015.



(R.S. Negi) 13/1/2015
Under Secretary (TC)
Tele/Fax: 23012735

DRAFT BILL

	THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) (AMENDMENT) BILL, 2015	
	A BILL	
	<i>further to amend the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.</i>	
	Be it enacted by Parliament in the Sixty-Fifth Year of the Republic of India as follows:-	
Short title and commencement	1. (1) This Act may be called the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Amendment Act, 2014.	
	(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.	
No.34 of 2003	2. In the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003(hereinafter referred to as the principal Act), for section 2, the following section shall be substituted, namely:-	
Substitution of new section for section 2	"2. It is hereby declared that it is expedient in the public interest that the Union should take under its control the tobacco industry and protect the development and implementation of public health policies with respect to tobacco control from the commercial and other vested interests of the tobacco industry"	Declaration as to expediency of control by the Union and protection of public health policies for tobacco control
Amendment of Section 3	3. In section 3 of the principal Act,-	Definitions

	(i) for clause (a), the following clause shall be substituted, namely:-	
	(a) "advertisement" includes any visible representation by way of notice, circular, label, wrapper pamphlet, brochure, programme, price-list, label, wrapper or other document and any announcement, notification or intimation to the public or any section thereof or to any person or persons made — orally or in writing; by means of any poster, placard, notice or other document affixed, posted up or displayed on any wall, billboard or hoarding or on any other object or thing; by means of producing or transmitting sound or light and whether for aural or visual reception or both; by means of any writing on any vehicle, ashtray, calendar, cigarette-lighter, clock or any other object or thing; or in any other manner whatsoever;	
	(ii) after clause (g), the following clause shall be inserted, namely:-	
	(gg) "indirectly advertise" means: (i) the use of a name or brand of tobacco products for marketing, promoting or advertising other goods, services and events; (ii) the use of a mark or trade mark of tobacco products for marketing, promoting or advertising other goods, services and events; (iii) the marketing of tobacco products with the aid of a brand name or trademark which is known as, or in use as, a name or brand for other goods and services; (iv) the use of particular colours and layout and/or presentation these are associated with particular tobacco products; and (v) the use of tobacco products and smoking situations when advertising other goods and services;	
	(iii) after clause (h), the following clause shall be inserted, namely:-	
	(hh) "medium" includes traditional media (print, television and radio) and internet, mobile telephones and other new technologies as well as films;	
	(iv) after clause (k), the following clause shall be inserted, namely:-	
	(kk) "promotion" includes any form of commercial communication, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or	

	tobacco use either directly or indirectly;	
	(v) for clause (l), the following clause shall be substituted, namely:-	
	(l) "public place" means any place to which the public have access, whether as of right or not, and includes auditorium, hospital buildings, airports, railway station, railway waiting room, bus stop, amusement centers, hotels, restaurants, public offices, work places, court buildings, educational institutions, libraries, parks, public conveyances and the like which are visited by general public;	
	(vi) after clause (o), the following clause shall be inserted, namely:-	
	(oo) "sponsorship" includes 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;	
	(vii) after clause (p), the following clause shall be inserted, namely:-	
	(q) "trade mark" means the whole or a part of a trade mark that is registered under the Trade Marks Act, 1999 in respect of goods that are or include tobacco products;	
	(viii) after clause (q), the following clause shall be inserted, namely:-	
	(r) "tobacco industry" means tobacco manufacturers, producers, wholesale distributors, and importers;	
Substitution of new section for section 4	4. For section 4 of the principal Act, the following section shall be substituted, namely:-	
	"4. No person shall use tobacco products in any public place.	Prohibition of use of tobacco in a public place
	Provided in an international airport there may be a smoking area or space as prescribed, which shall be located, ventilated in such a manner that smoke from smoking area does not permeate into the non-smoking areas.	

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	Provided further that smoking area or space shall be used only for the purpose of smoking and no other service(s) shall be allowed."	
	Explanation. - In this section, the word "use" means, smoking and spitting of tobacco."	
Substitution of new section for section 5	5. For Section 5 of the principal Act, the following section shall be substituted, namely:-	
	"5(1) No person engaged in, or purported to be engaged in the production, supply, distribution and sale of cigarettes or any other tobacco products shall directly or indirectly advertise and no person having control over a medium shall directly or indirectly cause to be advertised cigarettes or any other tobacco products through that medium and no person shall directly or indirectly promote the use or consumption of cigarettes or any other tobacco products.	Prohibition on direct or indirect advertisement and promotion of cigarettes or any other tobacco products.
	(2) No person, for any direct or indirect pecuniary benefit or otherwise, shall-	
	(a) display, cause to display, or permit or authorize to display any advertisement of cigarettes or any other tobacco product through audio, visual or audiovisual means, such as print (for example, newspapers, magazines, pamphlets, leaflets, flyers, letters, billboards, posters, signs), television and radio (including terrestrial and satellite), films, DVDs, videos and CDs, games (such as computer games, video games or online games), other digital communication platforms (such as the Internet and mobile phones) and theatre or other live performance; or (b) sell or distribute or cause to sell or distribute, or permit or authorize to sell or distribute a film or leaflet, handbill or any other document containing advertisement of cigarettes or any other tobacco product; or (c) display, cause to display, or permit or authorize to display packages of cigarettes or any other tobacco products at the entrance or inside a warehouse or a shop where cigarettes and any other tobacco products are offered for distribution or sale; (d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco products; or	

	<p>(e) import, distribute, sell or offer for sale any confectionery or other food product or any toy or any other article that is designed to resemble a tobacco product or the packaging of which is designed to resemble the packaging commonly associated with tobacco products.</p> <p>(f) distribute or give or cause to be distributed or given or assist in the distribution or giving of any free sample of a tobacco product to the public or any section of the public other than to persons who are associated or concerned with the manufacture, distribution or sale of tobacco products.</p> <p>(g) offer or give any tobacco product as a prize in any lottery, raffle, draw, game or competition.</p>	
	(3) No person, shall-	
	<p>(a) promote or agree to promote whether directly or indirectly the use or consumption of cigarettes or any other tobacco products; or</p> <p>(b) promote or agree to promote whether directly or indirectly any mark or trade mark or brand name of cigarettes or any other tobacco products in exchange for a sponsorship, gift, prize or scholarship or otherwise; or</p> <p>(c) promote through contribution or otherwise, or through an activity under corporate social responsibility, by or of a company engaged in the manufacture or production of cigarettes or any other tobacco products, or</p> <p>(d) sponsor any event, activity or individual with the aim, effect or likely effect of promoting any mark or trade mark or brand name of cigarettes or any other tobacco products.</p> <p>(e) use additives in any form that can impart, intensify, modify or enhance the flavor or increase dependence of cigarettes or any other tobacco products."</p>	
Substitution of new section for section 6	6. For Section 6 of the principal Act, the following section shall be substituted, namely:-	Prohibition on sale of cigarette or other tobacco products to person below the age of twenty one years.
	Section 6: No person shall-	
	(a) sell, offer for sale, or permit sale of, cigarettes or any other tobacco products to any person who is under twenty one years of age, or	
	(b) sell, offer for sale, or permit sale of, cigarettes or any other tobacco products in an area within a radius of one	

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	hundred meters of any educational institution, or	
	(c) sell, offer for sale, or permit sale of, cigarettes or any other tobacco products loose or in single sticks. Provided that the tobacco product shall be sold in intact packages of content, size, and weight as may be prescribed by rules, or	
	(d) employ, engage, or use whether for pecuniary benefit or otherwise any person who is under eighteen years of age in cultivation, processing, sale of tobacco or tobacco products.	
Amendment of section 7	7. In section 7 of the principal Act:-	
Substitution of new sub-section for sub-section 4	(i) for sub-section 4, the following sub-section shall be substituted, namely:-	
	"(4) The specified warning shall appear on the principal display area of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration in a manner as may be prescribed by rules made under this Act."	
Substitution of new sub-section for sub-section (5)	(ii) for sub-section 5, the following sub-section shall be substituted, namely:-	
	"(5) All person manufacturing or producing cigarettes or any other tobacco products shall disclose periodically and upon request the constituents and emission on each cigarette or as the case may be on other tobacco products to the Government in a manner as prescribed. Provided that the information disclosed on the constituents and emissions on each cigarette or as the case may be on other tobacco products shall be indicated by the producer, supplier, distributor or seller on every package of cigarettes or any other tobacco products in a manner as prescribed by rules made under this Act"	
Amendment of sections	8. In sections 10, 11, 15(2), 31(2) (d) and 32, of the principal Act, for the words "nicotine and tar contents", the	

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10, 11, 15(2), 31(2) (d) and 32.	words, "constituents and emissions" shall be substituted.	
Insertion of new section 19(A)	9. After Section 19 of the principal Act, the following section shall be inserted, namely:-	Special Courts
	<p>19A. (1) The Central Government, or the State Government, in consultation with the Chief Justice of the High Court, shall, for trial of offences relating to violation of sections 4, 5, 6 & 7, by notifications, designate one or more Courts of Session for such area or areas or for such case or class or group of cases as may be specified in the notification.</p> <p>Explanation -- In this sub-section, "High Court" means the High Court of the State in which a Court of session designated as Special Court was functioning immediately before such designation.</p> <p>(2) While trying for an offence under this Act, a designated Court shall also try an offence, other than an offence referred to in sub-section (1), with which the accused may, under Code of Criminal Procedure, 1973 be charged at the same trial.</p>	
Substitution of new section for section 20.	10. For section 20 of the principal Act, the following section shall be substituted, namely:-	Punishment for failure to give specified warning
	(1) Any person who produces or manufactures cigarettes or any other tobacco products, which do not contain, either on the package or on their label, the specified warning shall in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to one lakh rupees.	
	(2) Any person who sells or distributes cigarettes or any other tobacco products which do not contain either on the package or on their label, the specified warning shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to ten thousand rupees, or with both, and, for	

	the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to twenty five thousand rupees.	
	(3) Any person who produces or manufactures cigarettes or any other tobacco products, does not disclose to the government the constituents and emissions of cigarettes or any other tobacco products shall in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to one lakh rupees.	Punishment for failure to disclose to the Government "constituents" and "emissions"
	(4) Any person who produces or manufactures cigarettes or any other tobacco products, which do not contain, either on the package or on their label, the constituents and emissions, shall in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to fifty thousand rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to one lakh rupees.	Punishment for failure to give "constituents" and "emissions" on packages
	(5) Any person who sells or distributes cigarettes or any other tobacco products which do not contain either on the package or on their label, the constituents or emissions, shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to ten thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to twenty five thousand rupees.	
Amendment of section 21.	11. In Section 21 of the principal Act, in sub-section (1), for the words "two hundred rupees" the words, "one thousand rupees" shall be substituted.	Punishment for smoking and tobacco use in certain places
Amendment of section 22.	12. In section 22 of the principal Act,-	Punishment for advertisement and promotion of cigarettes and

		other tobacco products
	i) In subsection (a), for the words, "which may extend to one thousand rupees" the words "which may extend to ten thousand rupees" shall be substituted.	
	ii) In subsection (b), for the words, "which may extend to five thousand rupees" the words, "which may extend to fifty thousand rupees" shall be substituted.	
Amendment of Section 24,	13. In section 24 of the principal Act,--	
	(i) In subsection (1), for the words, "two hundred rupees" the words, "one thousand rupees" shall be substituted.	
Insertion of new section 24A	14. After section 24 of the principal Act, the following section shall be inserted, namely:-	
Cancellation of license		
	"24A. Notwithstanding anything contained in any other section of this Act, if an offence under section 5, 6 and 7 have been committed by a manufacturer or producer, importer, supplier, distributor or seller, the competent authority may suspend or cancel their license, for such period as it may think fit, under the provisions of any law for the time being in force, after giving a reasonable opportunity to explain such commission."	
Insertion of new section 25A	15. After section 25 of the principal Act, the following section shall be inserted, namely:-	National Tobacco Control Organization
	"25A. The Central Government may by a notification in the Official Gazette constitute a National Tobacco Control Organization (NTCO) to implement and monitor the provisions under this Act and other functions related to tobacco control as assigned by the Central Government, including for implementation of WHO/FCTC."	

