

# **Guidelines for Law Enforcers**

for effective implementation of  
Tobacco Control Laws  
2024



National Tobacco Control Programme



सत्यमेव जयते

**Ministry of Health & Family Welfare**  
**Government of India**



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Government of India







**जगत प्रकाश नड्डा**  
**JAGAT PRAKASH NADDA**



**मंत्री**  
**स्वास्थ्य एवं परिवार कल्याण**  
**व रसायन एवं उर्वरक**  
**भारत सरकार**  
**Minister**  
**Health & Family Welfare**  
**and Chemicals & Fertilizers**  
**Government of India**

### **MESSAGE**

Tobacco use in India constitutes a significant public health challenge. With a wide array of products-including cigarettes, bidis, hookah and smokeless tobacco-India is among the largest consumers of tobacco globally. According to the Global Adult Tobacco Survey (GATS) India, 2016-2017, nearly 28% of adults in India use tobacco in some form. This widespread consumption contributes to a substantial burden of disease and premature deaths, including rising incidences of cancer, respiratory diseases, and cardiovascular conditions.

Tobacco control initiatives are integral in reducing tobacco consumption and mitigating its adverse health effects and require a multi-faceted approach, involving stricter enforcement of existing laws, enhanced public awareness campaigns, and expanded access to cessation services. These include the effective implementation of the Cigarettes and Other Tobacco Products Act (COTPA), 2003 which regulates the advertisement, production, supply, trade and distribution of tobacco products, as well as the Prohibition of Electronic Cigarettes Act (PECA), 2019 which prohibits the production, manufacture, import, export, transport, sale, distribution, storage and advertisement of electronic cigarettes and related devices. Upholding these laws is not merely a regulatory duty-it is a crucial action for saving lives.

Our comprehensive tobacco control laws are fundamental to our efforts to safeguard the health and well-being of the Indian population. They are crucial in our mission to minimize the harmful impact of tobacco use in our society and to establish a strong framework for regulating or prohibiting the sale, promotion, advertisement and use of tobacco products, including electronic cigarettes and similar devices.

I am pleased to introduce the revised Guidelines for Law Enforcers for Effective Implementation of Tobacco Control Laws 2024. These guidelines are designed to support law enforcers with the tools to enforce the various sections of the Acts, including outlining the procedures for penalizing violators. By rigorously applying these guidelines, we can advance our mission to create a healthier India.

I call upon all health professionals, law enforcement agencies, civil society, experts and all citizens to work together towards this noble cause. Together, we can advance our collective goal of a healthier, tobacco-free India.

**(Jagat Prakash Nadda)**



अपूर्व चन्द्रा, भा.प्र.से.  
सचिव  
**APURVA CHANDRA, IAS**  
Secretary



भारत सरकार  
स्वास्थ्य एवं परिवार कल्याण विभाग  
स्वास्थ्य एवं परिवार कल्याण मंत्रालय  
Government of India  
Department of Health and Family Welfare  
Ministry of Health and Family Welfare



### **Message**

Tobacco kills over 8 million people every year globally. Tobacco use is a key risk factor for major groups of Non-Communicable Diseases (NCDs), such as cardiovascular diseases, cancers, respiratory diseases and diabetes. In India, tobacco use alone results in 1.35 million deaths each year. Further, the deaths and diseases due to tobacco use deprive the Indian economy of an estimated INR 1.77 lakh crore annually, which is over 1% of the nation's GDP.


Since the enactment of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act (COTPA), 2003, the Government of India has taken several strong policy initiatives. These include the launch of the National Tobacco Control Programme (NTCP), public awareness campaigns, setting up of the National Tobacco Quitline Service, establishing over 2000+ tobacco cessation centres, implementation of large graphic health warnings on tobacco product packaging, prohibition of certain packaged chewing tobacco products, enacting the Prohibition of Electronic Cigarettes Act (PECA), 2019 which prohibits the production, manufacture, import, export, transport, sale, distribution, storage and advertisement of electronic cigarettes and related devices and establishment of tobacco testing laboratories, and more.

While significant progress has been made in tobacco control efforts in the past two decades, we must continue to strengthen our efforts to ensure compliance with the laws designed to protect the public from the myriad harms of tobacco and its diverse forms, including electronic cigarettes and related devices.

The *Guidelines for Law Enforcers for Effective Implementation of Tobacco Control Laws 2024* are designed to provide law enforcement officers with succinct, actionable directions to ensure compliance with our tobacco control laws and policies, and I am delighted to release them. The goal is to create healthier environments, reduce the burden of tobacco-related diseases, and set a strong example for other countries to follow.

I trust that these revised guidelines will be a valuable tool in the effective implementation of tobacco control laws at the sub-national level, empowering law enforcement officers who are essential to our tobacco control efforts.

**Date** : 13.09.2024  
**Place** : New Delhi

  
(Apurva Chandra)







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स्वास्थ्य एवं परिवार कल्याण मंत्रालय  
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Government of India  
Ministry of Health & Family Welfare  
Directorate General of Health Services



### Message

Tobacco use is one of the leading causes of preventable diseases and deaths in India, causing 13.5 lakh deaths annually. The Ministry of Health and Family Welfare has been making persistent efforts in tobacco control at the national, state and district levels with the aim to reduce tobacco consumption and minimize the health burden caused by tobacco-related diseases and deaths.

The Ministry's continued implementation and enforcement of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act (COTPA), 2003 has significantly contributed to a noticeable decrease in tobacco use across different demographics in India. Data from our Global Adult Tobacco Survey shows a 6% absolute reduction in tobacco use in India from 2009 to 2017, translating to 81 lakh fewer tobacco users.

The Prohibition of Electronic Cigarettes Act (PECA), 2019 is another crucial step in curbing tobacco and nicotine use by prohibiting the production, manufacture, import, export, transport, sale, distribution, storage and advertisement of electronic cigarettes and related devices, which have been proven to cause detrimental health effects. Effective implementation of these laws is necessary for further reducing the tobacco burden in the country.

To further enhance the enforcement of COTPA 2003 and PECA 2019, I am pleased to announce the release of the revised *Guidelines for Law Enforcers for Effective Implementation of Tobacco Control Laws 2024*. These guidelines comprehensively outline the various sections of the Acts and provide clear procedures for law enforcement personnel to effectively identify and penalise violators.

I applaud the efforts of the National Tobacco Control Programme (NTCP) and various stakeholders who developed these guidelines. These guidelines will be a valuable tool in the effective implementation of tobacco control laws at the national and sub-national levels and will empower law enforcers who are essential to our tobacco control efforts.

  
(Atul Goel)







वी. हेकाली झिमोमी, भा.प्र.से.  
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### MESSAGE

Tobacco use is one of the greatest public health challenges in India, imposing severe health, economic, environmental and social burdens. It is the one risk factor common to the four main groups of non-communicable diseases – cardiovascular disease, cancer, chronic lung disease and diabetes — health burdens that afflict much of the country. The National Non-communicable Disease Monitoring Survey (NNMS) findings released in 2021 reported that 32.8% of adults between 18-69 years used either smoked or smokeless forms of tobacco, and 28% used tobacco daily.

India is home to a diverse range of tobacco products, with smokeless tobacco being particularly prevalent. Additionally, the socio-cultural acceptance of tobacco use among many communities has made tobacco control challenging. Evidence strongly suggests that all forms of tobacco use are harmful and there is no safe level of exposure to tobacco. Nicotine is widely acknowledged as the principal addictive substance driving the continued use of tobacco products, which are responsible for over 8 million deaths globally each year, with 13.5 million deaths in India alone.

In light of these concerns, the Ministry of Health and Family Welfare has made the nationwide implementation of tobacco control laws and initiatives a top priority. A key focus has been the rigorous enforcement of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply, and Distribution) Act (COTPA), 2003. COTPA aims to reduce tobacco consumption and safeguard public health by regulating or prohibiting the sale, advertisement, trade and/or use of tobacco products and by promoting vital tobacco control measures such as specified health warnings on tobacco product packaging, banning sale to minors and near educational institutions, prohibiting advertisement, promotion and sponsorship of tobacco products, among others.

Further, acknowledging the well-evidenced harmful effects of persistent tobacco and nicotine use and the growing threat of Novel and Emerging Tobacco and Nicotine Products such as e-cigarettes and Heated Tobacco Products, the Ministry of Health and Family Welfare has enacted the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage And Advertisement) Act (PECA), 2019. The Act safeguards public health and protects youth from the risk of tobacco and nicotine addiction.

Rigorous enforcement of these Acts supports broader tobacco control initiatives, helping to reduce overall tobacco use and the associated health, economic, environmental and social burdens. Thus, it is with great pride that I introduce the revised *Guidelines for Law Enforcers for Effective Implementation of Tobacco Control Laws 2024*. These guidelines have been developed and recently updated to provide law enforcement officials with a better understanding of the various provisions of COTPA, 2003 and PECA, 2019 and offer clear, actionable procedures for strictly and effectively enforcing the Acts to combat the proliferation of tobacco products, including electronic cigarettes and like devices in India.

I congratulate the National Tobacco Control Programme and all partners and experts involved in drafting and updating these guidelines. Their dedication and hard work have resulted in this resource that will undoubtedly play a pivotal role in enforcing our tobacco control laws at every level- from urban centres to rural grassroots communities, thereby fostering healthier environments, reducing the burden of tobacco-related mortality and morbidity, and making India a global leader in tobacco control efforts.

  
(V. Hekali Zhimomi)







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दिनांक / Dated 19/Sep/2024

### Acknowledgement

Tobacco use is one of the major risk factors associated with Non-Communicable Diseases. According to the latest National Family Health Survey (NFHS-5, 2019-21), approximately 38% of Indian men and 9% of Indian women aged 15 and above use tobacco in some form. The survey highlights the widespread use of diverse tobacco products, making tobacco control a challenge.

To address this issue, a priority for the Dte.GHs, Ministry of Health has been the rigorous enforcement of India's tobacco control laws, namely the Cigarettes and Other Tobacco Products Act (COTPA), 2003 and the Prohibition of Electronic Cigarettes Act (PECA), 2019.

These revised *Guidelines for Law Enforcers for Effective Implementation of Tobacco Control Laws, 2024* aim to offer law enforcement officials clear and practical instructions for enforcing our tobacco control laws and policies. I am pleased to unveil these guidelines. The objective is to establish healthier surroundings, lessen the impact of tobacco-related illnesses, and serve as a positive model for other nations to emulate.

The development of these updated guidelines occurred under the esteemed leadership and guidance of Prof. (Dr) Atul Goel, the Director General of Health Services. I am truly grateful to him for his wholehearted guidance and support in developing this resource that will prove to be useful for the rigorous enforcement of tobacco control laws.

Special thanks to Dr. Poonam Meena, Dr. Avinash Sunthlia, Mr. Ardhendu Sarkar, Dr. Gopal Chauhan, Dr Rajini, Dr. Lana Lyngdoh Nongbri, Dr. Sushanta Kumar Swain, Dr. S.N. Dholpuria, Dr Mukesh Matanheliya, Dr Arnela, Mr. Praveen Sinha, Dr Amit Yadav, Mr. Ranjit Singh for their invaluable contributions. Special acknowledgement goes to Ms. Pooja Gupta for her contributions to these guidelines.

I also extend sincere appreciation to my team- Dr Prachi Rathi, Dr Vedha V.P.K., Dr Ambika Narain, Ms. Mansi Singh, Ms Shivani and Mr. Sahil Lochab for their meticulous efforts and support.

We trust that these guidelines will significantly help in increasing awareness about tobacco control initiatives and thereby supporting the vision of a future generation free from tobacco.

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Addl. DDG & Director EMR



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**Part 1: Cigarettes and Other Tobacco  
Products (Prohibition of Advertisement  
and Regulation of Trade and Commerce,  
Production, Supply and Distribution)  
Act, 2003 (COTPA)**

**MINISTRY OF LAW AND JUSTICE  
(Legislative Department)**

***New Delhi, the 19<sup>th</sup> May, 2003/Vaisakha 29, 1925 (Saka)***

The following Act of Parliament received the assent of the President on the 18<sup>th</sup> 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  
[18<sup>th</sup> 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 39<sup>th</sup> World Health Assembly (WHO), in its Fourteenth Plenary meeting held on the 15<sup>th</sup> 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 43<sup>rd</sup> World Health Assembly in its Fourteenth Plenary meeting held on the 17<sup>th</sup> May, 1990, reiterated the concerns expressed in the Resolution passed in the 39<sup>th</sup> 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:-



**Section 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.

Short title,  
extent and  
commencement.

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

Declaration  
as to  
expediency  
of control  
by the  
Union  
Definitions.

**Section 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 labeling 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, labeling 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 centers, 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.

**Section 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.

**Section 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 to 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 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:

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 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.

**Section 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.

**Section 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 **such specified warning including a pictorial warning as may be prescribed<sup>1</sup>**.

(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:

Prohibition on sale of cigarette or other tobacco products to person below the age of eighteen

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

<sup>1</sup> Amended vide the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Amendment Act, 2007 (No. 38 of 2007) dated 25<sup>th</sup> September 2007

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.

**Section 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.

Manner in which specified warning shall be made

(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.

**Section 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;
- (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.

Language in which the specified warning shall

(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.

**Section 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

Size of letters and figures.

warning and indication is less than the height as may be prescribed by rules made under this Act.

**Section 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.

**Section 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, authorized 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.

**Section 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, authorized 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 seize 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.

**Section 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 authorized by this Act against the person guilty of the breach of the provisions of this Act as it may think fit.

**Section 15.** (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 order adjudging the confiscation, give the owner thereof an option to pay, in lieu of confiscation, costs which shall be equal to the value of the goods confiscated.

Power to  
give option  
to pay costs  
in lieu of  
confiscation

(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.

**Section 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.

Confiscation  
not to  
interfere  
with other  
punishments

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

Adjudication

- (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, authorize in this behalf.

**Section 18.** (1) No order adjudging confiscation or direct 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 manner:

Giving  
opportunity  
to the  
owner of  
seized  
packages.

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 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)

5 of 1908

**Section 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.

Appeal

(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.

**Section 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.

**Section 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 of 1974

(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.



**Section 22.** Whoever contravenes the provisions 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.

**Section 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

**Section 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.

2 of 1974

- 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.

**Section 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, authorize one or more persons who shall be competent to act under this Act:

Prevention,  
detention  
and place of  
trial of  
offences  
under section  
4 and 6

Provided that the person so authorized 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 this behalf, as well as in many 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 authorized 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

**Section 26.** (1) Where an offence under this Act has been committed by a company, every person who, at the time of a 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:

Offences by companies

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 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.

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

2 of 1974

Offences to be bailable.

**Section 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 authorized by Central Government or State Government and for an amount which may not exceed two hundred rupees.

Composition of offences

(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.

**Section 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.

Protection of action taken in good faith

**Section 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 amended accordingly.

Power to  
add any  
tobacco  
products  
in the  
Schedule

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

Power of  
Central  
Government  
to make  
rules

(2) Without prejudice to the generality of the foregoing power, such rules may provide for all 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 (b) 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 session 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.

**Section 32.** Nothing contained in this Act shall apply to any cigarettes 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 authorize 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 and 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.

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

49 of 1975

Repeal and  
savings

(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 the 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.

## 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.

- (i) Sections 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, and 31, came into force on 01.05.2004, vide S.O. 238(E).

(ii) Sections 7(1), (2), (3), (4), 8, 9, 10 and 20, came into force on 01.12.2007, vide S.O. 1955(E), dated 16.11.2007.

(iii) Sections 12(1)(a), 13(1)(a), 15, 17, 18, 32 and 33, came into force on 30.07.2009, vide S.O. 1865(E).

(iv) Section 6(b) came into force on 16.09.2009 vide G.S.R. No. 680(E)

(v) Section 11 came into force on 01.09.2019 vide S.O. 3134(E) dated 29.08.2019.

**TABLE**

<b>Section</b>	<b>Punishment</b>	<b>Offence</b>
<b>Section 4:</b> Prohibition on smoking in any public place.  “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 centers, restaurants, public offices, court buildings, educational institutions, libraries, public conveyances, open auditorium, stadium, railway station, bus stop/stand, all workplaces, refreshment rooms, banquet halls, discotheques, canteen, coffee house, pubs, clubs, bars, shopping malls, cinema halls, airport lounge and the like which are visited by general public but does not include any open space.”	<b>Section 21</b> Fine up to 200 rupees	Compoundable and Bailable
<b>Section 5:</b> Prohibition on direct and indirect advertisements, promotion and sponsorship of use or consumption of cigarettes or any other tobacco products.	<b>Section 22</b> (1) For first conviction, imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both, and (2) For 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	Non Compoundable & Bailable
<b>Section 6:</b> Prohibition on 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. “Educational Institution” means any place or center where educational instructions are imparted according to the specific norms and include any school/colleges and institution of higher learning established or recognized by an appropriate authority”	<b>Section 24</b> Fine up to 200 rupees	Compoundable and Bailable
<b>Section 7:</b> (1) No person shall, directly or indirectly, produce, supply or distribute or carry on trade or commerce or import 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 such specified warning including a pictorial warning as may be prescribed.	<b>Section 20</b> (1) Producer or Manufacturer 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) Seller or Distributer 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.	Non compoundable & Bailable

## Rules relating to prohibition on smoking in Public Place, Section 4

### MINISTRY OF HEALTH AND FAMILY WELFARE

**GSR.417(E) Dated 30<sup>th</sup> May, 2008.** - In exercise of the power conferred by Section 31 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (34 of 2003), the Central Government hereby makes the following Rules, in supersession to Rule 3 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004, namely:-

**1. Short title, Extent and Commencement.** - (1) These rules may be called the Prohibition of Smoking in Public Places Rules, 2008.

(2) They shall come into force on the 2<sup>nd</sup> October, 2008.

**2. Definitions:** - In these rules, unless the context otherwise requires,--

(a) "hotel" shall mean a building or a part of a building where lodging, with or without board or other services, is provided by way of business for consideration monetary or otherwise and includes boarding house and guest house.

(b) "restaurant" shall mean any place to which the public has access and where any kind of food or drink is supplied for consumption on the premises by any person by way of business for consideration monetary or otherwise and shall include the open space surrounding such premises and includes-

(i) Refreshment room, banquet halls, discotheques, canteen, coffee house, pubs, bar, airport lounge, and the like.

(c) "Open space" mentioned in Section 3 (1) of the Act shall not include any place visited by the public such as open auditorium, stadium, railway station, bus stop/stand, and other such places.

(d) "Public place" defined in Section 3 (1) of the Act shall also include work places, shopping malls, and cinema halls.

(e) "Smoking area or space" mentioned in the proviso to Section 4 of the Act shall mean a separately ventilated smoking room that:

(i) is physically separated and surrounded by full height walls on all four sides;

(ii) has an entrance with an automatically closing door normally kept in close position;

(iii) has an air flow system, as specified in **schedule I**,

(iv) has negative air pressure in comparison with the remainder of the building.

(f) Words and expressions used herein and not defined in these rules but defined in the Act shall have the meanings, respectively, assigned to them in the Act.

**3. Prohibition of smoking in a public place:** - (1) The owner, proprietor, manager, supervisor or in charge of the affairs of a public place shall ensure that:

(a) No person smokes in the public place (under his jurisdiction/ implied)

(b) the board as specified in **schedule II** is displayed prominently at the entrance of the public place, in case there are more than one entrance at each such entrance and conspicuous

place(s) inside. In case if there are more than one floor, at each floor including the staircase and entrance to the lift/s at each floor.

(c) No ashtrays, matches, lighters or other things designed to facilitate smoking are provided in the public place.

(2) The owner, proprietor, manager, supervisor or in charge of the affairs of a public place shall notify and cause to be displayed prominently the name of the person(s) to whom a complaint may be made by a person(s) who observes any person violating the provision of these Rules.

(3) If the owner, proprietor, manager, supervisor or the authorized officer of a public place fails to act on report of such violation, the owner, proprietor, manager, supervisor or the authorized officer shall be liable to pay fine equivalent to the number of individual offences.

(Explanation: For the purpose of these rules the word offence means a person found violating any provision of the Rules).

**4. Hotels, Restaurants and Airports:** - (1) the owner, proprietor, manager, supervisor or in charge of the affairs of a hotel having thirty or more rooms or restaurant having seating capacity of thirty persons or more and the manager of the airport may provide for a smoking area or space as defined in rule 2(e).

(2) Smoking area or space shall not be established at the entrance or exit of the hotel, restaurant and the airport and shall be distinctively marked as "Smoking Area" in English and one Indian language, as applicable.

<sup>1</sup>[(3) No service shall be allowed in any smoking area or space provided for smoking.

(3A) The owner, proprietor, manager, supervisor or in charge of the affairs of a hotel, restaurant or airport shall display a board at the entrance of a smoking area or space of minimum size of 60x30 cm with a white background and having the message in English and one Indian language in black colour that-

- (i) tobacco smoking is harmful to your health and the health of non-smokers; and
- (ii) entry of person below the age of eighteen years is prohibited].

(4) The owner, proprietor, manager, supervisor or in charge of the affairs of a hotel having thirty or more rooms may designate separate smoking rooms in the manner prescribed as under:

- a) all the rooms so designated shall form a separate section in the same floor or wing, as the case may be. In case of more than one floors/ wings the room shall be in one floor/wing as the case may be.
- b) all such rooms shall be distinctively marked as "Smoking rooms" in English or one Indian language, as applicable.

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<sup>1</sup> Subs. by GSR 500(E) dated 23<sup>rd</sup> May 2017

c) the smoke from such room shall be ventilated outside and does not infiltrate/permeate into the non-smoking areas of the hotel including lobbies and the corridors.

**5. Recovery of fine by authorized officers:** - (1) The authorized officers mentioned in **schedule III** shall be competent to act under and compound the offences committed in violation of section 4 of the Act.

#### **Schedule I**

[See rule 2 (e) (iii)]

- i. That is exhausted directly to the outside and not mixed back into the supply air for the other parts of the building; and
- ii. It is fitted with a non-re circulating exhaust ventilation system or an air cleaning system, or by a combination of the two, to ensure that the air discharges only in a manner that does not re-circulate or transfer it from a smoking area or space to non-smoking areas

#### **Schedule II**

[See rule 3(b)]

- 1. The board shall be of a minimum size of 60 cm by 30 cm of white background
- 2. It shall contain a circle of no less than 15 cm outer diameter with a red perimeter of no less than 3 cm wide with a picture, in the centre, of a cigarette or beedi with black smoke and crossed by a red band.
- 3. The width of the red band across the cigarette shall equal the width of the red perimeter.
- 4. The board shall contain the warning “No Smoking Area – Smoking Here is an Offence”, in English or one Indian language, as applicable. **[Figure-1 prototype of a board]**



### Schedule III

(See rule 5)


**Authorized Officers:** Following persons shall be authorized to impose and collect the fine against the violation of section 4.

Sl. No.	Person Authorized to take action	Description of Public Place
1	Inspectors of Central Excise / Income tax/ Customs/ Sales Tax/Health/Transport and above	All Public Places within their jurisdiction
2	Station Master/Asstt. Station Master/ Station Head/Station in charge	Railways and all its Premises
3	All Gazetted Officers of State/ Central Government or equivalent rank and above in Autonomous Organizations /PSU	Government offices/premises and offices of the autonomous bodies and corporations
4	Director/ Medical Superintendent/ Hospital Administrator	Government and Private Hospital
5	Post Master & Above	Respective Post Office in their jurisdiction.
6	Head of the Institution/HR Manager/Head of Administration	Private Offices / Workplaces
7	College / School/Headmaster Principal/Teacher	Respective Educational Institutions
8	Librarian/Asstt. Librarian/Library in-charge/ other administrative staff in library	Libraries/ Reading Rooms.
9	Airport Manager/Officers of Airport Authority of India and Officers of all schedule Airlines	Airports
10	Director Public Health/ Director Health Services	All Public Places
11	In charge Administration in Central/ State Government.	All Public Places
12	Nodal Officers/Focal Points of Anti-Tobacco Cell at District and State level	All Public Places
13 <sup>2</sup>	Police Officers not below the rank of Sub-Inspector of Police	All Public Places within their jurisdiction.
14	Officers of State Food & Drug Administration not below the rank of Sub-Inspector of Police.	All Public Places within their jurisdiction.
15	Representatives of Panchyati Raj Institutions (Sarpanch / Panchayat Secretary)	All Public Places within their jurisdiction.
16	Dist Program Manager/ Finance Manager – Dist Health Society (National Rural Health Mission)	All Public Places within their jurisdiction.
17	Civil Surgeon /Chief Medical Officer(CMO) at District Hospital/ Medical Officer at Primary Health Centre (PHC)	Hospital Buildings /Health Institutions/ dispensaries
18	Registrar/ Deputy Registrar/ Public Prosecutors/ Government Counsels.	Court Buildings

<sup>2</sup> Ins. by GSR 680(E), dated 15<sup>th</sup> September 2009.

19	Inspector of Schools/ District Education officer	Educational Institutions
20	Traffic Superintendents /Asst Traffic Superintendents / Bus Station Officer / Ticket Collector or Conductor.	Public Conveyances
21	Travelling ticket Examiner/ Chief Ticket Inspectors/ Ticket Collectors/ Officers not below the rank of ticket collector or equivalent rank not below the rank of Asst Sub-Inspector of Railway Protection Force	Railways

**Figure – 1-Prototype of “No Smoking” board**

Design of the signage	Specification of the board
	<ol style="list-style-type: none"> <li>1. The board shall be of a minimum size of 60 cm by 30 cm of white background</li> <li>2. It shall contain a circle of no less than 15 cm outer diameter with a red perimeter of no less than 3 cm wide with a picture, in the centre, of a cigarette or beedi with black smoke and crossed by a red band.</li> <li>3. The width of the red band across the cigarette shall equal the width of the red perimeter.</li> <li>4. The board shall contain the warning “No Smoking Area – Smoking Here is an Offence”, in English or one Indian language, as applicable.</li> </ol>



**Figure-2-Prototype of a Designated Smoking Area Board**

***Tobacco smoking is harmful to your health and  
the health of non-smokers***

**Entry of person below the age of eighteen years is prohibited**

**30cm by 60cm**

**Rules relating to prohibition on sale of cigarettes and other tobacco products  
to person under eighteen years of age.  
Section 6(a)**

**MINISTRY OF HEALTH AND FAMILY WELFARE**

**G.S.R. 619(E) Dated 11<sup>th</sup> August, 2011.**-In exercise of the powers conferred by Section 25 and Section 31 of 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), the Central Government hereby makes the following rules to further amend the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004, namely :-

**1. Short Title, Extent and commencement. -**

- (1) These rules may be called the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Amendment Rules, 2011.
- (2) They shall come into force on the date of their publication in the Official Gazette.

**2.** In the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004, for rule 5, the following rule shall be substituted, namely. -

**“5. Prohibition on sale of tobacco products to and by persons below the age of eighteen years. -** (1) The owner or the manager or the in-charge of the affairs of a place where cigarettes or other tobacco products are sold shall ensure that. -

(a) a board with a warning as specified in “Annexure I” is displayed at the entrance of the place where cigarettes or other tobacco products are sold and all the components of the board should appear in a manner exactly as in the soft copy provided in the compact disk [CD] accompanying these rules:

Provided that such board shall not have any advertisement or promotional messages or pictures or images of cigarettes or any other tobacco products.

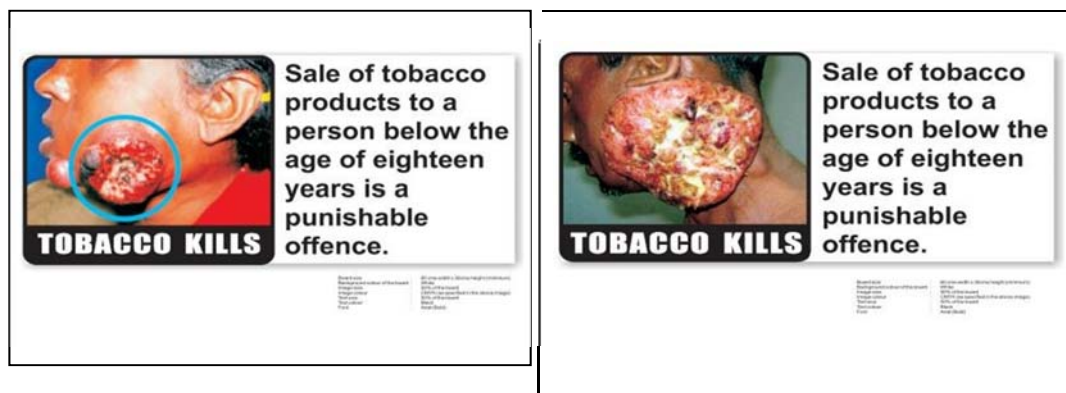
- (b) no tobacco product is sold through a vending machine;
- (c) no tobacco product is handled or sold by a person below the age of eighteen years;
- (d) tobacco products are not displayed in a manner that enables easy access of tobacco products to persons below the age of eighteen years.

(2) The onus of proof, that the buyer of the tobacco product is not a person below the age of eighteen years lies with the seller of the tobacco products and the seller in case of doubts may request the buyer to provide appropriate evidence or age proof of having reached eighteen years of age.

**3.** After Rule 5 as so amended, the following rule shall be inserted namely: - **“6. Recovery of Fine by authorized officers. -** The authorized officers mentioned in Annexure II shall be competent to act under and compound the offences committed in violation of clause (a) and clause (b) of section 6 of the Act.

**ANNEXURE I**  
(See Rule 5(1)[a])

1. The Board shall be of a minimum size of 60 cm by 30cm of white back ground.
2. The Board shall contain the warning “sale of tobacco products to a person below the age of eighteen years is a punishable offence”, in Indian language (s) as applicable and a pictorial depiction of the ill effects of tobacco use on health.



