

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

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Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of
Trade and Commerce, production, Supply and Distribution) Rules, 2004

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Prohibition on sale of Cigarettes and other Tobacco Products around Educational
Institutions Rules, 2004

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Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of
Trade and Commerce, Production, Supply and Distribution) Rules, 2005

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Supreme Court Judgement in Murli S. Deora Vs. Union of India & others case



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

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(PASSED BY THE HOUSES OF PARLIAMENT— RAJYA SABHA ON 9TH APRIL, 2003 & LOK SABHA ON 30TH APRIL, 2003)

(Act 32 of 2003)

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

WHEREAS, the Resolution passed by the 39th World Health Assembly (WHO), in its Fourteenth Plenary meeting held on the 15th May, 1986 urged the member States of WHO which have not yet done so to implement the measures to ensure that effective protection is provided to non-smokers from involuntary exposure to tobacco smoke and to protect children and young people from being addicted to the use of tobacco; AND WHEREAS, the 43rd World Health Assembly in its Fourteenth Plenary meeting held on the 17th May, 1990, reiterated the concerns expressed in the Resolution passed in the 39th

World Health Assembly and urged Member States to consider in their tobacco control strategies plans for legislation and other effective measures for protecting their citizens with special attention to risk groups such as pregnant women and children from involuntary exposure to tobacco smoke, discourage the use of tobacco and impose progressive restrictions and take concerted action to eventually eliminate all direct and indirect advertising, promotion and sponsorship concerning tobacco;

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

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

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

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

1. (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.

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(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.

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

3. In this Act, unless the context otherwise requires,—

(a) “advertisement” includes any visible representation by way of notice, circular, label, wrapper or other document and also includes any announcement made orally or by any means of producing or transmitting light, sound, smoke or gas;

(b) “cigarette” includes,—

(i) any roll of tobacco wrapped in paper or in any other substance not containing tobacco,

(ii) any roll of tobacco wrapped in any substance containing tobacco, which, by reason of its appearance, the type of tobacco used in the filter, or its packaging and labelling is likely to be offered to, or purchased by, consumers as cigarette, but does not include *beedi*, cheroot and cigar;

(c) “distribution” includes distribution by way of samples, whether free or otherwise;

(d) “export”, with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

(e) “foreign language” means a language which is neither an Indian language nor the English language;

(f) “import”, with its grammatical variations and cognate expressions, means bringing into India from a place outside India;

(g) “Indian language” means a language specified in the Eighth Schedule to the Constitution, and includes any dialect of such language;

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

(i) “package” includes a wrapper, box, carton, tin or other container;

(j) “prescribed” means prescribed by rules made under this Act;

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(k) “production”, with its grammatical variations and cognate expressions, includes the making of cigarettes, cigars, cheroots, *beedis*, cigarette tobacco, pipe tobacco, *hookah* tobacco, chewing tobacco, *pan masala* or any chewing material having tobacco as one of its ingredients (by whatever name called) or snuff and shall include—

(i) packing, labelling or re-labelling, of containers;

(ii) re-packing from bulk packages to retail packages; and

(iii) the adoption of any other method to render the tobacco product marketable;

(l) “public place” means any place to which the public have access, whether as of right or not, and includes auditorium, hospital buildings, railway waiting room, amusement centres, restaurants, public offices, court buildings, educational institutions, libraries, public conveyances and the like which are visited by general public but does not include any open space;

(m) “sale”, with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another, whether for cash or on credit, or by way of exchange, and whether wholesale or retail, and includes an agreement for sale, and offer for sale and exposure for sale;

(n) “smoking”, means smoking of tobacco in any form whether in the form of cigarette, cigar, *beedis* or otherwise with the aid of a pipe, wrapper or any other instruments;

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

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

4. No person shall smoke in any public place:

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

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

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

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

(b) sell or cause to sell, or permit or authorise to sell a film or video tape containing advertisement of cigarettes or any other tobacco product; or