Substitution of new section for section 27.	16. For section 27 of the principal Act, the following section shall be substituted, namely:-	
	" 27. Offences to be cognizable and bailable.--	Offences to be cognizable and bailable
	(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under this Act shall be bailable.	2 of 1974
	(2) For the avoidance of doubts, it is hereby declared that offences punishable under section 5, 6, and 7 of this Act shall be cognizable."	
Amendment of Section 28	17. In section 28 of the principal Act, in sub-section (1), for the words, "two hundred rupees" the words, "one thousand rupees" shall be substituted.	
Substitution of new Section for Section 30	18. For Section 30 of the principal Act, the following section shall be substituted, namely:-	
	"30. The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add to or alter the Schedule of the Act and thereupon the Schedule shall be deemed to be amended accordingly."	
Amendment of section 31	19. In section 31 of the principal Act, in sub-section (2), -	
Substitution of new clause for clause (b)	(i) for clause (b), the following clause shall be substituted, namely:-	
	"(b) specify the form and manner in which constituents and emissions shall be disclosed to the government and on packages of cigarettes or other tobacco products under sub-section (5) of section 7".	
Substitution of new clause for	(ii) for clause (d), the following clause shall be substituted, namely:-	

clause(f)		
	"(f) specify the composition, qualifications, tenure, removal, duties, functions, accountability of members and creation of Tobacco Control Fund under the National Tobacco Control Organization."	
Insertion of new clause (g)	(iii) after clause (f) as amended, the following clause shall be inserted, namely: -	
	"(g) provide for prohibition, regulation of trade and commerce, production, supply and distribution of cigarettes and other tobacco products."	
Insertion of new clause (h)	(iv) after clause (g), the following clause shall be inserted, namely: -	
	"(h) provide for any other matter which is required to be, or may be, prescribed."	
Insertion of new section 34.	20. After section 33 of the principal Act, the following section shall be inserted, namely:-	
	"34. (1) Overriding effect of this Act over all other tobacco related laws. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act. (2) Notwithstanding anything contained in sub-section (1), the provisions of this Act shall be in addition to and not in derogation of the provisions of any other law prohibiting manufacture, distribution and sale of products specified in the schedule of the Act."	Application of certain laws not barred.
Insertion of new section 35.	21. After section 34 of the principal Act, the following section shall be inserted, namely:-	
	"35. Power to remove difficulties:-	Power to remove difficulties
	(1) If any difficulty arises in giving effect to the provisions of the Amendment Act, as appear it to be necessary or	

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	<p>expedient for removing the difficulty:</p> <p>Provided that no such order shall be made under this section after the expiry of three years from commencement of the Amendment Act.</p>	
	<p>(2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or both Houses agree that the order should not be made, the order shall hereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that order."</p>	

10.2

Notes on Clauses

- (1) Clause 2 of the Bill seeks to amend Section 2 of the Act and inter-alia proposes to insert a clause that provides for protection of public health policies with respect to tobacco control from the commercial and other vested interests of the tobacco industry. This is in compliance with Article 5.3 of FCTC that requires parties to protect the development and implementation of public health policies with respect to tobacco control from the commercial and other vested interests of the tobacco industry. This is also in conformity with the undertaking given by the Union of India before the Karnataka High Court in court case W.P. No. 27692/2010, to frame a Code of Conduct for public officials, to prevent Tobacco Industry's interference in developing and implementing public health policies and programmes related to tobacco control.
- (2) Clause 3 of the Bill seeks to amend Section 3 of the Act relating to definitions. It is proposed to substitute the existing definitions of "advertisement" and "public place" with new definitions and further insert new definitions for words such as "indirectly advertise" "medium" "promotion" "sponsorship" "trademark" and "tobacco industry". The insertion of new definitions and amendment of the existing definitions in Section 3 especially pertaining to prohibition of tobacco use in public place and prohibition on tobacco advertising, promotion and sponsorship, is essential to be in conformity with the proposed amendment to the main provisions of the Act and also to meet the standards of WHO FCTC and global best practices.
- (3) Clause 4 of the Bill seeks to amend section 4 of the Act relating to prohibition on smoking in public place. It is proposed to amend or modify the existing proviso to Section 4 of the Act that allows designated smoking areas in hotels, restaurants and airports. While the provision allowing designated smoking area in hotel and restaurant is to be removed, however designated smoking area at International Airports is permitted subject to certain conditions, such as the smoking area or space shall be located, ventilated in such a manner that smoke from smoking area does not permeate into the non-smoking areas and the smoking area shall be used only for the purpose of smoking and no other service(s) shall be allowed.

The objective of COTPA 2003 is to provide effective protection to non-smokers from involuntary exposure to tobacco smoke. However the provisions of designated smoking areas in certain public place undermined the very objective of the Act, to protect non-smoker from involuntary smoke.

Further certain safeguards were introduced through the Prohibition on Smoking at Public Place Rules, 2008, such as that smoking area or space shall not be established at the entrance or exit of the hotel, restaurant and the airport, smoking area shall be used only for the purpose of smoking and no other service(s) shall be allowed and in a hotel, all rooms designated as smoking room shall form a separate section or floors as the case may be, the smoke from such room shall be ventilated outside and should not infiltrate into the non-smoking areas of the hotel. However the safeguards failed to have a deterrent effect largely due to inadequate compliance and deterrence. On the contrary, the said provision of designated smoking area has led to mushrooming of Hookah Bars throughout the country for attracting the urban youth, leading to commercialization of hookah tobacco, which was earlier only a cultural practice limited to rural areas.

In view of the same it is considered essential to do away with the provisions of designated smoking area or space at airports, restaurants and hotels, however due to long duration of flights and the intervening period between connecting flights at International Airports some exemption may be considered to be provided with adequate safeguards for protection of non-smokers.

This said exemption of having a designated smoking area is also contrary to the WHO FCTC guidelines that call for a complete protection from exposure to tobacco smoke. The Hon'ble Supreme Court in *Murl Deora vs UOI*, 2001 (8) SCC 765, has held that subjecting a non smoker to tobacco smoke is violation of his Fundamental right guaranteed under Article 21 of the Constitution of India, that none shall be deprived of his life without due process of law.

It is also proposed to expand the scope of Section 4 from "prohibition of smoking in public place" to "prohibition of tobacco use in public place". The word "use" is explained to include both smoking and spitting of tobacco at public place.

Tobacco spitting in public place is one of the biggest causes of spread of infectious disease such as tuberculosis, pneumonia, H1N1, avian flu and other ear nose and throat [TB Bacilli can survive in spit for an entire day]. Tuberculosis kills over 200,000 Indian every year. The proposed amendment is also in consonance with the Central Government initiative of Swachh Bharat and Swastha Bharat Abhiyan to provide for safe sanitation and hygiene in the country.

- (4) Clause 5 of the Bill seeks to amend Section 5 of the Act relating to prohibition of advertisement of tobacco products.

It is proposed to delete the proviso to Section 5(2) of the Act, which allows advertisement at point of sale and in/on packages of tobacco products.

This proviso is in direct conflict with the objective of COTPA, 2003 as enshrined in its preamble that is to discourage tobacco use by eliminating all direct and indirect advertisements of tobacco products.

This proviso is also in conflict with WHO FCTC Article 13 that mandates a complete ban on Tobacco Advertisement, Promotion and Sponsorships. Hence there is a need to delete this provision to comply with FCTC and to achieve the objective of the Act to eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco. Further the tobacco industry has misused this provision to extensively advertise at point of sale through display of huge hoardings inter-alia making the ban on tobacco advertising redundant.

It is also proposed to insert certain provisions in the existing Section 5 of the Act and inter-alia extend the prohibition on advertisement, promotion and sponsorship of tobacco products to all mediums of communication such as films, internet, mobile etc., and on brand sharing/brand stretching of tobacco brands/trademarks, visible stacking (at point of sale) of tobacco products, corporate social responsibility activities by tobacco companies, sale of imitation products of tobacco and on use/addition of additives in tobacco products.

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The existing Section 5 is vague on prohibiting surrogate advertisement or brand stretching of tobacco products resulting in widespread surrogate advertisement of tobacco products. Therefore with changing times it is imperative that new mediums of communications such as mobile, internet etc are covered under the ban on tobacco advertisement. Further all means of promotion of tobacco use whether by adding additives or through sale of any imitation products should be discouraged. There is also a need to plug the real or potential misuse of the Corporate Social Responsibility activities by tobacco companies to indirectly promote or advertise tobacco products.

- (5) Clause 6 of the Bill seeks to amend section 6 of the Act relating to prohibition on sale of tobacco products to persons below the age of 18 years and within 100 yards of any educational institutions. It is proposed to substitute the existing section 6 by inserting clause (a) to (d).

Sub-section (a) proposes to increase the minimum legal age for sale of tobacco products from 18 years to 21 years.

The Parliamentary Standing Committee on Human Resource Development, in its report on the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill, 2001, had observed:

"The committee has been given to understand that if a person is kept away from tobacco for the first twenty years of his life, there is a very high probability that he will remain tobacco free for rest of his life. Hence, it is mostly the teenagers and young school or college going students who are most vulnerable to the addiction of tobacco. The Committee is, therefore, of the view that availability of cigarette and other tobacco products should be made difficult for these age groups of people.

The increase of minimum legal age for sale of tobacco products to 21 years will ensure protection of our future generation from the hazards of tobacco use.

It is also proposed to subsequently increase the minimum legal age for sale of tobacco products to 23 years and finally to 25 years in two phases after studying/evaluating the impact of the new provision of 21 years as minimum legal age for sale of tobacco.

Sub-section (b) proposes to substitute the words "yards" to "meters". The existing provisions prohibit sale of tobacco products within a radius of one hundred "yards" of any educational institution.

In its 196th report, the Committee on subordinate Legislation, Rajya Sabha suggested to replace the imperial system of measurement of distance as specified in section 6 of the COTPA 2003, by the metric system which is more prevalent today.

Sub-Section (c) proposes to prohibit sale of tobacco products loose or in single sticks and specifies that they should be sold in intact packages of content, size, and weight as prescribed by rules.

Sale of tobacco products loose and in small pouches makes minors susceptible to tobacco use as it becomes convenient and cheaper to buy tobacco products, it promotes the sale of tobacco and makes pack warning on tobacco product packages redundant.

Sub-section (d) proposes to prohibit employment, engagement or use of children below the age of 18 years in the cultivation, processing and sale of tobacco or tobacco products.

Since the emphasis of the tobacco control law is to protect children and youth from hazards of tobacco, it is desirable that employment of minors in handling of tobacco products is also prohibited.

- (6) Clause 7 of the Bill seeks to amend section 7 of COTPA, by substituting sub-section (4) and (5) relating to display of specified health warning and nicotine and tar content with maximum permissible limit on tobacco product packages:

It is proposed to substitute sub-section (4) of section 7 with a new sub-section that includes the word "principal display area" to inter-alia remove any ambiguity with respect to display area of specified health warnings on tobacco product packages.

It is proposed to substitute sub-section (5) of section 7 and do away with the mandatory provision of depiction of tar and nicotine contents with its maximum permissible limit on packages of tobacco products.

The available medical evidence suggests that there is no safe level for nicotine and tar contents and as such there cannot be any permissible limit thereof in the cigarettes or other tobacco products. The provision relating to display of maximum permissible limits of tar and nicotine contents is also susceptible to be mis-used to promote tobacco products as safer products.

It is also proposed to replace the term "nicotine and tar contents" with the term "constituents and emissions", to expand the scope of the said provisions by including contents and emissions other than tar and nicotine in conformity with the global best practices, as there are a large number of chemicals and additives/intoxicants in tobacco as well as Second Hand Smoke. It is proposed to provide for disclosure of information on constituents and emissions to the Government by the manufacturers or producers. It is further proposed that the Government through Rules will prescribe the manner in which the information shall be disclosed to the Government and the manner in which the disclosed information shall be displayed on the package.

- (7) Clause 8 of the Bill seeks to amend Sections 10, 11, 15(2), 31(2)(d) and 32, of the Act by replacing the words "nicotine and tar contents" with the words, "constituents and emissions". This amendment is in conjunction with the proposed amendment to Section 7(5) of COTPA.

- (8) Clause 9 of the Bill seeks to insert a new Section 19A, relating to designation of special Courts to try offences relating to violation of Sections 4, 5, 6 & 7 of COTPA, 2003.

Designation of special courts will increase reporting of violation, filing of complaints and expedite trial/adjudication of offence and consequently ensure effective implementation of COTPA, 2003.

- (9) Clauses 10 to 13 of the Bill seek to amend sections 20, 21, 22 and 24 relating to penal provisions for violation of sections 7, 4, 5 and 6 of COTPA, 2003 respectively, by substantially enhancing the fine or penalty amounts.

In its 196th report, the Committee on Subordinate Legislation, Rajya Sabha desired that the penalty for selling tobacco products within 100 yards from educational Institutions

should be enhanced from the existing Rs 200/- as and when a comprehensive amendment of the Tobacco Act, 2003 is undertaken.

It is proposed to increase the fine or penalty amounts in the penal provisions of the Act, this is in keeping with the spirit of the above recommendation of Committee on Subordinate Legislation, as well as to increase the deterrence against violation of law, since there has been no review of the fine or penalty amounts ever since the Act came into force in 2003.

- (10) Clause 14 of the Bill seeks to insert a new Section 24A relating to suspension or cancellation of license of manufacturer, importer, supplier, distributor or seller, for violating Sections 5, 6 and 7 of the Act.

It is proposed to insert a new section 24A that will entail suspension/cancellation of license of the manufacturer or producer, importer, supplier, distributor or seller for violation of Sections 5, 6, and 7 by the competent authority under the provisions of any law for the time being in force, after giving a reasonable opportunity to explain such commission. This provision will strengthen the enforcement of the Act.

It has been observed that in States where compliance with COTPA, 2003 is included in the terms and conditions of license issued by the competent authority, the implementation of the Act has been very effective.

Further the Hon'ble Courts in judicial pronouncements have emphasized the need to incorporate compliance of provisions of COTPA, 2003 in the "terms and conditions" of license.

- (11) Clause 15 of the Bill seeks to insert a new Section 25A in COTPA relating to setting up of a National Tobacco Control Organization (NTCO), to implement and monitor the provisions of COTPA, 2003 and to undertake other functions related to tobacco control as assigned by the Central Government, including for implementation of WHOFCTC. The purpose of establishing a National Tobacco Control Organization (NTCO) is to create an autonomous body that will be the nodal agency for tobacco control issues including:

- i. Monitoring and enforcement of the Tobacco Control Laws (COTPA, 2003),
- ii. Defense of court cases, and
- iii. Product regulations / testing through accredited or standalone laboratories.

This is also in compliance of the Bombay High Court order dated 5th October 2011, in PIL No. 111 of 2010. The Hon'ble High Court had held that we expect the Central Government to take necessary steps for setting up of a National Tobacco Regulatory Authority that en-capacitate the states to effectively implement the anti tobacco laws as expeditiously as possible. Further this Ministry has also given assurance to the Parliament for setting up of a National Tobacco Regulatory Authority.

- (12) Clause 16 of the Bill seeks to amend Section 27 of COTPA, 2003 by inserting sub-section (2) relating to making the offences punishable under Sections 5, 6 and 7 of COTPA cognizable.

The proposed amendment to make offences punishable under sections 5, 6 and 7 of the Act cognizable will strengthen and facilitate the enforcement of the said provisions of the Act.

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The Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975, which is repealed by COTPA, 2003, had very mild provisions on tobacco control in comparison to COTPA, however the offences punishable under the said Act were cognizable.

- (13) Clause 17 of the Bill seeks to amend Section 28 of the Act in conjunction with amendment to Sections 21 and 24, the penal provisions for violation of Section 4 and 6 of COTPA.

