

Guidelines for Law Enforcers for effective implementation of Tobacco Control Laws 2013



**MINISTRY OF HEALTH & FAMILY WELFARE
GOVERNMENT OF INDIA**

**Jointly supported by
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**Cigarettes and Other Tobacco Products
(Prohibition of Advertisement and Regulation of
Trade and Commerce, Production,
Supply and Distribution) Act, 2003 (COTPA)
No. 34 of 2003 [18th May, 2003]**

MINISTRY OF LAW AND JUSTICE
(Legislative Department)

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

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

**THE CIGARETTES AND OTHER TOBACCO PRODUCTS
(PROHIBITION OF ADVERTISEMENT AND REGULATION
OF TRADE AND COMMERCE, PRODUCTION, SUPPLY
AND DISTRIBUTION ACT, 2003
No. 34 of 2003
[18th May, 2003.]**

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

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

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

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

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

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

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

- Section 1** (1) This Act may be called the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

Short title,
extent and
commencement.

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

Declaration
as to
expediency
of control
by the
Union

Section 3 In this Act, unless the context otherwise requires,-

- (a) "advertisement" includes any visible representation by way of notice, circular, label, wrapper or other document and also includes any announcement made orally or by any means of producing or transmitting light, sound, smoke or gas;
- (b) "cigarette" includes,-
- (i) Any roll of tobacco wrapped in paper or in any other substance not containing tobacco,
 - (ii) Any roll of tobacco wrapped in any substance containing tobacco, which, by reason of its appearance, the type of tobacco used in the filter, or its packaging and labeling is likely to be offered to, or purchased by, consumers as cigarette, but does not include beedi, cheroot and cigar;
- (c) "distribution" includes distribution by way of samples, whether free or otherwise;
- (d) "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;
- (e) "foreign language" means a language which is neither an Indian language nor the English language;
- (f) "import", with its grammatical variations and cognate expressions, means bringing into India from a place outside India;
- (g) "Indian language" means a language specified in the Eighth Schedule to the Constitution, and includes any dialect of such language;
- (h) "label" means any written, marked, stamped, printed or graphic matter, affixed to, or appearing upon, any package;
- (i) "package" includes a wrapper, box, carton, tin or other container;
- (j) "prescribed" means prescribed by rules made under this Act;
- (k) "production", with its grammatical variations and cognate expressions, includes the making of cigarettes, cigars, cheroots, beedis, cigarette tobacco, pipe tobacco, hookah tobacco, chewing tobacco, pan masala or any chewing material having tobacco as one of its ingredients (by whatever name called) or snuff and shall include-
- (i) Packing, labeling or re-labelling, of containers;
 - (ii) Re-packing from bulk packages to retail packages; and
 - (iii) The adoption of any other method to render the tobacco product marketable;
- (l) "public place" means any place to which the public have access, whether as of right or not, and includes auditorium, hospital buildings, railway waiting room, amusement 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;

Definitions

- (m) "sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another, whether for cash or on credit, or by way of exchange, and whether wholesale or retail, and includes an agreement for sale, and offer for sale and exposure for sale;
- (n) "smoking", means smoking of tobacco in any form whether in the form of cigarette, cigar, beedis or otherwise with the aid of a pipe, wrapper or any other instruments;
- (o) "specified warning" means such warnings against the use of cigarettes or other tobacco products to be printed, painted or inscribed on packages of cigarettes or other tobacco products in such form and manner as may be prescribed by rules made under this Act;
- (p) "tobacco products" means the products specified in the Schedule.

Section 4 No person shall smoke in any public place:

Prohibition of smoking in a 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.

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

Prohibition of advertisement of cigarettes and other tobacco products

- (2) No person, for any direct or indirect pecuniary benefit, shall-
 - (a) Display, cause to display, or permit or authorize to display any advertisement of cigarettes or any other tobacco product; or
 - (b) Sell or cause to sell, or permit or authorize to sell a film or video tape containing advertisement of cigarettes or any other tobacco product; or
 - (c) Distribute, cause to distribute, or permit or authorize to distribute to the public any leaflet, hand-bill or document which is or which contains an advertisement of cigarettes or any other tobacco product; or
 - (d) Erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product:

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

- (a) an advertisement of cigarettes or any other tobacco product in or on a package containing cigarettes or any other tobacco product;
 - (b) advertisement of cigarettes or any other tobacco product which is displayed at the entrance or inside a warehouse or a shop where cigarettes any other tobacco products are offered for distribution or sale.
- (3) No person, shall, under a contract or otherwise promote or agree to promote the use or consumption of-
- (a) cigarettes or any other tobacco product; or

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

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

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

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

Section 7 (1) No person shall, directly or indirectly, produce, supply or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him bears thereon, or on its label **such specified warning including a pictorial warning as may be prescribed¹**.

