

Tobacco Control Laws:

A Resource Manual



HRIDAY



Health Related Information Dissemination Amongst Youth



TOBACCO CONTROL LAWS

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Tobacco Control Laws : A Resource Manual (New Delhi, India)

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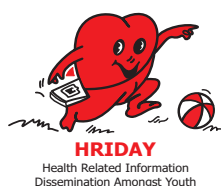
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List of Abbreviations

AIR-All India Reporter

AFTC-Advocacy Forum for Tobacco Control, a national alliance against tobacco.

CAD-Coronary Artery Disease

CEDAW - The Convention on the Elimination of All Forms of Discrimination against Women, 1979

COPD- Chronic Obstructive Pulmonary Disease

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

Cr.PC-The Criminal Procedure Code, 1973

CRC - The Convention on the Rights of the Child, 1989

FCTC- Framework Convention on Tobacco Control

GYTS-Global Youth Tobacco Survey

ICMR -Indian Council for Medical Research

ICESCR-International Covenant on Economic, Social and Cultural Rights, 1966

ICCPR-International Covenant on Civil and Political Rights, 1966

IPC- The Indian Penal Code, 1860

NGO-Non Governmental Organization

NHRC-National Human Rights Commission

SHS - Second Hand Smoke

SIDS- Sudden Infant Death Syndrome

WHO- World Health Organization

UDHR-Universal Declaration on Human Rights, 1948

Introduction

Tobacco as an epidemic remains a serious public health challenge for the country, despite the enactment of a comprehensive law to reduce tobacco burden, resulting in enormous disability, disease and death.

The purpose of this manual is to assist in the implementation and enforcement of the country's laws on tobacco control and to act as a source of legal information for all stakeholders engaged in controlling the use of tobacco. For tobacco control legislation to be effective, information about the laws and the need for their enforcement must be reiterated not only with the enforcement officials, but equally with the public, business establishments, and tobacco vendors alike. While the target audience for this manual is the law enforcers, it would also interest all those who have a stake in tobacco control and public health.

Tobacco was introduced in India by the Portuguese in the sixteenth century. Though some people, including physicians, suspected that it could be harmful, it soon came to be widely used and cultivated in India. In the seventeenth century, Emperor Jahangir passed orders prohibiting smoking, but these were not effective for long. After that, no significant legislation was passed until the second half of the nineteenth century. Much later, in the 1960s, reports from the Royal College of Physicians in the United Kingdom and the advisory committee to the Surgeon General of the United States of America established the cause and effect relationship between tobacco use and cancer. The use of tobacco became a global cause of concern. Driven by evidence-based research, countries started making efforts to enact anti-tobacco laws, albeit in bits and pieces. Gradually, the norms are becoming more stringent and countries are showing greater commitment to the global fight against tobacco. The adoption of first international public health treaty, the World Health Organization's (WHO) Framework Convention on Tobacco Control (FCTC) and its ratification by 164 countries, testifies this commitment.

The paramount importance of comprehensive tobacco control law is driven by the fact that tobacco is the biggest preventable cause of death causing more than five million deaths across the globe annually. Tobacco is also an economic burden for the Government. According to the Indian Council for Medical Research (ICMR) the cost of treating tobacco related disorders like Chronic Obstructive Pulmonary Disease (COPD), Coronary Artery Disease (CAD) and Cancers in 2002-03 was Rs. 308.33 billion, which more than offsets all the benefits accruing in the form of revenue and employment generated by the tobacco industry. Besides, tobacco control is essential to achieve the highest standard of health and for the protection of the right to life for all, and to achieve the constitutional obligation that requires the state to endeavour to improve public health. It is for this that the Ministry of Health and Family Welfare introduced the 'Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill in 2001.'

Concurrently, India played a strong leadership role in the global fight against tobacco and in the development of the WHO FCTC. In terms of legislation, a beginning was made in the form of the Cigarettes Act, 1975. The Advocacy Forum for Tobacco Control (AFTC), a national alliance against tobacco, provided

unique opportunity for all key tobacco control advocates to join in an effective campaign for tobacco control resulting in the modified and comprehensive tobacco control Bill that was tabled in the Parliament in late February, 2003. The Bill finally became an Act of Parliament after receiving assent from the President on May 18, 2003. The Legislation came into force on May 1, 2004.

The tobacco control law, Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (COTPA), is designed essentially to protect people from the hazards that tobacco poses to the health of its users and also to non-users from the harms of toxic and cancerous chemicals in the form of secondhand smoke (SHS) or passive smoking. This legislation also aims to prevent the minor's access to tobacco products, prevent their initiation into a harmful addiction and restrict its proliferation and promotion by prohibiting its advertisement. However, the enactment of such a law per se does not amount to creation of smoke-free public places or decrease in minor's access to tobacco products. Unless a committed effort is made to implement the legislation, it will have no actual impact; it needs to be effectively implemented and enforced both at National and State levels.

The implementation and enforcement of a law requires a thorough understanding of its rationale, essential components and finer procedural details. This manual attempts to explain the law, its importance and the procedures required for its effective implementation by the state and the local authorities. It aims at giving information that is handy and useful for each enforcement official designated to act under the tobacco control laws.


The manual is divided into three parts:

- Part I – The tobacco control law in India
- Part II – Other relevant laws related to tobacco control
- Part III – Study on implementation and enforcement

Part I deals with the essential aspects of the Indian tobacco control law i.e. the prohibition of smoking in public places; prohibition of advertisement, promotion and sponsorship of tobacco products; prohibition on sale of tobacco products to minors, and specified health warning labels on tobacco products. All these provisions need to be effectively enforced.

The Central Government, from time to time, makes rules to carry out the aforesaid objectives those find mention under the COTPA. These are discussed in detail under Part I of the manual as a handy reference for enforcement officials implementing the law.

Part II outlines the broad Indian and international legal arrangements for tobacco control. The important provisions under these laws are described in order to help the enforcement



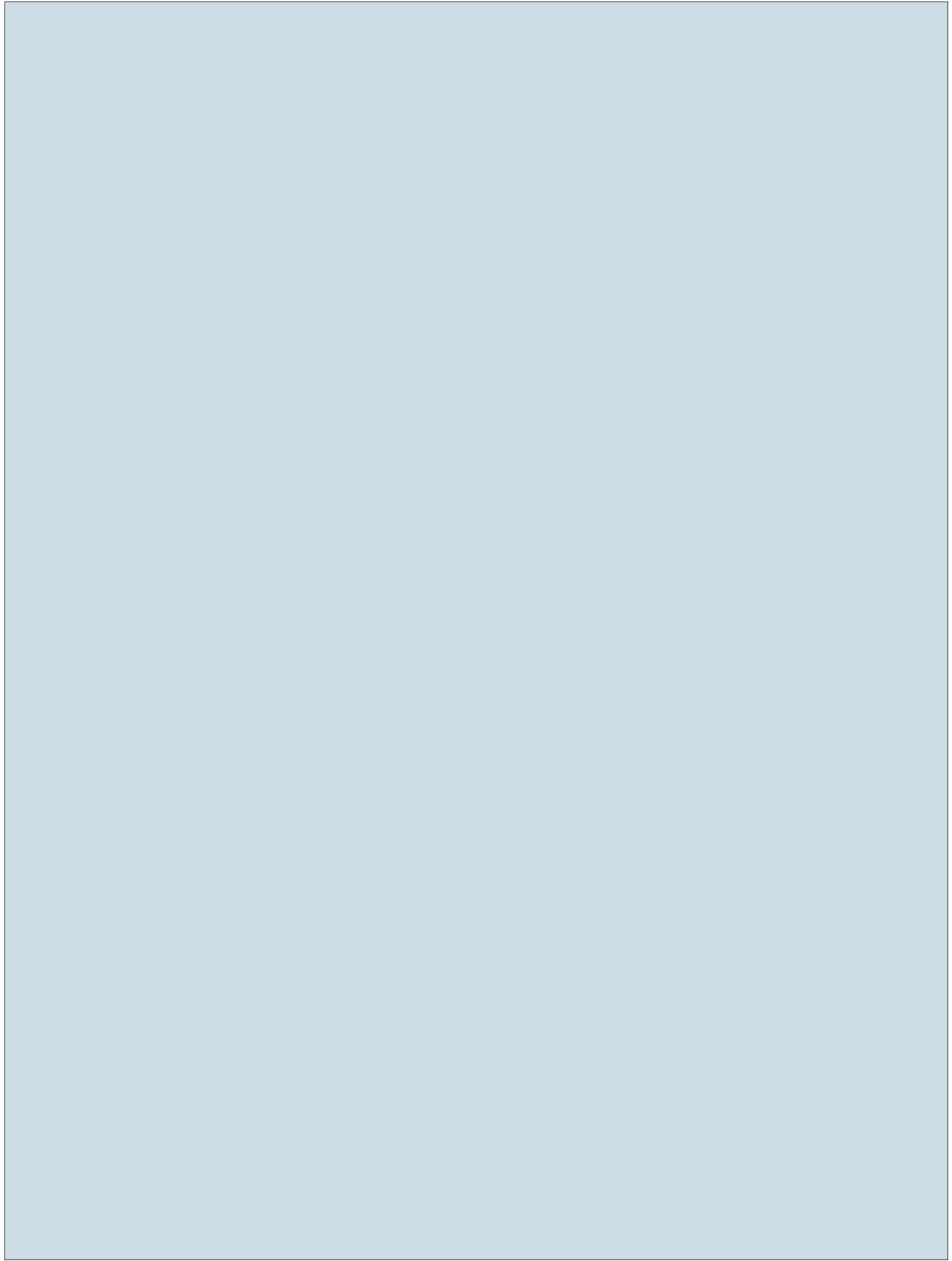
authorities understand the tobacco control law in its entirety. This would also assist the authorities in identifying and carrying out their duties in their attempt to meet the health objectives under the law.

Part II also briefly reviews the general procedures laid down under the Code of Criminal Procedure, 1973, and the relevant provisions under the Indian Penal Code, 1860 that could be applied in conjunction with the tobacco control law by the enforcement officers while ensuring compliance of the law.

Apart from describing the national laws, Part II also deals with the development of an international legal framework for tobacco control, ensuing from international treaties and conventions. It includes a description of the FCTC, the first global public health treaty. In addition, the Convention on the Rights of the Child and the Convention on Elimination of All Forms of Discrimination against Women which can help define the role and duties of the authorities, are discussed. While these treaties do not have explicit mention about tobacco control they accord every individual the right to the highest standards of health.

Part III presents a situational analysis of the enforcement and suggests steps to improve the implementation of tobacco control laws in India. The information is helpful for and enables the police officers; medical officers; drug inspectors; food inspectors; head of the departments; principal/ head-master/ manager/ in-charge of educational institutions; and owner/ manager/ in-charge of affairs of a public place including hotels, restaurants and airports, in effective enforcement of the law.

The annexures to this manual contains list of authorised officers and the sample challan for recording offences and punishment. It also details the methodology used to collect the data and analysis of Part III of this manual. It presents the findings from the interactions with enforcement officials from 14 States and 2 Union Territories of India covered under the study and recommends a series of steps to improve the level of enforcement of tobacco control laws.



Part I

The Tobacco Control Law in India

The key areas of the Indian Tobacco Control Law are as follows:

1. Prohibition of smoking in public places
2. Prohibition of advertisement, promotion and sponsorship of tobacco products
3. Prohibition on sale of tobacco products to and by minors
4. Specified health warnings on all tobacco products

These four aspects are dealt here in separate chapters.

Police officers not below the rank of sub-inspector or any officer of an equivalent rank from the Food and Drug Administration or any other officer of an equivalent rank or any person or persons who has been so authorised by the Central Government or by the State Government as competent to take action under COTPA are considered as the notified enforcement officials for implementing the tobacco control laws. (See annexure II for details)

Chapter 1: Prohibition of Smoking in Public Places

1.1 The law dealing with prohibition of smoking in public places

No person shall smoke in any public place.

Defining a public place [S. 3(l)]

As defined under COTPA 'public place' means any place to which the public have access, whether as of right or not, but does not include any open space. Smoking is, however, also prohibited at such open spaces visited by the public like open auditoriums, stadiums, railway stations, bus stops and such other places.

No smoking at public places (S. 4)

Section 4 of COTPA prohibits smoking in public places. Except where it is a hotel with 30 or more rooms or restaurant with 30 or more seats and in the airports it is allowed to have a separate smoking area or space.

Penalty for smoking in a public place (S. 21)

Any person found smoking in a public place is liable to pay a fine of up to Rs 200.

Ensuring smokefree public places (S. 25 and 28)

The Central Government and/or the State Government may appoint one or more persons to take action against any person smoking in a public place. The offence is compoundable, which can be settled on the spot by the enforcement officer and may be tried summarily in accordance with the procedure provided in the Code of Criminal Procedure, 1973. The authorised officer is considered a public servant while acting in performance of his duty under COTPA.

Public Places (for Sec.4)

- o auditoriums
- o hospital buildings
- o railway waiting rooms
- o amusement centers
- o restaurants
- o bars
- o discotheques
- o refreshment rooms
- o banquet halls
- o canteens
- o coffee houses
- o pubs
- o airports
- o public offices
- o court buildings
- o educational institutions
- o libraries
- o workplaces (private offices)
- o banks
- o shopping malls
- o cinema halls
- o open auditoriums
- o historical monuments
- o stadiums
- o railway stations
- o bus stops
- o public conveyances
- o and the like places which are visited by general public



The "No Smoking" signage

Rules against smoking in public places:

The rules on prohibition of smoking in public places were first notified in February, 2004. The rules had few gaps (e.g. no responsible authority to enforce the rules, physical segregation of smoking and non smoking area not defined etc.), as a result of which new rules were notified on May 30, 2008 which superseded these rules.