- (14) Clause 18 of the Bill seeks to amend Section 30 of the Act relating to power to add any tobacco products to the schedule of the Act.

It is proposed to amend section 30 of the Act by substituting the existing section with a new section to provide for adding or altering the Schedule of the Act. This amendment is necessitated to meet the requirement and align with other proposed amendments.

- (15) Clause 19 of the Bill proposes to amend Section 31 of COTPA, 2003, relating to power of Central Government to make rules:

It is proposed to insert a new clause (b) by substituting the existing clause that provides for specifying the form and manner in which constituents and emissions shall be disclosed to the government and on packages of cigarettes or other tobacco products under sub-section (5) of section 7.

It is proposed to insert a new clause (f) by substituting the existing clause that provides for specifying the composition, qualifications, tenure, removal, duties, functions, accountability of members and creation of Tobacco Control Fund under the National Tobacco Control Organization.

It is proposed to insert a new clause (g) that provides for prohibition, regulation of trade and commerce, production, supply and distribution of cigarettes and other tobacco products.

The proposed amendments to section 31, is to align the rule making power with other proposed amendments of the Act and further to insert enabling provisions that expound the objectives of the Act.

- (16) Clause 20 of the Bill proposes to insert a new Section 34 relating to overriding effect of COTPA on other tobacco related laws where there is inconsistency between the laws and permitting application of other laws which expound the objective of COTPA 2003.

It is proposed to insert sub-section (1) relating to COTPA having overriding effect over all other tobacco related laws, where there is anything inconsistent therewith contained in any other law for the time being in force.

It is proposed to insert sub-section (2) relating to COTPA being in addition to and not in derogation of the provisions of any other law prohibiting manufacture, distribution and sale of products specified in the schedule of the Act.

The insertion of new Section 34 will ensure that there is no ambiguity or conflict between COTPA and other laws and tobacco control provisions under any law gets primacy in relation to the regulation of tobacco products specified in the Schedule to the Act, if they are consistent with the objectives of the Act.

- (17) Clause 21 of the Bill seeks to insert a new Section 35 relating to removing of difficulties in implementation of the Amendment Act for a specific period.



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II — खण्ड 1

PART II — Section 1

प्राधिकार से प्रकाशित

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NEW DELHI, MONDAY, MAY 19, 2002/ VAISAKHA 29, 1925

इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE (Legislative Department)

New Delhi, the 19th May, 2003/Vaisakha 29, 1925 (Saka)

The following Act of Parliament received the assent of the President on the 18th May, 2003, and is hereby published for general information:—

THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) ACT, 2003

No. 34 OF 2003

[18th May, 2003.]

An Act to prohibit the advertisement of, and to provide for the regulation of trade and commerce in, and production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith or incidental thereto.

WHEREAS, the Resolution passed by the 39th World Health Assembly (WHO), in its Fourteenth Plenary meeting held on the 15th May, 1986 urged the member States of WHO which have not yet done so to implement the measures to ensure that effective protection is provided to non-smokers from involuntary exposure to tobacco smoke and to protect children and young people from being addicted to the use of tobacco;

AND WHEREAS, the 43rd World Health Assembly in its Fourteenth Plenary meeting held on the 17th May, 1990, reiterated the concerns expressed in the Resolution passed in the 39th World Health Assembly and urged Member States to consider in their tobacco control strategies plans for legislation and other effective measures for protecting their citizens with special attention to risk groups such as pregnant women and children from involuntary exposure to tobacco smoke, discourage the use of tobacco and impose progressive restrictions and take concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco;

AND WHEREAS, it is considered expedient to enact a comprehensive law on tobacco in the public interest and to protect the public health;

AND WHEREAS, it is expedient to prohibit the consumption of cigarettes and other tobacco products which are injurious to health with a view to achieving improvement of public health in general as enjoined by article 47 of the Constitution;

AND WHEREAS, it is expedient to prohibit the advertisement of, and to provide for regulation of trade and commerce, production, supply and distribution of, cigarettes and other tobacco products and for matters connected therewith or incidental thereto:

BE it enacted by Parliament in the Fifty-fourth Year of the Republic of India as follows:—

Short title, extent and commencement.

1. (1) This Act may be called the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

Declaration as to expediency of control by the Union.
Definitions.

2. It is hereby declared that it is expedient in the public interest that the Union should take under its control the tobacco industry.

3. In this Act, unless the context otherwise requires,—

(a) "advertisement" includes any visible representation by way of notice, circular, label, wrapper or other document and also includes any announcement made orally or by any means of producing or transmitting light, sound, smoke or gas;

(b) "cigarette" includes,—

(i) any roll of tobacco wrapped in paper or in any other substance not containing tobacco,

(ii) any roll of tobacco wrapped in any substance containing tobacco, which, by reason of its appearance, the type of tobacco used in the filter, or its packaging and labelling is likely to be offered to, or purchased by, consumers as cigarette, but does not include *beedi*, cheroot and cigar;

(c) "distribution" includes distribution by way of samples, whether free or otherwise;

(d) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(e) "foreign language" means a language which is neither an Indian language nor the English language;

(f) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(g) "Indian language" means a language specified in the Eighth Schedule to the Constitution, and includes any dialect of such language;

(h) "label" means any written, marked, stamped, printed or graphic matter, affixed to, or appearing upon, any package;

(i) "package" includes a wrapper, box, carton, tin or other container;

(j) "prescribed" means prescribed by rules made under this Act;

(k) "production", with its grammatical variations and cognate expressions, includes the making of cigarettes, cigars, cheroots, *beedis*, cigarette tobacco, pipe tobacco, *hookah* tobacco, chewing tobacco, *pan masala* or any chewing material having tobacco as one of its ingredients (by whatever name called) or snuff and shall include—

(i) packing, labelling or re-labelling, of containers;

(ii) re-packing from bulk packages to retail packages; and

(iii) the adoption of any other method to render the tobacco product marketable;

(l) "public place" means any place to which the public have access, whether as of right or not, and includes auditorium, hospital buildings, railway waiting room, amusement centres, restaurants, public offices, court buildings, educational institutions, libraries, public conveyances and the like which are visited by general public but does not include any open space;

(m) "sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another, whether for cash or on credit, or by way of exchange, and whether wholesale or retail, and includes an agreement for sale, and offer for sale and exposure for sale;

(n) "smoking", means smoking of tobacco in any form whether in the form of cigarette, cigar, *beedis* or otherwise with the aid of a pipe, wrapper or any other instruments;

(o) "specified warning" means such warnings against the use of cigarettes or other tobacco products to be printed, painted or inscribed on packages of cigarettes or other tobacco products in such form and manner as may be prescribed by rules made under this Act;

(p) "tobacco products" means the products specified in the Schedule.

4. No person shall smoke in any public place:

Provided that in a hotel having thirty rooms or a restaurant having seating capacity of thirty persons or more and in the airports, a separate provision for smoking area or space may be made.

Prohibition of smoking in a public place.

5. (1) No person engaged in, or purported to be engaged in the production, supply or distribution of cigarettes or any other tobacco products shall advertise and no person having control over a medium shall cause to be advertised cigarettes or any other tobacco products through that medium and no person shall take part in any advertisement which directly or indirectly suggests or promotes the use or consumption of cigarettes or any other tobacco products.

Prohibition of advertisement of cigarettes and other tobacco products.

(2) No person, for any direct or indirect pecuniary benefit, shall—

(a) display, cause to display, or permit or authorise to display any advertisement of cigarettes or any other tobacco product; or

(b) sell or cause to sell, or permit or authorise to sell a film or video tape containing advertisement of cigarettes or any other tobacco product; or

(c) distribute, cause to distribute, or permit or authorise to distribute to the public any leaflet, hand-bill or document which is or which contains an advertisement of cigarettes or any other tobacco product; or

(d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product:

Provided that this sub-section shall not apply in relation to—

(a) an advertisement of cigarettes or any other tobacco product in or on a package containing cigarettes or any other tobacco product;

(b) advertisement of cigarettes or any other tobacco product which is displayed at the entrance or inside a warehouse or a shop where cigarettes and any other tobacco products are offered for distribution or sale.

(3) No person, shall, under a contract or otherwise promote or agree to promote the use or consumption of—

(a) cigarettes or any other tobacco product; or

(b) any trade mark or brand name of cigarettes or any other tobacco product in exchange for a sponsorship, gift, prize or scholarship given or agreed to be given by another person.

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Prohibition on sale of cigarette or other tobacco products to a person below the age of eighteen years and in particular area.

6. No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product—

- (a) to any person who is under eighteen years of age, and
- (b) in an area within a radius of one hundred yards of any educational institution.

Restrictions on trade and commerce in, and production, supply and distribution of cigarettes and other tobacco products.

7. (1) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him bears thereon, or on its label, the specified warning including a pictorial depiction of skull and cross bones and such other warning as may be prescribed.

(2) No person shall carry on trade or commerce in cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products sold, supplied or distributed by him bears thereon, or on its label, the specified warning.

(3) No person shall import cigarettes or any other tobacco products for distribution or supply for a valuable consideration or for sale in India unless every package of cigarettes or any other tobacco products so imported by him bears thereon, or on its label, the specified warning.

(4) The specified warning shall appear on not less than one of the largest panels of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply for a valuable consideration.

(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the nicotine and tar contents on each cigarette or as the case may be on other tobacco products along with the maximum permissible limits thereof:

Provided that the nicotine and tar contents shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act.

8. (1) The specified warning on a package of cigarettes or any other tobacco products shall be—

- (a) legible and prominent;
- (b) conspicuous as to size and colour;
- (c) in such style or type of lettering as to be boldly and clearly presented in distinct contrast to any other type, lettering or graphic material used on the package or its label and shall be printed, painted or inscribed on the package in a colour which contrasts conspicuously with the background of the package or its labels.

(2) The manner in which a specified warning shall be printed, painted or inscribed on a package of cigarettes or any other tobacco products shall be such as may be specified in the rules made under this Act.

(3) Every package containing cigarettes or any other tobacco products shall be so packed as to ensure that the specified warning appearing thereon, or on its label, is, before the package is opened, visible to the consumer.

9. (1) Where the language used on a package containing cigarettes and any other tobacco products or on its label is—

- (a) English, the specified warning shall be expressed in the English language;
- (b) any Indian language or languages, the specified warning shall be expressed in such Indian language or languages;
- (c) both English and one or more Indian languages, the specified warning shall be expressed in the English language as well as in such Indian language or languages;
- (d) partly English and partly any Indian language or languages, the specified warning shall be expressed in the English language as well as in such Indian language or languages;

Manner in which specified warning shall be made.

Language in which the specified warning shall be expressed.

(e) any foreign language, the specified warning shall be expressed in the English language;

(f) partly any foreign language and partly English or any Indian language or languages, the specified warning shall be expressed in the English language as well as in such Indian language or languages.

(2) No package of cigarettes or any other tobacco products or its label shall contain any matter or statement which is inconsistent with, or detracts from, the specified warning.

10. No specified warning or indication of nicotine and tar contents in cigarettes and any other tobacco products shall be deemed to be in accordance with the provisions of this Act if the height of each letter or figure, or both used on such warning and indication is less than the height as may be prescribed by rules made under this Act.

Size of letters and figures.

11. For purposes of testing the nicotine and tar contents in cigarettes and any other tobacco products the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory as that Government may deem necessary.

Testing laboratory for nicotine and tar contents.

12. (1) Any police officer, not below the rank of a sub-inspector or any officer of State Food or Drug Administration or any other officer, holding the equivalent rank being not below the rank of Sub-Inspector of Police, authorised by the Central Government or by the State Government may, if he has any reason to suspect that any provision of this Act has been, or is being, contravened, enter and search in the manner prescribed, at any reasonable time, any factory, building, business premises or any other place,—

Power of entry and search.

(a) where any trade or commerce in cigarettes or any other tobacco products is carried on or cigarettes or any other tobacco products are produced, supplied or distributed; or

(b) where any advertisement of the cigarettes or any other tobacco products has been or is being made.

2 of 1974

(2) The provisions of the Code of Criminal Procedure, 1973, shall apply to every search and seizure made under this Act.

13. (1) If any police officer, not below the rank of a sub-inspector or any officer of State Food or Drug Administration or any other officer, holding the equivalent rank being not below the rank of Sub-Inspector of Police, authorised by the Central Government or by the State Government, has any reason to believe that,—

Power to seize.

(a) in respect of any package of cigarettes or any other tobacco products, or

(b) in respect of any advertisement of cigarettes or any other tobacco products,

the provisions of this Act have been, or are being, contravened, he may seize such package or advertisement material in the manner prescribed.

(2) No package of cigarettes or any other tobacco products or advertisement material seized under clause (a) of sub-section (1) shall be retained by the officer who seized the package or advertisement material for a period exceeding ninety days from the date of the seizure unless the approval of the District Judge, within the local limits of whose jurisdiction such seizure was made, has been obtained for such retention.

14. Any package of cigarettes or any other tobacco products or any advertisement material of cigarettes or any other tobacco products, in respect of which any provision of this Act has been or is being contravened, shall be liable to be confiscated:

Confiscation of package.

Provided that, where it is established to the satisfaction of the court adjudging the confiscation that the person in whose possession, power or control any such package of cigarettes or any other tobacco products is found is not responsible for the contravention of the provisions of this Act, the Court may, instead of making an order for the confiscation of such package, make such other order authorised by this Act against the person guilty of the breach of the provisions of this Act as it may think fit.

Power to give option to pay costs in lieu of confiscation.

15. (1) Whenever any confiscation of any package of cigarettes or any other tobacco products is authorised by this Act, the court adjudging it may, subject to such conditions as may be specified in the order adjudging the confiscation, give to the owner thereof an option to pay, in lieu of confiscation, costs which shall be equal to the value of the goods confiscated.

(2) On payment of the costs ordered by the court, the seized packages shall be returned to the person from whom they were seized on condition that such person shall, before making any distribution, sale or supply of such packages of cigarettes or other tobacco products, get the specified warning and indication of nicotine and tar contents incorporated on each such package.

