

Guidelines for Law enforcers for effective implementation of tobacco control laws



सत्यमेव जयते

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

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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]**

**THE 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]**

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.

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.

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;

Short title, extent and commencement.

Declaration as to expediency of control by the Union Definitions.

- (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;
- (m) "sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another, whether for cash or on credit, or by way of exchange, and whether wholesale or retail, and includes an agreement for sale, and offer for sale and exposure for sale;
- (n) "smoking", means smoking of tobacco in any form whether in the form of cigarette, cigar, beedis or otherwise with the aid of a pipe, wrapper or any other instruments;

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

Section 4. No person shall smoke in any public place:

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

Prohibition of smoking in a public place.

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

Prohibition of advertisement of cigarettes and other tobacco products

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

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

- (a) an advertisement of cigarettes or any other tobacco product in or on a package containing cigarettes or any other tobacco product;
 - (b) advertisement of cigarettes or any other tobacco product which is displayed at the entrance or inside a warehouse or a shop where cigarettes any other tobacco products are offered for distribution or sale.
- (3) No person, shall, under a contract or otherwise promote or agree to promote the use or consumption of-
 - (a) cigarettes or any other tobacco product; or
 - (b) any trade mark or brand name of cigarettes or any other tobacco product in exchange for a sponsorship, gift, prize or scholarship given or agreed to be given by another person.

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

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

Manner in which specified warning shall be made

- 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.**
 - (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 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.

¹ Substituted 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

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.

(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.

Language in which the specified warning shall be expressed.

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 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.

Power of entry and search

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.

Confiscation of package

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:

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.

Power to give option to pay costs in lieu of confiscation

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.

- (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.

Giving opportunity to the owner of seized packages.

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 matter:

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

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

5 of 1908

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

Appeal

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

Provided that an order enhancing any fine in lieu of confiscation or confiscating of goods of greater value shall not be made under this section unless the appellant has had an opportunity of making a representation and, if he so desires, of being heard in person or through a representative in his defence.

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

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

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

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

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

Punishment for smoking in certain places

2 of 1974

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

Punishment for advertisement of cigarettes and tobacco products

- Section 22.** Whoever contravenes the provisions of section 5 shall, on conviction, be punishable-
- (a) in the case of first conviction, with imprisonment for a term which may extend to two years or with fine which may extend to one thousand rupees or with both, and
 - (b) in the case of second or subsequent conviction with imprisonment for a term which may extend to five years and with fine which may extend to five thousand rupees.

Forfeiture of advertisement and advertisement material

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.

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.

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

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:

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

Offences by companies

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

Provided that nothing contained in this sub-section shall render any such person liable to any punishment, 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 an amount which may not exceed two hundred rupees.
- (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.

Composition of offences

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.
- (2) Without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-
- (a) specify the form and manner in which warning shall be given in respect of cigarettes or other tobacco products under clause (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;

Power of Central Government to make rules

- (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.

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

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

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

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

Repeal and savings

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

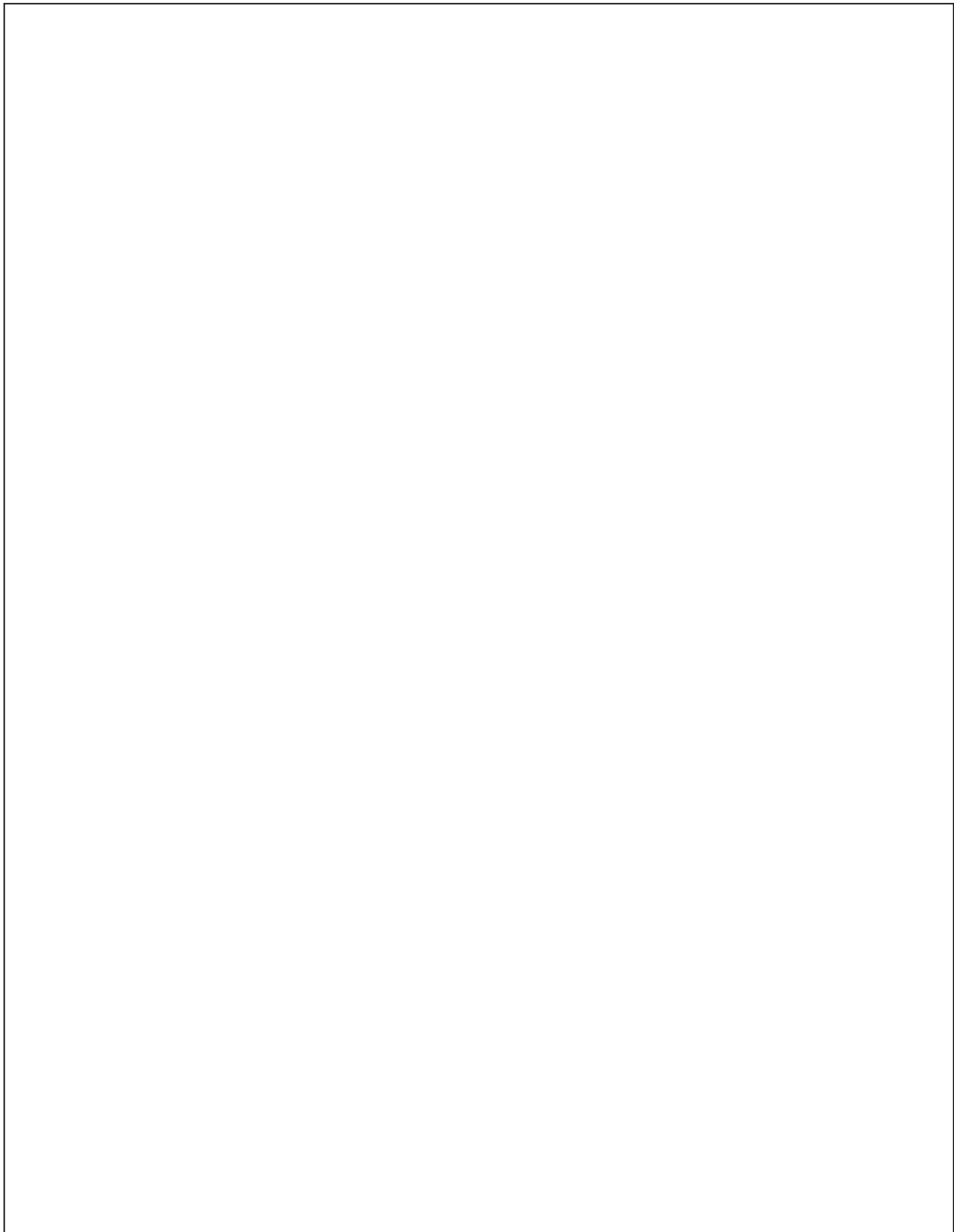
(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the aforesaid Act, shall, in so far as such thing or action is not inconsistent with the provisions of the Act as if the said provisions were in force when such thing was done or such action was taken and shall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