**ANNEXURE II**  
(See Rule 6)

Serial Number	Person authorized to take action
1.	Vice Chancellor or Director or Proctor or Principal or Headmaster or In-Charge of an Educational Institution
2.	Assistant Labour Commissioner from the Department of Labour
3.	All officers of the rank of Sub-Inspector in State Food and Drug Administration from the Department of Food and Drugs
4.	All officers of the rank of Inspectors from the Department of Education
5.	All police officers of the rank of Sub-Inspector of Police and above
6.	Municipal Health Officers
7.	Representatives of Panchayati Raj Institutions (Chairperson or Sarpanch or Panchayat Secretary)
8.	District Programme Manager or Finance Manager- District Health Society (National Rural Health Mission)
9.	Civil Surgeon or Chief Medical Officer at District Hospital or Medical Officer at Primary Health Centre (PHC)
10.	Block Development Officer, Block Extension Educator(BEE)
11.	Director or Joint Director Department of Health, and Department of Education in the State Government
12.	Nodal Officers of State and District Tobacco Control Cell under National Tobacco Control Programme

**Rules relating to prohibition on sale of cigarettes and other tobacco products,  
within 100 yards of educational institutions  
(Section 6b)**

**MINISTRY OF HEALTH AND FAMILY WELFARE**

**G.S.R. 40(E) Dated 19<sup>th</sup> January, 2010.**-In exercise of the powers conferred by Section 31 of 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), and in supersession of the prohibition on sale of the Cigarettes and Other Tobacco Products around Educational Institutions Rules 2004, except as respects things, done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:-

**1. Short Title, Extent and commencement. -**

- (1) These rules may be called the Cigarettes and Other Tobacco Products (Display of board by Educational Institutions Rules) 2009.
- (2) They shall extend to the whole of India.
- (3) They shall come into force on the date of their publication in the official gazette.

**2. Definitions. - (1)** In these rules, unless the context otherwise requires. -

- (a) “Act” means the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003;
- (b) “Educational Institution” means any place or centre where educational instructions are imparted according to the specific norms and include any school/colleges and institution of higher learning established or recognized by an appropriate authority;
- (2) Words and expressions used and not defined in these rules but defined in the Act, shall have the meanings, respectively, assigned to them in the Act.

**3. Display of Board by Educational Institutions.- (1) Display of Board.-** The owner or manager or any person in-charge of affairs of the educational institution shall display and exhibit a board at a conspicuous place(s) outside the premises, prominently stating that sale of cigarettes and other tobacco products in an area within a radius of one hundred yards of the educational institution is strictly prohibited and that it is an offence punishable under Section 24 of the Act with fine which may extend to two hundred rupees.

**(2) Measurement of Distance. -** The Distance on one hundred yards to in sub- rule (1), measured radially starting from the outer limit of boundary wall, fence or as the case may be, of the educational institution.

## SAMPLE BOARDS

### TOBACCO FREE EDUCATIONAL INSTITUTE

Sale of cigarettes and other tobacco products in an area within radius of one hundred yards of this educational institution is strictly prohibited and is a punishable offense. By Order



## ENFORCEMENT PROCEDURE FOR SECTION 4 & 6

a) **On the spot fine:** The person(s) authorized by the central or state government in this behalf, shall within his/her jurisdiction issue challans and recover on the spot fine (as the offence is compoundable. Refer to section 21 and 24).

OR

**Penalty before a Court:** When the offender fails to pay fine on the spot, issue challans with the direction that the offender pays the fine at the designated court or treasury on any given/fixed day(s) as may be decided by the State Government.

b) **Detention of offender:** When the offender refuses to pay the fine and further fails to furnish his/her name and address, and otherwise fails to satisfy the authorized officer that he/she will duly answer any summons or other proceedings which may be taken against him/her, such person may be detained by the authorized officer **(Refer to Section 25)**.

c) The authorized person may hand over the detained person to the concerned police station and lodge a complaint under section 21 or 24 of the COTP Act 2003.

d) The detained person shall forthwith be taken to the concerned Magistrate for summary trial.

e) **Place of trial:** Any person committing an offence under section 4 & 6 shall be tried for such offence in any place in which he may be or which the State Government may notify in this behalf, as well as in any other place in which he/she is liable to be tried under any law for the time being in force.

f) An offence committed under section 4 & 6 may be compounded either before or after the institution of prosecution by the officers authorized by the Central Government or the State Government for an amount which may not exceed two hundred rupees **(Refer to Section 28)**.

g) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be taken against him/her in respect of such offence.

h) **Summary Trial of offence:** All offences committed under section 4 & 6 of the Act shall be tried summarily in accordance with the procedure provided for summary trials in Section 283-287 of The Bharatiya Nagarik Suraksha Sanhita , 2023

## Annexure 1: Prototype of a challan (compounding of the offence on spot)

Book No.	Serial
<b>The 'Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade, Supply and Distribution) Act, 2003'</b>	
Name and address of the accused person .....	
Scene of the offence with date, time and place. .....	
Particulars of offence under Act/ Rules. .....	
Whereas you are hereby prosecuted for the offence described above, you are required to attend the court of name & address ..... place.....& time .....	
AM/PM on (date) ..... to answer the said charges unless otherwise ordered by the court.	
Signature/thumb impression of the accused	



**Annexure 2: Prototype of a challan (penalty before the designated court)**

Book No.

Serial

**The 'Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade, Supply and Distribution) Act, 2003'**

Name and address of the accused person

.....

Scene of the offence with date, time and place.

.....

Particulars of offence under Act/ Rules.

.....

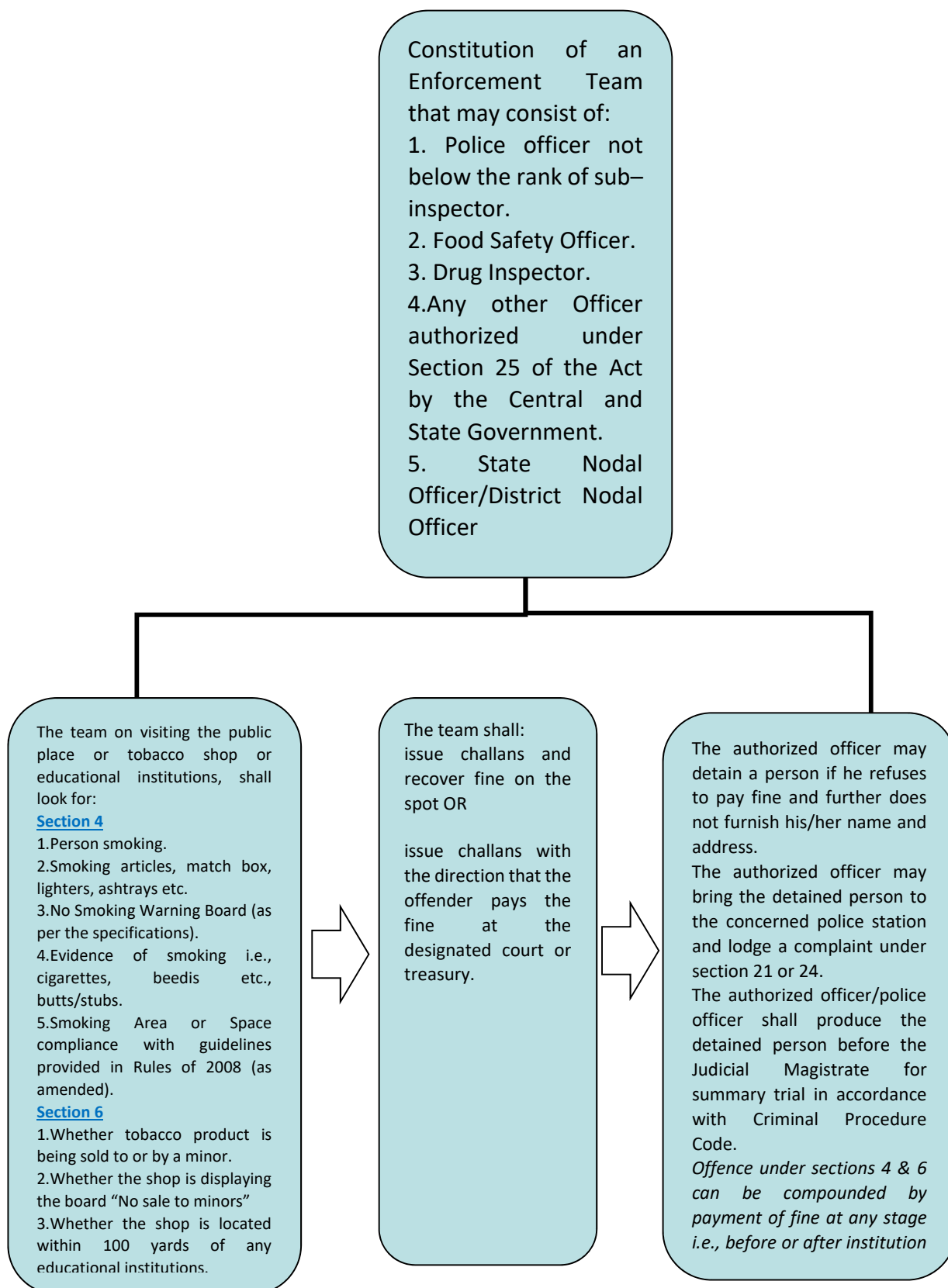
Whereas you are hereby prosecuted for the offence described above, you are required to attend the court of name & address

..... place .....&  
time ..... AM/PM on (date) ..... to answer the said charges unless  
otherwise ordered by the court.

Signature/thumb impression of the accused

**Name and address of the issuing**

## FLOW CHART OF ENFORCEMENT OF SECTIONS 4 & 6



**Rules relating to prohibition on direct and indirect advertisement, promotion  
and sponsorship of cigarettes and other tobacco products  
(Section 5)**

**MINISTRY OF HEALTH AND FAMILY WELFARE**

**G.S.R. 137. Dated 25<sup>th</sup> February, 2004** —In exercise of powers conferred by Section 31 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (34 of 2003), the Central Government hereby makes the following rules, namely:—

1. **Short title and commencement.**—(1) These rules may be called the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004.  
(2) They shall come into force on the 1<sup>st</sup> day of May, 2004.

2. **Definitions.**—In these rules, unless the context otherwise requires,—
- (a) “Act” means the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution Act, 2003;
  - (b) “section” means a section of the Act;
  - (c) **[\*\*\*]<sup>3</sup>**
  - (d) words and expression used herein and not defined in these rules but defined in the Act, shall have the meanings, respectively, assigned to them in the Act.
  - (e) **‘Indirect advertisement’ mentioned in section 5 (1) of the Act means<sup>4</sup>**
    - (i) the use of a name or brand of tobacco products for marketing, promoting or advertising other goods, services and events;
    - (ii) 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 service;
    - (iii) the use of particular colours and layout and/or presentation those are associated with particular tobacco products; and
    - (iv) the use of tobacco products and smoking situations when advertising other goods and services.

3. **[\*\*\*]<sup>5</sup>**

4. **Prohibition of advertisement of cigarette and other tobacco products<sup>6</sup>.**\_\_\_\_
- (1) The size of the board used for the advertisement of cigarettes and any other tobacco products displayed at the entrance of a warehouse or a shop where cigarette or any other tobacco product is offered for sale shall not exceed sixty centimeters by forty-five centimeters.

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<sup>3</sup> Rule 2(c) superseded by G.S.R. No. 417(E), dated 30.05.2008 at page 14,

<sup>4</sup> Ins, by G.S.R. No. 345(E) dated 31.05.2005

<sup>5</sup> Rule 3 superseded by G.S.R. No. 417(E), dated 30.05.2008 at pages 14-17

<sup>6</sup> Subs. by G.S.R. No. 345(E) dated 31.05.2005

(2) Each such board shall contain in an Indian language as applicable, one of the following warnings occupying the top edge of the board in a prominent manner measuring twenty centimeters by fifteen centimeters, namely:-

- (i) Tobacco causes cancer, or
- (ii) Tobacco kills

(3) The health warning referred to in sub-rule 2 must be prominent, legible and in black colour with a white background.

(4) The display board shall only list the type of tobacco products available and no brand pack shot, brand name of the tobacco product or other promotional message and picture shall be displayed on the board. The display board shall not be backlit or illuminated in any manner.

(5) The owner or manager or in-charge of the affairs of a place where cigarettes and other tobacco products are sold shall not display tobacco products in such a way that they are visible so as to prevent easy access of tobacco products to persons below the age of eighteen, years.

**5. [Prohibition on sale of tobacco products to and by person below the age of 18 years] refer to Rules 6(a) at pages 18-19**

**6. Recovery of fine by authorized officers refer to Rules 6(a) at page at page 19]**

**7. Health Spot and Message in Old Films and Television Programmes,** displaying Tobacco Products or their use<sup>7</sup>.-

(1) The owner or manager of a cinema hall or theatre screening old films (Indian and foreign) which display tobacco products or their use, shall ensure that anti-tobacco health spots of minimum thirty seconds duration each are screened at the beginning and middle of the film:

Provided that such health spots shall be made available to the Central Board of Film Certification by the Ministry of Health and Family Welfare, Government of India.

(2) If the owner or manager of cinema hall or theatre fails to comply with the provisions of sub-rule (1) the license of such cinema hall or theatre may be cancelled or suspended by the competent authority, after giving a reasonable opportunity to explain such failure.;

(3) The broadcaster of old television programme (including old Indian and foreign films) displaying tobacco products or its use, shall ensure that,-

(a) anti-tobacco health spots, of minimum thirty seconds duration each are screened at the beginning and middle of the television programme;

Provided that such health spots shall be made available to the Central Board of Film Certification by the Ministry of Health and Family Welfare, Government of India.

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<sup>7</sup> Subs. by G.S.R. No. 708(E), dated 21.09.2012

(b) anti-tobacco health warning as a prominent static message is displayed at the bottom of the television screen during the period of display of tobacco products or their use in the television programmes:

Provided that, the anti-tobacco health warning message shall be legible and readable, with font in black colour on white background, and;

(i) with the warnings "Smoking causes cancer" or "Smoking kills" for smoking forms of tobacco use;

(ii) with the warnings "Tobacco causes cancer" or "Tobacco kills" for chewing and other smokeless forms of tobacco;

(iii) or with such other warnings as may be specified by the Central Government from time to time:

Provided that the anti-tobacco health warning message or health spots shall be in the same language as used in the film or television programme and in case of dubbed or sub-titled films or television programmes, the message or spots shall be carried in the language of dubbing or sub-title.

(4) If the broadcaster of old television programmes fails to comply with the provisions of sub-rule (3), the competent authority in the Ministry of Information and Broadcasting, Government of India shall take appropriate punitive action including cancellation or suspension of the license issued to such broadcaster, after giving a reasonable opportunity to explain such failure.

Explanation. - For the purpose of this rule, -

(i) all films that receive Central Board of Film Certification prior to the effective date of this notification shall be categorized as "old films";

(ii) all television programmes produced prior to coming into effect of this notification shall be categorized as "Old Television Programme";

(iii) the expression "foreign film" implies "Imported" as defined in the Cinematograph (Certification) Rules, 1983.

(iv) the expression "television programmes" implies "programme" as defined in the Cable Television Networks (Regulation) Act, 1995.

## **8. Health Spots, Message and Disclaimer in New Films and Television Programmes<sup>8</sup>:-**

(1) All new Indian or foreign films and television programmes displaying tobacco products or their use shall have,-

(a) a strong editorial justification explaining the necessity of display of the tobacco products or their use in the film, to the Central Board of Film Certification;

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<sup>8</sup> Subs. by G.S.R. No. 708(E), dated 21.09.2012

(b) anti-tobacco health spots, of minimum thirty seconds duration each at the beginning and middle of the films and television programmes; **Figure-1**

(c) anti-tobacco health warning as a prominent static message at the bottom of the screen during the period of display of the tobacco products or their use in the film and television programme; **Figure-2**

(d) an audio-visual disclaimer on the ill-effects of tobacco use, of minimum twenty seconds duration each, in the beginning and middle of the film and television programme; **Figure-3**  
Provided that such health spots and disclaimer shall be made available to the Central Board of Film Certification by the Ministry of Health and Family Welfare, Government of India.  
Provided further that no film displaying tobacco products or their use shall be certified for public exhibition by the Central Board of Film Certification unless the conditions specified in clauses (a) to (d) of sub-rule (1) are fulfilled.

(2) If the owner or manager of a cinema hall or theatre fails to comply with the provisions of sub-rule (1), the license of such cinema hall or theatre may be cancelled or suspended by the competent authority, after giving a reasonable opportunity to explain such failure;

(3) If the broadcaster of the television programmes fails to comply with the provisions in clauses (b) to (d) of sub-rule 1, the competent authority in the Ministry of Information and Broadcasting, Government of India shall take appropriate punitive action including cancellation or suspension of the license issued to such broadcaster, after giving a reasonable opportunity to explain such failure.

(4) The anti-tobacco health warning message as specified in clause(c) of sub-rule 1 shall be legible and readable, with font in black colour on white background, and;

(i) with the warnings "Smoking causes cancer" or "Smoking kills" for smoking forms of tobacco use;

(ii) with the warnings "Tobacco causes cancer" or "Tobacco kills" for chewing and other smokeless forms of tobacco;

(iii) or with such other warnings as may be specified by the Central Government from time to time:

(5) The anti-tobacco health warning messages or health spots shall be in the same language as used in the film or television programme and in case of dubbed or sub-titled films or television programmes, the message or spots shall be carried in the language of dubbing or sub-title.

**Explanation.- For the purpose of this rule,-**

(i) all films that receive Central Board of Film certification after the effective date of this notification shall be categorized as "New Films".

(ii) all television programmes produced after the effective date of this notification shall be categorized as "New Television Programme";"

**9. Product Placement, Promotional materials and Posters<sup>9</sup> .-** (1) The display of tobacco products or their use in films and television programmes shall not extend to the following, namely:-

(a) display of the brands of cigarettes or other tobacco products or any form of tobacco product placement;

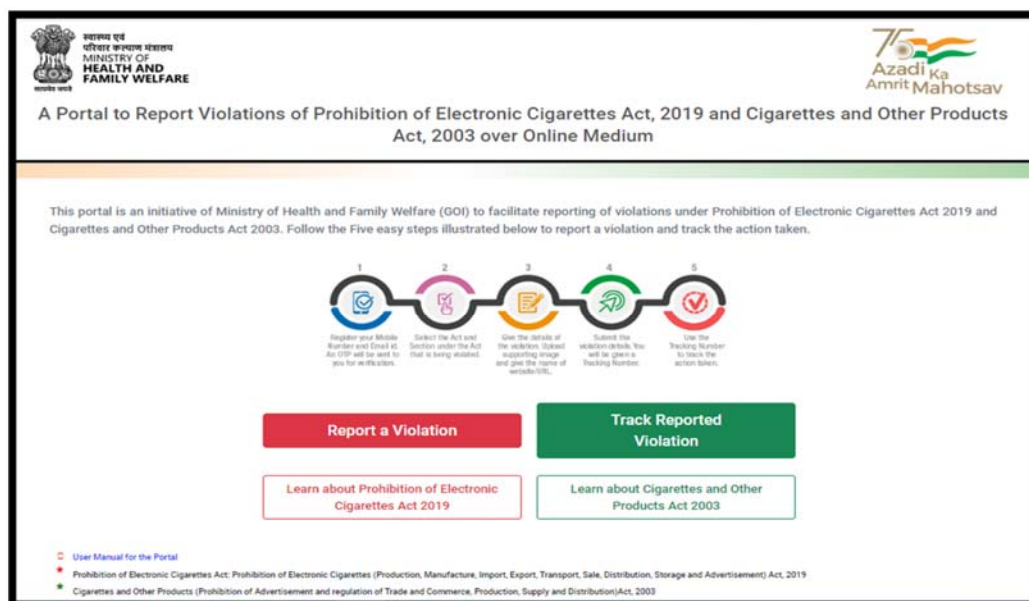
(b) close ups of tobacco products and tobacco products packages:

Provided that in a new film or television programme such scenes shall be edited by the producer or distributor or broadcaster prior to screening in cinema or theatre or airing on television, and in an old film or television programme such scenes shall be masked or blurred by the producer or distributor or broadcaster while screening

(2) Promotional materials and posters of film and television programmes shall not depict any tobacco products or their usage in any form.

**10. Cropping or Masking of Brand names and Logos of Tobacco Products<sup>10</sup>.-** Wherever brand names or logos of tobacco products form a part of the pictures to be printed in any form of print or outdoor media or footage to be aired through any form of electronic media, it shall be mandatory for the media to crop or mask the same to ensure that the brand names and logos of the tobacco products are not visible, except in case of live or deferred live telecast of sports, cultural and other events or activities held in other countries being aired on television in India”.

### ONLINE REPORTING OF COTPA VIOLATIONS



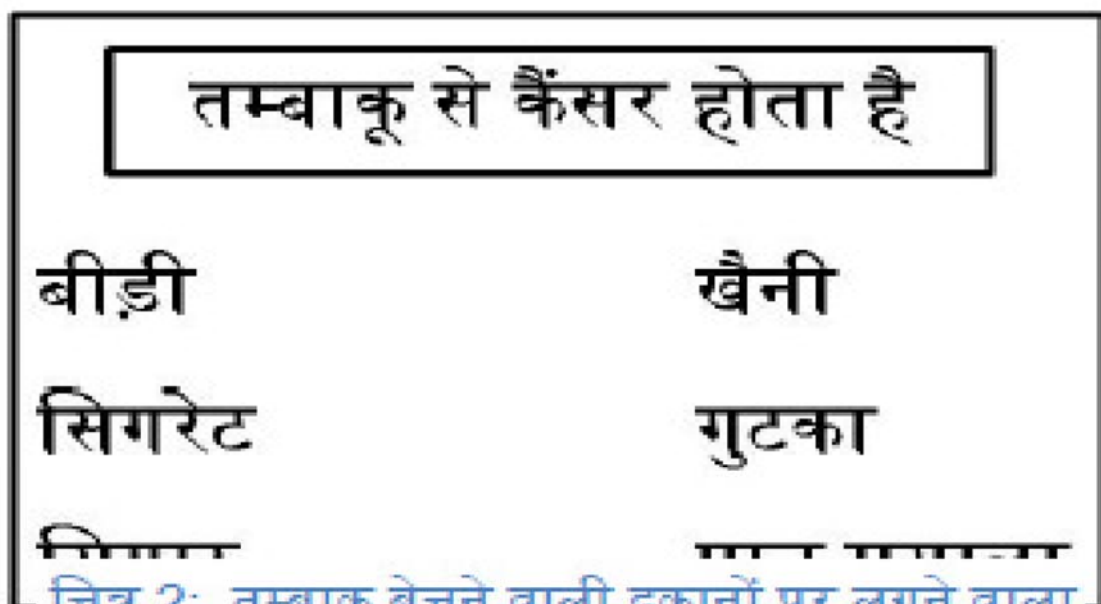
Online portal (<https://violation-reporting.ntcp.mohfw.gov.in/>) for reporting violation under COTPA 2003 was launched by Hon'ble Health Minister of India on 31<sup>st</sup> May 2023

<sup>9</sup> Ins. by G.S.R. No. 786(E), dated 27.10.2011

<sup>10</sup> Ins. by G.S.R. No. 786(E), dated 27.10.2011

PROTOTYPE OF POINT OF SALE BOARD AS PER RULE-4

45cm		
CIGARETTES		ZARDA
BEEDIS		KHAINI
CIGARS		SNUFF
	60cm	



तम्बाकू से कैंसर होता है

बीड़ी

खैनी

सिगरेट

गुटका

सिगार

सुन्फ

चित्र 2: तम्बाकू बेचने वाली दुकानों पर लगने वाला

बोर्ड (60 CM (L) x 45 CM (H))

45cm by 60cm



## FILM RULES- HEALTH SPOT/MESSAGE/DISCLAIMER


Figure-1-HEALTH SPOT



Figure-2-STATIC MESSAGE



Figure-3-DISCLAIMER

Disclaimer	Disclaimer
	<p>Tobacco use leads to cancer, heart attacks, lung disorders and other deadly diseases. The characters shown in this film or programme do not support the use of any type of tobacco products such as Bidi, Cigarettes, Khaini, Zarda etc. or their promotion in any manner.</p>

## **Notification of Steering Committee to look into violation of Section 5**

### **MINISTRY OF HEALTH AND FAMILY WELFARE**

**G.S.R. 489(E) Dated 9<sup>th</sup> June, 2010.**-In exercise of the powers conferred by Section 25 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 read with Rule 4 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004, the Central Government hereby constitutes a Steering Committee, with the following Members, to take cognizance or look into specific action regarding violations under Section 5 of the said Act, namely :-

1.	<b>Secretary, Ministry of Health &amp; Family Welfare, Government of India, New Delhi</b>	<b>Chairman</b>
2.	<b>Member of Parliament (Nominated by Union Ministry of Health &amp; Family Welfare)</b>	<b>Member</b>
3.	<b>Director General of Health Services</b>	<b>Member</b>
4.	<b>Joint Secretary, Ministry of Information &amp; Broadcasting</b>	<b>Member</b>
5.	<b>Joint Secretary, Ministry of Law &amp; Justice</b>	<b>Member</b>
6.	<b>Representative of Advertising Standards Council of India, New Delhi</b>	<b>Member</b>
7.	<b>Representative of Press Council of India, New Delhi</b>	<b>Member</b>
8.	<b>Dr P.C. Gupta, Healix-Sekhsaria Institute of Public Health, Navi Mumbai</b>	<b>Member</b>
9.	<b>Dr K. Srinath Reddy, President PHFI, New Delhi</b>	<b>Member</b>
10.	<b>Ms. Padmini Somani, Director, Salaam Bombay Foundation, Mumbai</b>	<b>Member</b>
11.	<b>Dr Surendra Shastri, Chief of Preventive Oncology, Tata Memorial Hospital Mumbai</b>	<b>Member</b>
13.	<b>Sh. Bejon Mishra Managing Director, Consumer Online Foundation, New Delhi</b>	<b>Member</b>
14.	<b>Joint Secretary(In-charge of Tobacco Control), Ministry of Health &amp; Family Welfare</b>	<b>Member</b>

**Rules relating to depiction of specified health warnings on tobacco  
products packages  
(Section 7)**

**MINISTRY OF HEALTH AND FAMILY WELFARE**

**G.S.R.182(E) Dated 15<sup>th</sup> March, 2008.**-In exercise of the powers conferred by sub-section (1) of Section 7, sub-section (2) of Section 8, Section 10 and Section 31 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (34 of 2003), and in supersession of the Cigarettes and other Tobacco Products (Packaging and Labeling) Rules, 2006, except as respects things done or omitted to be done before such supersession the Central Government hereby makes the following rules, namely:-

**1. Short title and Commencement<sup>11</sup>.** - These Rules may be called the Cigarettes and other Tobacco Products (Packaging and Labelling) Rules, 2008 and they shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

**2. Definitions.** - In these rules, unless the context otherwise requires:-

(a) “Act” means the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003;

(b) “package” [means any type of pack in which cigarette and other tobacco product is packaged for consumer sale but shall not include wholesale, semi wholesale or poora packages if such packages are not intended for consumer use]<sup>12</sup>

(c) “principal display area” means:-

- i. for box type packages, two equal sized largest surface area of the box that may be displayed or visible under normal or customary conditions of sale or use;
- ii. for pouch type packages, the entire surface area of the pack that may be displayed or visible under normal conditions of sale or use;
- iii. for conical or cylindrical type of packages, the entire curving area of the pack that may be displayed or visible under normal or customary conditions of sale or use;
- iv. for any other form or type of package, the entire surface area of the pack that may be displayed or visible under normal or customary conditions of sale or use;

(d) “specified health warning” means, such health warnings as specified by the Central Government from time to time, in the Schedule to these rules.

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<sup>11</sup> Came into force on 31.05.2009

<sup>12</sup> Subs. vide notification S.O.305 (E) dated 3<sup>rd</sup> May 2009.

**3. Manner of packing and labeling.-** (1) Every person engaged directly or indirectly in the production, supply, import or distribution of cigarette or any other tobacco product shall ensure that:-

(a) every package of cigarette or any other tobacco product shall have the specified health warning exactly as specified in the Schedule to these rules;

(b) the specified health warning shall cover at least eighty-five per cent. (85%) of the principal display area of the package of which sixty per cent. (60%) shall cover pictorial health warning and twenty-five percent. (25%) shall cover textual health warning and shall be positioned on the top edge of the package and in the same direction as the information on the principal display area<sup>13</sup>:

Provided that for conical package, the widest end of the package shall be considered as the top edge of the package:

Provided further that on box, carton and pouch type of package, the specified health warning shall appear on both sides of the package, on the largest panels and for cylindrical and conical type of package, the specified health warning shall appear diametrically opposite to each other on two largest sides or faces of the package and the specified health warning shall cover eighty-five per cent. (85%) of each side or face of the principal display area of the package of which sixty per cent. (60%) shall cover pictorial health warning and twenty-five per cent. (25%) shall cover textual health warning;

(c) none of the elements of the specified warning are severed, covered or hidden in any manner when the package is sealed or opened;

(d) no messages, images or pictures that directly or indirectly promote the use or consumption of a specific tobacco brand or tobacco usage in general or any matter or statement which is inconsistent with, or detracts from, the specified health warning are inscribed on the tobacco product package<sup>14</sup>;

(e) no product shall be sold unless the package contains the specified health warning:

Provided that the specified health warning shall be printed **[pasted or affixed]**<sup>15</sup> on every retail pack in which the tobacco product is normally intended for consumer use or retail sale, as well as any other external packaging, such as cartons or boxes;

(f) the textual health warning shall be inscribed in the language used on the package<sup>16</sup>:

Provided that where the language used on a package or on its label is-

(a) English, the health warning shall be expressed in English;

(b) English and Indian languages, the health warning shall be expressed in English and any one of the Indian languages in which the brand name appears;

(c) Hindi and other Indian languages, the health warning shall be expressed in Hindi and any one of the Indian language in which the brand name appears;

(d) any Indian language, the health warning shall be expressed in such Indian language;

(e) Indian languages, the health warning shall be expressed in any two Indian languages in which the brand name appears;

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<sup>13</sup> Subs. vide notification G.S.R.727 (E) dated 15th October 2014

<sup>14</sup> Subs. by G.S.R.727 (E) dated 15th October 2014

<sup>15</sup> Subs. by S.O. 693(E) dated 29<sup>th</sup> September 2008

<sup>16</sup> Subs. by G.S.R.727 (E) dated 15th October 2014

- (f) foreign language, the health warning shall be expressed in English;
- (g) foreign and Indian languages, the health warning shall be expressed in English and any one of the Indian languages in which the brand name appears;

Provided further that the textual health warning shall appear in not more than two languages used on the package;

Provided also that the textual health warning in one language shall be displayed on one side or face of principal display area and the textual health warning in the other language shall be displayed on the other side or face of principal display area of the package ;

(g) no tobacco product package or label shall contain any information that is false, misleading, or deceptive, or that is likely or intended to create an erroneous impression about the characteristics, health effects, or health or other hazards of the tobacco product or its emissions. This prohibition includes, but is not limited to, the use of words or descriptors, whether or not part of the brand name, such as “light”, “ultra light”, “mild”, “ultra mild”, “low tar”, “slim”, “safer”, or similar words or descriptors; any graphics associated with, or likely or intended to be associated with, such words or descriptors; and any product package design characteristics, associated with, or likely or intended to be associated with, such words or descriptors; and any product package design characteristics, associated with, likely or intended to be associated with, such descriptors.