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

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

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

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

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

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

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

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

Manner in which specified warning shall be made

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

package in a colour which contrasts conspicuously with the background of the package or its labels.

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

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

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

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

Language in which the specified warning shall expressed.

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

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

Size of letters and figures.

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

Testing laboratory for nicotine and tar contents.

Section 12 (1) Any police officer, not below the rank of a sub-inspector or any officer of State Food or Drug Administration or any other officer, holding the equivalent rank being not below the rank of Sub- Inspector of Police, authorized by the Central Government or by the State Government may, if

Power of entry and search

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.

2 of 1974 (2) The provisions of the Code of Criminal Procedure, 1973, shall apply to every search and seizure made under this Act.

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

Power to seize

- a) in respect of any package of cigarettes or any other tobacco products, or
- b) in respect of any advertisement of cigarettes or any other tobacco products,

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

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

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

Confiscation of package

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

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

Power to give option to pay costs in lieu of confiscation

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

Confiscation
not to
interfere with
other
punishments

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

Adjudication

Section 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, authorize in this behalf.

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

Giving
opportunity
to the owner
of seized
packages.

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

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

5 of 1908

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

Appeal

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

Provided that an order enhancing any fine in lieu of confiscation or confiscating of goods of greater value shall not be made under this section unless the appellant has had an opportunity of making a

representation and, if he so desires, of being heard in person or through a representative in his defence.

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

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

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

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

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

Punishment for smoking in certain places

2 of 1974 (2) An offence under this section shall be compoundable and shall be tried summarily in accordance with the procedure provided for summary trials in the Code of Criminal Procedure, 1973.

Section 22. Whoever contravenes the provisions of section 5 shall, on conviction, be punishable-

Punishment for advertisement of cigarettes and tobacco products

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

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

Forfeiture of advertisement and advertisement material

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

2 of 1974

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

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

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

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

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

(3) Any person committing an offence under section 4 or section 6 shall be triable for such offence in any place in which he may be or which the State Government may notify in this behalf, as well as in any other place in which he is liable to be tried under any law for the time being in force.

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

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

45 of 1860

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

Offences by
companies

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

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

Explanation- For the purposes of this section, -

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

(b) “director”, in relation to affirm, means a partner in the firm.

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

2 of 1974

Offences to be bailable.

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

Composition of offences

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

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

Protection of action taken in good faith

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

Power to add any tobacco products in the Schedule

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

Power of Central Government to make rules

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

- (a) specify the form and manner in which warning shall be given in respect of cigarettes or other tobacco products under clause (b) of section 3;
- (b) specify the maximum permissible nicotine and tar contents in cigarettes or other tobacco products under the proviso to sub-section (5) of section 7;
- (c) specify the manner in which the specified warning shall be inscribed on each package of cigarettes or other tobacco products or its label under sub-section (2) of section 8;
- (d) specify the height of the letter or figure or both to be used in specified warning or to indicate the nicotine and tar contents in cigarettes or other tobacco products under section 10;
- (e) provide for the manner in which entry into and search of any premises is to be conducted and the manner in which the seizure of any package of cigarettes or other tobacco products shall be made and the manner in which seizure list shall be prepared and delivered to the person from whose custody any package of cigarettes or other tobacco products has been seized;
- (f) provide for any other matter which is required to be, or may be, prescribed.

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

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

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

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

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

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

49 of 1975

Repeal and savings

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

THE SCHEDULE

[See section 2(p)]

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

- (i) Sections 1,2,3,4,5,6(a),12(1)(b),12(2),13(1)(b),13(2),14,16,19,21,22,23,24,25,26,27,28,29,30, and 31, came into force on 01.05.2004, vide S.O. 238(E).
- (ii) Sections 7(1),(2),(3),(4),8, 9,10 and 20, came into force on 01.12.2007, vide S.O. 1955(E), dated 16.11.2007.
- (iii) Sections 12(1)(a),13(1)(a),15,17,18,32 and 33, came into force on 30.07.2009, vide S.O. 1865(E).
- (iv) Section 6(b) came into force on 16.09.2009 vide G.S.R. No. 680(E)