49 of 1975

Note :- All the Sections under COTPA , except Sections 7(5) and 11, have been notified by the Central Government by Gazette notifications SO 238 (E) dated 25th February, 2004 , SO 1955 (E) dated 16th November, 2007 , SO 1865 (E) dated 30th July, 2009 and GSR 680(E), dated 18th September 2009.

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.



**Prohibition of smoking in public places
(Section 4 of COTPA)**

Prohibition on smoking in public places (Section 4 of COTPA)

Summary

Prohibition of Smoking in Public Places : Section 4 of COTPA prohibits smoking in '*public places*'. Any person found smoking in a public place is liable to pay a fine of up to Rs 200. The offence is compoundable, which can be settled on the spot by the enforcement officer and may be tried summarily in accordance with the procedure provided in the Code of Criminal Procedure, 1973. The authorized officer is considered a public servant while acting in performance of his duty under COTPA.

As defined under 3(l) of COTPA '*public place*' means any place to which the public have access, whether as of right or not, but does not include any open space. In addition, smoking is also prohibited at the open spaces that are visited by the public like open auditoriums, stadiums, railway stations, bus stops and such other places.

A physically segregated smoking area may only allowed in the following places:-

- Airports
- Hotels with 30 or more rooms.
- Restaurants with 30 or more seats.

Comprehensive rules on prohibition of smoking in public places were notified on May 30, 2008 (superceding the initial rules of 2004). These rules came into force from October 2, 2008. The rules designated 21 categories of authorized officers (listed in the rules) to ensure enforcement of smoke-free rules in public places. As per these rules the owner/in-charge/proprietor/manager of a public place must ensure that:

- No person smokes in the public place under his jurisdiction
- A 60 X 30cm board saying, "*No Smoking Area – Smoking Here is an Offence*" is prominently displayed at each entrance, floors, staircases, entrance of the lifts and at conspicuous place(s) inside
- Name of the person to whom a complaint may be made is prominently displayed
- No ashtrays, lighters and matchsticks etc. are provided.
- '*Smoking area or space*' is not provided at the entrance or exit of a restaurant, hotel or airport. Such area is distinctively marked as "*Smoking Area*" in English and the local language. "*Smoking Area*" is used only for the purposes of smoking and no service(s) are allowed therein.

If owner, manager, supervisor etc. fails to act upon any complaint he is liable to a fine equivalent to the number of individual offences recorded on his premises. Rules further define that the '*smoking area or space*' should be a separately ventilated room that is physically separated and surrounded by full height walls on all four sides. It should be fitted with an automatic closing door that is normally kept in a closed position. The air from the smoking area should be exhausted directly to the outside through use of appropriate air ventilation/cleaning system so that the smoke does not mix back in the air supply and the non-smoking areas of the building.

**Any complaints with regard to the violations of these Rules
can be reported at National Toll Free Helpline (24X7) number
1800-110-456**

Rules for prohibition of Smoking in Public Places (Section 4): ¹

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)

¹ The Prohibition of Smoking in Public Places Rules, 2008 as cited in Gazette Notification GSR.417(E) Dated 30th May, 2008

- (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.

Specifications for the Smoking Area/ Space

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

Specifications for the Board

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.



List of Notified Authorised Officers to implement Section 4

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

² Serial Number 13 to 21 inserted vide notification GSR 680(E) dated 15th September 2009

Step by Step Guidelines for Smoke-Free public places

1. Section (4) of the 'Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003' prohibits smoking in public places. Any violation of this act is a punishable offence with fine up to **Rs. 200**. However, the hotel with 30 rooms or more, Restaurants with 30 seating capacity or more and airport may create a separate smoking area or space.
2. "Public Place" as defined in the Act and the rules **means any place to which the public has access whether as of right or not and includes all places visited by general public** and includes

<i>Auditorium</i>	<i>Hospital Building</i>
<i>Health Institution</i>	<i>Amusement Centres</i>
<i>Restaurants</i>	<i>Hotels</i>
<i>Public Offices</i>	<i>Court Buildings</i>
<i>Educational Institutions</i>	<i>Libraries</i>
<i>Public Conveyances</i>	<i>Open Auditorium</i>
<i>Stadium</i>	<i>Railway Stations</i>
<i>Bus Stops</i>	<i>Workplaces</i>
<i>Shopping Malls</i>	<i>Cinema Halls</i>
<i>Refreshment Rooms</i>	<i>Discotheques</i>
<i>Coffee House</i>	<i>Pubs</i>
<i>Bars</i>	<i>Airport Lounge</i>

3. The provisions relating to 'Prohibition of Smoking in Public Places' were given effect to from 1st May 2004. These provisions were reviewed and comprehensive rules 'Prohibition of Smoking in Public Places Rules, 2008' were notified on 30th May 2008. These rules are in force since **2nd October 2008**. The salient features of these rules are:
 - It is the duty of the owner, proprietor, manager or supervisor or in-charge of affairs of public place:
 - ❖ To keep the area under his jurisdiction smoke-free.
 - ❖ Display the board as per the specification given in **Figure – 1** . These boards shall be displayed at
 - All entrances and other conspicuous places inside the building
 - If there are more than one entrance then at all entrances.
 - If there are more than one floor, at each floor including the stair case and entrance to the lift at each floor.