Rules notified on May 30, 2008 came into force from October 2, 2008: The rules require the management of a public place to ensure:

- ▶ that no person shall smoke in the public place (including restaurants and hotels)



"No Smoking" signage at staircase in a public building



"No Smoking" signage in an educational institution indicating where complaint could be made in case of violation

- ▶ prominent display of 60 X 30cm board saying, **“No Smoking Area – Smoking Here is an Offence”** at:
 - a. Each entrance
 - b. Each floor
 - c. Each staircase
 - d. Each entrance of the lift
 - e. At conspicuous place(s) inside
- ▶ prominent display of the name of the person to whom a complaint may be made in case of violation of the law.
- ▶ no ashtrays, lighters and matchsticks or other things designed to facilitate smoking are provided.
- ▶ there is no 'smoking area or space' at the entrance or exit of a restaurant with seating capacity for 30 or more, hotels with 30 or more rooms and airports, and such area is distinctively marked as **“Smoking Area”** in English and one Indian language as applicable.
- ▶ such **“Smoking Area”** is used only for the purposes of smoking and no service(s) are allowed therein.

If owner, manager, supervisor etc. fail to act upon any complaint he shall be liable to pay a fine equivalent to the number of individual offences in his/her premises.



Marked “SMOKING AREA” at an Airport

Smoking area or space

As defined under Rule 2(e), the smoking area or space must be a physically separated and separately ventilated room with full height walls on all four sides; such area should be fitted with an automatic closing door that is normally kept close. The air from the smoking area must be exhausted directly to the outside, through a non re-circulating exhaust ventilation system or an air cleaning system or by combination of the two, so that it does not mix back in the supply air of the building and the non-smoking area therein.

Separate smoking room

In a hotel having thirty or more rooms separate smoking rooms may be designated, provided:

- ▶ It is in a separate section of the same floor or wing, In case of more than one floors/wings the room should be in one floor/wing.
- ▶ It is distinctively marked as “**Smoking Rooms**” in English and one Indian language, as applicable.
- ▶ The smoke from such room shall be ventilated outside and should not mix back into the non-smoking areas of the hotel.

Authorised officers

The new Rules designate twelve categories of authorised officers to implement the provisions of section 4 of the Act. Besides others, the Head of Institution/HR Manager/Head of Administration is also authorised to impose and collect fine against the violation of the law. See annexure II for the complete list of authorised officers.

Update from the court room: The rules are effective and have left the industry gasping, which went to the High Court of Delhi, with four different but identical suits, to challenge its implementation. While on request from the Union of India, the Delhi High Court allowed the Government to present the matter (*Union of India v. ITC Ltd Etc.*) before the Supreme Court of

India which refused to grant stay on these rules. The Apex Court keeping the matter to its consideration directed that no other court in the country should pass any orders staying the rules.



People smoking at entrance of a college.

Laws besides COTPA

The Indian Railways have implemented prohibition of smoking in railway compartments since 1989. Section 167 of the **Indian Railways Act, 1989** prohibited smoking by any person in any compartment of the train if objected by any other passenger. Besides, the railway administration could prohibit smoking in

any train or part of a train. Any person who contravenes this provision is liable to be punished with a fine that could extend to one hundred rupees.

The **Consumer Protection Act, 1986** aims at protection of the rights of the consumers. The provisions of this Act can be invoked to protect the rights of the consumers against 'defective' products and 'deficient' services in the hotels and restaurants. If a restaurant owner /in-charge permits smoking without a separate smoking area, then the food served to the customers would have toxic chemicals as a result of SHS. If the food served there is contaminated with chemicals which are produced due to smoking, it would render the quality of food imperfect, the consumers can file a complaint against the restaurant/hotel for both the defective products (contaminated food) and deficient services (serving contaminated food).

Restaurants and hotels fall under the category of service industry and it is their duty to provide best service to their customers. But if a restaurant allows smoking inside where food is served it

would be providing sub-standard services because no customer would want to eat in a place where there are smoke and other toxic chemicals. This provision may apply to other public places as well.

The Workmen's Compensation Act, 1923 envisages protecting the rights of workers/employees. Section 3 of this Act provides that if a workman contracts any disease as an occupational disease peculiar to that employment, the employer is liable to pay appropriate compensation to that workman. This provision can be invoked in case of people working in restaurants/hotels and other workplaces where they are exposed to SHS and are forced to inhale toxic chemicals. As a consequence, they could contract serious diseases like cancer, heart disease and respiratory diseases etc. In any such case the employer is liable to pay appropriate compensation to the worker who suffered from diseases due to the exposure to SHS at the workplace.

1.2 Public health implications of smoking in public places

No smoking in public places should be allowed because:

1. SHS causes many diseases and contains about 4000 chemicals, many of which are harmful. Exposure to tobacco smoke causes a host of serious diseases like lung cancer, respiratory diseases, heart disease. Besides, new evidence suggest that it might cause breast cancer as well. SHS also exacerbates a number of pre-existing health conditions, including asthma, bronchitis, other respiratory ailments, and heart disease. In some cases, it can trigger severe, even life-threatening reactions in individuals.
2. The rights of born and unborn children are violated when they are exposed to tobacco smoke (active and passive) at homes or public areas. They are the most vulnerable and the worst affected (National Human Rights Commission, 2001). An estimated 40%-60% of all early childhood cases of asthma, bronchitis and wheezing are attributable to exposure to SHS. It can also cause ear infections and Sudden Infant Death Syndrome (SIDS) in children. They have the right and we owe a duty to protect them from exposure to SHS.
3. Beyond being a nuisance, smoking in public sets a bad example and is totally unacceptable. Non-smokers, especially the youth, may get the impression that smoking is acceptable and normal. Smokers say that seeing others smoke can make them feel like smoking.
4. A prohibition on smoking in public places makes for better health. It prevents damage to the health of both smokers and non-smokers. It encourages smokers to quit because it makes them feel that they might as well give up smoking.
5. A vast majority of people, including smokers, are in favour of a prohibition on smoking in public places. This has been shown by large-scale surveys, like the Sentinel Survey on tobacco use in 2001 and the Global Youth Tobacco Survey (GYTS) in India during 2001-2004.
6. Workers are among the worst affected by the SHS. Food and service-industry workers, for example, bartenders, waiters and other people working in a restaurant or a hotel, appear to be 50% more likely than the general population to develop lung cancer, largely because many of them are exposed to SHS on the job.

Indirect Advertisement means

- 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 services;
- iii. The use of particular colours and layout and or presentation that are associated with particular tobacco products; and
- iv. The use of tobacco products and smoking scenes when advertising other goods and services.

1.3 The role of enforcement officials

It is suggested for effective implementation of the law, the notified officers, especially officers from the Police department and the Food and Drug Administration could conduct surprise checks and routine inspections at restaurants, hotels, government and other public buildings, public transport systems including buses and trains to see whether the provisions of the Act are being complied with. They could also survey the public places within their jurisdiction to keep a check on people smoking in public places. If people are caught violating the provision they should be challaned and fined. The enforcement officials should also use this opportunity to inform the smoker of the grave public health risk that he was contributing to.

The Central Government has notified twelve categories of officers from various departments for implementation of the provisions of Section 4. It is necessary that many more officers are notified by States to complement the measures taken by the Centre. Some States have notified departments such as the Health, the Food and Drug Administration, Rural Development, Environment, Judiciary, Education, the Municipality, Tax and Excise and many more. All the officers in the departments concerned are responsible for implementing Section 4 of the Act. It is encouraging to see when State governments authorise multi-departments for the implementation of the COTPA, as it gives a larger scope for effective implementation. It would be beneficial if the officials from these departments make sure that no person is found smoking within the premises/buildings (public places) under their control.

Effective enforcement requires proper monitoring and follow-up by the notified officers. The States should ensure that the notified officers fully understand the legal provisions; that the penalty amount can be imposed and can vary (it is up to Rs. 200) depending on the ability to pay and whether it is a repeat offence or not. The notified officers should be provided with proper challan books for due recording of offence and collection of fines.

Chapter 2: Prohibition of Advertisement of Tobacco Products

2.1 The law dealing with prohibition of advertisement, promotion and sponsorship of tobacco products

No person shall advertise, promote or sponsor any tobacco product.

Defining advertisement (S. 3.a)

As defined under COTPA '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;

No to tobacco advertisement, promotions and sponsorship (S.5)

The Act prohibits both direct and indirect advertisements of cigarettes and other tobacco products, and covers anything that suggests the promotion or sponsorship of tobacco products.

Search, seizure, confiscation and forfeiture of tobacco advertisements (S. 12, 13, 14 and 23)

For the purposes of prohibiting advertisements of tobacco products, the Act empowers any police officer not below the rank of a sub-inspector, any officer of the state Food or Drug Administration, or any officer of an equivalent rank authorised by the Central or State Government to enter and search any building/premise which he has a reason to suspect that provisions of the Act has been or is being violated.

The notified officer may seize such advertisements and cigarette packages and any other tobacco packages that are in contravention of the provisions of the Act.

Any tobacco product or advertisement material found in contravention of the Act is liable to be confiscated.

On conviction such seized or confiscated advertisement or advertisement material may be forfeited to the Government and disposed in the manner prescribed by the rules made in this regard.

Punishment for advertising tobacco products (S. 22)

Any person acting in contravention of the provisions of Section 5 shall be liable to a punishment of imprisonment for two years or a fine of Rs. 1000, or both. In case of second or subsequent conviction, the fine is Rs. 5000 and the term of imprisonment five years.

Rules for prohibition of advertisements:

Rules prohibiting all direct and indirect advertisements were notified from time to time by the Government. The rules prescribed the size of the display board that may be used for advertisement at the entrance of a warehouse or a shop where such tobacco product is sold with following specifications:

- Size of the board: 60cm X 45cm
- The top edge of the board, measuring 20cm X 15cm, shall contain the following warnings:
 - "TOBACCO CAUSES CANCER" or
 - "TOBACCO KILLS"
- ▶ The warning should be prominent, legible and in black colour with a white background.



- ▶ The board should only list the type of tobacco products available with:
 - No brand pack shot
 - No brand name
 - No promotional message or picture
 - No backlight or illumination

Prohibition of advertisement in cinema and television programmes: The rules also prohibit display of tobacco use by any individual or a person or a character on television, cinema, print and electronic media.

Steering committee to look into violations of

Section 5: A Steering Committee is constituted vide rules dated November 30, 2005 for looking into specific violations under Section 5 of the Act. The committee acts on complaints of violations and can also take *suo moto* cognizance of cases. Complaints for the committees may be addressed to the Health Secretary, MoHFW, Nirman Bhavan, New Delhi 110011. The Central Government has also issued orders vide constitution of such steering committees at the state and district levels to check violations of section 5 at their levels.

Further, specific complaints relating to violations of the programme codes prescribed for the television and the print media may be addressed to the Joint Secretary, Ministry of Information and Broadcasting, Shastri Bhavan, New Delhi 110001. District level committee headed by the District Magistrate/Commissioner of Police of each district is also constituted to check violation of codes by private television channels under the Cable Television Networks (Regulation) Act, 1995.



Indirect advertising of branded cigarette

Update from the Court Room: The rules against depiction of tobacco use in cinema and television were struck down by the Delhi High Court in the Mahesh Bhatt's case. The MoHFW, Government of India, appealed against this order of the Delhi High Court before the Supreme Court of India. Allowing the appeal of the MoHFW the Apex Court granted an interim stay on the order passed by the Delhi High Court.

Besides the provisions under the COTPA the following laws also regulate tobacco advertisement:

1. Rule made in 1991 under Cinematograph Act, 1952

In exercise of the power conferred by sub-section (2) of Section 5 B of the Cinematograph Act, 1952 the Central Government directed that in sanctioning films for public exhibition, the Board of Film Certification shall be guided by the principles including that, the Board of Film Certification shall ensure that "Scenes tending to encourage, justify or glamorise

consumption of tobacco or smoking are not shown;"

2. Advertising code for broadcasting by All India Radio and Doordarshan

The earning of commercial revenue is not the sole criteria of the Prasar Bharati. Thus, the code has stricter provisions and among the main features of the code includes:

(a) [Advertisement of] Tobacco products including 'Pan Masala' and liquors are not permitted.

3. Cable Television Networks (Regulation) Act, 1995

The Cable Television Networks (Regulation) Act, 1995 was amended in 2000. The Advertising Code framed rules under it. Rule 7 prohibits advertisements directly or indirectly promoting the production, sale or consumption of cigarettes, tobacco products, alcoholic beverages, infant milk substitutes, infant food or feeding bottles. However, Rule 7 was amended by a notification issued on August 9, 2006 and again on February 27, 2009 where following exception was inserted:

"Provided that a product that uses a brand name or logo, which is also used for cigarettes, tobacco products, wine, alcohol, liquor or other intoxicants, may be advertised on cable service subject to the following conditions that:

- a) *The story board or visual of the advertisement must depict only the product being advertised and not the prohibited products in any form or manner;*
- b) *The advertisement must not make any direct or indirect reference to the prohibited products;*
- c) *The advertisements must not contain any nuances or phrases promoting prohibited products;*
- d) *The advertisement must not use particular colours and lay out or presentations associated with prohibited products*
- e) *The advertisement must not use situations typical for promotion of prohibited products when advertising the other products;"*

With intent to further regulate the surrogate advertisements of prohibited products on February 27, 2009 two provisos to these rules were notified, which require the advertiser to ensure that:

- i. He submits an application with a copy of the proposed advertisement along with a certificate from a chartered accountant that the product carrying the same name as the prohibited product is distributed in reasonable quantity and available in substantial number of outlet and the proposed advertising expenditure is not disproportionate to the actual sales turnover of the product advertised; and
- ii. All such advertisements that are genuine brand extensions shall be previewed and certified by the Central Board of Film Certification as suitable for unrestricted public exhibition and in compliance with the above rules prior to telecast or transmission or retransmission.



Pan Masala advertisement

The District Magistrate or Sub- Divisional Magistrate has the power under the Cable Television Networks (Regulation) Act, 1995 to take action against the cable operators after receiving a complaint against them. In a circular for better enforcement for programme and advertising code in 2005, a District Level Monitoring Committee was formed. This committee also has a representation from NGOs working on welfare for women and child and other Government department working on the same. This committee acts as a pool of knowledge and it is there to help the District Magistrate to take a fair decision on the complaints received on violation of the provisions of the Cable Television Networks (Regulation) Act, 1995.