(h) every package of cigarette or any other tobacco product shall contain the following particulars, namely<sup>17</sup>:

- (a) Name of the product;
- (b) Name and address of the manufacturer or importer or packer;
- (c) Origin of the product (for import);
- (d) Quantity of the product;
- (e) Date of manufacture; and
- (f) Any other matter as may be required by the Central Government in accordance with the international practice.

**4. Prohibition on obscuring, masking, altering or detracting from the Specified Health Warnings.-** No person shall sell or supply any product, device, or other thing that is intended to be used, or that can be used, to cover, obscure, mask, alter, or otherwise detract from the display of specified health warning on the tobacco product package. This includes prohibition to design the product package or parts of the package, or accessories thereto, with any cover that may obscure the prescribed messages.

**5. Rotation of specified health warnings<sup>18</sup> -(1)**The specified health warning on tobacco product package shall be rotated every twenty-four months from the date of commencement of these rules or before the period of rotation as may be specified by the Central Government by notification.

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<sup>17</sup> Ins. by G.S.R.727 (E) dated 15th October 2014

<sup>18</sup> Subs. by G.S.R.727 (E) dated 15th October 2014.

(2) During the rotation period, there shall be two images of specified health warning which shall appear consecutively on the package with an interregnum period of twelve months<sup>19</sup>

(3) At the end of the twelve months period, the first image (image1) of specified health warning shall be replaced with the second image (image2) of specified health warning, which shall appear for the next twelve months.

Provided that the date of coming into effect of the second image (image2) of specified health warning, shall be for all tobacco products manufactured or imported after the completion of twelve months from the date of commencement of first image(image1)<sup>20</sup>

(\*\*\*)<sup>21</sup> [rule 5, sub-rule (4) shall be omitted vide (G.S.R. 458(E) 21<sup>st</sup> July 2020]

## **SCHEDULE**

**(See rule 3)**

**1. Components of specified health warning.** - The components for the specified health warning shall include the following, namely:-

(i) Textual Health Warning<sup>22</sup>.- For smoking and smokeless forms of tobacco products, the words “TOBACCO CAUSES PAINFUL DEATH” shall appear in white font colour on a red background and the words “QUIT TODAY CALL 1800-11-2356” shall appear in white font colour on a black background. The intensity of color in the background of the textual health warning shall be: White: C:0%, M:0%, Y:0% K:0%, Red: C:0%, M:100%, Y:100% K: 0% and Black: C:0%, M:0%, Y:0% K: 100%. The textual health warnings shall be printed with four colors with printing resolution of minimum 300 DPI (Dots per inch). The font type and colour of the health warning shall be exactly as in the soft copy provided in the Compact Disk (CD) accompanying these rules or as uploaded on the website [www.mohfw.gov.in](http://www.mohfw.gov.in) OR [www.ntcp.nhp.gov.in](http://www.ntcp.nhp.gov.in);<sup>23</sup> [ **(G.S.R. 458(E) 21<sup>st</sup> July 2020)**

(ii) Pictorial Health Warning.- A pictorial representation of the ill effects of tobacco use on health shall be placed above the textual health warning. It shall be printed with four colors with printing resolution of minimum 300 DPI (Dots per inch). The pictorial health warning should appear in the same colour and resolution exactly as in the soft copy provided in the CD accompanying these rules or as uploaded on the website [www.mohfw.gov.in](http://www.mohfw.gov.in) OR [www.ntcp.nhp.gov.in](http://www.ntcp.nhp.gov.in);<sup>24</sup> **(G.S.R. 458(E) 21<sup>st</sup> July 2020)**

**2. The specified health warnings shall be-**

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<sup>19</sup> Subs. by G.S.R.331(E) dated 3rd April 2018

<sup>20</sup> Subs by G.S.R.331(E) dated 3rd April 2018

<sup>21</sup> Sub-Rule (4) omitted by G.S.R.331(E) dated 3rd April 2018)

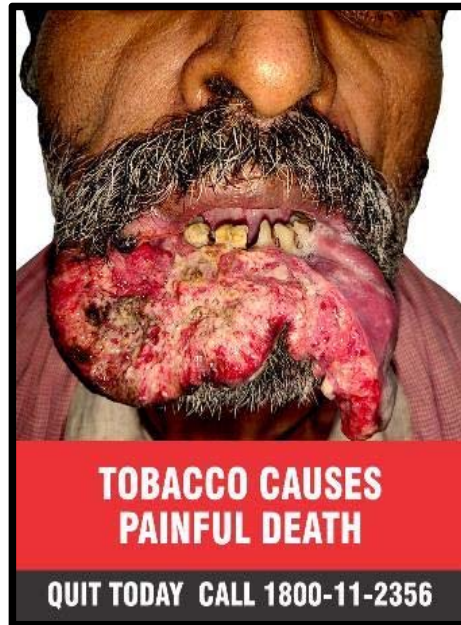
<sup>22</sup> Subs by G.S.R.331(E) dated 3rd April 2018

<sup>23</sup> Subs by G.S.R.331(E) dated 3rd April 2018

<sup>24</sup> Subs by G.S.R.727 (E) dated 15<sup>th</sup> October 2014.

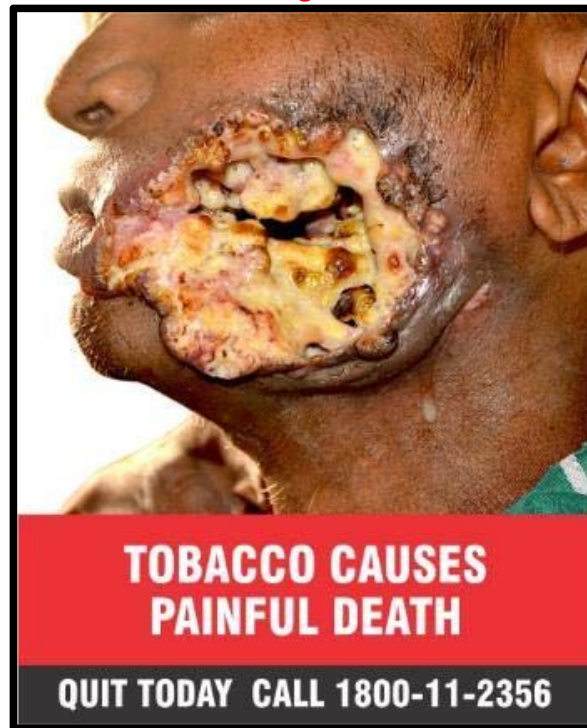
(a) Image-1, this shall be valid for a period of twelve months following its commencement.<sup>25</sup>

**Image- 1**



(b) Image-2, this shall come into effect following the end of twelve months from the date of commencement of specified health warning of image-1.

**Image- 2**



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<sup>25</sup> Subs by G.S.R.331(E) dated 3rd April 2018



**3. Size of the specified health warning.** – (1) The size of the specified health warning on each panel of the tobacco package shall not be less than 3.5 cm (width) x 4 cm (height), so as to ensure that the warning is legible, prominent and conspicuous;

(2) The size of all components of the specified health warning shall be increased proportionally according to increase of the package size to ensure that the specified health warning covers eighty-five per cent. (85%) of the principal display area of the package of which sixty per cent. (60%) shall cover pictorial health warning and twenty-five percent. (25%) shall cover textual health warning<sup>26</sup>;

**4. Language-** Each health warning shall be specified in English, Hindi and any other regional languages. Appropriate language combination shall be selected from the combination available at [www.mohfw.gov.in](http://www.mohfw.gov.in) and [www.ntcp.nhp.gov.in](http://www.ntcp.nhp.gov.in) to ensure that the language selected for health warning is in conformity with the language used on the package by the manufacturer or importer or packer.,<sup>27</sup> G.S.R. 458(E) 21<sup>st</sup> July 2020

**5. Printing.** - Subject to sub-paragraph (2) of paragraph 3 of this Schedule, while printing, it must be ensured that the colour, intensity and clarity of all the components of the specified health warning are not tampered with.

**Note.** - The soft or printable version of the specified health warnings shall be available on the websites [www.mohfw.gov.in](http://www.mohfw.gov.in) and [www.ntcp.nhp.gov.in](http://www.ntcp.nhp.gov.in). (G.S.R. 458(E) 21<sup>st</sup> July 2020)

### **AUTHORISED OFFICERS TO ENFORCE SECTION 5 & 7**

The following officers have been notified under Section 25(1) of COTPA, vide Notification **S.O. 1866(E)** dated 30<sup>th</sup> July 2009, to act under sections 12 and 13 of the COTPA and are conferred with the power of Entry, Search and Seizure under the said provisions of COTPA.

Table 1: Authorized officers

<b>S.No.</b>	<b>DESIGNATION</b>	<b>DEPARTMENT</b>
1.	All officers of the level of Superintendent and above of the Customs and Central Excise.	<b>All premises registered under the Department of Revenue<sup>28</sup></b>
2.	All officers of the rank of Inspectors and above of Sales Tax/ Health/ Transport Departments.	Department of Revenue /Health/ Transport of the State
3.	Junior Labor Commissioner and above	Labor Department.

<sup>26</sup> Subs by G.S.R.727 (E) dated 15<sup>th</sup> October 2014

<sup>27</sup> Subs by G.S.R.727 (E) dated 15<sup>th</sup> October 2014

<sup>28</sup> Ins. by S.O. 23 (E) dated 6<sup>th</sup> January, 2010



4.	Joint Director	O/o. Commissioner of Industries/ Small scale Industries.
5.	Sub-Inspector and above of Police/ State Food and Drug Administration or any other officer holding the equivalent rank of sub-Inspector of Police.	Department of Food and Drugs and Department of Home Affairs.

## **RECOGNITION OF NATIONAL TOBACCO TESTING LABORATORIES SECTION 11**

MINISTRY OF HEALTH AND FAMILY WELFARE  
(Department of Health and Family Welfare)

### **NOTIFICATION**

New Delhi, the 5<sup>th</sup> September, 2019

G.S.R. 633(E). -- In exercise of the powers conferred by section 11 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (34 of 2003), the Central Government, hereby grants recognition to the following testing laboratories for the purpose of testing nicotine and tar contents in cigarettes and any other tobacco products, namely:-

1. The National Tobacco Testing Laboratories at National Institute of Cancer Prevention and Research, Plot No. 1-7, Sector 39, Noida-201301, Uttar Pradesh.
2. The National Tobacco Testing Laboratories at Central Drugs Testing Laboratory, Zonal Food and Drug Administration Bhawan, Government Medical Store Depot Compound, Bellasis Road, Mumbai Central, Mumbai-400008.
3. The National Tobacco Testing Laboratory at Regional Drugs Testing Laboratory, Panjabari Road, Six Mile, Guwahati, Assam-781037.

[No. P. 16011/03/2019-TC]

VIKAS SHEEL, Jt Secy

## **ENFORCEMENT PROCEDURE FOR SECTION 5 & 7**

- a) The authorized officers *suo-motu* or on a complaint received of violation of section 5 or 7, shall proceed after forming an enforcement team, for carrying out the search and seizure **(Refer to Section 12 & 13)**.
- b) The enforcement team shall include the authorized officer himself along with two independent witnesses and may include one police officer not below the rank of Sub-Inspector.
- c) On suspecting contravention, the authorized officer along with the enforcement team shall enter and search the premises.
- d) Where the authorized officer has reason to believe that the offence appears to have been committed, the officer shall seize the contravening products, (such as advertisement materials, tobacco products packages etc.,)
- e) The authorized officer shall be required to give seizure memo/receipt to the owner/occupant/in-charge of the premises. **(Appendix 1)**
- f) A *Panchanama* shall be drawn in the presence of the two witnesses who shall narrate the place and the goods seized in their statements. **(Appendix 2)**
- g) The Enforcement Team may take photographs of the search and seizure, device used for taking such photograph should have its date stamp active.
- h) The advertisement materials/package/goods seized shall be kept in sealed condition where the seal shall be affixed in the presence of the two witnesses and the owner/occupant/ in-charge of the premises.
- i) The advertisement materials/package/goods seized shall not be retained by the officer who seizes the package for a period exceeding ninety days from the date of the seizure, unless the approval of the District Judge or such other designated judge, within the local limits of whose jurisdiction such seizure was made, has been obtained for such retention **(Refer to Section 13(2))**.
- j) The authorized officer shall then proceed for confiscation of the seized material before the District Judge, of principal civil court of original jurisdiction within the local limits of whose jurisdiction the material was seized.
- k) In case of confiscation of packages for violation of Section 7 of COTPA, 2003, the Court adjudging the confiscation may, subject to such conditions as may be specified in the order give the owner thereof an option to pay, in lieu of confiscation, costs which shall be equal to the value of the goods confiscated. 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 incorporated on each such package **(Refer to Section 15)**.
- l) Confiscation not to interfere with other punishments: Confiscation or payment of cost in lieu of confiscation does not bar other penalties or punishments against the offender **(Refer to Section 16)**.
- m) No order adjudging confiscation or direct 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 within a period of ninety days from the date of the seizure of the package of cigarettes

or any other tobacco products, 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 manner(Refer to Section 18).

**[Note: Paragraphs -k), l) and m) are with reference to violation of Section 7 of COTPA only]**

n) The authorized officer conducting the search and seizure may lodge a complaint with the Police Station in whose jurisdiction the place/premises is situated. The officer shall be the complainant in the said complaint. Upon the complaint being lodged with the Police Station. The police officer in charge of the police station shall then take appropriate action as per the provisions of the Bharatiya Nagarik Suraksha Sanhita , 2023 and shall record the said information in a book kept for such purpose and then refer the informant to the Magistrate, and thereafter investigate/record the First Information Report(F.I.R) with the order of the Magistrate.**OR**

The authorized officer conducting the search and seizure may file a complaint before the Judicial Magistrate of First Class or Chief Judicial Magistrate, under Section 5 and 22 and Section 7 and 20 of COTPA. The authorized officer shall be the complainant in the said complaint. **(Appendix 3)**

o) The authorized officer shall bear in mind that the offence committed under Section 5 and 7 of COTPA **IS NOT COMPOUNDABLE**.

p) The authorized officer shall record and proceed against every instance of violations as second or subsequent offence has enhanced punishments under COTPA.

q) On conviction for contravention of section 5, the advertisement and the advertisement material may be forfeited to the Government for disposal.

**Note:** Violation of 2004 Rules regulating depiction of tobacco usage in films and TV programmes shall entail: (i) Prosecution under section 22 readwith section 5 of COTPA against the owner or manager of a cinema hall or theatre screening films and the broadcaster of television programmes. (ii) Cancellation or suspension of license of cinema hall/theatre and broadcaster by the competent authority.

**Competent Authority for cancellation/suspension of license of cinema hall/theatre is the district magistrate or such other authority notified by State Government.**

## APPENDIX 1a: PROTOTYPE OF A SEIZURE MEMO

### **The Cigarette and other Tobacco Products** (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution), **Act 2003**

In exercise of the powers delegated to me under Section 12 and 13 of above act (COTPA2003) , I hereby seize/detain the under mentioned tobacco products /tobacco advertisements/ material which contravenes the provisions of Section..... of COTPA 2003 at the premises of M/S.....

S. No.	Date and time	Name/Descriptions of Product	No. of Units	Remarks

Name and Address of the witnesses

Signature of vendor/dealer

The products detained/seized have been duly sealed and left in the custody of Shri.....with the instruction not to tamper with seals and not to dispose of the products till further order.

Name and Address of the witnesses

Signature of vendor/dealer

Signature of Authority under COTPA 2003

## APPENDIX 1b: SAMPLE SEIZURE MEMO

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### PROTOTYPE OF A SEIZURE MEMO

The Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution), Act 2003

In exercise of the powers delegated to me under Section 12 and 13 of above act (COTPA 2003), I hereby seize/detain the under mentioned tobacco products/tobacco advertisements/ material Which contravenes the provisions of Section.....'7'.....of COTPA 2003 at the premises of M/S.....Sukham Traders, Sanki Apartment, Ramachandrapur, Puri.....(Mr. Gajant Sahoo)

S. No.	Date and time	Name/Descriptions of Product	No. of Units	Remarks
1	30/11/22	Aarebe	Aarebe	

Name and Address of the witnesses

Signature of vendor/dealer Gajant Sahoo

The products detained/seized have been duly sealed and left in the custody of shri.....Gajant Sahoo (M/S - Sukham Traders).....with the instruction not to tamper with seals and not to dispose of the products till further order.

Name and Address of the witnesses

Signature of vendor/dealer Gajant Sahoo

Signature of Authority under COTPA 2003

## APPENDIX 2a: PROTOTYPE OF PANCHNAMA

Panchnama dated \_\_\_\_\_

Whereas:

We \_\_\_\_\_

Sr. No	Name and parentage of Panch witnesses	Address	Age	Occupation
1				
2				

The above-mentioned Panchs on being called by

Shri \_\_\_\_\_, the authorized officer of \_\_\_\_\_, under the *Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act 2003* and the \_\_\_\_\_ Rules, 20\_\_\_\_, in exercise of the powers under Section \_\_\_\_\_ of the said Act, today came to the premises of Mr. \_\_\_\_\_, Address \_\_\_\_\_ to search the said place, where there is a reason to suspect that the provisions of Section \_\_\_\_\_ of the said Act read with the \_\_\_\_\_ Rules, has been or is being contravened.

We declare that the facts of the Panchnama mentioned herein are true and correct to the best of our observations and knowledge.

1. Signature of Accused	Date	Time
Name Address		

1. Signature of Witness	Date	Time
Name		
Address		

2. Signature of Witness	Date	Time
Name		
Address:		

### Attachment: List of the Inventory taken in possession

Signature of Authorized Officer

Name	Date	Time
	Place	



## APPENDIX 2b: SAMPLE PANCHNAMA

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Appendix 1: Prototype of Panchnama

Panchnama dated 29/11/2022

Whereas:  
We The District Enforcement Squad of COTPA-2003 (NTCP)

Sr. No	Name and parentage of Panch witnesses	Address	Age	Occupation
1				
2				

The above-mentioned Panchs on being called by  
Shri \_\_\_\_\_, the authorized officer of Enforcement Squad under the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 and the Section-20 Rules, 2013 in exercise of the powers under Section '7' of the said Act, today came to the premises of Mr. Srikant Sahoo, Address Ramachandi Sali, Puri to search the said place, where there is a reason to suspect that the provisions of Section '7' of the said Act read with the Section-20 Rules, 2013 has been or is being contravened.

We declare that the facts of the Panchnama mentioned herein are true and correct to the best of our observations and knowledge.

1. Signature of Accused \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_  
Name Srikant Sahoo  
Address \_\_\_\_\_

1. Signature of Witness \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_  
Name \_\_\_\_\_  
Address \_\_\_\_\_

2. Signature of Witness \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_  
Name \_\_\_\_\_  
Address: \_\_\_\_\_

**Attachment: List of the Inventory taken in possession**

Signature of Authorized Officer \_\_\_\_\_  
Name \_\_\_\_\_ Date \_\_\_\_\_ Time \_\_\_\_\_ Place \_\_\_\_\_

Mr Tuna Subar S.I. of Police.  
Mr Manoj Kumar Singh A.S.I. Ekota  
Mrs Bedabhee Sahoo R.S.O Puri  
Mr Susant Kumar B.S. DONTCP Puri. Sunit  
29/11/22

### APPENDIX 3: PROTOYPE OF A COMPLAINT

#### **IN THE COURT OF CHIEF JUDICIAL MAGISTRATE OR JUDICIAL MAGISTRATE 1<sup>st</sup> CLASS**

State Complaint through Tobacco Control Nodal Officer/In charge of the Enforcement Team  
/Authorized Officers

**V/s**

1 Sh..... M/S .....Pan Shop,Shop No ..... 2 M/S

x..... Though it's Prop./partners/

**Complaint under section 20 and/or 22 read with section 5 and/or 7 of The Cigarettes and Other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production Supply and Distribution Act 2003 (COTPA 2003)**

**Respectfully Sheweth:-**

1. That I ..... is duly appointed In charge of the State Level Flying Squad for Tobacco Control Directorate of Health Safety and Regulations under **The Cigarettes and Other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production supply and Distribution Act 2003** for the area of the state of .....

2. That I inspected the shop of .....M/S ..... Pan Shop,..... on ..... at about .....and found Sh.....M/S..... has displayed the colored board of advertisement of four square brand of tobacco products (photo enclosed)

3. That Sh.....,Sh.....  
and Sh..... all member of state level flying squad were present throughout the whole process inspection and witnessed the whole process.

4. That Challan were prepared on the spot, which were signed by the accused, as well as witnesses and by me.

5. That accused Sh.....M/S.....  
..... had displayed an advertisement board of tobacco product on his shop which is prohibited under Section 5 of COTPA 2003 which is punishable under Section 22 of COTPA 2003. M/S ..... though its Prop./partners/ is also liable under the Act .

**And/or**

5. That accused Sh.....M/S..... was in possession of packages of cigarettes and other tobacco products for sale without the prescribed statutory warnings at his shop which is prohibited under Section 7/8/9 of COTPA 2003 which is punishable under Section 20 of COTPA 2003. M/S ..... though its Prop./partners/ is also liable under the Act .

It is therefore prayed that the accused person(s) be summoned and dealt in accordance with law. In

charge State Level Flying Squad for Tobacco control

**List of Witnesses: -**

1. ....Authorised Officer

Incharge of the Flying Squad for Tobacco Control

2.

3.

**List of Documents attached: -**

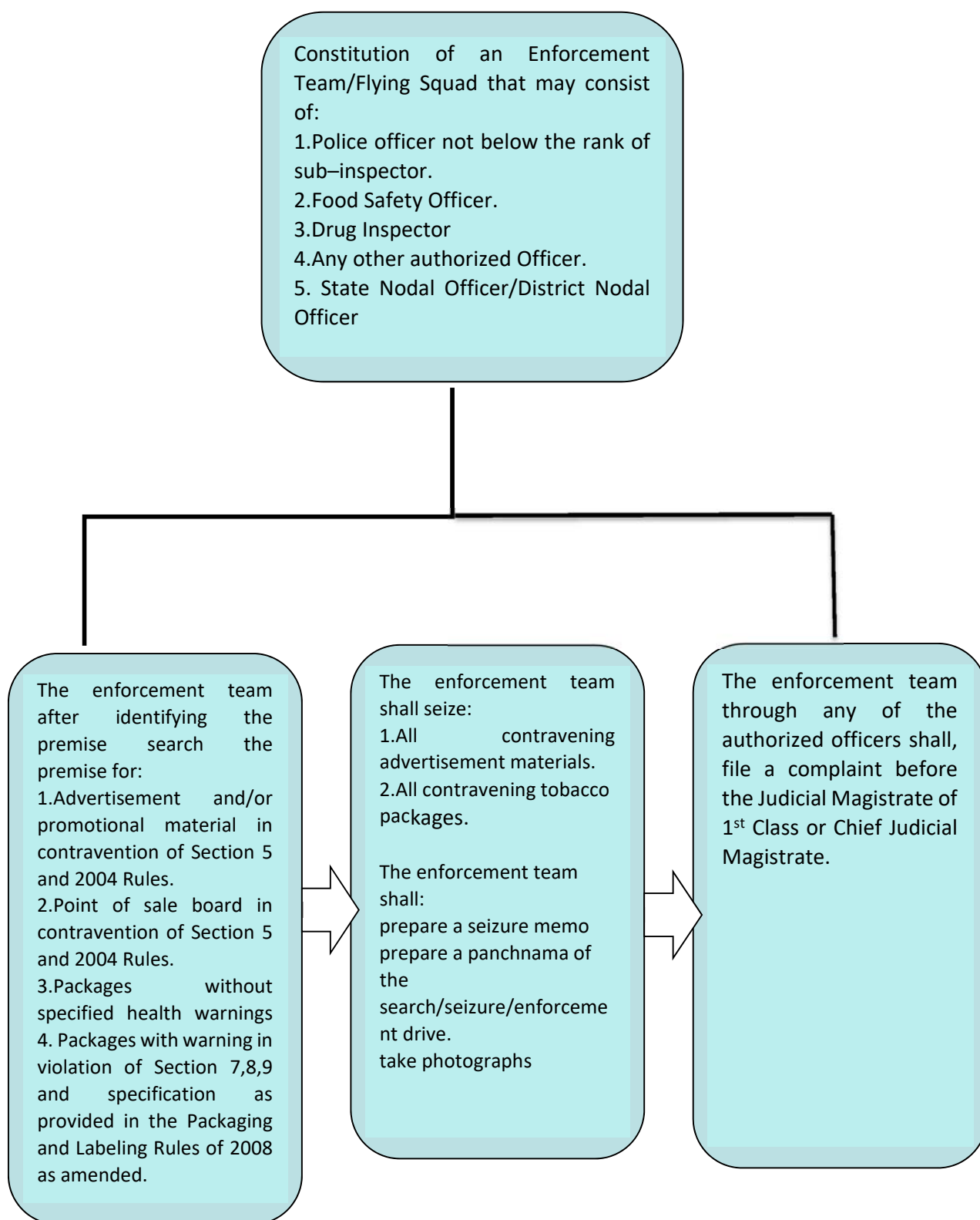
1. Panchnama/Challan

2. Seizure/spot memo

3 Photograph

In charge State Level Enforcement Team for Tobacco control

#### APPENDIX 4: FLOW CHART OF ENFORCEMENT



**APPENDIX 5a: SAMPLE OF THE NOTIFICATION OF AUTHORIZATION OF HEAD  
CONSTABLE FOR SECTION 4 & 6**


Annexure-5: Government order dated 22<sup>nd</sup> Sept. 2009 regarding to empowering police officials of rank of Head constable and above for taking action under section 4 and 6 of COTPA

**Government of Himachal Pradesh  
Department of Health and Family Welfare**

No. Health-A-H (1)2/2006      Dated: Shimla-2, 6.8.2009.

**NOTIFICATION**

In exercise of the powers conferred in Section 23 of the Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce Production, Supply and Distribution) Act 2003 hereinafter The Act, and Rules made thereunder, the Governor, Himachal Pradesh is pleased to authorize the police personnel not below the rank of Head Constable to impose and collect the fine and to compound the offence under Section 4 of The Act in their respective jurisdiction in addition to the persons authorized by the Central Government in the Rules notified vide Notification No F. No. P. 16015/20/2007-PH Dated 30.5.2008. The police personnel not below the rank of Head Constable shall also be authorized to impose and collect the fine and to compound the offence under Section 6 of The Act.

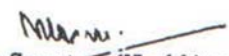
  
By Order  
(Deepak Sanan)  
Principal Secretary (Health) to the  
Government of Himachal Pradesh

Endst. No. As above

Dated: Shimla-2, the 6.8.2009

Copy forwarded to the following for information and further necessary action to:-

1. Dr. Vinayak M. Prashad, Director, Govt. of India, Ministry of Health & FW, Nirman Bhawan, New Delhi-11.
2. All Administrative secretaries, in H.P.
3. All Head of Departments in H.P.
4. The Director Health Services/Medical Education/Dental Health Services, H.P.
5. The Registrar, H.P. High Court, Shimla-171001.
6. All Deputy Commissioners in H.P.
7. All Superintendents of Police in H.P.
8. All CMOs/BMOs in Health Department, Himachal Pradesh.
9. The Joint Director, Prosecution, Himachal Pradesh, Shimla.
10. The Controller, Printing & stationery, Himachal Pradesh, Shimla-5 for publication in Rajpatra.

  
Under Secretary (Health) to the  
Government of Himachal Pradesh



GOVERNMENT OF KARNATAKA

Karnataka Government Secretariat,  
Vikasa Soudha,  
Bangalore, dated 09<sup>th</sup> July 2007

In exercise of the powers conferred by Section 25 and 28 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (34 of 2003) read with the Notification No.P.16011/1/2004-PH dated 14th July 2004, of the Government of India, Ministry of Health and Family Welfare, the Government of Karnataka hereby authorizes the Officers, mentioned in the annexure, who shall be competent to act under and Compound Offenses committed under Section 4 or Section 6 of the said Act, either before or after the institution of proceedings of the Government of Karnataka, with immediate effect.

(S.R.SHANKAR)

Under Secretary to Government,  
Health and Family Welfare Department

The Compiler, Karnataka Gazette, with a request to publish the same in the next publication Karnataka Gazette (Extra Ordinary) and also supply 500 copies to the Additional Chief Secretary and Principal Secretary to Government, Health and Family Welfare Department.

1) All Principal Secretaries to Government.