- ❖ Notify and display the name of a person to whom a complaint may be made, in case someone is found violating the law. **(specimen figure – 2).**
- ❖ Ensure that no ashtrays, matches, lighters or other things designed to facilitate smoking are provided.
- If the owner, proprietor, manager or supervisor, or in-charge of affairs of the public place fails to act on the report of such violation, he shall be fined equivalent to the number of individual offences.
- All Hotels, Restaurants, and Airport being public place have to be smoke-free. However, owner, proprietor, manager or supervisor or in-charge of affairs of the hotels having 30 or more rooms and restaurants having seating capacity of 30 or more and the manager of the airport may provide a separate smoking area /space as per the following specifications.
 - ❖ Physically separated and surrounded by full height walls on all four sides.
 - ❖ Having an entrance with automatically closing doors normally kept in close position.
 - ❖ Has an airflow system
 - That is exhausted directly to the outside and not mixed back into the supply to the other parts of the building.
 - That is fitted with a exhaust ventilation system which is non re-circulating in nature or an air cleaning system or a combination of two, in such a manner that air does not permeate into non smoking areas.
 - ❖ Has a negative air pressure in comparison with the remainder of the building.
- The smoking area /space shall not be established at the entrance or exit of the hotel, restaurant or airport and shall be distinctly marked as '**smoking area**' in English and one Indian language as applicable.
- The smoking area/space should be used only for the purpose of smoking and no other service(s) shall be allowed.
- The owner, proprietor, manager or supervisor or in-charge of affairs having 30 or more rooms may designate separate smoking rooms in a manner as provided:
 - ❖ All rooms designated as smoking rooms shall form a separate section in the same floor or wing. In case there is more than one floor/wing, these rooms shall be in one floor or wing as the case may be.
 - ❖ All such rooms shall be distinctly marked as smoking rooms in English or one Indian language.
 - ❖ The smoke from such room shall be ventilated outside and does not permeate in non smoking areas of the hotel including lobbies and corridors.

4. Action to be taken by State Government:

The dept dealing with Health in the state government shall be primarily responsible for implementing the provisions of these rules in coordination with other central/state government departments and various other stakeholders. The secretary in-charge of Health shall take following steps.

- ✓ Give wide publicity to the provisions of the rules; also put it on the official website of the Department.
- ✓ Ensure that all offices, Institutions, autonomous organization, including hospitals, Educational Institution/ Medical/Dental/ Nursing Colleges etc. under the Health/Medical Education Department and any public sector undertaking, follow the rules i.e. display of boards, identification of persons to whom a complaint of violation is to be lodged.
- ✓ Send communications to all state government departments, institution etc. in the state.
 - To ensure that attached/subordinate offices, Autonomous organization & PSU's under the respective department(s) comply with the law.
 - That those in-charge or responsible for any public place implement the smoke-free rules.
 - That all departments identify the person(s) to whom any complaint about violation(s) can be reported.

(A fact sheet indicating the steps to be taken by an organization is annexed)

- ✓ Send communications to all the heads of central government departments in the state like Railways, Customs and Central Excise, Defense Establishments, AG Office, Doordarshan, All India Radio, CPWD, Airports Authority, etc. for implementing the provisions of the rules.
- ✓ Send specific communications to Secretaries of Education Dept, Tourism dept, Transport Dept, Municipal Corporations as under:
 - To **Education Secretary** (and /or Medical Education secretary) to make all the school, colleges including Medical, Dental, Nursing, Paramedical Colleges, universities including deemed universities to display the boards as per specification and follow the other provisions of the rules.
 - To **Transport Secretary** for ensuring that the boards are displayed in all public conveyances under government and private sector and also at the bus stops and bus terminals.
 - To **head of the Municipal Corporations** to ensure that the provisions of the Act is implemented in the area under his jurisdiction.
 - To **Tourism Secretary**
 - ▶ To Inform all concerned in charge of places commonly frequented by tourists that they have to follow the rules and ensure that those places are smoke-free.
 - ▶ To ensure tourist are duly informed-through portals/websites, brochures and pamphlets about the provisions of the rule.
 - ▶ To provide smoke free environment in all hotels/restaurants as laid down in the Rules
 - ▶ To inform that hotels/restaurants having 30 or more rooms/ or 30 or more seating capacity may create a designated smoking area / space as per the specifications.
 - ▶ To ensure that the boards as per the requirement are prominently displayed in all tourist spots including in hotels/restaurants/pubs/bars/coffee shops etc.

- ✓ Communicate to all district collectors the details of the provisions of the rules and action to be taken.
- ✓ Sensitize the representatives of Hotels/ Restaurants, Private workplaces, shopping malls, cinema theaters, Industry / factories about the provisions of the rules and set up a mechanism for monitoring implementation.
- ✓ Establish a coordinating mechanism by way of setting a state level task force/steering committee under the chairmanship of Principal Secretary/Secretary Health with representatives of all the major departments of State/Central Governments, other stakeholder and Civil Society. Also to establish District Level committee under the chairmanship of District Collector with Chief Medical Officer (District Nodal Officer for Tobacco Control) as member Secretary.

5. Way forward for Enforcement

- ✓ Sensitize, train and empower the law enforcers i.e. Police, Food & Drug Inspectors and other the authorized officers, as notified by the central Government vide notification dated 30th May, 2008.
- ✓ The State Government may also consider notifying additional authorized officers for implementing the provisions of the rules.
- ✓ Set up flying squads for monitoring, enforcement and compliance.
- ✓ Setting up of toll-free help line / online reporting system may also be considered.
- ✓ Establish a mechanism for issue of challan or compounding of offence. The options available, based on the experience of a few States are:
 - **OPTION – 1:** to empower the authorized officers to compound the offence and impose appropriate fine upto Rs. 200 on the violators and recover the fine on the spot. A specimen copy of the receipt is at [figure -3](#)
 - **OPTION – 2:** to permit the authorized officers to 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. The state government may also constitute mobile courts/special magistrates. The specimen copy of challan is at [figure – 4](#).

