

AS INTRODUCED IN THE RAJYA SABHA
ON 5TH AUGUST, 2022

Bill No. LV of 2022

THE CIGARETTES AND OTHER TOBACCO PRODUCTS
(PROHIBITION OF ADVERTISEMENT AND REGULATION OF
TRADE AND COMMERCE, PRODUCTION, SUPPLY
AND DISTRIBUTION) (AMENDMENT)
BILL, 2022

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BILL

*further to amend the Cigarettes and Other Tobacco Products (Prohibition of
Advertisement and Regulation of Trade and Commerce, Production,
Supply and Distribution) Act, 2003.*

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

1. (1) This Act may be called the Cigarettes and Other Tobacco Products (Prohibition
of Advertisement and Regulation of Trade and Commerce, Production, Supply and
5 Distribution) Amendment Act, 2022. Short, title and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification
in the Official Gazette, appoint.

Substitution of Preamble.

2. In the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (hereinafter referred to as the principal Act), for the preamble, the following shall be substituted, namely:—

"WHEREAS India is a signatory to the World Health Organization Framework Convention on Tobacco Control adopted in Geneva, Switzerland on 21st day of May, 2003 which came into force on the 27th day of February, 2005;

AND WHEREAS the objective of this Convention and its protocols is to protect present and future generations from the devastating health, social, environmental and economic consequences of tobacco consumption and exposure to tobacco smoke by providing a framework for tobacco control measures to be implemented by the Parties at the national, regional and international levels to reduce continually and substantially the prevalence of tobacco use and exposure to tobacco smoke;

AND WHEREAS, it is considered expedient to enact a comprehensive law to implement the WHO Framework Convention on Tobacco Control and its Guidelines;

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 considered expedient to enact a comprehensive law on the use of tobacco products in the public interest and to protect the public health;

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:"

Substitution of reference to certain expression by certain other expression.

3. Throughout the principal Act, for the words "nicotine and tar contents", wherever they occur, the words, "constituents and emissions" shall be substituted.

Amendment of section 3.

4. In section 3 of the principal Act,—

(a) for clause (a), the following clause shall be substituted, namely:—

"(a) "advertisement" includes any visible representation by way of notice, circular, label, wrapper, pamphlet, brochure, programme, pricelist, or other document and in any form of commercial communication, recommendation, or action with the aim, effect, or likely effect of promoting cigarettes or any other tobacco products, or tobacco use, either directly or indirectly.";

(b) after clause (h), the following clause shall be inserted, namely:—

(ha) "medium" includes, audio, audio-visual, print including newspapers or magazines whether domestic or international, pamphlets, leaflets, flyers, and letters, billboards, hoardings, posters, signs, non-tobacco products, tobacco accessories, buildings or other structures, vehicles, television, radio, films, music, games, live performances, the internet including over-the-top media services, social media platforms, mobile telephones, and other new technologies";

(c) after clause (k), the following clause shall be inserted, namely:—

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

(d) after clause (o), the following clause shall be inserted, namely:—

"(oa) "sponsorship" means any form of contribution to any event, activity or person with the aim, effect, or likely effect of promoting a tobacco product or tobacco use either directly or indirectly;"

5 (e) after clause (p), the following clause shall be inserted, namely:—

"(pa) "trademark" means the whole or a part of a trademark that is registered under the Trade Marks Act, 1999 in respect of goods that are or include tobacco products, irrespective of whether the same or similar marks are also registered in respect of other goods or services."

47 of 1999

10 **5.** For section 4 of the principal Act, the following section shall be substituted, namely:—

"4. No person shall use tobacco products in any public place.

Explanation—For the purpose of this section, the word "use" means smoking and spitting of tobacco."

Substitution of section 4.

Prohibition of smoking in a public place.

15 **6.** For section 5 of the principal Act, the following section shall be substituted, namely:—

"(1) No person shall initiate, produce, disseminate, or broadcast any advertisement or promotion of cigarette or any other tobacco product through any medium and no person shall directly or indirectly promote the use or consumption of cigarettes or any other tobacco products.

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

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

(b) supply or offer to supply free samples of a tobacco product, including in connection with marketing surveys or taste testing; or

(c) import, distribute, sell, or offer for sale any confectionery or other food product or any toy or any other article that is designed to resemble a tobacco product or the packaging of which is designed to resemble the packaging commonly associated with a tobacco product; or

(d) offer to sell any tobacco product at a discounted price; or

(e) provide gifts or discounted products with the purchase of any tobacco product; or

(f) offer or engage in any incentive promotions, loyalty schemes, or whether requiring the purchase of tobacco products or not; or

(g) offer to sell or expose to sell any tobacco product on the internet, whether for cash or on credit, or by way of exchange or by any other means; or

(h) use a name, brand, mark, or trademark of a tobacco product on or in association with, or for marketing, promoting or advertising, any other product, service or event; or

(i) use particular colours, layouts or presentation that are associated with particular tobacco products for marketing, promoting or advertising, any other product, service or event; or

Substitution of section 5.