2) All Secretaries to Government.

3) The Commissioner, Health & Family Welfare Services, Bangalore

4) The Director, Health & Family Welfare Services, Bangalore.

5) All District Commissioners.

6) All Chief Executive Officers of Zilla Panchayaths.

7) All District Surgeons.

8) All District Health and Family Welfare Officers

9) Section Guard File/Spare Copies.

Sl.No.5,6,7, & 8  
through the Director  
HFW Services.

**ANNEXURE**

**The following officers may be identified for prevention of Tobacco Act at the State, Department and Taluk Levels.**

Sl. No.	DESIGNATION	DEPARTMENT
<b>AT THE STATE-LEVEL</b>		
1.	Commissioner/City Municipality Officers/Town-Zilla Panchayat/CEO	City Corporation
2.	Ward Health Officer	City Corporation /Town/BBMC
3.	Sanitary Health Inspector	City Corporation
4.	Director, Agriculture Dept.	Agriculture Dept.
5.	Director, Agriculture Marketing Dept.	Agriculture Dept.
6.	Director, Agriculture Dept.	Agriculture Dept.
7.	Director, Animal Husbandary Dept.	Animal Husbandary Dept.
8.	Managing-Director, Karnataka Meat and Chicken Sale Federation	Animal Husbandary Dept.
9.	Secretary, Sheep and Dev. Board	Animal Husbandary Dept.
10.	Director, Pre-University Board	Education Dept.
11.	Director, Fisheries Dept	Fisheries Dept
12.	Director, Food and Civil Supplies Dept.	Food and Civil Supplies Dept.
13.	Director, Information Dept.	Information Dept.
14.	Director, Employment & Training Dept.	Employment & Training Dept.
15.	Director, Technical Education Dept.	Technical Education Dept.
16.	Director, Municipal Administrative Dept.	Municipal Administrative Dept
17.	Director, Higher Education	Higher Education Dept.
18.	Director, Karnataka Government Insurance Dept.	Karnataka Government Insurance Dept.
19.	Director, Sliters Welfare and Rehabilitation Dept.	Home Dept.
20.	Director, Material Purchase Dept.	Material Purchase Dept.
21.	Director, Urban Planning Dept.	Planning Dept.
22.	Director, Indian Medicine System & Homeopathy Dept.	Health Dept.
23.	Director, Treasuries Dept	Finance Dept.
24.	Director, Social Welfare Department	Social Welfare Department
25.	Director, Co-operative Societies Dept.	Co-operative Dept.
26.	Director, Library Dept	Education Dept
27.	Director, Information Technology Dept.	Information Technology Dept.
28.	Director, Women & Child Welfare Dept	Women & Child Welfare Dept
29.	Managing-Director, Transport Dept.	Transport Dept.
30.	Vehicle Inspection Officers	Transport Dept.
31.	D.G. & I.G.P. Officers	Home Department
32.	Divisional Police Officers	Home Department
33.	Revenue Department Officers	Municipal Administrative Dept.
34.	Managing Director, Karnataka Electricity Board	Electricity Department
35.	Managing Director, Karnataka Food Civil Supplies	Food Dept.



36.	Managing Director, Karnataka Forest Dev. Board	Forest Dept.
37.	Managing Director, Karnataka House Board	Housing Dept.
38.	Managing Director, Karnataka Industrial Dev. Board	Industrial Dept.
39.	Managing Director, Karnataka Leather Industries Dev. Board	Industrial Dept.
40.	Managing Director, Karnataka Law Services Board	Law Dept.
41.	Managing Director, Karnataka Electricity Board	Electricity Department
42.	Managing Director, Karnataka SC/ST & Others Dev. Board	Human Resources Dept.
43.	Managing Director, Karnataka Silk Dev. Board	Silk Dept.
44.	Managing Director, Karnataka Slum Clearance Board	Irrigation Dept.
45.	Managing Director, Karnataka Finance Board	Finance Dept.
46.	Managing Director, Karnataka State Pollution Control Board	Pollution Dept.
47.	Managing Director, Karnataka State Road Transport Board	Transport Department
48.	Managing Director, Karnataka State Tourism Dev. Board	Tourism Dept.
49.	Managing Director, Karnataka Loka Seva Ayoga	Employment Dept.
50.	Managing Director, Karnataka Agriculture Marketing Board	Agriculture Dept.
51.	High court of Karnataka	Law Department
52.	<b>DISTRICT LEVEL</b>	
	Deputy Commissioners of Each District	Revenue Dept.
53.	District Health & FW Officers	Health Department
54.	District Surgeons	Health Department
55.	District Health Programme Officers	Health Department
56.	Superintendent, Government Hospital	Health Department
57.	Principals of Colleges	Education Dept.
58.	District Transport Officers	Transport Dept.
59.	District Food Inspector Officers	Health Department
60.	District Education Deputy Directors	Education Dept.
61.	District Sub-Treasury Officers	Finance Dept.
62.	District Pollution Control Officers	Pollution Dept.
63.	District Information & Technology Officer	Information Dept.
64.	District Police Officers	Home Dept.
65.	District Prisons Officers	Home Dept.
66.	District Revenue Officers	Revenue Dept.
67.	District Animal Husbandary Officers	Animal Husbandary Dept.
68.	District Law Dept. Officers	Law Dept.
69.	District Transport Division Officers	Transport Dept.
70.	District Municipal Administrative Officers	Municipal Administrative Dept.
71.	District Health Supervisors Officers	Health Dept.
72.	District Broad Costing and Information Officers	Information Department
73.	District Zilla Parishad CEO's	RDPR Dept.

J.R. 10/11/11

74.	<b>TALUK LEVEL</b>	Revenue Dept
	Tahasildar Officers	Revenue Department
75.	Sub Tahasildar Officers	Revenue Department
76.	Revenue Officers	Health Department
77.	Taluk level Health Officers	Health Department
78.	Administrative Med. Officers PHC	Health Department
79.	Med. Officers PHU	Health Department
80.	Sr. & Jr. Male Health Assistants	Health Department
81.	Sr. & Jr. Female Health Assistants	Health Department
82.	Hostal Warden Officers	Social Welfare Dept / Back Ward Caste Dept / Minority Dept.
		Education Dept.
83.	High Schools Teachers and Head Masters	Education Dept.
84.	Primary & Secondary School Teachers and Head Masters	Education Dept.
85.	Block Education Officers	Social Welfare Dept.
86.	Block Extension Officer	Social Welfare Dept.
87.	Taluka Dev. Officers	Polution Control Dept.
88.	Polution control Board Officers,	Animal Husbandary Dept.
89.	Animal Husbandary Dept. Officers	Registration Dept.
90.	Taluka Registration Officers	Horticulture Dept.
91.	Taluka Horticulture Officers	Agriculture Dept.
92.	Agriculture Dev. Officers	Silk Dept.
93.	Silk Dev. Officers	PWD Dept.
94.	Public works and Irrigation Officers	Finance Dept.
95.	Taluka Tresury Officers	Law Dept.
96.	Taluka Law Advistory Board Officers	Electricity Dept.
97.	Electricity Board Officers	Revenue Dept.
98.	Revenue Dept. Secretaries	RDPR Dept.
99.	Grama Panchayat Secretaries	RDPR Dept.
100.	Taluk Panchayat CEO's	Co-operative Dept
101.	All co-operatrive Societies Secretaries	
102.	Board of Directors, Governemnt Aided Private	



**APPENDIX 6: SAMPLE NOTIFICATION: UTILIZATION OF FUNDS FOR TOBACCO CONTROL ACTIVITIES**

No.HSR-H(Tobacco)/09  
Health and Family Welfare Department  
Himachal Pradesh.

To

All the DC HP  
All the SP HP  
All CMO's HP  
Dated Shimla-9 the-

Subject:- Implementation of COIPA 2003 (Anti tobacco Act.)

Sir,

The Govt. is committed to implement the anti tobacco Act (COIPA 2003) in the state in letter and spirit. You are requested to direct all the authorized Officers/persons to follow the following guidelines for implementation of the Act and Rules in the state.

1. All the incharge of institutions/authorise persons shall possess challan form/ receipt forms (sample attached) which shall be printed by the Distt level Committee for further distributions. The expenditure of printing may be met from the RKS funds initially and later on from the funds collected as fine or compounding fee.
2. All the incharge of public places should shall open a bank account in the name of institution in the anti tobacco Act COIPA 2003 Head and shall deposit the fine compounding fee in the bank account.
3. The funds shall be utilized for Anti tobacco activities, printing of challan forms/receipts etc, awareness camps, printing of boards/ signages and as POL for raids (search and seizure) under the act.

Your's Faithfully

Director  
Health Safety & Regulations  
Himachal Pradesh  
Dated Shimla-9 the-

10/10

Endst.No.As above.  
Copy to:-

**DIRECTORATE OF HEALTH SERVICES**  
**05 OCT 2010**  
**KASUMPTI SHIMLA-9**

1. The Principal Secretary (Health) to the Govt. of Himachal Pradesh as per the direction given in the state level meeting on tobacco control laws in H.P. Sectt. for favour of his kind information please.

2. The Mission Director (NRHM) Directorate of Health Services Kasumpti Shimla-9 for information and necessary action.

Director  
Health Safety & Regulations  
Himachal Pradesh

Annexure-6: Government order dated 5<sup>th</sup> Oct. 2010 regarding to printing of challan books and utilization of challan money for anti-tobacco activities.

APPENDIX 7a: SAMPLE COURT ORDER: SECTION 7, COTPA 2003

By The 1st Judicial Magistrate 1st class court No-  
4 Shimla in case No-10-3 of 12 Title as given  
below:

In the Court of Amit Mandyal, Judicial Magistrate 1st Class (IV)  
Shimla, H.P.

Case No. 10-3 of 2012.  
Date of Institution: 23.01.2012.  
Date of Decision: 1.3.2013.

State Complaint through In-charge State Level Flying Squad for  
Tobacco Control (Member Secretary for State Level Committee for  
Tobacco Control cum Program/Nodal Officer Tobacco Control)  
Directorate of Health Safety and Regulations Shimla-9.

... Complainant.

-Versus-

1.Sh. Raj Kumar, Manager 67-68 Gaiinda Mal Hem Raj The Mall  
Shimla.

2.M/S Gaiinda Mal Hem Raj The Mall Shimla through its  
Prop./partner, Gautam Jain son of Satish Jain.

... Accuseds.

Complaint under section 7 of the Cigarettes and  
other Tobacco Products (Prohibition of  
Advertisement and Regulation of Trade and  
Commerce, Production supply and Distribution  
Act 2003.

For the State/Complainant: Mrs. Manu Kalia, APP.  
For the accuseds : Sh. Amit Vaid, Advocate.

**JUDGMENT**

Briefly stated prosecution case is that on  
16.1.2012 complainant Dr.Gopal Chauhan, Incharge State Level  
Flying Squad for Tobacco Control appointed by competent authority  
alongwith Ashok Mangla Food Safety Officer, Sub Inspector Ashish  
Samual and ETI Goverdhan Singh was on checking duty on The  
Mall road Shimla, where at about 2.15 P.M.the team led by  
complainant Dr.Gopal Chauhan found that accused Raj Kumar being  
Manager of accused Gautam Jain proprietor of shop 67-68 Gaiinda  
Mall Hem Raj The Mall Shimla was selling tobacco products without  
specified pictorial Health Warnings. Packets of tobacco products  
were seized and put in parcel and taken in to possession vide  
separate memo. The accuseds had not erected mandatory board in

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the shop displaying that the tobacco products are not sold to minors for which fine of ₹ 200/- was imposed on the spot. Complainant had issued challan for violation of 7 of 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 Act for short) which was signed by complainant, member of flying squad and accused Raj Kumar. Offence under section 6 of the Act was compounded on the spot by imposing fine of ₹ 200/-. Photograph of the spot was snapped and after completion of formalities, complaint for offence u/s 7 of the Act was filed against the accused in the Court.

2. On finding sufficient grounds, accuseds were summoned. On appearance of accuseds copy of complaint and other documents were supplied to them. On finding prima-facie case notice of accusation under section 7 of The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production supply and Distribution Act 2003 was put to the accuseds to which they pleaded not guilty and claimed trial.

3. In support of its case, prosecution examined as many as 3 witnesses and evidence of the prosecution was closed as per separate statement of APP.

4. After closure of prosecution evidence, statement of accuseds u/s 313 Cr.P.C. were recorded wherein they denied prosecution case and pleaded innocence. However, accuseds had not led any defence evidence.

5. I have heard the learned counsel for the parties and gone through the record of the case with due care and caution.

6. The following points arise for determination:-

1. Whether prosecution has been able to prove beyond all reasonable doubts that on 16.1.2012 at about 2.15 P.M. accused No.1 being Manager and accused No.2 being proprietor were selling tobacco products without specified pictorial

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 12/01/12  
**EXAMINED**  
 16/1/12  
 Date: 16/1/12

Health Warnings ?

2.Final Order.

7. For the reasons to be recorded hereinafter, while discussing the aforesaid points, my findings on the same are as under:-

Point No.1 : Yes.

Final Order : Accused convicted as per operative part of the judgment.

Reasons for findings.

Point No.1.

8. Dr.Gopal Chauhan, Incharge State Level Flying Squad for Tobacco Control/Nodal Officer appeared as CW-1 and stated that on 16.1.2012 flying squad head by him comprising of Ashok Mangla, Food Safety Officer, M.C.Shimla, Ashish Samual, Sub Inspector police station New Shimla and Goverdhan Singh Excise Inspector Kasumpty Shimla had conducted raids in shop of M/S Gainda Mal Hem Raj 67-68 the Mall Shimla where Raj Kumar was found selling tobacco products without specified pictorial Health warnings. Stated that packets of tobacco product Ex.P.12 to Ex.P.4 were sealed and put in parcel Ex.P.1 and taken into possession vide memo Ex.CW-1/A. Stated that it was also found that accused had not displayed warning that selling of tobacco product to persons under 18 years of age is offence for which he was challaned and fine of ₹ 200/- was imposed on accuseds. Stated that for violation of section 7 for selling tobacco product without pictorial warning challan Ex.CW-1/B was issued on spot which bears signatures of member of flying squad and photograph Mark A-1 was snapped. He also tendered in evidence copy of notification Mark A-2. Stated that he had prepared complaint Ex.CW-1/C which bears his signatures. In his cross stated that as per his knowledge Gainda Mal Hem Raj is shop of daily needs. Admitted that preparation of tobacco product was not being carried out on the spot. Stated that he had not checked any record showing production and sale of tobacco product by Gainda Mal Hem Raj. Stated that on spot they did not find any

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process of manufacturing and supply of tobacco products. Denied that products seized by him were damaged and were not for sale. Admitted that seizure memo Ex.PW-1/A doesnot bear signatures of accused or any witness. Denied that on the spot a hoarding that sale of tobacco product to persons under 18 years of age was displayed and false case was made against the accuseds.

9. CW-2 is Ashok Mangla, FSO, M.C.Shimla, who stated that on 16.1.2012 he was member of flying squad headed by Dr.Gopal Chauhan and at about 2.15 PM accused Raj Kumar in shop Gainda Mal Hem Raj Shimla was found selling tobacco product to general public in the capacity of Manager without necessary pictorial warning. Stated that 3 packets which were not having warning were seized. He identified his signatures in circle A on parcel Ex.P.1. Stated that challan Ex.CW-1/B was issued which also bears his signatures in circle A. Stated that Ex.CW-1/B and Ex.P.1 also bears signatures of accused Raj Kumar. Stated that Ex.P.2 to Ex.P.4 were seized in his presence on the spot and photograph was also snapped by the complainant on the spot. Stated that Nodal Officer, other witnesses and Raj Kumar remained present on the spot. In his cross admitted that M/S Gainda Mal Hem Raj does not have any production unit of Tobacco. Stated that he cannot tell as to whether it was got checked that Ex.CW-1/A was Tobacco Product. Stated that they had not checked any document showing that accuseds were dealing in supply of tobacco products. Admitted that no price of seized product was paid on the spot. Denied that accuseds have maintained separate counter for dumping products not to be sold to general public self stated that seized products were displayed. Denied that seized tobacco products were not for sale to general public i.e. why there is no sale receipt for the same. Denied that they had seized the products from dumping counter. Admitted that seizure memo Ex.CW-1/A does bear signatures of accuseds.

10. CW-3 is Ashish Samuel, Sub Inspector Police Station New Shimla, who stated that he was also member of State Level Flying Squad, other members of which were Dr.Gopal Chauhan, FI Ashok Mangla and Goverdhan Singh qua which

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per  
[Signature]  
Date: 16/1/13



notification is Ex.PC. Stated that on 16.1.2012 at about 2.15 P.M. they had reached shop of Gaiinda Mal Hem Raj where Tobacco Product Ex.P.2 to Ex.P.4 were recovered without pictorial warning for which challan was issued. Stated that fine was also imposed on the accused. Stated that Tobacco Products Ex.P.2 to Ex.P.4 were seized and taken into possession. Stated that entire proceedings were conducted on the spot in the presence of Raj Kumar Manager of Gaiinda Mal Hem Raj vide seizure memo Ex.CW-1/A. Stated that challan Ex.CW-1/B was issued which bears signatures of accused and other team members. Stated that photograph Ex.PB was also snapped and they were not having any pictorial warning. In his cross stated that retail business is being conducted in Gaiinda Mal Hem Raj shop and no manufacturing work of tobacco product is being carried out in the shop. Stated that he cannot tell that they undertake wholesale business of tobacco. Stated that they had not checked any papers of the accused to show that they were undertaking wholesale business of Tobacco. Stated that they had not purchased any Tobacco Product from the shop. Stated that he had not seen any dumping counter on the spot. Denied that products seized by them were not for sale ~~sale~~ to general public. Denied that he was deposing falsely being member of flying squad team.

11. This is the entire evidence led by the prosecution.

12. On this evidence, Id. APP for State has vehemently argued that prosecution has proved its case beyond all reasonable doubts and accuseds be convicted. On the other hand, Id. defence counsel has controverted the arguments of Id. APP and argued that there is no convincing evidence on record to prove the guilt of the accuseds and they be acquitted.

13. I have given thoughtful consideration to the rival contentions of the parties.

14. Accused No.2 has not disputed to be proprietor of M/SGaiinda Mal Hem Raj in cross-examination. All the witnesses in one voice have stated that on 16.1.2012 at about 2.15PM they

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 [Signature]  
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had conducted raid in shop of M/S Gainder Mal Hem Raj 67-68 The Mall Shimla where accused Raj Kumar was found selling tobacco products without pictorial warning. Nothing fruitful could be extracted in their cross-examination which could have shattered this part of their chief - examination. Also all the witnesses in one voice stated that tobacco product Ex.P.2 to Ex.P.4 were taken into possession after putting in parcel Ex.P.1 vide memo Ex.CW-1/A. Accused Raj Kumar has admitted such facts in his statement u/s 313 Cr.P.C. In view of admission of accused Raj Kumar and unshattered statement of witnesses it is established that members of flying squad had taken into possession tobacco products Ex.P.2 to Ex.P.4 from the shop of accused. The presence of the flying squad in the shop is also proved from admission of the accused Raj Kumar that fine of ₹ 200 was imposed for not displaying mandatory board that tobacco products are not sold to minors. Interestingly, it has been suggested to CW-3 to which he feigned ignorance that accuseds deal in whole sale business of tobacco products. Also to another suggestion this witness feigned ignorance that accuseds undertake business of wholesale supply of cigarette distribution etc. From these suggestions what emerges is that accuseds want to show that they do not do retail business of tobacco but only deal in wholesale products which clearly shows that accuseds deal in tobacco products also. From perusal of section 7 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production supply and Distribution Act 2003 it is clear that ambit of this section not only covers producers but also suppliers, distributors, or any other persons who carry on trade or commerce in cigarettes or any other tobacco products. Hence, <sup>act of</sup> accuseds ~~act of~~ displaying seized products for sale falls within mischief of section 7 of the Act. All the witnesses in one voice stated that tobacco products were not having pictorial warning as required u/s 7 of the Act which remained unshattered in cross-examination. Accordingly, point No.1 is decided in affirmative.

**ATTESTED**

*new*  
**EXAMINER**

**DATE: 10.10.2018**



## Final Order.

15. In view of my discussions and findings on point No.1, accuseds are convicted for violation of section 7 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production supply and Distribution Act 2003 punishable u/s 20 of the Act. Their bail bonds are cancelled and discharged. Let they be heard on quantum of sentence after respite.

Announced and signed in the open Court on this 1st day of March, 2013

(Amit Mandiyal)  
Judicial Magistrate 1st Class (IV),  
Shimla.

File taken up after respite.

Quantum of sentence:

1.3.2013.

Present:-

Mrs. Manu Kalia, Ld.APP for the State.  
Convicts with Sh. Amit Vald, Advocate.

16. Heard on quantum of sentence. Ld. APP has argued that keeping in view the nature of offence convicts be dealt with iron hands. On the other hand, ld. defence counsel has submitted that convicts are first offenders, were not aware about displaying of pictorial warnings, <sup>have</sup> no criminal history, as such they be given benefit of section 4 of Probation of Offenders Act.

17. I have given thoughtful consideration to the rival contentions of the parties.

18. In the facts and circumstances of the case and keeping in view nature of offence, this Court is of considered view that convicts do not deserve benefit of Probation of Offenders Act. However, keeping in view the submissions of defence counsel, they are sentenced to pay fine of ₹ 1000/- each for offence punishable u/s 20 of the Cigarettes and other Tobacco Products (Prohibition of

**ATTESTED**

Presd

**EXAMINER**  
Date 16/3/13

Advertisement and Regulation of Trade and Commerce, Production supply and Distribution Act 2003 . In default of payment of fine, the convict will undergo simple imprisonment for 7 days.

19. Fine amount paid by the convicts. Be deposited in Govt. Treasury forthwith under relevant head. Copy of judgment be supplied to the convict free of cost forthwith. File after due completion be consigned to the general record room.

Announced and signed in the open Court on this 1st day of March, 2013.

(Amit Mandyar)

Judicial Magistrate 1st Class (IV),  
Shimla.

'ks'

**ATTESTED**  
per  
**16/3/13**  
Date

List of witnesses

Sr.No.	Names of witnesses	Whether witness of prosecution or accused.
CW-1	Dr. Gopal Chauhan	Prosecution witness.
CW-2	Ashok Mangla	-do-
CW-3	SI Ashish Samual	-do-

List of Exhibits.

Ex.No.	Date of Exts.	Description of Exts.
Ex.CW-1/A	17.7.2012	Memo.
Ex.CW-1/B	-do-	Challan.
Ex.CW-1/C	-do-	Complaint.
Ex.PB	-do-	Photograph.

(Amit Mondyal)  
Judicial Magistrate 1st Class (IV),  
Shimla.

a) No. of application 1158  
 b) Date of the presentation of the application 11/3/13  
 c) Name of the applicant paul  
 d) Date of Commencement of Case 16/3/13  
 e) Date on which copy was furnished 16/3/13  
 f) Date on which copy was received 16/3/13  
 g) Purpose for which copy applied for about use  
 h) Page free cost  
 i) Cost of copy free cost  
 j) Amount for 22/3/13  
 k) Date of Delivery 22/3/13

Certified to be a true copy  
 10/04/13  
 Superintendent, G-3  
 Office of District &  
 Sessions Judge Shimla  
 District Sessions Division Shimla  
 Authorized by Section 44 of the  
 Indian Evidence Act 1872  
 16/3/13



313 Cr.P.C. Recorded by the 1st J.M.C. - 4, Shimla in  
case No - 10-3 of 12 title as given below

In the Court of Amit Mandyal, Judicial Magistrate 1<sup>st</sup> Class (4)  
Shimla, H.P.  
State  
Versus Raj Kumar

Statement of accused Raj Kumar son of *Sh. Duni Chandra*  
resident of *at present Manager 67-68, Gopalpur, Shimla, H.P.* age *62* years, d/s 313  
Cr.P.C. *Shimla, H.P.*  
Without oath.  
26.2.2013.

Q.No.1 Have you heard and understood the prosecution evidence  
led against you?

Ans. Yes Sir.

Q.No.2 It is in complainant evidence led against you that CW-1  
Dr. Gopal Chauhan, Incharge State Level Flying Squad for  
Tobacco Control appointed vide notification copy of which  
is MarkA-1 alongwith CW-2 Ashok Mangla Food Safety  
Officer, CW-3-Ashish Samual Sub Inspector and ETI  
Govardhan Singh on 16.1.2012 at about 2.15 PM had raided  
shop of M/S Gaiinda Mal Hem Raj on Mall road Shimla  
where you accused being Manager were selling tobacco  
products without specified pictorial Health Warnings.  
What have you to say about it?

Ans.

*महोदय मैं कहूँ कि मैंने यह सब नहीं देखा है।*

Q.No.3 It is further in complainant evidence led against you that  
packets of tobacco products Ex.P.2 to Ex.P.4, were seized  
and put in parcel Ex.P.1 and taken into possession. Vide  
memo Ex.CW-1/A. What — have you to say about it?

Ans.

*महोदय मैं कहूँ कि मैंने यह सब नहीं देखा है।*

Q.No.4 It is further in complainant evidence led against you that  
you had not erected mandatory board in the shop displaying  
that the tobacco products are not sold to minors for which  
fine of ₹ 200/- was imposed on spot. What you  
have to say about it?

Ans.

*महोदय मैं कहूँ कि मैंने यह सब नहीं देखा है।*

Q.No.5 It is further in complainant evidence led against  
you that CW-1 Incharge Flying Squad/ State Nodal  
Officer Tobacco Control in H.P. had issued challan  
for Violation of Section 7 of the Act Ex. CW-1/B in  
presence of other members of flying squad  
which bears signatures of CW-1 and other witness/  
member of flying squad and your ~~so~~ accused Raj  
Kumar. What have you to say about it?

Ans.

*महोदय मैं कहूँ कि मैंने यह सब नहीं देखा है।*

Q.No.6 It is further in complainant evidence led against you  
that photograph Ex.PB was also snapped on spot  
by CW-1. What you have to say about it?

Ans.

*महोदय मैं कहूँ कि मैंने यह सब नहीं देखा है।*

Q.No.7 It is further in complainant evidence led against you that  
CW-1 had prepared the complaint Ex.CW-1/C which bears

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*jaal*  
[Signature]

Ans:

Q.No.8.

his signatures. What you have to say about it?

पता न है।

Why the complainant witnesses have deposed against you?

Ans.

गवाह उसी सख्तरी को गवाह है।

Q.No.9.

Ans.

Why this case against you?

किस मुद्दा बनाया है।

Q.No.10.

Ans.

Do you want to say anything else?

मे निरीक्षक डी.आ. लखनऊ से गोपनीयता  
का पत्र ले लाया है।

Q.No.11.

Ans.

Do you want to lead evidence in defence?

जी नहीं।

RO & AC:

*[Signature]*

(Amit Mandyal)  
JMIC (4) Shimla.

Certified that accused was examined in my presence & hearing & the record contains a true and full account of the statement made by him.

(Amit Mandyal)  
JMIC (4) Shimla.

**TESTED**

*[Signature]*

**EXAMINED**

19/3/13

**DATE**

**SIGNATURE**

**OFFICE**

**NAME**

**DESIGNATION**

**OFFICE**

**NAME**

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**OFFICE**



In the Court of Amit Mandyal, Judicial Magistrate 1<sup>st</sup> Class (4)  
Shimla, H.P.

State  
Versus Raj Kumar

Statement of accused Gautam Jain son of *Sh. Gopal Jain, H.P. Mall*  
resident of *Plot No. 15, Sector 15, Shimla, H.P.*  
Cr.P.C. *Age 39 years, u/s 313 Shimla, H.P.*  
Without oath.  
26.2.2013.

Q.No.1 Have you heard and understood the prosecution evidence led against you?

Ans. Yes Sir.

Q.No.2 It is in complainant evidence led against you that CW-1 Dr. Gopal Chauhan, Incharge State Level Flying Squad for Tobacco Control appointed vide notification copy of which is MarkA-1 alongwith CW-2 Ashok Mangla Food Safety Officer, CW-3-Ashish Samual Sub Inspector and ETI Goverdhan Singh on 16.1.2012 at about 2.15 PM had raided your shop M/S Guinda Mal Hem Raj on Mall road Shimla where your Manager was selling tobacco products without specified pictorial Health Warnings. What have you to say about it?

Ans. *हाँ हाँ हाँ*

Q.No.3 It is further in complainant evidence led against you that packets of tobacco products Ex.P.2 to Ex.P.4, were seized and put in parcel Ex.P.1 and taken into possession, Vide memo Ex.CW-1/A. What have you to say about it?

Ans. *हाँ हाँ हाँ*

Q.No.4 It is further in complainant evidence led against you that you had not erected mandatory board in the shop displaying that the tobacco products are not sold to minors for which fine of ₹ 200/- was imposed on spot. What you have to say about it?

Ans. *हाँ हाँ हाँ*

Q.No.5 It is further in complainant evidence led against you that CW-1 Incharge Flying Squad/ State Nodal Officer Tobacco Control in H.P. had issued challan for Violation of Section 7 of the Act Ex. CW-1/B in presence of other members of flying squad which bears signatures of CW-1 and other witness/ member of flying squad and your co-accused Raj Kumar. What have you to say about it?

Ans. *हाँ हाँ हाँ*

Q.No.6 It is further in complainant evidence led against you that photograph Ex.PB was also snapped on spot by CW-1. What you have to say about it?

Ans. *हाँ हाँ हाँ*

Q.No.7 It is further in complainant evidence led against you that CW-1 had prepared the complaint Ex.CW-1/C which bears his signatures. What you have to say about it?

Ans. *हाँ हाँ हाँ*

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16/3/13

Q.No.8. Why the complainant witnesses have deposed against you?

Ans. *कहा नही*

Q.No.9. Why this case against you?

Ans. *कहा नही*

Q.No.10. Do you want to say anything else?