Or combination of both the options as may be decided by the State Government.
- ✓ The Health Department has to print the numbered receipt book (s) and challan book(s) for distribution to various authorized officers for ensuring proper accounting of fines imposed on the offenders. The challan may contain two part, one to be issued to the offender and the other to be retained by the authorized officer who has to deposit the fine and the book to the health department.
- ✓ **There are different models of channelising the funds collected through fine.**
 - **OPTION – 1:** create a separate head of account as has been done by Gujarat Government under the department of Health in which the fine collected by various agencies/officers are deposited. This will enable Department of Health to use the fund for tobacco control activities. The head under which the fine is to be credited may be indicated at the bottom of the receipt itself.
 - **OPTION – 2:** the fine collected by various agencies may be deposited to a miscellaneous account of department of Health. In case the states have a separate account for National Tobacco Control Programme in the Health Society, the funds may be deposited in this account.

It is necessary for the state government to lay down detailed guidelines for ensuring accountability for the amount collected as fine.

6. Other Measures:

- ✓ Highlight successes and failures of every department/organization.
- ✓ Provide for non-monetary incentives such a commendation letters, etc.
- ✓ Mainstream the Rules and regulations in regular training/Orientation of officers and staff working in any 'Public place'.
- ✓ Encourage the vast majority of non smokers, to recognize their right to life and health - through media campaigns, school curriculum etc.

Steps for Enforcement by Department /Institutions

- ✓ Display boards as per specifications in non smoking areas.
- ✓ Notify and display the name of a person to whom a complaint may be made, in case someone is found violating the law.
- ✓ Train and inform the persons within the institutions responsible for implementing the act, including their duties, responsibilities under the law. The consequence of non-compliance is clearly spelt out. Also, train the enforcers about the mechanism of issuing challan /compounding of offences and imposing fine.
- ✓ Educate the staff about the provisions of the smoke-free rules.
- ✓ Constitute a core group/task force for regular monitoring, surprise checks to and ensure monitoring and compliance.
- ✓ The funds collected by compounding the offence may be deposited in the account as specified by the department of Health

Figure – 1-Signage


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

Figure - 2 -Specimen

If you find anybody smoking please report to

Name:.....

Designation:

Telephone no:.....

Figure – 3: Prototype of a receipt

Ministry of Health & Family Welfare	
NIRMAN BHAVAN, NEW DELHI	
Receipt No. 851	Date :.....
Received Rs. :.....(in words).....	
.....	
from ShriS/o.....	
R/o.....	
.....on account of compounding fees.	
For offence comitted by him at.....(Name of the Place) under the provisions of the Cigarettes and other tobacco products (prohibition of advertisement and regulation of trade and commerce. production, supply and distribution) Act, 2003.	
Signature of the Offender	Signature of the Authorized Officer

Figure – 4: Prototype of a challan

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. Where as you are hereby prosecuted for the offense described above, you are required to attend the court of name & address place& timeAM on (date) answer the said charges unless otherwise ordered by the court.	
Signature/left thumb impression of the accused	
Signature of the witness	
Name and address of the issuing authority.	

Frequently Asked Questions (FAQ's) for Section 4

Q-1 What is the mandate of the law that bans smoking at public places?

Section 4 of COTPA prohibits smoking in public places. Any violation will be punished with a fine up to Rs. 200 .Technically; the process of reaching a compromise is called Compounding. Such offences, in which a compromise can be done and a trial can be avoided, are called Compoundable offences.

Q-2 When did the ban take effect?

The ban on smoking at public places came into effect from 1st May 2004 and subsequently from 2nd October, 2008 and is applicable all over India.

Q-3 Which are the public places where the ban applies?

The Ban is applicable to all public places where the public have access, as of right or not, but does not include any open space.

auditoriums,
hospital buildings,
railway waiting rooms,
amusement centres,
restaurants including open space surrounding such premises
bars,
discotheques,
refreshment rooms,
banquet halls,
canteens,
coffee houses,
pubs,
airport lounges (airports can have a facility of providing separate smoking lounge)
public offices,
libraries,
workplaces
shopping malls
cinema halls
open auditoriums
stadium
railway stations
bus stops
public conveyances
educational institutions,
court buildings

And the like which are visited by general public

Q-4 Which open spaces are covered under the Act as Public place?

Open Auditorium, stadium, railway station, bus stop/stand, and such other such places.

Q-5 What is to be done by Authorized officers/ Managers of Public Places to ensure that smoke-free laws are implemented in their jurisdictions?

- Display boards as per specifications in non smoking areas.
- Notify and display the name of a person to whom a complaint may be made, in case someone is found violating the law.
- Train and inform the persons within the institutions responsible for implementing the Act, including their duties, responsibilities under the law. The consequence of non-compliance should be spelt out. Also, train the enforcers about the mechanism of issuing challan / compounding of offences and imposing fine.
- Educate the staff about the provisions of the smoke-free rules.
- Constitute a core group/task force for regular monitoring, surprise checks to and ensure monitoring & compliance.
- The funds collected by compounding the offence may be deposited in the account as specified by the Department of Health

Q-6 Where do the smoke-free boards need to be placed?

These boards need to be placed prominently at all public places. A 60 X 30cm size board saying, *“No Smoking Area – Smoking Here is an Offence”* should be prominently displayed at each entrance, each floor, staircase, entrance of the lifts and at conspicuous place(s) inside

Q-7 Is there any penalty under the smoke free law against the authorized officers for dereliction of duty?

If the owner, proprietor, manager or supervisor, or in-charge of affairs of the public place fails to act on the complaint of such violation, he shall be fined equivalent to the number of individual offences i.e. Rupees 200 multiplied by the number of offences.

Q-8 Which is the nodal agency for the enforcement of the smoke-free laws in India?

The Department of Health in the State Government shall be primarily responsible for implementing the provisions of these rules in coordination with other central/state government departments, authorized officers and various other stakeholders. The Authorized officers are notified under Rules relating to prohibition of smoking in public places implemented from 2 October, 2008.

Q-9 Are there any public places where a designated smoking area is allowed? If Yes, what are the specifications?

All Hotels, Restaurants, and Airport being public place have to be smoke-free. However, owner, proprietor, manager or supervisor or in-charge of affairs of the following places may provide a separate smoking area /space:

- Hotels having 30 or more rooms
- Restaurants having seating capacity of 30 or more
- Airports

The smoking area can be created but must be constructed as per the following specifications:-

- Physically separated and surrounded by full height walls on all four sides. Having an entrance with automatically closing doors normally kept in closed position.
- Has an airflow system as specified
- That is exhausted directly to the outside and not mixed back into the supply to the other parts of the building.
- That is fitted with a exhaust ventilation system which is non re-circulating in nature or an air cleaning system or a combination of two, in such a manner that air does not permeate into non smoking areas.
- Has a negative air pressure in comparison with the remainder of the building.
- The smoking area /space shall not be established at the entrance or exit of the hotel, restaurant or airport and shall be distinctly marked as '**smoking area**' in English and one Indian language as applicable.
- The smoking area/space should be used only for the purpose of smoking and no other service(s) shall be allowed.