Oversized point of sale
advertising board

4. The Advertising Standards Council of India

The Advertising Standards Council of India's Voluntary Code of 1998 envisaged prohibiting of advertisements targeting underage consumers, as well as suggestions that using tobacco products is safe, healthy or popular.

5. The Broadcasting Services Regulation Bill, 2007

This is still a Bill and it would be enacted soon to become an Act. This Act will have a 'Content Code' which would regulate inter alia, the broadcasting and advertisement of tobacco and other addictive products.

2.2 Rationale for the prohibition of advertisement of tobacco products

1. Tobacco marketing strategies ensure that the products are promoted heavily at the point of sale. The tobacco industry uses sophisticated and manipulative marketing strategies. Tobacco companies identify target groups and tailor their products to market to them by altering the content of tar and nicotine, and by adding flavourings to produce a distinctive taste. Advertisements and placing of the product at a low height and next to candies at points of sale is a strategy they use to give undesirable exposure and access to children.
2. Advertising and sponsorship agreements are used to increase the visibility of the brand and strengthen its image. A study found that children who had seen sports events being sponsored by a tobacco company were more likely to start smoking. This was during the period when a cigarette company sponsored cricket matches. In recent times, tobacco companies have been sponsoring fashion weeks and bravery awards in the cities, and festival celebrations in the rural areas, all of which are illegal.
3. Children in India are very susceptible to tobacco advertising. Surveys in India have shown that children and the youth have been greatly influenced by tobacco advertisements, especially those for cigarettes and gutka. A nationwide survey conducted in 2001-04 among schoolchildren studying in grades 8-10 (approximate age 13-15 years) found that 42% had seen many advertisements for cigarettes on billboards. In this survey, seeing advertisements for tobacco products in the community and in the media was found to be associated with tobacco use among the respondents. There are rules to prohibit easy access of tobacco products to youth which were notified on May 31, 2005. The rules say that the

person in charge of a place where tobacco products are sold shall not display tobacco products in a way that they are visible so as to prevent easy access of tobacco products to persons below the age of 18 years.

4. There is ample evidence to show that restriction of advertising reduces tobacco use. A 1999 World Bank report concluded that a comprehensive ban on advertising, promotion and sponsorship reduces consumption of tobacco. The tobacco industry, in India and globally, strongly opposes such a measure.
5. Children are the easiest targets of tobacco advertising; they need to be protected from such tactics. This is with reference to Article 17 of the Convention on the Rights of the Child (CRC), which states the need to encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his/her well-being, also bearing in mind the provisions of Articles 13 (the right to access to information) and 18 (protection of the best interests of the child) of the CRC.



Point of sale advertisement

2.3 The role of enforcement officials

The states must encourage the general public to report violations to the concerned authorities.

While the authorised officials can complaint to the Steering Committee about any direct or indirect advertisements of tobacco products. The specific violations of the advertising and programme code of the Ministry of Information and Broadcasting, by television or print media could also be reported to the Ministry of Information and Broadcasting, Government of India. Likewise, violations by cable T.V operators should be reported to the District Magistrates.

Besides, the conviction for contravening the prohibition on advertisement as under Sections 22 and 23 of the COTPA would require that proper care is taken while the advertisement materials are being searched and seized, so that the relevant evidence remains intact.

Chapter 3: Prohibition on Sale of Tobacco Products to and by Minors

3.1 The law dealing with prohibition on sale of tobacco products to and by minors

No person shall sell tobacco products to a minor (below the age of 18 years), all tobacco vendors shall ensure that no tobacco product is handled or sold by a minor and no person shall sell tobacco products within 100 yards of any educational institution.

Defining 'educational institution' [Rule 2 (b)]

Educational institution "means places/centres where educational instructions are imparted according to the specific norms and include schools, colleges and institutions of higher learning established or recognized by an appropriate authority."

Punishment on sale to and by minors (S. 24)

If a person contravenes the provisions he shall be punished with a fine of up to Rs 200.

Enforcing the ban (S. 25 and 28)

The Central Government and/or the State Government may appoint one or more persons to take action against any person committing an offence under Section 6. However, the offence is compoundable, which can be settled on the spot by the enforcement officer and may be tried summarily in accordance with the procedure provided in the Code of Criminal Procedure, 1973. The authorised officer is considered a public servant while acting in performance of his duty under COTPA.

Besides COTPA the **Child Labour Prohibition and Regulation Act, 1986** also mandates for protection of children from hazardous substances, whereas tobacco farming and bidi-making involve hazardous processes. This Act specifically prohibits employment of children in bidi-making. Moreover, if children work in bidi industry they would have easy access to it. The Act thereby protects children from consuming bidi and serves the purpose of Section 6 of COTPA to a certain extent.

Rules for prohibition on sale of tobacco products to minors: Rules were initially notified in February, 2004. These rules required that the owner/in-charge of a place where cigarettes or tobacco products were sold has a display board containing the warning:

- "Sale of tobacco products to a person under the age of 18 years is a punishable offence".



A shop owner putting a board in his shop which says "sale of tobacco products to minors is prohibited"

- The minimum size of the board is 60 cm x 30 cm.
- It is displayed at a conspicuous place.
- The warning is in an applicable Indian language.

The rules notified on September 1, 2004 further supplement the provision by prohibiting sale of cigarettes and other tobacco products around educational institutions. It is also specified that no tobacco product is sold through a vending machine and no tobacco products are handled or sold by a person below the age of 18 years.

The owner or the person in charge of an educational institution should display, at a prominent place, a board containing the warning '**Sale of cigarettes and other tobacco products in an area within a radius of 100 yards from the educational institution is strictly prohibited, and that the offence is punishable with a fine which may extend to Rs 200.**' Where the distance of 100 yards is to be measured radially, starting from the outer limits of the boundary wall, fence or as the case may be, of the educational institution.



Notice displayed against sale of tobacco product outside of a college.

Update from the court room: The rules are challenged in the High Court of Bombay and are stayed by the Court. Besides other issues, the petitioner has contended that the MoHFW has not notified the coming into force of the relevant provision of the law i.e. Section 6 (b) and thus the rules are not implementable.

3.2 Rationale for protecting youth and children from exposure to tobacco products

Tobacco consumption is a known hazard to health and we must, therefore, aim at restricting minor's access to tobacco products. These measures under COTPA will ensure preventing early initiation of tobacco use among children and youth.

a. Reasons for restricting sale to minors

1. Many children in India experiment with tobacco at an early age and become addicted thereafter.
2. Individuals who use tobacco from a young age are more likely to suffer from serious diseases earlier than others and die prematurely. Smoking-related diseases, including lung cancer, manifest themselves earlier in individuals who start smoking in childhood. Oral cancer is seen at a younger age among people who start using smokeless tobacco in childhood or early adulthood.



Minor selling tobacco products outside a railway station

b. Reasons for restricting sale by minors

1. Sale by a minor gives a message to that child, as well as to other children, that it may be all right to use tobacco.
2. Sale by minors may also give youth a misleading message that tobacco is good business.
3. Adolescents out of school are more likely than other youth to sell tobacco.

3.3 The role of enforcement officials

It is suggested that enforcement officers from the Education Department, Police Department, Food and Drug Administration, and other departments are authorised by the Central or State Government(s) to implement these provisions. They should ensure that cigarettes and other tobacco products are not sold in an area falling within a radius of 100 yards from an educational institution (educational institution includes not only schools and colleges, but other teaching and academic set up such as coaching institutes, nursing, medical/dental colleges etc.). They should also keep a check that vendors do not sell tobacco products to minors within the given radius.

Inspections and surprise checks carried out at places where tobacco products are sold would be helpful to see whether tobacco products are being sold to or by minors or not.

The authorities of an educational institution should also make sure that the premises of the institution are absolutely tobacco-free. The most important strategy would be to bring about awareness and to educate the teachers and school authorities of these legal provisions. Students should also be sensitized to report violations.

Chapter 4: Specified Health Warnings on Tobacco Products

4.1 The law dealing with Specified Health Warnings on tobacco products

The law mandates pictorial health warnings on the packaging of all tobacco products.

The Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975: The first statutory warning, '**Cigarette smoking is injurious to health**' (which is still in force), was stipulated under Section 2 (m) and Section 3 of the Cigarettes Act, 1975. It was laid down that all cigarette packages and their advertisements ought to carry the warning in the language used in the brand. Other tobacco products notably *bidi*, *gutka* etc were not covered by this warning. The text was to be a minimum of 3 mm in height, irrespective of the dimensions of the surface on which it appeared or of the dimensions of the brand name. Section 3 (3) of the Cigarettes Act, 1975 also prohibited the import of cigarettes, the packages of which did not bear the specified warnings.

Effective package warnings: The COTPA requires every package of cigarettes and all other tobacco products to have a specified warning with a pictorial depiction and such other warning as may be prescribed.

Tobacco products to have pictorial warnings (S. 7)

- Every package of cigarettes and other tobacco products shall
 - Bear the specified warning including a pictorial depiction and such other warnings as may be prescribed.
 - No trade or commerce in tobacco products without pack warnings
 - It also prohibits import of tobacco products unless and until the product packages have specified warnings on them.
 - Warnings to appear on not less than one of the largest panel of the tobacco product package.
 - Packages also to indicate the nicotine and tar contents on each tobacco products with permissible limits.

Warnings to be legible, prominent, and conspicuous in size, colour and style (S. 8)

- The lettering of the warning should be in bold and clearly presented, in distinct contrast to the background of the packaging or its labels.
- Warning must be visible to customer before the package is opened.

Prevention of Food Adulteration Act, 1954

The Government of India under notification No. GSR No. 491(E) dated August 21, 2006 amended the provisions of the Prevention of Food Adulteration Rules 1955 and incorporated rule 44-J which reads as:

"Product not to contain any substance which may be injurious to health: Tobacco and nicotine shall not be used as ingredients in any food products".

Language of warnings (S. 9)

Language on pack	Language of warning
English	In English
Indian language or languages	In such Indian language or languages
Both English and Indian language or languages	In English as well as in such Indian language or languages
Partly English and partly any Indian language or languages	In English as well as in such Indian language or languages
Foreign Language	In English
Partly foreign language and partly English or any Indian language or languages	In English as well as in such Indian language or languages

- No package to contain any matter or statement which is inconsistent with, or detracts from, the specified warning.

Sections 10 and 11 of the COTPA require that the Government prescribes the size of letters and figures of specified warnings and recognise testing laboratories for testing nicotine and tar contents in tobacco products.

Punishment for producer and manufacturer (S. 20)

- Any person who produces or manufactures tobacco products which do not contain the specified warning, in case of first conviction, shall be punished with imprisonment for a term which may extend to two years, or a fine of up to Rs 5000, or both. If it is a second or subsequent conviction, he shall be punished with imprisonment for a term which may extend to five years and with a fine of up to Rs 10,000.

Punishment for retailers (S. 20)

- Any person who sells or distributes tobacco products which do not contain the specified warning, on first conviction shall be punishable with imprisonment for a term which may extend to one year, or a fine of up to Rs 1000, or both. In case of second or subsequent conviction he shall be punished with imprisonment for a term which may extend to two years and with a fine up to Rs 3000.

Offences by companies (S. 26)

- If an offence is committed by a company, then the person in charge at the time when the offence was committed along with the company would be guilty of the offence and liable to punishment. However, if the person in charge proves that the offence was committed without his knowledge or that he has exercised all due diligence to prevent the commission of such offence then that person would not be liable to any punishment.

Offences to be bailable (S. 27)

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 an offence punishable under COTPA is bailable.

Rules notified for specified health warnings on tobacco products: The set of rules on pictorial health warnings were first notified in July 2006. These rules specified the manner of packaging and labelling of tobacco products. It prescribed that the warnings have to be exactly as specified in the appended schedule to the rules. There have been constant delays and dilutions in the prescribed warnings and as of now the specifications require that manufacturer and the seller ensure that every retail pack of a tobacco product have the specified warning that confirms to the following specifications:

- The health warnings occupy at least 40% of the principal display area of the front panel of the pack.
- The specified health warnings are to be rotated every 12 months, or earlier, as may be decided by the Central Government.
- The specified warning contains a health warning i.e. **“SMOKING KILLS”** or **“TOBACCO KILLS”** and pictorial depiction of the ill effects of tobacco use on health shall be placed below the health warning.
- Include health message i.e. **“TOBACCO CAUSES CANCER.”**
- Warnings not to be obscured, masked, altered or detract from the specified warning.
- The package and label should not carry any false, misleading or deceptive information.
- Not more than two languages to be used on the pack, including one in which brand name appears, to ensure that the warning is legible and prominent

Update from the court room: The tobacco industry is adamant against depiction of the specified warnings; it has challenged the Government's notification on pack warnings in multiple numbers of cases in various High Courts across the country. Unable to manage the multiple suits and to avoid inconsistent judicial observations the Government of India approached the Supreme Court to transfer the matter before itself and decide once and for all the applicability of the law. Simultaneously, civil society also approached the Apex Court to direct immediate implementation of the pictorial warnings, wherein hearing an Interlocutory Application the Court accepted and pronounced the Government of India's undertaking to implement the pictorial health warning with effect from May 31, 2009 and that the enforcement thereof shall not be further extended under any circumstances.

4.2 Rationale for display of pictorial health warnings on tobacco products

It is very important to depict large and prominent health warning on tobacco packages as experiences from many countries that have already implemented pictorial warnings show that it has a positive impact on public health. Pictorial warnings on tobacco products further reinforce the impact of the written health warnings. As they say, 'a picture paints a thousand words', the images help tobacco users visualize the nature of tobacco-related diseases and convey health messages in a clearer way besides it is shown to help reducing the use of tobacco.

Pictorial health warnings are intended to serve as visual cues to prompt smokers to take action to quit. They are designed to make people realize that tobacco use kills and causes serious illness. They are effective tool in conveying health risks to the tobacco users. It also has an impact on intention and ability to quit. Such warnings provide greater encouragement than the text-based warnings for tobacco users to quit using tobacco and for non-users to avoid initiating. Pictorial warnings also make the health warnings accessible and visible to those who are illiterate and cannot read.