Ans. *मेरे दोस्त ने कहा कि मैं नहीं जानता*

Q.No.11. Do you want to lead evidence in defence?

Ans. *कहा नही*

RO & AC.

(Amit Mandya)  
JMIC (4) Shimla.

Certified that accused was examined in my presence & hearing & the record contains a true and full account of the statement made by him.

(Amit Mandya)  
JMIC (4) Shimla.

- a) No. of applications..... 11.58  
b) Date of the presentation of the application..... 16/3/13  
c) Name of the applicant..... *परिवार*  
d) Date of Certification of Copy..... 16/3/13  
e) Date on which Copy was submitted..... 16/3/13  
f) Date on which Copy was received..... 16/3/13  
g) Purpose for which Copy applied for..... *ब्रॉचर*  
h) Page..... *Free copy*  
i) Cost of the..... *Free copy*  
j) Date of Delivery..... 22/3/13

Certified to be a true copy

*प्रति*

*Supervisor, G.O.  
Court of District &  
Sessions Judge Officer  
Shimla District Division  
Shimla*  
16/3/13

APPENDIX 7b: SAMPLE COURT ORDER: SECTION 7, COTPA 2003

By The 1st Judicial Magistrate 1st class court No-  
4 Shimla in case No-10-3 of 12 file as given  
below.

In the Court of Amit Mandyal, Judicial Magistrate 1st Class (IV)  
Shimla, H.P.

Case No. 10-3 of 2012.  
Date of Institution: 23.01.2012.  
Date of Decision: 1.3.2013.

State Complaint through In-charge State Level Flying Squad for  
Tobacco Control (Member Secretary for State Level Committee for  
Tobacco Control cum Program/Nodal Officer Tobacco Control)  
Directorate of Health Safety and Regulations Shimla-9.

... Complainant.

-Versus-

1.Sh. Raj Kumar, Manager 67-68 Gaiinda Mal Hem Raj The Mall  
Shimla.

2.M/S Gaiinda Mal Hem Raj The Mall Shimla through its  
Prop./partner, Gautam Jain son of Satish Jain.

... Accuseds.

Complaint under section 7 of the Cigarettes and  
other Tobacco Products (Prohibition of  
Advertisement and Regulation of Trade and  
Commerce, Production supply and Distribution  
Act 2003.

For the State/Complainant: Mrs. Manu Kalia, APP.  
For the accuseds : Sh. Amit Vaid, Advocate.

**JUDGMENT**

Briefly stated prosecution case is that on  
16.1.2012 complainant Dr.Gopal Chauhan, Incharge State Level  
Flying Squad for Tobacco Control appointed by competent authority  
alongwith Ashok Mangla Food Safety Officer, Sub Inspector Ashish  
Samual and ETI Goverdhan Singh was on checking duty on The  
Mall road Shimla, where at about 2.15 P.M.the team led by  
complainant Dr.Gopal Chauhan found that accused Raj Kumar being  
Manager of accused Gautam Jain proprietor of shop 67-68 Gaiinda  
Mall Hem Raj The Mall Shimla was selling tobacco products without  
specified pictorial Health Warnings. Packets of tobacco products  
were seized and put in parcel and taken in to possession vide  
separate memo. The accuseds had not erected mandatory board in

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pell



Health Warnings ?

2.Final Order.

7. For the reasons to be recorded hereinafter, while discussing the aforesaid points, my findings on the same are as under:-

Point No.1 : Yes.

Final Order : Accused convicted as per operative part of the judgment.

Reasons for findings.

Point No.1.

8. Dr.Gopal Chauhan, Incharge State Level Flying Squad for Tobacco Control/Nodal Officer appeared as CW-1 and stated that on 16.1.2012 flying squad head by him comprising of Ashok Mangla, Food Safety Officer, M.C.Shimla, Ashish Samual, Sub Inspector police station New Shimla and Goverdhan Singh Excise Inspector Kasumpty Shimla had conducted raids in shop of M/S Gaiinda Mal Hem Raj 67-68 the Mall Shimla where Raj Kumar was found selling tobacco products without specified pictorial Health warnings. Stated that packets of tobacco product Ex.P.12 to Ex.P.4 were sealed and put in parcel Ex.P.1 and taken into possession vide memo Ex.CW-1/A. Stated that it was also found that accused had not displayed warning that selling of tobacco product to persons under 18 years of age is offence for which he was challaned and fine of ₹ 200/- was imposed on accuseds. Stated that for violation of section 7 for selling tobacco product without pictorial warning challan Ex.CW-1/B was issued on spot which bears signatures of member of flying squad and photograph Mark A-1 was snapped. He also tendered in evidence copy of notification Mark A-2. Stated that he had prepared complaint Ex.CW-1/C which bears his signatures. In his cross stated that as per his knowledge Gaiinda Mal Hem Raj is shop of daily needs. Admitted that preparation of tobacco product was not being carried out on the spot. Stated that he had not checked any record showing production and sale of tobacco product by Gaiinda Mal Hem Raj. Stated that on spot they did not find any

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*[Signature]*

process of manufacturing and supply of tobacco products. Denied that products seized by him were damaged and were not for sale. Admitted that seizure memo Ex.PW-1/A does not bear signatures of accused or any witness. Denied that on the spot a hoarding that sale of tobacco product to persons under 18 years of age was displayed and false case was made against the accuseds.

9. CW-2 is Ashok Mangla, FSO, M.C.Shimla, who stated that on 16.1.2012 he was member of flying squad headed by Dr.Gopal Chauhan and at about 2.15 PM accused Raj Kumar in shop Gaiinda Mal Hem Raj Shimla was found selling tobacco product to general public in the capacity of Manager without necessary pictorial warning. Stated that 3 packets which were not having warning were seized. He identified his signatures in circle A on parcel Ex.P.1. ~~Stated that challan Ex.CW-1/B was issued which also~~ bears his signatures in circle A. Stated that Ex.CW-1/B and Ex.P.1 also bears signatures of accused Raj Kumar. Stated that Ex.P.2 to Ex.P.4 were seized in his presence on the spot and photograph was also snapped by the complainant on the spot. Stated that Nodal Officer, other witnesses and Raj Kumar remained present on the spot. In his cross admitted that M/S Gaiinda Mal Hem Raj does not have any production unit of Tobacco. Stated that he cannot tell as to whether it was got checked that Ex.CW-1/A was Tobacco Product. Stated that they had not checked any document showing that accuseds were dealing in supply of tobacco products. Admitted that no price of seized product was paid on the spot. Denied that accuseds have maintained separate counter for dumping products not to be sold to general public self stated that seized products were displayed. Denied that seized tobacco products were not for sale to general public i.e. why there is no sale receipt for the same. Denied that they had seized the products from dumping counter. Admitted that seizure memo Ex.CW-1/A does bear signatures of accuseds.

10. CW-3 is Ashish Samual, Sub Inspector Police Station New Shimla, who stated that he was also member of State Level Flying Squad, other members of which were Dr.Gopal Chauhan, FI Ashok Mangla and Goverdhan Singh qua which

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per  
Signature  
Date 16/12/12



notification is Ex.PC. Stated that on 16.1.2012 at about 2.15 P.M. they had reached shop of Gaiinda Mal Hem Raj where Tobacco Product Ex.P.2 to Ex.P.4 were recovered without pictorial warning for which challan was issued. Stated that fine was also imposed on the accused. Stated that Tobacco Products Ex.P.2 to Ex.P.4 were seized and taken into possession. Stated that entire proceedings were conducted on the spot in the presence of Raj Kumar Manager of Gaiinda Mal Hem Raj vide seizure memo Ex.CW-1/A. Stated that challan Ex.CW-1/B was issued which bears signatures of accused and other team members. Stated that photograph Ex.PB was also snapped and they were not having any pictorial warning. In his cross stated that retail business is being conducted in Gaiinda Mal Hem Raj shop and no manufacturing work of tobacco product is being carried out in the shop. Stated that he cannot tell that they undertake wholesale business of tobacco. Stated that they had not checked any papers of the accused to show that they were undertaking wholesale business of Tobacco. Stated that they had not purchased any Tobacco Product from the shop. Stated that he had not seen any dumping counter on the spot. Denied that products seized by them were not for sale ~~sale~~ to general public. Denied that he was deposing falsely being member of flying squad team.

11. This is the entire evidence led by the prosecution.

12. On this evidence, Id. APP for State has vehemently argued that prosecution has proved its case beyond all reasonable doubts and accuseds be convicted. On the other hand, Id. defence counsel has controverted the arguments of Id. APP and argued that there is no convincing evidence on record to prove the guilt of the accuseds and they be acquitted.

13. I have given thoughtful consideration to the rival contentions of the parties.

14. Accused No.2 has not disputed to be proprietor of M/S Gaiinda Mal Hem Raj in cross-examination. All the witnesses in one voice have stated that on 16.1.2012 at about 2.15PM they

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had conducted raid in shop of M/S Gainder Mal Hem Raj 67-68 The Mall Shimla where accused Raj Kumar was found selling tobacco products without pictorial warning. Nothing fruitful could be extracted in their cross-examination which could have shattered this part of their chief - examination. Also all the witnesses in one voice stated that tobacco product Ex.P.2 to Ex.P.4 were taken into possession after putting in parcel Ex.P.1 vide memo Ex.CW-1/A. Accused Raj Kumar has admitted such facts in his statement u/s 313 Cr.P.C. In view of admission of accused Raj Kumar and unshattered statement of witnesses it is established that members of flying squad had taken into possession tobacco products Ex.P.2 to Ex.P.4 from the shop of accused. The presence of the flying squad in the shop is also proved from admission of the accused Raj Kumar that fine of ₹ 200 was imposed for not displaying mandatory board that tobacco products are not sold to minors. Interestingly, it has been suggested to CW-3 to which he feigned ignorance that accuseds deal in whole sale business of tobacco products. Also to another suggestion this witness feigned ignorance that accuseds undertake business of wholesale supply of cigarette distribution etc. From these suggestions what emerges is that accuseds want to show that they do not do retail business of tobacco but only deal in wholesale products which clearly shows that accuseds deal in tobacco products also. From perusal of section 7 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production supply and Distribution Act 2003 it is clear that ambit of this section not only covers producers but also suppliers, distributors, or any other persons who carry on trade or commerce in cigarettes or any other tobacco products. Hence, <sup>as it is</sup> accuseds ~~not~~ displaying seized products for sale falls within mischief of section 7 of the Act. All the witnesses in one voice stated that tobacco products were not having pictorial warning as required u/s 7 of the Act which remained unshattered in cross-examination. Accordingly, point No.1 is decided in affirmative.

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 EXAMINED  
 Date: \_\_\_\_\_



Final Order.

15. In view of my discussions and findings on point No.1, accuseds are convicted for violation of section 7 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production supply and Distribution Act 2003 punishable u/s 20 of the Act. Their bail bonds are cancelled and discharged. Let they be heard on quantum of sentence after respite.

Announced and signed in the open Court on this 1st day of March, 2013.

(Amit Mandal)  
Judicial Magistrate 1st Class (IV),  
Shimla.

File taken up after respite.

Quantum of sentence:

1.3.2013.

Present:-

Mrs. Manu Kalia, Ld.APP for the State.  
Convicts with Sh. Amit Vald, Advocate.

16. Heard on quantum of sentence. Ld. APP has argued that keeping in view the nature of offence convicts be dealt with Iron hands. On the other hand, ld. defence counsel has submitted that convicts are first offenders, were not aware about displaying of pictorial warnings, <sup>have</sup> no criminal history, as such they be given benefit of section 4 of Probation of Offenders Act.

17. I have given thoughtful consideration to the rival contentions of the parties.

18. In the facts and circumstances of the case and keeping in view nature of offence, this Court is of considered view that convicts do not deserve benefit of Probation of Offenders Act. However, keeping in view the submissions of defence counsel, they are sentenced to pay fine of ₹ 1000/- each for offence punishable u/s 20 of the Cigarettes and other Tobacco Products (Prohibition of

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**EXAMINED**  
Date: 16/3/13



Advertisement and Regulation of Trade and Commerce, Production supply and Distribution Act 2003 . In default of payment of fine, the convict will undergo simple imprisonment for 7 days.

19. Fine amount paid by the convicts. Be deposited in Govt. Treasury forthwith under relevant head. Copy of judgment be supplied to the convict free of cost forthwith. File after due completion be consigned to the general record room.

Announced and signed in the open Court on this 1st day of March, 2013.

(Amit Mandyal)

Judicial Magistrate 1st Class (IV),  
Shimla.

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SHIMLA  
16/3/13  
Date

List of witnesses

Sr.No.	Names of witnesses	Whether witness of prosecution or accused.
CW-1	Dr.GopalChauhan	Prosecution witness.
CW-2	Ashok Mangla	-do-
CW-3	SI Ashish Samual	-do-

## List of Exhibits.

Ex.No.	Date of Exts.	Description of Exts.
Ex.CW-1/A	17.7.2012	Memo.
Ex.CW-1/B	-do-	Challan.
Ex.CW-1/C	-do-	Complaint.
Ex.PB	-do-	Photograph.

(Amit Mondyal)  
Judicial Magistrate 1st Class (IV),  
Shimla.

- a) Two of appliances 11/58
- b) Date of the promissory note 11/31/13
- c) Name of the payee Samuel
- d) Date of Certification 16/3/13
- e) Date we return copy 16/3/13
- f) Date on which copy will be returned 16/3/13
- g) Purpose for which copy required for grocery use
- h) Name of Company Free cost
- i) Urgent for 22/3/13
- j) Date of Delivery

Certified to be a true copy

100000  
 Department, Civil  
 Court of District &  
 Eastern Judge Office  
 South Eastern Division  
 Authorized by Section 44 of the  
 English Evidence Act 1938  
 16/3/12



313 Cr.P.C. Recorded by The 1st J.M.C-4, Shimla in  
case No-10-3 of 12 The as given below

In the Court of Amit Mandyal, Judicial Magistrate 1<sup>st</sup> Class (4)  
Shimla, H.P.  
State  
Versus Raj Kumar

Statement of accused Raj Kumar son of *Dr. Dhirendra Singh*  
resident of *at present Manager 67-68, Gopalpur, Himachal Pradesh*  
Cr.P.C. *Shimla, H.P.* age 42 years, d/s 313  
Without oath.  
26.2.2013.

Q.No.1 Have you heard and understood the prosecution evidence  
led against you?  
Ans. Yes Sir.

Q.No.2 It is in complainant evidence led against you that CW-1  
Dr. Gopal Chauhan, Incharge State Level Flying Squad for  
Tobacco Control appointed vide notification copy of which  
is MarkA-1 alongwith CW-2 Ashok Mangla Food Safety  
Officer, CW-3-Ashish Samual Sub Inspector and ETI  
Goverdhan Singh on 16.1.2012 at about 2.15 PM had raided  
shop of M/S Gaiinda Mal Hem Raj on Mall road Shimla  
where you accused being Manager were selling tobacco  
products without specified pictorial Health Warnings.  
What have you to say about it?

Ans. *मे दादा है कि मैंने कोर्ट में बयान दिया है*

Q.No.3 It is further in complainant evidence led against you that  
packets of tobacco products Ex.P.2 to Ex.P.4, were seized  
and put in parcel Ex.P.1 and taken into possession. Vide  
memo Ex.CW-1/A. What — have you to say about it?

Ans. *मे दादा है*

Q.No.4 It is further in complainant evidence led against you that  
you had not erected mandatory board in the shop displaying  
that the tobacco products are not sold to minors for which  
fine of ₹ 200/- was imposed on spot. What you  
have to say about it?

Ans. *मे दादा है*

Q.No.5 It is further in complainant evidence led against  
you that CW-1 Incharge Flying Squad/ State Nodal  
Officer Tobacco Control in H.P. had issued challan  
for Violation of Section 7 of the Act Ex. CW-1/B in  
presence of other members of flying squad  
which bears signatures of CW-1 and other witness/  
member of flying squad and your ~~so~~ accused Raj  
Kumar. What have you to say about it?

Ans. *मे दादा है*

Q.No.6 It is further in complainant evidence led against you  
that photograph Ex.PB was also snapped on spot  
by CW-1. What you have to say about it?

Ans. *मे दादा है*

Q.No.7 It is further in complainant evidence led against you that  
CW-1 had prepared the complaint Ex.CW-1/C which bears

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Ans: his signatures. What you have to say about it?  
Q.No.8. यला न हो  
Why the complainant witnesses have deposed  
against you?  
Ans. जवाह अमी सबकारी कोमोचरी हो  
Q.No.9. Why this case against you?  
Ans. केस मुहा बनाम हो  
Q.No.10. Do you want to say anything else?  
Ans. मे निवेक हो, मा लावाक मेनोचराम  
Q.No.11. Do you want to lead evidence in defence?  
Ans. जी नही

RO & AG: [Signature] (Amit Mandyal)  
JMIC (4) Shimla.

Certified that accused was examined in my presence &  
hearing & the record contains a true and full account of the statement  
made by him.

[Signature]  
(Amit Mandyal)  
JMIC (4) Shimla.

**TESTED**  
[Signature]  
**EXAMINED**  
10/3/13



Shumla, H.P.  
Versus Raj Kumar  
Statement of accused Gautam Jain son of Sh. Ramesh Jain, Te. Mulla  
resident of Neph. Panchayat Office, Dindori, age 29 years, w/o 313 Shrimati, H/P  
Cr.P.C. Without oath.  
Q.No.1 Have you heard and seen...  
26.2.2013.

Ans. Yes Sir.

Ans.

Ans.

Ans.

Ans.

Ans:

Ans:

16/3/12

Q.No.8. Why the complainant witnesses have deposed against you?

Ans. *उत्तर नही*

Q.No.9. Why this case against you?

Ans. *उत्तर नही*

Q.No.10. Do you want to say anything else?

Ans. *मैं क्षीय हो रहा हूँ, मैं कुछ कहना नहीं चाहता*

Q.No.11. Do you want to lead evidence in defence?

Ans. *हाँ नहीं*

RO & AC.

(Amit Mandya)  
JMIC (4) Shimla.

Certified that accused was examined in my presence & hearing & the record contains a true and full account of the statement made by him.

(Amit Mandya)  
JMIC (4) Shimla.

- a) No. of applications 11.58
- b) Date of the presentation of the application 11/3/13
- c) Name of the applicant *परमेश्वर*
- d) Date of Completion of Copy 16/3/13
- e) Date on which Copy was submitted 16/3/13
- f) Date on which Copy was returned 16/3/13
- g) Purpose for which Copy applied for *ब्रॉचर*
- h) Page *Force copy*
- i) Cost of Copy *Force copy*
- j) Date of Delivery 22/3/13

Certified to be a true copy

*peru*

*Signature*  
Deputy District & Sessions Judge  
District & Sessions Judge Office  
Shimla District  
16/3/13

HFW/170/CGE/2023-Health 2-Health and Family Welfare SEC

Govt of Karnataka

No: HFW 170 CGE 2023

Secretariate, Government of Karnataka,  
Vikasa Saudha  
Bengaluru, Date: 07.02.2024.

Notification

According to the WHO's Global Adults Tobacco Survey 2016-17, 22.8% of adults (aged 15 and above) in Karnataka consume some form of tobacco. 8.8% of these people are smokers. 23.9% adults in Karnataka are exposed to second hand smoke in public places.

The consumption, sales, advertisements, promotion, transportation, production and supply in India are regulated under the Cigarettes and Tobacco Products Act (COTPA) 2003.

According to studies, 45 minutes of hookah smoking is equivalent to smoking 100 cigarettes and is cited as harmful to health. According to the report of the World Health Organization, hookah is an addictive substance, which contains nicotine or molasses and flavoring substances containing a large amount of carbon monoxide, which is very harmful to health.

Section 3(p) schedule of COTPA 2003 Act classifies hookah as an tobacco product. In recent times, the government has come to the attention of the government that young men and woman, mainly student community, are falling prey consumption products such as tobacco containing hookah or hookah molasses and other hookah products in public places potentially leading drug addiction.

Section 4 of COTPA 2003 prohibits smoking in public places. Only places like restaurants, pubs, clubs having a seating capacity of 30 and more than 30 seats or rooms are permitted to construct a designated smoking area or room. Providing any smoking aid or services in the Designated Smoking Area is a violation of Section 4 of the COTPA 2003 Act.

According to Section 6(a) and 6(b) of COTPA, incitement to consumption of tobacco to children or students and sale and use of tobacco products including hookah within 100 yards of educational institutions are prohibited.

According to Section 77 of the Children and Protection Act 2015, possession, abetment, and sale of tobacco or other addictive substances to a minors is a punishable offence.

The Karnataka Poisons (Possession and Sale) Rules 2015 classifies nicotine as a poison or hazardous chemical substance.

A hookah is for a product that is consumed orally through a nozzle or wipe device in a closed chamber. There is a high possibility of spreading oral infectious diseases like herpes, tuberculosis, Hepatitis, Covid 19 and other diseases.



HFW/170/CGE/2023-HEALTH 2-HEALTH AND FAMILY WELFARE SEC

The hookah bar system is a cause of state fire hazards and violates state's fire safety laws.

Hookah Bars Licensed under the provisions of Food Safety and Quality Act 2006 and 2.1.1. Schedule 5. Consumption of hookah in hotels, bars and restaurants makes the food items unsafe for public consumption and may adversely affect the public's health.

As clearly mentioned in Article 47 of the Constitution, it is the duty of the State Government to protect public health. In general, the sale, consumption, promotion, stocking and trade of hookah tobacco products known as hookah tobacco or nicotine-free tobacco-free, flavored, unflavored hookah molasses, shisha and other similar names are prohibited in the state with immediate effect in the interest of public health.

It is hereby ordered that the violators of this order will be punished under the provisions of COTPA 2003, Juvenile Justice Act 2015, Food Safety and Quality Standards Act 2006, Karnataka Poisons (Possession and Sale) Rules 2015, Indian Penal Code and Fire Safety Act.

By order and in the name of the Governor of Karnataka

(Padma. V)

Under Secretary to Govt,  
Department of Health and Family Welfare  
(Health 1 & 2)

To:-

1. Accountant General (G &S.S.A). Karnataka, New Building, "Audit Bhavan", Post box no 5398, Bengaluru-560001
2. All Chief Secretary/Principal Secretary/Secretaries to Government of all Departments of the State
3. Heads of Departments of all the Departments of the State.
- 4 Deputy Commissioners of all districts of the State,
5. Superintendents of Police of all districts of the state.
6. Chief Executive Officers of all districts of the State.
7. Additional copy / branch security file

**Copy for information:**

1. Private Secretary to Hon'ble Chief Minister, Vidhana Soudha, Bangalore
2. Private Secretary to the Hon'ble Minister of Health and Family Welfare and Medical Education, Vikas Soudha, Bangalore
3. Private Secretary to the Principal Secretary to Government, Department of Health and Family Welfare
4. Personal Assistant to the Deputy Secretary-4 to Government, Department of Health and Family Welfare.

**APPENDIX 9a: SAMPLE NOTIFICATION: AUTHORIZATION OF SPECIAL COURTS FOR SECTION 4 and 6, COTPA 2003**

**Directorate of Health Safety and Regulation,  
Himachal Pradesh**

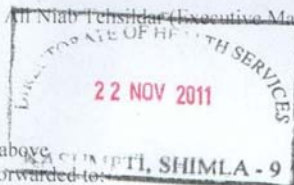
No. HSR-H(Tobacco)7/09-

Dated:

**NOTIFICATION**

In exercise of the powers conferred under section 25 of the COTPA (The Cigarette and other Tobacco Products, Prohibition of Advertisement and regulation of trade and commerce, production, supply and distribution Act) 2003 and with the prior approval of the Govt. the following Courts are hereby notified for the trial of offence under section 4 & 6.

1. All SDM Courts in HP.
2. All Tehsildar (Executive Magistrate) Court in H.P.
3. All Niab Tehsildar (Executive Magistrate) Court in H.P.



**Director Health Safety and Regulation  
Himachal Pradesh Shimla-9**

Dated:

No. as above

Copy forwarded to:

1. The Registrar HP High Court Shimla
2. The Director, Tobacco Control Programme, Govt. of India, Ministry of Health and FW, Nirman Bhawan, New Delhi.
3. All Administrative Secretaries in H.P.
4. All Head of Departments in H.P.
5. The Director of Health Services/ Medical Education/Dental Health Services HP.
6. The Joint Director, Prosecution, HP Shimla.
7. All Deputy Commissioner in HP with the request to circulate the notification to all SDMs Tehsildars, Niab Tehsildars in H.P.
8. All Superintendents of Police in H.P.
9. All CMOs/BMOs in Health Department HP.
10. The Controller, Printing & Stationery, HP Shimla-5 for publication in Rajpatra.
11. Director Public Relations HP for publication in leading newspapers

**Director Health Safety and Regulation  
Himachal Pradesh Shimla-9**

**APPENDIX 9b: SAMPLE NOTIFICATION: AUTHORIZATION OF SPECIAL COURTS FOR SECTION 4, 5, 6 and 7, COTPA 2003**

*Court notification order*

**PROCEEDINGS OF THE GOVERNMENT OF KARNATAKA**

Sub: Conferring power on the Courts to try the cases under Sections 4, 5, 6 and 7 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 – reg. (78)

**READ:**

1. Letter No. DHS/Thambaku/35/2014-15, dated 18.07.2014 of the Principal Secretary to Government, Health and Family Welfare Department, Bengaluru-1.
2. Letter No. LAW 114 LCE 2014, dated 14.08.2014 of Law Department, Bengaluru-1.
3. Letter No. GOB(I) 175/2006, dated 26.09.2014 of the Registrar General, High Court of Karnataka, Bengaluru-1.

**PREAMBLE:**

*leg 14/11/15*  
In the letter read at (1) above, the Principal Secretary to Government, Health and Family Welfare Department, Bengaluru-1 has requested to designate the Judges of suitable rank/Courts in the State, District and Taluk level, to try the cases under Sections 4, 5, 6 and 7 of The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.

Accordingly, the Registrar General, High Court of Karnataka, Bengaluru-1 has submitted a proposal stating that the Court of Judicial Magistrate of First Class in all the Districts and Taluk Headquarters may be conferred with the power to try the cases under Sections 4, 5, 6 and 7 of The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 where the punishment of imprisonment prescribed is less than three years and fine of Rs. 10,000/- or both; further, the Chief Metropolitan Magistrate at Bangalore City and the Chief Judicial Magistrates in other places in the State where the punishment of imprisonment prescribed is more than three years committed within their territorial jurisdiction, may be conferred with powers under the Rules mentioned above.

The proposal has been examined and hence the following order.

*[Signature]* 12/11/2015. Contd.....2.

GOVERNMENT ORDER NO. LAW 114 LCE 2014,  
BENGALURU, DATED 12.01.2015.

Under the circumstances explained in the preamble, the Court of Judicial Magistrate of First Class in all the Districts and Taluk Headquarters are hereby conferred with the powers to try the cases under Sections 4, 5, 6 and 7 of The Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 where the punishment of imprisonment prescribed is less than three years and fine of Rs. 10,000/- or both; and the Chief Metropolitan Magistrate at Bangalore City and the Chief Judicial Magistrates in other places in the State where the punishment of imprisonment prescribed is more than three years committed within their territorial jurisdiction, are also hereby conferred with powers under the Act/Rules mentioned above.

By Order and in the name of the  
Governor of Karnataka,

  
(S. UMESHA)

Under Secretary to Government (Admn.-1),  
Law Department.



To:

1. The Principal Accountant General (A&E) / (Audit-1) / (Audit-2), Karnataka, Bengaluru-1
2. The Advocate General in Karnataka, High Court Building, Bengaluru-1
3. The Registrar General, High Court of Karnataka, Bengaluru-1
4. The Principal Secretary to Government, Health and Family Welfare Department, Vikasa Soudha, Bengaluru-1
5. The Commissioner for Health and Family Welfare Services, Ananda Rao Circle, Bengaluru-9
6. The Director of Health and Family Welfare Services, Ananda Rao Circle, Bengaluru-9
7. The Private Secretary to Hon'ble Minister for Law, Parliamentary Affairs, Animal Husbandry and Muzrai, Vidhana Soudha, Bengaluru-1
8. The Personal Secretary to Chief Secretary to Government, Vidhana Soudha, Bengaluru-1
9. The Under Secretary to Government, Finance Department (Exp.-2 & 10), Vidhana Soudha, Bengaluru-1
10. Section Guard File / Extra copies.

## Legislations Supporting Tobacco Control

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

- i. Prohibition on smoking in public places (Section 4)
- ii. Prohibition on direct and indirect advertisement, sponsorship and promotion of tobacco products (Section 5)
- iii. Prohibition on sale of tobacco products to minors (Section 6(a))
- iv. Prohibition on sale of tobacco products near educational institutions (Section 6(b))
- v. Display of pictorial health warning on tobacco products packs (Section 7)
- vi. Display of tar and nicotine contents on tobacco products packs (Section 7(5))

### **2. The Bharatiya Nyaya Sanhita, 2023**

i. **Disobedience to order duly promulgated by public servant.**—Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction,—

(a) shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand and five hundred rupees, or with both; Resistance to taking of property by lawful authority of a public servant. Obstructing sale of property offered for sale by authority of public servant. Illegal purchase or bid for property offered for sale by authority of public servant. Obstructing public servant in discharge of public functions. Omission to assist public servant when bound by law to give assistance. Disobedience to order duly promulgated by public servant.