TABLE

Section/Offence	Punishment	Compoundable /Bailable	Procedure
<p>Section 4 Prohibition on smoking in any public place.</p> <p>“public place” means any place to which the public have access, whether as of right or not, and includes auditorium, hospital buildings, railway waiting room, amusement centers, restaurants, public offices, court buildings, educational institutions, libraries, public conveyances, open auditorium, stadium, railway station, bus stop/stand, all workplaces, refreshment rooms, banquet halls, discotheques, canteen, coffee house, pubs, clubs, bars, shopping malls, cinema halls, airport lounge and the like which are visited by general public but does not include any open space.”</p>	<p>Section 21 Fine up to 200 rupees</p>	Compoundable and Bailable	Summary Trials(Code of Criminal Procedure, 1973)
<p>Section 5 Prohibition on direct and indirect advertisements, promotion and sponsorship of use or consumption of cigarettes or any other tobacco products.</p>	<p>Section 22 (1) For first conviction, imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both, and</p> <p>(2) For second or subsequent conviction with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees</p>	Non Compoundable & Bailable	
<p>Section 6 Prohibition on sale of, cigarette or any other tobacco product- (a) to any person who is under eighteen years of age, and (b) in an area within a radius of one hundred yards of any educational institution. “Educational Institution” means</p>	<p>Section 24 Fine up to 200 rupees</p>	Compoundable and Bailable	Summary Trials(Code of Criminal Procedure, 1973)

Section/Offence	Punishment	Compoundable /Bailable	Procedure
any place or center where educational instructions are imparted according to the specific norms and include any school/colleges and institution of higher learning established or recognized by an appropriate authority”			
<p>Section 7 (1) No person shall, directly or indirectly, produce, supply or distribute or carry on trade or commerce or import cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him bears thereon, or on its label such specified warning including a pictorial warning as may be prescribed.</p>	<p>Section 20 (1) Producer or Manufacturer in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees. (2) Seller or Distributer in the case of first conviction be punishable with imprisonment for a term, which may extend to one year, or with fine which may extend to one thousand rupees, or with both, and, for the second or subsequent conviction, with imprisonment for a term which may extend to two years and with fine which may extend to three thousand rupees.</p>	Non compoundable & Bailable	

Rules relating to prohibition on smoking in public places (Section 4)

MINISTRY OF HEALTH AND FAMILY WELFARE

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

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

(2) They shall come into force on the 2nd October, 2008.

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

- (a) "hotel" shall mean a building or a part of a building where lodging, with or without board or other services, is provided by way of business for consideration monetary or otherwise and includes boarding house and guest house.
- (b) "restaurant" shall mean any place to which the public has access and where any kind of food or drink is supplied for consumption on the premises by any person by way of business for consideration monetary or otherwise and shall include the open space surrounding such premises and includes-
 - (i) Refreshment room, banquet halls, discotheques, canteen, coffee house, pubs, bar, airport lounge, and the like.
- (c) "Open space" mentioned in Section 3 (1) of the Act shall not include any place visited by the public such as open auditorium, stadium, railway station, bus stop/stand, and other such places.
- (d) "Public place" defined in Section 3 (1) of the Act shall also include work places, shopping malls, and cinema halls.
- (e) "Smoking area or space" mentioned in the proviso to Section 4 of the Act shall mean a separately ventilated smoking room that:
 - (i) is physically separated and surrounded by full height walls on all four sides;
 - (ii) has an entrance with an automatically closing door normally kept in close position;
 - (iii) has an air flow system, as specified in **schedule I**,
 - (iv) has negative air pressure in comparison with the remainder of the building.
- (f) Words and expressions used herein and not defined in these rules but defined in the Act shall have the meanings, respectively, assigned to them in the Act.

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

- (a) No person smokes in the public place (under his jurisdiction/ implied)
- (b) the board as specified in schedule II is displayed prominently at *the* entrance of the public place, in case there are more than one entrance at each such entrance and conspicuous place(s) inside. In case if there are more than one floor, at each floor including the staircase and entrance to the lift/s at each floor.

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

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

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

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

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

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

(3) A smoking area or space shall be used only for the purpose of smoking and no other service(s) shall be allowed.

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

- a) all the rooms so designated shall form a separate section in the same floor or wing, as the case may be. In case of more than one floors/ wings the room shall be in one floor/wing as the case may be.
- b) all such rooms shall be distinctively marked as "Smoking rooms" in English or one Indian language, as applicable.
- c) the smoke from such room shall be ventilated outside and does not infiltrate/permeate into the non-smoking areas of the hotel including lobbies and the corridors.