Prohibition of advertisement and production of cigarettes or any other tobacco product.

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(j) market tobacco products with the aid of a name, mark or brand which is known as, or in use as, a name or brand for any other product, service, or event; or

(k) use tobacco products when advertising other goods and services; or

(l) promote or agree to promote whether directly or indirectly any mark, trademark or brand name of cigarettes or any other tobacco products; or

(m) promote through contribution or otherwise, or through an activity under corporate social responsibility, cigarettes or any other tobacco products.

(3) No person shall display, cause to display, or permit or authorize to display, cigarette or any other tobacco product, or their package, at the entrance or inside a warehouse or a shop where cigarettes or any other tobacco products are offered for distribution or sale.

(4) The owner or person in control of a warehouse or a shop where cigarettes or any other tobacco products are offered for distribution or sale, shall, ensure that cigarettes and other tobacco products are kept in a closed container or dispenser that is not accessible to any member of the public:

Provided that a board, listing the kind of cigarettes and other tobacco products available for sale, may be displayed in a manner as prescribed by rules made under this Act."

Explanation. —For the purpose of this section, "display" means, when cigarette or any other tobacco product or their package is visible to any member of the public in general and not during the course of a transaction for the sale of any specific tobacco product.

Substitution of section 6.

7. For Section 6 of the principal Act, the following section shall be substituted, namely:—

"6. No person shall—

(a) sell, offer for sale, or permit sale of, cigarette or any other tobacco product to any person who is under twenty-one years of age, or

(b) sell, offer for sale, or permit sale of, cigarettes or any other tobacco products in an area within a radius of one hundred meters of any educational institution."

Prohibition on sale of cigarette or other tobacco products to person below the age of twenty-one years.

Amendment of section 7.

8. In section 7 of the principal Act,—

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

"Provided that the sale of cigarettes or any other tobacco products shall not be outside its package but in sealed, intact, original packaging of standard size, contents and weights, as may be prescribed."

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

"(5) No person shall directly or indirectly, produce, supply, or distribute cigarettes or any other tobacco products unless every package of cigarettes or any other tobacco products produced, supplied or distributed by him indicates thereon, or on its label, the constituents and emission contents on each cigarette or as the case may be on other tobacco products, in such manner as may be prescribed."

9. After Section 7 of the principal Act, the following section shall be inserted, namely:—

Insertion of new Section 7A.

"7A. (1) No person shall directly or indirectly, produce, supply, or distribute, import, sell, offer for sale, or permit sale of illicit cigarette or any other tobacco product.

Prohibition on production, supply, distribution, sale, etc. of illicit cigarettes or other tobacco products.

(2) The manner in which illicit cigarettes or any other tobacco product shall be identified, tracked or traced, be such as may be specified in the rules made under this Act.

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

10. For section 23 of the principal Act, the following section shall be substituted, namely: —

Substitution of section 23.

"23. Where any person has been convicted for contravention of the provisions of this Act, the packages of cigarettes and other tobacco products or advertisement materials or any other materials may be forfeited to the Government and such packages or materials shall be disposed of in accordance with the provisions contained in the Code of Criminal Procedure, 1973."

Forfeiture of materials.

2 of 1974.

11. After section 24 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new section 24A.

"24A. (1) Any person who produces or manufactures or supplies or imports illicit cigarettes or any other tobacco products shall in the case of first conviction be punishable with imprisonment for a term which may extend to two years, or with fine which may extend to one lakh rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to five lakh rupees.

Punishment for sale, supply, etc. of illicit cigarettes or other tobacco products.

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

12. In section 31 of the principal Act, in sub-section (2),—

Amendment of section 31.

(i) for clause (b), the following clause shall be substituted, namely: —

"(b) specify the form and manner in which constituents and emissions shall be indicated on the packages of cigarettes or other tobacco products under sub-section (5) of section 7;"

(ii) after clause (d), the following clause shall be inserted, namely:—

"(dd) specify the manner in which the illicit cigarette or any other tobacco product shall be identified, tracked, or traced, under sub-section (2) of section 7A;"

13. After section 31 of the principal Act, the following sections shall be inserted, namely:—

Insertion of new sections 31A and 31B.

"31A. The provisions of this Act shall be in addition to and not in derogation of the provisions of any other law for the time being in force prohibiting trade and commerce, production, supply and distribution of cigarettes and any other tobacco products.