(c) distribute, cause to distribute, or permit or authorise to distribute to the public any leaflet, hand-bill or document which is or which contains an advertisement of cigarettes or any other tobacco product; or

(d) erect, exhibit, fix or retain upon or over any land, building, wall, hoarding, frame, post or structure or upon or in any vehicle or shall display in any manner whatsoever in any place any advertisement of cigarettes or any other tobacco product:

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

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

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

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

(a) cigarettes or any other tobacco product; or

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

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

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

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

7. (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, the specified warning including a pictorial depiction of skull and cross bones and such other warning as may be prescribed.

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(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.

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.

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;

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(b) any Indian language or languages, the specified warning shall be expressed in such Indian language or languages;

(c) both English and one or more Indian languages, the specified warning shall be expressed in the English language as well as in such Indian language or languages;

(d) partly English and partly any Indian language or languages, the specified warning shall be expressed in the English language as well as in such Indian language or languages;

(e) any foreign language, the specified warning shall be expressed in the English language; contents.

(f) partly any foreign language and partly English or any Indian language or languages, the specified warning shall be expressed in the English language as well as in such Indian language or languages.

(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.

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

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

12. (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, authorised by the Central Government or by the State Government may, if he has any reason to suspect that any provision of this Act has been, or is being, contravened, enter and search in the manner prescribed, at any reasonable time, any factory, building, business premises or any other place,—

(a) where any trade or commerce in cigarettes or any other tobacco products is carried on or cigarettes or any other tobacco products are produced, supplied or distributed; or

(b) where any advertisement of the cigarettes or any other tobacco products has been or is being made.

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

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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, authorised by the Central Government or by the State Government, has any reason to believe that,—

(a) in respect of any package of cigarettes or any other tobacco products, or

(b) in respect of any advertisement of cigarettes or any other tobacco products, the provisions of this Act have been, or are being, contravened, he may seize such package or advertisement material in the manner prescribed.

(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 seized the package or advertisement material for a period exceeding ninety days from the date of the seizure unless the approval of the District Judge, within the local limits of whose jurisdiction such seizure was made, has been obtained for such retention.

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

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

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

(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.

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

17. Any confiscation of cigarettes or any other tobacco products may be adjudged or costs may be ordered to be paid,—

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(a) without any limit, by the principal civil court of original jurisdiction within the local limits of whose jurisdiction such confiscation has been made, costs have been ordered to be paid,

(b) subject to such limits as may be specified by the Central Government in this behalf, by such other court, not below a civil court having pecuniary jurisdiction exceeding rupees five thousand, as the Central Government may, by notification in the Official Gazette, authorise in this behalf.

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

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

(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 subsection (1).

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.

(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.

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

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imprisonment for a term which may extend to two years, or with fine which may extend to five thousand rupees, or with both, and for the second or subsequent conviction, with imprisonment for a term which may extend to five years and with fine which may extend to ten thousand rupees.

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

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

(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.

22. Whoever contravenes the provision of section 5 shall, on conviction, be punishable—

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

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

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

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

25. (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, authorise one or more persons who shall be competent to act under this

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

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

26. (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 of the company, such director, manager, secretary or other officer shall be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

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

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

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

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 authorised 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.

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

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

31. (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 (o) of section 3;

(b) specify the maximum permissible nicotine and tar contents in cigarettes or other tobacco products under the proviso to sub-section (5) of section 7;

(c) specify the manner in which the specified warning shall be inscribed on each package of cigarettes or other tobacco products or its label under sub-section (2) of section 8;

(d) specify the height of the letter or figure or both to be used in specified warning or to indicate the nicotine and tar contents in cigarettes or other tobacco products under section 10;

(e) provide for the manner in which entry into and search of any premises is to be conducted and the manner in which the seizure of any package of cigarettes or other

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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 sessions aforesaid, both Houses agree in making any modification in the rule or notification or both Houses agree that the rule or notification should not be made, the rule or notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or notification.