Confiscation not to interfere with other punishments.

16. No confiscation made, costs ordered to be paid under this Act shall prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of this Act or under any other law.

Adjudication.

17. Any confiscation of cigarettes or any other tobacco products may be adjudged or costs may be ordered to be paid,—

(a) without any limit, by the principal civil court of original jurisdiction within the local limits of whose jurisdiction such confiscation has been made; costs have been ordered to be paid,

(b) subject to such limits as may be specified by the Central Government in this behalf, by such other court, not below a civil court having pecuniary jurisdiction exceeding rupees five thousand, as the Central Government may, by notification in the Official Gazette, authorise in this behalf.

Giving opportunity to the owner of seized packages.

18. (1) No order adjudging confiscation or directing payment of costs shall be made unless the owner or person in possession of the package of cigarettes or any other tobacco products has been given a notice in writing informing him of the grounds on which it is proposed to confiscate such package, and giving him a reasonable opportunity of making a representation in writing, within such reasonable time as may be specified in the notice, against the confiscation mentioned therein, and, if he so desires, of being heard personally or through a representative in the matter:

Provided that, where no such notice is given within a period of ninety days from the date of the seizure of the package of cigarettes or of any other tobacco products, such package shall be returned, after the expiry of that period, to the owner or the person from whose possession it was seized.

(2) Save as otherwise provided in sub-section (1), the provisions of the Code of Civil Procedure, 1908, shall, as far as may be, apply to every proceeding referred to in sub-section (1). 3 of 1908

Appeal.

19. (1) Any person, aggrieved by any decision of the court adjudging a confiscation, ordering the payment of costs, may prefer an appeal to the court to which an appeal lies from the decision of such court.

(2) The appellate court may, after giving to the appellant an opportunity of being heard, pass such order as it thinks fit confirming, modifying or reversing the decision or order appealed against or may send back the case with such directions as it may think fit for a fresh decision or adjudication, as the case may be, after taking additional evidence, if necessary:

Provided that an order enhancing any fine in lieu of confiscation or confiscating of goods of greater value shall not be made under this section unless the appellant has had an opportunity of making a representation and, if he so desires, of being heard in person or through a representative in his defence.

(3) No further appeal shall lie against the order of the court of appeal.

20. (1) Any person who produces or manufactures cigarettes or tobacco products, which do not contain, either on the package or on their label, the specified warning and the nicotine and tar contents, shall in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

Punishment for failure to give specified warning and nicotine and tar contents.

(2) Any person who sells or distributes cigarettes or tobacco products which do not contain either on the package or on their label, the specified warning and the nicotine and tar contents shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to three thousand rupees.

21. (1) Whoever contravenes the provisions of section 4 shall be punishable with fine which may extend to two hundred rupees.

Punishment for smoking in certain places.

(2) An offence under this section shall be compoundable and shall be tried summarily in accordance with the procedure provided for summary trials in the Code of Criminal Procedure, 1973.

2 of 1974.

22. Whoever contravenes the provision of section 5 shall, on conviction, be punishable—

Punishment for advertisement of cigarettes and tobacco products.

(a) in the case of first conviction, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both, and

(b) in the case of second or subsequent conviction with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees.

23. Where any person has been convicted under this Act for the contravention of the provision of section 5, the advertisement and the advertisement material for cigarettes and other tobacco products may be forfeited to the Government and such advertisement and advertisement material shall be disposed of in such manner as may be prescribed by rules made under this Act.

Forfeiture of advertisement and advertisement material.

24. (1) Any person who contravenes the provisions of section 6 shall be guilty of an offence under this Act and shall be punishable with fine which may extend to two hundred rupees.

Punishment for sale of cigarettes or any other tobacco products in certain places or to persons below the age of eighteen years.

(2) All offences under this section shall be compoundable and shall be tried summarily in accordance with the procedure provided for summary trials in the Code of Criminal Procedure, 1973.

2 of 1974.

25. (1) Notwithstanding anything contained in any other law for the time being in force, the Central Government or the State Government may, by notification in the Official Gazette, authorise one or more persons who shall be competent to act under this Act:

Prevention, detention and place of trial of offences under sections 4 and 6.

Provided that the person so authorised may, if he has reasonable ground for believing that any person has committed an offence under section 4 or section 6, may detain such person unless the accused person furnishes his name and address, and otherwise satisfies the officer detaining him that he will duly answer any summons or other proceedings which may be taken against him.

(2) Any person detained under sub-section (1) shall forthwith be taken before Magistrate to be dealt with according to law.

(3) Any person committing an offence under section 4 or section 6 shall be triable for such offence in any place in which he may be or which the State Government may notify in

115

this behalf, as well as in any other place in which he is liable to be tried under any law for the time being in force.

(4) Every notification issued under sub-sections (1) and (3) shall be published in the Official Gazette, and a copy thereof shall be exhibited for information to the public in some conspicuous place or places as the State Government may direct.

(5) Every person authorised under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

45 of 1860.

Offences by
companies.

26. (1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) "company" means a body corporate and includes a firm or other association of individuals; and

(b) "director", in relation to a firm, means a partner in the firm.

Offences to be
bailable.

27. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under this Act shall be bailable.

2 of 1974.

Composition
of offences.

28. (1) Any offence committed under section 4 or section 6 may either before or after the institution of the prosecution be compounded by such officer authorised by Central Government or State Government and for an amount which may not exceed two hundred rupees.

(2) Where an offence has been compounded under sub-section (1), the offender, if in custody, shall be discharged and no further proceedings shall be taken against him in respect of such offence.

Protection of
action taken in
good faith.

29. No suit, prosecution or other legal proceeding shall lie against the Central Government or any State Government or any officer of the Central Government or any State Government for anything which is in good faith done or intended to be done under this Act.

Power to add
any tobacco
products in the
Schedule.

30. The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any other tobacco product in respect of which it is of opinion that advertisements are to be prohibited and its production, supply and distribution is required to be regulated under this Act, and thereupon the Schedule shall in its application to such products be deemed to be amended accordingly.

Power of
Central
Government
to make rules.

31. (1) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) specify the form and manner in which warning shall be given in respect of cigarettes or other tobacco products under clause (a) of section 3;

(b) specify the maximum permissible nicotine and tar contents in cigarettes or other tobacco products under the proviso to sub-section (5) of section 7;

(c) specify the manner in which the specified warning shall be inscribed on each package of cigarettes or other tobacco products or its label under sub-section (2) of section 8;

(d) specify the height of the letter or figure or both to be used in specified warning or to indicate the nicotine and tar contents in cigarettes or other tobacco products under section 10;

(e) provide for the manner in which entry into and search of any premises is to be conducted and the manner in which the seizure of any package of cigarettes or other tobacco products shall be made and the manner in which seizure list shall be prepared and delivered to the person from whose custody any package of cigarettes or other tobacco products has been seized;

(f) provide for any other matter which is required to be, or may be, prescribed.

(3) Every rule made under this Act and every notification made under section 30 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

32. Nothing contained in this Act shall apply to any cigarette or other tobacco products or package of cigarettes or other tobacco products which is exported:

Provided that nothing in this section shall be deemed to authorise the export of any package of cigarettes or other tobacco products, not containing the specified warning and indication of nicotine and tar contents to any country if the law in force in that country requires that the same or similar warning and nicotine and tar contents shall be specified on each package of cigarettes or other tobacco products.

Explanation.—For the purpose of this section, any cigarette or other tobacco products or package of cigarettes or other tobacco products shall be deemed to be exported before the commencement of this Act, if the necessary steps for export have already been taken notwithstanding that the actual export has not taken place.

49 of 1975.

33. (1) The Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975, is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the aforesaid Act, shall, in so far as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions of this Act as if the said provisions were in force when such thing was done or such action was taken and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

Act not to apply to cigarettes or other tobacco products which are exported.

Repeal and savings.

THE SCHEDULE

[See section 2(p)]

1. Cigarettes
2. Cigars
3. Cheroots
4. *Beedis*
5. Cigarette tobacco, pipe tobacco and *hookah* tobacco
6. Chewing tobacco
7. Snuff
8. *Pan masala* or any chewing material having tobacco as one of its ingredients (by whatever name called).
9. *Gutka*
10. Tooth powder containing tobacco.

SUBHASH C. JAIN,
Secy. to the Govt. of India.

AMMURE-V

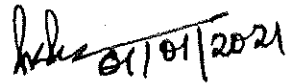
F. No. P.16011/04/2020-TC (Part)
Government of India
Ministry of Health & Family Welfare
(Tobacco Control Division)

Subject: Placing the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020 in public domain-reg

The Government of India has drafted the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill, 2020.

The said Bill is placed in public domain (ntcp.nhp.gov.in OR www.mohfw.gov.in), as part of pre-legislative consultations, with a view to elicit the comments/views of public. The comments should be specific and focused on the provisions of the Bill.

The comments/views must be e-mailed at cotpaamendment@gmail.com on or before 31st January, 2021 by 5:00 PM.


(Pradip Kumar Pal)

Under Secretary to the Government of India

THE CIGARETTES AND OTHER TOBACCO PRODUCTS (PROHIBITION OF ADVERTISEMENT AND REGULATION OF TRADE AND COMMERCE, PRODUCTION, SUPPLY AND DISTRIBUTION) (AMENDMENT) BILL, 2020

	A BILL
	<i>further to amend the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.</i>
	Be it enacted by Parliament in the Seventy First Year of the Republic of India as follows:-
	1. (1) This Act may be called the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Amendment Act, 2020. (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
No.34 of 2003 Amendment of Preamble	2. In the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter referred to as the principal Act),- In the Preamble, after the words ".....take concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco" the words, "AND WHEREAS, India is a signatory to the World Health Organization Framework Convention on Tobacco Control [WHO FCTC] adopted in Geneva, Switzerland on 21 st day of May, 2003 which came into force on the 27 th day of February, 2005" shall be inserted as a separate para.
Amendment of Section 3	3. In section 3 of the principal Act,-- i. for clause (a), the following clause shall be substituted, namely:- (a) "advertisement" means any audio or visual publicity, representation or pronouncement made by means of any light, sound, smoke, gas, print, electronic media, internet or website or social media and includes through any notice, circular, label, wrapper, invoice or other documents or device." (ii) for clause (k), the following clause shall be substituted, namely:-

	<p>“production”, with its grammatical variations and cognate expressions, includes the making of tobacco products and shall include-</p> <p>(i) Packing, labeling or re-labelling, of containers;</p> <p>(ii) Re-packing from bulk packages to retail packages; and</p> <p>(iii) The adoption of any other method to render the tobacco product marketable;</p>
Amendment of Section 4	4. In section 4 of the principal Act, the proviso, shall be omitted;
Amendment of Section 5	5. In section 5 of the principal Act,-
	(i) For sub-section (1), the following sub-section shall be substituted, namely:-
	“(1) No person shall directly or indirectly advertise cigarettes or any other tobacco products through any medium and no person shall take part in any advertisement that directly or indirectly promote the use or consumption of cigarettes or any other tobacco products.”
	(ii) In sub-section (2), proviso (a) and (b), shall be omitted;
	<p>Explanation: For the purpose of this section, the expression, -</p> <p>a. “medium” includes but not limited to audio, visual, audio-visual, print (including newspapers or magazines whether domestic or international, pamphlets, leaflets, flyers and letters), billboards, hoardings, posters, signs, non-tobacco products, tobacco accessories, buildings or other structures, vehicles, television, radio, films, music, games, live performances, the internet including over-the-top media services, social media platforms, mobile telephones, and any other technologies;-</p> <p>b. “promote” includes but not limited to supply or offer to supply free samples, sale or offer to sale at discounted price, sale or offer to sale on internet and/or any other forms of communication, sponsorship, recommendation or action with the aim, effect or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;</p> <p>c. “indirectly advertise” includes but is not limited to the followings:</p>

	<ol style="list-style-type: none"> 1. the use of a name or brand of tobacco products for marketing, promoting or advertising other goods, services and events; 2. the use of a mark or trade mark of tobacco products for marketing, promoting or advertising other goods, services and events; 3. the marketing of tobacco products with the aid of a brand name or trademark which is known as, or in use as, a name or brand for other goods and services; 4. the use of particular colours and layout and/or presentation those are associated with particular tobacco products; and 5. the use of tobacco products and smoking situations when advertising other goods and services;
Amendment of Section 6	6. For Section 6 of the principal Act, the following section shall be substituted, namely:-
	"6. No person shall sell, offer for sale, or permit sale of, cigarette or any other tobacco product -
	(a) to or by any person who is under twenty-one years of age, and
	(b) in an area within a radius of one hundred meters of any educational institution."
Amendment of Section 7	7. In section 7 of the principal Act,--
	(i) in sub-section(2), following proviso shall be inserted, namely:-
	"Provided that the trade and commerce in cigarette or any other tobacco product shall be in sealed, intact and original packaging."
	(ii) for sub-section (4), the following sub-section shall be substituted, namely:-
	"(4) The specified warning shall appear on the principal display area of the package in which cigarettes or any other tobacco products have been packed for distribution, sale or supply."
(iii) for sub-section (5), the following sub-section shall be substituted, namely:-	

