

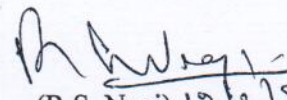
F. No. Z- 21020/03/2014 -PH-I [FTS-111238]

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

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

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

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


(R.S. Negi) 13/1/2015

Under Secretary (TC)
Tele/ Fax: 23012735

DRAFT BILL

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

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

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

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

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

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

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

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

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

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

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

	<p>expedient for removing the difficulty:</p> <p>Provided that no such order shall be made under this section after the expiry of three years from commencement of the Amendment Act.</p>	
	<p>(2) Every order made under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the order or both Houses agree that the order should not be made, the order shall 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 order.”</p>	

Notes on Clauses

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

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

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

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

This said exemption of having a designated smoking area is also contrary to the WHO FCTC guidelines that call for a complete protection from exposure to tobacco smoke.

The Hon`ble Supreme Court in *Murli Deora vs UOI*, 2001 (8) SCC 765, has held that subjecting a non smoker to tobacco smoke is violation of his Fundamental right guaranteed under Article 21 of the Constitution of India, that none shall be deprived of his life without due process of law.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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