4.3 The role of enforcement officials

The enforcement officials authorised by the Central or the State Government are empowered to enter and search any building or business premises if they have any reason to suspect that tobacco products without

health warnings are being sold. The seized goods need to be kept secured till produced in court. It is also necessary to know that order of confiscation and imposition of penalty may be given by a competent court only. The authorised officials have the power to seize tobacco products that are being manufactured or sold without bearing the specified health warning. Such products can also be confiscated. It is important for the enforcement officials to familiarize themselves with all the provisions on search and seizure/confiscation of goods (or advertisement materials) as mentioned in Sections 12–19 of the COTPA. For example, an enforcement official must know that Section 18 requires that an order adjudging confiscation or directing payment of costs must precede notice in writing with the grounds of confiscation. Failing to give such notice within ninety days from the date of seizure of the tobacco products will make it returnable to the owner or the person from whose possession it was seized.

The confiscation of packages without proper warnings is important not only for the protection of the public, but also because it enables enforcement officials to produce evidence of legal infringement in court in order to get the offenders convicted.

As an exception, Section 15 makes a provision that in place of confiscation, the owner of the goods may pay the court costs equivalent to the value of the goods, in which case the goods may be returned to him. It should be noted, however, that the goods have to be seized, presented in court and the costs paid by the offender before the goods are returned. The offender is then required to put the specified warnings on the packages before he could again sell them. This has to be followed up and verified by the enforcement officials. The enforcement officials should bear in mind that the seized goods are perishable in nature and therefore the proceedings in court should be prioritized including orders of confiscation need issued expeditiously.

It is important to remember that Section 16 clarifies that confiscation and payment of costs do not prevent from infliction of any punishment to which such person may be liable.

Dilution of Pictorial Warnings: The Story So Far

Pictorial Warnings as notified by the Government on July 5, 2006 and September 29, 2007



Strongest picture messages.

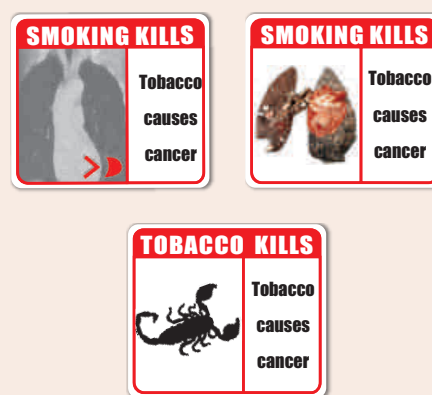
- Field tested
- Effective in motivating tobacco users to quit
- Prevent non-tobacco users from taking up the habit

Cover 50% of the packaging of tobacco products i.e., larger and more effective.

Conform to international best practices; Australia and New Zealand prescribe 60% each of the package, front and back.

Leading the South East Asia Region nations as the best example in protecting public health through health education.

Pictorial Warnings diluted by the Government notification on March 15, 2008 and May 3, 2009 (to be enforced from May 31, 2009)



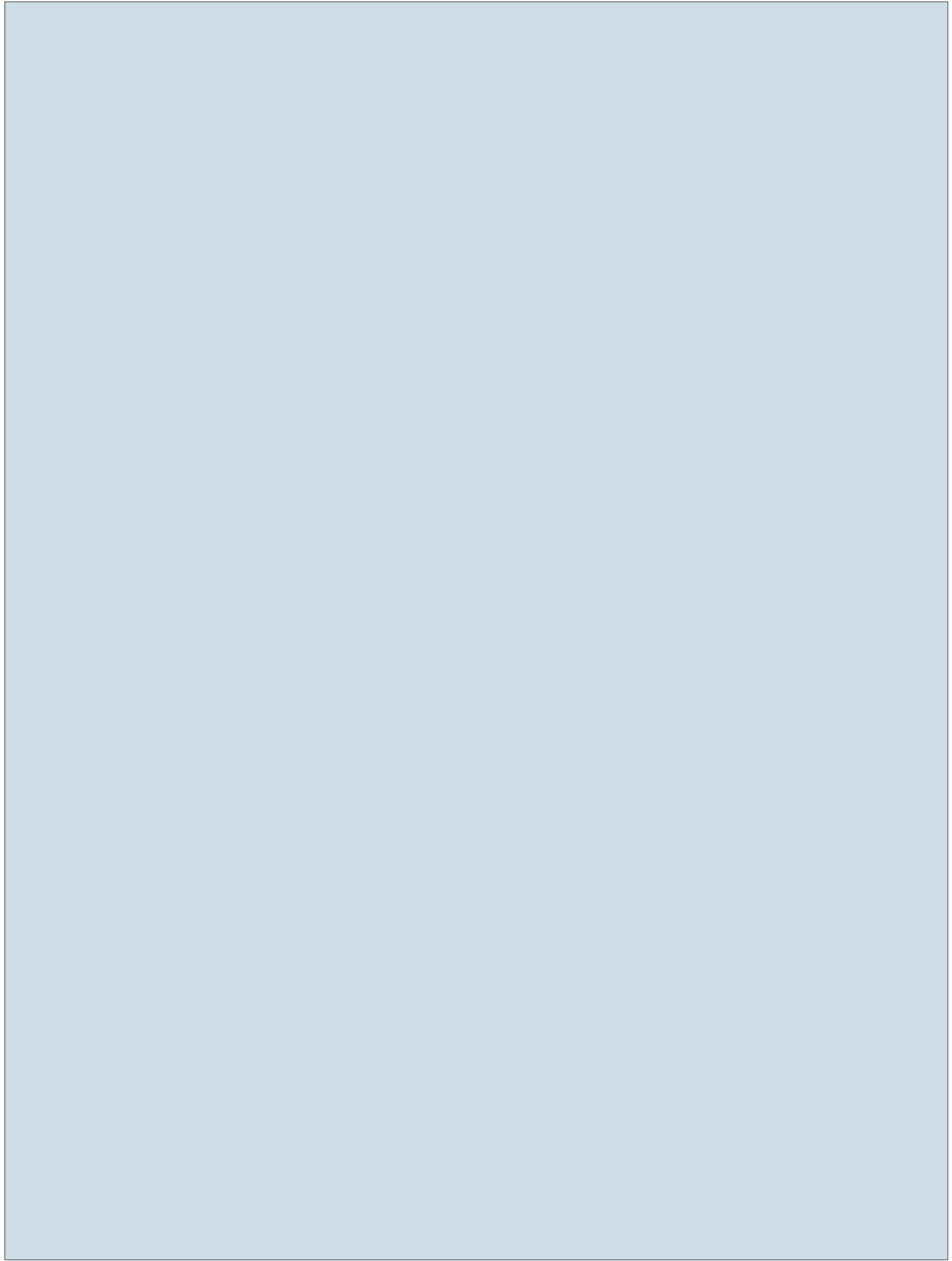
Mildest in the world.

- Health messages sans effectiveness
- Do not achieve the objectives of pictorial warnings
- Not field tested

Cover 40% of the principal display area of the front panel of the packaging of tobacco products i.e., smaller and less impact.

Does not even comply with the minimum standards prescribed by the World Health Organization (WHO) Framework Convention on Tobacco Control (FCTC).

- Big win for the tobacco industry
- Cast a death blow to the tobacco control initiatives in the region.



Part II

Other Relevant Laws for Tobacco Control

This part discusses the related laws for tobacco control and explains the relevant provisions of these laws in implementing COTPA.

Chapter 1: Relevant Indian Laws

Chapter 1.1: The Constitution of India

The Constitution of India is the basic premise for each law that the parliament ponders and enacts to have effect thereafter. Thus every law has to be in conformity with the constitutional mandates and not otherwise. The Tobacco control legislations also get their fundamental declaration in the Constitution at the following references:

Preamble to the Constitution

The Preamble aims at a social order with sovereign citizens and elected Government that is accountable to the public at large. The power of the government is restricted by the rights of the citizen to the extent guaranteed under the Constitution. The Preamble magnificently captures this idea as under and the Constitution is to be read with and not in isolation of this declaration in the preamble.

Cigarettes and Other Tobacco Products Act, 2003 is a social legislation, drafted in public interest to improve public health, the enforcement of which shall secure the social justice as envisioned under the Preamble. Similarly, the economy is adversely affected by the production and consumption of tobacco as the revenue collected by the government is less than the expenditure made on public health concerns attributable to tobacco use. Every individual has been assured of his dignity and smoking by one person injures not only his own dignity but the secondhand tobacco smoke he generates hurts the dignity of another person who has to inhale the smoke involuntarily.

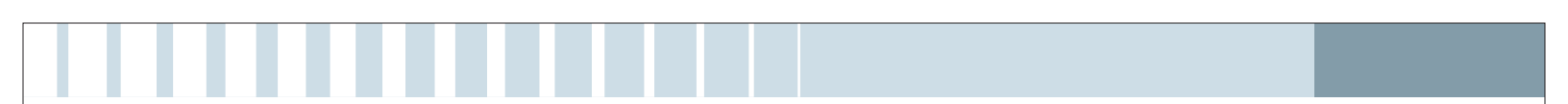
COTPA is the means through which this violation is redressed. “Equality of status” would mean every individual has same rights and liberties as another. If an individual has a right/liberty to smoke then it has to be seen in the light of peoples' right of not to take the smoke involuntarily, as all have been granted “equality before the law and equal protection of the laws” by the Constitution of India.

Fundamental Rights

Protection of life and personal liberty: (Article 21: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”)

Secondhand tobacco smoke or the side stream smoke contains three times more nicotine, three times more tar and about 50 times more ammonia. Therefore there is no doubt that smoking in a public place will vitiate the atmosphere so as to make it noxious to the health of persons who breathe in so polluted atmosphere.

It is certain that fresh air is necessary for life and polluting it with tobacco smoke would be hazardous to life within the meaning of Article 21 of the Constitution as it adversely affects the life of the citizens by slow and insidious poisoning thereby reducing the very life span itself. Exposing innocent individuals to secondhand tobacco smoke with serious health consequences amounts to taking away their life, not by execution of death sentence but through a slow and gradual process by robbing them of all their qualities and grace.



Also the mandate of Article 21 undertakes minors and women as a special group and thus acts as a sanction against smoking in public place, sale of tobacco products to minors and selling of tobacco products within a radius of 100 yards from educational Institutions.

Restriction on certain freedoms in public interest:

The constitutional freedoms under Article 19 are not absolute and may be regulated in public interest the restrictions under Article 19 (2) to (6) provide for the same.

The right “to freedom of speech and expression” can not become an excuse for an indirect and surrogate advertisement of tobacco product; similarly the right “to practice any profession, or to carry on any occupation, trade or business” may, in general public interest, be restricted or even completely taken over by the state in complete exclusion of the citizen or otherwise.

This is where the parliament through COTPA, realizing the health hazards of tobacco use, has decided to impose the total prohibition on advertisement of the tobacco products and to regulate its trade and commerce, production, supply and distribution. This is to restrict the tobacco industry from propagating its commercial interests above public health.

The constitution, inter alia, imposes a duty on every citizen to preserve the natural environment. Tobacco smoke being a pollutant every citizen should refrain from polluting environment and affecting public health by not lighting tobacco.

Directive Principles

The Directive Principles of State Policy are fundamental in the governance of the country and it is the duty of the State to apply these principles in making of the laws. COTPA as a social legislation was framed for the purpose of enacting a comprehensive law against tobacco use in public interest and to protect public health. It echoes the mandate in part IV of the Indian Constitution with a view to achieve improvement in public health.

The COTPA seeks to ensure, the highest standards of public health and wellbeing, what the Constitution had foreseen as an important issue; the fact is mentioned in Article 39 that requires State to direct its policy towards securing, among other things, that the health and strength of workers, men and women, and tender age of children are not abused. The legislation, as evident from the preambular declaration, further aims to implement article 47 of the Constitution which, inter alia, requires the State to endeavour to improve public health as among its primary duties.

1.2 The Indian Penal Code (IPC)

The IPC is the general code for regulation of offences and of punishments, i.e. in absence of specific directives under the special or local laws IPC needs to be invoked. The enforcement officers under COTPA need to take into account the meaning of terms like 'public servant', 'offence', 'injury', 'punishment' etc. explained in the Code should be used to meaningfully enforce COTPA.

Liability of enforcers:

It is to be noted that every enforcement officer under COTPA is deemed to be a 'public servant'. And every public servant who knowingly disobeys the direction of the law, thereby intending to cause and knowing that it is likely to cause injury to any person, shall be punished with simple imprisonment for a term which may extend to one year, or with fine, or with both.

If an enforcement officer does not apprehend a person smoking in the public place, in his presence or on so being informed, he is committing the offence under 166 IPC as he is both disobeying the direction of COTPA and he is also aware that this is likely to injure the health of another who is involuntarily inhaling the tobacco smoke. Thus section 166 of the IPC may be invoked to ensure accountability of the officers engaged in the enforcement of COTPA.

Punishments and/or fines:

Violation of Section 4 and section 6 of the COTPA invites a penalty only of a fine up to rupees two hundred. Where the offender is not able to pay the fine so inflicted upon him by the magistrate he shall, pursuant to Section 67 of the IPC, be penalised with simple imprisonment that may extend up to six months. However such imprisonment terminates whenever that fine is either paid or levied by process of law.

Similarly, where the penalty is both imprisonment and fine the imprisonment for failing to pay the fine shall not exceed one-fourth of the term of imprisonment which is the maximum fixed under Sections 20 and 22 of the COTPA

Abetment of offences:

According to Section 107 of the IPC a person abets the doing of a thing who-... intentionally aids, by any act or illegal omission, the doing of that thing. And Sections 109 and 110 provide for the punishment for such abetment.

COTPA requires the owner manager or in charge of a public place including that of a hotel, restaurant and the airport to display boards containing warning that, 'No Smoking Area – Smoking here is an Offence'. Failing to display the board or displaying it in a manner not conspicuously visible is an omission on the part of that person as it instigates smokers to light in such public place. This would amount to abetment of the offence of smoking in public place as in section 4 of the COTPA and also 'public nuisance' punishable under Section 290 of the IPC.

Similarly an institution not displaying the requisite board, stating that 'the sale of cigarettes and other tobacco products in an area within a radius of 100 yards from the educational institution is strictly prohibited, and that the offence is punishable with a fine which may extend to Rs 200,' aids by omission of the offence under Section 6 of the COTPA.