	<p>“(5) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him is having minimum quantity as may be prescribed.”</p>
Amendment of Section 10.	<p>8. In section 10, of the principal Act, the words “or indication of nicotine and tar contents”, shall be omitted.</p>
Insertion of new Section 10(A)	<p>9. After Section 10 of the principal Act, the following section shall be inserted, namely:-</p> <p>“10A. (1) No person shall directly or indirectly, produce, supply or distribute, import, sell, offer for sale or permit sale of illicit cigarette or any other tobacco product.</p> <p>(2) The manner in which illicit cigarette or any other tobacco product shall be identified, tracked or traced, be such as may be specified in the rules made under this Act.</p> <p>Explanation. – For the purpose of this section, the expression, “illicit” means any practice or conduct prohibited by law and which relates to production, supply, distribution, import and sale, including any practice or conduct intended to facilitate such activity.</p> <p>(3) No person shall directly or indirectly, produce, supply or distribute, import, sell, offer for sale or permit sale of cigarette or any other tobacco product without license, registration or permission required by any law for the time being in force, of the Central Government or a State Government.”</p>
Amendment of Section 11.	<p>10. For section 11, of the principal Act, the following section shall be substituted, namely:-</p> <p>“11. For the purposes of testing and regulating the contents and emissions in cigarettes and any other tobacco products, the Central Government shall by notification in the Official Gazette grant recognition to such testing laboratory or laboratories as the Government may deem necessary.”</p>
Amendment of Section 15	<p>11. In section 15 of the principal Act,-</p> <p>(i) In sub-section 2,-</p> <p>the words “and indication of nicotine and tar contents”, shall be omitted.</p>

	<p>(ii) After sub-section 2, the following proviso shall be inserted, namely-</p> <p>“Provided that this section shall not apply to seized packages of illicit cigarette or any other tobacco product.”</p>
Amendment of Section 20.	<p>12. For section 20 of the principal Act, the following section shall be substituted, namely:-</p> <p>“20 (1) Any person who produces or manufactures cigarettes or any other tobacco products, in contravention of section 7 shall in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees.</p> <p>(2) Any person who sells or distributes cigarettes or any other tobacco products, in contravention of section 7 shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to one lakh rupees.”</p>
Insertion of new section 20A	<p>13. After section 20 of the principal Act, the following section shall be inserted, namely:-</p> <p>“20A. (1) Any person who produces or manufactures or supplies or imports illicit cigarettes or any other tobacco products shall in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees.</p> <p>(2) Any person who distributes, sell, offer for sale or permit sale of illicit cigarettes or any other tobacco products shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to fifty thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to one lakh rupees.</p>
Amendment of Section 21	<p>14. In Section 21 of the principal Act, in sub-section (1), for the words “which may extend to two hundred rupees” the words, “of two thousand rupees” shall be substituted.</p>

<p>Amendment of Section 22.</p>	<p>15. In section 22 of the principal Act,-</p> <p>(i) in sub-section (a):- "for the words, "one thousand rupees" the words, "fifty thousand rupees" shall be substituted."</p> <p>(ii) in sub-section (b):- "for the words, "five thousand rupees" the words, "one lakh rupees" shall be substituted."</p>
<p>Amendment of Section 23.</p>	<p>16. For section 23 of the principal Act, the following section shall be substituted, namely:-</p> <p>"23. Where any person has been convicted for contravention of the provisions of this Act, the packages of cigarettes and other tobacco products or advertisement materials or any other materials may be forfeited to the Government and such packages or materials shall be disposed of in accordance with the provisions contained in the Code of Criminal Procedure, 1973."</p>
<p>Amendment of Section 24.</p>	<p>17. For section 24 of the principal Act, the following section shall be substituted, namely:-</p> <p>"24. Any person who contravenes the provisions of section 6 shall be guilty of an offence under this Act and shall be punishable with imprisonment for a term, which may extend to seven years and with fine which may extend to one lakh rupees."</p>
<p>Amendment of Section 25.</p>	<p>18. In section 25 of the principal Act,-</p> <p>"The words "and 6" and "or section 6", shall be omitted."</p>
<p>Amendment of Section 27</p>	<p>19. For section 27 of the principal Act, the following section shall be substituted, namely:-</p> <p>"27: Offences to be cognizable and bailable.--</p> <p>(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under this Act shall be bailable.</p> <p>(2) For the avoidance of doubts, it is hereby declared that offences punishable under sections 5, 6, 7 and 10A of this Act shall be cognizable."</p>
	<p>20. In sub-section (1) of section 28 of the principal Act,-</p>

Amendment of Section 28	<p>(i) the words "or section 6" shall be omitted.</p> <p>(ii) for the words, "which may not exceed two hundred rupees" the words, "of two thousand rupees" shall be substituted."</p>
Amendment of Section 30	21. For section 30 of the principal Act, the following section shall be substituted, namely:-
	<p>"30. The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add to, or, omit from, the Schedule any tobacco products and thereupon the Schedule shall be deemed to have been amended accordingly."</p>
Insertion of new Section 30A.	<p>22. After section 30 of the principal Act, the following section shall be inserted, namely:-</p> <p>"30A. Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."</p>
Insertion of new Section 30B	<p>23. After the new section 30A, the following section shall be inserted, namely: -</p> <p>"30B. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force prohibiting trade and commerce, production, supply and distribution of cigarettes and any other tobacco products."</p>
Amendment of Section 31	<p>24. In section 31 of the principal Act, in sub-section (2), -</p> <p>(i) for clause (b), the following clause shall be substituted, namely:-</p> <p>"(b) specify the manner in which the illicit cigarette or any other tobacco product shall be identified, tracked or traced, under sub-section (2) of section 10A".</p> <p>(ii) In clause (d), the words "or to indicate the nicotine and tar contents", shall be omitted.</p>
Amendment of Section 32	25. In section 32 of the principal Act, for proviso, the following proviso shall be substituted, namely:-

Provided that nothing in this section shall be deemed to authorize the export of any package of cigarettes or other tobacco products, not containing the specified warning and quantity to any country if the law in force in that country requires that each package of cigarettes or other tobacco products shall have a specified warning and quantity.

भार मल्होत्रा
सचिव

P. K. Malhotra
Secretary



GOVERNMENT OF INDIA
MINISTRY OF LAW & JUSTICE
LEGISLATIVE DEPARTMENT

Dated the 5th February, 2014

D.O. No. 11 (35)/2013-L.I

Dear Shri

In the modern context, pre-legislative consultative policy as a process supports many of the legitimate and growing expectations for transparent and better informed Government. The process tends to resolve contentious and complex policies and the areas where Government is seeking a policy to build consensus.

2. The effectiveness and importance of pre-legislative scrutiny was under consideration of the Government for quite some time. Briefly, the pre-legislative scrutiny takes place before the final drafting of a Bill has been decided and it is introduced in Parliament. As per past practice, only a limited number of Bills were published in draft form and scrutinised this way.

3. While following this process, the Government sets out clearly the policy problem that is to be addressed through the provision of supportive evidence and analysis, the options that it has considered and the reasons for the choices the Government have made in bringing forward a legislation. The process also involves the study of social and financial costs, benefits and the key challenges that required to be settled before undertaking the legislation. Looking into all these aspects facilitate formation of perfect policy objectives which a Bill intends to achieve and improve the efficacy of any Act in its implementation.

4. Taking into consideration the recommendations of the National Advisory Council, the National Commission to Review the Working of the Constitution and the practice followed in other countries, the Committee of Secretaries has formulated a policy on pre-legislative consultation which should invariably be followed by every Ministry/ Department of the Central Government before any legislative proposal is submitted to the Cabinet for its consideration and approval. This policy should also guide and govern the handling of subordinate legislations. The details of such legislative process are given in the Appendix to facilitate systematic compliance and adherence with the policy so laid down. It is requested that the policy document be given wide publicity in your Ministry/Department for strict adherence.

With regards,

Yours sincerely,

(P.K. Malhotra)

To : All Secretaries to the Government of India.

Copy to Cabinet Secretary, Cabinet Secretariat, Rashtrapati Bhawan, New Delhi.

P.K. Malhotra

**Decisions taken in the meeting of the Committee of Secretaries (CoS)
held on 10th January, 2014 under the Chairmanship of Cabinet
Secretary on the Pre-legislative Consultation Policy (PLCP)
(including principal and subordinate legislation).**

1. Every Department/Ministry shall proactively publish the proposed legislations both on the internet as also through other means; the detailed modalities of such publication may be worked out by the Department/Ministry concerned.
2. The Department/Ministry concerned should publish/place in public domain the draft legislation or at least the information that may *inter alia* include brief justification for such legislation, essential elements of the proposed legislation, its broad financial implications, and an estimated assessment of the impact of such legislation on environment, fundamental rights, lives and livelihoods of the concerned/affected people, etc. Such details may be kept in the public domain for a minimum period of thirty days for being proactively shared with the public in such manner as may be specified by the Department/Ministry concerned.
3. Where such legislation affect specific group of people, it may be documented and disclosed through print or electronic media or in such other manner, as may be considered necessary to give wider publicity to reach the affected people.
4. As a matter of practice, a provision regarding the previous publication of rules should be made in all new principal legislations.
5. Every draft legislation or rules, placed in public domain through pre-legislative process should be accompanied by an explanatory note explaining key legal provisions in a simple language.
6. The summary of feedback/comments received from the public/other stakeholders should also be placed on the website of the Department/Ministry concerned.
7. The Department/Ministry concerned might, in addition to placing the proposal in public domain, also hold consultations with all stakeholders. However, the degree of participation and mode of consultations may be decided by the Department/Ministry concerned and may vary according to the nature of the subject and the potential impact on those who will be affected by such legislation.

8. The Bill should be referred to the Ministry of Law and Justice for vetting after the pre-legislative consultation as well as inter-ministerial consultations are over. The Ministry of Law and Justice shall also, at the time of examination of the draft legislation or rules, ensure that the concerned Department/Ministry has complied with the process of pre-legislative consultation.
9. The Department/Ministry concerned should include a brief summary of the feedback received from stakeholders (including Government Departments and the public) along with its response in the note for the Cabinet along with the draft legislation.
10. The summary of pre-legislative process should also be placed before the Department Related Parliamentary Standing Committee by the Department/Ministry concerned when the proposed legislation is brought to the Parliament and is referred to the Standing Committee.
11. If the Department/Ministry concerned is of the view that it is not feasible or desirable to hold pre-legislative consultation as detailed above, it may record the reasons in the note for the Cabinet.
12. The Manual for Parliamentary Procedures in the Government of India, and the instructions issued by the Cabinet Secretariat on writing Cabinet Notes may, to the extent required, be suitably modified.

CONFIDENTIAL

**MINUTES OF THE SEVENTEENTH SITTING OF THE COMMITTEE ON PETITIONS
(SEVENTEENTH LOK SABHA)**

The Committee met on Thursday, 24 June, 2021 from 1200 hrs. to 1430 hrs. in Committee Room 'C', Parliament House Annexe, New Delhi.

PRESENT

Dr. Virendra Kumar - Chairperson

MEMBERS

2. Shri Anto Antony
3. Shri Dr. Sukanta Majumdar
4. Prof. Sanjay Sadashivrao Mandlik
5. Dr. Bharati Pravin Pawar
6. Shri Brijendra Singh
7. Shri Sushil Kumar Singh
8. Shri Manoj Kumar Tiwari
9. Shri Prabhubhai Nagarbhai Vasava
10. Shri Rajan Baburao Vichare

SECRETARIAT

1. Shri T.G. Chandrashekhar - Joint Secretary
2. Shri Raju Srivastava - Director
3. Shri G. C. Dobhal - Additional Director

SPECIAL INVITEE

[Representatives of Smokeless Tobacco Federation (India)]

1. Shri Sanjay Bechan - Representationist
2. Shri Manoj Gupta
3. Shri Vivek Kohli

WITNESSES

MINISTRY OF HEALTH AND FAMILY WELFARE (DEPARTMENT OF HEALTH AND FAMILY WELFARE)

- | | | | |
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| 1. | Shri Rajesh Bhushan | - | Secretary |
| 2. | Shri Vikas Sheel | - | Additional Secretary |
| 3. | Shri Mandeep K. Bhandari | - | Joint Secretary (Food Regulation) |
| 4. | Shri Sunil Bakshi | - | Head (Regulations/Codex/International Cooperation), FSSAI |
| 5. | Shri Rakesh Kumar | - | Director (Science & Standards), FSSAI |

2. At the outset, the Hon'ble Chairperson welcomed the Members to the sitting of the Committee.

[The representatives of Smokeless Tobacco Federation (India) were, then, ushered in]

3. After welcoming the representationist and other representatives of the Smokeless Tobacco Federation (India), the Chairperson drew their attention to Direction 55(1) of the Directions by the Speaker regarding confidentiality of the proceedings of the Committee and invited them to express their views on their representation regarding proposed amendments to the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003 and its impact on banning indigenous chewing tobacco. The main issues that were put forth by the representationists, before the Committee, were as follows:-

- (i) The Ministry of Health and Family Welfare (Tobacco Control Division) *vide* F. No. P.16011/04/2020 - TC (Part) dated 1 January 2021 placed the draft Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) Amendment Bill, 2020 [COTPA Amendment Bill] in the public domain on 1 January, 2021 for eliciting the comments/views of public.
- (ii) On 13 January, 2015, a similar draft COTPA Amendment Bill was placed in the public domain by the Ministry of Health and Family Welfare (Tobacco Control Division) *vide* F. No. Z-21020/03/2014-PH-I [FTS-111238] for soliciting comments/views of the stakeholders including the general public. However, later on, the draft Bill was revoked by the Ministry for reasons best known to them.

- (iii) The COTPA Amendment Bill, which was published in 2015, *inter alia* contained stringent provision(s) in regard to regulation of cigarettes and tobacco/nicotine such as mandatory disclosure of the constituents and emission of each cigarette, whereas, in the COTPA Amendment Bill of 2020, such provision(s) is/are missing and the same has now been focused on the regulation of only chewing tobacco, as if tobacco/nicotine is found only in the chewing tobacco and not in the cigarettes.
- (iv) It is an undeniable fact that tobacco/nicotine, in all its forms, is harmful for human health and there has been innumerable cases of untimely death due to their consumption. Hence, there is a dire need to regulate all forms of tobacco/nicotine products and to put a ban on all these products, if necessary. However, from the opinion of the Ministry, it appears that only 'smokeless tobacco', i.e., chewing tobacco could be banned and not the 'smoking tobacco', i.e., cigarettes, etc.
- (v) There are the following four Acts/Rules/Regulations which are relevant in dealing with the subject:-
 - (a) Food Safety and Standards Act, 2006;
 - (b) Food Safety and Standards Rules, 2011;
 - (c) Food Safety and Standards (Prohibition & Restrictions on Sales) Regulations, 2011; and
 - (d) Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003 or COTPA, 2003.
- (vi) There is no explicit mention of either 'tobacco' or 'nicotine' in the principal Food Act or Rules, however, in spite of this, the Ministry intends to proscribe chewing tobacco by way of bringing it under the category of 'Food Products' by way of subordinate legislation in the form of regulations. It is a fact that chewing tobacco products are sold in the country as 'tobacco products' with 85 per cent warning on their labels as mandated by the Government and not as 'food'.
- (vii) The Acts related to tobacco which have been enacted world-wide, have taken into account the ill-effects of smoke emitted therefrom on the children, women and old age persons, which are the vulnerable groups. However, despite the fact that the practice of chewing tobacco which is prevalent in the Indian sub-continent since ages, the harmful effects on human health besides protection of environment, etc., have not been considered as the 'focal point' while formulating laws on tobacco in the country.