(b) and where such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to one year, or with fine which may extend to five thousand rupees, or with both. **(Section 223).**

ii. **Public nuisance.** —A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage **(Section 271).**

iii. **Negligent act likely to spread infection of disease dangerous to life.** —Whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe



to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both **(Section 272)**.

iv. **Adulteration of food or drink intended for sale.** —Whoever adulterates any article of food or drink, so as to make such article noxious as food or drink, intending to sell such article as food or drink, or knowing it to be likely that the same will be sold as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both **(Section 274)**.

v. **Sale of noxious food or drink.** —Whoever sells, or offers or exposes for sale, as food or drink, any article which has been rendered or has become noxious, or is in a state unfit for food or drink, knowing or having reason to believe that the same is noxious as food or drink, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to five thousand rupees, or with both **(Section 275)**.

vi. **Making atmosphere noxious to health**—Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend one thousand rupees **(Section 280)**.

vii. **Causing hurt by means of poison, etc., with intent to commit an offence.**—Whoever administers to or causes to be taken by any person any poison or any stupefying, intoxicating or unwholesome drug, or other thing with intent to cause hurt to such person, or with intent to commit or to facilitate the commission of an offence or knowing it to be likely that he will thereby cause hurt, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine **(Section 123)**.

*1. Section 270, 271 and 280 of BNS has been referred, to declare a public place “Tobacco Free” and against serving of any form of Hookah etc.,*

*2. Section 223,274,275 and 123 of BNS has been referred, to enforce ban on pan masala, gutka and other forms of smokeless tobacco products.*

### **3. The Juvenile Justice (Care and Protection of Children) Act, 2015**

i. Section 77: Whoever gives, or causes to be given, to any child any intoxicating liquor or any narcotic drug **or tobacco products** or psychotropic substance, except on the order of a duly qualified medical practitioner, shall be 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.

### **4. The Environment (Protection) Act-1986**

i. **The Plastic Waste Management(Amendment) Rules, 2016**

a. Rule 4 (f) mandates: Sachets using plastic material shall not be used for storing, packing or selling gutka, tobacco and pan masala.

b. Rule 4 (i) of the said Rules, mandates: plastic material in any form including Vinyl Acetate, Maleic Acid, and Vinyl Chloride Copolymer, shall not be used in any package for packaging gutka, pan masala and tobacco in all forms.

**5. The Food Safety and Standards Act, 2006(FSS Act)**

i. Section 30(2)(a) of the FSS Act empowers the Commissioner of Food Safety & Standards to prohibit in the interest of public health, the manufacture, storage, distribution or sale of any article of food, either in the whole of the State or any area or part thereof for such period, not exceeding one year, as specified in the order notified in this behalf in the Official Gazette.

ii. Regulation 2.3.4 of the Food Safety and Standards (Prohibition and Restrictions on Sales) Regulation, 2011, prohibits the use of tobacco and nicotine *as ingredients in any food products*.

*Regulation 2.3.4 is referred to, for prohibiting manufacture, sale etc., of gutka pan masala (with tobacco or nicotine).*

*Section 30(2)(a) is referred to, for prohibiting manufacture, sale etc., of all flavored, scented chewing tobacco, pan masala and areca-nut or supari.*

**6. The Drugs & Cosmetics Act, 1940**

i. Section 18(c) of the Drugs and Cosmetics Act, 1940, states, no person shall himself or by any other person on his behalf, manufacture for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute any drug, except under, and in accordance with the conditions of, a license issued for such purpose.

ii. Section 27(b)(ii), whoever manufactures for sale or for distribution, or sell, or stock or exhibit or offer for sale, or distribute any drug without a valid license as required under section 18(c), shall be punished with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than five thousand rupees.

iii. **The Drugs and Cosmetics Rules, 1945**

In Schedule K, of the Drugs and Cosmetic Rules, 1945 “Nicotine Gum and Lozenges containing upto 2 mg of nicotine” is a listed drug.

*Section 18(c), Section 27(b)(ii) read with the Drugs and Cosmetics Rules, 1945 is referred to, for taking action against illegal trade in non-tobacco Hookah, Electronic Nicotine Delivery Systems etc.*

## **7. The Poisons Act, 1919**

- i. Section 2: Power of the State Government to regulate possession for sale and sale of any poison. —The State Government may by rule regulate within the whole or any part of the territories under its administration the possession for sale and the sale, whether wholesale or retail, of any specified poison.
- ii. Section 4: Power to regulate possession of any poison in certain areas.—(1) The State Government may by rule regulate the possession of any specified poison in any local area.
- iii. Section 5: Presumption as to specified poisons. —Any substance specified as a poison in a rule made or notification issued under this Act shall be deemed to be a poison for the purposes of this Act.
- iv. Section 8: State Government power to make rules generally to carry out the purposes and objects of the Act.

*The aforesaid provisions have been referred to, by State Governments for notifying “Nicotine” through Rules, namely:*

- The Chandigarh Poison (Possession and Sale) Rules of 2015, enacted under the said Act, lists “Nicotine in extracted form or Nicotine in any form as an additive and/or its derivatives”, in the category of poison.
- Karnataka Poison (Possession and Sale) (Amendment) Rules, 2019, enacted under the said Act, lists “Nicotine” in the Schedule to the Karnataka Poison (Possession and Sale) Rules, 2015.

*State Governments notifying “Nicotine” as poison can take action against distribution, sale, storage etc., of Nicotine Delivery Systems.*

## **8. The Cable Television Networks (Regulation) Act, 1995**

- i. Section 6 of the Act prohibits transmission or re-transmission of any advertisement if it does not confirm with the prescribed advertisement code which has been prescribed in the Cable Television Networks Rules, 1994.

### **The Cable Television Networks Rules, 1994**

- i. Rule 7 requires that all advertisements carried in the cable service shall conform to the laws of the country and no advertisement shall be permitted which inter alia, tends to incite people to breach of law; promotes directly or indirectly production, sale or consumption of cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants.

## **9. The Cinematograph Act, 1952**

i. Section 5B- the Central Government may issue such directions as it may think fit setting out the principles which shall guide the authority competent to grant certificates under this Act in sanctioning films for public exhibition.

Guidelines for certification under section 5B(2) of Guideline 2 (via) mandates the board of film certification shall ensure that scenes tending to encourage, justify or glamorise consumption of tobacco or smoking are not shown.

ii. Section 7(b)(c) If any person - exhibits or permits to be exhibited in any place fails to comply with any order made by the Central Government or by the Board in the exercise of any of the powers or functions conferred on it by this Act or the rules made thereunder, he shall be punishable with imprisonment for a term which may extend to three years, or with fine which may extend to one lakh rupees, or with both, and in the case of a continuing offence with a further fine which may extend to twenty thousand rupees for each day during which the offence continues.

iii. Section 11, The authority having power to grant licences shall be the district magistrate or such other authority as notified by the State Government.

iv. Section 14, If the owner or person in charge of a cinematograph uses the same or allows it to be used, or if the owner or occupier of any place permits that place to be used in contravention of the provisions of this Part or of the rules made thereunder, or of the conditions and restrictions upon or subject to which any licence has been granted under this Part, he shall be punishable with fine which may extend to one thousand rupees and, in the case of a continuing offence, with a further fine which may extend to one hundred rupees for each day during which the offence continues.

v. Section 15, Where the holder of a licence has been convicted of an offence under section 7 or section 14, the licence may be revoked by the licensing authority.

*The above provisions of the Cinematograph Act, 1952 maybe referred to, for enforcing Film Rules notified under COTPA 2003.*

#### **10. The Trademark Act-1999**

i. Section 9 (2)(a) of the Trademark Act, 1999 suggests that registration of trademarks can be refused on various grounds including a trade mark that is of such nature as to deceive the public or cause confusion.

ii. Section 9(2)(b)(c) and (d) also prevent registration of a trademark if they are likely to hurt religious sentiments; are scandalous or obscene; or if its use is prohibited under the Emblems and Names (Prevention of Improper Use) Act, 1950.

iii. Section 11 clause 1 read with sub-clause (b) provides relative grounds for refusal of registration and prevents registration of a trademark if it is similar to an earlier trademark or the similarity to an earlier trade mark is likely to create confusion on the part of the public.

- iv. Section 11 clause 3 prevents registration of a trademark if use of such trademark is prevented by virtue of any law or law of copyright.

*The above provision of the Trademark Act-1999 may be referred to, for preventing surrogate advertisements of tobacco products.*

#### **11. The Emblems and Names (Prevention of Improper Use) Act, 1950**

- i. Section 3 of the Act—no person shall, use or continue to use, for the purpose of any trade, business, calling or profession, or in the title of any patent, or in any trademark or design, any name and emblem specified in the Schedule or any colourable imitation thereof. Some of the name and emblem specified in the schedule to the Act are; Indian National Flag, name/emblem or official seal of the Government of India or of any State, or any other insignia or coat-of-arms used by any such Government or by a Department of any such Government, name/emblem or official seal of the President, Governor or Republic or Union of India.

Any name which may suggest or be calculated to suggest— (i) the patronage of the Government of India or the Government of a State; or (ii) connection with any local authority or any corporation or body constituted by the Government under any law for the time being in force.

*The above provision of the Emblems and Names (Prevention of Improper Use) Act, 1950 may be referred to, for taking action against companies using name and emblem specified in the Schedule or any colourable imitation thereof for tobacco products.*

#### **12. The Consumer Protection Act, 2019**

- i. Section 2 (28) "misleading advertisement" in relation to any product or service, means an advertisement, which—

- (i) falsely describes such product or service; or
- (ii) gives a false guarantee to, or is likely to mislead the consumers as to the nature, substance, quantity or quality of such product or service; or
- (iii) conveys an express or implied representation which, if made by the manufacturer or seller or service provider thereof, would constitute an unfair trade practice; or
- (iv) deliberately conceals important information;

- ii. Section 2 (47) "unfair trade practice" means a trade practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice including any of the following practices, namely:—

- (i) making any statement, whether orally or in writing or by visible representation including by means of electronic record, which—
  - (a) falsely represents that the goods are of a particular standard, quality, quantity, grade, composition, style or model;
- (vii) not issuing bill or cash memo or receipt for the goods sold or services rendered in such manner as may be prescribed;



iii. Section 16, the District Collector (by whatever name called) may, on a complaint, inquire into or investigate complaints regarding violation of rights of consumers as a class, on matters relating to unfair trade practices and false or misleading advertisements, within his jurisdiction.

iv. Section 89, any manufacturer or service provider who causes a false or misleading advertisement to be made which is prejudicial to the interest of consumers shall be punished with imprisonment for a term which may extend to two years and with fine which may extend to ten lakh rupees; and for every subsequent offence, be punished with imprisonment for a term which may extend to five years and with fine which may extend to fifty lakh rupees.

v. Section 90(1), whoever, by himself or by any other person on his behalf, manufactures for sale or stores or sells or distributes or imports any product containing an adulterant shall be punished, if such act—

(a) does not result in any injury to the consumer, with imprisonment for a term which may extend to six months and with fine which may extend to one lakh rupees;

(b) causing injury not amounting to grievous hurt to the consumer, with imprisonment for a term which may extend to one year and with fine which may extend to three lakh rupees;

(c) causing injury resulting in grievous hurt to the consumer, with imprisonment for a term which may extend to seven years and with fine which may extend to five lakh rupees; and

(d) results in the death of a consumer, with imprisonment for a term which shall not be less than seven years, but which may extend to imprisonment for life and with fine which shall not be less than ten lakh rupees.

(2) The offences under clauses (c) and (d) of sub-section (1) shall be cognizable and non-bailable.

(3) Notwithstanding the punishment under sub-section (1), the court may, in case of first conviction, suspend any licence issued to the person referred to in that sub-section, under any law for the time being in force, for a period up to two years, and in case of second or subsequent conviction, cancel the licence.

Explanation.—For the purposes of this section,—

(a) "adulterant" means any material including extraneous matter which is employed or used for making a product unsafe;

*The above provisions of the Consumer Protection Act may be referred to, against misleading, surrogate advertisement and use of adulterant by tobacco companies.*

### **13. Legal Metrology Act, 2009**

i. **The Legal Metrology (Packaged Commodities) Rules, 2011, Rule 6:** Declaration to be made on every package, every package shall bear thereon or on its label name of the product, name and address of the manufacturers or importer or packer, origin of the product (for import tobacco), quantity of the product and date of manufacture.

ii. **The Legal Metrology (Packaged Commodities) Rules, 2011, Rule 26:**

Exemption in respect of certain packages. -

Nothing contained in these rules shall apply to any package containing a commodity if—

(a) the net weight or measure of the commodity is ten gram or ten milli litre or less, if sold by weight or measure;

Provided that the declaration in respect of maximum retail price and net quantity shall be declared on packages containing 10g to 20g or 10ml to 20ml.

**Provided that the provision of this clause shall not be applicable for tobacco and tobacco products.**

iii. Section 36 of the Act, mandates that whoever manufactures, packs, imports, sells, distributes, delivers or otherwise transfers, offers, exposes or possesses for sale, or causes to be sold, distributed, delivered or otherwise transferred, offered, exposed for sale any pre-packaged commodity **which does not conform to the declarations on the package as provided in this Act, shall be punished with fine which may extend to twenty-five thousand rupees**, for the second offence, with fine which may extend to fifty thousand rupees and for the subsequent offence, with fine which shall not be less than fifty thousand rupees but which may extend to one lakh rupees or with imprisonment for a term which may extend to one year or with both.

iv. Section 48 refers to compounding of offences, punishable under section 36 of the Act, by the legal metrology officer by payment of fine.

*The above provisions of the Legal Metrology Act and Rules framed thereunder may be referred to, for taking action against tobacco products packages that fail to display mandatory declarations such as, name and address of the manufacturers or importer or packer, origin of the product (for import tobacco), quantity of the product, date of manufacture etc.,*

**14. The Child and Adolescent Labour (Prohibition and Regulation) Act, 1986**

The Act is to prohibit the engagement of children in all occupations and to prohibit the engagement of adolescents in hazardous occupations and processes.

*“child” means a person who has not completed his 14<sup>th</sup> year of age.*

*“adolescent” means a person who has completed his 14<sup>th</sup> year of age but has not completed his 18<sup>th</sup> year.*

i. Section 3 and 3A, no child and no adolescent shall be employed or permitted to work in any hazardous occupations or processes set forth in the Schedule.

ii. In the Schedule to the Act, work in beedi-making or processing of tobacco including manufacturing, pasting and handling of tobacco or any drugs or psychotropic substance or alcohol in any form in food processing and beverage industry and at bars, pubs, parties or other similar occasions that serve alcoholic substances, is included as hazardous occupations or processes.

*The above provisions of the Child and Adolescent Labour (Prohibition and Regulation) Act may be referred to, protect child and adolescent from engagement/employment in tobacco trade.*

**15. The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Acts.**

State Governments of Gujarat, Punjab and Maharashtra has amended Section 4 of COTPA, by inserting the following:

- i. No person shall either on his own or on behalf of any other person shall open or run any hookah bar in any place including the eating house (Section 4A).
- ii. Any violation of Section 4A, is punishable with imprisonment which may extend to three years but which shall not be less than one year and with fine which may extend to fifty thousand rupees but which shall not be less than twenty thousand rupees (Section 21A Gujarat and Punjab)
- iii. Any violation of Section 4A, shall be punishable with imprisonment for a term which may extend to three years but which shall not be less than one year and with fine which may extend to one lakh rupees but which shall not be less than fifty thousand rupees (Section 21A Maharashtra).
- iv. An offence under section 4A is cognizable. (Section 27A)

*The above amendments by State Governments facilitates actions against running of Hookah Bars.*

**16. The Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019**

- i. As per the Act, Electronic Cigarette is an electronic device that heats a substance, with or without nicotine and flavours, to create an aerosol for inhalation and includes all forms of Electronic Nicotine Delivery Systems, Heat Not Burn Products, e Hookah and the like devices, by whatever name called and whatever shape, size or form it may have, but does not include any product licensed under the Drugs and Cosmetics Act, 1940.

*“Substance” includes any natural or artificial substance or other matter, whether it is in a solid state or in liquid form or in the form of gas or vapour.*

- ii. Section 4 of the Act mandates, that, no person shall, directly or indirectly, –
  - (i) produce or manufacture or import or export or transport or sell or distribute electronic cigarettes, whether as a complete product or any part thereof; and
  - (ii) advertise electronic cigarettes or take part in any advertisement that directly or indirectly promotes the use of electronic cigarettes.

***Penalty for violation of Section 4:*** Imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to three years and with fine which may extend to five lakh rupees.

iii. Section 5 of the Act mandates, that, no person, being the owner or occupier or having the control or use of any place shall, knowingly permit it to be used for storage of any stock of electronic cigarettes.

***Penalty for violation of section 5:*** imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees or with both.

## **17. State Municipal Act and Local Acts to regulate trade in Tobacco Products**

i. The Circulars/Notification/Rules issued under the State Municipal Act incorporated condition of compliance with COTPA, 2003 and other tobacco control laws, in the terms and condition of existing as well as new licenses issued to the eateries/shops/refreshment stall/hawkers.

ii. Municipal Acts of Bihar, Jharkhand, Uttar Pradesh, West Bengal, Kerala, Rajasthan etc., have been referred to, for regulating tobacco trade by using provisions that prescribed compulsory licensing for tobacco (including snuff, cigar, cigarette and bidi), storing, packing, pressing, cleansing, preparing or manufacturing and/or notified tobacco trade as dangerous and offensive trade for compulsory licensing.

iii. The Himachal Prohibition of Sale of Loose Cigarettes and Beedis and Regulation of Retail Business of Cigarettes and Other Tobacco Products Act, 2016. The said Act makes compulsory registration for carrying retail business of any tobacco products and prohibits sale of loose cigarette and beedi.

## TABLE OF LAWS SUPPLEMENTING COTPA PROVISIONS

COTPA 2003	Other Laws Section/Offence/Punishment
<p><b>Section 4</b> Prohibition on smoking in any public place.</p> <p>“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 centers, restaurants, public offices, court buildings, educational institutions, libraries, public conveyances, open auditorium, stadium, railway station, bus stop/stand, all workplaces, refreshment rooms, banquet halls, discotheques, canteen, coffee house, pubs, clubs, bars, shopping malls, cinema halls, airport lounge and the like which are visited by general public but does not include any open space.”</p> <p><b>Section 21</b> Fine up to 200 rupees</p> <p><b>Prohibition of Smoking in Public Places Rules, 2008.</b></p> <p><b>Prohibition of Smoking in Public Places (Amendment) Rules, 2017.</b></p>	<p><i>i. The COTPA (Amendment) Acts of State Governments of Gujarat, Punjab and Maharashtra.</i></p> <p><b>Section 4A:</b> No person shall either on his own or on behalf of any other person shall open or run any hookah bar in any place including the eating house(Section 4A of all three States).</p> <p><b>Section 21A:</b> Any violation of Section 4A, is punishable with imprisonment which may extend to three years but which shall not be less than one year and with fine which may extend to fifty thousand rupees but which shall not be less than twenty thousand rupees(Gujarat and Punjab)</p> <p><b>Section 21A:</b> Any violation of Section 4A, shall be punishable with imprisonment for a term which may extend to three years but which shall not be less than one year and with fine which may extend to one lakh rupees but which shall not be less than fifty thousand rupees (Maharashtra).)</p> <p><i>ii. The Bharatiya Nyaya Sanhita, 2023</i></p> <p><b>Section 270 of BNS Public Nuisance:</b> —A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, <b>danger or annoyance to the public or to the people in general</b> who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage.</p> <p><b>Section 271 of BNS Negligent act likely to spread infection of disease dangerous to life.</b></p> <p><b>Section 280 of BNS Making atmosphere noxious to health—</b>Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to one thousand rupees.</p>



	<b><i>To ensure a public place is "Tobacco Free" Section 4 of COTPA readwith its rules and Sections 270/271/280 of BNS may be referred to.</i></b>
<p><b>Section 5</b> Prohibition on direct and indirect advertisements, promotion and sponsorship of use or consumption of cigarettes or any other tobacco products.</p> <p><b>Section 22</b> (1) For first conviction, imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both, and (2) For 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.</p>	<p><b><i>i. The Emblems and Names (Prevention of Improper Use) Act, 1950:</i></b> <b><i>The Trade Name, Trade Mark, Logo etc., associated with a tobacco product must conform to the restriction specified under this Act.</i></b></p> <p><b><i>ii. The Trademark Act-1999:</i></b> <b><i>Refusal of registration or withdrawal of Trademark if it confuses with a tobacco product trademark or hurts religious sentiments or use prohibited under the Emblems and Names Act, 1950.</i></b></p> <p><b><i>iii The Cinematograph Act, 1952</i></b> <b><i>Action against Cinema Theater Owners for non-compliance with Film Rules.</i></b></p> <p><b><i>iv. The Consumer Protection Act, 2019</i></b> <b><i>Action against misleading/surrogate advertisement/ unfair trade practice adopted for promotion of tobacco products or its use.</i></b></p>
<p><b>Section 6</b> Prohibition on sale of, cigarette or any other tobacco product-</p> <p>(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. "Educational Institution" means any place or center where educational instructions are imparted according to the specific norms and include any school/colleges and institution of higher learning established or recognized by an appropriate authority"</p> <p><b>Section 21</b> Fine up to 200 rupees</p>	<p><b><i>Section 77 of the Juvenile Justice(Care and Protection of Children) Act, 2015: Whoever gives, or causes to be given, to any child any tobacco products, shall be 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.</i></b></p>
<p><b>Section 7</b></p> <p>(1) No person shall, directly or indirectly, produce, supply or distribute or carry on trade or commerce or import 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 such specified warning including a pictorial warning as may be prescribed.</p> <p><b>Section 20</b></p>	<p><b><i>i. The Legal Metrology Act 1919 Section 36 and 48 read with Rule 6 of the Legal Metrology (Packaged Commodities) Rules, 2011/ may be referred to, for action against non-display of mandatory declarations such as, name and address of the manufacturers or importer or packer, origin of the product (for import tobacco), quantity of the product, date of manufacture etc., on tobacco product packages.</i></b></p>

<p>(1) Producer or Manufacturer 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.</p> <p>(2) Seller or Distributer 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.</p>	<p><b><i>ii. The Department of Revenue, Ministry of Finance circular/ notification, dated 29.03.2017 has framed guidelines for destruction/disposal of seized/confiscated, illicitly manufactured or imported cigarettes pack of foreign origin for violation of the Pack Warning and Legal Metrology Rules.</i></b></p> <p><b><i>iii. The Consumer Protection Act 2019, for misleading advertisements/unfair trade practice.</i></b></p>
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## **PROHIBITION ON HOOKAH BARS**

Hookah, narghile, shisha or water-pipe smoking (WPS), has in recent years seen a surge in popularity through smoking of communal hookah in restaurants, pubs, bars, especially by youths. Studies that have examined narghile smokers and the aerosol of narghile smoke have reported high concentrations of carbon monoxide, nicotine, "tar," and heavy metals. The scientific data regarding the adverse health consequences of hookah point to dangers that are similar to those associated with cigarette smoking: malignancy, impaired pulmonary function, low birth weight, and others. Additional dangers not encountered with cigarette smoking are infectious diseases resulting from pipe sharing and the frequent addition of alcohol or psychoactive drugs to the tobacco. Hookah users take longer pulls that are held for a longer duration, all of which leads to increased exposure to the carcinogenic smoke. A one-hour session of hookah can be as harmful as smoking 100 cigarettes, one hookah sessions delivers 25 times the tar of a single cigarette. Even tobacco and nicotine less hookah can be toxic to health, as the smoke from hookah/shisha is filled with carbon monoxides and other harmful carcinogens, it is deleterious to human lung and arterial cells and except for nicotine, smoke from tobacco-free water pipe products has the same toxicant content and biological activity as that from tobacco-based products.

### **Cigarettes and Other Tobacco Products Act 2003(COTPA)**

Running a Hookah Bar is in contravention of the objective of COTPA,2003 i.e., to discourage tobacco use and the following provisions:

i. Section 5(3), no person, shall, promote the use or consumption of tobacco product.

ii. Restaurants, Bars, Cafes, Lounges have been misinterpreting the proviso to Section 4 of COTPA that allows a smoking area in restaurants to run hookah bars. The said proviso is limited to use of tobacco products in a designated smoking area(DSA) and not serve hookah, which is clarified/specified by the Prohibition of Smoking in Public Places Rules, 2008(as amended), such as the DSA:

- is distinctively marked as "Smoking Area" and is not established at the entrance or exit of restaurants.
- is separately ventilated i.e., physically separated and surrounded by full height walls on all four sides.
- has an entrance with an automatically closing door normally kept in close position, has an air flow system that is exhausted directly to the outside and not mixed back into the supply air for the other parts of the building,
- is fitted with a non-re circulating exhaust ventilation system or an air cleaning system, or by a combination of the two, to ensure that the air discharges only in a manner that does not re-circulate or transfer it from a smoking area or space to non-smoking areas.
- has negative air pressure in comparison with the remainder of the building.
- shall display a board at the entrance of a smoking area or space of minimum size of 60x30 cm with a white background and having the message in English and one Indian language in black colour that-tobacco smoking is harmful to your health and the health of non-smokers and entry of person below the age of eighteen years is prohibited. [notification G.S.R. No. 500(E) dated 23.05.2017]
- no service is allowed in a DSA, which includes service of food or any tobacco products or any apparatus such as hookah for smoking. [notification G.S.R. No. 500(E) dated 23.05.2017]

iii. The entry of minors in DSA is prohibited in compliance with Section 6 of COTPA and Section 77 of the **Juvenile Justice (Care and Protection of Children) Act, 2015**, that prohibits sale and/or giving of tobacco products to minors.

<p>iv. The DSA is not within 100 yards of any educational institution, in compliance with Section 6(b) of COTPA.</p> <p><b>v. Section 4A of the COTPA (Amendment) Acts</b> of State Governments of Gujarat, Punjab and Maharashtra that mandates no person shall either on his own or on behalf of any other person shall open or run any hookah bar in any place including the eating house.</p>
<p><b>Drugs and Cosmetics Act, 1940</b></p> <p>i. Drugs and Cosmetics Act, 1940, regulates use of “nicotine” for human consumption and only 2mg to 4mg of nicotine in Chewing Gums/Lozenges is permitted as an aid for nicotine replacement therapy (NRT).</p> <p>ii. Serving nicotine laced hookah in restaurants is in violation of the Drugs and Cosmetics Act, 1940, Section 18(c) i.e., no person shall himself or by any other person on his behalf, sell, or stock or exhibit or offer for sale, or distribute any drug, except under, and in accordance with the conditions of, a license issued for such purpose.</p>
<p><b>Poisons Act, 1919</b></p> <p>i. States like Punjab, Haryana and Karnataka has notified “Nicotine in extracted form or Nicotine in any form as an additive and/or its derivatives”, as poison under the Poisons Act 1919.</p> <p>ii. Serving nicotine laced hookah in restaurants is in violation of the Poisons Act-1919.</p> <p>iii. Serving nicotine laced hookah in restaurants is in violation of Section 123 of BNS causing hurt by means of poison, etc., with intent to commit an offence.</p>
<p><b>Food Safety &amp; Standards Act, 2006</b></p> <p>i. Restaurants, bars, cafes etc., often registered/licensed under the Food Safety &amp; Standards Act of 2006 and the Regulation 2.1.1(5) of the Food Safety &amp; Standards (Licensing and Registration of Food Business) Regulation, 2011. Serving of hookah(with or without tobacco) with food is in violation of the FSS Act/Regulation, as hookah smoking contaminates air both inside and outside the area thus making food prepared/served unsafe and is therefore punishable under Section 59 of the Food Safety &amp; Standards Act of 2006.</p>
<p><b>The Bharatiya Nyaya Sanhita, 2023</b></p> <p>i. Serving Hookah (with or without tobacco or nicotine) in Bar/Café/Lounge is in violation of Section 270, 271 and 280 of the Indian Penal Code.</p> <p>ii. <b>Section 270 of BNS Public Nuisance:</b> —A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, <b>danger or annoyance to the public or to the people in general</b> who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage.</p> <p>iii. <b>Section 270 of BNS Negligent act likely to spread infection of disease dangerous to life.</b></p> <p>iv. <b>Section 280 of BNS Making atmosphere noxious to health</b>—Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.</p>
<p>The Fire Prevention and Fire Safety Act</p> <p>Serving of Hookah is in violation of a States Fire Prevention and Fire Safety Act.</p>

## JUDICIAL ORDERS IN SUPPORT OF TOBACCO CONTROL LAWS

### COTPA, 2003

#### SECTION 4

(1) **Murli S Deora vs. Union of India and Ors. 2001 Supp. (4) SCR 650**, the Hon`ble Supreme Court of India observed: “Fundamental right guaranteed under Article 21 of Constitution of India, inter alia, provides that none shall be deprived of his life without due process of law. Then-why a non-smoker should be afflicted by various diseases including lung cancer or of heart, only because he is required to go to public places? Is it not indirectly depriving of his life without any process of law? The answer is obviously-yes. Undisputedly smoking is injurious to health and may affect the health of smokers but there is no reason that health of passive smokers should also be injuriously affected. In any case there is no reason to compel non-smokers to be helpless victims of air pollution. The Hon`ble Court further, directed the Union of India, the States and the Union Territories, to take effective steps to ensure that smoking is prohibited in public places.

(2) **Union of India Vs ITC Ltd., Etc. (TP No. 28322 of 2008)**, the Hon`ble Supreme Court of India by order dated 29<sup>th</sup> September, 2008 supported implementation of Prohibition of Smoking in Public Places Rules, 2008.

(3) **J&K Voluntary Health & Dev. Assoc. Vs State & Ors., (Jammu & Kashmir High Court)**, by order dated 03.06.2011, the Hon`ble High Court issued direction to various State Departments/ Municipal Corporations for implementation of Section 4 (prohibition on smoking in public place), of COTPA, 2003.

(4) **Narinder S. Chadha & Ors(SLP(Civil)No(s).30832/2011**, the Hon`ble Supreme Court vide by judgment dated 8<sup>th</sup> December, 2014, upheld incorporating compliance with the provisions of COTPA and its Rules in terms and conditions of license issued to eateries/restaurants. The Court further interpreted the clause under the Prohibition of Smoking in Public Places Rules, 2008 mandating that a smoking area or space shall be used only for the purpose of smoking and “**no other service(s)**” shall be allowed, as service other than service of tobacco products are prohibited in a smoking area or space.