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

Schedule I

[See rule 2 (e) (iii)]

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

Schedule II

[See rule 3(b)]

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

Schedule III

(See rule 5)


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

Sl. No.	Person Authorised to take action	Description of Public Place
1	Inspectors of Central Excise / Income tax/ Customs/ Sales Tax/Health/Transport and above	All Public Places within their jurisdiction
2	Station Master/Asstt. Station Master/ Station Head/Station in charge	Railways and all its Premises
3	All Gazetted Officers of State/ Central Government or equivalent rank and above in Autonomous Organizations /PSU	Government offices/premises and offices of the autonomous bodies and corporations
4	Director/ Medical Superintendent/ Hospital Administrator	Government and Private Hospital
5	Post Master & Above	Respective Post Office in their jurisdiction.
6	Head of the Institution/HR Manager/Head of Administration	Private Offices / Workplaces
7	College / School/Headmaster Principal/Teacher	Respective Educational Institutions
8	Librarian/Asstt. Librarian/Library in-charge/ other administrative staff in library	Libraries/ Reading Rooms.
9	Airport Manager/Officers of Airport Authority of India and Officers of all schedule Airlines	Airports

10	Director Public Health/ Director Health Services	All Public Places
11	In charge Administration in Central/ State Government.	All Public Places
12	Nodal Officers/Focal Points of Anti-Tobacco Cell at District and State level	All Public Places
13 ¹	Police Officers not below the rank of Sub-Inspector of Police	All Public Places within their jurisdiction.
14	Officers of State Food & Drug Administration not below the rank of Sub-Inspector of Police.	All Public Places within their jurisdiction.
15	Representatives of Panchyati Raj Institutions (Sarpanch / Panchayat Secretary)	All Public Places within their jurisdiction.
16	Dist Program Manager/ Finance Manager – Dist Health Society (National Rural Health Mission)	All Public Places within their jurisdiction.
17	Civil Surgeon /Chief Medical Officer(CMO) at District Hospital/ Medical Officer at Primary Health Centre (PHC)	Hospital Buildings /Health Institutions/ dispensaries
18	Registrar/ Deputy Registrar/ Public Prosecutors/ Government Counsels.	Court Buildings
19	Inspector of Schools/ District Education officer	Educational Institutions
20	Traffic Superintendents /Asst Traffic Superintendents / Bus Station Officer / Ticket Collector or Conductor.	Public Conveyances
21	Travelling ticket Examiner/ Chief Ticket Inspectors/ Ticket Collectors/ Officers not below the rank of ticket collector or equivalent rank not below the rank of Asst Sub-Inspector of Railway Protection Force	Railways

¹ Serial Number 13 to 21 inserted vide notification GSR 680(E) dated 15th September 2009.

Figure – 1-Signage

Design of the signage	Specification of the board
 <p data-bbox="167 600 726 694">No Smoking Area - Smoking Here is an Offence</p>	<ol style="list-style-type: none"> <li data-bbox="778 389 1305 448">1. The board shall be of a minimum size of 60 cm by 30 cm of white background <li data-bbox="778 454 1305 611">2. It shall contain a circle of no less than 15 cm outer diameter with a red perimeter of no less than 3 cm wide with a picture, in the centre, of a cigarette or beedi with black smoke and crossed by a red band. <li data-bbox="778 618 1305 707">3. The width of the red band across the cigarette shall equal the width of the red perimeter. <li data-bbox="778 714 1305 840">4. The board shall contain the warning “No Smoking Area – Smoking Here is an Offence”, in English or one Indian language, as applicable.

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

MINISTRY OF HEALTH AND FAMILY WELFARE

G.S.R. 619(E) Dated 11th August, 2011 -In exercise of the powers conferred by Section 25 and Section 31 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (No. 34 of 2003), the Central Government hereby makes the following rules to further amend the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004, namely :-

1. Short Title, Extent and commencement -

(1) These rules may be called the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Amendment Rules, 2011.

(2) They shall come into force on the date of their publication in the Official Gazette.

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

“5. Prohibition on sale of tobacco products to and by persons below the age of eighteen years –

(1) The owner or the manager or the in-charge of the affairs of a place where cigarettes or other tobacco products are sold shall ensure that,-

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

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

(b) no tobacco product is sold through a vending machine;

(c) no tobacco product is handled or sold by a person below the age of eighteen years;

(d) tobacco products are not displayed in a manner that enables easy access of tobacco products to persons below the age of eighteen years.