- (viii) With a view to regulating various products containing tobacco/nicotine, the Cigarettes and other Tobacco Products Act (COTPA) was enacted in the year 2003. However, it is unfortunate that since then, nothing on scientific basis has been done by the Government for 'standardisation' of tobacco by specifying the nicotine and tar contents in the tobacco products despite the fact that for 'regulation' of any product, the first and foremost thing is its 'standardisation'.
- (ix) As per the Bureau of Indian Standards (BIS), specific standards with respect to chewing and smoking tobacco have been prescribed. However, until now, the Ministry of Health & Family Welfare have not been able to adopt and implement the same.
- (x) COTPA, in itself, is a composite legislation, wherein, provisions for regulation on production and sale of tobacco products already exist. In such a situation, it is unjustifiable to 'pick and choose' a particular tobacco product, either for surreptitiously taking it outside the purview of COTPA or for including the same through the circuitous route of Subordinate Legislation.
- (xi) The exiting version of the COTPA Amendment Bill is also contrary to the recommendations given by the two Parliamentary Committees of 16th Lok Sabha, i.e., the Committee on Petitions and the Committee on Subordinate Legislation.
- (xii) While considering a strict regulation or a ban on all form of tobacco products *per se*, viz., 'smokeless tobacco' and 'smoking tobacco', its repercussions on millions of tobacco farmers, traders/businessmen and other stakeholders should also be taken into account. A complete ban on all tobacco products may also result into smuggling/illegal trade and other unlawful activities.
- (xiii) The issue of banning 'smokeless tobacco' is already pending before the Supreme Court. In an affidavit filed before the Supreme Court, the Ministry of Health and Family Welfare had acknowledged that 'smoking tobacco' is, at least, ten times more harmful than 'smokeless tobacco'. In spite of that, in the COTPA Amendment Bill 2020, the focus is only on 'smokeless tobacco', which is not only a regressive and illogical hypothesis but would also have a cascading impact on source of livelihood of millions of tobacco farmers, traders/businessmen, etc., and on the revenue of the Government, as well.

[The representationist and other representatives of the Smokeless Tobacco Federation (India), then, withdrew]

[Thereafter, the representatives of the Ministry of Health and Family Welfare were ushered in]

4. After welcoming the representatives of the Ministry of Health and Family Welfare, the Chairperson read out Direction 55(1) of the Directions by the Speaker regarding confidentiality of the proceedings of the Committee. The Chairperson, thereafter, on behalf of the Committee, appreciated the efforts made by the Ministry of Health & Family Welfare during the difficult times of Covid-19 pandemic. The Committee, then, sought clarifications from the representatives of the Ministry of Health and Family Welfare on various aspects relating to the proposed amendments to the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003 and its impact on banning the indigenous chewing tobacco products *vis-a-vis* the action taken replies on the Sixty-Eighth Report of the Committee on Petitions (16th Lok Sabha), as under:-

- (i) In the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill 2015 [COTPA (Amendment) Bill], sub-section 5 was substituted by a new 'sub-section' by making it mandatory for all person manufacturing or producing cigarettes to disclose the 'constituents' and 'emission' of each cigarette. However, this 'sub-section' has been omitted from the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Bill 2020.
- (ii) In the COTPA (Amendment) Bill 2015, the words "nicotine and tar contents" which were substituted with the words "constituents and emissions" have also been omitted in the COTPA (Amendment) Bill 2020 by the Ministry of Health and Family Welfare.
- (iii) In the COTPA (Amendment) Bill 2015, the Ministry had appended a detailed 'Notes on Clauses'. However, in the Amendment Bill 2020, this has not been appended.
- (iv) In the Food Safety and Standards Act 2006 and Rules made thereunder, whether there is any reference of tobacco, nicotine, etc., even in the definition of 'Food'?
- (v) The Food Safety and Standards (Prohibition and Restriction on Sales), Regulation was notified in the year 2011. Since the Food Safety and Standards Act and the Rules made thereunder were already in place in the year(s) 2006 and 2011 respectively, what was the need to notify the said Regulations by specifically bringing in an unconnected Regulation, namely, 2.3.4 which specifies that 'tobacco' and 'nicotine' shall not be used as ingredient in any food product?

- (vi) Notwithstanding the fact that in Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restriction on Sales), Regulation 2011, it has been provided that "*Product not to contain any substance which may be injurious to health and that 'tobacco' and 'nicotine' shall not be used as ingredient in any food product*", a hypothesis has been made by categorizing the tobacco products into two categories, i.e., 'smokeless tobacco' and 'smoking tobacco' along with a conceptualization that 'smoking tobacco' cannot be brought under the definition of 'food' as anything which is eaten through mouth or chewed can only be 'food'.
- (vii) If the Food Safety and Standards (Prohibition and Restriction on Sales), Regulation 2011 explicitly provide that 'tobacco' and 'nicotine' shall not be used as ingredient in any food product, why 'smoking tobacco' has been excluded while making an interpretation of the definition of 'food'?
- (viii) Whether the representatives of the Ministry of Health and Family Welfare had endorsed similar views before the Committee on Petitions during the Sixteenth Lok Sabha on the basis of which the Committee had formulated its sixty-eighth Report in Lok Sabha in the year 2019?
- (ix) Whether it is a fact that while categorizing the tobacco products into two categories, viz., 'smokeless' and 'smoking', the Ministry of Health and Family Welfare has ignored that both of these products are 'nicotine delivery devices' and a health hazard and instead put their emphasis on the 'mode/method of consumption' due to which it was conceived that 'smokeless tobacco' comes within the definition of 'food' and could be proscribed and 'smoking tobacco' does not come under the definition of 'food' and, therefore, could be regulated under the provisions contained in the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003?
- (x) If the Ministry of Health and Family Welfare consider that tobacco in any form and quantity is harmful, what were the reasons that the Ministry have not made any effort to amend the Food Safety and Standards Act 2006 and Rules made thereunder and instead brought out Regulation in the year 2011 containing a 'one-line' provision to the effect that 'nicotine' and 'tobacco' shall not be used as ingredient in any food products?

5. The representatives of Ministry of Health and Family Welfare, thereafter, put forth their comments/views, as under:-

- (i) India is amongst 181 ratifying countries under the Framework Convention on Tobacco Control (FCTC), which is an International Framework for tobacco control, and has the responsibility to regulate the consumption of tobacco at public places and to ensure public health.
- (ii) There is no intention of the Ministry of Health & Family Welfare to exclusively ban 'smokeless tobacco' or in other words, the chewing tobacco. The objective is only to regulate the consumption of tobacco so that large number of people should not be addicted to it.
- (iii) Presently, tobacco is sold in the country as *beedi* or *tendu leaves*, in dried forms, which is legal and there is no ban on it. However, there is prohibition and restrictions on sale of products when tobacco or nicotine is mixed with any other food item as per provision of the Food Safety and Standards (Prohibition & Restrictions on Sales) Regulations, 2011 (Regulation 2.3.4) formulated under the Food Safety and Standards Act, 2006 which *inter alia* stipulates that- "*tobacco and nicotine shall not be used as ingredients in any food products.*"
- (iv) Pursuant to placing of COTPA Amendment Bill 2020 in the public domain on 1 January, 2021, the Ministry of Health & Family Welfare received around 89,000 objections through electronic mode viz., e-mails, etc., besides, more than 2 lakhs representations, letters, etc., in physical form by bringing out various grievances and suggestions on the subject. The Ministry of Health & Family Welfare are, presently, considering all the inputs received from various stakeholders and after considering all these inputs and also suggestions given by the Committee on Petitions, Lok Sabha, the said Bill would be finalised and introduced in the Parliament. After finalising the draft Bill, the Ministry would also inform the Committee on Petitions and seek appropriate guidance/suggestions from the Committee prior to bringing the said Bill before the Parliament.
- (v) Under the Food Safety and Standards Act, 2006, there are provisions for formulating Rules as well as Regulations. The Regulations which *inter alia* contain the standards of food products come under the purview of FSSAI, whereas, the Rules which *inter alia* specify qualification, experiences and responsibilities of the Designated Officers come under the purview of the Ministry of Health & Family Welfare or the Government of India.
- (vi) In terms of section 3(1)(j) of the Food Safety and Standards Act, 2006, which *inter alia* states that 'Food' means any substance, whether processed, partially processed or unprocessed, which is intended for human consumption. In other words, any substance whether processed, partially processed or unprocessed

which intended for human consumption, i.e., through ingestion (which goes through alimentary canal), is to be categorized as 'Food' and therefore, something which is inhaled (*which goes through lungs*) cannot be considered as 'Food'. There has been no change in this definition since the enactment of this Act in 2006, and at present, *pan masala, gutkha* and *zarda* are considered to be food products. However, whether this definition of 'Food' is illogical as it emphasizes on the 'mode of consumption' and not the 'element of harm' would have to be re-examined by the Ministry of Health & Family Welfare and the matter would also be discussed with the Committee on Petitions, Lok Sabha.

- (vii) The Regulation 2.3.4 under the Food Safety and Standards Act, 2006, on the one hand, states that "*tobacco and nicotine shall not be used as ingredients in any food products*" and on the other hand, the two forms of tobacco use, i.e., smoking and smokeless have been dealt with differently on the basis of difference in 'nicotine delivery mechanism', this self-devised categorization has also been agitated/contended in various legal fora including the High Courts and the Supreme Court.
- (viii) Imposing a blanket ban on all forms of tobacco product(s), i.e., 'smokeless' and 'smoking tobacco' is to be considered by the Ministry of Health and Family Welfare cautiously after taking into consideration various complexities as discussed above as also its implications and ramifications in view of the fact that such a decision would also give rise to illegal trade and/or black marketing.
- (ix) Although, strict regulation on tobacco products could also be an option, the most important aspect which is connected with the livelihood and employment of farmers, traders, etc., who are neither socially prosperous nor financially opulent would also be taken into account while finalising the COTPA Amendment Bill. The objective of the Bill is to achieve reduction in the supply and demand of tobacco products as it is an undeniable fact that their consumption is harmful to human health irrespective of their 'forms' and 'mode of consumption'.

6. After hearing the views of the representatives of the Smokeless Tobacco Federation (India) and the representatives of the Ministry of Health & Family Welfare (Department of Health & Family Welfare), the Committee expressed their views, as follows:-

- (i) The classification of food product should not solely on the basis on the interpretation of definition of 'Food' as provided under the Food Safety and Standards Act, 2006. The classification of tobacco products into 'smokeless tobacco' and 'smoking tobacco' is unjustifiable as it based on their mode of consumption which does not eliminate its harmful effects on human health.

- (ii) There should not be any inconsistency in interpreting the definition of 'Food' from the Principal Act, i.e., the Food Safety and Standards Act, 2006 *vis-a-vis* Rules and Regulations made thereunder. There is a need for harmonization of definition of 'Food' in all the extant Acts/Rules/Regulations.
- (iii) The Ministry of Health and Family Welfare should fix responsibility of the officials who have deliberately attempted to twist the focal point of the COTPA Amendment Bill of 2015, while formulating the similar Bill of 2020, wherein, stringent provision(s) in regard to declaration of constituents and emission of cigarettes have been omitted along with devising a classification of 'smokeless' and 'smoking tobacco' which does not find mention in the relevant Act, Rules and Regulations.
- (iv) Since there is no explicit mention of 'tobacco' and/or 'nicotine' in the Food Safety and Standards Act 2006 and Rules made thereunder, the Ministry should refrain from misinterpreting Regulation 2.3.4 of Regulation 2011 for including 'tobacco' and that too, 'smokeless tobacco' as 'food' in view of the fact that 'tobacco' could not be mixed with 'tobacco'. It appears that due to some 'vested interests', the illogical interpretation of 'smoking' and 'smokeless' tobacco products and pronouncing that only 'smokeless tobacco' comes under the 'category of food' has been made out. The origin and reasons for such illogical interpretation could be known by handing over the investigation to the Central Bureau of Investigation.
- (v) The Ministry of Health & Family Welfare should consider all possible impact on the stakeholders taking into account their past experience as to whether complete ban on all forms of tobacco products could be effectively implemented or not?
- (vi) Since millions of people are involved in tobacco farming and its related business, in the event of imposing a complete ban on all forms of tobacco products, whether the Ministry of Health and Family Welfare have prepared any concrete and implementable Action Plan to provide them with alternate employment opportunities.
- (vii) In case of a complete ban on all forms of tobacco products, the Ministry of Health and Family Welfare should ensure that it may not lead to illegal trade of tobacco products and the resultant loss of revenue to the Government.
- (viii) There should not be an unjustified and biased classification of tobacco products, while effecting any legislation on strict regulation on the manufacturing and sale of all tobacco products.