The owner, proprietor, manager or supervisor or in-charge of affairs of a hotel having 30 or more rooms may designate separate smoking rooms in a manner as provided:

- All rooms designated as smoking rooms shall form a separate section in the same floor or wing. In case there is more than one floor/wing, these rooms shall be in one floor or wing as the case may be.
- All such rooms shall be distinctly marked as smoking rooms in English or one Indian language.
- The smoke from such room shall be ventilated outside and should not permeate in non-smoking areas of the hotel including lobbies and corridors.

Q-10 Is it true that there cannot be a smoking area at entry or exit of an airport, hotel & restaurant where creation of smoking area is allowed? Can any service be provided within the smoking area/space?

Yes, a smoking area cannot be permitted to be constructed at the entry or exit. Also, the smoking area/space should be used only for the purpose of smoking and no other service(s) shall be allowed.

Q-11 How do I file a complaint?

If you observe or note a possible violation, please notify the owner or manager of the establishment. They are responsible for compliance and are required to take action against a person who is smoking. Also, any one can file a complaint on toll-free help line / online reporting system i.e. National Toll Free Helpline-1800-110-456 or the concerned authorized officer as mentioned in the rules.

**Prohibition of advertisement, promotion and
sponsorship of tobacco products
(Section 5 of COTPA)**

Prohibition of advertisement, promotion and sponsorship of tobacco products (Section 5 of COTPA)

Summary

No person is allowed to advertise (directly/indirectly), promote, or sponsor the use or consumption of cigarettes or any other tobacco products. However, there are two exceptions to this rule:-

- (a) an advertisement of cigarettes or any other tobacco product in or on a package containing cigarettes or any other tobacco product;
- (b) an 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

There are certain restrictions on this exception and these are as follows:-

- The size of the board at the entrance of warehouse /shop where cigarettes or any other tobacco products is offered for sale shall not exceed sixty centimeters by forty-five centimeters.
- There must be a health warning on the top edge of the point-of-sale boards [20cmsX15cms]. This board shall only list the type of tobacco products and no brand pack shot, brand name of tobacco product or other promotional messages shall be displayed. The tobacco products are not to be sold in a way that they are visible; in order to prevent easy access of tobacco products to minors.

In addition there are several restrictions on display of tobacco products in cinema, television and other media as per Cigarettes and Other Tobacco products (Second Amendment) Rules 2005.

- These rules prohibit display of tobacco products or their use in cinema and television programmes except in case of old Indian films and television programmes, Indian films and television where necessary display is required to show historical figure/era, foreign films and television programmes (including dubbed or sub-titled), Indian/foreign films & television programmes in case of documentaries and health spots made to reflect dangers/dire consequences of tobacco use, live coverage of news where the display is purely incidental. Provided that all these should have appropriate anti tobacco health warnings and there cannot be display of brands of tobacco products or close ups of cigarette products or tobacco products.
- It is mandatory for the media to crop/mask the brand names or logos of tobacco products which 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 except in case of live or deferred live telecast of sports, cultural or other events held in other countries being aired on television in India.
- A steering committee has been constituted under the chairmanship of Union Health Secretary with representation from other ministries. The committee will take cognizance suo moto or look into specific violations under Section 5 of the Act including evaluating cases related to indirect advertising and promotion of Cigarettes and Other Tobacco Products.

Rules relating to prohibition of advertisement, promotion and sponsorship of Cigarettes and other tobacco products¹

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", 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. 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, 2005.
2. In the Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) (Amendment) Rules, 2004-
 - (a) in rule 2, the following clause shall be inserted, namely.-

“(e) ‘Indirect advertisement’ mentioned in section 5 (1) of the Act means:

 - (i) the use of a name or brand of tobacco products for marketing, promoting or advertising other goods, services and events;
 - (ii) the marketing of tobacco products with the aid of a brand name or trademark which is known as, or in use as, a name or brand for other goods and service;
 - (iii) the use of particular colours and layout and/or presentation those are associated with particular tobacco products; and
 - (iv) the use of tobacco products and smoking situations when advertising other goods and services.”
 - (b) for rule 4, the following rule shall be substituted, namely:-
- “4. **Prohibition of advertisement of cigarettes and other tobacco products. –**
 - (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.
 - (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.

¹ Rules relating to prohibition of advertisement, promotion and sponsorship of Cigarettes and other tobacco products as cited in Gazette Notification G.S.R.345 (E) Dated 31st May, 2005

- (4) The display board shall only list the type of tobacco products available and no brand pack shot, brand name of the tobacco product or other promotional message and picture shall be displayed on the board. The display board shall not be backlit or illuminated in any manner.
- (5) The owner or manager or in-charge of the affairs of a place where cigarettes and other tobacco products are sold shall not display tobacco products in such a way that they are visible so as to prevent easy access of tobacco products to persons below the age of eighteen years.
- [(6) No individual or a person or a character in cinema and television programmes shall display tobacco products or their use: provided that this sub-rule shall not apply to
- (a) Indian films and television programmes displaying use of tobacco products necessary to represent the smoking or tobacco usage of a real historical figure or for representation of a historical era;
 - (b) Old Indian films and television programmes, produced prior to coming into effect of this notification, being screened in a cinema hall or theatre or aired on television;
 - (c) Foreign films and television programmes, including dubbed or sub-titled foreign films or television programmes, being screened in cinema halls or theatres or aired on television;
 - (d) Indian or foreign films and television programmes, displaying use of tobacco products, in case of documentaries or health spots made to clearly and unambiguously reflect the dangers and dire consequences of tobacco use;
 - (e) Live coverage of news, current affairs, interviews, public meetings, sports events, cultural events and the like, being telecast on television whereby there is a purely incidental and completely unintentional coverage of use of tobacco products:

Provided that the exemptions under clauses (a), (b), (c), (d), & (e) above shall not extend to display of brands of tobacco products or tobacco product placement in any form. Close ups of cigarette packages or tobacco products shall not be permissible and such scenes shall be edited by the producer/distributor/broadcaster prior to screening in cinemas/theatres or airing on television.