Act to supplement other laws.

Act to have
overriding
effect.

31B. Save as otherwise expressly provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

STATEMENT OF OBJECTS AND REASONS

The use of tobacco is a prominent risk factor for six to eight leading causes of death, and almost 40 per cent. of the Non-Communicable Diseases (NCD) including cancer, cardio-vascular diseases and lung disorders are directly attributable to tobacco use. The Ministry of Family Welfare, Government of India advisory on "*COVID-19 Pandemic and Tobacco Use in India*" states that tobacco use is also a risk factor for infectious diseases — *Covid*, tuberculosis and lower respiratory infections — health burdens that afflict much of humanity. The use of tobacco is a risk factor for many respiratory infections and increases the severity of respiratory diseases. Tobacco smoke including second-hand smoke contains over 7000 chemicals out of which more than 69 chemicals are cancer causing.

As per the Global Adult Tobacco Survey-India (GATS -2016-2017) conducted in the age group of 15 years and above in India, almost 27 crore adults use tobacco in some form or the other. The number of deaths every year in India which is attributable to tobacco use is more than 13.5 lakhs.

As per the GATS -2016-2017, 25.7 per cent. of adults were exposed to Second Hand Smoke (SHS) at a public place. As per the Global Youth Tobacco Survey (GYTS 4, 2019), 21% of students (13 to 15 years old school going children) were exposed to tobacco smoke inside enclosed public places. The Supreme Court in *Murli Deora vs Union of India, 2001* (8) SCC 765, wherein it was held that subjecting a non-smoker to tobacco smoke is violation of his Fundamental right guaranteed under article 21 of the Constitution of India, that none shall be deprived of his life without due process of law.

The Government of India enacted a comprehensive tobacco control legislation, namely, the Cigarettes and other Tobacco products (Prohibition of Advertisement and Regulations of Trade and Commerce Production, Supply and Distribution) Act, 2003 (COTPA, 2003), with emphasis on protection of children and young people from being addicted to the use of tobacco and with a view to achieve improvement of public health in general as enshrined in article 47 of the Constitution of India. Section 4 of COTPA mandates a ban on smoking in public places but provides in hotels/restaurants having 30 or more rooms/seats and at airports a separate space/area for smoking, well known as 'Designated Smoking Area'(DSA). COTPA prohibits the promotion, advertisement, sponsorship of cigarettes and other tobacco products, however, the proviso to sub-section (2) of section 5 of the Act allows advertisement at point of sale. Further, chewing tobacco products like, *khaini, gutkha, paan, zarda* etc. increases the urge to spit. Spitting in public places increases health risks especially those of spreading the infectious and contagious diseases like, COVID-19, tuberculosis, swine flu, encephalitis, etc. Hence a comprehensive ban on tobacco use in public place is imperative by amending COTPA 2003.

It is scientifically established that if a person is kept away from tobacco for the first twenty-one years of his life, there is a very high probability that he will remain tobacco free for rest of his life. It is mostly the teenagers and young school or college going students who are most vulnerable to the addiction of tobacco. Thus, there is need to increase minimum legal age for sale of tobacco products to 21 years, ban sale of cigarettes and other tobacco products loose or outside its package and ban comprehensively direct and indirect advertisement, promotion and sponsorship of tobacco products including point of sale.

It is, therefore, considered necessary to amend the aforesaid Act of 2003. This Bill seeks to amend the said Act to achieve the stated objectives.

SUJEET KUMAR

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 12 of the Bill proposes to amend section 31 of the principal Act to empower the Central Government to make rules for specifying the form and the manner in which the constituents and omissions shall indicated on packages of cigarettes etc. and also the manner in which illicit cigarettes or tobacco products shall be identified, tracked or traced. The rules to be made by the Government pertain to matters of administrative detail only. The delegation is, therefore, normal in character.

ANNEXURE

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

(34 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:

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Definitions.

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;

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

* * * * *

(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;

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(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.

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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.

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

Prohibition of advertisement of cigarettes and other tobacco products.

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

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

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

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

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

(a) cigarettes or any other tobacco product; or

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

* * * * *

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

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

(a) to any person who is under eighteen years of age, and

(b) in an area within a radius of one hundred yards of any educational institution.

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

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

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

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

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

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

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

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Forfeiture of advertisement and advertisement material.

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.

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

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

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

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Power of Central Government to make rules.

(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;

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(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;

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RAJYA SABHA

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further to amend the Cigarettes and Other Tobacco Products (Prohibition of
Advertisement and Regulation of Trade and Commerce, Production,
Supply and Distribution) Act, 2003.

(Shri Sujeet Kumar, M.P.)