- (ix) All such issues have to be considered taking into account long term ramifications and implications in terms of social and financial aspects such as employment and livelihood of millions of farmers and traders involved in tobacco farming and business.
- (x) There is a need to carry out a comprehensive study on the ill effects of tobacco products, i.e., 'smokeless tobacco' and 'smoking tobacco' on human health.
- (xi) As the instant issue relates to the public health at large, therefore, the Ministry of Health and Family Welfare, while taking into account the views/opinion of all the stakeholders, should take utmost care before taking any decision in the matter.
- (xii) The clarifications sought by the Members of the Committee which could not be responded to by the representatives of the Ministry of Health & Family Welfare should be furnished to the Committee Secretariat within a week's time.
- (xiii) After receipt of replies from the Ministry of Health and Family Welfare, the Committee on Petitions, Lok Sabha would decide as to whether the matter would further be deliberated upon with the representatives of the Ministry by convening another sitting of the Committee.

[The witnesses, then, withdrew].

7.	***	***	***	***	***	***
8.	***	***	***	***	***	***

The Committee, then, adjourned.

*** Does not pertain to this Report.

**MINUTES OF THE NINETEENTH SITTING OF THE COMMITTEE ON PETITIONS
(SEVENTEENTH LOK SABHA)**

The Committee met on Wednesday, 22 December, 2021 from 1500 hrs. to 1710 hrs. in Committee Room No.139, Parliament House Annexe, New Delhi.

PRESENT

Shri Harish Dwivedi - Chairperson

MEMBERS

2. Shri Anto Antony
3. Shri Brijendra Singh
4. Shri Sushil Kumar Singh
5. Shri Manoj Kumar Tiwari
6. Shri Prabhubhai Nagarbhai Vasava

SECRETARIAT

1. Shri T.G. Chandrashekhar - Joint Secretary
2. Shri Raju Srivastava - Director
3. Shri G. C. Dobhal - Additional Director

WITNESSES

**MINISTRY OF HEALTH AND FAMILY WELFARE
(DEPARTMENT OF HEALTH AND FAMILY WELFARE)**

1. Shri Rajesh Bhushan - Secretary
2. Shri Arun Singhal - CEO, FSSAI
3. Shri Vikas Sheel - Additional Secretary
4. Shri Mandeep K. Bhandari - Joint Secretary
5. Shri Sunil Bakshi - Head Regulations, FSSAI

2. At the outset, the Hon'ble Chairperson welcomed the Members to the sitting of the Committee.

3. *** **** *** *** ***

4. *** **** *** *** ***

5. *** **** *** *** ***

[The representatives of the Ministry of Health and Family Welfare (Department of Health and Family Welfare) were ushered in]

6. After welcoming the representatives of the Ministry of Health and Family Welfare (Department of Health and Family Welfare), the Chairperson read out Direction 55(1) of the Directions by the Speaker regarding confidentiality of the proceedings of the Committee.

7. Before taking oral evidence of the representatives of the Ministry of Health & Family Welfare (Department of Health & Family Welfare) on the representations of S/Shri R. P. Patel and Sanjay Bechan regarding proposed amendments to the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003 and its impact on banning indigenous chewing tobacco products *vis-a-vis* the action taken replies on the Sixty Eighth Report of the Committee on Petitions (16th Lok Sabha), the Committee while recapitulating the issues/points and various legal aspects discussed with the representatives of the Ministry during the earlier sitting of the Committee held on 24 June, 2021 under the Chairmanship of Dr. Virendra Kumar who has now been appointed as the Minister of Social Justice and Empowerment, expressed their views and sought further clarifications, as under:-

- (i) The sitting of the Committee held on 24 June, 2021, under the Chairmanship of Dr. Virendra Kumar, lasted for more than 2 hours and 30 minutes and during the said sitting, various members expected meaningful and legally tenable replies/clarifications from the representatives of the Committee.
- (ii) The Committee on Petitions, which was created prior to independence, i.e., on 20 February, 1924, have invariably selected petitions/representations that are of wider public interests and thereafter, examined the issues raised therein entirely from a legal perspective and by adopting a neutral and welfare-oriented approach. The outcome of such examination by the Committee often persuaded the Ministry concerned to review their earlier policy formulations. On the other hand, when the Committee realised that some vested interests have overweighed the wider public interests and the cardinal principal of law of natural justice, the Committee even do not hesitate to recommend initiating an inquiry by the Central Bureau of Investigation.
- (iii) During the earlier sitting of the Committee on the said subject, some pertinent questions were put forward before the representatives of the Ministry and the Committee expected that that the Ministry would undertake some course correction and tobacco as well as all the related products, which are harmful for human consumption as it causes cancer and other life threatening disease, would either be 'proscribed' or 'regulated' in such a manner that this habit would eventually come to an end and at the same time, the millions of people who are involved in cultivation of tobacco would also not become unemployed/jobless.
- (iv) Keeping the above hypothesis in view, during the earlier sitting, the Committee urged the representatives of the Ministry to review their formulations and in case, some related Act or Rules require amendment, the same could be taken up by the Ministry in the right earnest. However, it is unfortunate that no out-of-box proposal was put forward by the Ministry *vide* their communication dated 26 July, 2021. The Committee, therefore, again forwarded a detailed List of Points to the Ministry for giving clarifications on various aspects relating to the subject under examination. However, the Committee found that the replies submitted by the Ministry were mere repetition of their earlier submissions.

8. Pursuant to the replies furnished by the Ministry of Health & Family Welfare *vide* their Office Memorandum No. H-11013/01/2021-TC dated 17 December, 2021, the Committee categorized the various aspects connected with the subject into four parts, viz., (i) Contradiction in the definition of 'Food' as contained in the relevant Act and the interpretation made by the Ministry; (ii) Judgements/orders given by various Courts; (iii) Further consequential action on the

Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill, 2020; and (iv) Possible resolution to the issues/aspects connected with the subject under examination, and thereafter, expressed their views and sought further clarifications, as under:-

- (i) The Ministry of Health & Family Welfare *vide* their replies dated 25 June, 2018 to the List of Points forwarded by the Committee, had *inter alia* submitted before the Committee that under the definition of 'Food' under Section 3(j) of the FSS Act, 2006, gutkha, zarda, khaini, etc., have been included. However, when the Committee expressed that in Section 3(j) *ibid*, there is no such explicit mention of these products, the representatives of the Ministry immediately changed their version and informed the Committee that during the year 2011, Food Safety and Standards (Prohibition and Restriction on Sales) Regulations was issued by them, wherein, under Section 2.3.4, it was mentioned that "Tobacco and nicotine shall not be used as ingredients in any food products". However, when the Committee further disputed that in tune with the provisions of Section 2.3.4 of the Regulations *ibid*, all the tobacco products could, therefore, be proscribed, the representatives of the Ministry again changed their stance and submitted before the Committee that tobacco products are of two types, i.e., 'smoking tobacco' viz., cigarettes, bidis, etc., and 'smokeless/chewing tobacco' viz., Gutkha, Zarda, Khaini, etc. The definition of 'food' under Section 3(i) of the FSS Act, 2006 is very wide. Therefore, smokeless tobacco products such as Gutkha, Zarda, Khaini and any other similar processed/flavoured chewing tobacco products are all food products under the definition of the word 'food' under the FSS Act, 2006. On the other hand, 'smoking tobacco' cannot be brought under the definition of 'food' as anything which is eaten through mouth or chewed can only be 'food'. When the Committee further disputed that in Section 2.3.4 of the Regulations *ibid*, no such explicit mention has been made, the representatives of the Ministry stressed that the relevant assumption is based on their interpretation. The Committee, thereafter, brought to the attention of the representatives of the Ministry of the fact that such types of contradiction has led to various court cases and therefore, would it not be feasible to include the said interpretation by amending the FSS Act of 2006 so that the Parliament would also get an opportunity to discuss their interpretation and classification of tobacco as 'smoking tobacco' and 'smokeless/chewing tobacco'? On this, no response was forthcoming from the representatives of the Ministry of Health & Family Welfare.
- (ii) The Committee emphasised that 'tobacco' and nicotine' are harmful for human consumption in view of the fact that it causes cancer and other terminal disease. On this count, the Committee would appreciate if all the tobacco products are proscribed in the country. However, proscribing a specific category of tobacco

product and on the other hand, regulating another specific category of tobacco product on the basis of 'mode of consumption', i.e., one which is 'eaten/chewed' and the other which is 'smoked' is not a legally tenable proposition and calls for a dispassionate review by the Ministry of Health & Family Welfare.

- (iii) The Ministry of Health & Family Welfare, in their replies to the List of Points forwarded by the Committee have frequently quoted the Godawat Pan Masala case of 2004 and R. Krishnamurthy case of 1979 to emphasise before the Committee that the Hon'ble Supreme Court had concurred that 'tobacco', 'supari', 'pan masala' and 'guthka' come under the definition of 'food'. However, when the Committee undertook an intensive study of relevant judgements of Hon'ble Supreme Court, they found that in the Godawat Pan Masala case, the Hon'ble Supreme Court had held 'pan masala' and 'guthka' as 'food' and there is absolutely no mention of 'chewing tobacco' and 'supari' in the said judgement/order. On the other hand, the Krishnamurthy Case and the judgement/order of Hon'ble Supreme Court relates to 'Gingelly Oil' and has no relation whatsoever to tobacco, supari, pan masala and guthka. The Committee, therefore, expressed that giving misleading information to a Parliamentary Committee invariably comes under the category of 'breach of privilege'.
- (iv) The Ministry of Health & Family Welfare have selectively quoted various judgements/orders of the Hon'ble High Courts/Hon'ble Supreme Court in their replies furnished to the Committee and have not made any reference of judgment(s)/order(s) of Calcutta High Court (2014), Gauhati High Court (2014) and Patna High Court (2015), whereby, Regulation 2.3.4 of Food Safety and Standards (Prohibition and Restriction on Sales) Regulations, 2011 was interpreted or the orders of the Government of Assam for proscribing the 'chewing tobacco' were nullified. The Committee, therefore, urged the representatives of the Ministry to examine this issue, devoid of any pre-conceived notions, so that the all tobacco products, be it, smoking tobacco or smokeless/chewing tobacco, should be treated at par for arriving at a justifiable conclusion, either to proscribe all products that contain 'tobacco' and/or 'nicotine' or to regulate these products under COTPA.
- (v) Keeping in view the placing of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill, 2020 in public domain for eliciting the comments/views of public and the deletion of some important clauses relating to 'indication of nicotine and tar contents', etc., vis-a-vis the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill of 2015, the Committee *vide*

their communication dated 17 March, 2021 had urged the Ministry of Health & Family Welfare to keep the finalisation of said Bill in abeyance so that all the connected aspects could be holistically deliberated upon by the Committee in wider public interests. On this, the Ministry of Health & Family Welfare informed the Committee that since a large number of comments/views have been received from public, they need more time to examine these issues and thereafter, put up their final proposal for consideration of the Committee.

- (vi) On this issue, the Committee concurred with the view point put forward by the representatives of the Ministry of Health & Family Welfare and also urged them to keep the Committee apprised of the final formulations of the said exercise so that the Committee could also get an opportunity to clarify their doubts in wider public interests.
- (vii) Keeping in view the recurring inconsistencies in the replies furnished by the representatives of the Ministry of Health & Family Welfare and their successive deposition, the Committee suggested that with a view to achieving clarity on various issues, the Ministry should constitute a 'Special Committee', consisting of 2-3 Senior Officials of the Government of India, who have not been associated with this subject at any point of time, to review the case in its entirety with an objective and independent perspective. The said Special Committee would be required to submit their report to the Committee within a month's time. The Committee would, then, undertake a final discussion with the representatives of the Ministry of Health & Family Welfare and present the report to Parliament.

9. Thereafter, the Committee heard the representatives of the Ministry of Health & Family Welfare. The major issues put forth before the Committee by these witnesses, were as follows:-

- (i) The Ministry of Health & Welfare would constitute a 'Special Committee' consisting of 2-3 Senior Officials of the Government of India, who have never been associated with any of these issues at any point of time, to look into the various facets of the case with an independent perspective. The said 'Special Committee' would formulate a report, taking into account the public health related issues, legal implications, chronological analysis of the orders/judgments pronounced by various High Courts and Supreme Court, etc., and submit the same to the Committee.
- (ii) Apart from examining legal and administrative aspects of the case, the 'Special Committee' would also undertake a study on the matter of policy decision on issues of livelihood of farmers and economic repercussions.

- (iii) Since the Ministry are already pre-occupied with various health-related issues connected with Covid-19 pandemic, it would be appreciable if the Committee consider giving two month's time to the said 'Special Committee' to submit its report to them.
- (iv) Gutkha is a product, wherein, pan masala is mixed with tobacco. Therefore, there is a ban on 'Gutkha', whereas, there is no ban on 'tobacco'. Today also, any consumer has the freedom to purchase pan masala and tobacco separately and consume it by mixing both of them. There is *per se* no ban on 'tobacco' and/or 'pan masala'.
- (v) Section 2.3.4 of Food Safety and Standards (Prohibition and Restriction on Sales) Regulations, 2011 only provides that 'nicotine' or 'tobacco' should not be mixed in any food product. There is no provision in Section 2.3.4 of the Regulation *ibid* that restricts selling of pan masala and tobacco separately. The policy is only confined to regulation, *i.e.*, as to how tobacco could be sold. As a matter of fact, tobacco could be sold separately and should not be pre-mixed with pan masala and to this extent only, it comes under Section 2.3.4 of the Regulation of 2011.

10. On the aspect of time limit for submission of the report by the said 'Special Committee', the Committee agreed to the proposal that the 'Special Committee' could submit their report to the Committee on Petitions, Lok Sabha within a period of two months, *i.e.*, on or before 22 February, 2022.

[The witnesses, then, withdrew]

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|-----|-----|------|-----|-----|-----|-----|
| 11. | *** | **** | *** | *** | *** | *** |
| 12. | *** | **** | *** | *** | *** | *** |
| 13. | *** | **** | *** | *** | *** | *** |

The Committee, then, adjourned.

*** Does not pertain to this Report.

**MINUTES OF THE TWENTY FOURTH SITTING OF THE COMMITTEE ON PETITIONS
(SEVENTEENTH LOK SABHA)**

The Committee met on Monday, 17 October, 2022 from 1200 hrs. to 1500 hrs. in Committee Room 2, Parliament House Annexe (Extension), New Delhi.