Also in case where there is any advertisement of tobacco product, besides the person who actually is engaged in advertisement, the person/company that supplies such advertisement materials is also liable for abetment of the offence under section 5 of the COTPA. It also applies to any violation of the specifications prescribed for the point of sale advertisements. It is generally the tobacco companies who provide those point of sale advertisement materials to the

vendors, if there is any violation of the prescribed specifications the vendor is liable for the offence under section 5 and the person/company that has supplied the material is liable for abetment of the offence.

Secondhand smoke a Public nuisance:

It is firmly established through judicial observations that secondhand smoke is a public nuisance. It is both a danger and annoyance to the public who dwell in the vicinity or who may have occasion to use any public right e.g. attending a public meeting, dining in a restaurant, traveling in a public conveyance, reading in a public library, educational institution, and hence may be punishable under 290 of the IPC. It may be noted that where officers under COTPA are still not notified by the State Government; the police officer can take action on complaints under the IPC.

Further if any person repeats or continues the commission of public nuisance after injunction to discontinue he shall be punished with simple imprisonment for a term which may extend to six months, or with a fine, or with both under Section 291 of the IPC.

1.3. The Criminal Procedure Code

In absence of specific procedures in a law prescribing for punishments it is generally the code of criminal procedure that is followed i.e. the Criminal Procedure Code of 1973. COTPA too provides for offences and punishments and barring a few places where it details specific procedures it is the Cr.P.C that it refers to be followed.

Arrest without warrant

Though the offences under section 4 and 6 are compoundable it is possible that the offender is not ready to or is not in a position for the composition of the offence. In such a case the enforcement officer is required to take down the name and address of the offender to present him before a magistrate for summary trial. And if the offender refuses to give his name and address the officer can detain him and immediately produce before the nearest Magistrate having jurisdiction for the trial. Proviso to Section 25 (1) of the COTPA reflects the procedure as under Section 42 of the Cr.P.C.

All Offences Bailable

All the offences under COTPA are 'bailable offences' as so declared under section 27 of the Act. In case an offence is bailable the grant of bail is a matter of course given either by the police officer having accused in his custody or by the Court, by executing a bond even without surities under section 436 (1) of the Cr.P.C.

Summary trial (Section 261 to 265 of Cr.P.C)

COTPA provides for summary trials for the offences under Section 4 and 6 of the Act. In case of summary trials the case is tried and disposed of speedily. The record of its proceedings should be complete and carefully conducted. The evidence of witness need not be recorded nor a formal charge be framed.

In a summary trial the magistrate is required to record in the prescribed form:

- (a) the serial number of the case;
- (b) the date of the commission of the offence;
- (c) the date of the report or complaint;
- (d) the name of the complainant (if any);
- (e) the name, parentage and residence of the accused;

- (f) the offence complained of and the offence (if any) proved,
- (g) the plea of the accused and his examination (if any);
- (h) the finding;
- (i) the sentence or other final order
- (j) the date on which proceedings terminated.

In case where the accused does not plead guilty the magistrate shall record the substance of the evidence and a judgment containing a brief statement of the reasons for the finding. Though there is no limit to the amount of fine imposed in a summary trial, but there is no appeal if the sentence of fine does not exceed two hundred rupees. Nevertheless, an application for revision to the High Court can be made.

Charge

The fact, date and place of the previous convictions under section 20 and 22 of the COTPA must always be recorded as the offender is liable, by reason of such previous conviction, to enhanced punishment for a subsequent offence under the two sections.

Removal of Public Nuisance

Section 290 of the IPC makes public nuisance a punishable offence, the Cr.P.C. declares that the offence, though bailable, is cognizable.

Further section 133 of the Cr.P.C. empowers a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government to make a conditional order requiring the person causing nuisance, or carrying on such trade or occupation that is injurious to the health or physical comfort of the community, within a time to be fixed in the order

- (i) to remove such nuisance; or
- (ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, in such manner as may be directed; or,
- (iii) if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner provided under the code, why the order should not be made absolute.

No order duly made by a Magistrate under section 133 shall be called in question in any civil court.”

Most importantly the section explains the meaning of the term 'public places' to include “also property belonging to the State, camping grounds and left unoccupied for sanitary or recreative purposes.” This may be used by the enforcement officers for implementing section 4 of the COTPA more effectively.

Search and seizure

Section 12 of COTPA gives the enforcement officers the power of entry and search, Section 13 empowers for seizure all these are to be carried out in accordance with the procedure mentioned in the Cr.P.C.

- ▶ **Search by warrant (S. 93):** If a court considers that for the purposes of any inquiry, trial or other proceeding a General search or inspection may be required, it can issue a search-warrant for the search or inspection of the particular place or part so directed by the court.
- ▶ **Search in presence of the magistrate (S. 103):** Any Magistrate may direct a search to be made in his presence of any place for the search of which he is competent to issue a search warrant.
- ▶ **Search by police officer (S. 165):** A police officer may search, or cause search to be made believing that anything necessary for the purposes of investigation of any offence which he is authorized to investigate may be found in any place within the limits of his police station.

A police officer shall, if practicable, conduct the search in person.

In exceptional cases he may, after recording in writing his reasons for so doing, require any officer subordinate to him to make the search, however, he must provide the description in writing of the place and thing to be searched by such subordinate officer.

The police officer shall send the record of the search made by him to the nearest Magistrate empowered to take cognizance of the offence, and the owner or occupier of the place searched shall, on application, be furnished, free of cost, with a copy of the same by the Magistrate.

- ▶ **Persons in charge of closed place to allow search (S. 100):** Any person residing in or in charge of a closed place, on demand of the enforcement officer executing warrant of search, shall allow him free access to such place and afford all reasonable facilities for a search therein.

If ingress into such place cannot be so obtained, the officer or other person executing the warrant may break open the door or window to complete the search in accordance with the sub-section (2) of Section 47 of the Cr.P.C..

If any person in or about the place being searched is reasonably suspected of concealing about his person any article for which search should be made, such person may also be searched and if such person is a woman, the search shall be made by another woman with strict regard to decency.

Any such search must be witnessed by two or more independent and respectable inhabitants of the locality in which the place to be searched is situated or of any other locality if no such inhabitant of the said locality is available or is willing to be a witness to the search.

The search shall be made in presence of the witnesses, and a list of all things seized in the course of such search and of the places in which they are respectively found shall be prepared by such officer or other person and signed by such witnesses; but no person witnessing a search under this Section shall be required to attend the court as a witness of the search unless specially summoned by it.

The occupant of the place being searched, or his representative shall always be permitted to attend during the search, and a copy of the list prepared and signed by the said witnesses must be delivered to such occupant or person.

- ▶ **Power of police officer to seize certain property (S. 102):** Any police officer may seize any property which is found under circumstances which create suspicion of the commission of any offence. However, in case the seizure is caused by a police officer subordinate to the officer in charge of a police station, he shall immediately report the seizure to the in charge.

Every police officer causing seizure shall forthwith report the seizure to the magistrate having jurisdiction and give effect to the further orders of the court as to the disposal of the same.

Cognizance of offences by magistrates (S. 190)

Any Magistrate of the first class, and any Magistrate of the second class specially empowered may take cognizance of any offence

- (a) upon receiving a complaint of facts which constitute such offence;
- (b) upon a police report of such facts;
- (c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

The cognizance of the offences under COTPA may similarly be so taken.

Chapter 2: Related International Treaties and Conventions

2.1. WHO Framework Convention on Tobacco Control

The FCTC is a legally binding treaty which was negotiated by the 192 Member States of the World Health Organization. The world's first public health treaty, the FCTC contains many measures to reduce the devastating health and economic impacts of tobacco. The final agreement, reached in May 2003 after nearly four years of negotiations, provides the basic tools for countries to enact comprehensive tobacco control legislation. The major provisions in the treaty encourage countries to:

- ▶ Enact comprehensive bans on tobacco advertising, promotion and sponsorship;
- ▶ Make obligatory the placement of rotating health warnings on tobacco packaging that cover at least 30% (but ideally 50% or more) of the principal display areas and that can include pictures or pictograms;
- ▶ Ban the use of misleading and deceptive terms such as 'light' and 'mild';
- ▶ Protect citizens from exposure to tobacco smoke in workplaces, public transport and indoor public places;
- ▶ Combat smuggling, including the placing of final destination markings on packs; and
- ▶ Increase tobacco taxes

The FCTC also contains numerous other measures designed to promote and protect public health. These include making the disclosure of the ingredients of tobacco products mandatory, providing treatment for tobacco addiction, encouraging legal action against the tobacco industry, and promoting research and the exchange of information among countries.

In addition to containing specific obligations, the FCTC has strengthened international efforts at tobacco control by:

- ▶ giving governments greater access to scientific research and examples of best practice;
- ▶ motivating national leaders to rethink priorities as they respond to an ongoing international process;
- ▶ engaging powerful ministries, such as finance and foreign affairs, more deeply in tobacco control;
- ▶ raising public awareness about the strategies and tactics employed by the multinational tobacco companies;
- ▶ mobilizing technical and financial support for tobacco control both at the national and international levels;
- ▶ making it politically easier for developing countries to resist the tobacco industry; and
- ▶ mobilizing non-governmental organizations (NGOs) and other members of civil society to support stronger measures for tobacco control.

Women and children are the most vulnerable groups as far as tobacco use and exposure to tobacco are concerned. Therefore, it is very important to discuss the two International Conventions for safeguarding the rights of women and children.

2.2 The Convention on the Rights of the Child

The Convention on the Rights of the Child was adopted in 1989 and it came into force in September 1990. The interpretation of the articles of the Convention by the Committee on the Rights of the Child demonstrates that the use of and exposure to tobacco are, indeed, a human rights issue. Since the Convention is legally binding, the ratifying States are legally bound to ensure that children can enjoy all of the rights guaranteed under the Convention, including protection from tobacco. CRC was ratified by India on December 2, 1992.

One of the most important articles of the Convention, Article 3, states that in every decision affecting a child, the best interests of the child shall be a primary consideration. Article 18 of the Convention makes it clear that the principle of best interests is not confined to the public sphere, but applies to private welfare institutions and to parents as well. Article 4 requires States to take all appropriate legislative, administrative and other measures towards the realization of children's rights.

Article 24 emphasizes the right of the child to enjoy 'the highest attainable standard of health' and includes detailed obligations for States, many of which are relevant to protecting children from the harmful effects of tobacco. According to Article 19 of the Convention, children should be protected from all forms of violence, injury, abuse or neglect while in the care of their parents. The State is obligated to undertake appropriate measures to ensure that children's health and rights are not imperiled by adults smoking in spaces where children live, study, work and play.

Article 6 guarantees the child's rights to life, survival and development. This encompasses not only the fundamental concept of protection from arbitrary deprivation of life, but also the positive obligation to promote life compatible with the human dignity of the child. Article 27 guarantees an adequate standard of living, without which, the rights to survival and development cannot be realized in their fullest sense. The use of tobacco clearly imposes significant economic costs, both at the household and national levels, thus diminishing the likelihood of children having a standard of living that is adequate for their development.

Article 17 ensures that children shall have access to information from a diversity of sources, especially those aimed at the promotion of their social and moral well-being and physical and mental health. The right of the child to information is spelt out in Article 13 of the Convention. This right has been interpreted to include a positive obligation on States to ensure access to information held by the Government. In the case of tobacco, this would seem to impose upon the State an obligation to counter misinformation by the tobacco industry, and the State would be required to provide accurate and complete information to children on the true effects of tobacco use.

The right of children to be protected from economic exploitation and work that is detrimental to their development finds expression in Article 32 of the Convention. Child labour in the tobacco industry would seem to fit this description.

2.3 The Convention on the Elimination of All Forms of Discrimination against Women

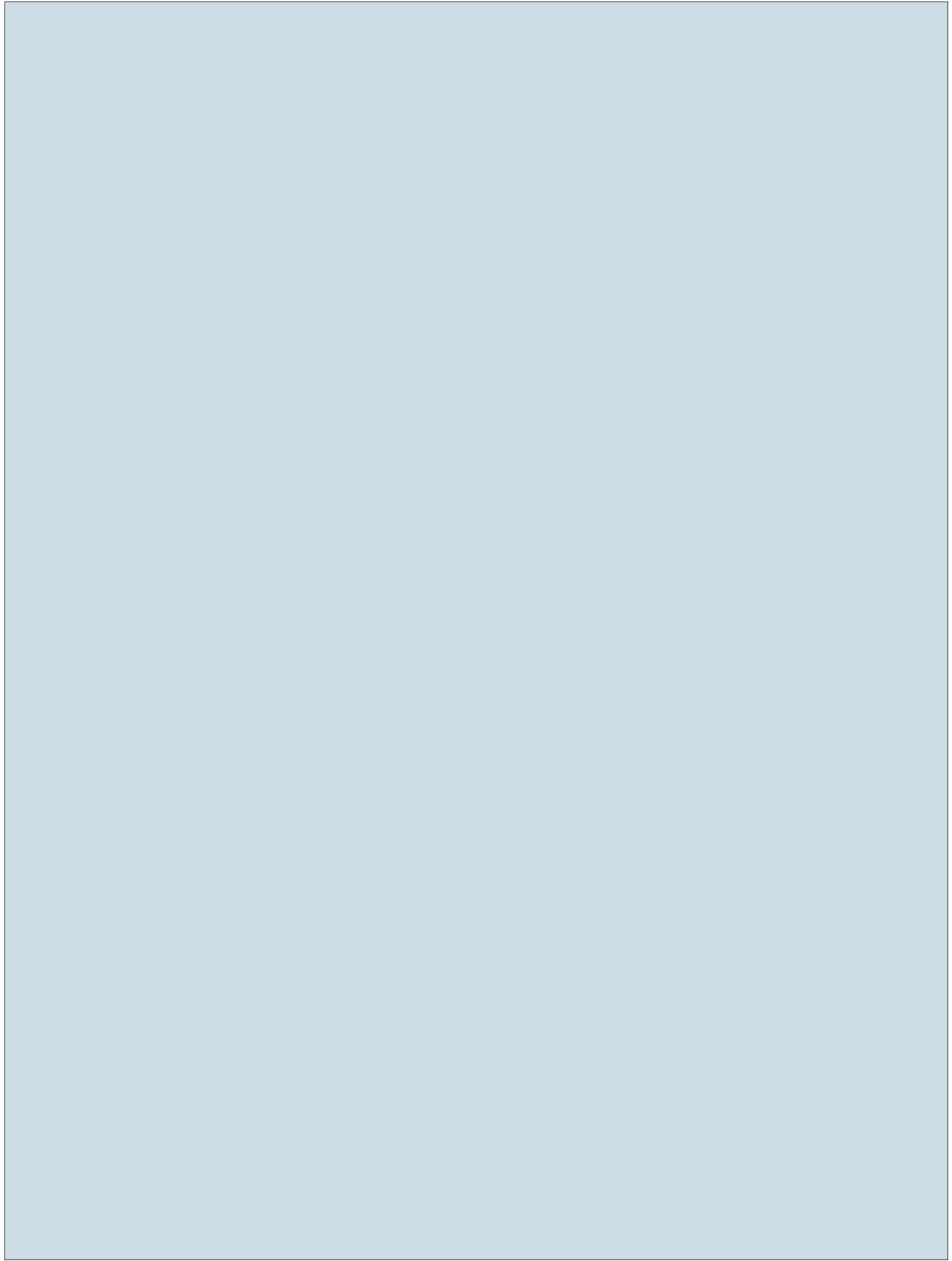
The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979. On 3 September 1981, just 30 days after the 20th State Party had ratified it, the Convention entered into force. India ratified CEDAW in July, 1993.