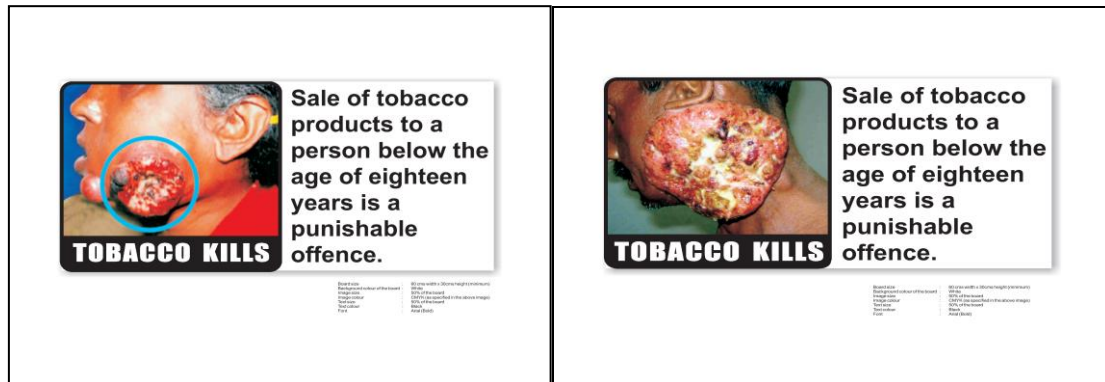
(2)The onus of proof, that the buyer of the tobacco product is not a person below the age of eighteen years lies with the seller of the tobacco products and the seller in case of doubts may request the buyer to provide appropriate evidence or age proof of having reached eighteen years of age.

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

ANNEXURE I

(See Rule 5(1)[a])

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



ANNEXURE II (See Rule 6)

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

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

MINISTRY OF HEALTH AND FAMILY WELFARE

G.S.R. 40(E) Dated 19th January, 2010.-In exercise of the powers conferred by Section 31 of the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (No. 34 of 2003), and in supersession of the prohibition on sale of the Cigarettes and Other Tobacco Products around Educational Institutions Rules 2004, except as respects things, done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely:-

1. Short Title, Extent and commencement.-

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

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

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

3. Display of Board by Educational Institutions.-

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

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

Boards used by Govt of Delhi



3'x2'



ENFORCEMENT PROCEDURE FOR SECTION 4 & 6

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

OR

Penalty before a Court: Issue challans with the direction that the offender pays the fine at the designated court or treasury on any given/fixed day(s) as may be decided by the State Government (when he fails to pay fine but furnishes his name and address).

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

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

d) Any person detained shall forthwith be taken before the concerned Magistrate to be dealt with in accordance with law.

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

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

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

h) **Summary Trial of offence:** All offences committed under section 4 & 6 of the Act shall be tried summarily in accordance with the procedure provided for summary trials in the Code of Criminal Procedure, 1973.

A complaint can be reported on the toll-free help line / online reporting system on the National Toll Free Helpline number
1800 110 456
or the concerned authorized officer as mentioned in the rules.

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

ORIGINAL	No. AA		
<p>GOVERNMENT OF TAMILNADU PUBLIC HEALTH DEPARTMENT COTPA ACT 2003</p>			
<p>Enforced by.....Dept.</p>			
<p>CASH RECEIPT FOR SPOT FINE</p>			
<p>Date.....</p>			
<p>Name.....</p>			
<p>Address.....</p>			
<p>.....</p>			
<p>Section under offenders are punished</p>			
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"> <ul style="list-style-type: none"> ▪ Violation Section 4 ▪ Violation Section 6 ▪ Others </td> <td style="width: 50%; padding: 5px;"> <p>Fine amount Rs.....</p> </td> </tr> </table>	<ul style="list-style-type: none"> ▪ Violation Section 4 ▪ Violation Section 6 ▪ Others 	<p>Fine amount Rs.....</p>	
<ul style="list-style-type: none"> ▪ Violation Section 4 ▪ Violation Section 6 ▪ Others 	<p>Fine amount Rs.....</p>		
<p>Name & Designation Of the authorized officer</p>	<p>Signature of Authorized Officer</p>		

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

Book No.

Serial No.....

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

1. Name and Address of the accused person

.....

2. Scene of the offence with date, time and place.

.....

3. Particulars of offence under Act/ Rules.

.....

4. Whereas you are hereby prosecuted for the offence described above, you are required to attend the court of name & address
place& time AM/PM on (date) to answer the said charges unless otherwise ordered by the court.