PRESENT

Shri Harish Dwivedi - Chairperson

MEMBERS

2. Shri Hanuman Beniwal
3. Shri Arvind Sawant
4. Shri Brijendra Singh
5. Shri Manoj Kumar Tiwari

SECRETARIAT

1. Shri Raju Srivastava - Director
2. Shri Harish Kumar Sethi - Under Secretary

WITNESSES

**MINISTRY OF HEALTH & FAMILY WELFARE
(DEPARTMENT OF HEALTH & FAMILY WELFARE)**

1. Shri Rajesh Bhushan - Secretary
2. Shri Alok Saxena - Additional Secretary
3. Ms. V. Hekali Zhimomi - Additional Secretary

* * *

2. At the outset, the Hon'ble Chairperson welcomed the Members to the sitting of the Committee.

[The representatives of the Ministry of Health & Family Welfare (Department of Health & Family Welfare) were ushered in]

3. After welcoming the representatives of the Ministry of Health & Family Welfare (Department of Health & Family Welfare), the Chairperson read out Direction 55(1) of the Directions by the Speaker regarding confidentiality of the proceedings of the Committee.

4. At the outset, the Committee, while recapitulating the issues/points discussed with the representatives of the Ministry of Health & Family Welfare (Department of Health & Family Welfare) during the last sitting of the Committee held on 22 December, 2021 on the representations of S/Shri R. P. Patel and Sanjay Bechan regarding proposed amendments to the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution) Act, 2003 and its impact on banning indigenous chewing tobacco products *vis-a-vis* the action taken replies on the Sixty Eighth Report of the Committee on Petitions (16th Lok Sabha), sought clarifications, as under:-

- (i) During the discussion held with the representatives of the Ministry of Health & Welfare on 22 December, 2021, it was assured that the Ministry would constitute a 'Special Committee' consisting of 2-3 Senior Officials of the Government of India, who have never been associated with any of these issues at any point of time, to look into the various facets of the case including its legal and administrative aspects besides undertaking a study on the policy decision on issues of livelihood of farmers and its economic repercussions. The said 'Special Committee' would formulate a report, taking into account the public health related issues, legal implications, chronological analysis of the orders/judgments pronounced by various High Courts as well as the Supreme Court, etc., and submit the same to the Committee within a period of two months, i.e., on or before 22 February, 2022.
- (ii) The Ministry of Health & Welfare (Tobacco Control Division), however submitted Volume-I of the Report of the Expert Committee on 24 May, 2022 and informed that the Final Report would be submitted shortly.
- (iii) The Committee, in their sitting held on 13 July, 2022, undergone detailed deliberations on the findings contained in Volume-I of the Report of the Expert Committee. Pursuant to this, the Committee on Petitions were in agreement with the views expressed by the said Expert Committee *inter alia* to the effect that banning of tobacco and tobacco products is an issue which has huge implications and a decision impinge on livelihood of large number of people. A conscious decision would, therefore, need to be taken, balancing the interests of all and would therefore, require large scale consultations with stake-holders including

farmers, industry, States and concerned Ministries Departments in the Government of India.

- (iv) The Committee also endorsed the clarification made by the Expert Committee vis-a-vis their earlier submissions made by the Ministry of Health & Family Welfare, on the following aspect(s):-

"...Under the FSS Act 2006, tobacco is neither excluded nor included in the definition of food. In the Prevention of Food Adulteration Rules, 1955, Rule 44(j) was inserted in the year 2006 which reads-

'44(j) Product not to contain any substance which may be injurious to health Tobacco and Nicotine shall not be used as ingredients in any food products'.

It may be noted that though Rule 44(j) was not originally in the PFA Rules, it was added subsequently in the year 2006 probably because the State Food Authorities could legitimately issue orders banning food products found mixed with tobacco and/or nicotine'....

The Prevention of Food Adulteration Act and Rules were superseded by the Food Safety and Standards Act 2006 and various regulations which were notified and come into force w.e.f., 5 August 2011. One of the principal regulations is the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulations, 2011. Regulation 2.3.4 of Food Safety and Standards (PRS) Regulations, 2011 corresponds with Rule 44(j) of PFA Rules..."

- (v) On this aspect, the Committee has always been of the considered view that in case, 'Tobacco' and 'Nicotine' are used as ingredients in any food product(s), the same should not be sold in the market as a food product under any circumstances. Therefore, in order to make the said proviso explicit and devoid of ambiguity, the Committee felt that Regulation 2.3.4 of the Food Safety and Standards Regulations, 2011 needs to be amended, as under:-

"Product not to contain any substance which may be injurious to health.

Tobacco and Nicotine shall not be used as ingredients in any food products as otherwise all such items shall be included as 'tobacco products' and regulated through relevant Rules, Regulations, etc."

- (vi) While emphasizing that the viability of aforementioned amendment in the Regulation *ibid* be expeditiously explored and the same should also form part of the final Report (Volume II), the Committee urged the Ministry of Health & Family Welfare to submit the final Report (Volume II), within a period of one month, *i.e.*, by 16 August, 2022. This was communicated to the Ministry *vide* Lok Sabha Secretariat O.M. dated by 15 July, 2022.
- (vii) The Ministry of Health & Family Welfare (Tobacco Control Division), thereafter, furnished the Final Report (Volume-II) of the Expert Committee *vide* their communication dated 14 October, 2022.
- (viii) The main contents of the Volume-I of the Report of the Expert Committee consisted of 26 pages, whereas the Annexures consisted of around 200 pages which contained mainly the communications of various individuals/organisations and the copies of orders of the Supreme Court. Upon plain reading of the said Report, it could be gathered that 'smoking tobacco' has been depicted as a less harmful product *vis-à-vis* 'smokeless/chewing tobacco'.
- (ix) Volume-II of the Report of the Expert Committee consisted of 9 pages only, thereby making a cumulative total of merely 35 pages. It is perturbing to note that the Expert Committee took almost 10 months for formulating such a Report.
- (x) Based on the inconclusive findings contained in the Report of the Expert Committee, the Committee, therefore, unanimously expressed their unwillingness to accept the same.

5. The Committee, thereafter, referred to the judgment dated 27.09.2022 of the High Court of Delhi which *inter alia* quashed the impugned ban on chewing tobacco products and drew attention of the representatives of the Ministry to the following aspects:-

- (i) As regards Regulation 2.3.4 of the Regulation, 2011, the Delhi High Court in paragraph 195 of the above said judgment, has *inter alia* observed that the executive power of the State is not to act as an independent law-making agency and its function is only to fill up the gaps. It is settled that the power to make the laws lies with the Legislature and not with the Executive. The Executive has to merely implement the policies/laws made by the Legislature.
- (ii) In paragraph 211 of the above said judgment, it has been *inter alia* stated that the Acts in question, *i.e.*, FSSA and COTPA, occupy different fields, *i.e.*, the former applies to the 'food industry' while the latter applies to the 'tobacco industry'.

Hence, in the considered view of this Court, the FSSA does not impliedly repeal the provisions of the COTPA.

- (iii) In paragraph 219, the Delhi High Court has *inter alia* observed that Regulation 2.3.4 *ibid* merely lays down general principle for food safety and cannot, in any manner, be read to construe that "tobacco" is "food" within the meaning of the FSSA.
- (iv) In paragraph 229, the Delhi High Court has stated that it is apparent that the classification/distinction between 'smokeless' and 'smoking' tobacco has no connection with the object sought to be achieved by the impugned Notifications. In fact, the said discrimination which is being promoted by the impugned Notifications encourages smoking tobacco over smokeless tobacco, thereby being not only clearly discriminatory but also in violation of Article 14 of the Constitution.
- (v) In paragraph 230, the Delhi High Court has further stated that the impugned Notifications have purportedly being issued in the garb of Regulation 2.3.4 which bars the usage of tobacco and nicotine in any food article.
- (vi) In paragraph 234, the Delhi High Court has *inter alia* observed that it is clear that compliance of the ban imposed on manufacturing and sale of 'Gutkha' and 'Pan Masala' with tobacco and/or nicotine has to be ensured. Nevertheless, the essence of Regulation 2.3.4 is to prohibit use of tobacco and nicotine as ingredients in any food products and not prohibit the manufacture and sale of tobacco and/or nicotine *per se*.
- (vii) In paragraph 236, the Delhi High Court has clearly stated that tobacco, in any form, not only 'smokeless' but also 'smoking', is injurious to public health.
- (viii) In paragraph 238(c), the Delhi High Court has asserted that it has never been the intention of the Parliament to impose an absolute ban on manufacture, sale, distribution and storage of tobacco and/or tobacco products. However, the intention of the Parliament is to regulate the trade and commerce of tobacco and tobacco products in accordance with the COTPA, a Central Act which deals with tobacco industry. Further, in paragraph 238(e), the Court explicitly stated that tobacco cannot be construed as "food" within the meaning of the provisions of FSSA. Also, in paragraph 238(f), the Court has contended that the impugned Notifications for banning tobacco products have been issued without following the general principles laid down under various provision(s) of the FSSA, which is a clear abuse of the powers conferred upon under the FSSA.

- (ix) As regards Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, the Committee have been deliberating on its provisions in their earlier sittings on the subject. Besides, the Ministry were also asked to furnish the clarifications on the inconsistencies in the COTPA (Amendment) Bill. However, the Ministry have not yet furnished their clarification. In this backdrop, the Committee enquired as to whether the Ministry are contemplating to introduce amendments in respect to following aspects:-
- (a) Since the 'powers to amend' have been retained by the Ministry themselves, how it could be ensured that after amendment in the COTPA Act, smoking tobacco would not be given concession *vis-a-vis* smokeless/ chewing tobacco over the time?
 - (b) If COTPA has to be considered as the Principal Act, whether other relevant Act(s) would be in consonance with the provision(s) of the Act *ibid*? If not, how such consistency could be ensured in future?
 - (c) Whether the clause(s) relating to fixing standards for 'nicotine and tar contents' in tobacco products as well as powers to conduct test(s) would be included in the COTPA (Amendment) Bill?

6. Thereafter, the Committee heard the representatives of the Ministry of Health & Family Welfare. The major issues put forth before the Committee by these witnesses, were as follows:-

- (i) As per the directions of the Committee on Petitions, the Ministry of Health & Family Welfare had constituted an 'Expert Committee' consisting of Senior Officials of the Government of India, who have never been associated with any of these issues at any point of time, to look into the various facets of the case with an independent perspective, which was not an Internal Committee of the Ministry. The said 'Expert Committee' consisted of representatives from the CGHS, NITI Aayog, AIIMS, Department of Agriculture & Farmers' Welfare, Department of Legal Affairs, Non Communicable Diseases Division (ICMR) and FSSAI.
- (ii) The Ministry of Health & Family Welfare had already asked the said 'Expert Committee' to examine and give their opinion on the alternate formulation in regard to Regulation 2.3.4 of the Food Safety and Standards Regulations, 2011 as suggested by the Committee on Petitions *vide* Lok Sabha Secretariat O.M. dated 15 July, 2022.

- (iii) The Ministry has been waiting for the final judgment of the Areca Nut Case (tagged with 70 related cases) wherein the question as to whether tobacco is a food product or not is expected to be resolved, which is pending in the Supreme Court since 2016-17. Besides, the Ministry is not in favor of challenging the recent judgment of the High Court of Delhi.
- (iv) As regards formulation and enactment of any Subordinate Legislation, the final decision is taken by the highest level. The Competent Authority has already been briefed about the alternate formulation in regard to Regulation 2.3.4, in question and a formal meeting for discussing the matter would be held soon.
- (v) The Ministry fully endorses the views of the Committee that consumption of 'tobacco', in any form is harmful for public health and does not want to discriminate the same on the basis of its form which is evident from the mandatory graphic warning on the packets of 'smoking tobacco' as well as 'smokeless/chewing tobacco'.

[The witnesses, then, withdrew]

7.	***	***	***	***	***	***
8.	***	***	***	***	***	***
9.	***	***	***	***	***	***
10.	***	***	***	***	***	***
11.	***	***	***	***	***	***

The Committee, then, adjourned.

*** Does not pertain to this Report.

**MINUTES OF THE TWENTY-FIFTH SITTING OF THE COMMITTEE ON PETITIONS
(SEVENTEENTH LOK SABHA)**

The Committee met on Monday, 12 December, 2022 from 1500 hrs. to 1700 hrs. in Committee Room 3, Block A, Parliament House Annexe Extension, New Delhi.

PRESENT

Shri Harish Dwivedi - Chairperson

MEMBERS

2. Shri Anto Antony
3. Shri Hanuman Beniwal
4. Prof. Sanjay Sadashivrao Mandlik
5. Dr. Jayanta Kumar Roy
6. Shri Arvind Ganpat Sawant
7. Shri Brijendra Singh
8. Shri Sunil Kumar Singh

SECRETARIAT

1. Shri T. G. Chandrasekhar - Additional Secretary
2. Shri Raju Srivastava - Director

2. At the outset, the Hon'ble Chairperson welcomed the Members to the sitting of the Committee.

3. The Committee, thereafter, took up for consideration the following Draft Reports :-

(i)	***	***	***	***	***	***
(ii)	***	***	***	***	***	***
(iii)	***	***	***	***	***	***
(iv)	***	***	***	***	***	***
(v)	***	***	***	***	***	***
(vi)	***	***	***	***	***	***

- (vii) Report on the representation of S/Shri Rajnikant P. Patel & Sudhir Sable and Shri Sanjay Bechan regarding proposed amendments to Cigarettes and Other Tobacco Products [Prohibition of Advertisement and Regulation of Trade & Commerce, Production, Supply and Distribution] Act, 2003 (COTPA) and other matter connected therewith or incidental thereto.

4. After discussing the above mentioned Draft Reports in detail, the Committee adopted all the seven Reports with minor modification(s). The Committee also authorised the Chairperson to finalise the Draft Reports and present the same to the House.

The Committee, then, adjourned.