One of the rights guaranteed under the Convention in relation to tobacco control is the right to equality in the full enjoyment of health. Article 12 of the CEDAW requires State Parties to eliminate discrimination against women in all aspects of their health care, including drug addiction and related problems. Although tobacco is not specifically mentioned, it is covered by Article 12 and has been interpreted by the CEDAW Committee as an issue on which governments can be held accountable. An important theory guiding the CEDAW is that the maintenance of health affects the very existence of human beings and is a fundamental need that forms the basis for securing human rights. This can be included as a part of women's rights to health under Article 12. The CEDAW Committee also notes that women's health should be given a high priority because women are the providers of health care to their families, and their role in health care, including childbirth and child rearing, is of great significance to successful development.

The issue of a human rights approach to women's health is not limited to Article 12 of the CEDAW (3). For example, Article 7 of the Convention gives women the right to participate in public life and political decision-making. The effective implementation of this right would mean involving women in designing and implementing national health policies and programmes. Article 2 notes that States must propose a policy to guarantee women the exercise and enjoyment of human rights and fundamental freedoms, covering both the private as well as public sectors. This means that women must be fully informed about their rights, a provision that can be applied to legislation on tobacco control. Article 11.1 refers to the right of women to the protection of health and safety in working conditions, a provision that is directly relevant to the hazards of passive smoking.

The CEDAW Committee also has the power to make general recommendations that interpret and update its articles. According to General Recommendation 24, governments have a duty to report to the CEDAW on their health legislation plans and policies, with reliable data, disaggregated by sex, on the incidence of the severity of conditions hazardous to women's health.

The FCTC and its provisions concerning women can also be used to commit governments to formulate more gender-sensitive policies and legislation. It will provide a legal basis for the interpretation of or amendments to the existing national laws, and assist in the enactment of new legislation regarding women's health related to tobacco. The FCTC can also create an expanded human rights framework for women that is acceptable within the given culture or under the country's legal system. To strengthen the role of women in global tobacco control, governments and the World Health Organization should link the FCTC and CEDAW, which is the only UN convention specifically on the rights of women of all age groups.



Part III

***Study on Implementation and Enforcement
of Tobacco Control Laws***

Study on Implementation and Enforcement of Tobacco Control Laws

This part of the manual contains an assessment of the current status of enforcement of the Cigarettes and Other Tobacco Products Act (COTPA), 2003. The status was assessed through an exploratory field study carried out in 16 States and Union Territories, which had either notified officers under the COTPA or their own tobacco control laws. Refer to details in Annexure II.

From the interviews carried out, a number of useful suggestions came out; some of these are enumerated as follows.

Suggestions Given by the Officers

- ▶ The enforcement officers would like to receive training to not only understand the law and its enforcement process but also the ill effects of tobacco on human health.
- ▶ They would like to see better networking and coordination amongst the various departments.
- ▶ Some enforcement officers suggested that it would be helpful if there were a Tobacco Cessation Clinic in every district with a permanent staff.
- ▶ Youth and school children have a role to play in creating awareness among the public.
- ▶ More civil society organizations like educational institutions, churches and village panchayats should be involved in enforcement
- ▶ There is a role to be played by medical and legal personnel too.
- ▶ Programmes on the electronic media could prove to be helpful to disseminate health awareness as well as awareness on the law.
- ▶ Along the lines of the Pulse Polio Week, Vigilance Week, and Traffic Regulations Week, it was suggested that every state could have a Tobacco Control Week to generate mass awareness.
- ▶ It would be effective if the officers other than the police officers should be given identity cards to produce them at the time of challan.
- ▶ A complaint line could be created for reporting COTPA violations and also display the telephone number at each public place and alongside of all “No Smoking” signage. It would be ideal to also create a helpline for cessation of tobacco use and display the number similarly.
- ▶ Display big hoardings and/or banners with the significant provisions and punishments at conspicuous public places to make people aware of the law in force like it has been done in Karnataka by the Municipal department.

In addition to the suggestions given by the officers interviewed, following recommendations also merit favourable consideration viz.:

1. Implementation Issue

- ▶ The notifications and circulars related to the COTPA should reach every notified department. The Health Department of the respective states could take this initiative.

- ▶ The officers notified to enforce the provisions of the COTPA are accountable to their senior officials. They should report regularly to them on their COTPA enforcement work.
- ▶ Government and civil society partnership:-To meet the additional requirements of manpower and funds in implementing the provisions of the tobacco control laws the appropriate government /department may appoint a designate police officer (for Community Policing) for a specified area. Such an officer will be responsible to implement the law and collect the fines from the violators of the law. This amount could be then deposited with the Government exchequer. The NGO will monitor the whole implementation process including paying honorarium to the designated police officer out of the fines so collected from the violators.

2. Monitoring Issue

- ▶ Sale to minors under 18: child volunteers are best suited in detecting instances of sale of tobacco products to minors by participating in a test purchase campaign. This idea was employed successfully in Scotland.

3. Evaluation Issue

- ▶ Reporting facilitates enforcement: reporting and collection of data on violations will be helpful in evaluating enforcement of the law. It would also be useful if violations are reported in the newspapers to make the public more aware of the situation.
- ▶ Periodic reporting from the State Tobacco Control Cells to the National Tobacco Control Cell is likely to strengthen the enforcement of the law.

4. Policy Measures

- ▶ Labeling of tobacco products should also include “Not to be sold to person below 18 years of age” and for the same policy reasons sale of loose cigarettes should be disallowed and ban production sale of small packs of cigarettes.
- ▶ The fine should be of fixed amount and exemptions to hotels and restaurants should be done away with.
- ▶ Only licensed vendors should be allowed to sell tobacco products.
- ▶ There should be compulsory Tobacco Control Cells in every State



Loose cigarette sold in Mizoram

Success Stories (State wise):

► **Rajasthan**

There are several NGOs in Rajasthan, which have been working for tobacco control. They have been actively involved in making Jhunjhunu District smoke free. They have filed and registered 93 cases and most of them have been either fined or their material has been confiscated. In Jhunjhunu section 4, section 5 and section 6 are implemented very effectively. Officials reported that the police and other departments have been very cooperative for enforcement of this act and showed a lot of interest in working towards tobacco control. There are monthly camps for the police department for refresher training on the ill effects of tobacco and the tobacco control law and there is a regular practice of conducting inspections to ensure implementation of the law.

An example of obvious success is “once someone was smoking in the court premises and he was produced before the judge and the judge penalized him”.

► **Chandigarh**

Chandigarh (pop. 900635 as of the 2001 census) is the first city in India declared smoke-free in July 2007. The impact of Chandigarh being declared smoke free is that the people are fined more strictly now and neither authorities nor the people can take the plea that they are unaware of the law. An NGO in Chandigarh has achieved this by making use of the enforcement machinery in a very successful way. A tobacco control helpline is in place that people can use to report violations against COTPA.



Logo for smoke-free
Chandigarh

► **Tamil Nadu**

Tamil Nadu is a state with visible success because of awareness through workshops not only focusing on the harmful effects of tobacco on health but also on the damage that tobacco causes to the environment. Tamil Nadu also has the first smoke free village in the country called Varanavasi.

► **Goa**

Goa has a history of active NGOs which have worked towards making the State eventually tobacco free, besides initiating legal actions against violators. Goa is the first state in India to ban production and sale of chewing tobacco which in itself is a remarkable achievement. Vasco, Mazgao and Panjim were visited.

► **Daman**

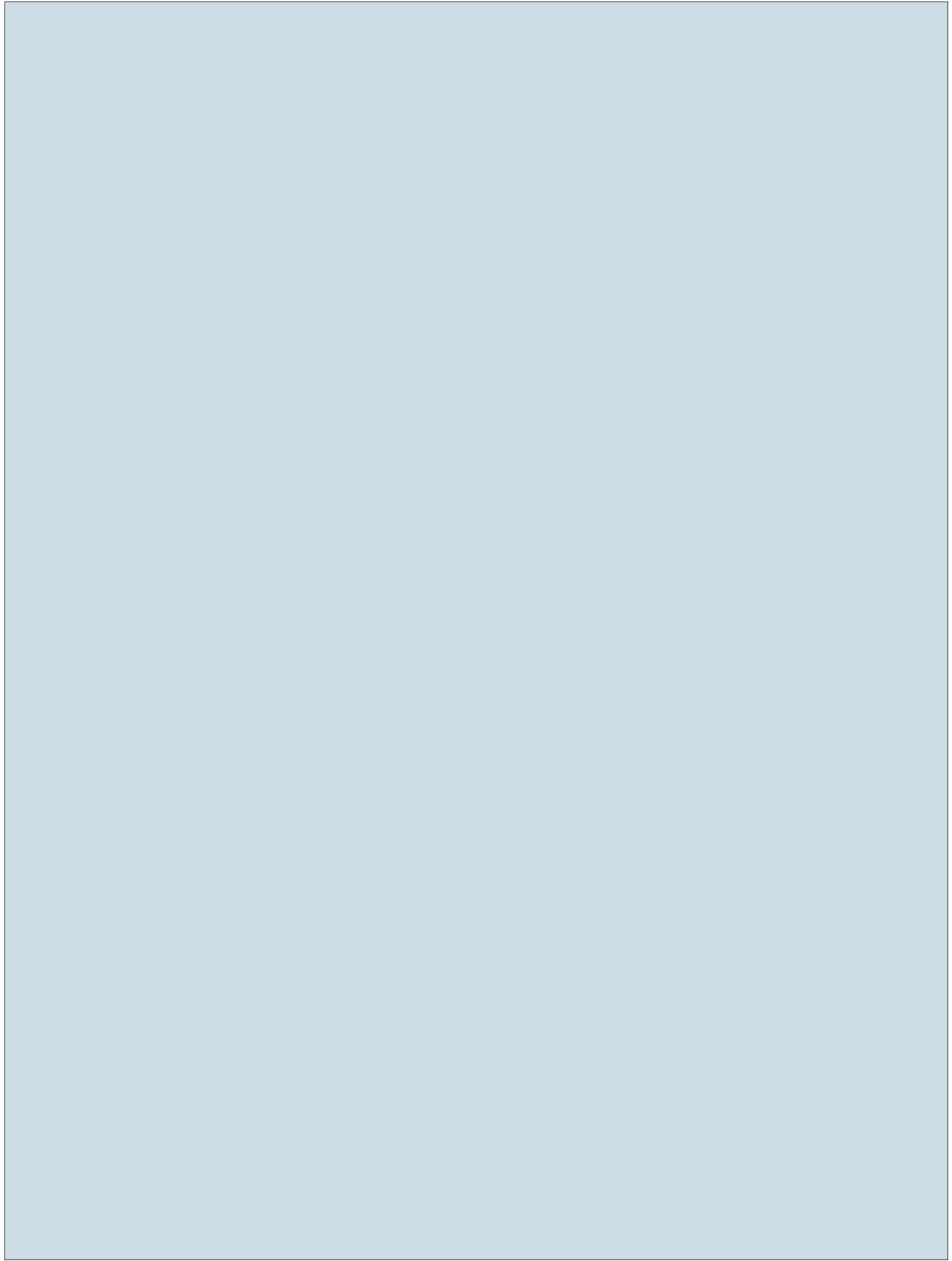
Section 6 (No sale of tobacco to minors and within 100 yards of educational institutions) is very effectively implemented here. Surprise checks after every 15 days are conducted to this effect.

► **Meghalaya**

Meghalaya stands out as most of the public offices were smoke free, each having display boards with the warning against smoking in public places. Remarkably, the taxis in Shillong are all smoke-free since the Supreme Courts order in 2001.



A taxi in Shillong having a
“No Smoking” caption



Annexures

Annexure I

Study on implementation and enforcement of tobacco control laws

Three legal officers from HRIDAY conducted interviews with law enforcers notified for enforcing these laws with an objective to observe the level of enforcement of tobacco control laws in these States. The field study area included the Capital cities of 14 States and two Union Territories. In addition three districts, namely Jhunjhunu, Ropar and Mohali were selected for the study because of the reported considerable tobacco control work in these districts.

I. Methodology

A. The questionnaire

To interview the enforcement officials a semi-structured interview schedule was developed. The interview schedule was designed to elicit discussion on:

- ▶ Their understanding of the Tobacco Control Laws; both Central as well as of the State.
- ▶ The general level of enforcement of the tobacco control laws.
- ▶ Means, mechanisms, procedures and strategies employed for the implementation of anti-tobacco laws.
- ▶ Identification of who the stakeholders are and their roles in enforcement of tobacco control laws.
- ▶ Identification of the barriers to effective enforcement of the law.