Explanation (1).- For the purpose of this sub-rule, all films that receive CBFC certification prior to the effective date of this notification shall be categorized as 'old films'.

Explanation (2).- For the purpose of this sub-rule, 'Foreign film' implies 'imported' as defined in the Cinematograph (Certification) Rules, 1983.

(6A) It shall be mandatory for the producer or distributor of the film to include anti tobacco health spots of minimum thirty seconds duration in the master print, to be screened at the beginning, middle and end of the said film. In case of old Indian films, the owner or manager of the cinema hall or theatre where the film is being screened shall ensure that these anti tobacco health spots are duly screened as prescribed. The provisions of this sub-rule shall not apply to clause (d) of sub-rule 6.

(6B) In case of television programmes, it shall be mandatory for the broadcaster to ensure either placement of an anti tobacco health warning as a prominent scroll at the bottom of the television screen during the period of such display or airing of anti tobacco health spots for a period of minimum thirty seconds during the telecast of each television programme of thirty minute duration or less. In case the television programme is more than thirty minutes further airtime of 30 seconds

shall be allocated for each incremental thirty minutes, for telecasting anti tobacco spots. The minimum duration of each anti tobacco spot shall be not less than 15 seconds. The provisions of this sub-rule shall not apply to clauses (d) and (e) of sub-rule 6:

Provided that, the anti tobacco health warning scroll shall be legible and readable with font in black colour on white background. The text of the health warning shall be 'smoking causes cancer' or 'smoking kills' for smoking form of tobacco use and 'Tobacco causes cancer' or 'Tobacco kills' for chewing and other form of tobacco or such other warning as may be specified by the Government:

Provided further that, the anti tobacco health warning scrolls or health spots shall be in the same language(s) as used in the film or television programme. In case of dubbed or sub-titled films or television programmes, the scrolls or spots shall be carried in the language of dubbing or sub-titling".

“(7) 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/activities held in other countries being aired on television in India”.

“(8) A Steering Committee shall be constituted under the Chairmanship of the Union Health Secretary with representation from among others the Ministry of Information & Broadcasting, Ministry of Law & Justice, Advertising Standards Council of India, Press Council of India, Members of Parliament and voluntary organizations.

This Committee will take cognizance suo moto or look into specific violations under section 5 of the Act. The Committee shall also evaluate cases related to indirect advertising and promotion and pass orders thereof”.]²

The Central Government vide G.S.R 646(E) dated 17th October 2006 enforced from December 1, 2007 and by latest superseded Notification G.S.R 489(E) dated 9th June, 2010 constituted a Steering Committee, with the following Members, to take action regarding violations of Section 5 of the said Act, namely:-

1.	Secretary, Ministry of Health and Family Welfare, Government of India, New Delhi	Chairman
2.	Member of Parliament (Nominated by Union Minister of Health and Family Welfare)	Member
3.	Director General of Health Services	Member
4.	Joint Secretary, Ministry of Information and Broadcasting, Government of India, New Delhi	Member
5.	Joint Secretary, Ministry of Law and Justice, Government of India, New Delhi	Member
6.	Joint Secretary, (In-charge of tobacco control), Ministry of Health and Family Welfare, New Delhi	Member
7.	Representative of Advertising Standards Council of India	Member
8.	Representative of Press Council of India, New Delhi	Member
9.	Dr. P.C. Gupta, Healis, Navi Mumbai Representative from NGO	Member
10.	Dr. K. Srinath Reddy, President, PHFI Representative from NGO	Member
11.	Ms. Padmini Somani, Director, Salam Bombay foundation Representative from NGO	Member
12.	Dr. Surendra Shastri, Chief of Preventive Oncology, Tata Memorial Hospital, Representative from NGO	Member
13.	Sh. Bejon Mishra, Managing Director, Consumer Online Foundation, New Delhi	Member

² Inserted vide notification GSR 698 (E), dated 30th November 2005 (Second Amendment) Rules, 2005

(b) in rule 5, the following clauses shall be added, namely.-

“(3) 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 no tobacco product is sold through a vending machine in order to prevent easy access of tobacco products to persons below the age of eighteen years.

(4) 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 no tobacco product is handled or sold by a person below the age of eighteen years.”

Note: - The principal rules were published vide number GSR 137 dated 25th February, 2004.

The (Amendment) Rules, 2005 and (Second Amendment) Rules, 2005 came into force on 2nd November 2006, vide GSR 599(E) dated 28th September 2006.)

Prohibition on sale of tobacco products to minors (Section 6 of COTPA)

Prohibition on sale of tobacco products to minors (Section 6 of COTPA)

Summary

As per section 6 of COTPA, no person is allowed to sell tobacco products to a person below the age of 18 years and no person can sell tobacco products within 100 yards of any educational institution. If a person contravenes these provisions he is liable to pay a fine of up to Rs 200. As in section 4, the offence is compoundable and may be tried summarily.

For the purposes of COTPA '*educational institution*' means any place or centre where educational instructions are imparted according to the specific norms and include any school/ college and institution of higher learning established or recognized by an appropriate authority."

The Rules mandate that the owner/in-charge of a place where cigarettes or tobacco products are sold has prominently displayed a board of 60 cm x 30 cm specifying the warning, in the applicable Indian language(s), that "**Sale of tobacco products to a person under the age of 18 years is a punishable offence**". The onus of proof that the buyer of the tobacco products is not a minor lies with the seller of the tobacco product.

It is also specified that no tobacco product can be sold through a vending machine and no tobacco product can be handled or sold by a person below the age of 18 years.