*However, by notification G.S.R. No. 500(E) dated 23.05.2017 the Government of India amended the Prohibition of Smoking in Public Places Rules, 2008, inter-alia banning all service in a smoking area or space.*

#### SECTION 5

(5) **Hemant Goswami Vs GPI & Ors., CWP NO. 313/2005, (Punjab & Haryana High Court, Chandigarh)**, case filed against red & white bravery award campaign as it was in violation of Section 5(3) of COTPA, on 11.05.2005, GPI gives an undertaking that the nomenclature red & white has been withdrawn from the campaign. The Hon`ble High Court further directs implementation of COTPA 2003 in its letter and spirit.



- (6) **Amarsinh Z Choudhari Vs UOI (Special Civil Application No.4848 of 2009) (High Court of Gujarat)** by order dated 22.12.2010, direction to Gujarat State Road Transport Corporation and Ahmedabad Municipal Transport Services, for removal of advertisements of gutkha/pan masala and other injurious items displayed on the public conveyance.
- (7) **Institute of Public Health Vs The State Government of Karnataka & Ors.(W.P. No. 27692/2010) order dated 08.02.2011.** The Hon`ble Karnataka High Court directed withdrawal of sponsorship to a tobacco industry sponsored event in compliance of Section 5 of COTPA. The Court further directs consideration of proposal of the petitioner on 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 in compliance with Article 5.3 of FCTC.
- (8) **Union of India Vs Mahesh Bhatt, (SLP(C) No. 8429-8431 of 2009),** order dated 02.04.2009. The Hon`ble Supreme Court of India stayed the Delhi High Court judgments/orders dated 07.02.08 and 23.01.09, that had quashed the provisions of the Films Rules. Subsequently the Hon`ble Supreme Court vide order dated 27.04.2012, made the interim stay orders absolute till the disposal of the case. Thus paving way for implementation of Film Rules.
- (9) **Kerala Voluntary Health Services Vs. Union of India, Writ Petition No. 38513 of 2010,** (Kerala High Court), order dated 26.03.2012. The Hon`ble High Court issued direction for implementation of Section 5 of COTPA, 2003 and the enabling Film Rules.
- (10) **Health for Million Vs. Union of India & Ors.,**(Civil Appeal Nos. 5912-5913 of 2013) judgment dated 22.07.2013. The Hon`ble Supreme Court of India sets aside the orders of the Bombay High Court, staying the Rules restricting advertisements of tobacco products at their point of sale and passed the following direction: "*We also make it clear that as a sequel to setting aside of the interim order passed by the High Court, the Central Government and the Governments of all the States shall be bound to rigorously implement the provisions of the 2003 Act and the 2004 Rules as amended from time to time*"
- (11) **S. Cyril Alexander Vs UOI & Ors,(Writ Petition No. 9955/2014),** order dated 11.08.2014. The Hon`ble High Court directed the Ministry of Corporate Affairs and Ministry of Health to look into all the matters as also the inter-government communications to see how best CSR Scheme of the tobacco trade can be met and what model has to be framed for the same. Ministry of Corporate Affairs on 16<sup>th</sup> May 2016, issued circular clarifying that tobacco companies while carrying out their CSR activities will not contravene provisions of COTPA 2003.
- (12) **Faith Foundation Vs State of Gujarat (W.P NO. 173 of 2017),** judgment dated 29.03.2019. Hon`ble Gujarat High Court directed inclusion of section 5 of COTPA compliance as a specific condition in the license issued by the Municipal Corporation.
- (13) **Food Safety Officer Vs Yadav Singh-** case filed for violation of Section 5 and POS Rules of COTPA in Chief Judicial Magistrate Court(CJM) of Mandi (HP). The accused was displaying flex board containing advertisement/promotion of tobacco products in the name of 'Green Way' having resemblance to the symbol of Four Square Cigarette Brand.

The Hon`ble CJM Court on 15.11.2014 passed the order sentencing the accused to undergo imprisonment, pay fine and destruction of cases property.

#### **SECTION 6**

(14) **Cancer Patients Aid Association Vs State of Karnataka & Anr.(WP(C) No. 17958/2009)**, order dated 29.03.2011. Hon`ble Bangalore High Court directs implementation of Section 6(b) of COTPA.

(15) **J&K Voluntary Health & Dev. Assoc. Vs State & Ors.**, order dated 03.06.2011. Hon`ble Jammu & Kashmir High Court issued direction to various State Departments/ Municipal Corporations for implementation of Section 6 (prohibition on sale of tobacco products to minors and within 100 yards of any educational institutions) of COTPA, 2003.

(16) **Kerala Voluntary Health Services Vs. Union of India, Writ Petition No. 38513 of 2010**, order dated 26.03.2012. Hon`ble Kerala High Court issues direction for implementation of Section 6 of COTPA 2003.

(17) **World Lung Foundation South Asia Vs Ministry of Health and Family Welfare, WP(C) 7540/2010**, order dated 16.05.2012. Hon`ble Delhi High Court issues direction for implementation of Section 6(b) of COTPA.

(18) **Naya Bans Sarv Vyapar Association Vs UOI & Ors. (W.P. No. 7292/2011)** order dated 09.11.2012. The Hon`ble Delhi High Court held, the trade in tobacco could be classified as *res extra commercium* i.e. a business in crime and the principle that there is no fundamental right to trade in dangerous and noxious substances, would apply to tobacco which has now been universally accepted as a major public health hazard. The High Court further dismissed the petition and imposed costs on the petitioner to be paid to the Central and State Governments for utilizing in anti-tobacco initiatives.

The appeal filed against the High Court order, SLP(C)No(s).39271-39272/2012, was dismissed by the Hon`ble Supreme Court, on 04.08.2018.

(19) **Dinar Yashwant Sohoni Vs. The State of Maharashtra & Ors, (PIL No.98 of 2013)** order dated 25.02.2014. The Hon`ble Bombay High Court, directed, Education Department of the State Government to issue instructions to all the educational institutions in the State to implement Section 6(b) of COTPA and display boards mentioning that sale of cigarettes and other tobacco products in an area within a radius of one hundred yards of the educational institution is strictly prohibited and that violation of the provision is a punishable offence.

(20) **Doctors for You Vs Government of NCT Delhi & Ors, W.P.(C) 8849/2017**, order dated 14.08.2019. The Hon`ble Delhi High Court directs the State Departments to strictly implement COTPA Act, 2003 near schools and educational institutions.

#### **SECTION 7**

(21) **Health for Millions Vs Union of India and Ors.(Writ Petition (Civil) No. 549 of 2008)** order dated 06.05.2009. Hon`ble Supreme Court of India issued direction for implementation of 2008 pictorial health warnings on all tobacco products packages, from 31<sup>st</sup> May 2009.

(22) **Health for Millions Trust Vs. Union of India and Ors.**( SLP No 37348/2017), order dated 08.01.2018. The Hon`ble Supreme Court of India stays the High Court Judgment quashing the 85% Health Warning, with the following observation: *“Though a very structural submission has been advanced by the learned counsel for the respondents that it will affect their business, we have remained unimpressed by the said proponent as we are inclined to think that health of a citizen has primacy and he or she should be aware of that which can affect or deteriorate the condition of health. We may hasten to add that deterioration may be a milder word and, therefore, in all possibility the expression “destruction of health” is apposite.”*

(23) **In-charge State Level Flying Squad for Tobacco Control, Directorate of Health Safety & Regulations, Shimla Vs Sh. Raj Kumar & Anr.**, case filed for selling tobacco products in violation of Section 7 of COTPA and Rules in Judicial Magistrate Court of 1<sup>st</sup> Class(JM1) of Shimla(HP). The Hon`ble JM1st Class on 01.03.2013 passed the order sentencing the accused to pay fine and accused to undergo imprisonment.

#### **BAN ON SALE OF LOOSE CIGARETTES**

(24) **Dharmendra Kansal vs. UOI & Ors. WP (PIL) No. 37 of 2014**, order dated 03.06.2014. The Hon`ble Uttarakhand High Court bans sale of loose cigarette in the State of Uttarakhand for violation of Section 7 of COTPA, 2003.

#### **COTPA ENFORCEMENT**

(25) **Doctors for You Vs UOI & Ors. CWJ Case No.14729 of 2013**, order dated 11.08.2014. The Hon`ble Patna High Court directs implementation of COTPA, and mainstreaming of the COTPA enforcement in monthly crime review meeting of the police department.

#### **DRUGS & COSMETIC ACT 1940, FOR REGULATING USE OF NICOTINE**

(26) **Laxmikant vs UOI & Ors., 1997(4) SCC 739(Supreme Court of India)**, the Government of India, on the recommendation of an Expert Committee in the year 1992 banned the use of tobacco in tooth-pastes/tooth-powders under the Drugs and cosmetics Act, 1940(Notification GSR 443(E), dated 30th April, 1992). The Hon`ble Supreme Court of India while hearing the challenge to the said ban, vide judgment dated 11.04.1997, upheld the ban and held: the view taken by the Government of India imposing total prohibition on the use of tobacco in the preparation of tooth-powder and tooth-paste is well justified in the public interest covered by Article 19(6) of the Constitution, though it offends the right to carry on trade guaranteed under Article 19(1) of the Constitution. The imposition of total ban is in the public interest.

(27) **Burning Brain Society Vs Union of India & Ors. (C.W.P No.14597 of 2007)**, case filed to control the use of substances containing nicotine in chemical form in the interest of health of citizens. The Hon`ble Punjab & Haryana High Court in its order dated 05.11.2012 held: The writ petition is disposed of with the direction to the States of Punjab, Haryana and Union Territory, Chandigarh to constitute a Permanent Task Force for monitoring the abuse of Nicotine in chemical form which is being used by Hookah Bars etc; register criminal cases against the violators and take all appropriate steps as required in accordance with the law. The quarterly Action Taken Report shall be placed on record of this case”.

## **FOOD SAFETY & STANDARDS ACT 2006**

(28) **Central Arecanut Marketing Corporation & Others Vs Union of India, TC Case No. 1 of 2010**, order dated 23.09.2016. The Hon`ble Supreme Court of India, directed the Secretaries, Health Department of all the States and Union Territories to file affidavits for total compliance of the ban imposed on manufacturing and sale of Gutkha and Pan Masala with tobacco and/or nicotine in terms of FSSAI Regulation 2.3.4.

(29) **The State of Maharashtra & Anr. Vs Sayyed Hassan Sayyed Subhan & Ors., SLP(Crl) No. 4475/2016**, final order dated 20.09.2018. The Hon`ble Supreme Court of India, upheld the Maharashtra Police initiative to take action under Sections 188, 272, 273 and 328 of the Indian Penal Code, 1860, for enforcing the Maharashtra Government order banning the manufacture and sale of tobacco & areca nut (beetelnut) which is either flavoured, scented or mixed with additives, whether going by the name of gutka, pan masala, flavoured scented tobacco, flavoured scented supari, chewing tobacco, kharra, mawa etc.

(30) **Vasim and Others .Vs. The State of Maharashtra and Ors.(Crl Application No. 4353 of 2016)**, final order dated 29.11.2018. The Hon`ble Bombay High Court follows Supreme Court judgment in Sayyed Hassan and inter-alia dismissed the application filed for quashing FIR lodged under Sections 272, 273 and 328 of the Indian Penal Code, 1860, for enforcing the Maharashtra Government order banning the manufacture and sale of tobacco & areca nut (beetelnut) which is either flavoured, scented or mixed with additives, whether going by the name of gutka, pan masala, flavoured scented tobacco, flavoured scented supari, chewing tobacco, kharra, mawa etc.

**Part 2: Prohibition of Electronic Cigarettes  
(Production, Manufacture, Import, Export,  
Transport, Sale, Distribution, Storage and  
Advertisement) Act, 2019 (PECA)**



## INTRODUCTION

E-cigarettes are electronic devices that heat a substance, with or without nicotine and flavours to create an aerosol for inhalation which a user can inhale like the action of smoking. These include all forms of Electronic Nicotine Delivery Systems, Heat Not Burn products, e-Hookahs and the like devices. The global community is concerned about the potential impact of these new products on individual and public health. Due to their sleek and attractive design, use of flavours that mask the smell and ease of concealment, they have grown tremendously in popularity especially among the younger generation. Available scientific evidence indicates that use of e-cigarettes are hazardous for an active as well as a passive user. E-cigarette solutions and emissions are known to contain harmful chemicals which are hazardous and some of whom considered to be toxicants.

The Government constituted three sub-groups of experts to recommend measures to control the sale, supply, import, export, manufacturing and trade of e-cigarettes under the prevailing legislative framework but they have recommended to prohibit Electronic Nicotine Delivery Systems.

The World Health Organisation – Framework Convention on Tobacco Control, 2003 urged Parties to restrict or prohibit, as appropriate, the manufacture, importation, exportation, distribution, presentation, sale and use of the Electronic Nicotine Delivery Systems as appropriate to their context.

The Indian Council of Medical Research has issued a White paper on Electronic Nicotine Delivery Systems and has also recommended a complete ban on electronic cigarettes and other Electronic Nicotine Delivery Systems based on currently available scientific evidence.

In view of the above recommendations and in the overall interest of public health as envisaged under article 47 of the Constitution, Government of India promulgated The Ordinance to ban electronic cigarettes and the like products. The Ordinance was adopted by both the house of Parliament and got presidential assent on 5<sup>th</sup> December 2019. The law, in force, completely prohibits the Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement of ENDS to prevent their negative health impacts on the public, especially youth.

**THE PROHIBITION OF ELECTRONIC CIGARETTES (PRODUCTION, MANUFACTURE, IMPORT,  
EXPORT, TRANSPORT, SALE, DISTRIBUTION, STORAGE AND ADVERTISEMENT) ACT, 2019**  
**No.42 OF 2019**

[5<sup>th</sup> December 2019]

An Act to prohibit the production, manufacture, import, export, transport, sale, distribution, storage and advertisement of electronic cigarettes in the interest of public health to protect the people from harm and for matters connected therewith or incidental thereto;

Be it enacted by Parliament in the Seventieth Year of the Republic of India as follows:-

1. (1) This Act may be called the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019.

(2) It shall be deemed to have come into force on the 18<sup>th</sup> day of September 2019.

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

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

(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;

(b) “authorised officer” means—

(i) any Police officer not below the rank of Sub-Inspector of Police or;

(ii) any other officer, not below the rank of Sub-Inspector of Police, authorised by the Central Government or the State Government by notification;

(c) “distribution” includes distribution by way of samples, whether free or otherwise and the expression “distribute” shall be construed accordingly;

(d) “electronic cigarette” means an electronic device that heats a substance, with or without nicotine and flavours, to create an aerosol for inhalation and includes all forms of Electronic Nicotine Delivery Systems, Heat Not Burn Products, *e-Hookah* and the like devices, by whatever name called and whatever shape, size or form it may have, but does not include any product licensed under the Drugs and Cosmetics Act, 1940.

*Explanation.*— For the purposes of this clause, the expression “substance” includes any natural or artificial substance or other matter, whether it is in a solid state or in liquid form or in the form of gas or vapour;

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

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

(g) “manufacture” means a process for making or assembling electronic cigarettes and any part thereof, which includes any sub-process, incidental or ancillary to the manufacture of electronic cigarettes and any part thereof;

(h) “notification” means a notification published in the Official Gazette;

(i) “person” includes—

(i) any individual or group of individuals;

(ii) a firm (whether registered or not);

(iii) a Hindu Undivided Family;

(iv) a trust;

(v) a limited liability partnership;

(vi) a co-operative society;

(vii) any corporation or company or body of individuals; and

(viii) every artificial juridical person not falling within any of the preceding sub-clauses;

(j) “place” includes any house, room, enclosure, space, conveyance or the area in like nature;

(k) “production” with its grammatical variations and cognate expressions, includes the making or assembling of electronic cigarettes and any part thereof;

(l) “sale” with its grammatical variations and cognate expressions, means any transfer of property in goods (including online sale) 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.

4. On and from the date of commencement of this Act, no person shall, directly or indirectly,—

(i) produce or manufacture or import or export or transport or sell or distribute electronic cigarettes, whether as a complete product or any part thereof; and

(ii) advertise electronic cigarettes or take part in any advertisement that directly or indirectly promotes the use of electronic cigarettes.

5. On and from the date of commencement of this Act, no person, being the owner or occupier or having the control or use of any place shall, knowingly permit it to be used for storage of any stock of electronic cigarettes:

Provided that any existing stock of electronic cigarettes as on the date of the commencement of the Act kept for sale, distribution, transport, export or advertisement shall be disposed of in the manner hereinafter specified–

- (a) the owner or occupier of the place with respect to the existing stock of electronic cigarettes shall, on *suomoto*, prepare a list of such stock of electronic cigarettes in his possession and without unnecessary delay submit the stock as specified in the list to the nearest office of the authorised officer; and
- (b) the authorised officer to whom any stock of electronic cigarettes is forwarded under clause (a) shall, with all convenient despatch, take such measures as may be necessary for the disposal according to the law for the time being in force.

6. (1) An authorised officer, if he has reason to believe that any provision of this Act has been, or is being contravened, may enter and search any place where–

(a) any trade or commerce in electronic cigarettes is carried on or electronic cigarettes are produced, supplied, distributed, stored or transported; or

(b) any advertisement of the electronic cigarettes has been or is being made

(2) After completion of the search referred to in sub-section (1), the authorised officer shall seize any record or property found as a result of the search in the said place, which are intended to be used, or reasonably suspected to have been used, in connection with any matter referred to in sub-section (1) and if he thinks proper, take into custody and produce, along with the record or property so seized, before the Court of First Class Magistrate, any such person whom he has reason to believe to have committed any offence punishable under this Act.

(3) Where it is not practicable to seize the record or property, the officer authorised under sub-section (1), may make an order in writing to attach such property, stocks or records maintained by the producer, manufacturer, importer, exporter, transporter, seller, distributor, advertiser or stockist about which a complaint has been made or credible information has been received or a reasonable suspicion exists of their having been connected with any offence in contravention of the provisions of this Act and it shall be binding on the person concerned with the said offence.

(4) All searches, seizures and attachment under this section shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973.

7. Whoever contravenes the provisions of section 4, shall be punishable with imprisonment for a term which may extend to one year or with fine which may extend to one lakh rupees, or with both, and, for the second or subsequent offence, with imprisonment for a term which may extend to three years and with fine which may extend to five lakh rupees.

8. Whoever contravenes the provisions of section 5, shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to fifty thousand rupees or with both.

9. (1) Any person committing an offence under section 4 or section 5 shall be triable for such offence in any place in which he is liable to be tried under any law for the time being in force.

(2) All offences under this Act shall be tried by the court of First Class Magistrate in accordance with the procedure provided for trials in the Code of Criminal Procedure, 1973.

10. After completion of the proceedings before the court and if it is proved that the stock seized by the authorised officer under the provisions of this Act are stocks of electronic cigarettes, such stocks shall be disposed of in accordance with the provisions contained in Chapter XXXVI of The Bharatiya Nagarik Suraksha Sanhita, 2023.

11. (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 provided in this Act, 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 an 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 also be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

*Explanation.*— For the purpose of this section—

(a) “company” means anybody corporate and includes a firm or other association of individuals; and

(b) “director” means a whole-time director in the company and in relation to a firm, means a partner in the firm.



12. No court shall take cognizance of an offence punishable under this Act, except upon a complaint in writing made by an authorised officer under this Act.

13. Notwithstanding anything contained in The Bharatiya Nagarik Suraksha Sanhita, 2023, an offence under section 4 shall be cognizable.

14. 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.

15. 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 production, manufacture, import, export, transport, sale, distribution, storage and advertisement of electronic cigarettes.

16. 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.

17. (1) If any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by an order published in the Official Gazette, make such provision not inconsistent with the provisions of this Act, as may appear to be necessary or expedient for removing the difficulty.

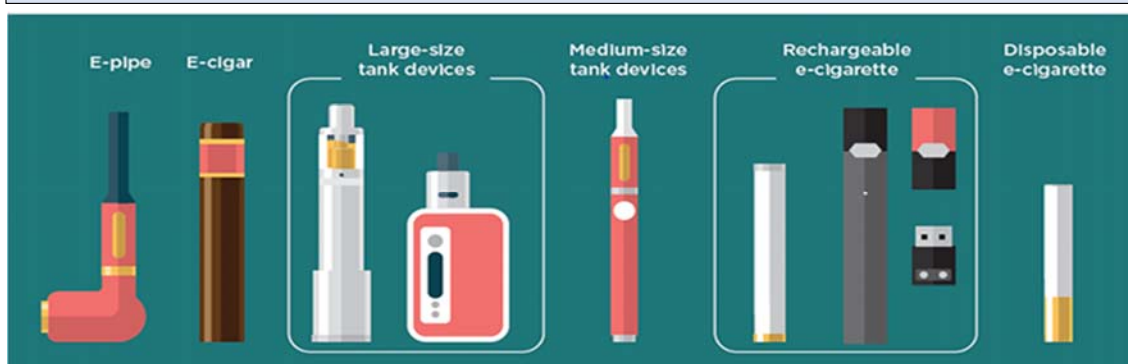
(2) Every order made under this section shall be laid, as soon as may be after it is made, before each House of Parliament.

## GUIDELINES FOR ENFORCEMENT OF PECA

### What is Electronic Cigarette?

Electronic Cigarette is an electronic device that heats a substance, with or without nicotine and flavours, to create an aerosol for inhalation and includes all forms of Electronic Nicotine Delivery Systems, **Heat Not Burn Products, e Hookah** and the **like devices**, by **whatever name called** and **whatever shape, size or form** it may have, but does not include any product licensed under the Drugs and Cosmetics Act, 1940.

*“Substance” includes any natural or artificial substance or other matter, whether it is in a solid state or in liquid form or in the form of gas or vapour. [Section 3(d)]*



## WHAT IS PROHIBITED

A. Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement of electronic cigarettes, as a complete product or any part thereof [Section 4]

B. Storage of any stock of electronic cigarettes [Section 5]

## WHO CAN TAKE ACTION

- a. Any police officer above the rank of sub-inspector of police can take *suo-motu* or on a complaint received from any person regarding Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement of ENDS or its components.
- b. *Any other officer not below the rank of sub-inspector, authorised by the Central Government or the State Government by notification. (Appendix V)*

### Duties of an Authorised Officer under PECA

#### **Every Authorised Officer shall:**

- Take cognizance of any kind of violations of the Act happening within his jurisdiction.
- Form an enforcement squad / raiding team for action as per the provisions of the Act.
- Record all violations of Sec 4, as subsequent offence has enhanced punishments.
- Enter and search any place (includes any house, room, enclosure, space, conveyance etc.), if he suspects any trade or commerce in electronic cigarettes is carried on or electronic cigarettes are produced, supplied, distributed, stored or transported and/or any advertisement of the electronic cigarettes has been or is being made.
- Seize any record or property found as a result of the search, which are intended to be used, or reasonably suspected to have been used, in connection with trade or commerce or production or advertisement of electronic cigarettes.
- Where it is not practicable to seize the record or property, the authorised officer, can make an order in writing to attach such property.
- Prepare a seizure memo of all the seized goods, records or properties.
- Prepare a panchanama in the presence of at least two witnesses who shall narrate the place and the goods, records or properties seized in their statements.
- Take photographs of the search and seizure, (device should have its date and time stamp active).
- Keep the advertisement materials/package/goods seized in sealed condition (seal shall be affixed in the presence of the two witnesses and the owner/occupant/ in-charge of the place).
- File a complaint (with attached copies of seizure memo, panchnama, photographs and seized goods, records or properties) before the Court of Judicial Magistrate of First Class in his jurisdiction.
- After completion of the proceedings seized stocks of electronic cigarettes, shall be disposed of in accordance with the provisions contained in Chapter XXXIV of the Cr.P.C, 1973.

## PROCEDURE FOR ENFORCEMENT OF PECA

### SUO MOTU OR ON COMPLAINT

The authorized officer suo-motu or on a complaint received, shall take action for the violation of the provision of the Act [Section 6].

### SEARCH AND SEIZURE

Authorised officer shall proceed with search and seizure of the premise if he has reason to believe violation of the Act.

### SEIZURE MEMO AND PANCHNAMA

1. After the search and seizure of the products and components that are in contravention/violation of the Act, the authorised officer shall draw a seizure memo with a receipt to the owner / occupant / in-charge of the premises. (*See Seizure Memo (template) Appendix-II*)
2. A Panchanama shall be drawn in the presence of the two witnesses who shall narrate the place and the goods/inventory seized in their statements. (*See Panchnama (template) Appendix-I and seizure memo (template) Appendix-II*)
3. The materials/ goods seized (electronic cigarettes or any part thereof and advertisement of electronic cigarettes) shall be kept in sealed conditions where the seal shall be affixed in the presence of the two witnesses and the owner /occupant/ in-charge of the premises using the seizure memo.
4. After completion of the search and seizure the authorised officer shall take into custody and produce, the record or property seized and any person whom he has reason to believe to have committed any offence punishable under this Act, before the Court of First Class Magistrate.

### COMPLAINT TO JUDICIAL MAGISTRATE

- a) The authorised officer shall register a complaint (including seizure memo, panchanama, record of property etc., photographs) before the Judicial Magistrate First Class in whose jurisdiction the place / premises is situated. [**appendix complaint prototype**]

## PUNISHMENTS UNDER THE ACT [SECTION 7 AND 8]

SI No	Offence	Punishment
	Section 4: Production, manufacture, sale, transport, distribution, import, export, or direct or indirect advertising of electronic cigarettes	Imprisonment up to one year or with fine up to one lakh rupees, or with both  Second or subsequent offence, with imprisonment for a term which may extend to three years and with fine which may extend to five lakh rupees
	Section 5: Storage of any stock of electronic cigarettes	With imprisonment which may extend to six months or with fine which may extend to fifty thousand rupees or with both

## DISPOSAL OF STOCKS

After conviction by court all stocks of electronic cigarettes shall be disposed of in accordance with the provisions contained in Chapter XXXVI of The Bharatiya Nagarik Suraksha Sanhita, 2023 and Environment Protection Act 1986 and Rules/Regulation or Guidelines framed thereunder, in coordination with the State Pollution Control Board **See Appendix I.** [Section 10]

***All search, seizure, attachment, disposal and trial shall be made in accordance with the provisions of the Code of Criminal Procedure, 1973***

### Other key features of the Act

- Offence under Section 4 of the Act is Cognizable. [Section 13]
- Authorised Officer is empowered to enter, search and seize without warrant. [Section 6]
- Act has overriding effect on other laws. [Section 14]
- Act does not apply to or any product licensed under the Drugs and Cosmetics Act, 1940.
- Act supports other law that has the effect of prohibiting electronic cigarettes. [Section 15]
- Act gives immunity to authorized person: No suit, prosecution or other legal proceeding shall lie against the authorized person for anything which is in good faith done or intended to be done under this Act. [Section 16]



## ONLINE REPORTING OF PECA VIOLATIONS



स्वास्थ्य एवं  
परिवार कल्याण मंत्रालय  
MINISTRY OF  
HEALTH AND  
FAMILY WELFARE



75  
Azadi Ka  
Amrit Mahotsav

### A Portal to Report Violations of Prohibition of Electronic Cigarettes Act, 2019 and Cigarettes and Other Products Act, 2003 over Online Medium

This portal is an initiative of Ministry of Health and Family Welfare (GOI) to facilitate reporting of violations under Prohibition of Electronic Cigarettes Act 2019 and Cigarettes and Other Products Act 2003. Follow the Five easy steps illustrated below to report a violation and track the action taken.

1



1  
Register your Mobile Number and Email id. An OTP will be sent to you for verification.

2



2  
Select the Act and Section under the Act that is being violated.

3



3  
Give the details of the violation. Upload supporting image and give the name of website/URL.

4



4  
Submit the violation details. You will be given a Tracking Number.

5



5  
Use the Tracking Number to track the action taken.

Report a Violation

Track Reported Violation

Learn about Prohibition of Electronic Cigarettes Act 2019

Learn about Cigarettes and Other Products Act 2003

 User Manual for the Portal

 Prohibition of Electronic Cigarettes Act: Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019

 Cigarettes and Other Products (Prohibition of Advertisement and regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003

Online portal (<https://violation-reporting.ntcp.mohfw.gov.in/>) for reporting violation under PECA 2019 was launched by Hon'ble Health Minister of India on 31<sup>st</sup> May 2023

# ATTENTION!

## **E-Cigarette Producers, Manufacturers, Importers, Exporters, Distributors, Retailers, Advertisers and others!**

The Government of India has enacted "the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019" on 5th December 2019, prohibiting production, manufacture, import, export, transport, sale, distribution, storage and advertisement of electronic cigarettes and the like devices in the interest of public health.

*"electronic cigarette" means an electronic device that heats a substance, with or without nicotine and flavours, to create an aerosol for inhalation and includes all forms of Electronic Nicotine Delivery Systems, Heat Not Burn Products, e-Hookah and the like devices, by whatever name called and whatever shape, size or form it may have.*

*"substance" includes any natural or artificial substance or other matter, whether it is in a solid state or in liquid form or in the form of gas or vapour; (Section 3(d))*

### **It is hereby informed to all the**

Producers, Manufacturers, Importers, Exporters, Distributors, Advertisers, Transporters including Couriers, Social Media Websites, e-Commerce Websites, Online shopping websites, Shopkeepers/retailers etc. not to directly or indirectly: –

- i. produce or manufacture or import or export or transport or sell or distribute or store electronic cigarettes, whether as a complete product or any part thereof; and
- ii. advertise electronic cigarettes or take part in any advertisement (in print, electronic media, internet or website or social media etc.) that directly or indirectly promotes the use of electronic cigarettes.