The interview schedule was filled by the interviewers. To the extent possible the participants' exact responses were recorded. An effort was made to eliminate any bias or ambiguity that could possibly creep in. Interviews were conducted in the language preferred by the participant. In some cases the interviews were unstructured but the interviewer made sure that all the questions were covered and the responses noted for completing the analysis.

B. Selection of respondents:

The respondents were selected from among the notified officers in the State and those responsible for the implementation and enforcement process in the State. The plan was to interview 158 officers.

Given below is the table giving the designations of the officers interviewed for the study:

Table I. Details pertaining to the officers interviewed:

S. No.	City and State	Designation of the officers
1	Chandigarh	Nodal Officer, Tobacco control cell, Food Inspector, Drug Inspector and Sub Inspector of Police.
2	Daman	Senior Medical Officer, Food Inspector, Social Welfare Officer and Statistical officer.
3	Sikkim	Director Health Services, State Officer Cancer Programme and Nodal Officer for Tobacco and Joint Director (Health Education).
4	Goa	Director (FDA), Deputy Director (FDA), Food Inspector, Deputy Superintendent of Police, Director (Higher Education) and Mamlatdar.

5	Assam	Joint Director (Leprosy) In charge Tobacco, Principal investigator Dr. B. Borooah Cancer Institute, Director Health Services, Vice Principal Dispur College and Sub Divisional Magistrate.
6	Himachal Pradesh	Regional Manager, Traffic, Deputy Director Health & Family Welfare Excise and Tax Officer, Chief Medical Officer, Road Transport Officer, Health Officer, Urban Local Bodies, Tahsildar, Executive Officer, Municipal Corporation.
7	Arunachal Pradesh	Health Education Officer, Assistant Food Controller, Director Health Services, Technical Officer PFA and Drug inspector
8	Karnataka	Joint Director, Deputy Director, H&FW, District Health Officer (Urban), Lokyukta Judge (Additional Registrar) and the Law Secretary.
9	West Bengal	Senior Consultant from WHO TFI for West Bengal, Joint Director (PH&CD), Director Health Services, Senior Environment Officer, Senior Law Officer and Principal, Kolkata Medical College.
10	Maharashtra	Joint Director Municipal Corporation, Senior Medical Officer Municipal Corporation, Deputy Executive Officer Epidemiology, Principal (B.ed College), Police Inspector, Food Inspector, Joint Director, FDA, Director, Public Health and Thana In charge.
11	Mizoram	OSD Health Govt. of Mizoram, Commissioner Health Govt. of Mizoram, Deputy Commissioner, Additional Director Medical and Health Education, Additional Superintendent of Police, President ISTH (Mizoram Chapter), Superintendent of Police, Clinical Psychologist, TCC (Tobacco Cessation Clinic) City Hospital Aizwal and Senior Leader MZP (Students Association).
12	Punjab	Civil Surgeons, District Health Officers, Food Inspector, Assistant Labour Commissioner, Additional Executive Officer, Senior Medical Officer, Medical Officer, Executive Magistrate and Principal of College.
13	Rajasthan	Chief Medical Officers, Drug Control Officer, Zila Parishad Secretary, Senior Medical Officer, Professor of Medical College and Deputy Chief Medical Officer.
14	Meghalaya	OSD Health, Joint Director (Surgeon Superintendent), Executive Officer Municipal Board Shillong, Assistant General Manager, Meghalaya Transport Corporation and Oncologist.
15	Tamil Nadu	Joint Director, Deputy Director, Medical Officer, Block Health Officer, Community Health Nurse, Health Inspector and Village Health Nurse), H&FW (Revenue Inspector), Police Inspector, CHO, Municipal Corporation and Nodal Officer Tobacco Control Cell.
16	Gujarat	Director and Joint Director (FDA), Senior Food Inspector, Tobacco Consultant (Government of India) and Additional Director (Health-TB).

C. Analysis

The analysis is mainly descriptive and relates to the level of awareness of the Act and the barriers to effective implementation. In addition the analysis refers to suggestions given by the interviewees and the observed and reported positive efforts in some States. The analysis is meant to focus on synthesizing the results of interviews and on extracting a set of recommendations that can be applied primarily by enforcement officials, legislators, other policymakers and anti-tobacco advocates for effective tobacco control work.

II. Results:

A. Interviews Obtained

In each State officers from municipal and state enforcement agency were interviewed. In a few States, representatives from non-governmental organizations engaged in anti-tobacco work were also interviewed.

Out of the 151 officers with whom the interviewers interacted, only 99 could be interviewed because some of them did not have time at all while others requested that the questionnaire be left back for them to fill and send it later.

B. The Findings

1. Awareness of the Act

Among the majority of the officials there was a lack of awareness about the Tobacco Control Act 2003. Even those officials who knew about the Act were not necessarily familiar with their provisions and other related details including the mechanism to implement them. Thus, we can say that out of 99 officers interviewed only 12% were aware of the law as a whole and these were mainly in the States where the NGOs had done a lot of work in spreading awareness, 9% of them had partial knowledge of the act and the rest knew only about the existence of the act.

2. Barriers to Effective Implementation

Lack of Knowledge

- ▶ The officials reported that lack of awareness on what the law is with all its intricacies, is the major barrier for effective implementation of the Tobacco control Act. This lack of awareness is an impediment to the effective implementation of the provisions of the Act. They reported that if officers are given complete information about the Act they would take proper steps to enforce it.
- ▶ They also remarked upon timely communication on the updates of the law to enable them for effective implementation.

Lack of Manpower and Funds

- ▶ Not enough enforcement officers were notified under the act.
- ▶ Some of the officers who were enlisted as notified had not received the notification.
- ▶ Scarcity of resources was another constraint. They said that they do not get vehicles to conduct raids and implement other provisions of the act.

Legal and Departmental Challenges

- ▶ Majority of the Police officers reported that they are overburdened as they have to handle so many things from terrorism to tourism, law and order, security and many other things. One of the respondents said “The Police have to handle more than 300 laws and tobacco is not a priority for them”.

- ▶ They also reported that there is poor coordination amongst the government departments and within the departments.
- ▶ The officers said that there is lack of clarity on directions for implementation that they get from the authorities, which makes it difficult to implement the particular provisions of the Act.
- ▶ Although most of the Officials felt that the punishment and fines were inadequate and do not act as deterrent, there was one who felt otherwise since it is difficult for rural folks to pay even Rs. 200.

Social, Cultural and Demographic Barriers

- ▶ It was reported that the societal acceptance of tobacco seems to be the biggest challenge against the law. As also advertisements have been a major problem because they influence people and the models that propagate these advertisements show them as socially acceptable.
- ▶ Some of the enforcement officers from the North Eastern States mentioned that it was difficult for them to impose the law on the illiterate villagers and such migrants in the city as they are neither aware of the law nor of the ill effects of tobacco use.
- ▶ Tobacco use in a few states like Mizoram and Assam is an essential part of the lifestyle; this cultural acceptance becomes a barrier for the effective implementation of not only the smoke free rules but also to the restrictions on minor's access.
- ▶ In States like Goa, despite the successful implementation otherwise, not all the officials are well aware of the act, besides, foreigners and tourists tend to violate the law most and the state machinery too shifts its focus on narcotics and other contraband drugs during tourist seasons.
- ▶ The geographic inaccessibility of the North Eastern region in itself acts as a barrier for the enforcement of the law. The enforcement officers find it hard to reach places. They further reported that near the interstate borders jurisdictional problems impede enforcement. It is well known that international borders are vulnerable to illicit trade and tobacco control remains the least priority at these areas.

Lacunae in the Act and Rules

Some of the officers mentioned the loopholes of the act, which are as follows:

- ▶ The owners of the restaurants and hotels are not very clear on the definition of physical segregation of smoking and non-smoking areas.
- ▶ A fine of Rs 200 is hardly a deterrent for the owners of restaurants/hotels.
- ▶ They also commented about the absence of the notification for certain important provisions of the law e.g. specified warnings on tobacco products.

3. Common Violations of COTPA Mentioned by Some Officers

They felt that some violations are so common that they act as a barrier to implementation of the law like; people smoking in public places, existence of small shops on footpaths with no warning signs and indirect advertisement and confusing slogans in cinema halls, like “smoking thrills and smoking kills”.

Annexure II

Information about notified officers and state tobacco control cell

A. Officers notified by the Central Government

S.No.	Persons Authorised to take action	Description of
1.	Inspector of Central Excise/Income Tax, Customs/Sales Tax/ Health/ Transport and above.	All public places within their jurisdiction
2.	Station Masters/Asst Station Master/ Station Head/ Station Incharge.	Railways and all its premises
3.	All gazetted officers of State/Central Govt. or equivalent rank and above in Autonomous organizations/ PSU	Govt Offices / premises and offices of Autonomous bodies and corporations.
4.	Director/ Medical Superintendent/Hospital Administrator.	Government and private Hospitals
5.	Post Master and Above	Respective Post Offices 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.	Dir Public Health/ Director Health Services	All Public Places
11.	In charge Administration in Central/ State Govt.	All Public Places
12.	Nodal Officers/Focal Points of Anti-Tobacco Cell at District and State level	All Public Places

B. Officers notified by the State governments

S.No	State	Notified Under	Notified Officer/Department	Tobacco Control Cell
1.	Mizoram	COTPA	1. Deputy Commissioner 2. SP of respective districts 3. State Level Anti Tobacco Cell 4. District Level Anti Tobacco Cell	Yes
2.	West Bengal	COTPA	1. Director of Health Services 2. Jt. DHS (PH & CD) 3. Chief Environment Officer 4. Senior Environment Officer 5. Member Secretary, West Bengal Pollution Control board 6. Chief Engineer 7. Senior Law Officer 8. Every Chief Medical Officer of Health of a District 9. Each Superintendent of Police 10. Each Addl. Superintendent of Police 11. Each Sub-Divisional Police Officer 12. Each Inspector/ Sub-Inspector-in-charge of the Police Station (Thana)	Yes
3.	Arunachal Pradesh	COTPA	District Medical Officers of the State Food Inspectors and Drug Inspectors	No
4.	Meghalaya	State Act/Supreme Court's order of 2001	General enforcement agencies of the state	No
5.	Sikkim	State Act	1. All Gazetted Officers (both of State and Central Government). 2. All Category 'B' Officers of autonomous corporations and local bodies 3. Manager/Assistant Manager of Cinema Halls, Restaurants and	Yes

S.No	State	Notified Under	Notified Officer/Department	Tobacco Control Cell
			Hotels 4. Driver Conductor in Public Vehicles	
6.	Assam	COTPA	Administrative Officers of the health department in the District including the SDO and SP	Yes
7.	Rajasthan	COTPA	1. All Joint Directors (Zone) Medical and Health Services 2. All Chief Medical and Health Officers 3. All Principal Medical & Health Officers 4 All Assistant Drug Controllers 5. All Drug Control Officers 6. All Medical Officers in Charge (Community Health Centre) 7. All Medical Officers in Charge (Primary Health Centre) 8. All Police Officers not below the rank of Sub Inspectors	Yes
8.	Himachal Pradesh	State Act	1. All the Executive Magistrates of the rank of Tehsildar and above 2. All the BMOs/CMO in Himachal Pradesh 3. All the BDOs in Himachal Pradesh 4. Medical Officers authorized by Government working in community health 5. Centres, Primary Health Centre, Civil Dispensaries and Zonal hospitals 6. Medical Officers posted in urban local bodies 7. Executive officers urban local bodies 8. All the Regional Transport Officers and all the officers of the Excise and Taxation Department, Himachal Pradesh not below the rank of Excise and Taxation Officer.	No

S.No	State	Notified Under	Notified Officer/Department	Tobacco Control Cell
			9. Regional Manager, Traffic Managers, Inspectors and Inspectors, HRTC.	
9.	Chandigarh	COTPA	<ol style="list-style-type: none"> 1. All Police Officers, not below the rank of Sub Inspector 2. All the Food Inspectors of the Health Department 3. All the Drug Inspectors of the Health Department 4. Secretary Health 5. Inspector General of Police 6. Deputy Commissioner 7. Director Tourism 8. Director Health Services 9. Director Public Instructions 10. Commissioner, Municipal Corporation 11. Head Tobacco cessation Clinic, PGI, Chandigarh 12. Chairperson, Burning Brain Society 13. Mr. Kumar Abhimanyu, Special Correspondent, Dainik Bhaskar 14. Mr. Jagwinder Patial, Star News 15. Mr. Jagdish Singh Sarpal, Double Three Residents Welfare Association 16. Mr. APS Shergill, Advocate. 	Yes
10.	Goa	COTPA and State Act	<ol style="list-style-type: none"> 1. All Officers of the Directorate of Health Services not below the rank of Medical Officer/Health Officer 2. Director, Directorate of Health Services 3. Collector for their respective jurisdiction 4. Superintendent of Police for their respective jurisdiction 5. Director, Directorate of Foods and Drugs Administration 6. All the Officers of the 	No

S.No	State	Notified Under	Notified Officer/Department	Tobacco Control Cell
			Directorate of Food and Drugs Administration not below the rank of Food Inspector	
11.	Tamil Nadu	State Act	<ol style="list-style-type: none"> 1. Dean of Medical College 2. Joint Director of Health Services 3. Deputy Director of Health Services 4. Health Officers 5. Municipal Health Officers 6. Medical Superintendents of hospital 7. Residential Medical officer 8. Principal of College 9. Chief Educational Officer 10. District Educational Officer 11. Assistant Educational Officer 12. Head Master/Principal of School 13. Block Development officer 14. Medical Officer of Primary Health Centre 15. Sanitary Officer 16. Block Health Supervisor 17. Community Health Nurse 18. Sector Health Nurse 19. Health Inspector Grade, I, I-B and II 20. Village Health Nurse 21. Tahsildar 22. Revenue Inspector 23. Village Administrative Officer and 24. Police Officer not below the rank of a Sub-Inspector of Police 	Yes
12.	Maharashtra	COTPA	<ol style="list-style-type: none"> 1. Additional Chief Secretary, Public Health Department 2. Secretary, Principal Secretary, Home Department 3. Secretary, Principal Secretary, Medical Education and Drugs Department 	Yes