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



Rules relating to prohibition on sale of tobacco products to minors

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, namely¹:—

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” 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 and such other places; 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.
3. **Prohibition of smoking in a public place**—This rule has been substituted vide notification GSR 417 (E) dated 30 May, 2008
4. **Prohibition of advertisement of cigarette and other tobacco products**— This rule has been amended vide notification GSR 345 (E) dated 31 May, 2005
5. **Prohibition of sale to minors.** — (1) the owner or the manager or the incharge of the affairs of a place where cigarettes and other tobacco products are sold shall display a board of minimum sixty centimeter by thirty centimeter at conspicuous place(s) containing the warning “**Sale of tobacco products to a person under the age of eighteen years is a punishable offence**”, in Indian language(s) as applicable.
 - (2) The onus of proof that the buyer of the tobacco product is not a minor lies with the seller of the tobacco products. The seller, in case of doubt, may request tobacco Purchaser to provide appropriate evidence of having reached eighteen years of age.

[“(3) **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 no tobacco product is sold through a vending machine in order to prevent easy access of tobacco products to persons below the age of eighteen years.**
 - (4) **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 no tobacco product is handled or sold by a person below the age of eighteen years.”]**²

¹ Rules relating to prohibition on sale of tobacco products to minors as cited in Gazette Notification, G.S.R. 137. Dated 25th February, 2004

² Inserted vide notification GSR 345 (E), dated 31 May, 2005 Amendment Rules, 2005

Rules relating to prohibition on display of tobacco products within 100 yards of educational institution

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, namely¹:-

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.-

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.

¹ Rules on the Cigarettes and Other Tobacco Products (Display of board by Educational Institutions Rules) 2009 as cited in Gazette Notification, G.S.R. 40(E) Dated 19th January, 2010.

Frequently Asked Questions (FAQ's) for Section 6

Q1. How does one measure the radius of 100 yards of an educational institution where the sale to minors is prohibited?

Ans. The 100 yards have to be measured from the outer limit of boundary wall or fence of an educational institution.

Q2. Who is responsible to display the boards outside educational institutions and what does the board read?

Ans. The school principal and the school management are responsible to display boards outside/at the gate of the educational institutions. The board should read as, *"Sale of tobacco products in an area within a radius of 100 yards of the educational institution is strictly prohibited and it is a punishable offence with a fine which may extend to Rs. 200."*

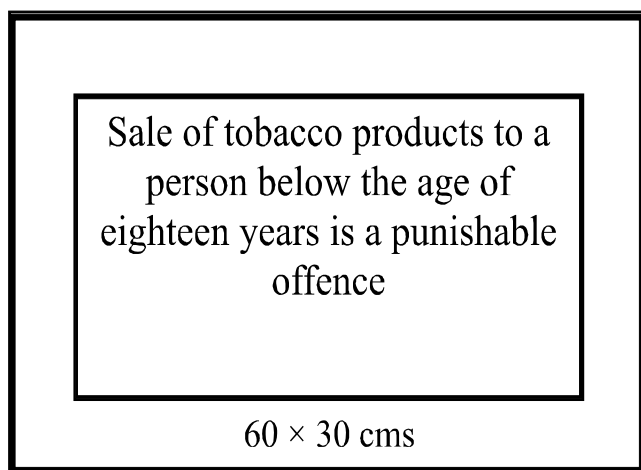
"Sale of tobacco products in an area within a radius of 100 yards of the educational institution is strictly prohibited and is a punishable offence with a fine which may extend to Rs. 200."



3. Who is responsible to display the boards at the point of sale of tobacco products and what information will the board contain?

Ans. The person who sells the tobacco products is supposed to display a board at his/her shop saying, "sale of tobacco products to a person under the age of eighteen years is a punishable offence." The board shall be of a minimum size 60 cm by 30 cm.

Sample board:



4. Who is responsible for ensuring that the buyer is not a minor and what is the penalty?.

Ans. The seller of cigarettes and other tobacco products has to ensure that tobacco products are not sold to a person under eighteen years of age, failing which a fine of Rs 200 will be imposed on them.

Q4. Who are the officers responsible for ensuring that there is no tobacco selling shop in the radius of 100 yards of educational institutions?

Ans. The Department of Health in the State Government is the nodal agency to implement this provision. They can notify one or more persons who shall be competent to act under this section. State Governments have notified various authorities including Municipal Corporation, Police and the Food and Drug Administration etc.

Q5. Which officers can fine persons who are selling tobacco to minors?

Ans. The Central and State governments can notify officers to enforce this provision.

**Display of specified health warnings on
tobacco product packages
(Section 7 of COTPA)**

Display of specified health warnings on tobacco product packages (Section 7 of COTPA)

Summary

Section 7 mandates that no person can produce, supply, distribute or import any tobacco product unless every tobacco product package carries a specified health warning including a picture as specified in the rules.

The rules give specification of the specified health warnings to be displayed on every tobacco product package. The specified health warnings shall occupy at least forty percent (40%) of the principal display area of the front panel 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. However, for conical packs, especially in the case of beedis in India, the widest end of the pack shall be considered as the top edge of the pack.

The language used for the specified health warnings should be the language used on the tobacco product pack. However, in case there is more than one language 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.

Other important aspects under the rules:-

- No messages that directly or indirectly promote a specific tobacco brand or tobacco usage in general should be inscribed on the tobacco product package;
- No tobacco product package or label shall contain any information that is false, misleading, or deceptive, or that is likely to create an erroneous impression about the characteristics, health effects, or health or other hazards of the tobacco product or its emissions.
- No person shall sell or supply any product that can be used, to cover, obscure, mask, alter, or otherwise detract from the display of specified health warning on the tobacco product package.
- The specified health warning on tobacco packs shall be rotated every twelve months from the date of notification of the rules or earlier as specified by the Central Government.
- The violation of section 7 is punishable under Section 20 of the COTPA. The producer/manufacturer can be punished with imprisonment up to 2 years or with fine which may extend to five thousand rupees or with both. For second or subsequent offence there is imprisonment for a term which may extend to 5 years and fine which may extend to ten thousand rupees. If the violation is done by the seller or distributor, he can be punished with imprisonment upto of one year or fine upto thousand rupees or both. In this case for the second or subsequent offence there is imprisonment for a term which may extend to 2 years and with fine which may extend to three thousand rupees.

Rules relating to display of specified health warnings on tobacco products packs

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, namely¹:-

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]²
 - (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 ay 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]³ 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 Rules relating to depiction of specified health warnings on tobacco products packs as cited in Gazette Notification dated G.S.R.182(E) Dated 15th March, 2008

² Inserted vide notification S.O.305 (E) dated 3rd May 2009.