*Note: offense of production, manufacture, import, export, transport, sale (including online sale), distribution, storage and advertisement of electronic cigarette is cognizable and punishable as per the statutory provisions of the Act.*

csc-17102/11/0001/2324



Ministry of Health  
& Family Welfare  
Government of India



# ध्यान दें!

**ई-सिगरेट उत्पादक, निर्माता, आयातक, निर्यातक,  
वितरक, खुदरा विक्रेता, विज्ञापनदाता और अन्य!**

भारत सरकार ने जन स्वास्थ्य के हित में इलेक्ट्रॉनिक सिगरेट और इस प्रकार के उपकरणों के उत्पादन, निर्माण, आयात, निर्यात, दुलाई, बिक्री, वितरण, भण्डारण और विज्ञापन पर रोक लगाने हेतु, 5 दिसम्बर, 2019 को "इलेक्ट्रॉनिक सिगरेट (उत्पादन, निर्माण, आयात, निर्यात, दुलाई, बिक्री, वितरण, भण्डारण और विज्ञापन) निषेध अधिनियम, 2019" को लागू कर दिया है।

"इलेक्ट्रॉनिक सिगरेट" का अर्थ है एक इलेक्ट्रॉनिक उपकरण जो कश लेने के लिए, एक एरोसोल बनाने हेतु, निकोटीन और फ्लेवर के साथ या उसके बिना किसी पदार्थ को गर्म करता है और इसके प्रकार के इलेक्ट्रॉनिक निकोटीन प्रणाली, उत्पाद जलाए बिना हीट, ई-हुक्का और इसी तरह के उपकरण शामिल हैं, जिसे किसी भी नाम से पुकारा और किसी भी आकार, आकृति या रूप का हो सकता है।

"पदार्थ" में कोई भी प्राकृतिक या कृत्रिम अथवा अन्य कोई पदार्थ शामिल है, चाहे वह ठोस अवस्था या तरल रूप में या गैस अथवा वाष्प के रूप में हो; (धारा 3(डी))

**एतद्वारा सभी को सूचित किया जाता है**

उत्पादकों, निर्माताओं, आयातकों, निर्यातकों, वितरकों, विज्ञापनदाताओं, कूरियर सहित ट्रांसपोर्टर्स, सोशल मीडिया वेबसाइट्स, ई-कॉमर्स वेबसाइट्स, ऑनलाइन शॉपिंग वेबसाइट्स, दुकानदारों/खुदरा विक्रेताओं आदि जो प्रत्यक्ष या अप्रत्यक्ष रूप से न हों:-

- इलेक्ट्रॉनिक सिगरेट, चाहे सम्पूर्ण उत्पाद या उसके किसी भाग के रूप में हो, के उत्पादन या निर्माण या आयात या निर्यात या दुलाई या बिक्री या वितरण या भण्डारण में; और
- इलेक्ट्रॉनिक सिगरेट का विज्ञापन करना या किसी विज्ञापन में भाग लेना (छपाई, इलेक्ट्रॉनिक मीडिया, इंटरनेट या वेबसाइट अथवा सोशल मीडिया इत्यादि में) जो इलेक्ट्रॉनिक सिगरेट के इस्तेमाल का प्रत्यक्ष या अप्रत्यक्ष रूप से प्रचार करता हो।

**टिप्पणी:** इलेक्ट्रॉनिक सिगरेट का उत्पादन, निर्माण, आयात, निर्यात, दुलाई, बिक्री (ऑनलाइन बिक्री शामिल), वितरण, भण्डारण और विज्ञापन करना इस अधिनियम के वैधानिक प्रावधानों के अनुसार संज्ञेय और दंडनीय अपराध है।



स्वास्थ्य एवं परिवार  
कल्याण मंत्रालय,  
भारत सरकार



## APPENDICES

### APPENDIX-I: PROTOTYPE OF PANCHNAMA

Panchnama dated \_\_\_\_\_

Whereas:

We \_\_\_\_\_

Sr. No	Name and parentage of Panch / witnesses	Age	Address	Occupation

The above-mentioned Panchs on being called by Shri \_\_\_\_\_, the authorized officer of District/City/Town/Tehsil \_\_\_\_\_, under the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 and the, in exercise of the powers under Section 6 of the said Act, today came to the premises of Mr./Ms. \_\_\_\_\_, Address \_\_\_\_\_ to search the said place, where there is a reason to suspect that the provisions of Section 6 of the said Act has been or is being contravened. We declare that the facts of the Panchnama mentioned herein are true and correct to the best of our observations and knowledge.

1. Signature of Accused

Date

Time

Name

Address

1. Signature of Witness

Date

Time

Name

Address

2. Signature of Witness

Date

Time

Name

Address:

**Attached:** List of inventory taken in possession

Signature of the Authorised Officer

Name

Date

Time

Place

**APPENDIX-II: PROTOTYPE OF A SEIZURE MEMO**

Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019.

In exercise of the powers delegated to me under Section 6 of above Act, I hereby seize/detain the below mentioned electronic cigarettes or its components or related material which contravenes the provisions of said Act at the premises of M/S.....

.....

.....

S. No.	Date and time	Name/Descriptions of Products	No. of Units	Remarks

**Name and Address of the witnesses**

**Signature of vendor/dealer**

1.

1.

2.

2.

The products detained/seized have been duly sealed and left in the custody of shri.....with the instruction not to tamper with seals and not to dispose of the products till further order.

**Name and Address of the witnesses**

**Signature of vendor/dealer**

1.

1.

2.

2.

**Signature of Authorised Officer under PECA, 2019**



**APPENDIX-III: PROTOYPE OF A COMPLAINT**

**IN THE COURT OF JUDICIAL MAGISTRATE 1<sup>st</sup> CLASS**

**State, through Authorized Officer under PECA**

**V/s**

1. Sh..... M/S ..... (Shop/premises  
name) Shop/premises No and Address  
.....
2. M/S ..... Through its Proprietor/partners/

Complaint under section 12 read with section 4 and/or 5 of the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 (PECA, 2019)

Respectfully Sheweth:-

1. That I ..... is duly authorized under the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 for the .....city.....district of the state of .....

2. That I inspected the shop of .....M/S .....  
.....on ..... at about ..... and found Sh.....  
M/S ..... has kept electronic cigarettes for sale and/or had  
advertised electronic cigarettes (photo enclosed)

3. That Sh. ....Sh. .... and  
Sh..... all members of enforcement team were present  
throughout the whole process of inspection and witnessed the whole process.

4. That seizure memo and panchnama were prepared on the spot, which were signed by the  
accused, as well as witnesses and by me.

5. That accused Sh.....M/S ..... had  
kep electronic cigarettes for sale and/or had also displayed an advertisement of electronic  
cigarette on his shop which is prohibited under Section 4 of PECA2019 which is punishable under

Section 7 of PECA, 2019. M/S ..... though its Prop./partners/ is also liable under the Act .

And/or

5. That accused Sh.....M/S ..... was in possession of packages of electronic cigarettes stored at his premises in violation of section 5 of PECA 2019 which is punishable under Section 8 of PECA 2019. M/S ..... through its Prop./partners/ is also liable under the Act .

It is therefore prayed that the accused person(s) be summoned and dealt in accordance with the law.

In charge / Authorised Officer under PECA

**List of Witnesses: -**

- 1.
- 2.
- 3.

**List of Documents attached: -**

1. Panchnama
2. Seizure memo
3. 3 Photograph

In charge / Authorised Officer under PECA

#### APPENDIX IV: GUIDELINES FOR DISPOSAL AND DESTRUCTION OF SEIZED PRODUCTS

##### **Disposal of property under Chapter XXXVI of The Bharatiya Nagarik Suraksha Sanhita, 2023**

**Section 451. Order for custody and disposal of property pending trial in certain cases:** The Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial.

**Section 452. Order for disposal of property at conclusion of trial:** for the purposed of this Act, the Court may make such order as it thinks fit for the disposal, by destruction, confiscation of any property or document produced before it or in its custody, or regarding which any offence appears to have been committed, or which has been used for the commission of any offence.

**Section 454. Appeal against orders under section 452:** In case of appeal, the order made under Section 452 may be stayed pending disposal of the appeal, or may be modified, altered or annulled.

**Section 457. Procedure by police upon seizure of property:** when after seizure such property is not produced before the Magistrate, he may make such order as he thinks fit respecting the disposal of such property.

**Section 458. Procedure where no claimant appears within six months:** If no person within six months establishes his claim to such property, and if the person in whose possession such property was found is unable to show that it was legally acquired by him, the Magistrate may by order direct that such property shall be at the disposal of the State Government.

##### **Guidelines for State Pollution Control Board for disposal and discarding of seized electronic cigarettes and components**

1. Seized goods should be sorted based on the material (plastic, metal, chemical, battery, etc..) and separated.
2. Plastic components must be destroyed as per Guidelines under (As per Rule '6(2)(d)' of Plastic Waste Management Rules, 2016 dated 18th March, 2016) adopted by each state. Based on the nature and quantity these need to be categorized as per Hazardous Wastes (Management & Handling) Rules apply to the categories of Hazardous Wastes as specified in the Schedule [See rules 3(1), 3(n) and 4].
3. For batteries, based on the type, will be recycled based on the Batteries (Management and Handling) Amendment Rules, 2010, of the Ministry of Environment and Forests, the Government of India. For all metals, E-Waste (Management) Rules, 2016 must be complied with.
4. All components if recyclable may be dismantled, destroyed and damaged by cutting, puncturing, broken or by any other means before given to an authorised recycler licensed by the State Pollution Control Board.
5. If material is non-recyclable but permitted for incineration or destruction through other means as prescribed under Environment (Protection) Act, 1986 (29 of 1986) and its Rules, or other specific rules notified by the Ministry of Environment, Forest and Climate Change.

**APPENDIX-V: NOTIFICATION OF ADDITIONAL AUTHORISED OFFICERS BY GOVERNMENT OF HARYANA**

3890

HARYANA GOVT. GAZ. (EXTRA.), NOV. 16, 2021 (KRTK. 25, 1943 SAKA)

**HARYANA GOVERNMENT**

**HEALTH DEPARTMENT**

**Notification**

The 16th November, 2021

No. 5/5/2020-3BH-III.— In exercise of the powers conferred under sub-clause (ii) of clause (b) of Section 3 of the Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 (Central Act 42 of 2019) the Governor of Haryana hereby notifies the following officers as authorized officer in their respective jurisdiction, namely:-

1. All Drugs Control Officers, Food and Drugs Administration Department, Haryana.
2. All Food Safety Officers, Food and Drugs Administration Department, Haryana.
3. All Deputy Civil Surgeons/Senior Medical Officers, Health Department, Haryana.

RAJEEV ARORA,  
Additional Chief Secretary to Government Haryana,  
Health Department.

9381—C.S.—H.G.P., Pk1

APPENDIX-VI: SAMPLE FIR COPY

		N.C.R.B (एन.सी.आर.बी)	
		I.I.F.-I (एकीकृत जाँच फार्म -I)	
<b>FIRST INFORMATION REPORT</b>			
(Under Section 154 Cr.P.C.)			
प्रथम सूचना रिपोर्ट			
(धारा 154 दंड प्रक्रिया संहिता के तहत)			
1. District (जिला): कमिश्नरेट गौतमबुद्ध नगर		Year (वर्ष): 2024	
P.S. (थाना): नौएडा सेक्टर-20			
FIR No.(प्र.सू.रि. सं.): 0182			
Date & Time of FIR(प्र.सू.रि. की दिनांक/समय): 14/06/2024 04:39			
2.	S.No. (क्र.सं.)	Acts (अधिनियम)	Sections (धारा(एँ))
	1	स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 8 1985	
	2	स्वापक औषधि और मनःप्रभावी पदार्थ अधिनियम, 20 1985	
	3	सिगरेट और अन्य तम्बाकू उत्पादों (विज्ञापन का प्रतिषेध और व्यापार और वाणिज्य का विनियमन, उत्पादन, आपूर्ति और वितरण) अधिनियम 2003	4
3.(a) Occurrence of offence (अपराध की घटना) :			
1. Day (दिन):	शुक्रवार	Date From (दिनांक से):	Date To (दिनांक तक):
Time Period (समय अवधि):	पहर 1	Time From (समय से):	Time To (समय तक):
		01:10 बजे	01:10 बजे



(b) Information received at P.S. (थाना जहाँ सूचना प्राप्त हुई):

Date 14/06/2024 Time (समय): 04:39 बजे  
(दिनांक):

(c) General Diary Reference (रोजनामचा संदर्भ):

Entry No. 009 Date & Time 14/06/2024 04:39 बजे  
(प्रविष्टि सं.): (दिनांक और समय):

4. Type of Information (सूचना का प्रकार): लिखित

5. Place of Occurrence (घटनास्थल):

Direction and distance from P.S. दक्षिण, 2.5 Beat No.

1. (a) (थाना से दूरी और दिशा): किमी (बीट सं.):

(b) Address 17 ए व सेक्टर 18 व डीएलएफ, तिराहे से मल्टीलेवल पार्किंग, की तरफ लगभग  
(पता): 20 कदम पर

(c) In case, outside the limit of this Police Station, then

(यदि थाना सीमा के बाहर है तो):

Name of P.S.

District(State)

(थाना का नाम):

(ज़िला (राज्य)):

6. Complainant / Informant (शिकायतकर्ता/सूचनाकर्ता):

- (a) Name (नाम): Chandra prakash Sharma  
(b) Father's/Husband's Name (पिता / पति का नाम):  
(c) Date/Year of Birth (जन्म तिथि / वर्ष): 08/04/1967  
(d) Nationality (राष्ट्रियता): भारत  
(e) UID No. (यूआईडी सं.):  
(f) Passport No. (पासपोर्ट सं.):  
Date of Issue (जारी करने की तिथि):  
Place of Issue (जारी करने का स्थान):

(g) Id details (Ration Card, Voter ID Card, Passport, UID No., Driving License, PAN)

S.No. (क्र.सं.) Id Type (पहचान पत्र का प्रकार) Id Number (पहचान संख्या)

1

(h) Address (पता):

S.No. (क्र.सं.)	Address Type (पता का प्रकार)	Address (पता)
1	वर्तमान पता	kosi kalan, कोसीकलॉ, मथुरा, उत्तर प्रदेश, भारत
2	स्थायी पता	kosi kalan, कोसीकलॉ, मथुरा, उत्तर प्रदेश, भारत

(i) Occupation (व्यवसाय):

(j) Phone number (दूरभाष सं.):

Mobile (मोबाइल सं.):

7. Details of known/suspected/unknown accused with full particulars

(ज्ञात / संदिग्ध / अज्ञात अभियुक्त का पूरे विवरण सहित वर्णन):

Accused More Than (अज्ञात आरोपी एक से अधिक हों तो संख्या):

**N.C.R.B (एन.सी.आर.बी)**  
**I.I.F.-I (एकीकृत जाँच फार्म -I)**

S.No. (क्र.सं.)	Name (नाम)	Alias (उपनाम)	Relative's Name (रिश्तेदार का नाम)	Present Address (वर्तमान पता)
1	शाहनवाज		पिता का नाम : शौकत	1. धनवाट, धनवाट, झारखंड, भारत
2	रवि कुमार		पिता का नाम : जवाहर सिंह	1. किराए का मकान गांव चकरपुर, गुडगांव, हरियाणा, भारत
3	जितेन्द्र बलिया उर्फ कद सोनू		पिता का नाम : रामसनेही	1. मकान नं0 7605 7th एवेन्यू, सैक्टर 32, गुडगांव, हरियाणा, भारत

**8.Reasons for delay in reporting by the complainant/informant**  
(शिकायतकर्ता / सूचनाकर्ता द्वारा रिपोर्ट देरी से दर्ज कराने के कारण):

**9.Particulars of properties of interest (संबन्धित सम्पत्ति का विवरण):**

S.No. (क्र.सं.)	Property Category (संपत्ति श्रेणी)	Property Type (सम्पत्ति का प्रकार)	Description (विवरण)	Value (In Rs/-) (मूल्य (रु में))
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**10.Total value of property (In Rs/-)-सम्पत्ति का कुल मूल्य(रु)**

**11.Inquest Report / U.D. case No., if any (मृत्यु समीक्षा रिपोर्ट / यू.डी.प्रकरण सं., यदि कोई हो ):**

**S.No. UIDB Number**

**12.First Information contents (प्रथम सूचना तथ्य ):**

नकल फर्द.....फर्द बरामदागी 4 किलो नाजायज गांजा व 2480(1520 pigoo  
RASPBERRY PASSION FRUIT ELFBAR , 910 VUOLO  
STRAWBERRY WATERMALON ICE YUOTO XXL,50 IGET STAR  
BLUEBERRY ICE DEVICE ) (ई-सिगरेट), एक बन्द बोड़ी ई-श्रीव्हीलर व  
गिरफ्तारी दो नफर अभियुक्त अन्तर्गत धारा 8/20 NDPS Act. व THE  
PROHIBITION OF ELECTRONIC CIGARETTES ACT 2019 SECTION  
- 4 आज दिनांक- 14.06.2024 को मैं उ0नि0 चन्द प्रकाश शर्मा चौकी प्रभारी डीएलएफ  
मय निरीक्षक श्री सत्यवीर सिंह मय है0का0 357 ईदरिश , है0का0 1227 मोनू , है0का0  
793 रोबिन मलिक , है0का0 1299 उपेन्द्र कुमार, का0 1753 दीपक कुमार व का0  
1491 पुनीत कुमार मुतैना स्वाट टीम 2 कमिश्नरेट गौतमबुद्धनगर मय उ0नि0 गुरविन्द सिंह  
मय का0 901 अंकुर कुमार मय का0 2560 कुशल पुनिया को थाना हाजा से बहवाले रपट  
04 समय 00.17 बजे रवाना होकर थाना क्षेत्र मे वास्ते देखरेख शान्ति व्यवस्था, सदिग्ध  
व्यक्ति/वाहन व पतारसी सुरागरसी व दबिश वाछित अभियुक्त की तलाश में थाना क्षेत्र  
सैक्टर 20 में मामूर थे। सैक्टर 17 ए व सैक्टर 18 व डीएलएफ तिराहे से मल्टीलेवल

पार्किंग की तरफ लगभग 20 कदम पर बैरियर लगाकर चैकिंग कर रहे थे कि सैक्टर 17/18 जे.जे. कालोनी की तरफ से एक बन्द बोड़ी ई-श्रीव्हीलर नं0 DL 51G D 4819 आता दिखाई दिया जिसे पास आने पर हम पुलिस कर्मियों को चैकिंग करते देखकर ई-श्रीव्हीलर चालक सकपकाया और ई-रिक्शा को पीछे की ओर मोड़ने का प्रयास करने लगा तभी हम पुलिस वालों को सन्देह होने पर उक्त ई-श्रीव्हीलर को एक बारगी दृविश देकर बिना पीछे मुड़ने का मौका दिये घेर घोटकर रोककर पकड़ लिया उक्त ई-श्रीव्हीलर में दो व्यक्ति सवार है, दोनों व्यक्तियों को ई-श्रीव्हीलर से नीचे उतारकर नाम पता पूछा तो ई-श्रीव्हीलर की ड्राईविंग सीट पर बैठे व्यक्ति ने अपना नाम शाहनवाज पुत्र शौकत निवासी तुगलकाबाद एक्सटेंशन सेकंड फ्लोर गली नं0 15 थाना गोविन्दपुरी साउथ दिल्ली मूल निवासी धनबाद झारखंड उम्र 22 वर्ष तथा कन्डेक्टर सीट पर बैठे दूसरे व्यक्ति ने अपना नाम रवि कुमार पुत्र जवाहर सिंह निवासी नेनु पत्नी सन्ना थाना मुंगर्रा जनपद मथुरा हाल पता गांव चकरपुर गुडगांव में किराए पर उम्र 32 वर्ष बताया दोनों व्यक्तियों से पीछे मुड़कर भागने का कारण पूछा तो दोनों ने एक स्वर में बताया कि साहब हमारे इस ई-श्रीव्हीलर में नाजायाज गाँजा व ई-सिगरेट है तथा सख्ताई से विश्वास में लेकर पूछने पर दोनों व्यक्तियों ने एक स्वर में बताया कि साहब हम ये गाँजा और ई-सिगरेट बेचने के लिए दिल्ली एनसीआर क्षेत्र में लेकर जा रहे थे यह गाँजा और ई-सिगरेट का मालिक जितेन्द बलिया उर्फ कद सोनू पुत्र रामसनेही निवासी मकान नं0 7605 7 Th एवेन्यू सैक्टर 32 गुडगांव, जो हमें यह माल सप्लाई करने के लिए देता है। जिसे हम दिल्ली नोएडा एनसीआर में स्कूल, कालिजों व युनिवर्सिटी व पीजी में रहकर पढ़ने वाले छात्र-छात्राओं को फुटकर में बेचते हैं। तथा जो पैसे की बचत होती है, उसे हम तीनों लोग बांट लेते हैं। अब आप पुलिस वालों ने हमें पकड़ लिया है। इसलिए हम दोनों ने आपको सही - सही बता दिया। इस पर मुझ उ0नि0 द्वारा धारा 50 NDPS Act. के प्रावधानों से अवगत कराते हुए बताया गया कि अगर आपके पास गाँजा है तो आपको यह अधिकार है कि आप अपनी तलाशी किसी मजिस्ट्रेट या राजपत्रित अधिकारी से लिवा सकते हैं यदि आप चाहें तो मैं किसी मजिस्ट्रेट/राजपत्रित अधिकारी को यहीं पर फोन करके बुला सकता हूँ तो पकड़े गये दोनों व्यक्तियों ने कहा कि साहब जब आपने हमें पकड़ ही लिया है तो आप ही हमारी व ई-श्रीव्हीलर की तलाशी ले लीजिए। हमें आप पर पूरा विश्वास है हम अपने विरुद्ध और अधिक साक्ष्य एकत्र कराना नहीं चाहते हैं। इस पर मुझ उ0नि0 द्वारा धारा 50 NDPS का सहमति पत्र तैयार कर दोनों व्यक्तियों को पढ़कर सुनाकर अलामात बनवाये गये। बाद सहमति पकड़े गये व्यक्तियों से बरामद बन्द बोड़ी ई-श्रीव्हीलर को खुलवाकर देखा गया तो ई-श्रीव्हीलर में गते के कार्टूनो में (1520 pigoo RASPBERRY PASSION FRUIT ELFBAR , 910 VUOLO STRAWBERRY WATERMALON ICE YUOTO XXL, 50 IGET STAR BLUEBERRY ICE DEVICE ) (ई-सिगरेट) बरामद हुई व साथ ही एक पालिथीन में गाँजे जैसी वस्तु दिखाई दी जिसे सूँघकर देखा गया व हमराहीयान को सुँघाया गया तो गाँजे

की बू आ रही है। पकड़े गये व्यक्तियों से गाँजा रखने का लाइसेंस तलब किया तो दिखाने में कासिर रहे। बरामद गाँजे की वजन करने हेतु का0 2560 कुशल पुनिया को ईलैक्ट्रॉनिक कांटा लेने हेतु भेजा गया जो कुछ ही देर बाद एक इलैक्ट्रॉनिक कांटा लेकर वापस आया। कांटे पर गाँजे का वजन करने पर 4 किलो पाया गया। बरामदा गाँजे में से 200 ग्राम गाँजा बतौर नमूना निकाल कर एक सफेद कपड़े में रखकर सीलकर सील सर्वे मोहर तथा शेष 03 किलो 800 ग्राम गाँजे को उसी पालिथीन सहित सफेद कपड़े में रखकर सील सर्वे मोहर कर नमूना मोहर तैयार किया गया। ई-श्रीव्हीलर में रखे गते के कार्टून को बारी बारी से खोलकर देखा तो कुल 2480 (1520 pigoo RASPBERRY PASSION FRUIT ELFBAR 910 VUOLO STRAWBERRY WATERMELON ICE YUOTO XXL 50 IGET STAR BLUEBERRY ICE DEVICE ) (ई-सिगरेट) कुल 2480 ईलैक्ट्रॉनिक सिगरेट बरामद हुई। बरामद कुल 2480 सिगरेट में से बतौर नमूना 06 अदद ईलैक्ट्रॉनिक सिगरेट मुतावित ब्रांड निकाल कर तीन अलग - अलग अदद प्लास्टिक के पारदर्शी डब्बे में रखकर सील सर्वे मोहर कर नमूना मोहर तैयार किया गया तथा शेष 2474 ईलैक्ट्रॉनिक सिगरेट को उन्ही गते के 11 कार्टून में रखकर चिटबन्दी किया गया। अभियुक्तगण को कारण गिरफ्तारी बताते हुए उनके जुर्रम से अवगत कराते हुए कि अन्तर्गत धारा 8/20 NDPS ACT एवं THE PROHIBITION OF ELECTRONIC CIGARETTES ACT 2019 SECTION - 4 में समय करीब 01.10 am पर हिरासत पुलिस में लिया गया। बरामद बन्द बोड़ी ई-श्रीव्हीलर न0 DL 51G D 4819 के सम्बन्ध में चालक से ई-श्रीव्हीलर के कागजात तलब किये गये तो दिखाने में कासिर रहा, ई-श्रीव्हीलर बन्द बोड़ी को अन्तर्गत धारा 207 MV ACT सीज किया गया। दौरान बरामदगी व गिरफ्तारी जनता के गवाहन फराहम करने का प्रयास किया तो रात्रि का समय होने के कारण कोई गवाह नहीं मिला। सम्पूर्ण कार्यवाही के दौरान माननीय सर्वोच्च न्यायालय व राष्ट्रीय मानवाधिकार आयोग के दिशा निर्देशों का भली भाँति पालन किया गया। फर्द मौके पर अपने निजी लैपटप पर मुझ उ0नि0 द्वारा टाईप की गई। फर्द को पेनड्राईव में सुरक्षित कर का0 2560 कुशल पुनिया को चौकी सैक्टर 18 से दो प्रति मंगवाकर हमराही व अभियुक्तगण को पढ़कर सुनाकर गवाही गवाहान के हस्ताक्षर बनवाये गये। गिरफ्तारी मीमो मौके पर तैयार किया गया। गिरफ्तारी की सूचना अभि0गणों के परिजनों को थाने पहुँचकर दी जायेगी। बरामदगी व गिरफ्तारी की समस्त कार्यवाही स्ट्रीट लाइट, टार्च व मोबाइल की रोशनी में की गयी। एसडी अग्नेजी अपठित उ0नि0 चन्द प्रकाश शर्मा 14.06.2024 उ0नि0 चन्द प्रकाश शर्मा चौकी प्रभारी डीएलएफ थाना सैक्टर 20 नोएडा कमिश्नरेट गौतमबुद्धनगर, एसडी उ0नि0 गुरविन्द सिंह, एसडी निरीक्षक सत्यवीर सिंह, एसडी है0का0 357 ईंदरिश, एसडी है0का0 1227 मोनू, एसडी है0का0 793 रोबिन मलिक, एसडी है0का0 1299 उपेन्द्र कुमार, एसडी का0 1753 दीपक कुमार व एसडी का0 1491 पुनीत कुमार, एसडी का0 2560 कुशल पुनिया, एसडी का0 901



अक्रूर, नोट: अभियुक्त रवि को दोनों की सहमति से फर्द की एक प्रति देकर अलामात बनवाये गये। एसडी अग्रेजी अभियुक्त Ravi, एसडी अभियुक्त शहनवाज, एसडी अग्रेजी अपठनीय उ0नि0 चन्द प्रकाश शर्मा 14.06.24 उ0नि0 चन्द प्रकाश शर्मा चौकी प्रभारी डीएलएफ थाना सैक्टर 20 नोएडा कमिश्नरेट गौतमबुद्धनगर नोट ..... मैं सीसी 2595 रविन्द कुमार प्रमाणित करता हूँ कि उक्त फर्द की कायमी मेरे द्वारा की गयी और सीसीटीएनएस पर शब्द व शब्द बोलबोल कर किता करायी गयी अलावा तकनीकी त्रुटि के।

**13. Action taken: Since the above information reveals commission of offence(s) u/s as mentioned at Item No. 2.**

(की गयी कार्यवाही : चूँकि उपरोक्त जानकारी से पता चलता है कि अपराध करने का तरीका मद सं. 2 में उल्लेख धारा के तहत है।)

(1) Registered the case and took up the investigation: (प्रकरण दर्ज किया गया और जांच के लिए लिया गया): or (या)

(2) Directed (Name of I.O.) DHARAM Rank I (Inspector)  
(जांच अधिकारी का नाम): PRAKASH (पद):

No. 012410095 to take up the Investigation  
(सं.): (को जांच अपने पास में लेने के लिए निर्देश दिया गया) or (या)

(3) Refused investigation due to (जांच के लिए):

or (के कारण इंकार किया या)

(4) Transferred to P.S. District  
(थाना): (ज़िला):  
on point of jurisdiction (को क्षेत्राधिकार के कारण हस्तांतरित) .

F.I.R. read over to the complainant / informant, admitted to be correctly recorded and a copy given to the complainant / informant free of cost.  
(शिकायतकर्ता / सूचनाकर्ता को प्राथमिकी पढ़ कर सुनाई गयी, सही दर्ज हुई माना और एक कॉपी निशुल्क शिकायतकर्ता को दी गयी।)

R.O.A.C. (आर. ओ. ए. सी.)



N.C.R.B (एन.सी.आर.बी)  
I.I.F.-I (एकीकृत जाँच फार्म -I)

14 Signature/Thumb impression of the  
complainant / informant.(शिकायतकर्ता /  
सूचनाकर्ता के हस्ताक्षर / अंगूठे का निशान):

15 Date and time of dispatch to the court  
(अदालत में प्रेषण की दिनांक और समय):

Signature of Officer in charge,  
Police Station  
(थाना प्रभारी के हस्ताक्षर)  
Name DHARAM PRAKASH  
Rank I (Inspector)  
No. 012410095









**Disclaimer:** This document has been developed to guide law enforcers in implementation of (i) Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA) , and (ii) Prohibition of Electronic Cigarettes (Production, Manufacture, Import, Export, Transport, Sale, Distribution, Storage and Advertisement) Act, 2019 (PECA). For further information, please refer to the notification and corrigendum as published in the Gazette of India