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

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

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

33. (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 this Act, be deemed to have been done or taken under the provisions of this Act as if the said provisions were in force when such thing was done or such action was taken and shall continue in force accordingly until superseded by anything done or any action taken under this Act.

THE SCHEDULE

[See section 3(p)]

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

CIGARETTES AND OTHER TOBACCO PRODUCTS ACT, 2003

Compiled by : Hemant Goswami for Burning Brain Society

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

NOTIFICATION

New Delhi, the 25th February, 2004

S.O. 238(E). —In exercise of the power conferred by Sub-section (3) of Section 1 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 appoints 1st day of May, 2004 as the date on which the provisions of section 1,2,3,4,5,6(a), 12(1)(b), 12(2), 13(1)(b) 13(2), 14,16,19,21,22,23,24,25,26,27,28,29,30 and 31 of the said Act shall come into force

[F.No.P-16011/2/2003-PH]

BHAVANI THYAGARAJAN, Jt. Secy.

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

NOTIFICATION

New Delhi, the 25th February, 2004

CIGARETTES AND OTHER TOBACCO PRODUCTS ACT, 2003

Compiled by : Hemant Goswami for Burning Brain Society

Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, production, Supply and Distribution) Rules, 2004

G.S.R. 137. — 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, namely: -

1. Short title and commencement. — (1) These rules may be called the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, production, Supply and Distribution) Rules, 2004

(2) They shall come into force on the 1st day of May, 2004

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

(a) “Act” means the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of trade and Commerce, production, Supply and Distribution Act, 2003

(b) “section” means a section of the Act

(c) “open space” mentioned in Section 3(1) of the Act shall not include any places visited by the public such as open auditorium, stadium, railway station, bus stop and such other places; and

(d) words and expressions used herein and not defined in these rules but defined in the Act, shall have the meaning, respectively, assigned to them in the Act

3. Prohibition of smoking in a public place. —(1) The owner or the manager or in charge of the affairs of a public place shall cause to be displayed prominently a board, of a minimum size of sixty centimeter by thirty centimetre in the Indian language(s) as applicable, at least one at the entrance of the public place and one at conspicuous place(s) inside, containing the warning “No Smoking Area - Smoking here is an offence

(2) The owner or the manager or in charge of the affair of a hotel having thirty rooms or restaurants having seating capacity of thirty persons or more and the manager of the airport shall ensure that, —

(i) The smoking and non-smoking areas are physically segregated;

CIGARETTES AND OTHER TOBACCO PRODUCTS ACT, 2003

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(ii) The smoking area shall be located in such manner that the public is not required to pass through it in order to reach the non-smoking area; and

(iii) Each area shall contain boards indicating thereon “Smoking Area/Non-Smoking area”.

4. Prohibition of advertisement of cigarette and other tobacco products.—(1)

The size of the board used for advertisement for cigarettes and any other tobacco products displayed at the entrance or inside a warehouse or a shop where cigarettes and any other such tobacco products are offered for distribution or sale shall not exceed ninety centimetre by sixty centimetre and number of such boards shall not exceed two.

(2) Each such board shall contain in the Indian language as applicable, one of the following warning occupying twenty-five percent, of top area of the board, namely: -

(i) Tobacco Causes Cancer, or

(ii) Tobacco Kills

(3) The board referred to in sub-rule (2) shall contain only the brand name or picture of the tobacco products and no other promotional message and picture

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 size of sixty centimetre by thirty centimetre at conspicuous place(s) containing the warning “Sales of tobacco products to a person under the age of eighteen years is a punishable offence”, in Indian language(s) applicable.

(2) The onus of proof that the buyer of the tobacco products 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.