Signature/left thumb impression of the accused

Name and address of the issuing authority

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

MINISTRY OF HEALTH AND FAMILY WELFARE

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

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

2. **Definitions.**—In these rules, unless the context otherwise requires,—
 - (a) “Act” means the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution Act, 2003;
 - (b) “section” means a section of the Act;
 - (c) [open space]¹, and
 - (d) words and expression used herein and not defined in these rules but defined in the Act, shall have the meanings, respectively, assigned to them in the Act.
 - (e) ‘Indirect advertisement’ mentioned in section 5 (1) of the Act means²
 - (ii) the use of a name or brand of tobacco products for marketing, promoting or advertising other goods, services and events;
 - (iii) the marketing of tobacco products with the aid of a brand name or trademark which is known as, or in use as, a name or brand for other goods and service;
 - (iv) the use of particular colours and layout and/or presentation those are associated with particular tobacco products; and
 - (v) the use of tobacco products and smoking situations when advertising other goods and services.”

3. **[Prohibition of Smoking in Public Places]**³

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

¹ The definition of “open space” re notified vide G.S.R. No. 417(E), dated 30.05.2008

² Inserted by G.S.R. No. 345(E) dated 31.05.2005

³ Prohibition of smoking in public place rules, superseded vide G.S.R. No. 417(E), dated 30.05.2008

⁴ Amended by G.S.R. No. 345(E) dated 31.05.2005

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

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

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

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

5&6. [Prohibition on sale of tobacco products to and by person below the age of 18 years]¹ refer to Rules 6(a) at page 21-22.

7. Health Spot and Message in Old Films and Television Programmes, displaying Tobacco Products or their use².-

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

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

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

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

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

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

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

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

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

¹ inserted by G.S.R. No. 619(E), dated 11.08.2011

² inserted by G.S.R. No. 708(E), dated 21.09.2012

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

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

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

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

Explanation .- For the purpose of this rule,-

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

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

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

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

8. Health Spots, Message and Disclaimer in New Films and Television Programmes.- (1) All new Indian or foreign films and television programmes displaying tobacco products or their use shall have,-

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

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

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

(d) an audio-visual disclaimer on the ill-effects of tobacco use, of minimum twenty seconds duration each, in the beginning and middle of the film and television programme;

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

Provided further that no film displaying tobacco products or their use shall be certified for public exhibition by the Central Board of Film Certification unless the conditions specified in clauses (a) to (d) of sub-rule (1) are fulfilled.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

¹ inserted by G.S.R. No. 786(E), dated 27.10.2011

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

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

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

MINISTRY OF HEALTH AND FAMILY WELFARE

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

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

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

- (a) "Act" means the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003;
- (b) "package" [means any type of pack in which cigarette and other tobacco product is packaged for consumer sale but shall not include wholesale, semi wholesale or poora packages if such packages are not intended for consumer use]¹
- (c) "principal display area" means:-
 - (i) for box type packages, two equal sized largest surface area of the box that may be displayed or visible under normal or customary conditions of sale or use;
 - (ii) for pouch type packages, the entire surface area of the pack that may be displayed or visible under normal conditions of sale or use;
 - (iii) for conical or cylindrical type of packages, the entire curving area of the pack that may be displayed or visible under normal or customary conditions of sale or use;
 - (iv) for any other form or type of package, the entire surface area of the pack that may be displayed or visible under normal or customary conditions of sale or use;
- (d) "specified health warning" means, such health warnings as specified by the Central Government from time to time, in the Schedule to these rules.

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

- (a) every package of cigarette or any other tobacco product shall have the specified health warning exactly as specified in the Schedule to these rules;
- (b) the specified health warnings shall occupy at least forty percent (40%) of the principal display area [of the front panel]¹ of the pack and shall be positioned parallel to the top edge of the package and in the same direction as the information on the principal display area:

¹ Inserted vide notification S.O.305 (E) dated 3rd May 2009.