³ 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]**⁴ 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]**⁵

- (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 warnings.- The specified health warning on tobacco packs shall be rotated every twelve months from the date of notification of the rules or earlier as specified by the Central Government.

⁴ Inserted vide notification S.O. 693(E) dated 29th September 2008

⁵ Inserted vide notification S.O. 693(E) dated 29th September 2008

SCHEDULE
(See rule 3)

1. **Components of specified health warning.**- The components for the specified health warning shall include :-
 - (1) **Health Warning:** - The warning “Smoking Kills” (on smoking forms of tobacco products) and “Tobacco Kills” (on smokeless or chewing and other forms of tobacco products) shall appear in white font colour on a red background (consisting of 100% magenta + 100% yellow).
 - (2) **Pictorial representation of ill effects of tobacco use.**- Pictorial depiction of the ill effects of tobacco use on health, shall be place below the health warning and should appear in colour exactly as in the soft copy provided in the Compact Disk CD accompanying these rules.
 - (3) **Health message.**- Every specified health warning shall include the health message in black font colour on a white background. The health message should be printed in easy to read black font on a white background and the font type or the font size shall be, exactly ass per the soft copy provided in the CD along with these rules.

2. The specified health warnings are-

- (1) For smoking forms of tobacco packs:-



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



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.

(1) The size of all components of the specified health warning shall be increased proportionally according to increase of the package size to ensure that the specified health warning occupies forty 40% (per cent) of the principal display area of the pack.

7. Language .- Each health warning and health message 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 and health message are in conformity with the language used on the pack by the manufacturer. Where more than one language is used on the pack, the specified health warning and health message shall be given separately in each of the language. Provided that not more than two languages shall be used on the pack.

8. 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.

[In exercise of the powers conferred by sub-section (1) of Section 25 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 authorizes officers mentioned in column (2) of the Table given below, who shall be competent to act under sections 12 and 13 of the said Act and are conferred with the power of entry, Search and Seizure under the said provision of the said Act.]⁶

List of Notified Authorised Officers to implement Section 7

TABLE

S.No. (1)	DESIGNATION (2)	DEPARTMENT (3)
1.	All officers of the level of Superintendent and above of the Customs and Central Excise.	All premises registered under the Department of Revenue ⁷
2.	All officers of the rank of Inspectors and above of Sales Tax/ Health/ Transport Departments.	Department of Revenue /Health/ Transport of the State
3.	Junior Labor Commissioner and above	Labor Department.
4.	Joint Director	O/o. Commissioner of Industries/ Small scale Industries.
5.	Sub-Inspector and above of Police/ State Food and Drug Administration or any other officer holding the equivalent rank of sub- Inspector of Police.	Department of Food and Drugs and Department of Home Affairs.

⁶ Inserted vide notification S.O. 1866(E) dated 30th July,2009

⁷ Inserted vide notification S.O. 23 (E) dated 6th January, 2010




Frequently Asked Questions (FAQ's) for Section 7

Q1. Who has to ensure that there are pictorial health warnings on tobacco products?

Ans. It is the duty of the producer, manufacturer, seller, distributor and importer of tobacco products to ensure that every tobacco product package shall have the pictorial health warning as prescribed by the rules. If anyone contravenes this provision, then that person will be punishable with a fine or imprisonment or both.

Q2. Where are warnings supposed to be placed on tobacco products?

Ans. The pictorial health warnings are supposed to occupy atleast 40% of the principal display area of the front panel of the pack and should be placed at the top edge of the package. This applies to square and rectangular packages. However, for a conical package which is applicable in the case of beedis, the widest edge of the package has to be considered as the top edge of the pack.

Cigarette Packs	Bidi Packs	Chewing/smokeless tobacco
		

Q3. Who are the Authorized Officers to take action against the violators?

Ans. As per the Notification dated 30th July 2009, the powers for implementation of Packaging and Labelling Rules 2008 can be exercised by the following officers:-

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

The state government can notify more officers if the state feels the need.

Q4. The chewing tobacco product (gutka) in our jurisdiction has an added descriptor to the brand name which reads as 'kesar yukt' gutka. Is it a violation? What are the other misleading descriptors?

Ans. Yes, this phenomenon is a violation because according to the law tobacco product package cannot contain any information that is false, misleading, or deceptive, or that is likely to create an incorrect impression about the characteristics, health effects, or health or other hazards of the tobacco product or its emissions.

The phrase 'kesar yukt' here creates an erroneous impression about the characteristics of gutka which is not allowed under law. Thus it is a violation. Other misleading descriptors are light, ultra light, mild, ultra mild, low tar, slim, safer, or similar words and descriptors.

Q5. What languages are to be used for the health warning on the tobacco product packages under law?

Ans. The health warnings have to be inscribed in the language/s used on the pack and if there is more than one language/s used on the pack then the health warning shall appear in two languages, one in which the brand name appears and the other in any other language used on the pack.

Q6. Pictorial health warnings are seen on cigarettes, beedis and gutkas. What about products like pan masala, hookah, tooth powder which contain tobacco but do not have pictorial health warnings inscribed on them?

Ans. All tobacco products have to bear pictorial health warnings on them. If some products like pan masala, hookah and tooth powder containing tobacco do not contain pictorial health warnings then it is a clear violation of the law. The companies which manufacture these products claim that they do not contain tobacco, which in most of the cases is not true. Thus if in doubt, the authorized officer can submit a sample to the local FDA and get it tested. If the product is tested positive with tobacco then the manufacturer and the seller both shall be punished.

Q7. What is the punishment for violation of Section 7 of COTPA?

The violation of section 7 is punishable under Section 20 of the COTPA. The producer/ manufacturer can be punished with imprisonment up to 2 years or with fine which may extend to five thousand rupees or with both. For second or subsequent offence there is imprisonment for a term which may extend to 5 years and fine which may extend to ten thousand rupees. If the violation is done by the seller or distributor, he can be punished with imprisonment of upto one year or with fine upto one thousand rupees or both. In this case for the second or subsequent offence there is imprisonment for a term which may extend to 2 years and with fine which may extend to three thousand rupees.