[F.No. P-16011/2/2003-PH]
BHAVANI THYAGARAJAN, Jt. Secy

CIGARETTES AND OTHER TOBACCO PRODUCTS ACT, 2003

Compiled by : Hemant Goswami for Burning Brain Society

**Prohibition on sale of Cigarettes and other Tobacco Products
around Educational Institutions Rules, 2004**

MINISTRY OF HEALTH AND FAMILY WELFARE

(Department of Health)

NOTIFICATION

New Delhi, the 1st September, 2004

G.S.R.561(E). In exercise of the powers conferred by Section 31 read with Section 6 of the Cigarettes and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 (No.34 of 2003), the Central Government hereby makes the following rules, namely:-

1. Short Title, Extent and Commencement -

- (1) These rules may be called the Prohibition on sale of Cigarettes and other Tobacco Products around Educational Institutions Rules, 2004.
- (2) They shall extend to the whole of India.
- (3) They shall come into force on the 1st day of December, 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) Educational Institution means places / centers where educational instructions are imparted according to the specific norms and include schools, colleges and institutions of higher learning established or recognized by an appropriate authority;
- (c) Section means a section of the Act; and
- (d) 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 Sale of Cigarettes and other Tobacco Products Around Educational Institutions.-

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(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 with the fine which may extend to two hundred rupees.

(2) Measurement of Distance.- Distance of one hundred yards shall be measured radially starting from the outer limit of boundary wall, fence or as the case may be, of the educational institution.

(F.No.P-16011/2/2003-PH)

BHAVANI THYAGARAJAN, Jt.Secy.

CIGARETTES AND OTHER TOBACCO PRODUCTS ACT, 2003

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Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2005

MINISTRY OF HEALTH AND FAMILY WELFARE

NOTIFICATION

New Delhi, the 31st may 2005

G.S.R. 345(E) :- In exercise of the powers conferred by section 31 of the “Cigarette 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 amend the Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act. 2003:-

- 1) (1) These rules may be called the Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Rules, 2005.
(2) They shall come into force on the 1st day of August 2005.

- 2) In the Cigarette and other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) 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, promotion 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 shall be substituted, namely:-

“4. Prohibited of advertisement of cigarettes and other tobacco products:-

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- (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 products is offered for sale shall not exceed sixty centimeters by fourth-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.
- (4) The display board shall only list the type of tobacco products available and no brand 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. Where, however, cinema and television programmes which have been produced prior to this notification have scenes with smoking situations and use of other forms of tobacco, it shall be mandatory to place a health warning as a prominent scroll at the bottom of the television or cinema screen with font in black colour on white background which is legible and readable. The text of the 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. The health warning shall be in the same language/s as used in the cinema or the television programme.
- (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 name and logos of the tobacco products are not visible.”

c) 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

CIGARETTES AND OTHER TOBACCO PRODUCTS ACT, 2003

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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.”

[F. No. P-16012/1/2005-PH]
BHAVANI TYAGRAJAN, Jt. Secy.

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

**SUPREME COURT ORDERS IN
MURLI S. DEORA Vs. UNION OF INDIA CASE**

IN THE SUPREME COURT OF INDIA

**CIVIL ORIGINAL JURISDICTION
WRIT PETITION (CIVIL) No. 316 OF 1999**

Murli S. Deora ... Petitioner

Versus

Union of India and Others ... Respondents

ORDER

Heard the learned counsel for the parties.

Fundamental right guaranteed under Article 21 of Constitution of India, inter alia, provides that none shall be deprived of his life without due process of law. Then — why a non-smoker should be afflicted by various diseases including lung cancer or of heart, only because he is required to go to public places? Is it not indirectly depriving of his life without any process of law? The answer is obviously - ‘yes’. Undisputedly, smoking is injurious to health and may affect the health of smokers but there is no reason that health of passive smokers should also be injuriously affected. In any case, there is no reason to compel non-smokers to be helpless victims of air pollution.