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

Provided further that for box and pouch type of packs, the specified health warning shall appear on both sides of the pack, on the largest panels;

- (c) none of the elements of the specified warning are severed, covered or hidden in any manner when the package is sealed or opened;
- (d) no messages that directly or indirectly promote a specific tobacco brand or tobacco usage in general are inscribed on the tobacco product package;
- (e) no product shall be sold unless the package contains the specified health warning:
Provided that the specified health warning shall be printed **[pasted or affixed]**² on every retail pack in which the tobacco product is normally intended for consumer use or retail sale, as well as any other external packaging, such as cartons or boxes;
- (f) the specified warnings shall be inscribed in the language used on the pack;

Provided that **[where more than one language/s is used on the pack the specified warning shall appear in two languages, one in which the brand name appears and the other in any other language used on the pack]**³

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

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

5. Rotation of specified health warnings⁴ - The specified health warning on tobacco packs shall be rotated every two years from the date of notification of the rules or earlier, as the case may be, as specified by the Central Government.

¹ Inserted vide notification S.O.305 (E) dated 3rd May 2009.

² Inserted vide notification S.O. 693(E) dated 29th September 2008

³ Inserted vide notification S.O. 693(E) dated 29th September 2008

⁴ Inserted vide notification GSR 985(E) dated 20th December, 2010

SCHEDULE

(See rule 3)

1. Components of specified health warning.- The components for the specified health warning shall include :-

(1) Health Warning¹: - The warning “Smoking Kills” in white font colour (on smoking forms of tobacco products) AND the warning “Tobacco Kills” in white font colour (on smokeless or chewing and other forms of tobacco products) and the words “warning “in red font colour shall appear on a black background, exactly as in the soft copy provided in the Compact Disk (CD) accompanying these rules.

(2) Pictorial representation of ill effects of tobacco use. - Pictorial depiction of the ill effects of tobacco use on health, shall be placed above the health warning and should appear in the same colour exactly as in the soft copy provided in the CD accompanying these rules.”.

2. The specified health warnings are²-

(1) For smoking forms of tobacco packs:-



(a)



(b)



(c)

(2) For chewing or smokeless forms of tobacco packages:-

¹ Inserted vide notification GSR 724(E) dated 27th September, 2012

³ Inserted vide notification GSR 724(E) dated 27th September, 2012



(a)



(b)



Note:- These rules are accompanied by a CD that contains a soft copy of these health warnings, for inclusion in printing of tobacco product packages.

3. **Size of the specified health warning .** - (1) The size of the specified health warning on each panel of the tobacco pack shall ensure that the warning is legible and prominent.
 (2) ¹ (a) The size of all components of the specified health warning shall be so kept as to maintain a ratio of 75:1 between the vertical length and horizontal length of the specified health warning.
 (b) The specified health warning shall occupy at least forty percent of the principal display area of the front panel of the pack.
4. **Language²** - Each health warning has been specified in English and regional languages. Appropriate language combination should be selected from the combination provided in the CD to ensure that the language selected for health warning is in conformity with the language used on the pack by the manufacturer. Where more than one language is used on the pack, the health warning shall be given separately in each of the language. Provided that not more than two languages shall be used on the pack.”
5. **Printing.** - Subject to sub-paragraph (2) of paragraph 3 of this Schedule, while printing, it must be ensured that the colour, intensity and clarity of all the components of the specified health warning are not tampered with.

¹ Inserted vide notification GSR 724(E) dated 27th September, 2012

² Inserted vide notification GSR 570(E) dated 26th July, 2011

AUTHORISED OFFICERS TO ENFORCE SECTION 5 & 7

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

Table 1: Authorized officers

Designation	Department
All officer of the level of Superintendent & above of the Customs & Central Excise	All premises registered under Department of Revenue
All officer of the rank of Inspectors & above of Sales Tax / Health / Transport Departments	Department of Revenue / Health / Transport of State
Junior Labour Commissioner	Labour Department
Joint Director	O/o Commissioner of Industries / Small Scale Industries
Sub – Inspector and above of Police / State Food & Drug Administration or any other officer holding the equivalent rank of the Sub – Inspector of Police	Department of Food & Drugs & Department of Home Affairs.