S.No	State	Notified Under	Notified Officer/Department	Tobacco Control Cell
			4. Secretary, Principal Secretary, Excise and Industry Department 5. Secretary, Principal Secretary, Urban Development Department 6. Secretary, Principal Secretary, Rural Development Department 7. Secretary, Principal Secretary, Higher and Technical Education Department 8. Secretary, Principal Secretary, School Education 9. Director General of Health Services 10. Commissioner FDA 11. Director Information and Public Relations	
13.	Karnataka	COTPA and State Act	1. The Chief Health Officers of the City Municipal Corporations in the State 2. The District Health Officer, Bangalore District 3. The Taluk Health Officers 4. The Health Officers, City Municipal Councils/ Town Municipal Councils	Yes
14.	Daman	COTPA	1. Police Sub Inspector 2. Food Inspector	No
15.	Punjab	COTPA	1. Civil Surgeons of Each District and Medical Superintendent of Medical colleges and Hospitals of Patiala, Amritsar, Faridkot 2. All the Senior Medical Officers of the Civil Hospitals and Primary Health Centers in the State of Punjab. 3. All the Medical officers in charge of all Dispensaries in the State of Punjab 4. All food inspectors of the	Yes

S.No	State	Notified Under	Notified Officer/Department	Tobacco Control Cell
			<p>Department of Health and Family Welfare in the State.</p> <p>By further Notification dated 19 July 2006:</p> <ol style="list-style-type: none"> 1. All Executive Magistrates in the State of Punjab 2. All Heads of Departments in the State of Punjab 3. All the Principals, Head Masters, Head Mistresses and Other Heads of Educational Institutions in the state of Punjab 4. All the Assistant Labour Commissioner in the State of Punjab 5. All the Commissioners/ Executive Officers of Municipal Corporations and Executive Officers of Municipal Councils of the Local Government in the State of Punjab. 	
16.	Gujarat	COTPA	<ol style="list-style-type: none"> 1. All Police Sub Inspectors 2. All the Mamlatdars 3. All the Taluka development Officer 4. All the Depot managers of the GSRTC 5. All the Local Health Authority of the Municipal Corporation 6. All the Chief Officers of the Municipalities/ Nagar Palikas 	Yes

Annexure III
Sample Challan to record offences under COTPA

Book No.

Serial N. A. _____

CHANDIGARH ADMINISTRATION
CHANDIGARH
CHALLAN

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

1. Name and address of the Accused person

2. Scene of offence with date, Time and Place

3. Particulars of offence under prohibition of advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution Act 2003 (No. 34) of 2003.

4. Whereas you are hereby being prosecuted for the offence described above, you are required to attend the court of Sh. _____
S.D.M. Central, Sector 17, Chandigarh at 10.00 A.M. on _____
to answer the said charge unless otherwise ordered by the Court.

Signature/ Left Thumb
Impression of Accused

Signature of Witness

Sub- Inspector Chandigarh Police Govt.
Food Inspector/ drug Inspector,
Chandigarh Administration, Chandigarh.

Annexure IV
Sample Challan to record offences and fines under COTPA

Government of National Capital Territory of Delhi
Directorate of Health Services

Nideshalaya Swasthya Sewa Bhawan, F-17, Karkadooma, Delhi - 110032

Receipt No.

Received Rs. (in words)

.....

From Sh. S/o

R/o on account of the compounding fees

for offence committed by him at (Name of the Place) under the

provisions of the Delhi Prohibition of Smoking and Non-Smoker's Health Protection Act, 1996

Signature of the Authorised Officer

Annexure V

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

(Act 32 of 2003)

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

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

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

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

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

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

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

1. (i) 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.
(ii) It extends to the whole of India.
(iii) 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.
2. It is hereby declared that it is expedient in the public interest that the Union should take under its control the tobacco industry.
3. In this Act, unless the context otherwise requires,—
 - (a) “advertisement” includes any visible representation by way of notice, circular, label, wrapper or other document and also includes any announcement made orally or by any means of producing or transmitting light, sound, smoke or gas;

- (b) “cigarette” includes,—
 - (i) any roll of tobacco wrapped in paper or in any other substance not containing tobacco,
 - (ii) any roll of tobacco wrapped in any substance containing tobacco, which, by reason of its appearance, the type of tobacco used in the filter, or its packaging and labelling is likely to be offered to, or purchased by, consumers as cigarette, but does not include beedi, cheroot and cigar;
- (c) “distribution” includes distribution by way of samples, whether free or otherwise;
- (d) “export”, with its grammatical variations and cognate expressions, means taking out of India to a place outside India;
- (e) “foreign language” means a language which is neither an Indian language nor the English language;
- (f) “import”, with its grammatical variations and cognate expressions, means bringing into India from a place outside India;
- (g) “Indian language” means a language specified in the Eighth Schedule to the Constitution, and includes any dialect of such language;
- (h) “label” means any written, marked, stamped, printed or graphic matter, affixed to, or appearing upon, any package;
- (i) “package” includes a wrapper, box, carton, tin or other container;
- (j) “prescribed” means prescribed by rules made under this Act;
- (k) “production”, with its grammatical variations and cognate expressions, includes the making of cigarettes, cigars, cheroots, beedis, cigarette tobacco, pipe tobacco, hookah tobacco, chewing tobacco, pan masala or any chewing material having tobacco as one of its ingredients (by whatever name called) or snuff and shall include—
 - (i) packing, labelling or re-labelling, of containers;
 - (ii) re-packing from bulk packages to retail packages; and
 - (iii) the adoption of any other method to render the tobacco product marketable;
- (l) “public place” means any place to which the public have access, whether as of right or not, and includes auditorium, hospital buildings, railway waiting room, amusement centres, restaurants, public offices, court buildings, educational institutions, libraries, public conveyances and the like which are visited by general public but does not include any open space;
- (m) “sale”, with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another, whether for cash or on credit, or by way of exchange, and whether wholesale or retail, and includes an agreement for sale, and offer for sale and exposure for sale;
- (n) “smoking”, means smoking of tobacco in any form whether in the form of cigarette, cigar, beedis or otherwise with the aid of a pipe, wrapper or any other instruments;

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

(p) “tobacco products” means the products specified in the Schedule.

4. No person shall smoke in any public place:

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

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

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

- (a) display, cause to display, or permit or authorise to display any advertisement of cigarettes or any other tobacco product; or
- (b) sell or cause to sell, or permit or authorise to sell a film or video tape containing advertisement of cigarettes or any other tobacco product; or
- (c) distribute, cause to distribute, or permit or authorise to distribute to the public any leaflet, hand-bill or document which is or which contains an advertisement of cigarettes or any other tobacco product; or
- (d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product:

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

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

(iii) 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.

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.

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

Provided that the nicotine and tar contents shall not exceed the maximum permissible quantity thereof as may be prescribed by rules made under this Act.
8. (i) 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.
 - (ii) 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.
 - (iii) Every package containing cigarettes or any other tobacco products shall be so packed as to ensure that the specified warning appearing thereon, or on its label, is, before the package is opened, visible to the consumer.
9. (i) 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; contents.
 - (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.
- (ii) No package of cigarettes or any other tobacco products or its label shall contain any matter or statement which is inconsistent with, or detracts from, the specified warning.
10. No specified warning or indication of nicotine and tar contents in cigarettes and any other tobacco products shall be deemed to be in accordance with the provisions of this Act if the height of each letter or figure, or both used on such warning and indication is less than the height as may be prescribed by rules made under this Act.
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.
12. (i) Any police officer, not below the rank of a sub-inspector or any officer of State Food or Drug Administration or any other officer, holding the equivalent rank being not below the rank of Sub-Inspector of Police, authorised by the Central Government or by the State Government may, if he has any reason to suspect that any provision of this Act has been, or is being, contravened, enter and search in the manner prescribed, at any reasonable time, any factory, building, business premises or any other place,—
- (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.
- (ii) The provisions of the Code of Criminal Procedure, 1973, shall apply to every search and seizure made under this Act.
13. (i) If any police officer, not below the rank of a sub-inspector or any officer of State Food or Drug Administration or any other officer, holding the equivalent rank being not below the rank of Sub-Inspector of Police, authorised by the Central Government or by the State Government, has any reason to believe that,—
- (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.
- (ii) No package of cigarettes or any other tobacco products or advertisement material seized under clause (a) of sub-section (1) shall be retained by the officer who seized the package or advertisement material for a period exceeding ninety days from the date of the seizure unless the approval of the

District Judge, within the local limits of whose jurisdiction such seizure was made, has been obtained for such retention.

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

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

15. (i) Whenever any confiscation of any package of cigarettes or any other tobacco products is authorised by this Act, the court adjudging it may, subject to such conditions as may be specified in the order adjudging the confiscation, give to the owner thereof an option to pay, in lieu of confiscation, costs which shall be equal to the value of the goods confiscated.
- (ii) 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.
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.
17. Any confiscation of cigarettes or any other tobacco products may be adjudged or costs may be ordered to be paid,—
 - (a) without any limit, by the principal civil court of original jurisdiction within the local limits of whose jurisdiction such confiscation has been made, costs have been ordered to be paid,
 - (b) subject to such limits as may be specified by the Central Government in this behalf, by such other court, not below a civil court having pecuniary jurisdiction exceeding rupees five thousand, as the Central Government may, by notification in the Official Gazette, authorise in this behalf.
18. (i) No order adjudging confiscation or directing payment of costs shall be made unless the owner or person in possession of the package of cigarettes or any other tobacco products has been given a notice in writing informing him of the grounds on which it is proposed to confiscate such package, and giving him a reasonable opportunity of making a representation in writing, within such reasonable time as may be specified in the notice, against the confiscation mentioned therein, and, if he so desires, of being heard personally or through a representative in the matter:

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

- (ii) 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 subsection (1).
19. (i) 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.
- (ii) 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.
- (iii) No further appeal shall lie against the order of the court of appeal.
20. (i) 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.
- (ii) Any person who sells or distributes cigarettes or tobacco products which do not contain either on the package or on their label, the specified warning and the nicotine and tar contents shall in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to three thousand rupees.
21. (i) Whoever contravenes the provisions of section 4 shall be punishable with fine which may extend to two hundred rupees.
- (ii) 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.
22. Whoever contravenes the provision of section 5 shall, on conviction, be punishable—
- (a) in the case of first conviction, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both, and
- (b) in the case of second or subsequent conviction with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees.
23. Where any person has been convicted under this Act for the contravention of the provision of section 5, the advertisement and the advertisement material for cigarettes and other tobacco products may be forfeited to the Government and such advertisement and advertisement material shall be disposed of in such manner as may be prescribed by rules made under this Act.
24. (i) 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.

- (ii) 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.
25. (i) Notwithstanding anything contained in any other law for the time being in force, the Central Government or the State Government may, by notification in the Official Gazette, authorise one or more persons who shall be competent to act under this Act: Provided that the person so authorised may, if he has reasonable ground for believing that any person has committed an offence under section 4 or section 6, may detain such person unless the accused person furnishes his name and address, and otherwise satisfies the officer detaining him that he will duly answer any summons or other proceedings which may be taken against him.
- (ii) Any person detained under sub-section (1) shall forthwith be taken before Magistrate to be dealt with according to law.
 - (iii) 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 any other place in which he is liable to be tried under any law for the time being in force.
 - (iv) 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.
 - (v) Every person authorised under sub-section (1) shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.
26. (i) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

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

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

Explanation.—For the purposes of this section,—

- (a) “company” means a body corporate and includes a firm or other association of individuals; and
- (b) “director”, in relation to a firm, means a partner in the firm.

27. Notwithstanding anything contained in the Code of Criminal Procedure, 1973, an offence punishable under this Act shall be bailable
28. (i) Any offence committed under section 4 or section 6 may either before or after the institution of the prosecution be compounded by such officer authorised by Central Government or State Government and for an amount which may not exceed two hundred rupees.
- (ii) 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.
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.
30. The Central Government, after giving by notification in the Official Gazette, not less than three months' notice of its intention so to do, may, by like notification, add any other tobacco product in respect of which it is of opinion that advertisements are to be prohibited and its production, supply and distribution is required to be regulated under this Act, and thereupon the Schedule shall in its application to such products be deemed to be amended accordingly.
31. (i) The Central Government may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.
- (ii) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
- (a) specify the form and manner in which warning shall be given in respect of cigarettes or other tobacco products under clause (o) of section 3;
- (b) specify the maximum permissible nicotine and tar contents in cigarettes or other tobacco products under the proviso to sub-section (5) of section 7;
- (c) specify the manner in which the specified warning shall be inscribed on each package of cigarettes or other tobacco products or its label under sub-section (2) of section 8;
- (d) specify the height of the letter or figure or both to be used in specified warning or to indicate the nicotine and tar contents in cigarettes or other tobacco products under section 10;
- (e) provide for the manner in which entry into and search of any premises is to be conducted and the manner in which the seizure of any package of cigarettes or other tobacco products shall be made and the manner in which seizure list shall be prepared and delivered to the person from whose custody any package of cigarettes or other tobacco products has been seized;
- (f) provide for any other matter which is required to be, or may be, prescribed.
- (iii) Every rule made under this Act and every notification made under section 30 shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

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

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

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

33. (i) The Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975, is hereby repealed.
- (ii) Notwithstanding such repeal, anything done or any action taken under the provisions of the aforesaid Act, shall, in so far as such thing or action is not inconsistent with the provisions of this Act, be deemed to have been done or taken under the provisions of this Act as if the said provisions were in force when such thing was done or such action was taken and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

THE SCHEDULE

[See section 3 (p)]

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

The Central Government, from time to time, have made rules for the implementation of this Act. For the text of the rules, please visit www.rctfi.org/legislations_tobacco_control.htm.

Contact Co-ordinates:

HRIDAY : C-1/52, 3rd Floor, Safdarjung Development Area, New Delhi - 110 016

Tel.: 91-11-26850342, 41031191 Fax: 91-11-2685 0331

email: info@hriday-shan.org; contact@hriday-shan.org

Website: www.hriday-shan.org