The statement of objects and reason of (The) Cigarettes (Regulation of Production, Supply and Distribution) Act, 1975, inter alia, provides, “Smoking of cigarettes is a harmful habit and, in course of time, can lead to grave health hazards. Researches carried out in various parts of the world have confirmed that there is a relationship between smoking of cigarettes and lung cancer, chronic bronchitis; certain diseases of the heart and arteries; cancer of bladder, prostate, mouth pharynx and oesophagus; peptic ulcer etc., are also reported to be among the ill-effects of cigarette smoking.”

Similarly, the statement of objects and reasons of The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Bill, 2001, provides, “Tobacco is universally regarded as one of the major public health hazards and is responsible directly or

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indirectly for an estimated eight lakh deaths annually in the country. It has also been found that treatment of tobacco related diseases and the loss of productivity caused therein cost the country almost Rs.13,500/- crores annually, which more than offsets all the benefits accruing in the form of revenue and employment generated by tobacco industry”.

In this view of the matter, when this petition under Article 32 of the Constitution of India came for orders on 31st August, 2001, we have passed order for implementing 1975 Act. At that time of hearing, learned Attorney General as well as counsel for the parties submitted that considering harmful effect of smoking, smoking in public places is required to be prohibited. On this submission, we sought response of the Central Government. As no affidavit was filed during the stipulated time by the Central Government, on 28th September, 2001, we were required to adjourn the matter. Today also, when the matter came up for hearing, no response is filed on behalf of the Central Government. However, learned Attorney General with all emphasis at his command submitted that appropriate order banning smoking in public places be passed. Learned counsel for the petitioner also submitted to the aforesaid effect. Counsel appearing for other respondents also supported the same.

In the petition, it is pointed out that tobacco smoking contains harmful contents including nicotine, tar, potential carcinogens, carbon monoxide, irritants, asphyxiates and smoke particles which are the cause of many diseases including the cancer. It is alleged that three million people die every year as a result of illness related to the use of tobacco products of which one million people belong to developing countries like India. The World Health Organisation is stated to have estimated that tobacco related deaths can rise to a whopping seven million per year. According to this organisation, in the last half century in the developing countries alone smoking has killed more than sixty million people. Tobacco smoking also adds to the air pollution. Besides cancer, tobacco smoking is responsible for various other fatal diseases to the mankind.

It is further submitted that statutory provisions are being made for prohibiting smoking in public places and the Bill introduced in the Parliament is pending consideration before a Select Committee. The State of Rajasthan has claimed to have passed Act No.14 of 2000 to provide for prohibition of smoking in place of public work or use and in public service vehicles for that State. It is stated that in Delhi also there is prohibition of smoking in public places.

Learned Attorney General for India submits and all the counsel appearing for the other parties agree that considering the adverse effect of smoking in public places, it would be in the interests of the citizens to prohibit the smoking in public places till the statutory provision is made and implemented by the legislative enactment. The persons not indulging in smoking cannot be compelled to or subjected to passive smoking on account of acts of the smokers.

Realising the gravity of the situation and considering the adverse effect of smoking on smokers and passive smokers, we direct and prohibit smoking in public places and issue

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directions to the Union of India, State Governments as well as the Union Territories to take effective steps to ensure prohibiting smoking in public places, namely:

1. Auditoriums
2. Hospital Buildings
3. Health Institutions
4. Educational Institutions
5. Libraries
6. Court Buildings
7. Public Office
8. Public Conveyances, including Railways.

Learned Attorney General for India assured the court that Union of India shall take necessary effective steps to give wide publicity to this order by electronic as well as print media to make the general public aware of this order of prohibition of smoking.

We further direct the Registrar General to intimate the State Governments/Union Territories as well as the Commissioners of Police as mentioned in our orders dated 31st August, 2001 and 28th September, 2001 of this Court with directions for submission of their compliance report in this Court within five weeks from today. Union of India shall also file its response at the earliest.

List after six weeks.

.....J.
(M.B. Shah)

New Delhi;J.
November 2, 2001. (R.P. Sethi)