ENFORCEMENT PROCEDURE FOR SECTION 5 & 7

- a) The authorized officer suo-motu or on a complaint received of violation of section 5 or 7, shall proceed after forming a raiding team, for carrying out the search and seizure **(Refer to Section 12&13)**.
- b) The raiding team shall include the Officer himself along with two independent witnesses and one police officer not below the rank of Sub – Inspector (optional).
- c) On the reason of suspect of contravention, the officer along with the raiding team or party shall enter and search the premises.
- d) Where the officer has reason to believe that the offence appears to have been committed, the officer shall seize the contravening products, (such as advertisement materials, tobacco products packages etc.,)
- e) The officer shall be required to give seizure memo / receipt to the owner / occupant / in-charge of the premises.
- f) A *Panchanama* shall be drawn in the presence of the two witnesses who shall narrate the place and the goods seized in their statements. **(Appendix 1)**
- g) The advertisement materials/package/goods seized shall be kept in sealed condition where the seal shall be affixed in the presence of the two witnesses and the owner / occupant/ in-charge of the premises.
- h) The advertisement materials/package/goods seized shall not be retained by the officer who seizes the package for a period exceeding ninety days from the date of the seizure, unless the approval of the District Judge or such other designated judge, within the local limits of whose jurisdiction such seizure was made, has been obtained for such retention **(Refer to Section 14)**.
- i) The officer shall then proceed for confiscation of the seized material before the District Judge, of principal civil court of original jurisdiction within the local limits of whose jurisdiction the material was seized.
- j) In case of confiscation of packages for violation of Section 7 of COTPA, 2003, the Court adjudging the confiscation may, subject to such conditions as may be specified in the order give the owner thereof an option to pay, in lieu of confiscation, costs which shall be equal to the value of the goods confiscated. On payment of the costs ordered by the court, the seized packages shall be returned to the person from whom they were seized on condition that such person shall, before making any distribution, sale or supply of such packages of cigarettes or other tobacco products, or get the specified warning incorporated on each such package **(Refer to Section 15)**.
- k) No order adjudging confiscation or direct payment of costs shall be made unless the owner or person in possession of the package of cigarettes or any other tobacco products has been given a notice in writing within a period of ninety days from the date of the seizure of the package of cigarettes or any other tobacco products, informing him of the grounds on which it is proposed to confiscate such package, and giving him a reasonable opportunity of making a representation in writing, within such reasonable time as may be specified in the notice, against the confiscation mentioned therein, and,

if he so desires, of being heard personally or through a representative in the manner **(Refer to Section 18)**.

[Note: Paragraphs - j) and k) are with reference to Section 7 of COTPA only]

- l) Since the order of confiscation or payment of cost by the court of civil jurisdiction does not prevent the infliction of any punishment to which the person affected thereby is liable under the provisions of COTPA or under any other law. The officer conducting the search and seizure will register a criminal complaint with the Police Station in whose jurisdiction the place / premises is situated. The officer shall be the complainant in the said complaint. Upon the criminal complaint being registered with the Police Station, the police officer shall then take appropriate action as per the provisions of the Criminal Procedure Code, 1973.
- m) The officer shall then file a complaint before the Metropolitan Magistrate, under Section 20 or 22 of COTPA.
- n) The officer shall bear in mind that the offence committed under Section 5 and 7 of COTPA read with the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2004 and the Packaging and Labeling Rules, 2008 **IS NOT COMPOUNDABLE**.
- o) Authorized officers need to record and proceed against every instance of violations as second or subsequent offence has enhanced punishments under COTPA.

A complaint can be reported on the toll-free help line / online reporting system on the National Toll Free Helpline number
1800 110 456
or the concerned authorized officer as mentioned in the rules.

Appendix 1: Prototype of Panchnama

Panchnama dated _____

Whereas:

We _____

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

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

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

1. Signature of Accused _____ Date _____ Time _____
Name _____
Address _____

1. Signature of Witness _____ Date _____ Time _____
Name _____
Address _____

2. Signature of Witness _____ Date _____ Time _____
Name _____
Address: _____

Attachment: List of the Inventory taken in possession

Signature of Authorized Officer _____
Name _____ Date _____ Time _____ Place _____

PROTOTYPE OF A SEIZURE MEMO

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

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

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

Name and Address of the witnesses

Signature of vendor/dealer

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

Name and Address of the witnesses

Signature of vendor/dealer

Signature of Authority under COTPA 2003

PROTOTYPE OF A COMPLAINT

IN THE COURT OF LD. CHIEF JUDICIAL MAGISTRATE

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

V/s

1 Sh..... M/SPan Shop,Shop No

2 M/S x..... Though it's Prop./partners/

Complaint under section 22 readwith section 5 of The Cigarettes and Other Tobacco products (Prohibition of Advertisement and Regulation of Trade and Commerce ,Production supply and Distribution Act 2003 (COTPA 2003)

Respectfully Sheweth:-

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

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

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

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

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

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

In charge State Level Flying Squad for Tobacco control

List of Witnesses:-

1. Incharge State Level Flying Squad for Tobacco
- 2.
- 3.

List of Documents attached:-

1. Challan form
2. Photograph
- 3 Seizure/spot memo

In charge State Level Flying Squad for Tobacco control